



## Legislative Fiscal Bureau

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July 19, 2011

TO: Members  
Joint Committee on Finance

FROM: Bob Lang, Director

SUBJECT: Transportation: Section 13.10 Request for Approval to Issue Passenger Rail Development Bonds and Supplemental Appropriation for Passenger Rail Equipment Costs -- Agenda Item I

### REQUEST

The Department of Transportation requests approval for the issuance of \$29,404,300 of passenger rail route development bonds and a supplemental appropriation of \$2,239,300 SEG in 2010-11 from the Committee's appropriation for costs related to the preparation and delivery of passenger rail cars previously purchased by the state, preparation of a maintenance facility in Milwaukee, including the acquisition of some spare parts for the cars, and improvements at the Milwaukee passenger rail station.

### BACKGROUND

The Department's request, in combination with existing funds, would be used for the following elements: (a) \$10,056,700 for costs related to the manufacture and delivery of the passenger rail cars that were purchased by the state in 2009; (b) \$12,158,500 for the preparation of a maintenance facility for the passenger rail cars and the purchase of spare parts and maintenance equipment; and (c) \$20,370,000 for the reconstruction of the boarding area at the Milwaukee Amtrak station.

### Manufacture and Delivery of Passenger Rail Cars

The two passenger rail car sets purchased by the state are being manufactured by Talgo, a Spanish train equipment manufacturer. Although the car bodies are manufactured in Spain, final assembly and finishing work is being done in Milwaukee. The Department determined that it was

necessary to retain the services of a consultant with experience in train manufacturing to act as the state's agent throughout the manufacture, assembly, and testing process in Europe and Wisconsin. The Department contracted with Interfleet Technology for these services at a cost of \$6,899,300, a cost that was not included in the original purchase request. In addition to this contract, the Department indicates that several change orders, totaling \$657,400 have been approved, which will add to the purchase price. The request includes an additional \$2,500,000 for potential change order costs that may be incurred to meet certain Federal Railroad Administration (FRA) safety and performance standards. Although the precise cost of these changes is not yet known, the Department included \$2,500,000 in the request as a preliminary estimate. The Department indicates that if the full amount is not needed, any remaining funds would not be spent. The train cars are expected to be placed in service in 2012.

### **Passenger Car Maintenance Facility, Equipment, and Spare Parts**

Although Talgo is responsible for establishing the assembly facility in Milwaukee, the state is responsible for providing and equipping a maintenance facility for the cars. The maintenance facility is located in the same building as the assembly facility, although several improvements, at a cost of \$3,158,500 were required to accommodate the train cars for maintenance. In addition, the Department's request includes \$8,500,000 for maintenance equipment, and \$500,000 for spare wheels for the cars, which were not included in the original contract purchase. The Department indicates that the maintenance facility will likely only be available for three years, because the railroad that owns the tracks leading to the facility would only allow the use of the tracks for that time. If that time cannot be extended, alternative maintenance arrangements will have to be made.

The total costs related to the consultant contract and the maintenance facility, as described above, are \$22,215,200. However, the Department is requesting \$21,404,300 for these elements, since a portion of the costs would be paid from savings from the state's contract for the Amtrak Hiawatha service between Chicago and Milwaukee and remaining bonding authority from the initial purchase approval.

### **Milwaukee Rail Station**

The final element of the Department's request is for an improvement project at the Milwaukee rail station, to rehabilitate the boarding platform, tracks, and canopy, which would, among other improvements, bring the facility into compliance with federal disabled accessibility standards. The Department included \$10,239,300 in its request for the cost of the station improvements, based on bids received for the project. [The total cost of the improvements is estimated at \$20,370,000. The Department requested a smaller amount since federal grants received by the state would be used for the remainder of the costs.] Since the time that the request was submitted, the Department canceled the bid for the project and has contracted with an engineering firm to redesign the project, with the goal of lowering the costs. If the project can be done at a lower cost, the Department indicates that any funds that are approved, but not needed for the project, would not be spent.

## **Source of Funding for the Request**

The total amount requested by the Department, for all three elements, is \$31,643,600. Of that amount, \$29,404,300 would be provided using passenger rail development bonds, and \$2,239,300 would be provided from funds placed in the Committee's appropriation for passenger rail service by 2009 Act 28. There are currently \$72,500,000 in unissued passenger rail development bonds available from a total authorization of \$122,000,000. Previously, the Committee approved the issuance of \$2,000,000 of these bonds for renovation of the Milwaukee Amtrak station in 2000, and \$47,500,000 for the purchase of two passenger rail car sets in 2009 from Talgo. Under statutory provisions related to the passenger rail development program, the Committee must approve the use of the bonds prior to issuance. Debt service on the bonds is paid from the general fund.

The passenger rail development bonds would be used for the costs related to the passenger rail cars, totaling \$21.4 million, and for \$8.0 million of the \$10.2 million state share of the Milwaukee rail station costs. A statutory provision limits the total amount of passenger rail development bonds that may be used on passenger rail stations to \$10.0 million. Since \$2.0 million was previously used for improvements at the Milwaukee station, only \$8.0 million may be used for the present request.

