

STORAGE NAME: h0637a.fpr.doc

DATE: April 11, 2001

**HOUSE OF REPRESENTATIVES
AS REVISED BY THE COMMITTEE ON
FISCAL POLICY & RESOURCES
ANALYSIS**

BILL #: HB 637

RELATING TO: Cigarette Taxes/H. Lee Moffitt

SPONSOR(S): Representative(s) Hart & others

TIED BILL(S):

ORIGINATING COMMITTEE(S)/COUNCIL(S)/COMMITTEE(S) OF REFERENCE:

- (1) HEALTH PROMOTION YEAS 11 NAYS 0
 - (2) FISCAL POLICY & RESOURCES YEAS 11 NAYS 0
 - (3) FISCAL RESPONSIBILITY COUNCIL
 - (4)
 - (5)
-

I. SUMMARY:

HB 637 specifies that beginning July 1, 2001, and continuing through June 30, 2011, the Division of Alcoholic Beverages and Tobacco of the Department of Business and Professional Regulation shall certify to the Comptroller an amount equal to 1.47 percent of the revenues derived from the cigarette tax imposed under s. 210.02, F.S., to be paid to the Board of Directors of the H. Lee Moffitt Cancer Center and Research Institute (Moffitt Cancer Institute). This is in addition to the 2.59 percent of the net collections from cigarette taxes that are currently paid to the Institute. The Moffitt Cancer Institute is to use these additional funds for constructing, furnishing, and equipping a cancer-research facility at the University of South Florida. A floor is placed on the amount of funds to be appropriated under the Act at the annualized amount appropriated in FY 2001-2002.

The Board of Directors at the Moffitt Cancer Institute must use these funds to secure financing to pay costs related to constructing, furnishing, and equipping the cancer research facility. Financing may include the use of tax-exempt bonds by a local authority, municipality, or county pursuant to parts II and III of chapter 159, F.S. In addition, the bill specifies that the cigarette dollars pledged to the Moffitt Cancer Institute shall be replaced annually by the Legislature from tobacco litigation settlement proceeds.

The bill's effective date is July 1, 2001.

It is estimated that this bill will reduce the amount of cigarette tax revenue deposited into the General Revenue by \$5.7 million annually, or by a total of an estimated \$57 million over the ten year period specified in the bill. However, this money is to be replaced by tobacco litigation settlement proceeds.

Based upon certain assumptions, including any additional bonds that would be sold on a parity with the original issue of bonds, the Division of Bond Finance conservatively estimates "\$33.8 million in bond proceeds could be generated from bonds secured by the proposed additional 1.47% cigarette tax distribution to the Moffitt Center. Should a debt service reserve fund not be required, an additional \$5.3 million would be available for the purpose of the issue."

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|------------------------------|-----------------------------|---|
| 1. <u>Less Government</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

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

B. 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: 2.9 percent to County Revenue Sharing; 29.3 percent to the Public Medical Assistance Trust Fund; 2.59 percent to the Board of Directors of the H. Lee Moffitt Cancer Center and Research Institute; and the remainder to the General Revenue Fund. [**Note:** Chapter 2000-355, Laws of Florida, eliminated the distribution from the Cigarette Tax to the Municipal Revenue Sharing Trust Fund and the Municipal Financial Assistance Trust Fund, thereby increasing the distribution to the General Revenue Fund.]

Cigarette tax collections are estimated to be \$420.8 million in fiscal year 2000-2001 and \$420.3 million in fiscal year 2001-2002. Based on the above distribution, General Revenue allocations (excluding the service charge) to the Moffitt Cancer Institute for fiscal years 2000-2001 and 2001-2002 are estimated to be \$5.7 million and \$5.7 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.

Chapter 98-286, Laws of Florida, authorized a 10 year distribution of 2.59 percent of net cigarette tax collections to the H. Lee Moffitt Cancer Center and Research Institute, guaranteeing \$10.2 million over a ten-year period. Proceeds of the General Revenue receipts from the cigarette tax to the Moffitt Cancer Institute have been distributed in the amount of \$10.5 million in 1999-2000 and an estimated \$10.5 million for 2000-2001.

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.

The Moffitt Cancer Institute is currently the only National Cancer Institute-designated comprehensive cancer center in Florida and a cancer research facility affiliated with the center is funded from the proceeds of the cigarette tax. Section 210.201, F.S., requires the Board of Directors of the Moffitt Cancer Institute to construct, furnish, and equip and to covenant to complete, the cancer research facility at the University of South Florida adjacent to the center and research institute. Section 210.20, F.S., also requires any moneys transferred to the Board of Directors of the Moffitt Cancer Institute to be used to secure financing to pay costs related to constructing, furnishing, and equipping the cancer research facility. Any cigarette tax dollars pledged to this facility must be replaced annually by the Legislature from tobacco litigation settlement proceeds.

