

Fiscal impact reports (FIRs) are prepared by the Legislative Finance Committee (LFC) for standing finance committees of the NM Legislature. The LFC does not assume responsibility for the accuracy of these reports if they are used for other purposes.

Current FIRs (in HTML & Adobe PDF formats) are available on the NM Legislative Website (www.nmlegis.gov). Adobe PDF versions include all attachments, whereas HTML versions may not. Previously issued FIRs and attachments may be obtained from the LFC in Suite 101 of the State Capitol Building North.

FISCAL IMPACT REPORT

ORIGINAL DATE 02/22/13
 SPONSOR Stewart LAST UPDATED 02/28/13 HB 428/aHHGAC
 SHORT TITLE Tobacco Products Tax Rate & Distribution SB _____
 ANALYST Walker-Moran

REVENUE (dollars in thousands)

Estimated Revenue					Recurring or Nonrecurring	Fund Affected
FY13	FY14	FY15	FY16	FY17		
\$0.0	\$2,983.0	\$3,088.0	\$3,171.0	\$3,265.0	Recurring	General Fund
\$0.0	\$1,259.0	\$1,304.0	\$1,339.0	\$1,378.0	Recurring	UNM Health Sciences Center
\$0.0	\$1,102.0	\$1,140.0	\$1,171.0	\$1,205.0	Recurring	Higher Education Department
\$0.0	\$1,307.0	\$1,354.0	\$1,389.0	\$1,430.0	Recurring	Department of Health
\$0.0	\$82.0	\$85.0	\$87.0	\$90.0	Recurring	Human Services Department
\$0.0	\$6,733.0	\$6,971.0	\$7,157.0	\$7,368.0	Recurring	TOTAL

(Parenthesis () Indicate Revenue Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY13	FY14	FY15	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	\$0.0	\$107.9	\$107.9	\$215.8	Recurring	Human Services Department (GF + FF)

(Parenthesis () Indicate Expenditure Decreases)

Relates to: HB398, SB19, SB47, SB87, and SB178. Conflicts with SB408.

SOURCES OF INFORMATION

LFC Files

Responses Received From

University of New Mexico (UNM)
 Taxation and Revenue Department (TRD)
 Department of Health (DOH)

Human Services Department (HSD)
Attorney General’s Office (AGO)
Department of Finance and Administration (DFA)

SUMMARY

Synopsis of HGIAC Amendment

HGIAC amendment adds language to define that the 7 percent distribution from the tax administration suspense fund is for the health science center to conduct lung biology research focused on smoking studies, lung cancer and chronic obstructive pulmonary disease drug development under the Speaker Ben Lujan lung cancer research project. This amendment adds a second distribution for the UNM health sciences center of 1.77 percent to conduct analyses related to health professional work force status and needs in rural and other medically underserved areas of the state.

Another distribution is made to the higher education department of 7.67 percent for the purpose of expanding the NM health professional loan repayment program to further recruit and retain additional health care professional in rural and other medically underserved areas of the state.

Another distribution is made to the department of health: 6.67 percent for the purpose of providing funds to school-based health centers to expand access to quality accessible student and community health centers; 1.33 percent for the purpose of providing coordinated cancer prevention, research and education services, including access to clinical trials in rural and other medically underserved areas of the state; and 1.10 percent for the purpose of expanding health professional work force programs developed in SW NM to better educate, recruit and retain students, medical residents and primary care providers in rural and medically underserved areas of the state.

Another distribution is made to the human services department of 0.57 percent for the purpose of contracting with a consortium of primary care training programs to expand and improve the quantity and quality of family medicine residency training opportunities in other medically underserved areas of the state

Synopsis of Original Bill

House Bill 428 amends the Tobacco Products Tax Act, NMSA 1978, §§ 7-12A-1 through 7-12A-10 (the “Act”), by amending the definition of “tobacco product” to various types of tobacco products intended for human consumption, but does not include tobacco products used in a product approved by the United States Food and Drug Administration as tobacco-use cessation product.

The bill also amends section 7-12A-3 NMSA 1978, to increase the tobacco product excise tax rate from 25 percent to 53 percent of the product value of the tobacco products.

