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Joint Committee on Finance

Paper #101

Eau Claire Confluence Development Project (Administration and Miscellaneous Appropriations)

[LFB 2015-17 Budget Summary: Page 22, #10 and Page 295, #1]

CURRENT LAW

No provision.

GOVERNOR

Create a continuing appropriation for the purpose of providing grants to an economic development district and provide \$15.0 million GPR in 2016-17 for the grants. Permit DOA to award grants to a city in the state for an economic development district that includes a community arts center and a mixed-use development. Require the applicant city to submit to DOA a financial plan for the economic development district. Specify that the plan must include matching funds (cash, in-kind, or both) that equal 100 percent of the grant funding being requested. In addition, require that the applicant provide proof, to the satisfaction of DOA, of other financing for the economic development district. Specify that DOA may not award more than \$15.0 million in grants in total. Further, specify that the funding, which is provided in 2016-17, will not remain in the budgeted base for miscellaneous appropriations.

DISCUSSION POINTS

1. According to the Budget in Brief, the \$15 million GPR for the grant program is provided because, "The Governor intends to provide these funds to the Confluence Development Project in the City of Eau Claire to support development in the City's downtown, provided that the district meets the financial matching requirements." No other specific reasons have been provided by the administration.

Project Background

2. The University of Wisconsin (UW)-Eau Claire's campus master plan, which was completed in November, 2011, identified the construction of a new performance arts center and a new fine arts center as priorities for the first five years of the 20-year plan. At present, the departments of art and design, music, and theatre arts are housed in the Haas Fine Arts Center. That facility houses a 600-seat theatre and two 200-seat theatres that are primarily used for music and dance performances. Theatre programs and productions are housed at the Kjer Theatre which has a 400-seat theatre and is located across the Chippewa River from the Haas Fine Arts Center. According to UW-Eau Claire officials, the campus's current fine arts and performance spaces are too small for current program needs and are poorly configured. In particular, the current 600-seat theatre located in the Haas Fine Arts Center is not large enough to accommodate the music department's choral and orchestra performances. The Kjer Theatre would require significant renovations and has been identified for demolition.

3. As proposed at the time, the arts facility component of the Confluence Project would include a significant amount of space that would be used exclusively by UW-Eau Claire's dance, theatre, and music departments. This space would include a dance studio, rehearsal space, set and costume shops, a lighting laboratory, office space for the departments of theatre and dance, and a classroom. In addition to these spaces, the university portion of the project would also include a 400-seat performance venue which the university would share with the community. The community portion of the project would include a 1,200- to 1,500-seat theatre and music rehearsal space to which the university would also have access.

4. The UW Board of Regents initially considered the Eau Claire Confluence Project at its meeting in October, 2012. At that time, the Regents considered whether to request \$25,000,000 in general fund supported borrowing (GFSB), which is the primary source of funding for UW System academic building projects, to purchase the university component of the proposed arts facility. The proposal was considered as an alternative to building an addition to the existing, on-campus Haas Fine Arts Center. According to UW-Eau Claire officials, a study conducted by the Division of Facilities Development in DOA found that building an addition to the Haas Fine Arts Center that would provide the same space as would be provided in university portion of the proposed arts facility could cost \$32 million. That addition would not include the 1,200- to 1,500-seat theatre and music rehearsal spaces that would comprise the community portion of the arts facility. Materials provided to the Regents in October, 2012, indicated that the UW System may request funds to renovate the Haas Fine Arts Center in the future.

5. In October, 2012, the Board of Regents approved the Confluence Project in concept and stipulated that the following criteria be met if the Board of Regents and UW-Eau Claire were to be involved: (a) the entity or entities that will own and operate the private components of the project's arts facilities must provide satisfactory proof of an independent guarantor or surety of the financial and operation obligations of the entity or entities; (b) the project's operating agreement must ensure that neither UW-Eau Claire nor the Board of Regents will be liable for more than their prorated share of operational costs; (c) the value of the public component of the project's arts facilities must be directly proportional to the amount of the state investment in that component, as

confirmed by independent audit; (d) the project's development process must be conducted in cooperation with DOA and in compliance with all project delivery requirements relating to fair competition and transparency; and (e) the state investment in the entire project must not exceed \$25 million.

