

1 SENATE BILL 273

2 **51ST LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2013**

3 INTRODUCED BY

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10 AN ACT

11 RELATING TO TRANSPORTATION; ENACTING THE TRANSPORTATION PUBLIC-
12 PRIVATE PARTNERSHIPS ACT; ALLOWING THE STATE AND CERTAIN LOCAL
13 GOVERNMENTS TO ENTER INTO LONG-TERM PARTNERSHIPS WITH PRIVATE
14 SECTOR PARTNERS TO PROVIDE REVENUE-PRODUCING TRANSPORTATION
15 FACILITIES; PROVIDING POWERS AND DUTIES; ALLOWING FOR THE
16 ISSUANCE OF REVENUE BONDS; EXEMPTING PUBLIC-PRIVATE
17 PARTNERSHIPS FROM THE PROCUREMENT CODE; PRESCRIBING PENALTIES;
18 MAKING APPROPRIATIONS.

19
20 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

21 SECTION 1. [NEW MATERIAL] SHORT TITLE.--Sections 1
22 through 26 of this act may be cited as the "Transportation
23 Public-Private Partnerships Act".

24 SECTION 2. [NEW MATERIAL] DEFINITIONS.--As used in the
25 Transportation Public-Private Partnerships Act:

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1 A. "department" means the department of
2 transportation;

3 B. "force majeure" means an uncontrollable force or
4 natural disaster not within the power of the operator or the
5 public partner;

6 C. "local government" means an incorporated city,
7 town or village; a county; or a regional transit authority;

8 D. "maintenance" means ordinary maintenance,
9 repair, rehabilitation, capital maintenance, replacement and
10 any other categories of maintenance that may be designated by
11 the public partner;

12 E. "material default" mean a failure of an operator
13 to perform any duties under a public-private partnership, which
14 failure jeopardizes delivery of adequate service to the public
15 and remains unsatisfied after a reasonable time and after the
16 operator has received written notice from the public partner of
17 the failure;

18 F. "operate" means any action to maintain,
19 rehabilitate, improve, equip or modify a transportation
20 facility;

21 G. "operator" means a private partner who
22 administers, manages or controls a transportation facility
23 pursuant to a public-private partnership;

24 H. "private partner" means one or more persons who
25 have entered into a public-private partnership with a public

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1 partner and who are not the federal government or any agency or
2 instrumentality of the federal government; another state or
3 territory of the United States; a sovereign or foreign
4 government; or the state or an agency, branch, institution or
5 instrumentality or a political subdivision of the state;

6 I. "public partner" means the department or a local
7 government;

8 J. "public-private partnership" means the agreement
9 between one or more public partners and one or more private
10 partners for the development, financing, maintenance or
11 operation of a transportation facility, including a lease,
12 ground lease, franchise, easement, permit or other agreement
13 that transfers rights for the use or control, in whole or in
14 part, of a transportation facility by the public partner to the
15 private partner;

16 K. "transportation facility" means a facility,
17 whether real or personal property, developed or operated in
18 accordance with the Transportation Public-Private Partnerships
19 Act, including an existing, enhanced, upgraded or new facility
20 that is:

21 (1) used or useful to transport people or
22 goods via one or more modes of transport, whether involving
23 roads, highways, bridges, tunnels, overpasses, conduits,
24 railways, monorails, transit, bus systems, guided rapid
25 transit, airports, intermodal or multimodal systems or any

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1 other mode of transport; or

2 (2) related, used or useful to provide,
3 operate, maintain or generate revenue for a transportation
4 facility, including administrative buildings and other
5 buildings, structures, parking, rest areas, maintenance yards,
6 rail yards, ports of entry or storage facilities, vehicles,
7 rolling stock, energy systems or other related equipment, items
8 or property;

9 L. "user fee" means the rate, toll, fee or other
10 charge imposed by an operator for use of all or part of a
11 transportation facility; and

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

20 SECTION 3. [NEW MATERIAL] RULES--APPROVAL OF PUBLIC-
21 PRIVATE PARTNERSHIPS.--

22 A. The department shall adopt rules to carry out
23 the provisions of the Transportation Public-Private
24 Partnerships Act. Provisions in the department's rules shall
25 serve as a model for any public-private partnerships entered

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1 into by a local government.

