

HOUSE APPROPRIATIONS AND FINANCE COMMITTEE SUBSTITUTE FOR
HOUSE BILL 146

51ST LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2014

AN ACT

RELATING TO PUBLIC FINANCE; SUSTAINING THE SEVERANCE TAX
PERMANENT FUND BY LIMITING THE OVERALL BONDING CAPACITY FOR
SEVERANCE TAX BONDS AND SUPPLEMENTAL SEVERANCE TAX BONDS;
ESTABLISHING THE PERCENTAGE OF THE ESTIMATED SEVERANCE TAX
BONDING CAPACITY ALLOCATED FOR WATER PROJECTS, WATER RIGHTS
ADJUDICATIONS, COLONIAS INFRASTRUCTURE PROJECTS AND TRIBAL
INFRASTRUCTURE PROJECTS; PROVIDING FOR THE TRANSFER OF MONEY
FROM THE SEVERANCE TAX BONDING FUND TO THE SEVERANCE TAX
PERMANENT FUND BASED ON ESTIMATED SEVERANCE TAX DEPOSITS;
ADDING A DEFINITION.

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

SECTION 1. Section 7-27-2 NMSA 1978 (being Laws 1961,
Chapter 5, Section 3, as amended) is amended to read:

"7-27-2. SEVERANCE TAX BONDING FUND CREATED.--There is
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1 created the "severance tax bonding fund" in the state treasury.

2 The severance tax bonding fund is the fund:

3 A. into which shall be distributed, in accordance
4 with the Tax Administration Act, the net receipts from taxes
5 levied upon natural resource products severed and saved from
6 the soil in accordance with the provisions of the Severance Tax
7 Act and the Oil and Gas Severance Tax Act; [~~and~~]

8 B. into which shall be deposited such other money
9 as the legislature may from time to time determine; and

10 C. from which the state treasurer shall transfer
11 the adjusted allocated amount determined by the division as
12 provided pursuant to Subsection A of Section 7-27-10.1 NMSA
13 1978 to the severance tax permanent fund."

14 SECTION 2. Section 7-27-3.2 NMSA 1978 (being Laws 1983,
15 Chapter 306, Section 6) is amended to read:

16 "7-27-3.2. [~~DEFINITION~~] DEFINITIONS.--As used in Sections
17 7-27-1 through 7-27-48 NMSA 1978:

18 A. "council" means the state investment council;
19 and

20 B. "division" means the board of finance division
21 of the department of finance and administration."

22 SECTION 3. Section 7-27-10.1 NMSA 1978 (being Laws 2003,
23 Chapter 134, Section 1, as amended) is amended to read:

24 "7-27-10.1. BONDING CAPACITY--TRANSFERS TO SEVERANCE TAX
25 PERMANENT FUND--AUTHORIZATION FOR SEVERANCE TAX BONDS--PRIORITY

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1 FOR WATER PROJECTS AND TRIBAL INFRASTRUCTURE PROJECTS.--

2 A. By June 15 of each year:

3 (1) for purposes of calculating an adjusted
 4 allocated amount to transfer from the severance tax bonding
 5 fund to the severance tax permanent fund, the division shall
 6 estimate the amount of all deposits into the severance tax
 7 bonding fund for the current fiscal year, if any, that exceeds
 8 by fifteen percent or greater the average amount of deposits
 9 received during the five immediately preceding fiscal years;

10 (2) the division shall then adjust the
 11 determined excess amount, if any, to equal an adjusted
 12 allocated amount for transfer to the severance tax permanent
 13 fund by ensuring that the adjusted allocated amount shall not
 14 include any amount necessary to remain in the severance tax
 15 bonding fund as required to cover all amounts pledged and
 16 provided pursuant to Section 7-27-8 NMSA 1978; and

17 (3) the division shall then allocate the
 18 adjusted amount, if any, to be transferred to the severance tax
 19 permanent fund as provided in Subsection B of this section.

