HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 917 Documentary Stamp Tax Exemption
SPONSOR(S): Insurance & Banking Subcommittee, McClain
TIED BILLS: **IDEN./SIM. BILLS:** SB 1334

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee	18 Y, 0 N, As CS	Haas	Luczynski
2) Ways & Means Committee			
3) Commerce Committee			

SUMMARY ANALYSIS

Since 1986, the London Interbank Offered Rate (LIBOR) has been the primary reference rate used in setting interest rates for such loans as adjustable rate mortgages, asset-backed securities, municipal bonds, and other types of debt. It is estimated that $200 trillion in financial contracts reference the U.S. Dollar LIBOR. However, the LIBOR has come under increasing scrutiny from regulators and financial markets. The entity that regulates the LIBOR, the Financial Conduct Authority (FCA) of the United Kingdom, states that the LIBOR will cease after the end of 2021, though some U.S. Dollar LIBOR panels have been extended to the end of June 2023. Accordingly, the FCA is recommending transitions to alternative rates before these dates. In the United States, the Alternative Reference Rates Committee (ARRC) has identified the Secured Overnight Financing Rate (SOFR) as its recommended alternative to the U.S. Dollar LIBOR.

Some financial contracts that reference the LIBOR include robust fallback language that contemplates a replacement interest rate index or replacement interest rate calculation in the event that the rate referenced in the contract is discontinued. However, the ARCC has reported that most contracts referencing the LIBOR may not have robust fallback language. Financial institutions and other market participants are in the process of assessing their exposure to the discontinuation of the LIBOR. For contracts based on the LIBOR that do not contain sufficient fallback language, such contracts may need to be modified in order to provide a substantially similar interest rate.

Florida law currently levies a documentary stamp tax on promissory notes, mortgages, other written obligations to pay money, and renewals of those documents. The tax is 35 cents on each $100 or fraction thereof of indebtedness or obligation. For certain documents, the tax is capped at $2,450. The modification of an original document which changes the terms of the indebtedness by adding one or more obligors, increasing the principal balance, or changing the interest rate, maturity date, or payment terms is a taxable renewal.

The bill provides that a modification of an original document which changes only the interest rate and is made as the result of the discontinuation of an index to which the original interest rate is referenced is not a renewal and is not subject to the documentary stamp tax.

The bill has an indeterminate but likely positive impact on the private sector. The bill has no impact on local governments or the state.

The bill provides an effective date of July 1, 2021.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Florida's Documentary Stamp Tax on Notes and Mortgages

Florida law currently levies a documentary stamp tax, capped at $2,450, on promissory notes, nonnegotiable notes, written obligations to pay money, or assignments of salaries made, executed, delivered, sold, transferred, or assigned in the state, and for each renewal of the same.[1] Florida law also levies a documentary stamp tax, with no cap, on mortgage, trust deeds, security agreements, or other evidence of indebtedness filed or recorded in this state, and for renewal of the same.[2] The documents are all taxed at 35 cents on each $100 or fraction thereof of the indebtedness or obligation.[3]

For purposes of taxing renewals of the documents described above, a renewal only includes the modifications of an original document which changes the terms of the indebtedness by adding one or more obligors, increasing the principal balance, or changing the interest rate, maturity date, or payment terms.[4] Modifications to documents that do not modify the terms of the indebtedness are not renewals and are not subject to the documentary stamp tax. Such non-taxable modifications include:[5]

- Modifications given or recorded to correct error;
- Modification of covenants, conditions, or terms unrelated to the debt;
- Severing of a lien into separate liens;
- Providing for additional, substitute, or further security for the indebtedness;
- Consolidating indebtedness or collateral;
- Adding, changing, or deleting guarantors; or
- Substituting a new mortgagee or payee.

