HOUSE BILL 231

51ST LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2014

INTRODUCED BY

Ernest H. Chavez

ENDORSED BY THE MORTGAGE FINANCE AUTHORITY ACT

OVERSIGHT COMMITTEE

AN ACT

RELATING TO HOUSING; TRANSFERRING THE OVERSIGHT OF THE
AFFORDABLE HOUSING ACT DUTIES AND RESPONSIBILITIES FROM THE NEW
MEXICO MORTGAGE FINANCE AUTHORITY TO THE DEPARTMENT OF FINANCE
AND ADMINISTRATION.

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

SECTION 1. 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;

[Branches:]
[Branches:]
[B. "authority" means the New Mexico mortgage
finance authority;]

C. "building" means a structure capable of

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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;

C. "department" means the department of finance and administration;

D. "governmental entity" means [a] the state, a county or 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 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, 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
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. "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
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. "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 2. 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 non-individual qualifying grantee shall:

(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] department or its most recent independent financial audit, have a certified letter from the [authority] department 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] department pursuant to the Affordable Housing Act."

SECTION 3. Section 6-27-5 NMSA 1978 (being Laws 2004, Chapter 104, Section 5, as amended) is amended to read:

"6-27-5. STATE, COUNTY AND MUNICIPALITIES [AND THE AUTHORITY]--AUTHORIZATION FOR AFFORDABLE HOUSING.--The state, a county or a municipality [or the authority] may:

A. donate, provide or pay all, or a portion, of the 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 4. 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 THE STATE.--

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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] department.

C. Rules adopted by the [authority] department may include 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 5. Section 6-27-7 NMSA 1978 (being Laws 2004, Chapter 104, Section 7, as amended) is amended to read:


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 applicable programs [of the authority]. No less than forty-five days prior to enactment, the county or municipality shall submit a proposed ordinance to the [authority] department, which shall review the proposed ordinance to ensure compliance with rules promulgated by the [authority] department 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] department.

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

D. The [authority] department 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] department. The resolution shall comply with rules promulgated by the [authority] department 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."

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

"6-27-8. PROVISIONS TO ENSURE SUCCESSFUL COMPLETION OF AFFORDABLE HOUSING PROJECTS--INVESTIGATION.--

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

B. The [authority] department 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;

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

(6) provisions for adequate security against the loss of public funds or property in the event that a
qualifying grantee 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] department shall act on an application within forty-five days of the date of receipt of an application that the [authority] department 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 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] department 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] department."

SECTION 7. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2014.

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