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 Committee on Banking and Insurance

BILL: SB 1334

INTRODUCER: Senator Boyd

SUBJECT: Excise Tax on Documents

DATE: March 2, 2021 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Arnold	Knudson	BI	**Pre-meeting**
2.			FT	
3.			AP	

I. Summary:

SB 1334 amends Florida law governing renewals and modifications of documents subject to an excise tax, to provide that a modification to an original document for the purpose of updating an interest reference rate that has been discontinued is not a renewal under the section and does not render the document subject to taxation under the section.

In November 2020, the Board of Governors of the Federal Reserve System, the Office of the Comptroller of the Currency, and the Federal Deposit Insurance Corporation issued a joint statement encouraging banks to cease entering into new contracts that use the London Interbank Offered Rate (LIBOR) as a reference rate by December 31, 2021.

The bill takes effect July 1, 2021.

II. Present Situation:

Excise Tax on Promissory or Nonnegotiable Notes, Written Obligations to Pay Money, or Assignments of Wages or Other Compensation

Florida law currently places a documentary stamp tax on notes and other written obligations to pay money executed, signed, or delivered in Florida, and on mortgages, liens, and other evidences of indebtedness filed or recorded in Florida.[1] The taxable rate is 35 cents on each $100 or fraction thereof of the indebtedness or obligation.[2] The tax on notes and other written obligations to pay money on is capped at $2,450.[3] There is no cap on mortgages, trust deeds, security agreements, or other evidences of indebtedness.[4]

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[1] Section 201.08(1), F.S.
[2] *Id*.
[3] Section 201.08(1)(a), F.S.
[4] Fla. Admin. Code R. 12B-4.051 (2003)

For tax purposes, a supplement or amendment to a previously taxed mortgage, deed of trust, indenture, or security agreement is subject to the documentary stamp tax on the aggregate amount of the new issue of bonds of other evidence of indebtedness.[5]

Renewals of previously taxed documents are similarly subject to the documentary stamp tax,[6] with certain exceptions. Modifications to documents which do not modify the terms of the indebtedness to correct an error; modify covenants, conditions, or terms unrelated to the debt; sever a lien into separate liens; provide for additional, substitute, or further security for the indebtedness; consolidate indebtedness or collateral; add, change, or delete guarantors; or which substitute a new mortgagee or payee; are not renewals under Florida law and are not subject to the documentary stamp tax.[7]

Recent Interest Reference Rate Reforms

Since 1986, LIBOR has been the primary reference rate used in setting interest rates for adjustable rate mortgages, asset-backed securities, municipal bonds, credit default swaps, private student loans, and other types of debt.[8] When two parties enter into a financial contract in which interest payments are to be exchanged, those payments are frequently based on LIBOR, which provides the benchmark rate for the resulting interest rate.[9]

The Federal Reserve Bank of New York estimates that approximately $200 trillion in financial contracts reference the United States Dollar LIBOR. Although the derivatives market accounts for 95 percent of the outstanding gross notional value of all financial products referring LIBOR; though several trillion dollars of corporate loans, floating-rate mortgages, floating-rate notes, and asset-backed securities reference LIBOR.[10] As of 2019, $1.2 trillion worth of residential mortgage loans and $1.3 trillion of consumer loans referenced LIBOR.[11]

LIBOR is calculated each day from an average of estimated borrowing rates reflecting a range of maturities, submitted by 18 international banks. When a participating bank has no transactions to support its submission, it provides estimates instead. LIBOR is calculated in five currencies: UK Pound Sterling, Swiss Franc, Euro, Japanese Yen, and US Dollar.[12]

