FISCAL IMPACT OF PROPOSED LEGISLATION

Measure: HB 2128 - C

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Legislative Fiscal Office
Only Impacts on Original or Engrossed Versions are Considered Official

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Measure Description:
Replaces escrow deposit system required of tobacco product manufacturers who are nonparticipating manufacturers for purposes of Master Settlement Agreement with requirement of direct payments to state.

Government Unit(s) Affected:
Judicial Department, Department of Justice, Department of Administrative Services, Oregon Health Authority

Summary of Fiscal Impact:
Costs related to the measure may require budgetary action - See analysis.

Analysis:
In 1998, Oregon and 45 other states and the four largest domestic tobacco manufacturers, entered into a Tobacco Master Settlement Agreement (TMSA) to recover smoking-related claims made by the states. There were a number of mostly smaller tobacco companies that elected not to participate in the TMSA, termed non-participating manufacturers (NPMs). The larger TMSA required settling states to enact and enforce statutes that required NPMs to make escrow deposits based on cigarette sales in a given state. The measure addresses the disposition of future funds and arrangement for collection and distribution of NPM assessments going forward.

The measure requires NPMs to either become a participating manufacturer and generally perform to the financial obligations under the Master Settlement Agreement or, satisfy the equity assessment for units sold in Oregon after January 1, 2024. The measure designates the Oregon Health Authority Fund (OHAF) as the repository for the equity assessment payments and directs the payments to be used for expenses of the Oregon Health Plan (OHP) and are adjusted for inflation. Under current law, the Tobacco Settlement Funds Account is the repository of payments. This portion of the measure becomes operative 31 days after entry of final judgment.

The measure allows for recovery of cigarette-related health care costs incurred in Oregon and requires monies recovered to be deposited into the OHAF for expenses of the OHP. The measure also allows NPMs to receive a credit or refund (and interest or other appreciation earned) for equity assessment payments if the required amount paid exceeded the amount of the TMSA if, the NPM had been a participating manufacturer. Manufacturers may seek a credit or refund within one year after the due date of the assessment.

In addition, the measure authorizes the Attorney General to bring civil action on behalf of Oregon against tobacco product manufacturers who fail to pay the required amount and allows the court to impose a civil penalty upon tobacco manufacturers, which are paid to the General Fund, in an amount that does not exceed 5% of the amount improperly withheld per day of the violation or, the total amount not exceed 100% of the original amount improperly withheld; if the court finds that it was a knowing violation, then the amount is increased to 15% and 300%, respectively. Attorney fees, costs and expenses recovered from violation of the measure shall be deposited into the Tobacco Enforcement Fund. This portion of the measure becomes operative January 1, 2025.

Finally, the measure amends ORS 180.205 to include deposits from the escrow fund into the Tobacco Enforcement Fund; effective January 1, 2024.

DOJ’s costs to implement the measure would be funded from an existing allocation from the Tobacco Settlement Funds Account rather than from NPM proceeds. In addition, any attorney fees, costs, and expenses recovered under the measure are to be deposited in the Tobacco Enforcement Fund. There is the potential of increased litigation risk to the state from this measure.

There is a minimal fiscal impact for the Oregon Health Authority (OHA), Department of Justice (DOJ), and Oregon Judicial Department.

The Legislative Fiscal Office notes that OHA will need to request Other Funds expenditure limitation to use the funds made available through the provisions of this measure for units sold after January 1, 2024. At this time, the available funds for OHP is indeterminate and will depend on the actual number of units sold on or after January 2, 2024 and, the adjustments for inflation.

There is no fiscal impact for the Department of Administrative Services.