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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.--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, 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 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

1 income;

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

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

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

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

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

16 (1) land upon which affordable housing will
17 be constructed;

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

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

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

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

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

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

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

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

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

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

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

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

22 (8) electrical transmission and distribution
23 facilities;

24 (9) natural gas distribution facilities;

25 (10) lighting systems;

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

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

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

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

9 I. "infrastructure purpose" means:

10 (1) planning, design, engineering,
11 construction, acquisition or installation of infrastructure,
12 including the costs of applications, impact fees and other
13 fees, permits and approvals related to the construction,
14 acquisition or installation of the infrastructure;

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

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

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

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

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

3 L. "qualifying grantee" means:

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

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

11 (a) is organized under state, local or
12 tribal laws and 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
15 member, founder, contributor or individual; and

16 (c) is approved by the governmental
17 entity; and

18 M. "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
21 by one or more households and any real property that is
22 offered for sale or lease for the construction or location
23 thereon of such a building, structure or portion thereof.

24 "Residential housing" includes congregate housing,
25 manufactured homes, housing intended to provide or providing
transitional or temporary housing for homeless persons and
common health care, kitchen, dining, recreational and other

1 facilities primarily for use by residents of a residential
2 housing project."

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

5 "6-27-4. ELIGIBILITY REQUIREMENTS--NON-INDIVIDUAL AND
6 INDIVIDUAL QUALIFYING GRANTEEES.--

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

11 (1) have a functioning accounting system
12 that is operated in accordance with generally accepted
13 accounting principles or shall designate an entity that will
14 maintain such an accounting system consistent with generally
15 accepted accounting principles;

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

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

24 B. To be eligible to receive lands, buildings and
25 infrastructure pursuant to Article 9, Section 14 of the
constitution of New Mexico, an individual qualifying grantee
shall meet the requirements established by the authority

1 pursuant to the Affordable Housing Act."

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

4 "6-27-5. STATE, COUNTY, MUNICIPALITIES,
5 INSTRUMENTALITIES OF THE STATE AND THE AUTHORITY--
6 AUTHORIZATION FOR AFFORDABLE HOUSING.--The state, including
7 any agency or instrumentality of the state, or a county, a
8 municipality or the authority may:

9 A. donate, provide or pay all, or a portion, of
10 the costs of land for the construction on the land of
11 affordable housing;

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

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

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

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

23 "6-27-6. REQUIREMENT FOR SPECIFIC LAW AUTHORIZING A
24 HOUSING ASSISTANCE GRANT FROM STATE.--

25 A. The specific grant of authority created in the
Affordable Housing Act is the prior approval required
pursuant to Article 9, Section 14 of the constitution of

1 New Mexico to allow the state to provide affordable housing
2 assistance.

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

8 C. Rules adopted by the authority may include
9 provisions for matching or using local, private or federal
10 funds in connection with a specific grant, but matching or
11 using federal funds shall not be prohibited.

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

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

17 "6-27-7. REQUIREMENT FOR ENACTMENT OF AN ORDINANCE BY A
18 COUNTY OR A MUNICIPALITY AND REVIEW BY THE AUTHORITY
19 AUTHORIZING HOUSING ASSISTANCE GRANTS.--

20 A. A county or municipality may provide housing
21 assistance grants pursuant to Article 9, Section 14 of the
22 constitution of New Mexico after enactment by its governing
23 body of an ordinance authorizing grants stating the
24 requirements of and purposes of the grants. The ordinance
25 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

1 participation through programs of the authority. No less
2 than forty-five days prior to enactment, the county or
3 municipality shall submit a proposed ordinance to the
4 authority, which shall review the proposed ordinance to
5 ensure compliance with rules promulgated by the authority
6 pursuant to Section 6-27-8 NMSA 1978. Within fifteen days
7 after enactment of the ordinance, the county or municipality
8 shall submit a certified true copy of the ordinance to the
9 authority. The governing body of the county or municipality
10 shall authorize the transfer or disbursement of housing
11 assistance grant funds only after the qualifying grantee has
12 submitted a budget to the governing body and the governing
13 body has approved the budget.

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

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

(1) the property transferred shall be
granted by the county or municipality as part or all of an

1 affordable housing grant; and

2 (2) the governing board of the public
3 post-secondary educational institution and the governing body
4 of the county or municipality enter into a contract that
5 provides the public post-secondary educational institution
6 with affordable housing units.

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

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

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

17 "6-27-8. PROVISIONS TO ENSURE SUCCESSFUL COMPLETION OF
18 AFFORDABLE HOUSING PROJECTS--SALE AFTER FORECLOSURE.--

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

24 B. The authority shall adopt rules in accordance
25 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

1 to municipalities. Concurrence by the New Mexico association
2 of counties is required for rules applicable to counties.

3 C. The authority shall adopt rules covering:

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

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

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

14 (a) financial and management stability
15 of the applicant;

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

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

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

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

24 (f) scope of the affordable housing
25 project;

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

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

3 (4) a requirement for long-term
4 affordability of a state, county or municipal project so that
5 a project cannot be sold shortly after completion and taken
6 out of the affordable housing market;

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

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

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

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

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

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

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

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

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

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

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

23 (2) ascertain that the property has a title
24 that has been transferred to the contracting governmental
25 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

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

7 (4) provide the terms for:

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

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

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

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

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

1 institution of a civil proceeding, execute in writing and
2 cause to be served upon the person a civil investigative
3 demand requiring the person to produce for inspection or
4 copying the document or recording.

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

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

24 D. In a civil action brought under this section
25 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

1 may seek to recover a civil penalty not exceeding the amount
2 of five thousand dollars (\$5,000) per violation, in addition
3 to any equitable relief imposed by the court.

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

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