

SB 89 & HB317 – Sale & Reporting of Public Securities

MAIN POINTS

- The bill allows public entities to delegate authority to approve the price at which public securities are sold at the time of final market pricing.
- Approved pricing must be within the authorized conditions previously approved by the public entity in a public meeting
- The individual or individuals delegated with pricing approval authority are acting in a fiduciary capacity
- The delegatee must report results back in a public meeting

FISCAL BENEFITS

- Additional investors will be attracted to New Mexico bonds
- Special meetings to approve bond sales will no longer be necessary
- Bond sales can be scheduled in line with market conditions rather than when public meetings are scheduled.

BENEFITS OF PASSAGE

- Provides sale flexibility
- Improves public accountability
- Produces more informed decisions as delegates must be actively involved in the pricing process
- Conforms with standard municipal market practice in the United States
- Decreases the cost of issuing bonds
- Improves process efficiency

SAFEGUARDS

- Entities are not required to delegate authority
- Delegation is specific and limited as to both time and terms
- Approval must conform to parameters in the authorizing resolution
- Those delegated authority are serving in a fiduciary capacity ensuring accountability

Bill Number: **SB 89 Sale & Reporting of Public Securities**
Sponsor: **Senator Joseph Cervantes**

Bill Number: **HB317 Sale & Reporting of Public Securities**
Sponsor: **Representative Jane E. Powdrell-Culbert**

Testimony

The New Mexico Finance Authority (“NMFA”) fully supports SB 89 / HB317. NMFA’s Board has endorsed this bill. The bill has the support of those in both the public and private sectors actively involved in the municipal bond business. The bill benefits NMFA, NMDOT and all public entities in the State that issue bonds as well as firms underwriting New Mexico bonds. Passage of this bill will put New Mexico bond approval practices in line with standard municipal market practices in the United States as practiced overwhelmingly in other states.

The fiscal benefits to NMFA and other New Mexico issuers are subtle but real. Public entities will save money in four ways.

- New Mexico public entities will no longer pay an *approval risk premium* on their public bond sales
- Additional investors will be attracted to New Mexico bonds
- Special meetings of public entities or their boards will no longer be necessary to finalize bond sale awards to underwriters (on behalf of investors), especially when those bond sales take place simultaneously with NMFA bond sales
- Public entity bond sales will no longer need to take place on the day of, or the day before, previously scheduled public meetings allowing both competitive bond sales and negotiated

bond sales to be managed and scheduled in line with prevailing market conditions, which can vary from day to day.

The benefits of passage of this bill are:

- Provides bond sale flexibility to NMFA, NMDOT and all New Mexico bond issuers and is consistent with bond sale delegation that some New Mexico entities already have
- Delegation ensures better public accountability, which is less robust without delegation
- Conforms with what other states do and with standard municipal market practice in the United States
- Produces more informed decisions
- Increases public accountability
- Improves process efficiency
- Decreases the cost of issuing bonds
- Eliminates the approval risk premium now added to pricing costs
- Attracts more investors to New Mexico bonds
- Eliminates the need for members of governing bodies to vote to approve bond pricing about which they may have no market knowledge
- Builds on good organizational and good government practices

The protections included in this bill are:

- Entities are not required to delegate approval authority
- Delegation is specific and limited both as to time and terms
- Enables public bodies to delegate bond sale approval authority to knowledgeable individuals who must actively monitor a bond sale

- Bond sale results must conform to the parameters established by an authorizing resolution passed in a public meeting in advance of the sale
- Individuals delegated approval authority must report back the results of the bond sale in a public meeting
- Individuals delegated act in a fiduciary capacity and must exercise the highest duty in carrying out the responsibilities delegated
- Bond counsel approval allowing the sale to be finalized requires final terms to be within authorized parameters
- The powers delegated are consistent with the powers public entities already can delegate when carrying out other aspects of public business

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SENATE BILL 89

52ND LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2016

INTRODUCED BY

Joseph Cervantes

ENDORSED BY THE NEW MEXICO FINANCE AUTHORITY
OVERSIGHT COMMITTEE

AN ACT

RELATING TO PUBLIC SECURITIES; ALLOWING PUBLIC BODIES TO
DELEGATE AUTHORITY FOR MAKING CERTAIN DETERMINATIONS REGARDING
SALES OF PUBLIC SECURITIES; CLARIFYING THE DEFINITIONS OF
"PUBLIC BODY" AND "PUBLIC SECURITIES"; REQUIRING REPORTING TO
THE NEW MEXICO FINANCE AUTHORITY OVERSIGHT COMMITTEE.

