

HOUSE BILL 90

53RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2017

INTRODUCED BY

Bill McCamley

AN ACT

RELATING TO BORDER DEVELOPMENT; AMENDING THE BORDER DEVELOPMENT ACT; CHANGING THE NAME OF THE BORDER AUTHORITY TO THE BORDER AND PORT AUTHORITY; CHANGING THE COMPOSITION OF THE BORDER AND PORT AUTHORITY; MAKING TECHNICAL AND CLARIFYING CHANGES TO LAW; REPEALING A SECTION OF THE NMSA 1978.

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

SECTION 1. Section 9-15-30 NMSA 1978 (being Laws 1988, Chapter 80, Section 4, as amended) is amended to read:

"9-15-30. MEXICAN AFFAIRS DIVISION CREATED--DUTIES.--

A. The "Mexican affairs division" is created as a division of the department.

B. The division [~~shall be~~] is responsible for conducting and coordinating the state's relations with the Republic of Mexico and the state of Chihuahua and shall promote

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1 New Mexico products and services in Mexico. The division is
2 created to coordinate activities of the department, the tourism
3 department, the cultural affairs department, the department of
4 transportation, the department of health, the department of
5 environment, the department of public safety, the New Mexico-
6 Chihuahua commission, the border and port authority and the
7 joint border research institute at New Mexico state university
8 as those activities relate to improving New Mexico-Mexico
9 relations and trade and encouraging or funding appropriate
10 border development.

11 C. The division shall provide periodic reports to
12 the New Mexico finance authority oversight committee on its
13 activities and the activities of the state pertaining to New
14 Mexico-Mexico relations, trade and border development."

15 **SECTION 2.** Section 15-3B-2 NMSA 1978 (being Laws 1972,
16 Chapter 74, Section 2, as amended) is amended to read:

17 "15-3B-2. DEFINITIONS.--As used in the Property Control
18 Act:

19 A. "capital outlay project" means the
20 acquisition, improvement, alteration or reconstruction of
21 assets of a long-term character that are intended to continue
22 to be held or used, including land, buildings, machinery,
23 furniture and equipment. A "capital outlay project" includes
24 all proposed expenditures related to the entire undertaking;

25 B. "department" means the general services

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1 department;

2 C. "director" means the director of the division;

3 D. "division" means the facilities management
4 division of the department;

5 E. "jurisdiction" means all state buildings and
6 land except those under the control and management of the
7 state armory board, the border and port authority, the
8 cultural affairs department, the state fair commission, the
9 department of game and fish, the department of
10 transportation, the commissioner of public lands, the state
11 parks division of the energy, minerals and natural resources
12 department, the state institutions of higher learning,
13 regional education cooperatives, the New Mexico school for
14 the deaf, the New Mexico school for the blind and visually
15 impaired, the judicial branch, the legislative branch,
16 property acquired by the economic development department
17 pursuant to the Statewide Economic Development Finance Act
18 and property acquired by the public school facilities
19 authority pursuant to the Public School Capital Outlay Act;
20 and

21 F. "secretary" means the secretary of general
22 services."

23 SECTION 3. Section 58-27-2 NMSA 1978 (being Laws 1991,
24 Chapter 131, Section 2) is amended to read:

25 "58-27-2. LEGISLATIVE PURPOSE.--[By enacting] The

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1 purpose of the Border Development Act [~~it~~] is [~~the purpose of~~
2 ~~the legislature~~] to:

3 A. encourage and foster development of the state
4 and its cities and counties by developing port facilities at
5 international ports of entry;

6 B. actively promote and assist public and private
7 sectors' infrastructure development to attract new industries
8 and businesses, thereby creating new job opportunities in the
9 state while resolving transportation and logistical problems
10 that may arise as ports of entry develop; and

11 C. create the statutory framework that will
12 enable the state to design, finance, construct, equip and
13 operate port facilities necessary to ensure the timely,
14 planned and efficient development of the border area between
15 New Mexico and [~~the Mexican state of Chihuahua~~] Mexico."

