

Report From Agency

**PROPOSED ORDER OF THE STATE OF WISCONSIN
DEPARTMENT OF TRANSPORTATION
ADOPTING RULES**

CR 10-082

The Wisconsin Department of Transportation proposes an order to create TRANS 75, relating to bikeways and sidewalks in highway projects.

**REPORT OF THE DEPARTMENT OF TRANSPORTATION
ON THE FINAL RULE DRAFT**

This report is submitted to the chief clerks of the Senate and Assembly for referral to the appropriate standing committees. The report consists of the following parts:

Part 1--Analysis prepared by the Department of Transportation.

Part 2--Rule text in final draft form.

Part 3--Recommendations of the Legislative Council.

Part 4--Analysis prepared pursuant to the provisions of s. 227.19(3), Stats.

Submitted by:

_____/s/_____
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PART 1
Analysis Prepared by the Wisconsin Department of Transportation

Statutes interpreted: s. 84.01(35), Stats.

Statutory authority: ss. 84.01(35)(c), Stats.

Explanation of agency authority: 2009 Wisconsin Act 28 created s. 84.01(35), Stats., which requires the Department of Transportation to ensure that bicycle and pedestrian facilities are included in all new highway construction and reconstruction projects funded in whole or in part from certain state funds or federal funds.

Related statute or rule: ss. 84.013 and 340.01, Stats.

Plain language analysis: 2009 Wisconsin Act 28 created s. 84.01(35), Stats., which requires the Department of Transportation to ensure that bicycle and pedestrian facilities are included in all new highway construction and reconstruction projects funded in whole or in part from certain state funds or federal funds, and sets forth five circumstances under which such facilities are not required. With minor exceptions, this law mirrors the “Complete Streets” policy recommended by the National Complete Streets Coalition, and supported by the Federal Highway Administration as a ‘livability initiative.’ The Act requires the Department to promulgate rules detailing those circumstances. This proposed rule details those circumstances. Bicycle and Pedestrian facilities may be omitted from qualifying projects only if:

1. Bicyclists or pedestrians are prohibited by law from using the highway that is the subject of the project. Highway authorities have specific statutory authority to limit highway access by bicycles and pedestrians, and this proposed rule enumerates those authorities.

2. The cost of establishing bikeways or pedestrian ways would be excessively disproportionate to the need or probable use of the bikeways or pedestrian ways. Under statutes, costs are excessively disproportionate if the cost of the bicycle or pedestrian facility exceeds 20 percent of the total project cost. This proposed rule uses the cost estimates for the construction of the entire project, including bicycle and pedestrian facilities and related real estate costs, but excludes design costs. It compares the cost of the bicycle and pedestrian facilities and allows a highway authority to omit either or both if the costs are 20% or more. In some cases, the cost of providing either a bicycle or pedestrian facility might be completed for less than 20% of total project costs, so this proposed rule considers these facilities separately, to require spending up to 20% of total project costs on bicycle or pedestrian facilities, or both. The proposed rule prioritizes sidewalks, but allows the highway authority to choose whichever facility it

determines provides the best value. The rule also considers the bicycle or pedestrian facility cost to be only the marginal cost (the costs not otherwise required for the roadway project) of adding or expanding any bicycle or pedestrian facility. Whenever additional real estate must be purchased, the rule considers which facility (travel lane, bikeway or sidewalk) is the primary demand for more real estate and apportions those real estate costs accordingly. Bikeways and sidewalks typically lie at the outermost edge of a highway and are most likely to lie on any newly-acquired real estate, but real estate costs are not properly attributable to those facilities if existing highway right-of-way is sufficient for them and where, for example, the demand for an additional travel lane is 'crowding out' the sidewalk or bikeway.

3. Establishing bikeways or pedestrian ways would have excessive negative impacts in a constrained environment. The proposed rule defines a constrained environment to be any location in which the addition of standard-width bicycle and pedestrian facilities would require the destruction of any building or other structure, improvement or landscaping adjacent to the highway, where such destruction would dramatically reduce the aesthetic value or functionality of the remaining area, or where the environmental documentation process shows would result in an unreasonable loss of natural resources, or sites of historical or archeological significance. The proposed rule specifies minimum widths of the bicycle or pedestrian facilities, and allows them to be narrowed, within limits, to fit within the area available for them.

Where real estate is acquired for a new or widened travel lane in a constrained environment, the 'constraint' might be eliminated. In such cases, the highway authority shall consider whether the area remains a constrained environment after real estate is acquired.

4. There is an absence of need for the bikeways or pedestrian ways, as indicated by sparsity of population, traffic volume, or other factors. The proposed rule distinguishes between development densities and land uses and allows the omission of bicycle and pedestrian facilities in areas that typically have little bicycle or pedestrian use and where future growth is not expected. The proposed rule does not allow omission of these facilities in any 'urban area' or 'semi-urban district' under this exception, regardless of existing demand for those facilities.

