



Legislative Fiscal Bureau

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Joint Committee on Finance

Paper #773

0.08 Prohibited Alcohol Concentration Law (DOT -- Motor Vehicles)

[LFB 2003-05 Budget Summary: Page 432, #8]

CURRENT LAW

Under the state's operating while intoxicated (OWI) law, persons are prohibited from driving or operating a motor vehicle under the following conditions: (a) while under the influence of an intoxicant, controlled substance, or controlled substance analog that renders him or her incapable of safely driving; or (b) with a prohibited alcohol concentration. The prohibited alcohol concentration varies depending upon the number of prior OWI offenses that the person has had. (For the purposes of counting offenses, the refusal to submit, upon request of a law enforcement officer, to a blood, breath, or urine test for the purpose of measuring the person's alcohol concentration is considered an offense, although a refusal alone does not result in a conviction.) The prohibited level is: (a) 0.10 for a person with one or no prior offenses; (b) 0.08 for a person with two prior offenses; and (c) 0.02 for a person with three or more prior offenses. Alcohol concentration is measured as the number of grams of alcohol per 100 milliliters of blood or the number of grams of alcohol per 210 liters of breath.

There are separate offenses, with less severe penalties, for: (a) driving or operating a motor vehicle with an alcohol concentration of more than 0.0 and less than 0.10, if the person has not reached the legal drinking age; and (b) driving or operating a commercial motor vehicle with an alcohol concentration of more than 0.4 and less than 0.10.

GOVERNOR

Modify the state's OWI law to reduce the prohibited alcohol concentration for persons who have one prior OWI conviction or no prior convictions from 0.10 to 0.08. Current law prohibited concentrations for persons who have two or more prior OWI convictions would remain unchanged. Modify provisions related to the separate offenses of operating a commercial

motor vehicle with a blood alcohol concentration of between 0.04 and 0.10 (including related offenses of causing injury, great bodily harm, and death) and related to the operation of a motor vehicle by a person who has not reached the legal drinking age with a blood alcohol concentration of between 0.0 and 0.10, by lowering the maximum blood alcohol level range applying to these offenses from 0.10 to 0.08. Modify statutory provisions related to the prima facie effect in a legal proceeding of alcohol concentration analysis to conform with the reduction in the prohibited blood alcohol concentration. Specify that these provisions would first apply to offenses and alcohol level test refusals committed on September 30, 2003, but do not preclude the counting of other convictions, suspensions, or revocations as prior convictions, suspensions, or revocations for purposes of administrative action by DOT, sentencing by a court, or revocation or suspension of motor vehicle operating privileges.

DISCUSSION POINTS

1. Changes in federal law require the Federal Highway Administration to withhold a certain percentage of federal highway aid from states that do not adopt a 0.08 OWI standard by October 1, 2003. In federal fiscal year (FFY) 2004, 2% would be withheld from states that are not in compliance and this amount would be increased by two percentage points annually until reaching 8% in FFY 2007 and annually thereafter. These percentages would be applied to a portion of the total federal highway aid, that, while not the whole aid amount, encompasses the major categories of aid.

2. Based on the level of federal highway aid estimated in the bill, it is estimated that the state would lose \$8.7 million in FFY 2004 (corresponding to state fiscal year 2003-04) and \$18.4 million in FFY 2005 (corresponding to 2004-05) if a 0.08 law is not adopted. It should be noted that the estimates of the amount of total federal highway aid contained in the bill (\$501.8 million in FFY 2004 and \$527.1 million in FFY 2005) were made at a time when the state's aid level for the current federal fiscal year (FFY 2003) was unknown, but expected to be about \$480 million. However, under the federal appropriations act for FFY 2003, which had not been passed at the time that the budget estimates were done, the state's FFY 2003 aid will be \$535.9 million (excluding Congressional earmarks). Consequently, it is possible that the state's aid for FFY 2004 and FFY 2005 will also be higher than the previous expectations. If aid in those years remains at the \$536 million level, the penalty for the failure to adopt a 0.08 law would be \$9.3 million in 2003-04 and \$18.7 million in 2004-05. At a later date, this office will produce an updated estimate of federal aid amounts for the biennium, which may slightly alter these amounts. If, for instance, it is determined that an increase in the estimate for FFY 2005 is warranted, relative to the amount estimated in FFY 2004, the amount of the penalty would also increase. In any case, the failure to adopt a 0.08 law would result in a reduction in federal aid, relative to the amounts in the bill, of \$8.7 million in 2003-04 and \$18.4 million in 2004-05.

