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AN ACT

RELATING TO LOCAL GOVERNMENT; ENACTING THE IMPROVEMENT
SPECIAL ASSESSMENT ACT; AUTHORIZING COUNTIES TO IMPOSE,
ADMINISTER AND DISBURSE SPECIAL ASSESSMENTS TO ENCOURAGE THE
DEVELOPMENT OF CERTAIN PROPERTY IMPROVEMENTS; REPEALING THE
SOLAR ENERGY IMPROVEMENT SPECIAL ASSESSMENT ACT.

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

SECTION 1. SHORT TITLE.--This act may be cited as the
"Improvement Special Assessment Act".

SECTION 2. DEFINITIONS.--As used in the Improvement
Special Assessment Act:

A. "capital provider" means a private entity or
its designee, successor or assigns that finances or
refinances an eligible improvement pursuant to the
Improvement Special Assessment Act;

B. "county" means a county, including an H class
county;

C. "county ordinance" means an ordinance adopted
by a county pursuant to the Improvement Special Assessment
Act to establish a program within a designated region;

D. "department" means the economic development
department;

E. "eligible improvement" means a permanently
affixed energy efficiency improvement, renewable energy

1 improvement, water conservation improvement or resiliency
2 improvement installed on eligible property as part of the
3 construction or renovation of the property;

4 F. "eligible property" means any privately owned
5 commercial, industrial, agricultural or multifamily
6 residential real property with five or more dwelling units,
7 including real property owned by an entity formally
8 recognized as tax exempt pursuant to Internal Revenue Code of
9 1986, as amended;

10 G. "energy efficiency improvement" means measures,
11 equipment or devices that result in a decrease in consumption
12 of or demand for electricity or natural gas;

13 H. "local government" means a municipality, county
14 or other general function governmental unit established by
15 state law;

16 I. "municipal" or "municipality" means any
17 incorporated city, town or village, whether incorporated
18 under general act, special act or special charter,
19 incorporated counties and H class counties;

20 J. "program" means a special assessment program
21 that utilizes and conforms to the program guidebook and
22 uniform special assessment documents established by the
23 department pursuant to the Improvement Special Assessment
24 Act;

25 K. "program administrator" means a person

1 designated by a county to administer a program; "program
2 administrator" may be the department, the county or a third
3 party; provided that the administration procedures used
4 conform to the requirements of the Improvement Special
5 Assessment Act;

6 L. "program guidebook" means a comprehensive
7 document created by the department pursuant to the
8 Improvement Special Assessment Act, including uniform
9 assessment documents, appropriate guidelines, specifications,
10 approval criteria and other standard forms consistent with
11 the administration of a program that are not detailed in the
12 Improvement Special Assessment Act;

13 M. "project application" means an application
14 submitted to a program administrator to demonstrate that a
15 proposed project qualifies for special assessment financing
16 pursuant to a program;

17 N. "region" means a geographical area as
18 designated by a county pursuant to the Improvement Special
19 Assessment Act;

20 O. "renewable energy improvement" means an energy
21 system that generates energy by use of low- or zero-emissions
22 generation technology with substantial long-term production,
23 including solar, wind and geothermal resources, fuel cell
24 equipment using an electrochemical process to generate
25 electricity and heat or biomass resources;

1 P. "resiliency improvement" means improvements
2 that increase the resilience of a property, including air
3 quality, flood mitigation, storm water management, energy
4 storage and microgrids, alternative vehicle charging
5 infrastructure, fire or wind resistance or inundation
6 adaptation;

7 Q. "special assessment" means a voluntary
8 assessment imposed on a property pursuant to the Improvement
9 Special Assessment Act for the total amount of special
10 assessment financing together with interest, penalties, fees
11 and charges related thereto;

12 R. "special assessment agreement" means a
13 voluntary agreement of a property owner to allow a county to
14 place an assessment on the owner's property to repay special
15 assessment financing pursuant to the Improvement Special
16 Assessment Act;

17 S. "special assessment assignable certificate"
18 means a document assigning a special assessment lien from the
19 county to a capital provider in an amount not to exceed the
20 amount of the special assessment financing for the term of
21 the special assessment lien;

