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FISCAL IMPACT REPORT

ORIGINAL DATE 02/13/17
 LAST UPDATED 03/06/17

SPONSOR SJC HB _____

SHORT TITLE Home Owner Dispute Resolution SB 244/SJCS

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)

SOURCES OF INFORMATION

LFC Files
 NM Mortgage Finance Authority (MFA)
 Office of the Attorney General (OAG)
 Public Regulation Commission (PRC)
 Regulation & Licensing Department (RLD)

SUMMARY

Synopsis of SJC Substitute

The Senate Judiciary Committee Substitute for Senate Bill 244 amends the disclosure requirements of homeowner associations that allows for an alterantive dispute resolution to resolve certain disagreements. This bill also expands the applicability of the Homeowner Association Act, and adds a penalty. This bill has an effective date of July 1, 2017.

FISCAL IMPLICATIONS

There are no known fiscal impacts.

SIGNIFICANT ISSUES

The Senate Judiciary Committee Substitute for Senate Bill 244 amends the disclosure requirements of homeowner associations that allows for an alterantive dispute resolution to resolve certain disagreements. This bill also expands the applicability of the Homeowner Association Act (Chapter 47-16-1 through 47-16-16 NMSA 1978.) The proposed amendments affect the membership of homeowner association boards, the board’s processes and meetings, and lot owner rights.

SB 244/SJCS adds a new definition for “conflict of interest” updates and makes clear responsibilities of record disclosure to members. As proposed, “conflict of interest” means that person is financially interested in any capacity in a transaction for the association; accepts or is a beneficiary of a fee, brokerage, gift or other thing of value as consideration for an investment to other transaction made by or for the association, an officer of the board or the board. This bill requires that within the disclosure statement or the disclosure certificate a statement stating that the records of the association reflect alterations or improvement to the lot that violates the declaration.

A penalty is proposed for failure to comply with the Homeowner Association Act. Failure to provide access to the financial and other records within ten business days after receipt of a written request entitles a lot owner to the greater of the actual damages incurred or to fifty dollars (\$50) per calendar day beginning on the eleventh business day after receipt of the written request.

As proposed, the board members are required, with reasonable care free from any undisclosed conflict of interest to:

- affirm in writing reading and accepting the association’s documents and policies within 90 days of taking office; failure to do so results in suspension of the member;
- provide an annual budget to lot owners outlining a complete list of fees and fines that may be charged by the association or a management company on behalf of the association;
- conduct a financial audit at least every three years in accordance with generally accepted accounting principles by an independent certified public accountant;
- may imposes reasonable charges not to exceed four hundred dollars (\$300) for the preparation of a disclosure certificate which is valid for sixty (60) days;
- upon the sixty-first (61) day the lot owner may request any changes to the disclosure certificate and may be charged a fee of \$50; and,
- meet at least once each 13 months in an open meeting that cannot be closed except in limited circumstances.

This bill requires the association to maintain written copies of the minutes of all association meetings, including summaries of all agenda items and action items. Furthermore, additional processes for resolution addressing certain conflicts are provided. A recall process is outlined of board members upon a two-thirds vote of lot owners. A means to enforce covenants that lot owners may have entered into as part of moving into the neighborhood is provided by imposing fines and suspension of use of common areas and facilities. A hearing before the board or a committee is required prior to enforcement of established covenants. Litigation is also allowed as an alternative means of resolution of disputes.

This bill outlines that all of the amendments are applicable to all homeowner associations created and existing with the state. For those homeowner associations created prior to July 1, 2013, compliance with the new provisions is no later than July 1, 2018.

OTHER SUBSTANTIVE ISSUES

The Regulation & Licensing Department (RLD), has mentioned that homeowner associations are not governed by any entity within RLD including the Real Estate Commission. RLD pointed out

that in the instance of a licensed real estate broker engaged to manage the homeowner association, the broker would be required to adhere to the Real Estate License Law and the rules established by the Real Estate Commission.

RLD commented the proposed \$300 cap on the charge that a homeowner association can charge for the preparation of the disclosure statement (see page 15, lines 22 through 25) would impact real estate brokers and their clients. RLD suggests the maximum allowable fee could be adjusted every three years in accordance with the Consumer Price Index.

JMA/jle/sb