

HOUSE JUDICIARY COMMITTEE SUBSTITUTE FOR
HOUSE BILL 213

56TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2023

AN ACT

RELATING TO PUBLIC PROJECTS; ENACTING THE PUBLIC-PRIVATE PARTNERSHIP ACT; ALLOWING PUBLIC PARTNERS TO ENTER INTO PUBLIC-PRIVATE PARTNERSHIP AGREEMENTS TO FACILITATE PUBLIC PROJECTS; CREATING THE PUBLIC-PRIVATE PARTNERSHIP BOARD; CREATING THE PUBLIC-PRIVATE PARTNERSHIP PROJECT FUND; PROVIDING FOR AN EXEMPTION TO THE PROCUREMENT CODE; AUTHORIZING GRANTS, LOANS AND BONDS; AUTHORIZING ADMINISTRATIVE FEES; PROVIDING POWERS AND DUTIES; PROVIDING A PLEDGE TO NOT CHANGE OR IMPAIR BOND AGREEMENTS; PROVIDING A DELAYED REPEAL; REQUIRING REPORTS.

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

SECTION 1. [NEW MATERIAL] SHORT TITLE.--Sections 1 through 14 of this act may be cited as the "Public-Private Partnership Act".

SECTION 2. [NEW MATERIAL] DEFINITIONS.--As used in the .225501.1

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1 Public-Private Partnership Act:

2 A. "authority" means the New Mexico finance
3 authority;

4 B. "board" means the public-private partnership
5 board;

6 C. "broadband telecommunications network
7 facilities" means the electronics, equipment, transmission
8 facilities, fiber-optic cables and any other item directly
9 related to a system capable of transmission of internet
10 protocol or other formatted data at current federal
11 communications commission minimum speed standard, all of which
12 will be owned and used by a provider of internet access
13 services;

14 D. "private partner" means an individual, a foreign
15 or domestic corporation, a general partnership, a limited
16 liability company, a limited partnership, a joint venture, a
17 business trust, a public benefit corporation, a nonprofit
18 entity or other private business entity or combination thereof;

19 E. "public partner" means the state and its
20 branches, agencies, departments, boards, instrumentalities or
21 institutions and all political subdivisions of the state and
22 their agencies, instrumentalities and institutions, including a
23 department, an agency, an institution of higher education, a
24 board or a commission;

25 F. "public-private partnership" means an

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1 arrangement between one or more public partners and one or more
2 private partners for the development of a public project
3 pursuant to the Public-Private Partnership Act;

4 G. "public-private partnership agreement" means a
5 contract between one or more public partners and one or more
6 private partners in connection with the development of a public
7 project;

8 H. "public project" means:

9 (1) the construction or improvement of a
10 public transportation facility or public transportation
11 infrastructure other than a toll road; or

12 (2) public construction or improvement of
13 broadband telecommunications network facilities;

14 I. "revenue" means all revenue, income, earnings,
15 user fees, lease payments or other service payments that
16 support the development of a public project, including money
17 received as a grant or otherwise from the federal government, a
18 public partner or any agency or instrumentality of the federal
19 government; and

20 J. "user fees" means rates, fees or other charges
21 imposed by the public partner or the private partner for use of
22 all or part of a public project.

23 SECTION 3. [NEW MATERIAL] PUBLIC-PRIVATE PARTNERSHIP
24 AGREEMENTS--APPROVAL REQUIREMENTS--RESTRICTIONS.--

25 A. In order to provide economic and administrative

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1 efficiencies in connection with the development of public
2 projects, a public partner may enter into public-private
3 partnership agreements.

4 B. Prior to entering into negotiations regarding
5 the use of a public-private partnership agreement as a method
6 of implementing a proposed public project, the public partner
7 shall publish a notice of its interest in considering such an
8 agreement. The notice shall be published for three successive
9 weeks in a newspaper of general circulation in the county where
10 the public partner is situated, and in the county where the
11 proposed public project will occur if different, and if the
12 public partner has a website, the notice shall be posted on
13 that website. The notice shall include a description of the
14 scope of the proposed public project.

