

HOUSE JUDICIARY COMMITTEE SUBSTITUTE FOR
HOUSE BILL 213

56TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2023

This document may incorporate amendments proposed by a committee, but not yet adopted, as well as amendments that have been adopted during the current legislative session. The document is a tool to show amendments in context and cannot be used for the purpose of adding amendments to legislation.

AN ACT

RELATING TO PUBLIC PROJECTS; ENACTING THE PUBLIC-PRIVATE PARTNERSHIP ACT; ALLOWING PUBLIC PARTNERS TO ENTER INTO PUBLIC-PRIVATE PARTNERSHIP AGREEMENTS TO FACILITATE PUBLIC PROJECTS; CREATING THE PUBLIC-PRIVATE PARTNERSHIP BOARD; CREATING THE PUBLIC-PRIVATE PARTNERSHIP PROJECT FUND; PROVIDING FOR AN EXEMPTION TO THE PROCUREMENT CODE; AUTHORIZING GRANTS, LOANS AND BONDS; AUTHORIZING ADMINISTRATIVE FEES; PROVIDING POWERS AND DUTIES; Hf11→**RESTRICTING CERTAIN ACTIONS AND CAMPAIGN**

.225501.1AIC March 2, 2023 (5:49pm)

underscored material = new
[bracketed material] = delete
Amendments: new = →bold, blue, highlight↔
delete = →bold, red, highlight, strikethrough↔

CONTRIBUTIONS; ←Hf11 PROVIDING A PLEDGE TO NOT CHANGE OR IMPAIR BOND AGREEMENTS; PROVIDING A DELAYED REPEAL; REQUIRING REPORTS.

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

SECTION 1. [NEW MATERIAL] SHORT TITLE.--Sections 1 through 14 of this act may be cited as the "Public-Private Partnership Act".

SECTION 2. [NEW MATERIAL] DEFINITIONS.--As used in the Public-Private Partnership Act:

- A. "authority" means the New Mexico finance authority;
- B. "board" means the public-private partnership board;
- C. "broadband telecommunications network facilities" means the electronics, equipment, transmission facilities, fiber-optic cables and any other item directly related to a system capable of transmission of internet protocol or other formatted data at current federal communications commission minimum speed standard, all of which will be owned and used by a provider of internet access services;

Hf11→**D. "officer" means an officer of a corporation identified pursuant to Section 53-11-48 NMSA 1978;**

E. "principal owner or shareholder" means a person who owns five percent or more of the assets or net worth of a

underscored material = new
[bracketed material] = delete
Amendments: new = →bold, blue, highlight←
delete = →bold, red, highlight, strikethrough←

private partner;←Hf11

Hf11→**D.**←Hf11 Hf11→**F.**←Hf11 "private partner" means an individual, a foreign or domestic corporation, a general partnership, a limited liability company, a limited partnership, a joint venture, a business trust, a public benefit corporation, a nonprofit entity or other private business entity or combination thereof;

Hf11→**E.**←Hf11 Hf11→**G.**←Hf11 "public partner" means the state and its branches, agencies, departments, boards, instrumentalities or institutions and all political subdivisions of the state and their agencies, instrumentalities and institutions, including a department, an agency, an institution of higher education, a board or a commission;

Hf11→**F.**←Hf11 Hf11→**H.**←Hf11 "public-private partnership" means an arrangement between one or more public partners and one or more private partners for the development of a public project pursuant to the Public-Private Partnership Act;

Hf11→**G.**←Hf11 Hf11→**I.**←Hf11 "public-private partnership agreement" means a contract between one or more public partners and one or more private partners in connection with the development of a public project;

Hf11→**H.**←Hf11 Hf11→**J.**←Hf11 "public project" means:

- (1) the construction or improvement of a

public transportation facility or public transportation infrastructure other than a toll road; or

(2) public construction or improvement of broadband telecommunications network facilities;

Hf11→I.←Hf11 Hf11→K.←Hf11 "revenue" means all revenue, income, earnings, user fees, lease payments or other service payments that support the development of a public project, including money received as a grant or otherwise from the federal government, a public partner or any agency or instrumentality of the federal government; and

Hf11→J.←Hf11 Hf11→L.←Hf11 "user fees" means rates, fees or other charges imposed by the public partner or the private partner for use of all or part of a public project.