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

8 SECTION 4. [NEW MATERIAL] PROJECT DELIVERY METHODS--
9 PROPOSALS.--A public partner may provide for the development or
10 operation of a transportation facility using a variety of
11 project delivery methods and forms of agreements. The methods
12 may include:

13 A. predevelopment agreements leading to other
14 implementing agreements;

15 B. design-build agreements;

16 C. design-build-maintain agreements;

17 D. design-build-finance-operate agreements;

18 E. design-build-operate-maintain agreements;

19 F. design-build-finance-operate-maintain
20 agreements;

21 G. concession agreements that provide for the
22 private partner to design, build, operate, maintain, manage or
23 lease a transportation facility; or

24 H. other project delivery methods or agreements or
25 combination of methods or agreements that the public partner

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1 determines will serve the public interest.

2 SECTION 5. [NEW MATERIAL] PROCUREMENT.--

3 A. A public partner:

4 (1) may procure a transportation facility
5 using any of the following:

6 (a) requests for proposals in which the
7 public partner describes a class of transportation facility or
8 a geographic area in which a person is invited to submit
9 proposals to develop transportation facilities;

10 (b) solicitations using requests for
11 qualifications, short-listing of qualified proposers, requests
12 for proposals, negotiations, best and final offers or other
13 procurement procedures;

14 (c) procurements seeking development and
15 finance plans that are most suitable for the project;

16 (d) best-value selection procurements
17 based on price or financial proposals, or both, or other
18 factors; and

19 (e) other procedures that the public
20 partner determines may further the implementation of the
21 Transportation Public-Private Partnerships Act; and

22 (2) may consider an unsolicited proposal if
23 the public partner determines that there is sufficient merit to
24 pursue the unsolicited proposal and a reasonable opportunity
25 for other persons to submit competing proposals for

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1 consideration as appropriate.

2 B. For a procurement in which the public partner
3 issues a request for qualifications or similar solicitation
4 document, the request shall generally set forth the factors
5 that will be evaluated and the manner in which responses will
6 be evaluated.

7 C. In evaluating proposals, the public partner may
8 accord relative weight to factors such as cost; financial
9 commitment; innovative financing; technical, scientific,
10 technological or socioeconomic merit; and other factors as the
11 public partner deems appropriate to obtain the best value for
12 the state or local government.

13 D. The public partner may charge and retain a
14 reasonable administrative fee for the evaluation of an
15 unsolicited project proposal; provided that the administrative
16 fee shall not exceed the reasonable cost of evaluating the
17 proposal.

18 E. In the procurement of a transportation facility,
19 the public partner shall follow substantially the procedures of
20 the Procurement Code in so far as practicable.

21 F. The public partner may retain financial, legal
22 and other experts to assist in the evaluation, negotiation and
23 development of public-private partnership agreements for a
24 transportation facility; provided that such experts shall have
25 a minimum of five years' experience in working with public-

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1 private partnerships in their field of expertise.

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

8 H. Before the public partner begins the process for
9 procuring a transportation facility, the public partner shall
10 hold at least one public hearing.

11 SECTION 6. [NEW MATERIAL] CONFIDENTIALITY AND PUBLIC
12 DISCLOSURE.--

13 A. A solicited or unsolicited proposer shall
14 identify those portions of a proposal or other submission that
15 the proposer considers to be a trade secret or confidential
16 commercial, financial or proprietary information. For trade
17 secrets and confidential and proprietary information to be
18 exempt from disclosure, the proposer must do all of the
19 following:

20 (1) invoke exclusion on submission of the
21 information or other materials for which protection is sought;

22 (2) identify with conspicuous labeling the
23 data or other materials for which protection is sought;

24 (3) state the reasons why protection is
25 necessary; and

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1 (4) fully comply with any applicable state law
2 with respect to information that the proposer contends should
3 be exempt from disclosure.

4 B. Each request for proposals issued pursuant to
5 the Transportation Public-Private Partnerships Act shall
6 require the proposer to include with its proposal an executive
7 summary covering the major elements of its proposal that do not
8 address the proposer's price, financing plan or other
9 confidential or proprietary information or trade secrets that
10 the proposer intends to be exempt from disclosure. The
11 executive summary shall be subject to release and disclosure to
12 the public at any time. Notwithstanding other provisions of
13 law, in order to maximize competition pursuant to that act, no
14 part of a proposal other than the executive summary shall be
15 subject to release or disclosure by the public partner before
16 an award of the public-private partnership contract and the
17 conclusion of any protest or other challenge to the award,
18 absent an administrative or judicial order requiring release or
19 disclosure. After the award of the contract and the conclusion
20 of any protest or other challenge to the award, the Inspection
21 of Public Records Act applies to any release of any part of the
22 proposal. An unsolicited proposal shall contain a similar
23 executive summary and be afforded the same protections as a
24 requested proposal.

