

LAWS 2024, CHAPTER 8

House Bill 195
Approved February 28, 2024

AN ACT

RELATING TO FINANCE; AMENDING AND ENACTING SECTIONS OF THE OPPORTUNITY ENTERPRISE ACT AND CHANGING THE NAME OF THE ACT; ALLOWING THE NEW MEXICO FINANCE AUTHORITY TO PROVIDE HOUSING DEVELOPMENT LOANS; CREATING THE HOUSING DEVELOPMENT REVOLVING FUND; DEFINING TERMS; AMENDING THE STRUCTURE OF THE OPPORTUNITY ENTERPRISE REVIEW BOARD AND CHANGING ITS NAME; PROVIDING DUTIES; REQUIRING RULEMAKING; AMENDING REQUIREMENTS FOR OPPORTUNITY ENTERPRISE LOANS; REQUIRING REPORTING.

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

Chapter 8 Section 1 Laws 2024

SECTION 1. Section 6-34-1 NMSA 1978 (being [Laws 2022, Chapter 57, Section 1](#)) is amended to read:

"6-34-1. SHORT TITLE.--Chapter 6, Article 34 NMSA 1978 may be cited as the "Opportunity Enterprise and Housing Development Act"."

Chapter 8 Section 2 Laws 2024

SECTION 2. Section 6-34-2 NMSA 1978 (being [Laws 2022, Chapter 57, Section 2](#)) is amended to read:

"6-34-2. DEFINITIONS.--As used in the Opportunity Enterprise and Housing Development Act:

A. "affordable housing infrastructure project" means infrastructure projects needed to support housing for low- or moderate-income residents;

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

C. "board" means the opportunity enterprise and housing development review board;

D. "department" means the economic development department;

E. "economic development opportunities" means the advancement of an environmentally sustainable economic development goal of the state as determined by the authority, in coordination with the department, and includes the creation of jobs, the provision of needed services and commodities to diverse communities across the state and the increase of tax and other revenue collections resulting from the enterprise development project;

F. "enterprise assistance" means opportunity enterprise financing, an opportunity enterprise lease or an opportunity enterprise loan;

G. "enterprise development project" means a commercial real estate development project primarily occupied by businesses unrelated to the opportunity enterprise partner that involves the purchase, planning, designing, building, surveying, improving, operating, furnishing, equipping or maintaining of land, buildings or infrastructure to create or expand economic development opportunities within the state;

H. "housing development assistance" means a loan for workforce development housing projects or affordable housing infrastructure projects;

I. "housing development partner" means a domestic corporation, a general partnership, a limited liability company, a limited partnership, a public benefit corporation, a nonprofit entity or any other private business entity or combination thereof that the authority determines is or will be engaged in a project that creates or expands housing within the state and is eligible for housing development assistance pursuant to the Opportunity Enterprise and Housing Development Act;

J. "housing development project" means an affordable housing infrastructure project or a workforce development housing project;

K. "opportunity enterprise partner" means a domestic corporation, a general partnership, a limited liability company, a limited partnership, a public benefit corporation, a nonprofit entity or other private business entity or combination thereof that the authority determines is or will be engaged in an enterprise that creates or expands economic development opportunities within the state and is eligible for enterprise assistance pursuant to the Opportunity Enterprise and Housing Development Act;

L. "opt-in agreement" means an agreement entered into among the authority, the department and a county, municipality or school district that ensures compliance with all local zoning, permitting and other land use rules and that provides for payments in lieu of taxes to the county, municipality or school district;

M. "payment in lieu of taxes" means the total annual payment paid as compensation for the tax impact of an enterprise development project, in an amount negotiated and determined in the opt-in agreement among the authority, the department and the county, school district or, if applicable, municipality where the enterprise development project is located in the same proportional amount as property tax revenues are normally distributed to those recipients;

N. "workforce development housing" means below-market housing addressing demand for workforce housing for middle-income workers in proximity to employment centers; and

O. "workforce development housing project" means a residential real estate development project that involves the purchase, planning, designing, building, surveying, improving, operating, furnishing, equipping or maintaining of land, buildings or infrastructure that provides housing, including housing that provides the option of home ownership."