5. The community where pedestrian ways are to be located refuses to accept an agreement to maintain them. This exception applies only where the local government lacks snow and ice removal equipment required to maintain the facilities and where these types of facilities do not exist and are not required. The proposed rule specifies that pedestrian facilities cannot be omitted from any national highway system project due to the absence of any maintenance agreement.

Finally, the proposed rule requires documented justification for omitting these facilities due to excessive costs, and requires the Department to approve that justification and omission, as a condition of receiving state and federal funds for the underlying highway project. For bikeways or sidewalks omitted for reasons other than excessive costs, the rule allows the department to request written justification for the omission and, if requested, prohibits the department from funding the highway project unless the department approves the omission and justification. The proposed rule also requires local highway authorities to agree, in writing, to maintain any sidewalks included in all new highway construction and reconstruction projects subject to this proposed rule, as a condition of eligibility for federal funds for that project.

Summary of, and preliminary comparison with, existing or proposed federal regulation: Federal regulations require the Department to give full consideration to the safe accommodation of pedestrians and bicyclists during the development of Federal-aid highway projects, and during the construction of such projects. The same regulations make qualifying bicycle and pedestrian facilities eligible for federal highway funds. 23 USC 217(g).

On February 28, 2000, the Federal Highway Administration issued “A U.S. DOT Design Policy: Integrating Bicycling and Walking Into Transportation Infrastructure” which sets forth a policy for the inclusion of bicycle and pedestrian facilities in federally-funded transportation projects, as required by TEA-21 and codified at 23 USC 217. On March 15, 2010, the U.S. Department of Transportation announced a new policy “to incorporate safe and convenient walking and bicycling facilities into transportation projects” and encouraging states, local governments, and others to go beyond minimum design standards and requirements to create safe, attractive, sustainable, accessible, and convenient bicycling and walking networks. The policy finds its authority in numerous congressional laws and federal regulations, including federal highway planning requirements and provisions for non-motorized highway users, prohibitions against ‘route severance’ in which highway projects leave unconnected remnant facilities, and pedestrian accessibility requirements under the Americans with Disabilities Act. The Federal Highway Administration has issued various policy guidance memoranda to implement these policies.

The recently enacted Wisconsin law, s. 84.01(35), Stats., appears consistent with the federal guidelines, except that state law includes two exceptions not expressly authorized under federal policy. First, the state exception for sidewalks where the local governmental unit refuses to accept responsibility for maintenance is not authorized by federal law and cannot be used on any highway that is part of the national highway system. Omitting sidewalks from these projects for this reason may cause the federal government to decline federal funds for the project. Accordingly, this proposed rule makes this exception inapplicable on any project on the national highways system. Next,

the state exception for excessive negative impacts in a constrained environment is not expressly authorized, but may be permissible under federal policy if these considerations are properly addressed in the environmental review process for the overall project.

Comparison with Rules in Adjacent States: None of the states appear to have promulgated “Complete Streets” rules, though all states have some laws and regulations relating to bicycle and pedestrian accommodations along highways.

Michigan: Michigan has adopted no administrative rules implementing the federal “Complete Streets” regulations and policy. Various municipalities within Michigan have adopted policies implementing “Complete Streets,” including Ann Arbor.

Minnesota: Minnesota statute 160.262 requires the Minnesota Department of Transportation to adopt model standards for the establishment of recreational vehicle lanes on and along proposed and existing public highways. The law requires the model standards to include the following: (a) criteria for desirability of a lane in any given location, (b) provision for maintenance of the lanes, and (c) the placement of the lanes in relation to roads. The model standards govern state trunk highways, but could be applied to local roads, or modified to fit local circumstances, if local highway authorities so choose.

Minnesota has rules establishing “CRITERIA FOR DESIRABILITY OF LANES” for use by bicycles and pedestrians. The rules, at ch. 8810.6300 Minn. Admin. Code, provide the circumstances under which the Department will consider adding lanes as part of a project, but do not seem to require those facilities. The rules list 12 factors to consider that could affect a decision to include bicycle or pedestrian lanes.

Illinois: Illinois has enacted at 605 ILCS 30 a statute called “The Bikeway Act” administered by the Illinois Department of Transportation. The Bikeway Act authorizes the construction and designation of bikeways, but does not appear to require the inclusion of bikeways in highway projects. The Illinois Department of Transportation has adopted a policy of Bicycle and Pedestrian Accommodations dated May 1, 2002, available at:

