

SENATE PUBLIC AFFAIRS COMMITTEE SUBSTITUTE FOR
SENATE BILL 636

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

AN ACT

RELATING TO THE PUBLIC PEACE, HEALTH, SAFETY AND WELFARE;
ENACTING THE PUBLIC-PRIVATE PARTNERSHIPS ACT; ALLOWING THE
STATE AND CERTAIN LOCAL GOVERNMENTS TO ENTER INTO PARTNERSHIPS
WITH PRIVATE SECTOR PARTNERS TO FACILITATE PUBLIC PROJECTS;
PROVIDING POWERS AND DUTIES; ALLOWING FOR THE ISSUANCE OF
REVENUE BONDS; PRESCRIBING PENALTIES.

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

SECTION 1. SHORT TITLE.--This act may be cited as the
"Public-Private Partnerships Act".

SECTION 2. DEFINITIONS.--As used in the Public-Private
Partnerships Act:

A. "department" means the general services
department;

B. "force majeure" means an uncontrollable force or

1 natural disaster not within the power of the public or private
2 partner;

3 C. "local government" means a municipality; a
4 county; or a regional entity created by a joint powers
5 agreement between one or more public agencies;

6 D. "material default" means a failure of a private
7 partner to perform any duties under a public-private
8 partnership, which failure jeopardizes delivery of adequate
9 service to the public and remains unsatisfied after a
10 reasonable time and after the private partner has received
11 written notice from the public partner of the failure;

12 E. "private partner" means one or more persons who
13 have entered into a public-private partnership with a public
14 partner and who are not the federal government or any agency or
15 instrumentality of the federal government; another state or
16 territory of the United States; a sovereign or foreign
17 government; or the state or an agency, branch, institution,
18 instrumentality or political subdivision of the state;

19 F. "public partner" means the department, a local
20 government or an instrumentality of the state or local
21 government;

22 G. "public-private partnership" means the agreement
23 between one or more public partners and one or more private
24 partners for the development or financing of a public project;

25 H. "public project" means:

1 (1) a building or other facility for a public
2 school or a public post-secondary educational institution,
3 including:

4 (a) a school building;

5 (b) a functionally related and
6 subordinate facility;

7 (c) a stadium or other facility
8 primarily used for school events;

9 (d) the acquisition of land for a
10 building or facility; and

11 (e) any depreciable property provided
12 for use in a school facility that is operated as part of the
13 public school system or a public post-secondary educational
14 institution;

15 (2) theaters, museums, convention centers,
16 stadiums, athletic facilities or golf courses;

17 (3) parking lots or garages;

18 (4) an airport, subway or similar facility;

19 (5) improvements, together with equipment,
20 necessary to enhance public safety and security of buildings to
21 be principally used by a public entity;

22 (6) utility and telecommunications and other
23 communications infrastructure;

24 (7) dams and reservoirs;

25 (8) a sewerage or water treatment facility,

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1 power generating plant, pump station, natural gas compressing
2 station or similar facility;

3 (9) a sewerage, water, gas or other pipeline;

4 (10) a transmission line;

5 (11) a radio, television, cell or other tower;

6 (12) improvements necessary or desirable to
7 any unimproved state-owned or locally owned real estate; or

8 (13) recycling facilities or solid waste
9 management facilities that produce electric energy derived from
10 solid waste;

11 I. "user fee" means a rate, fee or other charge
12 imposed by a public partner for use of all or part of a public
13 project; and

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

22 SECTION 3. RULES--APPROVAL OF PUBLIC-PRIVATE
23 PARTNERSHIPS.--

24 A. The department shall adopt rules to carry out
25 the provisions of the Public-Private Partnerships Act, which

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1 rules shall comply with the Procurement Code.

2 B. The attorney general, the state board of finance
3 and the legislature shall review and approve or disapprove a
4 public-private partnership agreement proposed to be entered
5 into or renewed by a public partner. A public-private
6 partnership agreement or a renewal of a public-private
7 partnership agreement shall not be effective unless approved by
8 the attorney general, the state board of finance and the
9 legislature.

