

HOUSE TAXATION AND REVENUE COMMITTEE SUBSTITUTE FOR  
HOUSE JUDICIARY COMMITTEE SUBSTITUTE FOR  
HOUSE BILL 405

**51ST LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2013**

AN ACT

RELATING TO PUBLIC PROJECTS; ENACTING THE PUBLIC-PRIVATE PARTNERSHIPS ACT; ALLOWING THE STATE AND CERTAIN LOCAL GOVERNMENTS TO ENTER INTO LONG-TERM PARTNERSHIPS WITH PRIVATE SECTOR PARTNERS TO FACILITATE PUBLIC PROJECTS; CREATING THE PUBLIC-PRIVATE PARTNERSHIPS BOARD; PROVIDING POWERS AND DUTIES; PROVIDING FOR A LONG-RANGE PLAN FOR THE STATE AND LOCAL GOVERNMENTS TO DEVELOP PUBLIC-PRIVATE PARTNERSHIPS FOR PUBLIC PROJECTS; PRESCRIBING PENALTIES; MAKING APPROPRIATIONS.

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

**SECTION 1. SHORT TITLE.**--This act may be cited as the "Public-Private Partnerships Act".

**SECTION 2. DEFINITIONS.**--As used in the Public-Private Partnerships Act:

A. "board" means the public-private partnerships

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1 board;

2 B. "force majeure" means an uncontrollable force or  
3 natural disaster not within the power of the public or private  
4 partner;

5 C. "local government" means a municipality; a  
6 county; or a regional entity created by a joint powers  
7 agreement between one or more public agencies;

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

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

21 F. "public partner" means a state agency,  
22 institution or an instrumentality of the state or a local  
23 government;

24 G. "public-private partnership" means the agreement  
25 between one or more public partners and one or more private

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1 partners for the development, financing or construction of a  
2 public project, including a lease, ground lease, franchise,  
3 easement, permit or other agreement;

4 H. "public project" means:

5 (1) a building or other facility, except  
6 affordable housing pursuant to the Affordable Housing Act, that  
7 meets a public purpose and is developed for a public entity;

8 (2) a building or other facility for a public  
9 school or a public post-secondary educational institution,  
10 including:

11 (a) a functionally related and  
12 subordinate facility;

13 (b) a stadium or other facility  
14 primarily used for school events; and

15 (c) any depreciable property provided  
16 for use in a school facility that is operated as part of the  
17 public school system or a public post-secondary educational  
18 institution;

19 (3) cultural or recreational facilities,  
20 including theaters, museums, convention centers, community  
21 centers, stadiums, athletic facilities, golf courses or similar  
22 facilities;

23 (4) parking lots or garages;

24 (5) airports, subways or similar facilities;

25 (6) improvements, together with equipment,

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1 necessary to enhance public safety and security of buildings to  
2 be principally used by a public entity;

3 (7) utility and telecommunications and other  
4 communications infrastructure;

5 (8) dams and reservoirs;

6 (9) a sewerage or water treatment facility,  
7 power generating plant, pump station, natural gas compressing  
8 station or similar facility;

9 (10) a sewerage, water, gas or other pipeline;

10 (11) a transmission line;

11 (12) a radio, television, cell or other tower;

12 (13) improvements necessary or desirable to  
13 any unimproved state-owned or locally owned real estate; or

14 (14) recycling facilities or solid waste  
15 management facilities that produce electric energy derived from  
16 solid waste;

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

20 J. "utility" means a privately, publicly or  
21 cooperatively owned line, facility or system for producing,  
22 transmitting or distributing communications, cable television,  
23 power, electricity, light, heat, gas, oil, crude products,  
24 water, steam, waste, storm water not connected with highway  
25 drainage or any other similar commodity, including a fire or

1 police signal system or street lighting system, which directly  
2 or indirectly serves the public.

3 SECTION 3. PUBLIC-PRIVATE PARTNERSHIPS BOARD--CREATED--  
4 MEMBERSHIP.--

5 A. The "public-private partnerships board" is  
6 created and administratively attached to the general services  
7 department. The department shall provide necessary  
8 administrative services to the board.

9 B. The board consists of:

10 (1) the following state officials or their  
11 designees:

12 (a) the attorney general;

13 (b) the secretary of finance and  
14 administration;

15 (c) the secretary of general services;

16 (d) the secretary of economic  
17 development; and

18 (e) the state auditor;

19 (2) three members who represent the private  
20 sector, appointed by the New Mexico legislative council; and

21 (3) two members who represent the councils of  
22 state government, appointed by the directors of the councils of  
23 state government.

24 C. The private-sector and councils of state  
25 government members appointed initially shall draw lots for

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1 staggered terms in such a way that two members serve for six  
2 years, two members serve for four years and one member serves  
3 for two years.