3. As noted, the federal penalty would increase to 6% in federal fiscal year 2006 and to 8% in federal fiscal year 2007 and each year thereafter. If the amount of federal highway aid remained at the \$536 million level in those years, the penalty would increase to \$28.0 million in

FFY 2006 and \$37.3 million in FFY 2007.

4. Under the federal law, aid must be withheld in any fiscal year in which the state has not enacted and is not enforcing a 0.08 law by October 1 of that fiscal year. The funds may be restored in a subsequent fiscal year if the state enacts and enforces a 0.08 law by the subsequent October 1. However, withheld funds are permanently lost (no opportunity to have them restored) after a period of four years. For instance, a state that does not adopt a 0.08 law by October 1, 2003, will have 2% of the applicable federal funds withheld in federal fiscal year 2004 and those funds would be permanently lost if the state still has not adopted a 0.08 law by October 1, 2007. If the state waited to pass a 0.08 law until just prior to October 1, 2007, amounts would be withheld in federal fiscal years 2004, 2005, 2006, and 2007. If federal aid equaled \$536 million annually during this period, a total of \$93.3 million would be withheld in those years, but would be restored in FFY 2008.

5. Although losses in federal aid could be restored, in the meantime the state's transportation budget would have to be adjusted to reflect lower federal aid levels. It is likely that inflation will erode the purchasing power of the withheld aid during the time that the aid is withheld, which effectively increases the cost of any transportation projects that are delayed due to a temporary loss of aid. Similarly, if the state were to increase the use of bonds to replace lost aid until it is restored, there would be an increase in interest costs associated with the bonds.

6. In addition to the Governor's budget bill, a separate bill (Assembly Bill 88) has been introduced to lower the prohibited blood alcohol level to 0.08. AB 88 would adopt the provisions necessary to bring the state into compliance with federal requirements, but, unlike the Governor's bill, would also reduce the prohibited alcohol concentration for the operation of snowmobiles, all-terrain vehicles, and boats from 0.10 to 0.08.

7. The 0.08 issue has been extensively debated. Proponents of the 0.08 law argue that the medical evidence indicates that most people with a blood alcohol level of 0.08 show a decrease in their reaction times and visual function to an extent that affects their ability to safely operate a vehicle. Opponents of the law argue that the 0.08 law does not have an effect on the most serious drunk driving problems, which they contend are repeat offenders and drivers with a very high blood alcohol level and, therefore, merely punishes more responsible drinkers.

8. In 1999, the General Accounting Office (GAO) conducted a review of the issue, including an examination of the research literature on the effect of 0.08 laws on drunk driving. According to GAO's review, many of the studies that had been completed by that time had focused on comparing the incidence of drunk driving accidents in states that had adopted a 0.08 law with states that had not. However, GAO noted that it can be difficult for these studies to effectively isolate the effect of the 0.08 law from the effect of other laws, such as administrative license suspension laws, or enhanced enforcement, which may have occurred at the same time. Furthermore, over the past 15 to 20 years, drunk driving accidents have been generally declining, which may make it difficult to assess the added impact, if any, that a 0.08 law has had on these trends. At that time there had been some studies that attempted to isolate the effect of a 0.08 law

from other factors, but the results were generally inconclusive. In concluding the review, GAO states: "Overall, the evidence does not conclusively establish that .08 BAC [blood alcohol concentration] laws, by themselves, result in reductions in the number and severity of alcohol-related crashes. There are, however, strong indications that .08 BAC laws in combination with other drunk driving laws (particularly license revocation laws), sustained public education and information efforts, and vigorous and consistent enforcement can save lives."

