

HOUSE BILL 1180

48TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2007

INTRODUCED BY

Ben Lujan

AN ACT

RELATING TO FINANCE; ENACTING THE PUBLIC-PRIVATE FACILITIES REVENUE BOND FINANCING ACT; AUTHORIZING THE ISSUANCE OF PUBLIC-PRIVATE FACILITIES REVENUE BONDS; PROVIDING AN EXEMPTION FROM THE PROCUREMENT CODE; PROVIDING AN EXEMPTION FROM CERTAIN PROVISIONS RELATING TO THE LEASING OR DISPOSAL OF PUBLIC PROPERTY.

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

Section 1. [NEW MATERIAL] SHORT TITLE.--Sections 1 through 12 of this act may be cited as the "Public-Private Facilities Revenue Bond Financing Act".

Section 2. [NEW MATERIAL] PURPOSE.--The purpose of the Public-Private Facilities Revenue Bond Financing Act is to provide a needed program for the acquisition and financing of public facilities by local governments to be used in

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1 partnership with private entities that serves a necessary and  
2 valid public purpose.

3 Section 3. [NEW MATERIAL] DEFINITIONS.--As used in the  
4 Public-Private Facilities Revenue Bond Financing Act:

5 A. "bond" means a bond, note or other instrument  
6 issued by a municipality or county pursuant to the Public-  
7 Private Facilities Revenue Bond Financing Act;

8 B. "county gross receipts tax revenue" means the  
9 revenue from the first one-eighth of one percent increment and  
10 the third one-eighth of one percent increment of the county  
11 gross receipts tax and any increment of the county  
12 infrastructure gross receipts tax and county capital outlay  
13 gross receipts tax;

14 C. "eligible enterprise" means:

15 (1) an industry for the manufacturing,  
16 processing or assembling of agricultural or manufactured  
17 products;

18 (2) a commercial enterprise for storing,  
19 warehousing, distributing or selling products of agriculture,  
20 mining or industry;

21 (3) a business in which all or part of the  
22 activities of the business involves the supplying of services,  
23 office space or other facilities to the general public or to  
24 governmental agencies or to a specific industry or customer;

25 (4) a business engaged in the production of

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1 film or other visual or electronic media; or

2 (5) a business engaged in the development,  
3 redevelopment or improvement of real property;

4 D. "gross receipts tax revenue" means county gross  
5 receipts tax revenue or municipal gross receipts tax revenue,  
6 as defined in this section;

7 E. "local government" means a municipality or  
8 county;

9 F. "mortgage" means a mortgage, deed of trust or  
10 pledge of any assets as a collateral security;

11 G. "municipal gross receipts tax revenue" means the  
12 gross receipts tax revenue received pursuant to Section 7-1-6.4  
13 or 7-1-6.12 NMSA 1978, as amended;

14 H. "net project revenues" means the revenues  
15 derived from the lease, operation, sale or other disposition of  
16 a project after deducting ordinary and reasonably anticipated  
17 costs of operating and maintaining the project;

18 I. "private partner" means a corporation, limited  
19 liability company, partnership, joint venture, syndicate,  
20 association or other person that is engaged in one or more  
21 eligible enterprises;

22 J. "project" means land and improvements thereon,  
23 buildings and improvements thereto, necessary machinery and  
24 equipment, operating capital and other personal property deemed  
25 necessary in connection with the project, to be utilized for

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1 one or more eligible enterprises; and

2 K. "state" means the state of New Mexico.

3 Section 4. [NEW MATERIAL] PUBLIC-PRIVATE FACILITIES  
4 REVENUE BONDS.--

5 A. A local government may issue bonds pursuant to  
6 the Public-Private Facilities Revenue Bond Financing Act to  
7 finance all or a portion of the costs of a project and may  
8 acquire, own, lease or otherwise dispose of its interest in a  
9 project. Bonds issued pursuant to the Public-Private  
10 Facilities Revenue Bond Financing Act shall not be a general  
11 obligation of the local government, the state or any political  
12 subdivision of the state, and shall not give rise to a  
13 pecuniary liability of, or a charge against, the general credit  
14 or taxing powers of the local government, the state or any  
15 political subdivision of the state.

