SENATE BILL

52ND LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2015

INTRODUCED BY

ENDORSED BY THE MORTGAGE FINANCE
AUTHORITY ACT OVERSIGHT COMMITTEE

AN ACT

RELATING TO HOUSING; AMENDING AND ENACTING SECTIONS OF THE AFFORDABLE HOUSING ACT; ADDING AND CLARIFYING DEFINITIONS; CHANGING LONG-TERM AFFORDABILITY REQUIREMENTS FOR CERTAIN PROJECTS; PROVIDING FOR RULES FOR HOUSING ASSISTANCE GRANTS BY THE NEW MEXICO MORTGAGE FINANCE AUTHORITY AND OTHER STATE AGENCIES AND INSTRUMENTALITIES; PROVIDING FOR RULES FOR THE TIMELY SALE OF CERTAIN PROJECTS; PROVIDING FOR ENFORCEMENT OF THE AFFORDABLE HOUSING ACT; PROVIDING PENALTIES.

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

SECTION 1. Section 6-27-1 NMSA 1978 (being Laws 2004, Chapter 104, Section 1) is amended to read:

"6-27-1. SHORT TITLE.--[~~This act~~] Chapter 6, Article 27 NMSA 1978 may be cited as the "Affordable Housing Act"."

SECTION 2. Section 6-27-2 NMSA 1978 (being Laws 2004,

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Chapter 104, Section 2) is amended to read:

"6-27-2. PURPOSE.--The purpose of the Affordable Housing Act is to implement the provisions of Subsections E and F of [~~Section 14 of~~] Article 9, Section 14 of the constitution of New Mexico."

SECTION 3. Section 6-27-3 NMSA 1978 (being Laws 2004, Chapter 104, Section 3, as amended) is amended to read:

"6-27-3. DEFINITIONS.--As used in the Affordable Housing Act:

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

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

C. "building" means a structure capable of being renovated or converted into affordable housing or a structure that is to be demolished and is located on land that is donated and upon which affordable housing will be constructed;

D. "governmental entity" means [~~a~~] the state, including any agency or instrumentality of the state, a county, a municipality or the authority;

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

F. "housing assistance grant" means the donation, provision or payment by a governmental entity of:

(1) land upon which affordable housing will be

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constructed;

(2) an existing building that will be renovated, converted or demolished and reconstructed as affordable housing;

(3) the costs of acquisition, development, construction, financing and operating or owning affordable housing; or

(4) the costs of financing or infrastructure necessary to support affordable housing;

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

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

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

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

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

(4) areas for motor vehicle use for road access, ingress, egress and parking;

(5) trails and areas for pedestrian,

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equestrian, bicycle or other nonmotor vehicle use for access, ingress, egress and parking;

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

(7) landscaping, including earthworks, structures, plants, trees and related water delivery systems;

(8) electrical transmission and distribution facilities;

(9) natural gas distribution facilities;

(10) lighting systems;

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

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

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

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

I. "infrastructure purpose" means:

(1) planning, design, engineering, construction, acquisition or installation of infrastructure, including the costs of applications, impact fees and other

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fees, permits and approvals related to the construction, acquisition or installation of the infrastructure;

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

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

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

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

K. "public post-secondary educational institution" means a state university or a public community college;

[~~K.~~] L. "qualifying grantee" means:

(1) an individual who is qualified to receive assistance pursuant to the Affordable Housing Act and is approved by the governmental entity; and

(2) a governmental housing agency, regional housing authority, tribal housing agency, corporation, limited liability company, partnership, joint venture, syndicate, association or nonprofit organization that:

(a) is organized under state, local or

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tribal laws and can provide proof of such organization;

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

(c) is approved by the governmental entity; and

[~~L.~~] M. "residential housing" means any building, structure or portion thereof that is primarily occupied, or designed or intended primarily for occupancy, as a residence by one or more households and any real property that is offered for sale or lease for the construction or location thereon of such a building, structure or portion thereof. "Residential housing" includes congregate housing, manufactured homes, housing intended to provide or providing transitional or temporary housing for homeless persons and common health care, kitchen, dining, recreational and other facilities primarily for use by residents of a residential housing project."

SECTION 4. Section 6-27-4 NMSA 1978 (being Laws 2004, Chapter 104, Section 4) is amended to read:

"6-27-4. ELIGIBILITY REQUIREMENTS--NON-INDIVIDUAL AND INDIVIDUAL QUALIFYING GRANTEES.--

A. To be eligible to receive lands, buildings and infrastructure pursuant to [~~Section 14 of~~] Article 9, Section 14 of the constitution of New Mexico, a nonindividual qualifying grantee shall:

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(1) have a functioning accounting system that is operated in accordance with generally accepted accounting principles or [~~has designated~~] shall designate an entity that will maintain such an accounting system consistent with generally accepted accounting principles;

(2) have among its purposes significant activities related to providing housing or services to low- or moderate-income persons or households; and

(3) if it has significant outstanding or unresolved monitoring findings from either the authority or its most recent independent financial audit, have a certified letter from the authority or auditor stating that the findings are in the process of being resolved.

