

2019 DRAFTING REQUEST

Bill

For: Robin Vos (608) 266-9171

Drafter: zwyatt

By: Jenny

Secondary Drafters:

Date: 1/28/2020

May Contact:

Same as LRB: -5558



Submit via email: YES
Requester's email: Rep.Vos@legis.wisconsin.gov
Carbon copy (CC) to: zachary.wyatt@legis.wisconsin.gov
eric.mueller@legis.wisconsin.gov
Jenny.Toftness@legis.wisconsin.gov

Pre Topic:

No specific pre topic given

Topic:

Requirements for design-build transportation projects

Instructions:

See attached.

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	zwyatt 1/28/2020	kfollett 1/30/2020			
/P1			mbarman 1/30/2020		State S&L
/1			lparisi 1/30/2020	lparisi 1/30/2020	State S&L

FE Sent For:

<END>

Hand-drawn arrow pointing from 'FE Sent For:' to 'At Intro.'

via Jerry, Rep. Vos

SECTION 1. CREATE WIS. STAT. § 84.062(1).

Sec. 84.062(1) is created to read:

- 84.062 Alternative project delivery. (1) DEFINITIONS. (a) "Alternative technical concepts" means a proposed alternative to the technical requirements provided by the department in the request for proposals for a project.
- (b) "Best value design-build contract" means a design-build contract award made following a calculation of value as provided in a request for proposals.
- (c) "Design-build contract" means a contract for a project under which the design, engineering, construction, and related services are provided by a single design-builder.
- (d) "Design-builder" means a private legal entity, consortium, or joint venture that proposes to or executes a contract with the department to design, engineer, and construct a project under this section.
- (e) "Design-build project" means a project for which design, engineering, construction, and related services are procured through a single contract with a single private legal entity, consortium, or joint venture capable of providing the necessary design, engineering, construction, and related services.
- (f) "Design professional" means a person registered under s. 443.03 or 443.04 or a firm, partnership, or corporation registered under s. 443.08.
- (h) "Fixed price variable scope design-build contract" means a design-build contract award made to the lowest qualified responsible bidder able to provide the best qualitative scope of work at a price not to exceed a fixed price set by the department.
- (i) "Low bid design-build contract" means a design-build contract award made to the lowest qualified responsible bidder.
- (j) "Member" means a private legal entity that is a member of a consortium or joint venture that is a design-builder.
- (L) "Project" means a project involving a highway improvement, as defined in s. 84.06 (1) (a).
- (m) "Qualified responsible bidder" means a design-builder responding to a request for qualifications and that is certified by the technical review committee.
- (n) "Responsive cost proposal" means a proposal that clearly identifies the costs of all services to be performed by the qualified responsible bidder, including all related fees, wages, and equipment and material costs.

(o) “Responsive technical proposal” means a proposal that clearly demonstrates a qualified responsible bidder's understanding of the design, engineering, and construction services to be performed and clearly describes the bidder's approach to the project.

(p) “Technical review committee” means the committee appointed under sub. (3).

(q) “Value engineering change” means a proposal that provides for a product of equal or improved quality to the product required by the department and that will reduce the project cost, improve safety, or decrease the time to complete the project.

SECTION 2. CREATE WIS. STAT. § 84.062(2).

Sec. 84.062(2) is created to read:

(2) Design-build projects. (a) The department shall administer a program for design-build projects. The department may not designate a project as a design-build project unless the department is able to clearly define the scope of work.

(b) The department shall award six design-build contracts every six years, beginning on the effective date of this section...[LRB inserts date]. The combined cost of the six design-build contracts awarded may not exceed \$250,000,000. The department shall award at least one low bid design-build contract, one best value design-build contract and one fixed price variable scope design-build contract during a six-year period. The department shall award three additional contracts during a six-year period that may be any combination of low bid design-build, best value design-build, fixed price variable scope design-build contracts. The combined cost of all contracts awarded for low bid design-build projects may not exceed \$25,000,000 during a six-year period.

(c) For each project designated under par. (a), the department shall solicit requests for qualifications, requests for proposals, and cost proposals as provided in this section and, subject to sub. (7) (c) and (d), award each project by contract to a qualified responsible bidder.

