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SENATE BILL 71

43RD LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 1998

INTRODUCED BY

PATRICK H. LYONS

FOR THE MORTGAGE FINANCE AUTHORITY ACT OVERSIGHT COMMITTEE

AN ACT

RELATING TO HOUSING; PROVIDING FOR THE CONSOLIDATION OF HOUSING PROGRAMS; RATIFYING THE TRANSFER OF CERTAIN HOUSING PROGRAMS TO THE NEW MEXICO MORTGAGE FINANCE AUTHORITY; CHANGING THE DESIGNATION OF THE STATE HOUSING AUTHORITY; AMENDING, REPEALING AND ENACTING SECTIONS OF THE NMSA 1978 TO MAKE STATUTORY PROVISIONS CONSISTENT WITH THE TRANSFER OF PROGRAMS.

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

Section 1. Section 9-15-4 NMSA 1978 (being Laws 1983, Chapter 297, Section 4, as amended) is amended to read:

"9-15-4. DEPARTMENT ESTABLISHED.--There is created in the executive branch the "economic development department". The department shall be a cabinet department and shall consist of, but not be limited to, [~~seven~~] six divisions as follows:

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- 1 A. the administrative services division;
- 2 B. the economic development division;
- 3 C. the New Mexico film division;
- 4 D. the technology enterprise division;
- 5 E. the trade division; and
- 6 ~~[F. the state housing authority; and~~
- 7 ~~G.]~~ F. the office for space commercialization. "

8 Section 2. Section 9-15-7.1 NMSA 1978 (being Laws 1983,
9 Chapter 296, Section 21, as amended) is amended to read:

10 "9-15-7.1. ADDITIONAL PLANNING DUTIES OF SECRETARY [~~OF~~
11 ~~THE ECONOMIC DEVELOPMENT DEPARTMENT~~]. --The secretary [~~of the~~
12 ~~economic development department~~], in addition to other duties,
13 shall:

- 14 A. serve as staff to the governor's rural
15 development council;
- 16 ~~[B. provide housing information and technical~~
- 17 ~~assistance to units of local government and housing~~
- 18 ~~development associations;~~
- 19 ~~C. administer the low-income elderly housing~~
- 20 ~~rehabilitation program;~~
- 21 ~~D. provide training to groups participating in~~
- 22 ~~housing management programs funded by housing and urban~~
- 23 ~~development and the farmers home administration;]~~ and
- 24 ~~[E.]~~ B. serve as lead agency in coordination of
25 the census program at the state data center. "

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1 Section 3. Section 11-1-2 NMSA 1978 (being Laws 1961,
2 Chapter 135, Section 2, as amended) is amended to read:

3 "11-1-2. DEFINITIONS. -- As used in the Joint Powers
4 Agreements Act:

5 A. "public agency" means the federal government or
6 any federal department, [~~or~~] agency or instrumentality; this
7 state, an adjoining state or any state department, [~~or~~] agency
8 or instrumentality; an Indian tribe or pueblo; a county,
9 municipality, public corporation or public district of this
10 state or an adjoining state; [~~it also specifically includes~~
11 ~~any state~~] a New Mexico educational institution specified in
12 Article 12, Section 11 of the constitution of New Mexico; and
13 [~~any~~] a New Mexico school district [~~in this state~~];

14 B. "agreement" means a written contractual
15 agreement entered into between two or more public agencies
16 subject to any constitutional or legislative restriction
17 imposed upon any of the contracting public agencies [~~provided~~
18 ~~that nothing in~~], but the Joint Powers Agreements Act [~~shall~~
19 ~~be construed to~~] does not authorize [~~any~~] an interstate water
20 supply agreement or [~~to~~] limit the powers of [~~any~~] an
21 interstate water compact commission, the interstate stream
22 commission or the state engineer [~~or to~~], and it does not
23 limit the powers of [~~any~~] a state agency or political
24 subdivision to enter into agreements with the interstate
25 stream commission or the state engineer;

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C. "bonds" means revenue bonds;

D. "bondholder" means any person who ~~[shall be]~~ is the bearer of any outstanding ~~[revenue]~~ bond or the owner of bonds ~~[which shall]~~ that are at the time ~~[be]~~ registered to other than the bearer;

~~[E. "governing body" means the board or commission provided for under the Joint Powers Agreements Act;]~~

~~F.]~~ E. "indenture" means the instrument providing the terms and conditions for the issuance of the bonds and may be a resolution, order, agreement or other instrument; and

~~[G. "project" means the building or other structure or improvements and all facilities appurtenant thereto or provided therefor to be financed by bonds issued pursuant to the Joint Powers Agreements Act]~~

