

HOUSE BILL 146

51ST LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2014

INTRODUCED BY

Jason C. Harper

AN ACT

RELATING TO PUBLIC FINANCE; SUSTAINING THE SEVERANCE TAX PERMANENT FUND BY LIMITING THE OVERALL BONDING CAPACITY FOR SEVERANCE TAX BONDS AND SUPPLEMENTAL SEVERANCE TAX BONDS; LIMITING THE PERCENTAGE OF THE ESTIMATED SEVERANCE TAX BONDING CAPACITY ALLOCATED FOR WATER PROJECTS, COLONIAS INFRASTRUCTURE PROJECTS AND TRIBAL INFRASTRUCTURE PROJECTS; LIMITING THE PERCENTAGE OF WATER PROJECT ADJUDICATION FUNDS ALLOCATED TO THE STATE ENGINEER AND THE ADMINISTRATIVE OFFICE OF THE COURTS; ANNUALLY TRANSFERRING MONEY FROM THE SEVERANCE TAX BONDING FUND TO THE SEVERANCE TAX PERMANENT FUND BASED ON PREVIOUS SEVERANCE TAX REVENUES; ADDING A DEFINITION.

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

SECTION 1. Section 7-27-2 NMSA 1978 (being Laws 1961, Chapter 5, Section 3, as amended) is amended to read:

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1 "7-27-2. SEVERANCE TAX BONDING FUND CREATED.--There is
2 created the "severance tax bonding fund" in the state treasury.
3 The severance tax bonding fund is the fund:

4 A. into which shall be distributed, in accordance
5 with the Tax Administration Act, the net receipts from taxes
6 levied upon natural resource products severed and saved from
7 the soil in accordance with the provisions of the Severance Tax
8 Act and the Oil and Gas Severance Tax Act; [and]

9 B. into which shall be deposited such other money
10 as the legislature may from time to time determine; and

11 C. from which the state treasurer shall transfer
12 the adjusted allocated amount determined by the division as
13 provided pursuant to Subsection A of Section 7-27-10.1 NMSA
14 1978 to the severance tax permanent fund."

15 SECTION 2. Section 7-27-3.2 NMSA 1978 (being Laws 1983,
16 Chapter 306, Section 6) is amended to read:

17 "7-27-3.2. [DEFINITION] DEFINITIONS.--As used in Sections
18 7-27-1 through 7-27-48 NMSA 1978:

19 A. "council" means the state investment council;
20 and

21 B. "division" means the board of finance division
22 of the department of finance and administration."

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

25 "7-27-10.1. BONDING CAPACITY--TRANSFERS TO SEVERANCE TAX
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1 PERMANENT FUND--AUTHORIZATION FOR SEVERANCE TAX BONDS--PRIORITY
2 FOR WATER PROJECTS AND TRIBAL INFRASTRUCTURE PROJECTS.--

3 A. By December 15 of each year, the division shall:

4 (1) determine the amount of all deposits into
5 the severance tax bonding fund that exceeds by fifteen percent
6 or greater the average amount of deposits received during the
7 five immediately preceding fiscal years. The division shall
8 then allocate the excess amount, if any, determined pursuant to
9 this paragraph; provided, however, that the division shall
10 further adjust the allocation as necessary to ensure that the
11 adjusted allocated amount is not greater than the total amounts
12 necessary as pledged and provided for in Section 7-27-6 NMSA
13 1978; and

14 (2) the state treasurer shall transfer the
15 adjusted allocated amount from the severance tax bonding fund
16 to the severance tax permanent fund.

17 [A.] B. By January 15 of each year, the [board of

18 finance] division [of the department of finance and

19 administration] shall estimate the amount of bonding capacity

20 available for severance tax bonds to be authorized by the

21 legislature.

