House Engrossed

FILED
KEN BENNETT
SECRETARY OF STATE

State of Arizona
House of Representatives
Fifty-first Legislature
First Regular Session
2013

CHAPTER 130

HOUSE BILL 2209

AN ACT

AMENDING SECTIONS 35-706 AND 35-726, ARIZONA REVISED STATUTES; RELATING TO INDUSTRIAL DEVELOPMENT AUTHORITIES.

(TEXT OF BILL BEGINS ON NEXT PAGE)

Be it enacted by the Legislature of the State of Arizona:

Section 1. Section 35-706, Arizona Revised Statutes, is amended to read:

35-706. Corporate powers

A. In addition to the powers granted to an industrial development authority by law, the authority has the following powers, together with all powers incidental or necessary for the performance of those powers:

1. To acquire, whether by purchase, exchange, gift, lease or otherwise establish, construct, improve, maintain, equip and furnish one or more projects.

2. To lease to others any or all of its projects, to charge and collect rent and to terminate any lease upon the failure of the lessee to comply with any of the obligations of the lease.

3. To sell, exchange, donate and convey to others any or all of its projects or properties upon terms and conditions as its board of directors may deem advisable, including the power to receive for any sale the note or notes of the purchaser of the project or property, whenever its board of directors finds the action to further advance the interest of the corporation.

4. To issue its bonds for the purpose of carrying out any of its powers.

5. To mortgage and pledge any or all of its projects and properties, whether owned or acquired, and to pledge the revenues, proceeds and receipts or any portion of the revenues, proceeds and receipts from a project as security for the payment of the principal of and interest on any bonds so issued and any agreements made in connection therewith.

6. To contract with and employ others to provide and to pay compensation for professional services and other services as the board of directors deems necessary for the financing of projects and for the business of the corporation.

7. To refund outstanding obligations incurred by an enterprise to finance the cost of a project when the board of directors finds that the refinancing is in the public interest.

8. To invest and reinvest funds under the control of the corporation and bond proceeds pending application thereof to the purposes for which the bonds were issued, subject only to the provisions of any bond resolution, lease or other agreement entered into by the board of directors.

9. To make secured or unsecured loans for the purpose of financing or refinancing the acquisition, construction, improvement, equipping or operating of a project and to charge and collect interest on the loans and pledge the proceeds of loan agreements as security for the payment of the principal and interest of any bonds, or designated issues of bonds, issued by the corporation, and any agreements made in connection with the loan, whenever the board of directors finds the loans to further advance the interest of the corporation or the public.

10. To acquire and hold obligations of any kind to carry out any of its purposes.

11. Subject to this section, to make loans to any bank, savings and loan institution, credit union or other mortgage lender, whether organized or existing under the laws of this state, another state or the United States, which is qualified to do business in this state, for the purpose of enabling the institutions to make loans to finance the acquisition, construction, improvement or equipping of projects which are owner-occupied single family dwelling units to be occupied by persons of low and moderate income, as determined by the corporation. The loans shall be fully secured in the same manner as deposits of public funds or by loans secured by mortgages, deeds of trust or other security instruments guaranteed or insured by the United States, or any instrumentality thereof, or by any private mortgage insurance or surety company which is approved by the federal home loan mortgage corporation or the federal national mortgage association and which is licensed to do business in this state, if the private mortgage insurance shall be in a dollar amount sufficient to satisfy the mortgage insurance requirements for loans eligible to be purchased by the federal home loan mortgage corporation or the federal national mortgage association or any other agency or department of the United States. The security shall not be necessary if the bonds issued to make the loans are guaranteed or insured by an agency, department or instrumentality of the United States. Any bonds issued to make loans shall be ratable as "A" or better by a nationally recognized bond rating agency.

12. Subject to this section, to purchase or enter into advance commitments to purchase loans or any loan interests secured by mortgages, deeds of trust or other security instruments relating to projects which are owner-occupied single family dwelling units from or with any bank, savings and loan institution, credit union or other mortgage lender, whether organized or existing under the laws of this state, another state or the United States, which is qualified to do business in this state, on terms and conditions as may be determined by the corporation. The purpose of the purchases shall be to finance directly or indirectly the acquisition, construction, improvement or equipping of projects which are owner-occupied single family dwelling units to be occupied by persons of low and moderate income. If the bonds issued to make purchases are not guaranteed or insured by an agency, department or instrumentality of the United States or secured by a letter of credit, insurance policy, surety bond or other credit facility from a financial institution or a combination of such instruments, the purchased loans shall be guaranteed or insured by the United States or any agency, department, or instrumentality thereof, or by any private mortgage insurance or surety company which is approved by the federal home loan mortgage corporation or the federal national mortgage association or secured by a letter of credit, insurance policy, surety bond or other credit facility from a financial institution or a combination of such instruments. In the

