

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 1459 Discretionary Surtax on Documents

SPONSOR(S): Policy & Budget Council; Economic Expansion & Infrastructure, Lopez-Cantera & others

TIED BILLS: **IDEN./SIM. BILLS:** 1492

REFERENCE	ACTION	ANALYST	STAFF
DIRECTOR			
1) Economic Expansion & Infrastructure Council	13 Y, 1 N, As CS	Rojas/Madsen	Tinker
2) Policy & Budget Council	27 Y, 0 N, As CS	Langston	Hansen
3) _____	_____	_____	_____
4) _____	_____	_____	_____
5) _____	_____	_____	_____

SUMMARY ANALYSIS

The bill extends the authority for Miami-Dade County to assess a discretionary surtax on documents by extending the surtax sunset from October 1, 2011 to October 1, 2031. The bill further requires biannual financial audits by the Auditor General of surtax revenues and expenditures, creates reporting requirements, authorizes the adoption of a housing plan every 3 years, limits the amount of surtax revenues which may be used for administrative expenses and specifies that a minimum percentage of surtax revenues be used to finance the construction, rehabilitation, or purchase of housing for low and moderate-income families.

The bill also allows Miami-Dade County, at the option of the county governing board, to create and administer a Housing Choice Assistance Voucher program. The program would be funded by a portion of the discretionary surtax on documents. It would allow private-sector employers that pay the surtax to apply to the county for housing assistance allocations to be funded by up to 50% of the surtaxes paid by the employer. Such employers must, in turn, distribute vouchers to qualified employees. The vouchers must be used for the purchase of a single-family residence within the county by a low-income or moderate-income person who is actively employed by the "purchasing employer" and who is prequalified for a mortgage loan by a certified lending institution. Housing choice assistance allocations must be used within one year of the initial payment of surtax by the employer.

The extension of the sunset provision will continue the levy of the surtax in Miami-Dade County and will prevent the state from receiving additional document stamp tax revenues beginning in 2011-12. The Revenue Impact Estimating Conference on March 21, 2008 estimated that there will be no cash impact on state or local revenue collections in FY 2008-09. However, the future reduction of state taxes reduces recurring or annualized state revenues in FY 2008-09 by -\$9.3 million (General Revenue) and -\$15.6 million (various trust funds). Conversely, for local government there is an increase of \$28.9 million in revenues on a recurring basis.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

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FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide Limited Government – The bill allows Miami-Dade County to create and administer a Housing Choice Assistance Voucher program.

Empower Families - The bill will allow continued funding of Miami-Dade's Home Ownership Assistance Loan Trust Fund, assisting families seeking affordable housing.

Lower Taxes – Application of the 10-cent tax rate increase in the documentary stamp tax provided for in s. 201.0205, F.S., will be delayed by 20 years and will not apply to Miami-Dade County during that period. Consequently, the doc stamp tax rate for Miami-Dade on deeds will remain at 60 cents per \$100 of consideration rather than 70 cents.

B. EFFECT OF PROPOSED CHANGES:

Background and Current Law

Discretionary Surtax on Documents

In 1983, the Legislature enacted chapter 83-220, Laws of Florida, creating s. 125.0167, F.S., to authorize the governing body of certain counties¹ to levy a discretionary surtax on documents for 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 50 percent 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 45 cents 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 Department of Revenue 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.

¹ Counties that meet the definition of "county" in s. 125.001(1), F.S. Currently only Miami-Dade County satisfies this definition.

In 1984, chapter 84-270, Laws of Florida, changed the name of the Home Ownership Trust Fund to the Housing Assistance Loan Trust Fund with the specified purpose of assisting 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 50 percent of the revenues collected each year could be used to finance new construction.

In 1989, the Legislature enacted chapter 89-252, Laws of Florida, to provide that the discretionary surtax program will sunset on October 1, 2011. In 1992, the Legislature enacted chapter 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.

State Excise Tax on Documents

Chapter 201, F.S., levies a statewide tax on various types of documents. One type of document subject to the tax is deeds, instruments, or writings whereby any lands, tenements, or other real property or any interest therein, are granted, assigned, transferred or otherwise conveyed to or vested in the purchaser or any other person by his or her direction. The tax rate on such documents is 70 cents per \$100 of consideration paid for the transferred property, except in Miami-Dade County, where the tax rate is 60 cents per \$100 of consideration.

Section 2 of chapter 92-317, Laws of Florida, enacted a 10 cent increase in the state excise tax rate on deeds referenced above, bringing the tax rate from 60 cents to 70 cents per \$100 of consideration. Section 34 of chapter 92-317 (now codified in 201.0205, F.S.) in effect exempted deeds in Miami-Dade County from the 10 cent tax rate increase, on the condition that the Discretionary Surtax on Documents is levied.

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 directs that the surtax be assessed at the full rate of 45 cents 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. Miami-Dade County reports that over the past five years, the surtax program has provided more than \$179 million for the construction, rehabilitation, and purchase of housing for low-income and moderate-income families, including \$29 million for 652 homeownership loans.

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 farm workers, as well as other persons who may need special housing assistance. The plans are also required to include definitions for essential service personnel including 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 of 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.

Effect of Changes

The bill amends section 3 of chapter 83-220, Laws of Florida, as amended by section 1 of chapter 84-270, Laws of Florida, and section 1 of chapter 89-252, Laws of Florida, to provide that the discretionary surtax on documents will be repealed on October 1, 2031 instead of on October 1, 2011.