22 [B.] C. The division shall allocate [ten] eight and
23 one-half percent of the estimated bonding capacity each year
24 for water projects, and the legislature authorizes the state
25 board of finance to issue severance tax bonds in the annually

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

15 [E.] D. The ~~board of finance~~ division shall
16 allocate ~~five~~ four percent of the estimated bonding capacity
17 each year for tribal infrastructure projects, and the
18 legislature authorizes the state board of finance to issue
19 severance tax bonds in the annually allocated amount for use by
20 the tribal infrastructure board to fund tribal infrastructure
21 projects. The tribal infrastructure board shall certify to the
22 state board of finance the need for issuance of bonds for
23 tribal infrastructure projects. The state board of finance may
24 issue and sell the bonds in the same manner as other severance
25 tax bonds in an amount not to exceed the authorized amount

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1 provided for in this subsection. If necessary, the state board
2 of finance shall take the appropriate steps to comply with the
3 federal Internal Revenue Code of 1986, as amended. Proceeds
4 from the sale of the bonds are appropriated to the tribal
5 infrastructure project fund for the purposes certified by the
6 tribal infrastructure board to the state board of finance.

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

18 [E.] F. The ~~[board of finance]~~ division ~~[of the~~
19 ~~department of finance and administration]~~ shall:

20 (1) void the authorization to the water
21 project fund held at the New Mexico finance authority to make
22 grants or loans of severance tax bond proceeds for projects
23 pursuant to Subsection U of Section 1 of Chapter 41 of Laws
24 2006 for the northwest New Mexico council of governments in
25 McKinley county for a water distribution project and Subsection

25 of Section 1 of Chapter 139 of Laws 2007 for the Navajo Nation division of natural resources department of water resources water management branch for a regional water project in Rio Arriba, Sandoval, McKinley, San Juan and Cibola counties; and

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

[F.] G. As used in this section:

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

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

(a) the storage, conveyance or delivery

1 of water to end users;

2 (b) the implementation of federal

3 Endangered Species Act of 1973 collaborative programs;

4 (c) the restoration and management of

5 watersheds;

6 (d) flood prevention; or

7 (e) conservation, recycling, treatment

8 or reuse of water."

9 SECTION 4. Section 7-27-12.5 NMSA 1978 (being Laws 2010,
10 Chapter 10, Section 9) is amended to read:

11 "7-27-12.5. AUTHORIZATION FOR SEVERANCE TAX BONDS--
12 PRIORITY FOR INFRASTRUCTURE PROJECTS FOR COLONIAS.--

13 A. After the annual estimate of severance tax
14 bonding capacity pursuant to Subsection A of Section 7-27-10.1
15 NMSA 1978, the ~~board of finance~~ division ~~of the department~~
16 ~~of finance and administration~~ shall allocate ~~five~~ four
17 percent of the estimated bonding capacity each year for
18 colonias infrastructure projects, and the legislature
19 authorizes the state board of finance to issue severance tax
20 bonds in the annually allocated amount for use by the colonias
21 infrastructure board to fund the projects. The colonias
22 infrastructure board shall certify to the state board of
23 finance the need for issuance of bonds for colonias
24 infrastructure projects. The state board of finance may issue
25 and sell the bonds in the same manner as other severance tax

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1 bonds in an amount not to exceed the authorized amount provided
2 for in this subsection. If necessary, the state board of
3 finance shall take the appropriate steps to comply with the
4 federal Internal Revenue Code of 1986, as amended. Proceeds
5 from the sale of the bonds are appropriated to the colonias
6 infrastructure project fund for the purposes certified by the
7 colonias infrastructure board to the state board of finance.

8 B. Money from the severance tax bonds provided for
9 in this section shall not be used to pay indirect project
10 costs. Any unexpended balance from proceeds of severance tax
11 bonds issued for a colonias infrastructure project shall revert
12 to the severance tax bonding fund within six months of
13 completion of the project. The colonias infrastructure board
14 shall monitor and ensure proper reversions of the bond proceeds
15 appropriated for the projects.

16 C. As used in this section, "colonias
17 infrastructure project" means a qualified project under the
18 Colonias Infrastructure Act."

19 SECTION 5. Section 7-27-14 NMSA 1978 (being Laws 1961,
20 Chapter 5, Section 11, as amended) is amended to read:

21 "7-27-14. AMOUNT OF TAX--SECURITY FOR BONDS.--

22 A. The legislature shall provide for the continued
23 assessment, levy, collection and deposit into the severance tax
24 bonding fund of the tax or taxes upon natural resource products
25 severed and saved from the soil of the state that, together

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1 with such other income as may be deposited to the fund, will be
2 sufficient to produce an amount that is at least the amount
3 necessary to meet annual debt service charges on all
4 outstanding severance tax bonds and supplemental severance tax
5 bonds.