22 T. "special assessment financing" means the total
23 amount of financing provided by a capital provider pursuant
24 to a special assessment financing agreement, including
25 accrual of interest and penalties, charges, fees and costs of

1 enforcement of a special assessment lien;

2 U. "special assessment financing agreement" means
3 a contract pursuant to which a property owner agrees to repay
4 a capital provider for special assessment financing and to
5 the terms of the special assessment financing, including the
6 treatment of prepayment and partial payment of a special
7 assessment, servicing arrangements, the payment of any
8 finance charges and fees and accrual of interest and
9 penalties;

10 V. "special assessment lien" means a lien recorded
11 in all counties in which the eligible property is located to
12 secure the special assessment, which assessment remains on
13 the property until paid in full;

14 W. "uniform assessment documents" means the forms
15 of county ordinance, special assessment agreement, special
16 assessment lien, special assessment assignable certificate
17 and other model documents prepared by the department pursuant
18 to the Improvement Special Assessment Act for use in the
19 program; provided, however, the department shall not mandate
20 a form of special financing agreement that shall be supplied
21 by a capital provider; and

22 X. "water conservation improvement" means
23 measures, equipment or devices that decrease the consumption
24 of or demand for water, address safe drinking water or
25 eliminate lead from water used for drinking or cooking.

1 SECTION 3. ORDINANCE ESTABLISHING THE PROGRAM.--The
2 board of county commissioners of a county may by county
3 ordinance establish a program. The county ordinance may
4 apply within the boundaries of a municipality in a county if
5 the municipality adopts a resolution or ordinance approving
6 the application of the county's ordinance within the
7 municipality. The county ordinance shall be substantively in
8 the form set forth in the program guidebook and shall:

9 A. include a statement that the financing of
10 eligible improvements, repaid by special assessments on
11 eligible property benefited by such improvements, is in the
12 interest of public health, safety and welfare;

13 B. designate the region in which owners of
14 eligible property may finance eligible improvements pursuant
15 to the Improvement Special Assessment Act; a county may
16 designate more than one region and if multiple regions are
17 designated, the regions may be separate, overlapping or
18 coterminous;

19 C. incorporate by reference the program guidebook,
20 notwithstanding that a county adopting a program pursuant to
21 the Improvement Special Assessment Act may narrow the
22 definition of eligible improvements to be consistent with the
23 county's climate goals;

24 D. authorize and direct a county official to enter
25 into special assessment agreements with property owners and

1 capital providers and issue special assessment assignable
2 certificates on behalf of the county to impose special
3 assessments and assign special assessment liens for
4 assessments approved by the program administrator pursuant to
5 this section;

6 E. authorize direct financing between an eligible
7 property owner and a capital provider to finance eligible
8 improvements;

9 F. designate a program administrator; and

10 G. require that the interest rate, delinquent
11 interest, penalties, terms of prepayment and other terms of a
12 special assessment shall be established by a capital provider
13 in the related special assessment financing agreement for
14 such assessment.

15 SECTION 4. APPROVAL OF SPECIAL ASSESSMENT.--

16 A. Prior to entering into a special assessment
17 agreement, a property owner shall submit a project
18 application to the program administrator in a form consistent
19 with the program guidebook. The application shall include:

20 (1) for an existing eligible property:

21 (a) where energy efficiency
22 improvements, water conservation improvements or renewable
23 energy improvements are proposed, certification by a licensed
24 professional engineer or other professional listed in the
25 program guidebook stating that the proposed eligible

1 improvements will either result in more efficient use or
2 conservation of energy or water, the reduction of greenhouse
3 gas emissions or the addition of renewable sources of energy
4 or water; or

5 (b) where resiliency improvements are
6 proposed, certification by a licensed professional engineer
7 or other professional listed in the program guidebook stating
8 that the qualified improvements will result in improved
9 resilience;

10 (2) for construction of a new eligible
11 property, certification by a licensed professional engineer
12 or other professional listed in the program guidebook stating
13 that the proposed eligible improvements will enable the
14 property to exceed the energy efficiency, water conservation,
15 renewable energy, renewable water or resilience requirements
16 of the applicable building code;

17 (3) certification that the property owner
18 requesting the proposed eligible improvements is the owner of
19 record of the property on which the special assessment will
20 be imposed and that there are no delinquent taxes or
21 assessments on the property;