25 SECTION 7. [NEW MATERIAL] EVALUATION CRITERIA.--Before

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1 entering into a public-private partnership, the public partner
2 shall consider:

3 A. the ability of the transportation facility to
4 improve transportation safety, reduce highway congestion,
5 increase transportation capacity, promote economic growth or
6 streamline services to the public;

7 B. the proposed cost and financial plan for the
8 transportation facility;

9 C. the general reputation, qualifications, industry
10 experience and financial capacity of the proposer;

11 D. the feasibility and proposed design and
12 operation of the transportation facility;

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

15 F. benefits to the public;

16 G. the safety record of the proposer; and

17 H. other criteria that the public partner deems
18 appropriate.

19 SECTION 8. [NEW MATERIAL] PUBLIC-PRIVATE PARTNERSHIP
20 AGREEMENTS--PENALTIES.--

21 A. In a public-private partnership, the public
22 partner may require the agreement to include provisions that:

23 (1) authorize the public partner or the
24 private partner to establish and collect user fees, rents,
25 advertising and sponsorship charges, service charges or other

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1 charges allowed in the agreement, including provisions that:

2 (a) specify how revenue will be
3 collected, accounted for and audited;

4 (b) establish circumstances under which
5 the public partner may receive all or a share of revenue from
6 such charges; and

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

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

19 (a) the fees and charges may be
20 collected directly by the private partner or a third party
21 engaged by the private partner for that purpose;

22 (b) a formula for the adjustment of user
23 fees and other charges during the term of the public-private
24 partnership;

25 (c) for an agreement that does not

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1 include a formula described in Subparagraph (b) of this
2 paragraph, provisions regulating the private partner's return
3 on investment;

4 (d) a maximum multiplier that may be
5 applied to the difference between passenger and commercial
6 vehicle user fees;

7 (e) a variety of traffic management
8 strategies, including general purpose toll lanes; high-
9 occupancy vehicle lanes where single- or low-occupancy vehicles
10 may use high-occupancy vehicle lanes by paying a toll; or lanes
11 or facilities in which the tolls may vary during the course of
12 the day or week or according to levels of congestion
13 anticipated or experienced; or

14 (f) other strategies that the public
15 partner determines are appropriate;

16 (3) allow for payments to be made by the
17 public partner to the private partner, including availability
18 payments or performance-based payments;

19 (4) allow the public partner to accept
20 payments and share revenue with the private partner;

21 (5) address how the public and private
22 partners will share management of the risks of the
23 transportation facility project;

24 (6) specify how the public and private
25 partners will share the costs of development of the

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- 1 transportation facility project;
- 2 (7) allocate financial responsibility for cost
- 3 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 rights of way
- 9 and other property interests that may be required, including
- 10 provisions that address the exercise of eminent domain;
- 11 provided, however, that the state shall not relinquish its
- 12 power of eminent domain to any private partner;
- 13 (11) establish recordkeeping, accounting and
- 14 auditing standards to be used for the project;
- 15 (12) for a transportation facility that
- 16 reverts to public ownership, address responsibility for
- 17 reconstruction or renovations that are required so that the
- 18 transportation facility meets all applicable government
- 19 standards on reversion of the transportation facility to the
- 20 state;
- 21 (13) provide for responsibilities for
- 22 patrolling and law enforcement on transportation facilities;
- 23 (14) identify public partner specifications
- 24 that must be satisfied, including provisions allowing the
- 25 private partner to request and receive authorization to deviate

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1 from the specifications on a showing satisfactory to the public
2 partner that the deviation is necessary;

3 (15) require a private partner to provide
4 performance and payment bonds, parent company guarantees,
5 letters of credit or other acceptable forms of security or a
6 combination of any of these, the penal sum or amount of which
7 may be less than one hundred percent of the value of the
8 contract involved based on the public partner's determination
9 of what is required to adequately protect the public partner,
10 made on a facility-by-facility basis;

11 (16) specify remedies available to the parties
12 and dispute resolution procedures to be followed; and

13 (17) allow the public or private partner to
14 acquire real property that is needed for and related to
15 transportation facilities, including acquisition by exchange of
16 other real property that is owned by the state, a local
17 government or the federal government.

18 B. The public-private partnership agreement shall
19 include a clear statement concerning which partner will own
20 real property pertaining to the transportation facility and if
21 or when ownership will revert to the public partner.

