

Department of Legislative Services  
 Maryland General Assembly  
 2019 Session

FISCAL AND POLICY NOTE  
 Enrolled - Revised

House Bill 1052

(Delegate Miller)(By Request - Task Force to Study State Alcohol Regulation, Enforcement, Safety, and Public Health)

Economic Matters

Education, Health, and Environmental Affairs

Alcohol and Tobacco Commission

This bill establishes the Alcohol and Tobacco Commission (ATC); specifies its powers and duties; transfers Field Enforcement Division (FED) staff, powers, and duties related to regulation of alcoholic beverages and tobacco from the Comptroller’s Office to ATC; and makes a series of conforming changes. The bill expresses legislative intent that the transfer to ATC take place by July 1, 2020. **The bill takes effect June 1, 2020.**

Fiscal Summary

**State Effect:** General fund expenditures increase by \$4.0 million in FY 2020 to procure a comprehensive document management and licensing system for ATC and at least \$699,900 in FY 2021, primarily for additional ATC staff; future years reflect ongoing operating expenses. Otherwise, existing general fund expenditures incurred by FED are transferred to ATC beginning in FY 2021. Other potential costs (such as moving and additional staff to maintain current levels of alcoholic beverages and tobacco enforcement) are not reflected below. State revenues are not assumed to be affected, as discussed below.

(in dollars)	FY 2020	FY 2021	FY 2022	FY 2023	FY 2024
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	4,000,000	699,900	681,400	703,200	725,900
Net Effect	(\$4,000,000)	(\$699,900)	(\$681,400)	(\$703,200)	(\$725,900)

*Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate increase; (-) = indeterminate decrease*

**Local Effect:** The bill is not anticipated to materially affect local operations or finances.

**Small Business Effect:** Minimal.

## Analysis

### Bill Summary:

#### *Alcohol and Tobacco Commission – Membership and Executive Director*

ATC consists of five members appointed by the Governor with the advice and consent of the Senate; the presiding officer of either house of the General Assembly may recommend a list of individuals for appointment to the Governor. Commissioner terms are five years, and a commissioner may not serve more than two full terms. The bill establishes other processes related to the terms of commissioners. ATC members must meet specified qualifications and have the following backgrounds and experience:

- one member must be knowledgeable and experienced in public health matters;
- one member must be knowledgeable and experienced in law enforcement matters;
- one member must be knowledgeable and experienced in the alcoholic beverages industry; and
- two members must be members of the public who are knowledgeable and experienced in fiscal matters, as specified by the bill.

ATC must annually elect a chair from its members. Additionally, the Secretary of Health and the Secretary of State Police, or their designees, may participate as *ex officio* nonvoting members. ATC must meet monthly. A commissioner is entitled to reimbursement for expenses under standard State travel regulations, as provided in the State budget.

The bill also establishes the position of Executive Director of the Alcohol and Tobacco Commission. The executive director must have specified qualifications, may not engage in another profession or occupation, is entitled to a salary as provided in the State budget, and serves at the pleasure of the Governor with the advice and consent of the Senate. The executive director is authorized to employ staff with the advice of the commission and in accordance with the State budget. Any such staff are in the State Personnel Management System.

The executive director and all employees in the Office of the Executive Director may not accept a contribution of money or property worth at least \$100 from an entity or individual associated with the alcoholic beverages or tobacco industries with respect to regulation of alcoholic beverages or tobacco.

### *Alcohol and Tobacco Commission – Powers and Duties*

The bill establishes the following powers and duties for ATC (which are in addition to the FED-related powers and duties transferred from the Comptroller's Office). ATC must:

- educate the public, by resource sharing and serving as an information clearinghouse, about specified topics related to the use of tobacco products and the consumption of alcoholic beverages;
- subject to federal approval, ensure that all alcoholic beverages sold in the State with an alcohol content exceeding 4.5% by volume bear a large and conspicuous label stating the percentage of alcohol content;
- conduct studies of the operation and administration of similar laws in other states or countries and federal laws that may affect the State's alcoholic beverages or tobacco industries, as specified; and
- develop best practices for various topics related to alcoholic beverages regulation, including the reporting of aggregate data between local police and local licensing boards, the development of a public health impact statement for all changes to the State alcoholic beverages laws, and carrying out compliance checks for alcoholic beverages licensees at least once each year.

