

ARTICLE 18

Mortgage Finance Authority

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58-18-1. Short title.

Chapter 58, Article 18 NMSA 1978 shall be known and may be cited as the "Mortgage Finance Authority Act".

History: 1953 Comp., § 13-9-1, enacted by Laws 1975, ch. 303, § 1; 1982, ch. 86, § 1.

Cross references. — For municipal housing, see Chapter 3, Article 45 NMSA 1978.

For urban development, see Chapter 3, Article 46 NMSA 1978.

For community development, see Chapter 3, Article 60 NMSA 1978.

For metropolitan redevelopment, see Chapter 3, Article 60A NMSA 1978.

For regional housing authorities, see Chapter 11, Article 3A NMSA 1978.

For the state housing authority, see Chapter 11 Article 4 NMSA 1978.

For utility supplements and assistance, see Chapter 27 Article 6 NMSA 1978.

ANNOTATIONS

Authority not state agency. — The New Mexico mortgage finance authority created pursuant to this article is not a state agency. 1975 Op. Att'y Gen. No. 75-48.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 40 Am. Jur. 2d Housing Laws and Urban Redevelopment § 1 et seq.

58-18-2. Legislative findings; declaration of purpose.

A. The legislature finds and declares that there exists in the state of New Mexico a serious shortage of decent, safe and sanitary residential housing available at prices and rentals within the financial means of persons and families of low or moderate income. This shortage is severe in certain urban areas of the state, is especially critical in the rural areas and is inimical to the health, safety, welfare and prosperity of all residents of the state.

B. The legislature finds and determines that the shortage of residential housing causes overcrowding and congestion and exacerbates existing slum conditions, which, in turn, contribute substantially and increasingly to the spread of disease and crime, impair economic values, necessitate excessive and disproportionate expenditures of public funds for crime prevention and punishment, public health, welfare and safety programs, fire and accident

protection and other services, substantially impair or arrest the growth of municipalities, aggravate traffic problems and promote juvenile delinquency and other social ills.

C. The legislature finds and declares further that private enterprise unaided has not been able to produce the needed construction of decent, safe and sanitary residential housing at prices and rentals that persons and families of low or moderate income can afford or to achieve the urgently needed rehabilitation of much of their present housing. It is imperative that the supply of residential housing for persons and families of low or moderate income be increased substantially and that private enterprise and investment be encouraged to sponsor, build and rehabilitate residential housing for such persons and families.

D. It is found and declared that a major cause of this housing shortage is the lack of funds in private banking channels available for affordable residential mortgages. This lack of funds has contributed to drastic reductions in construction starts of new residential housing and has frustrated the sale and purchase of existing residential housing in the state.

E. It is further found and declared that the drastic reduction in residential construction starts and in residential rehabilitation projects associated with housing shortages has caused a condition of substantial unemployment and underemployment in the construction industry, which results in hardships to many individuals and families, wastes vital human resources, increases the public assistance burdens of the state and its municipalities, impairs the security of family life, impedes the economic and physical development of municipalities and adversely affects the welfare and prosperity of all the people of the state. A stable supply of adequate funds for affordable residential mortgages is required to spur new housing starts and the rehabilitation of existing units in an orderly and sustained manner and thereby to reduce the hazards of unemployment and underemployment in the construction industry. The unaided operations of private enterprise have not met and cannot meet the need for a stable supply of adequate funds for affordable residential mortgage financing.

F. The legislature further finds and determines that for the purposes of remedying these conditions, helping to alleviate the shortage of adequate housing and encouraging and providing the financing for the acquisition, construction, rehabilitation and improvement of residential housing for persons and families of low or moderate income within the state, a public body politic and corporate, separate and apart from the state, constituting a governmental instrumentality to be known as the New Mexico mortgage finance authority should be created with power to raise funds from private and public investors, to make funds available for such purposes, to create and implement programs from time to time as may be necessary or appropriate to accomplish its purposes and to assist, administer, finance or service housing programs for or through private and nonprofit organizations and local, state, federal and tribal agencies or their instrumentalities. The legislature finds and declares further that in accomplishing these purposes, the New Mexico mortgage finance authority is acting in all respects for the benefit of the people of the state in the performance of essential public functions and is serving a valid public purpose in improving and otherwise promoting their health, welfare

and prosperity, and that the enactment of the provisions set forth in the Mortgage Finance Authority Act [58-18-1 NMSA 1978] is for a valid public purpose and is declared to be such as a matter of express legislative determination.

History: 1953 Comp., § 13-19-2, enacted by Laws 1975, ch. 303, § 2; 1995, ch. 9, § 1.

The 1995 amendment, effective June 16, 1995, inserted "or moderate" preceding "income" in the first sentences of Subsections A and C; inserted "affordable" preceding "residential" in the first sentence of Subsection D and in two places in Subsection E; rewrote Subsection F; and made minor stylistic changes throughout the section.

58-18-2.1. Multiple-family, transitional and congregate dwellings; supplemental legislative findings and purpose.

The legislature finds and declares that there is a critical shortage of multiple-family, transitional and congregate dwellings that provide decent, safe and sanitary residential housing at rentals that persons and families of low or moderate income can afford. It is further found and declared that private individuals, organizations and entities willing to undertake the construction of multiple-family, transitional and congregate dwellings are unable to obtain loans at sufficiently low interest rates to finance multiple-family, transitional and congregate dwelling projects for persons and families of low or moderate income. Providing mortgage loans at below-market interest rates for multiple-family, transitional and congregate dwellings would increase substantially the availability of multiple-family, transitional and congregate dwellings for occupancy by persons and families of low or moderate income and is expressly declared to be a valid public purpose and a corporate purpose that may be exercised by the authority.

History: 1978 Comp., § 58-18-2.1, enacted by Laws 1982, ch. 86, § 2; 1995, ch. 9, § 2.

The 1995 amendment, effective June 16, 1995, inserted "transitional and congregate" preceding "dwellings" and "or moderate" preceding "income" and made minor stylistic changes throughout the section.

58-18-3. Definitions.

As used in the Mortgage Finance Authority Act [58-18-1 NMSA 1978]:

- A. "authority" means the New Mexico mortgage finance authority;
- B. "bonds" or "notes" means the bonds or bond anticipation notes, respectively, issued by the authority pursuant to the Mortgage Finance Authority Act;
- C. "federal government" means the United States of America and any agency or instrumentality of the United States of America;
- D. "FHA" means the federal housing administration;
- E. "FHLMC" means the federal home loan mortgage corporation;

F. "FNMA" means the federal national mortgage association;

G. "home improvement loan" means a mortgage loan to finance those alterations, repairs and improvements on or in connection with an existing residence that the authority determines will substantially protect or improve the basic livability or energy efficiency of the residence;

H. "mobile home" means a movable or portable housing structure, constructed to be towed on its own chassis and designed to be installed with or without a permanent foundation for human occupancy as a residence; it may include one or more components that can be retracted for towing purposes and subsequently expanded for additional capacity, or two or more units separately towable but designed to be joined into one integral unit, as well as a single unit, except that "mobile home" does not include recreational vehicles, or modular or premanufactured homes built to Uniform Building Code standards and designed to be permanently affixed to real property;

I. "mortgage" means a mortgage, mortgage deed, deed of trust or other instrument creating a lien, subject only to title exceptions as may be acceptable to the authority, on a fee interest in real property located within the state or on a leasehold interest that has a remaining term at the time of computation that exceeds or is renewable at the option of the lessee until after the maturity day of the mortgage loan or an instrument creating a lien on a mobile home;

J. "mortgage lender" means any bank, bank or trust company, trust company, mortgage company, mortgage banker, national banking association, savings bank, savings and loan association, credit union building and loan association and any other lending institution; provided that the mortgage lender maintains an office in New Mexico, is authorized to make mortgage loans in the state and is approved by the authority and either the FHA, VA, FNMA or FHLMC;

K. "mortgage loan" means a financial obligation secured by a mortgage;

L. "municipality" means a county, city, town or village of the state;

M. "new mortgage loan" means a mortgage loan made by a mortgage lender to a person of low or moderate income to finance project costs and containing terms and conditions required by rule of the authority;

N. "persons of low or moderate income" means persons and families within the state who are determined by the authority to lack sufficient income to pay enough to cause private enterprise to build an adequate supply of decent, safe and sanitary residential housing in their locality or in an area reasonably accessible to their locality and whose incomes are below the income levels established by the authority to be in need of the assistance made available by the Mortgage Finance Authority Act [58-18-1 NMSA 1978], taking into consideration the following factors:

- (1) the total income of those persons and families available for housing needs;
- (2) the size of the family units;
- (3) the cost and condition of housing facilities available;
- (4) the ability of those persons and families to compete successfully in the normal

private housing market and to pay the amounts at which private enterprise is providing sanitary, decent and safe housing; and

(5) standards established by various programs of the federal government for determining eligibility based on income of those persons and families;

O. "project" means a work or undertaking, whether new construction, acquisition of existing residential housing, remodeling, improvement or rehabilitation approved by the authority for the primary purpose of providing sanitary, decent, safe and affordable residential housing within the state for one or more persons of low or moderate income;

P. "project costs" means the total of all costs incurred in the development of a project that is approved by the authority as reasonable and necessary; "project costs" may include:

(1) the cost of acquiring real property and improvements located on the property, including payments for options, deposits or contracts to purchase real property;

(2) cost of site preparation, demolition and development;

(3) fees in connection with the planning, execution and financing of a project;

(4) operating and carrying costs during construction;

(5) cost of construction, remodeling, rehabilitation, reconstruction, home improvements, fixtures, furnishings and equipment for the project;

(6) cost of land improvements both on and off site;

(7) expenses in connection with initial occupancy of a project;

(8) reasonable profit and risk fees to the general contractor in addition to the job overhead and, if applicable, to the developer;

(9) allowances established by the authority for working capital and contingency reserves and reserves for any anticipated operating deficits during the first two years of occupancy; and

(10) the cost of other items, including tenant relocation if tenant relocation costs are not otherwise being provided for, indemnity and surety bonds, premiums on insurance and fees and expenses of trustees, depositaries and paying agents of the bonds and notes that the authority determines to be reasonable and necessary for the development of a project;

Q. "real property" means land, space rights, air rights and tangible, intangible, legal and equitable interests in land;

R. "rehabilitation loan" means a qualified rehabilitation loan within the meaning of Section 143(k)(5) of the Internal Revenue Code of 1986, as that section may be amended or renumbered;

S. "residential housing" means the acquisition, construction or rehabilitation of real property, buildings and improvements undertaken primarily to provide one or more dwelling accommodations for persons of low or moderate income;

T. "state" means New Mexico;

U. "state, local, federal or tribal agency" means any board, authority, agency, department, commission, public corporation, body politic or instrumentality of the state or of a local, federal or tribal government; and

V. "VA" means the veterans affairs department.

History: 1953 Comp., § 13-19-3, enacted by Laws 1975, ch. 303, § 3; 1979, ch. 399, § 1; 1981, ch. 191, § 1; 1984, ch. 62, § 1; 1995, ch. 9, § 3; 1999, ch. 11, § 1.

Cross references. — For Section 143 of the Internal Revenue Code, see 26 U.S.C. § 143.

