



OBM

October 26, 2006

The Honorable J. Kenneth Blackwell
Ohio Secretary of State
180 E. Broad Street, 15th Floor
Columbus, Ohio 43215

Dear Secretary Blackwell:

Your office requested the Office of Budget and Management to analyze the expenditure impact of a proposed law pursuant to section 3519.04 of the Ohio Revised Code. This proposed law has been placed on the November 2006 ballot as State Issue 5. State Issue 5 would prohibit smoking in enclosed public places and places of employment. Places used as private residences are exempt. Smoking is permitted at the owner's option in a few limited areas. The Ohio Department of Health and the local health departments would enforce the proposed laws.

The expenditure impact on state and local governments to implement and enforce the provisions of the proposed law would be moderate and most costs would be incurred within the first year of implementation. State and local governments would incur costs related to education and training and enforcement activities. The expenditure impacts are addressed in more detail in the attached analysis.

I trust that the attached analysis responds to your request and fulfills the statutory requirements. Please contact me if you have any questions.

Sincerely,

Timothy S. Keen
Director

Attachment

State Issue 5

Summary of Proposal and Fiscal Analysis

State Issue 5 proposes state laws to prohibit smoking in enclosed public places and places of employment. Places used as private residences are exempt. Smoking is permitted at the owner's option in a few limited areas. The Ohio Department of Health and the local health departments would enforce the proposed laws. Most costs to implement and enforce the new provisions would occur within the first year. Most complaints from the public concerning suspected violations would occur in the first six months. Enforcement activities would probably be routine after the first year and might be combined with other ongoing inspections.

The Ohio Department of Health would be responsible for creating training and education materials on the new law for use statewide over the Internet, by local health departments, and perhaps disseminated in other ways. The state agency would also provide a system where citizens may lodge complaints about possible law violations. These complaints would probably be turned over to the respective local health department for follow up. Because of the initial heavy workload to work with businesses statewide, some additional local personnel and overtime may be necessary during the initial implementation period. Costs to both the Ohio Department of Health and the local health departments would be moderate to implement the law and most costs would be incurred during the first year of implementation.

Description of Proposal

State Issue 5 proposes state laws to prohibit smoking in enclosed public places and places of employment, and requires the posting of no smoking signs. Tobacco smoke may not enter a facility where smoking is prohibited and smoking is prohibited in places where such smoke infiltration into a protected space is possible. Places used solely as private residences are exempt. In addition, the following places may be exempt if they meet the law's specific requirements: hotel rooms (no more than 20% of the facility total), family businesses not open to the public, certain areas of a nursing home, tobacco stores, outdoor patios, and private clubs with no employees. The owner or operator of any indoor or outdoor space where smoking is otherwise permitted under the law may declare the space nonsmoking and post signs accordingly.

The Ohio Department of Health and the local health departments would enforce the proposed laws. State rules and a schedule of fines would be adopted under Chapter 119 of the Revised Code. According to the law, fines would be deposited in the Smokefree Ohio Fund created in the state treasury. Additional fines may be imposed on intentional violators and those that are found to repeatedly violate the law. The Department must establish a method for members of the public to report possible violations of the law.

Components of Fiscal Analysis

Currently, state laws or rules prohibit smoking in the following places:

- Places of public assembly under section 3791.031 of the Revised Code (theaters, except the lobby; opera houses; auditoriums; classrooms; elevators; and rooms in which persons are confined for public health, with some exceptions).
- All state, state higher education, school district, and local government buildings, including vehicles used in public transit, except dorm rooms and food service areas.
- Rooms in any building with a seating capacity of 50 or more that are available to the public, except food service areas, bowling alleys, and bars.
- Underground mines.
- Fireworks manufacturers and wholesalers.
- Elementary and secondary school students on school district property.
- Child care and day care facilities.
- Food manufacture or food preparation areas.
- Gas station fueling islands.
- Manufacturing, industrial, hospital, farm, and other high-hazard areas across a broad spectrum of operations containing any flammable or combustible materials or dust.

The proposed law would widen the smoking ban to almost all indoor spaces except residences and a few other specific exemptions. Presently, most Ohio indoor smoking bans are due to either (1) the public assembly or public building provisions (see the first two bullets above), (2) the bans for various hazardous areas, (3) a voluntary ban with rules and exceptions designed by the building owner or operator, or (4) a local government-adopted ban that is similar to the one proposed by State Issue 5. There are 21 local governments in Ohio that have enacted local indoor smoking bans. The two largest cities to do so are Toledo and Columbus. According to members of local health departments, the local bans are similar to Issue 5, with the exception that some of the local bans allow smoking in bars.

Local bans on smoking in buildings have been adopted in the last few years. Local health departments involved report one-time costs in educating establishments on the law and initial enforcement of those laws, especially over the first 6 to 12 months. Columbus, for example, spent approximately \$200,000 over the first year with its smoking ban and obtained a high level of compliance. Based on Columbus' cost and relative population size compared to the state, \$3 million would be a first-year statewide cost estimate. This estimate includes costs to the Ohio Department of Health. Since the law would apply statewide, greater efficiency (lower education cost per affected establishment) would be obtained than under local laws that apply to limited areas. According to press reports and local health department members, most long-term enforcement issues are due to the owner's stance against the law or from competitive pressures from nearby businesses that are outside of the jurisdiction covered by the law. With State Issue 5 applying statewide, this latter issue should be ended and this should ease enforcement costs, except for state border areas. After the initial education period, routine education efforts would be

carried out by local health departments, perhaps as part of existing inspections. Other enforcement activities would be triggered by public or worker complaints of possible violations.

The Ohio Department of Health would be responsible for creating training and education materials on the new law for use statewide over the Internet, by local health departments, and perhaps disseminated in other ways. Costs to the department might be several hundred thousand dollars for the materials, staff time, and computer work. Personnel would probably be temporarily reassigned to accomplish the work. Before the implementation date, local health departments would likely hold a series of local training sessions and forums where local businesses could receive handouts, learn about the law, and ask questions. The state agency would provide a system where citizens may lodge complaints about possible law violations. These complaints would probably be turned over to the respective local health department for follow up. Information from Columbus indicates that the complaint volume would be high the first two months and then decrease sharply in months three to five and remain at a low level beginning the sixth month. Because of the initial heavy workload, some additional local personnel may be necessary during the initial implementation period. Most of the statewide implementation and enforcement cost would fall on the local health departments. Evidence from some localities indicate that many of the violations would occur during evening hours so assigning some staff time during the evening is necessary for good enforcement. In some cases, staff time during the evenings may require overtime. Local health departments with a current smoking ban would have fewer costs to implement the new statewide law. For building owners that wish to establish allowable smoking areas within a building, inspections would probably also involve local building or fire inspectors since proper ventilation is the main issue.