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FISCAL IMPACT REPORT

SPONSOR <u>HJC</u>	LAST UPDATED _____
	ORIGINAL DATE <u>2/27/30</u>
SHORT TITLE <u>Public-Private Partnerships Act</u>	BILL NUMBER <u>CS/House Bill 213/HJCS</u>
	ANALYST <u>Graeser</u>

REVENUE* (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY23	FY24	FY25		
	No Revenue Impact	No Revenue Impact		General Fund
	P3 Board Authorized to impose and collect administrative fee to cover costs		Recurring	P3 Fund

Parentheses () indicate revenue increases.
*Amounts reflect most recent version of this legislation.

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT* (dollars in thousands)

	FY23	FY24	FY25	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
NMFA		350.0	350.0	700.0	Recurring	P3 Fund
DoIT		Depends on uptake for Internet Infrastructure, but could be significant				General Fund

Parentheses () indicate expenditure decreases.
*Amounts reflect most recent version of this legislation.

Sources of Information

LFC Files

Responses Received From

New Mexico Attorney General (NMAG) on original bill
 General Services Department (GSD) on original bill
 Department of Information Technology (DoIT) on original bill
 New Mexico Finance Authority (NMFA) on original bill
 Department of Transportation (DOT) on original bill
 Economic Development Department (EDD) on original bill

No Response Received

New Mexico Spaceport Authority
 Border Authority

SUMMARY

Synopsis of HJC Committee Substitute for House Bill 213

House Judiciary Committee substitute for House Bill 213 would enact the Public-Private Partnership Act. HB213/HJCCS adds authority for the board to impose and collect administrative fees, provides that any meetings of the board are subject to the Open Meetings Act and must allow public attendance and testimony, clarifies that the protection of proprietary information (Section 3(D)(12)) is limited when the information is needed for operations and maintenance by the public entity or for public health and safety and provides a pledge not to impair any P3 bonds sold. The New Mexico Attorney General prepared the following synopsis of the original bill, with the above four items separately noted:

HB213 would enact the Public-Private Partnership Act, allowing the state, its political subdivisions, instrumentalities, and institutions, as well as other public bodies, to enter into “arrangements” - through “public-private partnership agreements” or contracts - with private business entities including nonprofit corporations, for the development of public projects relating to public transportation facilities or public transportation infrastructure and broadband telecommunications network facilities.

HB213 would create an 11-member “public-private partnership board” to (1) review and consider for approval proposed public-private partnership agreements for public projects with individual costs in excess of \$10 million; (2) certify the need for the issuance of revenue bonds and refunding bonds by the New Mexico Finance Authority (NMFA); (3) determine the use of a public-private partnership agreement and ensure that the proposed funding mechanism was a prudent expenditure of public funds; and (4) make recommendations for approval to the NMFA of public projects seeking grants or loans from the public-private partnership project fund. The public-private partnership board would be required to provide an annual report, beginning December 1, 2023, to the governor and NMFA’s oversight committee including the number of grant and loan applications received, public-private partnership agreements approved and the status of the fund, among other things. [LFC note: HB213/HJCCs requires the meetings of the board to be open to the public and subject to the open meetings act.]

The Public-Private Partnership Act would create a non-reverting “public-private partnership project fund” within NMFA. The fund would consist of appropriations, payments of principal and interest on loans made from the fund, income from investment of the fund, and any other money distributed or otherwise allocated to the fund. NMFA would be authorized to make loans and grants from the public-private partnership project fund for public projects that have been recommended for approval by the public-private partnership board, and upon certification by the board, issue revenue bonds and refunding bonds in accordance with the provisions of HB213. [LFC note: the board is authorized to impose and collect administrative fees to cover its costs in reviewing and approving or disapproving a public-private partnership agreement:]

The Public-Private Partnership Act also contains a public “transparency” provision. Under Section 3(B) of HB213, before entering into negotiations on a public-private partnership agreement to implement a proposed public project, the public partner would publish notice of its interest in considering such an agreement for three successive weeks in a newspaper of general circulation published in the county where the public partner is located, and in the county where the proposed project will be constructed, if different, as well as post the same notice of interest on the public partner’s website, if it has one.

The public partner would have to perform a cost-benefit comparison of the public-private partnership project to a traditionally procured public project, include a determination as to whether there would be any delay or cost increase in procuring the project in accordance with the Procurement Code, and hold a public meeting on the proposed public project. The public partner would have to demonstrate the proposed public project serves an “important public purpose” and serves an “important public need” and that the project complies with applicable Federal and State laws.

