



## Legislative Fiscal Bureau

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August 18, 2020

TO: Members  
Joint Committee on Finance

FROM: Bob Lang, Director

SUBJECT: Department of Transportation: Alternate Funding Plan for North Leg of Zoo Interchange Project 14-Day Passive Review

On August 5, 2020, the Department of Transportation (DOT) submitted a request under s. 84.54 (2) of the statutes for approval of an alternate funding plan for the north leg of the Zoo Interchange project. The approval is needed because the Department has determined it cannot meet the minimum federal funding requirements for projects receiving federal funds prescribed in s. 84.54 (1) of the statutes, as created by 2017 Act 368.

### Background

With the enactment of 2011 Act 32, the 2011-13 biennial budget act, the southeast Wisconsin freeway megaprojects program replaced the southeast Wisconsin freeway rehabilitation program. A southeast Wisconsin freeway megaproject is defined as an improvement project with an estimated cost exceeding \$684.5 million (in 2019 dollars). Southeast Wisconsin freeways are statutorily defined as being located in Kenosha, Milwaukee, Ozaukee, Racine, Walworth, Washington, or Waukesha counties.

Prior to the start of construction, southeast Wisconsin freeway megaprojects must be enumerated in statutes. The Zoo Interchange project was enumerated in 2011 Act 32 and began construction in 2013. This project includes the reconstruction of the junction of I-94, I-894, and USH 45 in Milwaukee County. In August 2020, the Department reported to the Transportation Projects Commission that total project costs of the Zoo Interchange project are estimated at \$1,541.5 million, of which \$1,319.3 million had been spent to date and \$13.2 million had been encumbered, leaving \$209.0 million in funding needed to complete the project. Of the Zoo Interchange project, work related to the "north leg" component remains to be completed.

As shown in the table below, the 2019-21 biennial budget act provides a total budget authority of \$226.4 million for the southeast Wisconsin freeway megaprojects program, of which \$68.1 million is federal funding.

**Southeast Wisconsin Freeway Megaprojects Funding - 2019-21 Biennium (2019 Act 9)**

<u>Fund</u>	<u>2019-20</u>	<u>2020-21</u>	<u>Total</u>	<u>Percentage of Total</u>
SEG	\$36,659,600	\$26,659,600	\$63,319,200	28.0%
FED	41,005,100	27,075,700	68,080,800	30.0
Gen. Ob. Bonds (SEG)	<u>32,500,000</u>	<u>62,500,000</u>	<u>95,000,000</u>	<u>42.0</u>
Total	\$110,164,700	\$116,235,300	\$226,400,000	100.0%

Federal highway funding must be obligated within the federal fiscal year it is provided, which ends on September 30, of each year. Any unobligated federal funding by the states is redistributed to other states that have obligated their entire allotment and have the ability to obligate the redistributed funds. DOT anticipates that it will receive additional federal funds through the annual federal redistribution process this federal fiscal year, and that it will be able to allocate approximately \$28.0 million of those funds to the southeast Wisconsin freeway megaprojects program. As a result, in addition to the funds authorized in the biennial budget, DOT expects the program to have \$254.4 million in total funding available for the southeast Wisconsin freeway megaprojects program after the redistribution process, of which \$96.1 million (37.8%) would be federal funds.

Under 2017 Act 368, DOT is required under s. 84.54 (1) of the statutes to expend not less than 70% of the aggregate project components eligible for federal funding each fiscal year on projects upon which the Department expends federal funds, including: (a) state highway rehabilitation projects with a total cost of less than \$10 million; (b) major highway development projects; and (c) southeast Wisconsin freeway megaprojects. If DOT determines that the requirement cannot be met, the Department may submit a proposed alternate funding plan to the Joint Committee on Finance for approval under the 14-day passive review process. DOT submitted an alternate funding plan for the north leg Zoo Interchange project on August 5, 2020. The Department may expend funds as proposed in the plan unless the Cochairpersons of the Committee notify the Department by August 25, 2020, that it has scheduled a meeting to review the plan. If such a meeting is scheduled, the Department may expend funds as proposed in the plan only upon approval of the Committee.