B. To be eligible to receive lands, buildings and infrastructure pursuant to [~~Section 14 of~~] Article 9, Section 14 of the constitution of New Mexico, an individual qualifying grantee shall meet the requirements established by the authority pursuant to the Affordable Housing Act."

SECTION 5. Section 6-27-5 NMSA 1978 (being Laws 2004, Chapter 104, Section 5, as amended) is amended to read:

"6-27-5. STATE, COUNTY, MUNICIPALITIES, INSTRUMENTALITIES OF THE STATE AND THE AUTHORITY--AUTHORIZATION FOR AFFORDABLE HOUSING.--The state, including any agency or instrumentality of the state, or a county, a municipality or the authority may:

A. donate, provide or pay all, or a portion, of the

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costs of land for the construction on the land of affordable housing;

B. donate, provide or pay all or a portion of the costs of conversion or renovation of existing buildings into affordable housing;

C. provide or pay the costs of financing or infrastructure necessary to support affordable housing projects; or

D. provide or pay all or a portion of the costs of acquisition, development, construction, financing, operating or owning affordable housing."

SECTION 6. Section 6-27-6 NMSA 1978 (being Laws 2004, Chapter 104, Section 6) is amended to read:

"6-27-6. REQUIREMENT FOR SPECIFIC LAW AUTHORIZING A HOUSING ASSISTANCE GRANT FROM STATE.--

A. The specific grant of authority created in the Affordable Housing Act is the prior approval required pursuant to Article [~~4~~] 9, Section 14 of the constitution of New Mexico to allow the state to provide affordable housing assistance.

B. Funding pursuant to this grant of authority shall be appropriated to the department of finance and administration for disbursement by the authority to a qualifying grantee in accordance with rules promulgated by the authority.

C. Rules adopted by the authority may include

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provisions for matching or using local, private or federal funds in connection with a specific grant, but matching or using federal funds shall not be prohibited.

D. The authority shall seek comment from the Mortgage Finance Authority Act oversight committee prior to its adoption of rules pursuant to this section."

SECTION 7. Section 6-27-7 NMSA 1978 (being Laws 2004, Chapter 104, Section 7, as amended) is amended to read:

"6-27-7. REQUIREMENT FOR ENACTMENT OF AN ORDINANCE BY A COUNTY OR A MUNICIPALITY AND REVIEW BY THE AUTHORITY AUTHORIZING HOUSING ASSISTANCE GRANTS [~~REQUIREMENT FOR ADOPTION OF A RESOLUTION BY THE GOVERNING BODY OF THE AUTHORITY AUTHORIZING HOUSING ASSISTANCE GRANTS~~].--

A. A county or municipality may provide housing assistance grants pursuant to Article 9, Section 14 of the constitution of New Mexico after enactment by its governing body of an ordinance authorizing grants stating the requirements of and purposes of the grants [~~and authorizing transfer or disbursement to a qualifying grantee only after a budget is submitted to and approved by the governing body~~]. The ordinance may provide for matching or using local, private or federal funds either through direct participation with a federal agency pursuant to federal law or through indirect participation through programs of the authority. No less than forty-five days prior to enactment, the county or municipality

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shall submit a proposed ordinance to the authority, which shall review the proposed ordinance to ensure compliance with rules promulgated by the authority pursuant to Section 6-27-8 NMSA 1978. Within fifteen days after enactment of the ordinance, the county or municipality shall submit a certified true copy of the ordinance to the authority. The governing body of the county or municipality shall authorize the transfer or disbursement of housing assistance grant funds only after the qualifying grantee has submitted a budget to the governing body and the governing body has approved the budget.

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

C. The governing board of a public post-secondary educational institution may transfer land or buildings owned by that institution to a county or municipality; provided that:

(1) the property transferred shall be granted by the county or municipality as part or all of an affordable housing grant; and

(2) the governing board of the public post-secondary educational institution and the governing body

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of the county or municipality enter into a contract that provides the public post-secondary educational institution with affordable housing units.

D. Agencies or instrumentalities of the state may provide housing assistance grants pursuant to Article 9, Section 14 of the constitution of New Mexico in accordance with rules promulgated by the authority.

[~~D.~~] E. The authority may provide housing assistance grants pursuant to Article 9, Section 14 of the constitution of New Mexico [~~after enactment by its governing body of a resolution authorizing grants, stating the requirements and purposes of the grants and authorizing disbursement to a qualifying grantee after a budget is submitted to and approved by the governing body. The resolution may provide for matching or for using local, private or federal funds either through direct participation with a federal agency pursuant to federal law or through indirect participation through programs of the authority. The resolution shall comply with rules promulgated by the authority pursuant to Section 6-27-8 NMSA 1978.~~

~~E. As used in this section, "public post-secondary educational institution" means a state university or a public community college~~] in accordance with rules promulgated by the authority."

