

Department of Planning and Budget

2019 Fiscal Impact Statement

1. **Bill Number:** HB2676

House of Origin ☒ Introduced ☐ Substitute ☐ Engrossed
Second House ☐ In Committee ☐ Substitute ☐ Enrolled

2. **Patron:** R. Lee Ware

3. **Committee:** Finance

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 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>
2019			
2020	\$279,090	2	GF
2021	\$279,090	2	GF
2022	\$279,090	2	GF
2023	\$279,090	2	GF
2024	\$279,090	2	GF
2025	\$279,090	2	GF

8. **Fiscal Implications:** The Attorney General and Department of Law (OAG) indicates that this bill will require the addition of one attorney and one financial expert. They estimate the cost of those personnel to be \$279,090 per year. The OAG also indicates that the cost of the outside counsel to manage any litigation from both the Participating and Non-Participating Manufacturers is indeterminate at this time.

The Department of Taxation provided the following:

Administrative Costs

The Department of Taxation (“the Department”) considers implementation of this bill to be routine and does not require additional funding.

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: Attorney General And Department of Law, Department of Taxation

10. Technical Amendment Necessary: No.

11. Other Comments: The Department of Taxation provided the following summaries:

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.

2018 HB 1605 (2018 Acts of Assembly, Chapter 608) contained language identical to this bill with the exception of the reenactment clause requiring that the law change would not become effective unless reenacted by the 2019 General Assembly.

Proposal

This bill would require the Office of the Attorney General and the Department of Taxation to 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 bill would 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

and the Government Data Collection and Dissemination Practices Act. The bill would also require that the Office of the Attorney General shall, upon request of a tobacco manufacturer that has placed funds for a particular year into a qualified escrow account pursuant to Va. Code § 3.2-4201(A)(2), provide that manufacturer a calculation that demonstrates the amount of release, if any, to which that manufacturer may be entitled for such year under Va. Code § 3.2-4201(B)(2). If enacted during the 2019 Regular Session of the General Assembly, this bill would become effective July 1, 2019.