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HOUSE BILL 173

55TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2022

INTRODUCED BY

Roger E. Montoya and Leo Jaramillo and Susan K. Herrera and
Rebecca Dow

AN ACT

RELATING TO PUBLIC INFRASTRUCTURE; ENACTING THE RURAL
INFRASTRUCTURE CRISIS RESPONSE ACT; CREATING THE RURAL
INFRASTRUCTURE CRISIS RESPONSE FUND; ESTABLISHING ELIGIBILITY
REQUIREMENTS FOR FINANCIAL ASSISTANCE; CREATING THE BUREAU OF
RURAL INFRASTRUCTURE CRISIS RESPONSE; PROVIDING POWERS;
ALLOCATING A PORTION OF THE SEVERANCE TAX BONDING FUND TO THE
RURAL INFRASTRUCTURE CRISIS RESPONSE FUND; MAKING AN
APPROPRIATION.

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

SECTION 1. [NEW MATERIAL] SHORT TITLE.--Sections 1
through 5 of this act may be cited as the "Rural Infrastructure
Crisis Response Act".

SECTION 2. [NEW MATERIAL] DEFINITIONS.--As used in the
Rural Infrastructure Crisis Response Act:

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1 A. "bureau" means the bureau of rural
2 infrastructure crisis response of the local government division
3 of the department of finance and administration;

4 B. "crisis event" means an unforeseen power surge,
5 weather or other event that disables the use of critical public
6 infrastructure and requires complete replacement or repair of
7 the infrastructure that would cost a minimum of fifty percent
8 of the cost of complete replacement. A "crisis event" may
9 include damage to constructed infrastructure, durable equipment
10 or the loss of a public resource, such as loss of a community
11 water source due to a dam failure or extreme drought, but does
12 not include foreseeable depletion of a water source due to
13 regular pumping over time;

14 C. "critical public infrastructure" means public
15 infrastructure or durable equipment that is required for public
16 health, safety or welfare of individuals or communities and
17 includes dams, transportation infrastructure and infrastructure
18 essential to the delivery of utility services;

19 D. "durable equipment" means equipment essential to
20 the functioning of critical infrastructure that has a standard
21 useable life cycle of seven years or more before it predictably
22 must be replaced;

23 E. "eligible project" means a project that is
24 eligible pursuant to Subsection A of Section 3 of the Rural
25 Infrastructure Crisis Response Act;

1 F. "fund" means the rural infrastructure crisis
2 response fund;

3 G. "local authority" means a municipality that has
4 a population of less than twenty thousand people or a county
5 that has a population of less than one hundred fifty thousand
6 people according to the latest federal decennial census, a
7 tribe, a mutual domestic water consumers association or a water
8 and sanitation district that maintains local roads or provides
9 utility services to less than six thousand billed customers;

10 H. "non-state money" means money that does not
11 derive from revenue or interest into the state treasury or into
12 a state fund;

13 I. "relief request" means a request for financial
14 assistance for a project to repair or replace critical public
15 infrastructure that has experienced a crisis event;

16 J. "repair or replace" means repair or replacement
17 of critical public infrastructure to the same level of
18 functionality or service as the infrastructure provided prior
19 to a crisis event;

20 K. "secretary" means the secretary of finance and
21 administration;

22 L. "timely basis" means financial assistance for
23 replacement or repair of critical public infrastructure that
24 can be received or obligated by a local authority within one
25 hundred eighty days of a crisis event;

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1 M. "tribe" means an Indian nation, tribe or pueblo
2 located wholly or partially in New Mexico; and

3 N. "utility services" means broadband, electricity,
4 natural gas, solid waste, water or wastewater services.

5 SECTION 3. ~~[NEW MATERIAL]~~ INFRASTRUCTURE ELIGIBILITY--
6 RELIEF REQUEST--EVALUATION--DETERMINATION--PROCEDURES AND
7 RULES.--

8 A. Beginning on January 1, 2023, a project for
9 replacement or repair of critical public infrastructure is
10 eligible for financial assistance when a relief request has
11 been submitted to the bureau pursuant to Subsection B of this
12 section and the secretary has made a determination of
13 eligibility pursuant to Subsection D of this section that the
14 project meets the following requirements:

15 (1) the project is for repair or replacement
16 of critical public infrastructure damaged due to a crisis
17 event;

18 (2) the damage to the critical public
19 infrastructure severely affects the public health, safety or
20 welfare of a community;

21 (3) the local authority does not have the
22 resources to repair or replace the critical public
23 infrastructure; and

24 (4) no other source of financial assistance is
25 available to repair or replace the critical public

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1 infrastructure on a timely basis.

