

COMMITTEE ON LEGISLATIVE RESEARCH  
OVERSIGHT DIVISION

**FISCAL NOTE**

L.R. No.: 2087-01  
Bill No.: SB 490  
Subject: State Attorney General; Department of Revenue; Tobacco Products  
Type: Original  
Date: March 9, 2009

Bill Summary: The proposal amends various provisions of the Tobacco Master Settlement Agreement.

**FISCAL SUMMARY**

<b>ESTIMATED NET EFFECT ON GENERAL REVENUE FUND</b>			
FUND AFFECTED	FY 2010	FY 2011	FY 2012
General Revenue	(\$223,877)	(\$477,736)	(\$492,068)
<b>Total Estimated Net Effect on General Revenue Fund</b>	<b>(\$223,877)</b>	<b>(\$477,736)</b>	<b>(\$492,068)</b>

<b>ESTIMATED NET EFFECT ON OTHER STATE FUNDS</b>			
FUND AFFECTED	FY 2010	FY 2011	FY 2012
Tobacco Control Special Fund*	Unknown	Unknown	Unknown
<b>Total Estimated Net Effect on Other State Funds*</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

\*Costs of \$306,181 for FY10, \$240,611 for FY11 and \$247,829 for FY12 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.

<b>ESTIMATED NET EFFECT ON FEDERAL FUNDS</b>			
<b>FUND AFFECTED</b>	<b>FY 2010</b>	<b>FY 2011</b>	<b>FY 2012</b>
<b>Total Estimated Net Effect on All Federal Funds</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

<b>ESTIMATED NET EFFECT ON FULL TIME EQUIVALENT (FTE)</b>			
<b>FUND AFFECTED</b>	<b>FY 2010</b>	<b>FY 2011</b>	<b>FY 2012</b>
General Revenue	(2)	(4)	(4)
Tobacco Control Special	4.5	4.5	4.5
<b>Total Estimated Net Effect on FTE</b>	<b>2.5</b>	<b>0.5</b>	<b>0.5</b>

Estimated Total Net Effect on All funds expected to exceed \$100,000 savings or (cost).

Estimated Net Effect on General Revenue Fund expected to exceed \$100,000 (cost).

<b>ESTIMATED NET EFFECT ON LOCAL FUNDS</b>			
<b>FUND AFFECTED</b>	<b>FY 2010</b>	<b>FY 2011</b>	<b>FY 2012</b>
<b>Local Government</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

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## FISCAL ANALYSIS

### ASSUMPTION

Officials from the **Office of Administration, Department of Public Safety – Director’s Office**, and the **Office of the State Public Defender** assume the proposal would have no fiscal impact on their agencies.

Officials from the **Office of State Courts Administrator** assume the proposed legislation would have no fiscal impact on the courts.

Officials from the **Office of the Attorney General (AGO)** anticipate a savings under this proposal due to the enhanced tools provided to the AGO to enforce the escrow requirements under the current law.

In FY 10, AGO anticipated a savings of 2 FTE Assistant Attorneys General IV (at \$60,000 each) for total of \$120,000. The estimated savings for related expense and equipment for 2 AAG IV (FY 10 \$24,102; FY 11\$27,825).

In FY 11, AGO anticipates a savings of an additional 2 FTE Assistant Attorneys General IV (at \$60,000 each) for additional savings of \$120,000 in that fiscal year. The estimated savings for related expense and equipment for 2 AAG IV (FY 11 \$24,102; FY 12\$27,825).

In the years thereafter, AGO anticipates no additional savings.

Officials from the **Department of Corrections (DOC)** assume the penalty provisions for violations, the component of the bill to have potential fiscal impact for DOC, is for a class A misdemeanor.

DOC cannot currently predict the number of new commitments which may result from the creation of the offense(s) outlined in this proposal. An increase in commitments depends on the utilization by prosecutors and the actual sentences imposed by the court.

