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**HOUSE OF REPRESENTATIVES
COMMITTEE ON
COMMUNITY AFFAIRS
BILL ANALYSIS & ECONOMIC IMPACT STATEMENT**

BILL #: HB 237

RELATING TO: Excise Tax on Documents

SPONSOR(S): Representative Wasserman Schultz

STATUTE(S) AFFECTED: 201.032, Florida Statutes

COMPANION BILL(S): None.

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) COMMUNITY AFFAIRS
- (2) GOVERNMENTAL OPERATIONS
- (3) FINANCE & TAXATION
- (4)
- (5)

I. SUMMARY:

The bill authorizes district school boards to levy by resolution a local stamp tax up to 30 cents per \$100 of consideration on the documents conveying an interest in real property. Only boards that levy at least 2 mills of nonvoted ad valorem tax under general law authority or through voter approved referendum to fund capital improvements are authorized to assess the documentary stamp tax. Currently, 48 of the state's 67 boards would meet the eligibility requirements for documentary stamp tax assessment.

The proceeds of the local documentary stamp tax are to be used to fund construction of educational facilities within the county of assessment, and proceeds may be pledged to service bond indebtedness. Districts receiving proceeds from a development impact fee by July 1, 1997, will be authorized to levy both the local documentary stamp tax and the impact fee; districts initiating a development impact fee after this date may not levy both the stamp tax and the impact fee concurrently.

The bill has a positive but indeterminate revenue impact on district school boards. Based on estimates of current tax rolls and deed transactions, the maximum potential revenue impact from the tax in fiscal year 1997-98 is \$195.3 million, if all eligible school boards vote to levy the tax. The maximum potential impact for fiscal year 1997-98 to school boards will be less than \$195.3 million as the tax will not be levied immediately by all boards. State agencies experience no revenue impact. Clerks of the circuit courts may have increased expenditures from tax administration, and the Department of Revenue may encounter costs associated with enforcement. However, the clerks will, and the department may, be reimbursed from tax revenues.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

Florida's rapid population growth has resulted in increased demands placed on the state's public education system. School construction needs are great in many counties and extreme in Florida's most populous counties, where schools are enrolled to as much as 250% of their designated capacity and new students continue to arrive.

Public Education Capital Outlay (PECO)

Historically, the state has provided about 25 percent of the funds available for public school construction, primarily through the constitutional gross receipts tax on utility companies. The graduated increase in the rate of the gross receipts utilities tax in the early 1990's resulted in greatly enhanced bonding capacity for the Public Education Capital Outlay and Debt Service Trust Fund (commonly referred to as PECO). Because the amount of bonds issued from gross receipts proceeds is based on the previous 24 months of collection, growth in the revenue stream at a given time has an increasing effect on bond capacity for only two years (assuming that all bondable revenue is bonded, as has been done). However, the impact on bonding capacity of the last gross receipts rate increase, to 2.5% effective July 1, 1992, ended during the 1994-1995 fiscal year, with a \$981.5 million PECO appropriation. Annual PECO appropriations declined to \$635 million in fiscal year 1995-1996 and to \$601.5 million in fiscal year 1996-1997. With annual PECO appropriations not projected to reach even \$635 million in any subsequent fiscal year through the year 2006, the primary local funding sources earmarked for capital projects become especially important.

Nonvoted Capital Improvement Millage/Voted Debt Service Millage

The largest source of revenue available to public schools for capital outlay is the property millage levy provided in s. 236.25(2), Florida Statutes. District school boards may levy, by resolution, up to 2 mills on the school taxable value of property, and the proceeds may be used for capital projects including new construction, building renovation or maintenance; purchase, lease-purchase, or lease of equipment or buses; or lease-purchase of facilities and sites (often by means of certificates of participation). According to Department of Education data, over \$900 million will be raised statewide from the provisions of s. 236.25(2), Florida Statutes, for use by public schools during the 1996-97 school year.

School districts are granted authority to levy ad valorem taxes not to exceed 10 mills in Section 9 of Article VII of the Florida Constitution. Section 9(b) of Article VII of the Florida Constitution, exempts taxes levied for the payment of bonds and taxes levied for periods not exceeding two years when approved by vote of the electors from the 10 mil cap. Section 12(a) of Article VII of the Florida Constitution, authorizes school boards to issue bonds, certificates of indebtedness or any form of tax anticipation certificates, payable from ad valorem taxation and maturing more than twelve months after issuance, to finance or refinance capital projects when approved by vote of the electors. This millage is in excess of the 10 mil constitutional limit.

