



**SOUTH CAROLINA REVENUE AND FISCAL AFFAIRS OFFICE**  
**STATEMENT OF ESTIMATED FISCAL IMPACT**  
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**Bill Number:** H. 3886 Amended by the House of Representatives on March 30, 2017  
**Author:** Crawford  
**Subject:** Homeowners Associations  
**Requestor:** Senate Judiciary  
**RFA Analyst(s):** Gable, Stein, and Heineman  
**Impact Date:** April 13, 2017

**Estimate of Fiscal Impact**

	<b>FY 2017-18</b>	<b>FY 2018-19</b>
<b>State Expenditure</b>		
General Fund	\$147,640	\$0
Other and Federal	\$0	\$0
Full-Time Equivalent Position(s)	2.00	0.00
<b>State Revenue</b>		
General Fund	\$0	\$0
Other and Federal	\$0	\$0
<b>Local Expenditure</b>	\$0	\$0
<b>Local Revenue</b>	\$0	\$0

**Fiscal Impact Summary**

This bill as amended would have a \$147,640 expenditure impact on the General Fund to be used for the creation and staffing of the Office of the Homeowners Association Ombudsman. Of this amount, \$121,640 would be used for salaries and fringe benefits for 2 FTEs and \$22,000 in operating expense, resulting in \$143,640 in recurring expenses beginning in FY 2017-18. The remaining \$4,000 for office set up would be a non-recurring expenditure in FY 2017-18. This bill as amended is not expected to have an expenditure impact on Other Funds, Federal Funds, or local government.

**Explanation of Fiscal Impact**

**Amended by the House of Representatives on March 30, 2017**

**State Expenditure**

This amended bill requires a declaration and other governing document of a homeowners association (HOA) be recorded in the clerk of courts or the registers of deeds office in the county where the property is located. Also, for the purposes of allowing homeowners to inspect and copy an HOA's annual budget or membership list, the access to these documents are subject to the South Carolina Nonprofit Corporation Act's access to documents provisions as contained in Sections 33-31-1602 through 1605. Furthermore, HOAs are required to provide homeowners at least forty-eight hours advance notice of any meeting where the HOA may take an action to increase an annual budget.

This amended bill also creates the Office of the HOA Ombudsman under the Department of Consumer Affairs and outlines its powers and duties. The director of the Department of

Consumer Affairs appoints the ombudsman. The amended bill specifies that neither the department, the director, nor the ombudsman may charge a fee on an association, declarant, or residential builder to fund the office of the HOA Ombudsman.

This amended bill requires a disclosure document, the document that the owner of real property must provide to a purchaser, to include whether the property is subject to an HOA's governance and if so that the HOA's governing documents are recorded in the clerk of courts or the registers of deeds office in the county in which the property is located.

**Department of Labor, Licensing, and Regulation.** This amended bill requires the disclosure document be updated to include information about whether a property is under an HOA and where the HOA's governing documents may be located. The South Carolina Real Estate Commission, under the Department of Labor, Licensing, and Regulation (LLR), is responsible for promulgating the disclosure document form. Updating the form would not have an expenditure impact on the department as redrafting the form can be managed by existing staff within the existing budget for LLR.

**Department of Consumer Affairs.** This amended bill creates the Office of the Ombudsman (office) under the Department of Consumer Affairs (department). The office's responsibilities would consist of preparing and publishing online educational and reference materials about homeowner and HOAs, assisting in meeting and mediations between HOAs and varying parties, receiving and tracking complaints for informational purposes, and making an annual report to the General Assembly on the activities of the office, among other responsibilities. The bill as amended also creates the position of ombudsman, appointed by the director of the department, to serve as the head of the office. The department indicates there would be a recurring expenditure impact on the General Fund of \$147,640. This includes salaries and employer contributions for an ombudsman and a paralegal of \$121,640 and operating expenses of \$22,000. Furthermore, a non-recurring cost of \$4,000 is estimated for office equipment and information technology. While the department does not expect the ombudsman and one support staff to be able to manage all of the responsibilities required by the amended bill, the office would have access to staff in other department divisions, including investigators, public information, and education staff. Therefore, any additional workload can be managed by existing department staff and within existing budget.

**Judicial Department.** This amended bill grants the magistrates court concurrent civil jurisdiction with the circuit court over monetary disputes that arise under the Homeowner's Association Act. This may shift some HOA actions from the circuit court to magistrates court. As there is no information available to indicate the number of HOA related actions heard in the circuit court presently, the department cannot estimate how many of those actions may be heard in magistrates court. However, a reduction in the number of HOA related cases heard by circuit courts is not expected to result in a reduction of expenditures. At most, the circuit court would reallocate any saved time to focus on other matters.