If additional persons are sentenced to the custody of the DOC due to the provisions of this legislation, the DOC will incur a corresponding increase of direct offender costs either through incarceration (FY08 average of \$15.64 per offender per day, or an annual cost of \$5,709 per inmate) or through supervision provided by the Board of Probation and Parole (FY08 average of \$2.47 per offender per day, or an annual cost of \$902 per offender).

ASSUMPTION (continued)

In summary, supervision by the DOC through probation or incarceration would result in some additional costs, but it is assumed the impact would be \$0 or a minimal amount that could be absorbed within existing resources.

Officials from the **Department of Revenue (DOR)** assume to properly enforce the Master Settlement Agreement, the following tasks must be done:

DOR assumes Excise Tax would require two Revenue Processing Technicians I (each at \$25,380 per year) to receive, record, monitor and compile the reports of all cigarettes sold in Missouri. The Taxation Division would also need to be prepared to answer numerous telephone calls concerning manufacturers listed or not listed on the website. The DOR would require IT support to assist with database design and maintenance of the required website.

DOR assumes the Criminal Investigation Bureau would require eight Field Investigators (each at \$43,344 per year) to enforce the non-participating manufacture statutes. Each Investigator would be assigned to one of the DOR's field offices and would require vehicles and associated travel expenses. A great deal of investigation must be done to ensure all manufacturers and brand families are correctly certified and that all payments have been made. This would include verification of bank records and the ability to determine the true identity of a product manufacturer. Field investigators would be vital to enforce this law. Continual inspections of wholesalers and retailers will need to take place to make appropriate seizures. The increased field activity would create additional work for the DOR's registration area to suspend or revoke licenses of any wholesaler in possession of products deemed to be contraband.

DOR assumes they would incur Unknown costs for serving papers in foreign countries.

Due to the Statewide Information Technology Consolidation, DOR's response to a proposal reflects the cost estimates prepared by the Office of Administration – Information Technology Services Division (COA – ITSD) for impact to the various systems. If the legislation is Truly Agreed to and Finally Passed the COA – ITSD costs shown will be requested through appropriations by COA – ITSD.

DOR included a fiscal impact statement from the Office of Administration – Information Technology Services Division (COA – ITSD). COA – ITSD estimates the IT portion of this request can be accomplished within existing resources; however, if priorities shift, additional FTE/overtime would be needed. COA – ITSD estimates that this legislation could be implemented utilizing 2 existing CIT III for 5 months at a rate of \$44,410.

ASSUMPTION (continued)

In addition, COA – ITSD will require an additional ½ CIT III (each at \$53,292) full time in order maintain the requirements of the Master Settlement Agreement.

In summary, DOR assumes a need for 7.5 FTE at a cost of \$508,905 in FY 2010, \$479,643 in FY 2011, and \$494,033 in FY 2010.

In response to similar proposal from the 2004 session (HCS for HB 1267, LR # 4038-04), the DOR assumed they could administer the changes specified in the proposal with four additional FTE.

**Oversight** assumes the provisions of the proposal could be administered with 4.5 FTE: 1 FTE Revenue Processing Technician, 3 FTE Investigators II, and .5 FTE Computer Information Tech. Oversight has, for fiscal note purposes only, changed the starting salary for these FTE to correspond to the second step above minimum for comparable positions in the state's merit system pay grid. This decision reflects a study of actual starting salaries for new state employees for a six month period and the policy of the Oversight Subcommittee of the Joint Committee on Legislative Research. Oversight assumes the FTE will be housed within existing DOR facilities, so no floor space expenses are included.

