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SENATE BILL 26-040

BY SENATOR(S) Simpson and Amabile, Ball, Benavidez, Bridges, Catlin, Cutter, Daugherty, Exum, Frizell, Gonzales J., Jodeh, Kipp, Kirkmeyer, Kolker, Lindstedt, Marchman, Mullica, Pelton R., Roberts, Snyder, Sullivan, Wallace, Weissman, Coleman;
also REPRESENTATIVE(S) Stewart K. and Smith, Bacon, Boesenecker, Brown, Carter, Clifford, Duran, English, Froelich, Jackson, Joseph, Lieder, Lindsay, Lukens, McCormick, Nguyen, Paschal, Phillips, Ricks, Rutinel, Rydin, Stewart R., McCluskie.

CONCERNING THE AFFORDABLE HOME OWNERSHIP PROGRAM.

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

SECTION 1. In Colorado Revised Statutes, 29-32-103, **amend** (1)(a) as follows:

29-32-103. Transfers of money - permitted uses of the fund - continuous appropriation.

(1) (a) The affordable housing support fund is hereby created in the state treasury. The support fund consists of money deposited into it under subsections (1)(b)(II) and (3) of this section. The division of housing shall

Capital letters or bold & italic numbers indicate new material added to existing law; dashes through words or numbers indicate deletions from existing law and such material is not part of the act.

administer the support fund and expend the money in the support fund only for the purposes set forth in section 29-32-104 (3)(a) and (3)(b). The division of local government in the department of local affairs created in section 24-32-103 shall expend the money in the support fund only for the purposes set forth in section 29-32-104 (3)(c). Except as otherwise provided in subsection (1)(b) of this section, all money not expended or encumbered, and all interest earned on the investment or deposit of money in the support fund, remains in the support fund and does not revert to the general fund or any other fund at the end of any fiscal year. Except as otherwise provided in subsections (1)(b) and (1)(c) of this section and section 29-32-104 (3)(b)(II), all money transferred to the support fund pursuant to subsection (3) of this section is continuously appropriated to the division of housing for the purposes set forth in section 29-32-104 (3)(a) and (3)(b) and, to the extent allocated by the division of housing, to the division of local government for the purposes set forth in section 29-32-104 (3)(c).

SECTION 2. In Colorado Revised Statutes, 29-32-104, **amend** (1)(a) and (3)(a) as follows:

29-32-104. Permissible expenditures - affordable housing programs - report - definitions.

(1) The office shall contract with the administrator. The office may select an administrator without a competitive procurement process but shall announce the contract opening publicly and select the administrator in a meeting that is open to the public, no less than seventy-two hours after notice of such meeting is publicly available. No single contract may exceed five years in duration. Upon the expiration of any contract term, the office may renew the contract with the same administrator or may select another administrator. The administrator selected by the office shall expend the money transferred to the financing fund in section 29-32-103 (2) that the administrator receives from the office to support the following programs only:

(a) (I) A land banking program to be administered by the administrator. The program shall provide grants to local governments ~~and tribal governments~~ and loans to non-profit organizations with a demonstrated history of providing affordable housing to acquire and preserve land for the development of affordable housing. For purposes of this subsection (1)(a), "affordable housing" means rental housing that has

