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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;

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

~~G.]~~ B. "building" means a structure capable of

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1 being renovated or converted into affordable housing or a  
2 structure that is to be demolished and is located on land that  
3 is donated and upon which affordable housing will be  
4 constructed;

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

7 D. "governmental entity" means [a] the state, a  
8 county or a municipality [~~or the authority~~];

9 E. "household" means one or more persons occupying  
10 a housing unit;

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

13 (1) land upon which affordable housing will be  
14 constructed;

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

18 (3) the costs of acquisition, development,  
19 construction, financing and operating or owning affordable  
20 housing; or

21 (4) the costs of financing or infrastructure  
22 necessary to support affordable housing;

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

25 H. "infrastructure improvement" includes, but is

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1 not limited to:

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

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

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

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

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

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

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

21 (8) electrical transmission and distribution  
22 facilities;

23 (9) natural gas distribution facilities;

24 (10) lighting systems;

25 (11) cable or other telecommunications lines

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1 and related equipment;

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

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

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

10 I. "infrastructure purpose" means:

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

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

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

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

25 J. "municipality" means an incorporated city, town

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1 or village, whether incorporated under general act, special act  
2 or special charter, incorporated counties and H class counties;

3 K. "qualifying grantee" means:

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

7 (2) a governmental housing agency, regional  
8 housing authority, tribal housing agency, corporation, limited  
9 liability company, partnership, joint venture, syndicate,  
10 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 member,  
15 founder, contributor or individual; and

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

18 L. "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 by  
21 one or more households and any real property that is offered  
22 for sale or lease for the construction or location thereon of  
23 such a building, structure or portion thereof. "Residential  
24 housing" includes congregate housing, manufactured homes,  
25 housing intended to provide or providing transitional or

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1 temporary housing for homeless persons and common health care,  
2 kitchen, dining, recreational and other facilities primarily  
3 for use by residents of a residential housing project."

4 SECTION 2. Section 6-27-4 NMSA 1978 (being Laws 2004,  
5 Chapter 104, Section 4) is amended to read:

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

8 A. To be eligible to receive lands, buildings and  
9 infrastructure pursuant to [~~Section 14 of~~] Article 9, Section  
10 14 of the constitution of New Mexico, a non-individual  
11 qualifying grantee shall:

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

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

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

25 B. To be eligible to receive lands, buildings and

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1 infrastructure pursuant to [~~Section 14 of~~] Article 9, Section  
2 14 of the constitution of New Mexico, an individual qualifying  
3 grantee shall meet the requirements established by the  
4 [~~authority~~] department pursuant to the Affordable Housing Act."

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

7 "6-27-5. STATE, COUNTY AND MUNICIPALITIES [~~AND THE~~  
8 ~~AUTHORITY~~]-AUTHORIZATION FOR AFFORDABLE HOUSING.--The state, a  
9 county or a municipality [~~or the authority~~] may:

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

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

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

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

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

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

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

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

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

14           ~~[D. The authority shall seek comment from the~~  
15 ~~Mortgage Finance Authority Act oversight committee prior to its~~  
16 ~~adoption of rules pursuant to this section.]"~~

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

19           "6-27-7. REQUIREMENT FOR ENACTMENT OF AN ORDINANCE BY A  
20 COUNTY OR A MUNICIPALITY AND REVIEW BY THE [~~AUTHORITY~~]  
21 DEPARTMENT AUTHORIZING HOUSING ASSISTANCE GRANTS--REQUIREMENT  
22 FOR ADOPTION OF A RESOLUTION BY THE GOVERNING BODY [~~OF THE~~  
23 ~~AUTHORITY~~] AUTHORIZING HOUSING ASSISTANCE GRANTS.--

24           A. A county or municipality may provide housing  
25 assistance grants pursuant to Article 9, Section 14 of the

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1 constitution of New Mexico after enactment by its governing  
2 body of an ordinance authorizing grants, stating the  
3 requirements of and purposes of the grants and authorizing  
4 transfer or disbursement to a qualifying grantee only after a  
5 budget is submitted to and approved by the governing body. The  
6 ordinance may provide for matching or using local, private or  
7 federal funds either through direct participation with a  
8 federal agency pursuant to federal law or through indirect  
9 participation through applicable programs [~~of the authority~~].  
10 No less than forty-five days prior to enactment, the county or  
11 municipality shall submit a proposed ordinance to the  
12 [~~authority~~] department, which shall review the proposed  
13 ordinance to ensure compliance with rules promulgated by the  
14 [~~authority~~] department pursuant to Section 6-27-8 NMSA 1978.  
15 Within fifteen days after enactment of the ordinance, the  
16 county or municipality shall submit a certified true copy of  
17 the ordinance to the [~~authority~~] department.

