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## FISCAL IMPACT REPORT

ORIGINAL DATE 2/10/2020

SPONSOR Padilla/Lundstrom LAST UPDATED \_\_\_\_\_ HB \_\_\_\_\_

SHORT TITLE Public-Private Partnership Act SB 59

ANALYST Hawker

### REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY20	FY21	FY22		
	\$1,000.0	\$2,000.0	Recurring	P3 Fund

(Parenthesis ( ) Indicate Revenue Decreases)

### ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY20	FY21	FY22	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
		(\$500.0)	(\$500.0)	(\$1,000.0)	Recurring	P3 Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

Relates to House Bill 264

Relates to Appropriation in the General Appropriation Act

### SOURCES OF INFORMATION

LFC Files

U.S. Department of Commerce National Telecommunications and Information Administration

#### Responses Received From

Attorney General (NMAG)

Department of Transportation (DOT)

Department of Information Technology (DoIT)

Economic Development Department (EDD)

Indian Affairs Department (IAD)

New Mexico Finance Authority (NMFA)

New Mexico Mortgage Finance Authority (MFA)

### SUMMARY

Synopsis of Bill

Senate Bill 59 creates the Public-Private Partnership Act, providing legal authority for governmental entities to enter into agreements with private entities for the purpose of developing defined public projects. SB59 limits projects to construction or improvements related to broadband telecommunications network facilities.

The bill obligates a public partner contemplating a public-private partnership (P3) agreement to first undertake a cost-benefit analysis, conduct a public hearing, and demonstrate that the proposed public project serves an important public purpose. The bill also outlines mandatory terms and conditions to be included in a P3 agreement, including remedies available to the public partner in event of default by the private partner, and the requirement that the public project in question revert to the public partner and be dedicated for public use.

SB59 creates a nine member P3 board, which includes the secretaries or designees from EDD, DFA, GSD and DOT, the chief executive officer of the New Mexico finance authority (NMFA) and four members of the public who are appointed by Legislative Council. The public members will serve six year staggered terms, the process for filling initial terms is provided in this bill. The chair of the P3 board shall be a public member. The individual is selected by the board members.

The P3 board may:

- Meet quarterly and at other times as deemed necessary by the chair;
- Receive for reporting purposes executed public project P3 agreements for which the cost is less than \$5 million;
- Review and consider for approval P3 agreements for public projects in excess of \$5 million;
- Certify the need for the issuance of revenue bonds and refunding bonds by NMFA;
- Ensure that the use of a P3 agreement and its proposed funding mechanism is a prudent expenditure of public funds;
- Promulgate rules establishing the application process and criteria for the approval of P3 agreements;
- Make recommendations for approval to NMFA of public projects seeking grants or loans from the P3 project fund; and
- Take other actions as necessary to implement the Act, including entering into joint powers agreements and retaining legal counsel and experts as appropriate;

SB59 creates a public-private partnership project fund. The fund may be used for:

- Grants of up to \$75 thousand for studying the costs and benefits of entering into a P3 agreement for a proposed public project. The private partner shall provide matchings funds as required by NMFA.
- The fund may also be used to provide loans for financing a public project through a P3 agreement, provided that the private partner shall provide funds matching the public partner's monetary obligation for the P3 agreement.
- Grants or loans to an Indian nation, tribe or pueblo that have entered into a P3 agreement so long as the cost of the public project is in excess of \$5 million, the P3 agreement is approved by the P3 board and the grant or loan application is recommended for approval

by the P3 board and approved by NMFA.

- The fund may be used for administrative and reimbursable costs incurred by the P3 board and NMFA.

NMFA will staff the newly created board, administer the newly created fund, make loans and grants from the fund for public projects that have been recommended for approval by the P3 board, and issue revenue bonds and refunding bonds in accordance with the Act.

The bill outlines general permissible terms as to revenue bonds and refunding bonds issued pursuant to the Act by NMFA. All bonds or other obligations issued pursuant to the Act are payable solely from the revenue of NMFA pledged to the payment of the obligation. No breach of any pledge, obligation or agreement shall impose a pecuniary liability or charge upon the general credit or taxing power of New Mexico or any of its political subdivisions.

