LEGISLATIVE SERVICES AGENCY
OFFICE OF FISCAL AND MANAGEMENT ANALYSIS

301 State House
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FISCAL IMPACT STATEMENT

LS 6408 **DATE PREPARED:** Feb 17, 2000
BILL NUMBER: SB 108 **BILL AMENDED:** Feb 16, 2000

SUBJECT: Disposition of tobacco settlement funds.

FISCAL ANALYST: Alan Gossard, Brian Tabor
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FUNDS AFFECTED: GENERAL
X DEDICATED
FEDERAL

IMPACT: State

Summary of Legislation: (Amended) This bill provides the Indiana Rural Development Council $300,000 for five years. The bill establishes the Rural Community Impact Fund and appropriates $8.2 million (and $3.7 million for the following five years). The bill also increases the amount of funding local boards of health receive from the Local Health Maintenance Fund.

This bill also establishes the Tobacco Fund Executive Advisory Council to make final recommendations to the governor on programs to be funded by the Tobacco Settlement Fund. It also establishes the Tobacco Control Advisory Committee, the Enhanced Health Planning Advisory Committee, and the Prescription Drug Advisory Committee to review program applications and provide oversight and coordination concerning approved programs.

The bill also provides that certain cigarettes may not be sold or possessed in Indiana.

The bill appropriates from the Tobacco Settlement Fund: (1) $50 million for operating expenses for programs recommended by the Tobacco Fund Executive Advisory Council; (2) $7.5 million for addiction services; (3) $2 million for hospice care; (4) $15 million to the State Department of Health for community health centers; (5) $5 million to the Indiana Twenty-first Century Research and Technology Fund for tobacco-related disease research; (6) $10 million for capital costs associated with approved community health center and minority health initiatives; (7) $2.5million to the Local Health Maintenance Fund; (8) $5 million to the Hoosier Assurance Plan for tobacco programs for certain children; and (9) $2.5 million to the Indiana Comprehensive Health Insurance Association (ICHIA) for premium reductions.

Effective Date: July 1, 2000.

Explanation of State Expenditures: (Revised) This bill establishes: (1) the Tobacco Fund Executive Advisory Council and program priorities for expenditures from the Tobacco Settlement Fund; (2) the

Tobacco Control Advisory Committee, the Enhanced Health Planning Advisory Committee, and the Prescription Drug Advisory Committee to make recommendations to the Advisory Council; (4) the process by which expenditure recommendations are provided to the State Budget Committee for final approval of funds; and (5) several initial appropriations from the Tobacco Settlement Fund.

Tobacco Fund Executive Advisory Council: The bill establishes the 15-member Tobacco Fund Executive Advisory Council composed of state employees and lay members. The bill specifies that programs funded from the Tobacco Settlement Fund are to: (1) prevent and reduce tobacco use, especially among children and youth; (2) provide better access to quality health care; (3) increase the availability of quality health care in under served geographic areas and for low income individuals; (4) research treatments and cures for tobacco-related diseases; (5) address the special health care needs of those who suffer most from tobacco-related diseases; and (6) eliminate health disparities for ethnic racial minorities. The Advisory Council is to be staffed by the State Department of Health.

Advisory Committees: The Tobacco Control Advisory Committee and the Enhanced Health Planning Advisory Committee, each consisting of 15 members, are established to provide program recommendations to the Tobacco Fund Executive Advisory Council. Members of a committee who are not state employees receive travel expenses. The State Department of Health is to provide staff to both advisory committees.

The bill also establishes the Prescription Drug Advisory Committee composed of seven members. This Advisory Committee is to recommend to the Tobacco Fund Executive Advisory Council programs that address the pharmaceutical costs of low income and elderly individuals. The Family and Social Services Administration (FSSA) is to provide staff for this committee.

Funding Procedure for Tobacco Settlement Fund Expenditures: The Tobacco Fund Executive Advisory Council is to review all programs recommended by the three advisory committees established by this bill. The Advisory Council may reject, approve, or modify and then approve any recommended program. A program approved by the Advisory Council is to be recommended to the State Budget Committee. The State Budget Committee may approve or reject recommended programs depending on whether the program furthers the purposes of the Tobacco Settlement Fund Program as prescribed by this bill.

Appropriations from Tobacco Settlement Fund: The following sums are appropriated from the Tobacco Settlement Fund.

