

Department of Legislative Services
 Maryland General Assembly
 2011 Session

FISCAL AND POLICY NOTE

House Bill 592 (Delegates Davis and Vaughn)
 Environmental Matters and Economic
 Matters

Common Interest Community Managers - Licensing and Regulation

This bill creates the State Board of Common Interest Community Managers to regulate the provision of common interest community (CIC) property management services in the State. The board is appointed by the Governor and operates under the authority of the Secretary of Labor, Licensing, and Regulation. The bill sets forth the qualifications for a CIC manager’s license, subject to biennial renewal. The board may discipline a licensee and deny a license to an applicant under specified circumstances.

The board is subject to reestablishment and periodic evaluation under the Maryland Program Evaluation Act, with a termination date of July 1, 2017.

Fiscal Summary

State Effect: Special fund expenditures increase by \$260,400 in FY 2012 to establish the board. Special fund revenues increase by \$300,000 to cover expenditures in FY 2012. Out-years reflect annualization and the impact of staggered license renewals. Potential minimal general fund revenue increase due to the bill’s administrative penalty provision. The expenditures reflected below do not include direct costs that must be assessed beginning in FY 2013 and annually thereafter. Likewise, they are based on the assumption that a sufficient number of applicants qualify for licensure in the first year of board operation to cover expenditures; if fewer applicants can qualify, general funds may be needed to cover costs.

(in dollars)	FY 2012	FY 2013	FY 2014	FY 2015	FY 2016
GF Revenue	-	-	-	-	-
SF Revenue	\$300,000	\$199,800	\$400,200	\$199,800	\$400,200
SF Expenditure	\$260,400	\$259,100	\$255,800	\$268,200	\$281,300
Net Effect	\$39,600	(\$59,300)	\$144,400	(\$68,400)	\$118,900

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

Local Effect: None.

Small Business Effect: Meaningful.

Analysis

Bill Summary:

Defined Terms

The bill defines a “common interest community” to mean real estate located in the State subject to a declaration which contains lots, at least some of which are residential or occupied for recreational purposes, with common areas to which a person, by virtue of owning a lot, is a member of an “association,” which includes a condominium, cooperative or property owners’ association, and obligated to pay assessments. A “common interest community” does not include a time-share project.

A “common interest community manager” means an individual who, for consideration, provides management services to a CIC, such as:

- acting with the authority of an association in its business, legal, financial, or other transactions with association members and nonmembers;
- executing the resolutions and decisions of an association or, with the authority of the association, enforcing the rights of the association secured by statute, contract, covenant, rule, or bylaw;
- collecting, disbursing, or otherwise exercising dominion or control over money or other property belonging to an association;
- preparing budgets, financial statements, or other financial reports for an association;
- arranging, conducting, or coordinating meetings of an association or the governing body of an association;
- negotiating contracts or otherwise coordinating or arranging for services or the purchase of property and goods for or on behalf of an association; or
- offering or soliciting to perform any of the above-mentioned acts or services on behalf of an association.

State Board of Common Interest Community Managers

The board consists of 11 members who serve for a term of four years. A board member may not serve more than two consecutive terms. The terms of the members are staggered

as required by the terms specified for members of the board on October 1, 2011. Board members may be compensated as provided for in the State budget and reimbursed for expenses.

The board may adopt bylaws as necessary and regulations to carry out the bill. The board must, however, adopt rules of professional conduct for CIC managers and keep a record of its proceedings. Once licensing activity begins, the board has to maintain a list of the names and mailing addresses of all license holders and release the list to the public.

The board, with the approval of the Attorney General, may sue in the name of the State to enjoin any act prohibited under the bill – in addition to any other remedy authorized.

The board may set reasonable fees to cover both the direct and indirect costs of fulfilling its statutory and regulatory duties. To inform the fee-setting decision, the Secretary of Labor, Licensing, and Regulation, in consultation with the board, has to annually calculate the direct and indirect costs attributable to the board. However, each fee established by the board may not be increased annually by more than 12.5% over the existing fee. The board must publish its fee schedule. All fee revenue is deposited into a newly created State Board of Common Interest Community Managers Fund, a special, nonlapsing fund administered by the Secretary. Expenditures from the fund may only be made in accordance with the State budget.

