

MOTION 352

DEVELOPMENT

There has been much misinformation spread about the WCHA's involvement in the creation of Motion 352. Because of the WCHA's previous Summit discussions with WTBA, and the Public and Private Union representatives, there has been an assumption by many that the WCHA had a role in developing Motion 352. There have also been additional rumors, that the development of Motion 352, occurred in "secret", "closed door meetings".

The Task Force has reviewed this matter and found, that while Motion 352 did incorporate some concepts explored in the summit discussions, no one at WCHA had any involvement in the writing of Motion 352. It would appear that either WTBA or the Local 139 Operating Engineers had some input in cooperation with one or more Legislators in the authorship of motion 352. The lack of WCHA involvement, in essence, led to a flawed legislative proposal, which, in turn, led to the confusion and conflict at the County level.

The intent of the original Summit discussions was to span the political divide between WCHA and private sector interests represented by WTBA and Local 139 Operating Engineers. Both sides felt continued political disagreements, with respect to the provision of transportation services, was detrimental to the advancement of Wisconsin's transportation program. Both sides acknowledged that a united transportation community would be a great asset in dealing with future transportation challenges. The goal of the Summit was to identify what issues led to conflict between Counties and the private sector. Once the issues were identified, a determination could be made of the fiscal impacts and required funding offsets necessary to make counties whole.

The Summit discussions took place over 2009 and 2010, with the final Summit meeting taking place in July of 2010. At that meeting, the WCHA Executive Director was directed to meet with a representation of WTBA to discuss and resolve several remaining differences. Several additional meetings were set for these discussions along with additional Summit Meetings. None of the meetings took place, due to the ill health of the WTBA representative, discussions were by phone only. From July 2010 to the introduction of Motion 352 there were no formal discussions with WTBA about the Summit or the conceptual proposals developed by the WCHA Executive Director and WTBA representative.

The concepts being discussed at the Summit meetings were first presented at the 2010 Commissioner's Training session. The framework for the Summit proposals was presented at the Commissioners Training meeting in April 2011. After discussion a hand vote was taken, with the majority of counties supporting the basic concept of trading county improvement dollars funded from State or Federal sources (Local Force Account Work) for increases in State Trunk Highway Maintenance Funding; General Transportation Aids and increases in the County Highway Improvement Program. Several counties dissented and there was considerable concern about the non-fiscal provisions such as the definition of maintenance, as well as what was considered "State Funding" sources. From the April 2011 Commissioners Training to the present, there have been no additional Summit meetings and no discussion between the parties for implementation of the Summit proposals. It appears that parts of the Summit proposals were incorporated into Motion 352, but the WCHA did not have any involvement in the development, nor the specifics included in Motion 352.

WCA AND WCHA POSITIONS

The WCA and WCHA first became aware of the Joint Finance Committee's intention of submitting language addressing County Highway Operations on May 27, 2011. Several bills were discussed including one that would have prohibited counties from doing any improvement work over a \$25,000 threshold. The Legislators authoring the draft budget amendments indicated that one of the amendments would be introduced. The WCHA Executive Director was asked by the WCA to review the drafts and present a recommendation on, which one should be supported. He indicated with considerable reservations that draft Motion 352 was the best of the three, but that it was not totally reflective of the summit discussions and contained several provisions of concern and confusing language. The WCA made a decision to support Motion 352 on May 27, 2011. The WCHA Executive Committee chose not to take any position in support or opposition, and looked for input at the approaching WCHA 100 year anniversary road school that was coming up in a week. The Motion and the provisions contained in the motion were discussed at the WCHA Executive Committee, WCHA/WCA Joint Legislative Committee Meeting, and WCHA Board of Directors meeting at the WCHA Summer Road School June 6,7,8, 2011. Mr. Mark O'Connell, Executive Director of the Wisconsin Counties Association was in attendance at the conference and presented the WCA position to those in attendance. No WCHA position was officially taken at any of these Association Meetings. The WCHA President later issued a letter on his own volition, stating WCHA did not endorse the WCA position in support of Motion 352. Subsequently, the WCA revised their position requesting that the fiscal portions of Motion 352 be adopted, but the non-fiscal portions be removed. The Joint Finance Committee then stripped both the fiscal and non-fiscal language of Motion 352 from the budget bill and substituted several provisions constraining intergovernmental cooperation between counties and municipalities.

