

Department of Planning and Budget 2008 Fiscal Impact Statement

1. Bill Number: HB516

House of Origin ☐ Introduced ☒ Substitute ☒ Engrossed
Second House ☒ In Committee ☐ Substitute ☐ Enrolled

2. Patron: Suit

3. Committee: General Laws and Technology

4. Title: Common Interest Community Board.

5. Summary: This bill establishes a Common Interest Communities Board (the Board), creates a Common Interest Management Recovery Fund and allows for a certification process for Common Interest Association managers. The enactment clause of this bill provides that (i) the Board shall be deemed successor in interest to the Real Estate Board to the extent that this act transfers powers and duties, and that all right, title, and interest in and to any real or tangible personal property vested in the Real Estate Board is to be transferred to the Board; (ii) all rules and regulations adopted by the Real Estate Board that pertain to the subject of the act are to remain in full force and effect until acted upon by the Board; (iii) the Board shall promulgate regulations to implement the provisions of this act to be effective within 280 days of its enactment; and (iv) repeals §§55-511 and 55-512 of the Code of Virginia. This bill also amends the Property Owners' Association Act (POAA). Changes to the POAA include: adding several definitions, setting limits for fees charged for preparation of disclosure packets, and organizing the POAA into three articles: general provisions, disclosure requirements, and operation and management of associations.

6. Fiscal Impact Estimates: Preliminary. See Item 8.

6a. Expenditure Impact:

| <i>Fiscal Year</i> | <i>Dollars</i> | <i>Positions</i> | <i>Fund</i> |
|--------------------|----------------|------------------|-------------|
| 2008 | \$0 | 0 | n/a |
| 2009 | \$360,882 | 4.00 | NGF |
| 2010 | \$353,746 | 4.00 | NGF |
| 2011 | \$353,746 | 4.00 | NGF |
| 2012 | \$353,746 | 4.00 | NGF |
| 2013 | \$353,746 | 4.00 | NGF |
| 2014 | \$353,746 | 4.00 | NGF |

6b. Revenue Impact:

| <i>Fiscal Year</i> | <i>Dollars</i> | <i>Fund</i> |
|--------------------|----------------|-------------|
| 2008 | \$0 | n/a |
| 2009 | \$1,824,750 | NGF |
| 2010 | \$1,837,250 | NGF |
| 2011 | \$1,837,250 | NGF |
| 2012 | \$1,837,250 | NGF |
| 2013 | \$1,837,250 | NGF |

7. Budget Amendment Necessary: Yes; Item number 118. From information available from the proposed budget amendments, it appears that an amendment is proposed to Item 118 for the related expenditures in the bill's house of origin.

8. Fiscal Implications: This bill increases the administrative and regulatory responsibilities of the Department of Professional and Occupational Regulation (DPOR) by establishing a new Common Interest Community Management Board. Currently, common interest activities fall under the authority of the Real Estate Board. This bill transfers responsibilities regarding common interest communities (property owners associations, condominiums, cooperatives, and timeshares) from the Real Estate Board to the newly-created Common Interest Community Board (the Board). This bill requires the Board to certify association managers, and gives the Board authority to resolve complaints against regulants. In addition, the bill creates a Common Interest Management Recovery Fund to pay court-appointed receivers in common interest community cases. A Common Interest Community Management Information Fund (Management Fund) already exists and is currently established under the Real Estate Board, and is to serve as a functional operating fund for the Board.

In order to meet the requirements of establishing a new board, DPOR will transfer one classified Band 5 position from the Real Estate section to serve as the property registration manager with the Board. It will also transfer one classified Band 3 position to provide clerical and administrative support for Board activities. Total costs transferred from the existing Real Estate Board to the Board are estimated to be \$143,808. In addition, total costs for the Board will include a proportionate share of DPOR's support costs estimated at \$20,000 annually. These costs (both transferred positions and DPOR support costs) are not new to DPOR as they are currently experienced under the Real Estate Board, so an increase to DPOR's appropriation is not needed. The transfer is not expected to have a material impact on the Real Estate Board.

Currently, all property owners associations, condominiums, and cooperatives are required to register with the Real Estate Board through filing an annual report. As of December 2007, DPOR had registered 4,055 of these entities. The bill stipulates that all community association managers will be required to obtain licenses and become regulated by the Board; it is not known how many community association managers will be licensed.

The bill also requires DPOR to hire an attorney as the Common Interest Community Ombudsman to serve as an advocate for association members. DPOR estimates that it will require one new classified Band 5 position to fill this role; this position will replace the current wage position that serves as the Community Association Liaison. The bill provides that the expenses for the operations of the Office of the Common Interest Community Ombudsman, including the compensation paid to the Ombudsman, shall be paid first from interest earned on deposits in the Management Fund and the balance from the money collected annually in the fund.

In addition, DPOR estimates it will also require one new classified Band 4 position to review and investigate complaints and present findings of disciplinary cases to the Board, one new classified Band 3 position to process applications and provide customer service to licensees, and one new classified Band 6 position to serve as the Executive Director for the Board and manage program

responsibilities including regulatory review, board meeting management, and management of the new licensing program.

Personal Service Costs: Overall, the additional cost of salary and benefits for the four new positions for DPOR (not including the positions transferred from the Real Estate section), is expected to be \$294,531 in FY 2009 (assuming 23 pay periods) and \$308,395 in future years. These costs are based on the mid-point of each band range and take into account savings achieved by replacing a wage employee with the Ombudsman. These are recurring costs that will continue into future biennia.

