

LEGISLATIVE FISCAL OFFICE
Fiscal Note



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

Bill Text Version: **ENROLLED**

Opp. Chamb. Action:

Proposed Amd.:

Sub. Bill For.:

| | | |
|---|---------|--------------------------------|
| Date: June 7, 2023 | 2:49 PM | Author: HOLLIS |
| Dept./Agy.: Revenue/Treasury | | Analyst: Deborah Vivien |
| Subject: Increase tax on vape products | | |

REVENUE/TAXATION DEPT EN -\$5,000,000 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 \$0.15 per milliliter. Proposed law mandates that all vaping products sold in the state must be purchased from a Louisiana wholesaler and limits nicotine products sold in the state to those associated with an application for a FDA marketing order. The ATC must create 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 permit fee on manufacturers of \$100 per stock keeping unit (SKU) with annual renewal \$100/SKU to fund the directory. Proposed law dedicates the first \$28.6M of tax proceeds to enforcement and various salary increases with any remaining proceeds to the state general fund. Proposed law specifies proof of age requirements for online sales.
 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. | \$540,000 | \$387,000 | \$399,000 | \$411,000 | \$423,000 | \$2,160,000 |
| Ded./Other | INCREASE | INCREASE | INCREASE | INCREASE | INCREASE | |
| Federal Funds | \$0 | \$0 | \$0 | \$0 | \$0 | \$0 |
| Local Funds | \$0 | \$0 | \$0 | \$0 | \$0 | \$0 |
| Annual Total | | | | | | |

| REVENUES | 2023-24 | 2024-25 | 2025-26 | 2026-27 | 2027-28 | 5 -YEAR TOTAL |
|---------------------|--------------------|--------------------|--------------------|--------------------|--------------------|---------------------|
| State Gen. Fd. | (\$5,000,000) | (\$5,000,000) | (\$5,000,000) | (\$5,000,000) | (\$5,000,000) | (\$25,000,000) |
| Agy. Self-Gen. | \$600,000 | \$600,000 | \$600,000 | \$600,000 | \$600,000 | \$3,000,000 |
| Ded./Other | \$14,200,000 | \$14,200,000 | \$14,200,000 | \$14,200,000 | \$14,200,000 | \$71,000,000 |
| Federal Funds | \$0 | \$0 | \$0 | \$0 | \$0 | \$0 |
| Local Funds | \$0 | \$0 | \$0 | \$0 | \$0 | \$0 |
| Annual Total | \$9,800,000 | \$9,800,000 | \$9,800,000 | \$9,800,000 | \$9,800,000 | \$49,000,000 |

EXPENDITURE EXPLANATION

In the bill, proceeds from the vaping tax are primarily directed to salaries, which are a recurring expense that must be appropriated. **The fiscal note assumes that all tax proceeds (less initial expenses at ATC) 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 expenditure table above reflects self-generated revenue spending for ATC for enforcement and statutory dedication spending for salaries as specified on page 2 of this note and funded with the first \$600,000 of tax proceeds. Statutory dedication expenses are denoted as an increase in the amount that salaries increases are appropriated among State Police (LA State Police Salary Fund), the Department of Wildlife and Fisheries (WLF), Office of State Fire Marshal (SFM) and LA Public Defender Board (PDB) in the Compensation Fund created in the bill. Salary increases are subject to appropriation and will presumably be funded by tax proceeds in excess of \$600,000, should that amount materialize.

For enforcement efforts, ATC would be responsible for determining that all products sold at retail comply with current law, including directives included in this bill. The Tax Collection program would be responsible for determining that taxes are **CONTINUED ON PAGE 2**

REVENUE EXPLANATION

Increasing the tax from 5c/ml to 15c/ml is estimated to increase vaping product tax proceeds by an estimated \$9.8M over the estimated \$5 M already collected. The entirety of the proceeds or \$14.8 M would be dedicated to enforcement and salary increases with \$5 M of that amount transferring from the state general fund since the current vaping excise tax is deposited to the state general fund. The bill also specifies proof of age requirements for online purchases which, if effective, may lead to a decline in sales, further reducing anticipated tax proceeds. An estimate of this impact is not included in the figures in the revenue table due to time constraints.

Current vaping tax proceeds of about \$5 M annually flow to the state general fund, which are redirected into fees and statutory dedications by the bill. Of the tax proceeds, the first \$600,000 will be included as self-generated revenue for ATC vaping enforcement and the next \$28 M is directed to salary increases funded through statutory dedications with the first \$22 M of proceeds to the LA State Police Salary Fund 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, to be divided equally between WLF, SFM and PDB. Any proceeds in excess of \$28.6M will presumably remain in the state general fund.

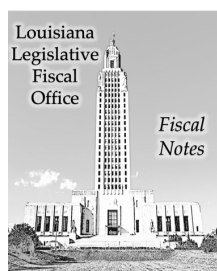
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Senate Dual Referral Rules
 13.5.1 >= \$100,000 Annual Fiscal Cost {S & H}
 13.5.2 >= \$500,000 Annual Tax or Fee Change {S & H}

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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CONTINUED EXPLANATION from page one:

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EXPENDITURE EXPLANATION (continued)

correctly remitted, whether at wholesale or retail, which is in keeping with current practice and would not be impacted substantially by the bill.

Estimated costs of enforcement from ATC are:

| | 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 |

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 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 (continued)

The bill also contains an annual permit fee for manufacturers (\$100/stock keeping unit) that is expected to generate an indeterminate amount accruing to ATC self-generated revenue. An estimate of permit fee proceeds is not reflected in the table above due to time constraints.

The bill contains several enforcement changes including limiting sales for resale purchases to those from a Louisiana wholesaler, ATC creation of a directory of eligible vaping products to be sold in the state, and imposing a penalty for non-compliance. Enforcement efforts in the bill appear to make 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 may not be 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
 13.5.1 >= \$100,000 Annual Fiscal Cost {S & H}
 13.5.2 >= \$500,000 Annual Tax or Fee Change {S & H}

House
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