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

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1 D. The public-private partnership agreement shall
2 contain a provision by which the private partner expressly
3 agrees that it is prohibited from seeking injunctive or other
4 equitable relief to delay, prevent or otherwise hinder the
5 public partner or any jurisdiction from developing,
6 constructing or maintaining a facility that was planned and
7 that would or might affect the revenue that the private partner
8 would or might derive from the transportation facility
9 developed under an agreement pursuant to the Transportation
10 Public-Private Partnerships Act, except that the agreement may
11 provide for reasonable compensation to the private partner for
12 the adverse effect on toll revenues or other user fee revenues
13 resulting from development, construction and maintenance of an
14 unplanned facility that affects the transportation facility's
15 revenue.

16 E. The public-private partnership agreement shall
17 provide that the state board of finance must approve the
18 assignment, transfer or sale of assets or other investment in a
19 transportation facility.

20 SECTION 9. [NEW MATERIAL] USER FEES AT END OF AGREEMENT
21 PERIOD.--The public partner may continue or cease collection of
22 user fees after the end of the term of the agreement.

23 SECTION 10. [NEW MATERIAL] FUNDING AND FINANCING.--

24 A. Any lawful source of funding may be used for the
25 development or operation of a transportation facility pursuant

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1 to the Transportation Public-Private Partnerships Act,
2 including:

3 (1) proceeds of grant anticipation revenue
4 bonds, private activity bonds, revenue bonds or other bonds
5 allowed by federal or state law;

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

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

10 (4) user fees, lease payments, availability
11 payments, gross or net receipts from sales, proceeds from the
12 sale of development rights, franchise charges, permit charges,
13 advertising and sponsorship charges, service charges or any
14 other lawful form of consideration; and

15 (5) other forms of public and private capital
16 that are available.

17 B. As security for the payment of financing
18 described in this section, the revenues from the transportation
19 facility may be pledged, but no pledge of revenues constitutes
20 in any manner or to any extent a general obligation of the
21 state or local government. Financing may be structured on a
22 senior, parity or subordinate basis to any other financing.

23 C. The public partner may issue toll revenue bonds
24 or other revenue bonds or notes to provide money for a
25 transportation facility pursuant to the Transportation Public-

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1 Private Partnerships Act.

2 D. The public partner may accept money from the
3 United States or any of its agencies to carry out the
4 provisions of the Transportation Public-Private Partnerships
5 Act, whether the money is made available by grant, loan or
6 other financing arrangement. The public partner assents to any
7 federal requirements, conditions or terms of any federal
8 funding accepted by the public partner pursuant to this
9 subsection. The public partner may enter into agreements or
10 other arrangements with the United States or any of its
11 agencies as may be necessary to carry out the provisions of
12 that act.

13 E. The public partner may accept from any source
14 any grant, donation, gift, conveyance of land, other real or
15 personal property or other thing of value made to the public
16 partner.

17 F. A transportation facility may be funded in whole
18 or in part by contributions of money or property made by a
19 private person or the state or any agency, institution,
20 instrumentality or political subdivision of the state.

21 G. Federal, state and local money may be combined
22 with private sector money for transportation facility purposes
23 as allowed by law or by grant, gift or donation provisions.

24 H. Revenue bonds issued pursuant to Section 12 of
25 the Transportation Public-Private Partnerships Act are not

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1 general obligations of this state and are not secured by or
2 payable from any money or assets of the state other than the
3 money and revenues specifically pledged to the repayment of the
4 revenue bonds.

5 SECTION 11. [NEW MATERIAL] EMINENT DOMAIN.--The state may
6 exercise the power of eminent domain to acquire property,
7 rights of way or other rights in property that are necessary to
8 develop, operate or hold a transportation facility pursuant to
9 the Transportation Public-Private Partnerships Act, even if the
10 property will be leased to the private partner to use, lease or
11 operate for its business purposes in connection with the
12 public-private partnership.

13 SECTION 12. [NEW MATERIAL] REVENUE BONDS--AUTHORITY TO
14 ISSUE.--

15 A. A public partner may issue revenue bonds on its
16 own behalf or on behalf of a private partner for transportation
17 facilities. Revenue bonds so issued by the department may be
18 considered appropriate investments for the severance tax
19 permanent fund or collateral for the deposit of public funds if
20 the bonds are rated not less than "A" by a national rating
21 service and both the principal and interest of the bonds are
22 fully and unconditionally guaranteed by a lease agreement
23 executed by an agency of the United States government or by a
24 corporation organized and operating within the United States,
25 that corporation or the long-term debt of that corporation

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1 being rated not less than "A" by a national rating service.
2 All bonds issued by a public partner are legal and authorized
3 investments for banks, trust companies, savings and loan
4 associations and insurance companies.