20 B. By June 30 of each year, the state treasurer
 21 shall transfer the adjusted allocated amount as determined in
 22 Subsection A of this section from the severance tax bonding
 23 fund to the severance tax permanent fund.

24 ~~[A.] C. By January 15 of each year, the [board of~~
 25 ~~finance] division [of the department of finance and~~

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1 ~~administration~~] shall estimate the amount of bonding capacity
2 available for severance tax bonds to be authorized by the
3 legislature; such estimate shall be an amount determined and
4 based on any adjusted allocated amount transferred to the
5 severance tax permanent fund on June 30 of that calendar year
6 as provided pursuant to Subsection A of this section.

7 ~~[B.]~~ D. The division shall allocate ten percent of
8 the estimated bonding capacity each year for water projects,
9 and the legislature authorizes the state board of finance to
10 issue severance tax bonds in the annually allocated amount for
11 use by the water trust board to fund water projects statewide,
12 except for projects authorized in Subsection ~~[E]~~ G of this
13 section. The water trust board shall certify to the state
14 board of finance the need for issuance of bonds for water
15 projects. The state board of finance may issue and sell the
16 bonds in the same manner as other severance tax bonds in an
17 amount not to exceed the authorized amount provided for in this
18 subsection. If necessary, the state board of finance shall
19 take the appropriate steps to comply with the federal Internal
20 Revenue Code of 1986, as amended. Proceeds from the sale of
21 the bonds are appropriated to the water project fund in the New
22 Mexico finance authority for the purposes certified by the
23 water trust board to the state board of finance.

24 ~~[G.]~~ E. The ~~[board of finance]~~ division shall
25 allocate five and one-half percent of the estimated bonding

1 capacity each year for tribal infrastructure projects, and the
2 legislature authorizes the state board of finance to issue
3 severance tax bonds in the annually allocated amount for use by
4 the tribal infrastructure board to fund tribal infrastructure
5 projects. The tribal infrastructure board shall certify to the
6 state board of finance the need for issuance of bonds for
7 tribal infrastructure projects. The state board of finance may
8 issue and sell the bonds in the same manner as other severance
9 tax bonds in an amount not to exceed the authorized amount
10 provided for in this subsection. If necessary, the state board
11 of finance shall take the appropriate steps to comply with the
12 federal Internal Revenue Code of 1986, as amended. Proceeds
13 from the sale of the bonds are appropriated to the tribal
14 infrastructure project fund for the purposes certified by the
15 tribal infrastructure board to the state board of finance.

16 ~~[D.]~~ F. Money from the severance tax bonds provided
17 for in this section shall not be used to pay indirect project
18 costs. Any unexpended balance from proceeds of severance tax
19 bonds issued for a water project or a tribal infrastructure
20 project shall revert to the severance tax bonding fund within
21 six months of completion of the project. The New Mexico
22 finance authority shall monitor and ensure proper reversions of
23 the bond proceeds appropriated for water projects, and the
24 department of finance and administration shall monitor and
25 ensure proper reversions of the bond proceeds appropriated for

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1 tribal infrastructure projects.

2 ~~[E.] G. The [board of finance] division [of the~~
3 ~~department of finance and administration] shall:~~

4 (1) void the authorization to the water
5 project fund held at the New Mexico finance authority to make
6 grants or loans of severance tax bond proceeds for projects
7 pursuant to Subsection U of Section 1 of Chapter 41 of Laws
8 2006 for the northwest New Mexico council of governments in
9 McKinley county for a water distribution project and Subsection
10 25 of Section 1 of Chapter 139 of Laws 2007 for the Navajo
11 Nation division of natural resources department of water
12 resources water management branch for a regional water project
13 in Rio Arriba, Sandoval, McKinley, San Juan and Cibola
14 counties; and

15 (2) authorize the department of environment to
16 make a grant of the unexpended proceeds of severance tax bonds
17 issued in fiscal years 2006 and 2007 for the purposes of the
18 water project fund to be used for the authorizations identified
19 in Paragraph (1) of this subsection and appropriate to the
20 department of environment five million three hundred seventy-
21 five thousand two hundred forty-four dollars (\$5,375,244) for
22 the Navajo Nation division of natural resources department of
23 water resources water management branch for a regional water
24 distribution project in Rio Arriba, Sandoval, McKinley, San
25 Juan and Cibola counties. Any unexpended balance of the funds

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1 authorized for expenditure in this section shall revert to the
 2 severance tax bonding fund at the end of fiscal year 2013 or
 3 upon completion of the project, whichever is earlier.

