2007 Regular Legislative Session
FISCAL ANALYSIS OF PROPOSED LEGISLATION
Prepared by the Oregon Legislative Fiscal Office

MEASURE NUMBER: SB 571 **STATUS:** B-Engrossed
SUBJECT: Expansion of prohibition of smoking in public places; increase in violation; and change in violation and civil penalty revenue from General Fund to the Tobacco Use Reduction Account
GOVERNMENT UNIT AFFECTED: Department of Human Services, Department of Transportation, Oregon Liquor Control Commission, Oregon Judicial Department, Lottery and county government
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DATE: May 17, 2007

	2007-2009	2009-2011
EXPENDITURES:		
See Comments		

REVENUES:
Please See Legislative Revenue Impact Statement

EFFECTIVE DATE: January 1, 2009

GOVERNOR'S BUDGET: This bill is not anticipated by the Governor's recommended budget.

LOCAL GOVERNMENT MANDATE: This bill does not affect local governments' service levels or shared revenues sufficient to trigger Section 15, Article XI of the Oregon Constitution.

COMMENTS: Current law restricts smoking in many public places, but provides for certain exemptions. This measure eliminates most exceptions of public places that previously were excluded from complying with the prohibition of smoking. The measure also expands the definition of a "place of employment" where smoking is prohibited to include for example, vehicles and elevators. Smoking or carrying a lighted smoking instrument within ten feet of public places and places of employment entrances, exits, windows, and ventilation intakes would be prohibited. The measure increases the violation level from a Class D violation to a Class A violation and increases the associated fine from $50 per day to $500 per day not to exceed $2,000 in any 30-day period. Any violation revenue generated would go to the Department of Human Services (DHS), Tobacco Use Reduction Account (TURA), rather than the General Fund. A hospital may not permit a person to smoke tobacco in a hospital or as noted above, within ten feet of public places and places of employment entrances, exits, windows, and ventilation intakes, subject to a civil penalty against a person not to exceed $2,000 in any 30-day period. Any such penalty revenue would be deposited into the General Fund. The measure eliminates a $10 fine and Class D violation related to a hospital-related violation. Lastly, the measure allows statutorily defined smoke shops to offer on-premises consumption of alcoholic beverages under certain circumstances. The measure's effective date is January 1, 2009.

DHS and certain local county health departments are responsible for the enforcement of public smoking laws under the federal Clean Air Act. DHS reports that typically Clean Air Act-related laws are self-enforcing (i.e., citizen complaints to violators or employers resolve issues prior to formal enforcement actions by DHS or the county). DHS, however, currently has a complaint-driven process that seeks first to warn violators prior to the imposition of a civil penalty/ violation. The process is outlined in the

Department's administrative rules. DHS reports that it levies few, if any fines or violations under current law. What enforcement actions the Department does takes, or are undertaken by county health departments, are paid for using Tobacco Prevention and Education Program (TPEP) funding. The revenue source for this program is tobacco tax paid into the TURA account.

To implement this measure, DHS would shift from current TPEP priorities (e.g., second hand smoke campaign/cessation, etc.) to public awareness of this measure. In other words, the Department would redirect TPEP funding to develop administrative rules, educate the public and employers about the law, and possibly expand enforcement activities. Additionally, the Department anticipates no additional violation revenue based on its assumption that compliance will not be an issue. Therefore, DHS has identified no fiscal impact.

According to DHS, local county health departments contracting with DHS to enforce the Clean Air Act would not experience a fiscal impact. The intergovernmental agreement for such services would be modified to include the provisions of this measure.

The Legislative Revenue Office (LRO) revenue impact statement for this measure, however, estimates a significant (negative) revenue impact on:

Legislative Revenue Impact Statement

	Tobacco Tax Distribution Recipients	**2007-09 (in millions)**	**2009-11 (in millions)**
1	State's General Fund	($2.23)	($10.94)
2	Oregon Health Plan	($6.79)	($33.33)
3	Tobacco Use Reduction Account	($.30)	($1.49)
4	City/county/transit districts/Department of Transportation	($.50)	($2.48)
5	**Total Tobacco Tax Reduction**	**($9.83)**	**($48.23)**

LRO estimates that there would be a total revenue reduction of $9.83 million for the 2007-09 biennium and $48.23 million for the 2009-11 biennium. The loss of any tobacco tax revenue to the state has implications for state and local budgets, which rely upon such revenues to finance expenditures. Therefore, a decline in tobacco tax revenues arising from this measure could result in the need for General Fund to backfill programs such as the Oregon Health Plan or TURA. Alternatively, these programs would need to be reduced to acknowledge lower amounts of program revenue. Local governments, which also receive tobacco tax revenues, would face a similar funding dilemma.

The Oregon Department of Transpiration could see a reduction in tobacco tax revenues dedicated to senior and disabled transit fund.

The Oregon Judicial Department does not anticipate a measurable increase or decrease in operation program expenditures due to the increase in the level and amount of the violation.

The Oregon Liquor Control Commission does not anticipate a fiscal impact.

As noted in the LRO impact statement, however, there is anticipated to be an indeterminate reduction in Lottery Funds revenue. Any reduction in Lottery revenue would reduce the transfer of funds from the Lottery Commission to the Department of Administrative Services Economic Development Fund. This would impact the State School Fund and various other programs after the payment of debt services obligations. Constitutionally dedicated Lottery Funding for state parks and natural resources could also be negatively affected. The Lottery Commission itself would not have an expenditures impact.

LFO believes this measure warrants a subsequent referral to the Joint Committee on Ways and Means Committee for consideration of this measure's budgetary impact on the State's General Fund and the DHS budget.

The Legislature is considering at least one other measure similar to SB 571B and that is HB 2571A.