

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 80TH LEGISLATIVE REGULAR SESSION

April 4, 2007

TO: Honorable Aaron Pena, Chair, House Committee on Criminal Jurisprudence

FROM: John S. O'Brien, Director, Legislative Budget Board

IN RE: HB3049 by Martinez Fischer (Relating to the punishment for certain intoxication related offenses; creating an offense for aggravated driving while intoxicated.), **As Introduced**

The probable impact of implementing the bill cannot be determined due to the unavailability of reliable data or information related to the alcohol concentration level for prior intoxication related convictions.

The bill would amend the Penal Code by creating the offense of aggravated driving while intoxicated. A person would commit the offense of aggravated driving while intoxicated if the person while driving has an alcohol concentration of .16 or more, or has an alcohol concentration level of .02 or more and is operating a commercial vehicle used to transport passengers or property. The minimum punishment for the offense of aggravated driving while intoxicated would be a Class A misdemeanor, the bill would also provide that such offenders would serve a minimum term of confinement of 30 days.

The bill would also amend the enhanced offenses and penalties provision of the Penal Code by including the offense of aggravated driving while intoxicated in the conditions for which the punishment for various intoxication offenses can be enhanced to a felony of the third degree based on previous intoxication offense convictions.

Under present statute, regardless of the level of alcohol in a person's blood stream the first time offense of driving while intoxicated is a Class B misdemeanor.

According to the Department of Public Safety (DPS) the following number of persons in Texas had an alcohol breath test level of .16 or higher: 21,553 in calendar year 2006, 21,849 in calendar year 2005, and 24,282 in calendar year 2004. There is currently no statewide repository for blood testing for alcohol content; however, alcohol breath tests make up the majority of alcohol concentration level testing in Texas. There is also no central repository of information for the number of alcohol concentration level tests of .02 or more for commercial motor vehicle operators.

In fiscal year 2005, there were 4,715 felony community supervision placements and 42,900 misdemeanor community supervision placements for the offense of driving under the influence. The creation of the offense of aggravated driving while intoxicated would have a more immediate impact on local government by changing the minimum punishment for such offenders from a Class B misdemeanor to a Class A misdemeanor. It's important to note that alcohol concentration level information is not contained with statewide criminal history data or records. Therefore, the number of offenders with punishment enhanced to the level of felony of the third degree as a result of the bill can not be determined because complete criminal history information is not available for basing assumptions related to prior alcohol concentration levels which would activate punishment enhancement.

Local Government Impact

The Nueces County Sheriff's Department reported requiring six additional deputies at a cost of \$329,600 in fiscal year 2008, to implement the provisions of the bill. These costs would fall to

\$242,600 in fiscal year 2009 because there would be no new capital outlay needed.

The Travis County Sheriff's Office reported new operational costs of a minimum of \$202,500 in fiscal years 2008 to 2012 for additional jail bed days at \$45 each. This estimate assumes that only ten percent of all individuals arrested for Driving While Intoxicated would meet the criteria for the proposed offense.

Harris County reported that they would incur some costs to enforce and prosecute the new offense. It costs the county \$60 per day for each jail bed, and the new offense would be a Class A misdemeanor for a first time offender, which could result in a maximum jail stay of 12 months.

The Abilene Police Department reported that there would be no significant fiscal impact to implement the provisions of the bill.

Source Agencies: 696 Department of Criminal Justice

LBB Staff: JOB, ES, GG, KJG