



“WCHA/WCA LEGISLATIVE HOT MIX”

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&

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Comparative Summary of Governor’s Proposed Budget, JFC’s Changes, and Final Budget

The following summary compares the differences between the Governor’s original proposed budget, the changes made to the Governor’s budget in JFC, and the final budget signed into law by Governor Walker.

The JFC budget Motion 352 included an additional \$50 million in Transportation funding above what the Governor had originally proposed. That included: \$10 million in the county portion of GTA’s; \$30 million in additional state highway maintenance funding for the biennium; and \$10 million in additional funding in the county discretionary component in the LRIP program (CHIP-D).

It is important to note that the Legislature removed \$35 million of the additional funding approved by JFC. That included: removing the \$10 million in GTA’s; removing \$15 million of the state highway maintenance funding; and the \$10 million in CHIP-D funding in the LRIP program. The Legislature then increased the State Highway Rehabilitation Program funding by an additional \$35 million.

The JFC budget Motion 352 did make changes to bidding requirements related to county highway departments. The assertion has been made that all projects performed by a county workforce would have been limited to \$100,000. WCA legal counsel reviewed the statutory language in ASA1 to AB 40 (the amended version of the budget passed by JFC) and it is their opinion that in fact projects funded with only county funds would not be subject to the \$100,000 limit. It is also the opinion of WCA legal counsel that projects performed by a county for a town and funded with only town funds would not be subject to the \$100,000 limit.

Also, projects funded in part or in whole with state funds would not have been subject to the \$100,000 limit until July 1, 2015. Projects funded in part or in whole with federal funds would not have been subject to the \$100,000 limit until July 1, 2013.

The final budget removed the provisions regarding the \$100,000 threshold and replaced them with additional restrictions, which are detailed in the summary below.

General Transportation Aids

- **Governor**
 - Decrease funding by **\$329,400 in 2011-12** and **\$8,160,700 in 2012-13** to provide a total of **\$101,806,400 in 2011-12** and **\$93,975,100 in 2012-13**.
 - Set the calendar year distribution at **\$93,975,100** for calendar year **2012** and thereafter. This represents a **10%** reduction from the **2011** aid level of **\$104,416,800** for calendar year **2012** and thereafter.
- **JFC Motion 352**
 - Increase GTA's by **\$2,160,100** in 2011-12 and **\$8,640,500** in 2012-13 for counties.
 - Set the distribution for calendar year 2012 and thereafter at \$102,615,600 for counties.
 - This represents a 1.73% reduction from the 2011 aid level for 2012 and thereafter for counties.
- **Final Budget**
 - Reduce funding by **\$2,000,000** in 2011-12 and **\$8,000,000** in 2012-13 for the general transportation aid program appropriation for county payments, and reduce the statutory distribution for county payments from **\$102,615,600** to **\$94,615,600** for 2012 and annually thereafter. This results in a **9.4%** reduction from the **2011** (current) GTA aid level of **\$104,416,800**.

State Highway Maintenance Funding

- **Governor**
 - Provide **\$3,923,300** in 2011-12 and **\$7,824,500** in 2012-13 for the state highway maintenance and traffic operations program, which would be an increase of 2.0% annually.
- **JFC**
 - Provide an additional **\$15,000,000** annually for the program, to provide a total increase of \$18,923,300 in 2011-12 and **\$22,824,500** in 2012-13.
- **Final Budget**
 - Funding for 2011-2012 will increase **\$18,923,300** to **\$213,446,700**
 - The increase represents the **\$3.9 million** increase the Governor had proposed as well as a \$15 million increase from the Joint Committee on Finance (JFC)
 - Funding for 2012-2103 will be adjusted to **\$202,347,900**
 - The 2012-2013 level still includes the **\$7.8 million** increase the Governor had proposed, but the additional **\$15 million** JFC proposed was removed by the Legislature.
 - Governor Walker vetoed a provision that would have required the DOT to submit in its budget request funding equal to the amount appropriated in the base year plus an inflationary factor, for maintenance activities performed by counties, if the department determines that funding levels for county maintenance activities is inadequate.

