



The Legislature
of the
State of New Mexico

49th Legislature, Second Session

LAWS 2010

CHAPTER 10

SENATE FINANCE COMMITTEE SUBSTITUTE FOR
SENATE PUBLIC AFFAIRS COMMITTEE SUBSTITUTE FOR
SENATE BILL 279, as amended

Introduced by



CHAPTER 10

AN ACT

1
2 RELATING TO THE PUBLIC PEACE, HEALTH, SAFETY AND WELFARE;
3 ENACTING THE COLONIAS INFRASTRUCTURE ACT; CREATING A BOARD;
4 PRESCRIBING POWERS AND DUTIES; CREATING A TRUST FUND;
5 CREATING A PROJECT FUND; ALLOCATING SEVERANCE TAX BONDING
6 CAPACITY FOR COLONIAS INFRASTRUCTURE PROJECTS; AUTHORIZING
7 SEVERANCE TAX BONDS; MAKING APPROPRIATIONS.

8
9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

10 Section 1. SHORT TITLE.--Sections 1 through 8 of this
11 act may be cited as the "Colonias Infrastructure Act".

12 Section 2. FINDINGS AND PURPOSE.--

13 A. The legislature finds that:

14 (1) colonias lack basic infrastructure
15 resulting in poor social, health and economic conditions;

16 (2) adequate infrastructure such as water
17 and wastewater systems, solid waste disposal facilities,
18 flood and drainage control, roads and housing infrastructure
19 are essential to improved health, safety and welfare of all
20 New Mexicans, including residents of the colonia communities;

21 (3) local efforts and resources have been
22 insufficient to develop and maintain a consistent and
23 adequate level of infrastructure;

24 (4) addressing the urgent need of replacing,
25 improving and developing infrastructure through the use of an

1 alternative financing mechanism is a long-term cost savings
2 benefit to both the state and the communities; and

3 (5) adequate infrastructure development
4 allows colonia residents to achieve the basic conditions
5 necessary to improve the quality of their lives.

6 B. The purposes of the Colonias Infrastructure Act
7 are to:

8 (1) ensure adequate financial resources for
9 infrastructure development for colonia recognized
10 communities;

11 (2) provide for the planning and development
12 of infrastructure in an efficient and cost-effective manner;
13 and

14 (3) develop infrastructure projects to
15 improve quality of life and encourage economic development.

16 Section 3. DEFINITIONS.--As used in the Colonias
17 Infrastructure Act:

18 A. "authority" means the New Mexico finance
19 authority;

20 B. "board" means the colonias infrastructure
21 board;

22 C. "colonia" means a rural community with a
23 population of twenty-five thousand or less located within one
24 hundred fifty miles of the United States-Mexico border that:

25 (1) has been designated as a colonia by the

1 municipality or county in which it is located because of a:

2 (a) lack of potable water supply;

3 (b) lack of adequate sewage systems; or

4 (c) lack of decent, safe and sanitary

5 housing;

6 (2) has been in existence as a colonia prior
7 to November 1990; and

8 (3) has submitted appropriate documentation
9 to the board to substantiate the conditions of this
10 subsection, including documentation that supports the
11 designation of the municipality or county;

12 D. "financial assistance" means providing grants
13 or loans on terms and conditions approved by the authority;

14 E. "project fund" means the colonias
15 infrastructure project fund;

16 F. "qualified entity" means a county, municipality
17 or other entity recognized as a political subdivision of the
18 state;

19 G. "qualified project" means a capital outlay
20 project selected by the board for financial assistance that
21 is primarily intended to develop colonias infrastructure. A
22 qualified project may include a water system, a wastewater
23 system, solid waste disposal facilities, flood and drainage
24 control, roads or housing infrastructure; but "qualified
25 project" does not include general operation and maintenance,

1 equipment, housing allowance payments or mortgage subsidies;
2 and

3 H. "trust fund" means the colonias infrastructure
4 trust fund.

5 Section 4. COLONIAS INFRASTRUCTURE BOARD CREATED.--

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

7 B. The board shall consist of seven voting members
8 as follows:

9 (1) the secretary of finance and
10 administration or the secretary's designee from the
11 department of finance and administration;

12 (2) the secretary of environment or the
13 secretary's designee from the department of environment;

14 (3) the chief executive officer of the
15 authority or the chief executive officer's designee from the
16 authority;

17 (4) one member appointed by the president
18 pro tempore of the senate;

19 (5) one member appointed by the minority
20 leader of the senate;

21 (6) one member appointed by the speaker of
22 the house of representatives; and

23 (7) one member appointed by the minority
24 leader of the house of representatives.

25 C. The members appointed pursuant to Paragraphs

1 (4) through (7) of Subsection B of this section shall be
2 appointed with the advice and consent of the senate, serve at
3 the pleasure of the appointing authority, be residents of the
4 colonias area and have experience in capital project
5 development or administration, and they may receive per diem
6 and mileage as provided for nonsalaried public officers in
7 the Per Diem and Mileage Act but shall receive no other
8 compensation, perquisite or allowance.

9 D. There shall be five advisory, nonvoting members
10 of the board as follows:

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

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

15 (3) the executive director of the
16 southeastern New Mexico economic development district or the
17 director's designee;

18 (4) the executive director of the New Mexico
19 association of counties or the director's designee; and

20 (5) the executive director of the New Mexico
21 mortgage finance authority or the director's designee.

