



1999 ASSEMBLY BILL 748

February 15, 2000 - Introduced by LAW REVISION COMMITTEE. Referred to
Committee on Transportation.

1 **AN ACT relating to:** repealing, consolidating, renumbering, amending and
2 revising various provisions of the statutes for the purpose of correcting errors,
3 supplying omissions, correcting and clarifying references, and eliminating
4 defects, anachronisms, conflicts, ambiguities and obsolete provisions (Revision
5 Bill).

Analysis by the Legislative Reference Bureau

This bill is prepared pursuant to s. 13.93 (2) (j), stats., for the purpose of modernizing statutory structure and language in order to increase conformity with current statutory style and to improve user readability and accessibility. Throughout this bill, the word form of numbers is replaced by digits; disfavored language is replaced with preferred terms and spellings; long sentences and statutory units are subdivided or otherwise shortened; and nonspecific articles and references are replaced. Some punctuation has been changed to accommodate the other changes.

For further information, see the NOTES provided by the the revisor of statutes bureau in the body of the bill that indicate the treatments that have been made to the specific statutory units. No substantive changes are intended.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

ASSEMBLY BILL 748

NOTE: None of the changes made by this bill are intended to be substantive.

1 **SECTION 1.** 80.01 (1) (title) of the statutes is renumbered 80.01 (1m) (title) and
2 amended to read:

3 80.01 (**1m**) (title) VALIDATION OF HIGHWAYS, ~~RECORDING~~.

NOTE: The majority of the text of s. 80.01 (1) is moved to s. 80.01 (1m) so that a definition can be properly located at the beginning of the section. See the next 2 sections of this bill.

4 **SECTION 2.** 80.01 (1) of the statutes is amended to read:

5 80.01 (**1**) DEFINITION. ~~All highways laid out by the town supervisors, the county~~
6 ~~board or by a committee of the board, or by commissioners appointed by the~~
7 ~~legislature, or by any other authority, and recorded, any portion of which has been~~
8 ~~opened and worked for 3 years are legal highways so far as they have been so opened~~
9 ~~and worked. The filing of an~~ In this section, “recorded highway” means a highway
10 for which the order laying out any the highway, or a certified copy thereof of the order,
11 has been filed in the office of the clerk of the town or the county in which the highway
12 is situated ~~is a recording of such highway within the meaning of this section.~~

NOTE: Separates a definition into a separate subsection in accordance with current style and reorders text to fit within the current format for a definition. The stricken language is moved to s. 80.01 (1m) by the next section of this bill.

13 **SECTION 3.** 80.01 (1m) of the statutes is created to read:

14 80.01 (**1m**) Any recorded highway that has been laid out by the town
15 supervisors, the county board or by a committee of the board, or by commissioners
16 appointed by the legislature, or by any other authority, any portion of which has been
17 opened and worked for 3 years is a legal highway to the extent that it has been opened
18 and worked. Any laid out highway that has not been fully and sufficiently described
19 or recorded or for which the records have been lost or destroyed is presumed to be 66
20 feet wide.

NOTE: The first sentence of this subsection is moved from s. 80.01 (1). The second sentence is moved from the end of sub. (2) as drafting records indicate that the

ASSEMBLY BILL 748

presumption of width originally applies to this provision and is not needed in sub. (2) due to the insertion of the same presumption after the 1st clause in that subsection by ch. 70 of the Laws of 1949. The language of both sentences is reordered and modified from the original and “rods” is replaced by “feet” for improved readability and conformity with current style.

1 **SECTION 4.** 80.01 (2) of the statutes is renumbered 80.01 (2) (a) and amended
2 to read:

3 80.01 (2) (a) ~~All highways not recorded which have~~ Except as provided in pars.
4 (b) and (c), any unrecorded highway that has been worked as a public highways
5 highway for 10 years or more ~~are is a public highways, highway and are is~~ presumed
6 to be ~~4 rods~~ 66 feet wide, ~~except that roads and bridges.~~

7 (b) No road or bridge built upon the bottoms and sloughs of the Mississippi
8 River by citizens or ~~municipalities~~ a municipality of any other state shall ~~not~~ become
9 a legal highways highway or a charge upon the town in which ~~they are situated~~ the
10 road is located unless upon petition ~~they are~~ the highway is legally laid out by the
11 town supervisors; ~~nor shall any grant of.~~

12 (c) No lands granted for highway purposes, ~~which has~~ that did not become a
13 legal highway prior to the first day of July 1, 1913, shall become effective for such
14 purposes, a legal highway unless the grant is accepted by the town board or by the
15 town meeting of the town wherein the lands and proposed highway are ~~situated~~
16 located, and until a resolution of ~~such~~ acceptance of the grant is recorded in the office
17 of the town clerk; ~~and in case any such laid out highways have not been fully and~~
18 ~~sufficiently described or recorded or if the records have been lost or destroyed the~~
19 ~~presumption shall be that they were laid 4 rods wide.~~

NOTE: Subdivides long sentence, replaces “rods” with “feet”, changes from plural forms to the singular and otherwise reorders text for improved readability and conformity with current style. Par. (c) previously referred to a grant not becoming a highway when to be grammatically correct it should have referred to the granted lands not becoming highways and was written viewing July 1, 1913 prospectively. The language of par. (c) is adjusted accordingly.

ASSEMBLY BILL 748

1 **SECTION 5.** 80.04 (1) of the statutes is amended to read:

2 80.04 (1) No supervisor shall ~~may~~ act in laying out, altering, widening or
3 discontinuing any highway in which the supervisor may be personally interested.
4 If one supervisor is interested the other ~~two~~ 2 supervisors shall act; ~~if two.~~ If 2
5 supervisors are interested the ~~third~~ 3rd supervisor shall act in the matter.

NOTE: Shortens sentences, replaces word form of numbers with digits and replaces language for greater readability and conformity with current style.

6 **SECTION 6.** 80.04 (2) of the statutes is amended to read:

7 80.04 (2) Whenever there ~~shall be less~~ are fewer than ~~two~~ 2 supervisors in any
8 a town, the ~~petition~~ application authorized by s. 80.02 may be made to the county
9 board, which shall ~~thereupon~~ promptly appoint a committee of ~~three~~ 3 of its
10 members. ~~Said~~ The committee shall ~~proceed and~~ act upon ~~such~~ petition ~~the~~
11 application in the same manner and with the same powers in every respect as the
12 supervisors of ~~such~~ the town might do.

