

## HOUSE OF REPRESENTATIVES STAFF FINAL BILL ANALYSIS

**BILL #:** HB 5401 PCB ANR 21-01 Documentary Stamp Tax Distributions  
**SPONSOR(S):** Agriculture & Natural Resources Appropriations Subcommittee, Tomkow  
**TIED BILLS:** CS/HB 7019, HB 7021 **IDEN./SIM. BILLS:** SB 2512

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**FINAL HOUSE FLOOR ACTION:** 78 Y's 38 N's **GOVERNOR'S ACTION:** Approved

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### SUMMARY ANALYSIS

HB 5401 passed the House on April 8, 2021, as SB 2512.

The bill conforms the statutes to the funding decisions included in the 2021-2022 General Appropriations Act.

The bill revises documentary stamp tax distributions as follows:

- Revises the distribution to the State Transportation Trust Fund by eliminating the required \$75 million transfer to the General Revenue Fund and recalculating the minimum distribution levels to the State Transportation Trust Fund from the lesser of 24.18442 percent or \$541.75 million to the lesser of \$20.5453 percent or \$466.75 million.
- Reduces the distributions to the State Housing Trust Fund and Local Government Housing Trust Fund from a combined 24.17 percent to a combined 9.70254 percent and removes the required \$75 million annual transfer to the State Economic Enhancement and Development Trust Fund.
- Creates a distribution of 5.4175 percent to be paid into the Resilient Florida Trust Fund to be used for lawful purposes of the trust fund, including planning and project grants.
- Creates a distribution of 5.4175 percent to be paid into the Water Protection and Sustainability Program Trust Fund to be used for wastewater grants as specified in section 403.0673, Florida Statutes.
- Creates a direct distribution of \$75 million to the State Economic Enhancement and Development Trust Fund.

The bill prohibits funds distributed to the State Housing Trust Fund and the Local Government Housing Trust Fund from being transferred to the General Revenue Fund in the General Appropriations Act. The bill also reenacts statutes related to the housing distributions to incorporate the changes to the documentary stamp tax distributions provided in the bill.

The bill expands the uses of the Water Protection and Sustainability Program Trust Fund to include the wastewater grant program authorized in section 403.0673, Florida Statutes.

See FISCAL COMMENTS for the estimated distributions resulting from changes made in the bill.

The bill was approved by the Governor on June 2, 2021, ch. 2021-39, L.O.F., and will become effective on July 1, 2021.

# I. SUBSTANTIVE INFORMATION

## A. EFFECT OF CHANGES:

### Background

#### Documentary Stamp Tax

The documentary stamp tax imposes an excise tax on deeds or other documents relating to real property or interests in real property.<sup>1</sup> The tax comprises two taxes imposed on different bases at different tax rates:

1. The tax on deeds and other documents granting, assigning, or transferring ownership (including fractional ownership) of real property is \$0.70 per \$100 of consideration or fractional part of \$100 of consideration.<sup>2</sup>
2. The tax on certificates of indebtedness, promissory notes, wage assignments, and retail charge account agreements is \$0.35 per \$100 of consideration.<sup>3</sup>

Revenue collected from the documentary stamp tax is divided between the General Revenue Fund and various trust funds according to the following statutory formula.<sup>4</sup>

- Of total collections, the Department of Revenue deducts amounts necessary to pay for collection and enforcement of the tax.
- From the amount remaining after the preceding deduction, 33 percent is distributed to the Land Acquisition Trust Fund.
- From the amount remaining after the two preceding deductions, an eight percent service charge is paid to the General Revenue Fund.

After the deductions listed above, the remainder of taxes collected is distributed as follows:

- State Transportation Trust Fund – lesser of 24.18442 percent or \$541.75 million, minus \$75 million that is transferred to the General Revenue Fund.
- Grants and Donations Trust Fund in the Department of Economic Opportunity (DEO) – lesser of 0.1456 percent or \$3.25 million.
- State Housing and Local Government Housing Trust Funds – 24.17 percent, minus \$75 million that is transferred to the State Economic Enhancement and Development Trust Fund in DEO.
- General Inspection Trust Fund in the Department of Agriculture & Consumer Services – lesser of 0.017 percent or \$300,000.
- General Revenue Fund – any remaining taxes after all other distributions.

