

STORAGE NAME: h0053z.rs

DATE: May 3, 1999

****FINAL ACTION****

****SEE FINAL ACTION STATUS SECTION****

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
REGULATED SERVICES
FINAL ANALYSIS**

BILL #: HB 53 [similar provisions passed in CS/SB 172, 2nd Engrossed]

RELATING TO: Alcoholic Beverage Surcharge

SPONSOR(S): Representatives Bitner & Morroni

COMPANION BILL(S): SB 102, HB 1955, CS/SB 172

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

- (1) REGULATED SERVICES YEAS 10 NAYS 0
- (2) FINANCE AND TAXATION
- (3) GENERAL APPROPRIATIONS
- (4)
- (5)

I. FINAL ACTION STATUS:

HB 53 passed the Regulated Services Committee but was subsequently withdrawn from further consideration. The substance of HB 53 is, however, contained in Sections 14 and 15 of CS/SB 172, 2nd Engrossed, which passed the Legislature and became Chapter 99-239, Laws of Florida. That act reduces the surcharge on alcoholic beverages sold for consumption on a retailer's licensed premises by one-third, rather than by one-half as in HB 53, effective September 1, 1999. [See AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES for chronology of events.]

II. SUMMARY:

The bill reduces the surcharge on alcoholic beverages sold for consumption on a retailer's licensed premises by one-half. Further, the bill completely repeals the surcharge effective September 1, 2000.

According to the Division of Alcoholic Beverages and Tobacco, the tax reduction contained in this legislation would reduce state revenue receipts by approximately \$50 million for FY 1999-2000 and by approximately \$107 million for FY 2000-2001.

The bill provides an effective date of September 1, 1999.

III. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

An alcoholic beverage surcharge is imposed on all alcoholic beverages sold by the drink for consumption on a retailer's licensed premises [s. 561.501]. The surcharge is ten cents on each one ounce of liquor or four ounces of wine, six cents on each 12 ounces of cider and four cents on each 12 ounces of beer. Numerous simplifications have been made to the surcharge collection process during the past several years; nevertheless, the surcharge is generally considered to be a difficult tax to report and to audit.

Retailers are required to remit the alcoholic beverage surcharge monthly and may pay the surcharge based on their actual on-premise sales during the previous month or up-front, based on the amount of alcoholic beverage purchases they made from licensed wholesalers. The Division of Alcoholic Beverages and Tobacco [DABT] reports that approximately 87% of retailers utilize the purchase method to calculate the surcharge. The sales method of calculations and remittance involves a more cumbersome record keeping procedure which often results in retailer miscalculations. For FY 1997-1998, the retail surcharge generated **over \$103 million** in tax due the state: nearly \$28.5 million from malt beverages; \$20.5 million from wines; \$55.6 million from spirits and \$1,800 from cider.

Retailers are allowed to retain 1% of the monthly surcharge owed to the state to cover their cost of maintaining appropriate records and remitting the tax in a timely manner.

Until recently, efforts to repeal the surcharge were unsuccessful due to the difficulty in reaching agreement on a suitable revenue replacement source. Legislation was enacted during the 1997 Session, Chapter 97-213, Laws of Florida, which repeals the surcharge effective July 1, 1999, contingent upon collection of sufficient increased excise tax revenue.¹ The repeal passed as part of a bill dealing with the unlawful direct shipping of alcoholic beverages. The nexus between the two issues is the belief that substantial tax dollars are lost due to unlawful direct shipping and that, if recouped, the increased tax revenue [excise & sales taxes] might be sufficient to offset the surcharge repeal. The DABT is required to report to the Legislature by March 1, 1999, the total amount of revenue collected pursuant to this law during calendar year 1998. Preliminary indications, however, do not demonstrate significant increased excise tax revenue collections which can be attributed to the direct shipping legislation.

Another effort at repeal resulted in legislation during the 1998 Session which tied repeal of the surcharge to employment of WAGES participants by the food and beverage industry. That legislation set forth a formula by which the economic benefit of a WAGES participant's employment could be calculated. This legislation passed but was subsequently vetoed by the Governor due to a concern that it did not set forth an adequate means of recouping the lost revenue.

Section 561.121, Florida Statutes, requires nine and eight-tenths of the surcharge to be transferred to the Children and Adolescents Substance Abuse Trust Fund [CASA TF] for the purpose of funding programs directed at reducing and eliminating substance abuse problems among children and adolescents. In FY 1997-1998, \$10,042,204 was transferred from surcharge collections to the CASA TF.

