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SENATE BILL

56TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2023

INTRODUCED BY

Siah Correa Hemphill

AN ACT

RELATING TO PUBLIC INFRASTRUCTURE; ENACTING THE RURAL
INFRASTRUCTURE CRISIS RESPONSE ACT; CREATING THE RURAL
INFRASTRUCTURE CRISIS RESPONSE FUND; ESTABLISHING ELIGIBILITY
REQUIREMENTS FOR FINANCIAL ASSISTANCE; CREATING THE BUREAU OF
RURAL INFRASTRUCTURE CRISIS RESPONSE; PROVIDING DUTIES;
ALLOCATING A PORTION OF THE SEVERANCE TAX BONDING FUND TO THE
RURAL INFRASTRUCTURE CRISIS RESPONSE FUND; AMENDING THE TRIBAL
INFRASTRUCTURE ACT TO MAKE THE TRIBAL INFRASTRUCTURE BOARD THE
FISCAL AGENT FOR ASSISTANCE FROM THE RURAL INFRASTRUCTURE
CRISIS RESPONSE FUND FOR PROJECTS OWNED OR OPERATED BY INDIAN
NATIONS, TRIBES AND PUEBLOS; MAKING AN APPROPRIATION.

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

SECTION 1. [NEW MATERIAL] SHORT TITLE.--Sections 1
through 4 of this act may be cited as the "Rural Infrastructure
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1 Crisis Response Act".

2 SECTION 2. [NEW MATERIAL] DEFINITIONS.--As used in the
3 Rural Infrastructure Crisis Response Act:

4 A. "bureau" means the bureau of rural
5 infrastructure crisis response of the local government division
6 of the department of finance and administration;

7 B. "crisis event" means an unforeseen power surge,
8 weather or other event that disables the use of critical public
9 infrastructure. A "crisis event" may include damage to
10 constructed infrastructure, durable equipment or the
11 unforeseeable loss of a public resource, such as loss of a
12 community water source due to a dam failure or extreme drought,
13 but does not include a foreseeable loss of a public resource
14 such as depletion of a water source due to regular pumping over
15 time;

16 C. "critical public infrastructure" means public
17 infrastructure or durable equipment that is required for public
18 health, safety or welfare of individuals or communities and
19 includes dams, transportation infrastructure and infrastructure
20 essential to the delivery of utility services;

21 D. "durable equipment" means equipment of a
22 permanent or non-depletable nature that is necessary in the use
23 of critical public infrastructure;

24 E. "eligible project" means a project that is
25 eligible for financial assistance pursuant to Subsection A of

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1 Section 3 of the Rural Infrastructure Crisis Response Act;

2 F. "fund" means the rural infrastructure crisis
3 response fund;

4 G. "local authority" means:

5 (1) a municipality that has a population of
6 less than twenty thousand people according to the latest
7 federal decennial census;

8 (2) a county that has a population of less
9 than one hundred fifty thousand people according to the latest
10 federal decennial census;

11 (3) an Indian nation, tribe or pueblo located
12 wholly or partially in New Mexico; or

13 (4) a mutual domestic water consumers
14 association or a water and sanitation district that maintains
15 local roads or provides utility services to fewer than six
16 thousand billed customers;

17 H. "relief request" means a request for financial
18 assistance for a project to repair or replace critical public
19 infrastructure that has experienced a crisis event;

20 I. "repair or replace" means repair or replacement
21 of critical public infrastructure to the same level of
22 functionality or service as the infrastructure provided prior
23 to a crisis event;

24 J. "secretary" means the secretary of finance and
25 administration; and

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1 K. "utility services" means broadband, electricity,
2 natural gas, solid waste, water or wastewater services.

