

Fiscal impact reports (FIRs) are prepared by the Legislative Finance Committee (LFC) for standing finance committees of the Legislature. LFC does not assume responsibility for the accuracy of these reports if they are used for other purposes.

## FISCAL IMPACT REPORT

<b>SPONSOR</b> <u>Borrego/Szczepanski</u>	<b>LAST UPDATED</b> _____
	<b>ORIGINAL DATE</b> <u>02/21/23</u>
<b>SHORT TITLE</b> <u>Additional Housing Dwelling Units</u>	<b>BILL NUMBER</b> <u>House Bill 425</u>
	<b>ANALYST</b> <u>Hitzman</u>

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

	FY23	FY24	FY25	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
	No fiscal impact	No fiscal impact	No fiscal impact			

Parentheses ( ) indicate expenditure decreases.  
 \*Amounts reflect most recent analysis of this legislation.

### Sources of Information

LFC Files

Journal of American Planning Association – Pendall, Rolf. (2007). *Local Land Use Regulation and the Chain of Exclusion*.

Health Affairs Health Policy Brief – Lens, Michael. (2021). *Low-Density Zoning, Health, And Health Equity*

National Low Income Housing Coalition (NLIHC)

US Department of Housing and Urban Development - *U.S Accessory Dwelling Units: Case Study*

#### Responses Received From

Mortgage Finance Authority (MFA)

#### No Response Received

Municipal League

Association of Counties

Councils of Government

## SUMMARY

### Synopsis of House Bill 425

House Bill 425 (HB425) amends statute regarding municipalities, removing sections that refer to zoning authorities in existing sections and adding new material regarding additional dwelling units in single-family zoning districts. The material provides that a zoning authority shall accommodate the construction of one additional dwelling unit for each lot within a single-family zoning district regardless of lot size. The bill specifies the additional dwelling unit shall be equal

to or less than 1,000 square feet, be with or without kitchen facilities, and have side and rear setbacks that are more than five feet from the property line and 10 feet from another structure on the property. The owner of the additional dwelling unit shall obtain approval from the appropriate health officer prior to any installation of a private liquid waste disposal system. The zoning authority shall not impose single-family or owner-occupancy requirements on the additional dwelling, charge additional impact fees if existing utilities are sufficient to accommodate the dwelling, require alternate covered or off-street parking when an existing garage is converted into the additional dwelling, or use additional standards to evaluate the proposed unit, except requiring the dwelling be used for long term rentals.

A zoning authority shall consider a permit application without a discretionary review or hearing. A local ordinance, policy, regulation, or neighborhood or homeowner association restriction cannot be the basis for delay or denial of a building permit for an additional dwelling unit. Dwellings meeting the above requirements shall not be deemed to exceed the allowable density of dwellings for that lot.

The legislation would void any covenant, restriction, or condition in a deed, community document, security instrument, or other instrument, that prohibits construction or use of additional dwelling units.

This bill does not contain an effective date and, as a result, would go into effect June 16, 2023, (90 days after the Legislature adjourns) if signed into law.

## **FISCAL IMPLICATIONS**

The bill does not contain an appropriation and is not expected to have a direct fiscal impact on the state. However, the construction of additional dwelling units may result in an increased collection of property tax revenues to the Taxation and Revenue Department, but the amount is not known given there is little to no information about how many units would be constructed as a result of HB425.

## **SIGNIFICANT ISSUES**

The Mortgage Finance Authority (MFA) provides the following:

[The] New Mexico Housing Strategy [included] a resident survey and respondents shared their future housing preferences, including their plans for moving, type of house they would like to move to, interest in accessory dwelling units, their desire for homeownership, and major barriers to homeownership. Thirty-seven percent (37%) of respondents indicated that they would consider building and renting out an accessory dwelling if they had the resources and another 14% indicated they might consider it.

The Strategy recommends creating flexibility within state and local programs and policies to respond to housing needs and market fluctuations by incentivizing by right or administrative approval for developments with a significant share of affordable units including casitas/[additional dwelling units] and plexes.

By 2035, the state is projected to reach nearly 900,000 households, 65,000 more than in

2020. Based on this projection, between now and 2025, an average of 5,100 housing units per year are needed to accommodate growth; and between 2025 and 2030, an average of 5,140 housing units per year are needed to accommodate growth. This compares to a 10-year average of annual permits issued of 4,107 housing units in growth counties and 4,771 housing units statewide. Rental unit production is a crucial component for reaching these housing targets.

