

**MISSOURI STATE AUDITOR'S OFFICE  
FISCAL NOTE (16-153)**

**Subject**

Initiative petition from Bradley Ketcher regarding a proposed amendment to Chapters 196 and 210 of the Revised Statutes of Missouri. (Received November 25, 2015)

**Date**

December 15, 2015

**Description**

This proposal would amend Chapters 196 and 210 of the Revised Statutes of Missouri.

The amendment is to be voted on in November 2016.

**Public comments and other input**

The State Auditor's office requested input from the **Attorney General's office**, the **Department of Agriculture**, the **Department of Economic Development**, the **Department of Elementary and Secondary Education**, the **Department of Higher Education**, the **Department of Health and Senior Services**, the **Department of Insurance, Financial Institutions and Professional Registration**, the **Department of Mental Health**, the **Department of Natural Resources**, the **Department of Corrections**, the **Department of Labor and Industrial Relations**, the **Department of Revenue**, the **Department of Public Safety**, the **Department of Social Services**, the **Governor's office**, the **Missouri House of Representatives**, the **Department of Conservation**, the **Department of Transportation**, the **Office of Administration**, the **Office of State Courts Administrator**, the **Missouri Senate**, the **Secretary of State's office**, the **Office of the State Public Defender**, the **State Treasurer's office**, **Adair County**, **Boone County**, **Callaway County**, **Cass County**, **Clay County**, **Cole County**, **Greene County**, **Jackson County Legislators**, **Jasper County**, **St. Charles County**, **St. Louis County**, **Taney County**, the **City of Cape Girardeau**, the **City of Columbia**, the **City of Jefferson**, the **City of Joplin**, the **City of Kansas City**, the **City of Kirksville**, the **City of Mexico**, the **City of Raymore**, the **City of St. Joseph**, the **City of St. Louis**, the **City of Springfield**, the **City of Union**, the **City of Wentzville**, the **City of West Plains**, **Cape Girardeau 63 School District**, **Hannibal 60 School District**, **State Technical College of Missouri**, **Metropolitan Community College**, **University of Missouri**, **St. Louis Community College**, **Children's Trust Fund**, and the **State Auditor's office**.

## Assumptions

Officials from the **Attorney General's office** indicated they assume that any potential costs arising from the adoption of this proposal can be absorbed with existing resources.

Officials from the **Department of Economic Development** indicated no impact for their department.

Officials from the **Department of Elementary and Secondary Education** indicated through the collection of a tax imposed on each package of twenty cigarettes, or lesser portion thereof, this proposal has the potential to significantly impact the Childhood Cancer Treatment and Prevention fund.

Their department has no means to calculate the impact from this tax.

Officials from the **Department of Higher Education** indicated this initiative petition would have no fiscal impact on their department.

Officials from the **Department of Health and Senior Services** indicated no fiscal impact on their department.

Officials from the **Department of Insurance, Financial Institutions and Professional Registration** indicated this petition, if passed, will have no cost or savings to their department.

Officials from the **Department of Mental Health** indicated this proposal creates no direct obligations or requirements to their department that would result in a fiscal impact.

Officials from the **Department of Natural Resources** indicated they would not anticipate a direct fiscal impact from this proposal.

Officials from the **Department of Corrections** indicated no impact.

Officials from the **Department of Labor and Industrial Relations** indicated no fiscal impact on their department.

Officials from the **Department of Revenue** (DOR) indicated this petition will increase revenues to the Childhood Cancer Treatment and Prevention Fund by \$49.7 million per year.

### **Section 196.1131**

Effective January 1, 2017, this section imposes an additional 10 cents on a pack of cigarettes before discounts and deals. The DOR collects the tax in the same manner and at same time as the current taxes.

Based on 496.5 million packs of cigarettes stamped in Tax Year 2014 the DOR estimates total revenues of \$49.7 million.

The DOR must refund moneys overpaid or erroneously paid pursuant to this section as provided by law. Each month, the Department Director must determine whether the tax imposed by this section caused a reduction in the amount of moneys collected and deposited into the fair share fund, the health initiatives fund, or the state school moneys fund pursuant to Chapter 149, RSMo. If a reduction exists, a like amount not collected and deposited into that fund or funds shall be transferred from the Childhood Cancer Treatment and Prevention Fund to the appropriate fund or funds.

**Administrative Impact:**

**Business Tax:**

Business Tax requires a floor stock tax form and cigarette stamp order forms be updated. Additionally, the SAGE 50 accounting system and cashiering records requires change. The DOR web pages will need to be updated and licensed wholesalers will need to be notified of the tax increase and the floor stock tax.

