

TRANSPORTATION

Omnibus Transportation Motion

Motion:

Move to make the following modifications to the bill related to transportation:

1. *Federal Highway Formula Aid.* Adopt Alternative #1 of LFB Issue Paper #643, which would approve the Governor's recommendation to estimate total federal highway aid at \$715,340,300 in 2011-12 and \$721,395,300 in 2012-13.

2. *Transfer from the General Fund to the Transportation Fund.* Adopt Alternative #5 of LFB Issue Paper #644, which would delete a provision in the bill that would deposit a specified percentage of sales tax revenue from the sale of motor vehicles and motor vehicle parts and accessories in the transportation fund instead of the general fund. Instead, require the Department of Administration, beginning on June 30, 2013, and annually thereafter, to transfer an amount equal to 0.25% of total general fund taxes, as shown in the general fund condition statement contained in the biennial budget act for that fiscal year, from the general fund to the transportation fund. Specify that the amount transferred in each fiscal year may not be less than \$35,127,000. Require the Department of Administration to make a separate transfer of \$125,000,000 from the general fund to the transportation fund in 2011-13.

3. *Transportation Finance and Policy Study Commission and Biennial Transportation Financing Plan Requirements.* Establish a Transportation Finance and Policy Study Commission to examine issues related to the future of transportation finance in this state. Specify that the Commission shall consist of the Secretary of the Department of Transportation, as a nonvoting member, and ten public members, one each appointed by the Speaker of the Assembly, the Assembly Minority Leader, the Senate Majority Leader and the Senate Minority Leader, and six appointed by the Governor. Specify that five of the public members shall have experience in public finance, transportation policy, or transportation system planning.

Require the Commission to address the following issues: (a) the estimated costs of: (1) highway maintenance, rehabilitation, reconstruction, and expansion projects over a ten-year period, including both those currently identified in the Department of Transportation's six-year program and those in the Department's long-range transportation plans; and (2) local government transportation aid and assistance programs, including general transportation aids and mass transit operating assistance; (b) projections of transportation fund revenues over the same ten-year period; (c) projections of transportation fund debt service over the same ten-year period, under various scenarios for the use of bonds; (d) various options for increasing transportation fund revenues or adjusting transportation fund expenditures over the ten-year period to achieve a stable balance between expenditures, revenues, and debt service; and (e) the impact of highway project planning

for specific projects on landowners with property abutting proposed improvements.

Require the Commission to prepare a report with findings and recommendations to the four legislative leaders and the Governor by March 1, 2013.

Require the Department of Transportation to submit a 10-year plan every two years with its biennial budget request that includes an estimate of total transportation fund revenues, proposed bonding, and estimated debt service for each year of the period. Require the Department to show various scenarios in the plan with different levels of transportation spending, from bond or cash sources, and different levels of revenues. Specify that at least one scenario should result in achieving a stable debt service percentage by the end of the 10-year period. Specify that for any scenarios that result in an increasing debt service percentage, the plan should identify the potential consequences for specific transportation programs of reduced net revenues.

4. *General Transportation Aids Funding.* Modify the Governor's recommendation by doing the following: (a) restoring the mileage aid rate to \$2,117 per mile for 2012 and thereafter; (b) increasing the proposed minimum aid guarantee from 85% to 90% of the prior year payment; and (c) providing \$2,160,100 SEG in 2011-12 and \$8,640,500 SEG in 2012-13 for counties and \$6,623,800 SEG in 2011-12 and \$13,247,700 SEG in 2012-13 for municipalities (no funding shift would occur). Set the distribution for calendar year 2012 and thereafter at \$102,615,600 for counties and \$308,904,300 for municipalities. Delete the Governor's recommended changes from 90% to 85% under the penalty provisions to reflect the change in the minimum guarantee.

5. *Supplemental Paratransit Aid.* Provide \$2,500,000 SEG annually to supplement the costs of paratransit service provided by transit systems that are eligible for state mass transit operating assistance. Require the Department of Transportation to annually distribute the paratransit funding to eligible transit systems in a way that would maximize the level of paratransit service provided by those systems. Specify that the Department must give priority in the distribution of the funding to paratransit service that existed on the effective date of this provision. Create an annual appropriation funded from the transportation fund to provide these supplemental paratransit payments. Define "paratransit service" to be comparable transportation service required by the federal American with Disabilities Act for individuals with disabilities who are unable to use fixed route transportation systems.

