The Legislature
of the
State of New Mexico

52nd Legislature, 1st Session

LAWS 2015

CHAPTER 69

SENATE BILL 61, as amended

Introduced by

SENATOR SANDER RUE

ENDORSED BY THE MORTGAGE FINANCE AUTHORITY ACT OVERSIGHT COMMITTEE
CHAPTER 609

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 income;

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

C. "building" means a structure capable of 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;

D. "governmental entity" means the state, including any agency or instrumentality of the state, a county, 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. "public post-secondary educational institution"
means a state university or a public community college;

L. "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
N. "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 4. 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 Article 9, Section 14 of the constitution of New Mexico, a nonindividual qualifying grantee shall:

(1) have a functioning accounting system that is operated in accordance with generally accepted accounting principles or 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 or its most recent independent financial audit, have a certified letter from the authority 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 Article 9, Section 14 of the constitution of New Mexico, an individual qualifying grantee shall meet the requirements established by the authority pursuant to the Affordable Housing Act."

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

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

   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
   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.

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

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

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. 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 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, which shall review the proposed ordinance to ensure compliance with rules promulgated by the authority 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. The governing body of the county or municipality
shall authorize the transfer or disbursement of housing
assistance grant funds only after the qualifying grantee has
submitted a budget to the governing body and the governing
body has approved the budget.

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

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

SECTION 8. 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--SALE AFTER FORECLOSURE.--

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

B. The authority shall adopt rules in accordance 
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 
to municipalities. Concurrence by the New Mexico association 
of counties is required for rules applicable to counties.

C. The authority 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;

(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 developed 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 defaults on a contractual obligation for the project or 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 shall act on an application within forty-five days of the date of receipt of an application that the authority 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;

(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; and

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

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

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

(2) ascertain that the property has a title that has been transferred to the contracting governmental 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 that all proceeds from the sale of a property pursuant to Paragraph (13) of Subsection C of this section are used solely for purposes pursuant to the Affordable Housing Act and that the qualifying grantee that held title to the property shall not benefit from the sale of the property or from the transfer of the affordable housing project; and

(4) provide the terms for:

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

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

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

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

A. The attorney general shall investigate an alleged violation of the Affordable Housing Act reported by the authority. If the attorney general has reasonable belief that a person is in possession, custody or control of an original or copy of a document or recording, including a record, report, memorandum, paper, communication, tabulation, map, chart, photograph, mechanical transcription or other tangible document or recording that the attorney general
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 institution of a civil proceeding, execute in writing and cause to be served upon the person a civil investigative demand requiring the person to produce for inspection or copying the document or recording.

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

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

E. In a civil action brought under this section 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 may seek to recover a civil penalty not exceeding the amount of five thousand dollars ($5,000) per violation, in addition to any equitable relief imposed by the court.

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

SECTION 10. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2015.
John A. Sanchez, President
Senate

Lenore M. Naranjo, Chief Clerk
Senate

Don L. Tripp, Speaker
House of Representatives

Denise Ramonas, Chief Clerk
House of Representatives

Approved by me this 7th day of April, 2015

Susana Martinez
Governor Susana Martinez
State of New Mexico