



Legislative Fiscal Bureau

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Joint Committee on Finance

Paper #667

Chemical Test Section -- Funding Source (DOT -- State Patrol)

[LFB 2013-15 Budget Summary: Page 474, #5]

CURRENT LAW

The State Patrol's chemical test section owns and maintains all evidentiary breath testing equipment used by state and local law enforcement agencies. The chemical test section has 13 employees who, in addition to maintaining the machines, provide training in their use. These services are provided at no charge to law enforcement agencies.

The chemical test section is funded by a program revenue appropriation, which receives a portion of revenues collected through the imposition of the operating while intoxicated driver improvement surcharge. Individuals who are convicted of an operating while intoxicated (OWI) offense are required to pay a \$365 driver improvement surcharge (hereafter "OWI surcharge"), in addition to any other fines, forfeitures, and surcharges imposed for the violation. The county in which the offense occurred retains 60% of the revenue collected from the OWI surcharge for the cost of driver alcohol assessments. The remaining 40% of OWI surcharge revenue is forwarded to the state. In addition to the chemical test section, the state's share of OWI surcharge revenue is used for other OWI-related programs, including the State Laboratory of Hygiene's blood testing program.

GOVERNOR

Delete \$1,358,300 PR and 13.0 PR positions annually to eliminate funding for the State Patrol's PR appropriation for the chemical test section. Delete the PR appropriation and statutory provisions that allow the Department of Administration to credit amounts from the OWI surcharge to that appropriation. Provide \$1,249,400 SEG and 13.0 SEG positions annually in a newly-created, transportation fund appropriation for the chemical test section.

DISCUSSION POINTS

1. This paper provides a discussion of the Governor's proposal to replace the OWI surcharge appropriation for the State Patrol's chemical test section with an appropriation from the transportation fund, restoring the funding mechanism for the breath testing program that existed prior to 1997-98. The 1997-99 biennial budget increased the OWI surcharge by \$40 (from \$300 to \$340, effective in October 1997) in order to fund the full cost of the chemical test section with surcharge revenues and eliminate transportation fund support for the program.

2. The state's share of OWI surcharge revenue currently supports the following programs: (a) the State Patrol's chemical test section; (b) a State Patrol appropriation for the purchase of breath testing equipment; (c) the State Laboratory of Hygiene, for blood testing in OWI cases; (d) a Department of Health Services (DHS) appropriation for providing supplements to counties for driver assessment costs; (e) a Department of Transportation appropriation for the safe-ride grant program, which pays a portion of the cost of taxi rides for intoxicated persons; (f) a Department of Public Instruction appropriation for the development and distribution of traffic safety and substance abuse school curriculum materials; and (g) a Department of Justice appropriation for crime victim compensation services. The amounts provided for each program are generally established in biennial budget acts, but the Department of Administration makes adjustments based on the amount of surcharge revenue actually collected. The following table shows the distribution to each program in 2011-12.

Allocation of OWI Surcharge Revenue Among State Programs, 2011-12

<u>Program</u>	<u>Agency</u>	<u>2011-12 Allocation</u>
Chemical test section, State Patrol	Department of Transportation	\$1,112,800
Breath screening instruments	Department of Transportation	241,800
State Laboratory of Hygiene	University of Wisconsin	1,316,200
Services for drivers, local assistance	Department of Health Services	744,300
Safe-ride grant program	Department of Transportation	396,400
Services for drivers	Department of Public Instruction	193,300
Crime victim compensation services	Department of Justice	<u>60,500</u>
Total		\$4,065,300

3. The proposed shift of the chemical test section to a transportation fund appropriation would allow OWI surcharge revenue to be allocated among the other programs. The state collections of OWI surcharge revenues have generally been declining over the past several years, necessitating program reductions. In particular, the bill would restore previous funding levels for the State Laboratory of Hygiene to address testing backlogs and the DHS appropriation for county supplements. [An LFB Issue Paper on the DHS program will be prepared for a future meeting.]

4. The following table shows the OWI surcharge revenues collected by the state over the past eight years, along with the annual percent change. It should be noted that the surcharge was

increased by \$10, effective with offenses committed on April 1, 2008, which may account for all or a portion of the revenue increase in 2008-09.

