

# South Carolina Board of Economic Advisors

## Statement of Estimated State Revenue Impact

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**Date:** May 20, 2010 (As amended April 21, 2010 by the House)

**Bill Number:** H.B. 3584

**Authors:** Harrell; Bingham; Cooper; Harrison, *et. al.*

**Committee Requesting Impact:** House of Representatives

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### Bill Summary

A bill to amend the Code of Laws of South Carolina, 1976, by adding Section 12-21-625 so as to impose a surtax on each cigarette in an amount of two and one-half cents, provide for the crediting of the revenue from the surtax to the Smoking Prevention and Cessation Trust Fund, the Department of Agriculture for marketing and branding state-grown crops and to assist in relief from natural disasters affecting state-grown crops, the South Carolina Healthy Families Insurance Trust Fund, and the Palmetto Health Care Safety Net Trust Fund, provide for reporting, payment, collection, and enforcement of the surtax, and define "cigarette"; to amend Section 12-21-620, relating to the original cigarette tax, so as to conform definitions; by adding Section 11-11-230 so as to create and establish in the state treasury the Smoking Prevention and Cessation Trust Fund, the South Carolina Healthy Families Insurance Trust Fund, and the Palmetto Health Care Safety Net Trust Fund, all so as to receive deposits of the revenues from the cigarette surtax as specified; by adding Chapter 62 to Title 38 so as to create and establish the South Carolina Healthy Families Insurance Plan, providing for a premium credit not to exceed three thousand dollars to an eligible individual or employer toward the purchase of a qualifying health insurance plan, describing eligibility requirements and the certification process, defining the qualifying individually or employer-sponsored insurance plans, and providing for administration and reporting by the Department of Insurance; and by adding Section 38-74-75 so as to create the Palmetto Health Care Safety Net Program, establishing a self-sustaining and financially independent portion of the premium assistance pool, and providing for eligibility requirements, administration, and reporting by the Department of Insurance and operating guidelines.

### REVENUE IMPACT <sup>1/</sup>

This bill, as amended, is expected to generate \$124,758,333 after adjusting for a loss of \$11,341,667 for stockpiling in FY2010-11. This amended bill is expected to increase funds to the Medical University of South Carolina Hollings Cancer Center by \$5,000,000; to allocate \$5,000,000 to the Smoking Prevention and Cessation Trust Fund; and the remaining annual revenue, an estimated \$114,758,333, shall be deposited in the South Carolina Medicaid Reserve Fund. If any funds remain, \$1,000,000 may be directed annually to the Department of Agriculture. Because the higher tax will reduce cigarette demand, cigarette taxes currently allocated to the General Fund will be reduced by an estimated \$3,671,920 in FY2010-11. Also, in the absence of a stockpiling provision, General Fund business license tax revenue would increase by an estimated \$1,936,667 in FY2009-10.

### Explanation of Action (May 5, 2010) – By the Senate

The Senate concurred in the House amendment and the bill was enrolled for ratification.

### Explanation of Amendment (April 21, 2010) – By the House

The following sections of the bill were affected by the amendment.

**Section 4.** This amended section removed the \$3,000,000 annual funding requirement for five years to the I-95 Corridor Authority. To the extent that funds are available and not otherwise committed, \$1,000,000 would be allocated to the Department of Agriculture annually for five years for the marketing of South Carolina crops and produce as being grown in South Carolina and to assist in relief from natural disasters affecting state-grown crops.

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### **Explanation of Amendment (April 14, 2010) – By the Senate**

The following sections of the bill were affected by the amendment.

**Section 1.** This section would add Section 12-21-625 to amend Section 12-21-620(1) to impose a 50-cent surtax on each pack of 20 cigarettes beginning July 1, 2010 and is expected to generate an estimated \$124,758,333 in FY2010-11. The estimate is net of the three and one-half percent discount allowed each distributor of tobacco products if the tax return is timely filed with the Department of Revenue. The revenue of the surtax would be credited as follows: \$5,000,000 would be allocated to the Medical University of South Carolina Hollings Cancer Center to be used for tobacco-related cancer research; \$5,000,000 would be allocated to the Smoking Prevention and Cessation Trust Fund; and the remaining annual revenue shall be deposited in the South Carolina Medicaid Reserve Fund. Because the higher tax will reduce cigarette demand, cigarette taxes currently allocated to the General Fund will be reduced by an estimated \$3,671,920 in FY2010-11.

