

1 AN ACT
2 RELATING TO UTILITIES; CREATING THE ESSENTIAL SERVICES
3 DEVELOPMENT ACT TO ALLOW STATE SUPPORT FOR INFRASTRUCTURE
4 PROJECTS THAT ALLOW ACCESS TO INTERNET, ENERGY, WATER AND
5 WASTEWATER SERVICES PRIMARILY FOR RESIDENTIAL PURPOSES.

6
7 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

8 SECTION 1. SHORT TITLE.--This act may be cited as the
9 "Essential Services Development Act".

10 SECTION 2. DEFINITIONS.--As used in the Essential
11 Services Development Act:

12 A. "broadband telecommunications network
13 facilities" means the electronics, equipment, transmission
14 facilities, fiber-optic cables and any other item directly
15 related to a system capable of transmission of internet
16 protocol or other formatted data at current federal
17 communications commission baseline speed standard, all of
18 which will be owned and used by a provider of internet access
19 services;

20 B. "division" means the local government division
21 of the department of finance and administration;

22 C. "essential services project" or "project" means
23 an infrastructure project that allows access to internet,
24 energy, water and wastewater services primarily for
25 residential purposes;

1 D. "governing body" means the city council, city
2 commission or board of trustees of a municipality or the
3 board of county commissioners of a county;

4 E. "local government" means a municipality or
5 county;

6 F. "municipality" means an incorporated city,
7 town or village;

8 G. "person" means an individual, corporation,
9 association, partnership or other legal entity;

10 H. "public support" means the provision of
11 assistance by the state to provide direct or indirect
12 assistance to support an essential services project,
13 including for the provision of:

14 (1) land, buildings or other infrastructure
15 by purchase, lease, grant, construction, reconstruction,
16 improvement or other acquisition or conveyance;

17 (2) the placement of new broadband
18 telecommunications network facilities; provided that the
19 facilities shall not serve a public facility or location that
20 already meets federal communications commission baseline
21 speed standards;

22 (3) rights-of-way infrastructure, including
23 trenching and conduit, for the placement of new broadband
24 telecommunications network facilities;

25 (4) public works improvements essential to

1 the location or expansion of a qualifying entity;

2 (5) payments for professional services
3 contracts necessary to implement an essential services plan
4 or provide public support for an essential services project;

5 (6) direct loans or grants for land,
6 buildings or infrastructure;

7 (7) loan guarantees securing the cost of
8 land, buildings or infrastructure; and

9 (8) grants for public works infrastructure
10 improvements; and

11 I. "regional government" means any combination of
12 municipalities and counties that enter into a joint powers
13 agreement to provide public support for economic development
14 projects pursuant to a plan adopted by all parties to the
15 joint powers agreement.

16 SECTION 3. PUBLIC SUPPORT SHALL BE SPECIFICALLY
17 AUTHORIZED BY LAW.--Public support for an essential services
18 project shall be specifically authorized by law. The law
19 shall include provisions to safeguard public money and other
20 resources, including allowing the division to recover money
21 and other resources from a local or regional government if
22 the essential services project is not completed to the
23 satisfaction of the division or otherwise does not meet the
24 requirements provided in the Essential Services Development
25 Act.

1 SECTION 4. TECHNICAL ASSISTANCE FROM THE DIVISION.--

2 At the request of a local or regional government, the
3 division shall provide technical assistance in the
4 development of an essential services plan or project.

5 SECTION 5. ESSENTIAL SERVICES DEVELOPMENT PLAN--
6 CONTENTS--PUBLICATION.--

7 A. Prior to receiving public support, a local or
8 regional government seeking to pursue an essential services
9 project shall adopt a development plan to implement the
10 project. Any plan or plan amendment shall be adopted by
11 ordinance of the governing body of the local government or
12 each local government of a regional government proposing the
13 plan or plan amendment.

