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SENATE BILL

50TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2011

INTRODUCED BY

DISCUSSION DRAFT

AN ACT

RELATING TO EXECUTIVE ORGANIZATION; COMBINING THE INDIAN
EDUCATION ADVISORY COUNCIL AND TRIBAL INFRASTRUCTURE BOARD WITH
THE INDIAN AFFAIRS COMMISSION; PROVIDING FOR SUNSET REVIEW;
PROVIDING FOR TRANSFERS OF FUNCTIONS, APPROPRIATIONS, MONEY,
PROPERTY, CONTRACTUAL OBLIGATIONS AND REFERENCES.

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

SECTION 1. Section 6-29-1 NMSA 1978 (being Laws 2005,
Chapter 146, Section 1) is amended to read:

"6-29-1. SHORT TITLE.--~~[This act]~~ Chapter 6, Article 29
NMSA 1978 may be cited as the "Tribal Infrastructure Act"."

SECTION 2. Section 6-29-3 NMSA 1978 (being Laws 2005,
Chapter 146, Section 3) is amended to read:

"6-29-3. DEFINITIONS.--As used in the Tribal
Infrastructure Act:

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1 A. "board" or "commission" means the [~~tribal~~
2 ~~infrastructure board~~] Indian affairs commission;

3 B. "department" means the Indian affairs
4 department;

5 C. "financial assistance" means providing grants or
6 loans on terms and conditions approved by the [~~board~~]
7 commission;

8 D. "governor" means the governor of New Mexico;

9 E. "project fund" means the tribal infrastructure
10 project fund;

11 F. "qualified project" means a tribal
12 infrastructure project selected by the [~~board~~] commission for
13 financial assistance pursuant to the Tribal Infrastructure Act;

14 G. "tribe" means a federally recognized Indian
15 nation, tribe or pueblo located wholly or partially in New
16 Mexico or any of its governmental entities or subdivisions; and

17 H. "trust fund" means the tribal infrastructure
18 trust fund."

19 SECTION 3. Section 7-27-10.1 NMSA 1978 (being Laws 2003,
20 Chapter 134, Section 1, as amended) is amended to read:

21 "7-27-10.1. BONDING CAPACITY--AUTHORIZATION FOR SEVERANCE
22 TAX BONDS--PRIORITY FOR WATER PROJECTS AND TRIBAL
23 INFRASTRUCTURE PROJECTS.--

24 A. By January 15 of each year, the board of finance
25 division of the department of finance and administration shall

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1 estimate the amount of bonding capacity available for severance
2 tax bonds to be authorized by the legislature.

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

20 C. The board of finance division shall allocate
21 five percent of the estimated bonding capacity each year for
22 tribal infrastructure projects, and the legislature authorizes
23 the state board of finance to issue severance tax bonds in the
24 annually allocated amount for use by the [~~tribal infrastructure~~
25 ~~board~~] Indian affairs commission to fund tribal infrastructure

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

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

24 E. The board of finance division of the department
25 of finance and administration shall:

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1 (1) void the authorization to the water
2 project fund held at the New Mexico finance authority to make
3 grants or loans of severance tax bond proceeds for projects
4 pursuant to Subsection U of Section 1 of Chapter 41 of Laws
5 2006 for the northwest New Mexico council of governments in
6 McKinley county for a water distribution project and Subsection
7 25 of Section 1 of Chapter 139 of Laws 2007 for the Navajo
8 Nation division of natural resources department of water
9 resources water management branch for a regional water project
10 in Rio Arriba, Sandoval, McKinley, San Juan and Cibola
11 counties; and

12 (2) authorize the department of environment to
13 make a grant of the unexpended proceeds of severance tax bonds
14 issued in fiscal years 2006 and 2007 for the purposes of the
15 water project fund to be used for the authorizations identified
16 in Paragraph (1) of this subsection and appropriate to the
17 department of environment five million three hundred seventy-
18 five thousand two hundred forty-four dollars (\$5,375,244) for
19 the Navajo Nation division of natural resources department of
20 water resources water management branch for a regional water
21 distribution project in Rio Arriba, Sandoval, McKinley, San
22 Juan and Cibola counties. Any unexpended balance of the funds
23 authorized for expenditure in this section shall revert to the
24 severance tax bonding fund at the end of fiscal year 2013 or
25 upon completion of the project, whichever is earlier.

