

HOUSE BILL 213

56TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2023

INTRODUCED BY

Joy Garratt and Patricia A. Lundstrom and Cathrynn N. Brown

AN ACT

RELATING TO PUBLIC PROJECTS; ENACTING THE PUBLIC-PRIVATE PARTNERSHIP ACT; ALLOWING PUBLIC PARTNERS TO ENTER INTO PUBLIC-PRIVATE PARTNERSHIP AGREEMENTS TO FACILITATE PUBLIC PROJECTS; CREATING THE PUBLIC-PRIVATE PARTNERSHIP BOARD; CREATING THE PUBLIC-PRIVATE PARTNERSHIP PROJECT FUND; PROVIDING FOR AN EXEMPTION TO THE PROCUREMENT CODE; AUTHORIZING GRANTS, LOANS AND BONDS; PROVIDING POWERS AND DUTIES; PROVIDING A DELAYED REPEAL; REQUIRING REPORTS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. [NEW MATERIAL] SHORT TITLE.--Sections 1 through 13 of this act may be cited as the "Public-Private Partnership Act".

SECTION 2. [NEW MATERIAL] DEFINITIONS.--As used in the Public-Private Partnership Act:

.223223.2

underscoring material = new
[bracketed material] = delete

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

1 A. "authority" means the New Mexico finance
2 authority;

3 B. "board" means the public-private partnership
4 board;

5 C. "broadband telecommunications network
6 facilities" means the electronics, equipment, transmission
7 facilities, fiber-optic cables and any other item directly
8 related to a system capable of transmission of internet
9 protocol or other formatted data at current federal
10 communications commission minimum speed standard, all of which
11 will be owned and used by a provider of internet access
12 services;

13 D. "private partner" means an individual, a foreign
14 or domestic corporation, a general partnership, a limited
15 liability company, a limited partnership, a joint venture, a
16 business trust, a public benefit corporation, a nonprofit
17 entity or other private business entity or combination thereof;

18 E. "public partner" means the state and its
19 branches, agencies, departments, boards, instrumentalities or
20 institutions and all political subdivisions of the state and
21 their agencies, instrumentalities and institutions, including a
22 department, an agency, an institution of higher education, a
23 board or a commission;

24 F. "public-private partnership" means an
25 arrangement between one or more public partners and one or more

underscoring material = new
[bracketed material] = delete

1 private partners for the development of a public project
2 pursuant to the Public-Private Partnership Act;

3 G. "public-private partnership agreement" means a
4 contract between one or more public partners and one or more
5 private partners in connection with the development of a public
6 project;

7 H. "public project" means:

8 (1) the construction or improvement of a
9 public transportation facility or public transportation
10 infrastructure other than a toll road; or

11 (2) public construction or improvement of
12 broadband telecommunications network facilities;

13 I. "revenue" means all revenue, income, earnings,
14 user fees, lease payments or other service payments that
15 support the development of a public project, including money
16 received as a grant or otherwise from the federal government, a
17 public partner or any agency or instrumentality of the federal
18 government; and

19 J. "user fees" means rates, fees or other charges
20 imposed by the public partner or the private partner for use of
21 all or part of a public project.

22 SECTION 3. [NEW MATERIAL] PUBLIC-PRIVATE PARTNERSHIP
23 AGREEMENTS--APPROVAL REQUIREMENTS--RESTRICTIONS.--

24 A. In order to provide economic and administrative
25 efficiencies in connection with the development of public

.223223.2

underscoring material = new
~~[bracketed material] = delete~~

1 projects, a public partner is authorized to enter into public-
2 private partnership agreements.

3 B. Prior to entering into negotiations regarding
4 the use of a public-private partnership agreement as a method
5 of implementing a proposed public project, the public partner
6 shall publish a notice of its interest in considering such an
7 agreement. The notice shall be published for three successive
8 weeks in a newspaper of general circulation published in the
9 county where the public partner is situated, and in the county
10 where the proposed public project will occur if different, and
11 if the public partner has a website, the notice shall be posted
12 on that website. The notice shall include a description of the
13 scope of the proposed public project.