5 B. The public partner may pay from the bond
6 proceeds all expenses, premiums and commissions that the public
7 partner deems necessary or advantageous in connection with the
8 authorization, sale and issuance of the bonds.

9 C. Revenue bonds:

10 (1) may have interest or appreciated principal
11 value or any part of interest or appreciated principal value
12 payable at intervals determined by the public partner;

13 (2) may be subject to prior redemption or
14 mandatory redemption at the public partner's option at the time
15 and upon such terms and conditions with or without the payment
16 of a premium as may be provided by resolution of the public
17 partner;

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

20 (4) may be serial in form and maturity; may
21 consist of one or more bonds payable at one time or in
22 installments; or may be in such other form as determined by the
23 public partner;

24 (5) may be in registered or bearer form or in
25 book-entry form through facilities of a securities depository

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1 either as to principal or interest or both;

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

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

7 D. Subject to the approval of the state board of
8 finance, the public partner may enter into other financial
9 arrangements if it determines that the arrangements will assist
10 the public partner to carry out its duties pursuant to the
11 Transportation Public-Private Partnerships Act.

12 SECTION 13. [NEW MATERIAL] BONDS SECURED BY TRUST
13 INDENTURE.--The bonds issued by the public partner may be
14 secured by a trust indenture between the public partner and a
15 corporate trustee that may be either a bank having trust powers
16 or a trust company. The trust indenture may contain reasonable
17 provisions for protecting and enforcing the rights and remedies
18 of bondholders, including covenants setting forth the duties of
19 the public partner in relation to the exercise of its powers
20 and the custody, use and investment of the project revenues or
21 other funds. The public partner may provide in a trust
22 indenture for the payment of the proceeds of the bonds and the
23 project revenue to the trustee under the trust indenture or
24 other depository for disbursement with any safeguards the
25 public partner determines are necessary.

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1 SECTION 14. [NEW MATERIAL] REVENUE BONDS--LIMITATIONS--
2 AUTHORIZATION--AUTHENTICATION.--

3 A. Revenue bonds or refunding bonds issued pursuant
4 to the Transportation Public-Private Partnerships Act are:

5 (1) not general obligations of the state or
6 any local government; and

7 (2) payable only from properly pledged
8 revenues, and each bond shall state that it is payable solely
9 from the properly pledged revenues and that the bondholders may
10 not look to any other fund for the payment of the interest and
11 principal of the bond.

12 B. Revenue or refunding bonds may be authorized by
13 resolution of the public partner, which resolution shall be
14 approved by the state board of finance.

15 C. The bonds shall be executed by the public
16 partner and may be authenticated by any public or private
17 transfer agent or registrar, or its successor, named or
18 otherwise designated by the public partner. Bonds may be
19 executed as provided under the Uniform Facsimile Signature of
20 Public Officials Act, and the coupons, if any, shall bear the
21 facsimile signature of the appropriate official of the public
22 partner.

23 SECTION 15. [NEW MATERIAL] SECURITY FOR BONDS.--The
24 principal of and interest on any bonds issued pursuant to the
25 provisions of the Transportation Public-Private Partnerships

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1 Act shall be secured by a pledge of the revenues out of which
2 the bonds shall be made payable; may be secured by a mortgage,
3 deed of trust note or other certificate of indebtedness
4 covering all or part of the transportation facility from which
5 the revenues so pledged may be derived; and may be secured by a
6 pledge of any lease or installment sale agreement or other fees
7 or revenues with respect to the transportation facility. The
8 resolution of the public partner under which bonds are
9 authorized to be issued may contain any agreement and
10 provisions customarily contained in instruments securing bonds,
11 notes or certificates of indebtedness, including:

12 A. provisions respecting the fixing and collection
13 of all revenues from any transportation facility covered by the
14 proceedings or mortgage;

15 B. the terms to be incorporated in any lease or
16 installment sale agreement with respect to the transportation
17 facility;

18 C. the maintenance and insurance of the
19 transportation facility; and

20 D. the creation and maintenance of special funds
21 from the revenues with respect to the transportation facility
22 and the rights and remedies available in the event of default
23 to the bondholders, all as the public partner deems advisable
24 and not in conflict with the provisions of the Transportation
25 Public-Private Partnerships Act. In making the agreements or

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1 provisions, the public partner shall not have the power to
2 obligate itself, except with respect to the transportation
3 facility and the application of the revenues from the
4 transportation facility, and shall not have the power to incur
5 a pecuniary liability or charge upon the state, municipal,
6 county or regional transit authority's general credit or
7 against its taxing powers. The resolution authorizing any
8 bonds and any mortgage securing such bonds shall set forth the
9 procedure and remedies in the event of default in payment of
10 the principal of or the interest on the bond, note or
11 certificate of indebtedness or in the performance of any
12 agreement. A breach of any agreement shall not impose any
13 pecuniary liability upon the state, municipality, county or
14 regional transit authority or any charge upon its general
15 credit or against its taxing powers.