22 E. The board shall choose a chair and vice chair
23 from among its members and such other officers as it deems
24 necessary. A majority of members constitutes a quorum for
25 the transaction of business. The affirmative vote of at

1 least a majority of a quorum shall be necessary for an action
2 to be taken by the board. The board shall meet whenever a
3 voting member submits a request in writing to the chair, but
4 not less than quarterly.

5 F. All meetings of the board shall be open to the
6 public and subject to the Open Meetings Act and, at each
7 meeting, the board shall provide an opportunity for public
8 comment.

9 Section 5. BOARD--DUTIES.--The board shall:

10 A. promulgate such rules as are necessary to
11 govern the acceptance, evaluation and prioritization of
12 applications submitted by qualified entities for financial
13 assistance;

14 B. after applications have been processed and
15 evaluated by the authority, prioritize the qualified projects
16 for financial assistance; and

17 C. upon such terms and conditions as are
18 established by the authority, recommend the prioritized
19 projects to the authority for financial assistance for:

20 (1) planning, designing, constructing,
21 improving or expanding a qualified project;

22 (2) developing engineering feasibility
23 reports for qualified projects;

24 (3) inspecting construction of qualified
25 projects;

- 1 (4) providing professional services;
- 2 (5) completing environmental assessments or
- 3 archaeological clearances and other surveys for qualified
- 4 projects;
- 5 (6) acquiring land, water rights, easements
- 6 or rights of way; or
- 7 (7) paying legal costs and fiscal agent fees
- 8 associated with development of qualified projects.

9 Section 6. AUTHORITY--DUTIES.--The authority shall:

- 10 A. provide staff support to the board;
- 11 B. administer the project fund;
- 12 C. at the direction of the board, process, review
- 13 and evaluate applications for financial assistance from
- 14 qualified entities; and
- 15 D. at the direction of the board, administer
- 16 qualified projects that receive financial assistance.

17 Section 7. COLONIAS INFRASTRUCTURE TRUST FUND--

18 CREATED--INVESTMENT--DISTRIBUTION.--

19 A. The "colonias infrastructure trust fund" is

20 created in the state treasury. The trust fund shall consist

21 of money that is appropriated, donated or otherwise allocated

22 to it. Money in the trust fund shall be invested by the

23 state investment officer in the manner that land grant

24 permanent funds are invested pursuant to Chapter 6, Article 8

25 NMSA 1978. Income from investment of the trust fund shall be

1 credited to the fund. Money in the trust fund shall not be
2 expended for any purpose, but an annual distribution from the
3 trust fund shall be made to the project fund pursuant to this
4 section.

5 B. On July 1 of each year in which adequate money
6 is available in the trust fund, an annual distribution shall
7 be made from the trust fund to the project fund in the amount
8 of ten million dollars (\$10,000,000) until the distribution
9 is less than an amount equal to four and seven-tenths percent
10 of the average of the year-end market values of the trust
11 fund for the immediately preceding five calendar years.
12 Thereafter, the amount of the annual distribution shall be
13 four and seven-tenths percent of the average of the year-end
14 market values of the trust fund for the immediately preceding
15 five calendar years.

16 Section 8. COLONIAS INFRASTRUCTURE PROJECT FUND--
17 CREATED--PURPOSE--APPROPRIATIONS.--

18 A. The "colonias infrastructure project fund" is
19 created in the authority and shall be administered by the
20 authority.

21 B. The project fund shall consist of:
22 (1) distributions from the trust fund;
23 (2) payments of principal and interest on
24 loans for qualified projects;
25 (3) other money appropriated by the

1 legislature or distributed or otherwise allocated to the
2 project fund for the purpose of supporting qualified
3 projects;

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

6 (5) income from investment of the project
7 fund that shall be credited to the project fund.

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

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

14 E. The authority may establish procedures and
15 adopt rules as required to:

16 (1) administer the project fund;

17 (2) originate grants or loans for qualified
18 projects recommended by the board;

19 (3) recover from the project fund the costs
20 of administering the fund and originating the grants and
21 loans; and

22 (4) govern the process through which
23 qualified entities may apply for financial assistance from
24 the project fund.

25 Section 9. A new section of the Severance Tax Bonding

1 Act is enacted to read:

2 "AUTHORIZATION FOR SEVERANCE TAX BONDS--PRIORITY FOR
3 INFRASTRUCTURE PROJECTS FOR COLONIAS.--

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

25 B. Money from the severance tax bonds provided for

1 in this section shall not be used to pay indirect project
2 costs. Any unexpended balance from proceeds of severance tax
3 bonds issued for a colonias infrastructure project shall
4 revert to the severance tax bonding fund within six months of
5 completion of the project. The colonias infrastructure board
6 shall monitor and ensure proper reversions of the bond
7 proceeds appropriated for the projects.

8 C. As used in this section, "colonias
9 infrastructure project" means a qualified project under the
10 Colonias Infrastructure Act."

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

18 Section 11. EFFECTIVE DATE.--The effective date of the
19 provisions of this act is July 1, 2011. _____

Diane D. Denish

Diane D. Denish, President
Senate

Lenore M. Naranjo
Lenore M. Naranjo, Chief Clerk
Senate

Ben Lujan
Ben Lujan, Speaker
House of Representatives

Stephen R. Arias
Stephen R. Arias, Chief Clerk
House of Representatives

Approved by me this 15th day of March, 2010

Bill Richardson
Governor Bill Richardson
State of New Mexico

RECEIVED 5:11 PM 3/15/10

GOVERNOR

RECEIVED BY STATE
OFFICE OF

10:08 AM 3/15/10

RECEIVED