

1 HOUSE BILL 275

2 **53RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2017**

3 INTRODUCED BY

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10 AN ACT

11 RELATING TO PUBLIC PROJECTS; ENACTING THE PUBLIC-PRIVATE  
12 PARTNERSHIPS ACT; ALLOWING THE STATE AND LOCAL GOVERNMENTS TO  
13 ENTER INTO LONG-TERM PARTNERSHIPS WITH PRIVATE SECTOR PARTNERS  
14 TO FACILITATE PUBLIC PROJECTS; PROVIDING POWERS AND DUTIES.

15  
16 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

17 SECTION 1. [NEW MATERIAL] SHORT TITLE.--This act may be  
18 cited as the "Public-Private Partnerships Act".

19 SECTION 2. [NEW MATERIAL] DEFINITIONS.--As used in the  
20 Public-Private Partnerships Act:

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

23 B. "force majeure" means an uncontrollable force or  
24 natural disaster not within the power of the public or private  
25 partner;

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1           C. "local government" means a municipality; a  
2 county; or a regional entity created by a joint powers  
3 agreement between one or more public agencies;

4           D. "material default" means a failure of a private  
5 partner to perform any duties under a public-private  
6 partnership, which failure jeopardizes delivery of adequate  
7 service to the public and remains unsatisfied after a  
8 reasonable time and after the private partner has received  
9 written notice from the public partner of the failure;

10          E. "private partner" means one or more persons who  
11 have entered into a public-private partnership with a public  
12 partner and who are not the federal government or any agency or  
13 instrumentality of the federal government; another state or  
14 territory of the United States; a sovereign or foreign  
15 government; or the state or an agency, branch, institution,  
16 instrumentality or political subdivision of the state;

17          F. "public partner" means a local government, state  
18 agency, state institution or instrumentality of the state;

19          G. "public-private partnership" means an agreement  
20 between one or more public partners and one or more private  
21 partners for the design, development, financing, construction,  
22 operation or maintenance of a public project;

23          H. "public project":

24               (1) means:

25                       (a) a building or other facility and

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1 infrastructure, except affordable housing pursuant to the  
2 Affordable Housing Act, that meets a public purpose and is  
3 developed or operated for a public entity;

4 (b) a building or other facility for a  
5 public school or a public post-secondary educational  
6 institution, including: 1) a functionally related and  
7 subordinate facility; 2) a stadium or other facility primarily  
8 used for school events; and 3) any depreciable property  
9 provided for use in a school facility that is operated as part  
10 of the public school system or a public post-secondary  
11 educational institution;

12 (c) a hospital or a health care,  
13 behavioral health, hospice or other treatment facility;

14 (d) cultural or recreational facilities,  
15 including theaters, museums, convention centers, lodging,  
16 community centers, stadiums, athletic facilities, golf courses  
17 or similar facilities;

18 (e) parking lots or garages;

19 (f) airports, railways, subways or other  
20 transportation facilities and roads;

21 (g) improvements, together with  
22 equipment, necessary to enhance public safety and security of  
23 buildings to be principally used by a public entity;

24 (h) utility, telecommunications,  
25 broadband, energy and other communications infrastructure that

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1 is ancillary to the development or operation of a public  
2 project;

3 (i) infrastructure needed to conserve  
4 natural resources or generate utility savings;

5 (j) a facility or infrastructure used in  
6 connection with the byproducts of watershed restoration or  
7 hazardous fuels reduction;

8 (k) a project that involves habitat or  
9 environmental restoration, cleanup or reuse;

10 (l) dams and reservoirs;

11 (m) a sewerage or water treatment  
12 facility, power generating plant, pump station, natural gas  
13 compressing station or similar facility;

14 (n) a sewerage, water, gas or other  
15 pipeline;

16 (o) a transmission line;

17 (p) a radio, television, cell or other  
18 tower;

19 (q) improvements necessary or desirable  
20 to any unimproved state-owned real estate or real estate owned  
21 by a local government;