[5] Section 201.08(4), F.S.
[6] Section 201.08(1), F.S.
[7] Section 201.08(5), F.S.
[8] Forbes, *What Is LiborAnd Why Is It Being Abandoned?* (December 16, 2020), https://www.forbes.com/advisor/investing/what-is-libor/ (last visited February 25, 2021)
[9] Consumer Finance Protection Bureau, *You Might Have Heard That LIBOR is Going Away. Here's What You Need to Know About LIBOR and Adjustable-Rate Loans* (October 17, 2019), https://www.consumerfinance.gov/about-us/blog/libor-going-away-heres-what-you-need-know-about-libor-and-adjustable-rate-loans/ (last visited February 26, 2021).
[10] Federal Reserve Bank of New York, *Alternative Reference Rates Committee: Frequently Asked Questions* (December 18, 2020), https://www.newyorkfed.org/medialibrary/Microsites/arrc/files/ARRC-faq.pdf (last visited February 25, 2021).
[11] *See* note 8.
[12] Board of Governor of the Federal Reserve System, *Statement of Governor Jerome Powell: Reforming U.S. Dollar LIBOR: The Path Forward* (September 04, 2014), https://www.federalreserve.gov/newsevents/speech/powell20140904a.htm (last visited February 26, 2021).

LIBOR has come under increasing scrutiny from regulators and financial markets alike following documented patterns of attempted manipulation by participating banks and a sustained decline in unsecured interbank borrowing.[13] Additionally, LIBOR may be ill-suited for most derivatives contracts and secured borrowing because movements in the credit risk component do not accurately reflect the underlying risks of those contracts.[14] Others have noted the declining correlations between LIBOR and total bank funding costs that predate the 2006-2011 financial crises.[15]

Adoption of the Secured Overnight Financing Rate

In 2014, the Board of Governors of the Federal Reserve System commissioned the Alternative Reference Rates Committee (ARRC) to recommend a benchmark interest rate to replace LIBOR for US dollar-denominated debt.[16] The ARRC is comprised of a group of market participants initially convened by the Board of Governors of the Federal Reserve System and the Federal Reserve Bank of New York, in cooperation with the US Department of Treasury, US Commodity Futures Trading Commission, and US Office of Financial Research.

In 2017, the ARRC identified the Secured Overnight Financing Rate (SOFR) as its recommended alternative to USD LIBOR. SOFR is fully-transaction based, broad measure of the cost of borrowing cash overnights collateralized by US Treasury securities.[17] SOFR is based on transaction data from three segments of the Treasury repurchase market: (1) tri-party repurchase, (2) General Collateral Finance repurchase; and (3) bilateral repurchase transactions clearing through the Fixed Income Clearing Corporation.[18] The Federal Reserve Bank of New York publishes SOFR data daily including SOFR Averages and a SOFR Index.

Expected Cessation of LIBOR

The Financial Conduct Authority (FCA) of the United Kingdom regulates LIBOR.[19] The FCA is indicating that LIBOR is expected to cease after the end of 2021.[20] Accordingly, the FCA is recommending transitions to alternative rates before this date.

In November 2020, the Board of Governors of the Federal Reserve System, the Office of the Comptroller of the Currency, and the Federal Deposit Insurance Corporation issued a joint

[13] *Id*.
[14] *Id*.
[15] Bowman et al., *How Correlated is LIBOR with Bank Funding Costs?* (June 29, 2020), https://www.federalreserve.gov/econres/notes/feds-notes/how-correlated-is-libor-with-bank-funding-costs-20200629.htm (last visited February 26, 2021).
[16] *See* note 10.
[17] *Id*.
[18] *Id*.
[19] New York Federal Reserve, Transition From LIBOR. https://www.newyorkfed.org/arrc/sofr-transition (last visited February 27, 2021).
[20] Financial Conduct Authority, *Transition From LIBOR* (Jan. 19, 2021). https://www.fca.org.uk/markets/libor (last visited February 27, 2021).

statement encouraging banks to cease entering into new contracts that use LIBOR as a reference rate by December 31, 2021.[21]

III. Effect of Proposed Changes:

Section 1 amends s. 201.08, F.S., governing renewals and modifications of documents subject to documentary stamp taxes, to provide that a modification to an original document for the purpose of updating an interest reference rate that has been discontinued is not a renewal under the section and does not render the document subject to taxation under the section.

Section 2 provides an effective date of July 1, 2021.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

The bill would create an exception to the taxability for renewals under 201.08, F.S.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

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[21] Board of Governors of the Federal Reserve System et al., *Statement on LIBOR Transition* (November 30, 2020), https://www.federalreserve.gov/newsevents/pressreleases/files/bcreg20201130a1.pdf (last visited February 26, 2021).

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 201.08 of the Florida Statutes.

IX. Additional Information:

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

None.

B. Amendments:

None.