

CHAPTER 192

GOVERNMENT - LOCAL

SENATE BILL 07-124

BY SENATOR(S) Isgar, Boyd, Bacon, Fitz-Gerald, Keller, Schwartz, Tochtrop, Tupa, and Williams;
also REPRESENTATIVE(S) Marshall, Borodkin, Carroll M., Carroll T., Cerbo, Frangas, Green, Kerr A., Levy, Madden,
McGihon, and Merrifield.

AN ACT

CONCERNING REVISIONS TO THE "COLORADO HOUSING AND FINANCE AUTHORITY ACT".

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

SECTION 1. 29-4-703 (3), (4.5), (5), (5.2), (5.5), and (6), the introductory portion to 29-4-703 (10), and 29-4-703 (12) and (12.4), Colorado Revised Statutes, are amended to read:

29-4-703. Definitions - rules. As used in this part 7, unless the context otherwise requires:

(3) "Bond" means any ~~revenue~~ bond, note, or other obligation of the Colorado housing and finance authority authorized to be issued under the provisions of this part 7. ~~and which evidences a debt of the authority.~~

(4.5) "~~Export trade activities~~" ~~means one or more services undertaken to export or facilitate the export of goods, products, or services produced or assembled in the state.~~

(5) "Family" means two or more persons, WHETHER OR NOT related by blood, marriage, or adoption, who live or expect to live together as a single household in the same home, a single person who is either at least sixty-two years of age or has a disability, or such other single persons as the board may by ~~regulation~~ RULE determine to be eligible for assistance under this part 7.

(5.2) "Financing agreement" includes a lease, sublease, installment purchase agreement, rental agreement, option to purchase, loan agreement, participation agreement, loan purchase agreement, or any other agreement, or any combination

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

thereof, entered into in connection with the financing of a project OR HOUSING FACILITY or the provision of capital pursuant to this part 7.

(5.5) "Home improvement loan" means a loan of money for the alteration, repair, or improvement of an existing housing facility. The term does not include a loan for a ~~garage, carport, patio, patio cover, fence, sidewalk, driveway, or pool, HOT TUB, or any other construction not directly improving THE STRUCTURAL INTEGRITY, GENERAL APPEARANCE, OR living conditions within the housing facility.~~

(6) "Housing facility" means any work or undertaking ~~which~~ THAT is designed and financed pursuant to ~~the provisions of~~ this part 7 for the primary purpose of providing decent, safe, and sanitary dwelling accommodations. Such dwelling accommodations may provide for separate, shared, or congregate facilities. "Housing facility" may include any buildings, land, equipment, facilities, or other real or personal property:

(a) Found necessary by the ~~board~~ AUTHORITY to insure required occupancy or balanced community development; or

(b) Found necessary or desirable by the ~~board~~ AUTHORITY for sound economic or commercial development of a community.

(10) "Low-income family" and "low- or moderate-income family" mean a family whose income is insufficient to secure decent, safe, and sanitary housing provided by private industry without loans OR OTHER INCENTIVES made by the authority or federal subsidies and whose income is below respective income limits established by the board by ~~regulation~~ RULE, taking into consideration such factors as the following:

(12) "Mortgage loan" means a loan of money, including advances and temporary loans, for the construction, reconstruction, rehabilitation, ~~or~~ purchase, OR REFINANCING of a housing facility, ~~such~~ WHICH loan IS evidenced by an ~~interest-bearing~~ obligation secured by a mortgage.

(12.4) "Project" means a work or improvement ~~which~~ THAT is ~~located or is to~~ WILL be located in this state, including but not limited to real property, buildings, equipment, furnishings, and any other real and personal property or any interest therein, financed, refinanced, acquired, owned, constructed, reconstructed, extended, rehabilitated, improved, or equipped, directly or indirectly, in whole or in part, by the authority and ~~which~~ THAT is designed and intended for the purpose of providing facilities for manufacturing, warehousing, commercial, recreational, hotel, office, research and development, or other business OR ECONOMIC purposes, including but not limited to machinery and equipment deemed necessary for the operation thereof, excluding raw material, work in process, or stock in trade. "Project" includes more than one project or any portion of a project, but shall not include a housing facility or any portion thereof unless the authority elects to treat such housing facility or portion thereof as a project. "Project" shall not include the financing by the authority of any county or municipal public facilities beyond the boundaries of the project, EXCEPT TO THE EXTENT THAT SUCH FACILITIES ARE ADJACENT TO THE PROJECT AND SUPPORT THE OPERATION OF THE PROJECT.

