

Amendment No.

CHAMBER ACTION

Senate

House

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1 Representative Robaina offered the following:

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3 **Amendment (with title amendment)**

4 Remove everything after the enacting clause and insert:

5 Section 1. Section 3 of chapter 83-220, Laws of Florida,
6 as amended by section 1 of chapter 84-270, Laws of Florida, and
7 section 1 of chapter 89-252, Laws of Florida, is amended to
8 read:

9 Section 3. Sections 1 and 2 of chapter 83-220, Laws of
10 Florida, as amended by this act, are repealed effective October
11 1, 2031 ~~2011~~.

12 Section 2. Section 125.0167, Florida Statutes, is amended
13 to read:

14 125.0167 Discretionary surtax on documents; adoption;
15 application of revenue.--

16 (1) Pursuant to the provisions of s. 201.031, the
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17 governing authority in each county, as defined by s. 125.011(1),
18 is authorized to levy a discretionary surtax on documents for
19 the purpose of establishing and financing a Housing Assistance
20 Loan Trust Fund to assist in the financing of construction,
21 rehabilitation, or purchase of housing for low-income and
22 moderate-income families. No less than 50 percent of the funds
23 used in each county to provide such housing assistance shall be
24 for the benefit of low-income families. For the purpose of this
25 section, "low-income family" means a family whose income does
26 not exceed 80 percent of the median income for the area, and
27 "moderate-income family" means a family whose income is in
28 excess of 80 percent but less than 140 percent of the median
29 income for the area. For purposes of this section, the term
30 "housing" is not limited to single-family, detached dwellings.
31 The rate of the surtax shall not exceed the rate of 45 cents for
32 each \$100 or fractional part thereof of the consideration
33 therefor. Such surtax shall apply only to those documents
34 taxable under s. 201.02, except that there shall be no surtax on
35 any document pursuant to which the interest granted, assigned,
36 transferred, or conveyed involves only a single-family
37 residence. Such single-family residence may be a condominium
38 unit, a unit held through stock ownership or membership
39 representing a proprietary interest in a corporation owning a
40 fee or a leasehold initially in excess of 98 years, or a
41 detached dwelling.

42 (2) The levy of the discretionary surtax and the creation
43 of a Housing Assistance Loan Trust Fund shall be by ordinance
44 which shall set forth the policies and procedures of the

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45 assistance program. The ordinance shall be proposed at a regular
46 meeting of the governing authority at least 2 weeks prior to
47 formal adoption. Formal adoption shall not be effective unless
48 approved on final vote by a majority of the total membership of
49 the governing authority. The ordinance shall not take effect
50 until 90 days after formal adoption.

51 (3) The county shall deposit revenues from the
52 discretionary surtax in the Housing Assistance Loan Trust Fund
53 of the county, except that a portion of such revenues may be
54 deposited into the Home Investment Trust Fund of the county as
55 defined by and created pursuant to the requirements of federal
56 law. The county shall use the revenues only to help finance the
57 construction, rehabilitation, or purchase of housing for low-
58 income families and moderate-income families, to pay necessary
59 costs of collection and enforcement of the surtax, and to fund
60 any local matching contributions required pursuant to federal
61 law. For purposes of this section, authorized uses of the
62 revenues include, but are not limited to, providing funds for
63 first and second mortgages and acquiring property for the
64 purpose of forming housing cooperatives. Special consideration
65 shall be given toward using the revenues in the neighborhood
66 economic development programs of community development
67 corporations. No more than 50 percent of the revenues collected
68 each year pursuant to this section may be used to help finance
69 new construction as provided herein. The proceeds of the surtax
70 shall not be used for rent subsidies or grants.

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

75 (5) (a) Notwithstanding the provisions of subsection (3),
76 of the discretionary surtax revenues collected by the Department
77 of Revenue remaining after any deduction for administrative
78 costs as provided in subsection (4), no less than 35 percent
79 shall be used to provide homeownership assistance for low-income
80 and moderate-income families, and no less than 35 percent shall
81 be used for construction, rehabilitation, and purchase of rental
82 housing units. The remaining amount may be allocated to provide
83 for homeownership assistance or rental housing units, at the
84 discretion of the county. Any funds allocated for homeownership
85 assistance or rental housing units which are not committed at
86 the end of the fiscal year shall be available for homeownership
87 assistance or construction, rehabilitation, and purchase of
88 rental housing units in subsequent years.

