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Fiscal Note

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Prime Sponsors: Sen. Moreno Bill Status: Senate Local Government
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Bill Topic: LAND USE

- Summary of Fiscal Impact:
State Revenue [] TABOR Refund []
State Expenditure [x] Local Government [x]
State Transfer [] Statutory Public Entity []

The bill requires the Department of Local Affairs to adopt model codes to increase higher density housing options and to create methodologies for assessing and planning for residential housing needs. Local governments must adopt model codes or develop new local zoning and building codes meeting minimum standards. The bill also requires that municipal water providers conduct a water loss audit and submit validated audits and mitigation plans to the Department of Natural Resources. The bill increases state and local expenditures beginning FY 2023-24.

Appropriation Summary: For FY 2023-24, the bill requires appropriations totaling about \$15.6 million to multiple state agencies.

Fiscal Note Status: The fiscal note reflects the introduced bill. This fiscal note is preliminary and will be revised with more detail concerning fund splits and departmental expenditures at a later date.

Table 1
State Fiscal Impacts Under SB 23-213

Table with 4 columns: Category, Sub-category, Budget Year FY 2023-24, and Out Year FY 2024-25. Rows include Revenue, Expenditures (General Fund, Cash Funds, Centrally Appropriated, Total Expenditures, Total FTE), Transfers (General Fund, Cash Funds, Net Transfer), and Other Budget Impacts (General Fund Reserve).

1 This transfer is made via an appropriation from the General Fund to the Housing Plans Assistance Fund.

Summary of Legislation

The bill establishes a state and local government framework for assessing statewide housing needs and creating model codes for the regulation of higher density housing options, transit-oriented areas, key corridors, manufactured housing, and other model housing strategies. Local governments are required to conduct a housing needs assessment and are prohibited from enforcing certain occupancy limits and zoning or master planning that limits higher density housing options.

Generally, state planning, housing needs assessments, and guidance for local governments must be completed by December 2024, reporting templates and reporting requirements for local governments must be available by December 2025, and model codes must be adopted locally or go into effect December 2025 for large urban municipalities, and December 2026 for rural resort job center municipalities.

State planning. The bill sets broad requirements for the Department of Local Affairs (DOLA) to assess housing needs and assist local governments in complying with model codes and higher density housing requirements. The DOLA, with recommendations from a multi-agency advisory committee, must:

- develop methodologies for assessing statewide, regional, and local housing needs;
- produce comprehensive state, regional, and local housing assessments with a 20-year planning forecast;
- publish a menu of affordability strategies to address housing production, preservation, and affordability;
- publish a menu of displacement mitigation measures for urban municipalities;
- issue guidance for creating a housing needs plan specifically for rural resort and large urban municipalities;
- develop reporting guidance and report templates for rural resort and large urban municipalities;
- identify statewide strategic growth objectives; and
- conduct a compliance review and approve municipal housing needs plans, or provide feedback, and publish an analysis on a publically available dashboard that includes all the information in municipal housing reports prepared by local governments.

The Governor's Office of Climate Preparedness is required to consult with the Department of Agriculture, Colorado Parks and Wildlife, the Outdoor Recreation Industry Office, and the multi-agency advisory committee to identify priorities that metropolitan planning organizations should apply to achieve connectivity and preservation of open space and agricultural land.

Multi-agency advisory committee. The bill creates a multi-agency advisory committee and staff group comprised of representatives from the DOLA, the Colorado Energy Office, the Colorado Department of Transportation (CDOT), and the Department of Natural Resources (DNR). The advisory committee and multi-agency staff makes recommendations to the DOLA, and must also report planning progress to the General Assembly. The advisory committee must engage various stakeholders, and conduct multiple public comment and hearing processes concerning recommendations made to the DOLA.

State funding. The bill creates the Housing Plans Assistance Fund and allows the Division of Housing in DOLA to use money in the fund to provide grants, technical assistance, materials, briefings, consulting services, templates, tools, trainings, webinars, or other guidance to local governments to conduct housing assessments, and to assist local governments adopting the higher density housing requirements. For FY 2023-24, the bill appropriates \$15.0 million from the General Fund to the assistance fund.

Local planning and reporting. Using guidance issued by the DOLA, rural resort municipalities and large urban municipalities must participate in a regional housing needs assessment planning process, and adopt and submit to the DOLA a housing needs plan. Plans must be developed with public involvement, which may include public hearings. The local government plans must detail how the municipalities will comply with state requirements for higher density housing, transit areas, and key corridors, and describe the specific affordability strategies chosen from a menu of strategies published by the DOLA. The plans must include a greenfield development analysis to classify areas outside the urban boundaries as conservation areas, efficient growth areas, or general growth areas. The bill details other data that must be reported to the DOLA annually.

