Ohio Legislative Service Commission

Bill Analysis

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H.B. 274

129th General Assembly
(As Reported by H. Judiciary & Ethics)

Reps. Letson, Bubp

BILL SUMMARY

- Provides that a transfer fee for purposes of a transfer fee covenant, which is not binding on or enforceable against a subsequent owner, purchaser, or mortgagee of real property, does not include any payment required pursuant to a conservation easement or agricultural easement.

CONTENT AND OPERATION

Environmental covenant

For purposes of the provisions on transfer fee covenants described below, "transfer fee" does not include any payment required pursuant to an "environmental covenant," which currently means a servitude that imposes activity and use limitations on real property and meets the requirements of R.C. 5301.82.[1] The bill expands the definition of "environmental covenant" to also mean a "conservation easement" or "agricultural easement" as defined in current law (see "**Definitions**," below), thus providing that a transfer fee for purposes of a transfer fee covenant does not include any payment required pursuant to a conservation easement or agricultural easement.[2]

Transfer fee covenant

Existing law provides that a "transfer fee covenant" recorded in Ohio on or after September 13, 2010 (effective date of Sub. H.B. 292 of the 128th General Assembly enacting the Transfer Fee Covenant Law), does not run with the title to real property and is not binding on or enforceable against any subsequent owner, purchaser, or

[1] R.C. 5301.057(A)(1) and (3)(h).

[2] R.C. 5301.057(A)(1)(b).

mortgagee of any interest in real property as an equitable servitude or otherwise. It further provides that any lien purporting to secure the payment of a "transfer fee" under a transfer fee covenant that is recorded in Ohio on or after that effective date is void.[3] "Transfer fee covenant" means a declaration or covenant recorded against the title to real property that requires or purports to require the payment of a "transfer fee" to the declarant or other person specified in the declaration or covenant or to their successors or assigns upon a subsequent transfer of an interest in the real property.[4] "Transfer fee" means a fee or charge required by a transfer fee covenant and payable upon the transfer of an interest in real property, or payable for the right to make or accept such a transfer, regardless of whether the fee or charge is a fixed amount or is determined as a percentage of the value of the property, the purchase price, or other consideration given for the transfer.[5] The law lists types of fees or amounts that are not transfer fees for purposes of this definition, including any payment required pursuant to an "environmental covenant."[6]

Definitions

For purposes of its provisions, the bill defines the following terms as in current law:[7]

"Conservation easement" means an incorporeal right or interest in land that is or does all of the following: (1) is held for the public purpose of retaining land, water, or wetland areas predominantly in their natural, scenic, open, or wooded condition, including, without limitation, the use of land in agriculture when consistent with and in furtherance of the purpose of retaining those areas in such a condition, or retaining their use predominantly as suitable habitat for fish, plants, or wildlife, (2) imposes any limitations on the use or development of the areas that are appropriate at the time of creation of the conservation easement to achieve one or more of those purposes, and (3) includes appropriate provisions for the holder to enter the property subject to the easement at reasonable times to ensure compliance with its provisions.

"Agricultural easement" means an incorporeal right or interest in land that is or does all of the following: (1) is held for the public purpose of retaining the use of land predominantly in agriculture, (2) imposes any limitations on the use or development of

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[3] R.C. 5301.057(B) and (C).

[4] R.C. 5301.057(A)(4).

[5] R.C. 5301.057(A)(3).

[6] R.C. 5301.057(A)(3)(h).

[7] R.C. 5301.67(A) and (C), not in the bill.

the land that are appropriate at the time of creation of the easement to achieve that purpose, (3) is in the form of articles of dedication, easement, covenant, restriction, or condition, and (4) includes appropriate provisions for the holder to enter the property subject to the easement at reasonable times to ensure compliance with its provisions.

HISTORY

ACTION	DATE
Introduced	06-21-11
Reported, H. Judiciary & Ethics	05-16-12

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