C. EFFECT OF PROPOSED CHANGES:

HB 637 specifies that, beginning July 1, 2001, and continuing through June 30, 2011, an additional 1.47 percent of cigarette taxes, less the General Revenue service charge provided in s. 215.20, F.S., and less the 0.9 percent of the amount derived from the cigarette tax imposed by s. 210.02, FS., which is deposited into the Alcoholic Beverage and Tobacco Trust Fund, be transferred to the Moffitt Cancer Institute, for the 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 provides that in FY 2002-2003 and thereafter, the appropriation to the Moffitt Cancer Institute authorized by this subparagraph will be not less than the amount paid to the Moffitt Cancer Institute in FY 2001-2002.

Funds available from the tobacco litigation settlement proceeds will be reduced by just over \$57 million over 10 years, which may result in a reduction of other programs or services in that amount.

D. SECTION-BY-SECTION ANALYSIS:

Section 1. Renumbers and adds s. 210.20(2)(c)2., F.S., relating to the Cigarette Tax Collection Trust Fund, to require that the Division of Alcoholic Beverages and Tobacco of the Department of Business and Professional Regulation certify to the Comptroller an amount equal to 1.47 percent of the revenues derived from the cigarette tax imposed under s. 210.02, F.S., to be paid to the Board of Directors of the Moffitt Cancer Center for a period of 10 years beginning July 1, 2001. The Moffitt Cancer Institute is to use these funds for constructing, furnishing, and equipping a cancer-research facility at the University of South Florida, adjacent to the current Moffett Cancer Institute. The amount of the funds paid to the board of directors for each of the ten years is to be no less than the amount paid from fiscal year 2001-2002.

Section 2. Amends s. 210.201, F.S., relating to the cancer research facility at the University of South Florida, to provide a statutory cross-reference to s. 210.20, F.S., relating to distribution of the cigarette tax revenue.

Section 3. Provides an effective date of July 1, 2001.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

General Revenue will be decreased by an estimated \$5.7 million annually for 10 years. However, these funds will be replaced by funds from tobacco settlement proceeds. The replacement of this revenue will mean that fewer dollars will be available for other publicly funded programs.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The H. Lee Moffitt Cancer Center and Research Institute will receive approximately \$5.7 million a year in funding for construction, furnishing, and equipping a cancer research facility.

D. FISCAL COMMENTS:

Based on changing economic conditions in Florida, the future revenues generated by Florida's cigarette tax are uncertain. However, the bill places a floor in the annual payment level at the FY 2001-2002 level, which is an estimated \$5.7 million.

Based upon certain assumptions, including that any additional bonds would be sold on a parity with the original issue of bonds, the Division of Bond Finance conservatively estimates "\$33.8 million in bond proceeds could be generated from bonds secured by the proposed additional 1.47% cigarette tax distribution to the Moffitt Center. Should a debt service reserve fund not be required, an additional \$5.3 million would be available for the purpose of the issue."

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 take an 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.

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:

N/A

C. OTHER COMMENTS:

This bill may result in the decrease in General Revenue funding for other public programs; however, this decrease will theoretically be ultimately offset by the public good that might come out of enhanced cancer research capability within the state.

This bill requires an additional monthly appropriation of a portion of the revenue collected from the tax on cigarettes for payment of construction, furnishing, and equipping of the Moffitt Cancer Institute for a period of 10 years. However, the mandatory future appropriations from "fiscal year 2002-2003 and thereafter" specified in the bill are non-binding on future legislatures. As the Florida Supreme Court has ruled in a series of cases, the most recent of which is *Neu v. Miami Herald*

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Publishing Company, 462 So.2d 821 (Fla. 1985), one legislative body cannot bind a future Legislature to an obligation. In *Neu*, a case addressing the Public Meetings Law, the court stated "A legislature may not bind the hands of future legislatures by prohibiting amendments to statutory law." *Neu*, at 824. In an earlier case reviewing a challenge to establishment of geographic municipal boundaries, the court stated, "The Legislature cannot prohibit a future Legislature by proper enactment changing boundaries which it [the earlier Legislature] established." *Kirklands v. Town of Bradley*, 139 So. 144, 145, (Fla. 1932).

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

On March 15, 2001, the Committee on Health Promotion approved HB 637 with one amendment [page 3, line 25] permitting, rather than requiring, the replacement of certain revenues from tobacco settlement proceeds.

VII. SIGNATURES:

COMMITTEE ON HEALTH PROMOTION:

Prepared by:

Tonya Sue Chavis, Esq.

Staff Director:

Phil E. Williams

AS REVISED BY THE COMMITTEE ON FISCAL POLICY & RESOURCES:

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