

AN ACT

RELATING TO PUBLIC PURPOSE AS IT PERTAINS TO CHARITABLE NONPROFIT PROJECTS SEEKING GOVERNMENT FUNDING; ENACTING THE VIBRANT COMMUNITIES ACT; PROVIDING FOR PUBLIC SUPPORT OF LOCAL COMMUNITY PUBLIC PURPOSE PROJECTS; PROVIDING POWERS AND DUTIES; AMENDING A SECTION OF THE NMSA 1978.

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

Section 1

SHORT TITLE.--Sections 1 through 14 of this act may be cited as the "Vibrant Communities Act".

Section 2

DEFINITIONS.--As used in the Vibrant Communities Act:

A. "public purpose project" means the provision of direct or indirect assistance to a qualifying individual, entity or government agency by the state, a county or a local or tribal government to enable a qualifying entity or government agency to provide assistance to individuals, with such assistance promoting health and community development, where the project is located, and may include:

- (1) the purchase, lease, grant, construction, reconstruction, improvement or other acquisition or conveyance of land, buildings; or other infrastructure;
- (2) public works improvements essential to the location or expansion of a qualifying entity;
- (3) payments for professional services contracts necessary for local or regional governments to implement a plan or project; and
- (4) payments to provide disaster relief, income assistance, education or workforce support, or other programs determined by the legislature to serve a public purpose;

B. "department" means the department of finance and administration;

C. "health council" means the county, tribal or regional health council;

D. "local government" means a county or municipality;

E. "municipality" means any incorporated city, town or village;

F. "public purpose" means for the purpose of providing facilities or services for the benefit of the public in connection with, but not limited to, public health, safety or welfare.

Commented [1]: Needs to match the definition that will be in the joint resolution

G. "qualifying entity" means: a 501(c)(3) nonprofit organization or a 501(c)(12) cooperative as recognized by the New Mexico Attorney General, the Secretary of State, and/or the Internal Revenue Service; and

H. "government agency" means any branch of any level of government that oversees the distribution of funds for public purposes.

I. "tribal government" means a federally recognized Indian nation, tribe, or pueblo located wholly or partially in the state.

Section 3

PUBLIC PURPOSE PROJECTS.--A qualifying entity seeking to pursue public purpose projects shall inform the health council, if any, local government and tribal governments, and state legislators representing the communities being served. The project proposal will include at a minimum:

A. a description of the community need including how the public purpose relates to one or more of the priorities identified by a county/local government/council of governments/health council;

B. a description of the project, including:

(1) whether the request is for funds or use of a government asset;

(2) whether the funds are for operational or capital expenses;

(3) expected deliverables or outcomes; and

(4) benchmarks to evaluate the achievement of public purpose;

C. a description of population served by the project;

D. the state agencies that may have authority over the project;

E. the value of the asset or the amount of funding being requested;

F. a description of qualifying entity making the request;

G. a list of other funding sources for the project, if any;

H. a letter of support from a third party within the community or communities that would benefit from fulfillment of the request;

I. a statement by a local government willing to serve as fiscal agent, if necessary;

J. a conflict of interest statement that includes all elected officials that are on the board or staff of the applying qualifying entity; and

K. any other forms as determined by the department.

Section 4

PUBLIC PURPOSE PROJECT APPLICATIONS.-- An application shall be on a form and require such information as the department deems necessary. Copies shall be sent to the appropriate health council, if any, and to the involved counties, councils of governments, and local and tribal governments. The

application shall be submitted by April 1 of each year. Applications submitted by April 30 of one year that are approved pursuant to Section 5 of the Vibrant Communities Act shall be submitted to the legislature for funding during the legislative session of the following year.

The Vibrant Communities Council will be composed of representation from

- DFA
- Legislative Finance Committee
- New Mexico Alliance of Health Councils
- State affiliate of the National Council of Nonprofits
- NM Counties Association
- NM Municipal League
- NM Council of Governments Association

The responsibilities of the Vibrant Communities Council would include:

- accepting and reviewing applications for public purpose projects from qualifying entities
- consulting with state agencies and local government bodies for their assistance in formulating recommendations
- provide recommendations to the legislature in time for inclusion in the next year's budgeting process
- establish reporting requirements for state agencies and local governments of performance metrics to ensure compliance with the Act.

