



JANEL BRANDTJEN

STATE REPRESENTATIVE • 22ND ASSEMBLY DISTRICT

Testimony for AB 202 before the Assembly Committee on Transportation

Thank you Chairman Plumer and the Assembly Committee on Transportation for holding this hearing on AB 202 today.

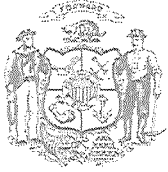
AB 202 simply directs the DOT to encourage contractors to use materials for highway projects that are available in the right-of-way of the proposed project area. The contractors interested in bidding for the project would be able to use the savings that would be realized by using such materials in the bidding process. The lower bids for these projects would result in lower costs for Wisconsin's taxpayers.

We all agree that there seems to be a never-ending list of transportation projects that we would like to see completed. We can also agree that funding these projects will always present a challenge to present and future lawmakers. This bill will help to stretch a few transportation dollars.

Thank you,

A handwritten signature in black ink that reads "Janel Brandtjen". The signature is written in a cursive, flowing style.

State Representative Janel Brandtjen



ANDRÉ JACQUE

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*Testimony before the Assembly Committee on Transportation
State Senator André Jacque
November 17, 2021*

Chairman Plumer and Committee Members,

Thank you for holding this hearing on Assembly Bill 202, The Right-of-Way Beneficial Re-use and Cost Savings Act, which allows sourcing materials from within the right-of-way of a highway improvement project. I appreciate the positive conversation I have had with WisDOT Secretary Thompson on this issue.

AB 202 requires WisDOT, where applicable, to utilize materials needed for a particular project from sources in the DOT right-of-way, rather than pay a higher cost to source and transport materials from more distant locations. Encouraging the use of materials sourced from within the right-of-way of the proposed improvement creates opportunities for acquiring materials more economically, reducing the unnecessary costs, pollution, and waste associated with bringing in materials that already may exist on-site. This simple proposal will make the highway improvement process more efficient and eliminate unnecessary obstacles, helping ensure projects are completed quicker and for less money, allowing us to stretch our transportation funding further.

Under AB 202:

- 1) DOT may not charge for any materials sourced from within the right-of-way
- 2) The bidder may include those potential cost savings in its bid, and
- 3) The bidder is responsible for any unanticipated costs in sourcing alternate materials if the materials proposed to be sourced from within the right-of-way do not satisfy the applicable specifications for the highway improvement or are more costly to utilize than anticipated, or if the bidder fails to receive all necessary approvals, other than the approval of the department, to excavate or remove the materials.

Thank you for your consideration of Assembly Bill 202.



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To: Chairman Plumer and members of the Committee
From: Joel Nilsestuen, Assistant Deputy Secretary
Date: November 17, 2021
RE: **Assembly Bill 202, relating to Highway Projects**

Thank you, Chairman Plumer and committee members for the opportunity submit this written testimony. The Wisconsin Department of Transportation's (WisDOT) submits this testimony for informational purposes.

Overall, the department believes this bill will carry negative consequences for project timelines and financing, with no real trade-off for taxpayer savings. The department has concerns regarding how to ensure compliance with approvals, permits and/or other commitments. We also see potential issues with material quality and whether projects would be built to quality standards for the traveling public.

Currently, the contractor may use stone, gravel, sand, or other material found within the vertical and horizontal excavation limits the plans show per Standard Specification 104.8(1). The contractor may also use material outside of the vertical and horizontal excavation limits per Standard Specification 104.8(2). If the materials are deemed suitable by the department, the pay is reduced by \$1.50 per cubic yard under the material from right-of-way administrative item.

This bill eliminates the \$1.50 per cubic yard reduction in payment to the department's contractor for the material sourced, as currently required by Standard Specification 104.8(2). The \$1.50 provision was specifically added to the Standard Specifications to help create a consistent bidding environment and prevent contractors from pressuring department staff to reduce the compensation amount. Before the specification change, contractors were able to effectively create an uneven bidding field, with some contractors presuming they will pay very little and reflecting that in their bid, while others bidding the project as let were then challenged to submit the low bid and win the project. The department mitigated these issues by establishing a standard compensation amount for the materials used outside of the vertical and horizontal excavation limits.

Additionally, Standard Specification 104.8(2) is intended to compensate the taxpayers for the resources/materials they've purchased beneath the roadway, as well as provide a small cost-savings to the department by allowing the contractor to use the existing materials. Eliminating the reduction in payment is really only a cost savings for the contractor and leaves the taxpayers uncompensated for their resources. This standard compensation amount is consistent with other statutory requirements regarding compensating taxpayers for resources/materials that are removed from within the right-of-way, such as trees. For example, Wis. Stat. s. 84.305(5)(f) requires a per-tree fee for each tree removed from the right-of-way.

In the department's experience, the presumption of using materials within the right-of-way to potentially save money has resulted in challenges to department decisions and ultimately delayed projects. Contractors have presumed they could use materials and have been denied because of environmental or local zoning requirements, but the contractor has challenged the decision. The department must then defend its decision, which may cause project delays.

Material must also be replaced for that which was removed, which is not contemplated in this bill. While the bill requires the contractor to accept responsibility for the quality of the material removed, the department has concerns over the quality of materials replaced to provide appropriate roadway geometrics. The quality of the material to replace the removed material may not be as desirable and would present an opportunity for debate with the contractor. For example, if they mine materials out of the median and replace it with an unstable material, and we have high tension cable barrier going in that location – the cable barrier cannot be sufficiently tensioned in that type of soil condition. This could present another opportunity for debate with the contractor, which could result in project delays.

Furthermore, the bill does not include any limitations regarding how much material the contractor can excavate. Some materials are valuable and provide a better foundation for our roadway. For example, rock beneath our roadway is a great foundation but the contractor may see the value in the material and over-excavate to mine that material. They may use some of the material for our project, but they could also take it elsewhere – there is no restriction. Again, the material removed will need to be replaced, so the rock will likely be replaced with some native soils which aren't as desirable as the rock. This again could result in project delays if the department disagrees with the contractor.

Finally, the bill places responsibility for "all necessary approvals" on the contractor, which the department interprets to include the required environmental impact analysis (EIA) approvals. However, as discussed in the fiscal estimate, due to existing responsibilities required by cooperative agreements with other agencies, the department assumes it will continue to conduct the EIA analyses to safeguard these agreements and relationships.

Thank you again for the opportunity to provide this written testimony today. We would be happy to answer any questions you might have.