Discretionary Sales Surtax

In 1995 the Legislature passed a local option ½ cent sales tax to fund school capital projects. Section 212.055(7), Florida Statutes, 1996 Supplement, requires approval of the tax by a majority vote of the electors of the county. As of November 1996, ten school districts had proposed approval of a ½ cent sales tax. In four of the ten districts, a majority of the voters approved the levy. In addition, since 1989 four counties have proposed and implemented the levy of a discretionary infrastructure sales surtax, as authorized by section 212.055(2), Florida Statutes, 1996 Supplement.

Documentary Stamp Tax

One potential revenue source related to population and student growth is the documentary stamp tax assessed by the state in Chapter 201, Florida Statutes. Section 201.02, Florida Statutes, imposes a tax on deeds and other documents conveying an interest in real property. Generally, the tax rate is 70 cents per \$100 of consideration given. The revenues generated by the state documentary stamp tax are distributed pursuant to s. 201.15, Florida Statutes, to the Land Acquisition Trust Fund, the Water Management Lands Trust Fund, the Conservation and Recreation Lands Trust Fund, the State Housing Trust Fund, the Local Government Housing Trust Fund, and the General Revenue Fund. Only one local documentary stamp tax is currently authorized by law; Dade County assesses a tax on real estate deeds and transactions, excluding single-family dwellings, with revenues deposited into its Housing Assistance Loan Trust Fund.

Statewide Concurrency Requirements

Statewide concurrency requirements for local government comprehensive plans, stated in section 163.3180, Florida Statutes, 1996 Supplement, do not include educational facilities. Local governments may include such facilities in their plans if they so choose. If a local government chooses to extend the concurrency requirement to public schools, section 163.3180(1)(b), Florida Statutes, 1996 Supplement, indicates that the local government should first conduct a study to determine how the requirement would be met and shared by all affected parties. In addition, a local government must adopt level-of-service standards for public schools with the agreement of the school board, and must satisfy the requirements for intergovernmental coordination set forth in section 163.3177(6)(b)1. and 2., Florida Statutes, 1996 Supplement.

Impact Fees

Impact fees are charges assessed against new development to cover a proportionate share of the cost of public facilities needed to serve the new development. They are assessed usually as a condition of development approval and are collected at the time of issuance of a building permit. The rationale behind impact fees is that existing residents should not have to bear the cost of increased development due to growth through increased ad valorem taxation, and that new development should pay for its share of the cost of new or expanded facilities that must be made available to service growth.

The "concurrency" requirements of the Local Government Comprehensive Planning and Land Development Regulation Act (part II, chapter 163, Florida Statutes), requiring that public facilities be in place concurrent with the impacts of development, have forced

local governments and developers into looking for ways to pay for the required facilities. Impact fees are popular financing mechanisms for such facilities. Based on the May 1996 update to the 1991 Florida ACIR Impact Fee Report, 39 counties, 123 municipalities, 13 school districts, and 10 independent special districts are currently imposing one or more types of impact fees. Impact fees are imposed in Florida on the following types of facilities: transportation; parks and recreation; police and corrections; fire and emergency management; library; school; water; and sewer.

B. EFFECT OF PROPOSED CHANGES:

This bill authorizes district school boards, through approval of a resolution by a majority of the total membership of the board, to levy a local stamp surtax of up to 30 cents per \$100 of consideration on the documents of all real estate transactions. Only boards that levy at least 2 mills of ad valorem tax from the provisions of s. 236.25(2), Florida Statutes, millage voted for local capital improvement under s. 9(b) and s. 12, Art. VII of the Florida Constitution, or a combination of both provisions, will be authorized to assess the documentary stamp tax. The levying board must hold a public hearing at least two weeks prior to formal adoption of the resolution.

The proceeds of the local documentary stamp tax will be collected and distributed by the clerk of the circuit court directly to the levying district and will be used entirely to fund survey-approved school construction and remodeling projects necessary to implement local government comprehensive plans or school board plans, so as to provide educational facilities concurrent with the impacts of development. District operational expenses may not be funded from tax proceeds or from any other funding source designated for capital outlay. Boards may pledge the proceeds of the tax to pay principal and interest on bonds issued to fund projects authorized by this section. The General Revenue service charge is not assessed on proceeds of the local documentary stamp tax because the tax is authorized to be levied by a political subdivision and is therefore exempt from the service charge pursuant to s. 215.22(2), Florida Statutes, 1996 Supplement.

