# 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.)

BILL: SB 1016

SPONSOR: Senator Burt

SUBJECT: Tobacco Settlement/Proceeds

DATE: February 6, 2002 REVISED:

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|---|---|---|---|---|
| 1. | Wiehle | Caldwell | RI | Favorable |
| 2. | Johnson | Johnson | JU | Favorable |
| 3. | | | FT | |
| 4. | | | AHS | |
| 5. | | | AP | |
| 6. | | | | |

## I. Summary:


The bill:

- Requires the Governor, in consultation with the Attorney General, to report to the President of the Senate, the Speaker of the House of Representatives, the Comptroller, and the Auditor General on the status of the tobacco lawsuit settlement agreement, specifically explaining the settlement agreement's formula for determining the amount of the annual tobacco settlement payments and the application of the formula.
- Requires the Comptroller, in consultation with the Auditor General, to verify the annual payment amounts and appropriately resolve inconsistencies.
- Requires the Auditor General to annually review the state's process for verifying the annual tobacco settlement payments and confirm that the payments were properly made in accordance with the settlement agreement.
- Authorizes the Governor to submit a budget amendment to the Legislative Budget Commission to transfer funds from the Tobacco Settlement Clearing Trust Fund or any of the agency Tobacco Settlement Trust Funds to the appropriate trust funds of the Governor, Comptroller, or Attorney General to cover costs incurred to ensure that tobacco settlement receipt amounts are accurate. The total amount transferred cannot exceed $1 million.

The bill substantially amends section 569.21 of the Florida Statutes.


## II. Present Situation:

In February 1995, the State of Florida sued a number of tobacco manufacturers and other defendants, asserting various claims for monetary and injunctive relief on behalf of the state of Florida. In March 1997, the State settled all of its claims against the Liggett Tobacco Company.

In August, 1997, the "Big Four" tobacco companies: Phillip Morris, Reynolds Tobacco, B&W American Brands, and Lorillard entered into a landmark settlement with the State for all past, present, and future claims by the State including reimbursement of Medicaid expenses, fraud, RICO and punitive damages. (*See*, *State v. American Tobacco Co. et al*., Case # 95-1466AH, Palm Beach County.) The Florida Revenue Estimating Conference has estimated these cigarette producers hold approximately 92% of the tobacco market share in the U.S. The remaining share of the market is held by various, smaller producers who were not named in the State's suit as defendants and, therefore, are not a part of the settlement.

Under the settlement agreement (as subsequently amended by a Stipulation of Amendment), there are non-monetary and monetary sanctions imposed on the tobacco manufacturers. The non-monetary provisions involve restrictions or limitations on billboard and transit advertisements, merchandise promotions, product placement, and lobbying, relating to all tobacco products.

Florida is to receive $12.1 billion over the first 25 years of the agreement. The state will also receive an additional $1.5 billion over the 5-year period ending in 2003 as a result of a most favored nation clause in the settlement agreement as amended.[1] The amounts of these tobacco settlement receipts (or payments) are based on a consideration of volume of U.S. cigarette sales, share of market, net operating profits (undefined in the agreement), consumer price indices, and other factors as to each year payment is made. Any adjustment to those payments are based on a formula set forth in an appendix to the settlement agreement and involve a ratio of volume of U.S. cigarette sales as existed in 1997 and volume of such sales in the applicable year. Apart from other first year payments, Florida is to receive 5.5 percent of the unadjusted amounts in perpetuity.

Statutory guidelines were established to govern the expenditure of the tobacco settlement proceeds. (See ch. 98-63, L.O.F.) As authorized by the Act, the Comptroller is responsible for the enforcement of the Tobacco Settlement Receipts ("payments") from the depository institution to which the tobacco companies submit their payments in Electronic Fund Transfer form.

Subsequent to Florida's settlement, the major tobacco companies, Phillip Morris, Reynolds Tobacco, B & W American Brands, and Lorillard and other smaller tobacco producers settled with 46 states and 5 U.S. territories in November 1998. This Master Settlement Agreement (MSA) provided states with funding to prevent smoking and control tobacco sales. The agreement required tobacco companies to take down all billboard advertising and advertising in sports arenas, to stop using cartoon characters to sell cigarettes and to make available to the public specified documentation. The tobacco companies also agreed to not market or promote their products to young people. The unadjusted cost of the state settlements ranges between $212 billion to $246 billion over the first 25 years, subject to numerous adjustments ranging from inflation to fluctuations in cigarette consumption and market share.

[1] Florida Revenue Estimating Conference of August 2001.

## III. Effect of Proposed Changes:

The bill amends s. 569.21, F.S., to require the Governor, in consultation with the Attorney General, to submit a report to the President of the Senate, the Speaker of the House of Representatives, the Comptroller, and the Auditor General by October 1, 2002, on the status of the settlement agreement in the tobacco lawsuit, as amended. The report must specifically describe and explain the settlement agreement's formula for determining the amount of the annual tobacco settlement payments and the application of the formula.

The bill also requires the Comptroller to request information from the tobacco industry with respect to calculating the annual tobacco-settlement payments. The Comptroller, in consultation with the Auditor General, is to verify the information from the tobacco industry, verify the annual payment amounts by applying the terms of the settlement agreement to the submitted industry information, and appropriately resolve inconsistencies. The Comptroller may obtain contractual services necessary to verify the information from the tobacco industry. If the Comptroller determines that there has been an overpayment by a settling defendant and the Auditor General confirms the overpayment, the Comptroller is to notify the Governor, the Senate, and the House of Representatives of such overpayment. Upon approval by the Legislative Budget Commission, a refund is to be made to the respective settling defendant for the overpayment by the Comptroller. If the Comptroller determines that there has been an underpayment by a settling defendant and the Auditor General confirms the underpayment, the Comptroller is to notify the Governor, the Senate, the House of Representatives, and the Attorney General of such underpayment. Within 10 days of the notification, the Comptroller is to request the respective settling defendant to pay the underpayment. If within 40 days after the request for payment the settling defendant has not made payment or entered into an agreement with the Attorney General and the Governor for a method of payment, the Attorney General shall institute proceedings in *State of Florida v. American Tobacco* to enforce the agreement and to collect the amount owed.

The Auditor General is to annually review the state's process for verifying the annual tobacco settlement payments and confirm that the payments were properly made in accordance with the settlement agreement. The Auditor General is to report on such confirmation and any deviation from such process to the Governor, the President of the Senate, the Speaker of the House of Representatives, the Comptroller, and the Attorney General.

The Governor is authorized to submit a budget amendment to the Legislative Budget Commission to transfer funds from the Tobacco Settlement Clearing Trust Fund or any of the agency Tobacco Settlement Trust Funds to the appropriate trust funds of the Governor, Comptroller, or Attorney General to cover costs incurred to ensure that tobacco settlement receipt amounts are accurate. This section authorizes transfers between agencies, pursuant to the requirements of section 216.292(1)(a), Florida Statutes. The total amount transferred from the Tobacco Settlement Clearing Trust Fund and the agency Tobacco Settlement Trust Funds shall not exceed $1 million.

The bill takes effect upon becoming a law.

## 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:

The bill will reconcile the settling cigarette companies' payments, correcting any under or over payments.

### C. Government Sector Impact:

The bill will reconcile the settling cigarette companies' payments, correcting any under or over payments.

## VI. Technical Deficiencies:

None.

## VII. Related Issues:

None.

## VIII. Amendments:

None.