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SENATE BILL 177

50TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2011

INTRODUCED BY

Gerald Ortiz y Pino

AN ACT

RELATING TO HOUSING; ENACTING THE MUNICIPAL AND COUNTY AFFORDABLE HOUSING ACT TO IMPLEMENT AFFORDABLE HOUSING PROGRAMS PERMITTED PURSUANT TO SUBSECTIONS E AND F OF SECTION 14 OF ARTICLE 9 OF THE CONSTITUTION OF NEW MEXICO IN NEW MEXICO MUNICIPALITIES AND COUNTIES; PROVIDING AUTHORITY TO IMPOSE A PROPERTY TAX TO FUND HOUSING ASSISTANCE GRANTS IN NEW MEXICO MUNICIPALITIES AND COUNTIES; DECLARING AN EMERGENCY.

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

SECTION 1. SHORT TITLE.--This act may be cited as the "Municipal and County Affordable Housing Act".

SECTION 2. PURPOSE.--The purpose of the Municipal and County Affordable Housing Act is to:

A. implement the provisions of Subsections E and F of Section 14 of Article 9 of the constitution of New Mexico

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1 regarding affordable housing programs in New Mexico
2 municipalities and counties;

3 B. work in conjunction with the provisions of the
4 Affordable Housing Act to provide the residents of the state
5 with affordable housing options; and

6 C. promote economic development by providing
7 financial support for the local development of affordable
8 housing programs.

9 SECTION 3. DEFINITIONS.--As used in the Municipal and
10 County Affordable Housing Act:

11 A. "affordable housing" means residential housing
12 that is primarily for persons or households of low or moderate
13 income;

14 B. "household" means one or more persons occupying
15 a housing unit;

16 C. "housing assistance grant" means a donation made
17 by a municipality or county of:

18 (1) a portion of the costs of acquisition,
19 development, construction, financing, operating or owning
20 affordable housing;

21 (2) the costs of infrastructure necessary to
22 support affordable housing; or

23 (3) the costs of supportive services or rental
24 assistance to indigent persons who are homeless or at high risk
25 of homelessness;

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1 D. "infrastructure" includes infrastructure
2 improvements and infrastructure purposes;

3 E. "infrastructure improvement" includes, but is
4 not limited to:

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

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

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

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

16 (5) trails and areas for pedestrian,
17 equestrian, bicycle or other nonmotor vehicle use for access,
18 ingress, egress and parking;

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

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

24 (8) electrical transmission and distribution
25 facilities;

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- 1 (9) natural gas distribution facilities;
2 (10) lighting systems;
3 (11) cable or other telecommunications lines
4 and related equipment;
5 (12) traffic control systems and devices,
6 including signals, controls, markings and signs;
7 (13) inspection, construction management and
8 related costs in connection with the furnishing of the items
9 listed in this subsection; and
10 (14) heating, air conditioning and
11 weatherization facilities, systems or services, and energy
12 efficiency improvements that are affixed to real property;
- 13 F. "infrastructure purpose" means:
- 14 (1) planning, design, engineering,
15 construction, acquisition or installation of infrastructure,
16 including the costs of applications, impact fees and other
17 fees, permits and approvals related to the construction,
18 acquisition or installation of the infrastructure;
- 19 (2) acquiring, converting, renovating or
20 improving existing facilities for infrastructure, including
21 facilities owned, leased or installed by the owner;
- 22 (3) acquiring interests in real property or
23 water rights for infrastructure, including interests of the
24 owner; and
25 (4) incurring expenses incident to and

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1 reasonably necessary to carry out the purposes specified in
2 this subsection;

3 G. "qualifying grantee" means:

4 (1) an individual who is qualified to receive
5 assistance pursuant to the Municipal and County Affordable
6 Housing Act and is approved by the municipality or county; and

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

11 (a) is organized under state, local or
12 tribal laws and that can provide proof of such organization;

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

16 (c) is approved by the municipality or
17 county; and

18 H. "residential housing" means any building,
19 structure or portion thereof that is primarily occupied, or
20 designed or intended primarily for occupancy, as a residence by
21 one or more households and any real property that is offered
22 for sale or lease for the construction or location thereon of
23 such a building, structure or portion thereof. "Residential
24 housing" includes congregate housing, manufactured homes,
25 housing that is intended to provide or that is providing

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1 transitional or temporary housing for homeless persons or those
2 at high risk of homelessness and common health care, kitchen,
3 dining, recreational and other facilities that are primarily
4 for use by residents of a residential housing project.

