

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;
- C. "mortgage" means a mortgage or a mortgage and deed of trust or the pledge and hypothecation of any assets as collateral security;
- D. "port of entry" means an international port of entry in New Mexico at which customs services are provided by the United States customs and border protection;
- E. "project" means any land or building or any other improvements acquired as a part of a port of entry or associated with a port of entry or to aid commerce in connection with a port of entry, including all real and

personal property deemed necessary in connection therewith, whether or not now in existence. A project shall be suitable for use by, or for, one or more of the following:

(1) a port of entry, a foreign trade zone, an inspection station, an emergency response station or any other facilities to be used by any agency or entity of the United States government, by another qualified entity or by any other foreign international state;

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

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

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

(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 industrial, commercial, agricultural, professional or other business enterprise

seeking to occupy office space;

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

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

(9) any industry that involves any water distribution or irrigation system, including pumps, distribution lines, transmission lines, fences, dams and similar facilities and equipment, including acquiring rights of way; or

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

F. "property" means land, improvements to the land, buildings and improvements to the buildings, machinery and equipment of any kind necessary to the project, operating capital and any other personal properties deemed necessary in connection with the project;

G. "qualified entity" means the state or one of its agencies, instrumentalities, institutions or political

subdivisions or the United States or any corporation, department, instrumentality or agency of the federal government;

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

I. "bondholder" means a person who is the owner of a bond, regardless of whether the bond is registered."

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

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

A. The authority shall:

(1) advise the governor and the governor's staff and the New Mexico finance authority oversight committee on methods, proposals, programs and initiatives involving the New Mexico-Chihuahua border area that may further stimulate the border economy and provide additional employment opportunities for New Mexico citizens;

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

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

(4) create avenues of communication between New Mexico and Chihuahua and the Republic of Mexico concerning

economic development, trade and commerce, transportation and industrial affairs;

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

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

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

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

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

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

B. The authority may:

(1) solicit and accept federal, state, local and private grants of funds, property or financial or other

aid in any form for the purpose of carrying out the provisions of the Border Development Act;

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

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

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

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

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

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

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

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

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

(11) refinance a project.

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

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

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

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

B. Except as provided in Subsections E and F of this section, money received by the authority shall be deposited in the border authority fund, including but not limited to:

(1) the proceeds of bonds issued by the authority or from any loan to the authority made pursuant to the Border Development Act;

(2) interest earned upon money in the fund;

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

(4) all earnings of such property or securities;

(5) lease or rental payments received by the authority from any 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 for projects pursuant to Section 58-27-25.1 NMSA 1978, then the money shall 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 the position of executive director is vacant, vouchers may be signed by the chair of the authority.

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

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

F. Ten percent of the tolls, fees, rents, lease payments and other charges that are imposed, collected and received by the authority shall be deposited into the border project fund and the remaining ninety percent shall be deposited into the border authority fund; provided that the money deposited into the border authority fund shall be

expended only as appropriated and in accordance with a budget approved by the state budget division of the department of finance and administration."

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

"58-27-25.1. BORDER PROJECT FUND--CREATED--PURPOSE--EXPENDITURES.--

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

B. The border project fund shall consist of:

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

(2) the portion of the tolls, fees, rents, lease payments or other charges imposed, collected and received by the authority and distributed to the fund pursuant to Subsection F of Section 58-27-25 NMSA 1978;

(3) money from public or private sources and deposited into the fund pursuant to Paragraph (6) of Subsection B of Section 58-27-25 NMSA 1978;

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

(5) the proceeds of severance tax bonds appropriated to the fund for projects; and

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

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

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

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

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

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

(3) costs incurred in the joint funding or operation of a project as part of a joint venture, partnership or other business relationship with a qualified entity or private person.

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

(1) administer the border project fund;

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

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

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

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