

From Todd Stua

Aaron,

please see

p 6-7

Major Highway Project Cost Increases

The LAB audit found that construction costs on the seven Major Projects it examined were a cumulative \$381 million more than i estimates.

for ~~a~~ provision
on shifting
TPC process

WTBA believes there are two primary reasons for the reported increase in pi

1. Inflation

The project cost increases of \$381 million cited in the LAB report are expressed in *actual dollars*, not inflation-adjusted *constant dollars*. Given that it now takes more than 12 years between Legislative enumeration of projects and completion of construction, inflation is a significant and unavoidable cost-driver of these projects.

Had the project cost increases been expressed in constant dollars, the difference for the seven projects would have been \$228 million – still a significant amount but the cause for which is more fully explained in the following section.

2. Initial project concept vs. final project design

The cost figures compared in the audit represent a project's scope at dramatically different points in the development process.

The *initial estimate* at the time the Transportation Projects Commission (TPC) is asked to approve beginning an Environmental Impact Statement (EIS) is based on a broad project concept. A completed DRAFT EIS represents a more detailed snapshot of various project alternatives, before a final corridor is selected. The cost estimate at that point is more accurate than the initial estimate, but far from complete. The FINAL EIS selects the corridor for construction and makes numerous project detail decisions, incorporating environmental mitigation and community outreach input. Only at this point is the cost estimate realistic, although subsequent right-of-way acquisition can cost more than anticipated.

It is critical to understand that, currently, only after a project is enumerated does WisDOT finalize the comprehensive environmental analysis and produce a FINAL EIS that must be approved by the Federal Highway Administration. It is at this stage that the project becomes much more defined as all of the elements are incorporated that integrate the roadway into a community's long-range economic plans, as well as the desires of citizens and legislators. The result is the "*final cost estimate*" on a project that, in some cases, has dramatically changed from the concept that was initially approved by the Legislature.

For example, three route alternatives still existed for the U.S. Highway 53 Eau Claire Bypass when it was enumerated in the 1995-97 state budget – rebuilding the road on the current Hastings Way alignment, an “inner bypass” on the city’s east side, and an “outer bypass” that would have routed the highway east of Altoona. Hence, the *initial estimate* of \$99.3 million was made with the best information available to WisDOT at the time. It wasn’t until the Department selected the final corridor (the “inner bypass”) a few years later that final design, real estate acquisition and community outreach on specific project details resulted in the *final cost estimate* of \$145.4 million.

Comparing these two cost estimates is akin to a prospective homeowner assuming the \$49,999 concept advertised in the home improvement flier will be the final cost at closing – without taking into account the need for a foundation, driveway, landscaping and other features tailored to meet each person’s needs and/or tastes.

WTBA believes that WisDOT should NOT be held accountable for cost variances from the initial estimate established after a Draft Environmental Impact Statement because there are too many project uncertainties at this point in the process. Rather, the Department should be held accountable for cost increases that occur after the Final Environmental Impact Statement establishes the preferred alignment, final design and other project specifics.

WisDOT has taken steps since 1991 to provide additional analysis of major project candidates before presenting them for consideration by the TPC. Since creation of the TPC in 1984 until 1990, the process was based on untested concepts and rough average costs for estimating projects. Starting in 1992, as part of a court settlement with the then-public intervenor, the Department began basing its *initial estimates* at enumeration on a completed Draft Environmental Impact Statement, which lays out numerous project alternatives. This has proven to be more reliable – though still a “guesstimate” – with each TPC cycle.

The first projects enumerated under this new process (1993-95 Budget) were based on “just completed” EIS’s, with no time for further evaluation. More recently, some time has elapsed following completion of the Draft EIS, before actual enumeration has occurred. This has allowed cost estimates to be more accurate.

As shown in the table on the following page, the difference between the *estimate* at enumeration and the *final cost estimate* for the seven projects examined in the LAB report has generally narrowed with each successive state budget, suggesting the process improvements are working to more accurately project costs:

<u>Project</u>	<u>Enumerated</u>	<u>Constant \$ % Cost Increase</u>
12 Whitewater Bypass	1991	169.1%
110 USH 41-STH 116	1991	97.6%
29 Chippewa Falls Bypass	1991	52.8%
64 Houlton-New Richmond	1993	65.2%
12 Sauk City-Middleton	1993	58.9%
53 Eau Claire Bypass	1995	21.2%
39/51 Wausau Beltline	2001	39.7%

WisDOT should be strongly commended for continuous efforts to understand and manage costs, while at the same time being responsive to the needs of the communities a project will impact.

WTBA also believes more consistent financial reporting requirements and regular communication with the Legislature on changes in the scope of projects will validate justifiable cost increases and help constrain unjustified cost increases. We agree with LAB recommendations that WisDOT:

- Report complete expenditure information for all major highway projects to the TPC semi-annually. *WTBA believes this report should be an annual statutory requirement and should include expenditures for design and construction engineering.*
- Consistently communicate changes in project design and scope, so that all parties understand when project or funding needs expand beyond initial proposals. *This will help legislators understand the costs and benefits of project modifications, such as upgrading a highway from expressway to freeway standards.*

Other Key Issues

The audit made several other recommendations WTBA believes would result in improved tracking of project expenditures and increased accountability in project development. It also highlighted several other issues that are worth discussion.

Among the recommendations:

- Improve financial reporting by tracking:
 - The number of acres and the cost of all real estate it purchases for each major highway project;
 - Overall and per project environmental expenditures, including those incurred by WisDOT staff, consultants and contractors.

WisDOT's technology for reporting project costs is out-of-date, which is further hampered by inconsistent reporting within the Department. WTBA is supportive of increased information technology for WisDOT and believes an independent consultant could develop a state-of-the-art cost accounting system for the Department, with protocols for uniform reporting.

WTBA has already expressed its interest to WisDOT in cooperatively developing a system to track overall and per-project environmental costs. (SEE JAN. 5, 2004, LETTER TO WISDOT SECRETARY BUSALACCHI). WTBA believes such a system should list separately the costs for conducting environmental impact statements and for environmental mitigation.

- WisDOT should develop policies specifying that all project costs should be included in a project's cost estimates that are presented in environmental impact statements.

WTBA agrees with this recommendation, which will help track changes to a project's cost over time and assist the TPC in evaluating projects, and looks forward to reviewing the new guidelines WisDOT expects to develop by Jan. 1, 2005.

Other key issues:

- Bonding:** The audit points out that under current WisDOT estimates, debt service payments will exceed proceeds from Transportation Revenue Bonds beginning in FY 2009.

WTBA has consistently advocated the responsible use of bonding for long-term capital improvements such as highway projects, while warning against excessive borrowing that pushes increasing costs into the future. Debt service payments will inevitably exceed bond proceeds over time as long as bonding continues to comprise the same percentage of a program's total funding.

WTBA supports the gradual reduction in the 55% bond share of the Major Highway Program by 5% per biennium until the program is funded 40% with bonds at the conclusion of the 2009-11 state budget. Less debt means more funding for future transportation needs. This provision should be included in the next budget.

However, the debt service projection included in the audit assumes that bonding in FY 2005-06 will increase by 20.2%, reflecting the increased level of funding needed for already-enumerated major projects. This is a worst-case scenario, since future debt service will be less if the level of bonding for major projects in the next budget is not dramatically increased. Even under this scenario that continues to assume a heavy reliance on bonding, the Transportation Fund's revenue-to-debt ratio in FY 2012 is projected to be 2.38-to-1, which still exceeds the 2.25-to-1 ratio that is required of major bond rating firms. This is hardly a bonding crisis. It is likely that the Legislature will adjust fees to keep up with inflation at some point in the next decade.

