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****AS PASSED BY THE LEGISLATURE****
CHAPTER #: 2002-393, Laws of Florida

HOUSE OF REPRESENTATIVES
COMMITTEE ON
BUSINESS REGULATION
FINAL ANALYSIS

BILL #: HB 41-E, 1ST ENGROSSED

RELATING TO: Cigarette Taxes; James L. Stevens Act

SPONSOR(S): Representative(s) Byrd

TIED BILL(S): None

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

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I. SUMMARY:

HB 41-E creates the James L. Stevens Act and directs that a portion of net revenue from cigarette excise tax collections is to be transferred to the H. Lee Moffitt Cancer Center and Research Institute [Moffitt Cancer Center].

For fiscal years 2002-03 and 2003-04, 0.2632 percent of net revenue from cigarette excise tax collections ($980,000 and $975,000 respectively) is to be transferred to the Moffitt Cancer Center. Thereafter, beginning July 1, 2004, and continuing for a 12-year period, the bill directs that 1.47 percent of net revenue from cigarette excise tax collections is to be transferred to the Moffitt Cancer Center.

The funds transferred must be used for constructing, furnishing, and equipping a cancer-research facility at the University of South Florida. A formula ensures that the transfer of funds in the 2004-05 through 2015-16 fiscal years will not be reduced below a set level, now estimated to be $5,313,000.

Cigarette tax revenue to the General Revenue Fund will be reduced by the amounts above for the next 14 years. In 2002-03, General Revenue will be reduced by $980,000 on a recurring basis and an additional $4,333,000 of General Revenue will be converted from recurring to non-recurring.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

1.	Less Government	Yes []	No []	N/A [X]
2.	Lower Taxes	Yes []	No []	N/A [X]
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:

Cigarette Tax Revenue

Chapters 210, 386, and 569, F.S., and chapter 61 of the Florida Administrative Code, provide the regulatory and tax structure for Florida's tobacco laws. The Division of Alcoholic Beverages and Tobacco, Department of Business and Professional Regulation [the Division] is given statutory authority for oversight of this industry.

Cigarettes and other tobacco products, with the exception of cigars, are subject to a state excise tax. Taxes must be paid by the wholesale dealer at the time of the first sale within the state. Under s. 210.02, F.S., a standard pack of cigarettes is taxed at a rate of 33.9 cents per pack, with rates varying proportionately for cigarettes of non-standard size. For FY 2000-2001, the excise tax on cigarettes generated approximately $421.2 million in revenue for the State of Florida. Section 210.20, F.S., provides a formula for disposition of that revenue as follows:

- 7.3 percent of total collections for the General Revenue service charge.
- 0.9 percent of total collections to fund the Division of Alcoholic Beverages and Tobacco.

Of the remaining revenue, distributions are made as follows:

- 2.9 percent to Revenue Sharing Trust Fund for Counties.
- 29.3 percent to the Public Medical Assistance Trust Fund.
- 2.59 percent to the Board of Directors, Moffitt Cancer Center.
- The remainder to the General Revenue Fund.

Chapter 82-240, Laws of Florida, allocated proceeds from the cigarette excise tax to the Cancer and Chronic Research and Treatment Center Trust Fund in the amount of $8.73 million in 1982-83, $25.02 million in 1983-84 and $11.25 million in 1984-85 for a total of $45 million. These funds were allocated to complete a Cancer and Chronic Disease Research and Treatment Center at the

University of South Florida College of Medicine, which later became the H. Lee Moffitt Cancer Center and Research Institute [Moffitt Cancer Center].

Chapter 98-286, Laws of Florida, authorized a 10-year distribution of 2.59 percent of net cigarette tax collections to the Moffitt Cancer Center for construction of a cancer research facility. Distributions in the amount of $10.5 million were made in both FY 1999-2000 and FY 2000-2001.

Cigarette excise tax collections generated $432.6 million for FY 1998-1999, $421.2 million in FY 1999-2000 and $419.2 million in FY 2000-2001. These revenues are expected to continue to decrease and are estimated to generate $413.9 million for FY 2001-2002 and $410.7 million in FY 2002-2003.

University-Based Cancer Research in Florida

Three university-based cancer centers in Florida conduct basic and clinical cancer-related research: the University of Florida Shands Cancer Center, the Sylvester Comprehensive Cancer Center at the University of Miami, and the Moffitt Cancer Center at the University of South Florida. The Moffitt Cancer Center is Florida's only National Cancer Institute Comprehensive Cancer Center and is one of only 39 NCI-designated Comprehensive Cancer Centers in the United States.

