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October 28, 2009

TO: Members
Joint Committee on Finance

FROM: Bob Lang, Director

SUBJECT: Senate Substitute Amendment 1 to Senate Bill 66: Operating While Intoxicated Modifications

Senate Bill 66 was introduced on February 18, 2009, and referred to the Senate Committee on Judiciary, Corrections, Insurance, Campaign Finance Reform, and Housing. On October 6, 2009, Senators Sullivan, Taylor, and Decker introduced Senate Substitute Amendment 1 to SB 66. Also on October 6, 2009, the Senate Committee adopted two simple amendments to that substitute amendment (SA 1 to SSA 1, on a vote of 5-0, and SA 2 to SSA 1, on a vote of 3-2) and recommend the bill for passage, as amended, on a 3-2 vote. On October 12, 2009, the bill was referred to the Joint Committee on Finance.

This memorandum provides a summary and a discussion of the fiscal impacts of the substitute amendment. Attachment I to this memorandum provides a comparison of the substitute amendment, as amended by the Senate Committee, and Engrossed Assembly Bill 283, which was passed by the Assembly on September 17, 2009, on a vote of 95-0. Attachment II provides a comparison of the revenue provisions of each version.

SUMMARY OF SENATE SUBSTITUTE AMENDMENT 1 TO SENATE BILL 66

Senate Substitute Amendment 1 to SB 66 would make several changes to provisions related to operating while intoxicated (OWI) offenses, including various changes to penalty provisions for specific OWI violations, general changes to OWI sentencing and probation provisions, and changes to ignition interlock device provisions. Unless otherwise noted, these changes, described below, would take effect on the first day of the third month beginning after publication of the act.

Modifications to Penalty Provisions for Certain OWI Offenses

SSA 1 to SB 66 would modify the penalty provisions for certain operating while intoxicated and other alcohol-related violations. In this memorandum, reference to a "basic OWI offense" refers to operating a motor vehicle while intoxicated, while under the influence of an intoxicant, with a prohibited blood alcohol concentration, or with a detectable amount of any restricted, controlled substance in his or her blood. Under current law, however, various penalties and court orders for a basic OWI offense depend upon the number of a person's prior basic OWI offense convictions plus the number of other related convictions. In this memorandum, the term "prior OWI offenses" refers to these offenses, and includes: (a) a basic OWI offense, as described above; (b) causing injury, great bodily harm, or death while operating a motor vehicle while intoxicated (including, for great bodily harm and death offenses, operating a commercial motor vehicle with a blood alcohol level of between 0.04 and 0.08); (c) license revocations for refusing to provide a sample of blood, breath, or urine upon request of a law enforcement officer for chemical testing ("implied consent refusal"); (d) violations of local ordinances or laws of other jurisdictions similar to the violations under (a), (b), and (c); and (e) operating an aircraft with a prohibited alcohol concentration or under the influence of intoxicating liquor or a controlled substance. The penalty changes under the substitute amendment are as follows:

Increase minimum term of imprisonment for a third OWI offense. The substitute amendment would increase the minimum term of imprisonment, from 30 days to 45 days, for a third basic OWI offense and for an offense of operating a commercial motor vehicle with a blood alcohol concentration of between 0.04 and 0.08 by a person with two prior OWI offenses. Under current law, the term of imprisonment for a third OWI offense is 30 days to one year.

Criminalize first offense OWI with a minor passenger. Under the substitute amendment, a person convicted of a first basic OWI offense violation would be guilty of a criminal offense if there was a minor passenger under 16 years of age in the motor vehicle at the time of the violation, subject to a fine of between $350 and $1,100, and a term of imprisonment of not less than five days nor more than six months (the current law penalties for a second basic OWI offense). Under current law, a first basic OWI offense with a minor passenger results in the doubling of the minimum and maximum forfeitures for the offense, or $300 to $600, but the offense is a civil forfeiture. Under the substitute amendment, a first basic OWI offense violation without a minor passenger would remain a non-criminal offense, subject to a forfeiture of $150 to $300.

Criminalize absolute sobriety offense with a minor passenger. The substitute amendment would criminalize violations of the prohibition against operating a motor vehicle with a blood alcohol level above 0.0, but less than 0.08, by a driver who has not attained legal drinking age ("absolute sobriety" violation), if there was a minor passenger under 16 years of age in the vehicle at the time of the offense. Under current law, such a violation is punishable with a civil forfeiture of $400, while under the substitute amendment it would be punishable by a criminal fine of $400.

Felony classification for certain fourth offense OWI violations. The substitute amendment would specify that a fourth basic OWI offense is a Class H felony if the offender had at least one

prior OWI offense within the previous five years of committing the fourth offense. The minimum fine would be $600 and the minimum term of imprisonment would be six months. (A Class H felony is punishable by a maximum fine of $10,000 and/or three years in prison and three years on extended supervision.) Under current law, a fourth basic OWI offense is a misdemeanor offense, punishable by a fine of not less than $600 nor more than $2,000 and a jail term of not less than 60 days nor more than one year.

Felony classification for repeat OWI offenses resulting in injury. The substitute amendment would specify that causing an injury while operating while intoxicated, including an offense involving the operation of a commercial motor vehicle with a blood alcohol level of between 0.04 and 0.08, is a Class H felony if the person had one or more prior OWI offenses. The bill would not specify a minimum fine or term of imprisonment for these offenses, although the current law maximums for a Class H felony would apply. Also, the substitute amendment would specify that the maximum fine and term of imprisonment would be doubled if there was a minor passenger under 16 years of age at the time of the violation. Under current law, these offenses are misdemeanors, punishable by a criminal fine of $300 to $2,000 and a jail term of 30 days to one year. If there was a minor in the vehicle at the time of the offense, however, these offenses are considered a felony under current law and the minimum and maximum fines and periods of imprisonment are doubled.

General Changes to OWI Sentencing Related to Imprisonment and Probation

The substitute amendment would make several changes to provisions related to terms of imprisonment and probation for OWI offenders, as follows:

Disallow house arrest for fourth and subsequent OWI offense. The substitute amendment would disallow the use of house arrest for persons convicted of a fourth or subsequent OWI offense.

Minimum period of confinement for OWI offenders with multiple prior offenses. The substitute amendment would specify that the confinement portion of a bifurcated sentence must be not less than three years for a person convicted of a seventh, eighth, or ninth OWI offense, and not less than four years for a person convicted of a tenth or subsequent OWI offense. Under current law, a seventh, eighth, or ninth OWI offense is classified as a Class G felony, punishable by a fine of up to $25,000 and a term of up to 10 years (five years imprisonment and five years extended supervision), and a tenth or subsequent OWI offense is classified as a Class F felony, punishable by a fine of up to $25,000 and a term of up to 12 years and six months (seven and a half years imprisonment and five years extended supervision). There is currently no mandatory minimum period of confinement specified for these offenses.

