FISCAL IMPACT REPORT

		LAST UPDATED	2/5/24
SPONSOR	Montoya	**ORIGINAL DATE**	2/2/24
SHORT TITLE	Affordable Housing Tax Credit Change	**BILL NUMBER**	House Bill 261
		ANALYST	Graeser

REVENUE*
(dollars in thousands)

Type	FY24	FY25	FY26	FY27	FY28	Recurring or Nonrecurring	Fund Affected
TRD/PIT/CIT/ Combined		($480.0) to ($1,400.0)	($360.0) – ($5,215.0)	($930.0) – ($5,330.0)	($1,815.0) – ($5,450.0)	Recurring	General Fund

Parentheses ( ) indicate revenue decreases.

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT*
(dollars in thousands)

Agency/Program	FY24	FY25	FY26	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
TRD		No fiscal impact		$0	Nonrecurring	General Fund
MFA		No fiscal impact	No fiscal impact		Recurring	

Parentheses ( ) indicate expenditure decreases.
*Amounts reflect most recent analysis of this legislation.

Sources of Information

LFC Files

<u>Agency Analysis Received From</u>
Mortgage Finance Agency (MFA)
Heath Care Authority (HCA)
Taxation and Revenue Department (TRD)

<u>Agency Analysis was Solicited but Not Received From</u>
Aging & Long-Term Care Department (ALTSD)
Department of Finance & Administration (DFA)

SUMMARY

Synopsis of House Bill 261

House Bill 261 (HB261) proposes to increase the value of an investment voucher that may be claimed as a tax credit pursuant to the Affordable Housing Tax Credit Act from fifty percent to one hundred percent of an investment made for an affordable housing project. HB261 removes old language limiting the maximum value of the tax credit vouchers.

This bill does not contain an effective date and, as a result, would go into effect 90 days after the Legislature adjourns, or May 15, 2024, if enacted. The provisions are applicable to vouchers issued after January 1, 2024.

FISCAL IMPLICATIONS

This bill expands a tax expenditure with a cost that is significant. LFC has serious concerns about the substantial risk to state revenues from tax expenditures and the increase in revenue volatility from erosion of the revenue base. The committee recommends the bill adhere to the LFC tax expenditure policy principles for vetting, targeting, and reporting or action be postponed until the implications can be more fully studied.

MFA has provided the following perspective:

> Increasing the value of an investment voucher that may be claimed as an affordable housing tax credit from 50 percent to 100 percent will likely increase the use of the $5,115,454 currently available to the Affordable Tax Credit program.

LFC notes that this voucher program, in addition to the state tax credit pursuant to 7-9I-5 NMSA 1978, provides a deduction for federal taxes. Each year, the IRS determines the amount of credits allocated to each state. New Mexico qualifies for the $5 million+ allocation as the minimum for each state. If the vouchers are not allocated, then fewer affordable housing structures are built.

The general fund cost of the 50 percent credit is shown below from the 2023 TRD Tax Expenditure Report. The last three fiscal years have averaged $480,000 per year. Even if this amount were doubled, it would still not exceed the $5,000,000 cap.

Affordable Housing Credit against modified combined tax, PIT or CIT	**Tax Year (Calendar)**	2020	2021	2022
	Claims	176	202	145
	Expenditure (thousands)	$407	$742	$229
	Fiscal Year	2021	2022	2023
	Claims	169	188	186
	Expenditure (thousands)	$276	$716	$449

TRD reports a somewhat different interpretation of the impact of this change:

Estimated Revenue Impact*					**R or NR****	**Fund(s) Affected**
FY2024	**FY2025**	**FY2026**	**FY2027**	**FY2028**		
--	--	($360 - $5,215)	($930 - $5,330)	($1,815 - $5,450)	R	General Fund

* In thousands of dollars. Parentheses ( ) indicate a revenue loss. ** Recurring (R) or Non-Recurring (NR).