16 B. Bonds shall be payable from net project revenue  
17 and from other revenues that may be pledged by a private  
18 partner, and may be additionally secured with gross receipts  
19 tax revenues of a local government in the following manner:

20 (1) a municipality may irrevocably pledge any  
21 or all municipal gross receipts tax revenues as additional  
22 security for payment of the principal of and interest on bonds  
23 and other expenses related to bonds;

24 (2) a county may irrevocably pledge any or all  
25 county gross receipts tax revenues as additional security for

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1 payment of the principal of and interest on bonds and other  
2 expenses related to bonds; and

3 (3) a law that imposes or authorizes the  
4 imposition of a municipal gross receipts tax or county gross  
5 receipts tax or that affects the municipal gross receipts tax  
6 or county gross receipts tax, or any law supplemental or  
7 otherwise pertaining thereto, shall not be repealed or amended  
8 or otherwise directly or indirectly modified in such a manner  
9 as to impair adversely any outstanding bonds that are  
10 additionally secured by a pledge of municipal gross receipts  
11 tax revenues or county gross receipts tax revenues unless the  
12 outstanding bonds have been discharged in full or provision has  
13 been made for the payment of all principal of, interest on and  
14 any redemption premium related to such outstanding bonds.

15 C. Bonds issued pursuant to the Public-Private  
16 Facilities Revenue Bond Financing Act may be executed and  
17 delivered at any time, and from time to time, may be in such  
18 form and denominations, may be payable in such installments and  
19 at such time or times not exceeding thirty years from their  
20 date of delivery, may be payable at such place or places, may  
21 bear or accrue interest at fixed rates or variable rates, may  
22 be evidenced in such manner and may contain such provisions not  
23 inconsistent with the Public-Private Facilities Revenue Bond  
24 Financing Act, all as shall be provided in the ordinance and  
25 proceedings of the local government in connection with issuance

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1 of the bonds. Bonds may be sold at public or private sale in  
2 such manner and from time to time as may be determined by the  
3 local government to be most advantageous, and the local  
4 government may pay all expenses, attorney, engineering and  
5 architect fees, premiums and commissions that the local  
6 government may deem necessary or advantageous in connection  
7 with the authorization, sale and issuance of the bonds. All  
8 bonds issued pursuant to the Public-Private Facilities Revenue  
9 Bond Financing Act shall be construed to be negotiable.

10 D. The principal of and interest on bonds issued  
11 pursuant to the Public-Private Facilities Revenue Bond  
12 Financing Act shall be secured by a pledge of net project  
13 revenues; may, to the extent not otherwise prohibited by law,  
14 be secured by a mortgage of all or any part of the project or  
15 other collateral pledged by a private partner; and may be  
16 secured by the lease of the project, which collateral and lease  
17 may be assigned, in whole or in part, by the local government  
18 to third parties to carry out the purposes of the Public-  
19 Private Facilities Revenue Bond Financing Act.

20 E. The ordinance pursuant to which bonds are  
21 authorized to be issued or any mortgage pursuant to Subsection  
22 D of this section may contain agreements and provisions  
23 customarily contained in instruments securing bonds, including  
24 provisions respecting the fixing and collection of all revenues  
25 from any project to which the ordinance or mortgage pertains,

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1 the terms to be incorporated in the lease of the project, the  
2 maintenance and insurance of the project, the creation and  
3 maintenance of special funds from the revenues of the project  
4 and the rights and remedies available in the event of default  
5 to the bondholders or to the trustee under a mortgage, all as  
6 the local government may deem advisable and as shall not be in  
7 conflict with the Public-Private Facilities Revenue Bond  
8 Financing Act; provided, however, that in making any such  
9 agreements or provisions, the local government may not obligate  
10 itself with respect to the project and application of the  
11 project revenues except as expressly permitted by the Public-  
12 Private Facilities Revenue Bond Financing Act, and shall not  
13 have the power to incur a pecuniary liability or a charge, or  
14 to pledge its general credit or taxing powers.

