

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based only on the provisions contained in the legislation as of the latest date listed below.)

Date: March 12, 1998 Revised: 03/24/98 \_\_\_\_\_

Subject: Cigarette Tax Collection Trust Fund/Moffitt Cancer and Research Institute

	<u>Analyst</u>	<u>Staff Director</u>	<u>Reference</u>	<u>Action</u>
1.	<u>Williams</u>	<u>Wilson</u>	<u>HC</u>	<u>Fav/1 amendment</u>
2.	_____	_____	<u>ED</u>	_____
3.	_____	_____	<u>WM</u>	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

**I. Summary:**

Senate Bill 1636 specifies that, beginning January 1, 1999, and continuing for 10 years thereafter, 2.59 percent of cigarette tax revenues be transferred from the Cigarette Tax Collection Trust Fund to the Board of Directors of the H. Lee Moffitt Cancer Center and Research Institute, for use in financing the construction, furnishing, and equipping of a cancer research facility at the University of South Florida. The bill provides for the uses of the transferred funds, including the issuance of tax-exempt bonds and the pledging of such tax revenue to cover related costs. The bill specifies that the Moffitt Center’s Board of Directors is to manage the construction and operate the facility upon completion of construction.

The bill creates an undesignated section of law.

**II. Present Situation:**

**Cigarette Tax Revenue**

Florida began taxing cigarettes in 1943. Taxes must be paid by the wholesale dealer at the time of the first sale within the state. Under s. 210.02, F.S., cigarettes of common size are taxed at a rate of \$.339 per pack, with rates varying proportionately for cigarettes and packs of non-standard size. As to disposition of this tax revenue, s. 210.20, F.S., specifies that: 7.3 percent of total collections be used for the General Revenue service charge under s. 215.20, F.S.; and an additional 0.9 percent of total collections be used to fund the Division of Alcoholic Beverages and Tobacco within the Department of Business and Professional Regulation. Of the remaining cigarette tax revenue, distributions are made as follows:

<u>Distribution Entity</u>	<u>Percent</u>
Municipal Financial Assistance Trust Fund	5.8
Municipal Revenue Sharing	32.4
County Revenue Sharing	2.9
Public Medical Assistance Trust Fund	29.3
General Revenue - Balance of available funds	29.6

Cigarette tax collections for fiscal years 1997-98 and 1998-99 are estimated to be \$451,300,000 and \$447,900,000, respectively. Based on the above distribution, General Revenue allocations (excluding the service charge) for fiscal years 1997-98 and 1998-99 are estimated to be \$122,630,846 and \$121,706,971, respectively.

### **University-Based Cancer Research in Florida**

There are three university-based comprehensive cancer centers in Florida that conduct basic and clinical cancer-related research. These are: the University of Florida Shands Cancer Center in Gainesville, the H. Lee Moffitt Cancer Center and Research Institute at the University of South Florida in Tampa, and the Sylvester Comprehensive Cancer Center at the University of Miami in Miami.

Chapter 240, F.S., relates to postsecondary education. Part V of chapter 240, F.S., consisting of ss. 240.501-240.705, F.S., provides for specific programs and institutions. Section 240.512, F.S., provides the statutory basis for the H. Lee Moffitt Cancer Center and Research Institute at the University of South Florida. In pertinent part, this section reads:

240.512 H. Lee Moffitt Cancer Center and Research Institute.--There is established the H. Lee Moffitt Cancer Center and Research Institute at the University of South Florida.

(1) The Board of Regents shall enter into an agreement for the utilization of the facilities on the campus of the University of South Florida to be known as the H. Lee Moffitt Cancer Center and Research Institute, including all furnishings, equipment, and other chattels used in the operation of said facilities, with a Florida not-for-profit corporation organized solely for the purpose of governing and operating the H. Lee Moffitt Cancer Center and Research Institute. This not-for-profit corporation, acting as an instrumentality of the State of Florida, shall govern and operate the H. Lee Moffitt Cancer Center and Research Institute in accordance with the terms of the agreement between the Board of Regents and the not-for-profit corporation. The not-for-profit corporation may, with the prior approval of the Board of Regents, create not-for-profit corporate subsidiaries to fulfill its mission. The not-for-profit corporation and its subsidiaries are authorized to receive, hold, invest, and administer property and any moneys received from private, state, and federal sources, as well as technical and professional income generated or derived from practice activities of the institute, for the benefit of the institute and the fulfillment of its mission. The affairs of the corporation shall be managed by a board of directors

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who shall serve without compensation. The President of the University of South Florida and the chair of the Board of Regents, or his or her designee, shall be directors of the not-for-profit corporation, together with 5 representatives of the State University System and no more than 14 nor fewer than 10 directors who are not medical doctors or state employees. Each director shall have only one vote, shall serve a term of 3 years, and may be reelected to the board. Other than the President of the University of South Florida and the chair of the Board of Regents, directors shall be elected by a majority vote of the board. The chair of the board of directors shall be selected by majority vote of the directors.

