

**LEGISLATIVE BUDGET BOARD**  
**Austin, Texas**

**FISCAL NOTE, 81ST LEGISLATIVE REGULAR SESSION**

**April 14, 2009**

**TO:** Honorable Pete Gallego, Chair, House Committee on Criminal Jurisprudence

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

**IN RE: HB2389** by Hernandez (Relating to supplemental breath alcohol testing court costs and the distribution of those costs in certain counties. ), **Committee Report 1st House, Substituted**

**No significant fiscal implication to the State is anticipated.**

The bill would amend the Code of Criminal Procedure, Chapter 102, by adding Article 102.0161 to create supplemental costs for breath alcohol testing programs, which includes 102.0161 (b) that would create a \$50 breath alcohol testing program fee as a court cost for persons if convicted of one of seven Penal Code offenses: Driving While Intoxicated (DWI), Driving While Intoxicated with a Child Passenger, Flying While Intoxicated, Boating While Intoxicated, Assembling or Operating an Amusement Ride While Intoxicated, Intoxication Assault, or Intoxication Manslaughter. It would allow counties to retain \$5 of each fee collected for administrative costs, if they comply with terms of the bill listed under Article 102.0161.

Within the addition of Article 102.0161(b), the bill would also allow counties in which one or more certified breath alcohol testing programs are maintained by the county or a municipality that do not use the services of a certified technical supervisor employed by the Department of Public Safety (DPS) to also retain the remaining \$45 of each fee collected, as well as any other court cost relating to a breath alcohol testing program to which the county is entitled under Article 102.016 of the Code of Criminal Procedure and Section 133.102 of the Local Government Code.

Within the addition of Article 102.0161(g), the bill would also require the remittance of the remaining \$45 to the Comptroller of Public Accounts (CPA) on a quarterly basis for the counties that do use a certified technical supervisor employed by the Department of Public Safety (DPS). The CPA would be required to deposit these funds to the breath alcohol testing account. The legislature may appropriate these funds to DPS for costs associated with the statewide breath alcohol testing program. The bill would also amend Government Code, Articles 102.0412, 102.0612, and 102.0812 to require court clerks for district and county courts to collect from defendants the fee imposed under Article 102.0161(b) of the Code of Criminal Procedure.

Of the 254 Texas counties, DPS provides a certified technical supervisor for breath alcohol testing for 234 counties and the remaining 20 counties do not use a DPS supervisor. According to the Office of Court Administration (OCA), in fiscal year 2008 there were 37,838 DWI and related convictions in the district courts and 68,983 similar convictions in the county courts for an annual total of 106,821. Of the convictions, 44,927 occurred in the 20 counties that do not use a DPS certified technical supervisor and 61,894 convictions occurred in the 234 counties that do use a DPS certified technical supervisor.

According to the Comptroller of Public Accounts (CPA) no fiscal impact to the state is anticipated due to the indirect nature of the fee's remittance to the CPA. for those counties using a DPS certified technical supervisor.

**Local Government Impact**

Based on information provided by the Office of Court Administration (OCA), each of the 20 counties

that maintain a certified breath alcohol testing program that does not use the services of a certified technical supervisor employed by DPS would be entitled to retain \$85.80 for each conviction. Assuming the number of applicable convictions statewide in 2008 continues in subsequent years and assuming a 40 percent collection rate, OCA estimates that these 20 counties combined would experience a revenue gain of \$404,343. The 234 remaining counties would be entitled to retain \$18.30 for each relevant conviction.

The Comptroller of Public Accounts reports that the counties contacted by that agency reported an anticipated revenue gain and no additional costs or a neutral fiscal impact, with costs offset by the revenue gain.

Counties responding to the Texas Association of Counties (TAC), estimate the provisions of the bill would result in increased costs that may or may not be fully offset by the revenue gain.

The fiscal impact to counties would vary depending on the number of applicable cases, systems currently in place, and collection rate. Based on the examples provided, it is assumed that the fiscal impact to units of local government would not be significant.

**Source Agencies:** 212 Office of Court Administration, Texas Judicial Council, 304 Comptroller of Public Accounts, 405 Department of Public Safety

**LBB Staff:** JOB, ESi, JI, JJO, DB