The public-private partnership agreement would require the private partner to provide guarantees, letters of credit or other acceptable forms of security, and the contract between the parties would have to specify how the revenue would be collected, and debts incurred on behalf of the public partner or private partner would be repaid.

Under Section 7(C)(1) of HB213, money in the public-private partnership project fund may be used to provide loans for financing a public project through a public-private partnership agreement, if among other things, the private partner provided funds matching the public partner’s monetary obligation for the public-private partnership agreement.

In the event of a default on the public-private partnership agreement, the public partner could elect remedies under the Public-Private Partnership Act: take over the public project and all rights, title, and interest in the same, subject to any outstanding liens or financial obligations, or elect to terminate the partnership, and the more nebulous remedy, “exercise any other rights and remedies that may be available.”

Section 11 of HB213, consistent with the New Mexico Constitution, provides that all bonds or other obligations issued pursuant to the Public-Private Partnership Act are payable solely from revenues from NMFA that may be pledged to the payment of such obligations, and the bonds or other obligations may not create an obligation, debt or liability of the state or any of its political subdivisions.

[LFC note: Section 12 of HB213/HJCCS, consistent with the New Mexico Constitution, provides a pledge that the state will take no action to impair the P3 bonds issued by the P3 board.]

The effective date of the act, if enacted, would be July 1, 2023. The provisions of the bill relating directly to the act would be sunset, with a delayed repeal date of July 1, 2033. The addition of public-private partnership (P3) projects to the exceptions from the Procurement Code, however, would not be repealed.

FISCAL IMPLICATIONS

GSD notes no fiscal impact to the agency but includes the GSD Secretary or designee on the public-private partnership board.

DoIT notes: “...if the Office of Broadband Access and Expansion (OBAE) pursues any public-private partnership agreements, the office will face administrative costs in complying with all the requirements set forth in the bill and in reporting to the P3 board. OBAE typically has 10 contracts at any given time. Administrative costs to OBAE are therefore estimated to be approximately \$32 thousand annually [based upon 80 hours worked at \$48 per hour over 10

contracts per year].”

As the executive agency with the most assigned duties pursuant to the provisions of the bill, NMFA reports significant operating budget impacts:

HB213 creates the Public-Private Partnership Act [which] establishes the public-private partnership board ... and the public-project partnership project fund allows the state and local governments to enter into partnership agreements with private entities for public projects and attaches the Board and the Fund to NMFA. NMFA is to provide staff support to the Board, administer the fund, develop grant and loan application forms, make loans and grants recommended by the Board, promulgate rules for issuing revenue and refunding bonds, issue bonds, charge fees as appropriate, be compensated from the fund as appropriate, and take all necessary actions to implement the act.

The bill authorizes NMFA to make study grants up to \$75 thousand and infrastructure loans from the fund to public projects with total costs in excess of \$10 million that are recommended by the Board. The fund may only make grants and loans to public partners, which includes Tribal entities, and requires annual reports, starting on December 1, 2023. HB213 also amends Section 13-1-98 of the State’s Procurement Code by exempting “agreements and contracts entered into pursuant to the act.

HB213 does not contain an appropriation to capitalize the fund; as such there is no basis for estimating revenue. NMFA estimates start-up costs and operating costs to be approximately \$350 thousand per year.

DOT notes: “... If HB213 was enacted, DOT would consider use of a P3 project and sources of private funding when evaluating available project delivery methods and timelines. DOT would also consider P3 project criteria, once developed by the P3 Board and NMFA, in the development of or improvements to transportation facility or infrastructure projects.

SIGNIFICANT ISSUES

GSD notes: “...The bill would allow procurements outside the Procurement Code. It would allow unsolicited offers from private parties for projects. This could invite favoritism if the competitive proposal/bid process is eliminated from the procurement process. The act provides little guidance regarding competitive procurement process, only that notice of interest in a newspaper published in the public partner’s county and website.”

GSD also notes: “...It appears both public and private parties will share the responsibility for management and risks associated with the project but liability and the burden for cost of defense is not specified. For example, it is unclear what happens if the private entity goes out of business and cannot pay liabilities for its actions.” [LFC note: Section 3(D)(4) and (5) provide for performance bonds and guarantees or letters of credit as a means of protecting the public interest.]

