



# Senate

General Assembly

**File No. 123**

February Session, 2010

Substitute Senate Bill No. 129

*Senate, March 25, 2010*

The Committee on General Law reported through SEN. COLAPIETRO of the 31st Dist., Chairperson of the Committee on the part of the Senate, that the substitute bill ought to pass.

## **AN ACT ESTABLISHING AN OFFICE OF CONDOMINIUM OMBUDSMAN.**

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. (NEW) (*Effective January 1, 2011*) (a) For the purposes of  
2 this section and sections 2 to 4, inclusive, of this act:

3 (1) "Board of directors" means a board of directors, as defined in  
4 section 47-68a of the general statutes, of a condominium;

5 (2) "Commissioner" means the Commissioner of Consumer  
6 Protection;

7 (3) "Community association manager" means a community  
8 association manager, as defined in section 20-450 of the general  
9 statutes;

10 (4) "Common interest community" means a common interest  
11 community, as defined in section 47-202 of the general statutes;

12 (5) "Condominium" means a condominium, as defined in section 47-  
13 68a of the general statutes;

14 (6) "Executive board" means an executive board, as defined in  
15 section 47-202 of the general statutes, of a common interest  
16 community; and

17 (7) "Unit owner" means a unit owner, as defined in section 47-68a of  
18 the general statutes, of a condominium unit, or section 47-202 of the  
19 general statutes, of a common interest community unit.

20 (b) There is established an Office of Condominium Ombudsman  
21 within the Department of Consumer Protection. The Office of  
22 Condominium Ombudsman shall be under the direction of the  
23 Commissioner of Consumer Protection, or the commissioner's  
24 designee.

25 (c) With respect to the Office of Condominium Ombudsman, the  
26 Commissioner of Consumer Protection, or the commissioner's  
27 designee may:

28 (1) Investigate and resolve complaints concerning unit owners,  
29 boards of directors, executive boards, community association  
30 managers, and managing agents of condominiums or common interest  
31 communities;

32 (2) Analyze the laws regarding condominiums and common interest  
33 communities and make recommendations to the Governor and the  
34 General Assembly for legislation;

35 (3) Publish information concerning laws and regulations related to  
36 condominiums and common interest communities; and

37 (4) Refer any complaint received by the office to the appropriate law  
38 enforcement agency for prosecution, if deemed appropriate by the  
39 commissioner.

40 (d) The Commissioner of Consumer Protection may adopt

41 regulations, in accordance with chapter 54 of the general statutes, to  
42 implement this section and sections 2 to 4, inclusive, of this act.

43       Sec. 2. (NEW) (*Effective January 1, 2011*) (a) Any unit owner or group  
44 of unit owners may file a request with the Office of Condominium  
45 Ombudsman that the commissioner or the commissioner's designee  
46 review the complaint of the unit owner or group of unit owners  
47 regarding alleged violations of any provision of chapter 825 or 828 of  
48 the general statutes, as the case may be, or a bylaw of a condominium  
49 association or common interest community association concerning the  
50 budget and appropriation of condominium association or common  
51 interest community association funds, the calling and conduct of  
52 condominium association or common interest community association  
53 meetings, or access to public records of the condominium association  
54 or common interest community association, provided (1) the complaint  
55 of the unit owner or group of unit owners was reviewed through the  
56 dispute resolution process established in section 3 of this act, or (2) the  
57 unit owner or group of unit owners has filed a sworn affidavit that the  
58 condominium association or common interest community association  
59 has not established such dispute resolution process. Such request shall  
60 be in writing, on such form as the commissioner may prescribe, and  
61 shall be accompanied by a fee of thirty-five dollars. Upon receipt of  
62 such request and after a determination by the commissioner or the  
63 commissioner's designee that such complaint presents a colorable  
64 claim of a violation of any of said provisions of statute or bylaws and  
65 that such complaint was not filed with malicious intent to unjustly vex  
66 or trouble the condominium association or common interest  
67 community association, the commissioner or the commissioner's  
68 designee shall notify the condominium association or common interest  
69 community association that is the subject of the complaint of such  
70 request and the fee required by this subsection. Not later than thirty  
71 days after receiving notice of the complaint from the commissioner or  
72 the commissioner's designee, the condominium association or common  
73 interest community association shall pay to the commissioner a fee of  
74 thirty-five dollars. If such condominium association or common  
75 interest community association fails to pay such fee not later than

76 thirty days after the date of such notice, the commissioner shall assess  
77 a penalty of one hundred dollars against such condominium  
78 association or common interest community association, in addition to  
79 such thirty-five-dollar fee.

