

SENATE FINANCE COMMITTEE SUBSTITUTE FOR SENATE PUBLIC AFFAIRS  
COMMITTEE SUBSTITUTE FOR SENATE BILL 279

**49TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2010**

AN ACT

RELATING TO THE PUBLIC PEACE, HEALTH, SAFETY AND WELFARE;  
ENACTING THE COLONIAS INFRASTRUCTURE ACT; CREATING A BOARD;  
PRESCRIBING POWERS AND DUTIES; CREATING A TRUST FUND; CREATING  
A PROJECT FUND; ALLOCATING SEVERANCE TAX BONDING CAPACITY FOR  
COLONIAS INFRASTRUCTURE PROJECTS; AUTHORIZING SEVERANCE TAX  
BONDS; MAKING APPROPRIATIONS.

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

Section 1. [NEW MATERIAL] SHORT TITLE.--Sections 1  
through 8 of this act may be cited as the "Colonias  
Infrastructure Act".

Section 2. [NEW MATERIAL] FINDINGS AND PURPOSE.--

A. The legislature finds that:

(1) colonias lack basic infrastructure  
resulting in poor social, health and economic conditions;

.181729.2

underscored material = new  
[bracketed material] = delete

1                   (2) adequate infrastructure such as water and  
2 wastewater systems, solid waste disposal facilities, flood and  
3 drainage control, roads and housing infrastructure are  
4 essential to improved health, safety and welfare of all New  
5 Mexicans, including residents of the colonia communities;

6                   (3) local efforts and resources have been  
7 insufficient to develop and maintain a consistent and adequate  
8 level of infrastructure;

9                   (4) addressing the urgent need of replacing,  
10 improving and developing infrastructure through the use of an  
11 alternative financing mechanism is a long-term cost savings  
12 benefit to both the state and the communities; and

13                   (5) adequate infrastructure development allows  
14 colonia residents to achieve the basic conditions necessary to  
15 improve the quality of their lives.

16                   B. The purposes of the Colonias Infrastructure Act  
17 are to:

18                   (1) ensure adequate financial resources for  
19 infrastructure development for colonia recognized communities;

20                   (2) provide for the planning and development  
21 of infrastructure in an efficient and cost-effective manner;  
22 and

23                   (3) develop infrastructure projects to improve  
24 quality of life and encourage economic development.

25                   Section 3. [NEW MATERIAL] DEFINITIONS.--As used in the

.181729.2

1 Colonias Infrastructure Act:

2 A. "authority" means the New Mexico finance  
3 authority;

4 B. "board" means the colonias infrastructure board;

5 C. "colonia" means a rural community with a  
6 population of twenty-five thousand or less located within one  
7 hundred fifty miles of the United States-Mexico border that:

8 (1) has been designated as a colonia by the  
9 municipality or county in which it is located because of a:

- 10 (a) lack of potable water supply;  
11 (b) lack of adequate sewage systems; or  
12 (c) lack of decent, safe and sanitary  
13 housing;

14 (2) has been in existence as a colonia prior  
15 to November 1990; and

16 (3) has submitted appropriate documentation to  
17 the board to substantiate the conditions of this subsection,  
18 including documentation that supports the designation of the  
19 municipality or county;

20 D. "financial assistance" means providing grants or  
21 loans on terms and conditions approved by the authority;

22 E. "project fund" means the colonias infrastructure  
23 project fund;

24 F. "qualified entity" means a county, municipality  
25 or other entity recognized as a political subdivision of the

.181729.2

1 state;

2 G. "qualified project" means a capital outlay  
3 project selected by the board for financial assistance that is  
4 primarily intended to develop colonias infrastructure. A  
5 qualified project may include a water system, a wastewater  
6 system, solid waste disposal facilities, flood and drainage  
7 control, roads or housing infrastructure; but "qualified  
8 project" does not include general operation and maintenance,  
9 equipment, housing allowance payments or mortgage subsidies;  
10 and

11 H. "trust fund" means the colonias infrastructure  
12 trust fund.

13 Section 4. [NEW MATERIAL] COLONIAS INFRASTRUCTURE BOARD  
14 CREATED.--

15 A. The "colonias infrastructure board" is created.

16 B. The board shall consist of seven voting members  
17 as follows:

18 (1) the secretary of finance and  
19 administration or the secretary's designee from the department  
20 of finance and administration;