4 D. The members shall select the chair and vice  
5 chair, who shall serve a term of two years.

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

10 SECTION 4. PUBLIC-PRIVATE PARTNERSHIPS BOARD--POWERS AND  
11 DUTIES--PLANNING AND REVIEW FUNCTIONS.--

12 A. The board shall develop a long-term vision and  
13 plan for the development of public projects through public-  
14 private partnerships. The public-private partnerships plan may  
15 be a component of the five-year economic development plan and  
16 updated annually with that plan, but the partnerships plan  
17 shall be developed as a stand-alone document and shall be  
18 specific and targeted in the kinds of public projects that  
19 should be sought by the state and local governments initially  
20 and for each succeeding five-year or longer period. The board  
21 shall engage the public through facilitated meetings throughout  
22 the state in the development of the vision and plan, including  
23 a focus on how partnerships can provide identifiable,  
24 measurable public benefit, including meeting infrastructure  
25 deficits and improving infrastructure, engendering New Mexico's

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1 intellectual capacity and capability; encouraging innovation in  
2 technology, building sciences, renewable energy applications  
3 and other areas; providing occupational and professional  
4 opportunities and training for high-wage employment for the  
5 state's work force; and improving the quality of life for all  
6 New Mexicans.

7 B. The board shall seek the input of the state  
8 universities; land use and public planners; architects;  
9 engineers; contractors; building trades; unions; the national  
10 laboratories; experts in work force training and development,  
11 finance, law and economic development; and other experts and  
12 interested persons. The board shall submit its long-term  
13 vision and plan to the governor and the second session of the  
14 fifty-first legislature.

15 C. The board shall promulgate rules to implement  
16 the provisions of the Public-Private Partnerships Act,  
17 including the review process the board will follow when a  
18 public partner proposes a partnership for a public project or  
19 when a private entity submits an unsolicited plan for a public  
20 project.

21 D. All state agencies, institutions and state  
22 instrumentalities, and local governments as appropriate, shall  
23 cooperate with the board and assist it in carrying out its  
24 duties by providing technical assistance, analysis and other  
25 services as requested by the board.

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1           SECTION 5. PROJECT DELIVERY METHODS--PROPOSALS.--A public  
2 partner, in consultation with the board, may provide for the  
3 development of a public project using a variety of project  
4 delivery methods and forms of agreements. The methods may  
5 include:

6           A. predevelopment agreements leading to other  
7 implementing agreements;

8           B. design-build agreements;

9           C. design-build-finance agreements;

10          D. construction manager at risk;

11          E. concession agreements that provide for the  
12 private partner to design, build, manage or lease a public  
13 project; or

14          F. other project delivery methods or agreements or  
15 combination of methods or agreements that the public partner  
16 determines is most advantageous to the public interest.

17           SECTION 6. PROJECT DEVELOPMENT--PROCUREMENT.--

18           A. A public partner, in consultation with the  
19 board, may:

20                   (1) procure a public project using any of the  
21 following:

22                           (a) requests for proposals in which the  
23 public partner describes a class of public project or a  
24 geographic area in which a person is invited to submit  
25 proposals to develop a public project;

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1 (b) solicitations using requests for  
2 qualifications, short-listing of qualified proposers, requests  
3 for proposals, negotiations or other procurement procedures;

4 (c) procurements seeking development and  
5 finance plans that are most advantageous to the public partner  
6 and suitable for the public project;

7 (d) best-value selection procurements  
8 based on price or financial proposals, or both, or other  
9 factors; and

10 (e) other procedures that the public  
11 partner determines may further the implementation of the  
12 Public-Private Partnerships Act; and

13 (2) consider an unsolicited proposal if the  
14 public partner and the board determine that there is sufficient  
15 merit to pursue the unsolicited proposal and a reasonable  
16 opportunity for other persons to submit competing proposals for  
17 consideration as appropriate.

18 B. For a procurement in which the public partner  
19 issues a request for qualifications or similar solicitation  
20 document, the request shall generally set forth the factors  
21 that will be evaluated and the manner in which responses will  
22 be evaluated.

23 C. In evaluating proposals, the public partner and  
24 the board shall consider a range of factors they deem  
25 appropriate to obtain the best value for the state or local

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1 government.

2 D. The public partner may charge and retain a  
3 reasonable administrative fee for the evaluation of an  
4 unsolicited project proposal; provided that the administrative  
5 fee shall not exceed the reasonable cost of evaluating the  
6 proposal.

7 E. The public partner or the board shall retain  
8 financial, legal and other experts to assist in the evaluation,  
9 negotiation and development of public-private partnership  
10 agreements for a public project; provided that such experts  
11 shall have a minimum of five years' relevant experience in  
12 their field of expertise.

