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SENATE BILL 181

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

INTRODUCED BY

Joseph A. Fidel

AN ACT

RELATING TO RURAL INFRASTRUCTURE; AMENDING THE RURAL  
INFRASTRUCTURE ACT; TRANSFERRING DUTIES OF THE ENVIRONMENTAL  
IMPROVEMENT BOARD TO THE SECRETARY OF ENVIRONMENT; EXPANDING  
THE PURPOSE OF THE ACT TO INCLUDE FINANCING OF WASTEWATER  
FACILITIES; PROVIDING FOR FLEXIBLE INTEREST RATES.

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

Section 1. Section 75-1-2 NMSA 1978 (being Laws 1973,  
Chapter 333, Section 2, as amended) is amended to read:

"75-1-2. DEFINITIONS. -- As used in the Rural  
Infrastructure Act:

A. [~~"division"~~] "department" means the  
[~~environmental improvement division of the health and  
environment~~] department of environment;

[B. ~~"board" means the environmental improvement~~

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1 ~~board;~~

2           ~~C.]~~ B. "fund" means the rural infrastructure  
3 revolving loan fund;

4           ~~D.]~~ C. "local authority" means any incorporated  
5 city, town or village, county, mutual domestic association,  
6 public water cooperative association or sanitation district  
7 whose water supply facility serves a population of less than  
8 ten thousand;

9           ~~E.]~~ D. "operate and maintain" means all necessary  
10 activities, including but not limited to replacement of  
11 equipment or appurtenances to assure the dependable and  
12 economical function of a water supply facility in accordance  
13 with its intended purpose; ~~and]~~

14           E. "secretary" means the secretary of environment;

15           F. "wastewater facility" includes but is not  
16 limited to collection lines, pumping equipment, treatment  
17 works and disposal piping or process units; and

18           ~~F.]~~ G. "water supply facility" includes but is  
19 not limited to the source of supply of water, pumping  
20 equipment, storage facilities, transmission lines, treatment  
21 works and distribution systems. "

22           Section 2. Section 75-1-2.1 NMSA 1978 (being Laws 1983,  
23 Chapter 173, Section 3, as amended) is amended to read:

24           "75-1-2.1. PURPOSE OF ACT. -- The purpose of the Rural  
25 Infrastructure Act is to provide financial assistance to local

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1 authorities for the construction or modification of water  
2 supply and wastewater facilities [~~that will~~] to correct  
3 demonstrably hazardous or inadequate conditions. "

4 Section 3. Section 75-1-3 NMSA 1978 (being Laws 1973,  
5 Chapter 333, Section 3, as amended) is amended to read:

6 "75-1-3. FUND CREATED--ADMINISTRATION--EMERGENCY FUND.--

7 A. A special fund is created to be known as the  
8 "rural infrastructure revolving loan fund". Money  
9 appropriated to the fund or to the [~~division~~] department to  
10 carry out the provisions of the Rural Infrastructure Act may  
11 be used to make loans and grants to local authorities,  
12 individually or jointly, for water supply or wastewater  
13 facilities. Appropriations made to the fund but not expended  
14 at the end of the fiscal year for which appropriated shall not  
15 revert to the general fund but shall accrue to the credit of  
16 the fund. Earnings on the balance in the fund shall be  
17 credited to the fund. In addition, when the proceeds from the  
18 issuance of severance tax bonds appropriated to the fund are  
19 deposited in the state treasury, interest earned on that money  
20 during the period from deposit in the state treasury until the  
21 actual transfer of the money to the fund shall be credited to  
22 the fund.

23 B. Ten percent of any appropriation to the fund or  
24 to the [~~division~~] department to carry out the provisions of  
25 the Rural Infrastructure Act shall be set aside for emergency

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1 grants and loans pursuant to Section 75-1-5 NMSA 1978.

2 C. All water supply and wastewater facilities  
3 shall be designed in compliance with the engineering  
4 requirements established by the ~~[board]~~ secretary after  
5 consulting with and considering the recommendations of the  
6 professional engineering societies operating in New Mexico.  
7 The ~~[board]~~ secretary shall also establish, by regulations,  
8 guidelines for the ranking of projects for top priority based  
9 on public health needs.

