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**HOUSE BILL 163**

**45TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2001**

**INTRODUCED BY**

**James G. Taylor**

**FOR THE NEW MEXICO FINANCE AUTHORITY OVERSIGHT COMMITTEE**

**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**

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1 authority;

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

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

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

8 (1) made necessary by an unforeseen  
9 occurrence or circumstance threatening the public health,  
10 safety or welfare; and

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

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

. 134803. 2

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

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

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

22 "6-21-4. NEW MEXICO FINANCE AUTHORITY CREATED--  
23 MEMBERSHIP--QUALIFICATIONS--QUORUM--MEETINGS--COMPENSATION--  
24 BOND.--

25 A. There is created a public body politic and

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1 corporate, separate and apart from the state, constituting a  
2 governmental instrumentality to be known as the "New Mexico  
3 finance authority" for the performance of essential public  
4 functions.

5 B. The authority shall be composed of twelve  
6 members. The state investment officer, the secretary of  
7 finance and administration, the secretary of economic  
8 development, the secretary of energy, minerals and natural  
9 resources, the secretary of environment, the executive  
10 director of the New Mexico municipal league and the executive  
11 director of the New Mexico association of counties or their  
12 designees shall be ex-officio members of the authority with  
13 voting privileges. The governor, with the advice and consent  
14 of the senate, shall appoint to the authority the chief  
15 financial officer of a state higher educational institution  
16 and four members who are residents of the state. The  
17 appointed members shall serve at the pleasure of the governor.

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

25 D. Each appointed member before entering upon his

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1 duty shall take an oath of office to administer the duties of  
2 his office faithfully and impartially. A record of the oath  
3 shall be filed in the office of the secretary of state.

4 E. The governor shall designate an appointed  
5 member of the authority to serve as chairman. The authority  
6 shall elect annually one of its members to serve as vice  
7 chairman. The authority shall appoint and prescribe the  
8 duties of such other officers, who need not be members, as the  
9 authority deems necessary or advisable, including an executive  
10 director and a secretary, who may be the same person. The  
11 authority may delegate to one or more of its members,  
12 officers, employees or agents such powers and duties as it may  
13 deem proper and consistent with the New Mexico Finance  
14 Authority Act.

15 F. The executive director of the authority shall  
16 direct the affairs and business of the authority, subject to  
17 the policies, control and direction of the authority. The  
18 secretary of the authority shall keep a record of the  
19 proceedings of the authority and shall be custodian of all  
20 books, documents and papers filed with the authority, the  
21 minute book or journal of the authority and its official seal.  
22 The secretary shall make copies of all minutes and other  
23 records and documents of the authority and give certificates  
24 under the official seal of the authority to the effect that  
25 the copies are true copies, and all persons dealing with the

. 134803. 2

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1 authority may rely upon the certificates.

2 G. Meetings of the authority shall be held at the  
3 call of the chairman or whenever three members shall so  
4 request in writing. A majority of members then serving  
5 constitutes a quorum for the transaction of any business. The  
6 affirmative vote of at least a majority of a quorum present  
7 shall be necessary for any action to be taken by the  
8 authority. An ex-officio member may designate in writing  
9 another person to attend meetings of the authority and to the  
10 same extent and with the same effect act in his stead. No  
11 vacancy in the membership of the authority shall impair the  
12 right of a quorum to exercise all rights and perform all  
13 duties of the authority.

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

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

. 134803. 2

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

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

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

12           "6-21-5. POWERS OF THE AUTHORITY. -- The authority is  
13 granted all powers necessary and appropriate to carry out and  
14 effectuate its public and corporate purposes, including the  
15 following powers:

- 16           A. to sue or be sued;
- 17           B. to adopt and alter an official seal;
- 18           C. to make and alter bylaws for its organization  
19 and internal management and to adopt, subject to the review  
20 and approval of the New Mexico finance authority oversight  
21 committee, such rules as are necessary and appropriate to  
22 implement the provisions of the New Mexico Finance Authority  
23 Act;
- 24           D. to appoint officers, agents and employees,  
25 prescribe their duties and qualifications and fix their

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1 compensation;

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

7 F. to acquire, construct, hold, improve,  
8 ~~[mortgage]~~ grant mortgages of, accept mortgages of, sell,  
9 lease, convey or dispose of real and personal property for its  
10 public purposes;

