



## TAXATION AND BUDGET REFORM COMMISSION

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### Staff Analysis and Economic Impact Statement

Measure:	CS/CP 22	REFERENCE:	ACTION:
Sponsor:	Commissioner Rouson	1. PBPC	Favorable
Subject:	Affordable Housing Trust Funds	2. GPSC	Favorable
		3. TBRC	Pre-meeting
Date:	March 19, 2008		

#### I. Summary:

Committee Substitute for Constitutional Proposal 22 creates two new trust funds, the State *Affordable* Housing Trust Fund and the Local Government *Affordable* Housing Trust Fund, and provides for the deposit of funds related to the trust funds for affordable housing purposes and directs the Legislature to appropriate all trust fund deposits.

CP/CS 22 directs the Legislature to appropriate all funds deposited in the State Affordable Housing and Local Government Affordable Housing trust funds annually for affordable housing purposes. The trust fund balances not appropriated during a fiscal year are to be appropriated for the following fiscal year. Funds from the excise tax on documents for debt service on bonds, to fund debt service reserve funds, rate obligations or payments for bonds issued prior to July 1, 2009 will have priority over the distribution of funds to the above affordable housing trust funds. However, after debt service related issues are addressed, allocations from the documentary stamp tax revenues will be distributed to the newly established affordable housing trust funds prior to other statutory required allocations.

#### II. Present Situation:

Chapter 201, F.S., provides the authorization to levy a documentary stamp tax on deeds, bonds, notes, written obligations to pay money, mortgages, liens, and other evidences of indebtedness. The tax on deed and other real property documents is imposed at the rate of 70 cents per \$100. Certificates of indebtedness, promissory notes, wage assignments, and retail charge account agreements are taxed at 35 cents per \$100. The documentary stamp tax revenues are divided between the General Revenue Fund and various trust funds used mainly to acquire and manage public lands, support growth management, or support affordable housing.

***Current Law Disposition of Documentary Stamp Tax Revenue***

In accordance with statute, seven percent of total collections are deducted as General Revenue Service Charge. Other distributions are then made as follows:

- 62.63 percent to the General Revenue Fund and Debt Service;
- Payments of debt service for Preservation 2000, Florida Forever, and Everglades Restoration bonds and other specific trust funds;
- 9.5 percent to the Land Acquisition Trust Fund;
- 4.2 percent to the Water Management Lands Trust Fund;
- 3.1275 percent to the Conservation and Recreation Lands Trust Fund (CARL);
- 0.8925 percent to the State Game Trust Fund;
- 2.28 percent to Invasive Plant Control Trust Fund;
- 0.25 percent to Water Quality Assurance Trust Fund;
- 0.25 percent to General Inspection Trust Fund;
- 4.8475 percent to the State Housing Trust Fund;
- 11.3425 percent to the Local Government Housing Trust Fund; and
- \$10.3 million to the Department of Revenue for administrative costs.

Projected documentary stamp tax distributions for 2007-2010 are as follows:

<b>DOCUMENTARY STAMP TAX</b>			
<b>Forecast Distribution by Fund</b>			
<b>(Millions of Dollars)</b>			
	FY 2007-08	FY 2008-09	FY 2009-10
Land Acquisition Trust Fund	110.9	110.5	112.5
Water Management Lands Trust Fund	60.5	60.3	61.4
CARL Trust Fund	74.6	63.9	70.6
State Game Trust Fund	17.6	17.3	18.3
Invasive Plant Control Trust Fund	34.1	34	34.6
Water Quality Assurance Trust Fund	5.2	5.1	5.6
General Inspection Trust Fund	5.2	5.1	5.6
State Housing Trust Fund	70.5	70.2	71.5
Local Government Housing Trust Fund	172.5	171.9	174.9
Distribution	551.2	538.3	555.2

***Brief History of Documentary Stamp Tax***

Florida enacted the documentary stamp tax in 1931, at the rate of 10 cents per \$100 of consideration. In 1957, the tax on documents relating to realty was raised to 20 cents, and since then the tax has been assessed at two separate rates on deeds and notes.

