

**JBC STAFF FISCAL ANALYSIS
HOUSE APPROPRIATIONS COMMITTEE**

CONCERNING A DRIVER'S RIGHT TO CHALLENGE THE LAWFULNESS OF A LAW ENFORCEMENT OFFICER'S INITIAL CONTACT IN AN ADMINISTRATIVE PROCEEDING FOR A REVOCATION OF A DRIVER'S LICENSE.

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Fiscal Impact of Bill as Amended to Date

The most recent Legislative Council Staff Fiscal Note (attached) reflects the fiscal impact of the bill as of 02/04/13. As a result of amendments adopted in the House Judiciary Committee, the Department of Law and the Department of Revenue have revised their estimates of the fiscal impact of the bill.

	No Change: Attached LCS Fiscal Note accurately reflects the fiscal impact of the bill
	Update: Fiscal impact has changed due to <i>new information or technical issues</i>
XXX	Update: Fiscal impact has changed due to <i>amendment adopted</i> after LCS Fiscal Note was prepared
	Non-Concurrence: JBC Staff and Legislative Council Staff disagree about the fiscal impact of the bill

The House Judiciary Committee Report (02/05/13) changes the bill to require hearing officers to consider all challenges to the validity of a law enforcement officer's initial contact for any type of license revocation, not just for charges related to driving under the influence, driving under the influence per se, and driving while ability impaired. The types of challenges may now come in hearings to consider driver's license suspension due to excessive points, habitual traffic offender revocations, insurance restraints, and other types of cases. The Department of Law and Department of Revenue have provide revised estimates of fiscal impact. The Department of Revenue has indicated a substantial increase in resources and appropriations needed the JBC Staff and Legislative Staff do not agree with. These differences are discussed in the Points to Consider Section.

In addition, the Legislative Council Staff Fiscal Note indicates on page 2 that a legal services rate of \$79.87 was used in calculating the appropriation. This was a typographical error, the correct rate should have been \$77.25, and the correct hourly rate actually used.

Amendments in This Packet for Consideration by Appropriations Committee

Amendment	Description
J.001	Staff-prepared appropriation amendment.

Current Appropriations Clause in Bill

The bill requires but does not contain an appropriation clause.

Description of Amendments in This Packet

J.001 Staff has prepared amendment **J.001** (attached) to add a provision appropriating \$42,024 cash funds from the Driver's License Administrative Revocation Account of the Highway Users Tax Fund to the Department of Revenue for FY 2013-14 for the purchase of legal services from the Department of Law. The amendment also provides an appropriation of \$42,024 reappropriated funds and 0.3 FTE to the Department of Law for the provision of legal services to the Department of Revenue. The appropriation annualizes to \$100,039 and 0.7 FTE in FY 2014-15 and subsequent State fiscal years. The recommended appropriation is detailed in the following table:

Fiscal Impact Summary	FY 2013-14	FY 2014-15
State Revenue Cash Funds - Fines Collection Cash Fund	Potential Decrease	
State Expenditures Department of Revenue Cash Funds - Driver's License Administrative Revocation Account	\$42,024	\$100,039
Department of Law Reappropriated Funds from Department of Revenue	42,024	\$100,039
FTE Position Change - Department of Law	0.3	0.7

The Department of Revenue requested an additional \$207,112 cash funds and 3.0 FTE starting in FY 2014-15. The recommendation of both JBC Staff and Legislative Council Staff is that this request not be approved until the Department justifies its assumptions. This recommendation is explained in the Points to Consider section of this Fiscal Analysis.

Points to Consider

JBC Staff and Legislative Council Staff Differences with Departments

In response to the amendment adopted by the House Judiciary Committee, both the Department of Law and the Department of Revenue submitted revised estimates of the fiscal impact of the bill. Each of these will be dealt with in turn.