22 (r) information technology systems and  
23 infrastructure; or

24 (s) recycling facilities or solid waste  
25 management facilities that produce electric energy derived from

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1 solid waste; and

2 (2) does not include a project that changes  
3 the franchise rights or territory of a regulated public  
4 utility;

5 I. "user fee" means a rate, fee or other charge  
6 imposed by a partner for use of all or part of a public  
7 project; and

8 J. "utility" means a privately, publicly or  
9 cooperatively owned line, facility or system for producing,  
10 transmitting or distributing communications, cable television,  
11 power, electricity, light, heat, gas, oil, crude products,  
12 water, steam, waste, storm water not connected with highway  
13 drainage or any other similar commodity, including a fire or  
14 police signal system or street lighting system, which directly  
15 or indirectly serves the public; but "utility" does not include  
16 electric utilities and electric utility facilities that are  
17 subject to regulation by the public regulation commission,  
18 except for the purpose of addressing utility crossings pursuant  
19 to Section 15 of the Public-Private Partnerships Act.

20 SECTION 3. [NEW MATERIAL] PROJECT DELIVERY METHODS--  
21 PROPOSALS.--A public partner may provide for the development of  
22 a public project using a variety of project delivery methods,  
23 which methods shall be documented in written agreements. The  
24 methods may include:

25 A. predevelopment agreements leading to other

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- 1 implementing agreements;
- 2 B. design-build agreements;
- 3 C. design-bid-build agreements;
- 4 D. design-build-finance agreements;
- 5 E. construction manager at risk;
- 6 F. agreements that provide for the private partner
- 7 to design, build, manage, maintain, operate or lease a public
- 8 project; or
- 9 G. other project delivery methods or agreements or
- 10 combination of methods or agreements that the public partner
- 11 determines is most advantageous to the public interest.

12 SECTION 4. [NEW MATERIAL] PROJECT DEVELOPMENT--  
13 PROCUREMENT.--

- 14 A. A public partner may:
- 15 (1) procure a public project using any of the
- 16 following:

- 17 (a) requests for proposals in which the
- 18 public partner describes a class of public project or a
- 19 geographic area in which a person is invited to submit
- 20 proposals to develop a public project;

- 21 (b) solicitations using requests for
- 22 qualifications, short-listing of qualified proposers, requests
- 23 for proposals, negotiations or other procurement procedures;

- 24 (c) procurements seeking development and
- 25 finance plans that are most advantageous to the public partner

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1 and suitable for the public project;

2 (d) best-value selection procurements  
3 based on price or financial proposals, or both, or other  
4 factors; and

5 (e) other procedures that the public  
6 partner determines may further the implementation of the  
7 Public-Private Partnerships Act; and

8 (2) consider an unsolicited proposal if the  
9 public partner determines that there is sufficient merit to  
10 pursue the unsolicited proposal and a reasonable opportunity  
11 for other persons to submit competing proposals for  
12 consideration to ensure maximum competition among proposals  
13 submitted and the best value for the public partner.

14 B. For a procurement in which the public partner  
15 issues a request for qualifications or similar solicitation  
16 document or following a public partner's decision to consider  
17 an unsolicited proposal, the public partner shall issue a  
18 request that sets forth the factors that will be evaluated and  
19 the manner in which responses will be evaluated.

20 C. In evaluating proposals, the public partner, and  
21 the department if required, shall:

22 (1) consider a range of factors they deem  
23 appropriate to obtain the best value for the state or local  
24 government; and

25 (2) require specific justification and support

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1 for a proposal that may affect:

2 (a) public employees' employment; or

3 (b) the cost of public service delivery.

4 D. The public partner may charge and retain a  
5 reasonable administrative fee for the evaluation of an  
6 unsolicited project proposal and for the cost of experts that  
7 are consulted pursuant to Subsection E of this section;  
8 provided that the administrative fee shall not exceed the  
9 reasonable cost of evaluating the proposal.

