PREPARED BY: Doug Gibbs
DATE PREPARED: February 04, 2009
PHONE: 471-0051

LB 404

Revision: 00

FISCAL NOTE

LEGISLATIVE FISCAL ANALYST ESTIMATE

ESTIMATE OF FISCAL IMPACT – STATE AGENCIES *

	FY 2009-10		FY 2010-11	
	EXPENDITURES	REVENUE	EXPENDITURES	REVENUE
GENERAL FUNDS	$0	$0	$91,175	$0
CASH FUNDS				
FEDERAL FUNDS				
OTHER FUNDS				
TOTAL FUNDS	$0	$0	$91,175	$0

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

LB 404 would adopt the Reduced Cigarette Ignition Propensity Act, with an operative date of July 1, 2010.

The Act requires cigarettes sold in Nebraska to use lower permeability (smolder resistant) bands in the cigarette paper, which are intended to extinguish a burning cigarette after a period of idle activity, and reduce the likelihood of fire as a result of an unattended cigarette. Cigarettes offered for sale in the state would have to be tested in accordance with a prescribed testing method and meet performance standards set forth in the bill.

The State Fire Marshal would have direct responsibility for administration of the Act and primary responsibility for compliance, although the Attorney General and the Department of Revenue would share some of the compliance duties.

The bill institutes a manufacturer's certification fee of $1,000 for each brand family of cigarettes identified in the certification, the fee to be placed in the Reduced Cigarette Ignition Propensity Fund which is created by the Act. Money from the fee is to be used by the State Fire Marshal to defray the actual costs of the processing, testing, enforcement and oversight activities required by LB 404. The State Fire Marshal may adjust the fee annually to ensure it does cover the aforementioned costs. Each cigarette listed in the brand family is to be recertified every three years.

LB 404 institutes civil penalties for violations of the Act:

> Anyone, other than a retailer, who knowingly sells or offers to sell cigarettes in violation of the Act is liable to a penalty not to exceed $10,000 per sale of such cigarettes for a first offense or a penalty not to exceed $25,000 for any subsequent offense, except that the penalty against any one such person or entity cannot exceed $100,000 in any thirty-day period.
>
> A retailer who knowingly sells cigarettes in violation of the Act is liable to a civil penalty not to exceed $500 for a first offense and a penalty not to exceed $2,000 for any subsequent offense if the total number of cigarettes sold or offered for sale does not exceed 1,000. If the number of cigarettes sold or offered for sale exceeds 1,000, the penalty for first offense may be up to $1,000 and for a subsequent offense up to $5,000. The penalty against any one retail dealer may not exceed $25,000 during any thirty-day period.
>
> A manufacturer who knowingly makes a false certification may be liable to a civil penalty of at least $75,000 for a first offense and up to $250,000 for any subsequent offense.

The Reduced Cigarette Ignition Propensity Act preempts any local law on the subject and the Act shall become void if a federal reduced cigarette ignition propensity standard that preempts the Act is adopted and becomes effective.

The Department of Revenue estimates that the fiscal impact of the bill to revenue is insignificant and that costs to implement the bill are minimal.

There is no basis to disagree with the Department of Revenue's estimate of fiscal impact.

The State Fire Marshal estimates expenditures of $91,175 in FY2010-11. These expenditures include hiring a full-time Deputy Fire Marshal and half-time administrative assistant; training costs for certification in testing methods; vehicle rental and mileage for making inspections of retail facilities; supplies; and license fees for access to American Society of Testing and Materials Standard Information. The expenditures are shown as General Funds since there will be no funds in the Reduced Cigarette Ignition Propensity Fund until the second fiscal year of the Act, FY2011-12, when the State Fire Marshal projects that certification fees will first be collected.

FY2011-12 expenditures are estimated by the State Fire Marshal to be $94,732.

The State Fire Marshal also notes that revenue estimates are based on 46 cigarette manufacturers with an average of 5 brand families licensed in Nebraska. At $1,000 per brand family this would equal revenues of $230,000 collected once every three years, since manufacturers are only required to recertify once every three years.

As noted above, the initial start-up costs are projected to be $91,175 in FY2010-11. No revenue is projected in FY2010-11 since fees could not be collected until the program is staffed, rules and regulations are adopted, training has been completed and the new Deputy Fire Marshal trained to become certified in testing methods.

Costs in FY2011-12 are projected to be $94,732 and similar costs for FY2012-13 and thereafter are to be expected. At that rate, the $230,000 in projected revenue would not be adequate to cover the costs incurred by the State Fire Marshal for administration and compliance activities during the three-year certification cycle. The assumption being that all manufacturers would certify sometime in 2011, dependent on how quickly the program could be put in place and that is when the program would first see revenue. The program would not see substantial additional revenue until sometime in 2014.

LB 404 does give the State Fire Marshal the authority to adjust the manufacturer certification fee to defray costs, but since certification is done on a three-year cycle the program could see a shortfall before additional revenue is realized. It is assumed in the absence of adequate Cash Funds that any shortfall would be made up from General Funds

DEPARTMENT OF ADMINISTRATIVE SERVICES

REVIEWED BY	Lyn Heaton	DATE 2/6/09	PHONE 471-2526

COMMENTS

DEPT. OF REVENUE – No basis upon which to disagree.

STATE FIRE MARSHAL – The agency analysis appears reasonable.