

PART 1
Analysis Prepared by the Wisconsin Department of Transportation

Statutes interpreted: ss. 86.31(1)(am), (b) and (c), (2)(a), (b), (d) and (e), (3g), (3r) and (6)(d), (f), (g) and (h), Stats.

Statutory authority: ss. 85.16(1), 86.31(6) and 227.11(2), Stats.

Explanation of agency authority: Chapter Trans 206 interprets and administers s. 86.31, Stats., the local roads improvement program. Section 86.31 was revised in 1999 Wis. Act 9 (eff. October 29, 1999), in 2001 Wis. Act 16 (eff. September 1, 2001), in 2003 Wis. Act 33 (eff. July 26, 2003), and in 2005 Wis. Act 25 (eff. July 27, 2005). The proposed rule will incorporate these statutory revisions and other related changes.

Related statute or rule: ss. 84.01(9) and 84.02(11), Stats.

Plain language analysis: 1997 Wis. Act 27, s. 86.31(3g), Stats., incorporates the county highway improvement discretionary program (CHIP-D) for high cost county highway projects of at least \$250,000 in eligible total project costs. This proposed rule making creates procedures and criteria for the selection of projects.

1999 Wis. Act 9, s. 86.31(3r), Stats., created a new Municipal Street Improvement Discretionary Program (MSIP-D) to fund a competitive, municipal street improvement program similar to the existing discretionary programs for high-cost town roads and county highways. It specified that eligible projects must have a total estimated cost of at least \$250,000. This proposed rule making creates procedures and criteria for the selection of projects.

This proposed rule making amends s. Trans 206.03(14) to indicate that it applies to recipients of entitlement projects only; it does not apply to recipients of CHIP-D, TRIP-D or MSIP-D projects.

1999 Wis. Act 9 requires the Department to amend ch. Trans 206, relating to the Local Roads Improvement Program (LRIP), to incorporate the changes set forth in the Act regarding the provisions for projects that can be done by county highway departments and the solicitation and awarding of bids for town projects.

1999 Wis. Act 9 eliminates the provisions set forth in s. 86.31(2)(d)1., 2. and 3., 1997 Stats., that restrict the amount of work on county trunk highways that may be done by county highway departments under the county highway improvement program (CHIP) and CHIP-D.

1999 Wis. Act 9 provides that county highway departments may do work under the basic county highway improvement program or the discretionary county highway improvement discretionary program if they demonstrate that doing so will be cost-effective,

provided that each county highway department uses competitive bidding for the funds provided by the state under the CHIP and the CHIP-D programs.

The Act eliminates the provision that requires each county highway improvement district committee to ensure compliance with the provisions related to the amount of work that may be done by county highway departments and, instead, requires these committees to: (1) review each project proposed by a county highway department and to determine if it would be cost-effective for the county highway department to perform the work; and (2) to approve the proposed project prior to its being performed by the county highway department.

The Act modifies the membership of each county highway improvement district committee to specify that it shall be composed of the highway commissioners from each county in the Wisconsin County Highway Association district.

The Act requires DOT to amend the existing rule to include: (a) criteria for determining whether a project can be done cost-effectively by county highway departments; and (b) procedures for departmental review of disputes relating to whether proposed work by a county highway department is cost-effective.

The Act eliminates the provision in s. 86.31(2)(b), 1997 Stats., that allows towns to contract with counties to perform work under the town road improvement program and the town road improvement discretionary programs (TRIP and TRIP-D) if the town does not receive a responsible bid on a project. Instead, the Department must amend ch. Trans 206 to include criteria and procedures for determining when a contract for a project under the TRIP and TRIP-D programs may be awarded to a county. The criteria must include: (a) a requirement that a written and sealed estimate of the cost of the improvement that includes the source of the estimate be prepared prior to the time set for the opening of bids for the improvement and not be opened until after the opening of all bids; (b) a requirement that all bids may be rejected and the contract awarded to a county for the improvement if the lowest bid exceeds the cost estimate by at least 10% and the town board notifies the lowest two bidders or, if only one bid was received, the single bidder, to provide information on the accuracy of the cost estimate; (c) a requirement that the amount of the contract with a county for the improvement be at least 10% below the lowest bid received for the improvement; and (d) a provision that permits re-bidding if the amount of the proposed contract with a county for the improvement is less than 10% below the lowest bid received for the improvement.

The proposed rule limits the number of times a project may be substituted under the LRIP program to one, requires county highway commissioners to review and maintain required documents for project approved within their counties, except for applications from cities or villages with populations of 20,000 or more. It also requires funds committed under the LRIP to be reimbursed within three biennia of when the funds were originally committed. It also requires that the number of projects that can be submitted in a given biennium for funding under TRIP and MSIP less than 20,000 in population is not to exceed one half of the number of towns or eligible cities or villages.

Summary of, and preliminary comparison with, existing or proposed federal regulation: This is a state program for local governments assisting in the improvement of deteriorating local highways, streets and roads. There are no existing or proposed federal regulations.

Comparison with Rules in the Following States:

Michigan: No similar program.

Minnesota: Minnesota has a local roads program, but the State provides grants rather than reimbursement.

Illinois: No similar program.

Iowa: No similar program.

Summary of factual data and analytical methodologies used and how the related findings support the regulatory approach chosen: This proposed rule implements statutory changes and clarifies program policies, procedures and requirements related to the Local Roads Improvement Program. The Department's implementation is the same as the Department applies to its other local programs under ch. 86, Stats., *Miscellaneous Highway Provisions*.

Analysis and supporting documentation used to determine effect on small businesses: This proposed rule pertains to a state program for local governments entering into a state municipal agreement with the Department for partial reimbursement of costs related to deteriorating local highways, streets and roads. The program does not provide any direct reimbursements or assess any fees to any small businesses.

Effect on small business: The proposed rule will have no adverse impact on small businesses. The Department's Regulatory Review Coordinator may be contacted by e-mail at ralph.sanders@dot.state.wi.us, or by calling (414) 438-4585.

Fiscal effect: The Department estimates that there will be no fiscal impact on the liabilities of any county, city, village, town, school district, vocational, technical and adult education district, sewerage district, or federally-recognized tribes or bands.

Under 1997 Wis. Act 27, s. 86.31(3g), Stats., the Department allocates \$5,000,000 annually, beginning in fiscal year 2001-02, to fund county highway improvement projects with total eligible costs of \$250,000 or more from the discretionary LRIP appropriation. This funding is in addition to the allocation of funds available to counties through the formula generated entitlement program.

Under 1999 Wis. Act 9, s. 86.31(3r), Stats., the Department allocates \$1,000,000 annually, beginning in fiscal year 2001-02, to fund municipal street improvement projects

with total eligible costs of \$250,000 or more from the discretionary LRIP appropriation. This funding is in addition to the allocation of funds available to cities and villages through the formula generated entitlement program.

The proposed rule defines and incorporates the sunset on funds policy recommended by the LRIP study group. This policy is intended to ensure the timely use of program funds, within three biennia of programming.

The proposed rule also defines and incorporates the program review process recommended by the LRIP study group. The process includes a mechanism for assessing sanctions and provides the community with an opportunity for appeal.

The proposed rule updates language related to engineering certification be consistent with statutory language.

The proposed rule updates administrative costs to be consistent with administrative policy and clarifies several issues in the current rule relating to the definition of eligible project and utilities.

The proposed rule clarifies the role of the county highway commissioner, detailing the responsibility for the commissioner to ensure adherence with statutory law and program rules and required recordkeeping. It requires the commissioner to submit entitlement applications totaling no more than one-half the available funds in any given year.

Anticipated costs incurred by private sector: The Department estimates that there will be no fiscal impact on private sector revenues or liabilities.

Agency contact person and copies of proposed rule: Copies of the proposed rule may be obtained, without cost, by writing to: Lori Richter, Department of Transportation, Bureau of Transit, Local Roads, Railroads & Harbors, Room 951, P. O. Box 7913, Madison, WI 53707-7913. You may also contact Lori by phone at (608) 266-0254 or via e-mail: lori.richter@wisconsin.gov.

PART 2 **TEXT OF PROPOSED RULE**

SECTION 1. Chapter Trans 206 is repealed and recreated to read:

LOCAL ROADS IMPROVEMENT PROGRAM

Trans 206.01 Purpose and scope. The purpose of this chapter is to interpret and administer procedures for reimbursing improvements on deteriorating local highways, streets and roads under s. 86.31, Stats.

Trans 206.02 Definitions. The words and phrases defined in s. 86.31 (1), Stats., have the same meaning in this chapter unless a different definition is specifically provided. In this chapter:

(1) “Administrative cost” means the county highway commissioner’s staff and material costs to perform the county highway commissioner’s duties to the county MSI program for small municipalities, and the county TRI program, including the cost of conducting bid lettings for MSI projects in small municipalities and for TRI projects.

(2) “Allocation” means the amount of state funds available under the specific components of the local roads improvement program to a county, city, village or town to make local road improvements.

(3) “Appeal” is the process to provide a county, city, village or town with an opportunity to present additional information that may compel the department to modify findings based on sound public policy prior to imposing a program sanction.

(4) “Biennial allocation” means the sum of the 2 annual allocations in a state biennium.

(5) “Biennial entitlement” means the sum of the 2 annual entitlements in a state biennium.

(6) “Chief executive” means the county executive, county board chairperson, town board chairperson, village president, mayor or city manager.

(7) “Components” means the funding mechanisms through which local road improvement projects are distributed.

(8) “Contract administration” means the preparation of plans for the LRIP project, acquisition of right of way, letting of bids and construction supervision of a local roads improvement program project.

(9) “Cost ceiling” means the maximum amount the department will pay as its share of the local road improvement project under this chapter.

(10) “County board chairperson” means the official described in s. 59.12, Stats.

(11) “County executive” means the official described in s. 59.17, Stats.

(12) “County highway commissioner” means the official described in s. 83.01, Stats.

(13) “County highway discretionary improvement” or “CHID” means the improvement projects on the county trunk system funded by the county highway improvement discretionary allocation component of the local roads improvement program as authorized by s. 86.31(3g), Stats.

(14) “County highway improvement” or “CHI” means the improvement projects on the county trunk system funded by the county highway improvement entitlement component of the local roads improvement program as authorized under s. 86.31(3), Stats.

(15) “County highway improvement district” means a group of counties designated by the department to be a county highway improvement district.

(16) “County highway improvement district committee” or “CHIDC” means a committee consisting of all of the county highway commissioners from counties within a county highway improvement district.

(17) “County highway improvement plan” means a county’s 5–year plan of improvements to the county trunk system which is eligible to be funded from the CHI and CHID components of the local roads improvement program.

(18) “County municipal street improvement committee” or “CMSIC” means a committee of not more than 5 chief executives or designees of small municipalities within the county responsible to select MSI projects and prioritize MSID applications within the county.

(19) “County town road improvement committee” or “CTRIC” means a committee of not more than 5 town chairpersons or designees from within the county responsible to select TRI projects and prioritize TRID applications within the county.

(20) “Days” means calendar days, unless otherwise specified.

(21) “Department” means the department of transportation.

(22) “Discretionary allocations” means any of the funds established in s. 86.31(3g), (3m) and (3r), Stats.

(23) “Eligible project costs” means the costs eligible to be reimbursed by the department for an eligible LRIP project and may include a feasibility study, right of way acquisition, design engineering, grading, base, paving and materials.

(24) “Entitlement” has the meaning given in s. 86.31(1)(ar), Stats.

