

1 HOUSE BILL 228

2 **56TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2023**

3 INTRODUCED BY

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10 AN ACT

11 RELATING TO LOCAL GOVERNMENT; ENACTING THE IMPROVEMENT SPECIAL
12 ASSESSMENT ACT; AUTHORIZING COUNTIES TO IMPOSE, ADMINISTER AND
13 DISBURSE SPECIAL ASSESSMENTS TO ENCOURAGE THE DEVELOPMENT OF
14 CERTAIN PROPERTY IMPROVEMENTS.

15
16 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

17 SECTION 1. [NEW MATERIAL] SHORT TITLE.--This act may be
18 cited as the "Improvement Special Assessment Act".

19 SECTION 2. [NEW MATERIAL] DEFINITIONS.--As used in the
20 Improvement Special Assessment Act:

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

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

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1 county;

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

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

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

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

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

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

23 I. "municipal" or "municipality" means any
24 incorporated city, town or village, whether incorporated under
25 general act, special act or special charter, incorporated

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1 counties and H class counties;

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

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

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

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

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

24 O. "renewable energy improvement" means an energy
25 system that generates energy by use of low- or zero-emissions

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1 generation technology with substantial long-term production,
2 including solar, wind and geothermal resources, fuel cell
3 equipment using an electrochemical process to generate
4 electricity and heat or biomass resources;

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

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

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

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

24 T. "special assessment financing" means the total
25 amount of financing provided by a capital provider pursuant to

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1 a special assessment financing agreement, including accrual of
2 interest and penalties, charges, fees and costs of enforcement
3 of a special assessment lien;

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

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

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

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

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1 water used for drinking or cooking.

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

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

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

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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 assessments
4 approved by the program administrator pursuant to this section;

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

8 F. designate a program administrator;

9 G. establish allowable dates for the payment of
10 installments of special assessments, including provisions for
11 differing optional time periods over which installments of
12 special assessments may be paid, which time periods shall be
13 consistent with the payment dates for property taxes or other
14 assessments due to the county;

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

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

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1 SECTION 4. [NEW MATERIAL] APPROVAL OF SPECIAL

2 ASSESSMENT.--

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

7 (1) for an existing eligible property:

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

17 (b) where resiliency improvements are
18 proposed, certification by a licensed professional engineer or
19 other professional listed in the program guidebook stating that
20 the qualified improvements will result in improved resilience;

21 (2) for construction of a new eligible
22 property, certification by a licensed professional engineer or
23 other professional listed in the program guidebook stating that
24 the proposed eligible improvements will enable the property to
25 exceed the energy efficiency, water conservation, renewable

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1 energy, renewable water or resilience requirements of the
2 applicable building code;

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

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

11 (a) the special assessment financing
12 amount;

13 (b) the interest rate;

14 (c) administrative fees paid to the
15 county;

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

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

20 (f) delinquent interest or penalties;

21 and

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

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1 (5) written consent from any holder of a lien,
2 mortgage or security interest in the real property that the
3 property may participate in the program and that the special
4 assessment lien shall have priority superior to all liens,
5 claims and titles except a lien for general ad valorem property
6 taxes or an improvement district lien that is coequal to
7 property taxes.

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

13 SECTION 5. [NEW MATERIAL] IMPOSITION OF SPECIAL
14 ASSESSMENT--AMOUNT--COLLECTION--SPECIAL ASSESSMENT LIEN
15 CREATED.--

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

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

- 22 (1) the legal description of the property;
23 (2) the county assessor's parcel number of the
24 property;
25 (3) the grantor's name, which shall be the

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1 same as the property owner on the special assessment agreement;

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

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

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

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

10 (8) a copy of the special assessment
11 agreement.

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

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

24 E. Upon entering into a special assessment
25 agreement, the county shall execute and record a special

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1 assessment assignable certificate from the county to the
2 appropriate capital provider. The special assessment
3 assignable certificate shall convey the special assessment lien
4 including all of the characteristics described in Subsection B
5 of this section.

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

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

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

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

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

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

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

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

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

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

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

24 F. If, after a year since a special assessment
25 payment is delinquent, the county fails or refuses to foreclose

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1 and sell a property for the delinquent installments due on a
2 special assessment, any holder of a special assessment
3 assignable certificate secured by the special assessment may
4 foreclose the special assessment lien on such delinquent
5 special assessment installments in the manner provided by law
6 for the foreclosure of mortgages on real estate any time after
7 one year after the date of delinquency.

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

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

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

25 A. Special assessment financing shall be provided

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1 by capital providers and disbursed directly by capital
2 providers to fund eligible improvements subject to a special
3 assessment financing agreement.

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

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

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

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

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1 (9) interest reserves;
2 (10) escrow for prepaid property taxes and
3 insurance; and

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

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

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

17 D. Program administrative fees shall reflect the
18 reasonable costs of the county or program administrator to
19 provide administrative services for the program but shall not
20 exceed the lesser of one percent of the principal amount of the
21 special assessment financing or twenty-five thousand dollars
22 (\$25,000).

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

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

5 The program guidebook shall include:

6 (1) forms for the uniform assessment
7 documents;

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

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

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

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

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

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1 department or its contracted third party as program
2 administrator in addition to any other program administrator
3 designated by the county.

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

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

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