

HOUSE BILL 267

**49TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2010**

INTRODUCED BY

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AN ACT

RELATING TO CAPITAL OUTLAY; PROVIDING A TRIGGER FOR AUTOMATIC  
CHANGES OF PURPOSE FOR INACTIVE CAPITAL OUTLAY FUNDING  
APPROPRIATED FOR PROJECTS DESIGNATED FOR TRIBAL COMMUNITIES TO  
VIABLE PROJECTS.

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

Section 1. Section 6-28-1 NMSA 1978 (being Laws 2006,  
Chapter 105, Section 1) is amended to read:

"6-28-1. LEGISLATIVE FINDINGS AND PURPOSE.--

A. The legislature finds that many residents of  
this state living within Indian country are impoverished and  
are involuntarily living without electric service, indoor  
plumbing, adequate potable water, telecommunications or related  
infrastructure due to federal government policies over the  
decades. This finding is based upon federal decennial census

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1 data showing that Native Americans living in Indian country  
2 have a long history of income below federal poverty levels and  
3 a lack of basic domestic amenities. Living under such adverse  
4 circumstances has a negative impact on the education of  
5 children at the elementary and secondary school levels and on  
6 the health and welfare of Native Americans in general.

7 B. Since the nineteenth century, the federal  
8 government has assumed a trust responsibility for Native  
9 Americans, but since New Mexico attained statehood, it has had  
10 a responsibility for its [~~Native American~~] residents, including  
11 Native Americans.

12 C. The legislature finds it is the policy of the  
13 state of New Mexico to improve the basic quality of life of  
14 residents within Indian country through the use of any means  
15 available.

16 D. The purpose of this act is in part to enable the  
17 state, in compliance with the provisions of the constitution of  
18 New Mexico, to provide financial and other assistance to  
19 residents within Indian country so that they may be served by  
20 basic residential services such as electric service, indoor  
21 plumbing, sewer, adequate potable water, telecommunications and  
22 related infrastructure.

23 E. The state has developed government-to-government  
24 relationships and agreements with the twenty-two Indian  
25 nations, tribes and pueblos with members living on the tribes'

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1 trust lands or pueblo grants in New Mexico regarding education  
2 and other topics. To better provide services to Native  
3 Americans, many state agencies have designated divisions or  
4 liaisons to work with the nations, tribes and pueblos.

5 F. The state has worked with Indian nations, tribes  
6 and pueblos, of which the Navajo Nation is the largest tribal  
7 government, and the state recognizes that the Navajo Nation is  
8 divided into political subdivisions designated as chapters.

9 G. Due to federal, state and tribal policies  
10 related to the implementation of capital outlay and other  
11 projects, delays in implementation due to bureaucratic [~~red~~  
12 ~~tape~~] procedures and barriers have resulted in the reversion of  
13 millions of dollars in capital outlay funds designated for  
14 projects in Indian country.

15 H. Tribal governments and their subdivisions have,  
16 through the years, organized nonprofit entities to assist in  
17 the provision of education and other basic services."

18 Section 2. A new section of Chapter 6, Article 28 NMSA  
19 1978 is enacted to read:

20 "[NEW MATERIAL] DEFINITIONS.--As used in Chapter 6,  
21 Article 28 NMSA 1978:

22 A. "capital outlay funding" means state funds,  
23 either general fund or severance tax bond funds, appropriated  
24 to complete a specified project in a capital outlay  
25 appropriation bill;

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1           B. "capital outlay project" means a project for  
2 which capital outlay funding has been appropriated;

3           C. "fiscal agent" means the state agency to which  
4 capital outlay funding has been appropriated to complete a  
5 project in a tribal community;

6           D. "local tribal entity" means a subdivision or  
7 other legal entity created by a tribe;

8           E. "Navajo Nation tribal entity" means a chapter or  
9 nonprofit entity authorized or created by the Navajo Nation;

10          F. "tribal community" means the community created  
11 by the presence of a tribe;

12          G. "tribal government administrator" means an  
13 entity of a tribe that has the authority to enter into  
14 contracts, approve the work completed on a capital outlay  
15 project, pay invoices, negotiate with the state and has the  
16 human and financial resources to implement a capital outlay  
17 project; and

18          H. "tribe" means a federally recognized Indian  
19 nation, tribe or pueblo located wholly or partially in New  
20 Mexico."

21           Section 3. Section 6-28-2 NMSA 1978 (being Laws 2006,  
22 Chapter 105, Section 2) is amended to read:

23           "6-28-2. [~~FISCAL AGENTS FOR~~] NAVAJO NATION PROJECTS--  
24 ADDITIONAL FINDINGS--TRIBAL GOVERNMENT ADMINISTRATOR.--

25           A. The state recognizes [~~the chapters of the Navajo~~  
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1 ~~Nation as local~~] that Navajo Nation tribal entities [~~having~~  
2 may have the capability and capacity to apply for and implement  
3 capital improvement projects. The state also recognizes [~~as~~  
4 ~~local~~] that Navajo Nation tribal entities [~~those~~] that are  
5 nonprofit entities, organized [~~under the supervision of tribal~~  
6 ~~governments~~] by the Navajo Nation, whose mission or objective  
7 is to provide education and other basic services [~~and who~~] may  
8 apply for and implement capital improvement projects.

9 [Therefore]

10 B. The state may contract through a [~~fiscal agent~~]  
11 Navajo Nation tribal entity other than the Navajo Nation tribal  
12 government for the expenditure of state funds on behalf of  
13 [~~local~~] Navajo Nation tribal entities [~~of the Navajo Nation~~].

