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HOUSE BILL 322

50TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2011

INTRODUCED BY

Mary Helen Garcia

AN ACT

RELATING TO BORDER DEVELOPMENT; AMENDING THE BORDER DEVELOPMENT ACT TO PROVIDE THE BORDER AUTHORITY WITH ADDITIONAL POWERS AND DUTIES RELATING TO PROJECTS; CREATING A FUND; MAKING AN APPROPRIATION.

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

SECTION 1. Section 58-27-3 NMSA 1978 (being Laws 1991, Chapter 131, Section 3, as amended) is amended to read:

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

A. "authority" means the border authority;

B. "financial assistance" means grants and loans provided for projects to a qualified entity on terms and conditions approved by the authority;

~~[B-]~~ C. "mortgage" means a mortgage or a mortgage

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1 and deed of trust or the pledge and hypothecation of any assets
2 as collateral security;

3 ~~[G.]~~ D. "port of entry" means ~~[any]~~ an
4 international port of entry in New Mexico at which customs
5 services are provided by the United States customs ~~[service]~~
6 and border protection;

7 ~~[D.]~~ E. "project" means any land or building or any
8 other improvements acquired as a part of a port of entry or
9 associated with a port of entry or to aid commerce in
10 connection ~~[therewith, and]~~ with a port of entry, including all
11 real and personal property deemed necessary in connection
12 therewith, whether or not now in existence ~~[which is suitable~~
13 ~~for use by the following, or by any combination]~~. A project
14 shall be suitable for use by, or for, one or more of the
15 following:

16 (1) a port of entry, a foreign trade zone,
17 ~~[and]~~ an inspection station, an emergency response station or
18 any other facilities to be used by any agency or entity of the
19 United States government, by another qualified entity or by any
20 other foreign international state ~~[or local public agency or~~
21 ~~entity at the port of entry or foreign trade zone]~~;

22 (2) an industry for the manufacturing,
23 processing or assembling of any agricultural, mining or
24 manufactured product;

25 (3) a railroad switching yard, railroad

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1 station, bus terminal, airport or other passenger, commuter or
2 mass transportation system or freight transportation system;

3 (4) a commercial business or other enterprise
4 engaged in storing, warehousing, distributing or selling
5 products of manufacturing, agriculture, mining or related
6 industries, not including facilities designed for the
7 distribution to the public of electricity or gas;

8 (5) an enterprise in which all or part of the
9 activities of the enterprise involve supplying services to the
10 general public or to governmental agencies or to a specific
11 industry or customer;

12 (6) any industrial, commercial, agricultural,
13 professional or other business enterprise seeking to occupy
14 office space;

15 (7) infrastructure development involving
16 acquiring, repairing, improving or maintaining storm sewers and
17 other drainage improvements, sanitary sewers, sewage treatment,
18 [~~or~~] water utilities or solid waste disposal facilities,
19 including acquiring rights of way or water rights;

20 (8) infrastructure development involving
21 reconstructing, resurfacing, maintaining, repairing or
22 improving existing alleys, streets, roads or bridges or laying
23 off, opening, constructing or acquiring new alleys, streets,
24 roads or bridges, including acquiring rights of way;

25 (9) any industry that involves any water

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1 distribution or irrigation system, including pumps,
2 distribution lines, transmission lines, fences, dams and
3 similar facilities and equipment, including acquiring rights of
4 way; or

5 (10) fire protection services or equipment or
6 police protection services or equipment;

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

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

17 ~~[F-]~~ H. "bond" means any bonds, notes or other
18 obligations; and

19 ~~[G-]~~ I. "bondholder" means a person who is the
20 owner of a bond, regardless of whether the bond is registered."

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

23 "58-27-10. POWERS AND DUTIES OF AUTHORITY.--

24 A. The authority shall:

25 (1) advise the governor and the governor's

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1 staff and the New Mexico finance authority oversight committee
2 on methods, proposals, programs and initiatives involving the
3 New Mexico-Chihuahua border area that may further stimulate the
4 border economy and provide additional employment opportunities
5 for New Mexico citizens;

6 (2) subject to the provisions of the Border
7 Development Act, initiate, develop, acquire, own, construct and
8 maintain border development projects;

9 (3) create programs to expand economic
10 opportunities beyond the New Mexico-Chihuahua border area to
11 other areas of the state;

12 (4) create avenues of communication between
13 New Mexico and Chihuahua and the Republic of Mexico concerning
14 economic development, trade and commerce, transportation and
15 industrial affairs;

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

18 (6) produce or cause to have produced
19 promotional literature related to explanation and fulfillment
20 of the authority's goals;

21 (7) actively recruit industries and establish
22 programs that will result in the location and relocation of new
23 industries in the state;

24 (8) coordinate and expedite the involvement of
25 the executive department's border area efforts; ~~and~~

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1 (9) perform or cause to be performed
2 environmental, transportation, communication, land use and
3 other technical studies necessary or advisable for projects or
4 programs or to secure port-of-entry approval by the United
5 States and the Mexican governments and other appropriate
6 governmental agencies; and

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

10 B. The authority may:

11 (1) solicit and accept federal, state, local
12 and private grants of funds, property or financial or other aid
13 in any form for the purpose of carrying out the provisions of
14 the Border Development Act;

15 (2) adopt rules governing the manner in which
16 its business is transacted and the manner in which the powers
17 of the authority are exercised and its duties performed;

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

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

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

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

9 (7) enter into agreements with the federal
10 government for the operation, improvement and expansion of
11 federal border facilities;

12 (8) enter into joint ventures, partnerships or
13 other business relationships with qualified entities and
14 private persons for the joint funding and operation of
15 projects;

16 [~~7~~] (9) issue revenue bonds and borrow money
17 for the purpose of defraying the cost of acquiring a project by
18 purchase or construction and to secure the payment of the bonds
19 or repayment of a loan;

20 [~~8~~] (10) expend funds or incur debt for the
21 improvement, maintenance, repair or addition to property owned
22 by the authority, the state or the United States government;
23 and

24 [~~9~~] (11) refinance a project.

