

**Second Regular Session
Seventy-fifth General Assembly
STATE OF COLORADO**

INTRODUCED

LLS NO. 26-0622.01 Jed Franklin x5484

SENATE BILL 26-040

SENATE SPONSORSHIP

Simpson and Amabile,

HOUSE SPONSORSHIP

Stewart K.,

Senate Committees
Local Government & Housing

House Committees

A BILL FOR AN ACT

101 **CONCERNING THE AFFORDABLE HOME OWNERSHIP PROGRAM.**

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://leg.colorado.gov>.)

The division of housing in the department of local affairs (division) administers an affordable home ownership program (program) that makes grants to nonprofit organizations, local governments, tribal governments, community development financial institutions, and community land trusts (eligible organizations) to support affordable home ownership, including the development of residential housing units that are described in an eligible organization's funding request (project). Current law specifies that only a household with an income less than or equal to

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters or bold & italic numbers indicate new material to be added to existing law.
Dashes through the words or numbers indicate deletions from existing law.

120% of the area median income is eligible for assistance through the program, but it is unclear whether this requirement applies to housing units constructed by an eligible organization through one of its projects. The bill clarifies that only a household with an income less than or equal to 120% of the statewide area median income is eligible for housing constructed by an eligible organization through one of its projects.

In addition, the program requires that housing offered through the program, including all taxes and fees, costs not more than 35% of a household's monthly income. The bill allows the division to modify this percentage as applied to a residential unit constructed by an eligible organization as part of an affordable housing project pursuant to a waiver process initiated by an eligible organization if a substantial need for housing the project's target population exists, the unit has been adequately marketed to eligible buyers for purchase for at least 6 months after the issuance of a certificate of occupancy, and the unit has not been purchased by an eligible buyer within that 6-month period. In lieu of this process, the division may approve an eligible organization's process for determining when to exceed the maximum monthly household income for a unit funded by the program.

The division may issue a waiver with a different housing cost limit from the limit requested by the eligible organization if a different limit would better serve needs identified in a housing assessment and the project remains financially feasible in the division's discretion.

For an eligible organization, the bill specifies that the division is required to accept a local affordability mechanism in lieu of any state-prescribed use covenant if the division determines that the local affordability mechanism allows the state to maintain its obligations for compliance and compliance monitoring and is substantially equivalent to or more protective of long-term affordability and primary occupancy than a state-prescribed use covenant or the local affordability mechanism is necessary to access financing for disproportionately impacted communities.

The division may allow an eligible organization to rent residential units constructed as part of the project. On or before December 31, 2026, the division is required to issue guidance for when units within a project may be rented.

1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1.** In Colorado Revised Statutes, 29-32-104, **amend**

3 (3)(a) as follows:

4 **29-32-104. Permissible expenditures - affordable housing**

1 **programs - report - definitions.**

2 (3) The division of housing and the division of local government
3 shall expend the money transferred to the support fund in section
4 29-32-103 (1) to support the following programs only:

5 (a) (I) An affordable home ownership program administered by
6 the division or one or more contractors of the division. The program shall
7 offer home ownership down-payment assistance to first-time homebuyers
8 and shall prioritize assistance, to the extent practicable, to first-generation
9 homebuyers. The assistance shall be provided to households with income
10 less than or equal to one hundred twenty percent of the area median
11 income of households of that size in the territory or jurisdiction of local
12 government or tribal government in which the housing is located, as
13 calculated and published for a given year by the United States department
14 of housing and urban development, and the cost of the monthly housing
15 payment toward mortgage principal, mortgage interest, property taxes,
16 mortgage and homeowner's insurance, homeowner association fees, land
17 lease fees, and metropolitan district fees ~~shall~~ MUST not cost more than
18 thirty-five percent of monthly household income. The program shall also
19 make grants OR BELOW-MARKET-RATE LOANS to nonprofit organizations,
20 local governments, tribal governments, community development financial
21 institutions, and community land trusts to support affordable home
22 ownership FOR HOUSEHOLDS WITH INCOME LESS THAN OR EQUAL TO ONE
23 HUNDRED TWENTY PERCENT OF THE STATEWIDE AREA MEDIAN INCOME OF
24 HOUSEHOLDS OF THAT SIZE, AS CALCULATED AND PUBLISHED FOR A GIVEN
25 YEAR BY THE UNITED STATES DEPARTMENT OF HOUSING AND URBAN
26 DEVELOPMENT, AND THE COST OF THE MONTHLY HOUSING PAYMENT
27 TOWARD MORTGAGE PRINCIPAL, MORTGAGE INTEREST, PROPERTY TAXES,

