

HOUSE FLOOR SUBSTITUTE FOR
HOUSE BILL 90

53RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2017

AN ACT

RELATING TO BORDER DEVELOPMENT; AMENDING THE BORDER DEVELOPMENT
ACT; CHANGING THE COMPOSITION OF THE BORDER AUTHORITY; MAKING
TECHNICAL AND CLARIFYING CHANGES TO LAW; REPEALING A SECTION OF
THE NMSA 1978.

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

SECTION 1. Section 58-27-2 NMSA 1978 (being Laws 1991,
Chapter 131, Section 2) is amended to read:

"58-27-2. LEGISLATIVE PURPOSE.--~~[By enacting]~~ The purpose
of the Border Development Act ~~[it]~~ is ~~[the purpose of the~~
~~legislature]~~ to:

A. encourage and foster development of the state
and its cities and counties by developing port facilities at
international ports of entry;

B. actively promote and assist public and private

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underscored material = new
[bracketed material] = delete

1 sectors' infrastructure development to attract new industries
2 and businesses, thereby creating new job opportunities in the
3 state while resolving transportation and logistical problems
4 that may arise as ports of entry develop; and

5 C. create the statutory framework that will enable
6 the state to design, finance, construct, equip and operate port
7 facilities necessary to ensure the timely, planned and
8 efficient development of the border area between New Mexico and
9 ~~[the Mexican state of Chihuahua]~~ Mexico."

10 SECTION 2. Section 58-27-3 NMSA 1978 (being Laws 1991,
11 Chapter 131, Section 3, as amended) is amended to read:

12 "58-27-3. DEFINITIONS.--As used in the Border Development
13 Act:

14 A. "authority" means the border authority;

15 B. "bond" includes notes and obligations;

16 C. "bondholder" means the owner of a registered or
17 unregistered bond;

18 ~~[B.]~~ D. "financial assistance" means grants and
19 loans provided for projects to a qualified entity on terms and
20 conditions approved by the authority;

21 ~~[G.]~~ E. "mortgage" means a mortgage, ~~[or]~~ a
22 mortgage and deed of trust or the pledge and hypothecation of
23 ~~[any]~~ assets as collateral security;

24 ~~[D.]~~ F. "port of entry" means an international port
25 of entry in New Mexico at which customs services are provided

1 by the United States customs and border protection;

2 ~~[E.]~~ G. "project" means ~~[any]~~ land, ~~[or]~~ a building
3 or ~~[any]~~ other ~~[improvements]~~ improvement acquired as a part of
4 a port of entry, ~~[or]~~ associated with a port of entry or to aid
5 commerce in connection with a port of entry, including all
6 existing or not yet existing real and personal property deemed
7 necessary in connection ~~[therewith, whether or not now in~~
8 ~~existence. A project shall be]~~ with a port of entry, that is
9 suitable for use by, as or for one or more of the following:

10 (1) a port of entry, a foreign trade zone, an
11 inspection station, an emergency response station or ~~[any other~~
12 ~~facilities to be]~~ another facility used by ~~[any]~~ an agency or
13 entity of the United States government, by another qualified
14 entity or by ~~[any other]~~ a foreign international state;

15 (2) an industry for the manufacturing,
16 processing or assembling of ~~[any]~~ an agricultural, mining or
17 manufactured product;

18 (3) a railroad switching yard, railroad
19 station, bus terminal, airport or other passenger, commuter or
20 mass transportation system or freight transportation system;

21 (4) a commercial business or other enterprise
22 engaged in storing, warehousing, distributing or selling
23 products of manufacturing, agriculture, mining or related
24 industries, not including facilities designed for the
25 distribution to the public of electricity or gas;

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(5) an enterprise in which all or part of the activities of the enterprise involve supplying services to the general public, ~~[or]~~ to governmental agencies or to a specific industry or customer;

(6) ~~[any]~~ an industrial, commercial, agricultural, professional or other business enterprise seeking to occupy office space;

(7) infrastructure development involving ~~[acquiring, repairing, improving or maintaining]~~ the acquisition, repair, improvement or maintenance of storm sewers ~~[and]~~ or other drainage ~~[improvements]~~ systems, sanitary sewers, sewage treatment systems, water utilities or solid waste disposal facilities, including ~~[acquiring]~~ the acquisition of rights of way or water rights;

