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SENATE BILL 531

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

INTRODUCED BY

Mark Moores

AN ACT

RELATING TO THE NEW MEXICO FINANCE AUTHORITY; PROVIDING FOR
GREATER CONTROL OVER AUTHORITY OPERATIONS.

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

SECTION 1. Section 6-3-1 NMSA 1978 (being Laws 1957,
Chapter 253, Section 1) is amended to read:

"6-3-1. STATE AGENCY DEFINED.--"State agency" means any
department, institution, board, bureau, commission, district,
[or] committee or other unit of government of the state [~~of New~~
~~Mexico~~], including the New Mexico finance authority, and means
every office or officer of any of the above."

SECTION 2. Section 6-3A-3 NMSA 1978 (being Laws 1999,
Chapter 5, Section 3 and Laws 1999, Chapter 15, Section 3, as
amended) is amended to read:

"6-3A-3. DEFINITIONS.--As used in the Accountability in
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1 Government Act:

2 A. "agency" means a branch, department,
3 institution, board, bureau, commission, district, [e#]
4 committee or other unit of the state, including the New Mexico
5 finance authority;

6 B. "approved program" means a program included in
7 an approved list of programs issued by the division pursuant to
8 Section 6-3A-4 NMSA 1978;

9 C. "baseline data" means the current level of a
10 program's performance measures established pursuant to
11 guidelines established by the division in consultation with the
12 committee;

13 D. "committee" means the legislative finance
14 committee;

15 E. "division" means the state budget division of
16 the department of finance and administration;

17 F. "outcome" means the measurement of the actual
18 impact or public benefit of a program;

19 G. "output" means the measure of the volume of work
20 completed or the level of actual services or products delivered
21 by a program;

22 H. "performance-based program budget" means a
23 budget that identifies a total allowed expenditure for a
24 program and includes performance measures, performance
25 standards and program evaluations;

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1 I. "performance measure" means a quantitative or
2 qualitative indicator used to assess the output or outcome of
3 an approved program;

4 J. "performance target" means the expected level of
5 performance of a program's performance measures; and

6 K. "program" means a set of activities undertaken
7 in accordance with a plan of action organized to realize
8 identifiable goals and objectives based on legislative
9 authorization."

10 SECTION 3. Section 6-5-1 NMSA 1978 (being Laws 1957,
11 Chapter 252, Section 1, as amended) is amended to read:

12 "6-5-1. DEFINITIONS.--As used in Chapter 6, Article 5
13 NMSA 1978:

14 A. "division" means the financial control division
15 of the department of finance and administration;

16 B. "central accounting system" means the accounting
17 system used by the division to process and record payments,
18 deposits and other financial transactions for state agencies
19 and departments;

20 C. "electronic" means electric, digital, magnetic,
21 optical, electronic or similar media;

22 D. "local public body" means any political
23 subdivision of the state that expends public money from
24 whatever source derived, including counties, county
25 institutions, boards, bureaus or commissions; incorporated

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1 cities, towns or villages; drainage, conservancy, irrigation or
2 other districts; charitable institutions for which
3 appropriations are made by the legislature; and every office or
4 officer of any of the above;

5 E. "model accounting practices" means the
6 accounting methods and procedures used by the state;

7 F. "processing document" means a form, including
8 supporting documents, submitted by a state agency to the
9 division that will be used by the division to record a
10 financial transaction or make payment;

11 G. "state agency" means any department,
12 institution, board, bureau, commission, district, ~~[or]~~
13 committee or other unit of the government of the state,
14 including the New Mexico finance authority, and means every
15 office or officer of any of the above; and

16 H. "statewide accounting system network" means the
17 central accounting system, the central payroll system, the
18 central treasury system and all other financial accounting
19 systems operated by state agencies as one system through manual
20 or automated interfaces."

21 SECTION 4. Section 6-5-2 NMSA 1978 (being Laws 1957,
22 Chapter 252, Section 2, as amended) is amended to read:

23 "6-5-2. FINANCIAL CONTROL DIVISION--CENTRAL SYSTEM OF
24 STATE ACCOUNTS--ACCOUNTING SYSTEMS--PROCESSING DOCUMENTS--MODEL
25 ACCOUNTING PRACTICES--INTERNAL ACCOUNTING CONTROLS.--

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1 A. The division shall maintain a central system of
2 state accounts and shall devise, formulate, approve, control
3 and set standards for the accounting methods and procedures of
4 all state agencies. The division shall prescribe procedures,
5 policies and processing documents for use by state agencies in
6 connection with fiscal matters and may require reports from
7 state agencies as may be necessary to carry out its duties and
8 functions. Procedures and policies issued by the division are
9 exempt from the uniform standards of style and format
10 promulgated by the state commission of public records.

