

HOUSE AGRICULTURE AND WATER RESOURCES COMMITTEE SUBSTITUTE FOR
HOUSE BILL 314

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, 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
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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 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

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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;

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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

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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:

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- 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.--

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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

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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;

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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

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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.

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