



Legislative Fiscal Bureau

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December 16, 2009

TO: Members
Wisconsin Legislature

FROM: Bob Lang, Director

SUBJECT: Summary and Fiscal Estimate of Assembly Amendment 1 to Senate Bill 66, Relating to Operating While Intoxicated Laws

As passed by the Senate, Senate Bill 66 (SB 66) would make several changes to the state's operating while intoxicated (OWI) laws. In a November 9 memorandum to members of the Legislature (attached), this office provided a comparison of the provisions of SB 66 with AB 283, as passed by the Assembly. This memorandum describes the changes to SB 66 included in Assembly Amendment 1 to SB 66, as well as the annualized fiscal effect of SB 66, if AA 1 to SB 66 were to be adopted.

Summary of Assembly Amendment 1 to Senate Bill 66

The principal provisions of AA 1 to SB 66 relate to the funding provided to state agencies for the costs associated with the OWI law changes. Senate Bill 66 would provide \$15,400,000 GPR in 2010-11 in the Joint Committee on Finance's supplemental appropriation to fund these costs. Within 60 days of publication of the bill, the Department of Administration, on behalf of, and with the assistance of, the State Public Defender, District Attorneys, the Department of Justice, and the Department of Corrections, would be required to submit to the Committee a proposed budget and number of created positions necessary to support the costs associated with the OWI law changes.

Assembly Amendment 1 to SB 66 would reduce the amount provided in the Joint Finance appropriation by \$6,600,000, to \$8,800,000, and would include the Director of State Courts in the list of agencies that must be consulted in the development of the proposal. The amendment would provide \$6,600,000 in a new, annual GPR appropriation in the Department of Corrections for the costs of community probation supervision, a monitoring center, and enhanced community treatment for persons convicted of a second or third OWI offense. The new appropriation would be exempt from budget lapse provisions included in the 2007-09 biennial budget (applicable to the 2009-11

biennium) and the 2009-11 biennial budget.

Under the amendment, the Department of Corrections would be required to provide probation, assessment, treatment, and other community treatment options for persons convicted of a second or third OWI offense, with no waiting list for services. If the funding provided in the new appropriation is not sufficient to provide these services without a waiting list, the Department would be required to notify the Joint Committee on Finance.

The amendment would make two other changes to the provisions of Senate Bill 66. First, it would increase a proposed driver's license reinstatement fee for OWI offenders that was included in SB 66 by \$100, from \$40 to \$140. When added to the current law reinstatement fee of \$60, the total reinstatement fee for these offenders would be \$200 under the amendment. Second, the effective date of the principal changes to the bill would be changed from the first day of the third month beginning after publication of the bill, to July 1, 2010. [Under Senate Bill 66, the effective date of provisions allowing counties to use an alternative sentencing structure for certain OWI offenders if they successfully complete a period of probation involving alcohol treatment is the day after publication of the bill. This would be unaffected by Assembly Amendment 1.]

Fiscal Effect of Senate Bill 66, as Amended by Assembly Amendment 1

Annualized Fiscal Effect

The following tables identify the annualized cost estimates for the Department of Corrections under the amendment. The estimated annualized populations include: (a) 366 in prison and 4,777 placed in the community on probation or on extended supervision if 31% of felony fourth offense OWI offenders are sentenced to 12 months in prison; or (b) 1,181 in prison and 5,451 placed in the community on probation or on extended supervision if 50% of felony fourth offense OWI offenders are sentenced to 24 months in prison. Further, the Department assumed:

- Ignition interlock devices used for first offense OWI offenders will result in a 7% reduction in second and subsequent OWI convictions;
- Of the remaining fourth offense OWI offenders not sentenced to prison, those individuals will serve three years probation;
- 30% of second and third offense OWI offenders will be placed in county-operated OWI programs rather than placed on probation. Of the remaining second and third offense OWI offenders, all will be placed on probation for one year, required to receive an alcohol and other drug abuse (AODA) assessment, and will receive enhanced AODA community treatment. For offenders in enhanced treatment, Corrections assumes that 45% to 50% will require inpatient residential care, 25% to 30% will require intensive outpatient care, and 20% will require participation in relapse treatment. Further, Corrections assumes that 90% of OWI offenders have health insurance that provides partial coverage for treatment and 10% require Corrections to pay the entire amount.