<http://dot.state.il.us/desenv/BDE%20Manual/BDE/pdf/chap17.pdf>. The policy follows the American Association of State Highway and Transportation Officials’ (“AASHTO”) publication “Guide for the Development of Bicycle Facilities” as the basis for design guidance. Further guidance is provided in the FHWA publication “Selecting Roadway Design Treatments to Accommodate Bicycles.” In general, the policy seems to require only that highway officials “Consider accommodating bicycles and pedestrians on all projects,” except controlled access highways and pavement resurfacing projects that not widen the roadway. The policy establishes five warrants that, if present, require the

inclusion of bicycle facilities in a highway project. The policy establishes six warrants that, if present, will make pedestrian accommodations “considered appropriate if they are not already available.” Illinois’ Department of Natural Resources also administers the “ILLINOIS BICYCLE PATH GRANT PROGRAM” under Title 17, Section 3040, Ill. Adm. Code. The purpose of the program is to provide financial assistance to eligible local units of government to assist them in the acquisition, construction, and rehabilitation of public *off-road*, non-motorized bicycle paths and directly-related facilities in Illinois.

Iowa: On February 22, 2010, an Iowa legislator introduced House File 2506, which would enact “Complete Streets” legislation. The bill was referred to committee with no further action taken. The Iowa Administrative Code, s. 761—150.4(306), requires the replacement of existing routes moved as result of a highway project on a ‘primary road,’ and requires the Iowa Department of Transportation to “consider the impacts to pedestrian accommodation at all stages of the project development process and encourage pedestrian accommodation efforts when pedestrian accommodation is impacted by highway construction.” The administrative code makes bicycle and pedestrian facilities eligible for highway funding whenever included as part of a highway project, but does not otherwise appear to require they be included.

Summary of factual data and analytical methodologies used and how the related findings support the regulatory approach chosen: This rule is proposed as required by s. 84.01(35)(c), Stats. The rule is consistent with the Department’s design criteria for bicycle and pedestrian facilities as published in the “Facilities Development Manual.”

Analysis and supporting documentation used to determine effect on small businesses: This proposed rule neither requires nor prohibits any action on the part of any small business, and the Department foresees no direct or indirect impact on any small business as result of this proposed rule. There may be indirect cost increases on small businesses that own or lease property fronting a highway, as a result of the statute that requires the addition of sidewalks on certain highway projects. This rule will not impose any indirect costs on any small business, as it provides only exceptions under which sidewalks and bikeways may be omitted from certain highway projects.

Effect on small business: This proposed rule has no effect on small business. The Department’s Regulatory Review Coordinator may be contacted by e-mail at ralph.sanders@dot.state.wi.us, or by calling (414) 438-4585.

Fiscal effect: The Department estimates that there will be no fiscal impact on the liabilities or revenues of any county, city, village, town, school district, vocational, technical and adult education district, sewerage district, or federally-recognized tribes or bands. This proposed rule provides the exceptions under which sidewalks and

bikeways may be omitted from certain highway projects. Any highway authority wishing to omit a sidewalk or bikeway from a highway project may incur some expenses in determining whether that facility is eligible for omission under this rule and, in some cases, to document eligibility or to apply for Department approval of that omission. Omitting a sidewalk or bikeway required by statute, following the procedures created by this rule, may require, for example, calculating the cost of adding a sidewalk or bikeway to determine whether it is excessively costly as compared with total estimated project costs. In effect, the only costs associated with the rule are those incurred in order to determine whether the highway authority can avoid the greater costs of adding sidewalks or bikeways required under statute. Local governmental units can avoid any costs associated with this rule by including sidewalks and bikeways in all qualifying highway projects, as required by statute.

Anticipated costs incurred by private sector: The Department estimates that there will be no fiscal impact on state or private sector revenues or liabilities as result of this proposed rule. Any costs borne by state or private sector revenues are the product of a statute that requires the addition of sidewalks and bikeways in certain highway projects. That statute may require the addition of sidewalks abutting business property, which may result in the local governmental unit imposing special assessments for sidewalks.

Agency contact person and copies of the proposed rule: Copies of the proposed rule may be obtained, without cost, by writing to Thomas Huber, Department of Transportation, Bureau of Planning and Economic Development, Room 901, P. O. Box 7913, Madison, WI 53707-7913. You may also contact Mr. Huber by phone at (608) 267-7757, or via e-mail at: Thomas.Huber@wisconsin.gov.

PART 2
TEXT OF PROPOSED RULE

SECTION 1. Trans 75 is created to read:

CHAPTER TRANS 75

BIKEWAYS AND SIDEWALKS IN HIGHWAY PROJECTS

Trans 75.01 Definitions. In this chapter:

(1) "Authority" means the department or local governmental unit having primary maintenance responsibility over the highway.

(2) "Bikeway" means any of the following:

(a) Bicycle lane, as defined in s. 340.01(5e), Stats.

(b) Paved shoulders of a roadway not normally permitted for use by motor vehicles.

(c) Outside travel lanes 14 feet or more wide.

(d) Paths, subject to s. Trans 75.02(3).

(3) "Department" means the department of transportation.

(4) "Estimated total project cost" means the construction cost estimated during preliminary design and shall include the cost of all bikeways and sidewalks and the cost of any additional real estate needed.