SECTION 3. [NEW MATERIAL] PUBLIC-PRIVATE PARTNERSHIP AGREEMENTS--APPROVAL REQUIREMENTS--RESTRICTIONS.--

A. In order to provide economic and administrative efficiencies in connection with the development of public projects, a public partner may enter into public-private partnership agreements.

B. Prior to entering into negotiations regarding the use of a public-private partnership agreement as a method of implementing a proposed public project, the public partner shall publish a notice of its interest in considering such an agreement. The notice shall be published for three successive weeks in a newspaper of general circulation in the county where

underscoring material = new
[bracketed material] = delete
Amendments: new = bold, blue, highlight
delete = bold, red, highlight, strikethrough

the public partner is situated, and in the county where the proposed public project will occur if different, and if the public partner has a website, the notice shall be posted on that website. The notice shall include a description of the scope of the proposed public project.

C. Prior to entering into a public-private partnership agreement, a public partner shall:

(1) undertake a cost-benefit analysis of a public-private partnership project in comparison with the traditional public partner-managed project;

(2) determine whether the application of the Procurement Code or other procurement rules applicable to the public partner would delay or increase the cost of the proposed public project;

(3) conduct a public hearing relating to the proposed public-private partnership held in accordance with the Open Meetings Act;

(4) demonstrate that the proposed public project serves an important public purpose and fulfills an important public need; and

(5) demonstrate that the proposed public project will comply with applicable state and federal law.

D. A public-private partnership agreement shall:

(1) define the roles and responsibilities of

.225501.1AIC March 2, 2023 (5:49pm)

the public partners and the private partners;

(2) provide clawback or recapture provisions that protect the public investment in the event of a default on the agreement;

(3) provide a finance plan detailing the financial contributions and obligations of the public and private partners;

(4) require a private partner to provide, or cause to be provided, performance and payment bonds as required pursuant to Section 13-4-18 NMSA 1978;

(5) require a private partner to provide guarantees, letters of credit or other acceptable forms of security, the amount of which may be less than one hundred percent of the value of the contract involved based on the determination of the public partner, or for public-private partnership agreements requiring board approval, based on the determination by the board;

(6) specify how revenue will be collected, accounted for and audited;

(7) specify how debts incurred on behalf of the public partner or private partner will be repaid;

(8) address how the public partners and the private partners will share management and the risks of the public project;

(9) provide that, in the event of an uncured

underscored material = new
[bracketed material] = delete
Amendments: new = →bold, blue, highlight←
delete = →bold, red, highlight, strikethrough←

default, the public partner may:

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

(b) terminate the public-private partnership and exercise any other rights and remedies that may be available;

(10) specify the term of the public-private partnership agreement, which shall not exceed thirty years;

(11) limit a private partner from seeking injunctive or other equitable relief to in any way restrict a public partner from developing, constructing or maintaining a public project, except that the public-private partnership agreement may provide for reasonable compensation to the private partner for the adverse effect resulting from development, construction, operation and maintenance of another public project of the public partner;

(12) provide for the protection of proprietary information of the private partner, except as that information is needed for operations and maintenance by a public entity or for public health and safety;

(13) provide that operations and maintenance of a public project, except a public project that is broadband

underscored material = new
[bracketed material] = delete
Amendments: new = → bold, blue, highlight ←
delete = → bold, red, highlight, strikethrough ←

infrastructure, to be performed by the public partner;

(14) provide provisions for termination of the public-private partnership agreement, including the cessation of the powers and duties of the private partner; and

(15) provide that the public project shall revert to the public partner and be dedicated for public use.

E. A public-private partnership agreement for a public project for which the cost is in excess of ten million dollars (\$10,000,000) shall not become effective until it is approved by the board pursuant to Subsection D of Section 5 of the Public-Private Partnership Act.

F. Within thirty days of execution by a public partner and a private partner, a copy of the fully executed public-private partnership agreement for a public project for which the cost is less than or equal to ten million dollars (\$10,000,000) shall be delivered to the board for reporting pursuant to Subsection C of Section 5 of the Public-Private Partnership Act.

Hf11→G. An elected official of a public partner shall not vote on or participate in the discussion or review of a proposed public-private partnership agreement if a board member, officer or principal owner or shareholder of a private partner to the proposed agreement has contributed to a political campaign for the elected official within six years of the discussion, review or vote.

underscoring material = new
[bracketed material] = delete
Amendments: new = →bold, blue, highlight←
delete = →bold, red, highlight, strikethrough←

H. An elected official of a public partner shall not accept campaign contributions from a private partner or a board member, officer or principal owner or shareholder of a private partner for the duration of a public-private partnership agreement with the private partner. ←Hf11

SECTION 4. [NEW MATERIAL] PUBLIC-PRIVATE PARTNERSHIP BOARD--CREATED--MEMBERSHIP.--

A. The "public-private partnership board" is created. The authority shall provide necessary administrative services to the board.

