



Legislative Fiscal Bureau

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February 15, 2022

TO: Members
Joint Committee on Finance

FROM: Bob Lang, Director

SUBJECT: Summary of Department of Transportation's Plan for 2022-23 Appropriations
Adjustments to Allocate Additional Federal Aid -- Agenda Item IX

REQUEST

The Department of Transportation requests increases to 2022-23 federal (FED) program appropriations to allocate \$165,101,700 in additional federal highway aid, as follows: (a) \$89,268,700 FED for local transportation facility improvement assistance; (b) \$45,000,000 FED to the local bridge improvement assistance program; (c) \$15,588,300 FED to the state highway rehabilitation (SHR) program; (d) \$10,920,900 FED to the transportation alternatives program (TAP); (e) \$4,201,000 FED to the congestion mitigation and air quality improvement (CMAQ) program; and (f) \$122,800 FED for departmental management and operations.

The Department also requests corresponding adjustments to segregated local (SEG-L) appropriations for the local transportation assistance programs included in the plan, reflecting federal requirements for matching funds from recipients. The proposed increases are: (a) \$22,317,200 SEG-L for local transportation facility improvement assistance; (b) \$11,250,000 SEG-L for local bridge improvement assistance; (c) 2,730,200 SEG-L for TAP; and (d) \$1,050,300 SEG-L for CMAQ.

The federal funding authority requested is provided to the Department through all moneys received continuing federal appropriations, which means the moneys are expendable until fully depleted or repealed. For state and local highway and bridge projects, which typically take longer than a year to complete, continuing appropriations allow the Department to appropriate the funds in one fiscal year and expend the funds for those projects over ensuing fiscal years.

BACKGROUND

Committee Review of DOT's Plan

1997 Act 86 included a provision, codified under s. 84.03(2) of the statutes, that requires the

Department of Transportation (DOT) to submit a plan to the Joint Committee on Finance for adjusting the Department’s appropriations if federal transportation aid received by the state differs from the amounts estimated in the biennial budget by more than 5%. After the plan is submitted, the Co-chairs of the Committee are required to determine if the plan is complete. If no meeting is held within 14 calendar days or the Committee does not approve a plan at a meeting, the DOT Secretary is required to implement the plan initially submitted if the plan has been found to be complete.

The Department submitted a federal appropriations adjustment plan to the Committee on January 12, 2023, then submitted a subsequent amendment to the plan on February 6. On February 13, the Co-Chairs of the Committee determined that the plan is complete and placed it on the agenda for February 15, meeting under s. 13.10.

Budgeted Federal Highway Aid

2021 Act 58 (the 2021-23 biennial budget) appropriated \$819,501,800 for federal highway aid in 2022-23, as detailed in Table 1.

TABLE 1

DOT's Act 58 2022-23 Federal Highway Aid Appropriations

<u>Appropriation</u>	<u>Amount</u>
State Highway Rehabilitation	\$483,056,100
Major Highway Development	184,176,800
Local Transportation Facilitate Improvement Assistance	72,282,800
Local Bridge Improvement Assistance	24,475,400
Departmental Management and Operations	15,525,100
Southeast Freeway Megaprojects	14,000,000
Congestion Mitigation/Air Quality Improvement	10,719,000
Transportation Alternatives	7,049,300
Administration and Planning	3,753,300
Railroad Crossing Improvements	3,291,800
Highway System Management and Operations	<u>1,172,200</u>
Total	\$819,501,800

Subsequent to the passage of Act 58, the federal government passed two complementary acts that reauthorized federal transportation programming and increased federal highway funding to states for federal fiscal year (FFY) 2023. In November, 2021, the Infrastructure Investment and Jobs Act (IIJA) was enacted, which reauthorized and modified the overarching framework for federal transportation funding over the five ensuing federal fiscal years (2022-26). The IIJA defined the programs that will receive federal transportation funding over this period. In addition, it established upper limits of funding, or "authority," for certain programs in each year of the five-year reauthorization. While upper limits of funding are established for these programs under IIJA, these amounts are subject to annual federal appropriations legislation. This includes the federal highway

formula aid program, the state's largest source of federal transportation funding. On December 29, 2022, the Consolidated Appropriations Act (CAA), 2023 was enacted, providing federal funding for these federal programs in FFY 2023. The annual appropriation amounts are required to be obligated by the end of the federal fiscal year in which they are provided (September 30). This two-stage legislative process is the standard procedure for the allocation (authorization under IJA) and appropriation (annual appropriations acts) of federal transportation funding to states. The Federal Highway Administration (FHWA) administers the federal programs and funding.

