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SENATE BILL 498

49TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2009

INTRODUCED BY

Timothy Z. Jennings

AN ACT

RELATING TO ELECTRIC SERVICE; ENACTING THE RURAL
ELECTRIFICATION ACCELERATION PROJECT ACT; CREATING A FUND TO
PROVIDE ELECTRIC SERVICE INFRASTRUCTURE TO AREAS OF THE STATE
THAT CURRENTLY HAVE NO ELECTRIC SERVICE; IMPOSING A FEE;
AUTHORIZING THE ISSUANCE OF REVENUE BONDS BY THE NEW MEXICO
FINANCE AUTHORITY; AUTHORIZING THE ISSUANCE OF SEVERANCE TAX
BONDS; MAKING AN APPROPRIATION.

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

Section 1. [NEW MATERIAL] SHORT TITLE.--Sections 1
through 6 of this act may be cited as the "Rural
Electrification Acceleration Project Act".

Section 2. [NEW MATERIAL] FINDINGS AND PURPOSE.--

A. The legislature finds that:

(1) availability of electric service is a

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1 basic need of New Mexicans;

2 (2) there are still many residents in rural
3 areas of this state who do not have the option of obtaining
4 reliable electric service at a reasonable cost;

5 (3) without electric service, these New
6 Mexicans cannot enjoy the simple basics of life that residents
7 in the rest of the state take for granted;

8 (4) without electric service and the resulting
9 availability of additional learning and communication options,
10 it will be increasingly difficult for these rural New Mexicans
11 to compete in the global economy of the twenty-first century;
12 and

13 (5) New Mexico needs a program to extend
14 electric transmission lines to these rural areas so that every
15 New Mexican can have the option of securing reliable electric
16 service at a reasonable cost.

17 B. The purpose of the Rural Electrification
18 Acceleration Project Act is to provide a financing vehicle so
19 that electric service can be offered to every area of this
20 state.

21 Section 3. [NEW MATERIAL] DEFINITIONS.--As used in the
22 Rural Electrification Acceleration Project Act:

23 A. "authority" means the New Mexico finance
24 authority;

25 B. "commission" means the public regulation

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1 commission;

2 C. "electric service infrastructure" means
3 transmission lines, rights of way and related property and
4 equipment necessary to provide electric service. "Electric
5 service infrastructure" includes facilities and related
6 equipment for the generation of renewable energy, but does not
7 include any other facilities or equipment related to the
8 generation of electricity;

9 D. "electric utility" means a public electric
10 utility regulated by the commission pursuant to the Public
11 Utility Act, a municipal electric utility exempt from
12 commission regulation pursuant to Section 62-6-4 NMSA 1978 or
13 an applicant for an award from the fund pursuant to the Rural
14 Electrification Acceleration Project Act that is not yet a
15 public electric utility but would be required to be regulated
16 pursuant to the Public Utility Act if the award is granted;

17 E. "fund" means the rural electrification
18 acceleration project grant fund;

19 F. "renewable energy" means electric energy:

20 (1) generated by use of low- or zero-emissions
21 generation technology with substantial long-term production
22 potential; and

23 (2) generated by use of renewable energy
24 resources that may include:

25 (a) solar, wind and geothermal

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1 resources;

2 (b) hydropower facilities brought into
3 service after July 1, 2007;

4 (c) fuel cells that are not
5 fossil-fueled; and

6 (d) biomass resources, such as
7 agriculture or animal waste, small diameter timber, salt cedar
8 and other phreatophyte or woody vegetation removed from river
9 basins or watersheds in New Mexico, landfill gas and
10 anaerobically digested waste biomass; but

11 (3) does not include electric energy generated
12 by use of fossil fuel or nuclear energy; and

13 G. "revenue bonds" means the rural electrification
14 acceleration project bonds issued pursuant to the New Mexico
15 Finance Authority Act and Section 5 of the Rural
16 Electrification Acceleration Project Act.

17 Section 4. [NEW MATERIAL] ELECTRICITY USE FEE IMPOSED--
18 COLLECTION.--

19 A. An electricity use fee of two cents (\$.02) per
20 megawatt hour is imposed on each retail electric customer in
21 New Mexico.

22 B. The electricity use fee shall be included on the
23 monthly bill of each customer of a public electric utility, a
24 municipal electric utility or other person providing retail
25 electric service. The customer shall be liable for the payment

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1 of the electricity use fee to the provider of retail electric
2 service.

3 C. The person providing retail electric service
4 shall be responsible for assessing, collecting and remitting
5 the electricity use fee to the taxation and revenue department.
6 The amount of the electricity use fee collected by a retail
7 electric service provider shall be remitted monthly to the
8 taxation and revenue department on or before the twenty-fifth
9 day of the month following collection. The taxation and
10 revenue department shall administer and enforce the collection
11 of the fee pursuant to the provisions of the Tax Administration
12 Act.