(5) "Highway" has the meaning given in s. 340.01(22), Stats.

(6) "Reconstruction project" means any of the following:

(a) 'Reconstruction' of a highway, as defined in s. 84.013(1)(c), Stats.

(b) Pavement replacement having a design life of 15 years or more on an existing highway.

(7) "Roadway" means that portion of a highway between the regularly established curb lines or that portion which is improved, designed or ordinarily used for vehicular travel, including the shoulder. In a divided highway, the term "roadway" refers to each roadway separately but not to all those roadways collectively.

(8) "Sidewalk" has the meaning given in s. 340.01(58), Stats.

Trans 75.02 When bikeways and sidewalks are required. (1) Except as provided in this chapter, the authority shall include bikeways and sidewalks 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, Stats.

(2) In this chapter, sidewalks and bikeways shall be considered separately. If sidewalks and bikeways cannot both be accommodated, consideration shall be given to sidewalks before adding bikeways.

(3) Paths can be used to supplement on-road bicycle accommodations. In exceptional situations a path may substitute for on-road bicycle accommodations if the use is consistent with the department's Bicycle Facility Design Handbook and the department's Facilities Development Manual and the substitution is approved in writing by the secretary's designee who has knowledge of the purpose and design of bicycle and pedestrian accommodations. A path may be considered along a controlled access highway, as defined in s. 990.01(5r), having a speed limit of 45 miles per hour or higher.

NOTE: The Department's Bicycle Facility Design Handbook is available online at: <http://www.dot.wisconsin.gov/projects/state/docs/bike-facility.pdf>. The Facilities Development Manual is available online at: <http://roadwaystandards.dot.wi.gov/standards/fdm/index.htm>.

(4) The department shall refuse to provide any state funds or federal funds appropriated under s. 20.395 or 20.866, Stats., for any highway construction or reconstruction project that does not include bikeways and sidewalks required under s. 84.01(35) and not excepted by this chapter. If an authority determines to omit any bikeway or sidewalk under this chapter, the department may request from the authority a written justification for the omission and shall deny state funds or federal funds appropriated under s. 20.395 or 20.866, Stats., for the project if the department determines the omission is not justified under this chapter.

(5) Notwithstanding sub. (1), bikeways and sidewalks are not required to be included in any highway construction or reconstruction project that is any of the following:

(a) Has a program level scoping document consistent with life cycle 11 of the department's Facilities Development Manual or, for projects undertaken by a local unit of

government, a similar document as determined by the department, in place as of January 1, 2011.

Note: The Facilities Development Manual is available online at: <http://roadwaystandards.dot.wi.gov/standards/fdm/index.htm>.

(b) Let for bid that is first advertised before the effective date of this chapter [LRB inserts date], or for projects for which no bid is advertised or undertaken under a contract signed before the effective date of this chapter [LRB inserts date].

(c) Described in a final environmental impact statement that is approved before the effective date of this chapter[LRB inserts date].

(d) Documented in an environmental report, as defined in s. Trans 400.04 (10), completed before the effective date of this chapter [LRB inserts date] that fit the criteria or conditions for approval as a categorical exclusion in 23 CFR 771.117, April 1, 2000.

(e) The subject of a finding of no significant impact made under ch. Trans 400 before the effective date of this chapter [LRB inserts date].

Note: This subsection does not supersede any federal law or policy relating to bicycle or pedestrian accommodations.

Trans 75.03 Bicycles or pedestrians prohibited. (1) Trans 75.02 does not require bikeways or sidewalks to be included on any highway on which bicycles or pedestrians are prohibited by any of the following:

(a) Order, ordinance or resolution under s. 349.105, Stats., regarding use of a freeway or expressway.

(b) Ordinance under s. 349.18, Stats., regarding the operation of bicycles on the highway.

(c) Ordinance under s. 349.23(3), Stats., regarding use of a roadway.

(d) Order, ordinance or resolution under 349.185(2), Stats., regarding pedestrians upon highways.

(2) If bicycles or pedestrians, but not both, are prohibited from using the highway, the project shall include either a bikeway or sidewalk, as appropriate, to serve the bicycles or pedestrians that are allowed to use the highway. A path may be considered along a controlled access highway, as defined in s. 990.01(5r), Stats., having a speed limit of 45 miles per hour or higher where bicyclists and pedestrians are not allowed to use the roadway.

Trans 75.04 Excessively disproportionate cost. (1) WHEN FACILITIES ARE NOT REQUIRED. Notwithstanding s. Trans 75.02, bikeways and sidewalks are not required on any highway on which the cost of establishing bikeways or sidewalks would be excessively disproportionate to the need or probable use of the bikeways or sidewalks. Cost is excessively disproportionate to the need or probable use of the bikeways or sidewalks if it exceeds 20 percent of the estimated total project cost.