10 E. The public partner shall consult with in-house  
11 or contracted financial, legal, architectural or other experts  
12 and advisors to assist in the design, evaluation, negotiation,  
13 construction administration and development of public-private  
14 partnership agreements for a public project.

15 F. If contractor insurance is required for services  
16 procured pursuant to this section, the insurance shall be  
17 placed with an insurer authorized to transact insurance in New  
18 Mexico or with a surplus lines insurer approved by the office  
19 of superintendent of insurance or its successor agency.

20 G. In addition to making proposals available to the  
21 public pursuant to Subsection H of this section and providing  
22 the opportunity for written comments from the public, the  
23 public partner shall hold at least one public hearing and may  
24 hold additional public hearings prior to entering into a  
25 public-private partnership, all of which shall be preceded by

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1 at least thirty days' notice. The meetings shall be subject to  
2 the Open Meetings Act.

3 H. Each request for proposals issued pursuant to  
4 the Public-Private Partnerships Act shall require the proposer  
5 to include with its proposal an executive summary covering the  
6 major elements of its proposal that do not address the  
7 proposer's price, financing plan or other confidential or  
8 proprietary information or trade secrets that the proposer  
9 intends to be exempt from disclosure. Any unsolicited proposal  
10 shall also include a similar executive summary. After the  
11 public-private partnership is awarded and the conclusion of any  
12 protest or other challenge to the award, the Inspection of  
13 Public Records Act applies to any release of any part of the  
14 proposals.

15 I. A solicited or unsolicited proposer shall  
16 identify those portions of a proposal or other submission that  
17 the proposer, with the public partner's concurrence, considers  
18 to be a trade secret or confidential commercial, financial or  
19 proprietary information. For trade secrets and confidential  
20 and proprietary information to be exempt from disclosure, the  
21 proposer must do all of the following:

22 (1) invoke exclusion on submission of the  
23 information or other materials for which protection is sought;

24 (2) identify with conspicuous labeling the  
25 data or other materials for which protection is sought;

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- 1 (3) state the reasons why protection is
- 2 necessary; and
- 3 (4) fully comply with any applicable state law
- 4 with respect to information that the proposer contends should
- 5 be exempt from disclosure.

6 J. A public partner shall consider a proposer's  
7 request to withhold certain information in a proposal from  
8 disclosure and shall issue a written determination either  
9 accepting or rejecting the proposer's request. Following the  
10 public partner's determination, any portions of the proposal  
11 not withheld from disclosure shall be made available to the  
12 public by request and the public partner shall maximize public  
13 access to the disclosed portions of the proposal through  
14 reasonable means available to the public partner.

15 SECTION 5. [NEW MATERIAL] PROCUREMENTS--RESTRICTIONS.--

16 A. The resident preferences provided in Sections  
17 13-1-21 and 13-1-22 NMSA 1978 apply to procurements pursuant to  
18 the Public-Private Partnerships Act. The construction of a  
19 public project is a public works for the purposes of the Public  
20 Works Minimum Wage Act, the Subcontractors Fair Practices Act,  
21 any other provisions of Chapter 13, Article 4 NMSA 1978 and the  
22 Public Works Apprentice and Training Act.

23 B. Before it may be awarded, every public-private  
24 partnership shall include an operating agreement that defines  
25 the roles and responsibilities of the partners. The operating

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1 agreement shall require that a public project be operated and  
2 maintained to the operating and maintenance standards and  
3 specifications as set out in the agreement.

4 C. Should a public project include building  
5 maintenance, as to the maintenance activities, the public  
6 partner or department shall not approve a project that  
7 displaces an existing government employee unless the employee  
8 is offered alternate equivalent employment.

