

# DEPARTMENT OF TAXATION

## 2011 Fiscal Impact Statement

1. **Patron** William K. Barlow

3. **Committee** House Finance

4. **Title** Local Cigarette Tax; Counties

2. **Bill Number** HB 2138

**House of Origin:**

  X   **Introduced**

       **Substitute**

       **Engrossed**

**Second House:**

       **In Committee**

       **Substitute**

       **Enrolled**

**5. Summary/Purpose:**

This bill would authorize all counties, cities and towns to impose a local cigarette tax. Any county cigarette tax authorized by this bill would be limited to 5 cents per pack or the amount levied under state law, whichever is greater.

All cities and towns with general taxing powers are already currently authorized to impose a cigarette tax with no rate limitations. Only two counties, Arlington and Fairfax, are authorized to impose a local cigarette tax, which is limited to the amount of the state cigarette tax rate. The state cigarette tax rate is currently 30 cents per pack of 20 cigarettes.

The effective date of this bill is not specified.

**6. Budget amendment necessary:** No.

**7. Fiscal Impact Estimates are:** Not available. (See Line 8.)

**8. Fiscal implications:**

This bill would have an unknown positive impact on tax revenues for counties. The amount of cigarette tax revenue is unknown because it is not known which counties would impose a local cigarette tax and the rate at which they would impose the tax. Arlington and Fairfax Counties are currently authorized to impose a local cigarette tax. If all of the remaining counties imposed the tax at the maximum rate, passage of this bill could result in \$80.24 million in local revenues each year. Because of the increased sales price of cigarettes if this bill is passed, it is likely that demand for cigarettes would decrease. Any decrease in demand for cigarettes would therefore decrease the amount of state cigarette and sales tax revenues.

**9. Specific agency or political subdivisions affected:**

All localities

**10. Technical amendment necessary: No.**

**11. Other comments:**

Cigarette Taxes

All cities and towns with general taxing powers are already currently authorized to impose a cigarette tax with no rate limitations. According to *Virginia Local Tax Rates, 2009*, published by the Weldon Cooper Center for Public Service, thirty cities and forty-three towns currently report imposing a cigarette tax. Only two counties, Arlington and Fairfax, are authorized to impose a local cigarette tax, which is limited to the amount of the state cigarette tax rate. The state cigarette tax rate is currently 30 cents per pack of 20 cigarettes.

Proposal

This bill would authorize all counties, cities and towns to impose a local cigarette tax. Any county cigarette tax authorized by this bill would be limited to 5 cents per pack or the amount levied under state law, whichever is greater. Any county cigarette tax authorized by this bill would apply within the limits of any town located in such county only with the town's consent. This bill would remove the grandfather clause that enabled localities that were authorized to impose a local cigarette tax prior to January 1, 1977 to continue to do so.

As this bill would not repeal the current authority for cities and towns to impose a cigarette tax with no rate limitations, its effect on the cigarette taxing authority of cities and towns is not clear. A similar inconsistency exists in current law. Under *Va. Code* § 58.1-3840, all cities and towns established with a charter granting general taxing powers to such locality may impose a cigarette excise tax. In contrast, *Va. Code* § 58.1-3830 provides that only counties, cities, and towns may impose a cigarette tax if such county, city, or town had imposed such a tax prior to January 1, 1977. Despite this conflict, the Attorney General ruled in a 1992 opinion, *Opinions of the Attorney General of Virginia*, 1992 at 172, that towns may impose a cigarette excise tax based on the language *Va. Code* § 58.1-3840. It should be noted, however, that *Va. Code* § 58.1-3830 was not discussed in the opinion.

As this bill would grant to all counties the same authority to impose a local cigarette tax that is currently granted to the Counties of Arlington and Fairfax under *Va. Code* § 58.1-3831, it would not effect the cigarette taxing authority of Arlington and Fairfax. Additionally, as *Virginia Local Tax Rates, 2009*, published by the Weldon Cooper Center for Public Service, lists the Counties of Arlington and Fairfax as the only counties reporting a local cigarette tax, it appears that no counties currently impose a local cigarette tax under *Va. Code* § 58.1-3830. Thus, this bill should not effect the authority of any county to impose a grandfathered local cigarette tax under *Va. Code* § 58.1-3830.

The effective date of this bill is not specified.

### Similar Legislation

**House Bill 1750** would increase the Cigarette Tax rate from \$0.30 per pack to \$0.80 per pack of 20 cigarettes and would increase the tax on roll-your-own tobacco from 10% to 27% of the manufacturer's sales price.

**House Bill 1815** would increase the Cigarette Tax rate from \$0.30 per pack to \$1.45 per pack of 20 cigarettes and would increase the tax on roll-your-own tobacco from 10% to 50% of the manufacturer's sales price. The bill also increases the tax rate on certain other tobacco products from 10% to 50% of the manufacturer's sales price.

**House Bill 2038** and **Senate Bill 1085** would require local governing bodies to adopt ordinances that adhere to guidelines and rules established by the Department of Taxation related to cigarette tax enforcement.

cc : Secretary of Finance

Date: 1/15/2011 AM  
DLAS File Name: HB2138F161