(25) “Highway” has the meaning given in s. 340.01(22), Stats., and includes connecting highways.

(26) “Improvement” has the meaning given in s. 86.31(1)(b), Stats.

(27) “Large municipality” means a city or village with a population of 20,000 or more.

(28) “Local roads improvement program” or “LRIP” means the state entitlement program with county trunk highway, town road and municipal street entitlement components as established in s. 86.31, Stats., or the state discretionary allocations for county trunk highways, town roads and municipal streets separate from the entitlement program as established in s. 86.31 (3g), (3m) and (3r), Stats.

(29) “LRIP project” means an eligible resurfacing, reconditioning, reconstruction or structure project under this chapter.

(30) “LRIP project application” means an application on a department form that describes the projects that may be funded with LRIP entitlements or LRIP discretionary allocations in the current state biennium.

Note: Forms can be obtained from the Wisconsin Department of Transportation, Division of Transportation Investment Management, Bureau of Transit, Local Roads, Railroads and Harbors, P.O. Box 7913, Madison, WI 53707–7913. You may also obtain this form on DOT’s website:
<http://www.dot.wisconsin.gov/localgov/highways/lrip.htm>

(31) “Miles” means the number of certified centerline miles of roads and streets as determined by the department under s. 86.302, Stats., to determine local roadway eligibility.

(32) “Municipal street discretionary improvement” or “MSID” means the improvement projects on the statewide city and village street system funded by the municipal street discretionary improvement allocation component of the local roads improvement program as authorized by s. 86.31(3r), Stats.

(33) “Municipal street improvement” or “MSI” means the improvement projects on the city and village street system funded by the municipal street improvement entitlement component of the local roads improvement program as authorized under s. 86.31 (3), Stats.

(34) “Municipal street improvement plan” means a city or village’s 5-year plan of improvements to the municipal street system eligible to be funded from the MSI and MSID components of the local roads improvement program.

(35) “PASER” means the pavement surface evaluation and rating process developed and taught by the transportation information center at the university of Wisconsin extension, Madison, WI.

(36) “Peer review committee” means an advisory group of local officials appointed by the department and responsible for providing advice to the department about an appeal of a sanction on a project that has been completed by the recipient and reimbursed by the department, and may include a representative from the Wisconsin County Highway Association, the League of Wisconsin Municipalities, the Wisconsin Alliance of Cities and the Wisconsin Towns Association.

(37) “Population” means the population of a political subdivision as determined in s. 86.33, Stats.

(38) “Pre-bid cost estimate” means an estimate of the cost of the improvement, based on industry trends, prepared by the local government sponsoring the project prior to the opening of the bids.

(39) “Probation” means an official department notice that a political subdivision may be suspended from submitting new LRIP project applications if future violations of the same program requirement are repeated.

(40) “Project agreement” means a formal agreement between the department and a political subdivision which identifies the responsibilities of each of the parties to the agreement.

(41) “Project review” is the process used by the department to confirm the project has been completed in accordance with all applicable federal, state and local laws, administrative policy and program rules, ordinances, standards and contract bidding requirements, and to identify program violations and related sanctions. This includes review of project documentation at any time before project completion and reimbursement to confirm the project is being developed in accordance with all applicable federal, state and local laws, administrative policy and program rules, ordinances, standards and contract bidding requirements, and advice on appropriate actions to bring the project into compliance, or to cancel the project agreement and reallocate the uncommitted funding.

(42) “Recipient” means a county, city, village or town that receives LRIP funds.

(43) “Sanction” means a penalty imposed by the department for a recipient’s failure to comply with the provisions of this chapter or s. 86.31, Stats.

(44) “Secretary” means the secretary of the department of transportation.

(45) “Small municipality” means a city or village with a population of less than 20,000.

(46) “State biennium” means a period from July 1 of every odd-numbered year through June 30 of the next odd-numbered year.

(47) “State fiscal year” means a period from July 1 through June 30.

(48) “Statewide municipal street discretionary improvement committee” or “SMSIDC” means the committee appointed by the secretary to recommend MSID projects for approval by the secretary.

(49) “Statewide town road discretionary improvement committee” or “STRIDC” means the committee appointed by the secretary to recommend TRID projects for approval by the secretary.

(50) “Street” has the meaning given in s. 340.01(64), Stats.

(51) “Sunset” means the expiration of project funding that has not been submitted for reimbursement by June 30 of the odd year, after 3 program cycles, including the state biennium when the funding was provided.

(52) “Suspension” means official department notice that a political subdivision is barred from submitting new LRIP project applications for a period of time.

(53) “Town road discretionary improvement” or “TRID” means the improvement projects on the statewide town road system funded by the town road improvement discretionary allocation component of the local roads improvement program as authorized under s. 86.31 (3m), Stats.

(54) “Town road improvement” or “TRI” means the improvement projects on the town road system funded by the town road improvement entitlement component of the local roads improvement program as authorized under s. 86.31 (3), Stats.

(55) “Town road improvement plan” means a town board’s 2 or more year plan for improvements to the town road system eligible to be funded from the TRI and TRID components of the local roads improvement program.

(56) “Written warning” means an official department warning to the chief elected official and clerk of the town, city or village, with a copy to the county highway commissioner or, in the case of a violation by a county, to the county highway

commissioner and clerk, identifying the program violation and providing a reminder regarding program requirements.

Trans 206.03 Uniform provisions. (1) FUNDING MECHANISM. The local roads improvement program provides a biennial entitlement to each county, each CMSIC and CTRIC and to each large municipality. In addition, the program provides a biennial discretionary allocation to fund eligible, high cost town road, municipal street and county trunk highway improvements. Entitlements and discretionary allocations shall be determined as follows:

(a) Municipal street improvement for each CMSIC and for each large municipality shall be 50% of each county's or large municipality's proportionate share of total miles of all city or village streets in the state and 50% of each county's or large municipality's proportionate share of the total population of all cities and villages in the state.

(b) County highway improvement shall be 60% of each county's proportionate share of the state population and 40% of each county's proportionate share of total county trunk miles of all county trunk miles in the state; except no county's entitlement shall be less than one half of one percent (0.5%) of the total funds allocated to the counties under this chapter.

(c) Town road improvement shall be on each county's proportionate share of town road miles to all town road miles in the state.

(2) COMMITMENT OF PROGRAM FUNDS. (a) No later than November 1 of each odd-numbered year, each recipient, except large municipalities, shall complete the LRIP project application form and send it to the appropriate county highway commissioner.

(b) No later than January 15 of each even-numbered year, the appropriate county highway commissioner, village president, mayor, or city manager with a large municipality shall send the department a copy of each LRIP project application submitted by each recipient in the county.

(c) Upon approval of each LRIP project application by the department, the LRIP assigned funds for the project listed on the LRIP project application form shall be considered committed, and shall be reserved for the political subdivision with an approved LRIP project.

(d) Only one substitution is allowed per TRI, MSI, CHI and CHID project in the 3 biennia for which the LRIP funds are committed. Funds are assigned to a specific project and portions of assigned funding may not be re-assigned before the project has been reimbursed or cancelled. Substitutions and project changes are not permitted for TRID and MSID projects.

(3) USE OF DISCRETIONARY ALLOCATION. (a) *Town road discretionary improvement allocation.* The TRID is the state-provided allocation for improvements to town roads costing \$100,000 or more in total LRIP project cost. Biennially, selected allocations shall be made to towns. Allocations to the recipient shall be recommended by the STRIDC and approved by the department.

(b) *Municipal street discretionary improvement allocation.* The MSID is the state provided allocation for improvements to municipal streets costing \$250,000 or more in total LRIP project cost. Biennially, selected allocations shall be made to cities and villages, regardless of their size. Allocations to the recipient shall be recommended by the SMSIDC and approved by the department.

(c) *County highway discretionary improvement allocation.* The CHID is the state provided allocation for improvements to county highways costing \$250,000 or more in total LRIP project cost. Biennially, selected allocations shall be made to each county highway improvement districts based on the existing CHI formula specified in sub. (1)(b). Allocations to the recipients shall be recommended by each county highway improvement district committee and approved by the department.

(d) *Discretionary allocations.* To permit maximum flexibility in the use of a discretionary allocation, a recipient may request approval from the department, on the LRIP project application, to use the entire discretionary allocation in either year of the state biennium.

(e) *Deadline for reimbursement request.* Request for reimbursement of any committed discretionary allocations shall be received by the department no later than the date of sunset.

(f) *Reallocation of uncommitted discretionary allocations.* On July 1 of each odd-numbered year, all uncommitted discretionary allocations from the previous biennium shall be returned to the appropriate discretionary component for reallocation in the current biennium.

(4) BIENNIAL ENTITLEMENTS. (a) *Fiscal year restrictions.* Project applications totaling no more than the annual entitlement may be submitted to the department for each state fiscal year.

(b) *Deadline for reimbursement requests.* Request for reimbursement of any committed entitlements shall be received by the department no later than the date of sunset.

(c) *Uncommitted LRIP biennial entitlements.* 1. Any biennial entitlement funds not committed by the recipient by November 1 of each odd-numbered year shall be available for use by other recipients as provided in sub. (2)(a).

2. The first priority for uncommitted biennial entitlement funds shall be for use by other recipients within the same county. The county highway commissioner of that county is responsible for determining if the uncommitted entitlement can be used within the county and which recipient will receive it.

3. The second priority for any uncommitted biennial entitlement funds that cannot be used within the county shall be for use within the county highway improvement district. The county highway improvement district committee shall be responsible for determining if the uncommitted entitlement can be used within the district and which recipient will receive it.

4. On July 1 of each odd-numbered year, all uncommitted biennial entitlement funds from the previous biennium shall be added to the LRIP appropriation for the current biennium and redistributed according to the distribution formula in sub. (1).

(5) PAYMENT OF ELIGIBLE PROJECT COSTS UPON COMPLETION OF IMPROVEMENT. (a) The local roads improvement program is a reimbursement program. The political subdivision where the work is performed shall be responsible for payment of eligible project costs. At the completion of the improvement and after the political subdivision has received and paid the final invoice from the contractor, the political subdivision may apply to the department for reimbursement of eligible project costs in accordance with the project agreement. Application for reimbursement shall be on forms prescribed by the department.

Note: Forms can be obtained from the Wisconsin Department of Transportation, Division of Transportation Investment Management, Bureau of Transit, Local Roads, Railroads and Harbors, P.O. Box 7913, Madison, WI 53707-7913. You may also obtain this form on DOT's website: <http://www.dot.wisconsin.gov/localgov/highways/lrip.htm>

(b) If a project is the result of an agreement among more than one recipient, the project agreement shall identify one political subdivision as responsible for initial funding of the project and to whom the state shall reimburse eligible project costs.

(c) The improvement shall be completed and all invoices shall be paid before reimbursement by the department.

(6) LRIP PROJECTS. (a) Improvements to the county trunk, town road or city or village street system may be eligible for funding under this chapter provided the political subdivision has complied with the provisions of this chapter.

(b) The county, CTRIC or CMSIC, large municipalities, towns under the TRID, counties under CHID, or cities and villages under MSID may enter into agreements with counties, other county CTRIC or CMSIC, other large municipalities, towns under the TRID, counties under CHID, or cities and villages under MSID to cooperate in LRIP projects that meet the standards of the local roads improvement program.

(7) NUMBER OF PROJECTS SELECTED OR RECOMMENDED FOR FUNDING. The number of projects that can be submitted to the department for funding in a given biennium shall comply with one of the following requirements:

(a) The number of MSI projects for small municipalities selected by CMSICs may not exceed one-half of the number of eligible municipalities within the county. One additional project shall be allowed for any counties with an odd number of municipalities.