(2) COSTS CONSIDERED. The cost of establishing a bikeway or sidewalk shall consider only the marginal cost of establishing any new or expanded bikeway or sidewalk and may not include any cost to reestablish any existing bikeway or sidewalk. Costs shall include only construction costs and the cost to acquire any real estate

needed for a bikeway or sidewalk. Only 20 percent of the cost to acquire real estate needed for a bikeway or sidewalk shall be considered a cost of the bikeway or sidewalk if all of the following apply:

(a) Existing right of way is sufficiently wide to establish the bikeway and sidewalk were the highway construction or reconstruction project to occur without any additional travel lane.

(b) Additional real estate is needed to accommodate all needed travel lanes, bikeways and sidewalks.

NOTE: For example, a highway reconstruction project may require a gravel shoulder of sufficient width. Paving the shoulders could establish a bikeway. The cost to establish the bikeway shall consider only the cost of paving the shoulder, not the cost of the gravel shoulder. If the shoulder is widened for the bikeway beyond that ordinarily required for the roadway, the excess shoulder costs shall be considered costs to establish the bikeway, in addition to the cost of repaving the entire shoulder.

(3) APPORTIONING MONEYS. If the sum of costs for both sidewalks and bikeways exceeds 20 percent of the estimated total project cost, but the costs for either sidewalks or bikeways is less than 20 percent of the estimated total project cost, the authority may give more consideration to the inclusion of sidewalks as required in s. Trans 75.02(2). The highway project shall include whichever of bikeways or sidewalks, or portions thereof, the authority, in consultation with the department, determines will provide the best value and costs 20 percent or less than the estimated total project costs. The highway project shall expend up to 20 percent of estimated total project costs on establishing sidewalks or bikeways or both.

NOTE: Assume a highway reconstruction project requiring no additional real estate and having estimated total project costs of \$1,500,000 where roadway construction costs \$1,150,000, the cost to build or rebuild sidewalks on both

sides is \$250,000, the cost to build or rebuild bikeways on both sides is \$100,000, and where:

1. Sidewalks already exist on both sides of the highway and no bikeways exist. In this example, the cost of establishing the sidewalks shall be considered to be zero, since the sidewalks are already established. The cost to establish both sidewalks and bikeways shall be considered to be \$100,000, which represents 7 percent of estimated total project costs. Bikeways and sidewalks should be built on both sides of the highway.
2. Sidewalk exists on only one side of that highway and no bikeways exist. In this example, the cost of establishing the sidewalks shall be considered to be \$125,000, the cost to establish bikeways is \$100,000, which together represents 15 percent of estimated total project costs. Bikeways and sidewalks should be built on both sides of the highway.
3. Neither sidewalks nor bikeways exist. In this example, the cost to establish both sidewalks and bikeways is \$350,000, which represents 23 percent of total project costs. In this case, expenditures to establish sidewalks and bikeways may be limited to \$300,000, or 20 percent of total project costs.

(4) **DOCUMENTATION AND APPROVAL REQUIRED.** Notwithstanding s. Trans 75.02 (4), if an authority determines that bikeways and sidewalks are not required under this section, the authority shall submit to the department a written justification for the exception as part of any agreement concerning funding for the highway construction and reconstruction project from any appropriation of state or federal funds under s. 20.395 or 20.866, Stats. If the department receives a justification under this subsection, the department may approve the expenditure of moneys from any state or federal appropriation under s. 20.395 or 20.866, Stats., for the highway project only if the secretary of transportation, or the secretary's designee who has knowledge of the purpose and value of bicycle and pedestrian accommodations, finds that the exception under this subsection applies.

Trans 75.05 Constrained environments. (1) Notwithstanding s. Trans 75.02 and subject to subs. (3) and (4), bikeways and sidewalks are not required in a

constrained environment if establishing them would have excessive negative impacts. A “constrained environment” is any area in which structures, improvements, natural resources, or historical or archaeological sites adjacent to the highway do not allow construction of all of the following on each side of the roadway unless the obstruction is eliminated:

(a) A terrace at least three feet wide, including the width of the curb, and having no sidewalk.

(b) A sidewalk that is either of the following:

1. Five feet wide, if adjacent to a terrace at least 3 feet wide.
2. Six feet wide, if adjacent to a curb or a terrace less than 3 feet wide.

(c) A bikeway.

(2) Impacts are considered excessively negative if any of the following applies:

(a) Establishing a sidewalk and bikeway together or just a sidewalk requires the reduction of the terrace width to less than 3 feet for more than 50 percent of total project length.

(b) Eliminating obstructing structures or improvements adjacent to the highway would dramatically reduce the aesthetic value or functionality of the remaining area. The authority shall give significant weight to the impacts on abutting property owners in any constrained environment.

(c) The environmental documentation process shows that establishing all of the facilities described in sub. (1)(a), (b), or (c) would result in loss or degradation of natural resources, historical or archaeological sites.

