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FISCAL IMPACT REPORT

SPONSOR Lopez ORIGINAL DATE 2/06/19
 LAST UPDATED 3/14/19 HB _____

SHORT TITLE No Indoor E-cigarette Use SB 338/aSPAC/aHHHC

ANALYST Chilton/Daly

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY19	FY20	FY21	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		NFI	NFI	NFI		

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Regulation and Licensing Department (RLD)

Department of Health (DOH)

SUMMARY

Synopsis of HHHC Amendment

The House Health and Human Services Committee Amendment to Senate Bill 338, as amended, clarifies the scope of the bill by amending its long title to include the phrase “EXPANDING THE SCOPE OF THE DEFINITION OF ‘SECONDHAND SMOKE AND ‘SMOKING’.” It also replaces the word “marijuana” with “cannabis” in two places in the bill.

Synopsis of SPAC Amendment

The Senate Public Affairs Committee amendment to Senate Bill 338 redefines “e-cigarette” to mean an electronic device for oral use that provides a vapor of nicotine or and substance in a way to simulate smoking. It includes devices under any name, to include e-cigarette, e-cigar, e-pipe, etc., but it excludes products regulated as a drug or device by the Federal Drug Administration.

Synopsis of Original Bill

Senate Bill 338 amends the Dee Johnson Clean Indoor Air Act, Section 24-16-3 NMSA 1978, to include e-cigarettes and their vapors from being used and inhaled in the spaces in which tobacco and similar products are prohibited by the act. It newly defines “e-cigarette” and “secondhand smoke” and “smoking” all of which to encompass the use of e-cigarettes along with smoked tobacco and other plant products.

FISCAL IMPLICATIONS

No fiscal impacts are identified by the responding agencies.

SIGNIFICANT ISSUES

The use of e-cigarettes has markedly increased since passage of the Dee Johnson Clean Indoor Air Act in 2007. Among New Mexico youth in ninth to twelfth grades, the prevalence of tobacco smoking has decreased considerably in the last several decades (current smoking, defined as at least once in the past 30 days, is down from 14.4 percent in 2013 to 10.6 percent in New Mexico in 2017), according to data in the New Mexico Youth Risk and Resiliency Survey, <http://www.youthrisk.org/tables/>, a salutary change. But from the same source, current use of e-cigarettes has increased from 8.6 percent in 2013 to 24.6 percent in 2017, a very disturbing trend, as nicotine addiction can occur with either type of product.

The American Academy of Pediatrics states its concern about the increasing use of e-cigarettes as one of the resources available to help pediatricians counsel families about the dangers of e-cigarettes on its website at <https://www.aap.org/en-us/advocacy-and-policy/aap-health-initiatives/Richmond-Center/Pages/Electronic-Nicotine-Delivery-Systems.aspx>

Quick Facts about E-Cigarettes

- E-Cigarettes are the most commonly-used tobacco products among youth, and use is rising at an alarming rate. In 2018, 21 percent of high school students and 5 percent of middle school students reported having used e-cigarettes in the last 30 days. This represents an increase of 1.5 million youth from 2017-2018.¹
- Youth who use e-cigarettes are more likely to use cigarettes or other tobacco products.^{2,6}
- E-Cigarettes contain a liquid solution that is usually flavored. Flavors, which are appealing to children, can include fruit flavors, candy, coffee, piña colada, peppermint, bubble gum, or chocolate. You can read more about the ways the Tobacco Industry uses flavors to lure kids into using tobacco products in “The Flavor Trap,” a report issued by AAP and four partner organizations.
- E-Cigarette solution has chemicals (i.e., anti-freeze, diethylene glycol, and carcinogens like nitrosamines).³
- E-Cigarette devices mimic conventional cigarette use and help re-normalize smoking behaviors.
- E-Cigarettes are not approved for smoking cessation, and the long-term health effects to users and bystanders are still unknown. The chemical compounds in an e-cigarette device can vary between brands.³
- E-liquid from e-cigarettes and refill packs can contaminate skin, leading to nicotine poisoning. Symptoms of nicotine poisoning include vomiting, sweating, dizziness, increased heart rate, lethargy, seizures, and difficulty breathing.³
- In 2014, poison centers in the US reported 3,783 exposures to e-cigarette devices and nicotine liquid, compared to only 1,543 exposures in 2013. In 2015, 3,073 exposures were reported.⁴
- Some states have enacted legislation to require child-resistant packaging for e-cigarettes and liquids, and a bill to do this at the national level was signed into law by President Obama in early 2016.

- E-Cigarette users should always keep e-cigarettes and liquid nicotine locked up and out of the reach of children and follow the specific disposal instructions on the label.⁵
- In 2016, US Surgeon General Vivek Murthy, MD MBA released a report, "E-Cigarette Use Among Youth and Young Adults: A Report of the Surgeon General." The report concluded that youth should not use e-cigarettes due to the health effects on users and on others exposed to secondhand e-cigarette aerosol.⁶

DOH adds the following facts:

The 2016 *Surgeon General's Report on E-Cigarette Use Among Youth and Young Adults* calls on states and localities to include e-cigarettes in smoke-free policies, noting "to protect the public from both secondhand smoke and secondhand aerosol, smoke-free air policies should be modernized to include e-cigarettes." The Surgeon General found that including e-cigarettes in smoke-free policies "will maintain current standards for clean indoor air, reduce the potential for renormalization of tobacco product use, and prevent involuntary exposure to nicotine and other aerosolized emissions from e-cigarettes." (www.surgeongeneral.gov/library/2016ecigarettes/index.html#fullreport)

According to the Centers for Disease Control and Prevention (CDC), e-cigarette aerosol is not as safe as clean air. (www.cdc.gov/tobacco/stateandcommunity/pdfs/ends-key-facts-oct-2016.pdf) E-cigarette aerosol contains nicotine, which is absorbed by users and bystanders. Studies have found other chemicals and toxins present in some e-cigarettes, including formaldehyde, acrolein, volatile organic compounds like toluene, tobacco-specific nitrosamines, and metals like nickel and lead. (http://tobaccocontrol.bmj.com/content/23/suppl_2/ii111.full). These compounds are generally present at levels much lower than in cigarette smoke, although the compounds themselves are found on Food and Drug Administration's list of harmful or potentially harmful substances. (www.fda.gov/TobaccoProducts/GuidanceComplianceRegulatoryInformation/ucm297786.htm). Because of the limited data available on the safety of exposure to e-cigarette emissions, in 2015 the National Institute for Occupational Safety and Health issued a recommendation that e-cigarettes be included in smoke-free workplace policies. (www.cdc.gov/niosh/updates/upd-04-02-15.html)

As of October 1, 2018, 14 states and 789 municipalities prohibit the use of electronic smoking devices to create 100 percent smoke-free venues. (<http://no-smoke.org/wp-content/uploads/pdf/ecigslaws.pdf>). In New Mexico, the Dee Johnson Clean Indoor Air Act restricts cigarette smoking in public but does not currently restrict the use of e-cigarettes or other electronic smoking devices. 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 and Las Cruces also prohibit the use of e-cigarettes in workplaces, restaurants, and bars. El Paso, TX, prohibits the use of e-cigarettes or other electronic smoking devices in places covered by clean indoor air legislation. About 65 percent of adults in New Mexico report that they "favor" or "strongly favor" prohibiting the use of e-cigarettes inside public places (2018 NM Tobacco Evaluation Survey).

RELATED to House Bill 256, which similarly adds e-cigarettes to the products that could not be used in areas covered by the Dee Johnson Clear Air Act, but also expands those locations where tobacco products and e-cigarettes could not be used.