

HOUSE RURAL DEVELOPMENT, LAND GRANTS AND CULTURAL AFFAIRS
COMMITTEE SUBSTITUTE FOR
HOUSE BILL 173

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

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 of a
20 permanent or non-depletable nature that is necessary in the use
21 of critical public infrastructure;

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

25 F. "fund" means the rural infrastructure crisis

1 response fund;

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

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

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

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

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

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

25 M. "tribe" means an Indian nation, tribe or pueblo

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1 located wholly or partially in New Mexico; and

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

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

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

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

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

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

23 (4) no other source of financial assistance is
24 available to repair or replace the critical public
25 infrastructure on a timely basis.

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

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

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

21 E. Upon a determination of eligibility pursuant to
22 Subsection D of this section, the secretary shall:

23 (1) for critical infrastructure that is owned
24 by a tribal local authority, either certify to the state board
25 of finance the need to issue bonds for the rural infrastructure

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1 crisis response project pursuant to Section 7-27-10.1 NMSA 1978
2 or award a grant from the fund to the tribal infrastructure
3 board to repair or replace the damaged critical public
4 infrastructure in question; or

5 (2) for critical infrastructure that is owned
6 by a non-tribal local authority, either certify to the state
7 board of finance the need to issue bonds for the rural
8 infrastructure crisis response project pursuant to Section
9 7-27-10.1 NMSA 1978 or award a grant from the fund to the local
10 authority to repair or replace the damaged critical public
11 infrastructure in question.

12 F. On June 15 and December 15 of each year, the
13 secretary shall submit to the state board of finance the
14 certifications issued for the prior six months pursuant to
15 Subsection E of this section; provided that the secretary shall
16 not issue a total of certifications or awards pursuant to
17 Subsection E of this section worth more than one million
18 dollars (\$1,000,000) for rural infrastructure crisis response
19 projects within any given county in a calendar year.

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

22 A. The "rural infrastructure crisis response fund"
23 is created in the state treasury. The fund consists of
24 appropriations, donations, interest from investment of the fund
25 and other money distributed to the fund. The department of

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1 finance and administration shall administer the fund and may
2 establish subaccounts for the fund as it deems necessary.
3 Money in the fund is appropriated to the department of finance
4 and administration for expenditure as provided in this section.
5 Disbursements from the fund shall be made by warrant of the
6 secretary of finance and administration pursuant to vouchers
7 signed by the secretary of finance and administration or the
8 secretary's designee. Money in the fund shall not revert at
9 the end of a fiscal year.

10 B. Money in the fund may be used to make grants to
11 a local authority, or to the tribal infrastructure board when
12 an eligible project is owned or operated by a tribe, for
13 eligible projects that have been approved pursuant to
14 Subsection E of Section 3 of the Rural Infrastructure Crisis
15 Response Act for up to:

16 (1) ninety-five percent of the total cost of
17 an eligible project; provided that the local authority has
18 demonstrated an ability, and has contracted, to provide the
19 remainder of the project costs in non-state money; or

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

24 C. An eligible project that requires construction
25 shall be designed in compliance with the engineering

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1 requirements established by the secretary after consulting with
2 and considering the recommendations of the engineering
3 societies operating in New Mexico.

4 D. By November 30 of each year, the department of
5 finance and administration shall provide a report to the
6 appropriate interim legislative committee on the status of the
7 fund, the status of the eligible projects for which grants have
8 been made from the fund and the outstanding demand for
9 assistance from the fund.

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

12 A. The "bureau of rural infrastructure crisis
13 response" is created within the local government division of
14 the department of finance and administration.