(b) The number of TRI projects selected by CTRICs may not exceed one-half of the number of towns within the county. One additional project shall be allowed for any counties with an odd number of towns.

(c) Once a county receives a CHID project, it may not be eligible to receive another until every other county within the county highway improvement district has either received funding for a project or opted out of receiving funding.

(d) The number of projects submitted for CHI and MSI for large municipalities shall be determined by the recipient, subject to departmental approval.

(e) The number of TRID projects recommended shall be determined by the STRIDC, as specified in s. Trans 206.05.

(f) The number of MSID projects recommended shall be determined by the SMSIDC, as specified in s. Trans 206.07.

(8) DUTIES OF THE COUNTY HIGHWAY COMMISSIONER. The county highway commissioner shall perform the following duties:

(a) Serve as the administrative contact between the department and all recipients within the county, except large municipalities.

(b) No later than January 15 of each even-numbered year, report to the secretary or the secretary's designee, on the form in the manner prescribed by the department, the projects to be funded under LRIP entitlements and recommended for funding to the secretary under MSID, CHID and TRID in the current state biennium.

**Note: Forms can be obtained from the Wisconsin Department of Transportation, Division of Transportation Investment Management, Bureau of Transit, Local Roads, Railroads and Harbors, P.O. Box 7913, Madison, WI 53707-7913. You may also obtain this form on DOT's website:
<http://www.dot.wisconsin.gov/localgov/highways/lrip.htm>**

(c) Determine if uncommitted entitlements of a recipient in the county can be used by another recipient within the county.

(9) REIMBURSEMENT OF COUNTIES FOR ADMINISTRATIVE COSTS. Five percent of each county's MSI entitlement for small municipalities and 5% of each county's TRI entitlement shall be distributed to the county treasurer as reimbursement for administrative services provided by the county highway department.

(10) PROJECT COSTS. (a) *Eligible project costs.* 1. Eligible project costs shall be reimbursable only as part of an eligible improvement under this chapter.

2. A hot mix asphalt purchase is an eligible project cost if the only eligible cost on the LRIP project is the purchase of finished hot mix asphalt.

3. Only pavement applications meeting the minimum 10-year design life required under this chapter are eligible costs, subject to prior department approval.

(b) *Ineligible project costs.* The following are ineligible project costs:

1. Individual components for producing finished hot mix asphalt.

2. Right-of-way acquisition, if the only eligible cost on the project is right-of-way acquisition.

3. Design engineering, if the only eligible cost on the project is design engineering.

4. New installations or alterations of sanitary sewers and connections.

5. Utilities, including water, gas, electric, telephone, police or fire alarm facilities, parking meters, street signs and utility costs associated with real estate transactions.

6. The costs to develop each county, municipality or town's improvement plan.

7. Patching and other maintenance activities.

(c) *Multi-year hot mix asphalt contracts.* Multi-year contracts for the purchase of hot mix asphalt are not eligible for reimbursement.

(11) CONTRACT ADMINISTRATION. (a) The recipient shall be responsible for contract administration of the project. If an eligible project is located in more than one political subdivision, the project agreement shall specify the recipient responsible for contract administration.

(b) The design and construction of all LRIP projects with eligible project costs meeting or exceeding the cost threshold specified in s. 86.31(2)(e), Stats., under this chapter shall be certified by a registered professional engineer for concurrence with applicable standards and programming for a 10-year design life.

(c) A recipient may use a contract established by the county in which the recipient is located, provided all of the following requirements are met:

1. The recipient pays the private contractor directly.
2. The county's bidding documents specifically identify which recipient may be included in the county contract for use on their LRIP project.
3. The county provides a copy of the affidavit of publication or advertisement for bid to the department at the time of the contract award.
4. Recipient meeting minutes approving action to use the county contract established with the private contractor are provided to the department at the time of reimbursement.

(d) The recipient may reject bids that are not responsive because they add or delete items from those requested to be bid, including bids for a different type of paving than specified in the advertisement for bid.

(12) FINANCIAL PARTICIPATION. (a) The department may provide a maximum of 50% of the total eligible project cost up to the cost ceiling specified in the project agreement. The remainder of the cost shall be provided by the recipient.

(b) The recipient's share may be in the form of cash, but not engineering or right of way. A county recipient's share may include work performed by the county in accordance with the requirements of this chapter.

(c) No LRIP funds shall be used as the local match for federal aid projects.

(d) No federal aid funds shall be used on an LRIP project.

(e) Entitlement funding that has sunset will be returned to the appropriation on July 1 of the odd year in which the sunset occurs. Discretionary funding will be returned to the appropriate discretionary component on July 1 of the odd year in which the sunset occurs.

(f) If entitlement funding is voluntarily released in writing in a manner prescribed by the department prior to the sunset, it may be used by another town, city or village within the county, or the county as provided in sub. (3). Release of entitlement funding does not change the funding date of sunset.

(13) LRIP PROJECT AGREEMENT. (a) Each LRIP project funded under this chapter shall be subject to a formal agreement between the recipient and the department. The secretary or the secretary's designee shall sign the LRIP project agreement for the department. The secretary or the secretary designee's signature on the project agreement shall be the official acceptance of the terms of the agreement. When the LRIP project agreement is between the department and a county, the county executive or designee, or when there is no office of county executive, the county board

chairperson or designee shall sign the project agreement for the county. When the LRIP project agreement is between the department and a town, village or city, the chief executive or designee of the political subdivision shall sign the LRIP project agreement for the political subdivision.

(b) The LRIP project agreement shall include, but is not limited to, the following items of information:

1. Name of the recipient or, in the case of a joint project, the LRIP project agreement shall include the names of all the political subdivisions participating in the LRIP project.

2. Statement of need for the project.

3. Description of the approved proposed work and the state fiscal year in which the LRIP project will be funded.

4. Cost estimate of the work.

5. Description of the cost participation and cost ceiling of each party to the agreement.

6. Description of all special provisions and considerations that apply to the proposed LRIP project.

7. Signed statement by the chief executive or designee certifying that the work will be done in accordance with all applicable federal, state and local laws, administrative policy and program rules, ordinances, standards and contract bidding requirements.

8. A statement by the department that it will only participate in eligible construction projects which are actually constructed in accordance with all applicable

federal, state and local laws, administrative policy and program rules, ordinances, standards and contract bidding requirements described in this chapter. The entire cost of construction projects not constructed, or not constructed to standards, shall be the responsibility of the recipient.

9. A statement certifying that the recipient assumes all responsibility for complying with all applicable environmental requirements for the improvement, that an environmental analysis was completed, and that all applicable environmental laws were followed.

(14) EXCEPTION TO STANDARDS. (a) The secretary or the secretary's designee may authorize deviation from the standards in special cases in which strict application of the standards is impractical and deviation is not contrary to the public interest and safety, and in the case of eligible county projects is not contrary to s. 84.01(9)(b), Stats.

(b) Any deviation in the standards shall be approved in writing by the secretary or the secretary's designee before any reimbursement payments are made.

(15) PROJECT SUBSTITUTION. (a) When a recipient informs the department that an eligible project for which a CHI, CHID, TRI or MSI project agreement has been executed cannot be built, that recipient shall have the option of substituting only one eligible project that can be constructed in the same time period. The parties shall then void the original project agreement and execute a new project agreement for the substitute project.

(b) Substitutions and project changes are not permitted on TRID and MSID projects.

(16) DUTIES OF THE DEPARTMENT. The department shall:

(a) Compute the biennial entitlement for each county, each CMSIC and CTRIC, for each large municipality, and the biennial allocations for each county highway improvement district committee.

(b) Inform, by September 1 of each odd-numbered year or after approval of the state's biennial budget, each county, each CTRIC and CMSIC, the chief executive of each large municipality of its biennial entitlement, and each county highway improvement district committee of its biennial district discretionary allocation for the current state biennium.

(c) Maintain a record of documents pertinent to each project as required by law.

(d)1. Review a sufficient number of projects to ensure that the program is functioning according to applicable state laws, administrative rule, and program policy and to identify any violations. The department shall impose appropriate sanctions, subject to any modifications by the appeals process, as defined in this chapter.

2. At the time of project review, if the required documentation is missing from the county highway commissioner's file that demonstrates compliance by the political subdivision, the department shall apply the appropriate sanctions as prescribed by this chapter for failure to comply with the applicable subchapter. A political subdivision may avoid sanctions for failure to provide proper documentation at the time of project review by providing the missing documentation to confirm compliance within 14 business days of the department's written request. Upon demonstration of compliance, the sanction may be reduced to a written warning by the department.

(e) Encumber state funds for all approved project agreements.

(f) Prepare, by June 30 of each odd-numbered year, a report listing all completed projects under the local roads improvement program.

(g) Determine if proposed projects meet the criteria of this chapter and s. 86.31, Stats.

(17) LRIP PROGRAM SANCTIONS. The department shall impose the following sanctions for failure to comply with the requirements of this chapter:

(a) If the recipient fails to comply with LRIP program policy requiring compliance with the competitive bidding requirement in ss. 86.31(2)(b), 86.31(2)(d) and 86.31(6)(h), Stats., and if there is entitlement funding on the project and the violation is discovered prior to reimbursement, the project will not be eligible for reimbursement, the state/municipal agreement will be canceled and the entitlement funding committed to the project may be recommitted to another project, subject to all other requirements under this chapter. If the entitlement funding cannot be recommitted to another eligible project by June 30 of the odd year, it shall be returned to the entitlement appropriation for redistribution in the next biennium. If there is discretionary funding on the project and the violation is discovered prior to reimbursement, the project will not be eligible for reimbursement, the state/municipal agreement will be canceled and the discretionary funding committed to the project shall be returned to the appropriate discretionary component for redistribution in the next biennium. If the violation is discovered after reimbursement, the recipient shall reimburse the department, or be subject to set off, as specified in par. (j).

(b) The department shall impose sanctions on any project that does not meet the minimum roadway improvement standards and an exception to standards has not been granted for either of the following:

1. If the entire project does not meet the minimum roadway improvement standards for lane or shoulder widths and no exception to standards was granted, and if there is entitlement funding on the project and the violation is discovered prior to reimbursement, the project will not be eligible for reimbursement, the state/municipal agreement will be canceled and the entitlement funding committed to the project may be recommitted to another project, subject to all other requirements under this chapter. If the entitlement funding cannot be recommitted to another eligible project by June 30 of the odd year, it shall be returned to the entitlement appropriation for redistribution in the next biennium. If there is discretionary funding on the project and the violation is discovered prior to reimbursement, the project will not be eligible for reimbursement, the state/municipal agreement will be canceled and the discretionary funding committed to the project shall be returned to the appropriate discretionary component for redistribution in the next biennium. If the violation is discovered after reimbursement, the recipient shall reimburse the department, or be subject to set off, as specified in par.

(j).

2. If a portion of the project does not meet the minimum roadway improvement standards for lane or shoulder widths and no exception to standards was granted, and the violation is discovered prior to reimbursement, the non-complying portion of the project will not be eligible for reimbursement. Any entitlement funding that cannot be recommitted to another eligible project by June 30 of the odd year shall be returned to

the entitlement appropriation for redistribution in the next biennium. Any discretionary funding committed to the project shall be returned to the appropriate discretionary component for redistribution in the next biennium. If the violation is discovered after reimbursement, the recipient shall reimburse the department only for the funding portion of the non-complying improvement, or be subject to set off, as specified in par. (j).

