



HOUSE COMMITTEE ON APPROPRIATIONS

FISCAL NOTE

HOUSE BILL NO. 442

PRINTERS NO. 1040

PRIME SPONSOR: Helm

FUND: General/ County

COST / (SAVINGS)

FY 2010/11	FY 2011/12
\$0	\$0

SUMMARY: This legislation amends Title 68 (Real and Personal Property) by inserting a Chapter 81, which would be known as the Private Transfer Fee Obligation Act. This bill would take effect immediately.

ANALYSIS: This legislation would provide that any private transfer fee imposed after the effective date of this legislation would be unenforceable to a future buyer or mortgagee. Any individual who imposes a private transfer fee obligation after the effective date shall be liable for any damages incurred as well attorney fees, expenses, or any costs incurred relating to a recovery of a transfer fee.

As defined by the legislation, private transfer fees do not include:

- Fees to homeowners associations
- Fees that do not bind successors in title, including mineral estates and surface access rights
- Commissions to real estate brokers
- Interest, charges, and fees payable to a lender pursuant to a mortgage, deed, or trust
- Assessments, fees, and fines imposed by and payable to a governmental authority
- Payments for extraction of timber, crops, or minerals, including gas, oil, and water
- A fee to a land trust that has been in existence for two years and holds an easement on real property in the same development plan as part of an agricultural conservation easement or a conservation easement

Any real property subject to a private transfer fee obligation must provide the disclosure of the fee along with any sales contract. The disclosure must also include a description of the fee and a notice that the obligation is subject to the provisions of this act. Any fee for such contract without such disclosure will not enforceable by the seller.

Within 6 months of the effective date, any payee of a private transfer fee obligation issued prior to the effective date would be required to forward to the recorder of deeds any pertinent information relating to any such private transfer fee. If a payee fails to provide the required notice to the recorder of deeds, the seller of a property encumbered by a transfer fee obligation may proceed with the transaction and the transfer fee obligation shall become void and the property shall be conveyed free and clear of any future transfer fee obligation. This provision would also extend to notices which were provided to a recorder of deeds which were considered to be flawed. If a payee fails to provide a written statement for the transfer fee within 30 days of a written request for such statement, then a grantor of real property may transfer interest in any real property without any fee obligation and would be free of any future obligation.

An affidavit would have to be filed with a county recorder of deeds where the real property is situated. The document must be filed prior to or at the same time with the conveyance of the real property which has had a transfer fee obligation removed pursuant to the act. The affidavit shall constitute evidence that the payee has either failed to provide notice of the existence of a transfer fee obligation within 30 days of receipt of the request.

FISCAL IMPACT: This legislation will have no adverse impact on Commonwealth funds. This legislation will have no adverse impact on County funds.

PREPARED BY: Tim Rodrigo
House Appropriations Committee (R)

DATE: March 7, 2011

Estimates are calculated using the best information available. Actual costs and revenue impact incurred may vary from estimates.