15 C. Prior to entering into a public-private
16 partnership agreement, a public partner shall:

17 (1) undertake a cost-benefit analysis of a
18 public-private partnership project in comparison with the
19 traditional public partner-managed project;

20 (2) determine whether the application of the
21 Procurement Code or other procurement rules applicable to the
22 public partner would delay or increase the cost of the proposed
23 public project;

24 (3) conduct a public hearing relating to the
25 proposed public-private partnership held in accordance with the

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1 Open Meetings Act;

2 (4) demonstrate that the proposed public
3 project serves an important public purpose and fulfills an
4 important public need; and

5 (5) demonstrate that the proposed public
6 project will comply with applicable state and federal law.

7 D. A public-private partnership agreement shall:

8 (1) define the roles and responsibilities of
9 the public partners and the private partners;

10 (2) provide clawback or recapture provisions
11 that protect the public investment in the event of a default on
12 the agreement;

13 (3) provide a finance plan detailing the
14 financial contributions and obligations of the public and
15 private partners;

16 (4) require a private partner to provide, or
17 cause to be provided, performance and payment bonds as required
18 pursuant to Section 13-4-18 NMSA 1978;

19 (5) require a private partner to provide
20 guarantees, letters of credit or other acceptable forms of
21 security, the amount of which may be less than one hundred
22 percent of the value of the contract involved based on the
23 determination of the public partner, or for public-private
24 partnership agreements requiring board approval, based on the
25 determination by the board;

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1 (6) specify how revenue will be collected,
2 accounted for and audited;

3 (7) specify how debts incurred on behalf of
4 the public partner or private partner will be repaid;

5 (8) address how the public partners and the
6 private partners will share management and the risks of the
7 public project;

8 (9) provide that, in the event of an uncured
9 default, the public partner may:

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

14 (b) terminate the public-private
15 partnership and exercise any other rights and remedies that may
16 be available;

17 (10) specify the term of the public-private
18 partnership agreement, which shall not exceed thirty years;

19 (11) limit a private partner from seeking
20 injunctive or other equitable relief to in any way restrict a
21 public partner from developing, constructing or maintaining a
22 public project, except that the public-private partnership
23 agreement may provide for reasonable compensation to the
24 private partner for the adverse effect resulting from
25 development, construction, operation and maintenance of another

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1 public project of the public partner;

2 (12) provide for the protection of proprietary
3 information of the private partner, except as that information
4 is needed for operations and maintenance by a public entity or
5 for public health and safety;

6 (13) provide that operations and maintenance
7 of a public project, except a public project that is broadband
8 infrastructure, to be performed by the public partner;

9 (14) provide provisions for termination of the
10 public-private partnership agreement, including the cessation
11 of the powers and duties of the private partner; and

12 (15) provide that the public project shall
13 revert to the public partner and be dedicated for public use.

14 E. A public-private partnership agreement for a
15 public project for which the cost is in excess of ten million
16 dollars (\$10,000,000) shall not become effective until it is
17 approved by the board pursuant to Subsection D of Section 5 of
18 the Public-Private Partnership Act.

19 F. Within thirty days of execution by a public
20 partner and a private partner, a copy of the fully executed
21 public-private partnership agreement for a public project for
22 which the cost is less than or equal to ten million dollars
23 (\$10,000,000) shall be delivered to the board for reporting
24 pursuant to Subsection C of Section 5 of the Public-Private
25 Partnership Act.

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1 SECTION 4. [NEW MATERIAL] PUBLIC-PRIVATE PARTNERSHIP
2 BOARD--CREATED--MEMBERSHIP.--

3 A. The "public-private partnership board" is
4 created. The authority shall provide necessary administrative
5 services to the board.

6 B. The eleven members of the board shall be:

7 (1) the secretary of economic development or
8 the secretary's designee;

9 (2) the secretary of finance and
10 administration or the secretary's designee;

11 (3) the secretary of general services or the
12 secretary's designee;

13 (4) the secretary of transportation or the
14 secretary's designee;

15 (5) the chief executive officer of the
16 authority or the chief executive officer's designee;

17 (6) the director of the office of broadband
18 access and expansion or the director's designee; and

19 (7) five members of the public appointed by
20 the New Mexico legislative council who shall have experience in
21 architecture, broadband development, engineering, public
22 projects, project finance, public finance or bond and finance
23 law.

24 C. The members of the public appointed initially
25 shall draw lots for staggered terms in such a way that two

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1 members shall serve for six years, two members shall serve for
2 four years and one member shall serve for two years.

