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HOUSE BILL 662

47TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2006

INTRODUCED BY

W. Ken Martinez

AN ACT

RELATING TO EXPENDITURE OF PUBLIC MONEY; PROVIDING FOR CAPITAL EXPENDITURES; ESTABLISHING CONDITIONS FOR PROJECTS WITHIN THE NAVAJO NATION; PROVIDING FOR DIRECT PAYMENTS TO VENDORS; DEFINING INDIGENCY; DECLARING AN EMERGENCY.

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

Section 1. LEGISLATIVE FINDINGS AND PURPOSE.--

A. The legislature finds that many residents of this state living within Indian country are impoverished and are involuntarily living without electric service, indoor plumbing, adequate potable water, telecommunications or related infrastructure due to federal government policies over the decades. This finding is based upon federal decennial census data showing that Native Americans living in Indian country have a long history of income below federal poverty levels and

1 a lack of basic domestic amenities. Living under such adverse
2 circumstances has a negative impact on the education of
3 children at the elementary and secondary school levels and on
4 the health and welfare of Native Americans in general.

5 B. Since the nineteenth century, the federal
6 government has assumed a trust responsibility for Native
7 Americans, but since New Mexico attained statehood, it has had
8 a responsibility for its Native American residents.

9 C. The legislature finds it is the policy of the
10 state of New Mexico to improve the basic quality of life of
11 residents within Indian country through the use of any means
12 available.

13 D. The purpose of this act is in part to enable the
14 state, in compliance with the provisions of the constitution of
15 New Mexico, to provide financial assistance to residents within
16 Indian country so that they may be served by basic residential
17 services such as electric service, indoor plumbing, sewer,
18 adequate potable water, telecommunications and related
19 infrastructure.

20 E. The state has developed government-to-government
21 relationships and agreements with the twenty-two Indian
22 nations, tribes and pueblos in New Mexico regarding education
23 and other topics. To better provide services to Native
24 Americans, many state agencies have designated divisions or
25 liaisons to work with the nations, tribes and pueblos.

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1 F. The state has worked with Indian nations, tribes
2 and pueblos, of which the Navajo Nation is the largest tribal
3 government, and recognizes that the Navajo Nation is divided
4 into political subdivisions designated as chapters.

5 G. Due to federal, state and tribal policies
6 related to the implementation of capital outlay and other
7 projects, delays in implementation due to bureaucratic red tape
8 have resulted in the reversion of millions of dollars in
9 capital outlay funds designated for projects in Indian country.

10 H. Tribal governments and their subdivisions have,
11 through the years, organized nonprofit entities to assist in
12 the provision of education and other basic services.

13 Section 2. FISCAL AGENTS FOR NAVAJO NATION PROJECTS.--The
14 state recognizes the chapters of the Navajo Nation as local
15 tribal entities having the capability and capacity to apply for
16 and implement capital improvement projects. The state also
17 recognizes as local tribal entities those nonprofit entities
18 organized under the supervision of tribal governments whose
19 mission or objective is to provide education and other basic
20 services and who may apply for and implement capital
21 improvement projects. Therefore, the state may contract
22 through a fiscal agent other than the Navajo Nation for the
23 expenditure of state funds on behalf of local tribal entities
24 of the Navajo Nation. Unless otherwise negotiated, an
25 administrative fee of no more than five percent of a project's

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1 cost may be charged by the entity that serves as fiscal agent.

2 Section 3. PUBLIC EMPLOYMENT PROGRAMS.--Local tribal
3 entities may be considered as vendors when they utilize their
4 own resources to implement capital improvement projects.

5 Section 4. DIRECT PAYMENTS.--

6 A. In the case of capital outlay projects located
7 within Indian country and authorized to the Indian affairs
8 department or other state agencies working through the Indian
9 affairs department, the state may make payments directly to
10 third-party contractors for services rendered or goods supplied
11 regarding such projects. Upon approval by the Indian affairs
12 department of a billing statement submitted on behalf of a
13 vendor by a tribal government or a local tribal entity, the
14 department may arrange for payment of that statement directly
15 to the vendor. Capital outlay projects may be invoiced and
16 paid in phases.

17 B. The department of finance and administration is
18 authorized to make payments directly to third-party contractors
19 for services rendered or goods supplied regarding capital
20 outlay projects located within Indian country and authorized to
21 the Indian affairs department.

22 Section 5. NAVAJO NATION PROJECTS--GENERAL FUND
23 APPROPRIATIONS.--Money appropriated from the general fund to
24 several chapters of the Navajo Nation located in New Mexico for
25 the same or similar purposes may be pooled by those chapters to

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1 create a regional or centralized project upon review of the
2 Indian affairs department and approval by the state board of
3 finance.

4 Section 6. TRIBAL INFRASTRUCTURE ACT.--The provisions of
5 this act also may be used to implement the provisions of the
6 Tribal Infrastructure Act.

7 Section 7. PRESUMPTION OF INDIGENCY.--For the purposes of
8 capital outlay projects located within Indian country and
9 authorized to the Indian affairs department, pursuant to
10 Subsection A of Section 14 of Article 9 of the constitution of
11 New Mexico, persons who reside in Indian country who are not
12 served by electric service, water service, indoor plumbing,
13 sewers, telecommunications or related infrastructure are
14 presumed to be indigent. State agencies may contract with and
15 make payment to local tribal entities to assist the indigent in
16 local tribal entities.

17 Section 8. RULEMAKING AUTHORITY.--The department of
18 finance and administration or the Indian affairs department
19 shall promulgate rules necessary to implement the provisions of
20 this act.

21 Section 9. EMERGENCY.--It is necessary for the public
22 peace, health and safety that this act take effect immediately.