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Joint Committee on Finance

Paper #659

Community Sensitive Solutions Policy (DOT -- State Highway Program)

CURRENT LAW

"Community sensitive solutions" (CSS) refers to a process used by transportation agencies to involve various parties that may be affected by proposed projects in project decisions and discussions early in the project development process, with the intent of building greater consensus for the project. The general principles behind CSS have been established through collaboration between the American Association of State Highway and Transportation Officials (AASHTO) and the Federal Highway Administration (FHWA). Although CSS refers to a process, the traveling public typically recognizes CSS as the aesthetic elements incorporated into some highway projects as one of the outcomes of that process. The Wisconsin Department of Transportation (DOT) has developed a CSS policy that establishes guidelines for the incorporation of these aesthetic elements in projects, including limits on the amount of funding that may be incorporated into a project.

GOVERNOR

No provision.

DISCUSSION POINTS

1. Several legislators have raised questions about the Department of Transportation's policy of incorporating certain aesthetic elements into state highway projects, generally known as "community sensitive solutions." Some have questioned this policy in light of continuing concerns regarding the status of the state's transportation finance system. This paper provides some information on the Department's CSS policy, a discussion of the rationale used by the Department

and other transportation agencies for having a CSS policy, and an alternative for placing restrictions on the Department's use of CSS in highway projects.

2. The Department's CSS policy is set forth in the Facilities Development Manual, which establishes the Department's standards and policies for transportation project design and construction. Examples of CSS elements that are eligible for inclusion in projects, according to the policy, include the following: aesthetic railings, anti-graffiti coating, bicycle/pedestrian accommodations, decorative fencing, decorative lighting, aesthetic treatments of noise barriers and retaining walls, and decorative landscaping.

3. A key element of the Department's CSS policy is a series of cost percentage limits, which vary depending upon the type of construction project (reconstruction, repaving, bridge projects, and projects over \$50 million, etc.) and the project's "visual community impact level," which relates to the proximity to, or prominence in, populated areas. For instance, for highway reconstruction projects, CSS costs are limited to 5% of the project cost for projects that have a high visual impact level, 3% for projects that have a medium impact level, and 1% for projects with a low impact level. Other types of projects are subject to different CSS percentage limits, while resurfacing projects are not eligible. In July 2012, the Department revised the CSS policy to lower the percentage limits for certain types of projects. Most notably, for large projects (over \$50 million), the CSS limit was reduced from 5% to 2% for projects with a high visual impact level and from 3% to 2% for projects with a medium impact level (for projects with a low impact level, the CSS percentage was unchanged, at 1%). Smaller reconstruction projects were unaffected by the revised percentages.

4. Although these percentages establish the limits for CSS expenditures, the actual amount of the CSS budget is generally less than the limit. The following table shows the CSS budget for the high-cost projects (over \$50 million) that are currently under construction or will be constructed within the next several years. For all these projects, the current CSS limit, according to the policy, is 2% of project costs, although most of the projects were developed prior to the percentage reduction described in the previous point.

<u>Project</u>	<u>Total Project Cost (In Millions)</u>	<u>CSS Budget (In Millions)</u>	<u>Percent of Total Cost</u>
I-94 North-South Freeway	\$1,911.9	\$13.2	0.7%
Zoo Interchange	1,717.8	10.1	0.6
USH 41, Brown and Winnebago County	1,400.0	21.4	1.5
STH 26, Janesville to Watertown	433.0	2.2	0.5
USH 10/441, Winnebago County CTH B to Oneida St.	415.0	2.5	0.6
Hoan Bridge	301.9	0.7	0.2
USH 12, I-90/94 to Ski Hi Road	206.4	1.4	0.7
USH 18/151, Verona Road/Madison Beltline	176.3	1.9	1.1
STH 23, STH 67 to USH 41	140.0	1.0	0.7
STH 15, STH 76 to New London	125.0	0.6	0.5

5. Several legislators have expressed opposition to the policy of incorporating CSS

elements in projects at a time when transportation fund revenues are insufficient to fund current transportation needs. Some argue that if a community desires that aesthetic treatments be incorporated into a highway project, then the community should pay the additional cost of those elements.

6. While highway projects frequently improve the travel speed and convenience for highway users, the primary beneficiaries often do not live or have businesses near the highway. In these cases, the affected local community may be opposed to the project, since it primarily benefits nonresidents, but has negative impacts on residents. Some may argue, therefore, that requiring the local government to pay the cost of mitigating negative effects improperly shifts the cost from the beneficiaries of the highway improvement to those that are negatively affected by the project.

7. The Department takes the position that having a CSS policy saves money, arguing that working with communities affected by highway projects to identify CSS elements helps achieve a greater degree of consensus for the project, which helps to avoid delays and other problems. Prior to having a CSS policy, the Department would sometimes receive complaints about the appearance or negative impacts of the project after construction had begun. This often led to pressure from local governments, community groups, and legislators to make modifications to address the concerns. The Department reports that the added cost associated with project redesign and delays to the project after it had been started was often as much or more than the cost of incorporating CSS elements.