- Freeways vs. Expressways:** The audit points out that project costs can increase significantly when WisDOT upgrades a highway from expressway to freeway standards. Expressways typically have at-grade intersections with lower-volume crossroads, while freeways use interchanges to restrict access from intersecting roads. The cost to construct a high-speed interchange is roughly triple the cost of constructing an at-grade intersection.

WTBA believes there are several reasons why it is in the state's long-term interest to make an additional investment upfront to construct a freeway rather than an expressway in some cases. The first is safety since interchanges eliminate cross-traffic and the potential for crashes due to motorist error. The second is improved traffic flow through continuous movement that prevents traffic tie-ups and rear-end collisions.

The third is that freeway interchanges can better accommodate future traffic patterns where development is likely to occur. Generally, the closer a highway is to a growing urban area, improvements to freeway standards can help focus development and prevent sprawl. An expressway design with at-grade intersections often leads to strip development and too many access points that result in safety problems. Fixing these problems is expensive and could require yet another new corridor to bypass the problem area.

Initially building an expressway and retrofitting it later to freeway standards to improve safety and traffic flow can be extremely expensive and difficult, since it threatens access to existing businesses, requires some of their right-of-way and disrupts surrounding

residential neighborhoods. A good example is U.S. Highway 18/151 in the city of Madison, where proposals to upgrade Verona Road to freeway standards have met stiff opposition from residents and businesses. In addition, upgrading portions of U.S. Highway 29 west of U.S. Highway 41 to freeway standards after initial construction as an expressway in the 1980s and 1990s will cost the state more in the long run.

- Changing the Point of Project Enumeration:** *WTBA believes that the project cost issues highlighted in the LAB audit emphasize the need to change the point at which the Legislature statutorily enumerates Major Projects.*

Currently, the TPC must grant non-statutory approval to any potential major project before WisDOT may proceed with preparation of an Environmental Impact Statement (EIS). Upon completion of the Draft EIS, the TPC can recommend statutory approval ("enumeration") to the Governor and Legislature if it determines that construction on the project can begin within six years.

Only after enumeration does WisDOT begin a Final EIS to develop the details of the project. This process creates several problems:

1. Enumeration occurs before sufficient analysis has occurred to accurately estimate costs;
2. Too many projects are under development, as evidenced by the 12-year time period between enumeration and completion of construction;
3. It creates false expectations for communities and other stakeholders, who expect a project to be completed within six years of enumeration.

Here is how such a change could be implemented:

- On or before September 15 of every even-numbered year, the Department will provide the TPC with two lists:
1. Those projects with a completed Draft Environmental Assessment (EA) or Environmental Impact Statement (EIS) that the Department is recommending approval to proceed to the Final EA or EIS, and an FHWA Record of Decision.
 2. Those projects with a completed Final EA or EIS and an FHWA Record of Decision that the Department is recommending for statutory enumeration in the following budget.
- On or before December 15 of every even-numbered year, the Commission will approve from a list of projects that have a completed Draft EA or EIS those projects that may proceed to completion of a Final EA or EIS.
- On or before December 15 of every even-numbered year, the Commission will approve, reject or modify the list of projects recommended by the Department that have a

completed Final EA or EIS, and a Record of Decision from FHWA. The recommendations will be forwarded to the Governor and Legislature.

- This recommendation should be effective in January 2005.

WTBA believes that after the Draft EIS is completed, the TPC should be empowered to approve (non-statutory enumeration) WisDOT proceeding to complete a Final EIS on a project and secure a Record of Decision from the Federal Highway Administration. At that point, the TPC would consider recommending the project for enumeration in state statutes. This would ensure much more accurate cost estimates at the point of enumeration and limit the number of enumerated projects under construction to a more manageable level.



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January 5, 2004

Mr. Frank Busalacchi, Secretary
Wisconsin Department of Transportation
4802 Sheboygan Avenue
Madison, WI 53702

RE: Audit of Major Highway Program

Dear Secretary Busalacchi:

Happy New Year! I hope 2004 proves to be an exciting year for you, and we are looking forward to working with you and the Doyle Administration to address future challenges to Wisconsin's transportation system.

In that regard, I wanted to offer our assistance in your efforts to respond to issues raised in the recent audit of the Major Highway Program. As you are aware, this audit recommended WisDOT track its environmental expenditures, and indicated the need to work with contractors to gather this information. In your November 17, 2003 letter to State Auditor Janice Mueller, you also recognized the need to work with contractors to gather this cost information, and noted that you would be requesting that the transportation construction industry participate in a discussion regarding the costs of environmental regulation.

As you suggested in your letter, there may be some competitiveness and confidentiality issues to address in gathering this information. However, we would welcome the opportunity to provide the Department with environmental cost information in a manner that meets all parties' needs. We recognize that, without our assistance, the Department would have difficulty gathering certain environmental cost information, particularly in regard to the numerous costs for which there is not a specific bid unit tab.

An example regarding the use of aggregate from a commercial site that is not entitled to permit exemptions under chapter 30 of the Wisconsin Statutes might help clarify this point. Currently, there is a proposal being discussed in the Legislature that would, among other things, create a new permitting system for high capacity water wells. Nonmetallic mines frequently use these wells to wash rock. Obviously, if a permit application is denied, the economics regarding the use of aggregate from that site for a particular project may change. Even if a permit is granted, the cost of obtaining the permit, and the cost of complying with any permit requirements, such as the cost of monitoring water levels, will ultimately be reflected in aggregate costs. Similarly, the

costs of obtaining nonmetallic reclamation permits will also be reflected in the cost of aggregate from commercial sites.

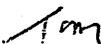
It may be important for WisDOT to take part in this process, to make sure aggregates are available at an acceptable cost.

There are numerous other examples of environmental costs for which there is no separate bid unit tab, but for which the environmental cost may be buried in a unit cost. These costs go largely undetected by WisDOT. Moreover, the costs of these items may be difficult to determine, even if they are identified. However, these are real costs that are part of overall project costs.

We believe that the best way to track these costs is to rigorously identify changes in policies and rules as they happen, and then track their cost consequences as these policies and rules are implemented.

Again, we look forward to working with you on this important issue, and wish you a joyful and prosperous new year!

Sincerely,



Thomas Walker
Executive Director

cc. Ruben Anthony, Deputy Secretary
Randy Romanski, Executive Assistant

Conclusion

The LAB audit also once again highlights several key transportation funding issues that WTBA has emphasized to the Legislature during past biennial budgets. Among them:

- At 31.5 cents per gallon (3 cents of which funds the Petroleum Environmental Cleanup Fund Award program), Wisconsin's state fuel tax is the highest in the country, which is offset by one of the lowest vehicle registration fees in the Midwest.
- Wisconsin ranks in the middle of the seven Midwestern states in overall highway spending and below the national average in highway investment per licensed driver, per resident and per million vehicle miles traveled.
- Every other Midwestern state supplements its highway user fees with other sources of transportation revenue, such as general purpose revenue, tolls, and additional transportation-related sales and excise taxes.
- Wisconsin must continue to utilize a reasonable level of transportation revenue bonds for the state highway program so that increasing debt service does not result in future program reductions.

Finally, WTBA believes caution is warranted in analyzing the reported significant improvement since 1998 in the percentage of state highway miles for congestion and pavement rating. In 1999, WisDOT changed the way it collects data on pavement conditions from a sonic to a more-accurate laser technology, leading to the improved rating. State-by-state comparisons have been rendered meaningless by the fact that more than 525 different performance measures are used in the 50 states, but only 11 measures were used by three or more states.

Similarly, the growing number of state highway miles with low levels of congestion is the result of a new definition of congestion as adopted in WisDOT's State Highway Plan.

Please call the WTBA office at (608) 256-6891 if you have any comments or questions about this booklet or the state's highway improvement plan.

From Todd Stuart

WTBA Comments on LAB Evaluation of Major Highway Program

Aaron -

FYI - here
is background
from audit
hearing 1/26.

