# CHAPTER 83

## COUNTY HIGHWAYS

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**83.001 Definition.** In this chapter, "department" means the department of transportation.

**History:** 1985 a. 223.

**83.01 County highway commissioner. (1)** ELECTION OR APPOINTMENT. (a) Except as provided under pars. (b) and (c), the county board shall elect a county highway commissioner. If the county board fails to elect a county highway commissioner, the county shall not participate in state allotments for highways.

(b) In counties having a population of 500,000 or more, the county highway commissioner shall also be the director of public works. The person holding the position of county highway commissioner and director of public works, under the classified service, on June 16, 1974, shall continue in that capacity under civil service status until death, resignation or removal from such position. Thereafter the county executive shall appoint as successor a director of transportation who shall assume the duties of county highway commissioner and director of public works and is subject to confirmation by the county board, as provided in s. 59.17 (2) (bm).

(c) Except as provided under par. (b), in any county with a county executive or a county administrator, the county executive or county administrator shall appoint and supervise the county highway commissioner. The appointment is subject to confirmation by the county board unless the county board, by ordinance, elects to waive confirmation or unless the appointment is made under a civil service system competitive examination procedure established under s. 59.52 (8) or ch. 63. Notwithstanding s. 83.01 (7) (a) and (b), the highway commissioner is subject only to the supervision of the county executive or county administrator.

**(2)** TERM. (a) Unless the county board establishes a different term of service by ordinance, the county highway commissioner shall serve for a term of 2 years, except as provided in par. (b).

(b) Unless the county board establishes a different term of service under par. (a), upon his or her first election or appointment the county highway commissioner shall serve until the first Monday in January of the 2nd year succeeding the year of the election or appointment.

**(3)** SALARY. The salary of the county highway commissioner shall be as determined under s. 59.22.

**(4)** OFFICE AND ASSISTANTS. The county board shall provide the county highway commissioner with suitable offices and such assistants as are necessary for the proper performance of the commissioner's duties.

**(5)** BOND. The county highway commissioner shall give bond in such sum as the county board shall from time to time require.

**(6)** PAYMENT OF SALARIES. The salaries, expenses of maintaining an office and the necessary traveling expenses of the county highway commissioner, assistants and special highway patrolmen in counties having such patrolmen may be paid monthly out of the general fund after being audited and approved by the county highway committee. All such expenditures out of the general fund shall be reimbursed out of moneys received under s. 86.30.

**(7)** DUTIES. (a) Except as provided under s. 83.015 (2) (b), the county highway commissioner shall have charge, under the direction of the county highway committee, of the construction of highways built with county aid and of the maintenance of all highways maintained by the county.

(b) Except as provided under s. 83.015 (2) (b), the county highway commissioner shall perform all duties required by the county board and by the county highway committee and shall do or cause to be done all necessary engineering and make all necessary examinations for the establishment, construction, improvement and maintenance of highways. The county highway commissioner shall establish such grades and make such surveys and maps or cause the same to be made as the commissioner considers proper, and examine the highways and report as to the condition of roads, bridges and culverts, and make estimates of the cost of the improvement thereof, and of the cost of any relocation when required to do so or when the commissioner considers the same reasonably necessary.

(c) The county highway commissioner shall have charge of all county road machinery and tools, and shall be responsible to the county board for their proper maintenance, repair and storage, and shall in the annual report required under par. (d) make a complete inventory of the same, which inventory shall show the date of purchase, the location and condition of such machinery and tools, and the cost and present value thereof.

(d) The county highway commissioner shall make an annual report to the department and to the county board at its annual meeting containing an itemized statement of all expenditures made from the county road and bridge fund during the year ending November 1. The commissioner shall include in the report an itemized estimate of the amount needed to properly maintain the

county trunk highways in the county for the succeeding year and shall make such recommendations as deemed advisable.

(e) The county highway commissioner and the commissioner's employees may enter private lands for the purpose of making surveys or inspections.

(f) Whenever any fence encroaches upon any highway on the county trunk or state trunk system, the county highway commissioner may issue an order requiring the owner or occupant of the land to which such fence is appurtenant to remove the fence from the highway within 30 days. The order shall be served personally or by registered mail. If the fence is not sooner removed the commissioner shall, after the expiration of 30 days, remove the fence. The commissioner shall keep an accurate account of the expense thereof which shall be paid by the county. The expense shall be charged to the town in which such lands are situated and shall be added to its tax roll as a special tax against such lands, and shall be collected and accounted for as other county taxes are. If the claim of encroachment is disputed, the dispute shall be decided in the manner prescribed by s. 86.04 (3).

(g) The county commissioner shall compile and maintain a record of the laying out, alteration, or discontinuance of all highways in the county outside the limits of cities and villages. The record shall be known as the county highway register and be kept in the manner or form prescribed by the department. The county highway commissioner or agents shall have access to the records of town clerks and may have temporary custody of such as are necessary for the purpose of making accurate and appropriate copies thereof. The department shall assist in the compilation of the records and shall furnish to the county highway commissioner such information as the department deems appropriate relative to the laying out of military, territorial, and such other roads as have been authorized by the legislature. The information contained in the county highway register shall be kept together in a location within the county that provides a safe repository for records as determined by the county board and shall be accessible to the public. Such county highway register may be supplemented from time to time by the county highway commissioner and such supplemental information is to be treated in the same fashion as the original county highway register all of which shall be admissible in evidence.

**History:** 1973 c. 262; 1977 c. 29 ss. 1654 (8) (c), (d), (f), 1656 (43); 1977 c. 273; 1981 c. 217; 1985 a. 29; 1985 a. 223 s. 5; 1989 a. 171; 1991 a. 316; 1995 a. 201; 1997 a. 35; 2005 a. 41, 401; 2015 a. 197 s. 51.