No pre-sentence release and no stay of execution for prison sentences for certain multiple-OWI offenders. The substitute amendment would specify that a person convicted of a third or subsequent OWI offense (including the OWI-related offenses counted as "prior OWI offenses") is not eligible to be released following a criminal conviction, but prior to sentencing, and a sentencing

judge may not stay the execution of the sentence for such an offender.

Probation for OWI offenders. The substitute amendment would delete a current law provision that disallows probation for a person convicted of a second or third basic OWI offense. This change would allow a court to order a term of probation for these offenders for a period of between six months and two years, although the current law provisions under which these OWI offenders are given probation require the offender to serve a jail term as part of the probation equal to at least the minimum sentence for the offense. In addition, the substitute amendment would increase the maximum period that a person convicted of a fourth basic OWI offense could be placed on probation from two years to three years.

Extend Winnebago County alternative sentencing and probation program to all counties; modify minimum jail terms under the program; allow alternative sentencing for fourth OWI offense. The substitute amendment would allow courts to use an alternative sentencing option, with reduced minimum or maximum jail sentences, for certain OWI offenders who successfully complete a period of probation that includes alcohol and other drug treatment, effective on the day after publication of the act. In addition, the substitute amendment would increase the minimum period of incarceration under the alternative sentencing structure for a third offense and would extend the program to offenders convicted of a fourth offense. Under the alternative sentencing structure, which is currently available only in Winnebago County, the periods of imprisonment for OWI-related offenses (as modified by the substitute amendment) would be as follows: (a) for a second basic OWI offense or offense of operating a commercial motor vehicle with a blood alcohol level of between 0.04 and 0.08 by a person with one prior OWI offense, the maximum term of imprisonment is reduced from 30 days to seven days (the minimum term remains five days) [these are current law terms under the Winnebago County program]; (b) for a third basic OWI offense or offense of operating a commercial motor vehicle with a blood alcohol level of between 0.04 and 0.08 by a person with two prior OWI offenses, the minimum term of imprisonment is reduced from 45 days to 14 days [the 14-day minimum represents an increase from the current law Winnebago County program minimum of 10 days]; (c) for a fourth basic OWI offense that is not classified as a felony under the substitute amendment or offense of operating a commercial motor vehicle with a blood alcohol level of between 0.04 and 0.08 by a person with three prior OWI offenses, the minimum term of imprisonment is reduced from 60 days to 29 days; and (d) for an offense of causing injuring while operating a vehicle while intoxicated or operating a commercial motor vehicle with a blood alcohol level of between 0.04 and 0.08, if the offender has no prior OWI convictions, the minimum sentence is reduced from 30 days to 15 days. A person can be sentenced under this alternative structure only once in his or her lifetime.

Ignition Interlock Device Provisions

Senate Substitute Amendment 1 to SB 66 would make several changes to ignition interlock device provisions, effective on the first day of the ninth month beginning after publication of the act, as follows:

Mandatory ignition interlock device order for certain offenses. The substitute amendment

would require courts to order a person's operating privileges to be restricted to operating a vehicle equipped with an ignition interlock device ("IID operating privilege restriction") following: (a) an implied consent refusal; (b) an OWI conviction where the person had a blood alcohol level of 0.15 or above; or (c) an OWI conviction by a person who has at least one prior OWI offense. Under current law, courts are allowed, although not required, to order an IID operating privilege restriction for a second or subsequent OWI offense, but are required to order an IID operating privilege restriction for a second or subsequent OWI offense committed within five years of the previous offense. If a court orders an IID operating privilege restriction under these current law, mandatory provisions, the court is also required to order that each motor vehicle for which the offender's name appears on the certificate of title or registration be equipped with an ignition interlock device ("vehicle IID order"), except that in cases of financial hardship the courts may exclude one or more vehicles from this order, or the court may, instead, order that the vehicle or vehicles be seized and forfeited or immobilized for a specified period. The substitute amendment would require courts to issue a vehicle IID order in all circumstances where an IID operating privilege restriction is ordered (while continuing to allow for the financial hardship exception) and would eliminate the option to substitute a vehicle seizure or immobilization order for a vehicle IID order.

Time periods. The substitute amendment would specify that the IID operating privilege restriction would begin on the date that the Department of Transportation issues any driver's license to the offender, but that the court may order that the vehicle IID order be effective immediately upon the issuance of the order. Under current law, an IID operating privilege restriction and a vehicle IID order must be for a period of not less than one year nor more than the maximum operating privilege revocation period for the OWI offense. The substitute amendment specifies that the IID operating privilege restriction for a person convicted of a first OWI offense with a blood alcohol level of 0.15 or above is nine months, which is the maximum license revocation period for a first OWI offense. [Senate Amendment 2 to SSA 1 would increase the IID operating privilege restriction to 12 months for these offenders.]

Ignition interlock device surcharge. The substitute amendment would create a $50 surcharge, to be imposed for any IID operating privilege restriction order. The court would be required to transmit the surcharge to the county treasurer.

Provisions for persons with low household income. The substitute amendment would create an exception to a current law provision that specifies that an offender subject to an IID vehicle order is liable for the cost of installing and maintaining each ignition interlock device. Under the exception, a court would be required to limit the offender's share of the installation and maintenance cost to one-half of the full cost if the court finds that the person has a household income that is at or below 150% of the nonfarm federal poverty line for the continental United States, as defined by the federal Department of Labor. The Department of Transportation would be required to include in its administrative rules for the ignition interlock device program a requirement that IID providers operating in Wisconsin accept, as payment in full for installation and maintenance, the one-half cost payment from qualifying offenders.

Occupational license provisions. The substitute amendment would prohibit DOT from

issuing an occupational license to a person for whom a court has issued an IID operating privilege restriction until the person pays the $50 ignition interlock device surcharge and submits proof that an ignition interlock device has been installed on each motor vehicle subject to an IID vehicle order.

Enforcement provisions and penalty for violations. The substitute amendment would specify that a person who holds an occupational license with an IID restriction or is subject to an IID order by a court is guilty of violating that restriction or order if he or she removes or disconnects an ignition interlock device or otherwise tampers with or circumvents the operation of the device. The substitute amendment would also modify a current law vehicle equipment provision that prohibits any person from removing, disconnecting, tampering with, or otherwise circumventing the operation of an ignition interlock device to include, as a violation, the failure to have an ignition interlock device installed as ordered by a court. The substitute amendment would modify the penalty for violations of this provision by replacing the civil forfeitures ($150 to $600, at the discretion of the court), with criminal penalties. Under the substitute amendment, the court could impose a fine of between $150 and $600, a term of imprisonment of up to six months, or both. In addition, the court would be required to extend the IID order by six months for each violation.