6. *Funding Source for the Mass Transit Aid Program.* Adopt Alternative #6 of LFB Issue Paper #651, which would delete a provision in the bill that would switch the funding source from the transportation fund to the general fund, beginning in 2012-13. Increase funding for mass transit assistance by \$106,478,300 SEG in 2012-13 and reduce GPR funding for the program by a corresponding amount.

7. *State Highway Rehabilitation Program Funding.* Modify the funding for the state highway rehabilitation program as follows: (a) reduce funding by \$1,000,000 SEG in 2011-12 and \$39,261,300 SEG in 2012-13; (b) increase funding by \$1,000,000 FED in 2011-12 and \$2,061,300 FED in 2012-13; and (c) authorize \$31,000,000 in transportation fund-supported, general obligation bonds for the program. Increase funding by \$768,000 SEG in 2012-13 to reflect estimated debt service payments on the bonds.

8. *Major Highway Development Program.* Adopt Alternatives #A1, #B1, #C2, #D1, and #E2 of LFB Issue Paper #666, which would: (a) approve the Governor's recommended funding level for the major highway development program; (b) approve the Governor's recommendation to modify the definition of a major highway project, with a modification to authorize the Department to determine the initial applicability of the definitional change; (c) modify the Governor's recommendation with respect to the Transportation Projects Commission review of high-cost rehabilitation projects to: (1) clarify that the expedited review procedure would not apply to projects that exceed the capacity expansion thresholds for a major highway project; and (2) delete the 14-day passive review process as part of the expedited review and instead specify that DOT cannot proceed with construction of one of these projects unless the Commission meets and approves, or modifies and approves, the Department's request; (d) approve the Governor's recommendation to enumerate four major highway projects for construction; and (e) maintain current law TPC recommendation policy.

9. *High-Cost Bridge Program.* Create SEG, FED, and SEG-L appropriations for high-cost state highway bridges, for rehabilitation or construction projects on bridges on the state trunk highway system, other than major interstate bridge projects, with an estimated cost exceeding \$150,000,000. Specify that a bridge project meeting these specifications is not considered a major highway project or southeast Wisconsin freeway megaproject. Specify that during the 2011-13 biennium, the Department may use funds from the major highway development, state highway rehabilitation, and the southeast Wisconsin megaprojects program for preliminary costs associated with the reconstruction of the Hoan Bridge and approaches to the east bank of the Milwaukee River on I-794 in Milwaukee County.

10. *Southeast Wisconsin Freeway Megaprojects.* Adopt Alternatives #A1 and #B1 of LFB Issue Paper #667, which would approve the Governor's recommended funding level for the I-94 North-South freeway project and the Zoo Interchange project. Modify the bill to require the Department to submit a report to the Committee, by December 1, 2011, that does the following: (a) outlines a financing plan and schedule for the Zoo Interchange project, including planned expenditures by year and by funding source, through the year of completion; (b) shows the impact on transportation fund debt service of the issuance of bonds for the project as well as past and future issuance of transportation fund-supported bonds for other projects and programs; and (c) provides estimates of the percentage of gross transportation fund revenues that would be required for the payment of transportation debt service on any bonds described under (b), through two years following the year of completion of the Zoo Interchange project.

11. *Minimum Service Hour Requirements for Division of Motor Vehicles Service Centers.* Provide \$6,000,000 SEG in 2011-12 and \$4,000,000 SEG in 2012-13 and 55.0 SEG positions annually for the Division of Motor Vehicles and require the Department of Transportation to provide at least 20 hours of driver's license-related services per week in each county in the state. Require the Department to provide services in each county in the most cost-effective means possible, including by contracting with counties or other local governments to provide services.

12. *State Patrol Recruit Class Funding.* Provide \$2,800,000 SEG in 2011-12 for the Division of State Patrol for costs related to conducting a recruit class for new troopers and inspectors.

13. *Bicycle and Pedestrian Facilities Grant Program.* Increase funding by \$1,000,000 FED annually for the bicycle and pedestrian facilities grant program, to provide a total, when added to base funding, of \$3,720,000 FED annually.

14. *Astronautics Assistance.* Move to provide \$10,000 SEG in 2011-12 in the astronautics assistance appropriation for the Wisconsin Aerospace Authority.

15. *Local Roads Improvement Program Funding.* Transfer \$10,000,000 SEG annually from the state highway rehabilitation program to the discretionary grant component of the local roads improvement program. Increase the annual allocation for discretionary grants by \$5,000,000 each for town road projects and county highway projects.

