

Department of Legislative Services
 Maryland General Assembly
 2019 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 703 (Senator Kramer)(By Request - Task Force to Study State Alcohol Regulation, Enforcement, Safety, and Public Health)

Education, Health, and Environmental Affairs

Alcohol, Tobacco, and Motor Fuel Commission

This bill establishes the Alcohol, Tobacco, and Motor Fuel Commission (ATMFC); specifies its powers and duties; transfers the Field Enforcement Division (FED) and its existing powers and duties from the Comptroller’s Office to ATMFC and makes a series of conforming changes. The bill expresses legislative intent that the transfer of FED and its personnel to ATMFC take place on or before 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 ATMFC and \$699,900 in FY 2021 primarily for additional ATMFC staff; future years reflect ongoing operating expenses. Otherwise, existing general and special fund expenditures incurred by FED transfer to ATMFC beginning in FY 2021. Potential costs related to moving and backfilling for functions handled by FED for which the Comptroller’s Office retains responsibility are not reflected, as discussed below. As any impact on tax compliance and related operational efficiencies cannot be reliably determined, State revenues are not assumed to be affected.

(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
GF/SF Exp.	0	0	0	0	0
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, Tobacco, and Motor Fuel Commission – Membership and Executive Director

ATMFC 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. ATMFC members must meet specified qualifications and have the following backgrounds and experience:

- one member must be a representative of the public health community;
- one member must be a representative of the law enforcement community;
- one member must be a representative of 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.

ATMFC 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. ATMFC 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, Tobacco, and Motor Fuel 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 alcohol, tobacco, or motor fuel industries with respect to regulation of alcohol, tobacco, or motor fuel.

Alcohol, Tobacco, and Motor Fuel Commission – Powers and Duties

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

- educate the public, by resource sharing and serving as an information clearinghouse, about specified topics related to the consumption of alcohol;
- 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 alcohol, tobacco, or motor fuel industries, as specified; and
- develop best practices for various topics related to alcohol 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 ATMFC to conduct a feasibility study for maintaining a statewide database of individuals trained in an alcohol awareness program, as specified.

Transfer of Field Enforcement Division to the Commission

The bill transfers FED; its personnel; and all of its powers, duties, and responsibilities from the Comptroller's Office to ATMFC and makes a series of conforming changes throughout the Alcoholic Beverages Article, Business Regulation Article, and Tax-General Article. All duties and responsibilities associated with FED's existing functions must continue under ATMFC. Employees transferred in this manner retain all rights, status, and merit system and retirement status they may have on the date of transfer. Furthermore, the bill specifies that all files, furniture, fixtures, records, other properties, credits, liabilities, and obligations are retained by FED under the transfer.

The bill expresses the intent of the General Assembly that:

- the transfer of FED and its personnel to ATMFC take place on or before July 1, 2020;
- the transfer of FED and its personnel to ATMFC be conducted in a manner that minimizes the costs of the transfer and will result in a more cost-efficient operation

for the regulation of alcoholic beverages, tobacco, and motor fuel for the protection of the public health, safety, and welfare of the State;

- the Executive Director of the Alcohol, Tobacco, and Motor Fuel Commission is the successor of the Comptroller's Office in matters concerning the regulation of alcohol, tobacco, and motor fuel; 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, many 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.

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 by ATMFC and \$699,886 in fiscal 2021 for ATMFC to hire additional 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 FED is required to continue its licensing and regulatory duties as ATMFC, the bill is not anticipated to have any material effect on revenues.

The estimate makes the following assumptions:

- the transfer of FED to ATMFC and all associated budgetary effects takes place on July 1, 2020, at the beginning of fiscal 2021. Furthermore, despite the need to be confirmed, the current director of FED is assumed to become the executive director of ATMFC at the same salary, and the new staff for ATMFC are assumed to be hired on July 1, 2020;
- other costs associated with the transfer of FED to ATMFC take place in fiscal 2020, which may take place prior to the bill's June 1, 2020 effective date, to ensure that ATMFC can smoothly continue with FED's operations after the transfer takes place on July 1, 2020; and
- FED's budgetary structure (which includes a combination of general and special funds) remains the same under ATMFC. Even so, any new spending by ATMFC is assumed to be general funded.

The estimate does not include potential costs related to moving (which is not required under the bill) or the loss of enforcement-related efficiencies by the Comptroller's Office. A more detailed discussion of each of these known and potential costs can be found below.