Chapter 8 Section 3 Laws 2024

SECTION 3. Section 6-34-3 NMSA 1978 (being [Laws 2022, Chapter 57, Section 3](#)) is amended to read:

"6-34-3. NEW MEXICO FINANCE AUTHORITY--POWERS--DUTIES.--To create or expand economic development opportunities and housing within the state, the authority may:

A. acquire, whether by construction, purchase, gift or lease, and hold title to or other interest in an enterprise development project or housing development project;

- B. provide opportunity enterprise financing to opportunity enterprise partners and collect costs and fees associated with that financing;
- C. enter into a contract to lease property to an opportunity enterprise partner and collect rent, costs and fees associated with that lease;
- D. make loans to opportunity enterprise partners and collect payments, including principal, interest costs and fees associated with that loan;
- E. make loans to housing development partners and collect payments, including principal, interest costs and fees associated with those loans;
- F. sell or otherwise dispose of any property obtained as a result of an enterprise development project or a housing development project; provided that proceeds received shall be deposited in the opportunity enterprise revolving fund or the housing development revolving fund, respectively;
- G. make, execute and enforce all contracts necessary to carry out the provisions of the Opportunity Enterprise and Housing Development Act;
- H. take legal action available to the authority to recover public money or other public resources if an opportunity enterprise partner or housing development partner defaults on its obligations to the authority;
- I. enter into joint powers agreements or other agreements with a state agency or governmental entity, as the authority determines to be appropriate for such purpose;
- J. adopt rules relating to the use of the opportunity enterprise revolving fund and the housing development revolving fund necessary to carry out the provisions of the Opportunity Enterprise and Housing Development Act subject to approval of the New Mexico finance authority oversight committee; and
- K. enter into opt-in agreements where the enterprise development project is located to facilitate the development of an enterprise development project; provided that if included in the opt-in agreement, the authority shall make payments in lieu of taxes to a county, municipality or school district to offset the tax impact of an enterprise development project."

Chapter 8 Section 4 Laws 2024

SECTION 4. Section **6-34-5** NMSA 1978 (being **Laws 2022, Chapter 57, Section 5**) is amended to read:

"6-34-5. OPPORTUNITY ENTERPRISE AND HOUSING DEVELOPMENT REVIEW BOARD--
CREATED--MEMBERSHIP.--

- A. The "opportunity enterprise and housing development review board" is created. The authority shall provide necessary administrative services to the board.
- B. The board is composed of the following fourteen members:
 - (1) the secretary of economic development or the secretary's designee;
 - (2) the secretary of finance and administration or the secretary's designee;
 - (3) the secretary of general services or the secretary's designee;

(4) the state treasurer or the state treasurer's designee;

(5) the executive director of the New Mexico mortgage finance authority or the executive director's designee;

(6) two members appointed by the governor who shall have experience in the housing, building or development sector;

(7) one representative appointed by the council of government organizations within the state; and

(8) six public members appointed by the New Mexico legislative council who shall have experience in any one or more of the following:

(a) the banking and finance industry;

(b) commercial or industrial credit;

(c) private equity, venture capital or mutual fund investments;

(d) commercial real estate development;

(e) engineering, construction and construction management;

(f) organized labor;

(g) urban planning; or

(h) environmentally sustainable construction and development.

C. Members of the board appointed pursuant to Paragraphs (7) and (8) of Subsection B of this section shall serve for staggered terms of six years; provided that the initial term of members appointed pursuant to Paragraph (8) of Subsection B of this section may be for a term of less than six years, as determined by the New Mexico legislative council, to ensure staggered membership of the board. Members of the board shall serve until their successors are appointed. A member of the board appointed pursuant to Paragraph (6), (7) or (8) of Subsection B of this section may be removed from the board by the appointing authority for failure to attend three consecutive meetings or other cause. A vacancy on the board of an appointed member shall be filled by appointment by the original appointing authority for the remainder of the unexpired term of office; provided that a member who is removed pursuant to this section shall be ineligible for reappointment.

D. Members of the board appointed pursuant to Paragraphs (6) through (8) of Subsection B of this section shall:

(1) be governed by the provisions of the Governmental Conduct Act; and

(2) not hold any office or employment in a political party.

E. The members shall select a chair, vice chair and other officers that the board deems necessary, who shall serve a term of two years. The board shall maintain minutes of all meetings of the board, and all meetings shall be held pursuant to the Open Meetings Act."

