Ohio Legislative Service Commission

Terry Steele

Fiscal Note & Local Impact Statement

Bill: Sub. H.B. 292 of the 128th G.A. **Date**: December 9, 2009

Status: As Reported by House Civil & Commercial Law **Sponsor**: Reps. Letson and Oelslager

Local Impact Statement Procedure Required: No — No local cost

Contents: Prohibits the use of certain forms of transfer fee covenants

State Fiscal Highlights

- No direct fiscal effect on the state.

Local Fiscal Highlights

- No direct fiscal effect on political subdivisions.

Detailed Fiscal Analysis

The bill defines the term "transfer fee covenant" and specifies that such covenants recorded in Ohio on or after the effective date of the bill do not run with the title to real property and are not binding on or enforceable against any subsequent property owner. The bill further provides that any lien purporting to secure the payment of a transfer fee as defined by the bill under such a covenant is void. The bill does not affect other forms of covenants such as condominium association assessments, environmental covenants, and other various specified fees that are commonly associated with real estate transactions. The bill appears to have no direct fiscal effect on the state or political subdivisions.

The form of covenant prohibited under the bill is a real estate business product that is marketed as a way to create a long-term revenue stream to a property seller, homebuilder, or property developer. This type of transfer fee covenant, valid for a prescribed number of years, becomes a legally recorded document attached to the property title. The binding agreement requires a current buyer and any future buyers of the encumbered property to pay the original seller a prescribed amount, typically a percentage of the sale price, every time the property is sold. The firm promoting the product can also benefit by receiving a share of this transfer fee as specified in the covenant agreement with the original seller.

Under current law, if no party elects to take an estate, the court of common pleas may order the sale of the estate at public auction by the sheriff who executed the writ of partition, or that sheriff's successor. The bill states that a licensed auctioneer may also conduct this sale. Generally, the beneficiaries of an estate receive the proceeds of any property sale. Under the bill, the auctioneer's fee would be taken from the proceeds of the sale.

HB0292HR / lb