

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 Policy and Steering Committee on Ways and Means

BILL: CS/CS/CS/SB 2430 and SB 1960

INTRODUCER: Policy and Steering Committee on Ways and Means and Finance and Tax Committee and Judiciary Committee and Senators Lawson and Gelber

SUBJECT: Excise Tax on Documents

DATE: April 19, 2009 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Daniell	Maclure	JU	Fav/CS (SB 24300
2.	Wolfgang	Yeatman	CA	Favorable (SB 1960)
3.	ODonnell	McKee	FT	Fav/Combined CS
4.	McVaney	Kelly	WPSC	Fav/CS
5.				
6.				

Please see Section VIII. for Additional Information:

- | | | |
|------------------------------|-------------------------------------|---|
| 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:

This legislation extends the authority of Miami-Dade County to impose a discretionary excise tax on documents subject to tax pursuant to Chapter 201, F.S. Absent the extension of the surtax, the tax rate on all deeds in Miami-Dade County will increase from \$0.60 per \$1000 to \$0.70 per \$1000, effective on October 1, 2011. The bill further provides for the imposition of an excise tax on the transfer of an ownership interest in certain entities that own real property. It also clarifies the taxable consideration subject to documentary stamp tax in certain transfers of real property, known as “short sales”.

Surtax Provision Extension:

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 DOR’s administrative costs, homeownership assistance, and rental housing units;
- defines homeownership assistance;
- creates a housing assistance voucher program;

- requires counties that levy the surtax:
 - to adopt a housing plan every 3 years
 - to have adopted an affordable housing element of its comprehensive plan
 - to have a report made for the county's governing body that explains how the housing assistance program is being implemented.

Transfers by a Real Property Entity are Subject to Tax:

The bill provides that it is the Legislature's intent to reverse the Florida Supreme Court's *Crescent* opinion relating to the application of the excise tax on documents to certain transactions involving legal entities. The bill requires that the documentary stamp tax is due on transfers of real property between persons and artificial entities even if the beneficial interests of the parties remain the same. Exceptions to this rule are provided for conveyances of real property, or a portion thereof, held in an artificial entity for 3 years or more and for real property held in an artificial entity used for estate planning purposes. The exceptions do not apply to the value of any mortgage transferred.

"Short sales" Clarification:

The bill defines the term "short sale" and provides that the documentary stamp tax applies to transfers of real property pursuant to a short sale, but that the taxable consideration does not include unpaid indebtedness that is forgiven or released by a mortgagee holding a mortgage on the property.

Revenue Impact

As a result of the reauthorization of the Miami-Dade County discretionary surtax on documents, the state excise tax on deeds in Miami-Dade County will remain at \$0.60 per \$1,000 on October 1, 2011. Under current law, sunset of the surtax would automatically lead to imposition of the statewide tax rate in Miami-Dade of \$0.70 per \$1,000. The continued imposition of the discretionary surtax will, therefore, have a negative \$3.6 million annualized recurring impact to General Revenue, a negative \$4.7 million annualized impact to the State Housing Trust Fund; a negative \$0.3 million annualized impact to Local Housing Trust Fund and a positive \$9.8 million annualized impact on the Housing Assistance Trust Fund.

The impact of returning to the pre-*Crescent* decision administration of the transfer tax is estimated to be \$18.7 million for the General Revenue Fund; \$25.8 million for state trust fund revenues; and \$1.8 million for state tax distributions to local governments. On a recurring basis (beginning in FY 2010-2011), the revenue impacts are expected to be \$19.4 million for the General Revenue Fund; \$26.7 million for state trust fund revenues; and \$1.9 million for state tax distributions to local governments.

The clarification of "taxable consideration" for short sales has no revenue impact.

Appropriations Impact

The bill authorizes \$50 million in Florida Forever bonds and \$50 million in Everglades Restoration bonds. The bill appropriates roughly \$3.5 million to pay debt service on the Florida Forever bonds in FY 2009-2010 and roughly \$5 million to pay debt service on the Everglades Restoration bonds in FY 2009-2010.

This bill substantially amends sections 125.0167, 201.02, 201.031, Florida Statutes.