2015 AB 21/SB 21

6. Funding for the Confluence Regional Arts Center was initially requested through the 2015-17 capital budget. The Confluence Project has three main components: (a) a Regional Arts Center; (b) Haymarket Landing (which is proposed to include university housing); and (c) a Public Plaza. Eau Claire Confluence Arts, Inc. requested the enumeration of \$25.0 million GFSB to support the construction of the Regional Arts Center component of the Confluence Project. At the time of the request, total funding for the Regional Arts Center was estimated at \$50.0 million. The Governor recommended denial of the request, citing the GPR provided under the budget bill for the project. Although AB 21/SB 21 contains additional bonding authority of \$1.56 billion, the administration has indicated that the Eau Claire Confluence Project was funded with GPR rather than bonding due to "an overall desire to restrain state bonding in this biennium."

7. Subsequent to submission of the capital budget request, Eau Claire Confluence Arts, Inc. reduced the budget for the Regional Arts Center to \$40.0 million. Funding would be provided from: (a) \$15.0 million GPR provided under the bill; (b) \$13.5 million from philanthropic sources; (c) \$5.0 million from the City of Eau Claire; (d) \$3.5 million from Eau Claire County; and (e) \$3.0 million from New Market Tax Credits. According to representatives of the project, any additional reduction to the \$40.0 million budget for the facility would compromise the quality of academic programming and services to the public. In addition, representatives of the project indicate that a reduction in the commitment of \$15.0 million funding from the state would risk the viability of the project.

8. The Regional Arts Center as currently proposed would include a 1,200-seat main theatre, 450-seat smaller theatre, and 250-seat flexible theatre. The facility would also include offices, classrooms, rehearsal rooms, art studios, theatre production space, and a public gathering place. Eau Claire Confluence Arts, Inc. indicates that the facility would replace the State Theatre, which is owned by the Eau Claire Regional Arts Council, and the Kjer Theatre, which is located on the UW-Eau Claire campus.

9. The facility would be owned by Eau Claire Confluence Arts, Inc., the not-for-profit organization which requested funding for the project under the 2015-17 capital budget. Operation of the facility would be managed by the Confluence Council, LLC, which includes members from the Eau Claire Regional Arts Council, UW-Eau Claire, Visit Eau Claire, the City of Eau Claire, and other community members. Representatives of the project estimate that the arts center would generate operating revenue of \$1,681,200 annually (\$1,202,000 attributable to the community and \$479,200 attributable to UW-Eau Claire) and have operating expenses of \$1,643,100 annually (\$1,208,500 attributable to the community and \$434,600 attributable to UW-Eau Claire), for net operating revenue of \$38,100 annually.

Analysis

10. The state operates several economic development programs, some of which are grant programs. In general, economic development programs operated by the state include at least one element that aims to promote positive economic development outcomes and proper utilization of state funding, such as: (a) a competitive application process to promote an efficient or effective use of funds; (b) repayment requirements that would ensure partial or full recovery of the cost to the state; (c) conditional funding provided on the basis of achievement of economic development outcomes; or (d) reporting requirements that ensure, at a minimum, that information regarding the use of funds or program outcomes would be available to the public.

11. On one hand, it could be argued that approval of the proposal in its current form could set a precedent that would lead to other such allocations of funding to specific beneficiaries in the future. The grant, for which a recipient has already been identified, would not be awarded on a competitive basis and no amount of the grant would be repaid to the state. Further, under the bill, the project would not be required to report to the state regarding economic development outcomes, such as the number or type of jobs created by the project.

12. On the other hand, although it is uncommon for funding to be provided to specific non-state entities in the form of a non-competitive, appropriated grant, in recent years funding has been provided to non-state entities for construction of facilities through the state building program, as shown in the following table. If funding for the Confluence Project were to be provided as GFSSB, as had been initially requested, it would represent one of the largest such provisions of funding for a local project.

Local Projects Enumerated under State Building Programs, 2009 - 2013

<u>Project</u>	<u>State Funding</u>
Aids Network (2009 Act 28)	\$300,000
Aids Resource Center (2009 Act 28)	800,000
Bradley Center Sports and Entertainment Corp. (2009 Act 28)	5,000,000
Dane County Yahara River Watershed Initiative (2009 Act 28)	6,600,000
Madison Children's Museum (2009 Act 28)	250,000
Myrick Hixon EcoPark (2009 Act 28)	500,000
Aldo Leopold Climate Change Classroom and Interactive Library (2009 Act 28)	500,000
Oshkosh Opera House (2009 Act 28)	500,000
L.E. Phillips Library -- Eau Claire (2009 Act 28)	125,000
Stone Barn Restoration -- Town of Chase (2009 Act 28)	100,000
Lac du Flambeau Indian Tribal Cultural Center (2011 Act 32)	250,000
Dane County Livestock Facilities (2013 Act 20)	9,000,000
Domestic Abuse Intervention Center - Madison (2013 Act 20)	560,000
K I Convention Center - Green Bay (2013 Act 20)	2,000,000
Norskedalen Nature and Heritage Center - Vernon County (2013 Act 20)	1,048,300
Wisconsin Maritime Center for Excellence - Marinette County (2013 Act 20)	<u>5,000,000</u>
Total	\$32,533,300

