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SENATE BILL 24

**51ST LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2014**

INTRODUCED BY

Timothy M. Keller and James P. White

FOR THE NEW MEXICO FINANCE AUTHORITY OVERSIGHT COMMITTEE

AN ACT

RELATING TO THE NEW MEXICO FINANCE AUTHORITY; CHANGING THE  
QUORUM REQUIREMENTS OF THE NEW MEXICO FINANCE AUTHORITY;  
PROVIDING FOR REPLACEMENT OF MEMBERS, FOR ORIENTATION OF NEW  
MEMBERS AND FOR ELECTION OF THE CHAIR AND VICE CHAIR OF THE NEW  
MEXICO FINANCE AUTHORITY; ESTABLISHING AN AUDIT COMMITTEE IN  
THE AUTHORITY; IMPOSING RESTRICTIONS AND DUTIES ON MEMBERS OF  
THE NEW MEXICO FINANCE AUTHORITY.

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

**SECTION 1.** Section 6-21-4 NMSA 1978 (being Laws 1992,  
Chapter 61, Section 4, as amended) is amended to read:

"6-21-4. NEW MEXICO FINANCE AUTHORITY CREATED--  
MEMBERSHIP--QUALIFICATIONS--QUORUM--MEETINGS--COMPENSATION--  
BOND.--

A. There is created a public body politic and

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1 corporate, separate and apart from the state, constituting a  
2 governmental instrumentality to be known as the "New Mexico  
3 finance authority" for the performance of essential public  
4 functions.

5 B. The authority shall be composed of eleven  
6 members. The secretary of finance and administration, the  
7 secretary of economic development, the secretary of energy,  
8 minerals and natural resources, the secretary of environment,  
9 the executive director of the New Mexico municipal league and  
10 the executive director of the New Mexico association of  
11 counties or their designees shall be ex-officio members of the  
12 authority with voting privileges. The governor, with the  
13 advice and consent of the senate, shall appoint to the  
14 authority the chief financial officer of a state higher  
15 educational institution and four members who are residents of  
16 the state. The appointed members shall serve at the pleasure  
17 of the governor.

18 C. The appointed members of the authority shall be  
19 appointed to four-year terms. The initial members shall be  
20 appointed to staggered terms of four years or less, so that the  
21 term of at least one member expires on January 1 of each year.  
22 Vacancies shall be filled by appointment by the governor for  
23 the remainder of the unexpired term. Any member of the  
24 authority shall be eligible for reappointment.

25 D. Each appointed member before entering upon the

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1 member's duty shall take an oath of office to administer the  
2 duties of the member's office faithfully and impartially. A  
3 record of the oath shall be filed in the office of the  
4 secretary of state.

5 E. ~~[The governor shall designate an appointed~~  
6 ~~member of the authority to serve as chair.]~~ The authority shall  
7 elect ~~[annually one of its members to serve as]~~ a chair and  
8 vice chair from its membership. The authority shall appoint  
9 and prescribe the duties of such other officers, who need not  
10 be members, as the authority deems necessary or advisable,  
11 including chief executive officer and a secretary, who may be  
12 the same person. The authority may delegate to one or more of  
13 its members, officers, employees or agents such powers and  
14 duties as it may deem proper and consistent with the New Mexico  
15 Finance Authority Act.

16 F. The chief executive officer of the authority  
17 shall direct the affairs and business of the authority, subject  
18 to the policies, control and direction of the authority. The  
19 secretary of the authority shall keep minutes of all meetings  
20 of the authority and a record of ~~[the]~~ all other proceedings of  
21 the authority and shall be custodian of all books, documents  
22 and papers filed with the authority, the minute book or journal  
23 of the authority and its official seal. Minutes of the  
24 authority meetings shall be approved in an open meeting of the  
25 authority. The secretary of the authority shall make copies of

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1 all minutes and other records and documents of the authority  
2 and give certificates under the official seal of the authority  
3 to the effect that the copies are true copies, and all persons  
4 dealing with the authority may rely upon the certificates.

5 G. Meetings of the authority shall be held at least  
6 quarterly or at the call of the chair or whenever three members  
7 shall so request in writing. [~~A majority of~~] Six members [~~then~~  
8 ~~servng constitutes~~] constitute a quorum for the transaction of  
9 any business. The affirmative vote of at least a majority of a  
10 quorum present shall be necessary for any action to be taken by  
11 the authority. An ex-officio member may designate in writing  
12 another person to attend meetings of the authority as the ex-  
13 officio member's sole designee and to the same extent and with  
14 the same effect act in the ex-officio member's stead. A change  
15 in designee must be in writing and is subject to the approval  
16 of the chair. No vacancy in the membership of the authority  
17 shall impair the right of a quorum to exercise all rights and  
18 perform all duties of the authority. The authority shall  
19 provide an opportunity for public comment at meetings of the  
20 authority.

21 H. A designee of an ex-officio member and each  
22 member who is not an ex-officio member shall have no less than  
23 ten years' experience in the field of institutional investment,  
24 accounting, law, public finance, banking or public project  
25 planning or engineering.

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1           I. A member of the authority may be:

2                   (1) deemed by the authority to have resigned  
3 for failure to attend three meetings in any twelve-month period  
4 and may be replaced by the appointing person or entity; or

5                   (2) removed from the authority for other  
6 cause, in the manner provided for removal of members of boards  
7 of regents under Article 12, Section 13 of the constitution of  
8 New Mexico.

