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HOUSE BILL 534

45TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2001

INTRODUCED BY

Joe M Stell

AN ACT

**RELATING TO WATER; ENACTING THE WATER PROJECT FINANCE ACT;
PROVIDING FOR THE FUNDING OF WATER PROJECTS; CREATING A BOARD;
CREATING THE WATER TRUST FUND AND THE WATER PROJECT FUND;
MAKING APPROPRIATIONS; DECLARING AN EMERGENCY.**

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

**Section 1. SHORT TITLE. -- This act may be cited as the
"Water Project Finance Act".**

Section 2. FINDINGS AND PURPOSE. --

A. The legislature finds that:

**(1) New Mexico is in a desert where water is
a scarce resource;**

**(2) the economy depends on reasonable and
fair allocation of water for all purposes;**

(3) the public welfare depends on efficient

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1 use and conservation of water;

2 (4) New Mexico must comply with its delivery
3 obligations under interstate compacts; and

4 (5) public confidence and support for water
5 use efficiency and conservation is based on a reasonable
6 balance of investments in water infrastructure and management.

7 B. The purpose of the Water Project Finance Act is
8 to provide for water use efficiency, resource conservation and
9 protection and fair distribution and allocation of the scarce
10 resource to all users.

11 Section 3. DEFINITIONS. -- As used in the Water Project
12 Finance Act:

13 A. "authority" means the New Mexico finance
14 authority;

15 B. "board" means the water trust board;

16 C. "political subdivision" means a municipality,
17 county, irrigation district, conservancy district, special
18 district, acequia or soil and water conservation district; and

19 D. "qualifying water project" means a project
20 authorized by the board for funding by the authority.

21 Section 4. WATER TRUST BOARD CREATED. --

22 A. The "water trust board" is created. The board
23 is composed of the following twelve members or their
24 designees:

25 (1) the state engineer or his designee, who

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1 shall be the chairman of the board;

2 (2) the executive director of the New Mexico
3 finance authority;

4 (3) the secretary of environment or his
5 designee;

6 (4) the secretary of energy, minerals and
7 natural resources or his designee;

8 (5) the director of the game and fish
9 department or his designee;

10 (6) the director of the New Mexico department
11 of agriculture or his designee;

12 (7) the executive director of the New Mexico
13 municipal league or his designee;

14 (8) the executive director of the New Mexico
15 association of counties or his designee; and

16 (9) four public members appointed by the
17 governor and confirmed by the senate and who represent:

18 (a) the environmental community;

19 (b) an irrigation or conservancy
20 district that uses surface water;

21 (c) an irrigation or conservancy
22 district that uses ground water; and

23 (d) acequia water users.

24 B. The board shall meet at the call of the
25 chairman or whenever three members submit a request in writing

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1 to the chairman, but not less often than once each calendar
2 year. A majority of members constitutes a quorum for the
3 transaction of business. The affirmative vote of at least a
4 majority of a quorum present shall be necessary for an action
5 to be taken by the board.

6 C. Each public member of the board shall be
7 appointed to a four-year term. To provide for staggered
8 terms, two of the initially appointed public members shall be
9 appointed for terms of two years and two members for terms of
10 four years. Thereafter, all members shall be appointed for
11 four-year terms. Vacancies shall be filled by appointment by
12 the governor for the remainder of the unexpired term.

13 D. Public members of the board shall be reimbursed
14 for attending meetings of the board as provided for
15 nonsalaried public officers in the Per Diem and Mileage Act
16 and shall receive no other compensation, perquisite or
17 allowance.

18 E. Public members of the board are appointed
19 public officials of the state while carrying out their duties
20 and activities under the Water Project Finance Act.

21 Section 5. BOARD--DUTIES.--The board shall:

22 A. adopt rules governing terms and conditions of
23 grants or loans made from the water project fund, giving
24 priority to projects that have urgent needs and that have
25 matching contributions from federal or local funding sources;

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- 1 B. identify and recommend qualifying water
2 projects for funding by the legislature that are for:
3 (1) storage, conveyance or delivery of water
4 to end users;
5 (2) implementation of Endangered Species Act
6 collaborative programs;
7 (3) restoration and management of watersheds;
8 and
9 (4) flood prevention.

10 Section 6. AUTHORITY--DUTIES.--The authority shall:

- 11 A. provide staff support for the board;
12 B. develop application procedures and forms for
13 political subdivisions to apply for grants and loans from the
14 water project fund; and
15 C. make loans or grants to political subdivisions
16 for qualifying water projects authorized by the legislature.