a designated imputed income limit by household size not to exceed sixty percent of the area median income as established by the United States Department of Housing and Urban Development and published by the department or a statewide political subdivision or authority on housing, and regulated units in the project must have a gross rent limit that does not exceed thirty percent of the imputed income limitation applicable to the units and for-sale housing that could be purchased by a household with an annual income of at or below one hundred TWENTY percent of the area median income. Mixed use development is an allowable use of land purchased under this program if the predominant use of the land is affordable housing. Loans made by the program shall be forgiven if land acquired with the assistance of the program is properly zoned with an active plan for the development of affordable housing within 5 years of date the loan is made and if the development is permitted and funded within 10 years. The lender and borrower may establish additional terms if needed. If land acquired with the assistance of the program is not developed within the timeline above, the loan must be repaid, with interest, as soon as practical, but not more than six months after expiration of said timeline, unless the office agrees to extend all or a portion of the timeline in its reasonable discretion. Land acquired with the assistance of the program that is not developed within the timeline above may be used by the owner for any purpose upon payment of the loan with interest or, in exchange for a waiver of interest, conveyed to a state agency or other entity for the development of affordable housing with the approval of the administrator. All principal and interest payments on loans made under this ~~paragraph (a)~~ SUBSECTION (1)(a) shall be paid to the administrator and used by the administrator for the purposes set forth in this subsection (1). As determined by the administrator, a minimum of 15% and a maximum of 25% of monies transferred to the financing fund annually may be used for the program. The administrator may utilize the funds it receives from the office for the program to pay for the costs of administering the program; except that the total combined annual administrative expenditures of money from the financing fund by the administrator and the office shall not exceed two percent of the funds the administrator receives from the office for the program for the state fiscal year.

(II) FOR LAND BANKING PROGRAM GRANTS TO SUPPORT TRIBAL GOVERNMENT PROGRAMS, THE TRIBE SHALL ESTABLISH INCOME LIMITS BY HOUSEHOLD SIZE AND GROSS RENT LIMITS REQUIRED BY SUBSECTION (1)(a)(I) OF THIS SECTION. THE TRIBAL GOVERNMENT SHALL SUBMIT

EVIDENCE TO THE OFFICE OR ADMINISTRATOR THAT IT HAS SATISFIED THE REQUIREMENTS OF THIS SUBSECTION (1)(a)(II), INCLUDING BY PROVIDING GENERAL INFORMATION ABOUT THE PROCESS IT USED TO ESTABLISH THESE LIMITATIONS, BUT SHALL NOT BE REQUIRED TO DISCLOSE CONFIDENTIAL TRIBAL DATA, INCLUDING THE SPECIFIC LIMITATIONS IT SETS PURSUANT TO THIS SUBSECTION (1)(a)(II).

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

(a) (I) An affordable home ownership program administered by the division or one or more contractors of the division. The program shall offer home ownership down-payment assistance to first-time homebuyers and shall prioritize assistance, to the extent practicable, to first-generation homebuyers. The assistance shall be provided to households with income less than or equal to one hundred twenty percent of the area median income of households of that size in the territory or jurisdiction of local government ~~or tribal government~~ in which the housing is located, as calculated and published for a given year by the United States department of housing and urban development, and the cost of the monthly housing payment toward mortgage principal, mortgage interest, property taxes, mortgage and homeowner's insurance, homeowner association fees, land lease fees, and metropolitan district fees ~~shall~~ MUST not cost more than ~~thirty-five~~ THIRTY-EIGHT percent of monthly household ~~income~~. INCOME; EXCEPT THAT THE COST OF THE MONTHLY HOUSING PAYMENT MUST NOT BE CONSIDERED WHEN PROVIDING HOMEOWNERS WITH ASSISTANCE FOR HOME REHABILITATION. The program shall also make grants to nonprofit organizations, local governments, tribal governments, community development financial institutions, and community land trusts to support affordable home ownership FOR HOUSEHOLDS WITH INCOME LESS THAN OR EQUAL TO EITHER ONE HUNDRED TWENTY PERCENT OF THE AREA MEDIAN INCOME OF HOUSEHOLDS OF THAT SIZE IN THE TERRITORY OR JURISDICTION OF A LOCAL GOVERNMENT IN WHICH THE HOUSEHOLDS ARE LOCATED, OR ONE HUNDRED TWENTY PERCENT OF THE STATEWIDE AREA MEDIAN INCOME OF HOUSEHOLDS OF THAT SIZE, AS CALCULATED AND PUBLISHED FOR A GIVEN YEAR BY THE UNITED STATES DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, AND THE COST OF THE MONTHLY HOUSING PAYMENT TOWARD MORTGAGE PRINCIPAL, MORTGAGE INTEREST, PROPERTY TAXES, MORTGAGE AND HOMEOWNER'S INSURANCE, HOMEOWNERS' ASSOCIATION