The bill also amends s. 125.0167, F.S., to require the following:

- No more than 10 percent of the surtax may be used for administrative costs.
- No less than 50 percent of the revenues collected shall be used to finance construction, rehabilitation or purchase of single-family housing for income limited families or persons.
- Rehabilitation of housing owned by a recipient government is allowed only after an affirmative vote of the county governing body that no other sources of funds are available.
- Any funds remaining after financing, construction, rehabilitation, or purchase of housing for low- and moderate-income families are to be used for down payment assistance.
- A county levying the discretionary surtax on documents is given the option to create a housing choice assistance voucher program to be funded from surtax proceeds. Subject to procedures and requirements approved by the county, private-sector employers that pay the surtax may apply to the county for housing assistance allocations to be funded by up to 50% of the surtaxes paid by the employer. Such employers are to, in turn, distribute vouchers to qualified employees. The vouchers must be used for the purchase of a single-family residence within the county by a low-income or moderate-income person who is actively employed by the purchasing employer and who is prequalified for a mortgage loan by a certified lending institution. Housing choice assistance allocations must be used within one year of the initial payment of surtax by the employer.
- Any housing assistance paid pursuant to the housing choice assistance voucher program is to be included in calculation of the percentage of the surtax revenues attributable to use for homeownership purposes.

The bill also amends s. 201.031, F.S., to require the following:

- Every 2 years the Auditor General is to conduct a financial review of the discretionary surtax program in a levying county.
- The governing body of a county implementing the surtax shall, by resolution, adopt a housing plan every three 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.

- Counties levying the discretionary surtax on documents must adopt an affordable housing element to its comprehensive land use plan that complies with s. 163.3177(6)(f).
- The staff or entity with authority to implement the housing plan must 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.

C. SECTION DIRECTORY:

Section 1 Amends section 3 of chapter 83-220, Laws of Florida, as amended by chapter 84-270, Laws of Florida, and section 1 of chapter 89-252, Laws of Florida.

Section 2 Amends s. 125.0167, F.S.

Section 3 Amends s. 201.031, F.S.

Section 4 Provides that the act shall take effect upon becoming a law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

Application of the 10-cent tax rate increase in the documentary stamp tax provided for in s. 201.0205, F.S., will be delayed by 20 years and will not apply to Miami-Dade County during that period. Consequently, the doc stamp tax rate for Miami-Dade on deeds will remain at 60 cents per \$100 of consideration rather than 70 cents.

The extension of the sunset provision will continue the levy of the surtax in Miami-Dade County and will prevent the state from receiving additional document stamp tax beginning in 2011-12. The Revenue Impact Estimating Conference on March 21, 2008 estimated that there will be no cash impact on state revenue collections in FY 2008-09. However, the future reduction of state taxes reduces recurring or annualized state revenues in FY 2008-09 by - \$9.3 million (General Revenue) and -\$15.6 million (various trust funds).

2. Expenditures:

None

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The extension of the sunset provision will continue the levy of the surtax in Miami-Dade County and avoid a reduction of local tax revenues beginning in 2011-12. The Revenue Impact Estimating Conference on March 21, 2008 estimated that there will be no cash impact

on local revenue collections in FY 2008-09. However, there is an increase of \$28.9 million in revenues to Miami-Dade County on a recurring basis.

2. Expenditures:

None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Persons who sell and buy real estate will continue to pay the discretionary surtax on documents if assessed by the local government.

D. FISCAL COMMENTS:

None

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not require counties or municipalities to spend funds or take action requiring the expenditure of funds. This bill does not reduce the percentage of state tax shared with counties or municipalities. This bill does not reduce the authority that municipalities have to raise revenue.

2. Other:

None

B. RULE-MAKING AUTHORITY:

None

C. DRAFTING ISSUES OR OTHER COMMENTS:

None

D. STATEMENT OF THE SPONSOR

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

On April 21, 2008, the Policy and Budget Council adopted a strike-all amendment (as amended) that made the following changes to CS/HB 1459:

- Some proposed changes already in CS/HB 1489 were moved from s. 201.031, F.S., to s. 125.0167.

- Other changes to s. 125.0167 not in CS/HB 1489 are:
 - Clarification that the minimum 50% of tax revenues that must be used for financing, construction, rehabilitation, or purchase of housing for low and moderate-income families is for single-family housing.
 - A requirement that rehabilitation of housing owned by a recipient government is allowed only after an affirmative vote of the county governing body that no other sources of funds are available.
 - A requirement that any funds remaining after financing, construction, rehabilitation, or purchase of housing for low- and moderate-income families are to be used for down payment assistance.
 - A county levying the discretionary surtax on documents is given the option to create a housing choice assistance voucher program to be funded from surtax proceeds. Subject to procedures and requirements approved by the county, private-sector employers that pay the surtax may apply to the county for housing assistance allocations to be funded by up to 50% of the surtaxes paid by the employer. Such employers are to, in turn, distribute vouchers to qualified employees. The vouchers must be used for the purchase of a single-family residence within the county by a low-income or moderate-income person who is actively employed by the purchasing employer and who is prequalified for a mortgage loan by a certified lending institution. Housing choice assistance allocations must be used within one year of the initial payment of surtax by the employer.
- Section 201.031, F.S., is amended:
 - To require that counties levying the discretionary surtax on documents must adopt an affordable housing element to its comprehensive land use plan that complies with s. 163.3177(6)(f).
 - To require a biannual financial review by the Auditor General of the discretionary surtax program. This replaces the requirement in the CS for a county to retain an independent outside auditor to conduct an annual financial audit.

This analysis reflects the changes noted above.