

CHAPTER 85

DEPARTMENT OF TRANSPORTATION

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85.01 Definitions. In this chapter:

- (1) "Department" means the department of transportation.
- (2) "Division of hearings and appeals" means the division of hearings and appeals in the department of administration.
- (3) "Rail property" means all fixed property, real or personal, used in operating a railroad.
- (4) "Rail property improvements" means rails, ties, switches, spurs, buildings, signals, trestles, bridges and other property, exclusive of land, that may be used in operating a railroad.
- (5) "Railroad" means a railroad as defined in s. 192.15 (2) (e), a railroad as defined in s. 195.02 (1) and any company, association, corporation or person managing, maintaining, operating or in possession of a railroad in whole or in part within this state whether as owner, contractor, lessee, mortgagee, trustee, assignee or receiver.
- (7) "Railway" means a corporation described in s. 193.01, 1983 stats.
- (8) "Secretary" means the secretary of transportation.

History: 1971 c. 125 s. 417; Stats 1971 s. 85 01; 1973 c. 90; 1977 c. 29; 1981 c. 347; 1983 a. 27 ss. 1332, 1333, 1339, 1344, 1345; 1985 a. 29, 135; 1985 a. 187 s. 45; 1993 a. 16.

85.013 Hearings. (1) Except as provided in sub. (2), any hearing under s. 227.42 granted by the department may be conducted before the division of hearings and appeals which shall decide the matter.

(2) The secretary shall designate employees of the department as hearing examiners to preside over all hearings arising under ch. 344.

History: 1993 a. 16.

85.015 Transportation assistance contracts. All contracts entered into under this chapter to provide financial assistance in the areas of railroads, urban mass transit, specialized transportation, and harbors are subject to ss. 16.528 and 16.752 but are exempt from ss. 16.70 to 16.75, 16.755 to 16.82 and 16.85 to 16.89.

History: 1981 c. 20; 1985 a. 300; 1989 a. 345

85.02 Planning, promotion and protection. The department may direct, undertake and expend state and federal aid for planning, promotion and protection activities in the areas of highways, motor vehicles, traffic law enforcement, aeronautics, railroads, waterways, specialized transportation services, mass transit systems and for any other transportation mode. All state, regional and municipal agencies and commissions created under authority of law shall to the extent practicable, when dealing with transportation, follow the recommendations made by the secretary.

History: 1973 c. 90; 1979 c. 34; 1981 c. 20.

85.022 Multimodal transportation studies. (1) The department shall administer a program to study multimodal transportation. The department may make grants or pay contract costs from the appropriations under s. 20.395 (2) (hq) and (hx) for multimodal transportation studies and preliminary engineering of public transportation projects. The department may provide grants or contract with any person under this section to study inter-urban and intraurban area multimodal transportation, including an analysis of the potential impact of a transportation facility on local and statewide economic development. A study may consider any of the following:

- (a) Present and future transit ridership.
- (b) Existing railroad and other transportation right-of-way and potential right-of-way availability.
- (c) The capacity of alternative transit facilities.
- (d) Parking availability.
- (e) Plans for completing transit projects.
- (f) The creation of a regional operating authority.
- (g) Analysis of alternative means of financing, including public and private cost-sharing.
- (h) Coordination of rail passenger services with existing publicly operated mass transit systems.
- (i) Technologies, costs, benefits and projected ridership of conventional rail passenger service, or of high-speed rail service.
- (j) Express bus service.

- (k) Commuter rail service.
- (L) Travel data.
- (m) Urban rail transit systems.

(3) A recipient of funding under this section shall make the results of its study available to any interested city, village, town or county.

History: 1989 a 31; 1991 a 39; 1993 a 16, 246

85.023 Planning for bicycle facilities. The department shall assist any regional or municipal agency or commission in the planning, promotion and development of bikeways as defined in s. 84.60 (1) (a). The department shall draft model local zoning ordinances for the planning, promotion and development of bikeways and bicycle racks.

History: 1979 c 221

85.024 Bicycle and pedestrian facilities program.

(1) In this section, "political subdivision" means a county, city, village or town.

(2) The department shall administer a bicycle and pedestrian facilities program to award grants of assistance to political subdivisions for the planning, development or construction of bicycle and pedestrian facilities. Annually, the department shall award from the appropriation under s. 20.395 (2) (fx) grants to political subdivisions under this section. A political subdivision that is awarded a grant under this section shall contribute matching funds equal to at least 25% of the amount awarded under this section. The department shall select grant recipients annually beginning in 1994 from applications submitted to the department on or before April 1 of each year.

History: 1993 a 16

85.025 Highway and bridge projects. The department shall adopt by rule criteria for selecting and evaluating all highway and bridge projects which are constructed from the appropriations under s. 20.395 (3) (bq), (bv), (bx), (cq), (cv) and (cx).

History: 1979 c 221, 355; 1991 a 39

85.028 Milwaukee east-west transportation corridor. (1) There is established in the transportation fund a reserve account consisting of \$3,800,000 for the purpose of funding preliminary engineering costs relating to a Milwaukee east-west transportation corridor. The department may submit a request to the joint committee on finance for the transfer of moneys from the reserve account to the appropriation under s. 20.395 (3) (cq) to increase funding for preliminary engineering costs relating to a Milwaukee east-west transportation corridor. Upon a showing by the department of the continued availability of federal funds for such purpose, the joint committee on finance may transfer such moneys. This subsection does not apply after June 30, 1997.

(2) Upon implementation of a funding source to provide local funds for a Milwaukee east-west transportation corridor project, local units of government that will be affected by such a project shall reimburse the transportation fund for 50% of the nonfederal share of preliminary engineering costs relating to a Milwaukee east-west transportation corridor project.

History: 1993 a 437 ss 180, 267, 268

85.03 Federal reduction or termination of aid. All appropriations made to the department under s. 20.395 are subject to the specific provision that if federal government funding of any portion of a program under s. 20.395 is reduced or terminated, the secretary may terminate or reduce state participation in the program in such proportion as the secretary considers appropriate.

History: 1971 c 125 s. 417; Stats. 1971 s. 85 02; 1973 c 90 ss 397e, 560 (4); Stats 1973 s. 85 03; 1991 a 316

85.035 Reduction of department appropriations.

Where the secretary deems that economic conditions warrant, the secretary, in conjunction with submission of estimates under s. 16.50, may recommend to the secretary of administration that

authorized department appropriations be reduced to reflect revenue deficiencies.

History: 1977 c 29; 1981 c 30

85.04 Acquisition of replacement lands. If federal law prohibits the acquisition of lands determined by the secretary to be necessary for transportation purposes unless replacement lands are provided, the department may acquire by gift, devise, purchase or condemnation any lands or interests in lands necessary to satisfy the replacement requirement.

History: 1977 c 418

This section applies only where federal law requires acquisition of replacement lands; where acquiring replacement lands is one option for gaining federal approval, this section does not apply. *Mitton v Transportation Dept.* 179 W (2d) 321, 507 NW (2d) 126 (Ct. App. 1993)

85.06 Rail passenger service assistance and promotion. (1) DEFINITIONS In this section:

(a) "Amtrak" means the national railroad passenger corporation.

(b) "Local governmental unit" has the meaning given in s. 59.88 (1) (c).

(2) PROGRAM The department shall administer a rail passenger service assistance and promotion program and may do any of the following:

(a) Conduct financial and technical planning for rail passenger service in this state and evaluate existing rail passenger service.

(b) Contract with Amtrak to provide rail passenger service.

(c) Consult with other states and with local governmental units regarding service levels for additional rail passenger service in this state.

(d) Monitor the quality of rail passenger service in this state.

(e) Subject to sub. (3), contract for marketing studies and promotional activities to increase rail passenger service ridership in this state, to identify potential riders and to educate the public about the availability and advantages of rail passenger service.

(f) Apply for and accept federal funds for rail passenger service.

(3) PROMOTIONAL FUNDING (a) Before contracting for marketing studies or promotional activities under sub. (2) (e), the department shall ensure that a local governmental unit spends at least an equal amount of money on similar or complementary studies or activities.

(b) The department shall give priority to funding additional rail passenger service over marketing studies or promotional activities.

History: 1991 a 39

85.061 Rail passenger route development. (1) DEFINITION In this section, "Amtrak" means the national railroad passenger corporation.

(2) LEGISLATIVE FINDINGS The legislature finds that private capital and local governmental financial and technical resources are unable to fully meet the transportation needs of all citizens. It is determined that the program authorized under this section, including the improvement of the property or facilities of a railroad, whether publicly or privately owned, is a legitimate governmental function serving proper public purposes.

(3) PROGRAM The department shall administer a rail passenger route development program. From the appropriation under s. 20.866 (2) (up), the department may fund capital costs related to Amtrak service extension routes between the cities of Milwaukee and Madison and between the cities of Milwaukee and Green Bay. The extension of the route between the cities of Milwaukee and Green Bay shall provide service to population centers along the route in a manner that makes the route most economically feasible. The department may not use any proceeds from the bond issue authorized under s. 20.866 (2) (up) for the extension of a route under this subsection unless the department submits evidence to the joint committee on finance that Amtrak has agreed to provide rail passenger service on that extension route and the joint

committee on finance approves the use of the proceeds. The department may contract with Amtrak, railroads or other persons to perform the activities under this subsection.