14 C. Unless otherwise negotiated, an administrative  
15 fee of no more than five percent of a project's cost may be  
16 charged by the entity that serves as [~~fiscal agent~~] a tribal  
17 government administrator for a project to be located within the  
18 Navajo Nation or on land under the control of the Navajo Nation  
19 or a Navajo Nation tribal entity."

20 Section 4. A new section of Chapter 6, Article 28 NMSA  
21 1978 is enacted to read:

22 "[NEW MATERIAL] AUTOMATIC CHANGE OF PURPOSE--CAPITAL  
23 OUTLAY FUNDING FOR INACTIVE CAPITAL OUTLAY PROJECTS  
24 APPROPRIATED FOR USE IN TRIBAL COMMUNITIES MOVED TO VIABLE  
25 CAPITAL OUTLAY PROJECTS.--

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1           A. Capital outlay funding appropriated for a  
2 capital outlay project located within a tribal community shall  
3 be reviewed by the fiscal agent for viability, in consultation  
4 with the appropriate officials of the tribal community, if,  
5 within eighteen months following the effective date of the  
6 appropriation of that capital outlay funding, agreements or  
7 third party contracts to begin work on the capital outlay  
8 project have not been executed or necessary tribal government  
9 approvals have not been obtained.

10           B. To determine if a capital outlay project is  
11 viable, a fiscal agent shall determine if the capital outlay  
12 project:

13                   (1) is adequately funded to ensure completion  
14 of the capital outlay project once started;

15                   (2) has sufficient tribal community support so  
16 that the requisite approvals can be obtained, allowing all  
17 contracts to be completed and performance to begin within the  
18 six months remaining before the end of the second year  
19 following the effective date of the appropriation;

20                   (3) has support from the governmental body and  
21 agencies that are required to approve the capital outlay  
22 project and that the approval is imminent, allowing the capital  
23 outlay project to proceed within the six months remaining in  
24 the second year following the effective date of the  
25 appropriation;

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1 (4) planning is under way to the extent that  
2 contractors have been consulted and are ready to enter into  
3 contracts to perform as required by the capital outlay project;  
4 and

5 (5) can begin expenditures of money no later  
6 than the last day of the second year following the effective  
7 date of the appropriation.

8 C. If the fiscal agent determines that any one of  
9 the requirements noted in Subsection B of this section fails to  
10 be met, the fiscal agent shall notify the department of finance  
11 and administration that the capital outlay project as funded  
12 cannot be expended for the purpose for which the appropriation  
13 was intended and the process set forth in this section, to be  
14 referred to as an "automatic change of purpose", is to be  
15 implemented.

16 D. An automatic change of purpose shall be  
17 implemented as follows:

18 (1) the fiscal agent, after notifying the  
19 department of finance and administration that a specific  
20 capital outlay appropriation cannot be expended for the purpose  
21 for which the appropriation was intended, shall notify the  
22 tribal community in which the capital outlay project is to be  
23 completed that an automatic change of purpose is required to be  
24 completed for the funds appropriated to be expended;

25 (2) the fiscal agent and the tribal community,

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1 after consultation with the legislator who requested the  
2 appropriation that cannot be expended, shall determine if there  
3 is another capital outlay project within the tribal community  
4 for which the funding can be used that is appropriate for  
5 capital outlay funding, can receive approvals needed, can have  
6 contracts entered into and expenditures begun before the end of  
7 the second year following the effective date of the  
8 appropriation and requires the amount of funding available from  
9 the appropriation;

10 (3) if no capital outlay project within the  
11 tribal community can be identified, the fiscal agent shall  
12 confer with the legislator who requested the appropriation and  
13 determine if the purpose for which the capital outlay funding  
14 was appropriated can be changed to another purpose within the  
15 legislator's district that will meet the criteria of a viable  
16 capital outlay project; and

17 (4) if, in the case of a capital outlay  
18 project located in a community of the Navajo Nation, no capital  
19 outlay project within the legislative district can be found  
20 that can absorb the funding from the appropriation within the  
21 time allotted, the fiscal agent, legislator and tribal  
22 government shall identify another capital outlay project within  
23 the Navajo Nation's tribal land in New Mexico to which the  
24 money may be shifted and expended within the time constraints  
25 of this section.

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1           E. Once an automatic change of purpose has been  
2 initiated pursuant to this section, the department of finance  
3 and administration shall be notified of the new purpose. A  
4 request to change the purpose through the reauthorization of  
5 capital outlay projects process shall be submitted by the  
6 fiscal agent to the legislative council service on behalf of  
7 the legislator who obtained the capital outlay funding for  
8 inclusion in the next reauthorization bill.

9           F. An automatic change of purpose shall not be used  
10 if it can be shown that the capital outlay project is viable,  
11 has received the appropriate tribal governmental approvals,  
12 but is awaiting additional funding from a guaranteed source,  
13 such as the federal government or a grant, and that the  
14 approval of those funds is certain and imminent. In such a  
15 case, the capital outlay project may be allowed an additional  
16 twelve months maximum before it is again reviewed for viability  
17 or an extension of time to complete the capital outlay project  
18 and use the funds is requested."

19           Section 5. Section 6-28-6 NMSA 1978 (being Laws 2006,  
20 Chapter 105, Section 6) is amended to read:

21           "6-28-6. TRIBAL INFRASTRUCTURE ACT--AUGMENT  
22 IMPLEMENTATION--The provisions of [~~this act~~] Chapter 6,  
23 Article 28 NMSA 1978 also may be used to implement the  
24 provisions of the Tribal Infrastructure Act."

25           Section 6. EFFECTIVE DATE.--The effective date of the  
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1 provisions of this act is July 1, 2010.

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