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SENATE BILL 1058

48TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2007

INTRODUCED BY

Nancy Rodriguez

AN ACT

RELATING TO PUBLIC FINANCE; RAISING THE CAP ON RURAL
INFRASTRUCTURE LOANS; EXPANDING THE SCOPE OF ELIGIBLE
COMMUNITIES; MAKING SOLID WASTE DISPOSAL PROJECTS ELIGIBLE FOR
FUNDING; ALLOWING FOR ADMINISTRATIVE COSTS; MAKING AN
APPROPRIATION.

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 by Laws 2001, Chapter 250,
Section 1 and by Laws 2001, Chapter 265, Section 1) is amended
to read:

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

A. "department" means the department of
environment;

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1 B. "fund" means the rural infrastructure revolving
2 loan fund;

3 C. "local authority" means [~~any incorporated city,~~
4 ~~town or village, county~~] a mutual domestic association [~~public~~
5 ~~water cooperative association~~] or water and sanitation district
6 [~~whose water supply facility serves~~] that supplies water,
7 wastewater or solid waste services to, or a municipality that
8 has, a population of less than [ten] twenty thousand or a
9 county with a population of less than two hundred thousand;

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

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

16 F. "solid waste facility" includes but is not
17 limited to transfer and convenience facilities, landfills or
18 other equipment or systems used for the processing,
19 transformation, recycling or disposal of solid waste;

20 [F.] G. "wastewater facility" includes but is not
21 limited to collection lines, pumping equipment, treatment works
22 and disposal piping or process units; and

23 [G.] H. "water supply facility" includes but is not
24 limited to the source of supply of water, pumping equipment,
25 storage facilities, transmission lines, treatment works and

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1 distribution systems."

2 Section 2. Section 75-1-2.1 NMSA 1978 (being Laws 1983,
3 Chapter 173, Section 3, as amended by Laws 2001, Chapter 250,
4 Section 2 and by Laws 2001, Chapter 265, Section 2) is amended
5 to read:

6 "75-1-2.1. PURPOSE OF ACT.--The purpose of the Rural
7 Infrastructure Act is to provide financial assistance to local
8 authorities for the planning, design and construction or
9 modification of water supply [~~and~~], wastewater and solid waste
10 facilities [~~to correct demonstrably hazardous or inadequate~~
11 ~~conditions~~]."

12 Section 3. Section 75-1-3 NMSA 1978 (being Laws 1973,
13 Chapter 333, Section 3, as amended by Laws 2001, Chapter 250,
14 Section 3 and by Laws 2001, Chapter 265, Section 3) is amended
15 to read:

16 "75-1-3. FUND CREATED--ADMINISTRATION--EMERGENCY FUND.--

17 A. A special fund is created to be known as the
18 "rural infrastructure revolving loan fund". Money appropriated
19 to the fund or to the department to carry out the provisions of
20 the Rural Infrastructure Act may be used to make loans and
21 grants to local authorities, individually or jointly, for water
22 supply [~~or~~], wastewater or solid waste facilities.

23 Appropriations made to the fund but not expended at the end of
24 the fiscal year for which appropriated shall not revert to the
25 general fund but shall accrue to the credit of the fund.

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1 Earnings on the balance in the fund shall be credited to the
2 fund. In addition, when the proceeds from the issuance of
3 severance tax bonds appropriated to the fund are deposited in
4 the state treasury, interest earned on that money during the
5 period from deposit in the state treasury until the actual
6 transfer of the money to the fund shall be credited to the
7 fund.

8 B. Ten percent of any appropriation to the fund or
9 to the department to carry out the provisions of the Rural
10 Infrastructure Act shall be set aside for emergency grants and
11 loans pursuant to Section 75-1-5 NMSA 1978.

12 C. All water supply [~~and~~], wastewater and solid
13 waste facilities shall be designed in compliance with the
14 engineering requirements established by the secretary after
15 consulting with and considering the recommendations of the
16 professional engineering societies operating in New Mexico.
17 The secretary shall also establish, by [~~regulations~~]
18 regulation, guidelines for the ranking of projects for top
19 priority based on public health needs.