Licensing Requirements

Individuals providing management services to a CIC in the State must be licensed by the board. Licensed CIC managers may provide management services to a CIC through an association, partnership, corporation, limited liability company, limited liability partnership, or any other business entity. Applicants must be of good character and reputation and at least age 21. Applicants must complete a board-approved training program offered by a State community college or other institution representing the industry and either:

- pass a board-approved certifying examination; or
- submit proof that they hold an active designation as a Professional Community Association Manager (PCAM) or Association Management Specialist (AMS) with at least five years experience in providing management services.

The board may grant reciprocity to certifications from other jurisdictions with similar licensing protocols.

A CIC manager must obtain and maintain a blanket fidelity bond or employee dishonesty insurance policy that insures the manager against losses from acts of theft or dishonesty

committed by the officers, directors, and employees of the CIC manager. The bond or insurance policy must provide coverage for the lesser of (1) \$2,000,000; or (2) the highest aggregate amount of the operating and reserve balances of all associations under the manager's control during the prior fiscal year. The bond or insurance policy must provide minimum coverage of \$10,000 and must also name the manager on the bond or policy.

An applicant must submit an application to the board, pay an application fee, and provide proof of the fidelity bond or insurance policy. Upon payment of a license fee, a qualified applicant must be issued a license by the board.

Licenses may not be renewed for a term longer than two years. The board must notify individuals of the impending expiration of a license at least one month prior to the end of the license term. To renew a license, an individual must pay a renewal fee, provide proof of the required fidelity bond or insurance policy, and satisfy any continuing education requirement adopted by the board. The Secretary may determine that licenses must expire on a staggered basis. The board may reinstate an individual who failed to renew a license if the individual remains qualified and pays a reinstatement fee set by the board.

Grounds for Denying, Suspending, or Revoking a License

Subject to specified notice and hearing requirements, the board may deny licensure to an applicant, reprimand a licensee, or suspend or revoke a license if the applicant or licensee:

- fraudulently or deceptively obtains, or attempts to obtain, a license for his/her own use or for another;
- fraudulently or deceptively uses a license;
- is convicted of a felony or a misdemeanor that is directly related to the fitness and qualifications of an individual to provide management services;
- is guilty of fraud, dishonesty, or gross negligence in providing management services;
- has had a CIC management license or certification denied, revoked, or suspended in another state or been sanctioned in another state regarding the provision of management services;
- has had a renewal application denied in another state for any reason other than failing to pay a renewal fee;
- has had the right to practice as a CIC manager suspended or revoked by any unit of the State or federal government;

- has been sanctioned by any unit of State or federal government for an act or omission that directly relates to the applicant's or licensee's fitness to provide management services; or
- violates the prohibited acts established under the bill or the board's rules of professional conduct.

The board may impose a penalty of up to \$5,000 for each violation instead of or in addition to reprimanding, suspending, or revoking a license. To determine the amount of a penalty, the board must consider the seriousness of a violation, the harm caused, the licensee's prior history of violations, and the licensee's good faith. The board must consider specified elements in the granting, denial, renewal, suspension, or revocation of a license or reprimand of a licensee when an individual is convicted of a felony or misdemeanor.

A person who contests a final decision of the board is entitled to seek judicial review.

Current Law:

Regulation of Management Services

State law does not designate a statewide office to regulate CIC management services. As of January 1, 2011, however, all common ownership community (COC, the more common name for CIC) management entities in Prince George's County must register with that county's Office of Community Relations (OCR). The registration form provided by OCR must include specified identifying information and request a listing of all associations that received management services from the registering entity in the previous year. The management entity must register and renew by January 31 of each year and pay an annual fee of \$100. Also, in Montgomery County, COCs have been required to register since the county created a 15-member volunteer Commission on Common Ownership Communities in 1991.

Fidelity Insurance Requirements for COCs

State law requires that the board of directors, council of owners, or other governing body of a COC purchase fidelity insurance, which is defined to include a fidelity bond, not later than the time of the first conveyance of a cooperative interest, unit, or lot to a person other than the developer, and must keep the insurance in place every subsequent year. The insurance must provide for the indemnification of the COC against loss resulting from acts or omissions arising from fraud, dishonesty, or criminal acts by any officer, director, managing agent, or other agent or employee charged with the operation or maintenance of the COC who controls or disburses funds and also applies to any management company employing a managing agent or other employee charged with the

operation or maintenance of the COC who controls or disburses funds. For purposes of that requirement, COCs essentially equate to CICs in this bill.