DoIT contributes:

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, but New Mexico does not. HB213 provides the statutory framework to ensure the projects are developed in the public’s interest.

The oversight of public-private partnerships 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.

Section 3(D)(12) provides that a public partner shall provide for the protection of proprietary information of the private partner, except as this information is needed for operations and maintenance by a public entity or for public health and safety. This subsection is ambiguous (proprietary information, for instance, is not defined in the bill) and in conflict with the Inspection of Public Records Act. [LFC note: HB213/HJCCS addressed a portion of this issue in modifying that section.]

Enactment of the bill would provide governmental entities and private partners with a transparent set of guidelines, under which these partnerships can operate to ensure the public's interests are served. The P3 Board will be responsible for promulgating rules to implement the act, which would have significant discretion to expound on the definitions, processes, and requirements of an agreement.

NMFA points out this P3 framework could be expanded to other projects besides road projects and internet infrastructure:

HB213 structures the P3 framework so that, with future legislation, the structure could be utilized beyond public transportation projects and broadband projects. While transportation projects are a focus of P3s nationwide, New Mexico tends to lack the transportation density necessary to underpin most P3 transportation projects. P3 transportation projects may also be dependent on New Mexico Department of Transportation priorities. Broadband, and technology in general, offers greater opportunity for P3 partnerships as technology need not be as population density dependent as public transportation projects tend to be.

Potential public partners are attracted to states that have clear P3 rules and laws in place; it is estimated that approximately 90 percent of states have established laws governing public-private partnerships. New Mexico lags and is overlooked by private sector investors in public infrastructure due to the lack of an effective framework allowing for public-private partnership agreements, and not enacting this bill may cause potential private partners to bypass New Mexico with otherwise viable P3 projects.

DOT notes: "...Public partners may be able to shift a portion of the risks of design, construction, and financing of a qualifying project to the private sector in exchange for the public partner's long-term obligations under the P3 agreement."

ADMINISTRATIVE IMPLICATIONS

DoIT expresses some concerns about the administrative impacts of the provisions of this bill:

Prior to entering into negotiations regarding the use of a public-private partnership agreement as a method of implementing a proposed public project, the public partner shall publish a notice of its interest three weeks in advance of considering such an Agreement. HB213 outlines guardrails, or protections of the public interest in projects: (1) Each project must provide a cost-benefit analysis comparing the proposed project with the project, if developed under conventional government processes. (2) Each project must demonstrate support locally by having held public hearings and received support

from local governmental bodies. (3) Each project must outline the procurement process for the project. (4) Each project must have met applicable state and federal laws such as those for environmental protection, employment and financing.

If the public-private partnership rules in HB213 are applied to any contract that the Office of Broadband Access and Expansion (OBAAE) accepts, the office will face significant administrative costs in assuring compliance with all the safeguards and in reporting to the P3 board.

DOT comments:

...HB213 requires DOT to participate on the P3 governing board. DOT's participation in rulemaking activities, review of grant and loan applications, and approval of certain P3 project agreements may be similar to its participation on other joint-agency programs. At this time, as noted above, DOT cannot estimate the administrative impact of this activity.

DOT notes a public partner will have continuing project oversight obligations concerning the administration of the P3 agreement, as well as ongoing operations and maintenance obligations for the P3 project once construction is complete, which may require use of dedicated FTE for the life of each project.

EDD seems to support the provisions:

This bill is wide ranging in the activities that could be supported by P3s. One of the key issues this bill addresses as compared to previous versions is the inclusion of minimum wage thresholds for public private partnerships.

This bill provides for protection of proprietary and confidential information, yet it does not clearly define how that is achieved and could be in conflict with IPRA requirements.

The intent of this bill is clear to allow for a path forward for public entities to address infrastructure issues in critical and key areas where a private partnership could in fact reduce time to completion, which would ultimately lead to saving especially in today's inflationary and supply change issues. However, this bill amends the New Mexico Procurement Code to exempt agreements and contracts entered into pursuant to the Public-Private Partnership Act, Section 13-1-98 NMSA 1978. The express purposes of the "Procurement Code are to provide for the fair and equitable treatment of all persons involved in public procurement, to maximize the purchasing value of public funds and to provide safeguards for maintaining a procurement system of quality and integrity." This bill may be in conflict with the New Mexico Procurement Code and may need further clarification.

