



**ASSEMBLY SUBSTITUTE AMENDMENT 1,  
TO ASSEMBLY BILL 422**

February 6, 2024 - Offered by Representative MURPHY.

1 **AN ACT** *to create* 86.074 of the statutes; **relating to:** highway setback areas.

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This substitute amendment makes the following changes to the bill:

1. Modifies the definition of “highway setback area” and “structure” and adds a definition of “improvement.”
  2. Modifies the definition of “substantial evidence” to include facts and information related to “the preservation of public interest or investment in state trunk or connecting highways.”
  3. Applies the limitation on the size of highway setbacks to only those setback areas established after the bill’s effective date.
  4. Specifies that the Department of Transportation may record a renewal of a special exception waiver.
  5. Requires DOT to record a special exception waiver.
  6. Limits the special exception process to property owners.
  7. Allows a property owner to appeal a denial of a special exception to the Division of Hearings and Appeals.
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***The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:***

2 **SECTION 1.** 86.074 of the statutes is created to read:

1           **86.074 Highway setback areas. (1)** In this section:

2           (a) “Highway setback area” means an area abutting a highway in which the  
3 construction or placement of structures and improvements is prohibited without a  
4 special exception permit issued by the department consistent with the terms of sub.  
5 (2).

6           (b) “Improvement” means any permanent addition to or betterment of real  
7 property that involves the expenditure of labor or money to make the property more  
8 useful or valuable. “Improvement” includes parking lots, parallel driveways, surface  
9 or sub-surface utility structures, storm water facilities, loading docks, in-ground  
10 swimming pools, wells, septic systems, retaining walls, signs, buildings, building  
11 appendages such as porches, and drainage facilities. “Improvement” does not  
12 include terraces, patios, landscaping, or open fences.

13           (c) “Special exception” means a special exception permit or waiver of  
14 requirement relating to placement of a structure or improvement in a highway  
15 setback area.

16           (d) “Structure” includes a temporary or permanent addition to or betterment  
17 of real property that is not portable in nature, but that adversely affects the safety  
18 of entrance upon or departure from state trunk or connecting highways or the  
19 preservation of public interest and investment in those highways, as determined by  
20 the department in its reasonable discretion. “Structure” does not include items such  
21 as portable swing sets, movable lawn sheds without pads or footings, above ground  
22 swimming pools without decks, sidewalks, bike paths, or natural features, including  
23 landscaping or berms.

24           (e) “Substantial evidence” means facts and information, other than merely  
25 personal preferences or speculation, directly pertaining to public safety or the

1 preservation of public interest and investment in state trunk or connecting  
2 highways, and directly pertaining to or the requirements and conditions an owner  
3 must meet to obtain a special exception and that reasonable persons would accept  
4 in support of a conclusion.

5 (2) All of the following apply to any highway setback area maintained by the  
6 department:

7 (a) A highway setback area established after the effective date of this  
8 paragraph .... [LRB inserts date], shall extend not more than 50 feet from the  
9 right-of-way line of the highway.

10 (b) Any setback requirement imposed by the department under this section  
11 may regulate only structures and improvements that adversely affect the safety of  
12 entrance upon or departure from state trunk or connecting highways or the  
13 preservation of public interest and investment in those highways, as determined by  
14 the department in its reasonable discretion.

15 (c) Notwithstanding par. (b), the department may prohibit the placement of any  
16 structure or improvement in the highway setback area only if the structure or  
17 improvement adversely affects the safety of the entrance upon or departure from the  
18 state trunk or connecting highways, or the preservation of the public interest and  
19 investment in those highways, as determined by the department in its reasonable  
20 discretion. The department may order the removal, at owner's expense, of any  
21 structure or improvement located in a highway setback area unless the owner  
22 demonstrates that the structure or improvement was placed prior to establishing the  
23 highway setback area or a special exception is granted for the structure or  
24 improvement.

1 (d) The department shall establish a special exception process to allow an  
2 owner to obtain a special exception to the requirements of par. (b) or (c).

3 (e) The requirements imposed by the department under this section relating  
4 to the placement of a structure or improvement in a highway setback area shall  
5 include a procedure by which an owner of the property subject to a highway setback  
6 area may request a special exception to a requirement. The special exception  
7 procedure under this paragraph applies to a person affected by a highway setback  
8 area, whenever the highway setback area requirement was established by the  
9 department. The procedure shall adhere to and include all of the following:

10 1. The department may not deny a special exception request due to a risk to  
11 public safety or to the preservation of the public interest and investment in the  
12 highway unless the department finds that substantial evidence demonstrates the  
13 risk.

14 2. The department may impose on an owner only the requirements and  
15 conditions consistent with par. (b) or (c). Any requirement or condition imposed  
16 under this subdivision shall be related to the purpose of the highway setback area,  
17 based on substantial evidence, reasonable, and, to the extent practicable,  
18 measurable. The department shall require as a condition of a special exception that  
19 the owner waive any claim or right to compensation related to any structure or  
20 improvement constructed or placed in the highway setback area if any portion of the  
21 highway setback area is used for highway purposes within 20 years of the date of  
22 issuance of the special exception. If the department has any projects planned within  
23 the improvement program or has documented future plans for corridor or spot  
24 location improvement, the department may record a renewal of a waiver under this  
25 subdivision one time for up to another 20 years from the date of expiration of the

1 original special exception. The department shall record a document notarized with  
2 the owner and department representative's signature in the property subject to the  
3 special exception's chain of title setting forth the owner's waiver under this  
4 subdivision for the period set forth in this subdivision. The recorded document shall  
5 state that the waiver under this subdivision waives any right to compensation,  
6 relocation assistance, or damages associated with the department's acquisition of the  
7 structure or improvement for a transportation improvement, including any damage  
8 to property outside the setback caused by removal of the structure or improvement  
9 in the setback that was allowed by special exception and that the waiver is binding  
10 upon future owners of the property and runs with the land. All costs of recording  
11 shall be paid by the owner. The department may not pay damages for any structure  
12 or improvement that is subject to a valid special exception and waiver under this  
13 subdivision.

14 3. If an owner demonstrates by substantial evidence that the application and  
15 all requirements and conditions imposed under subd. 2. are or shall be satisfied, the  
16 department shall grant the special exception.

17 4. An owner shall file an application for a special exception in the regional office  
18 of the department in which the property is located. If a regional office of the  
19 department denies a request for a special exception or revokes a special exception,  
20 the department shall, upon written request by the owner within 30 days after the  
21 denial, review the decision of the regional office. After review, the department may  
22 reverse, confirm, or modify the decision of the regional office. If the department  
23 confirms or modifies the decision of the regional office, the department shall notify  
24 the owner of the action and the grounds for the action and shall also notify the owner  
25 of a right to a hearing before the division of hearings and appeals. Upon written

1 request by the owner within 30 days after the notice is mailed to the owner, the  
2 division of hearings and appeals shall schedule a hearing to be held within 60 days  
3 after receipt of the request.

4 (f) The department shall provide accurate and current information about the  
5 special exception process on the department's website.

6 (END)