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HOUSE BILL 405

**51ST LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2013**

INTRODUCED BY

Larry A. Larrañaga and Timothy M. Keller

AN ACT

RELATING TO PUBLIC PROJECTS; ENACTING THE PUBLIC-PRIVATE PARTNERSHIPS ACT; ALLOWING THE STATE AND CERTAIN LOCAL GOVERNMENTS TO ENTER INTO LONG-TERM PARTNERSHIPS WITH PRIVATE SECTOR PARTNERS TO FACILITATE PUBLIC PROJECTS; PROVIDING POWERS AND DUTIES; ALLOWING FOR THE ISSUANCE OF REVENUE BONDS; EXEMPTING PUBLIC-PRIVATE PARTNERSHIPS FROM THE PROCUREMENT CODE; PRESCRIBING PENALTIES; MAKING APPROPRIATIONS.

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

SECTION 1. [NEW MATERIAL] SHORT TITLE.--Sections 1 through 26 of this act may be cited as the "Public-Private Partnerships Act".

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

A. "department" means the general services

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1 department;

2 B. "force majeure" means an uncontrollable force or  
3 natural disaster not within the power of the operator or the  
4 public partner;

5 C. "local government" means an incorporated city,  
6 town or village; a county; or a regional entity created by a  
7 joint powers agreement between one or more public agencies;

8 D. "maintenance" means ordinary maintenance,  
9 repair, rehabilitation, capital maintenance, replacement and  
10 any other categories of maintenance that may be designated by  
11 the public partner;

12 E. "material default" means a failure of an  
13 operator to perform any duties under a public-private  
14 partnership, which failure jeopardizes delivery of adequate  
15 service to the public and remains unsatisfied after a  
16 reasonable time and after the operator has received written  
17 notice from the public partner of the failure;

18 F. "operate" means any action to maintain,  
19 rehabilitate, improve, equip or modify a public project;

20 G. "operator" means a private partner who  
21 administers, manages or controls a public project pursuant to a  
22 public-private partnership;

23 H. "private partner" means one or more persons who  
24 have entered into a public-private partnership with a public  
25 partner and who are not the federal government or any agency or

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1 instrumentality of the federal government; another state or  
2 territory of the United States; a sovereign or foreign  
3 government; or the state or an agency, branch, institution,  
4 instrumentality or political subdivision of the state;

5 I. "public partner" means the department, a local  
6 government or an instrumentality of the state or local  
7 government;

8 J. "public-private partnership" means the agreement  
9 between one or more public partners and one or more private  
10 partners for the development, financing, maintenance or  
11 operation of a public project, including a lease, ground lease,  
12 franchise, easement, permit or other agreement that transfers  
13 rights for the use or control, in whole or in part, of a public  
14 project by the public partner to the private partner;

15 K. "public project" means:

16 (1) a building or other facility for a public  
17 school or a public post-secondary educational institution,  
18 including:

- 19 (a) a school building;
- 20 (b) a functionally related and  
21 subordinate facility;
- 22 (c) a stadium or other facility  
23 primarily used for school events;
- 24 (d) the acquisition of land for a  
25 building or facility; and

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1 (e) any depreciable property provided  
2 for use in a school facility that is operated as part of the  
3 public school system or a public post-secondary educational  
4 institution;

5 (2) a building or other facility that meets a  
6 public purpose and is developed or operated by or for a public  
7 entity;

8 (3) cultural or recreational facilities,  
9 including theaters, museums, convention centers, community  
10 centers, stadiums, athletic facilities, golf courses or similar  
11 facilities;

12 (4) parking lots or garages;

13 (5) an airport, subway or similar facility;

14 (6) improvements, together with equipment,  
15 necessary to enhance public safety and security of buildings to  
16 be principally used by a public entity;

17 (7) utility and telecommunications and other  
18 communications infrastructure;

19 (8) dams and reservoirs;

20 (9) a sewerage or water treatment facility,  
21 power generating plant, pump station, natural gas compressing  
22 station or similar facility;

23 (10) a sewerage, water, gas or other pipeline;

24 (11) a transmission line;

25 (12) a radio, television, cell or other tower;

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1 (13) improvements necessary or desirable to  
2 any unimproved state- or locally owned real estate; or

3 (14) recycling facilities or solid waste  
4 management facilities that produce electric energy derived from  
5 solid waste;

6 L. "user fee" means a rate, fee or other charge  
7 imposed by an operator for use of all or part of a public  
8 project; and

9 M. "utility" means a privately, publicly or  
10 cooperatively owned line, facility or system for producing,  
11 transmitting or distributing communications, cable television,  
12 power, electricity, light, heat, gas, oil, crude products,  
13 water, steam, waste, storm water not connected with highway  
14 drainage or any other similar commodity, including a fire or  
15 police signal system or street lighting system, which directly  
16 or indirectly serves the public.

17 SECTION 3. [NEW MATERIAL] RULES--APPROVAL OF PUBLIC-  
18 PRIVATE PARTNERSHIPS.--

19 A. The department shall adopt rules to carry out  
20 the provisions of the Public-Private Partnerships Act.  
21 Provisions in the department's rules shall serve as a model for  
22 any public-private partnerships entered into by a local  
23 government.

