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FISCAL IMPACT REPORT

SPONSOR Cervantes ORIGINAL DATE 2/8/16
LAST UPDATED _____ HB _____
SHORT TITLE Add E-Cigarettes to Dee Johnson Air Act SB 289
ANALYST Chenier

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY16	FY17	FY18	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		NFI	NFI	NFI	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From
Department of Health (DOH)

SUMMARY

Synopsis of Bill

Senate Bill 289, in the Dee Johnson Clean Air Act, would add the definition of “e-cigarette” to the list of definitions, would change the definition of smoking to include e-cigarette, and would change the definition of “retail tobacco store” to “retail store” to include any store used primarily for the sale of tobacco products or e-cigarettes.

FISCAL IMPLICATIONS

No fiscal implications were noted.

SIGNIFICANT ISSUES

DOH provided the following:

To date, eight states and 475 municipalities prohibit the use of electronic smoking devices to create 100 percent smoke-free venues (<http://www.no-smoke.org/pdf/ecigslaws.pdf>). In New Mexico, the Dee Johnson Clean Indoor Air Act restricts smoking in public but does not currently restrict the use of e-cigarettes or other

electronic smoking devices (ESDs). At the local level in New Mexico, however, Carlsbad has passed a law that prohibits the use of e-cigarettes in workplaces. Similarly, Santa Fe also prohibits the use of e-cigarettes in workplaces, restaurants, and bars. El Paso, TX, prohibits the use of ESDs in places covered by clean indoor air legislation. In the 2014 New Mexico Tobacco Evaluation Survey, 62 percent of New Mexico adults reported that they “favor” or “strongly favor” prohibiting the use of e-cigarettes inside restaurants, workplaces, and other public places.

Prohibitions on ESD use in public places might be beneficial in multiple ways. First, prohibitions could preserve clean indoor air because ESD aerosol can contain harmful and potentially harmful components, including nicotine and other toxins, and some ESDs can be modified to deliver marijuana and other psychoactive substances. Second, based on the experience that smoke-free policies result in diminished social acceptability of smoking, restrictions on ESD use in public might help support tobacco-free norms. Third, such restrictions could support smoke-free law enforcement because some ESD use can be difficult to distinguish from conventional smoking, thus complicating smoke-free policy enforcement. Accordingly, it is important that efforts to integrate ESDs into smoke-free laws uphold or strengthen, not weaken, existing protections against secondhand smoke exposure.

ESDs are aggressively marketed using similar tactics as those proven to attract youth to cigarette smoking that can result in a lifelong nicotine addiction. Because the adolescent brain is still developing, nicotine use during adolescence can disrupt the formation of brain pathways that control attention, learning, and susceptibility to addiction. Additionally, nicotine poses dangers to pregnant women and fetuses.

(<http://www.cdc.gov/tobacco/stateandcommunity/pdfs/ends-key-facts2015.pdf>)

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

SB 289 relates to:

- SB 4, would amend and enact new sections of the Tobacco Products Tax Act to: 1) change the title of the act to the “Tobacco and Nicotine Products Tax Act”; 2) define “nicotine product” as being different than a “tobacco product”; 3) impose a tax of four cents per milligram of nicotine on nicotine products; 3) require nicotine content labeling on all nicotine products; and 4) permit the Taxation and Revenue Department to conduct periodic compliance checks to ensure accurate nicotine content labeling on nicotine products.
- SB 77, would increase tax rates for cigarettes and tobacco products, expand the types of products subject to the tobacco products tax to include e-cigarettes, and create a new 23% and 41% distribution of net receipts from the cigarette and tobacco products tax respectively to the Children, Youth and Families Department (CYFD) for early childhood education.
- SB 178, would add the definition “fine cigar” to the Tobacco Products Tax Act and change the tax rate for fine cigars from the current tax rate of 25% of the product value to five cents (\$0.05) per cigar in a package containing one unit and three cents (\$0.03) per cigar in a package containing multiple units.

- HB300, would increase tax rates for cigarettes and tobacco products and expand the types of products subject to the tobacco products tax to include e-cigarettes.

TECHNICAL ISSUES

The definition of “e-cigarette” should match the definition enacted last legislative session in the Tobacco Products, E-Cigarette, and Nicotine Liquid Container Act, at section 30-49-2 NMSA (1978).

On page 5, line 7, propose to add "vape shops," after "including smoke shops," and before "cigar shops or hookah lounges."

OTHER SUBSTANTIVE ISSUES

The use of e-cigarettes is disproportionately high among youth and young adults. Nationally, there was an eight-fold increase (1.5% to 13.4%) in current e-cigarette use among high school youth between 2011 and 2014, with e-cigarettes surpassing use of traditional cigarettes (9.2%) in 2014.

In New Mexico, 1 in 10 adults (about 149,000) currently use e-cigarettes (2014 NM Tobacco Evaluation Survey). In addition, 18-29 year olds are more than twice as likely to currently use e-cigarettes than people 30+ years old (16.3% vs. 7.2%).

EC/jle