3 Thereafter, the public members shall serve for six-year terms.

4 D. The members shall select a chair who shall be a
5 public member and who shall serve a term of two years.

6 E. Members who are not public employees shall be
7 governed by the Gift Act and the Governmental Conduct Act and
8 are entitled to per diem and mileage as nonsalaried public
9 officials as provided in the Per Diem and Mileage Act but shall
10 receive no other compensation, perquisite or allowance.

11 F. All meetings of the board shall be open to the
12 public and subject to the Open Meetings Act.

13 SECTION 5. [NEW MATERIAL] BOARD--POWERS.--The board shall
14 have the following powers:

15 A. meet quarterly and at such other times as deemed
16 necessary by the chair;

17 B. develop forms of applications for approval of
18 public-private partnerships;

19 C. receive for reporting purposes executed public-
20 private partnership agreements for public projects for which
21 the cost is less than or equal to ten million dollars
22 (\$10,000,000);

23 D. review and consider for approval proposed
24 public-private partnership agreements for a public project for
25 which the cost is in excess of ten million dollars

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1 (\$10,000,000);

2 E. certify the need for the issuance of revenue
3 bonds and refunding bonds by the authority;

4 F. determine the use of a public-private
5 partnership agreement and ensure that the proposed funding
6 mechanism is a prudent expenditure of public funds;

7 G. promulgate rules establishing the application
8 process and criteria for the approval of public-private
9 partnership agreements in accordance with the provisions of the
10 State Rules Act;

11 H. make recommendations for approval to the
12 authority of public projects seeking grants or loans from the
13 public-private partnership project fund;

14 I. charge and collect reasonable fees necessary for
15 the collection, review and dissemination of public-private
16 partnership agreements; and

17 J. take all other action necessary to implement the
18 Public-Private Partnership Act, including entering into joint
19 powers agreements with any other public sector partner or
20 Indian nation, tribe or pueblo and retaining legal counsel and
21 experts when appropriate.

22 SECTION 6. [NEW MATERIAL] NEW MEXICO FINANCE AUTHORITY--
23 DUTIES.--The authority shall:

24 A. provide staff support to the board;

25 B. administer the public-private partnership

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1 project fund;

2 C. develop forms of grant and loan applications for
3 public projects seeking funds from the public-private
4 partnership project fund;

5 D. make loans and grants from the public-private
6 partnership project fund for public projects that have been
7 recommended for approval by the board pursuant to Subsection H
8 of Section 5 of the Public-Private Partnership Act;

9 E. promulgate rules relating to the issuance of
10 bonds for public projects;

11 F. upon certification by the board, issue revenue
12 bonds and refunding bonds in accordance with the provisions of
13 the Public-Private Partnership Act;

14 G. fix, revise from time to time, charge and
15 collect fees and other charges in connection with making loans
16 and grants from the public-private partnership project fund;

17 H. be compensated from the public-private
18 partnership project fund for administrative and reimbursable
19 costs in connection with the authority's support of the board
20 and administration of the public-private partnership project
21 fund;

22 I. charge and collect reasonable fees in connection
23 with collecting, reviewing and disseminating public-private
24 partnership agreements; and

25 J. take all other action necessary to implement the

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1 Public-Private Partnership Act, including entering into joint
2 powers agreements with other agencies.

3 SECTION 7. [NEW MATERIAL] PUBLIC-PRIVATE PARTNERSHIP
4 PROJECT FUND CREATED--STUDY GRANTS--INFRASTRUCTURE LOANS.--

5 A. The "public-private partnership project fund" is
6 created within the authority. The fund consists of
7 appropriations, payments of principal and interest on loans
8 made from the fund, income from investment of the fund and any
9 other money distributed or otherwise allocated to the fund.
10 Balances in the fund at the end of any fiscal year shall not
11 revert to the general fund. The fund may consist of such
12 subaccounts as the authority deems necessary to carry out the
13 purposes of the fund.

14 B. Money in the public-private partnership project
15 fund may be used to make grants of up to seventy-five thousand
16 dollars (\$75,000) to a public partner for the purposes of
17 studying the costs and benefits of entering into a public-
18 private partnership for a proposed public project. A private
19 partner shall provide funds matching the public partner's
20 monetary obligation for the cost of the study, as required by
21 the authority.