(c) The department shall impose sanctions if the recipient fails to comply with LRIP program policy requiring compliance with the legal notice requirement in s. 985.07(2), Stats., for the following:

1. If bids were not advertised, and if there is entitlement funding on the project and the violation is discovered prior to reimbursement, the project will not be eligible for reimbursement, the state/municipal agreement will be canceled and the entitlement funding committed to the project may be recommitted to another project, subject to all other requirements under this chapter. If the entitlement funding cannot be recommitted to another eligible project by June 30 of the odd year, it shall be returned to the entitlement appropriation for redistribution in the next biennium. If there is discretionary funding on the project and the violation is discovered prior to reimbursement, the project will not be eligible for reimbursement, the state/municipal agreement will be canceled and the discretionary funding committed to the project shall be returned to the appropriate discretionary component for redistribution in the next biennium. If the violation is discovered after reimbursement, the recipient shall reimburse the department, or be subject to set off, as specified in par. (j).

2. If bids were advertised for only one week, or for 2 or more non-consecutive weeks, the recipient shall receive probation for the initial offense, and suspension for subsequent offenses.

3. If the advertisement for bids did not identify the improvement as an LRIP project, the recipient shall receive a written warning from the department.

(d) The department shall impose sanctions on any LRIP project not performed according to the terms of the project agreement if any of the following apply:

1. If the contract is awarded prior to the recipient receiving the executed LRIP project agreement, the recipient shall receive a written warning from the department.

2. If the LRIP project completed is a different road or structure than identified in the LRIP project agreement, and a substitution was not approved or, if the LRIP project completed is a different segment of the road than identified in the LRIP project agreement, and a project change was not approved, and if there is entitlement funding on the project and the violation is discovered prior to reimbursement, the project will not be eligible for reimbursement, the state/municipal agreement will be canceled and the entitlement funding committed to the project may be recommitted to another project, subject to all other requirements under this chapter. If the entitlement funding cannot be recommitted to another eligible project by June 30 of the odd year, it shall be returned to the entitlement appropriation for redistribution in the next biennium. If there is discretionary funding on the project and the violation is discovered prior to reimbursement, the project will not be eligible for reimbursement, the state/municipal agreement shall be canceled and the discretionary funding committed to the project shall be returned to the appropriate discretionary component for redistribution in the next biennium. If the

violation is discovered after reimbursement, the recipient shall reimburse the department, or be subject to set off, as specified in par. (j).

3. If the LRIP project termini were not correctly identified in the LRIP project agreement, and a project change was not approved, the recipient shall receive a written warning from the department.

4. If the final LRIP project is a lower quality or level of work than identified in the LRIP project agreement, and a project change was not approved, but the LRIP project still meets the minimum 10-year design life, the recipient shall receive a written warning from the department for the first offense and probation for subsequent offenses.

5. If the final improvement funded with TRID or MSID funds is significantly below the quality or level of work identified in the approved LRIP project agreement, or if the scope of the LRIP project has changed, but the recipient did not obtain approval for the change from the peer review committee and from the department prior to proceeding with the improvement, but the LRIP project meets the 10-year design life, the LRIP project shall be subject to review by the peer review committee to determine the sanction, up to and including reimbursement. If the violation is discovered prior to reimbursement, the project will not be eligible for reimbursement, the state/municipal agreement will be canceled and the discretionary funding committed to the project shall be returned to the appropriate discretionary component for redistribution in the next biennium.

(e) A recipient shall receive probation from the department for the initial offense and suspension for any subsequent offenses if the recipient does not perform any of the following:

1. Have an improvement plan.

2. Have a plan that is based on sound traffic pavement management principles, and includes a priority list of needs and a schedule of improvements.

3. Include each roadway segment of the project under this chapter in the plan.

(18) GUIDANCE FOR IMPOSING SANCTIONS. (a) A political subdivision may avoid sanctions under this subchapter by improving a non-complying project to meet roadway improvement standards.

(b) Multiple offenses of the same program violation discovered at one project review will all be treated as an initial offense for the recipient. A successive offense will not be recorded nor will the related sanction be imposed based on the findings from the same project review that identified the initial offense.

(c) A successive offense, if applicable, can only be the result of findings from a subsequent project review that is conducted after the initial offense.

(d)1. Towns and small municipalities under suspension are not eligible to apply for new entitlement projects for 2 program cycles following the program review and may not be eligible to apply for new discretionary projects for one program cycle following the program review.

2. Large municipalities under suspension may not be eligible to apply for new entitlement and discretionary projects for one program cycle following the program review. While under suspension, the entitlement funding allocation generated by the community shall be distributed to the other eligible large municipalities.

3. Counties under suspension may not be eligible to apply for new entitlement and discretionary projects for one program cycle following the program review. While

under suspension, the entitlement funding allocation generated by the county shall be distributed to the other counties.

(e) If a recipient fails to reimburse the department within 90 days of the department's written request, its general transportation aids shall be set off by not more than 50 percent of the required reimbursement amount for at least 2 consecutive payments. General transportation aids payments shall be set off until the program has been fully reimbursed. Amounts set off may not affect future calculation of general transportation aids under s. 86.30, Stats.

Trans 206.04 Town road improvement and town road discretionary improvement. (1) COUNTY TOWN ROAD IMPROVEMENT COMMITTEES. (a) In each county, there shall be a town road improvement committee that shall select TRI projects and prioritize TRID applications within the county.

(b) The CTRIC shall consist of no more than 5 town chairpersons or designees selected by all the town chairpersons or designees in the county, one of whom shall be designated as chairperson by the committee. The selection of each CTRIC shall occur biennially, in the odd-numbered years, not later than October 1. The term of office for each CTRIC member shall be 2 years, and shall be from October 1 of the odd-numbered year in which the chairperson or the designee becomes a member to September 30 of the next odd-numbered year.

(c) In addition to the town chairperson members, each CTRIC may include as a non-voting member the county highway commissioner.

(2) DUTIES OF THE COUNTY TOWN ROAD IMPROVEMENT COMMITTEE. Each CTRIC shall perform the following:

(a) Submit to the county highway commissioner, no later than November 1 of each odd-numbered year, the LRIP project applications, including a list of TRI projects planned, and a list of TRID project applications prioritized for the current state biennium.

(b) Determine in the case where a TRI project cannot be built within the specified time frame, whether to select a substitute TRI project.

(c) Determine whether to enter into agreements with other recipients for the joint funding of eligible LRIP projects.

(3) SELECTION AND DUTIES OF THE CHAIRPERSON OF THE CTRIC. The chairperson of the CTRIC shall be selected by the members of the CTRIC no later than November 1 of each odd-numbered year. The duties of the chairperson shall include, but are not limited to, the following:

(a) Inform the department in writing, no later than November 1 of each odd-numbered year, of the name of the CTRIC chairperson.

(b) Convene the CTRIC when necessary.

(c) Preside over the CTRIC and perform all administrative duties required of the chairperson.

(4) DUTIES OF THE TOWNS. Each town participating in TRI and TRID shall establish and maintain as a minimum, a 2-year town road improvement plan for the town roads eligible to be funded under the TRI and TRID components. The plan shall be based on sound engineering and management principles and life cycle cost criteria such as the PASER program model. It shall include a priority list of needs and a 2-year schedule of improvements.

(5) DUTIES OF RECIPIENTS WITH A TRI OR TRID PROJECT. Towns with an approved TRI or TRID project shall perform the following:

(a) Review all project applications for compliance with all applicable federal, state and local laws, administrative policy and program rules, ordinances, standards and contract bidding requirements.

(b) Prepare all necessary documents to let the LRIP project to competitive bid including, prior to the opening of the bids, a written and sealed pre-bid cost estimate of the improvement, including the source of the estimate.

(c) Certify, by the town chairperson, at the time reimbursement is requested that the work was performed in accordance with all applicable federal, state and local laws, administrative policy and program rules, ordinances, standards and contract bidding requirements.

(d) Maintain required records for 10 years from project closing.

(6) DUTIES OF THE COUNTY HIGHWAY COMMISSIONER. The county highway commissioner shall perform the following:

(a) Convene and preside over the initial CTRIC meeting.

(b) Review all project applications for compliance with all applicable federal, state and local laws, administrative policy and program rules, ordinances, standards and contract bidding requirements.

(c) Submit to the department, not later than January 15 of each even-numbered year, all CTRIC selected TRI project applications and CTRIC prioritized TRID applications for the current state biennium. The sum of LRIP funds requested for all

entitlement applications, except for applications from large municipalities, may not exceed the annual entitlement for each year of the biennium.

(d) May assist towns in the preparation of the pre-bid cost estimate prior to the opening of bids. Pre-bid cost estimate shall be based on industry trends rather than the time and materials quote the county may provide to the town for the performance of the job.

(e) Conduct contract lettings for a recipient with a TRI or TRID project when requested by the recipient.

(f) Maintain required records for 10 years from project closing.

(7) STANDARDS. All TRI and TRID projects funded under this chapter shall be designed and constructed using the town road improvement standards as described in ch. Trans 204, except as provided in s. Trans 206.03(14). The recipient shall be responsible for the development and construction of the LRIP project and the certification that the project constructed complies with the provisions of the TRI and TRID.

(8) CRITERIA AND PROCEDURES FOR CONTRACTING WITH A COUNTY FOR A TOWN ROAD IMPROVEMENT OR TOWN ROAD DISCRETIONARY IMPROVEMENT. TRI or TRID project recipients shall conform to procedures and criteria in this subsection before awarding a project to a county when bids are rejected based on price. Towns with a TRI or TRID project may reject all bids and award the project to the county if all of the following are met:

(a) A written and sealed pre-bid estimate, including the source of the estimate, is prepared prior to the time set for the bid opening, and is not opened until after all bids have been opened.

(b) The lowest bid exceeds the cost of the pre-bid cost estimate by at least 10% and the town board notifies the lowest 2 bidders, or if only one bid was received, the town board notifies the single bidder to provide information on the accuracy of the pre-bid cost estimate.

(c) The amount of the county's proposal for the improvement is at least 10% below the lowest bid received for the improvement.

(d) The project may be re-bid if the amount of the county's proposal for the improvement is less than 10% below the lowest bid received for the improvement.

Trans 206.05 Statewide town road discretionary improvement committee.

(1) There shall be one STRIDC. The STRIDC shall consist of members appointed by the department and have geographically balanced representation. The STRIDC members shall serve 2-year terms beginning October 1 of the odd-numbered years and ending September 30 of the next odd-numbered year. The secretary or designee shall serve as a non-voting member of the STRIDC.

(2) The STRIDC shall perform the following duties:

(a) Select the STRIDC chairperson for the next 2 years.

(b) Establish criteria for the recommendation of TRID projects. These criteria shall include, but are not limited to, safety, reconstruction, traffic volume and type, and whether the project is multi-jurisdictional.

(c) Recommend, no later than March 1 of each even-numbered year, TRID projects to be funded.

Trans 206.06 Municipal street improvement and municipal street discretionary improvement. (1) COUNTY MUNICIPAL STREET IMPROVEMENT COMMITTEES (SMALL MUNICIPALITIES). (a) In each county there shall be a county municipal street improvement committee that shall select MSI projects and prioritize MSID applications within the county.

(b) The CMSIC shall consist of not more than 5 chief executives or designees of small municipalities selected by the small municipalities in the county, one of whom shall be designated as chairperson of the committee. The selection of each CMSIC shall occur biennially, in the odd-numbered years, not later than October 1. The term of office for each CMSIC member shall be 2 years, and shall be from October 1 of the odd-numbered year in which the chairperson or the designee becomes a member to September 30 of the next odd-numbered year.

