STORAGE NAME: h0695.rs
DATE: March 16, 2000

HOUSE OF REPRESENTATIVES
COMMITTEE ON
REGULATED SERVICES
ANALYSIS

BILL #: HB 695

RELATING TO: Alcoholic Beverage Surcharge

SPONSOR(S): Representative Bitner and Others

TIED BILL(S):

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:
(1) REGULATED SERVICES
(2) FINANCE & TAXATION
(3) GENERAL APPROPRIATIONS
(4)
(5)

I. SUMMARY:

This bill reduces the surcharge on alcoholic beverages sold for consumption on a retailer's licensed premises by one-half. Further, the bill completely repeals the surcharge effective September 1, 2001.

The tax reduction contained in this legislation will reduce state revenue receipts by approximately $31.2 million for FY 2000-2001 and $76.7 million on a recurring basis.

The bill provides an effective date of September 1, 1999.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

1.	Less Government	Yes []	No []	N/A [X]
2.	Lower Taxes	Yes [X]	No []	N/A []
3.	Individual Freedom	Yes []	No []	N/A [X]
4.	Personal Responsibility	Yes []	No []	N/A [X]
5.	Family Empowerment	Yes []	No []	N/A [X]

For any principle that received a "no" above, please explain:

B. PRESENT SITUATION:

An alcoholic beverage surcharge is imposed on all alcoholic beverages sold by the drink for consumption on a retailer's licensed premises [s. 561.501, F.S.]. The surcharge is 6.67 cents on each ounce of liquor and on each 4 ounces of wine, 4 cents on each 12 ounces of cider and 2.67 cents on each 12 ounces of beer. The surcharge was previously reduced by one-third to the existing rates on September 1, 1999.

Retailers are required to remit the alcoholic beverage surcharge monthly and may pay the surcharge based on their actual on-premises sales during the previous month or up-front, based on the amount of alcoholic beverage purchases they made from licensed wholesalers. In 1999, the Division of Alcoholic Beverages and Tobacco [DABT] reported that over 85% of licensed retailers utilize the purchase method to calculate the surcharge. The sales method of calculations and remittance involves a more cumbersome record keeping procedure which often results in retailer miscalculations. Retailers are allowed to retain 1% of the monthly surcharge owed to the state to cover their cost of maintaining appropriate records and remitting the tax in a timely manner. Current staffing levels at the DABT allow the nearly 21,000 licensees to be audited once every three to five years.

For FY 1999-2000, the surcharge is expected to generate approximately $83,475,000.

Section 561.121, Florida Statutes, requires 13.6% of surcharge collections be transferred to the Children and Adolescents Substance Abuse Trust Fund [CASA TF] to fund programs directed at reducing and eliminating substance abuse problems among children and adolescents. In order to hold harmless the CASA TF, the contribution rate was increased to this rate when the surcharge rates were reduced. The surcharge is expected to generate $10,295,250 for the CASA TF for FY 1999-2000.

In an earlier attempt to repeal the alcoholic beverage surcharge, section 3 of Chapter 97-213, Laws of Florida, provided a contingency for the amendment of s. 561.121, Florida Statutes, if the surcharge is completely repealed. That contingency directed $10 million annually from excise tax collections to the Children and Adolescents Substance Abuse Trust Fund.

It may be argued that the plain language of section 3 requires $10 million to be transferred annually to the CASA TF if the surcharge is repealed by any act of the Legislature. An editorial note to s. 561.121, Florida Statutes, however, gives credibility to the argument that the hold-harmless amendment contained in section 3, only takes effect if the surcharge is repealed pursuant to Section 1 of Chapter 97-213, which did not occur.

C. EFFECT OF PROPOSED CHANGES:

This bill reduces the surcharge on alcoholic beverages sold for consumption on a retailer's licensed premises by one-half. The surcharge is reduced from 6.67 cents ro 3.33 cents on each ounce of liquor and on each 4 ounces of wine; from 4 cents to 2 cents on each 12 ounces of cider; and, from 2.67 cents to 1.33 cents on each 12 ounces of beer.

In order that the surcharge contribution to the Children and Adolescents Substance Trust Fund [CASA TF] not be adversely impacted during the final year of collection, the rate of contribution to that fund was increased from 13.6 percent to 27.2 percent.

The bill contains a prospective repeal of the surcharge and its contribution to the CASA TF, effective September 1, 2001.

There is no contingency plan in this legislation to address the elimination of the surcharge contribution to the CASA TF upon total repeal of the surcharge. It is unclear whether the provisions of Section 3, Chapter 97-213, Laws of Florida, will provide funding to the CASA TF upon repeal of the surcharge pursuant to this legislation.

Additionally, the repeal of s. 561.501, Florida Statutes, in its entirety will also result in the repeal of the statutory directive that licensees maintain certain records for a designated period of time, statutory authority for the division to adopt rules concerning the required reporting, collection and accounting procedures, and statutory authority for the division to compromise a taxpayer's liability. Removal of this language may compromise the agency's ability to conduct close-out audits on pending surcharge accounts.

The tax reduction contained in this legislation will reduce state revenue receipts by approximately $31.2 million for FY 2000-2001 and $76.7 million on a recurring basis.