Prohibited alcohol concentration. The substitute amendment would establish the prohibited blood alcohol concentration for a person subject to an IID operating privilege restriction at 0.02. Such a person operating a motor vehicle with a blood alcohol content at or above that level could be found guilty of an OWI offense.

Other Provisions

Revocation time periods. The substitute amendment would modify provisions related to license revocation for OWI violations or implied consent refusals to specify that the applicable revocation periods for the offense or refusal are extended by the amount of time that the person is sentenced to jail.

Elimination of penalty exceptions for offenders with a blood alcohol level less than 0.10. The substitute amendment would eliminate provisions that exempt persons who are convicted of a first-time OWI offense with a blood alcohol level of at least 0.08, but less than 0.10, from the payment of various penalty surcharges and court fees and alcohol assessment requirements. As amended, the substitute amendment would require all OWI offenders to pay these surcharges and court fees, and be subject to an alcohol assessment.

Appropriation and Revenue Provisions

2009-11 Joint Committee on Finance reserve funding. The substitute amendment would provide $26,600,000 GPR in the Joint Committee on Finance's biennial supplemental appropriation to fund costs associated with the substitute amendment, and would require the Department of Administration, on behalf of, and with the assistance of, the State Public Defender, District Attorneys, the Department of Justice, and the Department of Corrections, to submit to the Committee, not later than 60 days after the effective date of the act, a proposed budget and number

of created positions necessary to support the costs under the act in the 2009-11 biennium.

Liquor tax. The substitute amendment would increase the state tax on hard liquor by 50¢ per liter, from 85.86¢ per liter under current law, to 135.86¢ per liter.

Criminal actions fee. The substitute amendment would increase the criminal actions fee, assessed upon each criminal conviction (this applies to all convictions, not just OWI-related convictions), by $143, from $20 to $163. Under current law, 50% of the criminal actions fee is deposited in the general fund and the other 50% is retained by the county in which the conviction occurred. The substitute amendment would specify that 94% of the criminal actions fee would be deposited in the general fund, which would be $153.22 of the new amount if the full fee is collected.

SUMMARY OF SENATE AMENDMENTS TO SSA 1 TO SB 66

Senate Amendment 1 to SSA 1 to SB 66

Senate Amendment 1 would modify a current law provision that specifies that the period of an IID operating privilege restriction must be not less than one year, nor more than the maximum operating privilege revocation for the applicable OWI offense, to specify that the period of the restriction must be not less than one year, nor more than the maximum revocation period, whichever is greater. The amendment would also eliminate a provision of the substitute amendment that would establish the IID operating privilege restriction for a person who has no prior OWI offenses at nine months. Under SA 1 to SSA 1, all IID operating privilege restrictions would have to be at least one year and those for offenses with revocation periods exceeding one year would have to be at least as long as the revocation period.

Senate Amendment 2 to SSA 1 to SB 66

Senate Amendment 2 would modify a current law provision that establishes the period after a license revocation begins before the offender can receive an occupational license. Under current law, a person who has committed a repeat OWI offense within five years of the prior offense may not receive an occupational license until one year after the revocation period begins. Senate Amendment 2 would eliminate these specific occupational license waiting periods for persons convicted of a repeat offense within five years, which would allow the general waiting periods for repeat offenses to apply. Under the current law general provisions, the period between revocation and eligibility for an occupational license is 60 days for a person with two OWI convictions and 90 days for a person with three or more OWI convictions.

FISCAL EFFECT

This section provides information on the fiscal impact of SSA 1 to SB 66, based on fiscal estimates submitted by agencies for the original bill and the fiscal estimate for AB 283, which contains some of the same provisions that are in SSA 1 to SB 66, but which were not included in

the original SB 66. These fiscal estimates have been modified and refined based on discussions with the affected agencies, to reflect changes that were not included in either of the original bills.

In general, the substitute amendment would impose higher state costs for the justice system agencies as the result of increasing penalties for certain OWI offenses and allowing or lengthening probation for other offenses. The most significant costs are borne by the Department of Corrections, largely as the result of two provisions: (a) the classification of certain fourth offense OWI convictions as felonies, with associated increased terms of imprisonment; and (b) the expansion of probation sentencing options for second, third, and fourth OWI offenses. Other agencies would incur increased costs associated with potentially lengthier court proceedings for various OWI offenses, since it is expected that the increased penalties would increase the likelihood that cases would go to a full trial.

The following sections discuss the estimated fiscal impacts for the affected agencies, the appropriation of state funds for these costs in the Joint Committee on Finance supplemental appropriation, the impact of the revenue provisions, and the potential impacts on local costs.

Department of Corrections

To estimate the additional correctional costs associated with the bill, the Department of Corrections assumed that: (a) based on recent probation placements for fourth offense OWI, 31% of those convicted of second and third offense OWI would be placed on probation; (b) second and third offense OWI probation placements would be for one year; and (c) approximately 65% of fourth offense OWI convictions occur within five years of a third offense OWI (based on 2008 DOT data). Further, since the average sentence lengths that judges will utilize in sentencing fourth offense OWI felonies is unknown, Corrections provided two independent cost estimates assuming: (a) sentences of 12 months in prison and three years on extended supervision to 31% of felony offense offenders; and (b) sentences of 24 months in prison and three years on extended supervision to 50% of felony fourth offense offenders.

Based on the above, and assuming 14,580 OWI cases for second (9,196), third (4,114), and felony fourth offense (1,270), the Department estimated annualized populations of: (a) 391 sentenced to prison and 5,275 placed in the community on probation or on extended supervision if 31% of felony fourth offense OWI offenders are sentenced to 12 months in prison; or (b) 1,270 sentenced to prison and 6,006 placed in the community on probation or on extended supervision if 50% of felony fourth offense OWI offenders are sentenced to 24 months in prison.

The fiscal effect of SSA 1 to SB 66 for the Department of Corrections is substantially similar to that for Engrossed AB 283, with one exception: SSA 1 to SB 66 includes a provision increasing the possible length of probation for fourth offense OWI offenders from two years to three years. The fiscal effect for SSA 1 to SB 66, therefore, utilizes information provided associated with Engrossed AB 283. As of June 30, 2008, Corrections had 1,068 offenders on probation for fourth offense OWI. It is unknown how many of these offenders would be placed on probation for more than two years and up to three years as a result of the proposed change. Based on the average

daily cost for community supervision, however, if it is assumed that the offenders would receive an additional year under probation supervision, costs would increase by $2.8 million annually.

