

By Senator Gelber

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1 A bill to be entitled
2 An act relating to the discretionary surtax on
3 documents; amending s. 3, ch. 83-220, Laws of Florida,
4 as amended; extending a future repeal date of
5 provisions authorizing counties to levy a
6 discretionary surtax on documents; amending s.
7 125.0167, F.S.; limiting the percentage of surtax
8 revenues that may be used for administrative costs;
9 specifying a minimum amount of surtax revenues to be
10 used for housing for certain low-income and moderate-
11 income families; requiring an affirmative vote of a
12 local government governing body to rehabilitate
13 certain governmentally owned housing; authorizing
14 certain counties to create by ordinance a housing
15 choice assistance voucher program for the purpose of
16 down payment assistance; providing definitions;
17 providing eligibility requirements for such vouchers;
18 authorizing purchasing employers to file for
19 allocations for such vouchers; limiting allocations;
20 requiring distribution of allocations to employees in
21 the form of such vouchers; prohibiting use of
22 allocations for such vouchers if not awarded within a
23 certain period after certain documentary stamps taxes
24 are collected; requiring the Office of Program Policy
25 Analysis and Government Accountability to conduct a
26 continuing review of the discretionary surtax program
27 operated by counties; requiring reports to the
28 Legislature; amending s. 201.02, F.S.; revising
29 criteria determining liability for payment of the tax;

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30 providing requirements and methods for making an
31 election regarding payment of tax under specified
32 circumstances; amending s. 201.031, F.S.; expanding
33 requirements for counties levying the discretionary
34 surtax to include housing plan, affordable housing
35 element, and annual reporting requirements; providing
36 for application; providing an effective date.

37
38 Be It Enacted by the Legislature of the State of Florida:

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40 Section 1. Section 3 of chapter 83-220, Laws of Florida, as
41 amended by section 1 of chapter 84-270, Laws of Florida, and
42 section 1 of chapter 89-252, Laws of Florida, is amended to
43 read:

44 Section 3. Sections 1 and 2 of chapter 83-220, Laws of
45 Florida, as amended by this act, are repealed effective October
46 1, 2031 ~~2011~~.

47 Section 2. Section 125.0167, Florida Statutes, is amended
48 to read:

49 125.0167 Discretionary surtax on documents; adoption;
50 application of revenue.—

51 (1) Pursuant to the provisions of s. 201.031, the governing
52 authority in each county, as defined by s. 125.011(1), is
53 authorized to levy a discretionary surtax on documents for the
54 purpose of establishing and financing a Housing Assistance Loan
55 Trust Fund to assist in the financing of construction,
56 rehabilitation, or purchase of housing for low-income and
57 moderate-income families. No less than 50 percent of the funds
58 used in each county to provide such housing assistance shall be

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59 for the benefit of low-income families. For the purpose of this
60 section, "low-income family" means a family whose income does
61 not exceed 80 percent of the median income for the area, and
62 "moderate-income family" means a family whose income is in
63 excess of 80 percent but less than 140 percent of the median
64 income for the area. For purposes of this section, the term
65 "housing" is not limited to single-family, detached dwellings.
66 The rate of the surtax shall not exceed the rate of 45 cents for
67 each \$100 or fractional part thereof of the consideration
68 therefor. Such surtax shall apply only to those documents
69 taxable under s. 201.02, except that there shall be no surtax on
70 any document pursuant to which the interest granted, assigned,
71 transferred, or conveyed involves only a single-family
72 residence. Such single-family residence may be a condominium
73 unit, a unit held through stock ownership or membership
74 representing a proprietary interest in a corporation owning a
75 fee or a leasehold initially in excess of 98 years, or a
76 detached dwelling.

77 (2) The levy of the discretionary surtax and the creation
78 of a Housing Assistance Loan Trust Fund shall be by ordinance
79 which shall set forth the policies and procedures of the
80 assistance program. The ordinance shall be proposed at a regular
81 meeting of the governing authority at least 2 weeks prior to
82 formal adoption. Formal adoption shall not be effective unless
83 approved on final vote by a majority of the total membership of
84 the governing authority. The ordinance shall not take effect
85 until 90 days after formal adoption.