6 B. Except as otherwise specifically provided by
7 law, the state board of finance shall issue no severance tax
8 bonds unless the aggregate amount of severance tax bonds
9 outstanding, and including the issue proposed, can be serviced
10 with not more than [fifty] forty-nine percent of the annual
11 deposits into the severance tax bonding fund, as determined by
12 the lesser of the deposits during the preceding fiscal year or
13 the deposits during the current fiscal year as estimated by the
14 division less the adjusted allocation amount provided in
15 Subsection A of Section 7-27-10.1 NMSA 1978.

16 C. The state board of finance shall issue no
17 supplemental severance tax bonds with a term that extends
18 beyond the fiscal year in which the bonds are issued unless the
19 aggregate amount of severance tax bonds and supplemental
20 severance tax bonds outstanding, and including the issue
21 proposed, can be serviced with not more than [sixty-two and
22 one-half] fifty-nine and one-half percent of the lesser of the
23 annual deposits into the severance tax bonding fund, as
24 determined by the deposits during the preceding fiscal year or
25 the deposits during the current fiscal year as estimated by the

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1 division less the adjusted allocation amount provided in
2 Subsection A of Section 7-27-10.1 NMSA 1978.

3 D. Except as otherwise specifically provided by
4 law, the state board of finance may issue supplemental
5 severance tax bonds with a term that does not extend beyond the
6 fiscal year in which they are issued if the debt service on
7 such supplemental severance tax bonds when added to the debt
8 service previously paid or scheduled to be paid during that
9 fiscal year on severance tax bonds and supplemental severance
10 tax bonds does not exceed [~~ninety-five~~ eighty-seven and one-
11 half percent of the lesser of the deposits into the severance
12 tax bonding fund during the preceding fiscal year or the
13 deposits into the severance tax bonding fund during the current
14 fiscal year as estimated by the division less the adjusted
15 allocation amount provided in Subsection A of Section 7-27-10.1
16 NMSA 1978.

17 E. The provisions of this section shall not be
18 modified by the terms of any severance tax bonds or
19 supplemental severance tax bonds hereafter issued."

20 SECTION 6. Section 72-4A-9 NMSA 1978 (being Laws 2001,
21 Chapter 164, Section 9, as amended) is amended to read:

22 "72-4A-9. WATER PROJECT FUND--CREATED--PURPOSE--

23 A. The "water project fund" is created in the New
24 Mexico finance authority and shall consist of distributions
25 made to the fund from the water trust fund and payments of

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1 principal of and interest on loans for approved water projects.
2 The fund shall also consist of any other money appropriated,
3 distributed or otherwise allocated to the fund for the purpose
4 of supporting water projects pursuant to provisions of the
5 Water Project Finance Act. The fund shall be administered by
6 the authority. Income from investment of the water project
7 fund shall be credited to the fund. Balances in the fund at
8 the end of any fiscal year shall not revert to the general
9 fund. The water project fund may consist of such subaccounts
10 as the authority deems necessary to carry out the purposes of
11 the fund. The authority may establish procedures and adopt
12 rules as required to administer the fund and to recover from
13 the fund costs of administering the fund and originating grants
14 and loans. [Ten] Seven and one-half percent of all water
15 project funds shall be dedicated to the state engineer for
16 water rights adjudications, and [twenty] fifteen percent of the
17 money dedicated for water rights adjudications shall be
18 allocated to the administrative office of the courts for the
19 courts' costs associated with those adjudications.

20 B. Money in the water project fund may be used to
21 make loans or grants to qualified entities for any project
22 approved by the legislature and for water rights adjudications.

23 C. The authority is authorized to issue revenue
24 bonds payable from the proceeds of loan repayments made into
25 the water project fund upon a determination by the authority

that issuance of the bonds is necessary to replenish the principal balance of the fund. The net proceeds from the sale of the bonds shall be deposited in the water project fund. The bonds shall be authorized and issued by the authority in accordance with the provisions of the New Mexico Finance Authority Act."

SECTION 7. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2014.

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