

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.)

Prepared By: The Professional Staff of the Community Affairs Committee

BILL: SB 1960

INTRODUCER: Senator Gelber

SUBJECT: The Discretionary Surtax on Documents

DATE: March 12, 2009 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Wolfgang	Yeatman	CA	Favorable
2.			FT	
3.			GA	
4.			WPSC	
5.				
6.				

I. Summary:

The bill:

- 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;
- describes how the funds are to be allotted between the Department of Revenue’s administrative costs, homeownership assistance, and rental housing units;
- defines homeownership assistance;
- creates a housing assistance voucher program;
- allows the owner(s) of an artificial legal entity to elect to transfer property to the entity without paying taxes on the transfer, but instead to pay a tax on the fair market value of the real property upon the subsequent change in any ownership interest; and
- requires counties that levy the surtax to:
 - adopt a housing plan every 3 years
 - have adopted an affordable housing element of its comprehensive plan
 - have a report made for the county’s governing body that explains how the housing assistance program is being implemented.

Under current law, the imposition of the discretionary surtax precludes imposition of a 10-cent increase in the statewide documentary stamp tax adopted in 1992.¹ As a result, passage of the bill would have a negative recurring impact to state funds but a positive recurring impact to local government funds.

¹ Section 201.0205, F.S.

The bill substantially amends s. 3, ch. 83-220 of the Laws of Florida.

This bill substantially amends the following sections of the Florida Statutes:
125.0167, 201.02, 201.031.

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 counties² 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, F.S., 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.

² 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.

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.

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.

The Documentary Stamp Tax

There is a state documentary tax on writings conveying real property.³ The Florida documentary stamp tax is described as an excise tax on particular transactions as well as a tax on the documents themselves rather than the underlying transactions.⁴ In 2005, *Crescent Miami Center, LLC v. Florida Department of Revenue* held that the transfer of property between a grantor and its wholly owned grantee, absent any exchange of value, is without consideration or a purchaser and thus not subject to the documentary stamp tax.⁵ The court relied on a previous decision that held that a mere change in the form of ownership "is not sufficient consideration to meet the statute's requirements. Furthermore, since there is no consideration for such transfers and thus no 'exchange in value,' there is no purchaser."⁶

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

³ Section 201.02(1), Fla. Stat.; Fla. Admin. Code R. 12B-4.011(1).

⁴ See Fla. Jur. Taxation § 2211 (citing *Choctawhatchee Elec. Co-op., Inc. v. Green*, 132 So. 2d 556 (Fla. 1961) ; *State ex rel. Peninsular Tel. Co. v. Gay*, 90 So. 2d 132 (Fla. 1956); *Plymouth Citrus Growers Ass'n v. Lee*, 157 Fla. 893, 27 So. 2d 415 (1946) ; *Department of Revenue v. Citizens Nat. Bank of Leesburg*, 618 So. 2d 252 (Fla. Dist. Ct. App. 5th Dist. 1992); *Hialeah, Inc. v. Department of Revenue*, 380 So. 2d 562 (Fla. Dist. Ct. App. 3d Dist. 1980).

⁵ 903 So.2d 913 (Fla. 2005).

⁶ *Crescent Miami Center, LLC v. Florida Dept. of Revenue*, 903 So.2d 913 (Fla. 2005) (quoting *Florida Dept. of Revenue v. De Maria*, 338, So2d 838, (Fla. 1976))(internal citations omitted).

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 section 1 of 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. 125.0167, F.S.

The bill specifies how surtax funds are to be allotted. No more than 10 percent of surtax revenues collected by the Department of Revenue and remitted to the county in any fiscal year may be used for administrative costs. No less than 35 percent is to be used for homeownership assistance. No less than 35 percent is to be used for rental housing units. The remaining amount may be allocated to provide for homeownership assistance or rental housing unity, at the discretion of the county.

The bill defines homeownership assistance to mean assisting low-income and moderate-income families in purchasing a home as their primary residence, including, but not limited to, reducing the cost of the home with below-market construction financing, the amount of down payment and closing costs paid by the borrower, or the mortgage payment to an affordable amount for the

purchaser or using any other financial assistance measure laid out in the Florida Homeownership Assistance Program.⁷ The Florida Homeowner Assistance Program is the state program that allows Florida Housing Finance Corporation to provide low interest loans and loan loss insurance.⁸

The bill provides that the local government receiving the surtax funds can only use surtax funds to rehabilitate its own property after the majority of the governing body determines that no other sources of funds are available.

The bill provides a scheme that enables an employer who purchases property subject to the discretionary surtax to file for housing choice assistance vouchers. If the employer files for this allocation, the employer can receive housing vouchers for its employees. The value of the vouchers cannot exceed 50 percent of the amount of the discretionary surtax the employer paid. The vouchers can be used for down payment assistance for the purchase of a single-family residence by low-income or moderate-income persons within the county and within a 5-mile radius of the purchasing employer. The voucher can be used by an employee of the purchasing employer or a business directly affiliated with the purchasing employer if that employee or business is prequalified for a mortgage loan by a certified lending institution. Any voucher not distributed to and redeemed by an employee within one year may not be used for housing choice assistance. Housing assistance paid pursuant to the housing choice assistance voucher program that is expended in a given year is included in the calculation for determining the percentage of discretionary surtax funds used for homeownership purposes for that year.

The Office of Program Policy Analysis and Government Accountability shall review the discretionary surtax by June 30, 2012, and every 5 years thereafter.

Section 3 amends s. 201.02, F.S., governing the state documentary stamp tax.

The bill adds the word “documents” to the list of taxable writings that convey real property. The bill also includes in the definition of “consideration” any increase or decrease in the value of any ownership interest in a grantee or grantor artificial legal entity or any other artificial legal entity. This definition of consideration modifies the decision in *Crescent Miami Center, LLC v. Florida Department of Revenue*⁹ to clarify that the Legislature intends to include the change in value of any ownership interest in a grantee or grantor artificial legal entity is consideration.

However, if a document that affects an interest in real property is transferred between the owner(s) of an artificial legal entity and the entity itself, there is a mere change in ownership, and the only consideration given is an increase or decrease in the value of any ownership interests in the grantee or grantor, then the parties to the transaction may elect to not make payment of the tax due but instead pay a tax on the fair market value of the real property upon the subsequent change/transfer in any ownership interest in the property. When such an election has been made, no tax shall apply to the subsequent transfer of the ownership interest when the ownership interest is simply being returned by the grantee to the identical grantor(s).

⁷ Section 420.5088, F.S.

⁸ Section 420.5088, F.S.

⁹ 903 So.2d 913 (Fla. 2005).

Section 4 amends s. 201.031, F.S.

The bill states that 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 bill also requires that the county have adopted the affordable housing element that complies with s. 163.3177(6)(f). F.S.

The bill requires the staff or entity with authority to implement the housing plan to 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 5 provides that the act shall take effect July 1, 2009, and shall apply to transfers of property for which the first transfer between an owner or owners of an artificial legal entity and that entity occurs after the effective date of this act.

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.

Although the Revenue Estimating Conference has not evaluated the financial impact of SB 1960, a similar bill (SB 1492) was examined by the Revenue Estimating Conference on March 21, 2008. It determined that passage of SB 1492 in 2008 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. The bill's voucher program should make it easier for employers to assist their low-income and medium-income employees find housing closer to their work.

C. Government Sector Impact:

The bill would require county employees to track and report how the housing assistance program is being implemented. It would also require the county to implement a voucher 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.)

None.

B. Amendments:

None.