3 SECTION 3. [NEW MATERIAL] INFRASTRUCTURE ELIGIBILITY--
4 RELIEF REQUEST--EVALUATION--DETERMINATION--PROCEDURES AND
5 RULES.--

6 A. Beginning on January 1, 2024, a project for
7 repair or replacement of critical public infrastructure is
8 eligible for financial assistance if a relief request has been
9 submitted to the bureau pursuant to Subsection B of this
10 section and the secretary has made a determination of
11 eligibility pursuant to Subsection D of this section that the
12 project meets the following requirements:

13 (1) the project is for repair or replacement
14 of critical public infrastructure damaged due to a crisis
15 event; provided that a project for repair shall only be
16 eligible for assistance if the cost of the repair is fifty
17 percent or greater than the cost of replacement;

18 (2) the damage to the critical public
19 infrastructure severely affects the public health, safety or
20 welfare of a community;

21 (3) the local authority does not have the
22 resources to repair or replace the critical public
23 infrastructure; and

24 (4) no other source of financial assistance is
25 available to the local authority to repair or replace the

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1 critical public infrastructure within eighty-one days of the
2 crisis event.

3 B. A relief request may be submitted to the bureau
4 by the governing board or council of a local authority or a
5 state representative or state senator due to a crisis event in
6 the district the state representative or state senator
7 represents; provided that a relief request shall include a
8 recommendation by the regional planning commission in which the
9 crisis event occurred regarding the eligibility of the project
10 for financial assistance.

11 C. Within thirty days of receiving a relief request
12 pursuant to Subsection B of this section, the bureau shall
13 provide an engineering and financial evaluation to the
14 secretary regarding whether the relief request meets the
15 eligibility requirements of Subsection A of this section and
16 shall make a recommendation regarding whether the local
17 authority qualifies for financial hardship as established by
18 the bureau by rule.

19 D. Within fifteen days of receiving an evaluation
20 pursuant to Subsection C of this section, the secretary shall
21 make a formal determination regarding whether the project in a
22 relief request meets the eligibility requirements pursuant to
23 Subsection A of this section and whether the local authority
24 qualifies for financial hardship.

25 E. Upon a determination of eligibility pursuant to

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1 Subsection D of this section, the secretary shall:

2 (1) for critical infrastructure that is owned
3 by a tribal local authority, either certify to the state board
4 of finance the need to issue bonds for the rural infrastructure
5 crisis response project pursuant to Section 7-27-10.1 NMSA 1978
6 or award a grant from the fund to the tribal infrastructure
7 board to repair or replace the damaged critical public
8 infrastructure in question; or

9 (2) for critical infrastructure that is owned
10 by a non-tribal local authority, either certify to the state
11 board of finance the need to issue bonds for the rural
12 infrastructure crisis response project pursuant to Section
13 7-27-10.1 NMSA 1978 or award a grant from the fund to the local
14 authority to repair or replace the damaged critical public
15 infrastructure.

16 F. The secretary shall not issue a total of
17 certifications or awards pursuant to Subsection E of this
18 section worth more than one million dollars (\$1,000,000) for
19 rural infrastructure crisis response projects within any given
20 county in a calendar year.

21 G. On June 15 and December 15 of each year, the
22 secretary shall submit to the state board of finance the
23 certifications issued for the prior six months pursuant to
24 Subsection E of this section.

25 SECTION 4. [NEW MATERIAL] RURAL INFRASTRUCTURE CRISIS

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1 RESPONSE FUND--CREATED--PURPOSE--APPROPRIATIONS.--

2 A. The "rural infrastructure crisis response fund"
3 is created in the state treasury. The fund consists of
4 appropriations, donations, interest from investment of the fund
5 and other money distributed to the fund. The department of
6 finance and administration shall administer the fund and may
7 establish subaccounts for the fund. Money in the fund is
8 appropriated to the department of finance and administration
9 for expenditure as provided in this section. Disbursements
10 from the fund shall be made by warrant of the secretary
11 pursuant to vouchers signed by the secretary or the secretary's
12 designee. Money in the fund shall not revert at the end of a
13 fiscal year.

14 B. Money in the fund may be used to make grants to
15 a local authority, or to the tribal infrastructure board when
16 an eligible project is owned or operated by a tribe, for
17 eligible projects that have been approved pursuant to
18 Subsection E of Section 3 of the Rural Infrastructure Crisis
19 Response Act for up to:

20 (1) ninety-five percent of the total cost of
21 an eligible project; provided that the local authority has
22 demonstrated an ability, and has contracted, to provide the
23 remainder of the project costs from sources other than the
24 state; or

25 (2) one hundred percent of the total cost of

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1 an eligible project if a financial hardship recommendation is
2 made by the bureau and approved by the secretary.

