LFC Requester:	Cally Carswell

AGENCY BILL ANALYSIS - 2025 REGULAR SESSION

WITHIN 24 HOURS OF BILL POSTING, UPLOAD ANALYSIS TO
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(Analysis must be uploaded as a PDF)

SECTION I: GENERAL INFORMATION

{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}

Date Prepared: *2/8/25*
Bill Number: *HB 276*

Check all that apply:
Original *X* Correction __
Amendment __ Substitute __

Sponsor: Joy Garratt, Patricia A. Lundstrom, Cathrynn N. Brown, Michael Padilla, Art De La Cruz

Short Title: Public-Private Partnerships Fund & Program

Agency Name and Code Number: NMFA (385)

Person Writing Marquita Russel

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SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY25	FY26		
-0-	-0-	N/A	N/A

(Parenthesis ( ) indicate expenditure decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY25	FY26	FY27		
-0-	-0-	-0-	N/A	N/A

(Parenthesis ( ) indicate revenue decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY25	FY26	FY27	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	NFI	NFI	NFI	N/A	N/A	N/A

(Parenthesis ( ) Indicate Expenditure Decreases) 41 (PPRF

Duplicates/Conflicts with/Companion to/Relates to: Relates to HB 41 (PPRF Appropriations)
Duplicates/Relates to Appropriation in the General Appropriation Act

<u>SECTION III: NARRATIVE</u>

BILL SUMMARY

House Bill 276 (HB 276) creates the public-private partnership fund ("Fund") and the public-private partnership ("P3") program ("Program") administered by the local government division ("Division") of the department of finance and administration. The Division, in consultation with the New Mexico Finance Authority ("NMFA"), shall evaluate and provide grants to public partners that have executed public-private partnership agreements for transportation and broadband projects, as defined by the Program. HB 276 specifies evaluation criteria for grant awards and requires the Division to promulgate rules to administer the Program, including application and evaluation procedures. NMFA shall evaluate financial risks of proposed projects and promulgate rules to recommend projects to the Division. Money in the fund may be used to cover administrative costs of NMFA.

HB 276 amends Section 6-21-6.1 of the NMFA Act to add another fund to which the legislature to appropriate monies from the public project revolving fund ("PPRF"), bringing the total eligible number of funds to eight.

HB 276 exempts from the procurement code P3 projects for broadband and transportation projects applying to the Program.

FISCAL IMPLICATIONS

NMSA 6-21-6.1 provides that the legislature may appropriate an aggregate amount not to exceed thirty-five percent of the governmental gross receipts tax ("GGRT") proceeds distributed to the PPRF in the preceding fiscal year to any of six local infrastructure financing programs – three administered by NMFA and three administered by NMED – and the Cultural Affairs Facilities Infrastructure Fund ("CAFIF"). The PPRF received $38.1 million in GGRT in FY 2024, which results this year in no more than $13.335 million (35% of the GGRT) being appropriated from the PPRF's share of the GGRT. NMFA uses the remaining 65% of GGRT to fund loans and provide disadvantaged communities with subsidized interest rates -- at 0% or 2% interest rates depending on Median Household Income -- on all or a portion of their loans.

Historically, the programs receiving PPRF distributions used the funding to leverage federal funds by serving as a state match to capitalization grants received by NMED and NMFA and to provide local governments, including mutual domestics, with critical planning dollars. Since 2019, $5 million annually has also been distributed to the CAFIF to address critical infrastructure needs at museums and monuments statewide. Exercising the authority provided in HB 276 to distribute funds to the P3 Program will severely impact the capacity to fund the NMFA-administered Drinking Water State Revolving Loan Fund ("DWSRLF") and Local Government Planning Fund ("LGPF"), the Clean Water State Revolving Fund ("CWSRF") administered by the NM Environment Department ("NMED"), and the CAFIF.

