

2015 DRAFTING REQUEST

Bill

Received: **1/2/2015** Received By: **mduchek**
Wanted: **As time permits** Same as LRB:
For: **Administration-Budget** By/Representing: **Bong**
May Contact: Drafter: **mduchek**
Subject: **Eminent Domain - reloc. benefits** Addl. Drafters:
Extra Copies:

Submit via email: **YES**
Requester's email:
Carbon copy (CC) to: **sbostatlanguage@webapps.wi.gov**

Pre Topic:

DOA:.....Bong, BB0392 -

Topic:

Relocation Assistance Benefits

Instructions:

See attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	mduchek 1/9/2015			_____			
/P1		kfollett 1/15/2015	rschluet 1/15/2015	_____	srose 1/15/2015		State S&L

FE Sent For:

<END>

2015 DRAFTING REQUEST

Bill

Received: **1/2/2015** Received By: **mduchek**
Wanted: **As time permits** Same as LRB:
For: **Administration-Budget** By/Representing: **Bong**
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Carbon copy (CC) to: **sbostatlanguage@webapps.wi.gov** ✓

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Topic:

Relocation Assistance Benefits ✓

Instructions:

See attached

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/?	mduchek	1/11/15 JP		1/13/15 JM	_____		

FE Sent For:

<END>

Duchek, Michael

From: Champagne, Rick
Sent: Friday, January 02, 2015 3:19 PM
To: Duchek, Michael
Cc: Hanaman, Cathlene
Subject: FW: Statutory Language Drafting Request - BB0392

Mike, are you ch. 32 attorney?

From: CathleneH [mailto:cathleneh@gmail.com]
Sent: Friday, January 02, 2015 11:53 AM
To: Champagne, Rick
Subject: Fwd: Statutory Language Drafting Request - BB0392

Sent from my iPhone

Begin forwarded message:

From: <SashaE.Bong@wisconsin.gov>
Date: January 2, 2015 at 11:05:44 AM AST
To: <cathlene.hanaman@legis.wisconsin.gov>
Cc: <Jennifer.Kraus@wisconsin.gov>, <SashaE.Bong@wisconsin.gov>, <Christopher.Connor@wisconsin.gov>
Subject: Statutory Language Drafting Request - BB0392

Biennial Budget: 2015-17

DOA Tracking Code: BB0392

Topic: Relocation Assistance Benefits

SBO Team: GGCF

SBO Analyst: Bong, Sasha - DOA
Phone: (608) 266-5468
E-mail: SashaE.Bong@wisconsin.gov

Agency Acronym: DOA

Agency Number: 505

Priority: High

Intent:

The intent of the request is to modify current law so that if relocation assistance benefit amounts differ between state and federal law, individuals affected by a federally-funded project could receive benefit amounts up to the maximum amounts allowed under federal

regulations. Relocation benefit amounts for individuals affected by state projects would remain unchanged.

For payments in lieu of actual and reasonable moving expenses for a business, the benefit amount would be the base state benefit under s. 32.19(3)(b)(2) [no less than \$1,000 and no more than \$20,000] plus a supplemental amount equal to the difference between 32.19(3)(b)(2) and 49 CFR s. 24.305.

For business reestablishment, the benefit amount would be the base state benefit under s. 32.19(3)(a) [no more than \$10,000] and 49 CFR s. 24.304.

Attachments: False

Please send completed drafts to SBOSatlanguage@webapps.wi.gov

Duchek, Michael

From: Bong, Sasha E - DOA <SashaE.Bong@wisconsin.gov>
Sent: Friday, January 09, 2015 1:07 PM
To: Duchek, Michael
Subject: FW: Draft update

Hi Mike,

Per our phone conversation, please see the email string below.

To summarize, the more general language you proposed is ok. DOT recommends adding federal regulations to the proposed language and also applying your suggested language to federal replacement housing payments.

Please let me know if you have any questions.

Thanks!

Sasha Bong
Executive Policy and Budget Analyst
Department of Administration, State Budget Office
(608) 266-5468
SashaE.Bong@wisconsin.gov

From: Nilsen, Paul - DOT
Sent: Thursday, January 08, 2015 8:43 AM
To: Bong, Sasha E - DOA
Subject: RE: Draft update

Thank you!

From: Bong, Sasha E - DOA
Sent: Thursday, January 08, 2015 8:20 AM
To: Nilsen, Paul - DOT; Walbrun, Cassandra - DOT; Matthiesen, Tanace - DOT; Mott, Amanda L - DOA; Ramsey, William H - DOA
Cc: Kraus, Jennifer - DOA
Subject: RE: Draft update

Thank you all for your input! I will forward both responses to LRB.

I will take back the more general changes to benefit amounts, but the other changes required by MAP-21 can be pursued in separate legislation, in consultation with the Governor's Office.

From: Nilsen, Paul - DOT
Sent: Wednesday, January 07, 2015 4:31 PM
To: Walbrun, Cassandra - DOT; Bong, Sasha E - DOA; Matthiesen, Tanace - DOT; Mott, Amanda L - DOA; Ramsey, William H - DOA

Cc: Kraus, Jennifer - DOA
Subject: RE: Draft update

I agree with you, Cassandra. It's a small addition. Thanks, Sasha, for pointing it out!

(I understand there are several other changes to state law required by MAP-21 and previous federal legislation. Will those changes be handled by DOA as routine, non-budget legislation?)

Paul E. Nilsen
Assistant General Counsel
Wisconsin Department of Transportation
Paul.Nilsen@dot.wi.gov
(608) 261-0126

From: Walbrun, Cassandra - DOT
Sent: Wednesday, January 07, 2015 4:29 PM
To: Bong, Sasha E - DOA; Matthiesen, Tanace - DOT; Nilsen, Paul - DOT; Mott, Amanda L - DOA; Ramsey, William H - DOA
Cc: Kraus, Jennifer - DOA
Subject: RE: Draft update

Sasha-

It is my opinion that the language proposed by LRB would not cover the federal replacement housing payment increase to \$31,000 which are limited by state statutes under s. 32.19(4) to \$25,000.

As Michael asks below, under this drafting premise, to specifically cover the federal replacement housing payment increase, LRB may wish to consider adding duplicated language as proposed under 32.19(ah)section. Another option would be to include the combined provision into a new section, such as s. 32.19 (4)(L) to cover the business benefit and replacement housing benefit increases.

Paul, you may wish to weigh in on this, as I am not an attorney who could address the feasibility of this provision.

Kassandra Walbrun, AICP
WisDOT Statewide Relocation Facilitator
608-266-2369

From: Bong, Sasha E - DOA
Sent: Wednesday, January 07, 2015 4:11 PM
To: Walbrun, Cassandra - DOT; Matthiesen, Tanace - DOT; Nilsen, Paul - DOT; Mott, Amanda L - DOA; Ramsey, William H - DOA
Cc: Kraus, Jennifer - DOA
Subject: RE: Draft update

Thanks for your response!

Mike also asked about payments for replacement housing under s. 32.19(4). Is this something that also needs to be changed or does his paragraph suffice?

From: Walbrun, Cassandra - DOT
Sent: Wednesday, January 07, 2015 4:00 PM
To: Bong, Sasha E - DOA; Matthiesen, Tanace - DOT; Nilsen, Paul - DOT; Mott, Amanda L - DOA; Ramsey, William H -

DOA
Cc: Kraus, Jennifer - DOA
Subject: RE: Draft update

Hello Sasha:

Paul, Tanace and I have reviewed the LRB draft and Paul summarized our discussion. See below for Paul's summary of our recommendation.

If you have any questions or need further language review, please let us know.

