

**MISSOURI STATE AUDITOR'S OFFICE
FISCAL NOTE (24-171)**

Subject

Initiative petition from Deirdre Hirner regarding a proposed constitutional amendment to Article X. (Received November 21, 2023)

Date

December 11, 2023

Description

This proposal would amend Article X of the Missouri Constitution.

The amendment is to be voted on in November 2024.

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 and Workforce Development**, the **Department of Health and Senior Services**, the **Department of Commerce and Insurance**, 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 **Missouri Department of the National Guard**, 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**, **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 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**, **Jennings School District**, **Malta Bend R-V School District**, **Mehlville School District**, **Wellsville-Middletown R-1 School District**, **State Technical College of Missouri**, **Metropolitan Community College**, **University of Missouri**, **St. Louis Community College**, the **Missouri Veterans Commission**, the **Kansas City Board of Police Commissioners**, the **Metropolitan Police Department - City of St. Louis**, **St. Charles County Election Authority**, **St. Louis County Board of Elections**, **Board of Election Commissioners City of St. Louis**, **Kansas City Board of Election Commissioners**,

Platte County Board of Elections, Jackson County Election Board, and the Clay County Board of Election Commissioners.

Bradley Ketcher, Ketcher Law Firm, LLC provided information to the State Auditor's office.

Assumptions

Officials from the **Attorney General's office** indicated they expect that, to the extent that the enactment of this proposal would result in increased litigation, their office could absorb the costs associated with that increased litigation using existing resources. However, if the enactment of this proposal were to result in substantial additional litigation, they may be required to request additional appropriations.

Officials from the **Department of Agriculture** indicated no impact.

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

Officials from the **Department of Elementary and Secondary Education** indicated they have reviewed initiative petition 24-171 and determined there is no impact to their agency.

Officials from the **Department of Higher Education and Workforce Development** indicated no impact to their department.

Officials from the **Department of Health and Senior Services** indicated this initiative petition has no impact on their department.

Officials from the **Department of Commerce and Insurance** indicated this petition, if passed, will have no anticipated 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.

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 no fiscal impact.

Officials from the **Department of Labor and Industrial Relations** indicated they anticipated no fiscal impact for the initiative petition 24-171 proposing to amend Article X.

Officials from the **Department of Revenue** indicated this IP attempts to give local political subdivisions the ability to vote on and create a tax on tobacco products. Currently, the only two local political subdivisions that have a tax on tobacco are Jackson County and St. Louis

County. The businesses in those areas remit the tax to the Department of Revenue and the Department distributes it. As reimbursement for the administration of this tax, the Department is allowed to retain 1% of all tobacco tax remitted.

While this proposal would allow the voters in their local political subdivision to implement a tax, this IP does not address who will collect the tax and where it is to be distributed. The Department of Revenue (Department) notes while the proposal appears to require the collection of the tax, it does not give the locals or the Department the necessary authority to actually collect the tobacco tax or to deposit the tobacco tax into any state or local fund. Therefore it appears this tobacco tax will not generate any revenue to the state, to any local political subdivision, or to any Fund.

Officials from the **Department of Public Safety** indicated no impact for their department.

Officials from the **Missouri Department of the National Guard** indicated no fiscal impact to their department.

Officials from the **Department of Social Services** indicated they do not anticipate a fiscal impact as a result of this petition.

Officials from the **Governor's office** indicated this proposal relating to local tobacco taxation does not directly financially impact their office.

Officials from the **Missouri House of Representatives** indicated no fiscal impact.

Officials from the **Department of Conservation** indicated Initiative Petition 24-171 will have no fiscal impact on their department.

Officials from the **Department of Transportation** indicated no fiscal impact expected for their department or the Missouri Highways and Transportation Commission.

Officials from the **Office of Administration** indicated this proposal relating to local tobacco taxation does not directly financially impact their office.

Officials from the **Office of State Courts Administrator** indicated that in reference to Initiative Petition 24-171 a proposed constitutional amendment to Article X, there is no fiscal impact on the Courts.

Officials from the **Missouri Senate** indicated they anticipate no fiscal impact.