State Highway Maintenance-Definition of Maintenance Activities

- Governor's proposed budget did not address this subject.
- JFC
 - 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 short segment 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 such as snow plowing, salting, and deicing, for pot hole filling, and for incidents such as pavement and deck failures, incident response, and bridge hits; (b) specify that the term "maintenance activities" does not include: (1) repair that is a capital investment that will improve a highway facility for at least 10 years; or (2) a highway improvement project; (c) include in the definition of maintenance activities the restoration of 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) 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 (e) 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) 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, and tunnels" after "repair"; (3) replace the term "restoration" with the term "preservation"; and (4) eliminate the phrase "all measures necessary to provide adequate traffic service".
- Final Budget
 - The provisions included in the JFC budget were eliminated and the final budget contained no changes or references to the definition of maintenance activities.

Local Roads Improvement Program-Discretionary Funding

- The Governor's original budget did not address this subject.
- JFC
 - Provide **\$10,000,000** annually for the discretionary component of the local roads improvement program. Increase the annual allocation for discretionary grants as follows: (a) by **\$5,000,000**, from **\$5,127,000** to **\$10,127,000**, in 2011-12 and annually thereafter for county highway projects; and (b) by **\$5,000,000**, from **\$732,500** to **\$5,732,500**, in 2011-12 and annually thereafter for town road projects. Resulting in a **\$10,000,000** increase in both the **CHIP-D** and the **TRIP-D** programs over the two years.
- Final Budget
 - The Legislature removed the additional **\$10 million** in CHIP-D funding. The additional **\$10 million** JFC provided for the towns discretionary component under LRIP was maintained in the final budget.

LRIP Bidding Requirements

- The Governor's original budget did not address this subject.
- JFC
 - Modify bidding requirements under the local roads improvement program, 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 on the first day of the fourth month beginning after the general effective date of the bill, that a county may not perform work for a project funded under the program for which the county has prepared a written and sealed cost estimate in connection with or in anticipation of competitive bidding for the award of a contract for the project.
- Final Budget
 - Delete the provision in the Joint Committee on Finance substitute amendment that would place new restrictions on the ability of counties to use their own workforce to perform highway improvement projects funded under the local roads improvement program. Under the amendment, current law restrictions with respect to the use of a county workforce for these projects would remain.

Bidding Requirements for Highway and Other Public Works Projects

- Governor's proposed budget did not address this subject
- JFC
 - Prohibit any county, city, village, or town ("local government") 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 entirely or in part with federal funds, and construction commences after July 1, 2013; or (b) the project is funded entirely or in part 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; and (b) the portion of projects under the discretionary component of the county highway improvement program funded with county funds.
 - Prohibit any county from using its own workforce to perform a highway improvement project for or with any village or city, regardless of the source of funds, if the project has a cost exceeding \$100,000, first applying to projects for which construction starts on the first day of the fourth month beginning after the general effective date of the bill.
 - Prohibit any local government from using its own workforce to perform any public construction project (defined below) for or with another local government under any agreement or arrangement, including, an intergovernmental cooperative agreement or under local government purchasing provisions, but specify that this prohibition does not apply to public contracts entered into by a town with another unit of government, first applying to projects for which construction starts on the first day of the fourth month beginning after

the general effective date of the bill, or to 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. Define "public construction project" to mean any public construction, public works project, or construction-related services, including road, sewer, water, stormwater, wastewater, recycling, or bridge projects.

- Specify that the restrictions, as described above do not apply in emergencies formally declared by the chief elected official or governing body 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.
- Prohibit any local government from dividing a highway improvement project into two or more parts for the purpose of evading these provisions, including the \$100,000 thresholds.

There has been a great deal of debate over what the \$100,000 would have applied to. It is the opinion of WCA legal counsel that the \$100,000 limit would not have applied to projects funded in whole with county dollars.

- Final Budget
 - Modify current law to: (a) prohibit a county from using its own workforce to perform a highway improvement project on a highway under the jurisdiction of another county or a municipality that is located in a different county, unless either of the following apply: (1) a portion of the project lies within the county doing the work and no portion of the project extends beyond an adjoining county; or (2) the project lies, in part or in whole, within a municipality that lies partially within the county doing the work; and (b) prohibit a county from using its own workforce to perform a highway improvement project for a city or village with a population of over 5,000, except as allowed in limited circumstances under the local roads improvement program. Specify that these changes would first apply to projects on which construction commences on the first day of the fourth month after the bill's general effective date.

This memo was a summary of the major provisions relating to county highway departments. Please feel free to contact us if you have a question regarding a provision included in the summary, or if you have a question regarding a provision that was not listed.