Thank you,
Kassandra Walbrun
WisDOT Statewide Relocation Facilitator
608-266-2369

From Paul Nilsen, WisDOT- OGC:

Revised per our discussion:

32.19 (3) (d) *Federally financed projects*. Notwithstanding pars. (a) to (c), in the case of a program or project receiving federal financial assistance, a condemnor shall, in addition to any payment under pars. (a) to (c), make any additional payment required to comply with the federal Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, 42 USC 4601 to 4655 and regulations adopted thereunder.

I suggest including a reference to regulations so that we can make payments under the regulations, if they vary from the US Code amounts. However, LRB thinks it is unnecessary to refer to 'regulations adopted under the Uniform Act'. If the reference to regulations is omitted from the statute (as being unnecessary), please ask the drafter to include in the drafting file: 1) our request to be able to make increased payment amounts under federal regulations adopted under the Uniform Act (under MAP-21, SECTION 1514(d)); and 2) LRB's interpretation below that the draft would allow payments specified under the corresponding regulations, even though the statute refers only to the US Code.

Paul E. Nilsen Assistant General Counsel
Wisconsin Department of Transportation
Paul.Nilsen@dot.wi.gov
(608) 261-0126

From: Bong, Sasha E - DOA
Sent: Wednesday, January 07, 2015 2:01 PM
To: Walbrun, Kassandra - DOT; Matthiesen, Tanace - DOT; Nilsen, Paul - DOT; Mott, Amanda L - DOA; Ramsey, William H - DOA
Cc: Kraus, Jennifer - DOA
Subject: FW: Draft update

Hi all,

Please see the response below from LRB. He and I have had various conversations about how to approach this. We briefed on a much narrower scope – only two relocation assistance benefit amounts – however, if Mike's suggestion below also works for DOT's immediate needs as well as if and when additional federal changes are enacted, we could take this back to the Governor's Office for review.

If all of you could please review and provide your input no later than close of business today, it would be greatly appreciated.

Thanks!

Sasha Bong
Executive Policy and Budget Analyst
Department of Administration, State Budget Office
(608) 266-5468
SashaE.Bong@wisconsin.gov

From: Duchek, Michael [<mailto:Michael.Duchek@legis.wisconsin.gov>]
Sent: Wednesday, January 07, 2015 1:43 PM
To: Bong, Sasha E - DOA
Subject: RE: Draft update

Sasha,

First of all, sorry I had missed the email string below when I called yesterday. So my apologies, and I've had a chance to read it and I understand things better now.

So, I thought before getting this out it might be worth it just to send you what I thought might be a solution and see if you think it would be within the scope of the decision (or not). My idea was to create s. 32.19 (3) (d) to read like this:

32.19 (3) (d) *Federally financed projects.* Notwithstanding pars. (a) to (c), in the case of a program or project receiving federal financial assistance, a condemnor shall, in addition to any payment under pars. (a) to (c), make any additional payment required to comply with the federal Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, 42 USC 4601 to 4655.

This would eliminate the need to tie specific provisions in state law to specific provisions in the federal CFR, and if the CFR provisions were later changed or updated, this would still work (the regs. in the CFR as I understand it are all promulgated under the authority of the federal "Uniform Act" cited in the language, so I think that reference would cover *both* the Uniform Act itself and any regulations thereunder).

I was also wondering if there is any issue with payments for replacement housing under s. 32.19 (4). Does that need to be addressed at all too?

What do you think? I'm happy to discuss further with you, Paul, or anyone else.

Mike Duchek
Legislative Attorney
Wisconsin Legislative Reference Bureau
(608) 266-0130

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

From: Bong, Sasha E - DOA [<mailto:SashaE.Bong@wisconsin.gov>]

Sent: Tuesday, January 06, 2015 1:13 PM

To: Duchek, Michael

Subject: RE: Draft update

Hi Mike,

Per our phone conversation, below is a request from DOT's chief legal counsel concerning the provisions to be cross-referenced in the relocation assistance request. Also, I've attached a recommendation paper that was provided to me as background for the request. Not all changes referenced in the paper are within the scope of this request.

If you need any additional information, please let me know.

Thanks!

Sasha Bong

Executive Policy and Budget Analyst

Department of Administration, State Budget Office

(608) 266-5468

SashaE.Bong@wisconsin.gov

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

From: Nilsen, Paul - DOT

Sent: Monday, January 05, 2015 9:12 AM

To: Bong, Sasha E - DOA

Cc: Matthiesen, Tanace - DOT

Subject: RE: Draft update

Hi Sasha,

As we discussed, the USC language has raised the max rate for moving payments in lieu of actual expenses from \$20K to \$40k, but the CFR still has the former rate of \$20K. To allow DOT to make the payment authorized under USC, just add to your proposal below from January 02, 2015 8:38 AM:

"For payments in lieu of actual and reasonable moving expenses for a business, the benefit amount would be the base state benefit under s. 32.19(3)(b)(2) [no less than \$1,000 and no more than \$20,000] plus a supplemental amount equal to the difference between 32.19(3)(b)(2) and 49 CFR s. 24.305 <insert:, or \$20,000, whichever is greater>."

I put my inserted language in <> because I can't seem to use underscores. This additional language I suggest would allow an immediate supplemental payment of \$20K (to raise the total payment to \$40k, as provided in USC), but would also allow that supplemental payment to increase in the event the CFR ever increases the payment in excess of the current limit of \$40K.

In terms of drafting instructions to LRB, I suggest asking them to "authorize a supplemental payment under 32.19(3)(a) that is the greater of the difference between the amounts shown in 32.19(3)(a) and either: a) the limits stated in USC (42 USC 4622(a)(4), as amended by MAP-21); or b) the amount authorized under 49 CFR 24.304."

and

"authorize supplemental payments under 32.19(3)(b)2. that is the greater of the difference between the amounts shown in 32.19(3)(b)2. and either: a) the limits stated in USC (42 USC 4622(c), as amended by MAP-21); or b) the amount authorized under 49 CFR 24.305."

--Paul

Paul E. Nilsen
Assistant General Counsel
Wisconsin Department of Transportation
Paul.Nilsen@dot.wi.gov
(608) 261-0126

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

From: Nilsen, Paul - DOT
Sent: Monday, January 05, 2015 8:41 AM
To: Bong, Sasha E - DOA
Subject: RE: Draft update

Hi Sasha,

Not exactly. MAP-21 changed the US Code, and increased the payments in lieu from the old \$1-\$20K to become \$1-\$40k. The CFR language at 49 CFR 24.305 does not appear to have increased from \$20k to \$40k, so the supplemental payment in the difference between 32.19(3)(b)2. And 49 CFR 24.305 would be \$0.

I'll call you.

--Paul

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

From: Bong, Sasha E - DOA
Sent: Monday, January 05, 2015 8:16 AM
To: Nilsen, Paul - DOT
Subject: RE: Draft update

Thanks for your input, Paul. To make sure I'm understanding your point - DOT is still bound by provisions of the congressional act (which I'm assuming already increased the two relocation benefit amounts this draft would modify under state law) even though federal regulations increasing the relocation benefit amounts have not yet been promulgated, correct?

If we are of the same understanding, then I will send this to the LRB drafter to see what his or her thoughts are.