Section 240.512, F.S., provides the statutory basis for the Moffitt Cancer Center. The statute requires the Board of Regents to enter into contract with a not-for-profit corporation organized solely for the purpose of governing and operating the Moffitt Cancer Center. The affairs of the corporation are managed by a board of directors who serve without compensation.

Chapter 98-286, Laws of Florida [ss. 210.20(2)(b) and 210.201, F.S.], authorizes 2.59 percent of cigarette excise tax revenue to be paid, beginning January 1, 1999, to the Board of Directors of the Moffitt Cancer Center for a period of 10 years and requires that the moneys be used to secure financing to pay costs related to constructing, furnishing, and equipping a cancer research facility [often referred to as the Tower Project] and to covenant to complete the facility. Such financing may include the issuance of tax-exempt bonds by a local authority, municipality or county pursuant to parts II and III of chapter 159, F.S. The statute specifies that these bonds do not constitute "state" bonds for purposes of s. 11, Art. VII, of the Florida Constitution, but constitute bonds of a "local agency" as defined in s. 159.27(4), F.S.

Section 210.201, F.S., further requires that cigarette tax revenue pledged to construction of this facility is to be replaced annually by the Legislature from tobacco litigation settlement proceeds.

C. EFFECT OF PROPOSED CHANGES:

This bill requires that, beginning July 1, 2002, and continuing through June 30, 2004, an additional 0.2632 percent of cigarette tax revenue will be transferred to the Moffitt Cancer Center, for use in financing the construction, furnishing, and equipping of the cancer research facility. Thereafter, beginning July 1, 2004, and continuing for a 12-year period through June 30, 2016, 1.47 percent of the net collections will be distributed to the Moffitt Cancer Center.

The bill provides that in the 2004-05 through 2015-16 fiscal years, the transfer for the cancer research facility will not be less than the base amount that would have been paid in FY 2001-2002 if this transfer provision had been in place. That base amount is estimated to equal $5,313,000. Pursuant to s. 210.201, F.S., the Board of Directors is authorized to use these funds to secure financing for the construction project, including the issuance of tax-exempt bonds.

Section 210.201, F.S., mandates the Legislature replace the funds transferred to the Moffitt Cancer Center annually with revenue from the tobacco settlement. This bill amends that statute to make replacement of the revenue permissive.

D. SECTION-BY-SECTION ANALYSIS:

Section 1. Designates this act as the "James L. Stevens Act."

Section 2. Amends s. 210.20(2)(b), F.S., relating to transfers from the Cigarette Tax Collection Trust Fund in the Department of Revenue to the Alcoholic Beverage and Tobacco Trust Fund in the Department of Business and Professional Regulation, to require that the Division transfer an amount equal to 0.2632 percent of the net revenues derived from the cigarette tax imposed under s. 210.02, F.S., to the Board of Directors of the Moffitt Cancer Center for a period of two years beginning July 1, 2002.

Beginning July 1, 2004, and continuing for a twelve-year period through June 30, 2016, the Division is required to transfer an amount equal to 1.47 percent of the net revenue derived from the cigarette tax to the Board of Directors of the Moffitt Cancer Center.

The Moffitt Cancer Center is required to use these funds to construct, furnish, and equip a cancer-research facility at the University of South Florida, adjacent to the current Moffitt Cancer Institute. The bill provides that beginning in FY 2004-2005, and for twelve years thereafter, the transfer of funds shall not be less than the amount that would have been paid in FY 2001-2002 if this transfer provision had been in effect.

Section 3. Amends s. 210.201, F.S., to authorize, rather than require, replacement of the tax revenue with tobacco settlement proceeds and provides a statutory cross-reference to s. 210.20, F.S.

Section 4. Provides that the act will take effect upon becoming a law.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

For the 2002-03 and 2003-04 fiscal years, the amount derived from the cigarette tax imposed by s. 210.02, F.S., less the service charges provided in s. 215.20, F.S. and less 0.9 percent of the amount derived from the cigarette tax imposed by s. 210.20, F.S., shall be increased to include an amount equal to 0.2632 percent of the net collections and be deposited in to the Alcoholic Beverage and Tobacco Trust Fund. This amount must be paid to the Board of Directors of the H. Lee Moffitt Cancer Center and Research Institute.

