

LEGISLATIVE FISCAL OFFICE
Fiscal Note



Fiscal Note On: **HB 635** HLS 23RS 1159

Bill Text Version: **REENGROSSED**

Opp. Chamb. Action: **w/ SEN COMM AMD**

Proposed Amd.:

Sub. Bill For.:

Date: June 1, 2023	1:02 PM	Author: HOLLIS
Dept./Agy.: Revenue/Treasury		Analyst: Deborah Vivien
Subject: Increase tax on vape products		

REVENUE/TAXATION DEPT RE1 -\$861,000 GF RV See Note Page 1 of 2
Increases the rate of the excise tax on vapor products and electronic cigarettes and dedicates a portion of the avails of such increase to payment of salaries and related benefits for La. State Police

Current law imposes a tax of \$0.05 per milliliter of consumable nicotine liquid solution or other material containing nicotine that is depleted as a vapor product is used. The proceeds accrue to the state general fund.

Proposed law increases the current tax from \$0.05 per milliliter to \$0.50 per milliliter. Proposed law mandates that all vaping products sold in the state must be purchased from a Louisiana wholesaler. Proposed law limits nicotine products sold in the state to those with a pending, appealed or granted application for a FDA marketing order (product on market by 8/1/16 and applied by 9/9/20) with information submitted by the manufacturer to ATC beginning 10/1/23. The ATC must maintain and publish a directory of products eligible for sale in the state and will limit remittances of sales and excise taxes to the reported products. Proposed law imposes an initial fee of \$2,000 (annual renewal \$500) upon manufacturers to fund the directory. Proposed law dedicates the first \$22 M in proceeds to LA State Police Salary Fund to provide for salaries and the next \$6 M to the Department of Wildlife and Fisheries (WLF), Office of State Fire Marshal (SFM) and LA Public Defender Board (PDB) Compensation Fund, which is created in the bill. Any money in the fund is to be divided equally between WLF, SFM and PDB and is to be used solely for salary increases at each agency, subject to appropriation. Effective July 1, 2023

EXPENDITURES	2023-24	2024-25	2025-26	2026-27	2027-28	5 -YEAR TOTAL
State Gen. Fd.	SEE BELOW	\$0	\$0	\$0	\$0	\$0
Agy. Self-Gen.	SEE BELOW	\$0	\$0	\$0	\$0	\$0
Ded./Other	INCREASE	INCREASE	INCREASE	INCREASE	INCREASE	
Federal Funds	\$0	\$0	\$0	\$0	\$0	\$0
Local Funds	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	\$0
Annual Total						

REVENUES	2023-24	2024-25	2025-26	2026-27	2027-28	5 -YEAR TOTAL
State Gen. Fd.	(\$861,000)	(\$861,000)	(\$861,000)	(\$861,000)	(\$861,000)	(\$4,305,000)
Agy. Self-Gen.	\$10,000	\$10,000	\$10,000	\$10,000	\$10,000	\$50,000
Ded./Other	\$28,000,000	\$28,000,000	\$28,000,000	\$28,000,000	\$28,000,000	\$140,000,000
Federal Funds	\$0	\$0	\$0	\$0	\$0	\$0
Local Funds	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	\$0
Annual Total	\$27,149,000	\$27,149,000	\$27,149,000	\$27,149,000	\$27,149,000	\$135,745,000

EXPENDITURE EXPLANATION

All proceeds from the tax are directed to salaries, which are a recurring expense that must be appropriated. Any increase in salaries is expected to be funded with proceeds of the tax. **The fiscal note assumes that all tax proceeds are used for salary increases. Should collections not materialize as expected and salary increases are awarded, another revenue source, possibly state general fund, may be required to cover the recurring obligations.**

The bill directs the first 1% up to \$10,000 in tax proceeds to the Department of Revenue's Office of Alcohol and Tobacco Control (ATC) for enforcement and directory creation. ATC indicates the need for four agents and an administrative coordinator, including gear, vehicles and IT equipment. The bill also contains a small permit fee for wholesalers that is expected to bring in \$44,000 in the first year and \$11,000 annually thereafter. Both sources of revenue are not enough to cover the estimated costs, which is the reason for the state general fund impact in the table. Estimated costs of enforcement from ATC are:

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REVENUE EXPLANATION

With a tenfold increase in the tax from 5c/ml to 50c/ml, use of vaping products are expected to decline by about 1/3, based on statistical studies of price responses. Even with lower use, the bill is estimated to increase vaping product tax proceeds by an estimated \$27.1 M over the estimated \$5 M already collected, or \$32.1 M. The proceeds would be dedicated as specified in the bill. The state general fund currently receives \$5 M from the tax which would receive about \$861,000 less should tax proceeds materialize in this manner.