Chapter 8 Section 5 Laws 2024

SECTION 5. Section 6-34-6 NMSA 1978 (being [Laws 2022, Chapter 57, Section 6](#)) is amended to read:

"6-34-6. OPPORTUNITY ENTERPRISE AND HOUSING DEVELOPMENT REVIEW BOARD--
POWERS.--

A. The board shall:

- (1) meet quarterly and at the call of the chair;
- (2) receive a list of executed contracts for enterprise assistance and housing development assistance;
- (3) recommend to the authority application forms and procedures for the prioritization of enterprise development projects and housing development projects;
- (4) review standards and procedures for the approval of proposed contracts as needed;
- (5) make recommendations to the authority of potential enterprise development projects and housing development projects;
- (6) determine whether the use of enterprise assistance and housing development assistance is a prudent expenditure of public funds and report to the legislature annually on that determination; and
- (7) make recommendations to the authority of potential rulemaking, application or lending changes to ensure transparent and efficient processes for carrying out the provisions of the Opportunity Enterprise and Housing Development Act.

B. The board and the department shall coordinate to:

- (1) provide outreach services to local governments and potential opportunity enterprise partners;
- (2) evaluate opportunity enterprise partners and eligible enterprise development projects for suitability for enterprise assistance;
- (3) evaluate housing development partners and eligible housing development projects for suitability for housing development assistance; and
- (4) obtain input and information relevant to carrying out the purposes of the Opportunity Enterprise and Housing Development Act from recipients of enterprise assistance and housing development assistance, local governments and local communities."

Chapter 8 Section 6 Laws 2024

SECTION 6. Section 6-34-7 NMSA 1978 (being [Laws 2022, Chapter 57, Section 7](#)) is amended to read:

"6-34-7. RULEMAKING--BOARD.--The board shall adopt rules necessary to carry out the provisions of the Opportunity Enterprise and Housing Development Act to:

- A. establish procedures for applying and qualifying for enterprise assistance and housing development assistance;
- B. establish economic development goals in consultation with the department;
- C. govern the application procedures and requirements for enterprise assistance and housing development assistance;
- D. determine how to select and prioritize applications for enterprise assistance to be recommended to the authority;
- E. prioritize projects that are in political subdivisions that are implementing zoning reforms that support housing development projects;
- F. determine how to select and prioritize applications for housing development assistance to be recommended to authority; and
- G. provide safeguards to protect public money and other public resources subject to the Opportunity Enterprise and Housing Development Act."

Chapter 8 Section 7 Laws 2024

SECTION 7. Section 6-34-8 NMSA 1978 (being [Laws 2022, Chapter 57, Section 8](#)) is amended to read:

"6-34-8. ENTERPRISE ASSISTANCE--GENERAL REQUIREMENTS.--

A. An application for enterprise assistance shall:

- (1) describe the scope and plans of the enterprise development project or proposed use of leased property by the applicant;
- (2) demonstrate that the enterprise development project or lease will create or expand economic development opportunities within the state;
- (3) demonstrate that the proposed enterprise development project or lease will comply with applicable state and federal law;
- (4) provide sufficient evidence that other means of financing a proposed enterprise development project are unavailable or insufficient; and
- (5) include other documentation or certifications that the authority deems necessary.

B. The authority, in coordination with the department, shall:

- (1) make the application publicly available, including a description of the scope and plans of the proposed enterprise development project or lease;

(2) ensure that all information relating to the enterprise development project or lease and the evaluation of the application is made publicly available, unless the information includes trade secrets or information that is otherwise unable to be disclosed as provided by law;

(3) prioritize applications for enterprise assistance that demonstrate local support and financial need; and

(4) prior to providing enterprise assistance, determine that:

(a) the proposed enterprise development project or lease will create or expand economic development opportunities within the state;

(b) the proposed enterprise development project or lease will comply with applicable state and federal law; and

(c) other means of financing a proposed enterprise development project are unavailable or insufficient.

