

**1999 DRAFTING REQUEST**

**Bill**

Received: 10/6/98

Received By: nelsorp1

Wanted: Soon

Identical to LRB:

For: Administration-Budget

By/Representing: Etzler

6-1039

This file may be shown to any legislator: NO

Drafter: nelsorp1

May Contact:

Alt. Drafters:

Subject: Drunk Driving - alcohol level

Extra Copies:

**Topic:**

DOA:.....Etzler - Funding for preliminary breath testing instruments

**Instructions:**

See Attached

**Drafting History:**

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/1	nelsorp1 10/6/98	gilfokm 10/7/98	ismith 10/9/98	_____	lrb_docadmin 10/9/98		State
/2	nelsorp1 10/19/98 nelsorp1 10/26/98	gilfokm 10/19/98	martykr 10/19/98	_____ _____ _____	lrb_docadmin 10/19/98		State
/3		chanaman 10/26/98	jfrantze 10/27/98	_____ _____	lrb_docadmin 10/27/98		
/4	nelsorp1 10/28/98	ptellez 10/28/98	martykr 10/29/98	_____ _____	lrb_docadmin 10/29/98		

FE Sent For:

<END>

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/3		chanaman 10/26/98	jfrantze 10/27/98	_____	lrb_docadmin 10/27/98		

*Handwritten notes:* dm 10/29, HH, dm 10/29

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FE Sent For:

*JB* 10/26      *JB/KM*  
10/26  
 <END>

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/1	nelsorp1 10/6/98	gilfokm 10/7/98	ismith 10/9/98	_____	lrb_docadmin 10/9/98		State

FE Sent For:

10-10-19  
kmg

10/19  
km

10/19  
km

<END>

1999 DRAFTING REQUEST

Bill

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Received By: nelsorp1

Wanted: Soon

Identical to LRB:

For: Administration-Budget

By/Representing: Etzler

This file may be shown to any legislator: NO

Drafter: nelsorp1

May Contact:

Alt. Drafters:

Subject: Drunk Driving - alcohol level

Extra Copies: KG

Topic:

DOA:.....Etzler - Funding for preliminary breath testing instruments

Instructions:

See Attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
1?	nelsorp1	11-10-97 King	IS 10/9	IS/JF 10/9			

FE Sent For:

<END>

*DOA Budget request*  
*Analyst: Etzler*

**Department of Transportation**  
**1999-2001 Biennial Budget Request**  
**STATUTORY MODIFICATIONS**

**DIN NUMBER:** 5611

**TOPIC:** Funding for Preliminary Breath Testing Instrument Replacement

**DESCRIPTION OF CHANGE:**

The Department is requesting revenues from the OWI (Operating While Intoxicated) surcharge to procure 493 Preliminary Breath Testing (PBT) instruments during the 1999-01 biennium. In order to receive those revenues, the Department is requesting the following appropriation change:

By July 31, 1999, or 30 days after the passage of the budget, the Department of Health and Family Services (DHFS) will transfer \$290,900 from s. Chapter 20.435 (6) (hx) to the Department of Transportation, s. Chapter 20.395 (5) (ci), Breath screening instruments, state funds. Chapter 20.435 (6) (hx) is the DHFS appropriation for services related to drivers, where the state's portion of the OWI surcharge is deposited. In addition, s. Chapter 20.435 (6) (hx) would need to be amended to allow for the transfer of revenues to s. Chapter 20.395 (5) (ci).

**JUSTIFICATION:**

The PBTs are an extremely important tool in the enforcement of laws prohibiting the operation of motor vehicles while intoxicated. The arresting officer may evaluate several different indicators in order to determine whether a motorist may be intoxicated. These include driver behavior prior to the vehicle stop, the presence of the odor of alcohol, slurred speech, and the driver's performance of roadside sobriety tests. However, PBT testing offers several important advantages, including the following:

- The identification of motorists who are legally intoxicated, but not grossly impaired. This is particularly important in regard to "experienced drinkers" who are accustomed to the effects of alcohol, and are able to compensate to some extent.
- The identification of motorists who exhibit certain signs of intoxication due to a medical condition that is not related to the consumption of alcohol. For example, persons suffering from the effects of diabetes may be mistaken for intoxicated individuals.
- The PBTs are extremely useful in regard to the identification of motorists who are impaired due to illegal drug use. If a motorist appears to be intoxicated, and the PBT indicates that the motorist is not under the influence of alcohol, the arresting officer may decide to have the motorist tested for drugs.
- Use of the PBT prior to the arrest may benefit the prosecution in a contested case. Attorneys for the defense frequently argue that the case should be dismissed since the probable cause for the arrest was insufficient. The employment of the PBT prior to the arrest strengthens the prosecution argument that probable cause did exist.
- The use of revenues collected from the OWI surcharge is a logical source of funding for the replacement of the PBTs. Having those individuals convicted of OWI pay for the PBT replacement necessary to enforce Wisconsin's drunk driving laws is consistent with the decision to procure 325 new evidential breath testing instruments with OWI funds as part of the 1997-99 biennial budget.



