

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 87TH LEGISLATIVE REGULAR SESSION

April 1, 2021

TO: Honorable Jane Nelson, Chair, Senate Committee on Finance

FROM: Jerry McGinty, Director, Legislative Budget Board

IN RE: SB248 by Johnson (relating to the regulation of and permits for the sale or delivery of cigarettes, tobacco products, and e-cigarettes; requiring permits; imposing fees; providing administrative penalties.), **Committee Report 1st House, Substituted**

Estimated Two-year Net Impact to General Revenue Related Funds for SB248, Committee Report 1st House, Substituted : a positive impact of \$900,500 through the biennium ending August 31, 2023.

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:

<i>Fiscal Year</i>	Probable Net Positive/(Negative) Impact to General Revenue Related Funds
2022	\$1,017,000
2023	(\$116,500)
2024	\$1,673,500
2025	(\$116,500)
2026	\$1,673,500

All Funds, Five-Year Impact:

<i>Fiscal Year</i>	Probable Revenue Gain/(Loss) from General Revenue Fund 1	Probable Savings/(Cost) from General Revenue Fund 1	Change in Number of State Employees from FY 2021
2022	\$2,219,000	(\$1,202,000)	3.0
2023	\$46,000	(\$162,500)	3.0
2024	\$1,836,000	(\$162,500)	3.0
2025	\$46,000	(\$162,500)	3.0
2026	\$1,836,000	(\$162,500)	3.0

Fiscal Analysis

The bill would add Chapter 147 to the Health and Safety Code to create a new e-cigarette retailer permit. The new chapter would require a new e-cigarette retailer permit for any engaged in business as an e-cigarette retailer in Texas. The permit would function in a similar manner as the cigarette and tobacco retailer's permits under Chapters 154 and 155 of the Tax Code. The e-cigarette retailer permit would expire on the last day of May of even numbered years and a separate permit would be required for each business location. The fee for the permit would be \$90 for e-cigarette retailers already holding a cigarette or tobacco retailer's permit and \$180 for e-cigarette retailers that do not. A late fee of \$50 would be added to permittees who do not renew

their permits in a timely manner. Revenue from the permit fee would be deposited to the credit of the General Revenue Fund and could first be appropriated to the Comptroller for administering the permitting of e-cigarette, cigarette, and tobacco retailers, and for administering certain disciplinary actions against those retailers.

The bill would amend Chapter 161 of the Health and Safety Code to expand the definition of e-cigarette to include a consumable liquid solution or other material aerosolized or vaporized during the use of an electronic cigarette or similar device, regardless of whether the liquid or other material contains nicotine.

The Comptroller would be required to prescribe the form and content of the e-cigarette retailer permit application by October 1, 2021 and to begin accepting applications by that date. Retailers would not be required to hold the permit until January 1, 2022.

The bill would amend Chapters 154 and 155 of the Tax Code to create a new interstate warehouse's permit. The new permit would allow an interstate warehouse to receive untaxed tobacco products and store them exclusively for sale or delivery to licensed or permitted cigarette and tobacco taxpayers in another state. A permitted Texas distributor could not hold an interstate warehouse's permit at the same location where they hold a distributor's permit. An interstate warehouse permittee would be prohibited from intrastate sales of tobacco products without written authorization from the Comptroller. The fee for an interstate warehouse's permit would be \$300 and it would expire on the last day of February each year.

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. The fund, account, or revenue dedication included in this bill would be subject to funds consolidation review by the current Legislature.

Methodology

This analysis assumes that 20,000 taxpayers already holding cigarette or tobacco retailer's permits and 200 taxpayers who do not have one of those permits would get the e-cigarette retailer permit. The holders of cigarette or tobacco retailer's permits would pay \$90 and the retailers who do not have one of those permits would pay \$180 every even-numbered year. Because the permits expire at the end of May of even-numbered years and the permit first would be required in January 2022, fiscal year 2022 would see additional revenue compared to future years as retailers would be paying the fee for a 5-month period by January 2022 and then the full 2-year permit by June 2022. For odd years, it is assumed that 5 percent of the taxpayer roster would turn over and prorated permit fees would be remitted.

The bill would add Section 161.0901 to the Health and Safety Code which would provide for higher fine amounts for certain violations than the fine amounts prescribed by Sections 154.1142 and 155.0592 of the Tax Code, which would be repealed. The amount of increased fine revenue is not expected to be significant.

The new interstate warehouse's permit would produce a small revenue gain but because there are expected to be few permittees, the revenue gains are not expected to be significant.

The Comptroller's office reports that the administrative costs to implement the provisions of the bill would total \$1.2 million in fiscal year 2022 and \$162,500 in each subsequent year. The cost include a one-time technology cost of \$1,039,500 and the funds necessary to hire three Taxpayer Compliance Officer IIs to handle the new tax type. The Comptroller's office indicates that two additional field collectors and one additional phone collector would be needed to address delinquencies and other enforcement activities.

Technology

The Comptroller's office reports a one-time technology cost of \$1,039,500 to build a new system for permitted taxpayers to register and report sales and use taxes on electronic nicotine delivery system vapor products.

Local Government Impact

No fiscal implication to units of local government is anticipated.

Source Agencies: 304 Comptroller of Public Accounts

LBB Staff: JMc, KK, SD, BRI