

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 87TH LEGISLATIVE REGULAR SESSION

May 7, 2021

TO: Honorable Kelly Hancock, Chair, Senate Committee on Business & Commerce

FROM: Jerry McGinty, Director, Legislative Budget Board

IN RE: HB2106 by Perez (Relating to the prevention, identification, investigation, and enforcement of payment card fraud; providing a civil penalty.), **As Engrossed**

Estimated Two-year Net Impact to General Revenue Related Funds for HB2106, As Engrossed : an impact of \$0 through the biennium ending August 31, 2023.

The Texas Department of Licensing and Regulation (TDLR) is statutorily required to generate sufficient revenue to cover its costs of operation, therefore this analysis assumes that any increased cost to TDLR, would be offset by an increase in fee-generated revenue. Unlike for other programs regulated by TDLR, the bill would not provide authority for TDLR to collect fees to cover the costs associated with implementing the provisions of the bill. It is possible that TDLR would have to increase fees on its other regulatory programs to cover these costs.

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:

<i>Fiscal Year</i>	<i>Probable Net Positive/(Negative) Impact to General Revenue Related Funds</i>
2022	\$0
2023	\$0
2024	\$0
2025	\$0
2026	\$0

All Funds, Five-Year Impact:

<i>Fiscal Year</i>	<i>Probable (Cost) from General Revenue Fund</i>	<i>Probable Revenue Gain from General Revenue Fund</i>
	1	1
2022	(\$1,542,896)	\$1,542,896
2023	(\$1,114,315)	\$1,114,315
2024	(\$1,114,315)	\$1,114,315
2025	(\$1,114,315)	\$1,114,315
2026	(\$1,114,315)	\$1,114,315

Fiscal Analysis

The bill would amend the Business and Commerce, Occupations, and Government Codes relating to the prevention, identification, investigation, and enforcement of payment card fraud; providing a civil penalty.

This bill would make the Texas Department of Licensing and Regulation (TDLR) responsible for the administration and enforcement of Chapter 607 of the Business and Commerce Code relating to payment card skimmers on motor fuel metering devices. On January 1, 2022, the bill would re-designate the Payment Fraud Fusion Center established via House Bill 2945, Eighty-sixth Legislature, 2019, as the Financial Crimes Intelligence Center (Center) and transfer all related powers, duties, functions, programs and activities from the Office of the Attorney General (OAG) to TDLR.

The bill would define the purposes of the Center to: serve as the state's primary entity for the planning, coordination, and integration of law enforcement agencies and other governmental agencies that respond to criminal activity related to card fraud, including through the use of skimmers and maximize the ability of TDLR, law enforcement agencies, and other governmental agencies to detect, prevent, and respond to criminal activities related to card fraud.

The bill would authorize TDLR to enter into agreements with law enforcement agencies or other governmental agencies for the operation of the Center and would require TDLR to enter such an agreement for the appointment of a chief intelligence coordinator to supervise and manage the Center. The bill would require the Center to assist law enforcement agencies, other governmental agencies, financial institutions, credit card issuers, and merchants in efforts to detect skimmers, ensure an effective response if a skimmer is found, and prevent card fraud. The bill would authorize the Center to serve as a centralized collection point for information related to card fraud, provide training and educational opportunities to law enforcement, provide outreach to the public, and release information to affected financial institutions, credit card issuers, and merchants if the Center does not consider the information to be sensitive to law enforcement efforts.

The bill would require the chief intelligence coordinator to file an annual report with TDLR. The report would include a plan of operation for the center and an estimate of the cost to implement the plan, an assessment of the current state of card fraud, a plan of operation for combatting card fraud, a communications plan for outreach, and a list of expenditures made by the Center since the last report was filed.

The bill would authorize TDLR to solicit and accept gifts, grants, and other donations to fund, administer, and carry out the purposes of the Center. Subject to the availability of appropriated funds for this purpose, the bill would also authorize TDLR to award grants to recipients to reduce card fraud by removing skimmers, purchase fraud deterrence equipment, provide training regarding skimmers, and conduct public outreach regarding card fraud.

