

ARTICLE 10 Capitol Buildings Planning Commission

Section

- 15-10-1 Capitol buildings planning commission created.
15-10-2 Capitol buildings planning commission; review of lease-purchase agreements.

15-10-1. Capitol buildings planning commission created.

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

B. The commission shall:

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

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

(3) work with the general services department and other state agencies in developing recommendations for addressing deferred maintenance on state facilities and disposal strategies for aging facilities no longer able to serve their mission; and

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

C. The legislative council service shall provide staff for the commission in coordination with the staff architect and other staff of the property control division of the general services department.

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

History: Laws 1997, ch. 178, § 5; 2002, ch. 69, § 1; 2003, ch. 110, § 1; 2007, ch. 64, § 1; 2009, ch. 19, § 1.

The 2002 amendment, effective May 15, 2002, inserted the references to Albuquerque in

© 2011 by the State of New Mexico. All rights reserved.

UCC Official Comments © by ALI & the NCCUSL. Reproduced with permission of the PEB for the UCC. All rights reserved.

Subsections A and D; and inserted "regularly" in Subsection D.

The 2003 amendment, effective June 20, 2003, inserted "the secretary of highway and transportation or his designee, the state cultural affairs officer or his designee" following "New Mexico staff architect" in Subsection B.

The 2007 amendment, effective March 29, 2007, directs the commission to study and plan for facilities in Las Cruces and to develop a master plan for facilities statewide, eliminates the staff architect as a commission member and adds the state treasurer as a commission member; and requires the staff architect and property control division to provide staff for the commission.

The 2009 amendment, effective July 1, 2009, in Subsection A, deleted the former specification of the duties of the commission and authorized the designees of the secretary of general services and of the state treasurer to serve on the commission; and added Subsection B.

15-10-2. Capitol buildings planning commission; review of lease-purchase agreements.

A. Before submitting a proposed lease-purchase agreement to the legislature for ratification and approval pursuant to Section 15-3-35 NMSA 1978, the proposed lessee shall notify the commission. The commission shall review a proposed lease-purchase agreement if:

(1) the total lease revenues to be generated during the term of the lease-purchase agreement, including any possible extensions or renewals, exceed five million dollars (\$5,000,000); or

(2) pursuant to criteria adopted by the commission, the commission selects the lease-purchase agreement for review.

B. A review conducted pursuant to this section shall include findings by the commission as to whether:

(1) the leasehold property and the term of the lease-purchase agreement are sufficient to meet the identified needs of the state agency that will occupy the leasehold property;

(2) the payment of all lease revenues due pursuant to a lease-purchase agreement will be sufficient, at the end of the term of the lease-purchase agreement, to acquire ownership of the leasehold property;

(3) the lease-purchase agreement provides that there is no legal obligation for the state or state agency to continue the lease-purchase agreement from year to year or to purchase the leasehold property, and that the lease-purchase agreement shall be terminated if sufficient appropriations are not available to meet the current lease payments; and

(4) the lease-purchase agreement is the most cost-effective alternative for acquiring the leasehold property, taking into account currently available alternative lease arrangements, lease-purchase agreements or other financing arrangements permitted by law.

C. After a review pursuant to this section, the commission shall submit its findings and recommendations to the legislature.

D. As used in this section:

- (1) "commission" means the capitol buildings planning commission;
- (2) "facilities" means buildings and the appurtenances and improvements associated therewith, including the real estate upon which a building is constructed; suitable parking for use of the building; utilities, access roads and other infrastructure; and related real estate. "Facilities" can also mean undeveloped or developed real estate that is transferred or leased with the intent that a new building or improvement be constructed thereon;
- (3) "lease-purchase agreement" means a financing agreement for the leasing of facilities by the state or a state agency from a public or private entity with an option to purchase the leasehold property for a price that is reduced according to the payments made pursuant to the financing agreement;
- (4) "leasehold property" means facilities that are subject to a lease-purchase agreement;
- (5) "lease revenues" means the amounts payable pursuant to a lease-purchase agreement; and
- (6) "state agency" means any department, branch, institution, board, officer, bureau, instrumentality, commission, district or committee of government of the state of New Mexico except:
 - (a) the state armory board;
 - (b) the commissioner of public lands;
 - (c) state institutions under the jurisdiction of the higher education department;
 - (d) the economic development department when the department is acquiring property pursuant to the Statewide Economic Development Finance Act [6-25-1 NMSA 1978];
 - (e) the public school facilities authority when the authority is acquiring property pursuant to the Public School Capital Outlay Act [22-24-1 NMSA 1978]; and
 - (f) a state-chartered charter school.