NOTE: Replaces word form of numbers with digits and replaces language for greater readability and conformity with current style.

13 **SECTION 7.** 80.08 of the statutes is amended to read:

14 **80.08 Width of highways.** Except as ~~otherwise expressly~~ provided by in s.
15 80.13, highways shall be laid out at least ~~three rods~~ 49.5 feet wide, and when no width
16 is specified in the order the highway shall be ~~4 rods~~ 66 feet wide.

NOTE: Replaces "rods" with a more common unit of measurement.

17 **SECTION 8.** 80.11 (1) of the statutes is amended to read:

18 80.11 (1) Whenever it ~~shall be deemed~~ is considered necessary to lay out, alter,
19 widen or discontinue a highway upon the line between ~~two~~ 2 towns, or extending
20 from one town into an adjoining town, it shall be done by the supervisors of ~~said~~ the
21 2 towns acting together, ~~and if such.~~ If the highway is laid out or altered it may be
22 either upon or as near to the town line ~~or as near thereto~~ as the situation of the

ASSEMBLY BILL 748

1 ground will admit; and they. The supervisors of the 2 towns acting together may vary
2 the same location on either ~~on one side or the other~~ of such the town line as they may
3 deem consider to be necessary.

4 SECTION 9. 80.11 (2) of the statutes is renumbered 80.11 (2) (a) (intro.) and
5 amended to read:

6 80.11 (2) (a) (intro.) The An application therefor under sub. (1) shall be in all
7 of the following:

- 8 1. In duplicate, addressed.
- 9 2. Addressed to the supervisors of both towns, ~~and be signed.~~
- 10 3. Signed by at least 6 resident freeholders in each town; ~~and be delivered~~
- 11 4. Delivered to a supervisor or the clerk of each town.

12 (b) Upon receipt of such an application under par. (a), the supervisors shall
13 promptly fix ~~a, and give notice of, the time when~~ and place for deciding thereon, ~~and~~
14 ~~give notice thereof where the application will be decided.~~ The notices of the time and
15 ~~place of meeting~~ notice shall be signed all of the following:

- 16 1. Signed by a majority of the supervisors of each town, ~~and published.~~
- 17 2. Published as a class 2 notice, under ch. 985, in said each of the towns, ~~and~~
18 ~~served.~~
- 19 3. Served as required by s. 80.05.

20 (c) A majority of the supervisors of each town shall meet jointly at the time and
21 place named in the notice under par. (b) to decide upon such the application and to
22 sign the order and the award of damages, ~~and in all other things the.~~ The proceedings
23 shall be the same as ~~are required by law~~ in laying out, altering, widening or
24 discontinuing highways located wholly within a one town. The orders, awards,

ASSEMBLY BILL 748**SECTION 9**

1 notices and all papers shall be in duplicate, and one duplicate of each shall be filed
2 with each town clerk, ~~and the.~~ The order shall be recorded in each town clerk's office.

3 **SECTION 10.** 80.11 (3) of the statutes is renumbered 80.11 (3) (a) and amended
4 to read:

5 80.11 (3) (a) ~~The said supervisors, upon laying out, altering or widening such~~
6 ~~highway may determine, in the order, what~~ under sub. (2) (c) may designate the part
7 of ~~such~~ the highway that shall be made and kept in repair by each town, and what
8 the share of the damages, if any, that shall be paid by each; ~~and each town.~~ Each town
9 shall have all of the rights and be subject to the liabilities in relation to the part of
10 ~~such~~ the highway to be made or repaired by it as if it were wholly located in ~~such~~ that
11 town. ~~If no such apportionment shall have been made in the order laying out,~~
12 ~~altering or widening such highway or any part thereof; or if such highway or any part~~
13 ~~thereof shall have had its origin in user; or if in the judgment of said supervisors~~
14 ~~circumstances have so altered since the last previous apportionment or~~
15 ~~reapportionment of such highway or any part thereof as to render the same~~
16 ~~inequitable or impracticable, a~~

17 (b) 1. (intro.) A majority of the supervisors of each town, meeting together, may
18 make such an order in accordance with par. (a) apportioning or reapportioning such
19 a town line highway or any part thereof as of the highway that they may deem
20 consider advisable, which if any of the following conditions exists:

21 2. An order made under this paragraph shall be filed as hereinbefore provided.
22 ~~When so made such order in sub. (2) (c) and shall be of~~ have the same force and effect
23 as an order made in connection with the original laying out of ~~such~~ the highway.

24 (c) Any written order or agreement made before August 27, 1947 made, by a
25 majority of the supervisors of each town concerned, acting together, apportioning or

ASSEMBLY BILL 748

1 reapportioning a town line highway is hereby validated and shall be of has the same
2 force and effect as though made on or after said date. ~~Where flowage crosses and~~
3 ~~covers a portion of a town line road, then that part of such order which previously~~
4 ~~fixed their respective liabilities shall be deemed vacated August 27, 1947.~~

5 **SECTION 11.** 80.11 (3) (b) 1. a., b. and c. of the statutes are created to read:

6 80.11 (3) (b) 1. a. No apportionment has been made in an order laying out,
7 altering or widening the highway or a part of the highway.

8 b. The highway or a part of the highway had its origin in user.

9 c. In the judgment of the supervisors circumstances have been so altered since
10 the last apportionment of the highway or part of the highway that the apportionment
11 or reapportionment has been rendered inequitable or impracticable.

12 **SECTION 12.** 80.11 (4) of the statutes is renumbered 80.11 (4) (a) (intro.) and
13 amended to read:

14 80.11 (4) (a) (intro.) ~~If by any change of the boundaries of either or both such~~
15 ~~towns including that caused by flowage the~~ The part of an order fixing the liabilities
16 of towns in regard to a town line highway is vacated if any of the following occurs:

17 1. The territory of either shall be town is increased or diminished, ~~or in the~~
18 event a by a change of the boundaries of either town including a change caused by
19 flowage.

