~~Indicates Matter Stricken~~

Indicates New Matter

COMMITTEE REPORT

April 19, 2017

**H. 3886**

Introduced by Reps. Crawford, Ryhal, Hamilton, Sandifer, Fry, Putnam, Clemmons, Yow, Anderson, Johnson, Hardee, Huggins, Hewitt, Duckworth, Bowers, Sottile, Crosby, Felder, Bennett, Thigpen, Whipper, Brown, Hixon, Taylor, King, Daning, Spires, Henderson, Pitts, Kirby, White, McCravy, Hill, Gagnon, West, Wheeler, Davis, Murphy, Hayes, Ott, V.S. Moss, Lowe, Jordan and McKnight

S. Printed 4/19/17--S.

Read the first time April 4, 2017.

**THE COMMITTEE ON JUDICIARY**

To whom was referred a Bill (H. 3886) to amend the Code of Laws of South Carolina, 1976, by adding Chapter 30 to Title 27 so as to entitle the Chapter “Homeowners Associations”; to define necessary terms, etc., respectfully

**REPORT:**

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

LUKE A. RANKIN for Committee.

**STATEMENT OF ESTIMATED FISCAL IMPACT**

**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.

**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.

**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 cost 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.

Frank A. Rainwater, Executive Director

Revenue and Fiscal Affairs Office

**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING CHAPTER 30 TO TITLE 27 SO AS TO ENTITLE THE CHAPTER “HOMEOWNERS ASSOCIATIONS”; TO DEFINE NECESSARY TERMS; TO REQUIRE OWNERS OF PROPERTY SUBJECT TO A HOMEOWNERS ASSOCIATION TO DISCLOSE THE ASSOCIATION’S GOVERNING DOCUMENTS TO PROSPECTIVE OWNERS, TO PROVIDE HOMEOWNERS ASSOCIATIONS SHALL PROVIDE HOMEOWNERS WITH PRINTED OR ELECTRONIC COPIES OF FINANCIAL INFORMATION AND THE GOVERNING DOCUMENTS OF THE ASSOCIATION UPON REQUEST AT NO CHARGE, TO PROVIDE HOMEOWNERS ASSOCIATION BOARDS MAY NOT TAKE ACTION TO ADD OR INCREASE FEES AND THE LIKE WITHOUT GIVING CERTAIN NOTICE TO HOMEOWNERS AND TO PROVIDE HOMEOWNERS MAY ATTEND MEETINGS AT WHICH SUCH ACTIONS ARE TO BE TAKEN, TO INSTRUCT THE SOUTH CAROLINA REAL ESTATE COMMISSION TO OFFER AN ONLINE INSTRUCTIONAL COURSE COVERING THE BASICS OF HOMEOWNERS’ ASSOCIATION MANAGEMENT AND THE RIGHTS AND RESPONSIBILITIES OF HOMEOWNERS, TO GRANT CONCURRENT CIVIL JURISDICTION IN CERTAIN ACTIONS BETWEEN HOMEOWNERS ASSOCIATIONS AND HOMEOWNERS, AND TO CREATE THE OFFICE OF HOMEOWNERS ASSOCIATION OMBUDSMAN IN THE DEPARTMENT OF CONSUMER AFFAIRS, TO PROVIDE QUALIFICATIONS, POWERS, AND DUTIES OF THE OMBUDSMAN, AMONG OTHER THINGS; AND TO AMEND SECTION 27‑50‑40, AS AMENDED, RELATING TO MANDATORY DISCLOSURE STATEMENTS SELLERS OF REAL PROPERTY MUST PROVIDE PURCHASERS, SO AS TO INCLUDE PROVISIONS CONCERNING DISCLOSURES OF PROPERTY SUBJECT TO HOMEOWNERS ASSOCIATION GOVERNANCE.

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

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

“CHAPTER 30

Homeowners Associations

Article 1

South Carolina

Homeowners Association Act

Section 27‑30‑110. This article may be cited as the ‘South Carolina Homeowners Association Act’.

Section 27‑30‑120. As used in this article:

(1) ‘Board’ means the representative body, regardless of name, designated in the governing documents to act on behalf of a homeowners association and govern the association.

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

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

(b) reserves or succeeds to a special declarant right, which means a right, in addition to the regular rights of the declarant as a unit owner, reserved for the benefit of or created by the declarant under the declaration or bylaws of the association.

(3) ‘Declaration’ means the recorded instruments, however denominated, that create a homeowners association, including amendments to those instruments.