15 B. The bureau may hire staff as needed to meet the
16 responsibilities of the bureau.

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

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

22 "7-27-10.1. TRANSFER TO SEVERANCE TAX PERMANENT FUND
23 BEFORE DETERMINING BONDING CAPACITY--AUTHORIZATION FOR
24 SEVERANCE TAX BONDS--PRIORITY FOR RURAL INFRASTRUCTURE CRISIS
25 RESPONSE PROJECTS, WATER PROJECTS AND TRIBAL INFRASTRUCTURE

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1 PROJECTS.--

2 A. On December 31 of each year from 2019 through
3 2028, the division shall transfer twenty-three million six
4 hundred ninety thousand dollars (\$23,690,000) from the
5 severance tax bonding fund to the severance tax permanent fund,
6 unless the state board of finance determines that a lesser
7 transfer amount is necessary pursuant to Section 7-27-8 NMSA
8 1978 to avoid a potential shortfall in debt service
9 obligations.

10 B. By January 15 of each year, the division shall
11 estimate the amount of bonding capacity available for severance
12 tax bonds to be authorized by the legislature.

13 C. Each year, the division shall allocate two and
14 one-fourth percent of the estimated bonding capacity for rural
15 infrastructure crisis response projects, and the state board of
16 finance shall issue severance tax bonds up to the annually
17 allocated amount for use by the local government division of
18 the department of finance and administration for such projects.
19 The state board of finance may issue and sell the bonds in the
20 same manner as other severance tax bonds in an amount not to
21 exceed the authorized amount provided for in this subsection.
22 If necessary, the state board of finance shall take appropriate
23 steps to comply with the federal Internal Revenue Code of 1986,
24 as amended. Proceeds from the sale of the bonds are
25 appropriated to the rural infrastructure crisis response fund

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1 for the purposes certified by the secretary of finance and
2 administration to the state board of finance pursuant to
3 Subsection E of Section 3 of the Rural Infrastructure Crisis
4 Response Act. Such certification shall be made by the
5 secretary of finance and administration to the state board of
6 finance after the bonds are issued, but prior to the
7 distribution of any funds from the rural infrastructure crisis
8 response fund to a local authority for such purposes.

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

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1 ~~[D.]~~ E. The division shall allocate the following
2 percentage of the estimated bonding capacity for tribal
3 infrastructure projects:

- 4 (1) in 2016, six and one-half percent; and
5 (2) in 2017 and each subsequent year, four and
6 one-half percent.

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

22 ~~[F.]~~ G. Money from the severance tax bonds provided
23 for in this section shall not be used to pay indirect project
24 costs. Any unexpended balance from proceeds of severance tax
25 bonds issued for a water project or a tribal infrastructure

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1 project shall revert to the severance tax bonding fund within
2 six months of completion of the project. The New Mexico
3 finance authority shall monitor and ensure proper reversions of
4 the bond proceeds appropriated for water projects, and the
5 department of finance and administration shall monitor and
6 ensure proper reversions of the bond proceeds appropriated for
7 tribal infrastructure projects.

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

9 (1) "division" means the board of finance
10 division of the department of finance and administration;

11 (2) "rural infrastructure crisis response
12 project" means an eligible project pursuant to the Rural
13 Infrastructure Crisis Response Act;

14 ~~[(2)]~~ (3) "tribal infrastructure project"
15 means a qualified project under the Tribal Infrastructure Act;
16 and

17 ~~[(3)]~~ (4) "water project" means a capital
18 outlay project for:

19 (a) the storage, conveyance or delivery
20 of water to end users;

21 (b) the implementation of federal
22 Endangered Species Act of 1973 collaborative programs;

23 (c) the restoration and management of
24 watersheds;

25 (d) flood prevention; or

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1 (e) conservation, recycling, treatment
2 or reuse of water."

3 SECTION 7. APPROPRIATION.--One million six hundred
4 thousand dollars (\$1,600,000) is appropriated from the general
5 fund to the department of finance and administration for
6 expenditure in fiscal years 2022 through 2025 for staff or
7 contractual services for engineering and financial evaluations
8 required by Subsection C of Section 3 of the Rural
9 Infrastructure Crisis Response Act; provided that no more than
10 four hundred thousand dollars (\$400,000) shall be expended in
11 any one fiscal year. Any unexpended or unencumbered balance
12 remaining at the end of fiscal year 2025 shall revert to the
13 general fund.

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