1 MORTGAGE AND HOMEOWNER'S INSURANCE, HOMEOWNERS' ASSOCIATION
2 FEES, LAND LEASE FEES, AND METROPOLITAN DISTRICT FEES MUST NOT
3 COST MORE THAN THIRTY-FIVE PERCENT OF MONTHLY HOUSEHOLD
4 INCOME. The program shall also make grants or loans to groups or
5 associations of mobile home owners and their assignees to assist them
6 with the purchase of a mobile home park pursuant to section 38-12-217.
7 Said grants and loans shall be used to support affordable home ownership
8 for households with income less than or equal to one hundred percent of
9 the area median income of households of that size in the territory or
10 jurisdiction of local government or tribal government in which the
11 households are located, as calculated and published for a given year by
12 the United States department of housing and urban development, and the
13 cost of the monthly housing payment toward mortgage principal,
14 mortgage interest, property taxes, mortgage and homeowner's insurance,
15 homeowner association fees, land lease fees, and metropolitan district
16 fees ~~shall~~ MUST not cost more than thirty-five percent of monthly
17 household income. All principal and interest payments on loans made
18 under this subsection (3)(a) shall be paid to the division and used by the
19 division for the purposes set forth in this subsection (3). Up to fifty
20 percent of money transferred to the support fund annually may be used for
21 the program. The division shall determine how much of the available
22 funding shall be allocated to each aspect of the program. The division
23 may utilize up to five percent of the funds it receives from the fund for
24 the program to pay for the direct and indirect costs of administering the
25 program.

26 (II) FOR PROJECTS UNDERTAKEN BY AN ELIGIBLE ORGANIZATION,
27 AS DEFINED IN SECTION 29-32-105.7 (2)(a), THE DIVISION MAY INCREASE

1 OR WAIVE THE MAXIMUM PERCENTAGE OF INCOME THAT A HOUSEHOLD
2 MAY ALLOCATE FOR MONTHLY HOUSING COSTS OTHERWISE REQUIRED BY
3 SUBSECTION (3)(a)(I) OF THIS SECTION PURSUANT TO THE PROCESS SET
4 FORTH IN SECTION 29-32-105.7.

5 **SECTION 2.** In Colorado Revised Statutes, **add** 29-32-105.7 as
6 follows:

7 **29-32-105.7. Home ownership program flexibility - waiver -**
8 **affordability mechanisms - legislative declaration - definitions.**

9 (1) (a) THE GENERAL ASSEMBLY FINDS AND DECLARES THAT:

10 (I) PROPOSITION 123, APPROVED BY A MAJORITY OF ELIGIBLE
11 ELECTORS DURING THE NOVEMBER 2022 GENERAL ELECTION, WAS
12 INTENDED TO REACH ALL COMMUNITIES IN THE STATE;

13 (II) AFFORDABLE HOME OWNERSHIP OPPORTUNITIES ARE LIMITED
14 BY CHANGING ECONOMIC CONDITIONS THROUGHOUT THE STATE;

15 (III) THE FUNDING PROVIDED PURSUANT TO PROPOSITION 123
16 SHOULD BE ALLOCATED TO BUILDING HOUSING THAT WOULD NOT
17 OTHERWISE BE BUILT WITHOUT FINANCIAL ASSISTANCE; AND

18 (IV) STATUTORY RESTRICTIONS ON ELIGIBILITY FOR ASSISTANCE
19 USING PROPOSITION 123 FUNDING, INCLUDING LIMITATIONS ON
20 HOUSEHOLD INCOME AND MAXIMUM ALLOWABLE MONTHLY HOUSING
21 COSTS, COUPLED WITH INCREASED INTEREST RATES, LAND COSTS, AND
22 BUILDING MATERIAL COSTS, ARE PREVENTING THE PROPOSITION 123 HOME
23 OWNERSHIP PROGRAM FROM BEING USED IN SOME COMMUNITIES.

