MISSOURI STATE AUDITOR'S OFFICE
FISCAL NOTE (06-03)

Subject

Initiative petition for constitutional amendment from Robert Hess concerning tobacco taxes and Medicaid. (Received January 27, 2006)

Date

February 14, 2006

Description

This initiative petition would amend Article IV of the Missouri Constitution by adding 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 tax revenue will be deposited into two accounts in the Healthy Future Trust Fund (HFTF); 17.5 percent to the Tobacco Use Prevention, Education, and Cessation Account and 82.5 percent to the Health Care Access and Treatment Account. The taxes are to be levied and collected as provided by law.

Moneys deposited into the Tobacco Use Prevention, Education, and Cessation Account will be used to fund a comprehensive statewide tobacco control program. To ensure effective funding allocations of the moneys in the account, at least fifteen percent of the moneys must be appropriated for mass media public education and counter-marketing programs, at least fifteen percent of the moneys must be appropriated for community programs to reduce tobacco use, at least five percent must be appropriated for surveillance and evaluation relating to all expenditures and uses of the funds, and at least fifteen percent but no more than thirty percent of the moneys must be appropriated for cessation programs including any funds appropriated for tobacco use cessation programs for Missouri Medicaid beneficiaries.

An oversight committee, appointed by the Governor with the advice and consent of the senate, will be created to assist the department of health and senior services, the department of public safety, and the department of mental health in developing, implementing, and maintaining a strategic plan, in monitoring the use of funds, and in assessing the efficacy of programs funded through the tobacco use prevention, education, and cessation account.

Moneys deposited into the Health Care Access and Treatment Account will be used to provide medically necessary health care services for individuals with incomes that are two hundred percent or less of the federal poverty guidelines, including services provided through the Medicaid or State Children's Health Insurance Programs. Thirty five and one-

quarter percent of the moneys in the account shall be appropriated to the Department of Social Services (DSS) for this purpose. The DSS shall give preference in favor of medical programs and services for individuals with medical conditions associated with tobacco use or secondhand smoke, and in favor of new or additional Medicaid benefits or services for custodial parents, the aged, and individuals with medical and mental health disabilities.

Moneys deposited into the Health Care Access and Treatment Account will also be used to provide supplemental payments for primary care and specialist physician services rendered to Missouri Medicaid beneficiaries. Thirty five and one-quarter percent of the moneys in the account shall be appropriated to the DSS for this purpose. The DSS shall establish, to the extent funds are available, a Medicaid physician fee schedule that is comparable to the Medicare physician fee schedule.

Moneys deposited into the Health Care Access and Treatment Account will also be used to provide supplemental payments to safety net clinics. Thirteen percent of the moneys in the account shall be appropriated to the DSS for this purpose. 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 two hundred percent or less of the federal poverty guidelines.

Moneys deposited into the Health Care Access and Treatment Account will also be used to provide supplemental payments to trauma centers and hospital emergency departments for facility and physician services rendered to Missouri Medicaid beneficiaries and uninsured Missourians. Fifteen and one-quarter percent of the moneys in the account shall be appropriated to the DSS for this purpose. At least fifty-five percent of the moneys appropriated for supplemental payments to trauma centers and hospital emergency departments shall be used for payments to compensate Level I designated trauma centers for their unreimbursed costs of treating Missouri Medicaid beneficiaries and uninsured Missourians.

Moneys deposited into the Health Care Access and Treatment Account will also be used to provide supplemental payments for emergency ambulance services provided to Missouri Medicaid beneficiaries. One and one-quarter percent of the moneys in the account shall be appropriated to the DSS for this purpose.

In calculating the payments to health care providers out of the Health Care Access and Treatment Account, the DSS shall ensure that total payments do not exceed the cost of delivering the services. The DSS may seek approval from the federal government and take all other necessary steps to qualify the payments for federal financial participation through the Missouri Medicaid program.