(d) No more than 6 months following the completion of a design-build project designated under this subsection, the department shall prepare a report, with input from the design-builder and the technical review committee, detailing the project, the decision to designate the project as a design-build project, the type of design-build contract let, and recommendations for statutory changes, if any. The department shall provide this report to the transportation projects commission, joint committee on finance and the senate and assembly standing committees having jurisdiction over transportation matters. The senate and assembly standing committees having jurisdiction over transportation matters shall schedule a hearing on the report not more than 30 days following distribution of the report by the chief clerks of the senate and the assembly. This paragraph does not apply to projects completed after December 31, 2026.

SECTION 3. CREATE WIS. STAT. § 84.062(3).

Sec. 84.062(3) is created to read:

(3) Technical review committee. (a) The secretary shall appoint 5 individuals to a technical review committee to evaluate proposals submitted under this section. The committee shall consist of the following:

1. Three employees of the department.
2. Two individuals who are not employees of the department chosen in compliance with a memorandum of understanding entered into by the department with a state association of architectural, engineering, or design companies and a state association of transportation construction companies.

(b) The secretary may not appoint to the technical review committee any person associated, as defined in s. 19.42 (2), with a design-builder. No person appointed to the technical review committee may review proposals under this section when the proposed project could benefit the appointee or the appointee's immediate family, as defined in s. 19.42 (7).

(c) A person appointed to the technical review committee is an agent of the department under s. 895.46.

(d) Except as otherwise provided in this section, all records of the technical review committee, except those designated as confidential and proprietary, are open to public inspection and copying under s. 19.35 (1).

SECTION 4. CREATE WIS. STAT. § 84.062(4).

Sec. 84.062(4) is created to read:

(4) Selection. The department shall solicit design-build proposals in 2 phases. In the first phase, the department shall solicit requests for qualifications under sub. (5) and requests for proposals under sub. (6). The technical review committee shall certify qualified responsible bidders as provided in sub. (5) (c) and shall score technical proposals as provided in sub. (6) (b). In the 2nd phase, the department shall solicit cost proposals and the technical review committee shall evaluate cost proposals as provided in sub. (7).

SECTION 5. CREATE WIS. STAT. § 84.062(5).

Sec. 84.062(5) is created to read:

(5) Request for qualifications. (a) The department shall prepare a request for qualifications that includes all of the following:

1. Minimum required qualifications for certification as a qualified bidder, which shall include all of the following:

- a. The design and construction experience of the design-builder or member, personnel, and contractors who will manage the design, engineering, and construction aspects of the project. The department may not require a level of experience that will unreasonably restrict competition.
- b. A requirement that the design-builder or member employ an individual who has no fewer than 5 years of experience in highway construction specific to highway improvement projects in this state.
- c. A requirement that the design-builder or member be a design professional or will employ or contract with a design professional.
- d. A sworn statement of the design-builder's financial ability, equipment, and experience in design-build project delivery and any other information the department determines is necessary to determine a bidder's competency.

2. Minimum required qualifications for certification as a responsible bidder, which shall include all of the following:

- a. The design-builder is registered or authorized to do business in this state.
- b. The design-builder submits a sworn statement that indicates that it has adequate financial resources to complete the work described in the request for qualifications, taking into account any other work the design-builder is currently under contract to complete.
- c. The design-builder is bondable for the term of the proposed contract and is able to obtain a 100 percent performance bond and a separate 100 percent payment bond.
- d. ~~If the department has previously contracted with the design-builder or a member, the design-builder or member has a record of satisfactorily completing projects.~~
- e. The design-builder or a member is not on a list maintained by the department identifying persons ineligible to bid due to suspension or debarment or on a list that the department of administration maintains for persons who violated statutory provisions or administrative rules relating to construction.

f. The design-builder or a member has been in business for at least 12 months.

g. The design-builder or a member has served as a contractor on no fewer than 5 projects administered by the department.

h. The design-builder can provide information to the technical review committee upon request about ownership, management, and control of the design-builder.

i. The design-builder or a member has not been debarred from any government contracts and has not been found to have committed tax avoidance or evasion in any jurisdiction in the previous ~~40~~ 5 years.

k. No design professional employed by the design-builder or a member who is assigned to the design-build project or and no design professional that the design-builder will contract with for the design-build project has been disciplined in any jurisdiction under license that is currently in use.

3. Information about bid procedures and the proposed project, including all of the following:

a. The type of contract to be awarded.

b. The selection criteria for recommendation of design-builders for phase 2.

c. Project requirements, including a scope of work statement and a schedule.

d. The required completion date of the project.

e. A description of requirements for the technical proposal for the project.