22 C. Money in the public-private partnership project
23 fund may be used to provide loans for financing a public
24 project through a public-private partnership agreement;
25 provided that:

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1 (1) the private partner shall provide funds
2 matching the public partner's monetary obligation for the
3 public-private partnership agreement, as provided by rule; and

4 (2) the public partner certifies to the board
5 that the public partner has taken all action necessary to
6 approve the public-private partnership agreement and that the
7 public-private partnership agreement contains all terms and
8 conditions required by Subsection D of Section 3 of the Public-
9 Private Partnership Act.

10 D. Money in the public-private partnership project
11 fund may be used pursuant to Subsections B and C of this
12 section only for:

13 (1) grants or loans to a public partner; and
14 (2) a public project for which the cost is in
15 excess of ten million dollars (\$10,000,000).

16 E. Money in the public-private partnership project
17 fund may be used for grants or loans to an Indian nation, tribe
18 or pueblo that has entered into a public-private partnership
19 with a private partner for the development of a public project
20 only if:

21 (1) the cost of the public project is in
22 excess of ten million dollars (\$10,000,000);

23 (2) the agreement between the Indian nation,
24 tribe or pueblo and the private partner is approved by the
25 board; and

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1 (3) the grant or loan application is
2 recommended for approval by the board and approved by the
3 authority.

4 F. Money in the public-private partnership project
5 fund may be used for administrative and reimbursable costs
6 incurred by the board and by the authority.

7 SECTION 8. [NEW MATERIAL] APPLICABILITY OF CERTAIN OTHER
8 LAWS.--The construction of a public project pursuant to a
9 public-private partnership agreement is a public work for the
10 purposes of the Public Works Minimum Wage Act, the
11 Subcontractors Fair Practices Act and the Public Works
12 Apprenticeship and Training Act.

13 SECTION 9. [NEW MATERIAL] REVENUE BONDING AUTHORITY.--

14 A. Upon certification of the board, the authority
15 may issue revenue bonds, the pledged revenues for which shall
16 be fees, charges, lease payments, installment sale payments or
17 other revenue sources of a public project for any one or more
18 of the purposes authorized by the Public-Private Partnership
19 Act.

20 B. The authority may pledge irrevocably any or all
21 of the revenue received by the authority to the payment of the
22 interest on and principal of revenue bonds for any of the
23 purposes authorized in the Public-Private Partnership Act.

24 C. In addition to the pledge of revenues to the
25 payment of revenue bonds, the authority may grant a mortgage on

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1 a public project that has been solely financed by revenue bonds
2 to the bondholders or a trustee for the benefit of the holders
3 of revenue bonds.

4 D. Revenue in excess of the annual principal and
5 interest due on revenue bonds secured by a pledged revenue may
6 be accumulated in a debt service reserve account. The
7 authority may appoint a commercial bank trust department to act
8 as paying agent or trustee of the revenue and to administer the
9 payment of principal of and interest on the revenue bonds.

10 E. Except as otherwise provided in the Public-
11 Private Partnership Act, revenue bonds:

12 (1) may have interest, principal value or any
13 part thereof payable at intervals or at maturity as may be
14 determined by the authority;

15 (2) may be subject to prior redemption at the
16 authority's option at a time and upon terms and conditions,
17 with or without the payment of a premium, as determined by the
18 authority;

19 (3) may mature at any time not exceeding
20 thirty years after the date of issuance;

21 (4) may be serial in form and maturity, may
22 consist of one bond payable at one time or in installments or
23 may be in another form determined by the authority;

24 (5) shall be sold for cash at, above or below
25 par and at a price that results in a net effective interest

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1 rate that does not exceed the maximum permitted by the Public
2 Securities Act and the Public Securities Short-Term Interest
3 Rate Act; and

4 (6) may be sold at public or negotiated sale.

5 F. At a regular or special meeting, the authority
6 may, upon receipt of a certification from the board, adopt a
7 resolution that:

8 (1) declares the necessity for issuing revenue
9 bonds;

10 (2) authorizes the issuance of revenue bonds
11 by an affirmative vote of a majority of all of the members of
12 the authority; and

13 (3) designates the sources of revenues to be
14 pledged to the repayment of the revenue bonds.