Appropriation To:	For the Purpose Of:	FY2001	FY2002
State Budget Agency	Tobacco Education, Prevention, and Use Control	$30 M	
State Budget Agency	Pharmaceutical Assistance for Low Income Elderly or Low Income Disabled	20 M	
State Budget Agency	Addiction Services	7.5 M	
State Budget Agency	Hospice Programs	2 M	
State Dept. of Health	Community Health Centers	15 M	
IN 21st Century Research and Technology Fund	Research on Tobacco-related Diseases	5 M	
State Budget Agency	Community Health Centers (Capital costs)	2.3125 M	2.3125 M
Local Health Maintenance Fund	Local Boards of Health	2.5 M	
Div. of Mental Health	Tobacco use by seriously emotionally disturbed children in the Hoosier Assurance Plan	5 M	
State Dept. of Health	Expansion of Local Minority Health Coalitions	2.375 M	
IN Minority Health Coalition and Martin University	Establish a Minority Epidemiology Resource Center	3 M	
	Total Appropriations	$94.6875 M	$2.3125 M

Although the Tobacco Settlement calls for state payments to continue in perpetuity, the following table shows the scheduled annual payments to Indiana from the tobacco companies through FY 2025. Each annual payment is adjusted for forecast reductions in the domestic cigarette sales volume. The distributions for FY 2000 and FY 2001 are also reduced by the current budget appropriations of $18.8 M in FY 2000 and $28.1 M in FY 2001 for the Children's Health Insurance Program (CHIP).

Projected Annual Payments to Indiana from Tobacco Companies (Less CHIP Appropriations) and Accumulated Balances After Appropriations in This Bill (and in lieu of Investment Revenues): FY2000 - FY2025.

FY	Projected Settlement Distribution	Accumulated Balance After Appropriations Provided in This Bill	FY	Projected Settlement Distribution	Accumulated Balance After Appropriations Provided in This Bill
2000 *	$145.3 M	$145.3 M	2013	189.2 M	$2,137.0 M
2001 *	103.0 M	153.6 M	2014	192.1 M	2,329.1 M
2002	157.9 M	309.2 M	2015	195.1 M	2,524.2 M
2003	164.0 M	473.2 M	2016	198.2 M	2,722.4 M
2004	139.6 M	612.8 M	2017	201.3 M	2,923.7 M
2005	141.7 M	754.5 M	2018	198.0 M	3,121.7 M
2006	143.9 M	898.4 M	2019	201.1 M	3,322.8 M
2007	146.2 M	1,044.6 M	2020	204.2 M	3,527.0 M
2008	175.1 M	1,219.7 M	2021	207.4 M	3,734.4 M
2009	177.8 M	1,397.5 M	2022	210.7 M	3,945.1 M
2010	180.6 M	1,578.1 M	2023	213.9 M	4,159.0 M
2011	183.4 M	1,761.5 M	2024	217.3 M	4,376.3 M
2012	186.3 M	1,947.8 M	2025	220.7 M	4,597.0 M

* Settlement figures are reduced by the current budget appropriations of $18.8 M in FY2000 and $28.1 M in FY2001 for the CHIP program.

Appropriations from Interest Generated by the Tobacco Settlement Fund: This bill also appropriates or transfers the following amounts from interest revenue to the Rural Community Impact Fund, the Indiana Rural Development Council, and the Indiana Comprehensive Health Insurance Association (ICHIA).

Appropriations from Interest Revenue of Tobacco Settlement Fund.

	Rural Community Impact Fund	IN Rural Development Council	ICHIA
FY2001	$8.2 M	$0.3 M	$2.5 M
FY2002	3.7 M	0.3 M	-
FY2003	3.7 M	0.3 M	-
FY2004	3.7 M	0.3 M	-
FY2005	3.7 M	0.3 M	-
FY2006	3.7 M	-	-

Projected Available Interest Revenue from the Tobacco Settlement Fund (Less CHIP Appropriations) after Appropriations in this Bill: FY2000 - FY2025.

FY	Projected Available Interest **	FY	Projected Available Interest **
2000 *	$7.5 M	2013	$839.3 M
2001 *	4.6 M	2014	997.7 M
2002	16.2 M	2015	1,173.8 M
2003	36.7 M	2016	1,368.6 M
2004	65.2 M	2017	1,583.2 M
2005	102.2 M	2018	1,818.5 M
2006	148.5 M	2019	2,075.5 M
2007	208.2 M	2020	2,355.6 M
2008	279.6 M	2021	2,660.2 M
2009	363.4 M	2022	2,990.4 M
2010	460.5 M	2023	3,347.9 M
2011	571.6 M	2024	3,734.1 M
2012	697.5 M	2025	4,150.6 M

* Settlement figures are reduced by the current budget appropriations of $18.8 M in FY2000 and $28.1 M in FY2001 for the CHIP program.
** Interest computed at 5% per year.

Imported Cigarette Enforcement: This bill provides that person may not possess, sell, distribute, or transport into Indiana any cigarettes which were intended solely for export outside the United States or that do not meet the labeling, health, or copyright requirements of the federal government. A person would also be barred from affixing Indiana tax stamps to cigarette packages that do not comply with these requirements.