14 C. Prior to entering into a public-private
15 partnership agreement, a public partner shall:

16 (1) undertake a cost-benefit analysis of a
17 public-private partnership project in comparison with the
18 traditional public partner-managed project;

19 (2) determine whether the application of the
20 Procurement Code or other procurement rules applicable to the
21 public partner would delay or increase the cost of the proposed
22 public project;

23 (3) conduct a public hearing relating to the
24 proposed public-private partnership held in accordance with the
25 Open Meetings Act;

.223223.2

1 (4) demonstrate that the proposed public
2 project serves an important public purpose and fulfills an
3 important public need; and

4 (5) demonstrate that the proposed public
5 project will comply with applicable state and federal law.

6 D. A public-private partnership agreement shall:

7 (1) define the roles and responsibilities of
8 the public partners and the private partners;

9 (2) provide clawback or recapture provisions
10 that protect the public investment in the event of a default on
11 the agreement;

12 (3) provide a finance plan detailing the
13 financial contributions and obligations of the public and
14 private partners;

15 (4) require a private partner to provide, or
16 cause to be provided, performance and payment bonds as required
17 pursuant to Section 13-4-18 NMSA 1978;

18 (5) require a private partner to provide
19 guarantees, letters of credit or other acceptable forms of
20 security, the amount of which may be less than one hundred
21 percent of the value of the contract involved based on the
22 determination of the public partner, or for public-private
23 partnership agreements requiring board approval, based on the
24 determination by the board;

25 (6) specify how revenue will be collected,

.223223.2

1 accounted for and audited;

2 (7) specify how debts incurred on behalf of
3 the public partner or private partner will be repaid;

4 (8) address how the public partners and the
5 private partners will share management and the risks of the
6 public project;

7 (9) provide that, in the event of an uncured
8 default, the public partner may:

9 (a) elect to take over the public
10 project, including the succession of all right, title and
11 interest in the public project, subject to any liens on revenue
12 previously granted by the private partner; and

13 (b) terminate the public-private
14 partnership and exercise any other rights and remedies that may
15 be available;

16 (10) specify the term of the public-private
17 partnership agreement, which shall not exceed thirty years;

18 (11) limit a private partner from seeking
19 injunctive or other equitable relief to in any way restrict a
20 public partner from developing, constructing or maintaining a
21 public project, except that the public-private partnership
22 agreement may provide for reasonable compensation to the
23 private partner for the adverse effect resulting from
24 development, construction, operation and maintenance of another
25 public project of the public partner;

.223223.2

underscored material = new
[bracketed material] = delete

1 (12) provide for the protection of proprietary
2 information of the private partner, except as that information
3 is needed for operations and maintenance by a public entity or
4 for public health and safety;

5 (13) provide that operations and maintenance
6 of a public project, except a public project that is broadband
7 infrastructure, to be performed by the public partner;

8 (14) provide provisions for termination of the
9 public-private partnership agreement, including the cessation
10 of the powers and duties of the private partner; and

11 (15) provide that the public project shall
12 revert to the public partner and be dedicated for public use.

13 E. A public-private partnership agreement for a
14 public project for which the cost is in excess of ten million
15 dollars (\$10,000,000) shall not become effective until it is
16 approved by the board pursuant to Subsection D of Section 5 of
17 the Public-Private Partnership Act.

18 F. Within thirty days of execution by a public
19 partner and a private partner, a copy of the fully executed
20 public-private partnership agreement for a public project for
21 which the cost is less than or equal to ten million dollars
22 (\$10,000,000) shall be delivered to the board for reporting
23 pursuant to Subsection C of Section 5 of the Public-Private
24 Partnership Act.

25 SECTION 4. [NEW MATERIAL] PUBLIC-PRIVATE PARTNERSHIP

.223223.2

underscoring material = new
~~[bracketed material] = delete~~

1 BOARD--CREATED--MEMBERSHIP.--

2 A. The "public-private partnership board" is
3 created. The authority shall provide necessary administrative
4 services to the board.

5 B. The eleven members of the board shall be:

6 (1) the secretary of economic development or
7 the secretary's designee;

8 (2) the secretary of finance and
9 administration or the secretary's designee;

10 (3) the secretary of general services or the
11 secretary's designee;

12 (4) the secretary of transportation or the
13 secretary's designee;

14 (5) the chief executive officer of the
15 authority or the chief executive officer's designee;

16 (6) the director of the office of broadband
17 access and expansion or the director's designee; and

18 (7) five members of the public appointed by
19 the New Mexico legislative council who shall have experience in
20 architecture, broadband development, engineering, public
21 projects, project finance, public finance or bond and finance
22 law.