After \$10,000 to ATC, the bill redirects the first \$22 M of proceeds to the State Police Salary Fund and then the next \$6 M to the Department of Wildlife and Fisheries, Office of State Fire Marshal and LA Public Defender Board Compensation Fund, which is created in the bill. Any additional funds would presumably remain in the state general fund, which in this case is \$861,000 less than the \$5 M that the SGF currently receives.

The bill also limits sales for resale purchases to those from a Louisiana wholesaler and has ATC create a directory of eligible vaping products to be sold in the state, imposing a fee for non-compliance. Enforcement efforts in the bill appear to make

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Senate
 13.5.1 >= \$100,000 Annual Fiscal Cost {S & H}
 13.5.2 >= \$500,000 Annual Tax or Fee Change {S & H}

House
 6.8(F)(1) >= \$100,000 SGF Fiscal Cost {H & S}
 6.8(G) >= \$500,000 Tax or Fee Increase or a Net Fee Decrease {S}

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Interim Legislative Fiscal Officer

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CONTINUED EXPLANATION from page one:

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EXPENDITURE EXPLANATION

	FY24	FY25	FY26	FY27	FY28
4 ATC Agents - salary and benefits (\$54,954 salary, \$27,477 benefits, 3% growth)	\$329,724	\$339,617	\$349,801	\$360,299	\$371,106
1 Admin Coordinator - salary and benefits (\$30,847 salary, \$15,423 benefits, 3% growth)	46,270	47,658	49,088	50,560	52,077
Agent Gear	10,277				
Agent Vehicles	138,400				
Agent/Admin IT Equipment	15,500				
TOTAL	\$540,171	\$387,275	\$398,889	\$410,860	\$423,184

These figures do not appear to include any costs for development or distribution of the directory, which may require additional resources once product development is known. For enforcement efforts, ATC would be responsible for determining that all products sold at retail were purchased through a state wholesaler and creating the directory. The Tax Collection program would be responsible for determining that taxes are correctly remitted, whether at wholesale or retail, which is in keeping with current practice and would not be impacted substantially by the bill.

The LFO is uncertain of verifiable agency needs given existing enforcement efforts in tobacco establishments. It appears certain that the \$100,000 dual referral threshold will be reached but it is not clear how far it will be surpassed. The agency collects fees in excess of its appropriation each year but may not be able to accommodate the consolidated impacts of all legislation impacting ATC operations this session. The Department of Treasury is responsible for creating the fund and may require additional resources once the aggregate impact of the session is known.

REVENUE EXPLANATION

the tax more readily collectible, though the amount and timing are not certain due to initiation of efforts including training, identifying non-compliance, due process and other unpredictable enforcement conditions. Further, testimony has alluded to the difficulty in hiring enough employees to effectively enforce in the field, particularly on a relatively new tax with a rapidly spreading market. The LFO typically recognizes collections related to new enforcement efforts as they are received to avoid spending funds may not materialize in the anticipated timeline or ever. Given the uncertainty in timing and magnitude in results brought about by enforcement efforts, revenue generated from these efforts are not conducive to supporting recurring expenses until a solid pattern of collections is established by experience.

Current collections of vaping liquid tax proceeds have been increasing annually since FY 16 and totaled about \$5.5 M in FY 22, which was more than double FY 21 collections, though certain timing issues and not necessarily economic activity may have impacted this increase in FY 22. Should vaping sales continue to increase, these figures would also increase. However, the lack of future growth evidenced in the fiscal note acts a proxy for any potential reduction in consumption should the price increase implied by the bill influence sales. **Actual use could fall given the magnitude of the increase in price through the tax imposed by the bill.** Furthering the uncertainty, testimony identified certain methods of sale for vaping products that may allow for tax evasion processes that are difficult to detect, including online sales. It is not clear whether enforcement mechanisms in the bill, such as mandating all sales be made through wholesalers, would preclude online purchases.

Note: At this time, another pending bill this session (HB 179) lowers the vaping tax base by prohibiting sales of certain products, which could further reduce collections as reported in this bill.

Senate Dual Referral Rules
 13.5.1 >= \$100,000 Annual Fiscal Cost {S & H}
 13.5.2 >= \$500,000 Annual Tax or Fee Change {S & H}

House
 6.8(F)(1) >= \$100,000 SGF Fiscal Cost {H & S}
 6.8(G) >= \$500,000 Tax or Fee Increase or a Net Fee Decrease {S}

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