HOUSE BILL 299

55TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2021

INTRODUCED BY

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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. [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;

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

F. "eligible property" means privately owned commercial, industrial or agricultural or nonprofit real property or multifamily residential real property with five or more dwelling units, including real property owned by an entity formally recognized as tax exempt pursuant to Section 501(c)3 of the Internal Revenue Code of 1986, as amended;

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

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

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

J. "program administrator" means a person designated by a county to administer a program pursuant to the requirements of the Improvement Special Assessment Act;

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

L. "project application" means an application submitted to a program administrator to demonstrate that a proposed project qualifies for special assessment financing pursuant to a program;

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

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

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

P. "special assessment" means a voluntary assessment imposed on a property pursuant to the Improvement Special Assessment Act for the total amount of special assessment financing;

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

R. "special assessment assignable certificate" means a document assigning a special assessment lien from the county to a capital provider in an amount not to exceed the amount of the special assessment financing for the term of the special assessment lien;

S. "special assessment financing" means the total amount of financing provided by a capital provider pursuant to a special assessment financing agreement, including accrual of interest and penalties, charges, fees and cost of enforcement of a special assessment lien;

T. "special assessment financing agreement" means a contract pursuant to which a property owner agrees to repay a capital provider for special assessment financing and to the terms of the special assessment financing, including the treatment of prepayment and partial payment of a special assessment;

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

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

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

SECTION 3. [NEW MATERIAL] ORDINANCE ESTABLISHING THE PROGRAM.--The board of county commissioners of a county may by county ordinance establish a program. The county ordinance shall be substantively in the form set forth in the program guidebook and shall:

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

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

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

D. authorize and direct a county official to enter into special assessment agreements with property owners and capital providers and special assessment assignable certificates on behalf of the county to impose special assessments and assign special assessment liens for assessments approved by the program administrator pursuant to this section;

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

F. designate a program administrator;

G. establish allowable dates for the payment of

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installments of special assessments, including provisions for differing optional time periods over which installments of special assessments may be paid, which time periods shall be consistent with the payment dates for property taxes or other assessments due to the county;

H. require that the interest rate, delinquent interest, penalties, terms of prepayment and other terms of a special assessment shall be established by a capital provider in the related special assessment financing agreement for such assessment; and

I. direct the county treasurer to bill a special assessment imposed pursuant to a special assessment agreement on the property tax bill or stand-alone bill for the property subject to the special assessment and to collect the special assessment at the times described in the special assessment agreement and as provided for in the county ordinance.

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

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

(1) for an existing eligible property:

(a) where energy efficiency improvements, water conservation improvements or renewable energy improvements are proposed, certification by a licensed professional engineer or other professional listed in the program guidebook stating the proposed eligible improvements will either result in more efficient use or conservation of energy or water, the reduction of greenhouse gas emissions or the addition of renewable sources of energy or water; or

(b) where resiliency improvements are proposed, certification by a licensed professional engineer stating the qualified improvements will result in improved resilience;

(2) for construction of a new eligible property, certification by a licensed professional engineer stating that the proposed eligible improvements will enable the property to exceed the energy efficiency, water conservation, renewable energy, renewable water or resilience requirements of the applicable building code;

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

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

(a) the special assessment financing

amount;

(b) the interest rate;

(c) administrative fees paid to the county;

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

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

(f) delinquent interest or penalties; and

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

(5) written consent from any holder of a lien, mortgage or security interest in the real property that the property may participate in the program and that the special assessment lien shall have priority coequal with other property tax and assessment liens.

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

SECTION 5. [NEW MATERIAL] IMPOSITION OF SPECIAL

ASSESSMENT--AMOUNT--COLLECTION--SPECIAL ASSESSMENT LIEN CREATED.--

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

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

(1) the legal description of the property;

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

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

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

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

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

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

(8) a copy of the special assessment agreement.

C. A special assessment lien shall be effective during the period in which the special assessment is imposed and shall have priority coequal with other property tax liens and assessments.

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

E. Upon entering into a special assessment agreement, the county shall execute and record a special assessment assignable certificate from the county to the appropriate capital provider. The special assessment assignable certificate shall contain:

(1) the legal description of the property covered by the special assessment assignable certificate;

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

(3) the grantor's name, which shall be the county in which the property is located;

(4) the grantee's name, which shall be the appropriate capital provider and its successors and assigns;

(5) the date on which the special assessment assignable certificate was created; and

(6) the amount and terms of the special

assessment lien assigned in the special assessment assignable certificate.

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

G. Special assessments shall be collected at times allowable pursuant to the applicable county ordinance and as set forth in a special assessment agreement. Money derived from the imposition and collection of a special assessment shall be kept separately from other county funds, and each special assessment payment received by the county shall be promptly remitted to the holder of the special assessment assignable certificate for the related property.

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

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

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

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

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on real estate.

D. The county shall institute proceedings to foreclose the special assessment lien against any property that is delinquent in the payment of the special assessment or installment of a special assessment for a period of more than one year.

E. In any action seeking the foreclosure of a special assessment lien against any property after assignable certificates have been issued, if there is no other purchaser for the property having a delinquent special assessment, the county may:

(1) offer the property to the capital provider if all outstanding taxes are paid by the capital provider;

(2) purchase the property sold at the foreclosure sale; or

(3) bid, in lieu of cash, the full amount of the assessment, interest, penalties, attorney fees and costs found by the court to be due and payable pursuant to the special assessment lien and any costs taxed by the court in the foreclosure proceedings against the property ordered sold.

F. If the county fails or refuses to foreclose and sell a property for the delinquent installments due on a special assessment, any holder of a special assessment assignable certificate secured by the special assessment may foreclose the special assessment lien on such delinquent

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property in the manner provided by law for the foreclosure of mortgages on real estate.

G. Whenever a county is delinquent in the remittance of a special assessment payment received from a property owner to the holder of a special assessment assignable certificate pursuant to Subsection G of Section 5 of the Improvement Special Assessment Act, the holder of the special assessment assignable certificate issued against the related property has the rights and remedies for the collection of the special assessment as are given by law for the collection of judgments against municipalities, counties and school districts.

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

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

B. The special assessment financing agreement shall specify that, notwithstanding the obligation of the county treasurer to remit a special assessment payment received from a property owner to the relevant special assessment certificate holder, the county is not liable in any way for the debt of the property owner, is not a third-party obligor and is not pledging or lending its credit to the property owner or the capital provider.

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

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

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

(2) permit fees;

(3) inspection fees;

(4) capital provider's fees;

(5) program administrative fees;

(6) project development and engineering fees;

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

(8) capitalized interest;

(9) interest reserves;

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

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

B. A county or a program administrator shall not require property owners or capital providers to access administrative services from the county or program administrator other than those provided for in the Improvement Special Assessment Act.

C. Program administrative fees shall reflect the reasonable costs of the county or program administrator to provide administrative services for the program but shall not exceed one percent of the principal amount of the special assessment financing.

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

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

(1) forms for the uniform assessment documents;

(2) a statement that the term of the special assessment financing agreement will not exceed the useful life of the proposed eligible improvements;

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

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

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

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

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

D. Pursuant to the Joint Powers Agreements Act, any combination of counties may agree to jointly administer the program pursuant to the Improvement Special Assessment Act, but the secretary of finance and administration shall not approve more than one joint powers agreement for the administration of a single program.

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

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