



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 constitutional amendment pursuant to section 3519.04 of the Ohio Revised Code. This amendment has been placed on the November 2006 ballot as State Issue 4. State Issue 4 would prohibit laws being passed to limit smoking in facilities listed in the amendment and invalidates local smoking bans. The amendment would require the legislature to pass laws to "limit or prohibit smoking" in the remaining enclosed, public areas of the state.

The expenditure impact on state and local governments of the proposed constitutional amendment appears to slightly lower costs of existing inspections by prohibiting existing state restrictions on smoking in various hazardous areas, in some food preparation areas, and perhaps in other areas. Enforcement and inspection costs for state and local government would rise for regulation of separate smoking areas, but costs cannot be determined since there is no provision in the amendment regarding enforcement and inspection. Also, the content of any future general law regulating smoking in enclosed, public areas is unknown. However, it is likely most costs would occur with implementation over the first year. In cities and other places with smoking bans that will be eliminated, one-time costs to implement the new smoking provisions will occur, but on-going costs may be similar to on-going costs under existing local laws. The attached analysis describes each of these impacts in more detail.

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

Sincerely,

A handwritten signature in black ink that reads "Timothy S. Keen".

Timothy S. Keen
Director

Attachment

State Issue 4

Summary of Proposal and Fiscal Analysis

The proposed amendment to the Ohio Constitution would prohibit enactment of state or local laws to prevent smoking in a list of specific public areas (see below), including separate smoking areas of restaurants, and in private residences and private facilities not open to the public. The amendment would require the legislature to pass laws to “limit or prohibit smoking” in the remaining enclosed, public areas of the state. The constitutional provision would invalidate existing and prohibit future local smoking bans. The amendment appears to prohibit existing state restrictions on smoking in various hazardous areas, in some food preparation areas, and perhaps in other areas. This may slightly lower costs of existing inspections. Enforcement and inspection costs for state and local government would likely rise for supervision of separate smoking areas, but costs cannot be determined since there is no provision in the amendment regarding enforcement and inspection, or what the future law’s content might be to regulate smoking in public areas. However, it is likely most state and local costs would occur with the implementation of new laws over the first year the law is in effect. In cities and other places with smoking bans that will be eliminated, one-time costs to implement the new smoking provisions will occur, but on-going enforcement costs may be similar to on-going costs under the current local law.

Description of Proposal

The proposed amendment to the Ohio Constitution would not allow any state or local laws (or rules) to prevent the smoking of all tobacco products in the following **public** areas:

- separate smoking areas of restaurants,
- most bars,
- bingo or bowling areas,
- racetracks,
- tobacco stores,
- separated areas of hotels, adult day care, and nursing homes,
- facilities from which minors are prohibited;

And in addition, the following **private** areas:

- residences,
- privately owned facilities that are not open to the public.

The amendment would require the legislature to pass laws to “limit or prohibit smoking” in the remaining enclosed, **public** areas of the state. The constitutional provision would invalidate existing and prohibit future local smoking bans.

Components of Fiscal Analysis

Currently, state laws or rules prohibit smoking in at least 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, wholesalers, and retailers.
- Elementary and secondary school students on school district property.
- Child care and day care facilities.
- Food manufacturing 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 constitutional amendment would appear to overturn or make unenforceable several provisions of Ohio law. First, the provision prohibiting anti-smoking laws for a “privately owned facility that is not open to the public” (Section 12 (B)) seems to eliminate or make unenforceable several state laws or regulations regarding smoking prohibitions for underground mines, fireworks companies, food manufacturers, and high-hazard operations containing any flammable or combustible materials or dust. Section 12 (G) of the amendment, which relates to businesses excluding minors, would appear to have a similar effect. These various hazardous operations are often in facilities not open to the public or open to minors. Under the state Fire Code, high-hazard areas are required to be closed to the public. The company owning the operations could still enforce a company no smoking rule (without the benefit of a backing state law) or the area might still be covered by federal law or regulation to ban smoking. Second, smoking in all food preparation areas is prohibited under public health rules. In the case of bars, the amendment seems to overturn this rule. (The wording for the bar exemption from smoking regulation in the constitutional amendment indicates the whole establishment is covered by the exemption—not just the bar area.) In the case of restaurants, the question turns on whether the kitchen area is deemed an area not open to the public and thus exempt from smoking regulation, or whether the whole restaurant is deemed a public facility and thus the kitchen space can be regulated for smoking. To the extent any areas can no longer be regulated for smoking, this may slightly decrease costs to inspectors under local health departments, fire departments, or the state Fire Marshal.¹

¹ Effects on companies of the elimination of state smoking prohibitions for high-hazard and food preparation areas are beyond the scope of this report.

On the other hand, local inspection costs may rise for enforcing the provisions on separate smoking areas in restaurants and other facilities allowed smoking areas. Under current law, smoking areas in restaurants are usually unregulated since it is the businesses' decisions to establish smoking and non-smoking sections and the degree of separation needed. It is not clear whether separate ventilation systems are needed for smoking areas and this decision will affect inspection costs. Inspections of ventilation systems are often the province of building inspectors or fire inspectors.

Twenty-one local bans on smoking in buildings have been adopted in the last few years and this might give some insight about the costs associated with implementing the new separate smoking areas provisions in this proposal. Local health departments involved report one-time costs in educating establishments on the law and initial enforcement of those laws. Columbus, where a local ban is now in place, spent \$200,000 the first year in one-time and enforcement costs. Similar one-time costs might come from this law. Based on Columbus' cost and relative population size compared to the state, \$3 million would be a first-year statewide cost estimate. One difference is that although separating smoking areas may involve fewer facilities, those facilities might pose more difficult and expensive inspection issues per site. The constitutional amendment gives no indication as to what local group would regulate provisions under the law. Presumably, even if smoking areas could not be regulated in any way, the non-smoking areas might be regulated to prevent the entrance of smoke. After the initial education period, routine education efforts may be carried out by local government as part of existing inspections. Other inspections will be triggered in response to public or worker complaints of possible violations.

The content of any future general law regulating smoking in enclosed, public areas is unknown. To the extent this law only "limits" smoking and thus creates additional indoor smoking areas may be a cause for additional regulation. However, what that law might contain is unknown, so no speculation on costs is warranted.

In the 21 cities and other places with existing local smoking bans that will be eliminated by the constitutional amendment, one-time costs to implement the new smoking provisions will occur, but on-going costs may be similar to on-going costs under the local law.