**Section 4.** To the extent that funds are available and not otherwise committed, \$3,000,000 would be allocated to the I-95 Corridor Authority annually for five years for a grant program for infrastructure improvements along I-95 and must be matched two to one by the grant recipient. Also, \$1,000,000 would be allocated to the Department of Agriculture annually for five years for the marketing of South Carolina crops and produce as being grown in South Carolina and to assist in relief from natural disasters affecting state-grown crops.

**Section 5.** Except where otherwise stated, this act takes effect upon approval by the Governor.

### **Explanation of Amendment (March 31, 2010) – By the Senate**

**Section 1.** This section would add Section 12-21-625 to amend Section 12-21-620(1) to impose a 50-cent surtax on each pack of 20 cigarettes beginning July 1, 2010 and is expected to generate an estimated \$124,758,333 in FY2010-11. The estimate is net of the three and one-half percent discount allowed each distributor of tobacco products if the tax return is timely filed with the Department of Revenue. The revenue of the surtax would be credited as follows: \$5,000,000 would be allocated to the Medical University of South Carolina Hollings Cancer Center to be used for tobacco-related cancer research; \$5,000,000 would be allocated to the Smoking Prevention and Cessation Trust Fund; \$2,722,000 would be allocated to the Department of Agriculture for the marketing of South Carolina crops and produce as being grown in South Carolina and to assist in relief from natural disasters affecting state-grown crops; \$3,500,000 would be allocated to the I-95 Corridor Authority for a grant program for infrastructure improvements along I-95; and the remaining annual revenue shall be deposited in the South Carolina Medicaid Reserve Fund. Because the higher tax will reduce cigarette demand, cigarette taxes currently allocated to the General Fund will be reduced by an estimated \$3,671,920 in FY2010-11.

Because this amended bill removes the 110% stockpiling limitation on purchases of tobacco products by wholesalers, distributors, and retailers, we have calculated that the stockpiling of cigarettes from the state excise tax increase in the absence of an inventory tax on retailers at the average rate of one month's excise tax collections. Based on the BEA's estimate of \$136,100,000 in FY2010-11, we estimate that the potential loss in cigarette tax revenue from retailers stockpiling cigarettes to avoid the remittance of the increased tax if no inventory tax is included in the proposed legislation is one month's excise tax collections of \$11,341,667 in FY2010-11. This is based upon the legislation being effective before June 1, 2010. Also, in the absence of a stockpiling provision, wholesalers, distributors, and retailers will stockpile cigarettes in the current fiscal year at the rate of one month's excise tax collections and General Fund business license tax revenue would increase by an estimated \$1,936,667

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in FY2009-10.

**Section 2.** The amendment adds language to provide a consistent definition for the term “cigarette” as used in Section 12-21-620 (the current 7-cent excise tax) and Section 12-21-625 (the proposed 50-cent surtax).

**Section 3.** This section would add Section 11-11-230(A) to create in the State Treasury a separate and distinct fund styled the South Carolina Smoking Prevention and Cessation Trust Fund. Earnings and interest on the fund must be credited to the fund. Any balance in the Fund at the end of a fiscal year carries forward to the succeeding fiscal year. The trust fund must transfer \$5,000,000 annually to the Department of Health and Environmental Control to administer a statewide smoking prevention and cessation program.

This section would add Section 11-11-230(B) to create in the State Treasury a separate and distinct fund styled the South Carolina Medicaid Reserve Fund. Earnings and interest on the fund must be credited to the fund. Any balance in the Fund at the end of a fiscal year carries forward to the succeeding fiscal year. The fund may only be appropriated for the restoration and maintenance of effort of the Medicaid program. The fund must not be used to expand any component of the existing Medicaid program.

**Section 4.** Except where otherwise stated, this act takes effect upon approval by the Governor.

### **Explanation of Updated Fiscal Impact (February 7, 2010)**

Public Law 111-3 (H.R.2) became law on February 4, 2009 authorizing the Children’s Health Insurance Program (CHIP) through fiscal year 2013 and increasing federal funding for the program. The program provides health insurance to targeted children of low-income families. One method of funding the program was to increase the federal excise tax on cigarettes from the current rate of 39-cents per pack to 100.66-cents per pack beginning April 1, 2009. The revenue estimate in H.B.3584, Section 1 takes into consideration the effects of H.R.2 and the reduction of General Fund business license tax revenue of 1.6 percent in FY2008-09.

