

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

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

(4) addressing the urgent need of replacing, improving and developing tribal infrastructure through the use of an alternative financing mechanism is a long-term cost

savings benefit to both the state and the tribes; and

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

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

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

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

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

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

A. "board" means the tribal infrastructure board;

B. "department" means the Indian affairs department;

C. "financial assistance" means providing grants or loans on terms and conditions approved by the board;

D. "governor" means the governor of New Mexico;

E. "project fund" means the tribal infrastructure project fund;

F. "qualified project" means a tribal

infrastructure project selected by the board for financial assistance pursuant to the Tribal Infrastructure Act;

G. "tribe" means a federally recognized Indian nation, tribe or pueblo located wholly or partially in New Mexico or any of its governmental entities or subdivisions; and

H. "trust fund" means the tribal infrastructure trust fund.

Section 4. TRIBAL INFRASTRUCTURE BOARD CREATED.--

A. The "tribal infrastructure board" is created and is administratively attached to the department.

B. The board shall consist of nine voting members and four non-voting members.

C. The voting ex-officio members are:

(1) the secretary of Indian affairs, or the secretary's designee from the department, who shall be chair of the board;

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

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

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

(5) the executive director of the New Mexico

finance authority or the executive director's designee from the New Mexico finance authority.

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

- (1) one person who is a member of a pueblo;
- (2) one person who is a member of the Jicarilla Apache Nation;
- (3) one person who is a member of the Mescalero Apache Tribe; and
- (4) one person who is a member of the Navajo Nation.

E. There shall be four non-voting members as follows:

- (1) one representative from the federal bureau of Indian affairs, Albuquerque area office, designated by the regional director;
- (2) one representative from the federal bureau of Indian affairs Navajo area office designated by the regional director;
- (3) one representative from the Albuquerque area Indian health services designated by the area director; and
- (4) one representative from the Navajo area Indian health services designated by the area director.

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

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

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

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

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

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

C. authorize funding for qualified projects, including:

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

(2) developing engineering feasibility reports for infrastructure projects;

(3) inspecting construction of qualified projects;

(4) providing special engineering services;

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

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

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

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

A. The "tribal infrastructure trust fund" is created in the state treasury. The trust fund shall consist of money that is appropriated, donated or otherwise accrues to it. Money in the trust fund shall be invested by the state investment officer in the manner that land grant permanent

funds are invested pursuant to Chapter 6, Article 8 NMSA 1978. Income from investment of the trust fund shall be credited to the fund. Money in the trust fund shall not be expended for any purpose, but an annual distribution from the trust fund shall be made to the project fund pursuant to this section.

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

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

Section 7. TRIBAL INFRASTRUCTURE PROJECT FUND--
CREATED--PURPOSE--APPROPRIATIONS.--

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

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

(2) the project fund shall consist of:

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

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

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

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

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

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

B. The department of finance and administration may establish procedures and adopt rules as required to administer the project fund and to originate grants or loans for qualified projects approved by the board.

C. Beginning in fiscal year 2006 and in subsequent years, the lesser of one percent of the project fund or one hundred thousand dollars (\$100,000) is appropriated from the project fund to the department of finance and administration for expenditure in the fiscal year in which it is appropriated, to administer the project fund. Any

unexpended or unencumbered balance remaining at the end of any fiscal year shall revert to the project fund.

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

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

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

A. Rules proposed by the board and the department of finance and administration pursuant to the Tribal Infrastructure Act shall be reviewed by the legislative

interim Indian affairs committee prior to approval.

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

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