

STORAGE NAME: h1221a.br.doc
DATE: February 12, 2002

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
BUSINESS REGULATION
ANALYSIS**

BILL #: HB 1221
RELATING TO: Cigarette Taxes/H. Lee Moffitt Cancer Center & Research Institute
SPONSOR(S): Representative(s) Byrd
TIED BILL(S): None

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

- (1) BUSINESS REGULATION YEAS 9 NAYS 0
 - (2) FISCAL RESPONSIBILITY COUNCIL
 - (3)
 - (4)
 - (5)
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I. SUMMARY:

THIS DOCUMENT IS NOT INTENDED TO BE USED FOR THE PURPOSE OF CONSTRUING STATUTES, OR TO BE CONSTRUED AS AFFECTING, DEFINING, LIMITING, CONTROLLING, SPECIFYING, CLARIFYING, OR MODIFYING ANY LEGISLATION OR STATUTE.

HB 1221 directs that, for a two-year period beginning July 1, 2002, 0.2632 percent of net revenue from cigarette excise tax collections is to be transferred to the H. Lee Moffitt Cancer Center and Research Institute [Moffitt Cancer Center]. Thereafter, beginning July 1, 2004, and continuing for a 12-year period, the bill directs that 1.47 percent of net revenue from cigarette excise tax collections is to be transferred to the Moffitt Cancer Center.

These funds are required to be used for constructing, furnishing, and equipping a cancer-research facility at the University of South Florida. A formula is established in order to ensure that the transfer of funds in the out years will not be reduced below a set level, now estimated to be \$5,585,415 annually.

It is estimated that this bill will reduce the amount of cigarette tax revenue deposited into General Revenue by approximately \$992,323 in FY 2002-2003 and \$984,385 for FY 2003-2004. Thereafter, transfers of cigarette tax revenue to the General Revenue Trust Fund will be decreased by approximately \$5,585,415 annually for 12 years.

The bill provides that the act will take effect upon becoming a law.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|------------------------------|-----------------------------|---|
| 1. <u>Less Government</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

B. PRESENT SITUATION:

Cigarette Tax Revenue

Chapters 210, 386, 569, F.S., and chapter 61 of the Florida Administrative Code, provide the regulatory and tax structure for Florida's tobacco laws. The Division of Alcoholic Beverages and Tobacco, Department of Business and Professional Regulation [division] is given statutory authority for oversight of this industry.

Cigarettes and other tobacco products, with the exception of cigars, are subject to a state excise tax. Taxes must be paid by the wholesale dealer at the time of the first sale within the state. Under s. 210.02, F.S., a standard pack of cigarettes is taxed at a rate of 33.94 per pack, with rates varying proportionately for cigarettes of non-standard size. For FY 2000-2001, the excise tax on cigarettes generated approximately \$421,200,000 in revenue for the State of Florida. Section 210.20, F.S., provides a formula for disposition of that revenue as follows:

- 7.3 percent of total collections for the General Revenue service charge
- 0.9 percent of total collections to fund the Division of Alcoholic Beverages and Tobacco

Of the remaining revenue, distributions are made as follows:

- 2.9 percent to Revenue Sharing Trust Fund for Counties;
- 29.3 percent to the Public Medical Assistance Trust Fund
- 2.59 percent to the Board of Directors, Moffitt Cancer Center; and
- the remainder to the General Revenue Fund.

Chapter 82-240, Laws of Florida, allocated proceeds from the cigarette excise tax to the Cancer and Chronic Research and Treatment Center Trust Fund in the amount of \$8,730,000 in 1982-83, \$25,020,000 in 1983-84 and \$11,250,000 in 1984-85 for a total of \$45 million. These funds were allocated to complete a Cancer and Chronic Disease Research and Treatment Center at the University of South Florida College of Medicine, which later became the H. Lee Moffitt Cancer Center and Research Institute [Moffitt Cancer Center].

Chapter 98-286, Laws of Florida, authorized a 10-year distribution of 2.59 percent of net cigarette tax collections to the Moffitt Cancer Center for construction of a cancer research facility. Distributions in the amount of \$10.5 million were made in both FY 1999-2000 and FY 2000-2001.

Cigarette excise tax collections generated \$432,600,000 for FY 1998-1999, \$421,200,000 in FY 1999-2000 and \$419,200,000 in FY 2000-2001. These revenues are expected to continue to decrease and are estimated to generate \$413.9 million for FY 2001-2002 and \$410.7 million in FY 2002-2003.

University-Based Cancer Research in Florida

There are three university-based cancer centers in Florida that conduct basic and clinical cancer-related research. These are: the University of Florida Shands Cancer Center, the Sylvester Comprehensive Cancer Center at the University of Miami, and the Moffitt Cancer Center at the University of South Florida. The Moffitt Cancer Center is Florida's only National Cancer Institute Comprehensive Cancer Center and is one of only 39 NCI-designated Comprehensive Cancer Centers in the United States.

Section 240.512, F.S., provides the statutory basis for the Moffitt Cancer Center. The statute required the then Board of Regents to enter into contract with a not-for-profit corporation organized solely for the purpose of governing and operating the Moffitt Cancer Center. The affairs of the corporation are managed by a board of directors who serve without compensation.