80 (b) The commissioner or the commissioner's designee may mediate  
81 a complaint pursuant to a request filed under subsection (a) of this  
82 section.

83 (c) The commissioner or the commissioner's designee may conduct  
84 an investigation and make findings and recommendations regarding  
85 any matter concerning a violation of chapter 825 of the general  
86 statutes, chapter 828 of the general statutes, or the bylaws of a  
87 condominium association or common interest community association.

88 (d) After notice and hearing pursuant to chapter 54 of the general  
89 statutes, the commissioner may:

90 (1) Issue an order to any person found to have violated any  
91 provision of chapter 825 or 828 of the general statutes, or the bylaws of  
92 the condominium association or common interest community  
93 association, requiring such person to cease such violation;

94 (2) Order any person found to have violated any such provision to  
95 make restitution for damages caused by such violation;

96 (3) Assess a penalty up to two hundred dollars per knowing  
97 violation; or

98 (4) Through the Attorney General, petition the superior court for the  
99 judicial district where the violation occurred for the enforcement of  
100 any order issued by the commissioner, or for appropriate temporary  
101 relief or a restraining order, and shall certify and file in the court a  
102 transcript of the entire record of all hearings, including all testimony  
103 upon which such order was made and the findings and orders made  
104 by the commissioner. The commissioner shall provide written notice of  
105 the filing of such petition to the condominium association or common  
106 interest community association not later than three business days after

107 the date such petition is filed in the superior court. The court may  
108 grant such relief by injunction or otherwise, including temporary  
109 relief, as it deems equitable and may make and enter a decree  
110 enforcing, modifying and enforcing as so modified, or setting aside, in  
111 whole or in part, any order of the commissioner.

112 (e) Any person aggrieved by a final decision of the commissioner  
113 may appeal therefrom in accordance with section 4-183 of the general  
114 statutes.

115 (f) Any fee or penalty collected pursuant to this section shall be  
116 deposited in the General Fund.

117 Sec. 3. (NEW) (*Effective from passage*) Not later than January 1, 2011,  
118 each condominium association or common interest community  
119 association shall establish a dispute resolution process for unit owner  
120 complaints regarding compliance by the condominium association or  
121 common interest community association with any provision of chapter  
122 825 of the general statutes, chapter 828 of the general statutes, or a  
123 bylaw of a condominium association or common interest community  
124 association concerning the budget and appropriation of condominium  
125 association or common interest community association funds, the  
126 calling and conduct of condominium association or common interest  
127 community association meetings, or access to public records of the  
128 condominium association or common interest community association.  
129 The dispute resolution process shall provide the opportunity for the  
130 unit owner to be heard regarding such complaint. Any complaint that  
131 is not resolved through the dispute resolution process established  
132 under this section may be filed with the Office of Condominium  
133 Ombudsman on or after January 1, 2011, pursuant to section 2 of this  
134 act.

135 Sec. 4. (NEW) (*Effective January 1, 2011*) (a) On January 1, 2011, and  
136 annually thereafter, each condominium association and common  
137 interest community association shall provide the Commissioner of  
138 Consumer Protection a certified copy of the last annual or biennial  
139 report of the association filed with the Secretary of the State, and shall

140 pay a fee to the commissioner in an amount of four dollars for each  
141 condominium or common interest community unit within such  
142 condominium association or common interest community association.  
143 Any condominium association or common interest community  
144 association that fails to pay such fee shall, in addition to such fee, be  
145 assessed a penalty of one hundred dollars for each year such fee was  
146 not paid. The Attorney General, upon referral by the commissioner,  
147 may bring an action in the superior court to collect such fees and  
148 penalties.

