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FISCAL IMPACT REPORT

ORIGINAL DATE 03/16/15

SPONSOR SPAC LAST UPDATED _____ HB _____

SHORT TITLE Homeowner Association Disputes & Meetings SB 491/SPACS

ANALYST Cerny

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

| | FY16 | FY17 | FY18 | 3 Year Total Cost | Recurring or Nonrecurring | Fund Affected |
|--------------|------|------|------|----------------------|------------------------------|------------------|
| Total | | NFI | NFI | | | |

(Parenthesis () Indicate Expenditure Decreases)

Conflicts with HB 380 Homeowner Association and Disclosure Fees

SOURCES OF INFORMATION

LFC Files

Responses Received From

Administrative Office of the Courts (AOC)

SUMMARY

Synopsis of SPAC Substitute

Senate Bill 491 as substituted by the Senate Public Affairs Committee amends the Homeowners Association Act (HAA), Sections 47-16-1 through 15, NMSA 1978, by including the following new materials: a dispute resolution section; open board association meetings to lot owners; and a penalty provision.

CS/491 differs from the original bill in that:

- Alternative Dispute Resolution (ADR) no longer requires that the NM Dispute Resolution Commission appoint the neutral party to preside over the dispute resolution;
- New language in Section 7 states “The Homeowner Association Act shall apply to all associations created and existing within this state,” thus broadening the bill; and
- CS/491 allows for an effective date of July 1, 2015 for Sections 1-6 of the bill, with an effective date of July 1, 2016 for provisions of Section 7. In conjunction with the new language in Section 7, this resolves an issue with regard to applicability that was present in the original bill (as detailed in AGO analysis of that bill).

CS/491 maintains the following changes to the Homeowner Association Act as the original bill:

The dispute resolution section provides for ADR in a dispute between the association and a lot owner/member. It also provides the following:

- The cost of the alternative dispute resolution services shall be divided equally among the disputing parties, unless otherwise determined;
- Permits the form of ADR chosen pursuant to this section to be binding or nonbinding, with the voluntary consent of the parties;
- If an agreement is reached, it is required to be presented to the court as a stipulation. The court is permitted to enter the stipulation as an order of the court. If either party subsequently violates the stipulation, the other party may apply immediately to the court for relief;
- Unless otherwise agreed, prior to an agreement being presented to a court pursuant to this section either party to the ADR process may terminate the process at any time without prejudice;
- Defines “alternative dispute resolution” to mean mediation, arbitration, conciliation or other non-judicial procedure that involves a neutral party in the decision-making process.

CS/491 also enacts a new section of the HAA to provide that any meeting of the board, except for those held in executive session, must be open to a lot owner/member. The bill permits a board meeting to be closed for executive session only to address pending or contemplated litigation, or personnel matters. CS/ 491 require the reason for the executive session to be noted in the minutes.

CS/491 provides a penalty for an association that violates the HAA of \$100/violation/day, not to exceed \$10 thousand /violation.

CS/491 amends Section 47-16-2 by adding paragraph Q that addresses “protected personal identifier information.” Under this definition, protected personal identifier information is defined as all but the last four digits of the following: taxpayer identification number; financial account number; and driver’s license number; a date of birth excluding the year of birth; and a social security number;

CA/491 amends Section 47-16-5 by adding to paragraph B a requirement that the association provide all records electronically at no cost to a lot owner and limiting reasonable copying fees to paper copies.

CS/491 amends Section 47-16-5 by adding a new paragraph C to permit the redaction before the inspection or copying of applicable records that contain “protected personal identifier information.” Paragraph C also states that the presence of protected personal identifier information in a record does not exempt the record from inspection.

CS/491 amends Section 47-16-15 paragraph A stating that the Act shall apply to all associations created and existing in the State.

In CS/491, the effective date of Sections 1-6 of the Act is July 1, 2015; for Section 7 the effective date is July 1, 2016.

FISCAL IMPLICATIONS

SB 491 carries no appropriation and has no fiscal impact.

SIGNIFICANT ISSUES

CS/491 eliminates the NM Dispute Resolution Commission from the ADR process. It does not contemplate what might occur if the parties are unable to agree on a neutral party to resolve the dispute.

AGO agency analysis on the original bill states:

The format for which all records electronically must be provided free of charge to a lot owner is not provided for in SB 491.

SB 491 does not appear to require the redaction of protected personal identifier information from records. Paragraph C of Section 47-16-5 only permits but does not require redaction before inspection or copying of applicable records.

AOC analysis states:

In the current HAA, enacted in 2013, the only provision pertaining to a dispute that may arise between an association and a lot owner/member is Section 47-16-14 NMSA 1978, providing that a court may award attorney fees and costs to any party that prevails in a civil action between a lot owner and the association or declarant based upon any provision of the declaration or bylaws, provided that the declaration or bylaws allow at least one party to recover attorney fees or costs.

SB 491, Section 1(B) permits an agreed-upon stipulation to be entered by the court as an order of the court, and provides that if either party violates the stipulation, the other party may apply immediately to the court for relief. Section 3 adds a penalty section, providing for a fine to be levied against an association for a violation of the HAA. If a violation of a stipulation entered as an order, or any other action by a lot owner/member could be considered a violation of the HAA, it would be appropriate to list a penalty for a violation of the HAA by a lot owner/member.

CONFLICT, RELATIONSHIP

SB 491 may conflict with HB 380 Homeowner Association and Disclosure Fees which allows HOAs to charge a fee not to exceed \$150 to prepare disclosure documents. This bill provides all documents shall be provided electronically free of charge and limited to “reasonable copying fees” for paper copies.

AMENDMENTS

AOC analysis states that:

SB 491, Section 1(C), permits the court to enter an agreement reached through ADR as a stipulation and an order of the court. There is no guidance in SB 491 as to when a court

may enter a stipulation as an order of the court or may not. If the intent of the bill is to *require* the court to enter the stipulation as an order of the court, on p. 2, line 8, “may” should be changed to “shall.”

Since SB 491 does not appear to require the redaction of protected personal identifier information from records, Paragraph C of Section 47-16-5 could be amended so that it permits, requires redaction of records before inspection or copying of applicable records. Since records are not exempted from inspection by the presence of such information as full social security numbers, this would add a measure of security to homeowners.

CAC/bb/aml