History: 1978 Comp., §15-10-2, as enacted by Laws 2009, ch. 19, § 2.

Effective dates. — Laws 2009, ch. 19, § 3 provided that Laws 2009, ch. 19, § 2 was effective July 1, 2009.

15-3-35. Lease-purchase agreements; approval of legislature.

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

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

(2) if the state agency is subject to the jurisdiction of the property control division of the general services department pursuant to the Property Control Act [15-3B-1 NMSA 1978], the agreement shall provide that, if the real property is purchased, title to the real property shall be issued in the name of the property control division.

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

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

History: Laws 2007, ch. 184, § 1.

Cross references. — See N.M. Const., Art IX, § 8 for lease purchase agreements.

Effective dates. — Laws 2007, ch. 184 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective June 15, 2007, 90 days after the adjournment of the legislature.

15-3B-21. Health and human services office building.

A. Subject to the provisions of this section, the property control division of the general services department, after consulting with the human services department and the children, youth and families department and on behalf of those departments, shall:

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

(2) enter into a lease purchase agreement with the owner of the building for the leasing of the building by the property control division with an option to purchase for a price that is reduced according to the payments made pursuant to the agreement; provided that the lease purchase agreement shall:

(a) specify the principal, interest and maintenance component of each payment made, provided further that: 1) the initial principal shall not exceed eighty million dollars (\$80,000,000); and 2) the net effective interest rate shall not exceed the maximum permitted by the Public Securities Act [6-14-1 NMSA 1978];

(b) provide that there is no legal obligation for the property control division to continue the lease from year to year or to purchase the building;

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

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

(e) provide that if the building is purchased, title to the building shall be issued in the name of the property control division.

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

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

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

Capitol Buildings Planning Commission Enabling Statutes and Related Laws

2

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

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

D. Neither a request for proposals shall be issued pursuant to Subsection A or B of this section nor a contract entered into pursuant to those subsections without prior review by the capitol buildings planning commission to ensure that:

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

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

E. The property control division shall enter into subleases with the human services department and the children, youth and families department for the lease of office space within the building, provided that the payments made under the subleases shall equal the payments due by the property control division under the lease purchase agreement. The property control division may also sublease available space within the building to any state agency if:

(1) the space subject to an existing sublease has been reduced by agreement between the property control division and the existing sublessee;

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

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

F. Notwithstanding any provision restricting budget adjustments, upon the certification by the director of the property control division that the building is completed and suitable for occupancy, the secretary of finance and administration may transfer between and among the categories and programs of the current operating budget of each agency that will occupy the building any unexpended or unencumbered appropriation for lease payments or building maintenance. The transferred appropriations shall be expended by the property control division for lease payments due pursuant to the lease purchase agreement.

G. During the term of the lease purchase agreement, each sublessee shall include, in its annual budget request, the amount due under its sublease during the next fiscal year, and the sublessee and the property control division shall use their best efforts to secure the appropriation. History: Laws 2009, ch. 145, § 1.

Temporary provisions. — Laws 2009, ch. 145, § 3 provided that in lieu of the ratification and approval otherwise required by Section 15-3-35 NMSA 1978, the legislature ratifies and approves a lease purchase agreement entered into in compliance with Section 1 of this act for the lease and option to

© 2011 by the State of New Mexico. All rights reserved.

UCC Official Comments © by ALI & the NCCUSL. Reproduced with permission of the PEB for the UCC. All rights reserved.

Capitol Buildings Planning Commission Enabling Statutes and Related Laws

3

purchase of a building by the property control division of the general services department.

Effective dates. — Laws 2009, ch. 145 contained no effective date provisions, but pursuant to N.M. Const., art. IV, § 23 was effective June 19, 2009, 90 days after the adjournment of the legislature.

© 2011 by the State of New Mexico. All rights reserved.

UCC Official Comments © by ALI & the NCCUSL. Reproduced with permission of the PEB for the UCC. All rights reserved.

ARTICLE 22
Historic Districts and Landmarks

Section

- 3-22-1 Historic District and Landmark Act; short title.
- 3-22-1.1 Definition.
- 3-22-2 Purpose.
- 3-22-3 Establishment of historic districts and landmarks by zoning.
- 3-22-4 Historic areas and landmarks; authorization to expend funds, to enter [into] agreements and, where necessary, exercise power of eminent domain.
- 3-22-5 Historic areas and landmarks; construction of this act.
- 3-22-6 Applicability to state capital outlay projects; limitation.

3-22-1. Historic District and Landmark Act; short title.

Chapter 3, Article 22 NMSA 1978 may be cited as the "Historic District and Landmark Act."

