



## Legislative Fiscal Bureau

One East Main, Suite 301 • Madison, WI 53703 • (608) 266-3847 • Fax: (608) 267-6873  
Email: [fiscal.bureau@legis.wisconsin.gov](mailto:fiscal.bureau@legis.wisconsin.gov) • Website: <http://legis.wisconsin.gov/lfb>

---

May 19, 2015

Joint Committee on Finance

Paper #655

### **Repeal of Statute Requiring Bicycle and Pedestrian Facilities (Transportation -- State Highway Program)**

[LFB 2015-17 Budget Summary: Page 450, #10]

---

#### **CURRENT LAW**

Under current law, the Department of Transportation (DOT) is generally required to ensure that bikeways and pedestrian ways are established in all new highway construction and reconstruction projects funded in whole or in part from state or federal funds. Exceptions to this general requirement apply only when: (a) bicyclists or pedestrians are prohibited by law from using the highway that is the subject of the project; (b) the cost of establishing bikeways or pedestrian ways would be excessively disproportionate (exceeding 20% of total project cost) to the need or probable use of the bikeways or pedestrian ways; (c) establishing bikeways or pedestrian ways would have excessive negative impacts in a constrained environment; (d) there is an absence of need for the bikeways or pedestrian ways, as indicated by sparsity of population, traffic volume, or other factors; or (e) the community where pedestrian ways are to be located refuses to accept an agreement to maintain them.

#### **GOVERNOR**

Repeal current law.

#### **DISCUSSION POINTS**

1. Current law, under s. 84.01(35) of the statutes, generally requires DOT to ensure that bikeways and pedestrian ways are established in all new highway construction and reconstruction projects that are funded in whole or in part from state or federal funds (exceptions to this requirement are outlined in the "Current Law" section above).

2. This provision was enacted as part of the 2009-11 biennial budget. Supporters of this law argued that this would ensure that new or reconstructed facilities accommodate all users, rather than just motorized vehicles, and that inclusion at this point in time was more cost-effective than coming back at a later date to retrofit highways to accommodate nonmotorized traffic.

3. The Governor's budget recommends repeal of this section of the statutes. [Alternative #A1] Although repeal of the law would remove the general requirement that the state include such facilities in highway construction projects, it would not otherwise limit the state's ability to construct bicycle and pedestrian ways.

4. Some have contended that a repeal of this section of the statutes should be introduced through legislation separate from the biennial budget process. Supporters of this position cite the relatively uncertain estimate of savings associated with the provision and concern over the transportation policy implications of the proposed repeal. Given these concerns, the Committee could decide to delete this provision and allow the Legislature to consider repeal or other modifications to the law through the general legislative process. [Alternative #A2]

5. According to DOT, at times some local governments prefer not to install bicycle and pedestrian facilities as part of projects near or in their jurisdictions. The Department believes this preference may be related to both the initial and maintenance costs of such facilities. In some instances, local governments have withdrawn their agreement to maintain these facilities after such agreements have been accepted and related project designs have been completed.

6. Per federal code, state and local agencies must provide "due consideration" of bicycle and pedestrian facilities on federally-funded highway projects. As part of this process, federal agencies could require the inclusion of such facilities as a condition of using federal funds, even in the absence of this state provision. Irrespective of whether or not the law is repealed, DOT indicates that it would continue to construct pedestrian facilities in compliance with the Americans with Disabilities Act's design standards and other federal public access codes. In addition, DOT also indicates that bicycle facility projects would continue to be considered as a part of highway projects in accordance with national design guidelines and standards adopted by the Federal Highway Administration.

7. A project-by-project analysis of 2013-15 costs related to the current law suggests that in absence of the law, DOT would not have completed the bicycle facility-related components of two projects (the STH 50 interchange in Walworth County and Quam Drive to CTH B in Dane County) with a total cost \$381,000. If the law were repealed, the potential savings in 2015-17 could be similar to the total amount from the 2013-15 analysis. If the Committee were to approve the Governor's recommendation to repeal the law, the Committee could consider reducing SEG funding to DOT by \$190,500 SEG annually. [Alternative #B1]

8. In the Executive Budget Book, the administration referenced savings associated with this provision equal to \$3.7 million annually. An initial DOT estimate of total, all funds spending for the bicycle and pedestrian facilities required by this statute suggested that average expenditures associated with this provision were equal to \$3.7 million annually. But, because of the federal codes and departmental design standards referenced above, this estimate should only be considered an estimate of average spending for this purpose, as opposed to an estimate of potential savings in the

absence of this law. In many cases, DOT would continue to construct bicycle and pedestrian facilities.