(c) In addition to the village or city chief executive committee members, each CMSIC may include as a non-voting member the county highway commissioner.

(2) DUTIES OF THE CMSIC. Each CMSIC committee shall perform the following:

(a) Submit to the county highway commissioner, no later than November 1 of each odd-numbered year, the LRIP project applications, including a list of MSI projects planned, and a list of MSID project applications prioritized for the current state biennium.

(b) Determine, in a case where an MSI project cannot be built within the specified time frame, whether to select a substitute MSI project.

(c) Determine whether to enter into agreements with other recipients for joint funding of eligible LRIP projects.

(3) SELECTION AND DUTIES OF THE CHAIRPERSON OF THE CMSIC. The chairperson of the CMSIC shall be selected by the members of the CMSIC no later than November 1 of each odd-numbered year. The duties of the chairperson shall include, but are not limited to, the following:

(a) Inform the department in writing, no later than November 1 of each odd-numbered year, the name of the CMSIC chairperson.

(b) Convene the CMSIC when necessary.

(c) Preside over the CMSIC and perform all administrative duties required of the chairperson.

(4) DUTIES OF ALL CITIES AND VILLAGES. Each city and village shall establish and maintain a 5-year municipal street improvement plan for the municipal streets to be funded under the MSI and MSID components. The plan shall be based on sound traffic and pavement management principles. It shall include a priority list of needs and a 5-year schedule of improvements.

(5) DUTIES OF SMALL MUNICIPALITY. Each small municipality with an approved MSI or MSID project shall perform the following:

(a) Review all project applications for compliance with all applicable federal, state and local laws, administrative policy and program rules, ordinances, standards and contract bidding requirements.

(b) Prepare all documents necessary to let the LRIP project to competitive bid.

(c) Certify through the city or village's chief executive, at the time reimbursement is requested that the work was performed in accordance with all applicable federal, state and local laws, administrative policy and program rules, ordinances, standards and contract bidding requirements.

(6) DUTIES OF LARGE MUNICIPALITY. Each large municipality with an approved MSI or MSID project shall perform the following:

(a) Review all project applications for compliance with all applicable statutory law, administrative policy and program rules.

(b) Submit to the department, no later than January 15 of each even-numbered year, the selected MSI project applications and requested MSID applications.

(c) Prepare all documents necessary to let the LRIP project to competitive bid.

(d) Certify through the city or village's chief executive, at the time reimbursement is requested that the work was performed in accordance with all applicable federal, state and local laws, administrative policy and program rules, ordinances, standards and contract bidding requirements.

(e) Maintain required records for 10 years from project closing.

(7) DUTIES OF THE COUNTY HIGHWAY COMMISSIONER. The county highway commissioner shall perform the following:

(a) Convene and preside over the initial CMSIC meeting.

(b) Review all project applications for compliance with all applicable federal, state and local laws, administrative policy and program rules, ordinances, standards and contract bidding requirements.

(c) Submit to the department, no later than January 15 of each even-numbered year, CMSIC selected MSI project applications and CMSIC prioritized MSID applications. The sum of LRIP funds requested for all entitlement applications, except for applications from large municipalities, may not exceed the annual entitlement for each year of the biennium.

(d) Conduct contract lettings for a recipient with an MSI or MSID project when requested by the city or village.

(e) Maintain required records for 10 years from project closing.

(8) STANDARDS. All MSI and MSID projects funded under this chapter shall be designed and constructed using the state standards as described in the department's facilities development manual procedure 11-20-1 except as provided in s. Trans 206.03(14). The recipient shall be responsible for the development and construction of the LRIP project and the certification that the project constructed complies with the provisions of the MSI and MSID.

NOTE: The Department's Facilities Development Manual procedure 11-20-1 standard may be obtained from the Wisconsin Department of Transportation, Division of Transportation System Development, Bureau of Project Development, P. O. Box 7916, Madison, WI 53707-7916.

(9) CRITERIA AND PROCEDURES FOR CONTRACTING WITH A COUNTY FOR A MUNICIPAL STREET IMPROVEMENT OR MUNICIPAL STREET DISCRETIONARY IMPROVEMENT. (a) MSI or MSID recipients shall conform to procedures and criteria in this subsection before awarding a project to a county when bids are rejected based on price. Cities or villages with an MSI or MSID project may reject all bids and award the project to the county if all bids have been rejected and considered non-responsible.

(b) Cities or villages with an MSI or MSID project may not reject parts of a bid and award them to the county. Instead, the bid for the entire project shall be rejected before contracting with the county.

TRANS 206.07 Statewide municipal street discretionary improvement committee. (1) There shall be one SMSIDC. The SMSIDC shall consist of members appointed by the department and have geographically balanced representation from all eligible municipalities, regardless of their size. The SMSIDC members shall serve a 2-year term, beginning October 1 of the odd-numbered year. The secretary or designee shall serve as a non-voting member of the SMSIDC.

(2) The SMSIDC shall perform the following duties:

(a) Select the SMSIDC chairperson for the next 2 years.

(b) Establish criteria for the recommendation of MSID projects. These criteria shall include, but are not limited to, safety, reconstruction, traffic volume and type, and comprehensive planning.

(c) Recommend, no later than March 1 of each even-numbered year, MSID projects to be funded.

Trans 206.08 County highway improvement and county highway discretionary improvement. (1) DUTIES OF THE COUNTIES. Each county participating in CHI or CHID shall establish and maintain, as a minimum, a 5-year county highway improvement plan for the county highways eligible to be funded under the CHI and CHID components. The plan shall be based on sound engineering and management principles and life cycle cost criteria, including the PASER program model. It shall include a priority list of needs and a 5-year schedule of improvements.

(2) DUTIES OF RECIPIENTS WITH A CHI OR CHID PROJECT. Counties with an approved CHI or CHID project shall perform the following:

(a) Review all project applications for compliance with all applicable federal, state and local laws, administrative policy and program rules, ordinances, standards and contract bidding requirements.

(b) Submit to the department, no later than January 15 of each even-numbered year CHI project applications. The sum of LRIP funds requested for all entitlement applications, except for applications from large municipalities, may not exceed the annual entitlement for each year of the biennium.

(c) Certify at the time reimbursement is requested that the work was performed in accordance with all applicable federal, state and local laws, administrative policy and program rules, ordinances, standards and contract bidding requirements.

(d) Determine in a case where a CHI project cannot be built in the specified time frame, whether to select a substitute CHI project.

(e) Determine whether to enter into agreements with other recipients for the joint funding of LRIP-eligible projects.

(3) STANDARDS. All CHI and CHID projects funded under this chapter shall be designed and constructed according to county trunk highway standards as described in ch. Trans 205, except as provided in s. Trans 206.03(14).

Trans 206.09 County highway improvement districts and committees.

(1) COUNTY HIGHWAY IMPROVEMENT DISTRICT COMMITTEES. (a) In each county highway improvement district, there shall be a county highway improvement district committee that shall recommend CHID projects.

(b) The CHIDC shall consist of each county highway commissioner from each county that makes up a county highway improvement district, one of whom shall be designated a chairperson by the committee. The selection of each CHIDC shall occur biennially, in the odd-numbered years, and shall be from October 1 of the odd-numbered year in which the chairperson or the designee becomes a member to September 30 of the next odd-numbered year.

(2) DUTIES OF THE COUNTY HIGHWAY IMPROVEMENT DISTRICT COMMITTEE. Each CHIDC shall perform the following:

(a) Select the committee chairperson for the next 2 years.

(b) Establish criteria for the recommendation of CHID projects. These criteria shall include, but are not limited to, safety, reconstruction, traffic volume and type, and whether the project is multi-jurisdictional.

(c) Recommend, no later than January 15 of each even-numbered year, CHID projects to be funded from the CHID district biennial discretionary allocation.

(d) Establish criteria for the selection of CHI projects to be funded from county uncommitted highway improvement district entitlements.

(e) Select, no later than January 15 of each even-numbered year, CHI projects to be funded from uncommitted entitlements from within the district.

(f) Review and approve a county's LRIP cost-effectiveness finding prior to work being performed by the county highway department on CHI or CHID projects. Cost-effectiveness findings may be waived by the CHIDC in emergency circumstances, including bridge or roadway failures, or other situations with an immediate adverse impact

on public safety, for projects where a need exists for expedited delivery of an LRIP project and a negotiated contract can be delivered in a more timely manner than a let contract.

(3) SELECTION AND DUTIES OF THE CHAIRPERSON OF THE CHIDC. The chairperson of the CHIDC shall be selected by the members of the CHIDC not later than October 1 of each odd-numbered year. The duties of the chairperson shall include, but are not limited to, the following:

(a) Convene the CHIDC when necessary.

(b) Preside over the CHIDC and perform all administrative duties required of the chairperson.

(c) Convene and preside over a meeting of all county highway commissioners in the CHIDC, no later than October 1 of each odd-numbered year, to select a chairperson for the next 2-year period.

(d) Inform the department in writing, no later than November 1 of each odd-numbered year, the name of the CHIDC chairperson.

(e) Inform the department in writing, no later than January 15 of each even-numbered year of recommended CHID applications.

(f) Inform the department in writing, no later than January 15 of each even-numbered year, of the CHIDC's selection of CHI projects in the district to be funded with the uncommitted entitlements of counties' CMSIC, CTRIC, and small municipalities in the district.

(4) STANDARDS. All CHI and CHID projects funded under this chapter shall be designed and constructed using the county trunk highway standards as described in ch. Trans 205, except as provided in s. Trans 206.03(14). The recipient shall be responsible

for the development and construction of the LRIP project and the certification that the project constructed complies with the provisions of the CHI and CHID.

TRANS 206.10 Local roads improvement program cost-effectiveness finding.

(1) Before a county with an executed state-municipal agreement for an LRIP project may perform a portion of the work on an LRIP project on its own county trunk highway system, it shall demonstrate that the interests of the public will be best served by using its own county resources and equipment rather than those of a private contractor selected through competitive bidding. This shall be done by preparing and submitting an LRIP cost effectiveness finding, which is an evaluation and a determination that the public's general overall interests will benefit from the county performing a portion of the work with their own forces.

Note: Questions about this policy should be directed to the LRIP Program Managers in the Local Transportation Programs and Finance Section of the Bureau of Transit, Local Roads, Railroads & Harbors, P.O. Box 7913, Madison, WI 53707–7913.

(2) The county shall use competitive bidding for an amount at least equal to the total LRIP funding.

(3) The improvement's final total costs shall be at least twice the total LRIP funding.

(4) In the LRIP cost-effectiveness finding, the county shall certify to the department all of the following:

(a) That the costs are less than those costs that would be obtained through competitive bidding. The county shall show that it can complete the portion of the improvement at less cost than under a let contract prior to beginning work on the improvement.

(b) That the county is properly staffed and suitably equipped to complete the portion of the improvement.

NOTE: This means that, with the exception of minor quantities of specialty work, the county will not have to specially train their employees or buy equipment to do the work.

(c) Prior commitments by the county to do work for the state or other municipalities will not impair performance of the work.

NOTE: This means that the county shall be able to devote sufficient personnel and equipment to do the proposed work without a time delay or a decrease in quality, despite agreement with other local government units for construction, traffic or maintenance service.

(5) Right-of-way acquisition and design contracts may not be counted toward the portion of work to be completed by the county's forces.