History: 1953 Comp., § 14-21-1, enacted by Laws 1965, ch. 300; 1983, ch. 178, § 1.

ANNOTATIONS

Law reviews. — For note, "County Regulation of Land Use and Development," see 9 Nat. Resources J. 266 (1969).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 83 Am. Jur. 2d Zoning and Planning § 77.

Applicability of zoning regulations to governmental projects or activities, 53 A.L.R.5th 1.

101A C.J.S. Zoning and Land Planning § 48.

3-22-1.1. Definition.

As used in the Historic District and Landmark Act [this article], "landmark" means a structure or site of historical interest.

History: 1978 Comp., § 3-22-1.1, enacted by Laws 1983, ch. 178, § 2.

3-22-2. Purpose.

The legislature of the state of New Mexico hereby declares that the historical heritage of this state is among its most valued and important assets and that it is the intention of the Historic District and Landmark Act [this article] to empower the counties and municipalities of this state with as full and complete powers to preserve, protect and enhance the historic areas and landmarks lying within their respective jurisdictions as it is possible for this legislature to permit under the constitution of the United States and the constitution of New Mexico and subject to the specific duties and responsibilities respecting historical matters already granted or to be granted under other statutes of this state.

© 2011 by the State of New Mexico. All rights reserved.

UCC Official Comments © by ALI & the NCCUSL. Reproduced with permission of the PEB for the UCC. All rights reserved.

History: 1953 Comp., § 14-21-2, enacted by Laws 1965, ch. 300; 1983, ch. 178, § 3.

ANNOTATIONS

City's power to zone state property must be delegated to the city by a state statute; and, as statutes granting power to cities are strictly construed, any fair or reasonable doubt concerning the existence of an asserted power is resolved against the city. *City of Santa Fe v. Armijo*, 96 N.M. 663, 634 P.2d 685 (1981).

State governmental body is not subject to local zoning regulations or restrictions. *City of Santa Fe v. Armijo*, 96 N.M. 663, 634 P.2d 685 (1981).

3-22-3. Establishment of historic districts and landmarks by zoning.

Any county or municipality otherwise empowered by law to adopt and enforce zoning ordinances, rules and regulations is hereby empowered to create, as part of the building and zoning regulations and restrictions adopted by it in the manner otherwise provided by law and in accordance with a comprehensive zoning plan, a zoning district designating certain areas as historical areas and landmarks and may, for the purpose of preserving, protecting and enhancing such historical areas and landmarks, adopt and enforce regulations and restrictions within such district relating to the erection, alteration and destruction of those exterior features of buildings and other structures subject to public view from any public street, way or other public place.

History: 1953 Comp., § 14-21-3, enacted by Laws 1965, ch. 300; 1983, ch. 178, § 4.

ANNOTATIONS

Law reviews. — For note, "County Regulation of Land Use and Development," see 9 Nat. Resources J. 266 (1969).

Am. Jur. 2d, A.L.R. and C.J.S. references. — Validity and construction of statute or ordinance protecting historical landmarks, 18 A.L.R.4th 990.

3-22-4. Historic areas and landmarks; authorization to expend funds, to enter [into] agreements and, where necessary, exercise power of eminent domain.

Any county or municipality is hereby empowered to expend public funds for any purposes connected with the preservation, protection or enhancement of historical areas and landmarks, areas related to historical areas or areas otherwise of special architectural or visual interest, including but not limited to the purchase of any or all of such areas and landmarks, if necessary, through the use of eminent domain in the manner provided by law for the acquisition of property for a public purpose, which acquisition is hereby declared to be:

A. the leasing or acquisition of any other title or interest in the same by negotiation or, if necessary, through the use of eminent domain in the manner provided by law, including the

acquisition of easements in and related to such areas and landmarks which will permit the county or municipality to control development of the same in a manner consistent with the purposes of the Historic District and Landmark Act [this article];

B. the entering into any reasonable agreement with private persons to promote the objectives of this section; or

C. the enactment of appropriate ordinances or resolutions under which the county or municipality, as the case may be, may be given prior right to acquire any interest in property in such areas and landmarks as over any private person offering an equal price for the same interest or any other similar measures as may be consistent with the purposes of the Historic District and Landmark Act.

History: 1953 Comp., § 14-21-4, enacted by Laws 1965, ch. 300; 1983, ch. 178, § 5.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — Validity and construction of statute or ordinance protecting historical landmarks, 18 A.L.R.4th 990.

Application and construction of § 106 of the National Historic Preservation Act of 1966 (16 USCS § 470f), dealing with federally sponsored projects which affect historic properties, 68 A.L.R. Fed. 578.