F. "instrumentality" means a public corporate entity created by state law but which is not subject to the general laws of the state and is not a state agency or department. "

Section 4. Section 11-3A-6 NMSA 1978 (being Laws 1994, Chapter 132, Section 6, as amended) is amended to read:

"11-3A-6. POWERS OF AUTHORITY IN BOARD OF COMMISSIONERS--APPOINTMENT OF BOARD OF AUTHORITIES--TERMS. --

A. The powers of each regional authority shall be vested in its board of commissioners as the board may be constituted, from time to time. The board of commissioners of

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1 the authority for each of the seven regions shall consist of
2 seven commissioners who shall be residents of the region for
3 which the authority is created and appointed by the governor.
4 Appointments shall be for terms of four years or less and
5 shall be made so that the terms of not more than two
6 commissioners on each board expire on July 1 of each year.
7 Vacancies shall be filled for the unexpired term.
8 Commissioners shall serve until their successors have been
9 appointed.

10 B. The members of the boards of commissioners may
11 receive per diem and mileage as provided in the Per Diem and
12 Mileage Act but shall receive no other compensation,
13 perquisite or allowance. Each board of commissioners shall
14 select a chairman and vice chairman from among its members.
15 Each board may employ necessary agents and employees and set
16 the salaries of the agents and employees. Each board may
17 delegate to its agents or employees such duties as the board
18 deems proper. A regional planning and development district,
19 created pursuant to the Planning District Act, may provide
20 technical staff for [a regional housing] an authority. Four
21 commissioners shall constitute a quorum of a board for the
22 purpose of conducting its business and exercising its powers
23 and for all other purposes. Action may be taken by an
24 authority upon a vote of a majority of the commissioners
25 present. Each board shall organize itself at its annual

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1 meeting each even-numbered year. A board may authorize an
2 authority to employ a secretary, who shall be executive
3 director and who shall be removable only for cause, and
4 technical experts and other officers, attorneys, agents and
5 employees, permanent and temporary, as the authority requires;
6 to determine employee and contractor qualifications, duties
7 and compensation; and to delegate to one or more employees or
8 contractors the powers or duties that the board deems proper.

9 C. The financial affairs of every regional
10 authority and any nonprofit corporation created by an
11 authority shall be thoroughly examined and audited annually by
12 the state auditor, by personnel of his office designated by
13 him or by auditors approved by him. The audits shall be
14 conducted in accordance with generally accepted auditing
15 standards. Each regional authority shall submit to the state
16 auditor, the department of finance and administration, the
17 state housing authority [~~of the economic development~~
18 ~~department~~] and the legislative finance committee, within
19 thirty days following the receipt of the audit by the
20 authority, a copy of the annual audit. "

21 Section 5. Section 48-10-3 NMSA 1978 (being Laws 1987,
22 Chapter 61, Section 3, as amended) is amended to read:

23 "48-10-3. DEFINITIONS.--As used in the Deed of Trust
24 Act, unless the context otherwise requires:

25 A. "beneficiary" means the person named or

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1 otherwise designated in a deed of trust as the person for
2 whose benefit a deed of trust is given or his successor in
3 interest;

4 B. "qualified construction project" means a low-
5 income housing project of a regional, county or municipal
6 housing authority or a qualified nonprofit organization;

7 C. "qualified nonprofit organization" means an
8 organization that is certified by the state housing authority
9 as having been granted exemption from federal income tax
10 pursuant to Section 501(c)(3) or (4) of the Internal Revenue
11 Code of 1986, as amended, and that includes as one of its
12 exempt purposes the fostering of low-income housing;

13 D. "contract" means an agreement between or among
14 two or more persons, including, without limitation, a note,
15 promissory note, guarantee or the terms of any deed of trust;

16 E. "credit bid" means a bid made by the
17 beneficiary in full or partial satisfaction of the contract
18 that is secured by the deed of trust. A credit bid may only
19 include an amount owing on a contract with interest secured by
20 liens, mortgages, deeds of trust or encumbrances that are
21 superior in priority to the deed of trust and which liens,
22 mortgages or encumbrances, whether recourse or nonrecourse,
23 are outstanding as provided in the contract or as provided in
24 the deed of trust, together with the amount of other
25 obligations provided in or secured by the deed of trust and

. 119601. 3

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1 the costs of exercising the power of sale and the trustee's
2 sale, including the fees of the trustee and reasonable
3 [~~attorneys'~~] attorney fees actually incurred by the trustee
4 and the beneficiary;

