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 Finance and Tax

BILL: SB 1334

INTRODUCER: Senator Boyd

SUBJECT: Excise Tax on Documents

DATE: March 17, 2021 REVISED:

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

I. Summary:

SB 1334 provides that a modification of an original document for the purpose of changing the interest rate due to the discontinuation of an index to which the original interest rate is referenced is not a renewal subject to the documentary stamp tax.

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 Revenue Estimating Conference reviewed similar HB 917 and determined that the bill has no fiscal impact, assuming the language is consistent with current law and current administration and the only change to the original document involves the interest rate.

The bill takes effect July 1, 2021.

II. Present Situation:

Documentary Stamp Tax

Florida imposes 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 tax comprises two taxes imposed on different bases at different tax rates. The first tax rate is 70 cents on each $100 of consideration for deeds, instruments, or writings whereby lands, tenements, or other real property or interests that are granted, assigned, transferred, conveyed or vested in a purchaser,[2] which is imposed on the full

[1] Section 201.08(1), F.S.

[2] Section 201.02(1), F.S.

amount of the obligation secured thereby.[3] The second tax rate is 35 cents per each $100 of consideration for certificates of indebtedness, promissory notes, wage assignments, and retail charge account agreements, with the tax on promissory notes, wage assignments, and retail charge account agreements capped at $2,450.[4]

Taxation of Renewals

Renewals of previously taxed documents are subject to the documentary stamp tax unless an exception or exemption applies.[5] Section 201.08(5), F.S., provides that a renewal shall only include modifications of an original document which change the terms of the indebtedness evidenced by the original document by:
- Adding one or more obligors;
- Increasing the principal balance; or
- Changing the interest rate, maturity date, or payment terms.

Florida provides a tax exemption for the renewal of existing promissory notes and mortgages when the renewal note only extends or continues the identical contractual obligations of the original promissory note and evidences part or all of the original indebtedness, not including any accumulated interest and "without enlargement in any way of the original contract and obligation."[6] For a renewal note evidencing a term obligation to qualify for the exemption, the renewal note must be attached to the original promissory note with a certain statutory notation, must be executed by the original obligor, and must renew and extend only the unpaid balance of the original contract and obligation.[7] If the renewal note otherwise meets this criteria but increases the unpaid balance of the original contract, only the face amount of the increase is taxable.[8]

A note given in renewal of an adjustable rate note or mortgage which has an initial interest rate adjustment interval of not less than six months is subject to taxation only to the extent of any accrued interest upon which taxes have not previously been paid.[9]

A Department of Revenue rule implementing sections 201.08 and 201.09, F.S., states: "A renewal that does not add obligor(s) and merely changes the interest rate, the maturity date, or the payment terms is not subject to tax, provided tax was paid on the original document and the original document is attached to the renewal."[10] In 2019, the Second District Court of Appeal, in reviewing whether a modification of an interest rate, a maturity date, or payment terms is taxable, followed the rule's interpretation of the statute.[11]

In addition, section 201.08(5), F.S., expressly provides that the following modifications to documents are not renewals and are not subject to taxation:

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[3] Fla. Admin. Code. R. 12B-4.051 (2003).
[4] Sections 201.07 and 201.08, F.S.
[5] Section 201.08(1)(a) and (b), F.S., specifies the documents that are taxable as well as "for each renewal of the same."
[6] Section 201.09, F.S.
[7] Section 201.09(1), F.S.
[8] *Id.*
[9] Section 201.09(3), F.S.
[10] Fla. Admin. Code. R. 12B-4.052(12)(a) (2003).
[11] *Wells Fargo Bank, N.A. v. Ordonez*, 272 So. 3d 859 (Fla. 2d DCA 2019).

- Modifications that do not modify the terms of the indebtedness evidenced, such as those given or recorded to correct an error;
- Modifications to covenants, conditions, or terms unrelated to the debt;
- Severing a lien into separate liens;
- Providing for additional, substitute, or further security for the indebtedness;
- Consolidating indebtedness or collateral;
- Adding, changing, or deleting guarantors; or
- Substituting a new mortgagee or payee.

