

AN ACT

RELATING TO THE NEW MEXICO FINANCE AUTHORITY; ALLOWING THE NEW MEXICO FINANCE AUTHORITY TO ACQUIRE AND LEASE PROPERTY TO QUALIFIED ENTITIES; AMENDING PROVISIONS RELATING TO THE OBLIGATIONS THAT MAY BE PLEDGED AND THE TYPES OF SECURITY THAT THE AUTHORITY MAY PROVIDE FOR THE PAYMENT OF PRINCIPAL, INTEREST AND OTHER COSTS RELATING TO BONDS OF THE AUTHORITY; AMENDING PROVISIONS RELATING TO THE AUTHORITY'S STATUS AS A GOVERNMENTAL INSTRUMENTALITY; DECLARING AN EMERGENCY.

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

Section 1. Section 6-21-3 NMSA 1978 (being Laws 1992, Chapter 61, Section 3, as amended) is amended to read:

"6-21-3. DEFINITIONS. -- As used in the New Mexico Finance Authority Act:

A. "authority" means the New Mexico finance authority;

B. "bond" means any bonds, notes, certificates of participation or other evidence of indebtedness;

C. "bondholder" or "holder" means a person who is the owner of a bond, whether registered or not;

D. "emergency public project" means a public project:

(1) made necessary by an unforeseen occurrence or circumstance threatening the public health,

safety or welfare; and

(2) requiring the immediate expenditure of money that is not within the available financial resources of the qualified entity as determined by the authority;

E. "public project" means the acquisition, construction, improvement, alteration or reconstruction of assets of a long-term capital nature by a qualified entity, including land; buildings; water rights; water, sewerage and waste disposal systems; streets; airports; municipal utilities; parking facilities; and machinery, furniture and equipment. "Public project" includes all proposed expenditures related to the entire undertaking. "Public project" also includes the acquisition, construction or improvement of real property, buildings, facilities and other assets by the authority for the purpose of leasing the property;

F. "qualified entity" means the state or an agency or institution of the state or a county, municipality, school district, two-year public post-secondary educational institution, land grant corporation, intercommunity water or natural gas supply association or corporation, special district or community water association or an Indian nation, tribe or pueblo located wholly or partially in New Mexico, including a political subdivision or a wholly owned enterprise of an Indian nation, tribe or pueblo; and

G. "security" or "securities", unless the context indicates otherwise, means bonds, notes or other evidence of indebtedness issued by a qualified entity or leases or certificates or other evidence of participation in the lessor's interest in and rights under a lease with a qualified entity and that are payable from taxes, revenues, rates, charges, assessments or user fees or from the proceeds of funding or refunding bonds, notes or other evidence of indebtedness of a qualified entity or from certificates or evidence of participation in a lease with a qualified entity. "

Section 2. Section 6-21-4 NMSA 1978 (being Laws 1992, Chapter 61, Section 4) is amended to read:

"6-21-4. NEW MEXICO FINANCE AUTHORITY CREATED--
MEMBERSHIP--QUALIFICATIONS--QUORUM--MEETINGS--COMPENSATION--
BOND.--

A. There is created a public body politic and corporate, separate and apart from the state, constituting a governmental instrumentality to be known as the "New Mexico finance authority" for the performance of essential public functions.

B. The authority shall be composed of twelve members. The state investment officer, the secretary of finance and administration, the secretary of economic development, the secretary of energy, minerals and natural

resources, the secretary of environment, the executive director of the New Mexico municipal league and the executive director of the New Mexico association of counties or their designees shall be ex-officio members of the authority with voting privileges. The governor, with the advice and consent of the senate, shall appoint to the authority the chief financial officer of a state higher educational institution and four members who are residents of the state. The appointed members shall serve at the pleasure of the governor.

C. The appointed members of the authority shall be appointed to four-year terms. The initial members shall be appointed to staggered terms of four years or less, so that the term of at least one member expires on January 1 of each year. Vacancies shall be filled by appointment by the governor for the remainder of the unexpired term. Any member of the authority shall be eligible for reappointment.

D. Each appointed member before entering upon his duty shall take an oath of office to administer the duties of his office faithfully and impartially. A record of the oath shall be filed in the office of the secretary of state.

E. The governor shall designate an appointed member of the authority to serve as chairman. The authority shall elect annually one of its members to serve as vice chairman. The authority shall appoint and prescribe the

duties of such other officers, who need not be members, as the authority deems necessary or advisable, including an executive director and a secretary, who may be the same person. The authority may delegate to one or more of its members, officers, employees or agents such powers and duties as it may deem proper and consistent with the New Mexico Finance Authority Act.

F. The executive director of the authority shall direct the affairs and business of the authority, subject to the policies, control and direction of the authority. The secretary of the authority shall keep a record of the proceedings of the authority and shall be custodian of all books, documents and papers filed with the authority, the minute book or journal of the authority and its official seal. The secretary shall make copies of all minutes and other records and documents of the authority and give certificates under the official seal of the authority to the effect that the copies are true copies, and all persons dealing with the authority may rely upon the certificates.