15 SECTION 10. [NEW MATERIAL] REFUNDING BOND AUTHORITY.--

16 A. Upon certification of the board, the authority
17 may issue refunding bonds for the purpose of refinancing,
18 paying and discharging all or any part of outstanding bonds for
19 the:

20 (1) acceleration, deceleration or other
21 modification of the payment of the outstanding bonds, including
22 any capitalization of any interest thereon in arrears or about
23 to become due for any period not exceeding two years from the
24 date of the refunding bonds;

25 (2) reduction of interest costs or effecting

1 other economies; or

2 (3) modification or elimination of restrictive
3 contractual limitations pertaining to the issuance of
4 additional bonds or concerning the outstanding bonds or public
5 project relating to the outstanding bonds.

6 B. The authority may pledge irrevocably for the
7 payment of interest, principal and premium, if any, on
8 refunding bonds the appropriate pledged revenues, which may be
9 pledged to an original issue of bonds.

10 C. In addition to the pledge of revenue to the
11 payment of refunding bonds, the authority may grant a mortgage
12 on a public project that has been solely financed by revenue
13 bonds to the bondholders or a trustee for the benefit of the
14 holders of the bonds.

15 D. Refunding bonds may be issued separately or in
16 combination in one series or more.

17 E. Refunding bonds shall be authorized by
18 resolution. Bonds that are refunded shall be paid at maturity
19 or on any permitted prior redemption date in the amounts, at
20 the time and places and, if called prior to maturity, in
21 accordance with any applicable notice provisions, all as
22 provided in the proceedings authorizing the issuance of the
23 refunded bonds or otherwise appertaining thereto, except for
24 any such bond that is voluntarily surrendered for exchange or
25 payment by the holder or owner.

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1 F. The principal amount of the refunding bonds may
2 exceed the principal amount of the refunded bonds and may also
3 be less than or the same as the principal amount of the bonds
4 being refunded if provision is duly and sufficiently made for
5 the payment of the refunded bonds.

6 G. The proceeds of refunding bonds, including
7 accrued interest and premiums appertaining to the sale of
8 refunding bonds, shall be immediately applied to the retirement
9 of the bonds being refunded or placed in escrow in a commercial
10 bank or trust company that possesses and exercises trust powers
11 and that is a member of the federal deposit insurance
12 corporation.

13 H. Refunding bonds may bear additional terms and
14 provisions as determined by the authority subject to the
15 limitations in this section relating to original bond issues.
16 Refunding bonds are not subject to the provisions of any other
17 statute.

18 I. Refunding bonds:

19 (1) may have interest, principal value or any
20 part thereof payable at intervals or at maturity, as determined
21 by the authority;

22 (2) may be subject to prior redemption at the
23 authority's option at a time or times and upon terms and
24 conditions with or without payment of premium or premiums, as
25 determined by the authority;

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1 (3) may be serial in form and maturity or may
 2 consist of a single bond payable in one or more installments or
 3 may be in another form, as determined by the authority; and

4 (4) shall be exchanged for the bonds and any
 5 matured unpaid interest being refunded at not less than par or
 6 sold at public or negotiated sale at, above or below par and at
 7 a price that results in a net effective interest rate that does
 8 not exceed the maximum permitted by the Public Securities Act.

9 J. At a regular or special meeting, the authority
 10 may adopt a resolution by majority vote to authorize the
 11 issuance of the refunding bonds.

12 SECTION 11. [NEW MATERIAL] BONDS NOT OBLIGATION OF
 13 STATE.--All bonds or other obligations issued pursuant to the
 14 Public-Private Partnership Act are payable solely from the
 15 revenue of the authority that may be pledged to the payment of
 16 such obligations, and the bonds or other obligations shall not
 17 create an obligation, debt or liability of the state or any
 18 other of its political subdivisions. No breach of any pledge,
 19 obligation or agreement of the authority shall impose a
 20 pecuniary liability or a charge upon the general credit or
 21 taxing power of the state or any other of its political
 22 subdivisions.

23 SECTION 12. [NEW MATERIAL] AGREEMENT OF THE STATE.--The
 24 state does hereby pledge to and agree with the holders of any
 25 bonds or notes issued under the Public-Private Partnership Act

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1 that the state will not limit or alter the rights hereby vested
2 in the authority to fulfill the terms of any agreements made
3 with the holders thereof or in any way impair the rights and
4 agreements made with the holders thereof or in any way impair
5 the rights and remedies of those holders until the bonds or
6 notes together with the interest thereon, with interest on any
7 unpaid installments or interest, and all costs and expenses in
8 connection with any action or proceedings by or on behalf of
9 those holders, are fully met and discharged. The authority is
10 authorized to include this pledge and agreement of the state in
11 any agreement with the holders of the bonds or notes.