10 SECTION 4. PROJECT DELIVERY METHODS--PROPOSALS.--A public
11 partner may provide for the development of a public project
12 using a variety of project delivery methods and forms of
13 agreements. A public partner may not develop any project
14 pursuant to the Public-Private Partnerships Act that includes
15 private operation, maintenance or management of a public
16 facility. A public-private partnership shall not be used to
17 create a tax increment development district. The project
18 delivery methods and forms of agreements may include:

- 19 A. predevelopment agreements leading to other
20 implementing agreements;
- 21 B. design-build agreements;
- 22 C. design-build-finance agreements;
- 23 D. construction manager at risk;
- 24 E. concession agreements that provide for the
25 private partner to design or build a public project; or

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1 F. other project delivery methods or agreements or
2 combination of methods or agreements that the public partner
3 determines will serve the public interest.

4 SECTION 5. PROCUREMENT.--

5 A. Procurements pursuant to the Public-Private
6 Partnerships Act are subject to the provisions of the
7 Procurement Code. The resident preferences provided in
8 Sections 13-1-21 and 13-1-22 NMSA 1978 apply to procurements
9 pursuant to that act. The construction of a public project is
10 a public works for the purposes of the Public Works Minimum
11 Wage Act, the Subcontractors Fair Practice Act, other
12 provisions of Chapter 13, Article 4 NMSA 1978 and the Public
13 Works Apprenticeship and Training Act. The Public-Private
14 Partnerships Act does not apply to projects developed pursuant
15 to the Affordable Housing Act.

16 B. For a procurement in which the public partner
17 issues a request for qualifications or similar solicitation
18 document, the request shall set forth the factors that will be
19 evaluated and the manner in which responses will be evaluated.

20 C. The public partner may charge and retain a
21 reasonable administrative fee for the evaluation of an
22 unsolicited project proposal; provided that the administrative
23 fee shall not exceed the reasonable cost of evaluating the
24 proposal.

25 D. The public partner shall retain financial, legal

1 and other experts to assist in the evaluation, negotiation and
2 development of public-private partnership agreements for a
3 public project; provided that such experts shall have a minimum
4 of five years' experience in working with public-private
5 partnerships in their field of expertise.

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

12 F. Before the public partner begins the process for
13 procuring a public project, the public partner shall hold at
14 least three public hearings during which the request for
15 proposal is presented and discussed and shall hold additional
16 public hearings before an agreement is signed at regular
17 intervals during the project and after the project is
18 completed. All public hearings shall be preceded by at least
19 fourteen days notice.

20 **SECTION 6. EVALUATION CRITERIA.**--In evaluating proposals,
21 the public partner may accord relative weight to factors such
22 as cost; financial commitment; innovative financing; technical,
23 scientific, technological or socioeconomic merit; full-cost
24 assessment and comparison of development, including
25 conventional bonding, other public financing mechanisms and

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1 triple bottom line accounting principles; and other factors as
2 the public partner deems appropriate to obtain the best value
3 for the state or local government. Before entering into a
4 public-private partnership, the public partner shall consider:

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

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

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

15 D. the feasibility and proposed design and
16 construction management of the public project;

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

19 F. benefits to the public;

20 G. the safety record of the proposer; and

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

23 SECTION 7. PUBLIC-PRIVATE PARTNERSHIP AGREEMENTS--
24 REQUIREMENTS--PENALTIES.--

25 A. In a public-private partnership, the public

1 partner shall require the agreement to include provisions as
2 applicable that:

3 (1) authorize the public partner to establish
4 and collect user fees and rents and to authorize the public
5 partner or private partner to establish and collect advertising
6 and sponsorship charges or service charges, including
7 provisions that:

8 (a) specify how revenue will be
9 collected, accounted for and audited;

10 (b) establish circumstances under which
11 the public partner may receive all or a share of revenue from
12 such charges; and

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

21 (2) if user fees and other charges are
22 allowed, the agreement shall provide for a reasonable rate of
23 return on the private partner's investment, including
24 provisions such as the following:

25 (a) the fees and charges may be

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1 collected directly by the private partner or a third party
2 engaged by the private partner for that purpose;

3 (b) a formula for the adjustment of user
4 fees and other charges during the term of the public-private
5 partnership;

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

10 (d) limitations on the profits by the
11 private partner of no more than a fifteen percent return on
12 investment; or

13 (e) 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;

1 (7) allocate financial responsibility for cost
2 overruns to the partner or partners that were responsible for
3 the cost overruns;

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

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

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

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

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

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 as required by Section 13-4-18
6 NMSA 1978 for those components of a public project that involve
7 construction. For components that do not involve construction,
8 require parent company guarantees, letters of credit or other
9 acceptable forms of security or a combination of any of these,
10 the penal sum or amount of which may be less than one hundred
11 percent of the value of the contract involved based on the
12 public partner's determination of what is required to
13 adequately protect the public partner, made on a project-by-
14 project basis;

15 (16) provide clawback or recapture provisions
16 that protect the public investment, and

17 (17) specify remedies available to the parties
18 and dispute resolution procedures to be followed.