3-22-5. Historic areas and landmarks; construction of this act.

Nothing in the Historic District and Landmark Act [this article] shall be construed to limit any existing inherent, statutory or other powers under which any county or municipality has enacted appropriate measures regarding historic areas and landmarks.

History: 1953 Comp., § 14-21-5, enacted by Laws 1965, ch. 300; 1983, ch. 178, § 6.

3-22-6. Applicability to state capital outlay projects; limitation.

A. Recognizing the fragility of the state's historic heritage, the purpose of this section is to establish a procedure under which the state and its municipalities and counties will commit to collaborate in good faith and work jointly to preserve and protect the historic districts of New Mexico.

B. Ordinances enacted by a municipality or county pursuant to the Historic District and Landmark Act [3-22-1 NMSA 1978] shall apply to a state capital outlay project only as provided in this section and only if the ordinances contain special provisions and standards applicable to state buildings, including provisions concerning the design, construction, alteration or demolition of the exterior features of state buildings. If requested by a resolution of the governing body of a municipality or county, the staff of the capitol buildings planning commission shall work jointly with the staff of the municipality or county in developing the provisions and standards required by this subsection.

C. The applicable state agency shall carry out a capital outlay project in a manner that is harmonious and generally compatible with the municipal or county ordinances.

D. Before commencing the design phase of a capital outlay project, the applicable state agency shall consult with the municipality or county as to the design standards in the ordinances and how those design standards would impact costs and the operation or manner in which the capital outlay project will ultimately be expected to function, provided that, if the municipality or county has an agency or other entity review projects within the area zoned as an historic district or landmark, then the consultation shall be with that review agency or other entity. The state agency shall work collaboratively with the municipality or county or its review agency or other entity to arrive at compatibility with the design standards, considering reasonable costs and preserving essential functionality. If the municipality or county has identifiable community groups involved in historic preservation, the agency shall also make every reasonable effort to obtain input from members of those identified groups before commencing the design phase.

E. After the design phase and before soliciting a bid or a proposal for design-build or lease-purchase for a capital outlay project, the applicable state agency shall transmit its plans for review and comment to the municipality or county or its review agency or other entity and shall also conduct a public meeting to receive public input. Notice of the public meeting shall also be given to any identifiable community groups involved in historic preservation in the municipality or county.

F. Within sixty days after the public meeting, the municipality or county or its review agency or other entity, any identifiable historic preservation community group and any other interested party shall communicate recommendations and comments in writing to the state agency. The state agency shall consult with the municipality or county or its review agency or other entity to resolve any issues raised. If, at the end of the sixty-day period, unresolved issues remain, the municipality or county may, within five days after the end of the period, notify the applicable state agency that the issues remain unresolved and should be finally determined pursuant to Subsection G of this section; provided that, if notice is not timely given, the applicable state agency may, after incorporating those provisions to which the state agency and the municipality or county have agreed, proceed with the capital outlay project.

G. If notice is timely given by a municipality or county, pursuant to Subsection F of this section, that issues remain unresolved, those issues shall be decided pursuant to the following provisions:

(1) within five days after the notice, a state-local government historic review board shall be formed, consisting of eight members as follows:

(a) one member appointed by the capitol buildings planning commission, who shall chair the board and who shall vote only if there is a tie among the other board members present;

(b) one member appointed by the cultural properties review committee;

(c) the state historic preservation officer or a designee of the officer;

(d) one member appointed by the agency or other entity that reviews projects within the area zoned as an historic district or landmark, provided that, if the municipality or county has no such agency or other entity, the member shall be appointed by the governing body of the municipality or county;

(e) one member appointed by the agency or entity of the municipality or county that is concerned with historic preservation, provided that, if the municipality or county has no such agency or other entity, the member shall be appointed by the governing body of the municipality or county; and

(f) three public members who have a demonstrated interest in historic preservation appointed as follows: one member appointed by the secretary of general services, one member appointed by the governing body of the municipality or county and one public member appointed by the other two public members;

(2) the staff of the capitol buildings planning commission shall serve as the staff of the state-local government historic review board; and

(3) the state-local government historic review board shall, at a public meeting, consider each of the unresolved issues and, within twenty days of its formation shall, for each issue, make a final decision that is harmonious and generally compatible with the municipal or county ordinance.

H. Appeals from the decisions of the state-local government historic review board shall be taken to the district court in the manner provided in Section 39-3-1.1 NMSA 1978.

I. The state agency shall not take any irrevocable action on the capital project in reliance on the plans until the procedures set forth in Subsections F and G of this section have been followed.