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1 F. As used in this section:

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

4 (2) "water project" means a capital outlay
5 project for:

6 (a) the storage, conveyance or delivery
7 of water to end users;

8 (b) the implementation of federal
9 Endangered Species Act of 1973 collaborative programs;

10 (c) the restoration and management of
11 watersheds;

12 (d) flood prevention; or

13 (e) conservation, recycling, treatment
14 or reuse of water."

15 SECTION 4. Section 9-21-13 NMSA 1978 (being Laws 2004,
16 Chapter 18, Section 13 and Laws 2004, Chapter 24, Section 13)
17 is amended to read:

18 "9-21-13. INDIAN AFFAIRS COMMISSION CREATED.--

19 A. The "Indian affairs commission" is created and
20 administratively attached to the department. The commission
21 shall consist of ~~ten~~ six voting ex-officio members, four
22 nonvoting advisory members and nine Indian members who are
23 residents of New Mexico appointed by the governor as follows:

24 (1) three members shall be Pueblo Indians;

25 (2) three members shall be Navajo Indians;

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- 1 (3) two members shall be Apache Indians; and
- 2 (4) one member shall be an urban Indian [~~and~~
- 3 ~~(5) one member shall be a non-Indian].~~

4 B. Indian members, except the urban Indian member,
5 shall be appointed from lists of names submitted by the all
6 Indian pueblo council, the Jicarilla and Mescalero tribal
7 councils and the Navajo Nation. The governor shall appoint
8 Indian members as to achieve geographical and subject matter
9 diversity of the commission. The governor shall appoint Indian
10 members to a two-year term. Vacancies shall be filled by
11 appointment by the governor for the remainder of the unexpired
12 term.

13 [~~G. Members serve at the pleasure of the governor.~~
14 ~~Vacancies shall be filled by appointment by the governor for~~
15 ~~the unexpired term.~~

16 ~~D. The governor shall appoint the chairman, and the~~
17 ~~commission may select such other officers as the commission~~
18 ~~deems necessary.~~

19 ~~E. Members may receive per diem and mileage~~
20 ~~pursuant to the Per Diem and Mileage Act, but shall receive no~~
21 ~~other compensation, perquisite or allowance.]~~

22 C. All Indian members shall have subject matter
23 expertise, experience or extensive knowledge and involvement in
24 at least one of the areas as follows:

- 25 (1) tribal capital projects development or

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1 administration;

2 (2) education of tribal students; and

3 (3) health care services to tribal members.

4 D. The voting ex-officio members shall be:

5 (1) the secretary of Indian affairs or the
6 secretary's designee from the department;

7 (2) the secretary of finance and
8 administration or the secretary's designee from the department
9 of finance and administration;

10 (3) the secretary of public education or the
11 secretary's designee from the public education department;

12 (4) the secretary of health or the secretary's
13 designee from the department of health;

14 (5) the secretary of environment or the
15 secretary's designee from the department of environment; and

16 (6) the executive director of the New Mexico
17 finance authority or the executive director's designee from the
18 New Mexico finance authority.

19 E. The four nonvoting advisory members shall be as
20 follows:

21 (1) one representative from the federal bureau
22 of Indian education, designated by the deputy director for
23 school operations located in the Albuquerque service area;

24 (2) one representative from the federal bureau
25 of Indian affairs Navajo area office designated by the regional

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1 director;

2 (3) one representative from the Albuquerque
3 area Indian health service designated by the area director; and

4 (4) one representative from the Navajo area
5 Indian health service designated by the area director.

6 F. The commission shall elect a chair and other
7 necessary officers from its appointed Indian membership. The
8 commission shall meet at the call of the chair or whenever four
9 voting members submit a request in writing to the chair, but
10 not less than twice each calendar year. A majority of voting
11 members constitutes a quorum for the transaction of business.
12 The affirmative vote of at least a majority of a quorum shall
13 be necessary for an action to be taken by the commission.

14 G. Indian members of the commission appointed by
15 the governor are entitled to receive per diem and mileage as
16 provided in the Per Diem and Mileage Act and shall receive no
17 other compensation, perquisite or allowance."

