F I S C A L   I M P A C T   R E P O R T

SPONSOR Lundstrom/ Gonzales/Trujillo/ Powdrell-Culbert /Sanchez **ORIGINAL DATE** 2/6/19 **LAST UPDATED** ____ **HB** 286

SHORT TITLE Public-Private Partnerships Act **SB** ____

ANALYST Valenzuela

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY19	FY20		
	See fiscal implications		

(Parenthesis ( ) Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY19	FY20	FY21		
	$250.0	$250.0	Recurring	NMFA Operating
	$1,000.0	$1,000.0	Recurring	P3 Fund

(Parenthesis ( ) Indicate Revenue Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY19	FY20	FY21	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		($250.0)	($250.0)	($500.0)	Recurring	NMFA Operating

(Parenthesis ( ) Indicate Expenditure Decreases)

SOURCES OF INFORMATION
FY20 LFC Appropriation Recommendation

Responses Received From
Energy, Minerals and Natural Resources Department (EMNRD)
New Mexico Municipal League (NMML)
New Mexico Attorney General (NMAG)
General Services Division (GSD)

SUMMARY

Synopsis of Bill

House Bill 286 creates the Public Private Partnerships Act, providing legal authority for governmental entities to enter into long-term agreements with private entities to finance, design, build, operate or maintain government-owned assets. The bill creates a Public Private Partnership (PPP or P3) Board, staffed by the New Mexico Finance Authority (NMFA), who would have the authority to approve PPP agreements, which comply with a set of guardrails intended to ensure the public interests are met through the agreement.

HB286 provides authority for the NMFA to participate in the financing of the P3 agreements through a P3 Project Fund, established by the bill. The bill includes standard language allowing the NMFA to issue revenue bonds as a form of financing of these projects, and explicitly ensures any bonds issued for these projects are not an obligation of the state.

HB286 is endorsed by the Legislative Finance Committee.

FISCAL IMPLICATIONS

House Bill 286 does not contain an appropriation. However, the FY20 LFC Appropriation Recommendation includes $40 million for a public-private partnership fund, which would allow NMFA to participate in the project financing.

Enactment of HB286 will provide NMFA an opportunity to cover any of its costs associated with staffing the P3 Board, principally the due diligence responsibility required prior to approval of a P3 partnership agreement. The estimate is $250 thousand of operating costs, which would be recouped by the NMFA, given its ability to charge back to the P3 fund (Section 6, Subsection E).

Additionally, the bill provides for NMFA's ability to earn a rate of return, commensurate with the risk, on project financing. Assuming a 5 percent annual return, NMFA could earn $2 million from interest earnings annually.

SIGNIFICANT ISSUES

New Mexico is often overlooked for private-sector investments in public infrastructure. More than 35 states have laws governing the use of public-private partnerships. New Mexico is not one of them. House Bill 286 provides the statutory framework for these opportunities and includes guardrails to ensure the P3 agreements are completed in the public's interest.

Rather, public-private partnerships have been completed throughout New Mexico on an ad-hoc basis with mixed results. Oversight of projects is left to a governing body that is a party to the agreement, which in some cases may not have the staff or expertise to fully analyze long-term financial obligations of the public-private partnership agreements.

P3 agreements are complex. The agreements define terms and conditions for the design, construction, financing, and operation on a long-term basis of these assets. Enactment of the bill would provide governmental entities and private developers with a clear transparent set of guidelines, under which these partnerships can operate to ensure the public's interests are served. The definitions in the bill provide the primary constraints: types of public assets allowed, the allowable players in the transactions, the length of the agreements, and the disposition of the assets.

Section 8 provides the guardrails: (1) threshold test: each project must meet a "but for" test to ensure that existing governmental processes are not sufficient to undertake the project efficiently or economically; (2) life-cycle cost: each project must provide a cost-benefit analysis of the expected life-cycle cost of the proposed project compared with the project developed under conventional government processes; (3) public input: each project must demonstrate support locally by having held public hearings and received support from local governmental bodies; (4) competition: each project must demonstrate it has entered into the agreement by selecting private partners through a competitive process; and (5) cost: each project must outline clearly the cost to the state from upfront transactional fees, availability or debt payments, any revenue sharing agreements, the financing costs, and any other costs associated with the project startup or operation.

NMFA would be authorized to staff the public-private partnership board and provide due diligence of the agreements, providing a common review to any agreements coming before the public-private partnership board. NMFA staff would promulgate rules, which would outline the process for approving agreements, the underwriting criteria for approving financial participation, and the policy constraints for the public-private partnership agreements. Additionally, the board would be required to provide oversight of the projects and report to the legislature annually.

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