

Fiscal impact reports (FIRs) are prepared by the Legislative Finance Committee (LFC) for standing finance committees of the NM Legislature. The LFC does not assume responsibility for the accuracy of these reports if they are used for other purposes.

Current and previously issued FIRs are available on the NM Legislative Website ([www.nmlegis.gov](http://www.nmlegis.gov)).

## FISCAL IMPACT REPORT

Sanchez, J./Sanchez,  
C./Lundstrom/Padilla/ **ORIGINAL DATE** 2/10/2020  
**SPONSOR** Gonzales **LAST UPDATED** 2/14/2020 **HB** 264/aHLVMC

**SHORT TITLE** Public Private Partnership Act **SB** \_\_\_\_\_

**ANALYST** Valenzuela

### REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY20	FY21	FY22		
	\$1,000.0	\$2,000.0	Recurring	P3 Fund

(Parenthesis ( ) Indicate Revenue Decreases)

### ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY20	FY21	FY22	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>Total</b>		(\$250.0)	(\$250.0)	(\$750.0)	Recurring	P3 Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

Relates to Senate Bill 59  
Relates to Appropriation in the General Appropriation Act

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

New Mexico Attorney General (NMAG)  
Department of Transportation (NMDOT)  
New Mexico Finance Authority (NMFA)

### SUMMARY

#### Synopsis of HLVMC Amendment

The House Labor, Veterans and Military Affairs Committee (HLVMC) Amendment #1 changed the financial assurance requirements for private partners to a performance and payment bond to align with existing statute.

Synopsis of Bill

House Bill 264 creates the Public-Private Partnership Act providing legal authority for governmental entities to enter into agreements with private entities to develop public projects. Projects are restricted to infrastructure in transportation but may not involve toll roads.

The bill creates a Public-Private Partnership (PPP or P3) Board, staffed by the New Mexico Finance Authority (NMFA). The P3 Board would review and approve P3 agreements that meet a minimum threshold of agreements for greater than \$10 million.

The bill provides authority to the NMFA to participate in the financing of the P3 agreements through a P3 Project Fund, established by the bill. The NMFA board would approve any financing for loans and grants from the fund. The bill includes standard language allowing NMFA to issue standalone revenue bonds as a form of financing of these projects, and explicitly ensures any bonds issued for these projects are not an obligation of the state. Governmental entities pursuing a P3 agreement may apply for up to \$75 thousand grant to assist in evaluating the feasibility of a proposed project.

HB264 is endorsed by the Legislative Finance Committee. The effective date of this bill is July 1, 2020.

**FISCAL IMPLICATIONS**

The bill does not contain an appropriation. House Bill 2, the General Appropriations Act, includes \$40 million for a public-private partnership fund, which would allow NMFA to participate in the project financing. Under the bill, the P3 Board and NMFA may use appropriations in the fund to cover any costs from implementation of the program. The estimate is \$250 thousand of operating costs. Additionally, the bill provides for NMFA’s ability to earn a rate of return, commensurate with the risk, on project financing. Assuming a 5 percent annual return and a \$40 million appropriation to the P3 fund, NMFA could earn \$2 million from interest earnings annually.

**SIGNIFICANT ISSUES**

New Mexico is often overlooked for private-sector investments in public infrastructure. More than 35 states have laws governing the use of public-private partnerships. New Mexico is not one of them. HB264 provides the statutory framework to ensure projects are developed in the public’s interest.

Public-private partnerships have been completed throughout New Mexico on an ad-hoc basis with mixed results. Oversight of projects is left to a governing body that is a party to the agreement, which in some cases may not have the staff or expertise to fully analyze long-term financial obligations of the public-private partnership agreements. P3 agreements are complex. HB264 would provide support to governments to analyze the legal and financial issues of an agreement.

Sections of the Bill. Enactment of the bill would provide governmental entities and private partners with a clear transparent set of guidelines, under which these partnerships can operate to ensure the public’s interests are served. The P3 Board will be responsible for promulgating rules

to implement the act, which would expound on the definitions, processes, and requirements of an agreement.

Section 2 provides a list of key definitions for a P3 projects: public partner, private partner, and P3 agreements. The definitions also detail eligible public projects (i.e., transportation and broadband infrastructure) and definitions of revenue or user fees that may generate from a P3 project.

Section 3 outlines guardrails, or protections of the public interest in projects: (1) Cost: Each project must provide a cost-benefit analysis comparing the proposed project with the project, if developed under conventional government processes. (2) Public input: Each project must demonstrate support locally by having held public hearings and received support from local governmental bodies. (3) Competition: Each project must outline the procurement process for the project. (4) Compliance with existing law: Each project must have met applicable state and federal laws such as for environmental protection, employment, and financing.

For any project over \$10 million or for a term longer than five years, the P3 agreements must be reviewed and approved by the P3 Board. Anything below these thresholds must report the project to the P3 Board.

Section 4 creates a board with nine members who have expertise in public project development or financing, including four cabinet secretaries (Economic Development Department, the Department of Finance and Administration, the General Services Department, and the Department of Transportation). The NMFA chief executive officer will hold one seat and four public members would be appointed by the New Mexico Legislative Council Service. The public members would have specific expertise in topics relevant to public-private partnerships and the chair would be selected from the public members.

Sections 5 and 6 establish the respective roles the P3 Board and NMFA and Section 12 requires NMFA to report activity of the P3 Board to the NMFA Oversight Committee by December 1 of each year. Section 7 creates the P3 fund which (1) may be used for grants up to \$75 thousand, matched with 25 percent match from the private partner to study the feasibility of a proposed P3 project or (2) may be used to finance a portion of a P3 project. The section allows the P3 Board and NMFA to charge administrative and reimbursable costs to the fund.

Sections 8 and 13 address other federal or state laws for which compliance is necessary in a P3 agreement, including statutes on public works construction, the procurement code and confidentiality in public records requests. Section 14 amends the Procurement Code to add a new exemption for projects undertaken pursuant to this Act.

### **CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP**

SB59 also contemplates the creation of the Act, but rather than transportation related public projects, identifies broadband telecommunications network facilities as “public projects.”