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SENATE BILL 61

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

INTRODUCED BY

Sander Rue

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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1 Chapter 104, Section 2) is amended to read:

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

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

8 "6-27-3. DEFINITIONS.--As used in the Affordable Housing
9 Act:

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

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

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

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

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

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

25 (1) land upon which affordable housing will be

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1 constructed;

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

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

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

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

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

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

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

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

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

25 (5) trails and areas for pedestrian,

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

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

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

8 (8) electrical transmission and distribution
9 facilities;

10 (9) natural gas distribution facilities;

11 (10) lighting systems;

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

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

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

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

22 I. "infrastructure purpose" means:

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

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

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

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

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

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

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

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

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

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

25 (a) is organized under state, local or

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1 tribal laws and can provide proof of such organization;

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

5 (c) is approved by the governmental
6 entity; and

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

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

20 "6-27-4. ELIGIBILITY REQUIREMENTS--NON-INDIVIDUAL AND
21 INDIVIDUAL QUALIFYING GRANTEES.--

22 A. To be eligible to receive lands, buildings and
23 infrastructure pursuant to ~~[Section 14 of]~~ Article 9, Section
24 14 of the constitution of New Mexico, a nonindividual
25 qualifying grantee shall:

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

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

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

14 B. To be eligible to receive lands, buildings and
15 infrastructure pursuant to [~~Section 14 of~~] Article 9, Section
16 14 of the constitution of New Mexico, an individual qualifying
17 grantee shall meet the requirements established by the
18 authority pursuant to the Affordable Housing Act."

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

21 "6-27-5. STATE, COUNTY, MUNICIPALITIES, INSTRUMENTALITIES
22 OF THE STATE AND THE AUTHORITY--AUTHORIZATION FOR AFFORDABLE
23 HOUSING.--The state, including any agency or instrumentality of
24 the state, or a county, a municipality or the authority may:

25 A. donate, provide or pay all, or a portion, of the
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1 costs of land for the construction on the land of affordable
2 housing;

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

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

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

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

14 "6-27-6. REQUIREMENT FOR SPECIFIC LAW AUTHORIZING A
15 HOUSING ASSISTANCE GRANT FROM STATE.--

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

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

25 C. Rules adopted by the authority may include

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

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

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

9 "6-27-7. REQUIREMENT FOR ENACTMENT OF AN ORDINANCE BY A
10 COUNTY OR A MUNICIPALITY AND REVIEW BY THE AUTHORITY
11 AUTHORIZING HOUSING ASSISTANCE GRANTS [~~REQUIREMENT FOR ADOPTION~~
12 ~~OF A RESOLUTION BY THE GOVERNING BODY OF THE AUTHORITY~~
13 ~~AUTHORIZING HOUSING ASSISTANCE GRANTS]~~.--

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

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1 shall submit a proposed ordinance to the authority, which shall
2 review the proposed ordinance to ensure compliance with rules
3 promulgated by the authority pursuant to Section 6-27-8 NMSA
4 1978. Within fifteen days after enactment of the ordinance,
5 the county or municipality shall submit a certified true copy
6 of the ordinance to the authority. The governing body of the
7 county or municipality shall authorize the transfer or
8 disbursement of housing assistance grant funds only after the
9 qualifying grantee has submitted a budget to the governing body
10 and the governing body has approved the budget.

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

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

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

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

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

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

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

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

25 SECTION 8. Section 6-27-8 NMSA 1978 (being Laws 2004,
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1 Chapter 104, Section 8, as amended) is amended to read:

2 "6-27-8. PROVISIONS TO ENSURE SUCCESSFUL COMPLETION OF
3 AFFORDABLE HOUSING PROJECTS--~~[INVESTIGATION]~~ SALE AFTER
4 FORECLOSURE.--

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

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

17 C. The authority shall adopt rules covering:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

12 (8) a requirement that, unless the period is
13 extended for good cause shown, the authority shall act on an
14 application within forty-five days of the date of receipt of an
15 application that the authority deems to be complete and, if not
16 acted upon, the application shall be 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) a requirement that a county or
24 municipality that makes a housing assistance grant shall have
25 an existing valid affordable housing plan or housing elements

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

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

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

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

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

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

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

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

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1 governmental entity to:

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

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

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

16 (4) provide the terms for:

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

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

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

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

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

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

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

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

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

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

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