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FISCAL IMPACT REPORT

ORIGINAL DATE 02/10/11

SPONSOR McSorley LAST UPDATED 03/18/11 HB _____

SHORT TITLE Condominium Board Member Requirements SB 183/aSCORC/aSJC/aHJC

ANALYST Wilson/Kleats

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY11	FY12		
	NFI		

(Parenthesis () Indicate Expenditure Decreases)

Relates to SB 8

SOURCES OF INFORMATION

LFC Files

Response Received From
Attorney General's Office (AGO)

SUMMARY

Synopsis of HJC Amendment

The House Judiciary Committee Amendment strikes Section 6 in its entirety from pages 11 and 12 and renumbers the succeeding sections accordingly. The HJC Amendment removes provisions for alternative dispute resolution.

Technical Issue: The title of the bill no longer reflects the content of the bill. The full title includes the line, "PROVIDING FOR ALTERNATIVE DISPUTE RESOLUTION AND ATTORNEY FEES," but the HJC Amendment removes all provisions for alternative dispute resolution. Consider a floor amendment to change that line of the title to "PROVIDING FOR ATTORNEY FEES".

Synopsis of SJC Amendment

The Senate Judiciary Committee amendment to Senate Bill 183 enacts a new section of the Condominium Act on attorney fees and costs. The amendment reads that a court may award reasonable attorney fees and costs to any party that prevails in a civil action between a unit owner and the unit owner's 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.

In the disclosure section, the amendment requires among other things that a disclosure statement must contain a statement that no less than seven days after receipt of a disclosure statement a purchaser, before conveyance, may cancel any contract for purchase of a unit from a declarant.

In addition the amendment reads as follows:

If a declarant fails to provide a disclosure statement to a purchaser before conveying a unit, that purchaser may rescind the purchase within 45 days from the date of conveyance;

If a purchaser receives the disclosure statement more than seven days before signing a contract to purchase a unit, the purchaser cannot cancel the contract;

If a purchaser receives the disclosure statement less than seven days before signing a contract to purchase a unit, the purchaser, before conveyance, shall have no less than seven days from the date of the contract to cancel the contract; and

A unit owner shall not be liable to a purchaser for the failure or delay of the association to provide the certificate in a timely manner, but the purchase contract may be canceled by the purchaser at least seven days from the date of receipt of the certificate or until conveyance, whichever occurs first occurs.

Synopsis of SCORC Amendment

The Senate Corporations and Transportation Committee amendment to Senate Bill 183 requires all meetings of the association and the executive board to be held in any county in which the condominium is located.

The amendment also reads that if a purchaser elects to cancel a contract, the purchaser may do so by hand-delivering notice thereof to the offeror or by mailing notice thereof by prepaid United States mail to the offeror or to the agent of the offeror for service of process or by sending notice thereof by electronic transmission to the offeror; provided that if notice is sent by electronic transmission, the notice shall require the offeror to reply to the electronic transmission acknowledging receipt of the transmission.

Synopsis of Original Bill

Senate Bill 183 increases the degree of care required by appointed condominium board members, decreases the amount of time a declarant may control a condominium association, requires notice of open meetings, provides for disclosure of records, allows audits, provides for alternative dispute resolution and attorneys fees. The bill also requires earlier disclosure of condominium information to purchasers.

FISCAL IMPLICATIONS

There will be a minimal administrative cost for statewide update, distribution and documentation of statutory changes. Any additional fiscal impact on the judiciary will be proportional to the enforcement of this law and commenced prosecutions. 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.

SIGNIFICANT ISSUES

The AGO provided the following:

SB 183 will change the degree of care required from fiduciary to trustee. A fiduciary duty is a duty of utmost good faith, trust, confidence and candor owed by a fiduciary to the beneficiary. A trustee, on the other hand, is to preserve the trust property, and to ensure that it is employed solely for the beneficiary, in accordance with the directors contained in the trust investment. Therefore, SB 183 essentially imposes a higher duty of care upon the executive board.

All financial and other records of the association are to be made available for examination and cannot charge a fee for inspection. The records open to inspection include, among other things: the bylaws, names and addresses of association members, meeting minutes, operating budgets, audits, insurance policies, and all contracts entered into by the association.

The bill also calls for alternative dispute resolution prior to a unit owner filing a suit against the association. This provision may be problematic as it restricts the right of the unit owner to go to court. Also, it does not delineate what type of court actions it would apply to. Presumably it might apply to any court action a unit owner wants to initiate against the association. This may improperly restrict the right of the owner to access to the courts.

RELATIONSHIP

SB 183 relates to SB 8, Condo Declaration Compliance with Local Laws

TECHNICAL ISSUES

SB 183 also changes the amount of time a declarant may control a condo association. It decreases the amount of time from 180 to 60 days after conveyance of 75% of the units. It should be noted that the 75% is a change from 90%. The meaning of this language is not clear.

DW/svb:mew:bym