

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 88TH LEGISLATIVE REGULAR SESSION

April 10, 2023

TO: Honorable Morgan Meyer, Chair, House Committee on Ways & Means

FROM: Jerry McGinty, Director, Legislative Budget Board

IN RE: HB4865 by Harris, Cody (Relating to the taxation of cigars, tobacco products, and oral nicotine products; providing penalties; creating criminal offenses; requiring and expanding the applicability of occupational permits; imposing a tax.), **As Introduced**

The overall fiscal impact of the bill cannot be estimated.

According to the Comptroller's Office, revenue impacts related to the remote seller permits cannot be estimated but would provide a positive impact to General Revenue Related Funds in the 2024-25 biennium.

As estimated by the Comptroller's Office, the fiscal impact due to the new oral nicotine products tax would be (\$13,863,480) for the 2024-25 biennium.

Additionally, the bill will have a direct impact of a revenue loss to the Property Tax Relief Fund of (\$1,758,000) for the 2024-25 biennium. Any loss to the Property Tax Relief Fund must be made up with an equal amount of General Revenue to fund the Foundation School Program.

General Revenue-Related Funds, Five- Year Impact:

<i>Fiscal Year</i>	Probable Net Positive/(Negative) Impact to General Revenue Related Funds
2024	(\$3,863,374)
2025	(\$10,000,106)
2026	(\$8,585,178)
2027	(\$8,860,663)
2028	(\$9,061,663)

All Funds, Five-Year Impact:

<i>Fiscal Year</i>	Probable Savings/(Cost) from General Revenue Fund 1	Probable Revenue Gain/(Loss) from General Revenue Fund 1	Probable Revenue Gain/(Loss) from Property Tax Relief Fund 304	Probable Revenue Gain/(Loss) from Physician Ed. Loan Repayment 5144
2024	(\$762,374)	(\$3,101,000)	(\$437,000)	\$0
2025	(\$798,106)	(\$9,202,000)	(\$1,321,000)	\$0
2026	(\$881,178)	(\$7,704,000)	(\$1,343,000)	(\$1,427,000)
2027	(\$965,663)	(\$7,895,000)	(\$1,368,000)	(\$1,180,000)
2028	(\$965,663)	(\$8,096,000)	(\$1,395,000)	(\$932,000)

<i>Fiscal Year</i>	<i>Change in Number of State Employees from FY 2023</i>
2024	11.0
2025	11.0
2026	11.0
2027	11.0
2028	11.0

Fiscal Analysis

The bill would amend Chapter 155 of the Tax Code, regarding the cigars and tobacco products tax, to create a remote retail seller permit. The bill would add Chapter 164 to the Tax Code, to impose a tax on oral nicotine products.

The bill would require remote sellers to obtain a remote retail seller permit to sell cigars or pipe tobacco remotely into Texas. The permit fee would be \$180 and the permittee would be required to remit all pertinent sales and excise taxes on cigars and pipe tobacco they sell into Texas.

The bill would create an oral nicotine products tax at a rate of \$1.20 per ounce on the first sale in Texas. It would provide for a personal use exemption from the tax for persons who personally transport oral nicotine products in quantities or amounts that would ordinarily retail at \$4 or less if the person uses and does not offer the products for sale.

The Comptroller would be required to adopt rules necessary to implement changes made by the bill by January 1, 2024.

The bill would take effect September 1, 2023 except that the remote retail seller permit and oral nicotine product tax would not be required until April 1, 2024.

Methodology

This fiscal analysis is based on the 2024-25 Biennial Revenue Estimate and convenience store product share data from the August 2020 issue of Convenience Store News. The number of potential remote seller permittees is unknown as is the volume of cigars and pipe tobacco they may sell into the state. The amount of cigars in each tax class to be sold into Texas is also unknown, therefore the revenue impact of the remote seller permits cannot be determined.

The definition of oral nicotine products in the bill does not include synthetic nicotine which could inhibit the taxability of future products. Under current Comptroller practice, oral nicotine products intended for oral consumption by a means other than inhalation are subject to the tobacco products tax; losses of current taxation are included in the table above, along with offsetting gains from the new oral nicotine products tax. Under the tobacco products tax, items are taxed at a rate of \$1.22 per ounce. Any items weighing less than 1.2 ounces are taxed as if they weigh 1.2 ounces. The proposed oral nicotine products tax would tax items at a rate of \$1.20 per ounce, with no floor weight for the purposes of calculating the tax due. The removal of the floor weight would result in a significant decrease in revenue relative to the current tobacco products tax.

The Comptroller's office anticipates needing to hire eleven FTEs to administer the provisions of the bill: two Managers (I and IV) and one Program Specialist, beginning in fiscal year 2024 as a level II and reaching level V by fiscal year 2027, would be needed to provide training and subject matter expertise for the new tax; seven Taxpayer Compliance Officers would be needed, beginning at level II in fiscal year 2024 and reaching level V by fiscal year 2027, to pursue collections of delinquent taxes and reports and to accommodate the added taxpayers in filing and paying the tax; and one Customer Service Representative III would be needed to handle the increase in administrative functions within the agency as a result of adding the new tax type. This analysis assumes administrative costs of \$762,374 in fiscal year 2024, increasing to \$965,663 in fiscal year 2027 and continuing in subsequent years.

Local Government Impact

No fiscal implication to units of local government is anticipated.

Source Agencies: 304 Comptroller of Public Accounts

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