

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 81ST LEGISLATIVE REGULAR SESSION

March 28, 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 breath alcohol testing court costs and the distribution of those costs in certain counties.), **As Introduced**

No significant fiscal implication to the State is anticipated.

This bill would amend Subsection (b) of Article 102.016 of the Code of Criminal Procedure to create a \$50 breath alcohol testing program fee as a court cost for persons if convicted of one of seven following Penal Code offenses: Driving While Intoxicated, 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 also would allow counties to retain \$5 of each fee collected for administrative costs, if they comply with terms of the bill.

This bill would also amend Subsection (b) of Article 102.016 by adding Subsections (b-1), (b-2), (e) and (f) to 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 Section 133.102, Local Government Code.

According to the Comptroller of Public Accounts (CPA) and DPS, approximately 20 counties do not use a DPS certified technical supervisor for their breath alcohol testing programs and would be permitted to retain the remaining \$45 to apply to the costs of the program.

According to the CPA, the bill does not specify where the remaining \$45 would be deposited for the 234 counties that use a DPS technical supervisor for their breath alcohol testing programs and, therefore, the agency cannot estimate the fiscal impact to the state. For illustrative purposes, DPS provided information on the number of fiscal year 2008 breath tests performed by the agency; these tests totaled 19,764 breath alcohol tests for the 234 counties that do use a DPS technical supervisor for the year. These numbers do not include refusals or those given a blood tests and only reflect total tests performed but not convictions.

In addition, based on information from the Office of Court Administration (OCA), in fiscal year 2008 there were 106,821 DWI-related convictions; of these, 61,894 of these convictions occurred in the 234 counties that use a DPS technical supervisor.

Local Government Impact

Information regarding the possible fiscal impact to local governments as a result of implementing provisions of the bill was obtained by the Legislative Budget Board and the Comptroller of Public Accounts from Dallas, Tarrant, San Patricio, Williamson, and Comal counties and from the County and District Clerks Association of Texas. Each entity estimated that the fiscal impact would not be significant. As an example of the responses received, Dallas County, which operates a breath alcohol testing program that does not use a certified technical supervisor employed by the Department of Public Safety (DPS), estimated the proposed new fees in total would result in an annual revenue gain

of \$122,238; however, the county was uncertain if under the provisions of the bill, the county could continue to charge local municipalities for services of a certified technical supervisor, which would affect the estimated fiscal impact.

The Office of Court Administration, using statewide conviction statistics, also provided estimates of revenue gain for the 20 counties that currently operate a breath alcohol testing program that does not use the services of a certified technical supervisor from DPS and provided estimates for the impact to the remaining counties statewide. Those estimates in the aggregate were \$494,000 and \$124,000 respectively, and assume a collection rate of 40 percent.

Based on the information from each source, it is anticipated that revenue gain to counties would not be significant. However, in counties operating a breath alcohol testing system without using a DPS employee, the additional fee would significantly help reduce costs of the program.

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