9. Others may argue that regardless of the actual number of projects affected, the repeal of this provision would damage Wisconsin's reputation as a "bicycle-friendly" tourist destination. According to information cited by the Wisconsin Department of Tourism, the state has a reputation, "as one of the top bicycling destinations in the nation ...[and] boasts a biking friendly culture and is clearly big on biking as a way to keep visitors healthy, happy, and coming back to bike time and time again." In addition, a number of advocacy groups have expressed concern that the repeal of this provision could result in a reduced level of state funding for bicycle and pedestrian facilities.

10. In consideration of these concerns and the issues raised by the Department, in lieu of repealing the law, the Committee could decide to require DOT to form a study commission to analyze and report on the impacts of this law on local governments and departmental operations and to make recommendations regarding the repeal or modification of this law. [Alternative #A3] This commission could be established to include representatives from the following parties: (a) DOT; (b) counties; (c) cities; (d) villages; (e) towns; (f) the Wisconsin Bike Fed; and (g) any other person appointed by the DOT Secretary. Pending the findings of the study commission, the Legislature could decide to address this issue at a later time.

11. Following the Department's briefing of the Committee, DOT was asked a follow-up question regarding the use of bicycle registration fees in other states. In response, the Department cited proposals in Washington and Oregon to impose excise taxes on bicycle sales of \$5 to \$20 and \$25, respectively. Further, in the past year, this office has also received frequent inquiries about the potential revenue from a bicycle registration fee. The reasoning behind such inquiries is often based on the argument that the transportation fund is a "user-based system," whereby users of the state's transportation infrastructure pay into the fund and these revenues are expended to support that same transportation infrastructure. Bicyclists and pedestrians benefit from the use of the state and local highway systems, but, relative to those activities, do not pay directly into the state's transportation fund for this use. As an argument for repealing this law, some have contended that activities and programs that are not directly supported by transportation fund user fees should not receive state transportation fund revenues.

12. As a means of addressing these concerns, the Committee could choose to retain the current law and create a statewide bicycle registration fee of \$25, which would be paid by consumers at the time of initial purchase, for bicycles with wheels of 20 inches in diameter or more. [Alternative #B2]. Revenue from this fee would be collected from bicycle vendors by the Department of Revenue and deposited into the transportation fund. There would likely be a lag before any revenue would be collected, as a collection mechanism would need to be established. In addition, it could be expected that there would be some level of fee evasion (such as Wisconsin residents purchasing a bicycle in another state to avoid this fee). Absent other factors that could affect revenue collections and assuming a 10% evasion rate in 2015-17 and a 50% reduction in collections during 2015-16 due to this lag factor, it is estimated that potential revenue would be equal to \$2.4 million in 2015-16 and \$4.8 million in 2016-17.

13. This revenue estimate is based on the product of the state's share of the national

population (1.8% of the national population of 316.1 million) and the average of annual, national bicycle sales (2009 through 2013) reported by the National Bicycle Dealer's Association (11.8 million sales per year at the national level).

**ALTERNATIVES**

**A. Statutory Provisions**

1. Approve the Governor's recommendation and repeal current law that generally requires DOT to ensure that bikeways and pedestrian ways are established in all new highway construction and reconstruction projects funded in whole or in part from state or federal funds.

2. Delete provision.

3. Delete provision and require DOT to form a study commission to analyze and report on the impacts of the current law on local governments and Departmental operations. Require the study commission to have representatives from the following parties: (a) DOT; (b) counties; (c) cities; (d) villages; (e) towns; (f) the Wisconsin Bike Fed; and (g) any other person appointed by the DOT Secretary. Specify that the Commission would be required to present a report on its findings to the Joint Committee on Finance and the standing committees of each house of the Legislature dealing with transportation no later than January 1, 2017. Provide that the report would have to include recommendations regarding the repeal or modification of the law.

**B. Funding**

1. Delete \$190,500 SEG annually from the appropriation for the major highway development program to reflect anticipated savings from the repeal of the law.

<b>ALT B1</b>	<b>Change to Bill</b>
SEG	- \$381,000

2. Create a statewide bicycle registration fee of \$25, which would be paid by consumers at the time of initial purchase, for bicycles with wheels of 20 inches in diameter or more. Require the Department of Revenue to collect this fee from bicycle vendors and to deposit the revenue from this fee, less 3% of the annual amount collected that DOR could retain to fund its administrative costs (\$72,000 PR-REV in 2015-16 and \$144,000 PR-REV in 2016-17), to the transportation fund. Increase estimated transportation fund revenue by \$2,328,000 in 2015-16 and \$4,656,000 in 2016-17.

<b>ALT B2</b>	<b>Change to Bill</b>
SEG-REV	\$6,984,000
PR-REV	<u>216,000</u>
Total	\$7,200,000

Prepared by: John Wilson-Tepeli