Separate from this two-stage process, IJA also provides certain sources of funding that are not subject to annual appropriations legislation. The federal bridge formula program (BFP) and the national electric vehicle infrastructure (NEVI) program are two new programs that are directly funded by IJA. Further, the funding received under these programs is not required to be obligated in the year it is received, but rather remains available through FFY 2026.

Actual Federal Highway Aid

For 2022-23, DOT reports that the state received \$1,001,233,800 in federal highway aid, or 22.2% more than what was estimated under Act 58, as shown in Table 2. Note that this total includes \$16,753,100 in FFY 2023 NEVI funding. However, DOT is requesting the appropriation of only \$122,800 of these funds for 2022-23 under its plan.

TABLE 2

Sources of 2022-23 Federal Highway Aid

Federal Highway Formula Aid (Estimated)	\$884,480,700
Redistribution Aid	55,000,000
Bridge Formula Program (BFP)	45,000,000
NEVI Funding	<u>16,753,100*</u>
Total Available	<u>\$1,001,233,800</u>
Act 58 Federal Highway Aid Appropriations	<u>\$819,501,800</u>
Difference in Estimated Federal Funding	\$181,732,000
% Difference	22.2%

*DOT indicates the state will receive \$16,753,100 in federal NEVI funding for FFY 2023, however only \$122,800 is being requested for appropriation in 2022-23 under the Department's plan. The remaining NEVI funding would remain available for appropriation in the 2023-25 biennial budget.

Federal highway formula aid, shown in Table 2, is comprised of the following program categories: (a) the national highway performance program; (b) the surface transportation block grant program (STBG), which includes a set-aside of funding for transportation alternatives; (c) the highway safety improvement program (HSIP); (d) the congestion mitigation and air quality (CMAQ) improvement program; (e) metropolitan planning; (f) the national highway freight program; (g) the carbon reduction program (CRP), a program newly-created under IJA to reduce carbon dioxide emissions from on-road highway sources; and (h) the promoting resilient operations for transformative, efficient, and cost saving transportation (PROTECT) program, also newly-created

under the IJJA to make surface transportation infrastructure more resilient to natural hazards such as flooding and natural disasters.

Federal Aid Program Requirements

Each federal highway aid program, as well as each federal highway formula aid program category, contains eligibility requirements that specify how funds can be spent. For example, funding provided under the HSIP category of the federal highway formula aid program must be utilized to improve hazardous road locations or address a highway safety problem. These requirements mean that the federal funding must be allocated under certain state programs whose activities align with federal rules. Also, the majority of federal highway aid funds must be spent for highway improvement construction projects. Funds generally do not support routine maintenance, such as mowing roadsides and filling potholes. Thus, such costs funded under DOT's local aid programs, including the general transportation aids program, would not be an eligible use of federal highway aid funding because they do not meet the corresponding requirements.

For the federal highway formula aid program categories, federal law allows states to transfer some funding authority between certain program categories. These rules grant the states a degree of flexibility to identify and address their own priorities with the federal highway aid they receive. However, these laws also place specific limits on the authority that can be transferred away from each program category, thereby mandating specific minimum levels of funding authority that must remain under each category.

Federal law also requires the state to obligate the \$906.1 million in FFY 2023 federal highway formula aid, shown in Table 2, by September 30, 2023. If the full amount of federal highway formula aid is not obligated by this deadline, any unobligated funds would lapse. In addition, this would inhibit the state's ability to receive annual redistribution aid, discussed below. DOT indicates that in order to meet this deadline, it must complete the process of obligating funds for individual projects, including soliciting grants for local transportation assistance programs, identifying projects, completing project bidding processes, and attaining federal project approval. DOT indicates that this process typically takes several months, and can only be completed following approval of program funding.

