

AN ACT

RELATING TO LAND USE BY THE DEPARTMENT OF TRANSPORTATION;  
PROVIDING AUTHORITY AND CONDITIONS FOR DISPOSITION AND  
DEVELOPMENT OF DEPARTMENT LAND IN CERTAIN SITUATIONS; MAKING  
AN APPROPRIATION; DECLARING AN EMERGENCY.

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

Section 1. TEMPORARY PROVISION--DEPARTMENT OF  
TRANSPORTATION--AUTHORIZING CONTINUED DEVELOPMENT OF REAL  
PROPERTY AT THE GENERAL OFFICE LOCATION--CONDITIONS.--

A. As used in this section:

(1) "city" means the city of Santa Fe;

(2) "contract" means the written, fully  
executed lease and acquisition agreement or agreements to  
complete the project entered into between the department and  
the developer as a result of the request for proposals;

(3) "department" means the department of  
transportation or the state transportation commission as  
appropriate;

(4) "department facilities" means the  
building or buildings designed and constructed to serve as the  
general office headquarters of the department in the city,  
including parking and related facilities and a multi-modal  
facility developed to accommodate train, bus and other forms  
of transportation as determined by the department;

(5) "developer" means the person or combination of persons entering into the contract with the department as a result of the request for proposals;

(6) "offeror" means a person or combination of persons submitting a proposal in response to the request for proposals;

(7) "project" means the lease of a portion of the site and the financing, design, development, construction and operation of the transit oriented development, and the acquisition of financing, design, construction and delivery to the department of the department facilities on the remainder of the site;

(8) "request for proposals" means the document and any attachments, documents incorporated by reference or amendments used for soliciting proposals;

(9) "site" means the real estate located at 1120 Cerrillos road, Santa Fe, New Mexico, consisting of twenty-five and four-tenths acres and currently serving as the department's general office headquarters, including parking and related facilities; and

(10) "transit oriented development" means the financing, design, development and construction of a high-density, mixed-use, pedestrian-friendly development adjacent to a transportation hub on the leased portion of the site.

B. The department may enter into a contract for

the project at the site. The acquisition of the department facilities shall be exempt from the provisions of the Procurement Code, but the request for proposals process shall conform to the extent practicable with the competitive sealed proposal process in the Procurement Code.

C. The project need not comply but shall be generally compatible with the city's zoning and land use policies, including affordable housing and architectural standards, if any. To the extent the project obtains water or other services from the city, the terms and conditions of the use of those services shall be no more stringent than the city's current laws, rules and policies and shall be pursuant to a negotiated agreement between the relevant parties. The developer shall submit its plans for comment by the city, which shall communicate its recommendations and comments in writing to the department and developer within thirty days of receiving the plans. The department and developer shall take no action on the project in reliance on those plans until they have received the city's recommendations and comments or until the thirty-day comment period has expired, whichever comes first; provided that the city's approval is not required under this section, and this section does not delegate to the city authority that it does not otherwise have.

D. The department facilities shall cost no more than ninety million dollars (\$90,000,000). In the financing

plan for the lease of a portion of the site for the transit oriented development, the leasehold value for the initial term of the lease shall be the cost of the department facilities and related financing costs. In lieu of lease payments to the department, the developer shall finance, design, construct and deliver the department facilities at no additional cost to the department. The initial term of the lease shall be the period of time that it would take for monthly, fair market value lease payments to equal the cost of the department facilities, including financing costs, if the developer was actually making these payments, subject to provisions for renewal or extension of the lease as determined by the department.

E. Beginning with a renewal or extension of the lease immediately following the initial term of the lease, as provided for in Subsection D of this section, the lease shall include provisions for the developer to pay to the department fair market value lease payments in cash or cash equivalent, at intervals determined by the department, for use and operation of the transit oriented development. Upon receipt, the lease payments shall be deposited by the department into the state road fund.

F. Upon selection of a developer, the department shall report the selection to the legislative finance committee and shall report the status of the project to the committee once a month until the project is complete.