B. The eleven members of the board shall be:

(1) the secretary of economic development or the secretary's designee;

(2) the secretary of finance and administration or the secretary's designee;

(3) the secretary of general services or the secretary's designee;

(4) the secretary of transportation or the secretary's designee;

(5) the chief executive officer of the authority or the chief executive officer's designee;

(6) the director of the office of broadband access and expansion or the director's designee; and

(7) five members of the public appointed by

.225501.1AIC March 2, 2023 (5:49pm)

underscoring material = new
[bracketed material] = delete
Amendments: new = →bold, blue, highlight←
delete = →bold, red, highlight, strikethrough←

the New Mexico legislative council who shall have experience in architecture, broadband development, engineering, public projects, project finance, public finance or bond and finance law.

C. The members of the public appointed initially shall draw lots for staggered terms in such a way that two members shall serve for six years, two members shall serve for four years and one member shall serve for two years. Thereafter, the public members shall serve for six-year terms.

D. The members shall select a chair who shall be a public member and who shall serve a term of two years.

E. Members who are not public employees shall be governed by the Gift Act and the Governmental Conduct Act and are entitled to per diem and mileage as nonsalaried public officials as provided in the Per Diem and Mileage Act but shall receive no other compensation, perquisite or allowance.

F. All meetings of the board shall be open to the public and subject to the Open Meetings Act.

SECTION 5. [NEW MATERIAL] BOARD--POWERS.--The board shall have the following powers:

A. meet quarterly and at such other times as deemed necessary by the chair;

B. develop forms of applications for approval of public-private partnerships;

C. receive for reporting purposes executed public-

underscoring material = new
[bracketed material] = delete
Amendments: new = bold, blue, highlight
delete = bold, red, highlight, strikethrough

private partnership agreements for public projects for which the cost is less than or equal to ten million dollars (\$10,000,000);

D. review and consider for approval proposed public-private partnership agreements for a public project for which the cost is in excess of ten million dollars (\$10,000,000);

E. certify the need for the issuance of revenue bonds and refunding bonds by the authority;

F. determine the use of a public-private partnership agreement and ensure that the proposed funding mechanism is a prudent expenditure of public funds;

G. promulgate rules establishing the application process and criteria for the approval of public-private partnership agreements in accordance with the provisions of the State Rules Act;

H. make recommendations for approval to the authority of public projects seeking grants or loans from the public-private partnership project fund;

I. charge and collect reasonable fees necessary for the collection, review and dissemination of public-private partnership agreements; and

J. take all other action necessary to implement the Public-Private Partnership Act, including entering into joint

.225501.1AIC March 2, 2023 (5:49pm)

underscored material = new
[bracketed material] = delete
Amendments: new = → bold, blue, highlight ←
delete = → bold, red, highlight, strikethrough ←

powers agreements with any other public sector partner or Indian nation, tribe or pueblo and retaining legal counsel and experts when appropriate.

SECTION 6. [NEW MATERIAL] NEW MEXICO FINANCE AUTHORITY--
DUTIES.--The authority shall:

- A. provide staff support to the board;
- B. administer the public-private partnership project fund;
- C. develop forms of grant and loan applications for public projects seeking funds from the public-private partnership project fund;
- D. make loans and grants from the public-private partnership project fund for public projects that have been recommended for approval by the board pursuant to Subsection H of Section 5 of the Public-Private Partnership Act;
- E. promulgate rules relating to the issuance of bonds for public projects;
- F. upon certification by the board, issue revenue bonds and refunding bonds in accordance with the provisions of the Public-Private Partnership Act;
- G. fix, revise from time to time, charge and collect fees and other charges in connection with making loans and grants from the public-private partnership project fund;
- H. be compensated from the public-private partnership project fund for administrative and reimbursable

.225501.1AIC March 2, 2023 (5:49pm)

underscored material = new
[bracketed material] = delete
Amendments: new = →bold, blue, highlight←
delete = →bold, red, highlight, strikethrough←

costs in connection with the authority's support of the board and administration of the public-private partnership project fund;

I. charge and collect reasonable fees in connection with collecting, reviewing and disseminating public-private partnership agreements; and

J. take all other action necessary to implement the Public-Private Partnership Act, including entering into joint powers agreements with other agencies.