10 D. The ~~[division]~~ department shall administer the  
11 fund and shall make grant and loan disbursements in accordance  
12 with the Rural Infrastructure Act. The ~~[board]~~ secretary  
13 shall adopt regulations to govern the application procedure  
14 and requirements for disbursing grants and loans under the  
15 Rural Infrastructure Act, including requirements consistent  
16 with the purpose of the act for determining the eligibility  
17 and priority of local authorities for such grants and loans.  
18 ~~[The division shall coordinate its application procedures and~~  
19 ~~funding cycle pursuant to the New Mexico Community Assistance~~  
20 ~~Act.]~~

21 E. Receipts from the repayment of loans, including  
22 loans approved by the state board of finance pursuant to  
23 Section 75-1-5 NMSA 1978, shall be deposited in the fund by  
24 the ~~[division]~~ department, including receipts from the  
25 repayment of loans made pursuant to appropriations to carry

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1 out the purposes of the Water Supply Construction Act made  
2 prior to the effective date of the Rural Infrastructure Act.

3 F. Loans and grants made pursuant to the  
4 provisions of the Rural Infrastructure Act shall not be used  
5 by the local authority on any project constructed in  
6 fulfillment or partial fulfillment of requirements made of a  
7 subdivider by the provisions of the Land Subdivision Act or  
8 the New Mexico Subdivision Act. "

9 Section 4. Section 75-1-4 NMSA 1978 (being Laws 1973,  
10 Chapter 333, Section 4, as amended) is amended to read:

11 "75-1-4. CONDITIONS FOR GRANTS AND LOANS. --

12 A. Grants and loans shall be made only to local  
13 authorities that:

14 (1) agree to operate and maintain the water  
15 supply facilities so that the facilities will function  
16 properly over the structural and material design life, which  
17 shall not be less than twenty years;

18 (2) require the contractor of the  
19 construction project to post a performance and payment bond in  
20 accordance with the requirements of Section 13-4-18 NMSA 1978;

21 (3) provide a written assurance, signed by an  
22 attorney, that the local authority has proper title, easements  
23 and rights of way to the property upon or through which the  
24 water supply facility proposed for funding is to be  
25 constructed or extended;

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1 (4) meet the requirements of the financial  
2 capability set by the [~~division~~] department to assure  
3 sufficient revenues to operate and maintain the facility for  
4 its useful life and to repay the loan;

5 (5) pledge sufficient revenues for repayment  
6 of the loan, provided that such revenues may by law be pledged  
7 for that purpose; and

8 (6) agree to properly maintain financial  
9 records and to conduct an audit of the project's financial  
10 records.

11 B. Except as otherwise provided in the Rural  
12 Infrastructure Act, a loan shall be for a period of time not  
13 to exceed twenty years. [~~with an annual interest rate of five  
14 percent on the unpaid balance, unless, in order to comply with  
15 federal arbitrage requirements, the state board of finance  
16 upon issuance and sale of bonds appropriated to the fund  
17 specifies a lower rate of interest on such loan to match the  
18 interest rate upon bonds funding the project and shall not  
19 exceed five hundred thousand dollars (\$500,000) in any one  
20 year.-] Loans may be interest free or bear an annual interest  
21 rate set by the secretary that is at or below market interest  
22 rates. The repayment of loans shall be in [~~equal~~] annual  
23 installments beginning one year after completion of the  
24 project. The repayment of the interest on the loan  
25 accumulated during the design and construction of a project~~

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1 may be included in the final loan amount, but it shall not be  
2 counted in determining the maximum loan amount.

3 C. No loan recipient eligible to receive a grant  
4 under the Rural Infrastructure Act shall receive grants in any  
5 one year totaling more than two hundred thousand dollars  
6 (\$200,000).

7 D. The maximum assistance, including both loans  
8 and grants, which a local authority may receive under the  
9 Rural Infrastructure Act in any one year is five hundred  
10 thousand dollars (\$500,000).

11 E. Plans and specifications for a water supply or  
12 wastewater facility construction project shall be approved by  
13 the [~~division~~] department before grant or loan disbursements  
14 to pay for construction costs are made to a local authority.  
15 Interim loan disbursements to pay for engineering and other  
16 professional services may be made by the [~~division~~] department  
17 prior to the approval of the plans and specifications.

