

CHAPTER 86.

MISCELLANEOUS HIGHWAY PROVISIONS.

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86.01 Materials left in highway; penalty. It shall be unlawful for any highway superintendent or any other person to leave any materials in the traveled portion of any highway not closed to public travel in piles or rows after sunset without placing within one hour after sunset upon such piles or at the end of such rows a lighted lantern containing sufficient oil or fuel to keep the same burning until daylight. Any person violating any of the provisions of this section shall be liable to a fine of not less than \$10 nor more than \$100. [1943 c. 334 s. 138]

Note: A fence existing across a highway for the purpose of impeding travel thereon clearly is an obstruction, not an encroachment. Since no statutory duty is imposed by law upon either the superintendent of highways or the town board in his absence, summarily to remove a fence obstruction, mandamus does not lie to compel the town board to remove it. State v. Maresch, 225 W 225, 273 NW 225.

86.02 Injury to highway. Any person who shall injure any highway by obstructing or diverting any creek or watercourse or sluiceway, or by dragging logs or timber thereon, or by any other act, shall be liable in treble damages, to be recovered by the political division chargeable with the maintenance of highway injured, and the amount recovered shall be credited to the highway maintenance fund. [1943 c. 334 s. 139]

Note: This section, so far as imposing treble damages in case of injury to a highway, has no application where the act resulting in such damages was expressly authorized by the legislature. Where damages are caused by the manner in which the dam was constructed, maintained or operated, the basis of liability of the proprietor is negligence, and there is no absolute liability. In an action by a town for damages caused to bridges when the waters impounded by a dam, constructed with the consent of the legislature, broke through an embankment of the dam following a rainfall, the issue was as to the proper maintenance and operation of the dam, and the basis of liability of the proprietor was negligence. Where the issue was as to negligence in the maintenance and operation of his dam, the character of the rainfall that preceded the break in the embankment was merely one of the circumstances, as to foreseeability, bearing on such issue, as to which issue the plaintiff had the burden of proof. Wausaukee v. Lauerman, 240 W 320, 3 NW (2d) 362.

86.03 Trees on and adjacent to highway. (1) **REMOVAL OF FALLEN TREES.** If any tree falls from adjacent land into any highway, the owner or occupant of the land shall immediately remove the tree from the highway. It shall be the duty of every highway patrolman, street commissioner, or other officer in charge of the maintenance of streets or highways, to remove from any highway any fallen tree or trees therein.

(2) **OWNERSHIP.** All trees on land over which any highway is laid out shall be for the use of the owner of the land or person otherwise entitled thereto, except trees that have been acquired by and for the public in the acquisition of the highway right of way and except such trees within the highway as may be requisite to make or repair the highways on the land or within one mile of the same; but no trees reserved for shade or ornament, unless acquired by the public, shall be used for such purpose.

(3) **PLANTING TREES AND SHRUBS IN HIGHWAY.** Any person owning or occupying land adjoining any highway may, with the approval of the public authority maintaining the highway, plant, cultivate and maintain trees, shrubs or hedges on the side of the highway contiguous to and within 10 feet of his land. Such trees, shrubs or hedges shall be cut or removed only by the owner or occupant of the abutting land or by the public authority having control of the highway.

(4) **CUTTING OR INJURING TREES ON HIGHWAY.** No person shall cut down, break, girdle, bruise the bark or in any other manner injure, or allow any animal under his control to injure, any public or private trees, shrubs or hedges growing within the highway, except as the owner thereof or the public authority maintaining the highway may cut down, trim and remove trees, shrubs and hedges for the purpose of and conducing to the benefit and improvement of the owner's land or the highway facility.

(5) **FINES.** Any person violating any of the provisions of this section shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by a fine not to exceed \$25 for each tree or shrub damaged, felled or destroyed. [1943 c. 334 s. 140, 141]

86.04 Highway encroachments. (1) **ORDER FOR REMOVAL.** If any highway right of way shall be encroached upon, under or over by any fence, stand, building or any other structure or object, and including encroachments caused by acquisition by the public of new or increased widths of highway right of way, the state highway commission (in case of a state trunk highway), the county highway committee (in case of a county trunk highway), or the city council, village or town board (in case of a street or highway maintained by or under the authority of any city, village or town) may order the occupant or owner of the land through or by which such highway runs, and to which the encroachment shall be appurtenant, to remove the same beyond the limits of such highway within 30 days. The order shall specify the extent and location of the encroachment with reasonable certainty, and shall be served upon such occupant or owner.