23 C. The members of the public appointed initially
24 shall draw lots for staggered terms in such a way that two
25 members shall serve for six years, two members shall serve for

.223223.2

underscoring material = new
[bracketed material] = delete

1 four years and one member shall serve for two years.
2 Thereafter, the public members shall serve for six-year terms.

3 D. The members shall select a chair who shall be a
4 public member and who shall serve a term of two years.

5 E. Members who are not public employees are
6 entitled to per diem and mileage as provided in the Per Diem
7 and Mileage Act but shall receive no other compensation,
8 perquisite or allowance.

9 SECTION 5. [NEW MATERIAL] BOARD--POWERS.--The board shall
10 have the following powers:

11 A. meet quarterly and at such other times as deemed
12 necessary by the chair;

13 B. develop forms of applications for approval of
14 public-private partnerships;

15 C. receive for reporting purposes executed public-
16 private partnership agreements for public projects for which
17 the cost is less than or equal to ten million dollars
18 (\$10,000,000);

19 D. review and consider for approval proposed
20 public-private partnership agreements for a public project for
21 which the cost is in excess of ten million dollars
22 (\$10,000,000);

23 E. certify the need for the issuance of revenue
24 bonds and refunding bonds by the authority;

25 F. determine the use of a public-private

.223223.2

underscored material = new
~~[bracketed material] = delete~~

1 partnership agreement and ensure that the proposed funding
2 mechanism is a prudent expenditure of public funds;

3 G. promulgate rules establishing the application
4 process and criteria for the approval of public-private
5 partnership agreements in accordance with the provisions of the
6 State Rules Act;

7 H. make recommendations for approval to the
8 authority of public projects seeking grants or loans from the
9 public-private partnership project fund; and

10 I. take all other action necessary to implement the
11 Public-Private Partnership Act, including entering into joint
12 powers agreements with any other public sector partner or
13 Indian nation, tribe or pueblo and retaining legal counsel and
14 experts when appropriate.

15 SECTION 6. [NEW MATERIAL] NEW MEXICO FINANCE AUTHORITY--
16 DUTIES.--The authority shall:

17 A. provide staff support to the board;

18 B. administer the public-private partnership
19 project fund;

20 C. develop forms of grant and loan applications for
21 public projects seeking funds from the public-private
22 partnership project fund;

23 D. make loans and grants from the public-private
24 partnership project fund for public projects that have been
25 recommended for approval by the board pursuant to Subsection H

.223223.2

underscoring material = new
[bracketed material] = delete

1 of Section 5 of the Public-Private Partnership Act;

2 E. promulgate rules relating to the issuance of
3 bonds for public projects;

4 F. upon certification by the board, issue revenue
5 bonds and refunding bonds in accordance with the provisions of
6 the Public-Private Partnership Act;

7 G. fix, revise from time to time, charge and
8 collect fees and other charges in connection with making loans
9 and grants from the public-private partnership project fund;

10 H. be compensated from the public-private
11 partnership project fund for administrative and reimbursable
12 costs in connection with the authority's support of the board
13 and administration of the public-private partnership project
14 fund; and

15 I. take all other action necessary to implement the
16 Public-Private Partnership Act, including entering into joint
17 powers agreements with other agencies.

18 SECTION 7. [NEW MATERIAL] PUBLIC-PRIVATE PARTNERSHIP
19 PROJECT FUND CREATED--STUDY GRANTS--INFRASTRUCTURE LOANS.--

20 A. The "public-private partnership project fund" is
21 created within the authority. The fund consists of
22 appropriations, payments of principal and interest on loans
23 made from the fund, income from investment of the fund and any
24 other money distributed or otherwise allocated to the fund.
25 Balances in the fund at the end of any fiscal year shall not

.223223.2

underscored material = new
~~[bracketed material]~~ = delete

1 revert to the general fund. The fund may consist of such
2 subaccounts as the authority deems necessary to carry out the
3 purposes of the fund.

4 B. Money in the public-private partnership project
5 fund may be used to make grants of up to seventy-five thousand
6 dollars (\$75,000) to a public partner for the purposes of
7 studying the costs and benefits of entering into a public-
8 private partnership for a proposed public project. A private
9 partner shall provide funds matching the public partner's
10 monetary obligation for the cost of the study, as required by
11 the authority.