(5) The institute shall be administered by a center director who shall serve at the pleasure of the board of directors of the not-for-profit corporation and who shall have the following powers and duties subject to the approval of the board of directors:

(d) The center director shall have control over the use and assignment of space and equipment within the facilities.

(7) In carrying out the provisions of this section, the not-for-profit corporation and its subsidiaries are not "agencies" within the meaning of s. 20.03(11).

(8)(a) Records of the not-for-profit corporation and of its subsidiaries are public records unless made confidential or exempt by law.

(b) Proprietary confidential business information is confidential and exempt from the provisions of s. 119.07(1), F.S., and s. 24(a), Art. I, State Constitution. However, the Auditor General and Board of Regents, pursuant to their oversight and auditing functions, must be given access to all proprietary confidential business information upon request and without subpoena and must maintain the confidentiality of information so received. As used in this paragraph, the term "proprietary confidential business information" means information, regardless of its form or characteristics, which is owned or controlled by the not-for-profit corporation or its subsidiaries; is intended to be and is treated by the not-for-profit corporation or its subsidiaries as private and the disclosure of which would harm the business operations of the not-for-profit corporation or its subsidiaries; has not been intentionally disclosed by the corporation or its subsidiaries unless pursuant to law, an order of a court or administrative body, a legislative proceeding pursuant to s. 5, Art. III, State Constitution, or a private agreement that provides that the information may be released to the public; and which is information concerning:

1. Internal auditing controls and reports of internal auditors;

4. Bids or other contractual data, banking records, and credit agreements the disclosure of which would impair the efforts of the not-for-profit corporation or its subsidiaries to contract for goods or services on favorable terms;

8. Minutes of meetings of the governing board of the not-for-profit corporation and its subsidiaries, except minutes of meetings open to the public pursuant to subsection (9);

11. The identity of donors or prospective donors of property who wish to remain anonymous or any information identifying such donors or prospective donors. The anonymity of these donors or prospective donors must be maintained in the auditor's report.

(9) Meetings of the governing board of the not-for-profit corporation and meetings of the subsidiaries of the not-for-profit corporation at which the expenditure of dollars appropriated to the not-for-profit corporation by the state are discussed or reported must remain open to the public in accordance with s. 286.011, F.S., and s. 24(b), Art. I, State Constitution, unless made confidential or exempt by law. Other meetings of the governing board of the not-for-profit corporation and of the subsidiaries of the not-for-profit corporation are exempt from s. 286.011, F.S., and s. 24(b), Art. I, State Constitution.

### **III. Effect of Proposed Changes:**

Senate Bill 1636 specifies that, beginning January 1, 1999, and continuing for 10 years thereafter, 2.59 percent of monthly cigarette tax revenues be transferred from the Cigarette Tax Collection Trust Fund to the Board of Directors of the H. Lee Moffitt Cancer Center and Research Institute, for use in financing the construction, furnishing, and equipping of a cancer research facility at the University of South Florida. The bill provides for the uses of the transferred funds, including the issuance of tax-exempt bonds and the pledging of such tax revenue to cover related costs. The bill specifies that the Moffitt Center's Board of Directors is to manage the construction and operate the facility upon completion of construction.

The bill's effective date is July 1, 1998.

### **IV. Constitutional Issues:**

#### **A. Municipality/County Mandates Restrictions:**

The provisions of this bill have no impact on municipalities and the counties under the requirements of Article VII, Section 18 of the Florida Constitution.

#### **B. Public Records/Open Meetings Issues:**

The provisions of this bill have no impact on public records or open meetings issues under the requirements of Article I, Subsections 24(a) and (b) of the Florida Constitution.

#### **C. Trust Funds Restrictions:**

The provisions of this bill have no impact on the trust fund restrictions under the requirements of Article III, Subsection 19(f) of the Florida Constitution.

**V. Economic Impact and Fiscal Note:**

**A. Tax/Fee Issues:**

The bill, by redistributing the revenue collections from the cigarette tax, impacts the amount of General Revenue funds available by an estimated \$10,649,360 for fiscal year 1998-99.

**B. Private Sector Impact:**

Unless the General Revenue reduction is somehow made up for the redistribution of funds provided under the bill, the public could see a decrease in funding for public programs.

