

# Interpretation of ORS 366.514

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The bill is divided into Sections (1)-(5).

- The original language of the bill is written in italics, with ODOT's interpretation following in regular print.
- The terminology of the original bill is outdated: "footpaths and bicycle trails" should read "walkways and bikeways."

*(1) Out of the funds received by the department or by any county or city from the State Highway Fund reasonable amounts shall be expended as necessary to provide footpaths and bicycle trails, including curb cuts or ramps as part of the project.*

The law requires that reasonable amounts of State Highway Funds be expended by the Department of Transportation, counties and cities to provide walkways and bikeways. Reasonable amounts are related to the need for bikeways and walkways; if there is a need, the governing jurisdiction shall expend a reasonable amount to construct the needed facilities.

When the bill was introduced in 1971, most road projects were funded through the highway fund. While the law itself refers to the highway fund, several drafters of the original bill have indicated that the intent was not to limit this requirement to the highway fund only, but rather to make this fund available for the construction of walkways and bikeways, to benefit all users of the highway.

*Footpaths and bicycle trails, including curb cuts or ramps as part of the project, shall be provided wherever a highway, road or street is being constructed, reconstructed or relocated.*

The law requires the Department of Transportation, counties and cities to provide walkways and bikeways on all roadway construction, reconstruction or relocation projects. The funding source or amount are not the determining factors; what is important is that pedestrian and bicycle facilities be provided as part of road improvements.

"Construction, reconstruction and relocation" refers to all projects where a roadway is built or upgraded. Walkways and bikeways don't necessarily have to be provided on projects such as signal or signing improvements, landscaping and other incidental work. Preservation overlays are also excluded if the only intent of the project is to preserve the riding surface in usable condition, without any widening or realignment. Projects where the entire depth of the roadway bed is replaced are usually considered reconstruction projects.

*Funds received from the State Highway Fund may also be expended to maintain footpaths and trails and to provide footpaths and trails along other highways, roads and streets and in parks and recreation areas.*

The law also allows highway funds to be used for maintenance and to provide walkways and bikeways independently of road construction. The Department, a city or a county may use its highway funds for projects whose primary purpose is to provide improvements for pedestrians and bicyclists.

The 1980 Constitutional Amendment (Article IX, section 3a) now prohibits the expenditure of highway funds in parks and recreation areas. A subsequent Oregon Supreme Court opinion, **Rogers v. Lane County**, supports continued use of highway funds to construct and maintain walkways and bikeways within the highway right-of-way, but allows such use only when they are within the highway right-of-way.

- (2) Footpaths and trails are not required to be established under subsection (1) of this section:*
- (a) Where the establishment of such paths and trails would be contrary to public safety;*
  - (b) If the cost of establishing such paths and trails would be excessively disproportionate to the need or probable use: or*
  - (c) Where sparsity of population, other available ways or other factors indicate an absence of any need for such paths and trails.*

The law provides for reasonable exemptions. The determination that one or more exemption is met should be well-documented. The decision should allow opportunities for public review and input by interested parties. Exemptions (b) and (c) refer back to the need. The burden is on the governing jurisdiction to show the lack of need to provide facilities; the need is legislatively presumed but can be rebutted.

*... contrary to public safety:* this exemption applies where the safety of any group of highway users would be jeopardized by the inclusion of walkways or bikeways. In most instances, the addition of walkways and bikeways improves safety, both for motorists and non-motorized users, but there may be instances where the inclusion of a walkway or bikeway decreases safety, for example, sidewalks on a limited access freeway would be considered unsafe.

*... cost is excessively disproportionate to need or probable use:* this exemption applies if it can be shown that there is insufficient need or probable use to justify the cost. Probable use must extend to cover the anticipated life of the project, which can be twenty years or longer for roadway projects, fifty years or longer for bridge projects. It is not sufficient to claim that there is little or no current pedestrian or bicycle use. This is often due to the lack

of appropriate facilities. The law does not provide guidelines for determining when costs are excessively disproportionate.

*... sparsity of population ... indicates an absence of any need:* This exemption most commonly applies to rural roads or highways where walkways and bikeways would get very little use.