4 ~~[F-]~~ H. As used in this section:

5 (1) "tribal infrastructure project" means a
 6 qualified project under the Tribal Infrastructure Act; and

7 (2) "water project" means a capital outlay
 8 project for:

9 (a) the storage, conveyance or delivery
 10 of water to end users;

11 (b) the implementation of federal
 12 Endangered Species Act of 1973 collaborative programs;

13 (c) the restoration and management of
 14 watersheds;

15 (d) flood prevention; or

16 (e) conservation, recycling, treatment
 17 or reuse of water."

18 **SECTION 4.** Section 7-27-12.5 NMSA 1978 (being Laws 2010,
 19 Chapter 10, Section 9) is amended to read:

20 "7-27-12.5. AUTHORIZATION FOR SEVERANCE TAX BONDS--
 21 PRIORITY FOR INFRASTRUCTURE PROJECTS FOR COLONIAS.--

22 A. After the annual estimate of severance tax
 23 bonding capacity pursuant to Subsection A of Section 7-27-10.1
 24 NMSA 1978, the ~~[board of finance]~~ division ~~[of the department~~
 25 ~~of finance and administration]~~ shall allocate five and one-half

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1 percent of the estimated bonding capacity each year for
2 colonias infrastructure projects, and the legislature
3 authorizes the state board of finance to issue severance tax
4 bonds in the annually allocated amount for use by the colonias
5 infrastructure board to fund the projects. The colonias
6 infrastructure board shall certify to the state board of
7 finance the need for issuance of bonds for colonias
8 infrastructure projects. The state board of finance may issue
9 and sell the bonds in the same manner as other severance tax
10 bonds in an amount not to exceed the authorized amount provided
11 for in this subsection. If necessary, the state board of
12 finance shall take the appropriate steps to comply with the
13 federal Internal Revenue Code of 1986, as amended. Proceeds
14 from the sale of the bonds are appropriated to the colonias
15 infrastructure project fund for the purposes certified by the
16 colonias infrastructure board to the state board of finance.

17 B. Money from the severance tax bonds provided for
18 in this section shall not be used to pay indirect project
19 costs. Any unexpended balance from proceeds of severance tax
20 bonds issued for a colonias infrastructure project shall revert
21 to the severance tax bonding fund within six months of
22 completion of the project. The colonias infrastructure board
23 shall monitor and ensure proper reversions of the bond proceeds
24 appropriated for the projects.

25 C. As used in this section, "colonias

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1 infrastructure project" means a qualified project under the
2 Colonias Infrastructure Act."

3 SECTION 5. Section 7-27-14 NMSA 1978 (being Laws 1961,
4 Chapter 5, Section 11, as amended) is amended to read:

5 "7-27-14. AMOUNT OF TAX--SECURITY FOR BONDS.--

6 A. The legislature shall provide for the continued
7 assessment, levy, collection and deposit into the severance tax
8 bonding fund of the tax or taxes upon natural resource products
9 severed and saved from the soil of the state that, together
10 with such other income as may be deposited to the fund, will be
11 sufficient to produce an amount that is at least the amount
12 necessary to meet annual debt service charges on all
13 outstanding severance tax bonds and supplemental severance tax
14 bonds.

