COMMITTEE REPORT

April 20, 2016

**S. 1176**

Introduced by Senators Gregory, Rankin and Johnson

S. Printed 4/20/16--S. [SEC 4/21/16 5:02 PM]

Read the first time March 17, 2016.

**THE COMMITTEE ON JUDICIARY**

To whom was referred a Bill (S. 1176) to amend the Code of Laws of South Carolina, 1976, by adding Section 27‑1‑80, so as to require the developer of a common interest community to, etc., respectfully

**REPORT:**

That they have duly and carefully considered the same and recommend that the same do pass with amendment:

Amend the bill, as and if amended, page 3, by striking lines 24 and 25, in Section 27‑1‑80(C), as contained in SECTION 1, by inserting therein the following:

/ (C)(1) The provisions of this section apply to all common interest communities created within this State after December 31, 2016.

(2) The provisions of this section do not apply to:

(a) any condominium that:

(i) is a horizontal property regime;

(ii) has one hundred or more units as residences or for transient occupancy; and

(iii) operates as a lodging establishment as defined in Section 45-2-20(2) with a registration desk; or

(b) a vacation time sharing plan organized and subject only to the provisions of Chapter 32 of Title 27. /

Renumber sections to conform.

Amend title to conform.

Majority favorable. Minority unfavorable.

LUKE A. RANKIN LEE BRIGHT

For Majority. For Minority.

**STATEMENT OF ESTIMATED FISCAL IMPACT**

**Fiscal Impact Summary**

This bill would have no expenditure or revenue impact on the general fund, federal funds, or other funds.

**Explanation of Fiscal Impact**

**State Expenditure**

This bill requires common interest community developers to transfer control of the executive board to unit owners. The prescribed schedule requires at least twenty-five percent of the executive board be elected by the unit owners no later than sixty days after thirty-three percent of the units are conveyed. The percentage of unit owner’s voting interest increases to at least fifty-one percent when ninety percent of the units that may be created are conveyed. This bill would have no expenditure or revenue impact on the general fund, federal funds, or other funds. However, if any additional hearings or trials would be held as a result of this legislation, we anticipate that the Judicial Department could absorb these expenditures within current appropriations.

Frank A. Rainwater, Executive Director

Revenue and Fiscal Affairs Office

**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTION 27‑1‑80, SO AS TO REQUIRE THE DEVELOPER OF A COMMON INTEREST COMMUNITY TO TRANSFER CONTROL OF THE HOMEOWNERS’ ASSOCIATION BY PHASING UNIT OWNERS ONTO THE EXECUTIVE BOARD OF THE ASSOCIATION AFTER A CERTAIN PERCENTAGE OF THE UNITS ARE CONVEYED.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Chapter 1, Title 27 of the 1976 Code is amended by adding:

“Section 27‑1‑80. (A) As used in this section:

(1) ‘Association’ means the unit owners’ association organized no later than the date the first unit in the common interest community is conveyed and is organized as a business or nonstock corporation, trust, partnership, or unincorporated association. The term also includes a homeowners’ association.

(2) ‘Common elements’ means:

(a) in the case of:

(i) a condominium or cooperative, all portions of the common interest community other than the units; and

(ii) a planned community, any real property within a planned community owned or leased by the association, other than a unit;

(b) in all common interest communities, any other interests in real property for the benefit of unit owners which are subject to the declaration.

(3) ‘Common interest community’ means real property described in a declaration with respect to which a person, by virtue of his ownership of a unit, is obligated to pay for a share of services and other expenses related to common elements, other units, or any other real property other than that unit described in the declaration. Such expenses include, but are not limited to:

(a) real property taxes;

(b) insurance premiums;

(c) maintenance; and

(d) improvements.

For purposes of this item, ‘ownership of a unit’ includes holding a leasehold interest of forty years or more in a unit, including renewal options. ‘Ownership of a unit’ does not include the interest which a resident holds in a mutual housing association by virtue of either a state contract for financial assistance or an individual occupancy agreement. An association of property owners funded solely by voluntary payments from those owners is not a common interest community.

(4) ‘Condominium’ means a common interest community in which portions of the real property are designated for separate ownership and the remainder of the real property is designated for common ownership solely by the owners of those portions. A common interest community is not a condominium unless the undivided interests in the common elements are vested in the unit owners.

(5) ‘Cooperative’ means a common interest community in which the real property is owned by an association, each of whose members is entitled by virtue of his ownership interest in the association to exclusive possession of a unit.

(6) ‘Declarant’ means any person or group of persons acting in concert who:

(a) as part of a common promotional plan, offers to dispose of his interest in a unit not previously disposed of; or

(b) reserves or succeeds to any special declarant right.

(7) ‘Declaration’ means any instruments, however denominated, that create a common interest community, including any amendments to those instruments.

(8) ‘Executive board’ means the body, regardless of name, designated in the declaration to act on behalf of the association.

(9) ‘Planned community’ means a common interest community that is not a condominium or a cooperative. A condominium or cooperative may be part of a planned community.

(10) ‘Unit’ means a physical portion of the common interest community designated for separate ownership or occupancy.

(11) ‘Unit owner’ means a declarant or other person who owns a unit, or a lessee of a unit in a leasehold common interest community whose lease expires simultaneously with any lease the expiration or termination of which will remove the unit from the common interest community, but does not include a person having an interest in a unit solely as security for an obligation.

(B) The declarant of a common interest community must transfer control of the executive board to unit owners by phasing unit owners, elected by the unit owners, onto the executive board so that no later than sixty days after conveyance of:

(1) thirty-three percent of the units that may be created, at least twenty‑five percent of the voting interest of the executive board is elected by unit owners other than the declarant;

(2) fifty percent of the units that may be created, at least thirty‑three and one‑third percent of the voting interest of the executive board is elected by unit owners other than the declarant;

(3) sixty‑six and two‑thirds percent of the units that may be created, at least forty-five percent of the voting interest of the executive board is elected by unit owners other than the declarant; and

(4) ninety percent of the units that may be created, at least fifty-one percent of the voting interest of the executive board is elected by unit owners other than the declarant.

(C) The provisions of this section apply to all common interest communities created within this State after December 31, 2016.”

SECTION 2. This act takes effect upon approval by the Governor.

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