9. Regardless of the effectiveness of 0.08 laws, the federal requirement is in place and has had the effect of increasing the number of states with 0.08 laws. Rather than face decreases in their federal highway aid, an increasing number of states have adopted this provision. At the time the federal requirement was adopted, 18 states, plus the District of Columbia and Puerto Rico, had a 0.08 law. As of early March, an additional 16 states had adopted a 0.08 law, increasing the total to 34 states, plus the District of Columbia and Puerto Rico. All of the 16 states that have not adopted a law, including Wisconsin, currently have 0.08 legislation pending.

10. A provision of the federal Transportation Equity Act for the 21st Century (TEA-21) provides incentives for states to adopt a 0.08 law. This incentive grant program expires in federal fiscal year 2003 (ending September 30, 2003), but the state may be eligible for this incentive grant money if the 0.08 law is passed with enough time for the state to provide certification to that effect to the U.S. DOT. The federal regulations for this program require the law to be in effect and enforced on or prior to September 30 in the fiscal year in which the grant is provided, and for the state to provide certification prior to July 15, 2003. Consequently, if the bill contains the 0.08 law and is signed into law prior to July 15, the state may be eligible for additional funding. The funding under this program may be used on any project that is eligible for federal highway, transit, or safety funds. The amount of funding that is received is dependent upon the number of other states that are also eligible for aid. If all states were eligible for the incentive grant, Wisconsin would receive about \$2.2 million in federal fiscal year 2003, which could be used in state fiscal year 2003-04. This amount would increase if other states do not become eligible prior to the July 15 certification deadline.

11. A decision to not adopt a 0.08 law at this time would require a reduction in one or more appropriations receiving federal highway aid. The following table shows how that aid is allocated under the bill.

<u>Appropriation</u>	<u>2003-04</u>	<u>2004-05</u>
Local Transportation Facility Improvement	\$67,012,600	\$70,391,300
Local Bridge Improvement	23,265,300	24,438,300
Congestion Mitigation/Air Quality Improvement	11,061,300	11,619,000
Transportation Enhancements Grants	5,956,300	6,256,600
Surface Transportation Grants	2,407,200	2,528,600
Railroad Crossing Improvements	3,141,200	3,299,600
Major Highway Development	\$28,733,000	\$31,198,400
State Highway Rehabilitation	265,339,400	279,238,900
Southeast Wisconsin Freeway Rehabilitation	71,317,600	79,241,800
Highway Maintenance and Traffic Operations	1,015,800	1,102,900
Highway Administration and Planning	3,449,700	3,745,700
Departmental Management and Operations	8,718,400	9,466,400
Rail Passenger Service	4,060,600	4,572,600
Motor Vehicle Emission Inspection and Maintenance	<u>6,321,700</u>	<u>0</u>
Total	\$501,800,100	\$527,100,100

ALTERNATIVES

1. Approve the Governor's recommendation to adopt a 0.08 OWI law, effective September 30, 2003.

2. Increase estimated federal highway aid by \$2,200,000 in 2003-04 to reflect the inclusion of the 0.08 OWI law in the bill and, therefore, the state's eligibility for a federal incentive grant in FFY 2003.

Alternative 2	FED
2003-05 FUNDING (Change to Bill)	\$2,200,000

3. Delete provision. Reduce estimated federal highway aid by \$8,700,000 in 2003-04 and \$18,400,000 in 2004-05. (These reductions would have to be allocated among DOT's appropriations for federal highway aid.)

Alternative 3	FED
2003-05 FUNDING (Change to Bill)	- \$27,100,000

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