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

18 "58-27-3. DEFINITIONS.--As used in the Border
19 Development Act:

20 A. "authority" means the border and port
21 authority;

22 B. "bond" includes notes and obligations;

23 C. "bondholder" means the owner of a registered
24 or unregistered bond;

25 [D.] D. "financial assistance" means grants and

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1 loans provided for projects to a qualified entity on terms
2 and conditions approved by the authority;

3 [C.] E. "mortgage" means a mortgage, [or] a
4 mortgage and deed of trust or the pledge and hypothecation of
5 [any] assets as collateral security;

6 [D.] F. "port of entry" means an international
7 port of entry in New Mexico at which customs services are
8 provided by the United States customs and border protection;

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

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

24 (2) an industry for the manufacturing,
25 processing or assembling of [any] an agricultural, mining or

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1 manufactured product;

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

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

11 (5) an enterprise in which all or part of
12 the activities of the enterprise involve supplying services
13 to the general public, [or] to governmental agencies or to a
14 specific industry or customer;

15 (6) [any] an industrial, commercial,
16 agricultural, professional or other business enterprise
17 seeking to occupy office space;

18 (7) infrastructure development involving
19 [acquiring, repairing, improving or maintaining] the
20 acquisition, repair, improvement or maintenance of storm
21 sewers [and] or other drainage [improvements] systems,
22 sanitary sewers, sewage treatment systems, water utilities or
23 solid waste disposal facilities, including [acquiring] the
24 acquisition of rights of way or water rights;

25 (8) infrastructure development involving

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1 [reconstructing] the reconstruction, resurfacing,
2 [maintaining, repairing or improving] maintenance, repair or
3 improvement of existing alleys, streets, roads or bridges or
4 the laying off, opening, [constructing] construction or
5 [acquiring] acquisition of new alleys, streets, roads or
6 bridges, including [acquiring] the acquisition of rights of
7 way;

8 (9) [any] an industry that involves [any] a
9 water distribution or irrigation system [including] and the
10 pumps, distribution lines, transmission lines, fences, dams
11 and similar facilities, [and] equipment [including acquiring]
12 and the acquisition of rights of way [or] associated with
13 those systems; and

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

16 [F.] H. "property" means, as necessary to a
17 project, land, improvements to [the] land, buildings, [and]
18 improvements to [the] buildings, machinery, [and] equipment,
19 [of any kind necessary to the project] operating capital and
20 [any] other personal [properties deemed necessary in
21 connection with the project] property; and

22 [G.] I. "qualified entity" means the state, [or]
23 one of its agencies, instrumentalities, institutions or
24 political subdivisions, [or] the United States or [any]
25 corporation, department, instrumentality or agency of the

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1 ~~federal government;~~

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

4 ~~I. "bondholder" means a person who is the owner~~
5 ~~of a bond, regardless of whether the bond is registered] one~~
6 ~~of its corporations, departments, instrumentalities or~~
7 ~~agencies."~~

8 SECTION 5. Section 58-27-4 NMSA 1978 (being Laws 1991,
9 Chapter 131, Section 4, as amended) is amended to read:

10 "58-27-4. BORDER AND PORT AUTHORITY CREATED--

11 MEMBERSHIP.--

12 A. The "border and port authority" is created.

13 The authority is a state agency and is administratively
14 attached to the economic development department.

15 B. The authority consists of [seven] five voting
16 members [six]:

17 (1) three of whom: ~~[shall be appointed by~~
18 ~~the governor. No more than three of those appointed shall~~
19 ~~belong to the same political party. The seventh member shall~~
20 ~~be the secretary of economic development or the secretary's~~
21 ~~designee. The voting members appointed by the governor shall~~
22 ~~be confirmed by the senate. The lieutenant governor shall~~
23 ~~serve as a nonvoting ex-officio member. The chair may~~
24 ~~appoint a nonvoting advisory committee to provide advice and~~
25 ~~recommendations on authority matters.~~

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1 C. ~~The six voting members of the authority~~
2 ~~appointed by the governor shall be citizens of the state and~~
3 ~~shall serve for terms of four years except for the initial~~
4 ~~appointees who shall be appointed so that the terms are~~
5 ~~staggered after initial appointment. Initial appointees~~
6 ~~shall serve terms as follows: two members for two years, two~~
7 ~~members for three years and two members for four years.]~~

8 (a) the governor shall appoint to
9 serve terms as follows: 1) one initial appointee, a two-year
10 term; 2) one initial appointee, a four-year term; and 3)
11 every other appointee, a six-year term;

12 (b) represent the private sector and
13 have professional experience in: 1) land development; 2)
14 economic development; 3) maritime or overland shipping by
15 truck or rail; 4) international commerce; 5) finance; 6)
16 economics; 7) accounting; 8) engineering; 9) law; or 10)
17 business management that consists of serving as the chief
18 executive officer, president or managing director of a
19 business or serving in another upper-level management
20 position of a business; and

21 (c) are appointed subject to
22 confirmation by the senate;

23 (2) one of whom is the secretary of economic
24 development or the secretary's designee; and

25 (3) one of whom is the secretary of

1 transportation or the secretary's designee.

2 C. The authority shall invite the following to
3 serve as advisory members of the authority:

4 (1) the two United States senators

5 representing New Mexico or those senators' designees;

6 (2) a representative of the governor of the
7 state of Chihuahua;

8 (3) a representative of the governor of the
9 state of Sonora;

10 (4) a representative of the development
11 community in Mexico; and

12 (5) additional members as deemed necessary
13 and approved by the authority."

14 SECTION 6. Section 58-27-6 NMSA 1978 (being Laws 1991,
15 Chapter 131, Section 6, as amended) is amended to read:

16 "58-27-6. OFFICERS OF THE AUTHORITY.--The [secretary of
17 economic development] authority shall select one of its
18 voting members to serve as the [chairman] chair of the
19 authority and one of its voting members to serve as vice
20 chair of the authority, each for a one-year term. Authority
21 members shall elect any other officers from the membership
22 that the authority [determines] deems appropriate."

23 SECTION 7. Section 58-27-10 NMSA 1978 (being Laws 1991,
24 Chapter 131, Section 10, as amended) is amended to read:

25 "58-27-10. POWERS AND DUTIES OF AUTHORITY.--

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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] New Mexico-Mexico border area that may further stimulate the border economy and provide additional employment opportunities for New Mexico [citizens] residents;

(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] New Mexico Mexico 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

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1 establish programs that will result in the location and
2 relocation of new industries in the state;

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

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

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

14 B. The authority may:

15 (1) solicit and accept federal, state, local
16 and private grants of funds, property or financial or other
17 aid in any form for the purpose of carrying out [the
18 provisions of] the Border Development Act;

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

23 (3) act as an applicant for and operator of
24 port-of-entry facilities and, as the applicant, carry out all
25 tasks and functions, including acquisition by purchase or

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1 gift of any real property necessary for port-of-entry
2 facilities, acquisition by purchase, gift or construction of
3 any facilities or other real or personal property necessary
4 for a port of entry and filing all necessary documents and
5 follow-up of such filings with appropriate agencies;

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

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

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

14 (7) enter into agreements with the [federal]
15 United States government for the operation, improvement and
16 expansion of federal border facilities;

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

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

25 (10) expend funds or incur debt for the

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1 improvement, maintenance, repair or addition to property
2 owned by the authority, the state or the United States
3 government; and

4 (11) refinance a project.

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

8 SECTION 8. Section 58-27-12 NMSA 1978 (being Laws 1991,
9 Chapter 131, Section 12, as amended) is amended to read:

10 "58-27-12. AUTHORITY STAFF--CONTRACTS.--

11 A. The authority shall hire an executive director
12 who has professional experience in land development, economic
development, maritime or overland shipping by truck or rail,
international commerce, finance, economics, accounting,
engineering, law or business management that consists of
serving as the chief executive officer, president or managing
director of a business or serving in another upper-level
management position of a business.

19 B. The executive director shall:

20 (1) employ the necessary professional,
21 technical and clerical staff to enable the authority to
22 function efficiently;

23 [B. ~~The executive director of the authority~~
24 shall] and

25 (2) direct the affairs and business of the

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1 authority [~~subject to~~] in accordance with the policies,
2 control and direction of the authority.

3 C. The authority may contract with any other
4 competent private or public organization or individual to
5 assist in the fulfillment of its duties."

6 **SECTION 9.** Section 58-27-13 NMSA 1978 (being Laws 1991,
7 Chapter 131, Section 13) is amended to read:

8 "58-27-13. LOCATION OF AUTHORITY.--The authority shall
9 be located in the [~~New Mexico-Chihuahua~~] New Mexico-Mexico
10 border area."

