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FISCAL IMPACT REPORT

SPONSOR <u>Rubio/Romero, A.</u>	LAST UPDATED <u>03/15/2025</u>	ORIGINAL DATE <u>02/17/2025</u>
SHORT TITLE <u>Housing Discrimination & Human Rights Act</u>	BILL NUMBER <u>339/aHCPAC/aHF1 #2/aSTBTC</u>	ANALYST <u>Gygi/Lesemann</u>

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT* (dollars in thousands)

Agency/Program	FY25	FY26	FY27	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
WSD	No fiscal impact	No fiscal impact	No fiscal impact	No fiscal impact		
NMAG	No fiscal impact	\$527.2	\$527.2	\$1,054.4	Recurring	General Fund

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

Relates to House Bill 43

Sources of Information

LFC Files

Agency Analysis Received From

Attorney General (NMAG)
New Mexico Mortgage Finance Authority (MFA)
Workforce Solutions Department (WSD)

Agency Analysis was Solicited but Not Received From

Governor’s Office on Housing

SUMMARY

Synopsis of STBTC Amendment to House Bill 339

The Senate Tax, Business and Transportation Committee amendment to House Bill 339 adds language to the title header indicating the bill reorganizes the Human Rights Act, consolidating sections relating to public accommodations and housing accommodations in a new section and adding new provisions. The amendment also makes minor “cleanup” language changes.

Synopsis of HFI Amendment #2 to House Bill 339¹

House Floor Amendment #2 to House Bill 339 adds language clarifying that a person is not required “to repair or improve a housing accommodation or real property” to meet specific housing quality standards set by housing assistance programs that are not required by federal,

¹ HFI#2 supersedes HFI#1, which was not adopted.

state, local or tribal law. Further, it is not considered an unlawful discriminatory practice for a person “to maintain a housing accommodation or real property” that does not meet quality standards established by housing assistance programs but not required by law.

Synopsis of HCPAC Amendment to House Bill 339

The House Consumer & Public Affairs Committee amendment to House Bill 339 eliminates two instances of the word “public” which incorrectly preceded “housing accommodation” in Section 5 (p. 20 line 7) and Section 6 (p. 26 line 7) of the bill. These sections now refer to housing accommodation in general.

Synopsis of Original House Bill 339

House Bill 339 (HB339) would strengthen protections in the Human Rights Act (Section 27-1-7 NMSA 1978 *et seq.*) for renters and homebuyers against discrimination in public accommodation and housing by:

- Creating source of income as a protected category. The bill defines “source of income” as “any recurring, lawful and verifiable source of money, funds, payments or other monetary consideration.” It clarifies these sources include income from a job, social security, and government or nonprofit housing assistance including vouchers.
- Specifying that an invalid screening process is proof of a prohibited discriminatory act regarding source of income. The bill defines “invalid screening process” as one that fails to: a) include all an individual’s or household’ sources of income in calculating an income requirement for renters or home buyers and b) to limit the calculation of the income requirement to the remaining ratio after subtracting public and tribal assistance.

HB339 would also remove enforcement for public accommodation and public housing accommodation violations from the jurisdiction of the Workforce Solutions Department (WSD) the Attorney General (NMAG). The bill adds a new section to the Human Rights Act requiring:

- Complaints of discrimination in these categories must be filed with the Attorney General to review and potentially pursue in a criminal or civil capacity, as well as providing for civil penalties mirroring the Unfair Practices Act (Section 57-12-2 NMSA1978 *et seq.*).
- Grievances for other categories of discriminatory practice would still be directed to the WSD’s Human Rights Bureau, following the procedures in Section 28-1-10 NMSA 1978.

The effective date of this bill is July 1, 2025.

FISCAL IMPLICATIONS

NMAG anticipates potentially significant but indeterminate increased resource needs, including attorney and non-attorney personnel. The bill does not include an appropriation to meet those needs. This analysis assumes NMAG will need to employ four additional FTE at an average cost of \$131.8 thousand to receive, investigate, and prosecute complaints.

