



# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. HOUSE PRINCIPLES ANALYSIS:

Ensures lower taxes -- This bill will decrease premium taxes paid on title insurance policies.

### B. EFFECT OF PROPOSED CHANGES:

#### **Title Insurance**

Part III, chapter 624, F.S., a portion of the Florida Insurance Code, contains the general requirements an insurer must follow to receive a certificate of authority to transact business in Florida. The Department of Financial Services (DFS) regulates the insurance industry in Florida.

Title insurance is defined by s. 624.608, F.S., as “insurance of owners of real property or others having an interest in real property or contractual interest derived therefrom, or liens or encumbrances on real property, against loss by encumbrance, or defective titles, or invalidity, or adverse claim to title.” Title insurance is a policy issued by a title insurer that, after performing a search of the title, represents the state of that title and insures the accuracy of its search against claims of title defects.<sup>1</sup> Title insurance is usually taken out by the purchaser of property or an entity that is loaning money on a mortgage.

Purchasers of real property and lenders utilize title insurance to protect themselves against claims by others that claim to be the rightful owner of the property.<sup>2</sup> Most lenders require title insurance when they underwrite loans for real property.<sup>3</sup> Title insurance provides a duty to defend related to an adverse claim against the title, and also promises to indemnify the policyholder for damage to the lender’s security interest created by a cloud on the title, unmarketable title, or adverse title that was not discovered by the title insurer.<sup>4</sup>

Under current law a title insurer charges a premium for title insurance that includes the charge for performance of primary title services<sup>5</sup> by a title insurer or title insurance agent or agency, and incurring the risks incident to such policy.<sup>6</sup> The title insurer must receive at least 30% of the premium to cover the risks and insure insurer solvency.<sup>7</sup>

#### **Insurance Premium Tax**

The insurance premium tax is imposed on insurance premiums and paid by insurance companies to the Department of Revenue at the following rates<sup>8</sup>: 1.75 percent on gross premiums minus reinsurance and return premiums; 1 percent on annuity premiums; 1.6 percent on self-insurers; and 5 percent on surplus lines premiums. Insurers are allowed certain credits and exemptions against this tax liability.

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<sup>1</sup> BLACK’S LAW DICTIONARY (8th ed. 2004).

<sup>2</sup> See e.g. American Land Title Association; <http://www.alta.org/consumer/questions.cfm> (last visited 1/31/07)

<sup>3</sup> Id.

<sup>4</sup> Id.

<sup>5</sup> “Primary title services” means determining insurability in accordance with sound underwriting practices based upon evaluation of a reasonable search and examination of the title or the records of a Uniform Commercial Code filing office and such other information as may be necessary, determination and clearance of underwriting objections and requirements to eliminate risk, preparation and issuance of a title insurance commitment setting forth the requirements to insure, and preparation and issuance of the policy. s.

627.771(1)(b), F.S.

<sup>6</sup> s. 627.771(2), F.S.

<sup>7</sup> s. 627.782(1), F.S.; Rule 690-186.003(9), F.A.C.

<sup>8</sup> s. 624.509, F.S.

Insurers remit taxes quarterly to the Department of Revenue (DOR). Section 624.509, F.S., specifies that the insurance premium taxes are to be deposited into the state's General Revenue Fund pursuant to the rules of DOR.

### **Effect of Bill**

This bill amends s. 624.509, F.S., to reduce the amount of the premium for title insurance subject to the 1.75 percent insurance premium tax. The 1.75 percent tax on title insurance is due only on that portion of the title insurance premium that is paid to the title insurance company. The remaining premium that is retained by the title insurance agent will no longer be subject to the insurance premium tax.

The bill amends the definition for title insurance premium in s. 627.7711, F.S., to revise the definition of "premium" for purposes of title insurance contracts. The bill deletes a cross-reference to s. 624.509, F.S., to conform to the change made by section 1.

### **C. SECTION DIRECTORY:**

Section 1: Amends s. 624.509, F.S., to provide a exemption from insurance premium tax for the portion of the title insurance premium retained by the title insurance agent.

Section 2: Amends s. 627.7711, F.S., to revise the definition of "premium" for title insurance to remove the requirement "for which a charge for premium tax is made."

Section 3: Provides an effective date of July 1, 2007.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

#### **1. Revenues:**

The bill has not been reviewed by the Revenue Estimating Conference. A similar bill was reviewed by the Revenue Estimating Conference on February 22, 2006 and the conference estimated that bill would have a recurring negative fiscal impact of \$11.3 million on state revenue.

#### **2. Expenditures:**

None.

### **B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

#### **1. Revenues:**

None.

#### **2. Expenditures:**

None.

### **C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

Title insurance companies would benefit in the reduction of the premium tax base since they would no longer be required to pay a 1.75-percent insurance premium tax on up to 70 percent of the gross receipts from the sale of title insurance.

D. FISCAL COMMENTS:

None.

**III. COMMENTS**

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not require counties or municipalities to spend funds or take an action requiring the expenditure of funds. This bill does not reduce the percentage of a state tax shared with counties or municipalities. This bill does not reduce the authority that counties and municipalities have to raise revenue.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

D. STATEMENT OF THE SPONSOR

No statement submitted.

**IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES**