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SENATE BILL 406

43RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 1997

INTRODUCED BY

MANNY M ARAGON

AN ACT

RELATING TO HOUSING; ENACTING THE LAND TITLE TRUST FUND ACT;
CREATING A FUND AS A SOURCE FOR LOANS AND GRANTS TO MAKE HOUSING
MORE ACCESSIBLE FOR LOW-INCOME PERSONS; PROVIDING FOR INTEREST
EARNED ON CERTAIN LAND TITLE INDUSTRY ACCOUNTS TO BE PAID INTO
THE FUND; CREATING AN ADVISORY COMMITTEE; AMENDING A SECTION OF
THE NMSA 1978; MAKING AN APPROPRIATION; DECLARING AN EMERGENCY.

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

Section 1. [NEW MATERIAL] SHORT TITLE. -- Sections 1
through 8 of this act may be cited as the "Land Title Trust Fund
Act".

Section 2. [NEW MATERIAL] DEFINITIONS. -- As used in the
Land Title Trust Fund Act:

A. "committee" means the land title trust fund
advisory committee;

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1 B. "depository institution" means any bank, savings
2 and loan association or credit union authorized by federal or
3 state law to do business in New Mexico and insured by the
4 federal deposit insurance corporation or the national credit
5 union administration;

6 C. "division" means the financial institutions
7 division of the regulation and licensing department;

8 D. "eligible organization" means a nonprofit
9 corporation whose primary purpose is to provide affordable
10 housing and that is qualified for tax exemption under Section
11 501(c)(3) of the Internal Revenue Code of 1986, as amended; a
12 unit of state or local government dealing with housing; a local
13 or regional housing authority or a tribal agency dealing with
14 housing;

15 E. "fund" means the land title trust fund;

16 F. "low-income persons" means a household consisting
17 of a single individual, a family or unrelated individuals living
18 together if the household's total annual income does not exceed
19 eighty percent of the median income for the area, as determined
20 by the United States department of housing and urban
21 development, and as adjusted for family size or other income
22 ceiling determined for the area on the basis of that
23 department's findings that such variations are necessary because
24 of prevailing levels of construction costs or fair market rents
25 or unusually high or low family incomes;

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1 G. "pooled interest-bearing transaction account"
2 means a trust or escrow account made available by a depository
3 institution in the form of a negotiable order of withdrawal
4 account, sweep account or other interest-bearing account;

5 H. "title company" means a title insurer or title
6 insurance agent as defined in and regulated pursuant to the New
7 Mexico Title Insurance Law; and

8 I. "trustee" means the New Mexico mortgage finance
9 authority.

10 Section 3. [NEW MATERIAL] LAND TITLE TRUST FUND
11 CREATED.--The "land title trust fund" is created. The New
12 Mexico mortgage finance authority shall be the trustee for the
13 fund.

14 Section 4. [NEW MATERIAL] TRUST ACCOUNTS--ESCROW
15 ACCOUNTS-- POOLED INTEREST-BEARING TRANSACTION ACCOUNTS--
16 DISPOSITION OF EARNED INTEREST ON CERTAIN ACCOUNTS.--

17 A. A title company that maintains one or more trust
18 accounts or escrow accounts into which customer funds are
19 deposited for use in the purchase, sale or financing of real
20 property located in New Mexico may maintain one or more pooled
21 interest-bearing transaction accounts and may deposit customer
22 funds into those accounts, except for funds required to be
23 deposited into interest-bearing accounts or investments under
24 instructions from one or more of the parties to a transaction
25 that provide for the payment of interest to be earned on the

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1 deposited funds to a person other than the title company. A
2 pooled interest-bearing transaction account established pursuant
3 to the provisions of this section shall be maintained in the
4 name of the title company, but the trustee shall be named and
5 shown as the beneficial owner of the account income or interest.
6 A title company maintaining one or more pooled interest-bearing
7 transaction accounts shall not be paid or receive any interest
8 earned on funds deposited in the accounts except for the purpose
9 of remitting net earned interest to the trustee pursuant to the
10 provisions of this section.

11 B. The interest earned on customer funds deposited
12 in a pooled interest-bearing transaction account pursuant to the
13 requirements of Subsection A of this section, net of any service
14 charges and fees that a depository institution charges to
15 regular, non-title company depositors and net of any reasonable
16 charge for preparation and transmittal of any required report
17 pursuant to the provisions of Subsection F of this section,
18 shall be remitted monthly or quarterly either directly to the
19 fund or to the title company for its remittance to the fund.
20 Alternatively, the depository institution may credit the title
21 company account with the net interest earned either monthly or
22 quarterly. Interest accrued after deducting the allowable
23 charges and fees shall be treated as interest earned by the
24 trustee and reported as such by the depository institution.

25 C. The provisions of this section shall not change

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1 existing duties or obligations of a title company under other
2 laws to safeguard and account for funds held for customers.

3 D. Funds in each pooled interest-bearing transaction
4 account shall be subject to withdrawal upon request and without
5 delay, subject only to the notice period the depository
6 institution is required to observe by law or regulation.

