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SENATE BILL 251

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

INTRODUCED BY

Lynda M. Lovejoy

AN ACT

RELATING TO CAPITAL OUTLAY; AUTHORIZING CHANGES IN PURPOSE FOR FUNDING FOR CAPITAL OUTLAY PROJECTS TO BE LOCATED ON TRIBAL LAND FOR PROJECTS IDENTIFIED BY THE TRIBAL INFRASTRUCTURE BOARD THAT CANNOT BE COMPLETED; PROVIDING PROCEDURES FOR CHANGES IN PURPOSE.

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

Section 1. Section 6-29-1 NMSA 1978 (being Laws 2005, Chapter 146, Section 1) is amended to read:

"6-29-1. SHORT TITLE.--~~[This act]~~ Chapter 6, Article 29 NMSA 1978 may be cited as the "Tribal Infrastructure Act"."

Section 2. Section 6-29-2 NMSA 1978 (being Laws 2005, Chapter 146, Section 2) is amended to read:

"6-29-2. FINDINGS AND PURPOSE.--

A. The legislature finds that:

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1 (1) tribes lack basic infrastructure resulting
2 in poor social, health and economic conditions of tribal
3 communities and that money appropriated for capital outlay
4 projects is essential to remedy the deficit in infrastructure
5 in tribal communities;

6 (2) adequate infrastructure such as water and
7 wastewater systems, major water systems, electrical power
8 lines, communications, roads, health and emergency response
9 facilities and infrastructure needed for economic development
10 are essential to improved health, safety and welfare of all New
11 Mexicans, including residents of tribal communities;

12 (3) local tribal efforts and resources have
13 been insufficient to develop and maintain a consistent and
14 adequate level of infrastructure in tribal communities;

15 (4) addressing the urgent need of replacing,
16 improving and developing tribal infrastructure through the use
17 of an alternative financing mechanism is a long-term cost
18 savings benefit to both the state and the tribes; and

19 (5) adequate infrastructure development on
20 tribal land will allow tribal members to achieve the basic
21 conditions necessary to improve the quality of their lives.

22 B. The purposes of the Tribal Infrastructure Act
23 are to:

24 (1) ensure adequate financial resources for
25 infrastructure development for tribal communities;

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1 (2) provide for the planning and development
2 of infrastructure in an efficient and cost-effective manner;
3 [~~and~~]

4 (3) develop infrastructure in tribal
5 communities to improve the quality of life and encourage
6 economic development; and

7 (4) provide a mechanism for expeditious
8 expenditure of capital outlay funds appropriated for projects
9 in tribal communities and enhanced oversight of the process to
10 ensure expenditure of capital outlay funds by tribes or their
11 agencies or subdivisions."

12 Section 3. Section 6-29-3 NMSA 1978 (being Laws 2005,
13 Chapter 146, Section 3) is amended to read:

14 "6-29-3. DEFINITIONS.--As used in the Tribal
15 Infrastructure Act:

16 A. "board" means the tribal infrastructure board;

17 B. "capital outlay funding" means state money
18 appropriated to complete a specified project in a capital
19 outlay appropriation bill;

20 C. "capital outlay project" means the acquisition,
21 improvement, alteration or reconstruction of assets of a
22 long-term character that are intended to continue to be held or
23 used, including land, buildings, machinery, furniture and
24 equipment. "Capital outlay project" includes all proposed
25 expenditures related to the entire undertaking;

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1 ~~[B-]~~ D. "department" means the Indian affairs
2 department;

3 ~~[G-]~~ E. "financial assistance" means providing
4 grants or loans on terms and conditions approved by the board;

5 ~~[D-]~~ F. "governor" means the governor of New
6 Mexico;

7 ~~[E-]~~ G. "project fund" means the tribal
8 infrastructure project fund;

9 ~~[F-]~~ H. "qualified project" means a tribal
10 infrastructure project selected by the board for financial
11 assistance pursuant to the Tribal Infrastructure Act;

12 I. "recipient community" means a tribal community
13 in which a state-funded capital outlay project is to be
14 located;

15 J. "tribal community" means a community located in
16 New Mexico within the exterior boundaries of a tribe;

17 ~~[G-]~~ K. "tribe" means a federally recognized Indian
18 nation, tribe or pueblo located wholly or partially in New
19 Mexico or any of its governmental entities or subdivisions; and

20 ~~[H-]~~ L. "trust fund" means the tribal
21 infrastructure trust fund."