(2) **NONREMOVAL.** If the occupant or owner upon whom the order is served shall not deny such encroachment, as provided in subsection (3), and the encroachment is not removed within 30 days after the service of such order, the occupant or owner shall forfeit \$1 for every day after the expiration of that time during which such encroachment shall continue. An action to recover such penalty may be brought in any court of record or justice court in the county. In all cases where a judgment is rendered, the judgment shall order that the occupant or owner remove the encroachment within the time fixed by the judgment, and if he fails to obey the order, the state highway commission, county highway committee, or city council, village or town board, as the case may be, may remove the encroachment and recover from the occupant or owner the cost thereof.

(3) **DENIAL OF ENCROACHMENT, PROCEDURE.** (a) If the occupant or owner shall, within 30 days after the service of such order on him, deny such encroachment in writing and deliver such denial to the state highway commission, county highway committee, or city council, village or town board, as the case may be, the commission, committee, council or board shall apply to a justice of the peace of the county or county judge of the county for a summons which he shall issue and direct to any constable or police officer of the county commanding him to summon a jury of 6 disinterested freeholders thereof to meet at a stated time, not less than 4 days after the issuing thereof, at the office of such justice or judge to try the issue. And the constable or police officer to whom such summons shall be directed shall give at least 3 days' notice to the state highway commission, county highway committee, or city council, village or town board, as the case may be, and to the occupant or owner of the land of the time and place such jurors are to meet.

(b) At the time and place specified in the summons the jury shall be sworn by such justice or judge well and truly to inquire whether any such encroachment has been made as described in the order, and if so by whom made; and in case any person summoned as a juror shall not appear or shall be incompetent his place may be supplied by a talesman as provided by section 302.10. The issue raised by such order and the written denial thereof shall be docketed and tried before such justice or judge in the same manner as in cases of personal actions of trespass, and the commission, committee, council or board shall be the plaintiff and said occupant or owner shall be the defendant; the jury may, in the discretion of the justice or judge and in the presence of an officer appointed by him, view the premises. After the question has been submitted to the jury they shall be kept together in charge of an officer until they agree or are discharged; if they fail to agree they may be discharged and a new trial had in like manner until a jury shall agree upon a verdict.

(c) If the jury find that such encroachment exists their verdict shall be for the plaintiff and judgment shall be entered accordingly. And the occupant or owner of the land, whether such encroachment shall have been made by him or by any former occupant or owner, shall remove the encroachment within 30 days after the entry of such judgment under forfeiture of \$1 for each day after the expiration of that time during which such encroachment shall continue. If such occupant or owner shall not so remove the encroachment the plaintiff may remove the same and may recover of him the expense of such removal.

(d) If the jury find that any such encroachment has been made the occupant or owner shall pay the costs and the justice or judge shall tax the costs thereof, including jurors', witnesses', and constables' fees and the expense of viewing the premises, if a view has

been had, and enter the same in the judgment in favor of the plaintiff and against the defendant; the justice, constable, jurors and witnesses shall be entitled to the same fees as in other cases in justice court. The judgment may be enforced as in civil cases.

(e) If the jury find that no encroachment has been made their verdict shall be for the defendant, and judgment shall be entered in his favor for costs. Either party may appeal as in civil actions to the circuit court of the county from the judgment, and the case shall be tried as an original action brought in circuit court.

(f) Upon the entry of a final judgment a copy thereof shall be filed in the office of the plaintiff and recorded in the highway record book. [1939 c. 519; 1943 c. 334 s. 142 to 144; 43.08 (2)]

Note: Where, in an action under 269.56, for a declaratory judgment determining the rights of the state and the defendants in lands traversed by a state trunk highway, there was no dispute as to the location of the buildings which were alleged to encroach on the highway, and the only litigated question, determined in favor of the state, was as to the title to the land on which it was alleged the buildings encroached, the trial court had jurisdiction to order the defendants to remove the encroaching buildings, within the rule that a municipality may maintain an action in equity to compel

the removal of an encroachment where the title to land is in question notwithstanding that §6.04 prescribes a procedure for causing encroachments to be removed. State v. Jewell, 250 W 165, 26 NW (2d) 825, 28 NW (2d) 314.

