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SENATE BILL 181

**44TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION,
2000**

INTRODUCED BY

Pauline B. Eisenstadt

AN ACT

RELATING TO TELECOMMUNICATIONS; CREATING A TELECOMMUNICATIONS
INFRASTRUCTURE FUND; MAKING AN APPROPRIATION.

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

Section 1. SHORT TITLE.--This act may be cited as the
"Telecommunications Infrastructure Fund Act".

Section 2. LEGISLATIVE FINDINGS AND STATEMENT OF
PURPOSE.--

A. The development of the telecommunications
infrastructure needs of local communities, school districts,
educational institutions and health care institutions,
including the need for facilities and equipment necessary for
high-speed data transmission, is a prerequisite to economic
development, distance learning and telemedicine in all areas
of the state. Local communities cannot finance these
infrastructure needs alone because of inadequate bonding

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1 capacity, lag time between development and the generation of
2 revenue and the dependency of economic development on
3 adequate infrastructure. Private telecommunications
4 providers have often been unwilling to provide such
5 infrastructure because the projected return on investment in
6 the infrastructure does not justify the cost over the short
7 term.

8 B. The legislature finds that, to aid local
9 communities in providing telecommunications infrastructure,
10 an assistance program is needed. The commission should
11 review proposals submitted by state political subdivisions to
12 allocate funding from several sources, including severance
13 tax bonds as approved and issued by the state board of
14 finance, community development block grants from the federal
15 government, proceeds from the private use of state and local
16 telecommunications facilities and such other sources of
17 funding as the legislature may specify from time to time, for
18 financing needed projects for local community
19 telecommunications infrastructure development.

20 Section 3. DEFINITIONS.--As used in the
21 Telecommunications Infrastructure Fund Act:

22 A. "commission" means the public regulation
23 commission;

24 B. "community assistance program" means a program
25 to assist political subdivisions with telecommunications
infrastructure development, including:

- (1) a grant or loan of funds to political

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1 subdivisions;

2 (2) gathering data about political
3 subdivisions that may include but is not limited to
4 information concerning telecommunications usage and projected
5 demand;

6 (3) providing technical assistance to
7 analyze the needs and seek solutions to problems related to
8 telecommunications infrastructure development in political
9 subdivisions; and

10 (4) providing technical assistance in
11 seeking funds from sources other than the commission;

12 C. "fund" means the telecommunications
13 infrastructure fund;

14 D. "political subdivision" means any county;
15 incorporated city, town or village; school district;
16 educational institution; or county hospital; and

17 E. "project" means, except as limited by the
18 constitution of New Mexico, the purchase, construction,
19 installation, lease, gift, grant, reconstruction,
20 improvement, option to purchase or other acquisition of
21 telecommunications equipment and facilities by a political
22 subdivision, including publicly owned poles, towers, wire,
23 cable, conduit, switches, antennae, generators, computer
24 hardware and software and all necessary real and personal
25 property therefor.

Section 4. FUND CREATED--ADMINISTRATION.--

A. There is created in the state treasury the

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1 "telecommunications infrastructure fund", which shall be
2 administered by the commission and operated as a separate
3 account. The commission is authorized to establish
4 procedures and adopt rules as required to administer the
5 fund. The commission shall, whenever possible, coordinate
6 application procedures and funding cycles in accordance with
7 the New Mexico Community Assistance Act.

8 B. The following shall be deposited directly in
9 the fund:

10 (1) grants from the federal government or
11 its agencies allotted to the state for capitalization of the
12 fund;

13 (2) money appropriated by the
14 legislature to implement the provisions of the
15 Telecommunications Infrastructure Fund Act;

16 (3) that portion of the net proceeds from
17 the disposition or private use of facilities or equipment
18 funded by a grant under the Telecommunications Infrastructure
19 Fund Act required to be deposited in the fund;

20 (4) the net proceeds, after the payment or
21 provision for the allocable share of operating expenses, of
22 private use of any telecommunications facilities or equipment
23 owned by the state; and

24 (5) any other public or private money
25 dedicated to the fund.

C. Money in the fund is appropriated for
expenditure by the commission as grants made pursuant to the
terms and conditions of the Telecommunications Infrastructure

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1 Fund Act.