Maryland Program Evaluation Act

Approximately 70 regulatory entities and activities are currently subject to periodic evaluation under the Maryland Program Evaluation Act. The Act establishes a process better known as “sunset review” as most entities evaluated are also subject to termination. The sunset review process begins with a preliminary evaluation conducted by the Department of Legislative Services (DLS) on behalf of the Legislative Policy Committee (LPC). LPC decides whether to waive an entity from further (or full) evaluation. If waived, legislation to reauthorize the entity typically is enacted. Otherwise, a full evaluation usually is undertaken the following year. The evaluation year in statute is typically one year before the termination date of the regulatory entity.

Background: Although not specified as such in this bill, CICs include a condominium council of unit owners organized under the Maryland Condominium Act, a homeowners association (HOA) organized under the Maryland Homeowners Association Act, and a cooperative housing corporation organization under the Corporations and Associations Article.

According to the Community Associations Institute (CAI), currently 60,000 individuals and 10,000 businesses offer community association services in the United States. Nine states regulate these types of organizations in some fashion, several through a state real estate commission rather than through a separate board or commission. CAI is a national organization with approximately 60 state, regional, and local chapters comprising residential community association members, property managers, community management firms, and other related professionals and companies that provide products or services to associations. As of February 2011, CAI estimates approximately 1,000 to 1,500 professional property managers conduct business in Maryland.

CAI offers the PCAM and AMS designations, which are one of the routes to qualify for licensure under the bill. Of the 339 CAI individual manager members in Maryland, 86 hold a CAI designation, including 63 with an AMS designation and 23 with a PCAM designation.

To receive and maintain an AMS designation, an individual must:

- successfully pass an essentials of community association management course (\$395 to \$545) or have at least five years of community association management experience;

- successfully pass the Certified Manager of Community Associations examination (\$250 to \$300);
- successfully pass a professional management development program (PMDP) course (\$395 to \$545);
- complete two or more years of community association management experience;
- complete and submit the AMS application (\$150 to \$250);
- pay annual maintenance fees (\$75 to \$175);
- redesignate every three years; and
- comply with the CAI professional manager code of ethics.

In addition to meeting the AMS qualifications, an individual seeking a PCAM designation must:

- successfully pass all six PMDP courses (\$395 to \$595 each);
- complete a comprehensive case study examination;
- complete five or more years of community association management experience;
- complete and submit the PCAM application (\$195 to \$295);
- redesignate every three years;
- pay an annual maintenance fee (\$150 to \$250); and
- meet continuing education requirements.

State Fiscal Effect: Given the breadth of the regulatory program and its experience with other regulatory boards, the Department of Labor, Licensing, and Regulation (DLLR) advises that three and one-half staff are necessary to fully implement the program. DLS concurs.

Accordingly, special fund expenditures increase by \$260,390 in fiscal 2012, which accounts for the bill’s October 1, 2011 effective date. This estimate reflects the cost of one program manager, one administrative assistant, one office clerk, and one part-time assistant Attorney General to develop the regulatory program, handle daily activities, and provide counsel to the board. It includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses.

Total Positions (full-time equivalent)	3.5
Salaries and Fringe Benefits	\$160,451
Other Operating Expenses	<u>99,939</u>
Total FY 2012 State Expenditures	\$260,390

Future year expenditures reflect full salaries with 4.4% annual increases, 3% employee turnover, and 1% annual increases in ongoing operating expenses. The estimate does not include any compensation for board members.

The above expenditures reflect the direct costs of regulating CIC managers but do not include the indirect costs that DLLR attributes to each regulatory program within the Division of Occupational and Professional Licensing for the use of division and departmental resources. Indirect costs – such as usage of the central licensing system, general services offices, and a portion of the salaries of some senior staff – are allocated to each program by a formula based on the program’s usage of these services. Thus, special fund expenditures for indirect costs under the bill are anticipated to be approximately \$25,000 in fiscal 2013 and \$35,000 annually in future years. The indirect costs associated with regulating CIC managers are addressed further below.

Despite the October 1, 2011 effective date of the bill, DLS assumes that the licensing of CIC managers cannot realistically begin until early in calendar 2012. DLLR must hire additional employees, and the additional employees have to develop regulations to set reasonable license fees and implement the licensing system. Moreover, the bill requires that CIC managers pass a board-approved program before being qualified for licensure. This could further decrease the number of licenses issued in fiscal 2012 due to delays in individuals qualifying for licensure. Even so, the board must license enough CIC managers to collect an adequate amount of fee revenues to cover its expenditures in the start-up phase, as well as when licensure is fully implemented. The bill requires payment of a license fee on a biennial basis, but it does not establish the fee in statute. The board must set licensing fees by regulation.