Section 2. TEMPORARY PROVISION--DEPARTMENT OF  
TRANSPORTATION--AUTHORIZING CONTINUED DEVELOPMENT OF REAL  
PROPERTY AT THE DISTRICT 5 LOCATION--CONDITIONS.--

A. As used in this section:

(1) "contract" means the written, fully executed contract and agreement or agreements to complete the project entered into between the department and the developer as a result of the request for proposals;

(2) "county" means the county of Santa Fe;

(3) "department" means the department of transportation or the state transportation commission as appropriate;

(4) "department facilities" means new district 5 facilities, a central materials laboratory, a vehicle maintenance facility, a vehicle fueling facility, a vehicle storage facility, a vehicle car wash, a signal laboratory, a sign shop and related facilities at the new district 5 site;

(5) "developer" means the person or combination of persons entering into the contract with the department for the project as a result of the request for proposals;

(6) "existing district 5 site" means the district 5 facilities and operations currently located at 7315 Cerrillos road, Santa Fe, New Mexico;

(7) "new district 5 site" means the real estate to be obtained within ten miles of the boundaries of the city of Santa Fe as of July 1, 2006, and the department facilities located on that real estate;

(8) "offeror" means a person or combination of persons submitting a proposal in response to the request for proposals;

(9) "project" means the financing, design, development and construction on the new district 5 site and commercial development, or a mix of commercial and residential development, on the existing district 5 site to fund the new district 5 site and develop the existing district 5 site to its highest and best use; and

(10) "request for proposals" means the document and any attachments, documents incorporated by reference or amendments used for soliciting proposals for the project.

B. The department may enter into a contract for the project at the existing and new district 5 sites. The developer shall be selected pursuant to the Procurement Code.

C. The project need not comply but shall be generally compatible with the county's zoning and land use policies, if any. To the extent the project obtains water or other services from the county or the city of Santa Fe, the terms and conditions of the use of those services shall be no

more stringent than the county's or the city's current laws, rules and policies and shall be pursuant to a negotiated agreement between the relevant parties. The developer shall submit its plans for comment by the county, which shall communicate its recommendations and comments in writing to the department and developer within thirty days of receiving the plans. The department and developer shall take no action on the project in reliance on those plans until they have received the county's recommendations and comments or until the thirty-day comment period has expired, whichever comes first; provided that the county's approval is not required under this section, and this section does not delegate to the county authority that it does not otherwise have.

D. The department shall require a financing plan for the project. The financing plan shall state the fair market value of the existing district 5 site. The financing plan shall provide that the consideration for the new district 5 site shall be the value of the use, by sale, exchange or lease, of the existing district 5 site by the developer; provided that the fair market value of the use of the existing district 5 site, as capitalized over an appropriate and financially sound period of time, shall not exceed the fair market value of the new district 5 site. This period of time, if the use is by lease, shall be the initial term of the lease, subject to renewal or extension as determined by the

department. If that lease is renewed or extended, the developer shall pay to the department fair market value lease payments in cash or cash equivalent, at intervals determined by the department, for use and operation of the existing district 5 site. Upon receipt, the lease payments shall be deposited by the department into the state road fund.

E. Once a developer has been selected, the department shall report the selection and the project financing plan to the legislative finance committee and then shall report the status of the project to the committee once a month until the project is complete.

Section 3. Section 67-3-12 NMSA 1978 (being Laws 1929, Chapter 110, Section 1, as amended) is amended to read:

"67-3-12. POWERS AND DUTIES.--In addition to the powers now conferred upon it by law, the state transportation commission:

A. may declare abandoned and close to public traffic all grade crossings of railroads by state highways in cases where grade separations or other adequate crossings are substituted therefor or where such grade crossings become unnecessary to the public convenience by reason of changes in highway locations;

B. may offer and, upon compliance with the conditions of such offer, pay rewards for information leading to the arrest and conviction of offenders in cases of theft,

defacement or destruction of markers or highway signs, lights or other warning devices placed upon or along highways of this state under the supervision of the state transportation commission and for information leading to the arrest and conviction of offenders or for the return of property in case of theft or unlawful damaging of property under the control of the commission. All such rewards when paid shall be paid from the state road fund upon voucher drawn by the secretary or other authorized officer or agent of the department;

C. shall prescribe by rule the conditions under which pipelines, telephone, telegraph and electric transmission lines and ditches may be placed along, across, over or under public highways in this state and shall forcibly remove or cause to be removed pipelines, telephone, telegraph or electric transmission lines or ditches that may be placed along, across, over or under such public highways in violation of such rules and regulations;

D. shall employ an attorney to assist and advise the state transportation commission and the department in the discharge of their duties and to appear and represent the interests of the commission or department in any case before any court or tribunal in which the official duties, powers, rights or privileges of the commission or department may be involved or affected and to pay that attorney the reasonable value of the attorney's services out of the state road fund;