Counties are without the power to furnish equipment or supplies or to contract to do repair work on private roads and driveways. 61 Atty. Gen. 304.

County highway commissioners are appointed by the county board. Their salary is to be fixed, and may be changed during their term, under s. 59.15 (2) [now 59.22(2)]. 63 Atty. Gen. 286.

A county board may provide for an indefinite term of office for a highway commissioner. 80 Atty. Gen. 46.

**83.013 County traffic safety commissions. (1)** (a) For each county, the county highway commissioner or a designated representative, the chief county traffic law enforcement officer or a designated representative, the county highway safety coordinator, and a representative designated by the county board from each of the disciplines of education, medicine and law and 3 representatives involved in law enforcement, highways and highway safety designated by the secretary of transportation shall comprise a traffic safety commission that shall meet at least quarterly to review traffic accident data from the county and other traffic safety related matters. The county board chairperson, or the county executive or county administrator in a county having such offices, may appoint additional persons to serve as a member of the county traffic safety commission. The commissions shall designate a person to prepare and maintain a spot map showing the locations of traffic accidents on county and town roads and on city and village streets if the population of the city or village is less than 5,000 and to maintain traffic accident data received from cities, villages and towns with a population of 5,000 or more under s. 66.0141. Upon each review, the commission shall make written recommendations for any corrective actions it deems appropriate to the department, the county board, the county highway committee or any other appropriate branch of local government.

(b) Counties may combine for the purposes of par. (a), if desired.

(c) The commissions shall file a report on each meeting with the department.

**(2)** The department shall furnish each commission with traffic accident data and uniform traffic citation data for the rural, federal, state, and county highways in the jurisdictions represented in each commission, which shall identify the accident rates and arrest rates on their highways, and shall also furnish a suitable map for use in spotting accidents.

**History:** 1971 c. 125, 279; 1975 c. 381, 421; 1977 c. 29; 1981 c. 314; 1983 a. 291; 1985 a. 223 s. 5; 1993 a. 246; 1997 a. 27; 1999 a. 150 s. 672.

**83.015 County highway committee. (1)** ELECTION; COMPENSATION; TERM. (a) Except as otherwise provided in par. (c) each county board at the annual meeting shall by ballot elect a committee of not less than 3 nor more than 5 persons, to serve for one year, beginning either as soon as elected or on January 1 following their election, as designated by the county board, and until their successors are elected. Any vacancy in the committee may be filled until the next meeting of the county board by appointment made by the chairperson of the board. The committee shall be known as the "county highway committee", and shall be the only committee representing the county in the expenditure of county funds in constructing or maintaining, or aiding in constructing or maintaining highways.

(b) The members of the county highway committee shall be reimbursed for their necessary expenses incurred in the performance of their duties, and shall be paid the same per diem for time necessarily spent in the performance of their duties as is paid to members of other county board committees, not, however, exceeding $500 for per diem, in addition to necessary expenses, to any member in any year. A different amount may be fixed as a maximum by the county board.

(c) Notwithstanding par. (a), each county board may fix the number of members on the county highway committee, the membership, manner of appointment, method of filling vacancies and the terms of the members.

(d) The town chairperson of each town in which county aid construction is performed shall be a member of the county highway committee, or shall act with such committee, on all matters affecting such construction in the town, if the town has voted a portion of the cost thereof.

**(2)** POWERS AND DUTIES. (a) Except as provided under par. (b), the county highway committee shall purchase and sell county road machinery as authorized by the county board, determine whether each piece of county aid construction shall be let by contract or shall be done by day labor, enter into contracts in the name of the county, and make necessary arrangements for the proper prosecution of the construction and maintenance of highways provided for by the county board, enter private lands with their employees to remove weeds and brush and erect or remove fences that are necessary to keep highways open for travel during the winter, direct the expenditure of highway maintenance funds received from the state or provided by county tax, meet from time to time at the county seat to audit all payrolls and material claims and vouchers resulting from the construction of highways and perform other duties imposed by law or by the county board.

(b) In any county with a highway commissioner appointed under s. 83.01 (1) (b) or (c), the county highway committee shall be only a policy−making body determining the broad outlines and principles governing administration and the county highway commissioner shall have the administrative powers and duties prescribed for the county highway committee under par. (a), sub. (3) (a) and ss. 27.065 (4) (b) and (13), 32.05 (1) (a), 82.08, 83.01 (6), 83.013, 83.018, 83.025 (1) and (3), 83.026, 83.035, 83.04, 83.05 (1), 83.07 to 83.09, 83.12, 83.14 (6), 83.17, 83.18, 83.42 (3) and

(4), 84.01 (5), 84.06 (3), 84.07 (1) and (2), 84.09 (1), (3) (a) to (c) and (4), 84.10 (1), 86.04 (1) and (2), 86.07 (2) (a), 86.19 (3), 86.34 (1m), 114.33 (5), 349.07 (2), 349.11 (4) and (10) and 349.15 (2). No statutory power, duty or function specified elsewhere for the county highway commissioner may be deemed impliedly repealed for the sole reason that reference to it has been omitted in this paragraph.

**(3)** COST ACCOUNTING SYSTEM. (a) Each county board, except in counties of a population of 500,000 or over, shall provide for and require the county highway committee and county highway department to use the system of cost accounting devised by the department of revenue.

(b) Any variations, adjustments, corrections and revisions in the system shall be made annually so as to be effective on January 1 of each year following the proposed change.

(c) Any changes so proposed in order to become effective shall be mutually agreed upon by the department and a majority of the county highway departments of the state.