The director of revenue, on a monthly basis, shall determine whether the tax imposed by this section has 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. If a

reduction in the amount of moneys collected and deposited into any of those funds has been caused, an amount equal to the amount shall be transferred from the HFTF to the appropriate fund or funds. The aggregate amount transferred to the fair share fund, the health initiatives fund, and the state school moneys fund from the health justice trust fund for any month shall not exceed three percent of the total moneys collected.

The State Auditor will perform an annual audit of the funds and programs established, which include an evaluation of whether pre-existing funds for programs or initiatives has been reduced because of the new funding for such purposes provided through the HFTF or any of its accounts. Every three years, the State Auditor will prepare a comprehensive report assessing the work and progress of the programs established under this section. Such assessment report shall analyze the impact of the programs, grants, and contracts performed.

The additional revenue provided by section 37(b) of this article shall not be part of the "total state revenue" within the meaning of sections 17 and 18 of article X of this constitution. The expenditure of this additional revenue shall not be an "expense of state government" under section 20 of article X of this constitution.

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.

Assumptions

According to officials at the Department of Revenue (DOR), this legislation would require a new system requiring 2 contract programmers 10 months to complete, for a total cost of $173,000 (3,460 hrs. @ $50 per hr.).

Taxation would need to revise forms and 230 notification letters to licensees would also need to be mailed (this cost would be minimal and would be absorbed by the department). An additional 5,000 to 6,000 notification letters may need to be sent to tobacco retailers for a cost of $2,490 ($0.025/letters and $0.39/postage for 6,000 letters). We would collect the additional tax with existing staff.

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 supposed 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. Taxation requires a time frame in which the distribution is to be made.

Section 5 (2) states that DOR is to refund moneys overpaid or erroneously paid. Currently, the Taxation Bureau only refund for returns to the manufacturer or for stamps that are returned to the director. Are the same refund standards to be applied?

Section 5 (3) requires Taxation 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. Is the amount compared to the prior year, the prior month, or the year to date totals? What proof is to be used in order to justify our figures? What is the due date of the report? How are amended reports, for prior periods, accounted for?

Section 10 states "…products in the possession or under the control of any *dealer* or *distributor*…." A definition for *dealer* or *distributor* has not been provided. Taxation recommends the definitions found in this Constitutional amendment be consistent with the definitions found in Chapter 149, RSMo.

Clarification is needed in this legislation to limit "floor stocks". There is a concern with the wording in **Section 10**, as is, that stockpiling and huge windfalls will 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 we would have anyone who has wholesale inventory, plus the licensed distributor and the retailer who might have inventory on the shelf.

If the language is not changed to say "retailer" and "wholesaler" is not added, the wording as follows is recommended to aide in "floor stocks" taking place, but will only affect licensed cigarette wholesalers. Without this language, wholesalers would see 80 cents a pack windfall for stamps purchased before the tax became effective. Retailers would also reap an 80 cents a pack windfall for all existing inventory at the time of the increase, unless this language is also extended to cover retailers.

Taxation currently does not require retailers to be licensed. How would DOR be expected to track floor stocks? When is the tax on floor stocks to be paid? Are there any penalties for late payment or nonpayment?

Officials from the Department of Health and Senior Services (DHSS) indicated that the estimated annual revenue from the tax proceeds from sales of cigarettes and tobacco is anticipated to be a minimum of $351 million to be deposited in the Healthy Future Trust Fund. Seventeen and one-half percent ($61.425 million) of the net proceeds shall be placed in the Tobacco Use Prevention, Education and Cessation Account to be appropriated to DHSS, DMH and DPS. Eighty-two and one-half percent of the net proceeds shall be placed in the Health Care Access and Treatment Account. Because the legislation is effective January 1, 2007, DHSS assumes the revenue collections for the first year to be 5/12 of the yearly estimated revenue due to the lag in revenue collection.

DHSS assumes the revenue levels will not decline substantially for the first three years. However, through the combination of higher prices on tobacco products and effective cessation and prevention programs, an incremental decrease in the tax revenues is expected over time as fewer tobacco products are purchased. As revenues deposited in the Tobacco Use Prevention, Education and Cessation Account decrease, the program expenditures will have to be adjusted accordingly.