The remaining \$2.2 million requested for the station improvements would be provided from the Committee's SEG appropriation for providing supplements. At the time of the Legislature's 2009-11 budget deliberations, the state had not signed a contract with Amtrak for the Hiawatha train service between Chicago and Milwaukee, so the state's cost for the service remained uncertain. Based on the Department's preliminary estimate, Act 28 provided a total of \$8,682,100 in 2010-11 for the contract, but of that amount, \$2,239,300 was placed in the Committee's appropriation, with a direction to the Department to request a supplement once more information on the final contract amount was known (the remaining \$6,442,800 was provided in DOT's passenger rail service appropriations). Since actual costs for the Hiawatha service in 2010-11 are expected to be about \$5.2 million, the amount placed in the Committee's appropriation is not needed for that purpose. Instead, the Department is including that amount in the present request. [As noted above, the Hiawatha costs were also less than the amount provided directly in DOT's appropriation. The Department has used the savings in the SEG appropriation to offset the costs of the items in this request. Savings in DOT's FED appropriation for passenger rail service were reallocated to other FED appropriations, since the expenses in question are not eligible for federal highway aid. The amount placed in the Committee's appropriation for 2009-10 service (\$1,789,200) was also not needed for the Hiawatha contract, and so lapsed to the transportation fund.]

## **ANALYSIS**

As noted above, the state purchased two passenger train car sets in 2009 using \$47,500,000 in passenger rail development bonds. At the time, the Department indicated that the cars would be

utilized in a proposed high-speed passenger rail service between Milwaukee and Madison if the state received federal funds for establishing such a route, but would also be used on the Hiawatha service between Chicago and Milwaukee, even if the state did not receive the grant. Although the state was awarded a federal grant of \$810 million in 2010 for the Milwaukee to Madison service, the Governor made a decision to not accept the grant.

Some elements of the Department's request are for costs that have already been incurred. Specifically, the work related to the preparation of the maintenance facility, at a cost of \$3.2 million has been completed. These costs were charged to the Department's passenger rail service appropriation, with the expectation that these costs would be reimbursed using the federal high-speed rail grant. Without the federal grant funds, the Department must now use state funds to reimburse those expenses.

Similarly, the Department has paid \$2.9 million for the train car manufacture oversight contract, out of the \$6.9 million contract total (additional costs have been incurred, but not yet paid). The Department indicates that once the purchase contract was signed, it became necessary to enter into the oversight contract to ensure that the state's interests were adequately protected in the manufacture and delivery process. If the Department had continued with the Milwaukee to Madison passenger rail project, a portion of this cost would have been covered by the federal high speed rail grant.

The costs for the maintenance equipment and spare parts, totaling \$9.0 million, have not yet been incurred, but the Department indicates these expenses are necessary to fulfill the state's responsibility to maintain the equipment once it is placed in service. As with the capital improvements to the maintenance facility, these costs would have been covered by the federal passenger rail grant.

As with the costs incurred for the maintenance facility, the station construction contract was let with the expectation that the federal grant funds would be available to reimburse the costs. Since that time, the Department cancelled the let, but has retained a consultant to redesign the project. The Department's position is that construction work should proceed to bring the station into compliance with disability accessibility standards and to make other improvements to the passenger boarding area.

If the Committee does not approve the Department's request, the Department indicates it would likely be necessary to cancel the contract for the purchase of the passenger rail cars, since it would not be possible to fulfill its obligation to provide a maintenance facility, and so that bonds previously approved for the purchase of the cars could be used to meet expense obligations that have already been incurred. In this event, Talgo would be entitled to retain payments received to date (about 63% of the purchase cost, plus any invoices for work completed since the last payment) and the state would retain ownership of the equipment that has been produced, although the cars are not yet in working condition.

In addition, if the request is not approved, the Department would cancel work on the Milwaukee rail station. Since the station platform does not meet federal disability accessibility standards, the state could be subject to a lawsuit under federal law, which could result in a court order to make improvements.

Certain elements of the request, however, are based on costs that are not yet known. The cost of contract change orders for the passenger rail cars, and the cost of rail station improvements could be less than the amount requested. One alternative would be to specify that any bonding amounts approved for these elements that are not needed would revert to unapproved status. In this case, the Department could not use approved, but unused, bonds for another purpose without receiving subsequent approval of the Committee.

## **ALTERNATIVES**

1. Approve the Department's request for approval of \$29,404,300 in passenger rail development bonds and an appropriation supplement of \$2,239,300 SEG in 2010-11 for passenger rail costs related to the manufacture and delivery of passenger rail cars purchased by the state, the preparation of a maintenance facility, and improvements at the Milwaukee passenger rail station.

2. Approve the Department's request, but specify that any bonding approved for the elements of the request that are not needed to pay the final cost would revert to unapproved status.

3. Deny the request.

Prepared by: Jon Dyck