19 B. The public-private partnership agreement shall
20 include a clear statement that the public partner will own any
21 real property pertaining to the public project when the project
22 reverts to the public partner.

23 C. The term of agreements entered into pursuant to
24 the Public-Private Partnerships Act may be for a term not to
25 exceed ten years, and such agreements may not be extended for

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1 additional terms.

2 D. The public-private partnership agreement shall
3 contain a provision by which the private partner expressly
4 agrees that it is prohibited from seeking injunctive or other
5 equitable relief to delay, prevent or otherwise hinder the
6 public partner or any other jurisdiction from developing,
7 constructing or maintaining a public project that was planned
8 and that would or might affect the revenue that the private
9 partner would or might derive from the public project developed
10 under an agreement pursuant to the Public-Private Partnerships
11 Act.

12 E. The public-private partnership agreement shall
13 require that the state board of finance must approve the
14 assignment, transfer or sale of assets or investment in a
15 public project. Sale or lease for longer than ten years of
16 state property requires legislative approval.

17 **SECTION 8. FUNDING AND FINANCING.--**

18 A. Gross receipts tax or property tax revenues
19 shall not be pledged to any bonds issued pursuant to this act.
20 Any other lawful source of funding may be used for the
21 development or management of a public project pursuant to the
22 Public-Private Partnerships Act, including:

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

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1 (2) grants, loans, loan guarantees, lines of
2 credit, revolving lines of credit or other arrangements as
3 allowed by federal or state law;

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

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

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

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

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

1 arrangements with the United States or any of its agencies as
2 may be necessary to carry out the provisions of that act.

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

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

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

14 G. Revenue bonds issued pursuant to Section 11 of
15 the Public-Private Partnerships Act are not general obligations
16 of this state or any local government and are not secured by or
17 payable from any money or assets of the state or any local
18 government other than the money and revenues specifically
19 pledged to the repayment of the revenue bonds.

20 **SECTION 9. REVENUE BONDS--AUTHORITY TO ISSUE.--**

21 A. A public partner may issue revenue bonds for
22 public projects. Revenue bonds so issued by the department may
23 be considered appropriate investments for the severance tax
24 permanent fund or collateral for the deposit of public funds if
25 the bonds are rated not less than "A" by a national rating

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1 service and both the principal and interest of the bonds are
2 fully and unconditionally guaranteed by a lease agreement
3 executed by an agency of the United States government or by a
4 corporation organized and operating within the United States,
5 that corporation or the long-term debt of that corporation
6 being rated not less than "A" by a national rating service.
7 All bonds issued by a public partner are legal and authorized
8 investments for banks, trust companies, savings and loan
9 associations and insurance companies.

10 B. The public partner may pay from the bond
11 proceeds all expenses, premiums and commissions that the public
12 partner deems necessary or advantageous in connection with the
13 authorization, sale and issuance of the bonds.

14 C. Revenue bonds:

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

18 (2) may be subject to prior redemption or
19 mandatory redemption at the public partner's option at the time
20 and upon such terms and conditions with or without the payment
21 of a premium as may be provided by resolution of the public
22 partner;

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

25 (4) may be serial in form and maturity; may

1 consist of one or more bonds payable at one time or in
2 installments; or may be in such other form as determined by the
3 public partner;

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

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

10 (7) may be sold at a public or negotiated
11 sale.

12 D. Subject to the approval of the state board of
13 finance, the state auditor and the attorney general, the public
14 partner may enter into other financial arrangements if it
15 determines that the arrangements will assist the public partner
16 to carry out its duties pursuant to the Public-Private
17 Partnerships Act.

18 **SECTION 10. BONDS SECURED BY TRUST INDENTURE.**--The bonds
19 issued by the public partner may be secured by a trust
20 indenture between the public partner and a corporate trustee
21 that may be either a bank having trust powers or a trust
22 company. The trust indenture may contain reasonable provisions
23 for protecting and enforcing the rights and remedies of
24 bondholders, including covenants setting forth the duties of
25 the public partner in relation to the exercise of its powers

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1 and the custody, use and investment of the project revenues or
2 other funds. The public partner may provide in a trust
3 indenture for the payment of the proceeds of the bonds and the
4 project revenue to the trustee under the trust indenture or
5 other depository for disbursement with any safeguards the
6 public partner determines are necessary.