12 C. Money in the public-private partnership project
13 fund may be used to provide loans for financing a public
14 project through a public-private partnership agreement;
15 provided that:

16 (1) the private partner shall provide funds
17 matching the public partner's monetary obligation for the
18 public-private partnership agreement, as provided by rule; and

19 (2) the public partner certifies to the board
20 that the public partner has taken all action necessary to
21 approve the public-private partnership agreement and that the
22 public-private partnership agreement contains all terms and
23 conditions required by Subsection D of Section 3 of the Public-
24 Private Partnership Act.

25 D. Money in the public-private partnership project

.223223.2

underscored material = new
[bracketed material] = delete

1 fund may be used pursuant to Subsections B and C of this
2 section only for:

- 3 (1) grants or loans to a public partner; and
4 (2) a public project for which the cost is in
5 excess of ten million dollars (\$10,000,000).

6 E. Money in the public-private partnership project
7 fund may be used for grants or loans to an Indian nation, tribe
8 or pueblo that has entered into a public-private partnership
9 with a private partner for the development of a public project
10 only if:

- 11 (1) the cost of the public project is in
12 excess of ten million dollars (\$10,000,000);
13 (2) the agreement between the Indian nation,
14 tribe or pueblo and the private partner is approved by the
15 board; and
16 (3) the grant or loan application is
17 recommended for approval by the board and approved by the
18 authority.

19 F. Money in the public-private partnership project
20 fund may be used for administrative and reimbursable costs
21 incurred by the board and by the authority.

22 SECTION 8. [NEW MATERIAL] APPLICABILITY OF CERTAIN OTHER
23 LAWS.--The construction of a public project pursuant to a
24 public-private partnership agreement is a public work for the
25 purposes of the Public Works Minimum Wage Act, the

.223223.2

underscoring material = new
~~[bracketed material] = delete~~

1 Subcontractors Fair Practices Act and the Public Works
2 Apprenticeship and Training Act.

3 SECTION 9. [NEW MATERIAL] REVENUE BONDING AUTHORITY.--

4 A. Upon certification of the board, the authority
5 may issue revenue bonds, the pledged revenues for which shall
6 be fees, charges, lease payments, installment sale payments or
7 other revenue sources of a public project for any one or more
8 of the purposes authorized by the Public-Private Partnership
9 Act.

10 B. The authority may pledge irrevocably any or all
11 of the revenue received by the authority to the payment of the
12 interest on and principal of revenue bonds for any of the
13 purposes authorized in the Public-Private Partnership Act.

14 C. In addition to the pledge of revenues to the
15 payment of revenue bonds, the authority may grant a mortgage on
16 a public project that has been solely financed by revenue bonds
17 to the bondholders or a trustee for the benefit of the holders
18 of revenue bonds.

19 D. Revenue in excess of the annual principal and
20 interest due on revenue bonds secured by a pledged revenue may
21 be accumulated in a debt service reserve account. The
22 authority may appoint a commercial bank trust department to act
23 as paying agent or trustee of the revenue and to administer the
24 payment of principal of and interest on the revenue bonds.

25 E. Except as otherwise provided in the Public-

underscored material = new
~~[bracketed material] = delete~~

1 Private Partnership Act, revenue bonds:

2 (1) may have interest, principal value or any
3 part thereof payable at intervals or at maturity as may be
4 determined by the authority;

5 (2) may be subject to prior redemption at the
6 authority's option at a time and upon terms and conditions,
7 with or without the payment of a premium, as determined by the
8 authority;

9 (3) may mature at any time not exceeding
10 thirty years after the date of issuance;

11 (4) may be serial in form and maturity, may
12 consist of one bond payable at one time or in installments or
13 may be in another form determined by the authority;

14 (5) shall be sold for cash at, above or below
15 par and at a price that results in a net effective interest
16 rate that does not exceed the maximum permitted by the Public
17 Securities Act and the Public Securities Short-Term Interest
18 Rate Act; and

19 (6) may be sold at public or negotiated sale.

20 F. At a regular or special meeting, the authority
21 may, upon receipt of a certification from the board, adopt a
22 resolution that:

23 (1) declares the necessity for issuing revenue
24 bonds;

25 (2) authorizes the issuance of revenue bonds

.223223.2

underscored material = new
~~[bracketed material] = delete~~

1 by an affirmative vote of a majority of all of the members of
2 the authority; and

3 (3) designates the sources of revenues to be
4 pledged to the repayment of the revenue bonds.