(6) LRIP cost-effectiveness findings may be waived by the CHIDC in emergency circumstances, such as bridge or roadway failures, or other situations with an immediate adverse impact on public safety. The chair shall provide notification of any waiver immediately to the LRIP program manager.

(7)(a) When the county's LRIP project application is prepared, the county shall decide whether they intend to construct a portion of the LRIP project with their own work force and equipment and to perform a cost-effectiveness finding. LRIP cost-effectiveness findings shall be prepared in a manner and form prescribed by the department, by the county highway commissioner, in the same year in which construction will occur and submitted to the CHIDC chair before construction commences. LRIP cost-effectiveness findings shall include a detailed cost analysis, including a total cost estimate and private cost comparison.

NOTE: The cost-effectiveness finding form may be obtained by writing to the Bureau of Transit, Local Roads, Railroads & Harbors, P. O. Box 7913, Madison, WI 53707-7913.

(b) Estimates shall include rates for labor and machinery that are current at the time the LRIP cost-effectiveness finding is developed.

(c) Unit prices shall be developed after the rates have been established for the year in which construction is to be performed.

NOTE: There is generally adequate time between finalization of labor and machinery rates and the start of the ensuing construction season to allow development of unit prices based on appropriate rates for labor and machinery. Projects for which the proposed work is expected to extend beyond one construction season would normally be of sufficient magnitude that it would be more appropriate to construct them through the competitive bidding process.

(d) Subcontracting between a county and a private contractor may be allowed under certain conditions, but the primary responsibility shall rest with the county, subject to sub. (4)(a) to (c). A county may also subcontract with another county to perform a limited amount of work with primary responsibility resting with the county and subject to sub. (4)(a) to (c). The county may not add equipment to its current inventory in order to perform the proposed LRIP cost-effectiveness finding work, but may replace worn-out or obsolete equipment.

(e) LRIP cost-effectiveness findings shall include a narrative justification addressing each of the 3 requirements described in sub. (4).

(8) LRIP cost-effectiveness findings shall be reviewed and approved by the CHIDC. If the CHIDC chair or designee approves it, the chair may then transmit it to the LRIP program manager with a recommendation for acceptance. If the LRIP cost-effectiveness finding is not approved, the county may not complete a portion of the work with its own forces, and shall be required to bid out the project. The chair shall be responsible for confirming that the LRIP cost-effectiveness finding complies with sub. (4)(a) to (c).

(9) If the LRIP cost-effectiveness finding is approved by the CHIDC chair, the date of approval shall be entered into the LRIP web application by the chair. It shall be the chair's responsibility to forward the approved LRIP cost-effectiveness finding, along with supporting documentation, to the department LRIP program manager.

(10) Department program area staff will review the documentation for completeness and indicate, in writing, whether the department accepts the LRIP cost-effectiveness finding. Copies of the letter, with the department acceptance signature, shall be sent to the county highway commissioner and CHIDC chair. If the LRIP cost-effectiveness finding is not accepted, it will be returned to the CHIDC chair, with a copy to the county highway commissioner, indicating the missing information.

(11) Work on the project may commence 45 days after acceptance by the department, unless a written dispute is filed by a complainant with the CHIDC.

TRANS 206.11 Review of cost-effectiveness finding disputes. (1) In this section, "dispute" means a disagreement between the county and a complainant on a CHI or CHID project regarding the cost-effectiveness of the performance of work by the county.

(2) The only types of disputes permitted under this section are disagreements related to s. Trans 206.10(4)(a) to (c).

(3) Procedures for review of disputes relating to work performed by county highway departments shall be as follows:

(a) In the event there is a disagreement between the county and a complainant regarding an LRIP cost-effectiveness finding that has been approved by the CHIDC and accepted by the department, the complainant shall file a written complaint with the CHIDC within 45 days of acceptance by the department. Work may not begin on a

project until all written disputes have been resolved. A copy of the written complaint shall be sent to the department and county highway commissioner by the complainant.

(b) If the parties are unable to resolve the dispute after a good faith attempt within 30 days of the filing of the written complaint, the written complaint and all supporting documentation and written comments by both parties shall be forwarded by the CHIDC chair to the county board, along with a request for a county board review. A copy of the letter shall be forwarded to the department, complainant and county highway commissioner.

(c) Within 60 days of receipt of the request for a county board review, the board shall conduct a review of the LRIP cost-effectiveness finding and subsequent findings in accordance with the accepted practices of the board. A written recommendation shall be drafted within 10 days of the review and forwarded to the CHIDC chair, with a copy to the department, complainant and county highway commissioner.

(4) A person adversely affected by the county board's decision may request the department to review the decision within 10 days of the county board review.

Note: Specific allegations shall be sent in writing to Director, Bureau of Transit, Local Roads, Railroads & Harbors, P.O. Box 7913, Madison, WI 53707-7913, with copies to the CHIDC Chair, County Board, County Highway Commissioner and complainant.

(5)(a) A request for department review under sub. (4) shall be made in writing and shall be filed with the department within 10 days of receipt of the county board review recommendation.

(b) If the department receives a request for review under this chapter, the chief of the local transportation programs and finance section shall conduct the department review.

(c) In conducting its review, the department may consider only compliance with applicable state and federal procedural requirements.

(d) All interested parties shall be given the opportunity to submit written or documentary evidence and written arguments to the department. Interested parties shall provide a copy of any written evidence, arguments or correspondence submitted to the department to all other parties involved in the department review.

(e) The department shall limit its review to consideration of written or documentary evidence and written arguments. The formal contested case requirements in ch. 227, Stats., are not applicable to this review.

Note: A request for Department review under this section is not a contested case as defined in s. 227.01(3), Stats., and not subject to the contested case hearing requirement in s. 227.42, Stats.

(f) In conducting its review, the department may request interested parties to provide additional written information. The failure of any interested party to provide information requested by the department, or to cooperate with the department in its review, may result in dismissal of a request for review or denial of an LRIP cost-effectiveness finding.

(g) The chief of the local transportation programs and finance section shall submit a written recommendation to the director of the bureau of transit, local roads, railroads and harbors, who shall issue a written decision. A copy of the director's decision shall be provided to all other parties involved in the department review. Within 30 days of receipt of the unresolved dispute, the department will decide the matter. If more than one complainant files a written complaint, the department will attempt to consolidate the disputes and decide them at the same time. In the case of multiple disputes, the department may delay a final decision for up to 45 days.

(h) The decision of the director of the bureau of transit and local roads shall be the final decision of the department and is not subject to further appeals or judicial review.

Trans 206.12 Appeal of a project review sanction. (1) The department shall conduct project reviews and identify violations and related sanctions. Written results of a project review will be forwarded to the recipient. The recipient shall have 14 days after receipt of the results to furnish the department with additional information to finalize the findings, or with written justification for appeal of the findings. The department shall review the information and respond in writing within 30 days after receipt of the appeal.

(2) If a recipient is dissatisfied with the findings from the project review, it may request to progress to the next step of the appeal process. The appeal shall be submitted in writing to the department within 30 days of receipt of the department's decision. The recipient's appeal must clearly state the justification for the appeal, based on program requirements and the program review policy.

(3) An advisory committee consisting of representatives of the Wisconsin County Highway Association, the League of Wisconsin Municipalities, the Wisconsin Alliance of Cities and the Wisconsin Towns Association and appointed by the department shall review the appeal and forward its written recommendation to the department.

(4) The department will review the advisory committee's recommendation and respond in writing to the appellant within 30 days of receipt of the recommendation. All rulings by the department shall be final and may not be subject to further appeals or judicial review.

(END OF RULE TEXT)

Effective Date. This rule shall take effect on the first day of the month following publication in the Wisconsin Administrative Register as provided in s. 227.22(2)(intro.), Stats.

Signed at Madison, Wisconsin, this **16th** day of **December**, 2009.

/s/

FRANK J. BUSALACCHI

Secretary

Wisconsin Department of Transportation

LEG. COUNCIL COMMENTS GO HERE

PART 4
CR 09-041

ANALYSIS OF FINAL DRAFT OF TRANS 206

(a) **Basis and Purpose of Rule.** The Local Roads Improvement Program (LRIP) authorizes the Department to reimburse local governments for not more than 50% of the costs to design and construct local roads. The Division of Transportation Investment Management, Bureau of Transit, Local Roads, Railroads and Harbors is responsible for administering this program. The requirements for this program are set forth in s. 86.31, Stats., and ch. Trans 206, Wis. Admin. Code.

The primary purpose of LRIP is to improve the quality of local roads. Another important purpose is to ensure that government funds used to reimburse local governments for these improvements are used wisely and fairly. LRIP authorizes reimbursement for work done by both private contractors and county government highway departments for local road improvements. Before county governments can perform local road improvements with their own resources, private contractors must be given the opportunity to bid competitively for the work. Town governments can choose county highway departments to perform town road improvement projects, but only after giving private contractors the opportunity to bid on the project, and only after demonstrating that the county highway department can complete the project in a more cost-effective manner (at least 10% less than private contractors).

Chapter Trans 206 interprets and administers s. 86.31, Stats., the local roads improvement program. Section 86.31 was revised in 1999 Wis. Act 9 (eff. October 29, 1999), in 2001 Wis. Act 16 (eff. September 1, 2001), in 2003 Wis. Act 33 (eff. July 26, 2003), and in 2005 Wis. Act 25 (eff. July 27, 2005). The proposed rule will incorporate these statutory revisions and other related changes.

(b) **Modifications as a Result of Testimony at Public Hearing.** The public hearings were held in Madison on July 20, 2009 and in Wausau on July 22, 2009. As a result of testimony at the hearing, and upon further Departmental review, the following modifications were made:

1. The language related to the eligible project cost finished hot mix asphalt has been clarified in s. Trans 206.03(10)(a)2.

2. The number of projects that may be submitted in a fiscal year has been clarified in ss. Trans 206.03(4)(a), 206.04(6)(c) and 206.06(7)(c).

3. Cost-effectiveness finding language in s. Trans 206.10(2) was clarified to indicate that it could include any LRIP funding.