5 SECTION 4. ELIGIBILITY REQUIREMENTS--NONINDIVIDUAL AND
6 INDIVIDUAL QUALIFYING GRANTEEES.--

7 A. To be eligible to receive a housing assistance
8 grant, a nonindividual qualifying grantee shall:

9 (1) have a functioning accounting system that
10 is operated in accordance with generally accepted accounting
11 principles or have designated an entity that will maintain such
12 an accounting system consistent with generally accepted
13 accounting principles; and

14 (2) have among its purposes significant
15 activities related to providing housing or services to homeless
16 persons or low- or moderate-income persons or households.

17 B. To be eligible to receive a housing assistance
18 grant, an individual qualifying grantee shall meet the
19 requirements established by the municipality or county pursuant
20 to the Municipal and County Affordable Housing Act.

21 SECTION 5. REQUIREMENT OF ENACTMENT OF AN ORDINANCE.--A
22 municipality or county may provide housing assistance grants
23 pursuant to Article 9, Section 14 of the constitution of New
24 Mexico and the Municipal and County Affordable Housing Act
25 after enactment by its governing body of an ordinance

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1 authorizing housing assistance grants, stating the requirements
2 of and purposes of the grants and authorizing transfer or
3 disbursement to a qualifying grantee only after a budget is
4 submitted to and approved by the governing body. The ordinance
5 shall include the conditions for allowing housing assistance
6 grants and shall provide for use of property tax funds as
7 provided in Section 7 of the Municipal and County Affordable
8 Housing Act to fund the housing assistance grants.

9 SECTION 6. PROVISIONS TO ENSURE THE SUCCESSFUL COMPLETION
10 OF AFFORDABLE HOUSING PROJECTS--REQUIREMENT OF ENACTMENT OF AN
11 ORDINANCE FOR EACH HOUSING ASSISTANCE GRANT.--

12 A. Municipal or county housing assistance grants
13 pursuant to the Municipal and County Affordable Housing Act
14 shall be applied for and awarded to qualifying grantees
15 pursuant to the ordinance enacted by the municipality or county
16 subject to the requirements of that act.

17 B. The ordinance shall include the following:

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

23 (2) establishment of an application and award
24 timetable for housing assistance grants to permit the selection
25 of the potential qualifying grantees prior to January of the

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1 year in which the grants would be made;

2 (3) contents of the housing assistance grant
3 application, including an independent evaluation of the:

4 (a) financial and management stability
5 of the applicant;

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

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

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

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

14 (f) scope of the affordable housing
15 project;

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

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

20 (4) a requirement for long-term affordability
21 of a project so that a project cannot be sold shortly after
22 completion and taken out of the affordable housing market to
23 ensure a quick profit for the qualifying grantee;

24 (5) a requirement that a grant for a project
25 shall impose a contractual obligation on the qualifying grantee

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1 that the housing units in the project, pursuant to the
2 Municipal and County Affordable Housing Act, be occupied by
3 low- or moderate-income households;

4 (6) provisions for adequate security against
5 the loss of public funds or property in the event that a
6 qualifying grantee abandons or otherwise fails to complete a
7 project;

8 (7) a requirement for review and approval of a
9 housing grant project budget by the municipality or county
10 before any expenditure of grant funds;

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

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

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

23 (11) provisions providing preference for
24 awarding housing assistance grants to individual grantees whose
25 primary place of residence is New Mexico or nonindividual

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1 qualifying grantees, the majority of whose employees are
2 located in New Mexico; and

3 (12) a requirement that the municipality or
4 county enter into a contract with a qualifying grantee
5 consistent with the Municipal and County Affordable Housing
6 Act, which contract shall include remedies and default
7 provisions in the event of the unsatisfactory performance by
8 the qualifying grantee.