Until 1967, all proceeds from documentary stamps were distributed to the General Revenue Fund. In that year, a surtax was imposed on documents relating to realty with the proceeds going to the Land Acquisition Trust Fund. Since then, documentary stamp tax revenue distribution has changed with funds directed to several trust funds and the inclusion of the seven percent general revenue service charge.

In 1995, funds were redirected from general revenue and distributed to the State Housing Trust Fund. In 1999, the Legislature authorized a portion of documentary stamp tax revenues, which had been allocated to general revenue, to be used for Florida Forever debt service. The 1999 legislation also reduced the documentary stamp tax distribution to several trust funds, including environmental-related trust funds.

In the 2003 and 2004 General Appropriations Acts, appropriations for the various programs supported by statutory distributions of documentary stamp tax revenues were the amounts estimated to be available. Unappropriated distributions were redirected to the working capital fund and became available for appropriation to the General Revenue Fund.

In 2005, the Legislature passed House Bill 1889 which limited the distribution from documentary stamp tax revenues to several trust funds. The legislation included a growth factor which increases the cap for each fund based on growth in documentary stamp tax collections. Beginning July 1, 2008, in each fiscal year that the remaining taxes collected exceed collections in the prior fiscal year, the maximum dollar amounts for those funds capped by the bill will be increased by an amount equal to 10 percent of the increase in the remaining taxes collected multiplied by the applicable percentage provided for those funds.

#### **DOCUMENTARY STAMP TAX**

##### **Capped Funds (Millions of Dollars)**

	FY 2007-08
Land Acquisition Trust Fund	110.9
Water Management Lands Trust Fund	60.5
State Game Trust Fund	9.3
Invasive Plant Control Trust Fund	36.1
State Housing Trust Fund	70.5
Local Government Housing Trust Fund	172.5

#### ***State Housing Trust Fund and Local Government Housing Trust Fund***

The William E. Sadowski Affordable Housing Act was designed to create housing and employment opportunities and to revitalize communities. The act created a dedicated source of revenue for affordable housing by providing a ten-cent increase to documentary stamp tax paid on the transfer of real estate, and reallocating an additional ten cents of existing documentary stamp tax revenues from general revenue.

Chapter 420, F. S., provides the statutory authority for the State Housing Trust Fund and the Local Government Housing Trust Fund which are administered by the Florida Housing Finance Corporation (FHFC). The Florida Housing Finance Corporation is housed within the Department of Community Affairs. As a public corporation, it is not subject to the control or supervision of the agency. An independent board of nine members, including the Secretary of the Department of Community Affairs, is responsible for the operations of the corporation. The FHFC administers the State Housing Initiative Partnership which provides funds directly to local governments as an

incentive to address affordable housing for very low, low, and moderate income families. The funds distributed are derived from the documentary stamp tax revenues deposited into the Local Government Housing Trust Fund. Other programs administered by FHFC include:

- Demonstration Loans;
- First time Homebuyer Program;
- Down Payment Assistance Program;
- Homeownership Pool Program;
- Multifamily Mortgage Revenue Bonds;
- Florida Affordable Housing Guarantee;
- HOME Investment Partnerships;
- Elderly Housing Community Loan; and
- State Apartment Incentive Loan Program.

### **III. Effect of Proposed Changes:**

CP/CS 22 creates two new trust funds, the State *Affordable* Housing Trust Fund and the Local Government *Affordable* Housing Trust Fund, and provides for distribution of 4.85 percent of documentary stamp tax receipts to the State Affordable Housing Trust Fund and 11.34 percent of documentary stamp tax receipts to the Local Government Housing Trust Fund.