20 2. A portion of said the town line highway is ~~or has been~~ taken over by the state
21 or county under the state or county highway system, ~~or if a.~~

22 3. A new town or village ~~be~~ is formed out of a part of the territory of either or
23 both of said the towns, having a portion of such the town line highway within its
24 borders ~~or if a.~~

ASSEMBLY BILL 748**SECTION 12**

1 4. ~~A portion of a town line road highway is crossed and covered by flowage, that~~
2 ~~part of such order fixing their liabilities shall be deemed vacated, and a.~~

3 **(b) 1. In the event that an order or part of an order is vacated under par. (a) 1.,**
4 **2. or 4., a majority of the supervisors of each such town that is party to the order shall,**
5 **before the time for making the next tax roll, meet together with a majority of the**
6 **supervisors of such new town or with the president of such village, and all of them**
7 **when so convened shall, if they can agree, and attempt to make a new order**
8 **apportioning the liabilities on account of such the highway, which shall be filed as**
9 **hereinbefore provided in sub. (2) (c).**

NOTE: Subdivides provision, reorders text and moves stricken material to a separate subdivision for greater readability and conformity with current style. See the next section of this bill.

10 **SECTION 13.** 80.11 (4) (b) 2. of the statutes is created to read:

11 80.11 **(4)** (b) 2. In the event that an order or part of an order is vacated under
12 par. (a) 3., a majority of the supervisors of each town that is party to the order shall,
13 before the time for making the next tax roll, meet together with a majority of the
14 supervisors of the new town or with the president of the new village and attempt to
15 make a new order apportioning the liabilities on account of the highway, which shall
16 be filed as provided in sub. (2) (c).

NOTE: Recreates language to reposition text in s. 80.11 (4). See the previous section of this bill.

17 **SECTION 14.** 80.11 (5) of the statutes is amended to read:

18 80.11 **(5)** ~~If they fail to make such order~~ **no agreement is reached under sub.**
19 **(4) (b), or if the an order laying out, altering or widening such a town line highway**
20 **shall has not have apportioned the liability of the towns or village on account of such**
21 **the highway, the supervisors of either an affected town or the president of said an**
22 **affected village, after ten 10 days' notice of the time and place of ~~so doing~~ hearing**

ASSEMBLY BILL 748

1 served on the clerk of each town and village to be affected, may apply to the circuit
2 judge of the county in which ~~such towns and village or the~~ affected town or village
3 ~~on whose behalf such notice is given~~ is located, for the appointment of ~~three~~ 3
4 commissioners to apportion the liabilities of ~~such towns~~ each affected town and
5 village on account of ~~such~~ the town line highway.

6 **SECTION 15.** 80.11 (6) and (7) of the statutes are amended to read:

7 80.11 (6) Upon ~~proper~~ application ~~such~~ under sub. (5), the circuit judge shall
8 appoint ~~three~~ 3 residents of ~~such~~ the county as commissioners. ~~They~~ The
9 commissioners shall ~~proceed~~, on not less than ~~five~~ 5 days' notice in writing to the
10 clerk of each town and village ~~clerks, to make such apportionment, and their~~ affected,
11 apportion the liabilities of each affected town and village on account of the highway.
12 The commissioners shall make the determination ~~shall be made~~ in writing and filed
13 shall file the determination with the clerk of each town and village affected, ~~and shall~~
14 have. The commissioners' determination has the same force and effect as an order
15 of the supervisors, ~~and the village president~~ made under sub. (2), (3) or (4).

16 (7) Any bridge on a highway that became a highway under s. 80.01 (2) as a
17 result of having been worked, that is between ~~two~~ 2 towns, or between a town on one
18 side and a village or a town and village on the other side, ~~which highway has become~~
19 ~~such by reason of having been used and worked as provided in s. 80.01 (2), which~~
20 ~~bridge~~ and that has not been assigned to either of the adjoining towns or village, shall
21 be repaired and maintained by ~~such~~ the adjoining towns and village, ~~and the.~~ The
22 cost of repairs and maintenance shall be paid by ~~them~~ the adjoining towns and
23 village in proportion to the valuation of the property ~~therein~~ in the adjoining towns
24 and village as equalized by the county board or boards at the last equalization.

ASSEMBLY BILL 748**SECTION 16**

1 **SECTION 16.** 80.11 (8) of the statutes is renumbered 80.11 (8) (a) and amended
2 to read:

3 80.11 **(8)** (a) ~~Unless~~ Except as provided in par. (b) and sub. (7) or unless
4 otherwise provided by statute or agreement, every highway bridge on a town, village
5 or city boundary shall be maintained by the municipalities in which ~~it~~ the bridge is
6 located, each contributing to the expenses thereof in proportion to the last
7 assessment of taxable property therein. ~~Provided, however, that any~~

8 (b) Any bridge, or bridges, over any stream or river forming the boundary line
9 between two 2 counties erected or maintained solely by one of the adjoining
10 municipalities, may be closed or discontinued by such the municipality so
11 maintaining the same when such bridge if the other adjoining municipality shall fail
12 fails to cooperate in such contribute towards the maintenance in of the bridge in the
13 following proportion:

14 1. In proportion to the amount of the cost thereof of erecting the bridge borne
15 by said the adjoining municipality that does not maintain the bridge, if the bridge
16 was erected at the joint expense of the two 2 adjoining municipalities; or, if not so
17 erected, then in.

18 2. In the proportion of one-half the cost of such maintenance, if the bridge was
19 not erected at joint expense.

NOTE: Subdivides provision, reorders text, deletes redundancies, replaces word
form of numbers with digits and replaces language for greater readability and conformity
with current style.

20 **SECTION 17.** 80.12 of the statutes is renumbered 80.12 (1) amended to read:

21 80.12 **(1)** Whenever it is deemed considered necessary to lay out, alter, widen
22 or discontinue a highway upon the line between a town and city or village or to lay
23 out, alter, widen or discontinue a highway or any part thereof of a highway extending

ASSEMBLY BILL 748

1 from a town to a city or village, the proceedings therefor may be had under s. 80.11.
2 The application ~~therefor~~ to lay out, alter, widen or discontinue the highway or any
3 part of the highway shall be in duplicate, addressed to the supervisors of the town
4 and the common council of the city or the board of trustees of the village, and be
5 signed by at least 6 freeholders of the town and 6 freeholders of the city or village.
6 Thereupon ~~such~~

7 (2) Upon receipt of an application under sub. (1), the common council or board
8 of trustees shall appoint 3 commissioners on the part of such ~~the affected~~ city or
9 village, who. The commissioners shall be duly sworn to faithfully discharge their
10 duties as such commissioners before entering on the same. Such ~~upon those duties.~~
11 The commissioners and town supervisors shall then give notice and proceed in all
12 respects as provided in s. 80.11; and such.

