

Department of Legislative Services
 Maryland General Assembly
 2004 Session

FISCAL AND POLICY NOTE

House Bill 1281 (Delegate Lee, *et al.*)
 Environmental Matters

Housing - Establishment - Commission on Common Ownership Communities

This bill creates a 22-member Commission on Common Ownership Communities to mediate disputes involving common ownership communities (COCs). The bill also requires those communities to register with the Department of Housing and Community Development (DHCD) and establishes penalties for violations of the bill. DHCD must provide staff for the commission. The commission must submit an annual report to the Governor and the General Assembly by September 1 on its activities, needs, and recommendations for meeting certain goals.

Fiscal Summary

State Effect: General fund expenditures will increase by \$227,100 in FY 2005 for additional personnel and start-up costs. Out-year costs reflect annualization and inflation. General fund revenues will increase through the registration fee paid by COCs and any fees paid for dispute resolution or technical assistance provided by DHCD. General fund revenues will increase further to the extent that parties to a dispute incur civil penalties under the bill.

(in dollars)	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009
GF Revenue	-	-	-	-	-
GF Expenditure	227,100	247,700	260,800	273,600	287,400
Net Effect	(\$227,100)	(\$247,700)	(\$260,800)	(\$273,600)	(\$287,400)

Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate effect

Local Effect: Potential minimal increase in revenues due to the bill's penalty provisions. No effect on expenditures.

Small Business Effect: Minimal. Assuming that most COCs are small, nonprofit organizations, they would incur increased regulatory costs under the bill. These costs would be passed on to association members through higher fees or assessments.

Analysis

Bill Summary: This bill creates a 22-member commission comprising State and private industry representatives to mediate disputes involving COCs. A COC includes residential condominium associations, cooperative housing corporations (co-ops), and homeownership associations that have enforcement authority. The bill requires COCs to register with DHCD and pay an annual fee set by the department. Failure to register, failure to pay the registration fee, or making a false statement is a civil violation with a penalty of \$1,000 for the first offense and \$1,500 for subsequent violations. Only registered COCs in good standing may participate in the dispute resolution procedures established by the bill.

Dispute Resolution

The bill authorizes the commission to hear any dispute between parties, defined as an owner, a governing body, or a co-op tenant. However, a party may not file a dispute until good faith measures to use all procedures or remedies in the association agreements have been exhausted. The commission must notify the community association that a dispute has been filed; the association must then notify other parties of their right to file with the commission. Any party may file a civil action arising out of an association documents or law regulating the association's powers at any time; the court may stay all proceeding for at least 90 days to allow for completion of the dispute resolution process.

The commission may issue subpoenas for investigations, hearings, or dispute proceedings; any person who disobeys a subpoena is subject to a contempt of court violation. DHCD may investigate facts, assemble documents, and summarize the issues in disputes filed with the commission. If DHCD finds that no violation occurred, the commission may dismiss the dispute but may reconsider under certain circumstances. Any party to a dispute may file a request for mediation with the commission. Within 30 days of the request, the commission must provide a qualified mediator – the costs of mediation must be shared by both parties.

When mediation is not successful, the commission may convene a three-person panel to hear cases; the hearing panel's decision is final and the commission may enforce a panel decision through appropriate legal action. A person who does not comply with a final commission order commits a civil violation and is subject to a \$500 penalty.

The bill defines a dispute for which the commission can mediate as a disagreement between two or more parties that involves the authority of a governing body to take certain actions, such as: (1) requiring an individual to take action or not take action involving a unit; (2) requiring an individual to pay a fee, fine, or assessment; (3) spending association funds; or (4) failure of a governing body to properly conduct an election, give adequate notice of a meeting or other action, adopt a budget, or allow inspection of books and records. The bill excludes certain items from the definition of a dispute, such as title to a unit or common area or the interpretation or enforcement of a warranty.

The bill authorizes DHCD to set fees for dispute resolution services and technical assistance that are sufficient to cover the actual costs of the services.

