

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: Regulated Industries Committee

BILL: CS/SB 1292

SPONSOR: Regulated Industries Committee and Senator Fasano

SUBJECT: Taxation/Alcoholic Beverages

DATE: March 20, 2006

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Oxamendi</u>	<u>Imhof</u>	<u>RI</u>	<u>Fav/CS</u>
2.	_____	_____	<u>GE</u>	_____
3.	_____	_____	<u>HA</u>	_____
4.	_____	_____	<u>WM</u>	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

The committee substitute (CS) repeals the surcharge tax imposed pursuant to s. 561.501, F.S., on alcoholic beverages sold by the drink for consumption on a retailer's licensed premises.

The CS deletes s. 561.121(4)(a)1., 2., and (b), F.S., effective July 1, 2006, which provides for depositing 27 percent of surcharge taxes collected under s. 561.501, F.S., into the Children and Adolescents Substance Abuse Trust Fund in the Department of Children and Family Services. The CS would permit the division to continue to audit and collect any surcharges incurred before the effective date of surcharge repeal for one year, and requires that surcharge tax funds collected be paid into, and credited to, the General Revenue Fund. Section 561.501, F.S., is repealed July 1, 2007.

The CS also terminates the Children and Adolescents Substance Abuse Trust Fund, and provides that the current balance remaining in the trust fund shall be transferred to the General Revenue Fund. The CS provides that Department of Children and Family Services shall pay any outstanding debts and obligations of the terminated fund as soon as practical. It requires that the Chief Financial Officer close and remove the terminated fund from the various state accounting systems using generally accepted accounting principles concerning warrants outstanding, assets, and liabilities.

The CS appropriates \$11,289,205 from the General Revenue Fund to the Department of Children and Family Services for the purpose of reducing or eliminating substance abuse in children and adolescents.

The CS provides that, except as otherwise expressly provided in the act, this CS would take effect on July 1, 2006.

This CS substantially amends the following sections of the Florida Statutes: 215.20, 561.025, 561.121, and 561.501. This CS also repeals sections 561.121 and 561.501, Florida Statutes. This CS creates an unnumbered section of the Florida Statutes.

II. Present Situation:

Surcharge Tax

In 1990, the Legislature enacted ch. 90-132, L.O.F., codified at s. 561.501, F.S., which imposed a surcharge on all alcoholic beverages sold by the drink for consumption on a retailer's licensed premises. The surcharge was ten cents on each one ounce of liquor or four ounces of wine and four cents on each 12 ounces of beer. The surcharge is collected by Division of Alcoholic Beverage and Tobacco (division) within the Department of Business and Professional Regulation (DBPR).

In 1997, s. 561.501, F.S., was amended by ch. 97-213, L.O.F., to provide for a surcharge of six cents on each 12 ounces of cider. The 1997 legislation also prevented shipping of alcoholic beverages into Florida directly to customers and repealed the surcharge, contingent upon a specified increase in alcoholic beverage excise and sales taxes. The contingent repeal was based on claims that substantial tax dollars are lost due to unlawful direct shipping, which if recouped, might be sufficient to offset repeal of the surcharge. The repeal was made contingent upon excise and sales tax revenue in calendar year 1998 being in excess of \$535 million. The total collected during calendar year 1998, however, was only \$464,185,488, and the contingent repeal was not implemented.

In 1999, the Legislature reduced the surcharge.¹ Effective September 1, 1999, the surcharge on each one ounce of liquor or four ounces of wine was reduced from 10 cents to 6.67 cents; the surcharge on each 12 ounces of cider was reduced from 10 cents to four cents; and the surcharge on each 12 ounces of beer was reduced from four cents to 2.67 cents.

In 2000, the Legislature further reduced the surcharge.² Effective July 1, 2000, the surcharge on each one ounce of liquor or four ounces of wine was reduced to 3.34 cents; the surcharge on each 12 ounces of cider was reduced to two cents; and the surcharge on each 12 ounces of beer was reduced to 1.34 cents.

Section 561.501, F.S., also provides an exemption from the alcoholic beverage surcharge for nonprofit organizations. Specifically, the surcharges need not be paid upon alcoholic beverages when sold by an organization that is licensed by the division under s. 565.02(4) or s. 561.422, F.S.,³ as an alcoholic beverage vendor and that is determined by the Internal Revenue Service to

¹ Chapter 99-239, L.O.F.

² Chapter 2000-354, L.O.F.

³ Section 565.04(4), F.S., provides an alcoholic beverage license for chartered or incorporated clubs, including any social clubs. Section 561.422, F.S., permits bona fide nonprofit civic organization to sell alcoholic beverages for consumption on the premises only, for a period not to exceed three days.

be currently exempt from federal income tax under s. 501(c)(3) or (19) of the Internal Revenue Code of 1986, as amended.

According to the Revenue Estimating Conference, the estimated surcharge revenue for FY 2006-07 is \$50.6 million.