**DOT Request**

As noted, approximately \$209.0 million is needed to complete the Zoo Interchange project. Of the remaining project costs, DOT estimates that all but approximately \$3.9 million would be eligible for federal funds. As mentioned earlier, DOT expects a total of approximately \$96.1 million in federal funds to be available for southeast Wisconsin freeway megaprojects program after the redistribution process. If this funding would be entirely dedicated to the remainder of the Zoo Interchange project, federal funding could only cover 46.0% of the \$209.0 million in estimated remaining costs for the project. Therefore, given the amount of federal funding available to the

program in the biennium, DOT indicates it is not possible for the north leg project to meet the 70% funding requirement.

As a result, DOT has submitted an alternate funding plan for Committee approval in order to complete the project. Under its alternate funding plan, DOT is requesting to use the federal funding available to the program (up to 46.0% of estimated project costs) to complete construction of the north leg of the Zoo Interchange project. Hence, the Department is effectively asking that the Committee waive the 70% federal funding requirement for the north leg project. DOT indicates that the north leg project is scheduled to be let on October 13, 2020, but federal funding requirements require that a project be federally authorized before it is advertised, or generally six to eight weeks prior to the project being let. As a result, DOT indicates that Committee approval of the alternate funding plan would likely be needed no later than September 1, 2020.

As noted earlier, federal highway funding must be obligated within the federal fiscal year it is provided, or else unobligated federal funding is redistributed to other states that have obligated their entire allotment and have the ability to obligate the redistributed funds. DOT indicates that delaying the north leg project may inhibit DOT from utilizing the entire \$68.1 million in federal funds authorized in the biennial budget for the southeast Wisconsin freeway megaprojects program, because the program has no other remaining project of size on which to spend the federal funds. Consequently, not being able to obligate the federal funds on the north leg project could also make the state ineligible for additional federal redistribution aid in this federal fiscal year. As a result, DOT estimates that delaying the project could result in the state losing an estimated \$108.9 million in currently authorized funds and potential federal redistribution funding.

The primary policy reason for which the 70% federal funding requirement was enacted is to concentrate the use of federal funds on projects within each component of the state highway program so as to limit the number of state highway projects subject to federal requirements, such as those related to environmental regulations under the National Environmental Policy Act or wages under construction contracts, as well as other reporting requirements. However, for the remaining work on the north leg, DOT indicates that all existing federal requirements would continue to apply because the Federal Highway Administration would likely consider each subcomponent of the Zoo Interchange project part of the same project. As a result, even if a remaining portion of the north leg project could be funded with 100% state funds so as to concentrate federal funding on other portions of the project, federal requirements would continue to apply to the 100% state funded portions of the project.

In addition, federal law establishes additional oversight and reporting requirements for all projects that use federal funds and exceed \$500 million in costs or projects involving the interstate system. Therefore, all enumerated megaprojects, and some large projects in the major highway development program, could have a federal interest (and therefore be subject to these additional requirements) if they are to be funded using federal highway funds or involve the federal interstate system.

The policy goals for concentrating federal funding to a limited number of projects are apparent. Further, the Department indicates that it has met the federal funding requirement in other

components of the state highway program. For example, for state highway rehabilitation projects with an estimated cost of less than \$10 million, which are also required to meet the minimum federal funding requirement, 474 projects contained federal funds in 2019-20. Federal funding used on these projects totaled \$424.2 million, or 80.6% of the \$526.6 million in total funding for the projects. Nonetheless, the state's ability to achieve this policy goal for the north leg of the Zoo Interchange project is inhibited by the funding mix (SEG, FED and Bonding) available to the southeast Wisconsin freeway megaproject program as well as the limited number of enumerated projects in the program and the size and nature of such projects. Act 368 recognized that such instances may occur and provided for this process in which the Committee reviews the Department's alternate funding plan.

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