13 D. The taxation and revenue department shall
14 distribute to the REAP debt service fund the receipts of the
15 electricity use fees collected less any amount deducted
16 pursuant to the provisions of Subsection E of this section;
17 provided that, upon certification by the chief executive
18 officer of the authority to the taxation and revenue department
19 that no debt service is due on revenue bonds, the net receipts
20 shall be distributed to the rural electrification acceleration
21 project grant fund. Transfer of the net receipts from the
22 electricity use fee to the REAP debt service fund or the rural
23 electrification acceleration project grant fund shall be made
24 within the month following the month in which the fee is
25 collected.

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1 E. The taxation and revenue department may deduct
2 an amount not to exceed three percent of the electricity use
3 fee collected as a charge for the administrative costs of
4 collection, which amount shall be remitted to the state
5 treasurer for deposit in the general fund each month.

6 Section 5. [NEW MATERIAL] BONDS AUTHORIZED--ISSUANCE--
7 FUND CREATED.--

8 A. The authority is authorized to issue and sell
9 from time to time revenue bonds, known as "rural
10 electrification acceleration project bonds", in an amount
11 outstanding at any one time not to exceed twenty million
12 dollars (\$20,000,000), payable solely from the REAP debt
13 service fund, in compliance with the Rural Electrification
14 Acceleration Project Act and the New Mexico Finance Authority
15 Act. The bonds shall be issued for the purpose of making
16 grants for the acquisition and construction of electric service
17 infrastructure pursuant to the Rural Electrification
18 Acceleration Project Act when the commission has certified that
19 grants have been or will be awarded pursuant to Section 6 of
20 the Rural Electrification Acceleration Project Act and there is
21 a need for the bonds. The bonds may be issued at times and on
22 terms established by the authority.

23 B. The net proceeds from the sale of the revenue
24 bonds are appropriated to the commission and shall be deposited
25 in the rural electrification acceleration project grant fund

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1 for the purpose of making grants for the acquisition and
2 construction of electric service infrastructure pursuant to the
3 Rural Electrification Acceleration Project Act.

4 C. All revenue bonds issued by the authority shall
5 be obligations of the authority payable solely from the REAP
6 debt service fund. The bonds shall not create an obligation,
7 debt or liability of the state and no breach of any pledge,
8 obligation or agreement of the authority shall impose a
9 pecuniary liability or charge upon the general credit or taxing
10 power of the state or any political subdivision of the state.

11 D. The authority may purchase revenue bonds with
12 money in the public project revolving fund pursuant to the
13 provisions of Section 6-21-6 NMSA 1978.

14 E. The "REAP debt service fund" is created in the
15 authority. The fund shall consist of distributions to the fund
16 of the net receipts derived from the electricity use fee and
17 money earned from investment of the fund. Balances remaining
18 in the fund at the end of a fiscal year shall not revert.
19 Money in the fund is appropriated to the authority for the
20 payment of principal, interest, premiums and expenses on
21 revenue bonds issued pursuant to this section.

22 F. On the last day of January and July of each
23 year, the authority shall estimate the amount needed to make
24 debt service and other payments during the next twelve months
25 from the REAP debt service fund on the revenue bonds issued

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1 pursuant to this section. The authority shall transfer to the
2 rural electrification acceleration project grant fund any
3 balance in the REAP debt service fund above the estimated
4 amounts.

5 G. Upon the certification of the authority that all
6 debt service on revenue bonds has been paid in full, any
7 remaining balance of the REAP debt service fund shall be
8 transferred to the rural electrification acceleration project
9 grant fund.

10 Section 6. [NEW MATERIAL] RURAL ELECTRIFICATION
11 ACCELERATION PROJECT GRANT FUND--APPLICATION FOR GRANTS--
12 AWARDS.--

13 A. The "rural electrification acceleration project
14 grant fund" is created in the state treasury. The fund shall
15 consist of proceeds from the sale of revenue bonds, proceeds
16 from the sale of severance tax bonds issued pursuant to Section
17 7-27-12.5 NMSA 1978, electricity use fees distributed to the
18 fund and any appropriations, grants, gifts or bequests made to
19 the fund. Earnings from the fund shall be credited to the
20 fund. The fund shall be administered by the commission, and
21 money in the fund is appropriated to the commission for
22 awarding grants for electric service infrastructure.
23 Disbursements from the fund shall be made by warrant of the
24 department of finance and administration pursuant to vouchers
25 signed by the chair of the commission or the chair's authorized

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1 representative. Any unexpended or unencumbered balance
2 remaining in the fund at the end of a fiscal year shall not
3 revert but shall remain to the credit of the fund.