(3) In a constrained environment with excessive negative impacts, the authority shall include those facilities to the greatest extent the authority determines is practicable but may omit a sidewalk or bikeway, or both, from either or both sides of the roadway, or may vary the minimum widths specified in sub. (1). If an authority omits a bikeway or sidewalk under this subsection, the authority shall do all of the following:

(a) Establish bikeways or sidewalks using the amount of space remaining in the highway after that omission.

(b) Consider establishing those omitted facilities nearby the constrained environment.

(4) In a constrained environment, an authority shall establish bikeways if the authority can do so by reducing the terrace width to less than 3 feet for not more than 25 percent of the overall length of the project.

(5) If real estate is or will be acquired within the constrained environment for a travel lane, the authority shall consider whether the area remains a constrained environment or whether additional real estate could be acquired for purposes of a bikeway or sidewalk without generating excessive negative impacts. Real estate costs attributable to establishing any new bikeways or sidewalks maybe considered under s. Trans 75.04 for purposes of determining costs.

Trans 75.06 Absence of need. (1) In this section:

(a) "Average daily traffic" or "ADT" means the total traffic volume during a stated period divided by the number of days in that stated period.

(b) "Outlying district" means the territory contiguous to and including any highway within the corporate limits of a city or village where on each side of the highway within any 1,000 feet along such highway the buildings in use for business, industrial or residential purposes fronting thereon average more than 200 feet apart.

(c) "Rural area" means any area that is not an urban area or a semi urban district.

(d) "Semi urban district" means the territory contiguous to and including any highway where on either side of the highway within any 1,000 feet along such highway the buildings in use for business, industrial or residential purposes fronting thereon average not more than 200 feet apart or where the buildings in use for such purposes fronting on both sides of the highway considered collectively average not more than 200 feet apart.

Note: This will include most areas within small cities and villages that do not have a population large enough to be classified as an urban area.

(e) "Urban area" means any area which is an urbanized area or urban place, as determined by the department under 23 USC 101 (a) and regulations adopted under 23 USC 101 (a) and approved by the appropriate federal authority.

(2) An authority may not omit sidewalks under this section in any semi urban district and in any urban area that is not an outlying district. In semi urban districts and

urban areas, an authority may not omit a bikeway under this section if the highway has at least 1,500 ADT in the design year.

Note: Maps of urban area boundaries shall be available for inspection at offices of the department and copies of the maps shall be provided at cost to anyone requesting them.

(3) Bikeways are not required in an outlying district or rural area if the highway that is the subject of the construction or reconstruction project has, or upon completion will have, less than 750 ADT and any of the following applies:

(a) The average bicycle traffic volume on the highway is or is expected to be less than 25 per day during the 10 most traveled days for bicycling of the year.

(b) The highway is not identified in part of a government bike transportation plan, in the Wisconsin Bicycle Transportation Plan or in any other bicycle plan endorsed by or supported by the department.

**NOTE: The Wisconsin Bicycle Transportation Plan is available online at:
<http://www.dot.wisconsin.gov/projects/state/bike2020.htm>**

(c) The highway does not provide a connection of 1 mile or less between any existing or planned bike route, as defined in s. 340.01(5m), Stats.

(d) The highway is not a short connection of 1 mile or less needed to connect an existing bikeway to the nearest local road.

(4) An authority may omit bikeways or sidewalks in any outlying district or rural area unless the authority determines, based on an official land use plan, that there will be significant development within the outlying district within the next 10 years. Use of a sidewalk in an outlying district or rural area is presumed to be too sparse to justify including sidewalks. An authority may omit bikeways from any highway that has less

than 750 ADT in the design year, but shall consider establishing a bikeway that will do any of the following:

(a) Complete a gap of one mile or less in an otherwise continuous bike route.

(b) Make a connection of not more than 3 miles from communities or urban areas to a town or county roadway network, excluding any dead end roadway.

(5) If an authority considers omitting a bikeway or sidewalk under this section, the authority shall consider changing patterns of use during the design life of the highway project. If the authority expects bikeway or sidewalk use to increase over the design life of the highway project, the authority shall give greater weight to use projected for the second half of the design life than for the first half of the design life. In this subsection, the “design life” is 20 years for a roadway, 75 years for a bridge.

Trans 75.07 Maintenance agreements; sidewalks. (1) Notwithstanding s. Trans 75.02, an authority may omit sidewalks from a highway construction or reconstruction project if the local governmental unit refuses to agree in writing to maintain them. A refusal is valid under this section only if shown by ordinance, resolution or order of the city, village, town or county in which the highway lies. This section applies only in areas in which all of the following applies:

(a) There are no sidewalks in the highway system under the authority's jurisdiction.

(b) The city, village, town or county has no ordinance that requires the installation of sidewalks or that requires the removal of snow and ice from sidewalks.

