

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

HOUSE BILL 299

**52ND LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2015**

INTRODUCED BY

Larry A. Larrañaga

AN ACT

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

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

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

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

A. "department" means the general services department;

B. "force majeure" means an uncontrollable force or natural disaster not within the power of the public or private

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

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

1 partner;

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

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

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

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

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

24 H. "public project":

25 (1) means:

.197648.4

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

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

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

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

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

19 (e) parking lots or garages;

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

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

25 (h) utility, telecommunications,

.197648.4

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

1 broadband, energy and other communications infrastructure that  
2 is ancillary to the development or operation of a public  
3 project;

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

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

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

11 (l) dams and reservoirs;

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

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

17 (o) a transmission line;

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

20 (q) improvements necessary or desirable  
21 to any unimproved state-owned or locally owned real estate; or

22 (r) recycling facilities or solid waste  
23 management facilities that produce electric energy derived from  
24 solid waste; and

25 (2) does not include a project that changes

.197648.4

underscored material = new  
[bracketed material] = delete

1 the franchise rights or territory of a regulated public  
2 utility;

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

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

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

- 21 A. predevelopment agreements leading to other  
22 implementing agreements;
- 23 B. design-build agreements;
- 24 C. design-build-finance agreements;
- 25 D. construction manager at risk;

.197648.4

underscored material = new  
[bracketed material] = delete

1 E. agreements that provide for the private partner  
2 to design, build, manage, maintain, operate or lease a public  
3 project; or

4 F. other project delivery methods or agreements or  
5 combination of methods or agreements that the public partner  
6 determines is most advantageous to the public interest.

7 SECTION 4. [NEW MATERIAL] PROJECT DEVELOPMENT--  
8 PROCUREMENT.--

9 A. A public partner may:

10 (1) procure a public project using any of the  
11 following:

12 (a) requests for proposals in which the  
13 public partner describes a class of public project or a  
14 geographic area in which a person is invited to submit  
15 proposals to develop a public project;

16 (b) solicitations using requests for  
17 qualifications, short-listing of qualified proposers, requests  
18 for proposals, negotiations or other procurement procedures;

19 (c) procurements seeking development and  
20 finance plans that are most advantageous to the public partner  
21 and suitable for the public project;

22 (d) best-value selection procurements  
23 based on price or financial proposals, or both, or other  
24 factors; and

25 (e) other procedures that the public

.197648.4

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

1 partner determines may further the implementation of the  
2 Public-Private Partnerships Act; and

3 (2) consider an unsolicited proposal if the  
4 public partner determines that there is sufficient merit to  
5 pursue the unsolicited proposal and a reasonable opportunity  
6 for other persons to submit competing proposals for  
7 consideration.

8 B. For a procurement in which the public partner  
9 issues a request for qualifications or similar solicitation  
10 document or following a public partner's decision to consider  
11 an unsolicited proposal, the public partner shall issue a  
12 request that generally sets forth the factors that will be  
13 evaluated and the manner in which responses will be evaluated.

14 C. In evaluating proposals, the public partner and  
15 the department, if required, shall:

16 (1) consider a range of factors they deem  
17 appropriate to obtain the best value for the state or local  
18 government; and

19 (2) require specific justification and support  
20 for a proposal that may affect:

21 (a) public employees' employment; or

22 (b) the cost of public service delivery.

23 D. The public partner may charge and retain a  
24 reasonable administrative fee for the evaluation of an  
25 unsolicited project proposal and for the cost of experts that

.197648.4

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

1 are consulted pursuant to Subsection E of this section;  
2 provided that the administrative fee shall not exceed the  
3 reasonable cost of evaluating the proposal.

4 E. The public partner shall consult with in-house  
5 or contracted financial, legal or other experts to assist in  
6 the evaluation, negotiation and development of public-private  
7 partnership agreements for a public project.

8 F. If contractor insurance is required for services  
9 procured pursuant to this section, the insurance shall be  
10 placed with an insurer authorized to transact insurance in New  
11 Mexico or with a surplus lines insurer approved by the office  
12 of superintendent of insurance or its successor agency.

13 G. Before a public-private partnership is formed,  
14 the public partner shall hold at least one public hearing and  
15 may hold additional public hearings, all of which shall be  
16 preceded by at least thirty days' notice.