7 E. The rate of interest payable on a pooled
8 interest-bearing transaction account shall not be less than the
9 rate customarily paid by the depository institution to regular,
10 non-title company depositors for similar accounts. Interest
11 shall be computed in accordance with the depository
12 institution's standard accounting practice. Higher rates
13 offered by the depository institution to customers whose
14 deposits exceed certain time or quantity minima, such as those
15 offered in the form of certificates of deposit, may be obtained
16 by the title company on some or all of the deposited funds so
17 long as there is no impairment of the right to withdraw or
18 transfer principal, subject only to the notice period the
19 depository institution is required to observe by law or
20 regulation.

21 F. A depository institution or title company making
22 a remittance of interest to the fund shall at the time of the
23 remittance transmit a report to the trustee for each account
24 from which remittance is made showing:

25 (1) the name of the title company maintaining

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1 the account from which remittance is made;

2 (2) the rate of interest used to compute the
3 earned interest and the amount of earned interest;

4 (3) the amount, if any, of depository
5 institution service charges and fees deducted and any charge for
6 the preparation and transmittal of the report; and

7 (4) the account balance as of the ending date
8 of the reporting period.

9 G. If the depository institution remits to the title
10 company or credits the title company account, it shall make the
11 remittance or credit no later than ten days after the statement
12 cutoff for that account. The title company shall remit to the
13 fund and shall send the report with the remittance no later than
14 thirty days after receipt of the remittance or credit by the
15 depository institution.

16 H. Remittances to the fund shall be made at least
17 quarterly, no later than ten days after the statement cutoff for
18 that account if made by the depository institution and no later
19 than thirty days after receipt of remittance or credit from the
20 depository institution if made by the title company.

21 I. The division shall adopt and promulgate rules and
22 regulations regarding the obligations of depository institutions
23 pursuant to the provisions of the Land Title Trust Fund Act.

24 Section 5. [NEW MATERIAL] USE OF MONEY--ELIGIBLE
25 ACTIVITIES.--Money from the fund and other sources may be used

. 113032. 3

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1 to finance in whole or in part any loans or grant projects that
2 will provide housing for low-income persons and for other uses
3 specified in this section. Money deposited into the fund may be
4 used annually as follows:

5 A. no more than seven percent of the fund shall be
6 used for expenses of administering the fund;

7 B. no less than twenty percent of the fund shall be
8 invested in a permanent capital fund, the interest on which may
9 be used for purposes specified in this section;

10 C. no less than fifty percent of the fund shall be
11 allocated to eligible organizations to make housing more
12 accessible to low-income persons; and

13 D. the remaining balance may be allocated to
14 eligible organizations for other housing-related programs for
15 the benefit of the public as specifically approved by the
16 trustee from time to time.

17 Section 6. [NEW MATERIAL] CONFLICT WITH FEDERAL
18 REQUIREMENTS. --If any part of the Land Title Trust Fund Act is
19 found to be in conflict with federal requirements that are a
20 prescribed condition to the allocation of federal funds to the
21 state, the conflicting part of that act is inoperative solely to
22 the extent of the conflict and with respect to the agencies
23 directly affected, and this finding does not affect the
24 operation of the remainder of that act in its application to the
25 agencies concerned. The rules adopted pursuant to the

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1 provisions of the Land Title Trust Fund Act shall meet those
2 federal requirements that are a necessary condition to the
3 receipt of federal funds by the state.

4 Section 7. [NEW MATERIAL] MATCHING FUNDS. -- Money from the
5 fund may be used to match federal, local or private money to be
6 used for projects authorized under the Land Title Trust Fund
7 Act.

8 Section 8. [NEW MATERIAL] LAND TITLE TRUST FUND ADVISORY
9 COMMITTEE CREATED-- FUNCTIONS. --

10 A. The "land title trust fund advisory committee" is
11 created. The committee shall consist of seven persons:

12 (1) the chairman of the trustee or his
13 designee, who shall serve as chairman of the committee;

14 (2) two representatives of the land title
15 industry appointed by the governor;

16 (3) one representative of the banking industry
17 and one representative of the real estate industry appointed by
18 the president pro tempore of the senate; and

19 (4) one representative of the mortgage lending
20 industry and one representative of the real estate industry
21 appointed by the speaker of the house of representatives.

22 B. Of the first committee members appointed, two
23 shall be appointed for terms of five years, two shall be
24 appointed for terms of four years and two shall be appointed for
25 terms of three years. Thereafter, appointed members shall be

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1 appointed for terms of five years. Members shall serve at the
2 pleasure of their respective appointing authorities, and
3 vacancies shall be filled by the appropriate appointing
4 authority. Any member of the committee shall be eligible for
5 reappointment.

6 C. The committee shall be advisory to the trustee
7 and shall be subject to oversight by the Mortgage Finance
8 Authority Act oversight committee.

9 D. The committee shall review all project
10 applications and make recommendations to the trustee for funding
11 them. The committee shall not be involved in or advisory to the
12 trustee in matters relating to the investment of the fund.