Chapter 98-286, Laws of Florida [codified as ss. 210.20(2)(c) and 210.201 F.S.], authorized 2.59 percent of cigarette excise tax revenue to be paid, beginning January 1, 1999, to the Board of Directors of the Moffitt Cancer Center for a period of 10 years and required that the moneys be used to secure financing to pay costs related to constructing, furnishing, and equipping a cancer research facility [often referred to as the Tower Project] and to covenant to complete the facility. Such financing may include the issuance of tax-exempt bonds by a local authority, municipality or county pursuant to parts II and III of chapter 159. The statute specified that these bonds do not constitute "state" bonds for purposes of s. 11, Art. VII, of the Florida Constitution, but constitute bonds of a "local agency" as defined in s. 159.27(4).

Section 210.201, F.S., further requires that cigarette tax revenue pledged to construction of this facility is to be replaced annually by the Legislature from tobacco litigation settlement proceeds.

C. EFFECT OF PROPOSED CHANGES:

HB 1221 requires that, beginning July 1, 2002, and continuing through June 30, 2004, an additional 0.2632 percent of cigarette tax revenue is to be transferred to the Moffitt Cancer Center, for use in financing the construction, furnishing, and equipping of the cancer research facility. Thereafter, beginning July 1, 2004, and continuing for a 12-year period through June 30, 2016, 1.47 percent of the net collections will be distributed to the Moffitt Cancer Center.

The bill provides that in FY 2004-2005 and thereafter, the appropriation for the cancer research facility authorized by this subparagraph will not be less than the base amount that would have been paid in FY 2001-2002 if this transfer provision had been in place. That base amount is estimated to equal \$5,585,415 annually. Under the provisions of s. 210.201, F.S., the Board of Directors is authorized to use these funds to secure financing for the construction project, including the issuance of tax-exempt bonds.

Section 210.201, F.S., mandates the Legislature replace the funds transferred to the Moffitt Cancer Center annually with revenue from the tobacco settlement. This bill amends that statute to make replacement of the revenue permissive.

The bill provides that the act will take effect upon becoming a law.

D. SECTION-BY-SECTION ANALYSIS:

Section 1. Amends s. 210.20(2)(b), F.S., relating to the Cigarette Tax Collection Trust Fund, to require that the Division transfer an amount equal to 0.2632 percent of the net revenues derived from the cigarette tax imposed under s. 210.02, F.S., to the Board of Directors of the Moffitt Cancer Center for a period of two years beginning July 1, 2002.

Beginning July 1, 2004, and continuing for a twelve-year period through June 30, 2016, the Division is required to transfer an amount equal to 1.47 percent of the net revenue derived from the cigarette tax to the Board of Directors of the Moffitt Cancer Center.

The Moffitt Cancer Center is required to use these funds for constructing, furnishing, and equipping a cancer-research facility at the University of South Florida, adjacent to the current Moffitt Cancer Institute. The bill provides that beginning in FY 2004-2005, and for twelve years thereafter, the transfer of funds shall not be less than the amount that would have been paid in FY 2001-2002 if this transfer provision had been in effect.

Section 2. Amends s. 210.201, F.S., to authorize, rather than require, replacement of the tax revenue with tobacco settlement proceeds and provides a statutory cross-reference to s. 210.20, F.S.

Section 3. Provides that the act will take effect upon becoming a law.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

Transfers of cigarette tax revenue to the General Revenue Trust Fund will be decreased by approximately \$992,323 in FY 2002-2003 and \$984,385 for FY 2003-2004. Thereafter, transfers of cigarette tax revenue to the General Revenue Trust Fund will be decreased by approximately \$5,585,415 annually for 12 years.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The H. Lee Moffitt Cancer Center and Research Institute will receive additional funding to assist in constructing, furnishing, and equipping the cancer research facility. When complete this expansion

will nearly double their research capabilities and will provide comprehensive outpatient care for more than 1,200 patients each day.

D. FISCAL COMMENTS:

Based on changing social and economic conditions, the future revenues generated by Florida's cigarette excise tax are uncertain. However, the bill establishes a floor, or minimum transfer amount, which is estimated to be \$5.6 million annually.

IV. 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 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.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

This bill requires an additional monthly appropriation, beginning July 1, 2002 and ending June 30, 2016, of a portion of the revenue collected from the excise tax on cigarettes for constructing, furnishing, and equipping expansion of the cancer research facility. Section 210.201 authorizes the use of these funds to secure financing which may include issuance of tax-exempt bonds by a local authority, municipality, or county pursuant to parts II and III of chapter 159.

The statutory authorization for the issuance of bonds appears to obligate cigarette tax revenue for future years; however, the future appropriations specified in the bill are not binding on future legislatures.

The Florida Supreme Court has ruled, see *Neu v. Miami Herald Publishing Company*, 462 So.2d 821 (Fla. 1985), that one legislative body cannot bind a future Legislature to an obligation. In *Neu*, a case addressing the Public Meetings Law, the court stated "A legislature may not bind the hands of future legislatures by prohibiting amendments to statutory law." *Neu*, at 824.

In an earlier case reviewing a challenge to establishment of geographic municipal boundaries, the court stated, "The Legislature cannot prohibit a future Legislature by proper enactment changing boundaries which it [the earlier Legislature] established." *Kirklands v. Town of Bradley*, 139 So. 144, 145, (Fla. 1932)

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B. RULE-MAKING AUTHORITY:

None.

C. OTHER COMMENTS:

The original concept of the cancer research facility contemplated a three-story clinic structure and three-story research laboratory with limited on-site parking and infrastructure. Due to significant increases in patient volumes over the past few years the need for additional clinic and research space has been identified. Annual patient visits were approximately 161,515 in 2001 and the number is expected to reach 196,000 patient visits by 2003 and 250,000 patient visits by 2005.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

None.

VII. SIGNATURES:

COMMITTEE ON BUSINESS REGULATION:

Prepared by:

Staff Director:

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