

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

**HOUSE BILL 25**

**46TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2004**

**INTRODUCED BY**

**Ben Lujan**

**FOR THE MORTGAGE FINANCE AUTHORITY ACT OVERSIGHT COMMITTEE**

**AN ACT**

**RELATING TO HOUSING; ENACTING THE AFFORDABLE HOUSING ACT TO  
IMPLEMENT THE FUNDING FOR AFFORDABLE HOUSING PERMITTED PURSUANT  
TO SUBSECTION F OF SECTION 14 OF ARTICLE 9 THE CONSTITUTION OF  
NEW MEXICO.**

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

**Section 1. SHORT TITLE. --This act may be cited as the  
"Affordable Housing Act".**

**Section 2. PURPOSE. --The purpose of the Affordable  
Housing Act is to implement the provisions of Subsection F of  
Section 14 of Article 9 of the constitution of New Mexico.**

**Section 3. DEFINITIONS. --As used in the Affordable  
Housing Act:**

**A. "affordable housing" means residential housing  
primarily for persons or households of low or moderate income;**

underscored material = new  
[bracketed material] = delete

1           B. "authority" means the New Mexico mortgage  
2 finance authority;

3           C. "building" means a structure capable of being  
4 renovated or converted into affordable housing or a structure  
5 that is to be demolished and is located on land donated for use  
6 in connection with an affordable housing project;

7           D. "governmental entity" means a state, county,  
8 municipal or tribal government;

9           E. "household" means one or more persons occupying  
10 a housing unit;

11           F. "housing assistance grant" means the donation by  
12 a governmental entity of:

13                   (1) land for construction of an affordable  
14 housing project;

15                   (2) an existing building for conversion or  
16 renovation as affordable housing; or

17                   (3) the costs of infrastructure necessary to  
18 support affordable housing;

19           G. "infrastructure" includes infrastructure  
20 improvements and infrastructure purposes;

21           H. "infrastructure improvement" includes, but is  
22 not limited to:

23                   (1) sanitary sewage systems, including  
24 collection, transport, storage, treatment, dispersal, effluent  
25 use and discharge;

underscored material = new  
[bracketed material] = del ete

1 (2) drainage and flood control systems,  
2 including collection, transport, diversion, storage, detention,  
3 retention, dispersal, use and discharge;

4 (3) water systems for domestic purposes,  
5 including production, collection, storage, treatment,  
6 transport, delivery, connection and dispersal;

7 (4) areas for motor vehicle use for travel,  
8 ingress, egress and parking;

9 (5) trails and areas for pedestrian,  
10 equestrian, bicycle or other nonmotor vehicle use for travel,  
11 ingress, egress and parking;

12 (6) parks, recreational facilities and open  
13 space areas to be used by residents for entertainment, assembly  
14 and recreation;

15 (7) landscaping, including earthworks,  
16 structures, lakes and other water features, plants, trees and  
17 related water delivery systems;

18 (8) electrical transmission and distribution  
19 facilities;

20 (9) natural gas distribution facilities;

21 (10) lighting systems;

22 (11) cable or other telecommunications lines  
23 and related equipment;

24 (12) traffic control systems and devices,  
25 including signals, controls, markings and signs;

. 149493. 1

underscored material = new  
[bracketed material] = delete

1 (13) inspection, construction management and  
2 program management costs in connection with the furnishing of  
3 the items listed in this subsection; and

4 (14) heating, air conditioning and  
5 weatherization facilities, systems or services, and energy  
6 efficiency improvements that are affixed to real property;

7 I. "infrastructure purpose" means:

8 (1) planning, design, engineering,  
9 construction, acquisition or installation of infrastructure,  
10 including the costs of applications, impact fees and other  
11 fees, permits and approvals related to the construction,  
12 acquisition or installation of the infrastructure;

13 (2) acquiring, converting, renovating or  
14 improving existing facilities for infrastructure, including  
15 facilities owned, leased or installed by the owner;

16 (3) acquiring interests in real property or  
17 water rights for infrastructure, including interests of the  
18 owner; and

19 (4) incurring expenses incident to and  
20 reasonably necessary to carry out the purposes specified in  
21 this subsection;

