

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 857

Insurance Premium Tax

**SPONSOR(S):** Mahon

**TIED BILLS:**

**IDEN./SIM. BILLS:** SB 1714

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| REFERENCE                  | ACTION | ANALYST | STAFF DIRECTOR |
|----------------------------|--------|---------|----------------|
| 1) Finance & Tax Committee |        | Levin   | Diez-Arguelles |
| 2) Civil Justice Committee |        |         |                |
| 3) Fiscal Council          |        |         |                |
| 4) _____                   |        |         |                |
| 5) _____                   |        |         |                |

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### SUMMARY ANALYSIS

Section 624.509, F.S., imposes a tax of 1.75 percent on the gross amount of premiums on title insurance.

Chapter 627, F.S., regulates insurance rates and contracts; part XIII of that chapter governs title insurance contracts specifically. Title insurance is sold as part of the initial purchase or refinance of real property. A title search generally is conducted by an attorney or other qualified person.

Section 627.7711, F.S., contains definitions relating to the regulation of title insurance. The word "premium" is defined to mean the charge made by a title insurer for a title insurance policy, including the charge related to title services, and the assumption of the risks associated with such a policy. The definition of premium with respect to title insurance includes the gross amount collected for title insurance, without consideration for any portion of the premium that is paid to the insurance carrier, agent, or agency as a commission. This definition of the word premium, as the gross receipts for a policy without an allowance for a commission, is standard throughout the Florida Insurance Code and the regulation of the different types of insurance policies. Staff of Department of Financial Services (DFS) report that commissions paid to title insurance agents frequently constitute 70 percent or more of the total price paid for such insurance.

HB 857 reduces the amount of the premiums for title insurance subject to the 1.75 percent tax. The 1.75 percent tax on title insurance is due only on that portion of the title insurance premium that is not paid as a commission to a title insurance agent. This change is implemented over a three year period, with 80 percent of the total premium subject to the tax in 2007, 55 percent in 2008, and up to 30 percent in 2009 and subsequent years.

The Revenue Estimating Conference considered the fiscal impact of HB 857 at its meeting on February 24, 2006. The Conference adopted a projected impact to the General Revenue Fund of negative (\$2.6 million) in FY 2006-2007, negative (\$7.6 million) in FY 2007-2008, and negative (\$11.3 million) recurring in years thereafter.

The bill becomes effective January 1, 2007.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

Ensures lower taxes:

The bill will decrease premium taxes paid on title insurance policies.

#### B. EFFECT OF PROPOSED CHANGES:

##### Background

Part III, chapter 624, F.S., a portion of the Florida Insurance Code, contains the general requirements an insurer must follow to receive a certificate of authority to transact business in Florida. The DFS regulates the insurance industry in Florida.

Section 624.509, F.S., imposes a tax of 1.75 percent on the gross amount of premiums on title insurance.

The tax is due for all insurance premiums, including title insurance, health, life, property, and insurance to cover property, subjects, or risks located or to be performed within Florida. The law also taxes premiums for wet marine and transportation insurance and for annuity policies, but at a rate lower than the 1.75-percent of gross receipts due for all other policies.

Insurers remit taxes quarterly to the Department of Revenue (DOR). Section 624.509, F.S., specifies that the insurance premium taxes are to be deposited into the state's General Revenue Fund pursuant to rules of DOR.

##### Title Insurance

Chapter 627, F.S., regulates insurance rates and contracts; part XIII of that chapter, which encompasses ss. 627.7711 through 627.798, F.S., governs title insurance contracts specifically.

Title insurance is sold as part of the initial purchase or refinance of real property. A title search is conducted by an attorney or other qualified person. A title search examines ownership of a parcel of property through its years of ownership. The primary goal of a title search is to establish that all previous liens have been satisfied, that property boundaries are clear and unobstructed, and that any easements are well-defined and included in the description of the property.

Section 627.7711, F.S., contains definitions relating to the regulation of title insurance. As part of the definitions, the word "premium" means the charge made by a title insurer for a title insurance policy, including the charge related to title services, and the assumption of the risks associated with such a policy. The definition indicates that the word "premium" as used throughout part XIII of the law governing title insurance does not include commission. As a practical matter, the definition of premium with respect to title insurance includes the gross amount collected for title insurance, without consideration for any portion of the premium that is paid to the insurance carrier, agent, or agency as a commission. Staff of DFS report that commissions paid to title insurance agents frequently constitute 70 percent or more of the total price paid for such insurance. This definition of the word premium as the gross receipts for a policy, without an allowance for a commission, is standard throughout the Florida Insurance Code and the regulation of the different types of insurance policies.

Title insurance is different in some respects from many other types of insurance. Property, health, life, and casualty insurance generally protect the policy owner against the possibility of an unknown future

risk. Title insurance, because it requires a review of the historical records relating to real property, protects the owner or borrower from a known risk, i.e. that the parcel of property is free of liens, encumbrances, and other defects and is therefore available for sale. There is generally an additional measure of security inherent in title insurance, because most real estate has been sold previously and, its title has been researched each time the property has been sold.

#### Changes Proposed by the Bill

Section 624.509, F.S., is amended to provide that the 1.75-percent tax on title insurance is due only on that portion of a title insurance premium that is not paid as a commission to an insurance agent. The bill specifies that the commission, and thus the portion of the title insurance premium that is exempt from the premium tax, may not exceed 20 percent of the total price paid for the title insurance in 2007; 45 percent in 2008; and 70 percent for 2009 and subsequent years.

Section 627.7711, F.S., the law containing the definitions relating to title insurance, is also amended. A cross-reference to section 624.509, F.S., the law describing the 1.75-percent tax due for insurance premium gross receipts, is deleted. This change conforms the law to the other changes proposed by the bill.

#### C. SECTION DIRECTORY:

Section 1. Amends s. 624.509, F.S., to exempt up to 70 percent of the gross receipts resulting from title insurance premiums from the 1.75-percent tax due on all insurance premiums, except annuity policies and contracts. The bill specifies that up to 70 percent of title insurance gross receipts are exempt from the general tax on insurance premiums if that money is retained by or paid under contract to an insurance agent, i.e., as a commission.

Section 2 Amends s. 627.7711, F.S., the definitions that apply to title insurance contracts. The bill deletes a cross-reference to s. 624.509, F.S., to conform to the change made by Section 1.

Section 3 Provides that the bill takes effect January 1, 2007.

### II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

#### A. FISCAL IMPACT ON STATE GOVERNMENT:

##### 1. Revenues:

The Revenue Estimating Conference considered the fiscal impact of HB 857 at its meeting on February 24, 2006.

|                 | <u>FY 2006-2007</u> | <u>FY 2007-2008</u> |
|-----------------|---------------------|---------------------|
| General Revenue | (\$2.6 million)     | (\$7.6 million)     |

##### 2. Expenditures:

None

#### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

##### 1. Revenues:

None

2. Expenditures:

None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Insurers will pay less insurance premium taxes.

D. FISCAL COMMENTS:

When fully implemented, the provisions of this bill will result in a reduction of \$11.3 million in state revenues in future years.

### 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 an action requiring the expenditure of funds. This bill does not reduce the percentage of a state tax shared with counties or municipalities. This bill does not reduce the authority that counties and municipalities have to raise revenue.

2. Other:

None

B. RULE-MAKING AUTHORITY:

None

C. DRAFTING ISSUES OR OTHER COMMENTS:

None

### IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES