

HOUSE GOVERNMENT AND URBAN AFFAIRS COMMITTEE SUBSTITUTE FOR
HOUSE BILL 322

45TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2001

AN ACT

RELATING TO PUBLIC PROCUREMENT; EXEMPTING CERTAIN CONTRACTS
FOR THE LEASE OR OPERATION OF HOSPITALS FROM THE PROCUREMENT
CODE; PROVIDING FOR TERMINATION OF LEASES OF THOSE HOSPITALS.

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

Section 1. Section 3-44-1 NMSA 1978 (being Laws 1965,
Chapter 300, Section 14-45-1, as amended) is amended to read:

"3-44-1. HOSPITALS-- AUTHORITY. -- A municipality may:

- A. control and regulate hospitals;
- B. construct hospitals and medical dispensaries;
- C. contribute to the support of any county
hospital located within the municipality;
- D. own, maintain and operate hospitals;
- E. charge for hospital services rendered;
- F. lease the hospital, sanitarium or other

1 institution upon such terms and conditions as the governing
2 body may determine to any person, corporation or association
3 for the operation and maintenance of the hospital, provided
4 that the lease may be terminated by the governing body of the
5 municipality without cause upon one hundred eighty days'
6 notice after the first three years of the lease;

7 G. contract with the [~~health and social~~] human
8 services department or the board of county commissioners for
9 the care of sick or indigent persons;

10 H. accept grants for constructing, equipping and
11 maintaining the hospital; and

12 I. perform any act or adopt any regulation
13 necessary or expedient to carry out the provisions of this
14 section. "

15 Section 2. Section 3-44-3 NMSA 1978 (being Laws 1965,
16 Chapter 300, Section 14-45-3) is amended to read:

17 "3-44-3. JOINT COUNTY-MUNICIPAL HOSPITALS. --If a county-
18 municipal hospital is authorized, the board of county
19 commissioners and the governing body of the municipality may
20 jointly:

21 A. lease the hospital upon such terms and
22 conditions as they may determine to a person, firm,
23 corporation, association or the county or municipality for the
24 operation and maintenance of the hospital, provided that the
25 lease may be terminated by the board of county commissioners

1 and the governing body of the municipality without cause upon
2 one hundred eighty days' notice after the first three years of
3 the lease;

4 B. enter into an agreement with the state
5 [welfare] human services department for the care of sick or
6 indigent persons;

7 C. accept gifts, endowments or grants-in-aid for
8 the purpose of constructing, equipping and maintaining the
9 hospital or endowing rooms or wards for sick, needy or
10 indigent persons; or

11 D. perform any act or adopt any regulation
12 necessary or expedient to carry out the purposes of Sections
13 [~~14-45-2 through 14-45-4 New Mexico Statutes Annotated, 1953~~
14 ~~Compilation~~] 3-44-2 through 3-44-4 NMSA 1978. "

15 Section 3. Section 3-44-5 NMSA 1978 (being Laws 1965,
16 Chapter 300, Section 14-45-5, as amended) is amended to read:

17 "3-44-5. HOSPITALS--SPECIAL CHARTER TOWNS--AUTHORITY.--

18 A. Any town incorporated, organized and operating
19 under a special act of the legislature may, by resolution or
20 ordinance:

21 (1) own, maintain and operate hospitals,
22 sanitariums and other institutions for the care of sick or
23 indigent persons;

24 (2) issue negotiable bonds for the
25 construction of a hospital, sanitarium or other institution;

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1 or

2 (3) upon such conditions and terms as the
3 governing body of the town may determine:

4 (a) delegate the operation and
5 maintenance of the hospital, sanitarium or other institution
6 to any person, corporation or association as it selects; or

7 (b) lease the hospital, sanitarium or
8 other hospital to any person, corporation or association for
9 the care of sick or indigent persons, provided that the lease
10 may be terminated by the governing body of the town without
11 cause upon one hundred eighty days' notice after the first
12 three years of the lease.

