

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 80TH LEGISLATIVE REGULAR SESSION

March 20, 2007

TO: Honorable John Whitmire, Chair, Senate Committee on Criminal Justice

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

IN RE: SB1061 by Williams (Relating to restricting persons who refuse to submit a breath specimen to the operation of a vehicle equipped with an ignition interlock device.), **As Introduced**

While the overall fiscal impact to state costs would be insignificant, the enactment of the bill could result in a loss of federal highway fund revenues to the state in an amount of approximately \$165.8 million in fiscal year 2008 and \$320.3 million each subsequent year.

The bill amends the Transportation Code relating to restricting persons who refuse to submit a breath specimen to the operation of a vehicle equipped with an ignition interlock device.

Section 1 of the bill amends Transportation Code, Section 724.001 which further defines the term "ignition interlock device".

Section 2 of the bill amends Transportation Code, Section 724.002 which adds the applicability of this section to include a license restriction requiring a person to the operation of a motor vehicle equipped with an ignition interlock device.

Section 3 of the bill amends Transportation Code, Section 724.015 which states the information an officer is required to provide a person before requesting a breath specimen. The bill changes the text was amended from a driver license will be automatically suspended to may be automatically suspended. The bill also requires an officer to inform a person that they may be restricted to the operation of a motor vehicle equipped with an interlock device for 180 days, whether or not the person is subsequently prosecuted as a result of the arrest.

Sections 4 and 5 of the bill amend Transportation Code, Section 724.032 which states that the peace officer shall serve notice on the person advising the person of a license suspension or restriction to the use of an ignition interlock device.

Sections 6 and 7 of the bill amend Transportation Code, Section 724.033 which states that if an officer did not serve notice of a license restriction at the time of a refusal to submit to taking of a breath specimen, the Department of Public Safety (DPS) shall mail the notice of the restriction by first class mail. The bill states the contents of the notice shall include information related to the use of an ignition interlock device.

Sections 8 of the bill amends Transportation Code, Section 724.035 which states that if a person refuses the request of a peace officer to submit to the taking of a specimen, DPS shall restrict the person to the use of an ignition interlock device for 180 days or suspend the person's license. The bill also changes the period of suspension for persons with one or more alcohol related or drug related enforcement contacts during the preceding 10 years from a suspension period of up to two years to restricting a person to the use of an ignition interlock device for one year.

Sections 9 through 15 of the bill amend Transportation Code, Sections 724.041, 724.043, 724.044, 724.046, 724.047, and 724.048 which states information on hearings and findings of the court, the waiver of right to a hearing, removal of license restriction, appeal of the administrative hearing relating to restricting a person to drive with an ignition interlock device.

The bill would take effect on September 1, 2007.

Section 3 of the bill would put Texas in non-compliance with Title 49, Code of Federal Regulations, Section 384.226 which requires that states must not mask, defer imposition of judgment, or allow an individual to enter

into a diversion program that would prevent a commercial driver license holder's conviction for any violation in any type of motor vehicle of a state of local traffic control law (except a parking violation) from appearing on the driver's record, whether the driver was convicted for an offense committed in the state where the driver is licensed or in another state.

To be in compliance, each state must meet each and every standard contained in 49 CFR, Part 384. This bill would not meet this compliance requirement, which would result in sanctions imposed on Texas. The loss of federal highway funds to Texas amounts to approximately \$165.8 million in fiscal year 2008 and \$320.3 million in fiscal year 2009. The loss of federal funding for the first year of non-compliance is based on 5 percent penalty of all Texas federal highway funding (based on \$3,090,574,205 in fiscal year 2006) and the loss of all Motor Carrier Safety Assistance Program funding (based on \$11,250,954 in fiscal year 2006). The second year and subsequent years of non-compliance, the penalty is 10 percent of penalty of all Texas federal highway funding and the loss of all Motor Carrier Safety Assistance Program funding.

In addition, DPS states that there were 17,919 hearings that were held for persons who refused to provide breath specimens. This analysis assumes that the provisions included in the bill would increase refusal hearings by 25 percent. The analysis assumes that the fiscal impact would cost the state \$98,730 in 2008 and \$98,730 in 2009 including 3 full-time-equivalents (2 attorneys and 1 administrative assistant) to implement the provisions of the bill. DPS estimates an additional \$99,000 in professional service fees would be needed for additional driver license system programming changes in fiscal year 2008 in order to implement the required changes of the bill. It is assumed the DPS costs could be absorbed within the agency's current appropriations and therefore would not result in a significant fiscal impact to the state.

Local Government Impact

No significant fiscal implication to units of local government is anticipated.

Source Agencies: 405 Department of Public Safety

LBB Staff: JOB, ES, GG, LG, KJG