

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 1283-05
Bill No.: SCS for SB 326
Subject: State Attorney General; Revenue Department; Tobacco Products.
Type: Original
Date: May 2, 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 9 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

Section 149.220 - Penalties for non-compliant cigarette sales;

In response to a similar proposal from this year (HB 672), officials with the **Department of Public Safety – Division of Alcohol and Tobacco Control, Office of Prosecution Services, Office of Secretary of State, and Office of State Courts Administrator** assume this part of the proposal would have no fiscal impact on their respective agencies.

In response to a similar proposal from this year (HB 672), officials with the **Attorney General’s Office (AGO)** assumed this part of the proposal would create new responsibilities for its agency. AGO assumed it would be required to make determinations concerning compliance, sue for purposes of discovery and enter into proceedings in foreign jurisdictions under these provisions. AGO assumed it would need 3 Assistant Attorneys General IV, 3 Investigators, and 1 Paralegal to enforce the provisions of this section. These employees would also investigate, monitor compliance, collect and maintain data.

Oversight assumes that any additional caseload at AGO resulting from this proposal could be absorbed by its existing enforcement infrastructure, including personnel and resources.

ASSUMPTION (continued)

Officials with the **Department of Revenue (DOR)** assume the changes to Section 149 will result in internal costs including programming and 2 FTE associated with this part of the legislation; however, DOR believes it can manage these costs at current appropriation levels unless there is a material change in the division's other responsibilities.

Chapter 196 -Tobacco Settlement Agreement;

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

In response to a previous version of this proposal, officials from the **Office of the State Public Defender** assumed the proposal would not fiscally impact their agency.

In response to a previous version of this proposal, officials from the **Office of Prosecution Services** assumed the proposal would not have a direct fiscal impact on county prosecutors.

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,

ASSUMPTION (continued)

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.

In response to a previous version of this proposal, officials from the **Office of the Attorney General (AGO)** assumed that with respect to the portions of this proposal relating to certification of tobacco products (Sections 196.1020 to 196.1035), AGO assumed there will be a fiscal impact. Based on discussions with DOR, AGO concurred with its view that the primary administrative duties, as well as the enforcement provisions, rest with the AGO's office. AGO assumed it would need one 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 assumed these positions could eventually be funded from the "Tobacco Control Special Fund" created in the proposal. AGO believed that after start up, these positions would be self-sustaining through collections of disgorgements, penalties and fees to be deposited in the Fund.

In summary, the AGO assumed cost from the four FTEs to be \$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.

DOR assumes an Attorney would be required to handle all the legal issues involved, including reviewing the certification and escrow agreements. As many of the Non-Participating

ASSUMPTION (continued)

Manufacturers (NPMs) are located in foreign countries, DOR will 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.

Support staff would be needed to receive, record, monitor and compile the reports of all cigarettes sold in Missouri. Information Technology personnel would also be needed to assist with database design and to maintain an Internet site. Field Investigators would be vital to the enforcement of 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 expenses would also be needed. Travel expense 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.

DOR assumes unknown costs for serving papers in foreign countries. Taxation is not sure how much, but believed funds are available from the Tobacco Settlement funds for administration and enforcement of the MSA.

Section 196.1023 - Requires Taxation to establish and maintain a database to track certifications of participating and non-participating manufacturers. Recording the data would not be a problem, however, verifying the data is correct may prove to be difficult. Taxation would require access to the Attorney General's records regarding the Master Settlement Agreement (MSA).

Section 196.1029.5 - Requires quarterly installments. This is currently done on an annual basis. This requirement would quadruple the workload as well as increase correspondence, phone calls, and compilation lists for DOR.

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).

ASSUMPTION (continued)

Officials from the **Office of the State Treasurer** state there is a potential impact to their office as there is no agency responsible for accepting and depositing payments to the new fund.

Officials from the **Office of Administration** did not respond to Oversight's request for fiscal impact.

<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>Cost</u> - Department of Revenue (DOR)			
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	<u>(\$67,794)</u>	<u>(\$46,144)</u>	<u>(\$47,529)</u>
Administrative costs to DOR	<u>(\$427,371)</u>	<u>(\$237,244)</u>	<u>(\$243,407)</u>
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	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 substitute makes various revisions to the Tobacco Master Settlement Agreement.

The substitute relieves any person licensed or required to affix a tax stamp on cigarette packages or any retailer who in good faith sells cigarettes that do not comply with state law, from being subject to any administrative, civil or criminal penalties associated with such act. However it does not relieve a wholesaler or retailer from any penalty imposed by law if the tax stamp has not been lawfully applied.

Declarations of non-compliant cigarettes must be posted on the website of both the Attorney General and the Department of Revenue. The director of the department of revenue must notify all wholesalers in writing via U.S. Mail of the manufacturers and cigarette brands that are no longer lawful to sell in the state. Within five days of such notification, the wholesaler must provide the director with a count of said manufacturers cigarette brands that the wholesaler is holding in inventory for sale in this state.

The cigarette manufacturer shall have the right to remedy any reason the director or attorney general gives for making it unlawful to sell such cigarette brands in this state and in the event said manufacturer provides such remedy, the director and attorney general shall cease any impending action to make such manufacturers brands unlawful for sale. Any tobacco product manufacturer aggrieved by a declaration of non-compliance has a right to seek relief in a court of competent jurisdiction.

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 and that they are registered to do business in the state of Missouri or they have appointed a registered agent for service of process. 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.

DESCRIPTION (continued)

Each nonresident or foreign tobacco product 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 act. 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 satisfied the certification requirements established in the act.

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 act are included.

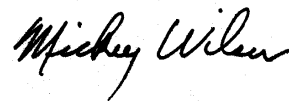
The act contains an emergency clause.

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
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

NOT RESPONDING: Office of Administration



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