FEES, LAND LEASE FEES, AND METROPOLITAN DISTRICT FEES MUST NOT COST MORE THAN THIRTY-FIVE PERCENT OF MONTHLY HOUSEHOLD INCOME. THE AREA MEDIAN INCOME ELECTION DESCRIBED IN THIS SUBSECTION (3)(a)(I) MUST BE MADE AT THE BEGINNING OF THE ASSISTANCE AGREEMENT AND MUST NOT BE REVOKED OR CHANGED UNTIL THE END OF THE ASSISTANCE AGREEMENT. The program shall also make grants or loans to groups or associations of mobile home owners and their assignees to assist them with the purchase of a mobile home park pursuant to section 38-12-217. Said grants and loans shall be used to support affordable home ownership for households with income less than or equal to one hundred TWENTY percent of the area median income of households of that size in the territory or jurisdiction of local government ~~or tribal government~~ in which the households are located, as calculated and published for a given year by the United States department of housing and urban development, and the cost of the monthly housing payment toward mortgage principal, mortgage interest, property taxes, mortgage and homeowner's insurance, homeowner association fees, land lease fees, and metropolitan district fees ~~shall~~ MUST not cost more than thirty-five percent of monthly household income. All principal and interest payments on loans made under this subsection (3)(a) shall be paid to the division and used by the division for the purposes set forth in this subsection (3). Up to fifty percent of money transferred to the support fund annually may be used for the program. The division shall determine how much of the available funding shall be allocated to each aspect of the program. The division may utilize up to five percent of the funds it receives from the fund for the program to pay for the direct and indirect costs of administering the program.

(II) FOR PROJECTS UNDERTAKEN BY AN ELIGIBLE ORGANIZATION, AS DEFINED IN SECTION 29-32-105.7 (2)(a), THE DIVISION MAY INCREASE OR WAIVE THE MAXIMUM PERCENTAGE OF INCOME THAT A HOUSEHOLD MAY ALLOCATE FOR MONTHLY HOUSING COSTS OTHERWISE REQUIRED BY SUBSECTION (3)(a)(I) OF THIS SECTION PURSUANT TO THE PROCESS SET FORTH IN SECTION 29-32-105.7. IF A WAIVER IS GRANTED, THE DIVISION IS AUTHORIZED TO AMEND EXISTING CONTRACTS ENTERED INTO AFTER JULY 1, 2026, EVEN IF THE PROJECT WAS ORIGINALLY AWARDED UNDER A SOLICITATION ISSUED PRIOR TO JULY 1, 2026.

(III) FOR GRANTS TO SUPPORT TRIBAL GOVERNMENT PROGRAMS, THE TRIBE SHALL ESTABLISH LIMITATIONS ON HOUSEHOLD INCOME AND MAXIMUM PERCENTAGE OF INCOME THAT A HOUSEHOLD MAY ALLOCATE FOR

MONTHLY HOUSING COSTS REQUIRED BY SUBSECTION (3)(a)(I) OF THIS SECTION AND SHALL ESTABLISH A TRIBAL AFFORDABILITY MECHANISM IN LIEU OF ANY STATE-PREScribed USE COVENANT. THE TRIBAL GOVERNMENT SHALL SUBMIT EVIDENCE TO THE DIVISION THAT IT HAS SATISFIED THE REQUIREMENTS OF THIS SUBSECTION (3)(a)(III), INCLUDING BY PROVIDING GENERAL INFORMATION ABOUT THE PROCESS IT USED TO ESTABLISH THESE LIMITATIONS AND MECHANISMS BUT IS NOT REQUIRED TO DISCLOSE CONFIDENTIAL TRIBAL DATA, INCLUDING THE SPECIFIC LIMITATIONS OR MECHANISMS IT SETS UNDER THIS SUBSECTION. UNLESS OTHERWISE AUTHORIZED BY LAW, THE DIVISION OF HOUSING AND THE DIVISION OF LOCAL GOVERNMENT SHALL ADMINISTER AND EXPEND FUNDING TO TRIBAL GOVERNMENTS UNDER THIS SECTION ONLY FOR THE PURPOSES SET FORTH IN SECTIONS 29-32-104 (3)(a), (3)(b), OR (3)(c).

