



Legislative Fiscal Bureau

One East Main, Suite 301 • Madison, WI 53703 • (608) 266-3847 • Fax: (608) 267-6873
Email: fiscal.bureau@legis.wisconsin.gov • Website: <http://legis.wisconsin.gov/lfb>

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Joint Committee on Finance

Paper #666

Commercial Motor Carrier Inspector Positions and Intrastate Motor Carrier Regulation (DOT -- State Patrol)

[LFB 2013-15 Budget Summary: Page 471, #2 and Page 473, #3]

CURRENT LAW

The Wisconsin State Patrol is the primary law enforcement agency in the state for the enforcement of state and federal motor carrier laws. To conduct this enforcement, the State Patrol employs motor carrier inspectors and consumer protection investigators. Motor carrier inspectors are sworn law enforcement officers specializing in the enforcement of commercial motor vehicle and commercial driver laws and regulations. Consumer protection investigators conduct motor carrier compliance reviews, which involve an examination of businesses engaged in the transportation of cargo or passengers (above certain thresholds) to ensure that all federal and state laws regarding matters such as vehicle maintenance and driver records are followed. The State Patrol currently has 101 motor carrier inspectors conducting enforcement in the field and 13 motor carrier consumer protection investigators (hereafter "investigators"). Of the 13 motor carrier investigators, four are classified as motor carrier inspectors and nine are civilian employees (not law enforcement).

GOVERNOR

Provide \$1,834,300 SEG in 2013-14 and \$1,998,200 SEG in 2014-15 and 22.0 SEG positions and 6.0 FED positions annually to increase the State Patrol's commercial motor carrier enforcement activities. In addition, convert 2.0 existing FED positions for motor carrier consumer protection investigators to 2.0 SEG State Patrol inspector positions. The net result on positions under this item would be an annual increase of 24.0 SEG positions and 4.0 FED positions.

Modify current law statutory provisions applying to common and contract motor carriers

that operate in interstate commerce to specify that they also apply to common and contract motor carriers operating in intrastate commerce. Specify that the certificates and licenses that are required to operate as an interstate carrier would be required also for intrastate carriers. Specify that these changes would first apply to motor carrier operations occurring on and fees and taxes assessed on January 1, 2014, or on the day after publication of the budget act, whichever is later.

DISCUSSION POINTS

1. This paper provides a discussion of two items in the Governor's budget bill related to the regulation of commercial motor carriers by the Wisconsin State Patrol. The State Patrol's motor carrier enforcement activities have two principal purposes: to protect the state's highway infrastructure by discouraging overweight vehicles, and to promote safety by encouraging safe driver and vehicle practices. The Department maintains that the budget initiatives are needed to improve the performance in both of these areas.

2. The bill would provide 20 new inspector positions, but would also provide funding and positions to allow the State Patrol to reassign four inspectors currently serving as consumer protection investigators to field enforcement. Inspectors working in the field are assigned either to one of the State Patrol's 16 safety and weight enforcement facilities or to mobile duty. The enforcement facilities are used to weigh commercial motor vehicles and conduct vehicle safety inspections along major highways. Inspectors on mobile duty carry mobile scales and patrol other routes in order to discourage trucks from taking alternate routes to avoid the fixed facilities and to patrol others areas with potential safety or violation problems.

3. Consumer protection investigators conduct reviews of motor carrier businesses to ensure that they are in compliance with various state and federal motor carrier laws. The bill would provide eight new investigator positions, although there would be a net increase of just four investigators, since four of the inspectors currently assigned as investigators would be moved to field enforcement. The number of investigators would increase from 13 to 17.

4. The following table shows the existing staffing for field inspectors and investigators (sworn law enforcement officers and civilian), the proposed changes, and what would be the resulting position distribution under the bill.

	<u>Field Inspectors</u>	<u>Consumer Protection Investigators</u>		<u>Total</u>
		<u>Sworn</u>	<u>Civilian</u>	
Current Staffing	101	4	9	114
Proposed Changes	<u>24</u>	<u>-4</u>	<u>8</u>	<u>28</u>
Total Proposed Staffing	125	0	17	142

5. Of the 28 new positions, 22 would be SEG positions and six would be FED positions, but the bill would also convert two existing FED positions to SEG positions (two of the investigators), so the net change would be an increase of 24 SEG positions and four FED positions.