The 1999 amendment, effective June 18, 1999, rewrote the definition of "mortgage lender", which read: " 'mortgage lender' means any bank, bank or trust company, trust company, mortgage company, mortgage banker, national banking association, savings bank, savings and loan association, credit union building and loan association and any other lending institution; provided that the principal office of the mortgage lender is in New Mexico and the mortgage lender is authorized to make mortgage loans in the state and that the mortgage lender is approved by the authority and either the FHA, VA, FNMA or FHLMC", and clarified other definitions.

The 1995 amendment, effective June 16, 1995, added Subsections D through F and redesignated the remaining subsections accordingly; deleted a proviso at the end of Subsection G relating to security for a loan; in Subsection I, deleted "first" preceding "lien" in two places, deleted "or in the case of a home improvement loan, a first or inferior lien" following "creating a lien", and inserted "or is renewable at the option of the lessee until after"; in Subsection J, inserted "credit union" and substituted "the mortgage lender is approved by the authority and either the FHA, VA, FNMA or FHLMC" for "such mortgage lender is FHA - and VA - approved"; added "including a project mortgage loan" at the end of Subsection K; inserted "or moderate" preceding "income" in Subsections M, N, O, and S; inserted "and affordable" in Subsection O; in Subsection R, substituted "Section 143(k)(5) of the Internal Revenue Code of 1986" for "Section 103A of the Internal Revenue Code of 1954" and added "or any successor provision" at the end; inserted "single-family, multiple-family, transitional and congregate dwellings" in Subsection S; inserted "local, federal or tribal" and "or of such local, federal or tribal government" in Subsection U; added Subsection V; and made stylistic changes throughout the section.

58-18-3.1. Additional definitions; multiple-family dwellings, transitional and congregate housing facilities.

As used in the Mortgage Finance Authority Act [58-18-1 NMSA 1978]:

A. "multiple-family dwelling project" means residential housing that is designed for occupancy by more than four persons or families living independently of each other or living in a congregate housing facility, at least sixty percent of whom are persons and families of low or moderate income, including without limitation persons of low or moderate income who are elderly and who have a disability as determined by the authority, provided that the percentage of low-income persons and families shall be at least the minimum required by federal tax law;

B. "transitional housing facility" means residential housing that is designed for temporary or transitional occupancy by persons or families of low or moderate income or special needs;

C. "congregate housing facility" means residential housing designed for occupancy by more

than four persons or families of low or moderate income living independently of each other. The facility may contain group dining, recreational, health care or other communal facilities and each unit in a congregate housing facility shall contain at least its own living, sleeping and bathing facilities;

D. "project mortgage loan" means a mortgage loan made to a sponsor to finance project costs of a multiple-family dwelling or transitional or congregate housing facility; and

E. "sponsor" means an individual, association, corporation, joint venture, partnership, limited partnership, trust or any combination thereof that has been approved by the authority as qualified to own and maintain a multiple-family dwelling or transitional or congregate housing facility in New Mexico, maintains its principal office or a branch office in New Mexico and has agreed to subject itself to the regulatory powers of the authority and the jurisdiction of the courts of the state.

History: 1978 Comp., § 58-18-3.1, enacted by Laws 1982, ch. 86, § 3; 1983, ch. 310, § 1; 1995, ch. 9, § 4; 2007, ch. 46, § 47.

The 2007 amendment, effective June 15, 2007, amends the section to make non-substantive language changes.

The 1995 amendment, effective June 16, 1995, added "transitional and congregate housing facilities" in the section heading; deleted former Subsection A defining "FHA" and redesignated former Subsection B as Subsection A; added Subsections B and C and redesignated former Subsections C and D as Subsections D and E; in Subsection A, substituted "sixty percent" for "twenty-five percent", inserted "or moderate" in two places, and deleted "provided that the percentage of low income persons and families shall be at least the minimum required by federal tax law" at the end; deleted "during construction and on a permanent basis the" following "sponsor to finance" in Subsection D; inserted "transitional or congregate housing" in Subsections D and E; and made minor stylistic changes throughout the section.

58-18-3.2. Secondary mortgage funds; additional definitions.

As used in the Mortgage Finance Authority Act [58-18-1 NMSA 1978]:

A. "pass-through securities" means securities representing undivided ownership interests in a pool of mortgage loans; and

B. "secondary market facility" means a corporation, trust or other form of legal entity established by the authority for the purpose of the purchase, with private or public funds legally available therefor, of mortgage loans, mortgage-backed obligations, pass-through securities or interests therein.

History: 1978 Comp., § 58-18-3.2, enacted by Laws 1983, ch. 285, § 1; 1995, ch. 9, § 5.

The 1995 amendment, effective June 16, 1995, deleted "facility or mortgage pooling" preceding "corporation" and inserted "trust or other form of legal entity" in Subsection B.

58-18-4. Authority created.

A. There is created a public body politic and corporate, separate and apart from the state, constituting a governmental instrumentality, to be known as the "New Mexico mortgage finance authority", for the performance of essential public functions. The authority shall be composed of seven members. The lieutenant governor, state treasurer and attorney general shall be ex-officio members of the authority with voting privileges. The governor, with the advice and consent of the senate, shall appoint the other four members of the authority, who shall be residents of the state and shall not hold other public office. The four members of the authority appointed by the governor shall be appointed for terms of four years or less staggered so that the term of one member expires on January 1 of each year. Vacancies shall be filled by appointment by the governor for the remainder of the unexpired term. Any member of the authority shall be eligible for reappointment. Each member of the authority appointed by the governor may be removed by the governor for misfeasance, malfeasance or willful neglect of duty after reasonable notice and a public hearing, unless the notice and hearing are, in writing, expressly waived. Each member of the authority appointed by the governor, before entering upon duty, shall take an oath of office to administer the duties of the office faithfully and impartially, and a record of the oath shall be filed in the office of the secretary of state. The governor shall designate a member of the authority to serve as chair for a term that shall be coterminous with the chair's then current term as a member of the authority. The authority shall annually elect one of its members as vice chair. The authority shall also elect or appoint and prescribe the duties of other officers, who need not be members, as the authority deems necessary or advisable, including an executive director and a secretary, who may be the same person. The authority shall fix the compensation of officers. Officers and employees of the authority are not subject to the Personnel Act [10-9-1 NMSA 1978]. The authority may delegate to one or more of its members, officers, employees or agents the powers and duties it may deem proper.

B. All members, officers, employees or agents exercising any voting power or discretionary authority shall be required to have a fiduciary bond in the amount of one million dollars (\$1,000,000) for the faithful performance of their duties, the cost of which shall be proper expense of the authority.

C. The executive director shall administer, manage and direct the affairs and business of the authority, subject to the policies, control and direction of the members of the authority. The secretary of the authority shall keep a record of the proceedings of the authority and shall be custodian of all books, documents and papers filed with the authority, the minute book or journal of the authority and its official seal. The secretary shall have authority to make copies of all minutes and other records and documents of the authority and to give certificates under the official seal of the authority to the effect that the copies are true copies and all persons dealing with the authority may rely upon the certificates.

D. Meetings of the authority shall be held at the call of the chair or whenever three members

so request in writing. A majority of members in office shall constitute a quorum for the transaction of any business and for the exercise of any power or function of the authority. A vacancy in the membership of the authority shall not impair the rights of a quorum to exercise all the rights and to perform all the duties of the authority. An ex-officio member from time to time may designate in writing another person to attend meetings of the authority and, to the same extent and with the same effect, act in the member's stead.

E. The authority is not created or organized, and its operations shall not be conducted, for the purpose of making a profit. No part of the revenues or assets of the authority shall inure to the benefit of or be distributable to its members or officers or other private persons. The members of the authority shall not receive compensation for their services, but the members of the authority, its officers and employees shall be paid allowed expenses if approved by the authority in accordance with policies adopted by the authority and approved by the Mortgage Finance Authority Act oversight committee.

F. The authority shall be separate and apart from the state and shall not be subject to the supervision or control of a board, bureau, department or agency of the state except as specifically provided in the Mortgage Finance Authority Act [58-18-1 NMSA 1978]. To effectuate the separation of the state from the authority, the use of the terms "state agency" or "instrumentality" in any other law of the state shall not be deemed to refer to the authority unless the authority is specifically named.

History: 1953 Comp., § 13-19-4, enacted by Laws 1975, ch. 303, § 4; 1985, ch. 232, § 1; 1987, ch. 57, § 1; 1995, ch. 9, § 6; 2003, ch. 17, § 1.

Cross references. — For the Mortgage Finance Authority Act oversight committee, see 2-12-5 NMSA 1978.

The 2003 amendment, effective June 20, 2003, in Subsection A, substituted "lieutenant governor" for "director of the financial institutions division of the regulation and licensing department" near the beginning of the third sentence, and inserted "appointment by" following "Vacancies shall be filled by" near the beginning of the sixth sentence; substituted "make copies" for "cause copies to be made" near the beginning of the third sentence of Subsection C; deleted "In order" at the beginning of the second sentence of Subsection F; and substituted "named" for "referred to therein" at the end of the second sentence of Subsection F.

The 1995 amendment, effective June 16, 1995, added the language beginning "the cost of which" at the end of Subsection B and made a minor stylistic change.

ANNOTATIONS

Subsection B should be construed as requiring bonding prior to discharge of duties; if the bonding is to insure "faithful performance," then it would have to precede that performance. 1975 Op. Att'y Gen. No. 75-55.

58-18-5. Powers of the authority.

The authority shall have all the powers necessary or convenient to carry out and effectuate the purposes and provisions of the Mortgage Finance Authority Act [58-18-1 NMSA 1978], including but without limiting the generality of the foregoing, the power:

- A. to sue and be sued;
- B. to have a seal and alter it at pleasure;
- C. to make and alter bylaws for its organization and internal management;
- D. to appoint other officers, agents and employees, prescribe their duties and qualifications and fix their compensation;
- E. to acquire, hold, improve, mortgage, lease and dispose of real and personal property for its public purposes;
- F. subject to the provisions of Section 58-18-6 NMSA 1978, to make loans, and contract to make loans, to mortgage lenders;
- G. subject to the provisions of Section 58-18-7 NMSA 1978, to purchase, and contract to purchase, mortgage loans from mortgage lenders;
- H. to procure or require the procurement of a policy of group or individual life insurance or disability insurance or both to insure repayment of mortgage loans in event of the death or disability of the borrower and to pay any premiums for the policy;
- I. to procure insurance against any loss in connection with its operations, including without limitation the repayment of any mortgage loan, in amounts and from insurers, including the federal government, that the authority deems necessary or desirable; to procure liability insurance covering its members, officers and employees for acts performed within the scope of their authority as members, officers or employees; and to pay any premiums for insurance procured;
- J. subject to any agreement with bondholders or noteholders:
 - (1) to renegotiate any mortgage loan or any loan to a mortgage lender in default;
 - (2) to waive any default or consent to the modification of the terms of any mortgage loan or any loan to a mortgage lender and otherwise exercise all powers with respect to its mortgage loans and loans to mortgage lenders that any private creditor may exercise under applicable law; and
 - (3) to commence, prosecute and enforce a judgment in any action or proceeding, including without limitation a foreclosure proceeding, to protect or enforce any right conferred upon it by law, mortgage loan agreement, contract or other agreement; and in connection with any such proceeding, to bid for and purchase the property or acquire or take possession of it and, in such event, complete, administer, pay the principal of and interest on any obligations incurred in connection with the property and operate or dispose of and otherwise deal with the property in

such manner as the authority may deem advisable to protect its interests therein;