This section, as amended by ch. 519, Laws 1939, does not vest authority in highway commission or various municipalities in relation to roads with respect to which jurisdiction is vested in these respective bodies by said chapter to prohibit the mere use of nontraveled portion of highway as encroachment. 28 Atty. Gen. 644.

86.05 [Renumbered section 86.04 (2) by 1943 c. 334 s. 143]

86.05 Entrances to highways restored. Except in counties having a population of 500,000 or more, whenever it is necessary, in making any highway improvement to cut or fill or otherwise grade the highway in front of any entrance to abutting premises, a suitable entrance to the premises shall be constructed as a part of the improvements; and if the premises are divided by the highway, then one such entrance shall be constructed on each side of the highway. Thereafter each entrance shall be maintained by the owner of the premises. During the time the highway is under construction, the state, county, city, village or town shall not be responsible for any damage that may be sustained through the absence of an entrance to any such premises. [1943 c. 334 s. 145]

Note: Town is not required to build necessary bridges or culverts along highway on right of way to enable abutting owners to

gain access on them to center of highway, except one such bridge or culvert as provided in this section. 25 Atty. Gen. 720.

86.06 [Renumbered section 86.04 (3) by 1943 c. 334 s. 144]

86.06 Highways closed to travel; penalties. (1) Whenever any highway is impassable or unsafe for travel or during the construction or repair of any such highway and until it is ready for traffic the authorities in charge of the maintenance or construction thereof may keep it closed by maintaining barriers at each end of the closed portion. The barriers shall be of such material and construction and so placed as to indicate that the highway is closed and shall be lighted at night.

(2) Any person who, without lawful authority, removes, takes down, alters the position of, destroys, passes over or beyond any barrier so erected, or travels with any vehicle upon any portion of a highway closed by barriers as in this section provided, or walks or travels in any manner upon the materials placed thereon as part of the repair or construction work, shall be liable to a fine of not less than \$10 nor more than \$100, or to imprisonment not less than 10 nor more than 60 days, or both, and in addition thereto shall be liable for all damages done to the highway, said damages to be recovered by such governmental agency. [1943 c. 334 s. 146]

Note: The official notice, required by §2.04 (6), Stats. 1929, that a road is closed is to protect the traveling public, and one disregarding the notice is contributorily negligent as a matter of law, precluding recovery from either the county or the highway construction contractor for injuries.

Fenske v. Kramp C. Co., 207 W 397, 241 NW 349.

It is not duty of county highway commissioner to maintain barriers upon portion of highway no longer used after relocation of federal highway. 26 Atty. Gen. 428.

86.07 to 86.09 [Renumbered section 86.03 by 1943 c. 334 s. 140]

86.07 Depositing rubbish or digging in highways or using bridges for advertising. (1) Any person who throws, leaves or deposits any weeds, sod, brush or other waste or rubbish in any highway shall be liable to a forfeiture of not less than \$5 nor more than \$25; and every person who shall draw, paint, print or paste upon any culvert, bridge or guard rail on any highway shall be liable to a like forfeiture.

(2) No person shall make any excavation or fill or install any culvert or make any other alteration in any highway or in any manner disturb any highway or bridge without a permit therefor from the highway authority maintaining the highway. Such permit shall contain the statement and be subject to the condition that the work shall be constructed subject to such rules and regulations as may be prescribed by said authority and be per-

formed and completed to its satisfaction, and in the case of temporary alterations that the highway or bridge shall be restored to its former condition, and that the permittee shall be liable to the town or county or state, as the case may be, for all damages which occur during the progress of said work or as a result thereof. Nothing herein shall abridge the right of the state highway commission or the county board or its highway committee to make such additional rules, regulations and conditions not inconsistent herewith as may be deemed necessary and proper for the preservation of highways, or for the safety of the public, and to make the granting of any such permit conditional thereon. If any culvert is installed or any excavation or fill or any other alteration is made in violation of the provisions of this subsection, the highway may be restored to its former condition by the highway authority in charge of the maintenance thereof; and any person who violates this subsection shall be punished by a fine of not less than \$5 nor more than \$100, or by imprisonment not exceeding 6 months, or both.