C. A contract to provide enterprise assistance shall:

(1) define the roles and responsibilities of the authority and the opportunity enterprise partner;

(2) provide clawback or recapture provisions that protect the public investment in the event of a default on the contract;

(3) provide a finance plan detailing the financial contributions and obligations of the authority and opportunity enterprise partner;

(4) require an opportunity enterprise partner to provide guarantees, letters of credit or other acceptable forms of security, as determined by the authority;

(5) specify how rents, if applicable, will be collected and accounted for;

(6) specify how debts incurred on behalf of the opportunity enterprise partner will be repaid; and

(7) provide that, in the event of a default, the authority may:

(a) elect to take possession of the property, including the succession of all right, title and interest in the enterprise development project; and

(b) terminate the lease or cease any further funding and exercise any other rights and remedies that may be available.

D. The authority may require any document, guarantee or certification from a recipient of enterprise assistance that the authority determines is necessary to ensure economic development opportunities are advanced by the enterprise assistance.

E. The authority may prioritize an application for enterprise assistance for a proposed enterprise development project located in a nonurban community.

F. Enterprise assistance shall only be provided if compliant with the Opportunity Enterprise and Housing Development Act. All contracts for enterprise assistance shall be provided to the board no later than thirty days from the execution of that contract.

G. As used in this section, "nonurban community" means a municipality with a population of less than sixty thousand according to the most recent federal decennial census or the unincorporated area of a county."

Chapter 8 Section 8 Laws 2024

SECTION 8. Section 6-34-10 NMSA 1978 (being [Laws 2022, Chapter 57, Section 10](#)) is amended to read:

"6-34-10. OPPORTUNITY ENTERPRISE LEASE--TERMS.--

A. The authority shall receive and review applications for opportunity enterprise leases. If the authority determines that an opportunity enterprise partner is eligible for an opportunity enterprise lease, the authority may enter into a contract to lease an available property to that opportunity enterprise partner in exchange for rent payments, subject to the terms provided by this section. The authority may enter into agreements with the general services department or other state agency or entity approved by the board to administer an opportunity enterprise lease.

B. An opportunity enterprise lease shall:

- (1) require that the property be used solely to create and expand economic development opportunities;
- (2) provide, based on the fair market value of the property, for:
 - (a) sufficient rent; and
 - (b) other securities to ensure the maintenance and protection of the property;
- (3) require that the property be properly insured for the duration of the lease; and
- (4) be bound only by the terms of the lease and any rules promulgated pursuant to the provisions of the Opportunity Enterprise and Housing Development Act.

C. Receipts from the payment of rent owed pursuant to an opportunity enterprise lease shall be deposited in the opportunity enterprise revolving fund."

Chapter 8 Section 9 Laws 2024

SECTION 9. Section 6-34-11 NMSA 1978 (being [Laws 2022, Chapter 57, Section 11](#)) is amended to read:

"6-34-11. OPPORTUNITY ENTERPRISE LOANS--TERMS--REPAYMENT.--

A. The authority shall receive and review applications for opportunity enterprise loans. The authority may make loans to opportunity enterprise partners if:

- (1) funding is available;
- (2) the opportunity enterprise partner meets credit and identification criteria, as determined by the authority;
- (3) the opportunity enterprise partner certifies that the proceeds of the loan will be used for an enterprise development project; and
- (4) the opportunity enterprise partner meets any other requirement for an opportunity enterprise loan.

B. The opportunity enterprise partner shall provide the authority with ongoing information requested by the authority.

C. Opportunity enterprise loans shall be made for loan periods of no more than thirty years, as determined by the authority. The loans shall bear an annual interest rate of no less than zero percent.

D. Beginning no later than the third anniversary of the funding date of the loan, payment on the outstanding principal of the loan shall be due on a schedule determined by the authority for the remainder of the loan period.

E. Receipts from the repayment of opportunity enterprise loans shall be deposited in the opportunity enterprise revolving fund.

F. No provision in an opportunity enterprise loan or the evidence of indebtedness of the loan shall include a penalty or premium for prepayment of the balance of the indebtedness.

G. The authority may provide a guarantee to a federally insured financial institution on behalf of a person who would otherwise be eligible as an opportunity enterprise partner; provided that the proceeds of any guaranteed loan are used for an enterprise development project. A guarantee pursuant to this subsection shall be provided subject to terms approved by the board."