History: 1993 a 16

85.062 Major transit capital improvement projects.

(1) In this section, "major transit capital improvement project" means a project that has a total cost of more than \$5,000,000 and which involves any of the following:

(a) Construction of a separate roadway designated for use by buses or other high-occupancy modes of travel.

(b) Initial construction or expansion of a light rail transit system.

(2) No major transit capital improvement project may be constructed using any state transportation revenues unless the major transit capital improvement project is specifically enumerated in a list under sub. (3). Notwithstanding s. 84.013 (4), a major transit capital improvement project that is enumerated under sub. (3) may be constructed without being included in the list of major highway projects under s. 84.013 (3).

(3) The department may proceed with construction of the following major transit capital improvement projects:

(a) No projects enumerated under this subsection as of May 10, 1994.

History: 1993 a 437

85.063 Urban rail transit systems. (1) DEFINITIONS In this section:

(b) "Urban area" means any area that includes a city, village or town having a population of 50,000 or more that is appropriate, in the judgment of the department, for an urban rail transit system.

(c) "Urban rail transit system" means a system, either publicly or privately owned, which will provide transportation by rail to the public on a regular and continuing basis.

(2) ADMINISTRATION. The department shall administer an urban rail transit system program to plan, design and engineer urban rail transit systems for urban areas in the state.

(3) GRANTS. (a) *Legislative findings.* The legislature finds that development of urban rail transit systems to serve urban areas of this state will enhance the welfare of all of the citizens of this state through conservation of fuel, enhancement of the development of alternative transportation modes and improvement of air quality. The legislature further finds that private capital is unavailable and local government resources are insufficient for development of urban rail transit systems. The legislature finds that providing grants for the development of urban rail transit systems is consistent with the state's support of other modes of mass transit and that the grant program authorized under this subsection is therefore a valid governmental function serving proper public purposes.

(b) *Authorized grants.* 1. Upon completion of a planning study under sub. (2), or, to the satisfaction of the department, of a study under s. 85.022, a political subdivision in a county which includes the urban area may apply to the department for a grant for property acquisition for an urban rail transit system.

2. The department may make such grants from the appropriation under s. 20.395 (1) (bt).

History: 1979 c 34; 1983 a 27; 1991 a 39; 1993 a 246.

85.065 Urban rail line relocations. (1) (a) Any county, city, village, town or combination thereof may apply to the department for a study of the cost and benefits of the location and form of railroad lines, associated facilities, and railroad operations within an urban area. Upon receiving such application, the department may undertake or contract for a study to determine the extent to which the existing location of such lines, facilities and operations serves the public interests in:

1. Reliable, economical and expeditious commercial transportation;

2. Safe and orderly movement of pedestrian and vehicular traffic;

3. Coordinated and environmentally sound planning for development or preservation of the area; and

4. Conservation of scarce land or energy resources.

(b) The study shall be performed in consultation with the applicant and other interested parties and shall result in a report describing alternatives to the existing location and form of such railroad lines, facilities and operations which assesses each alternative in light of those criteria.

History: 1977 c 29

85.07 Highway safety coordination. (1) DUTIES. The secretary, under the direction of the governor, shall coordinate the highway safety activities of the various agencies of state government; evaluate and make recommendations to the governor with respect to program proposals submitted by state agencies and political subdivisions for federal and state funds in conjunction with the federal highway safety program; advise the governor on matters relating to highway safety and the implementation of the federal highway safety program in this state; and assist governmental units and private organizations in the planning and execution of programs relating to highway safety.

(2) COUNCIL ON HIGHWAY SAFETY. The council on highway safety shall confer with the secretary or the secretary's designee on matters of highway safety and with respect to the functions of the secretary, under the direction of the governor, and shall advise the secretary on such matters. The council shall meet with the secretary or the secretary's designee at least once each quarter.

(3) INFORMATION; REPORTS; RECOMMENDATION. The secretary shall furnish all information requested by the governor or by any member of the legislature, and shall report biennially in accordance with s. 15.04 (1) (d), including therein a report relating to the implementation of the comprehensive highway safety program in this state. This report shall include but not be limited to:

(a) Current statistical information on motor vehicle accidents, injuries and deaths and their related causation factors.

(am) An assessment of the impact of mental and physical impairments upon the ability of a driver to exercise reasonable control over a motor vehicle.

(b) The implementation of highway safety performance standards promulgated by the state or federal government.

(c) A general accounting of all state or federal funds expended in implementing the comprehensive highway safety program.

(d) Recommendations for additional legislation, programs and funds necessary for the effective implementation of a comprehensive highway safety program.

(4) BICYCLE RULES. The department shall publish literature setting forth the state rules governing bicycles and their operation and shall distribute and make such literature available without charge to local enforcement agencies, safety organizations, and schools and to any other person upon request.

(6) DRINKING AGE STUDY. The department shall study the impact of raising the legal drinking age to 21 and report the results of its study to the chief clerk of each house of the legislature for distribution to the legislature under s. 13.172 (2) by January 1, 1988, 1989, 1990 and 1991. All other state agencies shall cooperate with the department in conducting the study. The department shall study the effect of the change in the drinking age on all of the following:

(a) Motor vehicle accident and fatality rates for persons 16 to 26 years of age including blood alcohol content and time and location of accidents.

(b) Alcohol and other drug use by persons 10 to 21 years of age.

(c) Per capita alcohol beverages consumption in this state.

(d) Arrests and other enforcement actions by law enforcement agencies and universities related to alcohol and other drug use by persons 12 to 26 years of age.

(e) Referrals and admissions of persons 12 to 21 years of age to alcohol treatment programs and facilities.

(f) Alcohol and other drug related utilization of crisis services and suicide rates of persons 12 to 21 years of age.

(7) **FEDERAL FUNDS** Beginning in 1994, the department shall annually prepare a plan to use, for purposes of state and local emergency medical services, at least 25% of any federal funds transferred under 23 USC 153 (h). The department shall prepare the plan after consulting with the council on highway safety, the department of health and social services and the emergency medical services board. Funds expended under the plan may not be used to supplant other federal and state funds used for emergency medical services purposes. Funds may not be expended under the plan unless any necessary federal approval of the plan has been obtained.

History: 1973 c. 182; 1975 c. 200; 1977 c. 196 s. 131; 1979 c. 34 ss. 19 to 24; Stats. 1979 s. 85.07; 1983 a. 74; 1985 a. 337; 1987 a. 40, 403; 1993 a. 251.

85.075 Rail program rules. The department shall adopt rules to carry out the railroad programs under ss. 85.08 and 85.09.

History: 1983 a. 27; 1985 a. 135 s. 85.

85.08 Freight railroad assistance. (1) **LEGISLATIVE FINDINGS** The legislature finds that private capital and local governmental financial and technical resources are unable to fully meet the transportation needs of all citizens. It is determined that the programs authorized under this section are legitimate governmental functions serving proper public purposes.

(2) **GENERAL POWERS** The department shall administer the programs of financial and technical assistance under this section for the purpose of assistance to or restoration of freight railroad service and shall maximize the use of available federal aid in conjunction with the allocation of state aid. The department may exercise those powers necessary to establish freight railroad assistance programs, including authority:

(b) To plan, promote and engage in financial and technical assistance programs for continuing, restoring and operating rail branch line transportation services

(c) To maintain adequate programs of investigation, research, promotion and development in connection with transportation programs authorized under this section and to provide for public participation in these programs.

(d) To comply with federal regulations affecting federal transportation service continuation or restoration, or operating assistance programs

(e) To enter into joint service agreements or other agreements providing for mutual cooperation related to transportation services and projects, including joint applications for federal aids with any county or other body public and corporate.

(f) To receive, use or reallocate federal funds, grants, gifts and aids.

(g) To adopt rules necessary to effectuate and enforce this section and to prescribe conditions and procedures, including auditing and accounting methods and practices, to assure compliance in carrying out the purposes for which state financial and technical assistance is made.

(i) To make and execute contracts with the federal government, any other state or any county, city, village, town, railroad, or any transit commission organized under s. 59.968, 66.30 or 66.943, to ensure the continuance and improvement of quality transportation service at reasonable rates or to provide for rail service on rail property owned by the state.

(j) To audit the operating revenues and expenditures of all transportation systems participating in the aids program under this section in accordance with accounting methods and practices prescribed by the department.

(k) To allow other uses of rail corridors owned by the state that are being used for freight rail service when such uses serve the purpose of providing assistance to or restoration of freight rail ser-

vice, and to regulate the safety and compatibility of such uses with the provision of freight rail service by issuing a permit for any such use.

(L) To acquire rail property for the purpose of preserving freight rail service or improving the efficiency of freight rail service if, in the department's judgment, the public interest requires acquisition of the rail property.

(3) **COORDINATION AND COOPERATION** (a) The department shall coordinate the transportation activities of the state to effectuate the purposes of this section and is responsible for negotiating with the federal government for transportation service programs authorized under this section.

(b) The department may cooperate with other states in connection with the acquisition, rehabilitation, construction or operation of any transportation properties within this state or in other states in order to carry out the purposes of this section. The department may enter into contractual arrangements for such purposes, including joint acquisition of transportation properties with other states and entering into leases jointly with other states affected thereby.

(4) **RAIL PLANNING AND TECHNICAL ASSISTANCE GRANTS** Upon its own initiative or upon application by a government agency, the department may make grants of financial assistance and provide technical assistance for rail system, service and technical studies.

