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: SB 1658

SPONSOR: Senator Fasano

SUBJECT: Alcoholic Beverages/Taxation

DATE: March 23, 2005 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Oxamendi	Imhof	RI	**Fav/1 amendment**
2.			GE	
3.			HA	
4.			WM	
5.				
6.				

Please see last section for Summary of Amendments

- [x] Technical amendments were recommended
- [ ] Amendments were recommended
- [ ] Significant amendments were recommended

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.

The bill deletes s. 561.121(4)(a)1.,2., and (b), F.S., effective July 1, 2005, 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 would permit the division to continue to audit and collect unpaid surcharges incurred before the surcharge ceased to be imposed through July 1, 2006, and requires that surcharge tax funds collected be paid into and credited to the General Revenue Fund.

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 Alcohol, Drug Abuse, and Mental Health Trust Fund in the Department of Children and Family Services. The bill 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 bill provides that, except as otherwise expressly provided in the act, this bill would take effect on July 1, 2005.

This bill substantially amends the following sections of the Florida Statutes: 215.20, 561.121, and 561.501.

This bill repeals sections 561.121 and 561.501, Florida Statutes.

This bill 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., as an alcoholic beverage vendor and that is determined by the Internal Revenue Service to

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[1] Chapter 99-239, L.O.F.
[2] Chapter 2000-354, L.O.F.

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 2005-06 is $47.2 million.

OPPAGA Report - In a recent 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.[3] 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),[4] 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. According to the Revenue Estimating Committee Conference, for FY 2005-06, an estimated $11.9 million in surcharge collections will transferred to the CASA TF.

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 Fund[5] 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 only, to fund programs directed at reducing and eliminating substance abuse problems among adults. The bill requires that funds collected pursuant to s. 561.501, F.S., be paid into and credited to the General Revenue Fund.

Section 2 terminates the CASA TF, and provides that the current balance remaining in the trust fund shall be transferred to the Alcohol, Drug Abuse, and Mental Health Trust Fund in the Department of Children and Family Services.

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[3] *Division of Alcoholic Beverages and Tobacco Should Improve Primary Functions and Accountability System*, Report No. 04-56, August 2004, OPPAGA, Florida Legislature.
[4] 2003 Auditor General Questionnaire to the Department of Children and Family Services; F.L.A.I.R. no 60-2-088.
[5] *Id.* F.L.A.I.R. no. 60-2-027.

The bill provides that Department of Children and Family Services shall pay any outstanding debts and obligations of the terminated fund as soon as practical. The bill 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 3 amends s. 215.20, F.S., to repeal the CASA TF.

Section 4 repeals subsection (1) of s. 561.501, F.S., which imposes the surcharge tax. The bill would permit the division to continue to audit and collect unpaid surcharges incurred before the surcharge ceased to be imposed through July 1, 2006.

Section 5 repeals s. 561.501, F.S., as amended by the bill, effective July 1, 2006.

Section 6 repeals s. 561.121, F.S., as amended by the bill, effective July 1, 2006.

Section 7 provides that, except as otherwise expressly provided in the act, this bill would take effect on July 1, 2005.

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.

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: $47.2 for FY 2005-06, $48.2 million for FY 2006-07, and $49.1 million for FY 2007-08. The Revenue Estimating Conference also projected the revenues to be deposited in the CASA TF from surcharge collections under current law as follows: $11.9 for FY 2005-06, $12.2 million for FY 2006-07, and $12.4 million for FY 2007-08. These estimates are based on the revenue estimates for SB 666 by Senator Posey which provides for the repeal of the surcharge tax in s. 561.501, F.S., but does not repeal the CASA TF. SB 666 also provides for the continued funding of that trust fund through the alcoholic beverage excise tax revenue collected under ss. 561.05, 564.06, and 565.12, F.S.

According to the DBPR, it has identified 18 positions involved in the administration and enforcement of the surcharge that would ultimately be affected by the bill. Because the requirement to administer and enforce the bill would remain in effect for three years, the department anticipates that it will be necessary to maintain current staffing levels in order to assure that each licensee is audited during the closeout phase.

OPPAGA estimates the costs associated with administering the alcoholic beverage surcharge to be a reduction of 37 FTE and a savings of $2.5 million.[6]

VI. Technical Deficiencies:

The term “fund” is misspelled as “find” on page 2, line 24. This technical deficiency has been corrected by amendment barcode 252890 by the Committee on Regulated Industries that is traveling with the bill.

VII. Related Issues:

SB 666 by Senator Posey provides for the repeal of the surcharge tax in s. 561.501, F.S., but does not repeal the CASA TF. SB 666 also provides for the continued funding of that trust through alcoholic beverage excise tax revenue collected under ss. 561.05, 564.06, and 565.12, F.S.

[6] *Supra* at n. 3.

VIII. Summary of Amendments:

Barcode 252890 by Regulated Industries:
Corrects misspelling of the term “fund,” which the bill misspells as “find.”