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SENATE BILL 12

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

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
COMPOSITION AND 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]~~ as follows:

18 (1) four members appointed by the governor,
19 with no more than two from the same political party and with
20 the advice and consent of the senate;

21 (2) the executive director of the New Mexico
22 municipal league;

23 (3) the executive director of the New Mexico
24 association of counties;

25 (4) the secretary of finance and

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1 administration;

2 (5) one public member appointed by the
3 president pro tempore of the senate with the advice and consent
4 of the senate;

5 (6) one public member appointed by the
6 minority floor leader of the senate with the advice and consent
7 of the senate;

8 (7) one public member appointed by the speaker
9 of the house of representatives with the advice and consent of
10 the senate; and

11 (8) one public member appointed by the
12 minority floor leader of the house of representatives with the
13 advice and consent of the senate.

14 C. The appointed members of the authority shall be
15 appointed to four-year terms. [~~The initial members shall be~~
16 ~~appointed to staggered terms of four years or less, so that the~~
17 ~~term of at least one member expires on January 1 of each year.~~]
18 Vacancies shall be filled by [~~appointment by the governor~~] the
19 appointing entity for the remainder of the unexpired term. Any
20 member of the authority shall be eligible for reappointment.

21 D. Each appointed member before entering upon the
22 member's duty shall take an oath of office to administer the
23 duties of the member's office faithfully and impartially. A
24 record of the oath shall be filed in the office of the
25 secretary of state.

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

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

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1 are true copies, and all persons dealing with the authority may
2 rely upon the certificates.

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

17 H. The authority shall appoint an audit committee
18 from among its membership. Minutes shall be recorded for all
19 meetings of the audit committee. Audit committee members shall
20 be provided training related to the duties of the audit
21 committee. At least one member of the audit committee shall
22 have no less than ten years' experience in the area of finance.

23 I. Members shall not be represented on the
24 authority by designees. Members appointed pursuant to
25 Paragraphs (1) and (5) through (8) of Subsection B of this

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1 section shall be qualified by competence and by no less than
2 ten years' experience in the field of institutional investment,
3 accounting, law, public finance, banking or public project
4 planning or engineering.

5 J. Members of the authority and officers and
6 employees of the authority shall be governed by the provisions
7 of the Governmental Conduct Act. Nothing in this section or in
8 the Governmental Conduct Act shall be construed as prohibiting
9 an officer of a financial institution from participating as a
10 member of the authority in setting general policies of the
11 authority, nor shall any provision of the Governmental Conduct
12 Act prohibit the authority from depositing funds under the
13 jurisdiction of the authority in any financial institution. An
14 authority member shall not hold office or employment in a
15 political party.

16 K. A member of the authority appointed pursuant to
17 Paragraphs (1) or (5) through (8) of Subsection B of this
18 section may be:

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

22 (2) removed from the authority for other
23 cause, in the manner provided for removal of members of boards
24 of regents under Article 12, Section 13 of the constitution of
25 New Mexico.

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1 L. A vacancy in the membership of the authority
2 occurring other than by expiration of term shall be filled in
3 the same manner as the original appointment, but for the
4 unexpired term only.

5 M. The authority shall provide no less than eight
6 hours of orientation and training for new members. The
7 training shall include instruction regarding the mission,
8 goals, strategic plans, operations, programs and funds of the
9 authority and public entity finance and ethics.

10 N. Members of the authority shall annually
11 establish a work plan for the authority and a staffing review
12 analysis of authority staffing levels, training and adequacy.
13 The work plan and staffing review analysis shall be provided to
14 the New Mexico finance authority oversight committee.

15 ~~[H.]~~ O. Each member of the authority shall give
16 bond as provided in the Surety Bond Act. All costs of the
17 surety bonds shall be borne by the authority.

18 ~~[I.]~~ P. The authority is not created or organized,
19 and its operations shall not be conducted, for the purpose of
20 making a profit. No part of the revenues or assets of the
21 authority shall benefit or be distributable to its members,
22 officers or other private persons. The members of the
23 authority shall receive no compensation for their services but
24 shall be reimbursed for actual and necessary expenses at the
25 same rate and on the same basis as provided for public officers

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1 in the Per Diem and Mileage Act.

2 [J-] Q. The authority shall not be subject to the
3 supervision or control of any other board, bureau, department
4 or agency of the state except as specifically provided in the
5 New Mexico Finance Authority Act. No use of the terms "state
6 agency" or "instrumentality" in any other law of the state
7 shall be deemed to refer to the authority unless the authority
8 is specifically referred to in the law.

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

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

13 "6-21-21. MONEY OF THE AUTHORITY--EXPENSES--AUDIT--
14 ANNUAL REPORT.--

15 A. All money of the authority, except as otherwise
16 authorized or provided in the New Mexico Finance Authority Act
17 or in a bond resolution, trust indenture or other instrument
18 under which bonds are issued, shall be deposited as soon as
19 practical in a separate account or accounts in banks or trust
20 companies organized under the laws of this state. All deposits
21 of money shall be secured, if required by the authority, in
22 such a manner as the authority determines to be prudent. Banks
23 or trust companies are authorized to give security for deposits
24 of the authority.

25 B. Subject to the provisions of any contract with

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1 bondholders, the authority shall prescribe a system of
2 accounts.

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

18 D. The authority shall have an audit of its books
19 and accounts made at least once each year by the state auditor
20 or by a certified public accounting firm whose proposal has
21 been reviewed and approved by the state auditor. The cost of
22 the audit shall be an expense of the authority. [~~Copies~~] The
23 audit shall be approved in an open meeting of the authority,
24 and copies of the audit shall be submitted to the governor and
25 the New Mexico finance authority oversight committee and made

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1 available to the public.

2 E. The authority shall submit a report of its
3 activities to the governor and to the legislature not later
4 than December 1 of each year. Each report shall set forth a
5 complete operating and financial statement covering its
6 operations for that year."

7 SECTION 3. TEMPORARY PROVISION--TRANSITION MEMBERSHIP OF
8 THE NEW MEXICO FINANCE AUTHORITY.--

9 A. On the effective date of this act, the secretary
10 of economic development, the secretary of energy, minerals and
11 natural resources, the secretary of environment and the chief
12 financial officer of a state higher educational institution are
13 no longer members of the New Mexico finance authority.

14 B. Within thirty days of the effective date of this
15 act, four members shall be appointed to the New Mexico finance
16 authority pursuant to Paragraphs (5) through (8) of Subsection
17 B of Section 6-21-4 NMSA 1978 and shall serve on an interim
18 basis until confirmed by the senate.

19 C. The four public members appointed by the
20 governor prior to the effective date of this act shall remain
21 members of the New Mexico finance authority subject to the
22 terms of their initial appointment.

23 D. The four members appointed pursuant to
24 Subsection B of this section shall, by lot, determine the
25 initial terms of office for each position so that one position

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1 will be for a term of one year, one position will be for a term
2 of two years, one position will be for a term of three years
3 and one position will be for a term of four years. Thereafter,
4 the terms shall be for four years.

5 SECTION 4. EFFECTIVE DATE.--The effective date of the
6 provisions of this act is July 1, 2013.