**Overall Impact:**

The DOR cannot determine on a monthly basis whether there has been a reduction in the money deposited in the fair share fund, health initiative fund, or the state schools fund. Wholesalers buy tax stamps without reference to the months in which the cigarettes bearing the stamps will be sold. For example, a wholesale may buy enough stamps for 3,000 packs of cigarettes. Those cigarettes may be sold in one month, two months, or six months. At best, the DOR could do an estimate on a calendar year of fiscal basis, but it would still only be an estimate.

Officials from the **Department of Public Safety** indicated their department sees no fiscal impact due to this initiative petition.

Officials from the **Department of Social Services** indicated no fiscal impact on their department.

Officials from the **Governor's office** indicated there should be no fiscal impact to their office.

Officials from the **Missouri House of Representatives** indicated no fiscal impact to their office.

Officials from the **Department of Conservation** indicated that no adverse fiscal impact to their department would be expected as a result of this initiative petition.

Officials from the **Department of Transportation** indicated they assume no fiscal impact.

Officials from the **Office of Administration** (OA) indicated the proposal amends Sections 196.1003 and 210.172 RSMo., and Chapter 196 by adding Section 196.113, RSMo.

Section 196.1131 – enacts an additional \$0.10/pack tax increase on cigarettes. The monies collected from this new tax would be deposited in the Childhood Cancer Treatment and Prevention Fund to be administered by the Children’s Trust Fund Board. These funds will be used for the treatment and prevention of childhood cancers. The proposal allows up to 5% of the collections to be used for collection costs. On a monthly basis, the Director of the Department of Revenue shall determine if the new tax has caused a reduction in the amount of moneys collected and deposited in to the Fair Share, Health Initiatives or State School Moneys Funds. If so, up to three percent of the total moneys collected from the new tax shall be transferred to these funds.

The State Auditor shall perform an annual audit of the fund, which shall include an evaluation of whether preexisting funding for programs or initiatives has been reduced because of the new funding. Every three years, the auditor shall prepare a comprehensive report assessing work and progress of initiatives undertaken pursuant to the proposed new sections.

Section 196.1003 – changes escrow requirements for the Tobacco Master Settlement Agreement, with provisions to remove references to the State’s allocable share of the total payments the manufacturer would have been required to make under the Master Settlement Agreement; it could adversely impact future Nonparticipating Manufacturer (NPM) adjustment arbitrations.

Section 210.172 – authorizes the Children’s Trust Fund Board to administer the Childhood Cancer Treatment and Prevention Fund.

**FISCAL IMPACT:**

In fiscal year 2015, there was \$81.7 million in cigarette excise taxes collected. OA assumes that the average pack of cigarettes retails for \$4.50, translating to roughly 480.9 million packs sold in Missouri. OA further assumes that cigarette sales have a (0.8) elasticity. Therefore, OA estimates a tax increase of \$0.10 in January 2017 will increase the “Childhood Cancer Treatment and Prevention Fund” by \$22.9 million in fiscal year 2017 and \$45.8 million once fully implemented in fiscal year 2018.

There is no way to truly know what impact these tax increases will have on demand due to smoking cessation efforts, other state and federal regulations, and the increase in sales of e-cigarettes. However, OA estimates that the tax increase will decrease the Fair Share Fund by \$0.1 million in fiscal year 2017 and \$0.3 million in fiscal year 2018 and thereafter, the Health Initiatives fund by \$0.2 million in fiscal year 2017 and \$0.3 million in fiscal year 2018 and thereafter, and the State School Moneys Fund by \$0.4 million in fiscal year 2017 and \$0.8 million in fiscal year 2018 and thereafter.

Further, since cigarette sales will decrease slightly, General Revenue will be reduced by \$1.1 million, the School District Trust Fund will be reduced by \$0.4 million, and local sales tax will be reduced by \$1.5 million once fully implemented in fiscal year 2018, from the loss of sales tax.

Officials from the **Office of State Courts Administrator** indicated there is no fiscal impact on the courts.

Officials from the **Missouri Senate** indicated no fiscal impact on their office.

Officials from the **Secretary of State's office** indicated their office is required to pay for publishing in local newspapers the full text of each statewide ballot measure as directed by Article XII, Section 2(b) of the Missouri Constitution and Section 116.230-116.290, RSMo. Their office is provided with core funding to handle a certain amount of normal activity resulting from each year's legislative session. Funding for this item is adjusted each year depending upon the election cycle with \$1.3 million historically appropriated in odd numbered fiscal years and \$100,000 appropriated in even numbered fiscal years to meet these requirements. Through FY (fiscal year) 2013, the appropriation had historically been an estimated appropriation because the final cost is dependent upon the number of ballot measures approved by the General Assembly and the initiative petitions certified for the ballot. In FY 2013, at the August and November elections, there were 5 statewide Constitutional Amendments or ballot propositions that cost \$2.17 million to publish (an average of \$434,000 per issue). In FY 2015, the General Assembly changed the appropriation so that it was no longer an estimated appropriation and their office was appropriated \$1.19 million to publish the full text of the measures. Due to this reduced funding, their office reduced the scope of the publication of these measures. In FY 2015, at the August and November elections, there were 9 statewide Constitutional Amendments or ballot propositions that cost \$1.1 million to publish (an average of \$122,000 per issue). Despite the FY 2015 reduction, their office will continue to assume, for the purposes of this fiscal note, that it should have the full appropriation authority it needs to meet the publishing requirements. Because these requirements are mandatory, they reserve the right to request funding to meet the cost of their publishing requirements if the Governor and the General Assembly again change the amount or continue to not designate it as an estimated appropriation.

