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SENATE BILL 43

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

INTRODUCED BY

Joseph Cervantes

ENDORSED BY THE NEW MEXICO FINANCE AUTHORITY
OVERSIGHT COMMITTEE

AN ACT

RELATING TO PUBLIC SECURITIES; ALLOWING PUBLIC BODIES TO
DELEGATE AUTHORITY FOR MAKING CERTAIN DETERMINATIONS REGARDING
SALES OF PUBLIC SECURITIES; CLARIFYING THE DEFINITIONS OF
"PUBLIC BODY" AND "PUBLIC SECURITIES"; REQUIRING REPORTING TO
THE NEW MEXICO FINANCE AUTHORITY OVERSIGHT COMMITTEE.

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

SECTION 1. Section 6-14-9 NMSA 1978 (being Laws 1983,
Chapter 265, Section 2) is amended to read:

"6-14-9. DEFINITIONS.--As used in the Supplemental Public
Securities Act:

A. "authorizing instrument" means the ordinance,
resolution, other official action or any applicable combination
thereof by which public securities are authorized to be issued
by a public body;

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1 B. "public body" means this state or any
2 department, board, agency or instrumentality of the state, any
3 county, city, town, village, school district, other district or
4 educational institution or any other governmental agency or
5 political subdivision of the state or the New Mexico finance
6 authority;

7 C. "public securities" means any bonds, notes,
8 loans, warrants or other obligations now or hereafter
9 authorized to be issued by any public body pursuant to the
10 provisions of any general or special statute, any
11 constitutional or statutory charter or any other law; and

12 D. "registrar" means the treasurer or any other
13 officer of the public body or of any other public body or any
14 corporate or other trustee, registrar, paying agent, transfer
15 agent, custodian or other financial intermediary within the
16 United States as may be appointed or designated in the
17 authorizing instrument."

18 **SECTION 2.** A new section of the Supplemental Public
19 Securities Act is enacted to read:

20 "NEW MATERIAL DELEGATION OF AUTHORITY BY PUBLIC BODY--
21 AUTHORIZING INSTRUMENT.--

22 A. A public body may adopt an authorizing
23 instrument that delegates to one or more members, officers or
24 employees of the public body, acting in a fiduciary capacity
25 within the scope of authority and the parameters and conditions

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1 for the public securities set forth by the public body in the
2 authorizing instrument as described in Subsection B of this
3 section, the authority to sign a contract for the purchase or
4 sale of public securities or to accept a binding bid for public
5 securities and to determine the final terms for public
6 securities to be issued pursuant to Subsection C of this
7 section. The authorizing instrument shall be effective for one
8 hundred twenty days or for a specified shorter period.

9 B. An authorizing instrument delegating authority
10 pursuant to Subsection A of this section shall establish the
11 parameters and conditions for the public securities, including:

12 (1) the public purpose for which the public
13 securities are to be issued;

14 (2) the maximum par amount of the public
15 securities;

16 (3) the maximum term for which the public
17 securities may be outstanding;

18 (4) the maximum interest rate that the public
19 securities may bear;

20 (5) each tax or revenue source that is pledged
21 to or that shall secure payment for the public securities;

22 (6) whether the public securities will be sold
23 at a public or a private sale;

24 (7) the minimum sales price or the maximum
25 sales price of the public securities;

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1 (8) the maximum amount of underwriting
2 discount, if any, as a percentage of the aggregate principal
3 amount of the public securities;

4 (9) the form of the public securities, subject
5 to the final terms described in Subsection C of this section;

6 (10) the public securities that may be
7 refunded, if any; and

8 (11) the appointment of a trustee, paying
9 agent, registrar, escrow agent, tender agent, remarketing
10 agent, dissemination agent or any other agent or service
11 provider required for the sale, issuance and delivery of the
12 public securities and the form of agreement for each
13 appointment.

14 C. Subject to the parameters and conditions
15 established in Subsection B of this section, a delegatee may be
16 authorized, pursuant to the authorizing instrument, to
17 determine any or all of the following final terms of the public
18 securities:

19 (1) the interest and principal payment dates;
20 (2) the principal amount, denominations and
21 maturity amortization;

22 (3) the sale price;

23 (4) the interest rate;

24 (5) the interest payment periods;

25 (6) the redemption and tender provisions;

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1 (7) the procurement of municipal bond
2 insurance and any related covenants or agreements;

3 (8) the creation of any capitalized interest
4 or debt service reserve funds, including the size and funding
5 of the funds;

6 (9) the amount of underwriting discount, if
7 any;

8 (10) the public securities to be refunded, if
9 any; and

10 (11) the final terms of agreements, if any,
11 with one or more trustee, paying agent, registrar, escrow
12 agent, tender agent, remarketing agent, dissemination agent or
13 any other agent or service provider required for the purchase,
14 sale, issuance and delivery of the public securities.

15 D. The public body shall determine and approve any
16 term not listed in Subsection C of this section.

17 E. The delegatee shall certify in writing, prior to
18 the delivery of the public securities, that the final terms
19 determined pursuant to Subsection C of this section comply with
20 the parameters and conditions established in the authorizing
21 instrument pursuant to Subsection B of this section. The
22 delegatee shall present the written certification containing
23 the final terms of the public securities to the public body in
24 a timely manner, before or after the delivery of the public
25 securities, at a regularly scheduled meeting of the public body

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1 held in compliance with the Open Meetings Act.

2 F. A public body need not approve a determination
3 made by the delegatee pursuant to Subsection C of this section
4 if the determination complies with the parameters and
5 conditions established in the authorizing instrument pursuant
6 to Subsection B of this section. A determination made by the
7 delegatee pursuant to this section has the same force and
8 effect as a determination made by the public body. The
9 delegatee, while acting within the scope of the delegatee's
10 authority and the parameters and conditions established in the
11 authorizing instrument pursuant to Subsection B of this
12 section, shall not be subject to any personal liability for any
13 action taken or omitted within that scope of authority.

14 G. A public body's adoption of an authorizing
15 instrument that includes a delegation of authority pursuant to
16 this section constitutes final passage of the authorizing
17 instrument for the purposes of any applicable general or
18 special law or any constitutional or statutory provision or
19 municipal charter related to any referendum or petition right."

20 SECTION 3. A new section of the New Mexico Finance
21 Authority Act is enacted to read:

22 "[NEW MATERIAL] REPORT TO LEGISLATURE--AUTHORIZING
23 INSTRUMENT--DELEGATION OF AUTHORITY FOR PUBLIC SECURITIES
24 ISSUANCES.--By September 30 of each year, the authority shall
25 report to the New Mexico finance authority oversight committee

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1 about the authority's public securities issuances, completed in
2 the prior twelve months, that involved a delegation of
3 authority through an authorizing instrument pursuant to Section
4 2 of this 2017 act."

5 SECTION 4. EFFECTIVE DATE.--The effective date of the
6 provisions of this act is July 1, 2017.

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