When renewal of a promissory note only extends or continues the identical contractual obligations of the original promissory note and evidences part or all of the original indebtedness, not including any accumulated interest thereon and without enlargement in any way of the original contract and obligation, such renewal note is not subject to the documentary stamp tax, so long as the renewal note has attached to it the original promissory note with other specified notation thereon.[6]

London Interbank Offered Rate (LIBOR)

When two parties enter into a financial contract in which interest payments are to be exchanged, those payments are frequently based on the LIBOR, which provides the benchmark rate for the resulting interest rate.[7] Since 1986, the LIBOR has been the primary reference rate used in setting interest rates for adjustable rate mortgages, asset-backed securities, municipal bonds, credit default swaps, private student loans, and other types of debt.[8]

[1] S. 201.08(1)(a), F.S.
[2] S. 201.08(1)(b), F.S.
[3] S. 201.08(1)(a) and (b), F.S.
[4] S. 201.08(5), F.S.
[5] *Id.*
[6] S. 201.09(1), F.S.
[7] Consumer Finance Protection Bureau, *You Might Have Heard That LIBOR is Going Away. Here's What You Need to Know About LIBOR and Adjustable-Rate Loans* (Oct. 17, 2019), https://www.consumerfinance.gov/about-us/blog/libor-going-away-heres-what-you-need-know-about-libor-and-adjustable-rate-loans/ (last visited Mar. 5, 2021).
[8] Forbes, *What Is LiborAnd Why Is It Being Abandoned?* (Dec. 16, 2020), https://www.forbes.com/advisor/investing/what-is-libor/ (last visited Mar. 5, 2021).

The LIBOR is calculated daily by the Intercontinental Exchange (ICE) Benchmark Administration.[9] Eighteen international banks submit rates that each bank believes it would pay, not what it actually pays, if it had to borrow money from another bank on the interbank lending market in London.[10] After removing the four highest and four lowest submissions, the ICE Benchmark Administration calculates the rate in five currencies: UK Pound Sterling, the Swiss Franc, the Euro, Japanese Yen, and the U.S. Dollar.[11]

It is estimated that $200 trillion in financial contracts reference the U.S. Dollar LIBOR.[12] Although the derivatives market accounts for 95 percent of the outstanding value of all financial products referencing the U.S. Dollar LIBOR, the LIBOR is also referenced in several trillion dollars of corporate loans, floating-rate mortgages, floating-rate notes, and securitized products.[13] As of 2019, $1.2 trillion worth of residential mortgage loans and $1.3 trillion of consumer loans referenced the LIBOR.[14]

The LIBOR has come under increasing scrutiny from regulators and financial markets alike following documented patterns of attempted manipulation by participating banks and a sustained decline in unsecured interbank borrowing.[15] Others have noted the declining correlations between the LIBOR and actual bank funding costs.[16]

In 2014, the Federal Reserve Board and the Federal Reserve Bank of New York convened the Alternative Reference Rates Committee (ARRC) to identify an alternative reference rate for use primarily in derivatives contracts.[17] The ARCC was reconstituted in 2018 with an expanded membership in an effort to push a wider segment of market participants to focus on their exposure to the LIBOR.[18]

In 2017, the ARRC identified the Secured Overnight Financing Rate (SOFR) as its recommended alternative to the U.S. Dollar LIBOR.[19] SOFR is fully-transaction based and is a broad measure of the cost of borrowing cash overnight collateralized by U.S. Treasury securities.[20] SOFR is based on transaction data from three segments of the Treasury repurchase agreement market: (1) tri-party repurchase agreements, (2) General Collateral Finance repurchase agreements; and (3) bilateral repurchase agreement transactions cleared through the Fixed Income Clearing Corporation.[21] The Federal Reserve Bank of New York publishes SOFR data daily, as well as SOFR Averages and a SOFR Index.[22]

The entity that regulates the LIBOR, the Financial Conduct Authority (FCA) of the United Kingdom, states that the LIBOR will cease after the end of 2021, though some U.S. Dollar LIBOR panels have been extended to the end of June 2023.[23] Accordingly, the FCA is recommending transitions to alternative rates before these dates.[24]

---

[9] *Id.*
[10] *Id.*
[11] *Id.*
[12] Alternative Reference Rates Committee, *Frequently Asked Questions* (Dec. 18, 2020), https://www.newyorkfed.org/medialibrary/Microsites/arrc/files/ARRC-faq.pdf (last visited Mar. 5, 2021).
[13] *Id.*
[14] Forbes, *supra* note 8.
[15] *Id*.
[16] Bowman et al*., How Correlated is LIBOR with Bank Funding Costs?* (June 29, 2020), https://www.federalreserve.gov/econres/notes/feds-notes/how-correlated-is-libor-with-bank-funding-costs-20200629.htm (last visited Mar. 5, 2021).
[17] Alternative Reference Rates Committee, *supra* note 12.
[18] *Id*.
[19] *Id.*
[20] *Id*.
[21] *Id*.
[22] *Id.*
[23] New York Federal Reserve, *Transition From LIBOR*, https://www.newyorkfed.org/arrc/sofr-transition (last visited Mar. 5, 2021); Financial Conduct Authority, *Transition From LIBOR* (Jan. 19, 2021). https://www.fca.org.uk/markets/libor (last visited Mar. 5, 2021).
[24] Financial Conduct Authority, *supra* note 23.

