

**LEGISLATIVE BUDGET BOARD**  
**Austin, Texas**

**FISCAL NOTE, 86TH LEGISLATIVE REGULAR SESSION**

**April 16, 2019**

**TO:** Honorable Senfronia Thompson, Chair, House Committee on Public Health

**FROM:** John McGeady, Assistant Director    Sarah Keyton, Assistant Director  
 Legislative Budget Board

**IN RE: HB3218** by Thierry (Relating to the regulation of e-cigarettes; requiring an occupational permit; authorizing fees; authorizing administrative penalties.), **As Introduced**

**Estimated Two-year Net Impact to General Revenue Related Funds** for HB3218, As Introduced: a negative impact of (\$1,355,555) through the biennium ending August 31, 2021. The bill would have a positive net impact of \$194,000 on the General Revenue-Dedicated Tobacco and E-Cigarette Education and Enforcement Fund through the biennium.

The bill would make no appropriation but could provide the legal basis for an appropriation of funds to implement the provisions of the bill.

**General Revenue-Related Funds, Five-Year Impact:**

Fiscal Year	Probable Net Positive/(Negative) Impact to General Revenue Related Funds
2020	(\$1,258,555)
2021	(\$97,000)
2022	(\$97,000)
2023	(\$97,000)
2024	(\$97,000)

**All Funds, Five-Year Impact:**

Fiscal Year	Probable Savings/(Cost) from <i>General Revenue Fund</i> 1	Probable Revenue Gain/(Loss) from <i>General Revenue Fund</i> 1	Probable Savings/(Cost) from <i>Tobacco and E- Cigarette Education and Enforcement Fund</i>	Probable Revenue Gain/(Loss) from <i>Tobacco and E- Cigarette Education and Enforcement Fund</i>
2020	(\$1,161,555)	(\$97,000)	(\$2,143,597)	\$2,240,597
2021	\$0	(\$97,000)	(\$3,664,372)	\$3,761,372
2022	\$0	(\$97,000)	(\$3,664,372)	\$3,761,372
2023	\$0	(\$97,000)	(\$3,664,372)	\$3,761,372
2024	\$0	(\$97,000)	(\$3,664,372)	\$3,761,372

<b>Fiscal Year</b>	<b>Change in Number of State Employees from FY 2019</b>
2020	30.0
2021	30.0
2022	30.0
2023	30.0
2024	30.0

## **Fiscal Analysis**

The bill would amend the Health and Safety Code as it relates to the regulation of e-cigarettes, requiring an occupational permit, authorizing fees, and authorizing administrative penalties.

The bill would create the General Revenue-Dedicated Tobacco and E-Cigarette Education and Enforcement Fund. The bill amends Chapter 161 of the Health and Safety Code to reallocate cigarette and tobacco product advertising fee revenue from General Revenue to the General Revenue-Dedicated Tobacco and E-Cigarette Education and Enforcement Fund. Under current law, cigarette and tobacco product advertising fee revenue is deposited to General Revenue, as the Tobacco Education and Enforcement Fund referenced in Chapter 161 of the Health and Safety Code was never created.

The bill would require manufacturers, distributors, and retailers of e-cigarettes to be permitted by the Health and Human Services Commission (HHSC). The bill would authorize HHSC to set the permit fees in an amount up to \$1,000 for manufacturers, up to \$500 for distributors, and up to \$150 for retailers. The bill would authorize HHSC to impose an administrative penalty against permit holders for violations. Permit fees and administrative penalties would be deposited to the General Revenue-Dedicated Tobacco and E-Cigarette Education and Enforcement Fund.

Note: This legislation would do one or more of the following: create or recreate a dedicated account in the General Revenue Fund, create or recreate a special or trust fund either in, with, or outside of the Treasury, or create a dedicated revenue source. Legislative policy, implemented as Government Code 403.095, consolidated special funds (except those affected by constitutional, federal, or other restrictions) into the General Revenue Fund as of August 31, 1993 and eliminated all applicable statutory revenue dedications as of August 31, 1995. Each subsequent Legislature has reviewed bills that affect funds consolidation. The fund, account, or revenue dedication included in this bill would be subject to funds consolidation review by the current Legislature.

## **Methodology**

The bill would require HHSC to establish a new program to regulate e-cigarettes. HHSC indicates that this would require the agency to review applications for permits, conduct on-site inspections, investigate complaints, and take enforcement actions when necessary. This analysis assumes 30 manufacturers, 500 distributors, and 29,816 retailers of e-cigarettes would apply for e-cigarettes.

HHSC would require 3.0 FTEs to manage and coordinate the program, 7.0 FTEs to process permits, 18.0 FTEs to conduct inspections across the state, and 2.0 FTEs to act as enforcement staff. This analysis assumes that inspectors would be stationed throughout the state, and would travel to conduct periodic checks of a sampling of retailers and through complaint investigations. There would also be ongoing program costs for equipment, supplies, postage, and other related expenses. The cost of these FTEs and related activities would be \$3,305,152 in fiscal year 2020, and \$3,664,372 in subsequent fiscal years.

In fiscal year 2020, \$1,161,555 of the costs above would be funded through General Revenue to hire staff and prepare the program to launch on January 1, 2020. After January 1, 2020, the program costs of \$2,143,597 in fiscal year 2020 and \$3,664,372 in subsequent fiscal years would be funded through the new General Revenue-Dedicated Tobacco and E-Cigarette Education and Enforcement Fund. This analysis assumes that permit fees would be set to recover the costs of administering program, generating revenue of \$2,143,597 in fiscal year 2020 and \$3,664,372 in subsequent fiscal years.

The Comptroller of Public Accounts indicates that the reallocation of cigarette and tobacco product advertising fee revenue would decrease revenue to General Revenue by \$97,000 in each fiscal year, and would increase revenue to the General Revenue-Dedicated Tobacco and E-Cigarette Education and Enforcement Fund by \$97,000 in each fiscal year.

Administrative penalty revenue cannot be determined, as the number of penalties that may be assessed under the bill could not be estimated.

The bill's provisions would have a negative impact on General Revenue of \$1,258,555 in fiscal year 2020 and \$97,000 in subsequent fiscal years. The bill's provisions would have a positive impact on the General Revenue-Dedicated Tobacco and E-Cigarette Education and Enforcement Fund of \$97,000 in each fiscal year.

### **Technology**

Technology costs to collect information on entities issued e-cigarette permits are estimated to be \$76,000 in fiscal year 2020 and \$7,176 in subsequent fiscal years.

### **Local Government Impact**

No fiscal implication to units of local government is anticipated.

**Source Agencies:** 304 Comptroller of Public Accounts, 529 Health and Human Services Commission, 537 State Health Services, Department of

**LBB Staff:** WP, AKi, MNa, BH