State Share of OWI Surcharge Revenues

<u>Fiscal Year</u>	<u>Amount</u>	<u>Percent Change</u>
2004-05	\$4,523,900	
2005-06	4,381,100	-3.2%
2006-07	4,470,300	2.0
2007-08	4,421,800	-1.1
2008-09	4,635,500	4.8
2009-10	4,552,000	-1.8
2010-11	4,341,600	-4.6
2011-12	4,065,300	-6.4

5. As the decline in OWI surcharge revenues suggests, the number of OWI convictions has been falling. In 2011, there were 28,213 OWI convictions, 30% lower than the number of OWI convictions in 2007 (since surcharge collections lag convictions, the collection data shown above do not yet reflect the full magnitude of the drop in convictions). Although conviction data are preliminary, it appears that the number of convictions in 2012 fell again. With reduced convictions and OWI surcharge collections, not enough revenue remains to fund the state OWI-related programs, including the chemical test section. The amount of revenue credited to each appropriation has been reduced to maintain a balance in the program revenue account. Funding for the State Laboratory of Hygiene and for county supplements for driver assessments, in particular, has been reduced by over 20% during the past two to three years.

6. Based on the average, annual decline in collections from 2009-10 through 2011-12, the Department of Administration assumed, for budget purposes, that collections would continue to decline in 2012-13 through 2014-15 by 4.3% each year. Through the first nine months of 2012-13, collections are down by 6.3% from the same period in the prior year.

7. The decision to convert the chemical test section to SEG funding would allow surcharge revenues to continue funding the other OWI-related programs. Without such a conversion (Alternatives 3 or 4), funding for all surcharge-funded programs would have to be reduced by at least 25%, based on DOA's revenue projections. Since most of the funding is associated with providing a basic infrastructure for OWI enforcement and treatment, reductions of that magnitude could affect the ability of state and local law enforcement and treatment agencies to maintain current programs.

8. Since the 1997 increase, the surcharge was again increased in 2000, 2001, and 2008, each time for the purpose of generating funds for particular programs. One alternative to the bill would be to increase the surcharge to generate sufficient revenue to continue funding the chemical test section with surcharge revenue. The following points detail this alternative, as well as provide some other considerations.

9. The amount by which the OWI surcharge must be increased to generate sufficient funds for the chemical test section depends upon the assumptions made for the number of OWI convictions. It is unclear whether the recent reduction in OWI convictions is due to trends that can be expected to continue, or whether it is due to temporary factors, such as the economic recession. However, there are at least some indications that attitudes toward drinking and driving are changing and, therefore, that it can be expected that OWI convictions will continue to fall. For instance, along with OWI convictions, alcohol related fatalities and accidents have been falling as well, and these trends predate the start of the economic recession in 2008. The number of alcohol-related traffic accidents has fallen in each year since 2003, and is now 41% below the 2003 level. Likewise, the number of convictions for underage alcohol operation (absolute sobriety) has fallen by more than 50% since 2003, suggesting that attitudes regarding drinking and driving among younger people are changing.

10. For the purpose of developing an estimate of the surcharge increase necessary to provide sufficient funding for the chemical test section, it is assumed that OWI convictions will continue to decline, to about 25,000 annually. Furthermore, since some persons who receive an OWI conviction do not pay the surcharge or do not pay the full amount, a 25% underpayment rate is assumed. Based on these assumptions, the surcharge would have to be increased by approximately \$70, to \$435, to generate sufficient revenue for the chemical test section. To ensure that a sufficient amount of the increase is fully retained by the state, the state and county shares would also need to be changed, such that the state would receive 49.7% and the county would retain 50.3%.

11. A \$70 increase to the OWI surcharge could exacerbate the problem of nonpayment of fines and surcharges. Although the 25% underpayment assumption is based on recent experience, an increase in the OWI surcharge may result in an increase in the underpayment rate. In this case, the revenues generated by a \$70 increase may be insufficient to fully support the chemical test section and all other state programs.

12. If a person fails to pay a traffic-related forfeiture or fine and the associated surcharges, the court may issue a driver's license suspension order. While the number of OWI convictions has been falling, the number of suspensions related to nonpayment of traffic fines and forfeitures has been increasing since 2007. The following table shows "failure to pay" license suspensions over that period. Note that these are fines and forfeitures related to any traffic offense, not just OWI violations. Nevertheless, further increases to the OWI surcharge may add to a growing problem.