24 B. The attorney general and the state board of  
25 finance shall review and approve or disapprove a public-private

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1 partnership agreement proposed to be entered into by a public  
2 partner. A public-private partnership agreement shall not be  
3 effective unless approved by the attorney general and the state  
4 board of finance.

5 SECTION 4. [NEW MATERIAL] PROJECT DELIVERY METHODS--  
6 PROPOSALS.--A public partner may provide for the development or  
7 operation of a public project using a variety of project  
8 delivery methods and forms of agreements. The methods may  
9 include:

- 10 A. predevelopment agreements leading to other  
11 implementing agreements;
- 12 B. design-build agreements;
- 13 C. design-build-maintain agreements;
- 14 D. design-build-finance-operate agreements;
- 15 E. design-build-operate-maintain agreements;
- 16 F. design-build-finance-operate-maintain  
17 agreements;
- 18 G. construction manager at risk;
- 19 H. concession agreements that provide for the  
20 private partner to design, build, operate, maintain, manage or  
21 lease a public project; or
- 22 I. other project delivery methods or agreements or  
23 combination of methods or agreements that the public partner  
24 determines will serve the public interest.

25 SECTION 5. [NEW MATERIAL] PROCUREMENT.--

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1           A. Procurements pursuant to the Public-Private  
2 Partnerships Act are exempt from the Procurement Code, but the  
3 public partner shall follow the procedures of the Procurement  
4 Code insofar as practicable. The resident preferences provided  
5 in Sections 13-1-21 and 13-1-22 NMSA 1978 apply to procurements  
6 pursuant to that act.

7           B. A public partner may:

8                   (1) procure a public project using any of the  
9 following:

10                           (a) requests for proposals in which the  
11 public partner describes a class of public project or a  
12 geographic area in which a person is invited to submit  
13 proposals to develop a public project;

14                           (b) solicitations using requests for  
15 qualifications, short-listing of qualified proposers, requests  
16 for proposals, negotiations, best and final offers or other  
17 procurement procedures;

18                           (c) procurements seeking development and  
19 finance plans that are most suitable for the public project;

20                           (d) best-value selection procurements  
21 based on price or financial proposals, or both, or other  
22 factors; and

23                           (e) other procedures that the public  
24 partner determines may further the implementation of the  
25 Public-Private Partnerships Act; and

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1                   (2) consider an unsolicited proposal if the  
2 public partner determines that there is sufficient merit to  
3 pursue the unsolicited proposal and a reasonable opportunity  
4 for other persons to submit competing proposals for  
5 consideration as appropriate.

6                   C. For a procurement in which the public partner  
7 issues a request for qualifications or similar solicitation  
8 document, the request shall generally set forth the factors  
9 that will be evaluated and the manner in which responses will  
10 be evaluated.

11                   D. In evaluating proposals, the public partner may  
12 accord relative weight to factors such as cost; financial  
13 commitment; innovative financing; technical, scientific,  
14 technological or socioeconomic merit; and other factors as the  
15 public partner deems appropriate to obtain the best value for  
16 the state or local government.

17                   E. The public partner may charge and retain a  
18 reasonable administrative fee for the evaluation of an  
19 unsolicited project proposal; provided that the administrative  
20 fee shall not exceed the reasonable cost of evaluating the  
21 proposal.

22                   F. The public partner may retain financial, legal  
23 and other experts to assist in the evaluation, negotiation and  
24 development of public-private partnership agreements for a  
25 public project; provided that such experts shall have a minimum



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1 of five years' experience in working with public-private  
2 partnerships in their field of expertise.

3 G. If contractor insurance is required for services  
4 procured pursuant to this section, the insurance shall be  
5 placed with an insurer authorized to transact insurance in New  
6 Mexico or with a surplus lines insurer approved by the  
7 insurance division of the public regulation commission or its  
8 successor agency.

9 H. Before the public partner begins the process for  
10 procuring a public project, the public partner shall hold at  
11 least one public hearing.

12 SECTION 6. [NEW MATERIAL] CONFIDENTIALITY AND PUBLIC  
13 DISCLOSURE.--

14 A. A solicited or unsolicited proposer shall  
15 identify those portions of a proposal or other submission that  
16 the proposer considers to be a trade secret or confidential  
17 commercial, financial or proprietary information. For trade  
18 secrets and confidential and proprietary information to be  
19 exempt from disclosure, the proposer must do all of the  
20 following:

21 (1) invoke exclusion on submission of the  
22 information or other materials for which protection is sought;

23 (2) identify with conspicuous labeling the  
24 data or other materials for which protection is sought;

25 (3) state the reasons why protection is

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1 necessary; and

2 (4) fully comply with any applicable state law  
3 with respect to information that the proposer contends should  
4 be exempt from disclosure.

