

SUBJECT: Allowing transfer fee for certain golf courses and conservation easements

COMMITTEE: Business and Industry — favorable, without amendment

VOTE: 8 ayes — Deshotel, Elkins, Christian, England, Gattis, Giddings,
Quintanilla, S. Turner

0 nays

3 absent — Keffer, S. Miller, Orr

SENATE VOTE: On final passage, April 24 — 30-0

WITNESSES: No public hearing

BACKGROUND: Property Code, sec. 5.017, which was added by the 80th Legislature in 2007 with the enactment of HB 2207 by Gallego, prohibits a transfer fee imposed by a deed restriction or other covenant running with the land, except for a transfer fee imposed by:

- a property owners' association;
- a non-profit organization organized under section 501(c)(3); or
- a governmental entity.

Natural Resources Code, ch. 183 defines a conservation easement as a nonpossessory interest of a holder in real property that imposes limitations or affirmative obligations designed to:

- retain or protect natural, scenic, or open-space values of real property or assure its availability for agricultural, forest, recreational, or open-space use;
- protect natural resources;
- maintain or enhance air or water quality; or
- preserve the historical, architectural, archeological, or cultural aspects of real property.

DIGEST: SB 2481 would amend Property Code, sec. 5.017 to permit assessment of a transfer fee through a deed restriction or other covenant running with the land by:

- a golf course and country club adjacent to a residential subdivision and not operated by the property owners' association if property owners were required by the property owners' association to obtain and maintain a membership in the golf course and country club; or
- a conservation easement created under Natural Resources, ch. 183, located in a county with a population of at least 500,000 but less than 1 million.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2009.

SUPPORTERS
SAY:

SB 2481 would appropriately extend to certain golf courses and country clubs the exemptions from the prohibition on transfer fees that were provided last session to property owners' associations, non-profit organizations, and governmental entities. A handful of property owners' associations throughout the state have created separate entities to manage golf courses, country clubs, and other recreational facilities. For example, the Weston Lakes golf course development in far west Fort Bend County remains a separate, private venture and is not governed, operated or controlled by the property owner's association. However, the deed restrictions on the property owners' association require membership of all property owners. The continuing operation of the golf course and country club provides a benefit to future owners, and the law should be clarified to allow assessment of the transfer fee.

SB 2481 would continue efforts to differentiate between those entities with a legitimate reason to charge transfer fees and the few actors who perpetrated scams. The legislation enacted last session was intended to target schemes, such as a developer who listed himself as an entity receiving future transfer fees. Exceptions were made to exempt non-profit groups set up to assist schools or the operations of municipal utility districts. SB 2481 would address other problems that have come to light since 2007, such as the operations of golf courses, country clubs, or other recreational facilities that have been in existence for 25 years or more. The bill would allow these unique entities to qualify for the exceptions even though they are not part of a property owners' association.

OPPONENTS
SAY:

SB 2481 would dilute protections enacted last session to protect buyers and sellers in property owners' association neighborhoods from hidden and ongoing transfer fees. For-profit entities, such as golf courses and country clubs, should not be allowed to assess what amounts to a tax on property sales. Transfer fees originally were designed to cover the cost of determining whether a specific property's mandatory assessments were current or if there was an outstanding deed restriction violation. Instead, transfer fees have become the means by which property owners' associations circumvent the process required to increase their assessments. These fees are not always used for the benefit of the property owners' association members. Some associations have set up separate organizations that use the fees to fund activities completely different from the purpose of the property owners' association, as appears to be the case with the golf course and country club. Anyone in a developer-controlled subdivision could be at risk of having transfer fees imposed on their property against their will and without their consent. There could no limit on the amount of the transfer fee or the number of entities that could be created as payees.

OTHER
OPPONENTS
SAY:

SB 2481 could lead to making transfer fees a standard practice for both private and public entities that do not own the property on which the transfer fee is imposed. As with developer-controlled property owners' associations, residents would not necessarily be able to vote for these fees. The Legislature should be cautious about allowing counties, cities, school districts, emergency services districts, municipal utility districts, and every developer-controlled private mandatory association to impose what is essentially a sales tax on transfers of property.