

### Fiscal Estimate - 2003 Session

Original     
  Updated     
  Corrected     
  Supplemental

<b>LRB Number</b> <b>03-1356/1</b>	<b>Introduction Number</b> <b>AB-88</b>
<b>Subject</b>	
Prohibited alcohol concentration to be .08 for first and second offense	
<b>Fiscal Effect</b>	
<b>State:</b>	
<input type="checkbox"/> No State Fiscal Effect <input checked="" type="checkbox"/> Indeterminate	
<input type="checkbox"/> Increase Existing Appropriations <input type="checkbox"/> Decrease Existing Appropriations <input type="checkbox"/> Create New Appropriations	<input type="checkbox"/> Increase Existing Revenues <input type="checkbox"/> Decrease Existing Revenues
<input type="checkbox"/> Increase Costs - May be possible to absorb within agency's budget <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Decrease Costs	
<b>Local:</b>	
<input type="checkbox"/> No Local Government Costs <input checked="" type="checkbox"/> Indeterminate	
1. <input type="checkbox"/> Increase Costs <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory 2. <input type="checkbox"/> Decrease Costs <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory	3. <input type="checkbox"/> Increase Revenue <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory 4. <input type="checkbox"/> Decrease Revenue <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory
5. Types of Local Government Units Affected <input type="checkbox"/> Towns <input type="checkbox"/> Village <input type="checkbox"/> Cities <input type="checkbox"/> Counties <input type="checkbox"/> Others <input type="checkbox"/> School Districts <input type="checkbox"/> WTCS Districts	
<b>Fund Sources Affected</b>	
<input type="checkbox"/> GPR <input checked="" type="checkbox"/> FED <input checked="" type="checkbox"/> PRO <input type="checkbox"/> PRS <input checked="" type="checkbox"/> SEG <input type="checkbox"/> SEGS	
<b>Affected Ch. 20 Appropriations</b>	
20.395(4)(ax);20.395(5)(cq);20.395(5)(di);20.395(5)(dq);20.395(5)(ek)	
<b>Agency/Prepared By</b>	<b>Authorized Signature</b>
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<b>Date</b>	
3/13/2003	

## Fiscal Estimate Narratives

DOT 3/14/2003

LRB Number	03-1356/1	Introduction Number	AB-88	Estimate Type	Updated
<b>Subject</b>					
Prohibited alcohol concentration to be .08 for first and second offense					

### Assumptions Used in Arriving at Fiscal Estimate

AB-88 changes the prohibited alcohol concentration (AC) from 0.10 to 0.08 percent for persons with one or no prior Operating While Intoxicated (OWI) convictions relating to operating a motor vehicle, as well as for persons operating an all-terrain vehicle, snowmobile, or boat. The effective date for these changes will be 9/30/03.

This estimate addresses only the fiscal implications associated with lowering the prohibited AC for motor vehicle-related OWI.

#### Assumptions:

1. Lowering the prohibited AC for first and second offense motor vehicle-related OWI, with an effective date of 9/30/03 or earlier, will bring Wisconsin into full compliance with the congressional 0.08 mandate embodied in the 2001 U.S. Department of Transportation Appropriations Act. Doing so will avoid the withholding of 2% of Wisconsin's federal highway construction funding in FFY 2004 and 4% in FFY 2005.

2. It is assumed AB-88 will be enacted into law no later than 7/15/03. This will allow the Department to certify to USDOT that Wisconsin complies with the congressional 0.08 mandate, thus avoiding withholding of federal highway construction funding in FFY 2004 and beyond.

It also will allow the Department to apply for Wisconsin's proportional share of the \$110 million national pool FFY 2003 federal Section 163 incentive funding, which is available only to states with conforming 0.08 laws. For purposes of this fiscal estimate, it is assumed that Wisconsin will be the only state to enact conforming 0.08 legislation prior to 7/15/03, thus making it the 36th state to qualify for Section 163 incentive funding.

3. Lowering the prohibited AC to 0.08 percent for 1st and 2nd offense OWI will impact alcohol consumption and driving behavior in Wisconsin, as well as general societal attitudes toward drinking and driving. Some drinkers will more frequently reduce the quantity of alcohol that they consume prior to driving. Some drinkers will not change the amount of alcohol they consume, but they will more frequently choose not to drive after drinking.

States that have lowered their prohibited AC from 0.10 to 0.08 percent experienced a variety of effects, including reductions in the number of alcohol-related traffic injuries and fatalities. However, monetizing the societal benefits of fewer fatalities and injuries is beyond the scope of this fiscal estimate.

States that have lowered their prohibited AC from 0.10 to 0.08 percent experienced changes in their OWI caseloads, but the results have been highly varied. For example, there was a 5% decrease in OWI convictions following enactment of California's 0.08 law, but no change in OWI caseload was experienced in North Carolina. OWI convictions increased 12% in Nebraska, 25% in Indiana, and 26% in Arizona.

