

1999 DRAFTING REQUEST

Bill

Received: **12/23/98**

Received By: **nilsepe**

Wanted: **As time permits**

Identical to LRB:

For: **Administration-Budget**

By/Representing: **Etzler**

This file may be shown to any legislator: **NO**

Drafter: **nilsepe**

May Contact:

Alt. Drafters:

Subject: **Transportation - highways**

Extra Copies: **TNF, ISR**

Topic:

DOA:.....Etzler - Corridor land use planning

Instructions:

See Attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	nilsepe 01/16/99	jgeller 01/16/99		_____			State
/P1	nilsepe 01/28/99	gilfokm 01/29/99	ismith 01/19/99	_____	lrb_docadmin 01/19/99		State
/1			ismith 01/30/99	_____	lrb_docadmin 01/31/99		

FE Sent For:

<END>

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/P1		1-1-29 KMG	ismith 01/19/99	_____	lrb_docadmin 01/19/99		
FE Sent For:			IS 1/30/99	IS/LP 1/30/99			<END>

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1/?	nilsepe	PI 1/16 jlg	IS 1/19/99	IS/WJ 1/19/99			

FE Sent For:

<END>

CORRESPONDENCE MEMORANDUM

**STATE OF WISCONSIN
Department of Administration**

Date: December 23, 1998

To: Steve Miller
Legislative Reference Bureau

From: John M. Etzler *JME*
Budget and Policy Analyst

Subject: Statutory Language Changes

Please draft legislation for the following:

Language Item	Priority	
• Require 6-year reissue of license plates	Low	- 1452
• Transportation Projects Commission	High	+ 1453
• Corridor Land Use Planning	High	+ 1454

Please call me at 266-1039 if you have any questions or concerns.

cc: David Schmiedicke

Department of Transportation
1999-2001 Biennial Budget Request
STATUTORY MODIFICATIONS

DIN NUMBER: 5817

TOPIC: Corridor Land Use Planning

DESCRIPTION OF CHANGE:

Create a section in Chapter 85 titled "Corridor Land Use Planning" (possibly 85.026). Suggested language could read – "The department may assist and/or coordinate corridor land use planning and information activities related to highway project development."

Add "transportation land use issues" as an eligible use of DOT's federal multimodal planning funds (Section 85.022, Stats.)

JUSTIFICATION:

The first statutory change would formally recognize corridor planning activities related to highway projects as an eligible use of project funds. Since the Department's reorganization, district staff have been encouraged to address planning and land use issues related to highway projects with affected local units of government. In some instances, district staff have convened committees or ad hoc planning groups. If agreed to by the involved parties, a corridor plan may be developed. The main purpose of highway corridor plans is to identify future land uses, densities, and site layouts that are appropriate to land adjacent to a highway and that maintain the safety and functionality of the highway.

The second statutory change adds "transportation land use issues" as an eligible use of DOT's multimodal planning funds. The Department is currently operating under a Department legal opinion allowing the Department to use these funds for land use related studies. The proposed change would formalize this use and allow continued access to federal funds for land use planning activities.



State of Wisconsin
1999 - 2000 LEGISLATURE

LRB-14542
PEN.....

SOON

JL
PI

DOA:.....Etzler - Corridor land use planning

FOR 1999-01 BUDGET - NOT READY FOR INTRODUCTION

d-note

do not gen

1 AN ACT ...; relating to: the budget.

Analysis by the Legislative Reference Bureau

TRANSPORTATION ✓

OTHER TRANSPORTATION ✓

Current law authorizes the department of transportation (DOT) ✓ to expend state and federal funds for multimodal transportation studies and preliminary engineering of public transportation projects. This bill allows the department of transportation (DOT) ✓ to expend these multimodal transportation study moneys studying land use issues relating to transportation.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

2 SECTION 1. 85.022 (1) (n) ^X of the statutes is created to read:

3 85.022 (1) (n) Land use issues relating to transportation. ✓

4 (END) ✓

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

PI
LRB-1454/7dn

PEN:.....
JLG

January 16, 1999

John Etzler:

Your drafting request asked for statutory authorization for the department of transportation to "assist or coordinate corridor land use planning and information activities related to highway project development". Under s. 85.22, stats., the "department may direct, undertake and expend state and federal aid for *planning, promotion and protection activities in the areas of highways*, motor vehicles, traffic law enforcement, aeronautics, railroads, waterways, specialized transportation services, mass transit systems and for any other transportation mode". I have not drafted this part of the request because it is unnecessary.

The department of transportation must ensure that activities under this draft do not violate federal restrictions, if any, on how multimodal transportation study moneys are spent.

Paul E. Nilsen
Legislative Attorney
261-6926

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-1454/P1dn
PEN:jlgr:ijs

January 19, 1999

John Etzler:

Your drafting request asked for statutory authorization for the department of transportation to "assist or coordinate corridor land use planning and information activities related to highway project development". Under s. 85.22, stats., the "department may direct, undertake and expend state and federal aid for *planning, promotion and protection activities in the areas of highways*, motor vehicles, traffic law enforcement, aeronautics, railroads, waterways, specialized transportation services, mass transit systems and for any other transportation mode". I have not drafted this part of the request because it is unnecessary.

