MISSOURI STATE AUDITOR'S OFFICE
FISCAL NOTE (05-04rr)

Subject

Initiative petition for constitutional amendment from Robert L. Hess II concerning a tobacco tax. (Received September 21, 2005)

Date

October 21, 2005

Description

This initiative petition (Version 2) would amend Article IV of the Missouri Constitution by amending Section 37(b). The initiative petition provides that monies collected from an additional tax of four cents per cigarette and twenty percent of the manufacturer's invoice price before discounts and deals on other tobacco products will be credited to and placed in the Healthy Future Trust Fund within the state treasury.

The monies may be appropriated to three general accounts in the Healthy Future Trust Fund to be used for the purposes specified in the Tobacco Use Prevention, Education, and Cessation Account, the Chronic Disease Management Account, and the Health Care Access and Treatment Account. The taxes are to be levied and collected as provided by law.

The amendment is to be voted on in November, 2006, or at a special election called by the governor. The effective date of the amendment will be January 1, 2007, and programs described in the petition will be implemented no later than July 1, 2007.

Public comments and other input

The State Auditor's Office received input from the Department of Revenue, the Department of Health and Senior Services, the Department of Public Safety, the Department of Mental Health, the Department of Social Services, the State Treasurer, and the Governor's Office. We also received comments from Robert L. Hess II with Hush & Eppenberger, LLC on behalf of the Committee for a Healthy Future.

Assumptions

Officials from the Department of Revenue (DOR) indicated that approximately 594 million packs of cigarettes are currently sold each year. An additional tax of four cents per cigarette would generate approximately $475 million annually. In addition, twenty percent of the manufacturer's invoice paid before discounts and deals for tobacco products other than cigarettes will generate approximately $24 million annually. The DOR noted actual revenues, especially the first year, may be less due to reduced sales because of increased prices, and/or stockpiling products and stamps in advance of the increase.

There would be a minimal impact on the DOR's Division of Taxation. Taxation would need to revise forms and programs and 230 notification letters to licensees would also need to be mailed. An additional 5,000 to 6,000 notification letters may need to be sent to tobacco retailers. Existing staff would be sufficient to collect the additional taxes.

Officials from the DOR did express some concerns. Section 5 (1) states"…the actual costs of collecting the new tax shall be paid from the Healthy Future Trust Fund"… It is not clear how Taxation is to separate the cost of collection of this additional tax from the cost of collection of the current tax. This would create additional costs in the collection process. The department requests a time frame in which the distribution is to be made. The department also questions whether the costs of collection should be deducted from the net proceeds each month.

Section 5 (2) states that the DOR is to refund moneys overpaid or erroneously paid. Currently, the Taxation Bureau only refunds for returns to the manufacturer or for stamps that are returned to the director. For the purpose of this response, it will be assumed that the current refund standards will be utilized.

Section 5 (3) requires the DOR to make a monthly comparison to determine if the tax increase caused a reduction in the amount of moneys collected and deposited into the fair share fund, school fund, and health initiatives fund. It is unclear how the comparison is to be made. Whether the amount compared is to be compared to the prior year, the prior month, or the year to date totals.

Section 11 states "…products in the possession or under the control of any dealer or distributor…" A definition for dealer or distributor has not been provided. The DOR recommended that the definitions found in this Constitutional amendment be consistent with the definitions found in Chapter 149, RSMo.

The DOR requested clarification to limit "floor stocks." There is a concern with the wording in Section 11, as is, that stockpiling and windfalls may take place for those who have the cash flow to purchase large amounts of stamps before the increase becomes effective. If the term "dealer" is changed to "retailer" and if "wholesaler" is also added, then the DOR would cover anyone who has wholesale inventory, plus the licensed distributor and the retailer who might have inventory on the shelf. Currently retailers are not required to be licensed. The DOR also questioned when the tax on floor stocks should be paid and whether there any penalties for late payment or nonpayment.

Currently the DOR allows a three percent timely discount on cigarette stamps and a two percent timely discount on other tobacco products. No provision has been given in this amendment for timely discounts. The DOR assumes that Sections 149.021 and 149.170 RSMo still apply. If not, the DOR will need to provide a way for the taxpayer to calculate the amount due.