(b) The office shall advertise the request for qualifications.

(c) The technical review committee shall certify at least 2 but not more than 5 design-builders as qualified responsible bidders. If the department does not receive at least 2 responses to the request for qualifications or if the technical review committee certifies only one design-builder as a qualified responsible bidder, the department may re-advertise or cancel the project.

SECTION 6. CREATE WIS. STAT. § 84.062(6).

Sec. 84.062(6) is created to read:

(6) Request for proposals. (a) The department shall prepare a request for proposals for each design-build contract that includes all the following:

1. The name, title, address, and telephone numbers of persons to whom questions concerning the proposal should be directed.
2. The procedures to be followed for submitting proposals, including how proposals must be delivered, the date and time by which they must be received, and the name and address of the person who is to receive them.
3. The date and time of the pre-proposal conference, if any.
4. A requirement that a technical proposal and a cost proposal be submitted in separate sealed proposals at the same time.
5. A clear description of the scope of all design, engineering, and construction work.
6. The criteria for evaluating proposals and their relative weight, if applicable.
7. The design criteria package, including a description of drawings, specifications, or other information to be submitted with the proposals, which shall allow the design-builder to use innovative projects meeting the criteria.
8. The project schedule and budget limits, if any.
9. The proposed terms and conditions of the contract.
10. Requirements relating to performance bonds, payments bonds, and insurance.
11. Amount of stipend, ~~if any~~.
12. The procedures for awarding a contract.
13. A process for the technical review committee to review and accept alternative technical concepts and value engineering change proposals.
14. A requirement that the design-builder perform not less than 30 percent of the construction services under the contract with labor provided by employees of the design-builder or member and equipment owned or rented by the design-builder or member.
15. Any other information the department determines is necessary.

(b) The technical review committee shall evaluate each technical proposal, which may include a confidential interview, and shall assign points in accordance with the request for proposals and subject to all of the following:

1. For a project that will be awarded as either a low bid design-build contract or a fixed price variable scope design-build contract, the technical review committee shall determine whether technical proposals are responsive to the request for proposals without ranking or scoring the proposals.

2. For a project that will be awarded as a best value design-build contract, the technical review committee shall determine whether technical proposals are responsive to the request for proposals and score each responsive technical proposal as required by the request for proposals. The technical review committee may award not more than 20 percent of the points awarded to a technical proposal based on the design-builder's qualifications and ability to design, contract, and deliver the project in accordance with any deadline established in the request for proposals. The technical review committee may award a technical proposal not less than 25 percent and not more 60 percent of the maximum number of combined points that may be awarded to a technical proposal and cost proposal.

(c) The department shall allow design-builders to include alternative technical concepts and value engineering changes in their proposals by describing the process for submission and evaluation of alternative technical concepts and value engineering changes in the request for proposals.

(d) The technical review committee may not consider a proposal responsive unless the proposal includes a conceptual design, critical path method, bar schedule of the work to be performed or similar schematic, design plans and specifications, technical reports, and all other information required by the request for proposals. The technical review committee may not consider any price or fee included in the technical proposal.

(e) The department shall notify the design-builder for each proposal that is determined to be responsive under par. (b) that the design-builder may submit a cost proposal under par. (7). The department shall reject all proposals that are determined to be nonresponsive under par. (b).

SECTION 7. CREATE WIS. STAT. § 84.062(7).

Sec. 84.062(7) is created to read:

(7) Cost proposals. (a) Design-builders notified under sub. (6) (e) may submit a cost proposal and the proposal shall include a fixed cost of design, engineering, and construction services prepared by a design professional that contains all design, engineering, construction, and quality assurance and quality control costs of the project.

(b) The technical review committee may open cost proposals only after the technical proposals have been reviewed as provided in sub. (6). At the time and place specified in

the request for proposals, the technical review committee shall open cost proposals, read the proposals aloud, and, for a project that will be awarded as a best value design-build contract, make public the committee's scoring of the technical proposals.