(d) The department may insist on the adoption of the uniform system in any county before entering into agreements with such county for the maintenance of state trunk highways.

**History:** 1971 c. 211 s. 124; 1977 c. 29 ss. 915, 1654 (8) (c); 1979 c. 110, 147; 1985 a. 29; 1985 a. 223 ss. 2, 5; 1987 a. 27; 1989 a. 56 s. 258; 1997 a. 27; 2003 a. 214; 2013 a. 20; 2015 a. 231.

**NOTE: 2003 Wis. Act 214, which affected this section, contains extensive explanatory notes.**

This section does not preclude county boards from auditing county highway committee vouchers prior to payment thereof from county funds. However, the board's audit authority is limited to determining whether the expenditure is within the scope of the committee's statutory or delegated authority. 63 Atty. Gen. 136.

**83.016 Traffic patrol officers, appointment, duties, bond. (1)** The county board, or one of its committees to which it may delegate such authority, may appoint traffic officers for the enforcement of laws relating to the highways or their use, or the maintenance of order upon or near the highways. Traffic officers may arrest without warrant any person who, in their presence, violates any law relating to highways or the maintenance of order upon or near highways. Any traffic officer, sheriff, constable or other police officer may make such arrest without warrant on the request of any other traffic officer, sheriff, constable or police officer in whose presence any such offense has been committed. The appointment of any traffic officer may be revoked at any time by the county board or one of its committees to which it may delegate such authority. No traffic officer shall receive or accept from or for any person he or she has arrested, any money or other thing of value, as or in lieu of bail or for the person's appearance before a court, or to cover or be applied to the payment of fines or costs, or as a condition of such person's release.

**(2)** Traffic officers, before exercising their powers, shall be provided with a badge by the county board or its designee which shall be worn when on duty.

**(3)** Traffic officers shall furnish bonds in a sum fixed by the county board to indemnify the county for any and all claims arising out of the performance of their duties. The cost of such bonds shall be paid by the county. In lieu of furnishing bonds, such officers may be included in a schedule or blanket bond under s. 19.07 (1) (b).

**History:** 1977 c. 29 s. 1654 (7) (b); 1977 c. 43, 203.

**83.018 Road supplies; committee may sell to municipalities.** The county highway committee is authorized to sell road building and maintenance supplies on open account to any city, village, town or school district within the county; and any such city, village, town or school district is authorized to purchase such supplies.

It is permissible for a county highway department to sell road sand or salt to municipalities, either for their own use or for resale, if, in good faith, county officials believe that the purchaser does not intend to resell the sand or salt for a private purpose. Generally, a county may not sell road maintenance supplies to a private party that intends to resell the supplies on the private market. OAG 2−01.

**83.02 County aid highways. (1)** The system of prospective state highways heretofore selected by the county boards and approved by the highway commission are hereby validated but without prejudice to the exercise of the power to change such systems. Such systems are hereby designated as the county aid highway system.

**(2)** The department, on the petition of at least 100 freeholders, may, after investigation, make such alterations in the system of county aid highways as it deems necessary to serve the public interest.

**(3)** The county board may alter such systems as provided in s. 83.025 (1).

**History:** 1977 c. 29 s. 1654 (8) (c); 1977 c. 418 s. 924 (48); 1985 a. 223 ss. 3, 5.

**83.025 County trunk highways. (1)** (a) The systems of county trunk highways heretofore selected by county boards and approved by the department are hereby validated. Changes may be made in the county trunk system by the county board as provided in this section. The county board in making the changes may order the county highway committee to lay out new highways and acquire the interests necessary by the procedures under s. 83.08. A county board may not make additions to a county trunk system from a city or village street or town road without the consent of the department and of the governing body of the city, village or town in which the proposed addition is located. A county board may not make deletions from a county trunk system without the approval of the department, and, except as provided in this paragraph and par. (d), without the approval of the governing body of the city, village or town in which the proposed deletion is located or, in the case of a proposed deletion affecting more than one city, village or town, without the approval of a majority of the governing bodies of such cities, villages or towns.

(b) The county board, or the county highway committee, shall, by conference with the boards or highway committees of adjoining counties, or otherwise, cause their respective county trunk systems to join so as to make continuous lines of travel between the counties. Any highway which is a part of the county trunk system shall, by virtue thereof, be a portion of the system of county aid highways.

(c) Any city or village street or portion thereof selected as a portion of the county trunk system prior to May 1, 1939, shall be a portion of the county trunk system. All streets or highways in any city or village over which is routed a county trunk highway or forming connections through the city or village between portions of the county trunk highway system shall be a part of the county trunk system unless the governing body of the city or village, by resolution, removes the street or highway from the system, but the removal shall apply only to that portion of any street or highway which is situated wholly within the city or village.

(d) In counties having a population of 500,000 or more the county board may remove from the county trunk highway system any part thereof which lies within an incorporated village or city, but the removal shall not be effected until one year after annexation proceeding affecting the area in question has become final.

(e) Whenever a county has completed a functional and jurisdictional classification of highways and the classification plan has been approved by the county board, the local governing bodies and the department, those roads and streets allocated to the county's jurisdiction will be known as county trunk highways. Additions and deletions from the county trunks under this paragraph in the various municipalities may be made as provided in pars. (a) and (d).

**(2)** The county trunk system shall be marked and maintained by the county. No county shall be responsible for the construction and maintenance of a city or village street on the county trunk highway system to a greater width than are those portions of such system outside the village or city and connecting with such street. When a portion of a county trunk highway extending from one county to another has less mileage than is practical for a patrol sec-

tion, such portion shall be patrolled by the county in which the major portion of the highway lies, and each county shall bear its proportionate share of the expense of maintenance, payable monthly. The marking and signing of the county trunk highway systems shall be uniform throughout the state, as prescribed by the department.