22 (4) the name of the capital provider
23 providing the special assessment financing and the proposed
24 terms of the special assessment financing agreement,
25 including:

- 1 (a) the special assessment financing
2 amount;
- 3 (b) the interest rate;
- 4 (c) administrative fees paid to the
5 county;
- 6 (d) a schedule of the installments of
7 the special assessment;
- 8 (e) the number of years the special
9 assessment shall be imposed on the property;
- 10 (f) delinquent interest or penalties;
- 11 and
- 12 (g) the conditions by which the
13 property owner may prepay and permanently satisfy the debt
14 owed pursuant to the special assessment financing agreement
15 and remove the special assessment lien from the property; and
- 16 (5) written consent from any holder of a
17 lien, mortgage or security interest in the real property that
18 the property may participate in the program and that the
19 special assessment lien shall have priority superior to all
20 liens, claims and titles except a lien for general ad valorem
21 property taxes or an improvement district lien that is
22 coequal to property taxes.

23 B. Prior to entering into a special assessment
24 agreement, the county shall receive from the program
25 administrator certification that the proposed eligible

1 improvements, eligible property and property owner qualify
2 for financing pursuant to the program.

3 SECTION 5. IMPOSITION OF SPECIAL
4 ASSESSMENT--AMOUNT--COLLECTION--SPECIAL ASSESSMENT LIEN
5 CREATED.--

6 A. Upon entering into a special assessment
7 agreement, the county shall record a special assessment lien
8 on the subject property in the real property records of the
9 county in which the property is located.

10 B. The recording of the lien pursuant to
11 Subsection A of this section shall include:

12 (1) the legal description of the property;

13 (2) the county assessor's parcel number of
14 the property;

15 (3) the grantor's name, which shall be the
16 same as the property owner on the special assessment
17 agreement;

18 (4) the grantee's name, which shall be the
19 county in which the property is located;

20 (5) the date on which the special assessment
21 lien was created;

22 (6) the principal amount of the special
23 assessment lien;

24 (7) the terms and length of the special
25 assessment lien; and

1 (8) a copy of the special assessment
2 agreement.

3 C. A special assessment lien shall be effective
4 during the period in which the special assessment is imposed
5 and shall have priority superior to all liens, claims and
6 titles except a lien for general ad valorem property taxes or
7 an improvement district lien that is coequal to property
8 taxes.

9 D. A special assessment lien runs with the land,
10 and that portion of the special assessment lien that has not
11 yet become due is not accelerated or eliminated by
12 foreclosure of the special assessment lien or any lien for
13 taxes or assessments imposed by the state, a local government
14 or taxing district against the property on which the special
15 assessment lien is imposed.

16 E. Upon entering into a special assessment
17 agreement, the county shall execute and record a special
18 assessment assignable certificate from the county to the
19 appropriate capital provider. The special assessment
20 assignable certificate shall convey the special assessment
21 lien including all of the characteristics described in
22 Subsection B of this section. The holder of the special
23 assessment assignable certificate shall be solely responsible
24 for the billing and collection of the related special
25 assessment and for the enforcement of the special assessment

1 lien.

2 F. When the underlying special assessment
3 financing has been satisfied, the special assessment shall be
4 removed from the property and the county shall record a
5 release of the special assessment lien.

6 SECTION 6. DELINQUENT SPECIAL ASSESSMENT PAYMENTS--
7 ENFORCEMENT OF SPECIAL ASSESSMENT LIENS.--

8 A. Delinquent payments due on a special assessment
9 incur interest and penalties as specified in the special
10 assessment financing agreement.

11 B. Delinquent payments due on a special assessment
12 shall be enforced in the event of a nonpayment of the special
13 assessment or installment thereto.

14 C. Delinquent payments due on a special assessment
15 have the effect of a mortgage and shall be foreclosed and
16 sold in the manner provided by law for the foreclosure of
17 mortgages on real estate.

18 D. The holder of a special assessment assignable
19 certificate may institute proceedings to foreclose the
20 special assessment lien against the property that is
21 delinquent in the payment of the special assessment or
22 installment of a special assessment for a period of more than
23 one year.