Accessory dwelling unit model code. The bill requires that the DOLA adopt a model code for accessory dwelling units, which at a minimum, must allow accessory dwelling units as a use by right in any area of a municipality that allows single-unit detached dwellings as a use by right, and must not include any requirement for off-street parking. Municipalities are required to adopt the model code, or adopt local codes meeting the statewide minimum standards developed by the DOLA. If a municipal government does not adopt the model code, the municipality is prohibited from enacting laws that are more restrictive than other local laws for single detached units, and may not impose unreasonable costs or delays for permitting, siting, and construction of accessory dwelling units. Local governments may apply to the DOLA for a time extension to adopt the model code, but must demonstrate that water, sewer, or storm water services are currently deficient in a subject area, and include a plan to remedy any deficiency in water services. If the DOLA rejects a local plan, the model code goes into effect immediately for the subject area until the DOLA determines that the subject jurisdiction has adopted laws that comply with the minimum standards, or has adopted the model code.

Middle housing model code. The DOLA must adopt a middle housing code for rural resort municipalities and large urban municipalities. Middle housing refers to multi-unit apartment buildings, townhomes, or cottage clusters. The model code must establish objective standards for the minimum requirements for middle housing to be allowed as a use by right in any part of the municipality that allows single-unit detached dwellings as a use by right. A municipality may adopt the model code, but may not adopt local laws that are more restrictive than the state code for middle housing. Local governments can apply for an extension for adopting the code due to limitations on water service with approval from the DOLA.

Transit-oriented area model code. The DOLA must adopt a model code for a transit-oriented area within urban municipalities with a large population. The bill details the minimum standards for a transit-oriented area model code, including a requirement that subject jurisdictions allow a minimum residential density limit for multifamily housing and mixed-income multifamily housing as a use by right in transit oriented areas. A subject jurisdiction may adopt the model code but may not adopt local laws that are more restrictive of high density housing in a transit-oriented area. A subject

jurisdiction that does not adopt the model code must create a zoning district within transit-oriented areas and allow high density development that meet specific gross density requirements.

Key corridor model code. DOLA must create a frequent transit services area map that designates frequent transit service areas, showing areas that are within one-quarter mile of roadways served with frequent bus or rapid transit service. The department must adopt a key corridor model code for adoption by rural resort and large urban municipalities. Minimum standards in the key corridor model code must include guidance to encourage regional strategies for key corridors, and identify a net residential zoning capacity for each subject jurisdiction. A municipality that does not adopt the code must establish a district within key corridors that allows multifamily residential housing as a use by right, and that satisfies net residential zoning capacity established by minimum standards in the other model codes.

Manufactured housing and tiny homes. The Division of Housing in the DOLA must consult the multi-agency advisory committee and produce a report on the opportunities and barriers in current state laws and regulations concerning the building of manufactured homes, modular homes, and tiny homes. The bill removes certain financial assurances currently required of manufacturers of factory-built structures. A local government must use the same standards and administrative review to approve manufactured houses as are applied to the approval of site-built houses. The local government may not impose more restrictive standards on manufactured or factory-built homes than those applied to site-built homes, such as requirements for permanent foundations, minimum floor space, or setbacks.

Planned unit development. A planned unit development application with residential use must not restrict the permitting of accessory dwelling units, middle housing, housing in transit-oriented areas, or housing in key corridors, or otherwise restrict housing density in contradiction to any of the model codes adopted by the state or local governments.

Local government residential occupancy limits. A local government is prohibited from enacting or enforcing residential occupancy limits that differ based on the relationships of the occupants of the dwelling.

County master development plans. A master development planning document adopted by a county must include the general location and extent of an adequate and suitable supply of water. For counties with more than 250,000 residents, the master plan must also include a greenfield development analysis. New, updated, or revised master plans must be submitted to the DOLA for review, and to ensure that the plans include the most recent local housing needs assessment and housing plan, and are in compliance with all model codes.

