BILL

52ND LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2016

INTRODUCED BY

DISCUSSION DRAFT

AN ACT

RELATING TO PUBLIC SECURITIES; ALLOWING PUBLIC BODIES TO DELEGATE AUTHORITY FOR MAKING CERTAIN DETERMINATIONS REGARDING SALES OF PUBLIC SECURITIES; CLARIFYING THE DEFINITIONS OF "PUBLIC BODY" AND "PUBLIC SECURITIES"; REQUIRING REPORTING TO THE NEW MEXICO FINANCE AUTHORITY OVERSIGHT COMMITTEE.

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

SECTION 1. Section 6-14-9 NMSA 1978 (being Laws 1983, Chapter 265, Section 2) is amended to read:

"6-14-9. DEFINITIONS.--As used in the Supplemental Public Securities Act:

A. "authorizing instrument" means the ordinance, resolution, other official action or any applicable combination thereof by which public securities are authorized to be issued by a public body;

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B. "public body" means this state or any department, board, agency or instrumentality of the state, any county, city, town, village, school district, other district or educational institution or any other governmental agency or political subdivision of the state or the New Mexico finance authority;

C. "public securities" means any bonds, notes, loans, warrants or other obligations now or hereafter authorized to be issued by any public body pursuant to the provisions of any general or special statute, any constitutional or statutory charter or any other law; and

D. "registrar" means the treasurer or any other officer of the public body or of any other public body or any corporate or other trustee, registrar, paying agent, transfer agent, custodian or other financial intermediary within the United States as may be appointed or designated in the authorizing instrument."

SECTION 2. A new section of the Supplemental Public Securities Act is enacted to read:

"[NEW MATERIAL] DELEGATION OF AUTHORITY BY PUBLIC BODY--AUTHORIZING INSTRUMENT.--

A. A public body may adopt an authorizing instrument that delegates to one or more members, officers or employees of the public body, acting in a fiduciary capacity within the scope of authority and the parameters and conditions

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for the public securities set forth by the public body in the authorizing instrument as described in Subsection B of this section, the authority to sign a contract for the purchase or sale of public securities or to accept a binding bid for public securities and to determine the final terms for public securities to be issued pursuant to Subsection C of this section. The authorizing instrument shall be effective for one hundred eighty days or for a specified shorter period.

B. An authorizing instrument delegating authority pursuant to Subsection A of this section shall establish the parameters and conditions for the public securities, including:

(1) the public purpose for which the public securities are to be issued;

(2) the maximum par amount of the public securities;

(3) the maximum term for which the public securities may be outstanding;

(4) the maximum interest rate that the public securities may bear;

(5) each tax or revenue source that is pledged to or that shall secure payment for the public securities;

(6) whether the public securities will be sold at a public or a private sale;

(7) the minimum sales price or the maximum sales price of the public securities;

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(8) the maximum amount of underwriting discount, if any, as a percentage of the aggregate principal amount of the public securities;

(9) the form of the public securities, subject to the final terms described in Subsection C of this section;

(10) the public securities that may be refunded, if any; and

(11) the appointment of a trustee, paying agent, registrar, escrow agent, tender agent, remarketing agent, dissemination agent or any other agent or service provider required for the sale, issuance and delivery of the public securities and the form of agreement for each appointment.

C. Subject to the parameters and conditions established in Subsection B of this section, a delegatee may be authorized, pursuant to the authorizing instrument, to determine any or all of the following final terms of the public securities:

(1) the interest and principal payment dates;

(2) the principal amount, denominations and maturity amortization;

(3) the sale price;

(4) the interest rate;

(5) the interest payment periods;

(6) the redemption and tender provisions;

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(7) the procurement of municipal bond insurance and any related covenants or agreements;

(8) the creation of any capitalized interest or debt service reserve funds, including the size and funding of the funds;

(9) the amount of underwriting discount, if any;

(10) the public securities to be refunded, if any; and

(11) the final terms of agreements, if any, with one or more trustee, paying agent, registrar, escrow agent, tender agent, remarketing agent, dissemination agent or any other agent or service provider required for the purchase, sale, issuance and delivery of the public securities.

D. The public body shall determine and approve any term not listed in Subsection C of this section.

E. The delegatee shall certify in writing, prior to the delivery of the public securities, that the final terms determined pursuant to Subsection C of this section comply with the parameters and conditions established in the authorizing instrument pursuant to Subsection B of this section. The delegatee shall present the written certification containing the final terms of the public securities to the public body in a timely manner, before or after the delivery of the public securities, at a regularly scheduled meeting of the public body

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held in compliance with the Open Meetings Act.

F. A public body need not approve a determination made by the delegatee pursuant to Subsection C of this section if the determination complies with the parameters and conditions established in the authorizing instrument pursuant to Subsection B of this section. A determination made by the delegatee pursuant to this section has the same force and effect as a determination made by the public body. The delegatee, while acting within the scope of the delegatee's authority and the parameters and conditions established in the authorizing instrument pursuant to Subsection B of this section, shall not be subject to any personal liability for any action taken or omitted within that scope of authority.

G. A public body's adoption of an authorizing instrument that includes a delegation of authority pursuant to this section constitutes final passage of the authorizing instrument for the purposes of any applicable general or special law or any constitutional or statutory provision or municipal charter related to any referendum or petition right."

SECTION 3. A new section of the New Mexico Finance Authority Act is enacted to read:

"[NEW MATERIAL] REPORT TO LEGISLATURE--AUTHORIZING INSTRUMENT--DELEGATION OF AUTHORITY FOR PUBLIC SECURITIES ISSUANCES.--By September 30 of each year, the authority shall report to the New Mexico finance authority oversight committee

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about the authority's public securities issuances, completed in the prior twelve months, that involved a delegation of authority through an authorizing instrument pursuant to Section 2 of this 2016 act."

SECTION 4. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2016.

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