22 Section 4. Section 6-29-5 NMSA 1978 (being Laws 2005,
23 Chapter 146, Section 5) is amended to read:

24 "6-29-5. BOARD--DUTIES.--The board shall:

25 A. adopt rules governing terms, conditions and

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1 priorities for providing financial assistance to tribes,
2 including developing application and evaluation procedures and
3 forms and qualifications for applicants and for projects;

4 B. provide financial assistance to tribes for
5 qualified projects on terms and conditions established by the
6 board;

7 C. authorize funding for qualified projects,
8 including:

9 (1) planning, designing, constructing,
10 improving, expanding or equipping water and wastewater
11 facilities, major water systems, electrical power lines,
12 communications infrastructure, roads, health infrastructure,
13 emergency response facilities and infrastructure needed to
14 encourage economic development;

15 (2) developing engineering feasibility reports
16 for infrastructure projects;

17 (3) inspecting construction of qualified
18 projects;

19 (4) providing special engineering services;

20 (5) completing environmental assessments or
21 archaeological clearances and other surveys for infrastructure
22 projects;

23 (6) acquiring land, easements or rights of
24 way; and

25 (7) paying legal costs and fiscal agent fees

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1 associated with development of qualified projects; and

2 D. oversee the expenditure of appropriations for
3 capital outlay projects in tribal communities for which state
4 money is appropriated to:

5 (1) ensure that the process to expend the
6 appropriations moves to completion in an expeditious manner;

7 (2) assess the obstacles to completion of the
8 project and take action to remove the obstacles or otherwise
9 address problems that arise to impede the progress of a capital
10 outlay project;

11 (3) identify, within fifteen months following
12 the appropriation of funding for a capital outlay project for a
13 tribal community, capital outlay projects that cannot be
14 completed and engage in consultation with the recipient
15 community officials and the legislative sponsor to determine if
16 there is an alternative project within the community to which
17 the capital outlay funding can be redirected, or if the board
18 fails to identify an alternative project within the recipient
19 community, identify in consultation with the legislative
20 sponsor a project in another tribal community within the
21 district of the legislator appropriating the capital outlay
22 funding to which the funds may be redirected; and

23 (4) take all action necessary to ensure
24 reauthorization of any capital outlay project that requires a
25 change of purpose or other change from the original

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1 appropriation parameters."

2 Section 5. Section 6-29-7 NMSA 1978 (being Laws 2005,
3 Chapter 146, Section 7) is amended to read:

4 "6-29-7. TRIBAL INFRASTRUCTURE PROJECT FUND--
5 CREATED--PURPOSE--APPROPRIATIONS.--

6 A. The "tribal infrastructure project fund" is
7 created in the state treasury and:

8 (1) the department of finance and
9 administration shall administer the project fund;

10 (2) the project fund shall consist of:

11 (a) distributions made to it from the
12 trust fund;

13 (b) payments of principal and interest
14 on loans for qualified projects;

15 (c) other money appropriated by the
16 legislature or distributed or otherwise allocated to the
17 project fund for the purpose of supporting qualified projects;

18 [~~and~~]

19 (d) income from investment of the money
20 in the project fund that shall be credited to the project fund;

21 and

22 (e) money appropriated for specific
23 capital outlay projects in tribal communities;

24 (3) balances in the project fund at the end of
25 a fiscal year shall not revert to the trust fund or to the

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1 general fund; and

2 (4) the project fund may consist of
3 subaccounts as determined to be necessary by the department of
4 finance and administration.

5 B. The department of finance and administration may
6 establish procedures and adopt rules as required to administer
7 the project fund and to originate grants or loans for qualified
8 projects approved by the board.

9 C. Beginning in fiscal year 2006 and in subsequent
10 years, the lesser of one percent of the project fund or one
11 hundred thousand dollars (\$100,000) is appropriated from the
12 project fund to the department of finance and administration
13 for expenditure in the fiscal year in which it is appropriated,
14 to administer the project fund. Any unexpended or unencumbered
15 balance remaining at the end of any fiscal year shall revert to
16 the project fund.

17 D. Beginning in fiscal year 2006 and in each
18 subsequent year, the lesser of five percent of the project fund
19 or five hundred thousand dollars (\$500,000) is appropriated
20 from the project fund to the Indian affairs department for
21 expenditure in the fiscal year in which it is appropriated to
22 administer the Tribal Infrastructure Act, to pay per diem and
23 mileage as required by that act and for operation of the board.
24 Any unexpended or unencumbered balance remaining at the end of
25 any fiscal year shall revert to the project fund.

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1 E. The balance in the project fund not otherwise
2 appropriated in this section is appropriated to the department
3 of finance and administration for expenditure in fiscal year
4 2006 and in subsequent fiscal years to carry out the provisions
5 of the Tribal Infrastructure Act by providing grants or loans
6 for qualified projects. Any unexpended or unencumbered balance
7 remaining at the end of a fiscal year shall revert to the
8 project fund."

9 Section 6. Section 6-29-9 NMSA 1978 (being Laws 2008,
10 Chapter 81, Section 3) is amended to read:

11 "6-29-9. TRIBAL CAPITAL OUTLAY REVERSIONS.--

12 A. The unexpended balances of a capital outlay
13 appropriation made after January 1, 2007 from the general fund
14 to the department or to the aging and long-term services
15 department for projects located on lands of an Indian nation,
16 tribe or pueblo shall revert to the project fund.

17 B. Notwithstanding any other law to the contrary,
18 the unexpended balances of appropriations made before January
19 1, 2010 for capital outlay projects in tribal communities that
20 are not encumbered by third-party contracts or other legally
21 binding obligations are reauthorized and appropriated to the
22 tribal infrastructure board to be administered pursuant to the
23 Tribal Infrastructure Act.

24 ~~[B.]~~ C. For the purpose of this section,
25 "unexpended balance" means the remainder of an appropriation

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1 after reserving for unpaid costs and expenses covered by
2 binding written obligations to third parties."

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