Given Corrections' assumed average sentence lengths under the two scenarios, the Department indicates that the full impact to the correctional system would occur over approximately one to two years for the state's prison system, and over four to five years for the community corrections (probation and extended supervision) system. Costs to Corrections would grow over this time as populations increased. Including the estimated costs of a possible third year of probation for fourth offense OWI, the prison and community corrections costs in the first full year of implementation would be between $19.2 million and $25.1 million depending on whether 31% or 50% of fourth offense OWI offenders were sent to prison and whether state institutions or contract prison beds are utilized for incarceration. During the second full year, costs are estimated to range from $29.4 million to $53.4 million. Actual costs of the OWI modifications would depend on a number of factors, including when the change in penalties becomes effective, sentencing practices of judges for the new felony offenses, and any deterrent effect of the modifications. The Department's estimate also assumes that if contract beds are utilized, existing correctional facilities will need to be adapted and staffed for increased alcohol and other drug abuse treatment.

Further, based on the assumed sentence lengths, Corrections estimates that the modifications will result in an annualized total of between 391 and 1,270 additional prisoners and between 5,275 and 6,006 additional probationers and persons on extended supervision. The estimated annualized increased costs associated with housing and supervising the increased populations would range from $34.0 million to $71.2 million, depending on the percentage of offenders sentenced to prison and whether the offenders would be placed in one of the state institutions or placed in prison contract beds. (Annualized populations and costs represent estimated figures after the applicable growth period.) The following tables detail the annualized cost estimates under the assumptions the Department of Corrections identified and include an additional $2.8 million annually associated with increased probation terms for fourth offense OWI offenders: Table 1 identifies the costs assuming that 31% of felony fourth offense OWI offenders are placed in prison for 12 months; and Table 2 identifies the costs assuming that 50% of these same offenders are placed in prison for 24 months.

Included within the community supervision and enhanced AODA supervision items in both Table 1 and Table 2 are the costs of extended supervision (post incarceration community supervision) for offenders admitted to prison. On an annualized basis, these costs are estimated to range from $4,563,000 (with 47.25 positions) to $7,410,800 (with 81.25 positions). These extended supervision costs would occur whether prison or contract beds were used.

TABLE 1

Estimated Correctional Costs Under SSA 1 to SB 66, Assuming 31% of Felony Fourth Offense OWI Offenders Placed in Prison for 12 Months

	Annualized Costs	
	Prisons	Contract Beds
Prison	$13,887,700	
Contract Beds		$7,349,500
Additional Prison Staffing for AODA Treatment		3,363,100
Community Supervision	16,512,400	16,512,400
Enhanced AODA Supervision	6,754,700	6,754,700
Total	$37,154,800	$33,979,700
Additional Corrections Positions		
Correctional Facilities	70.00	44.00
Community Corrections	207.75	207.75
Total	277.75	251.75
Estimated Increased Population		
Prisons	391	
Community Corrections	5,275	

TABLE 2

Estimated Correctional Costs Under SSA 1 to SB 66, Assuming 50% of Felony Fourth Offense OWI Offenders Placed in Prison for 24 Months

	Annualized Costs	
	Prisons	Contract Beds
Prison	$45,075,300	
Contract Beds		$23,854,300
Additional Prison Staffing for AODA Treatment		10,924,600
Community Supervision	18,413,100	18,413,100
Enhanced AODA Supervision	7,701,800	7,701,800
Total	$71,190,200	$60,893,800
Additional Corrections Positions		
Correctional Facilities	260.00	143.00
Community Corrections	241.75	241.75
Total	501.75	384.75
Estimated Increased Population		
Prisons	1,270	
Community Corrections	6,006	

Corrections estimates that making fourth offense OWI a felony offense will, on an annualized basis, cost between $18.4 million (with 117.25 positions) and $52.5 million (with 341.25 positions) if prison space is used, or between $15.3 million (with 91.25 positions) and $42.2 million (with 224.25 positions) if contract beds are used.

In considering the cost estimates, it should be noted that Corrections did not include costs of building any new correctional institutions. However, with the estimated increases in prison inmates, and given that the Department's institutions are already operating at or over capacity, it is unlikely that the Department could manage the increased admissions utilizing existing facilities. Generally, it takes at least three years to construct prison facilities once a determination has been made that a facility is necessary. Also, it should be noted that if the Department were to instead utilize prison contract beds, it would likely need to issue a request for proposals from private vendors for placement of the increased population, since the Department no longer contracts for out-of-state prison beds, or seek additional county jail bed space. In addition, the Department's estimate is based on the 2008-09 average daily costs and staffing at the Drug Abuse Correctional Center and the average daily cost for community supervision, but does not include individually targeted alcohol and other drug abuse treatment costs in the community. Finally, Corrections assumes that the Department will be responsible for electronic and sobriety monitoring equipment.

The Department's fiscal estimate does not make any assumptions related to sentencing changes recently enacted in 2009 Act 28. The sentencing provisions that could affect costs in Corrections include: (a) positive adjustment time, allowing for the reduction of an inmate's prison sentence and a corresponding increase in extended supervision, based on the inmate's behavior in prison; (b) risk reduction sentence, allowing judges, at sentencing, to make offenders eligible for a reduction in their prison sentence based on completion of prescribed prison treatment programs; (c) bifurcated sentencing modifications, allowing Corrections to release certain offenders from prison who are within 12 months of release from prison (extended supervision is increased by a corresponding amount); (d) the earned release program and challenge incarceration programs, current law programs allowing judges to make an offender eligible for release from prison at an earlier time based on completion of prescribed programming; (e) discharge from extended supervision, allowing Corrections to discharge a person from extended supervision after he or she has served two years of extended supervision, if the person has met the conditions of extended supervision and the reduction is in the interests of justice; and (f) probation modification, allowing the Department to modify a person's period of probation and discharge the person from probation if the person has completed 50% of his or her period of probation. It is not known to what extent any of these sentencing provisions would be utilized by the courts or Corrections. However, to the extent that these sentencing modification provisions are used, Corrections prison and community corrections populations may be reduced.

District Attorneys

Under current law, a fourth OWI offense is a misdemeanor offense. Under the substitute amendment, a fourth OWI offense would now be a Class H felony if the offender had at least one prior OWI violation within the previous five years of committing the fourth offense. According to

DOT, there were 1,902 fourth offense OWI convictions in 2007. Assuming a 95% conviction rate, in 2007, there were 2,002 individuals charged with committing a fourth offense OWI violation. The Department of Transportation further indicates that approximately 65% of fourth offense violations are committed within five years of the third offense. As a result, it is estimated that 1,301 of these fourth offense OWI cases in 2007 involved individuals who had committed the offense within five years of a prior offense.

