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HOUSE BILL 434

44TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2000

INTRODUCED BY

James G. Taylor

FOR THE NEW MEXICO FINANCE AUTHORITY OVERSIGHT COMMITTEE

AN ACT

**RELATING TO FINANCE; AMENDING THE NEW MEXICO FINANCE
AUTHORITY ACT TO RESTRICT THE POWER OF THE AUTHORITY TO MAKE
GRANTS FROM THE PUBLIC PROJECT REVOLVING FUND; DECLARING AN
EMERGENCY.**

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

**Section 1. Section 6-21-2 NMSA 1978 (being Laws 1992,
Chapter 61, Section 2, as amended) is amended to read:**

**"6-21-2. LEGISLATIVE FINDINGS-- DECLARATION OF
PURPOSE. --**

A. The legislature finds that:

**(1) there are necessary state and local
capital improvement and infrastructure needs that cannot be
met with existing capital financing methods and funding**

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1 sources;

2 (2) there is no coordinating entity or
3 process for accomplishing long-term state and local capital
4 planning, needs assessment or inventory of needs; setting
5 priorities; and making more effective use of existing capital
6 financing methods and funding sources;

7 (3) the uncertain nature of revenues
8 available from the proceeds of severance tax bonds and other
9 state and local revenues have frustrated state and local
10 government efforts to finance needed state and local capital
11 projects; and

12 (4) in order to meet public capital and
13 infrastructure needs, a central state mechanism to coordinate
14 the planning and financing of public projects is necessary.

15 B. It is the purpose of the New Mexico Finance
16 Authority Act to create a governmental instrumentality to
17 coordinate the planning and financing of state and local
18 public projects, to provide for long-term planning and
19 assessment of state and local capital needs and to improve
20 cooperation among the executive and legislative branches of
21 state government and local governments in financing public
22 projects.

23 C. It is the further purpose of the New Mexico
24 Finance Authority Act to provide financing for public
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1 projects in a manner that will not impair the capacity of the
2 public project revolving fund to provide future financing to
3 qualified entities for public projects. Funding shall not be
4 provided from the public project revolving fund unless
5 revenues in an amount sufficient to avoid a negative impact
6 on the financing capacity of the public project revolving
7 fund are contemporaneously pledged or dedicated for deposit
8 to the public project revolving fund. Pursuant to Section 6-
9 21-6.1 NMSA 1978, the authority may provide funding from the
10 public project revolving fund for the purposes of the
11 Wastewater Facility Construction Loan Act, the Rural
12 Infrastructure Act, the Solid Waste Act or the Drinking Water
13 State Revolving Loan Fund Act. "

14 Section 2. Section 6-21-5 NMSA 1978 (being Laws 1992,
15 Chapter 61, Section 5) is amended to read:

16 "6-21-5. POWERS OF THE AUTHORITY.--The authority is
17 granted all powers necessary and appropriate to carry out and
18 effectuate its public and corporate purposes, including [~~but~~
19 ~~not limited to~~] the following powers:

- 20 A. to sue or be sued;
- 21 B. to adopt and alter an official seal;
- 22 C. to make and alter bylaws for its organization
- 23 and internal management and to adopt subject to the review
- 24 and approval of the New Mexico finance authority oversight
- 25

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1 committee such [~~regulations~~] rules as are necessary and
2 appropriate to implement the provisions of the New Mexico
3 Finance Authority Act;

4 D. to appoint officers, agents and employees,
5 prescribe their duties and qualifications and fix their
6 compensation;

7 E. to make, enter into and enforce all contracts,
8 agreements and other instruments necessary, convenient or
9 desirable in the exercise of the authority's powers and
10 functions and for the purposes of the New Mexico Finance
11 Authority Act;

12 F. to acquire, construct, hold, improve, mortgage,
13 sell, lease, convey or dispose of real and personal property
14 for its public purposes;

15 G. to make loans and purchase securities and
16 contract to make loans and purchase securities;

17 H. to make grants to qualified entities to finance
18 public projects; provided that such grants are not made from
19 the public project revolving fund;