II. Present Situation:

Documentary Stamp Tax – Overview

The documentary stamp tax imposes an excise tax on deeds or other documents that convey an interest in Florida real property.¹ The tax is calculated based on the consideration for the transfer, which includes money paid or agreed to be paid, the discharge of an obligation, and the amount of any mortgage or other encumbrance.² When first enacted in 1931, the documentary stamp tax rate was 10 cents per \$100 of consideration.³ Since that time major rate increases have occurred in 1957, 1963, 1979, 1981, 1985, 1987, 1990, 1991, and 1992.⁴ The current tax rate is 70 cents on each \$100 of consideration for deeds, instruments, or writings under which lands, tenements, or other real property, or any interest in the property, are granted, assigned, transferred, conveyed, or vested in a purchaser.⁵

Subsections (6) through (9) of s. 201.02, F.S., provide exemptions and limitations to imposition of the documentary stamp tax. These include:

- Transfers of real property from a nonprofit organization to specified governmental entities;
- Transfers of a marital home between spouses or former spouses as part of an action for dissolution of marriage; and
- Contracts to sell the residence of an employee relocating at his or her employer's direction, when the sales contract is between the employer and the employee.⁶

There is also a limitation applied to certain judicial sales of real property under a foreclosure order. The certificate of title issued by the clerk of court is subject to the tax; however, the amount of the tax is computed based on the amount of the highest and best bid received at the foreclosure sale.⁷

Revenue from the documentary stamp tax is divided between the General Revenue Fund and various trust funds that are used to acquire public lands or support affordable housing.⁸

Discretionary Surtax on Documents

In 1983, the Legislature enacted Ch. 83-220, Laws of Florida, creating s. 125.0167, F.S., to authorize the governing body of certain counties⁹ to levy a discretionary surtax on documents for

¹ Section 201.02(1), F.S.

² *Id.*

³ Office of Economic and Demographic Research, The Florida Legislature et al., *Florida Tax Handbook, Including Fiscal Impact of Potential Changes*, 56 (2008), available at <http://edr.state.fl.us/reports/taxhandbooks/taxhandbook2008.pdf> (last visited Feb. 9, 2009).

⁴ *Id.*

⁵ Section 201.02(1), F.S. A similar tax is also levied in s. 201.08, F.S., on a different tax base: certificates of indebtedness, promissory notes, wage assignments, and retail charge account agreements. See *Florida Tax Handbook*, *supra* note 3, at 56.

⁶ Section 201.02(6)-(8), F.S.

⁷ Section 201.02(9), F.S.

⁸ *Florida Tax Handbook*, *supra* note 3, at 56.

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 DOR 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, Ch. 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 Ch. 89-252, Laws of Florida, to provide that the discretionary surtax program will sunset on October 1, 2011. In 1992, the Legislature enacted Ch. 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.

⁹ 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.

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.

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 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.

Transfer Tax

In 2005, the Florida Supreme Court accepted jurisdiction over the pending stamp tax disagreements that had developed between district courts.¹⁰ The facts at issue in *Crescent Miami*

¹⁰ Compare, *Kuro, supra, with Crescent Miami Center, LLC, supra* at 857 So.2d 904 (Fla. 3rd DCA 2003); *see also, Mubben-Lamar, L.P. v. Dep't. of Rev.*, 763 So.2d 1209 (Fla. 1st DCA 2000).

Center, LLC v. Florida Department of Revenue, 903 So.2d 913 (Fla. 2005), were that Crescent Real Estate Equities formed Crescent Miami Center, LLC, and then transferred 99.9 percent of its interest in Crescent Miami Center to a subsidiary limited partnership (Crescent Funding). The remaining 0.1 percent interest was transferred to the wholly owned Crescent Management. On the same day, Crescent Management transferred that 0.1 percent interest to Crescent Funding so that Crescent Funding became the sole owner of Crescent Miami Center.

The Court found that the “transfer was made to separate the property from Crescent Equities’ other assets in order to facilitate future unsecured financing.”¹¹ The court ruled “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.”¹²

The opinion sanctions the transfer of unencumbered real estate into family limited partnerships for estate planning purposes. It also allows small businesses to limit risk by segregating assets into separate legal entities without paying stamp tax on the transfer.¹³ However, *Crescent* also eliminates stamp tax when a single member LLC owning real property sells its membership interest to an unrelated party.¹⁴ A deed may be recorded after a merger without payment of the tax.

As a result, widespread structuring of real property transfers to avoid the stamp tax has reduced the importance of a significant revenue source that supports the General Revenue Fund. Given the judicial sanction for tax planning under current law¹⁵ and the relatively low cost to structure transfers free from documentary stamp tax, the use of tax planning can be expected to increase. A growing percentage of high value Florida real property conveyances are expected to take advantage of the planning opportunity offered by the Court’s opinion. Therefore, unchecked by statutory amendment, tax planning can be expected to reduce future stamp tax receipts.

