



Legislative Fiscal Bureau

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Joint Committee on Finance

Paper #608

State Highway Design-Build Projects (Transportation - State Highway Program)

[LFB 2021-23 Budget Summary: Page 587, #7]

CURRENT LAW

The 2019-21 biennial budget act, 2019 Act 9, established an alternative highway project delivery method known as "design-build". Under this method, the project design, engineering, construction, and related service are provided under one contract and are provided by a single design-builder. This is in contrast to the typical "design-bid-build" contracting method where a design contract is solicited, completed, and approved, then the construction component is put out for bids separately. Subsequent legislation, 2019 Wisconsin Act 18, provided an additional requirement for DOT to maintain an inventory of not fewer than five projects suitable for selection to utilize the alternative highway project design methods.

DISCUSSION POINTS

1. Most Department of Transportation (DOT) highway construction projects have separate contracts for the design and construction phases. Under this method, the construction contract is chosen after the Department has put out a request for bids following the completion of the project design. The Department then follows state procurement procedures to select the lowest responsible bidder for construction. This is referred to as the design-bid-build contracting process.

2. 2019 Act 9, the 2019-21 biennial budget act, created an alternative highway project delivery method known as "design-build". However, the design build program as passed by the Legislature during actions on the 2019-21 budget included significantly more provisions that were subsequently partially vetoed by the Governor, and not included in Act 9. As a result, the program is more limited in scope, in functional requirements, and in legislative oversight, than was envisioned by the Legislature at the time. Subsequently, 2019 Assembly Bill (AB) 820 was trailer bill aimed at

making modifications to restore and clean up some of the partially vetoed design build provisions included under Act 9. Then Secretary-designee Thompson, in testimony on AB 820, acknowledged that the Department could work within the framework of the AB 820 as it develops its design build program. AB 820 passed the Assembly, but did not pass the Senate before the session ended. Similar legislation has yet to be introduced as part of the 2021 legislative session.

3. Under Act 9, the design build method allows for a single contract to be solicited for a project from design through construction, including architectural, surveying, engineering, and construction services. Typically these contracts are chosen through a request for proposal, where the selection is quality-based rather than price-based according to the Department. The Act required the Department to prepare a request for qualifications that includes the minimum required qualifications for certification as a qualified bidder and the minimum required qualifications for certification as a responsible bidder, and required the Department to prepare a request for proposals for each design-build contract. The Act permitted the Department to replace any individual that responded to a request for qualifications with a design-builder if the Department determines the new individual meets the qualifications described in the response to the request for qualifications and their qualifications are at least equal to those of the individual being replaced.

4. Design-build projects have the potential for several advantages, including possible expedited schedules, encouraging innovation, and reducing administrative burden. DOT notes that projects best suited for the design-build method include complex projects that involve multiple construction trades or have tight schedules. The Department is in the process of developing program requirements, goals, and standards, and currently maintains a list of 28 projects under consideration for design-build. The Department plans to enter into contracts for the first two design-build projects in 2021, with construction beginning in 2022.

5. The Governor recommends authorizing \$20,000,000 in transportation fund-supported, general obligation bonds for state highway improvement program projects utilizing the design-build method in the state highway rehabilitation, major highway development, and southeast Wisconsin freeway megaprojects programs. This would require creating a new bonding authorization for this purpose and modifying an existing SEG debt service appropriation to include the debt service on these bonds as an allowable expenditure.

6. The Governor intended to recommend that design build projects be permitted in the state highway rehabilitation, major highway development, and southeast Wisconsin freeway megaprojects programs. However, the bill does not modify the existing program statute that lists eligible appropriations and bonding authorizations to be used for projects in the southeast Wisconsin freeway megaprojects program to include the recommended newly-created bonding authorization. The administration submitted a technical errata in April, 2021, to correct this. If the design build bonding recommendation is approved, it would have to include this purpose under the southeast Wisconsin freeway megaprojects program statutes in order for those projects to be funded using the bonding.