case of private mortgage insurance, the insurance shall be in a dollar amount sufficient to satisfy the mortgage insurance requirements for loans eligible to be purchased by the federal home loan mortgage corporation or the federal national mortgage association or any other agency or department of the United States. Any bonds issued to purchase loans shall be ratable as "A" or better by a nationally recognized bond rating agency. If the purchased loans have not been originated on behalf of the corporation to directly finance projects, the corporation shall require that the institution receiving proceeds from the sale of the loans use the proceeds to make loans to finance or refinance the acquisition, construction, improvement or equipping of projects which are owner-occupied single family dwelling units to be occupied by persons of low and moderate income, as determined by the corporation.

13. To elect not to issue an amount of qualified mortgage revenue bonds which it may otherwise issue during any calendar year and to issue instead mortgage credit certificates pursuant to a qualified mortgage credit certificate program as defined in section 35-901.

14. To make loans to any person or entity owning residential property or to make loans to any bank, savings and loan association, credit union or other mortgage lender, or to purchase or enter into advance commitments to purchase funding for the repair or improvement of property related to residential or neighborhood improvement projects. An authority may issue its bonds or incur other obligations to fund loans or purchases. An authority shall establish the provisions relating to bonds or other obligations, including the security for the loans, and shall establish the guidelines for the approval, funding, purchasing and security of the loans.

15. To enter into contracts and execute any agreements or instrument and do any other act necessary or appropriate to carry out its purposes.

16. To exercise the powers granted by this chapter, including through the issuance of bonds, to provide financing or refinancing for projects other than a project as defined in section 35-701, paragraph 8, subdivision (a), item (v), located in whole or in part outside this state, provided that the board of directors of the corporation has determined that the exercise of such powers will provide a benefit within this state.

B. The corporation shall not have the power to operate any project as a business other than as lessor or seller nor shall any corporation make any loans pursuant to subsection A, paragraph 9 of this section for projects which are owner-occupied single family dwelling units except by utilizing as its contract agent a mortgage lender, whether organized or existing under the laws of this state, another state or the United States, which is qualified to do business in this state. Any project established pursuant to subsection A, paragraph 14 of this section is not required to use a mortgage lender as its contract agent. The corporation shall not permit any funds derived from the sale of its bonds to be used, loaned or provided for the acquisition of any facilities of a public utility or public service corporation, except as

provided in section 35-701. The corporation shall comply with title 38, chapter 3, article 3.1.

C. A person's or family's eligibility for an owner-occupied single family dwelling unit financed pursuant to subsection A, paragraph 11, 12 or 13 of this section shall be determined by considering the person's or family's income. Owner-occupied single family dwelling units shall only be financed as provided in subsection A, paragraphs 11, 12 and 13 of this section unless the owner-occupied single family dwelling units are located in an area designated pursuant to section 36-1479 as a slum or blighted area as defined in section 36-1471 by a municipality having a population of more than two hundred fifty thousand persons according to the most recent United States decennial census or a special census conducted in accordance with section 42-5033.

D. In the exercise of its powers authorized in this section with respect to projects which are owner-occupied single family dwelling units to be occupied by persons of low and moderate income and financed pursuant to subsection A, paragraphs 11 and 12 of this section, the corporation shall establish, subject to approval by the governing body of the authorizing county or municipality, standards and requirements applicable to the purchase of loans or the making of loans to mortgage lenders, including:

1. The eligibility of mortgage lenders, including the requirement that all mortgage lenders be approved as mortgagees by the federal housing administration and the ~~veterans administration~~ UNITED STATES DEPARTMENT OF VETERANS AFFAIRS and be approved as sellers and servicers of mortgage loans by the federal national mortgage association or federal home loan mortgage corporation.

2. The time within which mortgage lenders must make commitments and disbursements for mortgage loans.

3. The character of residences to be financed by mortgage loans.

4. The eligibility of persons of low and moderate income, including the requirement that no person of low and moderate income may receive, more than once in a three year period, a mortgage loan financed directly or indirectly from the proceeds of bonds issued by the corporation.