The bill would provide SEG funding for the training, supplies and services, and salary and fringe benefit costs of the new positions. The costs associated with the new FED positions would be funded using existing federal commercial motor carrier safety funds. These position changes are discussed in separate sections below. Because the proposal to increase the number of investigator positions is related to a separate proposal to enhance the review of intrastate motor carriers, these provisions are addressed together.

Motor Carrier Inspector Positions

6. Over the past 10 to 20 years, the State Patrol's focus has evolved from primarily fixed-site enforcement to a mix of fixed-site and mobile enforcement. The State Patrol has eliminated several scales and inspection facilities, going from 26 to 16 over two decades. Operations at the enforcement facilities have become more efficient, however, with the installation of weigh-in-motion scales that allow trucks that are well within weight limits to bypass the scales.

7. One of the principal purposes of the motor carrier inspection program is to identify unsafe drivers and vehicles, and either require corrective action or remove the vehicles or drivers from the road. The Department argues that with an improving economy, the number of commercial motor vehicle miles driven is rising, creating the need for more enforcement. However, the number of inspectors has not been increased in more than 15 years, but, instead, has been decreased. The 2003-05 budget act eliminated eight inspector positions. Since that time, the number of heavy trucks registered in the state has gone up by over 20%.

8. The Department also notes that Wisconsin currently conducts fewer commercial motor vehicle inspections than surrounding states. Over the past four years, there have been an average of 33,671 inspections conducted in Wisconsin, compared to 38,836 in Minnesota, 55,112 in Iowa, 65,261 in Michigan, and 69,002 in Illinois. Using state data on diesel fuel sales as a proxy for commercial motor vehicle miles driven in each state, the annual, average number of inspections conducted per mile driven in those states exceeds Wisconsin's inspection rate by at least 8% (for Illinois) and by up to 80% (for Iowa).

9. Statistical modeling done by the Federal Motor Carrier Safety Administration (FMCSA) indicates that the use of roadside commercial motor vehicle (CMV) inspections has both direct and indirect benefits for traffic safety. Direct benefits occur when safety violations detected during the course of an inspection are corrected, while indirect benefits result from motor carriers' general compliance with vehicle and driver safety requirements as a result of the enforcement system.

10. Although Wisconsin conducts fewer inspections than neighboring states, it is not clear that the state's lower inspection rate results in more safety-related problems, compared to its neighbors. According to data compiled by FMCSA, the Wisconsin fatality rate for CMV accidents (number of fatalities resulting from an accident involving CMVs per 100 million vehicle-miles traveled in the state) is below the national average and is generally below the rates for Wisconsin's neighbors. In the five-year period from 2007 through 2011, the national average rate was 0.14 fatalities per 100 million vehicle-miles traveled, while the Wisconsin five-year average rate was 0.12. Illinois (0.13), Iowa (0.24), and Minnesota (0.14) all had higher fatality rates, while only

Michigan's fatality rate (0.09) was lower. Furthermore, although the number of inspections conducted in Wisconsin has generally decreased (from 38,548 in 2007 to 33,287 in 2012), both the number of fatalities associated with CMV accidents and the total number accidents involving a commercial motor vehicle have generally been declining.

11. It should be noted that there is a time lag in the national and state-level accident data, so they may not yet reflect increasing traffic associated with improving economic conditions. Also, states differ in the type and volume of commercial motor vehicle traffic, which may complicate the kind of data comparisons shown in the previous point. While the number of roadside inspections does not appear to be strongly correlated with the fatality rate data, this does not necessarily mean that there is not a safety benefit associated with inspections. Many crashes involving large trucks are unrelated to the particular vehicle or driver factors that inspections are intended to prevent. Consequently, although it may not be apparent in the data on overall crashes and fatalities, roadside inspections may have a significant impact on the smaller subset of accidents that are preventable through enforcement. From this perspective, an increase in the number of inspectors could have a beneficial impact that outweighs the costs.

