

NOTICE OF PROPOSED GUIDANCE DOCUMENT

DTIM-BPED36

Pursuant to Wis. Stat. s. 227.112, the Wisconsin Department of Transportation is hereby seeking comment on DTIM-BPED36, FAST Act, a proposed guidance document.

PUBLIC COMMENTS AND DEADLINE FOR SUBMISSION

Comments may be submitted to the Wisconsin Department of Transportation for 21 days by:

1. Department's website: <https://appengine.egov.com/apps/wi/dot/guidance-docs?guidDocId=DTIM-BPED36>

2. Mailing written comments to:

Division of Transportation Investment Management
Wisconsin Department of Transportation
4822 Madison Yards Way
PO Box 7913
Madison, WI 53707-7913

WEBSITE LOCATION OF FINAL GUIDANCE DOCUMENT

The final version of this guidance document will be posted at wisconsindot.gov to allow for ongoing comment.

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

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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 modified statute now 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. Facility decisions made under Trans 75 prior to its repeal remain in effect for projects already underway.

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.

UPDATED (12/09/15): Will projects still include bicycle 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 on a project funded in whole or in part from state funds, 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.

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.

UPDATED (12/09/15): How will we continue to document bicycle and pedestrian considerations and decisions?

New highway construction 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. In the interim, Central Office staff can provide assistance on an individual project-by-project basis. Designers are advised to continue coordinating through the Regional Oversight Engineer and the Regional Bike/ Pedestrian Coordinator for Central Office assistance.

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 staff, who in turn, should work with the Regional Oversight Engineer, Regional Environmental Coordinator, Regional 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.

UPDATED (12/09/15): 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. In the interim, Central Office staff can provide assistance on an individual project-by-project basis. Designers are advised to continue coordinating through the Regional Oversight Engineer and the Regional Bike/ Pedestrian Coordinator for Central Office assistance.

UPDATED (12/09/15): Is a municipal resolution required to establish a bicycle or pedestrian facility on the National Highway System (NHS) or a federal funded project?

The state statute says that the need for WisDOT to obtain a municipal resolution(s) does not apply if FHWA provides written notice that establishment of a bikeway or pedestrian way, as part of a project, is a condition of the use of federal funds for that project (s. 84.01 (35)(d)(2), Wis. Stats.). For projects with any federal funding and those on the NHS, WisDOT’s compliance with the FHWA written notice provision are satisfied by receipt of a completed environmental document from FHWA. However, even if the project does not require a resolution to authorize bicycle or pedestrian facilities, the planning and design processes will still provide opportunities for public input and to evaluate environmental impacts of project alternatives that may include bike and pedestrian accommodations. Both state law (s. 84.01(35)(b), Wis. Stats.) and federal legislation (23 USC Section 217(g)) require that bicyclists and pedestrians shall be given due consideration. Municipalities may adopt resolutions on NHS projects or federally funded projects where WisDOT does not need to obtain them. WisDOT will include these resolutions in the environmental document.

NEW (12/09/15): How do I know if a State Highway or Local Road is part of the National Highway System (NHS)?

NHS maps are available on the WisDOT FTP server <http://wisconsindot.gov/Pages/projects/data-plan/plan-res/nhs.aspx>. These are new [urban\(ized\) area maps](#) reflecting the additions to the NHS made through the MAP-21 Surface Transportation Authorization Bill, effective October 1, 2012. Also available are the [intermodal connector maps](#) and [planned route detail maps](#).

NEW (12/09/15): Is a municipal resolution required for local program projects that use Surface Transportation Program (STP) funds?

Local program STP projects typically do not use state funds and therefore the resolution requirement (s. 84.01 (35)(d)(2), Wis. Stats.) does not apply. However, even if the project does not require a resolution to authorize bicycle or pedestrian facilities, the planning and design processes will still provide opportunities for public input and to evaluate environmental impacts of project alternatives that may include bike and pedestrian accommodations. Both state law (s. 84.01(35)(b), Wis. Stats.) and federal legislation (23 USC Section 217(g)) require that bicyclists and pedestrians shall be given due consideration.

UPDATED (12/09/15): What if the establishment of bike and pedestrian facilities is proposed on a non-NHS project that is 100% state funded (no federal funding)?

If the establishment of 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 adopted. 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. (s. 84.01(35), Wis. Stats.)

UPDATED (12/09/15): What if a Local Road Improvement Program (LRIP) project includes the establishment of bike and pedestrian facilities?

Bicycle and pedestrian facilities cannot be established in an LRIP reconstruction improvement project, unless each municipality involved in the reconstruction project adopts a 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. (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.*