9 C. After review of the application, if the
10 municipality or county determines the applicant is a qualifying
11 grantee and there is sufficient funding to provide the
12 qualifying grantee with a housing assistance grant, the
13 municipality or county shall enact an ordinance setting forth
14 the amount and terms and conditions of the housing assistance
15 grant.

16 SECTION 7. TAX LEVIES AUTHORIZATION--PROCEDURES--
17 LIMITATIONS.--

18 A. If a municipality or county has adopted an
19 ordinance providing for housing assistance grants under the
20 Municipal and County Affordable Housing Act, the governing body
21 of the municipality or county may adopt a resolution to submit
22 to the qualified electors of the municipality or county the
23 question of whether a property tax at a rate not to exceed two
24 dollars (\$2.00) per one thousand dollars (\$1,000) of the net
25 taxable value of property allocated to the municipality or

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1 county under the Property Tax Code should be imposed for the
2 purpose of providing the necessary funding for the grants.

3 B. The resolution shall:

4 (1) specify the rate of the proposed tax,
5 which shall not exceed two dollars (\$2.00) per one thousand
6 dollars (\$1,000) of the taxable value of property;

7 (2) specify the date an election will be held
8 to submit the question of imposition of the tax to the
9 qualified electors of the municipality or county;

10 (3) limit the imposition of the proposed tax
11 to no more than eight years; and

12 (4) pledge the revenue from the tax solely for
13 the payment of housing assistance grants provided for in the
14 Municipal and County Affordable Housing Act.

15 C. The resolution authorized in Subsection A of
16 this section shall be adopted no later than July 15 in the year
17 prior to the year in which the tax is proposed to be imposed.

18 D. An election on the question of imposing the tax
19 authorized pursuant to this section may be held in conjunction
20 with a general election or may be conducted as or held in
21 conjunction with a special election, but the election shall be
22 held by the date necessary to assure that the results of the
23 election on the question of imposing the tax may be certified
24 no later than July 1 of the first property tax year in which
25 the tax is proposed to be imposed. Conduct of the election

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1 shall be as provided by the Election Code.

2 E. If, as a result of an election held on the
3 question of imposing a property tax to fund the housing
4 assistance grants provided in the Municipal and County
5 Affordable Housing Act, a majority of the qualified electors
6 voting on the question votes in favor of the imposition of the
7 tax, the tax rate shall be certified by the department of
8 finance and administration for any year in which the tax is
9 imposed. The rate certified shall be the rate specified in the
10 authorizing resolution or any lower rate required by operation
11 of the rate limitation provisions of Section 7-37-7.1 NMSA
12 1978. The tax shall be imposed at the rate certified unless
13 the governing body of the municipality or county determines
14 that the tax imposition be decreased pursuant to Subsection F
15 of this section. The revenue produced by the tax shall be
16 placed in a separate fund in the municipal or county treasury
17 and is pledged solely for the payment of the housing assistance
18 grants provided in the Municipal and County Affordable Housing
19 Act.

20 F. A tax imposed pursuant to this section may be
21 decreased for any year if the governing body of the
22 municipality or county, in its judgment, determines imposition
23 of the total rate is not necessary for such year.

24 **SECTION 8. CONSTRUCTION.**--Nothing in the Municipal and
25 County Affordable Housing Act shall be construed to limit a

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1 municipality or county from pursuing housing assistance
2 projects or funding provided in the Affordable Housing Act or
3 from combining the funds and programs authorized by the
4 Municipal and County Affordable Housing Act with other local,
5 private or federal funds either through direct participation
6 with a federal agency pursuant to federal law or through
7 indirect participation through programs of the state.

8 SECTION 9. EMERGENCY.--It is necessary for the public
9 peace, health and safety that this act take effect immediately.