#### State Housing and Local Government Housing Trust Funds

The State Housing Trust Fund<sup>5</sup> and the Local Government Housing Trust Fund<sup>6</sup> are administered by the Florida Housing Finance Corporation (FHFC),<sup>7</sup> which is a public corporation of the State of Florida that is housed within DEO. The FHFC administers both federal and state resources to finance the development and preservation of affordable homeowner and rental housing and to assist homebuyers with financing and down payment assistance. State funding for affordable housing programs is provided from documentary stamp tax revenues that are distributed to the State Housing Trust Fund and the Local Government Housing Trust Fund. The FHFC is also authorized to receive federal funding directly

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<sup>1</sup> Chapter 201, F.S.

<sup>2</sup> Section 201.02, F.S.

<sup>3</sup> Sections 201.07 and 201.08, F.S.

<sup>4</sup> Section 201.15, F.S.

<sup>5</sup> Section 420.0005, F.S.

<sup>6</sup> Section 420.9079, F.S.

<sup>7</sup> Section 420.504, F.S.

from the federal government for its housing programs; these funds are deposited outside of the State Treasury.<sup>8</sup> In 2020, the FHFC received \$789.5 million in federal funds.<sup>9</sup>

In the early years of operation, the FHFC accessed only federal resources to finance housing initiatives. To leverage and augment these programs, the Florida Legislature began appropriating additional funding for state programs in the late 1980s. However, it was the enactment of the William E. Sadowski Affordable Housing Act in 1992 that created a source of revenue for affordable housing from a portion of documentary stamp taxes on the transfer of real estate.<sup>10</sup>

From Fiscal Year 1992-93 to Fiscal Year 2005-06, the annual revenue generated from the documentary stamp tax increased 535 percent, growing from \$639 million to over \$4 billion as Florida experienced a housing boom.<sup>11</sup> Documentary stamp tax revenues distributed to the housing trust funds also grew exponentially, increasing from \$40.8 million in Fiscal Year 1992-93 to over \$600 million in Fiscal Year 2005-06.<sup>12</sup> The 2005 Legislature adopted a cap, effective July 1, 2007, that limited the annual distributions to the housing trust funds to \$243 million per year, with a mechanism for a small increase over time.<sup>13</sup> Following the collapse of the housing market, documentary stamp tax revenues decreased significantly each year, bottoming out at just over \$1 billion in Fiscal Year 2009-10.<sup>14</sup> Likewise, the distributions to the housing trust funds decreased to \$159 million in Fiscal Year 2009-10.<sup>15</sup>

The 2011 Legislature removed the cap on annual distributions to the housing trust funds, but created a new annual requirement starting July 1, 2012, providing that the first \$75 million in documentary stamp tax collections credited to the housing trust funds be automatically transferred to the newly created State Economic Enhancement and Development Trust Fund within DEO.<sup>16</sup> Since the start of Florida's economic recovery in Fiscal Year 2012-13, documentary stamp tax revenues and the distributions to the housing trust funds have grown rapidly, outpacing annual growth in both the consumer price index and Florida's population.<sup>17</sup>

Each year as part of the budget process, the Legislature determines the use of the revenues in the housing trust funds. The chart on the following page shows a five-year history of documentary stamp tax revenues distributed to the housing trust funds and the authorized uses of those revenues.

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<sup>8</sup> Section 420.507, F.S.

<sup>9</sup> Information provided by the Florida Housing Finance Corporation on Federal Funding Resources is on file with the House Appropriations Committee.

<sup>10</sup> Chapter 92-317, Laws of Fla.

<sup>11</sup> *Long-Term Revenue Analysis* (vol. 36), pp. 47-48. Florida Revenue Estimating Conference. Available at <http://edr.state.fl.us/Content/conferences/longtermrevenue/2020longtermrevenueanalysis.pdf>.

<sup>12</sup> Documentary Stamp Tax Conference Results. Florida Revenue Estimating Conference. Available at <http://edr.state.fl.us/Content/conferences/docstamp/index.cfm>.

<sup>13</sup> Chapter 2005-92, Laws of Fla.

<sup>14</sup> See *supra* note 10.

<sup>15</sup> *2011 Florida Tax Handbook*, p. 70. Florida Revenue Estimating Conference. Available at <http://edr.state.fl.us/Content/revenues/reports/tax-handbook/taxhandbook2011.pdf>

<sup>16</sup> Chapters 2011-189 and 2011-142, Laws of Fla.

<sup>17</sup> See *supra* notes 10 and 11.

