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SENATE BILL 339

51ST LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2013

INTRODUCED BY

Stuart Ingle

AN ACT

RELATING TO GOVERNMENT SERVICES; AMENDING AND REPEALING
SECTIONS OF THE NMSA 1978 TO MERGE THE BUILDING SERVICES
DIVISION INTO THE FACILITIES MANAGEMENT DIVISION OF THE GENERAL
SERVICES DEPARTMENT; CHANGING THE NAME OF THE PROPERTY CONTROL
DIVISION OF THE GENERAL SERVICES DEPARTMENT TO THE FACILITIES
MANAGEMENT DIVISION.

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

SECTION 1. Section 6-21-6.14 NMSA 1978 (being Laws 2009,
Chapter 145, Section 2) is amended to read:

"6-21-6.14. LEASE PURCHASE REVENUE BONDS--LEASE PURCHASE
AGREEMENTS.--

A. If specifically authorized by law, the authority
may issue and sell lease purchase revenue bonds in compliance
with the New Mexico Finance Authority Act and enter into a

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1 lease purchase agreement pursuant to the provisions of this
2 section.

3 B. Lease purchase revenue bonds may be issued at
4 times and on terms established by the authority and shall be
5 paid exclusively from a debt service fund created pursuant to
6 this section. The net proceeds from the sale of lease purchase
7 revenue bonds are appropriated to the authority for the purpose
8 of acquiring by construction or purchase the buildings, land or
9 infrastructure specified in the authorizing law; provided that,
10 if authorized by law, the net proceeds may also be used for
11 debt service payments due before sufficient lease payments have
12 been deposited into the applicable debt service fund.

13 C. All lease purchase revenue bonds issued by the
14 authority shall be obligations of the authority payable solely
15 from the separate debt service fund created for those bonds.
16 The bonds shall not create an obligation, debt or liability of
17 the state, and no breach of any pledge, obligation or agreement
18 of the authority shall impose a pecuniary liability or charge
19 upon the general credit or taxing power of the state or any
20 political subdivision of the state.

21 D. The authority may purchase lease purchase
22 revenue bonds with money in the public project revolving fund
23 pursuant to the provisions of Section 6-21-6 NMSA 1978.

24 E. A debt service fund shall be created in the
25 authority for each authorized issuance of lease purchase

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1 revenue bonds. Each fund shall consist of transfers to the
2 fund, legislative appropriations, lease payments made by the
3 [~~property control~~] facilities management division of the
4 general services department or other lessee pursuant to the
5 authorized lease purchase agreement and money earned from
6 investment of the fund. Balances remaining in a fund at the
7 end of a fiscal year shall not revert. Money in each fund is
8 appropriated to the authority for:

9 (1) the payment of principal, interest,
10 premiums and expenses on the specific lease purchase revenue
11 bonds that are issued pursuant to the bond authorization; and

12 (2) if authorized by law, required maintenance
13 and repairs of the building, land or infrastructure if the
14 authority determines that money in the fund is sufficient to
15 meet the requirements of Paragraph (1) of this subsection plus
16 any required reserve.

17 F. Upon the certification of the authority that all
18 debt service on a specific issuance of lease purchase revenue
19 bonds has been paid in full, any remaining balance of the debt
20 service fund created for those bonds shall be transferred to
21 the general fund.

22 G. The authority may enter into an agreement with
23 the [~~property control~~] facilities management division of the
24 general services department or other agency specified by law
25 for the lease purchase of the building acquired with the lease

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1 purchase revenue bond proceeds. The agreement shall provide
2 the lessee with an option to purchase for a price that is
3 reduced according to the lease payments made and shall also
4 provide that:

5 (1) there is no legal obligation for the state
6 to continue the lease from year to year or to purchase the
7 building;

8 (2) the lease shall be terminated if
9 sufficient appropriations are not available to meet the current
10 lease payments;

11 (3) if authorized by the legislature, the
12 lease payments include a maintenance component that may
13 escalate annually and, over the length of the agreement,
14 approximate the amount that will be needed for the maintenance
15 and repair of the building; and

16 (4) if the lessee is the [~~property control~~]
17 facilities management division of the general services
18 department or an agency under the jurisdiction of the [~~property~~
19 ~~control~~] facilities management division, the title to the
20 building shall be issued in the name of the [~~property control~~]
21 facilities management division if the building is purchased.

22 H. The provisions of this section apply to state
23 buildings specifically authorized by law to be acquired
24 pursuant to this section through lease purchase agreements with
25 the authority. Nothing in this section limits or otherwise

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1 affects the power that the authority has under other laws to
2 incur debt, acquire and dispose of property or enter into
3 agreements."

4 SECTION 2. Section 6-21C-4 NMSA 1978 (being Laws 2001,
5 Chapter 199, Section 4, as amended) is amended to read:

6 "6-21C-4. NEW MEXICO FINANCE AUTHORITY SHALL ISSUE
7 BUILDING BONDS--APPROPRIATION OF PROCEEDS.--

8 A. The New Mexico finance authority is authorized
9 to issue and sell revenue bonds, known as "state office
10 building tax revenue bonds", payable solely from the state
11 building bonding fund, in compliance with the State Building
12 Bonding Act for the purpose of acquiring state office buildings
13 and related facilities and other critical state facilities
14 within the master planning jurisdiction of the capitol
15 buildings planning commission when the acquisition has been
16 reviewed by the capitol buildings planning commission and has
17 been authorized by legislative act and the director of the
18 [~~property control~~] facilities management division of the
19 general services department has certified the need for the
20 issuance of the bonds; provided that the total amount of state
21 office building tax revenue bonds outstanding at any one time
22 shall not exceed one hundred fifteen million dollars
23 (\$115,000,000).

24 B. The net proceeds from the building bonds are
25 appropriated to the [~~property control~~] facilities management

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1 division of the general services department for the purpose of
2 acquiring state office buildings and related facilities and
3 other critical state facilities within the master planning
4 jurisdiction of the capitol buildings planning commission, the
5 acquisition of which shall be consistent with the State
6 Building Bonding Act and the authorizing legislation."

