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: Health Care Committee

BILL: SB 2130

SPONSOR: Senator Miller

SUBJECT: Cigarette Tax Proceeds/H. Lee Moffitt Cancer Center and Research Institute

DATE: April 18, 2005 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Matthews	O'Farrell	ED	**Favorable**
2.	Harkey	Wilson	HE	**Favorable**
3.			GE	
4.			WM	
5.				
6.				

I. Summary:

This bill requires the Division of Alcoholic Beverages and Tobacco of the Department of Business and Professional Regulation (division) to distribute on a monthly basis to the Board of Directors of the H. Lee Moffitt Cancer Center and Research Institute (center) an additional 2.1 percent of the net collections of cigarette taxes deposited into the Cigarette Tax Collection Trust Fund. The funds are to be used for the development and maintenance of a technology-based clinical care and research network.

The center would receive an annual amount of at least $8,010,513 from the distribution required in this bill.

The bill authorizes the Legislature to replace the cigarette tax dollars pledged to the development and maintenance of the network from tobacco litigation settlement proceeds. The center may secure financing to pay the costs of developing and maintaining the network through the issuance of tax-exempt bonds by a local authority, municipality, or county.

This bill amends ss. 210.20 and 210.201, F.S.

II. Present Situation:

The H. Lee Moffitt Cancer Center and Research Institute

Section 1004.43, F.S., establishes the H. Lee Moffitt Cancer Center and Research Institute (center) at the University of South Florida. A not-for-profit corporation governs the institute in accordance with an agreement with the State Board of Education for the use of facilities on the campus of the University of South Florida. A board of directors manages the not-for-profit corporation. A chief executive officer, who serves at the pleasure of the board of directors, administers the center.

Subject to approval of the State Board of Education, the not-for-profit corporation may create corporate subsidiaries. There are currently three (3) not-for-profit subsidiaries: a hospital, a cancer-screening center, and a foundation.

The agreement between the State Board of Education and the not-for-profit corporation provides, in pertinent part, for the use of lands, facilities and personnel for mutually approved teaching and research programs conducted by the University of South Florida, accredited medical schools, or research institutes.

A council of scientific advisers reviews the center's programs and research priorities. The board of directors of the not-for-profit corporation appoints the members of the council of scientific advisers.

Moffitt Total Cancer Care Initiative

The center has begun an initiative to develop a technology-based clinical care and research network. The center has collaborated with 15 medical center affiliates and more than 280 oncologists throughout Florida and Georgia. The network would be designed to increase access to the center's cancer care and research expertise, continue clinical research that can be translated into clinical benefit for patients, integrate genetic profiling of patient specimens leading to personalized therapies, create a health information system, and follow patients over their lifetime. The network would serve as a model of best practices for cancer care and research.

Cigarette Tax Revenues

Chapter 210, F.S., governs taxes on tobacco products. Cigarette tax collections received by the Division of Alcoholic Beverages and Tobacco in the Department of Business and Professional Regulation are deposited into the Cigarette Tax Collection Trust Fund. As provided in s. 210.20, F.S., funds are disbursed as follows:

- .9 percent to the Alcoholic Beverage and Tobacco Trust Fund to fund the division;
- 2.9 percent to the Revenue Sharing Trust Fund for Counties;
- 29.3 percent to the Public Medical Assistance Trust Fund to pay for indigent health care; and
- 4.06 percent to the H. Lee Moffitt Cancer Center and Research Institute.[1]

After the required distributions and after payment of a service charge required of trust funds under s. 215.20, F.S., the amount remaining in the trust fund is deposited in the General Revenue Fund.

The estimated amount of tax collections from cigarettes for 2005-06 is $429.2 million.

[1] The H. Lee Moffitt Cancer Center and Research Institute will receive funding until 2016.

Florida Tobacco Settlements

In February 1995, the State of Florida sued a number of tobacco manufacturers, and others, asserting various claims for monetary and injunctive relief. The lawsuit included as defendants the American Tobacco Company, R.J. Reynolds Tobacco Company, Brown & Williamson Tobacco Company, Philip Morris Inc., Liggett Group, Inc., Brooke Group, Ltd., Lorillard Company, British American Tobacco Co., Ltd. and Dosal Tobacco Corp, Inc., among others. On March 3, 1996, the State of Florida, as one of five settling states,[2] settled all of its claims against Liggett Group, Inc., Brooke Group, Ltd., and Liggett & Myers, Inc. (collectively herein referred to as Liggett). This settlement is known as the Attorneys General Settlement Agreement.

In August 1997, the “Big Four” tobacco companies (Phillip Morris, Inc., R.J. Reynolds Tobacco Company, Brown & Williamson Tobacco Corp., and Lorillard Tobacco Company) entered into the landmark $368.5 billion tobacco settlement agreement with Florida for all past, present and future claims by the state, including reimbursement of Medicaid expenses, fraud, RICO, and punitive damages.[3] At the time of the settlement, the settling manufacturers held approximately 97.35 percent of the tobacco market share in the U.S.[4]

From the date of the settlement, Florida was to receive $11.3 billion over the next 25 years and an additional $1.7 billion over the next five years as a result of a most favored nation clause in the settlement agreement as amended.[5] The annual tobacco settlement payments are based on several factors, including the total volume of U.S. cigarette sales, each company’s share of the national market, net operating profits, and consumer price indices. Statutory guidelines were established to govern the expenditure of the tobacco settlement proceeds.[6] Subsequent to Florida’s settlement, the “Big Four” tobacco companies settled with the 46 remaining states, the District of Columbia, and five U.S. territories in November 1998, by entering into the Master Settlement Agreement (MSA).

