

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 1035-01
Bill No.: HB 268
Subject: Business and Commerce; Taxation and Revenue; Tobacco Products.
Type: Original
Date: March 9, 2005

FISCAL SUMMARY

ESTIMATED NET EFFECT ON GENERAL REVENUE FUND			
FUND AFFECTED	FY 2006	FY 2007	FY 2008
Total Estimated Net Effect on General Revenue Fund	\$0	\$0	\$0

ESTIMATED NET EFFECT ON OTHER STATE FUNDS			
FUND AFFECTED	FY 2006	FY 2007	FY 2008
Tobacco Control Special Fund*	Unknown	Unknown	Unknown
Total Estimated Net Effect on <u>Other</u> State Funds	UNKNOWN	UNKNOWN	UNKNOWN

*Costs of \$427,371 for FY06, \$237,244 for FY07 and \$243,407 for FY08 are expected to be paid with collection of disgorgements, penalties and fees to be deposited to the fund.

Numbers within parentheses: () indicate costs or losses.

This fiscal note contains 8 pages.

ESTIMATED NET EFFECT ON FEDERAL FUNDS			
FUND AFFECTED	FY 2006	FY 2007	FY 2008
Total Estimated Net Effect on <u>All</u> Federal Funds	\$0	\$0	\$0

ESTIMATED NET EFFECT ON LOCAL FUNDS			
FUND AFFECTED	FY 2006	FY 2007	FY 2008
Local Government	\$0	\$0	\$0

FISCAL ANALYSIS

ASSUMPTION

Officials from the **Office of the State Courts Administrator** and the **Department of Public Safety** - Divisions of **Alcohol and Tobacco Control** and the **Director's Office** each assume the proposal would not fiscally impact their respective agencies.

Officials from the **Office of Prosecution Services** assumes the proposal will not have a significant direct fiscal impact on county prosecutors.

Officials from the **Office of Administration** - Divisions of **Accounting** and the **Commissioners Office** each assume the proposal would not fiscally impact their respective agencies. Officials from the Office of Administration - **Administrative Hearing Commission** state they anticipate the proposal would not significantly alter its caseload. However, if other similar bills pass, there will be fiscal impact. If there are more cases, or more complex cases, there could be a fiscal impact.

Officials from the **Office of State Public Defender (SPD)** assumes that existing staff could provide representation for those few cases arising where indigent persons were charged with the unlawful selling or distribution of cigarettes, or to acquire, hold, own, possess, transport, import,

ASSUMPTION (continued)

or cause to be imported cigarettes that the person knows or should know are intended for distribution or sale in the state in violation of subsection 3 of section 196.1023. A violation of this section is a class A misdemeanor.

Passage of more than one bill increasing penalties on existing crimes or creating new crimes would require the State Public Defender System to request increased appropriations to cover the cumulative cost of representing indigent persons accused in the now more serious cases or in the new additional cases.

Officials from the **Department of Corrections (DOC)** state that they could not predict the number of new commitments which could result from the creation of the offense(s) outlined in the proposal. An increase in commitments would depend on the utilization of prosecutors and the actual sentences imposed by the courts. If additional persons were sentenced to the custody of the DOC due to the provisions of this legislation, the DOC would incur a corresponding increase in operational costs through supervision provided by the Board of Probation and Parole (FY 2003 average \$3.15 per offender, per day or an annual cost of \$1,150). Supervision by the DOC through probation would result in some additional costs, but DOC officials assume that the impact would be \$0 or a minimal amount that could be absorbed within existing resources.

Officials from the **Office of Secretary of State (SOS)** assume there would be costs due to additional publishing duties related to the Department of Revenue's authority to promulgate rules, regulations, and forms. SOS estimates the division could require approximately 10 new pages of regulations in the Code of State Regulations at a cost of \$27.00 per page, and 15 new pages in the Missouri Register at a cost of \$23.00 per page. Costs due to this proposal are estimated to be \$615, however, the actual fiscal impact would be dependent upon the actual rule-making authority and may be more or less. Financial impact in subsequent fiscal years would depend entirely on the number, length, and frequency of the rules filed, amended, rescinded, or withdrawn. SOS does not anticipate the need for additional staff as a result of this proposal, however, the enactment of more than one similar proposal may, in the aggregate, necessitate additional staff.