(c) Following a review of cost proposals, the department may issue a notice of intent to award a contract, subject to all of the following:

1. For a low bid design-build contract, the contract shall be awarded to the qualified responsible bidder that submitted a responsive technical proposal and also submitted the lowest responsive cost proposal.
2. For a fixed price variable scope design-build contract, the contract shall be awarded to the qualified responsible bidder that submitted a responsive technical proposal and that submitted a responsive cost proposal that provides the maximum amount of services for the maximum fixed price set by the department or for an amount that is less than the maximum fixed price.
3. For a best value design-build contract, the contract shall be awarded to the qualified responsible bidder with the highest adjusted score, which shall be calculated by adding the bidder's technical proposal score to the bidder's cost proposal score. The technical review committee shall award the lowest qualified responsible bidder the maximum number of points that may be awarded to a cost proposal under the request for proposals, but not less than 40 percent and not more than 75 percent of the maximum number of combined points that may be awarded to a technical proposal and cost proposal. For each remaining qualified responsible bidder, the technical review committee shall calculate the score for the cost proposal by reducing the maximum number of points that may be awarded to the cost proposal by 1 percent for each percentage point by which the cost proposal exceeds the lowest cost proposal.

(d) Following a review of cost proposals, the department may reject all proposals. If the department rejects all proposals or does not execute a contract after issuing an intent to award a contract under par. (c), the department may reissue the request for proposals and allow only the qualified responsible bidders originally notified under sub. (6) (e) to submit new proposals. The department may pay a reasonable stipulated fee to each design-builder that provides a responsive but unsuccessful proposal in response to the reissued request for proposals. If the reissued request for proposals specifies a maximum fixed price, the department may not award a stipend to a design-builder whose proposal exceeds that price.

(e) Not less than 5 working days prior to executing a design-build contract, the department shall provide notice to each unsuccessful qualified responsible bidder that a notice of intent to award a contract has been issued.

(f) The department and the technical review committee shall maintain the confidentiality of information provided by design-builders as required by s. 84.01 (32).

SECTION 8. CREATE WIS. STAT. § 84.062(8).

Sec. 84.062(8) is created to read:

(8) Contract award. (a) In this subsection:

1. "Construction services" means all work necessary to construct a project, including trucking services and materials purchased regardless of whether the materials are installed by the design-builder.
2. "Specialty services" means work related to sanitary sewer systems, water main systems, staking, electrical, landscaping and erosion control, traffic control, signing, pavement marking, fencing, and other work identified by the department.

(b) No later than 10 days following the issuance of a notice of intent to award a design-build contract, the department shall verify that the design-builder will perform not less than 30 percent of the construction services under the contract with labor provided by employees of the design-builder or member and equipment owned or rented by the design-builder or member.

(c) The design-builder shall submit to the department in the form prescribed by the department documentation of the construction services the design-builder or members will perform and the dollar value of the services.

(d) The department shall calculate the percentage of total construction services identified in the contract to be performed by the design-builder or members by subtracting the value of specialty services to be performed from the total contract amount and dividing the dollar value of construction services to be performed by the design-builder or members by the difference. If the value of construction services to be performed by the design-builder or members is less than 30 percent of the value of all construction services required under the contract, the department shall cancel the contract award.

SECTION 9. CREATE WIS. STAT. § 84.062(11).

Sec. 84.062(11) is created to read:

(11) STIPULATED FEE. (a) The department shall award a stipulated fee of not less than three-tenths of 1 percent of the department's estimated cost of design and construction as follows.

1. To each qualified responsible bidder that provides a responsive but unsuccessful proposal when the department issues a notice of intent to award a contract. If the request for proposals specifies a maximum fixed price, the department cannot award a fee to a proposal that exceeds the maximum fixed price.

2. To all qualified responsible bidders that provide a responsive proposal, if the department does not issue a notice of intent to award a contract.

3. To all qualified responsible bidders if the department cancels the solicitation before the technical review committee reviews technical proposals.

(b) The department shall pay the fee to each qualified responsible bidder under par. (a) no later than 90 days after the department issues a notice of intent to award a contract, determines that it will not issue a notice of intent to award a contract, or cancels the solicitation.

(c) In consideration for paying the fee, the department may use work product contained in an unsuccessful proposal in connection with any proposed or awarded design-build project without making any additional compensation to the design-builder. If an unsuccessful design-builder waives the stipulated fee, the department cannot use work product in the design-builder's unsuccessful proposal.

SECTION 10. CREATE WIS. STAT. § 84.062(13).