24 (b) THE GENERAL ASSEMBLY FURTHER FINDS AND DECLARES THAT
25 IT IS THE GENERAL ASSEMBLY'S INTENT THAT THE WAIVER PROCESS SET
26 FORTH IN THIS SECTION WILL ALLOW THE DIVISION MORE FLEXIBILITY TO
27 ALLOCATE FUNDING FOR AFFORDABLE HOME OWNERSHIP PROJECTS IN

1 COMMUNITIES ACROSS THE STATE.

2 (2) AS USED IN THIS SECTION, UNLESS THE CONTEXT OTHERWISE
3 REQUIRES:

4 (a) "ELIGIBLE ORGANIZATION" MEANS A NON-PROFIT
5 ORGANIZATION, LOCAL GOVERNMENT, COMMUNITY DEVELOPMENT
6 FINANCIAL INSTITUTION, TRIBAL GOVERNMENT, OR COMMUNITY LAND
7 TRUST THAT IS ELIGIBLE FOR FUNDING PURSUANT TO SECTION 29-32-104
8 (3)(a).

9 (b) "PROJECT" MEANS A RESIDENTIAL HOUSING UNIT OR GROUP OF
10 UNITS DESCRIBED WITHIN AN ELIGIBLE ORGANIZATION'S REQUEST FOR
11 FUNDING PURSUANT TO SECTION 29-32-104 (3)(a)(I).

12 (3)(a) NOTWITHSTANDING THE PROVISIONS OF SECTION 29-32-104
13 (3)(a) THAT SPECIFY THAT MONTHLY HOUSING COSTS SHALL NOT EXCEED
14 THIRTY-FIVE PERCENT OF MONTHLY HOUSEHOLD INCOME, AN ELIGIBLE
15 ORGANIZATION THAT WAS AWARDED MONEY FOR AN AFFORDABLE HOME
16 OWNERSHIP PROJECT PURSUANT TO SECTION 29-32-104 (3)(a) AND THAT
17 CONSTRUCTED A RESIDENTIAL UNIT AS PART OF THE PROJECT THAT HAS
18 NOT BEEN PURCHASED WITHIN SIX MONTHS OF THE ISSUANCE OF A
19 CERTIFICATE OF OCCUPANCY, MAY SUBMIT A REQUEST TO THE DIVISION
20 FOR A WAIVER OF THE MAXIMUM MONTHLY HOUSING COST LIMIT FOR THAT
21 RESIDENTIAL UNIT.

22 (b) A WAIVER REQUEST MUST INCLUDE THE FOLLOWING
23 INFORMATION:

24 (I) A HOUSING-NEEDS ASSESSMENT COMPLETED WITHIN SIX YEARS
25 OF THE WAIVER REQUEST;

26 (II) A PROPOSED MAXIMUM PERCENTAGE OF MONTHLY INCOME
27 THAT A HOUSEHOLD MAY ALLOCATE FOR MONTHLY HOUSING COSTS; AND

1 (III) EVIDENCE THAT THE UNIT HAS BEEN ADEQUATELY MARKETED
2 TO ELIGIBLE BUYERS FOR PURCHASE FOR AT LEAST SIX MONTHS AFTER THE
3 UNIT'S FINAL COMPLETION AND THAT THE UNIT HAS NOT BEEN PURCHASED.

4 (c) THE DIVISION MAY APPROVE A WAIVER REQUEST IF AN ELIGIBLE
5 ORGANIZATION AWARDED MONEY FOR AN AFFORDABLE HOME OWNERSHIP
6 PROJECT PURSUANT TO SECTION 29-32-104 (3)(a) ESTABLISHES THAT:

7 (I) A SUBSTANTIAL NEED FOR HOUSING THE PROJECT'S TARGET
8 POPULATION EXISTS; AND

9 (II) THE UNIT HAS BEEN ADEQUATELY MARKETED TO ELIGIBLE
10 BUYERS FOR PURCHASE FOR AT LEAST SIX MONTHS AFTER FINAL
11 COMPLETION OF THE UNIT AND THE UNIT HAS NOT BEEN PURCHASED BY AN
12 ELIGIBLE BUYER WITHIN THAT SIX-MONTH PERIOD.

