SB 942

Department of Legislative Services

Maryland General Assembly
2008 Session

FISCAL AND POLICY NOTE

Senate Bill 942 (Senator Forehand)
Judicial Proceedings

Tobacco Product Manufacturers - Settlement of State Claims - Nonparticipating Manufacturers - Deposit of Funds in Escrow - Codification of Model Statute

This bill codifies the Master Settlement Agreement model statute as enacted by Chapter 169 of 1999 and amended by Chapter 141 of 2001, Chapter 348 of 2004, and Chapter 538 of 2006.

Fiscal Summary

State Effect: None. The change is technical in nature and would not directly affect governmental finances.

Local Effect: None.

Small Business Effect: None.

Analysis

Current Law: In 1998, Maryland and 45 other states signed MSA with the four largest tobacco product manufacturers in the United States. MSA requires these manufacturers to pay the states in exchange for the states releasing them of past, present, and certain future claims. The manufacturers also must fund a national public health foundation and change their advertising and marketing practices and corporate culture to reduce underage smoking.

Chapter 169 of 1999, amended by Chapter 141 of 2001, enacted the MSA model statute, which requires tobacco product manufacturers to either join MSA or deposit funds into escrow based on the number of cigarettes that they sell in Maryland. Tobacco product manufacturers not included in MSA must contribute to an escrow fund to pay a judgment or claim brought by the State or any releasing party located or residing in the State. A releasing party includes • public entities and educational institutions; and • persons or entities seeking relief on behalf of the general public or seeking to recover health care expenses paid or reimbursed by the State. Funds can be released early from escrow under certain circumstances. Otherwise, the escrow funds are released after 25 years. Interest or other appreciation earned on escrow payments reverts back to the tobacco product manufacturer.

The Attorney General may bring a civil action against any tobacco product manufacturer that does not place funds into an escrow account.

Chapter 348 of 2004 changed the formula for the early release of escrow funds deposited by a tobacco product manufacturer that is not participating in MSA. It specified that the escrow payments must be based on the units sold in Maryland. If those escrow payments exceed the amount the manufacturer would be required to pay as a party to MSA, any excess reverts back to the manufacturer.

Chapter 538 of 2006 included in the definition of "units sold" unstamped "roll-your-own" tobacco containers, with each 0.09 ounces of "roll-your-own" tobacco equaling one unit sold, for purposes of the model statute required under MSA.

Background: Under MSA, payments are to be made to the states through escrow accounts. Participating manufacturers are required to pay in to those accounts according to a specified schedule in proportion to there market share. From those accounts, states receive an allocated share. Actual payments are subject to adjustment for various economic and technical factors. One of these adjustments is the "nonparticipating manufacturers adjustment," which reduces payments if the market share of participating manufacturers shrinks as a result of the settlement, as determined by a consultant.

The distribution of MSA funds among states is determined by formula, with Maryland receiving 2.26% of MSA monies which are adjusted for inflation, volume, and prior settlements. In addition, the State collects 3.3% of monies from the Strategic Contribution Fund, distributed according to each state's contribution toward resolution of the state lawsuits against the major tobacco manufactures; this amounts to approximately $28.0 million a year. **Exhibit 1** provides State Cigarette Restitution Fund revenue and expenditure detail for fiscal 2007 to 2009.

Exhibit 1
Cigarette Restitution Fund Budget Estimates
Fiscal 2007-2009
($ in Millions)

	2007 Actual	2008 Working	2009 Allowance
Beginning Fund Balance	**$4.5**	**$12.9**	**$4.2**
Settlement Payments	154.5	150.7	151.5
NPM and Other Shortfalls in Payments[1]	-16.1	-16.5	-16.5
Other Adjustments	7.7	36.1	35.7
Subtotal	**$150.7**	**$183.2**	**$175.0**
Prior Year Recoveries	1.1	1.0	
Total Available Revenue	**$151.8**	**$184.2**	**$175.0**
Health			
Tobacco Use Prevention/Cessation	17.8	17.3	17.3
Cancer Prevention, Evaluation, and Treatment	28.1	25.4	25.5
Substance Abuse	17.1	17.1	17.1
Medicaid	63.7	106.7	97.5
Administration	0.5	1.0	1.0
Subtotal	**$127.1**	**$167.5**	**$158.5**
Other			
Aid to Nonpublic Schools	4.0	3.7	3.7
Crop Conversion	7.6	8.3	8.5
Attorney General	0.2	0.4	0.5
Subtotal	**$11.8**	**$12.4**	**$12.7**
Total Expenses	**$138.9**	**$179.9**	**$171.1**
Ending Fund Balance	**$12.9**	**$4.2**	**$3.9**

NPM: Nonparticipating Manufacturer
[1]The NPM adjustment represents $15.7 million of this $16.1 million in fiscal 2007; an estimate of $16.5 million is used in fiscal 2008 and 2009.
Note: Numbers may not sum to total due to rounding.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Judiciary (Administrative Office of the Courts), Comptroller's Office, Office of the Attorney General, Department of Legislative Services

Fiscal Note History: First Reader - March 17, 2008
ncs/ljm

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