**(3)** The county highway committee, subject to the approval of the county board, may enter into agreements with the department as provided in s. 86.25 (2).

**History:** 1973 c. 160; 1977 c. 29 s. 1654 (8) (d); 1985 a. 223; 1993 a. 246.

Sub. (1), as amended by ch. 160, laws of 1973, does not require counties to develop a functional and jurisdictional classification of highways. Nor is a properly approved classification plan a prerequisite to a county board's exercise of its authority pursuant to sub. (1) to incorporate town roads into the county trunk highway system without prior approval of town boards. 63 Atty. Gen. 125.

**83.026 Federal aid secondary highways.** The county highway committee shall cooperate with the department in the selection of a system of federal aid secondary and feeder roads within the meaning of the Federal Aid Road Act approved July 11, 1916 (39 Stats. at L. 355), and all acts amendatory thereof and supplementary thereto. The county highway committee shall request and consider recommendations from the governing bodies of municipalities within the county as to eligible highways and streets within such municipalities to be selected as part of such system. The highways and streets selected by the committee to be a part of such system shall be subject to the approval of the county board.

**History:** 1977 c. 29 s. 1654 (8) (c); 1985 a. 223 s. 5.

**83.027 Controlled−access highways. (1)** AUTHORITY OF COUNTY BOARD; PROCEDURE. The legislature declares that the effective control of traffic entering upon or leaving intensively traveled highways is necessary in the interest of public safety, convenience and the general welfare. The county board may designate as controlled−access highways the portions of the county trunk system on which, after traffic engineering surveys, investigations and studies, it finds, determines and declares that the average traffic potential is in excess of 1,000 vehicles per 24−hour day, except such controlled−access designation shall not be effective in cities, villages and towns until the decision of the county board has been referred to and approved by the governing body of such city, village or town. Such designation of a portion of any county trunk highway in any county as a controlled−access highway shall not be effected until after a public hearing in the matter has been held in the county courthouse or other convenient public place within the county following notice by publication of a class 3 notice, under ch. 985. If the county board then finds that the average traffic potential is as provided by this subsection, and that the designation of the highway as a controlled−access highway is necessary in the interest of public safety, convenience and the general welfare, it shall make its finding, determination and declaration to that effect, specifying the character of the controls to be exercised. Copies of the finding, determination and declaration shall be recorded with the register of deeds, filed with the county clerk, and published in the newspaper in which the notice of hearing was published, and the order shall be effective on such publication. At the time of designating such controlled−access mileage, the total of such mileage in any county shall not exceed 35 percent of the county trunk mileage in such county on the preceding January 1 as published by the department.

**(2)** CONTROLLED−ACCESS HIGHWAY DEFINED. For the purposes of this section, a controlled−access highway is a highway on which the traffic is such that the county board has found, determined and declared it to be necessary, in the interest of the public safety, convenience and the general welfare to prohibit entrance upon and departure from the highway or street except at places specially designated and provided for such purposes, and to exercise special controls over traffic on such highway or street.

**(3)** CONSTRUCTION; OTHER POWERS OF COUNTY BOARD. In order to provide for the public safety, convenience and the general welfare, the county board may use an existing highway or provide new and additional facilities for a controlled−access highway and so design the same and its appurtenances, and so regulate, restrict or prohibit access to or departure from it as the county board deems necessary or desirable. The county board may eliminate intersections at grade of controlled−access highways with existing highways or streets, by grade separation or service road, or by closing off such roads and streets at the right−of−way boundary line of such controlled−access highway and may divide and separate any controlled−access highway into separate roadways or lanes by raised curbings, dividing sections or other physical separations or by signs, markers, stripes or other suitable devices, and may execute any construction necessary in the development of a controlled−access highway including service roads or separation of grade structures.

**(4)** CONNECTIONS WITH OTHER HIGHWAYS. After the establishment of any controlled−access highway, no street or highway or private driveway, shall be opened into or connected with any controlled−access highway without the previous consent and approval of the county board, in writing, which shall be given only if the public interest shall be served thereby and shall specify the terms and conditions on which such consent and approval is given.

**(5)** USE OF HIGHWAY. No person shall have any right of entrance upon or departure from or travel across any controlled−access highway, or to or from abutting lands, except at places designated and provided for such purposes, and on such terms and conditions as may be specified from time to time by the county board.

**(6)** ABUTTING OWNERS. After the designation of a controlled−access highway, the owners or occupants of abutting lands shall have no right or easement of access, by reason of the fact that their property abuts on the controlled−access highway or for other reason, except only the controlled right of access and of light, air or view.

**(7)** SPECIAL CROSSING PERMITS. Whenever property held under one ownership is severed by a controlled−access highway, the county board may permit a crossing at a designated location, to be used solely for travel between the severed parcels, and such use shall cease if such parcels pass into separate ownership.

**(8)** RIGHT−OF−WAY. Any lands or other private or public property or interest in such property needed to carry out the purposes of this section may be acquired by the county board as provided in ss. 83.07 and 83.08.

**(9)** COOPERATIVE AGREEMENTS. To facilitate the purposes of this section, the county board and the governing bodies of a city, town or village are authorized to enter into agreements with each other or with the federal government respecting the financing, planning, establishment, improvement, maintenance, use, regulation or vacation of controlled−access highways or other public ways in their respective jurisdictions.

**(10)** LOCAL SERVICE ROADS. In connection with the development of any controlled−access highway, the county board and city, town or village highway authorities are authorized to plan, designate, establish, use, regulate, alter, improve, maintain or vacate local service roads and streets or to designate as local service roads and streets any existing roads or streets, and to exercise jurisdiction over local service roads in the same manner as is authorized over controlled−access highways under this section if, in their opinion, such local service roads or streets shall serve the necessary purposes.