(4) ‘Governing documents’ means any documents:

(a) establishing a homeowners association and governing its management or operation;

(b) providing for the duties and obligations of the board, the association, and the homeowners;

(c) creating or imposing assessments, fees, or fines by the board or the association on the homeowners; and

(d) including, but not limited to, the master deed or master lease, covenants, conditions, and restrictions, declarations, bylaws, rules and regulations, and any amendments thereto.

(5) ‘Homeowner’ means a declarant or other person who owns a unit in a homeowners association, but does not include a person having an interest in such a unit solely as security for an obligation.

(6) ‘Homeowners association’ or ‘association’ means an entity developed to manage and maintain a planned community or horizontal property regime for which there is a declaration requiring a person, by virtue of his ownership of a separate property within the planned community or horizontal property regime, to pay assessments for a share of real estate taxes, insurance premiums, maintenance, or improvement of, or services or other expenses related to, common elements and other real estate described in that declaration. A ‘homeowners association’ or ‘association’ does not include a vacation timesharing plan organized and subject only to the provisions of Chapter 32.

Section 27‑30‑130. A declaration or other governing document of a homeowners association must be recorded in the clerk of court’s or register of deeds office in the county in which the property is located in order to be enforceable. Homeowners associations in existence on the effective date of this section must record all such documents within six months after this effective date.

Section 27‑30‑140. A homeowners’ association shall provide notice to homeowners before it may take action to increase an annual budget at least forty‑eight hours in advance of such meeting. Notice may be accomplished through posting notice in a conspicuous place in a common area in the community, on an Internet website maintained by the homeowners’ association, or by electronic mail; however, a homeowners’ association’s bylaws may provide for notice requirements more stringent than those in this section.

Section 27‑30‑150. The access to documents provisions of Sections 33‑31‑1602, 33‑31‑1603, 33‑31‑1604, and 33‑31‑1605 apply to all homeowners associations not subject to the South Carolina Nonprofit Corporation Act for the purposes of allowing homeowners access to inspect and copy a homeowner association’s annual budget and homeowners membership lists.

Section 27‑30‑160. Pursuant to Section 22‑3‑10, the magistrates court shall have concurrent jurisdiction to adjudicate monetary disputes arising under this article, provided the dispute meets the jurisdictional requirements of Section 22‑3‑10.

Section 27‑30‑170. No provision of this article may be construed to be in conflict with the provisions of the South Carolina Nonprofit Corporation Act.

Article 3

Homeowners Association Ombudsman

Section 27‑30‑310. This article must be known and may be cited as the ‘Homeowners Association Ombudsman Act’.

Section 27‑30‑320. For the purposes of this article:

(1) ‘Board’ means the representative body, regardless of name, designated in the governing documents to act on behalf of a homeowners association and govern the association.

(2) ‘Bylaws’ means the document, and amendments to it, that contain the procedures for conducting the affairs of a homeowners association, regardless of the form of the association’s legal entity or the name by which the document comprising the bylaws is identified.

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

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

(b) reserves or succeeds to a special declarant right, which means a right, in addition to the regular rights of the declarant as a unit owner, reserved for the benefit of or created by the declarant under the declaration or bylaws of the association.

(4) ‘Declaration’ means the recorded instruments, however denominated, that create a homeowners association, including amendments to those instruments.

(5) ‘Department’ means the Department of Consumer Affairs.

(6) ‘Director’ means the Director of the Department of Consumer Affairs.

(7) ‘Homeowner’ means a declarant or other person who owns a unit in a homeowners association, but does not include a person having an interest in such a unit solely as security for an obligation.

(8) ‘Homeowners association’ or ‘association’ means an entity developed to manage and maintain a planned community or horizontal property regime for which there is a declaration requiring a person, by virtue of his ownership of a separate property within the planned community or horizontal property regime, to pay assessments for a share of real estate taxes, insurance premiums, maintenance, or improvement of, or services or other expenses related to, common elements and other real estate described in that declaration. A ‘homeowners association’ or ‘association’ does not include a vacation timesharing plan organized and subject only to the provisions of Chapter 32.

(9) ‘Office’ means the Office of the Homeowners Association Ombudsman established in this article.

(10) ‘Ombudsman’ means the homeowners association ombudsman established in this article.

Section 27‑30‑330. (A) There is established within the department the Office of the Homeowners Association Ombudsman.