17 H. Each request for proposals issued pursuant to  
18 the Public-Private Partnerships Act shall require the proposer  
19 to include with its proposal an executive summary covering the  
20 major elements of its proposal that do not address the  
21 proposer's price, financing plan or other confidential or  
22 proprietary information or trade secrets that the proposer  
23 intends to be exempt from disclosure. The executive summary  
24 shall be subject to release and disclosure to the public at any  
25 time. Notwithstanding other provisions of law, in order to

.197648.4



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

1 maximize competition, no part of a proposal or other formal  
2 procurement or evaluation document, other than the executive  
3 summary, shall be subject to release or disclosure by the  
4 public partner before the public-private partnership award is  
5 made and the conclusion of any protest or other challenge to  
6 the award, absent an administrative or judicial order requiring  
7 release or disclosure. After the public-private partnership is  
8 awarded and the conclusion of any protest or other challenge to  
9 the award, the Inspection of Public Records Act applies to any  
10 release of any part of the proposal. An unsolicited proposal  
11 shall contain a similar executive summary and be afforded the  
12 same protections as a requested proposal.

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

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

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

24 (3) state the reasons why protection is  
25 necessary; and

.197648.4

underscored material = new  
[bracketed material] = delete

1 (4) fully comply with any applicable state law  
2 with respect to information that the proposer contends should  
3 be exempt from disclosure.

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

5 A. The resident preferences provided in Sections  
6 13-1-21 and 13-1-22 NMSA 1978 apply to procurements pursuant to  
7 the Public-Private Partnerships Act. The construction of a  
8 public project is a public works for the purposes of the Public  
9 Works Minimum Wage Act, the Subcontractors Fair Practice Act,  
10 any other provisions of Chapter 13, Article 4 NMSA 1978 and the  
11 Public Works Apprentice and Training Act.

12 B. Before it may be awarded, every public-private  
13 partnership shall include an operating agreement that defines  
14 the roles and responsibilities of the partners. A private  
15 partner may require that a public project be operated and  
16 maintained to the private partner's standards and  
17 specifications as set out in the agreement.

18 C. Should a public project include building  
19 maintenance, as to the maintenance activities, the public  
20 partner or department shall not approve a project that replaces  
21 an existing government employee unless the employee is offered  
22 alternate equivalent employment.

23 SECTION 6. [NEW MATERIAL] DEPARTMENT--POWERS AND DUTIES--  
24 ASSISTANCE WITH DUTIES.--

25 A. The department shall:

.197648.4

underscoring material = new  
[bracketed material] = delete

1 (1) in consultation with the state purchasing  
2 agent, the New Mexico finance authority, the economic  
3 development department, the department of finance and  
4 administration, the office of the state engineer and any other  
5 person that the department deems necessary, develop a minimum  
6 set of guidelines to implement the provisions of the Public-  
7 Private Partnerships Act, including the process that the  
8 department shall follow with respect to the public-private  
9 partnership agreements that the department is required to  
10 review and approve and the information that is required to be  
11 included in an executive summary provided for in Subsection H  
12 of Section 4 of that act;

13 (2) before a public-private partnership may be  
14 established, review and approve all public-private partnership  
15 agreements that include:

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

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

20 (3) in evaluating public-private partnership  
21 agreements, consider whether projects should be developed as  
22 public-private partnerships or using traditional procurement  
23 and funding methods;

24 (4) manage public communication and education,  
25 including public hearings, regarding the scope, cost and

.197648.4

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

1 impacts of proposed public-private partnerships in order to  
2 maximize the opportunity for public input on proposals;

3 (5) promote the Public-Private Partnerships  
4 Act to encourage maximum competition among private entities to  
5 pursue the development and operation of public-private projects  
6 in the state;

7 (6) serve as a resource for the legislature  
8 and its staff regarding the policy and financial impacts of  
9 proposals and the implications of proposed or pending public  
10 project agreements on the credit or other obligations of the  
11 state;

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

15 (8) on or before December 1 of each year,  
16 submit a report to the legislature on any pending, proposed or  
17 completed public-private partnership agreements that the  
18 department is required to review and approve. The report shall  
19 specifically name the public-private project, its proposed  
20 scope, the proposed finance plan, the status of permitting and  
21 land acquisition and a summary of any public project agreements  
22 pending at the time of the report.