15 F. The ordinance authorizing the issuance of bonds  
16 pursuant to the Public-Private Facilities Revenue Bond  
17 Financing Act may provide procedures and remedies in the event  
18 of default in payment of the principal of or interest on the  
19 bonds or in the performance of any agreement. No breach of any  
20 such agreement shall impose any pecuniary liability upon, or  
21 any charge against, the general credit or taxing powers of the  
22 local government, the state or any political subdivision of the  
23 state.

24 G. A local government may arrange for such other  
25 guarantees, insurance or other credit enhancements or

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1 additional security for the bonds to be provided by a private  
2 partner or other entity as the local government may deem  
3 appropriate, and may provide for the payment of these costs of  
4 the same from the proceeds of the bonds, or may require payment  
5 of the costs by the private partner in connection with which  
6 bonds are issued.

7 H. The bonds and the income from the bonds shall be  
8 exempt from all taxation by the state or any political  
9 subdivision of the state.

10 Section 5. [NEW MATERIAL] ORDINANCE AUTHORIZING PUBLIC-  
11 PRIVATE FACILITIES REVENUE BONDS.--

12 A. At a regular or special meeting called for the  
13 purpose of issuing bonds pursuant to the Public-Private  
14 Facilities Revenue Bond Financing Act, the governing body of  
15 the local government shall adopt an ordinance that:

16 (1) declares the necessity for issuing bonds;

17 (2) authorizes the issuance of bonds by an  
18 affirmative vote of three-fourths of all the members of the  
19 governing body in the case of a municipality, and two-thirds of  
20 all the members of the governing body in the case of a county;

21 (3) makes a determination that, as proposed,  
22 the project will generate net project revenues sufficient to  
23 pay the principal of and interest on the bonds being  
24 authorized;

25 (4) designates the net project revenues and,

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1 if applicable, other revenues pledged by a private partner as  
2 security; and

3 (5) if determined to be in the interest of the  
4 local government, designates gross receipts tax revenues of the  
5 local government as additional security for the bonds with such  
6 priority of lien or payment as deemed appropriate by the  
7 governing body.

8 B. In addition to the provisions of Subsection A of  
9 this section, prior to the issuance of bonds pursuant to the  
10 Public-Private Facilities Revenue Bond Financing Act, the  
11 governing body of the local government shall make the following  
12 determinations and set them forth in the ordinance pursuant to  
13 which the bonds are to be issued:

14 (1) the amount necessary in each year to pay  
15 the principal of and interest on bonds proposed to be issued to  
16 finance the project;

17 (2) the amount necessary to be paid each year  
18 into any reserve funds that the governing body may deem  
19 advisable to establish in connection with the retirement of the  
20 proposed bonds and the maintenance and repair of the project;  
21 and

22 (3) unless the terms under which the project  
23 is to be leased provide that the lessee shall maintain the  
24 project and carry all proper insurance with respect thereto,  
25 the estimated cost of maintaining the project in good repair

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1 and keeping it properly insured.

2 C. No ordinance may be adopted under the provisions  
3 of this section that uses as pledged revenues a municipal or  
4 county gross receipts tax for a purpose that would be  
5 inconsistent with the purpose for which that municipal or  
6 county gross receipts tax revenue is dedicated.

7 D. Net project revenue in excess of the amount  
8 necessary to meet all annual principal and interest payments  
9 and other requirements incident to repayment of the bonds and  
10 not otherwise allocated to a private partner may be transferred  
11 to any other fund of the local government. At the end of each  
12 fiscal year, gross receipts tax revenue pledged as additional  
13 security for bonds and not needed to pay debt service on bonds  
14 in that fiscal year may be transferred to any other fund of the  
15 local government, provided that the purpose for which the tax  
16 revenue is dedicated shall not be inconsistent with the  
17 transfer to the fund.

18 Section 6. [NEW MATERIAL] LEASES OF PROJECTS.--

19 A. In connection with the issuance of bonds  
20 pursuant to the Public-Private Facilities Revenue Bond  
21 Financing Act, the local government may lease the project to a  
22 private partner if the lease is pursuant to an agreement  
23 providing for payment to the local government of rents or  
24 payments that will be at least sufficient to:

25 (1) pay the principal of and interest on the

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1 bonds issued to finance the project;

2 (2) accumulate and maintain any reserve deemed  
3 by the local government to be advisable in connection with the  
4 bonds;

5 (3) pay the costs of maintaining the project  
6 in good repair and keeping it properly insured, unless the  
7 lease obligates the lessee to pay for the maintenance and  
8 insurance of the project; and

9 (4) provide a revenue stream to the local  
10 government in an amount determined by the local government to  
11 be adequate to serve its interests in undertaking the project.