Under the Wisconsin District Attorneys Association (WDAA) weighted caseload analysis, it is estimated that, on average, a prosecutor will require 1.68 hours to complete a criminal traffic case. Under the WDAA analysis, it is further estimated that, on average, a prosecutor will require 8.49 hours to complete a felony case. While the WDAA has expressed concerns that the current case weights in its weighted caseload analysis may in many instances understate the amount of time actually required to complete these cases, utilizing the current WDAA weighted caseload analysis, every fourth offense OWI violation converted to a felony would, on average require an additional 6.81 hours to prosecute [8.49 hours for a felony case minus 1.68 hours for a criminal traffic case]. Assuming that the substitute amendment would convert 1,301 fourth offense OWI violations annually to felony offenses, the State Prosecutors Office estimates that the law change under SSA 1 to SB 66 would require an additional 8,860 prosecutorial hours annually. Under the WDAA weighted caseload analysis, which assumes that a full-time prosecutor has 1,227 hours annually available to prosecute cases, the increased workload associated with this change would require 7.2 additional prosecutors statewide. The State Prosecutors Office estimates additional salary and fringe benefits costs of $471,400 annually for these additional prosecutors.

The substitute amendment would also provide that causing an injury when operating while intoxicated would be a Class H felony if the person had one or more prior OWI offenses. Based on 2007 DOT data, there were 119 convictions for a second OWI offense causing injury and 46 convictions for a third offense OWI causing injury. Assuming that none of these injuries involved the infliction of great bodily harm (which is already a Class F felony under current law), this provision of the substitute amendment could lead to an estimated 165 additional felony cases annually (as second and third OWI offenses are misdemeanor offenses). Assuming that there were additional cases that were prosecuted or investigated but for which no conviction was obtained, the State Prosecutors Office assumed that as a result of this provision an additional 200 OWI misdemeanor cases annually would become felony cases.

Again assuming that for each criminal traffic case converted to a felony case that an additional 6.81 prosecutor hours would be required, this additional caseload would require an additional 1,362 prosecutorial hours annually. As the WDAA weighted caseload analysis assumes that a full-time prosecutor has 1,227 hours annually available to prosecute cases, the increased workload associated with this change would require an additional 1.1 prosecutors statewide at an annual cost of $72,000.

The substitute amendment would also: (a) increase the mandatory minimum sentences for fourth, seventh, eighth, ninth, and tenth OWI offenses; and (b) criminalize a first offense OWI violation if there was a minor passenger under 16 years of age in the motor vehicle at the time of

the violation. Prosecutors have expressed the opinion that these law changes would also be anticipated to increase their workload.

In regards to this estimate, it should be noted that the identified statewide need for additional prosecutorial resources would be divided between 71 county DA offices. It could be argued that for many smaller DA offices, the incremental increased need associated with these changes would not justify the creation of a small fraction of an additional prosecutor. As a result, costs could be less than that identified here.

In addition, it should be noted that in July, 2007, the Legislative Audit Bureau (LAB) published an audit of the current WDAA weighted caseload analysis. The LAB found that the current caseload measurement of prosecutorial workload uses incomplete data and out-of-date measures of the time required to prosecute cases. In addition, the audit found that variations in charging practices between DA offices may lessen the reliability of the current caseload measure. As of this writing, the WDAA has neither updated the caseload measurements of the time required to prosecute cases, nor agreed to any standard charging practices. As a result, the reliability of the current caseload measurement system for identifying need and allocating prosecutors on a statewide and county-by-county basis may be questioned. On the other hand, increasing the annual OWI felony caseload under the substitute amendment would certainly increase the workload for county DA offices.

Office of the State Public Defender

As with the district attorney function, the Office of the State Public Defender (SPD) estimates that converting 65% of the OWI fourth offense caseload from misdemeanor offenses to felony offenses would have a significant fiscal impact on the Office. It projects that an additional 1,301 OWI fourth offense felony cases annually (an estimated 50% of which would qualify for SPD representation) would require additional staffing of 2.2 attorneys, 0.75 legal secretary, and 0.3 investigator at a first year cost of $259,900, and an ongoing cost of $232,500 annually.

It is the belief of the SPD that other provisions of the substitute amendment could also substantially increase its workload and costs, but these other workload and cost implications will be more readily identifiable with experience if the provisions of the substitute amendment become law.

Department of Justice

Under the substitute amendment, a fourth offense OWI (all of which are misdemeanors under current law) would now be a Class H felony if the offender had at least one prior OWI violation within the previous five years of committing the fourth offense. Converting an estimated 65% of the OWI fourth offense caseload from misdemeanor offenses to felony offenses would create an estimated 1,236 OWI fourth offense felony convictions annually.

The substitute amendment would also provide that causing an injury while operating while

intoxicated would be a Class H felony if the person had one or more prior OWI offenses. Based on 2007 DOT data, there were 119 convictions for a second OWI offense causing injury and 46 convictions for a third offense OWI causing injury. Assuming that none of these injuries involved the infliction of great bodily harm (which is already a Class F felony under current law), this provision of the substitute amendment could lead to an estimated 165 additional felony convictions annually (as second and third OWI offenses are currently misdemeanor offenses).

While district attorneys are primarily responsible for prosecuting criminal and juvenile delinquency offenses at the trial or hearing level, the Department of Justice's Division of Legal Services generally represents the state in felony and other significant criminal and juvenile delinquency cases on appeal. The Department estimates that these law changes could lead to approximately 1,400 additional felony convictions annually. In the Department's experience, approximately one-third to one-half of OWI felony cases are appealed annually with the state being represented by DOJ on these appeals. As a result, the Department estimates that these law changes could lead to an additional 462 to 700 criminal appeals cases annually. Department staff indicate that Criminal Appeals Unit attorneys, on average, handle approximately 60 cases annually. As a result, the Department estimates that it would require an additional 9.0 assistant attorneys general to process a possible increased felony appeal caseload of 540 cases annually.

The Department estimated the salary, fringe benefits, supplies, and equipment costs of these positions at $1,385,100 in the first year and $1,310,400 annually thereafter. It may be worth noting that the Department's estimate would fill these attorney positions at the hourly rate of $45, or an annual salary of $93,600. Typically, however, the Legislature when creating new positions provides resources at the minimum salary level, which for attorneys is currently $23.673/hour, or $49,400 annually. If these positions were filled at the minimum salary level, the first year cost of the positions would be $819,000, and the ongoing, annual cost of the positions would be $744,300.

The Department further indicates that 9.0 additional assistant attorneys general would require 2.0 additional legal secretaries at a first year cost of $123,000, and an ongoing, annual cost of $109,400.