Based on the experience of other states, the effect of a 0.08 law on OWI convictions in Wisconsin cannot be predicted with certainty. In addition to the wide range of effects in other states, Wisconsin drivers with two prior OWI convictions are already subject to a 0.08 prohibited AC, and drivers with three or more prior OWI convictions are subject to a 0.02 prohibited AC. In 2001, 3rd or subsequent OWI convictions accounted for 17% of all OWI convictions. In effect, Wisconsin already has a partial 0.08 law (for drivers with two prior OWI convictions) and an even lower prohibited AC limit for drivers with three or more priors.

Independent of the general deterrent effect, lowering the prohibited AC to 0.08 percent will result in drivers under age 21 who test at AC levels between 0.08 and 0.10 percent being charged with OWI instead of underage alcohol operation (UAO). The number of additional OWI convictions resulting from this effect of a 0.08 law is indeterminable.

Lowering the prohibited AC to 0.08 percent will not, by itself, increase the number of traffic stops of drivers who are at AC levels between 0.08 and 0.10 percent. No data are kept on traffic stops in which officers decide not to request an evidentiary AC test for drivers with one or no prior OWI convictions after the roadside preliminary breath test (PBT) indicates an AC level between 0.08 and 0.10 percent. It is reasonable to assume that all of these drivers will now be requested to submit to an evidentiary AC test and that more evidentiary AC tests between 0.08 and 0.10 percent will be recorded, all of which will result in an OWI conviction. The number of additional OWI convictions resulting from this effect of a 0.08 law is indeterminable.

Some states that have enacted 0.08 laws have seen some reduction in the AC levels of drivers arrested for OWI at very high AC levels. If this effect results from Wisconsin lowering the prohibited AC to 0.08 for 1st and 2nd offenders, there would be an indeterminate decrease in the number of OWI offenders who face penalty enhancements (i.e. double, triple or quadruple fines) due to very high AC levels.

Based on the experience of other states and the fact that Wisconsin already has a partial 0.08 law (for repeat offenders), for purposes of this fiscal estimate, it is assumed the lower prohibited AC for 1st and 2nd offense OWI will have a general deterrent effect on drinking and driving behavior for many drivers, regardless of their number of prior OWI convictions. It is assumed the overall net result will be within a range between 5% fewer OWI convictions to 15% more OWI convictions.

### **Long-Range Fiscal Implications**

1. There would be no withholding of federal highway construction funds in FFY 2004 or thereafter. A 2% withholding in FFY 2004 would have equaled \$7,871,170, and a 4% withholding in FFY 2005 would have equaled \$16,529,456. Continued non-compliance would have resulted in a 6% withholding in FFY 2006 equal to \$26,033,893 and an 8% withholding in FFY 2007 equal to \$36,447,450.

Continued non-compliance after 9/30/07 would have resulted in the annual permanent lapse of the withheld funds in the same order in which they were initially withheld (i.e. \$7,871,170 would lapse in FFY 2008, \$16,529,456 in FFY 2009, \$26,033,893 in FFY 2010, and \$36,447,450 in FFY 2011). Beginning in FFY 2008, there would have been an annual 8% withholding, with permanent lapse to occur after four years (i.e. FFY 2008 withheld funding would have lapsed in FFY 2012, FFY 2009 withheld funds would have lapsed in FFY 2013, and so on).

2. Wisconsin would qualify for federal Section 163 incentive funding in FFY 2003. If no other state enacts a conforming 0.08 law, Wisconsin's share of Section 163 funding will be \$3,169,055.

If other states also enact conforming 0.08 laws, then Wisconsin's share of Section 163 funding would be smaller. How much smaller would depend on which other states also become eligible for a share of the national Section 163 incentive funding.

3. In 2001, there were 34,686 OWI convictions in Wisconsin. Increases or decreases in the number of OWI convictions per year would mean more or fewer associated Division of Motor Vehicles (DMV) transactions, including: administrative suspensions and related hearings, driver safety plans, driver license withdrawals, case releases, responses to information inquiries by OWI defendants, occupational driver license issuance, related insurance filings, and driver license reinstatements.

Estimates of associated fiscal effects (e.g. full-time equivalent position workload, salary and fringe benefit costs, and transaction revenues) were calculated using DMV's OWI caseload calculation model and are as follows:

Low Range: If the general deterrent effect is a 5% reduction in OWI convictions, there will be  $34,686 \times 0.05 = 1,734$  fewer OWI convictions per year. The net effects of all associated DMV transactions would be a workload reduction equivalent to -1.3 FTE positions equal to a savings of \$51,150 in salary and fringe benefits; a reduction in supplies and services of \$1,584; but a loss of -\$68,495 in State Transportation Fund revenues.

High Range: If the general deterrent effect is a 15% increase in OWI convictions, there will be  $34,686 \times 0.15 = 5,203$  more OWI convictions per year. The net effects of all associated DMV transactions would be a workload increase equivalent to +4.0 FTE positions at a cost of \$153,477 in salary and fringe benefits; an increase in supplies and services of \$4,752; and an increase of \$205,523 in State Transportation Fund

revenues.