Each year, if a state can demonstrate to FHWA that it has obligated all of its federal highway formula aid in compliance with federal law, it will be eligible for a portion of any federal aid amounts that other states have not obligated in that fiscal year. This is called redistribution aid. Because the state demonstrated that it could obligate its full amount of FFY 2022 federal highway formula aid by September 30, 2022, FHWA released \$55.0 million in redistribution aid to the state on August 29, 2022, shown in Table 2. This funding was required to be obligated by September 30, 2022. DOT indicates that it primarily allocates redistribution funds under the state highway rehabilitation program.

DOT also received \$45,000,000 from the federal BFP in 2022-23. The BFP was created by the IJJA to provide funding for bridge projects that reduce the overall number of state bridges in poor condition. The state is expected to receive \$45 million from the BFP over each year of the IJJA's five-year lifespan (2022-26). The FFY 2023 BFP funds were provided in October, 2022, because, as

mentioned earlier, this program is not subject to the annual federal appropriations process. The obligation deadline for these funds is September 30, 2026.

DOT also received \$16,753,100 from the NEVI program, which was created by the IIJA provide federal funding to states to strategically deploy electric vehicle charging infrastructure. As stated earlier, these funds are not required to be obligated by September 30, 2023, as is the case with the federal formula highway aid program.

SUMMARY OF THE PLAN

Table 3 displays the Department's proposed allocation of the additional \$165,101,700 in federal aid among its existing federal highway aid appropriations, including the \$122,800 requested from the federal NEVI program. Under the plan, \$16,630,100 in NEVI funds would remain unallocated to any DOT appropriation. In addition, the Attachment displays DOT's 2022-23 federal highway aid appropriations under Act 58 and the proposed plan.

TABLE 3

DOT's 2022-23 Federal Highway Aid Appropriations Under the Adjustment Plan

<u>Appropriation</u>	<u>Act 58</u>	<u>Plan*</u>	<u>Total</u>	<u>% Change</u>
Local Transportation Facilities	\$72,282,800	\$89,268,700	\$161,551,500	123.5%
Local Bridge Improvement	24,475,400	45,000,000	69,475,400	183.9
State Highway Rehabilitation	\$483,056,100	15,588,300	498,644,400	3.2
Transportation Alternatives	7,049,300	10,920,900	17,970,200	154.9
CMAQ	10,719,000	4,201,000	14,920,000	39.2
Dept. Mgt. and Ops.	15,525,100	122,800	15,647,900	0.8
Subtotal	\$613,107,700	\$165,101,700	\$778,209,400	26.9%
Other Federal Appropriations	<u>206,394,100</u>	<u>0</u>	<u>206,394,100</u>	<u>0.0</u>
Subtotal Allocated Under Plan	\$819,501,800	\$165,101,700	\$984,603,500	20.1%
NEVI Funds yet to Allocated	<u>0</u>	<u>16,630,100</u>	<u>16,630,100</u>	
Total	\$819,501,800	\$181,732,000	\$1,001,233,800	22.2%

*Includes only \$122,800 of the \$16,753,100 in FFY 2023 NEVI funding.

Local Transportation Facilities Improvement Assistance. Under its plan, the Department proposes allocating an additional \$89,268,700 FED to the LTFIA appropriation, from the following federal highway formula aid program categories: (a) \$57,495,600 FED in STBG funding; (b) \$16,200,000 FED in HSIP funding; and (c) \$15,573,100 FED in CRP funding. The Department also requests an increase of \$22,317,200 to the LTFIA SEG-L appropriation to reflect the federal matching requirements on these funds.

The LTFIA appropriation currently funds the state's surface transportation program (STP). The appropriation also includes a portion of the state's federal HSIP funding for local projects.

Finally, DOT's request would also use this appropriation to fund projects under the newly-created federal CRP.

Surface Transportation Program. STP provides grants of federal funds to local units of government for the rehabilitation of roads under their jurisdiction, with recipients required to provide a 20% match on any funds received. Federal funding for STP is provided under the STBG program component of the federal highway formula aid program. FHWA provides the state with a specific allocation of funding authority for STBG each year, and requires that a minimum of 55% of this authority (after set-asides and penalties) be sub-allocated as follows: (a) urbanized areas with a population over 200,000; (b) urbanized areas with a population between 50,000 and 200,000; (c) urban areas with a population between 5,000 and 49,999; and (d) rural areas with a population under 5,000 (the term "urbanized area" is used in federal transportation law for an area that is over 50,000 in population.) DOT distributes grants to localities in the latter category (population under 5,000) via its STP-Rural program subcomponent, and provides funds under the remaining categories via its STP-Urban subcomponent. In addition, IJA allows for a portion of the STBG funds provided for areas with a population below 50,000 (the two smallest categories) to be used for projects on roads classified as minor collectors and local roads, which can typically be town roads. The state was provided \$274.1 million in STBG funding authority for FFY 2023. The additional \$57,495,600 FED requested for STP under the DOT plan would provide total STP funding of \$129,778,400, which reflects the federal 55% sub-allocation requirement for the STBG funding authority provided to the state, after set-asides (\$38,107,153).