K. to make and execute contracts for the administration, servicing or collection of any mortgage loan and pay the reasonable value of services rendered to the authority pursuant to such contracts;

L. to fix, revise from time to time, charge and collect fees and other charges in connection with the making of mortgage loans, the purchasing of mortgage loans and any other services rendered by the authority;

M. subject to any agreement with bondholders or noteholders, to sell any mortgage loans at public or private sale at such prices and on such terms as the authority shall determine;

N. to borrow money and to issue bonds and notes that may be negotiable and to provide for the rights of the holders thereof;

O. to arrange for guarantees or other security, liquidity or credit enhancements in connection with its bonds, notes or other obligations by the federal government or by any private insurer or other provider and to pay any premiums therefor;

P. subject to any agreement with bondholders or noteholders, to invest money of the authority not required for immediate use, including proceeds from the sale of any bonds or notes:

- (1) in obligations of any municipality or the state or the United States of America;
- (2) in obligations the principal and interest of which are guaranteed by the state or the United States of America;
- (3) in obligations of any corporation wholly owned by the United States of America;
- (4) in obligations of any corporation sponsored by the United States of America that are or may become eligible as collateral for advances to member banks as determined by the board of governors of the federal reserve system;
- (5) in certificates of deposit or time deposits in banks qualified to do business in New Mexico, secured in the manner, if any, as the authority shall determine;
- (6) in contracts for the purchase and sale of obligations of the types specified in this subsection; or
- (7) as otherwise provided in any trust indenture or a resolution authorizing the issuance of the bonds or notes;

Q. subject to any agreement with bondholders or noteholders, to purchase bonds or notes of the authority at the price as may be determined by the authority or to authorize third persons to purchase bonds or notes of the authority; bonds or notes so purchased shall be canceled or resold, as determined by the authority;

R. to make surveys and to monitor on a continuing basis the adequacy of the supply of:

- (1) funds available in the private banking system in the state for affordable residential mortgages; and

(2) adequate, safe and sanitary housing available to persons of low or moderate income in the state and various sections of the state;

S. to make and execute agreements, contracts and other instruments necessary or convenient in the exercise of the powers and functions of the authority under the Mortgage Finance Authority Act [58-18-1 NMSA 1978];

T. to employ architects, engineers, attorneys (other than and in addition to the attorney general of the state), accountants, housing, construction and financial experts and such other advisors, consultants and agents as may be necessary in its judgment and to fix and pay their compensation;

U. to contract for and to accept any gifts or grants or loans of funds or property or financial or other aid in any form from the federal government or from any other source and to comply, subject to the provisions of the Mortgage Finance Authority Act, with the terms and conditions thereof;

V. to maintain an office at such place in the state as it may determine;

W. subject to any agreement with bondholders and noteholders, to make, alter or repeal, subject to prior approval by the Mortgage Finance Authority Act oversight committee, hereby created, to be composed of four members appointed by the president pro tempore of the senate and four members appointed by the speaker of the house of representatives, such rules and regulations with respect to its operations, properties and facilities as are necessary to carry out its functions and duties in the administration of the Mortgage Finance Authority Act;

X. to make, purchase, guarantee, service and administer mortgage loans for residential housing for the purposes set forth in the Mortgage Finance Authority Act where private banking channels and private enterprise, unaided, have not, cannot or are unwilling to make, purchase, guarantee, service or administer the loans;

Y. to act as trustee and administer the land title trust fund created pursuant to Section 58-28-3 NMSA 1978;

Z. to act as trustee and administrator pursuant to the Low-Income Housing Trust Act [58-18B-1 NMSA 1978];

AA. to act as trustee and statewide administrator of the New Mexico housing trust fund pursuant to and to receive funds under the New Mexico Housing Trust Fund Act [58-18C-1 NMSA 1978];

BB. to act as a governmental entity or a qualifying grantee or as an intermediary for a governmental entity or a qualifying grantee pursuant to the Affordable Housing Act [6-27-1 NMSA 1978]; and

CC. to do any and all things necessary or convenient to carry out its purposes and exercise the powers given and granted in the Mortgage Finance Authority Act.

History: 1953 Comp., § 13-19-5, enacted by Laws 1975, ch. 303, § 5; 1978, ch. 21, § 14; 1978,

ch. 163, § 1; 1985, ch. 232, § 2; 1995, ch. 9, § 7; 2003, ch. 304, § 1; 2005, ch. 105, § 10.

The 2005 amendment, effective July 1, 2005, adds Subsections AA and BB to authorize the finance authority to act as trustee and statewide administrator of the housing trust fund and to receive funds under the Housing Trust Fund Act and to act as a governmental entity, qualifying grantee, intermediary for a governmental entity or a qualifying grantee under the Affordable Housing Act.

The 2003 amendment, effective June 20, 2003, substituted "for the policy" for "therefor" at the end of Subsection H; in Subsection I, substituted "that the authority deems" for "deem" near the middle, and substituted "for insurance procured" for "therefor" at the end; added present Subsections Y and Z and redesignated former Subsection Y as present Subsection AA.

The 1995 amendment, effective June 16, 1995, inserted "or individual" in Subsection H; inserted the provision for procurement of liability insurance in Subsection I; added the language beginning "and otherwise exercise" at the end of Paragraph J(2); substituted "mortgage loans" for "loans to mortgage lenders" in Subsection L; substituted "guarantees or other security, liquidity or credit enhancements in connection with" for "guarantees of" and inserted "or other provider" in Subsection O; substituted "or a resolution authorizing the issuance of the bonds or notes" for "securing the issuance of the bonds" in Paragraph P(7); rewrote Subsection Q; inserted "affordable" in Paragraph R(1); inserted "or moderate" in Paragraph R(2); added Subsection X; redesignated former Subsection X as Subsection Y; and made minor stylistic changes throughout the section.

58-18-5.1. Recompiled.

Recompilations. — This section, regarding the Mortgage Finance Authority Act oversight committee, was recompiled as 2-12-5 NMSA 1978.

58-18-5.2. Authority duties.

The authority shall make available to the Mortgage Finance Authority Act [58-18-1 NMSA 1978] oversight committee all of its records and facilities upon written request.

History: 1978 Comp., § 58-18-5.2, enacted by Laws 1981, ch. 173, § 2; 1995, ch. 9, § 8.

Cross references. — For the Mortgage Finance Act oversight committee, see 2-12-5 NMSA 1978.

The 1995 amendment, effective June 16, 1995, substituted "The authority" for "The mortgage finance authority" at the beginning of the section.

58-18-5.3. Authority; multiple-family dwellings, transitional and congregate housing facilities.

In addition to the specific powers of the authority set forth in Section 58-18-5 NMSA 1978, the authority shall have the power to:

A. subject to the limitations of Subsection X of Section 58-18-5 NMSA 1978, make project mortgage loans or purchase or contract to purchase project mortgage loans from mortgage lenders or participate with mortgage lenders in project mortgage loans at prices and upon terms

and conditions as the authority determines. Each project mortgage loan made or purchased by the authority shall:

- (1) be evidenced by a properly executed note or other evidence of indebtedness and be secured by a properly recorded mortgage;
- (2) provide for payments sufficient to pay the project mortgage loan in full not later than the expiration of the useful life of the multiple-family dwelling project or transitional or congregate housing facility as determined by the authority; and
- (3) not exceed such percentage of such project costs as the authority may determine;

B. make and contract to make loans to mortgage lenders on such terms and conditions as the authority determines, including without limitation requirements relating to collateral for such loans; provided the authority shall require as a condition of any such loan that the mortgage lender make a project mortgage loan or loans to sponsors in an aggregate principal amount at least equal to the amount of the loan received from the authority; and

C. otherwise provide funding for project mortgage loans, including the issuance of bonds or notes in private placements or public offerings. Any bonds or notes issued in a public offering for any purpose authorized by this section shall, at the time of issuance, be rated in at least the third highest rating category by an independent nationally recognized bond rating service.

History: 1978 Comp., § 58-18-5.3, enacted by Laws 1982, ch. 86, § 4; 1987, ch. 58, § 1; 1995, ch. 9, § 9.

The 1995 amendment, effective June 16, 1995, added "transitional and congregate housing facilities" in the section heading and rewrote Subsections A and C.

58-18-5.4. Duties of authority; multiple-family dwellings, transitional and congregate housing facilities.

A. The authority shall require, as a condition of making or purchasing a project mortgage loan, that the sponsor agree to comply with the requirements and to make the representations and warranties as the authority deems reasonably necessary to protect its interests in the project mortgage loan and the multiple-family dwelling project or transitional or congregate housing facility, including the following:

- (1) the multiple-family dwelling project or transitional or congregate housing facility and surrounding area shall be maintained in good repair;
- (2) a reserve fund for repairs and replacements on the multiple-family dwelling project or transitional or congregate housing facility shall be established and maintained for the life of the project mortgage loan;
- (3) the sponsor shall make all records and documents relating to the multiple-family dwelling project or transitional or congregate housing facility available to the authority and its

agents at all reasonable times;

(4) the sponsor shall maintain its books and accounts in a manner satisfactory to the authority;

(5) the sponsor shall provide access to the authority and its agents at all reasonable times for the purpose of inspecting the multiple-family dwelling project or transitional or congregate housing facility;

(6) the sponsor shall file with the authority a copy of each report and schedule required to be filed with any provider of mortgage insurance or other security or liquidity enhancement for the mortgage loan or the authority's bonds or notes, the proceeds of which were used in whole or in part to acquire the project mortgage loan; annual financial and operating reports; and any other reports the authority may determine to be necessary;

(7) the sponsor shall purchase and maintain an insurance policy insuring the project against loss or damage by fire, windstorm, hail, smoke, explosion, riot or civil commotion in an amount not less than eighty percent of the replacement costs of the project, and the authority or its designee shall be named in the insurance policy as an additional named insured;

(8) the sponsor shall provide the authority with a market feasibility study, market-value appraisal, architectural design and outline specifications, tenant selection plans and any other documents the authority requires in determining whether to purchase the project mortgage loan;

(9) unless otherwise exempt under any other law of the state or any political subdivision of the state, all ad valorem, gross receipts and any other taxes imposed on the land or improvements for which a multiple-family dwelling project mortgage loan is being provided shall apply;

(10) the sponsor shall maintain the project as a multiple-family dwelling project or transitional or congregate housing facility throughout the life of the project mortgage loan; and

(11) the sponsor shall comply with any other reasonable requirements the authority deems necessary to impose in the future.

B. The authority shall distribute available funds to qualified sponsors and mortgage lenders on an equitable basis using guidelines that take into consideration geographic allocation and economic feasibility of affordable housing throughout the state, including the need for new housing to attract a new industry or plant or to provide housing in an economically depressed or low-income area.

History: 1978 Comp., § 58-18-5.4, enacted by Laws 1982, ch. 86, § 5; 1990, ch. 118, § 1; 1994, ch. 47, § 1; 1995, ch. 9, § 10.

Cross references. — For the Municipal Housing Law, see 3-45-1 NMSA 1978 et seq.

For the Urban Development Law, see 3-46-1 NMSA 1978 et seq.

For the Community Development Law, see 3-60-1 NMSA 1978 et seq.

