

HOUSE COMMERCE AND ECONOMIC DEVELOPMENT COMMITTEE
SUBSTITUTE FOR
HOUSE BILL 228

56TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2023

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. [NEW MATERIAL] SHORT TITLE.--This act may be cited as the "Improvement Special Assessment Act".

SECTION 2. [NEW MATERIAL] 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;

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

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

6 D. "department" means the economic development
7 department;

8 E. "eligible improvement" means a permanently
9 affixed energy efficiency improvement, renewable energy
10 improvement, water conservation improvement or resiliency
11 improvement installed on eligible property as part of the
12 construction or renovation of the property;

13 F. "eligible property" means any privately owned
14 commercial, industrial, agricultural or multifamily residential
15 real property with five or more dwelling units, including real
16 property owned by an entity formally recognized as tax exempt
17 pursuant to Internal Revenue Code of 1986, as amended;

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

21 H. "local government" means a municipality, county
22 or other general function governmental unit established by
23 state law;

24 I. "municipal" or "municipality" means any
25 incorporated city, town or village, whether incorporated under

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

3 J. "program" means a special assessment program
 4 that utilizes and conforms to the program guidebook and uniform
 5 special assessment documents established by the department
 6 pursuant to the Improvement Special Assessment Act;

7 K. "program administrator" means a person
 8 designated by a county to administer a program; "program
 9 administrator" may be the department, the county or a third
 10 party; provided that the administration procedures used conform
 11 to the requirements of the Improvement Special Assessment Act;

12 L. "program guidebook" means a comprehensive
 13 document created by the department pursuant to the Improvement
 14 Special Assessment Act, including uniform assessment documents,
 15 appropriate guidelines, specifications, approval criteria and
 16 other standard forms consistent with the administration of a
 17 program that are not detailed in the Improvement Special
 18 Assessment Act;

19 M. "project application" means an application
 20 submitted to a program administrator to demonstrate that a
 21 proposed project qualifies for special assessment financing
 22 pursuant to a program;

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

25 O. "renewable energy improvement" means an energy

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1 system that generates energy by use of low- or zero-emissions
2 generation technology with substantial long-term production,
3 including solar, wind and geothermal resources, fuel cell
4 equipment using an electrochemical process to generate
5 electricity and heat or biomass resources;

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

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

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

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

25 T. "special assessment financing" means the total

1 amount of financing provided by a capital provider pursuant to
 2 a special assessment financing agreement, including accrual of
 3 interest and penalties, charges, fees and costs of enforcement
 4 of a special assessment lien;

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

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

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

24 X. "water conservation improvement" means measures,
 25 equipment or devices that decrease the consumption of or demand

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1 for water, address safe drinking water or eliminate lead from
2 water used for drinking or cooking.

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

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

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

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

25 D. authorize and direct a county official to enter

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1 into special assessment agreements with property owners and
 2 capital providers and issue special assessment assignable
 3 certificates on behalf of the county to impose special
 4 assessments and assign special assessment liens for assessments
 5 approved by the program administrator pursuant to 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 such
 14 assessment.

15 SECTION 4. [NEW MATERIAL] APPROVAL OF SPECIAL
 16 ASSESSMENT.--

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

21 (1) for an existing eligible property:

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

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1 program guidebook stating that the proposed eligible
2 improvements will either result in more efficient use or
3 conservation of energy or water, the reduction of greenhouse
4 gas emissions or the addition of renewable sources of energy or
5 water; or

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

10 (2) for construction of a new eligible
11 property, certification by a licensed professional engineer or
12 other professional listed in the program guidebook stating that
13 the proposed eligible improvements will enable the property to
14 exceed the energy efficiency, water conservation, renewable
15 energy, renewable water or resilience requirements of the
16 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 be
20 imposed and that there are no delinquent taxes or assessments
21 on the property;

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

25 (a) the special assessment financing

1 amount;

2 (b) the interest rate;

3 (c) administrative fees paid to the
4 county;

5 (d) a schedule of the installments of
6 the special assessment;

7 (e) the number of years the special
8 assessment shall be imposed on the property;

9 (f) delinquent interest or penalties;
10 and

11 (g) the conditions by which the property
12 owner may prepay and permanently satisfy the debt owed pursuant
13 to the special assessment financing agreement and remove the
14 special assessment lien from the property; and

15 (5) written consent from any holder of a lien,
16 mortgage or security interest in the real property that the
17 property may participate in the program and that the special
18 assessment lien shall have priority superior to all liens,
19 claims and titles except a lien for general ad valorem property
20 taxes or an improvement district lien that is coequal to
21 property taxes.

22 B. Prior to entering into a special assessment
23 agreement, the county shall receive from the program
24 administrator certification that the proposed eligible
25 improvements, eligible property and property owner qualify for

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1 financing pursuant to the program.

2 SECTION 5. [NEW MATERIAL] IMPOSITION OF SPECIAL
3 ASSESSMENT--AMOUNT--COLLECTION--SPECIAL ASSESSMENT LIEN
4 CREATED.--

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

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

- 11 (1) the legal description of the property;
- 12 (2) the county assessor's parcel number of the
13 property;
- 14 (3) the grantor's name, which shall be the
15 same as the property owner on the special assessment agreement;
- 16 (4) the grantee's name, which shall be the
17 county in which the property is located;
- 18 (5) the date on which the special assessment
19 lien was created;
- 20 (6) the principal amount of the special
21 assessment lien;
- 22 (7) the terms and length of the special
23 assessment lien; and
- 24 (8) a copy of the special assessment
25 agreement.