8. The Department cites the replacement of the Claude Allouez Bridge in De Pere as an example of a project that received significant local opposition for many years, but which was eventually constructed after the Department agreed to incorporate aesthetic elements (then known as "context sensitive design") into the new bridge and approaches. The Department determined that the existing two-lane bridge and approaches were insufficient to accommodate the level of traffic that used the bridge and so proposed a four-lane replacement. However, because the old bridge was viewed as characteristic of the community, many residents resisted the four-lane replacement. The bridge was completed in 2007, but the Department indicates that without the incorporation of aesthetic improvements, it would have been significantly delayed.

9. Since the generally-accepted definition of CSS relates to the process of taking into consideration concerns of communities, citizens, and businesses that may be affected by a project (as opposed to the design elements itself), it has been suggested that a policy could be crafted to prohibit "aesthetic" elements of a project that are not needed for a highway or bridge facility. If the Committee decides that a statutory prohibition against aesthetic elements is warranted, there are several issues that should be considered when crafting the provision:

- Not all aesthetic treatments add materially to the cost of highway projects. For instance, the Department indicates that some common aesthetic treatments, such as patterned surfaces used for bridge abutments (fieldstone or brick appearance) are installed using reusable, standard forms, so do not add to the cost, relative to a plain concrete form. If it is not the intent to prohibit aesthetic treatments that do not add to the cost, this distinction would have to be made in the policy.

- The Department follows certain practices intended to be generally sensitive to the setting of a project, which may increase the cost of the project, but which are not counted as a CSS element. For instance, aesthetics is one element taken into consideration with the design of certain, significant bridge projects. In these cases, there is a difference between the "standard" design and what may be a less costly bridge design that many would consider stark and unattractive and that would be a long-lasting detriment to the local area. A prohibition against "aesthetic" elements would have the effect of eliminating those items that are covered under the Department's CSS policy, but would also affect those more general aesthetic practices.

- Other costs for aesthetics are the result of the Department's long-standing practices that many may consider a matter of basic "fairness." For instance, if a highway widening project results in the elimination of shade trees in a downtown area, the Department includes the cost of planting replacement trees in the project budget (that is, it is not a CSS cost). Such expenditures are not required for the functioning of the highway, so could be considered a cost that is incurred for purely aesthetic purposes. Again, a prohibition against "aesthetic" elements could prohibit the Department from following long-standing practices. The difference between basic, widely-accepted aesthetic practices and CSS elements is somewhat subjective and may not always be clear. For these reasons, crafting a policy that simply prohibits aesthetic treatments that are not necessary to the functioning of a highway could have unintended consequences.

- The Department is required under the National Environmental Policy Act and the Wisconsin Environmental Policy Act to follow certain practices intended to identify the potential consequences of highway improvement projects, and, in general, provide an opportunity for the public to have input on transportation project decisions. In some cases, the Department is required to include mitigation measures with highway improvement projects, which may involve working with affected communities to build in aesthetic treatments to offset negative impacts. The agreements reached during the environmental process are incorporated into a record of decision that marks the final federal approval to proceed on the project. If a policy to prohibit CSS measures is enacted, it could conflict with agreed-upon measures in the record of decision of projects that are currently under construction or in an advanced phase of development. This may, in turn, require the Department to "reopen" the environmental process and result in delays or a redesign of those projects. For future projects (or those projects that do not have a completed record of decision), the prohibition against incorporating aesthetic elements may conflict with certain federal requirements for the incorporation of mitigation measures. That is, federal law does not require the incorporation of CSS elements, but does require, in some cases, that consideration be given to mitigating negative impacts, which could include the incorporation of offsetting aesthetic features.

- The Department's CSS policy establishes a "budget limit" for CSS elements, which is based on the estimated additional cost of incorporating those elements into the project. The actual expenditures for these elements is unknown. In most cases, it would be impractical for the Department and for contractors to separately account for the costs of CSS elements, since they are typically incorporated into the regular bid items for the project. For this reason, a statutory prohibition against the use of state or federal funds for CSS elements may complicate the accounting of project costs if those elements are included as a local expense. To address this issue, the provision, instead of prohibiting the use of state or federal funds for CSS elements, could specify

that the Department must require local governments to pay the full cost of any such elements based on an engineering estimate of the cost of those elements.

10. If it is the intent of the Committee to prohibit the features that are commonly known as CSS, but not prohibit the Department from following long-standing practices related to aesthetics, or from complying with federally-required processes for taking into consideration public concerns regarding the negative impact of highway projects, then it may be necessary to establish a more general prohibition, but permit the Department to use some discretion in determining the limits on such a prohibition. In addition, it may be necessary to allow for exceptions in cases where federal law requires mitigation.

11. It should be noted that the policy described in the previous point would continue to allow some aesthetic features that some may find objectionable. It would, however, generally prohibit those features that are commonly recognized as community sensitive solution elements, without halting long-standing aesthetic design practices.

ALTERNATIVES

1. Specify that the Department of Transportation must require local governments to pay the full cost of any aesthetic elements commonly referred to as community sensitive solutions, as determined by the Department, that are incorporated into a state highway improvement project, if the following apply: (a) the elements add materially to the cost of a highway improvement project; (b) such elements are not included in a federal record of decision or other similar federal project approval issued prior to the effective date of the bill; and (c) the inclusion of such elements is not required to receive approval for the use of federal funds on the project.

2. Maintain current law.

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