5004  
**State of Wisconsin**  
**1999 - 2000 LEGISLATURE**

LRB-04837

RPN.....  
*King*

DOA:.....Etzler – Funding for preliminary breath testing instruments  
FOR 1999-01 BUDGET — NOT READY FOR INTRODUCTION

1

*Don't Gen. Cal.*  
**AN ACT ...; relating to: the budget**

**Analysis by the Legislative Reference Bureau**  
**HEALTH AND HUMAN SERVICES**

**ALCOHOL AND OTHER DRUG ABUSE**

Currently, each person ordered to pay a fine or forfeiture for driving or operating a motor vehicle while the person has a prohibited alcohol concentration in his or her blood, or while under the influence of an intoxicant, controlled substance or any other drug to a degree that renders the person incapable of ~~safety~~ driving (OWI), is required to pay a driver improvement surcharge of \$340. A majority of the money collected ~~by~~ the driver improvement surcharge is kept in the county where the violation occurred and is used to provide alcohol and other drug abuse services to drivers who are referred for alcohol or other drug abuse assessment. The remainder of the money collected is paid to the state treasurer. Some of the state moneys are used to provide chemical testing training to law enforcement officers by the state traffic patrol. The remainder of the funds received by the state may be allocated to various state agencies and the University of Wisconsin for services related to OWI offenses. These allocations are made by the secretary of ~~the~~ ~~department of~~ administration ~~and~~ after consultation with the secretaries of ~~the~~ ~~departments of~~ health and family services and transportation, the superintendent of public instruction, the attorney general and the president of the University of Wisconsin.

Under this bill, of the money received by the state from the driver improvement surcharge ~~after the payment to provide chemical testing training of law enforcement~~

*from*

*System safely*

*System*

officers by the state traffic patrol, \$290,900 is transferred to the department of transportation (DOT) for the purchase of preliminary breath screening instruments. These instruments are used to test the breath of a person who is suspected of committing an OWI offense before the person is arrested for that offense to help determine if additional testing is appropriate.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

*health and family services, administration*  
SECTION 9023. *Nonstatutory provisions; administration*  
*PRELIMINARY BREATH SCREENING INSTRUMENTS.*  
SECTION 1. 20.435 (6) (hx) of the statutes is amended to read:

~~20.435 (6) (hx) Services related to drivers, receipts. The amounts in the schedule for services related to drivers. All moneys received by the state treasurer from the driver improvement surcharge on court fines and forfeitures authorized under s. 346.655 shall be credited to this appropriation. The secretary of administration shall annually transfer to the appropriation account under s. 20.395~~

*From the amounts credited to the appropriation account under*  
~~(5) (di) 31.29% of all moneys credited to this appropriation. The secretary of administration shall transfer to the appropriation account under s. 20.395 (5) (ci)~~

*health and family services*  
~~\$290,900 not later than 30 days after the effective date of this paragraph. *section*~~

*subsection*  
~~Insert on or July 31, 1999, whichever is earlier. The moneys remaining may be transferred to sub. (7) (hy) and ss. 20.255 (1) (hm), 20.285 (1) (ia), 20.395 (5) (ci) and 20.455 (5) (h) by the secretary of administration after consultation with the secretaries of health and family services and transportation, the superintendent of public instruction, the attorney general and the president of the university of Wisconsin system.~~