(4m) **FREIGHT RAILROAD LOANS AND GRANTS** (a) **Purpose; findings.** The purpose of this subsection is to assist in the preservation and improvement of freight rail service in this state. The legislature finds that private capital and local government contributions are insufficient for adequate freight rail service. The legislature finds that freight rail service preservation and improvement bear a significant relationship to the conservation of energy, the preservation of existing economic and tax bases and the maintenance of a balanced transportation system. The legislature further finds that these are proper governmental functions and that the programs authorized under this subsection are therefore valid governmental functions serving proper public purposes. It is the intent of this subsection to promote the public good by preserving and improving freight rail service in this state.

(b) **Definitions.** In this subsection:

1. "Eligible applicant" means a county, municipality or town or agency thereof, a railroad, a current or potential user of freight rail service or a transit commission organized under s. 59.968, 66.30 or 66.943.

3. "Rail service" means a level of rail service which the department determines to be an acceptable level of service.

(c) **Railroad facilities acquisition grants and loans.** The department may make grants to eligible applicants for the purpose of preserving freight rail service through the acquisition of rail property. The grant may be composed of state funds, federal funds, state property, the use of state property, or any combination of state funds, federal funds, state property and the use of state property. No grant for the acquisition of rail property improvements may exceed 80% of the acquisition cost. No grant for the acquisition of rail property exclusive of rail property improvements may exceed 100% of the acquisition cost. A grant may be made to an eligible applicant before or after abandonment of a railroad line as defined in s. 85.09 (3). The department may permit an eligible applicant's share of an increase in the acquisition cost of rail property or rail property improvements to be paid in installments if the increase in acquisition cost is caused by negotiation or litigation. No grant may be made under this paragraph for the acquisition of rail property if the acquisition price exceeds an amount deemed reasonable by the department. If a grant is made to an eligible applicant under this paragraph, the department may award a loan to the eligible applicant for not more than 15% of the acquisition cost. A grant of money or a loan made under this paragraph shall be paid from the appropriation under s. 20.395 (2) (bq), (bu) or (bx) or 20.866 (2) (uw). The department shall admin-

ister this program and shall have all powers necessary and convenient to implement this paragraph and par. (d), including the following powers:

1. To develop the specifications and provisions of the grants and loans which are made to eligible applicants.

2. To receive and review applications for grants and loans and to prescribe the form, nature and extent of the information which shall be contained in applications.

3. To determine whether the proposed rail service to be provided on the rail property acquired, rehabilitated or constructed with financial assistance under this paragraph or par. (d) has a likelihood of attaining and sustaining economic self-sufficiency and to employ such findings in the awarding of grants and loans.

4. To determine whether the rail property to be acquired with financial assistance under this paragraph offers satisfactory opportunity for alternate public use or recovery of public funds and to employ such findings in the awarding of grants and loans.

5. To make and execute agreements with eligible applicants for grants and loans. These agreements shall ensure that any public purpose served by the financial assistance is appropriately maintained by the eligible applicant, that rail service on the line is adequately continued and that the required corridor preservation, maintenance, rehabilitation and improvement activities are performed.

6. To determine whether rail service is being adequately continued and the grantee or, if applicable, the railroad providing service on the affected rail line is performing any corridor preservation, maintenance or improvement activities that are required by the department on a rail line for which a grant is made under this paragraph or par. (d). If, without the approval of the department, rail service is discontinued or the grantee disposes of any portion of the rail property for which financial assistance was obtained under this paragraph or par. (d), or if corridor preservation, maintenance or improvement activities are inadequate, including failing to meet any federal or state safety or performance standards specified in the agreement with the department or established by departmental rule, the rail property for which financial assistance was obtained shall revert to the ownership and control of the department unless the department elects to accept repayment from the grantee of the full amount of all grants and loans received from the department for the line, including any interest accrued on loans.

7. To provide technical assistance to the eligible applicant and any railroad using the rail property in a manner deemed necessary by the department.

(d) *Railroad rehabilitation and construction grants and loans.* The department may make grants to eligible applicants for the purpose of rehabilitating or constructing rail property improvements. Construction shall be limited to that which is required to continue rail service on a particular line or to provide alternative rail service when a line has been abandoned. A grant under this paragraph may be composed of state funds, federal funds, state property, the use of state property, technical assistance, or any combination of state funds, federal funds, state property, the use of state property and technical assistance. The value of a grant may not exceed 80% of the costs of rehabilitation or construction. If a grant is made to an eligible applicant under this paragraph, the department may award a loan to the eligible applicant for not more than 15% of the rehabilitation or construction costs. A grant may be made before or after abandonment of a railroad line as defined in s. 85.09 (3). A grant or loan made under this paragraph shall be paid from the appropriation under s. 20.395 (2) (bq), (bu) or (bx) or 20.866 (2) (uw).

(e) *Freight rail infrastructure improvement loans.* 1. Upon the request of an eligible applicant, the department may negotiate and enter into a loan agreement with the eligible applicant for purposes of rehabilitating a rail line or to finance an economic development and transportation efficiency project, including a project designed to promote safety or the viability of a statewide system

of freight rail service, to assist intermodal freight movement or to provide industry access to a rail line. A loan made under this paragraph shall finance a project that confers a public benefit or enhances economic development in this state. Loans made under this paragraph shall be paid from the appropriation under s. 20.395 (2) (bt), (bu), (bw) or (bx).

2. Projects for which a loan made under this paragraph may be used include all of the following:

a. Line upgrades that will expand the use of a rail line for the public benefit, including increased passenger service and increased use of double-stack technology and piggyback service.

b. Rail branch line stabilization or upgrading.

c. Projects associated with rail intermodal facilities, such as terminals, team tracks, docks, conveyers and other loading and unloading facilities.

d. Relocation of a freight rail off-loading facility that has been agreed to by the owner of the facility; the city, village or town in which the facility is located; and the city, village or town in which the facility will be relocated.

e. Rail line relocation or consolidation.

3. Loans made under this paragraph shall be allocated by the department on bases that protect the public interest, including a cost-benefit analysis. A loan made under this paragraph may cover up to 100% of a project's cost.

4. The department shall administer this program and shall have all powers necessary and convenient to implement this paragraph, including the following powers:

a. To establish standards and schedules for railroad infrastructure improvement projects and to establish the specifications and provisions of a loan that is made to an eligible applicant.

b. To establish the level and period of rail service to be provided by the railroad in any loan agreement.

c. To negotiate and establish the financial participation required of an eligible applicant in any loan agreement.

d. To provide technical assistance to an eligible applicant.

5. An application for a loan under this paragraph may not be made if an abandonment or discontinuance application is pending on the line or portion of line, or the line or portion of line on which the rail property improvements are located has been designated by the railroad to the interstate commerce commission on its system diagram map as anticipated to be the subject of an abandonment or discontinuance application within a 3-year period following the date of the application or the date on which the loan is scheduled, unless the secretary determines that this restriction may be waived for a particular application.

(g) *Exemption from bond requirements.* The secretary may exempt contracts involving the performance of labor or furnishing of materials for any public improvement or public work under the railroad rehabilitation and construction program of par. (d) or the loan program for freight rail infrastructure improvements under par. (e) from the performance and payment bond requirements of s. 779.14 if the secretary determines that:

1. Adequate guarantees or warranties are provided for by contract;

2. Adequate safeguards are provided by accounting and payment controls;

3. Adequate security is available;

4. Public benefits of proceeding with the project substantially outweigh the risk of waiving the performance and payment bond requirements of s. 779.14; and

5. The project cannot proceed in a timely and efficient manner unless the performance and payment bond requirements of s. 779.14 are waived in whole or in part.

(5) *ASSISTANCE TO RURAL AREAS* (a) In this subsection, "rural municipality" means any of the following:

1. A city, town or village with a population of 4,000 or less.

2. A city, town or village that is located in a county with a population density of less than 150 persons per square mile.

(b) In awarding assistance under this section, the department shall make a good faith effort to select eligible applicants that represent or will benefit various geographical regions and populations of this state, including rural municipalities.

History: 1977 c. 29, 418; 1979 c. 34 ss. 912 to 932, 2102 (52) (b); 1979 c. 221; 1981 c. 20; 1983 a. 27; 1985 a. 29; 1987 a. 27; 1989 a. 31; 1991 a. 269; 1993 a. 16, 437, 491

85.085 Private road crossings. (1) The department shall make payments from the appropriation under s. 20.395 (2) (bu) to fund the rebuilding of any private road crossing across the tracks of a rail transit commission within this state if the applicable tracks of the rail transit commission were rehabilitated during the 1992-93 fiscal year or thereafter, the private road crossing has not been rebuilt since the tracks were rehabilitated and the private road crossing user obtains a private road crossing permit from the applicable rail transit commission.

(2) The department shall make payments from the appropriation under s. 20.395 (2) (bu) to reimburse any private road crossing user for costs incurred by the user in financing the rebuilding of a private road crossing across the tracks of a rail transit commission within this state if the applicable tracks of the rail transit commission were rehabilitated during the 1992-93 fiscal year or thereafter and the private road crossing user has obtained a private road crossing permit from the applicable rail transit commission.

(3) The department shall not make any payment under this section unless the applicable private road crossing permit provides that the rail transit commission shall, at the user's sole cost and expense, maintain, repair and renew the private road crossing.

History: 1993 a. 354

85.09 Acquisition of abandoned rail property.

(1) **DEFINITIONS** As used in this section:

(b) "Municipality" means any city, village or town.

