

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 82ND LEGISLATIVE REGULAR SESSION
Revision 1

March 22, 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 punishment for certain intoxication offenses.), **As Introduced**

Estimated Two-year Net Impact to General Revenue Related Funds for HB189, As Introduced: a negative impact of (\$7,476,162) 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	(\$2,492,054)
2013	(\$4,984,108)
2014	(\$7,476,161)
2015	(\$7,476,161)
2016	(\$7,476,161)

All Funds, Five-Year Impact:

Fiscal Year	Probable Revenue (Loss) from <i>General Revenue Fund</i> 1	Probable Revenue (Loss) from <i>Trauma Facility And Ems</i> 5111	Probable (Cost) from <i>State Highway Fund</i> 6	Probable (Cost) from <i>Oper & Chauffeurs Lic</i> Ac 99
2012	(\$2,492,054)	(\$2,442,706)	(\$180,709)	(\$1,109,732)
2013	(\$4,984,108)	(\$4,885,412)	(\$180,894)	(\$991,686)
2014	(\$7,476,161)	(\$7,328,119)	(\$126,756)	(\$989,604)
2015	(\$7,476,161)	(\$7,328,119)	(\$129,295)	(\$1,009,430)
2016	(\$7,476,161)	(\$7,328,119)	(\$126,756)	(\$989,604)

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, and the Penal 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. 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 installed.

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

Methodology

Permitting first-time defendants charged with certain intoxication offenses to be placed on deferred adjudication would allow these defendants to bypass the Driver Responsibility Program (DRP) surcharge of \$3,000 (\$1,000 per year for three years). This will result in a revenue loss to the General Revenue Fund and the Trauma Facility and EMS fund. 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 ($24,072/2 = 12,036$).

Offenders convicted of their first applicable intoxication offense receive a DRP surcharge of \$3,000, to be paid in \$1,000 installments over three years. Taking into consideration the current 41 percent collection rate of DRP surcharges, the total lost revenue would be \$4,934,760 for FY 2012, \$9,869,520 for FY 2013, and \$14,804,280 for FY 2014 and future fiscal years. 50.5 percent of the lost revenue would come from the General Revenue fund and 49.5 percent of the lost revenue would come from the Trauma Facility and EMS fund.

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 who 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 who 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 who 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.

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

No significant fiscal implication to units of local government is anticipated.

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

LBB Staff: JOB, ESi, GG, LM, TB