2 D. Pursuant to rules adopted by the commission,
3 the commission may impose and collect a fee from each
4 political subdivision that receives a grant from the fund,
5 which fee shall be used solely for the costs of administering
6 the fund.

7 E. Money not currently needed for the operation of
8 the fund or otherwise dedicated may be invested according to
9 the provisions of Chapter 6, Article 10 NMSA 1978, and all
10 interest earned on such investments shall be credited to the
11 fund. Money remaining in the fund at the end of any fiscal
12 year shall not revert to the general fund but shall accrue to
13 the credit of the fund.

14 F. The commission shall establish fiscal controls
15 and accounting procedures that are sufficient to ensure
16 proper accounting for fund payments, disbursements and
17 balances and shall provide an annual report and an annual
18 independent audit on the fund to the governor and the
19 legislature.

20 Section 5. RULES.--

21 A. The commission, after public hearing, shall
22 adopt rules to provide for:

23 (1) procedures and forms for making grants
24 under the Telecommunications Infrastructure Fund Act;

25 (2) documentation to be provided by the
proposed grantee to justify the need for the community
assistance program;

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1 (3) procedures for review, evaluation and
2 approval of grants;

3 (4) procedures for reporting by the grantee
4 of programmatic, organizational and financial information
5 necessary for the review, evaluation and approval of a
6 proposed or existing grant;

7 (5) a guide for the evaluation of the
8 ability and competence of a proposed or existing grantee or
9 its agent to efficiently and adequately provide for the
10 completion and management of the project;

11 (6) procedures to control the number of
12 applications from each political subdivision; and

13 (7) such other requirements deemed necessary
14 by the commission to ensure that the state receives the
15 services for which the legislature appropriates money.

16 B. Rules adopted by the commission shall become
17 effective when filed according to the provisions of the State
18 Rules Act.

19 Section 6. POWERS OF THE COMMISSION.--In addition to
20 its other powers, the commission shall have all the powers
21 necessary to carry out the purposes and provisions of the
22 Telecommunications Infrastructure Fund Act, including the
23 power to:

24 A. develop and oversee the administration of
25 community assistance programs;

B. adopt, amend and repeal, in accordance with the
provisions of the State Rules Act, all rules necessary to

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1 administer and enforce the provisions of the
2 Telecommunications Infrastructure Fund Act;

3 C. apply to any appropriate agency of the United
4 States for participation in and for receipt of aid from any
5 program designed to assist local community telecommunications
6 infrastructure development;

7 D. oversee the administration of federal and other
8 funds that are received, controlled or disbursed to carry out
9 the purposes of a community assistance program;

10 E. coordinate and mobilize assistance and funding
11 resources for the construction, extension or repair of
12 projects;

13 F. coordinate with, assist and seek input from
14 political subdivisions, community organizations and civic
15 groups;

16 G. make and enter into all contracts and
17 agreements necessary or incidental to its duties and the
18 execution of its powers under the Telecommunications
19 Infrastructure Fund Act;

20 H. do any and all things necessary or convenient
21 to carry out its purposes and exercise the powers granted the
22 commission in the Telecommunications Infrastructure Fund Act;
23 and

24 I. disburse and oversee the administration of any
25 other funds appropriated to the commission in connection with
community assistance programs or as directed by the
legislature.

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Section 7. COMMUNITY ASSISTANCE APPLICATION
REQUIREMENTS.--
A. A political subdivision desiring a grant of
funds from the commission shall file an application for a
grant of funds with the commission that shall contain at
least the following:
(1) a general description of the proposed
project, the telecommunications needs to be served by the
proposed project and of related existing facilities, if any;
(2) a general description of all real
estate, if any, necessary for the proposed project;
(3) preliminary plans and other documents
necessary to show the type, structure and general character
of the proposed project;
(4) an estimate of costs of the proposed
project;
(5) a general description of the efforts
made by the political subdivision to cause the facilities or
equipment involved in the proposed project or their
functional equivalent to be provided by private parties;
(6) a general description of the terms of
any proposed lease of the facilities or equipment involved in
a proposed project or of the management of the facilities or
equipment by a private party and a projection of any expected
associated costs or revenues;
(7) a general description and statement of
value of any property, real or personal, of the political

