



Legislative Fiscal Bureau

One East Main, Suite 301 • Madison, WI 53703 • (608) 266-3847 • Fax: (608) 267-6873

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Joint Committee on Finance

Paper #790

Charges for Crash Reconstruction Services (DOT -- State Patrol)

[LFB 2009-11 Budget Summary: Page 644, #4]

CURRENT LAW

The State Patrol has a unit consisting of one supervisor and 14 troopers who specialize in motor vehicle accident reconstruction. The accident reconstruction process is intended to determine the details of the events of an accident, such as speed and direction of the vehicles, actions of the drivers, and functioning of vehicle equipment. This information is typically used to determine the criminal or civil liability of the driver or drivers, but also may be used to assess the safety of the highway facilities. The State Patrol conducts accident reconstructions for accidents where the State Patrol is the primary investigating agency on an accident, but also for serious accidents at the request of a local law enforcement agency that is the principal investigating agency. Local agencies are not charged for the cost of accident reconstruction.

GOVERNOR

Specify that the State Patrol may charge a law enforcement agency for all services provided by the State Patrol in connection with the investigation or reconstruction of a traffic accident for which that law enforcement agency is the lead agency. Require the Department to credit the amounts collected for these services in a new SEG appropriation for all monies received for traffic accident investigations and reconstructions. Provide \$1,000,000 annually in this appropriation to estimate the amount collected under this provision and reduce the State Patrol's principal SEG appropriation by a corresponding amount, so that there would be no net change in the total SEG appropriated for these purposes. Increase estimated transportation fund revenue by \$1,000,000 annually to reflect amounts collected for traffic accident investigations and reconstructions. Transfer 8.0 SEG positions annually to the new appropriation from the State Patrol's principal administrative appropriation to reflect an estimate of the portion of the

State Patrol's crash reconstruction resources that would perform crash reconstructions for local agencies.

DISCUSSION POINTS

1. The State Patrol's Technical Reconstruction Unit (TRU) has 15 persons whose primary responsibility is to investigate motor vehicle accidents. In addition to conducting investigations on accidents where the State Patrol is the primary investigative agency, the TRU performs services for local law enforcement agencies upon request. The Department notes that the demand for these services has increased over the past several years and estimates that the cost of doing technical reconstruction work upon request from local law enforcement agencies or others will be \$1.25 million in 2008-09.

2. Traffic accident reconstruction involves the collection and analysis of several different types of data from an accident scene. In addition to plotting the course of the vehicles using tire marks and witness testimony, an accident reconstructionist assesses the damage to vehicles and other property, the condition of the drivers, the operation of vehicle equipment, and the weather conditions at the time of the accident. Using mapping software and forensic analysis, the accident reconstructionist can determine if one or more vehicles veered off course, if the driver or passengers were wearing seatbelts, who was driving a particular vehicle, if not otherwise apparent, and the approximate speed of the vehicles.

3. Typically, the Department conducts investigations in particularly severe accidents that involve at least one fatality, but reconstructions are also sometimes done if there is significant property damage resulting from an accident or if a commercial motor vehicle is involved.

4. The troopers in the State Patrol TRU are accredited in traffic accident reconstruction, which requires education and experience using the technical tools for data collection and analysis, as well as periodic completion of continuing education courses. Other accredited individuals may work for local law enforcement agencies, but most work for private companies, such as insurance companies or consultants.

5. In many cases, a technical accident reconstruction, conducted by an accredited person, is not required to determine if criminal charges are appropriate or to obtain a criminal conviction. However, in complex cases, the circumstances of the accident may be ambiguous, and a more thorough reconstruction may be needed for law enforcement and prosecutors to decide whether to proceed with a criminal case. For instance, under the state's law for homicide by intoxicated use of a motor vehicle, a valid defense is that the death would have occurred even if the driver had been exercising due care and had not been intoxicated at the time of the accident. Since the stakes of such cases are high, the prosecution must have substantial evidence that the driver's negligence contributed to the accident in order to proceed with a case and obtain a conviction, something that may require a careful accident reconstruction conducted by an accredited reconstructionist.