Some financial contracts that reference the LIBOR include robust fallback language[25] that contemplates a replacement interest rate index or replacement interest rate calculation in the event that the rate referenced in the contract is discontinued. However, the ARCC has reported that most contracts referencing the LIBOR may not have robust fallback language.[26] Financial institutions and other market participants are in the process of assessing their exposure to the discontinuation of the LIBOR.[27] For contracts based on the LIBOR that do not contain sufficient fallback language, such contracts may need to be modified in order to provide a substantially similar interest rate.

Effect of the Bill

The bill provides that a modification of an original document which changes only the interest rate and is made as the result of the discontinuation of an index to which the original interest rate is referenced is not a renewal and is not subject to the documentary stamp tax.

The bill takes effect July 1, 2021.

B. SECTION DIRECTORY:

Section 1. Amends s. 201.08, F.S., relating to tax on promissory or nonnegotiable notes, written obligations to pay money, or assignments of wages or other compensation; exception.

Section 2. Provides an effective date of July 1, 2021.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   See Fiscal Comments.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

---

[25] Fallback language should consist of contractual provisions that specify the trigger events for a transition to a replacement rate, the replacement rate, and the spread adjustment to align the replacement rate with the benchmark being replaced—in this case U.S. Dollar LIBOR. Alternative Reference Rates Committee, *Summary of ARRC's LIBOR Fallback Language* (Nov. 2019), https://www.newyorkfed.org/medialibrary/Microsites/arrc/files/2019/LIBOR_Fallback_Language_Summary.pdf (last visited Mar. 5, 2021).

[26] *Id.*

[27] *See, e.g.*, U.S. Securities and Exchange Commission Office of Compliance Inspections and Examinations, *Risk Alert* (June 18, 2020), https://www.sec.gov/files/Risk%20Alert%20-%20OCIE%20LIBOR%20Initiative_1.pdf (last visited Mar. 5, 2021); Board of Governors of the Federal Reserve System et al., *Statement on LIBOR Transition* (Nov. 30, 2020), https://www.federalreserve.gov/newsevents/pressreleases/files/bcreg20201130a1.pdf (last visited Mar. 5, 2021).

It is possible that lenders and borrowers could encounter liability for paying documentary stamp taxes when modifying, supplementing, or amending their contracts to reference the SOFR reference rate instead of the LIBOR reference rate. The bill will resolve any uncertainty in favor of preventing liability for documentary stamp tax due to the discontinuation of the LIBOR. The overall economic impact on the private sector, while likely positive, is indeterminate.

D. FISCAL COMMENTS:

On February 19, 2021, the Revenue Estimating Conference considered the impact of the bill.[28] The bill was estimated to have zero impact as a result of a Department of Revenue Rule that states in pertinent part, "A renewal that does not add obligor(s) and merely changes the interest rate, the maturity date, or the payment terms is not subject to tax, provided tax was paid on the original document and the original document is attached to the renewal."[29]

Unlike the rule, however, the bill would allow notes to be modified here in Florida without incurring documentary stamp taxes, even if tax was not paid on the original note. One example of why tax might not have been paid on the original note is that the note was executed out of state; Florida's documentary stamp tax is not applicable to a note executed out of state. Nevertheless, as stated above, the Revenue Estimating Conference estimated that the bill would have zero impact.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not Applicable. This bill does not appear to affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 10, 2021, the Insurance & Banking Subcommittee considered one amendment, which was adopted, and reported the bill favorably as a committee substitute. The committee substitute makes the following changes to the bill:

- Adds the word "only" to limit the documentary stamp tax exemption to instances where a document modification changes *only* the interest rate due to the discontinuation of the index to which the interest rate is referenced.
- Makes other technical changes.

The staff analysis has been updated to reflect the committee substitute.

[28] Revenue Estimating Conference, *2/19/2021 Revenue Impact Results*, http://www.edr.state.fl.us/Content/conferences/revenueimpact/archives/2021/_pdf/Impact0219.pdf (last visited Mar. 5, 2021).
[29] R. 12B-4.052, F.A.C.