

MEMORANDUM



JOINT BUDGET COMMITTEE

TO Joint Budget Committee
FROM Scott Thompson, JBC Staff (303-866-4957)
DATE March 16, 2017
SUBJECT Staff Comeback--Department of Revenue R3 Liquor Enforcement Division

This memo provides additional information requested by the Committee to assist in its decision whether to increase operating costs to the Liquor Enforcement Division (LED) by \$52,884 cash funds and sponsor legislation to implement a new liquor license renewal application fee. In working through this request, the Department and JBC Staff identified a cash flow problem that both believe relates to S.B. 16-197 (Liquor Licensed Drug Stores). Therefore, it is more straightforward to break this modified request into two pieces: (1) Increased appropriation for LED operations; and (2) Liquor license renewal application fee.

R3 LIQUOR ENFORCEMENT DIVISION OPERATING INCREASE

The Liquor Enforcement Division (LED) is responsible for licensing and regulating businesses selling alcohol in the State of Colorado by providing education, training, and outreach; carrying out inspections, background investigations, and enforcement actions; implementing legislation; promulgating rules and issuing licenses; and conducting the public needs and issues hearings for licensees on state-owned property.

Businesses under the LED's purview include liquor retailers, manufacturers, wholesalers, and importers. There are currently over 13,000 liquor licenses in Colorado, of which 1,763 are licenses for new liquor establishments. In the last ten years, Colorado has become a popular location for new breweries, wineries, and distilleries. The number of new breweries has tripled and the number of new distilleries has doubled in just the last three years. In addition to growth within the current market, legislative changes have added new, and modified existing, license types. These legislative changes have increased the number and types of businesses interacting with the LED.

Two activities that support the LED's mission of gaining and monitoring compliance with Colorado's liquor laws are under age compliance checks and minor-in-possession checks. Both of these activities are aimed at reducing underage consumption of alcohol. Under age compliance checks are carried out through an undercover operation in which a minor attempts to purchase alcohol from a licensed business. Criminal investigators from the LED coordinate the operation and use a "joey" (commonly known as a wire) to transmit and record the transaction for evidence. Minor-in-possession checks are most often carried out by criminal investigators who attend and monitor events for underage drinking. Compliance checks typically are daily activities and do not require an overnight stay, however, some remote parts of the state do require an overnight stay. Criminal investigators are strategically located throughout the state with a physical presence in Lakewood, Colorado Springs, Grand Junction, and Greeley.

Aside from personnel costs (both for the criminal investigators and the minors who assist with the compliance checks), enforcement activity costs include: equipment purchase and maintenance, lodging and travel, and per diem. For the past four years, the LED has struggled to maintain a statewide enforcement presence due to pressure on the operating budget from increased costs.

Under these budget pressures, the LED has taken several steps, including: prioritizing travel and lodging expenditures over standard operating and equipment maintenance costs, reducing travel to destinations requiring an overnight stay, reducing the LED’s presence at multi-day festivals and other events, and reducing training opportunities for new investigators.

The Department requests an increase of \$52,884 cash fund from the Liquor Enforcement Division and State Licensing Authority Cash Fund, which is comprised of: (1) \$8,304 for travel and lodging at multiday festivals, (2) \$5,790 for lodging in remote locations for single day compliance checks, (3) \$29,640 for equipment, and (4) \$9,150 for new investigator training.

TRAVEL AND LODGING

The LED events planned for the upcoming year include, among others, Global Dub, Global Dance, XGames, Snowball, Bands in the Backyard, and Country Jam. These events are subject to funding appropriated because each will require lodging, per diem, and multiple investigators to ensure success. Multi-day events are typically staffed by an average of 6 persons. Funding this request will allow for an average of 8 persons per event. Depending on the location, some or all of these investigators will require travel and lodging.

OPERATING COSTS ASSOCIATED WITH ADDING TWO INVESTIGATORS FOR EIGHT MULTIDAY EVENTS				
DAILY INVESTIGATOR LODGING	NUMBER OF ADDITIONAL INVESTIGATORS REQUESTED PER EVENT	NUMBER OF EVENTS PER YEAR	NUMBER OF DAYS PER EVENT	TOTAL REQUEST
\$173	x 2.0	x 8	x 3	\$8,304

Compliance checks are most frequently one-day events. However, for compliance checks in more remote areas, an overnight stay is required. The LED currently budgets for approximately 30 compliance checks that require overnight stays. This request is to increase the number of overnight stays from 30 to 45. Costs are as follows:

OPERATING COSTS ASSOCIATED WITH ADDING TWO INVESTIGATORS FOR 15 REMOTE COMPLIANCE CHECKS				
DAILY INVESTIGATOR LODGING	PER DIEM FOR MINOR CONFEDERATE	NUMBER OF ADDITIONAL INVESTIGATORS REQUESTED PER EVENT	NUMBER OF EVENTS	TOTAL REQUEST
\$173	+ \$20	x 2	x 15	\$5,790

The standard federal per diem in 2017 for Colorado is \$91 a day, which applies everywhere but fifteen geographic areas. The per diem for those areas range from a low of \$94 in Montrose to a high of \$362 in Telluride during ski season. JBC Staff considers the Department’s per diem reasonable considering the likelihood remote compliance checks and multiday festivals require stays in the fifteen areas federal employees receive increased per diem allowances.