History: 1971 c. 125 ss. 138 to 155, 522 (1); 1971 c. 211, 215, 302, 307, 322; 1973 c. 90, 198, 243; 1973 c. 284 s. 32; 1973 c. 308, 321, 322, 333, 336; 1975 c. 39 ss. 153 to 173, 732 (1), (2); 1975 c. 41 s. 52; 1975 c. 82, 224, 292; 1975 c. 113 s. 18; 1975 c. 422, 423; 1975 c. 430 ss. 1, 2, 80; 1977 c. 29 ss. 236 to 273, 657 (1); 1977 c. 112; 1977 c. 203 s. 106; 1977 c. 213, 233, 327; 1977 c. 354 s. 101; 1977 c. 359; 1977 c. 418 ss. 129 to 137, 924 (18) (d), 929 (55); 1977 c. 428 s. 115; 1977 c. 447; 1979 c. 32 s. 92 (11); 1979 c. 34, 48; 1979 c. 102 s. 237; 1979 c. 111, 175, 177; 1979 c. 221 ss. 118 to 133, 2202 (20); 1979 c. 238, 300, 331, 361; 1981 c. 20 ss. 301 to 356b, 2202 (20) (b), (d), (e); 1981 c. 93 ss. 3 to 8, 186; 1981 c. 298, 314, 317, 359, 390; 1983 a. 27 ss. 318 to 410, 2202 (20); 1983 a. 192, 199, 245; 1983 a. 333 s. 6; 1983 a. 363, 398, 410, 427; 1983 a. 435 ss. 2, 3, 7; 1983 a. 538; 1985 a. 24, 29, 56, 73, 120, 154, 176, 255, 281, 285, 332; 1987 a. 27, 339, 368, 398, 399, 402; 1987 a. 403 ss. 25, 256; 1987 a. 413; 1989 a. 31, 53; 1989 a. 56 ss. 23, 259; 1989 a. 102; 1989 a. 107 ss. 11, 13, 17 to 27; 1989 a. 120, 122, 173, 199, 202, 318, 336, 359; 1991 a. 6, 39, 189, 269, 275, 290, 315, 322; 1993 a. 16, 27, 76, 98, 99, 168, 183, 377, 437, 445, 446, 450, 460, 479

*section 20.435 (6) (hx), the of the statutes*

*no under score*

*of the statutes*



490, 491; 1996 a. 27 ss. 806 to 961r, 9126 (19); 1995 a. 77, 98; 1995 a. 216 ss. 26, 27; 1995 a. 266, 276, 289, 303, 404, 417, 440, 449, 464, 468; 1997 a. 27 ss. 211, 214, 216, 217, 527 to 609; 1997 a. 35, 105, 231, 237, 280, 282.

1

(END)



SOON

State of Wisconsin  
1999 - 2000 LEGISLATURE

R-Note

LRB-0483/2  
RPN:kmg:ijs

DOA:.....Etzler – Funding for preliminary breath testing instruments  
FOR 1999-01 BUDGET — NOT READY FOR INTRODUCTION

1

*Don't GenCat.*  
AN ACT ...; relating to: the budget.

---

*Analysis by the Legislative Reference Bureau*

**HEALTH AND HUMAN SERVICES**

**ALCOHOL AND OTHER DRUG ABUSE**

Currently, each person ordered to pay a fine or forfeiture for driving or operating a motor vehicle while the person has a prohibited alcohol concentration in his or her blood, or while under the influence of an intoxicant, controlled substance or any other drug to a degree that renders the person incapable of safely driving (OWI), is required to pay a driver improvement surcharge of \$340. A majority of the money collected from the driver improvement surcharge is kept in the county where the violation occurred and is used to provide alcohol and other drug abuse services to drivers who are referred for alcohol or other drug abuse assessment. The remainder of the money collected is paid to the state treasurer. Some of the state moneys are used to provide chemical testing training to law enforcement officers by the state traffic patrol. The remainder of the funds received by the state may be allocated to various state agencies and the University of Wisconsin System for services related to OWI offenses. These allocations are made by the secretary of administration after consultation with the secretaries of health and family services and transportation, the superintendent of public instruction, the attorney general and the president of the University of Wisconsin System.

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purchase of preliminary breath screening instruments. These instruments are used to test the breath of a person who is suspected of committing an OWI offense before the person is arrested for that offense to help determine if additional testing is appropriate.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

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***The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:***

**1 SECTION 9123. Nonstatutory provisions; health and family services.**

2 (1) PRELIMINARY BREATH SCREENING INSTRUMENTS. From the amounts credited to  
3 the appropriation account under section 20.435 (6) (hx) of the statutes, the secretary  
4 of health and family services shall transfer \$290,900 to the appropriation account  
5 under section 20.395 (5) (ci) of the statutes not later than 30 days after the effective  
6 date of this subsection or July 31, 1999, whichever is earlier <sup>or later.</sup>

7 (END)

*D-Note*

*This draft changes the last word of the bill because if the bill was passed after July 31, 1999, it would be impossible to have the bill be effective on July 31, 1999.*

*RPN*

**DRAFTER'S NOTE  
FROM THE  
LEGISLATIVE REFERENCE BUREAU**

LRB-0483/2dn  
RPN:kmg:km

October 19, 1998

This draft changes the last word of the bill, because if the bill was passed after July 31, 1999, it would be impossible to have the bill be effective on July 31, 1999.