13 B. The provisions of Sections [~~14-55-1 through~~
14 ~~14-55-3 NMSA 1953~~] 3-54-1 through 3-54-3 NMSA 1978 relating to
15 the leasing of municipal property are not applicable to this
16 section. "

17 Section 4. Section 4-48A-9 NMSA 1978 (being Laws 1978,
18 Chapter 29, Section 9, as amended) is amended to read:

19 "4-48A-9. BOARD OF TRUSTEES--POWERS.--The board of
20 trustees may:

21 A. acquire, construct, operate or maintain one or
22 more hospital facilities in the special hospital district for
23 the purposes for which the special hospital district was
24 created;

25 B. receive and expend all funds accruing to the

1 special hospital district pursuant to any provision of the
2 Special Hospital District Act through the sale of bonds or the
3 levy of taxes, paid from any source on account of patients
4 accommodated at the hospital, from any gift or bequest or from
5 any federal, state or private grant;

6 C. enter into contracts, including contracts with
7 the federal government and the departments and agencies
8 thereof or the state government and the departments,
9 institutions and agencies thereof, for the treatment of or the
10 hospitalization of patients under the jurisdiction of such
11 entities;

12 D. adopt and use a seal to authenticate its
13 official transactions;

14 E. sue and be sued;

15 F. adopt rules and regulations for the governing
16 of the special hospital district;

17 G. employ and fix the compensation of an executive
18 director of the special hospital district and such other staff
19 and clerical personnel it deems necessary;

20 H. employ a hospital administrator for hospital
21 facilities under its control and approve or disapprove the
22 recommendations of such administrator pertaining to
23 compensation and employment benefits for hospital employees;

24 I. exercise all powers necessary and requisite for
25 the accomplishment of the purposes for which the special

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1 hospital district is created;

2 J. issue bonds in the manner provided by law for
3 the issuance of special hospital district revenue bonds for
4 the construction, purchase, renovation, remodeling, equipping
5 or re-equipping of hospital facilities under its control and
6 purchasing the necessary land therefor;

7 K. charge for hospital services rendered;

8 L. lease a hospital to any person, corporation or
9 association for the operation and maintenance of the hospital
10 upon such terms and conditions as the board of trustees may
11 determine, provided that the lease may be terminated by the
12 board of trustees without cause upon one hundred eighty days'
13 notice after the first three years of the lease;

14 M enter into an agreement with another county or
15 counties, another county or counties and another political
16 subdivision or any other person, corporation or association
17 [~~which~~] that provides that the parties to the agreement shall
18 join together for the purpose of making some or all purchases
19 necessary for the operation of hospitals owned or operated by
20 the parties; and to designate one of the parties as the
21 central purchasing office, as defined in the [~~Public Purchases~~
22 ~~Act~~] Procurement Code, for the others, to make purchases for
23 the parties to the agreement as they shall deem necessary and
24 to comply with the provisions of the [~~Public Purchases Act~~]
25 Procurement Code; and

1 N. expend public money to recruit health care
2 personnel to serve the sick of the special hospital district. "

3 Section 5. Section 4-48B-4 NMSA 1978 (being Laws 1981,
4 Chapter 83, Section 4) is amended to read:

5 "4-48B-4. ANNUAL REPORT. -- Each contracting hospital
6 shall prepare an annual accounting and report to the county or
7 counties, or county or counties and another political
8 subdivision with which the contracting hospital contracts,
9 [~~explaining~~] accounting for the expenditure of mill levy funds
10 for the past year, an annual plan explaining the planned use
11 of such funds for the succeeding year and other reports as the
12 county or counties, or county or counties and another
13 political subdivision, from time to time shall reasonably
14 require. "

15 Section 6. Section 4-48B-5 NMSA 1978 (being Laws 1947,
16 Chapter 148, Section 1, as amended) is amended to read:

17 "4-48B-5. POWER OF COUNTIES. -- All counties shall have
18 the following powers:

- 19 A. to purchase, own, maintain and operate
20 hospitals;
- 21 B. to purchase the land necessary to construct
22 hospitals;
- 23 C. to control and regulate county hospitals;
- 24 D. to construct county hospitals;
- 25 E. to issue general obligation bonds and revenue

