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HOUSE BILL 868

**47TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2005**

INTRODUCED BY

Ben Lujan

AN ACT

RELATING TO INFRASTRUCTURE; ENACTING THE TRIBAL INFRASTRUCTURE ACT; CREATING A BOARD; PRESCRIBING POWERS AND DUTIES; CREATING A TRUST FUND; CREATING A PROJECT FUND; MAKING APPROPRIATIONS.

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

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

Section 2. FINDINGS AND PURPOSE.--

A. The legislature finds that:

(1) tribes lack basic infrastructure resulting in poor social, health and economic conditions of tribal communities;

(2) adequate infrastructure such as water and wastewater systems, major water systems, electrical power lines, communications, roads, health and emergency response

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1 facilities and infrastructure needed for economic development  
2 are essential to improved health, safety and welfare of all New  
3 Mexicans, including residents of tribal communities;

4 (3) local tribal efforts and resources have  
5 been insufficient to develop and maintain a consistent and  
6 adequate level of infrastructure in tribal communities;

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

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

14 B. The purposes of the Tribal Infrastructure Act  
15 are to:

16 (1) ensure adequate financial resources for  
17 infrastructure development for tribal communities;

18 (2) provide for the planning and development  
19 of infrastructure in an efficient and cost-effective manner;  
20 and

21 (3) develop infrastructure in tribal  
22 communities to improve the quality of life and encourage  
23 economic development.

24 Section 3. DEFINITIONS.--As used in the Tribal  
25 Infrastructure Act:

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- 1           A. "board" means the tribal infrastructure board;  
2           B. "department" means the Indian affairs  
3 department;  
4           C. "financial assistance" means providing grants or  
5 loans on terms and conditions approved by the board;  
6           D. "governor" means the governor of New Mexico;  
7           E. "project fund" means the tribal infrastructure  
8 project fund;  
9           F. "qualified project" means a tribal  
10 infrastructure project selected by the board for financial  
11 assistance pursuant to the Tribal Infrastructure Act;  
12           G. "tribe" means a federally recognized Indian  
13 nation, tribe or pueblo located wholly or partially in New  
14 Mexico or any of its governmental entities or subdivisions; and  
15           H. "trust fund" means the tribal infrastructure  
16 trust fund.

17           Section 4. TRIBAL INFRASTRUCTURE BOARD CREATED.--

- 18           A. The "tribal infrastructure board" is created and  
19 is administratively attached to the department.  
20           B. The board shall consist of nine voting members  
21 and three non-voting members.  
22           C. The voting ex-officio members are:  
23                 (1) the secretary of Indian affairs, or the  
24 secretary's designee from the department, who shall be chair of  
25 the board;

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1 (2) the secretary of finance and  
2 administration or the secretary's designee from the department  
3 of finance and administration;

4 (3) the secretary of health or the secretary's  
5 designee from the department of health;

6 (4) the secretary of environment or the  
7 secretary's designee from the department of environment; and

8 (5) the executive director of the New Mexico  
9 finance authority or the executive director's designee from the  
10 New Mexico finance authority.

11 D. The following four voting members who have  
12 experience with capital projects development or administration  
13 from tribes shall be appointed by the governor:

14 (1) one person who is a member of a pueblo  
15 from recommendations submitted by the all Indian pueblo  
16 council;

17 (2) one person who is a member of the  
18 Jicarilla Apache Nation from recommendations submitted by the  
19 president of the Jicarilla Apache Nation;

20 (3) one person who is a member of the  
21 Mescalero Apache Tribe from recommendations submitted by the  
22 president of the Mescalero Apache Tribe; and

23 (4) one person who is a member of the Navajo  
24 Nation from recommendations submitted by the president of the  
25 Navajo Nation.

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1           E. There shall be three non-voting members as  
2 follows:

3                   (1) one representative from the federal bureau  
4 of Indian affairs designated by the regional director;

5                   (2) one representative from the Albuquerque  
6 area Indian health services designated by the area director;  
7 and

8                   (3) one representative from the Navajo area  
9 Indian health services designated by the area director.

10           F. The board shall meet at the call of the chair or  
11 whenever three voting members submit a request in writing to  
12 the chair, but not less than twice each calendar year. A  
13 majority of members constitutes a quorum for the transaction of  
14 business. The affirmative vote of at least a majority of a  
15 quorum shall be necessary for an action to be taken by the  
16 board.

17           G. Each member of the board appointed by the  
18 governor shall be appointed to a two-year term. Vacancies  
19 shall be filled by appointment by the governor for the  
20 remainder of the unexpired term.