13 F. If contractor insurance is required for services  
14 procured pursuant to this section, the insurance shall be  
15 placed with an insurer authorized to transact insurance in New  
16 Mexico or with a surplus lines insurer approved by the  
17 insurance division of the public regulation commission or its  
18 successor agency.

19 G. Before the public partner and the board begin  
20 the process for procuring a public project, the public partner  
21 shall hold at least one public hearing with at least thirty  
22 days' notice and shall hold additional public hearings with at  
23 least three days' notice before an agreement is signed.

24 H. Each request for proposals issued pursuant to  
25 the Public-Private Partnerships Act shall require the proposer

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1 to include with its proposal an executive summary covering the  
2 major elements of its proposal that do not address the  
3 proposer's price, financing plan or other confidential or  
4 proprietary information or trade secrets that the proposer  
5 intends to be exempt from disclosure. The executive summary  
6 shall be subject to release and disclosure to the public at any  
7 time. Notwithstanding other provisions of law, in order to  
8 maximize competition pursuant to that act, no part of a  
9 proposal other than the executive summary shall be subject to  
10 release or disclosure by the public partner before an award of  
11 the public-private partnership contract and the conclusion of  
12 any protest or other challenge to the award, absent an  
13 administrative or judicial order requiring release or  
14 disclosure. After the award of the contract and the conclusion  
15 of any protest or other challenge to the award, the Inspection  
16 of Public Records Act applies to any release of any part of the  
17 proposal. An unsolicited proposal shall contain a similar  
18 executive summary and be afforded the same protections as a  
19 requested proposal.

20 I. A solicited or unsolicited proposer shall  
21 identify those portions of a proposal or other submission that  
22 the proposer considers to be a trade secret or confidential  
23 commercial, financial or proprietary information. For trade  
24 secrets and confidential and proprietary information to be  
25 exempt from disclosure, the proposer must do all of the

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1 following:

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

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

6 (3) state the reasons why protection is  
7 necessary; and

8 (4) fully comply with any applicable state law  
9 with respect to information that the proposer contends should  
10 be exempt from disclosure.

11 SECTION 7. PROCUREMENTS--RESTRICTIONS.--

12 A. Procurements pursuant to the Public-Private  
13 Partnerships Act are subject to the provisions of the  
14 Procurement Code. The resident preferences provided in  
15 Sections 13-1-21 and 13-1-22 NMSA 1978 apply to procurements  
16 pursuant to that act. The construction of a public project is  
17 a public works for the purposes of the Public Works Minimum  
18 Wage Act, the Subcontractors Fair Practice Act, other  
19 provisions of Chapter 13, Article 4 NMSA 1978 and the Public  
20 Works Apprentice and Training Act.

21 B. Every public-private partnership shall include  
22 an operating agreement that defines the roles and  
23 responsibilities of the partners. A private partner may  
24 require that a public project be operated and maintained to the  
25 private partner's standards and specifications as set out in

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1 the agreement.

2 C. Should a public project include building  
3 maintenance, as to the maintenance activities, the board shall  
4 not approve a project that displaces or replaces government  
5 employees whose employment is under the Public Employee  
6 Bargaining Act.

7 SECTION 8. EVALUATION CRITERIA.--Before entering into a  
8 public-private partnership, the public partner and the board  
9 shall consider:

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

16 B. whether the project is consistent with the  
17 board's long-term plan for public projects;

18 C. the proposed cost and financial plan for the  
19 public project;

20 D. the performance benchmarks contained in the  
21 proposal;

22 E. the estimated operating costs of the public  
23 project;

24 F. the financial commitment of the private partner;

25 G. the risk of proposed financing;

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1 H. the general reputation, qualifications, industry  
2 experience and financial capacity of the proposer;

3 I. the compatibility of the public project with  
4 local and regional land and water plans;

5 J. the feasibility and proposed design and  
6 management of the public project;

7 K. the degree of innovation; efficiency; and  
8 technical, scientific, technological and socioeconomic merit of  
9 the proposal;

10 L. comments from potential users, local citizens,  
11 affected jurisdictions and other interested persons;

12 M. benefits to the public, including improvements  
13 in economic growth, public safety and quality of life;

14 N. the safety record of the proposer;

15 O. efforts to be made by the partnership to retain  
16 and train New Mexico residents in occupations and professions  
17 related to planning, design, construction, project management,  
18 general management, administration, legal, accounting and other  
19 areas of the public project over the life of the partnership  
20 agreement;

21 P. the commitment to use New Mexico building  
22 materials and manufactured goods and local services;

23 Q. green building design and construction  
24 certification by a nationally recognized organization;

25 R. innovations in energy efficiency or generation;

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1 and

2 S. other criteria that the public partner and the  
3 board deems appropriate.

4 SECTION 9. BOARD--ADVICE AND ASSISTANCE--REVIEW AND  
5 APPROVAL OF AGREEMENTS.--

6 A. The board, when consulting with and advising a  
7 public partner, may assign each member of the board to evaluate  
8 proposals and proposed partnership agreements using the  
9 member's agency or private-sector resources in their areas of  
10 expertise.

