



# Ready for the Defense

## Bike Bill HB4907: Four reasons why it is a bad idea

**T**HE BIKE BILL, HB4907, is back again and once again seeks to make “a person riding a bicycle” an “intended and permitted user” of “any street or highway in Illinois.”

§ 3-102(a) of the Tort Immunity Act states “a local public entity has a duty to exercise ordinary care to maintain its property in a reasonably safe condition” for “people whom the entity intended and permitted to use the property” (745 ILCS 10/3-102(a)).

When bicyclists become “intended and permitted users” of streets and highways, local government has a duty to maintain such streets and highways “reasonably safe for bicyclists.” In effect, maintain streets and roads as it would “bike lanes.”

### Can 139,930 Miles Of Roads Used By 8 Million Drivers Be Made Safe Like “Bike Lanes”

The Illinois Department of Transportation reports that Illinois has 139,930 miles of streets and highways for the use of 10.45 million vehicles and 8.06 million licensed drivers. (Ill. Highway Statistics Sheet 2004, Ill. Dept. of Transportation).

Local government maintains pedestrian crosswalks of which pedestrians are “intended and permitted users.” Pedestrian crosswalks must be maintained reasonably safe for pedestrians.

Local government in some areas maintains “bicycle lanes” of which bicyclists are “intended and permitted users.” Bike lanes must be maintained reasonably safe for bicyclists.

Streets and highways are for motor vehicles. Crosswalks are for pedestrians. Bike lanes are for bicyclists.

The Bike Bill, HB4907, attempts to “wave a magic wand” and say “bicyclists are intended and permitted users of the whole street” (in effect, all streets and highways are “bike lanes”) and if a “street or highway is safe for a passenger car, it is safe for a bicycle.” There is no rational basis for such conclusion.

### The Provisions Of HB4907

The Bike Bill, HB4907, reads, in pertinent part, as follows:

(b) (1) A person riding a bicycle is an

intended and permitted user of any street or highway in Illinois except for a street or highway on which bicycle use has been specifically prohibited by the Department of Transportation or by a local public entity acting in compliance with Section 11-208.

(2) Notwithstanding subdivision (b) (1), no public entity shall be liable under this subsection (b) for the creation of, the existence of, or failure to remedy any condition related to the design, roadway surface, lighting, signage, or pavement markings of any street or highway causing injury to a person riding a bicycle, if that condition meets the standard of care required for a passenger car.

The Bike Bill will place thousands of bicyclists on streets and highways with 8 million licensed drivers over 139,930 miles of roads without any sound, rational, reasonable basis for doing so. This special group of citizens, the bicyclists, will cause safety concerns for millions of motor vehicle operators (slow-moving bicycles do not belong on roads with fast-moving vehicles) and safety concerns and financial burdens on local government to upgrade and maintain all streets and roads safe for bicyclists and defend against all claims and lawsuits for bicycle accidents on streets and roads.

Indeed, presently only “bike lanes” are safe for bicyclists. How can HB4907, by the stroke of a pen, say the “whole of any street or highway is safe for bicyclists” when, in fact, such is not true? How can HB4907, by a written pronouncement, say if the “whole of any street or highway is safe for a passenger car, it is safe for a bicycle”?

### Four Reasons Why Bike Bill HB4907 Is A Bad Idea

As has been discussed many times over and over, there appears to be no rational basis for the Bike Bill HB4907, other than bicyclists want to be able to ride on the “whole” of “any street or highway” and be able to sue if injured while doing so.

If bicyclists get their wish simply because they want it, who is next: all-terrain vehicle operators (ATVs), pedacycle operators, equestrian riders, skateboard riders?

Who determines what governmental facilities are to be provided for the citizens of Illinois: the executive branch of local government or special interest groups?