89 (b) For purposes of this subsection, the term
90 "homeownership assistance" means assisting low-income and
91 moderate-income families in purchasing a home as their primary
92 residence, including, but not limited to, reducing the cost of
93 the home with below-market construction financing, the amount of
94 down payment and closing costs paid by the borrower, or the
95 mortgage payment to an affordable amount for the purchaser or
96 using any other financial assistance measure set forth in s.
97 420.5088.

98 (6) Rehabilitation of housing owned by a recipient
99 government may be authorized only after a determination approved
100 by a majority of the governing body that no other sources of

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101 funds are available.

102 (7) (a) The governing body of each county as defined in s.
103 125.011(1) may, by county ordinance and pursuant to procedures
104 and requirements provided by such ordinance, create a housing
105 choice assistance voucher program.

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

107 1. "Housing choice assistance voucher" means the document
108 used to access assistance paid by the county from the
109 discretionary surtax balance in the Housing Assistance Trust
110 Fund to a prospective purchaser of a single-family residence,
111 which must be the purchaser's homestead.

112 2. "Purchasing employer" means a business or business
113 entity that has acquired real property within the county and
114 paid the surtax due as a result of the acquisition of that
115 property pursuant to this section.

116 (c) Housing choice assistance vouchers shall be used for
117 down payment assistance for the purchase of a single-family
118 residence by low-income or moderate-income persons within the
119 county and within a 5-mile radius of the purchasing employer who
120 are:

121 1. Actively employed by the purchasing employer or by a
122 business entity directly affiliated with the purchasing
123 employer.

124 2. Prequalified for a mortgage loan by a certified lending
125 institution.

126 (d) Upon payment of the discretionary surtax pursuant to
127 this section, the purchasing employer may file for an allocation
128 for housing choice assistance vouchers from the county in an

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129 amount not to exceed 50 percent of the amount of the
130 discretionary surtax paid. The purchasing employer shall
131 distribute the allocation to employees in the form of housing
132 choice assistance vouchers pursuant to rules and procedures
133 established for the program.

134 (e) Any housing choice assistance voucher allocation not
135 distributed to employees and redeemed by an employee within 1
136 year after the date the discretionary surtax is paid may not be
137 used for housing choice assistance vouchers under this
138 subsection.

139 (f) Any housing assistance paid pursuant to the housing
140 choice assistance voucher program shall be included in the
141 calculation determining the percentage of discretionary surtax
142 funds used for homeownership purposes during the year in which
143 the surtax funds for such purposes are expended.

144 (8) By June 30, 2012, and every 5 years thereafter, the
145 Office of Program Policy Analysis and Government Accountability
146 shall review the discretionary surtax program operated by
147 counties under this section and shall provide a report to the
148 President of the Senate and the Speaker of the House of
149 Representatives.

150 Section 3. (1) The Legislature finds that the Florida
151 Supreme Court opinion in *Crescent Miami Center, LLC v. Florida*
152 *Department of Revenue*, 903 So.2d 913 (Fla. 2005) interprets s.
153 201.02, Florida Statutes, in a manner inconsistent with the
154 intent of the Legislature at the time that statute was amended
155 in 1990.

156 (2) The Legislature finds that the opinion of the District
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157 Court of Appeal for the Third District of Florida in *Crescent*
158 *Miami Center, LLC v. Florida Department of Revenue*, 857 So.2d
159 904 (Fla. 3d D.C.A. 2003), interprets s. 201.02, Florida
160 Statutes, in a manner consistent with the intent of the
161 Legislature.

162 (3) The Legislature finds that the administrative rules
163 adopted by the department premised on the enactment of s. 7,
164 chapter 90-132, Laws of Florida, correctly interpret s. 201.02,
165 Florida Statutes, in a manner consistent with the intent of the
166 Legislature.

167 (4) The Legislature intends, by this act, to return
168 Florida law, administrative rules, and policy on the issue
169 addressed in the cited opinions to the state of such law, rule,
170 and policy which existed prior to the Supreme Court opinion.