7 SECTION 3. Section 6-21C-5 NMSA 1978 (being Laws 2001,
8 Chapter 199, Section 5, as amended) is amended to read:

9 "6-21C-5. STATE BUILDING BONDING FUND CREATED--MONEY IN
10 THE FUND PLEDGED.--

11 A. The "state building bonding fund" is created as
12 a special fund within the New Mexico finance authority. The
13 fund shall be administered by the New Mexico finance authority
14 as a special account. The fund shall consist of money
15 appropriated and transferred to the fund and gross receipts tax
16 revenues distributed to the fund by law. Earnings of the fund
17 shall be credited to the fund. Balances in the fund at the end
18 of any fiscal year shall remain in the fund, except as provided
19 in this section.

20 B. Money in the state building bonding fund is
21 pledged for the payment of principal and interest on all
22 building bonds issued pursuant to the State Building Bonding
23 Act. Money in the fund is appropriated:

24 (1) to the New Mexico finance authority for
25 the purpose of paying debt service, including redemption

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1 premiums, on the building bonds and the expenses incurred in
2 the issuance, payment and administration of the bonds; and

3 (2) if specifically authorized in the law
4 authorizing the acquisition of a building, to the [~~property~~
5 ~~control~~] facilities management division of the general services
6 department for expenditures for required maintenance and
7 repairs of that building but only if the authority determines
8 that money in the fund is sufficient to meet the requirements
9 of Paragraph (1) of this subsection.

10 C. On the last day of January and July of each
11 year, the New Mexico finance authority shall estimate the
12 amount needed to make debt service and other payments during
13 the next twelve months from the state building bonding fund on
14 the building bonds issued pursuant to the State Building
15 Bonding Act plus the amount that may be needed for any required
16 reserves and, if specifically authorized in the law authorizing
17 the acquisition of a building, the amount that may be needed
18 for required maintenance and repairs of that building. The New
19 Mexico finance authority shall transfer to the general fund any
20 balance in the state building bonding fund above the estimated
21 amounts.

22 D. Any balance remaining in the state building
23 bonding fund shall be transferred to the general fund upon
24 certification by the New Mexico finance authority that:

25 (1) the director of the [~~property control~~]

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1 facilities management division of the general services
2 department and the New Mexico finance authority have agreed
3 that the building bonds issued pursuant to the State Building
4 Bonding Act have been retired, that no additional obligations
5 of the state building bonding fund exist and that no additional
6 expenditures from the fund are necessary; or

7 (2) a court of jurisdiction has ruled that the
8 building bonds have been retired, that no additional
9 obligations of the state building bonding fund exist and that
10 no additional expenditures from the fund are necessary.

11 E. The building bonds issued pursuant to the State
12 Building Bonding Act shall be payable solely from the state
13 building bonding fund or, with the approval of the bondholders,
14 such other special funds as may be provided by law and do not
15 create an obligation or indebtedness of the state within the
16 meaning of any constitutional provision. No breach of any
17 contractual obligation incurred pursuant to that act shall
18 impose a pecuniary liability or a charge upon the general
19 credit or taxing power of the state, and the bonds are not
20 general obligations for which the state's full faith and credit
21 is pledged.

22 F. The state does hereby pledge that the state
23 building bonding fund shall be used only for the purposes
24 specified in this section and pledged first to pay the debt
25 service on the building bonds issued pursuant to the State

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1 Building Bonding Act. The state further pledges that any law
2 authorizing the distribution of taxes or other revenues to the
3 state building bonding fund or authorizing expenditures from
4 the fund shall not be amended or repealed or otherwise modified
5 so as to impair the bonds to which the state building bonding
6 fund is dedicated as provided in this section."

7 SECTION 4. Section 6-21C-8 NMSA 1978 (being Laws 2001,
8 Chapter 199, Section 8, as amended) is amended to read:

9 "6-21C-8. PROCEDURE FOR SALE OF BUILDING BONDS.--

10 A. Building bonds shall be sold by the New Mexico
11 finance authority at such times and in such manner as the
12 authority may elect, consistent with the need of the [~~property~~
13 ~~control~~] facilities management division of the general services
14 department, either at private sale for a negotiated price or to
15 the highest bidder at public sale for cash at not less than par
16 and accrued interest.

17 B. In connection with any public sale of building
18 bonds, the New Mexico finance authority shall publish a notice
19 of the time and place of sale in a newspaper of general
20 circulation in the state and also in a recognized financial
21 journal outside the state. Such publication shall be made once
22 each week for two consecutive weeks prior to the date fixed for
23 such sale, the last publication to be two business days prior
24 to the date of sale. Such notice shall specify the amount,
25 denomination, maturity and description of the bonds to be

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1 offered for sale and the place, day and hour at which sealed
2 bids therefor shall be received. All bids, except that of the
3 state, shall be accompanied by a deposit of two percent of the
4 principal amount of the bonds. Deposits of unsuccessful
5 bidders shall be returned upon rejection of the bid. At the
6 time and place specified in such notice, the New Mexico finance
7 authority shall open the bids in public and shall award the
8 bonds, or any part thereof, to the bidder or bidders offering
9 the best price. The New Mexico finance authority may reject
10 any or all bids and readvertise.

11 C. The New Mexico finance authority may sell a
12 building bond issue, or any part thereof, to the state or to
13 one or more investment bankers or institutional investors at
14 private sale."

15 SECTION 5. Section 6-21D-3 NMSA 1978 (being Laws 2005,
16 Chapter 176, Section 3, as amended) is amended to read:

17 "6-21D-3. BUILDING ASSESSMENTS FOR ENERGY EFFICIENCY
18 MEASURES.--

19 A. Upon the request of a state agency or a school
20 district, the department may perform an energy efficiency
21 assessment of a state or school district building to identify
22 the energy efficiency measures that can be installed and
23 operated at a total price that is less than the energy cost
24 savings realized. In addition, the assessment shall include a
25 schedule for funding and installing the energy efficiency

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1 measures that will realize significant energy cost savings in
2 the shortest time frame. The department shall develop the
3 assessment of:

4 (1) state buildings, in conjunction with the
5 ~~[property control]~~ facilities management division of the
6 general services department, the staff architect of the
7 division, the capitol buildings planning commission and other
8 state agencies with control and management over buildings; and

9 (2) school district buildings, in conjunction
10 with the public education department, the public school capital
11 outlay council and the public school facilities authority.

