SB 372

Department of Legislative Services

Maryland General Assembly
2012 Session

FISCAL AND POLICY NOTE

Senate Bill 372 (Senator Kelley)
Judicial Proceedings

Maryland Common Interest Community Managers Act

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. The board may discipline a licensee and deny a license to an applicant under specified circumstances. The bill also requires specified CICs to register with the board and pay a per unit or lot fee.

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: General fund expenditures increase by $194,000 in FY 2013 to establish the board. The board becomes operational as a special fund entity in FY 2014 and collects biennial licensing and annual registration fees to cover direct and indirect costs. Out-years reflect annualization and staggered license renewals. Potential minimal general fund revenue increases due to the bill's administrative penalty provisions.

(in dollars)	FY 2013	FY 2014	FY 2015	FY 2016	FY 2017
SF Revenue	$0	$525,000	$425,000	$525,000	$425,000
GF Expenditure	$194,000	$0	$0	$0	$0
SF Expenditure	$0	$409,100	$454,500	$471,300	$489,000
Net Effect	($194,000)	$115,900	($29,500)	$53,700	($64,000)

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" 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 organized under the Maryland Cooperative Housing Corporation Act.

A "common interest community association" means an association in which membership is a condition of ownership or shareholder interest in a residential unit that is part of a CIC.

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, and the terms of the members are staggered. Board members may be compensated as provided for in the State budget and reimbursed for expenses.

To administer and enforce the bill, the board is required to:

- adopt regulations for the renewal of licenses as well as to establish standards of conduct for CIC managers and grant reciprocity to CIC managers licensed or certified in other jurisdictions;
- establish requirements for appropriate training and education credentials of CIC managers as well as for individuals to work under the supervision of a licensee to gain necessary experience; and
- keep a record of its proceedings.

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

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, must annually calculate the direct and indirect costs attributable to the board. The board must publish its fee schedule. Each fee established by the board may not be increased by more than 12.5% of the existing and corresponding fee. 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

An individual acting as a CIC manager in the State must be licensed by the board by October 1, 2013. An applicant must be a U.S. citizen or hold a valid permanent resident card, be of good character and reputation, and be at least age 18. In addition, an applicant must *either*:

- complete a board-approved training program and successfully pass an examination developed in accordance with national standards using psychometric measures accredited by the National Organization for Competency Assurance; *or*

- have been actively engaged in providing management services for at least 12 months before applying for a license and hold an active designation as a (1) Professional Community Association Manager (PCAM); (2) an Association Management Specialist (AMS); a Certified Manager of Community Associations (CMCA); or a Certified Property Manager (CPM).

The board may impose a fine (to be set by the board) on an individual who is not licensed as required but, nonetheless, acts as a CIC manager in the State.

An applicant must submit an application to the board and pay an application fee. If an applicant qualifies for a license, the board must send the applicant a notice stating that the applicant has qualified for a license and, on receipt of a license fee set by the board, the board will issue a license to the applicant. Upon payment of a license fee, a qualified applicant must be issued a license by the board.

A licensee who provides management services for more than one association must maintain separate bank accounts for each association and may not commingle accounts. Each bank account maintained by the licensee must be in the name of the association.

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 under the Administrative Procedure Act.

The board may also impose a disciplinary action against a licensee if the licensee:

- commits a felony or offense involving moral turpitude;
- violates any provision of this bill;
- violates an order of the Department of Labor, Licensing, and Regulation (DLLR);
- violates any regulation adopted by the board; or
- fails to cooperate with the board in the investigation of a complaint.

Registration Requirements

The following associations must register with the board on or before January 1 of each year:

- each council of unit owners of a condominium with more than 10 units;
- an HOA with more than 50 lots; and
- a professionally managed CIC association.

Each association required to register must provide the board with specified identifying information and any other information required by the board.