5 F. "parent corporation" means a corporation that
6 owns eighty percent or more of each class of the issued and
7 outstanding stock of another corporation or, in the case of a
8 savings and loan association, eighty percent or more of the
9 issued and outstanding guaranty capital of the savings and
10 loan association;

11 G. "person" means an individual or organization;

12 H. "deed of trust" means a document by way of
13 mortgage in substance executed in conformity with the Deed of
14 Trust Act and in conformity with Section 47-1-39 NMSA 1978
15 granting or mortgaging trust real estate to a trustee
16 qualified under the Deed of Trust Act to secure the
17 performance of a contract, but does not include a deed of
18 trust that encumbers in whole or in part trust real estate
19 located in New Mexico and in one or more other states;

20 I. "junior encumbrancer" means a person holding a
21 lien, mortgage or other encumbrance of record evidencing an
22 interest in the trust real estate that is subordinate in
23 priority to the deed of trust and includes a lienholder, a
24 mortgagee, a seller and a purchaser as provided in a real
25 estate contract and, where the context is applicable, escrow

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1 agents as provided in a real estate contract;

2 J. "low-income household" means a household that
3 the state housing authority certifies is a household with
4 income at or below eighty percent of the state's median
5 household income;

6 K. "low-income housing project" means a housing
7 project that the state housing authority certifies is housing
8 for low-income households;

9 L. "state housing authority" means the New Mexico
10 mortgage finance authority;

11 [~~L.~~] M "trust real estate" means any legal,
12 equitable, leasehold or other interest in real estate,
13 including the term "real estate" as defined in Section 47-1-1
14 NMSA 1978, which is capable of being transferred whether or
15 not the interest is subject to any prior mortgages, deeds of
16 trust, contracts for conveyance of real estate, real estate
17 contracts or other liens or encumbrances; provided, however,
18 trust real estate shall not include:

19 (1) any dwelling and the underlying real
20 estate designed for occupancy by one to four families,
21 including mobile homes and condominiums, except when occupancy
22 is designed for low-income households;

23 (2) any real estate used by the trustor for
24 farming operations, including farming, tillage of the soil,
25 dairy farming, ranching, production or raising of crops,

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1 poultry or livestock, and production of poultry or livestock
2 products in an unmanufactured state; or

3 (3) oil and other liquid hydrocarbons, or
4 gas, including casinghead gas, condensates and other gaseous
5 petroleum substances, or coal or other minerals in, on or
6 under real estate, including patented and unpatented mining
7 claims, unless such minerals have not been severed from and
8 are included with the surface estate.

9 The character of trust real estate shall be determined as
10 of the date of the deed of trust covering the trust real
11 estate;

12 [~~M-~~] N. "trustee" means a person qualified as
13 provided in the Deed of Trust Act. The obligations of a
14 trustee to the trustor, beneficiary and other persons are as
15 provided in the Deed of Trust Act, together with any other
16 obligations specified in the deed of trust. Both the
17 beneficiary and the trustee have all the powers of a mortgagee
18 as provided by law; and

19 [~~N-~~] 0. "trustor" means the person or his
20 successor in interest granting or mortgaging trust real estate
21 by a deed of trust as security for the performance of a
22 contract and is the same as a mortgagor granting or mortgaging
23 real estate by way of mortgage as provided by law. "

24 Section 6. A new section of the Mortgage Finance
25 Authority Act, Section 58-18-5.5 NMSA 1978, is enacted to

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1 read:

2 "58-18-5.5. [NEW MATERIAL] ADDITIONAL POWERS OF AUTHORITY--
3 AUTHORITY DESIGNATED AS SINGLE STATE HOUSING AUTHORITY--APPLICATION
4 FOR AND RECEIPT OF FEDERAL FUNDS--ADMINISTRATION OF HOUSING
5 PROGRAMS.--In addition to the powers granted the authority pursuant
6 to Sections 58-18-5 and 58-18-5.3 NMSA 1978, the authority:

7 A. is designated as the state housing authority for all
8 purposes;

9 B. shall make application for federal housing funds and
10 programs;

11 C. shall administer federal and state housing programs
12 and federal tax credit provisions associated with those programs;

13 D. shall receive and expend funds pursuant to
14 applicable federal housing laws, federal housing regulations, the
15 provisions of the Mortgage Finance Authority Act and regulations
16 adopted pursuant to that act;

17 E. shall administer the following housing programs that
18 were previously transferred to it by executive order, the
19 provisions of which are ratified:

20 (1) the federal HOME program;

21 (2) the federal low-income housing tax credit
22 program;

23 (3) the federal emergency shelter grant programs;

24 (4) the state homeless program;