12 B. State agencies and school districts shall
13 cooperate with the department in the assessment performed
14 pursuant to Subsection A of this section."

15 SECTION 6. Section 9-7-6.5 NMSA 1978 (being Laws 2005,
16 Chapter 317, Section 1, as amended by Laws 2008, Chapter 4,
17 Section 1 and by Laws 2008, Chapter 70, Section 1) is amended
18 to read:

19 "9-7-6.5. AGREEMENTS FOR A REPLACEMENT FACILITY FOR FORT
20 BAYARD MEDICAL CENTER.--

21 A. Notwithstanding any other provision of state law
22 or rule, the secretary may do one or more of the following:

23 (1) enter into an agreement, including an
24 agreement with an independent contractor, to operate Fort
25 Bayard medical center or a replacement for Fort Bayard medical

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1 center in Grant county;

2 (2) acquire by purchase, lease, construction,
3 lease purchase or other financing arrangement a facility to be
4 located in Grant county to replace Fort Bayard medical center,
5 provided that, if the acquisition results in the transfer of
6 the title to the facility, the title to the facility shall be
7 in the name of the [~~property control~~] facilities management
8 division of the general services department; or

9 (3) enter into an agreement with Grant county
10 under which the department may construct or cause to be
11 constructed the facility that will replace the Fort Bayard
12 medical center.

13 B. The provisions of the Procurement Code shall not
14 apply to the procurement, by either the department or Grant
15 county or both, of tangible personal property, services or
16 construction deemed necessary by the department to effectuate
17 the provisions of this section. However, agreements related to
18 the acquisition of the facility to replace Fort Bayard medical
19 center shall be subject to the provisions of state law
20 regulating the acquisition and disposal of real property by
21 governmental entities.

22 C. An operating agreement entered into pursuant to
23 this section shall include provisions for the continued
24 employment of all current and future Fort Bayard medical center
25 employees, excluding management employees of the contractor, as

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1 state employees, entitled and subject to all the rights and
2 responsibilities of state employees. Under the terms of the
3 agreement and the overall direction of the department, the
4 independent contractor shall provide management and supervision
5 to state employees at Fort Bayard medical center, including the
6 provision of work assignments, evaluations and promotional and
7 disciplinary actions.

8 D. Pursuant to Section 15-3-35 NMSA 1978, the
9 legislature ratifies and approves a lease-purchase agreement,
10 in a form approved by the state board of finance, between the
11 department, as lessee-purchaser and Grant county, as lessor-
12 seller, for the facility that will replace the Fort Bayard
13 medical center, provided that, upon transfer of title, title to
14 the facility shall be in the name of the [~~property control~~]
15 facilities management division of the general services
16 department."

17 SECTION 7. Section 9-17-3 NMSA 1978 (being Laws 1983,
18 Chapter 301, Section 3, as amended) is amended to read:

19 "9-17-3. GENERAL SERVICES DEPARTMENT--CREATION--TRANSFER
20 AND MERGER OF DIVISION FUNCTIONS--MERGER AND CREATION OF
21 DIVISIONS.--

22 A. The "general services department" is created.
23 The department shall consist of those divisions created by law
24 or executive order, as modified by executive order pursuant to
25 Subsection C of this section, including:

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1 (1) the administrative services division;
2 [~~(2)~~ the building services division;
3 ~~(3)~~] (2) the [~~property control~~] facilities
4 management division;
5 [~~(4)~~] (3) the purchasing division;
6 [~~(5)~~] (4) the risk management division; and
7 [~~(6)~~] (5) the transportation services
8 division.

9 B. The secretary of general services is empowered
10 to organize the department and the divisions specified in
11 Subsection A of this section and may transfer or merge
12 functions between divisions in the interest of efficiency and
13 economy.

14 C. The governor is empowered to merge divisions of
15 the department or to create additional divisions by executive
16 order in the interest of efficiency or economy."

17 SECTION 8. Section 9-27-19 NMSA 1978 (being Laws 1975,
18 Chapter 214, Section 4, as amended) is amended to read:

19 "9-27-19. TRANSFER OF PROPERTY--CUSTODY AND CONTROL.--The
20 radio equipment purchased in accordance with Laws 1972, Chapter
21 74 by the [~~property control~~] facilities management division of
22 the general services department is transferred to the
23 department of information technology. The department has the
24 custody and control of the transferred radio equipment."

25 SECTION 9. Section 12-6-10 NMSA 1978 (being Laws 1969,
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1 Chapter 68, Section 10, as amended) is amended to read:

2 "12-6-10. ANNUAL INVENTORY.--

3 A. The governing authority of each agency shall, at
4 the end of each fiscal year, conduct a physical inventory of
5 movable chattels and equipment costing more than five thousand
6 dollars (\$5,000) and under the control of the governing
7 authority. This inventory shall include all movable chattels
8 and equipment procured through the capital program fund under
9 Section 15-3B-16 NMSA 1978, which are assigned to the agency
10 designated by the director of the [~~property control~~] facilities
11 management division of the general services department as the
12 user agency. The inventory shall list the chattels and
13 equipment and the date and cost of acquisition. No agency
14 shall be required to list any item costing five thousand
15 dollars (\$5,000) or less. Upon completion, the inventory shall
16 be certified by the governing authority as to correctness.
17 Each agency shall maintain one copy in its files. At the time
18 of the annual audit, the state auditor shall [~~satisfy himself~~
19 ~~as to~~] ascertain the correctness of the inventory by generally
20 accepted auditing procedures.

21 B. The official or governing authority of each
22 agency is chargeable on [~~his~~] the official's or authority's
23 official bond for the chattels and equipment shown in the
24 inventory.

25 C. The general services department shall establish

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1 standards, including a uniform classification system of
2 inventory items, and promulgate rules concerning the system of
3 inventory accounting for chattels and equipment required to be
4 inventoried, and the governing authority of each agency shall
5 install the system. A museum collection list or catalogue
6 record and a library accession record or shelf list shall
7 constitute the inventories of museum collections and library
8 collections maintained by state agencies and local public
9 bodies.