-TS

PROJECT COST INCREASES

The Legislative Audit Bureau (LAB) reported that the final cost of Highway projects it examined exceeded initial estimates by a significant amount. There are 2 primary reasons for the project cost increases:

1. The impact of inflation during the 12 years between the initial estimate and project completion.
2. The estimates reflect each project's scope at three different stages of the development process. The **initial estimate** is based on a broad project concept. The **DEIS estimate** is based on completion of a Draft Environmental Impact Statement, which is more accurate but still includes a wide range of costs dependent on final project decisions. A **final estimate** is based on specific project details such as route location, environmental mitigation and community preferences.

Initial estimate: This is WisDOT's estimation of costs when the project is still in the concept stage. It is presented to the Transportation Projects Commission when WisDOT seeks approval to proceed to a Draft Environmental Impact Statement (DEIS).

DEIS estimate: This is the cost estimate presented to the Legislature at enumeration based on a Draft Environmental Impact Statement (DEIS). At this point, numerous project details are unknown – such as the specific highway corridor, location/type of access to nearby roads and businesses, environmental mitigation (wetlands, endangered species), and amenities and features that make the project a “good neighbor” in the community it serves. It is only after enumeration that WisDOT conducts a Final Environmental Impact Statement (FEIS) and seeks project approval from the Federal Highway Administration.

Final estimate: This is a much more accurate cost estimate that emerges from the FEIS and the project's final design that is based on extensive community outreach. What had previously been envisioned as an intersection may now be designed as a grade-separated interchange (at triple the cost) to accommodate local land use or development plans. Final design of the highway may require purchasing and relocating more businesses and/or residents than was anticipated in the Initial or DEIS estimates. Only at this point in the project development process do cost estimates become realistic, although subsequent right-of-way acquisition can cost more than anticipated.

Comparing these estimates at very different points in the development process is the primary reason for the project cost increases cited in the LAB report.

WisDOT has been working to develop more accurate cost estimates since 1992, when it agreed to complete the Draft Environmental Impact Statement before making a recommendation to enumerate a project. As shown in the following table, those estimates have become more accurate with each successive biennial budget cycle:

<u>Project</u>	<u>Enumerated</u>	<u>Constant \$ % Cost Increase</u>
12 Whitewater Bypass	1991	169.1%
110 USH 41-STH 116	1991	97.6%
29 Chippewa Falls Bypass	1991	52.8%
64 Houlton-New Richmond	1993	65.2%
12 Sauk City-Middleton	1993	58.9%
53 Eau Claire Bypass	1995	21.2%
39/51 Wausau Beltline	2001	39.7%

WisDOT should be strongly commended for continuous efforts to understand and manage costs, while at the same time being responsive to the needs of the communities a project will impact.

WTBA believes additional cost issues can be understood if the TPC receives annual (*LAB recommended semi-annual*) expenditure information for all Major Projects and is updated more frequently about changes in project design and scope.

TPC PROJECT ENUMERATION

WTBA believes the best way to provide the Transportation Projects Commission (TPC) and Legislature with more accurate cost estimates to consider in evaluating potential Major Highway Projects is to change the point at which projects are enumerated in statutes.

- ✓ Currently, projects are enumerated after a Draft Environmental Impact Statement is completed, even though many project details – and costs – are unknown at this point.
- ✓ WTBA proposes that, beginning in January 2005, the TPC only consider for enumeration those projects for which there is a completed Final Environmental Impact Statement and FHWA Record of Decision.

WTBA proposes the following process:

- On or before September 15 of every even-numbered year, the Department will provide the TPC with two lists:
 1. Those projects with a completed Draft Environmental Assessment (EA) or Environmental Impact Statement (EIS) that the Department is recommending approval to proceed to a Final EA or EIS, and an FHWA Record of Decision.
 2. Those projects with a completed Final EA or EIS and an FHWA Record of Decision that the Department is recommending for statutory enumeration in the following budget.
- On or before December 15 of every even-numbered year, the Commission will approve from a list of projects that have a completed Draft EA or EIS those projects that may proceed to completion of a Final EA or EIS. (*Note: Currently, the TPC provides non-statutory approval for WisDOT to conduct a Draft EIS on potential major projects*).

- ☑ On or before December 15 of every even-numbered year, the Commission will approve, reject or modify the list of projects recommended by the Department that have a completed Final EA or EIS, and a Record of Decision from FHWA. The recommendations will be forwarded to the Governor and Legislature.

Changing the point of enumeration will provide the Legislature with more accurate cost estimates since additional project details will be determined through the Final EIS process. This will also allow project construction to occur within the 6-year time frame that already exists in state statute, rather than the 12-year span from enumeration to project completion that results in unrealistic expectations upon legislative enumeration and political frustration.

COST TRACKING ISSUES

WTBA agrees with LAB recommendations to improve tracking project costs:

- ✓ The industry has expressed its willingness to work with WisDOT to develop a system of tracking overall and per-project environmental costs and supports increased resources for the Department to develop a state-of-the-art accounting system.
- ✓ WTBA looks forward to reviewing new guidelines WisDOT expects to develop by Jan. 1, 2005, to include all project costs in the cost estimates presented in environmental documents.

FUNDING ISSUES

WTBA agrees with LAB concerns about excessive use of bonding for highway construction and supports reducing the 55% bond share by 5% each biennium until bonding represents 40% of program expenditures. However, WTBA believes LAB's debt service projection assumes an unlikely level of future bonding, and even those projections do not cause the Transportation Fund's revenue-to-debt ratio to fall below the level (2.25-to-1) required of major bond rating firms for the most favorable interest rates.

Despite one of the highest state gas taxes (31.5 cents/gallon, which includes 3 cents/gallon for the Petroleum Environmental Clean-up Fund Award program) in the country – to offset relatively inexpensive vehicle registration fees – the LAB found that **Wisconsin spends below the national average on highways** per licensed driver, per resident and per million vehicle miles of travel.

Every other Midwestern state supplements its highway user fees with other sources of transportation revenue, such as general purpose revenue, tolls, and additional transportation-related sales and excise taxes.

Testimony of Bob Cook
Executive Director, Transportation Development Association
Before the Joint Legislative Audit Committee
Monday, January 26, 2004

Thank you for the opportunity to testify on the findings of the Legislative Audit Bureau audit of the Major Highway Program. The Department of Transportation and others have done an excellent job addressing some of the specific concerns with the audit and suggesting some ideas for reform. I would like to focus my testimony on the importance of the Major Highway Program and why it is necessary to adequately fund these projects at the same time we are ensuring safeguards are in place that will allow us to understand how the money is being spent.

The state highway system makes up less than 10 percent of the lane miles in Wisconsin and carries 60 percent of the traffic and the vast majority of the state's commerce. According to the audit, Wisconsin ranks in the middle of seven Midwestern states and below the national average in overall highway spending. Last year, Wisconsin spent \$243 million on the Major Highway Program which was approximately 10 percent of the total transportation budget.

The Major Highway Program is the primary program for reducing congestion. The projects that have been enumerated will help position Wisconsin to effectively compete in national and world markets as well as provide Wisconsin's highway users safe mobility for many years. A recent study TDA commissioned documented a return of \$3 for every \$1 invested in the state highway system.

A major highway project is defined as costing more than \$5 million and must involve constructing a new highway or relocating a highway 2.5 miles or more in length, adding one lane of 5 miles or more to an existing highway, or improving 10 miles or more of existing highway to freeway standards. These projects are generally the most complex and costly, but they also provide the greatest benefit to the traveling public and the communities they serve.

The audit points out that project costs can increase significantly when WisDOT upgrades a highway from expressway to freeway standards. Expressways typically have at-grade intersections with lower-volume crossroads, while freeways use interchanges to restrict access from intersecting roads. The cost to construct a high-speed interchange is roughly triple the cost of constructing an at-grade intersection.

