

**DRAFT**

February 9, 2017

To: New Mexico Legislators

From: AFSCME, AFT, NM Building Trades Council (15 affiliated unions), CVNM, CWA, Food & Water Watch, NEA-NM, NM Environmental Law Center, NM Federation of Labor (AFL-CIO), Sierra Club, and Voices for Children

Re: **Please OPPOSE House Bill 275 (Allowing Privatization of all Public Services and Infrastructure) and SUPPORT Senate Bill 143 (Narrower Public Private Partnership bill)**

The above-listed organizations all support job creation efforts, but our first priority should be responsible use of capital outlay and existing bonding capacity. Those are far more affordable, transparent, and predictable than opening up a massive new set of financing options for privatization.

Unfortunately, as drafted, House Bill 275 (public-private partnerships) would broadly allow for privatization of financing, building, operations, and maintenance for virtually any public building, infrastructure, park, public schools, and almost any other public facility in the state for 50 years. It even would allow for toll roads and bridges, as the term “public project” includes “a building or other facility and infrastructure...that meets a public purpose and is developed or operated for a public entity”.

Research shows this is one of the most sweeping P3 bills in America, in terms of scope of authorized projects, breadth of governmental entities involved, lack of oversight (legislative and executive), lack of public transparency, and financial risks.

Fortunately, many of the organizations opposing HB 275 are supporting a P3 bill that has far more protections for workers, the environment, and taxpayers, while still spurring new economic activity in the state. Senator Michael Padilla's SB 143 recently passed Senate Corporations on a unanimous, bipartisan vote, with business, environmental, and labor organizations all standing in support.

**1. HB 275 allows for unlimited private operations and maintenance of public facilities.** HB 275's definition of “public private partnership” on p. 2, lines 19-22 allows for “design, development, financing, construction, operation or maintenance of a public project”. Both explicitly and through broad catch-all clauses, HB 275 allows unlimited privatization of management, operations, and maintenance of any public facility or infrastructure in the state (p. 2, line 23-p. 5, line 1, p. 6 lines 6-8).

**2. Large P3s have the potential to decimate future general fund operating budgets and increase the risk of government default and fiscal problems.** Private bonds issued for P3 projects may be repaid from “money and revenues specifically pledged to the repayment of the revenue bonds.” (p. 23, lines 16-17). This allows public entities to bond beyond our bonding capacity, and carries tremendous risk for the fiscal health of cities, counties, and even the state, and particularly to the credit rating of the state or local governments. In addition to adding to public debt, private company bonds almost always costs more than public bonds. In contrast to HB 275 relying on general fund obligations, SB 143 projects anticipate either user fees (broadband) or energy savings (energy efficiency retrofits) to recoup the private company's upfront investment.

Maryland's P3 legislation specifically safeguards against P3s resulting in fiscal recklessness by treating them as similar to capital outlay and explicitly counting P3 liabilities against bonding capacity. HB 275 contains none of the protections against over-leveraged borrowing found in the Maryland law.

**3. HB 275 does not protect New Mexicans working in the public sector.** HB 275 contains one token protection for a very small group of public workers—those who work in building maintenance (p. 11, lines 4-8). This is an incredibly small group of employees, and even they must merely be “offered

alternate equivalent employment”, which is not defined and may include losing their PERA, health care, and workplace health and safety protections.

New Mexico loses when we privatize public sector jobs, because the privatized jobs almost never have adequate retirement plans, rarely have health care plans comparable to public sector health care, and often create “savings” merely by cutting wages of low-income and middle class New Mexicans—wages that represent disposable income that fuels New Mexico’s economy. Instead, the savings are exported out of state, where the vast majority of privatizing companies are headquartered. This coalition does not oppose private sector profits; we oppose profits being generated by slashing pay and benefits of middle class and low income New Mexicans.

**4. HB 275 specifically authorizes privatizing environmentally critical infrastructure.** In addition to the broad definition of “public projects” that are subject to privatization, HB 275 specifically lists dams, reservoirs, sewerage or water treatment facilities, water pipelines, habitat or environmental restoration, cleanup or reuse, hazardous fuels reduction, power plants, solid waste, recycling, and other basic, essential environmental assets (p. 4, line 5-p. 5, line 1). The list of environmentally-related projects that are specifically listed in HB 275 is even more expansive than the list of projects in 2013’s otherwise-similar HB 405, indicating that privatization of environmental projects is a specific goal of this year’s legislation. P3s involving these types of facilities and infrastructure have proven damaging to consumers, taxpayers, and the environment in other locations, like Indianapolis, New Orleans, and Milwaukee.

**5. There is little to no oversight for most privatization projects contemplated by HB 275.** HB 275 requires the General Services Department to review and approve P3s, but only if the cost is greater than \$50 million or the P3 agreement runs for more than 35 years (p. 12, lines 1-4). Otherwise, the only review is by the public entity striking a deal with the privatizing company, and there are only provisions for one public hearing (pg. 8, line 23). Even in the best of circumstances, P3s incur agreements that may have short-term benefits but that come at excessive long-term costs that burden taxpayers and bind future governing bodies.

**6. Governments may have to pay privatizing companies for future public improvements.** Some of the worst abuses of P3s around the country have occurred through so-called “non-compete” clauses, whereby the public entity pays the privatizing company a penalty when government tries to be responsive to voters (p. 21, lines 5-9). For example, the City and County of Denver have to pay the private company operating the Northwest Parkway every time they fix surface streets near the toll road (for improving roads that could theoretically compete with the highway). Likewise, the City of Chicago pays Chicago’s privatized parking company (a Wall Street consortium led by Morgan Stanley) penalty fees every time there is something like a parade, street festival, or special event that requires closing some parking spots. These penalties may apply even in cases of emergency. For example, the State of Indiana was forced to pay \$400,000 to a private company for lost toll revenues when the state (wisely) waived tolls during evacuations due to flooding. HB 275 allows for these non-compete clauses and penalties which expose the taxpayer to much larger liabilities than would normally occur.

**7. HB 275 allows companies and politicians to circumvent the procurement code.** Among other objectives, the purpose of the procurement code is to foster competition, promote transparency, prevent fraud and abuse, and protect taxpayer dollars. If the procurement code needs updating, then the legislature should evaluate how best to accomplish that. Instead, the funding mechanisms authorized by HB275 represent an end-run around the procurement code for P3 projects because the initial funding is private (even though taxpayers or facility users ultimately pay for the project). Unless P3 projects must adhere to the same requirements as other public projects, there is no way to safeguard New Mexico taxpayers and companies. HB 275 even allows unsolicited proposals (p. 7, lines 8-13), which Senators have already stripped from SB 143.