(3) The prohibitions in this section do not apply to highway authorities in the performance of their duties. [1943 c. 334 s. 147, 147a; 1945 c. 320]

86.08 Dust-free surfacing at licensed dairy plants. (1) The duly constituted authority charged with the maintenance of any highway not having a dust-free surface, shall cause the main traveled portion thereof within 400 feet of any licensed dairy plant to be rendered dust-free by palliative treatment or an improved surface approved by the state highway commission. The cost of such treatment or surface shall be paid from the funds for maintenance or improvement of highways which shall be made available by the division of government responsible for the highway.

(2) If such treatment or surface is not applied by the division of government responsible on or before June 1 of any year, the county shall cause the work to be done. It shall keep an accurate account of the cost of such work and the county clerk shall, on or before November 1 of each year, certify to the state highway commission the cost of such work. The amount so certified shall be credited to the county in its allotment and deducted from the allotment to the division of government responsible. [1937 c. 357; 43.08 (2); 1941 c. 134; 1943 c. 334 s. 148; 1947 c. 429]

86.09 Access to cemetery preserved. In all cases where the paving, improvement, change of grade or any other change in the condition of any street or highway in this state shall operate to cut off, impede or obstruct the access or approach from such highway to a cemetery, it shall be the duty of the local or state authorities in charge of such paving, improvement or change to include in such work provisions for and to effect such grading and improvement of the access and approach to such cemetery as shall be necessary to preserve such access or approach in an equal degree of usability. And whenever in any city, village or town such paving, improvement or change of grade or condition heretofore made has operated so as to cut off, impede or obstruct the access or approach from such highway to a cemetery, it shall be the duty of the council or board of such city, village or town upon the request of any person to restore such access or approach to its former condition of usefulness, and to provide for such work in the same way that street or highway improvements are provided. [1943 c. 334 s. 149]

86.10 [Repealed by 1943 c. 334 s. 150]

86.10 Salvage in highway construction. Materials removed from a highway incident to its improvement or maintenance which are suitable for re-use or have a market value, and which are not used in or disposed of under the contract for the work, shall become the property of the duly constituted authority maintaining the highway from which the material was removed and may be used or disposed of by such authority in the manner as in its judgment is for the best interest of the public, and any money received for such material shall be paid into the maintenance fund. [1943 c. 334 s. 151]

Note: 87.16, Stats. 1937 (86.10, Stats. 1943) highways. *Carpenter v. Town of Spring* does not apply to bridges on discontinued Green, 231 W 72, 285 NW 409.

86.105 Snow removal in private driveways. The governing body of any county, town, city or village may enter into contracts to remove snow from private roads and driveways. [1947 c. 262]

86.106 Private road work by municipalities and counties. Any town, city or village, by its governing body, may enter into contracts to build, grade, drain, surface and gravel private roads and driveways. Any county, by its governing body, may enter into agreements with a municipality to perform for it any such work. [1947 c. 457]

86.11 [Renumbered section 86.03 by 1943 c. 334 s. 140]

86.11 Highways; railroad crossings; grade separation. Whenever any highway crosses a railroad at grade and the town, village or county board or the city council or city commissioners other than in a city of the first class, as the case may be, shall deem it for

the best interest of the public that said highway and railroad shall cross at separate grades, and when an agreement can be made between such board and the railroad company as to the manner of constructing of such separated grade crossing and doing the necessary work they may contract therefor; and such board shall after entering into such contract levy a tax sufficient to raise the money required to carry out such contract on its part, which tax shall be collected at the time and in the manner as other taxes are, and when collected shall be set aside as a special fund and used for said purpose. The plans for such grade separation shall have the approval of the state highway engineer before the contract shall be binding or the change shall be made. [1943 c. 334 s. 152]

86.12 [Renumbered section 61.66 by 1943 c. 334 s. 7]

86.12 Highway railroad grade crossings; construction and repair. It shall be the duty of all steam railroad companies owning or operating tracks crossing streets or highways at grade to keep the surface of the crossings between the tracks and rails and extending four feet on either side of the outside rails, in good condition and repair for highway travel; the common council, the village board, or town board of the municipality in which the crossing is located, may by resolution require any such railroad company to pave, plank, repair, change or otherwise improve such crossings, as the needs require, and the clerk of such city, village or town shall cause to be served upon the local agent of such railroad company a copy of such resolution; and if the railroad company shall fail for thirty days thereafter to comply with such resolution, the city, village or town may pave, plank, repair, change or otherwise improve such crossing as designated by said resolution, and may recover the reasonable cost thereof from the railroad company in the manner provided in section 66.22. The duty imposed upon railroad companies, and the remedy given by this section, shall be in addition to other duties and remedies, and shall not be construed to repeal any other duties or remedies. [1943 c. 336 s. 153]