MOTION 352 PROVISIONS

Perhaps the biggest flaw in Motion 352 process was the exclusion of the WCHA in the drafting process. The WCHA and WCA were placed into the position of accepting the "package" without input on the language itself. If Summit participants were allowed input into the drafts, it would appear only those representing the construction industry were provided the privilege of doing so. This led to a biased document with only some of what the parties had originally discussed and an abundance of confusing language.

The Task Force believes Motion 352 was not the "same" as the summit points. It went well beyond the agreements we had conditionally accepted in some areas and fell short in funding other areas. Confusing language in several provisions caused a great deal of uncertainty. Those private interests that supported the Motion then characterized the WCHA and WCA positions to Legislators as a withdrawal from a previous agreement. The Task Force believes there were differences between the non-fiscal language included in 352 and the concepts explored at the summit. Even those Counties that supported Motion 352 had reservations on aspects of the legislation. The consensus from those counties that opposed Motion 352 was that the positive provisions were not adequate to overcome the negative provisions.

The Task Force has identified a number of problems with Motion 352. A brief list follows:

- The WCHA was not allowed input or participation in the drafting of the legislation

- The language within Motion 352 was confusing and is still unclear to this day. Its impact on counties was and still is subject to debate, due to unclear and poorly written language
- No guarantees on where additional STH maintenance funding would go
- Increases to CHIP-D, but constraints on CEF's for CHIP projects. Summit discussions called for an 80/20 program. Motion 352 kept ratio at 50/50
- Inadequate GTA funding. While the proposed GTA funding was higher than Governor's proposal, it was still several million below 2011 levels
- The \$100,000 threshold for state and federal projects had no inflationary consideration
- Ban on counties doing "improvements" to State Trunk Highway System

The final enrolled bill removed most of the language contained in Motion 352 including the positive financial and non-fiscal items. Among the positive provisions included in Motion 352 that were removed from the enrolled bill are:

- \$10M from GTA and removal of language setting \$102M base
- \$10M from CHIP-D
- \$15M from STH Maintenance allocation *
- Land acquisition reform language
- WISDOT study of County maintenance operations with budgeting requirements
- Process for defining "Maintenance"

* Task Force members agree that there was no certainty these funds would have been given to Counties. An \$18.9M increase to the STH Maintenance account in the enrolled bill, yielded no funds for County RMA's.

Negative provisions removed included:

- Language constraining use of state and federal funds for LFA work
- Language constraining use of Cost Effectiveness Findings on CHIP projects
- Limits on Counties doing "private work"

Negative provisions in the enrolled bill included:

- Ban on counties cooperating on improvement projects
- Ban on counties performing work in Villages and Cities over 5,000 population
- Prevailing wage threshold of \$100,000 on "County" projects with a \$234,000 threshold for private contractors bidding on projects.

MOTION 352 AND ENROLLED BILL RAMIFICATIONS

The Task Force clearly has consensus that there were problems associated with Motion 352. Both those who supported Motion 352 and those who opposed it felt the legislation was flawed. Task Force members who supported the Motion believed the GTA, CHIP-D, and STH Maintenance funds provided in the bill outweighed the negative non-fiscal issues. They also felt that the Administrative Rule making process could have been used to clear up the uncertainties in the Motion's language. Task Force members who opposed the Motion believed the financial considerations were not enough to offset their losses caused by Local Force Account

work prohibitions. They also believed non-fiscal language would damage their ability for revenue in other areas and that the language was too destructive to be fixed.

While it is difficult to ascertain how Motion 352 would have effected individual County operations, it is clear that some counties saw the defeat of the motion as positive for them financially and others saw it as a negative. What is clear, is that counties statewide received \$20 million less funding over the biennium (\$35 Million if STH maintenance is included) from the withdrawal of Motion 352. The short term and long term loss of Local Force Account (LFA) projects was a major consideration for a number of counties. Contract work completed utilizing LFA work all or in part averaged \$9.5 million annually. The Local Share Cost of Negotiated Contracts (portion of contract going to counties) averaged \$5.4 million annually. Other potential losses from limitations that could have arisen from language contained in the bill are subject to debate, since all parties agree that the language was confusing and sometimes seemed to be contradictory.