**(11)** COMMERCIAL ENTERPRISES. No commercial enterprise shall be authorized or conducted within or on property acquired for or designated as a controlled−access highway.

**(12)** UNLAWFUL USE OF HIGHWAY; PENALTIES. It is unlawful for any person to drive any vehicle into or from a controlled−access highway except through an opening provided for that purpose. Any person who violates this provision may be fined not more than $100 or imprisoned not more than 30 days or both.

**(13)** VACATING. A controlled−access highway shall remain such until vacated by order of the county board. The discontinuance of all county trunk highway routings over a highway established as a controlled−access highway shall summarily vacate the controlled−access status of such section of highway only after a traffic engineer survey investigation and study finds, determines and declares that the vacating of the controlled−access status is in the public interest. Such vacating shall not be effected until after a public hearing is held in the county courthouse or other convenient place within the county, following notice by publication as provided in sub. (1). The county board shall record formal notice of any vacation of a controlled−access highway with the register of deeds of the county wherein such highway lies.

**History:** 1971 c. 186; 1977 c. 29 s. 1654 (8) (c); 1985 a. 223 s. 5; 1993 a. 246, 490.

This section must be satisfied to create a controlled−access highway. However, a county may adopt an ordinance to control driveway access from private property to a public thoroughfare without creating a controlled−access highway. Mommsen v. Schueller, 228 Wis. 2d 627, 599 N.W.2d 21 (Ct. App. 1999), 98−3095.

**83.03 County aid; local levy; donations. (1)** The county board may construct or improve or repair or aid in constructing or improving or repairing any highway or bridge in the county.

**(2)** If any county board determines to improve any portion of a county trunk highway with county funds, it may assess not more than 40 percent of the cost of the improvement but not over $1,000 in any year against the town, village or city in which the improvement is located as a special tax. The county clerk shall certify the tax to the town, village or city clerk who shall put the same in the next tax roll, and it shall be collected and paid into the county treasury as other county taxes are levied, collected and paid. A portion or all of such special assessment may be paid by donation.

**(3)** The county board may accept donations to the county of money or lands for highway or bridge purposes, and apply the donations in accordance with the wishes of the donor as nearly as is practicable.

**(4)** Any county may, by any lawful means, provide funds to match or supplement state or federal aid for the construction, reconstruction or improvement, under ch. 84, of any highway, street or bridge which it is authorized to construct, reconstruct or improve, and to pay such funds to the department or state treasury as provided in s. 84.03 (1) (b).

**History:** 1977 c. 29 s. 1654 (8) (c); 1985 a. 29; 1985 a. 223 s. 5.

Sub. (2) prohibits a county from imposing upon municipalities to share the cost of county road and bridge repair; it does not release a municipality from a voluntary agreement to contribute. Fond du Lac County v. Town of Rosendale, 149 Wis. 2d 326, 440 N.W.2d 818 (Ct. App. 1989).

A county board in a county with a county executive cannot enact an ordinance precluding the highway commissioner from determining that the county highway department will perform any of the work on any joint county highway project under ss. 83.03 and 83.035 if a contracting local municipality requests that all of the work on the project be competitively bid and let to private companies. OAG 2−11.

**83.035 Streets and highways, construction.** Any county board may provide by ordinance that the county may, through its highway committee or other designated county official or officials, enter into contracts with cities, villages and towns within the county borders to enable the county to construct and maintain streets and highways in such municipalities.

Counties may charge 1 percent of a project cost administrative fee for work done on municipal roads. 63 Atty. Gen. 321.

Effective January 1, 2010, with respect to any public works or public construction project whose estimated cost exceeds $25,000, state prevailing wage rates must be paid to the employees of a local unit of government that enters into an intergovernmental agreement under this section to perform services for another local unit of government upon such a project. OAG 5−09.

Projects involving county highway contracts entered into by the county highway committee or the county highway commissioner under ss. 83.035 and 83.04 (1) are exempt from county competitive bidding requirements. OAG 5−09.

A county board in a county with a county executive cannot enact an ordinance precluding the highway commissioner from determining that the county highway department will perform any of the work on any joint county highway project under ss. 83.03 and 83.035 if a contracting local municipality requests that all of the work on the project be competitively bid and let to private companies. OAG 2−11.

**83.04 Highway construction by county; noncontract work; payments. (1)** All highway improvements made by the county highway committee shall be by contract, unless the committee determines that some other method would better serve the public interest. The manner of advertising for bids and the forms of bids, contracts and bonds shall be substantially those used by the department. In letting a contract the county highway committee acts for the county.

**(2)** If it is deemed inadvisable to let a contract for highway construction, the county highway committee may direct the county highway commissioner to proceed with the construction as noncontract work, and the commissioner may, under the supervision of the committee, employ and purchase the necessary labor and materials.

**(3)** During construction the work and materials shall be inspected by the county highway commissioner or by inspectors employed by the commissioner with the approval of the county highway committee. Upon the completion of any highway job by or for the county on the county aid system or for which county aid has been granted the work shall be inspected by the county highway commissioner, and if found in conformity with plans and specifications, the commissioner shall so find and notify the county highway committee and the county clerk thereof and that the improvement has been accepted.

**(4)** Upon contract construction final payment shall not be made until the work has been accepted as complete by the county highway commissioner. In case of noncontract work payment shall be made monthly upon verified, detailed, statements and payrolls prepared by the county highway commissioner and approved and allowed by the county highway committee, and all payments shall be made by orders on the county treasurer in the ordinary form signed by the chairperson of the county board and the county clerk, unless the county has adopted some different method of making disbursements, in which event it shall be according to such method and all orders shall be drawn upon and paid out of the fund provided for such construction. Said statements and payrolls shall be filed with the county clerk.