History: Laws 2009, ch. 23, § 1.

Effective dates. — Laws 2009, ch. 23 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 19, 2009,

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 lease purchase agreement pursuant to the provisions of this section.

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

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

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

E. A debt service fund shall be created in the authority for each authorized issuance of lease purchase revenue bonds. Each fund shall consist of transfers to the fund, legislative appropriations, lease payments made by the property control division of the general services department or other lessee pursuant to the authorized lease purchase agreement and money earned from investment of the fund. Balances remaining in a fund at the end of a fiscal year shall not revert. Money in each fund is appropriated to the authority for:

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

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

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

G. The authority may enter into an agreement with the property control division of the general services department or other agency specified by law for the lease purchase of the building acquired with the lease purchase revenue bond proceeds. The agreement shall provide the lessee with an option to purchase for a price that is reduced according to the lease payments made and shall also provide that:

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

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

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

(4) if the lessee is the property control division of the general services department or an agency under the jurisdiction of the property control division, the title to the building shall be issued in the name of the property control division if the building is purchased.

H. The provisions of this section apply to state buildings specifically authorized by law to be acquired pursuant to this section through lease purchase agreements with the authority. Nothing in this section limits or otherwise affects the power that the authority has under other laws to incur debt, acquire and dispose of property or enter into agreements.

History: 1978 Comp., § 6-21-6.14, as enacted by Laws 2009, ch. 145, § 2.

Effective dates. — Laws 2009, ch. 145 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 19, 2009, 90 days after the adjournment of the legislature.

ARTICLE 21C State Building Bonding

Section

- 6-21C-1 Short title.
- 6-21C-2 Repealed.
- 6-21C-2.1 Findings and purpose.
- 6-21C-3 Definitions.
- 6-21C-4 New Mexico finance authority shall issue building bonds; appropriation of proceeds.
- 6-21C-5 State building bonding fund created; money in the fund pledged.
- 6-21C-6 Authority to refund bonds.
- 6-21C-7 Building bonds; form; execution.
- 6-21C-8 Procedure for sale of building bonds.
- 6-21C-9 State Building Bonding Act is full authority for issuance of bonds; bonds are legal investments.
- 6-21C-10 Suit may be brought to compel performance of officers.
- 6-21C-11 Building bonds tax exempt.

6-21C-1. Short title.

Chapter 6, Article 21C NMSA 1978 may be cited as the "State Building Bonding Act".

History: Laws 2001, ch. 199, § 1; 2003, ch. 371, § 1.

The 2003 amendment, effective June 20, 2003, rewrote the section which read "Sections 1 through 11 of this act may be cited as the 'State Office Building Acquisition Bonding Act'".

6-21C-2. Repealed.

Repeals. — Laws 2003, ch. 371, § 13 repealed 6-21C-2 NMSA 1978, as enacted by Laws 2001, ch. 199, § 2, relating to findings and purpose, effective June 20, 2003. For provisions of former section, see the 2002 NMSA 1978 on New Mexico One Source of Law DVD.

6-21C-2.1. Findings and purpose.

A. The legislature finds that the expense of leasing office space for state occupancy has grown to the point that the state would be better served if more state-owned facilities were acquired. The legislature further finds that the state's overall occupancy costs could be reduced even after taking into account the payments necessary on bonds issued to acquire additional facilities and that, therefore, it is economically advantageous for the state to own additional office space and related facilities. Further, in anticipation of the state's future office space needs, the legislature finds it prudent to establish an office acquisition program.

B. The legislature also finds that, in extreme circumstances, it is advantageous for the state to fund certain critical facilities to avoid the need for leasing or paying emergency rents.

C. The purpose of the State Building Bonding Act is to acquire additional state office

Capitol Buildings Planning Commission Enabling Statutes and Related Laws

2

buildings and related facilities, or critical facilities located within the master planning jurisdiction of the capitol buildings planning commission, by issuing bonds paid for with distributions of gross receipts tax revenue that reflect a portion of the savings that will result from the conversion to more state-owned facilities.

History: Laws 2004, ch. 123, § 1; 2005, ch. 320, § 2.

Compiler's notes. — Laws 2004, ch. 123, § 1 enacted this section as a new Section 6-21C-2 NMSA 1978, however, since that section was previously repealed, it was compiled as Section 6-21C-2.1 NMSA 1978.

The 2005 amendment, effective June 17, 2005, provided in Subsection A that it is advantageous for the state to own related facilities; adds Subsection B to provide that it is advantageous for the state to fund critical facilities to avoid leasing or paying emergency rents; and provided in Subsection C that the purpose of the act is to acquire related facilities or critical facilities located within the master planning jurisdiction of the capitol buildings planning commission.