13 (3) The city or village shall be in like manner as a town responsible for that part
14 of such ~~the affected~~ highway determined to that, under s. 80.11 (3 (a) shall be made
15 and kept in repair by the same ~~city or village~~ and for the share of damages assigned
16 to the same ~~city or village under s. 80.11 (3) (a).~~ The cost of repairs, improvement and
17 maintenance of any highway laid out on a line between a city and a town or village
18 or located on one or the other side of the line may be at the expense of such ~~the~~
19 adjoining municipalities and the apportionment may be made as provided in s. 80.11
20 (3) to (6).

21 (4) The town board, ~~and~~ village board ~~and~~ or city council may cause any such
22 highway or any part of such ~~a~~ highway subject to the provisions of this section, which
23 is not less than 16 rods ~~264 feet~~ in length, to be graded, paved, macadamized or
24 otherwise improved, including the establishment of the grade ~~and the,~~ construction
25 of ~~the~~ curbs and gutters, and installation of water and sewer mains and service pipes,

ASSEMBLY BILL 748**SECTION 17**

1 ~~or either, and.~~ The town board and village board or city council may levy special
2 assessments for the whole or any part of the cost thereof of the improvements as a
3 tax upon such the property as that they shall determine as is especially benefited
4 thereby by the improvements, in the manner provided in s. 66.60.

5 **(5)** All proceedings and orders required to be filed and recorded shall be filed
6 and recorded in the office of the clerk of the affected city ~~or, village clerk as well as~~
7 ~~in the office of the~~ or town clerk.

NOTE: Subdivides provision, replaces "rods" with a more common unit of measurement and replaces other language for greater readability and conformity with current style.

8 **SECTION 18.** 80.13 (1) of the statutes is amended to read:

9 80.13 (1) When any person shall ~~present to~~ presents the supervisors of any
10 town board with an affidavit ~~satisfying them that that person is the~~ that meets the
11 requirements under sub. (1m), the town board shall set a time and place to conduct
12 a hearing regarding the laying out or widening of a highway. The hearing shall be
13 held after 10 days and within 30 days of the receipt of the affidavit by the town board.
14 Notice of the time and place of the hearing shall be served as required by s. 80.05 and
15 published as a class 2 notice under ch. 985.

16 **(1m)** The affidavit required under sub. (1) shall be executed by the owner or
17 lessee of real estate (describing the same) located within said the town, shall contain
18 a description of the affected real estate and that the same shall contain facts that
19 satisfy the supervisors that any of the following circumstances exists:

20 **(a)** The real estate described in the affidavit is shut out from all public
21 highways, ~~other than a waterway~~, by being surrounded on all sides by real estate
22 belonging to owned by other persons, or by such real estate owned by other persons
23 and by water, ~~or that that person is the owner or lessee of real estate (describing the~~

ASSEMBLY BILL 748

1 same) and that the owner or lessee is unable to purchase a right-of-way to a public
2 highway from the owners of the adjoining real estate or that such a right-of-way
3 cannot be purchased except at an exorbitant price, which price shall be stated in the
4 affidavit.

5 (b) 1. The the owner or lessee is the owner of a private way or road leading,
6 whose width shall be stated in the affidavit, that leads from said the described real
7 estate to a public highway but ~~that such~~ the way or road ~~or way~~ is too narrow, giving
8 ~~its width,~~ to afford ~~that person~~ the owner or lessee reasonable access ~~to and from said~~
9 the described real estate to ~~said the~~ public highway, ~~that that person;~~ and

10 2. The owner or lessee is unable to purchase ~~from any of said persons the a~~
11 ~~right-of-way over or through the same~~ from the described real estate to a public
12 highway, or ~~that that person~~ is unable to purchase ~~from the owner or owners of land~~
13 on either or both sides of ~~that person's~~ the owner's or lessee's way or road land to
14 make ~~such~~ the way or road of sufficient width, or that it the right-of-way or
15 additional land cannot be purchased except at an exorbitant price, ~~stating the lowest~~
16 which price ~~for which the same the can be purchased,~~ the said supervisors shall
17 ~~appoint a time and place for hearing said matter, which hearing shall be after ten~~
18 ~~days and within thirty days of the receipt of said~~ stated in the affidavit.

19 **SECTION 19.** 80.13 (2) of the statutes is repealed.

NOTE: The text of sub. (2) is made a part of sub. (1). See the previous section of this bill.

20 **SECTION 20.** 80.13 (3) of the statutes is renumbered 80.13 (3) (a) and amended
21 to read:

22 80.13 (3) (a) The supervisors town board shall meet at the appointed time and
23 place stated in the notice given under sub. (1) and shall ~~then~~ in their discretion

ASSEMBLY BILL 748**SECTION 20**

1 proceed to lay out such a highway of not more than three nor less than two rods 33
2 feet nor more than 49.5 feet in width from the public highway to such the real estate,
3 described in the affidavit under sub. (1) (a) or (b) by either laying out a new highway
4 across the surrounding land or shall add by adding enough land to its the width of
5 the existing way or road described in the affidavit under sub. (1) (b) to make it not
6 less than ~~two~~ 33 feet nor more than ~~three rods~~ 49.5 feet in width, ~~and.~~

7 (b) The town board shall assess the damages to the owner or owners of the real
8 estate over or through which the same highway shall be laid or from whom land shall
9 be taken and the advantages to the applicant. The town board may not assess
10 damages in any amount exceeding the price stated in the affidavit of the applicant.

NOTE: Moves sentence regarding the award of damages from sub. (4) to sub. (3) for more appropriate placement. Reorders text, replaces “rods” with a more common unit of measurement and replaces other language for greater readability and conformity with current style.

11 **SECTION 21.** 80.13 (4) of the statutes is amended to read:

12 80.13 (4) ~~But the damages assessed by the supervisors shall in no case exceed~~
13 ~~the price stated in the affidavit of the applicant; upon~~ Upon laying out such a
14 highway, ~~or in adding to the width of a former private way or road, they~~ under sub.
15 (3), the town board shall make and sign an order describing the same laid out
16 highway and file the ~~same~~ order with the town clerk together with ~~their~~ its award
17 of damages, ~~which.~~ The order shall be recorded by ~~said~~ the clerk; provided, that the
18 amount assessed as advantages to the applicant shall be under sub. (3) is paid to the
19 town treasurer before the order laying out such highway shall be filed.