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.[12] 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.[13]

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 to LIBOR, several trillion dollars of corporate loans, floating-rate mortgages, floating-rate notes, and asset-backed securities reference LIBOR.[14] As of 2019, $1.2 trillion worth of residential mortgage loans and $1.3 trillion of consumer loans referenced LIBOR.[15]

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 the U.S. Dollar.[16]

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.[17] 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.[18] Others have noted the declining

[12] Forbes, *What Is LiborAnd Why Is It Being Abandoned?* (December 16, 2020), https://www.forbes.com/advisor/investing/what-is-libor/ (last visited March 13, 2021)
[13] 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 March 13, 2021).
[14] 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 March 13, 2021).
[15] *See* note 12.
[16] 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 March 13, 2021).
[17] *Id*.
[18] *Id*.

correlations between LIBOR and total bank funding costs that predate the 2006-2011 financial crises.[19]

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.[20] 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 United States Department of Treasury, United States Commodity Futures Trading Commission, and United States 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 U.S. Treasury securities.[21] 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.[22] 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.[23] The FCA is indicating that LIBOR is expected to cease after the end of 2021.[24] 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 statement encouraging banks to cease entering into new contracts that use LIBOR as a reference rate by December 31, 2021.[25]

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[19] 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 March 13, 2021).
[20] *See* note 10.
[21] *Id*.
[22] *Id*.
[23] New York Federal Reserve, Transition From LIBOR. https://www.newyorkfed.org/arrc/sofr-transition (last visited February 27, 2021).
[24] Financial Conduct Authority, *Transition From LIBOR* (Jan. 19, 2021). https://www.fca.org.uk/markets/libor (last visited March 13, 2021).
[25] 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 March 13, 2021).

According to the United States Securities and Exchange Commission, many legacy contracts have interest rate provisions referencing LIBOR that, when drafted, did not contemplate the permanent discontinuation of LIBOR.[26]

III. Effect of Proposed Changes:

Section 1 amends s. 201.08, F.S., to provide that a modification of an original document for the purpose of changing the interest rate due to the discontinuation of an index to which the original interest rate is referenced is not a renewal subject to the documentary stamp tax.

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

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Not applicable. The bill does not require counties and municipalities to spend funds, limit their ability to raise revenue, or reduce the percentage of a state tax shared with them. Therefore, the mandates provisions of Art. VII, s. 18 of the State Constitution do not apply.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

The bill does not create or raise state taxes or fees. Therefore, the requirements of Art. VII, s. 19 of the State Constitution do not apply.

E. Other Constitutional Issues:

None identified.

[26] United States Securities and Exchange Commission, *Staff Statement on LIBOR Transition*, Division of Corporation Finance, Division of Investment Management, Division of Trading and Markets, and Office of the Chief Accountant, July 12, 2019, *available at* https://www.sec.gov/news/public-statement/libor-transition (last visited Mar. 13, 2021).

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

The Revenue Estimating Conference reviewed similar HB 917 and determined that the bill has no fiscal impact, assuming the language is consistent with current law and current administration and the only change involves the interest rate.[27]

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

Because the purpose of the modification addressed by the bill is to change the reference rate rather than the interest rate, which is variable, the sponsor may consider amending the bill language to read: "A modification of an original document for the sole purpose of changing the reference rate due to the discontinuation of the reference rate in the original document is not a renewal and is not subject to tax pursuant to this section."

VII. Related Issues:

As described above, under a Department of Revenue rule implementing ss. 201.08 and 201.09, F.S., a renewal that does not add obligor(s) and merely changes the interest rate, the maturity date, or the payment terms is not subject to tax, provided tax was paid on the original document and the original document is attached to the renewal.[28] It is unclear whether the bill language would support an interpretation of s. 201.08, F.S., that a document modification that changes the interest rate is generally taxable.

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.

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[27] Revenue Estimating Conference analysis of HB 917, *available at* http://edr.state.fl.us/Content/conferences/revenueimpact/archives/2021/_pdf/page55-56.pdf (last visited Mar. 13, 2021).
[28] *See supra* note 10.

B. Amendments:

None.