G. Meetings of the authority shall be held at the call of the chairman or whenever three members shall so request in writing. A majority of members then serving constitutes a quorum for the transaction of any business. The affirmative vote of at least a majority of a quorum present shall be necessary for any action to be taken by the

authority. An ex-officio member may designate in writing another person to attend meetings of the authority and to the same extent and with the same effect act in his stead. No vacancy in the membership of the authority shall impair the right of a quorum to exercise all rights and perform all duties of the authority.

H. Each member of the authority shall give bond as provided in the Surety Bond Act. All costs of the surety bonds shall be borne by the authority.

I. The authority is not created or organized, and its operations shall not be conducted, for the purpose of making a profit. No part of the revenues or assets of the authority shall benefit or be distributable to its members, officers or other private persons. The members of the authority shall receive no compensation for their services, but shall be reimbursed for actual and necessary expenses at the same rate and on the same basis as provided for public officers in the Per Diem and Mileage Act.

J. The authority shall not be subject to the supervision or control of any other board, bureau, department or agency of the state except as specifically provided in the New Mexico Finance Authority Act. No use of the terms "state agency" or "instrumentality" in any other law of the state shall be deemed to refer to the authority unless the authority is specifically referred to in the law.

K. The authority is a governmental instrumentality for purposes of the Tort Claims Act."

Section 3. Section 6-21-5 NMSA 1978 (being Laws 1992, Chapter 61, Section 5, as amended) is amended to read:

"6-21-5. POWERS OF THE AUTHORITY. --The authority is granted all powers necessary and appropriate to carry out and effectuate its public and corporate purposes, including the following powers:

A. to sue or be sued;

B. to adopt and alter an official seal;

C. to make and alter bylaws for its organization and internal management and to adopt, subject to the review and approval of the New Mexico finance authority oversight committee, such rules as are necessary and appropriate to implement the provisions of the New Mexico Finance Authority Act;

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

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

F. to acquire, construct, hold, improve, grant

mortgages of, accept mortgages of, sell, lease, convey or dispose of real and personal property for its public purposes;

G. to acquire, construct or improve real property, buildings and facilities for lease and to pledge rentals and other income received from such leases to the payment of bonds;

H. to make loans, leases and purchase securities and contract to make loans, leases and purchase securities;

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

J. to procure insurance to secure payment on any loan, lease or purchase payments owed to the authority by a qualified entity in such amounts and from such insurers, including the federal government, as it may deem necessary or desirable and to pay any premiums for such insurance;

K. to fix, revise from time to time, charge and collect fees and other charges in connection with the making of loans, leases and any other services rendered by the authority;

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

M. to borrow money and to issue bonds and provide for the rights of the holders of the bonds;

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

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

P. to employ attorneys, accountants, underwriters, financial advisers, trustees, paying agents, architects, engineers, contractors and such other advisers, consultants and agents as may be necessary and to fix and pay their compensation;

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

R. to maintain an office at any place in the state it may determine;

S. subject to any agreement with bondholders, to:

(1) renegotiate any loan, lease or agreement;

(2) consent to any modification of the terms of any loan, lease or agreement; and

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

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

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

"6-21-8. PUBLIC PROJECT FINANCE PROGRAM - LOANS - PURCHASE OR SALE OF SECURITIES. -- To implement a program to assist qualified entities in financing public projects, the authority, subject to specific authorization by law for projects financed with money in the public project revolving fund, may:

A. make loans to qualified entities that establish one or more dedicated sources of revenue to repay the loan from the authority;

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

(1) a loan to a qualified entity;

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

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

(4) the performance of its duties and execution of its powers under the New Mexico Finance

Authority Act;

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

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

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

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

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

(2) redemption or payment before maturity;
and

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

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

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

I. acquire fee simple, leasehold, mortgagor's or mortgagee's interests in real and personal property and to sell, mortgage, convey or lease that property for authority purposes; and

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

Section 5. Section 6-21-9 NMSA 1978 (being Laws 1992, Chapter 61, Section 9) is amended to read:

"6-21-9. PUBLIC PROJECT FINANCING-- POWERS OF QUALIFIED ENTITIES.-- A qualified entity may:

A. obligate itself to pay to the authority at periodic intervals a sum sufficient to pay all or part of

debt service or other obligation, including fees and other charges imposed by the authority with respect to bonds issued by the authority to fund a public project, and to make such payments to the authority for deposit in the fund or account designated by the authority;

B. fulfill any obligation to pay the authority by the issuance of bonds in accordance with the laws authorizing such issuance by the qualified entity; provided that notwithstanding the provisions of any law to the contrary, such bonds may be sold at private sale to the authority at the price and upon the terms and conditions the qualified entity shall determine;

C. levy, collect and pay to the authority and obligate itself to continue to levy, collect and pay to the authority the proceeds from one or more sources of funds or revenues, including but not limited to charges, licenses, permits, taxes, user or other fees, special assessments or other funds or revenue available to the qualified entity, in accordance with the laws authorizing imposition or levy thereof by the qualified entity;

