

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

SPONSOR <u>Ivey-Soto/Ortiz y Pino</u>	LAST UPDATED _____
	ORIGINAL DATE <u>2/14/23</u>
SHORT TITLE <u>Discriminatory Restrictive Covenants</u>	BILL NUMBER <u>Senate Bill 286</u>
	ANALYST <u>Daly</u>

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT* (dollars in thousands)

	FY23	FY24	FY25	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
	No Fiscal Impact	Indeterminate but minimal	Indeterminate but minimal	Indeterminate but minimal	Recurring	General Fund

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

Relates to SB207

Sources of Information

LFC Files

Responses Received From

Administrative Office of the Courts (AOC)
 New Mexico Attorney General (NMAG)
 New Mexico Mortgage Finance Authority (NMMFA)

SUMMARY

Synopsis of Senate Bill 286

Senate Bill 286 (SB286) amends the Human Rights Act (HRA), to make it an unlawful discriminatory practice for any person to submit a deed or other written instrument to the county clerk for recording with an attached restrictive covenant that restricts ownership, residency, or use of real property because of race, religion, color, national origin, ancestry, sex, sexual orientation, gender identity, pregnancy, childbirth or condition related to pregnancy or childbirth, spousal affiliation, or physical or mental handicap.

The bill also amends existing law governing real property to:

- Declare such restrictive covenants void as against public policy;
- Prohibit the use of gender-specific references in deeds or other instruments relating to real property;
- Prohibit the filing of a deed or other instruments relating to real property;
- Permit a county clerk to reject such a deed or other instrument relating to real property;
- Require anyone preparing a deed or other such instrument to remove a covenant or such other language from a real property description, or to provide the specified disclaimer;

and

- Provide for the re-recording a deed by anyone with an ownership or financial interest in the real property in a manner that complies with these requirements.

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

AOC reports there will be a minimal administrative cost for statewide update, distribution and documentation of statutory changes. Any additional fiscal impact on the judiciary would be proportional to the enforcement of this law and any petitions, hearings, trials, and appeals in the courts, pursuant to the HRA, as well as challenges to this law. New laws, amendments to existing laws and new hearings have the potential to increase caseloads in the courts, thus requiring additional resources to handle the increase. These costs are indeterminate, but appear to be minimal.

SIGNIFICANT ISSUES

NMAG advises:

Racially restricted covenants were deemed illegal nationwide by the passage of the Fair Housing Act in 1968 by Congress. It has been reported in the media that many deeds in Albuquerque, for example, still contain racially restricted covenants from before that time period, even though they are unenforceable. This bill would expand the protections for various classes of people and allow discriminatory restrictive covenants to be removed from the chain of title.

AOC points out that under SB286, a person who submits to the clerk a deed or other instrument related to real property containing a restrictive covenant that is the subject of this bill commits an unlawful discriminatory practice under the HRA, but not an attorney or other person who prepares that deed or other instrument. Compare Section 1(G)(4) to Section 2(D). It suggests that if the intent is to include the conduct of the drafter of such an instrument subject to the provisions of HRA, Subsection G(4) should be revised to reflect that intent.

RELATIONSHIP

SB286 relates to SB207, which also amends the same section of the Human Rights Act as SB286 does, although the amendments in each bill do not conflict with those in the other.

MD/al/ne