*... other available ways ... indicate an absence of any need:* For this exemption to apply, it must be shown that the "other available ways" serve bicyclists and pedestrians as well as or better than would a facility provided on the road, street or highway in question. The "other available ways" must provide equal or greater access and mobility than the road, street or highway in question. An example sufficient to indicate other available ways would be providing sidewalks and bike lanes on a parallel or adjacent street rather than along a freeway. An example not sufficient would be choosing not to provide bike lanes and sidewalks on an arterial street and encouraging use of local side streets that do not include bicycle and pedestrian facilities nor offer the equivalent direct route or access as the arterial street.

*... other factors ... indicate an absence of any need:* This exemption allows consideration of other factors that are particular to a project. A common example is the acceptability of cyclists sharing the roadway with automobiles on low volume, low traffic local streets. Again, the absence of any need must be found.

*(3) The amount expended by the department or by a city or county as required or permitted by this section shall never in any one fiscal year be less than one percent of the total amount of the funds received from the highway fund. However:*

*(a) This subsection does not apply to a city in any year in which the one percent equals \$250 or less, or to a county in any year in which the one percent equals \$1500 or less.*

*(b) A city or county in lieu of expending the funds each year may credit the funds to a financial reserve or special fund in accordance with ORS 280.100, to be held for not more than 10 years, and to be expended for the purposes required or permitted by this section.*

*(c) For purposes of computing amounts expended during a fiscal year under this subsection, the department, a city or county may record the money as expended:*

*(A) On the date actual construction of the facility is commenced if the facility is constructed by the city, county or department itself; or*

*(B) On the date a contract for the construction of the facilities is entered with a private contractor or with any other governmental body.*

The law requires that in any given fiscal year, the amounts expended to provide walkways and bikeways must be a minimum of 1% of the state highway fund received by the

Department, a city or county. The law does not establish a special fund ("bicycle fund"), nor does it limit the expenditures to 1%: section (1) requires that "reasonable amounts" be expended. 1% is only a minimum.

Cities and counties are not required to spend a minimum of 1% each year; they may credit this amount to a reserve fund and expend these amounts within a period not to exceed ten years.

The 1% minimum requirement is independent from the requirement to provide bikeways and walkways as part of road construction. A jurisdiction spending more than 1% of its funds on walkways and bikeways must still provide bikeways and walkways as part of all new construction projects, unless determined not to be otherwise required pursuant to section (2).

The 1% minimum requirement does not apply to cities receiving less than \$25,000 a year, or to counties receiving less than \$150,000 a year from the fund. However, bikeways and walkways must be provided wherever roads are constructed, as required in Section 1, subject to the exemptions in Section 2.

*(4) For the purposes of this chapter, the establishment of paths, trails and curb cuts or ramps and the expenditure of funds as authorized by this section are for highway, road and street purposes.*

This section is the legislature's statement of intent that these uses would qualify under the Constitution as highway uses. This is reinforced in the 1980 constitutional amendment (Article IX, section 3a) and by **Rogers v. Lane County**.

*The department shall, when requested, provide technical assistance and advice to cities and counties in carrying out the purpose of this section. The division shall recommend construction standards for footpaths and bicycle trails. Curb cuts or ramps shall comply with the requirements of ORS 447.310. The division shall, in the manner prescribed for marking highways under ORS 810.200, provide a uniform system of signing footpaths and bicycle trails which shall apply to paths and trails under the jurisdiction of the department and cities and counties.*

One of the purposes of this Bicycle/Pedestrian Plan is to implement this section. ODOT develops standards and designs for bikeways and walkways. ODOT staff is available to assist cities and counties with technical problems, as well as with planning and policy issues.

*The department and cities and counties may restrict the use of footpaths and bicycle trails under their respective jurisdictions to pedestrians and non-motorized vehicles.*

Motor vehicles are generally excluded from using bike lanes, sidewalks and multi-use paths.

*(5) As used in this section, "bicycle trail" means a publicly owned and maintained lane or way designated and signed for use as a bicycle route.*

A "bicycle trail" is currently defined as a "bikeway."

The Oregon Court of Appeals upheld the intent of this statute in **Bicycle Transportation Alliance v. City of Portland** (9309-05777; CA A82770). The judge's summary was: "Read as a whole, ORS 366.514 requires that when an agency receives state highway funds and constructs, reconstructs or relocates highways, roads or streets, it must expend a reasonable amount of those funds, as necessary, on bicycle and pedestrian facilities. The statute also requires the agency to spend no less than one percent per fiscal year on such facilities, unless relieved of that obligation by one of the exceptions in subsection (2)."