TABLE 1

**Annualized Correctional Costs under SB 66, as Amended by AA 1
Assuming 31% of Felony Fourth Offense OWI Offenders Placed in Prison for 12 Months**

	<u>Annualized Costs</u>	
	<u>Prisons</u>	<u>Contract Beds</u>
Prison	\$12,995,200	
Contract Beds		\$6,877,200
Additional Prison Staffing for AODA Treatment		3,154,200
Community Supervision	17,675,100	17,675,100
Enhanced AODA Community Treatment	<u>19,743,400</u>	<u>19,743,400</u>
Total	\$50,413,700	\$47,449,900
Additional Corrections Positions		
Correctional Facilities	70.00	41.25
Community Corrections	<u>174.75</u>	<u>174.75</u>
Total	244.75	216.00
Estimated Increased Population		
Prisons		366
Community Corrections		4,777

TABLE 2

**Annualized Correctional Costs under SB 66, as Amended by AA 1
Assuming 50% of Felony Fourth Offense OWI Offenders Placed in Prison for 24 Months**

	<u>Annualized Costs</u>	
	<u>Prisons</u>	<u>Contract Beds</u>
Prison	\$41,920,000	
Contract Beds		\$22,184,500
Additional Prison Staffing for AODA Treatment		10,238,300
Community Supervision	20,357,600	20,357,600
Enhanced AODA Community Treatment	<u>19,743,400</u>	<u>19,743,400</u>
Total	\$82,021,000	\$72,523,800
Additional Corrections Positions		
Correctional Facilities	260.00	134.00
Community Corrections	<u>204.50</u>	<u>204.50</u>
Total	464.50	338.50
Estimated Increased Population		
Prisons		1,181
Community Corrections		5,451

Based on prior cost estimates, the Department of Corrections indicated that annualized costs under SB 66 would range from \$34.0 million to \$71.2 million depending on judicial sentencing patterns, and whether state prison space or contracted county jail space was utilized for increased populations. There are two primary differences between the Department's earlier estimates, and those indicated in the above tables. First, in the more recent estimates, Corrections assumes that, as a result of ignition interlock devices, populations of second and third offense OWI offenders will be reduced by approximately 7%. The reduction factor in populations is based on data from the National Highway Transportation Safety Administration on sentencing OWI offenders. Second, in prior fiscal estimates, Corrections did not include a specific estimate of costs for intensive outpatient treatment, aftercare treatment, and relapse treatment for second and third offense OWI offenders. Rather, the Department indicated that such costs would occur, but could not be estimated because it was unknown what percentage of individuals would be placed in the various types of treatment. In the above tables, specific assumptions are made regarding types of treatment. Inclusion of these assumptions increased enhanced treatment costs in Corrections' initial cost estimate by approximately \$13.0 million on an annualized basis.

2010-11 Fiscal Effect

Under Corrections' recent estimate, costs in 2010-11 would range between \$17.9 million and \$20.3 million.

Under Engrossed SB 66, \$15.4 million is placed in the Joint Committee on Finance's supplemental appropriation in 2010-11 for possible distribution to the Departments of Corrections and Justice, and the State Public Defender and the District Attorneys. Under AA 1 to SB 66, this funding is reduced by \$6.6 million, and a corresponding amount is placed in a new appropriation for Corrections "to provide community probation supervision, to fund a monitoring center, and to fund enhanced community treatment for persons convicted of a 2nd or 3rd offense related to driving while intoxicated." According to Corrections' fiscal estimate, the \$6.6 million in the new appropriation is approximately the cost of enhanced treatment services in 2010-11. Assembly Amendment 1 leaves \$8.8 million in the Joint Committee on Finance appropriation to fund other potential costs of the bill in 2010-11. Costs subsequent to 2010-11 would be addressed through 2011-13 agency budget requests based on actual experience to date.