Officials from the **Office of the State Public Defender** indicated the initiative petition will not have any impact on their office.

Officials from **Greene County** indicated that there are no estimated costs or savings to report from their county for this initiative petition.

Officials from the **City of Kansas City** indicated no fiscal impact is anticipated if this proposal is adopted.

Officials from the **University of Missouri** indicated there is no fiscal impact on their university for this petition.

Officials from the **St. Louis Community College** indicated they do not estimate this will have significant fiscal impact on their college.

Officials from the **Children's Trust Fund** indicated costs to the Children's Trust Fund is estimated at \$198,000 - \$233,000 annually to implement and manage the Childhood Cancer Treatment and Prevention Fund. Included in this estimate is:

A minimum of 2-2.5 additional full-time employees (FTE's) totaling \$110,000 - \$135,000 needed (includes salary and benefits package). FTE's include Program Grants Manager and assistant with fiscal/accounting background/skills, as well as a Public Information Officer (.5). FTE positions and salaries are based upon existing positions that perform like functions for child abuse and neglect prevention fund. Estimates could be higher depending upon necessary qualifications and expertise required as a result of the technical medical nature of the proposed fund.

Additional costs estimated at \$38,000 annually for existing personnel – Executive Director and Executive Assistant for fund/program oversight estimated at .33 % of current salary rate.

Additional expenses/costs for grant selection and review process, program implementation, grant evaluation, ongoing monitoring, and other necessary expenses directly related to implementation of this new fund, required office space & equipment for new FTE's, and to Office of Administration for procurement, budgetary and other functions estimated at \$50,000 - \$60,000 annually.

Monies to implement and operate the Childhood Cancer Treatment and Prevention Fund including cost of added FTE's would need to come directly from monies deposited by the State Treasurer into the specific fund proposed or from another source other than existing funds from the Children's Trust Fund which are dedicated solely for the purpose of child abuse/neglect prevention.

Also listed below are additional concerns with implementing this proposal as presented in its current form:

- The proposed amendment to Section 210.172, RSMo, outlining the powers and duties of the Children's Trust Fund Board proposes a subsection (e) as an additional power and duty of the board, when subsection (e) already exists in statute.
- Statutes in their current form prohibit the Children's Trust Fund Board from authorizing expenditures for any additional purpose other than for the prevention and alleviation of child abuse and neglect (Sections 210.171, 210.172, RSMo). This initiative petition fails to address other areas/statutory changes needed to manage and implement additional funds outside of child abuse and neglect prevention.
- The Children's Trust Fund Board in its current structure and make-up lacks the medical expertise needed to optimally and effectively administer funds for the purpose of preventing and treating childhood cancers (Section 210.170(1)(2)(3)(4)(5), RSMo).

- The Children's Trust Fund board was created solely to administer and monitor funds for the prevention and alleviation of child abuse and neglect as defined in Section 210.171, RSMo as follows. As used in Sections 210.170 to 210.173, RSMo, and Section 143.1000, RSMo, the following terms shall mean: (1) "Board", the children's trust fund board created in Section 210.170, RSMo; (2) "Prevention program", any community-based educational or service program designed to prevent or alleviate child abuse or neglect.

Officials from the **State Auditor's office** (SAO) indicated they believe that the audit required under the petition would require approximately 1 FTE. However, given the SAO has consistently lapsed funds in recent years, the SAO believes it could absorb these costs within its current appropriation authority.

The State Auditor's office did not receive a response from the **Department of Agriculture, the State Treasurer's office, Adair County, Boone County, Callaway County, Cass County, Clay County, Cole County, Jackson County Legislators, Jasper County, St. Charles County, St. Louis County, Taney County, the City of Cape Girardeau, the City of Columbia, the City of Jefferson, the City of Joplin, the City of Kirksville, the City of Mexico, the City of Raymore, the City of St. Joseph, the City of St. Louis, the City of Springfield, the City of Union, the City of Wentzville, the City of West Plains, Cape Girardeau 63 School District, Hannibal 60 School District, State Technical College of Missouri, and Metropolitan Community College.**

### **Fiscal Note Summary**

Estimated additional revenue to state government is \$42 million to \$50 million annually. The revenue will fund only programs and services allowed by the proposal. Local government revenues could decrease approximately \$1.5 million annually due to decreased cigarette sales.