16 SECTION 16. [NEW MATERIAL] RESOLUTION FOR ISSUANCE--
17 REQUIREMENTS--REVENUE--SALE OR LEASE OF PROPERTY.--

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

21 B. Prior to approving a resolution for the issuance
22 of bonds for a transportation facility, the state board of
23 finance shall determine and find that:

24 (1) the resolution is for the issuance of
25 bonds and the principal and interest of the bonds to be issued

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1 shall be fully secured by:

2 (a) revenue received from the
3 transportation facility pursuant to a contract entered into by
4 and between the public and private partners;

5 (b) a lease agreement or installment
6 sale agreement;

7 (c) a corporation organized and
8 operating within the United States;

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

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

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

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

23 C. Unless the terms under which the transportation
24 facility is to be leased or sold provide that the lessee or
25 purchaser shall maintain the transportation facility and carry

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1 all proper insurance with respect to the transportation
2 facility, the resolution shall set forth the estimated cost of
3 maintaining the transportation facility in good repair and
4 keeping it properly insured.

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

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

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
18 transportation facility in good repair and keep it properly
19 insured, unless the agreement of lease obligates the lessee to
20 pay for the maintenance and insurance of the transportation
21 facility.

22 E. With prior approval of the state board of
23 finance, and subject to constitutional limitations on public
24 debt, the public partner may borrow money to purchase, lease,
25 acquire or develop water rights, a water system, a wastewater

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1 collection and treatment system, a natural gas distribution
2 system, an electrical distribution system or other
3 infrastructure needed to support the transportation facility;
4 provided that the public partner shall not obligate itself or
5 the state, municipality or county to any debt or obligation
6 that cannot be paid from funds derived from the transportation
7 facility.

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

18 SECTION 17. [NEW MATERIAL] USE OF PROCEEDS FROM SALE OF
19 BONDS.--

20 A. The proceeds from the sale of any bonds issued
21 pursuant to the Transportation Public-Private Partnerships Act
22 shall be applied only for the purpose for which the bonds were
23 issued; provided that:

24 (1) any accrued interest and premiums received
25 in any sale shall be applied to the payment of the principal of

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1 or the interest on the bonds sold;

2 (2) if for any reason any portion of such
3 proceeds are not needed for the purpose for which the bonds
4 were issued, the balance of the proceeds shall be applied to
5 the payment of the principal of or the interest on the bonds;
6 and

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

16 B. The cost of acquiring a transportation facility
17 shall be deemed to include the following:

18 (1) the actual cost of planning, design and
19 construction of any part of a project, including architect,
20 attorney and engineer fees;

21 (2) the purchase price of any part of a
22 transportation facility that may be acquired by purchase;

23 (3) the actual cost of the extension of any
24 utility to the transportation facility site and all expenses in
25 connection with the authorization, sale and issuance of the

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1 bonds to finance such acquisition; and

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

5 SECTION 18. [NEW MATERIAL] REFUNDING BONDS--
6 AUTHORIZATION.--

7 A. The public partner may issue refunding revenue
8 bonds for the purpose of refinancing, paying and discharging
9 all or any part of outstanding transportation facility revenue
10 bonds for:

11 (1) the acceleration, deceleration or other
12 modification of payment of such obligations, including, without
13 limitation, any capitalization of any interest in arrears or
14 about to become due for any period not exceeding one year from
15 the date of the refunding bonds;

16 (2) reducing interest costs or effecting other
17 economies; or

18 (3) modifying or eliminating restrictive
19 contractual limitations pertaining to the issuance of
20 additional bonds, otherwise concerning the outstanding bonds or
21 to any transportation facilities relating to the bonds.

22 B. The public partner may pledge irrevocably for
23 the payment of interest and principal on refunding bonds the
24 appropriate pledged revenues that may be pledged to an original
25 issue of bonds.

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1 C. Bonds for refunding and bonds for any purpose
2 allowed by the Transportation Public-Private Partnerships Act
3 may be issued separately or issued in a combination of one
4 series or more.

