

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;

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

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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 board;

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

24 F. "qualified entity" means a state agency, county,  
25 municipality or other entity recognized as a political

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1 subdivision of the 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, flood and drainage control, roads, infrastructure  
7 needed to encourage economic development or housing; but  
8 "qualified project" does not include construction or  
9 maintenance of buildings other than housing, general operation  
10 and maintenance, housing allowance payments or mortgage  
11 subsidies; and

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

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

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

17 B. The board shall consist of five voting members  
18 as follows:

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

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

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

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1 authority;

2 (4) the executive director of the New Mexico  
3 mortgage finance authority or the executive director's designee  
4 from the New Mexico mortgage finance authority; and

5 (5) a member appointed by the governor, with  
6 the advice and consent of the senate, who shall serve at the  
7 pleasure of the governor, be a resident of the colonias area  
8 and have experience in capital project development or  
9 administration.

10 C. There shall be three advisory, nonvoting members  
11 of the board as follows:

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

14 (2) the executive director of the southwest  
15 New Mexico council of governments or the director's designee;  
16 and

17 (3) the executive director of the southeastern  
18 New Mexico economic development district or the director's  
19 designee.

20 D. The board shall choose a chair and vice chair  
21 from among its members and such other officers as it deems  
22 necessary. The board shall meet whenever a voting member  
23 submits a request in writing to the chair, but not less than  
24 quarterly.

25 Section 5. [NEW MATERIAL] BOARD--DUTIES.--The board

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1 shall:

2           A. adopt rules governing terms, conditions and  
3 priorities for providing financial assistance, through  
4 qualified entities, to colonias, including developing  
5 application and evaluation procedures and forms and  
6 qualifications for applicants and for projects;

7           B. through qualified entities, provide financial  
8 assistance to colonias for qualified projects on terms and  
9 conditions established by the board; and

10           C. authorize funding for qualified projects,  
11 including:

12                   (1) planning, designing, constructing,  
13 improving or expanding a qualified project;

14                   (2) developing engineering feasibility reports  
15 for qualified projects;

16                   (3) inspecting construction of qualified  
17 projects;

18                   (4) providing special engineering services;

19                   (5) completing environmental assessments or  
20 archaeological clearances and other surveys for qualified  
21 projects;

22                   (6) acquiring land, easements or rights of  
23 way; and

24                   (7) paying legal costs and fiscal agent fees  
25 associated with development of qualified projects.

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1           Section 6. [NEW MATERIAL] AUTHORITY--DUTIES.--The  
2 authority shall:

- 3           A. provide staff support to the board;
- 4           B. administer the project fund;
- 5           C. at the direction of the board, process, review  
6 and evaluate applications for financial assistance from  
7 qualified entities; and
- 8           D. at the direction of the board, administer  
9 qualified projects that receive financial assistance.

10           Section 7. [NEW MATERIAL] COLONIAS INFRASTRUCTURE TRUST  
11 FUND--CREATED--INVESTMENT--DISTRIBUTION.--

12           A. The "colonias infrastructure trust fund" is  
13 created in the state treasury. The trust fund shall consist of  
14 money that is appropriated, donated or otherwise allocated to  
15 it. Money in the trust fund shall be invested by the state  
16 investment officer in the manner that land grant permanent  
17 funds are invested pursuant to Chapter 6, Article 8 NMSA 1978.  
18 Income from investment of the trust fund shall be credited to  
19 the fund. Money in the trust fund shall not be expended for  
20 any purpose, but an annual distribution from the trust fund  
21 shall be made to the project fund pursuant to this section.

22           B. On July 1 of each year in which adequate money  
23 is available in the trust fund, an annual distribution shall be  
24 made from the trust fund to the project fund in the amount of  
25 ten million dollars (\$10,000,000) until the distribution is

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1 less than an amount equal to four and seven-tenths percent of  
2 the average of the year-end market values of the trust fund for  
3 the immediately preceding five calendar years. Thereafter, the  
4 amount of the annual distribution shall be four and  
5 seven-tenths percent of the average of the year-end market  
6 values of the trust fund for the immediately preceding five  
7 calendar years.

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

10 A. The "colonias infrastructure project fund" is  
11 created in the authority and shall be administered by the  
12 authority.

13 B. The project fund shall consist of:

- 14 (1) distributions from the trust fund;  
15 (2) payments of principal and interest on  
16 loans for qualified projects;  
17 (3) other money appropriated by the  
18 legislature or distributed or otherwise allocated to the  
19 project fund for the purpose of supporting qualified projects;  
20 (4) the proceeds of severance tax bonds  
21 appropriated to the fund for qualified projects; and  
22 (5) income from investment of the project fund  
23 that shall be credited to the project fund.

24 C. Except for severance tax bond proceeds required  
25 to revert to the severance tax bonding fund, balances in the

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1 project fund at the end of a fiscal year shall not revert to  
2 any other fund.

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

5 E. The authority may establish procedures and adopt  
6 rules as required to:

7 (1) administer the project fund;

8 (2) originate grants or loans for qualified  
9 projects approved by the board; and

10 (3) recover from the fund costs of  
11 administering the fund and originating grants and loans,  
12 provided that no more than one percent of the project fund or  
13 one hundred thousand dollars (\$100,000), whichever is less,  
14 shall be annually expended for the purposes of this paragraph.

15 F. Twenty percent of the annual financial  
16 assistance from the project fund shall be for qualified  
17 projects to provide affordable housing in the colonias.  
18 Projects funded pursuant to the requirement of this subsection  
19 shall be administered by the New Mexico mortgage finance  
20 authority through an agreement with the board and the authority  
21 and pursuant to the provisions of the Mortgage Finance  
22 Authority Act.

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

25 "[NEW MATERIAL] AUTHORIZATION FOR SEVERANCE TAX BONDS--

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1 PRIORITY FOR INFRASTRUCTURE PROJECTS FOR COLONIAS.--

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

22 B. Money from the severance tax bonds provided for  
23 in this section shall not be used to pay indirect project  
24 costs. Any unexpended balance from proceeds of severance tax  
25 bonds issued for a colonias infrastructure project shall revert

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1 to the severance tax bonding fund within six months of  
2 completion of the project. The colonias infrastructure board  
3 shall monitor and ensure proper reversions of the bond proceeds  
4 appropriated for the projects.

5 C. As used in this section, "colonias  
6 infrastructure project" means a qualified project under the  
7 Colonias Infrastructure Act."

8 Section 10. APPLICABILITY.--The allocation of severance  
9 tax bonding capacity and the authorization of severance tax  
10 bonds for colonias infrastructure projects pursuant to Section  
11 9 of this act shall commence with the severance tax bonding  
12 capacity estimated on January 15, 2012 for authorization by the  
13 second session of the fiftieth legislature.

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

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