171 Section 4. Subsection (1) of section 201.02, Florida
172 Statutes, is amended, and subsection (11) is added that section,
173 to read:

174 201.02 Tax on deeds and other instruments relating to real
175 property or interests in real property.--

176 (1) On deeds, instruments, or writings whereby any lands,
177 tenements, or other real property, or any interest therein,
178 shall be granted, assigned, transferred, or otherwise conveyed
179 to, or vested in, the purchaser or any other person by his or
180 her direction, on each \$100 of the consideration therefor the
181 tax shall be 70 cents. When the full amount of the consideration
182 for the execution, assignment, transfer, or conveyance is not
183 shown in the face of such deed, instrument, document, or
184 writing, the tax shall be at the rate of 70 cents for each \$100
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185 or fractional part thereof of the consideration therefor. For
186 purposes of this section, consideration includes, but is not
187 limited to, the money paid or agreed to be paid; the discharge
188 of an obligation; ~~and~~ the amount of any mortgage, purchase money
189 mortgage lien, or other encumbrance, whether or not the
190 underlying indebtedness is assumed; and conveyance of real
191 property to a corporation in exchange for shares of its capital
192 stock, or as a contribution to the capital of a corporation. If
193 the consideration paid or given in exchange for real property or
194 any interest therein includes property other than money, it is
195 presumed that the consideration is equal to the fair market
196 value of the real property or interest therein.

197 (11) The documentary stamp tax imposed by this section
198 applies to a deed, instrument, or writing that transfers any
199 interest in real property pursuant to a short sale, as defined
200 in this subsection. The taxable consideration for a short sale
201 transfer does not include unpaid indebtedness that is forgiven
202 or released by a mortgagee holding a mortgage on the grantor's
203 interest in the property. A short sale is a purchase and sale of
204 real property in which:

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

209 (b) A mortgagee releases the real property from its
210 mortgage in exchange for a partial payment of less than all of
211 the outstanding mortgage indebtedness owing to the releasing
212 mortgagee;

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213 (c) The releasing mortgagee does not receive, directly or
214 indirectly, any interest in the property transferred; and

215 (d) The releasing mortgagee, grantor, and grantee are
216 dealing with each other at arm's length.

217 Section 5. The Department of Revenue is directed to
218 readopt administrative rules and policies substantially similar
219 to those that are no longer enforced, or were changed, repealed,
220 or discontinued, as a result of *Crescent Miami Center, LLC v.*
221 *Florida Department of Revenue*, 903 So.2d 913 (Fla. 2005).

222 Section 6. The amendment to subsection (1) of section
223 201.02, Florida Statutes, made by this act and the provisions of
224 sections 3 and 5 of this act are intended to be clarifying and
225 remedial in nature, but do not provide a basis for assessments
226 of tax, or refunds of tax, for periods before July 1, 2009.

227 Section 7. Effective upon this act becoming a law, the
228 Department of Revenue is authorized, and all conditions are
229 deemed met, to adopt emergency rules under ss. 120.536(1) and
230 120.54(4), Florida Statutes, to implement section 4 of this act
231 relating to short sales. Notwithstanding any other provision of
232 law, such emergency rules shall remain effective for 6 months
233 after the date of adoption and may be renewed during the
234 pendency of procedures to adopt rules addressing the subject of
235 the emergency rules.

236 Section 8. Section 201.031, Florida Statutes, is amended
237 to read:

238 201.031 Discretionary surtax; administration and
239 collection; Housing Assistance Loan Trust Fund; reporting
240 requirements.--

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241 (1) Each county, as defined by s. 125.011(1), may levy,
242 subject to the provisions of s. 125.0167, a discretionary surtax
243 on documents taxable under the provisions of s. 201.02, except
244 that there shall be no surtax on any document pursuant to which
245 the interest granted, assigned, transferred, or conveyed
246 involves only a single-family residence. The ~~Such~~ single-family
247 residence may be a condominium unit, a unit held through stock
248 ownership or membership representing a proprietary interest in a
249 corporation owning a fee or a leasehold initially in excess of
250 98 years, or a detached dwelling.