Among the reasons why the Bike Bill is a bad idea, which benefits only the special interest group of bicyclists and to the detriment of all other citizens of local government in Illinois, are the following:

- (1) The Bike Bill appears to be “special legislation” favoring only bicyclists with no rational basis and no benefit to the citizens of Illinois and local government and, therefore, in violation of the “special legislation” prohibition of Article IV, § 13 of the Illinois Constitution.
- (2) The Bike Bill appears to be a violation of the “Separation of Powers” Clause in Article II, § 1 of the Illinois Constitution as it allows the legislature to determine what public improvements the executive branch must make. The sole and exclusive power to determine what public improvements will be made (*e.g.*, new roads, new sidewalks, new bike lanes, new traffic controls) rests with the executive branch of government.
- (3) The safety of bicyclists and the motoring public dictate that bikes and cars cannot be mixed on the same roads and same lanes of traffic.
- (4) The financial burden imposed upon local government and taxpayers by passage of Bike Bill HB4907 would be intolerable—imposing and maintaining streets and highways safe like bike lanes, or passing ordinances and posting signs to prohibit biking (per 625 ILCS 5/11-208), and handling and defending against claims and lawsuits.

### **(1) Special Legislation Is Unconstitutional— Is The Bike Bill Special Legislation?**

In Illinois, special legislation is unconstitutional. Is the Bike Bill special legislation to benefit only an arbitrarily-favored special group of citizens to the detriment of other citizens?

Special legislation, which arbitrarily creates a statutory classification for a special group without a legitimate state interest, is unconstitutional as violative of Article IV, § 13 of the 1970 Illinois Constitution. The special legislation clause of the Illinois Constitution provides:

The General Assembly shall pass no special or local law when a general law is

or can be made applicable. Whether a general law is or can be made applicable shall be a matter for *judicial* determination.

The Supreme Court in *Best v. Taylor Machine Works*, 179 Ill.2d 367, 689 N.E.2d 1057 (1997), held “that the purpose of the special legislation clause is to prevent arbitrary legislative classifications that discriminate in favor of a select group without a sound, reasonable basis.” (179 Ill.2d at 391, 689 N.E.2d at 1069-70).

The Bike Bill arbitrarily discriminates against motor vehicle operators for the benefit of bicycle operators by classifying both as “intended and permitted users” of “all streets and highways,” but placing restrictions on motor vehicle operators not imposed on bicycle operators as follows:

- (1) Motor vehicle operators must be age 16 to drive a motor vehicle on streets and highways, but no age limit exists for bicycle operators;
- (2) Motor vehicle operators must know the “Rules of the Road” and pass a written test and a driving test to get a license to drive a motor vehicle on streets and highways, but no such license or testing is required for bicycle operators;
- (3) Motor vehicle owners and operators must possess insurance to protect persons they may injure while driving on streets and highways, but no such insurance is required for bicycle operators for accidents and injuries they may cause.

The same age limits, licensing requirements and insurance requirements are required of motorcycle operators. Only the “special class” of bicycle operators is excused from complying with these requirements while using the whole road surface as a bike lane.

If bicyclists are made “intended and permitted users” of “any street or highway,” why not other similarly-situated groups such as ATV operators, pedacycle operators, equestrian riders, and skateboard riders?

Why a “special law” just for bicyclists?

### **(2) Under The “Separation Of Powers” Clause Of The Illinois Constitution, Only The Executive Branch Determines What Improve- ments Are Made To Public Property**

Under the “Separation of Powers” Clause, found in Article II, § 1 of the Illinois Constitution, the executive branch determines what public improvements are to be made to public property. Only the executive branch determines what roads to build, what sidewalks to construct, what traffic lights and signs to install, what buildings to build for townships, counties, cities and villages and what “bike lanes” or “bike routes” to build.

The “Separation of Powers” Clause reads as follows:

#### SECTION 1. SEPARATION OF POWERS

The legislative, executive and judicial branches are separate. No branch shall exercise powers properly belonging to another. (Article II, § 1, Ill. Constitution (1970)).

