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PREPARED BY: Doug Gibbs  
DATE PREPARED: March 01, 2011  
PHONE: 402-471-0051

**LB 590**

Revision: 00

# FISCAL NOTE

LEGISLATIVE FISCAL ANALYST ESTIMATE

ESTIMATE OF FISCAL IMPACT – STATE AGENCIES *				
	FY 2011-12		FY 2012-13	
	EXPENDITURES	REVENUE	EXPENDITURES	REVENUE
GENERAL FUNDS	\$341,389		\$239,722	
CASH FUNDS				
FEDERAL FUNDS				
OTHER FUNDS				
TOTAL FUNDS	\$341,389		\$239,722	

\*Does not include any impact on political subdivisions. See narrative for political subdivision estimates.

LB 590 amends a number of sections of statute dealing with tobacco and cigarettes sales and taxation.

The bill makes a number of changes and adds new language regarding tobacco licenses, tobacco sales, cigarette taxes, cigarettes on the directory maintained by the Department of Revenue, cigarettes not on the same directory, escrow deposits under the Master Settlement Agreement (MSA), and reporting requirements and restrictions on the sale of cigarettes.

LB 590 imposes new license requirements and penalties for noncompliance, and imposes requirements on persons who are not licensed, including individual Native Americans and tribes. The bill permits the state and the tribes to negotiate a compact and prohibits others from dealing with tribes outside the increased reporting and collection process.

The Department of Revenue would be responsible for issuing two additional types of licensing and would be receiving a number of new reports under the provisions of the bill.

Some of the changes or additions include:

- Expands the definition of "cigarette" to include anything upon which the federal excise tax on cigarettes is paid. This would include small cigars and roll-your-own tobacco that are subject to the other tobacco products tax, but not the cigarette tax in Nebraska;
- Defines and regulates importers of cigarettes upon which no federal or state tax has been paid and requires importers to make escrow payments;
- Manufacturers and importers are required to report all sales into Nebraska within 15 days and the Tax Commissioner may request that they provide copies of reports filed in other states. In addition, each manufacturer and importer is required to supply the state with all federal reports filed;
- Provides that the license of a stamping agent may be terminated for failing to file required reports, selling or possessing unstamped cigarettes, stamping cigarettes from manufacturers that are not in the directory, or holding these cigarettes for more than 10 days;
- Provides for penalties for manufacturers who fail to provide the required reports under the bill, including striking them from the directory;
- Requires "persons" as defined in the bill, to file reports on cigarettes purchased, sold, imported, etc. into the state.
- Adopts procedures for refunds of cigarette taxes for cigarettes sold on a federal installation or to a Native American on a reservation;
- Imposes a new requirement on persons that sell cigarettes from this state into another state;
- Increases penalties for stamping cigarettes that are not on the directory and provides that any contraband cigarettes and cigarette inputs must be destroyed and cannot be stamped or resold;
- Allows manufacturers, importers, wholesalers, and sales affiliates to become licensed as wholesalers if they promise to comply with all requirements, consent to the jurisdictions of the state to control the operation, and name an agent in the state for the service of process;
- Licensed manufacturers, importers, wholesalers, or retailers may also obtain a directory license, which authorizes the holder to possess nondirectory cigarettes for purposes of exporting them to other states. Persons holding wholesaler and directory licenses are to be listed on the Department's website;
- Reporting requirements are imposed upon persons that sell cigarettes to other states from Nebraska. The number sold, the number stamped and for which state, and the brand families of any sold unstamped cigarettes to a person not authorized to stamp cigarettes is required in this report.

The Department of Revenue has indicated that costs to implement LB 590 include a one-time programming cost of \$74,052 to implement the web application for processing electronic data files; another \$5,315 for mainframe programming costs; 3.0 additional FTE for Revenue Agents to review differences between the various reports that are files; 1.0 FTE for an Information Technology Business Systems Analyst; and 1.0 FTE for an Information Technology Application Developer.