9 SECTION 6. [NEW MATERIAL] DEPARTMENT--POWERS AND DUTIES--  
10 ASSISTANCE WITH DUTIES.--

11 A. The department shall:  
12 (1) in consultation with the state purchasing  
13 agent, the New Mexico finance authority, the economic  
14 development department, the department of finance and  
15 administration, the office of the state engineer and any other  
16 person that the department deems necessary, develop a minimum  
17 set of guidelines to implement the provisions of the Public-  
18 Private Partnerships Act, including the process that the  
19 department shall follow with respect to the public-private  
20 partnership agreements that the department is required to  
21 review and approve and the information that is required to be  
22 included in a requested or unsolicited proposal;

23 (2) before a public-private partnership may be  
24 established, review and approve all public-private partnership  
25 agreements that include:

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1 (a) a total public project cost that is  
2 greater than fifty million dollars (\$50,000,000); or

3 (b) a public-private partnership term  
4 that is longer than thirty-five years;

5 (3) establish an evaluation process to  
6 determine whether projects should be developed as public-  
7 private partnerships or using traditional procurement and  
8 funding methods prior to the initiation of contract  
9 negotiations with a private partner;

10 (4) manage public communication and education,  
11 including public hearings, regarding the scope, cost and  
12 impacts of proposed public-private partnerships in order to  
13 maximize the opportunity for public input on proposals;

14 (5) encourage maximum competition among  
15 private entities to pursue the development and operation of  
16 public-private projects in the state;

17 (6) serve as a resource for the legislature  
18 and its staff regarding the policy and financial impacts of  
19 proposals and the implications of proposed or pending public  
20 project agreements on the credit or other obligations of the  
21 state;

22 (7) provide technical assistance to local  
23 governments and regional entities on the use of public-private  
24 partnerships to meet their needs; and

25 (8) on or before December 1 of each year,

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1 submit a report to the legislature on any pending, proposed or  
2 completed public-private partnership agreements that the  
3 department is required to review and approve. The report shall  
4 specifically name the public-private project, its proposed  
5 scope, the proposed finance plan, the status of permitting and  
6 land acquisition and a summary of any public project agreements  
7 pending at the time of the report.

8 B. The department or a local government may:

9 (1) in accordance with Subsection D of Section  
10 4 of the Public-Private Partnerships Act, retain, as necessary,  
11 financial, legal and other experts to assist it in carrying out  
12 its duties pursuant to the Public-Private Partnerships Act,  
13 including assistance with the review of public-private  
14 partnership agreements;

15 (2) solicit the expertise of state agencies,  
16 state institutions, state instrumentalities and local  
17 governments to assist the department or local government in  
18 carrying out its duties pursuant to the Public-Private  
19 Partnerships Act, including reviewing public-private  
20 partnership proposals; and

21 (3) receive appropriations and money from any  
22 other source, including other state agencies or local  
23 governments, regional organizations or the federal government,  
24 to carry out its duties pursuant to the Public-Private  
25 Partnerships Act.

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1           C. All state agencies, state institutions, state  
2 instrumentalities and local governments, as appropriate, shall  
3 cooperate with the department or a local government and assist  
4 it in carrying out its duties by providing technical  
5 assistance, analysis and other services as requested by the  
6 department or a local government.

7           **SECTION 7. [NEW MATERIAL] DEPARTMENT--ADVICE AND**  
8 **ASSISTANCE--REVIEW AND APPROVAL OF AGREEMENTS.--**With respect to  
9 public-private partnership agreements that the department is  
10 required to review and approve, and before approving a public-  
11 private partnership, the department shall:

12           A. assist the public partner in negotiating  
13 agreements;

14           B. assist the public partner in preparing any  
15 documents related to a specific agreement;

16           C. identify, and advise the public partner  
17 regarding, any relevant federal securities or other laws and  
18 related disclosure requirements; and

19           D. identify, and advise the public partner  
20 regarding, accounting, investment and tax requirements  
21 applicable to specific public projects.

