

**AN ACT**

**RELATING TO HOUSING; PROVIDING FOR THE CONSOLIDATION OF HOUSING PROGRAMS; RATIFYING THE TRANSFER OF CERTAIN HOUSING PROGRAMS TO THE NEW MEXICO MORTGAGE FINANCE AUTHORITY; CHANGING THE DESIGNATION OF THE STATE HOUSING AUTHORITY; AMENDING, REPEALING AND ENACTING SECTIONS OF THE NMSA 1978 TO MAKE STATUTORY PROVISIONS CONSISTENT WITH THE TRANSFER OF PROGRAMS.**

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

Section 1. Section 9-15-4 NMSA 1978 (being Laws 1983, Chapter 297, Section 4, as amended) is amended to read:

"9-15-4. DEPARTMENT ESTABLISHED.--There is created in the executive branch the "economic development department". The department shall be a cabinet department and shall consist of, but not be limited to, six divisions as follows:

- A. the administrative services division;
- B. the economic development division;
- C. the New Mexico film division;
- D. the technology enterprise division;
- E. the trade division; and
- F. the office for space commercialization."

**Section 2. Section 9-15-7.1 NMSA 1978 (being Laws 1983, Chapter 296, Section 21, as amended) is amended to read:**

"9-15-7.1. **ADDITIONAL PLANNING DUTIES OF SECRETARY.** --  
The secretary, in addition to other duties, shall serve as

lead agency in coordination of the census program at the state data center. "

Section 3. Section 11-1-2 NMSA 1978 (being Laws 1961, Chapter 135, Section 2, as amended) is amended to read:

"11-1-2. DEFINITIONS. --As used in the Joint Powers Agreements Act:

A. "public agency" means the federal government or any federal department, agency or instrumentality; this state, an adjoining state or any state department, agency or instrumentality; an Indian tribe or pueblo; a county, municipality, public corporation or public district of this state or an adjoining state; a New Mexico educational institution specified in Article 12, Section 11 of the constitution of New Mexico; and a New Mexico school district;

B. "agreement" means a written contractual agreement entered into between two or more public agencies subject to any constitutional or legislative restriction imposed upon any of the contracting public agencies, but the Joint Powers Agreements Act does not authorize an interstate water supply agreement or limit the powers of an interstate water compact commission, the interstate stream commission or the state engineer, and it does not limit the powers of a state agency or political subdivision to enter into agreements with the interstate stream commission or the

state engineer;

C. "bonds" means revenue bonds;

D. "bondholder" means any person who is the bearer of any outstanding bond or the owner of bonds that are at the time registered to other than the bearer;

E. "indenture" means the instrument providing the terms and conditions for the issuance of the bonds and may be a resolution, order, agreement or other instrument; and

F. "instrumentality" means a public corporate entity created by state law but which is not subject to the general laws of the state and is not a state agency or department. "

Section 4. Section 11-3A-6 NMSA 1978 (being Laws 1994, Chapter 132, Section 6, as amended) is amended to read:

"11-3A-6. POWERS OF AUTHORITY IN BOARD OF COMMISSIONERS--APPOINTMENT OF BOARD OF AUTHORITIES--TERMS.--

A. The powers of each regional authority shall be vested in its board of commissioners as the board may be constituted, from time to time. The board of commissioners of the authority for each of the seven regions shall consist of seven commissioners who shall be residents of the region for which the authority is created and appointed by the governor. Appointments shall be for terms of four years or less and shall be made so that the terms of not more than two commissioners on each board expire on July 1 of each year. Vacancies shall be filled for the unexpired term. Commissioners shall serve until their successors have been appointed.

B. The members of the boards of commissioners may receive per diem and mileage as provided in the Per Diem and Mileage Act but shall receive no other compensation, perquisite or allowance. Each board of commissioners shall select a chairman and vice chairman from among its members. Each board may employ necessary agents and employees and set the salaries of the agents and employees. Each board may delegate to its agents or employees such duties as the board deems proper. A regional planning and development district, created pursuant to the Planning District Act, may provide technical staff for an authority. Four commissioners shall constitute a quorum of a board for the purpose of conducting its business and exercising its powers and for all other purposes. Action may be taken by an authority upon a vote of a majority of the commissioners present. Each board shall organize itself at its annual meeting each even-numbered year. A board may authorize an authority to employ a secretary, who shall be executive director and who shall be removable only for cause, and technical experts and other officers, attorneys, agents and employees, permanent and temporary, as the authority requires; to determine employee and contractor qualifications, duties and compensation; and to delegate to one or more employees or contractors the powers or duties that the board deems proper.

C. The financial affairs of every regional authority and any nonprofit corporation created by an authority shall be thoroughly examined and audited annually by the state auditor, by personnel of his office designated by him or by auditors approved by him. The audits shall be

conducted in accordance with generally accepted auditing standards. Each regional authority shall submit to the state auditor, the department of finance and administration, the state housing authority and the legislative finance committee, within thirty days following the receipt of the audit by the authority, a copy of the annual audit."