16. *Limitations on Appeals and Litigation Expenses in Eminent Domain Proceedings.* Make the following modifications with general applicability to the state's eminent domain law:

a. Limit the amount of attorney's fees included in the litigation expenses that are reimbursed by an acquiring authority, in cases involving the appeal of a condemnation award, to an amount equal to one-third of the difference between the amount awarded by the condemnation commission or jury verdict and the acquiring authority's rejected jurisdictional offer or highest written offer prior to the jurisdictional offer. Specify that if this amount is less than \$5,000, and the property owner shows good cause, the amount of reimbursed attorney's fees may exceed one-third of the difference, but may not exceed \$5,000. Specify that the same limits apply in cases of an appeal to a circuit court of an award of a condemnation commission, except that the calculation of the limit shall be based on the difference between the court's award and the condemnation commission's award.

b. Limit the circumstances under which litigation expenses may be awarded following an appeal in a condemnation proceeding, by increasing the trigger amount by which the final award must exceed the jurisdictional offer or highest written offer from at least \$700 and at least 15% of the offer, under current law, to at least \$10,000 and at least 15% of the offer.

Make the following modifications with applicability to: (1) property acquisition proceedings involving transportation projects, sanitary and storm sewers, watercourses, water transmission and distribution facilities, and gas or leachate extraction systems used to remedy environmental pollution from a solid waste disposal facility; and (2) other public and private entities with condemnation authority (such as other state and local agencies and utilities), except for certain types of projects initiated by first class cities (Milwaukee), municipal utilities, or for cemeteries, which are governed by separate statutory provisions:

a. Eliminate a current law provision that gives a property owner the right to file an appeal with the county condemnation commission or circuit court over the amount of an award for property acquisition and relocation or other related expenses in cases where the property conveyance occurred as the result of a negotiated settlement. Specify that this provision would first apply to conveyances recorded with the register of deeds on the general effective date of the budget act. Property owners would retain the right to refuse a negotiated settlement and appeal the amount of a subsequent condemnation award.

b. Specify that only an appraisal submitted by the condemning authority or an appraisal submitted by the property owner prior to the submission of a jurisdictional offer (following the failure to reach a negotiated settlement) may be introduced by either party in a subsequent appeal.

Make the following modification with applicability to property acquisition proceedings involving transportation projects and the other types of projects listed in "a" above:

Modify a current law provision relating to the appeal of a condemnation award (in cases not involving a negotiated settlement), to specify that only appraisals presented by the acquiring authority, or an appraisal prepared on behalf of the property owner and submitted to the acquiring authority prior to the service of a jurisdictional offer, may be used in an appeal.

Specify that these provisions would first apply to appeal actions brought, conveyances recorded, appraisals obtained, and negotiations obtained on the general effective date of the budget act.

17. *Relocation of Outdoor Advertising Signs.* Specify that realignment of a real estate site of an outdoor advertising sign that does not conform to a municipal or county ordinance where the realignment is caused by a state highway project shall not affect that sign's nonconforming status under that ordinance. Specify that in any case where such a sign is proposed to be moved as part of a state highway project, DOT shall notify the affected municipal or county government of the proposed realignment, and the affected municipal or county government may petition the Department to condemn the sign and any real estate interest of the sign owner that must be acquired. If the Department condemns the sign, the petitioning unit of government shall pay to the Department an amount equal to the condemnation award made for the sign and related real estate interest, less relocation costs for the sign that would have been paid by the Department if the sign had been relocated rather than condemned. Specify that in the event of nonpayment, the Department may withhold an amount due from the local government's general transportation aid payment. Specify that these provisions do not permit the alteration or movement of a sign that is nonconforming under state law.

18. *Bidding Requirements for Public Works Projects.* Prohibit any county or municipality from using its own workforce to perform a highway improvement project on highways under its jurisdiction, or highways under the jurisdiction of another local government, if the project costs \$100,000 or more, and either of the following apply: (a) the project is funded in part or in full with federal funds, and construction commences after July 1, 2013; or (b) the project is funded in part or in full with state funds, not including funds received under the general transportation aid program, and construction commences after July 1, 2015. Specify that this restriction does not apply to: (a) projects performed by a county workforce on town roads if the state funding is provided under the local roads improvement program and the project complies with bidding requirements and exceptions under that program (as modified below); and (b) the portion of projects under the discretionary component of the county highway improvement program funded with county funds.