5 SECTION 10. [NEW MATERIAL] REFUNDING BOND AUTHORITY.--

6 A. Upon certification of the board, the authority
7 may issue refunding bonds for the purpose of refinancing,
8 paying and discharging all or any part of outstanding bonds for
9 the:

10 (1) acceleration, deceleration or other
11 modification of the payment of the outstanding bonds, including
12 any capitalization of any interest thereon in arrears or about
13 to become due for any period not exceeding two years from the
14 date of the refunding bonds;

15 (2) reduction of interest costs or effecting
16 other economies; or

17 (3) modification or elimination of restrictive
18 contractual limitations pertaining to the issuance of
19 additional bonds or concerning the outstanding bonds or public
20 project relating to the outstanding bonds.

21 B. The authority may pledge irrevocably for the
22 payment of interest, principal and premium, if any, on
23 refunding bonds the appropriate pledged revenues, which may be
24 pledged to an original issue of bonds.

25 C. In addition to the pledge of revenue to the

.223223.2

1 payment of refunding bonds, the authority may grant a mortgage
2 on a public project that has been solely financed by revenue
3 bonds to the bondholders or a trustee for the benefit of the
4 holders of the bonds.

5 D. Refunding bonds may be issued separately or in
6 combination in one series or more.

7 E. Refunding bonds shall be authorized by
8 resolution. Bonds that are refunded shall be paid at maturity
9 or on any permitted prior redemption date in the amounts, at
10 the time and places and, if called prior to maturity, in
11 accordance with any applicable notice provisions, all as
12 provided in the proceedings authorizing the issuance of the
13 refunded bonds or otherwise appertaining thereto, except for
14 any such bond that is voluntarily surrendered for exchange or
15 payment by the holder or owner.

16 F. The principal amount of the refunding bonds may
17 exceed the principal amount of the refunded bonds and may also
18 be less than or the same as the principal amount of the bonds
19 being refunded if provision is duly and sufficiently made for
20 the payment of the refunded bonds.

21 G. The proceeds of refunding bonds, including
22 accrued interest and premiums appertaining to the sale of
23 refunding bonds, shall be immediately applied to the retirement
24 of the bonds being refunded or placed in escrow in a commercial
25 bank or trust company that possesses and exercises trust powers

.223223.2

1 and that is a member of the federal deposit insurance
2 corporation.

3 H. Refunding bonds may bear additional terms and
4 provisions as determined by the authority subject to the
5 limitations in this section relating to original bond issues.
6 Refunding bonds are not subject to the provisions of any other
7 statute.

8 I. Refunding bonds:

9 (1) may have interest, principal value or any
10 part thereof payable at intervals or at maturity, as determined
11 by the authority;

12 (2) may be subject to prior redemption at the
13 authority's option at a time or times and upon terms and
14 conditions with or without payment of premium or premiums, as
15 determined by the authority;

16 (3) may be serial in form and maturity or may
17 consist of a single bond payable in one or more installments or
18 may be in another form, as determined by the authority; and

19 (4) shall be exchanged for the bonds and any
20 matured unpaid interest being refunded at not less than par or
21 sold at public or negotiated sale at, above or below par and at
22 a price that results in a net effective interest rate that does
23 not exceed the maximum permitted by the Public Securities Act.

24 J. At a regular or special meeting, the authority
25 may adopt a resolution by majority vote to authorize the

.223223.2

underscored material = new
~~[bracketed material]~~ = delete

1 issuance of the refunding bonds.

2 SECTION 11. [NEW MATERIAL] BONDS NOT OBLIGATION OF
3 STATE.--All bonds or other obligations issued pursuant to the
4 Public-Private Partnership Act are payable solely from the
5 revenue of the authority that may be pledged to the payment of
6 such obligations, and the bonds or other obligations shall not
7 create an obligation, debt or liability of the state or any
8 other of its political subdivisions. No breach of any pledge,
9 obligation or agreement of the authority shall impose a
10 pecuniary liability or a charge upon the general credit or
11 taxing power of the state or any other of its political
12 subdivisions.