12 B. A lease of a project and the rents payable  
13 pursuant to such lease may be assigned to a trustee for the  
14 benefit of owners of bonds.

15 C. A lease of a project to a private partner may  
16 provide that:

17 (1) net project revenues in excess of the  
18 amounts needed to satisfy the required payments to the local  
19 government pursuant to Subsection A of this section may be  
20 allocated to the private partner; and

21 (2) upon the expiration of the term of the  
22 lease, the project may be sold to the private partner for its  
23 fair market value, adjusted according to the respective  
24 contributions of, and revenue received by, the local government  
25 and the private partner during the term of the lease.

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1           Section 7. [NEW MATERIAL] REFUNDING BONDS.--

2           A. Outstanding bonds may at any time and from time  
3 to time be refunded by issuing refunding bonds in such amounts  
4 as the local government may determine for the purpose of  
5 refunding all or a portion of the principal of the bonds and  
6 all interest on the bonds accrued to the scheduled maturity  
7 date of such bonds or to selected prior redemption dates  
8 thereof and paying any redemption premiums, costs of issuing  
9 the refunding bonds and other costs necessary to effect the  
10 refunding as may be determined by the governing body of the  
11 local government. The principal amount of refunding bonds may  
12 be less than, equal to or greater than the principal amount of  
13 the bonds to be refunded. Any such refunding may be effected  
14 whether the bonds to be refunded have matured or will  
15 subsequently mature, either by sale of the refunding bonds and  
16 the application of the proceeds thereof for the payment of the  
17 bonds to be refunded, or by exchange of the refunding bonds for  
18 the bonds to be refunded. The holders of any bonds to be  
19 refunded shall not be compelled without their consent to  
20 surrender their bonds for payment or exchange prior to the date  
21 on which they are payable or by their terms are subject to  
22 optional redemption. Refunding bonds shall be payable from the  
23 revenues out of which other bonds issued pursuant to the  
24 Public-Private Facilities Revenue Bond Financing Act may be  
25 payable, or from the amounts derived from an escrow as provided

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1 in this section or other legally available amounts, or from any  
2 combination of the foregoing sources, and may be secured in the  
3 manner that other bonds issued pursuant to the Public-Private  
4 Facilities Revenue Bond Financing Act may be secured.

5 B. Proceeds of refunding bonds shall either be  
6 applied immediately to the retirement of the bonds being  
7 refunded or placed in escrow in a commercial bank or trust  
8 company that possesses and is exercising trust powers. The  
9 escrowed proceeds may be invested in short-term or long-term  
10 securities. Except to the extent inconsistent with the express  
11 terms of the Public-Private Facilities Revenue Bond Financing  
12 Act, the ordinance of the local government pursuant to which  
13 the bonds to be refunded were issued, including any mortgage or  
14 trust indenture securing the bonds, shall govern the  
15 establishment of any escrow in connection with the refunding  
16 bonds and the investment or reinvestment of any escrowed  
17 proceeds.

18 Section 8. [NEW MATERIAL] USE OF BOND PROCEEDS.--The  
19 proceeds from the sale of bonds issued pursuant to the Public-  
20 Private Facilities Revenue Bond Financing Act shall be applied  
21 only for the purpose for which the bonds were issued and for  
22 costs related to the acquisition, construction or other  
23 improvement of the project, including the following:

24 A. the costs of the construction of any part of the  
25 project that may be constructed, including architectural,

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1 engineering, appraisal and attorney fees;

2 B. the purchase price of any part of the project  
3 that may be acquired by purchase;

4 C. the costs of the extension of any utility to the  
5 project site;

6 D. all expenses in connection with the  
7 authorization, sale and issuance of the bonds; and

8 E. the interest on the bonds for a reasonable time  
9 prior to construction, during construction and for a reasonable  
10 time after completion of construction.