(B) The director shall appoint the ombudsman.

(C) The ombudsman is the head of the office and is charged with managing the office consistent with the powers and duties vested in the ombudsman by this article, within the limitations of the funds appropriated by the General Assembly.

(D) The ombudsman shall serve at the pleasure of the director.

(E) A vacancy in the ombudsman position is filled in the same manner as the original appointment.

(F) Nothing in this section may be construed to allow the department, director, or ombudsman to charge a fee on an association, declarant, or residential builder to fund the Office of the Homeowners Association Ombudsman.

Section 27‑30‑340. The ombudsman:

(1) shall maintain a publicly available Internet website containing information about the office, contact information, services available through the office, information required to be placed on the website by other provisions of this article, and other information considered appropriate by the ombudsman;

(2) may organize and conduct meetings to educate declarants, homeowners associations, executive boards of homeowners associations, and other interested parties about their rights and responsibilities and the processes available to them according to the law, regulations, and documents governing their respective homeowners association;

(3) shall prepare, publish, and make available online educational and reference materials about homeowners communities, including general information about the roles, rights, and responsibilities of the various parties, suggestions for the orderly operation of the homeowners association, mechanisms for internal dispute resolution, and other information considered appropriate by the ombudsman;

(4) may assist with meetings, mediations, or other forms of alternative dispute resolution as requested by declarants, homeowners, homeowners associations, executive boards of homeowners associations, or other interested parties, if all parties to the dispute consent, which may be withdrawn at any time;

(5) shall receive complaints for informational purposes to report as required in item (6) and, if all parties to the dispute consent, which may be withdrawn at any time, may arrange for meetings or other forms of alternative dispute resolution to assist the parties in the resolution of the complaint;

(6) shall make an annual report of the office’s activities to the Governor and the General Assembly before December first, provided this report must include:

(a) statistics on the number of inquiries and complaints handled by the office;

(b) information on education and outreach efforts by the office;

(c) concerns expressed to the office by declarants, homeowners, homeowners associations, executive boards of homeowners associations, or other interested parties;

(d) legal developments impacting homeowners communities, associations, or both;

(e) recommendations to the General Assembly for changes to state law to improve the regulation and operation of homeowners communities; and

(f) other information considered appropriate by the ombudsman;

(7) shall direct the work of the office consistent with the powers and duties established by this section;

(8) shall employ and supervise staff necessary to assist in carrying out the powers and duties established by this section, within the limitations of funds appropriated by the General Assembly; and

(9) shall perform any other function necessary to fulfill the powers and duties outlined in this section.”

SECTION 2. Section 27‑50‑40(A) of the 1976 Code, as last amended by Act 141 of 2010, is further amended to read:

“(A) The owner of the real property shall furnish to a purchaser a written disclosure statement. The disclosure statement must contain the language and be in the form promulgated by the commission and the form may be delivered electronically through the Internet or other similar methods. The commission may charge a reasonable fee for the printed form but shall post the form for free downloading on its public website. The disclosure statement must include, but is not limited to, the following characteristics and conditions of the property:

(1) the water supply and sanitary sewage disposal system;

(2) the roof, chimneys, floors, foundation, basement, and other structural components and modifications of these structural components;

(3) the plumbing, electrical, heating, cooling, and other mechanical systems;

(4) present infestation of wood‑destroying insects or organisms or past infestation, the damage from which has not been repaired;

(5) the zoning laws, restrictive covenants, building codes, and other land‑use restrictions affecting the real property, any encroachment of the real property from or to adjacent real property, and notice from a governmental agency affecting this real property;

(6) presence of lead‑based paint, asbestos, radon gas, methane gas, underground storage tank, hazardous material or toxic material, buried or covered, and other environmental contamination; ~~or~~

(7) existence of a rental, rental management, vacation rental, or other lease contract in place on the property at the time of closing, and, if known, any outstanding charges owed by the tenant for gas, electric, water, sewerage, or garbage services provided to the property the tenant leases;

(8) existence of a meter conservation charge, as permitted by Section 58‑37‑50, that applies to electricity or natural gas service to the property; or

(9) whether the property is subject to governance of a homeowners association, as provided in Chapter 30 of this title, which carries certain rights and obligations that may limit the use of his property and involve financial obligations, and that copies are recorded in the clerk of court’s office or the register of deeds office in the county in which the property is located.”

SECTION 3. This act takes effect upon approval by the Governor.

‑‑‑‑XX‑‑‑‑