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FISCAL IMPACT REPORT

LAST UPDATED _____

SPONSOR Chasey/Romero, A/Herndon/Rubio/Dixon **ORIGINAL DATE** 2/23/23

BILL

SHORT TITLE Create Housing Department **NUMBER** House Bill 414

ANALYST Daly

REVENUE* (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY23	FY24	FY25		
No Fiscal Impact	(\$11,873.1)		Nonrecurring	MFA IFT Housing Fund
	\$11,873.1		Nonrecurring	Housing Department Housing Trust Fund
		(\$40,000.0)	Recurring	MFA IFT Housing Fund
		\$40,000.0	Recurring	Housing Department Housing Trust Fund

Parentheses () indicate revenue decreases.

*Amounts reflect most recent version of this legislation.

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT* (dollars in thousands)

	FY23	FY24	FY25	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
	\$0.0	\$1,500.0- \$2,000.0	\$1,500.0- \$2,000.0	\$3,000.0- \$4,000.0	Recurring	General Fund

Parentheses () indicate expenditure decreases.

*Amounts reflect most recent version of this legislation.

Relates to SB140, SB381, SB197 and HB262

Sources of Information

LFC Files

Responses Received From

Department of Health (DOH)

Economic Development Department (EDD)

Human Services Department (HSD)

Mortgage Finance Authority (MFA)

New Mexico Attorney General (NMAG)

Public Education Department (PED)

State Investment Council (SIC)

State Treasurer's Office (STO)

SUMMARY

Synopsis of House Bill 414

House Bill 414 creates a new Housing Department as a non-cabinet department in the executive branch. The Department, overseen by a superintendent of housing appointed by the governor with the advice and consent of the senate, is tasked with administration of laws and programs that provide housing stabilization, homelessness prevention, transitional housing, standardization of housing services and increased development of housing. It exercises functions and administers laws pertaining to housing services currently administered by other state agencies and MFA. The Department is composed of the following divisions: office of the superintendent; administrative services division; development and revitalization division; housing equity division; housing stability division; and services quality and standards division, each of which is assigned duties in HB414.

HB414 also amends the New Mexico Housing Trust Fund Act (HTFA), governing the New Mexico housing trust fund (the “Fund”), making it a non-reverting fund in the state treasury. It changes the trustee of the fund from MFA to the Department, and monies in the Fund are no longer appropriated to MFA, nor may they be used to reimburse MFA for actual expenses incurred in administering the Fund. Instead, those funds are appropriated to the Department to contract with MFA to carry out the provisions of the HTFA. HB414 revises existing law governing the Housing Trust Fund Advisory Committee to require that, following review of all project applications or program guidelines, it makes recommendations to the Department, rather than MFA. Trust funds that MFA receives pursuant to its contract with the Department must be awarded either competitively or based on need as the Department and MFA jointly determine.

Additionally, HB414 amends the Severance Tax Bonding Act to change the entity who uses proceeds of authorized severance tax bonds to carry out the purposes of HTFA from MFA to the Department, while requiring both entities to certify the need for issuance of those bonds. Additionally, both MFA and the Department are obligated to monitor the reversions of severance tax bond proceeds.

The superintendent of housing must provide the Legislative Finance Committee (LFC) with periodic updates on the progress of the transition and integration plan and the establishment of the Department, and must provide the Legislature with a comprehensive plan to provide housing programs and related services, including transfer of additional programs from other departments, by January 15, 2024. Public input is required, along with assistance of an advisory committee appointed by the superintendent that represents consumers, developers, advocacy organizations, providers, MFA, and other departments and stakeholders.

HB414 contains a temporary provision transferring to the Department housing-related programs and resources from a number of other state agencies, including the program to provide services to homeless students currently administered by the Public Education Department (to be transferred by Nov.1, 2023), the Department of Finance and Administration’s programs for emergency rental assistance, foreclosure prevention, eviction diversion and prevention (to be transferred by Nov. 1, 2023) and the linkages supportive housing vouchers program administered by the Human Services Department (to be transferred by January 1, 2024).

The effective date of this bill is July 1, 2023.

