



U.S. Department
of Transportation
**Federal Highway
Administration**

FHWA – WI Division

May 21, 2010

525 Junction Road, Suite 8000
Madison, WI 53717
608-829-7500
608-829-7526
Wisconsin.FHWA@dot.gov

In Reply Refer To:
HDA-WI

Secretary Frank Busalacchi
Wisconsin Department of Transportation
4802 Sheboygan Avenue, Room 120B
Madison, WI 53707

Dear Secretary Busalacchi:

We are writing in response to your request for guidance concerning the apparent conflict between State law and Federal policy regarding the recently enacted State Statute 84.01(35), addressing State Policy on Bicycle and Pedestrian ways, which we have enclosed for your reference. Our Headquarters office has reviewed your new statute and has provided us guidance.

Federal emphasis to incorporate pedestrian and bicycle accommodations on improvement projects has recently been elevated in a new US DOT policy as the Federal Government continues to promote livable communities and complete streets. We are pleased with the overall intent of the new law which will increase this national emphasis.

FHWA policy for pedestrian and bicycle accommodations are as follows:

Bicycle and pedestrian ways shall be established in new construction and reconstruction projects in all urbanized areas unless one or more of three conditions are met:

- Bicyclists and pedestrians are prohibited by law from using the roadway. In this instance, a greater effort may be necessary to accommodate bicyclists and pedestrians elsewhere within the right of way or within the same transportation corridor.
- The cost of establishing bikeways or walkways would be excessively disproportionate to the need or probable use. Excessively disproportionate is defined as exceeding twenty percent of the cost of the larger transportation project.
- Where sparsity of population or other factors indicate an absence of need. For example, the Portland Pedestrian Guide requires "all construction of new public streets" to include sidewalk improvements on both sides, unless the street is a cul-de-sac with four or fewer dwellings or the street has severe topographic or natural resource constraints.



State Law 84.01(35) appears less restrictive than federal policy for certain projects. We note three of the state exceptions are fully consistent with our three Federal exceptions. However, there are two additional state exceptions in the Statute that allow an agency not to include adding sidewalks in a case where State exception #3 "Establishing bikeways or pedestrian ways would

have excessive negative impacts in a constrained environment" or State exception #5 "*The community where pedestrian ways are to be located refuses to accept an agreement to maintain them.*" The last exception raises considerable concern and is unacceptable for use on National Highway System (NHS) projects. The NHS projects require FHWA approval of design standards, and lacking proper project design standards jeopardizes federal-aid funds on the entire project per the requirements in 23 CFR 625.2 & 3.

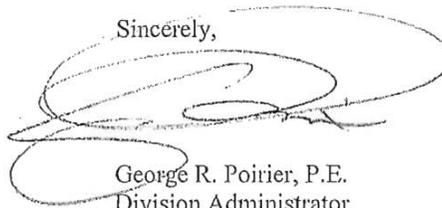
Therefore, if a NHS project proposes not to include sidewalks based on State exception #5, that will cause us not to authorize the project. The prohibition on the use of this State exception on NHS projects should be brought to the attention of local agencies during the planning process in order to preclude the requirement of a possible payback situation for federal-aid funded design work.

In addition, we strongly encourage the WisDOT to minimize the use of the State exception #5 on non-NHS projects. Regarding State policy exemption #3, "*Establishing bikeways or pedestrian ways would have excessive negative impacts in a constrained environment,*" we believe this exception may be addressed in the environmental process and may have applicability to one or more of the three federal exemptions. However, this can be addressed on a project by project basis.

In addition, we want to know if a local government decides to exercise state exception #5, to determine federal eligibility, and we encourage our early involvement in these decisions.

If you have any questions or concerns regarding these terms and conditions please contact John Berg at (608) 829-7515.

Sincerely,



George R. Poirier, P.E.
Division Administrator

Enclosure

ecc: Rubin Anthony (WisDOT)
~~Chris Cline (WisDOT)~~ Christopher Klein *CB*
 Thomas Huber (WisDOT Statewide Planning Unit)
 Kevin Chesnik (WisDOT DTSD)
 Rory Rhinesmith (WisDOT DTSD)
 George Poirier
 Matthew Hake
 John Berg
 Bill Stark
 Tracey McKenney
 Bill Bremer

Wisconsin State Law

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. (c), and notwithstanding any other provision of this chapter or ch. 82, 83, or 85, the department shall ensure that bikeways and pedestrian ways are established 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.

(c) The department shall promulgate rules identifying exceptions to the requirement under par. (b), but these rules may provide for an exception only 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 cost of establishing bikeways or pedestrian ways would be excessively disproportionate to the need or probable use of the bikeways or pedestrian ways. For purposes of this subdivision, cost is excessively disproportionate if it exceeds 20 percent of the total project cost. The rules may not allow an exception under this subdivision to be applied unless the secretary of transportation, or a designee of the secretary who has knowledge of the purpose and value of bicycle and pedestrian accommodations, reviews the applicability of the exception under this subdivision to the particular project at issue.
3. *Establishing bikeways or pedestrian ways would have excessive negative impacts in a constrained environment.*
4. There is an absence of need for the bikeways or pedestrian ways, as indicated by sparsity of population, traffic volume, or other factors.
5. *The community where pedestrian ways are to be located refuses to accept an agreement to maintain them.*