## 2007 Regular Legislative Session FISCAL ANALYSIS OF PROPOSED LEGISLATION Prepared by the Oregon Legislative Fiscal Office

MEASURE NUMBER: SB 571 STATUS: A-Engrossed

SUBJECT: Expansion of prohibition of smoking in public places; increase in violation; and change in

violation and civil penalty revenue from General Fund to the Tobacco Use Reduction Account

GOVERNMENT UNIT AFFECTED: Department of Human Services, Oregon Judicial Department,

and county government

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**DATE:** March 29, 2007

2007-2009 2009-2011

**EXPENDITURES:** See Comments

**REVENUES:** See Comments

**EFFECTIVE DATE:** January 1, 2008

**GOVERNOR'S BUDGET:** This bill is not anticipated by the Governor's recommended budget.

**LOCAL GOVERNMENT MANDATE:** This bill does not affect local governments' service levels or shared revenues sufficient to trigger Section 15, Article XI of the Oregon Constitution.

**COMMENTS:** This measure eliminates most statutory exceptions of "public place[s]" that previously were excluded from complying with the prohibition of smoking under current law. The measure also expands the definition of a "place of employment" to include for example, vehicles and elevators. Additionally, the measure increases the violation level from a Class D violation to a Class A violation and increases the associated fine from \$50 per day to \$500 per day not to exceed \$2,000 in any 30-day period. Any violation revenue generated would now go to the Department of Human Services (DHS), Tobacco Use Reduction Account (TURA). Under current law, such revenue is deposited into the General Fund.

DHS and certain local county health departments through an intergovernmental agreement with DHS are responsible for the enforcement of public smoking laws or the Clean Air Act. DHS reports that typically Clean Air Act-related laws are somewhat self-enforcing (i.e., citizen complaints to violators or employers resolve issues prior to formal enforcement actions by DHS or the county). DHS, however, currently has a complaint-driven process that seeks first to warn violators prior to the imposition of a civil penalty/violation. The process is outlined in the Department's administrative rules. DHS reports that it levies few, if any fines or violations under current law. What enforcement actions the Department does takes, or is undertaken via county health departments, is paid for using Tobacco Prevention and Education Program (TPEP) funding. The revenue source for this account is tobacco tax.

To implement this measure, DHS would shift from current TPEP priorities (e.g., second hand smoke campaign/cessation, etc.) to public awareness of this measure. In other words, the Department would redirect TPEP funding to develop administrative rules, educate the public and employers about the law,

and possibly expand enforcement activities. Additionally, the Department anticipates no additional violation revenue based on its assumption that compliance will not be an issue. Therefore, DHS has categorized this measure as having no fiscal impact.

The Oregon Judicial Department does not anticipate a measurable increase or decrease in operation program expenditures due the increase in the level and amount of the violation.

According to DHS, local county health departments contracting with DHS to enforce the Clean Air Act would not experience a fiscal impact. The intergovernmental agreement for such services would be modified to include the provisions of this measure.

The Legislative Fiscal Office notes that while the intent of this measure is clear, what is unclear is whether there is legislative concurrence with the Department's plan to re-direct existing TPEP funds to implement this measure. Additionally, LFO notes that this measure eliminates most existing exceptions that an employer must provide a smoke-free workplace. These exceptions include, but are not limited to, certain tobacco stores, bars, restaurants, bingo halls, bowling alleys and lounges. All existing exceptions are eliminated and replaced by two narrowly defined exceptions (up to 25 percent of hotel rooms may be designated as smoking rooms and smoking of noncommercial tobacco products for ceremonial purposes under the federal American Indian Religious Freedom Act). Yet, DHS anticipates no change in the number of complaints or enforcement actions for employers with what is perceived to be a high propensity violations beyond what it can do with existing, re-directed resources. Lastly, if one were to assume an increase in complaints and enforcement actions, then the Department may impose violations, and presumably collect revenue above what is currently budgeted. This would have a fiscal impact for the TURA account, especially given the substantial increase in the amount of both the per day penalty and the 30-day maximum penalty that the Department could levy.