**(5)** When final payment has been made upon any highway improvement, any funds remaining in the county treasurer's hands which were provided by any subdivision of the county for that particular improvement, shall be placed together with the county's balance available for that job to the credit of such subdivision of the county, and shall be used to increase the funds available for the next construction job in said subdivision, and any such balance in the bridge fund may be transferred to the road fund or vice versa by the town or village board with the approval of the county highway committee.

**(6)** No order shall be drawn on the county road or bridge fund in excess of the funds available for the particular improvement for which drawn, without the authority of the county board or the county highway committee.

**History:** 1977 c. 29 s. 1654 (8) (c); 1983 a. 192 s. 303 (2); 1985 a. 223 s. 5; 1991 a. 316.

Projects involving county highway contracts entered into by the county highway committee or the county highway commissioner under ss. 83.035 and 83.04 (1) are exempt from county competitive bidding requirements. OAG 5−09.

**83.05 Improving streets over 18 feet wide. (1)** When a portion of the system of county aid highways in any city is to be improved, and the funds from the city and county are available therefor, the city may determine that the roadways shall be paved to a greater width than 18 feet. If it so decides, the city may determine the type of improvement, the width, and all other features of the construction, subject to the approval of the county highway committee. And said committee shall fix the amount per linear foot of the improvement to be paid by the county. The city shall then improve the street in the manner provided generally for making street improvements. The work shall be done under the supervision of the city, but subject to the inspection of the county highway commissioner.

**(2)** Upon the completion of the work the county's share of the cost shall be paid to the contractor as though the county had been an immediate party to the contract. Unless specifically authorized

by the county, the payment by the county shall not exceed the cost of 22 feet of the width of the pavement, as well as a portion of the costs of grading, draining, and appertaining structures. The balance of the expense of the improvement shall be borne by the city, and shall be provided in the manner in which expense of street improvement is ordinarily met. Assessments of benefits may be made by the city against abutting property in the manner provided where the improvement is done solely at the expense of the city, but such assessments of benefits shall not exceed the difference between the cost of the improvement and the amount contributed thereto by the county.

**(3)** The provisions of subs. (1) and (2) shall apply to villages and towns subject to the approval of the county board.

**History:** 1993 a. 246, 248.

**83.06 Maintenance of county aid highways.** All streets and highways improved with county aid under this chapter shall be maintained by the towns, cities and villages in which they lie but this provision shall not diminish or otherwise affect the duty of the county with respect to any street or highway which is a portion of the county trunk highway system, nor the powers of the county conferred by s. 83.03 (1) and (2) or s. 83.035.

**83.065 County road and bridge fund; tax levy.** The county board shall annually levy a tax of not more than 2 mills on the dollar, in addition to all other taxes, and the proceeds shall be known as the "County Road and Bridge Fund". Expenditures from said fund shall be made only for the purposes of constructing and maintaining highways and bridges under this chapter and for purchasing, operating, renting and repairing machinery, quarries and gravel pits used in such construction and maintenance.

**83.07 Acquisition of lands, quarries, gravel pits; relocation; eminent domain. (1)** The county highway committee or town board may acquire any lands or interest therein needed to carry out the provisions of this chapter. Whenever the county highway committee or town board is unable to acquire the same by purchase at a reasonable price such property may be acquired by condemnation under ch. 32.

**(1a)** The county highway committee or town board may purchase or accept donations of remnants of tracts or parcels of land remaining at the time or after it has acquired portions of the tracts or parcels by purchase or condemnation where in the judgment of the county highway committee or town board the acquisition of the remnant would assist in rendering just compensation to a landowner, a part of whose lands have been taken for highway purposes, and would serve to minimize the overall cost of the taking by the public.

**(2)** In case the county highway committee or town board deems it desirable to acquire any lands or the right to take stone, gravel, clay or other material, from private lands for use in the execution of the committee's or board's duty, or to acquire the right of access to any lands, or the right of drainage across any lands, the committee or board may purchase or condemn such lands or right and take title thereto in the name of the county or town, and the cost thereof shall be paid out of the highway improvement funds.

**(3)** When lands are acquired under this section to relocate or straighten any highway or to provide easier curves at highway intersections, and tracts not more than 2 acres in area remain separated from the main body of land from which they are acquired, the county highway committee or town board may, if it deems the acquisition of such minor tracts advisable or necessary to beautify the highway or to protect public travel, acquire such minor tracts in the name of the county or the town. Tracts in excess of 2 acres of like character may be acquired by agreement.

**(4)** In case the county highway committee or the town board is unable to acquire needed lands or rights by contract, such committee or board may acquire the same in the name of the county or town by eminent domain, as provided in ch. 32.

**History:** 1997 a. 253.

**83.08 Acquisition of lands and interest therein. (1)** (a) The county highway committee may acquire by gift, devise, purchase or condemnation any lands or interests in lands for the improvement, maintenance, relocation or change of any county aid or other highway or street or any bridge on a county aid or other highway or street that the county is empowered to improve or aid in improving or to maintain. The county highway committee may purchase or accept donations of remnants of tracts or parcels of land remaining at the time or after it has acquired portions of those tracts or parcels by purchase or condemnation where in the judgment of the committee the acquisition of the remnant would assist in rendering just compensation to a landowner, a part of whose lands have been taken for highway purposes, and would serve to minimize the overall cost of the taking by the public.

