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FISCAL IMPACT REPORT

SPONSOR <u>Padilla</u>	LAST UPDATED _____
	ORIGINAL DATE <u>1/26/2024</u>
SHORT TITLE <u>Create Office of Housing</u>	BILL NUMBER <u>Senate Bill 71/ec</u>
	ANALYST <u>Gaussoin</u>

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT* (dollars in thousands)

Agency/Program	FY24	FY25	FY26	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
	\$1,000.0	\$750.0	\$750.0	\$2,500.0	Recurring	General Fund

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

Relates to Senate Bills 7, 31, 212 and 216.

Sources of Information

LFC Files

Agency Analysis Received From
 State Auditor (OSA)
 Department of Finance and Administration (DFA)
 Mortgage Finance Authority (MFA)
 State Treasurer (STO)
 Economic Development Department (EDD)

SUMMARY

Synopsis of Senate Bill 71

Senate Bill 71 (SB71) creates an Office of Housing, administratively attached to the Department of Finance and Administration (DFA) with a director appointed by the governor, that would study housing issues and work with governments and private developers to plan projects and acquire funding to address housing needs. It would work with the Mortgage Finance Authority (MFA) and across state and local agencies to coordinate projects. Its analysis of housing data would include an evaluation of geographic gaps, progress toward adequate housing supplies, and housing initiatives and investment.

The bill calls for state agencies, the MFA, the New Mexico Finance Authority (NMFA), regional housing authorities, local governments, tribal governments, and private housing stakeholders to work with the Office of Housing on an annual state housing plan. It also adds the director of the Office of Housing to the Mortgage Finance Authority as a nonvoting member.

The bill contains an emergency clause and would be effective immediately if signed into law.

FISCAL IMPLICATIONS

While the bill does not contain an appropriation, it creates extensive responsibilities for data collection, analysis, and outreach and authorizes the director to hire staff. The executive budget recommendation includes \$1 million for initial start-up costs, according to DFA, which anticipates \$750 thousand in recurring annual need for the operations of the office, including for the hiring of five full-time employees. DFA reports it will also need at least one additional FTE, at a cost of \$139 thousand, to coordinate its grant-making program with the new office and provide support.

The Office of the State Auditor estimates the office will have an ongoing need for about \$375 thousand a year for four employees and contracted services.

SIGNIFICANT ISSUES

MFA notes the office would duplicate much of the work it already does: “Creating a duplicative agency may decrease administrative efficiency of resource deployment and convolute the high level of coordination among housing stakeholders that currently exists.”

The office acts as the trustee of the New Mexico housing trust fund reports it has a staff of 120 that administer more than 40 programs delivered at the local level through a network of hundreds of private/public partnerships. Although it was created as a quasi-governmental agency, its board of directors is made up of government officials and governor appointees and it answers to a legislative oversight committee. The agency states:

In its 2023 fiscal year MFA administered nearly \$600 million for affordable housing programs from federal, state, and private funders. With these resources all housed under one roof, MFA leverages funding for maximum impact, underwrites projects for financial feasibility, ensures program compliance, and operates with a high level of efficiency.

The authority reports funding for housing has been sporadically appropriated but has become more stable recently through the Legislature’s authorization of recurring funding the housing trust fund from severance tax capacity starting in 2024. The authority issued the *New Mexico House Strategy* in 2022 that provides broad policy recommendations for improving housing opportunities in New Mexico.

The Office of the State Auditor raises concerns about conflicts between the proposal and stakeholders:

There is not any discussion of how to resolve discrepancies or conflicts between the multiple stakeholders named within SB71. For example, the bill requires the office to “coordinate across state agencies, state and regional housing authorities and appointed commissions or councils on housing to implement actions for housing or supportive housing services within their existing authority;” but does not explain a process for conflict resolution when local or state goals on housing conflict with the statewide plan. For instance, if local government housing and urban development goals are at odds with the statewide housing plan or local government priorities differ from said plan, should local goals take precedence over the statewide plan, or vice versa? Similarly, if MFA’s

risk analysis indicates a mortgage loan should not be made to a given entity but the state housing plan indicates that housing is needed in the area, whose legislative authority takes precedence? Because SB71 does not address how conflicts between an administrative arm of the executive branch and local independent oversight boards (like MFA, NMFA, the associated legislative oversight entities, regional housing authorities and local cities/counties) will be resolved, confusion on policy implementation could occur.

The State Treasurer Office suggests these conflicts, along with a lack of clarity in the bill, raise legal issues: “It is unclear as to whether the plan would be binding on state agencies, local governments, or tribal entities, all of whom individually possess their own constitutional, statutory, or other independent legal authority.” The office continues:

Relatedly, if the state housing plan is intended to be binding on and, where necessary, supersede the judgment of governmental entities involved in housing projects, this may create several legal issues:

1. A requirement that the state housing plan be binding on all stakeholders may conflict somewhat with existing law. For instance, the Mortgage Finance Authority (MFA) possesses specific authority conferred by statute, see Section 58-18-5 NMSA 1978, and no provision within this statute would indicate that MFA’s decision-making authority is subject to the approval of the state housing plan.
2. If the bill is intended to make the state housing plan binding on MFA, this may have the effect of reducing the checks and balances currently in place within the executive branch. At present, the MFA board of directors includes several independent statewide elected officials—the lieutenant governor, attorney general, and state treasurer—and the four members appointed by the governor may only be removed for “misfeasance, malfeasance or willful neglect of duty after reasonable notice and a public hearing.” Section 58-18-4 NMSA 1978. The current structure effectively provides independent oversight over MFA’s activities, which would not be the case for the new Office of Housing. In addition, the Office’s director serving as an ex officio nonvoting member of the MFA may also have an effect of reducing the checks and balances currently in place within the executive branch.

DFA indicates the office is needed to help local governments negotiate a difficult process: “The oversight of housing needs for the state is complicated and having a Housing Office to assist local governments and tribal entities with the expertise and navigation of this area is necessary to move these needs forward.”

ADMINISTRATIVE IMPLICATIONS

SB71 would create additional layers to the existing housing policy and program infrastructure and its role would need to be explicitly and thoughtfully defined to avoid duplication and confusion among stakeholders.

MFA reports it already creates an annual housing plan that assesses needs and strategies, provides technical assistance to local governments and developers, works across state agencies to coordinate funding for housing—all duties assigned to the new office through SB71. In addition,

it monitors adherence to agreements through 10 full-time staff that oversee 345 affordable housing properties with more than 25 thousand units.

The Affordable Housing Act (AHA) was passed and ratified by New Mexico voters as an exception to the anti-donation clause in the New Mexico Constitution to allow local governments and other political subdivisions to put resources toward affordable housing acquisition, development, financing, maintenance, and operation, according to MFA. In the AHA, MFA is charged as the entity responsible for implementation and oversight.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

SB71 relates to Senate Bill 7, which appropriate \$500 million from general fund for the housing trust fund; Senate Bill 31, which appropriates \$500 thousand from the general fund to DFA for MFA; Senate Bill 21, which requires regional housing authorities to develop five-year affordable housing plans, and Senate Bill 216, which allows NMFA to finance affordable housing projects.

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