20 D. The department shall administer the fund and
21 shall make grant and loan disbursements in accordance with the
22 Rural Infrastructure Act. The secretary shall adopt
23 regulations to govern the application procedure and
24 requirements for disbursing grants and loans under the Rural
25 Infrastructure Act, including requirements consistent with the

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1 purpose of the act for determining the eligibility and priority
2 of local authorities for such grants and loans.

3 E. Receipts from the repayment of loans, including
4 loans approved by the state board of finance pursuant to
5 Section 75-1-5 NMSA 1978, shall be deposited in the fund by the
6 department, including receipts from the repayment of loans made
7 pursuant to appropriations to carry out the purposes of the
8 Water Supply Construction Act made prior to the effective date
9 of the Rural Infrastructure Act.

10 F. Money in the fund is appropriated to the
11 department to carry out the provisions of the Rural
12 Infrastructure Act. The department may allocate up to ten
13 percent of the uncommitted balance in the fund to pay for
14 administrative expenses necessary to carry out the provisions
15 of the Rural Infrastructure Act. Money allocated for
16 administrative expenses shall be placed in a separate
17 administrative account in the fund to be used solely for
18 administrative expenses, and the department shall at the
19 beginning of the fiscal year determine the projected
20 administrative costs for the year and deposit in the account
21 the appropriate amount; provided that the amount to be
22 deposited does not exceed ten percent of the available
23 uncommitted balance in the fund. Money in the account shall
24 remain in the account at the end of a fiscal year.

25 [~~F.~~] G. Loans and grants made pursuant to the

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1 provisions of the Rural Infrastructure Act shall not be used by
2 the local authority on any project constructed in fulfillment
3 or partial fulfillment of requirements made of a subdivider by
4 the provisions of the Land Subdivision Act or the New Mexico
5 Subdivision Act."

6 Section 4. Section 75-1-4 NMSA 1978 (being Laws 1973,
7 Chapter 333, Section 4, as amended by Laws 2001, Chapter 250,
8 Section 4 and by Laws 2001, Chapter 265, Section 4) is amended
9 to read:

10 "75-1-4. CONDITIONS FOR GRANTS AND LOANS.--

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

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

18 (2) require the contractor of the construction
19 project to post a performance and payment bond in accordance
20 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, wastewater or solid waste facility proposed for
25 funding is to be constructed or extended;

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1 (4) meet the requirements of the financial
2 capability set by the department to assure sufficient revenues
3 to operate and maintain the facility for its useful life and to
4 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 to
13 exceed twenty years. Loans may be interest free or bear an
14 annual interest rate set by the secretary that is at or below
15 market interest rates. The repayment of loans shall be in
16 annual installments, or as approved by the department,
17 beginning one year after completion of the project. The
18 repayment of the interest on the loan accumulated during the
19 design and construction of a project may be included in the
20 final loan amount, but it shall not be counted in determining
21 the maximum loan amount.

22 C. No loan recipient eligible to receive a grant
23 under the Rural Infrastructure Act shall receive grants in any
24 one year totaling more than [~~two hundred thousand dollars~~
25 ~~(\$200,000)~~] five hundred thousand dollars (\$500,000).

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1 D. The maximum assistance, including both loans and
2 grants, [~~which~~] that a local authority may receive under the
3 Rural Infrastructure Act in any one year is [~~five hundred~~
4 ~~thousand dollars (\$500,000)] two million dollars (\$2,000,000).~~

5 E. Plans and specifications for a water supply
6 [~~or~~], wastewater or solid waste facility construction project
7 shall be approved by the department before grant or loan
8 disbursements to pay for construction costs are made to a local
9 authority. Interim loan disbursements to pay for engineering
10 and other professional services may be made by the department
11 prior to the approval of the plans and specifications.

12 F. Privately owned water supply [~~or~~], wastewater or
13 solid waste facilities are not eligible for assistance under
14 the Rural Infrastructure Act.

15 G. Grants and loans shall be made only for eligible
16 items. Eligible items include but are not limited to the costs
17 of engineering feasibility reports, contracted engineering
18 design, inspection of construction, special engineering
19 services, archaeological surveys and contracted construction.
20 The costs of water rights, land, system acquisition, easements
21 and rights of way, refinancing of program loans, legal costs
22 and fiscal agents' fees are eligible items only for loan funds.
23 Local authority administrative costs shall not be included as
24 eligible items.