During the 2008 session, legislation (CS/CS/SB 2040, 2008) was approved by the Senate to address the *Crescent Miami* opinion, but it died in the House without being heard. The bill was not intended to overturn *Crescent Miami*. It was intended to limit the potential impact of the opinion. It would have allowed real property owners to shift their property into their own business entities and estate planning vehicles without requiring them to pay documentary stamp tax as if they were selling their property to themselves.

Short Sales

People are engaging in “short sales”¹⁶ more frequently because of recent changes in the real estate market. In a short sale situation, lenders agree to release the lien on the property for less

¹¹ *Id.* at 914.

¹² *Id.* at 919.

¹³ *See*, TAA No. 06B4-003 (5/11/2006).

¹⁴ Vogelsang & Rappoport, *Crescent—Did the Florida Supreme Court Effectively Repeal the Documentary Stamp Tax on Transfers of Real Estate?*, *The Florida Bar Journal*, Volume 79, No. 9, p.44 (October, 2005); Connery, *supra*.

¹⁵ “Tax planning” is the use of a method – typically stressing form over substance - to legally avoid tax and is contrasted with an illegal tax evasion scheme.

¹⁶ A “short sale” is the “sale of real property for a price that is less than the owner’s outstanding debt secured by the property.” Florida Dep’t of Revenue, *Technical Assistance Advisement No. 08B4-006, Documentary Stamp Tax – “Short Sales” of Florida Real Property*, 1 (Sept. 23, 2008), available at <https://taxlaw.state.fl.us/wordfiles/DOC%20TAA%2008B4-006.pdf> (last visited Feb. 9, 2009).

than the full amount of the seller's debt.¹⁷ When this happens there is sometimes a question about measuring the consideration for purposes of determining the documentary stamp tax pursuant to s. 201.02, F.S. On September 23, 2008, the DOR issued a technical assistance advisement in response to a request for guidance from the Florida Association of Realtors on how to in determine the correct tax on deeds for short sales in Florida. In this advisement, DOR opined:

The lender's agreement to satisfy its lien and cancel a portion of the seller's debt is a separate, unrelated transaction between the seller and the lender. The seller and the purchaser alone have entered into their contract for the transfer of real property. The lender is not related to either one of those parties and is not bound by any aspect of the contract between the seller and the purchaser.

Independently, the lender has agreed to satisfy its lien and cancel a portion of the seller's debt. The lender is not related to or controlled in any way by either party, and neither the lender nor any of its related parties is receiving any interest in the real property. The lender has merely evaluated its risk as a creditor of the seller and the decreasing value of the seller's collateral, and the lender has made a business decision to cancel a portion of the seller's debt in return for the current payment of a lesser amount. Section 201.02(1), Florida Statutes, does not clearly impose tax merely because the seller happens to be a party to both transactions.

...

The amount paid or given by the purchaser, or paid or given by another on behalf of the purchaser, for an interest in Florida real property is consideration and subject to tax. However, in the transactions described above, when the lender cancels indebtedness of the seller, that cancellation is not included in determining the amount of consideration subject to tax under Section 201.02, Florida Statutes.¹⁸

The DOR limited its holding to the specific facts provided in the request from the Florida Association of Realtors, and DOR stated that the Legislature may wish to clarify how the documentary stamp tax is to be applied in short sale situations.

Distribution of Documentary Stamp Taxes

Section 201.15, F.S., sets forth the distribution of the documentary stamp taxes. The first proceeds of the tax revenues are distributed to the General Revenue Fund as service charges under s. 215.20, F.S., or retained by the Department of Revenue as the cost of collection and enforcement of the taxes. The remaining revenues are distributed as follows:

- 63.31% to pay debt service on Preservation 2000 bonds, Florida Forever bonds, Everglades Restoration bonds. Any amount not needed for these payments is deposited into the General Revenue Fund.

¹⁷ *Id.* at 2.

¹⁸ *Id.* at 3-4.