23 B. The department or a local government may:

24 (1) retain, as necessary, financial, legal and  
25 other experts to assist it in carrying out its duties pursuant

.197648.4

underscored material = new  
[bracketed material] = delete

1 to the Public-Private Partnerships Act, including assistance  
2 with the review of public-private partnership agreements;

3 (2) solicit the expertise of state agencies,  
4 state institutions, state instrumentalities and local  
5 governments to assist the department or local government in  
6 carrying out its duties pursuant to the Public-Private  
7 Partnerships Act, including reviewing public-private  
8 partnership proposals; and

9 (3) receive appropriations and money from any  
10 other source, including other state agencies or local  
11 governments, regional organizations or the federal government,  
12 to carry out its duties pursuant to the Public-Private  
13 Partnerships Act.

14 C. All state agencies, state institutions, state  
15 instrumentalities and local governments, as appropriate, shall  
16 cooperate with the department or a local government and assist  
17 it in carrying out its duties by providing technical  
18 assistance, analysis and other services as requested by the  
19 department or a local government.

20 SECTION 7. [NEW MATERIAL] DEPARTMENT--ADVICE AND  
21 ASSISTANCE--REVIEW AND APPROVAL OF AGREEMENTS.--With respect to  
22 public-private partnership agreements that the department is  
23 required to review and approve, and before approving a public-  
24 private partnership, the department shall:

25 A. assist the public partner in negotiating

.197648.4

underscored material = new  
[bracketed material] = delete

1 agreements;

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

4 C. identify, and advise the public partner  
5 regarding, any relevant federal securities or other laws and  
6 related disclosure requirements; and

7 D. identify, and advise the public partner  
8 regarding, accounting, investment and tax requirements  
9 applicable to specific public projects.

10 SECTION 8. [NEW MATERIAL] EVALUATION CRITERIA.--Before  
11 entering into a public-private partnership, the public partner  
12 and the department, if required, shall consider:

13 A. the ability of the public project to meet the  
14 needs of the community in which it is to be located, including  
15 improving and streamlining services to the public; providing or  
16 enhancing educational, cultural and recreational opportunities;  
17 promoting economic growth or job creation; or otherwise serving  
18 a public purpose;

19 B. the proposed cost and financial plan for the  
20 public project;

21 C. the performance benchmarks contained in the  
22 proposal;

23 D. the estimated operating costs of the public  
24 project;

25 E. the financial commitment of the private partner;

.197648.4

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

- 1 F. the risk of proposed financing;
- 2 G. the general reputation, qualifications, industry  
3 experience and financial capacity of the proposer;
- 4 H. the compatibility of the public project with  
5 local and regional land and water plans or other infrastructure  
6 plans;
- 7 I. the feasibility and proposed design and  
8 management of the public project;
- 9 J. the degree of innovation; efficiency; and  
10 technical, scientific, technological and socioeconomic merit of  
11 the proposal;
- 12 K. comments from potential users, local citizens,  
13 affected jurisdictions and other interested persons;
- 14 L. benefits to the public, including improvements  
15 in economic growth, job creation, public safety and quality of  
16 life;
- 17 M. the safety record of the proposer;
- 18 N. efforts to be made through the public-private  
19 partnership to retain and train New Mexico residents in  
20 occupations and professions related to planning, design,  
21 construction, project management, general management,  
22 administration, legal, accounting and other areas of the public  
23 project over the life of the public-private partnership;
- 24 O. the commitment to use New Mexico building  
25 materials and manufactured goods and local services to the

.197648.4

underscored material = new  
[bracketed material] = delete

1 extent possible;

2 P. green building design and construction  
3 certification by a nationally recognized organization;

4 Q. innovations in energy efficiency or generation;  
5 and

6 R. other criteria that the public partner and the  
7 department deem appropriate for consideration.

8 SECTION 9. [NEW MATERIAL] PUBLIC-PRIVATE PARTNERSHIP  
9 AGREEMENTS--REQUIREMENTS--PENALTIES.--

10 A. In a public-private partnership, the public  
11 partner, and the department with respect to public-private  
12 partnership proposals that it reviews, shall require an  
13 agreement to include provisions as applicable that:

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

18 (a) specify how revenue will be  
19 collected, accounted for and audited;