5. The terms and conditions of mortgage loans to be acquired.

6. The amounts and types of insurance coverage required on residences, mortgages and bonds.

7. The representations and warranties of mortgage lenders confirming compliance with the standards and requirements.

8. Restrictions as to interest rate and other terms of mortgage loans and the return realized on mortgage loans by mortgage lenders.

9. The type and amount of collateral security to be provided to assure repayment of any loans from the corporation and to assure repayment of bonds.

10. Assignment of the mortgage loans to a trustee acting on behalf of the corporation which shall be either a bank or trust company doing business in this state, having an officially reported combined capital surplus,

undivided profits and reserves of not less than fifteen million dollars. Trustees must be approved to sell mortgages to and service mortgages for the federal national mortgage association and the federal home loan mortgage corporation.

11. Any other matters related to the purchase of mortgage loans or the making of loans to mortgage lenders deemed relevant by the corporation. In establishing standards and requirements, the corporation shall be guided by the following standards:

(a) The amount of mortgage monies proposed to be made available in the area is to be reasonably related to the demand for mortgage monies.

(b) For projects of owner-occupied single family dwelling units to be occupied by persons of low and moderate income and financed pursuant to subsection A, paragraphs 11 and 12 of this section, at least ten per cent of all mortgage monies proposed to be made available by the corporations other than mortgage monies reserved for any period to finance mortgage loans on residences located within an area designated as a slum or blighted area as defined in section 36-1471 shall be reserved for at least a three month period for the financing of mortgage loans on manufactured housing unless the Arizona commerce authority determines that any bonds issued to make loans will not be ratable as "A" or better by a nationally recognized bond rating agency, in which case no such reservation is required. If all the mortgage monies reserved for manufactured housing are not committed or used to make mortgage loans during this three month period, the mortgage lender may allocate the remaining monies to finance mortgage loans on any single family dwelling unit.

(c) Any departure from the level of commitment fees, origination fees or servicing fees normally charged by a mortgage lender is to be justified in the context of the transaction.

(d) The costs, fees and expenditures associated with the issuance of bonds are to be reasonably related to the services provided.

E. Only corporations, the formations of which have been approved by the governing body of a county having a population of more than ~~nine~~ SEVEN per cent of the total state population computed according to the most recent United States decennial census or by the governing body of a municipality having a population of more than ~~nine~~ SEVEN per cent of the total state population computed according to the most recent United States decennial census, shall have the powers granted in subsection A, paragraphs 11, 12 and 13 of this section. Except as provided in section 35-913, subsections E and F, a corporation shall not exercise the powers granted in subsection A, paragraphs 11, 12 and 13 of this section outside of its jurisdiction. For the purposes of a refunding of any mortgage revenue bond issued before January 1, 2000, the proceeds from the refunding may be used outside the jurisdiction of the corporation issuing the refunding bonds except the corporation issuing the refunding bonds shall obtain the consent from another corporation with powers granted in subsection A, paragraphs 11, 12 and 13 of

this section if the proceeds of the refunding are to be used within the jurisdiction of that corporation. For the purposes of exercising the powers granted in subsection A, paragraphs 11, 12 and 13 of this section, the jurisdiction of a corporation formed on behalf of a county includes all incorporated and unincorporated territory in the county.

F. A corporation may not permit proceeds of bonds or a qualified mortgage credit certificate program to be used to finance projects which are owner-occupied single family dwelling units within the corporate limits of an incorporated city or town unless the governing body of the city or town has approved the general location and character of the residences to be financed. The corporation, prior to the issuance of bonds or mortgage credit certificates for that purpose, shall give written notice to the governing body of each city or town in which it intends to permit proceeds of an issue of bonds or mortgage credit certificates to be used to finance projects which are owner-occupied single family dwelling units and of the general location and character of the residences which may be financed. The governing body of the city or town shall be deemed to have given its approval unless it has denied approval by formal action of the governing body within twenty-one days after receiving the written notice from the corporation. Approvals given or deemed to have been given with respect to use of proceeds of an issue of bonds or mortgage credit certificates under this subsection may not be withdrawn. Denials may be withdrawn by the governing body of a city or town and approval may be given thereafter if the corporation issuing the bonds or mortgage credit certificates approves the withdrawal of the denial.

G. Two or more corporations with the powers granted by subsection E of this section may provide:

1. That a corporation, the formation of which was approved by the governing body of a county or city, may exercise the powers granted in subsection A, paragraphs 11, 12 and 13 of this section, with respect to owner-occupied single family dwelling units located in all counties and cities which are parties to a cooperative agreement.