D. SECTION-BY-SECTION ANALYSIS:

Section 1. Amends s. 561.501(1), Florida Statutes, to reduce the surcharge rates from 6.67 cents to 3.33 cents per each ounce of liquor and each 4 ounces of wine; from 4 cents to 2 cents on each 12 ounces of cider; and, from 2.67 cents to 1.33 cents on each 12 ounces of beer.

Section 2. Amends s. 561.121(4)(a), Florida Statutes, to increase the surcharge contribution to the Children and Adolescents Substance Abuse Trust Fund from 13.6% to 27.2%.

Section 3. Provides that ss. 561.121 (4) and 561.501, Florida Statutes, are repealed effective September 1, 2001.

Section 4. To conform to the repeal contained in Section 3, this section deletes a reference to s. 561.501, Florida Statutes, effective September 1, 2001.

Section 5. Provides an effective date of September 1, 2000.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The alcoholic beverage surcharge will be reduced by one-half effective September 1, 2000 and then completely repealed on September 1, 2001. These reductions and the subsequent repeal will reduce revenue collections to the General Revenue Fund and to the Children and Adolescents Substance Abuse Trust Fund as follows:

	Cash	Annualized
General Revenue Fund		
½ Reduction	($30.3m)	($37.4m)
2001 Repeal	($65.6m)	($66.4m)
CASA Trust Fund		
½ Reduction	($ 0.9m)	($ 0.6m)
2001 Repeal	($10.1m)	(10.3m)

2. Expenditures:

The Department of Business and Professional Regulation will incur expenses associated with the modification of its audit functions and the notification of licensees of the changes proposed in this legislation.

In addition, the Department of Business and Professional Regulation reports that the September 1, 2000 inventory held by all licensees must be adjusted to reflect the new surcharge rates. Since the majority of licensees prepay the surcharge on their inventory, the reduction in the surcharge rates for any prepaid surcharge will have to be shown as a credit or refunded to the licensee. The Department estimates this inventory credit/refund to be approximately $2 million.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

To the extent drink prices are reduced as a result of the reduced tax per drink, consumers will benefit by the reduced prices.

Affected alcoholic beverage licensees will incur costs associated with reprogramming of their electronic cash registers and other record keeping functions to conform with the reduced tax rates. Licensees will then pay a reduced tax for a period of one year, after which the remaining tax will be repealed. At that point, rather than reducing drink prices, retailers may opt to invest the revenue, which would otherwise have been paid as surcharge, back into their businesses.

D. FISCAL COMMENTS:

Generally accepted audit practices may suggest that final agency audits should be completed on all surcharge accounts upon repeal of the tax. Repeal of s. 561.501, Florida Statutes, in its entirety as contemplated in Section 3 of this bill, will result in the repeal of the statutory directive that licensees maintain certain records for a designated period of time, statutory authority for the division to adopt rules concerning the required reporting, collection and accounting procedures and statutory authority for the division to compromise a taxpayer's liability. Removal of this language may compromise the agency's ability to conduct close-out audits on pending surcharge accounts or continue administrative or legal challenges concerning surcharge revenues due the state. In addition, removal of this authority may increase departmental expenses associated with audits and legal proceedings as well as decrease revenue collections.

The Department of Business and Professional Regulation currently has an annual budget of approximately $2.3 million and 51 FTE's to administer the surcharge program. Current staffing levels allow the nearly 21,000 surcharge accounts to be audited once every three to five years. The department reports, however, that these employees have been pressed into use in other audit areas and that 44 of the original 51 surcharge positions devote less than 50% of their time to surcharge accounts. Of the remaining 7 positions: 3 perform surcharge tasks 75% of the time, while only 4 positions devote 100% of their time to surcharge accounts. Current staffing levels may need to be maintained at the present level for a period of time following the complete repeal of the surcharge in order for the department to conduct close-out audits.

<u>CASA TF</u>

In order that the surcharge contribution to the Children and Adolescents Substance Trust Fund [CASA TF] not be adversely impacted during the final year of collection, the rate of contribution is increased from 13.6 percent to 27.2 percent in this legislation. There is, however, no contingency plan in the bill to address the elimination of the approximate $10 million annual surcharge contribution to the CASA TF upon total repeal of the surcharge. [See also PRESENT SITUATION.]

IV. <u>CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION</u>:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to spend funds or to take any action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate.

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

This bill does not reduce the percentage of state tax shared with counties or municipalities.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

N/A

B. RULE-MAKING AUTHORITY:

Repeal of s. 561.501, Florida Statutes, in its entirety as contemplated in Section 3 of this bill, will also result in the repeal of the statutory directive that licensees maintain certain records for a designated period of time, statutory authority for the division to adopt rules concerning the required reporting, collection and accounting procedures and statutory authority for the division to compromise a taxpayer’s liability. Removal of this language may compromise the agency’s ability to adopt rules necessary to allow the department to conduct close-out audits on pending surcharge accounts.

C. OTHER COMMENTS:

N/A

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

N/A

VII. SIGNATURES:

COMMITTEE ON REGULATED SERVICES:

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