For Regional Housing Law, see Chapter 11, Article 3A NMSA 1978.

For the Low Income Utility Assistance Act, see 27-6-11 NMSA 1978 et seq.

The 1995 amendment, effective June 16, 1995, in Subsection A, substituted "making or purchasing a project" for "purchasing a multiple-family dwelling project" near the beginning and "multiple-family dwelling project or transitional or congregate housing facility" for "project" near the end; inserted "or transitional or congregate housing facility" in Paragraphs A(1), A(2), A(3), A(5), and A(10); substituted "that take into consideration geographic allocation and economic feasibility of affordable housing throughout" for "established to assure an even geographic allocation and taking into consideration the need for an economic feasibility of new housing in each area of" near the middle of Subsection B; and made minor stylistic changes throughout the section.

The 1994 amendment, effective May 18, 1994, inserted Paragraph A(9), and redesignated former Paragraphs A(9) and A(10) as A(10) and A(11); and deleted former Subsection C, relating to distribution of funds prior to July 1, 1995.

The 1990 amendment, effective May 16, 1990, in Subsection A, substituted "with any provider of mortgage insurance or other security or liquidity enhancement for the mortgage loan or the authority's bonds or notes, the proceeds of which were used in whole or in part to acquire the project mortgage loan" for "the FHA" in Paragraph (6), inserted "or its designee" following "authority" in Paragraph (7), and inserted "market-value appraisal" following "feasibility study" in Paragraph (8); in Subsection B rewrote the provision following "to assure" which read "a geographic allocation and taking into consideration the need for new housing in an area to attract a new industry or plant"; and added Subsection C.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — Suability, and liability, for torts, of public housing authority, 61 A.L.R.2d 1246.

Validity and construction of statute or ordinance providing for repair or destruction of a residential building by public authorities at owner's expense, 43 A.L.R.3d 916.

What constitutes "blighted area" within urban renewal and redevelopment statutes, 45 A.L.R.3d 1096.

Substantive issues relative to rent levels and termination of benefits under United States Housing Act of 1937 (42 USCS §§ 1437 et seq.), 77 A.L.R. Fed. 884.

58-18-5.5. Additional powers of authority; authority designated as single state housing authority; application for and receipt of federal funds; administration of housing programs.

In addition to the powers granted the authority pursuant to Sections 58-18-5 and 58-18-5.3 NMSA 1978, the authority:

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

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

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

D. shall receive and expend funds pursuant to applicable federal housing laws, federal housing regulations, the provisions of the Mortgage Finance Authority Act [58-18-1 NMSA 1978] and regulations adopted pursuant to that act;

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

(1) the federal HOME program;

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

(3) the federal emergency shelter grant programs;

(4) the state homeless program;

(5) the federal and state weatherization programs and that part of the low-income home energy assistance program authorized for weatherization; and

(6) the state safe water program;

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

G. shall not receive direct appropriations of state funds from the legislature, and, if a program for which the authority is granted the power and has the duty to administer involves the appropriation or expenditure of state funds, the authority is granted specific power to enter into a joint powers agreement with the department of finance and administration pursuant to the Joint Powers Agreements Act [11-1-1 NMSA 1978].

History: Laws 1998, ch. 63, § 6.

Cross references. — For the Municipal Housing Law, see 3-45-1 NMSA 1978 et seq.

For the Urban Development Law, see 3-46-1 NMSA 1978 et seq.

For the Community Development Law, see 3-60-1 NMSA 1978 et seq.

For Regional Housing Law, see Chapter 11, Article 3A NMSA 1978.

For Low Income Utility Assistance Act, see 27-6-11 NMSA 1978.

For the Gasoline and Home Heating Relief Fund, see 6-4-25 NMSA 1978.

Effective dates. — Laws 1998, ch. 63, § 8 makes the act effective on July 1, 1998.

ANNOTATIONS

Statewide housing authority. — Section 58-18-5.5 NMSA 1978 designates the mortgage finance authority as the single state housing authority in New Mexico with statewide jurisdiction and prohibits out-of-state public housing authorities and their instrumentalities from acting as public housing authorities within New Mexico. 2012 Op. Att'y Gen. No. 12-02.

58-18-5.6. Duties; behavioral health.

The authority shall:

A. appoint a representative to both the behavioral health planning council and the interagency behavioral health purchasing collaborative; and

B. ensure that any behavioral health services, including mental health and substance abuse services, and any housing provided for consumers of those services, that are provided, contracted for or approved by the authority are in compliance with requirements of Section 9-7-6.4 NMSA 1978.

History: Laws 2004, ch. 46, § 13.

Effective dates. — Laws 2004, ch. 46 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective May 19, 2004, 90 days after adjournment of the legislature.

58-18-6. Loans to mortgage lenders.

A. The authority may make and contract to make loans to mortgage lenders on terms and conditions as it determines, and all mortgage lenders are authorized to borrow from the authority in accordance with the provisions of this section and the rules and regulations of the authority.

B. The authority shall require that each mortgage lender receiving a loan pursuant to this section shall issue and deliver to the authority an evidence of its indebtedness to the authority that shall constitute either a general or limited obligation of the mortgage lender, as determined by the authority, and shall bear such date or dates, shall mature at such time or times, shall be subject to prepayment and shall contain such other provisions consistent with this section as the authority determines.

C. Notwithstanding any other provision of this section to the contrary, the interest rate or rates and other terms of loans to mortgage lenders made from the proceeds of any issue of bonds or notes of the authority shall be at least sufficient to assure the payment of the bonds or notes and the interest thereon as they become due.

D. The authority shall require that loans to mortgage lenders made pursuant to this section shall be secured as to payment of both principal and interest by a pledge of collateral security in such amounts as the authority determines to be necessary to assure the payment of the loans and

the interest thereon as they become due.

E. The authority may require that collateral for loans be deposited with a bank, trust company or other financial institution acceptable to the authority and designated by the authority as custodian. In the absence of this requirement, each mortgage lender shall enter into an agreement with the authority containing such provisions as the authority deems necessary to:

- (1) adequately identify and maintain the collateral;
- (2) service the collateral; and
- (3) require the mortgage lender to hold the collateral as an agent for the authority and be accountable to the authority as the trustee of an express trust for the application and disposition thereof and the income therefrom.

The authority may also establish such additional requirements as it deems necessary with respect to the pledging, assigning, setting aside or holding of collateral and the making of substitutions therefor or additions thereto and the disposition of income and receipts therefrom.

F. The authority shall require as a condition of each single-family loan to a mortgage lender that the mortgage lender, within a period that the authority may prescribe, shall have entered into written commitments to make and, within a period that the authority may prescribe, shall have disbursed the loan proceeds in new single-family mortgage loans to persons of low or moderate income in an aggregate principal amount equal to the amount of the loan. The new single-family mortgage loans shall have terms and conditions as the authority may prescribe.

G. The authority shall require the submission to it by each mortgage lender to which the authority has made a single-family mortgage loan evidence satisfactory to the authority of the making of new single-family mortgage loans to persons of low or moderate income as required by this section and in connection therewith may, through its members, employees or agents, inspect the books and records of any such mortgage lender.

H. The authority may require as a condition of any loans to mortgage lenders such representations and warranties as it determines to be necessary to secure the loans and carry out the purposes of this section.

I. Compliance by any mortgage lender with the terms of its agreement with or undertaking to the authority with respect to the making or servicing of any new mortgage loans may be enforced by decree of any court of competent jurisdiction. The authority may require as a condition of any loan to any national banking association the consent of the association to the jurisdiction of courts of the state over any such proceeding. The authority may also require, as a condition of any loan to a mortgage lender, agreement by the mortgage lender to the payment of penalties to the authority for violation by the mortgage lender of its undertakings to the authority.

J. To the extent that any provisions of this section may be inconsistent with any provision of law of the state governing the affairs of mortgage lenders, which other provision of law does not by its terms expressly amend the Mortgage Finance Authority Act [58-18-1 NMSA 1978], the provisions of this section shall control.

History: 1953 Comp., § 13-19-6, enacted by Laws 1975, ch. 303, § 6; 1978, ch. 163, § 2; 1979, ch. 399, § 2; 1995, ch. 9, § 11.

The 1995 amendment, effective June 16, 1995, deleted former Paragraph D(1) through D(5) enumerating types of collateral security; deleted "located in the state" following "authority" in the first sentence of Subsection E; inserted "single-family" and "or moderate" throughout Subsections F and G; in Subsection I, inserted "or servicing" and deleted "to persons of low income" after "new mortgage loans" in the first sentence and deleted "and such penalties shall be recoverable at the suit of the authority" at the end of the subsection; inserted "which other provision of law does not by its terms expressly amend the Mortgage Finance Authority Act" in Subsection J; deleted former Subsection K relating to loans to mortgage lenders for making new mortgage loans cured by first liens on mobile homes; and made minor stylistic changes throughout the section.

58-18-7. Purchase of mortgage loans.

A. The authority may purchase and contract to purchase mortgage loans at the prices and upon the terms and conditions as it determines. All mortgage lenders are authorized to sell mortgage loans to the authority in accordance with the provisions of this section and the rules and regulations of the authority.

B. The authority shall require as a condition of purchase of single-family mortgage loans from mortgage lenders either:

(1) that the single-family mortgage loans be existing mortgage loans owned by the mortgage lenders and that the mortgage lenders, within the period after receipt of the purchase price as the authority may prescribe shall enter into written commitments to loan and, within such period thereafter as the authority may prescribe, shall loan an amount equal to the entire purchase price of the mortgage loans on new mortgage loans to persons of low or moderate income, which new mortgage loans shall have such terms and conditions as the authority may prescribe; or

(2) that the single-family mortgage loans qualify as new mortgage loans to persons of low or moderate income and were originated by the mortgage lenders for the purpose of selling them to the authority.

C. The authority shall require the submission to it by each mortgage lender from which the authority has purchased a single-family mortgage loan evidence satisfactory to the authority of the making of new mortgage loans to persons of low or moderate income as required by this section and in connection therewith may, through its members, employees or agents, inspect the books and records of any such mortgage lender.

D. Compliance by any mortgage lender with the terms of its agreement with or undertaking to the authority with respect to the making or servicing of any mortgage loans may be enforced by decree of any court of competent jurisdiction. The authority may require as a condition of purchase of mortgage loans from any national banking association the consent of the association to the jurisdiction of courts of the state over any proceeding. The authority may also require, as a

condition of the authority's purchase of mortgage loans from, or servicing of mortgages by a mortgage lender, agreement by any mortgage lender to the payment of penalties to the authority for violation by the mortgage lender of its undertakings to the authority.

E. The authority may require as a condition of purchase of any mortgage loan from a mortgage lender that the mortgage lender represent and warrant to the authority that:

(1) the unpaid principal balance of the mortgage loan and the interest rate thereon have been accurately stated to the authority;

(2) the amount of the unpaid principal balance is justly due and owing;

(3) the mortgage lender has no notice of the existence of any counterclaim, offset or defense asserted by the mortgagor or his successor in interest;

(4) the mortgage loan is evidenced by a bond or promissory note and a mortgage that has been properly recorded with the appropriate public official;

(5) the mortgage constitutes a valid lien on the real property or mobile home described to the authority subject only to taxes not yet due, installments of assessments not yet due and easements and restrictions of record that do not adversely affect, to a material degree, the use or value of the real property or improvements thereon;

(6) the mortgagor is not now in default in the payment of any installment of principal or interest, escrow funds, taxes or otherwise in the performance of his obligations under the mortgage documents and has not to the knowledge of the mortgage lender been in default in the performance of any such obligation for a period of longer than sixty days during the life of the mortgage;

(7) the improvements to mortgaged real property are covered by a valid and subsisting policy of insurance issued by a company authorized to issue such policies in the state and providing fire and extended coverage in such amounts as the authority may prescribe by regulation; and

(8) the mortgage loan meets the prevailing investment quality standards for mortgage loans of that type in the state.