11 B. The division shall issue a manual of model
12 accounting practices containing the procedures and policies
13 prescribed pursuant to Subsection A of this section and shall
14 annually review and, if necessary, revise and reissue the
15 manual. State agencies shall comply with the model accounting
16 practices established by the division, and the administrative
17 head of each state agency shall ensure that the model
18 accounting practices are followed.

19 C. State agencies shall implement internal
20 accounting controls designed to prevent accounting errors and
21 violations of state and federal law and rules related to
22 financial matters. In addition, state agencies shall implement
23 controls to prevent the submission of processing documents to
24 the division that contain errors or that are for a purpose not
25 authorized by law.

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1 D. The financial systems of the New Mexico finance
2 authority shall be integrated into the statewide accounting
3 system network by July 1, 2013."

4 SECTION 5. Section 6-21-4 NMSA 1978 (being Laws 1992,
5 Chapter 61, Section 4, as amended) is amended to read:

6 "6-21-4. NEW MEXICO FINANCE AUTHORITY CREATED--
7 MEMBERSHIP--QUALIFICATIONS--QUORUM--MEETINGS--COMPENSATION--
8 BOND.--

9 A. There is created a public body politic and
10 corporate, separate and apart from the state, constituting a
11 governmental instrumentality to be known as the "New Mexico
12 finance authority" for the performance of essential public
13 functions.

14 B. The authority shall be composed of eleven
15 members. The secretary of finance and administration, the
16 secretary of economic development, the secretary of energy,
17 minerals and natural resources, the secretary of environment,
18 the executive director of the New Mexico municipal league and
19 the executive director of the New Mexico association of
20 counties or their designees shall be ex-officio members of the
21 authority with voting privileges. The governor, with the
22 advice and consent of the senate, shall appoint to the
23 authority the chief financial officer of a state higher
24 educational institution and four members who are residents of
25 the state. The appointed members shall serve at the pleasure

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1 of the governor.

2 C. The appointed members of the authority shall be
3 appointed to four-year terms. The initial members shall be
4 appointed to staggered terms of four years or less, so that the
5 term of at least one member expires on January 1 of each year.
6 Vacancies shall be filled by appointment by the governor for
7 the remainder of the unexpired term. Any member of the
8 authority shall be eligible for reappointment.

9 D. Each appointed member before entering upon the
10 member's duty shall take an oath of office to administer the
11 duties of the member's office faithfully and impartially. A
12 record of the oath shall be filed in the office of the
13 secretary of state.

14 E. The governor shall designate an appointed member
15 of the authority to serve as chair. The authority shall elect
16 annually one of its members to serve as vice chair. The
17 authority shall appoint and prescribe the duties of such other
18 officers, who need not be members, as the authority deems
19 necessary or advisable, including chief executive officer and a
20 secretary, who may be the same person. The authority may
21 delegate to one or more of its members, officers, employees or
22 agents such powers and duties as it may deem proper and
23 consistent with the New Mexico Finance Authority Act.

24 F. The chief executive officer of the authority
25 shall direct the affairs and business of the authority, subject

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1 to the policies, control and direction of the authority. The
2 secretary of the authority shall keep a record of the
3 proceedings of the authority and shall be custodian of all
4 books, documents and papers filed with the authority, the
5 minute book or journal of the authority and its official seal.
6 The secretary shall make copies of all minutes and other
7 records and documents of the authority and give certificates
8 under the official seal of the authority to the effect that the
9 copies are true copies, and all persons dealing with the
10 authority may rely upon the certificates.

11 G. Meetings of the authority shall be held at the
12 call of the chair or whenever three members shall so request in
13 writing. A majority of members then serving constitutes a
14 quorum for the transaction of any business. The affirmative
15 vote of at least a majority of a quorum present shall be
16 necessary for any action to be taken by the authority. An ex-
17 officio member may designate in writing another person to
18 attend meetings of the authority and to the same extent and
19 with the same effect act in the ex-officio member's stead. No
20 vacancy in the membership of the authority shall impair the
21 right of a quorum to exercise all rights and perform all duties
22 of the authority.

23 H. Each member of the authority shall give bond as
24 provided in the Surety Bond Act. All costs of the surety bonds
25 shall be borne by the authority.