There are several reasons why it is in the state's long-term interest to make an additional investment upfront to construct a freeway rather than an expressway in some cases. The first is safety since interchanges eliminate cross-traffic they reduce the potential for crashes due to motorist error. The second is improved traffic flow. The continuous movement on freeways helps to prevent traffic tie-ups and rear-end collisions.

The third is that freeway interchanges can better accommodate future traffic patterns where development is likely to occur. Generally, the closer a highway is to a growing urban area, the more improvements to freeway standards can help focus development and prevent sprawl. An expressway design with at-grade intersections often leads to strip development and too many access points that result in safety problems. Fixing these problems later threatens access to existing businesses, requires some of their right-of-way and disrupts surrounding residential neighborhoods. The expense and disruption could require yet another new corridor to bypass the problem area.

A good example is U.S. Highway 18/151 in the city of Madison, where proposals to upgrade Verona Road to freeway standards have met stiff opposition from residents and businesses. In addition, upgrading portions of U.S. Highway 29 west of U.S. Highway 41 to freeway standards after initial construction as an expressway in the 1980s and 1990s will cost the state more in the long run.

It is extremely important to provide adequate oversight and improve communication to ensure the state's transportation funds are invested wisely. In addition, the audit also sites some concerns with the current system providing funds for the Major Highway Program. It details the role of bonding to fund the majors program and the threat that excessive bonding and rising debt service pose to future program investments. Given current WisDoT estimates, debt service payments will exceed proceeds from Transportation Revenue Bonds beginning in FY2009.

TDA supports the responsible use of bonding for long-term capital improvements such as highway projects, but we have more recently expressed concern about excessive borrowing that pushes increasing costs into the future. Debt service payments will inevitably exceed bond proceeds over time as long as bonding continues to comprise the same percentage of a program's total funding.

It is important to consider that the debt service projection included in the audit assumes that bonding in FY 2005-06 will increase by 20%. This is a worst-case scenario, since future debt service will be less if the level of bonding for major projects in the next budget is not dramatically increased. Given more reasonable assumptions, Wisconsin doesn't face a bonding crisis yet. However, it is best to acknowledge the problem before it becomes a crisis.

TDA recommends a gradual reduction in the 57% bond share of the Major Highway Program. By replacing bonds with cash, the state will spend more on projects and less on debt service. Less debt means more funding for future transportation needs. This reduction should begin with the next biennial budget.

Finally, the audit highlights transportation funding issues that affect all transportation programs. The state's 31.5 cent/gallon gas tax is among the highest in the nation while the vehicle registration fee is one of the lowest at \$55/yr. Wisconsin relies solely on these user fees and bonding to fund all transportation programs. It is the only state in the country that does this. Table 22 on page 59 of the audit compares the revenue options available in other Midwestern states. Technology and alternative fuel vehicles are making the gas tax less viable as a measure of system use and source of revenue. Wisconsin must consider new revenue sources for transportation if are going to provide the transportation infrastructure for economic growth and safe convenient mobility.



1000 Friends of Wisconsin Testimony on Legislative Audit of Major Highway Projects

Ward Lyles
Transportation Policy Director
January 26, 2003

Thank you for the opportunity to speak before you today. My name is Ward Lyles and I am the Transportation Policy Director for 1000 Friends of Wisconsin.

I would like to commend this committee and its co-chairs for requesting this audit of the Major Highway Projects program. There is a great deal to talk about regarding the findings and recommendations of the audit, as well as how those findings and recommendations can be used in the future. In the interest of brevity, however, I will touch on just three main points.

First, cost overruns of nearly half the estimated cost on any project are unacceptable. Cost overruns of up to 262% are unconscionable, especially when an estimated \$380 million could be saved through practices such as value engineering. We fully and enthusiastically support the recommendations of the audit regarding improved financial reporting and cost estimates, as well as increased accountability to the Joint Audit Committee and Transportation Projects Commission

Before I make my second point, please consider a few statistics that complement the audit findings. These numbers are based on the Wisconsin Department of Transportation's *Transportation Budget Trends* document. Accounting for inflation, spending on Major Highway Projects increased 101%, that is, doubled, between 1988 and 2003. Meanwhile, expenditures to pay off the debt service on Major Highway Projects increased by 360%. On the other hand, spending on Rehabilitation did not come close to keeping up as it increased by 40%. What's most appalling is that during the same period spending on maintenance actually decreased by 3%. We're building more and more highways, not spending enough to repair them, and actually spending less and less to maintain them.

The point here is that the audit clearly demonstrates that the Major Highways Projects program has seen excessive cost overruns and a lack of fiscal restraint – two

unsustainable and irresponsible patterns. When considering the larger trends of expenditures on all types of highway work, it seems pretty clear that we're throwing good money after bad. The remedy to this problem is a common sense policy that should be implemented: fix-it-first.

The third point I wish to make is the most important. Please do not let this audit be both the means and the end of this process. Please let it be a starting point for extensive, thorough discussions of how this state has spent its taxpayers' money on transportation in the past. Please let it be a starting point for developing solutions for identifiable problems. And please let it be a starting point for implementing fiscally responsible budgeting that focuses on protecting our existing investments first and foremost.

Testimony of WisDOT Secretary Frank Busalacchi
Legislative Audit Bureau (LAB) Report on the Major Highway Program
Joint Audit Committee Hearing
January 26, 2004 – 9 am – Room 411 South

OVERVIEW

- Thank you for this opportunity to discuss the Major Highway Program.
- We fully understand the important work done by the Legislative Audit Bureau.
- LAB conducted this review in a thorough and professional manner.
- We appreciate the effort made to talk with DOT staff and to give us the opportunity to respond to the audit report.
- DOT did its best to cooperate and provide complete information – although most of the time period under review occurred during past administrations and the oversight of former department Secretaries.
- Although I can only speak for the past 13 months, I take this report and its recommendations very seriously.

- I also take seriously the responsibility I have to be accountable to taxpayers on the use of their dollars.
- This is why I am here today to provide you with the specific steps the department is taking to address the audit report recommendations.
- Some activities may take a little time to address – but our work has begun.
- So, let me proceed to give you the details on what we're doing.

VALUE ENGINEERING

*Pat 602 608
255
3114*

- The audit called on DOT to report to this committee by February 2nd our plans to implement the value engineering study.
- We will have information to you by the February 2 delivery date.
- While the specific details are still being fine-tuned, I can share a few general observations today.

- First, let me remind you the DOT commissioned this particular value engineering study to look at potential savings on 17 enumerated and 4 proposed major projects.
- The department conducts value engineering studies as a standard procedure for all projects valued at \$25 million or more.
- It never hurts to have another set of eyes look at a project, but VE studies are only one tool in any analysis.
- Some of the 2002 VE study recommendations make sense, others don't. I'll comment on just a couple areas.

The issue of building two lanes now instead of four

- This recommendation reduces costs in the short term by building two lanes instead of four on portions of major project highway corridors with lower traffic volumes.
- The VE study recommended this option for Highway 57 in Door County.
- Does it initially save money to build two lanes on Highway 57? Sure it does.

- Would a two-lane facility be as safe as a four-lane divided highway? No way, especially during busy tourist weekends.
- When I complete my comments today, we have some additional information to share with you about the Highway 57 project.
- In general, we have to balance any two on four decisions against the safety impacts.
- It is often safety concerns that motivate us to improve a particular road in the first place

Another recommendation is to scale back designs

- We will always consider this on a project-by-project basis.
- We work closely with local communities to build the type of systems the locals need and want for future development.
- We need to continue to make the type of investments that support economic development and help communities across the state grow and prosper.

- Sometimes building an interchange is the most responsible approach for a growing community – even though the price tag on the project goes up.
- This is also an important part of building local support for a project that can serve the long-term needs of a community.

Asphalt vs. concrete

- We are evaluating the recommendation to move to asphalt from concrete for some projects.
- The Department will continue to consider pavement choices. Concrete may still be the best choice for some projects and asphalt for others.

