

Report From Agency

STATE OF WISCONSIN DEPARTMENT OF TRANSPORTATION OFFICE OF THE SECRETARY

AGENCY REPORT TO LEGISLATURE CLEARINGHOUSE RULE 18-065

The State of Wisconsin Department of Transportation Proposes an Order to **create** ss. Trans 3.02 (1), (3m), 4.02 (1), (1h), (1p), 4.02 (2m), (3g), (3r), (4g), (4r), (10g), (10r), (12), 4.04 (3), (5) (aa), 4.07 (1m), 6.02 (1) (a), (b), (1g), (1r), (2m), (5g), (5r), (6) (a), (b), (c), (6m), (7m), (8m), (10m), (14m), (16), 6.03 (1) (b) 19., (3), 6.06 (1) (g), (h), (i), (3), 6.10 (4m), 8.02 (1m), (13), 8.03 (2) (f); **amend** ss. Trans 3.01 (2), 3.02 (2) (intro), (3), (4), (5), (7), (9), 3.03 (1) (b), (3) (c), (f), 3.04 (3) (e), (4) (c), 4.02 (2) (intro), (a), (b), (4), (5m), (7), (8m), (11), 4.03, 4.04 (1), (2), (b), 1., 2., 3., 4., (intro.), a., (4) (b), 6., 7., (c), (5) (f), (g), (o), (q), (r), (s), (t), (u), (w), (x), (z), 4.05 (1), 4.06 (1), (2), (4), 4.07 (1), (2), (3), (4), (5), (6), 4.08 (title), (1), (2) (intro.), (a), (3), (4) (intro.) (b), (g), 4.09 (intro.), (1), (2) (intro.), (4) (b), (c), (d), (f) 1., 6.01, 6.02 (1), (2), (3), (4), (4m), (5), (6), (7), (8), (10), (12), (14), (15), 6.03 (1) (intro.), (a), (b) (intro.), 4., 6., 7., 17., 18., (c) 1., 2., 3., 4., (2), 6.04 (1) (intro.), (a), (b), (d), (e), 6.05 (title), 6.06 (1) (intro.), (a), (c), (d), (e), (f), 6.06 (2), 6.07 (1), (2), (3), (5), (7) (a), (b), 6.10 (3), (4) (intro.), (5), 8.01, 8.02 (2), (2r), (4), (5), (6), (8), (12), 8.03 (title), (1) (a), (b), (2) (intro.), (a), (3), 8.04; **repeal** ss. Trans 4.04 (4) (b) 4. (note), 5., 4.05 (3), (4), (5), 4.07 (1) (note), 4.08 (5), (6), 6.03 (1) (b) 16., 6.07 (6), 6.10 (6), 6.12, 8.02 (9), (11m); **repeal and recreate** ss. Trans 4.02 (3), 4.04 (4) (a), 4.09 (3), 6.10 (1), (2), 6.11, 8.02 (1), (10); **renumber and amend** s. Trans 4.02 (1r); and to **renumber** ss. Trans 3.02 (1), 4.02 (1), relating to the Administration of Grant Programs to Administer Federal and State Funds for Local Public Transit Services.

I. THE PROPOSED RULE:

The proposed rule revisions and the analysis are attached.

II. REFERENCE TO APPLICABLE FORMS:

No forms are newly required by these rule revisions.

III. FISCAL ESTIMATE AND EIA:

The Fiscal Estimate and EIA are attached.

IV. DETAILED STATEMENT EXPLAINING THE BASIS AND PURPOSE OF THE PROPOSED RULE, INCLUDING HOW THE PROPOSED RULE ADVANCES RELEVANT STATUTORY GOALS OR PURPOSES:

Chapters Trans 3, 4, 6 and 8, Wis. Adm. Code, establish the Wisconsin Department of Transportation's (Department) blueprint for implementing and managing federal transit operating and capital funding programs established under 49 USC §§ 5307 and 5311, and the state transit operating funding program established under s. 85.20, Stats.

The Section 5307 program provides funding to public transit systems in urbanized areas (incorporated areas with a population of at least 50,000) for public transportation capital, planning, job access and reverse commute projects, and in some circumstances operating expenses. Section 5307 funds for urbanized areas with populations of at least 200,000 flows directly from the Federal Transit Administration (FTA) to authorized local public agencies. Funds for smaller urbanized areas flow through the Governor or Governor's designee (in Wisconsin, the Department of Transportation).

The Section 5311 program parallels the Section 5307 program, but provides funding for public transit systems serving rural and small urban areas (those with population under 50,000). Unlike the Section 5307 program, all federal funds flow through the Governor or Governor's designee, and may be used to pay for transit service operating expenses.

