

LFC Requester: \_\_\_\_\_

**AGENCY BILL ANALYSIS  
2024 REGULAR SESSION**

**WITHIN 24 HOURS OF BILL POSTING, UPLOAD ANALYSIS TO:**

**AgencyAnalysis.nmlegis.gov**

*{Analysis must be uploaded as a PDF}*

**SECTION I: GENERAL INFORMATION**

*{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}*

*Check all that apply:*

**Original**        **Amendment**      
**Correction**        **Substitute**   

**Date** 1/30/2024  
**Bill No:** H 195

**Sponsor:** Serrato, Dixon, Garratt and Padilla  
**Short Title:** HOUSING FUND & CHANGES

**Agency Name and Code**    OSA 308  
**Number:** \_\_\_\_\_  
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**SECTION II: FISCAL IMPACT**

**APPROPRIATION (dollars in thousands)**

Appropriation		Recurring or Nonrecurring	Fund Affected
FY24	FY25		

(Parenthesis ( ) Indicate Expenditure Decreases)

**REVENUE (dollars in thousands)**

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY24	FY25	FY26		

(Parenthesis ( ) Indicate Expenditure Decreases)

**ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)**

	<b>FY24</b>	<b>FY25</b>	<b>FY26</b>	<b>3 Year Total Cost</b>	<b>Recurring or Nonrecurring</b>	<b>Fund Affected</b>
<b>Total</b>						

(Parenthesis ( ) Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to:  
Duplicates/Relates to Appropriation in the General Appropriation Act

**SECTION III: NARRATIVE**

**BILL SUMMARY**

Synopsis: House bill 195 (HB195) changes the name of the Opportunity Enterprise Act to the "Opportunity Enterprise and Housing Development Act"; grants the New Mexico finance authority the power to create and/or expand housing in the state, to acquire, own, and sell housing developments projects, and to make and collect on loans to housing development partners; and replaces the state auditor or the auditor's designee from the opportunity enterprise and housing development review board.

**FISCAL IMPLICATIONS**

HB195 does not contain an appropriation.

**SIGNIFICANT ISSUES**

The office of the state auditor primarily is providing analysis of this bill in support of the language in the proposed legislation that removes the state auditor from the opportunity enterprise and housing development review board.

The office of the state auditor exists for the basic purpose of having a completely independent representative of the people, accountable to no one else, with the power, duty, and authority to examine and pass upon the activities of state officers and agencies who, by law, receive and expend public monies. The New Mexico Finance Authority, as a major component unit of the state, is one of these agencies.

To fulfill its constitutional, statutory, and professional responsibilities the state auditor and the state auditor's auditing staff, must comply with the American Institute of Certified Public Accountants (AICPA) and Generally Accepted Government Auditing Standards (GAGAS), including all related ethics and independence standards. Pursuant to the state constitution and the audit act, all audits and associated engagements performed are publicly released through the state auditor, therefore the state auditor must remain independent of all entities under the Office's audit authority.

There are several threats to independence inherent in having the auditor sit on the board, in particular the following:

1. Management Participation Threat: The threat to auditor independence that results from the auditor's taking on the role of management or otherwise performing management functions on behalf of the audited entity, which will lead the auditor to take a position that is not objective.
2. Bias Threat: The threat that an auditor will, as a result of political, ideological, social, or other convictions, take a position that is not objective.

Per the original and now the amended enacting legislation, the opportunity enterprise and housing development review board is responsible, among other things, for recommending forms and procedures for enterprise and housing project development assistance approval, determining if certain assistance is a prudent expenditure of government funds, making recommendations to the NMFA of potential enterprise development projects, and making recommendations to NMFA regarding rulemaking, application or lending changes. The board also adopts rules necessary to carry out the provisions of the act. These statutory responsibilities are management tasks, and the state auditor cannot participate in the role of management and be responsible for auditing these same management tasks.

Also, the enacting legislation gives the board broad discretion, through rule making, in determining what types of projects are prioritized – therefore creating inherent bias. The prioritization policy – approved by the board - includes more points awarded for targeted industries as determined by the Economic Development Department. Additionally, under the prioritization policy, the Economic Development Department is included in the team of project evaluators before projects are presented to the Board. The Economic Development Department is an audited agency under the audit act and managed by an individual serving at the pleasure of the governor. This could appear politically biased, as some industries are given priority and other industries are not. Additionally, the board may not become aware of applicants that applied but were not presented. This creates inherent bias which may result in the state auditor taking a position that is not objective.

Additionally, the amended act gives the board the rulemaking authority to prioritize projects in political subdivisions that are implementing zoning reforms that support housing development projects, which would further impair the auditor's appearance of independence and could further create inherent bias or the appearance of bias.

## **PERFORMANCE IMPLICATIONS**

## **ADMINISTRATIVE IMPLICATIONS**

## **CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP**

## **TECHNICAL ISSUES**

## **OTHER SUBSTANTIVE ISSUES**

## **ALTERNATIVES**

## **WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL**

## **AMENDMENTS**