Revenue Provisions

As amended, SB 66 would include two general fund revenue provisions. First, the bill would increase the criminal actions fee, levied upon all criminal convictions, from \$20 to \$163. Although the collections from this fee are currently split equally between the county in which the criminal offense occurred and the state's general fund, the bill would adjust the proportional distribution so that the full amount of increase would be deposited in the general fund (the county would continue to retain \$10, or a proportionate share if the full amount is not collected). On an annualized basis, it is estimated that this change would increase general fund revenues by \$10.0 million.

The other revenue change in SB 66, as amended by AA 1, would be the creation of a \$140

driver's license reinstatement fee for persons whose license was revoked for an OWI offense. Unlike the current law \$60 reinstatement fee, which is deposited in the transportation fund, the new fee would be deposited in the general fund. Although precise data are not available, it is estimated that approximately 50% of drivers whose license is revoked eventually reinstate their licenses. With the addition of a \$140 fee, it can be expected that the reinstatement rate would decline, although the magnitude of this decline is unknown. If the reinstatement rate dropped to 40%, for example, the fee would generate \$2.2 million on an annualized basis. Any decrease in the reinstatement rate would negatively affect transportation fund revenue, since collections of the current law \$60 fee would be reduced. For instance, if the reinstatement rate for OWI offenders fell from 50% to 40%, transportation fund revenues would be reduced by \$0.2 million on an annualized basis.

BL/sas
Attachment



Legislative Fiscal Bureau

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November 9, 2009

TO: Members
Wisconsin Legislature

FROM: Bob Lang, Director

SUBJECT: Comparison of Engrossed Senate Bill 66 and Engrossed Assembly Bill 283: Operating While Intoxicated

The attached table presents a comparison of the major provisions of the following:

- **Engrossed SB 66**, which was passed by the Senate on November 5, 2009.
- **Engrossed AB 283**, which was passed by the Assembly on September 17, 2009.

The attachment identifies modifications to current OWI statutes under each of the bills.

BL/le
Attachment

ATTACHMENT

Comparison of Major Provisions of Engrossed SB 66 and Engrossed Assembly Bill 283

Fines and Jail Term for Specific Offenses

	Current Law	Engrossed SB 66	Engrossed AB 283
First Offense OWI (with minor passenger).	\$300 to \$600 forfeiture (civil offense).	\$350 to \$1,100 fine; 5 days to 6 months term of imprisonment (criminal misdemeanor offense).	Same as Engrossed SB 66.
Third Offense OWI.	\$600 to \$2,000 fine; 30 days to 1 year term of imprisonment.	Increase minimum term of imprisonment to 45 days.	No change to current law.
Fourth Offense OWI.	\$600 to \$2,000 fine; 60 days to 1 year term of imprisonment (misdemeanor offense).	For offenders with a prior offense within previous five years: \$600 to \$10,000 fine; 6 months to 6 years term of imprisonment (Class H felony--3 years prison and 3 years of extended supervision). For all other 4 th offense offenders: No change to current law.	Same as Engrossed SB 66, except lacking a technical correction.
OWI causing injury (basic OWI and commercial motor vehicle with BAC of 0.04 to 0.08).	\$300 to \$2,000 fine; 30 days to 1 year term of imprisonment (misdemeanor offense); fines and jail term doubled if there was a minor in the vehicle.	For persons with a prior OWI conviction(s): Up to \$2,000 fine; up to 6 years term of imprisonment (Class H felony); fines and prison term doubled if there was a minor in the vehicle. For other offenders (no prior offense): Same as current law.	Same as Engrossed SB 66.
Absolute sobriety violation.	Forfeiture of \$400 (civil offense).	For offenders where there was a minor in the vehicle: Fine of \$400 (criminal misdemeanor). For other offenders: Same as current law.	Same as Engrossed SB 66.