FISCAL IMPLICATIONS

Revenues. SIC reports that currently, MFA invests its “general fund” and “IFT Housing” funds as a governmental client in SIC investment pools. SIC believes the “IFT Housing” account that is most-recently (12/31/22) valued at \$11.87 million and directed by MFA, would be included in the transfer of authority and capital to the new housing trust fund. Additionally, MFA reports that in 2022, Senate Bill 134 was enacted by the Legislature, allocating 2.5 percent of severance tax bonding capacity to the Fund for the purposes of carrying out the provisions of the HTFA. The estimated distribution for FY25 is \$40 million. The transfer of the role of the trustee of the Fund from MFA to the Department is reflected in the revenue table above, as well as the estimated value of the fund for the fiscal years shown.

MFA has reported that it has administered the Fund since 2005 and has leveraged state funding with \$783 million in federal dollars, bringing to bear \$21.73 for every \$1 dollar of state monies appropriated to the Fund. Based on FY23 severance tax bonding capacity, \$37.5 million will be made available for the Fund for FY23, \$40 million for FY24 and \$38 million for FY25. If MFA maintains even the minimum statutorily required leverage of 3/1, it predicts the state will benefit from an additional \$346 million over three years. The number could be significantly higher based on MFA’s proven track record. Utilizing the Fund program income earned through loan repayment and interest on investment has resulted in an additional \$10 million for loans and grants.

It is unclear whether this leveraging will continue if the Department takes on the role of the trustee of this Fund.

Operating Budget Impact. HB414 contains no new appropriation to fund the Department, relying apparently instead on the transfer of appropriations, personnel and other monies and resources from several state agencies under the temporary provision contained in Section 15. Whether that funding will be sufficient is unclear. In comparison, \$2 million from the general fund is appropriated in SB197 to the Office of the Governor to establish and operate a new office for infrastructure planning and development to develop a plan for improving and simplifying existing infrastructure planning and administrative functions within state agencies. LFC staff estimates that to staff a six division Department with 12 FTEs would cost \$1.5 million, and office space and other start-up and continuing costs could increase the total operating budget impact to \$2 million annually.

SIGNIFICANT ISSUES

Availability of Funding. MFA, the state’s housing provider and trustee of the Fund since 1975, advises the need for affordable housing (to address homelessness, and to house low-and-moderate income New Mexicans) in the state, and indeed across the country, is great. It reports that it has successfully administered the NMHTF since 2005 to leverage and layer other resources to create 4,791 housing units across the state producing \$21.73 dollars for every \$1 of NMHTF invested in a project. Based on its experience, MFA advises the single largest impediment to building additional affordable housing, addressing homelessness, and providing other housing related services has been the availability of funding. The legislature sought to remedy this issue in 2022 by providing a dedicated source of funding for the Fund. Removing MFA, the state housing authority, as the trustee of the Fund creates significant funding

unpredictability for MFA's programs, the very issue that the prior legislation sought to remedy. MFA also notes that HB414 removes all administrative compensation, but does not provide how the Department will operate or how MFA will be compensated as a contractor to the Department, which contract is required in Section 11(C).

Reduction in Oversight. The State Treasurer is a member of MFA's board of directors, and in that position oversees the activities of MFA, who under existing law is the trustee of the Fund. STO's analysis of HB414 provides these comments on the oversight currently provided MFA under existing law:

The Bill's shift of responsibilities from MFA to the new Housing Department will 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 those members appointed by the Governor which may only be removed for "misfeasance, malfeasance or willful neglect of duty after reasonable notice and a public hearing." Section 58-18-4. This current structure effectively provides independent oversight over MFA's activities, which would not be the case for the new Housing Department. It should be noted that Section 7-27-49 permits an allocation of 2.5 percent of the estimated bonding capacity for the New Mexico housing trust fund, which may be a significant amount of funding that would benefit from the current oversight structure.

Additionally, as MFA notes, its activities are overseen by the Legislative Oversight Committee (LOC), which is charged with reviewing and approving MFA rules and regulations related to operation or programs and funding. The LOC is composed of four members of the Senate, appointed by the President Pro Tem and four members of the House, appointed by the Speaker of the House. See Section 58-18-5(W), creating LOC, as well as Sections 58-18-8, 8.1, 8.2 and 8.3, NMSA 1978. As an entity of the executive branch, the Department would have no such legislative oversight. Upon transfer of the trusteeship of the Fund to the Department, LOC oversight of the Fund ends. Additionally, MFA reports to LFC yearly on its operating budget and provides a program overview, which reporting would also end.