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Paul E. Nilsen
Legislative Attorney
261-6926

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB
.....

-1454/ldn
PEW: jlg & King

John Etzler:

85.02

This draft adds language to s. ~~85.20~~ 85.02. Under existing s. 85.02, stats., the "department may direct, undertake and expend state and federal aid for *planning, promotion and protection activities in the areas of highways*, motor vehicles, traffic law enforcement, aeronautics, railroads, waterways, specialized transportation services, mass transit systems and for any other transportation mode". Specifying highway corridor planning (and information activities) as an authorized activity under s. 85.02 implies that highway corridor planning cannot already be done under that section. If that is the case, it's unclear to me what may be done under that section. For example, can rail corridor planning be done under that section?

Under the canon of statutory construction *expressio unius est exclusio alterius*, when a statute expressly mentions one matter, all matters not mentioned in statute are thereby excluded. DOT might face a challenge that the additional language needed under s. 85.02 to authorize "highway corridor planning" excludes, for example, rail corridor planning under that section. The court will examine the legislative intent to determine whether the legislature intended to apply this rule of statutory construction. While DOT might ultimately win any such challenge, it seems to me imprudent to invite the challenge since the activity already appears to be authorized under s. 85.02 (the department *is* already engaging in highway corridor planning and certainly not without legal authority...). See, Wis. Patients Compensation Fund v. WHCLIP, 200 WIS. 2D 599 (1996); In re Marriage of Lang v. Lang, 161 WIS. 2D 210, 224 (1991); State ex rel. Riegert v. Koepke, 13 WIS. 2D 519, 522 (1961); Peppas v. Marshall & Ilsley Bank, 2 WIS. 2D 144, 148-49 (1957).

Obviously, I have not had time to adequately research this issue and the possible consequences of including this language recommended by DOT. The consequences may become apparent another day.

Paul E. Nilsen
Legislative Attorney
261-6926



State of Wisconsin
1999 - 2000 LEGISLATURE

LRB-1454/01

PEN:jlg/tijs

Etzler

DOA:.....Etzler - Corridor land use planning

FOR 1999-01 BUDGET -- NOT READY FOR INTRODUCTION

to direct and undertake planning activities in the areas of highways, motor vehicles or any transportation mode. This bill specifies that DOT may assist or coordinate highway corridor land use planning and information activities related to highway project developments. ^{and promotion}
Current law allows DOT to do this. dot note

1 AN ACT ^{Don't call.} relating to: the budget.

Analysis by the Legislative Reference Bureau
TRANSPORTATION
OTHER TRANSPORTATION

Current law authorizes the department of transportation (DOT) to expend state and federal funds for multimodal transportation studies and preliminary engineering of public transportation projects. This bill allows ~~the department of transportation (DOT)~~ to expend these multimodal transportation study moneys studying land use issues relating to transportation.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

insert 1-2

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

2 SECTION 1. 85.022 (1) (n) of the statutes is created to read:
3 85.022 (1) (n) Land use issues relating to transportation.

4 (END)

dot

**1999-2000 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-1454/lins
PEN.....

1-2

1 **SECTION 1.** 85.02 of the statutes is renumbered 85.02 (1).

2 **SECTION 2.** 85.02 (2) of the statutes is created to read:

3 85.02 (2) The department may assist or coordinate highway corridor land use
4 planning that identifies future land uses, use densities and site layouts that are
5 appropriate to land adjacent to a highway and that maintain the safety and function
6 of the highway. The department may assist or coordinate information activities
7 related to highway project development.

(end insert)

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-1454/1dn
PEN:jlg&king:ijs

January 30, 1999

John Etzler:

This draft adds language to s. 85.02. Under existing s. 85.02, stats., the "department may direct, undertake and expend state and federal aid for *planning, promotion and protection activities in the areas of highways*, motor vehicles, traffic law enforcement, aeronautics, railroads, waterways, specialized transportation services, mass transit systems and for any other transportation mode". Specifying highway corridor planning (and information activities) as an authorized activity under s. 85.02 implies that highway corridor planning cannot already be done under that section. If that is the case, it's unclear to me what may be done under that section. For example, can rail corridor planning be done under that section?

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Paul E. Nilsen
Legislative Attorney
261-6926



State of Wisconsin
1999 - 2000 LEGISLATURE

LRB-1454/1
PEN:jlg&kmg:ijs

DOA:.....Etzler - Corridor land use planning

FOR 1999-01 BUDGET — NOT READY FOR INTRODUCTION

1 AN ACT ...; relating to: the budget.

Analysis by the Legislative Reference Bureau

TRANSPORTATION

OTHER TRANSPORTATION

Current law authorizes the department of transportation (DOT) to direct and undertake planning and promotion activities in the areas of highways, motor vehicles or any transportation mode. This bill specifies that DOT may assist or coordinate highway corridor land use planning and information activities related to highway project development.

Current law allows DOT to expend state and federal funds for multimodal transportation studies and preliminary engineering of public transportation projects. This bill allows DOT to expend these multimodal transportation study moneys studying land use issues relating to transportation.

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2 SECTION 1. 85.02 of the statutes is renumbered 85.02 (1).