In addition to costs associated with OWI felony appeals, the state crime laboratories also analyze blood samples submitted by local law enforcement agencies relating to felony OWI violations. To process an estimated 1,400 additional felony OWI blood samples annually, the Department indicates that it would need: (a) two additional gas-chromatography units totaling $140,000; and (b) 4.0 additional toxicology analysts at an annualized cost of $315,400. The Department estimates that even with these additional resources that the processing time for felony OWI blood samples will increase from two days to approximately three weeks.

Court System

The Director of State Courts Office (DSCO) indicates that revising the various OWI offenses would increase judicial workload, since felony cases take longer to process than misdemeanor cases and would likely impact state and/or county resources for the court system. Funding of the circuit

court system is a shared state and county function: costs for circuit court judges and court reporters are directly supported by the state, with other court costs supported by counties from local and state revenue sources. According to the DSCO, a contested traffic case takes 7.5 minutes of judicial time, a misdemeanor case takes 47.6 minutes, and a felony case takes 162.8 minutes. Therefore, each case shifting from traffic to misdemeanor will require an additional 40.1 minutes of court time, and each case moving from misdemeanor to felony an additional 115.2 minutes.

With regard to making fourth offense OWI within five years of a previous OWI a felony, the DSCO states: "In 2008, the DOT reported there were 1,576 convictions for fourth offense OWI. DOT has estimated that 65% of those cases involve an offense within five years of a prior offense. Using that estimate, 1,024 cases would change from misdemeanors to felonies and more than 2,000 hours of judicial time would be required." Based on the average amount of time a judge has available for caseload, these cases would require approximately 1.6 new judgeships on a statewide basis.

Further, the DSCO indicates that making second or subsequent OWI causing injury a felony offense would result in an additional 115.2 minutes for each additional case. It is not known, however, how many current OWI cases causing injury (the latest DOT data from 2002 indicates approximately 400 cases annually) may involve a second or subsequent OWI case. Therefore, the DSCO could not estimate the additional number of judgeships that may be necessary.

Regarding making first OWI with a minor in the vehicle a criminal offense, DOT data indicates that approximately 1.3% of first offense OWI offenses (approximately 300 cases in 2007) may involve a minor in the vehicle under the age of 16. The DSCO states: "Based on the experience of several judges surveyed, it appears these cases are a small minority of the total first offense cases."

In addition to caseload growth as a result of increased penalties under the bill, the DSCO indicates that, with regard to ignition interlock devices:

> "There are unlikely to be any direct costs to the court system from the expanded use of ignition interlocks, except in one area. To the extent there is a significant increase in the number of vehicles with ignition interlocks installed, there is a greater likelihood that persons may be charged with tampering with or otherwise circumventing the use of the devices. Any increase in the number of these charges brought will result in increased court proceedings, all of which require greater judge, court reporter, court staff and juror time. These additional resources will be supplied by both the state and the county.
>
> A significant increase in vehicles with ignition interlocks will likely increase the workload of the Clerks of Circuit Court. Their offices monitor compliance with current ignition interlock orders, including collection of any monies due and dealing with license status issues with the Department of Transportation. In addition to the increased workload from these issues, clerks have indicated concern about whether their efforts to collect forfeitures, fines, surcharges and costs will be negatively affected by the additional financial burdens on defendants who will be required to pay for ignition interlocks. Their concerns are that payments may be delayed or never realized. Delayed or lower collections will affect

revenues for the state, for counties and for the agencies who receive funds from the various surcharges. They also question whether counties may be required to pay for the portion of ignition interlocks that indigent defendants are unable to pay."

The DSCO did not identify specific funding amounts needed to implement the bill because caseload figures are difficult to accurately determine. To the extent that cases that are currently misdemeanors become felony cases, costs to the court system will increase. Based on previous fiscal estimates, each new judgeship (a judge and a court reporter position) costs approximately $178,500 annually. However, it is not known in which counties any new judgeships would be necessary, and how overall current judicial caseload may shift over time. Further, administrative workload of the clerk of courts offices is likely to expand as the result of collection and monitoring of new ignition interlock devices. To the extent that the court system will need additional resources as a result of the provisions of SSA 1 to SB 66, therefore, resources could be requested during the 2011-13 budget process based on a statewide determination of overall judicial need.

Department of Transportation

The Department of Transportation estimates that the Division of Motor Vehicles would incur increases in workload associated with various provisions of the substitute amendment, requiring 2.8 additional positions at an annual cost of $139,900. The additional workload would be associated with increases in the number of driver's license revocations resulting from additional OWI convictions and an increase in the number ignition interlock device orders recorded in the driver record file. The substitute amendment would not appropriate funds or create positions for this purpose, so any additional costs associated with the OWI provisions in the substitute amendment would have to be absorbed by the Division of Motor Vehicles.

Summary of State Agency General Fund Costs

Table 3 summarizes the annualized state costs for selected agencies associated with the substitute amendment as identified in this memorandum. Over time it is anticipated that state costs would be higher than the figures reflected in the table, as newly created state positions are generally filled at the minimum salary for the position classification type.

TABLE 3

Annualized State Costs Associated with SSA 1 to SB 66, as Modified

Agency	Funding*	Funding**
Corrections	$33,979,700	$71,190,200
District Attorneys	543,400	543,400
Public Defender	232,500	232,500
Justice	1,735,200	1,735,200
Total	$36,490,800	$73,701,300

*Corrections costs assume that 31% of felony fourth offense offenders are sentenced to prison for 12 months and placed in contract beds.

**Corrections costs assume that 50% of felony fourth offense offenders are sentenced to prison for 24 months and are housed in state prisons.

Fiscal Impact on Counties

The fiscal impact that the substitute amendment would have on counties is difficult to determine, largely because it will be dependent upon prosecutorial and judicial decisions, which could vary widely by county. In general, the substitute amendment would potentially increase county jail costs by: (a) increasing the minimum term of imprisonment for a third OWI offense from 30 days to 45 days; and (b) disallowing house arrest for offenders convicted of a fourth or subsequent OWI offense who are sentenced to the county jail (jail sentences less than one year). In addition, there could be increased local costs associated with increased district attorney and county court costs, if, as expected, the number and duration of OWI cases increases as the result of the provisions.

Other provisions of the substitute amendment, however, could decrease county costs, or at least allow greater flexibility in sentencing. For instance, the provision of the substitute amendment that would classify certain fourth OWI offenses as a felony could shift some inmates from county jails to state prisons (an increased state cost that is reflected in the Department of Corrections estimate above). As noted above, it is estimated that about two-thirds of fourth-offense OWI convictions would be classified as a Class H felony under the substitute amendment. Although some of these offenders may be given a sentence of less than one year (a county jail cost), some of these offenders who would otherwise be sentenced to a county jail would instead serve a longer sentence in a state prison. In addition, the option to adopt a treatment program similar to the one used in Winnebago County could reduce jail terms for certain second, third, and fourth OWI offenses.

