Ohio Legislative Service Commission

Joseph Rogers

Fiscal Note & Local Impact Statement

Bill: Sub. H.B. 383 of the 129th G.A. **Date**: February 15, 2012

Status: As Reported by House Judiciary & Ethics **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 would most likely 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 in 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 appears 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 in the treasury of the county where the case was adjudicated. The timing and magnitude of this potential revenue stream is uncertain.
- **Consumer-initiated civil actions.** It is uncertain as to the number of additional consumers that will elect to pursue a civil remedy, but LSC fiscal staff's research to date suggests that the number would 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 service 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, from LSC fiscal staff's perspective at least, 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. Even though the bill removes home construction services from the definition of consumer transaction as governed by the CSPA, and creates new regulations governing home construction services, the bill still grants to the Attorney General all the same powers and remedies that the Attorney General has to enforce the CSPA. The administrative, investigative, and enforcement duties relative to the regulation of home improvement contractors would 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 prohibitions established in the bill prior to initiating any formal legal action. For example, the violators 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 person as a last resort if they perceive that the person is receiving a pattern of consumer complaints. Assuming a less formal negotiating strategy does not work, the Attorney General could request that a court issue a declaratory judgment, a temporary restraining order, or an injunction in

order to persuade violators to cease their offending behavior. The bill provides the Attorney General with an alternative regulatory mechanism relative to protecting consumers in home construction transactions. Since this new mechanism relies on the same powers 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.

If the Attorney General successfully pursues a civil remedy under the enforcement powers granted by the bill, which are the same as those used to enforce the CSPA, the court adjudicating the matter can award the Attorney General all costs and expenses associated with their investigation, in addition to reasonable attorney's fees. The court may also order civil penalties up to $25,000. Three-quarters of this civil penalty (as much as $18,750 if the maximum $25,000 possible fine is assessed), as well as the investigation costs and attorney's fees would be credited to the state's Fund 6310. The remaining one-quarter of the civil penalty that violators could be ordered to pay would go to the treasury of the county where the case took place (as much as $6,250 if the $25,000 maximum possible fine is assessed). According to staff of the Attorney General, the collection of these penalties remains one of the more problematic areas in cases involving home construction services contractors. The timing and magnitude of this potential revenue stream is uncertain.

Consumer-initiated remedy

The bill also allows for a private individual to initiate a civil action as a remedy for damages stemming from a contract for home construction services. The civil action can seek to recover the actual economic damages incurred plus an amount not exceeding $5,000 in noneconomic damages.

If the bill's homeowner protection provisions are violated, then additional civil actions may be filed by a homeowner or the Attorney General in the appropriate common pleas, municipal, or county court, actions that might otherwise have been filed under the CSPA. Such an outcome would presumably generate local revenues in the form of fees and court costs and require the court to expend some amount of time and effort to adjudicate the matter. LSC fiscal staff's research to date 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, the annual fiscal effect on local revenues collected and moneys expended will likely be no more than minimal.

HB0383HR.docx / rs