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AN ACT  
RELATING TO UTILITIES; CREATING THE ESSENTIAL SERVICES  
DEVELOPMENT ACT TO ALLOW STATE SUPPORT FOR INFRASTRUCTURE  
PROJECTS THAT ALLOW ACCESS TO INTERNET, ENERGY, WATER AND  
WASTEWATER SERVICES PRIMARILY FOR RESIDENTIAL PURPOSES.

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

SECTION 1. SHORT TITLE.--This act may be cited as the  
"Essential Services Development Act".

SECTION 2. DEFINITIONS.--As used in the Essential  
Services Development Act:

A. "broadband telecommunications network  
facilities" means the electronics, equipment, transmission  
facilities, fiber-optic cables and any other item directly  
related to a system capable of transmission of internet  
protocol or other formatted data at current federal  
communications commission baseline speed standard, all of  
which will be owned and used by a provider of internet access  
services;

B. "division" means the local government division  
of the department of finance and administration;

C. "essential services project" or "project" means  
an infrastructure project that allows access to internet,  
energy, water and wastewater services primarily for  
residential purposes;

1           D. "governing body" means the city council, city  
2 commission or board of trustees of a municipality or the  
3 board of county commissioners of a county;

4           E. "local government" means a municipality or  
5 county;

6           F. "municipality" means an incorporated city,  
7 town or village;

8           G. "person" means an individual, corporation,  
9 association, partnership or other legal entity;

10           H. "public support" means the provision of  
11 assistance by the state to provide direct or indirect  
12 assistance to support an essential services project,  
13 including for the provision of:

14                   (1) land, buildings or other infrastructure  
15 by purchase, lease, grant, construction, reconstruction,  
16 improvement or other acquisition or conveyance;

17                   (2) the placement of new broadband  
18 telecommunications network facilities; provided that the  
19 facilities shall not serve a public facility or location that  
20 already meets federal communications commission baseline  
21 speed standards;

22                   (3) rights-of-way infrastructure, including  
23 trenching and conduit, for the placement of new broadband  
24 telecommunications network facilities;

25                   (4) public works improvements essential to

1 the location or expansion of a qualifying entity;

2 (5) payments for professional services  
3 contracts necessary to implement an essential services plan  
4 or provide public support for an essential services project;

5 (6) direct loans or grants for land,  
6 buildings or infrastructure;

7 (7) loan guarantees securing the cost of  
8 land, buildings or infrastructure; and

9 (8) grants for public works infrastructure  
10 improvements; and

11 I. "regional government" means any combination of  
12 municipalities and counties that enter into a joint powers  
13 agreement to provide public support for economic development  
14 projects pursuant to a plan adopted by all parties to the  
15 joint powers agreement.

16 SECTION 3. PUBLIC SUPPORT SHALL BE SPECIFICALLY  
17 AUTHORIZED BY LAW.--Public support for an essential services  
18 project shall be specifically authorized by law. The law  
19 shall include provisions to safeguard public money and other  
20 resources, including allowing the division to recover money  
21 and other resources from a local or regional government if  
22 the essential services project is not completed to the  
23 satisfaction of the division or otherwise does not meet the  
24 requirements provided in the Essential Services Development  
25 Act.

1 SECTION 4. TECHNICAL ASSISTANCE FROM THE DIVISION.--

2 At the request of a local or regional government, the  
3 division shall provide technical assistance in the  
4 development of an essential services plan or project.

5 SECTION 5. ESSENTIAL SERVICES DEVELOPMENT PLAN--  
6 CONTENTS--PUBLICATION.--

7 A. Prior to receiving public support, a local or  
8 regional government seeking to pursue an essential services  
9 project shall adopt a development plan to implement the  
10 project. Any plan or plan amendment shall be adopted by  
11 ordinance of the governing body of the local government or  
12 each local government of a regional government proposing the  
13 plan or plan amendment.