17 Section 7. CONDITIONS FOR GRANTS AND LOANS.--

- 18 A. Grants and loans shall be made only to state
19 agencies or to political subdivisions that:
20 (1) agree to operate and maintain the water
21 project so that it will function properly over the structural
22 and material design life, which shall not be less than twenty
23 years;
24 (2) require the contractor of the
25 construction project to post a performance and payment bond in

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1 accordance with the requirements of Section 13-4-18 NMSA 1978;

2 (3) provide written assurance signed by an
3 attorney or provide a title insurance policy that the
4 political subdivision has proper title, easements and rights
5 of way to the property upon or through which the water project
6 proposed for funding is to be constructed or extended;

7 (4) meet the requirements of the financial
8 capability set by the board to ensure sufficient revenues to
9 operate and maintain the water project for its useful life and
10 to repay the loan;

11 (5) agree to properly maintain financial
12 records and to conduct an audit of the project's financial
13 records; and

14 (6) agree to pay costs of originating grants
15 and loans as determined by rules adopted by the board.

16 B. Plans and specifications for a water project
17 shall be approved by the authority before grant or loan
18 disbursements to pay for construction costs are made to a
19 state agency or political subdivision.

20 C. Grants and loans shall be made only for
21 eligible items, which include:

- 22 (1) to match federal and local cost shares;
23 (2) engineering feasibility reports;
24 (3) contracted engineering design;
25 (4) inspection of construction;

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- 1 (5) special engineering services;
- 2 (6) environmental or archaeological surveys;
- 3 (7) construction;
- 4 (8) land acquisition;
- 5 (9) easements and rights of way; and
- 6 (10) legal costs and fiscal agent fees.

7 Section 8. WATER TRUST FUND--CREATED--INVESTMENT--
8 DISTRIBUTION.--

9 A. The "water trust fund" is created in the state
10 treasury. The fund shall consist of money appropriated,
11 donated or otherwise accrued to the fund. Money in the fund
12 shall be invested by the state investment officer as land
13 grant permanent funds are invested pursuant to Chapter 6,
14 Article 8 NMSA 1978. Earnings from investment of the fund
15 shall be credited to the fund. Money in the fund shall not be
16 expended for any purpose, but an annual distribution shall be
17 made to the water project fund in accordance with Subsection B
18 of this section.

19 B. On July 1 of fiscal year 2003 and on July 1 of
20 each fiscal year thereafter, an annual distribution shall be
21 made from the water trust fund to the water project fund in
22 the amount of four million dollars (\$4,000,000) until that
23 amount is less than an amount equal to two and four-tenths
24 percent of the average of the year-end market values of the
25 water trust fund for the immediately preceding five calendar

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1 years. Thereafter, the amount of the annual distribution
2 shall be two and four-tenths percent of the average of the
3 year-end market values of the water trust fund for the
4 immediately preceding five calendar years.

5 Section 9. WATER PROJECT FUND--CREATED--PURPOSE.--

6 A. The "water project fund" is created in the New
7 Mexico finance authority and shall consist of distributions
8 made to the fund from the water trust fund and money from
9 payments of principal of and interest on loans shall be
10 deposited in the water project fund. The fund shall also
11 consist of any other money appropriated, distributed or
12 otherwise allocated to the fund for the purpose of supporting
13 water projects pursuant to provisions of the Water Project
14 Finance Act. The fund shall be administered by the authority.
15 Income from investment of the water project fund shall be
16 credited to the fund. Balances in the fund at the end of any
17 fiscal year shall not revert to the general fund. The water
18 project fund may consist of such sub-accounts as the authority
19 deems necessary to carry out the purposes of the fund. The
20 authority may establish procedures and adopt rules as required
21 to administer the fund and to recover from the fund costs of
22 administering the fund and originating grants and loans.

23 B. Beginning in fiscal year 2003, money on deposit
24 in the water project fund may be used to make loans or grants
25 to qualified entities for any project approved by the

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1 legislature.

2 C. The authority is authorized to issue revenue
3 bonds payable from the proceeds of loan repayments made into
4 the water project fund upon a determination by the authority
5 that issuance of the bonds is necessary to replenish the
6 principal balance of the fund. The net proceeds from the sale
7 of the bonds shall be deposited in the water project fund.
8 The bonds shall be authorized and issued by the authority in
9 accordance with the provisions of the New Mexico Finance
10 Authority Act.

11 Section 10. REPORT TO LEGISLATURE. --The board shall
12 report to the legislature no later than October 1 of each
13 calender year the total expenditures from the water project
14 fund, their purposes, an analysis of the accomplishments of
15 the expenditures and recommendations for legislative action.

16 Section 11. APPROPRIATION. --Eighty million dollars
17 (\$80,000,000) is appropriated from the general fund to the
18 water trust fund for expenditure in fiscal year 2001 and
19 subsequent fiscal years for purposes of the Water Project
20 Finance Act. Any unexpended or unencumbered balance remaining
21 at the end of a fiscal year shall not revert to the general
22 fund.

23 Section 12. APPROPRIATION. --Twenty million dollars
24 (\$20,000,000) is appropriated from the general fund to the
25 water project fund for expenditure in fiscal year 2001 and

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1 subsequent fiscal years for purposes of the Water Project
2 Finance Act. Any unexpended or unencumbered balance remaining
3 at the end of a fiscal year shall not revert to the general
4 fund.

5 Section 13. EMERGENCY.--It is necessary for the public
6 peace, health and safety that this act take effect
7 immediately.