9           J. A vacancy in the membership of the authority  
10 occurring other than by expiration of term shall be filled in  
11 the same manner as the original appointment, but for the  
12 unexpired term only.

13           K. The authority shall provide no less than eight  
14 hours of orientation and training for new members. The  
15 training shall include instruction regarding the mission,  
16 goals, strategic plans, operations, programs and funds of the  
17 authority and public entity finance and ethics.

18           L. Members of the authority shall annually  
19 establish a work plan for the authority and a staffing review  
20 analysis of authority staffing levels, training and adequacy.  
21 The work plan and staffing review analysis shall be provided to  
22 the New Mexico finance authority oversight committee.

23           M. Members of the authority and officers and  
24 employees of the authority shall be governed by the provisions  
25 of the Governmental Conduct Act. Nothing in this section or in

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1 the Governmental Conduct Act shall be construed as prohibiting  
2 an officer of a financial institution from participating as a  
3 member of the authority in setting general policies of the  
4 authority, nor shall any provision of the Governmental Conduct  
5 Act prohibit the authority from depositing funds under the  
6 jurisdiction of the authority in any financial institution. An  
7 authority member shall not hold office or employment in a  
8 political party.

9 [H.] N. Each member of the authority shall give  
10 bond as provided in the Surety Bond Act. All costs of the  
11 surety bonds shall be borne by the authority.

12 O. The authority shall appoint an audit committee  
13 from among its membership. Minutes shall be recorded for all  
14 meetings of the audit committee and be maintained pursuant to  
15 the provisions of the Audit Act and the rules of the state  
16 auditor. Audit committee members shall be provided annual  
17 training related to the duties of the audit committee. At a  
18 minimum, the audit committee shall:

19 (1) attend the entrance and exit conferences  
20 for annual and special audits; and

21 (2) meet with the certified public accounting  
22 firm performing the external financial audit at least monthly  
23 after audit field work until the conclusion of the audit.

24 [I.] P. The authority is not created or organized,  
25 and its operations shall not be conducted, for the purpose of

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1 making a profit. No part of the revenues or assets of the  
2 authority shall benefit or be distributable to its members,  
3 officers or other private persons. The members of the  
4 authority shall receive no compensation for their services but  
5 shall be reimbursed for actual and necessary expenses at the  
6 same rate and on the same basis as provided for public officers  
7 in the Per Diem and Mileage Act.

8 ~~[J-]~~ Q. The authority shall not be subject to the  
9 supervision or control of any other board, bureau, department  
10 or agency of the state except as specifically provided in the  
11 New Mexico Finance Authority Act. No use of the terms "state  
12 agency" or "instrumentality" in any other law of the state  
13 shall be deemed to refer to the authority unless the authority  
14 is specifically referred to in the law.

15 ~~[K-]~~ R. The authority is a governmental  
16 instrumentality for purposes of the Tort Claims Act."

17 **SECTION 2.** Section 6-21-21 NMSA 1978 (being Laws 1992,  
18 Chapter 61, Section 21, as amended) is amended to read:

19 "6-21-21. MONEY OF THE AUTHORITY--EXPENSES--AUDIT--  
20 ANNUAL REPORT.--

21 A. All money of the authority, except as otherwise  
22 authorized or provided in the New Mexico Finance Authority Act  
23 or in a bond resolution, trust indenture or other instrument  
24 under which bonds are issued, shall be deposited as soon as  
25 practical in a separate account or accounts in banks or trust

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1 companies organized under the laws of this state. All deposits  
2 of money shall be secured, if required by the authority, in  
3 such a manner as the authority determines to be prudent. Banks  
4 or trust companies are authorized to give security for deposits  
5 of the authority.

6 B. Subject to the provisions of any contract with  
7 bondholders, the authority shall prescribe a system of  
8 accounts.

9 C. Money held by the authority that is not needed  
10 for immediate disbursement, including [~~any funds~~] money held in  
11 reserve, may be deposited with the state treasurer for  
12 short-term investment pursuant to Section 6-10-10.1 NMSA 1978  
13 or may be invested in direct and general obligations of or  
14 obligations fully and unconditionally guaranteed by the United  
15 States, obligations issued by agencies of the United States,  
16 obligations of this state or any political subdivision of the  
17 state, interest-bearing time deposits, commercial paper issued  
18 by corporations organized and operating within the United  
19 States and rated "prime" quality by a national rating service,  
20 other investments permitted by Section 6-10-10 NMSA 1978 or as  
21 otherwise provided by the trust indenture or bond resolution,  
22 if the [~~funds are~~] money is pledged for or [~~secure~~] secures  
23 payment of bonds issued by the authority.

24 D. The authority shall have an audit of its books  
25 and accounts made at least once each year by the state auditor

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1 or by a certified public accounting firm whose proposal has  
2 been reviewed and approved by the state auditor. The cost of  
3 the audit shall be an expense of the authority. ~~[Copies]~~ After  
4 the audit report has been released by the state auditor and  
5 becomes a matter of public record, the audit report shall be  
6 approved in an open meeting of the authority, and copies of the  
7 audit report shall be presented in person by a representative  
8 of the certified public accounting firm and submitted to the  
9 governor and the New Mexico finance authority oversight  
10 committee and made available to the public.

11 E. The authority shall submit a report of its  
12 activities to the governor and to the legislature not later  
13 than December 1 of each year. Each report shall set forth a  
14 complete operating and financial statement covering its  
15 operations for that year."

16 SECTION 3. EFFECTIVE DATE.--The effective date of the  
17 provisions of this act is July 1, 2014.