Officials from the **Secretary of State's office** indicated each year, a number of joint resolutions that would refer to a vote of the people a constitutional amendment and bills that would refer to a vote of the people the statutory issue in the legislation may be considered by the General Assembly.

Unless a special election is called for the purpose, Joint Resolutions proposing a constitutional amendment are submitted to a vote of the people at the next general election. Article XII section 2(b) of the Missouri Constitution authorizes the governor to order a special election for constitutional amendments referred to the people. If a special election is called to submit a Joint Resolution to a vote of the people, section 115.063.2 RSMo requires the state to pay the costs. The cost of the special election has been estimated to be \$10 million based on the cost of the 2022 primary and general election reimbursements.

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. Funding for this item is adjusted each year depending upon the election cycle. A new decision item is requested in odd numbered fiscal years and the amount requested is dependent upon the estimated number of ballot measures that will be approved by the General Assembly and the initiative petitions certified for the ballot. In FY 2014, the General Assembly changed the appropriation so that it was no longer an estimated appropriation.

For the FY22 petitions cycle, they estimate publication costs at \$70,000 per page. This amount is subject to change based on number of petitions received, length of those petitions and rates charged by newspaper publishers.

Their office will continue to assume, for the purposes of this fiscal note, that it should have the full appropriation authority it needs to meet the publishing requirements. Because these requirements are mandatory, they reserve the right to request funding to meet the cost of their publishing requirements if the Governor and the General Assembly again change the amount or continue to not designate it as an estimated appropriation.

Officials from the **Office of the State Public Defender** indicated initiative petition 24-171 will have no fiscal impact on their office.

Officials from the **Office of the State Treasurer** indicated no fiscal impact to their office.

Officials from **Cass County** provided comments of the estimated fiscal impact on proposed initiative petition 2024-171. The largest consideration, in their opinion, would be the very expensive but unknown amount of legal exposure and litigation costs. It would be important that this unlimited amount of legal exposure is highlighted in any fiscal impact statement because they believe such legal challenge is probable with this proposed IP. They provided the following information:

The Very Honorable Mr. Scott Fitzpatrick
Missouri State Auditor

RE: Initiative Petition No. 2024-171 – Fiscal impact

Mr. Auditor:

As the Auditor of Cass County, I write to provide insight as to the fiscal impact to county government by an Initiative Petition and the ramifications thereof. I have reviewed a summary of the proposed initiative petition numbered 2024-171. This initiative petition would commit county governments to some certain amounts and some uncertain amounts of spending by extending an initiative petition process to counties in Missouri and possibly forcing a special election.

The initiative petition process contained in 2024-171, would require signatures from five percent of the qualified voters in a county to put a product-specific tax on the ballot in that county. If sufficient signatures are verified by the county clerk, then the new taxation measure would go on the first available election day. Additionally, a ballot title would be required to be drafted for the tobacco tax proposal and such title would be drafted by the county clerk. Each of these provisions will carry varying degrees of costs with varying ranges of exposure and each provision certainly creates its own risk of large financial exposure to Cass County due to the possibility litigation costs throughout the process.

For example, signature verification requires staffing to review the submitted initiative petitions and compare those signatures to the files of registered voters in the county. Since the verification will take an unknown number of hours and could occur at any time, including holiday season or the weeks before or after a general election, I cannot reasonably even begin to estimate the cost, however it would cost the county money to achieve the signature verification. The major thing to consider with regard to fiscal impact in our county would be the exposure to unknown costs in litigation. I would conclude that signature verification for this IP is certain cost to the county, but an unknown, and possibly very large expense.

The proposed measure also requires an immediate election. The cost of ballot printing, staffing at the polling places, and advertising the ballot is estimated to be up to \$62,459.89 for Cass County. That cost estimate assumes that the IP is the sole ballot measure in a full county-wide election.