6. The new SEG appropriation for accident reconstruction services would be credited with all moneys received from charges for those services and would be used exclusively for the cost of accident reconstructions. Other DOT appropriations that function in the same way, such as the State Patrol appropriation for State Patrol Academy tuition payments, are PR appropriations. If the Committee approves of the concept in the Governor's proposal, the SEG appropriations could be converted to PR appropriations to make them consistent with similar appropriations under current law.

7. The Department indicates that the methodology for determining the amount to be charged for TRU services has not been finalized, although it is believed that the State Patrol will determine an hourly rate, which takes into consideration the average personnel and supplies and services costs for accident reconstruction. Based on preliminary discussions, the Department indicates that the typical reconstruction case would cost the requesting agency anywhere from \$2,000 to \$10,000, depending upon the complexity of the case. In rare cases, the cost could be higher for particularly serious and complex accidents.

8. The estimates in the bill are based on current expenditures for technical reconstruction work done at the request of local law enforcement agencies and other interested persons. In addition to law enforcement agencies, the TRU is sometimes asked to perform work for district attorney offices or, on occasion, other parties, such as insurance companies. In addition, sometimes the TRU is asked to use its equipment to map a crime scene, unrelated to a traffic accident. Since the bill would restrict the Department's authority to charge to requests from local law enforcement agencies and for traffic accident reconstruction, the amount of revenue that could be generated may fall short of the estimates in the bill. In order to be consistent with the assumptions used to estimate the revenue reflected for this provision, the bill could be modified to allow the Department to collect charges for all outside requests for TRU services.

9. The revenues reflected in the bill are based on the assumption that the demand for the State Patrol's accident reconstruction services will decline by about 20% if local law enforcement agencies are required to pay for the cost of those services. However, the actual magnitude of this decrease in demand is not known, and it is possible that demand would fall by more than 20% if more law enforcement agencies are unable or unwilling to pay for the cost of an accident reconstruction. Since the authority to charge for the TRU services is permissive rather than mandatory, the Department may decide to perform an accident reconstruction in cases where it is determined that a local agency is unable to pay and where the state's interest in conducting a thorough accident reconstruction outweighs the need to collect revenues. However, if demand falls by more than 20% or the Department decides to waive the charges in a significant number of cases, there may not be enough revenue collected to support the eight positions that the bill would transfer to the new crash reconstruction appropriation.

10. If the Committee is in agreement with the principle that local law enforcement agencies should be responsible for the costs of services provided by the State Patrol TRU, but wishes to avoid the risk associated with relying on an unknown revenue source to support those services, the Governor's proposal could be modified by maintaining the eight positions and

associated funding in the State Patrol's administrative appropriation, as under current law, and requiring the accident reconstruction revenue to be deposited in the transportation fund without crediting it to any particular appropriation. In this way, the State Patrol would be given the funding necessary to support the services regardless of the amount of revenue collected. However, in order to ensure that the Department collects revenue for services provided, the Department could be required to charge for the services, instead of being given the discretion to charge or not charge for services. To ensure that there are consistent standards for how the charges are assessed and in what circumstances the local law enforcement agency, rather than the State Patrol, is responsible for the costs, the Department could be required to promulgate an administrative rule to implement and administer these provisions. If the Department generates \$1,000,000 annually in charges during the 2009-11 biennium, as the bill assumes, the fiscal effect of this alternative would be the same as the bill. If revenues are more or less than \$1,000,000 annually, the difference will affect the transportation fund balance rather than the funding for the accident reconstruction services. In order to generate revenues prior to the time that a permanent rule is promulgated, the Department could be authorized to issue an emergency rule establishing the basis for charging for services, effective until July 1, 2011, or until the final rule has been completed.