12. In addition to making a case for additional inspectors for the traffic safety benefits, the Department also argues that more truck weight enforcement is needed. Based on engineering studies conducted by the American Association of State Highway and Transportation Officials, it is generally established that pavement damage (for most pavement types) caused by an axle load is proportional to the increase in the axle weight, raised to the fourth power. According to this relationship, therefore, an axle load that is 10% above the legal limit does approximately 45% more damage than an axle load at the legal limit. A 2011 study, commissioned by the Department and using these pavement damage models, estimated that overweight trucks caused \$41 million in pavement damage annually.

13. With the proposed increase in the number of inspectors, the Department indicates that the State Patrol would increase the number of hours that enforcement facilities are open, including evening and nighttime hours. However, the State Patrol would remain far from having sufficient staffing to provide complete coverage through fixed-site and mobile enforcement, and it would be impractical to try to eliminate such damage solely through increased enforcement. As with many types of law enforcement, violators would continue to be able to evade detection using alternate routes or alternate travel times.

14. A separate provision of the bill would increase penalties for overweight violations, the first such increase, for most types of trucks, in more than 50 years. [The bill would also increase the penalties for a second violation within 12 months of weight limits by trucks with six or more axles hauling raw forest products. These penalties were established in 2006.] As an example, the penalty (forfeiture and surcharges) for a truck exceeding weight limits by 4,500 pounds (first offense) would increase from \$484 under current law to \$654. Consequently, even without increased enforcement, some drivers who are in the practice of carrying illegal loads may be discouraged from doing so by the prospect of greater penalties.

15. The fiscal impact of increasing the number of field enforcement inspectors by 24 involves increasing SEG positions and associated funding, plus providing SEG and FED positions

to allow the State Patrol to reassign four inspectors from compliance review duty to field enforcement. The combined impact is an increase of 22 SEG positions and two FED positions, and \$1,703,000 SEG in 2013-14 and \$1,877,700 SEG in 2014-15 (Alternative A1).

16. In relation to total transportation fund expenditures, the proposed increase for the additional inspectors is small. However, some transportation programs are funded below the levels that many believe are necessary to maintain current conditions. Furthermore, some have expressed concerns that, under the bill, the transportation budget would be supported by transfers and other support from the general fund and the petroleum inspection fund, as well as an increase in the overall level of transportation bonding. Finally, as indicated in LFB Issue Paper #635, lower estimated transportation fund revenues have resulted in an estimated transportation fund deficit of \$63.5 million under the provisions of the bill. In this context, some may argue that an enhancement to law enforcement services, even on the grounds that such an increase would increase safety and protect the state's infrastructure, cannot be supported. In this case, the Committee could decide to eliminate the new inspector positions and associated funding (Alternative A4).

17. A decision could be made to provide some, but not all of the requested positions. The cost to restore the eight positions eliminated by the 2003-05 budget is estimated at \$593,100 SEG in 2013-14 and \$663,100 SEG in 2014-15, a reduction of \$1,109,900 SEG in 2013-14 and \$1,214,600 SEG in 2014-15 compared to the bill (Alternative A2). This alternative would result in an increase of eight new inspector positions instead of 20, and would not provide positions or funding to allow the State Patrol to reassign four current inspectors serving as investigators to field enforcement. Alternatively, funding and positions could be provided to allow the inspectors currently serving as investigators to be reassigned to field enforcement, and to be replaced with four new investigator positions. The net effect of those changes to base level funding and positions would be two SEG positions and two FED positions annually and \$220,100 SEG annually, which would be a reduction of \$1,482,900 SEG in 2013-14 and \$1,657,600 SEG in 2014-15 and a reduction of 20 SEG positions annually, compared to the bill (Alternative A3). Under this alternative, the number of inspectors conducting enforcement in the field would increase by four.

Consumer Protection Investigator Positions and Intrastate Motor Carrier Regulation

18. As summarized above, the bill would provide for eight new consumer protection investigator positions, but since four of these would replace sworn inspector positions who would be reassigned from investigator duties to field enforcement, the net increase would be four investigator positions. This section focuses on the proposal to create these four new positions.