4 B. The commission shall, by rule, establish a
5 program for grant awards from the fund to be used for electric
6 service infrastructure that will provide electric service to
7 residences and businesses in rural areas of the state for which
8 electric service is not otherwise available.

9 C. An electric utility, desiring a grant award from
10 the fund, shall submit an application to the commission. The
11 application shall contain:

12 (1) a description of the applicant and its
13 experience, expertise and ability to provide the electric
14 service infrastructure for which the grant will be used and the
15 resulting electric service;

16 (2) a description of the area that will be
17 served by the electric service infrastructure, including the
18 number of residences and businesses, the estimated number of
19 individuals and an assessment of the need in the area for
20 electric service;

21 (3) the estimated cost per kilowatt-hour for
22 the electric service that will be provided after the electric
23 service infrastructure is installed;

24 (4) the amount of grant award desired and all
25 proposed expenditures from the grant award;

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1 (5) the source and amount of the required
2 matching funds, including copies of such ordinances,
3 resolutions, contracts, grant agreements or other evidence of
4 the commitment for the matching funds as is required by the
5 commission;

6 (6) the source and amount of any additional
7 private or public funds that will be used to supplement or
8 match the grant award and the required match;

9 (7) if the grant will be used for the
10 construction or acquisition of facilities or equipment for the
11 generation of renewable energy, details concerning the proposed
12 generation capacity, the siting of the facilities, the
13 estimated costs and the proposed source of the renewable
14 energy; and

15 (8) such other information required by the
16 commission or considered by the applicant to be helpful to the
17 commission in making a decision.

18 D. The commission shall evaluate the application,
19 including the need for the electric service to be provided if
20 the grant is awarded, the cost effectiveness of the electric
21 service infrastructure and the cost of the electric service to
22 be provided and award the grant if it determines that:

23 (1) the applicant has secured commitments for
24 matching funds from other public sources, including the federal
25 government, local governments and Indian nations, tribes or

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1 pueblos, in an amount equal to fifty percent of the total grant
2 awarded from the fund;

3 (2) the award will further the purposes of the
4 Rural Electrification Acceleration Project Act; and

5 (3) the award is a prudent use of state money.

6 E. The commission shall, by rule, establish such
7 reporting and oversight functions as are necessary to ensure
8 that the grants are expended in the most prudent manner
9 possible and consistent with the original purpose for which
10 they were made, provided that no more than an amount equal to
11 five percent of a grant award shall be expended from the fund
12 for administration functions of the commission.

13 F. No grant shall be awarded to provide electric
14 service infrastructure to any area that includes a subdivision
15 subject to regulation under the Land Subdivision Act or the New
16 Mexico Subdivision Act.

17 Section 7. Section 7-1-2 NMSA 1978 (being Laws 1965,
18 Chapter 248, Section 2, as amended) is amended to read:

19 "7-1-2. APPLICABILITY.--The Tax Administration Act
20 applies to and governs:

21 A. the administration and enforcement of the
22 following taxes or tax acts as they now exist or may hereafter
23 be amended:

24 (1) Income Tax Act;

25 (2) Withholding Tax Act;

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- 1 (3) Venture Capital Investment Act;
- 2 (4) Gross Receipts and Compensating Tax Act
- 3 and any state gross receipts tax;
- 4 (5) Liquor Excise Tax Act;
- 5 (6) Local Liquor Excise Tax Act;
- 6 (7) any municipal local option gross receipts
- 7 tax;
- 8 (8) any county local option gross receipts
- 9 tax;
- 10 (9) Special Fuels Supplier Tax Act;
- 11 (10) Gasoline Tax Act;
- 12 (11) petroleum products loading fee, which fee
- 13 shall be considered a tax for the purpose of the Tax
- 14 Administration Act;
- 15 (12) Alternative Fuel Tax Act;
- 16 (13) Cigarette Tax Act;
- 17 (14) Estate Tax Act;
- 18 (15) Railroad Car Company Tax Act;
- 19 (16) Investment Credit Act, rural job tax
- 20 credit, Laboratory Partnership with Small Business Tax Credit
- 21 Act, Technology Jobs Tax Credit Act, film production tax
- 22 credit, New Mexico filmmaker tax credit, Affordable Housing Tax
- 23 Credit Act, high-wage jobs tax credit and Research and
- 24 Development Small Business Tax Credit Act;
- 25 (17) Corporate Income and Franchise Tax Act;

