SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: SB 1386

SPONSOR: Senator Peaden

SUBJECT: Documentary Stamp Tax

DATE: March 29, 2004 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Weidenbenner	Poole	AG	Favorable
2.			BI	
3.			FT	
4.			AGG	
5.			AP	
6.				

I. Summary:

This bill will eliminate the excise tax on documents, currently payable at the rate of 35 cents on each $100, on debt obligations of agricultural producers to the Commodity Credit Corporation.

This bill substantially amends section 201.08 of the Florida Statutes.

II. Present Situation:

The Commodity Credit Corporation (CCC) is a government-owned organization created in 1933 to stabilize, support, and protect farm income and prices and to help maintain a balanced and adequate supply of agricultural commodities. The CCC aids producers of crops, such as cotton, peanuts, sugar, corn, honey, and wheat, who participate under the program through loans, purchases, and payment programs. If the producer does not redeem the commodity by loan repayment time, CCC takes title and possession, without recourse. This means that the producers have the option of either repaying the principal and interest or forfeiting the commodity to the CCC in full settlement of the loan.

Section 201.08, F.S., currently requires that a tax be paid on debts or other debt obligations at the rate of 35 cents on each $100 or fraction thereof, with a maximum of $2,450. An identical tax is due on mortgages or other security instruments except that there is no maximum. If there is both a debt instrument and a security instrument, the tax must be paid on the security instrument with a notation being made on the debt instrument to that effect. The only exclusion is for debts on student loans. Accordingly, CCC loans are taxed in the same manner as all other loans.

III. Effect of Proposed Changes:

Section 1. Exempts agriculture producers of certain commodities in this state from paying excise tax on notes or debt obligations and related security instruments to the Commodity Credit Corporation.

Section 2. Provides that this act shall take effect upon becoming law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

Proponents of the bill argue that the CCC, as a governmental corporation, is exempt from taxation by the federal, state, or local government. They take the position that the transaction was tantamount to shifting the tax burden to the borrower from the government, but it is still unconstitutional. The proponents rely upon the U.S. Supreme Court case of Federal Land Bank of New Orleans v. Crosland, 261 U.S. 374, 43 S.Ct. 385 (1923). In this case, the court held that states could not tax mortgages executed to Federal Land Banks as the Federal Farm Loan Act of July 17, 1916 deemed such mortgages to be instrumentalities of the government. The proponents acknowledge that the Florida Supreme Court considered the foregoing case in Plymouth Citrus Growers Ass'n v. Lee, 157 Fla. 893, 27 So.2d 415 (1946). In *Plymouth*, it was contended that a note under the Farm Credit Act of 1933 was exempt because it was an instrumentality of the United States. The Florida Supreme Court examined the terms of the Farm Credit Act and the ruling in *Crosland* and found nothing to support the position that such notes should be exempt or that the Federal Law forbids such a tax. There does not appear to be any different judicial guidance for CCC loans made in the state of Florida at this time.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

The state will lose tax revenue in the estimated amount of $425,000 per year.

B. Private Sector Impact:

The private sector will benefit by the same amount.

C. Government Sector Impact:

The Revenue Estimating Conference estimates that the average amount of revenue lost to the state would be $425,000 on an annualized basis, with the loss in the first year being $390,000.

For the five year period ending in 2003, data from the Revenue Estimating Conference shows that 3,157 CCC loans were made in the total dollar amount of $662.7 million which had a tax impact of $2,319,450. A 2002 Loan Summary County Report provided by the Farm Service Agency, which administers the CCC loans, shows that loans for 2002 were made to the following producers:

Commodity	Nr. Loans	$ Amount Loans	Tax Impact
Peanut	1313	$ 15,904,894	$ 55,667
Upland cotton	30	$ 588,366	$ 2,059
Sugar cane	12	$ 89,029,800	$311,604
Corn	5	$ 111,153	$ 389
Honey	3	$ 368,965	$ 1,291
Wheat	2	$ 15,504	$ 54
Total	1365	$106,018,682	$371,065

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.