Probation and General Sentencing Provisions

	Current Law	Engrossed SB 66	Engrossed AB 283
Minimum confinement period for multiple OWI offenders; applicability of house arrest.	48-consecutive-hour period (for all criminal OWI offenses).	For 7 th , 8 th , and 9 th offense: 3 years. For 10 th offense: 4 years. All other offenders: No change to current law.	Same as Engrossed SB 66.
Probation for OWI offenders.	Probation allowed for 4 th offense OWI, not less than 6 months nor more than 2 years; probation not allowed for 2 nd or 3 rd offense.	Probation allowed for 2 nd and 3 rd offense, in addition to 4 th offense OWI; maximum period of probation for fourth offense probation extended from 2 years to 3 years.	Same as Engrossed SB 66, except no change to term of probation for 4th offense.
Pre-sentence release and stay of sentence execution for OWI offenders.	Pre-sentence release and stay of execution (up to 60 days) allowed for OWI offenders.	Pre-sentence release and stay of execution prohibited for 3 rd and subsequent offense until after the minimum period of confinement is served.	Same as Engrossed SB 66, except lacking a technical correction.
Alternative sentencing options.	In Winnebago County, 2 nd and 3 rd offense OWI offenders who complete probationary period that includes alcohol and other drug treatment are eligible for alternative sentencing with reduced minimum and maximum terms.	Extends Winnebago sentencing option to any county with a program similar to the Winnebago program; increases the minimum sentence for a 3 rd offense participant from 10 days to 14 days; also would make sentencing option available for 4 th offense OWI offenders, with a minimum sentence of 29 days for participants.	Extends Winnebago program to all counties as Engrossed SB 66, but does not include other changes.

Ignition Interlock Device (IID) Provisions

	Current Law	Engrossed SB 66	Engrossed AB 283
Applicability of IID order.	IID order allowed for 2 nd or subsequent OWI offense and required (unless seizure or immobilization ordered instead) for a 2 nd or subsequent offense committed within five years.	IID order mandatory for all repeat OWI offenses and for a 1 st OWI offense with a blood alcohol level of 0.15 and above; seizure and immobilization options eliminated.	Same as Engrossed SB 66.
Time periods.	IID restriction ordered for not less than one year nor more than maximum license revocation period for the offense; time period begins when ordered.	Operating privilege restriction time period begins when first license is issued instead of when order is issued; time period would be one year if the maximum revocation period for the offense is less than one year.	Same as Engrossed SB 66, with regard to start of restriction; no change to current law time periods.
IID surcharge.	No provision.	\$50 IID surcharge levied whenever IID restriction ordered; counties retain the \$50 surcharge.	Same as Engrossed SB 66, except that surcharge revenues placed in DOT appropriation and \$40 returned to sheriff of the county of the offense.
Provisions for low income offenders.	All offenders liable for the full cost of installation and maintenance of the device.	Offenders with a household income at or below 150% of the poverty line pay 50% of the cost of installation and maintenance; DOT may not approve IID provider for business in Wisconsin if the provider does not agree to allow qualifying individuals to make reduced payment.	Same as Engrossed SB 66, except no provision related to DOT approval of IID providers.
Occupational license provisions.	No provision.	No occupational license may be issued to a person subject to an IID order unless the person submits proof that IID surcharge has been paid and all vehicles subject to an IID installation order have been equipped with an IID.	Same as Engrossed SB 66, except that person must show proof that IID has been installed on every vehicle owned or registered in whole or in part by the offender (even vehicles not subject to IID order).
Enforcement and penalty provisions.	Forfeiture of \$150 to \$600 for removing, disconnecting, tampering with, or otherwise circumventing the operation of an IID.	Adds failure to install an IID, as ordered, as a violation; imposes criminal fine of \$150 to \$600, six months imprisonment, or both for violation; IID order period extended by six months for violation.	Same as Engrossed SB 66.

