

Fiscal impact reports (FIRs) are prepared by the Legislative Finance Committee (LFC) for standing finance committees of the NM Legislature. The LFC does not assume responsibility for the accuracy of these reports if they are used for other purposes.

Current FIRs (in HTML & Adobe PDF formats) are available on the NM Legislative Website (legis.state.nm.us). Adobe PDF versions include all attachments, whereas HTML versions may not. Previously issued FIRs and attachments may be obtained from the LFC in Suite 101 of the State Capitol Building North.

FISCAL IMPACT REPORT

ORIGINAL DATE 2/1/06
 SPONSOR HJC LAST UPDATED 2/10/06 HJR 8/HJCS
 SHORT TITLE Local Government Affordable Housing, CA SB _____
 ANALYST Lewis

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY06	FY07		
	NFI*		

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Mortgage Finance Authority (MFA)

SUMMARY

Synopsis of Bill

The House Judiciary Committee substitute for House Joint Resolution 8 proposes to amend Article 9, Section 14 of the Constitution of New Mexico to permit the state, or the instrumentality of the state designated by the Legislature as the state’s housing authority, or a county or local government to provide or pay:

- a portion of the costs of land for the construction of affordable housing;
- a portion of the costs of construction or renovation of affordable residential housing or the costs of conversion or renovation of buildings into affordable housing; or
- financing necessary to support affordable housing projects.

The enabling legislation for such affordable housing grants shall require that the governing body of the instrumentality of the state designated by the Legislature as the state’s housing authority give prior approval, by resolution.

SIGNIFICANT ISSUES

The Mortgage Finance Authority Act (Chapter 58, Article 18 NMSA 1978), designates the New Mexico Mortgage Finance Authority as the state housing authority for all purposes.

According to the Mortgage Finance Authority (MFA), the existing affordable housing exception

to the anti-donation clause permits the state, counties, and municipalities to “donate” land and/or buildings, and “provide or pay the costs of” infrastructure to support affordable housing projects. Importantly, the exception permits governments only to donate land and existing buildings they own; unlike infrastructure, which can be paid for or provided, the exception does not cover monetary contributions or donations for land and buildings.

The MFA notes that this works for governmental entities that own land and/or buildings, but does not work for the MFA and similar entities that do not “own” real property but wish to facilitate the donation or discounted sale of such property for affordable housing. Under the current provision MFA cannot provide state-funded grants or loans that are significantly below market rates to facilitate the acquisition or donation of real property for affordable housing, yet this is an important mission of MFA, and presumably the intent of the legislature when it appropriates state funding for affordable housing purposes (e.g., the \$10 million appropriated in 2005 to implement the Affordable Housing Act).

According to the MFA, in order for the authority to contribute to a real property transaction, it would first have to acquire the property, presumably by lease or purchase, then re-lease or re-sell (“donate”) it for the affordable housing purpose. This puts MFA in the position of having to be in the chain of title, with the risks inherent in that position, such as potential liability for environmental hazards (asbestos, radon, etc.), title defects, building condition, contractual obligations, etc. MFA asserts that these are not risks the authority should have to assume. What is more, it unnecessarily complicates the transaction and could double transaction costs (i.e., two title searches, two closings, etc.).

MFA adds that the above restrictions also apply to local governmental entities that wish to use state or local funds as grants or significantly below-market rate loans to facilitate the acquisition of real property for affordable housing purposes.

According to the September 13, 2005 minutes of the New Mexico Mortgage Finance Authority Act Oversight Committee, “Bruce Wiggins, MFA legal counsel, stated that until a few years ago, MFA did not experience conflicts between providing affordable housing and the anti-donation clause, but due to the recent need to provide assistance in current workforce needs, the anti-donation clause has caused limitations for the MFA to use the funds it has been granted, particularly the funds granted through the Affordable Housing Act. He noted recent MFA initiatives to provide affordable housing have come up against the anti-donation clause and he proposed a resolution to the clause to allow for the state, a county or a municipality to pay for the costs of buildings for construction or the costs of land.”

POSSIBLE QUESTIONS

The proposed constitutional amendment represents an attempt to expand existing exceptions to the anti-donation clause of the Constitution of New Mexico with regard to affordable housing projects. Is it clear that:

- 1) the proposed amendment would have the result sought by the Mortgage Finance Authority; and that
- 2) a constitutional amendment further diluting the anti-donation clause is both justified and desirable?