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FISCAL IMPACT REPORT

ORIGINAL DATE 02/24/11
LAST UPDATED 03/02/11 **HB** _____

SPONSOR Griego, P.

SHORT TITLE No Property Transfer Fee Covenants **SB** 504/aSCONC

ANALYST Hoffmann

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY11	FY12		
NFI	NFI		

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Regulation and Licensing Department (RLD)

SUMMARY

Synopsis of Senate Conservation Committee Amendment

The Senate Conservation Committee amendment to Senate Bill 504 clarifies that the policy of the state “favors the transferability of interests in real property free from unreasonable restraints on alienation and covenants or servitudes that do not touch and concern the property.” It also corrects the applicability of the bill as applying to covenants recorded after the effective date of July 1, 2011.

Synopsis of Original Bill

Senate Bill 504 proposes that a transfer fee covenant, affecting transferability of interests in real property, recorded after the effective date of the Prohibition of Transfer Fee Covenants Act, or any lien to the extent that it purports to secure the payment of a transfer fee, is not binding on or enforceable against the affected real property or any subsequent owner, purchaser or mortgagee of any interest in the property.

The bill would make a violation of the Prohibition of Transfer Fee Covenants Act and a violation of the Unfair Practices Act.

The provisions of this act apply to transfer fee covenants recorded prior to July 1, 2011, which

covenants shall be invalid and unenforceable.

The effective date of the provisions of this act is July 1, 2011.

FISCAL IMPLICATIONS

Senate Bill 504 does not make any appropriations.

TECHNICAL ISSUES

The RLD notes the bill contains the following provision in Section 7: “The provisions of this act apply to transfer fee covenants recorded prior to July 1, 2011, which covenants shall be invalid and unenforceable.”

It appears that the language underscored may need to be changed to: “after”

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

According to the RLD, transfer fee covenants, affecting transferability of interests in real property, will continue to impair the marketability of the title to the affected real property and constitutes an unreasonable restraint on alienation, regardless of the duration of the covenant or the amount of the transfer fee set forth in the covenant.

JCH/mew:bym