NOTE: Moves sentence regarding the award of damages from sub. (4) to sub. (3) for more appropriate placement. Divides provision into multiple sentences and replaces language for greater readability and conformity with current style.

20 **SECTION 22.** 80.13 (5) of the statutes is amended to read:

ASSEMBLY BILL 748

1 80.13 (5) Whenever a parcel of land in any town which is accessible, or provided
2 with a right-of-way to a public highway, is subdivided and the owner thereof sells
3 and transfers a any part thereof or sells a of the subdivided parcel of said land by
4 metes and bounds, ~~which part or parcel that~~ would otherwise be landlocked and shut
5 out from all public highways ~~other than a waterway~~, by reason of being surrounded
6 on all sides by real estate belonging to other persons or by ~~such~~ real estate belonging
7 to other persons and by water without an adequate right-of-way to a public highway,
8 the seller shall ~~in so subdividing said land or a part thereof or in selling a parcel of~~
9 ~~said land by metes and bounds~~ provide a cleared right-of-way at least 50 feet in
10 width ~~which that~~ shall be continuous from the highway to each the part, parcel, lot
11 ~~or of the~~ subdivision sold. In case the seller fails to ~~do so~~ provide the required
12 right-of-way, the town board may, pursuant to proceedings under this section, lay
13 out a road from ~~such the~~ inaccessible land to the public highway over the remaining
14 lands of the seller without assessment ~~to the latter~~ of damages or compensation
15 ~~therefor to the seller~~.

NOTE: Deletes redundant language and inserts specific references.

16 **SECTION 23.** 80.23 of the statutes is amended to read:

17 **80.23 Removal of fences from highway; notice.** (1) Whenever pursuant
18 to this chapter, any highway is laid out, widened or altered through ~~inclosed~~
19 enclosed, cultivated or improved lands and the determination has not been appealed
20 from, the highway authorities shall give the owner or occupant of ~~such the~~ lands
21 written notice ~~in writing~~ to remove the fences located ~~thereon on the highway~~ within
22 ~~such a time as they shall deem~~ determined by the highway authorities to be
23 reasonable, but not less than 30 days after giving ~~such the~~ notice; ~~and if.~~ If the owner
24 or occupant does not remove the fences within the time required ~~in such by the~~ notice,

ASSEMBLY BILL 748

1 the highway authorities shall ~~cause remove~~ the fences ~~to be removed~~ and shall direct
2 the highway to be opened; ~~but if.~~ If the determination has been appealed from, the
3 notice shall be given after the final decision of the appeal.

4 (2) This section does not authorize the opening of a highway through such
5 enclosed, cultivated or improved lands or the removal of fences between May 15 and
6 September 15, except in cases of emergency to be determined by the highway
7 authorities.

NOTE: Divides long sentence and replaces language for greater readability and
conformity with current style.

8 **SECTION 24.** 80.24 (1) and (2) of the statutes are amended to read:

9 80.24 (1) Except as provided in sub. (2), an owner of lands through which a
10 highway is laid out, widened, altered or discontinued who is not satisfied with the
11 award of damages under s. 80.09 may, within 30 days after the filing of the award,
12 appeal to the circuit judge court of the county for a jury to assess the damages.

13 (2) An owner of lands through which a highway is laid out, widened, altered
14 or discontinued who has appealed under s. 80.17 from the order laying out, widening,
15 altering or discontinuing the highway and who is not satisfied with the award of
16 damages under s. 80.09 may, within 30 days after the entry of a final order on the
17 appeal affirming the order, appeal to the circuit judge court of the county for a jury
18 to assess the damages.

19 **SECTION 25.** 80.24 (5) (intro.) and (a) of the statutes are consolidated,
20 renumbered 80.24 (5) and amended to read:

21 80.24 (5) The At least 6 days before making an appeal under this section, the
22 appellant shall serve written notice on 2 of the supervisors of the town in which the
23 highway is situated, or upon 2 or more of the supervisors or commissioners of the

ASSEMBLY BILL 748

1 town, city or village ~~who have been assigned the duty of~~ responsible for paying the
2 damages for the land, ~~at least 6 days before making the appeal, a.~~ The notice in
3 ~~writing, specifying the following:~~ (a) The shall state the name of the judge to whom
4 the appeal will be made and the date, time and place at which the appeal will be
5 heard.

6 **SECTION 26.** 80.24 (5) (b) and (c) of the statutes are repealed.

7 **SECTION 27.** 80.25 of the statutes is renumbered 80.25 (1) and amended to read:

8 80.25 (1) Any taxpayer of a ~~town or other~~ municipality in which a highway is
9 laid out, altered or discontinued or any part thereof is situated, and which is required
10 to pay damages resulting ~~therefrom~~ from the laying out, alteration or
11 discontinuation, may ~~appeal~~, within 30 days after the award or agreement
12 determining the damages has been filed with the ~~town, city or village~~ municipal
13 clerk, appeal to the circuit judge court of the county for a jury to assess the damages
14 sustained by the persons to whom damages were awarded or are to be paid.

15 **(2)** The appeal under this section shall be in writing, describing the premises
16 and naming the persons to whom damages are to be paid, and the amount awarded
17 to each, and, unless appealing from all of the awards, shall specify the particular
18 award from which the taxpayer appeals ~~in case he or she does not appeal from all.~~
19 The appellant shall serve written notice of the appeal upon 2 of the supervisors of the
20 town or ~~upon 2 of the commissioners of the city or village to which has been assigned~~
21 ~~the duty of~~ that is responsible for paying the damages and upon the persons whose
22 awards are appealed from_{7.}

23 **(3)** The notice under sub. (2) shall be served at least 6 days before making the
24 appellant makes the application, a notice in writing specifying therein for the jury
25 to assess damages. The notice shall state the name of the judge to whom and who

ASSEMBLY BILL 748

1 will hear the application and the time and place appellant will apply for the selection
2 of the jury hearing.

NOTE: Subdivides provision, reorders and replaces language for greater readability and conformity with current style and consistency with s. 80.24. See the previous section of this bill.