11 B. Before approval of a partnership agreement, the  
12 attorney general and the secretary of finance and  
13 administration shall, within thirty days of the board's  
14 request:

15 (1) advise the board and the public partner  
16 concerning the legality of specific proposed partnerships;

17 (2) advise the board and the public partner on  
18 legal procedures and practices related to implementation of  
19 specific projects that use a partnership;

20 (3) assist the public partner in negotiating  
21 partnership agreements;

22 (4) assist the public partner in preparing any  
23 documents related to a specific partnership;

24 (5) advise the board and the public partner  
25 regarding any relevant federal securities or other laws and

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1 related disclosure requirements; and

2 (6) advise the board and the public partner  
3 regarding accounting, investment and tax requirements  
4 applicable to specific projects that use a partnership.

5 C. The board may ask other agencies of state or  
6 local governments to assist in the review of a proposed public-  
7 private partnership.

8 SECTION 10. PUBLIC-PRIVATE PARTNERSHIP AGREEMENTS--  
9 REQUIREMENTS--PENALTIES.--

10 A. In a public-private partnership, the public  
11 partner and the board shall require the agreement to include  
12 provisions as applicable that:

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

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

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

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

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1 relevant public databases for enforcement purposes. Misuse of  
2 the data contained in the databases, including negligence in  
3 properly securing the data, shall result in a civil penalty of  
4 ten thousand dollars (\$10,000) for each violation;

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

9 (a) the fees and charges 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 determines are 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;

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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 long-term public project, address  
23 responsibility for reconstruction or renovations that are  
24 required so that the public project meets all applicable  
25 government standards before the public project reverts to the

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

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

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

24 B. The public-private partnership agreement shall  
25 include a clear statement that the public partner will own any

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1 real property pertaining to the public project when the project  
2 reverts to the public partner.

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

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

22 E. The public-private partnership agreement shall  
23 require that the state board of finance must approve the  
24 assignment, transfer or sale of assets or investment in a  
25 public project. Sale or lease for longer than twenty-five

1 years of state property requires legislative approval.

2 SECTION 11. 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 constitutes in any  
23 manner or to any extent a general obligation of the state or  
24 local government. Financing may be structured on a senior,  
25 parity or subordinate basis to any other financing.

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

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

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

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

22           G. Any revenue bonds issued pursuant to the Public-  
23 Private Partnerships Act are not general obligations of this  
24 state or any local government and are not secured by or payable  
25 from any money or assets of the state or any local government

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1 other than the money and revenues specifically pledged to the  
2 repayment of the revenue bonds.

3 SECTION 12. USER FEES AT END OF AGREEMENT PERIOD.--The  
4 public partner may continue or cease collection of user fees  
5 after the end of the term of the agreement.

6 SECTION 13. REVERSION OF PUBLIC PROJECT TO PUBLIC  
7 PARTNER.--If the public-private partnership is terminated, the  
8 authority and duties of the private partner cease, except for  
9 any duties and obligations that extend beyond the termination  
10 as provided in the public-private agreement, and the public  
11 project reverts to the public partner and shall be dedicated  
12 for public use.

13 SECTION 14. MATERIAL DEFAULT--REMEDIES.--

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

17 (1) elect to take over the public project,  
18 including the succession of all right, title and interest in  
19 the public project, subject to any liens on revenue previously  
20 granted by the private partner; and

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

24 B. If the public partner elects to take over a  
25 public project pursuant to Subsection A of this section, the

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1 public partner:

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

4 (2) may develop and operate the public  
5 project, impose user fees for the use of the public project and  
6 comply with any service contracts; and

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

10 SECTION 15. POLICE POWERS--VIOLATIONS OF LAW.--All law  
11 enforcement officers of the state or local government have the  
12 same powers and jurisdiction within the limits of the public  
13 project as they have in their respective areas of jurisdiction  
14 and access to the public project at any time to exercise such  
15 powers and jurisdictions.

16 SECTION 16. UTILITY CROSSINGS.--A public or private  
17 partner and any utility whose facility is to be crossed or  
18 relocated shall cooperate fully in planning and arranging the  
19 manner of the crossing or relocation of the utility facility.

20 SECTION 17. PENALTIES.--A person who fails to pay a user  
21 fee required for the privilege of using property included in a  
22 public project is guilty of a petty misdemeanor and shall be  
23 sentenced as provided in Section 31-19-1 NMSA 1978.

24 SECTION 18. EFFECTIVE DATE.--The effective date of the  
25 provisions of this act is July 1, 2013.

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