The Vibrant Communities Council will choose the chair.

DFA will be the oversight agency of the Vibrant Communities Council and responsible for staffing it.

Section 5

PROJECT REVIEW.--

A. The Vibrant Communities Council shall review applications for public purpose projects.

B. The involved local governments shall be informed of applications for public purpose projects.

C. The department shall provide the governor and state legislators representing the communities to be served by the proposed public purpose projects with a listing of such projects.

D. After the evaluation process is complete, the department shall provide the governor with a list of proposed public purpose projects with owner or agency agreements in place; provided that the owner is in compliance with the audit requirement.

E. The Vibrant Communities Council shall provide recommendations to the legislature by November 30 of each year.

F. Public purpose projects are subject to compliance with lobbying and procurement laws. Any charitable organization applying to receive funding directly from the state must comply with audit requirements, lobbying and procurement laws.”

G. Any project that is recommended for funding shall be forwarded by the department to the state legislators representing the communities to be served by the proposed public purpose projects.

Section 6

PROJECT PARTICIPATION AGREEMENT--DUTIES AND REQUIREMENTS.--

A. The state agency or local government and the qualifying entity shall enter into a project participation agreement.

B. The participation agreement at a minimum shall set out:

(1) the contributions to be made by each party to the project, including fair market consideration for goods or services that are direct, ascertainable and obligatory;

(2) a schedule for project development and implementation, including measurable goals and time limits for those goals;

(3) the qualifying entity’s demonstrated compliance with the audit act

(4) provisions for performance review and actions to be taken upon a determination that project performance is unsatisfactory;

(5) anticipated outcomes resulting from the project; and

(6) terms of ownership of the property or asset if there is a state, county or local or tribal government ownership interest, including a schedule of depreciation and a schedule of payments through services; with the asset or property to be the responsibility of the entity receiving public funds and held in trust so long as the qualifying entity continues to serve a public purpose.

C. If the qualifying entity ceases to exist or to serve a public purpose, then the property or asset will revert ownership to the state, county, municipal, or local or tribal government.

Section 7

PLAN AND PROJECT TERMINATION.--

A. At any time after approval of a public purpose project, the state or local government may terminate the project for cause by providing written notification giving sixty days’ notice. If a public purpose project is terminated, the party managing the funds as provided in the project participation agreement shall provide for satisfying existing contracts and the rights of the parties arising from those contracts.

B. Any unexpended and unencumbered balances remaining in any project fund upon termination of a public purpose project shall be transferred to the general fund of the state.

Section 8

LIMITATIONS.--Nothing in the Vibrant Communities Act shall be construed to affect any other requirements of the constitution or other laws regarding local government debt, issuance of bonds, use of tax revenues or the grant, lease or sale of land or other property.

Section 9

Section [3-54-3](#) NMSA 1978 (being Laws 1965, Chapter 300, Section 14-55-3, as amended) is amended to read:

"3-54-3. SUPPLEMENTAL METHOD FOR DISPOSING OF MUNICIPAL PROPERTY.--Sections [3-54-1](#) and [3-54-2](#) NMSA 1978 are intended to afford another and additional method of disposing of municipal real and personal property and are not to be construed as repealing or qualifying any other statutory authorization granted a municipality to dispose of or exchange real or personal municipal property or as affecting in any way the sale, lease, exchange or other disposition of real or personal property pursuant to the Local Economic Development Act or the Vibrant Communities Act."

Section 10

SEVERABILITY.--If any part or application of the Vibrant Communities Act is held invalid, the remainder or its application to other situations or persons shall not be affected.

Section 11

EFFECTIVE DATE.--The effective date of the provisions of this act is the date the secretary of state certifies that the constitution of New Mexico has been amended as proposed by a joint resolution of the first session of the fifty-seventh legislature entitled "A JOINT RESOLUTION PROPOSING TO AMEND ARTICLE 9, SECTION 14 OF THE CONSTITUTION OF NEW MEXICO, ASSISTANCE TO PRIVATE ORGANIZATIONS, RESTRICTIONS; ALLOWABLE ASSISTANCE."

Commented [2]: This will be changed based on the name of the repeal and replace bill