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

25 C. The governing board of a public post-secondary

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1 educational institution may transfer land or buildings owned by  
2 that institution to a county or municipality; provided that:

3 (1) the property transferred shall be granted  
4 by the county or municipality as part or all of an affordable  
5 housing grant; and

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

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

24 E. As used in this section, "public post-secondary  
25 educational institution" means a state university or a public

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1 community college."

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

4 "6-27-8. PROVISIONS TO ENSURE SUCCESSFUL COMPLETION OF  
5 AFFORDABLE HOUSING PROJECTS--INVESTIGATION.--

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

11 B. The ~~[authority]~~ department shall adopt rules  
12 covering:

13 (1) procedures to ensure that qualifying  
14 grantees meet the requirements of the Affordable Housing Act  
15 and rules promulgated pursuant to that act both at the time of  
16 the award and through the term of the grant;

17 (2) establishment of an application and award  
18 timetable for housing assistance grants to permit the selection  
19 of the potential qualifying grantees prior to January of the  
20 year in which the grants would be made;

21 (3) contents of the application, including an  
22 independent evaluation of the:

23 (a) financial and management stability  
24 of the applicant;

25 (b) demonstrated commitment of the

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1 applicant to the community;

2 (c) cost-benefit analysis of the project  
3 proposed by the applicant;

4 (d) benefits to the community of a  
5 proposed project;

6 (e) type or amount of assistance to be  
7 provided;

8 (f) scope of the affordable housing  
9 project;

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

12 (h) performance schedule for the  
13 qualifying grantee with performance criteria;

14 (4) a requirement for long-term affordability  
15 of a state, county or municipal project so that a project  
16 cannot be sold shortly after completion and taken out of the  
17 affordable housing market to ensure a quick profit for the  
18 qualifying grantee;

19 (5) a requirement that a grant for a state or  
20 local project must impose a contractual obligation on the  
21 qualifying grantee that the housing units in a state or local  
22 project pursuant to the Affordable Housing Act be occupied by  
23 low- or moderate-income households;

24 (6) provisions for adequate security against  
25 the loss of public funds or property in the event that a

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1 qualifying grantee abandons or otherwise fails to complete a  
2 project;

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

6 (8) a requirement that, unless the period is  
7 extended for good cause shown, the ~~[authority]~~ department shall  
8 act on an application within forty-five days of the date of  
9 receipt of an application that the ~~[authority]~~ department deems  
10 to be complete and, if not acted upon, the application shall be  
11 deemed approved;

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

15 (10) provisions defining "low- and moderate-  
16 income" and setting out requirements for verification of income  
17 levels;

18 (11) a requirement that a county or  
19 municipality that makes a housing assistance grant shall have  
20 an existing valid affordable housing plan or housing elements  
21 contained in its general plan; and

22 (12) a requirement that the governmental  
23 entity enter into a contract with a qualifying grantee  
24 consistent with the Affordable Housing Act, which contract  
25 shall include remedies and default provisions in the event of

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1 the unsatisfactory performance by the qualifying grantee.

2 C. In addition to the rulemaking mandated in  
3 Subsection B of this section, the [~~authority~~] department may  
4 adopt additional rules to carry out the purposes of the  
5 Affordable Housing Act. Rulemaking procedures pursuant to the  
6 Affordable Housing Act shall:

7 (1) provide a public hearing in accordance  
8 with the state Administrative Procedures Act; and

9 (2) require concurrence in a rule having  
10 application to local government by both the New Mexico  
11 municipal league and the New Mexico association of counties.

12 D. The attorney general shall investigate any  
13 alleged violation of the Affordable Housing Act as reported  
14 by the [~~authority~~] department."

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