Each association must pay the board $2 per unit in registration fees, but the total fee may not be any less than $25 or more than $500 per year. An association subject to more than one declaration is required to pay only a single registration fee.

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 unit 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 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: According to the Community Associations Institute (CAI), currently 60,000 individuals and 10,000 businesses offer community association services in the United States. 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 2012, CAI estimates approximately 1,000 to 1,500 professional property managers conduct business in Maryland.

The bill requires applicants *either* to complete a board-approved training program and pass an examination *or* to have been actively engaged in providing management services for at least 12 months before applying for a license and hold an active designation as a PCAM, AMS, CMCA, or CPM.

Of the 363 CAI individual manager members in Maryland, 233 hold at least one CAI designation, including 211 with an AMS designation and 69 with a PCAM designation. Several CAI members have both designations.

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

- successfully pass the CMCA examination ($250 to $300);
- successfully pass two professional management development program (PMDP) courses ($395 to $595);
- 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 seven 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.

NBC-CAM is a professional accreditation organization for more than 10,000 community associations. It was created by CAI to administer the CMCA designation. To gain accreditation as a CMCA, applicants must complete and pass a course on community association management and pass an examination. The course is offered as a seminar, home study, or online and costs range from $395 to $595.

The Institute of Real Estate Management (IREM) is a real estate management association with more than 18,000 individual members and more than 530 corporate members. Its credentialed membership program offers the following designations: CPM, Accredited Residential Manager, Accredited Commercial Manager, and the Accredited Management Organization (AMO). IREM has members in both the multi-family and commercial real estate sectors. There are 506 individuals operating as a property manager with IREM membership in the State. CPM designation requires specified education levels, the completion of a professional competency and ethics examinations, experience in the field of real estate management, and an application fee.

State Fiscal Effect:

Staffing Needs

Despite the bill's October 1, 2012 effective date, DLS assumes that licensing and registration activity cannot begin until fiscal 2014 at the earliest. Given the breadth of the regulatory program and its experience with other regulatory boards, DLLR advises that four and one-half staff are necessary to fully implement the program in fiscal 2013 with an additional two staff in fiscal 2014.

DLS does not concur in the total number of staff needed or the timing. DLS advises that one and one-half staff are needed to begin the process of implementing the regulatory program in fiscal 2013 with general fund support. Thus, in the first year, DLS assumes that a full-time program manager and a part-time assistant Attorney General are hired to develop regulations, implement the electronic licensing program, and undertake other such preparatory activities. In fiscal 2014, as licensing and registration activity begins, an administrative specialist, an office secretary, and two licensing and registration investigators are assumed to be covered by special funds. The additional personnel are considered necessary particularly considering the expected high volume of complaints to be received by the office. The investigators will not be needed until licensing activity begins on October 1, 2014.

Accordingly, general fund expenditures increase by $194,036 in fiscal 2013, which accounts for the bill's October 1, 2012 effective date. Special fund expenditures increase by $409,140 in fiscal 2014 as shown below. This estimate includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses – including indirect cost allocation beginning in fiscal 2014.

	GF FY 2013	**SF FY 2014**
Total Positions	1.5	5.5
Salaries and Fringe Benefits	$89,071	$296,382
Other Operating Expenses (including FY 2014 indirect costs)	104,965	112,758
Total State Expenditures	**$194,036**	**$409,140**

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

Direct and Indirect Expenditures

The above expenditures reflect the direct costs of regulating CIC managers and 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.

Direct costs include necessary expenditures for personnel, equipment and supplies, contractual services, and fixed charges. 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 2014 and $35,000 annually in future years. The indirect costs associated with regulating CIC managers are addressed further below.

Revenue Stream for the New Board

The bill provides for two distinct revenue sources for the fund: licensing fees from CIC managers and registration fees from the various types of CICs. Although registration fees could be collected as soon as January 2013, given the bill's October 1, 2012 effective date, this estimate assumes that DLLR would not be able to begin collection of registration fees until January 2014, after the licensing program has been implemented. Accordingly, all revenue collection would begin in fiscal 2014.

