HB 19-1033

Legislative Council Staff

Nonpartisan Services for Colorado's Legislature

REVISED FISCAL NOTE

(replaces fiscal note dated January 28, 2019)

Drafting Number:	LLS 19-0670	**Date:**	February 12, 2019
Prime Sponsors:	Rep. Tipper; Kennedy Sen. Fields; Priola	**Bill Status:**	Senate HHS
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Bill Topic: LOCAL GOVERNMENTS MAY REGULATE NICOTINE PRODUCTS

Summary of Fiscal Impact:

- ☐ State Revenue
- ☒ State Expenditure *(minimal)*
- ☐ State Transfer
- ☐ TABOR Refund
- ☒ Local Government
- ☐ Statutory Public Entity

The bill makes several changes to the regulation and taxation of cigarettes, tobacco products, and nicotine products. The bill increases state workload, and revenue and expenditures for some local governments.

Appropriation Summary: No appropriation is required.

Fiscal Note Status: This fiscal note has been revised to reflect the reengrossed bill.

Summary of Legislation

The bill makes several changes related to the regulation of cigarettes, nicotine products, and tobacco products (nicotine products) by local governments.

Local regulation of sale to and possession by minors. Under current law, a municipality may enact an ordinance or resolution that prohibits a minor from purchasing nicotine products or that imposes requirements around providing those products to minors that are more stringent than the state. The bill allows counties to enact similar policies. Counties may also enact policies that regulate the possession and purchase by, and sale of nicotine products to minors under the age of 21.

Distribution of state cigarette tax revenue. Under current law, the Department of Revenue distributes 27 percent of state cigarette tax revenues to municipalities and counties in proportion to the amount of state sales tax revenue collected within each jurisdiction. In order to receive its distribution of cigarette tax revenue, local governments cannot impose or attempt to impose fees, licenses, or taxes on people selling cigarettes. The bill removes this condition, thus allowing local governments to impose fees, licenses, and taxes on cigarette sales without losing their portion of state cigarette tax revenue. Local governments that have imposed tax or regulation on cigarette sales are eligible to receive their portion of revenue beginning on the effective date of the bill.

Special sales taxes. The bill permits counties to levy, collect, and enforce a county special sales tax on nicotine products, if approved by voters. The special sales tax may only be imposed in unincorporated areas and cities within the county that do not levy a municipal special sales tax.

If a municipality imposes or decides to impose special sales tax on nicotine products, the county special sales tax is invalid; however, the county and municipality may enter into an intergovernmental agreement specifying the county's levy, collection, and enforcement of the county special sales tax within the municipality.

Special sales taxes on cigarette, tobacco products, and nicotine products that are imposed by a county or municipality are collected and administered by the entity imposing the tax, not the Department of Revenue. The municipality or county imposing the tax may allow retailers to retain a percentage of the tax to cover the cost of collecting and remitting the tax.

In addition, the bill clarifies that statutory and home-rule municipalities and counties have the same authority to tax and regulate cigarette, tobacco, and nicotine products.

Background

Cigarette tax distributions. Under current law, 27 percent of state cigarette tax revenue is required to be distributed to local governments, based on the amount collected in each jurisdiction. The December 2018 Legislative Council Staff economic forecast estimated that $9.8 million in cigarette tax revenue will be distributed to local governments in FY 2019-20 and $9.6 million in FY 2020-21.

Currently, four cities (Aspen, Avon, Basalt, and Edgewater) regulate or tax cigarette products and, therefore, do not receive their portion of state cigarette tax collections. In addition, some cities have raised the age to purchase or possess cigarettes to 21 years old.

State Expenditures

Beginning in FY 2019-20, the bill increases workload for the Department of Revenue by a minimal amount to distribute state cigarette tax revenue to the four cities that currently do not receive a portion of state tax revenue due to their local regulation and taxation of cigarette, nicotine, and tobacco. No change in appropriations is required.

Local Government

Beginning in FY 2019-20, the bill increases revenue and expenditures for local governments, as discussed below.

Revenue. The bill increases revenue for any county that imposes a special sales tax on nicotine products or requires licensing or other fees for entities selling such products. It is unknown how many counties will implement such policies.

In addition, revenue will increase for the four cities (Aspen, Avon, Basalt, and Edgewater) that do not receive a portion of the state cigarette tax revenue under current law. For other local governments, revenue from state cigarette tax distributions will decrease proportionally as four more cities will receive revenue distributions. The amount that these four cities would have received is not available at the time of writing.

Expenditures. For cities and counties that establish new regulation or impose new taxes on nicotine products, expenditures will increase to implementation and enforcement of those policies. Expenditure increases will be at the discretion of the local government and will vary by municipality and county.

Effective Date

The bill takes effect July 1, 2019.

State and Local Government Contacts

Counties	Information Technology	Law
Local Affairs	Municipalities	Revenue