(c) "State agency" means state departments and independent agencies.

(d) "System diagram map" means the map required under federal law to be filed with the department by the railroad operating in this state that indicates rail lines in the process of abandonment, rail lines the railroad expects to abandon and the rail lines that are under study by the railroad for possible abandonment in the future.

(2) **FIRST RIGHT OF ACQUISITION** (a) The department of transportation shall have the first right to acquire, for present or future transportation or recreational purposes, any property used in operating a railroad or railway, including land and rails, ties, switches, trestles, bridges and the like located thereon, which has been abandoned. The department of transportation may, in connection with abandoned rail property, assign this right to a state agency, the board of regents of the university of Wisconsin system, any county or municipality or any transit commission. Acquisition by the department of transportation may be by gift, purchase or condemnation in accordance with the procedure under s. 32.05. In addition to its property management authority under s. 85.15, the department of transportation may lease and collect rents and fees for any use of rail property pending discharge of the department's duty to convey property that is not necessary for a public purpose. In exercising its property management authority, the department of transportation, to the greatest extent practicable, shall encourage and utilize the Wisconsin conservation corps for appropriate projects. No person owning abandoned rail property, including any person to whom ownership reverts upon abandonment, may convey or dispose of any abandoned rail property without first obtaining a written release from the department of transportation indicating that the first right of acquisition under this subsection will not be exercised or assigned. No railroad or railway may convey any rail property prior to abandonment if the rail property is part of a rail line shown on the railroad's system map as in the process of abandonment, expected to be abandoned or under study for possible abandonment unless the

conveyance or disposal is for the purpose of providing continued rail service under another company or agency. Any conveyance made without obtaining such release is void. The first right of acquisition of the department of transportation under this subsection does not apply to any rail property declared by the department to be abandoned before January 1, 1977. The department of transportation may acquire any abandoned rail property under this section regardless of the date of its abandonment.

(b) The first right of acquisition under this subsection applies only to the following property:

1. In unincorporated areas, any land measured 50 feet from the center line of each outermost track bed and any land between such tracks.

2. In incorporated areas, any land measured 33 feet from the center line of each outermost track bed and any land between such tracks.

3. Any property not included in subds. 1. and 2. that consists of a loading or unloading facility, a vehicular access facility, or a building that is, in the department's judgment, suitable for a freight or rail passenger station.

(3) **DETERMINATION OF ABANDONMENT** For purposes of this section, rail property shall be deemed abandoned if par. (a) or (b) applies:

(a) A certificate or approval of abandonment has been issued by the interstate commerce commission or federal court or any other federal or state agency having jurisdiction over the rail property.

(b) A certificate or approval of abandonment is not required and the use of the rail property for railroad or railway purposes has been discontinued with the intent not to resume. Intent not to resume may be inferred from circumstances including, but not limited to, the following:

1. If the rail property is not used for railroad purposes for 2 consecutive years.

2. If the facilities on the rail property are removed or rendered unfit for service.

3. If the rail property is used for other than railroad purposes.

(4) **ACQUISITION AND CONVEYANCE** Upon its own initiative, the department may determine at any time whether the rail property is abandoned, and whether it is in the best interest of the state to acquire the rail property. Within 90 days after being requested by any state agency, any railroad or any county or municipality in which the rail property is located, the department shall, subject to sub. (5) (b), make a determination of the abandonment status and, if found to be abandoned, shall determine whether it is in the best interest of the public to acquire the rail property. If it is determined to acquire the rail property or any part or interest therein, the department shall, within 180 days of the determination of its abandoned status, or the interstate commerce commission's final order permitting the abandonment, or the termination of any efforts to negotiate an agreement for continual operation of rail service on the line, whichever occurs last, determine the fair market value of the rail property and acquire the rail property at a price deemed reasonable by the department or make a relocation order under s. 32.05. In making its determination, the department shall consider long-range potential for use of the rail property for restoration of railroad service and for other transportation related purposes. The department shall solicit the opinions of appropriate state agencies, affected counties and municipalities and other interested persons. The department shall give due consideration to an expressed desire by a state agency or an affected county or municipality to acquire, in whole or in part, the rail property under consideration. Subject to sub. (6), all or part of any interest in abandoned rail property acquired by the department under this section or under s. 66.941 (7), 1975 stats., may be subsequently conveyed to another state agency or a county or municipality for transportation purposes, recreational purposes, scenic purposes or for the purpose of constructing a correctional institution, or to a railroad for continued railroad transportation operations when the railroad

has operated on the rail property for 5 years and the department may make such conveyances for such purposes. Any determination of the department under this section that rail property is not abandoned shall not preclude the undertaking of a subsequent investigation and determination concerning the same rail property or any portion thereof. If at any time subsequent to the acquisition of rail property under this section the department determines that the rail property is not suitable for transportation purposes, recreational purposes, scenic purposes or for the purpose of constructing a correctional institution, or that the rail property or any interest therein may be conveyed to any other person on terms which are not inconsistent with the potential use of the rail property for transportation purposes, recreational purposes, scenic purposes or for the purpose of constructing a correctional institution or which yield a benefit, including financial benefits, to the state which outweighs the benefit derived from the rail property if used for transportation purposes, recreational purposes, scenic purposes or for the purpose of constructing a correctional institution, the department may convey the rail property or such interest therein, subject to sub. (6). The department shall give notice of its intention to make the conveyance, and state and local units of government shall have the first 6 months in which to exercise their opportunity to acquire the rail property or interest therein. The railroad from which the rail property was acquired shall have the next 6 months in which to exercise its opportunity to reacquire the rail property or interest therein.

(4i) DISPOSAL OF RAIL PROPERTY. The department shall sell at public or private sale rail property acquired under sub. (4) when the department determines that the rail property is not necessary for a public purpose and, if real property, the real property is not the subject of a petition under s. 16.375 (2). Upon receipt of the full purchase price, the department shall, by appropriate deed or other instrument, transfer the rail property to the purchaser. The funds derived from sales under this subsection shall be deposited in the transportation fund, and the expense incurred by the department in connection with the sale shall be paid from the appropriation under s. 20.395 (2) (bq).

(4m) RELOCATION PLAN. The department is exempt from s. 32.25 (1) if the department determines that acquiring rail property under this section will not result in any displaced persons as defined in s. 32.19 (2) (e). The department shall file a statement of its determinations with the department of industry, labor and human relations.

(5) DUTIES OF RAILROADS AND OTHERS. (a) Any railroad which places a rail line or portion of a line on a system diagram map shall within 60 days of such action provide to the department one legible copy of each map in the railroad's possession which shows rail property boundaries or engineering stations for the line involved. At the same time the railroad shall provide to the department all other pertinent information in its possession requested by the department relating to the title to the rail property covered by the line involved. The department shall determine the reasonable cost to the railroad of providing documents and information under this paragraph and shall reimburse the railroad in this amount. Any conveyance by the railroad made without providing the information required by this paragraph is void.

(b) Any state agency, railroad, county or municipality which requests the department to make a determination of abandonment status and public interest in acquisition of rail property under sub. (4) shall provide a formal legal description of the rail property which is the subject of the request. The department may decline to take action on requests which do not contain an adequate description of the rail property involved. When the department provides a release of its first right to acquire rail property, the state agency, railroad, county or municipality which receives the release shall within 90 days have the release recorded by the register of deeds for each county in which the rail property is located.

(6) STATE RIGHTS SUBORDINATE TO FEDERAL LAW. To the extent that the first or subsequent rights of acquisition under this section conflict with rights conferred by 49 USC 10905 (f) (4) or 10910

(h), the rights conferred by this section are subordinate to such federal rights and shall take effect only when consistent with 49 USC 10905 (f) (4) and 10910 (h).

(7) RULES. The department may adopt such rules as it deems necessary to accomplish the purposes of this section.

History: 1977 c. 29, 418; 1979 c. 34 s. 1018; Stats. 1979 s. 85 09; 1981 c. 20; 1983 a. 27, 192; 1985 a. 29 ss. 1583 to 1586, 3200 (51); 1985 a. 332 s. 253; 1987 a. 5; 1989 a. 31; 1991 a. 39; 1993 a. 16

85.095 Harbor assistance program. (1) DEFINITIONS. In this section:

(a) "Eligible applicant" means a county, municipality, town or agency thereof or a board of harbor commissioners organized under s. 30.37.

(b) "Harbor improvements" means any dock wall repair and maintenance, construction of new dock walls, dredging of materials from a harbor or the placement of dredged materials in containment facilities.

(2) ADMINISTRATION. The department, in consultation with the Wisconsin coastal management council created under s. 14.019, shall administer the harbor assistance program and shall have the following powers:

(a) To make grants for the purpose of reimbursing eligible applicants for moneys expended to make harbor improvements and to fund other harbor assistance and improvement projects. The amount of a grant may not exceed 80% of the moneys expended by the eligible applicant for harbor improvements.

(b) To establish criteria for evaluating applications for harbor assistance grants in order to provide for the disbursement of grants. In establishing these criteria, the department shall consult with the department of development and shall give priority to applicants based on the amount of tonnage and waterborne transportation handled in the harbor.

(c) To receive and review applications for grants under this section and to prescribe the form, nature and extent of the information which shall be contained in the applications.

(d) To direct, with the approval of the governor, that state debt subject to the limitations in s. 20.866 (2) (uv) be contracted in accordance with ch. 18 to fund harbor improvements and other harbor assistance and improvement projects.