- The lesser of 7.56% or \$107 million to the Land Acquisition Trust Fund;
- The lesser of 1.94% or \$26 million to the Land Acquisition Trust Fund for coastal lands;
- The lesser of 4.2% or \$60.5 million to the Water Management Lands Trust Fund;
- 3.52% to the Conservation and Recreation Lands Trust Fund;
- The lesser of 2.28% or \$34.1 million to the Invasive Plant Control Trust Fund;
- The lesser of 0.5% or \$9.3 million to the State Game Trust Fund;
- 0.5% divide equally between the Water Quality Assurance Trust Fund and the General Inspections Trust Fund;
- The lesser of 7.53% or \$107 million to the State Housing Trust Fund;
- The lesser of 8.66% or \$136 million to the State Housing Trust Fund;
- The remainder to the General Revenue Fund.

III. Effect of Proposed Changes:

Discretionary Surtax on Documents

Section 1 amends section 3 of ch. 83-220, Laws of Florida, as amended by section 1 of ch. 84-270, L.O.F., and section 1 of ch. 89-252, L.O.F., to extend the repeal of the discretionary surtax on documents from October 1, 2011 to October 1, 2031.

Section 2 amends s. 125.0167, F.S., to specify how surtax funds are to be allotted. No more than 10 percent of surtax revenues collected by the DOR 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.¹⁹ The Florida Homeowner Assistance Program is the state program that allows Florida Housing Finance Corporation to provide low interest loans and loan loss insurance.²⁰

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 method 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.

¹⁹ Section 420.5088, F.S.

²⁰ Section 420.5088, F.S.

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 makes a legislative finding that the Florida Supreme Court's *Crescent* opinion relating to the application of the excise tax on documents when a transaction involves a legal entity mistakenly interpreted the 1990 amendment to s. 201.02, F.S. There are also legislative findings that the Third District Court of Appeal's opinion in *Crescent* was consistent with the amended statute, as were the administrative rules adopted by the Department at the time. The intent is to prevent tax avoidance through the use of artificial entities to transfer beneficial ownership in real property.

Section 4 amends s. 201.02(1), F.S., to define "consideration" as including a conveyance of real property to a corporation in exchange for shares of stock, or as a capital contribution.

Section 4 adds a new subsection (11) to s. 201.02, F.S., to exempt from the documentary stamp tax a conveyance of real property between at least one natural person and a legal entity as long as the conveyance is not a precursor to the transfer of the ownership or control of an interest in the legal entity or a conveyance of real property. If a subsequent transfer of the real property or an interest in the legal entity occurs within three years, the otherwise exempt conveyance is taxable.

Section 4 adds a new subsection (12) to s. 201.02, F.S., to provide that the documentary stamp tax is not applicable to a conveyance of real property when transferred by inter vivos gift for purposes of estate planning, or when transferred by reason of the death of any person.

Consideration in a Short Sale

Section 4 adds a new subsection (13) to s. 201.02, F.S., to provide that the documentary stamp tax applies to a deed, instrument, or writing that transfers any interest in real property pursuant to a short sale. However, the taxable consideration for a short sale transfer does not include the unpaid indebtedness that is forgiven or released by a mortgagee holding a mortgage on the property.

The bill defines a short sale as the purchase and sale of real property in which:

- The grantor's (seller's) interest in the real property is encumbered by a mortgage or mortgages securing indebtedness in an aggregate amount greater than the purchase price paid by the grantee (buyer);

- A mortgagee releases the real property from its mortgage in exchange for a partial payment of less than all of the outstanding mortgage indebtedness owing to the releasing mortgagee;
- The mortgagee does not receive any interest in the property; and
- The mortgagee, grantor and grantee are engaging in an arms-length transaction.

Section 5 provides that the amendment to s. 201.01(1) is remedial.

Section 6 provides the Department with emergency rulemaking authority to implement the changes to s. 201.02, F.S., relating to short sales.

Section 7 amends s. 201.031, F.S., to require the governing body of a county implementing the surtax to adopt, by resolution, 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 8 amends s. 719.105, F.S., to correct a cross reference.

Section 9 authorizes the issuance of \$50 million of Florida Forever bonds in FY 2009-2010. The sum of \$3.5 million is appropriated to pay the debt service in FY 2009-2010.

Section 10 authorizes the issuance of \$50 million of Everglades Restoration bonds. The sum of \$4.99 million is appropriated to pay the debt service in FY 2009-2010. The sum of \$47 million of the bond proceeds are to be allocated to particular program components. \$3 million of the bond proceeds will be transferred to the Department of Agriculture and Consumer Services to implement agricultural nonpoint source controls in the Okeechobee, Caloosahatchee, and St. Lucie River watersheds.