(8) infrastructure development involving ~~[reconstructing]~~ the reconstruction, resurfacing, ~~[maintaining, repairing or improving]~~ maintenance, repair or improvement of existing alleys, streets, roads or bridges or the laying off, opening, ~~[constructing]~~ construction or ~~[acquiring]~~ acquisition of new alleys, streets, roads or bridges, including ~~[acquiring]~~ the acquisition of rights of way;

(9) ~~[any]~~ an industry that involves ~~[any]~~ a water distribution or irrigation system ~~[including]~~ and the pumps, distribution lines, transmission lines, fences, dams and similar facilities, ~~[and]~~ equipment ~~[including acquiring]~~ and

1 the acquisition of rights of way [or] associated with those
 2 systems; and

3 (10) fire protection services or equipment or
 4 police protection services or equipment;

5 ~~[F.]~~ H. "property" means, as necessary to a
 6 project, land, improvements to ~~[the]~~ land, buildings, ~~[and]~~
 7 improvements to ~~[the]~~ buildings, machinery, ~~[and]~~ equipment,
 8 ~~[of any kind necessary to the project]~~ operating capital and
 9 ~~[any] other personal [properties deemed necessary in connection~~
 10 ~~with the project]~~ property; and

11 ~~[G.]~~ I. "qualified entity" means the state, ~~[or]~~
 12 one of its agencies, instrumentalities, institutions or
 13 political subdivisions, ~~[or]~~ the United States or ~~[any~~
 14 ~~corporation, department, instrumentality or agency of the~~
 15 ~~federal government;~~

16 H. ~~"bond" means any bonds, notes or other~~
 17 ~~obligations; and~~

18 I. ~~"bondholder" means a person who is the owner of~~
 19 ~~a bond, regardless of whether the bond is registered]~~ one of
 20 its corporations, departments, instrumentalities or agencies."

21 SECTION 3. Section 58-27-4 NMSA 1978 (being Laws 1991,
 22 Chapter 131, Section 4, as amended) is amended to read:

23 "58-27-4. BORDER AUTHORITY CREATED--MEMBERSHIP.--

24 A. The "border authority" is created. The
 25 authority is a state agency and is administratively attached to

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1 the economic development department.

2 B. The authority consists of [~~seven~~] five voting
3 members [~~six~~]:

4 (1) three of whom: [~~shall be appointed by the~~
5 ~~governor. No more than three of those appointed shall belong~~
6 ~~to the same political party. The seventh member shall be the~~
7 ~~secretary of economic development or the secretary's designee.~~
8 ~~The voting members appointed by the governor shall be confirmed~~
9 ~~by the senate. The lieutenant governor shall serve as a~~
10 ~~nonvoting ex-officio member. The chair may appoint a nonvoting~~
11 ~~advisory committee to provide advice and recommendations on~~
12 ~~authority matters.~~

13 C. ~~The six voting members of the authority~~
14 ~~appointed by the governor shall be citizens of the state and~~
15 ~~shall serve for terms of four years except for the initial~~
16 ~~appointees who shall be appointed so that the terms are~~
17 ~~staggered after initial appointment. Initial appointees shall~~
18 ~~serve terms as follows: two members for two years, two members~~
19 ~~for three years and two members for four years.]~~

20 (a) the governor shall appoint to serve
21 terms as follows: 1) one initial appointee, a two-year term;
22 2) one initial appointee, a four-year term; and 3) every other
23 appointee, a six-year term;

24 (b) are New Mexico residents who
25 represent the private sector and have professional experience

1 in: 1) land development; 2) economic development; 3) maritime
2 or overland shipping by truck or rail; 4) international
3 commerce; 5) finance; 6) economics; 7) accounting; 8)
4 engineering; 9) law; 10) agriculture; or 11) business
5 management that consists of serving as the chief executive
6 officer, president or managing director of a business or
7 serving in another upper-level management position of a
8 business; and

9 (c) are appointed subject to
10 confirmation by the senate;

11 (2) one of whom is the secretary of economic
12 development or the secretary's designee; and

13 (3) one of whom is the secretary of
14 transportation or the secretary's designee.