F. Each mortgage lender is liable to the authority for any damages suffered by the authority by reason of the untruth of any representation or the breach of any warranty and, in the event that any representation proves to be untrue when made or in the event of any breach of warranty, the mortgage lender shall, at the option of the authority, repurchase the mortgage loan for the original purchase price adjusted for amounts subsequently paid thereon, as the authority may determine. The authority may also require, as a condition of the authority's purchase of mortgage loans from the mortgage lender, agreement by the mortgage lender to the payment of penalties to the authority for any misrepresentation or breach of warranty.

G. The authority shall require the recording of an assignment of any mortgage loan purchased by it from a mortgage lender. The authority is not required to inspect or take

possession of the mortgage documents if the mortgage lender from which the mortgage loan is purchased by the authority enters, or the mortgage lender's approved designee enters, a contract to service the mortgage loan and account to the authority therefor.

H. In the event of the foreclosure of any mortgage purchased under the provisions of this section, the foreclosure shall not be made in the name of the state. The authority is empowered to make appropriate arrangements for the foreclosure of such mortgages in the name of the authority or another party.

I. To the extent that any provisions of this section may be inconsistent with any provision of law of the state governing the affairs of mortgage lenders, which other provision of law does not by its terms expressly amend the Mortgage Finance Authority Act [58-18-1 NMSA 1978], the provisions of this section shall control.

History: 1953 Comp., § 13-19-7, enacted by Laws 1975, ch. 303, § 7; 1978, ch. 163, § 3; 1979, ch. 399, § 3; 1995, ch. 9, § 12.

The 1995 amendment, effective June 16, 1995, substituted the language beginning "at the prices" for "from mortgage lenders at such prices and upon such terms and conditions as it shall determine; provided, however, that the authority shall not pay any premium for any mortgage loan except as such premium is realized from payments by the mortgagor" at the end of the first sentence of Subsection A; in Subsection B, inserted "single-family" in three places, deleted "by regulation" after "prescribe" in two places, and inserted "or moderate" in two places; substituted "a single-family mortgage loan" for "mortgages" and inserted "or moderate" near the middle of Subsection C; in Subsection D, substituted "making or servicing of any mortgage loans" for "making of any new mortgage loans to persons of low income" in the first sentence, inserted "or servicing of mortgages by a" near the middle and deleted "and such penalties shall be recoverable at the suit of the authority" at the end of the second sentence; added the second sentence in Subsection F; inserted "or the mortgage lender's approved designee enters" in the second sentence of Subsection G; in Subsection H, deleted "or the mortgage finance authority at the end of the first sentence and deleted "mortgage finance" preceding "authority" and inserted "the authority or" in the second sentence; inserted "which other provision of law does not by its terms expressly amend the Mortgage Finance Authority Act" in Subsection I; deleted former Subsection J relating to mortgages secured by first liens on mobile homes; and made stylistic changes throughout the section.

58-18-7.1. Sale of project mortgage loans.

All mortgage lenders are authorized to sell project mortgage loans to and to accept loans from the authority in accordance with the provisions of the Mortgage Finance Authority Act [58-18-1 NMSA 1978] and the rules and regulations of the authority. To the extent that any provisions of this section may be inconsistent with any provision of law of the state governing the affairs of mortgage lenders, which other provision of law does not by its terms expressly amend the Mortgage Finance Authority Act, the provisions of this section shall control.

History: 1978 Comp., § 58-18-7.1, enacted by Laws 1982, ch. 86, § 6; 1995, ch. 9, § 13.

The 1995 amendment, effective June 16, 1995, deleted "Multiple family dwellings" at the beginning of the section heading and inserted "which other provision of law does not by its terms expressly amend the

Mortgage Finance Authority Act" in the second sentence.

58-18-7.2. Secondary market facility; findings and purposes; establishment.

A. The legislature finds and declares that it is necessary and in the public interest that the authority be authorized to create, operate, fund, administer and maintain a secondary market facility for mortgage loans and to otherwise act as a conduit for public and private funds to provide an increased degree of liquidity for mortgage investments, thereby improving the distribution and availability of investment capital for use in mortgage investments in this state and promoting the economic well-being of the state through increased opportunity for employment, all of which are expressly declared to be valid public purposes and corporate purposes that may be exercised by the authority.

B. In connection with the establishment and implementation of a secondary market facility, the authority may issue pass-through securities and may purchase and contract to purchase mortgage loans, pass-through securities, obligations secured by mortgage loans, or revenues therefrom or interests therein, at the prices and upon the terms and conditions as the authority shall determine. All mortgage lenders are authorized to sell mortgage loans, pass-through securities and such obligations to the secondary market facility in accordance with the provisions of this section and the rules and regulations of the authority.

C. To provide funding for the secondary market facility, the authority or the secondary market facility may enter into agreements to administer funds made available to the secondary market facility, at such prices and upon such terms and conditions as the authority shall determine, and may issue its bonds, notes, other obligations, pass-through securities and guarantees in the same manner and on the same terms and conditions as the authority may issue its bonds and notes pursuant to Section 58-18-11 NMSA 1978 or on such other terms and conditions as the authority shall determine. In no event shall any bonds, notes, other obligations, pass-through securities or guarantees constitute an obligation, either general or special, of the state or any political subdivision thereof or constitute pecuniary liability of the state or any political subdivision thereof.

D. Notwithstanding any other provisions of the Mortgage Finance Authority Act [58-18-1 NMSA 1978], the state shall have the power, out of funds legally available therefor, to purchase and to contract to purchase from the authority pass-through securities or participations therein and mortgage loans or participations therein.

History: 1978 Comp., § 58-18-7.2, enacted by Laws 1983, ch. 285, § 2; 1995, ch. 9, § 14.

The 1995 amendment, effective June 16, 1995, substituted "mortgage loans" for "home mortgages" near the beginning of Subsection A; inserted "may issue pass-through securities and" and deleted "from mortgage lenders" preceding "at the prices" in the first sentence of Subsection B; deleted former Subsection D relating to waiver of the exemption from federal income tax of interest on the authority bonds, notes or other securities; redesignated former Subsection E as Subsection D; and made minor stylistic changes throughout the section.

58-18-7.3. Rehabilitation loans and home improvement loans.

The authority may develop a tax-exempt bond, a taxable bond or an authority-funded program for the financing of home improvement or rehabilitation loans. Such a home improvement or rehabilitation loan program may be conducted in concert with any appropriation provided by the legislature for the purpose of developing and conducting a program of subsidizing the interest rates on home improvement or rehabilitation loans to persons of low or moderate income.

History: 1978 Comp., § 58-18-7.3, enacted by Laws 1984, ch. 62, § 2; 1987, ch. 168, § 1; 1995, ch. 9, § 15.

The 1995 amendment, effective June 16, 1995, deleted former Subsection A relating to the reservation of bond proceeds for the purchase of rehabilitation loans; substituted the language beginning "of home improvement" for "of the purchase of home improvement loans from mortgage lenders or for loans to mortgage lenders to fund home improvement loans" at the end of the first sentence; inserted "or rehabilitation" in two places and "or moderate" near the end; deleted "to the state investment council" following "by the legislature"; and made stylistic changes throughout the section.

58-18-8. Rules and regulations of the authority.

A. The authority shall adopt and may from time to time modify or repeal, subject to prior approval by the Mortgage Finance Authority Act oversight committee, rules and regulations:

(1) for determining income levels for the classification of persons of low or moderate income, which may vary between different areas in the state and in accordance with the size of family unit; and

(2) for governing:

(a) the making of loans to mortgage lenders; and

(b) the purchase of mortgage loans, to implement the powers authorized and to achieve the purposes set forth in the Mortgage Finance Authority Act [58-18-1 NMSA 1978].

B. The rules and regulations of the authority relating to the making of loans to mortgage lenders pursuant to Section 58-18-6 NMSA 1978 or the purchase of mortgage loans pursuant to Section 58-18-7 NMSA 1978 shall provide at least for the following:

(1) procedures for the submission by mortgage lenders to the authority of:

(a) requests for loans; and

(b) offers to sell mortgage loans;

(2) standards for allocating bond proceeds among mortgage lenders requesting loans from or offering to sell mortgage loans to the authority;

(3) standards for determining the principal amount to be loaned to each mortgage

lender and the interest rate thereon;

(4) standards for determining the aggregate principal amount of mortgage loans to be purchased from each mortgage lender and the purchase price thereof;

(5) qualifications or characteristics of:

(a) residential housing; and

(b) the purchasers of residential housing to be financed by new mortgage loans made in satisfaction of the requirements of Subsection F of Section 58-18-6 NMSA 1978 or Subsection B of Section 58-18-7 NMSA 1978, as the case may be;

(6) restrictions as to the interest rates to be allowed on new mortgage loans and the return to be realized therefrom by mortgage lenders;

(7) requirements as to commitments and disbursements by mortgage lenders with respect to new mortgage loans; and

(8) standards for mobile homes eligible for use as security.

C. The rules and regulations of the authority shall also provide for:

(1) schedules of any fees and charges to be imposed by the authority; and

(2) any other matters related to the duties and the exercise of the powers of the authority under the Mortgage Finance Authority Act.

History: 1953 Comp., § 13-19-8, enacted by Laws 1975, ch. 303, § 8; 1979, ch. 399, § 4; 1995, ch. 9, § 16.

Cross references. — For the Mortgage Finance Authority Act oversight committee, see 2-12-5 NMSA 1978.

The 1995 amendment, effective June 16, 1995, inserted "Mortgage Finance Authority Act" in the introductory paragraph of Subsection A, inserted "or moderate" in Paragraph A(1), and made a stylistic change.

58-18-8.1. Rules and regulations of the authority; multiple-family dwellings, transitional and congregate housing facilities.

Prior to financing a multiple-family dwelling project or transitional or congregate housing facility, the authority shall adopt, subject to prior approval by the Mortgage Finance Authority Act oversight committee, rules and regulations governing the purchase of project mortgage loans and the making of loans to finance project mortgage loans, which shall provide at least for the following:

A. procedures for the submission by mortgage lenders to the authority of:

(1) offers to sell project mortgage loans; or

(2) requests for loans;

- B. standards for approving qualifications of sponsors and mortgage lenders;
- C. standards for determining minimum equity requirements for sponsors and acceptable debt-to-equity ratios for sponsors;
- D. methods for establishing uniform accounting systems for sponsors;
- E. standards for approving costs of such projects; and
- F. guidelines establishing reasonable geographic allocation procedures for project mortgage loans.

History: 1978 Comp., § 58-18-8.1, enacted by Laws 1982, ch. 86, § 7; 1995, ch. 9, § 17.

Cross references. — For the Mortgage Finance Authority Act oversight committee, see 2-12-5 NMSA 1978.