(3) PLANNING REQUIREMENTS. (a) Except as provided in par. (c), no grant may be made under this section unless the eligible applicant submits information to the department regarding harbor projects for which the eligible applicant may request state aid under this section or federal aid, or both, during the next 3-year period. The information shall be submitted prior to the April 1 which precedes the fiscal year in which the eligible applicant seeks aid under this section.

(b) The department shall, by rule, establish the starting date of each 3-year period and the form, nature and extent of the notice required under par. (a).

(c) The department may waive the requirements under this subsection.

History: 1979 c. 34, 221, 355; 1981 c. 314; 1983 a. 27; 1987 a. 27, 399; 1989 a. 31, 359.

85.10 Sale of aerial photographic survey products.

The department may sell to any person the selection of photographic products from the aerial photographic survey conducted under s. 23.325. The department may retain an amount equal to the costs that it incurs in selling and reproducing the photographic products.

History: 1977 c. 418; 1979 c. 175 s. 53; 1987 a. 27; 1991 a. 39

85.107 Minority civil engineer scholarship and loan repayment incentive grant program. (1) PURPOSE. The minority civil engineer scholarship and loan repayment incentive grant program is created to assist in improving the representation of minorities among employees of the department who are classified as civil engineers.

(2) **DEFINITION.** In this section, "minority" has the meaning specified for "minority group member" under s. 560.036 (1) (f).

(3) **ADMINISTRATION.** From the appropriation under s. 20.395 (4) (aq), the department may:

(a) Award scholarships to resident minority students enrolled fulltime and registered as sophomores, juniors or seniors in a civil engineering bachelor of science program offered by an accredited institution of higher education in this state. Scholarships under this paragraph shall not exceed the following amounts:

1. For a sophomore, \$1,500.
2. For a junior, \$2,000.
3. For a senior, \$2,500.

(b) 1. Make loan repayment grants to minority civil engineers who are employed by the department and have education loans outstanding. Subject to subd. 2., loan repayment grants under this subdivision shall not exceed the following amounts:

- a. After one year of employment by the department, \$1,000.
- b. After 2 years of employment by the department, an additional \$1,200.
- c. After 3 years of employment by the department, an additional \$1,700.
- d. After 4 years of employment by the department, an additional \$2,100.

2. The total amount of loan repayment grants under this paragraph made to an employe shall not exceed the amount of the employe's education loans outstanding.

(4) **RULE MAKING.** The department shall promulgate rules to implement and administer this section.

History: 1987 a 27

85.12 Statewide public safety radio management program. (1) The department shall administer a statewide public safety radio management program. From the appropriations under s. 20.395 (5) (dk) and (dq), the department may provide statewide tower site management, public safety frequency management, public safety database administration and planning services related to statewide public safety radio management.

(2) The department shall maintain any existing communications equipment at state patrol towers and stations that is used by emergency medical services programs under s. 146.55 unless the cost of maintaining the equipment exceeds the benefits that will result from such maintenance.

History: 1993 a 16

85.13 Cost of traffic violation and registration program. The department shall develop a system for charging local units of government or other authority as defined in s. 345.28 (1) (a) for the cost of the development and operation of the traffic violation and registration program under ss. 341.08 (4m), 341.10 (7) and (7m), 341.63 (1) (c), 345.28 (4) and 345.47 (1) (d) based on the number of transactions processed by the local unit of government or other authority. No notices under s. 345.28 (4) submitted by an authority or under s. 345.47 (1) (d) submitted by the court may be processed by the department unless the local unit of government or other authority involved has paid the department the appropriate amount determined by the department under this section.

History: 1979 c 221 s 903x; 1981 c 165; 1983 a 330.

85.14 Payments of fees and deposits by credit card. (1) (a) The department may accept payment by credit card of a fee that is required to be paid to the department under ch. 194, 218, 341, 342, 343 or 348. The department shall determine which fees may be paid by credit card and the manner in which the payments may be made.

(b) Except for charges associated with a contract under par. (c), the department shall pay to the state treasurer the amount of charges associated with the use of credit cards under par. (a) that are assessed to the department.

(c) The department may contract for services relating to the payment of fees by credit cards under this subsection. Any charges associated with a contract under this paragraph shall be paid from the appropriations under s. 20.395 (5) (cg) and (cq).

(2) The department shall certify to the state treasurer the amount of charges associated with the use of credit cards that is assessed to the department on deposits accepted under s. 345.26 (3) (a) by state traffic patrol officers and state motor vehicle inspectors, and the state treasurer shall pay the charges from moneys under s. 59.20 (8) and (8m) that are reserved for payment of the charges under s. 14.58 (21).

History: 1985 a 29; 1989 a 31; 1991 a 39.

85.15 Property management. The department may improve, use, maintain or lease any property acquired for highway, airport or any other transportation purpose until the property is actually needed for any such purpose and may permit use of the property for purposes and upon such terms and conditions as the department deems in the public interest.

History: 1977 c 29; 1991 a 269.

85.16 Department rules and forms. (1) The secretary may make reasonable and uniform orders and rules deemed necessary to the discharge of the powers, duties and functions vested in the department. The secretary may also prescribe forms for applications, notices and reports required by law to be made to the department or which are deemed necessary to the efficient discharge of all powers, duties and functions and prescribe the form and manner in which those applications, notices and reports may be filed or submitted.

(2) Any person violating an order, determination or rule adopted under chs. 84 to 86, 110, 114, 218 and 341 to 349 and not subject to another statutory penalty shall be required to forfeit not less than \$20 nor more than \$400.

History: 1983 a 175 ss 1, 3; 1983 a 538; 1989 a 31.

85.17 Storage of highway salt. (1) **DEFINITIONS.** In this section:

(a) "Highway salt" means bulk quantities of a chloride intended for application to highways during winter months, and includes mixtures in any proportion of sand and chlorides.

(b) "Waters of the state" has the meaning specified under s. 144.01 (19).

(2) **STORAGE OF HIGHWAY SALT.** Every person who stores highway salt shall comply with the standards adopted under sub. (3).

(3) **STANDARDS.** The department shall adopt by rule standards for the storage of highway salt for the purpose of protecting the waters of the state from harm due to contamination by dissolved chlorides. The rule shall comply with ch. 160. The rule may include different standards for various types of chlorides, or for mixtures of sand and chlorides. The rule may not require the storage of mixtures of sand and chlorides in a building or structure. The rule may include different standards for various storage facilities and conditions, quantities of highway salt and times during the year when salt is stored. All standards under this section shall provide substantially similar protection for the waters of the state.

(4) **INFORMATION.** The department may collect and publish information relating to this section and distribute it to municipalities and persons subject to this section.

(5) **ENFORCEMENT.** (a) The department shall enforce this section.

(b) The department may enter and inspect, during regular business hours, places where highway salt is stored on private or public property.

(c) The department shall conduct periodic inspections, at least once annually, of each location where highway salt is stored, to ascertain compliance with this section.

(d) The department shall issue special orders directing and requiring compliance with the rules and standards of the department adopted under this section whenever, in the judgment of the

department, the rules or standards are threatened with violation, are being violated or have been violated.

(e) The circuit court for any county where violation of such an order occurs has jurisdiction to enforce the order by injunctive and other appropriate relief.

(6) **PENALTY.** Any person who violates this section or any rule or order adopted under this section shall forfeit not less than \$10 nor more than \$1,000 for each violation. Each violation of this section or any rule or order under this section constitutes a separate offense and each day that a violation continues is a separate offense.

History: 1983 a. 410; Stats. 1983 s. 85.16; 1983 a. 538 s. 118; Stats. 1983 s. 85.17.

85.18 Groundwater protection. The department shall comply with the requirements of ch. 160 in the administration of any program, responsibility or activity assigned or delegated to it by law.

History: 1983 a. 410.

85.19 Construction site erosion control. (1) **STANDARDS.** The department, in consultation with the department of natural resources, shall, by rule, establish standards for the control of soil erosion related to highway and bridge construction that is funded in whole or in part with state or federal funds. At a minimum, the standards shall require the use of best management practices.

(2) **TRAINING** (a) The department shall establish a program of training for persons who prepare plans for, review plans for, conduct inspections of or engage in construction activities subject to the standards under sub. (1). The department shall do all of the following:

1. Identify those persons involved in plan preparation, plan review, construction supervision or inspections who are required to be trained.

4. Identify other persons who may benefit from the training program, and encourage those persons to enroll in the training program.

(b) The department may impose fees for the training program.

(c) The department shall establish the training program in consultation with the department of natural resources.

(d) Any training required under this subsection may be conducted by the department or by another person with the approval of the department.

History: 1991 a. 309.

85.20 Urban mass transit operating assistance program. (1) **DEFINITIONS.** In this section:

(ag) "Disabled persons" means individuals who, by reason of illness, injury, age, congenital malfunction, or other temporary or permanent incapacity or disability, are unable without special planning or design to use mass transit facilities and services as effectively as persons who are not so affected.

(am) "Elderly persons" means individuals age 65 or over.

(b) "Eligible applicant" means a local public body in an urban area which is served by an urban mass transit system incurring an operating deficit.

(d) "Local public body" includes counties, municipalities or towns, or agencies thereof; transit or transportation commissions or authorities and public corporations established by law or by interstate compact to provide mass transportation services and facilities or 2 or more of any such bodies acting jointly under s. 66.30.