D. undertake and obligate itself to pay its contractual obligation to the authority solely from the proceeds from any of the sources specified in Subsection C of this section or, in accordance with the laws authorizing issuance of bonds by a qualified entity, impose upon itself a

general obligation to impose a property tax to pay bonds held by the authority which may be additionally secured by a pledge of any of the sources specified in Subsection C of this section; provided, however, that any general obligation involving property tax revenues is subject to applicable constitutional debt requirements;

E. lease buildings, facilities and other real and personal property from the authority; and

F. enter into agreements, perform acts and delegate functions and duties that the qualified entity determines are necessary or desirable to enable the authority to assist the qualified entity in financing a public project. "

Section 6. Section 6-21-10 NMSA 1978 (being Laws 1992, Chapter 61, Section 10) is amended to read:

"6-21-10. PURCHASES IN NAME OF AUTHORITY--
DOCUMENTATION.--

A. All tangible and intangible property, real and personal property and securities purchased, held or owned at any time by the authority shall at all times be purchased and held in the name of the authority, or may be mortgaged, assigned or otherwise encumbered as security for the repayment of bonds issued by the authority.

B. All securities purchased at any time by the authority, upon delivery to the authority, shall be

accompanied by all documentation required by the authority and shall include an approving opinion of recognized bond counsel, certification and guarantee of signatures and certification as to no litigation pending as of the date of delivery of the securities challenging the validity or issuance of such securities. "

Section 7. Section 6-21-11 NMSA 1978 (being Laws 1992, Chapter 61, Section 11, as amended) is amended to read:

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

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

- (1) purchase of securities;
- (2) making loans through the purchase of securities;
- (3) making grants for public projects from money available to the authority except money in the public project revolving fund;
- (4) the acquisition, construction or improvement of public projects, including real and personal property;
- (5) the payment, funding or refunding of the principal of or interest or redemption premiums on bonds issued by the authority, whether the bonds or interest to be

paid, funded or refunded have or have not become due;

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

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

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

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

(1) any obligation that is payable to the authority, including rents and lease payments owing to the

authority in connection with the leasing of real or personal property;

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

(3) money in the public project revolving fund or a subaccount of that fund subject to the provisions of Subsection C of Section 6-21-6 NMSA 1978;

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

(5) any income, revenues, funds or other money of the authority from any other source authorized for such pledge, transfer or assignment other than from the public project revolving fund under the New Mexico Finance Authority Act. "

Section 8. Section 6-21-23 NMSA 1978 (being Laws 1992, Chapter 61, Section 23, as amended) is amended to read:

"6-21-23. PROHIBITED ACTIONS. --The authority shall not:

A. lend money or make a grant other than to a qualified entity;

B. purchase securities other than from a qualified entity or other than for investment as provided in the New Mexico Finance Authority Act;

C. lease a public project to any entity other

than a qualified entity; except that the authority may lease a public project to any entity following termination of a lease of the public project to a qualified entity if leasing the public project to an entity other than a qualified entity is necessary to avoid forfeiture or impairment of the public project or a default on bonds whose payment is secured, in whole or in part, by the public project or by lease rentals from the public project;

D. deal in securities within the meaning of or subject to any securities law, securities exchange law or securities dealers law of the United States or of the state or of any other state or jurisdiction, domestic or foreign, except as authorized in the New Mexico Finance Authority Act;

E. issue bills of credit or accept deposits of money for time on demand deposit or administer trusts or engage in any form or manner, or in the conduct of, any private or commercial banking business, or act as a savings bank or savings and loan association or any other kind of financial institution except as authorized in the New Mexico Finance Authority Act;

F. engage in any form of private or commercial banking business except as authorized in the New Mexico Finance Authority Act; or

G. lend money, issue bonds, including public-private partnership project bonds, or make a grant for the

promotion of gaming or a gaming enterprise or for development of infrastructure for a gaming facility."

Section 9. Section 6-21-26 NMSA 1978 (being Laws 1992, Chapter 61, Section 26) is amended to read:

"6-21-26. COURT PROCEEDINGS-- PREFERENCE-- VENUE. -- Any action or proceeding to which the authority or the people of the state may be a party in which any question arises as to the validity of the New Mexico Finance Authority Act or project or transaction undertaken by the authority pursuant to that act shall be preferred over all other civil cases in all courts of the state and shall be heard and determined in preference to all other civil business pending therein irrespective of position on the calendar. The same preference shall be granted upon application of counsel to the authority in any action or proceeding seeking a judicial declaration of the validity of the New Mexico Finance Authority Act or any project or transaction undertaken by the authority pursuant to that act. The venue of any such action or proceeding or any other action or proceeding against the authority shall be in the county in which the principal office of the authority is located."

Section 10. EMERGENCY.--It is necessary for the public peace, health and safety that this act take effect immediately. _____