3 C. An eligible project that requires construction
4 shall be designed in compliance with engineering requirements
5 established by the bureau.

6 D. By November 30 of each year, the department of
7 finance and administration shall provide a report to the
8 appropriate interim legislative committee on the status of the
9 fund, the status of the eligible projects for which grants have
10 been made from the fund and the outstanding demand for
11 assistance from the fund.

12 SECTION 5. Section 6-29-5 NMSA 1978 (being Laws 2005,
13 Chapter 146, Section 5) is amended to read:

14 "6-29-5. BOARD--DUTIES.--The board shall:

15 A. adopt rules governing terms, conditions and
16 priorities for providing financial assistance to tribes,
17 including developing application and evaluation procedures and
18 forms and qualifications for applicants and for projects;

19 B. provide financial assistance to tribes for
20 qualified projects on terms and conditions established by the
21 board;

22 C. authorize funding for qualified projects,
23 including:

24 (1) planning, designing, constructing,
25 improving, expanding or equipping water and wastewater

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1 facilities, major water systems, electrical power lines,
2 communications infrastructure, roads, health infrastructure,
3 emergency response facilities and infrastructure needed to
4 encourage economic development;

5 (2) developing engineering feasibility reports
6 for infrastructure projects;

7 (3) inspecting construction of qualified
8 projects;

9 (4) providing special engineering services;

10 (5) completing environmental assessments or
11 archaeological clearances and other surveys for infrastructure
12 projects;

13 (6) acquiring land, easements or rights of
14 way; and

15 (7) paying legal costs and fiscal agent fees
16 associated with development of qualified projects; and

17 D. act as the fiscal agent for projects owned or
18 operated by tribes that receive financial assistance pursuant
19 to the Rural Infrastructure Crisis Response Act."

20 SECTION 6. Section 7-27-10.1 NMSA 1978 (being Laws 2003,
21 Chapter 134, Section 1, as amended) is amended to read:

22 "7-27-10.1. TRANSFER TO SEVERANCE TAX PERMANENT FUND
23 BEFORE DETERMINING BONDING CAPACITY--AUTHORIZATION FOR
24 SEVERANCE TAX BONDS--PRIORITY FOR RURAL INFRASTRUCTURE CRISIS
25 RESPONSE PROJECTS, WATER PROJECTS AND TRIBAL INFRASTRUCTURE

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1 PROJECTS.--

2 A. On December 31 of each year from 2019 through
3 2028, the division shall transfer twenty-three million six
4 hundred ninety thousand dollars (\$23,690,000) from the
5 severance tax bonding fund to the severance tax permanent fund,
6 unless the state board of finance determines that a lesser
7 transfer amount is necessary pursuant to Section 7-27-8 NMSA
8 1978 to avoid a potential shortfall in debt service
9 obligations.

10 B. By January 15 of each year, the division shall
11 estimate the amount of bonding capacity available for severance
12 tax bonds to be authorized by the legislature.

13 C. Each year, the division shall allocate two and
14 one-fourth percent of the estimated bonding capacity for rural
15 infrastructure crisis response projects, and the state board of
16 finance shall issue severance tax bonds up to the annually
17 allocated amount for use by the local government division of
18 the department of finance and administration for such projects.
19 The state board of finance may issue and sell the bonds in the
20 same manner as other severance tax bonds in an amount not to
21 exceed the authorized amount provided for in this subsection.
22 If necessary, the state board of finance shall take appropriate
23 steps to comply with the federal Internal Revenue Code of 1986,
24 as amended. Proceeds from the sale of the bonds are
25 appropriated to the rural infrastructure crisis response fund

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1 for the purposes certified by the secretary of finance and
2 administration to the state board of finance pursuant to
3 Subsection E of Section 3 of the Rural Infrastructure Crisis
4 Response Act. Such certification shall be made by the
5 secretary of finance and administration to the state board of
6 finance after the bonds are issued, but prior to the
7 distribution of any funds from the rural infrastructure crisis
8 response fund to a local authority for such purposes.