6-21C-3. Definitions.

As used in the State Building Bonding Act:

A. "acquiring" or "acquisition" includes acquiring or acquisition by purchase, construction or renovation; and

B. "building bonds" means state office building tax revenue bonds.

History: Laws 2001, ch. 199, § 3; 2003, ch. 371, § 2; 2004, ch. 123, § 2.

The 2004 amendment, effective May 19, 2004, amended Subsection B to delete from the definition of "building bonds" "or state museum tax revenue bonds".

Applicability. — Laws 2004, ch. 123, § 8 provided that:

"Nothing in this act shall be deemed to impair state museum tax revenue bonds outstanding on the effective date of this act. For the purposes of the obligations incurred with respect to those bonds:

A. the bonds shall be deemed to be "building bonds" pursuant to the provisions of the State Building Bonding Act;

B. money in the state building bonding fund is pledged for the payment of principal and interest on those bonds to the same extent as the fund was pledged prior to the effective date of this 2004 act; and

C. the state further pledges that any law authorizing the distribution of taxes or other revenues to the state building bonding fund or authorizing expenditures from the fund shall not be amended or repealed or otherwise modified so as to impair those bonds."

6-21C-4. New Mexico finance authority shall issue building bonds; appropriation of proceeds.

A. The New Mexico finance authority is authorized to issue and sell revenue bonds, known as "state office building tax revenue bonds", payable solely from the state building bonding fund,

© 2011 by the State of New Mexico. All rights reserved.

UCC Official Comments © by ALI & the NCCUSL. Reproduced with permission of the PEB for the UCC. All rights reserved.

Capitol Buildings Planning Commission Enabling Statutes and Related Laws

3

in compliance with the State Building Bonding Act for the purpose of acquiring state office buildings and related facilities and other critical state facilities within the master planning jurisdiction of the capitol buildings planning commission when the acquisition has been reviewed by the capitol buildings planning commission and has been authorized by legislative act and the director of the property control division of the general services department has certified the need for the issuance of the bonds; provided that the total amount of state office building tax revenue bonds outstanding at any one time shall not exceed one hundred fifteen million dollars (\$115,000,000).

B. The net proceeds from the building bonds are appropriated to the property control division of the general services department for the purpose of acquiring state office buildings and related facilities and other critical state facilities within the master planning jurisdiction of the capitol buildings planning commission, the acquisition of which shall be consistent with the State Building Bonding Act and the authorizing legislation.

History: Laws 2001, ch. 199, § 4; 2003, ch. 371, § 3; 2004, ch. 123, § 3; 2005, ch. 320, § 3; 2009, ch. 114, § 1.

Cross references. — For the New Mexico finance authority, see 6-21-1 NMSA 1978.

The 2009 amendment, effective April 6, 2009, in Subsection A, added the exception at the end of the sentence.

Laws 2009, ch. 114, § 4, effective April 6, 2009, amended Laws 2001, ch. 166, § 2, to delete the provision in Subsection A, which provided that the total amount of state office building tax revenue bonds outstanding at any one time shall not exceed one hundred million dollars; in Subsection C, to extend the period for expenditure of funds from the end of fiscal year 2009 to the end of fiscal year 2012; and extended the time for reversion of unexpended or unencumbered balances from the end of fiscal year 2009 to the end of fiscal year 2012.

Laws 2009, ch. 114, § 5, effective April 6, 2009, authorized the New Mexico finance authority to issue and sell state office building tax revenue bonds to design and build a new executive office building in the main capitol campus in Santa Fe.

Laws 2007, ch. 64, § 4, effective March 29, 2007, amended Laws 2001, ch. 166, § 2 to limit the total amount of bonds outstanding to not more than \$100,000,000; deleted the provision for the sale of bonds for purposes specified in Laws 2001, ch. 166, §1; and appropriated \$350,000 to the legislative council service for master planning for state facilities.

The 2005 amendment, effective June 17, 2005, provided in Subsection A that the finance authority may sell bonds to acquire related facilities and other critical facilities located within the master planning jurisdiction of the capitol buildings planning commission and provided in Subsection B that net proceeds from bonds are appropriated to acquire related facilities and other critical facilities located within the master planning jurisdiction of the capitol buildings planning commission.

The 2004 amendment, effective May 19, 2004, deleted Subsection B, redesignated Subsection C as Subsection B, amended Subsection B to delete "state office" preceding "building" and "tax revenue" preceding "bonds" and deleted Subsection D.

The 2003 amendment, effective June 20, 2003, substituted "State Building Bonding Act" for "State

© 2011 by the State of New Mexico. All rights reserved.

