

Agency Analysis Solicited But Not Received From
Department of Finance and Administration (DFA)

SUMMARY

Synopsis of House Bill 276

House Bill 276 (HB276) creates the public-private partnership fund as a non-reverting fund in the state treasury and the public-private partnership program to be administered by the Local Government Division of the Department of Finance and Administration (DFA). The bill tasks the local government division with evaluating and providing grants to broadband and transportation projects, in consultation with the New Mexico Finance Authority (NMFA). HB276 specifies issues to be evaluated by DFA before awarding grants, including cost-benefit analyses of the public-private partnership compared to a traditional public project; a determination of whether procurement rules normally applicable to the public partner would delay or increase the cost of the project; other financing available; and the likelihood of the project's completion. Additionally, DFA is to prioritize broadband projects that support service expansion measured by the number of private and commercial properties that would receive service or the need to develop, repair, replace, or maintain public facilities or infrastructure that provide internet. DFA is to prioritize transportation projects based on whether the project is necessary to maintain transportation infrastructure and is currently delayed due to cost or procurement issues. DFA is to develop rules for the program and NMFA is to evaluate the financial risk of proposed projects and develop any necessary rules for recommending projects to DFA.

HB276 makes the public-private partnership fund a potential beneficiary of annual appropriations from the public project revolving fund and exempts broadband and transportation projects funded through the program from the Procurement Code.

This bill does not contain an effective date and, as a result, would go into effect 90 days after the Legislature adjourns if enacted, or June 20, 2025.

FISCAL IMPLICATIONS

Under existing state law, there are seven funds to which the Legislature may annually appropriate up to 35 percent of the annual revenues to the public project revolving fund from governmental gross receipts tax. The eligible beneficiaries are: the clean water state revolving loan fund; drinking water state revolving loan fund; cultural affairs facilities infrastructure fund; local government planning fund; rural infrastructure revolving loan fund; solid waste facility grant fund; and the water and wastewater project grant fund.

Most funds that are eligible for public project revolving fund appropriations do not receive them on a regular basis. Over the last three fiscal years, a total of \$13 million to \$14 million has been appropriated to between three and four of the authorized beneficiaries. The three to four funds have maxed out the capacity for public project revolving fund appropriations within statutory limits. According to NMFA, the public project revolving fund received \$38.1 million in public project revolving fund in FY24, up to \$13.3 million of which would be eligible for appropriation by the 2025 Legislature to the eligible funds.

If HB276 is enacted and the Legislature subsequently chooses to capitalize the new public-private partnership fund with appropriations from the public project revolving fund, it could negatively impact the other authorized funds or require general fund appropriations to those funds. HB276 does not contain an appropriation to the new fund, so these impacts are dependent on future legislative action.

Public Project Revolving Fund Appropriations, FY23 - FY25 (in thousands)

| Fund | FY23 | FY24 | FY25 |
|---|---------|---------|---------|
| Drinking Water State Revolving Loan Fund | \$6,720 | \$3,500 | \$6,000 |
| Clean Water State Revolving Loan Fund | \$2,500 | \$3,700 | \$0 |
| Local Government Planning Fund | \$0 | \$2,000 | \$2,000 |
| Cultural Affairs Facilities Infrastructure Fund | \$5,000 | \$5,000 | \$5,000 |

Source: LFC files

The public project revolving fund appropriations to the drinking water and clean water state revolving funds provide state match for annual federal grants to those funds. The local government planning fund provides planning grants and has served as a project pipeline for the water trust board in recent years. The cultural affairs facilities infrastructure fund supports capital projects at museums and historic sites statewide.

The responsibility HB276 assigns to NMFA to evaluate the risk of proposed projects is likely to involve analysis outside the agency’s current expertise, according to NMFA, and would require contracting outside expertise. Additionally, NMFA notes there is likely to be significant demand for the program since it would represent the only exemption for public-private partnerships from the procurement code. The operating budget impact could therefore be significant but would depend on funding to the program and the number and complexity of projects seeking funding through it. This analysis assumes that NMFA will need at least one additional FTE at a recurring cost of approximately \$100 thousand.

NMFA notes any appropriations from the public project revolving fund reduce its lending capacity and revenues pledged to its bondholders.

SIGNIFICANT ISSUES

Public-private partnerships allow public owners to leverage private sector resources, expertise, and project delivery methods to develop infrastructure that yields public benefits. Analysis submitted by NMFA states that public-private partnerships are complex project delivery transactions involving project agreements, which are long-term contracts to finance the projects that align public and private interests and balance risk and return.

Competitive procurement is a gold standard by which governments ensure that public funds are being put to good use. Competitive procurement, wherein the government solicits goods or services and then reviews and compares proposals from potential sellers, gives the state the information it needs to make informed choices to do business with those that offer the best quality, price and value. Because of the value competitive procurement brings to the government, several reports from the New Mexico Office of the State Auditor, the LFC's

Program Evaluation Unit, and the National Association of State Procurement Officials have highlighted the hazards of government reliance on exemptions from competitive procurement. By providing a new exemption to the procurement code, HB276 introduces a hazard that the state could overspend on goods or services or that it will choose services without a full picture of the quality and value on offer.

The Office of Broadband Access and Expansion (OBAE) is responsible for developing a statewide broadband plan, identifying broadband funding opportunities, and applying for federal and non-governmental broadband funding. Projects should likely be developed in coordination with the office. A 25 percent local match is required for projects financed with the \$675 million in federal BEAD funds the office is responsible for deploying in the state. It is unclear whether funds from the new public-private partnership fund could be used to cover the match.

NMFA notes:

While HB276 provides the opportunity for an appropriation to be made from the public project revolving fund to the public-private partnerships fund, it does not contain an actual appropriation. It is therefore difficult for NMFA to estimate the cost of fulfilling its duties. Further, HB276 provides that NMFA may recover its administrative costs from the public-private partnerships fund. However, if the public-private partnerships 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 public project revolving fund to the [current beneficiaries], those programs would not have adequate resources to meet funding needs of critical water and other infrastructure projects.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

HB276 relates to Senate Bill 206, which makes several changes to the state's Procurement Code, including for public-private partnerships.

HB276 relates to House Bill 41, which appropriates \$13.3 million from the public project revolving fund in FY25 for the drinking water state revolving fund, local government planning fund, and cultural affairs facilities infrastructure fund.

TECHNICAL ISSUES

NMFA states analyzing the risks of public-private partnerships projects is likely to require information a private partner would consider confidential or proprietary but the bill does not exempt such information from inspection of public records requests.

NMFA also notes the bill appears to contain conflicting language exempting the projects from the procurement code but requiring DFA to determine whether procurement rules should apply.

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