10 D. No surety upon the official bond of any officer
11 or employee of any agency shall be released from liability
12 until a complete accounting has been had. All official bonds
13 shall provide coverage of, or be written in a manner to
14 include, inventories."

15 SECTION 10. Section 13-1-121 NMSA 1978 (being Laws 1984,
16 Chapter 65, Section 94, as amended) is amended to read:

17 "13-1-121. COMPETITIVE SEALED QUALIFICATIONS-BASED
18 PROPOSALS--ARCHITECTS--ENGINEERS--LANDSCAPE ARCHITECTS--
19 SURVEYORS--SELECTION COMMITTEE--STATE PUBLIC WORKS PROJECTS.--

20 A. The "architect, engineer, landscape architect
21 and surveyor selection committee" is created. The committee,
22 which shall serve as the selection committee for state public
23 works projects, except for highway projects of the [state
24 ~~highway and transportation~~] department of transportation, is
25 composed of four members as follows:

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1 (1) one member of the agency for which the
2 project is being designed;

3 (2) the director of the [~~property control~~]
4 facilities management division of the general services
5 department, who shall be [~~chairman~~] chair;

6 (3) one member designated by the [~~architect-~~
7 ~~engineer-landscape architect~~] joint practice committee; and

8 (4) one member designated by the secretary.

9 B. The staff architect or [~~his~~] the staff
10 architect's designee of the [~~property control~~] facilities
11 management division shall serve as staff to the architect,
12 engineer, landscape architect and surveyor selection committee.

13 C. The members of the architect, engineer,
14 landscape architect and surveyor selection committee shall be
15 reimbursed by the [~~property control~~] facilities management
16 division for per diem and mileage in accordance with the
17 provisions of the Per Diem and Mileage Act.

18 D. The [~~state highway and transportation~~]
19 department of transportation shall create a selection committee
20 by rule, after notice and hearing, [~~which~~] that shall serve as
21 the selection committee for highway projects of the
22 department."

23 SECTION 11. Section 13-4A-3 NMSA 1978 (being Laws 1986,
24 Chapter 11, Section 3, as amended) is amended to read:

25 "13-4A-3. DEFINITIONS.--As used in the Art in Public

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1 Places Act:

2 A. "agency" means all state departments and
3 agencies, boards, councils, institutions, commissions and
4 quasi-public corporations, including all state educational
5 institutions enumerated in Article 12, Section 11 of the
6 constitution of New Mexico, and all statutorily created post-
7 secondary educational institutions;

8 B. "architect" means the person or firm designing
9 the project for the contracting agency to which the one percent
10 provision pursuant to Section 13-4A-4 NMSA 1978 applies;

11 C. "contracting agency" means the agency having the
12 control, management and power to enter into contracts for new
13 construction or renovation of any public building;

14 D. "division" means the arts division of the
15 [~~office of~~] cultural affairs department;

16 E. "public buildings" means those buildings under
17 the control and management of the [~~property control~~] facilities
18 management division of the general services department, the
19 department of game and fish, the energy, minerals and natural
20 resources department, the [~~state highway and~~] department of
21 transportation [~~department~~], the state fair commission, the
22 supreme court, the commissioner of public lands, the [~~office~~
23 ~~of~~] cultural affairs department, the governing boards of the
24 state educational institutions and statutorily created post-
25 secondary educational institutions, the [~~state department of~~]

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1 public education department and the legislature or all
2 buildings constructed with funds appropriated by the
3 legislature. For the purposes of the Art in Public Places Act,
4 "public buildings" does not include such auxiliary buildings as
5 maintenance plants, correctional facilities, warehouses or
6 temporary structures; and

7 F. "work of art" means any work of visual art,
8 including but not limited to a drawing, painting, mural,
9 fresco, sculpture, mosaic or photograph; a work of calligraphy;
10 a work of graphic art, including an etching, lithograph, offset
11 print, silk screen or a work of graphic art of like nature;
12 works in clay, textile, fiber, wood, metal, plastic, glass and
13 like materials; or mixed media, including a collage or
14 assemblage or any combination of the foregoing art media
15 [~~which~~] that is chosen to be included in or immediately
16 adjoining the public building under consideration. Under
17 special circumstances, the term may include environmental
18 landscaping if approved by the division."

19 SECTION 12. Section 15-3-5 NMSA 1978 (being Laws 1957,
20 Chapter 92, Section 2, as amended) is amended to read:

21 "15-3-5. PENITENTIARY PROPERTY TRANSFERRED.--The
22 remaining property on Cordova road held in the name of the New
23 Mexico state penitentiary, including the former site of the New
24 Mexico state penitentiary, is hereby transferred to the
25 [~~property control~~] facilities management division of the

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1 general services department. The land [~~will~~] shall be held in
2 the name of the state of New Mexico."

3 SECTION 13. Section 15-3-6 NMSA 1978 (being Laws 1959,
4 Chapter 174, Section 2, as amended) is amended to read:

5 "15-3-6. LEASE OF FORMER PENITENTIARY LAND.--The
6 [~~property control~~] facilities management division of the
7 general services department may execute on behalf of the state
8 of New Mexico as lessor, from time to time, agreements of lease
9 of all or any part of the real property on Cordova road in
10 Santa Fe, New Mexico formerly held in the name of the
11 penitentiary of New Mexico and now administered by the division
12 to such persons on such terms and conditions and for such
13 consideration as the division determines in the exercise of its
14 discretion to be advantageous to the state of New Mexico; but
15 no such agreement of lease shall provide for a term of more
16 than five years from the date thereof unless first approved by
17 the state board of finance."

18 SECTION 14. Section 15-3-6.1 NMSA 1978 (being Laws 2001,
19 Chapter 195, Section 1) is amended to read:

20 "15-3-6.1. STATE PENITENTIARY--LEASE FOR MOTION
21 PICTURES.--The corrections department, the [~~property control~~]
22 facilities management division of the general services
23 department and the New Mexico film division of the economic
24 development department shall enter into a joint powers
25 agreement to make the old state penitentiary at Santa Fe

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1 available for use by the motion picture industry. The property
2 and structures that fall within the existing security perimeter
3 fence at the old state penitentiary at Santa Fe and any
4 building not used by the corrections department that is within
5 three hundred yards of the outside of the security perimeter
6 fence of the old state penitentiary at Santa Fe shall be made
7 available for lease at reasonable market rates to the motion
8 picture industry for economic development."