Oversight assumes the SOS could absorb the costs of printing and distributing regulations related to this proposal. If multiple bills pass which require the printing and distribution of regulations at substantial costs, the SOS could request funding through the appropriation process. Any decisions to raise fees to defray costs would likely be made in subsequent fiscal years.

Officials from the **Office of the Attorney General (AGO)** assumes that with respect to the portion of this proposal relating to the release of funds from the MSA (Sections 196.1003 and

ASSUMPTION (continued)

196.1006), any potential costs can be absorbed with existing resources.

With respect to the portions of this proposal relating to certification of tobacco products (Sections 196.1020 to 196.1035), AGO assumes there will be a fiscal impact. Based on discussions with the Department of Revenue, AGO concurs with its view that the primary administrative duties, as well as the enforcement provisions, rest with the AGO's office. AGO assumes it would need 1 Assistant Attorney General IV (at \$55,000 annually), 2 Investigators (each at \$28,000 annually) and 1 Paralegal (at \$25,000 annually) to enforce the provisions of this proposal in litigation. These employees would also investigate, monitor compliance, collect and maintain data and promulgate rules. AGO assumes these positions could be funded from the "Tobacco Control Special Fund" created in the proposal. AGO believes that after start up, these positions would be self-sustaining through collections of disgorgements, penalties and fees to be deposited in the Fund.

The AGO assumes a cost from this proposal of \$235,305 in FY 2006, \$283,541 in FY 2007 and \$291,029 in FY 2008.

Oversight assumes the responsibility of the enforcement of the regulations specified in this proposal lies with the Department of Revenue. In a similar proposal from the 2004 session (HB 1267, 4038-01), the responsible agency was the Attorney General's Office. In that fiscal note, the AGO requested and were given four FTE to administer the proposal, while the Department of Revenue assumed the proposal would not fiscally impact their agency. Therefore, since the Department of Revenue is specified in this bill as the responsible agency, Oversight assumes the AGO would not need the four additional FTE.

Officials from the **Department of Revenue (DOR)** state this legislation provides additional regulations for tobacco product manufacturers. This legislation will have an impact on DOR's Division of Taxation.

To properly enforce the Master Settlement Agreement, the following items would also be required: An Attorney would be required to handle all the legal issues involved, including reviewing the certification and escrow agreements. As so many of the Non-Participating Manufacturers (NPMs) are located in foreign countries, DOR would need people versed in international law. Funding would be required to cover costs involved in serving papers in the foreign countries. As manufacturers and brands are constantly changing, attorneys are needed to investigate the true identity of the parties involved to determine who is ultimately responsible for the escrow payments. An Attorney would also be responsible for bringing actions against those companies that fail to comply.

ASSUMPTION (continued)

Support staff would be needed to receive, record, monitor and compile the reports of all cigarettes sold in Missouri. IT personnel would also be needed to assist with database design and to maintain an Internet site.

Field Investigators would be vital to enforcing this law. To do it right, DOR must have an ongoing field presence. DOR would need to inspect not only the cigarette wholesalers, but also all retailers selling cigarettes. The Investigators would be stationed at area offices, and travel expense would be needed. Travel expenses would also be needed for the attorneys and the investigators to attend training and conferences, so that they stay current on issues and to maintain contacts with other states and national organizations. There would also be unknown costs for serving papers in foreign countries.

Please note - costs are assumed to be coming from General Revenue. Taxation is not sure how much, but believes funds are available from the Tobacco Settlement funds for administration and enforcement of the MSA.

In summary, DOR assumes a need for 11.5 FTE at a cost of \$806,405 in FY 2006, \$675,239 in FY 2007, and \$692,385 in FY 2008.