5 B. Each request for proposals issued pursuant to  
6 the Public-Private Partnerships Act shall require the proposer  
7 to include with its proposal an executive summary covering the  
8 major elements of its proposal that do not address the  
9 proposer's price, financing plan or other confidential or  
10 proprietary information or trade secrets that the proposer  
11 intends to be exempt from disclosure. The executive summary  
12 shall be subject to release and disclosure to the public at any  
13 time. Notwithstanding other provisions of law, in order to  
14 maximize competition pursuant to that act, no part of a  
15 proposal other than the executive summary shall be subject to  
16 release or disclosure by the public partner before an award of  
17 the public-private partnership contract and the conclusion of  
18 any protest or other challenge to the award, absent an  
19 administrative or judicial order requiring release or  
20 disclosure. After the award of the contract and the conclusion  
21 of any protest or other challenge to the award, the Inspection  
22 of Public Records Act applies to any release of any part of the  
23 proposal. An unsolicited proposal shall contain a similar  
24 executive summary and be afforded the same protections as a  
25 requested proposal.

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1           SECTION 7. [NEW MATERIAL] EVALUATION CRITERIA.--Before  
2 entering into a public-private partnership, the public partner  
3 shall consider:

4           A. the ability of the public project to meet the  
5 needs of the community in which it is to be located, including  
6 improving and streamlining services to the public; providing or  
7 enhancing educational, cultural and recreational opportunities;  
8 promoting economic growth; or otherwise serving a public  
9 purpose;

10           B. the proposed cost and financial plan for the  
11 public project;

12           C. the general reputation, qualifications, industry  
13 experience and financial capacity of the proposer;

14           D. the feasibility and proposed design and  
15 operation of the public project;

16           E. comments from potential users, local citizens,  
17 affected jurisdictions and other interested persons;

18           F. benefits to the public;

19           G. the safety record of the proposer; and

20           H. other criteria that the public partner deems  
21 appropriate.

22           SECTION 8. [NEW MATERIAL] PUBLIC-PRIVATE PARTNERSHIP  
23 AGREEMENTS--PENALTIES.--

24           A. An agreement pursuant to the Public-Private  
25 Partnerships Act is a public works contract and is subject to

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1 the provisions of Section 13-4-1 NMSA 1978, the Public Works  
2 Minimum Wage Act, the Subcontractors Fair Practices Act, other  
3 provisions of Chapter 13, Article 4 NMSA 1978 and the resident  
4 preferences provided in Sections 13-1-21 and 13-1-22 NMSA 1978.

5 B. In a public-private partnership, the public  
6 partner may require the agreement to include provisions that:

7 (1) authorize the public partner or the  
8 private partner to establish and collect user fees, rents,  
9 advertising and sponsorship charges, service charges or other  
10 charges allowed in the agreement, including provisions that:

11 (a) specify how revenue will be  
12 collected, accounted for and audited;

13 (b) establish circumstances under which  
14 the public partner may receive all or a share of revenue from  
15 such charges; and

16 (c) govern enforcement of user fees,  
17 including provisions for the use of cameras or other mechanisms  
18 to ensure that users are identified and notified of fees owed  
19 and provisions that allow the private partner access to  
20 relevant public databases for enforcement purposes. Misuse of  
21 the data contained in the databases, including negligence in  
22 properly securing the data, shall result in a civil penalty of  
23 ten thousand dollars (\$10,000) for each violation;

24 (2) if user fees and other charges are  
25 allowed, the agreement shall provide for a reasonable rate of

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1 return on the private partner's investment, including  
2 provisions such as the following:

3 (a) the fees and charges may be  
4 collected directly by the private partner or a third party  
5 engaged by the private partner for that purpose;

6 (b) a formula for the adjustment of user  
7 fees and other charges during the term of the public-private  
8 partnership;

9 (c) for an agreement that does not  
10 include a formula described in Subparagraph (b) of this  
11 paragraph, provisions regulating the private partner's return  
12 on investment; or

13 (d) other strategies that the public  
14 partner determines are appropriate;

15 (3) allow for payments to be made by the  
16 public partner to the private partner, including availability  
17 payments or performance-based payments;

18 (4) allow the public partner to accept  
19 payments and share revenue with the private partner;

20 (5) address how the public and private  
21 partners will share management of the risks of the public  
22 project;

23 (6) specify how the public and private  
24 partners will share the costs of development of the public  
25 project;

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1 (7) allocate financial responsibility for cost  
2 overruns;

3 (8) establish the damages to be assessed for  
4 nonperformance;

5 (9) establish performance criteria or  
6 incentives, or both;

7 (10) address the acquisition of property  
8 interests that may be required, including provisions that allow  
9 the public or private partner to acquire real property,  
10 including acquisition by exchange of other real property that  
11 is owned by the state, a local government or the federal  
12 government, and that address the exercise of eminent domain;  
13 provided, however, that the state or local government shall not  
14 relinquish its power of eminent domain to any private partner;

15 (11) establish recordkeeping, accounting and  
16 auditing standards to be used for the project;

17 (12) for a public project that reverts to  
18 public ownership, address responsibility for reconstruction or  
19 renovations that are required so that the public project meets  
20 all applicable government standards upon reversion of the  
21 public project to the state;

22 (13) provide for responsibilities for law  
23 enforcement on public projects;

24 (14) identify public partner specifications  
25 that must be satisfied, including provisions allowing the

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1 private partner to request and receive authorization to deviate  
2 from the specifications on a showing satisfactory to the public  
3 partner that the deviation is necessary;

4 (15) require a private partner to provide  
5 performance and payment bonds, parent company guarantees,  
6 letters of credit or other acceptable forms of security or a  
7 combination of any of these, the penal sum or amount of which  
8 may be less than one hundred percent of the value of the  
9 contract involved based on the public partner's determination  
10 of what is required to adequately protect the public partner,  
11 made on a project-by-project basis; and

12 (16) specify remedies available to the parties  
13 and dispute resolution procedures to be followed.