Sasha Bong
Executive Policy and Budget Analyst
Department of Administration, State Budget Office
(608) 266-5468
SashaE.Bong@wisconsin.gov

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

From: Nilsen, Paul - DOT
Sent: Friday, January 02, 2015 11:21 AM

To: Bong, Sasha E - DOA
Subject: RE: Draft update

Hi Sasha,
Please feel free to call me if you like. My email message is kind of wordy.
--Paul

Paul E. Nilsen
Assistant General Counsel
Wisconsin Department of Transportation
Paul.Nilsen@dot.wi.gov
(608) 261-0126

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

From: Matthiesen, Tanace - DOT
Sent: Friday, January 02, 2015 10:56 AM
To: Bong, Sasha E - DOA
Cc: Nilsen, Paul - DOT; Walbrun, Cassandra - DOT; Mott, Amanda L - DOA; Ramsey, William H - DOA; Burkel, Rebecca - DOT
Subject: FW: Draft update

Tanace Matthiesen
Section Chief,
Real Estate Appraisal, Relocation and Property Management
608 - 264 - 8716

From: Nilsen, Paul - DOT
Sent: Friday, January 02, 2015 10:14 AM
To: Matthiesen, Tanace - DOT
Cc: Walbrun, Cassandra - DOT
Subject: RE: Draft update

Hi Tanace,

Mechanically, the most recent CFR version available online at GPO (2013) does not appear to have promulgated the MAP-21 provisions yet (see attached pdf). The feds have the same issue we do, which is that MAP-21 changes congressional law but the USDOT (Or, HUD? I don't know which is the 'lead agency' for Uniform Relocation Assistance) then needs to promulgate a regulation. If we reference our supplemental payment to the federal regulation, as proposed by DOA, we will be unable to make supplemental payments required by MAP-21 until the federal agency adopts the congressional changes. If the DOA proposal were law today you still could not make any supplemental payment because the amounts at 32.19(3)(b)(2) are the same as those at 49 CFR 24.305. However, it looks like Congress has delegated authority to change relocation payment amounts to USDOT (or 'the lead agency'), so once the initial federal regulation is promulgated it looks like subsequent changes will be done by regulation, not by congressional law, so this could be a one-time delay, waiting only for the initial regulation; tying the supplemental payment to the CFR would allow us to change our payments with any subsequent changes to those regs:

SECTION 1514(d): "(d) ADJUSTMENT OF PAYMENTS.-The head of the lead agency may adjust, by regulation, the amounts of relocation payments provided under sections 202(a)(4), 202(c), 203(a), and 204(a) if the head of the lead agency determines that cost of living, inflation, or other factors indicate that the payments should be adjusted to meet the

policy objectives of this Act." (see page 477 of <http://www.gpo.gov/fdsys/pkg/BILLS-112s1813es/pdf/BILLS-112s1813es.pdf>)

So, the DOA proposal will still not allow us to make the supplemental payment until USDOT promulgates a federal regulation, but once the fed regulation does change we should be able to keep abreast of any subsequent changes to federal regs.

I think we might be better off tying the supplemental payments to "the amounts authorized under section 1514 of MAP-21 (P.L. 112-141, 126 stat. 405), as may be adjusted from time to time by federal regulation promulgated under MAP-21 section 213(d)" without referring to the specific CFR cite. That would seem to allow immediate supplemental payments of the amounts under MAP-21, with changes whenever federal regs are adopted.

I checked the federal register and could not find any rulemaking notices relating to 49 CFR 24.305. I don't know whether there is any effort to amend 49 CFR 24.305, or whether the congressional law is given effect notwithstanding the dollar amounts stated in the regulation, even without amending the CFR.

Feel free to forward this to DOA if you want to suggest that change.

Paul E. Nilsen
Assistant General Counsel
Wisconsin Department of Transportation
Paul.Nilsen@dot.wi.gov
(608) 261-0126

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

From: Matthiesen, Tanace - DOT
Sent: Friday, January 02, 2015 9:06 AM
To: Nilsen, Paul - DOT
Cc: Bong, Sasha E - DOA; Walbrun, Cassandra - DOT; Mott, Amanda L - DOA; Ramsey, William H - DOA
Subject: FW: Draft update

Paul, do you have any comments about the DOA proposal?

Tanace Matthiesen
Section Chief,
Real Estate Appraisal, Relocation and Property Management
608 - 264 - 8716

From: Bong, Sasha E - DOA
Sent: Friday, January 02, 2015 9:02 AM
To: Matthiesen, Tanace - DOT; Mott, Amanda L - DOA; Walbrun, Cassandra - DOT
Cc: Ramsey, William H - DOA
Subject: RE: Draft update

Excellent - I will send this over to LRB today. Please feel free to keep your office of general counsel in the loop, and if there are certain people in the office that would review the draft, please let me know their contact information so that I can also send a draft to them when it's ready.

Thanks!

Sasha Bong
Executive Policy and Budget Analyst
Department of Administration, State Budget Office
(608) 266-5468
SashaE.Bong@wisconsin.gov

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

From: Matthiesen, Tanace - DOT
Sent: Friday, January 02, 2015 8:56 AM
To: Bong, Sasha E - DOA; Mott, Amanda L - DOA; Walbrun, Cassandra - DOT
Cc: Ramsey, William H - DOA
Subject: RE: Draft update

Hi Sasha, Your intention to separate the federally -funded and the state-funded projects is what we need. I will leave comments on the exact amounts to Cassandra Walbrun, our relocation specialist. Also, we'd like to forward your email to our office of general counsel for their comments. Any concerns with us doing that?

Tanace Matthiesen
Section Chief,
Real Estate Appraisal, Relocation and Property Management
608 - 264 - 8716

From: Bong, Sasha E - DOA
Sent: Friday, January 02, 2015 8:38 AM
To: Mott, Amanda L - DOA; Matthiesen, Tanace - DOT; Walbrun, Cassandra - DOT
Cc: Ramsey, William H - DOA
Subject: Draft update

Hi all,

I wanted to give you a brief update on this - I didn't have a decision on this until right before the holidays, so I'm checking in with you before sending in the drafting request to make sure we're all on the same page and can resolve any issues beforehand.

The decision on this item was to maintain relocation benefit amounts under current law for state projects, but for federally funded projects, authorize an additional amount equal to the difference between any required federal benefit and the state benefit.

In terms of a drafting request, I would propose the following:

The intent of the request is to modify current law so that if relocation assistance benefit amounts differ between state and federal law, individuals affected by a federally-funded project could receive benefit amounts up to the maximum amounts allowed under federal regulations. Relocation benefit amounts for individuals affected by state projects would remain unchanged.

For payments in lieu of actual and reasonable moving expenses for a business, the benefit amount would be the base state benefit under s. 32.19(3)(b)(2) [no less than \$1,000 and no more than \$20,000] plus a supplemental amount equal to the difference between 32.19(3)(b)(2) and 49 CFR s. 24.305.

For business reestablishment, the benefit amount would be the base state benefit under s. 32.19(3)(a) [no more than \$10,000] and 49 CFR s. 24.304.

Please let me know of any issues as soon as possible.

Thanks,

Sasha Bong
Executive Policy and Budget Analyst
Department of Administration, State Budget Office
(608) 266-5468
SashaE.Bong@wisconsin.gov

From: Mott, Amanda L - DOA
Sent: Monday, December 22, 2014 12:25 PM
To: Matthiesen, Tanace - DOT; Walbrun, Cassandra - DOT
Cc: Bong, Sasha E - DOA
Subject: Email

Hi Tanace and Cassandra,

I know you are interested in having a call after the holidays about what we are putting in the budget for relocation. Sasha Bong has been working on this and once she gets a draft together she will be sending it my way and likely share it with you as well. This draft will be for informational review only. We can talk further about the details after the holidays.

The email I just sent with your email addresses on it was for Sasha's information. I forgot to include an explanation in that email as to why I was sending it. This email was to clarify.

Thank you and have a wonderful holiday. I look forward to talking with you in the new year!

Thank you,
mandy

Amanda Mott
Energy Projects Specialist
101 E. Wilson St., 6th Fl.
PO Box 7868
Madison, WI 53707-7868
Direct: (608) 261-8404
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Fax: (608) 261-8427
Email: amanda.mott@wisconsin.gov<<mailto:amanda.mott@wisconsin.gov>>
Web: <http://energyindependence.wi.gov>

**WISCONSIN ADMINISTRATIVE CODE ADM 92 “RELOCATION ASSISTANCE”:
A REPORT TO SECRETARY MIKE HUEBSCH**

Executive Summary

This report aims to provide the Wisconsin Department of Administration (DOA) Secretary, Mike Huebsch, information that will help him determine whether to revise Wisconsin ADM 92 – Relocation Assistance.

