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HOUSE BILL 368

45TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2001

INTRODUCED BY

Lorenzo A. Larranaga

AN ACT

RELATING TO RURAL INFRASTRUCTURE; AMENDING THE RURAL
INFRASTRUCTURE ACT; TRANSFERRING DUTIES OF THE ENVIRONMENTAL
IMPROVEMENT BOARD TO THE SECRETARY OF ENVIRONMENT; EXPANDING
THE PURPOSE OF THE ACT TO INCLUDE FINANCING OF WASTEWATER
FACILITIES; PROVIDING FOR FLEXIBLE INTEREST RATES.

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

Section 1. Section 75-1-2 NMSA 1978 (being Laws 1973,
Chapter 333, Section 2, as amended) is amended to read:

"75-1-2. DEFINITIONS. --As used in the Rural
Infrastructure Act:

A. [~~"division"~~] "department" means the
[~~environmental improvement division of the health and
environment~~] department of environment;

[~~B. "board" means the environmental improvement
board;~~

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1 ~~C.~~ B. "fund" means the rural infrastructure
2 revolving loan fund;

3 ~~D.~~ C. "local authority" means any incorporated
4 city, town or village, county, mutual domestic association,
5 public water cooperative association or sanitation district
6 whose water supply facility serves a population of less than
7 ten thousand;

8 ~~E.~~ D. "operate and maintain" means all necessary
9 activities, including but not limited to replacement of
10 equipment or appurtenances to assure the dependable and
11 economical function of a water supply facility in accordance
12 with its intended purpose; ~~and~~

13 E. "secretary" means the secretary of environment;

14 F. "wastewater facility" includes but is not
15 limited to collection lines, pumping equipment, treatment
16 works and disposal piping or process units; and

17 ~~F.~~ G. "water supply facility" includes but is
18 not limited to the source of supply of water, pumping
19 equipment, storage facilities, transmission lines, treatment
20 works and distribution systems. "

21 Section 2. Section 75-1-2.1 NMSA 1978 (being Laws 1983,
22 Chapter 173, Section 3, as amended) is amended to read:

23 "75-1-2.1. PURPOSE OF ACT. --The purpose of the Rural
24 Infrastructure Act is to provide financial assistance to local
25 authorities for the construction or modification of water

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1 supply and wastewater facilities [~~that will~~] to correct
2 demonstrably hazardous or inadequate conditions. "

3 Section 3. Section 75-1-3 NMSA 1978 (being Laws 1973,
4 Chapter 333, Section 3, as amended) is amended to read:

5 "75-1-3. FUND CREATED--ADMINISTRATION--EMERGENCY FUND.--

6 A. A special fund is created to be known as the
7 "rural infrastructure revolving loan fund". Money
8 appropriated to the fund or to the [~~division~~] department to
9 carry out the provisions of the Rural Infrastructure Act may
10 be used to make loans and grants to local authorities,
11 individually or jointly, for water supply or wastewater
12 facilities. Appropriations made to the fund but not expended
13 at the end of the fiscal year for which appropriated shall not
14 revert to the general fund but shall accrue to the credit of
15 the fund. Earnings on the balance in the fund shall be
16 credited to the fund. In addition, when the proceeds from the
17 issuance of severance tax bonds appropriated to the fund are
18 deposited in the state treasury, interest earned on that money
19 during the period from deposit in the state treasury until the
20 actual transfer of the money to the fund shall be credited to
21 the fund.

22 B. Ten percent of any appropriation to the fund or
23 to the [~~division~~] department to carry out the provisions of
24 the Rural Infrastructure Act shall be set aside for emergency
25 grants and loans pursuant to Section 75-1-5 NMSA 1978.

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1 C. All water supply and wastewater facilities
2 shall be designed in compliance with the engineering
3 requirements established by the ~~[board]~~ secretary after
4 consulting with and considering the recommendations of the
5 professional engineering societies operating in New Mexico.
6 The ~~[board]~~ secretary shall also establish, by regulations,
7 guidelines for the ranking of projects for top priority based
8 on public health needs.