Highway Safety Improvement Program. FHWA provided the state with a total of \$57.6 million in federal HSIP funding authority in FFY 2023. The Department typically appropriates a portion of its federal HSIP funds under the LTFIA appropriation to operate DOT's local HSIP program, which advances the goal of reducing the number and severity of vehicle crashes by providing grants to local units of government for highway safety projects at sites that have experienced high crash histories. Within the local HSIP program, DOT also operates a high risk rural road program to specifically fund projects on highways functionally classified as rural collectors or local roads. DOT typically allocates its remaining federal HSIP funding to other appropriations to fund eligible program activities on state highways, primarily under the state highway rehabilitation program. In previous years, DOT had allocated \$5,000,000 annually to the LTFIA appropriation for local HSIP projects. Under its 2022-23 plan, DOT requests an additional \$16,200,000 for local HSIP projects in 2022-23.

Carbon Reduction Program. CRP is a new federal highway formula aid program category created under IJA with the goal of reducing carbon dioxide emissions from on-road highway sources. Eligible project activities include replacement of street lighting and traffic control devices with more energy efficient alternatives, transportation and congestion management, and public transportation projects. Starting in FFY 2022, FHWA began providing the state with specific allocations of funding authority for CRP each year: \$24.0 million in FFY 2022, and \$24.4 million in FFY 2023. Federal law allows the state to transfer a portion of its CRP funding authority to other federal highway formula aid program categories, but requires that 65% of authority cannot be transferred. Similar to HSIP funding, CRP funding can also be used to fund eligible projects activities on the state highway system.

The \$15,573,100 FED requested by DOT in the plan reflects 65% of the CRP funding authority provided by FHWA for the program in FFY 2022. DOT indicates that it did not include a request for this FFY 2022 CRP funding under its 2021-22 federal plan due to the late timing of federal guidance for the program and other factors which made implementation of the program in 2021-22 impractical. Because of the delay in guidance, these funds were instead allocated to the state highway rehabilitation program under the 2021-22 plan.

Under the amendment to their plan, the Department is no longer requesting an allocation of FFY 2023 CRP funding authority because the state received a lesser amount of total federal highway formula aid than DOT originally estimated. However, the FFY 2023 CRP funding authority would remain available for appropriation under 2023-25 budget deliberations.

Like STP, federal law requires CRP funds to be sub-allocated to areas of the state under the following categories: (a) urbanized areas with a population over 200,000; (b) urbanized areas with a population between 50,000 and 200,000; (c) urban areas with a population between 5,000 and 50,000; and (d) rural areas with a population under 5,000. The Department is working to introduce a state CRP program in 2022-23 to provide grants to local governments under these categories. DOT also indicates that a significant local use of these funds could be for projects to install more efficient light emitting diode (LED) lights on existing street lighting and traffic control devices.

Local Bridge Improvement Assistance Program. DOT's local bridge improvement assistance program makes grants to local governments for rehabilitation and replacement of highway bridges under their jurisdiction. Local governments must provide a match of at least 20% of the total cost of the awarded project. The program receives both FED and segregated (SEG) funding from the transportation fund. Table 5 compares 2022-23 program appropriations under Act 58 to the program funding level proposed in the Department's plan.