In addition, MFA reports MFA is subject to more than a dozen audits each year. In addition to its annual financial statement and single audit, MFA comments that it has a robust internal audit program and is also audited for individual federal and state programs on an ongoing basis. FY20 was MFA's 29th year of unmodified opinions on financial statement audits with no material weaknesses.

Duplication of and Conflicts in Dual Responsibilities. STO also comments on the amendments to the HTFA and provisions governing issuance of severance tax bonds. As it notes, these amendments:

Would appear to create significant duplication of responsibilities between the new Housing Department and the existing New Mexico Mortgage Finance Authority. As drafted, the Bill would require both the Housing Department and MFA to carry out identical duties simultaneously, such as certifying to the State Board of Finance the need for severance tax bonds and awarding trust funds. Currently, these functions are handled by MFA alone, and it is unclear why two state agencies would be required to carry out these activities.

Relatedly, there may be some loss of technical knowledge and expertise in creating the new Housing Department as the trustee of the New Mexico Housing Trust Fund rather than MFA. Since the Fund's creation in 2005, it has been managed by MFA, which has significant in-house knowledge and expertise in fulfilling its responsibilities under the New Mexico Housing Trust Fund Act. *See* 2005 N.M. Laws, ch. 105, sec. 4.

MFA raises a number of these same concerns:

There are numerous instances where the bill creates a duplication of efforts including the process of certifying severance tax bond needs to the state board of finance (a trustee duty), ensuring proper reversions of bond proceeds (trustee duty), and/or imposes duties upon MFA without corresponding powers to ensure those duties may be met including ensuring that the NMHTF funds attract at least three times as much funding from other sources.

The bill creates the housing agency, thereby creating two entities who are both responsible for complying with existing requirements to expend program income first and it does not address how the funds will be balanced to ensure the existing NMHTF programs will be funded.

This legislation states that the housing department will contract with MFA, it may not be appropriate that MFA then be part of the certification process to the State Board of Finance. It also creates unpredictability related to the continued operations of any existing programs funded through the NMHTF. Additionally, as a contractor, it would not be appropriate for MFA to ensure proper reversions of the bond proceeds, that would be the responsibility of the Trustee.

Section 7 (new material) creates many instances of duplication of efforts, including in housing development, policy, renovation, and standards. In order to effectively leverage other state and federal dollars, MFA has to comply with funding source requirements, including building standards.

Additionally, MFA calls attention to its status as a quasi-governmental entity that has different procurement and contractual requirements that may conflict with those governing an executive branch agency, adding additional administrative burdens and issues. Similarly, it comments that having two agencies performing similar tasks could create confusion about layered funding, including duplication of funding and over-subsidizing projects and programs.

Finally, it warns that MFA alone is responsible for the statutory leverage requirements, and expressed concern that this may not be appropriate if MFA is acting as a contractor and does not have the ability to influence or monitor how funding is expended by the Department.

Transfers of State Agency Programs. PED provides this comment concerning the transfer of its program providing services for homeless students:

The EHCY federal grant program supports an office for coordination of the education of homeless children and youths in each state, which gathers comprehensive information about homeless children and youths and the impediments they must overcome to

regularly attend school.

The grants also help state educational agencies ensure that homeless children, including preschoolers and youths, have equal access to free and appropriate public education. States must review and revise laws and practices that impede such equal access. States are required to have an approved plan for addressing problems associated with the enrollment, attendance, and success of homeless children in school. States must make competitive subgrants to local educational agencies to facilitate the enrollment, attendance, and success in school of homeless children and youths. This includes addressing problems due to transportation needs, immunization and residency requirements, lack of birth certificates and school records, and guardianship issues.

PED's EHCY coordinator regularly communicates with other divisions within PED regarding the support of homeless students in all these areas, which could continue through a Memorandum of Understanding between the agencies if HB414 is enacted.

Other currently available housing-related state funding includes PED's Education for Homeless Children and Youth (EHCY) Program, which it reports is regularly funded by the federal EHCY grant of approximately \$800 thousand per year, which supports office operations, including a state coordinator and assistant coordinator positions. Through FY24, 25 percent of the \$6.4 million American Rescue Plan grant funding is also funding two support positions for business operations and training programs.