14 B. The plan or the ordinance adopting the plan  
15 shall:

16 (1) describe the local or regional  
17 government's essential services development goals or  
18 strategies;

19 (2) describe the types of essential services  
20 projects that will qualify for public support under the plan;

21 (3) describe the criteria to be used to  
22 determine eligibility for public support for an essential  
23 services project;

24 (4) describe the manner in which a person or  
25 entity may submit an application for public support pursuant

1 to Section 7 of the Essential Services Development Act;

2 (5) describe the process the local or  
3 regional government will use to verify the information  
4 submitted on an application for public support;

5 (6) detail the need for the essential  
6 services projects contemplated in the plan and the benefit  
7 that the projects will bring to the local or regional  
8 government;

9 (7) describe the safeguards of public  
10 resources that will be ensured; and

11 (8) if a regional government, describe  
12 the joint powers agreement, including whether it can be  
13 terminated and, if so, how the contractual or other  
14 obligations, risks and any property will be assigned or  
15 divided among the local governments that are party to the  
16 agreement.

17 C. The plan shall be made available to the  
18 residents within the local or regional government area.

19 SECTION 6. REGIONAL PLANS--JOINT POWERS AGREEMENT--  
20 REGIONAL GOVERNMENT.--

21 A. Two or more municipalities, two or more  
22 counties or one or more municipalities and counties may enter  
23 into a joint powers agreement pursuant to the Joint Powers  
24 Agreements Act to develop a regional essential services  
25 development plan, which may consist of existing local plans.

1 The parties to the agreement shall be deemed a regional  
2 government for the purposes of the Essential Services  
3 Development Act.

4 B. The joint powers agreement shall provide for  
5 appointment of a project manager who shall be responsible for  
6 the management of projects and money from public support.

7 The agreement may provide for a regional body consisting of  
8 representatives from the governing bodies of each local  
9 government that is a party to the agreement and may determine  
10 the powers and duties of that body in implementing the  
11 regional government's plan and providing public support for  
12 essential services projects.

13 SECTION 7. APPLICATIONS FOR PUBLIC SUPPORT.--

14 A. After the adoption of an essential services  
15 development plan by a local or regional government, the local  
16 or regional government may begin accepting applications for  
17 public support of the local or regional government's  
18 essential services project. The application shall be on a  
19 form and in a manner as prescribed by the local or regional  
20 government.

21 B. The local or regional government shall review  
22 each application and any project determined to be eligible  
23 for public support shall be approved by ordinance.

24 C. The local or regional government's evaluation  
25 of an application shall be based on the provisions of the

1 essential services development plan and any other information  
2 the local or regional government believes is necessary for a  
3 full review of the application.

4 D. The local or regional government may negotiate  
5 with an applicant on the type or amount of public support to  
6 be provided or on the scope of the essential services  
7 project.

8 SECTION 8. DEPOSIT PUBLIC SUPPORT MONEY IN SPECIAL  
9 FUND.--

10 A. A regional or local government that receives  
11 money from public support for an essential services project  
12 shall create a special fund into which the money from the  
13 public support shall be deposited and shall be expended only  
14 for essential services project purposes. Separate accounts  
15 shall be established for each essential services project.

16 B. In the case of a regional government, money  
17 from public support may be expended only as provided by the  
18 regional government's essential services development plan and  
19 joint powers agreement.

20 SECTION 9. PLAN AND PROJECT TERMINATION--DEPOSIT OF  
21 UNEXPENDED FUNDS IN GENERAL FUND.--

22 A. At any time after approval of an essential  
23 services development plan, the governing body of the local  
24 government or the governing body of each local government in  
25 a regional government may enact an ordinance terminating the

1 plan and dissolving or terminating any public support for  
2 essential services projects.

3 B. Any unexpended and unencumbered balance  
4 remaining in a local or regional government's special fund or  
5 account upon repeal of an essential services plan and  
6 termination of public support for or dissolution of a project  
7 shall be returned to the state treasurer, who shall deposit  
8 the returned amount in the general fund.

9 SECTION 10. STATE PARTICIPATION IN ESSENTIAL SERVICES  
10 PROJECTS--PROJECT PARTICIPATION AGREEMENT--DUTIES AND  
11 REQUIREMENTS.--

12 A. If public support is provided for an essential  
13 services project, the division shall enter into a project  
14 participation agreement with the local or regional government  
15 pursuant to this section.

16 B. A project participation agreement shall set  
17 out, at a minimum:

18 (1) a description of the public support to  
19 be provided for the essential services project;

20 (2) a schedule for project development and  
21 completion, including measurable goals and time limits for  
22 those goals;

23 (3) provisions for performance review and  
24 actions to be taken upon a determination that project  
25 performance is unsatisfactory; and

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(4) a description of how the local or regional government will safeguard public money or other resources provided as public support for the essential services project.

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