It will be recalled that the Supreme Court in *Boub* determined that it was the “intent of Wayne Township” which determined who were “intended users” of the township bridge and road. (*Boub v. Township of Wayne*, 183 Ill.2d 520, 702 N.E.2d 535 (1998) (bicyclist on township road and bridge not an “intended user,” as required in § 3-102(a) of Tort Immunity Act, and, therefore, township immune from liability pursuant to § 3-102(a) of Tort Immunity Act when bike wheel caught in gap between wooden slats on township bridge causing bike to flip over and cyclist to sustain serious injuries)).

And, Wayne Township in *Boub* did not intend bicyclists to be “intended users” of its bridge and road. The Supreme Court in *Boub* explained:

Simply put, many road conditions that do not pose hazards to vehicles may represent special dangers to bicycles, an imposition of liability in this case would, we believe, open the door to liability for a broad range of pavement conditions, such as potholes, speed bumps, expansion joints, sewer grates, and rocks and gravel, to name but a few .... In this regard, it is appropriate to consider the potentially enormous costs both of imposing liability for road defects that might injure bicycle riders and of upgrading road conditions to meet the special requirements of bicyclists. *Vaughn* ... (the cost of making all public streets and roadways reasonably safe for unrestricted pedestrian use would be an extreme burden on municipalities with limited resources). (183 Ill.2d at 535, 702 N.E.2d at 542-43).

Just as the legislature cannot pass a statute requiring local government to build sidewalks adjacent to every street and highway in Illinois because such legislation violates the “Separation of Powers” Clause of the Illinois Constitution, the legislature cannot pass a statute requiring local government build all its streets and highways for bicyclists. That is, HB4907’s language stating bicyclists are “intended and permitted users” of “any street or highway” means all streets and roads must be “bike lanes.”

Just as the Supreme Court in *Harinek* held that



the doctrine of the “separation of powers” prohibits the courts from rewriting the Tort Immunity Act and putting exceptions into the immunities the legislature enacted, the legislature cannot enact statutes mandating the executive branch make certain public improvements—build bike lanes. (*See, Harinek v. 161 No. Clark Street Ltd. Partnership*, 181 Ill.2d 335, 692 N.E.2d 1177 (1998) (§ 2-201, discretionary immunity, is absolute barring negligence and wilful & wanton claims as it contains no “exceptions” and it is an unconstitutional violation of the “separation of powers” clause of the Constitution for courts to read either a “special duty” exception or a “wilful & wanton conduct” exception into § 2-201 of the Tort Immunity Act)).

### **(3) Mixing Bicycles & Motor Vehicles On The Same Roads In The Same Lanes Creates Incredibly Dangerous & Unsafe Conditions On Illinois Roads**

Common sense and the common experiences of mankind suggest that cars and bikes are like oil and water and cannot be mixed with great safety concerns—injuries to bicyclists and cars causing injuries to others avoiding bicyclists.

Special bumps, potholes, raised utility/manhole covers, sewer grates, expansion joints, gravel, sand and dirt, and ice, water and snow on streets and highways pose great dangers to thin-wheeled bicycles, but little or no danger to a passenger car. A bicyclist striking a speed bump or raised utility cover or heat-induced raised expansion joint could fall in front of a car or truck and become injured or killed.

All the literature on providing bike lanes suggests that the “whole of streets and highways” are not safe for bicycles so “bike lanes” must be built and maintained. (*See, e.g.,* IDOT’s Bureau of Design & Envi-

ronment Manual, Chapter 17, "Bicycle & Pedestrian Accommodations" (12/2002); and "Guide for the Development of Bicycle Facilities," AASHTO (1999)).

It appears that the Bike Bill, HB4907, is, in fact, special legislation for the sole and exclusive benefit of bicyclists with no benefit to all the citizens of Illinois and to the detriment of all motorists using Illinois streets and highways and the detriment of local government.