	REVENUE DISTRIBUTIONS FROM DOCUMENTARY STAMP TAX				
	FY 2016-17	FY 2017-18	FY 2018-19	FY 2019-20	FY 2020-21
Local Gov't Housing TF	\$197,319,930	\$208,356,854	\$221,115,328	\$244,752,930	\$284,700,000
State Housing TF	\$84,254,822	\$88,971,199	\$94,423,240	\$104,524,227	\$121,600,000
	<b>\$ 281,574,752</b>	<b>\$ 297,328,053</b>	<b>\$ 315,538,568</b>	<b>\$ 349,277,157</b>	<b>\$ 406,300,000</b>
	APPROPRIATIONS				
	FY 2016-17	FY 2017-18	FY 2018-19	FY 2019-20	FY 2020-21 <sup>18</sup>
Local Gov't Housing TF	\$ 135,500,000	\$ 109,000,000	\$ 86,840,000	\$ 111,560,000	\$ 30,000,000
State Housing TF	\$ 64,600,000	\$ 28,000,000	\$ 36,790,000	\$ 81,040,000	\$ 115,000,000
	<b>\$ 200,100,000</b>	<b>\$ 137,000,000</b>	<b>\$ 123,630,000</b>	<b>\$ 192,600,000</b>	<b>\$ 145,000,000</b>
	SWEEPS				
	FY 2016-17	FY 2017-18	FY 2018-19	FY 2019-20	FY 2020-21
Local Gov't Housing TF	\$ 86,500,000	\$ 95,130,000	\$ 127,400,000	\$ 115,000,000	\$ -
State Housing TF	\$ 30,414,438	\$ 59,270,000	\$ 54,600,000	\$ 10,000,000	\$ -
	<b>\$ 116,914,438</b>	<b>\$ 154,400,000</b>	<b>\$ 182,000,000</b>	<b>\$ 125,000,000</b>	<b>\$ -</b>

### Water Protection and Sustainability Program Trust Fund

The Water Protection and Sustainability Program Trust Fund in the Department of Environmental Protection (DEP) was created by the 2005 Legislature to implement the Water Protection and Sustainability Program, which includes the alternative water supply program and the water storage facility revolving loan fund.<sup>19</sup> The trust fund initially received annual distributions of \$100 million from the documentary stamp tax.<sup>20</sup> However, in 2008, the Legislature reduced the distribution to a maximum of \$80 million each year.<sup>21</sup>

The 2009 Legislature eliminated the annual distribution to this trust fund and redirected those revenues to the General Revenue Fund.<sup>22</sup> Current revenues in the trust fund consist of interest earnings on cash remaining in the trust fund to support prior years' surface water improvement and alternative water supply projects.

### Wastewater Grant Program

The 2020 Legislature created the wastewater grant program within DEP to provide grants for projects that reduce excess nutrient pollution.<sup>23</sup> The program is subject to appropriation and requires a 50 percent local match of funds.<sup>24</sup> Eligible projects include:

- Projects to retrofit onsite sewage treatment and disposal systems to upgrade such systems to enhanced nutrient-reducing onsite sewage treatment and disposal systems.
- Projects to construct, upgrade, or expand facilities to provide advanced waste treatment.
- Projects to connect onsite sewage treatment and disposal systems to central sewer facilities.

<sup>18</sup> The Conference Report on the Fiscal Year 2020-21 General Appropriations Act provided a total appropriation of \$255 million from the Local Government Housing Trust Fund. The Governor vetoed \$225 million of the appropriation and replaced state funds with federal Coronavirus Relief Funds. See Specific Appropriation 2282 of Chapter 2020-111, Laws of Fla.

<sup>19</sup> Section 403.890, F.S.

<sup>20</sup> Chapter 2005-290, Laws of Fla.

<sup>21</sup> Chapter 2008-114, Laws of Fla.

<sup>22</sup> Chapter 2009-68, Laws of Fla.

<sup>23</sup> Chapter 2020-150, Laws of Fla.

<sup>24</sup> Section 403.0673, F.S. Subsection (3) allows the DEP to waive the local match rural areas of opportunity.

The Fiscal Year 2020-21 General Appropriations Act included \$25 million from the General Revenue Fund for this program.<sup>25</sup>

#### Resilient Florida Trust Fund

The Resilient Florida Trust Fund does not currently exist in law. Senate Bill 2514 (2021) creates the Resilient Florida Trust Fund within DEP and specifies that moneys deposited in the trust fund are available as a funding source for the Resilient Florida Grant Program and the Statewide Flooding and Sea Level Rise Resilience Plan, including costs to operate the grant program, to develop the plan, and to provide grants to regional resilience coalitions. Senate Bill 2514 (2021) also authorizes DEP to use moneys deposited in the trust fund for administrative and operational costs of the Florida Flood Hub for Applied Research and Innovation and coastal resilience initiatives.

