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HOUSE BILL

57TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2025

INTRODUCED BY

DISCUSSION DRAFT

AN ACT

RELATING TO PUBLIC-PRIVATE PARTNERSHIPS; CREATING THE PUBLIC-PRIVATE PARTNERSHIP FUND AND THE PUBLIC-PRIVATE PARTNERSHIP PROGRAM; REQUIRING THE LOCAL GOVERNMENT DIVISION OF THE DEPARTMENT OF FINANCE AND ADMINISTRATION, IN CONSULTATION WITH THE NEW MEXICO FINANCE AUTHORITY, TO PROVIDE GRANTS TO PUBLIC PARTNERS TO COMPLETE BROADBAND PROJECTS AND TRANSPORTATION PROJECTS; REQUIRING RULEMAKING; PROVIDING THAT APPROPRIATIONS FROM THE PUBLIC PROJECT REVOLVING FUND MAY BE MADE TO THE PUBLIC-PRIVATE PARTNERSHIP FUND; EXEMPTING PUBLIC-PRIVATE PARTNERSHIP AGREEMENTS FROM THE PROCUREMENT CODE; MAKING AN APPROPRIATION.

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

SECTION 1. [NEW MATERIAL] PUBLIC-PRIVATE PARTNERSHIP FUND--CREATED--PURPOSE--PUBLIC-PRIVATE PARTNERSHIP PROGRAM--

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DISTRIBUTIONS.--

A. As used in this section:

(1) "authority" means the New Mexico finance authority;

(2) "broadband project" means a project to develop, repair, replace or maintain the state facilities or infrastructure used to provide internet, including the electronics, equipment, transmission facilities, fiber-optic cables and any other item directly related to a system capable of transmission of internet protocol or other formatted data at current federal communications commission minimum speed standard, all of which will be owned and used by a provider of internet access services;

(3) "division" means the local government division of the department of finance and administration;

(4) "private partner" means an individual, a foreign or domestic corporation, a general partnership, a limited liability company, a limited partnership, a joint venture, a business trust, a public benefit corporation, a nonprofit entity or other private business entity or any combination thereof;

(5) "public partner" means the state or any of its branches, agencies, departments, boards, instrumentalities or institutions and all political subdivisions of the state;

(6) "public-private partnership" means an

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1 arrangement between one or more public partners and one or more
2 private partners for the development of a broadband project or
3 a transportation project; and

4 (7) "transportation project" means studies,
5 planning, design, construction and maintenance of
6 transportation infrastructure located in this state.

7 B. The "public-private partnership fund" is created
8 as a nonreverting fund in the state treasury. The public-
9 private partnership fund consists of distributions from the
10 public project revolving fund, appropriations, income from
11 investment of the public-private partnership fund, gifts,
12 grants and donations. The division shall administer the
13 public-private partnership fund, and money in the public-
14 private partnership fund is appropriated to the division to
15 administer the public-private partnership program.

16 Disbursements from the public-private partnership fund shall be
17 made by warrant of the secretary of finance and administration
18 pursuant to vouchers signed by the director of the division or
19 the director's designee.

20 C. The "public-private partnership program" is
21 created and shall be administered by the division. The
22 division shall, in consultation with the authority, evaluate
23 and provide grants to fund proposed transportation projects and
24 broadband projects.

25 D. A public partner shall apply to receive a grant

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1 on forms and in a manner prescribed by the division, which
2 shall include the public-private partnership agreement executed
3 by the public partner and private partner. When determining an
4 award pursuant to this section, the division shall:

5 (1) undertake a cost-benefit analysis of the
6 proposed public-private partnership in comparison to a
7 traditional project that is managed by a public partner;

8 (2) determine whether the application of
9 procurement rules normally applicable to the public partner
10 would delay or increase the cost of the proposed public
11 project;

12 (3) consider other financing available to
13 complete the project, including matching financing provided by
14 the private partner; and

15 (4) consider the likelihood of the broadband
16 project's or transportation project's completion.

17 E. In addition to the requirements provided
18 pursuant to Subsection D of this section, the division shall
19 base its decision to award a grant for the completion of a:

20 (1) broadband project on:

21 (a) whether the proposed project
22 supports the expansion of broadband as estimated by the amount
23 of private properties and commercial properties that would
24 receive internet as a result of the project; or

25 (b) the need to develop, repair, replace

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1 or maintain the state facilities or infrastructure used to
2 provide internet with existing broadband infrastructure based
3 on the geographic area served by the project; and

4 (2) transportation project on whether the
5 project is necessary to study, plan, design, construct or
6 maintain transportation infrastructure or facilities and is
7 currently delayed by the public partner due to cost or the
8 procurement process.

9 F. The division shall promulgate rules to
10 administer the public-private partnership program, including
11 procedures:

12 (1) for a public partner to apply for grants
13 from the program;

14 (2) to evaluate a proposed project; provided
15 that the division shall:

16 (a) apply procurement, accounting and
17 governmental conduct standards in evaluating a public partner's
18 proposal and public-private partnership agreement;

19 (b) consider the recommendations of the
20 authority; and

21 (c) ensure an expedited review process;

22 (3) to award grants to a public partner to
23 complete the public project; and

24 (4) to safeguard public funds.

25 G. The authority shall:

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1 (1) evaluate the financial risks of the
2 proposed transportation project or broadband project; and

3 (2) promulgate rules as necessary to recommend
4 projects to the division.

5 H. Money in the public-private partnership fund may
6 be used to cover the administrative costs of the authority in
7 complying with this section."

8 SECTION 2. Section 6-21-6.1 NMSA 1978 (being Laws 1994,
9 Chapter 145, Section 2, as amended) is amended to read:

10 "6-21-6.1. PUBLIC PROJECT REVOLVING FUND--APPROPRIATIONS
11 TO OTHER FUNDS.--

12 A. At the end of each fiscal year, after all debt
13 service charges, replenishment of reserves and administrative
14 costs on all outstanding bonds, notes or other obligations
15 payable from the public project revolving fund are satisfied,
16 an aggregate amount not to exceed thirty-five percent of the
17 governmental gross receipts tax proceeds distributed to the
18 public project revolving fund in the preceding fiscal year less
19 all debt service charges and administrative costs of the
20 authority paid in the preceding fiscal year on bonds issued
21 pursuant to this section may be appropriated by the legislature
22 from the public project revolving fund to:

23 (1) the following funds for local
24 infrastructure financing:

25 (a) the wastewater facility construction

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1 loan fund for purposes of the Wastewater Facility Construction
2 Loan Act;

3 (b) the rural infrastructure revolving
4 loan fund for purposes of the Rural Infrastructure Act;

5 (c) the solid waste facility grant fund
6 for purposes of the Solid Waste Act;

7 (d) the drinking water state revolving
8 loan fund for purposes of the Drinking Water State Revolving
9 Loan Fund Act;

10 (e) the water and wastewater project
11 grant fund for purposes specified in the New Mexico Finance
12 Authority Act; or

13 (f) the local government planning fund
14 for purposes specified in the New Mexico Finance Authority Act;
15 [~~or~~]

16 (2) the public-private partnership fund for
17 purposes specified in Section 1 of this 2025 act; or

18 [~~(2)~~] (3) the cultural affairs facilities
19 infrastructure fund.

20 B. The authority and the department of finance and
21 administration in coordination with the New Mexico finance
22 authority oversight committee may recommend annually to each
23 regular session of the legislature amounts to be appropriated
24 to the funds listed in Subsection A of this section."

25 SECTION 3. Section 13-1-98 NMSA 1978 (being Laws 1984,
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1 Chapter 65, Section 71, as amended by Laws 2023, Chapter 149,
2 Section 2 and by Laws 2023, Chapter 174, Section 1) is amended
3 to read:

4 "13-1-98. EXEMPTIONS FROM THE PROCUREMENT CODE.--The
5 provisions of the Procurement Code shall not apply to:

6 A. procurement of items of tangible personal
7 property or services by a state agency or a local public body
8 from a state agency, a local public body or external
9 procurement unit except as otherwise provided in Sections
10 13-1-135 through 13-1-137 NMSA 1978;

11 B. procurement of tangible personal property or
12 services for the governor's mansion and grounds;

13 C. printing and duplicating contracts involving
14 materials that are required to be filed in connection with
15 proceedings before administrative agencies or state or federal
16 courts;

17 D. purchases of publicly provided or publicly
18 regulated gas, electricity, water, sewer and refuse collection
19 services;

20 E. purchases of books, periodicals, instructional
21 materials and training materials in printed, digital or
22 electronic format from the publishers, designated public-
23 education-department-approved instructional material
24 depositories or copyright holders thereof and purchases of
25 print, digital or electronic format library materials by

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1 public, school and state libraries for access by the public;

2 F. travel or shipping by common carrier or by
3 private conveyance or to meals and lodging;

4 G. purchase of livestock at auction rings or to the
5 procurement of animals to be used for research and
6 experimentation or exhibit;

7 H. contracts with businesses for public school
8 transportation services;

9 I. procurement of tangible personal property or
10 services, as defined by Sections 13-1-87 and 13-1-93 NMSA 1978,
11 by the corrections industries division of the corrections
12 department pursuant to rules adopted by the corrections
13 industries commission, which shall be reviewed by the
14 purchasing division of the general services department prior to
15 adoption;

16 J. purchases not exceeding ten thousand dollars
17 (\$10,000) consisting of magazine subscriptions, web-based or
18 electronic subscriptions, conference registration fees and
19 other similar purchases where prepayments are required;

