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FISCAL IMPACT REPORT

ORIGINAL DATE 02/23/11
 SPONSOR HJC LAST UPDATED 03/09/11 HB CS/9/aSCONC
 SHORT TITLE Homeowner Association Act SB _____
 ANALYST Daly

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY11	FY12	FY13	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
Total		NFI	NFI			

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Regulation and Licensing Department (RLD)
 Public Regulatory Commission (PRC)
 Municipal League

Note: Although agency analyses were received on original bill and the HCPAC amendments, comments from those analyses are included when relevant to provisions of the HJC substitute.

SUMMARY

Synopsis of SCONC Amendment

The Senate Conservation Committee amendment deletes “rainwater harvesting systems” from the list of water conservation measures that a county or a municipality cannot restrict and that cannot be the subject of an enforceable covenant, restriction or condition imposed in any instrument affecting the transfer, sale, use of or interest in real property.

Synopsis of Original Bill

The House Judiciary Committee Substitute for House Bill 9 proposes the enactment of the Homeowner Association Act (HOAA), which applies to all residential use planned communities with more than five parcels established under the Act after July 1, 2011, except for condominiums governed by the Condominium Act. The HOAA:

1. Requires organization of a planned community only by recording a declaration containing specific information relating to name, legal description of real estate

comprising the community, total number of parcels and type of development allowed, reserved developer rights, restrictions on use and alienation, and allocation of the homeowner association's financial liabilities, expenses, reserves and voting interests; and requiring planned communities organized prior to July 1, 2011 to record notice of its association in the real estate records of the applicable county or counties (Section 4);

2. Requires creation of a non-profit homeowner association of all parcel owners by each planned community, with stated requirements for quorums, board members and officers and their duties, removal procedures and budget adoption requirements (Sections 5, 6 and 7);
3. Imposes limitations on declarant control of board, and provisions for voluntary surrender of certain rights by declarant, which provisions do not apply to master planned communities meeting certain criteria (Section 8);
4. Directs allocation of association financial liabilities, expenses, reserves (and allows for certain reductions allocated to declarant-owned parcels) and voting rights, including voting on removal of property management company or other contractors (Sections 9 and 13);
5. Establishes conduct of board meetings, including exercise of voting rights and ballot counting, requires meetings be open to members except where personal information of an individual member is to be discussed or in limited circumstances while the declarant is in control or for ministerial and certain emergency actions, and sets notice and agenda requirements (Sections 10, 11 and 12);
6. Requires disclosure of financial and other records of the association to parcel owners, including minutes, budget, current assessments, and most recent financial audits or reviews within 5 days of request, and require the board provide for new financial audit or reviews upon majority vote of all parcel owners (Sections 14 and 15);
7. Provides for award of costs and attorneys fees to prevailing party in event of lawsuits between a parcel owner and the declarant or association if allowed by the declaration or bylaws (Section 16); and
8. Requires prescribed disclosure statements for residential parcels offered for sale or resale containing specific items including declaration, current balance sheet, budget, projected fees, expenses and liabilities, and other financial information, imposes liability for false or misleading statements or omission of a material fact, and provides a purchaser the right to cancel within 7 days of receipt of that statement or, if it is not provided, within 45 days of conveyance (Sections 17-21).

Section 3(B) provides that certain provisions of the HOAA would also apply (but only as to events and circumstances occurring after the bill's effective date) to planned communities created prior to the HAA's effective date, including those sections addressing board member and officer duties and procedures for removal (Section 7); the conduct of board meetings (Sections 11 and 12), disclosure of association records (Section 14), and disclosure requirements upon sale or resale of residential parcels (Sections 17-21).

In addition, Section 22 of the HJC substitute for HB 9 would amend NMSA 1978, Section 3-18-32 to narrow its scope limiting a local public body's restrictions on solar collectors (except in historic districts) to municipalities, and provide a similar limitation on water conservation measures (rain barrels, rainwater harvesting systems, efficient irrigation systems, low water-use plants and landscape design), except for those that threaten public health or safety. Section 23 would create a new law imposing these same restrictions on counties. Section 24 recodifies a provision in existing law that bars the enforcement of provisions in sale, transfer and land use documents (post-July 1, 1978) which contain restrictions on solar collectors and adds a similar bar prohibiting enforcement of restrictions on water conservation measures.

The Committee substitute contains an effective date of July 1, 2011.

FISCAL IMPLICATIONS

No fiscal impact is anticipated.

PERFORMANCE IMPLICATIONS

RLD notes that the provision in Section 3(E), which requires that no building code may impose any requirement upon any structure in a planned community that it does not impose upon a physically identical development under a different form of ownership, does not impact application of the state building code since ownership is not a factor under that code.

TECHNICAL ISSUES

As to Section 9(B), EMNRD noted two concerns:

1. The language allowing for a 25% reduction in the percentage of association expenses allocated to declarant-owned parcels does not grant the flexibility to allow for a lesser percentage.
2. The language requiring that “any financial shortfall of the association shall be the responsibility of the declarant based on a pro rata share of declarant-owned parcels” is unclear. Is this provision intended to allocate a shortfall only to the declarant, or does it anticipate multiple declarants, or is it intended to remove the 25% reduction and distribute the responsibility for the shortfall among the owners of all parcels?

MD/mew:bym