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## FISCAL IMPACT REPORT

ORIGINAL DATE 02/01/13

SPONSOR Stewart/Soules LAST UPDATED 02/09/13 HB 210/aHCPAC

SHORT TITLE Home Owner Association Act SB \_\_\_\_\_

ANALYST Weber

### ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY13	FY14	FY15	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>Total</b>		NFI				

(Parenthesis ( ) Indicate Expenditure Decreases)

Duplicates, Relates to, SB 30

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Department of Finance and Administration (DFA)

Attorney General's Office (AGO)

Regulation and Licensing Department (RLD)

### SUMMARY

#### Synopsis of HCPAC Amendment

The amendment makes the following changes which do not change the substance of the bill.

1. On page 31, line 15, strike "restrict" and insert in lieu thereof "effectively prohibit".
2. On page 31, line 25, strike "restrict" and insert in lieu thereof "effectively prohibit".
3. On page 32, line 12, strike "restrict" and insert in lieu thereof "effectively prohibit".
4. On page 32, line 16, strike "restrict" and insert in lieu thereof "effectively prohibit".

#### Synopsis of Original Bill

House Bill 210 (HB 210) 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, 2013, 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 HOAA'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 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, 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.

### **FISCAL IMPLICATIONS**

No fiscal implications are identified.

### **SIGNIFICANT ISSUES**

The Attorney General's Office (AGO) notes that, although invalidating certain restrictive covenants in deeds and contracts affecting a property owner's ability to use solar collectors or to undertake water conservation measures, such as the use of rain barrels, such invalidation would likely be upheld as reasonably related to a proper public purpose. See Temple Baptist Church v. City of Albuquerque, 98 N.M. 138 (1982) (upholding municipal sign ordinance; regulation did not constitute a "taking" because it was reasonably related to a proper purpose and did not deprive owner of beneficial use and the regulation merely prohibited uses declared to be injurious to public health, morals and safety of community). HB 210 makes findings in section 24, which support "proper public purpose." Moreover, from the perspective of an individual property owner, that owner's ability to use his or her property as he or she many wish is expanded not limited.

The Regulation and Licensing Department (RLD) reports that the bill allows the homeowners association to delegate the responsibility for a detailed disclosure statement upon sale or resale of a parcel within a planned community to a real estate broker intending to sell or resell a parcel within the community. While the bill holds a parcel owner harmless from liability for erroneous information contained in the disclosure statement provided by the association, there appears to be no similar protection for a real estate broker who provides a disclosure statement to a prospective purchaser.

MW/bm:svb