P3 legislation is fairly common across the United States and has been successfully implemented in many cases, most notably close to home the expansion and completion of the Denver International Airport. New Mexico's sparse population and limited users may hinder some projects however this type of legislation could well provide the impetus to bring key infrastructure especially in the broadband world to small rural areas of New Mexico.

PERFORMANCE IMPLICATIONS

Performance will be driven by P3 activity. Given the anticipated initial limited level of P3 activity, performance in operating the P3 program should not be an issue.

ADMINISTRATIVE IMPLICATIONS

NMFA will be taking on additional administrative responsibilities in servicing a new Board and in managing the fund. ~~Without an appropriation to the fund, NMFA will not have a source of capital to cover its administrative costs associated with operating the Board and approving and monitoring P3 agreements which continue under the bill even if loans and grants are never made. Language relating to issuing revenue or refunding bonds needs to be the most precise, given Federal oversight of municipal bonds. Bonding language in the Act is sufficient for its purposes, although bond impairment language would be beneficial (see proposed amendment, below).~~ NMFA anticipates passage of HB213 would require NMFA to hire specialized contractors and additional staff to support the compliance monitoring of public-private partnership agreements. [LFC note: HB213/HJCCS provides for an administrative fee to allow NMFA and the P3 board to cover the costs of reviewing and approving or rejecting proposals. The bill also includes an explicit pledge not to take any action to impair P3 bonds.]

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

NMAG notes the provisions of this bill generally relate to Senate Bill 76, which proposes to amend the Procurement Code.

Public Private Partnerships (PPPs or P3s) have been proposed many times over the last four years:

- 2019 HB286
- 2019 HB534
- 2020 HB264
- 2020 SB59
- 2021 SB143
- 2022 HB55
- 2022 HB227
- 2022 HB228

The house Judiciary Committee Substitute for House Bill 55 of the 2022 session is virtually identical with the original bill except for updating various dates. The HJC changes, responding to agency comments, are new.

TECHNICAL ISSUES

NMAG notes: "...section 3(D)(12) of HB 213 would require a public-private partnership agreement to "provide for the protection of proprietary information of the private partner, except as that information is needed for operations and maintenance by a public entity or for public health and safety." Under NMSA 1978, § 14-2-1 (2019) of the Inspection of Public Records Act, every person has a right to inspect the public records of a public body, the definition of which term includes many, if not all, of the "public partners" defined in the singular in Section 2(E) of HB 213. This could create some confusion as to the confidentiality of the 'proprietary information of the private partner.'" [HJC note: HB213/HJCCS addresses a portion of this issue

clarifying that the protection of proprietary information (Section 3(D)(12)) is limited when the information is needed for operations and maintenance by the public entity or for public health and safety.”

GSD provided an extensive list of issues and questions:

The cost-benefit analysis does not contain a standard to compare with traditional public projects, and terms such as “delay” and “increase the cost” (p4, Sec. 3.C.2) are undefined. Provisions for termination of the agreement are required under (p7, Sec. 3.D.14) but “transition” provisions for reversion or to another private partner are not specified. A copy of the agreement to the board is required but no publication on the NM Sunshine Portal is necessary (p7, Sec. 3.F). Private partners shall provide matching funds for the public partner’s cost of the cost benefit study. Is this done prior to the agreement? How does this influence the private partner selection and is the funding “donated” to the public if the project is not approved (p12, Sec. 7.B)? What is the “action necessary to approve” the agreement (p12, Sec. 7.C.2)? Is there a requirement to competitively procure a commercial bank (p14, Sec. 9.D)? Should the annual report include the status of the projects (p19, Sec. 12)?

There is no mechanism for the resolution of public-private disputes (e.g., mediation, arbitration, or direct court action). Examples of disputes include the performance of respective public-private duties, what happens when a bond default occurs, who pays for attorney representation, and what mechanism is used for valuation of the project if a buy out of the private entity is necessary (because of default, withdrawal, dissolved, bankrupt, merger, etc.)

It is unclear how agreements would prioritize federal funding requirements if federal funds are used in the project.

The Act is a complex procurement method that requires expertise not currently existing in most government entities.

‘Broadband telecommunications network facilities’ is defined to include a list of items, including “transmission facilities” (p2). The latter is undefined and could reasonably be interpreted to include anything from buildings and real property to only transmission structures, e.g., towers. Clarification would be helpful.