SECTION 7. [NEW MATERIAL] PUBLIC-PRIVATE PARTNERSHIP PROJECT FUND CREATED--STUDY GRANTS--INFRASTRUCTURE LOANS.--

A. The "public-private partnership project fund" is created within the authority. The fund consists of appropriations, payments of principal and interest on loans made from the fund, income from investment of the fund and any other money distributed or otherwise allocated to the fund. Balances in the fund at the end of any fiscal year shall not revert to the general fund. The fund may consist of such subaccounts as the authority deems necessary to carry out the purposes of the fund.

B. Money in the public-private partnership project fund may be used to make grants of up to seventy-five thousand dollars (\$75,000) to a public partner for the purposes of studying the costs and benefits of entering into a public-

underscored material = new
[bracketed material] = delete
Amendments: new = →bold, blue, highlight←
delete = →bold, red, highlight, strikethrough←

private partnership for a proposed public project. A private partner shall provide funds matching the public partner's monetary obligation for the cost of the study, as required by the authority.

C. Money in the public-private partnership project fund may be used to provide loans for financing a public project through a public-private partnership agreement; provided that:

(1) the private partner shall provide funds matching the public partner's monetary obligation for the public-private partnership agreement, as provided by rule; and

(2) the public partner certifies to the board that the public partner has taken all action necessary to approve the public-private partnership agreement and that the public-private partnership agreement contains all terms and conditions required by Subsection D of Section 3 of the Public-Private Partnership Act.

D. Money in the public-private partnership project fund may be used pursuant to Subsections B and C of this section only for:

(1) grants or loans to a public partner; and
(2) a public project for which the cost is in excess of ten million dollars (\$10,000,000).

E. Money in the public-private partnership project fund may be used for grants or loans to an Indian nation, tribe

underscored material = new
[bracketed material] = delete
Amendments: new = →bold, blue, highlight↔
delete = →bold, red, highlight, strikethrough↔

or pueblo that has entered into a public-private partnership with a private partner for the development of a public project only if:

(1) the cost of the public project is in excess of ten million dollars (\$10,000,000);

(2) the agreement between the Indian nation, tribe or pueblo and the private partner is approved by the board; and

(3) the grant or loan application is recommended for approval by the board and approved by the authority.

F. Money in the public-private partnership project fund may be used for administrative and reimbursable costs incurred by the board and by the authority.

SECTION 8. [NEW MATERIAL] APPLICABILITY OF CERTAIN OTHER LAWS.--The construction of a public project pursuant to a public-private partnership agreement is a public work for the purposes of the Public Works Minimum Wage Act, the Subcontractors Fair Practices Act and the Public Works Apprentice and Training Act.

SECTION 9. [NEW MATERIAL] REVENUE BONDING AUTHORITY.--

A. Upon certification of the board, the authority may issue revenue bonds, the pledged revenues for which shall be fees, charges, lease payments, installment sale payments or

underscored material = new
[bracketed material] = delete
Amendments: new = → bold, blue, highlight ←
delete = → bold, red, highlight, strikethrough ←

other revenue sources of a public project for any one or more of the purposes authorized by the Public-Private Partnership Act.

B. The authority may pledge irrevocably any or all of the revenue received by the authority to the payment of the interest on and principal of revenue bonds for any of the purposes authorized in the Public-Private Partnership Act.

C. In addition to the pledge of revenues to the payment of revenue bonds, the authority may grant a mortgage on a public project that has been solely financed by revenue bonds to the bondholders or a trustee for the benefit of the holders of revenue bonds.

D. Revenue in excess of the annual principal and interest due on revenue bonds secured by a pledged revenue may be accumulated in a debt service reserve account. The authority may appoint a commercial bank trust department to act as paying agent or trustee of the revenue and to administer the payment of principal of and interest on the revenue bonds.

