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FISCAL IMPACT REPORT

SPONSOR HJC ORIGINAL DATE 02/20/17 CS/CS/374/HJCS/
LAST UPDATED 03/16/17 HB aHF1#1
SHORT TITLE Homeowner Disclosure Certificate Fee Cap SB
ANALYST Amacher

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY17	FY18	FY19	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		NFI	NFI			

(Parenthesis () Indicate Expenditure Decreases)

Conflicts with SB 244

SOURCES OF INFORMATION

LFC Files

Responses Received From

New Mexico Mortgage Finance Authority (MFA)
Regulation & Licensing Department (RLD)

SUMMARY

Synopsis of the House Floor Amendment #1

The House Floor Amendment adds an additional responsibility of the board provide all lot owners a listing of all fees and fines that may be charged including charges for a disclosure certificate.

Synopsis of the HJC Substitute for the HLELC Substitute for House Bill 374

The House Judiciary Committee Substitute for the House Local Government, Elections, Land Grants and Cultural Affairs Committee Substitute for House Bill 374 amends the Homeowner Association Act by defining “conflicts of interest”; providing a nominal fee for record disclosure; providing a penalty for failure to provide access to records; updating board member responsibilities; amending the financial audit requirements; provides a cap of \$300 on fees charged for a reasonable transfer charge; in addition to outlining new material for removal of members, meetings of association, and enforcement of covenants.

This bill has an effective date of July 1, 2017.

FISCAL IMPLICATIONS

There are no known fiscal impacts.

SIGNIFICANT ISSUES

The Substitute for House Bill 374 amends the Homeowner Association Act by defining “conflicts of interest”; providing a nominal fee for record disclosure; providing a penalty for failure to provide access to records; updating board member responsibilities; amending the financial audit requirements; provides a cap of \$300 on fees charged for preparation of a disclosure certificate; in addition to outlining new material for removal of members, meetings of association, and enforcement of covenants.

This substitute defines “conflict of interest” as a person who accepts a gift, fee, brokerage, or other thing of value as consideration for an investment, loan, deposit, purchase, sale, or other transaction made by the association or an officer of the board; or that a person is financially interested in any capacity in any transaction for the association, except on behalf of the association. The definition of “disclosure certificate” has been expanded to include, if applicable, a statement of the records of the association reflecting alterations or improvements to the lot that violate the declaration.

The association may charge a nominal fee of ten cents (\$0.10) per copy page for making financial and other records available for review. The term “financial statements and accounts” now includes the bank account statements, transaction registers, association-provided service, or utility records. Any electronic records by the association must also be maintained and available for review. Access to the financial and other records may be provided upon a written request that create a rebuttable presumption the association willfully failed to comply with the Homeowner Association Act. Failure by the association to provide access to such records within 10 business days causes a penalty of either fifty dollars (\$50.00) per calendar day or the greater of actual damages incurred. Financial audits are required every three years in accordance with generally accepted accounting principles by an independent certified public accountant.

As provided in this substitute, the board members responsibilities have been updated to ensure a member, if elected to the association board, is free from any undisclosed conflict of interest. Contracts negotiated between the board and a management company must include disclosure of any relationships the company has with any vendor or contractor from which a conflict of interest may arise; and a list of all fees to be charged during the term of the contract. It is made clear that in a proxy and absentee vote it is not considered a conflict by using a replacement of voting member councils or voting systems as created by the community documents. A member may be removed from the board by a two-thirds’ vote of all entitled lot owners in a meeting upon which a quorum is established. The association is required to hold an annual meeting at least once every 13 months. Written notice of the meetings must be provided for electronically, hand-delivered or sent by mail between fifty and ten days prior to the meeting.

This substitute amends the Disclosure Certificate section of the Homeowner Association Act (Chapter 47-16-12 NMSA 1978). As proposed, the homeowner association may impose a reasonable charge of \$300 for preparation of the disclosure certificate upon the sale, transfer or other conveyance of a lot within the association. Any updates to a disclosure certificate are subject to a fifty dollar (\$50.00) fee and is only valid for 60 days.

This substitute provide for enforcement of covenants in a dispute resolution. The association may levy reasonable fines for violations or suspend, for period of time, the lot owners' rights to use common areas and facilities of the association. A hearing must be held before the board, or a committee appointed by the board, prior to such fines being imposed.

RELATIONSHIP, CONFLICT

HB 374 relates to SB 244 in that they both amend the disclosure requirements of homeowner associations. However, the conflict exists regarding the dollar cap for the preparation of a disclosure certificate. SB 244 imposes a \$400 cap; HB 374 as amended imposes a \$300 cap.

SB 244 amends the disclosure requirements of homeowner associations that allows for an alternative dispute resolution to resolve certain disagreements; expands the responsibilities of the board; and provides for certain penalties for noncompliance with the Act.

OTHER SUBSTANTIVE ISSUES

The New Mexico Mortgage Finance Authority (MFA) does not have any oversight or direct involvement with homeowner associations. MFA indicates

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

As indicated by RLD, homeowner associations will continue to charge exorbitant fees for preparing the disclosure certificate mandated by the Homeowner Association Act.

JMA/jle/al/sb/jle