The proposal directs the Legislature to appropriate all funds deposited in the State Affordable Housing and Local Government Affordable Housing trust funds annually for affordable housing purposes. The trust fund balances not appropriated during a fiscal year are to be appropriated for the following fiscal year. Funds from the excise tax on documents for debt service on bonds, to fund debt service reserve funds, rate obligations or payments for bonds issued prior to July 1, 2009 will have priority over the distribution of funds to the above affordable housing trust funds.

The Legislature is authorized to repeal any duplicate trust funds for affordable housing.

### **IV. Constitutional Issues:**

#### **A. Constitutional or Legislative Issues:**

Currently, the State Housing Trust Fund and the Local Government Housing Trust Fund are statutorily established under chapter 420, Florida Statutes. The trust funds provide fiscal support for affordable housing programs administered by the Florida Housing Finance Corporation. These trust funds provide the same support for affordable housing as indicated in CS/CP 22.

## B. Other Constitutional Issues:

Art. III, s. 19(f)(1), Fla. Const., states that no trust fund may be created or re-created by law without a three-fifths vote of the membership of each house of the legislature in a separate bill for that purpose. This constitutional amendment creates a trust fund without the requirement of legislative action. Thus, the measure contains an exception to Art. III, s. 19(f)(1), Fla. Const.

## V. Economic Impact and Fiscal Note:

### A. Tax/Fee Issues:

CP/CS 22 will reduce the amount of documentary stamp tax revenues distributed to general revenue.

### B. Private Sector Impact:

If this proposal is passed, providing additional funding for affordable housing may have a positive impact on housing development and home construction.

### C. Government Sector Impact:

The sponsor of CS/CP 22 proposes that the two newly created trust funds receive distributions from documentary stamp taxes, after commitments to debt service but prior to distributions to other trust funds. Therefore, this proposal will reduce the funding available for the General Revenue Fund and for other trust funds receiving a distribution from the documentary stamp tax. The fiscal impact below includes the proposed and current affordable housing trust funds since the Legislature must take action to delete the statutory established affordable housing trust funds after the proposal is approved by the voters.

Documentary Stamp Tax								
Proposed Constitutional Amendment								
Distributions to two new housing trust funds of 4.8475% and 11.3425%; Retention of existing distribution shares in statute								
(in millions)								
	2009-10	2010-11	2011-12	2012-13	2013-14	2014-15	2015-16	2016-17
<b>GR Impact</b>	-348.5	-412.6	-455.0	-482.9	-507.1	-534.4	-561.8	-587.1
<b>Trust Impact</b>								
<i>Housing Trust Funds (net)</i>	366.5	430.8	474.8	503.5	528.7	557.2	585.7	612.2
<i>Other Trust</i>	-18.0	-18.3	-19.8	-20.7	-21.6	-22.8	-24.0	-25.0

Source: The Economic and Demographic Research Office.

Under Art. XI, s. 5(d), Fla. Const., the Secretary of State must publish in newspapers throughout the state proposed constitutional amendments and notice of the date of the election at which it will be submitted to the electors. According

to the Department of State, the average publishing costs for citizen initiative amendments is \$60,000. However, the cost to publish lengthy amendments will exceed that amount.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

During the 2008 Legislative Session, the Legislature will consider three bills which have been filed to address the distribution of documentary stamp tax revenues to the State Housing Trust Fund and the Local Government Housing Trust Fund. These bills are:

- House Bill 5 -- Removes a limitation on the amount of proceeds from excise taxes on documents which may be deposited into the State Housing Trust Fund.
- Senate Bill 74 -- Removes a limitation on the amount of proceeds from excise taxes on documents which may be deposited into the State Housing Trust Fund.
- Senate Bill 80 -- Revises provisions governing the distribution of a portion of the proceeds of the excise tax on documents to the State Housing Trust Fund. Provides for the annual appropriation of at least 90 percent of the tax proceeds distributed to the trust fund to provide affordable housing units and other purposes for which the trust fund was created.