251 (2) All provisions of chapter 201, except s. 201.15, ~~shall~~
252 apply to the surtax. The Department of Revenue shall pay to the
253 governing authority of the county which levies the surtax all
254 taxes, penalties, and interest collected under this section less
255 any costs of administration.

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

257 (a) Include in the financial report required under s.
258 218.32 information showing the revenues and the expenses of the
259 trust fund for the fiscal year.

260 (b) Adopt a housing plan every 3 years which includes
261 provisions substantially similar to the plans required in s.
262 420.9075(1).

263 (c) Have adopted an affordable housing element of its
264 comprehensive land use plan which complies with s.
265 163.3177(6) (f).

266 (d) Require by resolution that the staff or entity that
267 has administrative authority for implementing the housing plan
268 prepare and submit to the county's governing body an annual

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269 report substantially similar to the annual report required in s.
270 420.9075(10).

271 Section 9. Paragraph (a) of subsection (1) of section
272 719.105, Florida Statutes, is amended to read:

273 719.105 Cooperative parcels; appurtenances; possession and
274 enjoyment.--

275 (1) Each cooperative parcel has, as appurtenances thereto:

276 (a) Evidence of membership, ownership of shares, or other
277 interest in the association with the full voting rights
278 appertaining thereto. Such evidence must include a legal
279 description of each dwelling unit and must be recorded in the
280 office of the clerk of the circuit court as required by s.
281 201.02(4) ~~s. 201.02(3)~~.

282 Section 10. Except as otherwise expressly provided in this
283 act and except for this section, which shall take effect upon
284 becoming a law, this act shall take effect July 1, 2009, and
285 section 3 of this act applies to transfers of real property
286 occurring on or after July 1, 2009.

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290 **T I T L E A M E N D M E N T**

291 Remove the entire title and insert:

292 A bill to be entitled

293 An act relating to the discretionary surtax on documents;
294 amending s. 3, ch. 83-220, Laws of Florida, as amended;
295 extending a future repeal date of provisions authorizing
296 counties to levy a discretionary surtax on documents;

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297 amending s. 125.0167, F.S.; limiting the percentage of
298 surtax revenues that may be used for administrative costs;
299 specifying a minimum amount of surtax revenues to be used
300 for housing for certain low-income and moderate-income
301 families; requiring an affirmative vote of a local
302 government governing body to rehabilitate certain
303 government-owned housing; authorizing certain counties to
304 create by ordinance a housing choice assistance voucher
305 program for the purpose of down payment assistance;
306 providing definitions; providing eligibility requirements
307 for such vouchers; authorizing purchasing employers to
308 file for allocations for such vouchers; limiting
309 allocations; requiring distribution of allocations to
310 employees in the form of such vouchers; prohibiting use of
311 allocations for such vouchers if not awarded within a
312 certain period after certain documentary stamps taxes are
313 collected; requiring the Office of Program Policy Analysis
314 and Government Accountability to conduct a continuing
315 review of the discretionary surtax program operated by
316 counties; requiring reports to the Legislature; providing
317 legislative intent to reverse a judicial opinion relating
318 to the application of the excise tax on documents to
319 certain transactions involving legal entities; amending s.
320 201.02, F.S.; providing that the excise tax on documents
321 applies to transfers involving the exchange of real
322 property for shares of stock or as a capital contribution;
323 imposing the tax on deeds, instruments, and other writings
324 on the consideration for a transfer of real property

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HOUSE AMENDMENT

Bill No. CS/HB 283

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325 pursuant to a short sale; providing that the consideration
326 subject to the tax does not include unpaid indebtedness
327 that is forgiven by a mortgagee; defining the term "short
328 sale"; directing the Department of Revenue to readopt
329 rules relating to the application of the excise tax on
330 documents to transfers of real property involving a legal
331 entity; providing intent that the statutory changes
332 relating to the application of the excise tax on documents
333 for transfers involving legal entities are to be
334 clarifying and remedial in nature; authorizing the
335 Department of Revenue to adopt emergency rules relating to
336 short sales; amending s. 201.031, F.S.; expanding
337 requirements for counties levying the discretionary surtax
338 to include housing plan, affordable housing element, and
339 annual reporting requirements; amending s. 719.105, F.S.;
340 conforming a cross-reference; providing for application of
341 specified provisions of the act; providing effective
342 dates.

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