14 C. The public-private partnership agreement shall  
15 include a clear statement concerning which partner will own  
16 real property pertaining to the public project and if or when  
17 ownership will revert to the public partner.

18 D. The term of agreements entered into pursuant to  
19 the Public-Private Partnerships Act may be for a term not to  
20 exceed twenty-five years, and such agreements may be extended  
21 for additional terms.

22 E. The public-private partnership agreement shall  
23 contain a provision by which the private partner expressly  
24 agrees that it is prohibited from seeking injunctive or other  
25 equitable relief to delay, prevent or otherwise hinder the

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1 public partner or any jurisdiction from developing,  
2 constructing or maintaining a public project that was planned  
3 and that would or might affect the revenue that the private  
4 partner would or might derive from the public project developed  
5 under an agreement pursuant to the Public-Private Partnerships  
6 Act, except that the agreement may provide for reasonable  
7 compensation to the private partner for the adverse effect  
8 resulting from development, construction and maintenance of an  
9 unplanned facility that affects the public project's revenue.

10 F. The public-private partnership agreement shall  
11 provide that the state board of finance must approve the  
12 assignment, transfer or sale of assets or other investment in a  
13 public project. Sale or lease for longer than twenty-five  
14 years of state property requires legislative approval.

15 SECTION 9. [NEW MATERIAL] USER FEES AT END OF AGREEMENT  
16 PERIOD.--The public partner may continue or cease collection of  
17 user fees after the end of the term of the agreement.

18 SECTION 10. [NEW MATERIAL] FUNDING AND FINANCING.--

19 A. Any lawful source of funding may be used for the  
20 development or operation of a public project pursuant to the  
21 Public-Private Partnerships Act, including:

22 (1) proceeds of grant anticipation revenue  
23 bonds, private activity bonds, revenue bonds or other bonds  
24 allowed by federal or state law;

25 (2) grants, loans, loan guarantees, lines of



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1 credit, revolving lines of credit or other arrangements as  
2 allowed by federal or state law;

3 (3) other federal, state or local revenues;

4 (4) user fees, lease payments, availability  
5 payments, gross or net receipts from sales, proceeds from the  
6 sale of development rights, franchise charges, permit charges,  
7 advertising and sponsorship charges, service charges or any  
8 other lawful form of consideration; and

9 (5) other forms of public and private capital  
10 that are available.

11 B. As security for the payment of financing  
12 described in this section, the revenues from the public project  
13 may be pledged, but no pledge of revenues constitutes in any  
14 manner or to any extent a general obligation of the state or  
15 local government. Financing may be structured on a senior,  
16 parity or subordinate basis to any other financing.

17 C. The public partner may issue toll revenue bonds  
18 or other revenue bonds or notes to provide money for a public  
19 project pursuant to the Public-Private Partnerships Act.

20 D. The public partner may accept money from the  
21 United States or any of its agencies to carry out the  
22 provisions of the Public-Private Partnerships Act, whether the  
23 money is made available by grant, loan or other financing  
24 arrangement. The public partner assents to any federal  
25 requirements, conditions or terms of any federal funding

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1 accepted by the public partner pursuant to this subsection.  
2 The public partner may enter into agreements or other  
3 arrangements with the United States or any of its agencies as  
4 may be necessary to carry out the provisions of that act.

5 E. The public partner may accept from any source  
6 any grant, donation, gift, conveyance of land, other real or  
7 personal property or other thing of value made to the public  
8 partner for the purposes of a public project.

9 F. A public project may be funded in whole or in  
10 part by contributions of money or property made by a private  
11 person or the state or any agency, institution, instrumentality  
12 or political subdivision of the state.

13 G. Federal, state and local money may be combined  
14 with private sector money for public project purposes as  
15 allowed by law or by the grant, gift or donation provisions.

16 H. Revenue bonds issued pursuant to Section 12 of  
17 the Public-Private Partnerships Act are not general obligations  
18 of this state and are not secured by or payable from any money  
19 or assets of the state other than the money and revenues  
20 specifically pledged to the repayment of the revenue bonds.

21 SECTION 11. [NEW MATERIAL] EMINENT DOMAIN.--The state or  
22 local government may exercise the power of eminent domain to  
23 acquire property, rights of way or other rights in property  
24 that are necessary to develop, operate or hold a public project  
25 pursuant to the Public-Private Partnerships Act, even if the

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1 property will be leased to the private partner to use, lease or  
2 operate for its business purposes in connection with the  
3 public-private partnership.