24 E. The capital provider may sell or assign for
25 consideration any and all special assessment liens received

1 from the county. The capital provider or its assignee shall
2 have and possess the same powers and rights at law or in
3 equity to enforce the special assessment lien in the same
4 manner as described in Subsections C and D of this section.

5 SECTION 7. SPECIAL ASSESSMENT FINANCING.--

6 A. Special assessment financing shall be provided
7 by capital providers and disbursed directly by capital
8 providers to fund eligible improvements subject to a special
9 assessment financing agreement.

10 B. A county is not liable in any way for the debt
11 of the property owner, is not a third-party obligor and is
12 not pledging or lending its credit to the property owner or
13 the capital provider.

14 SECTION 8. ELIGIBLE COSTS--ADDITIONAL CRITERIA
15 PROHIBITED.--

16 A. Costs capitalized into the special assessment
17 financing principal amount may include:

18 (1) the cost of materials and labor
19 necessary for installation or modification of an eligible
20 improvement;

21 (2) permit fees;

22 (3) inspection fees;

23 (4) capital provider's fees;

24 (5) program administrative fees;

25 (6) project development and engineering

1 fees;

2 (7) third-party review fees, including
3 verification review fees;

4 (8) capitalized interest;

5 (9) interest reserves;

6 (10) escrow for prepaid property taxes and
7 insurance; and

8 (11) any other fees or costs that may be
9 incurred by the property owner incident or ancillary to the
10 installation, modification or improvement on a specific or
11 pro rata basis.

12 B. A property may be eligible for financing if
13 otherwise qualified improvements were completed and
14 operational no more than thirty-six months prior to
15 submission of the application to the local government.

16 C. A county or program administrator shall not
17 require property owners or capital providers to access
18 administrative services from the county or program
19 administrator other than those provided for in the
20 Improvement Special Assessment Act.

21 D. Program administrative fees shall reflect the
22 reasonable costs of the county or program administrator to
23 provide administrative services for the program but shall not
24 exceed the lesser of one percent of the principal amount of
25 the special assessment financing or twenty-five thousand

1 dollars (\$25,000).

2 SECTION 9. PROGRAM GUIDEBOOK--PROGRAM ADMINISTRATOR.--

3 A. The department shall develop and make available
4 on its website within ninety days of the effective date of
5 the Improvement Special Assessment Act the program guidebook
6 governing the terms and conditions under which financing for
7 special assessments may be made available through the
8 program. The program guidebook shall include:

9 (1) forms for the uniform assessment
10 documents;

11 (2) a statement that the term of the special
12 assessment financing agreement shall not exceed thirty years;

13 (3) a statement explaining the application
14 process and eligibility requirements for participation in the
15 program, consistent with Section 4 of the Improvement Special
16 Assessment Act;

17 (4) a statement explaining the consent
18 requirement provided in Section 4 of the Improvement Special
19 Assessment Act; and

20 (5) a statement explaining the engineer
21 certification requirement set forth in Section 4 of the
22 Improvement Special Assessment Act.

23 B. The department may elect to serve as a program
24 administrator and may contract with a third party to assist
25 with administration. In the event the department or its

1 contracted third party provides administrative services for
2 the program, counties establishing a program pursuant to the
3 Improvement Special Assessment Act shall designate the
4 department or its contracted third party as program
5 administrator in addition to any other program administrator
6 designated by the county.

7 C. The board of county commissioners may authorize
8 a department or official of the county as program
9 administrator pursuant to the county ordinance and may
10 contract with a third party to assist with the administration
11 of the program.

12 D. Any combination of counties may agree to
13 jointly administer a program pursuant to a memorandum of
14 understanding. Any combination of counties may also agree to
15 jointly administer a program pursuant to an agreement under
16 the Joint Powers Agreements Act, notwithstanding that the
17 secretary of finance and administration shall not approve
18 more than one joint powers agreement for the administration
19 of a single program.

20 **SECTION 10. IMMUNITY.**--Nothing in the Improvement
21 Special Assessment Act shall be interpreted to pledge, offer
22 or encumber the full faith and credit of a county.

23 **SECTION 11. REPEAL.**--Sections 4-55C-1 through 4-55C-9
24 NMSA 1978 (being Laws 2009, Chapter 270, Sections 1 through 8
25 and Laws 2019, Chapter 110, Section 4, as amended) are

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