OPPAGA Report

An Office of Program Policy Analysis and Government Accountability (OPPAGA) report, OPPAGA found that the surcharge is a costly and complicated tax to administer, audit, and enforce and is burdensome to merchants.⁴ The OPPAGA report found that the average monthly surcharge payment is less than \$200. The report also found that the auditing of the surcharge requires a significantly disproportionate share of resources per tax dollar collected, and that there is a high rate of surcharge underpayment, due, in part, to the difficulty of calculating the surcharge due. The report found that the surcharge recordkeeping and reporting requirements place a burden on retailers. OPPAGA recommended that the Legislature consider eliminating the surcharge or, alternatively, consider requiring that the surcharge be paid on the wholesale level rather than the retail level.

Children and Adolescents Substance Abuse Trust Fund

Section 561.121(5), F.S., requires that twenty-seven and two-tenths percent of the surcharge collections to be transferred to the Children and Adolescents Substance Abuse Trust Fund (CASA TF),⁵ in the Department of Children and Family Services, for the purpose of establishing juvenile addiction receiving facilities for substance abuse crisis intervention. The remainder of collections are credited to the General Revenue Fund.

Alcohol, Drug Abuse, and Mental Health Trust Fund

Based on information gathered by the Auditor General in 2003, the purpose of the Alcohol, Drug Abuse, and Mental Health Trust Fund⁶ in the Department of Children and Family Services is to promote and improve the mental health of the citizens of the state through a system of comprehensive, coordinated alcohol, drug abuse and mental health services.

III. Effect of Proposed Changes:

Section 1 deletes the provisions in s. 561.121(4) (a)1., 2., and (b), F.S., that provide for depositing twenty seven and two tenths percent of alcoholic beverage surcharges collected under s. 561.501, F.S., into the CASA TF. It also deletes a provision that permits the use of moneys in the CASA TF, for FY 2004-2005, to fund programs directed at reducing and eliminating substance abuse problems among adults. This provision expired on July 1, 2005. The CS requires that funds collected pursuant to s. 561.501, F.S., be paid into, and credited to, the General Revenue Fund.

⁴ *Division of Alcoholic Beverages and Tobacco Should Improve Primary Functions and Accountability System*, Report No. 04-56, August 2004, OPPAGA, Florida Legislature.

⁵ 2003 Auditor General Questionnaire to the Department of Children and Family Services; F.L.A.I.R. No 60-2-088.

⁶ *Id.* F.L.A.I.R. No. 60-2-027.

Section 2 deletes subsection (4) of s. 561.121, F.S., which requires that state funds collected pursuant to s. 561.501, F.S., be deposited in the CASA TF, effective July 1, 2007.

Section 3 terminates the CASA TF and references the Florida Accounting Information Resource System (FLAIR) number 60-2-088. It provides that the current balance remaining in the trust fund shall be transferred to the General Revenue Fund.

The CS provides that Department of Children and Family Services shall pay any outstanding debts and obligations of the terminated fund as soon as practical. The CS requires that the Chief Financial Officer close and remove the terminated fund from the various state accounting systems using generally accepted accounting principles concerning warrants outstanding, assets, and liabilities.

Section 4 amends s. 215.20, F.S., to delete the reference to the CASA TF within this sections listing of trust funds within the Department of Children and Family Services.

Section 5 deletes subsection (1) of s. 561.501, F.S., which imposes the surcharge tax. The CS would permit the division to continue to audit and collect for one year any surcharges incurred before the effective date of surcharge repeal under the authority of the provisions of s. 561.501, F.S., that are not repealed on July 1, 2006.

Section 6 amends s. 561.025, F.S., to correct a cross reference.

Section 7 repeals the remaining provisions of s. 561.501, F.S., effective July 1, 2007.

Section 8 provides that \$11,289,205 is appropriated from the General Revenue Fund to the Department of Children and Family Services for the purpose of reducing or eliminating substance abuse in children and adolescents.

Section 9 provides that, except as otherwise expressly provided in the act, this CS would take effect on July 1, 2006.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

Alcoholic beverage licensees who sell alcoholic beverages for consumption on their licensed premises would not have to collect and make monthly surcharge payments, or comply with the related surcharge recordkeeping and reporting requirements in s. 561.501, F.S. According to OPPAGA, this would reduce the cost to merchants of administering this complicated tax.⁷

C. Government Sector Impact:

According to the consensus estimate of the Revenue Estimating Conference, the projected revenues for the next three years from the surcharge tax are: \$50.6 for FY 2006-07, \$45.2 million for FY 2007-08, and \$51.8 million for FY 2008-09. The Revenue Estimating Conference did not project the revenues to be deposited in the CASA TF from surcharge collections under current law, which is 27.2% of the surcharge collected.

OPPAGA estimated the costs associated with administering the alcoholic beverage surcharge to be a reduction of 37 FTE and a savings of \$2.5 million.⁸

The fiscal analysis from the Department of Business and Professional Regulation concluded that there would be a one-time undetermined cost to the department to inform the vendors of the changes to the existing requirements and of the surcharge repeal. The department intends to develop informational packages to distribute to all consumption on premise license holders.

The department also noted that, for FY 2007-08, termination of all surcharge administrative processes on July 1, 2007 could realize a reduction of 18 positions and a savings of \$685,047.

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VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

⁷ *Supra* at n. 3.

⁸ *Id.*

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

VIII. Summary of Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