Section 5. Section 48-10-3 NMSA 1978 (being Laws 1987, Chapter 61, Section 3, as amended) is amended to read:

"48-10-3. DEFINITIONS.--As used in the Deed of Trust Act, unless the context otherwise requires:

A. "beneficiary" means the person named or otherwise designated in a deed of trust as the person for whose benefit a deed of trust is given or his successor in interest;

B. "qualified construction project" means a low-income housing project of a regional, county or municipal housing authority or a qualified nonprofit organization;

C. "qualified nonprofit organization" means an organization that is certified by the state housing authority as having been granted exemption from federal income tax pursuant to Section 501(c)(3) or (4) of the Internal Revenue Code of 1986, as amended, and that includes as one of its exempt purposes the fostering of low-income housing;

D. "contract" means an agreement between or among two or more persons, including, without limitation, a note, promissory note, guarantee or the terms of any deed of trust;

E. "credit bid" means a bid made by the

beneficiary in full or partial satisfaction of the contract that is secured by the deed of trust. A credit bid may only include an amount owing on a contract with interest secured by liens, mortgages, deeds of trust or encumbrances that are superior in priority to the deed of trust and which liens, mortgages or encumbrances, whether recourse or nonrecourse, are outstanding as provided in the contract or as provided in the deed of trust, together with the amount of other obligations provided in or secured by the deed of trust and the costs of exercising the power of sale and the trustee's sale, including the fees of the trustee and reasonable attorney fees actually incurred by the trustee and the beneficiary;

F. "parent corporation" means a corporation that owns eighty percent or more of each class of the issued and outstanding stock of another corporation or, in the case of a savings and loan association, eighty percent or more of the issued and outstanding guaranty capital of the savings and loan association;

G. "person" means an individual or organization;

H. "deed of trust" means a document by way of mortgage in substance executed in conformity with the Deed of Trust Act and in conformity with Section 47-1-39 NMSA 1978 granting or mortgaging trust real estate to a trustee qualified under the Deed of Trust Act to secure the performance of a contract, but does not include a deed of trust that encumbers in whole or in part trust real estate located in New Mexico and in one or more other states;

I. "junior encumbrancer" means a person holding a lien, mortgage or other encumbrance of record evidencing an

interest in the trust real estate that is subordinate in priority to the deed of trust and includes a lienholder, a mortgagee, a seller and a purchaser as provided in a real estate contract and, where the context is applicable, escrow agents as provided in a real estate contract;

J. "low-income household" means a household that the state housing authority certifies is a household with income at or below eighty percent of the state's median household income;

K. "low-income housing project" means a housing project that the state housing authority certifies is housing for low-income households;

L. "state housing authority" means the New Mexico mortgage finance authority;

M. "trust real estate" means any legal, equitable, leasehold or other interest in real estate, including the term "real estate" as defined in Section 47-1-1 NMSA 1978, which is capable of being transferred whether or not the interest is subject to any prior mortgages, deeds of trust, contracts for conveyance of real estate, real estate contracts or other liens or encumbrances; provided, however, trust real estate shall not include:

(1) any dwelling and the underlying real estate designed for occupancy by one to four families, including mobile homes and condominiums, except when occupancy is designed for low-income households;

(2) any real estate used by the trustor for farming operations, including farming, tillage of the soil, dairy farming, ranching, production or raising of crops,

poultry or livestock, and production of poultry or livestock products in an unmanufactured state; or

(3) oil and other liquid hydrocarbons, or gas, including casinghead gas, condensates and other gaseous petroleum substances, or coal or other minerals in, on or under real estate, including patented and unpatented mining claims, unless such minerals have not been severed from and are included with the surface estate.

The character of trust real estate shall be determined as of the date of the deed of trust covering the trust real estate;

N. "trustee" means a person qualified as provided in the Deed of Trust Act. The obligations of a trustee to the trustor, beneficiary and other persons are as provided in the Deed of Trust Act, together with any other obligations specified in the deed of trust. Both the beneficiary and the trustee have all the powers of a mortgagee as provided by law; and

O. "trustor" means the person or his successor in interest granting or mortgaging trust real estate by a deed of trust as security for the performance of a contract and is the same as a mortgagor granting or mortgaging real estate by way of mortgage as provided by law."

**Section 6. A new section of the Mortgage Finance Authority Act, Section 58-18-5.5 NMSA 1978, is enacted to read:**

**"58-18-5.5. ADDITIONAL POWERS OF AUTHORITY--AUTHORITY DESIGNATED AS SINGLE STATE HOUSING AUTHORITY--APPLICATION FOR AND RECEIPT OF FEDERAL FUNDS--ADMINISTRATION OF HOUSING**



**PROGRAMS.** --In addition to the powers granted the authority pursuant to Sections 58-18-5 and 58-18-5.3 NMSA 1978, the authority:

A. is designated as the state housing authority for all purposes;

B. shall make application for federal housing funds and programs;

C. shall administer federal and state housing programs and federal tax credit provisions associated with those programs;

D. shall receive and expend funds pursuant to applicable federal housing laws, federal housing regulations, the provisions of the Mortgage Finance Authority Act and regulations adopted pursuant to that act;

E. shall administer the following housing programs that were previously transferred to it by executive order, the provisions of which are ratified:

(1) the federal HOME program;

(2) the federal low-income housing tax credit program;

(3) the federal emergency shelter grant programs;

(4) the state homeless program;

(5) the federal and state weatherization programs and that part of the low-income home energy

assistance program authorized for weatherization; and

(6) the state safe water program;

F. shall assist with technical consultation in connection with housing components of the community service block grant and community development block grant programs that are administered by the human services department and the department of finance and administration, respectively; and

G. shall not receive direct appropriations of state funds from the legislature, and, if a program for which the authority is granted the power and has the duty to administer involves the appropriation or expenditure of state funds, the authority is granted specific power to enter into a joint powers agreement with the department of finance and administration pursuant to the Joint Powers Agreements Act. "

Section 7. REPEAL. -- Sections 11-4-1 through 11-4-8 NMSA 1978 (being Laws 1975, Chapter 102, Sections 1 through 8, as amended) are repealed.

Section 8. EFFECTIVE DATE. -- The effective date of the provisions of this act is July 1, 1998. \_\_\_\_\_