Prohibit any unit of government from doing any public construction, public works project, or construction-related services, including, without limitation, road, sewer, water,

stormwater, wastewater, recycling or bridge projects, for or with another unit of government under any agreement or arrangement, including, without limitation, an intergovernmental cooperative agreement or under local government purchasing provisions, but specify that this prohibition does not apply to town road projects funded under the local roads improvement program or public contracts entered into by a town with another unit of government, effective three months after the general effective date of the bill.

Prohibit any county from using its own workforce to perform a highway improvement project, not including highway maintenance work, for or with any village or city, regardless of the source of funds, if the project has a cost exceeding \$100,000, effective three months after the general effective date of the bill.

Specify that the restrictions, as described above do not apply in emergencies formally declared by the chief elected official of the municipality or county or for projects where all materials are donated and labor is provided by unpaid volunteers. Specify that the above restrictions do not apply to any projects conducted by a county under an individual project agreement approved prior to the general effective date of the bill.

Modify a current law provision that exempts county public works projects from general bidding requirements, under certain circumstances, to conform with these changes. Prohibit any county or municipality from dividing an improvement project into two or more pieces for the purpose of evading the \$100,000 thresholds in these provisions.

19. *Restrictions on Work Done for Private Entities.* Prohibit any local government, using its own workforce, from performing the construction of roads, sewers, water, stormwater, wastewater, grading, parking lots, or other infrastructure or construction-related services on behalf of a private entity, including infrastructure projects where the responsibility for the cost of the infrastructure belongs to a private entity, effective three months after the general effective date of the bill.

20. *Local Roads Improvement Program Bidding Requirements.* Modify the local roads improvement program bidding requirements, effective July 1, 2015, to: (a) eliminate a provision that allows a city or village to contract with a county for an improvement under the program if it does not receive a responsible bid for the project; (b) eliminate a provision that allows a county to perform work under the program under certain conditions, including if the county finds that it would be cost-effective to do so; and (c) specify that counties may perform work under the program for a city or village within the county or work on its own system only if the cost of the project is less than \$100,000. Specify, effective three months after the general effective date of the bill, that a county may not perform work for a project for which the county has prepared the required project cost estimate (a sealed estimate prepared prior to the submission of bids).

21. *Local Roads Improvement Program Project Eligibility.* Specify that a double seal coat project on a town road is eligible for funding under the local roads improvement program if it has a projected life of at least 10 years, similar projects in the same geographic area have performed satisfactorily, and the county highway commissioner of the county in which the project is located approves the project's eligibility.

22. *Prohibition on Alternative Bidding Methods.* Prohibit local governments from utilizing methods for letting public works projects for bid, other than accepting sealed bids, awarded to the lowest responsible bidder. Specify that this prohibition applies to bidding methods that give preference based on the geographic location of the bidder or that use other criteria that affect the selection of the lowest responsible bidder.

23. *Local Let Authority.* Eliminate a current law provision that authorizes DOT to designate the governing body of a local government as its agent on behalf of the state to perform bidding, contracting, and oversight responsibilities for a state highway improvement project.

24. *State Highway Maintenance Program -- Funding.* Provide \$15,000,000 SEG annually for the state highway maintenance program.

25. *State Highway Maintenance Program -- DOT Requirements.* Require DOT to work cooperatively with the county highway departments to determine an appropriate level of state work sufficient to fully utilize manpower and equipment needed for winter maintenance. Require DOT, in each biennial budget submission, to include a funding proposal for maintenance activities performed by counties that is no less than the base year and includes an inflationary adjustment, if it is determined that the level of funding for that purpose is inadequate to perform needed maintenance activities.