22           **SECTION 8. [NEW MATERIAL] EVALUATION CRITERIA.--**Before  
23 entering into a public-private partnership, the public partner,  
24 and the department if required, shall consider:

25           A. the ability of the public project to meet the

1 needs of the community in which it is to be located, including  
2 improving and streamlining services to the public; providing or  
3 enhancing educational, cultural and recreational opportunities;  
4 promoting economic growth or job creation; or otherwise serving  
5 a public purpose;

6 B. the proposed cost and financial plan for the  
7 public project;

8 C. the performance benchmarks contained in the  
9 proposal;

10 D. the estimated operating costs of the public  
11 project;

12 E. the financial commitment of the private partner;

13 F. the risk of the proposed financing;

14 G. the general reputation, qualifications, industry  
15 experience and financial capacity of the proposer;

16 H. the compatibility of the public project with  
17 local and regional land and water plans or other infrastructure  
18 plans;

19 I. the feasibility and proposed design and  
20 management of the public project;

21 J. the degree of innovation; efficiency; and  
22 technical, scientific, technological and socioeconomic merit of  
23 the proposal;

24 K. comments from potential users, local citizens,  
25 affected jurisdictions and other interested persons;

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1 L. benefits to the public, including improvements  
2 in economic growth, job creation, public safety and quality of  
3 life;

4 M. the safety record of the proposer;

5 N. efforts to be made through the public-private  
6 partnership to retain and train New Mexico residents in  
7 occupations and professions related to planning, design,  
8 construction, project management, general management,  
9 administration, legal, accounting and other areas of the public  
10 project over the life of the public-private partnership;

11 O. the commitment to use New Mexico building  
12 materials and manufactured goods and local services to the  
13 extent possible;

14 P. green building design and construction  
15 certification by a nationally recognized organization;

16 Q. innovations in energy efficiency or generation;  
17 and

18 R. other criteria that the public partner and the  
19 department deem appropriate for consideration.

20 SECTION 9. [NEW MATERIAL] PUBLIC-PRIVATE PARTNERSHIP  
21 AGREEMENTS--REQUIREMENTS.--

22 A. In a public-private partnership, the public  
23 partner, and the department with respect to public-private  
24 partnership proposals that it reviews, shall require an  
25 agreement to include provisions, as applicable, that:

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1 (1) authorize the public partner or the  
2 private partner to establish and collect user fees, rents,  
3 advertising and sponsorship charges, service charges or other  
4 charges allowed in the agreement, including provisions that:

5 (a) specify how revenue will be  
6 collected, accounted for and audited;

7 (b) establish circumstances under which  
8 the public partner may receive all or a share of revenue from  
9 such charges; and

10 (c) govern enforcement of user fees,  
11 including provisions for mechanisms to ensure that users are  
12 identified and notified of fees owed and provisions that allow  
13 the private partner access to information from relevant public  
14 databases for enforcement purposes. Negligent use of the data  
15 contained in the databases, including unauthorized disclosure  
16 of the data, shall result in a civil penalty of ten thousand  
17 dollars (\$10,000) for each violation;

18 (2) provide for a maximum negotiated rate of  
19 return on the private partner's investment, including:

20 (a) fees and charges that may be  
21 collected directly by the private partner or a third party  
22 engaged by the private partner for that purpose;

23 (b) a formula for the adjustment of user  
24 fees and other charges during the term of the public-private  
25 partnership;

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1 (c) for an agreement that does not  
2 include a formula described in Subparagraph (b) of this  
3 paragraph, provisions regulating the private partner's return  
4 on investment; or

5 (d) other strategies that the public  
6 partner or the department deems appropriate;

7 (3) allow for payments to be made by the  
8 public partner to the private partner, including availability  
9 payments or performance-based payments;

10 (4) allow the public partner to accept  
11 payments and share revenue with the private partner;

12 (5) address how the public and private  
13 partners will share management of the risks of the public  
14 project;

15 (6) specify how the public and private  
16 partners will share the costs of development of the public  
17 project;

18 (7) allocate financial responsibility for cost  
19 overruns to the partner or partners that were responsible for  
20 the cost overruns;

21 (8) establish the damages to be assessed for  
22 nonperformance;

23 (9) establish performance criteria or  
24 incentives, or both;

