

<b>LFC Requester:</b>	<b>Faubion</b>
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**AGENCY BILL ANALYSIS  
2023 REGULAR SESSION**

**SECTION I: GENERAL INFORMATION**

*Check all that apply:*

**Original**     **Amendment**      
**Correction**     **Substitute**   

**Date Prepared:** 02/10/23  
**Bill No:** SB235

**Sponsor:** Hickey  
**Short Title:** TOBACCO PRODUCTS TAX & DEFINITIONS

**Agency Name and Code Number:** Agency Name and Code Number: PED - 924  
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**SECTION II: FISCAL IMPACT**

**APPROPRIATION (dollars in thousands)**

Appropriation		Recurring or Nonrecurring	Fund Affected
FY23	FY24		
None	\$500.0	Nonrecurring	General Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

**REVENUE (dollars in thousands)**

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY23	FY24	FY25		
None	None	None	N/A	NFA

(Parenthesis ( ) Indicate Expenditure Decreases)

**ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)**

	FY23	FY24	FY25	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>Total</b>	None	None	None	N/A	N/A	NFA

(Parenthesis ( ) Indicate Expenditure Decreases)

Duplicates/Relates to Appropriation in the General Appropriation Act

**SECTION III: NARRATIVE**

**BILL SUMMARY**

**Synopsis:** Senate Bill 235 (SB235) would increase the state tobacco products tax rate by 6 percent, from 25 percent to 31 percent of the wholesale price, and distribute the revenues of the tax to a newly created Nicotine Use Prevention and Control Fund. Money in the fund would be subject to appropriation by the Legislature to provide funds to the Department of Health (DOH)

for development of programs, educational materials, and social and traditional media advertising on nicotine use prevention and control for persons age five to 25 years of age, in collaboration with the Public Education Department (PED) and the Higher Education Department (HED),.

The effective date of the bill is July 1, 2023.

### **FISCAL IMPLICATIONS**

The bill would appropriate \$500,000 from the general fund to the Regulation and Licensing Department for expenditure in FY24 to expand the Department's licensure and enforcement duties in regard to nicotine sales and use. The bill would require any unexpended or unencumbered balance remaining at the end of FY24 to revert to the general fund.

### **SIGNIFICANT ISSUES**

Per [Section 22-5-4.4 NMSA 1978](#):

- a school employee who knows, or in good faith suspects, any student of using or abusing alcohol or drugs, is required to report such use or abuse pursuant to procedures established by the local school board.
- no school employee who in good faith reports any known or suspected instances of alcohol or drug use or abuse shall be held liable for any civil damages as a result of such report or his efforts to enforce any school policies or regulations regarding drug or alcohol use or abuse.

PED promulgated rule - [6.12.4 NMAC, Tobacco, Alcohol, and Drug Free Schools](#) – to prohibit the use, possession, and distribution of tobacco products, e-cigarettes and nicotine liquid containers, alcoholic beverages, mood-altering substances and illicit drugs in school buildings, on school premises and by students at school-sponsored activities away from school grounds. The rule requires each local school board or governing body to establish a tobacco, alcohol, and drug-free policy that meets the following requirements:

- The policy shall provide specific rules of conduct prohibiting the use, possession and distribution of tobacco products, e-cigarettes and nicotine liquid containers, alcoholic beverages, mood-altering substances and illicit drugs in school buildings, on school premises and by students at school-sponsored activities away from school grounds.
- Each school district and state-chartered charter school shall detail the prohibited acts and activities under the policy, and shall establish adequate provisions for its enforcement, including the enumeration of possible sanctions or disciplinary action, consistent with applicable statutory and case law.
- The policy shall provide that no school employee who in good faith reports any known or suspected use, possession or distribution of alcoholic beverages, mood-altering substances or illicit drugs shall be held liable for any civil damages as a result of such report or efforts to enforce the policy.
- Each school district and state-chartered charter school shall develop and implement a procedure for effectively communicating the policy to students, their parents and families, school personnel, visitors on school premises, and to local residents, groups, businesses and organizations served by the school.
- Each school district and state-chartered charter school shall post conspicuous notices on all school premises prohibiting the use, possession and distribution of tobacco products, e-cigarettes and nicotine liquid containers, alcoholic beverages, mood-altering substances

and illicit drugs, in school buildings, on school premises and by students at school-sponsored activities away from school grounds.

**PERFORMANCE IMPLICATIONS**

N/A

**ADMINISTRATIVE IMPLICATIONS**

N/A

**CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP**

N/A

**TECHNICAL ISSUES**

N/A

**OTHER SUBSTANTIVE ISSUES**

Under the bill, DOH would administer the funds through its Nicotine Use Prevention and Control (NUPAC) Program, which provides guidance on comprehensive, evidence-based approach to promote healthy lifestyles that are free from tobacco abuse and addiction among all New Mexicans. NUPAC follows recommendations from the Centers for Disease Control and Prevention (CDC), which is congruent with tobacco and nicotine prevention strategies adopted the PED. With the increased revenue from the tax increase and other resources, guidance, and marketing collateral provided by NUPAC, the PED Safe & Healthy Schools Bureau could expand its assistance with promoting the nicotine prevention resources and messages to public schools and charter schools throughout the state.

**ALTERNATIVES**

N/A

**WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL**

N/A

**AMENDMENTS**

N/A