

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

**FISCAL NOTE, 84TH LEGISLATIVE REGULAR SESSION**

**March 3, 2015**

**TO:** Honorable John T. Smithee, Chair, House Committee on Judiciary & Civil Jurisprudence

**FROM:** Ursula Parks, Director, Legislative Budget Board

**IN RE: HB543** by Dutton (Relating to the creation of a specialty court for certain first-time DWI offenders; imposing fees for participation and alcohol monitoring.), **As Introduced**

**Estimated Two-year Net Impact to General Revenue Related Funds** for HB543, As Introduced: an impact of \$0 through the biennium ending August 31, 2017.

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
2016	\$0
2017	\$0
2018	\$0
2019	\$0
2020	\$0

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

Fiscal Year	Probable Savings/(Cost) from <i>Criminal Justice Plan Ac</i> 421	Probable Savings/(Cost) from <i>Federal Funds</i> 555
2016	(\$3,105,000)	(\$77,849,498)
2017	(\$3,105,000)	(\$77,849,498)
2018	(\$3,105,000)	(\$77,849,498)
2019	(\$3,105,000)	(\$77,849,498)
2020	(\$3,105,000)	(\$77,849,498)

**Fiscal Analysis**

The bill would amend the Health and Safety Code relating to the creation of a specialty court program for first time DWI offenders. The bill would establish the operational procedures, eligibility requirements, and the powers and duties of the Direct Intervention using Voluntary

Education, Restitution, and Treatment (DIVERT) program. The commissioners' court of a county or the governing body of a municipality would be authorized to establish a DIVERT program for defendants charged with an offense under Section 49.04 of the Penal Code, driving while intoxicated, who have not been previously convicted of or adjudicated as having engaged in conduct constituting an offense under Chapter 49 of the Penal Code.

The bill would mandate that counties with a population in excess of 200,000 shall apply for federal and state funds to pay the costs of the program and if successful in obtaining funds shall establish a Divert Program by September 1, 2016. A county that does not establish and maintain a DIVERT program would be ineligible to receive from the state funds for a community supervision and corrections department and grants for substance abuse treatment programs administered by the criminal justice division of the governor's office.

The bill would authorize a program to collect from a participant a nonrefundable program fee in a reasonable amount not to exceed \$1,000; a treatment fee to cover the costs of testing, counseling, and treatment; and a deep-lung breath analysis monitoring fee not to exceed \$10 per month. These fees must be based on the participant's ability to pay and used only for purposes specific to the program.

Title 49 Code of Federal Regulation (CFR) 384.226 provides that states may not mask or defer a conviction for a person that holds a commercial driver license that can result in the disqualification of the commercial driver license. Because a Drive While Intoxicated (DWI) is considered a major offense under title 49 CFR 383.51 and Transportation Code 522.081 allowing diversion would result in noncompliance with 49 CFR 384.226.

## **Methodology**

The Department of Public Safety (DPS) indicates the provisions of the bill could place Texas out of compliance with Title 49, Code of Federal Regulations, which may result in a loss of federal-aid highway funds. DPS estimates the potential losses from federal-aid highway funds would be at least four percent of the total funds received in the first year of non-compliance (\$77,849,498 in fiscal year 2016). This analysis assumes a continuation of these losses through fiscal year 2020. It is assumed DPS can absorb the costs associated with implementing the provisions of the bill with existing resources.

The Office of the Governor has indicated the bill would entail a significant cost to the Criminal Justice Division (CJD). CJD funds other types of specialty court programs within these counties with an average cost of \$135,000 per program. With 23 counties with populations over 200,000 and assuming a cost of \$135,000 per program, the Office of the Governor estimates costs of \$3,105,000 million (23 counties x \$135,000 per program = \$3,150,000).

The Comptroller of Public Accounts reported that because the number of potential DIVERT program participants is unknown, and because the associated fee revenue would be set by the courts, any additional fee revenue is indeterminate.

## **Local Government Impact**

According to the Department of Criminal Justice, the bill may cause a loss of state funding to Community Supervision and Corrections Departments (CSCD) if the commissioners court of a county with a population over 200,000 does not establish a DIVERT program.

Williamson County Community Supervision and Corrections Department reported that the bill would cost the department an additional \$510,208 to establish the program. Williamson County CSCD estimates that they would have to hire 8 new staff members at \$55,000 for a total annual cost of \$440,000, with an additional \$44,000 for training. Williamson County CSCD also anticipates losses of \$26,208 in collected fees associated moving offenders from probation to the DIVERT program: assuming 546 annual DWI cases and a collection rate of 60 percent, the \$1,000 fee would generate \$327,600; currently, assuming the same collection rate, Williamson County CSCD takes in approximately \$353,808 annually.

Counties with populations less than 200,000 that do not establish DIVERT programs would not see a fiscal impact from the bill.

**Source Agencies:** 212 Office of Court Administration, Texas Judicial Council, 301 Office of the Governor, 304 Comptroller of Public Accounts, 308 State Auditor's Office, 405 Department of Public Safety, 696 Department of Criminal Justice

**LBB Staff:** UP, FR, MW, GDz, KVe, LCO, JN, JAW, LBe