

**MISSOURI STATE AUDITOR'S OFFICE
FISCAL NOTE (14-122)**

Subject

Initiative petition from Tony Nenninger regarding a proposed constitutional amendment to Article I of the Constitution of Missouri. (Received January 31, 2014)

Date

February 20, 2014

Description

This proposal would amend Article I of the Constitution of Missouri.

The amendment is to be voted on in November 2014.

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 Kirkwood**, 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**, **Rockwood R-VI School District**, **Linn State Technical College**, **Metropolitan Community College**, **University of Missouri** and **St. Louis Community College**.

Assumptions

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

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

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

Officials from the **Department of Elementary and Secondary Education** indicated this proposal has the potential to significantly impact the revenue stream of state and local governments; however, their department has no means to calculate such impact.

Officials from the **Department of Higher Education** indicated the proposal would not result in any costs or savings for their department. Although there may be additional revenue available for higher education from the tax on marijuana products, the amount of those new revenues is unknown.

Officials from the **Department of Insurance, Financial Institutions and Professional Registration** indicated this petition 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. However, the impact on the demand for substance use disorder treatment is unknown. Their department sees the legalization of marijuana as a broader public health issue, especially for children.

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:

Passage of this proposal may result in the release of offenders who are incarcerated for felony marijuana offenses or probation/ parole violators who have been returned to prison for misdemeanor or local ordinance marijuana offenses. This may have a positive fiscal impact in that it may reduce both the incarcerated population and the population supervised by Probation & Parole (P&P). Each day an offender is not incarcerated results in a cost avoidance of \$18.01 in incarceration costs while P&P per diems are \$5.07 per offender.

This legislation could also have an unknown operational impact in that it allows for the expungement of marijuana offenses from offender records. This may result in an additional workload for the institutional Records Office staff as they are the custodians of

the offender records; however, it is not anticipated that the increased workload will be significant.

The petitions states it is not intended to "amend or affect in any way state or federal law pertaining to employment matters." While this will arguably provide some protections for the department to continue to test employees for marijuana, there is some ambiguity in the language or alternative interpretations of the language that may impede the department testing employees for marijuana use/impairment. There may be an unknown operational impact on the safety and security of the prisons if the department is not allowed to test their staff for marijuana usage.

Passage of this proposal into law would have an unknown fiscal impact for their department, an impact which is assumed to be fiscally positive.

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

Officials from the **Department of Revenue** indicated increased costs would be \$36,691 for fiscal year 2015, \$0 for fiscal year 2016, and \$0 for fiscal year 2017.

This would allow for additional businesses to become retailers of medicinal and recreational cannabis.

The IT portion of this fiscal impact is estimated with a level of effort valued at \$36,691. This value is based on 1,344 FTE hours.

Based on a 25 percent excise tax, this legislation creates an unknown, positive impact on total state revenue.

If passed by voters, this petition would increase state revenues.

This petition legalizes, regulates and taxes the use of marijuana for medicinal and recreational purposes. This petition would impose an excise tax on the first fair market sale of marijuana produced at a rate of 25 percent of the purchase price. The Division of Alcohol and Tobacco Control and the General Assembly have the responsibility to establish rules, regulations, and laws to provide for collection of the excise tax.

The amendment requires the Department of Health and Senior Services and Division of Alcohol and Tobacco Control to make, administer, and enforce rules and regulations not inconsistent with this section.

Administrative Impact:

Tax: New Excise Tax System 1,344 hours

Officials from the **Department of Public Safety** indicated the following fiscal impact:

Division of Alcohol and Tobacco Control (ATC)

Costs would increase by \$5,634,921 in FY 2015, \$4,718,729 in FY 2016, and \$4,778,049 in FY 2017. Excise tax and licensing fees could be \$217,500,000 in FY 2016 and FY 2017.

ATC will need to provide office space across the state for four District Offices in St. Louis, Kansas City, Springfield and Cape Girardeau. The existing ATC office in Jefferson City can absorb the additional staff within the existing location.

It is very likely that many small businesses will become licensed as a result of marijuana legalization and the potential to increase small business profits is huge based on information received from the State of Colorado, which just legalized recreational marijuana.

It is estimated that each new FTE will require laptops (or desktop PC's) and printing equipment. In addition, based on Colorado's estimation, ATC will need large marijuana tracking computer system to facilitate the tracking and excise tax collections which is estimated to cost \$1,000,000 in the first two years. ITSD has been contacted and will be submitting a more detailed response to this item.