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1 I. The authority is not created or organized, and
2 its operations shall not be conducted, for the purpose of
3 making a profit. No part of the revenues or assets of the
4 authority shall benefit or be distributable to its members,
5 officers or other private persons. The members of the
6 authority shall receive no compensation for their services, but
7 shall be reimbursed for actual and necessary expenses at the
8 same rate and on the same basis as provided for public officers
9 in the Per Diem and Mileage Act.

10 J. The authority shall not be subject to the
11 supervision or control of any other board, bureau, department
12 or agency of the state except as specifically provided in the
13 New Mexico Finance Authority Act or other law. No use of the
14 terms "state agency" or "instrumentality" in any other law of
15 the state shall be deemed to refer to the authority unless the
16 authority is specifically referred to in the law.

17 K. The authority is a governmental instrumentality
18 for purposes of the Tort Claims Act."

19 SECTION 6. Section 6-21-5 NMSA 1978 (being Laws 1992,
20 Chapter 61, Section 5, as amended) is amended to read:

21 "6-21-5. POWERS OF THE AUTHORITY.--Pursuant to the New
22 Mexico Finance Authority Act and other applicable law, the
23 authority is granted all powers necessary and appropriate to
24 carry out and effectuate its public and corporate purposes,
25 including the following powers:

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- 1 A. to sue or be sued;
- 2 B. to adopt and alter an official seal;
- 3 C. to make and alter bylaws for its organization
- 4 and internal management and to adopt, subject to the review and
- 5 approval of the New Mexico finance authority oversight
- 6 committee, such rules as are necessary and appropriate to
- 7 implement the provisions of the New Mexico Finance Authority
- 8 Act;
- 9 D. to appoint officers, agents and employees,
- 10 prescribe their duties and qualifications and fix their
- 11 compensation;
- 12 E. to make, enter into and enforce all contracts,
- 13 agreements and other instruments necessary, convenient or
- 14 desirable in the exercise of the authority's powers and
- 15 functions and for the purposes of the New Mexico Finance
- 16 Authority Act;
- 17 F. to acquire, construct, hold, improve, grant
- 18 mortgages of, accept mortgages of, sell, lease, convey or
- 19 dispose of real and personal property for its public purposes;
- 20 G. to acquire, construct or improve real property,
- 21 buildings and facilities for lease and to pledge rentals and
- 22 other income received from such leases to the payment of bonds;
- 23 H. to make loans, leases and purchase securities
- 24 and contract to make loans, leases and purchase securities;
- 25 I. to make grants to qualified entities to finance

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1 public projects; provided that such grants are not made from
2 the public project revolving fund;

3 J. to procure insurance to secure payment on any
4 loan, lease or purchase payments owed to the authority by a
5 qualified entity in such amounts and from such insurers,
6 including the federal government, as it may deem necessary or
7 desirable and to pay any premiums for such insurance;

8 K. to fix, revise from time to time, charge and
9 collect fees and other charges in connection with the making of
10 loans, leases and any other services rendered by the authority;

11 L. to accept, administer, hold and use all funds
12 made available to the authority from any sources;

13 M. to borrow money and to issue bonds and provide
14 for the rights of the holders of the bonds;

15 N. to establish and maintain reserve and sinking
16 fund accounts to insure against and have funds available for
17 maintenance of other debt service accounts;

18 O. to invest and reinvest its funds and to take and
19 hold property as security for the investment of such funds as
20 provided in the New Mexico Finance Authority Act;

21 P. to employ attorneys, accountants, underwriters,
22 financial advisers, trustees, paying agents, architects,
23 engineers, contractors and such other advisers, consultants and
24 agents as may be necessary and to fix and pay their
25 compensation;

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1 Q. to apply for and accept gifts or grants of
2 property, funds, services or aid in any form from the United
3 States, any unit of government or any person and to comply
4 [~~subject to the provisions of the New Mexico Finance Authority~~
5 ~~Act~~] with the terms and conditions of the gifts or grants;

6 R. to maintain an office at any place in the state
7 it may determine;

8 S. subject to any agreement with bondholders, to:

9 (1) renegotiate any loan, lease or agreement;
10 (2) consent to any modification of the terms

11 of any loan, lease or agreement; and

12 (3) purchase bonds, which may upon purchase be
13 canceled; and

14 T. to do any and all things necessary or convenient
15 to carry out its purposes and exercise the powers given and
16 granted in the New Mexico Finance Authority Act."