The drafting of a ballot title is a new duty for the county clerk. As we know, litigation over ballot titles is frequent and predictable. The proposed initiative expressly provides for judicial review of any ballot title. To draft a ballot title that would survive judicial scrutiny would require the retention of an election attorney with experience in this field. Moreover, if the ballot title is challenged, then there will be a need to retain election counsel with expertise in the field. Tare few attorneys with this experience, and I estimate the legal costs to be possible and likely. This provision may have an unknowably expensive fiscal impact that the county would be required to absorb.

In short, IP exposes Cass County to certain, clearly stated election and signature verification costs. More impactful would be the very, very large financial exposure that could easily reach hundreds of thousands, or possibly over a million dollars. This legal exposure is unlimited coming from both the signature, drafting, and election provisions. It is also possible, but much less likely that cost be contained to election and signature verification alone. These provisions, themselves, carry a certain fiscal impact that would range from \$20,000 to \$82,459.89.

Respectfully submitted,

Jack Bondon
Cass County, Missouri Auditor

Officials from **Clay County** indicated they estimate no impact from this petition.

Officials from **Greene County** indicated that there are estimated costs to report from the County of Greene for 24-171 proposing to amend Article X. The anticipated cost for verification of the signatures for the petition if that option is used is **\$7,482.90**. This estimate is based on the number of hours from signatures verified in 2022. An attachment with the estimate totals has been provided.

In addition, there is to their knowledge no adequate information available to know the volume of sales of tobacco products at retail establishments where tobacco product are sold within Greene County to create an estimate of potential sales tax the county would receive if a sales tax rate is applied to each tobacco purchase. The Greene County Budget office was contacted regarding any tobacco sales data specific to Greene County they could provide, as well as the Missouri Department of Revenue. Neither office was able to provide the sales data needed to create a reliable estimate. If this data does become available, an estimate could then be submitted.

Greene County Employee Initiative Petition Signature Costs

Employee	Rate of Pay	Estimate Hours*	Total Cost
Coordinator	23.07	30	\$692.10
Clerk I	15.49	120	\$1,858.80
Temporary Employee	20.55	120	\$2,466.00
Temporary Employee	20.55	120	\$2,466.00

*Estimate based on number of hours from 2022 petition

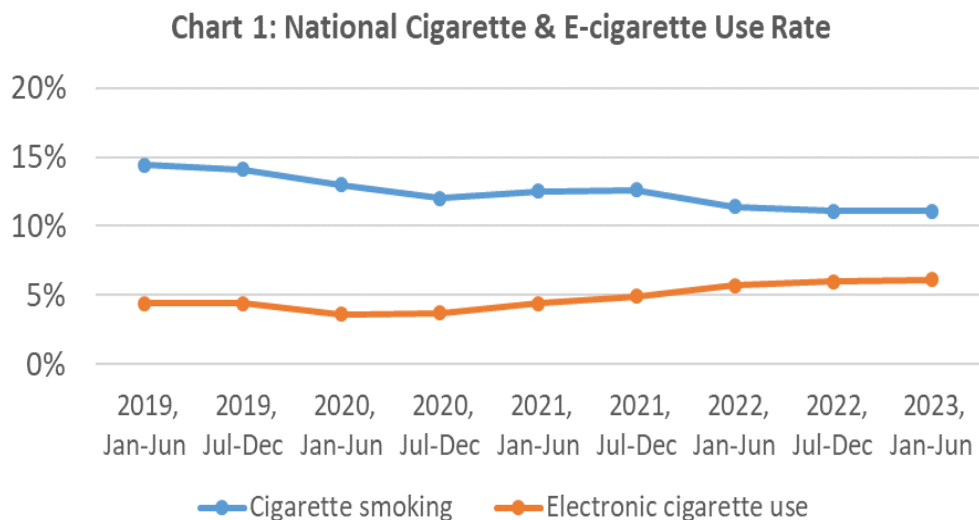
\$7,482.90

Comments
3 weeks @ 10 hours a week to check work/train
3 weeks @ 40 hours a week
3 weeks @ 40 hours a week
3 weeks @ 40 hours a week

Officials from **St. Louis County** indicated this amendment should have no fiscal impact on their county.