15 B. Except as otherwise specifically provided by
16 law, the state board of finance shall issue no severance tax
17 bonds unless the aggregate amount of severance tax bonds
18 outstanding, and including the issue proposed, can be serviced
19 with not more than [~~fifty~~] forty-eight percent of the annual
20 deposits into the severance tax bonding fund, as determined by
21 the lesser of the deposits during the preceding fiscal year or
22 the deposits during the current fiscal year as estimated by the
23 division less the adjusted allocated amount provided in
24 Subsection A of Section 7-27-10.1 NMSA 1978.

25 C. The state board of finance shall issue no

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1 supplemental severance tax bonds with a term that extends
2 beyond the fiscal year in which the bonds are issued unless the
3 aggregate amount of severance tax bonds and supplemental
4 severance tax bonds outstanding, and including the issue
5 proposed, can be serviced with not more than [~~sixty-two and~~
6 ~~one-half~~] sixty and one-half percent of the lesser of the
7 annual deposits into the severance tax bonding fund, as
8 determined by the deposits during the preceding fiscal year or
9 the deposits during the current fiscal year as estimated by the
10 division less the adjusted allocated amount provided in
11 Subsection A of Section 7-27-10.1 NMSA 1978.

12 D. Except as otherwise specifically provided by
13 law, the state board of finance may issue supplemental
14 severance tax bonds with a term that does not extend beyond the
15 fiscal year in which they are issued if the debt service on
16 such supplemental severance tax bonds when added to the debt
17 service previously paid or scheduled to be paid during that
18 fiscal year on severance tax bonds and supplemental severance
19 tax bonds does not exceed [~~ninety-five~~] eighty-five and one-
20 half percent of the lesser of the deposits into the severance
21 tax bonding fund during the preceding fiscal year or the
22 deposits into the severance tax bonding fund during the current
23 fiscal year as estimated by the division less the adjusted
24 allocated amount provided in Subsection A of Section 7-27-10.1
25 NMSA 1978.

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1 E. The provisions of this section shall not be
2 modified by the terms of any severance tax bonds or
3 supplemental severance tax bonds hereafter issued."

4 **SECTION 6.** Section 72-4A-9 NMSA 1978 (being Laws 2001,
5 Chapter 164, Section 9, as amended) is amended to read:

6 "72-4A-9. WATER PROJECT FUND--CREATED--PURPOSE.--

7 A. The "water project fund" is created in the New
8 Mexico finance authority and shall consist of distributions
9 made to the fund from the water trust fund and payments of
10 principal of and interest on loans for approved water projects.
11 The fund shall also consist of any other money appropriated,
12 distributed or otherwise allocated to the fund for the purpose
13 of supporting water projects pursuant to provisions of the
14 Water Project Finance Act. The fund shall be administered by
15 the authority. Income from investment of the water project
16 fund shall be credited to the fund. Balances in the fund at
17 the end of any fiscal year shall not revert to the general
18 fund. The water project fund may consist of such subaccounts
19 as the authority deems necessary to carry out the purposes of
20 the fund. The authority may establish procedures and adopt
21 rules as required to administer the fund and to recover from
22 the fund costs of administering the fund and originating grants
23 and loans. [~~Ten~~] Seven and one-half percent of all water
24 project funds shall be dedicated to the state engineer for
25 water rights adjudications, and twenty percent of the money

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1 dedicated for water rights adjudications shall be allocated to
2 the administrative office of the courts for the courts' costs
3 associated with those adjudications.

4 B. Money in the water project fund may be used to
5 make loans or grants to qualified entities for any project
6 approved by the legislature and for water rights adjudications.

7 C. The authority is authorized to issue revenue
8 bonds payable from the proceeds of loan repayments made into
9 the water project fund upon a determination by the authority
10 that issuance of the bonds is necessary to replenish the
11 principal balance of the fund. The net proceeds from the sale
12 of the bonds shall be deposited in the water project fund. The
13 bonds shall be authorized and issued by the authority in
14 accordance with the provisions of the New Mexico Finance
15 Authority Act."

16 SECTION 7. EFFECTIVE DATE.--The effective date of the
17 provisions of this act is July 1, 2014.