SECTION 2. 29-4-705, Colorado Revised Statutes, is amended to read:

29-4-705. Records of board. All resolutions and orders shall be recorded and authenticated by the signature of the secretary or any assistant secretary of the board. Every legislative act of the board of a general or permanent nature shall be by resolution. The book of resolutions, corporate acts, and orders shall be a public record. A public record shall also be made of all other proceedings of the board, minutes of the meetings, annual reports, certificates, contracts, and bonds given by officers, employees, and any other agents of the authority. The account of all moneys received by and disbursed on behalf of the authority shall also be a public record. ~~Any public record of the board shall be open for inspection by any citizen.~~ ALL PUBLIC RECORDS OF THE AUTHORITY SHALL BE SUBJECT TO THE "COLORADO OPEN RECORDS ACT", ARTICLE 72 OF TITLE 24, C.R.S. All records shall be subject to the uniform budget and audit laws and shall be subject to regular audit as provided therein.

SECTION 3. 29-4-706, Colorado Revised Statutes, is amended to read:

29-4-706. Meetings of board. (1) All meetings of the board shall be open to the public. No business of the board shall be transacted except at a regular or special meeting at which a quorum consisting of at least a majority of the total membership of the board is present. Any action of the board shall require the affirmative vote of a majority of the ~~total membership of the board~~ MEMBERS PRESENT AT SUCH MEETING.

(2) ONE OR MORE MEMBERS OF THE BOARD MAY PARTICIPATE IN ANY MEETING AND MAY VOTE THROUGH THE USE OF TELECOMMUNICATIONS DEVICES, INCLUDING, BUT NOT LIMITED TO, A CONFERENCE TELEPHONE OR SIMILAR COMMUNICATIONS EQUIPMENT. SUCH PARTICIPATION THROUGH TELECOMMUNICATIONS DEVICES SHALL CONSTITUTE PRESENCE IN PERSON AT SUCH MEETING. SUCH USE OF TELECOMMUNICATIONS SHALL NOT SUPERSEDE ANY REQUIREMENTS FOR PUBLIC HEARING OTHERWISE PROVIDED BY LAW.

SECTION 4. 29-4-708 (1) (aa), Colorado Revised Statutes, is amended to read:

29-4-708. General powers of the authority. (1) In addition to any other powers granted to the authority in this part 7, the authority shall have the following powers:

(aa) To provide financial advice and counseling with respect to business enterprises ~~including but not limited to export trade activities;~~ and to provide for guaranties, insurance, coinsurance, or reinsurance against risks of loss on loans to business enterprises to finance projects or provide capital; ~~including but not limited to political or credit risks of loss on loans to finance export trade activities under a contract with the export-import bank of the United States.~~

SECTION 5. 29-4-709, Colorado Revised Statutes, is amended to read:

29-4-709. Power of board - housing facility plans. (1) The board shall ~~approve or disapprove~~ ESTABLISH CRITERIA FOR the financial feasibility of any plan for the development of housing facilities to be undertaken with the proceeds of

housing facility loans.

(2) If the ~~board ascertains~~ AUTHORITY DETERMINES that such plan is financially ~~feasible~~ MEETS THE BOARD'S CRITERIA, that private financing is not available on reasonably equivalent terms and conditions, and that the necessary means of financing such plan are available to the authority, the ~~board may signify its approval of~~ AUTHORITY MAY ACCEPT such plan.