5 SECTION 19. [NEW MATERIAL] REFUNDING BONDS--ESCROW.--

6 A. Refunding bonds issued pursuant to the
7 Transportation Public-Private Partnerships Act shall be
8 authorized by resolution of the public partner. Any bonds that
9 are refunded under the provisions of this section shall be paid
10 at maturity or on any permitted prior redemption date in the
11 amounts, at the time and places and, if called prior to
12 maturity, in accordance with any applicable notice provisions,
13 all as provided in the proceedings authorizing the issuance of
14 the refunded bonds or otherwise pertaining thereto, except for
15 any such bond that is voluntarily surrendered for exchange or
16 payment by the holder or owner.

17 B. Provision shall be made for paying the bonds
18 refunded at the time provided in this section. The principal
19 amount of the refunding bonds may exceed the principal amount
20 of the refunded bonds and may also be less than or the same as
21 the principal amount of the bonds being refunded; provided that
22 provision is duly and sufficiently made for payment of the
23 refunded bonds.

24 C. The proceeds of refunding bonds, including any
25 accrued interest and premium pertaining to the sale of

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1 refunding bonds, shall either be immediately applied to the
2 retirement of the bonds being refunded or be placed in escrow
3 in a commercial bank or trust company that possesses and is
4 exercising trust powers and that is a member of the federal
5 deposit insurance corporation, to be applied to the payment of
6 the principal of, interest on and any prior redemption premium
7 due in connection with the bonds being refunded; provided that
8 such refunding bond proceeds, including any accrued interest
9 and any premium pertaining to a sale of refunding bonds, may be
10 applied to the establishment and maintenance of a reserve fund
11 and to the payment of expenses incidental to the refunding and
12 the issuance of the refunding bonds, the interest thereon, the
13 principal thereof or both interest and principal as the public
14 partner may determine. Nothing in this section requires the
15 establishment of an escrow if the refunded bonds become due and
16 payable within one year from the date of the refunding bonds
17 and if the amounts necessary to retire the refunded bonds
18 within that time are deposited with the paying agent for the
19 refunded bonds. Any such escrow shall not necessarily be
20 limited to proceeds of refunding bonds but may include other
21 money available for its purpose. Any proceeds in escrow
22 pending such use may be invested or reinvested in bills,
23 certificates of indebtedness, notes or bonds that are direct
24 obligations of or the principal and interest of which
25 obligations are unconditionally guaranteed by the United States

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1 or in certificates of deposit of banks that are members of the
2 federal deposit insurance corporation. Such proceeds and
3 investments in escrow, together with any interest or other
4 income to be derived from any such investment, shall be in an
5 amount at all times sufficient as to principal, interest, any
6 prior redemption premium due and any charges of the escrow
7 agent payable to pay the bonds being refunded as they become
8 due at their respective maturities or due at any designated
9 prior redemption date in connection with which the public
10 partner shall exercise a prior redemption option. Any
11 purchaser of any refunding bond issued pursuant to
12 Transportation Public-Private Partnerships Act is in no manner
13 responsible for the application of the proceeds by the public
14 partner or any of its officers, employees or agents.

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

18 SECTION 20. [NEW MATERIAL] REFUNDING REVENUE BONDS--
19 TERMS.--Refunding revenue bonds:

20 A. may have interest or appreciated principal value
21 payable at intervals or at maturity;

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

25 C. may be serial in form and maturity;

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

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

8 **SECTION 21. [NEW MATERIAL] EXEMPTION FROM TAXATION.--**

9 Bonds authorized pursuant to the Transportation Public-Private
10 Partnerships Act and the income from those bonds, all mortgages
11 or other security instruments executed as security for those
12 bonds, all lease and installment purchase agreements made
13 pursuant to the provisions of that act and revenue derived from
14 any lease or sale by the public partner shall be exempt from
15 all taxation by the state or any political subdivision of the
16 state.

17 **SECTION 22. [NEW MATERIAL] REVERSION OF TRANSPORTATION**

18 **FACILITY TO PUBLIC PARTNER.--**If the public-private partnership
19 is terminated, the authority and duties of the operator cease,
20 except for any duties and obligations that extend beyond the
21 termination as provided in the public-private agreement, and
22 the transportation facility reverts to the public partner and
23 shall be dedicated for public use.

24 **SECTION 23. [NEW MATERIAL] MATERIAL DEFAULT--REMEDIES.--**

25 A. Upon the occurrence and during the continuation

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1 of material default by an operator, not related to an event of
2 force majeure, the public partner may:

3 (1) elect to take over the transportation
4 facility, including the succession of all right, title and
5 interest in the transportation facility, subject to any liens
6 on revenue previously granted by the private partner; and

7 (2) terminate the public-private partnership
8 and exercise any other rights and remedies that may be
9 available.