11 **SECTION 10.** Section 58-27-15 NMSA 1978 (being Laws
12 1991, Chapter 131, Section 15, as amended) is amended to
13 read:

14 "58-27-15. [~~BORDER~~] AUTHORITY--BONDING AUTHORITY--POWER
15 TO ISSUE REVENUE BONDS.--

16 A. The authority may act as an issuing authority
17 for the purposes of the Private Activity Bond Act.

18 B. The authority may issue revenue bonds for
19 authority projects. With the exception of the port of entry
20 or foreign trade zone, the [~~border~~] authority shall not [~~be~~
21 ~~authorized to~~] issue bonds for projects for a qualified
22 entity, as defined in Section 6-21-3 NMSA 1978. Revenue
23 bonds so issued may be considered appropriate investments for
24 the severance tax permanent fund or collateral for the
25 deposit of public funds if the bonds are rated [~~not less~~

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1 than] "A" or higher by a national rating service and if both
2 the principal and interest of the bonds are fully and
3 unconditionally guaranteed by a lease agreement executed by
4 an agency of the United States government or by a corporation
5 organized and operating within the United States that
6 [corporation] is, or [the] whose long-term debt [of that
7 corporation being] is, rated [~~not less than~~] "A" or higher by
8 a national rating service. All bonds issued by the authority
9 are legal and authorized investments for banks, trust
10 companies, savings and loan associations and insurance
11 companies.

12 C. The authority may pay from the bond proceeds
13 all expenses, premiums and commissions that the authority
14 [~~may deem~~] deems necessary or advantageous in connection with
15 the authorization, sale and issuance of the bonds."

16 **SECTION 11.** Section 58-27-21 NMSA 1978 (being Laws
17 1991, Chapter 131, Section 21) is amended to read:

18 **"58-27-21. [BORDER] AUTHORITY REVENUE BONDS--REFUNDING
19 AUTHORIZATION.--**

20 A. The authority may issue refunding revenue
21 bonds for the purpose of refinancing, paying and discharging
22 all or any part of outstanding authority revenue bonds of any
23 [~~one or more or all~~] number of outstanding issues:

24 (1) for the acceleration, deceleration or
25 other modification of payment of [~~such~~] those obligations,

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1 including [without limitation] any capitalization of [any]
2 interest [thereon] on those obligations in arrears or about
3 to become due for [any] a period [not exceeding] of one year
4 or less from the date of the refunding bonds;

5 (2) for the purpose of reducing interest
6 costs or effecting other economies;

7 (3) for the purpose of modifying or
8 eliminating restrictive contractual limitations pertaining to
9 the issuance of additional bonds, otherwise concerning the
10 outstanding bonds or to any facilities relating [thereto] to
11 those bonds; or

12 (4) for any combination of those purposes.

13 B. The authority may pledge irrevocably for the
14 payment of interest and principal on refunding bonds the
15 appropriate pledged revenues [which] that may be pledged to
16 an original issue of bonds.

17 C. Bonds for refunding and bonds for any purpose
18 permitted by the Border Development Act may be issued
19 separately or issued in combination in one series or more."

20 SECTION 12. Section 58-27-25 NMSA 1978 (being Laws
21 1991, Chapter 131, Section 25, as amended) is amended to
22 read:

23 "58-27-25. FUND CREATED.--

24 A. The "border and port authority fund" is
25 created in the state treasury. Separate accounts within the

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1 fund may be created for [any project] projects. Money in the
2 fund is appropriated to the authority for the purposes of
3 carrying out the [provisions of the] Border Development Act.
4 Money in the fund shall not revert at the end of a fiscal
5 year.

6 B. Except as provided in Subsections E and F of
7 this section, money received by the authority shall be
8 deposited in the border and port authority fund, including
9 [but not limited to] all:

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

13 (2) interest earned [upon] on money in the
14 fund;

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

17 (4) [all] earnings of [such] that property
18 or those securities;

19 (5) lease or rental payments received by the
20 authority from [any] a project and distributed to the fund
21 pursuant to Subsection F of this section;

22 (6) [all] other money received by the
23 authority from any public or private source except [that, if
24 the public or private source expresses an intent that the]
25 money [be used] earmarked for projects pursuant to Section

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1 58-27-25.1 NMSA 1978, [~~then the money~~] which shall instead be
2 deposited into the border project fund [~~and not the border~~
3 ~~authority fund~~]; and

4 (7) tolls, fees, rents or other charges
5 imposed and collected by the authority and distributed to the
6 fund pursuant to Subsection F of this section.