Officials from the Department of Health and Senior Services (DHSS) indicated estimated revenue from the proposed tax increase, as determined by the Committee for a Healthy Future, to be approximately $351 million. The DHSS assumes the funding levels will remain at the current level for the first three years. However, if the tobacco cessation programs are successful, there will be a decrease in the revenue as fewer tobacco products are purchased. DHSS assumes all of these programs would begin in fiscal year 2008. DHSS stated that a supplemental budget may need to be requested, and if approved by the General Assembly, implementation of the programs can begin prior to fiscal year 2008.

In order to implement the proposed legislation would require seventeen additional full-time employees. Estimated costs incurred in the Tobacco Use Prevention, Education, and Cessation Account total $61,338,178, $61,273,523, and $61,273,523 in fiscal years 2008, 2009, and 2010, respectively. Estimated tax revenue for the account total $61,425,000 for fiscal years 2008 through 2010.

Estimated costs incurred in the Health Care Access and Treatment Account total $1,894,977, $1894,655, and $1,894,655 in fiscal years 2008, 2009, and 2010 respectively. Estimated tax revenue for the account total $1,895,000 for fiscal years 2008 through 2010.

The DHSS has concerns with Section 37(b)9.(3) regarding payments to trauma centers and hospital emergency departments for facility and physician services rendered to Medicaid beneficiaries and uninsured Missourians. The proposed constitutional change appears to guarantee at least some level of payment to the Level I trauma centers, but not to the other two levels of trauma centers.

The DHSS also has concerns with the composition of an oversight committee, comprised of individuals with expertise in public health, tobacco control, education and counter-marketing, established to help state agencies plan, monitor and assess the efficacy of programs funded through the Tobacco Use prevention, Education and Cessation Account. Section 37(b)7.(3) states that no director or employee of an organization receiving funds from the Tobacco Use Prevention, Education and Cessation Account can be a member of the committee. This will severely limit the membership of the committee in that most of the individuals in the state with expertise and experience in tobacco control and public health will likely be applicants for funds dispersed through grants and contracts.

Officials from the Department of Public Safety (DPS) assume that this legislation will have an economic impact on small businesses. DPS assumes vendors who sell tobacco products will see a reduced profit from sales of tobacco products, related to reduced consumption as tobacco taxes increase.

The DPS would need to hire twenty agents and five full-time clerical employees in order to implement the enforcement components of the Center for Disease

Control's (CDC) Best Practices for the Comprehensive Tobacco Control Program. For tobacco access laws to be actively enforced, universal licensure of tobacco outlet sources is necessary. Best practices include licensing, conducting frequent retailer controlled buys to identify retailers who sell tobacco products to minors (four per outlet per year), imposing a graduated series of civil penalties on the retailer, including license revocation, and eliminating tobacco vending machines and self-service displays. The Division already does controlled buys, however, to meet best practice guidelines, buys would have to be increased by 75 percent; graduated civil penalties are already in place, although they would need to be more severe; and restrictive tobacco vending machine laws have been enacted, reducing the incentive for vendors to have them. Many of the best practices for enforcement are minimally in place within the Division, thus, the Division estimates enhancing the effort to meet best practices could be accomplished for less then $2,000,000 a year.

The estimated fiscal impact for the DPS totals $1,120,405, $1,521,070, and $1,574,638, for the last half of fiscal year 2007, fiscal year 2008, and fiscal year 2009, respectively in salaries and equipment for the additional employees.

Officials from the Department of Mental Health (DMH) indicated that additional program and administrative staff may be needed to expand the efforts in tobacco education to reduce tobacco use; however, it is difficult to determine the actual number of staff and operating costs until specific funding and programs have been identified.

Section 9 (1) refers to supplemental payments for primary care and specialist physician services rendered to Medicaid beneficiaries. The Department of Social Services shall establish, to the extent funds are available, a Medicaid physician fee schedule that is comparable to the Medicare physician fee schedule. The DMH does not administer physician services directly, unless this is a component of their program. In regards to the rate, the Mental Health provider system uses this option, but this is currently administered under Medicaid; therefore, the Department defers to the DSS in the establishment of rates for Department-related physician services which impact DMH clients.