Robert P. Nelson  
Senior Legislative Attorney  
267-7511



State of Wisconsin  
1999 - 2000 LEGISLATURE

LRB-0483/2  
RPN:kmg:km

DOA:.....Etzler - Funding for preliminary breath testing instruments  
FOR 1999-01 BUDGET -- NOT READY FOR INTRODUCTION

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7 (END)

JTK  
Can we direct  
\$290,900 to transfer  
to another agency?  
PJD

1 - I would say "DoA shall transfer" because secy of hofs cannot  
get the money into DOT's account. DoA must do this.  
2 - I would delete "July 31, 1999" since budget act cannot take effect  
before July 1, 1999.

JTK



*Soon*  
**State of Wisconsin**  
**1999 - 2000 LEGISLATURE**  
*P-Note*

LRB-0483/2  
RPN:kmg:km  
*3*  
*L. KSN*

DOA:.....Etzler – Funding for preliminary breath testing instruments  
FOR 1999-01 BUDGET — NOT READY FOR INTRODUCTION

*do not sur  
cat.*

1 AN ACT ...; relating to: the budget.

*Analysis by the Legislative Reference Bureau*

**HEALTH AND HUMAN SERVICES**

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4       of ~~health and family services~~ *the department of administration* shall transfer \$290,900 to the appropriation account  
5       under section 20.395 (5) (ci) of the statutes not later than 30 days after the effective  
6       date of this subsection ~~on July 31, 1999, which is later~~

7       (END)



**DRAFTER'S NOTE  
FROM THE  
LEGISLATIVE REFERENCE BUREAU**

LRB-0483/3/dn  
RPN:kmg:km

October 19, 1998

This draft ~~changes the last word of the bill, because if the bill was passed after July 31, 1999, it would be impossible to have the bill be effective on July 31, 1999.~~

Robert P. Nelson  
Senior Legislative Attorney  
267-7511

requires the secretary of <sup>the</sup> department of  
administration to transfer the funds.  
Jeff Huestel of our office says  
DOA has that authority, not DHFS.

Also, he noted that the  
budget bill is always effective  
no earlier than July 1, so the  
July 31 language in the bill  
is unnecessary.

**DRAFTER'S NOTE  
FROM THE  
LEGISLATIVE REFERENCE BUREAU**

LRB-0483/3dn  
RPN:kmg&ksh:jf

October 26, 1998

This draft requires the secretary of the department of administration to transfer the funds. Jeff Kuesel of our office says DOA has that authority, not DHFS.

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Robert P. Nelson  
Senior Legislative Attorney  
267-7511



**State of Wisconsin  
1999 - 2000 LEGISLATURE**

LRB-0483/3  
RPN:kmg&ksh:jf

DOA:.....Etzler – Funding for preliminary breath testing instruments  
FOR 1999-01 BUDGET — NOT READY FOR INTRODUCTION

1 **AN ACT ...; relating to: the budget.**

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***Analysis by the Legislative Reference Bureau***

**HEALTH AND HUMAN SERVICES**

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2001  
State of Wisconsin  
1999 - 2000 LEGISLATURE

LRB-0483/2  
RPN:kmg&ksh:jf

*D-Note*

DOA:.....Etzler - Funding for preliminary breath testing instruments  
FOR 1999-01 BUDGET -- NOT READY FOR INTRODUCTION

1 AN ACT *do not gun cat.*; relating to: the budget.

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*Analysis by the Legislative Reference Bureau*  
**HEALTH AND HUMAN SERVICES**

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Under this bill, of the money received by the state from the driver improvement surcharge \$290,900 is transferred to the department of transportation (DOT) for the



**DRAFTER'S NOTE  
FROM THE  
LEGISLATIVE REFERENCE BUREAU**

LRB-04837/dn  
RPN:kmg&ksh:jf

October 26, 1998

removes

language

from the  
draft

This draft requires the ~~secretary~~ " " of the department of administration to transfer the funds. Jeff Kuesel of our office says DOA has that authority, not DHP.

Also, he noted that the budget bill is always effective no earlier than July 1, so the July 31 language in the bill is unnecessary.

Robert P. Nelson  
Senior Legislative Attorney  
267-7511

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**DRAFTER'S NOTE  
FROM THE  
LEGISLATIVE REFERENCE BUREAU**

LRB-0483/4dn  
RPN:kmg&ksh:km

October 29, 1998

This draft removes language "of the department" of administration from the draft.

Robert P. Nelson  
Senior Legislative Attorney  
267-7511



**Nelson, Robert**

---

**From:** Nilsen, Paul  
**Sent:** Monday, December 21, 1998 2:33 PM  
**To:** Nelson, Robert  
**Subject:** FW: LRB-0483/4, Funding for preliminary breath testing instruments.