UCC Official Comments © by ALI & the NCCUSL. Reproduced with permission of the PEB for the UCC. All rights reserved.

Office Building Acquisition Bonding Act" in the section heading and Subsection A; redesignated former Subsection B as present Subsection C and added Subsections B and D.

6-21C-5. State building bonding fund created; money in the fund pledged.

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

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

(1) to the New Mexico finance authority for the purpose of paying debt service, including redemption premiums, on the building bonds and the expenses incurred in the issuance, payment and administration of the bonds; and

(2) if specifically authorized in the law authorizing the acquisition of a building, to the property control division of the general services department for expenditures for required maintenance and repairs of that building but only if the authority determines that money in the fund is sufficient to meet the requirements of Paragraph (1) of this subsection.

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

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

(1) the director of the property control division of the general services department and the New Mexico finance authority have agreed that the building bonds issued pursuant to the State Building Bonding Act have been retired, that no additional obligations of the state building bonding fund exist and that no additional expenditures from the fund are necessary; or

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

E. The building bonds issued pursuant to the State Building Bonding Act shall be payable solely from the state building bonding fund or, with the approval of the bondholders, such other

special funds as may be provided by law and do not create an obligation or indebtedness of the state within the meaning of any constitutional provision. No breach of any contractual obligation incurred pursuant to that act shall impose a pecuniary liability or a charge upon the general credit or taxing power of the state, and the bonds are not general obligations for which the state's full faith and credit is pledged.

F. The state does hereby pledge that the state building bonding fund shall be used only for the purposes specified in this section and pledged first to pay the debt service on the building bonds issued pursuant to the State Building Bonding Act. The state further pledges that any law authorizing the distribution of taxes or other revenues to the state building bonding fund or authorizing expenditures from the fund shall not be amended or repealed or otherwise modified so as to impair the bonds to which the state building bonding fund is dedicated as provided in this section.

History: Laws 2001, ch. 199, § 5; 2003, ch. 371, § 4; 2004, ch. 123, § 4; 2009, ch. 114, § 2.

Cross references. — For the New Mexico finance authority, see 6-21-1 NMSA 1978.

The 2009 amendment, effective April 6, 2009, added Subsection B(2) and in Subsection C, in the first sentence, after "required reserves", added the remainder of the sentence.

The 2004 amendment, effective May 19, 2004, amended Subsection D(1) to delete "in the case of state office building tax revenue bonds, and the state cultural affairs officer, in the case of state museum tax revenue bonds".

The 2003 amendment, effective June 20, 2003, substituted "state building bonding fund" for "state office building bonding fund" in the section heading and throughout the section; substituted "building bonds" for "state office building tax revenue bonds" throughout the section; substituted "State Building Bonding Act" for "State Office Building Acquisition Bonding Act" throughout the section; and inserted "in the case of state office building tax revenue tax revenue bonds, and the state cultural affairs officer, in the case of state museum tax revenue bonds" in Subsection D(1).

6-21C-6. Authority to refund bonds.

The New Mexico finance authority may issue and sell at public or private sale building bonds to refund outstanding building bonds by exchange, immediate or prospective redemption, cancellation or escrow, including the escrow of debt service funds accumulated for payment of outstanding bonds, or any combination thereof, when, in its opinion, such action will be beneficial to the state.

History: Laws 2001, ch. 199, § 6; 2003, ch. 371, § 5.

Cross references. — For the New Mexico finance authority, see 6-21-1 NMSA 1978.

The 2003 amendment, effective June 20, 2003, substituted "building bonds" for "state office building tax revenue bonds".

6-21C-7. Building bonds; form; execution.

A. The New Mexico finance authority, except as otherwise specifically provided in the State

Capitol Buildings Planning Commission Enabling Statutes and Related Laws

6

Building Bonding Act, shall determine at its discretion the terms, covenants and conditions of building bonds, including, but not limited to, date of issue, denominations, maturities, rate or rates of interest, call features, call premiums, registration, refundability and other covenants covering the general and technical aspects of the issuance of the bonds.

B. The building bonds shall be in such form as the New Mexico finance authority may determine, and successive issues shall be identified by alphabetical, numerical or other proper series designation.

C. Building bonds shall be signed and attested by the secretary of the New Mexico finance authority and shall be executed with the facsimile signature of the chairman of the New Mexico finance authority and the facsimile seal of the New Mexico finance authority, except for bonds issued in book entry or similar form without the delivery of physical securities. Any interest coupons attached to the bonds shall bear the facsimile signature of the secretary of the New Mexico finance authority, which officer, by the execution of the bonds, shall adopt as his own signature the facsimile thereof appearing on the coupons. Except for bonds issued in book entry or similar form without the delivery of physical securities, the Uniform Facsimile Signature of Public Officials Act [6-9-6 NMSA 1978] shall apply, and the New Mexico finance authority shall determine the manual signature to be affixed on the bonds.