EQUIPMENT REPLACEMENT

The Department wishes to continue its two-year equipment replacement plan and the equipment required for compliance checks is detailed below.

EQUIPMENT REPLACEMENT SCHEDULE FOR TWO INVESTIGATORS				
JOEY/WIRE	RADIO	SCANNER	QUANTITY	TOTAL
\$3,700	+ \$11,000	+ \$120	x 2	\$29,640

NEW INVESTIGATOR TRAINING

In prior years, the LED sent investigators to the National Liquor Law Enforcement Association (NLLEA) training. The training is specifically created for new liquor investigators. The training is given and attended by new and experienced investigators from throughout the 50 states. The training locations change as the NLLEA wants to ensure all state agencies have the ability to attend. The Division has not had the funding to send any new hires to the NLLEA academy since 2014. There are currently three new investigators who need to attend the training. Annual costs to send staff to NLLEA training is \$3,050 each.

The National Liquor Law Enforcement Association (NLLEA) training is offered annually and focuses on providing training about enhanced enforcement procedures. An example of some of the topics covered during the 2016 training are included below:

- Warrantless Search Authority;
- The Three-Tier System and Trade Practice Investigations;
- Underage Drinking Enforcement;
- Illegal Gambling;
- Special Events Enforcement;
- Fraudulent Documents;
- Place of Last Drink (POLD);
- Undercover Operations;
- Intelligence Gathering & Sharing;
- Surveillance Techniques & Procedures;
- Sales to Intoxicated Persons (SIP);
- Source Investigations;
- Social Networking/Cyber-Space Investigations;
- Delaware Alcohol and Tobacco Enforcement's Citizen Academy; and
- Illegal Manufacturing of Alcohol.

JBC Staff believes the investigators would benefit from attending a national training even after each has completed P.O.S.T. Certification. Many professions require continuing education to maintain licensure because hearing or learning the correct or more effective way to conduct professional activities helps ensure consistent application. With the training provided at NLLEA, Investigators can provide guidance to local licensing authorities.

JBC Staff recommends the Committee approve the Department request.

LIQUOR LICENSE RENEWAL APPLICATION FEE

The Department did not formally request the Joint Budget Committee sponsor legislation to implement a renewal fee for liquor licensees. In reviewing the Department request, JBC Staff and the Department noted that approximately 60 percent of the Liquor Enforcement Division's (LED) operating budget was funded with revenue from the application fee levied on *new* liquor licensees. In FY 2015-16, new licensees account for less than 14 percent of all licensees

The LED has had fee setting authority and a direction to approximate its direct and indirect costs by setting fees that summed to anticipated costs since at least FY 1997-98. This funding model worked well for almost two decades. When the Department developed its budget request for the the LED, historic cash flow projections forecast sufficient revenue to fund base operations in addition to the request. However, after passage of S.B. 16-197 (Liquor Licensed Drugstores) it appears that the industry's behavior has changed and the division has seen a 24 percent reduction in first time applications through December.

The Department is assuming the industry behavior is a permanent reaction to the changes made in S.B. 16-197. After the fees were increased in December, the Department forecasts that without alternative funding new applicants will fund 74 percent of the LED operations, up from 50 percent in FY 2015-16.

The Department collects fees for a number of different types of liquor licenses, most of which are set by the General Assembly in statute. The major source of revenue the LED has control to set fees is the new application fee and pursuant Section 12-47-501 (2)(a), C.R.S., it sets the fee to approximate the direct and indirect costs of LED operations. With such a marked drop in fee revenue through the first half of the fiscal year, the Department suggested and JBC Staff supports the implementation of a liquor license renewal fee. Under the draft bill, the Department will set its fees for first time applications and renewals to approximate its direct and indirect costs.

The solution is a logical response to the changes to industry behavior and its reaction to enacting S.B. 16-197. In February, the Department feared it would not have sufficient cash flow to make it through the current fiscal year and thought it would need \$300,000 to \$500,000 General Fund in FY 2016-17. It has since identified some operating and vacancy savings that it can reduce or eliminate temporarily until the General Assembly can ascertain an alternative funding stream, which it estimates will save \$308,000 in FY 2016-17.

Based on the changing dynamics of the industry and the limitation on the LED to adjust fees only to pay anticipated expenses based on appropriations from the General Assembly, JBC Staff agrees that implementing a liquor license renewal fee will address the revenue concerns of the LED. The added benefit is that the fee structure for new applicants and existing licensees will be more equitable.

The Department wants to remind that the legislation it supports will not have an impact on TABOR refunds. There is no TABOR impact because initial TABOR cash fund revenue projections for the Liquor Enforcement Division and State Licensing Authority Cash Fund included all revenue the LED anticipated. Because this new fee revenue is supplementing fee revenue that was anticipated but not realized, there is essentially no “new” revenue.

JBC Staff recommends introducing the draft legislation to create a liquor license renewal fee and provide the LED with fee-setting authority to fund its direct and indirect costs.