

By the Committee on Governmental Oversight and Productivity;
and Senator Horne

302-2182-00

1 A bill to be entitled
2 An act relating to state revenue; amending s.
3 215.5601, F.S.; defining the term
4 "participating manufacturer"; revising
5 legislative intent; specifying procedures by
6 which a tobacco manufacturer may become a
7 participating manufacturer; providing for
8 signatories to a specified settlement agreement
9 to be participating manufacturers; providing
10 for funds received from participating
11 manufacturers to be deposited into the Tobacco
12 Settlement Clearing Trust Fund; providing for a
13 portion of unappropriated funds to be deposited
14 into the Lawton Chiles Endowment Fund; amending
15 s. 210.02, F.S.; imposing a surtax on
16 cigarettes not manufactured by a participating
17 manufacturer, as defined by the act; providing
18 for calculating the amount of the surtax;
19 amending s. 210.20, F.S.; providing for the
20 deposit of proceeds of the surtax; providing an
21 effective date.

22
23 Be It Enacted by the Legislature of the State of Florida:

24
25 Section 1. Section 215.5601, Florida Statutes, is
26 amended to read:

27 215.5601 Lawton Chiles Endowment Fund.--

28 (1) SHORT TITLE.--This section may be cited as the
29 "Lawton Chiles Endowment Fund."

30 (2) DEFINITIONS.--As used in this section:

31

1 (a) "Board" means the State Board of Administration
2 established by s. 16, Art. IX of the State Constitution of
3 1885 and incorporated into s. 9(c), Art. XII of the State
4 Constitution of 1968.

5 (b) "Endowment" means the Lawton Chiles Endowment
6 Fund.

7 (c) "Earnings" means all income generated by
8 investments and the net change in the market value of assets.

9 (d) "Participating manufacturer" means any
10 manufacturer of tobacco products which meets the requirements
11 of subsection (4).

12 (e)~~(d)~~ "State agency" or "state agencies" means the
13 Department of Health, the Department of Children and Family
14 Services, the Department of Elderly Affairs, or the Agency for
15 Health Care Administration, or any combination thereof, as the
16 context indicates.

17 (3) LEGISLATIVE INTENT.--It is the intent of the
18 Legislature to:

19 (a) Provide a perpetual source of funding for the
20 future of state children's health programs, child welfare
21 programs, community-based health and human services
22 initiatives, and biomedical research activities.

23 (b) Ensure that enhancement revenues will be available
24 to finance these important initiatives.

25 (c) Use funds received from the Tobacco Settlement
26 Clearing Trust Fund ~~moneys~~ to ensure the financial security of
27 vital health and human services programs.

28 (d) Encourage the development of community-based
29 solutions to strengthen and improve the quality of life of
30 Florida's most vulnerable citizens.

31

1 (e) Provide funds for cancer research and
2 public-health research for diseases linked to tobacco use.

3 (f) Provide tobacco manufacturers the opportunity to
4 voluntarily participate in mitigating the impact of the use of
5 tobacco on the residents of this state.

6 (4) PARTICIPATING MANUFACTURERS; QUALIFICATIONS.--

7 (a)1. A tobacco manufacturer may become a
8 participating manufacturer by entering into an agreement with
9 the Attorney General which provides for the following:

10 a. Elimination of the manufacturer's outdoor
11 advertising and transit advertisements at the earlier of the
12 expiration of applicable contracts or 4 months after the date
13 the final list of outdoor advertising signs is supplied to the
14 Attorney General. The manufacturer shall provide a final list
15 of all its outdoor advertising signs and transit
16 advertisements to the Attorney General within 45 days after
17 entering the agreement.

18 b. Support of the state's efforts to mitigate the
19 impact of the use of tobacco through annual payments to the
20 state. On January 1 of each year, the Division of Alcoholic
21 Beverages and Tobacco of the Department of Business and
22 Professional Regulation shall calculate the payment amount,
23 which is due by January 31 of that year. The payment amount
24 shall be based on the number of cigarette packages delivered
25 to wholesale dealers for sale in this state by the
26 manufacturer from January 1 until December 31 of the prior
27 year. The payment amount per package shall be calculated as
28 the total annual payment due to the state pursuant to the
29 settlement agreement in the case of The State of Florida et
30 al., v. American Tobacco Company et al., divided by the total
31 number of packages delivered to wholesale dealers for sale in

1 this state by the four settling manufacturers during the
2 previous 12 months, rounded to the nearest tenth of a cent.