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

SECTION 1. Section 6-14-9 NMSA 1978 (being Laws 1983,
Chapter 265, Section 2) is amended to read:

"6-14-9. DEFINITIONS.--As used in the Supplemental Public
Securities Act:

A. "authorizing instrument" means the ordinance,
resolution, other official action or any applicable combination
thereof by which public securities are authorized to be issued
by a public body;

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1 B. "public body" means this state or any
2 department, board, agency or instrumentality of the state, any
3 county, city, town, village, school district, other district or
4 educational institution or any other governmental agency or
5 political subdivision of the state or the New Mexico finance
6 authority;

7 C. "public securities" means any bonds, notes,
8 loans, warrants or other obligations now or hereafter
9 authorized to be issued by any public body pursuant to the
10 provisions of any general or special statute, any
11 constitutional or statutory charter or any other law; and

12 D. "registrar" means the treasurer or any other
13 officer of the public body or of any other public body or any
14 corporate or other trustee, registrar, paying agent, transfer
15 agent, custodian or other financial intermediary within the
16 United States as may be appointed or designated in the
17 authorizing instrument."

18 SECTION 2. A new section of the Supplemental Public
19 Securities Act is enacted to read:

20 "[NEW MATERIAL] DELEGATION OF AUTHORITY BY PUBLIC BODY--
21 AUTHORIZING INSTRUMENT.--

22 A. A public body may adopt an authorizing
23 instrument that delegates to one or more members, officers or
24 employees of the public body, acting in a fiduciary capacity
25 within the scope of authority and the parameters and conditions

1 for the public securities set forth by the public body in the
2 authorizing instrument as described in Subsection B of this
3 section, the authority to sign a contract for the purchase or
4 sale of public securities or to accept a binding bid for public
5 securities and to determine the final terms for public
6 securities to be issued pursuant to Subsection C of this
7 section. The authorizing instrument shall be effective for one
8 hundred eighty days or for a specified shorter period.

9 B. An authorizing instrument delegating authority
10 pursuant to Subsection A of this section shall establish the
11 parameters and conditions for the public securities, including:

12 (1) the public purpose for which the public
13 securities are to be issued;

14 (2) the maximum par amount of the public
15 securities;

16 (3) the maximum term for which the public
17 securities may be outstanding;

18 (4) the maximum interest rate that the public
19 securities may bear;

20 (5) each tax or revenue source that is pledged
21 to or that shall secure payment for the public securities;

22 (6) whether the public securities will be sold
23 at a public or a private sale;

24 (7) the minimum sales price or the maximum
25 sales price of the public securities;

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1 (8) the maximum amount of underwriting
2 discount, if any, as a percentage of the aggregate principal
3 amount of the public securities;

4 (9) the form of the public securities, subject
5 to the final terms described in Subsection C of this section;

6 (10) the public securities that may be
7 refunded, if any; and

8 (11) the appointment of a trustee, paying
9 agent, registrar, escrow agent, tender agent, remarketing
10 agent, dissemination agent or any other agent or service
11 provider required for the sale, issuance and delivery of the
12 public securities and the form of agreement for each
13 appointment.

14 C. Subject to the parameters and conditions
15 established in Subsection B of this section, a delegatee may be
16 authorized, pursuant to the authorizing instrument, to
17 determine any or all of the following final terms of the public
18 securities:

19 (1) the interest and principal payment dates;
20 (2) the principal amount, denominations and
21 maturity amortization;

22 (3) the sale price;

23 (4) the interest rate;

24 (5) the interest payment periods;

25 (6) the redemption and tender provisions;

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1 (7) the procurement of municipal bond
2 insurance and any related covenants or agreements;

3 (8) the creation of any capitalized interest
4 or debt service reserve funds, including the size and funding
5 of the funds;

6 (9) the amount of underwriting discount, if
7 any;

8 (10) the public securities to be refunded, if
9 any; and

10 (11) the final terms of agreements, if any,
11 with one or more trustee, paying agent, registrar, escrow
12 agent, tender agent, remarketing agent, dissemination agent or
13 any other agent or service provider required for the purchase,
14 sale, issuance and delivery of the public securities.

