

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 82ND LEGISLATIVE REGULAR SESSION

April 4, 2011

TO: Honorable Mike Hamilton, Chair, House Committee on Licensing & Administrative Procedures

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

IN RE: HB1959 by Thompson (Relating to appeal of the refusal of an alcoholic beverage license or permit based on a certification of an area's wet or dry status.), **As Introduced**

Estimated Two-year Net Impact to General Revenue Related Funds for HB1959, As Introduced: a negative impact of (\$5,360,981) through the biennium ending August 31, 2013.

General Revenue-Related Funds, Five-Year Impact:

Fiscal Year	Probable Net Positive/(Negative) Impact to General Revenue Related Funds
2012	(\$2,663,163)
2013	(\$2,697,818)
2014	(\$2,897,623)
2015	(\$3,008,975)
2016	(\$3,174,672)

All Funds, Five-Year Impact:

Fiscal Year	Probable Savings/(Cost) from <i>General Revenue Fund</i> 1	Change in Number of State Employees from FY 2011
2012	(\$2,663,163)	46.0
2013	(\$2,697,818)	46.0
2014	(\$2,897,623)	46.0
2015	(\$3,008,975)	46.0
2016	(\$3,174,672)	46.0

Fiscal Analysis

The bill would amend the Alcoholic Beverage Code by providing that regardless of any other Code provision, an applicant is entitled to a hearing before the Commission (SOAH for a permit or the County Judge for a license) to contest the Commission's refusal to issue a permit/license if the refusal is based on the failure of the county clerk/city secretary/city clerk to certify that the location for the permit/license is lawful-meaning in a wet area and/or is not prohibited by charter or ordinance. The bill would take effect September 1, 2011.

Currently, certification by the city or county to the legality of the sale of alcohol at the proposed location is a precondition to obtaining an application to be processed by the Texas Alcoholic and Beverage Commission (TABC); under the authority of the appropriate city or county official. If there is an issue with the city or county official refusing to certify a location, the person may go through the city/county appeal/review process for a waiver or exemption, file civil remedies (injunction, declaratory judgment, or mandamus), or go to district court.. TABC estimates 2,520 requests for

certification protest hearings per year. With more areas recently electing to allow alcohol, this number could rise. The agency estimates that 85% of the requests would be settled in the field and 378 requests per year would require hearings before the State Office of Administrative Hearings (SOAH) or the County Judge in the jurisdiction of the premise. TABC is responsible for coordinating protest requests and having an attorney at the hearings. Protest hearings are also expedited over other code violation cases. Statute requires that a county judge hear a protest within 10 days. Appeals to the District Court will also increase, requiring TABC's legal staff travelling and preparing the record and closely coordinating, and perhaps attending the appeal hearing with the Office of the Attorney General, who must represent the Commission.

TABC's Licensing Division would be required to amend the procedures for processing applications. In FY 2010, approximately 334 contested cases were referred to TABC's Legal Hearings Division with a staff of 8 Attorneys and 6 legal support staff. Approximately 42% of those contested cases were able to be settled without a hearing. The agency indicates this bill would require approximately an additional 378 cases referred to the Legal Hearings Division each year and resulting in a hearing.

Methodology

To implement the bill, the TABC estimates it would need an additional 46 FTEs (16 Auditors, 13, Attorneys, 10 Accounts Examiners, 2 Legal assistants, and 5 Legal Secretaries). Total personnel costs for these FTEs would be \$12,771,049 over the next 5 years. Other expenses would include \$72,000 per year in travel for auditors and \$13,794 per year for travel for attorneys. Additional rental expenses for the 46 FTEs would be \$138,000 per year, with telephone at \$27,600 per year, data center costs at \$6,394 per year, software maintenance at \$19,872 per year and office furniture as a one-time expense of \$64,400. Personal computer leases for new employees totaling \$20,700 per year and consumable supplies are estimated at \$23,000 per year.

Technology

There would be a technology impact due to increased costs associated with PC leases (\$20,700 per year), Data Center Consolidation (\$6,394 per year) and increased software maintenance (\$19,872 per year) for additional employees.

Local Government Impact

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

Source Agencies: 458 Alcoholic Beverage Commission

LBB Staff: JOB, AG, GG, DAR