WSD notes no fiscal impact from the bill. However, the department notes:

The volume of public accommodation claims is minimal. To the extent claims do decrease, this will merely offset the unfunded increase in claims the Human Rights

Bureau has experienced and will likely continue to experience in connection with the significant expansion of the Human Rights Act to include all local public bodies.

SIGNIFICANT ISSUES

HB339 would address housing instability for New Mexico’s most vulnerable citizens, including low-income families, seniors, veterans, and individuals with disabilities, who often experience discrimination in seeking housing. According to the Aging and Long-Term Service Department (ALTSD):²

- Over a third (33.8 percent) of New Mexican households house one or more persons 65 years of age or older, with the national average being 11.5 percent.
- Of New Mexico senior households, 41.8 percent earn less than \$40 thousand annually.
- There is a deficit of approximately 41.9 thousand rental homes affordable and available for extremely low-income renters.
- Further, rising rents are outpacing wage growth and are putting low-income renters at greater risk.

New Mexico’s housing costs are accelerating, as is homelessness. According to a recent Pew study, from 2017 to 2024:³

- Median rents in New Mexico increased by 60 percent, more than double the increase for the U.S. at 27 percent during the same period.
- The average price of a New Mexico home increased by 70 percent, now topping \$300 thousand.
- The number of people who are unhoused increased by 87 percent, more than double the nation’s 40 percent increase. In Albuquerque, alone, the number of unhoused people jumped by 108 percent.
- The share of chronically unhoused people in New Mexico increased from 33 percent to 40 percent, whereas Arizona and Colorado saw a 26 percent and 25 percent increase respectively, though also facing affordability challenges.

The HCPAC amendment to HB339 resolves the following issues by eliminating the word “public” preceding “housing accommodation”:

HB339 is inconsistent in its use of the terms “public housing accommodation” versus “housing accommodation.” The title of Section 5, which adds a new section to the Human Rights Act (Section 28-1-7.3 NMSA 1978), is: Unlawful Discriminatory Practice--Public Accommodation--Public Housing Accommodation--Enforcement. This title indicates that the prohibited practices and enforcement only apply to “public” housing accommodation and not private housing. However, the subsections refer to all housing and private property transactions, private and public. Further, the enforcement responsibilities assigned to NMAG are limited to “public accommodation and public housing accommodation.” Since this new Section 28-1-7.3 NMSA 1978 would consolidate all sections in current statute regarding public accommodations and housing in general, who has jurisdiction in the case of private housing is unclear. It would appear that neither WSD nor NMAG is responsible for enforcement of discriminatory practice

² Agency analysis for House Bill 43 regarding Housing Income To Rent Screening Calculations.

³ <https://www.pewtrusts.org/en/research-and-analysis/articles/2025/01/21/restrictive-regulations-fuel-new-mexico-housing-shortage>

violations related to private housing accommodations.

There is currently no definition for “public housing accommodation” in statute or the proposed amendments. Section 1 K does include the following definition:

"Housing accommodation" means any building or portion of a building that is constructed or to be constructed, which is used or intended for use as the residence or sleeping place of any individual.

Source of Income Protection. Adding a source of income protection to the Human Rights Act would prohibit landlords or home sellers from discriminating against potential renters or buyers based on the source of funds used to rent or buy a housing unit. At least 19 other states—including Oklahoma, Utah, Oregon, Colorado, and many New England states—have laws prohibiting discrimination by property owners based on source of income.⁴ These laws specifically protect voucher holders and others on public assistance. HB339 specifies that disallowing vouchers is a discriminatory practice, “including vouchers paid directly to a housing provider even if the assistance includes requirements for inspections, administrative processes or contracting agreements.”

Such laws may help address the affordability crisis. However, as pointed out by the New Mexico Mortgage Finance Authority in response to 2023’s House Bill 25, “critics of source of income protections argue the rules impose burdensome program requirements on landlords and can cause delayed rent payments.”