(b) Whenever the county highway committee considers it necessary to acquire any lands or interests in land for any purpose described in par. (a), it shall so order. The order or a separate map or plat shall show the old and new locations and the lands or interests required. The committee shall file a copy of the order and map with the county clerk or, in lieu of filing a copy of the order and map, may file or record a plat in accordance with s. 84.095. The committee shall attempt to obtain easements or title in fee simple by conveyance of the lands or interests required, at a price, including damages, considered reasonable by the committee. The instrument of conveyance shall name the county as grantee and shall be filed with the county clerk and recorded in the office of the register of deeds.

**(2)** If any of the needed lands or interests therein cannot be purchased expeditiously for a price deemed reasonable by the committee, the committee may acquire the same by condemnation under ch. 32.

**(3)** The cost of land and rights so acquired, including any damages allowed and other expenses connected therewith, shall be paid out of available improvement or maintenance funds.

**(4)** Subject to s. 84.09 (3) (c) and to the approval of the department, the county board is authorized and empowered to sell at public sale, or to sell at private sale for fair market value to an owner of adjacent property, property, owned by the county in fee for highway purposes, when the county board shall determine that such property is no longer necessary for the county's use for highway purposes. The funds derived from such sale shall be deposited in the county highway fund and the expense incurred in connection with the sale shall be paid from that fund. However, approval of the department is not required where county funds only have been used.

**History:** 1977 c. 29 s. 1654 (8) (c); 1985 a. 223 s. 5; 1997 a. 253, 282; 1999 a. 32; 2003 a. 212, 327.

Absent express language to the contrary, courts presume that the grantor of land to be used for roadways intended to convey only an easement. A deed using the term "right of way" should be construed as conveying an easement unless the instrument, considered as a whole, indicates that the parties intended the passage of fee title. Berger v. Town of New Denmark, 2012 WI App 26, 339 Wis. 2d 336, 810 N.W.2d 833, 11−1807.

**83.09 Emergency repairs of county trunk highways.** Whenever a flood or other casualty renders any county trunk highway dangerous for travel, the town chairperson may immediately close it and notify the county highway commissioner thereof, and the commissioner shall promptly make repairs necessary to render the highway safe for travel. If sufficient funds are not available in the county maintenance fund, the commissioner may, with the consent of the chairperson of the county board or of the county highway committee, make the necessary repairs, and the cost thereof shall be paid as soon as funds are available.

**History:** 1983 a. 192 s. 303 (2); 1989 a. 56 s. 258; 2003 a. 214.

**NOTE: 2003 Wis. Act 214, which affected this section, contains extensive explanatory notes.**

**83.11 Marking section and quarter section corners in highways.** Any county board may provide that section and quarter section corners in any highway constructed in whole or in part with county funds may be marked with suitable permanent monuments or markers; and the expense of putting in and maintaining such markers shall be paid out of the county road and bridge fund or other county fund as may be determined by the county board.

**83.12 Cattle passes.** As a part of any highway improvement or as a separate project under this chapter, cattle passes across highways may be constructed at places determined by the county highway committee to be necessary and practical.

**83.13 Guideboards.** The county board may erect and maintain guideboards on county aid and county trunk highways which are not part of the state trunk highway system, the cost to be paid out of such fund as the board shall direct.

**83.14 County aid on town and village initiative. (1)** Any town meeting or village board may vote a tax of not less than $500 to improve a designated portion of a county aid highway and may accept cash donations for such purposes, and when accepted subsequent proceedings shall be the same as if a tax of like amount had been voted. Highways in villages shall not be eligible to improvement under this section wherever the buildings fronting the highways average more than one to each 60 lineal feet of highway. The tax shall not exceed 2 mills on the dollar on the taxable property but every town and village may vote $500, and such tax shall be paid to the county treasurer when the county taxes are paid. If the total cost of the improvement approved by the town meeting or village board exceeds the amount which it is permitted by this subsection to raise by taxation in the current year, it may vote a tax of not to exceed the same amount for the succeeding year or years.

**(2)** When the tax has been voted the town or village board shall petition the county board at its next annual meeting to appropriate at least an equal amount as the county's share of the cost of the proposed improvement. The petition shall designate the highway to be improved and state the character of the improvement and the amount which has been voted therefor.

**(3)** The county board shall thereupon appropriate for the improvement a sum equal to or greater than the amount voted therefor by the town or village; and shall raise the same by tax on all the taxable property of the county.

**(4)** No county shall be required to appropriate in any year over $2,000 for work in any town or village.

**(5)** The improvement shall be performed, supervised and paid for and accepted in the same manner as other county aid work.

**(6)** Construction shall not begin until the funds to pay for the same are in the county treasury and the plans and specifications have been approved by the county highway committee. After any town has voted the tax such town may borrow money for such improvement in anticipation of the tax levy and the appropriation to be made by the county board, and pay the same into the county treasury as an advance, after which construction may proceed. The county shall reimburse the town for such advance when the necessary funds become available.

**(7)** Towns and villages may take the initiative in the improvement of county aid highways by issuing bonds and the funds produced by such bond issue shall be handled and expended as though raised by taxation. If the county has not appropriated a sum at least equal to the funds raised by the town or village or to the proceeds of the town or village bonds advanced to the county for such improvements, the town or village board may petition the county pursuant to sub. (2) for an amount equal to one−half of such funds or of the principal maturing on such bonds in each year and the county shall appropriate its share as provided in sub. (3), subject to the limitation in sub. (4), until the county has appropriated an amount equal to the amount raised by the town or village or to the proceeds of the bonds thus advanced. This procedure may also be used to repay funds borrowed and advanced by a town or village for such improvements, as provided in sub. (6).

**(8)** The county clerk shall, on or before January 1 of each year, file with the department a written statement setting forth the petitions granted by the county board and the improvements determined upon under s. 83.03, the location, character and contemplated cost of each improvement, and the amount to be paid by the county and town or village for making each improvement.

