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## FISCAL IMPACT REPORT

**SPONSOR** Varela **ORIGINAL DATE** 01/31/14  
**LAST UPDATED** 02/01/14 **HB** 177

**SHORT TITLE** Affordable Housing Act Oversight Duties **SB** \_\_\_\_\_

**ANALYST** Daly

### APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY14	FY15		
	\$200.0	Nonrecurring	General Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

Conflicts with SB 203, HB 230 and HB 231.  
Relates to HB 31.

### SOURCES OF INFORMATION

LFC Files

Responses Received From  
Mortgage Finance Authority (MFA)

### SUMMARY

#### Synopsis of Bill

House Bill 177 appropriates \$200 thousand from the general fund to the Department of Finance and Administration for expenditure by MFA in fiscal years 2015 and 2016 for the purpose of funding the oversight of the Affordable Housing Act.

### FISCAL IMPLICATIONS

The appropriation of \$200 thousand contained in this bill is a nonrecurring expense to the general fund. Any unexpended or unencumbered balance remaining at the end of FY 2016 shall revert to the general fund.

MFA explains the Affordable Housing Act of 2004 (Act), Sections 6-27-1 through 8 NMSA 1978, assigns to it rulemaking and oversight authority for the Act. Because MFA is an instrumentality of the state of New Mexico, it does not receive operating funds from the state to fund its oversight responsibilities under that Act. MFA reads this appropriation to be recurring when it comments SB 203 would remedy this lack of funding by providing a recurring

appropriation of \$200,000 per year for oversight of the Affordable Housing Act. Based on current and prior years of oversight, MFA reports no additional operating budget impact on MFA if a recurring appropriation is approved through SB 203.

### **SIGNIFICANT ISSUES**

MFA advises that the Act is an important tool for the state and local governments to create and preserve affordable housing. It is enabling legislation for the affordable housing exception to the anti-donation clause of the New Mexico constitution. The Act permits state and local governments to contribute public funds, buildings or other resources to create or preserve affordable housing. In exchange for these contributions, the Act imposes a long-term affordability requirement on publicly-subsidized properties.

Pursuant to the Act, MFA has adopted and overseen rules for the Affordable Housing Act since its inception. In addition to its oversight responsibility, MFA provides technical assistance to local governments as they create affordable housing plans and ordinances required by the Act. To date, MFA has assisted 19 local governments with affordable housing plans and ordinances. MFA assistance includes review and approval of plans, provision of affordable housing data, legal review of ordinances, and presentations to local government bodies. MFA also provides grant funding to assist local governments with the costs of plan development. In the current economic climate—MFA sustained a \$10 million loss in federal funding in FY2013—MFA can no longer afford to subsidize these oversight and technical assistance activities.

### **CONFLICT, RELATIONSHIP**

This bill conflicts with SB 203 and HB 230, both of which appropriate the same amount as this bill, but allow expenditures to occur in FY 15 and subsequent fiscal years with no reversion. Additionally, HB 177 conflicts with HB 231, which seeks to amend the Affordable Housing Act to transfer MFA's oversight responsibilities to DFA.

MFA notes that HB 31, which proposes amendments to the Act relating to violations of that Act which would enable more effective administration of the Act, is related to but does not conflict with HB 177.

### **TECHNICAL ISSUES**

LFC staff reads this appropriation is nonrecurring because it may be expended over a number of fiscal years, and any unexpended or unencumbered balance remaining at the end of a fiscal year does not revert. It is suggested that if the intent of this appropriation is that it be recurring, then expenditure should be limited to a single fiscal year (FY 15), and any unexpended or unencumbered balance remaining at the end of that fiscal year revert, since a new appropriation would be made for each year thereafter.

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

MFA advises that failure to fund HB 230 will place at risk MFA's effective oversight of the Affordable Housing Act, given its limited resources and recent federal funding cuts. MFA's ability to provide technical assistance and funding for planning to local governments will be greatly diminished.