Issue – Should Secretary Huebsch open up ADM 92, the Relocation Assistance Program, for revision?

The DOA regulates the Wisconsin relocation program and recently convened a stakeholder group to review the impact of federal relocation benefit changes (effective October 2014) on this program. In order to determine whether it should recommend that Secretary Huebsch open up ADM 92 for revisions, the group looked closely at how these federal changes will impact Wisconsin agencies responsible for implementing federal and state relocation programs.¹

Answer – Yes, Secretary Huebsch should open up ADM 92 for revision.

The work group recommends that Secretary Huebsch open up ADM 92 for revisions for several reasons, with the most important being the following: (1) Wisconsin has not updated the relocation provisions in 17 years; and (2) Inconsistencies between the state and federal relocation programs pose a risk of losing funds associated with federally funded projects. The Wisconsin relocation program aims to ensure that every displacee resulting from a public project in Wisconsin is treated uniformly. By maintaining existing program benefits at the state level while the federal programs reflects substantive increases, relocatees will not be treated uniformly across the state.

Short Explanation

The majority (86 percent) of Wisconsin-based relocations are a result of federally-funded projects. Agencies providing relocation benefits associated with federally-funded projects must comply with both state and federal relocation program provisions. Federal relocation laws are being revised with the relocation benefit changes effective October 2014, followed by more substantive federal code changes within the next year or two. Once effective, many Wisconsin relocation benefit amounts will differ from the federal provisions. The main concern is with state benefit amounts that will be LOWER than federal benefit amounts after the changes are implemented.

The Wisconsin Department of Transportation (WisDOT) is responsible for overseeing many relocations resulting from federally-funded projects and therefore must comply with both federal and state relocation provisions. There is risk to the state when these provisions differ, as compliance with both federal and state may be difficult. If WisDOT (or any other agency in a similar position) is found non-compliant by the USDOT with federal provisions, the state risks losing federal project funds. For WisDOT, the federal funds are a significant source of funding for highway projects. Alternatively, if the agency does not follow state provisions, it risks being tried in Wisconsin court, where Wisconsin relocation provisions will apply. Either way, the agency is at risk for noncompliance.

Options for Addressing the Insufficiencies in ADM 92

The group provides five options for the Secretary’s consideration in addressing ADM 92’s insufficiencies:

1. Maintain state relocation provisions (Stakeholder group does not recommend this option.);
2. Update state benefit amounts to meet new federal benefit amounts, where higher;
3. Update state benefit amounts to meet new federal benefit amounts, where higher and update some, but not all, procedural differences to match federal procedures;
4. Update state benefit amounts and procedures to meet the new, higher federal benefit amounts. Maintain higher benefit amounts currently in state provisions, as well as less stringent procedural requirements; and
5. Add a provision to state code that allows agencies implementing federally funded projects in Wisconsin to follow federal Uniform Act and federal code only.

¹ DOA’s Working Group - Members of this group included Jack Sanderson (DOA), Stan Kaitfors (DOA), Tanace Matthiesen (WisDOT), Cassandra Walbrun (WisDOT), Curt Witynski (League of Wisconsin Municipalities), Reg Draheim (a relocation consultant with Draheim Company, Inc.), and Dan Sande (We Energies)

Background and Introduction

Nearly 200 relocations occur every year in Wisconsin, most of which are the result of federally-funded state highway projects and carried out by WisDOT. The others are solely state funded and the associated relocation plans are overseen by DOA. As a condition of accepting federal project funds, agencies are required to abide by all federal laws and codes or risk losing federal dollars. WisDOT receives 25 percent of its total revenues from federal transportation funds. Federal funds provide 40 percent of the total highway project funds and 53 percent of all local road and bridge funding in Wisconsin.² Federal funds are an important source for sustaining the highway program both on state highways but also within local municipalities.

Wisconsin's relocation assistance benefits, in the past, have generally been more substantial than federal benefits. However, Congress recently passed several federal relocation benefit changes (effective October 2014) that, in several circumstances, will surpass Wisconsin's benefits.³ Additionally, impending procedural federal code changes will likely exacerbate the inconsistencies between the state and federal programs. These inconsistencies provide significant challenges for WisDOT and other agencies using federal funds in projects, including:

- Staff and consultants working with displacees are often unsure how to appropriately apply the state and federal provisions when they are inconsistent.
- State law requires agencies provide relocatees with verbal and written information, including a state brochure on their rights and eligible benefits under state laws and codes. The brochure does not include federal relocation laws and benefit information. Therefore, agencies with federal funds must also provide federal benefit information. Many displacees receiving this information find it confusing and inconsistent.
- When WisDOT is faced with litigation in Wisconsin Circuit Court, only the state provisions apply, meaning WisDOT is at risk of violating state law if it had followed the federal code.
- If WisDOT follows the state code instead of the federal, and the USDOT determines the conflict cannot be resolved, the state risks losing federal highway project funds.

This report reviews the pending federal relocation benefit changes and the impact on agencies implementing both federal and state relocation programs. Background information, data, and differing provisions in federal and state relocation programs are provided in this report. This information is intended to assist the DOA Secretary in determining whether to revise ADM 92.

What is Relocation Assistance?

The U.S. Constitution, federal and Wisconsin laws convey property rights known as eminent domain.⁴ Eminent domain is defined as the right of government and others under s. 32.02, Stats.,⁵ to permit a taking of private property for a public purpose with payment of just compensation.⁶ Eminent domain is most commonly associated with infrastructure projects such as roads, storm water and other public works projects. While property owners affected by public projects may be required to relinquish their property, eminent domain provides protections for those affected parties.

Additional benefits are provided under both federal and Wisconsin laws to persons and businesses required to relocate as part of a public project. Relocation benefits were first provided under the federal law, *Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970*.⁷ Subsequently, Wisconsin's Eminent Domain Chapter identifies state benefits for any public project,⁸ as codified in ADM 92.⁹

² Includes the current biennium. See <http://www.dot.wisconsin.gov/about/docs/trends2012-13final.pdf>.

³ Appendix A provides a table with the provisions of the state and federal relocation programs, and the pending MAP-21 changes to the benefit amounts.

⁴ See <https://docs.legis.wisconsin.gov/statutes/statutes/32>.

⁵ See <https://docs.legis.wisconsin.gov/statutes/statutes/32/1/02>

⁶ See http://docs.legis.wisconsin.gov/code/admin_code/adm/92/1/01/17?down=1.

⁷, See Pub. L. 91-646, 84 Stat. 1894; 42 U.S. C. 4601 *et seq.*, as codified in Title 49 CFR Part 24 available at http://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title49/49cfr24_main_02.tpl

⁸ <https://docs.legis.wisconsin.gov/statutes/statutes/32/1/19>

⁹ https://docs.legis.wisconsin.gov/code/admin_code/adm/92

Background on State and Federal Relocation Laws

1968 Federal Highway Act

As a condition of receiving federal highway funds, the 1968 federal Highway Act required states to adopt enabling legislation granting uniform relocation benefits to persons displaced by highway projects. The requirement set the minimum relocation benefit levels (and procedures) with which agencies implementing federally-funded highway projects must comply. States have the ability to provide different and/or additional relocation benefits (and procedures) for non-federally funded projects causing displacement. Wisconsin implemented this enabling legislation in 1970.