The 1995 amendment, effective June 16, 1995, in the introductory paragraph, inserted "or transitional or congregate housing facility" near the beginning and substituted "to finance project mortgage loans" for "to mortgage lenders" near the end; and substituted "project mortgage loans" for "multiple family dwelling project loans" at the end of subsection F.

58-18-8.2. Rules and regulations of the authority; secondary market facility.

Prior to establishing a secondary market facility or issuing any pass-through security, the authority shall adopt, subject to prior approval by the Mortgage Finance Authority Act oversight committee, rules and regulations governing the operations of the secondary market facility and the issuance of pass-through securities, which shall provide for the following, to the extent that the secondary market facility proposes to engage in such activities:

- A. procedures for submission by mortgage lenders to the authority of offers to sell:
 - (1) mortgage loans;
 - (2) pass-through securities; or
 - (3) obligations secured by mortgage loans or pledges of mortgage loan revenues;
- B. standards for allocating available funds or guarantees among mortgage lenders through the secondary market facility;
- C. qualifications or conditions relating to the reinvestment by mortgage lenders of the funds made available to mortgage lenders by the secondary market facility; and
- D. characteristics of pass-through securities to be issued by the secondary market facility.

History: 1978 Comp., § 58-18-8.2, enacted by Laws 1983, ch. 285, § 3.

58-18-8.3. Rules and regulations of the authority; home improvement loan program.

Prior to implementing the home improvement loan program referred to in Subsection B of

Section 58-18-7.3 NMSA 1978, the authority shall adopt, subject to prior approval by the Mortgage Finance Authority Act oversight committee, rules and regulations governing the purchase of home improvement loans or loans to mortgage lenders to fund home improvement loans under the program, which shall provide at least for the following:

A. procedures for submission by mortgage lenders to the authority of offers to sell home improvement loans;

B. standards for approving qualifications of mortgage lenders;

C. standards for allocating bond proceeds or other authority funds among mortgage lenders offering to sell home improvement loans to the authority and among mortgage lenders receiving loans from the authority to fund home improvement loans;

D. qualifications or characteristics of:

(1) residential housing upon which a home improvement loan may be made;

(2) the types of home improvements that may be made with the proceeds of home improvement loans, except that the authority shall not permit the proceeds to be used for landscaping, lawn sprinkling systems, swimming pools, tennis courts, saunas or other recreational facilities; and

(3) the persons of low or moderate income who may apply for home improvement loans;

E. restrictions as to the interest rates to be allowed on home improvement loans and the fees and other profit to be realized by mortgage lenders; and

F. procedures for determining eligibility for any subsidies to be provided to persons of low or moderate income.

History: 1978 Comp., § 58-18-8.3, enacted by Laws 1984, ch. 62, § 3; 1987, ch. 168, § 2; 1995, ch. 9, § 18.

Cross references. — For the Mortgage Finance Authority Act oversight committee, see 2-12-5 NMSA 1978.

Compiler's notes. — The reference to Subsection B of 58-18-7.3 NMSA 1978 in the introductory language should now be a reference to 58-18-7.3 NMSA 1978 since the 1995 amendment to that section deleted Subsection A.

The 1995 amendment, effective June 16, 1995, substituted "may be made" for "can be made" in Paragraphs D(1) and D(2) and inserted "or moderate" in Paragraph D(3) and Subsection F.

58-18-9. Required determinations of the authority.

The authority shall not make loans to mortgage lenders pursuant to Section 58-18-6 NMSA 1978 or purchase mortgage loans pursuant to Section 58-18-7 NMSA 1978 until the authority has determined:

A. that the supply of funds available in the private banking system in the state for residential mortgages is inadequate to meet the demand of persons of low or moderate income for residential mortgage financing; and

B. that the purchase of mortgages or making of loans by the authority will alleviate the inadequate supply of residential mortgage money in the state's banking system.

History: 1953 Comp., § 13-19-9, enacted by Laws 1975, ch. 303, § 9; 1995, ch. 9, § 19.

The 1995 amendment, effective June 16, 1995, in the introductory paragraph, substituted "shall not make" for "may not make" and substituted "Section 58-18-6 NMSA 1978" and "Section 58-18-7 NMSA 1978" for "Section 6 of the Mortgage Finance Authority Act" and "Section 7 of that act", respectively, inserted "or moderate" near the end of Subsection A, and made stylistic changes throughout the section.

58-18-9.1. Repealed.

Repeals. — Laws 1995, ch. 9, § 37 repeals 58-18-9.1 NMSA 1978, as amended by Laws 1983, ch. 310, § 2, relating to the authority's financing or purchase of multiple-family dwelling project mortgage loans insured by the SHA, effective June 16, 1995. For provisions of former section, see the 1994 NMSA 1978 on *NMONESOURCE.COM*.

58-18-10. Planning, zoning and building laws.

A. All multiple-family dwelling projects and transitional and congregate housing facilities shall be subject to any applicable master plan, official map, zoning regulation, building code, housing ordinance and other laws and regulations governing land use or planning or construction of the municipality in which the project is or is to be located.

B. The authority shall provide a description of any multiple-family dwelling project or transitional or congregate housing facility for which it proposes to finance a project mortgage loan to the local governing body of the municipality in which the multiple-family dwelling project or transitional or congregate housing facility is or is to be located. The description shall include the proposed number and type of dwelling units and the location of the project. Unless the local governing body, by majority vote, disapproves the multiple-family dwelling project or transitional or congregate housing facility within thirty days after receipt of the description, the authority may finance a project mortgage loan on the project.

History: 1953 Comp., § 13-19-10, enacted by Laws 1975, ch. 303, § 10; 1982, ch. 86, § 9; 1995, ch. 9, § 20.

The 1995 amendment, effective June 16, 1995, substituted "All multiple-family dwelling projects and transitional and congregate housing facilities" for "all projects" at the beginning of Subsection A, inserted "or transitional or congregate housing facility" in three places in Subsection B, and made minor stylistic changes throughout the section.

58-18-11. Bonds and notes of the authority.

A. The authority may from time to time issue its bonds and notes in the principal amounts as, in the opinion of the authority, are necessary to provide sufficient funds for achieving its corporate purposes, the payment of principal and of premium, if any, and interest on bonds and notes of the authority, establishment of reserves to secure the bonds and notes and all other expenditures of the authority incident to and necessary or convenient to carry out its corporate purposes and powers.

B. Except as may otherwise be expressly provided by the authority, all bonds and notes issued by the authority shall be general obligations of the authority, secured by the full faith and credit of the authority and payable out of any money, assets or revenues of the authority, subject only to any agreement with bondholders or noteholders pledging any particular money, assets or revenues. In no event shall any bonds or notes constitute an obligation, either general or special, of the state or any political subdivision of the state or constitute or give rise to a pecuniary liability of the state or any political subdivision of the state; nor shall the authority have the power to pledge the general credit or taxing power of the state or any political subdivision of the state or to make its debts payable out of any money except that of the authority.

C. Bonds and notes shall be authorized by resolutions of the authority adopted as provided by the Mortgage Finance Authority Act [58-18-1 NMSA 1978]; provided that any such resolution authorizing the issuance of bonds or notes may delegate to an officer of the authority the power to issue such bonds or notes from time to time and to fix or specify the manner of fixing the details of any such issues of bonds or notes by an appropriate certificate of the authorized officer.

D. The bonds shall:

(1) state on their face that they:

(a) are payable both as to principal and interest solely out of the assets of the authority; and

(b) do not constitute an obligation, either general or special, of the state or any political subdivision of the state; and

(2) be:

(a) either registered, registered as to principal only or in coupon form;

(b) issued in such denominations as the authority may prescribe;

(c) fully negotiable instruments under the laws of the state unless otherwise determined by the authority;

(d) signed on behalf of the authority with the manual or facsimile signature of the chairman or vice chairman attested by the manual or facsimile signature of the secretary, shall

have impressed or imprinted on them the seal of the authority or a facsimile of the seal, and any coupons attached to them shall be signed with the facsimile signature of the chairman or vice chairman;

(e) payable as to interest at such rate or rates and at such time or times as the authority may determine or provide;

(f) payable as to principal at such times over a period not to exceed forty-five years from the date of issuance, at such place or places and with such reserved rights of prior redemption as the authority may prescribe;

(g) sold at such price or prices, at public or private sale, and in such manner as the authority may prescribe; and the authority may pay all expenses, premiums and commissions that it deems necessary or advantageous in connection with the issuance and sale of the bonds; and

(h) issued under and subject to such terms, conditions and covenants providing for the payment of the principal, redemption premiums, if any, and interest and such other terms, conditions, covenants and protective provisions safeguarding the payment, not inconsistent with the Mortgage Finance Authority Act, as may be found to be necessary by the authority for the most advantageous sale of the bonds, which may include but not be limited to covenants with the holders of the bonds as to: 1) pledging or creating a lien, to the extent provided by a resolution on all or any part of any money or property of the authority or of any money held in trust or otherwise by others to secure the payment of the bonds; 2) otherwise providing for the custody, collection, securing, investment and payment of any money of or due to the authority; 3) the setting aside of reserves or sinking funds and the regulation or disposition thereof; 4) limitations on the purpose to which the proceeds of sale of any issue of bonds then or thereafter to be issued may be applied; 5) limitations on the issuance of additional bonds and on the refunding of outstanding or other bonds; 6) the procedure, if any, by which the terms of any contract with the holders of bonds may be amended or abrogated, the amount of bonds the holders of which must consent thereto and the manner in which such consent may be given; 7) the creation of special funds into which any money of the authority may be deposited; 8) vesting in a trustee the properties, rights, powers and duties in trust as the authority may determine that may include any or all of the rights, powers and duties of the trustee appointed pursuant to Section 58-18-14 NMSA 1978 for the holders of any bonds issued by the authority in which event the provisions of that section authorizing appointment of a trustee by the holders of bonds shall not apply; or limiting or abrogating the right of the holders of bonds to appoint a trustee under Section 58-18-14 NMSA 1978 or limiting the rights, duties and powers of the trustee; 9) defining the acts or omissions to act that constitute a default in the obligations and duties of the authority and providing for the rights and remedies of the holders of bonds in the event of default, provided that the rights and remedies shall not be inconsistent with the general laws of the state and other provisions of the Mortgage Finance Authority Act; and 10) any other matters of like or different character that in any way affect the security and protection of the bonds and the rights of the holders of bonds.

E. The authority is authorized to issue its bonds or notes for the purpose of refunding any bonds or notes of the authority or of any issuer under the Municipal Mortgage Finance Act [58-18A-1 to 58-18A-12 NMSA 1978] or under any other authorizing act then outstanding, including the payment of any redemption premiums thereon and any interest accrued to or to accrue to the date of redemption of the outstanding bonds or notes. Until the proceeds of any bonds or notes issued for the purpose of refunding outstanding bonds or notes are applied to the purchase or retirement of the outstanding bonds or notes or the redemption of the outstanding bonds or notes, the proceeds may be placed in escrow and be invested and reinvested in accordance with the provisions of Subsection P of Section 58-18-5 NMSA 1978. The interest, income and profits, if any, earned or realized on any such investment may, in the discretion of the authority, also be applied to the payment of the outstanding bonds or notes to be refunded by purchase, retirement or redemption, as the case may be. After the terms of the escrow have been fully satisfied and carried out, any balance of the proceeds and interest, if any, earned or realized on the investments thereof may be returned to the authority for use by it in any lawful manner. All bonds or notes shall be issued and secured and shall be subject to the provisions of the Mortgage Finance Authority Act in the same manner and to the same extent as any other bonds or notes issued pursuant to the Mortgage Finance Authority Act.

