

1 SENATE BILL 393

2 **55TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2021**

3 INTRODUCED BY

4 Gerald Ortiz y Pino

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10 AN ACT

11 RELATING TO CAPITAL EXPENDITURES; ENACTING THE VIBRANT
12 COMMUNITIES ACT; AMENDING AND ENACTING SECTIONS OF THE NMSA
13 1978.

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

16 SECTION 1. [NEW MATERIAL] SHORT TITLE.--Sections 1
17 through 10 of this act may be cited as the "Vibrant Communities
18 Act".

19 SECTION 2. [NEW MATERIAL] DEFINITIONS.--As used in the
20 Vibrant Communities Act:

21 A. "community well-being and capital development
22 project" means the provision of direct or indirect assistance
23 to a qualifying entity by the state, a county or a municipal
24 government to assist a qualifying entity that serves New
25 Mexico's sick and indigent residents and that promotes health,

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1 self-sufficiency and community and economic development,
2 thereby strengthening the resources of the community in which
3 it is located, and includes:

4 (1) the purchase, lease or other acquisition
5 of land or buildings;

6 (2) the purchase, lease or other acquisition
7 or the construction or improvement of buildings or other
8 infrastructure;

9 (3) public works improvements essential to the
10 location or expansion of a qualifying entity; and

11 (4) payments for professional services
12 contracts necessary for a county or municipal government to
13 implement a plan or project;

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

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

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

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

22 F. "public purpose" means a purpose that serves the
23 community; and

24 G. "qualifying entity" means:

25 (1) an organization recognized as tax exempt

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1 pursuant to Section 501(c)(3) of the federal Internal Revenue
2 Code of 1986, as amended;

3 (2) an organization recognized as a
4 cooperative pursuant to Section 501(c)(12) of the federal
5 Internal Revenue Code of 1986, as amended; or

6 (3) a federally chartered tribal corporation,
7 business or person.

8 SECTION 3. [NEW MATERIAL] COMMUNITY WELL-BEING AND
9 CAPITAL DEVELOPMENT PROJECTS--RESTRICTIONS ON PUBLIC
10 EXPENDITURES OR PLEDGES OF CREDIT.--

11 A. The total amount of public money expended and
12 the value of credit pledged in the fiscal year in which that
13 money is expended by a county or municipality for community
14 well-being and capital development projects pursuant to the
15 Vibrant Communities Act shall not exceed five percent of the
16 annual general fund expenditures of the county or municipality
17 in that fiscal year. The value of any land or building
18 contributed to any project pursuant to a project participation
19 agreement shall not be subject to the limits of this
20 subsection.

21 B. The restriction set forth in Subsection A of
22 this section does not include contractual agreements for the
23 purchase of services.

24 SECTION 4. [NEW MATERIAL] COMMUNITY WELL-BEING AND
25 CAPITAL DEVELOPMENT PROJECTS AND PUBLIC PURPOSE.--A qualifying
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1 entity seeking to pursue community well-being and capital
2 development projects shall provide a project proposal to the
3 department, to the appropriate health council, if any, and to
4 appropriate counties and municipalities and involved Indian
5 nations, tribes or pueblos. The project proposal shall
6 include:

7 A. a description of the community need or public
8 purpose;

9 B. a description of the project;

10 C. the state agencies that may have authority over
11 the project;

12 D. the amount of funding being requested from the
13 state; and

14 E. a list of other funding sources for the project,
15 if any.

16 SECTION 5. [NEW MATERIAL] COMMUNITY WELL-BEING AND
17 CAPITAL DEVELOPMENT PROJECT APPLICATIONS.--An application for
18 funding community well-being and capital development projects
19 shall be on a form and require such information as the
20 department deems necessary. The application deadline shall be
21 April 30 of each year.

22 SECTION 6. [NEW MATERIAL] PROJECT EVALUATION--
23 DEPARTMENT.--

24 A. The department shall designate the appropriate
25 state agency to oversee the proposed community well-being and

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1 capital development project.

2 B. The designated state agency shall review each
3 project proposal and provide confirmation in writing that it
4 has reviewed the proposed community well-being and capital
5 development project.

6 C. The designated state agency may negotiate with a
7 qualifying entity on the type or amount of assistance to be
8 provided or on the scope of the community well-being and
9 capital development project.

10 D. If a designated state agency refuses to approve
11 a community well-being and capital development project, it
12 shall provide information in writing to the requesting entity
13 regarding the reasons for not promoting the project.

14 SECTION 7. [NEW MATERIAL] PROJECT PARTICIPATION
15 AGREEMENT--DUTIES AND REQUIREMENTS.--

16 A. The state agency designated pursuant to
17 Subsection A of Section 6 of the Vibrant Communities Act,
18 participating counties and municipalities and the qualifying
19 entity shall enter into a project participation agreement.

20 B. A county or municipality shall hold a public
21 hearing concerning a proposed community well-being and capital
22 development project before entering into a participation
23 agreement for such a project.