21 (2) the secretary of environment or the  
22 secretary's designee from the department of environment;

23 (3) the chief executive officer of the  
24 authority or the chief executive officer's designee from the  
25 authority;

.181729.2

1 (4) one member appointed by the president pro  
2 tempore of the senate;

3 (5) one member appointed by the minority  
4 leader of the senate;

5 (6) one member appointed by the speaker of the  
6 house of representatives; and

7 (7) one member appointed by the minority  
8 leader of the house of representatives.

9 C. The members appointed pursuant to Paragraphs (4)  
10 through (7) of Subsection B of this section shall be appointed  
11 with the advice and consent of the senate, serve at the  
12 pleasure of the appointing authority, be residents of the  
13 colonias area and have experience in capital project  
14 development or administration, and they may receive per diem  
15 and mileage as provided for nonsalaried public officers in the  
16 Per Diem and Mileage Act but shall receive no other  
17 compensation, perquisite or allowance.

18 D. There shall be five advisory, nonvoting members  
19 of the board as follows:

20 (1) the executive director of the south  
21 central council of governments or the director's designee;

22 (2) the executive director of the southwest  
23 New Mexico council of governments or the director's designee;

24 (3) the executive director of the southeastern  
25 New Mexico economic development district or the director's

.181729.2

1 designee;

2 (4) the executive director of the New Mexico  
3 association of counties or the director's designee; and

4 (5) the executive director of the New Mexico  
5 mortgage finance authority or the director's designee.

6 E. The board shall choose a chair and vice chair  
7 from among its members and such other officers as it deems  
8 necessary. The board shall meet whenever a voting member  
9 submits a request in writing to the chair, but not less than  
10 quarterly.

11 F. All meetings of the board shall be open to the  
12 public and subject to the Open Meetings Act and, at each  
13 meeting, the board shall provide an opportunity for public  
14 comment.

15 Section 5. [NEW MATERIAL] BOARD--DUTIES.--The board  
16 shall:

17 A. promulgate such rules as are necessary to govern  
18 the acceptance, evaluation and prioritization of applications  
19 submitted by qualified entities for financial assistance;

20 B. after applications have been processed and  
21 evaluated by the authority, prioritize the qualified projects  
22 for financial assistance; and

23 C. upon such terms and conditions as are  
24 established by the authority, recommend the prioritized  
25 projects to the authority for financial assistance for:

.181729.2

- 1 (1) planning, designing, constructing,
- 2 improving or expanding a qualified project;
- 3 (2) developing engineering feasibility reports
- 4 for qualified projects;
- 5 (3) inspecting construction of qualified
- 6 projects;
- 7 (4) providing professional services;
- 8 (5) completing environmental assessments or
- 9 archaeological clearances and other surveys for qualified
- 10 projects;
- 11 (6) acquiring land, water rights, easements or
- 12 rights of way; or
- 13 (7) paying legal costs and fiscal agent fees
- 14 associated with development of qualified projects.

15 Section 6. [NEW MATERIAL] AUTHORITY--DUTIES.--The  
16 authority shall:

- 17 A. provide staff support to the board;
- 18 B. administer the project fund;
- 19 C. at the direction of the board, process, review
- 20 and evaluate applications for financial assistance from
- 21 qualified entities; and
- 22 D. at the direction of the board, administer
- 23 qualified projects that receive financial assistance.

24 Section 7. [NEW MATERIAL] COLONIAS INFRASTRUCTURE TRUST  
25 FUND--CREATED--INVESTMENT--DISTRIBUTION.--

.181729.2

1           A. The "colonias infrastructure trust fund" is  
2 created in the state treasury. The trust fund shall consist of  
3 money that is appropriated, donated or otherwise allocated to  
4 it. Money in the trust fund shall be invested by the state  
5 investment officer in the manner that land grant permanent  
6 funds are invested pursuant to Chapter 6, Article 8 NMSA 1978.  
7 Income from investment of the trust fund shall be credited to  
8 the fund. Money in the trust fund shall not be expended for  
9 any purpose, but an annual distribution from the trust fund  
10 shall be made to the project fund pursuant to this section.