TABLE 4

Local Bridge Improvement Assistance Program 2022-23 Funding Under Current Law and Adjustment Plan

	<u>Act 58</u>	<u>Adjustment</u>	<u>Adjusted Total</u>	<u>% Change</u>
SEG	\$18,470,600	\$0	\$18,470,600	0.0%
FED	<u>24,475,400</u>	<u>45,000,000</u>	<u>69,475,400</u>	183.9
Total	\$42,946,000	\$45,000,000	\$87,946,000	104.8%

The additional \$45,000,000 FED requested for the program would be provided from the federal bridge formula program. Federal law requires that these funds be spent on bridge projects located on public roads. Over 8,800 of the 14,000 highway bridges in the state are under local jurisdiction, with the Department reporting that 8.5% of these local bridges (approximately 750) are in poor condition, while many others are over 50 years old.

State Highway Rehabilitation Program. The SHR program funds projects to reconstruct, recondition, and resurface roads and bridges on the state trunk highway system, a network of over

11,000 miles of highways generally consisting of U.S. interstates, U.S. highways, and state highways. The SHR program receives both FED and SEG funding. Table 4 compares SHR program appropriations under Act 58 to those in the Department's plan.

TABLE 5

**State Highway Rehabilitation Program 2021-22 Funding
Under Current Law and Adjustment Plan**

	<u>Act 58</u>	<u>Adjustment</u>	<u>Adjusted Total</u>	<u>% Change</u>
SEG	\$556,183,800	\$0	\$556,183,800	0.0%
FED	<u>483,056,100</u>	<u>15,588,300</u>	<u>498,644,400</u>	3.2
Total	\$1,039,239,900	\$15,588,300	\$1,054,828,200	1.5%

The Department's plan requests an additional \$15,588,300 for the SHR program, which involves a large number of projects on the state highway system that can be easily advanced. The Department indicates that it has completed an initial review of SHR projects to determine which projects are able to be advanced using the additional federal funds. They note that the evaluation of projects for advancement involves a dynamic process of identifying an inventory of projects that are eligible to be advanced, and balancing that inventory against federal aid eligibility for the various components of those projects, project cost trends, and existing project priority movement within the existing inventory, as well as other factors that may arise. The Department indicates that due to the abundance of SHR projects that are ready to be advanced, this allocation will help to ensure that all the additional federal funds are obligated by September 30, 2023, and the state remains eligible for redistribution aid.

The remaining state highway improvement program (SHIP) components (Majors, Southeast Megaprojects, and Interstate and High-Cost Bridge) involve larger construction and reconstruction projects that require lengthy, multi-year project design and approval processes and cannot be easily advanced. Additionally, Act 58 funded all the anticipated expenditures in the 2021-23 biennium for the active projects under these SHIP program components.

Transportation Alternatives Program. TAP is a DOT program that provides grants of federal funding to local government entities for a variety of non-motorized vehicle transportation projects. Eligible activities include construction and planning of on-road and off-road bicycle, pedestrian, and other non-motorized vehicle facilities, viewing areas such as overlooks and turnouts, and safe routes to school projects. Local governments receiving TAP grants must provide a minimum 20% match on the funds received.

Funding for TAP is provided from a set-aside of funding for transportation alternatives under the STBG program category of federal highway formula aid. Each FFY, FHWA allocates an initial level of funding authority under the transportation alternatives set-aside (\$32,625,800 in FFY 2023), but then allows states to transfer a portion of this authority to other federal highway formula aid program categories. However, states are required to retain 59% of funding authority in the

transportation alternatives program, after a set-aside is deducted for the recreational trails program (\$2,167,800 in FFY 2023), to be used for grants to local governments ($[\$32,625,800 - \$2,167,800] * 59\% = \$17,970,200$ for FFY 2023). This funding must also be sub-allocated to areas of the state according to population size, like STP and CRP, using the same categories as those programs. In past years, DOT has utilized these rules to transfer the maximum allowable funding authority to other program categories, and retained the minimum required funding authority for the state TAP program.

The adjustment plan requests an increase of \$10,920,900 FED to the Department's federal TAP appropriation, for a new appropriation total of \$17,970,200, which reflects the funding authority that is required by federal law to remain in the transportation alternatives set-aside for grants to local governments sub-allocated by population size in FFY 2023. Due to the federal matching requirements for these funds, the Department also requests a corresponding increase of \$2.6 million SEG-L for TAP.