13. For the Confluence Regional Arts Center, it should be noted that one of the primary beneficiaries of the project would be UW-Eau Claire, which is a state entity. Therefore, it could be argued that the project should be compared to GFSB-funded projects of the UW System and UW campuses. Under 2013 Act 20, \$238.8 million GPR in new general obligation bonds was provided for UW System and UW campus projects ranging from \$4.5 million for a UW-Whitewater student success center addition to \$82.0 million for a UW-La Crosse science labs building.

14. In August, 2014, the Board of Regents approved a resolution supporting the Eau Claire Confluence Project but did not include a request for GFSB related to the project in its capital budget request. According to UW System staff, the Board of Regents did not request the enumeration of GFSB to purchase the university component of the arts facility, as had been initially proposed, due to concerns regarding UW-Eau Claire's potential responsibility for capital and operating costs related to the facility if the project is not successful in attracting adequate private funds. Project developers have set a goal of raising \$13.5 million from philanthropic sources to support the arts facility portion of the project. University of Wisconsin-Eau Claire officials indicate that \$8 million in private contributions has been raised to date.

15. In addition to the proposed arts facility, the Eau Claire Confluence Project includes a mixed-use building (Haymarket Landing) that would include retail, restaurant, and office space in addition to 119 apartments. Similar to the proposed arts facility, it was initially proposed that the Board of Regents could request \$30 million in program revenue supported borrowing (PRSB) to purchase the housing component of the mixed-use facility after it had been constructed. Construction began on the project in November, 2014, and it is anticipated that the building will be completed in summer, 2016. It is currently being developed by a private partnership which includes the Blugold Real Estate, a subsidiary of the UW-Eau Claire Foundation. The campus master plan identified a significant need for additional student housing both on- and off-campus. The master plan recommended that UW-Eau Claire partner with a private or non-profit developer on a residential project in close proximity to campus and to provide university programming in that space if possible. At present, there is no agreement in place between the private entities developing the property and UW-Eau Claire regarding the use of the residential portion of the property as student housing. The Regents also have not requested any funds related to this portion of the Confluence Project.

16. The Building Commission has developed the following criteria for including state funding for local projects in the state's capital budget: (a) the project must be in the public interest; (b) there should be a statewide basis justifying the need for the project; (c) local or other financing alternatives should be considered first; (d) the requestor should be required to provide evidence that the purpose and use of the project is such that it can be financed with tax-exempt bonds; (e) the requestor and DOA's Division of Facilities Development should consider appropriate language to protect the state's interest in the project if the property is used for purposes other than those approved by the Building Commission; (f) the Commission can modify its original approval if the proposed change is in the public interest and approved by state bond counsel; (g) the requester agrees to provide a 50% or greater match for the project before initial review by the Commission and the Commission may require appropriate guarantees for this match; and (h) the local project must be submitted and reviewed following the same procedures used for state agency requests for

funding through the state capital budget.

17. Eau Claire Confluence Arts, Inc. argues that the project is in the public interest due to its relationship with the Eau Claire community as well as the UW-Eau Claire. The organization explains that the project would support the academic enrichment of students of the arts through provision of performance venues, classrooms, offices, rehearsal rooms, art studios, and theatre production space. The organization further argues that the project would benefit the state as a whole through regional economic development that would: (a) attract and retain students, in addition to employees in various economic sectors; and (b) generate additional sales tax revenue directly through facility events and indirectly through development of and activity in the surrounding area. In particular, the organization notes that Eau Claire competes directly with facilities of similar size in the Minneapolis-Saint Paul metropolitan area, and that the project would benefit Wisconsin as a whole by attracting and retaining people who might have otherwise taken up residence in a neighboring state.

18. Under s. 13.48 of the Statutes, with regard to grants provided by the State Building Commission to certain non-state entities for the construction of facilities, if a grant to an organization is authorized and if, for any reason, the facility that is constructed with funds from the grant is not used in the manner in which it was originally intended, the State of Wisconsin will retain an ownership interest in the facility equal to the amount of the state's grant. Although this language is not included in the bill with regard to the Confluence Project, such language could be included to protect the state's interest.