Fees must be set at a level to ensure both direct *and indirect* costs of the regulatory program are covered. Accordingly, the board must collect at least \$260,390 in fee revenue in fiscal 2012. This amount must increase because of out-year expenditures. The fee amount is difficult to estimate because there is limited information on the numbers of individuals and businesses likely to fall under the regulatory purview of the new board, as well as the number of qualified applicants in the first year of licensing. However, as noted above, CAI estimates that 1,000 to 1,500 individuals may be subject to licensure. DLLR estimates this number to be closer to 1,500 because it is possible that additional members of CAI would participate in the Maryland licensing program due to the increased economic integration of Maryland, Virginia, and the District of Columbia.

For illustrative purposes only, **Exhibit 1** shows the revenue pattern with 400 licenses issued the first year to account for the delay in operations and a conservative estimate of 1,000 licenses issued every subsequent two years. The 1,000 licenses are staggered based on DLLR’s advice that approximately two-thirds of the individuals subject to licensure comply with the bill’s requirements in the first full year of licensing and the remainder

comes into compliance in the second year. Based on the projected number of biennial licenses and projected out-year expenditures, DLLR would have to charge a \$750 fee for biennial licensure to cover expenditures over the first two years. DLLR could then decrease the fee to \$600 for renewal licenses only due to the increased volume of licenses issued in fiscal 2014 and 2016. This estimate does not reflect any other growth in regulatory activity, which is expected to be minimal.

DLS advises that, over the five-year period shown, revenues are likely to be sufficient to cover all costs, by drawing down on the fund balance in certain years.

Exhibit 1
Projected Revenues and Expenditures of the Program
Fiscal 2012-2016

	<u>FY 2012</u>	<u>FY 2013</u>	<u>FY 2014</u>	<u>FY 2015</u>	<u>FY 2016</u>
Total Costs	\$260,390	\$284,056	\$290,790	\$303,179	\$316,267
Direct Costs	\$260,390	\$259,056	\$255,790	\$268,179	\$281,267
Indirect Costs	\$0	\$25,000	\$35,000	\$35,000	\$35,000
Anticipated Revenues	\$300,000	\$249,750	\$400,200	\$199,800	\$400,200
Annual Surplus	\$39,610	(\$34,306)	\$109,410	(\$103,379)	\$83,933
Cumulative Surplus		\$5,304	\$114,714	\$11,335	\$95,268

Source: Department of Legislative Services

However, due to the biennial nature of regulatory activity under the bill, fees may need to be raised in fiscal 2016 to ensure sufficient fund balance to cover costs in fiscal 2017 and subsequent years. As fees are subject to a 12.5% cap on any annual increase, it may be necessary to increase fees sooner. DLS further advises that, to the extent regulatory activity differs from that anticipated, fee amounts and associated revenue may vary significantly from this estimate. Likewise, general funds may be needed in the first year to cover costs.

Small Business Effect: As noted above, small businesses may have to pay \$750 for licenses in the first two years of the board’s operation, as well as costs associated with board-approved training and professional credentialing and/or required exams. Fees may increase or decrease depending on the board’s expenditures in a given year. Furthermore, the lack of a grandfather clause allowing property managers in operation before the

creation of the board to gain licensure creates a logistical problem for small businesses. Property managers will have to stop operating while they complete the necessary steps to gain licensure, which could create significant financial difficulties.

Additional Comments: The bill subjects the new board to periodic evaluation under the Maryland Program Evaluation Act. The termination and evaluation dates for the board are the same under the bill; typically, the evaluation date is one year earlier than the termination date. Moreover, given the termination date of July 1, 2017, a preliminary evaluation would be conducted in 2014, very soon after implementation.

Additional Information

Prior Introductions: HB 1300 of 2010, a similar bill, received an unfavorable report from the House Economic Matters Committee. Its cross file, SB 931, was heard in the Senate Judicial Proceedings Committee, but no further action was taken. SB 873 of 2009, another similar bill, received an unfavorable report from the Senate Judicial Proceedings Committee.

Cross File: None.

Information Source(s): Office of the Attorney General; Department of Labor, Licensing, and Regulation; Community Associations Institute; Secretary of State; Department of Legislative Services

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mm/kdm

Analysis by: Michael F. Bender

Direct Inquiries to:
(410) 946-5510
(301) 970-5510