20 I. to procure insurance to secure payment on any
21 loan, lease or purchase payments owed to the authority by a
22 qualified entity in such amounts and from such insurers,
23 including the federal government, as it may deem necessary or
24 desirable and to pay any premiums for such insurance;
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1 J. to fix, revise from time to time, charge and
2 collect fees and other charges in connection with the making
3 of loans and any other services rendered by the authority;

4 K. to accept, administer, hold and use all funds
5 made available to the authority from any sources;

6 L. to borrow money and to issue bonds and provide
7 for the rights of the holders of the bonds;

8 M. to establish and maintain reserve and sinking
9 fund accounts to insure against and have funds available for
10 maintenance of other debt service accounts;

11 N. to invest and reinvest its funds and to take
12 and hold property as security for the investment of such
13 funds as provided in the New Mexico Finance Authority Act;

14 O. to employ attorneys, accountants, underwriters,
15 financial advisers, trustees, paying agents, architects,
16 engineers, contractors and such other [~~advisors~~] advisers,
17 consultants and agents as may be necessary and to fix and pay
18 their compensation;

19 P. to apply for and accept gifts or grants of
20 property, funds, services or aid in any form from the United
21 States, any unit of government or any person and to comply,
22 subject to the provisions of the New Mexico Finance Authority
23 Act, with the terms and conditions of the gifts or grants;

24 Q. to maintain an office at any place in the state
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1 it may determine;

2 R. subject to any agreement with bondholders, to:

3 (1) renegotiate any loan or agreement;

4 (2) consent to any modification of the terms
5 of any loan or agreement; and

6 (3) purchase bonds, which may upon purchase
7 be canceled; and

8 S. to do any and all things necessary or
9 convenient to carry out its purposes and exercise the powers
10 given and granted in the New Mexico Finance Authority Act. "

11 Section 3. Section 6-21-6 NMSA 1978 (being Laws 1992,
12 Chapter 61, Section 6, as amended) is amended to read:

13 "6-21-6. PUBLIC PROJECT REVOLVING FUND--PURPOSE--
14 ADMINISTRATION.--

15 A. The "public project revolving fund" is created
16 within the authority. The fund shall be administered by the
17 authority as a separate account, but may consist of such
18 subaccounts as the authority deems necessary to carry out the
19 purposes of the fund. The authority is authorized to
20 establish procedures and adopt [~~regulations~~] rules as
21 required to administer the fund in accordance with the New
22 Mexico Finance Authority Act.

23 B. Except as otherwise provided in the New Mexico
24 Finance Authority Act, money from payments of principal of
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1 and interest on loans and payments of principal of and
2 interest on securities held by the authority for public
3 projects authorized specifically by law shall be deposited in
4 the public project revolving fund. The fund shall also
5 consist of any other money appropriated, distributed or
6 otherwise allocated to the fund for the purpose of financing
7 public projects authorized specifically by law.

8 C. Money appropriated to pay administrative costs,
9 money available for administrative costs from other sources
10 and money from payments of interest on loans or securities
11 held by the authority, including payments of interest on
12 loans and securities held by the authority for public
13 projects authorized specifically by law, that represents
14 payments for administrative costs shall not be deposited in
15 the public project revolving fund and shall be deposited in a
16 separate account of the authority and may be used by the
17 authority to meet administrative costs of the authority.

18 D. Except as otherwise provided in the New Mexico
19 Finance Authority Act, money in the public project revolving
20 fund is appropriated to the authority to make loans or grants
21 and to purchase or sell securities to assist qualified
22 entities in financing public projects in accordance with the
23 New Mexico Finance Authority Act and pursuant to specific
24 authorization by law for each project.

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1 E. Money in the public project revolving fund not
2 needed for immediate disbursement, including [~~any funds~~]
3 money held in reserve, may be deposited with the state
4 treasurer for short-term investment pursuant to Section
5 6-10-10.1 NMSA 1978 or may be invested in direct and general
6 obligations of or obligations fully and unconditionally
7 guaranteed by the United States, obligations issued by
8 agencies of the United States, obligations of this state or
9 any political subdivision of the state, interest-bearing time
10 deposits, commercial paper issued by corporations organized
11 and operating in the United States and rated "prime" quality
12 by a national rating service, other investments permitted by
13 Section 6-10-10 NMSA 1978 or as otherwise provided by the
14 trust indenture or bond resolution, if [~~funds are~~] money is
15 pledged for or [~~secure~~] secures payment of bonds issued by
16 the authority.

