



GENERAL

When a local or county road is used as a STH detour route, the geometric characteristics of that route such as shoulder or pavement width or alignment often times are less than the characteristics of the STH route. Despite these conditions, the local road has been chosen as a detour route because it is the best alternative. Although the geometric standards *may* not be able to be upgraded, traffic control devices such as signing and marking *should* be upgraded to the same standards as the STH system. Exceptions are outlined below.

SIGNING

Concern has been expressed that local jurisdictions will incur some liability if signs are placed on their routes as an upgrade of their current standards during a STH detour and then removed. WisDOT General Counsel has determined that temporarily upgrading the signing along the local route does not place a liability upon the local municipality. (See attached December 3, 1991)

WARNING AND REGULATORY SIGNING

The signing along the detour route, Stop Signs, No Passing zone pennants, Curve, Turn and other warning and regulatory signs **shall** be installed along the route as if the detour route were a state trunk highway. If the detour will be in place less than two weeks, the Region will determine to what extent, if any, the signing will be upgraded. In the case of an emergency detour, the signing will be upgraded as soon as possible depending on the anticipated duration of the detour.

JUNCTION AND REASSURANCE ASSEMBLIES

Orange auxiliary arrows and detour auxiliary plaques **shall** be used in route marker assemblies in advance of and along the detour route. Reassurance markers **shall** be placed after every major intersection or at a spacing not to exceed two miles in rural areas and two blocks in urban areas.

QUALITY OF SIGNS

The condition of the signs used along the detour route **shall** be such that the signs have good daytime visibility and nighttime reflectivity. Care must be taken to ensure the signs are in good enough condition to command the respect and attention of motorists. This is especially important on detour routes since typically motorists who are unfamiliar with the route are depending on these signs for guidance.

REMOVAL OF DETOUR SIGNING

Some of the signs along the route *may* have been added to upgrade the route to STH signing standards. The local Jurisdiction *may* not wish to have these signs retain in place after the detour is no longer in place. Sign removal *should* be dependent on the wishes of the local Jurisdiction.

PAVEMENT MARKING

The condition of the marking *should* be such that it provides daytime and nighttime visibility and *should* be approximately equal in quality to that prevalent on State Trunk Highways.

CENTER LINE AND EDGE LINE MARKING

Unless the detour will be in place less than two weeks, the edge line and center line marking along the detour route *should* be in general agreement with WisDOT policy for marking on the STH System. If the detour will be in place less than two weeks, the Region will determine which, if any, markings need to be upgraded.

NO PASSING ZONE MARKING

Since local jurisdictions do not have the same No Passing zone criteria as the STH System, in some cases, the No Passing zones *may* need to be relocated using STH criteria. The Region is responsible for determining if the difference between local and STH criteria used when locating the zones differs enough to warrant remarking of the zones.

REMOVAL OF DETOUR PAVEMENT MARKING

If the marking along the route has been upgraded it is up to the Region and the local jurisdiction to determine if the marking *should* stay in place. Marking removal can be accomplished by contract or by resurfacing the roadway upon the completion of the detour.



**Wisconsin Department of Transportation
Office of General Counsel**

MEMORANDUM

To: Lee F. Crook
From: Jim Thiel *Jim Thiel*
Date: December 3, 1991
Subject: Policy on Detour No Passing Marking; OGC 91-456

You asked whether the policy of marking state trunk highway detours on local roads with the yellow and black NO PASSING ZONE warning pennants causes a legal problem of liability for the local agency when the detour is removed and the pennants are removed.

It is my opinion that the answer is NO, if the pennants are removed at the request of the local agency when the detour is removed. The reason is that installation of the NO PASSING ZONE pennant is a discretionary, policy decision on local roads by local governments. The local government traffic engineers can most appropriately decide what they want, i.e. no-passing zone pavement markings or black and white DO NOT PASS signs or combinations of the above and the NO PASSING ZONE pennants.

The Manual on Uniform Traffic Control Devices (MUTCD), paragraph 2C-38 deals with the NO PASSING ZONE sign (W14-3). It says the NO PASSING ZONE sign "should be used on two-lane roads to warn of the beginning of no-passing zones identified by either conventional pavement markings or DO NOT PASS signs or both." Our Wisconsin supplement to the MUTCD says "The W14-3 No Passing Zone sign shall be used on State Trunk Highways to designate no-passing zones." Paragraph 1A-5 of the MUTCD defines "shall" as a "mandatory condition. Where certain requirements in the design or application of the device are described with the "shall" stipulation, it is mandatory when an installation is made that these requirements be met." It defines "should" as "an advisory condition. Where the word "should" is used, it is considered to be advisable usage, recommended but not mandatory." Therefore use of the NO PASSING ZONE pennant is discretionary by local governments on local roads.

In considering whether to ask WISDOT to remove the pennants when the detour is removed, the local government is in the best position to make the policy decision whether uniformity of marking on the local system outweighs any marginal benefit of retention and maintenance of NO PASSING ZONE pennants when the STH detour is removed. There is no statutory requirement imposed on local governments to install or maintain NO PASSING ZONE pennants. There is no ministerial, mandatory duty for local governments to install them on local roads under the MUTCD. The local government may decide to retain the signs and maintain them as a safety precaution to the traveling public. Although there is no local, legal duty to erect them in the first instance, if the local government decides to keep them after the detour is removed, a court might decide there is a local, common law duty to maintain the signs in good condition if the court decides the public has developed a right to rely on their continued presence.

cc: Pete Rusch, Julie Neebel, Chuck Spang, Gerry Roth