2. For the joint exercise by two or more corporations, each formed with the approval of a governing body executing the cooperative agreement, of the powers granted in subsection A, paragraphs 11, 12 and 13 of this section, with respect to owner-occupied single family dwelling units located in all counties and cities which are parties to the cooperative agreement. The agreement shall specify the calendar year or years for which it is effective, the means by which the agreement may be terminated prior to the expiration of the calendar year or years and the aggregate principal amount of bonds which may be issued by the designated corporation or corporations to exercise the powers pursuant to the agreement. The corporation or corporations designated in the agreement to exercise the powers in the counties and cities which are parties to the agreement are the only corporation or corporations authorized and having jurisdiction to exercise the powers and to issue bonds to carry out the powers in the counties and cities while the agreement is in effect.

The combined jurisdictions of all the counties and cities which are parties to the cooperative agreement are the jurisdictions of the corporation or corporations designated to exercise the powers granted in subsection A, paragraphs 11, 12 and 13 of this section within the meaning of the mortgage subsidy bond tax act of 1980 (P.L. 96-499; 26 United States Code section 103A).

H. It shall not be a conflict of interest under title 38, chapter 3, article 8, and this chapter, for any trustee or any mortgage lender to enter into loan agreements with, or to sell mortgage loans to, the corporation as contemplated in subsection A, paragraphs 11, 12 and 13 of this section, act for or under contract with the corporation as a mortgage originator, servicer, paying agent or depository, act as holder or dealer of bonds of the corporation or have as a director, officer or employee any member of the board of directors of the corporation or any combination.

I. The department of economic security shall once in each calendar year on or before March 1 determine the median family income of this state for the purposes of this chapter.

J. All areas in this state which are either designated pursuant to section 36-1479 as slum or blighted areas as defined in section 36-1471 or designated as pockets of poverty by the United States department of housing and urban development are designated as areas of chronic economic distress within the meaning of the mortgage subsidy bond tax act of 1980 (P.L. 96-499; 26 United States Code section 103A).

K. Any corporation that is described in subsection E of this section and that desires to exercise the powers granted in subsection A, paragraphs 11, 12 and 13 of this section, with respect to owner-occupied single family dwelling units located in two or more counties, may do so if the corporation, before issuing bonds or mortgage credit certificates for that purpose, gives written notice to the governing bodies of the other counties and their respective corporations, if any, of its intent to permit the proceeds of an issue of bonds or mortgage credit certificates to finance projects within its jurisdiction which are owner-occupied single family dwelling units. The governing body of a county and its respective corporation, if any, which have been given notice are deemed to have approved the use of the proceeds or mortgage credit certificates for owner-occupied single family dwelling units within their jurisdiction and approved the use of any state ceiling, as defined in section 35-901, unless approval is denied by formal action of the governing body or the board of directors of the corporation, if any, within twenty-one days after receiving written notice from the corporation. Absent a denial of approval as stated in this subsection, a cooperative agreement providing for the exercise of the powers granted in subsection A, paragraphs 11, 12 and 13 of this section is deemed to exist among the applicable counties or corporations. Approvals given or deemed to have been given with respect to the matters stated in this subsection may not be withdrawn. Denials by the governing body of a county apply only to the unincorporated

areas of the county. Denials may be withdrawn by the governing body of a county and approval may be given thereafter if the corporation issuing the bonds or mortgage credit certificates approves the withdrawal of the denial. Mortgage credit certificates and bond proceeds issued pursuant to this subsection shall be available on an equitable basis within each of the participating counties.

Sec. 2. Section 35-726, Arizona Revised Statutes, is amended to read:

35-726. Approval of general plan before issuing bonds; fee; definition

A. Bonds shall not be issued by a corporation for the purpose of financing single family dwelling units pursuant to section 35-706, subsection A, paragraph 11 or 12 without approval of a general plan by its governing body. The corporation shall submit a general plan for each respective series of bonds to its governing body. The general plan shall briefly describe:

1. The amount of the proposed bonds.

2. The maximum term of the bonds.

3. The maximum interest rate on the bonds.

4. The need for the bond issue.

5. The terms and conditions for originating or purchasing mortgage loans or making loans to lenders.

6. The area in which the single family dwelling units to be financed may be located.

7. The proposed fees, charges and expenditures to be paid for originators, servicers, trustees, custodians, mortgage administrators and others.

8. All insurance requirements with respect to mortgage loans, mortgaged property, mortgagors, originators, servicers and trustees.