SECTION 6. The introductory portion to 29-4-710 (1) and 29-4-710 (1) (a) (II) and (1) (b), Colorado Revised Statutes, are amended to read:

29-4-710. Powers of the board - executive director - housing facility loans - assistance in housing facility development. (1) Upon ~~the approval by the board~~ ACCEPTANCE of a housing facility plan pursuant to section 29-4-709 and upon or prior to the issuance of bonds or other financial arrangement for the development of such facility, the board shall have adopted rules and regulations applicable to such plan. In addition to the other powers granted in this part 7, the authority shall have the power to and, upon the adoption of a plan as provided in section 29-4-709, the board shall authorize the executive director to:

(a) (II) Except as provided in this section, housing facility loans to sponsors or to low- or moderate-income families shall be secured by a mortgage or ~~notwithstanding the provisions of paragraph (b) of this subsection (1), as to housing facilities to be constructed on land owned by a governmental entity,~~ such other security interest as the authority shall determine adequate to secure repayment of the housing facility loan.

(b) Make or participate in the making of housing facility loans secured by second deeds of trust or mortgages to sponsors or low- or moderate-income families ~~if the outstanding principal balance of the first mortgage, together with such housing facility loan, does not exceed ninety-two percent of the total appraised value of any property which secures such second deed of trust or mortgage or to purchase or participate in the purchase of second deeds of trust or mortgages meeting this criterion~~ if the total amount of such second deeds of trust or mortgages does not exceed fifteen percent of the total amount of loans secured by first deeds of trust or mortgages issued by the authority;

SECTION 7. 29-4-712 (4) (a), Colorado Revised Statutes, is amended to read:

29-4-712. Powers of the board - executive director - mortgage purchase - loans to lenders - assistance in providing housing facilities. (4) (a) Mortgage loans made by lenders to families with the proceeds of a loan as provided for in subsection (3) of this section, pursuant to a commitment to purchase as provided for in paragraph (a) of subsection (3.5) of this section, or with the proceeds of the purchase of a mortgage loan as provided for in paragraph (b) of subsection (3.5) of this section, shall be to families ~~each of whose adjusted family incomes, as determined by the board, does not exceed the median income as determined periodically by the board, unless:~~ WHO QUALIFY AS LOW-INCOME OR LOW- OR MODERATE-INCOME FAMILIES.

(f) The authority has waived, pursuant to section 29-4-708 (1) (w), the federal tax

~~exemption referred to therein with respect to bonds and notes, or the interest payable thereon, issued to finance the mortgage loans as provided for in this paragraph (a); or~~

~~(H) Such bonds and notes, or the interest payable thereon, are not entitled to such federal tax exemption.~~

SECTION 8. 29-4-714 (5), Colorado Revised Statutes, is amended to read:

29-4-714. Powers of the board - home improvement loans - purchase of such loans - loans to lenders. (5) Home improvement loans made or acquired by the authority under this section or made by a lender with the proceeds of a loan under this section shall be to families ~~each of whose adjusted family incomes, as determined by the board, does not exceed the median income as determined periodically by the board, unless:~~ WHO QUALIFY AS LOW-INCOME OR LOW- OR MODERATE-INCOME FAMILIES.

~~(a) The authority has waived, pursuant to section 29-4-708 (1) (w), the federal tax exemption referred to therein with respect to bonds and notes, or the interest payable thereon, issued to finance home improvement loans as provided for in this subsection (5); or~~

~~(b) Such bonds and notes, or the interest payable thereon, are not entitled to such federal tax exemption.~~

SECTION 9. Repeal. 29-4-715, Colorado Revised Statutes, is repealed as follows:

29-4-715. Sponsor - limitations on distributions. (1) ~~(a) A sponsor may not make distributions in any one year with respect to a housing facility in excess of that percentage of the sponsor's equity in such facility which the authority determines feasible and necessary to protect against the realization by sponsors of excessive financial returns or benefits as determined by prevailing market conditions. No such distributions shall be made except from surplus cash remaining after completion of repairs deemed necessary by the authority and after payment or setting aside of all expenses of operation and maintenance of the housing facility, as these may be defined by the authority, which expenses shall include, without limitation, all sums due or currently required under the terms of the housing facility loan, all amounts required to be deposited in a reserve fund for replacement or in other reserves required by the authority, and all other obligations of the housing facility other than the housing facility loan.~~