3 2. Cigarettes produced by each manufacturer that fully
4 complies with the agreement entered into with the Attorney
5 General under subparagraph 1. and makes the annual payment by
6 January 31 are exempt from the surtax on cigarettes imposed
7 under s. 210.02(6) for the subsequent 12-month period.

8 (b) All tobacco manufacturers that are signatories to
9 the settlement agreement entered on August 25, 1997, in the
10 case of The State of Florida et al., v. American Tobacco
11 Company et al., and the settlement agreement entered on March
12 15, 1996, in the case of State of West Virginia, State of
13 Florida, State of Mississippi, Commonwealth of Massachusetts,
14 and State of Louisiana v. Brooke Group Ltd. and Liggett Group,
15 Inc., are participating manufacturers. Cigarettes produced by
16 each such manufacturer that fully complies with the applicable
17 settlement agreement and makes the annual payment required
18 under the agreement by December 31 are exempt from the surtax
19 on cigarettes imposed under s. 210.02(6) for the subsequent
20 12-month period.

21 (c) Funds received from participating manufacturers
22 shall be deposited into the Department of Banking and Finance
23 Tobacco Settlement Clearing Trust Fund.

24 (5)(4) LAWTON CHILES ENDOWMENT FUND; CREATION;
25 PURPOSES AND USES.--

26 (a) There is created the Lawton Chiles Endowment Fund,
27 to be administered by the State Board of Administration. The
28 endowment shall serve as a clearing trust fund not subject to
29 termination pursuant to s. 19(f), Art. III of the State
30 Constitution and shall be funded by ~~settlement~~ moneys received
31 from the Tobacco Settlement Clearing Trust Fund ~~industry~~. The

1 endowment fund shall be exempt from the service charges
2 imposed by s. 215.20.

3 (b) Funds from the endowment shall be distributed by
4 the board to trust funds of the state agencies in the amounts
5 indicated by reference to the legislative appropriations for
6 the state agencies, except as otherwise provided in this
7 section.

8 (c) The state agencies shall use the funds from the
9 endowment to enhance or support increases in clients served or
10 in program costs in health and human services program areas.

11 (d) The Secretary of Health, the Secretary of Children
12 and Family Services, the Secretary of Elderly Affairs, and the
13 Director of Health Care Administration shall conduct meetings
14 to discuss program priorities for endowment funding prior to
15 submitting their budget requests to the Executive Office of
16 the Governor and the Legislature. The purpose of the meetings
17 shall be to gain consensus for priority requests and
18 recommended endowment funding levels for those priority
19 requests. An agency head may not designate a proxy for these
20 meetings.

21 (e) Funds from the endowment may not be used to
22 supplant existing revenues.

23 (f) When advised by the Revenue Estimating Conference
24 that a deficit will occur with respect to the appropriations
25 from the Tobacco Settlement Clearing Trust Fund in any fiscal
26 year, the Governor shall develop a plan of action to eliminate
27 the deficit. Before implementing the plan of action, the
28 Governor must comply with the provisions of s. 216.177(2). In
29 developing the plan of action, the Governor shall, to the
30 extent possible, preserve legislative policy and intent, and,
31 absent any specific directions to the contrary in the General

1 Appropriations Act, any reductions in appropriations from the
2 Tobacco Settlement Clearing Trust Fund for a fiscal year shall
3 be prorated among the purposes for which funds were
4 appropriated from the Tobacco Settlement Clearing Trust Fund
5 for that year.

6 (6)~~(5)~~ ADMINISTRATION OF THE ENDOWMENT.--

7 (a) The board is authorized to invest and reinvest
8 funds of the endowment in those securities listed in s.
9 215.47, in accordance with the fiduciary standards set forth
10 in s. 215.47(9) and consistent with an investment plan
11 developed by the executive director and approved by the board.
12 Costs and fees of the board for investment services shall be
13 deducted from the earnings accruing to the endowment.

14 (b) The endowment shall be managed as an annuity. The
15 investment objective shall be long-term preservation of the
16 real value of the principal and a specified regular annual
17 cash outflow for appropriation, as nonrecurring revenue. The
18 schedule of annual cash outflow shall be included within the
19 investment plan adopted pursuant to paragraph (a).