17 SECTION 7. Section 6-21-6.11 NMSA 1978 (being Laws 2006,
18 Chapter 89, Section 4) is amended to read:

19 "6-21-6.11. RURAL COUNTY CANCER TREATMENT FUND CREATED--
20 PURPOSE--APPROPRIATION.--The "rural county cancer treatment
21 fund" is created in the [~~New Mexico finance~~] authority. The
22 fund is [~~comprised~~] composed of appropriations, donations,
23 distributions pursuant to Section 7-1-6.11 NMSA 1978 and money
24 earned from investment of the fund and otherwise accruing to
25 the fund. Money in the fund is appropriated to the [~~New Mexico~~

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1 ~~finance]~~ authority to provide a revenue stream to finance the
2 construction of cancer treatment facilities in class B
3 counties. Balances remaining in the fund at the end of a
4 fiscal year shall not revert. The ~~[New Mexico finance]~~
5 authority shall administer the fund, and money from the fund
6 may be drawn only on warrants signed by the ~~[executive director~~
7 ~~of the New Mexico finance authority]~~ secretary of finance and
8 administration pursuant to vouchers signed by the chief
9 executive ~~[director]~~ officer of the authority or the chief
10 executive officer's designee."

11 SECTION 8. Section 6-21-6.13 NMSA 1978 (being Laws 2008,
12 Chapter 91, Section 2) is amended to read:

13 "6-21-6.13. METROPOLITAN COURT BOND GUARANTEE FUND.--

14 A. The "metropolitan court bond guarantee fund" is
15 created in the authority. The fund is ~~[comprised]~~ composed of
16 appropriations, donations, transfers pursuant to Section
17 3-18-17 NMSA 1978 and money earned from investment of the fund
18 and otherwise accruing to the fund. Money in the fund is
19 appropriated to the authority as a credit enhancement to the
20 distributions from the court facilities fund in order to
21 guarantee and secure the payment of principal, interest,
22 premiums and expenses on bonds issued pursuant to Section
23 34-9-16 NMSA 1978 and Laws 2000, Chapter 5, Section 2.
24 Balances remaining in the fund at the end of a fiscal year
25 shall not revert. The authority shall administer the fund, and

.191261.4SA

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1 money from the fund may be drawn only on warrants signed by the
2 [~~chief executive officer of the authority~~] secretary of finance
3 and administration pursuant to vouchers signed by the chief
4 executive officer of the authority or the chief executive
5 officer's designee.

6 B. Before each due date for payments of principal,
7 interest, premiums or expenses on bonds issued pursuant to
8 Section 34-9-16 NMSA 1978 and Laws 2000, Chapter 5, Section 2,
9 the authority shall determine if the distributions from the
10 court facilities fund will be sufficient to meet the amount
11 due. If the authority determines that distributions from the
12 court facilities fund are not sufficient to meet the total
13 amount due, any insufficient amount shall be paid immediately
14 from the metropolitan court bond guarantee fund. After each
15 due date for a payment on the bonds, the authority shall
16 determine the amount necessary to reserve in the metropolitan
17 court bond guarantee fund as security for future payments and
18 transfer any balance, above the amount reserved, to the traffic
19 safety bureau of the department of transportation. The amounts
20 transferred are appropriated to the bureau for expenditure on
21 statewide efforts to prevent or reduce incidents of driving
22 while intoxicated.

23 C. Upon payment of all principal, interest,
24 premiums and expenses on bonds guaranteed and secured by
25 amounts in the metropolitan court bond guarantee fund, the

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1 authority shall certify to the administrative office of the
2 courts that all obligations for bonds have been fully
3 discharged. Upon the certification, the director of the
4 administrative office of the courts shall cease transferring
5 amounts to the metropolitan court bond guarantee fund and
6 transfer those amounts to the traffic safety bureau of the
7 department of transportation. Such amounts are appropriated to
8 the bureau for the purposes specified in Subsection B of this
9 section."

10 SECTION 9. Section 6-21-21 NMSA 1978 (being Laws 1992,
11 Chapter 61, Section 21, as amended) is amended to read:

12 "6-21-21. MONEY OF THE AUTHORITY--EXPENSES--AUDIT--
13 ANNUAL REPORT.--

14 A. All money of the authority, except as otherwise
15 authorized or provided in the New Mexico Finance Authority Act
16 or in a bond resolution, trust indenture or other instrument
17 under which bonds are issued, shall be deposited as soon as
18 practical in a separate account or accounts in banks or trust
19 companies organized under the laws of this state. All deposits
20 of money shall be secured, if required by the authority, in
21 such a manner as the authority determines to be prudent. Banks
22 or trust companies are authorized to give security for deposits
23 of the authority.

