

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 02/09/10

SPONSOR Morales LAST UPDATED _____ HB _____

SHORT TITLE Invest in Mortgages for Public Employees SJM 43

ANALYST Escudero

Duplicates HJM 51, "Invest in Affordable Housing and Mortgages." SJM44, Invests in Affordable Housing

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY10	FY11	FY12	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
Total	\$0.1	\$0.1	\$0.1	\$0.1	Recurring	SIC Operating Budget

(Parenthesis () Indicate Expenditure Decreases)

Relates to Appropriation in the General Appropriation Act.

SOURCES OF INFORMATION

LFC Files

Responses Received From

State Investment Council (SIC)

Mortgage Finance Authority (MFA)

State Treasurer's Office (STO)

SUMMARY

Synopsis of Bill

House Joint Memorial (HJM 43) urges all candidates for Governor, Lt. Governor, Land Commissioner and State Treasurer to "adopt a position" to invest no less than \$1,000,000,000 in below market-rate mortgages and/or mortgage refinancing for public workers via NM banks and credit unions.

FISCAL IMPLICATIONS

State Investment Council indicates the following:

Following through on implementing such a practice would have an additional, but indeterminate cost relative to the employees needed to execute such a program.

Developing a workable policy for such an undertaking would not be without cost, as evidenced by a previous draft of HB 66, which requested a \$100,000 appropriation to study the viability and best structure for the SIC and Treasurer to increase investments in NM community banks.

Such a significant investment in any one type of alternative asset class would require no small measure of due diligence and assessment of risk. The potential detriment to investment returns for any below market rate investment allocation should be determined prior to implementation.

Mortgage Finance Authority states, because a memorial does not have the force of law, this piece of legislation does not present any fiscal implications in and of itself. However, were the objective of the memorial to be acted upon, at least \$1 billion would be transferred from the land grant permanent fund to New Mexico chartered banks and credit unions.

Both the STPF and LGPF make annual appropriations of 4.7 and 5.8 percent respectively to the general fund based upon their average market value for the preceding five calendar years. In FY10 the funds will distribute approximately \$624 million to the general fund combined, representing more than 10 percent of all recurring general fund revenue. Therefore any legislation that could possibly harm their overall performance has the potential to negatively impact general fund recurring revenue.

	<u>Historical GF Distributions</u>	
	<u>LGPD</u>	<u>STPF</u>
FY09	\$433.2	\$191.3
FY08	\$390.5	\$177.2
FY07	\$364.7	\$171.0
FY06	\$354.2	\$171.8
FY05	\$350.3	\$173.2
FY04	\$292.2	\$172.4

SIGNIFICANT ISSUES

State Investment Council indicates as follows:

HJM 43, though not explicitly saying the funding source for these mortgage investments should be from the \$9 Billion Land Grant Permanent Fund, certainly contemplates the LGPF as a funding source.

“There is currently a mechanism in statute that allows the SIC to invest up to 20% of the STPF in New Mexico Banks. The existing statute (NMSA 1978 Section 7-27-5.19), allows investments to be made from the STPF into Certificates of Deposit held by qualified New Mexico financial institutions.

Historically, this CD investment program has seen limited use for different reasons. Under the statute, banks would only qualify for these investments if rated A by the SIC, or if providing up to 102% collateralization. This collateralization requirement has made the program unattractive to NM banks. In addition, the amount invested by the SIC in CDs with any individual bank, was limited to the amount that they were loaning to New

Mexico businesses. Depending on the number and size of the bank investments, this is potentially difficult for SIC staff to monitor adequately.

It is notable that in recent months, there has been an initiative led by the State Land Commissioner to restart the CD investment program, loosen the existing policy and invest money through certificates of deposit with NM community banks. This “restart” has been hampered by two issues:

- First it was identified that the existing policy was similar, but not exactly the same as a previous Rule regarding this investment authority from 1993. This meant that to make a policy change regarding these investments (and make the program attractive to banks), was not possible as then the new policy would be in conflict with the old Rule. That Rule was repealed in late 2009 through the necessary but lengthy process. Future investments of this kind will be governed by statute and SIC policy, not Rule.
- Secondly, amid the current turmoil facing the Council relative to a federal investigation regarding outside marketer placement fees, in addition to the resignation and subsequent replacement of the state investment officer, several members of the Investment Council have voiced public concern over whether this program will be properly securitized to avoid putting permanent fund money at risk. The Council has asked that SIO Staff put together a proposed policy that would make changes sought by the bankers, while also addressing Council Members concerns over securitization and monitoring. This revamped policy is expected to be discussed once again and possibly voted on at the SIC meeting in February.”