9 SECTION 15. Section 15-3-35 NMSA 1978 (being Laws 2007,
10 Chapter 184, Section 1) is amended to read:

11 "15-3-35. LEASE-PURCHASE AGREEMENTS--APPROVAL OF
12 LEGISLATURE.--

13 A. A financing agreement under which a state agency
14 is to occupy a building or other real property and that
15 contains an option to purchase for a price that is reduced
16 according to the lease payments made is subject to the
17 following criteria:

18 (1) the agreement shall not become effective
19 until it has been ratified and approved by the legislature; and

20 (2) if the state agency is subject to the
21 jurisdiction of the [~~property control~~] facilities management
22 division of the general services department pursuant to the
23 Property Control Act, the agreement shall provide that, if the
24 real property is purchased, title to the real property shall be
25 issued in the name of the [~~property control~~] facilities

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1 management division.

2 B. Legislative ratification and approval of an
3 agreement pursuant to Subsection A of this section shall not
4 create a legal obligation for the state agency to continue the
5 lease from year to year or to purchase the real property.

6 C. As used in this section, "state agency" means
7 the state or any of its branches, agencies, departments,
8 boards, instrumentalities or institutions, but "state agency"
9 does not include state educational institutions or state-
10 chartered charter schools."

11 SECTION 16. Section 15-3B-2 NMSA 1978 (being Laws 1972,
12 Chapter 74, Section 2, as amended) is amended to read:

13 "15-3B-2. DEFINITIONS.--As used in the Property Control
14 Act:

15 A. "capital outlay project" means the acquisition,
16 improvement, alteration or reconstruction of assets of a long-
17 term character that are intended to continue to be held or
18 used, including land, buildings, machinery, furniture and
19 equipment. A "capital outlay project" includes all proposed
20 expenditures related to the entire undertaking;

21 B. "department" means the general services
22 department;

23 C. "director" means the director of the division;

24 D. "division" means the [~~property control~~]
25 facilities management division of the department;

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1 E. "jurisdiction" means all state buildings and
2 land except those under the control and management of the state
3 armory board, the border authority, the cultural affairs
4 department, the state fair commission, the department of game
5 and fish, the department of transportation, the commissioner of
6 public lands, the state parks division of the energy, minerals
7 and natural resources department, the state institutions of
8 higher learning, regional education cooperatives, the New
9 Mexico school for the deaf, the New Mexico school for the blind
10 and visually impaired, the judicial branch, the legislative
11 branch, property acquired by the economic development
12 department pursuant to the Statewide Economic Development
13 Finance Act and property acquired by the public school
14 facilities authority pursuant to the Public School Capital
15 Outlay Act; and

16 F. "secretary" means the secretary of general
17 services."

18 SECTION 17. Section 15-3B-3 NMSA 1978 (being Laws 1968,
19 Chapter 43, Section 1, as amended) is amended to read:

20 "15-3B-3. [~~PROPERTY CONTROL~~] FACILITIES MANAGEMENT
21 DIVISION--CREATION--DIRECTOR.--The "~~[property control]~~
22 facilities management division" is created within the
23 department. The director shall be appointed by the secretary
24 with the governor's consent."

25 SECTION 18. Section 15-3B-7.1 NMSA 1978 (being Laws
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1 2001, Chapter 196, Section 1) is amended to read:

2 "15-3B-7.1. STATE BUILDINGS--USE IN MOTION PICTURES.--

3 The [~~property control~~] facilities management division of the
4 general services department shall provide for the free access
5 to state buildings by the motion picture industry."

6 SECTION 19. Section 15-3B-21 NMSA 1978 (being Laws
7 2009, Chapter 145, Section 1) is amended to read:

8 "15-3B-21. HEALTH AND HUMAN SERVICES OFFICE BUILDING.--

9 A. Subject to the provisions of this section, the
10 [~~property control~~] facilities management division of the
11 general services department, after consulting with the human
12 services department and the children, youth and families
13 department and on behalf of those departments, shall:

14 (1) enter into agreements necessary for the
15 land acquisition, if necessary, and the planning, designing,
16 constructing, equipping and furnishing of a new health and
17 human services office building in the county or municipality
18 of Santa Fe that will serve as the first phase of the health
19 and human services office complex and be occupied by the
20 human services department and the children, youth and
21 families department, provided that, in entering into the
22 agreements, the division shall consider state and private
23 land acquisition options, including potential trades of land;
24 and

25 (2) enter into a lease purchase agreement

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1 with the owner of the building for the leasing of the
2 building by the [~~property control~~] facilities management
3 division with an option to purchase for a price that is
4 reduced according to the payments made pursuant to the
5 agreement; provided that the lease purchase agreement shall:

6 (a) specify the principal, interest
7 and maintenance component of each payment made, provided
8 further that: 1) the initial principal shall not exceed
9 eighty million dollars (\$80,000,000); and 2) the net
10 effective interest rate shall not exceed the maximum
11 permitted by the Public Securities Act;

12 (b) provide that there is no legal
13 obligation for the [~~property control~~] facilities management
14 division to continue the lease from year to year or to
15 purchase the building;

16 (c) provide that the lease shall be
17 terminated if sufficient appropriations are not available to
18 meet the current lease payments;

19 (d) provide that the lease payments
20 include a maintenance component that shall escalate annually
21 and, over the length of the agreement, approximate the amount
22 that will be needed for the maintenance and repair of the
23 building; and

24 (e) provide that if the building is
25 purchased, title to the building shall be issued in the name

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1 of the [~~property control~~] facilities management division.