24 [~~B. Subject to the provisions of any contract with~~
25 ~~bondholders, the authority shall prescribe a system of~~

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1 ~~accounts.~~

2 ~~G.]~~ B. Money held by the authority that is not
3 needed for immediate disbursement, including [~~any funds~~] money
4 held in reserve, may be deposited with the state treasurer for
5 short-term investment pursuant to Section 6-10-10.1 NMSA 1978
6 or may be invested in direct and general obligations of or
7 obligations fully and unconditionally guaranteed by the United
8 States, obligations issued by agencies of the United States,
9 obligations of this state or any political subdivision of the
10 state, interest-bearing time deposits, commercial paper issued
11 by corporations organized and operating within the United
12 States and rated "prime" quality by a national rating service,
13 other investments permitted by Section 6-10-10 NMSA 1978 or as
14 otherwise provided by the trust indenture or bond resolution,
15 if the [~~funds are~~] money is pledged for or [~~secure~~] secures
16 payment of bonds issued by the authority.

17 ~~D.]~~ C. The authority shall have an audit of its
18 books and accounts made at least once each year by the state
19 auditor or by a certified public accounting firm whose proposal
20 has been reviewed and approved by the state auditor. The cost
21 of the audit shall be an expense of the authority. Copies of
22 the audit shall be submitted to the governor and the New Mexico
23 finance authority oversight committee and made available to the
24 public.

25 ~~E.]~~ D. The authority shall submit a report of its

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1 activities to the governor and to the legislature not later
2 than December 1 of each year. Each report shall set forth a
3 complete operating and financial statement covering its
4 operations for that year."

5 SECTION 10. Section 13-1-90 NMSA 1978 (being Laws 1984,
6 Chapter 65, Section 63) is amended to read:

7 "13-1-90. DEFINITION--STATE AGENCY.--"State agency" means
8 any department, commission, council, board, committee,
9 institution, legislative body, agency, government corporation,
10 educational institution or other unit, including the New Mexico
11 finance authority, or official of the executive, legislative or
12 judicial branch of the government of this state. "State
13 agency" includes the purchasing division of the general
14 services department and the state purchasing agent but does not
15 include local public bodies."

16 SECTION 11. Section 13-1-99 NMSA 1978 (being Laws 1984,
17 Chapter 65, Section 72, as amended) is amended to read:

18 "13-1-99. EXCLUDED FROM CENTRAL PURCHASING THROUGH THE
19 STATE PURCHASING AGENT.--Excluded from the requirement of
20 procurement through the state purchasing agent but not from the
21 requirements of the Procurement Code are the following:

- 22 A. procurement of professional services;
- 23 B. small purchases having a value not exceeding one
24 thousand five hundred dollars (\$1,500);
- 25 C. emergency procurement;

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- 1 D. procurement of highway construction or
2 reconstruction by the department of transportation;
- 3 E. procurement by the judicial branch of state
4 government;
- 5 F. procurement by the legislative branch of state
6 government;
- 7 G. procurement by the boards of regents of state
8 educational institutions named in Article 12, Section 11 of the
9 constitution of New Mexico;
- 10 H. procurement by the state fair commission of
11 tangible personal property, services and construction under
12 twenty thousand dollars (\$20,000);
- 13 I. purchases from the instructional material fund;
- 14 J. procurement by all local public bodies;
- 15 K. procurement by regional education cooperatives;
- 16 L. procurement by charter schools;
- 17 M. procurement by each state health care
18 institution that provides direct patient care and that is, or a
19 part of which is, medicaid certified and participating in the
20 New Mexico medicaid program; [~~and~~]
- 21 N. procurement by the public school facilities
22 authority; and
- 23 O. procurement by the New Mexico finance
24 authority."

25 SECTION 12. TEMPORARY PROVISION.--If the secretary of

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1 finance and administration determines, in consultation with the
2 New Mexico finance authority, that the implementation of any
3 provisions of this act would unconstitutionally impair the New
4 Mexico finance authority's existing agreements with
5 bondholders, implementation shall be delayed as necessary to
6 avoid such impairment. The secretary of finance and
7 administration shall report any delay in implementation to the
8 New Mexico finance authority oversight committee.