25 C. In exercising its authority, the authority

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1 shall not incur debt as a general obligation of the state or
2 pledge the full faith and credit of the state to repay debt."

3 SECTION 3. Section 58-27-25 NMSA 1978 (being Laws 1991,
4 Chapter 131, Section 25, as amended) is amended to read:

5 "58-27-25. FUND CREATED.--

6 A. The "border authority fund" is created in the
7 state treasury. Separate accounts within the fund may be
8 created for any project. Money in the fund is appropriated
9 to the authority for the purposes of carrying out the
10 provisions of the Border Development Act. Money in the fund
11 shall not revert at the end of a fiscal year.

12 B. Except as provided in [~~Subsection E~~]
13 Subsections E and F of this section, [~~any~~] money received by
14 the authority shall be deposited in the border authority
15 fund, including but not limited to:

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

19 (2) interest earned upon [~~any~~] money in the
20 fund;

21 (3) any property or securities acquired
22 through the use of money belonging to the fund;

23 (4) all earnings of such property or
24 securities;

25 (5) [~~all~~] lease or rental payments received

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1 [from] by the authority from any project and distributed to
2 the fund pursuant to Subsection F of this section;

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

9 (7) [any] tolls, fees, rents or other
10 charges imposed and collected by the authority and
11 distributed to the fund pursuant to Subsection F of this
12 section.

13 C. ~~[Any tolls, fees, rents or other charges~~
14 ~~imposed and collected by the authority in excess of those~~
15 ~~imposed and collected for an approved project and for all~~
16 ~~debt service and reserves for the bonds that financed the~~
17 ~~project may be expended only as appropriated and in~~
18 ~~accordance with a budget approved by the state budget~~
19 ~~division of the department of finance and administration.]~~
20 Disbursements from the border authority fund shall be made
21 only upon warrant drawn by the secretary of finance and
22 administration pursuant to vouchers signed by the executive
23 director of the authority or [his] the executive director's
24 designee pursuant to the Border Development Act; provided
25 that in the event the position of executive director is

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1 vacant, vouchers may be signed by the [~~chairman~~] chair of the
2 authority.

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

11 E. All proceeds from issuing revenue bonds shall
12 be placed in trust with a chartered bank to be dispersed by
13 the trustee, pursuant to the terms set forth in the bonding
14 resolution adopted by the authority.

15 F. Tolls, fees, rents, lease payments or other
16 charges that are imposed, collected and received by the
17 authority shall be distributed as follows:

18 (1) if the receipts are from a project for
19 which revenue bonds have been issued, the portion of the
20 receipts pledged for debt service and an adequate reserve
21 shall be deposited into the separate account within the
22 border authority fund established for that purpose. Fifteen
23 percent of any portion of the receipts in excess of the
24 amount pledged for debt service and an adequate reserve shall
25 be deposited into the border project fund. The remaining

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1 eighty-five percent of any portion in excess of the amount
2 pledged for debt service and an adequate reserve shall be
3 deposited into the border authority fund; provided that the
4 money shall be expended only as appropriated and in
5 accordance with a budget approved by the state budget
6 division of the department of finance and administration; or
7 (2) if the receipts are not from a project
8 for which revenue bonds have been issued, fifteen percent
9 shall be deposited into the border project fund and the
10 remaining eighty-five percent shall be deposited into the
11 border authority fund; provided that the money deposited into
12 the border authority fund shall be expended only as
13 appropriated and in accordance with a budget approved by the
14 state budget division of the department of finance and
15 administration."

16 SECTION 4. A new section of the Border Development
17 Act, Section 58-27-25.1 NMSA 1978, is enacted to read:

18 "58-27-25.1. [NEW MATERIAL] BORDER PROJECT FUND--
19 CREATED--PURPOSE--EXPENDITURES.--

20 A. The "border project fund" is created in the
21 state treasury.

22 B. The border project fund shall consist of:

23 (1) payments of principal and interest on
24 loans for projects;

25 (2) a portion of the tolls, fees, rents,

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1 lease payments or other charges imposed, collected and
2 received by the authority and distributed to the fund
3 pursuant to Subsection F of Section 58-27-25 NMSA 1978;

4 (3) money appropriated by the legislature or
5 distributed or otherwise allocated to the fund;

6 (4) the proceeds of severance tax bonds
7 appropriated to the fund for projects; and

8 (5) income from investment of the fund,
9 which shall be credited to the border project fund.

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

14 D. The border project fund may consist of
15 subaccounts as determined to be necessary by the authority.

16 E. The border project fund is appropriated to the
17 authority for the following purposes:

18 (1) providing financial assistance to
19 qualified entities for projects;

20 (2) costs incurred in the operation of a
21 port of entry or related project pursuant to a joint powers
22 agreement entered into with the federal government; or

23 (3) costs incurred in the joint funding or
24 operation of a project as part of a joint venture,
25 partnership or other business relationship with a qualified

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1 entity or private person.

2 F. The authority may establish procedures and
3 adopt rules as required to:

4 (1) administer the border project fund;

5 (2) originate financial assistance for
6 projects selected by the authority; and

7 (3) govern the process through which
8 qualified entities may apply for financial assistance from
9 the border project fund."

10 SECTION 5. EFFECTIVE DATE.--The effective date of the
11 provisions of this act is July 1, 2011.

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