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**SENATE BILL 532**

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

**INTRODUCED BY**

**Ben D. Altamirano**

**AN ACT**

**RELATING TO TELECOMMUNICATIONS; PROVIDING FOR RURAL BROADBAND  
TELECOMMUNICATIONS DEMONSTRATION PROJECTS; CREATING THE  
TELECOMMUNICATIONS INFRASTRUCTURE FUND COUNCIL; CREATING THE  
TELECOMMUNICATIONS INFRASTRUCTURE FUND; ENACTING SECTIONS OF  
THE NMSA 1978; 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 for local communities, school districts,  
educational institutions and health care institutions,  
including facilities and equipment necessary for high-speed**

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1 data transmission, is a prerequisite to economic development,  
2 distance learning and telemedicine in all areas of the state.  
3 Local communities cannot finance these infrastructure needs  
4 alone because of inadequate bonding capacity, lag time between  
5 development and the generation of revenue and the dependency  
6 of economic development on adequate infrastructure. Private  
7 telecommunications providers have often been unwilling to  
8 provide such infrastructure because the projected return on  
9 investment in the infrastructure does not justify the cost  
10 over the short term. In addition, the provision of broadband  
11 telecommunications services has become increasingly critical  
12 for communities' survival and economic growth.

13 B. The legislature finds and declares that an  
14 assistance program is needed to aid local communities in  
15 providing telecommunications infrastructure. A  
16 telecommunications infrastructure fund council should be  
17 created to review proposals submitted by state political  
18 subdivisions in cooperation with community-based organizations  
19 to allocate funding from several sources, including severance  
20 tax bonds as approved and issued by the state board of  
21 finance, community development block grants from the federal  
22 government, proceeds from the private use of state and local  
23 telecommunications facilities and such other sources of  
24 funding as the legislature may specify from time to time, for  
25 financing needed projects for local community

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1 telecommunications infrastructure development. In addition,  
2 the council should provide guidance to communities seeking to  
3 deploy advanced services needed to implement locally targeted  
4 projects.

5 Section 3. DEFINITIONS.--As used in the  
6 Telecommunications Infrastructure Fund Act:

7 A. "broadband service" means a single  
8 telecommunications medium that provides multiple channels for  
9 the transmission of information at high speeds;

10 B. "community assistance program" means a program  
11 to assist political subdivisions working in cooperation with  
12 community-based organizations with telecommunications  
13 infrastructure development, including:

14 (1) a grant or loan of funds to political  
15 subdivisions;

16 (2) gathering data about political  
17 subdivisions, including information concerning  
18 telecommunications usage and projected demand;

19 (3) providing technical assistance to analyze  
20 the needs and seek solutions to problems related to  
21 telecommunications infrastructure development in political  
22 subdivisions; and

23 (4) providing technical assistance in seeking  
24 funds from sources other than the council;

25 C. "community-based organization" means a local

1 nonprofit organization operating within a political  
2 subdivision;

3 D. "council" means the telecommunications  
4 infrastructure fund council;

5 E. "department" means the economic development  
6 department;

7 F. "fund" means the telecommunications  
8 infrastructure fund;

9 G. "local public body" means every political  
10 subdivision of the state that is empowered to receive or  
11 expend public money from whatever source derived;

12 H. "political subdivision" means any county;  
13 incorporated city, town or village; school district;  
14 educational institution; or county hospital;

15 I. "project" means the purchase, construction,  
16 installation, lease, gift, grant reconstruction, improvement,  
17 option to purchase or other acquisition of telecommunications  
18 and information technology equipment and facilities by a  
19 political subdivision that is cooperating with a community-  
20 based organization in the design of a broadband hub or center,  
21 including publicly owned poles, towers, wire, cable, conduit,  
22 switches, antennae, generators and computer hardware and  
23 software and all necessary real and personal property; and

24 J. "telecommunications provider" means any  
25 telegraph company, telephone company, transmission company,

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1 telecommunications common carrier, telecommunications company,  
2 cellular service company or pay telephone provider regulated  
3 in whole or in part by the public regulation commission under  
4 law, including the Telephone and Telegraph Company  
5 Certification Act, the New Mexico Telecommunications Act, the  
6 Cellular Telephone Services Act and Sections 63-9E-1 and  
7 63-9E-3 NMSA 1978.

8 Section 4. COUNCIL CREATED--MEMBERSHIP--TERMS.--

9 A. The "telecommunications infrastructure fund  
10 council" is created. The council is administratively attached  
11 to the department.

12 B. The council is composed of sixteen voting  
13 members. The chairman of the council is the director of the  
14 office of science and technology in the department, who shall  
15 nominate members to the governor that include both users and  
16 providers of broadband services. The governor shall appoint  
17 members so that:

18 (1) not less than one-half of the members are  
19 from the group of broadband user nominees; and

20 (2) not more than four members are officers,  
21 directors, members, managers or employees of or have  
22 substantial interests in a telecommunications provider.