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

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

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

23 F. When the underlying special assessment financing
 24 has been satisfied, the special assessment shall be removed
 25 from the property and the county shall record a release of the

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1 special assessment lien.

2 SECTION 6. [NEW MATERIAL] DELINQUENT SPECIAL ASSESSMENT
3 PAYMENTS--ENFORCEMENT OF SPECIAL ASSESSMENT LIENS.--

4 A. Delinquent payments due on a special assessment
5 incur interest and penalties as specified in the special
6 assessment financing agreement.

7 B. Delinquent payments due on a special assessment
8 shall be enforced in the event of a nonpayment of the special
9 assessment or installment thereto.

10 C. Delinquent payments due on a special assessment
11 have the effect of a mortgage and shall be foreclosed and sold
12 in the manner provided by law for the foreclosure of mortgages
13 on real estate.

14 D. The holder of a special assessment assignable
15 certificate may institute proceedings to foreclose the special
16 assessment lien against the property that is delinquent in the
17 payment of the special assessment or installment of a special
18 assessment for a period of more than one year.

19 E. The capital provider may sell or assign for
20 consideration any and all special assessment liens received
21 from the county. The capital provider or its assignee shall
22 have and possess the same powers and rights at law or in equity
23 to enforce the special assessment lien in the same manner as
24 described in Subsections C and D of this section.

25 SECTION 7. [NEW MATERIAL] SPECIAL ASSESSMENT FINANCING.--

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1 A. Special assessment financing shall be provided
2 by capital providers and disbursed directly by capital
3 providers to fund eligible improvements subject to a special
4 assessment financing agreement.

5 B. A county is not liable in any way for the debt
6 of the property owner, is not a third-party obligor and is not
7 pledging or lending its credit to the property owner or the
8 capital provider.

9 SECTION 8. [NEW MATERIAL] ELIGIBLE COSTS--ADDITIONAL
10 CRITERIA PROHIBITED.--

11 A. Costs capitalized into the special assessment
12 financing principal amount may include:

- 13 (1) the cost of materials and labor necessary
14 for installation or modification of an eligible improvement;
- 15 (2) permit fees;
- 16 (3) inspection fees;
- 17 (4) capital provider's fees;
- 18 (5) program administrative fees;
- 19 (6) project development and engineering fees;
- 20 (7) third-party review fees, including
21 verification review fees;
- 22 (8) capitalized interest;
- 23 (9) interest reserves;
- 24 (10) escrow for prepaid property taxes and
25 insurance; and

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

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

9 C. A county or program administrator shall not
10 require property owners or capital providers to access
11 administrative services from the county or program
12 administrator other than those provided for in the Improvement
13 Special Assessment Act.

14 D. Program administrative fees shall reflect the
15 reasonable costs of the county or program administrator to
16 provide administrative services for the program but shall not
17 exceed the lesser of one percent of the principal amount of the
18 special assessment financing or twenty-five thousand dollars
19 (\$25,000).

20 SECTION 9. [NEW MATERIAL] PROGRAM GUIDEBOOK--PROGRAM
21 ADMINISTRATOR.--

22 A. The department shall develop and make available
23 on its website within ninety days of the effective date of the
24 Improvement Special Assessment Act the program guidebook
25 governing the terms and conditions under which financing for

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1 special assessments may be made available through the program.

2 The program guidebook shall include:

3 (1) forms for the uniform assessment
4 documents;

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

7 (3) a statement explaining the application
8 process and eligibility requirements for participation in the
9 program, consistent with Section 4 of the Improvement Special
10 Assessment Act;

11 (4) a statement explaining the consent
12 requirement provided in Section 4 of the Improvement Special
13 Assessment Act; and

14 (5) a statement explaining the engineer
15 certification requirement set forth in Section 4 of the
16 Improvement Special Assessment Act.

17 B. The department may elect to serve as a program
18 administrator and may contract with a third party to assist
19 with administration. In the event the department or its
20 contracted third party provides administrative services for the
21 program, counties establishing a program pursuant to the
22 Improvement Special Assessment Act shall designate the
23 department or its contracted third party as program
24 administrator in addition to any other program administrator
25 designated by the county.

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1 C. The board of county commissioners may authorize
2 a department or official of the county as program administrator
3 pursuant to the county ordinance and may contract with a third
4 party to assist with the administration of the program.

5 D. Any combination of counties may agree to jointly
6 administer a program pursuant to a memorandum of understanding.
7 Any combination of counties may also agree to jointly
8 administer a program pursuant to an agreement under the Joint
9 Powers Agreements Act, notwithstanding that the secretary of
10 finance and administration shall not approve more than one
11 joint powers agreement for the administration of a single
12 program.

13 SECTION 10. [NEW MATERIAL] IMMUNITY.--Nothing in the
14 Improvement Special Assessment Act shall be interpreted to
15 pledge, offer or encumber the full faith and credit of a
16 county.

17 SECTION 11. REPEAL.--Sections 4-55C-1 through 4-55C-9
18 NMSA 1978 (being Laws 2009, Chapter 270, Sections 1 through 8
19 and Laws 2019, Chapter 110, Section 4, as amended) are
20 repealed.