

1 AN ACT

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

10
11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

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

14 "6-27-1. SHORT TITLE.--Chapter 6, Article 27 NMSA 1978
15 may be cited as the "Affordable Housing Act"."

16 SECTION 2. Section 6-27-2 NMSA 1978 (being Laws 2004,
17 Chapter 104, Section 2) is amended to read:

18 "6-27-2. PURPOSE.--The purpose of the Affordable
19 Housing Act is to implement the provisions of Subsections E
20 and F of Article 9, Section 14 of the constitution of
21 New Mexico."

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

24 "6-27-3. DEFINITIONS.--As used in the Affordable
25 Housing Act:

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

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

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

11 D. "governmental entity" means the state,
12 including any agency or instrumentality of the state, a
13 county, a municipality or the authority;

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

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

18 (1) land upon which affordable housing will
19 be constructed;

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

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

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

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

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

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

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

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

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

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

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

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

1 (8) electrical transmission and distribution
2 facilities;

3 (9) natural gas distribution facilities;

4 (10) lighting systems;

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

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

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

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

15 I. "infrastructure purpose" means:

16 (1) planning, design, engineering,
17 construction, acquisition or installation of infrastructure,
18 including the costs of applications, impact fees and other
19 fees, permits and approvals related to the construction,
20 acquisition or installation of the infrastructure;

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

24 (3) acquiring interests in real property or
25 water rights for infrastructure, including interests of the

1 owner; and

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

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

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

11 L. "qualifying grantee" means:

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

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

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

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

24 (c) is approved by the governmental
25 entity; and

1 M. "residential housing" means any building,
2 structure or portion thereof that is primarily occupied, or
3 designed or intended primarily for occupancy, as a residence
4 by one or more households and any real property that is
5 offered for sale or lease for the construction or location
6 thereon of such a building, structure or portion thereof.

7 "Residential housing" includes congregate housing,
8 manufactured homes, housing intended to provide or providing
9 transitional or temporary housing for homeless persons and
10 common health care, kitchen, dining, recreational and other
11 facilities primarily for use by residents of a residential
12 housing project."

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

15 "6-27-4. ELIGIBILITY REQUIREMENTS--NON-INDIVIDUAL AND
16 INDIVIDUAL QUALIFYING GRANTEEES.--

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

21 (1) have a functioning accounting system
22 that is operated in accordance with generally accepted
23 accounting principles or shall designate an entity that will
24 maintain such an accounting system consistent with generally
25 accepted accounting principles;

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

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

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

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

16 "6-27-5. STATE, COUNTY, MUNICIPALITIES,
17 INSTRUMENTALITIES OF THE STATE AND THE AUTHORITY--
18 AUTHORIZATION FOR AFFORDABLE HOUSING.--The state, including
19 any agency or instrumentality of the state, or a county, a
20 municipality or the authority may:

21 A. donate, provide or pay all, or a portion, of
22 the costs of land for the construction on the land of
23 affordable housing;

24 B. donate, provide or pay all or a portion of the
25 costs of conversion or renovation of existing buildings into

1 affordable housing;

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

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

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

10 "6-27-6. REQUIREMENT FOR SPECIFIC LAW AUTHORIZING A
11 HOUSING ASSISTANCE GRANT FROM STATE.--

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

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

22 C. Rules adopted by the authority may include
23 provisions for matching or using local, private or federal
24 funds in connection with a specific grant, but matching or
25 using federal funds shall not be prohibited.

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

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

6 "6-27-7. REQUIREMENT FOR ENACTMENT OF AN ORDINANCE BY A
7 COUNTY OR A MUNICIPALITY AND REVIEW BY THE AUTHORITY
8 AUTHORIZING HOUSING ASSISTANCE GRANTS.--

9 A. A county or municipality may provide housing
10 assistance grants pursuant to Article 9, Section 14 of the
11 constitution of New Mexico after enactment by its governing
12 body of an ordinance authorizing grants stating the
13 requirements of and purposes of the grants. The ordinance
14 may provide for matching or using local, private or federal
15 funds either through direct participation with a federal
16 agency pursuant to federal law or through indirect
17 participation through programs of the authority. No less
18 than forty-five days prior to enactment, the county or
19 municipality shall submit a proposed ordinance to the
20 authority, which shall review the proposed ordinance to
21 ensure compliance with rules promulgated by the authority
22 pursuant to Section 6-27-8 NMSA 1978. Within fifteen days
23 after enactment of the ordinance, the county or municipality
24 shall submit a certified true copy of the ordinance to the
25 authority. The governing body of the county or municipality

1 shall authorize the transfer or disbursement of housing
2 assistance grant funds only after the qualifying grantee has
3 submitted a budget to the governing body and the governing
4 body has approved the budget.