History: Laws 2001, ch. 199, § 7; 2003, ch. 371, § 6.

Cross references. — For the New Mexico finance authority, see 6-21-1 NMSA 1978.

The 2003 amendment, effective June 20, 2003, substituted "building bonds" for "state office building tax revenue bonds" in the section heading and throughout the section.

Temporary provisions. — Laws 2003, ch. 371, § 12, provided that nothing in the act shall be deemed to impair state office building tax revenue bonds outstanding on June 20, 2003; the State Office Building Acquisition Bonding Act and the State Building Bonding Act are the same act; the state office building bonding fund and the state building bonding fund are the same fund.

6-21C-8. Procedure for sale of building bonds.

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

B. In connection with any public sale of building bonds, the New Mexico finance authority shall publish a notice of the time and place of sale in a newspaper of general circulation in the state and also in a recognized financial journal outside the state. Such publication shall be made once each week for two consecutive weeks prior to the date fixed for such sale, the last publication to be two business days prior to the date of sale. Such notice shall specify the amount, denomination, maturity and description of the bonds to be offered for sale and the place, day and hour at which sealed bids therefor shall be received. All bids, except that of the state, shall be accompanied by a deposit of two percent of the principal amount of the bonds. Deposits

© 2011 by the State of New Mexico. All rights reserved.

UCC Official Comments © by ALI & the NCCUSL. Reproduced with permission of the PEB for the UCC. All rights reserved.

of unsuccessful bidders shall be returned upon rejection of the bid. At the time and place specified in such notice, the New Mexico finance authority shall open the bids in public and shall award the bonds, or any part thereof, to the bidder or bidders offering the best price. The New Mexico finance authority may reject any or all bids and readvertise.

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

History: Laws 2001, ch. 199, § 8; 2003, ch. 371, § 7; 2004, ch. 123, § 5.

Cross references. — For the New Mexico finance authority, see 6-21-1 NMSA 1978.

The 2004 amendment, effective May 19, 2004, amended Subsection A to delete "or the office of cultural affairs" following "general services department".

The 2003 amendment, effective June 20, 2003, inserted "Building" in the section heading; substituted "building bonds" for "state office building tax revenue bonds" throughout the section; and inserted "or the office of cultural affairs" following "general services department" in Subsection A.

6-21C-9. State Building Bonding Act is full authority for issuance of bonds; bonds are legal investments.

A. The State Building Bonding Act shall, without reference to any other act of the legislature, be full authority for the issuance and sale of building bonds, which bonds shall have all the qualities of investment securities under the Uniform Commercial Code [Chapter 55 NMSA 1978] and shall not be invalid for any irregularity or defect or be contestable in the hands of bona fide purchasers or holders thereof for value.

B. Building bonds are legal investments for any person or board charged with the investment of any public funds and are acceptable as security for any deposit of public money.

History: Laws 2001, ch. 199, § 9; 2003, ch. 371, § 8.

The 2003 amendment, effective June 20, 2003, substituted "State Building Bonding Act" for "State Office Building Acquisition Bonding Act" in the section heading and in Subsection A; and substituted "building bonds" for "state office building tax revenue bonds" throughout the section.

Temporary provisions. — Laws 2003, ch. 371, § 12, provided that nothing in the act shall be deemed to impair state office building tax revenue bonds outstanding on June 20, 2003; the State Office Building Acquisition Bonding Act and the State Building Bonding Act are the same act; the state office building bonding fund and the state building bonding fund are the same fund.

6-21C-10. Suit may be brought to compel performance of officers.

Any holder of building bonds or any person or officer being a party in interest may sue to enforce and compel the performance of the provisions of the State Building Bonding Act.

History: Laws 2001, ch. 199, § 10; 2003, ch. 371, § 9.

The 2003 amendment, effective June 20, 2003, substituted "building bonds" for "state office building tax revenue bonds" and substituted "State Building Bonding Act" for "State Office Building Acquisition

Bonding Act".

6-21C-11. Building bonds tax exempt.

All building bonds shall be exempt from taxation by the state or any of its political subdivisions.

History: Laws 2001, ch. 199, § 11; 2003, ch. 371, § 10.

The 2003 amendment, effective June 20, 2003, substituted "All building bonds" for "All state office building bonds".