19. Two of the four new investigator positions would be SEG positions and two would be FED positions. The bill would provide \$131,300 SEG in 2013-14 and \$120,500 SEG in 2014-15 for the SEG positions, but no funding increase would be provided for the FED positions. Instead, the Department indicates that existing federal motor carrier safety funds would be reallocated for the salary, fringe benefits, and other costs associated with those positions (Alternative B1).

20. Consumer protection investigators conduct motor carrier compliance reviews, which may involve on-site visits or other correspondence to examine the company's records and conduct interviews. Depending upon the extent of the issues under investigation, the review may take one to

two days or up to several weeks. The purpose of such reviews is to determine the motor carrier's "fitness" to operate, which is a test of compliance with various safety regulations. If violations of motor carrier laws are found, the investigator may issue citations. Depending upon the type and severity of the violations, if any, the investigator may issue a rating upon completion of the review. If, as the result of the rating, the motor carrier does not take the prescribed corrective actions, the investigator may take action to have the motor carrier's operating authority revoked or suspended.

21. Under the State Patrol's compliance review program, investigators act under federal government authority, enforce federal motor carrier standards, and any forfeitures issued are processed through the federal judicial system. The reviews may include an examination of the company's records and practices related to various motor carrier requirements, such as: (a) hours of service logs (time spent on duty, driving, and off duty); (b) driver qualifications and records; (c) controlled substance and alcohol testing; (d) medical card requirements for drivers; (e) vehicle maintenance and inspection; (f) proper cargo loading and securing practices; and (g) accident records.

22. The companies selected for compliance reviews are identified as the result of a rating system developed by the Federal Motor Carrier Safety Administration. The data used to compile ratings are collected from roadside inspections and accident records. Because of the way the federal rating system is structured, it primarily identifies interstate motor carriers (those operating across state borders) and motor carriers transporting hazardous materials in interstate or intrastate operations. Consequently, intrastate motor carriers (non-hazardous materials carriers), while still subject to motor carrier laws, are generally not identified for compliance reviews. Furthermore, if an intrastate motor carrier is subject to a compliance review, the federal rules limit the examination to the company's policies or performance on just three factors: (a) driver qualifications and records; (b) controlled substance and alcohol testing; and (c) medical card requirements for drivers.

23. The bill would modify state statutes to allow the Department to develop, by administrative rule, a compliance review and enforcement mechanism to use for both interstate and intrastate motor carriers (Alternative C1). The Department cites two reasons for this change. First, having a state compliance review process would allow the State Patrol to balance its effort between the types of carriers, targeting intrastate carriers with identified safety problems that are not currently subject to reviews. Although these carriers are subject to some different standards under the federal motor carrier laws, the Department argues that they should, nevertheless, be subject to the same process for reviewing their compliance to those standards, which may include, depending upon the situation, a review of all of the seven factors considered in an interstate motor carrier compliance review. The data that the Department would use for identifying intrastate carriers for review is already collected for all motor carriers (interstate and intrastate), so no new data collection or record keeping requirements would be created for intrastate carriers. Second, the Department indicates that having a state compliance review process would allow the state more flexibility in how it enforces violations. Under current practice, since any violations found proceed through the federal judicial system, investigators have limited ability to use prosecutorial flexibility to leverage compliance. Having a state enforcement system would allow more opportunities to establish forfeitures and use prosecutorial discretion to gain cooperation and compliance.

24. The Department indicates that the state compliance review process would be established by administrative rule. The Department anticipates that the state process would generally mirror federal standards and the federal rating system, but would apply to all motor carriers. This does not mean, however, that interstate and intrastate carriers would be subject to identical standards, since federal rules allow for variance in some areas, such as hours of service requirements. The Department's proposals would be subject to modification during the administrative rules process. During this process, the motor carrier industry and the Legislature would have an opportunity for input on the final rules.

25. The number of interstate motor carrier compliance reviews has been declining in recent years, from 358 in 2009 to 172 in 2012. The primary reason for the decline is the implementation of a new safety rating system by FMCSA in 2010 and 2011. The new system is designed to be more targeted toward motor carriers that exhibit problems than the previous procedure, but the reviews done under the new process generally take more time. Also a factor in the decline was a decision to reassign two inspector positions (which had recently been vacated) working as compliance review investigators to field enforcement in June, 2012 (similar to the four that would be reassigned under the bill, as discussed in the previous section of this paper).