E. shall bring and maintain in the name of the state actions and proceedings deemed necessary by the state transportation commission for the condemnation of rights of way for public highways or for the removal or condemnation of buildings or other improvements that encroach in whole or part upon the rights of way of public highways or for the condemnation of gravel pits or other deposits of materials or supplies suitable for the construction of public highways. The attorney general of New Mexico shall appear in and prosecute all such cases on behalf of the state upon request of the state transportation commission. All such proceedings shall be conducted in the same manner as other cases for the condemnation of real property. The damages assessed in proceedings brought under the provisions of this section shall be paid out of the state road fund from money furnished for that purpose by cooperative agreement between the state, federal government and the county within which the condemned property is situate or any such governmental bodies or out of money furnished for the construction of the highway in connection with which the condemnation is had, by the county in which the condemned property is situate; provided, however, that if no such money is available, the damages shall be advanced on behalf of said counties out of their money in the state road fund and the state treasurer shall thereafter reimburse the state road fund for the money advanced out of

the next installment of money from motor vehicle license fees accruing to the road fund of the county for which such funds were so advanced;

F. shall designate in its discretion one of its employees as acting secretary to act at all times when the secretary is absent from the state capital. The acting secretary, when designated, has the right and is hereby given authority at all times when the secretary is absent from the state capital to sign all federal project statements, federal project agreements and federal vouchers with the same force and effect as if signed by the secretary in person, and the certificate of the acting secretary attached to any federal project statement, federal project agreement or federal voucher to the effect that the secretary was absent from the state capital at the time that the same was so signed by the acting secretary shall be conclusive evidence of the truth of such fact. The acting secretary may also be vested by the state transportation commission with power and authority to act for the secretary in such other matters as the state transportation commission may determine;

G. subject to the provisions of Subsection H of this section, may conduct, permit or authorize commercial enterprises or activities on department- or commission-owned land or land leased to or from the department for the purpose of providing goods and services to the users of the property

or facilities on the land, including commercial enterprises or activities, other than commercial enterprises or activities on a controlled-access facility conducted, permitted or authorized pursuant to Section 67-11-9 NMSA 1978. In furtherance of these commercial enterprises or activities, the commission may:

(1) authorize the lease of department- or commission-owned land as it deems necessary, in which case consideration for the lease shall be payments in cash or cash equivalent that shall be deposited into the state road fund; or

(2) authorize the sale or exchange or lease with in-lieu value consideration of department- or commission-owned land; provided that the sale or exchange or lease with in-lieu value shall be subject to the ratification and approval by joint resolution of the state legislature prior to the sale or exchange or lease with in-lieu value becoming effective; and

H. for the purposes of Subsection G of this section shall:

(1) adopt rules necessary to carry out the provisions of Subsection G of this section;

(2) prior to initiating any action to conduct, permit or authorize commercial enterprises or activities, adopt a rule providing a procedure to involve

residents of the municipality or county in which the commercial enterprises or activities are proposed to occur in the department's planning and decision-making process for the sole purpose of advising the commission and department on the feasibility and suitability of the proposed commercial enterprises or activities;

(3) comply with the Procurement Code in the acquisition process whenever commercial enterprises or activities result in the commission or department acquiring construction, services or tangible personal property, as those terms are defined in the Procurement Code;

(4) if the commercial enterprises or activities are to be developed or operated by a private entity, direct that private entity to:

(a) create its plans to be not necessarily in compliance but generally compatible with local zoning and land use policies, including affordable housing and historic and architectural standards, if any, and, to the extent the private entity will obtain water or other services from a local authority, negotiate an agreement between relevant parties for those services, the terms and conditions of which shall be no more stringent than the local authority's then current laws, rules and policies; and

(b) submit its plans to the local zoning and land use authority for comment. The local

authority shall communicate its recommendations and comments in writing to the department and private entity within thirty days of receiving the plans. The department, commission and private entity shall take no action on the project in reliance on those plans until they have received the local authority's recommendations and comments or until the thirty-day comment period has expired, whichever comes first; provided that the local authority's approval is not required under this section, and this section does not delegate to the local authority power that it does not otherwise have; and

(5) not use the power of eminent domain to acquire land to be developed or operated by a private entity."

Section 4. EFFECTIVE DATE.--The effective date of the provisions of Section 3 of this act is July 1, 2006.

Section 5. EMERGENCY.--It is necessary for the public peace, health and safety that this act take effect immediately.

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