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- 1 (18) Uniform Division of Income for Tax
- 2 Purposes Act;
- 3 (19) Multistate Tax Compact;
- 4 (20) Tobacco Products Tax Act; ~~[and]~~
- 5 (21) the telecommunications relay service
- 6 surcharge imposed by Section 63-9F-11 NMSA 1978, which
- 7 surcharge shall be considered a tax for the purposes of the Tax
- 8 Administration Act; and
- 9 (22) the electricity use fee imposed pursuant
- 10 to Section 4 of the Rural Electrification Acceleration Project
- 11 Act, which fee shall be considered a tax for the purposes of
- 12 the Tax Administration Act;
- 13 B. the administration and enforcement of the
- 14 following taxes, surtaxes, advanced payments or tax acts as
- 15 they now exist or may hereafter be amended:
- 16 (1) Resources Excise Tax Act;
- 17 (2) Severance Tax Act;
- 18 (3) any severance surtax;
- 19 (4) Oil and Gas Severance Tax Act;
- 20 (5) Oil and Gas Conservation Tax Act;
- 21 (6) Oil and Gas Emergency School Tax Act;
- 22 (7) Oil and Gas Ad Valorem Production Tax Act;
- 23 (8) Natural Gas Processors Tax Act;
- 24 (9) Oil and Gas Production Equipment Ad
- 25 Valorem Tax Act;

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1 (10) Copper Production Ad Valorem Tax Act;

2 (11) any advance payment required to be made
3 by any act specified in this subsection, which advance payment
4 shall be considered a tax for the purposes of the Tax
5 Administration Act;

6 (12) Enhanced Oil Recovery Act;

7 (13) Natural Gas and Crude Oil Production
8 Incentive Act; and

9 (14) intergovernmental production tax credit
10 and intergovernmental production equipment tax credit;

11 C. the administration and enforcement of the
12 following taxes, surcharges, fees or acts as they now exist or
13 may hereafter be amended:

14 (1) Weight Distance Tax Act;

15 (2) the workers' compensation fee authorized
16 by Section 52-5-19 NMSA 1978, which fee shall be considered a
17 tax for purposes of the Tax Administration Act;

18 (3) Uniform Unclaimed Property Act (1995);

19 (4) 911 emergency surcharge and the network
20 and database surcharge, which surcharges shall be considered
21 taxes for purposes of the Tax Administration Act;

22 (5) the solid waste assessment fee authorized
23 by the Solid Waste Act, which fee shall be considered a tax for
24 purposes of the Tax Administration Act;

25 (6) the water conservation fee imposed by

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1 Section 74-1-13 NMSA 1978, which fee shall be considered a tax
2 for the purposes of the Tax Administration Act; and

3 (7) the gaming tax imposed pursuant to the
4 Gaming Control Act; and

5 D. the administration and enforcement of all other
6 laws, with respect to which the department is charged with
7 responsibilities pursuant to the Tax Administration Act, but
8 only to the extent that the other laws do not conflict with the
9 Tax Administration Act."

10 Section 8. A new section of the Severance Tax Bonding
11 Act, Section 7-27-12.5 NMSA 1978, is enacted to read:

12 "7-27-12.5. [NEW MATERIAL] SEVERANCE TAX BONDS
13 AUTHORIZED--RURAL ELECTRIFICATION ACCELERATION PROJECT GRANT
14 FUND.--

15 A. The state board of finance may issue and sell
16 severance tax bonds in each fiscal year from fiscal year 2010
17 through fiscal year 2019 in compliance with the Severance Tax
18 Bonding Act in an amount not exceeding five million dollars
19 (\$5,000,000) per fiscal year when the public regulation
20 commission certifies the need for the issuance of the bonds,
21 provided that, if the authorized amount is not issued in any
22 fiscal year, the authorization shall carry forward to the
23 subsequent fiscal year.

24 B. The state board of finance shall schedule the
25 issuance and sale of the bonds in the most expeditious and

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1 economical manner possible upon a finding by the state board of
2 finance that, based upon a certification from the public
3 regulation commission, the proceeds of the bonds are needed and
4 that the projects can proceed to contract within a reasonable
5 time. The state board of finance shall further take the
6 appropriate steps necessary to comply with the federal Internal
7 Revenue Code of 1986, as amended. The state board of finance
8 may issue and sell the bonds in the same manner as other
9 severance tax bonds in an amount not to exceed the authorized
10 amount provided for in this section.

11 C. The proceeds from the sale of the bonds are
12 appropriated to the rural electrification acceleration project
13 grant fund for the purpose of awarding grants pursuant to the
14 Rural Electrification Acceleration Project Act.

15 D. Money from the severance tax bonds provided for
16 in this section shall not be used to pay indirect costs. If
17 the public regulation commission has not certified the need for
18 the issuance of the bonds by July 1, 2020, the authorization
19 provided in this section shall expire.

20 E. Any unexpended or unencumbered balance remaining
21 at the end of fiscal year 2023 shall revert to the severance
22 tax bonding fund."

23 Section 9. EFFECTIVE DATE.--The effective date of the
24 provisions of this act is July 1, 2009.