9. The anticipated date of issuance of the bonds.

B. The governing body shall review general plans submitted by corporations pursuant to subsection A of this section. In reviewing the plans the governing body shall consider:

1. Whether the amount of the mortgage monies proposed to be made available is reasonably related to the demand for the mortgage monies.

2. Whether the terms of the general plan are justifiable in the context of the transaction and in the context of similar transactions.

3. Whether the fees, costs and expenditures as set forth in the general plan are reasonably related to the services provided.

4. For projects of owner-occupied single family dwelling units to be occupied by persons of low and moderate income and financed pursuant to section 35-706, subsection A, paragraphs 11 and 12, whether the proposed mortgage monies to be made available will fulfill a public purpose by providing housing for persons of low and moderate income or by encouraging single family developments in all participating jurisdictions, including such jurisdictions' slum or blighted areas as defined in section 36-1471.

C. The governing body shall approve or disapprove the general plan not later than thirty days after receipt of the plan. If the governing body does not act upon the general plan within thirty days from the date of receipt, the general plan shall be deemed approved. If a general plan is approved, the corporation may issue the series of bonds covered by the general plan with a total principal amount, maximum term and maximum interest rate no greater than that which is set forth in the general plan. The origination and servicing fees pertaining to mortgage loans to be financed in accordance with the general plan shall not exceed those proposed in the general plan. The corporation may vary other items in the general plan upon a finding that the variation is minor and that the variations will not impair the security for the bonds or substantially increase the cost of financing the single family dwelling units and the findings of the corporation shall be conclusive.

D. The governing body may charge any corporation submitting a general plan for review a fee of not to exceed ten thousand dollars together with reimbursement of its actual costs and expenses incurred in reviewing the general plan.

E. EXCEPT FOR A CORPORATION APPROVED BY A GOVERNING BODY OF A COUNTY OR A MUNICIPALITY HAVING A POPULATION OF MORE THAN SEVEN PER CENT OF THE TOTAL STATE POPULATION COMPUTED ACCORDING TO THE MOST RECENT UNITED STATES DECENNIAL CENSUS, a corporation shall not issue bonds, other than refunding bonds the proceeds of which are used exclusively to refund a prior bond issue, to finance a multifamily residential rental project, sanitarium, clinic, medical hotel, rest home, nursing home, skilled nursing facility or life care facility as prescribed in section 20-1801, unless the department approves the project. The department, with or without a hearing, shall review the project and consider at least the following factors:

1. The demand for and feasibility of the project in the area set forth in the application to the corporation.

2. The terms and conditions of the proposed bonds.

3. The proposed use of bond proceeds.

4. The benefit to the public if the project provides rental housing for persons of low and moderate income or encourages rental housing in slum or blighted areas as defined in section 36-1471.

5. If the project consists of a nursing home, or a life care facility as prescribed in section 20-1801, the benefit to the public of the project, including the proposed rent, fees and other charges of the project in relation to the level of services to be offered.

F. Subsection E of this section does not apply to bonds issued to finance a sanitarium, clinic, medical hotel, rest home, nursing home, skilled nursing facility, or life care facility as prescribed in section 20-1801, if the facility is to be owned and operated by this state or a political subdivision or agency of this state.

G. EXCEPT FOR A CORPORATION THAT IS EXEMPT UNDER SUBSECTION E OF THIS SECTION, the department with or without a hearing shall approve or disapprove the project not later than thirty days after receipt of the request for approval. If the project is approved the corporation may issue the bonds described in the approval request with the total principal amount, maximum term and maximum interest rate no greater than as set forth in the request. The department shall charge each applicant submitting a project approval request pursuant to this subsection a fee of not to exceed five thousand dollars together with reimbursement of its actual costs and expenses incurred in reviewing the project. Beginning on October 1, 2002, the department shall remit the fees to the state treasurer for deposit in the Arizona department of housing program fund established by section 41-3957.

H. For the purposes of this section, "department" means the Arizona department of housing.

APPROVED BY THE GOVERNOR APRIL 29, 2013.

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 30, 2013.

Passed the House February 19, 2013

by the following vote: 59 Ayes,

0 Nays, 1 Not Voting

Speaker of the House

Chief Clerk of the House

Passed the Senate April 25, 2013

by the following vote: 29 Ayes,

0 Nays, 1 Not Voting

President of the Senate

Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill received by the Governor this

25 day of April, 2013

at 3:30 o'clock P M.

Secretary to the Governor

Approved this 29th day of

April

at 4:10 o'clock P M.

Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill received by the Secretary of State

this 30th day of April, 2013

at 9:35 o'clock A M.

Secretary of State

H.B. 2209