

**MISSOURI STATE AUDITOR'S OFFICE
FISCAL NOTE (24-173)**

Subject

Initiative petition from Deirdre Hirner regarding a proposed constitutional amendment to Article X. (Received February 20, 2024)

Date

March 11, 2024

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 24-173 and determined there is no fiscal 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 agency.

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 24-173 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 (Department) 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 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 there is 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 any 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 24-173 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 in reference to Initiative Petition 24-173, 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 24-173 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 **Clay County** indicated they estimate no impact from this petition.

Officials from **Greene County** indicated in reviewing initiative petition 24-173 it has been determined there may be an increased cost to the County of Greene if voters vote to amend Article X. After further review it has been determined that there is very likely opportunity for additional costs to the county. The language is vague as to how the ballot measure will be placed on the ballot for local voters, which requires an estimate for the issue placed on the ballot through initiative petition or by the County Commission if it chooses to put the question before voters. Therefore, in anticipation of those potential costs please find the following estimate for this IP.

The anticipated cost for verification of the signatures for the petition, if that option is used to place this question before voters is **\$7,482.90**. This estimate is based on the number of hours from signatures verified in 2022.

The language also appears to allow the election to be held at the next county election date available where the referendum provision may be presented to voters by a political subdivision. With that understanding the per voters cost to administer an election during an April election when costs are proportionally shared by political subdivisions will be submitted, as well as the costs to host an election when the political subdivision is the only entity to hold an election below:

Scenario 1 – Proportional Costs

The most recent April 2023 election cost **\$361,991.59**. The estimated cost total county portion to be paid from the **\$361,991.59** election cost total is estimated to be **\$99,103.27**.

Scenario 2 – County only Political Subdivision Cost

A countywide special election has an estimated total cost of **\$337,336.50**.

The county will also need to retain legal counsel to write the ballot summary and title for the question being proposed to the voters of the county. A minimum estimate for 8 hours of legal work at a **\$240.00** an hour would be **\$1,920** of legal fees at a minimum.

In addition, there is to their knowledge no adequate information available to know the volume of sales of tobacco products at retail establishments where the tobacco product would be 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. There also may be additional costs to attain the tax collected for each tobacco purchase that without the volume of tobacco sales information cannot be ascertained either.

Though the IP is silent on how the question is to be put before voters, it states that, “local voters shall have the right and option to set tobacco taxes in counties,” in subsection 2. State statute allows for voters to put an issue before voters in their respective county in RSMo 115.700. The election costs estimate submitted allow for a scenario of when the question would be presented to the voters as a stand-alone countywide issue when no other issue and/or candidate is on the ballot. In that scenario the county would pay the full cost. In an election where the issue would be shared with other political subdivisions, an estimate is submitted as well. The county pays its proportional share of the ballot costs for any election it has an issue and/or candidates on a ballot in an election per RSMo 115.065.

The county's prosecutor examined RSMo 115.700. In his brief research, he did not disagree with the understanding previously provided. The vagueness of the statute does not in the opinion of county officials present an issue for a county of any classification from using it as a method when a constitutional amendment with this language is passed.

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

Officials from **St. Louis County** indicated there should be no fiscal cost to their county resulting from this proposed amendment.

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

Officials from **Metropolitan Community College** indicated there may impact to their college. Unknown at this time as to what education level they're talking about, and how the local voters will decide how to spend the money.

Officials from **University of Missouri** indicated no fiscal impact expected for the University of Missouri System.

Officials from the **St. Louis Community College** indicated they have reviewed the petition initiative and do not see a revenue, expense, or operational change that would affect their college.

Officials from the **Missouri Veterans Commission** (MVC) indicated no fiscal impact to MVC.

Officials from the **Kansas City Board of Police Commissioners** indicated there is no anticipated cost or savings to KCPD based on this measure.

Officials from the **St. Louis County Board of Elections** indicated they have reviewed initiative petition 24-173 and see no fiscal impact to their operations.

Officials from the **Board of Election Commissioners City of St. Louis** indicated no impact on their organization, unless the election regarding this measure generated a stand alone election, in which case the cost could be potentially 500K.

Officials from the **Kansas City Board of Election Commissioners** indicated the effect of Article X (2024-173) on their operations would be immaterial (less than \$5000).

Officials from the **Platte County Board of Elections** indicated there would be no fiscal impact on their Board of Elections.

Officials from the **Jackson County Election Board** indicated this has no fiscal impact to their Board of Elections.

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 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 current proposal should receive the same analysis, fiscal note, and fiscal summary as IP 24-113. The proposal has no fiscal impact on state funds because the proposal requires nothing from state government. Further, the proposal has no fiscal impact on local funds because it is a "local voters' option" measure that includes no mandate and requires nothing of local governments.

As an additional touchstone, the Committee on Legislative Research, Oversight Division has consistently developed a "zero cost" fiscal note for such local option proposals.

The State Auditor's office did not receive a response from **Adair County, Boone County, Callaway County, Cass County, Cole County, Jackson County, Jasper County, St. Charles County, Taney County, the City of Cape Girardeau, the City of Columbia, 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, 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 costs or savings.