Uniform Relocation and Real Property Acquisitions Policies Act of 1970

Not long after the 1968 law, Congress passed the Uniform Relocation and Real Property Acquisitions Policies Act of 1970 (Uniform Act), which became effective January 1971. The Uniform Act extended the 1968 relocation provisions beyond federal highway projects to include any federally-funded public project. The Uniform Act authorized USDOT to establish and maintain federal codes administering the Uniform Act.¹⁰

Wisconsin's State Relocation Law

Governor Knowles signed Wisconsin's state relocation law on July 1, 1970. This law¹¹ was modeled closely after the original provisions of the federal code.

Revisions to State and Federal Relocation Laws and Codes

Wisconsin Relocation Assistance

The most recent, content-related revision to ADM 92 occurred in 1997. In January 2012, ADM 92 was recodified (from COMM 92) due to agency reorganization; however no substantive changes were made to the rule.

Federal Relocation Assistance

In contrast to the state code, there have been several amendments to the federal code since 1997, with the most recent noted below:

- The Safe, Accountable, Flexible, Transportation Equity Authorization Act- A Legacy for Users (SAFETEA-LU) in 2005.
- Moving Ahead for Progress in the 21st Century (MAP-21) in 2012.

These changes in federal code provisions directly affect any Wisconsin local government or public agency¹² accepting federal dollars for public projects.

MAP-21 includes several relocation monetary benefit increases (for inflation) that ***will become effective*** on October 1, 2014. MAP-21 also authorized USDOT to make procedural updates to the federal code, but those changes have not yet been proposed.

Relocation Programs in Other States

In contrast to Wisconsin, several other states drafted their relocation programs to authorize the federal code without reiterating the language specifically in statute. (COMMENT: In the above section, we say Wisconsin mirrored the federal language, but the point of difference is that Wisconsin essentially codified every word, whereas the other states authorized the federal code.) Nineteen states include added benefits above and beyond what is allowable under the federal code. Common additions include increased benefit amounts for business re-establishment payments. For example, Minnesota's Relocation Assistance Program authorizes the federal code, but also provides a few additional relocation benefits including increased business re-establishment payments.¹³ Only three of these states, however, have procedural code requirements that differ from the federal Uniform Act.¹⁴ Wisconsin has many differences and is the only state in the country to have a replacement business payment.

¹⁰ See U.S.C. 49 CFR Part 24.

¹¹ Over the years this program has been codified under different Wisconsin codes, the current being ADM 92.

¹² e.g. cities/villages/towns/counties, school districts, Wisconsin Departments of Transportation, Natural Resources, other state agencies

¹³ See Appendix B for Minnesota's statutory language.

¹⁴ See http://www.fhwa.dot.gov/real_estate/publications/business_relocation_assistance/final_report/page03.cfm.

Data on the State Relocation Program

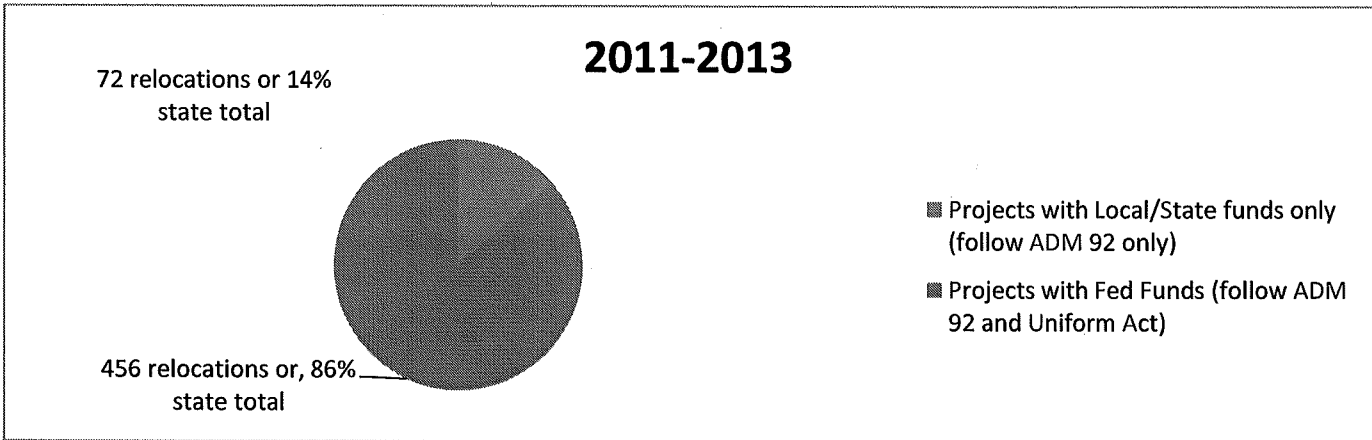
The DOA’s Relocation Unit oversees the state relocation program. DOA reviews and approves relocation plans for local public projects that have resulting displacements. In 2013, DOA reviewed and approved 15 local relocation plans with a total of 40 total displacements (residential and business). These included relocation plans for various local projects including: local roads, floodway clearance, municipal and school facility expansion, airport expansion and economic and/or housing development.

State provisions allow an informal appeals process in which DOA provides a review. This process offers displaced persons or businesses a venue outside of the court system for seeking relief when they dispute the relocation. DOA has received no relocation appeal cases since the program was reassigned to the DOA in the summer of 2011.

A total of 114 displacements were included in relocations plans reviewed by DOA between 2011 and 2013. Of those projects, 72 displacements occurred with state-only funded projects. The remaining forty-two (42) displacements were part of federally-funded projects such as Community Development Block Grants, Federal Emergency Management Act Funds, or other Housing and Urban Development grant dollars.

Data on WisDOT’s Relocation Program

In contrast with 40 displacements made as a result of state-funded projects in 2013, WisDOT reviewed and approved 18 plans that identified 165 total displacements (as a result of federally-funded projects).¹⁵ Between 2011 and 2013, approximately 138 displacements occurred annually as a result of federally-funded state highway projects. The associated relocation costs totaled nearly \$9 million dollars.¹⁶



Compliance with both Federal and State Relocation Provisions - Problems

Compliance

While WisDOT is the primary state agency required to follow both state and federal relocation provisions, other state or local government using federal project dollars must also comply with both state and federal relocation laws and provisions. The administration of both federal and state relocation provisions, with differing benefits provisions and procedural requirements, presents multiple challenges for agencies including:

- WisDOT and other agencies must provide relocatees with verbal and written information on their relocation rights and benefits under both state and federal laws and codes. This includes a DOA-issued relocation brochure that only includes information on Wisconsin’s program. This can cause confusion for the displacees as to whether state or federal provisions will apply to their situation. Relocation is a complicated process for agency staff to explain to displacees including their specific benefits and the process and timing for the relocation. Establishing a positive, straightforward rapport with displacees is critically important to successful relocations. During the intense time of working with a homeowner or business owner to relocate them, conflicting information is not only a problem for the displacee, but also for WisDOT or any other agency receiving federal funds.

¹⁵ WisDOT is certified by DOA to review and approve relocation plans for relocations resulting from state highway right of way projects.

¹⁶ Relocation data from WisDOT’s real estate reporting and other financial systems. These are actual dollars paid to relocatees.

- WisDOT staff and consultants, in working with displacees, must apply both state and federal requirements. When state and federal provisions are inconsistent, WisDOT must make a determination on which provision to apply, and at times the inconsistency in provisions could risk compliance with one of the two (state or federal) codes.
- When WisDOT is faced with litigation in Wisconsin Circuit Court, only the state provisions apply. Since the federal provisions are soon increasing above state benefit amounts, WisDOT risks future noncompliance with state law and likely, state court challenges.
- The most critical issue is the threat of losing federal highway project funds if the agency is found non-compliant with the federal code. This is a substantial concern as public resources are diminishing for public projects.