This General Revenue decrease will theoretically be ultimately offset by any public good that might come out of enhanced cancer research capability within the state.

**C. Government Sector Impact:**

As previously indicated, cigarette tax revenue is distributed as follows under s. 210.20, F.S., using the estimated collections for fiscal year 1998-99 of \$447,900,000 as an illustration:

<u>Distribution Entity</u>	<u>Percent</u>	<u>Amount</u>
General Revenue Service Charge	7.3	\$32,696,700
Division of Alcoholic Beverages and Tobacco	0.9	4,031,100
Remainder		\$411,172,200
Municipal Financial Assistance Trust Fund	5.8	\$23,847,988
Municipal Revenue Sharing	32.4	133,219,793
County Revenue Sharing	2.9	11,923,994
Public Medical Assistance Trust Fund	29.3	120,473,454
General Revenue - current	29.6	121,706,971
Moffitt revenue - proposed	2.59	\$10,649,360
General Revenue - proposed	27.01	111,057,611

Based on the above analysis and assuming that cigarette tax revenues remain fairly constant over the course of the next 10 years, which is a definite uncertainty, this bill has the potential to generate in excess of \$106 million over the 10-year period.

No information has been provided to indicate how these revenues will be used in terms of authorization for construction, furnishing, equipping, and operating the proposed cancer-research facility.

## VI. Technical Deficiencies:

The bill, on page 2, line 3, improperly cross-references s. 210.22, F.S., as the tax source from which revenue is to be derived for purposes of the bill. Section 210.22, F.S., provides legislative intent relating to severability of cigarette tax provisions. It is assumed that the appropriate cross-reference would be s. 210.02, F.S., which provides for the imposition of the cigarette tax.

## VII. Related Issues:

The staff of the Board of Regents offered the following comments regarding the bill:

- This legislation has not been filed at the request of the Board of Regents, nor has the Board of Regents taken any position on it.
- If the Legislature determines that a portion of cigarette tax revenues should be paid directly to an institution to conduct cancer research, there is no substantive or programmatic reason that any one of the three university-based comprehensive cancer centers should be given higher priority for receipt of these revenues than the other two institutions.

This bill requires a monthly appropriation of a portion of the revenue collected from the tax on cigarettes for payment of construction of the H. Lee Moffitt cancer research center for a period of 10 years. The State Supreme Court has repeatedly held that a present Legislature may not bind a future Legislature by the former Legislature's enactments. For example, in *Kirklands v. Town of Bradley*, 139 So. 144 (Fla. 1932), the Court was asked to determine whether or not the language in ch. 6804, Sp. Acts of 1913, that established the municipal corporation (municipality) of Bradley, Florida, stating: 'That the territorial boundaries of the town of Bradley hereby created shall not be changed and shall be as follows' excludes property outside the established boundaries from the applicability of a subsequently enacted law. Specifically, the Court ruled on whether the phrase *shall not be changed* excluded property from the effects of the later enacted statute. The Court held that the phrase ". . . can have no preventive force or effect. The Legislature cannot prohibit a future Legislature by proper enactment changing boundaries which it established." Additionally, the Court held in *Tamiami Trail Tours, Inc. v. Lee*, 194 So. 305 (Fla. 1940),

The legislative power to deal with new situations as they arise cannot thus be limited, even though their action expressly or impliedly repeals former legislative acts. . . .

Furthermore, the legislature can by statute prescribe a new rule, which, if the statute shows an intention so to do, will completely govern the subject dealt with, even though this amounts to an implied repeal of all prior acts in conflict therewith.

More recently, in 1997, the Florida Supreme Court in *Advisory Opinion to the Attorney General RE Requirement for Adequate Public Education Funding*, No. 89962, (Fla. 1997) issued an advisory opinion relating to a proposed constitutional amendment that would require the state to allocate a minimum of 40 percent of appropriations of state funds, not including lottery proceeds

or federal funds, to make *adequate provision for funding public education*. The Court reasoned, in agreement with opponents of the proposed amendment, that

. . . setting a minimum percentage of forty percent of appropriations for education *arbitrarily* relegates the percentage of appropriations for all other functions of government to the remaining sixty percent of appropriations . . . It is obvious that this amendment would substantially alter the legislature's present discretion in making value choices as to appropriations among the various vital functions of State government, including not only education but also civil and criminal justice; public health, safety, and welfare; transportation; disaster relief; agricultural and environmental regulation; and the remaining array of State governmental services.

#### **VIII. Amendments:**

#1 by Health Care:  
Technical, corrects a cross-reference.

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This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

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