

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

**FISCAL NOTE, 82ND LEGISLATIVE REGULAR SESSION**  
**Revision 1**

**April 19, 2011**

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

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

**IN RE: HB189** by Smith, Todd (Relating to the criminal and civil consequences for certain intoxication offenses and to certain fees associated with the enforcement and administration of certain of those consequences.), **Committee Report 1st House, Substituted**

**Estimated Two-year Net Impact to General Revenue Related Funds** for HB189, Committee Report 1st House, Substituted: an impact of \$0 through the biennium ending August 31, 2013.

The bill would make no appropriation but could provide the legal basis for an appropriation of funds to implement the provisions of the bill.

**General Revenue-Related Funds, Five-Year Impact:**

Fiscal Year	Probable Net Positive/(Negative) Impact to General Revenue Related Funds
2012	\$0
2013	\$0
2014	\$0
2015	\$0
2016	\$0

**All Funds, Five-Year Impact:**

Fiscal Year	Probable (Cost) from <i>State Highway Fund</i> 6	Probable (Cost) from <i>Oper &amp; Chauffeurs Lic</i> <i>Ac</i> 99	Probable Revenue Gain from <i>Texas Mobility Fund</i> 365	Probable Revenue Gain from <i>Appropriated Receipts</i> 666
2012	(\$180,709)	(\$1,109,732)	\$120,360	\$1,290,492
2013	(\$180,894)	(\$991,686)	\$120,360	\$1,290,492
2014	(\$126,756)	(\$989,604)	\$120,360	\$1,290,492
2015	(\$129,295)	(\$1,009,430)	\$120,360	\$1,290,492
2016	(\$126,756)	(\$989,604)	\$120,360	\$1,290,492

Fiscal Year	Change in Number of State Employees from FY 2011
2012	17.0
2013	17.0
2014	17.0
2015	17.0
2016	17.0

## **Fiscal Analysis**

The bill would amend the Code of Criminal Procedure, Government Code, Penal Code, and Transportation Code as they relate to a defendant's eligibility to be placed on deferred adjudication for certain intoxication offenses and to the consequences of that deferred adjudication. Under current statute, certain intoxication offenses (Sections 49.04 through 49.08, Penal Code) are ineligible for placement on deferred adjudication. The provisions of the bill would only allow certain first-time defendants eligibility for placement on deferred adjudication.

Under the provisions of the bill, Driving While Intoxicated, Flying while Intoxicated, Boating while Intoxicated, and Assembling or Operating an Amusement Ride while Intoxicated would be eligible for placement on deferred adjudication as long as the defendant at the time of the offense did not possess a commercial driver's license or a commercial driver learners' permit, or did not cause injury to another person or damage property that belongs to another person. The bill would also amend the Government Code to add Driving While Intoxicated, Flying while Intoxicated, Boating while Intoxicated, and Assembling or Operating an Amusement Ride while Intoxicated with punishment greater than a Class C misdemeanor to the list of those offenses for which an order of non-disclosure cannot be sought.

The bill would require an individual placed on deferred adjudication for Driving While Intoxicated, Flying while Intoxicated, Boating while Intoxicated, and Assembling or Operating an Amusement Ride while Intoxicated have an ignition interlock device (IID) installed. The bill also contains provisions that indicate a person who receives deferred adjudication for the applicable intoxication offenses is considered to be convicted of the offense for purposes of the Driver Responsibility Program (DRP).

The bill would add Driving while Intoxicated with a Child Passenger to the list of offenses punishable as a third degree felony under Section 49.09 (b), Penal Code if the person had been previously convicted of certain intoxication offenses. Under the provisions of the bill, penalties for certain intoxication offenses would be enhanced if the defendant had previously been convicted or previously been placed on deferred adjudication for certain intoxication offenses. The bill would require the Department of Public Safety to establish fees to offset certain costs of auditing and inspecting IIDs and the vendors that provide IIDs.

The bill would take effect September 1, 2011 and apply only to an offense committed on or after the effective date of the Act.

## **Methodology**

According to the Department of Public Safety, 12,036 defendants would receive deferred adjudication each year. 24,072 defendants received probation for a Class B Misdemeanor (first-time) intoxication offense in fiscal year 2010, and this analysis assumes 50 percent of those would receive deferred adjudication ( $24,072/2 = 12,036$ ).

The bill would require all offenders receiving deferred adjudication for the applicable intoxication offenses to have an ignition interlock device (IID) placed on their vehicle. DPS is responsible for auditing and testing the entities that provide the IIDs throughout the state and issuing licenses for each IID. The increased demand for IIDs due to the provisions of the bill will likely require DPS to audit and test additional entities that provide IIDs. DPS will require additional full-time employees to process IID licenses and customer service inquiries. DPS assumes there will be a 25 percent increase in the entities that provide IIDs as a result of the provisions of the bill; DPS will also require additional FTEs to adequately inspect and audit the additional entities.

One additional Administrative Assistant IV would be required to process the additional IID licenses and one Customer Service Representative IV would be required to field the additional customer support expected. These full-time employees (FTEs) would be funded through the State Highway Fund. Thirteen additional Inspector IVs would be required to adequately inspect and audit the anticipated 25% growth in the number of IID providers, and one Program Specialist I would be required to supervise the additional Inspector IVs. One Accountant V will be required to provide

accounting and various financial management issues for the additional employees. These FTEs would be funded through the Operator and Chauffeurs License Account. Additional expenses for the supplies and support of all the additional FTEs is also included in this analysis.

Assuming the same number of applicable persons would be required to obtain the IID in future years (12,036), this would result in a gain to the Texas Mobility Fund of \$120,360 each year because each person issued an IID would be required to pay a \$10 fee to obtain a driver's license with an IID restriction.

The bill requires DPS to establish fees to offset the associated costs of auditing and inspecting the IID devices and the vendors that provide IIDs. DPS indicates there were three IID device approvals in fiscal year 2010. This analysis assumes the revenue from fees associated with IID device approval would be insignificant. The bill also requires DPS to establish a yearly fee for manufacturers of IIDs. DPS indicates there are seven IID manufacturers in Texas, so this analysis assumes this revenue would also be insignificant. However, DPS estimates a 25 percent increase in the number of vendors who provide IIDs throughout the state, resulting in approximately 378 vendors in fiscal years 2012-2016. In order to offset the costs of the additional inspection requirements associated with the bill's provisions, DPS will charge IID vendors \$3,414 per year, for a total revenue gain of \$1,290,492 per fiscal year ( $\$3,414 \times 378 = \$1,290,492$ ).

### **Technology**

DPS will require systems analysis, programming, and database administration support for logic and database changes to the Driver License System at a cost of \$67,600 in fiscal years 2012 and 2013.

### **Local Government Impact**

Community Supervision and Corrections Departments (CSCDs) indicate the bill's provisions could result in significant costs and/or revenue losses to CSCDs.

The bill could require additional staff to monitor offenders required to obtain an IID and lead to a decrease in payments received from offenders. Offenders who are unable or unwilling to pay both supervision fees and fees for the device would likely pay the device fee to be able to drive and fail to pay supervision fees, which CSCDs anticipate would lead to decreased revenue.

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

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