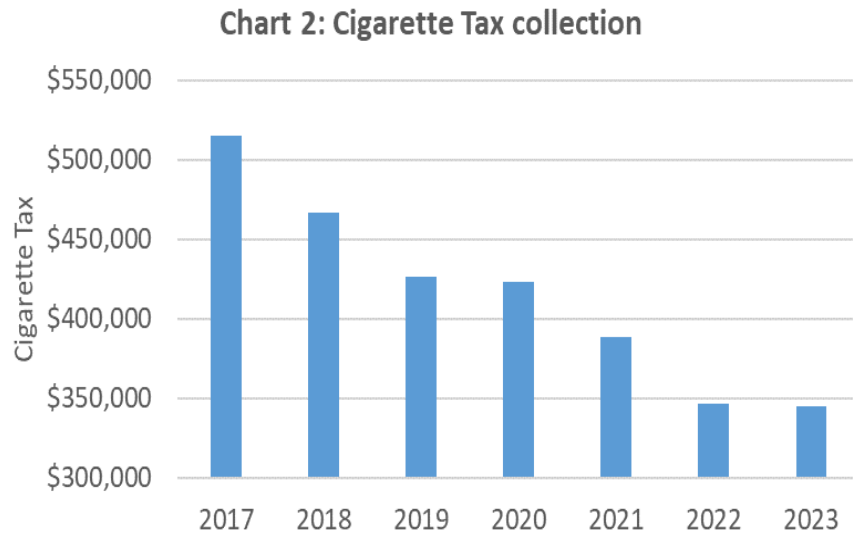
Officials from the **City of Columbia** indicated their local government estimates the fiscal impact of this initiative petition for fiscal years 2024, 2025, and 2026 to be as follows:

Surveys administered by the National Center for Health Statistics have found that, as cigarette usage has dropped among adults in the US, electronic cigarette usage has increased.¹ It is reasonable to assume that a certain portion of prior cigarette users have switched to e-cigarette use.



Consistent with this trend, the City of Columbia has experienced a 33% fall in revenue from cigarette taxes over the last six years (as shown in Chart 2 below).

¹ https://wwwn.cdc.gov/NHISDataQueryTool/ER_Biannual/index_biannual.html



The amendment proposes granting greater control to local voters regarding taxes levied on tobacco products, which include electronic cigarettes.² Until local voters change the excise tax on cigarettes and tobacco products, current trends and substitution to e-cigarettes will continue to have a detrimental impact on local government revenue collection. If voters approve an excise tax on e-cigarettes, then, in FY 25 and FY 26, the City of Columbia would add approximately \$11,841 to \$59,206 annually, assuming a per unit rate of \$0.10 to \$0.50 is adopted. Furthermore, increasing the excise tax rate on cigarettes could add approximately \$345,177.50 annually if the excise tax is increased to \$0.20 per pack of cigarettes. Calculations and estimations are detailed below:

Population Over 18 in Columbia, MO	99,551
Estimated E-cigarette Users in Columbia, MO	6,073
Average US E-cigarette Usage Rate	19.5
Estimated Annual E-cigarette Sales in Columbia, MO	\$118,420

Assuming Columbia's overall electronic cigarette usage rate is that of the most recent national rate, 6.1%, Columbia has approximately 6,073 electronic cigarette users. The CDC has estimated that electronic cigarette sales averaged 23.91 million units per month, which means electronic cigarette users average 1.62 units per month or 19.5 units per year.³ Simply extending the \$0.10 per unit tax currently collected on packs of cigarettes in Columbia to electronic cigarette sales would generate \$11,842.35 in tax revenue per year.

² <https://www.federalregister.gov/documents/2023/03/20/2023-03950/definition-of-the-term-tobacco-product-in-regulations-issued-under-the-federal-food-drug-and#:~:text=Tobacco%20product%20means%20any%20product,or%20accessory%20of%20a%20tobacco>

³ https://www.cdcfoundation.org/Issue33-MonthlyECigaretteSalesDataBrief_9.10.2023.pdf?inline

The petition would allow altering the rate collected on cigarettes and other tobacco products, which are among the lowest in the nation here in Columbia and across Missouri. Such changes could have significant fiscal impacts. Demand for cigarettes is considered to be inelastic, so increases in the per unit excise tax rate would likely have a proportional impact on the total tax collected.