**Section 1.** This section would add Section 12-21-625 to impose a 50-cent surtax on each pack of 20 cigarettes beginning July 1, 2010 and is expected to generate an estimated \$136,100,000 in FY2010-11. On the advice of the Department of Revenue, we have calculated that the stockpiling of cigarettes from the state excise tax increase would remove an estimated \$1,000,000 of state excise tax revenue from FY2010-11 collections. After adjusting for a loss of \$1,000,000 for stockpiling, this section is expected to generate an estimated \$135,100,000 in FY2010-11. The revenue of the surtax would be credited as follows: \$5,000,000 would be allocated to the Medical University of South Carolina Hollings Cancer Center to be used for tobacco-related cancer research, and the remaining annual revenue shall be deposited in the South Carolina Healthcare Trust Fund. Because the higher tax will reduce cigarette demand, cigarette taxes currently allocated to the General Fund will be reduced by an estimated \$3,671,920 in FY2010-11.

### **Explanation of Amendment (May 7, 2009) – By the Senate Finance Committee**

The Senate Finance Committee amended the bill by striking all after the enacting words and inserting the following language:

**Section 1.** This section would add Section 12-21-625 to impose 50-cent surtax on each pack of 20 cigarettes beginning July 1, 2009 and is expected to generate an estimated \$148,300,000 in FY2009-

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10. On the advice of the Department of Revenue, we have calculated that the stockpiling of cigarettes from the state excise tax increase would remove an estimated \$1,000,000 of state excise tax revenue from FY2009-10 collections. After adjusting for a loss of \$1,000,000 for stockpiling, this section is expected to generate an estimated \$147,300,000 in FY2009-10. The revenue of the surtax would be credited as follows: \$5,000,000 would be allocated to the Medical University of South Carolina Hollings Cancer Center to be used for tobacco-related cancer research, and the remaining annual revenue shall be deposited in the South Carolina Healthcare Trust Fund. Because the higher tax will reduce cigarette demand, cigarette taxes currently allocated to the General Fund will be reduced by an estimated \$4,001,430 in FY2009-10.

**Section 2.** The amendment adds language to provide a consistent definition for the term “cigarette” as used in Section 12-21-620 (the current 7-cent excise tax) and Section 12-21-625 (the proposed 50-cent surtax).

**Section 3.** This section would add Section 11-11-230 to create in the State Treasury a separate and distinct fund styled the South Carolina Healthcare Trust Fund. Earnings and interest on the fund must be credited to the fund. Any balance in the Fund at the end of a fiscal year carries forward to the succeeding fiscal year.

**Section 4.** This section limits purchases by wholesalers, distributors, and retailers to one month of no more than 110% of the average monthly amount of cigarettes purchased in the same two months of the previous calendar year in May and June of 2009. Violators are subject to an audit by the Department of Revenue and subject to a civil fine equal to five times the amount of tax owed on the purchased cigarettes in excess of the 110% stockpiling limitation. On the advice of the Department of Revenue, we have calculated that the stockpiling of cigarettes from the state excise tax increase would remove an estimated \$1,000,000 of state excise tax revenue from FY2009-10 collections.

**Section 5.** Except where otherwise stated, this act takes effect upon approval by the Governor.

**Section 6.** The General Assembly would impose the additional surtax on cigarettes on a provisional basis pending any federal expansion of healthcare programs that substantially increase access to healthcare to all individuals. This act, therefore, is repealed effective June 30, 2010 unless the act is extended prior to the date of repeal by a concurrent resolution adopted by each house of the General Assembly.

### **Explanation of Amendment (April 2, 2009) – By the House of Representatives**

**Section 3.** The amendment amends Section 11-11-230(B) to require the South Carolina Healthy Families Insurance Trust Fund to transfer seventy percent of the remaining annual revenue from the cigarette surtax annually to the Department of Insurance to fund the South Carolina Healthy Families Insurance Plan. Section 11-11-230(C) was also amended to require the South Carolina Healthy Families Insurance Trust Fund to transfer twenty percent of the remaining annual revenue from the cigarette surtax annually to the Palmetto Health Care Safety Net Trust Fund. This amendment deletes the requirement that the Board of Economic Advisors would be required to determine the amount of revenue to be transferred annually.

### **Explanation of Amendment (March 31, 2009) – By the House Ways & Means Committee**

**Section 1.** The amendment strikes the phrase “or fifty cents for each pack of cigarettes” to definitively impose the price of the surtax on cigarettes in an amount of two and one-half cents on each cigarette.

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The Committee also amended the amount of the surtax credited to the Department of Agriculture from “one cent from each pack of cigarettes” to “five hundredths of a cent of the surtax on each cigarette” (\$0.0005) for promoting agricultural crops grown in South Carolina.

**Section 2.** The amendment adds language to provide a consistent definition for the term “cigarette” as used in Section 12-21-620 (the current 7-cent excise tax) and Section 12-21-625 (the proposed 50-cent surtax).