The bill sets the amount of registration fees charged each CIC; however, the board must set license fees to cover any direct and indirect costs not covered by registration fees. To cover costs, the board must collect at least $409,140 in special fund fee revenue in fiscal 2014. This amount must increase because of out-year expenditures. The license fee amount is difficult to estimate because there is limited information on both the number of CICs subject to registration fees and CIC managers subject to licensing fees.

Exhibit 1 shows the revenue pattern for both sources. According to the State Department of Assessments and Taxation and the Secretary of State, there are approximately 2,000 active condominiums and 204,000 condominium units in the State. The number of HOAs is not known; however, DLS assumes, for purposes of this estimate, that the number of HOAs is approximate to the number of condominiums. Although the bill implements a $2 fee for each unit in a CIC, the bill also applies a floor of $25 and ceiling of $500 to the amount of registration fees each CIC must pay. Because both the number of CICs and how the floor and ceiling restrictions will affect the amount each CIC is required to pay are unknown, the amount of revenues the fund will receive in registration fees is not quantifiable. If there are at least 4,000 CICs subject to the bill in the State, it is reasonable to assume the board will collect *at least* $400,000 in annual registration fees starting fiscal 2014.

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. Because the bill requires that, as of October 1, 2013, individuals acting as a CIC manager must be licensed by the State, DLS assumes that the majority of eligible individuals will be licensed in fiscal 2014. Exhibit 1 shows the revenue pattern if 1,250 licenses are issued in the first year of licensing activity and the remaining 250 in fiscal 2015.

Based on the projected number of biennial licenses, projected out-year expenditures, and potential registration revenue, DLLR would have to charge a $100 fee for biennial licensure to cover expenditures over the first four fiscal special-funded years of the board. This estimate does not reflect any other growth in regulatory activity, which is expected to be minimal. The bill does not specify how often a CIC manager must renew a license. DLS assumes DLLR will use a biennial system because of cost savings when compared with an annual system. Finally, Exhibit 1 shows the revenues created by a relatively low license fee. If registration revenue attainment is lower than $400,000, the board is required to increase licensing fees as needed to cover expenditures.

DLS advises that revenues are likely to be sufficient to cover all costs beginning in fiscal 2014, by drawing down on the fund balance in certain years. However, as noted earlier, general fund expenditures are required to develop the regulatory program before licensing and registration begins.

Exhibit 1
Projected Revenues and Expenditures of the Program
Fiscal 2013-2017

	FY 2013	FY 2014	FY 2015	FY 2016	FY 2017
Total Costs	$194,036	$409,140	$454,491	$471,346	$489,015
Direct Costs	$194,036	$384,140	$419,491	$436,346	$454,015
Indirect Costs	$0	$25,000	$35,000	$35,000	$35,000
Anticipated Revenues	$0	$525,000	$425,000	$525,000	$425,000
Licensing Fees	$0	$125,000	$25,000	$125,000	$25,000
Registration Fees	$0	$400,000	$400,000	$400,000	$400,000
Annual Surplus	$0	$115,860	($29,491)	$53,654	($64,015)
Cumulative Surplus		$115,860	$86,369	$140,023	$76,008

Source: Department of Legislative Services

Small Business Effect: As noted above, small business expenditures increase by at least $100 for licenses, as well as potentially significant costs associated with board-approved training and required exams or attaining specified professional credentialing. Fees increase or decrease depending on the board's expenditures in a given year.

Additional Information

Prior Introductions: None.

Cross File: HB 433 (Delegate Beidle, *et al.*) - Environmental Matters.

Information Source(s): Department of Labor, Licensing, and Regulation; Institute of Real Estate Management; Community Associations Institute; Office of Administrative Hearings; State Department of Assessment and Taxation; Secretary of State; Department of Legislative Services

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