**History:** 1977 c. 29 s. 1654 (8) (c); 1977 c. 272; 1985 a. 223 s. 5.

**83.15 Aid by county for state line bridge or highway.** The county board of any county bounded in part by a river, or by a highway, either of which is also a state boundary line may aid any municipality of such county in the construction of a bridge across such river or any part thereof, or in the reconstruction of the highway including its bridges by an appropriation therefor not exceeding one−third of the cost of such bridge or of such highway.

**83.16 County may contract with foreign county.** The board of supervisors of any county in this state bordering on any stream or highway which is the boundary line between such county and a county in another state is authorized in conjunction with the board of supervisors of such adjoining county in such other state, to construct and maintain a bridge or bridges across such river at a place or places within the limits of such county or reconstruct such highway including its bridges as may be agreed upon by the respective boards of supervisors, whenever said board of supervisors deems it necessary, and to enter into a contract with such board of supervisors of the adjoining county of such other state for the construction, maintenance and repair of such bridges or highway.

**83.17 County may assume compensation liability; agreements with localities.** Whenever a county contributes funds to a highway project undertaken by a town, village or city in the county or a city, town or village has its highways maintained by the county with local funds, the county through its county highway committee may assume the liability under ch. 102 of the town, village or city to any employee on such project, and may by agreement with the governing body of the town, village or city provide for the amount the town, village or city shall pay to the county for the assumption of such liability. The action of the county highway committee shall remain in effect until the county board by resolution disapproves of the action.

**History:** 1975 c. 147 s. 54; 1979 c. 89.

**83.18 Entry on lands.** For constructing or maintaining any highway by the county, the county highway committee or commissioner shall possess all of the powers to acquire and enter lands conferred upon town boards by s. 82.03 (2) and (5).

**History:** 1985 a. 29 s. 3202 (56); 2003 a. 214.

**NOTE: 2003 Wis. Act 214, which affected this section, contains extensive explanatory notes.**

**83.19 Temporary highways and detours.** When any highway which is maintained or to be maintained by the county shall be practically impassable or be dangerous to travel or when it shall be deemed necessary on account of construction or repair work thereon or for other reasons to suspend travel upon any part of such highway, the county highway commissioner may lay out and open temporary highways for the accommodation of public travel through any lands, and the county highway commissioner shall possess the powers conferred by s. 82.35 upon town boards. Said powers shall be exercised by the county highway commissioner in like manner and the procedure shall be the same except that the contract and orders and claim for damages and other papers relating to the matter shall be filed with the county clerk, and claims for damages shall be acted upon by the county board in the manner provided by s. 893.80.

**History:** 1977 c. 285 s. 12; 1979 c. 323 s. 33; 1991 a. 316; 2003 a. 214.

**NOTE: 2003 Wis. Act 214, which affected this section, contains extensive explanatory notes.**

**83.20 Highways, lighting.** Any county may provide for lighting of improved highways maintained by the county or the construction of which has been aided by the county or state, and of bridges located thereon.

**83.42 Rustic roads system. (1)** PURPOSE. In order to create and preserve rustic and scenic roads for vehicular, bicycle, electric personal assistive mobility device, and pedestrian travel in unhurried, quiet and leisurely enjoyment; to protect and preserve recreational driving, culture, beauty, trees, vegetation and wildlife by establishing protective standards of rustic road design, access, speed, maintenance and identification, which will promote a continuous system of rustic roads and scenic easements for the public health and welfare; a state system of rustic roads is created.

**(2)** DEFINITIONS. In this section:

(a) "Board" means the rustic roads board in the department.

(b) "Municipality" means a city, village or town.

**(3)** DESIGNATION AS A RUSTIC ROAD. Any county highway committee or the governing body of any municipality may apply to the board for the designation of any highway under its jurisdiction as a rustic road. The board shall approve or deny the application for designation of a highway as a rustic road submitted under this subsection.

**(4)** WITHDRAWAL OF HIGHWAYS FROM RUSTIC ROADS SYSTEM. After holding a public hearing, any county highway committee, or the governing body of any municipality, which has jurisdiction over a rustic road may apply to the board for the removal of a highway from the rustic roads system. The board shall approve or deny the application for removal of the highway from its designation as a rustic road.

**(5)** JOINT JURISDICTION OF HIGHWAYS. Highways under the joint jurisdiction of 2 or more municipalities or a municipality and a county or 2 or more counties may not be designated rustic roads or be withdrawn from the rustic roads system until after approval by:

(a) The governing bodies of all affected municipalities; and

(b) The county highway committees of all affected counties; and

(c) The board.

**(7)** LOCAL AUTHORITY. The county highway committees, the municipalities and the counties shall have the same authority over rustic roads as they possess over other highways under their jurisdiction except as otherwise provided in this section.

**(8)** AIDS. State aids for rustic roads shall be determined in accordance with the general transportation aids provisions of s. 86.30.

**(8m)** RUSTIC ROAD MARKING SIGNS; STATE PAYMENT. The department shall pay the costs of furnishing and installing rustic roads marking signs on officially designated rustic roads from the appropriation under s. 20.395 (3) (eq).

**(9)** RULES AND STANDARDS. The board shall promulgate rules and establish standards for the maintenance, identification, construction, use and preservation of the rustic roads system.

**History:** 1973 c. 142; 1979 c. 100, 154, 355; 1981 c. 20 s. 2202 (51) (c); 1983 a. 55; 1985 a. 223 s. 5; 1991 a. 39; 1995 a. 338; 2001 a. 90.

**Cross−reference:** See also ch. Trans−RR 1, Wis. adm. code.