17 F. The authority shall establish fiscal controls
18 and accounting procedures that are sufficient to assure
19 proper accounting for public project revolving fund payments,
20 disbursements and balances.

21 G. Money on deposit in the public project
22 revolving fund may be used to make interim loans for a term
23 not exceeding one year to qualified entities for the purpose
24 of providing interim financing for [~~any~~] a project approved
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1 or funded by the legislature.

2 H. Money on deposit in the public project
3 revolving fund may be used to acquire securities or to make
4 loans to qualified entities in connection with the equipment
5 program. As used in this subsection, "equipment program"
6 means the program of the authority designed to finance:

- 7 (1) the acquisition of equipment for:
- 8 (a) fire protection;
 - 9 (b) law enforcement and protection;
 - 10 (c) computer and data processing;
 - 11 (d) street and road construction and
12 maintenance;
 - 13 (e) emergency medical services;
 - 14 (f) solid waste collection, transfer
15 and disposal;
 - 16 (g) radio and telecommunications; and
 - 17 (h) utility system purposes; and
- 18 (2) [~~to finance~~] the acquisition,
19 construction and improvement of fire stations. The amount of
20 securities acquired from or the loan made to a qualified
21 entity at any one time pursuant to this subsection shall not
22 exceed five hundred thousand dollars (\$500,000). The
23 authority shall issue bonds within one year of the date the
24 securities are acquired or within one year of the date on
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1 which the loans are made and use the bond proceeds to
2 reimburse the public project revolving fund for the amounts
3 temporarily used to acquire securities or to make loans. The
4 temporarily funded projects under the equipment program are
5 not required to obtain specific authorization by law required
6 of projects permanently funded from the public project
7 revolving fund, as provided in this section and Section 6-21-
8 8 NMSA 1978.

9 I. Money on deposit in the public project
10 revolving fund may be designated as a reserve [funds] for
11 [any] bonds issued by the authority, including bonds payable
12 from sources other than the public project revolving fund,
13 and the authority may covenant in [any] a bond resolution or
14 trust indenture to maintain and replenish the reserve [funds]
15 from money deposited in the public project revolving fund
16 after issuance of bonds by the authority."

17 Section 4. Section 6-21-8 NMSA 1978 (being Laws 1992,
18 Chapter 61, Section 8) is amended to read:

19 "6-21-8. PUBLIC PROJECT FINANCE
20 PROGRAM - LOANS - PURCHASE OR SALE OF SECURITIES. -- To implement
21 a program to assist qualified entities in financing public
22 projects, the authority, subject to specific authorization by
23 law for projects financed with money in the public projects
24 revolving fund, may:
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1 A. make loans to qualified entities that establish
2 one or more dedicated sources of revenue to repay the loan
3 from the authority;

4 B. make, enter into and enforce all contracts
5 necessary, convenient or desirable for the purposes of the
6 authority or pertaining to:

7 (1) a loan to a qualified entity;

8 (2) a grant to a qualified entity from money
9 available to the authority except money in the public project
10 revolving fund;

11 (3) a purchase or sale of securities
12 individually or on a pooled basis; or

13 (4) the performance of its duties and
14 execution of [~~any of~~] its powers under the New Mexico Finance
15 Authority Act;

16 C. purchase or hold securities at prices and in a
17 manner the authority considers advisable, giving due
18 consideration to the financial capability of the qualified
19 entity, and sell securities acquired or held by it at prices
20 without relation to cost and in a manner the authority
21 considers advisable;

22 D. prescribe the form of application or procedure
23 required of a qualified entity for a loan or purchase of its
24 securities, fix the terms and conditions of the loan or
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1 purchase and enter into agreements with qualified entities
2 with respect to loans or purchases;