Mortgage Finance Authority indicates the following:

The desire to invest \$1 billion in below-market rate mortgages in order to increase access to affordable housing is laudable, and the New Mexico Mortgage Finance Authority (MFA) contends that quality, affordable housing is a very good investment for the state.

However, it is unclear whether land grant permanent funds could be invested this way. If the state were to invest funds directly in below-market rate mortgages absent any affordability requirements, this could be construed as a violation of the anti-donation clause. In order for the state to invest in below-market rate mortgages (*i.e.*, for the state to make a contribution equal to the differential between market rate returns and below-market rate returns on its investment), the investment program would have to be in compliance with the affordable housing exception in Article 9, Section 14 of the New Mexico Constitution.

In other words, it is questionable whether funds could be directly invested through New Mexico chartered banks and credit unions without first going through DFA and then MFA. Ultimately, MFA would be responsible for reviewing the program to ensure its compliance with the Affordable Housing Act.

State Treasure’s Office states, the Memorial does not specify how this money would be channeled to and through the financial institutions nor does it include any accountability measures to audit the flow of dollars to make sure the funds are used for the intended purpose.

PERFORMANCE IMPLICATIONS

Mortgage Finance Authority states, in order to implement this type of investment program, the administrators of the program—as well as participating lenders—would need to have the infrastructure in place to comply with Affordable Housing Act requirements.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

State Investment Council states, SJM 43 may conflict with NMSA 1978 Section 7-27-5.19 which caps the amount available for permanent fund investments in NM banking institutions at 20% of the Severance Tax Permanent Fund, which currently stands around \$3.5 Billion. Twenty percent of the STPF would be \$700 million, much less than the \$1B proposed here.

Mortgage Finance Authority states, SJM 43 contains provisions that are duplicative of HJM51, “Invest in Affordable Housing and Mortgages.”

TECHNICAL ISSUES

State Investment Council states, while the Lt. Governor has historically been very active in the promotion of affordable housing efforts in New Mexico, it should be noted that the Lt. Governor has no role whatsoever in the investments made by the State Investment Council.

State Treasury’s Office states, the memorial only refers to state investment council permanent funds. Are those the only targeted funds? These longer term funds seem to be more suited to this program than the liquid, short term funds managed by the State Treasurer’s Office.

OTHER SUBSTANTIVE ISSUES

State Investment Council indicates there is a significant question whether investments of this kind could ever meet prudent investment standards, given that they would likely be:

- Below market rate
- Lacking guarantees beyond \$250k under FDIC
- Highly concentrated both in strategy and geography
- Highly illiquid on the public markets should the need arise to sell
- A very significant portion of the portfolio (more than 10% if fully deployed)

A specific statutory mandate requiring such an investment would be necessary to carry out the will of SJM 43.

There is also a question whether such a program might violate the state’s anti-donation clause, as it offers a specific subsidy for a specific group (public employees), without anything of value being returned.

Mortgage Finance Authority states if the Legislature indeed wishes to direct Land Grant Permanent Fund investment in below-market rate mortgages in accordance with the Affordable Housing Act, it already has infrastructure in place to execute such an initiative: MFA is very capable of administering this type of program on behalf of the state.

ALTERNATIVES

Mortgage Finance Authority states, as noted in the “Other Substantive Issues” section above, if the Legislature wishes to direct land grant permanent fund investment in below-market rate mortgages in accordance with the Affordable Housing Act, MFA can accommodate this type of investment immediately. Numerous New Mexico chartered banks and credit unions currently participate in MFA’s below-market rate mortgage and down payment assistance programs, so implementation of the type of program described in SJM43 would be seamless

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Mortgage Finance Authority states, if SJM43 is not enacted, the wishes of the Legislature to urge the identified candidates to invest at least \$1 billion from the land grant permanent fund in below-market rate mortgages will not be conveyed in any formal way.

PME/mew