18 SECTION 5. Section 9-21-14 NMSA 1978 (being Laws 2004,
19 Chapter 18, Section 14 and Laws 2004, Chapter 24, Section 14)
20 is amended to read:

21 "9-21-14. POWERS OF THE COMMISSION.--The commission
22 shall:

23 A. conduct meetings to provide an opportunity for
24 the presentation and exchange of ideas with respect to Indian
25 affairs by any interested party that result in the promotion of

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1 the welfare of the Indian people;

2 B. receive and disseminate information on issues
3 that significantly impact the welfare of the Indian people;

4 C. apprise the secretary of Indian affairs of the
5 conditions in Native American communities in New Mexico; ~~and~~

6 D. advise the secretary of Indian affairs on policy
7 matters related to the department's powers and duties;

8 E. adopt rules governing terms, conditions and
9 priorities for providing financial assistance to tribes
10 pursuant to the Tribal Infrastructure Act, including developing
11 application and evaluation procedures and forms and
12 qualifications for applicants and for projects;

13 F. provide financial assistance to tribes for
14 qualified projects on terms and conditions established by the
15 commission;

16 G. authorize funding for qualified projects,
17 including:

18 (1) planning, designing, constructing,
19 improving, expanding or equipping water and wastewater
20 facilities, major water systems, electrical power lines,
21 communications infrastructure, roads, health infrastructure,
22 emergency response facilities and infrastructure needed to
23 encourage economic development;

24 (2) developing engineering feasibility reports
25 for infrastructure projects;

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- 1 (3) inspecting construction of qualified
2 projects;
3 (4) providing special engineering services;
4 (5) completing environmental assessments or
5 archaeological clearances and other surveys for infrastructure
6 projects;
7 (6) acquiring land, easements or rights of
8 way; and
9 (7) paying legal costs and fiscal agent fees
10 associated with development of qualified projects;

11 H. advise the secretary of public education and
12 assistant secretary for Indian education on implementation of
13 the provisions of the Indian Education Act;

14 I. on a semiannual basis, meet to assist in
15 evaluating, consolidating and coordinating all activities
16 relating to the education of tribal students with
17 representatives from all New Mexico tribes, members of the
18 public education commission, the office of the governor, the
19 Indian affairs department, the legislature, the secretary of
20 public education and the assistant secretary for Indian
21 education; and

22 J. present legislative and policy recommendations
23 to promote the welfare of the Indian people before the
24 appropriate interim legislative committee."

25 SECTION 6. Section 21-23A-4 NMSA 1978 (being Laws 2009,

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1 Chapter 60, Section 5) is amended to read:

2 "21-23A-4. AMERICAN INDIAN POST-SECONDARY EDUCATION
3 DIVISION DUTIES.--

4 A. The division shall:

5 (1) develop and implement policies that
6 positively affect the post-secondary educational success of
7 American Indian students;

8 (2) provide assistance to public post-
9 secondary educational institutions and tribal colleges in the
10 planning, development, implementation and evaluation of
11 recruitment and retention strategies designed for American
12 Indian college students;

13 (3) seek funding to assist public educational
14 institutions and tribal colleges as needed to develop support
15 services to increase the enrollment, retention and graduation
16 rates of American Indians at public post-secondary educational
17 institutions and tribal colleges, including:

18 (a) academic support and transition
19 programs; and

20 (b) institutional efforts to increase
21 academic financial support;

22 (4) develop a system for consistent data
23 collection and sharing on the enrollment, retention and
24 graduation rates of American Indian students at public post-
25 secondary educational institutions and tribal colleges; and

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1 (5) conduct outreach to tribes concerning
2 financial aid opportunities for American Indian students.

3 B. The director of the division shall serve as a
4 liaison with the Indian [~~education advisory council~~] affairs
5 commission."

6 SECTION 7. Section 22-23A-1 NMSA 1978 (being Laws 2003,
7 Chapter 151, Section 1) is amended to read:

8 "22-23A-1. SHORT TITLE.--~~[This act]~~ Chapter 22, Article
9 23A NMSA 1978 may be cited as the "Indian Education Act"."