The bill makes the supplying of cigarettes in violation of these import and export provisions a deceptive act under the Deceptive Consumer Sales Act statute. The court may do any of the following under the Deceptive Consumer Sales Act: award reasonable attorney's fees to the prevailing party; issue an injunction (if a party violates the injunction then a fine of up to $15,000 per violation may be assessed); order payment to the state for reasonable costs of the Attorney General's investigation and prosecution; void or limit the application of contracts; order restitution paid to aggrieved consumers; order payment to the state of $500 per violation if a supplier knowingly committed an act constituting a deceptive sale or deceptive and unconscionable act; and if appropriate, allow an elderly person who relies on an uncured or incurable deceptive act to recover treble damages.

The bill also requires that a person importing cigarettes manufactured outside of the United States (but not otherwise banned under this proposal) must file a report with the Department of State Revenue (DOR). The DOR may incur some additional administrative record keeping and rule making expenses associated with this bill, however, it is expected that these costs could be absorbed given the Department's current budget and resources.

A person previously convicted of a misdemeanor under this bill who knowingly possesses more than 12,000 cigarettes (in stamped export packs) would commit an Class D felony. A Class D felony is punishable by a prison term ranging from six months to three years or reduction to Class A misdemeanor depending upon mitigating and aggravating circumstances. The average expenditure to house an adult offender was $17,500 in FY 1998. Individual facility expenditures range from $11,900 to $29,400.(This does not include the cost of new construction.) If offenders can be housed in existing facilities with no additional staff, the average cost for medical care, food, and clothing is approximately $1,825 annually or $5 daily per prisoner. The average length of stay in DOC facilities for all Class D felony offenders is approximately ten and a half months.

Explanation of State Revenues: (Revised) *Imported cigarette enforcement:* This bill would impact the sale of what are commonly referred to as "gray market" cigarettes. Gray market cigarettes are either those which are produced overseas but do not meet federal requirements for sale in the US or those which are produced in the US solely for export and are re-imported. Unlike those in the first category, re-imported US-produced cigarettes are generally legal. They are often sold at a significant discount compared with others produced for the domestic market which meet all federal labeling and health standards.

Effective January 1, 2000, it will be illegal under federal law for gray market cigarettes to be re-imported by anyone other than the manufacturer (Internal Revenue Code, Section 5754). However, inventories of gray market cigarettes do currently exist in Indiana, and their sale would be prohibited upon passage of this bill. Although no specific estimates are available for Indiana alone, it has been estimated that gray market cigarette sales make up between 1% to 4% of the total US market for cigarettes.

The amount of revenue Indiana is due to receive under the Master Settlement Agreement (MSA) with the major tobacco companies could be affected by this bill. The payments made to each state are based on a formula which includes the domestic shipping volume of the manufactures participating in the MSA. The volume adjustment in the accepted formula is shown below:

Actual Payment = Payment + [Payment x 0.98 x Change in Volume)]

If gray market sales are effectively eliminated by this bill, then domestic shipping of cigarettes may increase, resulting in an indeterminable increase in settlement payments to Indiana.

Under this bill, the sale of cigarettes packaged for export bearing Indiana tax stamps would constitute a Class A misdemeanor. If additional court cases occur and fines are collected, revenue to both the Common School Fund and the state General Fund would increase. The maximum fine for a Class A misdemeanor is $5,000 while the maximum fine for a Class D felony is $10,000. Criminal fines are deposited in the Common School Fund. If the case is filed in a circuit, superior or county court, 70% of the $120 court fee that is assessed and collected when a guilty verdict is entered would be deposited in the state General Fund. If the case is filed in a city or town court, 55% of the fee would be deposited in the state General Fund.

Explanation of Local Expenditures: (Revised) *Imported Cigarette Enforcement:* A Class A misdemeanor is punishable by up to one year in jail, and felony defendants are detained in county jails prior to their court hearings. The average daily cost to incarcerate a prisoner in a county jail is approximately $44.

Explanation of Local Revenues: (Revised) *Imported Cigarette Enforcement:* If additional court actions occur and a guilty verdict is entered, local governments would receive revenue from the following sources: (1) The county general fund would receive 27% of the $120 court fee that is assessed in a court of record. Cities and towns maintaining a law enforcement agency that prosecutes at least 50% of its ordinance violations in a court of record may receive 3% of court fees. If the case is filed in a city or town court, 20%

of the court fee would be deposited in the county general fund and 25% would be deposited in the city or town general fund. (2) A $3 fee would be assessed, and if collected would be deposited into the county law enforcement continuing education fund. (3) A $2 jury fee is assessed, and if collected, would be deposited into the county user fee fund to supplement the compensation of jury members.

State Agencies Affected: State Budget Agency, State Department of Health, FSSA, Department of Correction, Department of State Revenue, Attorney General.

Local Agencies Affected: Trial courts, local law enforcement agencies.

Information Sources: Tobacco Settlement projections by Morgan Stanley Dean Witter; Indiana Sheriffs Association; Department of Correction; Department of State Revenue; Mike Pitts, Indiana Petroleum Marketers & Convenience Store Association, (317) 633-4662; "Estimating Tobacco Payments", Issue Brief 99-16, Federal Funds Information for States, September 1, 1999.