25 (5) the federal and state weatherization programs

. 119601. 3

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1 and that part of the low-income home energy assistance program
2 authorized for weatherization; and

3 (6) the state safe water program;

4 F. shall assist with technical consultation in
5 connection with housing components of the community service block
6 grant and community development block grant programs that are
7 administered by the human services department and the department of
8 finance and administration, respectively;

9 G. shall not receive direct appropriations of state
10 funds from the legislature, and, if a program for which the
11 authority is granted the power and has the duty to administer
12 involves the appropriation or expenditure of state funds, the
13 authority is granted specific power to enter into a joint powers
14 agreement with the department of finance and administration
15 pursuant to the Joint Powers Agreements Act; and

16 H. may:

17 (1) exercise oversight over regional housing
18 authorities to achieve efficiency and coordination of state and
19 regional housing programs;

20 (2) conduct reviews and audits of regional housing
21 authorities' programs; and

22 (3) upon request of a regional housing authority,
23 provide appropriate technical assistance. "

24 Section 7. REPEAL. -- Sections 11-4-1 through 11-4-8 NMSA 1978
25 (being Laws 1975, Chapter 102, Sections 1 through 8, as amended)

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are repealed.

Section 8. EFFECTIVE DATE. --The effective date of the provisions of this act is July 1, 1998.

1 FORTY-THIRD LEGISLATURE
2 SECOND SESSION, 1998
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6 January 26, 1998
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8 Mr. President:
9

10 Your COMMITTEES' COMMITTEE, to whom has been referred
11

12 SENATE BILL 71
13

14 has had it under consideration and finds same to be GERMANE,
15 pursuant to Senate Executive Message No. 19, and thence referred to
16 the CORPORATIONS & TRANSPORTATION COMMITTEE.
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19 Respectfully submitted,
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25 _____
Manny M. Aragon, Chairman

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Adopted _____ Not Adopted _____

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(Chief Clerk)

(Chief Clerk)

Date _____

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1 FORTY-THIRD LEGISLATURE

2 SECOND SESSION, 1998

3 SB 71/a

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5
6 February 3, 1998

7
8 Mr. President:

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11 Your CORPORATIONS & TRANSPORTATION COMMITTEE, to whom
12 has been referred

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15 SENATE BILL 71

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18 has had it under consideration and reports same with recommendation
19 that it DO PASS, amended as follows:

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23 1. On page 2, line 13, strike the colon and strike lines 14 and
24 15.
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2. On page 2, line 24, strike "B."

FORTY-THIRD LEGISLATURE
SECOND SESSION, 1998

SCORC/SB 71

Page 17

3. On page 12, line 8, after the semicolon insert "and".

4. On page 12, line 15, after "Act" strike the remainder of the line, strike all of lines 16 through 22 and on line 23, strike the line through "assistance";,

and thence referred to the FINANCE COMMITTEE.

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FORTY-THIRD LEGISLATURE
SECOND SESSION, 1998

SCORC/SB 71

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Respectfully submitted,

Roman M. Maes, III, Chairman

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

Date _____

The roll call vote was 5 For 3 Against

Yes: 5

No: Griego, Howes, Maes

Excused: Leavell, McKibben

Absent: None

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SECOND SESSION, 1998

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FORTY-THIRD LEGISLATURE
SECOND SESSION, 1998

February 6, 1998

Mr. President:

Your FINANCE COMMITTEE, to whom has been referred

SENATE BILL 71, as amended

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

Respectfully submitted,

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FORTY-THIRD LEGISLATURE
SECOND SESSION, 1998

SCORC/SB 71

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Ben D. Altamirano, Chairman

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

Date _____

The roll call vote was 6 For 0 Against

Yes: 6

No: None

Excused: Aragon, Carraro, Ingle, McKibben, Romero

Absent: None

. 119601. 3

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FORTY-THIRD LEGISLATURE
SECOND SESSION, 1998

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1 FORTY-THIRD LEGISLATURE
2 SECOND SESSION, 1998
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6 February 14, 1998
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8 Mr. Speaker:
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10 Your BUSINESS AND INDUSTRY COMMITTEE, to whom has been
11 referred

12
13 SENATE BILL 71, as amended
14

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

17 Respectfully submitted,
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21 _____
22 Fred Luna, Chairman
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1 FORTY-THIRD LEGISLATURE
2 SECOND SESSION, 1998

3 HBIC/HB 71a

Page 24

4 Adopted _____ Not Adopted _____

5 (Chief Clerk)

(Chief Clerk)

7 Date _____

9 The roll call vote was 9 For 0 Against

10 Yes: 9

11 Excused: Olguin, J. G. Taylor, Varela

12 Absent: Getty

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