12 SECTION 13. [NEW MATERIAL] REPORT.--By December 1, 2023,
13 and by December 1 of each year thereafter, the board shall
14 provide a report to the governor and the New Mexico finance
15 authority oversight committee regarding:

16 A. the grant and loan applications approved by the
17 board;

18 B. the public-private partnership agreements
19 approved by or reported to the board;

20 C. the status of the public-private partnership
21 project fund;

22 D. any certifications for the issuance of revenue
23 or refunding bonds made by the board to the authority; and

24 E. any recommended changes to the Public-Private
25 Partnership Act.

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1 SECTION 14. ~~[NEW MATERIAL]~~ CUMULATIVE AUTHORITY.--The
 2 Public-Private Partnership Act shall be deemed to provide an
 3 additional and alternative method for the doing of things
 4 authorized by that act and shall be regarded as supplemental
 5 and additional to powers conferred by other laws and shall not
 6 be regarded as in derogation of any powers now existing;
 7 provided that the issuance of bonds pursuant to the provisions
 8 of the Public-Private Partnership Act need not comply with the
 9 requirements of any other law applicable to the issuance of
 10 bonds, except the Public Securities Act, the Public Securities
 11 Short-Term Interest Rate Act and the Public Securities
 12 Limitation of Action Act, which acts shall apply.

13 SECTION 15. Section 6-21-6 NMSA 1978 (being Laws 1992,
 14 Chapter 61, Section 6, as amended) is amended to read:

15 "6-21-6. PUBLIC PROJECT REVOLVING FUND--PURPOSE--
 16 ADMINISTRATION.--

17 A. The "public project revolving fund" is created
 18 within the authority. The fund shall be administered by the
 19 authority as a separate account, but may consist of such
 20 subaccounts as the authority deems necessary to carry out the
 21 purposes of the fund. The authority may establish procedures
 22 and adopt rules as required to administer the fund in
 23 accordance with the New Mexico Finance Authority Act.

24 B. Except as otherwise provided in the New Mexico
 25 Finance Authority Act, money from payments of principal of and

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1 interest on loans and payments of principal of and interest on
2 securities held by the authority for public projects authorized
3 specifically by law shall be deposited in the public project
4 revolving fund. The fund shall also consist of any other money
5 appropriated, distributed or otherwise allocated to the fund
6 for the purpose of financing public projects authorized
7 specifically by law.

8 C. Money appropriated to pay administrative costs,
9 money available for administrative costs from other sources and
10 money from payments of interest on loans or securities held by
11 the authority, including payments of interest on loans and
12 securities held by the authority for public projects authorized
13 specifically by law, that represents payments for
14 administrative costs shall not be deposited in the public
15 project revolving fund and shall be deposited in a separate
16 account of the authority and may be used by the authority to
17 meet administrative costs of the authority.

18 D. Except as otherwise provided in the New Mexico
19 Finance Authority Act, money in the public project revolving
20 fund is appropriated to the authority to pay the reasonably
21 necessary costs of originating and servicing loans, grants or
22 securities funded by the fund and to make loans or grants and
23 to purchase or sell securities to assist qualified entities in
24 financing public projects in accordance with the New Mexico
25 Finance Authority Act and pursuant to specific authorization by

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1 law for each project.

2 E. Money in the public project revolving fund not
3 needed for immediate disbursement, including money held in
4 reserve, may be deposited with the state treasurer for
5 short-term investment pursuant to Section 6-10-10.1 NMSA 1978
6 or may be invested in direct and general obligations of or
7 obligations fully and unconditionally guaranteed by the United
8 States, obligations issued by agencies of the United States,
9 obligations of this state or any political subdivision of the
10 state, interest-bearing time deposits, commercial paper issued
11 by corporations organized and operating in the United States
12 and rated "prime" quality by a national rating service, other
13 investments permitted by Section 6-10-10 NMSA 1978 or as
14 otherwise provided by the trust indenture or bond resolution,
15 if money is pledged for or secures payment of bonds issued by
16 the authority.