Section 85.20, Stats., establishes a framework for allocating state and federal transit funds to the operations of mass transit systems serving "urban areas." (Per statute, an urban area is defined as "...any area that includes a city or village having a population of 2,500 or more that is appropriate, in the judgment of the department, for an urban mass transit system or an area that includes 2 American Indian reservations and that is served by a mass transit system operated by a transit commission.") It directs the Department to combine and equitably distribute state and federal funds among eligible public transit systems within each funding tier defined in s. 85.21 (4m) (a), Stats. It also broadly establishes the Department's administrative authority in this regard, including the authority to:

- receive applications for financial aid and prescribe the form, nature and extent of information contained therein;
- execute contracts with eligible applicants to ensure continued provision of transit service (subject to the applicant satisfying certain conditions);
- audit the operating revenues and expenses of all urban mass transit systems participating in the program;
- conduct management performance audits of all participating urban mass transit systems at least once every 5 years; and
- apply for and receive federal grants for the Department or as requested on behalf of eligible recipients.

Section 85.20, Stats., limits each system's state funding to the system's operating deficit less the federal funds it receives. Finally, it instructs the Department to impose certain requirements on the recipients of state and federal transit funding. The statute does not address the use of federal funds for transit system capital investments, nor does it establish a state-funded capital program. The administrative rules flesh out the requirements of s. 85.20, Stats. Chapter Trans 3 establishes procedures by which public transit systems may count passenger trips. (The Department requires this information as a condition of disbursing state and federal funds, and

transit agencies need it to satisfy the Department's transit development planning and performance goal requirements.) Chapter Trans 4 defines eligible costs under the federal 5307 and 5311 public transit aid programs, and outlines service procurement requirements. It also specifies a due date for public transit systems to submit state aid applications to WisDOT and the deadline for new systems to notify the Department of their intention to apply for state aid. Finally, the rule specifies the performance metrics and cost efficiency standards required under s. 85.20, Stats.

Chapter Trans 6 addresses the Department's administration of the 5311 program specifically, including the rural transit assistance program. It restates the legal limit on use of federal funds for operating costs (generally, 50% of operating deficit), and caps combined federal and state allocations for operating assistance at 70% of projected operating expenses. Similarly, it restates federal law provisions allowing use of funds for administrative and technical support purposes. It also establishes a deadline for public transit systems to submit federal aid applications to WisDOT, dictates that unused operating funds be used for capital projects, and specifies capital project funding priorities.

Chapter Trans 8 governs the allocation of the governor's 5307 program apportionment. It specifies that funds be allocated to operating costs first – up to 50% of operating deficit – and caps combined federal and state allocations for operating assistance at 70% of projected operating expenses. It also specifies capital project funding priorities.

In summary, s. 85.20, Stats. and Chapters Trans 3, 4, 6, and 8 are linked to federal code that establishes the 5307 and 5311 programs, but they do not significantly reference the specific contents of that code. To the extent they do, however, minor inconsistencies have developed over the years as federal transit laws have evolved. The rule revisions contained in this proposed order will, among other things, eliminate these inconsistencies.

V. SUMMARY OF PUBLIC COMMENTS AND THE DEPARTMENT'S RESPONSES, AND EXPLANATION OF ANY RESULTING MODIFICATIONS TO THE PROPOSED RULES:

The Department held a public hearing on the proposed rule on October 23, 2018. No one testified or appeared at the hearing, and no written comments were received.

VI. RESPONSE TO LEGISLATIVE COUNCIL STAFF COMMENTS:

The Department received the Clearinghouse Report on October 1, 2018, which reported 17 distinct comments related to: statutory authority, form, style and placement in the administrative code, and clarity, grammar, punctuation and use of plain language. The Department made all recommended changes, except for the following:

Section 13 (now Section 12). Section 59.001, Stats. defines municipality as "any city, village or town," and using this term eliminates the redundancy in Trans 4 and s. 85.20, Stats., which explicitly define local public body to include "...municipalities or towns..." We are restoring "or agencies thereof" to permit (hypothetical) situations where a county designates an ADRC as its official human services agency for seniors and those with disabilities, and the county/agency applies for 5311 funding. Trans 6 requires a more permissive definition of local public body (i.e., not tied to "urban area >2,500" definition and allowing tribes) for consistency with 5311.

Section 14. The proposed definition for "mass transit system" is a better definition because it's harmonized with the statute, more concise, and avoids perpetuating the rule's confusion between "entity" and "service."

Section 15 (now Section 56). The words "derived therefrom" are relevant to the proposed rule.

VII. REPORT FROM THE SBRRB AND FINAL REGULATORY FLEXIBILITY ANALYSIS:

The Department did not receive any statement, suggested changes, or other material from the Small Business Regulatory Review Board.