

Frequently Asked Questions to Bicycle & Pedestrian State Statute 84.01 (35)

October 20, 2015

Is there still a State Statute addressing the establishment of bikeways and pedestrian ways?

Yes, State Statute [84.01\(35\)](#) originally created in 2009 was modified as part of the 2015-2017 Wisconsin budget bill Act 55 and still exists.

The new statute reads:

84.01(35)

(a) In this subsection:

1. "Bikeway" has the meaning given in s. [84.60 \(1\) \(a\)](#).
2. "Pedestrian way" has the meaning given in s. [346.02 \(8\) \(a\)](#).

(b) Except as provided in par. (d), and notwithstanding any other provision of this chapter or ch. [82](#), [83](#), or [85](#), the department shall give due consideration to establishing bikeways and pedestrian ways in all new highway construction and reconstruction projects funded in whole or in part from state funds or federal funds appropriated under s. [20.395](#) or [20.866](#).

(d) The department may not establish a bikeway or pedestrian way as a part of a new highway construction or reconstruction project if any of the following apply:

1. Bicyclists or pedestrians are prohibited by law from using the highway that is the subject of the project.
2. The project is funded in whole or in part from state funds unless the governing body of each municipality in which a portion of the project will occur has adopted a resolution authorizing the department to establish the bikeway or pedestrian way. This subdivision does not apply if the federal government provides written notice to the department that establishment of a bikeway or pedestrian way as a part of a project is a condition of the use of federal funds for that project.

Is there still an Administrative Code Trans 75?

No. Administrative Code Trans 75 was repealed as part of the 2015-2017 Wisconsin budget bill Act 55. Trans 75 was developed when State Statute 84.01(35) was originally created in 2009. The 2009 state statute required WisDOT to promulgate rules identifying exceptions to the requirements in state statute. Administrative Code Trans 75 detailed the five exceptions when facilities may be omitted.

What are the modifications in State Statute 84.01(35) as part of the 2015-2017 budget bill?

Key State Statute 84.01(35) modifications include:

- The law modified the statutory requirement from 'ensure bikeways and pedestrian ways are established' to 'shall give due consideration to establishing bikeways and pedestrian ways' on new highway and reconstruction projects funded in whole or in part from state and federal funds.
- The statute was also changed from a presumption that bicycle and pedestrian facilities would be included unless an exception applied, to a presumption that bicycle and pedestrian facilities cannot be included in state-funded project unless certain conditions are met. That is, the department may not establish a bikeway or pedestrian way if any of the following apply:
 - 1) Bicycles and pedestrians are prohibited by law from using the highway; or
 - 2) The project is wholly or partially funded with state funds, unless the governing body of each municipality within the project has adopted a resolution authorizing the department to establish the bikeway or pedestrian way. Section 990.01(22), Wis. Stats. defines "municipality" as a city, village or town. A resolution is not required if the federal government provides written notice to department that establishment of a bikeway or pedestrian way is a condition of the use of federal funds for that project.

When do these changes become effective?

The modifications to the state statute became effective on July 14, 2015.

Does the modified state statute apply to all state-funded projects?

No. Based on the Governor's partial veto of the 2015-2017 Wisconsin budget bill Act 55 and the veto message objecting to the potential delay of applying the municipal resolution to existing projects, WisDOT has determined that the statutory changes do not apply to projects already underway, meaning those that have an approved environmental document as July 14, 2015. Projects with approved environmental documents as of July 14, 2015 will follow through on the commitments identified during the public involvement and environmental processes including bike and pedestrian commitments.

So, will projects still include bike and pedestrian accommodations?

Maybe. WisDOT must give due consideration to establishing bikeways and pedestrian ways in all new highway construction and reconstruction (including pavement replacement) projects funded in whole or in part from state funds or federal funds. After giving due consideration, if WisDOT determines that bikeways and pedestrian ways are required, then WisDOT is authorized to include those facilities only if each municipality in which the project is located adopts a resolution authorizing WisDOT to establish a bikeway or pedestrian way. The municipal resolution is not required if the federal government provides written notice to WisDOT stating that establishing the bikeway or pedestrian way is a condition of federal funding.

WisDOT will continue to work with communities to provide multimodal transportation that includes options for biking and walking and will continue to develop and evaluate alternative project designs that include bike and pedestrian accommodations.