4 SECTION 12. [NEW MATERIAL] REVENUE BONDS--AUTHORITY TO  
5 ISSUE.--

6 A. A public partner may issue revenue bonds on its  
7 own behalf or on behalf of a private partner for public  
8 projects. Revenue bonds so issued by the department may be  
9 considered appropriate investments for the severance tax  
10 permanent fund or collateral for the deposit of public funds if  
11 the bonds are rated not less than "A" by a national rating  
12 service and both the principal and interest of the bonds are  
13 fully and unconditionally guaranteed by a lease agreement  
14 executed by an agency of the United States government or by a  
15 corporation organized and operating within the United States,  
16 that corporation or the long-term debt of that corporation  
17 being rated not less than "A" by a national rating service.  
18 All bonds issued by a public partner are legal and authorized  
19 investments for banks, trust companies, savings and loan  
20 associations and insurance companies.

21 B. The public partner may pay from the bond  
22 proceeds all expenses, premiums and commissions that the public  
23 partner deems necessary or advantageous in connection with the  
24 authorization, sale and issuance of the bonds.

25 C. Revenue bonds:

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1 (1) may have interest or appreciated principal  
2 value or any part of interest or appreciated principal value  
3 payable at intervals determined by the public partner;

4 (2) may be subject to prior redemption or  
5 mandatory redemption at the public partner's option at the time  
6 and upon such terms and conditions with or without the payment  
7 of a premium as may be provided by resolution of the public  
8 partner;

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

11 (4) may be serial in form and maturity; may  
12 consist of one or more bonds payable at one time or in  
13 installments; or may be in such other form as determined by the  
14 public partner;

15 (5) may be in registered or bearer form or in  
16 book-entry form through facilities of a securities depository  
17 either as to principal or interest or both;

18 (6) shall be sold for cash at, above or below  
19 par and at a price that results in a net effective interest  
20 rate that conforms to the Public Securities Act; and

21 (7) may be sold at a public or negotiated  
22 sale.

23 D. Subject to the approval of the state board of  
24 finance, the public partner may enter into other financial  
25 arrangements if it determines that the arrangements will assist

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1 the public partner to carry out its duties pursuant to the  
2 Public-Private Partnerships Act.

3 SECTION 13. [NEW MATERIAL] BONDS SECURED BY TRUST  
4 INDENTURE.--The bonds issued by the public partner may be  
5 secured by a trust indenture between the public partner and a  
6 corporate trustee that may be either a bank having trust powers  
7 or a trust company. The trust indenture may contain reasonable  
8 provisions for protecting and enforcing the rights and remedies  
9 of bondholders, including covenants setting forth the duties of  
10 the public partner in relation to the exercise of its powers  
11 and the custody, use and investment of the project revenues or  
12 other funds. The public partner may provide in a trust  
13 indenture for the payment of the proceeds of the bonds and the  
14 project revenue to the trustee under the trust indenture or  
15 other depository for disbursement with any safeguards the  
16 public partner determines are necessary.

17 SECTION 14. [NEW MATERIAL] REVENUE BONDS--LIMITATIONS--  
18 AUTHORIZATION--AUTHENTICATION.--

19 A. Revenue bonds or refunding bonds issued pursuant  
20 to the Public-Private Partnerships Act are:

21 (1) not general obligations of the state or  
22 any local government; and

23 (2) payable only from properly pledged  
24 revenues, and each bond shall state that it is payable solely  
25 from the properly pledged revenues and that the bondholders may

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1 not look to any other fund for the payment of the interest and  
2 principal of the bond.

3 B. Revenue or refunding bonds may be authorized by  
4 resolution of the public partner, which resolution shall be  
5 approved by the state board of finance.

6 C. The bonds shall be executed by the public  
7 partner and may be authenticated by any public or private  
8 transfer agent or registrar, or its successor, named or  
9 otherwise designated by the public partner. Bonds may be  
10 executed as provided under the Uniform Facsimile Signature of  
11 Public Officials Act, and the coupons, if any, shall bear the  
12 facsimile signature of the appropriate official of the public  
13 partner.

14 SECTION 15. [NEW MATERIAL] SECURITY FOR BONDS.--The  
15 principal of and interest on any bonds issued pursuant to the  
16 provisions of the Public-Private Partnerships Act shall be  
17 secured by a pledge of the revenues out of which the bonds  
18 shall be made payable; may be secured by a mortgage, deed of  
19 trust note or other certificate of indebtedness covering all or  
20 part of the public project from which the revenues so pledged  
21 may be derived; and may be secured by a pledge of any lease or  
22 installment sale agreement or other fees or revenues with  
23 respect to the public project. The resolution of the public  
24 partner under which bonds are authorized to be issued may  
25 contain any agreement and provisions customarily contained in

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1 instruments securing bonds, notes or certificates of  
2 indebtedness, including:

3 A. provisions respecting the fixing and collection  
4 of all revenues from any public project covered by the  
5 proceedings or mortgage;

6 B. the terms to be incorporated in any lease or  
7 installment sale agreement with respect to the public project;

8 C. the maintenance and insurance of the public  
9 project; and

10 D. the creation and maintenance of special funds  
11 from the revenues with respect to the public project and the  
12 rights and remedies available in the event of default to the  
13 bondholders, all as the public partner deems advisable and not  
14 in conflict with the provisions of the Public-Private  
15 Partnerships Act. In making the agreements or provisions, the  
16 public partner shall not have the power to obligate itself,  
17 except with respect to the public project and the application  
18 of the revenues from the public project, and shall not have the  
19 power to incur a pecuniary liability or charge upon the  
20 state's, municipality's or county's general credit or against  
21 its taxing powers. The resolution authorizing any bonds and  
22 any mortgage securing such bonds shall set forth the procedure  
23 and remedies in the event of default in payment of the  
24 principal of or the interest on the bond, note or certificate  
25 of indebtedness or in the performance of any agreement. A

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1 breach of any agreement shall not impose any pecuniary  
2 liability upon the state, municipality or county or any charge  
3 upon its general credit or against its taxing powers.