Cost estimates

- We have already implemented changes in the process for majors to improve financial management of the program.
- One of those changes involves completing additional design work before bringing them to the Transportation Projects Commission.

- This is a needed improvement. The additional design work allows for an improved cost estimate, even though it does cost more up front.
- Once again, the department will provide a full response to the value engineering study by February 2.

REAL ESTATE EXPENDITURES

- Another LAB recommendation involves real estate expenditures.
- The audit calls on the Department to track the number of acres and the cost of all real estate it purchases for each major highway project.
- ✓ ● We believe this is a very do-able task.
- Our Real Estate Automated Data System, called the READS system, already has the capacity to track acres and costs for individual parcels.
- We will focus on expanding the READS system capabilities so that data on individual parcels can be easily aggregated and reported at a total project level.

- Changing computer systems can be more complex than we'd like, but we're hopeful we can make the changes to get this additional data from the READS system in the very near future.
- The audit report also noted that real estate represents a significant portion of individual project costs and documented large cost increases in this area.
- The trend of increasing real estate costs is likely to continue given current funding levels and the current 12-year time lag between the enumeration and construction of a major highway project.

IMPROVED REPORTING TO THE TPC

- The audit recommended DOT create a report to include all expenditures associated with each major highway project and provide it to the Transportation Projects Commission every six months.
- In general, we agree with this recommendation.
- The TPC process works well – I know it is held in high regard by most members of the Legislature.

- Once again, the department believes this is a very do-able recommendation.
- We'd like to take the recommendation a step further to make it even better.
- The recommendation focuses on tracking expenditures only.
- The Department will create a report that will show the expenditures – the costs incurred to date – as well as an estimate of the cost to complete each project in the majors schedule.
- This will provide a very quick picture of what's been spent to date and what we expect to spend in the future.

ENVIRONMENTAL COSTS

- The audit recommended DOT track its overall and per project environmental expenditures, including those incurred by staff, consultants and contractors.
- LAB called for a report to be delivered to this committee by June 1, 2004.

- This recommendation is a good start and we're going to take our best shot to accomplish the task.
- I'll be honest; it is something that is easier said than done.
- Our current information systems are designed to track contract costs on a total bid item basis. The problem is that an individual bid item can be used to address many different functions on a project.
- An earthwork contract, for example, can be partly for roadway construction and partly for environmental mitigation. We need to isolate the components separately.
- We have a work plan in place. Here's how we are going to approach the project.
- We're going to divide the effort into three separate components that will be conducted concurrently. These include:
 1. Isolating and tracking the costs to complete environmental impact statements

2. Isolating and tracking construction contract costs for bid items related to environmental mitigation
3. Identifying, isolating, tracking, and verifying industry-related environmental costs

- When we have this information together, we'd like to come back and talk with you in more detail.
- Government agencies spend money and when someone asks us what we spend it on we ought to be able to provide an answer.
- This is an important thing to accomplish, however, there will be significant costs to do this.
- It may require more resources and is something we'll need to look at during the 2005-2007 budget process.

EA/EIS COST ESTIMATES

- The final LAB recommendation I want to touch on is the proposal for the Department to develop policies specifying that all project costs should be included in the project cost estimates presented in environmental documents.

- We've got no argument with this. It's a good idea.
- We're taking steps to make it happen and hope to have formal publication of the new guidance sometime this Fall.
- Our work plan on this recommendation focuses on five steps:
 1. Reviewing current guidelines for the development of Environmental Impact Statements and Environment Assessments.
 2. Identifying specific categories where cost estimates must be developed for each project.
 3. Developing criteria for estimating the cost of each category.
 4. Documenting criteria and requirements.
 5. Developing a process to measure compliance of each EIS/EA toward meeting the criteria.

CLOSING

- In closing, I want to once again emphasize accountability. We have an obligation to be accountable to taxpayers on the use of their dollars.
- Last week, we were all shocked by the allegations of bid rigging on state highway construction contracts.
- We stand firmly by the integrity of the DOT bid process.
- The public is well served by an honest, fair bidding process.
- Those who choose to break the law and violate that process should be prosecuted.
- The current system is sound, but we're going to work with even more vigor to make sure the construction bid process and all of our accounting systems maintain their integrity.
- We welcome the LAB recommendations as a way to help us be more accountable.
- We have some work to do and will need a little time to accomplish some things, but I assure you, the work has already started.

- I promise to keep you informed. In fact, I'd like to make a date to come back to you in early June to provide a comprehensive update on our progress. 
- At this point, we have just a few examples of some specific projects to share.
- Mark Wolfgram, one of our division administrators, is going to walk you through the examples and then we'd be happy to take your questions.

END OF REMARKS

Needed
by 2/4
end of day

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

A-Note

Gen

1 AN ACT ...; relating to: major highway projects and the transportation projects
2 commission.

X

Analysis by the Legislative Reference Bureau

Current law generally requires that any major highway project, unlike other construction projects undertaken by the Department of Transportation (DOT), receive the approval of the Transportation Projects Commission (TPC) and the legislature before the project may be constructed. With limited exceptions, a major highway project is a project having a total cost of more than \$5,000,000 and involving construction of a new highway 2.5 miles or more in length; reconstruction or reconditioning of an existing highway that relocates at least 2.5 miles of the highway or adds one or more lanes five miles or more in length to the highway; or improvement of an existing multilane divided highway to freeway standards.

Under current law, DOT submits a list of potential major highway projects to the TPC for study and recommendation by the TPC. DOT may not begin preparing an environmental impact statement (EIS) or environmental assessment (EA) for a potential major highway project without TPC approval. Although DOT generally may not begin construction of a major highway project without the approval of the TPC and the legislature, the legislature may enumerate and approve the construction of major highway projects without approval by the TPC. The TPC may not recommend approval of a major highway project unless the TPC determines that there is sufficient funding to begin construction of the project within six years.

This bill requires DOT to report to the TPC each major highway project for which a draft EIS or EA or final EIS or EA has been completed, and prohibits the TPC

from recommending approval of any major highway project prior to the completion by DOT of a final EIS or EA approved by the Federal Highway Administration.

The bill also imposes numerous financial reporting requirements on DOT for all potential major highway projects. The bill requires DOT to establish procedures for identifying, tracking, recording, and maintaining expenditure information on all potential major highway projects, and requires comprehensive, standardized, and consistently prepared financial and project cost information for all expenditures associated with each project. The bill requires DOT to compile and maintain complete and itemized project cost information, including both cost estimates and actual costs, for all potential major highway projects. Any draft or final EIS or EA prepared by DOT must include project cost information prepared in accordance with these requirements. The bill also requires DOT to establish procedures for determining, and to determine, that portion of each project's construction costs attributable to the cost of compliance with state and federal environmental laws.

The bill requires DOT to report to the TPC every six months, for each potential major highway project and for the major highway project program as a whole, all project cost information, and specified other project information, on a cumulative basis and on an updated basis as compared to the prior reporting period.

The provisions of the bill generally become effective on January 1, 2005 and apply to potential major highway projects initiated for consideration by the TPC after that date.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 SECTION 1. 13.489 (1) of the statutes is renumbered 13.489 (1g).
X

2 SECTION 2. 13.489 (1m) (a) of the statutes is renumbered 13.489 (1c), and
X
3 13.489 (1c) (intro.), as renumbered, is amended to read:

4 13.489(1c) (intro.) In this subsection section:

History: 1983 a. 27; 1985 a. 2; 1985 a. 29 ss. 27 to 29, 3202 (51); 1987 a. 27; 1993 a. 16; 1997 a. 27, 86; 1999 a. 9.