In addition, district school boards have the option to receive proceeds either from the local documentary stamp tax or from an impact fee assessed by a local government on the issuance of any development permit, but both may not be assessed concurrently; however, this restriction applies only to impact fees imposed after July 1, 1997. If a development impact fee is imposed by that date, a district is eligible both to receive proceeds from the impact fee and to levy the documentary stamp tax.

In the 1996-97 fiscal year, 48 of the state's 67 district school boards levy at least 2.0 mills from combinations of s. 236.25(2) and voted millage for local capital improvement. Currently, only these 48 boards would be eligible to levy the local documentary stamp tax. However, the number of counties levying at least 2.0 mills changes from year to year.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

No.

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

Yes. The proceeds of the local documentary stamp tax will be collected and distributed by the clerks of the circuit court, which may incur insignificant administration costs related to the surtax. However, the clerks will receive 0.5% of total tax collections (see s. 201.11(2), Florida Statutes, 1996 Supplement) as reimbursement for administrative costs. The Department of Revenue may incur additional administrative costs for collection and enforcement duties associated with the local option documentary stamp surtaxes.

(3) any entitlement to a government service or benefit?

No.

b. If an agency or program is eliminated or reduced:

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

Not applicable.

(2) what is the cost of such responsibility at the new level/agency?

Not applicable.

(3) how is the new agency accountable to the people governed?

Not applicable.

2. Lower Taxes:

- a. Does the bill increase anyone's taxes?

The bill authorizes school boards meeting certain criteria to impose an optional surtax on those documents taxed under section 201.02, Florida Statutes.

- b. Does the bill require or authorize an increase in any fees?

No.

- c. Does the bill reduce total taxes, both rates and revenues?

No.

- d. Does the bill reduce total fees, both rates and revenues?

No.

- e. Does the bill authorize any fee or tax increase by any local government?

Yes. The bill authorizes school boards meeting certain criteria to impose an optional surtax on those documents taxed under section 201.02, Florida Statutes.

3. Personal Responsibility:

- a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

No.

- b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

The bill provides local school boards an additional source of revenue to fund school construction. Some individuals, as well as entities, who would benefit from the construction of schools allowed by the additional surtax on documents, would be required to pay the tax. For instance, individuals and businesses locating in a new development could benefit from construction of a new school in the area. When purchasing real estate in the new development, these individuals and businesses would pay the additional doc stamp tax.

4. Individual Freedom:

- a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

No.

- b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

No.

5. Family Empowerment:

- a. If the bill purports to provide services to families or children:

- (1) Who evaluates the family's needs?

Not applicable.

- (2) Who makes the decisions?

Not applicable.

- (3) Are private alternatives permitted?

Not applicable.

- (4) Are families required to participate in a program?

Not applicable.

- (5) Are families penalized for not participating in a program?

Not applicable.

- b. Does the bill directly affect the legal rights and obligations between family members?

No.

- c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

- (1) parents and guardians?

Not applicable.

- (2) service providers?

Not applicable.

(3) government employees/agencies?

Not applicable.

D. SECTION-BY-SECTION ANALYSIS:

Section 1. Section 201.032, F.S., is created to authorize each district school board, by resolution approved by a majority of the total membership of the board, to levy a surtax on deeds or other instruments transferring an interest in real property. Only boards that levy at least 2 mills on the nonexempt property value for school purposes pursuant to provisions of s. 236.25(2), F.S., millage voted for local capital improvement under s. 9(b) and s. 12 of Art. VII of the Florida Constitution, or a combination of both provisions, may assess the surtax, which shall not exceed a rate of 30 cents per \$100 of consideration and shall be paid by the buyer. The board must hold a public hearing at least two weeks prior to formal adoption of the resolution.

This surtax may only be used to fund the new construction and remodeling projects for schools approved in a district's educational plant survey necessary to meet requirements of the local government's comprehensive plan so as to be concurrent with the impacts of development.

Funds collected pursuant to the surtax shall be retained by the clerks of the circuit court and distributed to boards through deposit in a separate fund created for the purposes of this section. The provisions for tax distribution in section 201.15, F.S., do not apply to this surtax. The proceeds of the surtax and any other funds designated as capital outlay funds shall not be applied by a district school board to payment of operating costs, and any collection and enforcement costs may be reimbursed out of tax revenues (presumably to the Department of Revenue [DOR]; see Section III.A. and Section V of this analysis).

