

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

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Prepared By: The Professional Staff of the Finance and Tax Committee

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BILL: CS/SB 1492

INTRODUCER: Community Affairs Committee and Senator Margolis

SUBJECT: Discretionary Surtax on Documents

DATE: April 17, 2008

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Molloy</u>	<u>Yeatman</u>	<u>CA</u>	<u>Fav/CS</u>
2.	<u>ODonnell</u>	<u>Johansen</u>	<u>FT</u>	<u>Favorable</u>
3.	_____	_____	<u>GA</u>	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

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**Please see Section VIII. for Additional Information:**

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|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes        |
| B. AMENDMENTS.....           | <input type="checkbox"/>            | Technical amendments were recommended   |
|                              | <input type="checkbox"/>            | Amendments were recommended             |
|                              | <input type="checkbox"/>            | Significant amendments were recommended |

**I. Summary:**

The committee substitute extends the authority for Miami-Dade County to assess the discretionary surtax on documents by providing that the surtax will sunset on October 1, 2031, requires annual financial audits of surtax revenues and expenditures, creates reporting requirements, authorizes the adoption of a housing plan every 3 years, and limits the amount of surtax revenues which may be used for administrative expenses.

Under current law, the imposition of the discretionary surtax precludes imposition of a 10-cent increase in the statewide documentary stamp tax adopted in 1992. As a result, passage of the bill would have a negative recurring impact to the State of \$24.9 million and a negative cash impact to the State in fiscal year 2011-2012 of \$27.9 million. It also means that passage of the bill would have a positive recurring impact to local government of \$28.9 million and a positive cash impact to local government of \$28.9 million in fiscal year 2011-2012.

**II. Present Situation:**

**Discretionary Surtax on Documents**

In 1983, the Legislature enacted chapter 83-220, Laws of Florida, creating s. 125.0167, F.S., to authorize the governing body of certain counties<sup>1</sup> to levy a discretionary surtax on documents for the purpose of establishing and financing a Home Ownership Assistance Loan Trust Fund. Revenues in the fund were to be used to assist low and moderate income families in the purchase of a home or an apartment. Not less than 1/2 of the funds were to be used to assist low-income families, defined as families whose income did not exceed 80 percent of the median income for the area. The remaining funds could be used to assist families whose income was in excess of 80 percent, but not more than 140 percent, of the median income for the area. The surtax could not exceed the rate of \$0.45 per \$100 or fractional part thereof, and could apply only to documents taxable under s. 201.01, except that no surtax could be imposed on a deed conveying a single-family residence, identified as a detached dwelling, a condominium unit, or a unit held through stock ownership or membership representing a proprietary interest in a corporation owning a fee or a leasehold initially in excess of 98 years.

The governing body was directed to adopt an ordinance to levy the discretionary surtax and create the trust fund. The ordinance was required to establish the policies and procedures of the assistance program. The county was directed to deposit revenues from the surtax into the trust fund to be used only for the purchase of a home or an apartment, or the rehabilitation of an existing home or apartment. The surtax could not be used for rent subsidies or grants.

Section 201.031, F.S., was created to establish the discretionary surtax and require counties levying the surtax to submit a financial report (under s. 218.32, F.S.) showing the revenues and expenses of the trust fund. The Department of Revenue was directed to distribute all surtaxes collected within each county to that county's governing authority. The act was scheduled to sunset on October 1, 1993.

In 1984, chapter 84-270, Laws of Florida, changed the name of the Home Ownership Trust Fund to the Housing Assistance Loan Trust Fund with a specified purpose of assisting in the financing of construction, rehabilitation, or purchase of housing for low and moderate income families. Funds could be used for first or second mortgages, and buying property to form housing cooperatives. Special consideration was to be given to neighborhood economic development programs of Community Development Corporations. Not more than 1/2 of the revenues collected each year could be used to finance new construction.

In 1989, the Legislature enacted chapter 89-252, Laws of Florida, to provide that the discretionary surtax program will sunset on October 1, 2011. In 1992, the Legislature enacted chapter 92-317, Laws of Florida, to provide that a portion of the discretionary surtax revenues deposited into the Housing Assistance Trust Fund could be deposited into the Home Investment Trust Fund of the county as defined by and created under the requirements of federal law. These set-aside funds are to be used to finance the construction, rehabilitation, or purchase of housing for low-income and moderate-income families and to fund any local matching contributions required under federal law.

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<sup>1</sup> Counties that meet the definition of "county" in s. 125.011(1), F.S., which defines "county" as "any county operating under a home rule charter adopted pursuant to ss. 10, 11, and 24, Art. VIII of the Constitution of 1885, as preserved by Art. VIII, s. 6(e) of the Constitution of 1968, which county, by resolution of its board of county commissioners, elects to exercise the powers herein conferred. Use of the "county" within the above provisions shall include "board of county commissioners" of such county." Only Miami-Dade County meets this definition.

The income restrictions and the cap on the discretionary surtax remain unchanged since 1983.