7 SECTION 11. REVENUE BONDS--LIMITATIONS--AUTHORIZATION--
8 AUTHENTICATION.--

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

11 (1) not general obligations of the state or
12 any local government; and

13 (2) payable only from properly pledged
14 revenues, and each bond shall state that it is payable solely
15 from the properly pledged revenues and that the bondholders may
16 not look to any other fund for the payment of the interest and
17 principal of the bond.

18 B. Revenue or refunding bonds may be authorized by
19 resolution of the public partner, which resolution shall be
20 approved by the state board of finance.

21 C. The bonds shall be executed by the public
22 partner and may be authenticated by any public or private
23 transfer agent or registrar, or its successor, named or
24 otherwise designated by the public partner. Bonds may be
25 executed as provided under the Uniform Facsimile Signature of

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1 Public Officials Act, and the coupons, if any, shall bear the
2 facsimile signature of the appropriate official of the public
3 partner.

4 SECTION 12. SECURITY FOR BONDS.--The principal of and
5 interest on any bonds issued pursuant to the provisions of the
6 Public-Private Partnerships Act shall be secured by a pledge of
7 the revenues out of which the bonds shall be made payable; may
8 be secured by a mortgage, deed of trust note or other
9 certificate of indebtedness covering all or part of the public
10 project from which the revenues so pledged may be derived; and
11 may be secured by a pledge of any lease or installment sale
12 agreement or other fees or revenues with respect to the public
13 project. The resolution of the public partner under which
14 bonds are authorized to be issued may contain any agreement and
15 provisions customarily contained in instruments securing bonds,
16 notes or certificates of indebtedness, including:

17 A. provisions respecting the fixing and collection
18 of all revenues from any public project covered by the
19 proceedings or mortgage;

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

22 C. the maintenance and insurance of the public
23 project; and

24 D. the creation and maintenance of special funds
25 from the revenues with respect to the public project and the

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1 rights and remedies available in the event of default to the
2 bondholders, all as the public partner deems advisable and not
3 in conflict with the provisions of the Public-Private
4 Partnerships Act. In making the agreements or provisions, the
5 public partner shall not have the power to obligate itself,
6 except with respect to the public project and the application
7 of the revenues from the public project, and shall not have the
8 power to incur a pecuniary liability or charge upon the
9 state's, municipality's or county's general credit or against
10 its taxing powers. The resolution authorizing any bonds and
11 any mortgage securing such bonds shall set forth the procedure
12 and remedies in the event of default in payment of the
13 principal of or the interest on the bond, note or certificate
14 of indebtedness or in the performance of any agreement. A
15 breach of any agreement shall not impose any pecuniary
16 liability upon the state, municipality or county or any charge
17 upon its general credit or against its taxing powers.

18 SECTION 13. RESOLUTION FOR ISSUANCE--REQUIREMENTS--
19 REVENUE--SALE OR LEASE OF PROPERTY.--

20 A. A resolution for the issuance of bonds shall set
21 forth the determinations and findings of the public partner
22 required by this section.

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

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

4 (a) revenue received from the public
5 project pursuant to a contract entered into by and between the
6 public and private partners;

7 (b) a lease agreement or installment
8 sale agreement;

9 (c) a corporation organized and
10 operating within the United States;

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

14 (e) a bond insurance policy issued by an
15 insurance company rated not less than "AA" by a national rating
16 service;

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

20 (3) revenues are available in an amount
21 necessary to be paid each year into any reserve funds that the
22 public partner may deem advisable to establish in connection
23 with the retirement of the proposed bonds or the maintenance of
24 the public project.

25 C. Unless the terms under which the public project

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1 is to be leased provide that the lessee shall maintain the
2 public project and carry all proper insurance with respect to
3 the public project, the resolution shall set forth the
4 estimated cost of maintaining the public project in good repair
5 and keeping it properly insured.

6 D. Prior to the issuance of the bonds, the public
7 partner may lease the public project to a lessee under an
8 agreement conditioned upon completion of the public project and
9 providing for payment to the public partner of such rental
10 payments as, upon the basis of such determinations and findings
11 pursuant to provisions of this section, will be sufficient to:

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

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

17 (3) pay the costs of maintaining the public
18 project in good repair and keep it properly insured, unless the
19 agreement of lease obligates the lessee to pay for the
20 maintenance and insurance of the public project.

21 E. With prior approval of the state board of
22 finance, the public partner may borrow money to purchase,
23 lease, acquire or develop water rights, a water system, a
24 wastewater collection and treatment system, a natural gas
25 distribution system, an electrical distribution system or other

1 infrastructure needed to support the public project; provided
2 that the public partner shall not obligate itself or the state,
3 municipality or county to any debt or obligation that cannot be
4 paid from funds derived from the public project.

5 F. Upon prior approval of the state board of
6 finance, the public partner may obtain commitment from a
7 financial institution to borrow money; provided that closing of
8 the loan and disbursement of the proceeds is conditioned upon
9 compliance with the requirements of the Public-Private
10 Partnerships Act. Nothing in this section shall be deemed to
11 authorize the public partner to incur any debt obligation in
12 connection with a loan commitment prior to the closing of the
13 loan.

14 SECTION 14. USE OF PROCEEDS FROM SALE OF BONDS.--

15 A. The proceeds from the sale of any bonds issued
16 pursuant to the Public-Private Partnerships Act shall be
17 applied only for the purpose for which the bonds were issued;
18 provided that:

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

22 (2) if for any reason any portion of such
23 proceeds are not needed for the purpose for which the bonds
24 were issued, the balance of the proceeds shall be applied to
25 the payment of the principal of or the interest on the bonds;

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1 and

2 (3) any portion of the proceeds from the sale
3 of the bonds or any accrued interest and premium received in
4 any such sale may, in the event that the money will not be
5 needed or cannot be used effectively to the advantage of the
6 public partner for the purposes provided pursuant to the
7 Public-Private Partnerships Act, be invested in short-term
8 interest-bearing securities if such investment will not
9 interfere with the use of the funds for the primary purpose of
10 the project.

11 B. The cost of acquiring a public project shall be
12 deemed to include the following:

13 (1) the actual cost of planning, design and
14 construction of any part of a project, including architect,
15 attorney and engineer fees;

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

18 (3) the actual cost of the extension of any
19 utility to the public project site and all expenses in
20 connection with the authorization, sale and issuance of the
21 bonds to finance such acquisition; and

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

25 SECTION 15. REFUNDING BONDS--AUTHORIZATION.--

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1 A. The public partner may issue refunding revenue
2 bonds for the purpose of refinancing, paying and discharging
3 all or any part of outstanding public project revenue bonds
4 for:

5 (1) the acceleration, deceleration or other
6 modification of payment of such obligations, including, without
7 limitation, any capitalization of any interest in arrears or
8 about to become due for any period not exceeding one year from
9 the date of the refunding bonds;

10 (2) reducing interest costs or effecting other
11 economies; or

12 (3) modifying or eliminating restrictive
13 contractual limitations pertaining to the issuance of
14 additional bonds, otherwise concerning the outstanding bonds or
15 to any public projects relating to the bonds.

16 B. The public partner may pledge irrevocably for
17 the payment of interest and principal on refunding bonds the
18 appropriate pledged revenues that may be pledged to an original
19 issue of bonds.

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

23 **SECTION 16. REFUNDING BONDS--ESCROW.--**

24 A. Refunding bonds issued pursuant to the Public-
25 Private Partnerships Act shall be authorized by resolution of

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1 the public partner. Any bonds that are refunded under the
2 provisions of this section shall be paid at maturity or on any
3 permitted prior redemption date in the amounts, at the time and
4 places and, if called prior to maturity, in accordance with any
5 applicable notice provisions, all as provided in the
6 proceedings authorizing the issuance of the refunded bonds or
7 otherwise pertaining thereto, except for any such bond that is
8 voluntarily surrendered for exchange or payment by the holder
9 or owner.

10 B. Provision shall be made for paying the bonds
11 refunded at the time provided in this section. The principal
12 amount of the refunding bonds may exceed the principal amount
13 of the refunded bonds and may also be less than or the same as
14 the principal amount of the bonds being refunded; provided that
15 provision is duly and sufficiently made for payment of the
16 refunded bonds.

