CENTER FOR HOUSING ECONOMICS

Property Tax Abatement in Exchange for Inclusion of Affordable Housing *

The Problem: After new multifamily housing is built, the property is reassessed, and the increase in property taxes is significant and sudden; it is called "tax lightning." The increase is large enough that it disincentivizes building new projects because rents won't offset the higher cost. Instead of new housing, the property remains a parking lot or some other non-housing use. The overall impact is a reduction in housing supply adding to a housing shortage which means higher rents.

The Solution: Private developers of housing could participate in a Pay In Lieu of Taxes (PILOT) program like the one in NMSA Chapter 3-60-A-13.1, the Metropolitan Redevelopment Act (MRA). A PILOT program for affordable housing would allow a transfer of the properties ownership to a non-taxable entity like a city or county for 20 years in exchange for setting aside 20 percent of newly built units in the project as affordable at 80 percent of Area Median Income (AMI). Existing multifamily communities could participate with a 20 percent reduction of current rents. This would remove the property from the tax rolls, incentivize the development of more multifamily housing by eliminating tax lightning, and create affordable housing units for 20 years.

Legislative Proposal: Legislation is needed to create a new PILOT program in chapter 6 (new article 36) of the state's public finance statutes to allow transfer of taxable property local jurisdictions for the duration of the abatement. Multi-family communities both new and existing would calculate the PILOT based on the lesser of 20% above current assessed value or 40% of appraised value including 3 percent annual increases. Communities would not be eligible to have a PILOT payment below its current property tax payment. The community would also have to set aside 20 percent of the units as affordable at a 20 percent reduction in current rents at the property for at least 20 years. New construction projects will have to set aside 20 percent of the units at 80% AMI. Existing and new Low Income Housing Tax Credit (LIHTC) developments may also participate in the program.

Potential Partners: Potential partners include non-profit and market-rate developers, affordable housing advocates, and some local governments seeking to incentivize more affordable housing development.

How will we pay for it?: Participating projects would pay more property tax than they would have prior to entering the program so local jurisdictions would see an immediate increase in revenue along with a 3% increase every year. Additionally, communities will be charged a $50 fee per unit/annually to the local jurisdiction to cover expenses related to compliance.

*This legislative proposal is still under development and is in the drafting process as of July. Updates will follow as we evolve the legislation ahead of the 2027 legislative session

Compliance: Communities will be required to maintain the affordable units required throughout the entire year and submit an annual audit of their rent roll confirming the affordable units.

Establishment of AMI rental levels – Upon application for the program, the community shall submit a rent roll of their in-place rents. The average rental rate will define the AMI rent percentage for the community.

Assignability – The lease may be assigned by the owner/lessee during the lease term to a purchaser of the applicable property. If the lease is assigned more than once during the lease term, then upon the second transfer, and each subsequent transfer, the PILOT will be reset using one of the two original options, as elected by the owner/lessee. The adjustment in the PILOT will be effective beginning the tax year after the year in which the second or subsequent transfer occurred.

- **Application fee –** Communities shall pay for all 3rd party costs related to the application either in a fixed fee or by invoice. The City may charge a processing fee to cover staff-related costs.

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