	Current Law	Engrossed SB 66	Engrossed AB 283
Prohibited alcohol concentration.	0.08 prohibited alcohol concentration, 0.02 for person with three OWI offenses; no special provision for offenders subject to an IID order.	0.02 prohibited alcohol concentration for persons subject to an IID order.	Same as Engrossed SB 66.
Eligibility for Huber Release.	No provision.	Prohibits a person from leaving jail under Huber release unless, within two weeks after a court issues an IID order, the person submits proof to the sheriff that an IID has been installed in each motor vehicle to which the order applies.	No provision.

Licensing and Other Provisions

	Current Law	Engrossed SB 66	Engrossed AB 283
Revocation time periods.	License revocation period begins when ordered.	Period of license revocation is extended by the amount of the term of imprisonment.	License revocation period is tolled while a person is imprisoned.
Surcharges and other sanctions for OWI offenders with a blood alcohol level of between 0.08 and 0.10.	Penalty surcharges, including OWI driver improvement surcharge are not levied for 1st OWI conviction if the offender had a blood alcohol concentration of between 0.08 and 0.10; no alcohol assessment required for such offenders.	Eliminate special surcharge and alcohol assessment exemptions for these offenders.	Same as Engrossed SB 66.
Waiting period after revocation for eligibility for an occupational license.	Eligibility for an occupational license begins after 60 days following the revocation for a 2 nd offense and after 90 days for a 3 rd or subsequent offense, except that if an offender commits two or more offenses within a five-year period, eligibility for an occupational license begins after one year.	Eliminates the one-year waiting period for offenders with two or more offenses within a five-year period. Reduces the current 60-day or 90-day waiting periods to 45 days	No change to current law.

Fiscal Provisions

	Current Law	Engrossed SB 66	Engrossed AB 283
Beer and liquor tax revenue.	Beer and liquor tax is deposited in the general fund.	No provision.	First \$10,000,000 collected from each tax in each fiscal year credited to a new PR appropriation in the Department of Corrections for probation and various treatment services related to OWI offenders, beginning in 2011-12.
Criminal actions fee.	\$20 surcharge paid by person convicted of any crime; 50% (\$10) retained by county and 50% deposited in the general fund.	Increase surcharge by \$143 and deposit increase in the general fund; specify that 93.87% of the collected fee be sent to the Department of Administration (DOA); increase estimated general fund revenue by \$2.5 million in 2009-10 and \$10.0 million in 2010-11.	No provision.
District attorney surcharge.	No provision.	No provision.	\$100 district attorney surcharge levied for any OWI conviction, including operating a commercial motor vehicle with a blood alcohol level of between 0.04 and 0.08; revenues transmitted to Department of Administration for OWI prosecutions.
License reinstatement fee.	\$50 reinstatement fee following any license suspension or revocation plus a \$10 issuance fee; revenue deposited in the transportation fund.	Creates an additional \$40 reinstatement fee following revocations for OWI or OWI-related offenses; deposit revenues in the general fund; increase estimated general fund revenues by \$0.3 million in 2009-10 and \$0.8 million in 2010-11.	No provision.

	Current Law	Engrossed SB 66	Engrossed AB 283
Appropriation for state costs.		<p>Department of Corrections, District Attorneys, Department of Justice, and Office of State Public Defender: Joint Committee on Finance GPR supplemental appropriation increased by \$15.4 million in 2010-11; DOA required to submit request under s. 13.10 on behalf of these agencies to allocate funding.</p> <p>Department of Transportation: No provision.</p>	<p>Department of Corrections: PR appropriation created with an allocation of \$20.0 million of beer and liquor tax revenues, beginning in 2011-12.</p> <p>District Attorneys: PR appropriation created with proceeds of the district attorney surcharge, estimated at \$2.7 million annually.</p> <p>Department of Justice: No provision.</p> <p>Office of State Public Defender: No provision.</p> <p>Department of Transportation: PR appropriation created with the state share of proceeds from the IID surcharge, estimated at \$0.2 million annually.</p>