13 (d) THE DIVISION MAY:

14 (I) ISSUE A WAIVER WITH HOUSING COST LIMITS THAT ARE
15 DIFFERENT FROM THOSE REQUESTED BY THE ELIGIBLE ORGANIZATION IN
16 THE WAIVER REQUEST IF DIFFERENT HOUSING COST LIMITS WOULD BETTER
17 SERVE NEEDS IDENTIFIED IN THE HOUSING-NEEDS ASSESSMENT, THE
18 PROJECT REMAINS FINANCIALLY FEASIBLE IN THE DIVISION'S DISCRETION,
19 AND THERE ARE ELIGIBLE BUYERS THAT MEET THE PARAMETERS SET BY
20 THE DIVISION PURSUANT TO THIS SUBSECTION (3)(d)(I); OR

21 (II) MODIFY THE TOTAL AMOUNT OF FUNDING PROVIDED
22 PURSUANT TO SECTION 29-32-104 (3)(a) TO ACCOUNT FOR AN INCREASE
23 IN THE SALE PRICE OF THE UNIT.

24 (4) IN LIEU OF THE PROCESS DESCRIBED IN SUBSECTION (3) OF THIS
25 SECTION, THE DIVISION MAY APPROVE AN ELIGIBLE ORGANIZATION'S
26 PROCESS FOR DETERMINING WHEN TO EXCEED THE MAXIMUM MONTHLY
27 HOUSEHOLD INCOME FOR A UNIT FUNDED PURSUANT TO SECTION

1 29-32-104 (3)(a).

2 (5) (a) FOR PROJECTS FUNDED PURSUANT TO SECTION 29-32-104
3 (3)(a), THE DIVISION SHALL ACCEPT A LOCAL AFFORDABILITY MECHANISM,
4 INCLUDING A DEED RESTRICTION, COMMUNITY LAND TRUST GROUND
5 LEASE, SECURED RECAPTURE LIEN, OR COMPARABLE RECORDED
6 INSTRUMENT IN LIEU OF ANY STATE-PRESCRIBED USE COVENANT IF THE
7 DIVISION DETERMINES THAT:

8 (I) THE LOCAL AFFORDABILITY MECHANISM ALLOWS THE STATE TO
9 MAINTAIN ITS OBLIGATIONS FOR COMPLIANCE AND COMPLIANCE
10 MONITORING; AND

11 (II) (A) THE LOCAL AFFORDABILITY MECHANISM IS
12 SUBSTANTIALLY EQUIVALENT TO OR MORE PROTECTIVE OF LONG-TERM
13 AFFORDABILITY AND PRIMARY OCCUPANCY THAN A STATE-PRESCRIBED
14 USE COVENANT; OR

15 (B) THE LOCAL AFFORDABILITY MECHANISM IS NECESSARY FOR
16 ACCESS TO FINANCING FOR A DISPROPORTIONATELY IMPACTED
17 COMMUNITY, AS DEFINED IN SECTION 24-4-109 (2)(b)(II).

18 (b) IF THE DIVISION ACCEPTS A LOCAL AFFORDABILITY MECHANISM
19 IN LIEU OF A STATE-PRESCRIBED USE COVENANT, THE DIVISION SHALL NOT
20 REQUIRE A STATE-PRESCRIBED USE COVENANT ON A UNIT, EXCEPT TO
21 INCORPORATE NON-DUPPLICATIVE FEDERAL OR STATE REQUIREMENTS NOT
22 ADDRESSED IN THE LOCAL AFFORDABILITY MECHANISM.

23 (6) (a) FOR PROJECTS FUNDED PURSUANT TO SECTION 29-32-104
24 (3)(a), AN ELIGIBLE ORGANIZATION MAY REQUEST THAT THE DIVISION
25 ALLOW IT TO RENT RESIDENTIAL UNITS CONSTRUCTED AS PART OF THE
26 PROJECT.

27 (b) ON OR BEFORE DECEMBER 31, 2026, THE DIVISION SHALL ISSUE

1 GUIDANCE FOR WHEN AN ELIGIBLE ORGANIZATION MAY RENT UNITS
2 WITHIN A PROJECT.

3 **SECTION 3. Effective date - applicability.** This act takes effect
4 July 1, 2026, and applies to requests for waivers received by the division
5 on or after said date.

6 **SECTION 4. Safety clause.** The general assembly finds,
7 determines, and declares that this act is necessary for the immediate
8 preservation of the public peace, health, or safety or for appropriations for
9 the support and maintenance of the departments of the state and state
10 institutions.