By December 1, 2020 and each December 1 thereafter, the P3 board shall provide a report to the governor and NMFA oversight committee addressing grant and loan applications approved, P3 agreements approved by or reported to the board, the status of the P3 fund, certifications for the issuance or revenue or refunding boards and any recommended changes to the Act.

The construction of a public project pursuant to a P3 agreement is a public work for the purposes of the Public Works Minimum Wage Act, the Subcontractors Fair Practices Act and the Apprenticeship and Training Act.

Finally, the bill exempts from the Procurement Code agreements and contracts entered into pursuant to the Act.

The effective date of the provisions in this bill is July 1, 2020.

## **FISCAL IMPLICATIONS**

The bill does not contain an appropriation. The General Appropriation Act of 2020, includes \$40 million for a public-private partnership project fund, which would allow NMFA to participate in the project financing. The P3 board and NMFA may use the fund to cover administrative and reimbursable costs related to the P3 program.

NMFA estimates implementation of this bill will result in \$500 thousand in operating costs. The bill provides for NMFA's ability to earn interest on the fund. Assuming a 5 percent annual return and a \$40 million appropriation to the P3 fund, NMFA could earn \$2 million from interest earnings annually.

## **SIGNIFICANT ISSUES**

New Mexico is often overlooked for private-sector investments in public infrastructure. More than 35 states have laws governing the use of public-private partnerships. New Mexico is not one of them. SB59 provides the statutory framework to ensure projects are developed in the public's interest. Public-private partnerships have been completed throughout New Mexico on an ad-hoc basis with mixed results. Oversight of projects is left to a governing body that is a party to the agreement, which in some cases may not have the staff or expertise to fully analyze long-term financial obligations of the public-private partnership agreements. As P3 agreements are

complex, SB59 would provide support to governments to analyze the legal and financial issues of an agreement.

P3 projects as defined in this bill are limited to construction or improvement related to broadband telecommunications network facilities. The National Telecommunications and Information Administration (NTIA) states “broadband commonly refers to high-speed Internet access that is always on and faster than traditional dial-up access. Broadband includes several high-speed transmission technologies, such as fiber, wireless, satellite, digital subscriber line and cable. For the Federal Communications Commission (FCC) broadband capability requires consumers to have access to actual download speeds of at least 25 Mbps [Megabits per second] and actual upload speeds of at least 3 Mbps.”

EDD points out SB59 does not address internet services or other activities that drive revenue generation for these projects. Using 2016 Census Bureau data, EDD notes New Mexico ranks 48<sup>th</sup>, ahead of Arkansas and Mississippi, in percentage of households with broadband Internet subscriptions.

## **RELATIONSHIP**

This bill relates to a \$40 million fund transfer contained in The General Appropriation Act of 2020. The funds will be transferred in fiscal year 2020 from the general fund to the public-private partnership project fund at NMFA. The fund transfer is contingent upon SB59 or similar legislation creating the public-private partnership project fund.

HB264 creates the Public-Private Partnership Act, instead of broadband telecommunications network facilities, transportation related projects are identified as “public projects”.

## **TECHNICAL ISSUES**

NMFA points out on page 6, item 11 (lines 13 – 14) requires P3 agreements provide for the protection of proprietary information of the private partner, but does not provide an explicit exemption from the Inspection of Public Records Act. See Amendments below.

EDD observes the bill is unclear if NMFA is required to fund all grant requests for cost benefit studies.

## **AMENDMENTS**

NMFA recommends that on page 6, lines 13 and 14 be struck in their entirety, or, in the alternative, add the following phrase to the end of line 6: “to the extent permitted by law”.

NMFA recommends that on page 13, line 10 be amended to read: “of the revenue received by the authority pursuant to the Public-Private Partnership Act to the payment of the...”

NMFA recommends that on page 13, line 14 be amended to read: “payment of revenue bonds as permitted by Section B above, the authority may grant a mortgage on...”