~~(b) The sponsor's equity in such a facility shall consist of the difference between the housing facility loan and the total facility cost.~~

~~(c) "Total facility cost" includes construction costs (including job overhead and a builder's and sponsor's profit and risk fee), architectural, engineering, legal, and accounting costs, organizational expenses, land value, interest and financing charges paid during construction, the cost of relocation of displaced residents, and the cost of landscaping and off-site improvements, whether or not such costs have been paid in cash or in a form other than cash.~~

~~(2) With respect to every housing facility, the authority shall establish the sponsor's equity at the time of the making of the final housing facility loan advance, and that figure shall remain constant during the life of the housing facility loan on such housing facility.~~

SECTION 10. 29-4-717 (1) (c) and (2), Colorado Revised Statutes, are amended to read:

29-4-717. Findings - percentage of low-income families required. (1) Prior to the authority's making or committing to make a housing facility loan for a housing facility with more than five dwelling units under this part 7, the board shall find:

~~(c) That such housing facility is designed to house families of varied economic means and will not create or contribute to an undue concentration of low-income families in any one neighborhood.~~

(2) Prior to the authority's making or committing to make any housing facility loan, the ~~board~~ AUTHORITY shall find:

(a) That, with respect to such housing facility, no restrictions are imposed as to sex, race, creed, or national origin of occupants;

~~(b) That such facility will be provided in an efficient manner at costs which are comparable to similar housing facilities; THAT SUCH HOUSING FACILITY IS DESIGNED TO HOUSE FAMILIES OF VARIED ECONOMIC MEANS AND WILL NOT CREATE OR CONTRIBUTE TO AN UNDUCE CONCENTRATION OF LOW-INCOME FAMILIES IN ANY ONE NEIGHBORHOOD.~~

~~(c) That such facility will conform, where practicable, to the applicable regional planning of a council of governments where such regional plan has been created under part 1 of article 28 of title 30, C.R.S., and will conform to any agreements made within such council as to the extent of participation of such local governments in the establishment of low- and moderate-income housing facilities, under either a regional planning commission or under their intergovernmental contracting powers authorized in part 2 of article 1 of this title.~~

SECTION 11. 29-4-718 (1) (b) (I) (B), (1) (b) (I) (C), (1) (b) (II), (2), (4), (7), and (8), Colorado Revised Statutes, are amended to read:

29-4-718. Bonds and notes. (1) (b) (I) The authority has the power, from time to time, to issue:

(B) Bonds to pay notes, including the interest thereon, and, whenever it deems refunding expedient, to refund any bonds OR OBLIGATIONS OF OTHER PUBLIC ENTITIES, whether the bonds OR SUCH OTHER OBLIGATIONS to be refunded have or have not matured; and

(C) Bonds partly to refund bonds OR OBLIGATIONS OF OTHER PUBLIC ENTITIES then outstanding and partly for any of its corporate purposes.

(II) Refunding bonds issued pursuant to this paragraph (b) may be exchanged for the bonds OR OBLIGATIONS OF OTHER PUBLIC ENTITIES to be refunded or sold and the proceeds applied to the purchase, redemption, or payment of such bonds OR OBLIGATIONS.

(2) The notes and bonds shall be authorized by a resolution adopted by ~~an affirmative vote of a majority of the members of the board.~~

(4) The bonds or notes of each issue may, in the discretion of the ~~board~~ AUTHORITY, be made redeemable before maturity at such prices and under such terms and conditions as may be determined by the ~~board~~ AUTHORITY. Notes shall mature at such time as may be determined by the ~~board~~ AUTHORITY, and bonds shall mature at such time OR TIMES, not exceeding forty-five years from their date of issue, as may be determined by the ~~board~~. ~~The bonds may be issued as serial bonds payable in annual installments or as term bonds or as a combination thereof~~ AUTHORITY. The notes and bonds shall bear interest at such FIXED OR VARIABLE rate OR RATES DETERMINED BY OR IN ACCORDANCE WITH METHODS APPROVED BY THE AUTHORITY WITHOUT REGARD TO ANY INTEREST RATE LIMITATION APPEARING IN ANY OTHER LAW OF THIS STATE, be in such denominations, be in such form, either coupon or registered, carry such registration privileges, be executed in such manner, be payable in such medium of payment and at such place, and be subject to such terms of redemption as ~~such resolution~~ THE AUTHORITY may provide. The notes and bonds of the authority may be sold by the authority, at public or private sale, at such price as the board shall determine.