(e) "Mass transit system" means transportation by bus, shared-ride taxicab, rail, or other conveyance, either publicly or privately owned, that provides the public with general or special service on a regular and continuing basis.

(f) "Operating deficit" means the amount by which the total operating expenses incurred in the operation of an urban mass transit system exceeds the amount of operating revenue derived therefrom.

(g) "Operating expenses" mean costs accruing to an urban mass transit system by virtue of its operations, including costs to subsidize fares paid by disabled persons for transportation within the urban area of the eligible applicant. For a publicly owned system, operating expenses do not include profit, return on investment or depreciation as costs. If a local public body contracts for the services of a privately owned system on the basis of competitive bids, operating expenses may include as costs depreciation on the facilities and equipment that the privately owned system acquired without benefit of public financial assistance, profit and return on investment. If a local public body contracts for the services of a privately owned system on the basis of negotiated procurement, operating expenses may include as costs depreciation on the facilities and equipment that the privately owned system acquired without benefit of public financial assistance. In an urban area which is served exclusively by shared-ride taxicab systems, operating expenses may include costs to subsidize reasonable fares paid by all users for transportation within the urban area of the eligible applicant.

(h) "Operating revenues" mean income accruing to an urban mass transit system by virtue of its operations.

(hm) "Reasonable fare" means a charge for mass transit service which complies with rules of the department relating to the fairness of such charges for purposes of this section.

(j) "Revenue passenger trip" means a trip taken on an urban mass transit system by any passenger who pays a fare to use an urban mass transit system, or by any passenger for whom a fare has been paid by another under a contract or other arrangement with an urban mass transit system.

(k) "Urban area" means any area that includes a city or village having a population of 2,500 or more that is appropriate, in the judgment of the department, for an urban mass transit system or an area that includes 2 American Indian reservations and that is served by a mass transit system operated by a transit commission.

(L) "Urban mass transit system" means a mass transit system operating within an urban area.

(2) **PURPOSE.** The purpose of this section is to promote the general public good by preserving and improving existing urban mass transit systems in this state and encouraging their effective and efficient operation.

(3) **ADMINISTRATION.** The department shall administer the urban mass transit operating assistance program and shall have all the powers necessary and convenient to implement this section, including the following powers:

(a) To receive applications for aid under this section and to prescribe the form, nature and extent of information which shall be contained in applications.

(b) To make and execute contracts with any eligible applicant to ensure the continuance and improvement of quality urban mass transit service at reasonable fares. No such contract may be effective for a period of more than one year in length and no such contract may be enforced against the state unless the following conditions are met:

1. The eligible applicant pays the operating deficit of the urban mass transit systems involved in accordance with a schedule approved by the department;

2. The participating urban mass transit system provides reduced fare programs for elderly and disabled persons during nonpeak hours. Such reduced fares may not exceed one-half of the full adult cash fare applicable during peak hours of operation; and

3. The eligible applicant establishes and maintains accounting procedures and documentation requirements as prescribed or approved by the department.

4. The eligible applicant complies with any applicable provisions of ss. 59.967 (10) (b), (11) (b) and (12), 59.968 (7m) (b) and (9), 66.94 (30m) and 66.943 (10) (b), (11) (b) and (12) with respect to limitation on service.

(c) Except as provided in par. (cm), to audit the operating revenues and expenses of all urban mass transit systems participating in the program in accordance with generally accepted accounting principles and practices. Except as provided in par. (cm), the audits shall be the basis for computing the maximum share of state and federal aids each eligible applicant can apply against operating deficits for each state aid contract period.

(cm) To conduct an audit of a privately owned urban mass transit system with which a local public body contracts for services on the basis of competitive bids to determine that system's compliance with the terms of that contract for services. An audit under this paragraph shall be the basis for computing the maximum share of state and federal aids that an eligible applicant that contracts with a privately owned urban mass transit system on the basis of competitive bids may apply against operating deficits for each state aid contract period.

(cr) To conduct a management performance audit of all urban mass transit systems participating in the program at least once every 5 years.

(d) To apply for and receive federal grants for the department or as requested on behalf of eligible recipients.

(3m) USER-SIDE SUBSIDY PROGRAMS (a) In this subsection, "user-side subsidy" means a voucher provided by an eligible applicant directly to a mass transit system user for use in full or partial payment of a mass transit system fare.

(b) After June 30, 1991, if an eligible applicant's urban mass transit system operates a user-side subsidy program, that system may include user contributions under the user-side subsidy program in its calculation of operating expenses for purposes of sub. (4m).

(4m) STATE AIDS Payments of state aids appropriated for this program shall be in accordance with the terms and conditions of contracts executed between the department and eligible applicants. State aid payments shall be subject to the following limitations:

(a) From the amounts appropriated under s. 20.395 (1) (bq), an amount equal to 42% of the projected operating expenses of each eligible applicant's urban mass transit system shall be allocated to each eligible applicant.

(am) From the amounts appropriated under s. 20.395 (1) (bu), the department shall make supplemental payments of state aid to each eligible applicant in an urban area served by an urban mass transit system with annual operating expenses in excess of \$20,000,000 and annual ridership exceeding 7,000,000 one-way revenue passenger trips. State aid to an eligible applicant under this paragraph shall be paid in each fiscal year according to a schedule established by the department. The department may not make the last payment for a fiscal year until the department has completed an audit under sub. (3) (c) of the applicable urban mass transit system for the most recent state aid contract period. Payments under this paragraph are in addition to any payments made under par. (a). Each eligible applicant shall provide a local contribution, exclusive of user fees, toward operating expenses in an amount equal to at least 20% of any supplemental payment of state aid to that eligible applicant under this paragraph. Payments under this paragraph shall be made so that the sum of state and federal aids distributed to each eligible applicant for a state aid contract period is equal to a uniform percentage of operating expenses established by the department.

(b) 1. Except as provided in subd. 2., each eligible applicant shall provide a local contribution, exclusive of user fees, toward operating expenses in an amount equal to at least 20% of state aid allocations to that eligible applicant under this section.

2. Subdivision 1. does not apply to an eligible applicant that is served exclusively by a shared-ride taxicab system.

(e) If the amounts appropriated under s. 20.395 (1) (bq) are less than the percentages specified in par. (a), the allocations shall be made on a proportional basis.

(em) The sum of the state aid allocations made to each applicant under par. (a) may not exceed any of the following:

1. An amount equal to 42% of the audited operating expenses for the project year of the applicant's urban mass transit system.

2. The nonfederal share of the audited operating deficit for the project year of the applicant's urban mass transit system.

3. Five times the amount of an eligible applicant's required local contribution under par. (b) 1.

(er) Eligible applicants shall repay the department any overpayments in state aids under this section which are made because of differences between projected financial data and audited financial data or because of differences between projected financial data and contract compliance audits.

(f) If more than one local public body contributes assistance to the operation of an urban mass transit system, the state aids allocated under this section shall be distributed among the contributors in accordance with any cost-sharing agreement that is filed with the department. If no agreement is filed, the aids shall be distributed among the contributors in proportion to their contributions.

(4s) PAYMENT OF AIDS UNDER THE CONTRACT The contracts executed between the department and eligible applicants under this section shall provide that the payment of the state aid allocation under sub. (4m) (a) for the last quarter of the state's fiscal year shall be provided from the following fiscal year's appropriation under s. 20.395 (1) (bq).

(5) REGULATION For such time as any urban mass transit system participates in this program, it shall be exempt from regulation under ch. 194.

(6) PLANNING REQUIREMENTS As a condition of eligibility to receive state aids, an applicant is required to do all of the following:

(a) Annually prepare and submit to the department a 4-year transit development program, in the form and manner prescribed by the department. The rules adopted to implement this paragraph and par. (b) shall be compatible with applicable federal regulations.

(b) Establish multiyear service and performance goals and assess the effectiveness of its mass transit system in relation to those goals at intervals specified by the department by rule.

History: 1973 c. 90, 333; 1975 c. 39; 1977 c. 29; 1979 c. 34 ss. 911p, 911r, 2102 (52) (a); 1979 c. 110 s. 60 (11); 1981 c. 20 ss. 1202 to 1207, 1232 to 1233; Stats. 1981 s. 85.20; 1983 a. 27; 1985 a. 29; 1987 a. 27, 399; 1989 a. 31; 1991 a. 39, 239; 1993 a. 16, 279.

85.21 Specialized transportation assistance program for counties. **(1) PURPOSE** The purpose of this section is to promote the general public health and welfare by providing financial assistance to counties providing transportation services for elderly and disabled persons, and to thereby improve and promote the maintenance of human dignity and self-sufficiency by affording the benefits of transportation services to those people who would not otherwise have an available or accessible method of transportation.

(2) DEFINITIONS In this section:

(a) "Copayment" means the fee imposed on a person for the use of the specialized transportation service.

(b) "County proportionate share" means the amount allocated to a county under this section which is based on the total amount appropriated for purposes of this section during the current fiscal year multiplied by the ratio of the number of elderly and disabled persons in the county to the total number of elderly and disabled persons in this state and which provides for a minimum base amount for each county, as determined by the department.

(c) "Designated service area" means that area to be provided specialized transportation service for any fiscal year.

(cm) "Disabled person" means any individual who, because of any temporary or permanent physical or mental condition or institutional residence is unable without special facilities or special

planning or design to use available transportation facilities and services as effectively as persons who are not so affected.