20 K. municipalities having adopted home rule charters
21 and having enacted their own purchasing ordinances;

22 L. the issuance, sale and delivery of public
23 securities pursuant to the applicable authorizing statute, with
24 the exception of bond attorneys and general financial
25 consultants;

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1 M. contracts entered into by a local public body
2 with a private independent contractor for the operation, or
3 provision and operation, of a jail pursuant to Sections 33-3-26
4 and 33-3-27 NMSA 1978;

5 N. contracts for maintenance of grounds and
6 facilities at highway rest stops and other employment
7 opportunities, excluding those intended for the direct care and
8 support of persons with handicaps, entered into by state
9 agencies with private, nonprofit, independent contractors who
10 provide services to persons with handicaps;

11 O. contracts and expenditures for services or items
12 of tangible personal property to be paid or compensated by
13 money or other property transferred to New Mexico law
14 enforcement agencies by the United States department of justice
15 drug enforcement administration;

16 P. contracts for retirement and other benefits
17 pursuant to Sections 22-11-47 through 22-11-52 NMSA 1978;

18 Q. contracts with professional entertainers;

19 R. contracts and expenditures for legal
20 subscription and research services and litigation expenses in
21 connection with proceedings before administrative agencies or
22 state or federal courts, including experts, mediators, court
23 reporters, process servers and witness fees, but not including
24 attorney contracts;

25 S. contracts for service relating to the design,

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1 engineering, financing, construction and acquisition of public
2 improvements undertaken in improvement districts pursuant to
3 Subsection L of Section 3-33-14.1 NMSA 1978 and in county
4 improvement districts pursuant to Subsection L of Section
5 4-55A-12.1 NMSA 1978;

6 T. works of art for museums or for display in
7 public buildings or places;

8 U. contracts entered into by a local public body
9 with a person, firm, organization, corporation or association
10 or a state educational institution named in Article 12, Section
11 11 of the constitution of New Mexico for the operation and
12 maintenance of a hospital pursuant to Chapter 3, Article 44
13 NMSA 1978, lease or operation of a county hospital pursuant to
14 the Hospital Funding Act or operation and maintenance of a
15 hospital pursuant to the Special Hospital District Act;

16 V. purchases of advertising in all media, including
17 radio, television, print and electronic;

18 W. purchases of promotional goods intended for
19 resale by the tourism department;

20 X. procurement of printing, publishing and
21 distribution services for materials produced and intended for
22 resale by the cultural affairs department;

23 Y. procurement by or through the public education
24 department from the federal department of education relating to
25 parent training and information centers designed to increase

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1 parent participation, projects and initiatives designed to
2 improve outcomes for students with disabilities and other
3 projects and initiatives relating to the administration of
4 improvement strategy programs pursuant to the federal
5 Individuals with Disabilities Education Act; provided that the
6 exemption applies only to procurement of services not to exceed
7 two hundred thousand dollars (\$200,000);

8 Z. procurement of services from community
9 rehabilitation programs or qualified individuals pursuant to
10 the State Use Act;

11 AA. purchases of products or services for eligible
12 persons with disabilities pursuant to the federal
13 Rehabilitation Act of 1973;

14 BB. procurement, by either the department of health
15 or Grant county or both, of tangible personal property,
16 services or construction that are exempt from the Procurement
17 Code pursuant to Section 9-7-6.5 NMSA 1978;

18 CC. contracts for investment advisory services,
19 investment management services or other investment-related
20 services entered into by the educational retirement board, the
21 state investment officer or the retirement board created
22 pursuant to the Public Employees Retirement Act;

23 DD. the purchase for resale by the state fair
24 commission of feed and other items necessary for the upkeep of
25 livestock;

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1 EE. contracts entered into by the crime victims
2 reparation commission to distribute federal grants to assist
3 victims of crime, including grants from the federal Victims of
4 Crime Act of 1984 and the federal Violence Against Women Act of
5 1994;

6 FF. procurement by or through the early childhood
7 education and care department of early pre-kindergarten and
8 pre-kindergarten services purchased pursuant to the Pre-
9 Kindergarten Act;

10 GG. procurement of services of commissioned
11 advertising sales representatives for New Mexico magazine;

12 HH. public-private partnership agreements for the
13 performance of a broadband project or a transportation project
14 pursuant to Section 1 of this 2025 act;

15 [~~HH.~~] II. contracts entered into by the forestry
16 division of the energy, minerals and natural resources
17 department to distribute federal grants to nongovernmental
18 entities and individuals selected through an application
19 process conducted by the United States department of
20 agriculture, the United States department of the interior or
21 any division or bureau thereof for programs for wildfire
22 prevention or protection, urban forestry, forest and watershed
23 restoration and protection, reforestation or economic
24 development projects to advance the use of trees and wood
25 biomass for hazardous fuel reduction; and

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[~~II.~~] JJ. procurements exempt from the Procurement
Code as otherwise provided by law."

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