### **Miami-Dade County Affordable Housing Documentary Surtax Program**

The discretionary surtax imposed by Miami-Dade County is contained in section 29-7 of the Code of Miami-Dade County, and is known as the "Metropolitan Dade County Documentary Surtax Ordinance." The ordinance provides that the surtax be assessed at the full rate of \$.045 per \$100 of value on deeds and instruments transferring real property with the exception of documents transferring title to a single-family residence. The ordinance also contains the Miami-Dade County Housing Assistance Loan Trust Fund and establishes the purposes for which surtax revenues may be used.

Miami-Dade County reports that over the past five years, the surtax program has provided more than \$179 million for the construction, rehabilitation, and purchase of housing for low-income and moderate-income families, including \$29 million for 652 homeownership loans.

### **Local Housing Assistance Plans**

Subsection (1) of s. 420.9075, F.S., requires each county or eligible municipality participating in the State Housing Initiatives Partnership (SHIP) program to develop and implement a local housing assistance plan. The plan must be created to provide affordable residential units available to very-low, low, and moderate income persons. The plan must also address the special housing needs of the homeless, the elderly, and migrant farmworkers, as well as other persons who may need special housing assistance. The plans are also required to include definitions for essential service personnel such as teachers and educators, police and fire personnel, health care personnel, skilled building trades personnel, and may include other job categories. Also, local governments are encouraged to develop a strategy within the assistance plan to recruit and retain essential service personnel, and a strategy to address the needs of persons deprived of affordable housing due to the closure of a mobile home park or the conversion of affordable rental units into condominiums.

Subsection (1) of s. 420.9075, F.S., requires that each county or eligible municipality participating in the SHIP program submit an annual report to the Florida Housing Finance Corporation by September 15th of each year. The report must include the following:

- The number of households served by income category, age, family size, race, and special needs.
- The number of units and average cost of producing units under each assistance strategy included in the plan.
- The average area purchase price of single-family units and the amount of rent charged based on unit size.
- The number of mortgages, the average mortgage rate, and the number of defaults by income category.
- A description of the status of implementing of each strategy contained in the assistance plan.
- Support services available to residents.

- The sales price or value of the housing produced broken down into percentages financed by the local housing distribution, other public funds, and private resources.
- Anything else considered significant by the reporting entity.

### III. Effect of Proposed Changes:

**Section 1** amends section 3 of chapter 83-220, Laws of Florida, as amended by chapter 84-270, Laws of Florida, and section 1 of chapter 89-252, Laws of Florida, to provide that the discretionary surtax on documents will stand repealed on October 1, 2031.

**Section 2** amends s. 201.031, F.S., to require the following:

- Each county that levies the surtax must retain an independent outside auditor to conduct an annual financial audit of the surtax revenues and expenditures. The cost of the audit may not be considered an administrative cost.
- The governing body of a county implementing the surtax shall, by resolution, adopt a housing plan every 3 years. The housing plan must include provisions which are substantially similar to the requirements of the local housing assistance plan required in s. 420.9075(1), F.S.
- The staff or entity with authority to implement the housing plan must prepare and submit an annual report to the governing body. The report must contain similar data to that required by the Florida Housing Finance Corporation in annual reports submitted by local governments who participate in the State Housing Initiatives Partnership program and who also implement a local housing assistance plan.

**Section 3** provides that the act shall take effect upon becoming a law.

### IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

### V. Fiscal Impact Statement:

A. Tax/Fee Issues:

Under current law, the discretionary surtax on documents imposed pursuant to the provisions of chapter 83-220, L.O.F., as amended, ends in 2011. Section 201.0205, F.S., provides that a statewide 10-cent per \$100 increase in the documentary stamp tax levied

in 1992 does not apply to a county that has implemented the discretionary surtax. If the discretionary surtax ended in 2011, the statewide 10-cent per \$100 tax would then apply to that county and the revenue would largely be distributed to the General Revenue Fund.

The Revenue Estimating Conference developed a consensus estimate on March 21, 2008. It determined that passage of the bill would have a negative recurring impact to the State of \$24.9 million and a negative cash impact to the State in fiscal year 2011-2012 of \$27.9 million. It also determined that passage of the bill would have a positive recurring impact to local government of \$28.9 million and a positive cash impact to local government of \$28.9 million in fiscal year 2011-2012.

**B. Private Sector Impact:**

Persons who sell and buy real estate will either pay the discretionary surtax on documents if assessed by local government or the statewide tax. The impact of the bill is that it will maintain the current revenue distribution to local government.

**C. Government Sector Impact:**

The committee substitute provides that Miami-Dade County may not use more than 10 percent of surtax revenues collected to administer the program.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Additional Information:**

**A. Committee Substitute – Statement of Substantial Changes:**  
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

**CS by Community Affairs Committee on March 19, 2008:**

The committee substitute provides for the repeal of the surtax on October 1, 2031, requires annual financial audits of surtax revenues and expenditures, provides for the adoption of a housing plan every 3 years, requires an annual report on the housing assistance loan program and limits administrative costs to no more than 10 percent.

**B. Amendments:**

None.