SECTION 3. In Colorado Revised Statutes, **add** 29-32-105.7 as follows:

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

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

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

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

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

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

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

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

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

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

(3) NOTWITHSTANDING THE PROVISIONS OF SECTION 29-32-104 (3)(a), AN ORGANIZATION THAT WAS AWARDED MONEY FOR AN AFFORDABLE HOME OWNERSHIP PROJECT PURSUANT TO SECTION 29-32-104 (3)(a) AND THAT CONSTRUCTED A RESIDENTIAL UNIT AS PART OF THE PROJECT THAT HAS NOT BEEN PURCHASED WITHIN SIX MONTHS OF THE ISSUANCE OF A CERTIFICATE OF OCCUPANCY, MAY SUBMIT A REQUEST TO THE DIVISION FOR A WAIVER OF THE MAXIMUM MONTHLY HOUSING COST LIMIT FOR THAT RESIDENTIAL UNIT.

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

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

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

(c) THE DIVISION MAY:

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

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

(4) IN LIEU OF THE PROCESS DESCRIBED IN SUBSECTION (3) OF THIS SECTION, THE DIVISION MAY APPROVE AN ELIGIBLE ORGANIZATION'S PROCESS FOR DETERMINING WHEN TO EXCEED THE MAXIMUM MONTHLY HOUSEHOLD INCOME FOR A UNIT FUNDED PURSUANT TO SECTION 29-32-104 (3)(a). AN ELIGIBLE ORGANIZATION'S PROCESS APPROVED UNDER THIS SUBSECTION (4) SHALL NOT REQUIRE A SIX-MONTH MARKETING PERIOD.

(5) (a) FOR PROJECTS FUNDED PURSUANT TO SECTION 29-32-104 (3)(a), AN ELIGIBLE ORGANIZATION MAY REQUEST THAT THE DIVISION ALLOW IT TO RENT RESIDENTIAL UNITS CONSTRUCTED AS PART OF THE PROJECT. THE DIVISION HAS THE AUTHORITY TO RENT OR ALLOW THE RENTAL OF A RESIDENTIAL UNIT CONSTRUCTED AS PART OF THE PROJECT.

(b) ON OR BEFORE DECEMBER 31, 2026, THE DIVISION SHALL ISSUE GUIDANCE FOR WHEN AN ELIGIBLE ORGANIZATION MAY RENT UNITS WITHIN A PROJECT AND DEVELOP A PROCESS BY WHICH RENTED UNITS MAY RETURN TO THE FOR-SALE MARKET.

(c) A HOMEOWNER MAY RENT A UNIT FUNDED PURSUANT TO SECTION 29-32-104 (3)(a) AS LONG AS THE UNIT REMAINS THEIR PRIMARY RESIDENCE.

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

SECTION 5. Safety clause. The general assembly finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, or safety or for appropriations for

the support and maintenance of the departments of the state and state institutions.

James Rashad Coleman, Sr.
PRESIDENT OF
THE SENATE

Julie McCluskie
SPEAKER OF THE HOUSE
OF REPRESENTATIVES

Esther van Mourik
SECRETARY OF
THE SENATE

Vanessa Reilly
CHIEF CLERK OF THE HOUSE
OF REPRESENTATIVES

APPROVED _____

(Date and Time)

Jared S. Polis
GOVERNOR OF THE STATE OF COLORADO