24 C. The designated state agency shall require a
25 substantive contribution from the qualifying entity for each

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1 community well-being and capital development project. The
2 contribution shall be of value and may be in-kind services,
3 jobs, property or other thing or service of value for the
4 expansion of community well-being.

5 D. The participation agreement at a minimum shall
6 set out:

7 (1) the contributions to be made by each party
8 to the participation agreement;

9 (2) the security provided to the state or
10 county or municipal government by the qualifying entity in the
11 form of a lien and the pledge of the qualifying entity's
12 financial or material participation and cooperation to
13 guarantee the qualifying entity's performance pursuant to the
14 project participation agreement;

15 (3) a schedule for project development and
16 implementation, including measurable goals and time limits for
17 those goals;

18 (4) who will manage the funds associated with
19 the proposed community well-being and capital development
20 project;

21 (5) provisions for performance review and
22 actions to be taken upon a determination that project
23 performance is unsatisfactory; and

24 (6) terms of ownership of the property or
25 asset, including a schedule of depreciation and a schedule of

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1 payments through services, with the asset or property to be the
2 responsibility of the qualifying entity receiving public funds
3 and held in trust so long as the qualifying entity continues to
4 serve a public purpose.

5 E. If the qualifying entity ceases to exist or to
6 serve a public purpose, then the property or asset shall revert
7 ownership to the county or municipal government or, with the
8 approval of the designated state agency and an involved county
9 or municipal government, to another tax-exempt organization or
10 cooperative that meets the requirements of a qualifying entity
11 pursuant to Subsection G of Section 2 of the Vibrant
12 Communities Act.

13 F. If the qualifying entity ceases to exist or no
14 longer serves a public purpose, and there is no outstanding
15 lien or mortgage on the property or asset, the state agency or
16 local government may assume ownership of the property or asset
17 itself or transfer ownership of the property or asset to
18 another qualifying entity.

19 SECTION 8. [NEW MATERIAL] PROJECT REVENUES--THIRD PARTY
20 MANAGEMENT.--State funds dedicated or pledged for funding or
21 financing of community well-being and capital development
22 projects shall be managed by the entity as agreed to in the
23 project participation agreement and overseen by the state
24 agency designated pursuant to Subsection A of Section 6 of the
25 Vibrant Communities Act. Money shall be expended only for

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1 community well-being and capital development project purposes,
2 which may include the payment of necessary professional
3 services contract costs.

4 SECTION 9. [NEW MATERIAL] PLAN AND PROJECT TERMINATION.--

5 A. At any time after approval of a community well-
6 being and capital development project, the state agency
7 designated pursuant to Subsection A of Section 6 of the Vibrant
8 Communities Act may terminate it by providing written
9 notification giving thirty days' notice. If the designated
10 state agency terminates a community well-being and capital
11 development project, the party managing the funds as provided
12 in the participation agreement shall provide for satisfying
13 existing contracts and the rights of the parties arising from
14 those contracts.

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

18 SECTION 10. [NEW MATERIAL] LIMITATIONS.--Nothing in the
19 Vibrant Communities Act shall be construed to affect any other
20 requirements of the constitution of New Mexico or other laws
21 regarding local government debt, issuance of bonds, use of tax
22 revenues or the grant, lease or sale of land or other property.

23 SECTION 11. Section 3-54-3 NMSA 1978 (being Laws 1965,
24 Chapter 300, Section 14-55-3, as amended) is amended to read:

25 "3-54-3. SUPPLEMENTAL METHOD FOR DISPOSING OF MUNICIPAL

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1 PROPERTY.--Sections 3-54-1 and 3-54-2 NMSA 1978 are intended to
2 afford another and additional method of disposing of municipal
3 real and personal property and are not to be construed as
4 repealing or qualifying any other statutory authorization
5 granted a municipality to dispose of or exchange real or
6 personal municipal property or as affecting in any way the
7 sale, lease, exchange or other disposition of real or personal
8 property pursuant to the Local Economic Development Act or the
9 Vibrant Communities Act."

10 SECTION 12. SEVERABILITY.--If any part or application of
11 the Vibrant Communities Act is held invalid, the remainder or
12 its application to other situations or persons shall not be
13 affected.

14 SECTION 13. EFFECTIVE DATE.--The effective date of the
15 provisions of this act is the date the secretary of state
16 certifies that the constitution of New Mexico has been amended
17 as proposed by a joint resolution of the first session of the
18 fifty-fifth legislature entitled "A JOINT RESOLUTION PROPOSING
19 TO AMEND ARTICLE 9, SECTION 14 OF THE CONSTITUTION OF NEW
20 MEXICO TO PERMIT, UNDER CERTAIN CONDITIONS, THE STATE OR ANY
21 COUNTY OR MUNICIPALITY TO PROVIDE REAL ESTATE, EQUIPMENT OR
22 MONEY TO BE USED BY NONPROFIT ORGANIZATIONS AND COOPERATIVES
23 THAT PROVIDE GOODS OR SERVICES TO THE PUBLIC ON BEHALF OF THE
24 STATE OR A COUNTY OR MUNICIPALITY".

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