15 D. The public body shall determine and approve any
16 term not listed in Subsection C of this section.

17 E. The delegatee shall certify in writing, prior to
18 the delivery of the public securities, that the final terms
19 determined pursuant to Subsection C of this section comply with
20 the parameters and conditions established in the authorizing
21 instrument pursuant to Subsection B of this section. The
22 delegatee shall present the written certification containing
23 the final terms of the public securities to the public body in
24 a timely manner, before or after the delivery of the public
25 securities, at a regularly scheduled meeting of the public body

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1 held in compliance with the Open Meetings Act.

2 F. A public body need not approve a determination
3 made by the delegatee pursuant to Subsection C of this section
4 if the determination complies with the parameters and
5 conditions established in the authorizing instrument pursuant
6 to Subsection B of this section. A determination made by the
7 delegatee pursuant to this section has the same force and
8 effect as a determination made by the public body. The
9 delegatee, while acting within the scope of the delegatee's
10 authority and the parameters and conditions established in the
11 authorizing instrument pursuant to Subsection B of this
12 section, shall not be subject to any personal liability for any
13 action taken or omitted within that scope of authority.

14 G. A public body's adoption of an authorizing
15 instrument that includes a delegation of authority pursuant to
16 this section constitutes final passage of the authorizing
17 instrument for the purposes of any applicable general or
18 special law or any constitutional or statutory provision or
19 municipal charter related to any referendum or petition right."

20 SECTION 3. A new section of the New Mexico Finance
21 Authority Act is enacted to read:

22 "[NEW MATERIAL] REPORT TO LEGISLATURE--AUTHORIZING
23 INSTRUMENT--DELEGATION OF AUTHORITY FOR PUBLIC SECURITIES
24 ISSUANCES.--By September 30 of each year, the authority shall
25 report to the New Mexico finance authority oversight committee

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1 about the authority's public securities issuances, completed in
2 the prior twelve months, that involved a delegation of
3 authority through an authorizing instrument pursuant to Section
4 2 of this 2016 act."

5 SECTION 4. EFFECTIVE DATE.--The effective date of the
6 provisions of this act is July 1, 2016.

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HOUSE BILL 317

52ND LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2016

INTRODUCED BY

Jane E. Powdrell-Culbert

AN ACT

RELATING TO PUBLIC SECURITIES; ALLOWING PUBLIC BODIES TO
DELEGATE AUTHORITY FOR MAKING CERTAIN DETERMINATIONS REGARDING
SALES OF PUBLIC SECURITIES; CLARIFYING THE DEFINITIONS OF
"PUBLIC BODY" AND "PUBLIC SECURITIES"; REQUIRING REPORTING TO
THE NEW MEXICO FINANCE AUTHORITY OVERSIGHT COMMITTEE.

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Securities Act:

A. "authorizing instrument" means the ordinance,
resolution, other official action or any applicable combination
thereof by which public securities are authorized to be issued
by a public body;

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1 B. "public body" means this state or any
2 department, board, agency or instrumentality of the state, any
3 county, city, town, village, school district, other district or
4 educational institution or any other governmental agency or
5 political subdivision of the state or the New Mexico finance
6 authority;

7 C. "public securities" means any bonds, notes,
8 loans, warrants or other obligations now or hereafter
9 authorized to be issued by any public body pursuant to the
10 provisions of any general or special statute, any
11 constitutional or statutory charter or any other law; and

12 D. "registrar" means the treasurer or any other
13 officer of the public body or of any other public body or any
14 corporate or other trustee, registrar, paying agent, transfer
15 agent, custodian or other financial intermediary within the
16 United States as may be appointed or designated in the
17 authorizing instrument."