Is the Trans 75 worksheet still required on projects?

No. The worksheet is not required; however it may assist the project team in giving 'due consideration' to establishing bikeways and pedestrian ways and documenting design decisions in the interim. WisDOT is in the process of developing and clarifying implementation guidance per the recent state statute modifications. This process includes updating the FDM and various department materials which will occur over the next several months.

How will we continue to document bike and pedestrian considerations and decisions?

New highway and reconstruction (including pavement replacement) projects need to follow the appropriate environmental documentation processes. There will be an increased emphasis to address the evaluation and recommendation of bikeways and pedestrian ways in the environmental documentation. Projects also need to continue to document bicycle and pedestrian design decisions as part of the Design Study Report (DSR) process.

Example: The project has an approved environmental document but, the community has asked to change bike and pedestrian accommodations under the new law. Can this be done?

It depends what changes are being proposed. As a first step, communities should contact the Department's Region office, who in turn, should work with the Regional Oversight Engineer, Environmental Coordinator, Bicycle/ Pedestrian Coordinator and Central Office staff to help determine how the proposed changes would impact the project. Significant proposed changes may require amending the environmental process and may delay the project.

What if the project does not have an approved environmental document, can bike and pedestrian accommodations be automatically eliminated from further project consideration?

No. Projects need to develop and evaluate alternatives for all roadway users, including users who bike and walk. WisDOT must give due consideration to establishing bikeways and pedestrian ways in all new highway construction and reconstruction projects funded in whole or in part from state funds or federal funds. (s. 84.01(35)(b), Wis. Stats.) This is also consistent with federal legislation that requires bicyclists and pedestrians shall be given due consideration in planning and design (23 USC Section 217(g)). Therefore, projects will continue to develop and evaluate alternatives that may include bike and pedestrian accommodations.

Will more guidance be developed on what ‘due consideration’ means?

Yes. WisDOT is working on an FDM update to better define what ‘due consideration’ means for project planning and design processes. These materials will become available in the next several months. Although use of the Trans 75 worksheet is not required, it may assist the project team in giving ‘due consideration’ and documenting design decisions in the interim.

If a project with federal funding or a project on the National Highway System (NHS) proposes establishing bike and pedestrian facilities, does the project need an adopted resolution from the municipality or written notice from FHWA?

WisDOT is working to provide guidance on the process for these types of projects. We are also in discussions with FHWA to coordinate state and federal requirements. In the meantime, Central Office staff can provide assistance on an individual project-by-project basis. Please coordinate this request with the Regional Oversight Engineer and the Bike/ Pedestrian Coordinator for Central Office assistance.

What if bike and pedestrian facilities are proposed on a non-NHS project that is 100% state funded (no federal funding)?

If bicycle and pedestrian facilities are proposed on a reconstruction (including pavement replacement) or new construction improvement project of a highway that is not a part of the National Highway System (NHS), that is 100% state funded (no federal funding), WisDOT cannot establish those facilities unless each municipality involved in the project adopts an official resolution authorizing the establishment of those facilities as part of the improvement project. This requires consensus amongst all the governing bodies in which a portion of the project will occur. WisDOT will not finalize an environmental document that recommends providing a bike or pedestrian accommodation unless the aforementioned resolutions have been passed. A resolution is not required when bicycle and pedestrian facilities already exist and are to be replaced as part of the reconstruction or if bicycle and pedestrian facilities are not part of the improvement project. (pursuant to s. 84.01(35), Wis. Stats.)*

What if bike and pedestrian facilities are included in a Local Road Improvement Program (LRIP) project?

Bicycle and pedestrian facilities cannot be included in an LRIP reconstruction improvement project, unless each municipality involved in the reconstruction project adopts an official resolution authorizing the establishment of those facilities as part of the improvement project. This requires consensus amongst all the governing bodies in which a portion of the project will occur. A resolution is not required when bicycle and pedestrian facilities already exist and are to be replaced as part of the reconstruction or if bicycle and pedestrian facilities are not part of the improvement project. (pursuant to s. 84.01(35), Wis. Stats.) There is no federal funding in LRIP projects, so FHWA funding conditions do not apply.*

**According to State Statute 990.01(22) a municipality is defined as a city, village, or town.*