(c) The city, village, town or county lacks sufficient equipment for the efficient removal of snow or ice from sidewalks.

(2) Sub. (1) does not apply to any highway that is part of the national highway system.

(3) Except as provided in this section, an authority must agree, in writing, with the department, to maintain sidewalks as a condition of eligibility for state or federal funds appropriated under s. 20.395 or 20.866, Stats., for that highway construction or reconstruction project.

(END OF RULE TEXT)

Effective Date. This rule shall take effect on the first day of the month following publication in the Wisconsin Administrative Register as provided in s. 227.22(2)(intro.), Stats.

Signed at Madison, Wisconsin, this 30th day of August, 2010.

/s/
FRANK J. BUSALACCHI
Secretary
Wisconsin Department of Transportation

LEG. COUNCIL COMMENTS GO HERE

PART 4
CR 10-082

ANALYSIS OF FINAL DRAFT OF TRANS 75

(a) **Basis and Purpose of Rule.** 2009 Wisconsin Act 28 created s. 84.01(35), Stats., which requires the Department of Transportation to ensure that bicycle and pedestrian facilities are included in all new highway construction and reconstruction projects funded in whole or in part from certain state funds or federal funds, and sets forth five circumstances under which such facilities may not be required. With minor exceptions, this law mirrors the “Complete Streets” policy recommended by the National Complete Streets Coalition, and supported by the Federal Highway Administration as a ‘livability Initiative.’ The Act requires the Department to promulgate rules detailing those circumstances. This proposed rule details those circumstances.

(b) **Modifications as a Result of Testimony at Public Hearing.** The public hearing was held in Madison on August 4, 2010. The Department made several changes in response to written and oral testimony explained in par. (d) below.

(c) **List of Persons who Appeared or Registered at Public Hearing.** The following persons appeared at the hearing:

Kevin Luecke, Planner, Bicycle Federation of Wisconsin, Madison, WI—spoke in favor of the rule.

Kevin Hardman, Executive Director, Bicycle Federation of Wisconsin, Madison, WI—spoke in favor of the rule.

Bill Delaney, Madison, WI—spoke in favor of the rule.

John Sobotik, Citizen, Madison, WI—spoke for information.

The written comment period was held open until close of business August 6, 2010. Written comments were received from:

Representative Spencer Black, Governor’s Bicycle Council member, Madison, WI.

Jackie Cody, President, Oneida County Biking and Walking Trails Council, Rhinelander, WI.

Bob Allen, Middleton, WI (e-mail)

Mike Rewey (e-mail)

Pat Goss, Executive Director, Wisconsin Transportation Builders Association, Madison, WI.

Kevin Luecke (Lead Planner) / Kevin Hardman (Executive Director), Bicycle Federation of Wisconsin, Madison, WI.

The following individuals/groups support the comments by the Bicycle Federation of Wisconsin:

Jessica Wineberg Binder, Organizer, Wisconsin Safe Routes to School Network

Jay Ferm, Director of Advocacy, Planet Bike

Chris Fortune, President, Saris Cycling Group.

Bruce Speight, Director, WISPIRG

John Burke, President, Trek Bicycle Corporation

Al Fish, Vice Chancellor of Facilities and Planning, UW-Madison

Steve Hiniker, Executive Director, 1,000 Friends of Wisconsin

Alice Tillett, President, Pacific Cycle, Inc.

(d) **Summary of Public Comments and Agency Response to those Comments.**

Testimony conflicted concerning the scope of projects that should be considered 'reconstruction' that requires the addition of bikeways and sidewalks. The rule proposed that pavement replacement should be considered 'reconstruction' only if it had a design life of at least 15 years. The Bicycle Federation of Wisconsin ("Bike Fed") and the Wisconsin Public Interest Research Group ("WISPIRG") suggested a design life of at least 10 years. The Wisconsin Transportation Builders Association ("WTBA") suggested a design life of 20 years. The rule is unchanged, as a 15-year design life will add bicycle and pedestrian accommodations to appropriate projects without requiring them on comparatively minor (and numerous) projects.

Many commenters suggested that the term “reconstruction,” as used in s. 84.01(35), Stats., has the meaning given to it in s. 84.013(1)(c), Stats. However, the meanings given to terms in s. 84.013 are specifically limited to that section of the statutes. The Department found that relying solely on that definition would omit these facilities from highway projects having a significant design life, where the next opportunity to add sidewalks or bikeways was not expected for at least another 15 years. Similarly, WTBA suggested deleting “reconditioning” from being considered “reconstruction” projects required to include bikeways and sidewalks, noting the differences in project types, or adding consideration of design life. The rule deletes “reconditioning” from being considered “reconstruction.”

