FISCAL IMPACT OF PROPOSED LEGISLATION   Measure: HB 2136

Seventy-Seventh Oregon Legislative Assembly – 2013 Regular Session
Legislative Fiscal Office

Only Impacts on Original or Engrossed Versions are Considered Official

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Measure Description:
Directs that moneys received under Master Settlement Agreement be distributed to Oregon Health Authority Fund and to Tobacco Use Reduction Account.

Government Unit(s) Affected:
General Fund, Department of Justice (DOJ), Oregon Health Authority (OHA)

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.

Analysis:
Oregon receives roughly $160 million per biennium from the tobacco Master Settlement Agreement (MSA) with participating tobacco manufacturers. The MSA was signed in 1998 and released participating tobacco companies from past, present, and future claims. Under currently law, moneys from MSA proceeds are expended as directed by the Legislatively Assembly through the state's budget process. For the 2011-2013 biennium, the Legislative Assembly allocated moneys from the MSA to the Oregon Appropriation Bond Fund, and the OHSU Bond Fund for debt service payments, the Oregon Health Authority for the Oregon Health Plan, and to the Department of Justice for MSA enforcement activities. Oregon Appropriation Bond debt service will be paid off during the 2013-15 biennium after an estimated $29 million payment, but expenditures for OHSU Opportunity Bond debt service is estimated to be about $31.6 million per biennium through the 2023-25 biennium. Note that depending on legislative action, MSA funds can be allocated in addition to or in lieu of existing General Fund.

House Bill 2136 removes allocation authority from the Legislative Assembly. The bill also removes language authorizing the Department of Justice (DOJ) to request funds from the Tobacco Settlement Funds Account for costs incurred by the department in enforcing the MSA. As of January 1, 2014, the bill directs all MSA proceeds to be allocated to the Oregon Health Authority to be used as follows:

1. 90% to be used only for health care initiatives.
2. 10% for the funding of prevention and education programs designed to reduce cigarette and tobacco use.

MSA payments from participating tobacco companies are subject to market share calculations and on the condition that settling states provide diligent enforcement of a "Qualifying Statute," codified in ORS 323.800 to 323.806. However, the MSA does not define diligent enforcement. In addition, MSA participating companies have lost market share during the 2003 through 2009 sales years. Due to these losses, several of the participating companies have reduced payments to the states and placed disputed payments into escrow accounts. These actions have led to a protracted legal process resulting in the appointment of a national arbitration panel. The current panel is scheduled to hear state-specific cases, relating to the 2003 sales year, from May 2012 through June of 2013. If Oregon fails to defend its diligent enforcement efforts, the entire MSA payment for the 2003 sales year (up to $68 million) could be lost. In addition to criminal conviction costs of enforcing provisions of the MSA, the Department of Justice has incurred additional expenditures for outside counsel, expert witnesses, and arbitrators, as a result of these protracted legal proceedings. During the 2011-13, DOJ's Civil Enforcement Division received approximately $2.1 million General Fund for this work.