(c) **List of Persons who Appeared or Registered at Public Hearing.** The following persons appeared/registered at the Madison hearing:

NAME	SPOKE IN OPPOSITION	REGISTERED IN OPPOSITION	REGISTERED FOR INFORMATION
Ron Chamberlain, Adams County Hwy. Comm'r, Adams, WI	X		
Jerald A. Holub, Past-chair WCHA/Vice Chair Sheboygan County Board, Sheboygan, WI	X		
Paul Halverson, Douglas County Hwy. Comm'r, Hawthorne, WI	X		
Benjamin J. Coopman, Jr., Rock County Director of Public Works, Janesville, WI	X		
Daniel J. Fedderly, Exec. Dir., WI County Hwy. Assoc., Boyceville, WI	X		
Jack Dittmar, Monroe County Hwy. Comm'r, Sparta, WI	X		
Bill Weronke, Portage County Hwy. Comm'r, Plover, WI	X		
Tim Ramberg, St. Croix County Hwy. Comm'r, Hammond, WI	X		
Dennis Pelock, Crawford County Hwy. Comm'r, Seneca, WI	X		
Tom Dahlke, Waushara County Hwy. Comm'r, Wautoma, WI	X		
Gary Kennedy, Manitowoc County Hwy. Comm'r, Manitowoc, WI	X		
Mark Servi, Barron County Hwy. Comm'r, Barron, WI	X		
Dean Steingraber, Waupaca County Hwy. Comm'r, Waupaca, WI	X		
Al Geurts, Outagamie Co. Hwy. Comm'r, Appleton, WI	X		
Bruce G. Stelzner, President, WCHA, Chippewa Falls, WI	X		
David J. Lambert, Grant County Hwy. Comm'r, Lancaster, WI		X	
Thomas Janke, Fond du Lac County Hwy. Comm'r, Fond du Lac, WI		X	
Greg Schnell, Sheboygan County Hwy. Comm'r, Sheboygan, WI		X	
Stephen A. Muchow, Sauk County Hwy. Comm'r, Baraboo, WI		X	
Dallas Cecil, Green County Hwy. Comm'r, Monroe, WI		X	
Marion "Bud" Flood, Portage County Supervisor, WHCA BOD, Stevens Point, WI		X	
Craig e. Hardy, Iowa Co. Hwy. Comm'r, Dodgeville, WI		X	
Randy Schulz, Lincoln County Hwy. Comm'r, Merrill, WI		X	
Tom Jean, Lafayette Co. Hwy. Comm'r, Darlington, WI			X
Joe Maassen, Counsel for WI Transportation Builders Association, Madison, WI			X

The following persons appeared/registered at the Wausau hearing:

NAME	SPOKE IN OPPOSITION	REGISTERED IN OPPOSITION
Jon Johnson, Washburn County Commissioner, Spooner, WI	X	
Charles M. Rayala, Jr., Chairman, Wisconsin County Hwy. Assoc., Manitowish Waters, WI	X	
Steve Schofield, Pepin County Hwy. Comm'r, Durand, WI	X	
Jesse T. Rintala, Dunn County Hwy. Dept. Engineer, Menomonie, WI	X	
Jim Fischer, Vilas County Hwy. Comm'r, Eagle River, WI		X
John Rogers, Forest County Hwy. Comm'r, Crandon, WI		X
Jeff DeMuri, Florence County Hwy. Comm'r, Florence, WI		X
Steve Warndahl, Polk County Hwy. Comm'r, Balsam Lake, WI		X
Vicki Price, Walworth County Hwy. Coordinator, Elkhorn, WI		X
Larry Price, Public Works Superintendent, Walworth Co. Public Works Dept., Elkhorn, WI		X
Grant Bystol, Shawano County Hwy. Comm'r, Shawano, WI		X
Jess Sackmann, Taylor County Hwy. Comm'r, Medford, WI		X
Patrick Scanlan, Oconto County Hwy. Comm'r, Oconto, WI		X

(d) Summary of Public Comments and Agency Response to those Comments: In addition to the comments made at and on behalf of individuals in attendance at the public hearings, the Department also received additional comments. The written comment period was held open until November 1, 2009. Written comments received are included in the following:

Ron Chamberlain, Adams County Hwy. Commissioner, Adams, WI – Mr. Chamberlain stresses that LRIP should be simple. He contends the proposed rule will have a fiscal impact. Mr. Chamberlain considers the proposed CEF process too complicated, and indicates the sanctions should be improved.

Jerald A. Holub, Past-chair WCHA/Vice Chair Sheboygan County Board, Sheboygan, WI – Mr. Holub believes that the program has become too cumbersome. He believes WISLR is a waste of time and money. Mr. Holub thinks sanctions should not be enforced in the case of an honest mistake. He believes the rule will impose additional work without additional compensation for county highway commissioners. Mr. Holub indicates that program dollars should be put into the road, not into administration. He would like the Department to keep the program simple, and believes the program is not user friendly. Mr. Holub thinks the statutory requirement for counties to provide a sealed quote and be 10% below the lowest bid is terrible.

Paul Halverson, Douglas County Highway Commissioner, Hawthorne, WI – Mr. Halverson indicates that LRIP is a very important program for local government. He believes the relationship between the Department and local governments has become adversarial and the parties have not worked together to draft the rule. Mr. Halverson indicates the program has become cumbersome and needs to be simplified.

Benjamin J. Coopman, Jr., Rock County Director of Public Works, Janesville, WI – Mr. Coopman expresses his belief that a rule rewrite is unnecessary, and cites the

proposed cost-effectiveness finding language as an example. Mr. Coopman disagrees with the proposed limitation on stand-alone material purchases to hot mix asphalt. He also opposes the requirement to complete the final improvement prior to receiving the LRIP reimbursement. He requests that the Department postpone the rule and meet with the stakeholders.

Daniel J. Fedderly, Exec. Dir., WI County Hwy. Assoc., Boyceville, WI – Mr. Fedderly expresses his concern that the rule narrows the definition of “eligible projects.” He questions the need for the total improvement to be completed before the LRIP project is eligible for reimbursement. He expresses his concerns regarding project sanctions, responsibility for incurring those penalties, and the appeals process. Mr. Fedderly sees the need for further clarification regarding project number limitations. He proposes “levels of compliance” regarding roadway standards. He believes that the cost-effectiveness finding and review process are complicated and will result in misinterpretations. He thinks the term “work quality” should be defined in the rule. Mr. Fedderly questions the Department’s assertion that the rule will have no fiscal impact. He asserts the need for a better stakeholder appeal process.

Jack Dittmar, Monroe County Highway Commissioner, Sparta, WI – Mr. Dittmar believes that reimbursements should be provided prior to final improvement completion. He expresses his concern that the program should remain simple. He believes double chip seal and cold mix asphalt paving materials should be eligible for reimbursement.

Bill Weronke, Portage County Highway Commissioner, Plover, WI – Mr. Weronke believes that more materials should be eligible for reimbursement. He would like to see local governments have more input into the rule. Mr. Weronke thinks the statutory requirement for counties to provide a sealed quote and be 10% below the lowest bid should be eliminated.

Tim Ramberg, St. Croix County Highway Commissioner, Hammond, WI – Mr. Ramberg wants more meetings between local governments and the department. Mr. Ramberg would like reimbursements before the improvement has been completed. He criticizes the use of acronyms in the proposed rule. Mr. Ramberg believes that some of the cost-effectiveness finding provisions are overbearing and unnecessary.

Dennis Pelock, Crawford County Highway Commissioner, Seneca, WI – Mr. Pelock would like to see an extension to the sunset policy for emergencies. He expresses his concern that the cost-effectiveness finding provisions will require too much paperwork.

Tom Dahlke, Waushara County Highway Commissioner, Wautoma, WI – Mr. Dahlke indicates that LRIP is a simple program that is becoming more complicated. He questions the Department’s assertion that the rule will have no fiscal impact. He believes the sanctions section and hot mix asphalt provision should be clarified. Mr. Dahlke believes that the cost-effectiveness finding process is cumbersome, and should not involve county boards.

Gary Kennedy, Manitowoc County Highway Commissioner, Manitowoc, WI – Mr. Kennedy believes that re-creation of the rule is unnecessary. He contends the program was once simple and should remain simple. He believes the rule will create unnecessary and unwanted rules and paperwork. Mr. Kennedy reports that he was a member of the LRIP study committee and believes that while some of their recommendations are part of the rule draft, it goes beyond what they discussed and approved at that time. He requests that the rules committee not adopt the rule until the Department works with local governments to improve the program.

Mark Servi, Barron County Highway Commissioner, Barron, WI – Mr. Servi stresses that LRIP is an extremely important program. He expresses his concerns that the proposed rule makes the program more complicated and cumbersome, the prevailing wage laws will increase LRIP costs, and the program should be more flexible.

Dean Steingraber, Waupaca County Highway Commissioner, Waupaca, WI – Mr. Steingraber contends the program should remain simple and flexible.

Al Geurts, Outagamie County Highway Commissioner, Appleton, WI – Mr. Geurts believes that the proposed rule goes above and beyond what is necessary. He believes it will create additional problems for administration of the program.

Bruce G. Stelzner, President, WCHA, Chippewa Falls, WI – Mr. Stelzner provided a copy of the Department's preliminary, pre-draft language describing all modifications in the rule re-creation. Mr. Stelzner provides a count of the rule recreation changes – “at least 26 definition changes, 50 new provisions 24 language changes, 7 new subchapters and 7 new proposed rules.” Mr. Stelzner expresses his concern that the proposed will result in a program that is more cumbersome and difficult to administer. Mr. Stelzner believes that the rule re-creation is not consistent with s. 86.31(2), Stats., and that it exceeds the authority granted to the Department under s. 86.31 for sanctions and penalties, programming caps, eligible project language, rules on real estate transactions, validation of cost-effectiveness findings, sunset of funds, and additional requirements and limitations on substitutions and engineering.

Thomas Janke, Fond du Lac County Highway Commissioner, Fond du Lac, WI – Mr. Janke believes the program should be simple and flexible, the rule is too complex and the sanctions are too severe.

Dallas Cecil, Green County Hwy. Commissioner, Monroe, WI – Mr. Cecil agrees with the prior comments of all the other commissioners and believes the administrative requirements are escalated.

Jon Johnson, Washburn County Highway Commissioner, Spooner, WI – (also includes additional written comments) Mr. Johnson asks that accumulation of entitlements be included in the rule. He indicates that “finished asphalt” should be clarified in the rule. He conveys his concerns about the complaint mechanism related to cost-effectiveness finding disputes and the possible cost associated with dispute resolution. He also

questions the stipulation in s. Trans 206.10(7)(d) that a county may not purchase new equipment to perform work permitted under a cost-effectiveness finding, except if it is worn out or obsolete. Mr. Johnson requests that the Department meet with the Wisconsin County Highway Association. Finally, he expresses his concern regarding the cost of additional regulation.

Charles Rayala, Chairman, Wisconsin County Hwy. Assoc., Manitowish Waters, WI. Mr. Rayala expresses his concern there should be more cooperation between the Department and local governments. He stresses the need for more input from County Highway Commissioners. Mr. Rayala expresses concern that the rule narrows the definition of “eligible projects.” He questions the need for the total improvement to be completed before the LRIP project is eligible for reimbursement. He expresses his concerns regarding project sanctions, responsibility for those penalties, and concerns regarding the appeals process. Mr. Rayala indicates the need for further clarification regarding project number limitations. He proposes “levels of compliance” roadway standards. He expresses his opinion that the cost-effectiveness and its review process is complicated and will create misinterpretations. He indicates that “work quality” should be defined. Mr. Rayala questions the Department’s assertion that the rule will have no fiscal impact. He asserts the need for a greater stakeholder appeal process.

Steve Schofield, Pepin County Hwy. Commissioner, Durand, WI – Mr. Schofield opposes any rule provisions not authorized by law. He asserts that the rule places too much additional administrative burden on commissioners. Mr. Schofield opposes limitations to the number of projects, and believes reimbursements should be permitted prior to final improvement completion. He also believes that the cost-effectiveness finding provisions go beyond the federal process.

Jesse T. Rintala, Dunn County Hwy. Dept. Engineer, Menomonie, WI – Mr. Rintala is concerned about added regulation and additional administrative costs. He believes the hot mix asphalt requirements in the proposed are unclear, and program sanctions should be objective standards.

Grant Bystol, Shawano County Hwy. Commissioner, Shawano, WI – Mr. Bystol sees the need for more input from WCHA and county highway commissioners.

Virgil Hanold, Vernon County Highway Commissioner, Viroqua, WI -- Mr. Hanold expresses the importance of working cooperatively through LRIP issues by bringing back the LRIP study group to review areas that both the stakeholders and the Department feel need to be modified.