Funds collected pursuant to the surtax may be pledged for the payment of principal and interest on bonds issued or to be issued for the purposes authorized by this section. However, where the funds are pledged to pay principal and interest, the pledge constitutes a valid and legally binding contract between the school board, the governing board of the county, and the bondholders; furthermore, the school board is obligated to continue levying the surtax as long as any bonds are outstanding.

A school board may collect proceeds from either the documentary stamp tax or an impact fee levied by a local government on the issuance of development permits as defined by s. 163.3164(8), F.S. Impact fee programs in effect on July 1, 1997, based upon uniform county wide service and the district educational facilities plan, may remain in effect. All laws and ordinances that conflict with this subsection are declared to be superseded.

Each school board levying a surtax pursuant to this section must file a financial report of the revenue depository fund to the Department of Banking and Finance within 90 days after the close of the district's fiscal year.

Section 2. An effective date of July 1, 1997, is provided.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

None.

2. Recurring Effects:

The Department of Revenue may incur additional administrative costs for collection and enforcement duties associated with the local option documentary stamp surtaxes.

3. Long Run Effects Other Than Normal Growth:

None.

4. Total Revenues and Expenditures:

The Department of Revenue may incur additional administrative costs for collection and enforcement duties associated with the local option documentary stamp surtaxes.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

None.

2. Recurring Effects:

The impact to district school boards is positive but indeterminate. It is unclear how many of the 48 school boards currently levying at least 2 mills under eligible provisions will assess the documentary stamp tax, and it is impossible to determine when the tax will be levied. School districts most likely to levy the tax are those experiencing large student growth, overcrowding of students due to inadequate facility space, and deteriorating facilities. Also, boards could receive proceeds from a local government impact fee on the issuance of development permits instead of a documentary stamp tax; this would lower the potential revenues available from the tax statewide (although an impact fee may be assessed concurrent to the tax if implemented by July 1, 1997). Currently, boards in 13 counties receive proceeds from an impact fee.

Based upon estimates of current county tax rolls and deed transactions, eligible district school boards could collect a maximum \$195.3 million statewide in fiscal year 1997-98. The maximum potential revenue impact for fiscal year 1997-98 will be lower than \$195.3 million; boards will not enact the tax immediately and the Department of Revenue may, and clerks of circuit courts will, take a portion of

revenues to cover administrative costs. In addition, the authority to bond tax proceeds may result in additional money being made available to finance capital projects.

The clerk of the circuit court, as the collector and distributor of surtax proceeds, may incur insignificant administration costs related to the surtax. However, the clerk will receive 0.5% of total tax collections (see s. 201.11(2), F.S., 1996 Supplement) as reimbursement for administrative costs. For fiscal year 1997-98, therefore, the maximum amount that may potentially accrue to the clerks of courts is \$97,650.

3. Long Run Effects Other Than Normal Growth:

As school construction needs are met, continued assessment of the local documentary stamp tax may be unnecessary.

C. **DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

1. Direct Private Sector Costs:

Real estate transactions will cost the purchaser of the land or building up to an additional \$300 per \$100,000 of the property value.

2. Direct Private Sector Benefits:

Money raised from the local documentary stamp tax will be used to fund new school construction in the districts levying the tax.

3. Effects on Competition, Private Enterprise and Employment Markets:

The additional cost of real estate transactions due to the documentary stamp tax may discourage some individuals or businesses from purchasing a new home or property, which could result in decreased real estate sales in Florida.

D. **FISCAL COMMENTS:**

The fiscal analysis assumes that only the 48 districts currently levying at least 2 mills under provisions of s. 236.25(2), F.S., and millage voted for local capital improvement pursuant to s. 9(b) and s. 12 of Art. VII of the Florida Constitution may assess the documentary stamp tax.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. **APPLICABILITY OF THE MANDATES PROVISION:**

This bill requires counties (i.e., clerks of court) to spend funds for the administration of local documentary stamp surtaxes. However, the clerks are permitted to recover administrative costs via a 0.5 percent deduction of taxes collected. The overall fiscal impact on counties is expected to be insignificant. Thus, the bill is exempt from the mandates provisions.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

*The provision in section 1(2) of HB 237 relating to the distribution of proceeds to build educational facilities "concurrent with the impacts of development" does **not** mandate that concurrency requirements be enacted by local governments.*

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

None.

VII. SIGNATURES:

COMMITTEE ON COMMUNITY AFFAIRS:

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