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

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

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

20 (2) the governing board of the public
21 post-secondary educational institution and the governing body
22 of the county or municipality enter into a contract that
23 provides the public post-secondary educational institution
24 with affordable housing units.

25 D. Agencies or instrumentalities of the state may

1 provide housing assistance grants pursuant to Article 9,
2 Section 14 of the constitution of New Mexico in accordance
3 with rules promulgated by the authority.

4 E. The authority may provide housing assistance
5 grants pursuant to Article 9, Section 14 of the constitution
6 of New Mexico in accordance with rules promulgated by the
7 authority."

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

10 "6-27-8. PROVISIONS TO ENSURE SUCCESSFUL COMPLETION OF
11 AFFORDABLE HOUSING PROJECTS--SALE AFTER FORECLOSURE.--

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

17 B. The authority shall adopt rules in accordance
18 with the Administrative Procedures Act to carry out the
19 purposes of the Affordable Housing Act. Concurrence by the
20 New Mexico municipal league is required for rules applicable
21 to municipalities. Concurrence by the New Mexico association
22 of counties is required for rules applicable to counties.

23 C. The authority shall adopt rules covering:

24 (1) procedures to ensure that qualifying
25 grantees meet the requirements of the Affordable Housing Act

1 and rules promulgated pursuant to that act both at the time
2 of the award and through the term of the grant;

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

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

9 (a) financial and management stability
10 of the applicant;

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

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

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

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

19 (f) scope of the affordable housing
20 project;

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

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

25 (4) a requirement for long-term

1 affordability of a state, county or municipal project so that
2 a project cannot be sold shortly after completion and taken
3 out of the affordable housing market;

4 (5) a requirement that a grant for a state
5 or local project must impose a contractual obligation on the
6 qualifying grantee that the housing units in a state or local
7 project developed pursuant to the Affordable Housing Act be
8 occupied by low- or moderate-income households;

9 (6) provisions for adequate security against
10 the loss of public funds or property in the event that a
11 qualifying grantee defaults on a contractual obligation for
12 the project or abandons or otherwise fails to complete a
13 project;

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

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

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

25 (10) provisions defining "low- and moderate-

1 income" and setting out requirements for verification of
2 income levels;

3 (11) a requirement that a county or
4 municipality that makes a housing assistance grant shall have
5 an existing valid affordable housing plan or housing elements
6 contained in its general plan;

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

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

16 D. The rules adopted by the authority pursuant to
17 Paragraph (13) of Subsection C of this section shall require
18 a governmental entity to:

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

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

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

8 (4) provide the terms for:

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

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

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

16 "INVESTIGATION OF AFFORDABLE HOUSING ACT
17 VIOLATIONS--PENALTIES--REMEDIES.--

18 A. The attorney general shall investigate an
19 alleged violation of the Affordable Housing Act reported by
20 the authority. If the attorney general has reasonable belief
21 that a person is in possession, custody or control of an
22 original or copy of a document or recording, including a
23 record, report, memorandum, paper, communication, tabulation,
24 map, chart, photograph, mechanical transcription or other
25 tangible document or recording that the attorney general

1 believes to be relevant to the subject matter of an
2 investigation of a probable violation of the Affordable
3 Housing Act, the attorney general may, prior to the
4 institution of a civil proceeding, execute in writing and
5 cause to be served upon the person a civil investigative
6 demand requiring the person to produce for inspection or
7 copying the document or recording.

8 B. If the attorney general has reasonable belief
9 that a person has violated a provision of the Affordable
10 Housing Act and that instituting a proceeding against that
11 person would be in the public interest, the attorney general
12 may bring a civil action on behalf of the state alleging a
13 violation of the Affordable Housing Act. The action may be
14 brought in the district court of the county in which the
15 person alleged to have violated that act resides or in which
16 the person's principal place of business is located. The
17 attorney general shall not be required to post bond when
18 seeking a temporary or permanent injunction in the civil
19 action.

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

1 the violation occurred.

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

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

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

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