22 J. "municipality" means an incorporated city, town  
23 or village, whether incorporated under general act, special act  
24 or special charter, incorporated counties and H class counties;

25 K. "qualifying grantee" means a governmental

underscored material = new  
[bracketed material] = delete

1 housing agency, tribal housing agency, corporation, limited  
2 liability company, partnership, joint venture, syndicate,  
3 association or nonprofit organization that:

4 (1) is organized under state, local or tribal  
5 laws and can provide proof of such organization;

6 (2) if a nonprofit organization, has no part  
7 of its net earnings inuring to the benefit of any member,  
8 founder, contributor or individual;

9 (3) has a functioning accounting system that  
10 is operated in accordance with generally accepted accounting  
11 principles, or has designated an entity that will maintain such  
12 an accounting system consistent with generally accepted  
13 accounting principles;

14 (4) has among its purposes significant  
15 activities related to providing housing or services to low- or  
16 moderate-income persons or households;

17 (5) if it has significant outstanding or  
18 unresolved monitoring findings from either the authority or its  
19 most recent independent financial audit, has a certified letter  
20 from the authority or auditor stating that the findings are in  
21 the process of being resolved; and

22 (6) is approved by the governmental entity;  
23 and

24 L. "residential housing" means any building,  
25 structure or portion thereof that is primarily occupied, or

underscored material = new  
[bracketed material] = delete

1 designed or intended primarily for occupancy, as a residence by  
2 one or more households and any real property that is offered  
3 for sale or lease for the construction or location thereon of  
4 such a building, structure or portion thereof. "Residential  
5 housing" includes congregate housing, manufactured homes and  
6 housing intended to provide or providing transitional or  
7 temporary housing for homeless persons.

8 Section 4. REQUIREMENT FOR SPECIFIC LAW AUTHORIZING A  
9 HOUSING ASSISTANCE GRANT FROM STATE. --The state may make a  
10 housing assistance grant only by legislative enactment of a law  
11 authorizing the grant, stating its purpose and appropriating  
12 the amount of the grant to the department of finance and  
13 administration for disbursement by the authority to a  
14 qualifying grantee in accordance with rules promulgated by the  
15 authority. Rules adopted by the authority may include  
16 provisions for matching or using local, private or federal  
17 funds in connection with a specific grant, but the authorizing  
18 law shall not require or prohibit matching or using federal  
19 funds. The authority shall seek comment from the Mortgage  
20 Finance Authority Act oversight committee prior to its adoption  
21 of any rules pursuant to this section.

22 Section 5. REQUIREMENT FOR ENACTMENT OF ORDINANCE BY  
23 COUNTY OR MUNICIPALITY AUTHORIZING A HOUSING ASSISTANCE  
24 GRANT. --

25 A. A county or municipality may make a housing

underscored material = new  
[bracketed material] = delete

1 assistance grant only by enactment by its governing body of an  
2 ordinance authorizing the grant, stating its purpose and  
3 authorizing its transfer or disbursement to a qualifying  
4 grantee pursuant to a budget to be submitted to and approved by  
5 the governing body. The ordinance may provide for matching or  
6 using local, private or federal funds either through direct  
7 participation with a federal agency pursuant to federal law or  
8 through indirect participation throughout the authority. The  
9 ordinance shall be submitted to the authority, which shall  
10 approve it if it adequately ensures that the recipients of the  
11 grant are qualifying grantees that meet the requirements of the  
12 Affordable Housing Act and the rules promulgated by the  
13 authority at the time of the award and through the term of the  
14 grant. The ordinance shall be effective when approved by the  
15 authority subject to local ordinance requirements for  
16 publication or filing.

17 B. A school district may transfer land owned by the  
18 school district to a county or municipality to be further  
19 granted as part or all of an affordable housing grant if the  
20 school district and the governing body of the county or  
21 municipality enter into a contract that provides the school  
22 district with a negotiated number of affordable housing units  
23 that will be reserved for employees of the school district.

24 C. The governing board of a post-secondary  
25 educational institution may transfer land owned by that

underscored material = new  
[bracketed material] = delete

1 institution to a county, municipality or tribal government;  
2 provided that:

3 (1) the property transferred shall be granted  
4 by the county, municipality or tribal government as part or all  
5 of an affordable housing grant; and

6 (2) the governing board of the post-secondary  
7 educational institution and the governing body of the county,  
8 municipality or tribal government enter into a contract that  
9 provides the post-secondary educational institution with  
10 affordable housing units.