13 SECTION 12. [NEW MATERIAL] REPORT.--By December 1, 2023,
14 and by December 1 of each year thereafter, the board shall
15 provide a report to the governor and the New Mexico finance
16 authority oversight committee regarding:

17 A. the grant and loan applications approved by the
18 board;

19 B. the public-private partnership agreements
20 approved by or reported to the board;

21 C. the status of the public-private partnership
22 project fund;

23 D. any certifications for the issuance of revenue
24 or refunding bonds made by the board to the authority; and

25 E. any recommended changes to the Public-Private

.223223.2

underscoring material = new
[bracketed material] = delete

1 Partnership Act.

2 SECTION 13. [NEW MATERIAL] CUMULATIVE AUTHORITY.--The
3 Public-Private Partnership Act shall be deemed to provide an
4 additional and alternative method for the doing of things
5 authorized by that act and shall be regarded as supplemental
6 and additional to powers conferred by other laws and shall not
7 be regarded as in derogation of any powers now existing;
8 provided that the issuance of bonds pursuant to the provisions
9 of the Public-Private Partnership Act need not comply with the
10 requirements of any other law applicable to the issuance of
11 bonds, except the Public Securities Act, the Public Securities
12 Short-Term Interest Rate Act and the Public Securities
13 Limitation of Action Act, which acts shall apply.

14 SECTION 14. Section 13-1-98 NMSA 1978 (being Laws 1984,
15 Chapter 65, Section 71, as amended by Laws 2019, Chapter 48,
16 Section 13 and by Laws 2019, Chapter 63, Section 1) is amended
17 to read:

18 "13-1-98. EXEMPTIONS FROM THE PROCUREMENT CODE.--The
19 provisions of the Procurement Code shall not apply to:

20 A. procurement of items of tangible personal
21 property or services by a state agency or a local public body
22 from a state agency, a local public body or external
23 procurement unit except as otherwise provided in Sections
24 13-1-135 through 13-1-137 NMSA 1978;

25 B. procurement of tangible personal property or
.223223.2

underscoring material = new
~~[bracketed material] = delete~~

1 services for the governor's mansion and grounds;

2 C. printing and duplicating contracts involving
3 materials that are required to be filed in connection with
4 proceedings before administrative agencies or state or federal
5 courts;

6 D. purchases of publicly provided or publicly
7 regulated gas, electricity, water, sewer and refuse collection
8 services;

9 E. purchases of books, periodicals and training
10 materials in printed or electronic format from the publishers
11 or copyright holders thereof and purchases of print, digital or
12 electronic format library materials by public, school and state
13 libraries for access by the public;

14 F. travel or shipping by common carrier or by
15 private conveyance or to meals and lodging;

16 G. purchase of livestock at auction rings or to the
17 procurement of animals to be used for research and
18 experimentation or exhibit;

19 H. contracts with businesses for public school
20 transportation services;

21 I. procurement of tangible personal property or
22 services, as defined by Sections 13-1-87 and 13-1-93 NMSA 1978,
23 by the corrections industries division of the corrections
24 department pursuant to rules adopted by the corrections
25 industries commission, which shall be reviewed by the

.223223.2

underscoring material = new
~~[bracketed material] = delete~~

1 purchasing division of the general services department prior to
2 adoption;

3 J. purchases not exceeding ten thousand dollars
4 (\$10,000) consisting of magazine subscriptions, web-based or
5 electronic subscriptions, conference registration fees and
6 other similar purchases where prepayments are required;

7 K. municipalities having adopted home rule charters
8 and having enacted their own purchasing ordinances;

9 L. the issuance, sale and delivery of public
10 securities pursuant to the applicable authorizing statute, with
11 the exception of bond attorneys and general financial
12 consultants;

13 M. contracts entered into by a local public body
14 with a private independent contractor for the operation, or
15 provision and operation, of a jail pursuant to Sections 33-3-26
16 and 33-3-27 NMSA 1978;

17 N. contracts for maintenance of grounds and
18 facilities at highway rest stops and other employment
19 opportunities, excluding those intended for the direct care and
20 support of persons with handicaps, entered into by state
21 agencies with private, nonprofit, independent contractors who
22 provide services to persons with handicaps;

23 O. contracts and expenditures for services or items
24 of tangible personal property to be paid or compensated by
25 money or other property transferred to New Mexico law

.223223.2

underscoring material = new
~~[bracketed material] = delete~~

1 enforcement agencies by the United States department of justice
2 drug enforcement administration;