#### **State Revenue**

N/A

## **Local Expenditure**

This amended bill grants the magistrates court concurrent civil jurisdiction with the circuit court over monetary disputes that arise under the HOA Act. The Revenue and Fiscal Affairs Office (RFA) contacted twenty-three county governments and the Municipal Association of South Carolina (MASC) regarding the expenditure impact to local magistrates courts. Lancaster County indicates magistrates courts could be impacted depending on the number of cases related to HOAs and homeowners, but costs are expected to be minimal. Clarendon and Florence counties, as well as the MASC, indicate there would be no expenditure impact. Based on the responses received, this bill as amended is not expected to have an expenditure impact on local governments.

## **Local Revenue**

N/A

## **Introduced March 2, 2017**

### **State Expenditure**

This bill requires owners of property subject to a homeowners association (HOA) to disclose governing documents to prospective owners upon request, and requires HOAs to provide homeowners with printed or electronic copies of financial information and governing documents at no cost. The bill requires HOAs to notify homeowners at least forty-eight hours before any association meeting scheduled to take action on a proposed fee increase.

The bill requires the Real Estate Commission, administered by the Department of Labor, Licensing and Regulation, to offer at no charge to the public an online course covering the basics of HOA management, rights, and responsibilities. The bill provides curriculum guidelines and requires the commission to post online an annually updated list of certified persons and the year they passed the course.

The bill grants magistrates concurrent civil jurisdiction in certain specified actions between HOAs and homeowners.

The bill creates the Office of Homeowners Association Ombudsman in the Department of Consumer Affairs and provides for its qualifications, powers and duties. The bill amends the Residential Property Condition Disclosure Act, which requires owners of real property to furnish a purchaser with a written disclosure statement indicating whether the property is subject to governance by a homeowners association, specifying any rights and obligations that may limit the use of the property and/or involve financial cost. The seller must also declare in this statement that the buyer is entitled to receive copies of all HOA governing documents at no charge. Disclosure forms are available for downloading from the Real Estate Commission's website.

**Department of Labor, Licensing and Regulation.** This bill requires the Department of Labor, Licensing and Regulation to offer at no charge to the public an online course covering the basics of HOA management, rights, and responsibilities. The department reports that the development, maintenance and on-going support of an online course would require a program coordinator and an administrative assistant. Salaries and employer contributions are estimated at \$81,598.

Operating costs for third-party course development and maintenance are estimated at \$22,240. A one-time expenditure of \$7,400 in the first year is needed for office and information technology equipment. Therefore, first year Other Funds expenditures are estimated at \$111,238 and annual recurring expenditures are estimated at \$103,838. However, the department also indicates that these estimates do not include accurate figures for travel since the number of committee meetings associated with the development of the online course is unknown at this time. The figure used for course administration and maintenance may also be underestimated since these costs are highly dependent upon course utilization which cannot be predicted. However, Other Funds revenues collected from real estate license applicants will offset all expenses associated with this new requirement. The impact is based on an assumption of wide participation in this course. If participation is much lower than expected, then the fiscal impact would be reduced.

**Department of Consumer Affairs.** The department indicates there will be a recurring expenditure impact on the General Fund of \$158,640. This includes salaries and employer contributions for an ombudsman and a paralegal (\$134,640) and operating expenses (\$24,000). A one-time cost of \$4,000 is estimated for office equipment and information technology. Since the ombudsman would have access to staff in other department divisions, including investigators and public information and education staff, any additional workload related to complaints can be handled with existing staff and with no additional expenditures.

#### **State Revenue**

The Department of Labor, Licensing and Regulation is required, pursuant to Section 40-1-50(D) to adjust fees biennially to ensure that fee revenue is sufficient, but not excessive, to cover expenses of each respective board. Therefore, the expenditure estimates of \$111,238 in the first year of operation, and \$103,838 each year thereafter will be offset by subsequent fee adjustments made to cover any shortfalls in revenue collections from real estate license fees.

#### **Local Expenditure**

The Revenue and Fiscal Affairs Office (RFA) contacted twenty-three county governments and the Municipal Association of South Carolina (MASC) regarding the expenditure impact of this bill. Lancaster County indicates magistrates courts could be impacted depending on the number of cases related to HOAs and homeowners, but costs are expected to be minimal. Clarendon and Florence counties, as well as the MASC, indicate there will be no expenditure impact. Based on the responses received, this bill is not expected to have an expenditure impact on local governments.

#### **Local Revenue**

N/A



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Frank A. Rainwater, Executive Director