10 B. If the public partner elects to take over a
11 transportation facility pursuant to Subsection A of this
12 section, the public partner:

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

15 (2) may develop and operate the transportation
16 facility, impose user fees for the use of the transportation
17 facility and comply with any service contracts; and

18 (3) may solicit proposals for the maintenance
19 and operation of the transportation facility as provided in the
20 Transportation Public-Private Partnerships Act for original
21 proposals.

22 SECTION 24. [NEW MATERIAL] POLICE POWERS--VIOLATIONS OF
23 LAW.--

24 A. All law enforcement officers of the state or
25 local government have the same powers and jurisdiction within

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1 the limits of the transportation facility as they have in their
2 respective areas of jurisdiction and access to the
3 transportation facility at any time to exercise such powers and
4 jurisdictions.

5 B. The traffic and motor vehicle laws and other
6 laws of the state or, if applicable, ordinances of a local
7 government, shall be the same on the transportation facility as
8 those laws applied to conduct on similar transportation
9 facilities in the state or local government.

10 C. Punishment for violations of traffic and motor
11 vehicle laws or other laws of the state, or, if applicable,
12 ordinances of the local government, on the transportation
13 facility shall be as prescribed by law for conduct occurring on
14 similar transportation facilities in the state or local
15 government.

16 SECTION 25. [NEW MATERIAL] UTILITY CROSSINGS.--An
17 operator 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 26. [NEW MATERIAL] PENALTIES.--A person who fails
21 to pay a user fee required for the privilege of traveling on or
22 using property included in a transportation facility is guilty
23 of a petty misdemeanor and shall be sentenced as provided in
24 Section 31-19-1 NMSA 1978.

25 SECTION 27. Section 13-1-98 NMSA 1978 (being Laws 1984,
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1 Chapter 65, Section 71, as amended) is amended to read:

2 "13-1-98. EXEMPTIONS FROM THE PROCUREMENT CODE.--The
3 provisions of the Procurement Code shall not apply to:

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

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

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

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

18 E. purchases of books and periodicals from the
19 publishers or copyright holders thereof;

20 F. travel or shipping by common carrier or by
21 private conveyance or to meals and lodging;

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

25 H. contracts with businesses for public school

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1 transportation services;

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

9 J. minor purchases not exceeding five thousand
10 dollars (\$5,000) consisting of magazine subscriptions,
11 conference registration fees and other similar purchases where
12 prepayments are required;

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

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

19 M. contracts entered into by a local public body
20 with a private independent contractor for the operation, or
21 provision and operation, of a jail pursuant to Sections
22 33-3-26 and 33-3-27 NMSA 1978;

23 N. contracts for maintenance of grounds and
24 facilities at highway rest stops and other employment
25 opportunities, excluding those intended for the direct care and

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1 support of persons with handicaps, entered into by state
2 agencies with private, nonprofit, independent contractors who
3 provide services to persons with handicaps;

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

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

11 Q. contracts with professional entertainers;

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

17 S. contracts for service relating to the design,
18 engineering, financing, construction and acquisition of public
19 improvements undertaken in improvement districts pursuant to
20 Subsection L of Section 3-33-14.1 NMSA 1978 and in county
21 improvement districts pursuant to Subsection L of Section
22 4-55A-12.1 NMSA 1978;

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

25 U. contracts entered into by a local public body

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1 with a person, firm, organization, corporation or association
2 or a state educational institution named in Article 12, Section
3 11 of the constitution of New Mexico for the operation and
4 maintenance of a hospital pursuant to Chapter 3, Article 44
5 NMSA 1978, lease or operation of a county hospital pursuant to
6 the Hospital Funding Act or operation and maintenance of a
7 hospital pursuant to the Special Hospital District Act;

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

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

12 X. procurement of printing services for materials
13 produced and intended for resale by the cultural affairs
14 department;

15 Y. procurement by or through the public education
16 department from the federal department of education relating to
17 parent training and information centers designed to increase
18 parent participation, projects and initiatives designed to
19 improve outcomes for students with disabilities and other
20 projects and initiatives relating to the administration of
21 improvement strategy programs pursuant to the federal
22 Individuals with Disabilities Education Act; provided that the
23 exemption applies only to procurement of services not to exceed
24 two hundred thousand dollars (\$200,000);

25 Z. procurement of services from community

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1 rehabilitation programs or qualified individuals pursuant to
2 the State Use Act;

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

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

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

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

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

23 FF. procurements pursuant to the Transportation
24 Public-Private Partnerships Act."

25 SECTION 28. EFFECTIVE DATE.--The effective date of the

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1 provisions of this act is July 1, 2013.

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