17 F. The authority shall establish fiscal controls
18 and accounting procedures that are sufficient to assure proper
19 accounting for public project revolving fund payments,
20 disbursements and balances.

21 G. Money on deposit in the public project revolving
22 fund may be used to make interim loans for a term not exceeding
23 two years to qualified entities for the purpose of providing
24 interim financing for any project approved or funded by the
25 legislature.

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1 H. Money on deposit in the public project revolving
2 fund may be used to acquire securities or to make loans to
3 qualified entities in connection with the small loan program.
4 As used in this subsection, "small loan program" means the
5 program of the authority designed to provide financing for
6 public projects in amounts not to exceed one million dollars
7 (\$1,000,000) per project. A public project financed pursuant
8 to the small loan program shall not require specific
9 authorization by law.

10 I. Money on deposit in the public project
11 revolving fund may be designated as a reserve for any bonds
12 issued by the authority, including bonds payable from sources
13 other than the public project revolving fund, and the authority
14 may covenant in any bond resolution or trust indenture to
15 maintain and replenish the reserve from money deposited in the
16 public project revolving fund after issuance of bonds by the
17 authority.

18 J. Money on deposit in the public project revolving
19 fund may be used to purchase bonds issued by the authority or
20 bonds issued by the authority pursuant to the Public-Private
21 Partnership Act, which are payable from any designated source
22 of revenues or collateral. Purchasing and holding the bonds in
23 the public project revolving fund shall not, as a matter of
24 law, result in cancellation or merger of the bonds
25 notwithstanding the fact that the authority as the issuer of

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1 the bonds is obligated to make the required debt service
2 payments and the public project revolving fund held by the
3 authority is entitled to receive the required debt service
4 payments.

5 K. Money on deposit in the public project revolving
6 fund may be used to capitalize other financing programs of the
7 authority authorized by law, either directly or from proceeds
8 of bonds issued by the authority and secured by money in the
9 public project revolving fund."

10 SECTION 16. Section 13-1-98 NMSA 1978 (being Laws 1984,
11 Chapter 65, Section 71, as amended by Laws 2019, Chapter 48,
12 Section 13 and by Laws 2019, Chapter 63, Section 1) is amended
13 to read:

14 "13-1-98. EXEMPTIONS FROM THE PROCUREMENT CODE.--The
15 provisions of the Procurement Code shall not apply to:

16 A. procurement of items of tangible personal
17 property or services by a state agency or a local public body
18 from a state agency, a local public body or external
19 procurement unit except as otherwise provided in Sections
20 13-1-135 through 13-1-137 NMSA 1978;

21 B. procurement of tangible personal property or
22 services for the governor's mansion and grounds;

23 C. printing and duplicating contracts involving
24 materials that are required to be filed in connection with
25 proceedings before administrative agencies or state or federal

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1 courts;

2 D. purchases of publicly provided or publicly
3 regulated gas, electricity, water, sewer and refuse collection
4 services;

5 E. purchases of books, periodicals and training
6 materials in printed or electronic format from the publishers
7 or copyright holders thereof and purchases of print, digital or
8 electronic format library materials by public, school and state
9 libraries for access by the public;

10 F. travel or shipping by common carrier or by
11 private conveyance or to meals and lodging;

12 G. purchase of livestock at auction rings or to the
13 procurement of animals to be used for research and
14 experimentation or exhibit;

15 H. contracts with businesses for public school
16 transportation services;

17 I. procurement of tangible personal property or
18 services, as defined by Sections 13-1-87 and 13-1-93 NMSA 1978,
19 by the corrections industries division of the corrections
20 department pursuant to rules adopted by the corrections
21 industries commission, which shall be reviewed by the
22 purchasing division of the general services department prior to
23 adoption;

24 J. purchases not exceeding ten thousand dollars
25 (\$10,000) consisting of magazine subscriptions, web-based or

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underscoring material = new
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1 electronic subscriptions, conference registration fees and
2 other similar purchases where prepayments are required;

3 K. municipalities having adopted home rule charters
4 and having enacted their own purchasing ordinances;

5 L. the issuance, sale and delivery of public
6 securities pursuant to the applicable authorizing statute, with
7 the exception of bond attorneys and general financial
8 consultants;