The Tobacco Settlement Payment Forecast from the February 11, 2005, Revenue Estimating Conference forecast that $431.8 million would be available to Florida in 2005-06 from tobacco settlement funds. All tobacco settlement funds are appropriated by the Legislature. Any new appropriation of tobacco settlement funds would have to be offset by a corresponding reduction in an existing appropriation.

III. Effect of Proposed Changes:

This bill requires the Board of Directors of the H. Lee Moffitt Cancer Center and Research Institute to develop a technology-based clinical care and research network for the center, affiliated hospitals, and providers. The cost of the research network is funded from the cigarette

---

[2] The five states that entered into the March 3, 1996, settlement agreement are the states of West Virginia, Florida, Mississippi, Massachusetts, and Louisiana. These states are known as the “initially settling states.”
[3] See s. 215.56005(1)(f), F.S., which defines the tobacco settlement agreement to mean State v. American Tobacco Co. et al., Case no. 95-1466AH (Fla. 15th Cir. Ct. 1996).
[4] The Council of State Governments, Tobacco Settlement and Declining State Revenues, Trends Alert (March 2002), page 5.
[5] Florida also negotiated a “Most Favored Nations” clause in the settlement, which provides the state with additional monies for a period of time after Minnesota settled with the defendants on terms more favorable than Florida’s settlement.
[6] See s. 569.21, F.S.

tax proceeds deposited into the Cigarette Tax Collection Trust Fund. The amount of the funds to be transferred to the center from the Trust Fund would be 2.1 percent of the net collections. However, for FY 2005-06 and thereafter the center must receive as much as it would have received in FY 2003-04 if the bill had been in effect.[7] The funds are appropriated monthly and are paid directly to the board.

Unlike the current distributions that the center receives through the Cigarette Tax Collection Trust Fund, the center's new funds are not limited by a date certain. Accordingly, the center would, at a minimum, receive $8,010,513 per year in additional funding after the research network is operating. The bill authorizes the Legislature to replace the cigarette tax dollars pledged to the development and maintenance of the network from tobacco litigation settlement proceeds.

The center may use the funds under the trust fund to secure financing to pay costs related to the development of the technology-based clinical care and research network. The 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 bill provides that the bonds are not state bonds under s. 11, Art. VII of the State Constitution; rather, the bonds are local agency bonds as defined in s. 159.27(4), F.S.

The act has an effective date of July 1, 2005.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The provisions of this bill have no impact on municipalities and the counties under the requirements of Article VII, Section 18 of the Florida Constitution.

B. Public Records/Open Meetings Issues:

The provisions of this bill have no impact on public records or open meetings issues under the requirements of Article I, Section 24(a) and (b) of the Florida Constitution.

C. Trust Funds Restrictions:

The provisions of this bill have no impact on the trust fund restrictions under the requirements of Article III, Subsection 19(f) of the Florida Constitution.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

The bill requires an additional 2.1 percent of existing cigarette tax revenues to be paid to the Board of Directors of the H. Lee Moffitt Cancer Center and Research Institute.

[7] According to the Office of Economic and Demographic Research, the amount the H. Lee Moffitt Cancer Center and Research Institute would have received in FY 2003-2004, if the distribution required by this bill had been in effect, would have been $8,010,513.

B. Private Sector Impact:

If the clinical care and research network fulfills its promise, there may be a positive fiscal impact on citizens of the state. However, this impact is indeterminate at this time.

C. Government Sector Impact:

The Cigarette Tax Collection Trust Fund is a deposit and transfer fund. According to the division, the tax collection is projected to be $424 million for FY 2005-06. Under s. 210.20, F.S., funds are distributed to the center. Any balance remaining in the trust fund reverts to the General Revenue Fund. For FY 2005-06, the distribution to the center under current law would be approximately $16 million. The bill would create an additional distribution to the center in the amount of $8.2 million. Accordingly, there would be an $8.2 million reduction in General Revenue for FY 2005-06.

The bill authorizes the Legislature to replace the cigarette tax dollars pledged to the development and maintenance of the network from tobacco litigation settlement proceeds. All tobacco settlement funds are appropriated by the Legislature. Any new appropriation of tobacco settlement funds would have to be offset by a corresponding reduction in an existing appropriation.

VI. Technical Deficiencies:

None.

VII. Related Issues:

Section 210.20(2)(b)2., F.S., contains a distribution formula for the center in the amount of 0.2632 percent of net cigarette tax collections from July 1, 2002, through June 30, 2004. By its terms, this provision has expired and the Legislature may consider repealing this distribution. The entire subparagraph should not be repealed as it contains an additional distribution to the center that has not expired.

If it is the intent of the bill that the distribution to the H. Lee Moffitt Cancer Center and Research Institute will never be less than 2.1 percent of the net collections of cigarette tax funds in 2003-04, or $8,010,513, an amendment on page 4, line 23 would make that clear. If the intent is that the requirement for a minimum distribution applies only to the amount that would be generated by the new subparagraph 3. and not to the total amount that "would have been paid to the H. Lee Moffitt Cancer Center and Research Institute in fiscal year 2003-04," the words <u>under this subparagraph</u> should be added after the word "Institute" on page 4, line 23.

VIII. Summary of Amendments:

None.