86.13 [Renumbered section 81.35 by 1943 c. 334 s. 78]

86.13 Railroads to maintain highway crossings. (1) When any street or highway crosses any railroad track at grade, the company owning or operating the railroad shall grade, construct and maintain in good and safe condition for public travel the portion of such street or highway extending across said track. When such street or highway shall be or is about to be paved, surfaced or otherwise improved, the railway company shall improve, pave or surface such crossing between the tracks and rails and extending 4 feet beyond the outside rails on its right of way in substantially the same manner as the adjacent highway and with substantially the same materials, but this provision applies in cities only when the work is under chapter 83 or 84. This section shall not restrict the application of section 66.21 relating to special assessments against railroads for street improvements.

(2) When the improvement of the portion of a street or highway adjacent to a railroad crossing has been decided upon, notice thereof may be given to the railway company. Unless the company, within 30 days after receipt of such notice, informs the public board, committee or officer in charge of such improvement that it will do the improvement work at the crossing, the company shall be deemed to have elected to have the work done by and under the direction of the highway authorities in charge of the adjacent improvement, and to pay the cost thereof as in case of failure to improve the crossing as required by law.

(3) When any company fails to grade, construct, pave, surface or otherwise improve or maintain in good and safe condition for public travel as required by this section any street or highway crossing after having been notified so to do by the officer in charge thereof or of the highway improvement for 30 days after such notification, the highway authorities may grade, construct, pave, surface, improve or repair the street or highway across the railroad right of way, and the cost shall be paid by the company to and may be collected by that unit of government out of whose treasury the original cost of the work was disbursed.

(4) The notice to the company shall be in writing and shall specify with reasonable certainty the work to be done by the company and may be served on any station agent of the company in this state. But failure to give such notice shall not prevent a recovery from the company of such sum as may be equitably due for the performance of a duty imposed by this section upon the company. [1939 c. 249; 1943 c. 334 s. 154]

86.14 [Renumbered 81.36 by 1943 c. 79]

86.14 Strength of bridges. (1) After July 1, 1943, no bridge or culvert shall be constructed in any highway unless it shall be designed to have sufficient strength to carry at least 15 ton truck loading in accordance with standard specifications covering design for structures as adopted by the state highway commission and in force at the time of design. Repairs to any bridge or culvert shall be of substantial character, strengthening same as much as practical and leave such bridge or culvert in condition to safely carry the load for which it was originally designed.

(2) Any person who subjects any bridge or culvert to a load in excess of maximum limitations on weight of vehicles on highways imposed by law or regulations thereunder or limitation as to gross weight of vehicles as posted on any such bridge or culvert shall be liable for double the amount of damages that may be caused thereby, but there shall be no recovery for any injury to himself or to the property in his keeping.

(3) Every person who wilfully injures any highway structure shall be liable for treble damages to the subdivision of the state chargeable with the maintenance or repair of such structure. [1943 c. 334 s. 155]

Note: Liability to state of all persons who participate in subjecting bridge to excessive load is absolute, irrespective of liability of defendants as among themselves. State v. Yellow B. & T. Co., 211 W 391, 247 NW 310.

86.15 Donations of highway aid to adjoining municipalities. (1) Any town, city or village to which is or has been bequeathed or donated money or other property for the construction of a proposed highway or the improvement of an existing highway, either or both of the terminals or any part of which highway are outside the limits of such town, city or village, may accept such bequest or donation, and with the consent of the councils of the cities, the boards of the towns and villages and the boards or other bodies in control of any state lands, through or into which such proposed highway may be constructed or such existing highway may be improved, which permission said councils and boards are hereby authorized to grant, may enter such towns, cities, villages, and state land, and may do all other things necessary for the purpose of carrying out the terms and conditions of such bequest or donation.