It is unnecessary to conduct studies of mixing motor vehicle traffic and bicycle traffic on the same roads using the same lanes to reach the conclusion that it would be incredibly dangerous and unsafe for a 10-year-old bicyclist, with no license, training or knowledge of the Rules of the Road and no life experiences of years of riding and handling bicycles, to be riding side-by-side on streets and highways along with semi-tractor-trailer trucks, concrete trucks, garbage trucks and school buses.

No reasonable person would suggest or conclude that such mixture of bicycles and motor vehicles is reasonably safe.

For example, consider the following scenarios which show the Bike Bill is a bad idea for all concerned:

- (a) Bicyclists ride too slowly to be on 55 m.p.h. or 65 m.p.h. roads without there being marked bike lanes. A vehicle traveling 65 m.p.h. and coming over a hill or around a curve poses a grave danger to a slow moving bicyclist or a group of slow moving bicyclists.

Perhaps, for the safety of bicyclists themselves and to avoid autos swerving into oncoming traffic, on roads where the speed limit is over 40 m.p.h., bicyclists should be compelled to ride near the right-hand shoulder and in single file.

- (b) Bicyclists ride too slowly for vehicle traffic—especially a family out riding for pleasure—and should not be permitted to endanger themselves or cause autos to stop suddenly (creating rear-end accidents) or swerve into oncoming traffic or off-the-road to avoid such bicyclists. Some limitations should be placed on bicyclists riding slowly and abreast. Three or four bicyclists riding side-by-side blocking a whole lane of traffic at 15 m.p.h. should be prohibited.

Some consideration or accommodation in any bill seeking to make "bicyclists" "intended and permitted users" must be made to assure the motor vehicle traffic facing time constraints and conducting business or trying to get to work on time or buses trying to get children to school is not blocked and impeded by bicyclists

using the street or highway for recreation—leisurely pleasure riding.

Streets and highways are intended for business purposes, not recreational purposes. A bicyclist or group of bicyclists should not be permitted to travel at slow speed (15 m.p.h.–20 m.p.h.) and block traffic lanes preventing persons from getting to work on time or to school on time or picking up kids at school, etc.

To assure the safety of bicyclists and motorists, "bike lanes" are necessary.

#### **(4) The Financial Burden On Local Government & Taxpayers To Maintain All Roads For Bicyclists & Defend All Claims & Lawsuits Therefrom Is Intolerable**

The financial burden which would be imposed upon local government and the citizen taxpayers of Illinois to maintain all streets and highways reasonably safe for bicyclists (as required for "intended and permitted users" by § 3-102(a) of the Tort Immunity Act) would be intolerable—impossible of being met.

How much would it cost to upgrade, improve, sign and mark 139,930 miles of streets and highways in Illinois to make them safe for bicyclists—to make them "bike lanes"? Would it be \$100 per mile or \$13,993,000? Would it be \$1,000 per mile or \$139,930,000? Where would the money come from?

Why would bicyclists receive this kind of money, as opposed to schools or hospitals or drug programs?

And, how much would it cost local government to handle claims and lawsuits from injuries to bicyclists claiming the streets and highways were "not reasonably safe"? What is safe for a "passenger car"? Will all lawsuits be decided by a jury because HB4907 sets a vague and ambiguous standard of safety—"safe for passenger cars"? What does that mean?

And, what does local government need to do to prohibit bicycling on certain of its streets and highways per § 11-208 cited in HB4907? (625 ILCS 5/11-208).

§ 11-208(a)(8), Powers of Local Authorities, grants local authorities power to regulate bicycles on their streets and highways. But, any regulation done by ordinance or local regulation must be "posted" by signs giving notice. (§ 11-208(b)).

#### **Conclusion**

No one opposes the creation of "bike lanes" and "bike routes" for the benefit of bicyclists. No one desires for bicyclists to be denied the opportunity to ride on Illinois roads, but to do so safely in "bike lanes."

HB4907 is a bad idea. It benefits no one, as the four reasons herein explain.