25 (10) address the acquisition of property

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1 interests that may be required, including provisions that allow  
2 the public or private partner to acquire real property,  
3 including acquisition by exchange of other real property that  
4 is owned by the state, a local government or the federal  
5 government;

6 (11) establish recordkeeping, accounting and  
7 auditing standards to be used for the public project;

8 (12) for a public project with a term that is  
9 longer than twenty-five years, address responsibility for  
10 reconstruction or renovations that are required so that the  
11 public project meets all applicable government standards before  
12 the public project reverts to the public partner;

13 (13) provide for responsibilities for law  
14 enforcement on public projects;

15 (14) identify public partner specifications  
16 that must be satisfied, including provisions allowing the  
17 private partner to request and receive authorization to deviate  
18 from the specifications on a showing satisfactory to the public  
19 partner that the deviation is necessary;

20 (15) require a private partner to provide,  
21 either directly or through the principal contractor who is in  
22 charge of the project, performance and payment bonds as  
23 required by Section 13-4-18 NMSA 1978 for those components of a  
24 public project that involve construction. For components that  
25 do not involve construction, require parent company guarantees,

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1 letters of credit or other acceptable forms of security or a  
2 combination of any of these, the penal sum or amount of which  
3 may be less than one hundred percent of the value of the  
4 contract involved based on the public partner's or the  
5 department's determination of what is required to adequately  
6 protect the public partner, made on a project-by-project basis;

7 (16) provide clawback or recapture provisions  
8 that protect the public investment; and

9 (17) specify remedies available to the parties  
10 and dispute resolution procedures to be followed.

11 B. The public-private partnership agreement shall  
12 include a clear statement of which partner will own any real  
13 property pertaining to the public project when the project  
14 reverts to the public partner based on the terms of the  
15 agreement.

16 C. The term of initial agreements entered into  
17 pursuant to the Public-Private Partnerships Act may be for a  
18 term not to exceed fifty years, and such agreements may be  
19 extended for additional terms; provided that an extension shall  
20 be subject to the same review and negotiation process as the  
21 original agreement.

22 D. The public-private partnership agreement shall  
23 contain a provision by which the private partner expressly  
24 agrees that it is prohibited from seeking injunctive or other  
25 equitable relief to delay, prevent or otherwise hinder the

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1 public partner or any other jurisdiction from developing,  
2 constructing or maintaining a public project that was planned  
3 and that would or might affect the revenue that the private  
4 partner would or might derive from the public project developed  
5 pursuant to the Public-Private Partnerships Act, except that  
6 the agreement may provide for reasonable compensation to the  
7 private partner for the adverse effect resulting from  
8 development, construction and maintenance of an unplanned  
9 facility that affects the public project's revenue.

10 E. The state board of finance shall approve the  
11 assignment, transfer or sale of assets or investment in a  
12 public project that creates debt obligation of the public  
13 partner.

14 SECTION 10. [NEW MATERIAL] FUNDING AND FINANCING.--

15 A. Any lawful source of funding may be used for the  
16 development or management of a public project pursuant to the  
17 Public-Private Partnerships Act, including:

18 (1) proceeds of grant anticipation revenue  
19 bonds, private activity bonds, revenue bonds or other bonds  
20 allowed by federal or state law;

21 (2) grants, loans, loan guarantees, lines of  
22 credit, revolving lines of credit or other arrangements as  
23 allowed by federal or state law;

24 (3) other federal, state or local revenues;

25 (4) user fees, lease payments, availability

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1 payments, gross or net receipts from sales, proceeds from the  
2 sale of development rights, franchise charges, permit charges,  
3 advertising and sponsorship charges, service charges or any  
4 other lawful form of consideration; and

5 (5) other forms of public and private capital  
6 that are available.

7 B. As security for the payment of financing  
8 described in this section, the revenues from the public project  
9 may be pledged, but no pledge of revenues or property  
10 constitutes in any manner or to any extent a general obligation  
11 of the state or local government, unless explicitly agreed to  
12 by the state or local government. Financing may be structured  
13 on a senior, parity or subordinate basis to any other  
14 financing.