The bill also adds a new section to the Act calling for the distribution pursuant to Section 7-1-6.1 NMSA 1978 from the tax administration suspense fund to the Ben Lujan cancer research fund at the University of New Mexico (UNM) Health Sciences Center in an amount equal to 7 percent of the net receipts, exclusive of penalties and interest, attributable to the tobacco products tax

The effective date of this bill is July 1, 2013. The changes are applicable to receipts from the tobacco products tax attributable to payments from the first purchaser on taxable events that occur on or after July 1, 2013.

FISCAL IMPLICATIONS

As reported by the Taxation and Revenue Department (TRD), tobacco demand is responsive to price changes. When prices go up demand will go down, thereby affecting the fiscal impact. Baseline tobacco products tax base from the February 2013 Consensus General Fund Forecast was adjusted to reflect reduced demand in response to the proposed tax increase using an assumed demand elasticity of -0.4.

SIGNIFICANT ISSUES

As reported by the UNM, death from lung cancer is a significant and terrible burden for New Mexicans. It is the second most common type of cancer in New Mexican women (after breast cancer) and men (after prostate cancer) and the most common cause of cancer-related mortality in men and women. While causally linked to smoking, New Mexican's may also acquire lung cancer through their involvement in uranium mining and other industrial or laboratory exposures. Across the nation and in New Mexico, certain forms of lung cancer are increasingly being diagnosed in younger patients, particularly females, who have never smoked, and the etiology of this form of disease is unknown. Each year, more than 200 newly diagnosed patients with lung cancer are treated at the UNM CRTC. The UNM CRTC has been a leader in the development of new cancer therapies for lung cancer and the development of new therapeutic approaches in clinical trials (see #11 below). This RPSP expansion request 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.

As reported by the TRD:

New Mexico is one of the states currently imposing a lower tax rate on tobacco products. Every state except for PA has at least some tax on non-cigarette tobacco products. The highest rates, as a percentage of wholesale/manufacturer's price, are in WI (100 percent), WA (95 percent), VT (92 percent), MA (90 percent), RI (80 percent), ME (78 percent), and AK (75 percent). Of those states that tax moist snuff at a percentage of the price, the average rate is roughly 37 percent, despite very low rates in SC (5 percent), TN (6.6 percent), and WV (7 percent).

The provisions of this bill may help the TRD in its compliance efforts. Following sharp increases in the cigarette tax over the last several years, the tobacco products tax is now significantly lower than the cigarette tax as a percent of value. This bill would create tax equity between cigarettes and other tobacco products, thus alleviating the incentive of a merchant attempting to classify cigarettes as other tobacco products.

As reported by the Department of Health (DOH):

It is important to note that HB428a has become a vehicle for the proposed funding of numerous and varied efforts outlined in individual bills previously analyzed by DOH. HB428 contains similar language as SB87, which would appropriate \$265,000 to UNM Health Sciences Center to add staffing to perform health workforce analysis.

The distribution to HED to expand the New Mexico Health Professional Loan Repayment Program would help address issues of health care professional shortages.

The distribution to DOH involves increased revenue for SBHCs, coordinated cancer prevention, research, education and access to clinical trials, and workforce programs.

SBHCs provide care for many uninsured adolescents providing a much needed point of access to health care services. Of the 42,977 visits to SBHCs in school year 2011-2012, 61% (26,216) were to non-white adolescents (2012 OSAH SBHC Annual Status Report). “SBHCs have the capacity to increase access to basic health care for low-income children and adolescents. Data suggests they are perceived as acceptable by students and families and can target underserved racial and ethnic minorities, thereby fostering equity in access to care and health outcomes for the most vulnerable populations.” (Institute of Medicine, Highlights and Considerations for State Health Policymakers, 2009)

HB428a contains the same language as proposed in SB178 which provides for coordinated cancer prevention, research, and education services, including access to clinical trials in rural areas. SB178 specifies that DOH provide these services through a nonprofit statewide network of health care providers engaged in conducting clinical trials, providing educational services to physicians and patients and coordinating with organizations that provide support services to cancer patients and their families.

HB428a contains language proposed in HB398 relating to funding for a health professional work force program developed in Southwestern New Mexico.

The distribution to HSD in the Bill is related to SB408, which appropriates \$85 thousand dollars, from the General Fund to HSD with the goal of expanding and improving the quantity and quality of family medicine residency training opportunities in the State.