SECTION 3. 13.489 (2) of the statutes is amended to read:

13.489 (2) DEPARTMENT TO REPORT PROPOSED PROJECTS. (Intro.) Subject to s. 85.05 (1),
P *renumbered 13.489 (2) (intro.) and*

7 the department of transportation shall report to the commission not later than
8 September 15 of each even-numbered year and at such other times as required under
9 s. 84.013 (6) concerning its recommendations for adjustments in the major highway

Change component

1 projects program under s. 84.013. Any report submitted under this subsection shall
2 include all of the following:

3 History: 1983 a. 27; 1985 a. 2; 1985 a. 29 ss. 27 to 29, 3202 (51); 1987 a. 27; 1993 a. 16; 1997 a. 27, 86; 1999 a. 9.

3 **SECTION 4.** 13.489 (2) (a) and (b) of the statutes are created to read:

4 13.489 (2) (a) A list of potential major highway projects approved under sub.
5 (1m) (d) for which the department has completed draft environmental impact
6 statements or environmental assessments and for which the department
7 recommends approval to proceed with preparation of a final environmental impact
8 statement or environmental assessment.

9 (b) A list of potential major highway projects approved under sub. (2m) for
10 which the department has completed final environmental impact statements or
11 environmental assessments and obtained approval from the federal highway
12 administration and for which the department recommends approval under sub. (4).

13 **SECTION 5.** 13.489 (2m) of the statutes is created to read:

14 13.489 (2m) APPROVAL OF DRAFT ENVIRONMENTAL STUDIES. In conducting its
15 review under sub. (4) of reports submitted as provided by sub. (2), the commission's
16 report under sub. (4) shall notify the department of projects specified in sub. (2) (a)
17 that the commission approves for preparation of a final environmental impact
18 statement or environmental assessment or shall notify the department that it
19 does not approve any project specified in sub. (2) (a) for preparation of a final
20 environmental impact statement or environmental assessment. The department of
21 transportation may not proceed with preparation of a final environmental impact
22 statement or environmental assessment unless the commission notifies the
23 department that the project is approved under this subsection.

24 **SECTION 6.** 13.489 (4) (a) 1. a. of the statutes is amended to read:

1 13.489 (4) (a) 1. a. The commission determines that, within 6 years after the
 2 first July 1 after the date on which the commission recommends approval of the
 3 project, construction will be commenced on all projects enumerated under s. 84.013
 4 (3) and on the project recommended for approval and that the department has
 5 completed a final environmental impact statement or environmental assessment
 6 and obtained approval for the project from the federal highway administration.

7 History: 1983 a. 27; 1985 a. 2; 1985 a. 29 ss. 27 to 29, 3202 (51); 1987 a. 27; 1993 a. 16; 1997 a. 27, 86; 1999 a. 9.

8 **SECTION 7.** 13.489 (4) (a) 1. b. of the statutes is amended to read:

9 13.489 (4) (a) 1. b. The report recommending approval of the project is
 10 accompanied by a financing proposal that, if implemented, would provide funding in
 11 an amount sufficient to ensure that construction will commence on all projects
 12 enumerated under s. 84.013 (3) and on the project within 6 years after the first July
 13 1 after the date on which the commission recommends approval of the project and
 14 the commission determines that the department has completed a final
 15 environmental impact statement or environmental assessment and obtained
approval for the project from the federal highway administration.

16 History: 1983 a. 27; 1985 a. 2; 1985 a. 29 ss. 27 to 29, 3202 (51); 1987 a. 27; 1993 a. 16; 1997 a. 27, 86; 1999 a. 9.

17 **SECTION 8.** 84.013 (10) ^{are} of the statutes ^{are} created to read:

18 84.013 (10) (a) For each potential major highway project submitted by the
 19 department to the transportation projects committee for consideration at any time
 20 under s. 13.489 and each major highway project enumerated under sub. (3) or
 21 approved under sub. (6), the department shall compile and maintain, in accordance
 22 with the procedures established under s. 85.05 (2), complete financial data for all
 23 project costs that identifies both total project costs and itemized project costs, which
 24 itemization shall include costs associated with all of the following:

1. Construction and construction contracts.

- 1 2. Design work.
- 2 3. Construction engineering.
- 3 4. Acquisition of interests in real estate, including rights-of-way, correlated to
- 4 type of interest and number of acres acquired.
- 5 5. Utility relocation.
- 6 6. Home and business relocation.
- 7 7. Environmental compliance, other than costs specified under par. (c) 1.,
- 8 including consultant contracts, services of state agencies, and staffing.
- 9 8. Administration.

10 (b) The financial data required under par. (a) shall include, for each item of
11 itemized cost, both the department's cost estimate and, if any funds have been
12 expended, the department's actual expenditure.

13 (c) For each project specified in par. (a), the department shall compile and
14 maintain, in accordance with the procedures established under s. 85.05 (2), complete
15 financial data related to all of the following:

16 1. The department's determination, in accordance with procedures established
17 under s. 85.05 (2) (b), of that portion of costs specified under par. (a) 1. that are
18 attributable to the cost of compliance with state and federal environmental laws.

19 2. The department's estimate of necessary contingency costs for the project.

20 3. The department's estimate of anticipated future highway maintenance costs
21 associated with the project.

22 (d) For each project for which financial data is required under this subsection,
23 the department shall compile and maintain, in accordance with the procedures
24 established under s. 85.05 (2), the financial data for every phase of the project, and
25 shall retain the financial data for not less than 10 years after the discontinuance of

1 any project or, if construction of the project is completed, for the duration of the life
2 of the highway.

3 (11) Any draft or final environmental impact statement or environmental
4 assessment prepared by the department in connection with a project specified under
5 sub. (10)[✓](a) shall, for each project alternative identified in the environmental impact
6 statement or environmental assessment, include all financial data specified in sub.
7 (10)[✓], prepared in accordance with procedures specified in s. 85.05[✓](2).

8 (12) (a) ~~By~~ By January 1, 2005, and every 6 months thereafter, the department
9 shall report to the transportation projects commission, for each project specified in
10 sub. (10)[✓](a), all of the following:

- 11 1. All information specified in sub. (10)[✓].
- 12 2. Any significant change in concept, design, or scope of the project.
- 13 3. With respect to any project for which the department has entered into any
14 construction contract, any contract change order or other amendment to the
15 contract, the reason for the change order or amendment, and the project cost impact
16 of the change order or amendment.
- 17 4. With respect to any project enumerated under sub. (3)[✓] or approved under
18 sub. (6)[✓] for which the department has separated a portion of the project or combined
19 a portion of the project with another project, a description of the change in the project
20 and, in addition to the information under subd. 1., all information specified in sub.
21 (10)[✓] for the project calculated as if no such change had occurred.

22 (b) The report under par. (a)[✓] shall include both cumulative project information
23 and project information for the most recent 6 months that is compared to project
24 information included in the prior reporting period.

1 (c) The report under par. (a) shall include aggregated and comprehensive
2 project expenditures for each project specified in sub. (10) (a) and for the entire major
3 highway projects development program.

4 SECTION 9. 85.05 (title) of the statutes is amended to read:

5 **85.05 (title) ~~Evaluation of Procedures for proposed major highway~~**
6 **projects.**

7 History: 1997 a. 86; 1999 a. 9.

8 SECTION 10. 85.05 of the statutes is renumbered 85.05 (1).

9 SECTION 11. 85.05 (2) of the statutes is created to read:

10 85.05 (2) (a) The department shall establish procedures for identifying,
11 tracking, recording, and maintaining expenditure information on all potential major
12 highway projects submitted by the department to the transportation projects
13 committee for consideration at any time under s. 13.489 and on all major highway
14 projects enumerated under s. 84.013 (3) or approved under s. 84.013 (6). The
15 department's procedures shall require comprehensive, standardized, and
16 consistently prepared financial and project cost information for all expenditures
17 associated with each project and shall require that the same procedures be followed
18 on every project. These procedures shall be used for the development of project cost
19 estimates for each proposed highway project, including all design alternatives for the
20 project, and shall require that all anticipated project costs be included in any total
21 project cost estimate.