In response to similar proposal from the 2004 session (HCS for HB 1267), the DOR assumed they could administer the changes specified in the proposal with four additional FTE. **Oversight** will utilize the estimates used in the fiscal note for 4038-04 from 2004, and make adjustments for the new estimated fringe benefit factor and for a full year in FY 2006 (emergency clause).

In response to a similar proposal from this year (SB 326), officials from the **Office of the State Treasurer** stated there is a potential impact to their office as there is no agency responsible for accepting and depositing payments to the new fund.

<u>FISCAL IMPACT - State Government</u>	FY 2006	FY 2007	FY 2008
TOBACCO CONTROL SPECIAL FUND			
<u>Income</u> - collection of disgorgements, penalties and fees	Unknown	Unknown	Unknown

<u>FISCAL IMPACT - State Government</u> (continued)	FY 2006	FY 2007	FY 2008
<u>Cost - Department of Revenue (DOR)</u>			
Personal Service (4 FTE)	(\$130,688)	(\$133,955)	(\$137,304)
Fringe Benefits	(\$55,751)	(\$57,145)	(\$58,574)
Programming	(\$173,138)	\$0	\$0
Expense and Equipment	(\$67,794)	(\$46,144)	(\$47,529)
Administrative costs to DOR	(\$427,371)	(\$237,244)	(\$243,407)
ESTIMATED NET EFFECT ON TOBACCO CONTROL SPECIAL FUND*	<u>UNKNOWN</u>	<u>UNKNOWN</u>	<u>UNKNOWN</u>

*The income from disgorgements, penalties and fees is expected to exceed the DOR costs.

<u>FISCAL IMPACT - Local Government</u>	FY 2006 (10 Mo.)	FY 2007	FY 2008
	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>

FISCAL IMPACT - Small Business

This proposal may impact small businesses that sell tobacco products.

DESCRIPTION

This proposal modifies the release of certain funds placed in escrow by tobacco product manufacturers in compliance with the 1998 Master Settlement Agreement. The number of units sold in Missouri is allowed to be taken into consideration for the release of the funds.

Certain requirements are established for participating tobacco manufacturers and for nonparticipating tobacco manufacturers relating to the agreement between various tobacco companies and the State of Missouri, 45 other states, the District of Columbia, and five U. S. territories.

All tobacco manufacturers whose cigarettes are sold in Missouri are required to report and certify to the Department of Revenue and the Attorney General's office by April 30 of each year that they are in compliance with the Tobacco Settlement Model Statute currently in Missouri law.

DESCRIPTION (continued)

In addition to the certification, participating manufacturers must also provide a list of "brand families" of cigarette types. Nonparticipating manufacturers must submit their brand families, the number of units sold for each family at any time during the year, the name and address of any other manufacturer of their brand families in the preceding or current calendar year, and other information to verify compliance with the model statute. Each nonresident or foreign nonparticipating manufacturer must be registered to do business in the state or maintain an agent within the state for the purpose of service of process relating to the enforcement of the bill.

By June 1, 2006, the Director of the Department of Revenue must make available for public inspection or publish on the department's web site a list of all tobacco product manufacturers that have provided the certification requirements established in the bill. Stamping agents (persons authorized to affix cigarette tax stamps to cigarette packages) are required to submit to the director an e-mail address for the receipt of notifications as required by the bill and to submit various reports and documents as required by the department.

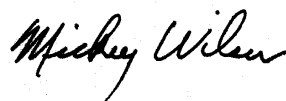
Various penalties and actions for failure to comply with the requirements of the bill are included.

The bill contains an emergency clause.

This legislation is not federally mandated, would not duplicate any other program and would not require additional capital improvements or rental space.

SOURCES OF INFORMATION

Office of the Attorney General
Office of Administration
Department of Revenue
Office of the Secretary of State
Office of the State Courts Administrator
Department of Public Safety
Office of Prosecution Services
Office of the State Public Defender
Office of the State Treasurer
Department of Corrections



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