**Oversight** assumes the income from disgorgements, penalties, and fees will exceed the Department of Revenue costs.

**Officials from the Office of Prosecution Services, Office of the Secretary of State, and the Office of the State Treasurer did not respond to Oversight's request for fiscal impact.**

<u>FISCAL IMPACT - State Government</u>	FY 2010	FY 2011	FY 2012
<b>GENERAL REVENUE FUND</b>			
<u>Savings – Office of the Attorney General</u>			
Personal Service	(\$123,600)	(\$254,616)	(\$262,254)
Fringe Benefits	(\$60,107)	(\$123,820)	(\$127,534)
Equipment and Expense	<u>(\$40,170)</u>	<u>(\$99,300)</u>	<u>(\$102,280)</u>
<u>Total Savings – AGO</u>	<u>(\$223,877)</u>	<u>(\$477,736)</u>	<u>(\$492,068)</u>
FTE Change – AGO	(2) FTE	(4) FTE	(4) FTE
<b>ESTIMATED NET EFFECT ON GENERAL REVENUE FUND</b>			
	<b><u>(\$223,877)</u></b>	<b><u>(\$477,736)</u></b>	<b><u>(\$492,068)</u></b>
Estimated Net FTE Change for General Revenue Fund	(2) FTE	(4) FTE	(4) FTE
<b>TOBACCO CONTROL SPECIAL FUND</b>			
<u>Income – Collection of disgorgements, penalties, and fees</u>			
	Unknown	Unknown	Unknown
<u>Costs – Department of Revenue (DOR)</u>			
Personal Service	(\$152,695)	(\$157,276)	(\$161,995)
Fringe Benefits	(\$74,256)	(\$76,483)	(\$78,778)
Equipment and Expense	<u>(\$79,230)</u>	<u>(\$6,852)</u>	<u>(\$7,056)</u>
<u>Total Costs – DOR</u>	<u>(\$306,181)</u>	<u>(\$240,611)</u>	<u>(\$247,829)</u>
FTE Change – DOR	4.5 FTE	4.5 FTE	4.5 FTE
<b>ESTIMATED NET EFFECT ON TOBACCO CONTROL SPECIAL FUND*</b>			
	<b><u>Unknown</u></b>	<b><u>Unknown</u></b>	<b><u>Unknown</u></b>
Estimated Net FTE Change for Tobacco Control Special Fund	4.5 FTE	4.5 FTE	4.5 FTE

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

FISCAL IMPACT - Local Government

FY 2010

FY 2011

FY 2012

\$0

\$0

\$0

FISCAL IMPACT - Small Business

Small businesses involved in the sale of cigarettes or tobacco products may be administratively impacted by the provisions in the proposed legislation.

FISCAL DESCRIPTION

The proposed legislation modifies the release of certain funds placed in escrow by tobacco product manufacturers in compliance with the 1998 Master Settlement Agreement.

All tobacco manufacturers whose cigarettes are sold in Missouri are required to report and certify to the attorney general's office by April 30<sup>th</sup> of each year that they are in compliance with the Tobacco Settlement Model Statute currently in Missouri law. 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 preceding year, the name and address of any other manufacturer of their brand families for the preceding or current calendar year, as well as other information required to verify compliance with the model statute. Each nonparticipating manufacturer must further certify it is registered to do business in the state or maintains an agent within the state for the purpose of service of process relating to the enforcement of the act.

All tobacco manufacturers must update their lists thirty days prior to any addition to, or modification of, its brand families through a supplemental certification to the attorney general. Tobacco product manufactures must maintain all invoices and documentation of sales and other such information relied upon for certification for a period of five years, unless otherwise required by law to maintain such records for a longer period of time.

By July 1, 2010, 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.

FISCAL DESCRIPTION (continued)

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 proposal contains an emergency clause, and will be in full force and effect upon passage and approval.

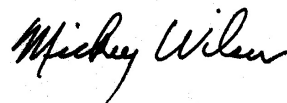
This legislation is not federally mandated, would not duplicate any other program and would not require additional capital improvements or rental space.

SOURCES OF INFORMATION

Office of the Attorney General  
Office of Administration  
Office of State Courts Administrator  
Department of Corrections  
Department of Revenue  
Department of Public Safety  
– Director's Office  
Office of the State Public Defender

NOT RESPONDING

**Office of Prosecution Services**  
**Office of the Secretary of State**  
**Office of the State Treasurer**





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