HOUSE RESEARCH :

Bill Summary =

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Subject: Private Transfer fee obligations

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Overview

This bill prohibits the imposition of "private transfer fees" before an interest in a piece of land can be conveyed from one person to another. A private transfer fee is, essentially, a fee that the seller or purchaser of the property is contractually required to pay to a third-party (such as a land developer) before the property can be legally transferred. In some cases, the fee "runs with the land," which means that it is an obligation on the land itself, not on any individual person, and therefore must be paid any time an interest in the property is transferred, indefinitely into the future. Common types of real estate transaction fees (such as mortgage interest, real estate broker fees, taxes, etc.) are not included within the definition of private transfer fee.

Section

Definitions. Provides definitions of "transfer," "private transfer fee," and "private transfer fee obligation."

A "private transfer fee obligation" means a declaration or covenant against the title to real property, or a contractual promise or agreement, that requires the payment of a fee from one private person to another as a condition of transferring a person's interest in the property to someone else. Exceptions are provided for a number of common types of fees or consideration, including payment for the property itself, a real estate broker's commission, a mortgage lender's fees or charges, condo or homeowner's association fees, and fees or taxes imposed by a unit of government.

Prohibition. Provides that a private transfer fee obligation that is recorded, filed, or otherwise entered into after the effective date of the bill is not binding or enforceable against any future holder of an interest in the property, and specifies that private transfer fee obligations should not be valid or enforceable as a matter of state public policy. This section also specifies that no presumption about the validity or enforceability of a private transfer fee obligation recorded, filed, or entered into before the bill's effective date is created by this bill.

- Liability. Establishes liability for a person who records, files, or enters into a private transfer fee obligation that benefits that person after the bill's effective date. The person would be liable for all damages resulting from the imposition of the transfer fee obligation, including the amount of transfer fee paid by a party to the transfer, and all attorney's fees, expenses, and costs incurred by a party to the transfer in an action related to the property's title. Immunity is provided for an agent acting on behalf of a principal who violates the prohibition.
- Notice requirements; existing transfer fee obligations. Specifies notice procedures required to maintain the validity of private transfer fee obligations entered before the bill becomes effective. A person entitled to receive a fee must record or file the required notice prior to December 31, 2010. Failure to comply with the notice requirements, or failure to provide a written statement of the transfer fee payable within 30 days of a written request, permits the property to be conveyed without payment of the transfer fee, and the property is conveyed free and clear of the transfer fee and transfer fee obligation.
- Effective date; application. Modifies an effective date contained in a bill enacted earlier in the 2010 legislative session (Laws 2010, Chapter 238 (SF 2562)). The effective date applies to a provision of law that would provide for a 20-year period during which an action to collect a child support judgment could be maintained, rather than the existing ten-year period provided in law. The effective date of this change is delayed by this section from January 1, 2011 to July 1, 2011.
- **6 Effective date.** Provides that the bill is effective the day following final enactment.