ATC will begin licensing marijuana growers, producers, distributors, and retailers. It is estimated it will have a large positive impact on total state revenue. Although the language indicates that the excise taxes will not be considered a part of total state revenue or expense of state government. ATC estimates that excise taxes collected will be based on Missouri marijuana sales of between \$750 million and \$1 billion annually, resulting in possibly \$187,500 million in excise tax collections if tax rates are 25%. ATC also estimates that if the minimum number of retail licenses allowed (1 license per 2,500 people, 6.022 million Missouri population) of 2,400 obtain licenses, plus possibly 600 producers or distributors, there will be 3,000 licensees. ATC proposes a fee of \$10,000 per license which would result in approximately \$30 million in license fees. This license fee is in line with the range of fees paid by Colorado licensees.

This initiative petition allows for citizens twenty-one years of age or older to engage in the productions, sale, distribution and consumption of marijuana and hemp. It defines terms and concepts in the bill, including what "Fair Market Sale" means and the personal and household exemptions. It also defines that in this bill, the mention of "Division" means the Division of Alcohol and Tobacco Control.

The language in the bill sets up a new program that puts ATC in charge of the monitoring, regulation and collection of excise taxes and license fees, from the production of and sells of marijuana, similarly as to the system that is currently used to regulate the Alcohol Industry.

The petition was extremely hard to read, but the division compared the major provisions to the portion of HB1659, Section 195.850, and they were very similar.

The division is requesting approximately \$5.6 million in PS and E&E during the first year to respond to the tasks involved in marijuana legalization. Each year thereafter the cost would be approximately \$4.8 million. ATC would be responsible for licensing, collecting excise taxes and regulatory compliance in a new marijuana industry in Missouri. ATC believes that the only way to track marijuana is through a computerized system using bar codes and/or tax stamps. Colorado currently uses a system that cost \$1 million over a 2 year period. This system would track the product from the production to the retail system. Because there are no prohibitions against one person having all different types of marijuana licenses, the only way to assure excise taxes are being paid is through the use of bar codes and/or tax stamps and frequent inspections. ATC would utilize five district offices throughout the state with 1 District Supervisor, 1 Clerical person and various Special Agent/Auditors in each District. ATC would need 5 District Supervisors, 45 Special Agent/Auditors, 7 Senior Office Support Assistants, 1 Staff Attorney and 1 Agricultural Expert to facilitate such a large undertaking. It should be noted that Colorado, with a population of almost a million less, has 56 FTE dedicated solely to the marijuana control program.

Additional Information: The state of Washington's marijuana initiative allows up to \$5 million annually for the Washington State Liquor Control Board to implement and administer the recreational marijuana program. The Economic Revenue Forecast Council has not yet projected revenues but we suspect it will be in the 0-\$300 million range in the first full year of operation. No Washington marijuana licenses have been issued yet but the applications are approaching 3,000 as of December 19, 2013.

It is unclear what the local impact will be to cities and counties.

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

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

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

Officials from the **Office of Administration** indicated:

This initiative petition creates Article I, Section 35(a) in the Missouri Constitution. This petition:

- Legalizes the production, sale, distribution, and consumption of marijuana and hemp.
- Legalizes the possession of marijuana, marijuana products, marijuana concentrates, marijuana paraphernalia, marijuana extracts, and industrial hemp for persons twenty-one years of age or older.
- Legalizes the cultivation of marijuana for medical needs as recommended by a physician.

- Legalizes the retail sales of marijuana, marijuana products, marijuana paraphernalia, marijuana extracts, and industrial hemp.
- Allow the General Assembly to enact an excise tax at a rate of twenty-five percent on the fair market sale of marijuana and industrial hemp produced in the state.
- Require the Division of Alcohol and Tobacco Control to adopt regulations necessary for implementation by June 1, 2015 including:
 - Licensing procedures
 - Excise tax collection
 - Enforcement and compliance of licensees
 - Fee schedules
 - Advertisement regulation
- Require the Department of Health and Senior Services to adopt regulations necessary for implementation by June 15, 2015 that will permit individuals with medical conditions to use marijuana, marijuana products, marijuana paraphernalia, and marijuana extracts for medical use.
- Permit records expungement of marijuana offenses no longer illegal under this act, and calls for the release of any offenders who offenses are no longer illegal under this act to be released from custody.
- Does not:
 - Allow the state to impose any additional taxes to transactions regarding marijuana, marijuana products, marijuana paraphernalia, marijuana extracts, and industrial hemp, other than what is imposed on other products generally.
 - Permit the state to add additional regulations related to licensees beyond the scope of the petition.
 - Forbid any individual or property owner from prohibiting marijuana within their property.
 - Require a person to violate or exempt them from enforcement of federal laws.
 - Permit operation of any means of transportation by anyone impaired by marijuana.
 - Permit the transfer or sale of marijuana, marijuana products, marijuana paraphernalia, marijuana extracts, and industrial hemp to anyone under the age of twenty-one.