Section 11 amends s. 201.15, F.S., to provide that all documentary stamp taxes collected by the state may be used to pay the debt service on bonds authorized before January 1, 2010. However, tax revenues necessary to pay debt service on other bonds will not be available to repay Preservation 2000 bonds, Florida Forever bonds, or Everglades Restoration bonds.

Section 12 provides that the act shall take effect July 1, 2009, and section 4 applies 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:

Surtax

Currently, sections 1 and 2 of ch. 83-220, L.O.F., which impose the discretionary surtax are repealed effective October 1, 2011. Under the bill, sections 1 and 2 of ch. 83-220, L.O.F., are extended until October 1, 2031.

Under current law, absent the extension of the surtax, there would be an automatic imposition of the statewide rate of \$0.70 per \$1,000. However, with the extension of the surtax, the state tax on deeds in Miami-Dade County will remain at \$0.60 per \$1,000. As a result, the revenue reductions for FY 2011-2012 are expected to be \$3.2 million for the General Revenue Fund; \$4.8 million for state trust funds; \$0.3 million state tax distributions to local governments. On a recurring basis (beginning in FY 2012-2013), the revenue reductions are expected to be \$3.6 million for the General Revenue Fund; \$4.7 million for state trust funds; \$0.3 million for state tax distributions to local governments. The discretionary tax is expected to generate \$9.5 million in FY 2011-2012 and \$9.8 million annually thereafter.

Transfer Tax

While no official estimate has been completed on the specific language in the bill relating to the transfer tax, language intended to have a similar impact has been evaluated. The revenue impacts for FY 2009-2010 are estimated to be \$18.7 million for the General Revenue Fund; \$25.8 million for state trust fund revenues; and \$1.8 million for state tax distributions to local governments. On a recurring basis (beginning in FY 2010-2011), the revenue impacts are expected to be \$19.4 million for the General Revenue Fund; \$26.7 million for state trust fund revenues; and \$1.9 million for state tax distributions to local governments.

Consideration for Short Sales

The changes made regarding taxable consideration for short sales are not expected to have an impact on state and local revenues.

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 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.

By enacting the administrative interpretation that the taxable consideration for a short sale transfer does not include unpaid indebtedness that is forgiven or released by the mortgagee, the bill may have a positive impact on the sale of real property.

C. Government Sector Impact:

The bill requires county employees to track and report how the housing assistance program is being implemented. It requires the county to implement a voucher program. The bill requires that a return be filed by a real property entity at the time of a transfer of beneficial ownership in real property.

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 PCS.)**CS by Policy and Steering Committee on Ways and Means on April 17, 2009:**

The committee substitute revises how the bill addresses the documentary stamp revenue loss due to the Supreme Court's decision in the *Crescent* case and it creates a new provision providing that short sales are subject to the documentary stamp tax.

The bill requires that the documentary stamp tax is due on transfers of real property between persons and artificial entities even if the beneficial interests of the parties remain the same. It provides exceptions to this rule for real property, or a portion thereof, held in an artificial entity for 3 years or more and for real property held in an artificial entity used for estate planning purposes. The exceptions do not apply to the value of any mortgage transferred.

CS by Finance and Tax on April 6, 2009:

The committee substitute combines CS/SB 2430, and SB 1960 and the short sale language also contained in CS/SB 728. The committee substitute strikes language from the bill that imposes the documentary stamp tax at the time of a transfer, or at a future point in time, at the option of the parties to the sale. Instead, it makes findings regarding legislative intent, amends s. 201.02(1), F.S., and requires the Department of Revenue to

readopt rules similar to those adopted following the 1990 statutory amendments to s. 201.02, F.S.

CS by Judiciary on March 25, 2009:

The committee substitute:

- Eliminates language from the bill which provided that, if consideration is not determinable at the time of the transfer, the consideration is presumed to equal fair market value and that the burden of proving otherwise is on the person liable for payment of the tax.
- Removes language from the bill which specified that exemptions from the documentary stamp tax must be expressly provided for in Ch. 201, F.S., and that, absent an exemption, the tax shall apply to all deeds or other documents that transfer an interest in real property.
- Revises one of the triggers for future payment of tax. Under the original bill, future payment of tax was based, in part, on a transfer of an ownership interest in the grantee artificial legal entity; under the committee substitute, it is based, in part, on a change in any ownership interest in the real property.
- Revises the effective date to specify that the act applies to property transfers for which the first transfer to an artificial entity occurs on (as well as after) the date the measure becomes a law.

B. Amendments:

None.