

<b>LFC Requester:</b>	<b>Jeannae Leger</b>
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**AGENCY BILL ANALYSIS  
2024 REGULAR SESSION**

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

**Analysis.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** January 19, 2024  
**Bill No:** SB 71

**Sponsor:** Sen. Michael Padilla  
**Short Title:** CREATE OFFICE OF HOUSING

**Agency Name and Code**    394 - State Treasurer  
**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: SB 71 proposes to create a new “Office of Housing” within the executive branch of state government. The purpose of the new Office would be to “study, evaluate and coordinate housing across jurisdictions statewide, including housing investment, development, infrastructure, revitalization, equity, stability, quality and standards.” The Office would be administratively attached to the Department of Finance and Administration, and the Office would be led by a director appointed by the Governor. The Office would have the statutory responsibility to submit an annual state housing plan to the Governor and the Legislature every January, provide technical assistance and training to local governments, tribal governments, and developers, coordinate housing projects and activities across state agencies, and generally to evaluate and identify housing needs across the state. State agencies, local governments, and other stakeholders would be required to participate with and assist the Office in developing the state housing plan. In addition, the Office’s Director would also serve as an ex-officio nonvoting member of the Mortgage Finance Authority.

The bill contains an emergency clause and would take effect immediately upon the Governor’s signature.

**FISCAL IMPLICATIONS**

N/A

**SIGNIFICANT ISSUES**

Although SB 71 specifies a number of content requirements for the state housing plan, and further requires that an updated plan be submitted to the Governor and the Legislature each January, the bill is silent as to the plan’s legal effect. Particularly, 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 state housing plan is to include a “requirement” that such entities “shall coordinate their efforts to ensure the appropriate and effective use of public money,” but the bill does not actually state that the plan is legally binding on such stakeholders. It also does not address the situation in which these stakeholders may disagree with one another – or the Office – regarding “the appropriate and effective use of public money.” In the event of such a disagreement, SB 71 raises questions as to the effect of the state housing plan.

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.

#### **PERFORMANCE IMPLICATIONS**

None to this office.

#### **ADMINISTRATIVE IMPLICATIONS**

None to this office.

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

Relates generally to SB 7 NM HOUSING TRUST FUND, which proposes to appropriate \$500 million to the New Mexico Housing Trust Fund.

Relates generally to SB 31 MFA AFFORDABLE HOUSING ACT FUNDS, which proposes to appropriate \$500,000 to carry out the purposes of the Affordable Housing Act.

#### **TECHNICAL ISSUES**

None noted.

#### **OTHER SUBSTANTIVE ISSUES**

The inclusion of tribal governments and private sector stakeholders within several of SB 71’s mandatory requirements may be subject to challenge. On page 4, lines 19 through 22, the bill appears to provide that “tribal governments and private sector housing stakeholders shall participate with and assist the office of housing in the development and updating of the state housing plan.” Similarly, on pages 5 and 6 of the bill, lines 23 through 2, the bill appears to mandate that the state housing plan include a requirement “that ... any other state, regional, local or tribal funding agency shall coordinate their efforts to ensure the appropriate and effective use of public money.” It is unclear whether the state has the legal authority to mandate that either tribal governments or private sector stakeholders participate in the development of the state

housing plan or that tribal governments must coordinate with other stakeholders, at least in the absence of voluntary assent to do so or federal law.

**ALTERNATIVES**

N/A

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

Status quo

**AMENDMENTS**

N/A