The bill also requires ATC to (1) submit an annual report containing statistical information on the alcoholic beverages business in the State by December 1 of each year and (2) conduct a feasibility study for maintaining a statewide database of individuals trained in an alcohol awareness program, as specified. The feasibility study must be completed and submitted to the Governor and General Assembly by December 31, 2021.

The bill authorizes the disclosure of tax information to ATC.

### *Transfer of the Field Enforcement Division (as Relates to Alcoholic Beverages and Tobacco) to the Commission*

The bill transfers FED personnel, powers, duties, and responsibilities that relate to the regulation of alcoholic beverages and tobacco from the Comptroller's Office to ATC and makes a series of conforming changes throughout the Alcoholic Beverages Article and Business Regulation Article. All duties and responsibilities associated with FED's existing alcoholic beverages and tobacco regulation functions must continue under ATC. Employees transferred in this manner retain any merit system and retirement status they may have on the date of transfer and must be transferred without any change or loss of pay, working conditions, benefits, rights, or status. Furthermore, the bill specifies that files, furniture, fixtures, records, other properties, credits, liabilities, and obligations are retained by the appropriate entity under the transfer.

The bill expresses the intent of the General Assembly that:

- the transfer of personnel and responsibilities to ATC under the bill take place on or before July 1, 2020;
- the transfer be conducted in a manner that minimizes the costs of the transfer and results in a more cost-efficient operation for the regulation of alcoholic beverages and tobacco for the protection of the public health, safety, and welfare of the State;
- the Executive Director of the Alcohol and Tobacco Commission is the successor of the Comptroller's Office in matters concerning the regulation of alcoholic beverages and tobacco; and
- in every law, executive order, rule, regulation, policy, or document created by an official, an employee, or a unit of the State, the names and titles of those agencies and officials mean the names and titles of the successor agency or official.

Documents, including letterhead and business cards, reflecting the renaming of State agencies under the bill may not be used until all documents already in print have been used. The bill allows the Department of Legislative Services (DLS) to correct cross references and terminology in State law rendered incorrect by the bill's various changes.

### **Current Law/Background:**

#### *Task Force to Study State Alcohol Regulation, Enforcement, Safety, and Public Health*

Chapter 25 of 2018 established the Task Force to Study State Alcohol Regulation, Enforcement, Safety, and Public Health. The task force was required to examine whether the State agency that is now assigned the tasks of regulating the State alcoholic beverages industry and enforcing associated laws is the most appropriate agency to ensure the safety and welfare of Maryland residents, or whether those tasks should be assigned to another State agency or to one created specifically to carry out those tasks.

In its final [report](#), the task force made 23 recommendations, some of which are being implemented by the bill. Among other things, the task force recommended (1) increasing the number of positions in FED to keep pace with the increase in alcohol outlets; (2) establishing a new separate agency in charge of regulating and enforcing alcohol, tobacco, and motor fuel laws in the State; and (3) prohibiting all alcohol regulators and elected officials, on State and local levels, from accepting donations from entities associated with the alcohol, tobacco, or motor fuel industries with respect to regulation of alcohol, tobacco, or motor fuel.

### *Field Enforcement Division of the Comptroller's Office*

The Comptroller's Office issues licenses to manufacturers and wholesalers and is responsible for enforcing the laws that are applicable to the purchase or importation of alcoholic beverages. Specifically, two divisions within the Comptroller's Office are primarily tasked with the regulatory process. The Revenue Administration Division is responsible for collecting tax revenue from the sale of alcoholic beverages. The FED oversees licenses and investigates the manufacture, sale, purchase, use, and transportation of alcohol.

FED agents are charged with investigating violations of State revenue laws pertaining not only to alcoholic beverages violations, but also to violations involving tobacco, trader's and transient vendors' licenses, the sales and use tax, the International Fuel Tax Agreement, and motor fuel taxes. FED is authorized to inspect and search building and space premises where alcoholic beverages are housed, use equipment to measure quantity and quality of alcoholic beverages, and issue summonses for witnesses for hearings and inquiries. FED works with State's attorneys to provide evidence against individuals in possession of contraband alcoholic beverages or selling alcoholic beverages without authorization.

Investigations conducted by FED agents may result in an arrest or a criminal citation. Agents also work closely with other state law enforcement agencies and federal law enforcement agencies to monitor and arrest individuals that live in the State or who live outside the State but commit revenue crimes in Maryland.