3 **SECTION 28.** 80.26 of the statutes is amended to read:

4 **80.26 Appeal bond.** The appellant under s. 80.24 or 80.25 shall execute to the
5 proper town, city or village and file with the judge circuit court a bond with one or
6 more sureties to be approved by ~~such judge~~ the circuit court. In case the appeal is
7 by a landowner, the bond shall be conditioned to pay all costs arising from ~~such the~~
8 appeal if the jury ~~shall~~ does not award the appellant an increase of damages. In case
9 of an appeal by a taxpayer ~~as such~~ under s. 80.25, the bond shall be conditioned that
10 the appellant shall pay all costs arising from ~~such the~~ appeal if the amount of
11 damages in the aggregate of the items appealed from ~~shall is~~ not be diminished ~~upon~~
12 as a result of the appeal.

NOTE: Inserts cross-references and replaces language for greater clarity and conformity with current style.

13 **SECTION 29.** 80.27 of the statutes is renumbered 80.27 (1) (intro.) and amended
14 to read:

15 80.27 (1) (intro.) Upon the filing of the bond required under s. 80.26 and notice
16 of the appeal with proof of service ~~thereof of the notice~~, the jury shall be selected and
17 summoned in the following manner:

18 (a) The judge shall make out a list of 15 disinterested resident freeholders of
19 the county, not of kin to the owner or occupant of the lands.

20 (b) Each party in turn shall strike 5 persons from ~~such the~~ list, and if none of
21 the proper supervisors or commissioners or other appellee is present, the judge shall
22 strike ~~off the 5 names for them, and the~~ any missing party.

ASSEMBLY BILL 748

1 (c) The judge shall ~~thereupon~~ issue an order to the sheriff or ~~some~~ a constable
2 of the county to summon the 5 persons ~~named in such list and~~ whose names were not
3 ~~stricken off to~~ under par. (b) to meet at a time and place ~~to be specified in such the~~
4 order to appraise the damages, the award of which has been appealed from.

5 (2) In case any juror fails to appear at the time and place fixed for ~~their~~ the
6 meeting under sub. (1) (c), the judge shall summon another juror ~~shall be summoned~~
7 in the missing juror's place.

8 (3) Any juror may be excused for good cause, ~~and if any.~~ Any juror duly who
9 is summoned and under sub. (1) (c), is not excused and fails to serve ~~that juror shall~~
10 forfeit not to exceed \$10, and shall be liable to the party having the costs of the appeal
11 to pay for additional costs ~~made in consequence of such~~ resulting from the juror's
12 failure to serve.

NOTE: Subdivides provision, inserts cross-references and replaces language for
greater clarity and conformity with current style.

13 **SECTION 30.** 80.28 of the statutes renumbered 80.28 (1) and is amended to read:

14 80.28 (1) The jury selected under s. 80.27 shall be sworn by the judge to justly
15 and impartially to make such appraisal, and appraise the damages, the award of
16 which is appealed from. The jury shall proceed to view such the highway, subject to
17 the appealed order, and hear the statements and proofs of the parties, ~~and such.~~ The
18 jury may increase or diminish decrease the amount awarded, and they shall make
19 sign and return of their the jury's appraisal to the judge signed by them; and in.

20 (2) (a) In case of appeal by a landowner ~~if the jury shall increase the award~~
21 under s. 80.24, the costs and expenses of the proceedings shall be paid by the proper
22 town, city or village; ~~but if the jury shall not increase the award the costs and~~

ASSEMBLY BILL 748**SECTION 30**

1 ~~expenses shall be paid by the appellant, and in~~ if the jury increases the amount
2 awarded or by the appellant if the jury does not increase the amount awarded.

3 (b) In case of an appeal by a taxpayer if the award appealed from is diminished,
4 the costs and expenses of the proceedings shall be paid by the town, city or village,
5 otherwise if the jury decreases the amount awarded or by the appellant if the jury
6 does not decrease the amount awarded.

7 (c) In case of cross-appeals if the damages involved therein are unchanged,
8 each appellant shall pay half 50% of said the costs and expenses of the proceedings.

9 (3) If the jury shall fail fails to agree and be is discharged by the judge for that
10 reason, the judge shall immediately proceed to make select another list of such
11 freeholders, jury under this section and s. 80.27 (1) and further proceedings shall be
12 had thereon on the appeal under s. 80.27 and this section in all respects as in the case
13 of a first jury.

14 (4) (a) When the jury shall have made a return of their has returned its
15 appraisal to the judge, the judge shall adjust the costs and expenses of such the
16 proceedings, and within 10 days thereafter return such the appraisal to the town
17 clerk, together with all the other following, which shall be filed by the clerk:

18 1. All papers relating to such the appeal, a,

19 2. A statement of the proceedings had before the judge, and,

20 3. A detailed statement of the cost and expenses in detail, duly of the
21 proceedings certified by the judge, which shall be forthwith filed by the clerk; and if
22 two,

23 (b) If 2 towns or a town and a city or village be are interested, the judge shall
24 make and file a certified copy of the appraisal papers and statements with the clerk
25 of such other each interested town, city or village.

ASSEMBLY BILL 748

NOTE: Subdivides provision, inserts cross-references, replaces word form of number with digits and replaces language for greater clarity and conformity with current style.

1 **SECTION 31.** 80.29 of the statutes is amended to read:

2 **80.29 Appeal costs; jurors' fees.** Each juror who serves under s. 80.28 shall
3 receive \$3 for services and 10 cents a mile for actual and necessary travel in going
4 to and returning from the place of meeting;. Costs under this section are payable in
5 advance by the party appealing, and to be are a charge against the party finally liable
6 for the costs of the proceeding.

NOTE: Inserts cross-reference for greater clarity.

7 **SECTION 32.** 80.32 (4) of the statutes is renumbered 80.32 (4) (a) (intro.) and
8 amended to read:

9 80.32 (4) (a) (intro.) Whenever any public highway or public ground has been
10 vacated or discontinued ~~the,~~ any easements and rights incidental thereto acquired
11 by or belonging to any county, school district, town, village or city or to any utility or
12 person ~~in~~ and relating to any underground or overground structures, improvements
13 or services and all rights of entrance, maintenance, construction and repair of the
14 ~~same~~ structures, improvements or services shall continue, unless one of the following
15 applies:

16 1. The owner of the easements and incidental rights gives written consent to
17 the discontinuance of such ~~the~~ easements and rights by the owner thereof is as a part
18 of the vacation or discontinuance proceedings and ~~reference thereto is made in the~~
19 ~~vacation or discontinuance resolution, ordinance or order, or discontinued by failure~~
20 refers to the owner's written consent.