20 (c) The board shall establish a separate account for
21 the funds of the endowment. The board shall design and operate
22 an investment portfolio that maximizes the financial return to
23 the endowment, consistent with the risks inherent in each
24 investment, and that is designed to preserve an appropriate
25 diversification of the portfolio.

26 (d) No later than February 15, 2000, the board shall
27 report on the financial status of the endowment to the
28 Governor, the Speaker of the House of Representatives, the
29 President of the Senate, the chairs of the respective
30 appropriations and appropriate substantive committees of each
31 chamber, and the Revenue Estimating Conference. Thereafter,

1 the board shall make a status report to such persons no later
2 than August 15 and February 15 of each year.

3 (e) Accountability for funds from the endowment which
4 have been appropriated to a state agency and distributed by
5 the board shall reside with the state agency. The board is not
6 responsible for the proper expenditure or accountability of
7 funds from the endowment after distribution to a state agency.

8 (f) The board may collect a fee for service from the
9 endowment no greater than that charged to the Florida
10 Retirement System.

11 (7)~~(6)~~ AVAILABILITY OF FUNDS.--

12 (a) Funds from the endowment shall not be available
13 for appropriation to a state agency until July 1, 2000.
14 Beginning July 1, 2000, the maximum annual amount of endowment
15 funds that may be appropriated shall be in accordance with the
16 following, based on earnings averaged over 3 years:

17 1. Beginning July 1, 2000, no more than a level of
18 spending representing earnings at a rate of 3 percent.

19 2. Beginning July 1, 2001, no more than a level of
20 spending representing earnings at a rate of 4 percent.

21 3. Beginning July 1, 2002, no more than a level of
22 spending representing earnings at a rate of 5 percent.

23 4. Beginning July 1, 2003, and thereafter, no more
24 than a level of spending representing earnings at a rate of 6
25 percent.

26 (b) The Legislature may not appropriate more than 85
27 percent of the revenue that is received from participating
28 manufacturers or pursuant to s. 210.02 in any fiscal year and
29 made available for appropriation in the subsequent fiscal
30 year. Revenue received from participating manufacturers or
31 pursuant to s. 210.02 in any fiscal year which is not

1 appropriated by the Legislature shall be deposited into the
2 Lawton Chiles Endowment Fund.

3 (c)~~(b)~~ Notwithstanding the provisions of s. 216.301
4 and pursuant to s. 216.351, all unencumbered balances of
5 appropriations as of June 30 or undisbursed balances as of
6 December 31 shall revert to the endowment's principal.

7 (8)~~(7)~~ ENDOWMENT PRINCIPAL; APPROPRIATION OF
8 EARNINGS.--The following amounts are appropriated from the
9 Department of Banking and Finance Tobacco Settlement Clearing
10 Trust Fund to the Lawton Chiles Endowment Fund for Health and
11 Human Services:

12 (a) For fiscal year 1999-2000, \$1.1 billion;

13 (b) For fiscal year 2000-2001, \$200 million;

14 (c) For fiscal year 2001-2002, \$200 million; ~~and~~

15 (d) For fiscal year 2002-2003, \$200 million; ~~and~~

16 (e) For all subsequent fiscal years, a minimum of \$25
17 million.

18 Section 2. Section 210.02, Florida Statutes, is
19 amended to read:

20 210.02 Cigarette tax imposed; collection.--

21 (1) An excise or privilege tax, in addition to all
22 other taxes of every kind imposed by law, is imposed upon the
23 sale, receipt, purchase, possession, consumption, handling,
24 distribution, and use of cigarettes in this state, in the
25 following amounts, except as hereinafter otherwise provided,
26 for cigarettes of standard dimensions:

27 (a) Upon all cigarettes weighing not more than 3
28 pounds per thousand, 16.95 mills on each cigarette.

29 (b) Upon all cigarettes weighing more than 3 pounds
30 per thousand and not more than 6 inches long, 33.9 mills on
31 each cigarette.

1 (c) Upon all cigarettes weighing more than 3 pounds
2 per thousand and more than 6 inches long, 67.8 mills on each
3 cigarette.

4 (2) The description of cigarettes contained in
5 paragraphs (a), (b), and (c) of subsection (1) are hereby
6 declared to be standard as to dimensions for taxing purposes
7 as provided in this law and should any cigarette be received,
8 purchased, possessed, sold, offered for sale, given away, or
9 used of a size other than of standard dimensions, the same
10 shall be taxed at the rate of 1.41 cents on each such
11 cigarette.