Further, despite an increase in the amount of rental and other housing assistance being provided to existing residents, housing units are in short supply across the state, with a 4.6 percent rental vacancy rate and 0.8 percent of owner housing that is vacant for sale. The 2022 New Mexico Strategy report, commissioned by MFA, indicates that the costs of housing of all types continue to rise for renters and homeowners, largely due to inflation and production challenges. However, incomes have not risen accordingly, which increases cost burden and housing insecurity. According to MFA and National Low Income Housing Coalition (NLIHC) estimates, there is a shortage of 32 thousand to 40 thousand affordable rental units available for extremely low-income renters.

Although, over the last decade, the number of homeless people in New Mexico has declined by one-third and poverty has decreased by 3.1 percent, there are still unmet needs for housing support across the continuum of risk for homelessness and housing insecurity. Since 2018, New Mexico has greatly improved in providing emergency shelter options for the homeless. However, a shortage of affordable housing units in New Mexico illustrates a need for some additional long-term solutions, including permanent supportive housing and related support services. Additionally, there is a need for increased transparency and outcomes regarding existing investments in housing support programs. LFC staff have previously recommended expanding existing state-funded supportive housing programs, considering land use and zoning laws to promote increasing affordable units, and additional tracking and transparency for existing funding and programming.

HB425 proposes to amend zoning laws to allow the construction of additional dwelling units, which could have the effect of increasing the state's availability of housing units. While there is nothing in the bill that requires those units to be affordably priced, the U.S. Department of Housing and Urban Development (HUD) notes building an additional or accessory dwelling unit typically costs less than a single-family home, so it is more likely to be offered at a more affordable rate than a new dwelling built on a separate lot.

Though important, affordable housing and homeless supports are not federal entitlements nor are they constitutional requirements in the same way that Medicaid or public education are for the state. As such, until recently, the state has played a relatively limited role in providing housing and homelessness programming, instead leaving the federal and local governments to hold primacy in these areas. However, significant infusions of pandemic-related funding to the state have kindled a new state focus on housing issues. With higher-than-ever recurring resources available at the federal and state level, both the Legislature and executive have signaled their interest in continuing state support for housing into the future. Since the 2020 session, the Legislature has allocated over \$108.7 million in state funds from capital and other appropriations for housing and homelessness efforts, though almost all of it was nonrecurring.

The bill notes the zoning authority cannot charge additional impact fees if the existing utility infrastructure can support the additional unit, but the bill does not specify how that determination

would be made or whether the owner or the zoning authority would have final say in whether current infrastructure is ‘adequate.’

The bill is likely intended to address the availability of housing units, which would essentially result in some level of increased lot density by allowing additional units regardless of lot size. Those in opposition to the new policies may suggest that low-density zoning policies and restrictions on lot density help address concerns regarding foot and vehicle traffic or environmental harms. However, proponents of the bill may argue that low-density zoning can drive housing costs up artificially and can exacerbate segregation, where low-income communities and communities of color are driven out of certain areas; a study published in the Journal of American Planning Association shows low-density-only zoning can have the effect of limiting the number of Hispanic and Black residents in an area. However, more studies are needed on the effects of lot density and the impacts on health and safety as well as on equity and segregation. A report published in a Health Affairs Health Policy Brief in 2021 notes that, while “increasing allowable density in more neighborhoods will not have immediate effects on housing affordability, segregation, or health, [it] is a necessary step toward a more affordable, healthy, and sustainable future.”

Other municipalities have adopted ordinances regarding additional or accessory dwelling units (ADU). For example, HUD notes policies in Santa Cruz, California that allow accessory dwelling units in designated residential zones on lots that are at least 5,000 square feet in area. Similar to what is proposed in HB425, no more than one accessory dwelling unit per lot is allowed, however the property owner must occupy the primary or ADU, which is not required per HB425. Similarly, Portland, Oregon permits the construction of ADUs on lots with a single-family home, as long as they are smaller, supplementary to the primary residence, and no more than 800 square feet. Further:

[Portland] considers ADUs to be more affordable than other housing types because of the efficiency of the units in using fewer resources and reducing housing costs. City planner Mark Bello notes that allowing more ADUs did increase the housing supply, and that city residents viewed ADUs positively and were satisfied with the changes made. He also added, “There were no significant negative issues that arose from liberalizing Portland’s code.”

While it is unclear if New Mexico would realize similar benefits, as noted by HUD, “a community can tailor ADU ordinances to suit its demographic, geographic, and socioeconomic characteristics” as needed, depending on the intended outcome of the bill/policy.

JH/al/ne/mg