Operating Costs: In FY2009, DPOR will need to purchase furniture and equipment for three of the new positions at an estimated cost of \$21,000 (\$7,000 per position). This is a one-time expenditure that will not continue into future years.

Other additional operating costs for three of the new positions beginning in FY2009 include telephone, employee development, computer operating support, postage, printing, rent, and supplies, and are estimated at \$34,500 each year. Travel costs for the investigator are expected to be \$4,959 annually.

Travel and per diem costs for nine board members to attend four meetings annually are estimated to be \$5,892. These are all recurring costs that will continue into future years.

Total Board costs, including costs transferred from the Real Estate Board and a proportionate share of DPOR's support costs, are expected to be \$524,690 in FY09 and \$517,554 in future years. When taking into account costs transferred from the Real Estate Board, total new costs are projected to be \$360,882 in FY2009, and \$353,746 in future years.

Licensing fees and annual filing assessments are to be accounted for in the Management Fund, and the Board's expenses are to be paid from the Management Fund. The bill provides for expenses of the Board's operations to be paid first from the interest earned on deposits to the Fund (interest shall accrue to the Management Fund), and then from monies collected annually (annual report filing fees, annual assessments, and license fees). Revenues received will be deposited in the Management Fund, and interest earned and monies in the fund shall be used to pay the expenses of the Board.

Revenue: Revenue sources for the new Board include (1) the annual filing fees for associations (currently being collected under the authority of the Real Estate Board), (2) the new annual assessment fee, (3) a new Recovery Fund assessment fee, and (4) new licensing fees for association managers.

(1) Annual filing fees for associations (current): DPOR currently collects annual filing fees from associations. The current fee is \$25 annually. A new graduated fee structure will become effective in March 2008, and is expected to provide revenue of approximately \$250,000 annually. This graduated fee structure is not a result of this bill, but rather of a recently-enacted regulatory change. As such, while these numbers are not included in the revenue impact (as the fee is currently being collected and any increase in the revenue resulting from the new fee structure is not as a result of this bill), this revenue source does count towards the total revenue deposited into the Management Fund. The total balance in the Management Fund is taken into

consideration when determining a rate for licensing fees and when considering transferring balances to or from the Recovery Fund.

(2) Annual assessment fee (new): The bill provides for a new annual assessment on associations, to be submitted with the annual report, equal to the lesser of \$1000 or .02% of the association's gross assessment during the preceding calendar year, or an amount established in the regulations.

While it is difficult to estimate the revenue from the annual filing assessment, assuming the assessment is established at about \$450, and using the current number of registrants, DPOR estimates that revenue collections from the assessment filing fee would be approximately \$1,824,750 annually. Assuming \$325,000 of the revenue from assessment filing fees would remain in the Fund to support the cost of ongoing Board operations, approximately \$1.5 million of that revenue is transferred to the Recovery Fund (see below).

(3) Recovery Fund assessment fee (new): The bill establishes a Common Interest Management Recovery Fund (Recovery Fund) to be used to protect the interests of associations. The bill stipulates that the Board is to collect a \$25 assessment fee from each initial applicant and annual report filing, which will be deposited to the Recovery Fund. Interest earned on deposits constituting the Fund shall be used for administering the Fund. The remainder of this interest, at the discretion of the Board, may be transferred to the Management Fund or accrue to the Recovery Fund. On and after July 11, 2011, the minimum balance of the Recovery Fund is to be \$150,000. If at any time the minimum balance of the Recovery Fund is or will be less than \$150,000, the Board may approve a transfer of funds from the Management Fund to the Recovery Fund.

It is not known how many applications the Board will receive annually, but assuming about 500 initial applicants, 50 applicants annually, and 40 new reports filed annually, revenues from initial applications and filings would be about \$15,000, which is not adequate to bring the Recovery Fund balance to the minimum of \$150,000. DPOR expects that a substantial amount of the monies collected from the annual filing assessments will be transferred to the Recovery Fund to pay claims and to maintain the required minimum balance of \$150,000.

At the end of a biennium, funds may also be transferred from the Management Fund to the Recovery Fund at the Board's discretion. If transfers are not made or are not adequate to maintain the minimum balance, the bill provides for a general assessment of associations and managers. The bill also provides that if the balance of the Recovery Fund exceeds \$2.0 million, the excess will be transferred to the Virginia Housing Partnership Revolving Fund. Revenues and expenditures relating to Recovery Funds are accounted for separately and are not appropriated.

(4) Licensing fees for association managers (new): According to the provisions of §54.1-113 of the Code of Virginia (the Callahan Act), licensing fees for community managers are to be established at rates adequate to cover the Board's operating costs and a proportionate share of DPOR's support costs. According to the provisions of the bill, revenue from the annual filing fee from associations and annual filing assessments may also be used to fund operating costs of the Board. Specifically, DPOR expects to collect approximately \$250,000 annually from the filing fee from associations and approximately \$325,000 annually from filing assessments (after \$1.5 million of the estimated \$1,824,750 collected annually from filing assessments is transferred to the Recovery Fund). Therefore, depending on the disposition of the revenue from these other

fees, DPOR will set the licensing fees at the rate needed to recover any remaining costs of Board operations.

Changes to the Property Owners' Association Act do not have a fiscal impact on DPOR.

9. Specific Agency or Political Subdivisions Affected: Department of Professional and Occupational Regulation.

10. Technical Amendment Necessary: None.

11. Other Comments: This bill is very similar to the substitute version of SB301 that passed the Senate.

Date: 2/20/2008 dpback

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cc: Secretary of Commerce and Trade
Secretary of Finance