18 SECTION 2. A new section of the Supplemental Public
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20 "[NEW MATERIAL] DELEGATION OF AUTHORITY BY PUBLIC BODY--
21 AUTHORIZING INSTRUMENT.--

22 A. A public body may adopt an authorizing
23 instrument that delegates to one or more members, officers or
24 employees of the public body, acting in a fiduciary capacity
25 within the scope of authority and the parameters and conditions

1 for the public securities set forth by the public body in the
2 authorizing instrument as described in Subsection B of this
3 section, the authority to sign a contract for the purchase or
4 sale of public securities or to accept a binding bid for public
5 securities and to determine the final terms for public
6 securities to be issued pursuant to Subsection C of this
7 section. The authorizing instrument shall be effective for one
8 hundred eighty days or for a specified shorter period.

9 B. An authorizing instrument delegating authority
10 pursuant to Subsection A of this section shall establish the
11 parameters and conditions for the public securities, including:

12 (1) the public purpose for which the public
13 securities are to be issued;

14 (2) the maximum par amount of the public
15 securities;

16 (3) the maximum term for which the public
17 securities may be outstanding;

18 (4) the maximum interest rate that the public
19 securities may bear;

20 (5) each tax or revenue source that is pledged
21 to or that shall secure payment for the public securities;

22 (6) whether the public securities will be sold
23 at a public or a private sale;

24 (7) the minimum sales price or the maximum
25 sales price of the public securities;

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1 (8) the maximum amount of underwriting
2 discount, if any, as a percentage of the aggregate principal
3 amount of the public securities;

4 (9) the form of the public securities, subject
5 to the final terms described in Subsection C of this section;

6 (10) the public securities that may be
7 refunded, if any; and

8 (11) the appointment of a trustee, paying
9 agent, registrar, escrow agent, tender agent, remarketing
10 agent, dissemination agent or any other agent or service
11 provider required for the sale, issuance and delivery of the
12 public securities and the form of agreement for each
13 appointment.

14 C. Subject to the parameters and conditions
15 established in Subsection B of this section, a delegatee may be
16 authorized, pursuant to the authorizing instrument, to
17 determine any or all of the following final terms of the public
18 securities:

19 (1) the interest and principal payment dates;
20 (2) the principal amount, denominations and
21 maturity amortization;

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2 insurance and any related covenants or agreements;

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4 or debt service reserve funds, including the size and funding
5 of the funds;

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7 any;

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9 any; and

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13 any other agent or service provider required for the purchase,
14 sale, issuance and delivery of the public securities.

15 D. The public body shall determine and approve any
16 term not listed in Subsection C of this section.

17 E. The delegatee shall certify in writing, prior to
18 the delivery of the public securities, that the final terms
19 determined pursuant to Subsection C of this section comply with
20 the parameters and conditions established in the authorizing
21 instrument pursuant to Subsection B of this section. The
22 delegatee shall present the written certification containing
23 the final terms of the public securities to the public body in
24 a timely manner, before or after the delivery of the public
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6 to Subsection B of this section. A determination made by the
7 delegatee pursuant to this section has the same force and
8 effect as a determination made by the public body. The
9 delegatee, while acting within the scope of the delegatee's
10 authority and the parameters and conditions established in the
11 authorizing instrument pursuant to Subsection B of this
12 section, shall not be subject to any personal liability for any
13 action taken or omitted within that scope of authority.

14 G. A public body's adoption of an authorizing
15 instrument that includes a delegation of authority pursuant to
16 this section constitutes final passage of the authorizing
17 instrument for the purposes of any applicable general or
18 special law or any constitutional or statutory provision or
19 municipal charter related to any referendum or petition right."

20 SECTION 3. A new section of the New Mexico Finance
21 Authority Act is enacted to read:

22 "[NEW MATERIAL] REPORT TO LEGISLATURE--AUTHORIZING
23 INSTRUMENT--DELEGATION OF AUTHORITY FOR PUBLIC SECURITIES
24 ISSUANCES.--By September 30 of each year, the authority shall
25 report to the New Mexico finance authority oversight committee

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1 about the authority's public securities issuances, completed in
2 the prior twelve months, that involved a delegation of
3 authority through an authorizing instrument pursuant to Section
4 2 of this 2016 act."

5 SECTION 4. EFFECTIVE DATE.--The effective date of the
6 provisions of this act is July 1, 2016.

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