2 B. The [~~property control~~] facilities management
3 division shall enter into such financing arrangements as are
4 necessary to construct, occupy and acquire the building by
5 the most cost-effective method and, if the division
6 determines that the issuance of lease purchase revenue bonds
7 by the New Mexico finance authority pursuant to Section
8 6-21-6.14 NMSA 1978 is the most cost-effective financing
9 arrangement, the New Mexico finance authority is authorized
10 to:

11 (1) issue bonds, in an amount not to exceed
12 eighty million dollars (\$80,000,000), pursuant to that
13 section;

14 (2) include a maintenance component as part
15 of the lease payments received; and

16 (3) use a portion of the net proceeds from
17 the sale of the bonds for debt service payments that are due
18 before sufficient lease payments have been deposited into the
19 debt service fund.

20 C. No contract or financing arrangement entered
21 into pursuant to Subsection A or B of this section shall be
22 effective until approved by the attorney general for legal
23 sufficiency.

24 D. Neither a request for proposals shall be
25 issued pursuant to Subsection A or B of this section nor a

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1 contract entered into pursuant to those subsections without
2 prior review by the capitol buildings planning commission to
3 ensure that:

4 (1) the request for proposals or the
5 contract is the most cost-effective method for acquiring the
6 building; and

7 (2) the building and its proposed use are
8 within the scope of the commission's master plan.

9 E. The ~~[property control]~~ facilities management
10 division shall enter into subleases with the human services
11 department and the children, youth and families department
12 for the lease of office space within the building, provided
13 that the payments made under the subleases shall equal the
14 payments due by the ~~[property control]~~ facilities management
15 division under the lease purchase agreement. The ~~[property~~
16 ~~control]~~ facilities management division may also sublease
17 available space within the building to any state agency if:

18 (1) the space subject to an existing
19 sublease has been reduced by agreement between the ~~[property~~
20 ~~control]~~ facilities management division and the existing
21 sublessee;

22 (2) the previous sublease for the available
23 space has been terminated due to the failure of the sublessee
24 to obtain appropriations or otherwise receive the money
25 necessary for making the lease payments; or

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1 (3) the previous sublessee of the available
2 space has been relocated by an act of the legislature.

3 F. Notwithstanding any provision restricting
4 budget adjustments, upon the certification by the director of
5 the [~~property control~~] facilities management division that
6 the building is completed and suitable for occupancy, the
7 secretary of finance and administration may transfer between
8 and among the categories and programs of the current
9 operating budget of each agency that will occupy the building
10 any unexpended or unencumbered appropriation for lease
11 payments or building maintenance. The transferred
12 appropriations shall be expended by the [~~property control~~]
13 facilities management division for lease payments due
14 pursuant to the lease purchase agreement.

15 G. During the term of the lease purchase
16 agreement, each sublessee shall include, in its annual budget
17 request, the amount due under its sublease during the next
18 fiscal year, and the sublessee and the [~~property control~~]
19 facilities management division shall use their best efforts
20 to secure the appropriation."

21 SECTION 20. Section 15-10-1 NMSA 1978 (being Laws 1997,
22 Chapter 178, Section 5, as amended) is amended to read:

23 "15-10-1. CAPITOL BUILDINGS PLANNING COMMISSION
24 CREATED.--

25 A. The "capitol buildings planning commission" is
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1 created. The commission shall be composed of four members of
2 the legislature, two from each house, appointed by the New
3 Mexico legislative council, the secretary of general services
4 or the secretary's designee, the state treasurer or the state
5 treasurer's designee, the secretary of transportation or the
6 secretary's designee, the secretary of cultural affairs or
7 the secretary's designee, the secretary of finance and
8 administration or the secretary's designee, the commissioner
9 of public lands or the commissioner's designee and the chair
10 of the supreme court building commission or the chair's
11 designee.

12 B. The commission shall:

13 (1) study and plan for the long-range
14 facilities needs of state government in the greater
15 metropolitan areas of Las Cruces, Santa Fe and Albuquerque
16 and, after developing an initial master plan for the state
17 facilities in those areas, conduct a review of state
18 properties throughout the state for the development of an
19 overall master plan;

20 (2) review proposed lease-purchase
21 agreements pursuant to Section 15-10-2 NMSA 1978;

22 (3) work with the general services
23 department and other state agencies in developing
24 recommendations for addressing deferred maintenance on state
25 facilities and disposal strategies for aging facilities no

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1 longer able to serve their mission; and

2 (4) utilizing life cycle costing, work with
3 the general services department in developing recommendations
4 regarding whether the state should lease, lease-purchase or
5 purchase needed additional facilities.

6 C. The legislative council service shall provide
7 staff for the commission in coordination with the staff
8 architect and other staff of the [~~property control~~]
9 facilities management division of the general services
10 department.

11 D. The commission shall meet regularly and shall
12 report annually to the legislature on an annual update of the
13 master plan for the long-range facilities needs of state
14 government in the greater metropolitan areas of Las Cruces,
15 Santa Fe and Albuquerque and throughout the state."

16 SECTION 21. Section 19-12-12 NMSA 1978 (being Laws
17 1959, Chapter 25, Section 14, as amended) is amended to read:

18 "19-12-12. CONTRACT FOR MAINTENANCE.--The commissioner
19 of public lands is authorized to contract with the [~~building~~
20 ~~services~~] facilities management division of the general
21 services department on a cost basis for the maintenance of
22 the lands and buildings acquired under the provisions of the
23 Land Office Building Act."

24 SECTION 22. Section 22-2B-3 NMSA 1978 (being Laws 1993,
25 Chapter 232, Section 3, as amended) is amended to read:

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1 "22-2B-3. REGIONAL EDUCATION COOPERATIVES AUTHORIZED.--

2 A. The department may authorize the existence and
3 operation of "regional education cooperatives". Upon
4 authorization by the department, local school boards may join
5 with other local school boards or other state-supported
6 educational institutions to form cooperatives to provide
7 education-related services. Cooperatives shall be deemed
8 individual state agencies administratively attached to the
9 department; provided that:

10 (1) pursuant to the rules of the department,
11 cooperatives may own, and have control and management over,
12 buildings and land independent of the director of the
13 [~~property control~~] facilities management division of the
14 general services department;

15 (2) cooperatives shall not submit budgets to
16 the department of finance and administration but shall submit
17 them to the department. The department shall, by rule,
18 determine the provisions of the Public School Finance Act
19 relating to budgets and expenditures that are applicable to
20 cooperatives; and

21 (3) pursuant to the rules of the department,
22 the secretary may, after considering the factors specified in
23 Section 22-8-38 NMSA 1978, designate a cooperative council as
24 a board of finance with which all funds appropriated or
25 distributed to it shall be deposited. If such a designation

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1 is not made or if such a designation is suspended by the
2 secretary, the money appropriated or to be distributed to a
3 cooperative shall be deposited with the state treasurer.
4 Unexpended or unencumbered balances in the account of a
5 cooperative shall not revert.