(d) "Elderly person" means any individual age 65 or over.

(e) "Eligible applicant" means any county or agency thereof.

(g) "Specialized transportation service" means a transportation system, either publicly or privately owned, which provides to elderly or disabled persons general or special service on a regular and continuing basis in a designated service area.

(3) ADMINISTRATION The department shall administer the specialized transportation service assistance program and shall have all the powers necessary and convenient to implement this section, including the following powers:

(a) To receive and review county plans for specialized transportation service assistance under this section and to prescribe the form, nature and extent of the information which shall be contained in the county plans. County plans may also include specialized transportation services to persons age 55 or over.

(b) To determine the county proportionate share in accordance with a generally accepted statistical methodology and practice.

(c) To make and execute contracts with counties to ensure the provision of specialized transportation service. Payments under such contracts to eligible applicants shall not exceed the county proportionate share, except as supplemented under par. (e) or (f). A contract under this section shall require the county to make a matching contribution of 20% of the contract amount and to furnish information determined necessary by the department for periodic program monitoring and year-end auditing and evaluation. A contract may permit a county to hold aids received under this section on or after July 2, 1983, in trust, according to rules promulgated by the department, for the exclusive purpose of acquiring or maintaining equipment used for services authorized under this section. All aids held in trust, as well as any accumulated interest, not expended for the authorized purposes, shall be returned to the department for deposit in the transportation fund. Nothing in this paragraph entitles a county to any investment interest accumulated prior to the time the aid payment is actually received by the county.

(e) If any county fails to contract with the department for its entire county proportionate share by February 1 of any fiscal year, the department may distribute the remaining amount by supplemental contract with other counties that have applied for more than their county proportionate share.

(f) Notwithstanding the determination of county proportionate share under par. (b), to make supplemental payments under contracts to eligible applicants under this section. The department shall make supplemental payments under this paragraph to ensure that payments to any eligible applicant for calendar year 1994 and for each calendar year thereafter are at least equal to payments made to the eligible applicant for calendar year 1992.

(4) COUNTY PLAN PROVISIONS; COPAYMENTS (a) The county may establish the transportation of elderly and disabled persons to medical, nutritional and work-related activities as the priority for the specialized transportation services.

(b) Specialized transportation services may at the discretion of the county be open to the general public on a space-available basis.

(c) 1. The county shall either require a copayment by the user of the specialized transportation service or provide the user with an opportunity to make a voluntary contribution to the cost of the service.

2. The county shall establish the amount of copayment if copayment is required and shall recommend an amount for a voluntary contribution if an opportunity to make a voluntary contribution is provided. The county shall establish the method by which the copayment or voluntary contribution is collected from the user.

3. The county shall collect and incorporate into the county plan data regarding the purposes and activities for which individuals use the specialized transportation services.

4. A county may exempt a user from payment under subd. 1. if an emergency exists, if the user does not have the economic resources to make a payment or if the user is not competent to make a payment.

(d) A county may not use aids provided under this section to support the regular route services of an urban mass transit system receiving state aids under s. 85.20. A county may use aids provided under this section to support subsystems of urban mass transit systems that provide special services to elderly or disabled persons.

History: 1981 c. 20 ss. 1220m, 1221, 1221m, 1233m, 1234; 1981 c. 93; 1983 a. 27, 189; 1985 a. 29; 1987 a. 27; 1991 a. 239; 1993 a. 16.

85.22 Capital assistance program for specialized transportation. **(1) PURPOSE.** The purpose of this section is to promote the general public health and welfare by providing capital assistance to eligible applicants providing transportation services to elderly and disabled persons.

(2) DEFINITIONS. In this section:

(ag) "Disabled person" means any individual who, because of any temporary or permanent physical or mental condition or institutional residence is unable without special facilities or special planning or design to use available transportation facilities and services as effectively as persons who are not so affected.

(am) "Eligible applicant" means any applicant that meets eligibility requirements for federal assistance under 49 USC 1612 (b) (2) and is one of the following:

1. A private, nonprofit organization.

2. A local public body that satisfies one of the following conditions:

a. After submission and approval of the certification by the department, certifies to the governor that no private, nonprofit organization is readily available to provide transportation services to elderly and disabled persons in the proposed service area.

b. Is approved by the department to coordinate transportation services to elderly and disabled persons in a proposed service area.

(b) "Elderly person" means any individual age 55 or older.

(c) "Local public body" has the meaning given in s. 85.20 (1) (d), except as limited by rule of the department.

(3) ADMINISTRATION. The department shall administer the grant program and shall have all the powers necessary and convenient to implement this section, including the following powers:

(a) To receive and review annually applications for aid under this section and to prescribe the form, nature and extent of information which shall be contained in applications. Each applicant shall indicate whether the transportation services it provides or proposes to provide conflict with any transportation services being assisted under s. 85.21.

(b) To establish criteria for evaluating all applications and for placing each application in a statewide priority ranking for distribution of available federal and state moneys.

(c) To make and execute agreements with eligible applicants to provide for the undertaking of transportation services to elderly or disabled persons.

(d) To audit the records of all eligible applicants receiving aids under this section in accordance with generally accepted accounting principles and practices.

(e) To require eligible applicants receiving aids under this subsection to furnish information deemed necessary by the department.

(f) To apply for and receive federal grants on behalf of eligible recipients.

(g) To establish an annual application cycle for the program.

(h) To establish, by rule, standards for the coordination of transportation services to elderly and disabled persons for purposes of s. 85.22 (2) (am) 2. b. These standards may require certification by a local public body that any application for aid under this section shall be consistent with the recommendations of a local coordinating committee on transportation that has membership which is, in the department's judgment, sufficient to provide for adequate coordination of services available in the applicable area.

(4) AMOUNT AND USE OF AID. Commencing with the highest ranked application and to the extent that state moneys are available, the department shall offer to each eligible applicant an amount of state aid such that the sum of federal and state aid received by an applicant does not exceed 80% of the estimated capital project costs. State aids available under this section shall not be available for operating purposes.

History: 1981 c. 20 s. 1222; 1991 a. 239; 1993 a. 437.

85.23 Rural public transportation assistance program. The department may administer a program for the distribution of rural public transportation aids made available to the state under section 18 of the urban mass transportation act of 1964, as amended, or under any similar federal act.

History: 1981 c. 20 s. 1223.

85.24 Demand management and ride-sharing program. (1) PURPOSE. The purpose of this section is to promote the conservation of energy, reduce traffic congestion, improve air quality and enhance the efficient use of existing transportation systems by planning and promoting demand management and ride-sharing programs and providing technical and financial assistance to public and private organizations for the development and implementation of demand management and ride-sharing programs.

(2) DEFINITIONS. In this section:

(a) "Demand management" means policies and programs designed to reduce the number of automobile trips, especially during peak hours of traffic congestion, including policies and programs designed to do any of the following:

1. Promote the reduction of unnecessary single-occupancy automobile trips.
2. Promote alternatives to automobile travel, such as biking and walking.
3. Encourage the use of high-occupancy modes of travel, such as ride sharing and all forms of public transportation.
4. Increase the convenience of alternatives to single-occupancy automobile trips, such as appropriate land-use planning and preferential parking privileges for car and van pools.

(b) "Ride sharing" means the use of a single motor vehicle by 2 or more persons for the purpose of commuting to and from their places of employment or attendance at postsecondary institutions, and includes commuting by means of a car pool or a van pool.

(3) ADMINISTRATION. (a) The department shall be the lead state agency in demand management and ride-sharing activities and shall have all powers necessary to develop and implement a state demand management and ride-sharing assistance program which shall include the coordination of demand management and ride-sharing activities in this state, the promotion and marketing of demand management and ride-sharing activities, the dissemination of technical information, the provision of technical and financial assistance to public and private organizations for the planning, development and implementation of demand management and ride-sharing programs, and the development and distribution of computer and manual ride-matching systems.

(b) The department may apply for and receive federal grants on its own behalf or as requested on behalf of other private and public organizations.

(c) The department may administer a program for the distribution of any federal funds for ride sharing and demand management that are made available to the state.

(d) The department may award grants from the appropriation under s. 20.395 (1) (bs) to public and private organizations for the development and implementation of demand management and ride-sharing programs. As a condition of obtaining a grant under this paragraph, a public or private organization may be required to provide matching funds at any percentage. The department shall give priority in the awarding of grants to those programs that provide the greatest reduction in automobile trips, especially during peak hours of traffic congestion. The department shall have all powers necessary and convenient to implement this paragraph, including the following powers:

1. To promulgate, by rule, procedures and criteria for the review and award of grants under this paragraph.
2. To receive and review applications for grants and to prescribe the form, nature and extent of the information which shall be contained in applications.

3. To audit and inspect the records of grant recipients.

4. To require reports from grant recipients as needed.

History: 1981 c. 20; 1991 a. 39.

85.243 Surface transportation discretionary grants program. (1) DEFINITIONS. (a) "Eligible applicant" means a local public body in an area having a population of 5,000 or more.

(b) "Local public body" includes counties, municipalities or towns, or agencies thereof; transit or transportation commissions or authorities and public corporations established by law or by interstate compact to provide mass transportation services and facilities or 2 or more of any such bodies acting jointly under s. 66.30.

(c) "Metropolitan planning organization" means an organization designated by the department by rule for an urbanized area having a population of 50,000 or more that complies with the requirements of 23 USC 134.