Administrative costs are based on the assumption that the Department will require reports to be filed electronically. Administrative costs are significantly higher if paper reports were allowed. The Department indicates that is not possible to have programming in place to handle electronic returns by the bill's operative date, which is three months after the end of the legislative session.

Total costs are estimated as follows:

FY2011-12:	\$ 341,389
FY2012-13:	\$ 239,722
FY2013-14:	\$ 244,517

Given the extensive reporting and monitoring requirements of LB 590, there is no basis to disagree with the Department of Revenue's estimate of cost.

MAR 01 2011

LB 590

LEGISLATIVE FISCAL

Fiscal Note 2011

State Agency Estimate

State Agency Name: Department of Revenue		Date Prepared: 1/28/2011		Date Due LFA: 1/26/2011	
Approved by: Douglas Ewald				Phone: 471-5700	
FY 2011-2012		FY 2012-2013		FY 2013-2014	
Expenditures	Revenue	Expenditures	Revenue	Expenditures	Revenue
General Funds	\$341,389	\$239,722		\$244,517	
Cash Funds					
Federal Funds					
Other Funds					
Total Funds	\$341,389	\$239,722		\$244,517	

LB 590 adopts ten new sections of statute, and revises 25 sections, dealing with tobacco licenses, tobacco sales, cigarette taxes, cigarettes on and not on the directory, Master Settlement Agreement (MSA) escrow deposits, and adds new reporting requirements and restrictions to the sale of cigarettes. These changes are to enforce MSA requirements for nonparticipating manufacturers and cigarette tax collection. It imposes new license requirements and penalties for noncompliance, and imposes requirements on persons who are not licensed, including individual Native Americans and tribes. The bill permits the state and the tribes to negotiate a compact and prohibits others from dealing with tribes outside the increased reporting and collection process. The following summarizes the new requirements:

- Requires quarterly instead of monthly escrow payments by nonparticipating manufacturers.
- Expands the definition of “cigarettes” for purposes of the MSA to include anything upon which the federal excise tax on cigarettes is paid. This includes small cigars and roll-your-own tobacco that are subject to the other tobacco products tax, but not the cigarette tax in Nebraska.
- Defines and regulates importers of cigarettes upon which no federal or state tax has been paid. Importers are required to make escrow payments. Manufacturers and importers are required to report all sales into the state within 15 days. The Tax Commissioner may request that manufacturers and importers provide copies of the PACT Act report filed in all other states. Each manufacturer and importer is required to supply the state with all federal reports filed.
- Allows the license of a stamping agent to be terminated for failing to file any of these reports, selling or possessing unstamped cigarettes, stamping cigarettes from manufacturers that are not in the directory, or holding these cigarettes for more than ten days. Terminated licenses may be reinstated under certain conditions.

Major Objects of Expenditure

Class Code	Classification Title	11-12	12-13	13-14	11-12	12-13	13-14
		FTE	FTE	FTE	Expenditures	Expenditures	Expenditures
X29222	Revenue Agent	3	3	3	\$92,957	\$94,816	\$96,713
A07011	IT Applications Developer	1	1	1	\$41,026	\$41,846	\$42,683
A07081	IT Business Systems Analyst	1	1	1	\$42,725	\$43,580	\$44,451
Benefits.....					\$58,314	\$59,480	\$60,670
Operating Costs.....					\$79,367		
Travel.....							
Capital Outlay.....					\$27,000		
Aid.....							
Capital Improvements.....							
<b>Total.....</b>					<b>\$341,389</b>	<b>\$239,722</b>	<b>\$244,517</b>