6 B. The department shall, by rule, establish
7 minimum criteria for the establishment and operation of
8 cooperatives. The department shall also establish procedures
9 for oversight of cooperatives to ensure compliance with
10 department rule. Cooperatives shall be exempt from the
11 provisions of the Personnel Act.

12 C. With council approval, a cooperative may
13 provide revenue-generating education-related services to
14 nonmembers, so long as those services do not detract from the
15 cooperative's ability to fulfill its responsibilities to its
16 members.

17 D. With council approval, a cooperative may apply
18 for and receive public and private grants as well as gifts,
19 donations, bequests and devises and use them to further the
20 purposes and goals of the cooperative.

21 E. Each cooperative shall cooperate with the
22 department as required by federal-state plans or department
23 rules in the effectuation and administration of its
24 educational programs. Each cooperative shall submit reports
25 to the department at such times and in such form as required

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1 by department rule. Reports shall include an evaluation of
2 the effectiveness of the technical assistance and other
3 services provided to members of the cooperative and any
4 nonmember public and private entities to which the
5 cooperative provided educational services. The reports and
6 evaluations submitted pursuant to this subsection shall be
7 made available upon request to the legislative education
8 study committee and the legislative finance committee."

9 SECTION 23. Section 33-1-17 NMSA 1978 (being Laws 1985,
10 Chapter 149, Section 1, as amended) is amended to read:

11 "33-1-17. PRIVATE CONTRACT.--

12 A. The corrections department may contract for
13 the operation of any adult female facility or for housing
14 adult female inmates in a private facility with a person or
15 entity in the business of providing correctional or jail
16 services to government entities.

17 B. The corrections department may contract with a
18 person or entity in the business of providing correctional or
19 jail services to government entities for:

20 (1) a correctional facility in Guadalupe
21 county of not less than five hundred fifty and not more than
22 two thousand two hundred beds;

23 (2) a correctional facility in Lea, Chaves
24 or Santa Fe county of not less than one thousand two hundred
25 and not more than two thousand two hundred beds;

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1 (3) design and construction of a support
2 services building, a laundry and an infirmary at the
3 penitentiary of New Mexico in Santa Fe; or

4 (4) construction of a public facility to
5 house a special incarceration alternative program for adult
6 male and adult female felony offenders.

7 C. The authorization in Subsection B of this
8 section for a correctional facility in Guadalupe county and a
9 correctional facility in Lea, Chaves or Santa Fe county is
10 contingent upon construction of both facilities, so that one
11 of the facilities shall not be constructed unless both of the
12 facilities are constructed, as nearly as practicable,
13 simultaneously.

14 D. The corrections department shall solicit
15 proposals and award any contract under this section in
16 accordance with the provisions of the Procurement Code. The
17 contract shall include such terms and conditions as the
18 corrections department may require after consultation with
19 the general services department; provided that the terms and
20 conditions shall include provisions:

21 (1) setting forth comprehensive standards
22 for conditions of incarceration;

23 (2) that the contractor assumes all
24 liability caused by or arising out of all aspects of the
25 provision or operation of the facility;

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1 (3) for liability insurance or other proof
2 of financial responsibility acceptable to the general
3 services department covering the contractor and its officers,
4 employees and agents in an amount sufficient to cover all
5 liability caused by or arising out of all aspects of the
6 provision or operation of the facility;

7 (4) for termination for cause upon ninety
8 days' notice to the contractor for failure to meet contract
9 provisions when such failure seriously affects the
10 availability or operation of the facility;

11 (5) that venue for the enforcement of the
12 contract shall be in the district court for Santa Fe county;

13 (6) that continuation of the contract is
14 subject to the availability of funds; and

15 (7) that compliance with the contract shall
16 be monitored by the corrections department and the contract
17 may be terminated for noncompliance.

18 E. When the contractor begins operation of a
19 facility for which private contractor operation is
20 authorized, [~~his~~] the contractor's employees performing the
21 functions of correctional officers shall be deemed
22 correctional officers for the purposes of Sections 33-1-10
23 and 33-1-11 NMSA 1978 but for no other purpose of state law,
24 unless specifically stated.

25 F. Any contract awarded pursuant to this section

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1 may include terms to provide for the renovation of the
2 facility or for the construction of new buildings. Work
3 performed pursuant to such terms and conditions shall not be
4 considered a capital project [~~as defined in Section 15-3-23.3~~
5 ~~NMSA 1978~~] or a state public works project as defined in
6 Section 13-1-91 NMSA 1978 nor shall it be subject to the
7 requirements of Section 13-1-150 NMSA 1978 [~~or of the Capital~~
8 ~~Program Act~~], review by the staff architect of the [~~property~~
9 ~~control~~] facilities management division of the general
10 services department [~~pursuant to Section 15-3-20 NMSA 1978~~]
11 or regulation by the director of that division pursuant to
12 Section [~~15-3-11~~] 15-3B-6 NMSA 1978.

13 G. Any contract entered into by the corrections
14 department with a private contractor to operate an existing
15 facility shall include a provision securing the right of all
16 persons employed by that facility prior to the effective date
17 of that contract to be employed by that contractor in any
18 position for which they qualify before that position is
19 offered to any person not employed by that facility prior to
20 that date."