The net effect of these changes on counties would depend upon decisions made in each county, and, therefore, cannot be reliably estimated on a statewide basis.

Joint Committee on Finance Supplemental Appropriation for State Agency Costs

The substitute amendment would provide $26,600,000 GPR in 2010-11 in the Joint Committee on Finance's biennial supplemental appropriation and require the Department of Administration to submit a request to allocate that funding among the Department of Corrections, the District Attorneys, the Office of State Public Defender, and the Department of Justice. Since the amount appropriated for state agency costs in the 2010-11 biennium is less than the estimated amount of general fund revenue generated under provisions of the substitute amendment ($10,700,000 in 2009-10 and $35,700,000 in 2010-11), the amendment would have the effect of increasing the net, 2009-11 biennial general fund balance by an estimated $19,800,000.

Revenue Provisions

Liquor tax. The 50¢ per liter increase in the tax on hard liquor would increase estimated general fund revenues by $8,200,000 in 2009-10 and $25,700,000 in 2010-11.

Criminal actions fee. The $143 increase in the criminal actions fee would increase estimated general fund revenues by $2,500,000 in 2009-10 and $10,000,000 in 2010-11. The Director of State Courts Office indicates that in 2008 there were approximately 112,400 cases to which the criminal action could apply. This number of cases may be too high for revenue estimating purposes, however, since some of the cases may have eventually been consolidated (and therefore, only one fee would apply), or represented multiple criminal courts instead of multiple criminal cases. Further, since court fees are statutorily last in order of payment and not all assessed fees can be collected, the actual amount collected can be further reduced. Based on the above assumptions, each $1 increase in the criminal actions fee is estimated to generate approximately $70,000.

Ignition interlock device surcharge. The Department of Transportation's fiscal note for AB 283, which contains the $50 IID surcharge provision that was included in the Senate substitute amendment, estimates the additional revenue that would be generated by the ignition interlock device surcharge. According to DOT, it is estimated that 36,655 offenders annually would be subject to the IID surcharge. The Department assumed that the full $50 would be collected for each offender, meaning that a total of $1,832,750 annually would be collected.

It should be emphasized that this estimate is based on the assumption that the full $50 surcharge would be collected for each offender. However, it is not unusual for an offender to fail to pay criminal surcharges or pay only a portion of the amount. For instance, in aggregate, only about two-thirds of the total amount of operating while intoxicated driver improvement surcharge that is assessed is actually collected. If just two-thirds of the proposed IID surcharge is collected, the total amount collected would be approximately $1,222,000, an amount that would be retained by counties.

ATTACHMENTS

Two attachments are included with this memorandum. Attachment I provides a comparison of major provisions in SSA 1 to SB 66 with current law and Engrossed AB 283, as it passed the Assembly. Attachment II provides a comparison of revenue provisions under SSA 1 to SB 66 and Engrossed AB 283.

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Attachments

ATTACHMENT I

Comparison of Major Provisions of Senate Substitute Amendment 1 to SB 66, as Amended, and Engrossed Assembly Bill 283

Fines and Jail Term for Specific Offenses

	Current Law	**SSA 1 to SB 66, as Amended**	**Engrossed AB 283**
First Offense OWI (with minor passenger).	$300 to $600 forfeiture (civil offense).	$350 to $1,100 fine; 5 days to 6 months term of imprisonment (criminal misdemeanor offense).	Same as SSA 1 to SB 66.
Third Offense OWI.	$600 to $2,000 fine; 30 days to 1 year term of imprisonment.	Increase minimum term of imprisonment to 45 days.	No change to current law.
Fourth Offense OWI.	$600 to $2,000 fine; 60 days to 1 year term of imprisonment (misdemeanor offense).	For offenders with a prior offense within previous five years: $600 to $10,000 fine; 6 months to 6 years term of imprisonment (Class H felony--3 years prison and 3 years of extended supervision). For all other 4th offense offenders: No change to current law.	Same as SSA 1 to SB 66.
OWI causing injury (basic OWI and commercial motor vehicle with BAC of 0.04 to 0.08).	$300 to $2,000 fine; 30 days to 1 year term of imprisonment (misdemeanor offense); fines and jail term doubled if there was a minor in the vehicle.	For persons with a prior OWI conviction(s): Up to $2,000 fine; up to 6 years term of imprisonment (Class H felony); fines and prison term doubled if there was a minor in the vehicle. For other offenders (no prior offense): Same as current law.	Same as SSA 1 to SB 66.
Absolute sobriety violation.	Forfeiture of $400 (civil offense).	For offenders where there was a minor in the vehicle: Fine of $400 (criminal misdemeanor). For other offenders: Same as current law.	Same as SSA 1 to SB 66.

Probation and General Sentencing Provisions

	Current Law	SSA 1 to SB 66, as Amended	Engrossed AB 283
Minimum confinement period for multiple OWI offenders; applicability of house arrest.	48-consecutive-hour period (for all criminal OWI offenses).	For 4th or subsequent offense: confinement may not include house arrest. For 7th, 8th, and 9th offense: 3 years. For 10th offense: 4 years. All other offenders: No change to current law.	Same as SSA 1 to SB 66, except no restrictions on house arrest.
Probation for OWI offenders.	Probation allowed for 4th offense OWI, not less than 6 months nor more than 2 years; probation not allowed for 2nd or 3rd offense.	Probation allowed for 2nd and 3rd offense, in addition to 4th offense OWI; maximum period of probation for fourth offense probation extended from 2 years to 3 years.	Same as SSA 1 to SB 66, except no change to term of probation for 4th offense.
Pre-sentence release and stay of sentence execution for OWI offenders.	Pre-sentence release and stay of execution (up to 60 days) allowed for OWI offenders.	Pre-sentence release and stay of execution prohibited for 3rd and subsequent offense until after the minimum period of confinement is served; includes technical correction of similar provision in Engrossed AB 283.	Same as SSA 1 to SB 66, except lacking technical change.
Alternative sentencing options.	In Winnebago County, 2nd and 3rd offense OWI offenders who complete probationary period that includes alcohol and other drug treatment are eligible for alternative sentencing with reduced minimum and maximum terms.	Extends Winnebago sentencing option to any county with a program similar to the Winnebago program; increases the minimum sentence for a 3rd offense participant from 10 days to 14 days; also would make sentencing option available for 4th offense OWI offenders, with a minimum sentence of 29 days for participants.	Extends Winnebago program to all counties as SSA 1 to SB 66, but does not include other changes.