10 SECTION 8. Section 22-23A-3 NMSA 1978 (being Laws 2003,
11 Chapter 151, Section 3, as amended by Laws 2007, Chapter 295,
12 Section 2 and by Laws 2007, Chapter 296, Section 2) is amended
13 to read:

14 "22-23A-3. DEFINITIONS.--As used in the Indian Education
15 Act:

16 A. "assistant secretary" means the assistant
17 secretary for Indian education;

18 B. "government-to-government" means the
19 relationship between a New Mexico tribe and a state government;

20 C. "indigenous" means native or tribal groups of
21 the Americas that maintain a cultural identity separate from
22 the surrounding dominant cultures;

23 D. "tribal" means pertaining to urban Indians who
24 are residents of New Mexico or to [~~an Indian nation, tribe or~~
25 ~~pueblo located within New Mexico~~] a tribe;

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1 E. "tribe" means a federally recognized Indian
2 nation, tribe or pueblo located wholly or partly within the
3 exterior boundaries of New Mexico; and

4 F. "urban Indian" means a member of a federally
5 recognized tribe or an Alaska native who lives in an
6 off-reservation urban area and is a New Mexico resident."

7 SECTION 9. Section 22-23A-4 NMSA 1978 (being Laws 2003,
8 Chapter 151, Section 4, as amended by Laws 2007, Chapter 295,
9 Section 3 and by Laws 2007, Chapter 296, Section 3) is amended
10 to read:

11 "22-23A-4. RULEMAKING.--

12 A. The secretary shall ensure that the duties
13 prescribed in the Indian Education Act are carried out and that
14 each division within the department is collaborating to fulfill
15 its responsibilities to tribal students.

16 B. The secretary shall consult on proposed rules
17 implementing the Indian Education Act with the [~~Indian~~
18 ~~education advisory council~~] commission and shall present rules
19 for review and comment at the next semiannual government-to-
20 government meeting pursuant to Section 22-23A-5 NMSA 1978."

21 SECTION 10. Section 22-23A-5 NMSA 1978 (being Laws 2003,
22 Chapter 151, Section 5, as amended by Laws 2007, Chapter 295,
23 Section 4 and by Laws 2007, Chapter 296, Section 4) is amended
24 to read:

25 "22-23A-5. INDIAN EDUCATION DIVISION--CREATED--ASSISTANT

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1 SECRETARY--DUTIES.--

2 A. The "Indian education division" is created
3 within the department. The secretary shall appoint an
4 assistant secretary for Indian education, who shall direct the
5 activities of the division and advise the secretary and the
6 Indian affairs commission on development of policy regarding
7 the education of tribal students. The assistant secretary
8 shall also coordinate transition efforts for tribal students in
9 public schools with the higher education department and work to
10 expand appropriate Indian education for tribal students in
11 preschool through grade twenty.

12 B. The assistant secretary shall coordinate with
13 appropriate administrators and divisions in the department to
14 ensure that department administrators make implementation of
15 the Indian Education Act a priority.

16 C. The secretary and the assistant secretary, in
17 cooperation with the Indian [~~education advisory council~~]
18 affairs commission, shall collaborate with state and federal
19 departments and agencies and tribal governments to identify
20 ways such entities can assist the department in the
21 implementation of the Indian Education Act.

22 D. The [~~secretary and assistant secretary~~]
23 department and the Indian affairs commission shall convene
24 semiannual government-to-government meetings for the express
25 purpose of receiving input on education of tribal students.

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1 E. In accordance with the rules of the department
2 and after consulting with the Indian [~~education advisory~~
3 ~~council~~] affairs commission and determining the resources
4 available within the department, the assistant secretary shall:

5 (1) provide assistance, including advice on
6 allocation of resources, to school districts and tribes to
7 improve services to meet the educational needs of tribal
8 students based on current published indigenous best practices
9 in education;

10 (2) provide assistance to school districts and
11 New Mexico tribes in the planning, development, implementation
12 and evaluation of curricula in native languages, culture and
13 history designed for tribal and nontribal students as approved
14 by New Mexico tribes;

15 (3) develop or select for implementation a
16 challenging, sequential, culturally relevant curriculum to
17 provide instruction to tribal students in pre-kindergarten
18 through sixth grade to prepare them for pre-advanced placement
19 and advanced placement coursework in grades seven through
20 twelve;