21 SECTION 24. Section 33-1A-1 NMSA 1978 (being Laws 1983,
22 Chapter 186, Section 1) is amended to read:

23 "33-1A-1. LEASE OF REAL PROPERTY FOR CORRECTIONAL
24 FACILITY HOUSING.--The [~~property control~~] facilities
25 management division of the general services department [~~of~~

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1 ~~finance and administration~~] is authorized to lease a portion
2 of the real property of the state on which a correctional
3 facility is located, but not to include Grants, New Mexico,
4 for a period not to exceed twenty-five years, to a private
5 entity in consideration for the construction on [~~such~~] the
6 real property of low-rent housing units for correctional
7 officers of the corrections department, their families and
8 such other corrections department personnel or other state
9 employees as the secretary of corrections may designate;
10 provided [~~such~~] the low-rent housing units [~~shall not be~~] are
11 rented only to [~~non-state~~] state employees."

12 SECTION 25. Section 33-1A-2 NMSA 1978 (being Laws 1983,
13 Chapter 186, Section 2) is amended to read:

14 "33-1A-2. LONG-TERM LEASE OF CORRECTIONAL FACILITY
15 HOUSING BY [~~PROPERTY CONTROL~~] FACILITIES MANAGEMENT
16 DIVISION--SUBLEASE TO CORRECTIONAL OFFICERS AND OTHERS.--In
17 connection with and as part of the real property lease
18 authorized in Section [~~1 of this act~~] 33-1A-1 NMSA 1978, the
19 [~~property control~~] facilities management division of the
20 general services department is authorized to negotiate and
21 execute a long-term lease, for a period not to exceed twenty-
22 five years, of the low-rent housing units constructed
23 pursuant to [~~this act~~] Chapter 33, Article 1A NMSA 1978 and
24 to sublease them to correctional officers of the corrections
25 department, their families and such other department

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1 personnel or other state employees as the secretary of
2 corrections may designate."

3 SECTION 26. Section 33-1A-3 NMSA 1978 (being Laws 1983,
4 Chapter 186, Section 3) is amended to read:

5 "33-1A-3. LONG-TERM CORRECTIONAL FACILITY HOUSING LEASE
6 SUSPENSE FUND ESTABLISHED.--The [~~property control~~] facilities
7 management division of the general services department shall
8 establish a schedule of sublease rental fees for the low-rent
9 housing units constructed pursuant to [~~this act~~] Chapter 33,
10 Article 1A NMSA 1978. Sublease rental fee payments shall be
11 paid to the general services department [~~of finance and~~
12 ~~administration~~] and deposited in the "long-term correctional
13 facility housing lease suspense fund", hereby established,
14 which shall be administered by the secretary of [~~finance and~~
15 ~~administration~~] general services or [~~his~~] the secretary's
16 designee. Payments shall be made from the long-term
17 correctional facility housing lease suspense fund to satisfy
18 the long-term correctional facility housing lease terms,
19 including rent, maintenance and replacement costs, insurance,
20 management fees, taxes and all applicable costs. No other
21 fund shall be liable for or available to satisfy the long-
22 term correctional facility housing lease authorized in [~~this~~
23 ~~act~~] Chapter 33, Article 1A NMSA 1978."

24 SECTION 27. Section 33-1A-4 NMSA 1978 (being Laws 1983,
25 Chapter 186, Section 4) is amended to read:

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1 "33-1A-4. LEASE TERMS.--

2 A. Upon expiration of the long-term housing
3 lease, the low-rent housing units constructed pursuant to
4 ~~[this act]~~ Chapter 33, Article 1A NMSA 1978 shall become the
5 exclusive property of the state, free of any encumbrances of
6 any kind arising from the construction or leasing of ~~[such]~~
7 the housing units.

8 B. The low-rent housing units constructed
9 pursuant to ~~[this act]~~ Chapter 33, Article 1A NMSA 1978 shall
10 conform to all applicable building codes, and the plans and
11 specifications for ~~[such]~~ the housing units shall be approved
12 by the ~~[property control]~~ facilities management division of
13 the general services department prior to commencement of
14 construction.

15 C. The state shall be indemnified against any
16 judgment awarding monetary damages due to the construction or
17 safety of the low-rent housing units constructed pursuant to
18 ~~[this act]~~ Chapter 33, Article 1A NMSA 1978."

19 SECTION 28. Section 33-1A-5 NMSA 1978 (being Laws 1983,
20 Chapter 186, Section 5) is amended to read:

21 "33-1A-5. BOARD OF FINANCE APPROVAL.--No lease of low-
22 rent housing units constructed pursuant to ~~[this act]~~ Chapter
23 33, Article 1A NMSA 1978 shall be binding against the
24 ~~[property control]~~ facilities management division of the
25 general services department until it has been approved by the

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1 state board of finance."

2 SECTION 29. TEMPORARY PROVISION--TRANSFER OF FUNCTIONS,
3 PERSONNEL, PROPERTY, CONTRACTS AND REFERENCES IN LAW--
4 BUILDING SERVICES DIVISION TO FACILITIES MANAGEMENT
5 DIVISION.--On July 1, 2013:

6 A. all functions, personnel, appropriations,
7 money, records, equipment, supplies and other property of the
8 building services division of the general services department
9 shall be transferred to the facilities management division of
10 the general services department;

11 B. all contracts of the building services
12 division of the general services department shall be binding
13 and effective on the facilities management division of the
14 general services department; and

15 C. all references in law to the building services
16 division of the general services department shall be deemed
17 to be references to the facilities management division of the
18 general services department.

19 SECTION 30. TEMPORARY PROVISION--TRANSFER OF FUNCTIONS,
20 PERSONNEL, PROPERTY, CONTRACTS AND REFERENCES IN LAW--
21 PROPERTY CONTROL DIVISION TO FACILITIES MANAGEMENT
22 DIVISION.--On July 1, 2013:

23 A. all functions, personnel, appropriations,
24 money, records, equipment, supplies and other property of the
25 property control division of the general services department

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1 shall be transferred to the facilities management division of
2 the general services department;

3 B. all contracts of the property control division
4 of the general services department shall be binding and
5 effective on the facilities management division of the
6 general services department; and

7 C. all references in law to the property control
8 division of the general services department shall be deemed
9 to be references to the facilities management division of the
10 general services department.

11 SECTION 31. REPEAL.--Section 15-11-1 NMSA 1978 (being
12 Laws 2001, Chapter 108, Section 1) is repealed.