11 Section 9. [NEW MATERIAL] REQUIREMENTS CONCERNING  
12 PROCUREMENT--PROJECT LEASES NOT SUBJECT TO ADDITIONAL  
13 APPROVAL.--

14 A. The acquisition, construction, improvement,  
15 furnishing and equipping of a project pursuant to the Public-  
16 Private Facilities Revenue Bond Financing Act by a local  
17 government or a private partner shall not be subject to the  
18 provisions of the Procurement Code but shall be subject to such  
19 requirements as the governing body of the local government  
20 deems appropriate to protect the interests of the local  
21 government.

22 B. The lease of a project by a local government  
23 pursuant to the Public-Private Facilities Revenue Bond  
24 Financing Act shall not be subject to the approval of any other  
25 public body.

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1           Section 10. [NEW MATERIAL] BONDS LEGAL INVESTMENTS.--  
2 Bonds issued pursuant to the Public-Private Facilities Revenue  
3 Bond Financing Act shall be legal investments for savings banks  
4 and insurance companies organized pursuant to the laws of the  
5 state.

6           Section 11. [NEW MATERIAL] CUMULATIVE AUTHORITY.--The  
7 Public-Private Facilities Revenue Bond Financing Act shall be  
8 deemed to provide an additional and alternative method for the  
9 accomplishment of the things authorized by that act, shall be  
10 interpreted as supplemental and additional to the powers  
11 conferred by other laws and shall not be regarded as in  
12 derogation of any powers now existing.

13           Section 12. [NEW MATERIAL] LIBERAL INTERPRETATION.--The  
14 Public-Private Facilities Revenue Bond Financing Act, being  
15 necessary for the welfare of the state and its inhabitants,  
16 shall be liberally construed to effectuate the purposes  
17 thereof.

18           Section 13. Section 13-1-98.2 NMSA 1978 (being Laws 2003,  
19 Chapter 187, Section 1) is amended to read:

20           "13-1-98.2. ADDITIONAL EXEMPTIONS FROM THE PROCUREMENT  
21 CODE.--The provisions of the Procurement Code do not apply to  
22 contracts entered into by a local public body with a person,  
23 firm, organization, corporation, association or state  
24 educational institution named in Article 12, Section 11 of the  
25 constitution of New Mexico for:

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- 1           A. the operation and maintenance of a hospital  
2 pursuant to Chapter 3, Article 44 NMSA 1978;
- 3           B. the lease or operation of a county hospital  
4 pursuant to the Hospital Funding Act; [~~or~~]
- 5           C. the operation and maintenance of a hospital  
6 pursuant to the Special Hospital District Act; or
- 7           D. the acquisition, construction or improvement of  
8 a project undertaken by or on behalf of a local government  
9 pursuant to the Public-Private Facilities Revenue Bond  
10 Financing Act."

11           Section 14. Section 13-6-2 NMSA 1978 (being Laws 1979,  
12 Chapter 195, Section 3, as amended) is amended to read:

13           "13-6-2. SALE OF PROPERTY BY STATE AGENCIES OR LOCAL  
14 PUBLIC BODIES--AUTHORITY TO SELL OR DISPOSE OF PROPERTY--  
15 APPROVAL OF APPROPRIATE APPROVAL AUTHORITY.--

16           A. Providing a written determination has been made,  
17 a state agency, local public body, school district or state  
18 educational institution may sell or otherwise dispose of real  
19 or tangible personal property belonging to the state agency,  
20 local public body, school district or state educational  
21 institution.

22           B. A state agency, local public body, school  
23 district or state educational institution may sell or otherwise  
24 dispose of real property:

- 25           (1) by negotiated sale or donation to an

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1 Indian nation, tribe or pueblo located wholly or partially in  
2 New Mexico, or to a governmental unit of an Indian nation,  
3 tribe or pueblo in New Mexico, that is authorized to purchase  
4 land and control activities on its land by an act of congress  
5 or to purchase land on behalf of the Indian nation, tribe or  
6 pueblo;

7 (2) by negotiated sale or donation to other  
8 state agencies, local public bodies, school districts or state  
9 educational institutions;

10 (3) through the central purchasing office of  
11 the state agency, local public body, school district or state  
12 educational institution by means of competitive sealed bid,  
13 public auction or negotiated sale to a private person or to an  
14 Indian nation, tribe or pueblo in New Mexico; or

15 (4) if a state agency, through the federal  
16 property assistance bureau of the general services department.

