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: Ways and Means Committee

BILL: CS/SB 1292

INTRODUCER: Regulated Industries Committee and Senator Fasano

SUBJECT: Taxation/Alcoholic Beverages

DATE: April 24, 2006 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Oxamendi	Imhof	RI	**Fav/CS**
2.			GE	**Withdrawn**
3.			HA	**Withdrawn**
4.	McVaney	Coburn	WM	**Favorable**
5.				
6.				

I. Summary:

The bill 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, effective July 1, 2006. The Division of Alcoholic Beverages and Tobacco is permitted to continue to audit and collect any surcharges that should have been remitted before July 1, 2006. This audit and collection authority is repealed effective July 1, 2007.

The bill 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 bill 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 bill 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.

According to the Revenue Estimating Conference, the repeal of the surcharge will reduce total state revenues by $45.3 million in FY 2006-2007 and $51.8 million each year thereafter. Of these amounts, the reduction to the General Revenue Fund is expected to be $32.5 million in FY 2006-2007 and $38.7 million on a recurring basis.

This bill substantially amends sections 215.20, 561.025, 561.121, and 561.501, Florida Statutes. This bill repeals sections of 561.121 and 561.501, 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., to impose 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 Division of Alcoholic Beverage and Tobacco (division) within the Department of Business and Professional Regulation (DBPR) was tasked with the responsibility to collect the revenues.

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 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.

[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.

OPPAGA Report

In 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] OPPAGA found that the average monthly surcharge payment is less than $200. The report also indicated 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 also indicated 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 deposited into the General Revenue Fund.

III. Effect of Proposed Changes:

Section 1 amends s. 561.121(4), F.S., to delete the provisions requiring 27.2% of alcoholic beverage surcharges collections to be deposited into the CASA TF. It also deletes an obsolete provision that was effective for the 2004-2005 fiscal year. Effective July 1, 2006, all surcharge revenues (those collected under audit) must be deposited into the General Revenue Fund.

Section 2 amends s. 561.121(4), F.S., to make a conforming change by deleting reference to the alcoholic beverage surcharge revenues, effective July 1, 2007.

Section 3 terminates the CASA Trust Fund in the Department of Children and Family Services. Any current balance remaining in the trust fund is directed to be transferred to the General Revenue Fund. The Department of Children and Family Services is directed to pay any outstanding debts and obligations of the terminated fund as soon as practical.

Section 4 amends s. 215.20, F.S., to make a conforming change by deleting the reference to the CASA Trust Fund.

Section 5 amends s. 561.501(1), F.S., to repeal the imposition of the alcoholic beverage surcharge. The authority to audit and collect the surcharge is retained, subject to the provisions of section 7 of this act.

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[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.

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, the bill takes 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:

This bill repeals the alcoholic beverage surcharge, effective July 1, 2006. According to the Revenue Estimating Conference, the repeal of the surcharge will reduce total state revenues by $45.3 million in FY 2006-2007 and $51.8 million each year thereafter. Of these amounts, the reduction to the General Revenue Fund is expected to be $32.5 million in FY 2006-2007 and $38.7 million on a recurring basis.

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 administrating this complicated tax.[6]

[6] *Supra* at n. 3.

C. Government Sector Impact:

The bill transfers the balances in the CASA Trust Fund on July 1, 2006, to the General Revenue Fund. Based on current appropriations and revenue estimates, the balance is expected to be $2.4 million. This results in a nonrecurring increase of $2.4 million to the General Revenue Fund.

The bill 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.

With the repeal of the surcharge, the Department of Business and Professional Regulation will be able to eliminate its resources used to collect and enforcement the surcharge beginning in FY 2007-2008. OPPAGA has estimated the costs associated with administering the alcoholic beverage surcharge to be $2.5 million and 37 FTE.[7] The Department of Business and Professional Regulation has concluded that $685,047 and 18 FTE could be eliminated once the collection and enforcement responsibilities cease.

The Department of Business and Professional Regulation is expected to incur a one-time cost 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.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

[7] *Id.*

VIII. Summary of Amendments:

None.