‘Broadband telecommunications network facilities’ as defined provides that all of the listed items “will be owned and used by a provider of internet access services”(p2). It is unclear whether this is intended to be a substantive provision or merely a part of the definition.

‘Public partner’ includes “political subdivisions” (p2). The latter is not defined. This term is not consistently used throughout the NMSA. This may invite confusion.

‘Public project’ is defined to include a “public transportation facility” (p3). It is unclear what that term includes. The bill provides (p3):

H. "public project" means:

(1) the construction or improvement of a public transportation facility or public transportation infrastructure other than a toll road; or

(2) public construction or improvement of broadband telecommunications network facilities;

It is unclear why (1) says “the construction or improvement...”, but (2) says “*public* construction or improvement...” Is there a substantive reason for the difference? Courts are required to give every word in a statute meaning.

Section 5 (p9) sets forth the powers of the Public Private Partnership Board. They include the power to “make recommendations for approval” of project to NMFA. Section 6 (p10) provides that the Authority “shall” make loans or grants “for public projects that *have been recommended* for approval by the board...” It is unclear which entity actually *approves* the project. If the Board can only “recommend” approval to the Authority, but the Authority “shall” make loans or grants for every project “recommended for approval”, it appears that the Board has absolute authority to approve projects as a practical matter.

Section 7, subsection E (p12) provides for loans and grants to Indian Nations, tribes and pueblos. The grant or loan application must be “recommended” by the Board and “approved” by the Authority. As noted above, Section 6 provides that the Authority “shall” make loans and grants for projects that have been “recommended” by the Board. It is unclear who has the ultimate approval authority.

DOT also has some technical concerns:

HB213 could be more clearly drafted to express the intent of the Act is to provide an alternative public project delivery method, available for use at the discretion of a public entity. This change may eliminate any confusion that the P3 process would be mandatory for public entity use. See suggested “Amendment No. 1” below.

HB213 could be amended to clarify P3 partnerships are intended for use on public projects, the use of which generate user fees or other recurring operational revenue. This change may help to address a concern that all opportunities to use private funding for any public project development or construction would be subject to the P3 process. See suggested “Amendment No. 2” below.

HB213 includes a deferred repeal of the P3 Act, Sections 1 to 13, but does not apply the repeal to Section 14, the exception to the Procurement Code, or to Section 15, investment authority granted to NMFA for the P3 Project Fund. In the event the P3 Act is repealed through the sunset provision, there would be no continuing need for either the exception or the investment authority.

HB213 does not address whether approved P3 projects may continue after the effective date of the delayed repeal of the act.

SUPPLEMENTAL LEGAL ANALYSIS

In its review of 2022 HB55/HJCCS, LFC staff prepared the following legal analysis. Since the original bill was virtually identical, the analysis is still current. References to dates and bill numbers have been updated.

This substitute bill contains a delayed repeal date of July 1, 2033. Because this is a relatively new provision in the state, it is appropriate and important for the Legislature to review the issue after a few years to determine if there should be more guardrails established. NMFA notes that after July 1, 2033 delayed repeal of sections 1 through 14, there may be no continuing need for the exception to the Procurement Code in Section 16 of the bill or with the investment authority granted to NMFA/PPRF in Section 15.

Tort Claims Issues:

HB213/HJCCS provides for the merging of public and private partners into public-private partnerships, under public-private partnership agreements. Section 41-4-4 NMSA 1978 grants public entities and employees immunity from liability for tort claims except as waived under the New Mexico Religious Freedom Restoration Act [[28-22-1](#) to [28-22-5](#) NMSA 1978] or the Tort Claims Act.

Section 41-4-8(A) NMSA 1978 states in part that immunity: “does not apply to liability for damages resulting from bodily injury, wrongful death or property damage caused by the negligence of public employees while acting within the scope of their duties in the operation of the following [enumerated] public utilities....”

Section 41-4-8(B) NMSA 1978 states: “The liability imposed pursuant to Subsection A of this section shall not include liability for damages resulting from bodily injury, wrongful death or property damage: (1) caused by a failure to provide an adequate supply of gas, water, electricity or services as described in Subsection A of this section; or (2) arising out of the discharge, dispersal, release or escape of smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, liquids or gases, waste materials or other irritants, contaminants or pollutants into or upon land, the atmosphere or any watercourse or body of water.”

HB213/HJCCS presents a potential issue as to whether this creation of a public-private partnership under public-private partnership agreement nullifies the immunity otherwise available to public utilities, entities and employees under the New Mexico Tort Claims Act.