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

15 ~~[G.]~~ H. to make loans, leases and purchase  
16 securities and contract to make loans, leases and purchase  
17 securities;

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

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

. 134803. 2



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1           ~~[J-]~~ K. to fix, revise from time to time, charge  
2 and collect fees and other charges in connection with the  
3 making of loans, leases and any other services rendered by the  
4 authority;

5           ~~[K-]~~ L. to accept, administer, hold and use all  
6 funds made available to the authority from any sources;

7           ~~[L-]~~ M. to borrow money and to issue bonds and  
8 provide for the rights of the holders of the bonds;

9           ~~[M-]~~ N. to establish and maintain reserve and  
10 sinking fund accounts to insure against and have funds  
11 available for maintenance of other debt service accounts;

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

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

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

25           ~~[Q-]~~ R. to maintain an office at any place in the

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1 state it may determine;

2 [R-] S. subject to any agreement with bondholders,  
3 to:

4 (1) renegotiate any loan, lease or agreement;  
5 (2) consent to any modification of the terms  
6 of any loan, lease or agreement; and

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

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

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

14 "6-21-8. PUBLIC PROJECT FINANCE PROGRAM - LOANS - PURCHASE  
15 OR SALE OF SECURITIES. --To implement a program to assist  
16 qualified entities in financing public projects, the  
17 authority, subject to specific authorization by law for  
18 projects financed with money in the public [~~projects~~] project  
19 revolving fund, may:

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

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

. 134803. 2

- 1 (1) a loan to a qualified entity;
- 2 (2) a grant to a qualified entity from money  
3 available to the authority except money in the public project  
4 revolving fund;
- 5 (3) a purchase or sale of securities  
6 individually or on a pooled basis; or
- 7 (4) the performance of its duties and  
8 execution of its powers under the New Mexico Finance Authority  
9 Act;
- 10 C. purchase or hold securities at prices and in a  
11 manner the authority considers advisable, giving due  
12 consideration to the financial capability of the qualified  
13 entity, and sell securities acquired or held by it at prices  
14 without relation to cost and in a manner the authority  
15 considers advisable;
- 16 D. prescribe the form of application or procedure  
17 required of a qualified entity for a loan or purchase of its  
18 securities, fix the terms and conditions of the loan or  
19 purchase and enter into agreements with qualified entities  
20 with respect to loans or purchases;
- 21 E. charge for its costs and services in review or  
22 consideration of a proposed loan to a qualified entity or  
23 purchase by the authority of securities, whether or not the  
24 loan is made or the securities purchased;
- 25 F. fix and establish terms and provisions with

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1 respect to:

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

4 (2) redemption or payment before maturity;  
5 and

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

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

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

21 I. acquire [~~and hold title to or~~] fee simple,  
22 leasehold, [~~interest~~] mortgagor's or mortgagee's interests in  
23 real and personal property and to sell, mortgage, convey or  
24 lease that property for [~~the purpose of satisfying a default~~  
25 ~~or enforcing the provisions of a loan agreement~~] authority

. 134803. 2

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1 purposes; and

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

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

7 "6-21-9. PUBLIC PROJECT FINANCING--POWERS OF QUALIFIED  
8 ENTITIES.--A qualified entity may:

9 A. obligate itself to pay to the authority at  
10 periodic intervals a sum sufficient to pay all or part of debt  
11 service or other obligation, including fees and other  
12 [~~changes~~] charges imposed by the authority with respect to  
13 bonds issued by the authority to fund a public project, and to  
14 make such payments to the authority for deposit in the fund or  
15 account designated by the authority;

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

23 C. levy, collect and pay to the authority and  
24 obligate itself to continue to levy, collect and pay to the  
25 authority the proceeds from one or more sources of funds or

. 134803. 2

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1 revenues, including but not limited to charges, licenses,  
2 permits, taxes, user or other fees, special assessments or  
3 other funds or revenue available to the qualified entity, in  
4 accordance with the laws authorizing imposition or levy  
5 thereof by the qualified entity;

6 D. undertake and obligate itself to pay its  
7 contractual obligation to the authority solely from the  
8 proceeds from any of the sources specified in Subsection C of  
9 this section or, in accordance with the laws authorizing  
10 issuance of bonds by a qualified entity, impose upon itself a  
11 general obligation to impose a property tax to pay bonds held  
12 by the authority which may be additionally secured by a pledge  
13 of any of the sources specified in Subsection C of this  
14 section; provided, however, that any general obligation  
15 involving property tax revenues is subject to applicable  
16 constitutional debt requirements; [~~and~~]