14 B. The plan or the ordinance adopting the plan
15 shall:

16 (1) describe the local or regional
17 government's essential services development goals or
18 strategies;

19 (2) describe the types of essential services
20 projects that will qualify for public support under the plan;

21 (3) describe the criteria to be used to
22 determine eligibility for public support for an essential
23 services project;

24 (4) describe the manner in which a person or
25 entity may submit an application for public support pursuant

1 to Section 7 of the Essential Services Development Act;

2 (5) describe the process the local or
3 regional government will use to verify the information
4 submitted on an application for public support;

5 (6) detail the need for the essential
6 services projects contemplated in the plan and the benefit
7 that the projects will bring to the local or regional
8 government;

9 (7) describe the safeguards of public
10 resources that will be ensured; and

11 (8) if a regional government, describe
12 the joint powers agreement, including whether it can be
13 terminated and, if so, how the contractual or other
14 obligations, risks and any property will be assigned or
15 divided among the local governments that are party to the
16 agreement.

17 C. The plan shall be made available to the
18 residents within the local or regional government area.

19 SECTION 6. REGIONAL PLANS--JOINT POWERS AGREEMENT--
20 REGIONAL GOVERNMENT.--

21 A. Two or more municipalities, two or more
22 counties or one or more municipalities and counties may enter
23 into a joint powers agreement pursuant to the Joint Powers
24 Agreements Act to develop a regional essential services
25 development plan, which may consist of existing local plans.

1 The parties to the agreement shall be deemed a regional
2 government for the purposes of the Essential Services
3 Development Act.

4 B. The joint powers agreement shall provide for
5 appointment of a project manager who shall be responsible for
6 the management of projects and money from public support.
7 The agreement may provide for a regional body consisting of
8 representatives from the governing bodies of each local
9 government that is a party to the agreement and may determine
10 the powers and duties of that body in implementing the
11 regional government's plan and providing public support for
12 essential services projects.

13 SECTION 7. APPLICATIONS FOR PUBLIC SUPPORT.--

14 A. After the adoption of an essential services
15 development plan by a local or regional government, the local
16 or regional government may begin accepting applications for
17 public support of the local or regional government's
18 essential services project. The application shall be on a
19 form and in a manner as prescribed by the local or regional
20 government.

21 B. The local or regional government shall review
22 each application and any project determined to be eligible
23 for public support shall be approved by ordinance.

24 C. The local or regional government's evaluation
25 of an application shall be based on the provisions of the

1 essential services development plan and any other information
2 the local or regional government believes is necessary for a
3 full review of the application.

4 D. The local or regional government may negotiate
5 with an applicant on the type or amount of public support to
6 be provided or on the scope of the essential services
7 project.

8 SECTION 8. DEPOSIT PUBLIC SUPPORT MONEY IN SPECIAL
9 FUND.--

10 A. A regional or local government that receives
11 money from public support for an essential services project
12 shall create a special fund into which the money from the
13 public support shall be deposited and shall be expended only
14 for essential services project purposes. Separate accounts
15 shall be established for each essential services project.

16 B. In the case of a regional government, money
17 from public support may be expended only as provided by the
18 regional government's essential services development plan and
19 joint powers agreement.

20 SECTION 9. PLAN AND PROJECT TERMINATION--DEPOSIT OF
21 UNEXPENDED FUNDS IN GENERAL FUND.--

22 A. At any time after approval of an essential
23 services development plan, the governing body of the local
24 government or the governing body of each local government in
25 a regional government may enact an ordinance terminating the

1 plan and dissolving or terminating any public support for
2 essential services projects.

3 B. Any unexpended and unencumbered balance
4 remaining in a local or regional government's special fund or
5 account upon repeal of an essential services plan and
6 termination of public support for or dissolution of a project
7 shall be returned to the state treasurer, who shall deposit
8 the returned amount in the general fund.

9 SECTION 10. STATE PARTICIPATION IN ESSENTIAL SERVICES
10 PROJECTS--PROJECT PARTICIPATION AGREEMENT--DUTIES AND
11 REQUIREMENTS.--

12 A. If public support is provided for an essential
13 services project, the division shall enter into a project
14 participation agreement with the local or regional government
15 pursuant to this section.

16 B. A project participation agreement shall set
17 out, at a minimum:

18 (1) a description of the public support to
19 be provided for the essential services project;

20 (2) a schedule for project development and
21 completion, including measurable goals and time limits for
22 those goals;

23 (3) provisions for performance review and
24 actions to be taken upon a determination that project
25 performance is unsatisfactory; and

(4) a description of how the local or regional government will safeguard public money or other resources provided as public support for the essential services project.

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