

Department of Planning and Budget 2018 Fiscal Impact Statement

1. Bill Number: HB1605ER

House of Origin	<input type="checkbox"/> Introduced	<input type="checkbox"/> Substitute	<input type="checkbox"/> Engrossed
Second House	<input type="checkbox"/> In Committee	<input type="checkbox"/> Substitute	<input checked="" type="checkbox"/> Enrolled

2. Patron: Terry G. Kilgore

3. Committee: Passed Both Houses

4. Title: Disclosure of information under the Master Settlement Agreement and Non-Participating Manufacturer.

5. Summary: Provides that officers, employees, or agents of the Office of the Attorney General and the Department of Taxation shall share with each other's departments and disclose to the appropriate person or party information in accordance with the Master Settlement Agreement and the Non-Participating Manufacturer Adjustment Settlement Agreement entered into by the Commonwealth on October 10, 2017. The substitute adds that the Office of the Attorney General shall upon the request of a tobacco product manufacturer that has placed funds for a particular year into a qualified escrow account pursuant to subdivision A 2 of § 3.2-4201 provide that tobacco product manufacturer a calculation that demonstrates in reasonable detail the amount of the release, if any, to which such tobacco product manufacturer may be entitled for such year under subdivision B 2 of § 3.2-4201. The bill provides that any records shared by, collected by, disclosed by, or reported or provided to an officer, employee, or agent of the Office of the Attorney General or the Department of Taxation in accordance with such agreements are exempt from the provisions of the Virginia Freedom of Information Act (§ 2.2-3700 et seq.) and the Government Data Collection and Dissemination Practices Act (§ 2.2-3800 et seq.).

6. Budget Amendment Necessary: Yes.

7. Fiscal Impact Estimates: Yes, see line 8.

7a. Expenditure Impact:

<i>Fiscal Year</i>	<i>Dollars</i>	<i>Positions</i>	<i>Fund</i>
2018			
2019	474,822	4	GF
2020	474,822	4	GF
2021	474,822	4	GF
2022	474,822	4	GF
2023	474,822	4	GF
2024	474,822	4	GF

- 8. Fiscal Implications:** The Attorney General and Department of Law (OAG) indicates that this amendment adds language in the tax title that requires the OAG to make a calculation that will determine the amount of escrow NPMs (non-participating manufacturers) are entitled to under Section 3.2-4201.B.2 (Chapter 42 of Title 3.2: Implementation of Tobacco Master Settlement Agreement). This places responsibility on the OAG to perform a calculation that is currently the responsibility of the NPM under Section 3.2-4201.B.2. The OAG would need to add 4 positions to master the terms of the Master Settlement Agreement, the Non-Participating Settlement Agreement, the Independent Auditor report, the additional calculations required to comply with the substitute bill, and manage any challenges and litigation. To perform those functions, they estimate needing 2 attorneys, 1 auditor, and 1 administrative position.

The Department of Taxation provided the following:

Administrative Costs

The Department of Taxation (“the Department”) has not assigned any administrative costs to this bill because the changes required by a single bill such as this can be implemented as part of the annual changes to our systems and forms. As stand-alone legislation, the Department considers implementation of this bill as “routine,” and does not require additional funding.

The Department will provide specific administrative costs on any legislation that is not “routine.” Additionally, the Department will review all state tax legislation likely to be enacted prior to the passage by each house. If the aggregate number of routine bills likely to pass either house is unusually large, it is possible that additional resources will be required. If so, the Department will identify the costs at that time.

Revenue Impact

This bill has no impact on state or local revenue. However, failure to enact this bill may jeopardize Virginia’s ability to receive significant amounts under the Non-Participating Manufacturer Adjustment Settlement Agreement.

- 9. Specific Agency or Political Subdivisions Affected:** Office of the Attorney General and Department of Law, Department of Taxation

- 10. Technical Amendment Necessary:** No.

- 11. Other Comments:** The Department of Taxation indicates:

Current Law

Existing law authorizes the Department and the OAG to disclose information relating to sales of cigarettes and other tobacco products to each other and to any federal, state or local agency. Information could also be disclosed to cigarette manufacturers. These disclosures were related to requirements undertaken by Virginia and other states as part of the Tobacco Master Settlement Agreement that Virginia signed on November 23, 1998.

On October 10, 2017, Virginia signed the Non-Participating Manufacturer Adjustment Settlement Agreement (“NPM Agreement”). Among other things, the NPM Agreement requires disclosures to a clearing house as well as to outside counsel designated by manufacturers. The current law authorizing disclosures related to the Tobacco Master Settlement Agreement does not cover all of the disclosures required by the NPM Agreement.

Proposal

This bill would provide that officers, employees, or agents of the Office of the Attorney General and the Department of Taxation shall share with each other's departments and disclose to the appropriate person or party information in accordance with the Tobacco Master Settlement Agreement and the NPM Agreement entered into by the Commonwealth on October 10, 2017. The bill would also provide that any records shared by, collected by, disclosed by, or reported or provided to an officer, employee, or agent of the Office of the Attorney General or the Department of Taxation in accordance with such agreements are exempt from the provisions of the Virginia Freedom of Information Act (Va. Code § 2.2-3700 et seq.) and the Government Data Collection and Dissemination Practices Act (Va. Code § 2.2-3800 et seq.).