11. The State Patrol has the capability to utilize state resources in support of local law enforcement efforts. For instance, the State Patrol can mobilize law enforcement officers to a local area from other parts of the region or state in response to extreme conditions, such as a severe weather or traffic-generating event, where local resources may be inadequate. Similarly, the State Patrol provides breath testing equipment for use in intoxicated driving enforcement for all law enforcement agencies in the state and provides training for the use of that equipment. It could be argued that traffic accident reconstruction is one such area where the State Patrol's use of state resources to assist local law enforcement is consistent with this principle function, and to charge for that service would be inconsistent with the State Patrol's mission. As with other law enforcement services, there may be cases where the State Patrol does not have sufficient resources to fully meet the demand for traffic reconstruction services and, therefore, must decide how to fairly allocate those resources within those constraints.

12. Representatives of local law enforcement agency associations indicate that many local agencies would not be able to pay for crash reconstructions and would elect, instead, to conduct the investigations with their own personnel. In some cases, this could make a criminal prosecution more difficult or could result in criminal charges being filed against a driver without there being sufficient evidence to establish his or her criminal liability. They also note that local law enforcement agencies are not charged for investigative assistance provided by the Department of Justice's Division of Criminal Investigation, or other state law enforcement assistance.

13. If the Committee determines that charging the full cost of reconstruction services provided by the State Patrol's TRU would impose an excessive burden on local law enforcement agencies, but that those agencies should have to pay a portion of the cost, one alternative would be to authorize the State Patrol to charge for services, but in an amount not exceeding 50% of the cost. Under this alternative, transportation fund revenues would decrease by \$500,000 annually, relative to the bill.

ALTERNATIVES

1. Approve the Governor's recommendation to: (a) allow the Department of Transportation to charge a local law enforcement agency for services provided by the State Patrol in connection with the investigation or reconstruction of a traffic accident; (b) reduce funding by \$1,000,000 SEG annually in the State Patrol's principal appropriation and provide \$1,000,000 SEG annually in a new appropriation for traffic accident reconstruction services, reflecting charges for services; (c) increase estimated transportation fund revenue by \$1,000,000 annually to reflect charges for services; and (d) transfer 8.0 SEG positions annually from the State Patrol's principal appropriation to the new appropriation for accident reconstruction services.

2. Convert the SEG appropriation for accident reconstruction services to a PR appropriation. Reduce SEG funding and transportation fund revenue estimates by \$1,000,000 annually and increase PR funding and revenue by \$1,000,000 annually. Convert 8.0 SEG positions to PR positions.

ALT 2	Change to Bill		
	Revenue	Funding	Positions
SEG	-\$2,000,000	-\$2,000,000	- 8.00
PR	<u>2,000,000</u>	<u>2,000,000</u>	<u>8.00</u>
Total	\$0	\$0	0.00

3. Modify the Governor's recommendation by deleting the new SEG appropriation for accident reconstruction services and restoring funding of \$1,000,000 SEG and 8.0 SEG positions annually in the State Patrol's principal appropriation.

4. Modify the Governor's recommendation by adopting one or more of the following alternatives in addition to Alternatives #1, #2, or #3:

a. Specify that the Department may charge other persons besides local law enforcement agencies for reconstruction services and specify that the Department may charge for technical reconstruction work performed by request for law enforcement purposes unrelated to a traffic accident.

b. Require, instead of allow, the Department to charge for accident reconstruction services provided by the State Patrol. Require the Department to promulgate administrative rules establishing the basis for such charges, and authorize the Department to issue an emergency rule establishing the basis for the charges, effective until July 1, 2011, or until the final rule is completed, whichever occurs first.

c. Specify that the Department may charge not more than 50% of the cost of reconstruction services provided by the State Patrol. [The fiscal effect of this alternative is shown as a reduction in transportation fund revenue, but would be a reduction in PR revenue if adopted in addition to Alternative #2.]

ALT 4c	Change to Bill
	Funding
SEG	- \$1,000,000

5. Delete provision.

ALT 5	Change to Bill
	Funding
SEG	- \$2,000,000

Prepared by: Jon Dyck