E. Except as otherwise provided in the Public-Private Partnership Act, revenue bonds:

(1) may have interest, principal value or any part thereof payable at intervals or at maturity as may be determined by the authority;

(2) may be subject to prior redemption at the authority's option at a time and upon terms and conditions,

underscored material = new
[bracketed material] = delete
Amendments: new = →bold, blue, highlight↔
delete = →bold, red, highlight, strikethrough↔

with or without the payment of a premium, as determined by the authority;

(3) may mature at any time not exceeding thirty years after the date of issuance;

(4) may be serial in form and maturity, may consist of one bond payable at one time or in installments or may be in another form determined by the authority;

(5) shall be sold for cash at, above or below par and at a price that results in a net effective interest rate that does not exceed the maximum permitted by the Public Securities Act and the Public Securities Short-Term Interest Rate Act; and

(6) may be sold at public or negotiated sale.

F. At a regular or special meeting, the authority may, upon receipt of a certification from the board, adopt a resolution that:

(1) declares the necessity for issuing revenue bonds;

(2) authorizes the issuance of revenue bonds by an affirmative vote of a majority of all of the members of the authority; and

(3) designates the sources of revenues to be pledged to the repayment of the revenue bonds.

SECTION 10. [NEW MATERIAL] REFUNDING BOND AUTHORITY.--

.225501.1AIC March 2, 2023 (5:49pm)

underscoring material = new
[bracketed material] = delete
Amendments: new = → bold, blue, highlight ←
delete = → bold, red, highlight, strikethrough ←

A. Upon certification of the board, the authority may issue refunding bonds for the purpose of refinancing, paying and discharging all or any part of outstanding bonds for the:

(1) acceleration, deceleration or other modification of the payment of the outstanding bonds, including any capitalization of any interest thereon in arrears or about to become due for any period not exceeding two years from the date of the refunding bonds;

(2) reduction of interest costs or effecting other economies; or

(3) modification or elimination of restrictive contractual limitations pertaining to the issuance of additional bonds or concerning the outstanding bonds or public project relating to the outstanding bonds.

B. The authority may pledge irrevocably for the payment of interest, principal and premium, if any, on refunding bonds the appropriate pledged revenues, which may be pledged to an original issue of bonds.

C. In addition to the pledge of revenue to the payment of refunding bonds, the authority may grant a mortgage on a public project that has been solely financed by revenue bonds to the bondholders or a trustee for the benefit of the holders of the bonds.

D. Refunding bonds may be issued separately or in

underscored material = new
[bracketed material] = delete
Amendments: new = → bold, blue, highlight
delete = → bold, red, highlight, strikethrough

combination in one series or more.

E. Refunding bonds shall be authorized by resolution. Bonds that are refunded shall be paid at maturity or on any permitted prior redemption date in the amounts, at the time and places and, if called prior to maturity, in accordance with any applicable notice provisions, all as provided in the proceedings authorizing the issuance of the refunded bonds or otherwise appertaining thereto, except for any such bond that is voluntarily surrendered for exchange or payment by the holder or owner.

F. The principal amount of the refunding bonds may exceed the principal amount of the refunded bonds and may also be less than or the same as the principal amount of the bonds being refunded if provision is duly and sufficiently made for the payment of the refunded bonds.

G. The proceeds of refunding bonds, including accrued interest and premiums appertaining to the sale of refunding bonds, shall be immediately applied to the retirement of the bonds being refunded or placed in escrow in a commercial bank or trust company that possesses and exercises trust powers and that is a member of the federal deposit insurance corporation.

H. Refunding bonds may bear additional terms and provisions as determined by the authority subject to the

.225501.1AIC March 2, 2023 (5:49pm)

limitations in this section relating to original bond issues. Refunding bonds are not subject to the provisions of any other statute.

I. Refunding bonds:

(1) may have interest, principal value or any part thereof payable at intervals or at maturity, as determined by the authority;

(2) may be subject to prior redemption at the authority's option at a time or times and upon terms and conditions with or without payment of premium or premiums, as determined by the authority;

(3) may be serial in form and maturity or may consist of a single bond payable in one or more installments or may be in another form, as determined by the authority; and

(4) shall be exchanged for the bonds and any matured unpaid interest being refunded at not less than par or sold at public or negotiated sale at, above or below par and at a price that results in a net effective interest rate that does not exceed the maximum permitted by the Public Securities Act.

J. At a regular or special meeting, the authority may adopt a resolution by majority vote to authorize the issuance of the refunding bonds.

