

HOUSE BILL 364

51ST LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2013

INTRODUCED BY

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AN ACT

RELATING TO WATER; REVISING THE PROCESS FOR APPROVAL OF
PROJECTS FINANCED PURSUANT TO THE WATER PROJECT FINANCE ACT.

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

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

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

A. By January 15 of each year, the board of finance
division of the department of finance and administration shall
estimate the amount of bonding capacity available for severance
tax bonds to be authorized by the legislature.

B. The water trust board is authorized to certify
by resolution that proceeds of severance tax bonds are needed

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1 for expenditures relating to qualifying water projects pursuant
2 to the Water Project Finance Act.

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

23 ~~[G.]~~ D. The board of finance division shall
24 allocate five percent of the estimated bonding capacity each
25 year for tribal infrastructure projects, and the legislature

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

15 ~~[D-]~~ E. Money from the severance tax bonds provided
16 for in this section shall not be used ~~[to pay indirect project~~
17 ~~costs. Any unexpended balance from proceeds of severance tax~~
18 ~~bonds issued for a water project or a tribal infrastructure~~
19 ~~project shall revert to the severance tax bonding fund within~~
20 ~~six months of completion of the project. The New Mexico~~
21 ~~finance authority shall monitor and ensure proper reversions of~~
22 ~~the bond proceeds appropriated for water projects, and the] for~~
23 any purpose except those authorized by the Water Project
24 Finance Act and the Tribal Infrastructure Act. Proceeds of
25 severance tax bonds previously or hereafter issued by the state

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1 board of finance that are appropriated to the water project
2 fund shall, except to the extent that the proceeds are derived
3 from any bonds the interest on which is excluded from federal
4 income tax, be transferred by the state board of finance
5 immediately upon receipt to the water project fund. All money
6 so transferred shall be administered by the New Mexico finance
7 authority consistent with the requirements of the Water Project
8 Finance Act. The department of finance and administration
9 shall monitor and ensure proper reversions of the bond proceeds
10 appropriated for tribal infrastructure projects.

11 ~~[E-]~~ F. The board of finance division of the
12 department of finance and administration shall:

13 (1) void the authorization to the water
14 project fund held at the New Mexico finance authority to make
15 grants or loans of severance tax bond proceeds for projects
16 pursuant to Subsection U of Section 1 of Chapter 41 of Laws
17 2006 for the northwest New Mexico council of governments in
18 McKinley county for a water distribution project and Subsection
19 25 of Section 1 of Chapter 139 of Laws 2007 for the Navajo
20 Nation division of natural resources department of water
21 resources water management branch for a regional water project
22 in Rio Arriba, Sandoval, McKinley, San Juan and Cibola
23 counties; and

24 (2) authorize the department of environment to
25 make a grant of the unexpended proceeds of severance tax bonds

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

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

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

16 (2) "qualifying water project" means a
17 ~~[capital outlay project for:~~

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

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

22 ~~(c) the restoration and management of~~
23 ~~watersheds;~~

24 ~~(d) flood prevention; or~~

25 ~~(e) conservation, recycling, treatment~~

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1 ~~or reuse of~~] water project authorized by the water trust board
2 pursuant to the provisions of the Water Project Finance Act."

3 SECTION 2. Section 72-4A-3 NMSA 1978 (being Laws 2001,
4 Chapter 164, Section 3, as amended) is amended to read:

5 "72-4A-3. DEFINITIONS.--As used in the Water Project
6 Finance Act:

7 A. "authority" means the New Mexico finance
8 authority;

9 B. "board" means the water trust board;

10 C. "political subdivision" means a municipality,
11 county, land grant-merced controlled and governed pursuant to
12 Sections 49-1-1 through 49-1-18 or 49-4-1 through 49-4-21 NMSA
13 1978, regional or local public water utility authority created
14 by statute, irrigation district, conservancy district, special
15 district, acequia, soil and water conservation district, water
16 and sanitation district or an association organized and
17 existing pursuant to the Sanitary Projects Act;

18 D. "qualifying water project" means a water project
19 [~~recommended by the board for funding by the legislature~~]
20 authorized by the board for financial assistance that does not
21 include funding of general operation and maintenance and is
22 intended for:

23 (1) storage, conveyance or delivery of water
24 to end users;

25 (2) implementation of federal Endangered

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1 Species Act of 1973 collaborative programs;

2 (3) restoration and management of watersheds;

3 (4) flood prevention; or

4 (5) conservation, recycling, treatment or
5 reuse of water; and

6 E. "qualifying entity" means a state agency,
7 a political subdivision of the state, an intercommunity water
8 or natural gas supply association or corporation organized
9 under Chapter 3, Article 28 NMSA 1978, a recognized Indian
10 nation, tribe or pueblo, the boundaries of which are located
11 wholly or partially in New Mexico or an association of such
12 entities created pursuant to the Joint Powers Agreements Act or
13 other authorizing legislation for the exercise of their common
14 powers."

15 SECTION 3. Section 72-4A-5 NMSA 1978 (being Laws 2001,
16 Chapter 164, Section 5, as amended) is amended to read:

17 "72-4A-5. BOARD--DUTIES.--The board shall:

18 A. adopt rules governing terms and conditions of
19 grants or loans [~~recommended~~] authorized by the board for
20 [~~appropriation by the legislature~~] financial assistance from
21 the water project fund, giving priority to projects that have
22 been identified as being urgent to meet the needs of a regional
23 water planning area that has a completed regional water plan
24 that has been accepted by the interstate stream commission;
25 that have matching contributions from federal or local funding

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1 sources available; and that have obtained all requisite state
2 and federal permits and authorizations necessary to initiate
3 the project; and

4 B. authorize qualifying water projects to the
5 authority for financial assistance that are for:

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

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

10 (3) restoration and management of watersheds;

11 (4) flood prevention; or

12 (5) ~~water~~ conservation, ~~or~~ recycling,
13 treatment or reuse of water ~~[as provided by law; and~~

14 ~~G. create a drought strike team to coordinate~~
15 ~~responses to emergency water shortages caused by drought~~
16 ~~conditions]."~~

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

19 "72-4A-6. AUTHORITY--DUTIES.--The authority shall:

20 A. provide staff support for the board;

21 B. at the direction of the board, administer the
22 water project fund and adopt such rules as are necessary to
23 prevent waste, fraud and abuse;

24 ~~[B-]~~ C. develop application procedures and forms
25 for qualifying entities to apply for grants and loans from the

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1 water project fund and, at the direction of the board, process,
2 renew and evaluate applications for financial assistance;

3 ~~[G.]~~ D. make loans or grants to qualifying entities
4 for qualifying water projects authorized by the ~~[legislature]~~
5 board; provided that the service area for the project is wholly
6 within the boundaries of the state or the project is an
7 interstate project that directly benefits New Mexico;

8 E. at the direction of the board, administer,
9 manage and oversee qualifying water projects that receive
10 financial assistance; and

11 F. be authorized to enter into memoranda of
12 understanding, contracts and other agreements to carry out the
13 provisions of the Water Project Finance Act."

14 SECTION 5. Section 72-4A-7 NMSA 1978 (being Laws 2001,
15 Chapter 164, Section 7, as amended) is amended to read:

16 "72-4A-7. CONDITIONS FOR GRANTS AND LOANS.--

17 A. Grants and loans shall be made only to
18 qualifying entities that:

19 (1) agree to operate and maintain a water
20 project so that it will function properly over the structural
21 and material design life, which shall not be less than twenty
22 years;

23 (2) require the contractor of a construction
24 project to post a performance and payment bond in accordance
25 with the requirements of Section 13-4-18 NMSA 1978;

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1 (3) provide written assurance signed by an
2 attorney or provide a title insurance policy that the
3 qualifying entity has proper title, easements and rights of way
4 to the property upon or through which a water project proposed
5 for funding is to be constructed or extended;

6 (4) meet the requirements of the financial
7 capability set by the board to ensure sufficient revenues to
8 operate and maintain a water project for its useful life and to
9 repay the loan;

10 (5) agree to properly maintain financial
11 records and to conduct an audit of a project's financial
12 records;

13 (6) agree to pay costs of originating grants
14 and loans as determined by rules adopted by the board; and

15 (7) except in the case of an emergency,
16 submit a water conservation plan with its application if
17 required to do so and one is not on file with the state
18 engineer, pursuant to Section 72-14-3.2 NMSA 1978.

19 B. Plans and specifications for a water project
20 shall be approved by the authority [~~after review and upon the~~
21 ~~recommendation of the state engineer and the department of~~
22 ~~environment~~] before grant or loan disbursements to pay for
23 construction costs are made to a qualifying entity. Plans and
24 specifications for a water project shall incorporate available
25 technologies and operational design for water use efficiency.

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1 C. Grants and loans shall be made only for eligible
2 items, which include:

- 3 (1) to match federal and local cost shares;
- 4 (2) engineering feasibility reports and asset
5 management plans;
- 6 (3) contracted engineering design;
- 7 (4) inspection of construction;
- 8 (5) special engineering services;
- 9 (6) environmental reports or archaeological
10 clearances and other surveys;
- 11 (7) construction;
- 12 (8) land and water rights acquisition;
- 13 (9) easements and rights of way; and
- 14 (10) limited legal costs and fiscal agent
15 fees."

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

18 "72-4A-9. WATER PROJECT FUND--CREATED--PURPOSE.--

19 A. The "water project fund" is created in the New
20 Mexico finance authority and shall consist of distributions
21 made to the fund from the water trust fund and payments of
22 principal of and interest on loans for approved water projects.
23 The fund shall also consist of any other money appropriated,
24 distributed or otherwise allocated to the fund for the purpose
25 of supporting water projects pursuant to provisions of the

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1 Water Project Finance Act. The fund shall be administered by
2 the authority. Income from investment of the water project
3 fund shall be credited to the fund. Balances in the fund at
4 the end of any fiscal year shall not revert to the general
5 fund. The water project fund may consist of such subaccounts
6 as the authority deems necessary to carry out the purposes of
7 the fund. The authority may establish procedures and adopt
8 rules as required to administer the fund and to recover from
9 the fund costs of administering the fund and originating grants
10 and loans and administering, managing and overseeing qualifying
11 water projects. Ten percent of all annual severance tax bond
12 distributions to the water project [~~funds~~] fund shall be
13 dedicated to the state engineer for water rights adjudications,
14 [~~and~~] twenty percent of the money dedicated for water rights
15 adjudications shall be allocated to the administrative office
16 of the courts for the courts' costs associated with those
17 adjudications and at least five-tenths of one percent and up to
18 three percent of all severance tax bond distributions shall be
19 allocated to fund oversight of qualified water construction
20 projects as a direct project cost by the department of
21 environment or other agencies and consultants to prevent waste,
22 fraud and abuse.

23 B. Money in the water project fund may be used to
24 make loans or grants to qualified entities for any qualifying
25 water project [~~approved by the legislature~~] and for water

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1 rights adjudications.

2 C. The authority is authorized to issue revenue
3 bonds payable from the proceeds of loan repayments made into
4 the water project fund upon a determination by the authority
5 that issuance of the bonds is necessary to replenish the
6 principal balance of the fund. The net proceeds from the sale
7 of the bonds shall be deposited in the water project fund. The
8 bonds shall be authorized and issued by the authority in
9 accordance with the provisions of the New Mexico Finance
10 Authority Act."

11 SECTION 7. Section 72-4A-9.1 NMSA 1978 (being Laws 2004,
12 Chapter 85, Section 1) is amended to read:

13 "72-4A-9.1. ACEQUIA PROJECT FUND.--The "acequia project
14 fund" is created in the state treasury. The fund shall consist
15 of money appropriated, donated or otherwise accrued to the
16 fund. The fund shall be administered by the authority. Income
17 from investment of money in the acequia project fund shall be
18 credited to the fund. Balances in the fund at the end of any
19 fiscal year shall not revert to the general fund. The acequia
20 project fund may consist of such subaccounts as the authority
21 deems necessary to carry out the purposes of the fund. The
22 authority may establish procedures and adopt rules as required
23 to administer the fund and to recover from the fund costs of
24 administering the fund. Money in the acequia project fund may
25 be used to make grants to acequias for any qualifying water

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project approved by the [~~legislature~~] board."

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