9 [~~G.~~] D. For each year except 2017, the division
10 shall allocate nine percent of the estimated bonding capacity
11 each year for water projects, and the legislature authorizes
12 the state board of finance to issue severance tax bonds in the
13 annually allocated amount for use by the water trust board to
14 fund water projects statewide. The water trust board shall
15 certify to the state board of finance the need for issuance of
16 bonds for water projects. The state board of finance may issue
17 and sell the bonds in the same manner as other severance tax
18 bonds in an amount not to exceed the authorized amount provided
19 for in this subsection. If necessary, the state board of
20 finance shall take the appropriate steps to comply with the
21 federal Internal Revenue Code of 1986, as amended. Proceeds
22 from the sale of the bonds are appropriated to the water
23 project fund in the New Mexico finance authority for the
24 purposes certified by the water trust board to the state board
25 of finance.

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1 ~~[D.]~~ E. The division shall allocate the following
2 percentage of the estimated bonding capacity for tribal
3 infrastructure projects:

- 4 (1) in 2016, six and one-half percent; and
5 (2) in 2017 and each subsequent year, four and
6 one-half percent.

7 ~~[E.]~~ F. The legislature authorizes the state board
8 of finance to issue severance tax bonds in the amount provided
9 for in this section for use by the tribal infrastructure board
10 to fund tribal infrastructure projects. The tribal
11 infrastructure board shall certify to the state board of
12 finance the need for issuance of bonds for tribal
13 infrastructure projects. The state board of finance may issue
14 and sell the bonds in the same manner as other severance tax
15 bonds in an amount not to exceed the authorized amount provided
16 for in this section. If necessary, the state board of finance
17 shall take the appropriate steps to comply with the federal
18 Internal Revenue Code of 1986, as amended. Proceeds from the
19 sale of the bonds are appropriated to the tribal infrastructure
20 project fund for the purposes certified by the tribal
21 infrastructure board to the state board of finance.

22 ~~[F.]~~ G. Money from the severance tax bonds provided
23 for in this section shall not be used to pay indirect project
24 costs. Any unexpended balance from proceeds of severance tax
25 bonds issued for a water project or a tribal infrastructure

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1 project shall revert to the severance tax bonding fund within
2 six months of completion of the project. The New Mexico
3 finance authority shall monitor and ensure proper reversions of
4 the bond proceeds appropriated for water projects, and the
5 department of finance and administration shall monitor and
6 ensure proper reversions of the bond proceeds appropriated for
7 tribal infrastructure projects.

8 [~~G.~~] H. As used in this section:

9 (1) "division" means the board of finance
10 division of the department of finance and administration;

11 (2) "rural infrastructure crisis response
12 project" means an eligible project pursuant to the Rural
13 Infrastructure Crisis Response Act;

14 [~~(2)~~] (3) "tribal infrastructure project"
15 means a qualified project under the Tribal Infrastructure Act;
16 and

17 [~~(3)~~] (4) "water project" means a capital
18 outlay project for:

19 (a) the storage, conveyance or delivery
20 of water to end users;

21 (b) the implementation of federal
22 Endangered Species Act of 1973 collaborative programs;

23 (c) the restoration and management of
24 watersheds;

25 (d) flood prevention; or

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1 (e) conservation, recycling, treatment
2 or reuse of water."

3 SECTION 7. A new section of the Department of Finance and
4 Administration Act is enacted to read:

5 "[NEW MATERIAL] BUREAU OF RURAL INFRASTRUCTURE CRISIS
6 RESPONSE CREATED--DUTIES.--The "bureau of rural infrastructure
7 crisis response" is created within the local government
8 division of the department of finance and administration. The
9 bureau shall evaluate relief requests pursuant to Section 3 of
10 the Rural Infrastructure Crisis Response Act."

11 SECTION 8. APPROPRIATION.--One million six hundred
12 thousand dollars (\$1,600,000) is appropriated from the general
13 fund to the department of finance and administration for
14 expenditure in fiscal years 2023 through 2026 for staff or
15 contractual services for engineering and financial evaluations
16 required by Subsection C of Section 3 of the Rural
17 Infrastructure Crisis Response Act; provided that no more than
18 four hundred thousand dollars (\$400,000) shall be expended in
19 any one fiscal year. Any unexpended or unencumbered balance
20 remaining at the end of fiscal year 2026 shall revert to the
21 general fund.