11           B. On July 1 of each year in which adequate money  
12 is available in the trust fund, an annual distribution shall be  
13 made from the trust fund to the project fund in the amount of  
14 ten million dollars (\$10,000,000) until the distribution is  
15 less than an amount equal to four and seven-tenths percent of  
16 the average of the year-end market values of the trust fund for  
17 the immediately preceding five calendar years. Thereafter, the  
18 amount of the annual distribution shall be four and  
19 seven-tenths percent of the average of the year-end market  
20 values of the trust fund for the immediately preceding five  
21 calendar years.

22           Section 8. [NEW MATERIAL] COLONIAS INFRASTRUCTURE PROJECT  
23 FUND--CREATED--PURPOSE--APPROPRIATIONS.--

24           A. The "colonias infrastructure project fund" is  
25 created in the authority and shall be administered by the

.181729.2



1 authority.

2 B. The project fund shall consist of:

3 (1) distributions from the trust fund;

4 (2) payments of principal and interest on  
5 loans for qualified projects;

6 (3) other money appropriated by the  
7 legislature or distributed or otherwise allocated to the  
8 project fund for the purpose of supporting qualified projects;

9 (4) the proceeds of severance tax bonds  
10 appropriated to the fund for qualified projects; and

11 (5) income from investment of the project fund  
12 that shall be credited to the project fund.

13 C. Except for severance tax bond proceeds required  
14 to revert to the severance tax bonding fund, balances in the  
15 project fund at the end of a fiscal year shall not revert to  
16 any other fund.

17 D. The project fund may consist of subaccounts as  
18 determined to be necessary by the authority.

19 E. The authority may establish procedures and adopt  
20 rules as required to:

21 (1) administer the project fund;

22 (2) originate grants or loans for qualified  
23 projects recommended by the board;

24 (3) recover from the project fund the costs of  
25 administering the fund and originating the grants and loans;

.181729.2

1 and

2 (4) govern the process through which qualified  
3 entities may apply for financial assistance from the project  
4 fund.

5 Section 9. A new section of the Severance Tax Bonding Act  
6 is enacted to read:

7 "[NEW MATERIAL] AUTHORIZATION FOR SEVERANCE TAX BONDS--  
8 PRIORITY FOR INFRASTRUCTURE PROJECTS FOR COLONIAS.--

9 A. After the annual estimate of severance tax  
10 bonding capacity pursuant to Subsection A of Section 7-27-10.1  
11 NMSA 1978, the board of finance division of the department of  
12 finance and administration shall allocate five percent of the  
13 estimated bonding capacity each year for colonias  
14 infrastructure projects, and the legislature authorizes the  
15 state board of finance to issue severance tax bonds in the  
16 annually allocated amount for use by the colonias  
17 infrastructure board to fund the projects. The colonias  
18 infrastructure board shall certify to the state board of  
19 finance the need for issuance of bonds for colonias  
20 infrastructure projects. The state board of finance may issue  
21 and sell the bonds in the same manner as other severance tax  
22 bonds in an amount not to exceed the authorized amount provided  
23 for in this subsection. If necessary, the state board of  
24 finance shall take the appropriate steps to comply with the  
25 federal Internal Revenue Code of 1986, as amended. Proceeds

.181729.2

1 from the sale of the bonds are appropriated to the colonias  
2 infrastructure project fund for the purposes certified by the  
3 colonias infrastructure board to the state board of finance.

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

12 C. As used in this section, "colonias  
13 infrastructure project" means a qualified project under the  
14 Colonias Infrastructure Act."

15 Section 10. APPLICABILITY.--The allocation of severance  
16 tax bonding capacity and the authorization of severance tax  
17 bonds for colonias infrastructure projects pursuant to Section  
18 9 of this act shall commence with the severance tax bonding  
19 capacity estimated by January 15, 2012 for authorization by the  
20 second session of the fiftieth legislature.

21 Section 11. EFFECTIVE DATE.--The effective date of the  
22 provisions of this act is July 1, 2011.