Chapter 8 Section 10 Laws 2024

SECTION 10. Section [6-34-12](#) NMSA 1978 (being [Laws 2022, Chapter 57, Section 12](#)) is amended to read:

"6-34-12. OPPORTUNITY ENTERPRISE REVOLVING FUND--CREATED--PERMITTED USES.--

A. The "opportunity enterprise revolving fund" is created within the authority. The fund consists of appropriations, distributions, transfers, gifts, grants, donations, bequests, fees collected, payments of principal and interest on opportunity enterprise loans, income from rents paid on opportunity enterprise leases, income from investment of the fund and any other money distributed or otherwise allocated to the fund. Balances in the fund at the end of a fiscal year shall not revert to the general fund except as provided in [Section 6-34-13](#) NMSA 1978. The fund shall be administered by the authority as a separate account and may consist of such subaccounts as the authority deems necessary to carry out the purposes of the fund.

B. Money in the opportunity enterprise revolving fund shall be used by the authority to carry out the provisions of the Opportunity Enterprise and Housing Development Act, including to:

- (1) pay the reasonably necessary administrative costs, payments in lieu of taxes and other costs and fees incurred by the authority in carrying out the provisions of that act;
- (2) provide opportunity enterprise financing; and
- (3) make opportunity enterprise loans.

C. Money in the opportunity enterprise revolving fund that is not needed for immediate disbursement may be deposited or invested in the same manner as other funds administered by the authority."

Chapter 8 Section 11 Laws 2024

SECTION 11. Section ~~6-34-13~~ NMSA 1978 (being ~~Laws 2022, Chapter 57, Section 13~~) is amended to read:

~~"6-34-13. EXCESS REVENUE TO THE GENERAL FUND--OPPORTUNITY ENTERPRISE REVOLVING FUND--TRANSFER.--~~

A. If, on June 30, 2028 and by June 30 of each fiscal year thereafter, the balance in the opportunity enterprise revolving fund for that fiscal year exceeds the annual average amount by an amount greater than six percent, the amount in excess of six percent shall be transferred to the general fund. If there is not an excess amount pursuant to this section, no transfer shall be made from the fund.

B. As used in this section, "annual average amount" means the total balance of the opportunity enterprise revolving fund in the immediately preceding five fiscal years, divided by five."

Chapter 8 Section 12 Laws 2024

SECTION 12. A new section of the Opportunity Enterprise and Housing Development Act is enacted to read:

~~"HOUSING DEVELOPMENT ASSISTANCE--REQUIREMENTS.--~~

A. An application for housing development assistance shall:

- (1) describe the scope and plans of the housing development project;
- (2) demonstrate that the housing development project will create or expand housing within the state;
- (3) demonstrate that the proposed housing development project will comply with applicable state and federal law;
- (4) provide sufficient evidence that other means of financing a proposed housing development project are unavailable or insufficient; and
- (5) include other documentation or certifications that the authority deems necessary.

B. The authority shall:

- (1) make the application publicly available, including a description of the scope and plans of the proposed housing development project;
- (2) ensure that all information relating to the housing development project and the evaluation of the application is made publicly available, unless the information is otherwise unable to be disclosed as provided by law;
- (3) prioritize applications for housing development assistance that demonstrate local support and financial need; and
- (4) prior to providing housing development assistance, determine that:
 - (a) the proposed housing development project will create or expand housing within the state;
 - (b) the proposed housing development project will comply with applicable state and federal law; and
 - (c) other means of financing a proposed housing development project are unavailable or insufficient."

Chapter 8 Section 13 Laws 2024

SECTION 13. A new section of the Opportunity Enterprise and Housing Development Act is enacted to read:

"HOUSING DEVELOPMENT LOANS--TERMS--REPAYMENT.--

- A. The authority shall receive and review applications for housing development loans. The authority may make loans to housing development partners if:
- (1) funding is available;
 - (2) the housing development partner meets credit and identification criteria, as determined by the authority;
 - (3) the housing development partner certifies that the proceeds of the loan will be used for a housing development project; and
 - (4) the housing development partner meets any other requirement for a housing development project loan as determined by the authority.
- B. The housing development partner shall provide the authority with ongoing information requested by the authority.
- C. Housing development loans shall be made for loan periods of no more than forty years, as determined by the authority. The loans shall bear an annual interest rate of no less than zero percent.
- D. Receipts from the repayment of housing development loans shall be deposited in the housing development revolving fund.