2 B. A relief request may be submitted to the bureau
3 by the governing board or council of a local authority or a
4 state representative or a state senator due to a crisis event
5 in the district the state representative or the state senator
6 represents; provided that the request shall include a
7 recommendation regarding eligibility by the regional planning
8 commission established pursuant to the Regional Planning Act in
9 which the crisis event occurred.

10 C. Within thirty days of receiving a relief request
11 pursuant to Subsection B of this section, the bureau shall
12 provide an evaluation to the secretary regarding whether the
13 relief request meets the eligibility requirements of Subsection
14 A of this section and shall certify whether the local authority
15 qualifies for financial hardship.

16 D. Within fifteen days of receiving an evaluation
17 pursuant to Subsection C of this section, the secretary shall
18 make a formal determination regarding whether the project in a
19 relief request meets the eligibility requirements pursuant to
20 Subsection A of this section and whether the local authority
21 qualifies for financial hardship.

22 E. Upon a determination of eligibility pursuant to
23 Subsection D of this section, the secretary shall award a grant
24 from the fund to the local authority to plan, design,
25 construct, repair or replace a rural infrastructure crisis

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1 response project; provided that the secretary shall not award
2 more than one million dollars' (\$1,000,000) worth of grants for
3 rural infrastructure crisis response projects within any given
4 county in a calendar year.

5 SECTION 4. [NEW MATERIAL] RURAL INFRASTRUCTURE CRISIS
6 RESPONSE FUND--CREATED--PURPOSE--APPROPRIATIONS.--

7 A. The "rural infrastructure crisis response fund"
8 is created in the state treasury. The fund consists of
9 appropriations, donations, interest from investment of the fund
10 and other money distributed to the fund. The department of
11 finance and administration shall administer the fund and may
12 establish subaccounts for the fund as it deems necessary.
13 Money in the fund is appropriated to the department of finance
14 and administration for expenditure as provided in this section.
15 Disbursements from the fund shall be made by warrant of the
16 secretary of finance and administration pursuant to vouchers
17 signed by the secretary of finance and administration or the
18 secretary's designee. Money in the fund shall not revert at
19 the end of a fiscal year.

20 B. Money in the fund may be used to make grants to
21 local authorities individually or jointly for eligible projects
22 that have been approved pursuant to Subsection E of Section 3
23 of the Rural Infrastructure Crisis Response Act for up to:

24 (1) ninety-five percent of the total cost of
25 an eligible project; provided that the county, municipality or

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1 tribe has demonstrated an ability, and has contracted, to
2 provide the remainder of the project costs in non-state money;
3 or

4 (2) one hundred percent of the total cost of
5 an eligible project if a financial hardship qualification
6 certificate is issued to the local authority by the bureau and
7 the level of hardship assistance is approved by the secretary.

8 C. An eligible project that requires construction
9 shall be designed in compliance with the engineering
10 requirements established by the secretary after consulting with
11 and considering the recommendations of the engineering
12 societies operating in New Mexico.

13 D. By November 30 of each year, the department of
14 finance and administration shall provide a report to the
15 appropriate interim legislative committee on the status of the
16 fund, the status of the eligible projects for which grants have
17 been made from the fund and the outstanding demand for
18 assistance from the fund.

19 SECTION 5. [NEW MATERIAL] BUREAU OF RURAL INFRASTRUCTURE
20 CRISIS RESPONSE CREATED--POWERS.--

21 A. The "bureau of rural infrastructure crisis
22 response" is created within the local government division of
23 the department of finance and administration.

24 B. The bureau may hire staff as needed to meet the
25 responsibilities of the bureau.

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1 C. The bureau shall provide evaluations of relief
2 requests as required pursuant to Section 3 of the Rural
3 Infrastructure Crisis Response Act.

4 **SECTION 6.** Section 7-27-10.1 NMSA 1978 (being Laws 2003,
5 Chapter 134, Section 1, as amended) is amended to read:

6 "7-27-10.1. TRANSFER TO SEVERANCE TAX PERMANENT FUND
7 BEFORE DETERMINING BONDING CAPACITY--AUTHORIZATION FOR
8 SEVERANCE TAX BONDS--PRIORITY FOR RURAL INFRASTRUCTURE CRISIS
9 RESPONSE PROJECTS, WATER PROJECTS AND TRIBAL INFRASTRUCTURE
10 PROJECTS.--

11 A. On December 31 of each year from 2019 through
12 2028, the division shall transfer twenty-three million six
13 hundred ninety thousand dollars (\$23,690,000) from the
14 severance tax bonding fund to the severance tax permanent fund,
15 unless the state board of finance determines that a lesser
16 transfer amount is necessary pursuant to Section 7-27-8 NMSA
17 1978 to avoid a potential shortfall in debt service
18 obligations.