Driver's Licenses Suspensions for Failure to Pay a Traffic Forfeiture

<u>Calendar Year</u>	<u>"Failure to Pay" License Suspensions</u>
2007	152,447
2008	169,431
2009	188,286
2010	209,290
2011	220,453
2012	244,072

13. The OWI surcharge was last increased on April 1, 2008, from \$355 to \$365. Other costs associated with an OWI conviction, however, have been increased more recently, with the passage of 2009 Act 100. Effective with OWI offenses committed on July 1, 2010, fees were created or increased, as follows: (a) the fee for license reinstatement following an OWI-related license revocation was increased by \$140; (b) a \$50 ignition interlock device (IID) surcharge was created, for all OWI cases for which an IID is ordered; and (c) for criminal OWI cases (all repeat offenses and a small subset of first offenses), the criminal court costs fee was increased by \$143.

14. In addition to these surcharge and fee increases, the use of IIDs was expanded to cover more OWI violators, with a potentially more significant impact on total costs to the offender. All repeat offenders and any first-time offender with a blood alcohol level of 0.15 or higher are now required to use an IID, whereas before it was only an option that could be ordered for certain repeat offenders. For 2009 OWI convictions, prior to the change, 839 IID orders were issued by the court, but this increased to 17,132 for 2011 convictions, affecting over 60% of all OWI convictions. The annual cost associated with the installation and maintenance of an IID varies somewhat by provider, but can range from \$950 to \$1,100. Total court costs (fines and surcharges) and other costs (such as driver assessment and license reinstatement fees) total about \$1,200 for a first OWI offense (without an IID order) and \$2,600 for a second offense.

15. The Legislative Audit Bureau submitted a report in 2012 that reviewed collections of the crime victim and witness assistance surcharge, which has seen a similar decline in collections in spite of the fact that the surcharge was recently increased by \$7. [The crime victim and witness assistance surcharge is \$67 for all misdemeanor convictions and \$92 for all felony convictions, but is not assessed for civil offenses, such as first-offense OWI. Revenues are used for Department of Justice crime victim services programs.] The Audit Bureau reported that collections were declining in part because of a decrease in the number of criminal convictions, but also found that some surcharge revenue is not being collected. In response to the audit, the Attorney General wrote that the "findings support the desirability of finding more stable funding sources" for the crime victim programs. A similar case could be made in support of the Governor's proposal to fund the State Patrol's chemical test section with a transportation fund appropriation. Even if the OWI surcharge is increased to fund the chemical test section in the 2013-15 biennium, OWI surcharge revenues may be insufficient to fund all of the state programs if the number of OWI convictions continues to fall or if the collection rate drops.

16. If the Committee decides to adopt a \$70 increase to the OWI surcharge in order to continue funding the chemical test section with surcharge revenues, the state would not realize an increase in revenue collections until persons charged with an OWI offense on or after the effective date of the change are convicted and begin paying the higher amounts. In a typical OWI case, several months may elapse between the time of arrest and the conviction date, and offenders are usually given 60 days following conviction to pay penalties or establish a payment plan. Monthly payment plans may extend the collection of penalties for up to a year following conviction for some offenders. Consequently, although a \$70 increase would be designed to generate approximately \$1.25 million in state revenues on an annual basis (the funding level for the chemical test section), the delay in collections means that the state may receive only half that amount in the first year, although it is difficult to precisely estimate the magnitude of the delayed collection effect.

17. The delay between the date of the violation and the collection of surcharge revenues also complicates the calculation of the state and county shares of surcharge revenues. According to staff with the State Courts, most county clerks of court and municipal court clerks do not have the capability to track surcharge collections by the date of the offense. Currently, the clerks forward 40% of the total OWI surcharge revenue collected to the state treasury and 60% to the county treasury. However, if an increase to the surcharge is adopted, along with an immediate change to the percentage, then counties would lose revenue, since they would retain a lower percentage of collections prior to the time that offenders begin paying the higher amount.