12 (3) When cigarettes as described in paragraph (1)(a)
13 are packed in varying quantities of 20 cigarettes or less,
14 except manufacturer's free samples authorized under s.
15 210.04(9), the following rate shall govern:

16 (a) Packages containing 10 cigarettes or less require
17 a 16.95-cent tax.

18 (b) Packages containing more than 10 but not more than
19 20 cigarettes require a 33.9-cent tax.

20 (4) When cigarettes as described in paragraph (1)(b)
21 are packed in varying quantities of 20 cigarettes or less,
22 except manufacturer's free samples authorized under s.
23 210.04(9), the following rates shall govern:

24 (a) Packages containing 10 cigarettes or less require
25 a 33.9-cent tax.

26 (b) Packages containing more than 10 but not more than
27 20 cigarettes require a 67.8-cent tax.

28 (5) When cigarettes as described in paragraph (1)(c)
29 are packed in varying quantities of 20 cigarettes or less,
30 except manufacturer's free samples authorized under s.
31 210.04(9), the following rates shall govern:

1 (a) Packages containing 10 cigarettes or less require
2 a 67.8-cent tax.

3 (b) Packages containing more than 10 but not more than
4 20 cigarettes require a 135.6-cent tax.

5 (6) For cigarettes not manufactured by a participating
6 manufacturer as defined in s. 215.5601, beginning February 1,
7 2001, an additional surtax shall be added to the amounts
8 otherwise provided in this section. The division shall
9 calculate the surtax on January 1 of each year, and the surtax
10 shall apply on February 1. The surtax per package shall be
11 calculated as the total annual payment due to the state
12 pursuant to the settlement agreement in the case of The State
13 of Florida et al., v. American Tobacco Company et al., divided
14 by the total number of packages of cigarettes delivered to
15 wholesale dealers for sale in this state by the four settling
16 manufacturers during the previous 12 months, rounded to the
17 nearest tenth of a cent.

18 (7)(6) This tax shall be paid by the dealer to the
19 division for deposit and distribution as hereinafter provided
20 upon the first sale or transaction within the state, whether
21 or not such sale or transfer be to the ultimate purchaser or
22 consumer. The seller or dealer shall collect the tax from the
23 purchaser or consumer, and the purchaser or consumer shall pay
24 the tax to the seller. The seller or dealer shall be
25 responsible for the collection of the tax and the payment of
26 the same to the division. All taxes are due not later than the
27 10th day of the month following the calendar month in which
28 they were incurred, and thereafter shall bear interest at the
29 rate of 1 percent per month. If the amount of tax due for a
30 given period is assessed without allocating it to any
31 particular month, the interest shall begin with the date of

1 the assessment. Whenever cigarettes are shipped from outside
2 the state to anyone other than a distributing agent or
3 wholesale dealer, the person receiving the cigarettes shall be
4 responsible for the tax on said cigarettes and the payment of
5 same to the division.

6 (8)~~(7)~~ It is the legislative intent that the tax on
7 cigarettes shall be uniform throughout the state.

8 Section 3. Section 210.20, Florida Statutes, is
9 amended to read:

10 210.20 Employees and assistants; distribution of
11 funds.--

12 (1) The division under the applicable rules of the
13 Department of Management Services shall have the power to
14 employ such employees and assistants and incur such other
15 expenses as may be necessary for the administration of this
16 part, within the limits of an appropriation for the operation
17 of the Department of Business and Professional Regulation as
18 may be authorized by the General Appropriations Act.

19 (2) As collections are received by the division from
20 such cigarette taxes, it shall pay the same into a trust fund
21 in the State Treasury designated "Cigarette Tax Collection
22 Trust Fund" which shall be paid and distributed as follows:

23 (a) The division shall from month to month certify to
24 the Comptroller the amount derived from the cigarette tax
25 imposed by s. 210.02(1)-(5)~~s. 210.02~~, less the service
26 charges provided for in s. 215.20 and less 0.9 percent of the
27 amount derived from the cigarette tax imposed by s. 210.02,
28 which shall be deposited into the Alcoholic Beverage and
29 Tobacco Trust Fund, specifying the amounts to be transferred
30 from the Cigarette Tax Collection Trust Fund and credited on
31 the basis of 5.8 percent of the net collections to the

1 Municipal Financial Assistance Trust Fund, 32.4 percent of the
2 net collections to the Revenue Sharing Trust Fund for
3 Municipalities, 2.9 percent of the net collections to the
4 Revenue Sharing Trust Fund for Counties, and 29.3 percent of
5 the net collections for the funding of indigent health care to
6 the Public Medical Assistance Trust Fund.