F. The authority is authorized to issue bond anticipation notes and may renew them from time to time, but the maximum maturity of the notes, including renewals, shall not exceed ten years from the date of issue of the original notes. The notes may be payable from any money of the authority available therefor and not otherwise pledged or from the proceeds of sale of the bonds of the authority in anticipation of which the notes were issued. The notes may be issued for any corporate purpose of the authority. The notes shall be issued in the same manner as the bonds, and the notes and the resolution authorizing them may contain any provisions, conditions or limitations, not inconsistent with the provisions of this subsection, that the bonds or a bond resolution of the authority may contain. The notes may be sold at public or private sale. In case of default on its notes or violation of any obligations of the authority to the noteholders, the noteholders shall have all the remedies provided for bondholders in the Mortgage Finance Authority Act. The notes shall be as fully negotiable as the bonds of the authority.

G. It is the intention of the legislature that any pledge of earnings, revenues or other assets made by the authority shall be valid and binding from the time when the pledge is made; that the earnings, revenues or other assets so pledged and thereafter received by the authority shall immediately be subject to the lien of the pledge without any physical delivery thereof or further act and that the lien of any such pledge shall be valid and binding as against all parties having claims of any kind in tort, contract or otherwise against the authority irrespective of whether the parties have notice of the claims. The resolution or any other instrument by which a pledge is created need not be filed or recorded.

H. Neither the members of the authority nor any person executing the bonds, notes or other obligations shall be liable personally on the bonds, notes or other obligations or be subject to any

personal liability or accountability by reason of the issuance thereof while acting in the scope of their authority.

History: 1953 Comp., § 13-19-11, enacted by Laws 1975, ch. 303, § 11; 1995, ch. 9, § 21.

Cross references. — For rehabilitation loans and home improvement loans, see 58-18-7.3 NMSA 1978.

The 1995 amendment, effective June 16, 1995, substituted "bonds and notes in the principal amounts" for "negotiable bonds and notes in conformity with the applicable provisions of the Uniform Commercial Code in such principal amounts" and inserted "principal and of premium if any, and" in Subsection A; inserted "or specify the manner of fixing" near the end of Subsection C; added "unless otherwise determined by the authority" at the end of Subparagraph D(2)(d); substituted "forty-five years" for "thirty-five years" in Subparagraph D(2)(f); substituted "appointed pursuant to Section 58-18-14 NMSA 1978 for the holders of any bonds issued by the authority in which event the provisions of that section" for "appointed for the holders of any issue of bonds pursuant to Section 14 of the Mortgage Finance Authority Act in which event the provisions of section 14 of that act" and "Section 58-18-14 NMSA 1978" for "Section 14 of that act" in Subparagraph D(2)(h); in Subsection E, inserted "or notes" following "bonds" throughout, inserted "or of any issuer under the Municipal Mortgage Finance Act or under any other authorizing act" in the first sentence, and substituted "Section 58-18-5 NMSA 1978" for "Section 5 of the Mortgage Finance Authority Act" in the second sentence; in Subsection G, substituted "assets" for "moneys" and "money" in the first sentence and inserted "filed or" in the second sentence; and made stylistic changes throughout the section.

58-18-11.1 to 58-18-11.5. Repealed.

Repeals. — Laws 1988, ch. 46, § 13, effective March 4, 1988, repeals former 58-18-11.1 NMSA 1978, as enacted by Laws 1981, ch. 174, § 1, regarding tax exempt mortgage subsidy bond issuance.

Laws 1995, ch. 9, § 37 repeals 58-18-11.2 NMSA 1978, as amended by Laws 1983, ch. 310, § 3, relating to bonds or notes issued in connection with financing of multiple-family dwelling projects, effective June 16, 1995. For provisions of former section, see the 1994 NMSA 1978 on *NMONESOURCE.COM*.

Laws 1983, ch. 310, § 5, repeals 58-18-11.3 and 58-18-11.4 NMSA 1978, relating to termination of the authorization to issue bonds to finance multiple-family dwelling projects and to the multiple-family sunset plan, respectively, effective April 7, 1983.

Laws 1990, ch. 118, § 2 repeals 58-18-11.5 NMSA 1978, as amended by Laws 1987, ch. 54, § 1, relating to expiration of authorization to issue bond to finance multiple-family dwellings, effective May 16, 1990. For provisions of former section, see the 1989 NMSA 1978 on *NMONESOURCE.COM*.

58-18-12. Reserve funds.

A. The authority may create and establish one or more reserve funds.

B. The authority may create and establish other reserve funds as it deems advisable and necessary.

History: 1953 Comp., § 13-19-12, enacted by Laws 1975, ch. 303, § 12; 1995, ch. 9, § 22.

The 1995 amendment, effective June 16, 1995, deleted former provisions of Subsection A relating to debt service reserve funds and made stylistic changes in Subsection B.

58-18-13. Notice or publication not required.

No notice, consent or approval by any governmental body or public officer shall be required as a prerequisite to the issuance, sale or delivery of any bonds, notes or other obligations of the authority pursuant to the provisions of the Mortgage Finance Authority Act [58-18-1 NMSA 1978], except as specifically provided in that act.

History: 1953 Comp., § 13-19-13, enacted by Laws 1975, ch. 303, § 13; 1995, ch. 9, § 23.

The 1995 amendment, effective June 16, 1995, deleted "The internal revenue service shall be notified of the issuance of all bonds, notes and other obligations" at the beginning, substituted "notes or other obligations of the authority" for "notes of the authority or to the making of any loans to mortgage lenders or to the purchase of mortgage loans", and made related stylistic changes.

58-18-14. Remedies of bondholders and noteholders.

Except to the extent this section conflicts with a term or condition of any trust indenture or note, bondholders and noteholders shall have the following remedies:

A. in the event that the authority defaults in the payment of principal of or interest on any issue of bonds or notes after it becomes due, whether at maturity or upon call for redemption, and the default continues for a period of thirty days, or in the event that the authority fails or refuses to comply with the provisions of the Mortgage Finance Authority Act [58-18-1 NMSA 1978] or defaults in any agreement made with the holders of any issue of bonds or notes, the holders of twenty-five percent in aggregate principal amount of the bonds or notes of the issue then outstanding, by one or more instruments filed in the office of the clerk of the county in which the principal office of the authority is located and proved or acknowledged in the same manner as a deed to be recorded, may appoint a trustee to represent the holders of the bonds or notes for the purposes provided in this section;

B. a trustee may, and upon written request of the holders of twenty-five percent in aggregate principal amount of the issue of bonds or notes then outstanding shall, in his or its own name:

- (1) enforce all rights of the bondholders or noteholders, including the right to require the authority to carry out its agreements with the holders of the bonds or notes and to perform its duties under the Mortgage Finance Authority Act;
- (2) bring suit upon the bonds or notes;
- (3) by action or suit, require the authority to account as if it were the trustee of an express trust for the holders of the bonds or notes;
- (4) by action or suit, enjoin any acts or things that may be unlawful or in violation of

the rights of the holders of the bonds or notes; and

(5) declare all such bonds or notes due and payable and, if all defaults are made good, then with the consent of the holders of twenty-five percent of the aggregate principal amount of the issue of bonds or notes then outstanding, annul the declaration and its consequences;

C. a trustee shall, in addition to the provisions of Subsection B of this section, have and possess all the powers necessary or appropriate for the exercise of any functions specifically set forth in this section or incident to the general representation of bondholders or noteholders in the enforcement and protection of their rights;

D. before declaring the principal of bonds or notes due and payable, the trustee shall first give thirty days' notice in writing to the governor, to the authority and to the attorney general of the state; and

E. the district court shall have jurisdiction of any suit, action or proceeding by the trustee on behalf of bondholders or noteholders. The venue of any such suit, action or proceeding shall be laid in the county in which the principal office of the authority is located.

History: 1953 Comp., § 13-19-14, enacted by Laws 1975, ch. 303, § 14; 1995, ch. 9, § 24.

The 1995 amendment, effective June 16, 1995, added the introductory language and made numerous stylistic changes.

58-18-14.1. Project mortgage loans; enforcement of agreement.

A. Compliance by any mortgage lender with the terms of its agreement with or undertaking to the authority with respect to the making of any project mortgage loans to sponsors may be enforced by decree of any court of competent jurisdiction. The authority shall require as a condition of purchasing project mortgage loans from or making a loan to any national banking or federal savings and loan association the consent of the association to the jurisdiction of courts of the state over any such proceeding. The authority shall also require as a condition of the authority's purchasing project mortgage loans from or making a loan to any mortgage lender agreement by the mortgage lender to the payment of penalties to the authority for violation by the mortgage lender of its undertakings to the authority.

B. Each mortgage lender shall be liable to the authority for any damages suffered by the authority by reason of the untruth of any representation or the breach of any warranty, and, in the event that any representation proves to be untrue when made or in the event of any breach of warranty, the mortgage lender shall, at the option of the authority:

(1) repurchase the project mortgage loan for the original purchase price adjusted for amounts subsequently paid thereon, as the authority may determine; or

(2) repay the then unpaid principal balance of the loan, together with interest accrued thereon and the penalties owed pursuant to Subsection A of this section.

History: 1978 Comp., § 58-18-14.1, enacted by Laws 1982, ch. 86, § 11; 1995, ch. 9, § 25.

The 1995 amendment, effective June 16, 1995, substituted "Project mortgage loans" for "Multiple family dwellings" in the section heading, deleted "multiple-family dwelling" preceding "project mortgage loans" in Subsection A, and made stylistic changes throughout the section.

58-18-15. State and municipalities not liable on bonds and notes.

The bonds, notes and other obligations of the authority shall not be a debt of the state or of any municipality, and neither the state nor any municipality shall be liable thereon.

History: 1953 Comp., § 13-19-15, enacted by Laws 1975, ch. 303, § 15.

58-18-16. Agreement of the state.

The state does hereby pledge to and agree with the holders of any bonds, notes, other obligations, pass-through securities or guarantees issued under the Mortgage Finance Authority Act [58-18-1 NMSA 1978] that the state will not limit or alter the rights vested in the authority or any secondary market facility to fulfill the terms of any agreements made with the holders of the bonds, notes, other obligations, pass-through securities or guarantees or in any way impair the rights and remedies of the holders of the bonds, notes, other obligations, pass-through securities or guarantees until the bonds, notes, other obligations, pass-through securities or guarantees together with the interest thereon, with interest on any unpaid installments of interest and all costs and expenses in connection with any action or proceedings by or on behalf of the holders of the bonds, notes, other obligations, pass-through securities or guarantees, are fully met and discharged. The authority or any secondary market facility is authorized to include this pledge and agreement of the state in any agreement with the holders of the bonds, notes, other obligations, pass-through securities or guarantees.

History: 1953 Comp., § 13-19-16, enacted by Laws 1975, ch. 303, § 16; 1995, ch. 9, § 26.

The 1995 amendment, effective June 16, 1995, inserted "other obligations, pass-through securities or guarantees" throughout the section, inserted "or any secondary market facility" near the beginning of the first sentence and in the second sentence, and made stylistic changes throughout the section.