22 (b) For each project specified under par. (a), the department shall establish
23 procedures for determining that portion of expenditures, within each bid item of each
24 construction contract, attributable to the cost of compliance with state and federal
environmental laws. The department shall consult with the department of natural

1 resources and construction contractors in establishing procedures under this
 2 paragraph. Each construction contract entered into by the department shall require
 3 the contractor to cooperate with the department, and provide information the
 4 department determines to be necessary, to implement the procedures established
 5 under this paragraph.

6 **SECTION 12. Initial applicability.**

7 (1) This act first applies to projects first submitted to the transportation
 8 projects commission for consideration under section 13.489 of the statutes on the
 9 effective date of this subsection.

10 (2) The treatment of section 85.05 (2) (b) of the statutes first applies to contracts
 11 entered into on the effective date of this subsection.

12 **SECTION 13. Effective dates.** This act takes effect on January 1, 2005, except
 13 as follows:

14 (1) The treatment of sections 84.013 (13) and 85.05 of the statutes takes effect
 15 on the day after publication.

16 (END)

of the statutes, the amendment of section 85.05, the renumbering of section 85.05

D-Note

of the statutes, the renumbering of section 85.05 of the statutes, the amendment of section 85.05 (title) of the statutes, and the creation of section 85.05(2)

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-4069/P1dn

ARG: *[Signature]*

Date

ATTN: Todd Stuart

Please review the attached draft carefully to ensure that it is consistent with your intent. As requested, the attached draft was prepared on an expedited basis and, while the draft is complete, it may need to be reworked to some extent to meet your intent. The subject matter of the draft is complex, and, given the significance of the program at issue, I would recommend a thorough review by DOT, the Fiscal Bureau, or the Audit Bureau.

Aaron R. Gary
Legislative Attorney
Phone: (608) 261-6926
E-mail: aaron.gary@legis.state.wi.us

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-4069/P1dn
ARG:kjf:pg

February 3, 2004

ATTN: Todd Stuart

Please review the attached draft carefully to ensure that it is consistent with your intent. As requested, the attached draft was prepared on an expedited basis and, while the draft is complete, it may need to be reworked to some extent to meet your intent. The subject matter of the draft is complex, and, given the significance of the program at issue, I would recommend a thorough review by DOT, the Fiscal Bureau, or the Audit Bureau.

Aaron R. Gary
Legislative Attorney
Phone: (608) 261-6926
E-mail: aaron.gary@legis.state.wi.us

2/4/04

File w/ Todd Stewart

- need "1" today

- only change at this time → make
semi-annual report an annual
report per e-mail

Gary, Aaron

From: Stuart, Todd
Sent: Wednesday, February 04, 2004 11:52 AM
To: Gary, Aaron
Subject: RE: major highway projects draft

Aaron:
I am still reviewing the draft. Looks good so far.

One change I would like to see that is different than the original drafting instructions. We have had feedback that semiannual reports might be a bit of overkill. So, instead mandate an **annual report** on complete expenditure information for all major highway projects to the Transportation Projects Commission and the Legislature.

I will see what kind of timeframe we are on. I think Cowles wants to get this out by the end of the week for cosponsorship.

-----Original Message-----

From: Gary, Aaron
Sent: Wednesday, February 04, 2004 9:42 AM
To: Stuart, Todd
Subject: major highway projects draft

<< File: 03-4069/P1 >> << File: 03-4069/P1dn >>
Todd,

Attached is a .pdf copy of the draft and drafter's note. A hard copy will follow today. Let me know if you would like any changes. As I indicate in the drafter's note, the draft is complete and workable but might be more polished if I had had more time to cogitate and fine-tune. Aaron

Aaron R. Gary
Legislative Attorney
Legislative Reference Bureau
608.261.6926 (voice)
608.264.6948 (fax)
aaron.gary@legis.state.wi.us



State of Wisconsin
2003 - 2004 LEGISLATURE

TODAY
wanted
ASAP

LRB-4069/21 /

ARG:kjf:bw

RMR

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

Reger

1 AN ACT *to renumber* 13.489 (1) and 85.05; *to renumber and amend* 13.489
2 (1m) (a) and 13.489 (2); *to amend* 13.489 (4) (a) 1. a., 13.489 (4) (a) 1. b. and
3 85.05 (title); and *to create* 13.489 (2) (a) and (b), 13.489 (2m), 84.013 (10) to (12)
4 and 85.05 (2) of the statutes; **relating to:** major highway projects and the
5 Transportation Projects Commission.

Analysis by the Legislative Reference Bureau

Current law generally requires that any major highway project, unlike other construction projects undertaken by the Department of Transportation (DOT), receive the approval of the Transportation Projects Commission (TPC) and the legislature before the project may be constructed. With limited exceptions, a major highway project is a project having a total cost of more than \$5,000,000 and involving construction of a new highway 2.5 miles or more in length; reconstruction or reconditioning of an existing highway that relocates at least 2.5 miles of the highway or adds one or more lanes five miles or more in length to the highway; or improvement of an existing multilane divided highway to freeway standards.

Under current law, DOT submits a list of potential major highway projects to the TPC for study and recommendation by the TPC. DOT may not begin preparing an environmental impact statement (EIS) or environmental assessment (EA) for a potential major highway project without TPC approval. Although DOT generally may not begin construction of a major highway project without the approval of the TPC and the legislature, the legislature may enumerate and approve the

construction of major highway projects without approval by the TPC. The TPC may not recommend approval of a major highway project unless the TPC determines that there is sufficient funding to begin construction of the project within six years.

This bill requires DOT to report to the TPC each major highway project for which a draft EIS or EA or final EIS or EA has been completed, and prohibits the TPC from recommending approval of any major highway project prior to the completion by DOT of a final EIS or EA approved by the Federal Highway Administration.

The bill also imposes numerous financial reporting requirements on DOT for all potential major highway projects. The bill requires DOT to establish procedures for identifying, tracking, recording, and maintaining expenditure information on all potential major highway projects, and requires comprehensive, standardized, and consistently prepared financial and project cost information for all expenditures associated with each project. The bill requires DOT to compile and maintain complete and itemized project cost information, including both cost estimates and actual costs, for all potential major highway projects. Any draft or final EIS or EA prepared by DOT must include project cost information prepared in accordance with these requirements. The bill also requires DOT to establish procedures for determining, and to determine, that portion of each project's construction costs attributable to the cost of compliance with state and federal environmental laws.

The bill requires DOT to report to the TPC ~~every six months~~ ^{annually} for each potential major highway project and for the major highway project program as a whole, all project cost information, and specified other project information, on a cumulative basis and on an updated basis as compared to the prior reporting period.

The provisions of the bill generally become effective on January 1, 2005 and apply to potential major highway projects initiated for consideration by the TPC after that date.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 13.489 (1) of the statutes is renumbered 13.489 (1g).

2 **SECTION 2.** 13.489 (1m) (a) of the statutes is renumbered 13.489 (1c), and
3 13.489 (1c) (intro.), as renumbered, is amended to read:

4 13.489 (1c) (intro.) In this ~~subsection~~ section:

5 **SECTION 3.** 13.489 (2) of the statutes is renumbered 13.489 (2) (intro.) and
6 amended to read:

1 13.489 (2) DEPARTMENT TO REPORT PROPOSED PROJECTS. (intro.) Subject to s.
2 85.05 (1), the department of transportation shall report to the commission not later
3 than September 15 of each even-numbered year and at such other times as required
4 under s. 84.013 (6) concerning its recommendations for adjustments in the major
5 highway projects program under s. 84.013. Any report submitted under this
6 subsection shall include all of the following:

7 **SECTION 4.** 13.489 (2) (a) and (b) of the statutes are created to read:

8 13.489 (2) (a) A list of potential major highway projects approved under sub.
9 (1m) (d) for which the department has completed draft environmental impact
10 statements or environmental assessments and for which the department
11 recommends approval to proceed with preparation of a final environmental impact
12 statement or environmental assessment.