DHCD Requirements

DHCD must perform several tasks, including the following:

- provide staff for the commission's meetings, which are to be held monthly or more frequently if needed;
- maintain a master roster of all COCs in the State, including leadership information;
- research, assemble, analyze, and disseminate educational materials and data about activities and programs that assist COCs;
- plan and conduct educational programs, meetings, and conferences to promote the operation of COCs;
- develop and maintain an information and referral system for all services in the State related directly to COCs;
- provide technical assistance on transition, elections, rules adoption and enforcement, selection of association managers, stormwater management, and other services;
- advise COCs and professional association managers on changes in State law and regulations affecting their communities or operations; and
- operate a dispute resolution process to furnish mediation and administrative hearings.

Current Law: Community associations are governed by local, State, and federal law. State statutes regulate association governance and procedures, including the Maryland Condominium Act, Maryland Homeowners Association Act, and the Maryland Cooperative Housing Act. Generally, disputes that arise between owners and the community associations are governed by the procedures of the respective agreements of the association and the courts.

State real property laws prohibit a condominium council of unit owners or board of directors from imposing a fine or suspending the rights of a unit owner or other occupants for violations of rules until certain procedures are followed, including a written demand for the violation to cease, allowance for 10 days for action to abate the violation, and a hearing if the violation continues after the 10 days. A decision pursuant to these procedures can be appealed to State courts.

Chapter 44 of 2003 authorized Charles County to establish a Homeowners Association Commission with the authority to hear and resolve disputes between a homeowners' association and a homeowner regarding the enforcement of the recorded covenants or restrictions of the homeowners' association. The Montgomery County Commission on Common Ownership Communities provides similar services for homeowners and homeowners' associations.

State Revenues: General fund revenues would increase in relation to the registration fees paid by the COCs covered by the bill. The revenue amount cannot be accurately determined at this time because the number of associations is unknown. The Secretary of State advises there are about 1,750 condominium groups or associations but data are not available for cooperative corporations and the homeowners' associations covered by the bill.

General fund revenues could increase minimally under the bill's monetary penalty provisions for those cases heard in the District Court.

State Expenditures: General fund expenditures will increase by an estimated \$227,077 in fiscal 2005, which accounts for the bill's October 1, 2004 effective date. This estimate reflects the cost of hiring an attorney, an administrative officer, and a researcher. It includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses. The information and assumptions used in calculating the estimate are stated below:

- the bill's mediation procedures and requirement for advice to COCs will require an additional Assistant Attorney General;
- contractual services will be required for outreach and education efforts, such as seminars; and
- duties such as maintaining a master roster of all COCs and research on COC activities and programs will require two full-time staff members.

Salaries and Fringe Benefits	\$142,362
Contractual Services	50,000
Operating Expenses	<u>34,715</u>
Total FY 2005 State Expenditures	\$227,077

Future year expenditures reflect: (1) full salaries with 4.6% annual increases and 3% employee turnover; and (2) 1% annual increases in ongoing operating expenses. A 6.8% employee turnover rate applies to the contractual employee. Contractual services will be \$30,000 annually, plus inflation.

DHCD may set fees to cover the cost of dispute resolution and technical assistance, which would apply to some of the expenditures described above; however, the bill does not designate DHCD as the specific beneficiary of those fees.

The Department of Legislative Services (DLS) notes that the bill could potentially reduce the caseload for State courts as it provides an alternative entity to resolve disputes. The number of court cases specific to community association disputes is unknown.

Local Revenues: Revenues could increase minimally under the bill's monetary penalty provisions for those cases heard in the circuit courts.

Additional Comments: DLS observes that the Department of Labor, Licensing, and Regulation is already equipped to oversee boards that regulate various industries and resolve disputes. DLS also advises that it is unclear whether owners or tenants in Charles and Montgomery counties would have the option of using both the local commission or the State commission created by the bill.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Department of Housing and Community Development, Department of Legislative Services

Fiscal Note History: First Reader - March 4, 2004
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