SB 824

Department of Legislative Services

Maryland General Assembly
2011 Session

FISCAL AND POLICY NOTE

Senate Bill 824 (Senator Kelley)
Judicial Proceedings

Common Ownership Community Managers - Licensing and Regulation

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This bill creates the State Board of Common Ownership Community Managers, and a corresponding special fund, to regulate the provision of common ownership community (COC) management services in the State. The Department of Labor, Licensing, and Regulation (DLLR) must adopt specified regulations, including qualifications for licensure, by October 1, 2012, and COC managers must be licensed by the board by July 1, 2013. The board is subject to reestablishment and periodic evaluation under the Maryland Program Evaluation Act, with a termination date of July 1, 2017.

The bill takes effect July 1, 2011.

Fiscal Summary

State Effect: General fund expenditures increase by $61,900 in FY 2012 to establish the board. The board becomes operational as a special fund entity in FY 2013 and begins to collect licensing fees to cover costs. Therefore, special fund revenues increase by $650,000 in FY 2013, to cover expenditures in both FY 2013 and 2014, assuming biennial licensure. Out-years reflect annualization and the likely biennial licensure renewal pattern. The expenditures reflected below do not include indirect costs that must be assessed beginning in FY 2013 and annually thereafter. Indirect costs are discussed further below.

(in dollars)	FY 2012	FY 2013	FY 2014	FY 2015	FY 2016
SF Revenue	$0	$650,000	-	$650,000	-
GF Expenditure	$61,900	$0	$0	$0	$0
SF Expenditure	$0	$315,200	$269,700	$267,100	$280,100
Net Effect	($61,900)	$334,800	($269,700)	$382,900	($280,100)

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 ownership community" as 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.

A "common ownership community manager" means any person that receives compensation for marketing, negotiating, or providing services to a common ownership community.

State Board of Common Ownership Community Managers and Fund

The board is appointed by the Governor and operates under the authority of the Secretary of Labor, Licensing, and Regulation. The board consists of 13 members who serve for a term of three years. A member's term begins January 1. A board member may not serve more than two consecutive terms. The terms of the members are staggered as required by the terms provided for members of the board on July 1, 2011. Board members may be compensated and reimbursed for expenses as provided in the State budget.

In addition to other specified duties, the board must adopt ethical standards and rules of professional conduct for COC managers, keep a record of its proceedings, and establish standards for training and continuing education of licensees. The board may discipline a licensee and deny a license to an applicant under specified circumstances.

Once licensing activity begins, the board has to maintain a list of the names and mailing addresses of all license holders and may release the list to the public.

The board must publish the fee schedule set by DLLR. 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 to cover costs of the board and must be made in accordance with the State budget.

Licensing Requirements

An individual acting as a COC manager in the State has to be licensed by the board. DLLR must set licensing and renewal fees for COC managers by regulation. The fees charged must be set to produce funds to approximate the cost of maintaining the board. An applicant must submit an application to the board with the appropriate fee and meet the requirements established by regulation of DLLR.

Grounds for Denying, Suspending, or Revoking a License

Subject to specified notice and hearing requirements, the board must establish, by regulation, grounds for denying a license to an applicant, reprimanding a licensee, suspending or revoking a license, or imposing a penalty against a licensee. Before the board takes any of these actions against a licensee, it must give the individual an opportunity for a hearing before the board. If the individual does not appear after due notice has been given, the board may hear and determine the matter. An individual who contests a final decision of the board is entitled to an appeal as provided by State law.

Current Law:

Regulation of Management Services

State law does not designate a statewide office to regulate COC management services. As of January 1, 2011, however, all COC 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.

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: 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.