While the bill would repeal the OAG's authority to enforce regulations adopted under Chapter 607, it adds authority to collect a civil penalty for violations of Chapter 607 or TDLR rules adopted under the chapter.

Methodology

TDLR anticipates the duties required by the bill to prevent skimmers, including: conducting inspections for the presence of suspected skimmers on motor fuel dispensers, investigating and prosecuting violations for failing to report skimmers by one of its license holders, cooperating with and assisting law enforcement in the investigation of discovered skimmers, assisting the Commission of Licensing and Regulation (Commission) in establishing rules required by the bill, assisting in actions to collect a civil penalty for violations of the chapter or rule, and contracting to award grants as authorized by the bill can be performed within existing resources.

According to information provided by TDLR, the agency would need funding to assist the Commission in establishing the Financial Crimes Intelligence Center (Center) within TDLR, and to administratively oversee and support the work of the Center. Estimated administrative costs for this assistance and support would be approximately \$150,000 in General Revenue Funds per fiscal year. TDLR would be responsible for the hiring of the employees and oversight of their work; assisting in the development and updating of rules; performing the financial services of the Center; contracting for the data management system, then overseeing its development, ensuring the contract is adhered to, and assisting in the safeguarding of its security; developing

and overseeing any grant contracts entered into; performing or overseeing any purchasing for the Center; and occasional travel to the Center when needed for oversight reasons.

Financial Crimes Intelligence Center

TDLR would enter into an agreement with a law enforcement agency for the operation of the Center, as authorized by the bill. Based on information provided by TDLR, this analysis assumes TDLR would cover the cost of three staff members of the law enforcement agency that would operate the Center: (1) a chief intelligence officer would supervise and manage the operations of the Center, (2) a law enforcement agent would perform the activities of the Center, and (3) a program analyst would assist the other two members and serve as the point person at the Center for the administration of the data management software. These three staff members would be employees of the law enforcement agency operating the Center under the agreement with TDLR, with the funding for salaries, benefits, operating expenses, equipment, vehicles for the Center's staff, and the cost of the data management system coming from the appropriations to TDLR to operate the Center.

The salary for the chief intelligence officer would be \$115,000 each year, \$90,00 each year for the law enforcement agent, and \$55,000 each year for the program analyst. This would result in a total cost of \$344,552 in General Revenue Funds each fiscal year for salaries and benefits. Costs for furniture, fixtures, equipment, supplies, and for computers and associated devices and their support, would be \$30,000 in the first year and \$6,000 each year after that.

Center staff would need two vehicles to allow them to travel to areas of reported or suspected illegal card activity and conduct investigations and/or coordinate with other law enforcement agencies, provide training and educational opportunities to law enforcement agencies across Texas, and provide in-person outreach about credit card fraud to the public when necessary. The vehicles would cost approximately \$74,000 in the first year with associated costs of \$11,000 each year for fuel and vehicle expenses and \$5,000 each year for travel costs.

According to TDLR, to further the Center's assignment to serve as a centralized collection point for information related to card fraud, the Center would need a system that can provide the data management and analytics that will allow the Center to connect and collect the large volume and variety of data from different law enforcement systems across Texas. The system would help collate large sets of data and identify the connections within the different sets of information. TDLR estimates the costs for the system would include the system software and the user licenses, the provision of setup services, configuration of the system, and training, remotely managed software support and other services, consultant support and any change orders, and Data Center Services hosting costs. This analysis assumes the cost for the initial year would be approximately \$928,344, with a yearly cost for licenses, maintenance, improvements and consultant support of \$597,763.

OAG anticipates any legal work resulting from the passage of this bill could be reasonably absorbed with current resources.

Technology

This analysis estimates a technology cost of \$928,344 in fiscal year 2022 for computer equipment; Intelligence and Investigation Management Software; services, configuration, and training; Remote Managed Software and Services; support services; and, Data Center Services hosting costs and \$597,763 in fiscal year 2023 and thereafter for ongoing technology services.

Local Government Impact

The fiscal implications for units of local government cannot be estimated. Their costs will depend on the amounts they will commit in law enforcement resources for this purpose.

Source Agencies: 302 Office of the Attorney General, 452 Dept of License & Reg

LBB Staff: JMc, SZ, DFR, AAL, MB