149 (b) All fees and penalties collected pursuant to this section shall be  
150 deposited by the commissioner in a separate, nonlapsing fund, which  
151 shall be solely used for the operational expenditures of the Office of  
152 Condominium Ombudsman and for the administration of the  
153 programs performed by said office. The commissioner shall annually  
154 review such fund and, upon a finding by the commissioner that the  
155 balance of the fund is in excess of the amount necessary to operate said  
156 office and such programs, shall order that the annual fee collected  
157 pursuant to subsection (a) of this section be suspended or reduced  
158 until such time as the balance falls below that amount necessary to  
159 operate said office and such programs.

160 Sec. 5. Section 20-452 of the general statutes is repealed and the  
161 following is substituted in lieu thereof (*Effective January 1, 2011*):

162 (a) Any person seeking a certificate of registration shall apply to the  
163 department in writing, on a form provided by the department. Such  
164 application shall include the applicant's name, residence address,  
165 business address, business telephone number and such other  
166 information as the department may require.

167 (b) Each application for a certificate of registration as a community  
168 association manager shall be accompanied by an application fee of  
169 sixty dollars and a registration fee of [one] four hundred dollars. The  
170 department shall refund the registration fee if it refuses to issue a  
171 certificate of registration.

172 Sec. 6. Subsection (d) of section 20-457 of the 2010 supplement to the  
 173 general statutes is repealed and the following is substituted in lieu  
 174 thereof (*Effective January 1, 2011*):

175 (d) All certificates issued under the provisions of sections 20-450 to  
 176 20-462, inclusive, as amended by this act, shall expire [annually]  
 177 biennially on the thirty-first day of January. The fee for renewal of a  
 178 certificate shall be [two] four hundred dollars.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>January 1, 2011</i>	New section
Sec. 2	<i>January 1, 2011</i>	New section
Sec. 3	<i>from passage</i>	New section
Sec. 4	<i>January 1, 2011</i>	New section
Sec. 5	<i>January 1, 2011</i>	20-452
Sec. 6	<i>January 1, 2011</i>	20-457(d)

**GL**      *Joint Favorable Subst.*

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

**OFA Fiscal Note**

**State Impact:**

Agency Affected	Fund-Effect	FY 11 \$	FY 12 \$
Consumer Protection, Dept.	New Non-lapsing Fund - Cost	330,000	626,000
State Comptroller - Fringe Benefits <sup>1</sup>	New Non-lapsing Fund- Cost	85,800	324,000
Consumer Protection, Dept.	New Non-lapsing Fund - Revenue Gain	960,000	See Below
Consumer Protection, Dept.	GF - Revenue Gain	None	71,000
Consumer Protection, Dept.	GF - Revenue Gain	Potential	Potential

Note: GF=General Fund

**Municipal Impact:** None

**Explanation**

The bill results in a cost of approximately \$415,800 to the state in FY 11 and an estimated full year cost to the state beginning in FY 12 of \$950,000. The lower cost in FY 11 is due to partial year funding. The cost is due to the need for 9 additional positions in the Department of Consumer Protection (DCP) plus associated fringe benefits. These positions would include two staff attorneys, five Special Investigators, one Consumer Information Representative and one Paralegal Specialist 1. These estimates are based upon the funding levels associated with Nevada's Office of the Condominium Ombudsman. Nevada currently has just over 469,000 condominium units while Connecticut has

<sup>1</sup> The estimated non-pension fringe benefit rate as a percentage of payroll is 26.66% which includes health insurance, social security, Medicare, life insurance, and unemployment compensation. Fringe benefit costs for new positions do not include pension costs as new positions will not impact the state's pension contribution until FY 12 after the next scheduled actuarial valuation.

approximately 240,000 units. Connecticut has 4,000 condominium associations while Nevada has approximately 3,000. Nevada currently operates their program with fifteen staffers.

The bill results in an initial revenue gain in FY 11 of approximately \$960,000, based on 240,000 condominium units, due to the imposition of a four dollar per condominium fee assessed to each condominium association. The revenue would be deposited in a non-lapsing fund for the administration of the Ombudsman's Office by the Department of Consumer Protection. In subsequent years the fee could be adjusted downwards if funds available for administration are estimated to be in excess of that needed. Thus resulting in the potential for less than \$960,000 in revenue in subsequent years.