4 SECTION 16. [NEW MATERIAL] RESOLUTION FOR ISSUANCE--  
5 REQUIREMENTS--REVENUE--SALE OR LEASE OF PROPERTY.--

6 A. A resolution for the issuance of bonds shall set  
7 forth the determinations and findings of the public partner  
8 required by this section.

9 B. Prior to approving a resolution for the issuance  
10 of bonds for a public project, the state board of finance shall  
11 determine and find that:

12 (1) the resolution is for the issuance of  
13 bonds and the principal and interest of the bonds to be issued  
14 shall be fully secured by:

15 (a) revenue received from the public  
16 project pursuant to a contract entered into by and between the  
17 public and private partners;

18 (b) a lease agreement or installment  
19 sale agreement;

20 (c) a corporation organized and  
21 operating within the United States;

22 (d) an irrevocable letter of credit  
23 issued by a chartered financial institution approved for this  
24 purpose by the state board of finance; or

25 (e) a bond insurance policy issued by an



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1 insurance company rated not less than "AA" by a national rating  
2 service;

3 (2) revenues are available in an amount  
4 necessary in each year to pay the principal of and interest on  
5 the bonds proposed to be issued to finance the project; and

6 (3) revenues are available in an amount  
7 necessary to be paid each year into any reserve funds that the  
8 public partner may deem advisable to establish in connection  
9 with the retirement of the proposed bonds or the maintenance of  
10 the public project.

11 C. Unless the terms under which the public project  
12 is to be leased or sold provide that the lessee or purchaser  
13 shall maintain the public project and carry all proper  
14 insurance with respect to the public project, the resolution  
15 shall set forth the estimated cost of maintaining the public  
16 project in good repair and keeping it properly insured.

17 D. Prior to the issuance of the bonds, the public  
18 partner may lease or sell the public project to a lessee or  
19 purchaser under an agreement conditioned upon completion of the  
20 public project and providing for payment to the public partner  
21 of such rentals or payments as, upon the basis of such  
22 determinations and findings pursuant to provisions of this  
23 section, will be sufficient to:

24 (1) pay the principal of and interest on the  
25 bonds issued to finance the public project;

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1                   (2) build up and maintain any reserve deemed  
2 by the public partner to be advisable in connection with the  
3 financing of the project; and

4                   (3) pay the costs of maintaining the public  
5 project in good repair and keep it properly insured, unless the  
6 agreement of lease obligates the lessee to pay for the  
7 maintenance and insurance of the public project.

8                   E. With prior approval of the state board of  
9 finance, and subject to constitutional limitations on public  
10 debt, the public partner may borrow money to purchase, lease,  
11 acquire or develop water rights, a water system, a wastewater  
12 collection and treatment system, a natural gas distribution  
13 system, an electrical distribution system or other  
14 infrastructure needed to support the public project; provided  
15 that the public partner shall not obligate itself or the state,  
16 municipality or county to any debt or obligation that cannot be  
17 paid from funds derived from the public project.

18                   F. Upon prior approval of the state board of  
19 finance, and subject to constitutional limitations on public  
20 debt, the public partner may obtain commitment from a financial  
21 institution to borrow money; provided that closing of the loan  
22 and disbursement of the proceeds is conditioned upon compliance  
23 with the requirements of the Public-Private Partnerships Act.  
24 Nothing in this section shall be deemed to authorize the public  
25 partner to incur any debt obligation in connection with a loan

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1 commitment prior to the closing of the loan.

2 SECTION 17. [NEW MATERIAL] USE OF PROCEEDS FROM SALE OF  
3 BONDS.--

4 A. The proceeds from the sale of any bonds issued  
5 pursuant to the Public-Private Partnerships Act shall be  
6 applied only for the purpose for which the bonds were issued;  
7 provided that:

8 (1) any accrued interest and premiums received  
9 in any sale shall be applied to the payment of the principal of  
10 or the interest on the bonds sold;

11 (2) if for any reason any portion of such  
12 proceeds are not needed for the purpose for which the bonds  
13 were issued, the balance of the proceeds shall be applied to  
14 the payment of the principal of or the interest on the bonds;  
15 and

16 (3) any portion of the proceeds from the sale  
17 of the bonds or any accrued interest and premium received in  
18 any such sale may, in the event that the money will not be  
19 needed or cannot be used effectively to the advantage of the  
20 public partner for the purposes provided pursuant to the  
21 Public-Private Partnerships Act, be invested in short-term  
22 interest-bearing securities if such investment will not  
23 interfere with the use of the funds for the primary purpose of  
24 the project.