> TRD reviewed the historical claims and credit amounts of the Affordable Housing Credit. Between tax year 2013 and tax year 2021, the number of taxpayers claiming the credit has increased by 46 percent, reaching 202 taxpayers in tax year 2021. In that same time period, the aggregate credit amounts claimed increased by 226 percent. The average aggregated credit amount claimed for tax years 2018 to 2021 is $640 thousand, with the

average credit per taxpayer of $3,500. This is well under the statutory cap on the credit that grows each year based on a formula of the consumer price index and New Mexico population. In tax year 2021 the statutory limit was $5.1 million. In tax year 2021, the cap grew to $5.5 million. An additional factor constraining the amount of claims for the credit is that projects must be approved by the New Mexico Mortgage Finance Authority (MFA). According to MFA's website, five sites are currently approved and in development. In June 2023, MFA announced $53 million of funding towards five new projects.[1]

Due to the expansion of approved projects and the doubling of the credit to 100% of investment, TRD assumes a lower bound as the average aggregate credit amount of $640 thousand per tax year growing by twice the annual rate between 2013 and 2021. The upper bound assumes the increased incentive reaches the statutory limit. The statutory limit is grown by 2 percent per year, the average annual growth prior to 2022, removing inflationary growth in 2022 and 2023. This range assumes that the MFA will continue to expand the number of approved affordable housing projects.

LFC expects some claims pursuant to the doubled limits to be made in the spring of 2025 and affect, to a small extent, the FY25 PIT revenues.

SIGNIFICANT ISSUES

MFA notes the following:

Currently, Under the Affordable Housing Tax Credit Act, donations eligible for investment vouchers include investment of land, buildings, materials, cash or services for an affordable housing project approved by the New Mexico Mortgage Finance Authority (MFA) or for the New Mexico Affordable Housing Charitable Trust Fund. The Affordable Housing Tax Credit Act directly reduces a donor's state tax liability by 50% of the value of their donation. MFA is designated as the issuer of investment vouchers used to claim State Tax Credits.

The passage of HB261 would increase incentives for donations to affordable housing projects and could fully utilize the amount of annual credit available for the first time since the Affordable Housing Tax Credit Act was passed. In 2022 the amount of annual credit available was $5,115,454 and the amount of investment vouchers issued was $1,183,410.

TRD also notes several policy issues:

Affordable housing availability is a problem facing New Mexico and states nationwide. This credit supports the efforts of funding projects approved by MFA. This credit has been established since 2005 and has shown steady growth in the number of taxpayers claiming the credit and the amount of credit issued. This credit demonstrates a cooperative government-agency and private investment initiative that has supported investment in affordable housing.

[1] https://housingnm.org/about-mfa/news/mfa-awards-53-million-for-affordable-workforce-housing-construction-and- rehabilitation-across-new-mexico

While tax incentives can support specific industries or promote desired social and economic behaviors, the growing number of such incentives complicates the tax code. Introducing more tax incentives has two main consequences: (1) It creates special treatment and exceptions within the code, leading to increased tax expenditures and a narrower tax base, which negatively impacts the General Fund; and (2) It imposes a heavier compliance burden on both taxpayers and Tax & Rev. Increasing complexity and exceptions in the tax code is generally not in line with sound tax policy.

Additional analysis of Section 7-2-34 NMSA 1978 can be found in the 2023 New Mexico Tax Expenditure Report.[2]

PERFORMANCE IMPLICATIONS

The LFC tax policy of accountability is met with TRD's requirement to report the costs and utilization of all tax expenditures.

ADMINISTRATIVE IMPLICATIONS

Neither TRD nor MFA expect any significant administrative implications. TRD notes that any changes will be included in annual tax year changes.

OTHER SUBSTANTIVE ISSUES

In assessing all tax legislation, LFC staff considers whether the proposal is aligned with committee-adopted tax policy principles. Those five principles:

- **Adequacy**: Revenue should be adequate to fund needed government services.
- **Efficiency**: Tax base should be as broad as possible and avoid excess reliance on one tax.
- **Equity**: Different taxpayers should be treated fairly.
- **Simplicity**: Collection should be simple and easily understood.
- **Accountability**: Preferences should be easy to monitor and evaluate.