Additionally, Linkages was created in 2007 to provide permanent supportive housing for homeless adults who are diagnosed with a serious mental illness. The program is funded through HSD- Behavioral Health Services Division (the Collaborative). The Linkages rental assistance program received \$3.5 million for FY23. (Linkages provides assistance with rent, security deposits, utility deposits, on-going utility assistance, application fees and background checks. Participants receive on-going case management to include monthly home visits through a support services administrator. Participants may stay in the program if they remain eligible or permanent housing is secured. MFA administers the rental assistance portion of the program.)

Further, in November 2022, the governor appointed a housing and homeless advisor to the Office of the Governor. Funding for that position for FY23 and 24 has been appropriated to the Office of the Governor. Further, based on LFC staff analysis, HSD has approximately 1.5 to 2 FTEs for housing programs.

Creating an Executive Branch Department. DOH believes that given the importance of housing, it is notable that there is no lead agency in the executive branch to address the wide range of housing issues. It does, however, raise one issue of concern with HB414:

While it would continue and seek to expand existing services related to a range of housing issues, and therefore should improve health status, the proposed structure does not clearly address the issue of homelessness, including shelters and encampments (beyond the Services Quality and Standards Division establishing criteria and monitoring best practices for sheltering services). Providing a specific Division that addresses the various emergency shelters (e.g., for economic or domestic crisis, severe weather, public

health emergencies such as isolation/quarantine), transitional shelters, and people living in encampments; is a conduit for funding (e.g., from federal grants); can provide support to local shelters statewide; and can collaborate with state and local emergency managers, FEMA, and non-governmental organizations (e.g., Red Cross), may be valuable.

HSD comments that it is supportive of the spirit of the proposed Department to consolidate, streamline, and coordinate housing and housing supports and services. As part of the Section 15 comprehensive plan, HSD advises assessing the outcomes of the Linkages program and sharing those results with interested parties. It also advises, per the National Alliance on Mental Illness (NAMI), stable housing can often be a barrier to wellness for individuals who suffer from behavioral health concerns. Housing that is affordable, supports individuals with the correct level of independence, that meets physical needs, and is discrimination free is key to sustainable recovery. Creating a centralized Housing Department could increase access to housing that meets the needs of those with behavioral health concerns.

<https://www.nami.org/Your-Journey/Individuals-with-Mental-Illness/Finding-Stable-Housing>

EDD reports that one of the main impediments to economic growth throughout New Mexico regardless of size or region is the availability of affordable housing. It is hard to create and sustain jobs where housing is either too expensive or nonexistent. It believes an executive level agency working in conjunction with local economic and community development leaders along with the EDD will allow for grass roots efforts to be acted upon in a nimbler, more open, and direct process.

On the other hand, MFA notes it oversees the Affordable Housing Act, which provides a statutory exception to the anti-donation clause in the New Mexico Constitution and allows counties, municipalities, and school districts to make donations for affordable housing development. MFA advises it provides technical assistance and support to local communities to develop and implement affordable housing plans, which work with local governments has resulted in \$73.0 million in Affordable Housing Act contributions across the state.

Section 15(F) requires the superintendent of housing to provide the Legislature with a comprehensive plan to provide housing programs and related services for all populations by January 15, 2024. Establishing the Department finding office space and staffing six divisions before that comprehensive plan is completed may be putting the cart before the horse.

PERFORMANCE IMPLICATIONS

MFA notes that HB414 could disrupt contractual relationships with over 300 partners across the state, who in turn serve thousands of New Mexicans across the state.

ADMINISTRATIVE IMPLICATIONS

STO notes HB414 does not appear to shift any resources or staffing from MFA to the new Department, and the two entities may compete for the same pool of labor and resources. Further, HSD reports that the provision in the bill requiring Department access to all records, data and information of other state departments, not specifically held confidential by law may cause administrative implications as it may be difficult to predict a specific IT timeline and cost.

RELATIONSHIP

SB140 makes an appropriation of \$48 million to the New Mexico housing trust fund for expenditure in FY24.

SB381 changes the applicability date of NMSA 1978, § 7-27-49 relating to the bonding capacity of the New Mexico housing trust fund.