4. WisDOT public information/education materials related to impaired driving would have to be revised. However, these materials are routinely revised on a regular basis, so the 0.08 change would be incorporated into the next planned cycle of revisions.

5. The WisDOT Division of State Patrol would have to replace the reference standard gas used in the 240 Intoximeter® breath alcohol testing devices deployed in police agencies around the state. The total one-time cost would be  $\$98 \times 240 = \$23,520$ .

6. Changes in the number of OWI convictions per year would affect a variety of state and local revenues paid by OWI offenders.

Low Range: A reduction of 1,734 OWI convictions per year would mean an annual reduction in state and local OWI conviction-related revenues, as follows:

Type of Fine or Fee School Fund Program Revenue GPR-Earned County/Municipal Total  
Forfeiture

Average \$250 per case) -\$216,750 -\$216,750 -\$433,500  
Penalty Assessment(\$58 per case) -\$100,572 -\$100,572  
Jail Assessment(\$10 per case) -\$17,340 -\$17,340  
Justice Information System Fee(\$9 per case) -\$15,606 -\$15,606  
Milwaukee County Justice Information  
System Fee(\$2 per case)\* -\$326 -\$326  
Court Costs(\$25 per case) -\$43,350 -\$43,350  
Court Support Services(\$52 per case)-\$90,168 -\$90,168  
OWI Surcharge(\$355 per case)-\$615,570 -\$615,570  
Total -\$216,750 -\$716,142-\$90,168 -\$293,372 -\$1,316,432

\* Milwaukee County OWI caseload is 9.4% of the state total ( $1,734 \times 0.094 = 163$  fewer OWI cases)

High Range: An increase of 5,203 OWI convictions per year would mean an annual increase in state and local OWI conviction-related revenues, as follows:

Type of Fine or Fee School Fund Program Revenue GPR-Earned County/Municipal Total  
Forfeiture (Average

\$250 per case) \$650,375 \$650,375 \$1,300,750  
Penalty Assessment(\$58 per case) \$301,774 \$301,774  
Jail Assessment(\$10 per case) \$52,030 \$52,030  
Justice Information System Fee(\$9 per case) \$46,827 \$46,827  
Milwaukee Co Justice Information System Fee(\$2 per case)\* \$978 \$978  
Court Costs(\$25 per case) \$130,075 \$130,075  
Court Support Services(\$52 per case) \$270,556 \$270,556  
OWI Surcharge(\$355 per case) \$1,847,065 \$1,847,065  
Total \$650,375 \$2,148,839 \$270,556 \$880,285 \$3,950,055

\* Milwaukee County OWI caseload is 9.4% of the state total ( $5,203 \times 0.094 = 489$  more OWI cases)

## Fiscal Estimate Worksheet - 2003 Session

Detailed Estimate of Annual Fiscal Effect

Original     
  Updated     
  Corrected     
  Supplemental

<b>LRB Number</b> <b>03-1356/1</b>		<b>Introduction Number</b> <b>AB-88</b>	
<b>Subject</b>			
Prohibited alcohol concentration to be .08 for first and second offense			
<b>I. One-time Costs or Revenue Impacts for State and/or Local Government (do not include in annualized fiscal effect):</b>			
If there is a 5% decrease in OWI convictions, there will be a one-time cost of \$23,520 to replace the reference standard gas used in 240 Intoximeter breath alcohol testing devices.			
<b>II. Annualized Costs:</b>		<b>Annualized Fiscal Impact on funds from:</b>	
		Increased Costs	Decreased Costs
<b>A. State Costs by Category</b>			
	State Operations - Salaries and Fringes	\$	-51,150
	(FTE Position Changes)		(-1.3 FTE)
	State Operations - Other Costs		-1,584
	Local Assistance		
	Aids to Individuals or Organizations		
	<b>TOTAL State Costs by Category</b>	<b>\$</b>	<b>\$-52,734</b>
<b>B. State Costs by Source of Funds</b>			
	GPR		
	FED		
	PRO/PRS		
	SEG/SEG-S		-52,734
<b>III. State Revenues - Complete this only when proposal will increase or decrease state revenues (e.g., tax increase, decrease in license fee, etc.)</b>			
		Increased Rev	Decreased Rev
	GPR Taxes	\$	\$
	GPR Earned		
	FED	3,169,055	
	PRO/PRS		-78,030
	SEG/SEG-S		-68,495
	<b>TOTAL State Revenues</b>	<b>\$3,169,055</b>	<b>\$-146,525</b>
<b>NET ANNUALIZED FISCAL IMPACT</b>			
		State	Local
	NET CHANGE IN COSTS	\$-52,734	\$
	NET CHANGE IN REVENUE	\$3,022,530	\$
<b>Agency/Prepared By</b>		<b>Authorized Signature</b>	<b>Date</b>
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