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Joint Committee on Finance

Paper #656

Prohibiting the Use of State Moneys for Community Sensitive Solutions (Transportation -- State Highway Program)

[LFB 2015-17 Budget Summary: Page 450, #11]

CURRENT LAW

"Community sensitive solutions" (CSS) refers to a process used by transportation agencies to involve various parties that may be affected by proposed projects in project decisions and discussions early in the project development process, with the intent of building greater consensus for the project. The general principles behind CSS have been established through collaboration between the American Association of State Highway and Transportation Officials (AASHTO) and the Federal Highway Administration (FHWA). Although CSS refers to a process, the traveling public typically recognizes CSS as the aesthetic elements incorporated into some highway projects as one of the outcomes of that process. The Department of Transportation (DOT) has developed a CSS policy that establishes guidelines for the incorporation of these aesthetic elements in projects, including limits on the amount of funding that may be incorporated into a project.

Generally, under current law, established through 2013 Act 20, DOT may not expend more than 1.5% of the project costs of any highway improvement project on such elements, unless: (a) the project elements are included in a federal record of decision or similar federal project approval issued prior to July 2, 2013; (b) the inclusion of the project elements is required to receive approval for the use of federal funds on the project; or (c) the expenditures in excess of the amount permitted are reimbursed by another party.

GOVERNOR

Specify that state moneys may not be expended on elements of highway improvement projects that the Department determines are primarily related to the aesthetic preferences of

communities adjacent to the project, generally known as community sensitive solutions. Specify that this prohibition would first apply to a project for which an agreement between the state and a local government related to community sensitive solutions has not been entered into as of the general effective date of the bill.

DISCUSSION POINTS

1. For the 2013-15 biennium, DOT has reported total CSS expenditures of an estimated \$8.7 million. This represents an "all funds" accounting of CSS expenditures, which includes SEG, FED, and local moneys. The state share of these expenditures is an estimated \$2.6 million.

2. The Department's CSS policy is set forth in the Facilities Development Manual, which establishes the Department's standards and policies for transportation project design and construction. Examples of CSS elements that are eligible for inclusion in projects, according to the policy, include the following: aesthetic railings, anti-graffiti coating, bicycle/pedestrian accommodations, decorative fencing, decorative lighting, aesthetic treatments of noise barriers and retaining walls, and decorative landscaping. Not all aesthetic treatments add materially to the cost of highway projects. For instance, the Department indicates that some common aesthetic treatments, such as patterned surfaces used for bridge abutments (fieldstone or brick appearance) are installed using reusable, standard forms, so do not add to the cost, relative to a plain concrete form.

3. The Department is required under the National Environmental Policy Act and the Wisconsin Environmental Policy Act to follow certain practices intended to identify the potential consequences of highway improvement projects, and, in general, provide an opportunity for the public to have input on transportation project decisions. In some cases, the Department is required to include mitigation measures with highway improvement projects, which may involve working with affected communities to build in aesthetic treatments to offset negative impacts. The agreements reached during the environmental process are incorporated into a record of decision that marks the final federal approval to proceed on the project.

4. If this provision were to become law, it would require that federal and local government funding be used to pay for the full cost of CSS elements and local governments would be responsible for paying the portion of these costs not covered by federal aid, including any required local match, as required by federal law. Some have argued that the use of CSS elements provides an important means through which state highway projects can be designed to accommodate the aesthetic character of a community. Supporters of this position have argued that use of state funds for CSS purposes is an appropriate means of ensuring that all local governments have at least some ability to incorporate such elements into nearby projects, irrespective of their ability to pay for these improvements. In consideration of this argument, the Committee could decide to delete the provision. [Alternative #A2].

5. Relative to this provision, DOT was asked to estimate the costs associated with projects with CSS elements for which no agreement with a unit of local government will have been signed by July 1, 2015 (an estimate of the effective date of the bill). DOT indicated that there are two groups of projects for which this could be the case: (a) projects for which the Department

believes no CSS agreement will be signed by July 1, 2015; and (b) projects for which a CSS agreement is pending, but it is uncertain if the agreement will be signed by July 1, 2015. In the 2015-17 biennium, \$104,200 SEG is associated with projects for which a signed CSS agreement is not anticipated by the effective date of the bill and \$1,741,600 SEG is associated with projects classified as "pending." If the Committee approves the Governor's budget recommendation relative to prohibiting the use of state moneys for CSS elements, it could decide to make either of the following biennial funding reductions to the state highway program: (a) \$104,200 SEG, which is related to projects for which no signed CSS agreement is anticipated; or (b) \$1,845,800 SEG, which reflects DOT's estimate of the funding associated with CSS agreements for which the status is uncertain and for those CSS agreements that will not be signed by July 1, 2015 [Alternatives #B1 or #B2]. If the Department were to enter into any further CSS agreements prior to the effective date of the bill, under Alternatives #B1 or #B2, the related costs would have to be paid from remaining program resources.

ALTERNATIVES

A. Statutory Provisions

1. Approve the Governor's recommendation that state moneys may not be expended on elements of highway improvement projects that the Department determines are primarily related to the aesthetic preferences of communities adjacent to the project, generally known as community sensitive solutions. Specify that this prohibition would first apply to a project for which an agreement between the state and a local government related to community sensitive solutions has not been entered into as of the general effective date of the bill.

2. Delete provision.

B. Funding

1. Reduce the appropriation for the major highway development program by \$104,200 SEG in 2016-17 to reflect DOT's estimate of the funding in this program associated with CSS agreements that will not be signed by the effective date of the bill.

ALT B1	Change to Bill
SEG	- \$104,200

2. Reduce the following state highway program appropriations by the following amounts to reflect DOT's estimate of the funding associated with CSS agreements for which the status is uncertain and for those CSS agreements that will not be signed by the effective date of the bill: (a) \$431,700 SEG in 2015-16 and \$345,400 SEG in 2016-17 from the southeast Wisconsin freeway megaprojects program; (b) \$1,015,100 SEG in 2016-17 from the major highway development program; and (c) \$37,800 SEG in 2015-16 and \$15,800 SEG in 2016-17 from the state highway rehabilitation program (for a total, all funds reduction of \$1,845,800 in 2015-17). If the Department

were to enter into any further CSS agreements prior to the effective date of the bill, the related costs would have to be paid from remaining program resources.

ALT B2	Change to Bill
SEG	- \$1,845,800

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