7. Design-build projects are subject to specific funding requirements that can create challenges. For example, the full amount of a contract must be encumbered in the fiscal year in which the contract is signed. This commits larger tranches of funding earlier in the project schedule compared to the traditional design-bid-build method where projects are funded in multiple stages.

Funding design-build projects with bond proceeds allow these costs to be dispersed across the duration of the bond term.

8. If the Committee shares the belief that design-build method could bring improvements to the delivery of state highway projects, it could authorize \$20,000,000 in transportation fund-supported, general obligation bonds for use in the state highway rehabilitation, major highway development, and southeast Wisconsin freeway megaprojects programs and modify the necessary statutes to do so. Estimated debt service associated with the partial issuance of these bonds in the biennium would be \$1,052,500 SEG in 2022-23. Once fully issued, debt service is estimated to be \$1,604,900 SEG annually. [Alternative 1]

9. As mentioned earlier, and as demonstrated under 2019 AB 820, some have felt that the design build provisions included in 2019 Act 9, as partially vetoed, do not encompass the needed scope, functionality, or legislative oversight envisioned by the Legislature during deliberations on 2019 Act 9. However, the changes needed to the Act 9 design build provisions could not be agreed upon last session. Nonetheless, the Committee may want to wait to provide funding for design build projects until more agreement exists relative to the Department's design build authority going forward.

10. Under the base level funding currently included in the substitute amendment to Assembly Bill 68/Senate Bill 111, expenditures from the transportation fund are significantly higher than under the Governor's recommendations. The Governor's recommendations reduced SEG funding to the state highway improvement program and replaced that funding with bonding. Further, while the 2019-21 budget increased revenues to the transportation fund, the coronavirus pandemic has dampened the impact of those revenue increases to the fund, as well as to ongoing base level revenues. The Committee already took action to reduce transportation fund appropriations, including adopting standard budget adjustments and reestimates of sum sufficient debt service appropriations that reduced appropriations by \$46.5 million in 2021-22 and \$31.4 million in 2022-23. Despite these actions and slightly higher estimated revenues, prior to Committee actions on the remainder of the transportation budget the estimated 2022-23 ending balance is -\$32.3 million. Thus, the availability of SEG finding to support future debt service on bonds issued for design build highway projects could be limited.

11. Under the separate recommendations of the Governor, each of the three major components of the state highway improvement program would be authorized additional bonding. Similarly, if this design build bonding is approved (as modified by the errata), and because no specific projects or programs have been identified for use of this bonding, each of the three major components of the state highway program could access some or all of the recommended design build bonding. Therefore, if the Committee chooses to authorize bonding for design build state highway projects, in separate actions, it could reduce the bonding amounts recommended for one or all of the three major highway components in the biennium.

12. Bonding has often been used as the means of funding the gap between DOT infrastructure programs needs and available revenues. Consequently, the amount of annual transportation fund revenues needed to support annual debt service is seen as a measure of the transportation fund's solvency. Given the adverse effects on transportation fund revenue due to the coronavirus pandemic, which in turn may require more bonding to fulfill other programmatic needs,

some may have concerns regarding the continued authorization of additional bonds and thus increasing the amount of future SEG revenues needed to pay debt service. If the Committee shares this concern, it could take no action. [Alternative 2]

ALTERNATIVES

1. Authorize \$20,000,000 in transportation fund-supported, general obligation bonds to be issued for state highway improvement program projects utilizing the design-build method in the state highway rehabilitation, major highway development, and southeast Wisconsin freeway megaprojects programs, and make the necessary statutory modifications. Estimated debt service associated with the partial issuance of these bonds in the biennium would be \$1,052,500 SEG in 2022-23. Once fully issued, debt service is estimated to be \$1,604,900 SEG annually.

ALT 1	Change to Base	
	Revenue	Funding
BR-SEG	\$20,000,000	\$0
SEG	\$0	\$1,052,500

2. Take no action.

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