20 (b) establish circumstances under which  
21 the public partner may receive all or a share of revenue from  
22 such charges; and

23 (c) govern enforcement of user fees,  
24 including provisions for the use of cameras or other mechanisms  
25 to ensure that users are identified and notified of fees owed

.197648.4



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

1 and provisions that allow the private partner access to  
2 relevant public databases for enforcement purposes. Negligent  
3 use of the data contained in the databases, including  
4 unauthorized disclosure of the data, shall result in a civil  
5 penalty of ten thousand dollars (\$10,000) for each violation;

6 (2) if user fees and other charges are  
7 allowed, the agreement shall provide for a maximum negotiated  
8 rate of return on the private partner's investment, including:

9 (a) fees and charges that may be  
10 collected directly by the private partner or a third party  
11 engaged by the private partner for that purpose;

12 (b) a formula for the adjustment of user  
13 fees and other charges during the term of the public-private  
14 partnership;

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

19 (d) other strategies that the public  
20 partner or the department deems appropriate;

21 (3) allow for payments to be made by the  
22 public partner to the private partner, including availability  
23 payments or performance-based payments;

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

.197648.4

1 (5) address how the public and private  
2 partners will share management of the risks of the public  
3 project;

4 (6) specify how the public and private  
5 partners will share the costs of development of the public  
6 project;

7 (7) allocate financial responsibility for cost  
8 overruns to the partner or partners that were responsible for  
9 the cost overruns;

10 (8) establish the damages to be assessed for  
11 nonperformance;

12 (9) establish performance criteria or  
13 incentives, or both;

14 (10) address the acquisition of property  
15 interests that may be required, including provisions that allow  
16 the public or private partner to acquire real property,  
17 including acquisition by exchange of other real property that  
18 is owned by the state, a local government or the federal  
19 government;

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

22 (12) for a public project with a term that is  
23 longer than twenty-five years, address responsibility for  
24 reconstruction or renovations that are required so that the  
25 public project meets all applicable government standards before

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

1 the public project reverts to the public partner;

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

4 (14) identify public partner specifications  
5 that must be satisfied, including provisions allowing the  
6 private partner to request and receive authorization to deviate  
7 from the specifications on a showing satisfactory to the public  
8 partner that the deviation is necessary;

9 (15) require a private partner to provide,  
10 either directly or through the principal contractor who is in  
11 charge of the project, performance and payment bonds as  
12 required by Section 13-4-18 NMSA 1978 for those components of a  
13 public project that involve construction. For components that  
14 do not involve construction, require parent company guarantees,  
15 letters of credit or other acceptable forms of security or a  
16 combination of any of these, the penal sum or amount of which  
17 may be less than one hundred percent of the value of the  
18 contract involved based on the public partner's or the  
19 department's determination of what is required to adequately  
20 protect the public partner, made on a project-by-project basis;

21 (16) provide clawback or recapture provisions  
22 that protect the public investment; and

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

25 B. The public-private partnership agreement shall

.197648.4

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

1 include a clear statement of which partner will own any real  
2 property pertaining to the public project when the project  
3 reverts to the public partner based on the terms of the  
4 agreement.

5 C. The term of initial agreements entered into  
6 pursuant to the Public-Private Partnerships Act may be for a  
7 term not to exceed fifty years, and such agreements may be  
8 extended for additional terms; provided that an extension shall  
9 be subject to the same review and negotiation process as the  
10 original agreement.

11 D. The public-private partnership agreement shall  
12 contain a provision by which the private partner expressly  
13 agrees that it is prohibited from seeking injunctive or other  
14 equitable relief to delay, prevent or otherwise hinder the  
15 public partner or any other jurisdiction from developing,  
16 constructing or maintaining a public project that was planned  
17 and that would or might affect the revenue that the private  
18 partner would or might derive from the public project developed  
19 pursuant to the Public-Private Partnerships Act, except that  
20 the agreement may provide for reasonable compensation to the  
21 private partner for the adverse effect resulting from  
22 development, construction and maintenance of an unplanned  
23 facility that affects the public project's revenue.

24 E. The state board of finance shall approve the  
25 assignment, transfer or sale of assets or investment in a

.197648.4

underscored material = new  
[bracketed material] = delete

1 public project.