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1 subdivision applied or to be applied to the proposed project;

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3 (8) a statement of cash funds previously
4 applied, or currently held by or on behalf of the political
5 subdivision, that are available for and are to be applied to
6 the proposed project;

7 (9) evidence of the arrangement made by the
8 political subdivision for the financing of all costs of the
9 proposed project in excess of the requested assistance from
10 the commission;

11 (10) evidence that the political subdivision
12 or its agent has the organizational and technical competence
13 to utilize the requested funds efficiently; and

14 (11) evidence that the political subdivision
15 or its agent can properly operate and maintain the proposed
16 project.

17 B. In deciding whether or not to approve
18 assistance funds, the commission shall consider:

19 (1) the health, safety and convenience of
20 those to be served by the proposed project;

21 (2) the availability of other means of
22 providing for the proposed project or its functional
23 equivalent or of otherwise meeting the needs the proposed
24 project is expected to address;

25 (3) the needs of other political
subdivisions for telecommunications infrastructure
development funding;

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1 (4) the extent to which the proposed project
2 involves innovative use of telecommunications technology;

3 (5) the extent to which the proposed project
4 would provide improved connectivity among telecommunications
5 carriers;

6 (6) the extent to which the proposed project
7 would provide improved connectivity among communities;

8 (7) the extent to which the proposed project
9 would stimulate demand for advanced telecommunications
10 services;

11 (8) the extent to which the proposed project
12 is likely to generate significant gains in economic
13 development, health care, education or public services; and

14 (9) other sources of funds available to the
15 political subdivision to fund the proposed project.

16 C. All approved action shall be by vote of a
17 majority of the members of the commission.

18 D. The commission shall, upon a decision to grant
19 assistance funds to a political subdivision, notify all
20 appropriate state agencies of the project and request that
21 they monitor it to ensure that all statutes, rules and
22 regulations are complied with and that appropriate standards
23 are maintained.

24 Section 8. OWNERSHIP.--Upon completion of the project,
25 ownership of the related facilities, equipment and other real
and personal property, if acquired, constructed or installed
with proceeds of a grant under the Telecommunications

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1 Infrastructure Fund Act, shall reside with the political
2 subdivision that undertook the project.

3 Section 9. FACILITIES' PROCEEDS.--One-half of the net
4 proceeds of any disposition, by lease, sale or otherwise, or
5 private use of any facilities or equipment funded by a grant
6 under the Telecommunications Infrastructure Fund Act shall be
7 paid to the commission by the political subdivision that owns
8 the facilities or equipment for deposit in the fund within
9 thirty days after receipt by the political subdivision. Net
10 proceeds of a lease or sale are the gross proceeds less any
11 expenses incurred by the political subdivision in connection
12 with such sale or lease. Net proceeds of private use are the
13 gross proceeds less any operating expenses incurred by the
14 political subdivision. The remaining proceeds of any
15 disposition or private use may be used by the political
16 subdivision for any lawful purpose.

17 Section 10. ASSISTANCE BY STATE AGENCIES.--

18 A. Upon request of the commission, a state agency
19 is authorized and empowered to temporarily assign to the
20 commission such officers and employees as it may deem
21 necessary from time to time to assist the commission in
22 carrying out its functions and duties under the
23 Telecommunications Infrastructure Fund Act. The officers and
24 employees so assigned shall not lose their status or rights
25 as public employees.

B. Upon request of the commission, any state
agency, or officer or employee thereof, is authorized and

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1 empowered to lend technical assistance, render advice and
2 attend meetings with members and employees of the commission
3 as the commission may require in carrying out its functions
4 and duties under the Telecommunications Infrastructure Fund
5 Act.

6 Section 11. APPROPRIATION.--Ten million dollars
7 (\$10,000,000) is appropriated from the general fund to the
8 telecommunications infrastructure fund for expenditure in
9 fiscal year 2001 and subsequent fiscal years to implement the
10 provisions of the Telecommunications Infrastructure Fund Act.
11 Any unexpended or unencumbered balance remaining at the end
12 of a fiscal year shall not revert to the general fund.