In order to ensure compliance with both federal and state relocation benefit provisions, WisDOT's current policy is to defer to the most "generous" provision (federal or state) for the relocatee considering eligible costs, procedural requirements and monetary benefits amount.¹⁷ In practice, implementing agencies/organizations must: 1) follow the higher monetary benefit; 2) duplicate various administrative procedures to ensure compliance with both federal and state provisions; and 3) assess both state and federal provisions to determine the eligibility of program benefits for the relocatee. For example, the state program has a business replacement benefit payment, whereas the federal provisions do not.¹⁸ Another example of inconsistency between state and federal code is that state code provides a business search expense benefit of up to \$1,000, whereas the federal business search expense is limited to \$2500. For additional information on differences, see Appendix A.

Assurances

Wisconsin's relocation assistance benefits, in the past, have generally been more substantial than federal benefits. However, the federal changes effective October 2014 provide relocation benefits, in several circumstances, that will surpass Wisconsin's benefits.¹⁹ Additionally, the future procedural federal code changes will likely exacerbate the inconsistencies between the state and federal programs. Federal relocation provisions require that states provide assurances they will comply with the federal code.²⁰ As Wisconsin law is currently written, WisDOT will not have specific authorization to exceed the state relocation amounts in order to comply with federal code changes effective October 2014. Agencies currently required to obey both Wisconsin and federal relocation programs will face conflicts between the programs, which could lead to noncompliance with state laws leading to court challenges, or federal funding losses.

Differences between Federal and State Relocation Provisions

Appendix A contains a list of the various differing relocation provisions in the state and federal codes, including the federal changes effective October 2014. Below are some examples of existing differences:²¹

- Wisconsin statutes require that all agencies provide owners and tenants a DOA-produced brochure on state relocation rights. The brochures do not have information related to federal Uniform Act benefits and requirements, which cause confusion for federally-funded projects as state and federal provisions are significantly different.²² Agencies receiving federal funds for projects with relocations must provide information on the federal Uniform Act benefits and requirements.
- ADM 92 provides for a replacement business payment.²³ Wisconsin is the only state in the U.S. with this relocation benefit and it is not stipulated under federal code.
- The schedule of federal moving expenses is significantly higher than state moving expenses, and the federal schedule is revised every few years.²⁴
- The federal replacement housing payment includes additional financial benefits if a residential tenant or owner qualifies as "low income" under the federal HUD income criteria. State law does not provide this benefit.
- Federal code allows up to 18 months to submit relocation claims, whereas state law permits up to 24 months.

¹⁷ Based on WisDOT's ten-year average of relocation data of 150 relocations per year.

¹⁸ If eligibility requirements as assigned are met.

¹⁹ Appendix A provides a table with the provisions of the state and federal relocation programs, and the pending MAP-21 changes to the benefit amounts.

²⁰ See 49 CFR 24.4.

²¹ Additional differences between state and federal codes are anticipated with the pending FHWA rule changes for the Uniform Act.

²² See Wis. Stat. s. 32.19 and ADM 92.06(3)(a).

²³ The business replacement payment is \$30k max for tenant businesses and \$50k max for business owners.

²⁴ See ADM 92.54.

- Federal code provides significantly less criteria than state code for determining a comparable property when calculating maximum relocation benefits. This provision is important as relocation cannot occur unless a comparable property is found. This issue is often a concern for legal challenges.

Non-compliance with either federal or state relocation provisions poses significant financial and legal risks for agencies using federal project funds

Recommendations

The group discussed several courses of action DOA could pursue as a result of the analysis provided in this report. Specific options include:

1. **Maintain State Relocation Provisions** - Maintains current monetary benefit levels for state/local funded relocations. Continues inconsistencies between state and federal relocation provisions including lower state benefit amounts for relocatees.
2. **Update State Benefit Dollar Amount to Meet Federal Benefit Amount, when Higher Only** – Revise state relocation benefits to meet federal relocation benefits effective October 2014, where higher. This provides increased monetary benefits to relocatees. This doesn't address procedural rule differences.
3. **Update State Benefit Dollar Amounts to Meet Federal Benefit Amounts, where Higher AND Update Some, but not ALL, Procedural Differences** - Revise state provisions to: 1) meet federal benefit amounts, where higher and 2) modify some, but not all, state procedures to meet federal procedures other procedures. Some state procedures may remain inconsistent with federal procedures.
4. **Update Both State Benefit Dollar Amounts and Procedures to Meet Federal Standards. Maintain Higher Benefit Amounts Currently in State Provisions, as well as less Stringent Procedural Requirements** -- Revise state provisions to authorize the implementation of federal code. In addition, continue higher state monetary benefits and less stringent state procedural requirements (*e.g.*, required acquisition stage relocation plan, replacement business payment, rent loss payment.) This option mirrors how many other states run their state relocation programs.
5. **Add Provision to State Code that Allows Agencies Implementing Federally Funded Projects in WI to Follow Federal Code Only** - Authorize agencies that implement federally funded projects to follow federal code ONLY. State code would continue to apply to relocations resulting from public projects without federal dollars.

The stakeholder group does not recommend Option 1. For more discussion about pros and cons related to each option, see Appendix C.

Appendix A
Examples of Differences between State and Federal Relocation Laws/Provisions

Topic/Provision	Wisconsin State Statute Chapter 32	Wisconsin Code ADM 92	Current Federal Uniform Act 49 CFR Part 24	Federal MAP-21 Revisions – effective October 1, 2014
Conceptual Relocation Plan	n/a	n/a	49 CFR s. 24.205 REQUIRED – Conducted through NEPA Environmental Review.	**
Acquisition Stage Relocation Plan	s. 32.25 REQUIRED	ADM 92, Sub 2 REQUIRED	n/a While planning is required, a specific plan for relocations is not.	**
DOA Brochure Distribution Requirement	s. 32.26(6) REQUIRED	ADM 92.06(3) REQUIRED	n/a While information and assistance is required, a specific brochure is not required like state.	**
Undocumented Residents	n/a	n/a	49 CFR s. 24.208 REQUIRED Relocation payments prohibited to aliens not lawfully present in US; requires agency certification	**
90 Day Assurance of Occupancy (at current location)	n/a	n/a	49 CFR s. 24.203 REQUIRED	**
90 Day Vacancy Notice of Acquired location	s.32.06 REQUIRED	ADM 92.06(6) REQUIRED	n/a	
Moving Payments – Residential	s. 32.19(3)(a) Actual s. 32.19(3)(b)(1) Fixed Residential	ADM 92.54 Commercial Move, Self Move, or combo <u>or</u> Fixed Payment Fixed payment by schedule in ADM 92.	49 CFR s. 24.302 Commercial Move, Self Move, by either <i>Fixed schedule</i> as revised annually by USDOT <u>or</u> by actual cost (receipted bills)	**
Moving Payments – Business	s. 32.19(3)(a) Actual s. 32.19(3)(b)(2) Fixed Business	ADM 92.56(2) Commercial move, self-move or combo	49 CFR s. 24.302 Commercial move, self move, actual cost	**

Topic/Provision	Wisconsin State Statute Chapter 32	Wisconsin Code ADM 92	Current Federal Uniform Act 49 CFR Part 24	Federal MAP-21 Revisions – effective October 1, 2014
Moving Payments – Business <ul style="list-style-type: none"> Reimbursement for connecting to public utilities. Reimbursement for professional services. 	n/a	n/a Both costs identified are eligible under reestablishment payment. Capped max amount is \$10,000. (see below)	49 CFR s. 24.303 Allowable cost - No capped amount under business move.	
Payment in Lieu of Actual and Reasonable Moving Expenses – Business	s. 32.19(3)(b)(2)	ADM 92.56(4) Up to \$20,000 max	49 CFR s. 24.305 Up to \$20,000 max	Max will be increased - Up to \$40,000
Direct Loss of Tangible Personal Property - Business	s. 32.19(3)(a) Moving Expenses actual	ADM 92.56(2)	49 CFR s. 24.301(g)(14) Direct Loss of Tangible Personal Property	**
Purchase of Substitute Personal Property - Business	n/a	n/a	49 CFR s. 24.301(g)(16) Provisions are distinct from above direct loss of tangible personal property	**
Residential Search Expenses	s. 32.19(3)(a) Moving Expenses Actual	ADM 92.56 (3) Expenses are <u>eligible</u> to max \$1000. Based on receipted bills.	49 CFR s. 24.301(h)(9) Residential search expenses <u>ineligible</u>	**
Business Search Expenses	s. 32.19(3)(a) Moving Expenses Actual	ADM 92.56 (3) Expenses are <u>eligible</u> to max \$1000. Based on receipted bills.	49 CFR s. 24.301 Business Search expenses eligible up to \$2500	**
Moving Expense - Fees to prepare a claim	n/a	ADM 92.52(1)(n) Max \$100 per residential occupant, \$500 for business	49 CFR s. 24.301(h)(8) Designated as Ineligible	**