23 C. Members of the council shall serve staggered  
24 three-year terms; provided that when making the initial  
25 appointments, the governor shall appoint five members to

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1 one-year terms, five members to two-year terms and five  
2 members to three-year terms. The governor may remove a member  
3 for good cause.

4 D. The council shall meet at the call of the  
5 chairman of the council not less than four times per year.  
6 Necessary officers shall be elected by a majority vote of the  
7 council members. Meetings shall be conducted in different  
8 regions of the state on an alternating basis.

9 E. Members of the council shall be reimbursed  
10 pursuant to the Per Diem and Mileage Act and shall not receive  
11 any other compensation, perquisite or allowance for service on  
12 the council.

13 Section 5. FUND CREATED--ADMINISTRATION.--

14 A. There is created in the state treasury the  
15 "telecommunications infrastructure fund", which shall be  
16 administered by the council and operated as a separate  
17 account. The council is authorized to establish procedures  
18 and adopt rules as required to administer the fund. The  
19 council shall, whenever possible, coordinate application  
20 procedures and funding cycles in accordance with the New  
21 Mexico Community Assistance Act.

22 B. The following shall be deposited directly in  
23 the fund:

24 (1) grants from the federal government or its  
25 agencies allotted to the state for capitalization of the fund;

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1 (2) money appropriated by the legislature to  
2 implement the provisions of the Telecommunications  
3 Infrastructure Fund Act;

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

8 (4) the net proceeds, after the payment or  
9 provision for the allocable share of operating expenses, of  
10 private use of any telecommunications facilities or equipment  
11 owned by the state; and

12 (5) any other public or private money  
13 dedicated to the fund.

14 C. Money in the fund is appropriated for  
15 expenditure by the council as grants made pursuant to the  
16 terms and conditions of the Telecommunications Infrastructure  
17 Fund Act.

18 D. Pursuant to rules adopted by the council, the  
19 council may impose and collect a fee from each political  
20 subdivision that receives a grant from the fund, which shall  
21 be used solely for the costs of administering the fund.

22 E. Money not currently needed for the operation of  
23 the fund or otherwise dedicated may be invested according to  
24 the provisions of Chapter 6, Article 10 NMSA 1978, and all  
25 interest earned on such investments shall be credited to the

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1 fund. Money remaining in the fund at the end of any fiscal  
2 year shall not revert to the general fund but shall accrue to  
3 the credit of the fund.

4 F. The council shall establish fiscal controls and  
5 accounting procedures that are sufficient to ensure proper  
6 accounting for fund payments, disbursements and balances and  
7 shall provide an annual report and an annual independent audit  
8 on the fund to the governor and the legislature.

9 Section 6. RULES. --

10 A. The council, after public hearing, shall adopt  
11 rules to provide for:

12 (1) procedures and forms for making grants  
13 pursuant to the Telecommunications Infrastructure Fund Act;

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

17 (3) procedures for review, evaluation and  
18 approval of grants;

19 (4) procedures for reporting by the grantee  
20 of programmatic, organizational and financial information  
21 necessary for the review, evaluation and approval of a  
22 proposed or existing grant to be funded or that is funded by  
23 the council;

24 (5) a guide for the evaluation of the ability  
25 and competence of a proposed or existing grantee or its agent

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1 to efficiently and adequately provide for the completion and  
2 management of the project;

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

5 (7) such other requirements deemed necessary  
6 by the council to ensure that the state receives the services  
7 for which the legislature appropriated money.

8 B. Rules adopted by the council shall become  
9 effective when filed according to the provisions of the State  
10 Rules Act.

11 Section 7. POWERS OF THE COUNCIL. --The council shall  
12 have all the powers necessary to carry out the purposes and  
13 provisions of the Telecommunications Infrastructure Fund Act,  
14 including the power to:

15 A. develop and oversee the administration of  
16 community assistance programs;

17 B. adopt, amend and repeal, in accordance with the  
18 provisions of the State Rules Act, all rules necessary to  
19 administer and enforce the provisions of the rules of the  
20 Telecommunications Infrastructure Fund Act;

21 C. apply to any appropriate agency of the United  
22 States for participation in and for receipt of aid from any  
23 program designed to assist local community telecommunications  
24 infrastructure development;

25 D. oversee the administration of federal and other

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1 funds that are received, controlled or disbursed for the  
2 purposes of carrying out the provisions of the community  
3 assistance program;

4 E. coordinate and mobilize assistance and funding  
5 resources in regard to the construction, extension or repair  
6 of projects;

7 F. coordinate with, assist and seek input from  
8 political subdivisions, community organizations and civic  
9 groups;

10 G. make and enter into all contracts and  
11 agreements necessary or incidental to its duties and the  
12 execution of its powers pursuant to the Telecommunications  
13 Infrastructure Fund Act;

14 H. do any and all things necessary or convenient  
15 to carry out its purposes and exercise the powers given and  
16 granted in the Telecommunications Infrastructure Fund Act; and

17 I. disburse and oversee the administration of any  
18 other money appropriated to the council in connection with  
19 community infrastructure programs or as directed by the  
20 legislature.