### *Disclosure of Tax Information*

Generally, tax information may not be disclosed by an officer, employee, former officer, or former employee of the State or any political subdivision of the State; however, tax information may be disclosed to specified individuals and entities. For example, tax information may be disclosed to the Maryland Tax Court, certain local and federal officials, or another tax collector. "Tax information" generally means the amount of income or other information disclosed in a tax return, as specified. State law specifies that certain types of returns are considered tax information, such as a bay restoration fee return, an alcoholic beverage tax return, a motor fuel tax return, and a tobacco tax return.

### *Health Effects of Alcohol*

According to the U.S. Centers for Disease Control and Prevention, excessive drinking includes binge drinking, heavy drinking, and any drinking by pregnant women or those younger than age 21. "Binge drinking" is defined as the consumption of (1) for women, 4 or more drinks during a single occasion and (2) for men, 5 or more drinks during a single

occasion. “Heavy drinking” is defined as the consumption of (1) for women, 8 or more drinks per week and (2) for men, 15 or more drinks per week. Short-term health risks of excessive drinking include injuries, violence, alcohol poisoning, risky sexual behaviors, and miscarriages. Long-term health risks of excessive drinking include high blood pressure, heart or liver disease, stroke, cancer, memory problems, mental health problems, social problems, and alcoholism.

**State Fiscal Effect:** Overall, net general fund expenditures increase by \$4.0 million in fiscal 2020 for the procurement of a new document management and licensing system for ATC and at least \$699,886 in fiscal 2021 for ATC to hire additional administrative and public-health focused staff and for maintenance of the new system. Future year expenditures reflect full salaries with annual increases and employee turnover and ongoing operating expenses, as well as ongoing maintenance costs. Because the FED staff who are transferred are required to continue their licensing and regulatory duties at ATC, the bill is not anticipated to have any material effect on revenues.

The estimate makes the following assumptions:

- Because the bill retains motor fuel regulation within the Comptroller’s Office, the 33 FED staff who currently perform that function (and are funded through the Transportation Trust Fund (TTF)) remain in the Comptroller’s Office.
- The remaining 27 FED staff (all of whom are funded by the general fund) are transferred to ATC.
- The transfer of the FED staff noted above to ATC and all associated budgetary effects take place on July 1, 2020, at the beginning of fiscal 2021.
- Despite the need to be confirmed, the current director of FED is assumed to become the executive director of ATC at the same salary, and the new staff for ATC are assumed to be hired on July 1, 2020.
- Other costs associated with the transfer of FED alcoholic beverages and tobacco regulation to ATC take place in fiscal 2020, in advance of the bill’s June 1, 2020 effective date, to ensure that ATC can smoothly continue the FED operations for which it assumes responsibility after the transfer takes place on July 1, 2020.
- All spending for ATC is from general fund appropriations.

The estimate does not include potential costs related to moving or the possible hiring of additional enforcement staff who may be needed to maintain current levels of alcoholic beverages and tobacco regulation activities (since more than one-half of FED positions are assumed to remain in the Comptroller’s Office). The estimate does not include the promotion or hiring of a new executive director for motor fuel enforcement activities at the Comptroller’s Office. A more detailed discussion of each of these known and potential costs can be found below.

### *Transfer of Regulatory Functions and Personnel*

In general, FED is a discrete regulatory unit within the Comptroller's Office; however, it does provide support services to other divisions. FED is primarily funded by a combination of general funds and TTF monies; however, the TTF portion of FED's budget varies from year to year based on its motor fuel regulatory activities. Specifically, the salaries of 33 of FED's 60 total staff, and a variety of other motor fuel-related costs, are supported by TTF, while FED's remaining 27 staff, and other alcoholic beverages and tobacco-related costs, are supported with general funds.

Therefore, general fund expenditures for the Comptroller's Office decrease by \$3.2 million in fiscal 2021 while general fund expenditures for ATC increase correspondingly as staff and equipment related to alcoholic beverages and tobacco regulation are transferred to ATC. Future years reflect a 2% annual growth rate.

### *Licensing Systems*

ATC requires a comprehensive document management and licensing database system to accept applications, maintain records on licensees, and generally enforce its regulatory duties related to alcoholic beverages and tobacco once staff and equipment have been transferred. Therefore, general fund expenditures increase by \$4.0 million in fiscal 2020 in order to design and implement the new system. Future years assume annual maintenance costs of \$40,000.

Costs could be mitigated to the extent that ATC can directly use or replicate the existing systems within the Comptroller's Office currently used by FED for alcoholic beverages and tobacco enforcement activities; however, it is unclear at this time the extent to which doing so is practicable.

