

LEGISLATIVE BUDGET BOARD

Austin, Texas

FISCAL NOTE, 82ND LEGISLATIVE REGULAR SESSION

Revision 1

April 28, 2011

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

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

IN RE: HB99 by Martinez Fischer (Relating to the punishment for certain intoxication related offenses; creating the offense of aggravated driving while intoxicated.), **Committee Report 1st House, Substituted**

The probable fiscal impact of implementing the bill cannot be determined due to the unavailability of reliable data or information related to criminal history information for prior alcohol concentration level tests which are linked to punishment provisions listed in the bill.

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 0.16 or more, or has an alcohol concentration level of 0.02 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 take effect on September 1, 2011 and apply to offenses committed on or after that date.

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 punishable as a Class B misdemeanor. 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.

There is currently no statewide repository for blood testing for alcohol content, and alcohol concentration level information is not contained with statewide criminal history data or records. There is also no central repository of information for the number of alcohol concentration level tests of 0.02 or more for commercial motor vehicle operators. Therefore, the fiscal impact of implementing the provisions of the bill cannot be determined.

The bill would require the court that convicts a person for an offense under Section 49.046 of the Penal Code to order the sheriff of the county to impound or immobilize the motor vehicle operated by the person at the time of the offense for seven days. A sheriff acting under a court order may require the motor vehicle be taken to a garage or other safe place, or garage designated or maintained by the county. A person convicted of an offense would not be entitled to take possession of the motor vehicle until all removal and storage fees incurred as a result of the impoundment or immobilization were paid.

Local Government Impact

There could be a fiscal impact associated with implementing the provisions of the bill; however, those costs would vary depending on the number of offenses committed, the costs for enforcement and prosecution of the offenses, and the cost for additional jail beds. The Texas Commission on Jail Standards reported the average cost for an inmate in a county jail is \$45 per day.

There would be costs associated with the impoundment or immobilization of a motor vehicle that would likely be offset by the required reimbursement of expenses from the owner.

Source Agencies:

LBB Staff: JOB, ESi, TP, GG, LM, ADM, KKR