Section 37(b) 5 (3) states that each month the director of the department of revenue shall determine whether the tax imposed by this section has caused a reduction in the amount of moneys collected and deposited in the fair share fund, the health initiatives fund, or the state school moneys fund under chapter 149, RSMo. If a reduction in the amount of moneys collected and deposited into any of those funds has been caused by the tax imposed by this section, an amount equal to the amount of moneys that were not collected and deposited into that fund or funds because of the tax imposed shall be transferred from the HFTF to the appropriate fund(s). The aggregate amount shall not exceed three percent of the total moneys collected during the same month. Because DHSS cannot determine the amount that would be transferred, for the purposes of this estimate, DHSS has assumed there would be no transfer of funds. However, in all likelihood, there would be a transfer of moneys from this fund.

Monies deposited in the Tobacco Use Prevention, Education, and Cessation Account shall be appropriated to DHSS, DPS and DMH for funding a statewide comprehensive tobacco control program that is consistent with the CDC guidelines and determined by DHSS to be effective to prevent and reduce tobacco use, reduce exposure to secondhand smoke and identify and eliminate disparities related to tobacco use. Following is an estimate of how funds would be allocated by component in accordance to the CDC Best Practices for Comprehensive Tobacco Control Programs (August 1999) and the proposed constitutional amendment.

DHSS Community programs (minimum of 15% required by section 7 (1).)	$ 9,600,000
DHSS Chronic disease programs	$ 3,000,000
DHSS School programs	$ 5,000,000
DMH and DPS Education and Enforcement programs	$ 3,500,000
DHSS Statewide programs	$ 4,400,000
DHSS Counter-marketing programs (minimum of 15% per 7 (1)).	$10,900,000
DHSS Cessation programs (minimum of 15% and no more than 30% per 7 (1)) including required 10% ($6,142,500) to Medicaid per 7.	$18,400,000
DHSS Surveillance and Evaluation (minimum of 5% per 7 (1); 10% of program total per CDC Best Practices)	$ 5,300,000
DHSS Administration (this is based on a full year of operation, some of these costs are one-time)	$ 1,258,340
Total	$61,358,340

New personnel for administration of the Comprehensive Tobacco Use Prevention and Cessation Program at DHSS would require 13 additional full-time employees. Expense

and Equipment costs for the new employees include standard one-time costs for computer and office equipment and standard ongoing costs for travel, communication, rent, utilities, network, software, and office supplies. Other fund costs include $60,100,000 in interagency transfers and grants and contracts.

Officials from the Department of Public Safety (DPS) indicated the need for an additional twenty agents and five 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%; 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. The CDC has estimated that to properly enforce tobacco laws and implement the best practices model in Missouri, it would take between $2,475,000 - $4,650,000 annually. 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 Division estimates that with the comprehensive program in place, compliance with the youth-access to tobacco laws will increase dramatically, resulting in a reduction of the number of American teenagers taking up daily smoking. One in three teens who are regular smokers will eventually die of smoking-related causes. The implementation of CDC's Best Practises for the Comprehensive Tobacco Control Program, based on evidense-based analysis of comprehensive State tobacco control programs does result in a reduction of tobacco use. Tobacco use is the single most preventable cause of death and disease in our socity.

The Division anticipates a significant number of arrests, of minors and of clerks who sell to minors. By way of comparison, last year the Division made over 1,700 liquor arrests of minors. Last year the Division also took administrative action in 459 cases against liquor retailers for various violations, mostly sales to minors. Licensing of tobacco vendors, will result in similar action against tobacco establishments, and we anticipate even more tobacco cases than liquor cases. This is largely due to the fact we will increase our controlled buy operations, within the guidelines of the CDC's Best Practises for the Comprehensive Tobacco Control Program.