13 E. The committee shall adopt and promulgate rules
14 and regulations regarding:

15 (1) the time, place and procedures of committee
16 meetings;

17 (2) the procedures for the review of and
18 standards for recommending applications for loans or grant
19 projects; and

20 (3) the obligations of title companies pursuant
21 to the provisions of the Land Title Trust Fund Act.

22 Section 9. Section 58-18B-3 NMSA 1978 (being Laws 1994,
23 Chapter 146, Section 3) is amended to read:

24 "58-18B-3. DEFINITIONS. --As used in the Low-Income Housing
25 Trust Act:

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1 A. "appropriate financial institution service
2 charges and fees" means those service charges and fees that a
3 financial institution charges its customers on demand deposit
4 accounts;

5 B. "division" means the financial institutions
6 division of the regulation and licensing department;

7 C. "escrow closing agent" means an escrow agent [~~or~~
8 ~~insurer or title insurance~~] other than a title company that acts
9 in the normal course of business as the agent of the seller and
10 buyer of real estate for the purpose of consummating a sale,
11 including but not limited to the performance of the following
12 functions:

13 (1) preparation of deeds, mortgages, promissory
14 notes, deeds of trust, real estate contracts, assignments or
15 other documents incidental to the sale as permitted by law;

16 (2) calculations and disbursements of prorated
17 taxes, insurance premiums, utility bills and other charges
18 incidental to the sale;

19 (3) preparation of sellers' and buyers' closing
20 statements;

21 (4) supervision of signing of documents;

22 (5) collection and disbursement of down
23 payments, realtors' commissions, fees and other charges pursuant
24 to a sales agreement; and

25 (6) recordation of documents;

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1 D. "escrow servicing agent" means any person who in
2 the normal course of business collects and disburses funds
3 received from real estate-related financing instruments on
4 behalf of a lender or borrower;

5 E. "first-time home buyer" means:

6 (1) an individual or the individual's spouse
7 who has not owned a home other than a manufactured home during
8 the three-year period prior to the purchase of a home; or

9 (2) any individual who is a displaced homemaker
10 or a single parent;

11 F. "fund" means the low-income housing trust fund
12 created pursuant to the provisions of the Low-Income Housing
13 Trust Act;

14 G. "low-income persons" means a household consisting
15 of a single individual or a family or unrelated individuals
16 living together when the household's total annual income does
17 not exceed eighty percent of the median income for the area, as
18 determined by the United States department of housing and urban
19 development and as adjusted for family size, or other income
20 ceiling determined for the area on the basis of that
21 department's findings that such variations are necessary because
22 of prevailing levels of construction costs or fair market rents
23 or unusually high or low family incomes;

24 H. "person" means an individual or any other legal entity;
25 and

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I. "property manager" means a person who acts in the normal course of business as the agent for the owner of real property for the purpose of property rental, leasing and management. "

Section 11. EMERGENCY.--It is necessary for the public peace, health and safety that this act take effect immediately.

1 FORTY-THIRD LEGISLATURE
2 FIRST SESSION, 1997
3
4

5 February 24, 1997
6

7 Mr. President:
8

9 Your PUBLIC AFFAIRS COMMITTEE, to whom has been
10 referred
11

12 SENATE BILL 406
13

14 has had it under consideration and reports same with
15 recommendation that it DO PASS, and thence referred to the
16 FINANCE COMMITTEE.
17

18 Respectfully submitted,
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22 _____
23 Shannon Robinson, Chairman
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Adopted _____ Not Adopted _____
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Date _____

The roll call vote was 6 For 0 Against

Yes: 6

No: None

Excused: Vernon, Smith, Garcia

Absent: None

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1 FORTY-THIRD LEGISLATURE
2 FIRST SESSION, 1997
3
4

5 March 5, 1997
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7 Mr. President:
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9 Your FINANCE COMMITTEE, to whom has been referred
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11 SENATE BILL 406
12

13 has had it under consideration and reports same with
14 recommendation that it DO PASS.
15

16 Respectfully submitted,
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21 Ben D. Altamirano, Chairman
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25 Adopted _____ Not Adopted _____
(Chief Clerk) (Chief Clerk)

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Date _____

The roll call vote was 6 For 0 Against

Yes: 6

No: None

Excused: Campos, Ingle, Lyons, McKibben, Romero

Absent: None

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State of New Mexico House of Representatives

FORTY-THIRD LEGISLATURE
FIRST SESSION, 1997

March 15, 1997

Mr. Speaker:

Your BUSINESS AND INDUSTRY COMMITTEE, to whom has
been referred

SENATE BILL 406

has had it under consideration and reports same with
recommendation that it DO PASS, and thence referred to the
APPROPRIATIONS AND FINANCE COMMITTEE.

Respectfully submitted,

Fred Luna, Chairman

FORTY-THIRD LEGISLATURE
FIRST SESSION, 1997

HBIC/SB 406

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Adopted _____ Not Adopted _____
(Chief Clerk) (Chief Clerk)

Date _____

The roll call vote was 7 For 0 Against

Yes: 7

Excused: Alwin, Getty, Gubbels, Hobbs, Rodella, Varela

Absent: None

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