



U.S. Department
of Transportation

**Federal Transit
Administration**

The Administrator

1200 New Jersey Avenue, SE
Washington, D.C. 20590

JUN 27 2011

Mr. Robert J. Bauman
Alderman, 4th District
200 E. Wells Street
Milwaukee, WI 53202

Re: Milwaukee Interstate Cost Estimate Substitute Funds

Dear Mr. Bauman:

Thank you for your recent letter raising several questions about the Interstate Cost Estimate Substitute (ICE) funds that have been directed to the city of Milwaukee for the construction of a downtown streetcar line. I have addressed each of your questions below.

1. Under what circumstances, if any, can the funds appropriated to the city of Milwaukee be redirected to another transportation project in the city of Milwaukee or County of Milwaukee?

RESPONSE:

As a matter of law, the ICE funds cannot be redirected to another transportation project, unless Congress acts to amend the statute. In 1991, section 1045 of the Intermodal Surface Transportation Equity Act (ISTEA) (Pub. L. 102-240) provided Wisconsin with the option to substitute highway, bus transit and/or light rail transit projects in lieu of an I-94 East/West Transit Way project in order to use the nearly \$289 million in Federal funds for that project. Pursuant to section 1045(a)(2)(B) and (C) of ISTEA, the Governor of Wisconsin was required to submit a list of substitute projects to the Secretary of the United States Department of Transportation (Secretary) for approval no later than October 1, 2000.

In response to that statutory requirement, on August 10, 1999, former Governor Tommy Thompson transmitted a list of five projects requesting that the Secretary approve allocation of the ICE funds to those projects. On January 21, 2000, the Secretary approved four of the five projects. Approval for the "Local Transportation Options" project was withheld pending resolution of two Title VI complaints and a preferred alternative. ICE funds for the four approved projects were fully obligated, leaving a balance of \$91.5 million for the "Local Transportation Options."

On August 20, 2009, Governor Doyle requested that the Secretary approve two substitute public transportation projects, the Milwaukee Downtown Connector Streetcar project and

the Milwaukee County energy bus acquisition project. On October 7, 2009, the Secretary approved both projects. However, release of the ICE funds allocated to both projects was contingent upon compliance with the Title VI settlement agreements and compliance with Federal planning requirement. On August 25, 2010, with the compliance matters having been resolved, the ICE funds for the two projects were released for obligation.

It is clear that the purposes of section 1045(a)(2)(B) and (C) of ISTEA were fulfilled when the Secretary approved the Milwaukee Downtown Connector Streetcar project and the Milwaukee County energy bus acquisition project on October 7, 2009. In my view, the statute does not provide the Secretary with the flexibility to redirect the funds to another project following his approval.

2. Under what circumstances, if any, can the funds appropriated to the city of Milwaukee be redirected to offset operating costs of the Milwaukee County Transit System?

RESPONSE:

See the response to question 1. Moreover, ICE funds are available for capital projects. Operating assistance is not an eligible expense.

3. Is there a date certain by which the funds appropriated to the city of Milwaukee must be obligated? If so, what is that date?

RESPONSE:

Pursuant to section 1045(b)(2) of ISTEA the funds are available for obligation until expended unless Congress acts to rescind or reprogram the funding prior to an obligation of funds.

4. If the funds appropriated to the city of Milwaukee are not obligated by that date certain, what is the disposition of those funds?

RESPONSE

See the response to question 3.

5. If there is no date certain by which the funds appropriated to the city of Milwaukee must be obligated, under what circumstances, if any could these funds be rescinded?

RESPONSE:

Congress can rescind unobligated funds through the legislative process.

The Federal Highway Administration, Office of the Chief Counsel, has jurisdiction with respect to the statute's interpretation and has concurred with my response. The Federal Transit Administration will continue to work with all parties to advance the Milwaukee Downtown Connector Streetcar.

I hope this information is helpful to you. If I can provide further information or assistance, feel free to contact me directly on (202) 366-4010.

Sincerely yours,

A handwritten signature in black ink, appearing to read 'Peter Rogoff', written in a cursive style.

Peter Rogoff