3 P. contracts for retirement and other benefits
4 pursuant to Sections 22-11-47 through 22-11-52 NMSA 1978;

5 Q. contracts with professional entertainers;

6 R. contracts and expenditures for legal
7 subscription and research services and litigation expenses in
8 connection with proceedings before administrative agencies or
9 state or federal courts, including experts, mediators, court
10 reporters, process servers and witness fees, but not including
11 attorney contracts;

12 S. contracts for service relating to the design,
13 engineering, financing, construction and acquisition of public
14 improvements undertaken in improvement districts pursuant to
15 Subsection L of Section 3-33-14.1 NMSA 1978 and in county
16 improvement districts pursuant to Subsection L of Section
17 4-55A-12.1 NMSA 1978;

18 T. works of art for museums or for display in
19 public buildings or places;

20 U. contracts entered into by a local public body
21 with a person, firm, organization, corporation or association
22 or a state educational institution named in Article 12, Section
23 11 of the constitution of New Mexico for the operation and
24 maintenance of a hospital pursuant to Chapter 3, Article 44
25 NMSA 1978, lease or operation of a county hospital pursuant to

.223223.2

underscoring material = new
~~[bracketed material] = delete~~

1 the Hospital Funding Act or operation and maintenance of a
2 hospital pursuant to the Special Hospital District Act;

3 V. purchases of advertising in all media, including
4 radio, television, print and electronic;

5 W. purchases of promotional goods intended for
6 resale by the tourism department;

7 X. procurement of printing, publishing and
8 distribution services for materials produced and intended for
9 resale by the cultural affairs department;

10 Y. procurement by or through the public education
11 department from the federal department of education relating to
12 parent training and information centers designed to increase
13 parent participation, projects and initiatives designed to
14 improve outcomes for students with disabilities and other
15 projects and initiatives relating to the administration of
16 improvement strategy programs pursuant to the federal
17 Individuals with Disabilities Education Act; provided that the
18 exemption applies only to procurement of services not to exceed
19 two hundred thousand dollars (\$200,000);

20 Z. procurement of services from community
21 rehabilitation programs or qualified individuals pursuant to
22 the State Use Act;

23 AA. purchases of products or services for eligible
24 persons with disabilities pursuant to the federal
25 Rehabilitation Act of 1973;

.223223.2

underscored material = new
[bracketed material] = delete

1 BB. procurement, by either the department of health
2 or Grant county or both, of tangible personal property,
3 services or construction that are exempt from the Procurement
4 Code pursuant to Section 9-7-6.5 NMSA 1978;

5 CC. contracts for investment advisory services,
6 investment management services or other investment-related
7 services entered into by the educational retirement board, the
8 state investment officer or the retirement board created
9 pursuant to the Public Employees Retirement Act;

10 DD. the purchase for resale by the state fair
11 commission of feed and other items necessary for the upkeep of
12 livestock;

13 EE. contracts entered into by the crime victims
14 reparation commission to distribute federal grants to assist
15 victims of crime, including grants from the federal Victims of
16 Crime Act of 1984 and the federal Violence Against Women Act of
17 1994;

18 FF. procurement by or through the early childhood
19 education and care department of early pre-kindergarten and
20 pre-kindergarten services purchased pursuant to the Pre-
21 Kindergarten Act;

22 GG. procurement of services of commissioned
23 advertising sales representatives for New Mexico magazine;

24 HH. agreements and contracts entered into pursuant
25 to the Public-Private Partnership Act; and

.223223.2

underscoring material = new
[bracketed material] = delete

1 ~~[HH-]~~ II. procurements exempt from the Procurement
2 Code as otherwise provided by law."

3 **SECTION 15.** Section 6-21-6 NMSA 1978 (being Laws 1992,
4 Chapter 61, Section 6, as amended) is amended to read:

5 "6-21-6. PUBLIC PROJECT REVOLVING FUND--PURPOSE--
6 ADMINISTRATION.--

7 A. The "public project revolving fund" is created
8 within the authority. The fund shall be administered by the
9 authority as a separate account, but may consist of such
10 subaccounts as the authority deems necessary to carry out the
11 purposes of the fund. The authority may establish procedures
12 and adopt rules as required to administer the fund in
13 accordance with the New Mexico Finance Authority Act.

