



Ohio Legislative Service Commission

Joseph Rogers

Fiscal Note & Local Impact Statement

Bill: Am. Sub. H.B. 383 of the 129th G.A.

Date: May 16, 2012

Status: As Enacted

Sponsor: Rep. Slaby

Local Impact Statement Procedure Required: No

Contents: Regulating home construction services

State Fiscal Highlights

STATE FUND

FY 2013 – FUTURE YEARS

General Revenue Fund (GRF)

Revenues - 0 -

Expenditures Potential minimal annual increase

Consumer Protection Enforcement Fund (Fund 6310)

Revenues Potential gain in civil penalties, timing and magnitude uncertain

Expenditures Potential minimal annual increase

Note: The state fiscal year is July 1 through June 30. For example, FY 2013 is July 1, 2012 – June 30, 2013.

- **Office of the Attorney General.** The administrative, investigative, and enforcement duties assigned to the Office of the Attorney General under the bill will be performed by its Consumer Protection Section, whose funding is split between the Consumer Protection Enforcement Fund (Fund 6310) and the General Revenue Fund (GRF). Any additional annual operating expenses generated (which are likely to be minimal) as a result of performing these new duties may be offset to some degree by civil penalties that could be ordered by a court and deposited into Fund 6310.

Local Fiscal Highlights

LOCAL GOVERNMENT

FY 2012 – FUTURE YEARS

Counties and Municipalities (common pleas, municipal, and county courts)

Revenues

(1) Potential minimal annual gain in court costs and fees;
(2) Potential gain in civil penalties for county treasury, timing and magnitude uncertain

Expenditures

Potential minimal annual increase to adjudicate civil actions

Note: For most local governments, the fiscal year is the calendar year. The school district fiscal year is July 1 through June 30.

- **Attorney General-initiated civil actions.** It is unlikely that the bill will generate a costly new burden for common pleas, municipal, or county courts in the form of a large number of additional civil cases requiring adjudication brought about by the Office of the Attorney General's pursuit of civil remedies. A portion of the civil penalty (one-third) that could be assessed against a violator by the court would be deposited into the treasury of the county where the case was adjudicated. The timing and magnitude of this potential revenue stream is uncertain.
- **Owner-initiated civil actions.** The number of additional owners that will elect to pursue a civil remedy is likely to be relatively small in the context of any given court's total caseload, and any associated annual costs minimal. The court may also collect a minimal annual amount of related revenue in the form of court costs and fees.

Detailed Fiscal Analysis

Under current law, the services of home improvement contractors are subject to the Consumer Sales Practices Act (CSPA). The state Attorney General's staff reported to LSC that, in 2011, the office received nearly 800 complaints involving the delivery of home improvement type services around the state. The bill removes home construction services from the CSPA and creates certain new rules and requirements that must be followed by home construction services contractors and prohibits certain types of conduct.

Under the bill, there are two civil remedies for handling alleged violations of the bill's rules, requirements, and prohibitions. The first such remedy is available to the Attorney General, who is authorized to investigate violations, seek a declaratory judgment, an injunction or other equitable relief, or organize and bring a class action. The second remedy permits a private individual to initiate a civil action. Based on a conversation with Attorney General staff familiar with this area of law, it does not appear that either of these remedies will generate significant additional work for the Attorney General or local courts with jurisdiction over such matters. This is because the Attorney General and consumers can already pursue CSPA cases involving home construction services contractors under current law and practice.

Attorney General-initiated remedy

Under current practice, the Attorney General's Consumer Protection Section handles the investigative and legal work associated with the CSPA. The bill removes home construction services from the definition of consumer transaction as governed by the CSPA, and enacts powers and remedies governing home construction services that are substantially similar to those used by the Attorney General to enforce the CSPA. The administrative, investigative, and enforcement duties relative to the regulation of home improvement contractors will be assigned to the Consumer Protection Section, whose funding is split between the Consumer Protection Enforcement Fund (Fund 6310) and the General Revenue Fund (GRF).

It is likely that the Attorney General would try to settle the issues surrounding violations of the bill's rules, requirements, or prohibitions prior to initiating any formal legal action. For example, a contractor could simply agree to cease their conduct, and assuming they do so, the Attorney General would stop incurring any related investigative and legal expenses. Similar to the procedures taken under the CSPA, the Attorney General would seek court action against a contractor as a last resort if they perceive that the contractor is receiving a pattern of consumer complaints. Assuming a less formal negotiating strategy does not work, the Attorney General is permitted to bring an action in court to obtain a declaratory judgment, a temporary restraining order, preliminary injunction, or a permanent injunction. Since this new mechanism relies on the same powers and remedies as those used to enforce the CSPA, and will

largely involve the same personnel, additional costs, if any, are likely to be no more than minimal annually.

The remedies available when the Attorney General brings an action include permitting the court to impose a civil penalty of: (1) not more than \$5,000 for each day of violation of a temporary restraining order, preliminary injunction, or a permanent injunction, and (2) not more than \$25,000 against the supplier for each violation of the Home Construction Services Law. The civil penalties will be distributed in the following amounts: three-fourths, or 75%, to the state's Fund 6310 and one-fourth, or 25%, to the treasury of the county where the Attorney General's action is brought. The timing and magnitude of this potential revenue stream is uncertain. According to staff of the Attorney General, the collection of these civil penalties remains one of the more problematic areas in cases involving home construction services contractors.

Owner-initiated remedy

The bill also permits an owner to bring a civil action for damages or other relief for a violation of any of the bill's provisions.

LSC fiscal staff's research suggests that the number of additional civil actions likely to be filed in any affected court will be relatively small in the context of that court's total caseload. Thus, any additional cost for the court to adjudicate these matters and any related gain in court cost and fee revenues will be no more than minimal annually.