**Section 4.** The amendment changes the initial date when the Department of Health and Human Services must submit appropriate requests to the Centers for Medicare and Medicaid Services to allow the use of federal Medicaid funding from January 1, 2011 to “ninety days after the effective date of this chapter”.

### Explanation of Bill filed February 19, 2009

**Section 1.** This section would add Section 12-21-625 to impose 50-cent surtax on each pack of 20 cigarettes beginning July 1, 2009 and is expected to generate an estimated \$148,300,000 in FY2009-10. On the advice of the Department of Revenue, we have calculated that the stockpiling of cigarettes from the state excise tax increase would remove an estimated \$1,000,000 of state excise tax revenue from FY2009-10 collections. After adjusting for a loss of \$1,000,000 for stockpiling, this section is expected to generate an estimated \$147,300,000 in FY2009-10. The revenue of the surtax would be credited as follows: \$5,000,000 would be allocated to the Smoking Prevention and Cessation Trust Fund; one-cent from each pack, or an estimated \$2,966,000 would be credited to the Department of Agriculture to cause the marking or branding of South Carolina agricultural crops or produce as being grown in South Carolina when offered for sale in retail establishments; of the remaining annual revenue, an appropriate amount of funds would be allocated to the South Carolina Healthy Families Insurance Trust Fund and the Palmetto Health Care Safety Net Trust Fund. Because the higher tax will reduce cigarette demand, cigarette taxes currently allocated to the General Fund will be reduced by an estimated \$4,001,430 in FY2009-10.

**Section 2.** This section amends Section 12-21-620 to provide a definition for the term “cigarette”.

**Section 3.** This section would create three (3) separate and distinct trust funds. This section would create in the State Treasury a separate and distinct fund styled the Smoking Prevention and Cessation Trust Fund. Earnings and interest on the fund must be credited to the fund. Each fiscal year, \$5,000,000 credited to the Smoking Prevention and Cessation Trust Fund must be transferred to the Department of Health and Environmental Control to administer a statewide smoking prevention and cessation program. There is also created in the State Treasury a separate and distinct fund styled the South Carolina Healthy Families Insurance Trust Fund to receive an appropriate amount of revenue from the surtax on cigarettes. Earnings and interest on the fund must be credited to the fund. The Department of Insurance must transfer the appropriate amount of funds to the South Carolina Healthy Families Insurance Plan. There is also created in the State Treasury a separate and distinct fund styled the Palmetto Health Care Safety Net Trust Fund. Earnings and interest on the fund must be credited to the fund. Beginning July 1, 2011, and every July first thereafter, the State Treasurer shall make a transfer from the South Carolina Healthy Families Insurance Trust Fund to the Palmetto Health Care Safety Net Fund in an amount determined by the Board of Economic Advisors in accordance with Section 11-11-230.

**Section 4.** Of the funds transferred to the Department of Insurance from the South Carolina Healthy Families Insurance Trust Fund, the department would administer the South Carolina Healthy Families

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Insurance Plan. Beginning July 1, 2010, individuals meeting the eligibility requirements may receive an insurance premium credit of 75% of the actual cost of a qualifying insurance plan not to exceed \$3,000 per year. A qualified "small employer" may receive an insurance premium credit of 67% of the actual cost of a qualifying insurance plan not to exceed \$3,000 per year. Each year thereafter, the Department of Insurance may adjust the amount of the premium credit, but not to less than 50% of the actual cost of coverage. The qualified individual must earn at or less than 200% of the federal poverty level; has not been covered under a health insurance policy for at least twelve consecutive months before the application; is not eligible for or enrolled in Medicare, Medicaid, or any other state or federal government health insurance program; and is between the ages of 19 and 64 years.

**Section 5.** Of the funds transferred to the Department of Insurance from the Palmetto Health Care Safety Net Trust Fund, the department would administer the Palmetto Health Care Safety Net Program. Beginning July 1, 2011, qualified individuals that are at least 19 years of age earning less than 400% of the federal poverty level based on the person's family status may participate in a managed care, premium-assisted program on a first-come, first-served basis. The amount of the annual insurance premium credit changes as the amount of annual family or household incomes change relative to the federal poverty level.

**Section 6.** Except where otherwise stated, this act takes effect upon approval by the Governor.

/s/ WILLIAM C. GILLESPIE, PH.D.

William C. Gillespie, Ph.D.  
Chief Economist

**Analyst:** Martin

<sup>1/</sup> This statement meets the requirement of Section 2-7-71 for a state revenue impact by the BEA, or Section 2-7-76 for a local revenue impact or Section 6-1-85(B) for an estimate of the shift in local property tax incidence by the Office of Economic Research.