

LFC Requester:	Rick Martinez, Jr.
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**AGENCY BILL ANALYSIS
2014 REGULAR SESSION**

WITHIN 24 HOURS OF BILL POSTING, EMAIL ANALYSIS TO:

LFC@NMLEGIS.GOV

And

DFA@STATE.NM.US

{Include the bill no. in the email subject line, e.g., HB2, and only attach one bill analysis and related documentation per email message}

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 X **Amendment**
Correction **Substitute**

Date January 14, 2014
Bill No: HB31-305 Jan 14

Sponsor: Rep. Roberto "Bobby" Gonzales **Reviewing** Attorney General's Office
Short Affordable Housing Act **Person Writing** Jennifer Armijo Hughes
Title: Violations and Penalties **Phone:** 222-9000 **Email** jhughes@nmag.gov

SECTION II: FISCAL IMPACT **FOR LFC OFFICIAL PURPOSES******
AGO STAFF SHOULD LEAVE SHADED AREAS BLANK

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY14	FY15		

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to:

Duplicates/Relates to Appropriation in the General Appropriation Act

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY14	FY15	FY16		

(Parenthesis () Indicate Expenditure Decreases)

Duplicates, Relates to, Conflicts with, Companion to

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY14	FY15	FY16	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total						

(Parenthesis () Indicate Expenditure Decreases)

SECTION III: NARRATIVE

This analysis is neither a formal Attorney General’s Opinion nor an Attorney General’s Advisory Opinion Letter. This is a staff analysis in response to the agency’s, committee’s or legislator’s request.

BILL SUMMARY

Summary Synopsis:

The purpose of HB 31 is to amend the Affordable Housing Act, NMSA 1978 Section 6-27-1 et. seq., by providing terms for the timely sale of foreclosed or failed affordable housing projects without retaining the long-term affordability restrictions. HB 31 adds a civil penalty provision to the Affordable Housing Act that will provide a mechanism for the Act to be enforced by the Attorney General.

Although under the current law the Attorney General is already mandated to investigate violations of the Affordable Housing Act reported by the New Mexico Mortgage Finance Authority (“Authority”), the newly added Section 2 expounds upon this mandate. Section 2B gives the Attorney General the authority to execute and serve civil investigative demands. If a person is found to have willfully committed an act in violation of the Affordable Housing Act, the Attorney General may seek to recover a civil penalty not exceeding the amount of \$5000 per violation, in addition to any equitable relief imposed by the court. This section restates existing law that in addition to the Attorney General’s power to investigate it may pursue both civil and/or criminal actions.

HB 31 Section 3 is amended to now include:

“C. In addition to the rulemaking duties provided in Subsection B of this section, the authority shall adopt rules covering provisions necessary to ensure the timely sale of an affordable housing project as provided in Paragraph (6) of Subsection B of this section, including the land or buildings:

- (1) that is subject to a long-term affordability contract executed by a governmental entity pursuant to the Affordable Housing Act but that is determined by the authority not to be marketable for a price that would sufficiently recover the public funds invested in the project;
- (2) in the event that the qualifying grantee defaults on a contractual obligation or if the project is abandoned by the qualifying grantee or otherwise fails; and
- (3) that has title that is subsequently transferred by or to the contracting governmental entity through:
 - a. a foreclosure sale;
 - b. a transfer of title by deed in lieu of foreclosure; or
 - c. any other manner.

D. The rules adopted by the authority pursuant to Subsection C of this section shall require that a governmental entity shall exercise reasonable efforts to ensure that all proceeds from the sale of

a property pursuant to Subsection C of this section are used solely for purposes pursuant to the Affordable Housing Act and that the qualifying grantee that held title to the property shall not benefit from the sale of the property or from the transfer of the affordable housing project.

The rules shall provide the terms for:

- (1) the sale of the property at fair market value; and
- (2) the removal of the contractual obligation requiring long-term occupancy of the property by low-income or moderate-income households.”

Former Section D has been deleted as it is now falls under Section 2 which specifically addresses the power of the Attorney General to investigate alleged violations of the Affordable Housing Act.

FISCAL IMPLICATIONS WITH ENACTING THIS BILL

N/A

SIGNIFICANT LEGAL ISSUES

N/A

PERFORMANCE IMPLICATIONS WITH ENACTING THIS BILL

N/A

ADMINISTRATIVE IMPLICATIONS WITH ENACTING THIS BILL

N/A

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP WITH BILLS INTRODUCED THIS SESSION

HB 31 may be related to the following:

- HB 40 - Affordable Housing Tax Credit Act Definitions
- HB 28 - Regional Housing Authority Oversight
- SB 11 - Regional Housing Authority Oversight
- HB 29 - Transfer Regional Housing Authority Oversight
- SB 32 - Transfer Regional Housing Authority Oversight
- SB 71 - Municipal Housing Commissioner Appointments

TECHNICAL ISSUES OR DRAFTING ERROR

N/A

OTHER SUBSTANTIVE LEGAL ISSUES

N/A

ALTERNATIVES TO ENACTING THIS BILL

N/A

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

State Housing Authority Flexibility to Ensure Timely Sale of Properties

The weakening of the national economy and the local real estate market has left many properties with no viable re-sale market. Without the amendments to the Act, to allow the flexibility in the affordability restrictions, the Authority may be limited in its ability to move properties and re-invest funds in other affordable housing projects to benefit the citizens of New Mexico. Further, without the flexibility of the amended language the Authority may need to hold properties for longer periods of time without proper development leading to the properties languishing and becoming blight and possibly subject to local condemnation proceedings.

Investigation of Act Violations, Penalties, Remedies

If this Bill is not enacted, enforcement of the Affordable Housing Act will be severely curtailed.

AMENDMENTS NEEDED TO IMPROVE THIS BILL

The first sentence in Section 2A which states, “The attorney general shall investigate an alleged violation of the Affordable Housing Act reported by the authority.” should be removed from that section and added to the beginning of Section 2B.