Section 3 of Chapter 97-213, Laws of Florida, contains an amendment to s. 561.121, Florida Statutes, which specifies that in the event the surcharge is repealed, \$10 million annually will be transferred from excise tax collections to the CASA TF. [See Comments section for further discussion of this issue.]

¹ The Consensus Revenue Estimating Conference estimated that under current practices the excise tax on alcoholic beverages would generate \$460.9m during calendar year 1998. Further, the Conference estimated that the alcoholic beverage surcharge would generate approximately \$109.5m for that same period. Sales tax collections on those surcharge sales were estimated to be an additional \$5.9m. In order to offset the repeal of the surcharge, the Conference estimated that \$74.1m in additional excise tax revenue must be collected in calendar year 1998, as well as \$41.3m in sales tax revenue. Therefore, if the amount of excise tax collections in calendar year 1998 reaches or exceeds \$535m, the alcoholic beverage surcharge can be repealed without adversely impacting state revenues.

B. EFFECT OF PROPOSED CHANGES:

HB 53 reduces by one-half the surcharge on alcoholic beverages which are sold for consumption on a retailer's licensed premises until September 1, 2000, at which time the surcharge is abolished.

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?

The DABT will be required to revise existing agency rules concerning collection of the alcoholic beverage surcharge.

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

N/A

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

N/A

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?

N/A

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

N/A

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

N/A

2. Lower Taxes:

a. Does the bill increase anyone's taxes?

No

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

No

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

Yes. The bill reduces by one-half the surcharge collected on the sale of alcoholic beverages effective September 1, 1999. Thereafter, the bill provides for the complete repeal of the surcharge effective September 1, 2000.

- 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?

No

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?

N/A

4. Individual Freedom:

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

N/A

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

N/A

5. Family Empowerment:

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

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

N/A

- (2) Who makes the decisions?

N/A

- (3) Are private alternatives permitted?

N/A

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

N/A

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

N/A

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

N/A

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?

N/A

(2) service providers?

N/A

(3) government employees/agencies?

N/A

D. STATUTE(S) AFFECTED:

Section 561.501, Florida Statutes.

E. SECTION-BY-SECTION ANALYSIS:

Section 1. Amends s. 561.501, Florida Statutes, to reduce by one-half the surcharge collected on the sale of alcoholic beverages which are consumed in a retailer's licensed establishment.

Section 2. Repeals s. 561.501, Florida Statutes, effective September 1, 2000.

Section 3. Provides the act will take effect on September 1, 1999.

IV. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

The Division of Alcoholic Beverages and Tobacco [DABT] will incur the cost of informing licensees of the change in tax rate and the necessary costs accompanying that change for various printed materials, computer programming and other administrative costs. This cost is estimated to be \$185,400 for FY 1999-2000.

Present law requires nine and eight-tenths of the surcharge to be transferred to the Children and Adolescents Substance Abuse Trust Fund [CASA TF] annually. For FY 1997-1998, total dollars deposited into the CASA TF exceeded \$10 million. Under the provisions of this legislation, the surcharge rate will be reduced by one-half for 10 months in FY 1999-2000 and the CASA Trust Fund will be negatively impacted for that period of time. [Also, please see Comments Section of Analysis.]

2. Recurring Effects:

For the period of September 1, 1999 to September 1, 2000, General Revenue collections will be reduced by approximately \$50 million; thereafter, revenue collections will be reduced by approximately \$100 million annually.

The Department of Business and Professional Regulation has an annual budget of over \$2 million and 53 FTE's to administer the surcharge program. Current staffing levels within the Division presently allow the nearly 20,000 licensees to be audited once during each three to five year period. Current staffing levels may need to be maintained at the present level for that period of time if the Legislature desires the DABT to conduct close-out audits.

Finally, present law requires nine and eight-tenths of the surcharge to be transferred to the Children and Adolescents Substance Abuse Trust Fund [CASA TF] annually. For FY 1997-1998, total dollars deposited into the CASA TF exceeded \$10 million. [See Comments section of Analysis.]

3. Long Run Effects Other Than Normal Growth:

N/A

4. Total Revenues and Expenditures:

See above and Comments Section below.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

None.

2. Recurring Effects:

None.

3. Long Run Effects Other Than Normal Growth:

None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

Affected alcoholic beverage licensees will incur costs associated with reprogramming their electronic cash registers and other record keeping functions to comport with the reduced tax.

