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FISCAL IMPACT REPORT

LAST UPDATED _____

SPONSOR Hickey/Lopez **ORIGINAL DATE** 02/02/2023

SHORT TITLE Local Gov't Tobacco Laws **BILL NUMBER** Senate Bill 179

ANALYST Chilton

REVENUE* (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY23	FY24	FY25		
	Indeterminate but minimally negative	Indeterminate but minimally negative	Recurring	General Fund

Parentheses () indicate revenue decreases.

*Amounts reflect most recent version of this legislation.

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT* (dollars in thousands)

	FY23	FY24	FY25	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
	No fiscal impact	No fiscal impact	No fiscal impact			
Total						

Parentheses () indicate expenditure decreases.

*Amounts reflect most recent version of this legislation.

Relates to House Bills 94, 123, and 124 and Senate Bills 130 and 178

Sources of Information

LFC Files

Responses Received From

Indian Affairs Department (IAD)

Department of Health (DOH)

University of New Mexico Health Sciences Center (UNM-HSC)

Human Services Department (HSD)

No Response Received

Middle Rio Grande Council of Governments (MRGCOG)

SUMMARY

Synopsis of Senate Bill 179

Senate Bill 179 allows local government entities—counties and municipalities—to adopt tobacco regulation measures more stringent than state law, but not less so. Until now, counties and municipalities have been required to regulate tobacco products in the same way as state law.

The bill repeals Section 61-37-24 NMSA 1978, which states, in its entirety, “When a municipality or county, including a home rule municipality or an urban county, adopts an ordinance, charter amendment or regulation pertaining to the sales of tobacco products, the ordinance, charter amendment or regulation shall be consistent with the provisions of the Tobacco Products Act.”

This bill does not contain an effective date and, as a result, would go into effect June 16, 2023, (90 days after the Legislature adjourns) if signed into law.

FISCAL IMPLICATIONS

There is no appropriation in Senate Bill 179.

UNM-HSC notes:

New restrictions on tobacco sales at the municipal and county level would likely reduce cigarette tax proceeds. Cigarette tax proceeds currently fund debt service on bonds that were issued by the New Mexico Finance Authority for UNM Comprehensive Cancer Center capital projects. The funds also support cancer center operations. During the 2021 session, the legislature authorized the NMFA to issue new bonds for the UNM Comprehensive Cancer Center radiation oncology and laboratory expansion in the amount of \$22 million (SB223, Regular Session 2021). The bonds back by this revenue were issued in 2016 and 2021 with maturity dates of 2025 and 2036 respectively. The net proceeds of the Cigarette Tax proceeds to UNM Health Sciences and Cancer Center after bond repayment over the last three fiscal years were: \$3.3 million in FY 2020, \$3.7 million in FY 2021 and \$2.3 million in FY 2022.

SIGNIFICANT ISSUES

Although U.S. tobacco use has fallen markedly since publication of the Surgeon General’s 1984 report on Smoking and Health, it is clear there is still high morbidity and mortality due to use of tobacco, especially among disadvantaged populations (e.g., incarcerated people, people experiencing homelessness, and minority groups). Premature heart disease, chronic lung disease, and lung and pharyngeal cancer are among many disorders linked to tobacco use. Some communities would prefer to disincentivize tobacco use more than others; this bill would permit more stringent regulation than state law mandates.

DOH makes the following points:

Because local control is so integral to tobacco control, the tobacco industry and its allies have historically used, and continue to use, preemptive strategies to thwart smoke-free laws, youth access and retailer licensing restrictions, advertising and promotion regulations, and similar policies. The Public Health Law Center recognizes preemptive language as damaging policy that threatens to reverse public health gains ([Untangling-the-Preemption-Doctrine-in-Tobacco-Control-2018.pdf](https://publichealthlawcenter.org/wp-content/uploads/2018/06/Untangling-the-Preemption-Doctrine-in-Tobacco-Control-2018.pdf) (publichealthlawcenter.org)).

The tobacco industry has leveraged these policies as opportunities to include preemptive clauses while appearing to be on the right side of reducing youth tobacco use. Although the tobacco industry routinely attempts to insert preemption clauses in bills that are specifically related to tobacco, in one egregious example from Hawaii in the final hours of the 2018 legislative session, a dialysis bill was used as a vehicle to preempt counties from regulating tobacco sales. In order for local governments to enact even stronger and more effective tobacco control policies within their jurisdictions, states and territories should oppose preemption but, whenever possible, should seek to include in legislation allowing local governments to enact even stronger and more effective tobacco control policies within their jurisdictions (<https://www.astho.org/globalassets/pdf/tcn-policy-recommendations-guide.pdf>).

IAD comments:

Traditional and commercial tobacco are different in the way that they are planted and grown, harvested, prepared, and used. Traditional tobacco is and has been used in sacred ways by American Indians for centuries. Its use differs by Tribe and commercial tobacco is produced for recreational use by companies, contains chemical additives and is linked with death and disease. It is sometimes erroneously used in place of traditional tobacco for ceremonies. Commercial tobacco use prevention and cessation outreach among American Indians and Alaska Natives should be informed by and tailored to a Tribal community's culture. ...

As sovereign nations federally recognized Indian tribal governments and reservations are not regulated by New Mexico's Tobacco Products Act. However, they must abide by federal policy. The federal law does apply to tribal lands, given that federal and tribal laws apply to members of the tribe.

HSD points out:

The Centers for Disease Control (CDC) note that, “nationwide smoke free policy could save \$700 to \$1,297 for each person not currently covered by a smoke free policy by preventing illness and reducing deaths from secondhand smoke exposure.” Furthermore, CDC suggests that “interventions that increase the price of tobacco products by 20% can save an average of \$72 per person per year in health care costs.” <https://www.cdc.gov/chronicdisease/programs-impact/pop/>

RELATIONSHIP

SB179 relates HB94, HB123, HB124, SB130, and SB178, all of which regulate tobacco use in different ways at the statewide level.

LAC/al/hg/mg