SECTION 11. [NEW MATERIAL] BONDS NOT OBLIGATION OF STATE.--All bonds or other obligations issued pursuant to the Public-Private Partnership Act are payable solely from the

underscored material = new
[bracketed material] = delete
Amendments: new = bold, blue, highlight
delete = bold, red, highlight, strikethrough

revenue of the authority that may be pledged to the payment of such obligations, and the bonds or other obligations shall not create an obligation, debt or liability of the state or any other of its political subdivisions. No breach of any pledge, obligation or agreement of the authority shall impose a pecuniary liability or a charge upon the general credit or taxing power of the state or any other of its political subdivisions.

SECTION 12. [NEW MATERIAL] AGREEMENT OF THE STATE.--The state does hereby pledge to and agree with the holders of any bonds or notes issued under the Public-Private Partnership Act that the state will not limit or alter the rights hereby vested in the authority to fulfill the terms of any agreements made with the holders thereof or in any way impair the rights and agreements made with the holders thereof or in any way impair the rights and remedies of those holders until the bonds or notes together with the interest thereon, with interest on any unpaid installments or interest, and all costs and expenses in connection with any action or proceedings by or on behalf of those holders, are fully met and discharged. The authority is authorized to include this pledge and agreement of the state in any agreement with the holders of the bonds or notes.

SECTION 13. [NEW MATERIAL] REPORT.--By December 1, 2023, and by December 1 of each year thereafter, the board shall

.225501.1AIC March 2, 2023 (5:49pm)

provide a report to the governor and the New Mexico finance authority oversight committee regarding:

- A. the grant and loan applications approved by the board;
- B. the public-private partnership agreements approved by or reported to the board;
- C. the status of the public-private partnership project fund;
- D. any certifications for the issuance of revenue or refunding bonds made by the board to the authority; and
- E. any recommended changes to the Public-Private Partnership Act.

SECTION 14. [NEW MATERIAL] CUMULATIVE AUTHORITY.--The Public-Private Partnership Act shall be deemed to provide an additional and alternative method for the doing of things authorized by that act and shall be regarded as supplemental and additional to powers conferred by other laws and shall not be regarded as in derogation of any powers now existing; provided that the issuance of bonds pursuant to the provisions of the Public-Private Partnership Act need not comply with the requirements of any other law applicable to the issuance of bonds, except the Public Securities Act, the Public Securities Short-Term Interest Rate Act and the Public Securities Limitation of Action Act, which acts shall apply.

SECTION 15. Section 6-21-6 NMSA 1978 (being Laws 1992,

underscoring material = new
[bracketed material] = delete
Amendments: new = bold, blue, highlight
delete = bold, red, highlight, strikethrough

Chapter 61, Section 6, as amended) is amended to read:

"6-21-6. PUBLIC PROJECT REVOLVING FUND--PURPOSE--
ADMINISTRATION.--

A. The "public project revolving fund" is created within the authority. The fund shall be administered by the authority as a separate account, but may consist of such subaccounts as the authority deems necessary to carry out the purposes of the fund. The authority may establish procedures and adopt rules as required to administer the fund in accordance with the New Mexico Finance Authority Act.

B. Except as otherwise provided in the New Mexico Finance Authority Act, money from payments of principal of and interest on loans and payments of principal of and interest on securities held by the authority for public projects authorized specifically by law shall be deposited in the public project revolving fund. The fund shall also consist of any other money appropriated, distributed or otherwise allocated to the fund for the purpose of financing public projects authorized specifically by law.

C. Money appropriated to pay administrative costs, money available for administrative costs from other sources and money from payments of interest on loans or securities held by the authority, including payments of interest on loans and securities held by the authority for public projects authorized

.225501.1AIC March 2, 2023 (5:49pm)

underscoring material = new
[bracketed material] = delete
Amendments: new = → bold, blue, highlight ←
delete = → bold, red, highlight, strikethrough ←

specifically by law, that represents payments for administrative costs shall not be deposited in the public project revolving fund and shall be deposited in a separate account of the authority and may be used by the authority to meet administrative costs of the authority.

D. Except as otherwise provided in the New Mexico Finance Authority Act, money in the public project revolving fund is appropriated to the authority to pay the reasonably necessary costs of originating and servicing loans, grants or securities funded by the fund and to make loans or grants and to purchase or sell securities to assist qualified entities in financing public projects in accordance with the New Mexico Finance Authority Act and pursuant to specific authorization by law for each project.

