

**LEGISLATIVE EDUCATION STUDY COMMITTEE
BILL ANALYSIS**

Bill Number: HB 428a

51st Legislature, 1st Session, 2013

Tracking Number: .191864.2

Short Title: Tobacco Products Tax Rate & Distribution

Sponsor(s): Representative Mimi Stewart and Others

Analyst: Ian Kleats

Date: March 6, 2013

AS AMENDED

The House Health, Government & Indian Affairs Committee amendments would create additional distributions of tobacco products tax receipts to several beneficiaries. Among those beneficiaries are:

- **the University of New Mexico (UNM) Board of Regents:**
 - **7.0 percent for the Ben Lujan Lung Cancer Research Project;**
 - **1.77 percent for the Health Sciences Center to analyze workforce status and needs in rural and other medically underserved areas of the state;**
- **the Higher Education Department:**
 - **7.67 percent for expanding the New Mexico Health Professional Loan Repayment Program;**
- **the Department of Health:**
 - **6.67 percent to fund school-based health centers;**
 - **1.33 percent for providing coordinated cancer prevention, research, and education services;**
 - **1.10 percent for expanding health professional workforce programs in southwestern New Mexico; and**
- **the Human Services Department:**
 - **0.57 percent for contracting with a consortium of primary care training programs to expand family medicine training opportunities in the state.**

Fiscal Impact, Amendments:

HB 428, as amended, appropriates 26.11 percent of net tobacco product tax receipts to various beneficiaries for different uses.

LESC staff defer to the Taxation and Revenue Department (TRD) estimate provided below. However, the TRD bill analysis likely underestimates the impact of HB 428, as amended, because of the same concern raised under “Original Fiscal Impact,” below.

Estimated Revenue Impact*				R or NR**	Fund(s) Affected
FY 13	FY 14	FY 15	FY 16		
0	2,983	3,088	3,171	R	General Fund
0	1,259	1,304	1,339	R	UNM Health Sciences Center
0	1,102	1,140	1,171	R	Higher Education Department
0	1,307	1,354	1,389	R	Department of Health
0	82	85	87	R	Human Services Department

* In thousands of dollars. Parentheses () indicate a revenue loss.

** Recurring (R) or Non-Recurring (NR).

Original Bill Summary:

HB 428 would amend sections of the *Tobacco Products Tax Act* and add new material to the *Tax Administration Act* effective July 1, 2013. Among its provisions, the bill would:

- clarify the definition of “tobacco product” to exclude products intended to serve as tobacco-use cessation products;
- increase the tobacco product tax rate to 53 percent of the value of tobacco products, up from 25 percent; and
- create a distribution to the Ben Lujan Lung Cancer Research Fund equal to 7.0 percent of tobacco products tax revenue, exclusive of penalties and interest.

Original Fiscal Impact:

HB 428 appropriates 7.0 percent of net tobacco product tax receipts to the Ben Lujan Lung Cancer Research Fund.

Estimated Revenue Impact*				R or NR**	Fund(s) Affected
FY 13	FY 14	FY 15	FY 16		
0	5,730	5,930	6,090	R	General Fund
0	1,010	1,040	1,070	R	Ben Lujan Cancer Research Fund

* In thousands of dollars. Parentheses () indicate a revenue loss.

** Recurring (R) or Non-Recurring (NR).

LESC staff defer to the Taxation and Revenue Department (TRD) estimate provided above. However, the TRD bill analysis likely underestimates the impact of HB 428 because of an incorrectly applied price elasticity of demand. It appears that TRD applied its calculation based on the price of tobacco products prior to the imposition of any tax; instead, for the demand elasticity to be properly applied, the percentage price increase should be calculated relative to current sales price inclusive of the current tax. By not doing this, TRD could be overestimating the decrease in tobacco demand and therefore underestimating the increase to revenues by several hundred thousand dollars.

Original Fiscal Issues:

The estimated fiscal impact of HB 428 could increase General Fund revenue by approximately \$6.0 million in each future fiscal year.

Based on *General Appropriation Act* appropriations for the last five years, the Legislature has appropriated approximately 43.5 percent of General Fund revenue for public education. The reduction of revenue from the General Fund as proposed in this bill could result in increased annual appropriations of \$2.61 million for public education.

The Ben Lujan Lung Cancer Research Fund at the UNM Health Sciences Center would receive slightly more than \$1.0 million per year in distributions.

Substantive Issues:

Negative economic effects of any tax increase should be judged relative to economic impacts from any increased government revenue. General Fund appropriations comprise many diverse uses with the largest proportion going to fund public education. Without strong evidence to the contrary, an assertion that tax increases have a negative economic impact larger than economic base jobs and expenditures associated with public education or any other governmental program might be considered speculative.

Moreover, New Mexico's State Equalization Guarantee education funding formula implies that over 40 percent of increased government expenditures would be spread equitably across the state, impacting small rural communities in a proportionate level to larger urban communities. It is unclear whether the economic activities hindered by this tax increase could ensure the same equitable economic impact to all communities that public school funding would provide, even absent any discussion of the relative economic multiplier effects of the tax policy.

The Tobacco Products Tax is an example of a Pigouvian tax, which is a tax applied to a good or activity that creates a negative social externality. This form of taxation could allow for a double dividend by reducing a socially undesirable outcome while generating revenue that could be dedicated for some other use; in this case, tobacco usage might be considered the undesired activity, and lung cancer research might be considered the beneficial use of tax proceeds. The UNM bill analysis notes that fund provided by HB 428 will support four new research and clinical thrusts, which will assure that New Mexico stays at the national forefront to overcome this most deadly form of cancer.

According to the TRD analysis, New Mexico is one of the states imposing a lower tax rate on tobacco products than cigarettes. Every state except for Pennsylvania has at least some tax on non-cigarette tobacco products¹. The highest rates, as a percentage of wholesale/manufacturer's price, are in Wisconsin (100 percent), Washington (95 percent), Vermont (92 percent), Massachusetts (90 percent), Rhode Island (80 percent), Maine (78 percent), and Alaska (75 percent). Of those states that tax moist snuff, one prevalent non-cigarette tobacco product, at a percentage of the price, the average rate is roughly 37 percent.

Committee Referrals:

HHGIC/HTRC

Related Bills:

None as of March 6, 2013.

¹ <http://www.tobaccofreekids.org/research/factsheets/pdf/0169.pdf>.