A 2023 Policy Spotlight by the LFC’s Program Evaluation Unit noted an 18 percent underutilization of federal housing choice vouchers available to low-income renters statewide. The Spotlight reported that one reason for voucher underutilization could be a lack of landlords willing to accept the vouchers. The New Mexico Mortgage Finance Authority also cited such reasoning, pointing to a similar finding in a 2018 U.S. Housing and Urban Development Office of Policy Development and Research report, *A Pilot Study of Landlord Acceptance of Housing Choice Vouchers*. The new definitions in HB339 would make it unlawful for landlords to discriminate against potential renters because they were voucher-users.

Albuquerque, Dona Ana County, and Bernalillo County passed “source of income” protection ordinances in 2022, which bar property owners from discriminating against potential tenants with vouchers. Santa Fe passed an ordinance in 2024. The LFC Spotlight also recommended that “if these ordinances prove to be enforceable and improve voucher utilization in those areas, the state may want to consider a statewide source-of-income protection law.”

The house floor amendment protects property owners against claims of unlawful discriminatory practice if they are not able to meet quality standards set by housing assistance programs, but not required by law, if they refuse to accept applicants with these sources of income.

Screening Process and Income Calculation. HB339 provides that “use of an invalid screening process shall be evidence of a source of income discriminatory practice.” The income

⁴ See HUD interactive map at:

https://www.hud.gov/Program_Offices/Public_Indian_Housing/Source_Income_Protections_0?utm_medium=email&utm_source=govdelivery

screening process specified in Subsection FF(4) could ensure that applicants are not rejected because of perceived lack of income, the wrong sources of income, or for an insufficient rent to income ratio. However, the use of ratios in the screening process is not fully explained. Traditionally, property owners and managers have looked at a limit of 30 percent of adjusted gross income in determining whether an applicant can reliably pay the rent. This percent cap was originally set by the federal National Housing Act of 1937 as amended in 1981. Recently, because of escalating rental costs, voucher holders and other applicants on public assistance are allowed to exceed that cap, especially in high-cost areas.

ADMINISTRATIVE IMPLICATIONS

The Workforce Solutions Department notes:

Complex housing discrimination and public accommodation claims might be better handled by NMAG, which consists primarily of lawyers and legally trained individuals. WSD funding for the Human Rights Bureau is not adequate to replicate that workforce, and the bureau has administrative investigators instead.

WSD would want to establish a referral system to ensure that claims filed under the current Human Rights Act or mistakenly filed with DWS after the effective date of this legislation are properly and timely referred to NMAG.

NMAG notes the bill:

Requires investigation by [the agency] and authorizes litigation and prosecution by the Attorney General without providing for appropriations...for increased resource needs.... These needs will implicate various divisions within [NMAG] to effectuate this portion of the bill, including potentially consumer intake, consumer protections, civil rights, civil appeals, special prosecutions, and criminal appeals, as well as possibly others.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

House Bill 339 relates to House Bill 43, which would amend the Uniform Owner Resident Relations Act (Section 47-8-1 NMSA 1978 *et seq.*) by defining rental dwelling unit applicant income screening requirements.

Relates to House Bill 25 introduced in 2024, which would have made housing discrimination based on a renter's or buyer's source of income an unlawful discriminatory practice pursuant to the Human Rights Act.

TECHNICAL ISSUES

The use of ratios in the screening process to determine the calculation of an applicant's income requirement in Section 1 GG (2) could be clarified to indicate which ratios are acceptable.

NMAG comments that:

The language of Section 5(F)(2) reads that “[a complaint] may be instituted by the attorney general[.]” The contextual language of this section may be read as using two distinct definitions of “complaint”—one complaint being a form submitted to NMAG by a consumer and the other complaint being a legal filing initiating a lawsuit. Consider

altering the language of Section 5(F)(2) to read, for example, “(2) if the attorney general has reasonable belief that a person violated this section, the attorney general may bring a civil action on behalf of the state...”

ALTERNATIVES

NMAG suggests: “Language concerning enforcement in Section 5 could be amended to make a violation of this act a violation of the New Mexico Unfair Practices Act...[which] allows for attorney general enforcement and the pursuit of civil penalties.”

KG/rl/SL2/rl/sgs/hj/SL2/SL2