3 E. charge for its costs and services in review or
4 consideration of a proposed loan to a qualified entity or
5 purchase by the authority of securities, whether or not the
6 loan is made or the securities purchased;

7 F. fix and establish terms and provisions with
8 respect to:

9 (1) a purchase of securities by the
10 authority, including date and maturities of the securities;

11 (2) redemption or payment before maturity;
12 and

13 (3) any other matters that in connection
14 with the purchase are necessary, desirable or advisable in
15 the judgment of the authority;

16 G. to the extent permitted under its contracts
17 with the holders of bonds of the authority, consent to
18 modification of the rate of interest, time and payment of
19 installment of principal or interest, security or any other
20 term of a bond, contract or agreement of any kind to which
21 the authority is a party;

22 H. in connection with the purchase of any
23 securities, consider the ability of the qualified entity to
24 secure financing from other sources and the costs of that
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1 financing and the particular public project or purpose to be
2 financed or refinanced with the proceeds of the securities to
3 be purchased by the authority;

4 I. acquire and hold title to or leasehold interest
5 in real and personal property and to sell, convey or lease
6 that property for the purpose of satisfying a default or
7 enforcing the provisions of a loan agreement; and

8 J. in the event of default by a qualified entity,
9 enforce its rights by suit or mandamus or may use all other
10 available remedies under state law. "

11 Section 5. Section 6-21-11 NMSA 1978 (being Laws 1992,
12 Chapter 61, Section 11) is amended to read:

13 "6-21-11. BONDS OF THE AUTHORITY--USE--SECURITY.--

14 A. The authority may issue and sell bonds in
15 principal amounts it considers necessary to provide
16 sufficient [~~funds~~] money for any purpose of the New Mexico
17 Finance Authority Act, including:

18 (1) purchase of securities;
19 (2) [~~make~~] making loans through the purchase
20 of securities;

21 (3) [~~make~~] making grants for public projects
22 from money available to the authority except money in the
23 public project revolving fund;

24 (4) the construction of public projects;

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1 (5) the payment, funding or refunding of the
2 principal of or interest or redemption premiums on bonds
3 issued by the authority, whether the bonds or interest to be
4 paid, funded or refunded have or have not become due;

5 (6) the establishment or increase of
6 reserves or sinking funds to secure or to pay principal,
7 premium, if any, or interest on bonds; and

8 (7) all other costs or expenses of the
9 authority incident to and necessary or convenient to carry
10 out its corporate purposes and powers.

11 B. Except as otherwise provided in the New Mexico
12 Finance Authority Act, all bonds or other obligations issued
13 by the authority shall be obligations of the authority
14 payable solely from the revenues, income, fees, charges or
15 funds of the authority that may, pursuant to the provisions
16 of the New Mexico Finance Authority Act, be pledged to the
17 payment of such obligations, and the bonds or other
18 obligations shall not create an obligation, debt or liability
19 of the state. No breach of any pledge, obligation or
20 agreement of the authority shall impose a pecuniary liability
21 or a charge upon the general credit or taxing power of the
22 state or any political subdivision of the state.

23 C. As security for the payment of the principal,
24 interest or premium, if any, on bonds issued by the
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1 authority, the authority is authorized to pledge, transfer
2 and assign:

3 (1) any obligation of a qualified entity
4 that is payable to the authority;

5 (2) the security for the qualified entity's
6 obligations;

7 (3) money in the public project revolving
8 fund or [any] a subaccount of that fund subject to the
9 provisions of Subsection C of Section [~~6 of the New Mexico~~
10 ~~Finance Authority Act~~] 6-21-6 NMSA 1978;

11 (4) any grant, subsidy or contribution from
12 the United States or any of its agencies or
13 instrumentalities; or

14 (5) any income, revenues, funds or other
15 money of the authority from any other source authorized for
16 such pledge, transfer or assignment other than from the
17 public [~~projects~~] project revolving fund under the New Mexico
18 Finance Authority Act. "

19 Section 6. EMERGENCY. --It is necessary for the public
20 peace, health and safety that this act take effect
21 immediately.