Topic/Provision	Wisconsin State Statute Chapter 32	Wisconsin Code ADM 92	Current Federal Uniform Act 49 CFR Part 24	Federal MAP-21 Revisions – effective October 1, 2014
Business Re-establishment	s. 32.19(3)(a)	ADM 92.67 Max \$10,000 Limitations if max BRP provided. Identifies specific eligible items. Connection to public utilities listed under reestablishment. Professional Services also under reestablishment.	49 CFR s. 24.304 Max \$10,000. Identifies specific eligible items.	Eligibility is increased to \$25,000 max
Replacement Housing Payment Benefit amounts	s. 32.19(4)	ADM 92.68 Tenant max = \$8,000 (48 months) Owner max = \$25,000 (48 months) ADM 92.68 (6) Payment of Incidentals and increased mortgage costs may not exceed \$25,000 max	49 CFR s. 24.401 90 day Tenant or Owner = max \$5,250 (42 months) 180 day Owner = max \$22,050 (42 months) <u>Plus</u> increased mortgage interest costs and other incidentals expenses.	Increased to Tenant = \$7,200 Owner = \$31,000
Replacement Housing Payment Occupancy Requirements Replacement Housing Payment – owner	s. 32.19(4)	ADM 92.68 Tenant – 90 days Owner – 180 days for full benefits, 90 Days for tenant replacement payment ADM 92.70 180 day owner Includes increase interest, incidentals ADM 92.74 90 day occupant that purchases (max \$8,000)	49 CFR s. 24.402 90 day occupants (tenant or owners) requirements 49 CFR s. 24.401 180 day Owner requirements	Qualification for RHP- Changes Occupancy Requirements for all occupants to 90 days only. <u>Removes 180 day requirement.</u>
Housing differential – tenant	s. 32.19(4)	ADM 92.78 Increased rental costs to comparable unit for <i>48 months</i>	49 CFR s. 24.402 Increased rental costs compared to comparable unit is Limited to <i>42 months</i>	**

Topic/Provision	Wisconsin State Statute Chapter 32	Wisconsin Code ADM 92	Current Federal Uniform Act 49 CFR Part 24	Federal MAP-21 Revisions – effective October 1, 2014
Decent Safe and Sanitary (DSS) requirements for replacement housing and the payment of RHP	s. 32.19(4)(ag)	ADM 92.04 Outlines requirements for DSS, different than federal uniform act (state more extensive)	49 CFR s. 24.2 (8) Outlines requirements for DSS different than state code requirements	**
Additional payment (state) Housing of Last Resort (federal)	32.19(4)(c) <i>“(c) Additional payment. If a comparable dwelling is not available within the monetary limits established in par. (a) or (b), the condemnor may exceed the monetary limits and make payments necessary to provide a comparable dwelling.”</i>	n/a	49 CFR s. 24.404 Housing of Last Resort: Allows agencies to exceed maximum benefit amounts if shown comparable housing cannot be found without additional amounts.	**
Replacement Business and Farm Payment	s. 32.19(4m)	ADM 92.90 ADM 92.92 Business Owner \$50,000 Max ADM 92.96 Business Tenant \$30,000 Max	n/a	n/a
Expenses Incidental to Transfer of Property	s. 32.195 Includes: mortgage prepayment penalties, real estate recording fees, realignment of personal property, payment of “rent loss” to owners, fencing	n/a	n/a	n/a
Timeline to submit relocation claims	n/a	ADM 92.08 2 years to file claims.	49 CFR s. 24.207 18 months to file claims.	**
Claim Appeals Process	n/a	ADM 92.18 Outlines appeals process to displacing agency and DOA for an informal review.	49 CFR s. 24.10 Outlines agency appeals process. Sets 60 month time limit for claimant filing an appeal to agency. Sets 30 day time limit for agency to provide a response. Requires written determination.	**

Appendix B

State of Minnesota Statutes

117.52 UNIFORM RELOCATION ASSISTANCE.

Subdivision 1. **Lack of federal funding.** In all acquisitions undertaken by any acquiring authority and in all voluntary rehabilitation carried out by a person pursuant to acquisition or as a consequence thereof, in which, due to the lack of federal financial participation, relocation assistance, services, payments and benefits under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, United States Code, title 42, sections 4601 to 4655, as amended by the Surface Transportation and Uniform Relocation Assistance Act of 1987, Statutes at Large, volume 101, pages 246 to 256 (1987), are not available, the acquiring authority, as a cost of acquisition, shall provide all relocation assistance, services, payments and benefits required by the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended by the Surface Transportation and Uniform Relocation Assistance Act of 1987, and those regulations adopted pursuant thereto, and either (1) in effect as of January 1, 2006, or (2) becoming effective after January 1, 2006, following a public hearing and comment. Comments received by an acquiring authority within 30 days after the public hearing must be reviewed and a written response provided to the individual or organization who initiated the comment. The response and comments may be addressed in another public hearing by the acquiring authority before approval.

Subd. 1a. **Reestablishment costs limit.** For purposes of relocation benefits paid by the acquiring authority in accordance with this section, the provisions of Code of Federal Regulations, title 49, part 24, with respect to reimbursement of reestablishment expenses for nonresidential moves are applicable, except that the acquiring authority shall reimburse the displaced business for eligible expenses up to a maximum of \$50,000.

Subd. 2. **Acquisitions for highway purposes.** Despite subdivision 1, with respect to acquisitions for highway purposes or acquisitions for which the state Department of Transportation performs relocation assistance services for the Department of Administration, the regulations of the United States Department of Transportation may be applied to all displaced persons who would otherwise be eligible for such relocation assistance, services, payments and benefits thereunder but for the lack of federal financial participation.

Subd. 3. **Exception.** This section shall not apply in the case where federal financial participation for provision of relocation assistance, services, payments and benefits in connection with an acquisition has been procured or committed pursuant to section 117.51 and has then been withdrawn by the United States, unless the acquiring authority subsequently determines to proceed with the acquisition in question using nonfederal funds.

Subd. 4. **Relocation assistance eligibility or amount determined by administrative law judge.** Notwithstanding any law or rule to the contrary, if a person entitled to relocation assistance under this section does not accept the acquiring authority's determination of the amount of relocation assistance or if a person does not accept the acquiring authority's denial of relocation assistance, the acquiring authority must initiate contested case proceedings under sections 14.57 to 14.66 for a determination of the eligibility for or amount of relocation assistance that must be provided by the acquiring authority. The administrative law judge's determination of the person's eligibility for or amount of relocation assistance that the acquiring authority must provide constitutes a final decision in the case, as provided in section 14.62, subdivision 4. The acquiring authority must pay all costs of the proceedings. "Costs" is defined in section 15.471, subdivision 4, and also includes charges billed by the Office of Administrative Hearings for the proceedings.