#### Resilient Florida Grant Program

The Resilient Florida Grant Program does not currently exist in law. Senate Bill 1954 (2021) creates the Resilient Florida Grant Program, which authorizes the DEP to provide grants to local governments to fund the costs for community resilience planning to prepare for threats from flooding and sea level rise. Senate Bill 1954 (2021) also requires DEP to annually develop a three-year Statewide Flooding and Sea Level Rise Resilience Plan, to be submitted to the Governor and the Legislature, that consists of ranked projects that address risks of flooding and sea level rise to coastal and inland communities.

In addition, Senate Bill 1954 (2021) creates the Florida Flood Hub for Applied Research and Innovation within the University of South Florida College of Marine Science. The hub must organize existing data needs, coordinate research funds, establish community-based programs to improve flood monitoring and prediction, and develop opportunities to partner with other flood and sea level rise research and innovation leaders. Lastly, Senate Bill 1954 (2021) authorizes counties and municipalities to enter into agreements to form regional resilience coalitions for the purpose of planning for the resilience needs of communities and coordinating intergovernmental solutions to mitigate adverse impacts of flooding and sea level rise.

#### **Effect of the Bill**

The bill revises documentary stamp tax distributions as follows:

1. Revises the distribution to the State Transportation Trust Fund by eliminating the required \$75 million transfer to the General Revenue Fund and recalculating the minimum distribution levels to the State Transportation Trust Fund from the lesser of 24.18442 percent or \$541.75 million to the lesser of \$20.5453 percent or \$466.75 million.
2. Reduces the distributions to the State Housing Trust Fund and Local Government Housing Trust Fund from a combined 24.17 percent to a combined 9.70254 percent and removes the required \$75 million annual transfer to the State Economic Enhancement and Development Trust Fund.
3. Creates a distribution of 5.4175 percent to be paid into the Resilient Florida Trust Fund to be used for lawful purposes of the trust fund, including planning and project grants.
4. Creates a distribution of 5.4175 percent to be paid into the Water Protection and Sustainability Program Trust Fund to be used for wastewater grants as specified in section 403.0673, Florida Statutes.
5. Creates a direct distribution of \$75 million to the State Economic Enhancement and Development Trust Fund.

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<sup>25</sup> Specific Appropriation 1641, Chapter 2020-111, Laws of Fla.

The bill prohibits the transfer of funds distributed to the State Housing Trust Fund and the Local Government Housing Trust Fund from being transferred to the General Revenue Fund in the General Appropriations Act. The bill also reenacts statutes related to the housing distributions to incorporate the changes to the documentary stamp tax distributions provided in the bill.

The bill expands the uses of the Water Protection and Sustainability Program Trust Fund to include the wastewater grant program authorized in section 403.0673, Florida Statutes.

The effective date of the bill is contingent upon Senate Bill 1954, relating to statewide flooding and sea level rise resilience, and Senate Bill 2514, relating to the Resilient Florida Trust Fund/DEP, or similar legislation, taking effect.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

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

#### **1. Revenues:**

See FISCAL COMMENTS.

#### **2. Expenditures:**

See FISCAL COMMENTS.

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

#### **1. Revenues:**

See FISCAL COMMENTS.

#### **2. Expenditures:**

See FISCAL COMMENTS.

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

See FISCAL COMMENTS.

D. FISCAL COMMENTS:

The FY 2021-2022 General Appropriations Act appropriates \$29.0 million from the Resilient Florida Trust Fund for the Resilient Florida Program and \$116.7 million from the Water Protection and Sustainability Program Trust Fund for the wastewater grant program.

The changes to the distribution of documentary stamp tax revenues are expected to have the following impact in Fiscal Year 2021-22.

<i>Based on March 2021 Revenue Estimates</i>	<b>Current Law</b>	<b>Proposed Change</b>
Total Collections	3,509.7	3,509.7
Collection Costs	9.8	9.8
Land Acquisition TF	1,155.0	1,155.0
General Revenue Service Charge	188.4	188.4
State Transportation TF	446.6	443.1
Grants and Donations TF (DEO)	3.1	3.1
State Housing TF and Local Government Housing TF	446.3	209.2
Resilient Florida TF	0.0	116.8
Water Protection and Sustainability Program TF	0.0	116.8
State Economic Enhancement and Development TF	75.0	75.0
General Inspection TF	0.3	0.3
Remainder to General Revenue	1,185.2	1,192.2