9 D. The ~~[division]~~ department shall administer the
10 fund and shall make grant and loan disbursements in accordance
11 with the Rural Infrastructure Act. The ~~[board]~~ secretary
12 shall adopt regulations to govern the application procedure
13 and requirements for disbursing grants and loans under the
14 Rural Infrastructure Act, including requirements consistent
15 with the purpose of the act for determining the eligibility
16 and priority of local authorities for such grants and loans.
17 ~~[The division shall coordinate its application procedures and~~
18 ~~funding cycle pursuant to the New Mexico Community Assistance~~
19 ~~Act.]~~

20 E. Receipts from the repayment of loans, including
21 loans approved by the state board of finance pursuant to
22 Section 75-1-5 NMSA 1978, shall be deposited in the fund by
23 the ~~[division]~~ department, including receipts from the
24 repayment of loans made pursuant to appropriations to carry
25 out the purposes of the Water Supply Construction Act made

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1 prior to the effective date of the Rural Infrastructure Act.

2 F. Loans and grants made pursuant to the
3 provisions of the Rural Infrastructure Act shall not be used
4 by the local authority on any project constructed in
5 fulfillment or partial fulfillment of requirements made of a
6 subdivider by the provisions of the Land Subdivision Act or
7 the New Mexico Subdivision Act. "

8 Section 4. Section 75-1-4 NMSA 1978 (being Laws 1973,
9 Chapter 333, Section 4, as amended) is amended to read:

10 "75-1-4. CONDITIONS FOR GRANTS AND LOANS. --

11 A. Grants and loans shall be made only to local
12 authorities that:

13 (1) agree to operate and maintain the water
14 supply facilities so that the facilities will function
15 properly over the structural and material design life, which
16 shall not be less than twenty years;

17 (2) require the contractor of the
18 construction project to post a performance and payment bond in
19 accordance with the requirements of Section 13-4-18 NMSA 1978;

20 (3) provide a written assurance, signed by an
21 attorney, that the local authority has proper title, easements
22 and rights of way to the property upon or through which the
23 water supply facility proposed for funding is to be
24 constructed or extended;

25 (4) meet the requirements of the financial

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1 capability set by the [~~division~~] department to assure
2 sufficient revenues to operate and maintain the facility for
3 its useful life and to repay the loan;

4 (5) pledge sufficient revenues for repayment
5 of the loan, provided that such revenues may by law be pledged
6 for that purpose; and

7 (6) agree to properly maintain financial
8 records and to conduct an audit of the project's financial
9 records.

10 B. Except as otherwise provided in the Rural
11 Infrastructure Act, a loan shall be for a period of time not
12 to exceed twenty years. [~~with an annual interest rate of five~~
13 ~~percent on the unpaid balance, unless, in order to comply with~~
14 ~~federal arbitrage requirements, the state board of finance~~
15 ~~upon issuance and sale of bonds appropriated to the fund~~
16 ~~specifies a lower rate of interest on such loan to match the~~
17 ~~interest rate upon bonds funding the project and shall not~~
18 ~~exceed five hundred thousand dollars (\$500,000) in any one~~
19 ~~year.-] Loans may be interest free or bear an annual interest
20 rate set by the secretary that is at or below market interest
21 rates. The repayment of loans shall be in [~~equal~~] annual
22 installments beginning one year after completion of the
23 project. The repayment of the interest on the loan
24 accumulated during the design and construction of a project
25 may be included in the final loan amount, but it shall not be~~

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1 counted in determining the maximum loan amount.

2 C. No loan recipient eligible to receive a grant
3 under the Rural Infrastructure Act shall receive grants in any
4 one year totaling more than two hundred thousand dollars
5 (\$200,000).

6 D. The maximum assistance, including both loans
7 and grants, which a local authority may receive under the
8 Rural Infrastructure Act in any one year is five hundred
9 thousand dollars (\$500,000).

10 E. Plans and specifications for a water supply or
11 wastewater facility construction project shall be approved by
12 the [~~division~~] department before grant or loan disbursements
13 to pay for construction costs are made to a local authority.
14 Interim loan disbursements to pay for engineering and other
15 professional services may be made by the [~~division~~] department
16 prior to the approval of the plans and specifications.