19. The Committee could choose to approve the Governor's request to provide \$15.0 million GPR to the City of Eau Claire for the Confluence Development Project. [Alternative 1] In addition, if the Committee chooses to provide grant funding, either or both of the following modifications could be adopted: (a) in order to provide some level of legislative oversight, the Committee could require DOA to submit a report to the Committee under 14-day passive review containing the following, before providing grants: (1) notification of grant amounts to be provided; (2) dates upon which funding would be provided; and (3) documentation showing that the City of Eau Claire has met the financing requirements under the bill [Alternative 2]; or (b) specify that the State would retain an ownership interest in the Confluence Regional Arts Center facility equal to the amount of the State's grant if the facility is not used in the manner in which it was originally intended, to protect the interest of the State. [Alternative 3]

20. However, it could be argued that the project is more suitable to inclusion in the capital budget, based on past precedents and the amount of funding involved which, though large for a non-state local project, is within the range of funds historically provided to UW System and UW campus projects. Therefore, the Committee could choose to delete the GPR-funded grant program and instead provide the funding through enumeration of the project under the state capital budget. [Alternative 4]

21. If bonding is used to construct the facility, local projects like the proposed Confluence Arts Center are typically enumerated in the biennial state building program and a bonding authorization and debt service appropriation to repay the bonds are created. Further, the Legislature typically makes a finding that the project has a statewide significance and indicates the facility is to

be constructed outside DOA's supervision. Finally, the Building Commission typically provides the funds in the form of a grant with the following caveats: (a) the grant cannot be made until the Commission determines that the organization to receive the grant has raised non-state funds equal to the amount of the grant; and (b) the state would retain an ownership interest in the facility equal to the amount of its grant.

22. If GPR-supported bonding would be provided for the facility, it is estimated that debt service on the bonds would be \$1,075,700 GPR in 2016-17, and each year thereafter, assuming construction would begin in early 2016. Over the 20-year life of the bonds, the debt service cost to the state for the project would total \$21,514,000 GPR.

23. Finally, given that the administration did not provide specific reasons for the proposal, that the provision is intended to provide funding to a specific recipient, that the funding would not be repaid, that the project would have no requirements regarding economic development outcomes or reporting, and that the proposal could establish a precedent for providing such funds to other non-state entities in the future, the Committee could choose to delete the provision. [Alternative 5]

24. The Committee should note that the Eau Claire Confluence Development Project was included on the April, 14, 2015, Earmark Transparency Report prepared for the Legislature under s. 13.95(1r). Under s. 13.102(2) of the Statutes, "If a member of the joint committee on finance makes a motion during committee deliberations on a biennial budget bill to remove an earmark, as defined in s. 13.95 (1r) (a), from the biennial budget bill, the motion shall prevail on either a majority or a tie vote." As such, adoption of Alternative 5, would prevail by majority or tie vote.

ALTERNATIVES

1. Approve the Governor's recommendation to provide \$15.0 million GPR in 2016-17 to the City of Eau Claire for the Eau Claire Confluence Development Project.

2. In addition to Alternative 1, require DOA before providing grants to submit a report to the Committee providing, under a 14-day passive review: (a) notification of grant amounts to be provided; (b) dates upon which funding would be provided; and (c) documentation showing that the City of Eau Claire has met the financing requirements under the bill.

3. In addition to Alternative 1, specify that if, for any reason, the facility that is constructed with funds from the grant is not used in the manner in which it was originally intended, the State of Wisconsin will retain an ownership interest in the facility equal to the amount of the State's grant.

4. Delete the Governor's recommendation to create an economic development grant program and funding of \$15.0 million GPR in 2016-17. Provide \$15,000,000 in GPR-supported bonding and \$1,075,700 GPR in 2016-17 for debt service associated with the enumeration of a Confluence Arts Center in Eau Claire under the 2015-17 state building program (the net GPR change to bill funding would be -\$13,924,300). Specify the legislative findings and Building Commission authority associated with providing of state bonding for such enumerated projects and

create a bonding authorization and associated debt service appropriation under the Building Commission for the project.

ALT 4	Change to Bill
GPR	- \$13,924,300
BR	<u>15,000,000</u>
Total	\$1,075,700

5. Delete provision.

ALT 5	Change to Bill
GPR	- \$15,000,000

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