SB197 creates an infrastructure planning and development office that would be administratively attached to, among other governmental entities, the New Mexico mortgage finance authority.

HB262 creates the connect New Mexico council which would include the executive director of the New Mexico mortgage finance authority or the executive director's designee as a member.

TECHNICAL ISSUES

The deadline for Section 15(F)'s comprehensive housing programs and related services plan is January 15, 2024. In light of the potential for funding requests as part of that plan, LFC staff suggests the plan be presented by September 1, 2023, the statutory date for agency budget requests.

On page 5, line 4, the “and” between “supervisory” and “authority” appears to be extraneous.

SIC notes that existing statutory language on page 10, line 12, the state investment council is the investment agent for the Fund, but new language on page 12, lines 15-16, the term “state investment office” is used. It appears that that reference should be to the council.

OTHER SUBSTANTIVE ISSUES

There appear to be several other state agency housing-related programs and funds that are not included in the transfer provisions of Section 15. They include the Landlord Collaboration Program, a partnership between MFA and Children, Youth and Families Department that provides access to safe, permanent and supportive housing opportunities for youth (24 years old and under) who are experiencing homelessness or are at-risk of homelessness. Funds provided to landlords cover items such as excessive damage to rental units, lost rent, or legal fees beyond the security deposit. The weatherization program operated by Energy, Minerals and Natural Resources Department, the tribal infrastructure fund administered by Indian Affairs Department, and the colonias fund administered by New Mexico Finance Authority are others. Further, as of February 2023, state agencies have a 20 percent vacancy rate.

Additionally, HSD comments:

As part of the Medicaid 1115 innovations waiver to the U.S. Centers for Medicare and Medicaid Services, HSD is proposing to provide pre-tenancy and tenancy support

services to individuals who are part of the Linkages Supportive Housing Program, and to increase the capacity of this program to serve additional members. Waiver approval is pending.

DOH provides some additional overview as to housing issues:

Over 17 percent of New Mexicans experience severe housing problems, the 13th highest percentage in the country. ([2024RecommendVol.pdf \(nmlegis.gov\)](#)) While there are many factors that influence health, stable housing is a key “social determinant of health” that directly impacts health outcomes. Housing insecurity compromises health status and impairs healthcare outcomes: living on the street or in crowded homeless shelters is extremely stressful and made worse by being exposed to communicable disease, violence, malnutrition, and harmful weather exposure, in addition to worsening chronic health conditions and behavioral health issues. ([homelessness-and-health.pdf \(nhchc.org\)](#))

Housing is necessary to realize a healthier society. Communities that invest in affordable housing incur lower public costs, achieve better health outcomes, and work to prevent and end homelessness. ([homelessness-and-health.pdf \(nhchc.org\)](#))

The LFC Budget Recommendation includes:

- For Corrections Department, the committee recommendation provides an additional \$500 thousand from the general fund and funds raises that would address supportive housing for released offenders. ([2024RecommendVol.pdf \(nmlegis.gov\)](#))
- For HSD’s Medicaid expansion items including for \$6.2 million that includes supportive housing. ([PatternStream Book.book \(nmlegis.gov\)](#))
- For TANF funds for transfer to the Children, Youth and Families Department for supportive housing (\$900 thousand). ([PatternStream Book.book \(nmlegis.gov\)](#))

MFA reports that in serving as the state housing authority and in just the last year has provided more than \$642.6 million in low-interest financing and grants for affordable housing and related services. This \$642.6 million includes:

- More than 2,200 New Mexico families became homeowners with \$430 million in MFA mortgage loans and \$15.9 million in down payment assistance.
- Nearly 1,000 rental homes built and preserved with \$136.8 million in MFA financing.
- Nearly 5,200 low-income renters assisted with project-based Section 8 rental assistance totaling \$32.1 million.
- 743 homes rehabilitated or weatherized with \$8.8 million in MFA funding.
- More than 5,000 people sheltered and housed and 935 individuals where homelessness was prevented with \$8 million in funding.
- 500 special needs individuals and households assisted with \$3.66 million in rental assistance and related services.
- MFA administers more than 35 programs that address homelessness assistance, transitional housing, rental development, specialized housing, single-family development, homeownership, weatherization, and rehabilitation

MD/al/ne