

Please note that fine revenues collected and placed into Fund 5ED, Smoke Free Indoor Air, are to be used for administration expenses relating to Ohio's Indoor Smoking Ban. While ODH has many of these fines in the process of being collected, no fine revenue has been received at this point. As a result, LSC has assumed that initial expenditures relating to this bill might be paid for out of a combination of non-GRF and GRF funds. ODH will begin using Fund 5ED for administration when enough fine revenue has been collected.

Local Fiscal Highlights

LOCAL GOVERNMENT	FY 2008	FY 2009	FUTURE YEARS
Local Health Departments			
Revenues	Potential loss of fine revenue	Potential loss of fine revenue	Potential loss of fine revenue
Expenditures	Potential increase for web site and education materials modification; Potential impact relating to enforcement	Potential impact relating to enforcement	Potential impact relating to enforcement

Note: For most local governments, the fiscal year is the calendar year. The school district fiscal year is July 1 through June 30.

- Local health departments are likely to realize an increase in expenditures as a result of the bill. According to the Association of Ohio Health Commissioners (AOHC), each local health department would need to change their educational materials and web site, etc. AOHC estimates that this cost could be \$1,000 or more per local jurisdiction. The total cost of this would be dependent upon the size of the jurisdiction and the number of businesses affected.
- Any fine revenue collected as a result of Ohio's Indoor Smoking Ban is placed in Fund 5ED, Smoke Free Indoor Air, which is in ODH. ODH retains 10% of any fine revenue collected and the remaining 90% is disbursed to the local jurisdiction that brought the enforcement action forward. The smoking ban exceptions made in the bill could result in a loss of fine revenue for local health departments. However, this loss in revenue could eventually be offset by a reduction in expenditures relating to inspections for the facilities that would be made exceptions in the bill. However, at least initially, local health departments could receive an influx of questions and complaints regarding these facilities that could increase expenditures relating to inspections.

Detailed Fiscal Analysis

Background

The Ohio Department of Health (ODH) was made responsible for enforcement of Ohio's Indoor Smoking Ban (Issue 5), which voters passed on November 7, 2006. According to ODH's web site, ODH wrote the enforcement rules in collaboration with an advisory committee made up of 34 representatives. ODH received 55,000 public comments (at public hearings, in writing, or via telephone and e-mail) regarding this matter. Local health districts have been made responsible with enforcement, except for six county health departments and one city health department, for which ODH acts as the enforcer. Proprietors who violate the ban are sent a warning letter for the first violation, are fined \$100 for a second violation, \$500 for a third violation, \$1,000 for a fourth violation, and \$2,500 for fifth or subsequent violations. Individuals who violate the ban are sent a warning letter for a first violation and are fined \$100 for second or subsequent violations. Complaints regarding violations can be made by dialing a 1-800 number. Complaints are logged into a database and then assigned to a local health department. Complaints may also be made directly to a local health department. Of the fine revenue collected, 90% goes to the local jurisdiction that brought the enforcement action forward, while 10% is retained by ODH. According to ODH, as of October 11, 2007, there have been over 15,000 complaints, which have resulted in 9,300 investigations. ODH has stated that there has been no fine revenue collected as of October 11, 2007. However, there are many fines in process at this time.

Currently, a proprietor of a public place or place of employment is prohibited from permitting smoking in the public place or place of employment or in areas directly or indirectly under the control of the proprietor that are immediately adjacent to locations of ingress or egress to the public place or place of employment. Existing law provides several exceptions to this general prohibition.

Exceptions in the bill

Cigar bar

The bill would allow an exception for a cigar bar. The bill defines "cigar bar" to mean a walk-in humidor that consists of a minimum volume of 300 cubic feet and that has HEPA-designed air filtration systems, carbon filtration, carbon dioxide filtration, smoke eaters, and ozone machines. "HEPA" means the designation given to a product, device, or system that has been equipped with a high-efficiency particulate air filter, which is a filter capable of removing particles of 0.3 microns or larger from air at 99.97% or greater efficiency.

Outdoor Seating Area

Current law provides an exception for an "outdoor patio." An outdoor patio is an area that is either (1) enclosed by a roof or other overhead covering and walls or side coverings on not more than two sides or (2) has no roof or other overhead covering regardless of the number of walls or other side coverings. All outdoor patios must be physically separated from an enclosed area. If windows or

doors form any part of the partition between an enclosed area and the outdoor patio, the openings must be closed to prevent the migration of smoke into the enclosed area. If windows or doors do not prevent the migration of smoke into the enclosed area, the outdoor patio is considered an extension of the enclosed area and subject to the applicable smoking restrictions. The bill replaces the exception for outdoor patios with an exception for any outdoor seating area of a restaurant that is located at least 20 feet away from the main entrance, an exit, or any operable window of the building in which the restaurant is located.

Fiscal Effects

According to ODH, there would be an increase in costs as a result of the bill. The complaint investigation database would need to be changed, as well as the report functions, violation functions, and the web site itself. ODH has estimated that the programming costs for these web modifications would be \$85 per hour. ODH staff would make these modifications. ODH does not have an estimate at this time regarding the number of man hours needed to make these modifications. Local health departments are also likely to realize an increase in expenditures as a result of the bill. According to the Association of Ohio Health Commissioners (AOHC), each local health department would need to change their educational materials and web site, etc. AOHC estimates that this cost could be \$1,000 or more per local jurisdiction. The total cost of this would be dependent upon the size of the jurisdiction and the number of businesses affected.

According to ODH there are approximately 40,000 food service operations in Ohio. Notice to each of these operations would likely cost approximately \$26,000 in total, assuming a one-page notification. ODH would likely print materials to inform affected parties of any new exemptions/procedures in the bill.

The exceptions made in the bill could also result in a loss of fine revenue for ODH and local health departments. However, this loss in revenue could eventually be offset by a reduction in expenditures relating to inspections for the facilities that would be made exceptions in the bill. However, at least initially, local health departments and ODH could receive an influx of questions and complaints regarding these facilities that could increase expenditures relating to inspections for these exceptions in the bill.

LSC fiscal staff: Wendy Risner, Senior Budget Analyst

SB0195IN.doc/rh