- Subjects manufacturers to penalties for failure to report under this act or the PACT Act, including striking the brand families from the directory. Any difference between sales reported for federal excise tax purposes and the PACT Act reports in excess of five percent could also result in striking the appropriate brand families. This difference could arise from different definitions of the federal excise tax, which is broader than Nebraska's definition in the MSA statutes.
- Requires "persons," including those that are not licensed under one of the licensing schemes, to file reports on cigarettes purchased, sold, imported, etc. into the state. There are penalties for failure to report. "Persons," as defined by the bill, includes tribes.
- Requires the Tax Commissioner to list on the Department's website any person claiming to be exempt from enforcement under any of these provisions, including tribes. Tribes do not have to insist on non-enforceability, but if they do, they are put on a list. Persons who are subject to enforcement or otherwise licensed would be prohibited from selling cigarettes or cigarette inputs, or buying cigarettes from anyone on this exempt-from-regulation list, unless the cigarettes are on the directory. The definition of "cigarette inputs" includes paper, filters, and manufacturing equipment. It would also prohibit anyone on the exempt-from-regulation list from selling or transporting cigarettes that are not on the directory.
- Adopts detailed procedures governing refunds of cigarette taxes for cigarettes sold on a federal installation or to a Native American on a reservation.
- Allows the Governor to negotiate a cigarette tax agreement with any federally-recognized tribe. The tribes must collect escrow and tax at a rate identical to the state rate. Tribes may issue their own stamps.
- Allows manufacturers, importers, wholesalers, and sales affiliates to become licensed as a wholesaler if they promise to comply with all requirements, consent to the jurisdiction of the state to control the operation, and name an agent in the state for the service of process. Licensed manufacturers, importers, wholesalers, or retailers may also obtain a directory license, which authorizes the holder to possess non-directory cigarettes for purposes of exporting them to other states. Persons holding wholesaler and directory licenses are to be listed on the Department's website.
- Imposes a new reporting requirement on persons that sell cigarettes from this state into another state. The number sold, the number stamped and for which state, and the brand families of any sold unstamped cigarettes to a person not authorized to stamp cigarettes, is required on this report.
- Increases penalties for stamping cigarettes that are not on the directory and provides that any contraband cigarettes and cigarette inputs must be destroyed and cannot be stamped or resold.

The Department would be responsible for issuing two additional types of licensing and would be receiving many new reports under LB 590. Administrative costs are based on the assumption that the Department will require reports to be filed electronically. Administrative costs are significantly higher if paper reports were allowed. It is not possible to have the programming in place to handle electronic returns by the bill's operative date, which is three months after the end of the legislative session.

Departmental cost to implement LB 590 includes a one-time cost of \$74,052 to implement the web application for processing electronic data files, \$5,315 for mainframe programming costs, three FTE Revenue Agents to review differences between the various reports that are filed, one FTE Information Technology Business Systems Analyst, and one FTE Information Technology Application Developer. Expected costs in FY 2011-12 total \$341,389. Costs for FY 2012-13 and 2013-14 total \$239,722 and \$244,517, respectively. As drafted, the costs would be General Fund expenditures.

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FISCAL NOTE

LEGISLATIVE FISCAL

2011

ESTIMATE PROVIDED BY STATE AGENCY OR POLITICAL SUBDIVISION

State Agency or Political Subdivision Name:(2), Department of Health and Human Services

Prepared by: (3) Willard Bouwens

Date Prepared:(4) February 28, 2011

Phone: (5) 471-8072

*W. Bouwens*

	FY 2011-2012		FY 2012-2013	
	EXPENDITURES	REVENUE	EXPENDITURES	REVENUE
GENERAL FUNDS				
CASH FUNDS				
FEDERAL FUNDS				
OTHER FUNDS				
TOTAL FUNDS	\$0	\$0	\$0	\$0

Return by date specified or 72 hours prior to public hearing, whichever is earlier.

Explanation of Estimate:

There is no Fiscal Impact to the Department of Health and Human Services.

MAJOR OBJECTS OF EXPENDITURE

PERSONAL SERVICES:

POSITION TITLE	NUMBER OF POSITIONS		2011-2012 EXPENDITURES	2012-2013 EXPENDITURES
	11-12	12-13		
Benefits.....				
Operating.....				
Travel.....				
Capital Outlay.....				
Aid.....				
Capital Improvements.....				
TOTAL.....			\$0	\$0