Summary of Fiscal Impact

The Department of Corrections and the Office of the Court Administrator would incur costs (amount unknown) due to the expungement of records and release of offenders' provisions in the act. The Department of Public Safety, Division of Alcohol and Tobacco Control and the Department of Health and Senior Services are given the authority to promulgate rules to implement this section. Those rules could result in a fiscal impact for those agencies. The Department of Revenue could also see increased costs resulting from the collection of excise and sales taxes and compliance with those taxes.

Budget and Planning (B&P) assumes the revenue generated from the excise tax and license fees would be deposited into the state's general revenue fund. The petition requires the general assembly to appropriate the revenue as follows:

1. All funds the General Assembly deems necessary for the division of alcohol and tobacco control within the department of public safety to carry out any obligations created by the petition or laws operating under this section, and may establish a reserve fund for such obligations.
2. The remainder of all funds shall be appropriated within the following guidelines:
 - a. 25% for state and local law enforcement and firefighter pensions
 - b. 25% for public institutions of elementary and secondary education
 - c. 20% for mental health and substance abuse programs
 - d. 15% for cities and counties
 - e. 15% for public institutions of higher education or for scholarships to attend such institutions

Further B&P assumes that the retail sale of marijuana, marijuana products, marijuana paraphernalia, marijuana extracts, and industrial hemp would be subject to state sales tax, therefore increasing the collections to the state's general revenue fund, the School District Trust Fund, the Conservation Commission Fund, the State Park Sales Tax Fund, and the Soil and Water Sales Tax Fund. B&P does not have the data available to provide an estimate.

Officials from the **Office of State Courts Administrator** indicated:

The proposed initiative petition would create a new section of the Missouri Constitution to be known as Article I, Section 35(a). This section would allow citizens over the age of twenty-one years to have the right to engage in the production, sale, distribution and consumption of marijuana and the manufacture of goods from hemp, subject to reasonable regulations adopted by the state pursuant to this section.

During the past five years (2009 – 2013) there has been an average of 3,100 Associate Circuit Division charges disposed statewide by guilty outcome and 8,256 Circuit Division charges disposed by guilty outcome. The officials said they are unable to determine what number of these charges were for someone over the age of twenty-one.

The following Criminal Court Costs would be affected by this petition:

Criminal Court Costs		
Felony Case Costs	Amount of Cost	Disburse to State/County
Basic Civil Legal Services Fund surcharge	\$10.00	State of Missouri - Basic Civil Legal Services Fund
Clerk Fee	\$45.00	State of Missouri - General Revenue \$36, County \$9
County Fee	\$75.00	County

Court Automation Fund Fee	\$7.00	State of Missouri -Statewide Court Automation Fund
Court Reporter fee (All Circuit Division Cases)	\$15.00	State of Missouri - General Revenue
Crime Victims' Compensation Fund surcharge	\$7.50	State of Missouri - Crime Victims' Compensation Fund
DNA Profiling Analysis Fund surcharge	\$30.00	State of Missouri - DNA Profiling Analysis Fund
Brain Injury Fund surcharge	\$2.00	State of Missouri - Head Injury Fund
Independent Living Center Fund surcharge	\$1.00	State of Missouri - Independent Living Center Fund
Motorcycle Safety Trust Fund surcharge	\$1.00	State of Missouri - Motorcycle Safety Trust Fund
Peace Officer Standards & Training (POST) Commission surcharge	\$1.00	State of Missouri - Peace Officer Standards & Training Fund
Prosecuting Attorney and Circuit Attorneys' Retirement Fund	\$4.00	Pros. Attorney Retirement Fund
Prosecuting Attorney Training Fund surcharge	\$1.00	State of Missouri - Prosecuting Attorney Training Fund
Sheriffs' Fee	\$75.00	County
Sheriffs' Retirement Fund surcharge (except 21st Circuit)	\$3.00	Sheriffs' Retirement Fund
Spinal Cord Injury Fund surcharge	<u>\$2.00</u>	State of Missouri - Spinal Cord Injury Fund
Total	\$279.50	
Misdemeanor Case Costs		
Basic Civil Legal Services Fund surcharge	\$8.00	State of Missouri - Basic Civil Legal Services Fund
Clerk Fee	\$15.00	\$12 State of Missouri / \$3 County
County Fee	\$25.00	County
Court Automation Fund Fee	\$7.00	State of Missouri - Court Automation Fund
Crime Victims' Compensation Fund surcharge	\$7.50	State of Missouri - Crime Victims' Compensation Fund
DNA Profiling Analysis Fund surcharge	\$15.00	State of Missouri - DNA Profiling Analysis Fund
Brain Injury Fund surcharge	\$2.00	State of Missouri - Brain Injury Fund