21 Section 8. COMMUNITY ASSISTANCE APPLICATION  
22 REQUIREMENTS. --

23 A. In considering applications for demonstration  
24 projects, the council shall consider the following:

25 (1) money may be allocated to each

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1 demonstration project for a period of up to two years;

2 (2) the council shall fund up to five  
3 demonstration projects in its first year. Each project may be  
4 funded for up to one million dollars (\$1,000,000);

5 (3) of the initial five projects, at least  
6 two must be for communities of no more than ten thousand  
7 population;

8 (4) of the initial five projects, each should  
9 demonstrate a unique technology as a solution to the proposal  
10 submitted; and

11 (5) each proposal should include a cost  
12 comparison component to allow adequate review of the  
13 community's likelihood of success and sustainability.

14 B. A political subdivision that works with a  
15 community-based organization desiring a grant of funds from  
16 the council shall file an application for a grant of funds  
17 with the council, which shall contain at least the following:

18 (1) a general description of the proposed  
19 project, a general description of the telecommunications needs  
20 to be served by the proposed project and a general description  
21 of related existing facilities, if any;

22 (2) a general description of all real estate,  
23 if any, necessary for the proposed project;

24 (3) preliminary plans and other documents  
25 necessary to show the type, structure and general character of

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1 the proposed project;

2 (4) estimates of the cost of the proposed  
3 project;

4 (5) a general description of the efforts made  
5 by the political subdivision to cause the facilities or  
6 equipment involved in the proposed project or their functional  
7 equivalent to be provided by private parties;

8 (6) a general description of the terms of any  
9 proposed lease of the facilities or equipment involved in a  
10 proposed project to or of the management of the facilities or  
11 equipment by a private party and a projection of any expected  
12 associated costs or revenue;

13 (7) a general description and statement of  
14 value of any property, real or personal, of the political  
15 subdivision applied or to be applied to the proposed project;

16 (8) a statement of cash funds previously  
17 applied, or currently held by or on behalf of the political  
18 subdivision, that are available for and are to be applied to  
19 the proposed project;

20 (9) evidence of the arrangement made by the  
21 political subdivision for the financing of all costs of the  
22 proposed project in excess of the requested assistance from  
23 the council;

24 (10) evidence that the political subdivision  
25 or its agent has the organizational and technical competence

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1 to use the requested funds efficiently; and

2 (11) evidence that the political subdivision  
3 or its agent can properly operate and maintain the proposed  
4 project.

5 C. In deciding whether to approve assistance  
6 funds, the council shall consider:

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

9 (2) the availability of other means of  
10 providing the proposed project or its functional equivalent or  
11 of otherwise meeting the needs the proposed project is  
12 expected to address;

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

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

17 (5) the extent to which the proposed project  
18 would provide improved connectivity among telecommunications  
19 carriers;

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

22 (7) the extent to which the proposed project  
23 would stimulate demand for advanced telecommunications  
24 services;

25 (8) the extent to which the proposed project

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1 is likely to generate significant gains in economic  
2 development, health care, education or public services;

3 (9) other sources of funds available to the  
4 political subdivision to fund the proposed project;

5 (10) the willingness of the public regulation  
6 commission to grant expedited regulatory procedures to any  
7 telecommunications company or service provider participating  
8 in the demonstration project for the purpose of providing  
9 services needed by the project in a timely manner; and

10 (11) the willingness of a local public body  
11 to grant expedited right-of-way agreements or available tax  
12 abatements on any aspect of the demonstration project.

13 D. All action shall be taken by vote of a majority  
14 of the members of the council.

15 E. The council shall, upon a decision to approve  
16 assistance funds to a political subdivision, notify all  
17 appropriate state agencies of the project and request that  
18 they monitor it to assure that all statutes, rules and  
19 regulations are complied with and that standards are  
20 maintained.

21 Section 9. OWNERSHIP.--Upon completion of the project,  
22 ownership of the related facilities, equipment and other real  
23 and personal property, if acquired, constructed or installed  
24 with proceeds of a grant from the fund shall reside with the  
25 political subdivision or local government body that undertook

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1 the project.

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

15 Section 11. ASSISTANCE BY STATE AGENCIES. --

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

24 B. Upon request of the council, any state agency,  
25 or officer or employee thereof, is authorized and empowered to

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

5 Section 12. APPROPRIATION.--Five million dollars  
6 (\$5,000,000) is appropriated from the general fund to the  
7 telecommunications infrastructure fund for expenditure in  
8 fiscal year 2002 and subsequent fiscal years to implement the  
9 provisions of the Telecommunications Infrastructure Fund Act.  
10 Any unexpended or unencumbered balance remaining at the end of  
11 a fiscal year shall not revert to the general fund.