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

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

6 (1) proceeds of grant anticipation revenue  
7 bonds, private activity bonds, revenue bonds or other bonds  
8 allowed by federal or state law;

9 (2) grants, loans, loan guarantees, lines of  
10 credit, revolving lines of credit or other arrangements as  
11 allowed by federal or state law;

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

13 (4) user fees, lease payments, availability  
14 payments, gross or net receipts from sales, proceeds from the  
15 sale of development rights, franchise charges, permit charges,  
16 advertising and sponsorship charges, service charges or any  
17 other lawful form of consideration; and

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

20 B. As security for the payment of financing  
21 described in this section, the revenues from the public project  
22 may be pledged, but no pledge of revenues or property  
23 constitutes in any manner or to any extent a general obligation  
24 of the state or local government, unless explicitly agreed to  
25 by the state or local government. Financing may be structured

.197648.4

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

1 on a senior, parity or subordinate basis to any other  
2 financing.

3 C. The public partner may accept money from the  
4 United States or any of its agencies to carry out the  
5 provisions of the Public-Private Partnerships Act, whether the  
6 money is made available by grant, loan or other financing  
7 arrangement. The public partner assents to any federal  
8 requirements, conditions or terms of any federal funding  
9 accepted by the public partner pursuant to this subsection.  
10 The public partner may enter into agreements or other  
11 arrangements with the United States or any of its agencies as  
12 may be necessary to carry out the provisions of that act.

13 D. The public partner may accept from any source  
14 any grant, donation, gift, conveyance of land, other real or  
15 personal property or other thing of value made to the public  
16 partner for the purposes of a public project.

17 E. A public project may be funded in whole or in  
18 part by contributions of money or property made by a private  
19 person, a private entity or the state or any agency,  
20 institution, instrumentality or political subdivision of the  
21 state.

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

25 G. Any revenue bonds issued as a result of the

.197648.4

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

1 Public-Private Partnerships Act are not general obligations of  
2 this state or any local government and are not secured by or  
3 payable from any money or assets of the state or any local  
4 government other than the money and revenues specifically  
5 pledged to the repayment of the revenue bonds.

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

11 SECTION 12. [NEW MATERIAL] REVERSION OF PUBLIC PROJECT TO  
12 PUBLIC PARTNER.--If the public-private partnership is  
13 terminated, the powers and duties of the private partner cease,  
14 except for any duties and obligations that extend beyond the  
15 termination as provided in the public-private partnership  
16 agreement, and the public project reverts to the public partner  
17 and shall be dedicated for public use.

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

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

22 (1) elect to take over the public project,  
23 including the succession of all right, title and interest in  
24 the public project, subject to any liens on revenue previously  
25 granted by the private partner; and

.197648.4

underscored material = new  
[bracketed material] = delete

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

4 B. If the public partner elects to take over a  
5 public project pursuant to Subsection A of this section, the  
6 public partner:

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

9 (2) may develop and operate the public  
10 project, impose user fees for the use of the public project and  
11 comply with any service contracts; and

12 (3) may solicit proposals for the maintenance  
13 and operation of the public project as provided in the Public-  
14 Private Partnerships Act for original proposals.

15 SECTION 14. [NEW MATERIAL] POLICE POWERS--VIOLATIONS OF  
16 LAW.--All law enforcement officers of the state or local  
17 government have the same powers and jurisdiction within the  
18 limits of the public project as they have in their respective  
19 areas of jurisdiction and access to the public project at any  
20 time to exercise such powers and jurisdictions.

21 SECTION 15. [NEW MATERIAL] UTILITY CROSSINGS.--Subject to  
22 the requirements of federal and state laws, contractual  
23 agreements and land conveyance documents, a public or private  
24 partner and any utility whose facility is to be crossed or  
25 relocated shall cooperate fully in planning and arranging the

.197648.4



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

1 manner of the crossing or relocation of the utility facility.

2 SECTION 16. [NEW MATERIAL] PENALTIES.--A person who fails  
3 to pay a user fee required for the privilege of using property  
4 included in a public project is guilty of a petty misdemeanor  
5 and shall be sentenced as provided in Section 31-19-1 NMSA  
6 1978.

7 SECTION 17. EFFECTIVE DATE.--The effective date of the  
8 provisions of this act is July 1, 2015.

10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25