17 C. A state agency shall give the federal property  
18 assistance bureau of the general services department the right  
19 of first refusal to dispose of tangible personal property of  
20 the state agency. A school district may give the department  
21 the right of first refusal to dispose of tangible personal  
22 property of the school district.

23 D. Except as provided in Section 13-6-2.1 NMSA 1978  
24 requiring state board of finance approval for certain  
25 transactions, sale or disposition of real or tangible personal

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1 property having a current resale value of more than five  
2 thousand dollars (\$5,000) may be made by a state agency, local  
3 public body, school district or state educational institution  
4 if the sale or disposition has been approved by the state  
5 budget division of the department of finance and administration  
6 for state agencies, the local government division of the  
7 department of finance and administration for local public  
8 bodies, the public education department for school districts  
9 and the [~~commission on~~] higher education department for state  
10 educational institutions.

11 E. Prior approval of the appropriate approval  
12 authority is not required if the tangible personal property is  
13 to be used as a trade-in or exchange pursuant to the provisions  
14 of the Procurement Code.

15 F. The appropriate approval authority may condition  
16 the approval of the sale or other disposition of real or  
17 tangible personal property upon the property being offered for  
18 sale or donation to a state agency, local public body, school  
19 district or state educational institution.

20 G. The appropriate approval authority may credit a  
21 payment received from the sale of such real or tangible  
22 personal property to the governmental body making the sale.  
23 The state agency, local public body, school district or state  
24 educational institution may convey all or any interest in the  
25 real or tangible personal property without warranty.

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- 1                   H. This section [~~shall~~] does not apply to:
- 2                   (1) computer software of a state agency;
- 3                   (2) those institutions specifically enumerated
- 4 in Article 12, Section 11 of the constitution of New Mexico;
- 5                   (3) the New Mexico state police division of
- 6 the department of public safety;
- 7                   (4) the state land office or the department of
- 8 transportation;
- 9                   (5) property acquired by a museum through
- 10 abandonment procedures pursuant to the Abandoned Cultural
- 11 Properties Act;
- 12                   (6) leases of county hospitals with any person
- 13 pursuant to the Hospital Funding Act;
- 14                   (7) property acquired by the economic
- 15 development department pursuant to the Statewide Economic
- 16 Development Finance Act; [~~and~~]
- 17                   (8) the state parks division of the energy,
- 18 minerals and natural resources department; and
- 19                   (9) property acquired by a local government
- 20 pursuant to the Public-Private Facilities Revenue Bond
- 21 Financing Act."

22                   Section 15. Section 13-6-2.1 NMSA 1978 (being Laws 1989,

23 Chapter 380, Section 1, as amended by Laws 2003, Chapter 142,

24 Section 3 and by Laws 2003, Chapter 349, Section 22) is amended

25 to read:

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1 "13-6-2.1. SALES, TRADES OR LEASES--BOARD OF FINANCE  
2 APPROVAL.--

3 A. Except as provided in Section 13-6-3 NMSA 1978,  
4 for state agencies, any sale, trade or lease for a period of  
5 more than five years of real property belonging to a state  
6 agency, local public body or school district or any sale, trade  
7 or lease of such real property for a consideration of more than  
8 twenty-five thousand dollars (\$25,000) shall not be valid  
9 unless it is approved prior to its effective date by the state  
10 board of finance.

11 B. The provisions of this section shall not be  
12 applicable as to those institutions specifically enumerated in  
13 Article 12, Section 11 of the constitution of New Mexico, the  
14 state land office, the state transportation commission, [~~or~~]  
15 the economic development department when disposing of property  
16 acquired pursuant to the Statewide Economic Development Finance  
17 Act or a local government when leasing or otherwise disposing  
18 of property acquired pursuant to the Public-Private Facilities  
19 Revenue Bond Financing Act."