17 C. The proceeds of refunding bonds, including any
18 accrued interest and premium pertaining to the sale of
19 refunding bonds, shall either be immediately applied to the
20 retirement of the bonds being refunded or be placed in escrow
21 in a commercial bank or trust company that possesses and is
22 exercising trust powers and that is a member of the federal
23 deposit insurance corporation, to be applied to the payment of
24 the principal of, interest on and any prior redemption premium
25 due in connection with the bonds being refunded; provided that

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underscoring material = new
~~[bracketed material] = delete~~

1 such refunding bond proceeds, including any accrued interest
2 and any premium pertaining to a sale of refunding bonds, may be
3 applied to the establishment and maintenance of a reserve fund
4 and to the payment of expenses incidental to the refunding and
5 the issuance of the refunding bonds, the interest thereon, the
6 principal thereof or both interest and principal as the public
7 partner may determine. Nothing in this section requires the
8 establishment of an escrow if the refunded bonds become due and
9 payable within one year from the date of the refunding bonds
10 and if the amounts necessary to retire the refunded bonds
11 within that time are deposited with the paying agent for the
12 refunded bonds. Any such escrow shall not necessarily be
13 limited to proceeds of refunding bonds but may include other
14 money available for its purpose. Any proceeds in escrow
15 pending such use may be invested or reinvested in bills,
16 certificates of indebtedness, notes or bonds that are direct
17 obligations of or the principal and interest of which
18 obligations are unconditionally guaranteed by the United States
19 or in certificates of deposit of banks that are members of the
20 federal deposit insurance corporation. Such proceeds and
21 investments in escrow, together with any interest or other
22 income to be derived from any such investment, shall be in an
23 amount at all times sufficient as to principal, interest, any
24 prior redemption premium due and any charges of the escrow
25 agent payable to pay the bonds being refunded as they become

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1 due at their respective maturities or due at any designated
2 prior redemption date in connection with which the public
3 partner shall exercise a prior redemption option. Any
4 purchaser of any refunding bond issued pursuant to the Public-
5 Private Partnerships Act is in no manner responsible for the
6 application of the proceeds by the public partner or any of its
7 officers, employees or agents.

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

11 SECTION 17. REFUNDING REVENUE BONDS--TERMS.--Refunding
12 revenue bonds:

13 A. may have interest or appreciated principal value
14 payable at intervals or at maturity;

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

18 C. may be serial in form and maturity;

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

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

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1 **SECTION 18. EXEMPTION FROM TAXATION.**--Bonds authorized
2 pursuant to the Public-Private Partnerships Act and the income
3 from those bonds, all mortgages or other security instruments
4 executed as security for those bonds, all lease and installment
5 purchase agreements made pursuant to the provisions of that act
6 and revenue derived from any lease or sale by the public
7 partner shall be exempt from all taxation by the state or any
8 political subdivision of the state.

9 **SECTION 19. REVERSION OF PUBLIC PROJECT TO PUBLIC**
10 **PARTNER.**--When the public-private partnership is terminated,
11 the authority and duties of the private partner cease, except
12 for any duties and obligations that extend beyond the
13 termination as provided in the public-private agreement, and
14 the public project reverts to the public partner and shall be
15 dedicated for public use.

16 **SECTION 20. MATERIAL DEFAULT--REMEDIES.**--

17 A. Upon the occurrence and during the continuation
18 of material default by the private partner, not related to an
19 event of force majeure, the public partner may:

20 (1) elect to take over the public project,
21 including the succession of all right, title and interest in
22 the public project, subject to any liens on revenue previously
23 granted by the private partner; and

24 (2) terminate the public-private partnership
25 and exercise any other rights and remedies that may be

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1 available.

2 B. If the public partner elects to take over a
3 public project pursuant to Subsection A of this section, the
4 public partner:

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

7 (2) may develop and operate the public
8 project, impose user fees for the use of the public project and
9 comply with any service contracts.

10 SECTION 21. POLICE POWERS--VIOLATIONS OF LAW.--All law
11 enforcement officers of the state or local government have the
12 same powers and jurisdiction within the limits of the public
13 project as they have in their respective areas of jurisdiction
14 and access to the public project at any time to exercise such
15 powers and jurisdictions.

16 SECTION 22. UTILITY CROSSINGS.--A public or private
17 partner and any utility whose facility is to be crossed or
18 relocated shall cooperate fully in planning and arranging the
19 manner of the crossing or relocation of the utility facility.

20 SECTION 23. PENALTIES.--A person who fails to pay a user
21 fee required for the privilege of using property included in a
22 public project is guilty of a petty misdemeanor and shall be
23 sentenced as provided in Section 31-19-1 NMSA 1978.

24 SECTION 24. EFFECTIVE DATE.--The effective date of the
25 provisions of this act is July 1, 2013.

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