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HOUSE OF REPRESENTATIVES
COMMITTEE ON
GENERAL GOVERNMENT APPROPRIATIONS
ANALYSIS

BILL #: HB 1865 (PCB GG 99-02)

RELATING TO: Department of Banking and Finance Tobacco Settlement Clearing Trust Fund

SPONSOR(S): Committee on General Government Appropriations

COMPANION BILL(S):

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:
(1) GENERAL GOVERNMENT APPROPRIATIONS YEAS 12 NAYS 0
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I. SUMMARY:

This bill creates the Department of Banking and Finance Tobacco Settlement Clearing Trust Fund. The need for this new fund results from the settlement of the lawsuit by the State of Florida against tobacco manufacturers and other defendants and the state's need to account for settlement funds accurately.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

The State of Florida commenced a legal action against various tobacco manufacturers and other defendants in February, 1995, asserting various claims for monetary and injunctive relief on behalf of the State of Florida.

On August 25, 1997, the State of Florida entered into a settlement agreement with several of the tobacco companies, including Philip Morris Incorporated, R.J. Reynolds Tobacco Company, Brown & Williamson Tobacco Corporation, Lorillard Tobacco Company, and United States Tobacco Company.

The settling defendants agreed among other things:

- To discontinue all billboards and transit advertisements of tobacco products in the State of Florida,

- To support legislative initiatives to enact new laws and administrative initiatives to promulgate new rules intended to effectuate:

  1. The prohibition of the sale of cigarettes in vending machines, except in adult-only locations and facilities;

  2. The strengthening of civil penalties for sales of tobacco products to children under the age of 18, including the suspension or revocation of retail licenses; and

  3. The strengthening of civil penalties for possession of tobacco products by children under the age of 18.

- Monetary provisions, including

  1. Initial Payment -- Pilot Program. Settling defendants also agreed to support a pilot program by the State of Florida, the elements of which were to be aimed specifically at the reduction of the use of tobacco products by persons under the age of 18 years. On or before September 15, 1997, the settling defendants agreed to pay into a second escrow account for the benefit of the State of Florida, the sum of $200 million. The requirement for the Pilot Program has since been removed under the “most favored nation” provision.

  2. Initial Payment -- General. On or before September 15, 1997, settling defendants agreed to pay into an escrow account for the benefit of the State of Florida, the sum of $550 million, representing the plaintiffs’ estimate of the portion Florida would receive of the $10 billion payment provided for in the then proposed federal resolution.

  3. Annual Payments. On September 15, 1998, (subject to adjustment for actual market share by January 30, 1999), and annually thereafter, on December 31st (subject to final adjustment within 30 days), each of the settling defendants agreed, severally and not jointly, that it will pay into a special account for the benefit of the State of Florida, pro rata in proportion equal to its respective market share, its share of 5.5% of the following amounts (in billions):

Year	Amount
1	$4.0B
2	$4.5B
3	$5.0B
4	$6.5B
5	$6.5B
6	$8.0B
thereafter	$8.0B

These payments are to be adjusted upward by the greater of 3% or the Consumer Price Index applied each year on the previous year, beginning with the first annual payment. These payments will also be decreased or increased, in accordance with decreases or increases in volume of domestic tobacco product volume sales.

The monies received by the State of Florida under this settlement agreement constitute not only reimbursement for Medicaid expenses incurred by the state, but also settlement of all of Florida's other claims, including those for punitive damages, RICO and other statutory theories. The settlement anticipated that these funds, will be used :

- for children's health care coverage and other health-related services,
- to reimburse the State of Florida for medical expenses incurred by the state,
- for mandated improvements in State enforcement efforts regarding the reduction of sales of tobacco products to minors, and
- to ensure the proposed federal resolution's performance targets.

The funds provided under the settlement agreement may be used for such purposes as the state match required to draw federal funds to provide children's health care coverage and for enhancement of children's and adolescents' substance abuse services, substance abuse prevention and intervention and children's mental health services.

B. EFFECT OF PROPOSED CHANGES:

This bill creates a new trust fund - the Tobacco Settlement Clearing Trust Fund - in the Department of Banking and Finance. Moneys received from the settling defendants pursuant to the settlement are required to be deposited into this fund. Moneys will be disbursed to tobacco settlement trust funds in various departments (created in separate bills), by nonoperating transfers, from the clearing trust fund in amounts equal to the appropriations made from those trust funds annually in the General Appropriations Act. Additionally, the department will disburse funds, by nonoperating transfer, from the clearing trust fund to the Lawton Chiles Endowment Fund for Children and Elders (also created in a separate bill) in amounts specified by law. Notwithstanding the provisions of s. 216.301 and pursuant to s. 216.351, any unencumbered balance in the trust fund at the end of any fiscal year and any encumbered balance remaining undisbursed on December 31 of the same calendar year shall revert to the Lawton Chiles Endowment Fund for Children and Elders.

C. APPLICATION OF PRINCIPLES:

1. <u>Less Government:</u>

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

No.

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

No.

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

No.

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. <u>Lower Taxes:</u>

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?

No.

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?

No.

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?

No.

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 17.41, Florida Statutes

E. SECTION-BY-SECTION ANALYSIS:

Section 1. Creates s. 17.41, F.S., creating the Tobacco Settlement Clearing Trust Fund in the Department of Banking and Finance. Provides for deposit into the trust fund of annual payments received by the State from the settlement of State of Florida v. American Tobacco Company, Case No. 95-1466AH, in the Circuit Court for the Fifteenth Judicial Circuit, in and for Palm Beach County, Florida. The fund is exempt from General Revenue service charge imposed by s. 215.20, F.S. Money in the fund shall be invested by the State Board of Administration, with applicable costs and fees, in accordance with ss. 214.44-215.53, F.S. Notwithstanding the provisions of section 216.301 and pursuant to section 216.351, any unencumbered balance in the trust fund at the end of any fiscal year and any encumbered balance remaining undisbursed on December 31 of the same calendar year shall revert to the Lawton Chiles Endowment Fund for Children and Elders. As a clearing fund, the trust fund is not subject to constitutional termination.

Section 2. Establishes an effective date.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

None.

2. Recurring Effects:

None.

3. Long Run Effects Other Than Normal Growth:

None.

4. Total Revenues and Expenditures:

None.

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:

None.

2. Direct Private Sector Benefits:

None.

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

None.

D. FISCAL COMMENTS:

Creation of this fund will allow tobacco settlement expenditures to be tracked over time.

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 to take any actions requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority of counties or municipalities to raise revenues in the aggregate, as such authority existed on February 1, 1989.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the percentage of a state tax shared with counties and municipalities as an aggregate on February 1, 1989.

V. COMMENTS:

None.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

N/A

VII. SIGNATURES:

COMMITTEE ON GENERAL GOVERNMENT APPROPRIATIONS:

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