

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

**FISCAL NOTE, 82ND LEGISLATIVE REGULAR SESSION**

**March 15, 2011**

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

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

**IN RE: HB38** by Menendez (Relating to the punishment for the offense of graffiti.), **As Introduced**

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

The bill would amend the Penal Code, the Civil Practice and Remedies Code, and the Transportation Code as they relate to the punishment for the offense of graffiti. Under the provisions of the bill, a graffiti offense would have a minimum term of confinement (72 hours) and a first time offense would be punishable as a Class A Misdemeanor unless the offense involved specified places (a school, an institution of higher education, a place of worship or human burial, a public monument, a government building, or a community center that provides medical, social, or educational programs) in which case the offense would be punishable as a state jail felony. The bill would also increase the punishment for graffiti to a state jail felony if the defendant has been previously convicted or placed on deferred adjudication for graffiti. Out-of-State convictions for offenses with substantially similar elements would be considered a previous conviction. The bill would add coercing, soliciting, or inducing gang membership and graffiti offenses involving a government building to the list of gang activities specified as membership in a criminal street gang subchapter of the Civil Practice and Remedies Code. Under the provisions of the bill a court would be required to suspend or deny a driver's license or provisional license to a person who has been convicted or adjudicated to have engaged in delinquent conduct for a graffiti offense.

Under current statute graffiti is punishable at both misdemeanor and felony levels and is contingent upon the total dollar amount of pecuniary loss to property. The bill would take effect September 1, 2011.

Modifying the penalty for any criminal offense is expected to result in increased demands upon the correctional resources of counties or of the State due to longer terms of probation, or longer terms of confinement in county jails or prison. When an offense is changed from a misdemeanor to a felony or from a felony to a misdemeanor there is a transfer of the burden of confinement. It is assumed the number of offenders convicted under this statute would not result in a significant impact on the programs and workload of State corrections agencies or on the demand for resources and services of those agencies.

**Local Government Impact**

This bill would increase the offense for a graffiti offense to a Class A misdemeanor, and to the next higher category of offense if the defendant has been previously convicted.

A Class A misdemeanor is punishable by a fine of not more than \$4,000, confinement in jail for a term not to exceed one year, or both. Costs associated with enforcement, prosecution, and confinement could be absorbed within existing resources. Revenue gain from fines imposed and collected would not have a significant fiscal implication.

The increase in revenue generated from the elevated charge would vary depending on the number of offenses prosecuted, but is not expected to be significant. A county jail would incur costs associated with increased jail time per offender, but it is anticipated those costs could be absorbed within existing

resources.

**Source Agencies:** 405 Department of Public Safety

**LBB Staff:** JOB, GG, LM, SD, ADM