LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 86TH LEGISLATIVE REGULAR SESSION

May 23, 2019

TO: Honorable Dennis Bonnen, Speaker of the House, House of Representatives

FROM: John McGeady, Assistant Director Sarah Keyton, Assistant Director
Legislative Budget Board

IN RE: **HB1545** by Paddie (Relating to the continuation and functions of the Texas Alcoholic Beverage Commission, including the consolidation, repeal, and creation of certain licenses and permits; changing fees.), **As Passed 2nd House**

Estimated Two-year Net Impact to General Revenue Related Funds for HB1545, As Passed 2nd House: a negative impact of ($4,459,205) through the biennium ending August 31, 2021.

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
2020	($2,141,797)
2021	($2,317,408)
2022	($1,390,414)
2023	($1,390,414)
2024	($1,390,414)

All Funds, Five-Year Impact:

Fiscal Year	Probable Revenue (Loss) from *General Revenue Fund* 1	Probable (Cost) from *General Revenue Fund* 1	Probable Savings from *General Revenue Fund* 1	Change in Number of State Employees from FY 2019
2020	$0	($2,141,797)	$0	2.5
2021	($88,825)	($2,228,583)	$0	3.5
2022	($388,825)	($1,146,389)	$144,800	3.0
2023	($388,825)	($1,146,389)	$144,800	3.0
2024	($388,825)	($1,146,389)	$144,800	3.0

Fiscal Analysis

The bill would amend the Alcoholic Beverage Code to continue the Texas Alcoholic Beverage

Commission (TABC) and its functions. The bill would extend the existence of TABC, under the Texas Sunset Act, to September 1, 2031.

The bill would update training standards for members of the commission and update non-substantive language in the Alcoholic Beverage Code. The bill would also repeal certain reporting requirements related to alcohol sales and consumption during prohibited hours. The bill would require TABC to implement a two-pronged approach based on certain risk-based factors. The bill would also require the Commission to revise certain enforcement and disciplinary action and standardize protest processes by requiring the State Office of Administrative Hearings (SOAH) to conduct certain contested cases, including protest hearings and emergency orders. According to SOAH, any additional workload could be absorbed within existing resources and would not result in a significant fiscal impact to the State.

The bill would increase the size of the Commission from three to five members, to be appointed by December 1, 2019. According to TABC, the provisions of the bill related to commissioner travel beginning in fiscal year 2020, would incur a $4,000 negative impact per fiscal year.

The bill would remove the distinction between beer and ale, and instead use the term malt beverages. Under current law, TABC taxes beer and ale at different rates. The bill would direct TABC to tax malt beverages at the current excise tax rate for beer, which is lower than the current excise tax rate for ale. According to the Comptroller, there would a loss of approximately $300,000 in General Revenue per fiscal year, which would take effect on September 1, 2021. According to Sunset, the creation of the malt beverage category would minimize duplicative regulatory processes, such as licensing, audits, and excise tax collections and reduce the agency's workload.

The bill would direct TABC to transition to the federal Certificate of Label Approval (COLA) malt beverage registration process by December 31, 2020. According to the agency, there would be a negative fiscal impact of $88,825 in General Revenue per fiscal year resulting from the elimination of separate fee charges for different size containers. Under the current state approval process, TABC assess a $25 fee for each additional container size approved beyond the first size approved. The bill would also exempt certain brewers and manufactures from obtaining label approval from TABC for malt beverages sold to the ultimate consumer.

The bill would amend various sections of the Alcoholic Beverage Code to restructure the alcoholic beverage licensing and permit system and reduce the number of licenses and permits from 75 to 36. The changes would include eliminating the distinction between beer and ale, combining several types of licenses and permits, and eliminating several permit types; however, TABC has indicated that the agency would be unable to implement the streamlined licensing and permit system with current information technology resources. According to Sunset, consolidation and elimination of certain licenses and permits would eliminate 31,292 active licenses, which represents a quarter of all licenses and permits issued by TABC. As a result, the agency would no longer collect fees for the eliminated licenses and permits, which would result in a revenue loss of approximately $1.9 million annually. However, this analysis assumes that TABC would set fees for the remaining licenses and permits at a rate that would cover revenue loss and regulatory costs. There would be a similar fiscal impact for subordinate licenses and permits effected by the consolidation.