Alcohol, Tobacco, and Motor Fuel Commission

Field Enforcement Division Transfer

The bill moves the entirety of FED, and its 60 existing staff, from the Comptroller's Office to ATMFC. 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 transportation trust funds (TTF); however, the TTF portion of FED's budget varies from year to year based on its motor fuel regulatory activities.

Therefore, the transfer of FED decreases general and special fund expenditures for the Comptroller's Office by \$6.9 million in fiscal 2021 while general and special fund expenditures for ATMFC increase correspondingly. Future years reflect a 2% annual growth rate.

Licensing Systems

ATMFC requires a comprehensive document management and licensing database system to accept applications; maintain records on licensees; and generally enforce its regulatory duties related to alcohol, tobacco, and motor fuel once FED has been transferred. Therefore, general fund expenditures increase by \$4.0 million in fiscal 2020 in order to design and implement the new system; the system is likely to be designed to easily

implement a database of individuals trained in an alcohol awareness program should ATMFC determine that such a system is feasible. Future years assume annual maintenance costs of \$40,000.

Costs could be mitigated to the extent that ATMFC can directly use or replicate the existing systems within the Comptroller's Office currently used by FED; 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 ATMFC begins its regulatory duties.

Additional Staff

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 FED to ATMFC necessitates the hiring of additional administrative staff by ATMFC. Furthermore, the bill's expansion of duties for FED under ATMFC 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 ATMFC 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
Salaries and Fringe Benefits	\$612,766
One-time Start-up Costs	39,120
Ongoing Operating Expenses (including commissioner reimbursement)	<u>8,000</u>
Total FY 2021 ATFMC New Personnel/Commissioner Expenditures	\$659,886

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

Potential Moving Costs

DLS advises that that bill does not require FED to move its operations from its current location once FED is transferred to ATMFC. Specifically, FED, as a division within the

Comptroller's Office, is located alongside the legislative complex in the City of Annapolis; ATMFC 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 colocated with DBM for a number of years until it needed additional space and moved its operations. Therefore, for purposes of this analysis, it is assumed that ATMFC establishes its operations where FED is currently located at little to no additional cost.

To the extent that FED chooses to or is required to move when it becomes ATMFC, general fund expenditures increase significantly to do so. FED advises that it needs significant space to hold seized property, such as alcohol and tobacco 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. Additionally, costs for rent could be significant; however, any such costs are potential and depend on whether any other suitable State-owned space (which would be free or low-cost) is available if current FED operations are moved.

Comptroller's Office

Tax-related Compliance

The Comptroller's Office advises that, even under the bill, it is still responsible for certain tax-related compliance issues and the regulation of certain slot machines by eligible organizations in certain counties. To the extent that the Comptroller's Office cannot absorb the residual FED functions not transferred under the bill with existing resources and staff from other divisions, general fund expenditures are necessary for additional staff (and additional vehicles). Without actual experience under the bill, any such need cannot be reliably determined, and such costs are, therefore, not included in this estimate. The Comptroller's Office currently has more than 1,100 employees, including 60 FED employees.

Additionally, the Comptroller's Office may be able to establish a memorandum of understanding or an interagency agreement with ATMFC to continue some or all of the tax-related compliance functions listed above; doing so would likely be the most cost-effective option. Any such agreement would have to be negotiated between ATMFC and the Comptroller's Office and, therefore, this estimate does not reflect these potential costs.

Impact on Efficiencies

The Comptroller's Office advises that the transfer of FED could result in a loss of efficiencies due to the case enhancement services that FED provides to the Comptroller's Office. FED regularly works with other divisions in the Comptroller's Office, as well as the Office of the Attorney General and local and federal law enforcement to further their regulatory functions. For example, FED (1) provides service on subpoenas on behalf of the assistant Attorney General assigned to the Comptroller's Office; (2) conducts undercover activities related to tax types other than alcohol, tobacco, and motor fuel; (3) conducts criminal investigations for fraud perpetrated against the Comptroller's Office; and (4) conducts investigations related to identity theft. It is not known at this time whether these efficiencies could be replicated using existing staff in the Comptroller's Office or whether the Comptroller's Office could contract with ATMFC to continue these services.

The Comptroller's Office also advises that any reduction in regulatory efficacy related to tobacco 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 any such impact is speculative and, therefore, not reflected in this estimate.

Additional Information

Prior Introductions: None.

Cross File: HB 1052 (Delegate Miller)(By Request - Task Force to Study State Alcohol Regulation, Enforcement, Safety, and Public Health) - Economic Matters.

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: First Reader - February 21, 2019
mag/tso

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