Bob: This was sent to me 12/11, but it pertains to your draft. Sorry for the delay!--Paul

-----Original Message-----

**From:** Peacock, Joshua [mailto:joshua.peacock@dot.state.wi.us]  
**Sent:** Friday, December 11, 1998 2:56 PM  
**To:** Etzler, John  
**Cc:** Beaupre, Sandy; Smith, Thomas; Nilsen, Paul; Buckmaster, Carol; McGuire, Daniel  
**Subject:** LRB-0483/4, Funding for preliminary breath testing instruments.

John,

We have reviewed the language in the above noted draft and agree that it meets the needs of the agency for inclusion in the budget.

However, we do have two concerns relating to language in the existing appropriation:

1.) Under the statutory language for appropriation 20.395 (5) (ci), is the language "...for the purchase and maintenance of breath screening instruments." broad enough to include preliminary breath testing instruments. Does the language need to be changed to reflect that we are purchasing PBTs? (i.e. "...including preliminary breath testing instruments.").

2.) Under the statutory language for appropriation 20.395 (5) (ci), "...the unencumbered balance in this appropriation account on June 30 of each year shall be transferred to the appropriation account under s. 20.435 (6) (hx)." Because of the complex nature of these types of procurements and the timing of the passage of the budget during 1999 (the 1997-99 budget was enacted on October 11, 1997) this provision may create difficulties with encumbering the dollars available before the end of the fiscal year. Would it be possible to look at the removal of this provision from the statutory language for this appropriation?

Joshua.

12/22  
John & I agree that  
no change is  
necessary - intend to  
cover preliminary  
John says do not  
make this change -  
want to maintain  
tight control.

## **Nelson, Robert**

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**From:** Nilsen, Paul  
**Sent:** Thursday, January 07, 1999 11:50 AM  
**To:** 'Etzler, John'  
**Cc:** Nelson, Robert  
**Subject:** RE: LRB 0483/P4

John:

Bob Nelson drafted that one. Josh shouldn't have cc'd me on it. I have forwarded this redrafting request to Bob Nelson.

Since Josh's redraft request was from 12/11, I'm sure that Bob has already redrafted it, and will now have to redraft it to restore it to the original language... 2 wasted redrafts.

--Paul

-----Original Message-----

**From:** Etzler, John [mailto:John.Etzler@doa.state.wi.us]  
**Sent:** Thursday, January 07, 1999 11:36 AM  
**To:** Nilsen, Paul  
**Subject:** LRB 0483/P4

Paul -- Josh Peacock "cc:"ed a message to you dated 12/11/98 (subject: LRB 0483/4, Funding for Preliminary Breath Testing Instruments) regarding the handling of the language contained in this appropriation. Please disregard his concerns. We will not be making these changes to the draft (0483/P4). If you have any questions or concerns, let me know. Thanks.



State of Wisconsin  
1999 - 2000 LEGISLATURE

LRB-0483/4  
RPN:kmg&ksh:km

DOA:.....Etzler - Funding for preliminary breath testing instruments  
FOR 1999-01 BUDGET -- NOT READY FOR INTRODUCTION

1 AN ACT ...; relating to: the budget.

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*Analysis by the Legislative Reference Bureau*

**HEALTH AND HUMAN SERVICES**

**ALCOHOL AND OTHER DRUG ABUSE**

Currently, each person ordered to pay a fine or forfeiture for driving or operating a motor vehicle while the person has a prohibited alcohol concentration in his or her blood, or while under the influence of an intoxicant, controlled substance or any other drug to a degree that renders the person incapable of safely driving (OWI), is required to pay a driver improvement surcharge of \$340. A majority of the money collected from the driver improvement surcharge is kept in the county where the violation occurred and is used to provide alcohol and other drug abuse services to drivers who are referred for alcohol or other drug abuse assessment. The remainder of the money collected is paid to the state treasurer. Some of the state moneys are used to provide chemical testing training to law enforcement officers by the state traffic patrol. The remainder of the funds received by the state may be allocated to various state agencies and the University of Wisconsin System for services related to OWI offenses. These allocations are made by the secretary of administration after consultation with the secretaries of health and family services and transportation, the superintendent of public instruction, the attorney general and the president of the University of Wisconsin System.

Under this bill, of the money received by the state from the driver improvement surcharge \$290,900 is transferred to the department of transportation (DOT) for the





State of Wisconsin  
1999 - 2000 LEGISLATURE

LRB-0483/1  
RPN:kmg:ijs

(D)

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