18 F. Privately owned water supply or wastewater  
19 facilities are not eligible for assistance under the Rural  
20 Infrastructure Act.

21 G. Grants and loans shall be made only for  
22 eligible items. Eligible items include but are not limited to  
23 the costs of engineering feasibility reports, contracted  
24 engineering design, inspection of construction, special  
25 engineering services, archaeological surveys and contracted

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1 construction. The costs of water rights, land, system  
2 acquisition, easements and rights of way, refinancing of  
3 [~~delinquent~~] program loans, legal costs and fiscal agents'  
4 fees are eligible items only for loan funds. Local authority  
5 administrative costs shall not be included as eligible items.

6 H. In the event the local authority fails to make  
7 the prescribed loan repayment, the [~~division~~] department is  
8 authorized to set water or wastewater user rates in the area  
9 of the local authority's jurisdiction in order to provide  
10 sufficient money for repayment of this loan and proper  
11 operation and maintenance. "

12 Section 5. Section 75-1-5 NMSA 1978 (being Laws 1987,  
13 Chapter 175, Section 4, as amended) is amended to read:

14 "75-1-5. EMERGENCY LOANS AND GRANTS. --Ten percent of the  
15 proceeds of each severance tax bond issuance or other  
16 appropriation for the purpose of carrying out the provisions  
17 of the Rural Infrastructure Act shall be reserved for  
18 emergencies and shall be allocated by the [~~division~~]  
19 department only upon approval of the state board of finance.  
20 This amount shall not be deposited in the fund and shall be  
21 allocated only for emergency loans and grants. Emergency  
22 loans and grants shall be made in accordance with the  
23 applicable provisions for loans pursuant to the Rural  
24 Infrastructure Act; provided that a grant shall not exceed two  
25 hundred thousand dollars (\$200,000). At the end of the third

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1 quarter of each fiscal year, the unexpended balance of the  
2 reserved amount may be transferred by the [~~division~~]  
3 department to the fund for use in accordance with the Rural  
4 Infrastructure Act. "

5 Section 6. Section 75-1-6 NMSA 1978 (being Laws 1988,  
6 Chapter 28, Section 7, as amended) is amended to read:

7 "75-1-6. AVERAGE RESIDENTIAL USER COST REDUCTION GRANTS  
8 AND ZERO PERCENT LOANS. --

9 A. No more than twenty-five percent of the  
10 proceeds of each severance tax bond issuance or other  
11 appropriation for the purpose of carrying out the provisions  
12 of the Rural Infrastructure Act shall be reserved for average  
13 residential user cost reduction grants or zero percent loans  
14 to reduce average residential user cost to a reasonable level  
15 for eligible financially needy loan recipients whose water  
16 supply or wastewater facilities serve less than three thousand  
17 persons.

18 B. Average residential user cost reduction grants  
19 and zero percent loans shall be allocated by the [~~division~~]  
20 department in accordance with the provisions for grants and  
21 loans pursuant to the Rural Infrastructure Act, provided that  
22 an average residential user cost reduction grant or zero  
23 percent loan shall not exceed two hundred thousand dollars  
24 (\$200,000). Such grants and loans shall reduce only the  
25 principal and interest portion of the average residential user

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1 cost to a reasonable cost as determined by the [~~division~~]  
2 department.

3 C. A zero percent loan or average residential user  
4 cost reduction grant shall be approved by the [~~division~~]  
5 department when, after construction bids have been received,  
6 the following conditions have been met by the local authority  
7 whose average residential user costs are in need of reduction:

8 (1) the construction project is designed  
9 using the most cost-effective and dependable option;

10 (2) the system is designed with adequate  
11 built-in expansion capacity;

12 (3) other sources of grant funds have been  
13 sought and are not available in a timely manner;

14 (4) the project cannot feasibly be reduced in  
15 scope or phased so as to bring it within available loan funds  
16 and within reasonable user cost; and

17 (5) the local authority's [~~average~~  
18 ~~residential user cost in need of the reduction is at least~~  
19 ~~eighteen dollars (\$18.00) per month~~] median household income  
20 is less than ninety percent of the statewide non-metropolitan  
21 median household income based on the most current federal  
22 decennial census. "