

Department of Planning and Budget 2008 Fiscal Impact Statement

1. Bill Number: SB301

House of Origin X Introduced Substitute Engrossed
 Second House In Committee Substitute Enrolled

2. Patron: Whipple**3. Committee:** Courts of Justice**4. Title:** Common Interest Community Board.

5. Summary: This bill establishes a Common Interest Communities Board, creates a Common Interest Management Recovery Fund and allows for a certification process for Common Interest Association managers. *This revised FIS amends the number of positions included in the expenditure impact from 3.00 to 4.00*

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
2014	\$1,837,250	NGF

7. Budget Amendment Necessary: Yes; Item number 118.

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. In addition, 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 already exists (and is currently established under the Real Estate Board) and, for the purposes of this bill, would serve as a functional operating Fund under the Common Interest Community Management 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. It will also transfer one classified Band 3 position to provide clerical and administrative support for Board activities. Costs associated with these positions will not increase DPOR's appropriation, but will be included in the total costs of the new Board. Total costs transferred to the new Board are estimated at \$143,808. These costs are not new to DPOR but were already experienced under the Real Estate Board; the transfer is not expected to have a material impact on the Real Estate Board.

Currently, property owners associations, condominiums, and cooperatives are all 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 now 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. 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, based on the mid-point of each band range, is expected to be \$294,531 in FY 2009 (assuming 23 pay periods) and \$308,395 in future years. These costs have been reduced by the cost of the wage employee to be replaced by 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 Real Estate and a proportionate share of DPOR's support costs estimated at \$20,000 annually, 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.

Currently, annual report filing fees are accounted for in the Common Interest Community Management Fund (the Management Fund). DPOR assumes that licensing fees and annual filing assessments will also be accounted for in the Management Fund, and that the Board's expenses will 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: In accordance with the provisions of Section 54.1-113 (Callahan Act) of the Code of Virginia, licensing fees are established at rates adequate to cover a program's operating costs and a proportionate share of agency support costs.

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) 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.

(2) 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) 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. At the end of the biennium, funds remaining in the Management Fund in excess

of the Board's operating expenses may be transferred to the Recovery Fund. At any time that 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 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) Based on the fee structure effective March 2008, revenue from the current report filing fee is expected to be approximately \$250,000. DPOR assumes that revenue from the new annual filing assessments would provide approximately \$1,824,750 annually, with a balance of approximately \$325,000 remaining in the Management Fund for operational costs after \$1.5 million of that revenue is transferred to the Recovery Fund. Therefore, according to the provisions of the Callahan Act in determining the rate at which DPOR is to set licensing fees, the fees for community managers would be established to cover the remaining costs of Board operations. Estimated fees could vary substantially depending on the disposition of the revenue from the annual filing assessment.

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

10. Technical Amendment Necessary: Line 122, "attorney-at-law," the hyphens are not printing correctly. Line 1569, after "Management," insert "Information." Line 1785, after "Management," insert "Information."

11. Other Comments: This bill is identical to HB516.

Date: 1/24/2008 dpbaek

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cc: Secretary of Commerce and Trade
Secretary of Finance