

LFC Requester:	Anne Hanika-Ortiz
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**AGENCY BILL ANALYSIS
2015 REGULAR SESSION**

WITHIN 24 HOURS OF BILL POSTING, EMAIL ANALYSIS TO:

LFC@NMLEGIS.GOV

and

DFA@STATE.NM.US

{Include the bill no. in the email subject line, e.g., HB2, and only attach one bill analysis and related documentation per email message}

SECTION I: GENERAL INFORMATION

{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}

Check all that apply:

Original **Amendment**
Correction **Substitute**

Date February 4, 2015
Bill No: HB299

Sponsor: Rep. Larry A. Larrañaga **Agency Code:** Attorney General's Office
Short Title: Public-Private Partnership Act **Person Writing** Caroline Manierre, AAG
Title: Public-Private Partnership Act **Phone:** 505-827-6079 **Email** cmanierre@nmag.gov

SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY15	FY16		

(Parenthesis () Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY15	FY16	FY17		

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY15	FY16	FY17	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total						

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to:
 Duplicates/Relates to Appropriation in the General Appropriation Act:

SECTION III: NARRATIVE

This analysis is neither a formal Attorney General’s Opinion nor an Attorney General’s Advisory Letter. This is a staff analysis in response to an agency’s, committee’s, or legislator’s request.

BILL SUMMARY

Synopsis:

House Bill 299 is an act creating specific parameters for partnership agreements between a private and public party for the purpose of developing public projects. The Bill creates a structure for proposals, and develops criteria for creating and accepting a partnership agreement. The Bill specifies inclusion in the agreement of user fee information, including uses of revenue and collection of the fees. Finally, the Bill addresses funding for public projects under these agreements.

FISCAL IMPLICATIONS N/A

Note: major assumptions underlying fiscal impact should be documented.

Note: if additional operating budget impact is estimated, assumptions and calculations should be reported in this section.

SIGNIFICANT ISSUES

Although House Bill 299 deals with “public projects” and “agreements,” it appears to overlap with, and may conflict with, statutes involving “public works contracts” under NMSA 1978, Sections 13-4-1 to -9.

The Procurement Code, NMSA 1978, Sections 13-1-28 to -199, applies to “every expenditure by state agencies and local public bodies for the procurement of items of tangible personal property, services and construction.” NMSA 1978, § 13-1-30. There is no mention of the Procurement Code in House Bill 299. Although this does not necessarily indicate a conflict, there are several areas in House Bill 299 that may conflict with existing law. For example, House Bill 299 discusses requests for proposals, as well as solicited or unsolicited proposals. This may violate the processes laid out in the Procurement Code for bidding (including sealed bids, invitation for bids, and certain contracts). *See* NMSA 1978, §§ 13-1-102 to -122.

House Bill 299 discusses some of the requirements for the agreements, specifically it mentions user fees. Though this does not appear to violate statutes as is, it is possible that the user fees

included in an agreement could violate statutes relating to permissible user fees (including taxing implications).

House Bill 299 also requires these partnership agreements to contain a provision prohibiting the private party from seeking injunctive or equitable relief under certain circumstances. Forcing this provision in every partnership agreement could result in a violation of a private party's rights under state or federal law, particularly in situations where it may be unclear whether the situation falls under the circumstances listed by the Public-Private Partnerships Act.

PERFORMANCE IMPLICATIONS: N/A

ADMINISTRATIVE IMPLICATIONS: N/A

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP: None

TECHNICAL ISSUES: N/A

OTHER SUBSTANTIVE ISSUES: N/A

ALTERNATIVES: N/A

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL: Status quo

AMENDMENTS: N/A