13 (b) A list of potential major highway projects approved under sub. (2m) for
14 which the department has completed final environmental impact statements or
15 environmental assessments and obtained approval from the federal highway
16 administration and for which the department recommends approval under sub. (4).

17 **SECTION 5.** 13.489 (2m) of the statutes is created to read:

18 13.489 (2m) APPROVAL OF DRAFT ENVIRONMENTAL STUDIES. In conducting its
19 review under sub. (4) of reports submitted as provided by sub. (2), the commission's
20 report under sub. (4) shall notify the department of projects specified in sub. (2) (a)
21 that the commission approves for preparation of a final environmental impact
22 statement or environmental assessment or shall notify the department that it does
23 not approve any project specified in sub. (2) (a) for preparation of a final
24 environmental impact statement or environmental assessment. The department of
25 transportation may not proceed with preparation of a final environmental impact

1 statement or environmental assessment unless the commission notifies the
2 department that the project is approved under this subsection.

3 **SECTION 6.** 13.489 (4) (a) 1. a. of the statutes is amended to read:

4 13.489 (4) (a) 1. a. The commission determines that, within 6 years after the
5 first July 1 after the date on which the commission recommends approval of the
6 project, construction will be commenced on all projects enumerated under s. 84.013
7 (3) and on the project recommended for approval and that the department has
8 completed a final environmental impact statement or environmental assessment
9 and obtained approval for the project from the federal highway administration.

10 **SECTION 7.** 13.489 (4) (a) 1. b. of the statutes is amended to read:

11 13.489 (4) (a) 1. b. The report recommending approval of the project is
12 accompanied by a financing proposal that, if implemented, would provide funding in
13 an amount sufficient to ensure that construction will commence on all projects
14 enumerated under s. 84.013 (3) and on the project within 6 years after the first July
15 1 after the date on which the commission recommends approval of the project and
16 the commission determines that the department has completed a final
17 environmental impact statement or environmental assessment and obtained
18 approval for the project from the federal highway administration.

19 **SECTION 8.** 84.013 (10) to (12) of the statutes are created to read:

20 84.013 (10) (a) For each potential major highway project submitted by the
21 department to the transportation projects committee for consideration at any time
22 under s. 13.489 and each major highway project enumerated under sub. (3) or
23 approved under sub. (6), the department shall compile and maintain, in accordance
24 with the procedures established under s. 85.05 (2), complete financial data for all

1 project costs that identifies both total project costs and itemized project costs, which
2 itemization shall include costs associated with all of the following:

- 3 1. Construction and construction contracts.
- 4 2. Design work.
- 5 3. Construction engineering.
- 6 4. Acquisition of interests in real estate, including rights-of-way, correlated to
7 type of interest and number of acres acquired.
- 8 5. Utility relocation.
- 9 6. Home and business relocation.
- 10 7. Environmental compliance, other than costs specified under par. (c) 1.,
11 including consultant contracts, services of state agencies, and staffing.
- 12 8. Administration.

13 (b) The financial data required under par. (a) shall include, for each item of
14 itemized cost, both the department's cost estimate and, if any funds have been
15 expended, the department's actual expenditure.

16 (c) For each project specified in par. (a), the department shall compile and
17 maintain, in accordance with the procedures established under s. 85.05 (2), complete
18 financial data related to all of the following:

- 19 1. The department's determination, in accordance with procedures established
20 under s. 85.05 (2) (b), of that portion of costs specified under par. (a) 1. that are
21 attributable to the cost of compliance with state and federal environmental laws.
- 22 2. The department's estimate of necessary contingency costs for the project.
- 23 3. The department's estimate of anticipated future highway maintenance costs
24 associated with the project.

1 (d) For each project for which financial data is required under this subsection,
2 the department shall compile and maintain, in accordance with the procedures
3 established under s. 85.05 (2), the financial data for every phase of the project, and
4 shall retain the financial data for not less than 10 years after the discontinuance of
5 any project or, if construction of the project is completed, for the duration of the life
6 of the highway.

7 (11) Any draft or final environmental impact statement or environmental
8 assessment prepared by the department in connection with a project specified under
9 sub. (10) (a) shall, for each project alternative identified in the environmental impact
10 statement or environmental assessment, include all financial data specified in sub.
11 (10), prepared in accordance with procedures specified in s. 85.05 (2).

12 (12) (a) By January 1, 2005, and ^{annually} ~~every 6 months~~ thereafter, the department
13 shall report to the transportation projects commission, for each project specified in
14 sub. (10) (a), all of the following:

15 1. All information specified in sub. (10).
16 2. Any significant change in concept, design, or scope of the project.
17 3. With respect to any project for which the department has entered into any
18 construction contract, any contract change order or other amendment to the
19 contract, the reason for the change order or amendment, and the project cost impact
20 of the change order or amendment.

21 4. With respect to any project enumerated under sub. (3) or approved under
22 sub. (6) for which the department has separated a portion of the project or combined
23 a portion of the project with another project, a description of the change in the project
24 and, in addition to the information under subd. 1., all information specified in sub.
25 (10) for the project calculated as if no such change had occurred.

1 (b) The report under par. (a) shall include both cumulative project information
2 and project information for the most recent ^{year} ~~month~~ that is compared to project
3 information included in the prior reporting period.

4 (c) The report under par. (a) shall include aggregated and comprehensive
5 project expenditures for each project specified in sub. (10) (a) and for the entire major
6 highway projects development program.

7 **SECTION 9.** 85.05 (title) of the statutes is amended to read:

8 **85.05** (title) ~~Evaluation of Procedures for proposed major highway~~
9 **projects.**

10 **SECTION 10.** 85.05 of the statutes is renumbered 85.05 (1).

11 **SECTION 11.** 85.05 (2) of the statutes is created to read:

12 85.05 (2) (a) The department shall establish procedures for identifying,
13 tracking, recording, and maintaining expenditure information on all potential major
14 highway projects submitted by the department to the transportation projects
15 committee for consideration at any time under s. 13.489 and on all major highway
16 projects enumerated under s. 84.013 (3) or approved under s. 84.013 (6). The
17 department's procedures shall require comprehensive, standardized, and
18 consistently prepared financial and project cost information for all expenditures
19 associated with each project and shall require that the same procedures be followed
20 on every project. These procedures shall be used for the development of project cost
21 estimates for each proposed highway project, including all design alternatives for the
22 project, and shall require that all anticipated project costs be included in any total
23 project cost estimate.

24 (b) For each project specified under par. (a), the department shall establish
25 procedures for determining that portion of expenditures, within each bid item of each

1 construction contract, attributable to the cost of compliance with state and federal
2 environmental laws. The department shall consult with the department of natural
3 resources and construction contractors in establishing procedures under this
4 paragraph. Each construction contract entered into by the department shall require
5 the contractor to cooperate with the department, and provide information the
6 department determines to be necessary, to implement the procedures established
7 under this paragraph.

8 **SECTION 12. Initial applicability.**

9 (1) This act first applies to projects first submitted to the transportation
10 projects commission for consideration under section 13.489 of the statutes on the
11 effective date of this subsection.

12 (2) The treatment of section 85.05 (2) (b) of the statutes first applies to contracts
13 entered into on the effective date of this subsection.

14 **SECTION 13. Effective dates.** This act takes effect on January 1, 2005, except
15 as follows:

16 (1) The treatment of section 84.013 (12) of the statutes, the renumbering of
17 section 85.05 of the statutes, the amendment of section 85.05 (title) of the statutes,
18 and the creation of section 85.05 (2) of the statutes take effect on the day after
19 publication.

20 (END)