Sec. 84.062(13) is created to read:

(13) Appeals. (a) Any person aggrieved and directly affected by a decision of the department to issue a request for qualifications or a request for proposals under this section shall be entitled to judicial review of the decision as provided in chapter 227, subject to the procedural requirements of s. 227.53 (1). A person shall be considered a person aggrieved and directly affected by a decision of the department if any of the following apply to a request for qualifications or a request for proposals issued by the department under this section:

1. The request does not include qualifications, requirements, or other items required under this section.
2. The request does not comply with procedural requirements under this section.
3. The request contains material errors or omissions.
4. The request contains material discrepancies, deficiencies, or ambiguities that prevent a person from submitting a responsive proposal.
5. The request indicates a bias against or preference for a specific design-builder.
6. The request exceeds the department's authority.

(b) Any person aggrieved and directly affected by a decision of the department to issue a notice of intent to award a contract under this section shall be entitled to judicial review of the decision as provided in chapter 227, subject to the procedural requirements of s. 227.53 (1). A person shall be considered a person aggrieved and directly affected by a

decision of the department if any of the following apply to a notice of intent to award a contract under this section:

1. The design-builder that received the notice of intent to award a contract was improperly certified as a qualified responsible bidder.
2. A mathematical error was made in scoring any of the proposals that resulted in an improper intent to award a contract.
3. There is evidence of collusion or fraud involving either the design-builder who received the notice of intent to award a contract or a member of the technical review committee.
4. There is evidence of bias of a member of the technical review committee.
5. There is evidence that a member of the technical review committee has a conflict of interest because the committee member, a member of his or her immediate family, as defined in s. 19.42 (7), or any organization or business with which the member is associated, as defined in s. 19.42 (2), may benefit from the intent to award a contract.
6. The technical proposal or cost proposal submitted by the design-builder who received the notice of intent to award a contract is not responsive to the request for proposals, contains conditions or qualifications not provided for in the request for proposals, or does not assign costs to all services identified in the technical proposal or is otherwise materially unbalanced.

(c) If the department prevails upon judicial review, following any protest and appellate court proceedings, the department shall be entitled to recover all costs and charges included in the final order or judgment, excluding attorney's fees. Upon payment of costs and charges by the protester, the bond shall be returned. If the protesting party prevails, the protesting party shall be entitled to recover from the department all costs and charges included in the final order or judgment, excluding attorney's fees. The entire amount of the bond shall be forfeited if the hearing officer determines that a protest was filed for a frivolous or improper purpose, including but not limited to the purpose of harassing, causing unnecessary delay, or causing needless cost for the department or parties.

SECTION 11. CREATE WIS. STAT. § 84.062(14).

Sec. 84.062(14) is created to read:

(14) Deliverables. (a) No later than 9 months after the effective date of this act [LRB inserts date], the department shall prepare a report that establishes a program structure for delivering projects as required under this subsection. The report shall specify the types of highway improvement projects to be considered and procedures and timelines for the bid

process. The department may not designate a highway improvement project as a design-build project prior to the completion of the report.

(b) The department shall prepare a design-build procurement manual that incorporates the requirements under this subsection and any applicable requirements under federal law.

(c) No later than December 31, 2027, the department shall submit a report the transportation projects commission, the joint committee on finance and the senate and assembly standing committees having jurisdiction over transportation matters summarizing observations of the process utilized for alternative project delivery methods and describing the effectiveness of the alternative project delivery methods contracting procedures. The report shall include discussion on scope of work, history of projects selected, evaluation criteria, selection process, contract administration, work progression, time and cost comparisons between the traditional contracting method and alternative delivery methods, claims, and changes.

(d) No later than 6 months after receipt of the report required under par. (c), the joint committee on finance shall determine whether the alternative project delivery was successful in providing the department with additional tools that allow innovation, reduced project completion time, cost certainty, or reduced cost or other advantages or benefits and shall make a recommendations to the legislature regarding statutory changes.

NONSTATUTORY

SECTION 1. CREATE NONSTATUTORY LANGUAGE

(1) Emergency rules. The department of transportation may use the procedure under s. 227.24 to promulgate emergency rules under s. 84.062 (5) to (7) for the period before the date on which permanent rules under s. 84.062 (5) to (7) take effect. Notwithstanding s. 227.24 (1) (c) and (2), emergency rules promulgated under this subsection remain in effect until the first day of the 25th month beginning after the effective date of the emergency rule, the date on which the permanent rules take effect, or the effective date of the repeal of the emergency rule, whichever is earlier. Notwithstanding s. 227.24 (1) (a) and (3), the department of transportation is not required to provide evidence that promulgating a rule under this subsection as emergency rules is necessary for the preservation of public peace, health, safety, or welfare and is not required to provide a finding of emergency for a rule promulgated under this subsection.