58-18-17. Bonds, notes and other obligations; legal investments for public officers and fiduciaries.

The bonds, notes, other obligations, pass-through securities and guarantees of the authority or any secondary market facility are securities in which all insurance companies and associations and other persons carrying on insurance business, all banks, bank and trust companies, trust companies, private banks, savings banks, savings and loan associations, building and loan associations, investment companies and other persons carrying on a banking business, all administrators, guardians, executors, trustees and other fiduciaries and all other persons who are

or may be authorized to invest in bonds or other obligations of the state may properly and legally invest funds including capital in their control or belonging to them.

History: 1953 Comp., § 13-19-17, enacted by Laws 1975, ch. 303, § 17; 1995, ch. 9, § 27.

The 1995 amendment, effective June 16, 1995, substituted "Bonds, notes and other obligations" for "Bonds and notes" in the section heading, inserted "other obligations, pass-through securities and guarantees" and "or any secondary market facility" near the beginning, and made stylistic changes throughout the section.

58-18-18. Tax exemption.

A. It is determined that the creation of the authority is in all respects for the benefit of the people of the state, for the improvement of their health and welfare and for the promotion of the economy and that those purposes are public purposes. The authority will be performing an essential governmental function in the exercise of the powers conferred upon it by the Mortgage Finance Authority Act [58-18-1 NMSA 1978], and the state covenants with the purchasers and all subsequent holders and transferees of bonds and notes issued by the authority, in consideration of the acceptance of and payment for the bonds and notes, that the bonds and notes of the authority issued pursuant to that act and the income therefrom shall at all times be free from taxation, except for estate or gift taxes and taxes on transfers.

B. The income and operations of the authority and any secondary market facility shall be exempt from taxation of every kind and nature, provided that the authority shall be obligated to pay all ad valorem taxes and special assessments. The authority and any secondary market facility shall pay any recording fee for instruments recorded by it or on its behalf but shall not be required to pay any transfer tax of any kind on account of instruments recorded by it or on its behalf.

History: 1953 Comp., § 13-19-18, enacted by Laws 1975, ch. 303, § 18; 1981, ch. 190, § 1; 1985, ch. 232, § 3; 1995, ch. 9, § 28.

The 1995 amendment, effective June 16, 1995, inserted "and any secondary market facility" in two places in Subsection B and made a stylistic change.

58-18-19. No contribution by state or municipality.

Neither the state nor any municipality shall have the power to pay out of its general funds or otherwise contribute its money to the authority, nor may the state or any state agency purchase any bonds or notes of the authority, nor shall the state or any municipality have the power to make or participate in the making of loans to mortgage lenders or to purchase or participate in the purchase of mortgage loans pursuant to the Mortgage Finance Authority Act [58-18-1 NMSA 1978]. Notwithstanding the foregoing, neither the state nor any municipality shall be prohibited from appropriating its money to or in aid of the authority's programs or the beneficiaries of any

program to the extent otherwise permitted by law.

History: 1953 Comp., § 13-19-19, enacted by Laws 1975, ch. 303, § 19; 1995, ch. 9, § 29.

The 1995 amendment, effective June 16, 1995, rewrote the second sentence which read: "The making of all loans to mortgage lenders and the purchase of all mortgage loans by the authority shall be made out of the proceeds from the sale of bonds or notes issued by the authority pursuant to the Mortgage Finance Authority Act".

58-18-20. Money of the authority.

A. All money of the authority from whatever source derived, except as otherwise authorized or provided in the Mortgage Finance Authority Act [58-18-1 NMSA 1978], shall be paid to the treasurer of the authority and shall be deposited forthwith in a bank designated by the authority. The money in such accounts shall be withdrawn on the order of persons whom the authority may authorize. All deposits of such money shall, if required by the authority, be secured in such manner as the authority may determine. The state auditor and his legally authorized representatives are authorized and empowered from time to time to examine the accounts and books of the authority, including its receipts, disbursements, contracts, leases, sinking funds, investments and any other records and papers relating to its financial standing. The authority shall pay a reasonable fee for such examination as determined by the state auditor.

B. The authority and any secondary market facility shall have power to contract with holders of any of its bonds, notes, other obligations, pass-through securities or guarantees as to the custody, collection, securing, investment and payment of any money of the authority or any secondary market facility of any money held in trust or otherwise for the payment of bonds, notes, other obligations, pass-through securities or guarantees and to carry out the contract. Money held in trust or otherwise for the payment of bonds, notes, other obligations, pass-through securities or guarantees or in any way to secure bonds, notes, other obligations, pass-through securities or guarantees and deposits of such money may be secured in the same manner as money of the authority, and all banks and trust companies are authorized to give security for deposits.

C. Subject to the provisions of any contract with bondholders, noteholders, or holders of other obligations, pass-through securities or guarantees, the authority and any secondary market facility shall prescribe a system of accounts.

D. The authority shall submit to the governor, the state auditor and the legislative finance committee, within thirty days of the receipt thereof by the authority, a copy of the report of every external examination of the books and accounts of the authority.

E. Money of the authority and any secondary market facility, including money held in trust or otherwise for the payment of bonds, notes, other obligations, pass-through securities or guarantees is not public money or state funds within the meaning of any law of the state relating to investment, deposit, security or expenditure of public money and, subject to any agreement

with bondholders and any limitations imposed by the Mortgage Finance Authority Act, may be used by the authority in any manner necessary or appropriate in carrying out the powers given in the Mortgage Finance Authority Act.

History: 1953 Comp., § 13-19-20, enacted by Laws 1975, ch. 303, § 20; 1985, ch. 232, § 4; 1995, ch. 9, § 30.

Cross references. — For Low-Income Housing Trust Act, see 58-18B-1 to 58-18B-11 NMSA 1978.

For the state auditor, see N.M. Const., art. V, § 1.

The 1995 amendment, effective June 16, 1995, deleted "qualified to do business in New Mexico" following "in a bank" in the first sentence of Subsection A; inserted "any secondary market facility" and "other obligations, pass-through securities or guarantees" throughout Subsections B, C, and E; added the language beginning "and, subject to any agreement" at the end of Subsection E; and made stylistic changes throughout the section.

58-18-21. Limitation of liability.

Neither the members of the authority nor any person acting in its behalf, while acting within the scope of their authority, shall be subject to any personal liability for any action taken or omitted within that scope of authority.

History: 1953 Comp., § 13-19-21, enacted by Laws 1975, ch. 303, § 21; 1995, ch. 9, § 31.

The 1995 amendment, effective June 16, 1995, substituted "for any action taken or omitted within that scope of authority" for "resulting from carrying out any of the powers given in the Mortgage Finance Authority Act" and made a stylistic change.

58-18-22. Assistance by state officers and agencies.

All state officers and all state agencies may render such services to the authority within their respective functions as may be requested by the authority.

History: 1953 Comp., § 13-19-22, enacted by Laws 1975, ch. 303, § 22.

58-18-23. Court proceedings; preference; venue.

Any action or proceeding to which the authority or the people of the state may be a party in which any question arises as to the validity of the Mortgage Finance Authority Act [58-18-1 NMSA 1978] shall be preferred over all other civil causes in all courts of the state and shall be heard and determined in preference to all other civil business pending in the courts irrespective of position on the calendar. The same preference shall be granted upon application of counsel to the authority in any action or proceeding questioning the validity of that act in which he may be allowed to intervene. The venue of any action or proceeding to which the authority or the people of the state are a party shall be laid in the county in which the principal office of the authority is

located.

History: 1953 Comp., § 13-19-23, enacted by Laws 1975, ch. 303, § 23; 1995, ch. 9, § 32.

The 1995 amendment, effective June 16, 1995, inserted "to which the authority or the people of the state are a party" in the third sentence and made stylistic changes throughout the section.

58-18-24. Corporate existence.

The authority and its corporate existence shall continue until terminated by law, provided that no such law shall take effect so long as the authority has bonds, notes, other obligations or pass-through securities or guarantees outstanding unless adequate provision has been made for the satisfaction or payment thereof. Upon termination of the existence of the authority, all its rights and properties in excess of its obligations shall pass to and be vested in the state.

History: 1953 Comp., § 13-19-24, enacted by Laws 1975, ch. 303, § 24; 1995, ch. 9, § 33.

The 1995 amendment, effective June 16, 1995, inserted "or pass-through securities or guarantees" and "satisfaction or" and made stylistic changes in the first sentence.

58-18-25. Conflicts of interest; penalty.

A. If any member, officer or employee of the authority has an interest, either direct or indirect, in any contract to which the authority or any secondary market facility is or is to be a party or in any mortgage lender requesting a loan from or offering to sell mortgage loans to the authority or any secondary market facility or in any sponsor requesting a project mortgage loan, the interest shall be disclosed to the authority in writing and shall be set forth in the minutes of the authority. The member, officer or employee having the interest shall not participate in any action by the authority or any secondary market facility with respect to the contract, mortgage lender or sponsor.

B. Nothing in this section shall be deemed or construed to limit the right of any member, officer or employee of the authority to:

(1) acquire an interest in bonds, notes, other obligations, pass-through securities or guarantees of the authority or any secondary market facility; or

(2) have an interest in any banking institution in which the funds of the authority are or are to be deposited or that is or is to be acting as trustee or paying agent under any trust instrument to which the authority is a party.

C. Any person having a conflict of interest as defined in this section and participating in any transaction involving the conflict of interest or failing to notify the authority of the conflict is guilty of a misdemeanor.

History: 1953 Comp., § 13-19-25, enacted by Laws 1975, ch. 303, § 25; 1981, ch. 172, § 1; 1982, ch. 86, § 12; 1995, ch. 9, § 34.

The 1995 amendment, effective June 16, 1995, inserted "or any secondary market facility" throughout the section; substituted "a project mortgage loan" for "a project loan for a multiple-family dwelling project" in the first sentence of Subsection A; inserted "other obligations, pass-through securities or guarantees" in Paragraph B(1); substituted "trust instrument" for "trust indenture" in Paragraph B(2); and made stylistic changes throughout the section.

58-18-26. Cumulative authority.

The Mortgage Finance Authority Act [58-18-1 NMSA 1978] shall be deemed to provide an additional and alternative method for the doing of the things authorized by that act, shall be regarded as supplemental and additional to powers conferred by other laws and shall not be regarded as in derogation of any powers now existing; provided that the issuance of bonds, notes, other obligations, pass-through securities or guarantees under the provisions of the Mortgage Finance Authority Act need not comply with the requirements of any other law applicable to the issuance of bonds, notes, other obligations, pass-through securities or guarantees.

History: 1953 Comp., § 13-19-26, enacted by Laws 1975, ch. 303, § 26; 1995, ch. 9, § 35.

The 1995 amendment, effective June 16, 1995, inserted "other obligations, pass-through securities or guarantees" in two places and made stylistic changes.

58-18-27. Liberal interpretation.

The Mortgage Finance Authority Act [58-18-1 NMSA 1978], being necessary for the welfare of the state and its inhabitants, shall be liberally construed to effect its purposes.

History: 1953 Comp., § 13-19-27, enacted by Laws 1975, ch. 303, § 27; 1995, ch. 9, § 36.

The 1995 amendment, effective June 16, 1995, substituted "effect its purposes" for "effect the purposes thereof" at the end.