

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 3, 1998 Revised: 04/21/98 \_\_\_\_\_

Subject: Lawsuit Against Tobacco Companies

	<u>Analyst</u>	<u>Staff Director</u>	<u>Reference</u>	<u>Action</u>
1.	Revell	Smith	WM	Fav/1 amendment
2.	_____	_____	_____	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

**I. Summary:**

This bill limits attorney fees in the state’s lawsuit against tobacco companies to a maximum of \$3 million. Attorney fees paid in the lawsuit that exceed \$3 million are to be used to provide annual salary bonuses for classroom teachers.

**II. Present Situation:**

On August 25, 1997 the tobacco industry agreed to a settlement of at least \$11.3 billion dollars from tobacco companies to Florida over the next 25 years for reimbursement of Medicaid expenses, punitive damages, fraud and RICO.

The 12 attorneys handling the case would divide amongst themselves \$2.8 billion or approximately \$250 million per attorney.

In the current year, 1997-1998, there are a total of 126,397 teachers with an average teacher salary of \$34,473.

**III. Effect of Proposed Changes:**

This bill would limit the fees that lawyers in Florida’s tobacco lawsuit to a total of \$250 per hour, or a maximum of \$250,000 per attorney, providing the attorneys with a total of \$3 million to divide amongst themselves.

The remainder of the dollars, approximately \$2.797 billion would be awarded, as an annual salary bonus, to classroom teachers on an equal basis. There are a total of 126,397 Florida classroom teachers.

**IV. Constitutional Issues:**

## A. Municipality/County Mandates Restrictions:

None.

## B. Public Records/Open Meetings Issues:

None.

## C. Trust Funds Restrictions:

None.

## D. Other Constitutional Issues:

The state's private attorneys have a contingency fee contract entered into under the provisions of s. 409.910(15), F.S., that entitles them to attorneys' fees in the amount of 25 percent of the recovery. It is currently in dispute as to what base that the percentage properly applies to. The Attorney General takes the position that the 25 percent is to be based on the Medicaid recovery portion of the entire settlement amount. The state's private counsel are of the view that the proper base for computing their attorneys' fee is the entire recovery, not limited to the Medicaid portion.

On its face, this bill raises the possible issue of impairment of obligations of a contract, namely the contingency fee contract. However, to the extent that the funds used to pay the state's private counsel are state funds, then their use is subject to legislative oversight and control, and the Legislature is empowered to modify this attorneys' fee contract, by law, without interfering with the state's private attorneys' constitutional rights. *Gamble v Wells*, 450 So.2d 850 (Fla. 1984).

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

## A. Tax/Fee Issues:

None.

## B. Private Sector Impact:

None.

**C. Government Sector Impact:**

The \$2.8 billion attorney's fees in the tobacco lawsuit would be reduced to a maximum of \$3 million with the remaining balance of \$2.797 billion to be awarded on an equal basis to classroom teachers of the state as an annual salary bonus. There are a total of 126,397 Florida classroom teachers.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Amendments:**

#1 by Ways and Means:

Adds new subsections (4) and (5) to the bill to state that the bill only applies to state funds expended to pay attorney's fees and not fees determined payable by tobacco companies in excess of those funds payable to the state pursuant to the settlement agreement. The amendment also clarifies that the bill is not to be construed as an appropriation of funds.