21 2. The owner of the easements and incidental rights fails to use the same
22 easements and rights for a period of 4 years from the time that the public highway

ASSEMBLY BILL 748**SECTION 32**

1 or public ground was vacated or discontinued. ~~Upon the failure of the interested~~
2 ~~parties to reach an agreement permitting discontinuance of such~~

3 (b) (intro.) The easements and incidental rights or upon refusal of the owner
4 of such easements and rights to give written consent to the discontinuance thereof,
5 such easements and rights described in par. (a) may be discontinued in the vacation
6 or discontinuance proceedings in any case where benefits or damages are to be
7 assessed as herein provided. in par. (c), if one of the following applies:

8 (c) Damages for the discontinuance of such the easements and rights, in the
9 described in par. (a) shall be assessed against the land benefited in the proceedings
10 for assessment of damages or benefits upon the vacation or discontinuance of the
11 public highway or public ground. The amount of the damages shall be the present
12 value of the property to be removed or abandoned, plus the cost of removal, less the
13 salvage thereon value of the removed or abandoned property, or in such any other
14 amount as that may be agreed upon between the interested parties, shall be assessed
15 against the land benefited in the proceedings for assessment of damages or benefits
16 upon the vacation or discontinuance of the public highway or public ground. The
17 owner of such the easements and incidental rights, upon application to the treasurer
18 and upon furnishing satisfactory proof shall be entitled to any payments of or upon
19 such the assessment of damages.

20 (d) Any person aggrieved by such the assessment of damages under this
21 subsection may appeal therefrom the assessment in the same time and manner as
22 is provided for appeals from assessments of damages or benefits in vacation or
23 discontinuance proceedings in the town, village or city.

NOTE: Subdivides provision, repositions text and deletes redundant and outdated language for greater readability and conformity with current style.

ASSEMBLY BILL 748

1 **SECTION 33.** 80.32 (4) (b) 1. and 2. of the statutes are created to read:

2 80.32 (4) (b) 1. The interested parties fail to reach an agreement permitting
3 discontinuance of the easements and incidental rights.

4 2. The owner of the easements and incidental rights refuses to give written
5 consent to their discontinuance.

NOTE: Recreates language to reposition text in s. 80.32 (4). See the previous section
of this bill.

6 **SECTION 34.** 80.37 of the statutes is renumbered 80.37 (1) and amended to read:

7 80.37 (1) Whenever the record of the laying out of any highway ~~has been or~~
8 ~~shall be~~ is lost or destroyed, the supervisors of the town in which such the highway
9 is situated located, upon notice being served on all interested parties in accordance
10 with s. 80.05, may make a new record ~~thereof by a written order, which shall be~~
11 ~~entered on the town records. Whenever the supervisors shall contemplate making~~
12 ~~such new record they shall make a~~ of the highway. The notice and shall fix therein
13 a the time when and place at which they where the supervisors will meet and decide
14 upon the same, which making the new record. The notice shall specify as near as may
15 be the highway as to for which they ~~propose to make such~~ the proposed record. ~~Such~~
16 ~~notice shall be served as provided by s. 80.05; but notice will be made. Notice need~~
17 ~~not be given to such persons as~~ who waive the same notice or consent to the making
18 of the order either before or after it is entered.

19 **(2)** The supervisors shall meet pursuant to the notice given under sub. (1) and
20 hear any arguments or evidence that may be offered for or against the proposed new
21 record, and ~~thereupon decide~~ make a new record as they ~~deem~~ consider proper. ~~They~~
22 The supervisors may adjourn from time to time, and an entry of each adjournment
23 shall be made in the record by the town clerk. If they the supervisors find that the

ASSEMBLY BILL 748**SECTION 34**

1 highway is a legal ~~one~~ highway the record ~~whereof of which~~ is lost or destroyed, they
2 shall make ~~an a~~ written order determining ~~sueh~~ stating those facts and specifying
3 the course, width and other pertinent description of the highway, ~~and sueh.~~ The
4 order shall be filed and recorded in the office of the town clerk, who shall note the time
5 of recording it the order in the record. Any number of highways may be included in
6 one ~~sueh~~ notice or order, ~~and a~~ under this section. A failure or refusal to make a new
7 record for any highway ~~shall~~ does not preclude a subsequent proceeding for that
8 purpose.

9 **(3)** Any person through whose land ~~sueh a~~ highway shall pass described in an
10 order entered under sub. (2) passes may appeal from ~~sueh~~ the order on the ground
11 that the highway described ~~therein~~ in the order was not ~~theretofore~~ a legal highway
12 in fact. The appeal shall be made in the time and manner provided for appealing from
13 orders laying out highways, and ~~like~~ proceedings, ~~as near as may be~~, shall be had
14 ~~thereon~~ on the appeal as in case of appeals from ~~sueh~~ orders. ~~The~~ laying out
15 highways. No person may call into question the regularity of ~~sueh~~ proceedings ~~shall~~
16 ~~not be called in question by any person~~ under this section except owners of land on
17 whom ~~sueh~~ notice should have been served but ~~on whom it was not~~ in fact served, was
18 not and persons claiming under ~~sueh~~ those owners.

NOTE: Subdivides provision, repositions text, inserts specific references and cross-references and deletes redundant and outdated language for greater readability and conformity with current style.

19 **SECTION 35.** 80.48 (3) of the statutes is renumbered 80.48 (3) (a) and amended
20 to read:

21 80.48 **(3)** (a) At the time and place specified in the notice given under sub. (2),
22 the circuit judge of the county, the president of the village or the chairperson of the
23 town in which the land sought to be taken lies shall issue a precept directed to the

ASSEMBLY BILL 748

1 sheriff of the county or to any constable, naming the sheriff or constable, ~~which.~~ The
2 precept shall direct the officer ~~to write~~ sheriff or constable to make a written list
3 containing the names of 36 freeholders of the county who are qualified to serve as
4 jurors in the circuit court and to return the list. After being sworn to perform the
5 duties required to the best of his or her ability, without partiality, the officer sheriff
6 or constable shall immediately ~~write the names~~ make and deliver the list thereof to
7 the officer who issued the precept; ~~and from.~~

8 (b) From the list made under par. (a), each party, in person or by an agent or
9 attorney, commencing with the petitioner, shall in turn strike out alternately, a name
10 from the list until each has stricken 12 names, ~~and if.~~ If either party is absent or
11 refuses to strike out the names, the officer who issued the precept shall appoint some
12 person to strike 12 names for the absent or nonparticipating person. The officer shall
13 then summon the 12 persons whose names remain on the list in the manner
14 prescribed under s. 756.05 to appear at the time and place mentioned in the
15 summons for the purpose of determining the necessity of taking for the public use the
16 land described in the petition; ~~if.~~ If any of the persons summoned fail to attend others
17 may be selected in the same ~~mode~~ manner to fill the vacancy, and for that purpose
18 the proceedings may be adjourned from time to time.