15 C. The authority shall invite the following to
16 serve as advisory members of the authority:

17 (1) the two United States senators
18 representing New Mexico or those senators' designees;

19 (2) the United States representative
20 representing New Mexico's second congressional district or the
21 representative's designee;

22 (3) the lieutenant governor or the lieutenant
23 governor's designee;

24 (4) a representative of the governor of the
25 state of Chihuahua;

1 (5) a representative of the governor of the
2 state of Sonora;

3 (6) a representative of the development
4 community in Mexico; and

5 (7) additional members as deemed necessary and
6 approved by the authority."

7 SECTION 4. Section 58-27-6 NMSA 1978 (being Laws 1991,
8 Chapter 131, Section 6, as amended) is amended to read:

9 "58-27-6. OFFICERS OF THE AUTHORITY.--The [~~secretary of~~
10 ~~economic development~~] authority shall select one of its voting
11 members to serve as the [chairman] chair of the authority and
12 one of its voting members to serve as vice chair of the
13 authority, each for a one-year term. Authority members shall
14 elect any other officers from the membership that the authority
15 [~~determines~~] deems appropriate."

16 SECTION 5. Section 58-27-10 NMSA 1978 (being Laws 1991,
17 Chapter 131, Section 10, as amended) is amended to read:

18 "58-27-10. POWERS AND DUTIES OF AUTHORITY.--

19 A. The authority shall:

20 (1) advise the governor and the governor's
21 staff and the New Mexico finance authority oversight committee
22 on methods, proposals, programs and initiatives involving the
23 [~~New Mexico-Chihuahua~~] New Mexico-Mexico border area that may
24 further stimulate the border economy and provide additional
25 employment opportunities for New Mexico [~~citizens~~] residents;

1 (2) subject to ~~[the provisions of]~~ the Border
2 Development Act, initiate, develop, acquire, own, construct and
3 maintain border development projects;

4 (3) create programs to expand economic
5 opportunities beyond the ~~[New Mexico-Chihuahua]~~ New Mexico-
6 Mexico border area to other areas of the state;

7 (4) create avenues of communication between
8 New Mexico ~~[and Chihuahua]~~ and the Republic of Mexico
9 concerning economic development, trade and commerce,
10 transportation and industrial affairs;

11 (5) promote legislation that will further the
12 goals of the authority and development of the border region;

13 (6) produce or cause to have produced
14 promotional literature related to explanation and fulfillment
15 of the authority's goals;

16 (7) actively recruit industries and establish
17 programs that will result in the location and relocation of new
18 industries in the state;

19 (8) coordinate and expedite the involvement of
20 the executive department's border area efforts;

21 (9) perform or cause to be performed
22 environmental, transportation, communication, land use and
23 other technical studies necessary or advisable for projects or
24 programs or to secure port-of-entry approval by the United
25 States and the Mexican governments and other appropriate

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1 governmental agencies; and

2 (10) administer the border project fund and
3 projects financed with expenditures from that fund pursuant to
4 Section 58-27-25.1 NMSA 1978.

5 B. The authority may:

6 (1) solicit and accept federal, state, local
7 and private grants of funds, property or financial or other aid
8 in any form for the purpose of carrying out ~~[the provisions of]~~
9 the Border Development Act;

10 (2) adopt rules governing the manner in which
11 its business is transacted and the manner in which the powers
12 of the authority are exercised and its duties performed;

13 (3) act as an applicant for and operator of
14 port-of-entry facilities and, as the applicant, carry out all
15 tasks and functions, including acquisition by purchase or gift
16 of any real property necessary for port-of-entry facilities,
17 acquisition by purchase, gift or construction of any facilities
18 or other real or personal property necessary for a port of
19 entry and filing all necessary documents and follow-up of such
20 filings with appropriate agencies;

21 (4) as part of a port of entry, give or
22 transfer real property, facilities and improvements owned by
23 the authority to the United States government;

24 (5) acquire by construction, purchase, gift or
25 lease projects that shall be located within the state;

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1 (6) sell, lease or otherwise dispose of a
2 project upon terms and conditions acceptable to the authority
3 and in the best interests of the state;

4 (7) enter into agreements with the ~~[federal]~~
5 United States government for the operation, improvement and
6 expansion of federal border facilities;

7 (8) enter into joint ventures, partnerships or
8 other business relationships with qualified entities and
9 private persons for the joint funding and operation of
10 projects;

11 (9) issue revenue bonds and borrow money for
12 the purpose of defraying the cost of acquiring a project by
13 purchase or construction and to secure the payment of the bonds
14 or repayment of a loan;

15 (10) expend funds or incur debt for the
16 improvement, maintenance, repair or addition to property owned
17 by the authority, the state or the United States government;
18 and

19 (11) refinance a project.