Ignition Interlock Device (IID) Provisions

	Current Law	SSA 1 to SB 66, as Amended	Engrossed AB 283
Applicability of IID order.	IID order allowed for 2nd or subsequent OWI offense and required (unless seizure or immobilization ordered instead) for a 2nd or subsequent offense committed within five years.	IID order mandatory for all repeat OWI offenses and for a 1st OWI offense with a blood alcohol level of 0.15 and above; seizure and immobilization options eliminated.	Same as SSA 1 to SB 66.
Time periods.	IID restriction ordered for not less than one year nor more than maximum license revocation period for the offense; time period begins when ordered.	Operating privilege restriction time period begins when first license is issued instead of when order is issued; time period would be one year or maximum period of revocation for the offense, whichever is greater.	Same as SSA 1 to SB 66, except no change to the time periods.
IID surcharge.	No provision.	$50 IID surcharge levied whenever IID restriction ordered; counties retain the $50 surcharge.	Same as SSA 1 to SB 66, except that surcharge revenues placed in DOT appropriation and $40 returned to sheriff of the county of the offense.
Provisions for low income offenders.	All offenders liable for the full cost of installation and maintenance of the device.	Offenders with a household income at or below 150% of the poverty line pay 50% of the cost of installation and maintenance; DOT may not approve IID provider for business in Wisconsin if the provider does not agree to allow qualifying individuals to make reduced payment.	Same as SSA 1 to SB 66, except no provision related to DOT approval of IID providers.
Occupational license provisions.	No provision.	No occupational license may be issued to a person subject to an IID order unless the person submits proof that IID surcharge has been paid and all vehicles subject to an IID installation order have been equipped with an IID.	Same as SSA 1 to SB 66, except that person must show proof that IID has been installed on every vehicle owned or registered in whole or in part by the offender.
Enforcement and penalty provisions.	Forfeiture of $150 to $600 for removing, disconnecting, tampering with, or otherwise circumventing the operation of an IID.	Adds failure to install an IID, as ordered, as a violation; imposes criminal fine of $150 to $600, six months imprisonment, or both for violation; IID order period extended by six months for violation.	Same as SSA 1 to SB 66.
Prohibited alcohol concentration.	0.08 prohibited alcohol concentration, 0.02 for person with three OWI offenses; no special provision for offenders subject to an IID order.	0.02 prohibited alcohol concentration for persons subject to an IID order.	Same as SSA 1 to SB 66.

Licensing and Other Provisions

	Current Law	SSA 1 to SB 66, as Amended	Engrossed AB 283
Revocation time periods.	License revocation period begins when ordered.	Period of license revocation is extended by the amount of the term of imprisonment.	License revocation period is tolled while a person is imprisoned.
Surcharges and other sanctions for OWI offenders with a blood alcohol level of between 0.08 and 0.10.	Penalty surcharges, including OWI driver improvement surcharge are not levied for 1st OWI conviction if the offender had a blood alcohol concentration of between 0.08 and 0.10; no alcohol assessment required for such offenders.	Eliminate special surcharge and alcohol assessment exemptions for these offenders.	Same as SSA 1 to SB 66.
Waiting period after revocation for eligibility for an occupational license.	Eligibility for an occupational license begins after 60 days following the revocation for a 2nd offense and after 90 days for a 3rd or subsequent offense, except that if an offender commits two or more offenses within a five-year period, eligibility for an occupational license begins after one year.	Eliminates the one-year waiting period for offenders with two or more offenses within a five year period, meaning that the 60-day or 90-day periods apply.	No change to current law.

Fiscal Provisions

	Current Law	SSA 1 to SB 66, as Amended	Engrossed AB 283
Beer and liquor tax revenue.	Beer and liquor tax is deposited in the general fund.	No provision.	First $10,000,000 collected from each tax in each fiscal year credited to a new PR appropriation in the Department of Corrections for probation and various treatment services related to OWI offenders, beginning in 2011-12.
Liquor tax.	Liquor taxed at 85.86¢ per liter.	Increase the tax on hard liquor by 50¢ per liter, to generate an estimated $8.2 million in 2009-10 and $25.7 million in 2010-11.	No provision.
Criminal actions fee.	$20 surcharge paid by person convicted of any crime; 50% retained by county and 50% deposited in the general fund.	Increase surcharge by $143 and deposit increase in the general fund; increase estimated general fund revenue by $2.5 million in 2009-10 and $10.0 million in 2010-11.	No provision.
District attorney surcharge.	No provision.	No provision.	$100 district attorney surcharge levied for any OWI conviction, including operating a commercial motor vehicle with a blood alcohol level of between 0.04 and 0.08; revenues transmitted to Department of Administration for OWI prosecutions.

	Current Law	SSA 1 to SB 66, as Amended	Engrossed AB 283
Appropriation for state costs.		Department of Corrections, District Attorneys, Department of Justice, and Office of State Public Defender: Joint Committee on Finance GPR supplemental appropriation increased by $26.6 million in 2010-11; DOA required to submit request under s. 13.10 on behalf of these agencies to allocate funding. Department of Transportation: No provision.	Department of Corrections: PR appropriation created with an allocation of $20.0 million of beer and liquor tax revenues, beginning in 2011-12. District Attorneys: PR appropriation created with proceeds of the district attorney surcharge, estimated at $2.7 million annually. Department of Justice; No provision. Office of State Public Defender: No provision. Department of Transportation; PR appropriation created with the state share of proceeds from the IID surcharge, estimated at $0.2 million annually.

ATTACHMENT II

Comparison of Revenue Provisions of SSA 1 to SB 66 and Engrossed AB 283

The following table compares the annualized increase to state and local revenues under the provisions of Senate Substitute Amendment 1 to SB 66 and Engrossed AB 283. In order to reflect the effect of Engrossed AB 283 on general fund revenues related to the proposed allocation of beer and liquor tax revenues to a new PR appropriation for the Department of Corrections, the table reflects revenues in 2011-12, the first year of that allocation.

Annualized Revenue Generated Under Provisions of SSA 1 to SB 66 and Engrossed AB 283 ($ in Millions, in 2011-12)

	SSA 1 to SB 66	Engrossed AB 283
State Revenues		
General Fund Revenues		
Beer and Liquor Tax		-$20.0
Liquor Tax	$25.7	
Criminal Actions Fee	10.0	Not Applicable
Subtotal of General Fund Revenues	$35.7	-$20.0
Program Revenues		
District Attorney Surcharge	Not Applicable	$2.7
Ignition Interlock Device Surcharge	$0.0	0.2
Beer and Liquor Tax Allocation	Not Applicable	20.0
Subtotal of Program Revenues	$0.0	$23.0
Total State Revenues	$35.7	$2.9
Local Revenues		
Ignition Interlock Device Surcharge	$1.2	$1.0