14 B. Except as otherwise provided in the New Mexico
15 Finance Authority Act, money from payments of principal of and
16 interest on loans and payments of principal of and interest on
17 securities held by the authority for public projects authorized
18 specifically by law shall be deposited in the public project
19 revolving fund. The fund shall also consist of any other money
20 appropriated, distributed or otherwise allocated to the fund
21 for the purpose of financing public projects authorized
22 specifically by law.

23 C. Money appropriated to pay administrative costs,
24 money available for administrative costs from other sources and
25 money from payments of interest on loans or securities held by

.223223.2

underscored material = new
~~[bracketed material]~~ = delete

1 the authority, including payments of interest on loans and
2 securities held by the authority for public projects authorized
3 specifically by law, that represents payments for
4 administrative costs shall not be deposited in the public
5 project revolving fund and shall be deposited in a separate
6 account of the authority and may be used by the authority to
7 meet administrative costs of the authority.

8 D. Except as otherwise provided in the New Mexico
9 Finance Authority Act, money in the public project revolving
10 fund is appropriated to the authority to pay the reasonably
11 necessary costs of originating and servicing loans, grants or
12 securities funded by the fund and to make loans or grants and
13 to purchase or sell securities to assist qualified entities in
14 financing public projects in accordance with the New Mexico
15 Finance Authority Act and pursuant to specific authorization by
16 law for each project.

17 E. Money in the public project revolving fund not
18 needed for immediate disbursement, including money held in
19 reserve, may be deposited with the state treasurer for
20 short-term investment pursuant to Section 6-10-10.1 NMSA 1978
21 or may be invested in direct and general obligations of or
22 obligations fully and unconditionally guaranteed by the United
23 States, obligations issued by agencies of the United States,
24 obligations of this state or any political subdivision of the
25 state, interest-bearing time deposits, commercial paper issued

.223223.2

underscored material = new
~~[bracketed material] = delete~~

1 by corporations organized and operating in the United States
2 and rated "prime" quality by a national rating service, other
3 investments permitted by Section 6-10-10 NMSA 1978 or as
4 otherwise provided by the trust indenture or bond resolution,
5 if money is pledged for or secures payment of bonds issued by
6 the authority.

7 F. The authority shall establish fiscal controls
8 and accounting procedures that are sufficient to assure proper
9 accounting for public project revolving fund payments,
10 disbursements and balances.

11 G. Money on deposit in the public project revolving
12 fund may be used to make interim loans for a term not exceeding
13 two years to qualified entities for the purpose of providing
14 interim financing for any project approved or funded by the
15 legislature.

16 H. Money on deposit in the public project revolving
17 fund may be used to acquire securities or to make loans to
18 qualified entities in connection with the small loan program.
19 As used in this subsection, "small loan program" means the
20 program of the authority designed to provide financing for
21 public projects in amounts not to exceed one million dollars
22 (\$1,000,000) per project. A public project financed pursuant
23 to the small loan program shall not require specific
24 authorization by law.

25 I. Money on deposit in the public project

.223223.2

underscored material = new
[bracketed material] = delete

1 revolving fund may be designated as a reserve for any bonds
2 issued by the authority, including bonds payable from sources
3 other than the public project revolving fund, and the authority
4 may covenant in any bond resolution or trust indenture to
5 maintain and replenish the reserve from money deposited in the
6 public project revolving fund after issuance of bonds by the
7 authority.

8 J. Money on deposit in the public project revolving
9 fund may be used to purchase bonds issued by the authority or
10 bonds issued by the authority pursuant to the Public-Private
11 Partnership Act, which are payable from any designated source
12 of revenues or collateral. Purchasing and holding the bonds in
13 the public project revolving fund shall not, as a matter of
14 law, result in cancellation or merger of the bonds
15 notwithstanding the fact that the authority as the issuer of
16 the bonds is obligated to make the required debt service
17 payments and the public project revolving fund held by the
18 authority is entitled to receive the required debt service
19 payments.

20 K. Money on deposit in the public project revolving
21 fund may be used to capitalize other financing programs of the
22 authority authorized by law, either directly or from proceeds
23 of bonds issued by the authority and secured by money in the
24 public project revolving fund."

25 SECTION 16. DELAYED REPEAL.--Sections 1 through 13 of

.223223.2

underscoring material = new
~~[bracketed material] = delete~~

1 this act are repealed effective July 1, 2033.

2 SECTION 17. EFFECTIVE DATE.--The effective date of the
3 provisions of this act is July 1, 2023.

4 - 30 -

5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25