20 C. In exercising its authority, the authority shall
21 not incur debt as a general obligation of the state or pledge
22 the full faith and credit of the state to repay debt."

23 **SECTION 6.** Section 58-27-12 NMSA 1978 (being Laws 1991,
24 Chapter 131, Section 12, as amended) is amended to read:

25 "58-27-12. AUTHORITY STAFF--CONTRACTS.--

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1 A. The authority shall hire an executive director
2 who has professional experience in land development, economic
3 development, maritime or overland shipping by truck or rail,
4 international commerce, finance, economics, accounting,
5 engineering, law, agriculture or business management that
6 consists of serving as the chief executive officer, president
7 or managing director of a business or serving in another upper-
8 level management position of a business.

9 B. The executive director shall:

10 (1) employ the necessary professional,
11 technical and clerical staff to enable the authority to
12 function efficiently;

13 ~~[B. The executive director of the authority shall]~~

14 and

15 (2) direct the affairs and business of the
16 authority ~~[subject to]~~ in accordance with the policies, control
17 and direction of the authority.

18 C. The authority may contract with any other
19 competent private or public organization or individual to
20 assist in the fulfillment of its duties."

21 SECTION 7. Section 58-27-13 NMSA 1978 (being Laws 1991,
22 Chapter 131, Section 13) is amended to read:

23 "58-27-13. LOCATION OF AUTHORITY.--The authority shall be
24 located in the ~~[New Mexico-Chihuahua]~~ New Mexico-Mexico border
25 area."

1 SECTION 8. Section 58-27-15 NMSA 1978 (being Laws 1991,
2 Chapter 131, Section 15, as amended) is amended to read:

3 "58-27-15. [~~BORDER~~] AUTHORITY--BONDING AUTHORITY--POWER
4 TO ISSUE REVENUE BONDS.--

5 A. The authority may act as an issuing authority
6 for the purposes of the Private Activity Bond Act.

7 B. The authority may issue revenue bonds for
8 authority projects. With the exception of the port of entry or
9 foreign trade zone, the [~~border~~] authority shall not [~~be~~
10 ~~authorized to~~] issue bonds for projects for a qualified entity,
11 as defined in Section 6-21-3 NMSA 1978. Revenue bonds so
12 issued may be considered appropriate investments for the
13 severance tax permanent fund or collateral for the deposit of
14 public funds if the bonds are rated [~~not less than~~] "A" or
15 higher by a national rating service and if both the principal
16 and interest of the bonds are fully and unconditionally
17 guaranteed by a lease agreement executed by an agency of the
18 United States government or by a corporation organized and
19 operating within the United States that [~~corporation~~] is, or
20 [~~the~~] whose long-term debt [~~of that corporation being~~] is,
21 rated [~~not less than~~] "A" or higher by a national rating
22 service. All bonds issued by the authority are legal and
23 authorized investments for banks, trust companies, savings and
24 loan associations and insurance companies.

25 C. The authority may pay from the bond proceeds all

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1 expenses, premiums and commissions that the authority [~~may~~
2 ~~deem~~] deems necessary or advantageous in connection with the
3 authorization, sale and issuance of the bonds."

4 SECTION 9. Section 58-27-21 NMSA 1978 (being Laws 1991,
5 Chapter 131, Section 21) is amended to read:

6 "58-27-21. [~~BORDER~~] AUTHORITY REVENUE BONDS--REFUNDING
7 AUTHORIZATION.--

8 A. The authority may issue refunding revenue bonds
9 for the purpose of refinancing, paying and discharging all or
10 any part of outstanding authority revenue bonds of any [~~one or~~
11 ~~more or all~~] number of outstanding issues:

12 (1) for the acceleration, deceleration or
13 other modification of payment of [~~such~~] those obligations,
14 including [~~without limitation~~] any capitalization of [~~any~~]
15 interest [~~thereon~~] on those obligations in arrears or about to
16 become due for [~~any~~] a period [~~not exceeding~~] of one year or
17 less from the date of the refunding bonds;

18 (2) for the purpose of reducing interest costs
19 or effecting other economies;

20 (3) for the purpose of modifying or
21 eliminating restrictive contractual limitations pertaining to
22 the issuance of additional bonds, otherwise concerning the
23 outstanding bonds or to any facilities relating [~~thereto~~] to
24 those bonds; or

25 (4) for any combination of those purposes.