The bill also results in an undetermined revenue gain as it requires a \$35 filing fee for each complaint dispute resolution filing by condominium owners. The revenue gain would be determinant on the actual number of complaints brought before the Ombudsman's Office, which is unknown at this time.

Lastly, the bill results in a revenue gain of approximately \$17,000 in FY 12 as it increases the fee for a certificate of registration as a community association manager from \$100 to \$400 but makes the fee payable biennially rather than annually. Making the fee biennial results in a revenue loss in FY 13 of \$27,000. The long-term revenue impact of the changes in the fee and its structure is a doubling of revenue.

### ***The Out Years***

The annualized ongoing fiscal impact identified above would continue into the future subject to inflation and subject to the number of dispute resolutions.

**OLR Bill Analysis****sSB 129*****AN ACT ESTABLISHING AN OFFICE OF CONDOMINIUM OMBUDSMAN.*****SUMMARY:**

This bill establishes an Office of Condominium Ombudsman within the Department of Consumer Protection (DCP) under the consumer protection commissioner's or his designee's direction. It gives the commissioner certain powers relating to (1) investigating and resolving complaints concerning common interest communities and (2) analyzing and making recommendations concerning the laws that govern them.

The bill allows any unit owner or group of unit owners to file a request with the Office of Condominium Ombudsman to have the commissioner or his designee review their complaint regarding alleged violations of the Common Interest Ownership Act (CIOA), the Condominium Act, or a bylaw of a condominium association or common interest community association concerning certain matters (see BACKGROUND).

By January 1, 2011, the bill requires each condominium association or common interest community association to establish a dispute resolution process for unit owner complaints regarding compliance by the association with the law and any association bylaw concerning the matters the bill gives the commissioner power to investigate. Any complaint that is not resolved through this process may be filed with the Office of Condominium Ombudsman on or after January 1, 2011.

The bill requires each condominium association and common interest community association to provide annually to the DCP

commissioner a certified copy of the association's last annual or biennial report filed with the secretary of the state, and pay the commissioner a \$4 fee for each condominium or common interest community unit within the complex.

The bill increases from \$100 to \$400, the fee for a certificate of registration as a community association manager. It makes the registration certificate expire biennially instead of annually and increases the renewal fee from \$200 to \$400.

EFFECTIVE DATE: January 1, 2011, except for the provision requiring associations to establish a dispute resolution process by January 2011, which is effective on passage.

**DCP COMMISSIONER-POWERS AND DUTIES**

The bill authorizes the DCP commissioner or his designee to:

1. investigate, mediate, and resolve complaints concerning unit owners, boards of directors, executive boards, community association managers, and managing agents of condominiums or common interest communities;
2. analyze the laws regarding condominiums and common interest communities and recommend legislation to the governor and the General Assembly;
3. publish information concerning laws and regulations related to condominiums and common interest communities;
4. refer any complaint received by the office to the appropriate law enforcement agency for prosecution, if the commissioner considers the complaint appropriate; and

It also authorizes the commissioner to adopt regulations to implement the bill.

**COMPLAINTS FROM UNIT OWNERS**

The bill allows any unit owner or group of unit owners to file a

request with the Office of Condominium Ombudsman that the commissioner or his designee review their complaint regarding alleged violations of the CIOA, or the Condominium Act, or a condominium association or common interest community association bylaw concerning:

1. the budget and appropriation of association funds,
2. the calling and conduct of association meetings, or
3. access to the association's public records.

The bill allows this only if:

1. the complaint was reviewed through the dispute resolution process the bill establishes, or
2. the unit owner or group of unit owners has filed a sworn affidavit that the association has not established such a dispute resolution process.

### **Review Process**

The request to the ombudsman must be in writing, on whatever form the commissioner prescribes, and be accompanied by a \$35 fee.