E. No provision in a housing development loan or the evidence of indebtedness of the housing development loan shall include a penalty or premium for prepayment of the balance of the indebtedness.

F. The authority may prioritize an application for housing development assistance for a proposed housing development project located in a nonurban community. As used in this subsection, "nonurban community" means a municipality with a population of less than sixty thousand according to the most recent federal decennial census or the unincorporated area of a county."

Chapter 8 Section 14 Laws 2024

SECTION 14. A new section of the Opportunity Enterprise and Housing Development Act is enacted to read:

"HOUSING DEVELOPMENT REVOLVING FUND--CREATED.--

A. The "housing development revolving fund" is created within the authority. The fund consists of appropriations, distributions, transfers, gifts, grants, donations, bequests, fees collected, payments of principal and interest on housing development assistance, income from investment of the fund and any other money distributed or otherwise allocated to the fund. Balances in the fund at the end of a fiscal year shall not revert to any other fund. The fund shall be administered by the authority as a separate account and may consist of such subaccounts as the authority deems necessary to carry out the purposes of the fund.

B. Money in the housing development revolving fund shall be used by the authority to carry out the provisions of the Opportunity Enterprise and Housing Development Act, including to:

- (1) pay the reasonably necessary administrative costs and other costs and fees incurred by the authority in carrying out the provisions of that act; and
- (2) provide housing development assistance.

C. Money in the housing development revolving fund that is not needed for immediate disbursement may be deposited or invested in the same manner as other funds administered by the authority."

Chapter 8 Section 15 Laws 2024

SECTION 15. Section 6-34-14 NMSA 1978 (being [Laws 2022, Chapter 57, Section 14](#)) is amended to read:

"6-34-14. REPORTS.--

A. On December 1, 2024 and each succeeding December 1 thereafter, the authority shall submit a report to the governor, the legislature, the legislative finance committee, the New Mexico finance authority oversight committee, the revenue stabilization and tax policy committee and other appropriate legislative interim committees. The report shall provide details regarding assistance from the opportunity enterprise revolving fund and housing development revolving fund provided pursuant to the Opportunity Enterprise and Housing Development Act. The report shall include:

- (1) the total amount of enterprise assistance provided for enterprise development projects and state revenue derived from each enterprise development project;

(2) the total number of loans made pursuant to the Opportunity Enterprise and Housing Development Act; the amount of those loans; the number of loan recipients in a delinquent status, in default or that have filed for bankruptcy;

(3) an overview of the industries and types of business entities operating pursuant to an enterprise development project or lease;

(4) the total number of employees currently employed directly or indirectly related to an enterprise development project or lease;

(5) the total number of affordable housing units and workforce development housing units supported by housing development assistance; and

(6) any recommended changes to the Opportunity Enterprise and Housing Development Act to ensure proper safeguards for public money and to ensure enterprise assistance and housing development assistance are able to efficiently advance the economic development interests of the state.

B. Information obtained by the authority regarding applicants for enterprise assistance and housing development assistance is confidential and not subject to inspection pursuant to the Inspection of Public Records Act; provided that nothing shall prevent the authority from disclosing:

(1) information required in the report pursuant to this section;

(2) public information pursuant to Paragraphs (1) and (2) of Subsection B of Section 6-34-8 NMSA 1978 and Paragraphs (1) and (2) of Subsection B of Section 12 of this 2024 act; and

(3) the names of persons that have received enterprise assistance and housing development assistance and the amounts of assistance provided pursuant to the Opportunity Enterprise and Housing Development Act."

Chapter 8 Section 16 Laws 2024

SECTION 16. Section 6-34-15 NMSA 1978 (being Laws 2022, Chapter 57, Section 15) is amended to read:

"6-34-15. CONFLICT OF INTEREST.--

A. If a member of the board or an employee of the authority has an interest, either direct or indirect, in an application or contract relating to enterprise assistance or housing development assistance, that interest shall be disclosed to the authority and the board in writing. The person having such interest shall not participate in actions by the board or the authority with respect to that conflict.

B. A person who has a conflict of interest and participates in an action involving that conflict of interest or knowingly fails to notify the authority and the board in writing of that conflict is guilty of a misdemeanor and upon conviction shall be sentenced pursuant to the provisions of Section 31-19-1 NMSA 1978."