Water loss accounting. The bill requires that the Colorado Water Conservation Board (CWCB) in the DNR adopt guidelines for the conduct of standardized water loss audits, and a process for water loss audit report validation, that must be implemented by local water providers. The CWCB must create a reporting process to allow water providers to submit audits to the board. Water loss audit reports must also identify steps the water provider is taking to reduce water loss. The CWCB must deem incomplete and return to the water provider any final water loss audit report found to be incomplete, not validated, or without the required attestation from local government personnel. The water provider has 90 days to cure the water loss audit report. With money from the Water Efficiency Grant

Program Cash Fund, the CWCB may award grants between FY 2023-24 and FY 2025-26 to assist water providers with validation services for their water loss audits.

Homeowners' associations. The bylaws and covenant restriction of a Homeowners Association (HOA) may not prohibit accessory dwelling units, middle housing in transit-oriented areas, or housing in key corridors.

Transportation planning. Recommendations for existing and future transportation systems made by the Colorado Department of Transportation (CDOT) must include prioritization criteria that are consistent with state strategic growth objectives for regionally significant transportation projects. The CDOT must ensure that prioritization criteria for any grant program are consistent with state growth objectives. Spending from the Multimodal Transportation Projects Fund must only be made for multimodal projects that the CDOT determines are consistent with state strategic growth objectives.

State Transfers

For FY 2023-24, the bill requires that \$15.0 million be appropriated from the General Fund to the Housing Plans Assistance Fund.

State Expenditures

The bill increases state expenditures in the Department of Local Affairs by \$13.2 million in FY 2023-24 and \$2.9 million in FY 2024-25, paid from the Housing Plans Assistance Fund and from the General Fund. It also increases state expenditures in the Department of Natural Resources by \$583,182 in FY-2023-24 and \$559,842 in FY 2024-25, paid from the Colorado Water Conservation Board Construction Fund, and from the General Fund. Finally, it increases state expenditures in the Colorado Energy Office by \$31,738 in FY 2023-24 and \$35,522 in FY 2024-25, paid from the General Fund. The Department of Transportation will have similar costs as the Colorado Energy Office; however, that staff effort does not require new appropriations for FY 2023-24, or FY 2024-25. State expenditures are shown in Table 2 and detailed below.

**Table 2
 Expenditures Under SB 23-213**

	FY 2023-24	FY 2024-25
Department of Local Affairs		
Personal Services	\$1,050,420	\$1,056,893
Operating Expenses	\$15,525	\$16,470
Capital Outlay Costs	\$80,040	\$66,700
Computer Programming	\$15,015	\$5,760
Consultant Pool & Tech. Assistance	\$11,846,500	\$1,485,000
Travel & Vehicle Lease	-	\$13,214
Centrally Appropriated Costs ¹	\$225,172	\$224,680
FTE – Personal Services	11.5 FTE	11.4 FTE
DOLA Subtotal	\$13,232,672	\$2,868,717
Department of Natural Resources		
Personal Services	\$117,825	\$117,825
Operating Expenses	\$2,025	\$2,025
Capital Outlay Costs	\$13,340	\$0
Travel	\$2,424	\$2,424
Database Licensing	\$10,000	\$10,000
Contractor—Database Upgrades	\$10,000	\$0
Contractor—Utilities Training & 3 rd Party Validation	\$400,000	\$400,000
Centrally Appropriated Costs ¹	\$27,568	\$27,568
FTE – Personal Services	1.5 FTE	1.5 FTE
DNR Subtotal	\$583,182	\$559,842
Colorado Energy Office		
Personal Services	\$27,001	\$29,455
Centrally Appropriated Costs ¹	\$4,737	\$6,067
FTE – Personal Services	0.2 FTE	0.3 FTE
CEO Subtotal	\$31,738	\$35,522
Total	\$13,847,592	\$3,464,081
Total FTE	13.2 FTE	13.2 FTE

¹ Centrally appropriated costs are not included in the bill's appropriation.

Department of Local Affairs

Personal services. The DOLA will add new staff in the Division of Local Government, the State Demography Office, and the Division of Housing to develop comprehensive statewide planning methodologies and assessments and to assist local governments to do the same. This includes publishing a strategy of affordable housing options and displacement mitigation menus for use by municipalities and other local governments. New staff are also required to create model codes for accessory dwelling units, middle housing, transit-oriented areas and key corridors. Staff costs will include some travel expenses beginning FY 2024-25. Costs include standard operating and capital outlay costs, and for FTE funded with General Fund, include the required pay date shift.