21 (4) provide assistance to school districts,
22 public post-secondary schools and New Mexico tribes to develop
23 curricula and instructional materials in native languages,
24 culture and history in conjunction and by contract with native
25 language practitioners and tribal elders, unless the use of

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1 written language is expressly prohibited by the tribe;

2 (5) conduct indigenous research and evaluation
3 for effective curricula for tribal students;

4 (6) collaborate with the department to provide
5 distance learning for tribal students in public schools to the
6 maximum limits of the department's abilities;

7 (7) [~~establish~~] support [~~and maintain an~~
8 ~~Indian education advisory council~~] and collaborate with the
9 Indian affairs commission on Indian education policies;

10 (8) enter into agreements with each New Mexico
11 tribe or its authorized educational entity to share
12 programmatic information and to coordinate technical assistance
13 for public schools that serve tribal students;

14 (9) seek funds to establish and maintain an
15 Indian education office in the northwest corner of the state or
16 other geographical location to implement agreements with each
17 New Mexico tribe or its authorized educational entity, monitor
18 the progress of tribal students and coordinate technical
19 assistance at the public pre-kindergarten to post-secondary
20 schools that serve tribal students;

21 (10) require school districts to obtain a
22 signature of approval by the New Mexico tribal governments or
23 their government designees residing within school district
24 boundaries, verifying that the New Mexico tribes agree to
25 Indian education policies and procedures pursuant to federal

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1 requirements;

2 (11) seek funds to establish, develop and
3 implement culturally relevant support services for the purposes
4 of increasing the number of tribal teachers, administrators and
5 principals and providing continued professional development for
6 educational assistants, teachers and principals serving tribal
7 students, in conjunction with the Indian ~~[education advisory~~
8 ~~council]~~ affairs commission:

9 (a) recruitment and retention of highly
10 qualified teachers and administrators;

11 (b) academic transition programs;

12 (c) academic financial support;

13 (d) teacher preparation;

14 (e) teacher induction; and

15 (f) professional development;

16 (12) develop curricula to provide instruction
17 in tribal history and government and develop plans to implement
18 these subjects into history and government courses in school
19 districts throughout the state;

20 (13) ensure that native language bilingual
21 programs are part of a school district's professional
22 development plan, as provided in Section 22-10A-19.1 NMSA 1978;
23 and

24 (14) develop a plan to establish a
25 post-secondary investment system for tribal students to which

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1 parents, tribes and the state may contribute."

2 SECTION 11. [NEW MATERIAL] TERMINATION OF AGENCY
3 LIFE--DELAYED REPEAL.--The Indian affairs commission is
4 terminated on July 1, 2015 pursuant to the Sunset Act. The
5 commission shall continue to operate according to the
6 provisions of Sections 9-21-13 and 9-21-14 NMSA 1978 until July
7 1, 2016. Effective July 1, 2016, Sections 9-21-13 and 9-21-14
8 NMSA 1978 are repealed.

9 SECTION 12. TEMPORARY PROVISION--TRANSFER OF FUNCTIONS,
10 APPROPRIATIONS, PERSONNEL AND PROPERTY--CONTRACTUAL
11 OBLIGATIONS--STATUTORY REFERENCES.--On July 1, 2011:

12 A. all functions, personnel, appropriations, money,
13 records, furniture, equipment and other property of the Indian
14 education advisory council and the tribal infrastructure board
15 shall be transferred to the Indian affairs commission;

16 B. all contracts of the Indian education advisory
17 council and tribal infrastructure board shall be binding and
18 effective on the Indian affairs commission; and

19 C. all references in law to the Indian education
20 advisory council and the tribal infrastructure board shall be
21 deemed to be references to the Indian affairs commission.

22 SECTION 13. REPEAL.--Sections 6-29-4, 6-29-5 and 22-23A-6
23 NMSA 1978 (being Laws 2005, Chapter 146, Sections 4 and 5, and
24 Laws 2003, Chapter 151, Section 6, as amended) are repealed.

25 SECTION 14. EFFECTIVE DATE.--The effective date of the

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1 provisions of this act is July 1, 2011.

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