

HOUSE BILL

53RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2017

INTRODUCED BY

DISCUSSION DRAFT

AN ACT

RELATING TO CAPITAL EXPENDITURES; AUTHORIZING THE ISSUANCE OF
SEVERANCE TAX BONDS FOR TRANSPORTATION PROJECTS; PROVIDING FOR
DISTRIBUTION OF FUNDS TO THE DEPARTMENT OF TRANSPORTATION;
MAKING AN APPROPRIATION; AMENDING THE LIMITATIONS ON DESIGN AND
BUILD CONTRACTS.

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

SECTION 1. SEVERANCE TAX BONDS--PURPOSE FOR WHICH
ISSUED--APPROPRIATION OF PROCEEDS.--The state board of finance
may issue and sell severance tax bonds in fiscal years 2018
through 2022 in compliance with the Severance Tax Bonding Act
in an amount not exceeding three hundred million dollars
(\$300,000,000) when the department of transportation certifies
the need for the issuance of the bonds; provided that no more
than sixty million dollars (\$60,000,000) may be issued in any

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1 one fiscal year. The proceeds from the sale of the bonds are
2 appropriated to the department of transportation for the
3 purposes specified in Section 2 of this 2017 act. The state
4 board of finance shall schedule the issuance and sale of bonds
5 in the most expeditious and economical manner possible upon a
6 finding by the board, based upon the certification from the
7 department of transportation, that the proceeds of the bonds
8 are needed and that construction on the projects and
9 acquisitions designated pursuant to Section 2 of this 2017 act
10 will begin within a reasonable time after the bonds are sold.
11 The state board of finance shall further take the appropriate
12 steps necessary to comply with the federal Internal Revenue
13 Code of 1986, as amended. Any unexpended or unencumbered
14 balance remaining at the end of fiscal year 2026 shall revert
15 to the severance tax bonding fund. If the department of
16 transportation has not certified the need for the issuance of
17 the bonds by the end of fiscal year 2022, the authorization
18 provided in this section shall expire.

19 SECTION 2. DEPARTMENT OF TRANSPORTATION PROJECTS--
20 SEVERANCE TAX BONDS--PROJECT ACQUISITION.--Pursuant to the
21 provisions of Section 1 of this 2017 act, the proceeds of the
22 sale of the bonds are appropriated to the department of
23 transportation for the following purposes:

24 A. ninety-five percent of the funds shall be used
25 for planning, design and construction of projects identified

1 and certified by the department of transportation as necessary
2 to improve safety and reduce fatalities, maintain or improve
3 the condition of roadways and other transportation
4 infrastructure, promote economic development or mitigate
5 traffic congestion; and

6 B. five percent of the funds shall be dedicated to
7 support the acquisition of facilities and vehicles by county
8 and municipal governments and regional transit districts for
9 public transportation programs. The department of
10 transportation shall establish procedures for the distribution
11 of these funds.

12 SECTION 3. Section 13-1-119.1 NMSA 1978 (being Laws 1997,
13 Chapter 171, Section 5, as amended) is amended to read:

14 "13-1-119.1. PUBLIC WORKS PROJECT DELIVERY SYSTEM--DESIGN
15 AND BUILD PROJECTS AUTHORIZED.--

16 A. Except for road and highway construction or
17 reconstruction projects costing less than twenty-five million
18 dollars (\$25,000,000), a design and build project delivery
19 system may be authorized when the state purchasing agent or a
20 central purchasing office makes a determination in writing that
21 it is appropriate and in the best interest of the state or
22 local public body to use the system on a specific project. The
23 determination shall be issued only after the state purchasing
24 agent or a central purchasing office has taken into
25 consideration the following criteria, which shall be used as

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1 the minimum basis in determining when to use the design and
2 build process:

3 (1) the extent to which the project
4 requirements have been or can be adequately defined;

5 (2) time constraints for delivery of the
6 project;

7 (3) the capability and experience of potential
8 teams with the design and build process;

9 (4) the suitability of the project for use of
10 the design and build process as concerns time, schedule, costs
11 and quality; and

12 (5) the capability of the using agency to
13 manage the project, including experienced personnel or outside
14 consultants, and to oversee the project with persons who are
15 familiar with the design and build process.

16 B. When a determination has been made by the state
17 purchasing agent or a central purchasing office that it is
18 appropriate to use a design and build project delivery system,
19 the design and build team shall include, as needed, a New
20 Mexico registered engineer or architect and a contractor
21 properly licensed in New Mexico for the type of work required.

22 C. Except as provided in Subsections F and G of
23 this section, for each proposed state or local public works
24 design and build project, a two-phase procedure for awarding
25 design and build contracts shall be adopted and shall include

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1 at a minimum the following:

2 (1) during phase one, and prior to
3 solicitation, documents shall be prepared for a request for
4 qualifications by a registered engineer or architect, either
5 in-house or selected in accordance with Sections 13-1-120
6 through 13-1-124 NMSA 1978, and shall include minimum
7 qualifications, a scope of work statement and schedule,
8 documents defining the project requirements, the composition of
9 the selection committee and a description of the phase-two
10 requirements and subsequent management needed to bring the
11 project to completion. Design and build qualifications of
12 responding firms shall be evaluated, and a maximum of five
13 firms shall be short-listed in accordance with technical and
14 qualifications-based criteria; and

15 (2) during phase two, the short-listed firms
16 shall be invited to submit detailed specific technical concepts
17 or solutions, costs and scheduling. Unsuccessful firms may be
18 paid a stipend to cover proposal expenses. After evaluation of
19 these submissions, selection shall be made and the contract
20 awarded to the highest-ranked firm.

21 D. Except as provided in Subsections F and G of
22 this section, to ensure fair, uniform, clear and effective
23 procedures that will strive for the delivery of a quality
24 project on time and within budget, the secretary, in
25 conjunction with the appropriate and affected professional

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1 associations and contractors, shall promulgate rules applicable
2 to all using agencies, which shall be followed by all using
3 agencies when procuring a design and build project delivery
4 system.

5 E. A state agency shall make the decision on a
6 design and build project delivery system for a state public
7 works project, and a local public body shall make that decision
8 for a local public works project. A state agency shall not
9 make the decision on a design and build project delivery system
10 for a local public works project.

11 F. The requirements of Subsections C and D of this
12 section do not apply to a design and build project delivery
13 system and the services procured for the project if:

14 (1) the maximum allowable construction cost of
15 the project is four hundred thousand dollars (\$400,000) or
16 less; and

17 (2) the only requirement for architects,
18 engineers, landscape architects or surveyors is limited to
19 either site improvements or adaption for a pre-engineered
20 building or system.

21 G. The procurement of a design and build project
22 delivery system qualifying for exemptions pursuant to
23 Subsection F of this section, including the services of any
24 architect, engineer, landscape architect, construction
25 manager or surveyor needed for the project, shall be

1 accomplished by competitive sealed bids pursuant to Sections
2 13-1-102 through 13-1-110 NMSA 1978."

3 SECTION 4. EFFECTIVE DATE.--The effective date of the
4 provisions of this act is July 1, 2017.

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