The commissioner must notify the condominium association or common interest community association that is the subject of the complaint if he or she first determines that the complaint (1) presents a "colorable claim" of a violation of any law or the association's bylaws and (2) was not filed with malicious intent to unjustly vex or trouble the association. (The bill does not define the term "colorable claim" but apparently it means a claim that could be reasonably asserted given the facts presented and the current law (*Black's Law Dictionary*)). The bill requires the association to pay to the commissioner a \$35 fee within 30 days after receiving notice. If the association fails to pay the fee within 30 days, the commissioner must assess a \$100 penalty against it in addition to the \$35 fee.

**Commissioner's Power and Authority**

The bill authorizes the commissioner to conduct an investigation and make findings and recommendations.

After notice and hearing, the commissioner may:

1. issue an order to any person found to have violated the law or association bylaws to cease the violation;
2. order any violator to make restitution for damages caused by the violation;
3. assess a penalty of up to \$200 for each knowing violation; or
4. through the attorney general, petition the Superior Court for the judicial district where the violation occurred for the enforcement of any order the commissioner issued, or for appropriate temporary relief or a restraining order, and certify and file in the court a transcript of the entire record of all hearings, including all testimony on which the order was made and the commissioner's findings and orders.

The bill requires the commissioner to provide written notice of the filing of the petition in Superior Court to the association within three business days after the date the petition is filed. The court may grant relief by injunction or otherwise, including temporary relief, as it deems equitable and may make and enter a decree enforcing, modifying and enforcing, or setting aside, in whole or in part, any order of the commissioner.

The bill authorizes any person aggrieved by the commissioner's final decision to appeal to the Superior Court.

The bill requires any fee or penalty collected to be deposited in the General Fund.

**DISPUTE RESOLUTION PROCESS**

The bill requires that by January 1, 2011, each condominium

association or common interest community association establish a dispute resolution process for unit owner complaints regarding the association's compliance with the law and any association bylaw concerning the matters the bill gives the commissioner authority to investigate.

The dispute resolution process must provide the opportunity for the unit owner to be heard. Any complaint that is not resolved through this process may be filed with the Office of Condominium Ombudsman on or after January 1, 2011.

### **ANNUAL OR BIENNIAL REPORTS**

Starting January 1, 2011, the bill requires each condominium association and common interest community association must provide annually to the DCP commissioner a certified copy of the last annual or biennial report of the association filed with the secretary of the state, and pay the commissioner a fee of \$4 for each condominium or common interest community unit within the complex. Any association that fails to pay the fee must, in addition to the fee, be assessed a penalty of \$100 for each year the fee was not paid. The attorney general, upon referral by the commissioner, may bring an action in the Superior Court to collect the fees and penalties.

### **ACCOUNT FUNDING**

The bill requires the commissioner to deposit all fees and penalties collected in a separate, non-lapsing fund, which must be used solely for the operational expenses of the Office of the Condominium Ombudsman. The commissioner must annually review the fund and upon finding the balance is in excess of the necessary amount for operating the program, must reduce or suspend the collection of the annual fee until the balance falls below the amount necessary to operate the program.

### **BACKGROUND**

#### ***CIOA, the Condominium Act, and the Unit Ownership Act***

Three different sets of laws govern condominiums, depending on

when they were created. CIOA governs the creation, alteration, management, termination, and sale of condominiums and other common interest communities formed in Connecticut after January 1, 1984 (CGS § 47-200 et seq.). The Condominium Act governs condominiums created from 1977 through 1983 (CGS §§ 47-68a to 47-90c). Condominiums created before the Condominium Act was adopted are governed by the Unit Ownership Act CGS §§ 47-67 to 47-115 Revised to 1975). Certain CIOA provisions automatically apply to condominiums created in Connecticut before January 1, 1984, but only with respect to events and circumstances that occur after December 31, 1983 (CGS § 47-216).

The law permits condominiums created before January 1, 1984 to amend their governing instruments (declaration, bylaws, survey, or plans) to conform to portions of CIOA that do not automatically apply. Thus, a pre-CIOA condominium may adopt any of these CIOA provisions it wishes and does not have to adopt all of CIOA. Any amendment must be adopted in accordance with the law that applied when the condominium was created and with the procedures and requirements specified by the condominium's declaration and bylaws (CGS § 47-218).

**COMMITTEE ACTION**

General Law Committee

Joint Favorable Substitute

Yea 12    Nay 7    (03/16/2010)