19 (c) When 12 persons ~~are thus~~ have been secured in accordance with par. (b),
20 they shall be sworn by the officer who issued the precept to faithfully and impartially
21 discharge the duties imposed upon them, ~~which.~~ The oath shall be filed with the city,
22 village or town clerk.

23 (d) The number of persons listed and summoned shall be proportionately
24 reduced if the jury is to consist of a number less than 12.

ASSEMBLY BILL 748**SECTION 35**

NOTE: Subdivides provision, shortens sentences, reorders text, inserts cross-references, and replaces language for greater readability and conformity with current style.

1 **SECTION 36.** 80.48 (4) of the statutes is renumbered 80.48 (4) (a) and amended
2 to read:

3 80.48 **(4)** (a) After the jurors selected under sub. (3) are sworn, the circuit or
4 municipal judge, president or chairperson shall issue his or her precept directed to
5 them and requiring that within 10 days they shall view the land specified ~~therein and~~
6 ~~make return to him or her under their hands~~ in the precept and issue a decision,
7 signed by each juror, as to whether it is necessary to take it the land for public use
8 as described in the petition; ~~the.~~ The jurors shall, at a time to be fixed by them, view
9 the premises; ~~the.~~ The parties interested shall have notice of the time of, and may
10 offer to the jury any evidence pertinent to, the inquiry; ~~after.~~ After viewing the
11 premises and hearing the evidence the jury shall determine whether a necessity
12 exists for taking the land and shall return ~~their~~ its verdict to the officer who issued
13 the precept.

14 **(b)** ~~On the receipt thereof~~ of the jury's verdict, the officer shall, as soon as may
15 be possible, submit the same verdict to the council, trustees or supervisors, and for
16 that purpose may call a meeting of either body and deliver the verdict to them; ~~the.~~
17 The body to which it the verdict is so delivered shall, if in ~~their~~ its judgment the public
18 good requires it, immediately make an order laying out a street or highway from the
19 nearest street or highway which can be used as a convenient means of approach to
20 the cemetery, fairground or land used for industrial expositions. The street or
21 highway so laid shall not be less than 3 49.5 feet nor more than 4 rods 66 feet in width,
22 ~~and.~~

ASSEMBLY BILL 748

1 (c) The body issuing the order under par. (b) shall, in the order they shall,
2 appoint 3 disinterested residents of the county as commissioners ~~who.~~ The
3 commissioners shall, after notice to the owners or occupants of the land and after
4 being sworn to support the U.S. constitution ~~of the United States~~ and the
5 constitution of this state and faithfully discharge their duties to the best of their
6 ability, assess adequate damages to the owners of the land through which the street
7 or highway is laid. The award of damages shall be signed by the commissioners and
8 be returned to the city, village or town clerk.

NOTE: Subdivides provision, shortens sentences, inserts cross-references, replaces
“rods” with a more common unit of measurement and replaces other language for greater
readability and conformity with current style.

9 **SECTION 37.** 80.48 (5) of the statutes is amended to read:

10 80.48 (5) OPENING HIGHWAY. The street commissioner of such the city or village
11 or the superintendent of highways of such the town, ~~after who made the order under~~
12 sub. (4) laying out such the street or highway has been filed, upon the filing of the
13 order with the city, village or town clerk, shall ~~forthwith~~ immediately open the street
14 or highway ~~so laid~~, provided that the petitioner shall have paid to the city, village or
15 town treasurer the damages awarded.

NOTE: Replaces language and inserts a cross-reference for greater readability and
conformity with current style.

16 **SECTION 38.** 80.48 (6) of the statutes is renumbered 80.48 (6) (a) and amended
17 to read:

18 80.48 (6) (a) If any Any person through whose land such a street or highway
19 is laid or the petitioner ~~shall be may, if~~ dissatisfied with the damages awarded ~~either~~
20 may under this section, appeal to the circuit court of the county in which the land is
21 situated located. The appeal is commenced by serving a notice of appeal and
22 undertaking upon the opposite party, with at least ~~two~~ 2 sureties, conditioned for the

ASSEMBLY BILL 748**SECTION 38**

1 payment of all costs and damages which may be incurred if the appellant shall does
2 not succeed; ~~such~~. The notice and undertaking shall be filed with the city, village or
3 town clerk, who shall be entitled to receive two dollars \$2 for fees in making return
4 to the clerk of the circuit court as hereinafter required; provided, that such appeal
5 shall under par. (b). An appeal made under this paragraph does not impair the right
6 of the public to use such the street or highway for the purpose of travel.

7 (b) Within ~~ten~~ 10 days after ~~such papers~~ the notice and undertaking are filed
8 and ~~such payment of the fees is made, the clerk with whom they~~ the notice and
9 undertaking are filed shall transmit the papers pertaining to the subject matter of
10 the appeal to the clerk of the circuit court, who shall file them in the clerk of court's
11 office, ~~and upon such~~. Upon filing with the clerk of circuit court, the appeal shall be
12 is considered an action pending in such the circuit court, subject to a change of the
13 place of trial and an appeal to the supreme court as in other actions. The appeal shall
14 be entered upon the records by making the party who took it appellant the plaintiff
15 and the other party the defendant; it.

16 (c) The appeal shall be tried by a jury unless ~~such mode of trial~~ the jury is
17 waived, and costs.

18 (d) Costs shall be allowed to the successful party, and if. If the landowner is
19 the successful party shall be, the landowner costs shall be added to the judgment, ~~and~~
20 if. If the petitioner is the successful party, the costs shall be petitioner be deducted
21 therefrom from the judgment.

NOTE: Subdivides provision, shortens sentences, replaces word form of numbers with digits and replaces language for greater readability and conformity with current style.