17 F. Privately owned water supply or wastewater
18 facilities are not eligible for assistance under the Rural
19 Infrastructure Act.

20 G. Grants and loans shall be made only for
21 eligible items. Eligible items include but are not limited to
22 the costs of engineering feasibility reports, contracted
23 engineering design, inspection of construction, special
24 engineering services, archaeological surveys and contracted
25 construction. The costs of water rights, land, system

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1 acquisition, easements and rights of way, refinancing of
2 [~~delinquent~~] program loans, legal costs and fiscal agents'
3 fees are eligible items only for loan funds. Local authority
4 administrative costs shall not be included as eligible items.

5 H. In the event the local authority fails to make
6 the prescribed loan repayment, the [~~division~~] department is
7 authorized to set water or wastewater user rates in the area
8 of the local authority's jurisdiction in order to provide
9 sufficient money for repayment of this loan and proper
10 operation and maintenance. "

11 Section 5. Section 75-1-5 NMSA 1978 (being Laws 1987,
12 Chapter 175, Section 4, as amended) is amended to read:

13 "75-1-5. EMERGENCY LOANS AND GRANTS. --Ten percent of the
14 proceeds of each severance tax bond issuance or other
15 appropriation for the purpose of carrying out the provisions
16 of the Rural Infrastructure Act shall be reserved for
17 emergencies and shall be allocated by the [~~division~~]
18 department only upon approval of the state board of finance.
19 This amount shall not be deposited in the fund and shall be
20 allocated only for emergency loans and grants. Emergency
21 loans and grants shall be made in accordance with the
22 applicable provisions for loans pursuant to the Rural
23 Infrastructure Act; provided that a grant shall not exceed two
24 hundred thousand dollars (\$200,000). At the end of the third
25 quarter of each fiscal year, the unexpended balance of the

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1 reserved amount may be transferred by the [~~division~~]
2 department to the fund for use in accordance with the Rural
3 Infrastructure Act. "

4 Section 6. Section 75-1-6 NMSA 1978 (being Laws 1988,
5 Chapter 28, Section 7, as amended) is amended to read:

6 "75-1-6. AVERAGE RESIDENTIAL USER COST REDUCTION GRANTS
7 AND ZERO PERCENT LOANS. --

8 A. No more than twenty-five percent of the
9 proceeds of each severance tax bond issuance or other
10 appropriation for the purpose of carrying out the provisions
11 of the Rural Infrastructure Act shall be reserved for average
12 residential user cost reduction grants or zero percent loans
13 to reduce average residential user cost to a reasonable level
14 for eligible financially needy loan recipients whose water
15 supply or wastewater facilities serve less than three thousand
16 persons.

17 B. Average residential user cost reduction grants
18 and zero percent loans shall be allocated by the [~~division~~]
19 department in accordance with the provisions for grants and
20 loans pursuant to the Rural Infrastructure Act, provided that
21 an average residential user cost reduction grant or zero
22 percent loan shall not exceed two hundred thousand dollars
23 (\$200,000). Such grants and loans shall reduce only the
24 principal and interest portion of the average residential user
25 cost to a reasonable cost as determined by the [~~division~~]

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1 department.

2 C. A zero percent loan or average residential user
3 cost reduction grant shall be approved by the [~~division~~]
4 department when, after construction bids have been received,
5 the following conditions have been met by the local authority
6 whose average residential user costs are in need of reduction:

7 (1) the construction project is designed
8 using the most cost-effective and dependable option;

9 (2) the system is designed with adequate
10 built-in expansion capacity;

11 (3) other sources of grant funds have been
12 sought and are not available in a timely manner;

13 (4) the project cannot feasibly be reduced in
14 scope or phased so as to bring it within available loan funds
15 and within reasonable user cost; and

16 (5) the local authority's [~~average~~
17 ~~residential user cost in need of the reduction is at least~~
18 ~~eighteen dollars (\$18.00) per month~~] median household income
19 is less than ninety percent of the statewide non-metropolitan
20 median household income based on the most current federal
21 decennial census. "