18. Since the courts are generally not able to easily trace surcharge collections on an individual basis by date of offense, one way to compensate so that counties would not lose revenue would be to delay the effective date of the change to the percentage. Such an adjustment would be imprecise, since it is not possible to reliably determine how much of a delay would equitably allocate OWI surcharge revenues between the counties and the state. Nevertheless, a delay of six months may be a reasonable assumption. According to court system data, most OWI cases are completed by six months following arrest. Although, as noted above, there are additional delays between conviction and payment, a six-month delay before the percentage change would allow some time to begin collecting the higher surcharge payments. In some cases, counties would collect surcharge revenues at the increased level prior to six months and so would retain a larger amount, but in others, when payments are delayed beyond six months, counties would retain a smaller amount.

19. Based on the factors described above, the total amount collected would be less than the amount needed to support the chemical test section in the first year. To compensate for the delayed revenue collection issue, the alternative (Alternative 2) could be structured as follows: (a) increase the OWI surcharge by \$70, first applying to offenses committed on the bill's general effective date; (b) increase the state's share to 49.7%, first applying to OWI surcharge revenues collected six months following the bill's general effective date (as described in the previous point); (c) retain the current law program revenue appropriation for the chemical test section, funded at the same level proposed under the bill for the SEG appropriation (which would be eliminated); and (d) transfer \$625,000 in 2013-14 (one-half of the annual cost of the chemical test section) from the transportation fund to the PR appropriation that receives OWI surcharge revenues to reflect that the increase in such revenues from the \$70 surcharge increase would not occur until the second half of 2013-14. In the event that surcharge revenue collections are still insufficient to fund all programs, funding for these programs would have to be adjusted accordingly, as under current law. Relative to the bill, this alternative would reduce SEG appropriations by \$1,249,400 annually, but would create a SEG transfer of \$625,000 in 2013-14.

20. In addition to the changes outlined in the previous point, an adjustment would need to be made to the percentage of state OWI surcharge revenues that is credited to the safe-ride grant program. Under current law, the safe-ride grant program receives 9.75% of the total state revenue collected, equivalent to \$14.24 of each surcharge that is fully paid. To maintain the same revenue for that program, the percentage of the state OWI surcharge collections would need to be reduced to 6.6%, applicable to the revenues collected six months following the effective date of the bill. Also, the \$625,000 transfer to the program revenue appropriation account for the collection of OWI surcharge revenues should be excluded from the safe-ride grant calculation.

ALTERNATIVES

1. Adopt the Governor's recommendation to delete the existing PR appropriation for the chemical test section and provide \$1,249,400 SEG and 13.0 SEG positions annually in a newly-created, transportation fund appropriation for the chemical test section.

2. Modify the Governor's recommendation as follows: (a) delete the proposed \$1,249,400 annual SEG appropriation and 13.0 SEG positions for the chemical test section and retain the PR appropriation for the chemical test section, funded at \$1,249,400 annually, and 13.0 PR positions; (b) increase the OWI driver improvement surcharge by \$70, first applying to offenses committed on the effective date of the bill; (c) modify the percentage allocation of OWI surcharge revenue such that the counties would retain 50.3% and the state would receive 49.7%, first applying to collections received on the first day of the sixth month beginning after the effective date of the bill; (d) transfer \$625,000 in 2013-14 from the transportation fund to the PR appropriation that receives OWI surcharge revenues, and specify that this revenue shall not be considered as part of the OWI surcharge revenues for the purpose of calculating the share of revenues credited to the safe-ride grant appropriation; and (e) modify the percentage of the state's share of OWI surcharge revenue credited to the safe-ride grant program from 9.75% to 6.6%, first applying to revenues received by the state on the first day of the sixth month beginning after the bill's general effective date.

ALT 2	Change to Bill		
	Revenue	Funding	Positions
SEG	\$0	-\$2,498,800	- 13.00
PR	<u>2,498,800</u>	<u>2,498,800</u>	<u>13.00</u>
Total	\$2,498,800	\$0	0.00
SEG-Transfer		\$625,000	

3. Delete the Governor's recommendation to fund the chemical test section with SEG, rather than PR, but approve the lower funding level (\$1,249,400 annually versus base funding of \$1,358,300 annually) recommended by the Governor.

ALT 3	Change to Bill	
	Funding	Positions
SEG	- 2,498,800	- 13.00
PR	<u>2,498,800</u>	<u>13.00</u>
Total	\$0	0.00

4. Delete provision.

ALT 4	Change to Bill	
	Funding	Positions
SEG	-\$2,498,800	- 13.00
PR	<u>2,716,600</u>	<u>13.00</u>
Total	\$217,800	0.00

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