Section 9 (2) states that money deposited in the Health Care Access and Treatment Account shall be appropriated to provide additional funds for the purpose of providing supplemental payments to safety net clinics. Twenty percent of the moneys shall be appropriated to the DSS for this purpose. The Department assumes the definition of "safety net clinics" includes both the community mental health centers and the Division of Alcohol and Drug Abuse's Comprehensive Substance Abuse Treatment and Rehabilitation program. The DSS shall calculate the supplemental payment to each safety net clinic based on the number of ambulatory visits provided during the prior twelve month period to uninsured Missourians with annual household incomes that are 200 percent or less of the federal poverty guidelines. It is assumed that the definition of "ambulatory visit" includes therapists and physicians included in the Mental Health Service delivery system. It is assumed that this definition includes services provided by the community mental health centers and through the CSTAR program. The DMH defers to the DSS for the projected fiscal impact for this section. The DMH assumes a minimal number of additional administrative staff may be needed to administer the requirements of this section.

Officials from the Department of Social Services (DSS), Information Technology Services Division (ITSD) indicated that the initiative petition will require an eligibility determination system and likely impact Income Maintenance, Medical Services, and to a lesser degree FAMIS. They estimate a one time expense of $330,000 for the initial set up and yearly upkeep of $15,000.

Officials from the DSS, Division of Medical Services (DMS) indicated there would be an increased cost for administrative services related to the implementation and administration of the services funded by the Healthy Future Trust Fund. No additional funding for staff would be required to administer a smoking cessation program.

Additional staff and/or a contract for actuarial services will be needed to review and analyze the cost of medical services for the Chronic Disease Management Account. Funding will also be needed for modifications to the current payment system so appropriate charges can be applied to the individual's health care account and the balance left on the card is accurate and readily available.

The DSS may seek approval from the federal government to qualify the payments for federal participation payments through the disease management program for Medicaid beneficiaries or any similar program for obtaining federal funding. Additional staff is needed to research and apply for and maintain a federal waiver.

The DMS will also need additional staff for the programs under the Health Care Access and Treatment Account. Changes may also be needed to the current billing/payments system so that the supplemental payments may be made. Additional funding may be needed for these changes.

The DSS, Family Support Division (FSD) indicated that they plan to contract out the determination of eligibility and processing of applications for the health care access cards; however, for the purposes of determining an estimated cost, FSD will base its calculations on estimated eligibles, number of applicants, and caseworker need.

The FSD must determine the potential number of Missourians eligible for a new healthcare access card allowing qualified beneficiaries to access benefits from a newly established fund/account via a debit card or similar type payment mechanism. The FSD will base its projections on the prevalence of chronic diseases among Missouri's adult population, 18 years and older. As a result, the

FSD will make the assumption that 198,432 individuals could qualify for health care access cards under the definition of "qualified medical condition."

The FSD anticipates significant staff time involved with processing initial applications and annual reinvestigations with between 99,216 to 198,432 individuals applying in the first year. The FSD estimated the annual cost for one caseworker, with the corresponding supervisor and office support assistant, personal service, and expenses and equipment is $83,710. The FSD assumes that one staff can process 200 applications per month.

Officials from the State Treasurer's Office indicated that the proposed constitutional amendment would have no fiscal impact on their office.

Officials from the Governor's Office indicated that there is no way to determine the fiscal impact of the Oversight Committee. They obtained a revenue estimate, from the Office of Administration, Budget and Planning, of $201.7 million, $407 million, $410.7 million, and $414.4 million in FY2007, FY2008, FY2009, and FY2010, respectively.

The initiative petition requires the State Auditor to perform an annual financial audit of the funds and programs established, at an estimated annual cost of $12,000. It also requires the State Auditor to assess the work and progress of the programs established every three years, at an estimated cost of $32,000 every three years.

Fiscal Note Summary

Additional taxes of four cents per cigarette and twenty percent of the manufacturer's invoice price on other tobacco products generates an estimated $351 - $499 million annually for tobacco use prevention and cessation programs, treatment of chronic diseases and medical conditions, health care access, and administrative costs. Local governmental fiscal impact is unknown.