(7) The authority, subject to such agreements with noteholders or bondholders as may then exist, has the power out of any funds available therefor to purchase notes or bonds of the authority, which shall thereupon, AT THE ELECTION OF THE AUTHORITY, be cancelled. ~~at a price not exceeding:~~

~~(a) If the notes or bonds are then redeemable, the redemption price then applicable plus accrued interest to the next interest payment thereon; or~~

~~(b) If the notes or bonds are not then redeemable, the redemption price applicable on the first date after such purchase upon which the notes or bonds become subject to redemption plus accrued interest to such date.~~

(8) In the discretion of the authority, the bonds may be secured by a trust indenture by and between the authority and a corporate trustee, which may be any trust company or bank having the power of a trust company within or without this state. Such trust indenture may contain such provisions for protecting and enforcing the rights and remedies of the bondholders as may be reasonable and proper and not in violation of law, including covenants setting forth the duties of the authority in relation to the exercise of its corporate powers and the custody, safeguarding, and application of all moneys. The authority may provide by such trust indenture for the payment of the proceeds of the bonds and the revenues to the trustee under such trust indenture or other depository and for the method of disbursement thereof, with such safeguards and restrictions as it may determine. All expenses incurred in carrying out such trust indenture may be treated as a part of the operating expenses of the authority. If the bonds are secured by a trust indenture, the bondholders shall have no authority to appoint a separate trustee to represent them, EXCEPT AS MAY

BE OTHERWISE PROVIDED IN SUCH TRUST INDENTURE.

SECTION 12. 29-4-724, Colorado Revised Statutes, is amended to read:

29-4-724. Refunding bonds. (1) The board may provide for the issuance of refunding obligations of the authority for the purpose of refunding any obligations then outstanding ~~which~~ THAT have been issued under ~~the provisions of this part 7~~ OR ISSUED BY OTHER PUBLIC ENTITIES, including the payment of any redemption premium thereon and any interest accrued or to accrue to the date of redemption of such obligations, and for any corporate purpose of the authority.

(2) Refunding obligations issued as provided in subsection (1) of this section may be sold or exchanged for outstanding obligations ~~issued under this part 7~~ BEING REFUNDED, and, if sold, the proceeds thereof may be applied, in addition to any other authorized purposes, to the purchase, redemption, or payment of such outstanding obligations. Pending the application of the proceeds of any such refunding obligations, with any other available funds, to the payment of the principal, the accrued interest, and any redemption premium on the obligations being refunded and, if so provided or permitted in the resolution authorizing the issuance of such refunding obligations or in the trust agreement securing the same, to the payment of any interest on such refunding obligations and any expenses in connection with such refunding, such proceeds may be invested in securities meeting the investment requirements established ~~in part 6 of article 75 of title 24, C.R.S.~~ BY THE AUTHORITY, which shall mature or which shall be subject to redemption by the holders thereof, at the option of such holders, not later than the respective dates when the proceeds, together with the interest accruing thereon, will be required for the purposes intended.

SECTION 13. 29-4-727 (1), Colorado Revised Statutes, is amended to read:

29-4-727. Property taxation - exemption of bonds from taxation. (1) In any instance where a proposed housing facility or project, whether owned by the authority or ~~a~~ BY ANOTHER sponsor, would qualify for a property tax exemption under the laws of Colorado, the board may require that, as a condition for a loan or other assistance under this part 7, any such property shall be subject to an agreement between the taxing authorities and the authority or the sponsor for payments in lieu of taxes; ~~provided~~ EXCEPT that, in the case of a housing facility, such payments shall not exceed ten percent of the rentals of such housing facility.

SECTION 14. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Approved: May 3, 2007