The bill would amend the Alcoholic Beverage Code to remove fees from statute and allow TABC to set license and permit fees in rule and would take effect on September 1, 2021, along with the related changes to restructure alcoholic beverage licenses and permits. TABC anticipates that fees could be set at a rate sufficient to recover the IT-related implementation costs resulting from the provisions of the bill related to the licensing and permit system restructure. The changes to fee rates and the elimination of surcharges collected by TABC cannot be determined at this time; however, this analysis assumes that TABC would set fees at a rate that would cover regulatory costs. The bill would also modify certain aspects of the package store permit, including transferability, acquisition, and maximum number of package store permits held. According to the Sunset Commission, the number of applications for package store permits may increase; however, the fiscal impact cannot be determined at this time.

The bill would amend the Alcoholic Beverage Code to allow for certain permit holders to sell certain alcoholic beverages for off-premises consumption, establish a daily limit for malt beverages, and require a monthly report. According to the Sunset Commission and TABC, the duties and responsibilities associated with implementing the provisions of the bill would not result in a significant fiscal impact.

Methodology

The fiscal impact of the provisions of the bill related to additional Commission members is based on a historical $2,000 average in travel and per diem reimbursements for each TABC commissioner.

The fiscal impact of the provisions of the bill related to the distinction between beer and ale and the subsequent tax rate result in a loss of approximately $300,000 in General Revenue annually, according to the Comptroller. The estimate of the fiscal impact of taxing ale and malt liquor at the same rate as beer was based on the 2020-21 Biennial Revenue Estimate.

The fiscal impact of the provisions of the bill related to the transition to the federal COLA malt beverage registration process would result in a revenue loss of approximately $88,825 per fiscal year. In fiscal year 2017, license holders paid a $25 fee to register 3,553 additional sizes of a malt beverage product beyond the first size approved.

Technology

The provisions of the bill related to streamlining the alcoholic beverage licensing structure would require TABC to update the agency's licensing technology system. According to TABC, the current licensing system has reached end-of-life and is no longer adequately supported by the vendor. Replacing the licensing technology system would have a fiscal impact of $4,362,380 in General Revenue for the 2020-2021 biennium. Of that amount, the agency anticipates approximately $3.1 million for one-time expenditures, and would require 2.5 FTEs in fiscal year 2020, 3.5 FTEs in fiscal year 2021, and 3.0 FTEs in fiscal year 2022 and each year thereafter to support and maintain the new licensing system. According to TABC, the varied FTE count reflects different resource needs depending on the project implementation stage; permanent FTEs would include 1.0 business analyst, 1.0 database administrator, and 1.0 systems analyst. The estimated cost of additional FTEs, including salary, benefits, equipment, and consumables would be $250,915 in fiscal year 2020, $337,701 in fiscal year 2021, and $291,507 for each fiscal year thereafter.

TABC also reports a savings of $144,800 in General Revenue per fiscal year, beginning in fiscal year 2022 as the agency would no longer incur maintenance costs for the agency's current licensing system. Beginning in fiscal year 2022, TABC assumes a fiscal impact of approximately $500,000 in General Revenue per fiscal year for ongoing operational costs and maintenance.

Local Government Impact

According to the Sunset Commission, the fiscal impact on local governments cannot be determined at this time. The bill would clarify the authority of cities and counties to charge a certain fee for each TABC license and permit issued in their jurisdiction. The bill would also raise the package store permit cap, which may result in the issuance of additional package store permits. Cities and counties are authorized to collect a fee for each permit issued within their jurisdictions, including package stores permits. While the number of licenses and permits issued in a specific area could decrease, as a result of streamlining the licensing and permit system, the amount of fee revenue to the local government could increase or decrease depending on the new fee structure adopted by TABC and the mix of licenses and permits in that area.

Source Agencies: 116 Sunset Advisory Commission, 304 Comptroller of Public Accounts, 458 Alcoholic Beverage Commission, 360 State Office of Administrative Hearings

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