E. Money in the public project revolving fund not needed for immediate disbursement, including money held in reserve, may be deposited with the state treasurer for short-term investment pursuant to Section 6-10-10.1 NMSA 1978 or may be invested in direct and general obligations of or obligations fully and unconditionally guaranteed by the United States, obligations issued by agencies of the United States, obligations of this state or any political subdivision of the state, interest-bearing time deposits, commercial paper issued by corporations organized and operating in the United States and rated "prime" quality by a national rating service, other

underscored material = new
[bracketed material] = delete
Amendments: new = →bold, blue, highlight←
delete = →bold, red, highlight, strikethrough←

investments permitted by Section 6-10-10 NMSA 1978 or as otherwise provided by the trust indenture or bond resolution, if money is pledged for or secures payment of bonds issued by the authority.

F. The authority shall establish fiscal controls and accounting procedures that are sufficient to assure proper accounting for public project revolving fund payments, disbursements and balances.

G. Money on deposit in the public project revolving fund may be used to make interim loans for a term not exceeding two years to qualified entities for the purpose of providing interim financing for any project approved or funded by the legislature.

H. Money on deposit in the public project revolving fund may be used to acquire securities or to make loans to qualified entities in connection with the small loan program. As used in this subsection, "small loan program" means the program of the authority designed to provide financing for public projects in amounts not to exceed one million dollars (\$1,000,000) per project. A public project financed pursuant to the small loan program shall not require specific authorization by law.

I. Money on deposit in the public project revolving fund may be designated as a reserve for any bonds

.225501.1AIC March 2, 2023 (5:49pm)

issued by the authority, including bonds payable from sources other than the public project revolving fund, and the authority may covenant in any bond resolution or trust indenture to maintain and replenish the reserve from money deposited in the public project revolving fund after issuance of bonds by the authority.

J. Money on deposit in the public project revolving fund may be used to purchase bonds issued by the authority or bonds issued by the authority pursuant to the Public-Private Partnership Act, which are payable from any designated source of revenues or collateral. Purchasing and holding the bonds in the public project revolving fund shall not, as a matter of law, result in cancellation or merger of the bonds notwithstanding the fact that the authority as the issuer of the bonds is obligated to make the required debt service payments and the public project revolving fund held by the authority is entitled to receive the required debt service payments.

K. Money on deposit in the public project revolving fund may be used to capitalize other financing programs of the authority authorized by law, either directly or from proceeds of bonds issued by the authority and secured by money in the public project revolving fund."

SECTION 16. Section 13-1-98 NMSA 1978 (being Laws 1984, Chapter 65, Section 71, as amended by Laws 2019, Chapter 48,

underscored material = new
[bracketed material] = delete
Amendments: new = →bold, blue, highlight←
delete = →bold, red, highlight, strikethrough←

Section 13 and by Laws 2019, Chapter 63, Section 1) is amended to read:

"13-1-98. EXEMPTIONS FROM THE PROCUREMENT CODE.--The provisions of the Procurement Code shall not apply to:

A. procurement of items of tangible personal property or services by a state agency or a local public body from a state agency, a local public body or external procurement unit except as otherwise provided in Sections 13-1-135 through 13-1-137 NMSA 1978;

B. procurement of tangible personal property or services for the governor's mansion and grounds;

C. printing and duplicating contracts involving materials that are required to be filed in connection with proceedings before administrative agencies or state or federal courts;

D. purchases of publicly provided or publicly regulated gas, electricity, water, sewer and refuse collection services;

E. purchases of books, periodicals and training materials in printed or electronic format from the publishers or copyright holders thereof and purchases of print, digital or electronic format library materials by public, school and state libraries for access by the public;

F. travel or shipping by common carrier or by

.225501.1AIC March 2, 2023 (5:49pm)

underscored material = new
[bracketed material] = delete
Amendments: new = → bold, blue, highlight ←
delete = → bold, red, highlight, strikethrough ←

private conveyance or to meals and lodging;

G. purchase of livestock at auction rings or to the procurement of animals to be used for research and experimentation or exhibit;

H. contracts with businesses for public school transportation services;

I. procurement of tangible personal property or services, as defined by Sections 13-1-87 and 13-1-93 NMSA 1978, by the corrections industries division of the corrections department pursuant to rules adopted by the corrections industries commission, which shall be reviewed by the purchasing division of the general services department prior to adoption;

J. purchases not exceeding ten thousand dollars (\$10,000) consisting of magazine subscriptions, web-based or electronic subscriptions, conference registration fees and other similar purchases where prepayments are required;

K. municipalities having adopted home rule charters and having enacted their own purchasing ordinances;

L. the issuance, sale and delivery of public securities pursuant to the applicable authorizing statute, with the exception of bond attorneys and general financial consultants;