Independent Living Center Fund surcharge	\$1.00	State of Missouri - Independent Living Center Fund
Motorcycle Safety Trust Fund surcharge	\$1.00	State of Missouri - Motorcycle Safety Trust Fund
Peace Officer Standards and Training (POST) Commission surcharge	\$1.00	State of Missouri - Peace Officer Standards & Training Fund
Prosecuting Attorney and Circuit Attorneys' Retirement Fund	\$4.00	Pros. Attorney Retirement Fund
Prosecuting Attorney Training Fund surcharge	\$1.00	\$0.50 State of Missouri / \$0.50 County
Sheriffs' fee	\$10.00	County
Sheriffs' Retirement Fund surcharge (except 21st Circuit)	\$3.00	Sheriffs' Retirement fund
Spinal Cord Injury Fund Surcharge	\$2.00	State of Missouri - Spinal Cord Injury Fund
Total	\$102.50	
Municipal Case (Filed in Associate Division) Costs		
Clerk Fee	\$15.00	\$12 State of Missouri / \$3 County
Court Automation Fund Fee	\$7.00	State of Missouri - Court Automation Fund
Crime Victims' Compensation Fund surcharge	\$7.50	State of Missouri - Crime Victims' Compensation Fund
Peace Officer Standards and Training (POST) Commission surcharge	\$1.00	State of Missouri - Peace Officer Standards & Training Fund
Sheriffs' Retirement Fund surcharge	\$3.00	Sheriffs' Retirement Fund
Total	\$33.50	
Criminal Costs Not Included Above		
Drug Testing by a State Lab	\$150.00	State of Missouri
Drug Testing by a Private Lab	Actual Costs	County Reimbursement
Law Enforcement Arrest		

Costs:		
Highway Patrol		Amt. Approved by the Court
Local (County)		Amt. Approved by the Court
Municipal		Amt. Approved by the Court

The decrease in the court fees, depending on the number of cases, will result in an unknown loss to the courts.

We also assume there will be an unknown decrease in caseload for the courts because the courts will no longer process these cases; however, at this time we are unable to calculate the decrease.

Any significant increase or decrease will be reflected in future budget requests.

Officials from the **Missouri Senate** indicated the proposed legislation has no impact to their agency beyond existing appropriations.

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. The Secretary of State's 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. The appropriation has 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). Therefore, the Secretary of State's office assumes, for the purposes of this fiscal note, that it should have the full appropriation authority it needs to meet the publishing requirements. However, because these requirements are mandatory, we reserve the right to request funding to meet the cost of our publishing requirements if the Governor and the General Assembly change the amount or eliminate the estimated nature of our appropriation.

This petition includes a provision requiring an agency to submit rules and regulations to implement certain requirements. The fiscal impact for this fiscal note to the Secretary of State's office for Administrative Rules is less than \$2,500.

Officials from the **Office of the State Public Defender** indicated this initiative petition will have some impact on the State Public Defender System. In Fiscal Year 2013 the State Public Defender provided representation in an estimated 3,315 marijuana cases. The Missouri State Public Defender System is currently providing legal representation in caseloads in excess of any recognized standards. Removing these cases would assist

public defenders by providing some caseload relief, moving toward more recognized standards.

Officials from the **State Treasurer's office** indicated no fiscal impact to their office.

Officials from the **City of Jefferson** indicated there is not expected to be any fiscal impact to their city, as a result of this initiative petition.

Officials from the **City of Kansas City** indicated they are unable to estimate the increase in sales tax revenues or the increase in costs that this initiative petition would generate. Their city would incur substantial administrative costs in expunging and destroying thousands of conviction records for marijuana-related offenses. Additionally, it is anticipated that their municipal court would be clogged significantly with applications for expungement. There would be no savings.

The State Auditor's office did not receive a response from the **Department of Health and Senior Services, the Department of Transportation, 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 Joplin, the City of Kirksville, the City of Kirkwood, 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, Rockwood R-VI School District, Linn State Technical College, Metropolitan Community College, University of Missouri, and St. Louis Community College.**

Fiscal Note Summary

State government expects \$1 million in startup costs and annual operating costs starting at \$4.8 million, possibly offset by unknown savings in the criminal justice system. Legislative and agency actions will impact potential increased state revenue. The annual revenue increase could possibly exceed \$217 million. The fiscal impact to local governments is unknown.