Bike Fed supported the prioritization of sidewalks over bikeways in constrained environments, or where including both bikeways and sidewalks is excessively costly, noting that bicycles can more readily use travel lanes. WTBA disagreed with this prioritization, suggesting the decision be left with the local governing body. The Department did not intend to install sidewalks to the exclusion of bikeways in all instances. The rule is modified to give consideration to sidewalks but to allow the local unit of government, in consultation with the Department, to determine which facility provides the best value under the circumstances.

WTBA suggested that average daily traffic (“ADT”) alone was an insufficient measure for the suitability of bikeways or sidewalks in urban areas, suggesting the rule consider minimum highway functional classifications. Urban areas generally may have higher ADT and proximately located alternative bikeways and sidewalks (i.e., on the next block over). The rule is unchanged, as the Department assumes that wherever traffic counts are high, the relative pedestrian and bicycle needs are proportionally high regardless of functional roadway classification.

WTBA suggested an absence of need for sidewalks exists wherever highways are built with rural cross sections. The rule is unchanged, as projected growth and development plans during the qualifying project’s design life should be considered. WTBA suggested deleting from the rule that local authorities must agree to maintain sidewalks as a condition of receiving state and local highway funds for the project. The rule is unchanged, as the statute requires the Department to ensure that sidewalks and bikeways are established in all qualifying projects, and refusing to maintain those facilities does not establish any useful facility.

Mr. Mike Rewey suggested allowing the inclusion of a path for use by pedestrians and bicyclists adjacent to controlled access highways, on which pedestrian or bicycle traffic may be prohibited by law. Bike Fed requested language requiring parallel paths in such cases. The rule is revised to allow consideration of adjacent paths, although it does not require paths at such locations.

Bike Fed requested the Department approval of any claimed exemptions, by making s. Trans 75.05(4) a requirement wherever an omission is claimed. Bike Fed specifically requested the Department approval of omissions due to an 'absence of need.' The rule is modified to require the Department approval wherever a path is substituted for an on-highway bikeway, and to require consultation with, but not approval by, the Department when choosing whether to omit bikeways or sidewalks due to cost considerations. The rule does not require the Department approval of determinations of an 'absence of need' for bikeways or sidewalks.

WTBA suggested that modifying the number or width of travel lanes should be considered a 'negative impact' that could justify omitting bikeways or sidewalks. In contrast, Bike Fed supported the rule's failure to consider roadway width as a negative impact. The Department did not add lane widths or numbers as a negative impact, preferring to rely on existing design guidance to determine when and to what extent a lane width may be modified to accommodate bikeways or sidewalks.

Bike Fed suggested returning to earlier draft language requiring that sufficient real estate be purchased for bikeways and sidewalks whenever real estate is acquired for a highway project in a constrained environment. In some cases, purchasing additional real estate will be feasible and should and will be done. In others, purchasing additional real estate may have extremely negative impacts on the affected property and could significantly increase highway real estate costs. For example, acquiring land sufficient for a highway project may reduce the number of off-street parking spaces for a business while buying the additional land needed for sidewalks and bikeways may require the entire parking lot to be eliminated, resulting in a total loss (and required purchase) of the business. The rule is unchanged to allow sufficient flexibility to avoid unreasonable effects on neighboring properties and landowners.

Mr. Steve Marshall of the Department questioned whether the fiscal estimate should consider increased costs attributable to establishing sidewalks, since Department policy calls for a 20% share of costs payable by the benefitted municipality. Any increased expenditures attributable to sidewalks is the result of the statute; the rule provides only exceptions under which sidewalks and bikeways may be omitted from qualifying projects. In those cases, the rule reduces local expenditures for sidewalks. The fiscal estimate is unchanged and reflects neither increased costs nor savings resulting from the rule.

Mr. Bill Delaney noted that the rule does not address maintenance of bikeways and sidewalks. The rule does require a maintenance agreement for sidewalks, but requires no particular level of performance or effort. The rule is unchanged, as s. 84.01(35) requires only that sidewalks and bikeways be established. While those

facilities must be sufficiently maintained to be usable, and thereby 'established,' specifying a particular performance level may exceed the authority conferred by statute.

Mr. John Sobotik suggested that where sidewalks or bikeways are omitted due to absence of need, the highway project agreement should require the local unit of government to require any subsequent subdivisions to include those facilities. The rule is unchanged, as this may exceed the authority conferred by statute.

Representative Spencer Black of Madison, Ms. Jackie Cody, for Oneida County Biking and Walking Trails Council, Inc., and Mr. Bob Allen of Middleton wrote separately to express support for the rule.

(e) **Explanation of any Changes Made to the Plain Language Analysis or Fiscal Estimate.** The plain language analysis is corrected to state that real estate costs for bikeways or sidewalks are considered.

(f) **Response to Legislative Council Recommendations.** The Legislative Council report made some recommendations, all of which have been incorporated into the proposed rule.

(g) **Final Regulatory Flexibility Analysis.** This proposed rule has no effect on small business.