26. *State Highway Maintenance Program -- Definitions of Maintenance Activities.* Modify provisions related to highway maintenance activities done by counties or municipalities, as follows: (a) eliminate the authority of DOT to contract with a county or municipality for maintenance of state trunk highways beyond the limits of the county or municipality, except that: (1) in cases where a short segment of highway passes through a county, but for which there is no access or only limited access to that highway from other parts of the county, the Department may contract with an adjoining county to maintain that short segment; and (2) the Department may deploy county and municipal maintenance resources across county lines for winter maintenance snow plowing, salting, deicing, pot hole filling, and incidents such as pavement and deck failures, incident response, and bridge hits; (b) modify the definition of maintenance to specify that it does not include repair that is a capital investment that will improve a highway facility for at least 10 years; (c) specify that maintenance activities include restoring material losses, patching, mudjacking, joint filling, crack sealing, and interim short resurfacing projects, provided that they are less than 500 feet in length, less than three-fourths inch thick, and cost less than \$25,000; (d) specify that the term maintenance does not include a highway improvement project; (e) modify a provision that authorizes the Department to contract "with a private entity for service or materials or both associated with the installation, replacement, or maintenance of highway signs, traffic control signals, highway lighting, pavement markings, and intelligent highway systems" to eliminate the phrase "associated with the ...systems"; and (f) make the following other modifications to the term "maintenance": (1) eliminate the distinction in the definition of maintenance between general maintenance and special maintenance; (2) modify the phrase "repair of highway surfaces..." to be "interim repair of highway surfaces..."; (3) change the term "complete repair" to "repair" and add the phrase "of travel surfaces, shoulders, roadsides and traffic weigh stations, park and ride lots, drainage facilities, bridges, bridge, tunnels" after "repair"; (4) include sanding of ice in the list of maintenance activities; (5) replace the term

"restoration" with the term "preservation"; and (6) eliminate the phrase "all measures necessary to provide adequate traffic service".

27. *State Highway Improvement Program Bidding Requirements.* Delete a current law provision that authorizes the Department to contract with a county or municipality for a highway improvement project. Instead, specify that the Department may enter into such contracts only if the project is an emergency and no private contractors are available. Specify that this provision takes effect three months after the general effective date of the bill. Authorize the Department to employ an accelerated bidding process under circumstances when a project is unexpectedly needed and the normal timelines and bidding documents allow insufficient time to follow uniform methods.

28. *Borrow and Disposal Sites for Transportation Projects.* Modify a current law provision that exempts any site for the excavation of borrow (soil or a soil, stone, and gravel mixture) from local zoning ordinances provided that it meets certain conditions and is opened for use prior to July 1, 2011, as follows:

a. eliminate the July 1, 2011 applicability sunset date for these provisions, but specify that the current law zoning exemptions would continue to apply to borrow sites opened prior to that date.

b. expand the applicability of the provision to cover: (1) sites for use of material disposal (defined below), in addition to sites used for excavation of borrow; (2) sites for any transportation project (defined below), instead of, under current law, any state highway construction project; and (3) any site off the site of a transportation project, provided that the Department determines that the site is not a commercial establishment that has a fixed place of business from which the establishment regularly supplies processed or manufactured materials or products, instead of, under current law, any site that is located on a property near the site of a state highway construction project for which borrow is being used. Define "material disposal site" as a site used for the lawful disposal of surplus materials from a transportation project that is under the direct control of the transportation project contractor or a transportation project subcontractor, but specify that the term does not include a private landfill that is not managed by the transportation project contractor or a transportation project subcontractor or a landfill that is owned or directly controlled by a political subdivision. Define "transportation project" as a construction or maintenance project that relates to an airport, railroad, highway, bridge, or other transportation facility that is directed and supervised by DOT and that is subject to an interagency expedited permit approval agreement between DOT and DNR.

c. modify the conditions for the applicability of the zoning exemption as follows: (1) specify that the transportation project contractor must assume sole responsibility for the operation of the site; (2) specify that the transportation project contractor or subcontractor may not crush, screen, wash, blast, or apply another manufacturing process to mineral aggregate from the borrow site, on or off the borrow site, to produce finished aggregate products; (3) specify that the contractor must comply with any applicable noise limit standards established by administrative rule by the Department of Commerce for mine or quarry operations, instead of, under current law, agreeing to any noise abatement measures required by the governing body of the applicable political subdivision; (4) specify that the contractor must comply with applicable restoration requirements

established by DOT and DNR under the interagency agreement for the project and any restoration requirements established by DOT for construction site erosion control, instead of, under current law, agreeing to any landscaping measures required by the governing body of the applicable political subdivision; and (5) eliminate a requirement that the owner of the property on which the borrow (or material disposal) site is located agrees to reasonably restore the site after the period of use.

[Change to Bill: \$125,000,000 GPR-Transfer; -\$106,478,009 GPR; \$125,000,000 SEG-REV; \$145,467,100 SEG and 55.0 SEG positions; \$5,061,300 FED; and \$31,000,000 BR]