There will be a significant amount of work associated with the violation reports. The Division must track each controlled buy, arrest, violation, and indeed all enforcement work, on their computer system, and that will involve a tremendous amount of daily data entry. The Division will also evaluate tobacco-training programs of retailers throughout the state, which means they may receive over 10,000 program synopses annually. The

Division must report monthly under the Uniform Crime Reporting system to the Highway Patrol with respect to tobacco arrests. Data entry to the tobacco database requires a manual entry and file creation for each and every tobacco vendor in the State, again a tremendous data entry task. The Division will send a congratulatory "attaboy" letter to each establishment that passes a controlled buy operation. The Division will also keep a hard file for every tobacco establishment that we cite, for administrative disciplinary action purposes.

The five tobacco clerks will be absolutely essential for the tasks summarized above under tobacco enforcement, including the data entry for the database, arrests and violation reports; tracking of server training; "attaboy" letters; file maintenance; clerical support for the Tobacco Program Manager; and Uniform Crime Reporting to the Highway Patrol. Although the Division will apportion work among the five, they anticipate needing one full-time clerk to handle the tobacco docket; one full-time clerk for clerical support of the Tobacco Program Manager and other central office management; and one full-time clerk for file management and the other clerical tasks as summarized above. Each of the two District offices will need additional clerical support for the enforcement staff associated with the tobacco enforcement program consisting of additional work involved in licensing and and additional violations expected with the implementation of this program.

The estimated fiscal impact for the DPS totals $1,049,051, $1,521,070, and $1,574,638, for the fiscal year 2006, fiscal year 2007, and fiscal year 2008, respectively in salaries and equipment for the additional employees.

Officials from the Department of Mental Health (DMH) indicated that projected revenues from this proposal will total approximately $351 million.

Section 37(b).6 states that 17.5% of the net proceeds shall be credited to and placed in the Tobacco Use Prevention, Education, and Cessation account. This would equate to $61.4 million. Section 37(b).7 states that funds deposited in the Tobacco Use Prevention, Education, and Cessation Account shall be appropriated to the DHSS, DPS, and DMH for the sole purpose of funding a comprehensive statewide tobacco control program that is consistent with the CDC's best practices and guidelines for tobacco control programs and is determined by DHSS to be effective to prevent and reduce tobacco use, reduce the public's exposure to secondhand smoke, and identify and eliminate disparities related to tobacco use and its effects among different population groups. The petition indicates at least fifteen percent of those moneys shall be appropriated for mass media public education and counter-marketing programs and community programs to reduce tobacco use. The Department assumes a portion of these funds would be appropriated to the Division of Alcohol & Drug Abuse to expand current efforts in providing public education on tobacco use for children and adults, as well as community programs to reduce tobacco use. Depending on the level of funding made available, additional program and administrative staff to expand the efforts in tobacco education to reduce tobacco use may be needed; however, it is difficult to determine the actual number of staff and operating costs until specific funding and programs have been identified.

Section 37(b).8(2) – This section refers to supplemental payments for primary care and specialist physician services rendered to Missouri 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 identifying a fiscal impact for this section. They will collaborate with the DSS in the establishment of rates for Department-related physician services which impact their clients.

Section 37(b).8(3) –The petition states that moneys 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. Thirteen percent of the moneys (approximately $37.6 million) 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 & Drug Abuse's Comprehensive Substance Abuse Treatment & 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% 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. In addition, please note that the Department assumes a minimal number of additional administrative staff may be needed to administer the requirements of this section.

In addition to the Department of Social Services, some of the funding in the Health Care Access and Treatment Account may need to be appropriated to other departments who also administer Medicaid programs.

Officials from the DSS – Division of Medical Services (DMS) indicated that no additional funding for staff would be needed to administer a smoking cessation program. They also indicated that in order to provide healthcare for Missourians with income less than two hundred percent of federal poverty level, it is anticipated that the additional cost would exceed $1.2 billion. This $1.2 billion cost refers to the total cost of medical assistance payments to cover all Missourians with incomes less than 200% of federal poverty level. The actual level of spending will reflect the revenue realized through the increase in the tobacco tax. Additional funding for staff to review and analzye the cost of medical services would be needed to administer each program.