9 M. contracts entered into by a local public body
10 with a private independent contractor for the operation, or
11 provision and operation, of a jail pursuant to Sections 33-3-26
12 and 33-3-27 NMSA 1978;

13 N. contracts for maintenance of grounds and
14 facilities at highway rest stops and other employment
15 opportunities, excluding those intended for the direct care and
16 support of persons with handicaps, entered into by state
17 agencies with private, nonprofit, independent contractors who
18 provide services to persons with handicaps;

19 O. contracts and expenditures for services or items
20 of tangible personal property to be paid or compensated by
21 money or other property transferred to New Mexico law
22 enforcement agencies by the United States department of justice
23 drug enforcement administration;

24 P. contracts for retirement and other benefits
25 pursuant to Sections 22-11-47 through 22-11-52 NMSA 1978;

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1 Q. contracts with professional entertainers;

2 R. contracts and expenditures for legal
3 subscription and research services and litigation expenses in
4 connection with proceedings before administrative agencies or
5 state or federal courts, including experts, mediators, court
6 reporters, process servers and witness fees, but not including
7 attorney contracts;

8 S. contracts for service relating to the design,
9 engineering, financing, construction and acquisition of public
10 improvements undertaken in improvement districts pursuant to
11 Subsection L of Section 3-33-14.1 NMSA 1978 and in county
12 improvement districts pursuant to Subsection L of Section
13 4-55A-12.1 NMSA 1978;

14 T. works of art for museums or for display in
15 public buildings or places;

16 U. contracts entered into by a local public body
17 with a person, firm, organization, corporation or association
18 or a state educational institution named in Article 12, Section
19 11 of the constitution of New Mexico for the operation and
20 maintenance of a hospital pursuant to Chapter 3, Article 44
21 NMSA 1978, lease or operation of a county hospital pursuant to
22 the Hospital Funding Act or operation and maintenance of a
23 hospital pursuant to the Special Hospital District Act;

24 V. purchases of advertising in all media, including
25 radio, television, print and electronic;

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1 W. purchases of promotional goods intended for
2 resale by the tourism department;

3 X. procurement of printing, publishing and
4 distribution services for materials produced and intended for
5 resale by the cultural affairs department;

6 Y. procurement by or through the public education
7 department from the federal department of education relating to
8 parent training and information centers designed to increase
9 parent participation, projects and initiatives designed to
10 improve outcomes for students with disabilities and other
11 projects and initiatives relating to the administration of
12 improvement strategy programs pursuant to the federal
13 Individuals with Disabilities Education Act; provided that the
14 exemption applies only to procurement of services not to exceed
15 two hundred thousand dollars (\$200,000);

16 Z. procurement of services from community
17 rehabilitation programs or qualified individuals pursuant to
18 the State Use Act;

19 AA. purchases of products or services for eligible
20 persons with disabilities pursuant to the federal
21 Rehabilitation Act of 1973;

22 BB. procurement, by either the department of health
23 or Grant county or both, of tangible personal property,
24 services or construction that are exempt from the Procurement
25 Code pursuant to Section 9-7-6.5 NMSA 1978;

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1 CC. contracts for investment advisory services,
2 investment management services or other investment-related
3 services entered into by the educational retirement board, the
4 state investment officer or the retirement board created
5 pursuant to the Public Employees Retirement Act;

6 DD. the purchase for resale by the state fair
7 commission of feed and other items necessary for the upkeep of
8 livestock;

9 EE. contracts entered into by the crime victims
10 reparation commission to distribute federal grants to assist
11 victims of crime, including grants from the federal Victims of
12 Crime Act of 1984 and the federal Violence Against Women Act of
13 1994;

14 FF. procurement by or through the early childhood
15 education and care department of early pre-kindergarten and
16 pre-kindergarten services purchased pursuant to the Pre-
17 Kindergarten Act;

18 GG. procurement of services of commissioned
19 advertising sales representatives for New Mexico magazine;

20 HH. agreements and contracts entered into pursuant
21 to the Public-Private Partnership Act; and

22 [~~HH-~~] II. procurements exempt from the Procurement
23 Code as otherwise provided by law."

24 SECTION 17. DELAYED REPEAL.--Sections 1 through 14 of
25 this act are repealed effective July 1, 2033.

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1 SECTION 18. EFFECTIVE DATE.--The effective date of the
2 provisions of this act is July 1, 2023.

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