19 B. On December 31 of each year from 2022 through
20 2031, the division shall transfer twenty-five million dollars
21 (\$25,000,000) from the severance tax bonding fund to the rural
22 infrastructure crisis response fund unless the state board of
23 finance determines that a lesser transfer amount is necessary
24 pursuant to Section 7-27-8 NMSA 1978 to avoid a potential
25 shortfall in debt service obligations.

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1 ~~[B.]~~ C. By January 15 of each year, the division
2 shall estimate the amount of bonding capacity available for
3 severance tax bonds to be authorized by the legislature.

4 ~~[G.]~~ D. For each year except 2017, the division
5 shall allocate nine percent of the estimated bonding capacity
6 each year for water projects, and the legislature authorizes
7 the state board of finance to issue severance tax bonds in the
8 annually allocated amount for use by the water trust board to
9 fund water projects statewide. The water trust board shall
10 certify to the state board of finance the need for issuance of
11 bonds for water projects. The state board of finance may issue
12 and sell the bonds in the same manner as other severance tax
13 bonds in an amount not to exceed the authorized amount provided
14 for in this subsection. If necessary, the state board of
15 finance shall take the appropriate steps to comply with the
16 federal Internal Revenue Code of 1986, as amended. Proceeds
17 from the sale of the bonds are appropriated to the water
18 project fund in the New Mexico finance authority for the
19 purposes certified by the water trust board to the state board
20 of finance.

21 ~~[D.]~~ E. The division shall allocate the following
22 percentage of the estimated bonding capacity for tribal
23 infrastructure projects:

24 (1) in 2016, six and one-half percent; and

25 (2) in 2017 and each subsequent year, four and

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1 one-half percent.

2 ~~[E.]~~ F. The legislature authorizes the state board
3 of finance to issue severance tax bonds in the amount provided
4 for in this section for use by the tribal infrastructure board
5 to fund tribal infrastructure projects. The tribal
6 infrastructure board shall certify to the state board of
7 finance the need for issuance of bonds for tribal
8 infrastructure projects. The state board of finance may issue
9 and sell the bonds in the same manner as other severance tax
10 bonds in an amount not to exceed the authorized amount provided
11 for in this section. If necessary, the state board of finance
12 shall take the appropriate steps to comply with the federal
13 Internal Revenue Code of 1986, as amended. Proceeds from the
14 sale of the bonds are appropriated to the tribal infrastructure
15 project fund for the purposes certified by the tribal
16 infrastructure board to the state board of finance.

17 ~~[F.]~~ G. Money from the severance tax bonds provided
18 for in this section shall not be used to pay indirect project
19 costs. Any unexpended balance from proceeds of severance tax
20 bonds issued for a water project or a tribal infrastructure
21 project shall revert to the severance tax bonding fund within
22 six months of completion of the project. The New Mexico
23 finance authority shall monitor and ensure proper reversions of
24 the bond proceeds appropriated for water projects, and the
25 department of finance and administration shall monitor and

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1 ensure proper reversions of the bond proceeds appropriated for
2 tribal infrastructure projects.

3 ~~[G.]~~ H. As used in this section:

4 (1) "division" means the board of finance
5 division of the department of finance and administration;

6 (2) "tribal infrastructure project" means a
7 qualified project under the Tribal Infrastructure Act; and

8 (3) "water project" means a capital outlay
9 project for:

10 (a) the storage, conveyance or delivery
11 of water to end users;

12 (b) the implementation of federal
13 Endangered Species Act of 1973 collaborative programs;

14 (c) the restoration and management of
15 watersheds;

16 (d) flood prevention; or

17 (e) conservation, recycling, treatment
18 or reuse of water."

19 SECTION 7. APPROPRIATION.--One million six hundred
20 thousand dollars (\$1,600,000) is appropriated from the general
21 fund to the department of finance and administration for
22 expenditure in fiscal years 2022 through 2025 for staff or
23 contractual services for engineering and financial evaluations
24 required by Subsection C of Section 3 of the Rural
25 Infrastructure Crisis Response Act; provided that no more than

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1 four hundred thousand dollars (\$400,000) shall be expended in
2 any given fiscal year. Any unexpended or unencumbered balance
3 remaining at the end of fiscal year 2025 shall revert to the
4 general fund.