86 (3) The county shall deposit revenues from the
87 discretionary surtax in the Housing Assistance Loan Trust Fund

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88 of the county, except that a portion of such revenues may be
89 deposited into the Home Investment Trust Fund of the county as
90 defined by and created pursuant to the requirements of federal
91 law. The county shall use the revenues only to help finance the
92 construction, rehabilitation, or purchase of housing for low-
93 income families and moderate-income families, to pay necessary
94 costs of collection and enforcement of the surtax, and to fund
95 any local matching contributions required pursuant to federal
96 law. For purposes of this section, authorized uses of the
97 revenues include, but are not limited to, providing funds for
98 first and second mortgages and acquiring property for the
99 purpose of forming housing cooperatives. Special consideration
100 shall be given toward using the revenues in the neighborhood
101 economic development programs of community development
102 corporations. No more than 50 percent of the revenues collected
103 each year pursuant to this section may be used to help finance
104 new construction as provided herein. The proceeds of the surtax
105 shall not be used for rent subsidies or grants.

106 (4) No more than 10 percent of surtax revenues collected
107 under this section by the Department of Revenue and remitted to
108 the county in any fiscal year may be used for administrative
109 costs.

110 (5) (a) Notwithstanding the provisions of subsection (3), of
111 the discretionary surtax revenues collected by the Department of
112 Revenue remaining after any deduction for administrative costs
113 as provided in subsection (4), no less than 35 percent shall be
114 used to provide homeownership assistance for low-income and
115 moderate-income families, and no less than 35 percent shall be
116 used for construction, rehabilitation, and purchase of rental

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117 housing units. The remaining amount may be allocated to provide
118 for homeownership assistance or rental housing units, at the
119 discretion of the county. Any funds allocated for homeownership
120 assistance or rental housing units that are not committed at the
121 end of the fiscal year shall be available for homeownership
122 assistance or construction, rehabilitation, and purchase of
123 rental housing units in subsequent years.

124 (b) For purposes of this subsection, the term
125 "homeownership assistance" means assisting low-income and
126 moderate-income families in purchasing a home as their primary
127 residence, including, but not limited to, reducing the cost of
128 the home with below-market construction financing, the amount of
129 down payment and closing costs paid by the borrower, or the
130 mortgage payment to an affordable amount for the purchaser or
131 using any other financial assistance measure set forth in s.
132 420.5088.

133 (6) Rehabilitation of housing owned by a recipient
134 government may be authorized only after a determination approved
135 by a majority of the governing body that no other sources of
136 funds are available.

137 (7) (a) The governing body of each county as defined in s.
138 125.011(1) may, by county ordinance and pursuant to procedures
139 and requirements provided by such ordinance, create a housing
140 choice assistance voucher program.

141 (b) For purposes of this subsection, the term:

142 1. "Housing choice assistance voucher" means the document
143 used to access assistance paid by the county from the
144 discretionary surtax balance in the Housing Assistance Trust
145 Fund to a prospective purchaser of a single-family residence

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146 which must be the purchaser's homestead.

147 2. "Purchasing employer" means a business or business
148 entity that has acquired real property within the county and
149 paid the surtax due as a result of the acquisition of that
150 property pursuant to this section.

151 (c) Housing choice assistance vouchers shall be used for
152 down payment assistance for the purchase of a single-family
153 residence by low-income or moderate-income persons within the
154 county and within a 5-mile radius of the purchasing employer who
155 are:

156 1. Actively employed by the purchasing employer or by a
157 business entity directly affiliated with the purchasing
158 employer.

159 2. Prequalified for a mortgage loan by a certified lending
160 institution.

161 (d) Upon payment of the discretionary surtax pursuant to
162 this section, the purchasing employer may file for an allocation
163 for housing choice assistance vouchers from the county in an
164 amount not to exceed 50 percent of the amount of the
165 discretionary surtax paid. The purchasing employer shall
166 distribute the allocation to employees in the form of housing
167 choice assistance vouchers pursuant to rules and procedures
168 established for the program.

169 (e) Any housing choice assistance voucher allocation not
170 distributed to employees and redeemed by an employee within 1
171 year after the date the discretionary surtax is paid may not be
172 used for housing choice assistance vouchers under this
173 subsection.

174 (f) Any housing assistance paid pursuant to the housing

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175 choice assistance voucher program shall be included in the
176 calculation determining the percentage of discretionary surtax
177 funds used for homeownership purposes during the year in which
178 the surtax funds for such purposes are expended.

179 (8) By June 30, 2012, and every 5 years thereafter, the
180 Office of Program Policy Analysis and Government Accountability
181 shall review the discretionary surtax program operated by
182 counties under this section and shall provide a report to the
183 President of the Senate and the Speaker of the House of
184 Representatives.