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1 bonds in the manner provided in the Hospital Funding Act for
2 the construction, purchase, renovation, remodeling, equipping
3 or re-equipping of a county hospital or a jointly owned
4 county-municipal hospital and purchasing the land necessary
5 therefor or for any combination of the foregoing purposes;

6 F. to charge for hospital services rendered and to
7 reduce any charge made for care of a patient in whole or part
8 when the charges are determined to be disputed in good faith
9 or uncollectible;

10 G. to lease a hospital to any person, corporation
11 or association for the operation and maintenance of the
12 hospital upon terms and conditions as the county commissioners
13 may determine;

14 H. to contract with the state, another county or
15 counties, the federal government or its agencies, another
16 political subdivision or a public or private corporation,
17 organization or association for the care of the sick of the
18 county;

19 I. to receive all funds appropriated from whatever
20 source or paid by or on behalf of any patient of the hospital;

21 J. notwithstanding any other provision of law, to
22 enter into leases, management or operating contracts, health
23 care facilities contracts and other agreements authorized by
24 the Hospital Funding Act for periods in excess of one year;
25 provided that:

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1 (1) the contract, lease or agreement may be
 2 terminated by the county without cause upon one hundred eighty
 3 days' notice after the first three years of the contract; and

4 (2) Paragraph (1) of this subsection shall
 5 not apply during the portion of a lease term in which a lessee
 6 is obligated under the lease to make debt service payments on
 7 revenue bonds that finance all or part of the hospital or
 8 equipment for the hospital;

9 K. to authorize the hospital governing board of a
 10 county hospital to exercise all powers that the county is
 11 granted by the Hospital Funding Act except the powers to issue
 12 bonds, call a mill levy election and levy the annual
 13 assessments for the mill levy authorized by the Hospital
 14 Funding Act;

15 L. to enter into a health care facilities contract
 16 with one or more hospitals [~~which~~] that agree to provide
 17 facilities to the sick of the county;

18 M. to call a mill levy election as authorized by
 19 the Hospital Funding Act and to collect and distribute the
 20 proceeds of the mill levy pursuant to that act;

21 N. to distribute the proceeds of the mill levy
 22 authorized by the Hospital Funding Act to one or more county
 23 hospitals and one or more contracting hospitals or any
 24 combination thereof [~~which~~] that provide facilities for the
 25 sick of the county, whether located within or without the

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1 county wherein the mill levy is collected;

2 0. to accept grants for constructing, equipping,
3 operating and maintaining a county hospital;

4 P. to enter into an agreement with a municipality
5 for constructing, equipping, operating and maintaining a
6 jointly owned county-municipal hospital;

7 Q. to enter into an agreement with another county
8 or counties, another county or counties and another political
9 subdivision, an agency of the federal government or any other
10 person, corporation, organization or association [~~which~~] that
11 provides that the parties to the agreement shall join together
12 or form a legal entity for the purpose of making some or all
13 purchases necessary for the operation of public hospitals or
14 public and private hospitals subject to provisions of or
15 exemptions from the Procurement Code;

16 R. to enter into an agreement with another county
17 or counties, another political subdivision, an agency of the
18 federal government or any other person, corporation,
19 organization or association that provides that parties to the
20 agreement shall join together or form a legal entity for the
21 purpose of creating a network of health care providers or
22 jointly operating a common health care service, subject to
23 provisions of or exemptions from the Procurement Code;

24 S. to expend public money to recruit health care
25 personnel to serve the sick of the county; and

1 T. to perform any other act or adopt any
2 regulation necessary or expedient to carry out the provisions
3 of the Hospital Funding Act. "

4 Section 7. Section 13-1-98 NMSA 1978 (being Laws 1984,
5 Chapter 65, Section 71, as amended) is amended to read:

6 "13-1-98. EXEMPTIONS FROM THE PROCUREMENT CODE. --The
7 provisions of the Procurement Code shall not apply to:

8 A. procurement of items of tangible personal
9 property or services by a state agency or a local public body
10 from a state agency, a local public body or external
11 procurement unit except as otherwise provided in Sections
12 13-1-135 through 13-1-137 NMSA 1978;

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

15 C. printing and duplicating contracts involving
16 materials [~~which~~] that are required to be filed in connection
17 with proceedings before administrative agencies or state or
18 federal courts;

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

22 E. purchases of books and periodicals from the
23 publishers or copyright holders thereof;

24 F. travel or shipping by common carrier or by
25 private conveyance or to meals and lodging;

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

4 H. contracts with businesses for public school
5 transportation services;

6 I. procurement of tangible personal property or
7 services, as defined by Sections 13-1-87 and 13-1-93 NMSA
8 1978, by the corrections industries division of the
9 corrections department pursuant to regulations adopted by the
10 corrections commission, which shall be reviewed by the
11 purchasing division of the general services department prior
12 to adoption;

13 J. minor purchases not exceeding five thousand
14 dollars (\$5,000) consisting of magazine subscriptions,
15 conference registration fees and other similar purchases where
16 prepayments are required;

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

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

23 M. contracts entered into by a local public body
24 with a private independent contractor for the operation, or
25 provision and operation, of a jail pursuant to Sections

1 33-3-26 and 33-3-27 NMSA 1978;

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

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

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

14 Q. contracts with professional entertainers; ~~[and]~~

15 R. contracts and expenditures for litigation
 16 expenses in connection with proceedings before administrative
 17 agencies or state or federal courts, including experts,
 18 mediators, court reporters, process servers and witness fees,
 19 but not including attorney contracts; and

20 S. contracts entered into by a local public body
 21 with a person, firm, organization, corporation, association or
 22 a state educational institution named in Article 12, Section
 23 11 of the constitution of New Mexico for the operation and
 24 maintenance of a hospital pursuant to Chapter 3, Article 44
 25 NMSA 1978, for the lease or operation of a county hospital

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1 pursuant to the Hospital Funding Act or for the operation and
2 maintenance of a hospital pursuant to the Special Hospital
3 District Act. "

4 Section 8. Section 13-6-2 NMSA 1978 (being Laws 1979,
5 Chapter 195, Section 3, as amended by Laws 1989, Chapter 211,
6 Section 7 and also by Laws 1989, Chapter 380, Section 3) is
7 amended to read:

8 "13-6-2. SALE OF PROPERTY BY STATE AGENCIES OR LOCAL
9 PUBLIC BODIES--AUTHORITY TO SELL OR DISPOSE OF PROPERTY--
10 APPROVAL OF APPROPRIATE APPROVAL AUTHORITY. --

11 A. Any state agency, local public body, school
12 district or state educational institution is empowered to sell
13 or otherwise dispose of real or personal property belonging to
14 the state agency, local public body, school district or state
15 educational institution. Except as provided in Section
16 13-6-2.1 NMSA 1978 requiring state board of finance approval
17 for certain transactions, sale or disposition of real or
18 personal property having a current resale value of more than
19 five thousand dollars (\$5,000) may be made by any state
20 agency, local public body, school district or state
21 educational institution if the sale or disposition has been
22 approved by the state budget division of the department of
23 finance and administration for state agencies, the local
24 government division of the department of finance and
25 administration for local public bodies, the state department

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1 of public education for school districts and the commission on
 2 higher education for state educational institutions.

3 B. Prior approval of the appropriate approval
 4 authority is not required if the property is to be used as a
 5 trade-in or exchange pursuant to the provisions of the
 6 Procurement Code.

7 C. The appropriate approval authority may
 8 condition the approval of the sale or other disposition of any
 9 real or personal property upon the property being offered for
 10 sale to a state agency, local public body, school district or
 11 state educational institution.

12 D. The appropriate approval authority shall have
 13 the power to credit any payment received from the sale of any
 14 such real or personal property to the governmental body making
 15 the sale. The state agency, local public body, school
 16 district or state educational institution may convey all or
 17 any interest in the real or personal property without
 18 warranty.

19 E. This section shall not apply to any computer
 20 software or hardware of any state agency.

21 F. The provisions of this section shall not be
 22 applicable as to those institutions specifically enumerated in
 23 Article 12, Section 11 of the constitution of New Mexico, the
 24 state land office, [or] the state highway commission or leases
 25 of county hospitals with any person pursuant to the Hospital

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