For the 2004-05 through the 2015-16 fiscal years, the amount transferred to the H. Lee Moffitt Center and Research Institute is required to equal an amount equal to 1.47 percent of the net revenue derived from the cigarette tax.

	FY 02-03	FY 03-04	FY 04-05 through 15-16
Revenue			
GR (Alcoholic Beverage and Tobacco TF)	($980,000)	($975,000)	($5,313,000)
Moffitt Cancer Center	$980,000	$975,000	$5,313,000
Appropriation	$0	$0	$0

2. Expenditures:

   Approximately $980,000 in fiscal year 2002-2003 and $975,000 in fiscal year 2003-2004 will be transferred to the Board of Directors of the H. Lee Moffitt Cancer Center and Research Center and Research Institute from the Alcoholic Beverage and Tobacco Trust Fund. Beginning in the 2004-05 fiscal year, the amount transferred will increase to approximately $5,313,000 annually for 12 years.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The original concept of the cancer research facility contemplated a three-story clinic structure and three-story research laboratory with limited on-site parking and infrastructure. Due to significant increases in patient volumes over the past few years the need for additional clinic and research space has been identified. Annual patient visits were approximately 161,515 in 2001 and the number is expected to reach 196,000 patient visits by 2003 and 250,000 patient visits by 2005.

This legislation will enable the H. Lee Moffitt Cancer Center and Research Institute to receive additional funding to assist in constructing, furnishing, and equipping the cancer research facility. When complete this expansion will nearly double their research capabilities and will provide comprehensive outpatient care for more than 1,200 patients each day.

D. FISCAL COMMENTS:

Based on changing social and economic conditions, the future revenues generated by Florida's cigarette excise tax are uncertain. However, the bill establishes a floor, or minimum transfer amount, which is estimated to be $5.6 million annually.

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 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:

This bill requires an additional monthly transfer, beginning July 1, 2002 and ending June 30, 2016, of a portion of the revenue collected from the excise tax on cigarettes to construct, furnish, and equip the expansion of the cancer research facility. Section 210.201, F.S., authorizes the use of these funds to secure financing which may include issuance of tax-exempt bonds by a local authority, municipality, or county pursuant to parts II and III of chapter 159, F.S.

The statutory authorization for the issuance of bonds appears to obligate cigarette tax revenue for future years; however, the future transfers (appropriations) specified in the bill are subject to amendment by future legislatures.

The Florida Supreme Court has ruled, see *Neu v. Miami Herald Publishing Company*, 462 So.2d 821 (Fla. 1985), that 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, at 145, (Fla. 1932).

B. RULE-MAKING AUTHORITY:

None.

C. OTHER COMMENTS:

HB 41-E was introduced outside the call for a special session and the bill was placed on the Special Order Calendar for May 3, 2002. One amendment was adopted to the bill which designated the bill as the James L. Stevens Act and the bill passed as amended, 108 Yeas, 0 Nays, and was immediately certified to the Senate. On May 8, 2002, the bill was substituted for SB 66-E, was read a second and third time and passed the Senate, 39 Yeas, 0 Nays. The Governor signed the bill on June 5, 2002 and the act became Chapter 2002-393, Laws of Florida.

The following is a chronological summary of relevant hearing dates for HB 1221, an identical measure that was filed during the regular session.

Committee on Business Regulation

The committee considered HB 1221 on February 12, 2002 and voted to report the bill favorably, 9 Yeas, 0 Nays.

Fiscal Responsibility Council

On March 8, 2002, the council voted to report the bill favorably, 21 Yeas, 0 Nays, and the bill was placed on the calendar.

Floor Action

The bill passed the House, 116 Yeas, 0 Nays, on March 18, 2002 and was forwarded to the Senate. In the Senate the bill was referred to the Health, Aging and Long-Term Care, Appropriations Subcommittee on Health and Human Services and Appropriations Committees. The bill died in the Committee on Health, Aging and Long-Term Care upon adjournment of the Legislature sine-die.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

One amendment was adopted to this legislation which designated the act as the James L. Stevens Act.

VII. SIGNATURES:

COMMITTEE ON BUSINESS REGULATION:

Prepared by:	Staff Director:
Janet Clark Morris	M. Paul Liepshutz

FINAL ANALYSIS PREPARED BY THE COMMITTEE ON BUSINESS REGULATION:

Prepared by:	Staff Director:
Janet Clark Morris	M. Paul Liepshutz