Department of Law: The Department of Law assumed, for the purposes of this bill as originally drafted, that the bill would result in an additional 12 cases per year where the hearing officer's denial of challenge of the validity of the law enforcement officer's initial contact would be appealed to the district court and the court of appeals and require the provision of legal services to the Department of Revenue. In response to the amendment extending the grounds for which the hearing officer must consider the challenge to the validity of the initial traffic stop whenever it is raised by a defendant, the Department estimates that the number of cases requiring legal services would increase by another 11 cases.

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The Department estimates that it would not begin to see cases related to challenges resulting from this bill until February 2014 because the cases would not have worked their way through the process before that time. Therefore, the Department discounted the hours it would need by 58 percent (7/12ths of the year will have elapsed before the Department expects to see any cases). Therefore, the Department of Law estimates that it will need, as a result of the bill, an appropriation of \$42,024 reappropriated funds and 0.3 FTE for FY 2013-14 (to provide 544 hours of legal service at \$77.25 per hour). This appropriation annualizes to \$100,039 reappropriated funds and 0.7 FTE in FY 2014-15 (for 1,295 hours at \$77.25 per hour).

Department of Revenue: The Department of Revenue provided a revised fiscal impact worksheet in response to the amendment adopted in the House Judiciary Committee. The worksheet indicated that there would be no position change or appropriation required in FY 2013-14. The Department did indicate, however, a fiscal impact starting in FY 2014-15.

The Department assumed that 20.0 percent of the cases where the defendant does not now request and attend a hearing, the defendant will now request a hearing. That is an extra 3,955 new hearings, which would require an additional 1.9 FTE hearing officers. In addition, the Department assumes challenges would be made to the validity of the initial contact in 20.0 percent of the hearings they do conduct, resulting in 1,471 challenges, requiring an additional 0.8 FTE. Finally, the Department estimated that it would need 0.3 FTE for the increase in subpoenas issued. In total, the Department estimates that it will require an appropriation of \$207,112 cash funds and 3.0 FTE, starting in FY 2014-15.

The request for additional FTE is detailed in the following table:

New Hearing Driven by Availability of Challenge to Law Enforcement's Original Traffic Stop	Current Cases - No Hearing	Estimated Percent of Hearings Requested	Estimated New Hearings	Hours per Hearing	Total Hours	FTE
Points suspensions	3,900	20.0%	780	1.0	780	0.38
DUI convictions	4,305	20.0%	861	1.0	861	0.41
Habitual Traffic Offender	3,270	20.0%	654	1.0	654	0.31
Renewal/extensions	260	20.0%	52	1.0	52	0.03
Insurance restraints request	<u>26,800</u>	6.0%	<u>1,608</u>	1.0	<u>1,608</u>	<u>0.77</u>
Total	38,535		3,955		3,955	1.90

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HB 13-1077 Defense Raised in Existing Hearing Types	Existing Hearing	Estimated Percentage Challenged	Estimated Challenges	Hours per Hearing	Total Hours	FTE
Points	6,073	20.0%	1,215	1.2	1,458	0.70
DUI	141	20.0%	28	1.0	28	0.01
Habitual Traffic Offender	72	20.0%	14	1.0	14	0.01
Insurance	231	20.0%	46	1.0	46	0.02
Vehicular assault/homicide	584	20.0%	117	1.0	117	0.06
Extensions	<u>256</u>	20.0%	<u>51</u>	1.0	<u>51</u>	<u>0.02</u>
Total	7,357		1,471		1,714	0.82
Additional Subpoenas	8,468	20.0%	1,694	0.2	565	0.27
Total Additional FTE						3.00

Legislative Council Staff asked the Department of Revenue to justify its numbers and to date, the Department has not. Both JBC and Legislative Council Staff agree that the hours required to implement the bill in the Fiscal Impact worksheet need to be justified before an appropriation is provided to the Department of Revenue for additional staff and operating expenses. This issue can be addressed through the annual budget process, if necessary.