11 D. As used in this section, "post-secondary  
12 educational institution" means a state university or a public  
13 community college.

14 Section 6. PROVISIONS TO ENSURE SUCCESSFUL COMPLETION OF  
15 AFFORDABLE HOUSING PROJECTS. --

16 A. State housing assistance grants shall be applied  
17 for and awarded to qualifying grantees pursuant to the rules  
18 promulgated by the authority subject to the requirements of  
19 Section 4 of the Affordable Housing Act. County and municipal  
20 housing assistance grants shall be applied for and awarded to  
21 qualifying grantees pursuant to rules promulgated by the  
22 authority subject to the requirements of Section 5 of the  
23 Affordable Housing Act.

24 B. The authority shall adopt rules covering:

25 (1) procedures to ensure that state, county



underscored material = new  
[bracketed material] = delete

1 and municipal housing assistance grantees are qualifying  
2 grantees that meet the requirements of the Affordable Housing  
3 Act and rules promulgated pursuant to that act both at the time  
4 of the award and through the term of the grant;

5 (2) establishment of an application and award  
6 timetable for state housing assistance grants to permit the  
7 selection of the potential qualifying grantees prior to January  
8 of the year in which the grants would be made;

9 (3) contents of the application, including an  
10 independent evaluation of the:

11 (a) financial and management stability  
12 of the applicant;

13 (b) demonstrated commitment of the  
14 applicant to the community;

15 (c) cost-benefit analysis of the project  
16 proposed by the applicant;

17 (d) benefits to the community of a  
18 proposed project;

19 (e) type or amount of assistance to be  
20 provided;

21 (f) scope of the affordable housing  
22 project;

23 (g) substantive or matching contribution  
24 by the applicant to the proposed project; and

25 (h) performance schedule for the

underscored material = new  
[bracketed material] = delete

1 qualifying grantee with performance criteria;

2 (4) a requirement for long-term affordability  
3 of a state, county or municipal project so that a project  
4 cannot be sold shortly after completion and taken out of the  
5 affordable housing market to ensure a quick profit for the  
6 qualifying grantee;

7 (5) a requirement that a grant for a state or  
8 local project must establish a contractual obligation on the  
9 qualifying grantee that the housing units in the project be  
10 occupied by low- or moderate-income households;

11 (6) provisions for adequate security against  
12 the loss of public funds or property in the event that a  
13 qualifying grantee abandons or otherwise fails to complete a  
14 project;

15 (7) a requirement for review and approval of a  
16 housing grant project budget by the grantor before any  
17 expenditure of grant funds or transfer of granted property;

18 (8) a requirement that, unless the period is  
19 extended for good cause shown, the authority shall act on an  
20 application within forty-five days of the date of receipt of an  
21 application that the authority deems to be complete and, if not  
22 acted upon, the application shall be deemed approved;

23 (9) a requirement that a condition of grant  
24 approval be proof of compliance with all applicable state and  
25 local laws, rules and ordinances;

. 149493. 1

underscored material = new  
[bracketed material] = delete

1 (10) provisions defining "low- and moderate-  
2 income" and setting out requirements for verification of income  
3 levels;

4 (11) a requirement that a county or  
5 municipality that makes a housing assistance grant shall have  
6 an existing valid affordable housing plan or housing elements  
7 contained in its general plan; and

8 (12) a requirement that the governmental  
9 entity enter into a contract with a qualifying grantee  
10 consistent with the Affordable Housing Act, which contract  
11 shall include remedies and default provisions in the event of  
12 the unsatisfactory performance by the qualifying grantee.

13 C. In addition to the rulemaking mandated in  
14 Subsection B of this section, the authority may adopt  
15 additional rules to carry out the purposes of the Affordable  
16 Housing Act. Rulemaking procedures pursuant to the Affordable  
17 Housing Act shall:

18 (1) provide a public hearing in accordance  
19 with the state Administrative Procedures Act; and

20 (2) require concurrence in a rule having  
21 application to local government by both the New Mexico  
22 municipal league and the New Mexico association of counties.