7 C. Disbursements from the border and port
8 authority fund shall be made only upon warrant drawn by the
9 secretary of finance and administration pursuant to vouchers
10 signed by the executive director of the authority, [~~or~~] the
11 executive director's designee [~~pursuant to the Border~~
12 ~~Development Act; provided that in the event~~] or, if the
13 position of executive director is vacant, [~~vouchers may be~~
14 ~~signed by~~] the chair of the authority.

15 D. Earnings on the balance in the border and port
16 authority fund shall be credited to the fund. [~~In addition,~~
17 ~~in the event that~~] If the proceeds from the issuance of bonds
18 or from money borrowed by the authority are deposited in the
19 state treasury, interest earned on that money [~~during the~~
20 ~~period commencing with~~] from the date of its deposit in the
21 state treasury until [~~the~~] its actual transfer [~~of the money~~]
22 to the fund shall be credited to the fund.

23 E. All proceeds from issuing revenue bonds shall
24 be placed in trust with a chartered bank to be dispersed by
25 the trustee [~~pursuant~~] according to the terms [~~set forth~~] in

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1 the bonding resolution adopted by the authority.

2 F. Ten percent of the tolls, fees, rents, lease
3 payments and other charges that are imposed, collected and
4 received by the authority shall be deposited ~~[into]~~ in the
5 border project fund, and the remaining ninety percent shall
6 be deposited ~~[into]~~ in the border and port authority fund.
7 ~~[provided that the]~~ Money deposited into the border and port
8 authority fund shall be expended only as appropriated and in
9 accordance with a budget approved by the state budget
10 division of the department of finance and administration."

11 SECTION 13. Section 58-27-26 NMSA 1978 (being Laws
12 1995, Chapter 192, Section 21) is amended to read:

13 "58-27-26. NEW MEXICO FINANCE AUTHORITY OVERSIGHT
14 COMMITTEE--OVERSIGHT POWERS AND DUTIES.--The New Mexico
15 finance authority oversight committee shall serve as the
16 oversight committee to the border and port authority. The
17 New Mexico finance authority oversight committee shall:

18 A. monitor and oversee the operation of the
19 border and port authority;

20 B. meet ~~[on a regular basis]~~ regularly to receive
21 and review reports from the border and port authority on
22 implementation of the ~~[provisions of the]~~ Border Development
23 Act and to review and approve regulations proposed for
24 adoption pursuant to that act;

25 C. monitor, and ~~[provide assistance and advice]~~

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1 assist and advise on, the project financing program of the
2 border and port authority;

3 D. oversee and monitor state and local government
4 capital planning and financing and take testimony from state
5 and local officials on border and port-of-entry capital
6 needs;

7 E. ~~[provide advice and assistance to]~~ assist and
8 advise the border and port authority and cooperate with the
9 executive branch of state government and local governments on
10 planning, setting priorities for and financing ~~[of]~~ border
11 and port-of-entry capital projects;

12 F. ~~[undertake an ongoing examination of]~~
13 continually examine the statutes, constitutional provisions,
14 regulations and court decisions governing border and port-of-
15 entry capital financing in New Mexico; and

16 G. report its findings and recommendations,
17 including recommended legislation or necessary changes, to
18 the governor and to each session of the legislature. The
19 report and proposed legislation shall be made available on or
20 before December 15 of each year."

21 SECTION 14. TEMPORARY PROVISION--REFERENCES IN LAW.--
22 Beginning on the effective date of this act, all references
23 in law to the border authority shall be deemed to be
24 references to the border and port authority.

25 SECTION 15. REPEAL.--Section 58-27-7 NMSA 1978 (being

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1 Laws 1991, Chapter 131, Section 7) is repealed.

2 **SECTION 16. EFFECTIVE DATE.**--The effective date of the
3 provisions of this act is July 1, 2017.

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