

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: April 21, 1998 Revised: _____

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> </u>	<u> </u>	<u>ED</u>	<u>Withdrawn</u>
3.	<u>Keating</u>	<u>Smith</u>	<u>WM</u>	<u>Favorable/CS</u>
4.	<u> </u>	<u> </u>	<u> </u>	<u> </u>
5.	<u> </u>	<u> </u>	<u> </u>	<u> </u>

I. Summary:

The bill specifies that, beginning January 1, 1999, and continuing for 10 years thereafter, 2.59 percent of net 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 guarantees that the annual cigarette tax distribution and appropriation can not be less than the annualized 1998-99 cigarette tax distribution and appropriation.

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: 5.8 percent to the Municipal Financial

Assistance Trust Fund; 32.4 percent to Municipal Revenue Sharing; 2.9 percent to County Revenue Sharing; 29.3 percent to the Public Medical Assistance Trust Fund; and the remainder to the General Revenue Fund.

Cigarette tax collections are estimated to be \$450.2 million in fiscal year 1998-99 and \$452.5 million in fiscal year 1999-00. Based on the above distribution, General Revenue allocations (excluding the service charge) for fiscal years 1998-99 and 1999-00 are estimated to be \$121.5 million and \$122.4 million respectively.

Chapter 82-240, Laws of Florida, diverted first proceeds of the General Revenue receipts from the cigarette 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. The funds in the trust fund were allocated to complete a Cancer and Chronic Disease Research and Treatment Center at the University of South Florida College of Medicine, which became the H. Lee Moffitt Cancer Center and Research Institute.

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 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 some of the following:

- Internal auditing controls and reports of internal auditors;
- 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;

- 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);
- 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:

The bill specifies that, beginning January 1, 1999, and continuing for 10 years thereafter, 2.59 percent of cigarette tax collections, less the general revenue service charge provided in s. 215.20, and less 0.9 percent of the amount derived from the cigarette tax imposed by s. 210.02, which shall be deposited into the Alcoholic Beverage and Tobacco Trust Fund, 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 those funds 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 provides that in fiscal years 1999-2000 and thereafter, with the exception of fiscal year 2008-2009, the cigarette tax distribution and appropriation to the Institute shall not be less than the amount that would have been paid to the Institute for fiscal year 1998-1999 had payments been made for the entire fiscal year rather than for a 6-month period.

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.

D. Other Constitutional Issues:

Article VII, section 11 of the Florida Constitution prohibits state bonds pledging of the full faith and credit of the state without a referendum and allows revenue bonds to be issued by the state or its agencies only from funds derived directly from sources other than state tax revenues. The provisions of this act allow the Board of Directors of the Moffit Cancer Center to pledge the proceeds from the cigarette tax appropriated to them annually by statute. It is unclear how the Constitutional provision would impact this pledge.

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 \$4.5 million in 1998-99 and \$10.8 million in fiscal year 1999-00. The bill guarantees that the annual cigarette tax distribution and appropriation can not be less than the annualized 1998-99 cigarette tax distribution and appropriation.

Issue/Fund	General Revenue		Trust		Local		Total	
	1st Year	Recurring	1st Year	Recurring	1st Year	Recurring	1st Year	Recurring
Cigarette Tax Revenue Redistribution	\$ (4.5)	\$ (10.8)	\$ 4.5	\$ 10.8	0.0	0.0	0.0	0.0

* Insignificant
 ** Indeterminate

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:

Based on the above analysis and assuming that cigarette tax revenues remain fairly constant over the course of the next 10 years, this bill has the potential to generate in excess of \$108 million over the 10-year period to be paid to the Board of Directors of the H. Lee Moffitt Cancer Center and Research Institute.

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:

None.

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:

None.