State of Wisconsin in 1/28/2020
2019 - 2020 LEGISLATURE out 1/30/2020

LRB-5513/8
ZDW: jf/pj
amn/cdc

INSERT

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

- 1 AN ACT ...; **relating to:** requirements for design-build transportation projects,
2 providing an exemption from emergency rule procedures, and granting
3 rule-making authority.

Analysis by the Legislative Reference Bureau

This bill makes numerous changes to the design-build method that the Department of Transportation is currently authorized to use for projects.

Under current law, the design and construction of projects are generally two distinct phases. Under this method, often referred to as “design-bid-build,” DOT has broad authority to accomplish the design of a project. The construction of a project must be executed by contract based on bids, with DOT awarding the contract to the lowest responsible bidder.

Under current law, DOT is also authorized to use a design-build method under which design, engineering, construction, and related services are procured through a single contract with a single entity capable of providing the services. Current law specifies the contents of requests for qualifications and requests for proposals solicited by DOT for design-build projects.

Under the bill, DOT must award six contracts for design-build projects every six years. The bill creates requirements for the evaluation of proposals and the awarding of design-build contracts. Under the bill, DOT must develop a design-build procurement manual. DOT must also prepare a report for the transportation projects commission and the legislature evaluating the success of the design-build program and the Joint Committee on Finance must make a recommendation as to whether the program should continue.

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:

NS 2-1 →
1
NS 2-2 →

(END)



State of Wisconsin
2019 - 2020 LEGISLATURE

LRB-5513/P1
ZDW:kjf/amn/edc

11
No
changes

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

1 **AN ACT** *to repeal* 84.062 (1) (k) and 84.062 (5) (a) 2. d.; *to renumber* 84.062 (6)
2 (f); *to renumber and amend* 84.062 (2); *to amend* 84.062 (1) (m), 84.062 (5)
3 (a) 1. a., 84.062 (5) (a) 2. h., 84.062 (5) (a) 2. i., 84.062 (5) (a) 2. k., 84.062 (5) (b)
4 and 84.062 (6) (a) 11.; and *to create* 84.062 (1) (f), 84.062 (1) (j), 84.062 (1) (L),
5 84.062 (1) (p), 84.062 (2) (b), 84.062 (2) (c), 84.062 (2) (d), 84.062 (3), 84.062 (4),
6 84.062 (5) (a) 2. f., 84.062 (5) (c), 84.062 (5) (d), 84.062 (6) (a) 14., 84.062 (6) (b),
7 84.062 (6) (c), 84.062 (6) (d), 84.062 (6) (e), 84.062 (7), 84.062 (8), 84.062 (11),
8 84.062 (13) and 84.062 (14) of the statutes; **relating to:** requirements for
9 design-build transportation projects, providing an exemption from emergency
10 rule procedures, and granting rule-making authority.

Analysis by the Legislative Reference Bureau

This bill makes numerous changes to the design-build method that the Department of Transportation is currently authorized to use for projects.

Under current law, the design and construction of projects are generally two distinct phases. Under this method, often referred to as "design-bid-build," DOT has broad authority to accomplish the design of a project. The construction of a project

1 delivery program was successful in providing the department with additional tools
2 that allow innovation, reduced project completion time, cost certainty, or reduced
3 cost or other advantages or benefits and shall make a recommendation to the
4 legislature as to whether the program should continue.

5 **SECTION 34. Nonstatutory provisions.**

6 (1) EMERGENCY RULES RELATING TO ALTERNATIVE PROJECT DELIVERY. The
7 department of transportation may use the procedure under s. 227.24 to promulgate
8 emergency rules under s. 84.062 (5) to (7) for the period before the date on which
9 permanent rules under s. 84.062 (5) to (7) take effect. Notwithstanding s. 227.24 (1)
10 (c) and (2), emergency rules promulgated under this subsection remain in effect until
11 the first day of the 25th month beginning after the effective date of the emergency
12 rule, the date on which the permanent rules take effect, or the effective date of the
13 repeal of the emergency rule, whichever is earlier. Notwithstanding s. 227.24 (1) (a)
14 and (3), the department of transportation is not required to provide evidence that
15 promulgating a rule under this subsection as emergency rules is necessary for the
16 preservation of public peace, health, safety, or welfare and is not required to provide
17 a finding of emergency for a rule promulgated under this subsection.

18 (END)