

Fiscal Estimate - 2005 Session

Original Updated Corrected Supplemental

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|--|--|--|--|-------------|
| LRB Number 05-4630/1 | | Introduction Number AB-1023 | | |
| Description Discovery in implied consent cases involving drunken driving and in certain prosecutions for alcohol beverage violations | | | | |
| Fiscal Effect | | | | |
| State: | | | | |
| <input type="checkbox"/> No State Fiscal Effect | | | | |
| <input checked="" type="checkbox"/> Indeterminate | | | | |
| <input type="checkbox"/> Increase Existing Appropriations | | <input type="checkbox"/> Increase Existing Revenues | | |
| <input type="checkbox"/> Decrease Existing Appropriations | | <input type="checkbox"/> Decrease Existing Revenues | | |
| <input type="checkbox"/> Create New Appropriations | | <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 | | |
| Local: | | | | |
| <input type="checkbox"/> No Local Government Costs | | | | |
| <input checked="" type="checkbox"/> Indeterminate | | | | |
| 1. <input type="checkbox"/> Increase Costs | | 3. <input type="checkbox"/> Increase Revenue | | |
| <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory | | <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory | | |
| 2. <input type="checkbox"/> Decrease Costs | | 4. <input type="checkbox"/> Decrease Revenue | | |
| <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory | | <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 | | |
| Fund Sources Affected | | Affected Ch. 20 Appropriations | | |
| <input type="checkbox"/> GPR <input type="checkbox"/> FED <input type="checkbox"/> PRO <input type="checkbox"/> PRS <input type="checkbox"/> SEG <input type="checkbox"/> SEGS | | | | |
| Agency/Prepared By | | Authorized Signature | | Date |
| DOT/ John Sobotik (608) 267-9320 | | Julie Johnson (608) 267-3703 | | 2/22/2006 |

Fiscal Estimate Narratives

DOT 2/22/2006

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|--|-----------|---------------------|---------|---------------|----------|
| LRB Number | 05-4630/1 | Introduction Number | AB-1023 | Estimate Type | Original |
| Description Discovery in implied consent cases involving drunken driving and in certain prosecutions for alcohol beverage violations | | | | | |

Assumptions Used in Arriving at Fiscal Estimate

Under s. 345.421, Stats., neither the prosecution nor defense is entitled to pretrial discovery in a typical traffic case. The only exception of note is that if the defendant brings a motion within 10 days after the alleged violation and shows cause, the court may allow the defendant (actually his/her experts) to inspect and test any devices used by the police to determine whether a violation has been committed. Using this mechanism, defendants can test devices such as radar guns and chemical test devices.

If the defendant refused chemical testing in an OWI case, however, different rules apply to him because of that refusal. In *State v. Schoepp*, 204 Wis. 2d 266 (1996), the court of appeals ruled that the proceeding to revoke a driver license for chemical test refusal under s. 343.305(10), Stats., is technically not a traffic proceeding. Accordingly, it determined that the default general rules of discovery that apply in civil proceedings apply in those cases.

As a result, police officers are subject to being subpoenaed and deposed in any case in which a person refuses chemical testing. The prosecution can also be required to respond to written requests for admission, written interrogatories, requests for production of documents, and other burdensome discovery mechanisms. The result is that defendants who refuse chemical testing use the refusal proceeding as a mechanism to conduct discovery for use in the OWI traffic case that would otherwise be prohibited under s. 345.421, Stats.

In 2003 DMV revoked about 3000 operating privileges for refusing chemical tests. We do not have any records that indicate the frequency of discovery use in those cases. Anecdotally, prosecutors and police report that the discovery practice in refusal cases is burdensome.

When discovery is permitted in these cases today, often 2 or more officers must be diverted to responding to the discovery requests or being deposed. Usually the arresting officer and the officer that attempted to administer chemical tests are deposed, although additional officers may be deposed as well if they are potential witnesses. Limiting discovery in refusal cases should reduce the prevalence of this practice and reduce the number of hours officers are diverted from their normal duties. Because the officers are paid whether they are being deposed or at their regular duties, no significant financial impact is expected from the change. Some savings would be realized if officers perform these functions while on overtime, as those overtime charges would be eliminated.

We expect the cost implications to be similar for local police agencies.

The State Patrol's Chemical Test Section, which maintains the evidential breath testing devices used statewide, provides expert testimony in cases involving chemical testing of breath. Currently, it is involved in responding to discovery requests to one or two cases per month involving chemical test refusal. It estimates the total increased cost to its program of this proposed bill to be less than \$1000 annually for salaries and costs associated with court proceedings related to testing of chemical test devices in refusal proceedings.

Long-Range Fiscal Implications

Unknown.