In addition, DOT has introduced a new initiative for TAP funding provided to areas of the state under 5,000 in population over the remaining four years of IJA (FFY 2023-26), entitled safe transportation alternatives for rural schools (STARS). The initiative would issue grants for projects that would create safer walking and biking routes to school for children in grades K-8. DOT indicates that these rural local government entities have historically under-participated in projects of this type due in part to limited levels of administrative and financial capacity. Responding to this concern, the initiative would offer additional administrative support to applicants. Program funding in FFY 2023 and 2024 would be provided primarily for project planning and design, while funding FFY 2025 and 2026 would prioritize constructing infrastructure. Thus, applicants could work with DOT to design an infrastructure project over the first two years of the initiative, then receive funding to construct the project in subsequent years. DOT indicates that it has an open project solicitation for the TAP 2023-26 grant cycle. DOT is currently accepting applications for the STARS program component, which are due on March 24, 2023.

Congestion Mitigation and Air Quality Improvement Program. DOT's CMAQ local assistance appropriation provides grants of federal CMAQ funds to local government entities in southeastern Wisconsin for projects to reduce transportation-related air pollution and traffic congestion, with grant recipients required to provide a minimum 20% match on any funding received. Eligible activities include the installation of alternate fueling facilities, improvements to traffic signal timing to improve traffic flow, the construction of bicycle facilities for commuters, and capital or operating assistance for transit services. Under federal law, CMAQ funds may only be used in counties that are classified by the Environmental Protection Agency as non-attainment or maintenance areas for ozone, carbon-monoxide, or particulate matter pollution. In Wisconsin, these counties are Door, Kenosha, Kewaunee, Manitowoc, Milwaukee, Ozaukee, Racine, Sheboygan, Walworth, Washington, and Waukesha. Thus, only local government entities in these counties are eligible for CMAQ grants. However, like HSIP and CRP, CMAQ funding authority can also be used to fund eligible projects on the state highway system. This could occur, for example, if the Department were unable to identify a sufficient number of local projects to fund with its CMAQ funding authority in a given year.

Similar to other federal highway formula aid program categories, FHWA allocates an initial level of annual funding authority for CMAQ (\$30,449,000 in FFY 2023). However, federal law allows the Department to transfer up to 50% of this authority, after subtracting a 2% set-aside for state planning and research (\$609,000 in FFY 2023) to other federal highway formula aid programs. In past years, DOT has utilized this rule to transfer the full 50% of eligible funding authority from the CMAQ program to other federal formula highway aid programs, and utilized the remaining 50% for the state CMAQ program ($[\$30,449,000 - \$609,000] * 50\% = \$14,920,000$ in FFY 2023).

The adjustment plan requests an increase of \$4,201,000 FED to the Department's federal CMAQ appropriation, for a new appropriation total of \$14,920,000. This increase reflects the FFY 2023 CMAQ funding authority that would remain after transferring 50% from the program. Due to the federal matching requirements for these funds, the Department also requests a corresponding increase of \$1,050,300 SEG-L for CMAQ.

Departmental Management and Operations. The Department requests an increase of \$122,800 FED under its departmental management and operations appropriation. This funding would be provided from FHWA's NEVI formula program, newly-created under IIJA to support states to develop a network of electric vehicle (EV) charging stations on designated alternative fuel corridors. The NEVI program includes both a formula and discretionary component. Wisconsin is eligible to receive an estimated \$78.7 million in NEVI program formula funds through federal fiscal year 2026. The discretionary grant program, which includes a competitive grant program to help deploy charging in communities, will proceed sometime later in 2023 after FHWA issues guidance for the program.

FHWA guidance for the NEVI formula program specifies that new EV charging infrastructure locations should be spaced a maximum distance of 50 miles apart along designated corridors and that EV charging infrastructure should be located no greater than one mile from interstate exits or highway intersections along federally designated alternative fuel corridors. Currently, Wisconsin's alternative fuel corridor federal designations include portions of I-90, I-94, I-39, I-41, I-43, I-535, U.S. 151, U.S. 53, U.S. 51, WIS 29, U.S. 2, and U.S. 141, and all of U.S. 8 and U.S. 41.

To qualify for NEVI formula funding, all states were required to submit an EV infrastructure deployment plan to FHWA. On September 14, 2022, DOT was notified by FHWA that the state plan was approved for implementation. The Wisconsin NEVI plan specifies that the state will seek private sector, third party site hosts, owners, and operators to compete for NEVI formula program funding through structured procurements. The plan also specifies that the state is not proposing to deploy charging stations on DOT property and will not own or operate charging stations, but that site selection could be on private or public land.