(2) ADMINISTRATION. (a) The department shall administer a surface transportation discretionary grants program to promote the development and implementation of surface transportation projects that foster the diverse transportation needs of the people of this state. Annually, the department may make grants to eligible applicants for surface transportation projects that promote nonhighway use or that otherwise supplement existing transportation activities. A grant may not exceed 80% of the total cost of a project. The department shall give priority to funding projects that foster alternatives to single-occupancy automobile trips. In deciding whether to award a grant under this section, the department may consider whether other funding sources are available for the proposed project.

(b) The department shall have all powers necessary and convenient to implement this section, including the following powers:

1. To promulgate, by rule, procedures and criteria for the review and award of grants under this section.
2. To receive and review applications for grants and to prescribe the form, nature and extent of the information which shall be contained in applications.

3. To audit and inspect the records of grant recipients.

4. To require reports from grant recipients as needed.

(c) For any eligible applicant located within an urbanized area served by a metropolitan planning organization, all of the following apply:

1. The department shall administer and implement the program under this section in cooperation with the metropolitan planning organization.

2. The department may not make a grant under par. (a) unless the proposed project is included in a transportation improvement plan of the metropolitan planning organization.

3. If 2 or more grant applications are submitted to the department by eligible applicants located within the urbanized area served by a metropolitan planning organization, the department shall require the metropolitan planning organization to submit a ranking, in order of priority, of the grant applications before

awarding any grants to eligible applicants located within the urbanized area served by the metropolitan planning organization.

History: 1993 a 16.

85.245 Congestion mitigation and air quality improvement program. (1) The department may administer a program for the distribution of federal funds for congestion mitigation and air quality improvement projects made available to the state under 23 USC 149. The cost of any project shall be funded from the appropriations under s. 20.395 (2) (kv) and (kx).

(2) The department shall pay to the department of natural resources \$624,000 in fiscal year 1993-94 and \$552,000 in fiscal year 1994-95 from the appropriation under s. 20.395 (2) (kx) for air quality improvement related to mobile sources of air contaminants.

History: 1993 a 16.

85.25 Disadvantaged business mobilization assistance program. (1) **FINDINGS AND PURPOSE** The legislature finds that the lack of working capital is a major barrier to the participation of certain businesses in construction contracts with the department. This problem is most acute for newer, less experienced businesses, and, in particular, for disadvantaged businesses, many of which lack the assets necessary to obtain financing under normal business lending standards. The disadvantaged business mobilization assistance program is created to assist disadvantaged businesses in obtaining working capital in order to participate in construction contracts with the department and to increase the representation of disadvantaged businesses among contractors performing on construction projects for the department.

(2) **DEFINITIONS** In this section:

(a) "Business development organization" means the Wisconsin housing and economic development authority under s. 234.02 or any private organization which prepares business and loan plans for and provides other financial, management and technical assistance to disadvantaged businesses.

(b) "Deficiency" means the unpaid principal amount of a defaulted mobilization loan guaranteed under sub. (4). "Deficiency" does not include any interest, any origination fees or other charges relating to the guaranteed loan or any expenses incurred by the lender in enforcing the security interest taken in the capital equipment or other asset resulting from the proceeds of the guaranteed loan.

(c) "Disadvantaged business" means a sole proprietorship, partnership, limited liability company, joint venture or corporation that fulfills all of the following requirements:

1. It is at least 51% owned, controlled and actively managed by a disadvantaged individual, as defined in s. 84.076 (1) (a).

2. It is currently performing a useful business function as defined in s. 560.036 (1) (h).

(d) "Guaranteed loan" means a mobilization loan which is guaranteed by a business development organization under a grant under sub. (3).

(e) "Mobilization loan" means a short-term loan, as specified by the department by rule, to a disadvantaged business to provide working capital in order to finance the purchase of capital equipment, insurance or any other service or consumable good necessary to enable the disadvantaged business to participate in transportation-related construction contracts with the department.

(f) "Participating lender" means a bank, credit union, savings bank, savings and loan association or other person who makes mobilization loans.

(3) **ADMINISTRATION** The department shall administer the disadvantaged business mobilization assistance program. Subject to sub. (4), the department may make grants for the purpose specified in sub. (1) to a business development organization in order to provide funding for the guarantee by the business development

organization of a mobilization loan made by a participating lender to a disadvantaged business certified by the department.

(4) **RULE MAKING** The department shall promulgate rules to implement the disadvantaged business mobilization assistance program. The rules shall specify all of the following:

(a) Conditions for eligibility of a business development organization for a grant under sub. (3).

(b) Conditions for eligibility of a disadvantaged business for a guaranteed loan. The conditions may include requirements relating to certification of a disadvantaged business by the department.

(c) Conditions for the guarantee of a mobilization loan by a business development organization applying for a grant under sub. (3). The conditions shall include requirements relating to the term of a mobilization loan. The conditions may include a requirement for execution of a guarantee agreement between the business development organization and the participating lender and review of such an agreement by the department. The conditions may specify a percentage of principal of any mobilization loan which must be guaranteed by a business development organization applying for a grant under sub. (3). The conditions may include requirements relating to the rate of a mobilization loan. The conditions may include requirements relating to defaulted mobilization loans and deficiencies.

(d) Conditions relating to the total principal amounts of all mobilization loans which may be guaranteed by business development organizations at one time, not to exceed \$1,500,000.

(e) Conditions under which a business development organization may not guarantee additional mobilization loans. The conditions shall include a prohibition on the guarantee of additional mobilization loans by a business development organization if the amount of the grant to the business development organization not yet expended under the disadvantaged business mobilization assistance program is equal to or less than \$100,000.

(f) Conditions under which a grant made under sub. (3) to a business development organization may be required to be repaid.

(5) **MORAL OBLIGATION** Recognizing its moral obligation to do so, the legislature expresses its expectation and aspiration that, if ever called upon to do so, it shall make an appropriation from the transportation fund to meet all demands for funds relating to defaulted mobilization loans and deficiencies under this section.

History: 1987 a 399; 1989 a 31; 1991 a 221; 1993 a 112.

85.26 Employment transit assistance program.

(1) **FINDINGS AND PURPOSE** The legislature finds that, for many workers and persons seeking employment in outlying suburban and sparsely populated and developed areas, conventional, fixed-route mass transit systems do not provide adequate transportation service. The purpose of the employment transit assistance program under this section is to correct this deficiency in access to employment locations and to stimulate the development of innovative transit service methods.

(2) **DEFINITIONS** In this section:

(a) "Eligible applicant" means a local public body or a private organization.

(b) "Local public body" has the meaning given in s. 85.20 (1) (d).

(c) "Mass transit system" has the meaning given in s. 85.20 (1) (e).

(d) "Project" means a project designed to improve access to jobs located in outlying suburban and sparsely populated and developed areas that are not adequately served by a mass transit system and to develop innovative transit service methods.

(3) **ADMINISTRATION** The department shall administer the employment transit assistance program and shall have all powers necessary and convenient to implement this section, including the following:

(a) To conduct a project.

(b) To make and execute contracts with eligible applicants.

(c) To make grants to eligible applicants to conduct projects or to match a federal grant awarded to an eligible applicant to conduct a project. Grants by the department are subject to all of the following requirements:

1. A grant may not exceed 80% of the total cost of a project.

2. A grant may only be made to an eligible applicant that provides access to nontemporary employment.

(d) To receive and review applications from eligible applicants for grants under this section and to prescribe the form, nature and extent of information that shall be included in applications.

(e) To establish criteria for evaluating applications for grants under this section.

(4) REQUIREMENTS. The following requirements apply to the employment transit assistance program:

(a) All jobs accessed by the program must pay at least \$4 per hour.

(b) Fares charged under the program must not exceed \$2 per one-way trip.

(c) Employers must pay at least 50% of the cost per one-way trip for their employees who participate in the program.

History: 1989 a 31

85.28 Driver license reinstatement training program. The department shall administer a driver license reinstatement training program. From the appropriation under s. 20.395 (5) (cq), the department may contract with public or private entities for programs that provide persons whose driver's license has been revoked or suspended under the laws of this state with training and assistance in meeting the requirements of ch. 343 for license reinstatement.

History: 1993 a 16.

85.30 Type 1 motorcycle, moped and motor bicycle safety program. The department shall develop and administer a Type 1 motorcycle, moped and motor bicycle safety program. The program shall include operational skills training, safety education and public awareness and such other elements as the department deems desirable. The safety education program for Type 1 motorcycles shall include instruction as to the proper eye protection to be worn during hours of darkness. The department may make grants under this program for establishment of courses which further the aims of this program. The department shall adopt rules to implement this section.

History: 1981 c. 20; 1983 a. 243, 534, 538; 1985 a. 65, 135.

85.31 Information for tax bills. By October 1, the department shall provide to the department of revenue the information about the aids paid under s. 86.30 to each municipality and county that will enable the department of revenue to furnish to taxation districts the information required under s. 73.03 (31).

History: 1985 a. 12.

85.35 Motor carrier projects program. The department may administer a program for the study of motor carrier operations and may participate in projects, including pilot projects in cooperation with other jurisdictions, for the evaluation of programs affecting motor carriers.

History: 1987 a. 27.

85.50 Hazardous materials transportation registration fees. The department shall collect the fees established under s. 166.20 (7g) to be paid by persons required to file hazardous materials transportation registration statements with the federal department of transportation under 49 USC Appendix 1805 (c).

History: 1991 a. 104.