Indian Sovereignty Issues:

HB213/HJCCS Section 5(I). “take all other action necessary to implement the Public-Private Partnership Act, including entering into joint powers agreements with any other public sector partner or Indian nation, tribe or pueblo and retaining legal counsel and experts when appropriate.

HB213/HJCCS Section 7(E) provides for a grant or loan of money in the public-private partnership fund to an: “Indian nation, tribe or pueblo that has entered into a public-private partnership with a private partner for the development of a public project” under enumerated conditions.

In *Hamaatsa, Inc. v. Pueblo of San Felipe*, 2017-NMSC-007, 388 P.3d 977, the court held that dismissal was proper under: “the unequivocal precedent of the United States Supreme Court [which] declares only two exceptions to tribal sovereign immunity—the tribes’s waiver of immunity or congressional authorization—neither of which exists in the instant case.”

See also: Update of Selected Studies in Transportation Law, <https://www.nap.edu/catalog/25514/update-of-selected-studies-in-transportation-law-volume-8-section-3-indian-transportation-law>; &

https://www.nap.edu/cart/download.cgi?record_id=25514&file=42-46:

“Sovereign immunity ... extends to commercial activities off of Indian lands and can only be waived by the tribe or Congress”, citing *Michigan v Bay Mills Indian Community*, 134 S. Ct. 2024, 188 L. Ed. 2d `071 (2014).

Under this precedent, tribal sovereign immunity can only be expressly waived by an authorized member of the Indian nation, tribe or pueblo; or by a Congressional waiver. If not waived, tribal sovereign immunity will apply to judicial actions taken against said entities.

An express waiver of tribal sovereign immunity should therefore be included in HB213, and in any related legislation (and agreements) involving the Indian nation, tribe or pueblo in order to preserve the state’s pursuit of default and other contract remedies.

Procurement Code Issues:

HB213(14)(HH) amends the New Mexico Procurement Code to exempt agreements and contracts entered into pursuant to the Public-Private Partnership Act Section 13-1-98 NMSA 1978. The express purposes of the: “Procurement Code are to provide for the fair and equitable treatment of all persons involved in public procurement, to maximize the purchasing value of public funds and to provide safeguards for maintaining a procurement system of quality and integrity.” Section 13-1-29(C), NMSA 1978; *Planning & Design Solutions v. City of Santa Fe*, 1994-NMSC-112, 118 N.M. 707, 885 P.2d 628. In *Planning & Design Solutions v. City of Santa Fe*, the Court held that Santa Fe had violated the Procurement Code and found that: “Of all the interests involved in competitive bidding, the public interest is the most important. [citation omitted]. An economical and efficient system of procurement directly benefits taxpayers. [citation omitted]. Through competitive bidding the municipality hopes to obtain the best product at the best price. [citation omitted]. Thus, the Code protects against the evils of favoritism, nepotism, patronage, collusion, fraud, and corruption in the award of public contracts. [citation omitted]. It is certainly in the public interest that the City abide by the procurement rules it has set for itself.”

The suggested amendment proposed under HB213 Section 16(HH) may be found to violate the purposes and protections of the New Mexico Procurement Code.

OTHER SUBSTANTIVE ISSUES

NMAG notes: “...section 7(E) of HB213 provides that money in the public-private partnership project fund may be used for grants or loans to an Indian nation, tribe or pueblo that has entered into a public-private partnership with a private partner for the development of a public project. The question of an Indian nation, tribe or pueblo’s waiver of sovereign immunity likely would arise if any of the remedies on default of obligations, financial or otherwise, under the public-private partnership agreement were sought to be exercised. Tribal sovereign immunity can be waived one of two ways: Congress can expressly abrogate tribal sovereign immunity through legislation, or tribes can waive immunity through an express and unequivocal waiver. *See, e.g., Mendoza v. Isleta Resort & Casino*, 2020-NMSC-006, ¶ 18, 460 P.3d 467, 473.”

PROPOSED AMENDMENTS

NMDOT suggests the following amendments to HB213, as discussed in “Technical Issues.”

1 Amend Section 2(F) as follows:

F. “public-private partnership” means an arrangement between one or more public partners and one or more private partners for the development of a public project that generates user fees, pursuant to the Public-Private Partnership Act.”

Other amendments might be suitable to address the issues identified by GSD.

LG/al/ne