In addition, staff reviews whether the bill meets principles specific to tax expenditures. Those policies and how this bill addresses those issues:

Tax Expenditure Policy Principle	Met?	Comments
Vetted: The proposed new or expanded tax expenditure was vetted through interim legislative committees, such as LFC and the Revenue Stabilization and Tax Policy Committee, to review fiscal, legal, and general policy parameters.	✓	First enacted in 2005.
Targeted: The tax expenditure has a clearly stated purpose, long-term goals, and measurable annual targets designed to mark progress toward the goals.		Goal is to allocate the full, allowed $5 million + allotment.
Clearly stated purpose	✓	
Long-term goals		
Measurable targets	✓	
Transparent: The tax expenditure requires at least annual reporting by the recipients, the Taxation and Revenue Department, and other relevant	✓	

[2] See https://www.tax.newmexico.gov/forms-publications/

agencies		
Accountable: The required reporting allows for analysis by members of the public to determine progress toward annual targets and determination of effectiveness and efficiency. The tax expenditure is set to expire unless legislative action is taken to review the tax expenditure and extend the expiration date. Public analysis Expiration date	 ✓ ✓	
Effective: The tax expenditure fulfills the stated purpose. If the tax expenditure is designed to alter behavior – for example, economic development incentives intended to increase economic growth – there are indicators the recipients would not have performed the desired actions "but for" the existence of the tax expenditure. Fulfills stated purpose Passes "but for" test	 ✓ ?	This is but one tool that can incentivize construction of affordable housing.
Efficient: The tax expenditure is the most cost-effective way to achieve the desired results.	?	Apparently, other strategies are needed in addition to this.
Key: ✓ Met ✗ Not Met ? Unclear		

LG/ne/ss/hg

AFFORDABLE HOUSING
CREDIT AGAINST MODIFIED COMBINED TAX, PIT, OR CIT

Category: Citizen Benefits

Brief Description: A tax credit can be applied against GRT (less local option gross receipts taxes), compensating tax (less local option compensating taxes), withholding, PIT, CIT, E911, and interstate telecommunications gross receipts tax for investments in affordable housing projects equal to 50% of the amount of cash invested or the fair market value of the land, buildings, materials, or services relating to such projects. The credit cannot be applied against governmental gross receipts taxes. This tax expenditure is available to taxpayers receiving a tax credit voucher issued by the New Mexico Mortgage Finance Authority (MFA).

Under the MFA's program, the tax credit voucher is administered based on donations made to affordable housing projects approved by MFA and the Affordable Housing Charitable Trust. The maximum amount for this expenditure is calculated annually by multiplying a base rate, adjusted for inflation, and the state's population. For tax year 2023, the ceiling is approximately \$5.5 million. Donations may include land, buildings, materials, cash or services. Cash equivalents such as store credit or waived invoices are considered a cash donation. Donations received by the project sponsor in exchange for tax credits may be used to fund the acquisition, substantial rehabilitation, and/or new construction of affordable housing projects throughout the state, including down payment and closing cost assistance for acquisition of affordable single-family housing. No minimum or maximum dollar limits are placed on donations made directly to the Affordable Housing Charitable Trust.

The credit is not refundable but may be carried forward for up to five years.

Statutory Basis: 7-9I-5 NMSA 1978

Intended Purpose: To incentivize the construction of affordable housing projects.

History: Originally enacted in 2005. An amendment to the Affordable Housing Tax Credit Act in 2010 expanded where eligible "affordable housing projects" can be located from counties with a population of less than 100,000 to all counties and to include materials as an allowable investment.

Evaluation: Every year since the inception of the credit, the MFA program has approved affordable housing projects eligible for contributions and applications for the credit. During the same time, claims for the credit have grown from an average of 14 in the first seven years, to 187 in the last five tax years.

Recommendations: None.

Reliability Factor: 1 - This credit is separately reported. No estimation is required.

Fiscal Impact:

Table is shown in FISCAL IMPLICATIONS