25 B. The cost of acquiring a public project shall be

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1 deemed to include the following:

2 (1) the actual cost of planning, design and  
3 construction of any part of a project, including architect,  
4 attorney and engineer fees;

5 (2) the purchase price of any part of a public  
6 project that may be acquired by purchase;

7 (3) the actual cost of the extension of any  
8 utility to the public project site and all expenses in  
9 connection with the authorization, sale and issuance of the  
10 bonds to finance such acquisition; and

11 (4) the interest on those bonds for a  
12 reasonable time prior to construction, during construction and  
13 not exceeding six months after completion of construction.

14 SECTION 18. [NEW MATERIAL] REFUNDING BONDS--  
15 AUTHORIZATION.--

16 A. The public partner may issue refunding revenue  
17 bonds for the purpose of refinancing, paying and discharging  
18 all or any part of outstanding public project revenue bonds  
19 for:

20 (1) the acceleration, deceleration or other  
21 modification of payment of such obligations, including, without  
22 limitation, any capitalization of any interest in arrears or  
23 about to become due for any period not exceeding one year from  
24 the date of the refunding bonds;

25 (2) reducing interest costs or effecting other

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1 economies; or

2 (3) modifying or eliminating restrictive  
3 contractual limitations pertaining to the issuance of  
4 additional bonds, otherwise concerning the outstanding bonds or  
5 to any public projects relating to the bonds.

6 B. The public partner may pledge irrevocably for  
7 the payment of interest and principal on refunding bonds the  
8 appropriate pledged revenues that may be pledged to an original  
9 issue of bonds.

10 C. Bonds for refunding and bonds for any purpose  
11 allowed by the Public-Private Partnerships Act may be issued  
12 separately or issued in a combination of one series or more.

13 SECTION 19. [NEW MATERIAL] REFUNDING BONDS--ESCROW.--

14 A. Refunding bonds issued pursuant to the Public-  
15 Private Partnerships Act shall be authorized by resolution of  
16 the public partner. Any bonds that are refunded under the  
17 provisions of this section shall be paid at maturity or on any  
18 permitted prior redemption date in the amounts, at the time and  
19 places and, if called prior to maturity, in accordance with any  
20 applicable notice provisions, all as provided in the  
21 proceedings authorizing the issuance of the refunded bonds or  
22 otherwise pertaining thereto, except for any such bond that is  
23 voluntarily surrendered for exchange or payment by the holder  
24 or owner.

25 B. Provision shall be made for paying the bonds

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1 refunded at the time provided in this section. The principal  
2 amount of the refunding bonds may exceed the principal amount  
3 of the refunded bonds and may also be less than or the same as  
4 the principal amount of the bonds being refunded; provided that  
5 provision is duly and sufficiently made for payment of the  
6 refunded bonds.

7 C. The proceeds of refunding bonds, including any  
8 accrued interest and premium pertaining to the sale of  
9 refunding bonds, shall either be immediately applied to the  
10 retirement of the bonds being refunded or be placed in escrow  
11 in a commercial bank or trust company that possesses and is  
12 exercising trust powers and that is a member of the federal  
13 deposit insurance corporation, to be applied to the payment of  
14 the principal of, interest on and any prior redemption premium  
15 due in connection with the bonds being refunded; provided that  
16 such refunding bond proceeds, including any accrued interest  
17 and any premium pertaining to a sale of refunding bonds, may be  
18 applied to the establishment and maintenance of a reserve fund  
19 and to the payment of expenses incidental to the refunding and  
20 the issuance of the refunding bonds, the interest thereon, the  
21 principal thereof or both interest and principal as the public  
22 partner may determine. Nothing in this section requires the  
23 establishment of an escrow if the refunded bonds become due and  
24 payable within one year from the date of the refunding bonds  
25 and if the amounts necessary to retire the refunded bonds

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1 within that time are deposited with the paying agent for the  
2 refunded bonds. Any such escrow shall not necessarily be  
3 limited to proceeds of refunding bonds but may include other  
4 money available for its purpose. Any proceeds in escrow  
5 pending such use may be invested or reinvested in bills,  
6 certificates of indebtedness, notes or bonds that are direct  
7 obligations of or the principal and interest of which  
8 obligations are unconditionally guaranteed by the United States  
9 or in certificates of deposit of banks that are members of the  
10 federal deposit insurance corporation. Such proceeds and  
11 investments in escrow, together with any interest or other  
12 income to be derived from any such investment, shall be in an  
13 amount at all times sufficient as to principal, interest, any  
14 prior redemption premium due and any charges of the escrow  
15 agent payable to pay the bonds being refunded as they become  
16 due at their respective maturities or due at any designated  
17 prior redemption date in connection with which the public  
18 partner shall exercise a prior redemption option. Any  
19 purchaser of any refunding bond issued pursuant to the Public-  
20 Private Partnerships Act is in no manner responsible for the  
21 application of the proceeds by the public partner or any of its  
22 officers, employees or agents.

23 D. Refunding bonds may bear such additional terms  
24 and provisions as may be determined by the public partner  
25 subject to the limitations in this section.