State Fiscal Effect: Despite the July 1, 2011 effective date of the bill, DLS assumes that licensing activity cannot begin until fiscal 2013 at the earliest. The bill requires DLLR to set regulations regarding licensee qualifications and fees by October 1, 2012. Moreover, the bill requires that all COC managers be licensed by July 1, 2013, so COC managers have at least nine months to meet any license qualification requirements. However, because DLLR may issue regulations prior to October 1, 2012, and the deadline for managers to be licensed is two years after the bill's effective date, it is reasonable to assume that COC managers will meet the licensure requirement in fiscal 2013.

Given the breadth of the regulatory program and its experience with other regulatory boards, DLLR advises that three and one-half staff are necessary to fully implement the program. DLS concurs.

However, DLS assumes that two part-time employees are needed to begin the process of implementing the regulatory program in fiscal 2012 *with general fund support*. Thus, in the first year, DLS assumes that a part-time program manager is hired on October 1, 2011, and a part-time assistant Attorney General is hired on January 1, 2012, to develop regulations, implement the electronic licensing program, and undertake other such preparatory activities. In fiscal 2013, as licensing activity begins, an administrative specialist and an office clerk join the board's staff and the part-time program manager becomes full-time, at which point salaries and related costs are covered by special funds.

Accordingly, general fund expenditures increase by $62,140 in fiscal 2012 and special fund expenditures increase by $316,004 in fiscal 2013. These estimates include salaries, fringe benefits, one-time start-up costs, ongoing operating expenses, and fiscal 2013 database programming costs.

	GF FY 2012	SF FY 2013
Total Positions (full-time equivalent)	1	3.5
Salaries and Fringe Benefits	$50,076	$218,377
Other Operating Expenses	11,802	96,778
Total Direct State Expenditures	**$61,878**	**$315,155**

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 COC 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, including legal counsel – 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 COC managers are addressed further below.

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 $340,155 in fee revenue in fiscal 2013. The fee amount is difficult to estimate because there is limited information on the numbers of individuals 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. It is also unknown how often a COC manager must renew a license. DLS assumes DLLR will use a biennial system because it should result in lower costs than an annual renewal system.

Exhibit 1 shows the revenue pattern with a conservative estimate of 1,000 licenses issued biennially. Based on the projected number of licenses and projected out-year expenditures, DLLR would have to charge a $650 fee for biennial licensure to cover expenditures. If licenses are instead renewed annually and the number of licensed COC managers approaches 1,500, the license fee decreases to approximately $215.

DLS advises that, over the four-year period shown, revenues are likely to be sufficient to cover all costs, by drawing down on the fund balance in certain years. This estimate does not reflect any other growth in regulatory activity, which is expected to be minimal.

Exhibit 1
Projected Revenues and Expenditures of the Program
Fiscal 2013-2016

	FY 2013	FY 2014	FY 2015	FY 2016
Total Costs	$340,155	$304,678	$302,056	$315,133
Direct Costs	315,155	269,678	267,056	280,133
Indirect Costs	25,000	35,000	35,000	35,000
Anticipated Revenues	$650,000	-	$650,000	-
Annual Surplus	$309,845	($304,678)	$347,944	($315,133)
Cumulative Surplus		$5,167	$353,111	$37,978

Source: Department of Legislative Services

If licenses are renewed biennially, fees may need to be raised in fiscal 2017 to ensure sufficient fund balance to cover costs in subsequent years. DLS further advises that, to the extent regulatory activity differs from that anticipated, fee amounts and associated revenue may vary significantly from this estimate.

Small Business Effect: As noted above, small businesses may have to pay $650 each biennial period for licenses. Fees may increase or decrease depending on the board's expenditures in a given year. Furthermore, while the exact qualifications needed to become licensed as a COC manager are unknown, it is likely DLLR will require certification, a board-approved training course, or the successful completion of an examination. Small businesses will have to pay the costs associated with these requirements and may have to stop operating while they complete the necessary steps to gain licensure. This 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 of 2010, 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): Department of Labor, Licensing, and Regulation; Community Associations Institute; Department of Legislative Services

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mm/kdm

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