M. contracts entered into by a local public body with a private independent contractor for the operation, or

underscored material = new
[bracketed material] = delete
Amendments: new = →bold, blue, highlight←
delete = →bold, red, highlight, strikethrough←

provision and operation, of a jail pursuant to Sections 33-3-26 and 33-3-27 NMSA 1978;

N. contracts for maintenance of grounds and facilities at highway rest stops and other employment opportunities, excluding those intended for the direct care and support of persons with handicaps, entered into by state agencies with private, nonprofit, independent contractors who provide services to persons with handicaps;

O. contracts and expenditures for services or items of tangible personal property to be paid or compensated by money or other property transferred to New Mexico law enforcement agencies by the United States department of justice drug enforcement administration;

P. contracts for retirement and other benefits pursuant to Sections 22-11-47 through 22-11-52 NMSA 1978;

Q. contracts with professional entertainers;

R. contracts and expenditures for legal subscription and research services and litigation expenses in connection with proceedings before administrative agencies or state or federal courts, including experts, mediators, court reporters, process servers and witness fees, but not including attorney contracts;

S. contracts for service relating to the design, engineering, financing, construction and acquisition of public

.225501.1AIC March 2, 2023 (5:49pm)

underscored material = new
[bracketed material] = delete
Amendments: new = → bold, blue, highlight ←
delete = → bold, red, highlight, strikethrough ←

improvements undertaken in improvement districts pursuant to Subsection L of Section 3-33-14.1 NMSA 1978 and in county improvement districts pursuant to Subsection L of Section 4-55A-12.1 NMSA 1978;

T. works of art for museums or for display in public buildings or places;

U. contracts entered into by a local public body with a person, firm, organization, corporation or association or a state educational institution named in Article 12, Section 11 of the constitution of New Mexico for the operation and maintenance of a hospital pursuant to Chapter 3, Article 44 NMSA 1978, lease or operation of a county hospital pursuant to the Hospital Funding Act or operation and maintenance of a hospital pursuant to the Special Hospital District Act;

V. purchases of advertising in all media, including radio, television, print and electronic;

W. purchases of promotional goods intended for resale by the tourism department;

X. procurement of printing, publishing and distribution services for materials produced and intended for resale by the cultural affairs department;

Y. procurement by or through the public education department from the federal department of education relating to parent training and information centers designed to increase parent participation, projects and initiatives designed to

underscored material = new
[bracketed material] = delete
Amendments: new = →bold, blue, highlight←
delete = →bold, red, highlight, strikethrough←

improve outcomes for students with disabilities and other projects and initiatives relating to the administration of improvement strategy programs pursuant to the federal Individuals with Disabilities Education Act; provided that the exemption applies only to procurement of services not to exceed two hundred thousand dollars (\$200,000);

Z. procurement of services from community rehabilitation programs or qualified individuals pursuant to the State Use Act;

AA. purchases of products or services for eligible persons with disabilities pursuant to the federal Rehabilitation Act of 1973;

BB. procurement, by either the department of health or Grant county or both, of tangible personal property, services or construction that are exempt from the Procurement Code pursuant to Section 9-7-6.5 NMSA 1978;

CC. contracts for investment advisory services, investment management services or other investment-related services entered into by the educational retirement board, the state investment officer or the retirement board created pursuant to the Public Employees Retirement Act;

DD. the purchase for resale by the state fair commission of feed and other items necessary for the upkeep of livestock;

.225501.1AIC March 2, 2023 (5:49pm)

EE. contracts entered into by the crime victims reparation commission to distribute federal grants to assist victims of crime, including grants from the federal Victims of Crime Act of 1984 and the federal Violence Against Women Act of 1994;

FF. procurement by or through the early childhood education and care department of early pre-kindergarten and pre-kindergarten services purchased pursuant to the Pre-Kindergarten Act;

GG. procurement of services of commissioned advertising sales representatives for New Mexico magazine;

HH. agreements and contracts entered into pursuant to the Public-Private Partnership Act; and

[~~HH.~~] II. procurements exempt from the Procurement Code as otherwise provided by law."

SECTION 17. DELAYED REPEAL.--Sections 1 through 14 of this act are repealed effective July 1, 2033.

SECTION 18. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2023.

underscoring material = new
[bracketed material] = delete
Amendments: new = bold, blue, highlight
delete = bold, red, highlight, strikethrough