15 C. The public partner may accept money from the  
16 United States or any of its agencies to carry out the  
17 provisions of the Public-Private Partnerships Act, whether the  
18 money is made available by grant, loan or other financing  
19 arrangement. The public partner assents to any federal  
20 requirements, conditions or terms of any federal funding  
21 accepted by the public partner pursuant to this subsection.  
22 The public partner may enter into agreements or other  
23 arrangements with the United States or any of its agencies as  
24 may be necessary to carry out the provisions of that act.

25 D. The public partner may accept from any source

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1 any grant, donation, gift, conveyance of land, other real or  
2 personal property or other thing of value made to the public  
3 partner for the purposes of a public project.

4 E. A public project may be funded in whole or in  
5 part by contributions of money or property made by a private  
6 person, a private entity or the state or any agency,  
7 institution, instrumentality or political subdivision of the  
8 state.

9 F. Federal, state and local money may be combined  
10 with private sector money for public project purposes as  
11 allowed by law or by the grant, gift or donation provisions.

12 G. Any revenue bonds issued as a result of the  
13 Public-Private Partnerships Act are not general obligations of  
14 this state or any local government and are not secured by or  
15 payable from any money or assets of the state or any local  
16 government other than the money and revenues specifically  
17 pledged to the repayment of the revenue bonds.

18 SECTION 11. [NEW MATERIAL] USER FEES AT END OF AGREEMENT  
19 PERIOD.--The public partner may continue or cease collection of  
20 user fees after the end of the term of the public-private  
21 partnership agreement, based on a determination of the public  
22 project's future operations.

23 SECTION 12. [NEW MATERIAL] REVERSION OF PUBLIC PROJECT TO  
24 PUBLIC PARTNER.--If the public-private partnership is  
25 terminated, the powers and duties of the private partner cease,

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1 except for any duties and obligations that extend beyond the  
2 termination as provided in the public-private partnership  
3 agreement, and the public project reverts to the public partner  
4 and shall be dedicated for public use.

5 SECTION 13. [NEW MATERIAL] MATERIAL DEFAULT--REMEDIES.--

6 A. Upon the occurrence and during the continuation  
7 of material default by the private partner, not related to an  
8 event of force majeure, the public partner may:

9 (1) elect to take over the public project,  
10 including the succession of all right, title and interest in  
11 the public project, subject to any liens on revenue previously  
12 granted by the private partner; and

13 (2) terminate the public-private partnership  
14 and exercise any other rights and remedies that may be  
15 available.

16 B. If the public partner elects to take over a  
17 public project pursuant to Subsection A of this section, the  
18 public partner:

19 (1) shall collect and pay any revenue that is  
20 subject to lien to satisfy an obligation;

21 (2) may develop and operate the public  
22 project, impose user fees for the use of the public project and  
23 comply with any service contracts; and

24 (3) may solicit proposals for the maintenance  
25 and operation of the public project as provided in the Public-



underscoring material = new  
~~[bracketed material] = delete~~

1 Private Partnerships Act for original proposals.

2 SECTION 14. [NEW MATERIAL] POLICE POWERS--VIOLATIONS OF  
3 LAW.--All law enforcement officers of the state or local  
4 government have the same powers and jurisdiction within the  
5 limits of the public project as they have in their respective  
6 areas of jurisdiction and access to the public project at any  
7 time to exercise such powers and jurisdictions.

8 SECTION 15. [NEW MATERIAL] UTILITY CROSSINGS.--Subject to  
9 the requirements of federal and state laws, contractual  
10 agreements and land conveyance documents, a public or private  
11 partner and any utility whose facility is to be crossed or  
12 relocated shall cooperate fully in planning and arranging the  
13 manner of the crossing or relocation of the utility facility.

14 SECTION 16. EFFECTIVE DATE.--The effective date of the  
15 provisions of this act is July 1, 2017.