SECTION 8. Section 6-27-8 NMSA 1978 (being Laws 2004,

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Chapter 104, Section 8, as amended) is amended to read:

"6-27-8. PROVISIONS TO ENSURE SUCCESSFUL COMPLETION OF AFFORDABLE HOUSING PROJECTS--[~~INVESTIGATION~~] SALE AFTER FORECLOSURE.--

A. State, county and municipal housing assistance grants awarded pursuant to the Affordable Housing Act shall be applied for and awarded to qualifying grantees pursuant to the rules promulgated by the authority subject to the requirements of that act.

B. The authority shall adopt rules [~~covering~~] in accordance with the Administrative Procedures Act to carry out the purposes of the Affordable Housing Act. Concurrence by the New Mexico municipal league is required for rules applicable to municipalities. Concurrence by the New Mexico association of counties is required for rules applicable to counties.

C. The authority shall adopt rules covering:

(1) procedures to ensure that qualifying grantees meet the requirements of the Affordable Housing Act and rules promulgated pursuant to that act both at the time of the award and through the term of the grant;

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

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

(a) financial and management stability of the applicant;

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

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

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

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

(f) scope of the affordable housing project;

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

(h) performance schedule for the qualifying grantee with performance criteria;

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

(5) a requirement that a grant for a state or local project must impose a contractual obligation on the

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qualifying grantee that the housing units in a state or local project developed pursuant to the Affordable Housing Act be occupied by low- or moderate-income households;

(6) provisions for adequate security [~~against~~] to minimize the loss of public funds or property in the event that a qualifying grantee defaults on a contractual obligation for the project or abandons or otherwise fails to complete a project;

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

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

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

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

(11) a requirement that a county or municipality that makes a housing assistance grant shall have an existing valid affordable housing plan or housing elements

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contained in its general plan; [~~and~~]

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

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

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

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

~~D. The attorney general shall investigate any alleged violation of the Affordable Housing Act as reported by the authority~~] and

(13) provisions necessary to ensure the timely sale of an affordable housing project on which a qualifying grantee has defaulted on a contractual obligation or abandoned or otherwise failed to complete.

D. The rules adopted by the authority pursuant to Paragraph (13) of Subsection C of this section shall require a

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governmental entity to:

(1) make a determination that the property is not marketable for a price that would sufficiently recover the public funds invested in the project;

(2) ascertain that the property has a title that has been transferred to the contracting governmental entity through a foreclosure sale, a transfer of title by deed in lieu of foreclosure or any other manner;

(3) exercise reasonable efforts to ensure that all proceeds from the sale of a property pursuant to Paragraph (13) of Subsection C of this section are used solely for purposes pursuant to the Affordable Housing Act and that the qualifying grantee that held title to the property shall not benefit from the sale of the property or from the transfer of the affordable housing project; and

(4) provide the terms for:

(a) the sale of the property at fair market value; and

(b) the removal of the contractual obligation requiring long-term occupancy of the property by low- or moderate-income households."

SECTION 9. A new section of the Affordable Housing Act is enacted to read:

"[NEW MATERIAL] INVESTIGATION OF AFFORDABLE HOUSING ACT VIOLATIONS--PENALTIES--REMEDIES.--

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A. The attorney general shall investigate an alleged violation of the Affordable Housing Act reported by the authority. If the attorney general has reasonable belief that a person is in possession, custody or control of an original or copy of a document or recording, including a record, report, memorandum, paper, communication, tabulation, map, chart, photograph, mechanical transcription or other tangible document or recording that the attorney general believes to be relevant to the subject matter of an investigation of a probable violation of the Affordable Housing Act, the attorney general may, prior to the institution of a civil proceeding, execute in writing and cause to be served upon the person a civil investigative demand requiring the person to produce for inspection or copying the document or recording. The demand by the attorney general shall not be a matter of public record and shall not be published by the attorney general except by order of the court.

B. If the attorney general has reasonable belief that a person has violated a provision of the Affordable Housing Act and that instituting a proceeding against that person would be in the public interest, the attorney general may bring a civil action on behalf of the state alleging a violation of the Affordable Housing Act. The action may be brought in the district court of the county in which the person alleged to have violated that act resides or in which the

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person's principal place of business is located. The attorney general shall not be required to post bond when seeking a temporary or permanent injunction in the civil action.

C. The attorney general may, in addition to or as an alternative to pursuing a civil action, as provided in this section, pursue criminal charges against a person for an alleged violation of the Affordable Housing Act under the applicable provisions of the Criminal Code. Venue for any criminal action shall be in the judicial district where the violation occurred.

D. In a civil action brought under this section for an alleged violation of the Affordable Housing Act, if a court finds that a person willfully committed an act in violation of the Affordable Housing Act, the attorney general may seek to recover a civil penalty not exceeding the amount of five thousand dollars ($5,000) per violation, in addition to any equitable relief imposed by the court.

E. As used in this section, "person" means an individual, including a municipal or county government employee or elected official, or a corporate entity, including any organization formed under state law to carry out business or other activities."

SECTION 10. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2015.

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