Consultant pool & technical assistance. The bulk of cash fund expenditures are for technical assistance, reporting guidance, support for locally developed housing needs assessments, and other assistance provided to local governments to adopt new building codes meeting minimum standards, and to comply with new reporting requirements to the state. These technical assistance costs are identified in FY 2023-24, and are part of the FY 2023-24 fiscal year appropriation; however, actual expenditures are likely to roll forward into FY 2024-25.

Department of Natural Resources

Personal services. The DNR will have new costs in the executive director's office to participate and provide staff support to the multi-agency advisory committee. Staff in Colorado Parks and Wildlife are necessary to consult with the Office of Climate Preparedness in the DOLA and prepare a natural and agricultural lands priorities report. New staff costs in the CWCB are to assist local governments and other municipal water providers to conduct and report a water loss audit. In total, new personal service costs equate to 1.5 FTE and include standard operating, and capital outlay costs. New FTE paid from the General Fund are prorated for the required pay date shift.

Database licensing and updates. DNR will have information technology costs to update existing databases and database licensing for external logins and other reporting updates allowing municipal water providers to submit water loss audits for review, and to resubmit reports to cure deficiencies found by CWCB staff.

Contractor training. The CWCB must train and certify technical experts capable of conducting third party validations of municipal water loss audits. CWCB will hire temporary contractors to developing water loss audit validation curriculum and training, which can be delivered to technical experts providing services to municipal water providers. This contracted service is estimated at about \$400,000 annually, paid from the CWCB Construction Fund.

Colorado Energy Office.

Personal services. The CEO will have personal service costs to participate in the multi-agency advisory committee making recommendations to the DOLA on the requirements for model codes and other deliverables. Personal service costs include only the salary expense for 0.3 FTE in both FY 2023-24, and FY 2024-25. First-year costs are prorated for the General Fund pay date shift.

Other State Agencies

The bill increases workload in the Department of Agriculture, Colorado Parks and Wildlife, and the Outdoor Recreation Industry Office in the Office of Economic Development and International Trade. Broadly, these agencies must collaborate to produce guidance on connectivity with open and agricultural spaces. The bill may also minimally increase water court activity in the Judicial department to address any change of water use as a result of new model codes for higher density housing. These efforts do not require new appropriations.

Department of Law. Costs increase to assist the DOLA and the DNR with legal services developing new rules and model codes. It is assumed any additional legal service costs will be addressed through the annual budget process, if necessary.

Department of Transportation. Workload increases to participate on the multi-agency advisory committee, which can be accomplished within existing appropriations.

Centrally appropriated costs. Pursuant to a Joint Budget Committee policy, certain costs associated with this bill are addressed through the annual budget process and centrally appropriated in the Long Bill or supplemental appropriations bills, rather than in this bill. These costs, which include employee insurance and supplemental employee retirement payments, are shown in Table 2.

Other Budget Impacts

General Fund reserve. Under current law, an amount equal to 15 percent of General Fund appropriations must be set aside in the General Fund statutory reserve. Based on this fiscal note, the bill is expected to increase the amount of General Fund held in reserve by the amounts shown in Table 1, decreasing the amount of General Fund available for other purposes.

Local Government

This bill has extensive fiscal impacts for applicable jurisdictions, including large urban municipalities, some smaller municipalities in metro areas, and rural resort job center municipalities. Additional research is necessary to identify affected jurisdictions and deadlines for specific compliance. Generally, municipal governments and some county governments must update local code, submit proof of compliance, update posted materials, complete greenfield analyses, complete housing plans, submit housing plans, participate in regional planning groups, conduct public outreach and hearings, and respond to modification requests from the state and revise as necessary. Planning and reporting activities recur every five years. Initial compliance tasks are estimated by the DOLA at an average of \$29,500 per jurisdiction for initial compliance, and \$120,000 per jurisdiction every 5 years for the required periodic updates. Local government impacts will be updated in a revised fiscal note when more information is collected.

Effective Date

The bill takes effect upon signature of the Governor, or upon becoming law without his signature.

State Appropriations

For FY 2023-24, the bill requires the following appropriations:

- \$15,000,000 from the General Fund to the Housing Plans Assistance Fund;
- \$500,000 from the Colorado Water Conservation Board Construction Fund to the Department of Natural Resources;
- \$55,614 from the General Fund to the Department of Natural Resources; and
- \$27,001 from the General Fund to the Colorado Energy Office.

State and Local Government Contacts

Counties

Law

Natural Resources

Special Districts

Governor

Local Affairs

Public Safety

Transportation

Judicial

Municipalities

Regulatory Agencies