Wisconsin is eligible to receive an estimated total of \$78.7 million from the NEVI formula program from FFY 2022 through FFY 2026, with specific sums provided by FHWA each year. DOT reports that it has so far received a total of \$28,395,118 under the NEVI formula program: (a) \$11,642,100 in FFY 2022, and (b) \$16,753,057 in FFY 2023. However, federal rules do not require these funds to be obligated by September 30, 2023, as is the case with the federal formula

highway aid program. The Department's request for a \$122,800 increase in departmental management and operations funding reflects the portion of these formula funds that it anticipates spending in 2022-23, which will be used for program planning and development costs to establish an EV infrastructure program for the state.

ANALYSIS

Pursuant to s. 84.03(2) of the statutes, the Committee has the authority to approve, modify and approve, or deny the Department's federal appropriations adjustment plan. However, certain factors associated with the federal funding may need to be considered in determining whether to approve, modify, or deny the Department's plan to allocate the \$165,101,700 in additional federal highway aid.

Local Program Funding

When appropriating funding under the local transportation assistance programs, the Department must consider federal obligation deadlines. The majority of additional federal funding will be provided under the federal highway formula aid program, which must be obligated by September 30, 2023 (the end of the FFY). In order to obligate all federal funds, the Department must complete review and approval of grant proposals under the applicable local programs (STP, HSIP, CRP, TAP, and CMAQ), a process which typically takes several months.

In 2021-22, the Department also submitted a federal plan to the Committee after receiving additional federal transportation funds under the first year of the IJA, which was approved on April 26, 2022. At that time, the Department indicated that it could encounter challenges obligating funding allocated under the local programs by the September 30 deadline. The Department attempted to mitigate this issue by initiating the project solicitation process in advance of the plan being approved for these local programs. However, as it indicated may be the case at the time, the Department had to shift unobligated local funding authorized under the 2021-22 plan to the SHR program, in order to fully obligate the federal funding received and remain eligible for \$55.0 million in FFY 2022 redistribution aid, which was received in August, 2022. In 2022-23, the Department indicates that it will utilize the amount of unobligated 2021-22 local funding authorized under the 2021-22 plan in addition to any local funds approved under this year's plan, in order to fund these programs at a level consistent with both adjustment plans.

FFY 2023 transportation funds have been provided to the Department earlier than in FFY 2022, granting the Department a lengthier timeline to select projects and obligate funding. The Department has again initiated the project solicitation process for each local assistance program included in its plan (STP, HSIP, CRP, local bridge, TAP, and CMAQ). The Department indicates that, like last year, if it is unable to obligate any local transportation assistance funds by the September 30 deadline it could again reallocate unused funds to the SHR program, which contains an inventory of projects ready to advance.

The Committee must also adhere to the federal laws and program guidance governing the various federal highway aid programs, which specify the activities that are eligible under each federal formula aid program category, and establish limits on the state's expenditure authority under each

category. For example, as mentioned earlier, federal law requires that the state retain a minimum level of funding authority under programs such as STP, CRP, TAP, and CMAQ.

Bridge Formula Program

BFP funds do not have to be used entirely on the local bridge improvement program as requested. Instead, a portion of the \$45,000,000 provided through the federal BFP could be appropriated under the Department's state highway improvement appropriations, including the SHR program. As stated previously, FFY 2023 BFP funds are available to be obligated through September 30, 2026. The Department reports that, per its national bridge inspection standards rating system, 8.5% of local bridges and 2.5% of state bridges are in poor condition. The Department provides funding for the improvement of most state bridges through the SHR program. However, any modifications to the plan must consider federal BFP requirements that 15% of program funds, or \$6,750,000 in FFY 2023, must be spent on "off system" bridges that are located on highways that are not classified under the federal-aid highway system.

NEVI Funding

DOT is requesting the appropriation of \$122,800 in NEVI funds to its departmental management and operations appropriation. Currently, DOT is implementing Wisconsin's approved NEVI plan with existing staff (SEG-funded) and 1.0 FED project position supported by funding from a planning and research grant from U.S. Department of Commerce Economic Development Administration. According to DOT, the additional appropriation authority would support the hiring of an additional 2.5 FED project positions to implement the NEVI program. Wisconsin's NEVI plan commits the Department to perform an annual assessment of progress in implementing the state plan and also commits the state to quarterly reporting of that progress. Approving the request would indicate to the FHWA that DOT continues to advance the state's NEVI plan and allow the Department to immediately start the hiring process for the additional 2.5 positions.

