Ohio Legislative Service Commission

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Fiscal Note & Local Impact Statement

Bill: Sub. H.B. 292 of the 128th G.A. **Date**: May 27, 2010

Status: As Reported by Senate Judiciary Civil Justice **Sponsor**: Reps. Letson and Oelslager

Local Impact Statement Procedure Required: No — No local cost

Contents: Limits the use of transfer fee covenants and makes other changes

State Fiscal Highlights

- No direct fiscal effect on the state.

Local Fiscal Highlights

- No direct fiscal effect on political subdivisions.

Detailed Fiscal Analysis

Transfer fee covenants

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.

The bill also alters the disposal of an estate if no one opts to take it. 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.

Conservatorships and liquidations of savings institutions

Generally, the bill modifies the statutes governing the conservatorship and liquidation of a state-chartered savings institution (a savings and loan association or savings bank) to mirror such processes found in Ohio law for conserving or liquidating a state-chartered bank. All of these institutions are regulated by the Division of Financial Institutions in the Ohio Department of Commerce. There are approximately 50 such savings institutions with approximately $10 billion in assets regulated by the Division. There have been no state-chartered savings institutions in conservatorship or receivership in the past two years. If a savings institution would fail, the insurer of the institution, which is the Federal Deposit Insurance Corporation, would typically be appointed the conservator or receiver.

According to the Department of Commerce, the changes may expedite and streamline the process of putting a savings institution into conservatorship or liquidation. For example, the bill would not require a court filing to proceed with the sale of a savings institution's assets, as is required under current law. An institution, however, would be able to appeal such an action. Overall, the changes would have little, if any, fiscal effect on the Division. The Division's regulatory activities for savings institutions are paid for out of the Savings Institution Fund (Fund 5450).

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