21           H. Members of the board appointed by the governor  
22 may receive per diem and mileage as provided for non-salaried  
23 public officers in the Per Diem and Mileage Act and shall  
24 receive no other compensation, perquisite or allowance.

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

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1           A. adopt rules governing terms, conditions and  
2 priorities for providing financial assistance to tribes,  
3 including developing application and evaluation procedures and  
4 forms and qualifications for applicants and for projects;

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

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

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

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

18                   (3) inspecting construction of qualified  
19 projects;

20                   (4) providing special engineering services;

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

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

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1 (7) paying legal costs and fiscal agent fees  
2 associated with development of qualified projects.

3 Section 6. TRIBAL INFRASTRUCTURE TRUST FUND--CREATED--  
4 INVESTMENT--DISTRIBUTION.--

5 A. The "tribal infrastructure trust fund" is  
6 created in the state treasury. The trust fund shall consist of  
7 money that is appropriated, donated or otherwise accrues to it.  
8 Money in the trust fund shall be invested by the state  
9 investment officer in the manner that land grant permanent  
10 funds are invested pursuant to Chapter 6, Article 8 NMSA 1978.  
11 Income from investment of the trust fund shall be credited to  
12 the fund. Money in the trust fund shall not be expended for  
13 any purpose, but an annual distribution from the trust fund  
14 shall be made to the project fund pursuant to this section.

15 B. On July 1 of each year in which adequate money  
16 is available in the trust fund, an annual distribution shall be  
17 made from the trust fund to the project fund in the amount of  
18 ten million dollars (\$10,000,000) until the distribution is  
19 less than an amount equal to four and seven-tenths percent of  
20 the average of the year-end market values of the trust fund for  
21 the immediately preceding five calendar years. Thereafter, the  
22 amount of the annual distribution shall be four and seven-  
23 tenths percent of the average of the year-end market values of  
24 the trust fund for the immediately preceding five calendar  
25 years.

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1           Section 7. TRIBAL INFRASTRUCTURE PROJECT FUND--CREATED--  
2 PURPOSE.--

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

5                   (1) the department of finance and  
6 administration shall administer the project fund;

7                   (2) the project fund shall consist of:

8                           (a) distributions made to it from the  
9 trust fund;

10                           (b) payments of principal and interest  
11 on loans for qualified projects;

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

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

18                   (3) balances in the project fund at the end of  
19 a fiscal year shall not revert to the trust fund or to the  
20 general fund; and

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

24           B. The department of finance and administration may  
25 establish procedures and adopt rules as required to administer

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1 the project fund and to originate grants or loans for qualified  
2 projects approved by the board.

3 C. Beginning in fiscal year 2006 and in subsequent  
4 years, one hundred thousand dollars (\$100,000) is appropriated  
5 from the project fund to the department of finance and  
6 administration for expenditure in the fiscal year in which it  
7 is appropriated, to administer the project fund. Any  
8 unexpended or unencumbered balance remaining at the end of any  
9 fiscal year shall revert to the project fund.

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

19 E. The balance in the project fund not otherwise  
20 appropriated in this section is appropriated to the department  
21 of finance and administration for expenditure in fiscal year  
22 2006 and in subsequent fiscal years to carry out the provisions  
23 of the Tribal Infrastructure Act by providing grants or loans  
24 for qualified projects. Any unexpended or unencumbered balance  
25 remaining at the end of a fiscal year shall revert to the

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1 project fund.

2 Section 8. LEGISLATIVE OVERSIGHT--RULE REVIEW--REPORT.--

3 A. Rules proposed by the board and the department  
4 of finance and administration pursuant to the Tribal  
5 Infrastructure Act shall be reviewed by the legislative interim  
6 Indian affairs committee prior to approval.

7 B. The legislative interim Indian affairs committee  
8 shall be briefed by the board on grant and loan proposals  
9 submitted to the board and shall review the list of grants and  
10 loans made by the board.

11 C. The board shall report to the legislative  
12 interim Indian affairs committee no later than October 1 of  
13 each year regarding the total expenditures from the project  
14 fund for the previous fiscal year, the purposes for which  
15 expenditures were made, an analysis of the progress of the  
16 projects funded and proposals for legislative action in the  
17 subsequent legislative session.

18 Section 9. APPROPRIATION.--Ten million dollars  
19 (\$10,000,000) is appropriated from the general fund to the  
20 tribal infrastructure project fund for expenditure in fiscal  
21 years 2006 and subsequent fiscal years for expenditure pursuant  
22 to the Tribal Infrastructure Act to implement the provisions of  
23 that act. Any unexpended or unencumbered balance remaining at  
24 the end of a fiscal year shall not revert to the general fund.