The Committee could deny the Department's request so that no additional management and operations funding be provided in 2022-23. Approving funding for the Department's NEVI program within the deliberations of 2023-25 biennial budget could also show progress toward implementing the state's NEVI plan. Also, several other legislative changes will be needed to appropriate NEVI formula funding and administer the state program. These deliberations have already started in the form of DOT's 2023-25 agency budget request. As part of this submission, the Department is requesting \$34,511,700 FED expenditure authority to be provided to a newly-created continuing appropriation for all monies received from the federal NEVI formula program, and \$8,628,300 SEG-L expenditure authority to be provided to a newly-created continuing appropriation to receive monies from local units of government and other sources for the construction of EV charging infrastructure. The budget request also includes statutory language to allow DOT to establish, administer, and provide funding for EV infrastructure projects eligible for funding under the NEVI formula program as provided in federal law. The Department also requests a statutory exemption from regulation as a public utility, a person who supplies electricity through the person's EV charging station to users' electric vehicles, if the person does not otherwise directly or indirectly provide electricity to the public.

Notwithstanding these considerations, the Committee has the authority to make modifications to the Department's plan by adjusting the funding amounts requested for the various DOT federal appropriations that fund state and local projects. If the Committee were to deny the appropriation adjustment plan, the Department would have to resubmit a separate plan for the Committee's review. As noted, such an action would delay 2022-23 highway programming decisions and impact the Department's ability to obligate FFY 2025 funding in a timely fashion in order to remain eligible for FFY 2023 federal redistribution aid.

ALTERNATIVES

A. Federal Highway Program Funding

1. Approve the Department's plan, as amended, to increase the Department's FED and SEG-L program appropriations in order to allocate the \$164,978,900 in additional federal funding received in 2022-23.

2. Modify the Department's plan, as amended, by adjusting the FED and SEG-L program appropriations included in the Department's request to allocate the additional federal funding received in 2022-23. Make adjustments among appropriations so that a total of \$164,978,900 FED would be allocated among the following Department programs:

- a. State Highway Rehabilitation.
- b. Local Transportation Facility Improvement Assistance.
- c. Local Bridge Improvement Assistance.
- d. Congestion Mitigation and Air Quality Improvement.
- e. Transportation Alternatives.

3. Deny the Department's request. The Department would be required to resubmit a separate plan to adjust its 2022-23 federal program appropriations to reflect the \$164,978,900 in additional federal aid received in 2022-23

B. Departmental Management and Operations Funding

1. Approve the Department's request to provide \$122,800 FED in 2022-23 from the federal NEVI program under its departmental management and operations appropriation.

2. Deny the Department's request to provide \$122,800 FED in 2022-23 from the federal NEVI program under its departmental management and operations appropriation.

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Attachment

ATTACHMENT

Comparison of 2022-23 Federal Highway Aid Appropriations Under Act 58 and DOT's Plan

<u>Appropriation</u>	<u>Act 58</u>	<u>Adjustment</u>	<u>Adjusted Total</u>
State Highway Rehabilitation	\$483,056,100	\$15,588,300	\$498,644,400
Major Highway Development	184,176,800	0	184,176,800
Local Transp. Facility Improvement Assistance	72,282,800	89,268,700	161,551,500
Local Bridge Improvement Assistance	24,475,400	45,000,000	69,475,400
Transportation Alternatives	7,049,300	10,920,900	17,970,200
Departmental Management and Operations	15,525,100	122,800	15,647,900
Congestion Mitigation/Air Quality Improvement	10,719,000	4,201,000	14,920,000
Southeast Freeway Megaprojects	14,000,000	0	14,000,000
Administration and Planning	3,753,300	0	3,753,300
Railroad Crossing Improvements	3,291,800	0	3,291,800
Highway System Management and Operations	<u>1,172,200</u>	<u>0</u>	<u>\$1,172,200</u>
Total	\$819,501,800	\$165,101,700	\$984,603,500