SIGNIFICANT ISSUES

Pursuant to NMSA 6-21-6.1, the Legislature appropriates PPRF funds to numerous programs funding local infrastructure projects, including the DWSRLF, the LGPF, the CSWRF, and the CAFIF. These programs rely on appropriations from the PPRF to meet match requirements to unlock additional federal funding for local infrastructure projects. Appropriating money from the PPRF reduces resources available for other programs currently funding critical water and other infrastructure throughout the state.

PERFORMANCE IMPLICATIONS

While HB 276 provides the opportunity for an appropriation to made from the PPRF to the P3 Program fund, it does not contain an actual appropriation. It is therefore difficult for NMFA to estimate the cost of fulfilling its duties. Further, HB 276 provides that NMFA may recover its administrative costs from the P3 Program fund. However, if the P3 Program fund receives an appropriation of severance tax bond ("STB") proceeds, this reimbursement provision would conflict with the STB's prohibition of paying agency administrative costs.

Should insufficient funding be available to appropriate from the PPRF to the DWSRF, the LGPF, the CWSRF, or the CAFIF, those programs would not have adequate resources to meet funding needs of critical water and other infrastructure projects.

ADMINISTRATIVE IMPLICATIONS

P3s are complex infrastructure project delivery transactions in which a public owner (public partner) leverages private sector resources, expertise, and project implementation methods through a Project Agreement. The Project Agreement is typically long-term contract that finances the project and may include design, construction, maintenance, and/or operations of the public project. A mutually beneficial P3 Project Agreement aligns public and private interests and balances risk and return.

One of the primary responsibilities assigned to NMFA in HB 276 is to "evaluate the financial risks of the proposed transportation project or broadband project." As noted above, P3s are complex transactions. This evaluation will likely include an analysis involving the construction, operations and maintenance of the project, which is outside the current skillset of the NMFA staff. As a result, NMFA will need to contract firms and/or hire individuals with this experience and expertise. Because P3 agreements are only excepted from the procurement code if they apply to or are funded from the Program, NMFA expects a high volume of project requests. So, while NMFA expects to incur additional operating expense to fulfill its responsibilities under HB 276, without a more precise understanding of the number and complexity of the projects to be analyzed, this figure is difficult to quantify.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

HB 276 relates to HB 41, the Public Projects Fund Appropriation bill which appropriates $13.25 million from the PPRF to the DWSRLF and LGPF, and the CAFIF.

TECHNICAL ISSUES

In order to analyze the financial risks of P3 projects, NMFA will likely need information that the Private Partner may consider confidential or proprietary. HB 276, however, does not exempt such information from the Inspection of Public Records.

Although HB 276 exempts certain P3 projects from the Procurement Code, the bill seems to contain conflicting language in Section 1(D) suggesting that an application would be analyzed by the Division as to determine whether normal procurement rules should apply. Additionally, HB 276 requires an executed Project Agreement be submitted part of the grant application, but does not address any fallout if a grant is not approved.

OTHER SUBSTANTIVE ISSUES

Any appropriation of monies out of the PPRF results in both reduced lending capacity and a decline in the revenues pledged to PPRF bondholders. Such declines could have a negative impact on the credit ratings of the PPRF bond programs, ultimately resulting in higher interest rates to PPRF program borrowers. NMFA estimates that increasing the statutory limitation from 35% to 50%, and fully allocating the distributions annually, could reduce the capacity of the PPRF by more than $92 million over a 10-year period and nearly $350 million over a 20-year period.

Moreover, such reduction may run afoul of Section 6-21-(C) which states in pertinent part “it is the further purpose of the New Mexico Finance Authority Act to provide financing for public projects in a manner that will not impair the capacity of the public project revolving fund to provide future financing to qualified entities for public projects.” An increase in distributions out of the PPRF would necessarily diminish the lending capacity of the PPRF.

ALTERNATIVES

Replace the potential for limited distributions from the PPRF with a larger and/or more consistent form of appropriations, such as a general fund appropriation or earmark of Severance Tax Bonds.