Even though the bill takes effect June 1, 2020, procurement of the system would be necessary earlier in fiscal 2020 to ensure the system is fully operational on July 1, 2020, when ATC begins its regulatory duties.

### *Additional Staff for the Alcohol and Tobacco Commission*

FED does not currently have its own administrative staff and, instead, is supported by a shared administrative staff within the Comptroller's Office. As such, the transfer of alcoholic beverages and tobacco-related FED employees to ATC necessitates the hiring of additional administrative staff by ATC. Furthermore, the bill's expansion of duties related to the public health effects of alcoholic beverages requires the hiring of a public health specialist to manage and undertake those duties.

Therefore, general fund expenditures by ATC increase by \$659,886 in fiscal 2021, which assumes the new staff are hired July 1, 2020, concurrent with the anticipated transfer date under the bill. This estimate reflects the cost of hiring two information technology specialists, two human resources specialists, one administrative and finance specialist, one external communications specialist, one assistant Attorney General, and one public health liaison. It includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses.

Positions	8.0
Salaries and Fringe Benefits	\$612,766
One-time Start-up Costs	39,120
Ongoing Operating Expenses (including commissioner reimbursement)	<u>8,000</u>
<b>Total FY 2021 ATC New Personnel/Commissioner Expenditures</b>	<b>\$659,886</b>

Future year expenditures reflect full salaries with annual increases and employee turnover and ongoing operating expenses.

*Staff May Be Needed to Maintain Current Level of Enforcement*

ATC may require additional staff in order to maintain the level of alcoholic beverages and tobacco regulation and enforcement now provided by FED. In its current configuration, FED’s enforcement activities benefit from operational efficiencies achieved by having its agents perform multiple functions while out in the field. For example, an agent inspecting a gas station’s motor fuel activities could also inspect the gas station’s tobacco sales activities during the same visit. Such operational efficiencies are less likely to be achieved under the bill.

The Comptroller’s Office advises that any reduction in regulatory efficacy related to tobacco enforcement could impact the State’s status as a beneficiary of the tobacco Master Settlement Agreement (MSA). In order to receive funding from MSA, the State must demonstrate that it is diligently enforcing tobacco compliance. The Comptroller’s Office advises that MSA provides the State with approximately \$150.0 million in revenues annually. DLS advises that, although loss of operational efficiencies as noted above could impact such enforcement, any fiscal impact cannot be reliably estimated at this time.

As noted above, this estimate assumes the current director of FED transfers along with the alcoholic beverages and tobacco enforcement personnel to ATC. It is unclear how FED personnel who remain at the Comptroller’s Office will be supervised. This estimate does not account for any additional costs related to ongoing supervision of motor fuel enforcement activities.

### *Potential Moving Costs*

FED, as a division within the Comptroller's Office, is located alongside the legislative complex in the City of Annapolis. ATC could meet its statutory duties by establishing its headquarters in that same location. A similar situation occurred when the Department of Information Technology (DoIT) was separated from the Department of Budget and Management (DBM) by Chapter 9 of 2008. DoIT remained collocated with DBM for a number of years until it needed additional space and moved its operations. Even so, the Comptroller's Office may not have the space necessary to house both the remaining staff from FED and ATC with its additional complement of staff. To the extent that ATC chooses to or is required to move, general fund expenditures increase, potentially significantly, to do so.

FED requires significant space to hold seized property, such as alcohol, tobacco, and motor fuel products that were smuggled into Maryland from other states. Moreover, because this property is evidence and may be used to prosecute smugglers and other violators, moving the property requires chain of custody procedures to be utilized, which would increase overall moving costs. Conversely, the Comptroller's Office could continue to house this property in its current location for ATC even if ATC moves to another location, which would significantly lower the overall moving costs. Additionally, costs for rent for ATC could vary greatly depending on whether any other suitable State-owned space (which would be free or low-cost) is available if current ATC operations are moved. As such, any potential moving costs are not included in this analysis.

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### **Additional Information**

**Prior Introductions:** None.

**Cross File:** SB 703 (Senator Kramer)(By Request - Task Force to Study State Alcohol Regulation, Enforcement, Safety, and Public Health) - Education, Health, and Environmental Affairs.

**Information Source(s):** Comptroller's Office; Judiciary (Administrative Office of the Courts); Department of Budget and Management; Maryland Department of Health; Department of State Police; Maryland Department of Transportation; U.S. Centers for Disease Control and Prevention; Department of Legislative Services

**Fiscal Note History:**  
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