Funds will be appropriated to provide additional funds for the purpose of establishing a physician Medicaid fee schedule that is comparable to the Medicare physician fee schedule. If the physician reimbursements were to reflect 100% Medicare rates, it is anticipated that additional cost of $268.1 million would be realized. This figure was

derived for the FY06 budget request through calculating the difference between current reimbursement for the physician program and the cost for these services at 100% Medicare rates. Additional funding for staff to analyze and establish a Medicaid fee schedule based on appropriated funds that would be comparable to the Medicare physician fee schedule would be needed.

Funds will be appropriated to provide supplemental payments to safety net clinics for services provided to uninsured Missourians with annual incomes that are 200% or less of federal poverty level. Additional funding for staff to calculate the supplemental payment to each safety net clinic and review annual financial reports submitted by the safety net clinics would be needed.

Funds will be appropriated to provide supplemental payments to trauma centers and hospital emergency departments for services provided to Missouri Medicaid beneficiaries and uninsured Missourians. Additional funding for staff to calculate the supplemental payment to these facilities would be needed.

Funds will be appropriated to provide supplemental payments for emergency ambulance services provided to Missouri Medicaid beneficiaries. Additional funding for staff to calculate the supplemental payment for emergency ambulance services would be needed.

Changes may be needed to the DMS current billing/payment system so that the supplemental payments may be made. Additional funding may be needed for these changes.

The petition states the DSS shall seek approval from the federal government and take all other necessary steps to qualify the payments as eligible for federal financial participation through the Medicaid program. In addition to the staff needed for each program, staff will be needed to research and apply for and maintain a federal waiver. Funding for an actuarial study is also needed.

According to the DSS – Family Support Division (FSD), if this bill is enacted it will increase the Medicaid caseloads of the division. As a result, additional staff will be needed to maintain the additional caseload growth anticipated from the legislation.

The FSD assumes that the DMS will apply a preference with respect to medical programs and services for individuals with medical conditions associated with tobacco use or secondhand smoke.

The division would not see an increase in caseloads to increase Medicaid income guidelines for eligibility for custodial parents up to 200% of the federal poverty level (FPL). Since the division already covers the children of the parents up to 200%, this would only add another individual to the already existing case. The division would need additional caseworkers to cover the increased caseload to increase the income guidelines for the pregnant women, elderly and disabled population up to 200%. It is estimated that the caseloads would grow by 56,392. To cover this increased caseload, based on a

standard of 315 cases per worker for the elderly and disabled population and 270 cases per worker for Pregnant Women, the Division would need an additional 231 staff (180 caseworkers, 18 supervisors, 33 clerical). The division further assumes this funding would come from the tobacco tax revenue.

The DSS – FSD estimates the cost to be $6,911,206, $10,219,352, and $10,481,505 in FY 2007, FY 2008, and FY 2009, 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.

The Governor's Office indicated that the estimated revenues for the proposed tax increase are as follows:

$ millions	**FY 2007 (6 Months)**	**FY 2008**	**FY 2009**	**FY 2010**
Cigarette Tax	197.3	397.2	399.8	402.5
Other Tobacco Tax	10.7	22.4	23.5	24.7
Hold Harmless Funds*	(6.2)	(12.6)	(12.7)	(12.8)
Net New Revenues	**201.7**	**407.0**	**410.7**	**414.4**

* Total loss to hold harmless funds is estimated to be greater than 3%.

The State Treasurer's Office assumes the tax revenue will be collected and deposited by the DOR with all other taxes administered by the DOR. The state accounting system cannot handle sub-accounts, nor can interest be calculated and distributed to a sub-account. Each will have to be set up as separate funds on the state accounting system.

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 control programs, healthcare for low income Missourians, and payments for services provided to Missouri Medicaid beneficiaries and uninsured Missourians. Local governmental fiscal impact is unknown.