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

19 [~~E.~~] F. enter into agreements, perform acts and  
20 delegate functions and duties that the qualified entity  
21 determines are necessary or desirable to enable the authority  
22 to assist the qualified entity in financing a public project. "

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

25 "6-21-10. PURCHASES IN NAME OF AUTHORITY--

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1 DOCUMENTATION. --

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

8 B. All securities purchased at any time by the  
9 authority, upon delivery to the authority, shall be  
10 accompanied by all documentation required by the authority and  
11 shall include an approving opinion of recognized bond counsel,  
12 certification and guarantee of signatures and certification as  
13 to no litigation pending as of the date of delivery of the  
14 securities challenging the validity or issuance of such  
15 securities. "

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

18 "6-21-11. BONDS OF THE AUTHORITY--USE--SECURITY. --

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

23 (1) purchase of securities;

24 (2) making loans through the purchase of  
25 securities;

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1 (3) making grants for public projects from  
2 money available to the authority except money in the public  
3 project revolving fund;

4 (4) the acquisition, construction or  
5 improvement of public projects, including real and personal  
6 property;

7 (5) the payment, funding or refunding of the  
8 principal of or interest or redemption premiums on bonds  
9 issued by the authority, whether the bonds or interest to be  
10 paid, funded or refunded have or have not become due;

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

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

17 B. Except as otherwise provided in the New Mexico  
18 Finance Authority Act, all bonds or other obligations issued  
19 by the authority shall be obligations of the authority payable  
20 solely from the revenues, income, fees, charges or funds of  
21 the authority that may, pursuant to the provisions of the New  
22 Mexico Finance Authority Act, be pledged to the payment of  
23 such obligations, and the bonds or other obligations shall not  
24 create an obligation, debt or liability of the state. No  
25 breach of any pledge, obligation or agreement of the authority

. 134803. 2



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1 shall impose a pecuniary liability or a charge upon the  
2 general credit or taxing power of the state or any political  
3 subdivision of the state.

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

7 (1) any obligation [~~of a qualified entity~~]  
8 that is payable to the authority, including rents and lease  
9 payments owing to the authority in connection with the leasing  
10 of real or personal property;

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

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

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

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

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

. 134803. 2

1 "6-21-23. PROHIBITED ACTIONS. --The authority shall not:

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

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

7 C. lease a public project to any entity other than  
8 a qualified entity; except that the authority may lease a  
9 public project to any entity following termination of a lease  
10 of the public project to a qualified entity if leasing the  
11 public project to an entity other than a qualified entity is  
12 necessary to avoid forfeiture or impairment of the public  
13 project or a default on bonds whose payment is secured, in  
14 whole or in part, by the public project or by lease rentals  
15 from the public project;

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

21 E. issue bills of credit or accept deposits of  
22 money for time on demand deposit or administer trusts or  
23 engage in any form or manner, or in the conduct of, any  
24 private or commercial banking business, or act as a savings  
25 bank or savings and loan association or any other kind of

. 134803. 2

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1 financial institution except as authorized in the New Mexico  
2 Finance Authority Act;

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

6 G. lend money, issue bonds, including public-  
7 private partnership project bonds, or make a grant for the  
8 promotion of gaming or a gaming enterprise or for development  
9 of infrastructure for a gaming facility. "

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

12 "6-21-26. COURT PROCEEDINGS-- PREFERENCE-- VENUE. -- Any  
13 action or proceeding to which the authority or the people of  
14 the state may be a party in which any question arises as to  
15 the validity of the New Mexico Finance Authority Act or  
16 project or transaction undertaken by the authority pursuant to  
17 that act shall be preferred over all other civil cases in all  
18 courts of the state and shall be heard and determined in  
19 preference to all other civil business pending therein  
20 irrespective of position on the calendar. The same preference  
21 shall be granted upon application of counsel to the authority  
22 in any action or proceeding [~~questioning~~] seeking a judicial  
23 declaration of the validity of the New Mexico Finance  
24 Authority Act [~~in which he may be allowed to intervene~~] or any  
25 project or transaction undertaken by the authority pursuant to

. 134803. 2

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1 that act. The venue of any such action or proceeding or any  
2 other action or proceeding against the authority shall be in  
3 the county in which the principal office of the authority is  
4 located. "

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

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