25 H. The department may:

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1 (1) conduct periodic reviews of the operation
2 of a local authority that has received funding from the
3 department;

4 (2) require the local authority to submit
5 information relevant to the loan to the department;

6 (3) require the submission of financial
7 reports relevant to the ability of the local authority to repay
8 the loan; and

9 (4) review and require changes to the
10 rate-setting analysis that supports the loan payments.

11 [H.] I. In the event the local authority fails to
12 make the prescribed loan repayment, the department is
13 authorized to set solid waste, water or wastewater user rates
14 in the area of the local authority's jurisdiction in order to
15 provide sufficient money for repayment of [~~this~~] the loan and
16 proper operation and maintenance. Funds sufficient to provide
17 for repayment of the loan and proper operation and maintenance
18 shall be identified through a rate-setting analysis that will
19 ensure enough revenue to cover yearly expenses and emergencies,
20 a reserve fund for nonmajor capital items and equitable pay for
21 staff. The rate-setting analysis may be reviewed and changed
22 on a yearly basis if necessary.

23 J. The department may enforce its rights by suit or
24 mandamus and may utilize all other available remedies under
25 state law in the event of default by a local authority."

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1 Section 5. Section 75-1-5 NMSA 1978 (being Laws 1987,
2 Chapter 175, Section 4, as amended by Laws 2001, Chapter 250,
3 Section 5 and by Laws 2001, Chapter 265, Section 5) is amended
4 to read:

5 "75-1-5. EMERGENCY LOANS AND GRANTS.--Ten percent of the
6 proceeds of each severance tax bond issuance or other
7 appropriation for the purpose of carrying out the provisions of
8 the Rural Infrastructure Act shall be reserved for emergencies
9 and shall be allocated by the department only upon approval of
10 the state board of finance. This amount shall not be deposited
11 in the fund and shall be allocated only for emergency loans and
12 grants. Emergency loans and grants shall be made in accordance
13 with the applicable provisions for loans pursuant to the Rural
14 Infrastructure Act; provided that a grant shall not exceed [~~two~~
15 ~~hundred thousand dollars (\$200,000)] five hundred thousand
16 dollars (\$500,000). At the end of the third quarter of each
17 fiscal year, the unexpended balance of the reserved amount may
18 be transferred by the department to the fund for use in
19 accordance with the Rural Infrastructure Act."~~

20 Section 6. Section 75-1-6 NMSA 1978 (being Laws 1988,
21 Chapter 28, Section 7, as amended by Laws 2001, Chapter 250,
22 Section 6 and by Laws 2001, Chapter 265, Section 6) is amended
23 to read:

24 "75-1-6. AVERAGE RESIDENTIAL USER COST REDUCTION GRANTS
25 AND ZERO PERCENT LOANS.--

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1 A. No more than twenty-five percent of the proceeds
2 of each severance tax bond issuance or other appropriation for
3 the purpose of carrying out the provisions of the Rural
4 Infrastructure Act shall be reserved for average residential
5 user cost reduction grants or zero percent loans to reduce
6 average residential user cost to a reasonable level for
7 eligible financially needy loan recipients whose water supply
8 or wastewater facilities serve less than three thousand
9 persons.

10 B. Average residential user cost reduction grants
11 and zero percent loans shall be allocated by the department in
12 accordance with the provisions for grants and loans pursuant to
13 the Rural Infrastructure Act, provided that an average
14 residential user cost reduction grant or zero percent loan
15 shall not exceed [~~two hundred thousand dollars (\$200,000)~~] five
16 hundred thousand dollars (\$500,000). Such grants and loans
17 shall reduce only the principal and interest portion of the
18 average residential user cost to a reasonable cost as
19 determined by the department.

20 C. A zero percent loan or average residential user
21 cost reduction grant shall be approved by the department when,
22 after construction bids have been received, the following
23 conditions have been met by the local authority whose average
24 residential user costs are in need of reduction:

25 (1) the construction project is designed using

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- the most cost-effective and dependable option;
- (2) the system is designed with adequate built-in expansion capacity;
- (3) other sources of grant funds have been sought and are not available in a timely manner;
- (4) the project cannot feasibly be reduced in scope or phased so as to bring it within available loan funds and within reasonable user cost; and
- (5) the local authority's median household income is less than ninety percent of the statewide non-metropolitan median household income based on the most current federal decennial census."

Section 7. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2007.