2. Direct Private Sector Benefits:

To the extent drink prices are reduced as a result of the reduced tax, consumers will benefit by the reduced price.

Affected alcoholic beverage licensees will pay a reduced tax rate for a period of 10 months after which time the surcharge will be repealed resulting in a \$100 million savings.

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

Retailers may be able to invest revenue, which previously would have been paid as tax revenue, into their businesses resulting in increased employment opportunities or other benefits to private enterprise.

D. FISCAL COMMENTS:

The Division of Alcoholic Beverages and Tobacco anticipates increased non-compliance during the phasing out of the surcharge which would likely result in additional expenditures for investigative and legal efforts. Such expenditures are indeterminate.

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

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds.

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 state tax shared with counties or municipalities.

VI. COMMENTS:

Section 561.121, Florida Statutes, requires nine and eight-tenths of the surcharge to be transferred to the Children and Adolescents Substance Abuse Trust Fund [CASA TF]. Section 3 of Chapter 97-213, Laws of Florida, provided a contingency for the amendment of s. 561.121, Florida Statutes, if the surcharge is repealed, which directs \$10 million annually from excise tax collections to the Children and Adolescents Substance Abuse Trust Fund.

It may be argued that the plain language of section 3 requires \$10 million to be transferred annually to the CASA TF if the surcharge is repealed by any act of the Legislature. An editorial note to s. 561.121, Florida Statutes, however, gives credibility to the argument that the hold-harmless amendment contained in section 3 only takes effect if the surcharge is repealed pursuant to section 1 of Chapter 97-213, Laws of Florida.

Additionally, neither that statute nor this legislation contains a similar provision which would protect the CASA TF in view of a *reduction in the surcharge tax rate* as contemplated by this legislation.

Finally, repeal of s. 561.501, Florida Statutes, will also result in the repeal of the statutory directive that licensees maintain certain records for a designated period of time, statutory authority for the division to adopt rules concerning the required reporting, collection and accounting procedures and statutory authority for the division to compromise a taxpayer's liability. Removal of this language may compromise the division's ability to conduct close-out audits.

VII. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

Committee on Regulated Services

To ensure that the Children and Adolescents Substance Abuse Trust Fund [CASA TF] is not adversely impacted by repeal of the alcoholic beverage surcharge, on January 7, 1999, the Committee on Regulated Services adopted an amendment to HB 53 which appropriates \$4.3 million from alcoholic beverage excise tax collections to the CASA TF for FY 1999-2000 and appropriates \$10 million to the trust fund for each subsequent fiscal year. HB 53 passed the committee unanimously, as amended, and was referred to the Committee on Finance and Taxation.

Chronology of Events

STORAGE NAME: h0053z.rs

DATE: May 3, 1999

PAGE 8

On March 19, 1999, the Committee on Finance and Taxation introduced a committee bill, HB 1955, which reduced the alcoholic beverage surcharge by one-third. Provision was also made in that legislation to hold harmless the CASA Trust Fund. HB 53 was subsequently withdrawn from further consideration on March 24, 1999. HB 1955 was considered by the House on March 25, 1999 and on March 26, 1999, passed the House with a vote of 118 Yeas and 0 Nays. On April 7, 1999, HB 1955 was referred to the Senate Fiscal Resource and Regulated Industries Committees. HB 1955 died in the Committee on Fiscal Resource upon adjournment, however, the substance of HB 1955 passed as sections 14 and 15 of CS/SB172, 2nd Engrossed.

Sections 14 and 15 of CS/SB 172, 2nd Engrossed, provide that the surcharge is reduced to 6.67 cents on each one ounce of liquor or four ounces of wine, 4 cents on each 12 ounces of cider and 2.67 cents on each 12 ounces of beer. Distribution of surcharge revenue to the Children and Adolescents Substance Abuse [CASA] Trust Fund was increased in order that funding would not be diminished due to the reduction in surcharge collections. This reduced surcharge rate will reduce state revenue by approximately \$30.5 million in FY 99-00 and \$37.7 million in FY 00-01.

CS/SB 172, 2nd Engrossed was signed by the Governor on June 8, 1999, and became law as Chapter 99-239, Laws of Florida.

VIII. SIGNATURES:

COMMITTEE ON REGULATED SERVICES:

Prepared by:

Staff Director:

Janet Clark Morris

Paul Liepshutz

FINAL ANALYSIS PREPARED BY THE COMMITTEE ON REGULATED SERVICES:

Prepared by:

Staff Director:

Janet Clark Morris

Paul Liepshutz