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1           **SECTION 20. [NEW MATERIAL] REFUNDING REVENUE BONDS--**

2           TERMS.--Refunding revenue bonds:

3                   A. may have interest or appreciated principal value  
4           payable at intervals or at maturity;

5                   B. may be subject to prior redemption at the public  
6           partner's option at such time or times and upon such terms and  
7           conditions with or without the payment of premiums;

8                   C. may be serial in form and maturity;

9                   D. may consist of a single bond payable in one or  
10          more installments; and

11                   E. shall be exchanged for the bonds and any mature  
12          unpaid interest being refunded at not less than par or sold at  
13          public or negotiated sale at, above or below par and at a price  
14          that results in a net effective interest rate that does not  
15          exceed the maximum permitted by the Public Securities Act.

16           **SECTION 21. [NEW MATERIAL] EXEMPTION FROM TAXATION.--**

17          Bonds authorized pursuant to the Public-Private Partnerships  
18          Act and the income from those bonds, all mortgages or other  
19          security instruments executed as security for those bonds, all  
20          lease and installment purchase agreements made pursuant to the  
21          provisions of that act and revenue derived from any lease or  
22          sale by the public partner shall be exempt from all taxation by  
23          the state or any political subdivision of the state.

24           **SECTION 22. [NEW MATERIAL] REVERSION OF PUBLIC PROJECT TO**  
25          **PUBLIC PARTNER.--If the public-private partnership is**

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1 terminated, the authority and duties of the operator cease,  
2 except for any duties and obligations that extend beyond the  
3 termination as provided in the public-private agreement, and  
4 the public project reverts to the public partner and shall be  
5 dedicated for public use.

6 SECTION 23. [NEW MATERIAL] MATERIAL DEFAULT--REMEDIES.--

7 A. Upon the occurrence and during the continuation  
8 of material default by an operator, not related to an event of  
9 force majeure, the public partner may:

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

14 (2) terminate the public-private partnership  
15 and exercise any other rights and remedies that may be  
16 available.

17 B. If the public partner elects to take over a  
18 public project pursuant to Subsection A of this section, the  
19 public partner:

20 (1) shall collect and pay any revenue that is  
21 subject to lien to satisfy an obligation;

22 (2) may develop and operate the public  
23 project, impose user fees for the use of the public project and  
24 comply with any service contracts; and

25 (3) may solicit proposals for the maintenance

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1 and operation of the public project as provided in the Public-  
2 Private Partnerships Act for original proposals.

3 SECTION 24. [NEW MATERIAL] POLICE POWERS--VIOLATIONS OF  
4 LAW.--All law enforcement officers of the state or local  
5 government have the same powers and jurisdiction within the  
6 limits of the public project as they have in their respective  
7 areas of jurisdiction and access to the public project at any  
8 time to exercise such powers and jurisdictions.

9 SECTION 25. [NEW MATERIAL] UTILITY CROSSINGS.--An  
10 operator and any utility whose facility is to be crossed or  
11 relocated shall cooperate fully in planning and arranging the  
12 manner of the crossing or relocation of the utility facility.

13 SECTION 26. [NEW MATERIAL] PENALTIES.--A person who fails  
14 to pay a user fee required for the privilege of using property  
15 included in a public project is guilty of a petty misdemeanor  
16 and shall be sentenced as provided in Section 31-19-1 NMSA  
17 1978.

18 SECTION 27. Section 13-1-98 NMSA 1978 (being Laws 1984,  
19 Chapter 65, Section 71, as amended) is amended to read:

20 "13-1-98. EXEMPTIONS FROM THE PROCUREMENT CODE.--The  
21 provisions of the Procurement Code shall not apply to:

22 A. procurement of items of tangible personal  
23 property or services by a state agency or a local public body  
24 from a state agency, a local public body or external  
25 procurement unit except as otherwise provided in Sections

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1 13-1-135 through 13-1-137 NMSA 1978;

2 B. procurement of tangible personal property or  
3 services for the governor's mansion and grounds;

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

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

11 E. purchases of books and periodicals from the  
12 publishers or copyright holders thereof;

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

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

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

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

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1 adoption;

2 J. minor purchases not exceeding five thousand  
3 dollars (\$5,000) consisting of magazine subscriptions,  
4 conference registration fees and other similar purchases where  
5 prepayments are required;

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

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

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

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

22 O. contracts and expenditures for services or items  
23 of tangible personal property to be paid or compensated by  
24 money or other property transferred to New Mexico law  
25 enforcement agencies by the United States department of justice

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1 drug enforcement administration;

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

4 Q. contracts with professional entertainers;

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

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

16 T. works of art for museums or for display in  
17 public buildings or places;

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

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

3           W. purchases of promotional goods intended for  
4 resale by the tourism department;

5           X. procurement of printing services for materials  
6 produced and intended for resale by the cultural affairs  
7 department;

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

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

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

24           BB. procurement, by either the department of health  
25 or Grant county or both, of tangible personal property,

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1 services or construction that are exempt from the Procurement  
2 Code pursuant to Section 9-7-6.5 NMSA 1978;

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

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

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

16 FF. procurements pursuant to the Public-Private  
17 Partnerships Act."

18 SECTION 28. EFFECTIVE DATE.--The effective date of the  
19 provisions of this act is July 1, 2013.