ADMINISTRATIVE IMPLICATIONS

The TRD reports a moderate to high administrative impact. Revisions would be needed to forms, instructions, and publications. Taxpayer and department personnel education will be needed. A new revenue accounting account will need to be established in order to distribute to the new fund. GenTax would need modification to allow the new rate, but the current effective date of the legislation does not allow enough time to implement these changes due to the current upgrade to GenTax. The TRD will not be able to implement the GenTax modifications required to implement this bill until at least October 1, 2013, after the effective date of the legislation.

HSD would need at least one additional employee to achieve the needs outlined in the amendment. The average FTE cost is \$107,926.59 (\$64,000.47 Federal Funds, \$37,558.45 General Fund).

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

SJM 15 creates a task force to study the relationship between tobacco use and employer costs, including the impacts on organizations that employ tobacco users.

SM 22 proposes to create a task force to study the relationship between tobacco use and employer costs, including the impacts on organizations that employ tobacco users.

Conflicts with SB408, Human Services Primary Care Training.

OTHER SUBSTANTIVE ISSUES

Disparities issues reported by DOH: In 2011, NM high school males used spit tobacco products (14.8 percent) and cigars (19.3 percent) at significantly higher rate than females (3.9 percent and 10.7 percent, respectively). (www.youthrisk.org, 2011 NM High School YRRS Report) Similar patterns are seen among adults, with 7.6 percent of adult males in NM reporting current spit tobacco use, compared to 0.9 percent of females (2011 NM Behavioral Risk Factor Surveillance System). Significantly higher spit tobacco, cigar, and hookah use is also seen among high school youth who report earning mostly Cs, Ds or Fs in school compared to those earning mostly As and Bs. White students use spit tobacco significantly more often than African-American students. African-American high school students smoke hookah at significantly higher rates than their American Indian, Hispanic and White peers.

As reported by the UNM:

The success of the UNM CRTC has come in part through its significant support from the State of New Mexico. The Center's current RPSP funding, via the State General Fund, as well as its support from NM state cigarette tax revenues, have been critical for faculty (physician and scientist) recruitment, program growth, facility expansion, and development of statewide outreach programs. The State's investment in the UNM CRTC was instrumental in receiving NCI Designation and federal funding, further facilitating program growth. Although the UNM CRTC has continued to grow dramatically since 2003 (see Attachment 1), its annual program funding from the State has not increased since 2003 and has declined slightly with decreasing State revenues. As mentioned above, the UNM CRTC has also supported an increasing burden of cancer care for the uninsured, growing from 14% of patients in 2008 to over 19% in 2012. While the provision of cancer care to all New Mexicans is a critical component of the UNM CRTC's mission, the Center must also maintain the quality of its cancer treatment and research programs in order to be "cutting edge" and competitive with the best Cancer Centers in the nation in order to retain its NCI Designation in 2015. New Mexicans deserve and should continue to have access to the best cancer care possible in their home State.

In 2012, in honor of Speaker Ben Lujan, who has been a patient of the UNM CRTC since 2009, the NM State Legislature passed HB315, establishing a fund of \$1 million dollars (citing tobacco settlement funds) dedicated for lung cancer research and prevention, in honor of the Speaker. Unfortunately, the appropriation accompanying this bill was not completed. The provision of funds to the UNM CRTC through an RPSP expansion would honor this request and would greatly facilitate the recruitment of new essential faculty who are experts in lung cancer therapy, development of infrastructure and new technology for lung cancer screening and diagnosis, and development of new lung cancer treatments through clinical trials, which would assure that all New Mexicans affected from lung cancer have access to the best cancer treatment and benefit from the fruits of cancer research. Moreover, having these funds be recurring, rather than non-recurring, would assure that the Center could build critical lung cancer research and treatment programs that would be sustained in the coming years.

Does the bill meet the Legislative Finance Committee tax policy principles?

1. **Adequacy:** Revenue should be adequate to fund needed government services.
2. **Efficiency:** Tax base should be as broad as possible and avoid excess reliance on one tax.
3. **Equity:** Different taxpayers should be treated fairly.
4. **Simplicity:** Collection should be simple and easily understood.
5. **Accountability:** Preferences should be easy to monitor and evaluate

EWM/svb:blm