7 (b) The division shall from month to month certify to
8 the Comptroller the amount derived from the cigarette surtax
9 imposed by s. 210.02(6), and that amount shall be transferred
10 from the Cigarette Tax Collection Trust Fund and credited to
11 the Department of Banking and Finance Tobacco Settlement
12 Clearing Trust Fund.

13 (c)~~(b)~~ The division shall from month to month certify
14 to the Comptroller the amount derived from the cigarette tax
15 imposed by s. 210.02 on all cigarettes sold at retail on any
16 property of the Inter-American Center Authority, created by
17 chapter 554, and such amount, less the service charge provided
18 for in s. 215.20, shall be paid to said Inter-American Center
19 Authority by warrant drawn by the Comptroller upon the State
20 Treasury, which amount is hereby appropriated monthly out of
21 such Cigarette Tax Collection Trust Fund.

22 (d)~~(c)~~ Beginning January 1, 1999, and continuing for
23 10 years thereafter, the division shall from month to month
24 certify to the Comptroller the amount derived from the
25 cigarette tax imposed by s. 210.02, less the service charges
26 provided for in s. 215.20 and less 0.9 percent of the amount
27 derived from the cigarette tax imposed by s. 210.02 which
28 shall be deposited into the Alcoholic Beverage and Tobacco
29 Trust Fund, specifying an amount equal to 2.59 percent of the
30 net collections, and that amount shall be paid to the Board of
31 Directors of the H. Lee Moffitt Cancer Center and Research

1 Institute, established under s. 240.512, by warrant drawn by
2 the Comptroller upon the State Treasury. These funds are
3 hereby appropriated monthly out of the Cigarette Tax
4 Collection Trust Fund, to be used for the purpose of
5 constructing, furnishing, and equipping a cancer research
6 facility at the University of South Florida adjacent to the H.
7 Lee Moffitt Cancer Center and Research Institute. In fiscal
8 years 1999-2000 and thereafter with the exception of fiscal
9 year 2008-2009, the appropriation to the H. Lee Moffitt ~~Moffitt~~
10 Cancer Center and Research Institute authorized by this
11 paragraph shall not be less than the amount which would have
12 been paid to the H. Lee Moffitt Cancer Center and Research
13 Institute for fiscal year 1998-1999 had payments been made for
14 the entire fiscal year rather than for a 6-month period
15 thereof.

16 (3) After all distributions hereinabove provided for
17 have been made, the balance of the revenue produced from the
18 tax imposed by this part shall be deposited in the General
19 Revenue Fund.

20 Section 4. This act shall take effect upon becoming a
21 law.
22
23
24
25
26
27
28
29
30
31

1 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
2 COMMITTEE SUBSTITUTE FOR
3 SB 1998
4 Eliminates Tobacco Settlement Financing Corporation, and
5 attendant powers and duties established in the bill.
6 Defines "participating manufacturer" as: (1) one who entered
7 one of the two settlement agreements already signed by the
8 state and who complies with all provisions of the agreement
9 including making payments to the state by December 31 of each
10 year; and (2) one who enters into an agreement with the
11 Attorney General which restricts outdoor advertising and
12 transit advertising in the same manner as the original
13 settlements and which provides for equivalent payments per
14 pack of cigarettes delivered for sale in Florida.
15 Provides a statutory cap of 85 percent on annual
16 appropriations to be made of funds received from settling and
17 participating tobacco companies. The unappropriated balance is
18 to be deposited in the Lawton Chiles Endowment Fund.
19 Amends the schedule of annual appropriations to the Lawton
20 Chiles Endowment Fund by establishing a minimum level of \$25
21 million for appropriations to the Endowment fund in all fiscal
22 years subsequent to 2003-2004.
23 Creates an additional surtax on cigarettes beginning February
24 1, 2001, that will apply to cigarettes shipped to Florida
25 other than those able to claim an exemption as a participating
26 manufacturer.
27
28
29
30
31