By Attorney Joe Maassen, representing Wisconsin Transportation Builders Association) – Pat Goss, Wisconsin Transportation Builders Association – WTBA has concerns about the proposed rule as drafted. They believe that current negotiations between WTBA and WCHA on a number of local highway improvement project issues will impact ch. Trans 206 as proposed. WTBA understands that the Department is holding the record of the hearing open so everyone can provide comments on the rule, with

knowledge of the ongoing negotiations between WTBA and WCHA. The Association requests that the Department leave the record open until those meetings conclude so WTBA can provide “complete and meaningful” comments.

Greg Schnell, Sheboygan County Hwy. Commissioner, Sheboygan, WI – Mr. Schnell believes the proposed rule will add “red tape,” and additional administration for counties and towns. He says if the impetus for the rewrite was the commissioners’ actions, the Department should have expressed that to WCHA. He would like to see any issues resolved without the proposed rule change.

Town of Waterville, Arkansaw, WI – Town Chair Mr. John Caturia and Town Supervisors Mr. Josh Caturia and Mr. Bernard Bauer indicate that they are neither in favor of the changes nor the proposed draft.

Tim Ramberg, St. Croix County Hwy. Commissioner, Hammond, WI – Mr. Ramberg followed up with additional comments to supplement his public hearing testimony. Mr. Ramberg believes that the “LRIP committees” should have sole control of determining cost-effectiveness findings and compliance with program rules. He opposes the requirement for all projects to be bid, and believes that, to promote intergovernmental cooperation, the statutory provisions that limit the conditions under which towns may contract with a county should not apply. He believes there are fiscal effects, including costs associated with increased paperwork and meetings. Mr. Ramberg opposes holding recipients responsible for administering the program within the available annual funding levels. He provides his analysis of the difference between a project and improvement. He would like to see all references to “the department” changed to “the program.” Mr. Ramberg objects to the use of some acronyms in the proposed rule. He suggests allowing the town committee chair to determine uncommitted funds. He disagrees with letting all counties have a chance in turn for a discretionary project, and objects to the Department sending the administrative fee to the county treasurer, rather than directly to the highway department. He disagrees with the provisions related to eligible costs, as well as the provisions that prohibit the purchase of individual components, such as oil. Mr. Ramberg asserts that additional clarification of the piggybacking provisions is unnecessary. He objects to references to the county executive and board chair in the proposed rule, as well as the requirement for the total improvement to be completed prior to reimbursement. Mr. Ramberg disagrees with the offset of GTA. He argues that a professional engineer and/or highway commissioner should be responsible for quality of work. He recommends deleting sections of the rule. Mr. Ramberg contends that estimates are not required to be sealed and objects to commissioners assisting towns in the preparation of the pre-bid estimate. He objects to the entire section related to criteria and procedures for contracting with a county for a town road project, and indicates that it would be better to eliminate the program and provide the funding through GTA. He objects to the cost-effectiveness finding process, and deems it unnecessary; noting that whether a county uses competitive bidding should be left to their discretion.

Iowa County Highway Department Transportation Committee, Dodgeville, WI – Mr. Craig Hardy, Iowa County Highway Commissioner, on behalf of the Iowa County

Highway Department Transportation Committee, expresses their concerns regarding the need for third-party negotiations in the appeal process. They would like to see the term “sound public policy” defined in the rule. The group opposes some use of acronyms to describe components. The committee believes eligible costs should include work performed by the recipient. They believe eligible costs should include anything (materials or services) bid out, and also some items not competitively bid. They don’t see how the draft proposes to modify the statutory provisions related to when a county may do work for a town. They believe that the statutory provision for the county to submit a sealed quote and be 10% below the lowest bid should be eliminated. The committee believes the definition of LRIP “project” and the conditions necessary to meet the 10-year design life requirement should be clarified. The committee does not “... agree with the principle of allowing the oversight of the program by the department.” They assert that the program should be run by the locals for the locals, and support local representation on the (association-selected) peer review committee, which they assert should provide the final stage of appeals rather than the Department. They believe this group should be responsible for imposing sanctions and reviewing appeals, and offer suggested language for the rule to incorporate these provisions. The committee would like to see the term “quality of work” defined. The committee supports the Department establishing guidelines for the number of county and large city projects approved. They believe the county highway commissioners should be apprised of large city/village projects. The committee would like to see the reimbursement of administration reflect the actual costs, and would like for counties to be able to recoup additional administrative costs. They suggest several format changes to the proposed rule, and request further definition of eligible and ineligible costs. The committee believes the requirement for an engineer’s certification on projects exceeding the cost threshold in statute is burdensome. The group would like the Department to provide a written warning to obtain documentation the commissioner reports is missing, but any punishment should be determined at the local level. They oppose the GTA set-off provision. They believe the cost-effectiveness finding provisions should be established by a WCHA group.

State Representative Steve Hilgenberg, 51st Assembly District – Rep. Hilgenberg provided another copy of Iowa County Highway Committee’s letter, along with his own letter in appreciation of the Department’s work, and reiterating several concerns expressed to him by local officials, including worries that the rule narrows the definition of “eligible project costs” and redefines and diminishes the authority of the “peer review committee.”

The Department thanked Rep. Hilgenberg for his letter and for sending Iowa County Highway Committee’s letter, and assured him that the Department will consider their concerns as part of preparing the final draft.

(e) Explanation of any Changes Made to the Plain Language Analysis or Fiscal Estimate: No changes made.

(f) Response to Legislative Council Recommendations. The Legislative Council report contained numerous comments and are incorporated into the proposed rule, with the exception of the following:

1. Statutory Authority – Section 86.31(6)(g), Stats., requires the Department to promulgate rules establishing criteria for determining cost-effectiveness, and procedures for departmental review of disputes relating to county highway departments' decisions that it would be more cost effective for a county to complete a highway improvement project than to competitively bid the work for completion by a private contractor.

Trans 206.11(5) provides for Department review of disputes relating to county highway departments' decisions on cost-effectiveness. Subsection (e) provides that formal contested case requirements in ch. 227, Stats., do not apply. Subsection (h) provides that the Department's decision is final and not subject to further appeal or judicial review. The Department's review is limited to considering written comments and arguments.

There are frequently disputes between county highway departments and private construction contractors about whether a highway improvement project should be completed by the county highway department or by private contractors. These disputes must be resolved quickly and efficiently to complete needed highway construction and to allocate funds within a specified funding cycle. The proposed revision establishes a fast, informal review procedure rather than the cumbersome, expensive, time consuming contested case and judicial review process established in Chapter 227, Stats. The Department has chosen a fast informal review process to ensure that it can continue to provide reimbursement to local governments to improve the quality of local roads without unnecessary delay.

Chapter 227, Stats., does not require that formal contested case procedures be used in all circumstances. *J.F. Ahern Co. v. Wisconsin State Building Commission*, 114 Wis. 2d 69, 92-95 (Ct. App. 1983), review denied 114 Wis. 2d 601; *Gleason v. Department of Transportation*, 61 Wis. 2d 562 (1973). A person is entitled to a formal contested case hearing only if a "substantial interest" is injured by agency action or inaction. *Milwaukee Metropolitan Sewerage District v. Department of Natural Resources*, 126 Wis. 2d 63, 74 (1985); section 227.42, Stats; *Kathleen S. Donius, Milwaukee Metropolitan Sewerage District v. DNR: Expanding the Scope of State Agency Actions Covered by Contested Case Hearings*, 1986 Wis. L. Rev. 963.

Chapter 227, Stats., does not require that all agency actions be subject to judicial review. A person is entitled to judicial review only if a "substantial interest" is injured by agency action or inaction. *Department of Revenue v. Hogan*, 198 Wis. 2d 792, 803 (Ct. App. 1995); *Madison Landfills, Inc. v. Department of Natural Resources*, 180 Wis. 2d 129 (Ct. App. 1993); section 227.52, Stats.

The Department's informal review is appropriate because a local government has no "substantial interest" in whether the Department's decision to reimburse for 50% of the costs to design and construct local roads is based upon the Department's decision on cost-effectiveness. The Department has a legitimate interest in ensuring that state funds

available under the LRIP program are encumbered and disbursed in accordance with fair procedures, and without unnecessary delay.

The s. 227.42, right to a contested case hearing, does not apply when there is evidence of legislative intent that a particular interest is not protected. The Department believes that s. 86.31, Stats., provides clear evidence of legislative intent that there is no right to a contested case hearing for Department review of disputes relating to county highway departments' decisions on cost-effectiveness.

The LRIP program requires the Department to:

1. Utilize a formula for allocating funds for each county;
2. Administer a biennial application process to encumber funds on an annual fiscal year basis;
3. Encumber funds for specific applicants based on biennial allocation and the availability of state funds for each fiscal year.

The Legislature makes funds available to the Department on a fiscal year basis. The available funds for this program must be encumbered within the fiscal year in which they have been made available.

By establishing statutory requirements that the Department must use a formula for allocating funds for each county, and that funds must be encumbered during the fiscal year in which they are made available, the legislature has expressed an intent that contested case hearings are not required. Formal contested case hearings typically take more than a year to complete, especially if judicial review is mandated. Also, the appeal process would remain open-ended because subsequent appeals could follow upon initial appeals as funds are allocated and encumbered each fiscal while contested case hearings and judicial review are pending.

The Department cannot effectively administer this program and encumber funds within the state fiscal year, if the Department is required to provide formal contested case hearings followed by judicial review of disputes relating to county highway departments' decisions on cost-effectiveness. Available funds would be tied up while the Department completes a series of individual formal contested case hearings for Department review of disputes relating to county highway departments' decisions on cost-effectiveness.

The Department must ensure state funds available under the LRIP program are allocated and encumbered in accordance with statutory requirements. The Department must ensure that these funds are encumbered within the fiscal year. If not, these funds will be unavailable for use. The Department is satisfied that an informal review process is more appropriate than the formal contested case and judicial review in chapter 227, Stats.

It is noteworthy that, although there were many objections to the proposed cost-effectiveness process, no one objected that this informal review procedure did not include contested case or judicial review procedures. To the contrary, those who objected wanted a simpler, less complicated review procedure.

2. Form, Style, and Placement in Administrative Code

b. Section Trans 206.03 (7) (a), (b) and (d) refer to “these requirements.” To clarify the subsection related to the number of projects selected or recommended, each of the components has been broken out to clarify any limitations and the responsible party.

d. A new subsection, (18) Guidance for Imposing Sanctions, was added.

e. The recommended updates to “shall” were incorporated, per the recommendation. In addition, upon review of the draft, many additional references to “should” “are” “is” and “will” in other sections were also replaced by the word “shall,” wherever appropriate.

5. Clarity, Grammar, Punctuation and Use of Plain Language

c. Section Trans 206.03(2)(a) refers to the transmittal of forms to the commissioner liaison by towns and small municipalities. Section Trans 206.03(2)(b) refers to the transmittal of forms to the Department by county highway commissioners and large municipalities, which are responsible for administering their own projects. These provisions are not duplicative with respect to the submission of project applications.

d. Section Trans 206.03(3)(c) is modified to include the reference where the existing CHI formula can be found.

f. Section Trans 206.03(2)(d) is clarified to indicate that funds are assigned to a specific project and portions of assigned funding cannot be re-assigned before the project has been reimbursed.

i. Section Trans 206.03(17)(e)2. has been clarified.

k. Clarifying language was added to s. Trans 206.06(1)(b) to indicate that the composition of CMSIC is determined by small cities and villages.

n. Section Trans 206.12(3) refers to an advisory committee established for appeal of a project review sanction. The composition of this body is included in the provision.

(g) **Final Regulatory Flexibility Analysis**. The proposed rule will have no adverse impact on small businesses.