Appendix C

Option	Pros	Cons	Comment
<p>Option 1. Maintain State Relocation Provisions</p>	<p>Avoids unintended changes in law from opening discussion.</p> <p>Maintains current monetary benefit levels for state/local funded relocations.</p>	<p>Continues two relocation programs in Wisconsin.</p> <p>Continues lower benefit amounts for relocatees.</p> <p>Current ADM 92 procedures are cumbersome to administer.</p> <p>Continues two relocation codes, and conflicts with federal Uniform Act.</p>	<p>Current law provides for insufficient monetary benefits to meet various relocatees' costs.</p> <p>Complex and confusing program to administer and explain to relocatees. Increases those issues when federal funds are used in the project.</p> <p>Continues significant administrative issues for agencies using federal funds for projects. (e.g., Wisdom).</p>
<p>Option 2. Update State Benefit Dollar Amount to Meet Federal Benefit Amount, when Higher Only</p>	<p>Provides increase in monetary benefits to relocatees.</p> <p>Short Term - Provides a modest update to rule in the short term.</p>	<p>Continues two relocation programs.</p> <p>Increases costs to local governments, if funding with state/local funds.</p> <p>Requires statutory changes – which may include unintended changes in law.</p> <p>Long term - Does not improve the inconsistency between benefit amounts and procedures between Uniform Act and state.</p>	<p>As projects with fed funds must follow Uniform Act benefits where increased, this would increase costs for projects with state/local funds.</p> <p>Consistency with only some federal provisions would be confusing to relocatees and difficult to administer.</p>
<p>Option 3. Update State Benefit Dollar Amounts to Meet Federal Benefit Amounts, where Higher AND Update Some, but not ALL, Procedural Differences.</p>	<p>Provides increase in monetary benefits to relocatees.</p> <p>Short Term - Provides a more comprehensive update to the rule.</p>	<p>Continues two relocation programs.</p> <p>Modestly increases costs to local governments, if funding with state/local funds.</p> <p>Requires statutory changes.</p> <p>Long Term – Revising ADM 92 consistency between federal uniform Act and ADM 92.</p>	<p>The federal rules are updated regularly (every few years). Once the next fed update occurs, state codes will again be out of date.</p>
<p>Option 4. Update Both State Benefit Dollar Amounts and Procedures to Meet Federal Standards. Maintain Higher Benefit Amounts Currently in State Provisions, as well as less Stringent Procedural Requirements</p>	<p>Aligns provisions for one relocation program which clarifies rights and benefits for relocatees and simplifies administration.</p> <p>Increases benefits for relocatees. Maintains additional benefits authorized by the state.</p> <p>Accommodates future federal law and code updates</p> <p>Covers long term updates at federal level, without revisiting state code.</p>	<p>Modestly increases costs for local governments.</p> <p>Requires statutory changes.</p>	<p>Feds update payment schedules annually and make other changes to benefit amounts and procedures every few years.</p> <p>An umbrella authorization will allow for consistent, automatic changes.</p>
<p>Option 5. Add Provision to Allow Federally Funded Projects in WI to Follow Federal Uniform Act Only</p>	<p>Avoids comprehensively revising ADM 92 with specific changes.</p> <p>Does not affect local governments directly, as increased costs would be offset by federal funds.</p> <p>Addresses issues with inconsistent provisions both in the short and long terms.</p>	<p>Continues two different and distinct relocation programs in the state.</p> <p>Some relocation benefits are currently provided only through state laws, and are not found in Uniform Act – saving taxpayer dollars. Does not provide consistent benefits to all relocatees equally between state/local projects and federally funded projects.</p> <p>Limits required statutory changes.</p>	<p>Allows agencies such as WisDOT to ensure consistent approach to relocations.</p> <p>This option would cover the majority of relocations that occur in Wisconsin.</p> <p>The biggest concern for benefit differences is the replacement business payment (30k and 50k max) which is not found in Uniform Act.</p>



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State of Wisconsin
2015 - 2016 LEGISLATURE



LRB-1080/P1
MED:...

D-note

DOA:.....Bong, BB0392 - Relocation Assistance Benefits

FOR 2015-2017 BUDGET -- NOT READY FOR INTRODUCTION

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1 AN ACT ...; relating to: the budget.

Analysis by the Legislative Reference Bureau

EMINENT DOMAIN ✓

Under both the current state eminent domain law and the federal Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (the Uniform Act), a person that exercises eminent domain authority that acquires property or that undertakes a program or project that displaces a person must, in addition to payments to compensate for the acquisition or displacement, make certain relocation assistance payments for items including moving expenses and losses of personal property, and certain replacement housing payments, which must be in the manner and amount determined under whichever law applies. Programs and projects that receive federal financial assistance may be subject to both state eminent domain law and the Uniform Act, which may differ in terms of the procedures that apply and the amount of compensation that must be paid for those payments.

This bill provides that, in the case of a program or project receiving federal financial assistance, a condemnor must, in addition to any such payment required to be paid under the state eminent domain law, make any additional payment required to comply with the Uniform Act.

For further information see the *state and local* 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.** 32.19 (3) (d) of the statutes is created to read: ✓

2 32.19 (3) (d) *Federally financed projects.* Notwithstanding pars. (a) to (c), in ✓ ✓
3 the case of a program or project receiving federal financial assistance, a condemnor
4 shall, in addition to any payment under pars. (a) to (c), make any additional payment ✓ ✓
5 required to comply with the federal Uniform Relocation Assistance and Real
6 Property Acquisition Policies Act of 1970, 42 USC 4601 to 4655, and any regulations
7 adopted thereunder.

8 **SECTION 2.** 32.19 (4) (d) of the statutes is created to read: ✓

9 32.19 (4) (d) *Federally financed projects.* Notwithstanding pars. (a) to (c), in ✓ ✓
10 the case of a program or project receiving federal financial assistance, a condemnor
11 shall, in addition to any payment under pars. (a) to (c), make any additional payment ✓ ✓
12 required to comply with the federal Uniform Relocation Assistance and Real
13 Property Acquisition Policies Act of 1970, 42 USC 4601 to 4655, and any regulations
14 adopted thereunder.

15

(END)

D. M. De

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

LRB-1080/P1dn

MED: *[Signature]*

Date

Sasha:

It appears that the differences between state and federal law are nuanced, and would require further study on my part to get more familiar with, but as we discussed, I think the language should provide the authority to make an additional payment required under federal law where state law otherwise provides a cap on those payments under s. 32.19 (3) or (4). As we discussed, the language does not address any of the other issues beyond making additional payments required to comply with federal law.

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

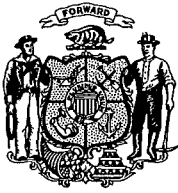
LRB-1080/P1dn
MED:kjfrs

January 15, 2015

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State of Wisconsin
2015 - 2016 LEGISLATURE



LRB-1080/P1
MED:kjf:rs

DOA:.....Bong, BB0392 – Relocation Assistance Benefits

FOR 2015-2017 BUDGET — NOT READY FOR INTRODUCTION

1 **AN ACT ...; relating to:** the budget.

Analysis by the Legislative Reference Bureau

EMINENT DOMAIN

Under both the current state eminent domain law and the federal Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (the Uniform Act), a person that exercises eminent domain authority that acquires property or that undertakes a program or project that displaces a person must, in addition to payments to compensate for the acquisition or displacement, make certain relocation assistance payments for items including moving expenses and losses of personal property, and certain replacement housing payments, which must be in the manner and amount determined under whichever law applies. Programs and projects that receive federal financial assistance may be subject to both state eminent domain law and the Uniform Act, which may differ in terms of the procedures that apply and the amount of compensation that must be paid for those payments.

This bill provides that, in the case of a program or project receiving federal financial assistance, a condemnor must, in addition to any such payment required to be paid under the state eminent domain law, make any additional payment required to comply with the Uniform Act.