26. Of the four new investigator positions, the Department indicates that the two FED positions would replace the reassigned inspector positions, to reestablish the same staffing on interstate reviews that existed prior to their reassignment. Without these positions, the number of compliance reviews conducted by the State Patrol would be reduced. The two SEG positions would be assigned to intrastate motor carrier compliance reviews. Relative to the current staffing level, the bill would provide an increase of four investigators, but relative to the staffing level prior to June, 2012, the bill would result in an increase of two investigators.

27. If the Committee determines that changes to the State Patrol's compliance review process as it relates to intrastate motor carriers are not justified, or should be considered in more depth by the Legislature's transportation committees before being enacted, a decision could be made to delete the statutory changes in the bill (Alternative C2) and the SEG funding and SEG positions associated with intrastate reviews (Alternatives B2 or B3). The two FED positions to replace the investigators that were reassigned in 2012 could be retained (Alternative B2) or deleted along with the SEG positions and funding (Alternative B3).

ALTERNATIVES

A. New Motor Carrier Inspector Positions

1. Approve the Governor's recommendation to provide \$1,703,000 SEG in 2013-14 and \$1,877,700 SEG in 2014-15 and 22.0 SEG positions and 2.0 FED positions annually to increase the number of State Patrol motor carrier inspector positions conducting field enforcement by 24.

2. Modify the Governor's recommendation by deleting \$1,109,900 SEG in 2013-14 and \$1,214,600 SEG in 2014-15 and 14.0 SEG positions and 2.0 FED positions annually to provide for an above-base increase of \$593,100 SEG in 2013-14 and \$663,100 SEG in 2014-15 and 8.0

SEG positions annually, restoring the number of inspector positions that the State Patrol had prior to the 2003-05 biennial budget.

ALT A2	Change to Bill	
	Funding	Positions
SEG	- \$2,324,500	- 14.00
FED	<u>0</u>	<u>- 2.00</u>
Total	- \$2,324,500	- 14.00

3. Modify the Governor's recommendation by deleting \$1,482,900 SEG in 2013-14 and \$1,657,600 SEG in 2014-15 and 20.0 SEG positions annually, to provide for an above-base increase of \$220,100 SEG, 2.0 SEG positions, and 2.0 FED positions annually to allow the State Patrol to reassign four inspectors currently serving as consumer protection investigators to field enforcement and to replace them with four new investigator positions.

ALT A3	Change to Bill	
	Funding	Positions
SEG	- \$3,140,500	- 20.00

4. Delete provision.

ALT A4	Change to Bill	
	Funding	Positions
SEG	- \$3,580,700	- 22.00
FED	<u>0</u>	<u>- 2.00</u>
Total	- \$3,580,700	- 24.00

B. Consumer Protection Investigator Positions

1. Approve the Governor's recommendation to provide \$131,300 SEG in 2013-14 and \$10,500 SEG in 2014-15, and 2.0 SEG positions and 2.0 FED positions annually to increase the number of consumer protection investigator positions by four. The FED positions would be funded using base federal appropriations.

2. Modify the Governor's recommendation by deleting \$131,300 SEG in 2013-14 and \$120,500 SEG in 2014-15, and 2.0 SEG positions annually, to remove funding and positions associated with intrastate motor carrier reviews. Relative to the base, this alternative would provide 2.0 FED positions annually to replace investigator positions that had previously been filled by inspectors, but which were reassigned to field enforcement in 2012.

ALT B2	Change to Bill	
	Funding	Positions
SEG	- \$251,800	- 2.00

3. Delete provision.

ALT B3	Change to Bill	
	Funding	Positions
SEG	- \$251,800	- 2.00
FED	<u>0</u>	<u>- 2.00</u>
Total	- \$251,800	- 4.00

C. Intrastate Motor Carrier Regulation

1. Approve the Governor's recommendation to modify statutory provisions related to the regulation of motor carriers to specify that provisions currently applying to interstate motor carriers also applies to intrastate motor carriers, first applying to motor carrier operations occurring on January 1, 2014, or on the day after publication of the budget act, whichever is later.

2. Delete provision.

Prepared by: Jon Dyck