Tax Rate	Additional Revenue from E-Cigarette Tax	Additional Revenue from Change to Existing Cigarette Tax*	Additional Revenue from Change to Cigarette & Other Tobacco Tax
\$0.10	\$11,842.04	\$0 (Current Rate)	\$11,842.04
\$0.20	\$23,684.08	\$345,177.50	\$368,861.58
\$0.50	\$59,210.20	\$1,380,710.00	\$1,439,920.20

*Calculated based on FY 23 cigarette excise collection as shown in Chart 2.

The business license office anticipates that changes to taxes regarding cigarette and tobacco products, including electronic cigarettes, would necessitate an additional 0.5 FTE business service technician, which would cost the City anywhere from \$18,962.50 to \$27,685 annually.

Officials from the **City of Kansas City** indicated this petition would have no fiscal impact on their city.

Officials from **Metropolitan Community College** indicated no fiscal impact to their college.

Officials from the **University of Missouri** indicated there will not be any significant impact to the University of Missouri system.

Officials from the **Missouri Veterans Commission** (MVC) indicated there is no fiscal impact to MVC on Initiative Petition.

Officials from the **Kansas City Board of Police Commissioners** indicated there is no immediate cost or savings that will affect KCPD.

Officials from the **St. Louis County Board of Elections** indicated they have reviewed initiative petition 24-171 and see no fiscal impact to their operations.

Officials from the **Board of Election Commissioners City of St. Louis** indicated if an election was called, the cost of a city wide election could be upwards of 300k.

Officials from the **Kansas City Board of Election Commissioners** indicated the cost to conduct a jurisdiction-wide election in the Kansas City portion of Jackson County is

\$850,000. If the election is held on a Primary or General election day, the cost is allocated one third each to Jackson County, Kansas City and the State. Outside those two dates, the cost is allocated based on voter registration for the entities participating in that election.

Officials from the **Platte County Board of Elections** indicated no fiscal impact to their Board of Elections.

Officials from the **Jackson County Election Board** indicated requiring the local election authority to create a ballot title for the Local Voters' Right and Option to Set Tobacco Taxes Initiatives would require legal review by both Election Board attorneys.

Cost \$500.00 - \$1,000.00

If the election were to be held on a primary or general election Jackson County would have a budget already in place for an additional question.

If an election were to be held in an off year or a non-countywide election the cost would be substantial.

The amount below would be for Eastern Jackson County only. The Kansas City Election Board would have to provide their cost for Kansas City proper.

Cost of a non-budgeted countywide election (Eastern Jackson County only)

\$600,000 - \$700,000.

Bradley Ketcher, Ketcher Law Firm, LLC provided the following information:

This proposed measure would give local voters in counties control over local tobacco taxes in those counties. It does not call for a tax increase or decrease, but simply gives local voters the right and option to set their own local tobacco taxes.

It is directly analogous to statutory IP 24-113, which your office developed a fiscal note and summary for earlier this year. Like the current initiative, that proposal would give local voters the “right and option” to set certain taxes. In the fiscal note for that measure, your office found no cost or savings for state or local governments.

The State Auditor's office did not receive a response from **Adair County, Boone County, Callaway County, Cole County, Jackson County, Jasper County, St. Charles County, Taney County, the City of Cape Girardeau, the City of Jefferson, the City of Joplin, the City of Kirksville, 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, Jennings School District, Malta Bend R-V School District, Mehlville School District, Wellsville-Middletown R-1 School District, State Technical College of Missouri, St. Louis Community College, the Metropolitan Police Department - City**

of St. Louis, St. Charles County Election Authority, and the Clay County Board of Election Commissioners.

Fiscal Note Summary

State and local governmental entities estimate no direct costs or savings. Attempts to implement a local tobacco tax, or to modify an existing local tobacco tax, could result in changes in revenue or increased election related or other costs for these entities that cannot be estimated.