185 Section 3. Subsection (1) of section 201.02, Florida
186 Statutes, is amended to read:

187 201.02 Tax on deeds and other instruments relating to real
188 property or interests in real property.—

189 (1) (a) On deeds, instruments, documents, or writings
190 whereby any lands, tenements, or other real property, or any
191 interest therein, shall be granted, assigned, transferred, or
192 otherwise conveyed to, or vested in, the purchaser or any other
193 person by his or her direction, on each \$100 of the
194 consideration therefor the tax shall be 70 cents except as
195 provided in paragraph (b). When the full amount of the
196 consideration for the execution, assignment, transfer, or
197 conveyance is not shown in the face of such deed, instrument,
198 document, or writing, the tax shall be at the rate of 70 cents
199 for each \$100 or fractional part thereof of the consideration
200 therefor except as provided in paragraph (b). For purposes of
201 this section, consideration includes, but is not limited to, the
202 money paid or agreed to be paid; the discharge of an obligation;
203 ~~and~~ the amount of any mortgage, purchase money mortgage lien, or

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204 other encumbrance, whether or not the underlying indebtedness is
205 assumed; and any increase or decrease in the value of any
206 ownership interest in a grantee or grantor artificial legal
207 entity or any other artificial legal entity. If the
208 consideration paid or given in exchange for real property or any
209 interest therein includes property other than money, it is
210 presumed that the consideration is equal to the fair market
211 value of the real property or interest therein.

212 (b) If:

213 1. A deed, instrument, document, or writing grants,
214 assigns, transfers, or conveys any interest in real property
215 between an owner or owners of an artificial legal entity and
216 that entity, or between two artificial legal entities if those
217 entities are owned by the same person or persons;

218 2. There is a mere change in form of ownership without
219 effecting any change in any beneficial ownership interests; and

220 3. The only consideration given is an increase or decrease
221 in the value of any ownership interests in the grantee or
222 grantor artificial legal entity or any other artificial legal
223 entity,

224
225 in lieu of paying the tax due on such deed, instrument,
226 document, or writing, the parties to the grant, assignment,
227 transfer, or conveyance may make an election, on or before the
228 date of the grant, assignment, transfer, or conveyance, on a
229 form issued by the department, to not make payment of the tax
230 due on such deed, instrument, document, or writing but instead
231 to pay a tax on the fair market value of the real property upon
232 the subsequent change in any ownership interest in the real

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233 property or the subsequent transfer of any interest in the real
234 property. The form on which such election is made shall be
235 attached to and recorded with the deed, instrument, document, or
236 writing that grants, assigns, conveys, or otherwise transfers
237 any interest in the real property. However, when such an
238 election has been made, no tax shall apply to the subsequent
239 transfer of the ownership interest in the artificial legal
240 entity, or the subsequent transfer of an interest in the real
241 property, when the subsequent transfer is limited to a return of
242 the identical interest in the real property by the grantee to
243 the identical grantor or grantors resulting in no change in the
244 beneficial ownership interests originally held in the real
245 property.

246 Section 4. Section 201.031, Florida Statutes, is amended to
247 read:

248 201.031 Discretionary surtax; administration and
249 collection; Housing Assistance Loan Trust Fund; reporting
250 requirements.-

251 (1) Each county, as defined by s. 125.011(1), may levy,
252 subject to the provisions of s. 125.0167, a discretionary surtax
253 on documents taxable under the provisions of s. 201.02, except
254 that there shall be no surtax on any document pursuant to which
255 the interest granted, assigned, transferred, or conveyed
256 involves only a single-family residence. The ~~Such~~ single-family
257 residence may be a condominium unit, a unit held through stock
258 ownership or membership representing a proprietary interest in a
259 corporation owning a fee or a leasehold initially in excess of
260 98 years, or a detached dwelling.

261 (2) All provisions of chapter 201, except s. 201.15, ~~shall~~

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262 apply to the surtax. The Department of Revenue shall pay to the
263 governing authority of the county which levies the surtax all
264 taxes, penalties, and interest collected under this section less
265 any costs of administration.

266 (3) Each county that ~~which~~ levies the surtax shall:

267 (a) Include in the financial report required under s.
268 218.32 information showing the revenues and the expenses of the
269 trust fund for the fiscal year.

270 (b) Adopt a housing plan every 3 years which includes
271 provisions substantially similar to the plans required in s.
272 420.9075(1).

273 (c) Have adopted an affordable housing element of its
274 comprehensive land use plan which complies with s.
275 163.3177(6) (f).

276 (d) Require by resolution that the staff or entity that has
277 administrative authority for implementing the housing plan
278 prepare and submit to the county's governing body an annual
279 report substantially similar to the annual report required in s.
280 420.9075(10).

281 Section 5. This act shall take effect July 1, 2009, and
282 shall apply to transfers of property for which the first
283 transfer between an owner or owners of an artificial legal
284 entity and that entity occurs after the effective date of this
285 act.