1 B. The authority may pledge irrevocably for the
2 payment of interest and principal on refunding bonds the
3 appropriate pledged revenues [~~which~~] that may be pledged to an
4 original issue of bonds.

5 C. Bonds for refunding and bonds for any purpose
6 permitted by the Border Development Act may be issued
7 separately or issued in combination in one series or more."

8 SECTION 10. Section 58-27-25 NMSA 1978 (being Laws 1991,
9 Chapter 131, Section 25, as amended) is amended to read:

10 "58-27-25. FUND CREATED.--

11 A. The "border authority fund" is created in the
12 state treasury. Separate accounts within the fund may be
13 created for [~~any project~~] projects. Money in the fund is
14 appropriated to the authority for the purposes of carrying out
15 the [~~provisions of the~~] Border Development Act. Money in the
16 fund shall not revert at the end of a fiscal year.

17 B. Except as provided in Subsections E and F of
18 this section, money received by the authority shall be
19 deposited in the border authority fund, including [~~but not~~
20 ~~limited to~~] all:

21 (1) [~~the~~] proceeds of bonds issued by the
22 authority or from any loan to the authority made pursuant to
23 the Border Development Act;

24 (2) interest earned [~~upon~~] on money in the
25 fund;

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(3) ~~[any]~~ property or securities acquired through the use of money belonging to the fund;

(4) ~~[all]~~ earnings of ~~[such]~~ that property or those securities;

(5) lease or rental payments received by the authority from ~~[any]~~ a project and distributed to the fund pursuant to Subsection F of this section;

(6) ~~[all]~~ other money received by the authority from any public or private source except ~~[that, if the public or private source expresses an intent that the]~~ money ~~[be used]~~ earmarked for projects pursuant to Section 58-27-25.1 NMSA 1978, ~~[then the money]~~ which shall instead be deposited into the border project fund ~~[and not the border authority fund]~~; and

(7) tolls, fees, rents or other charges imposed and collected by the authority and distributed to the fund pursuant to Subsection F of this section.

C. Disbursements from the border authority fund shall be made only upon warrant drawn by the secretary of finance and administration pursuant to vouchers signed by the executive director of the authority, ~~[or]~~ the executive director's designee ~~[pursuant to the Border Development Act; provided that in the event]~~ or, if the position of executive director is vacant, ~~[vouchers may be signed by]~~ the chair of the authority.

1 D. Earnings on the balance in the border authority
 2 fund shall be credited to the fund. [~~In addition, in the event~~
 3 ~~that~~] If the proceeds from the issuance of bonds or from money
 4 borrowed by the authority are deposited in the state treasury,
 5 interest earned on that money [~~during the period commencing~~
 6 ~~with~~] from the date of its deposit in the state treasury until
 7 [~~the~~] its actual transfer [~~of the money~~] to the fund shall be
 8 credited to the fund.

9 E. All proceeds from issuing revenue bonds shall be
 10 placed in trust with a chartered bank to be dispersed by the
 11 trustee [~~pursuant~~] according to the terms [~~set forth~~] in the
 12 bonding resolution adopted by the authority.

13 F. Ten percent of the tolls, fees, rents, lease
 14 payments and other charges that are imposed, collected and
 15 received by the authority shall be deposited [~~into~~] in the
 16 border project fund, and the remaining ninety percent shall be
 17 deposited [~~into~~] in the border authority fund. [~~provided that~~
 18 ~~the~~] Money deposited into the border authority fund shall be
 19 expended only as appropriated and in accordance with a budget
 20 approved by the state budget division of the department of
 21 finance and administration."

22 SECTION 11. REPEAL.--Section 58-27-7 NMSA 1978 (being
 23 Laws 1991, Chapter 131, Section 7) is repealed.

24 SECTION 12. EFFECTIVE DATE.--The effective date of the
 25 provisions of this act is July 1, 2017.