(2) Any city, of the fourth class, however organized, may appropriate a sum not to exceed one-fourth of one mill on each dollar of the assessed valuation of such city, according to the last preceding assessment therein, for the purpose of aiding any adjoining town, city or village in the construction or improvement of any highway or part thereof in accordance with the terms and conditions of any bequest or donation to such adjoining town, city or village, and any part of such moneys so appropriated may be expended within or without the corporate limits of such city. [1943 c. 334 s. 156]

86.16 Electric lines on highways; place of poles; penalty. (1) Any person, firm or corporation including any corporation licensed under chapter 226 may, with the written consent of the town board, but subject to the approval of the state highway commission, construct and operate telegraph, telephone or electric lines, or pipes or pipe lines for the purpose of transmitting messages, heat, light or power along, across or within the limits of any highway.

(2) All poles used in the construction of such lines shall be set in such manner as not to interfere with the use of such highway by the public, nor with the use of the adjoining land by the owner thereof; and all pole lines shall hereafter be constructed so as to meet the requirements of the Wisconsin state electrical code.

(3) No tree shall be cut, trimmed or the branches thereof cut or broken in the construction or maintenance of any such line without the consent of the owner of the tree.

(4) Any person erecting any telephone, telegraph, electric light or other pole or stringing any telephone, telegraph, electric light or other wire, or constructing any pipes or pipe lines in violation of the provisions of this section shall forfeit a sum not less than \$10 nor more than \$50.

(5) Any person, firm or corporation whose written application for permission to construct such lines within the limits of any highway of any town has been refused, or when such application shall have been on file with the town clerk for 20 days and no action shall have been taken thereon, such applicant may file with such town clerk a notice of appeal to the state highway commission. The town clerk shall thereupon make return of all the papers and action of the board to the state highway commission, and such commission shall proceed to hear and try and determine such appeal on 10 days' notice to the town board, and the applicant. The order entered by the commission shall be final. [1943 c. 334 s. 157; 1947 c. 302, 327]

Note: Official authorization of construction and maintenance of electric power lines along highways does not grant rights in the nature of indeterminate permits in towns. South Shore U. Co. v. Railroad Commission, 207 W 95, 240 NW 784.

A city having annexed territory, including a street in a town after a public utility corporation had installed, at considerable cost and without objection by the town, electric cables and conduits in compliance with proper engineering standards under the street, following a written application to the town board for a permit therefor with the verbal consent of the town chairman accompanied by the statement that consent in writing was not necessary, is estopped to deny the lawful

presence thereof and the city on annexation of the territory obtained no greater rights than the town would have had. Milwaukee E. R. & L. Co. v. Milwaukee, 209 W 663, 245 NW 860.

Where a high voltage line located 12 feet beyond the limits of a highway had a clearance of 17 feet, there was no violation of the electric code or of 86.16, Stats. 1933, so as to impose liability on the power company for the death by electrocution of an employe of a telephone company which occurred when telephone wires came in contact with the high voltage wire. Nicolai v. Wisconsin Power & Light Co. 227 W 83, 277 NW 674.

Corporations within 180.17 are given right to occupy highways and as to such corpora-

tions permits granted by town or by highway commission are police power regulations only and do not confer franchise rights. Permit granted by town board to any other person or corporation carries with it franchise rights and granting of such permits is legislative function in discretion of town board. In such cases highway commission has power to grant permit if town board refuses to do so. 19 Atty. Gen. 378.

Appeal by corporation to highway commission from determination of town board under (5) need not be determined unless showing is made that certificate has been granted by public service commission. 20 Atty. Gen. 1068.

Under (1) permit from town board is condition precedent to issuance of construction of transmission line orders by highway commission, and such town board permit and approval by highway commission are required as to all classes of highways. 28 Atty. Gen. 126.

As town permit is condition precedent to highway commission issuing transmission line order, applicant for such order to commission should furnish commission with best available evidence as to terms of permit issued by town board. If such permit is conditioned, application should show that conditions have been complied with. 29 Atty. Gen. 260.

86.17 Taking water from highway streams. The general public shall have the right to use and take water from any spring, creek or running water that may be found running in or across the limits of any public highway, provided that this section shall not interfere with the tunneling or piping of water for the purpose of draining or improving lands on either side of such highway. [1943 c. 334 s. 158]

86.18 Milwaukee county highways; location, alteration, maintenance. (1) The county board of any county having a population of 250,000 or more, shall have power and authority to acquire, establish, lay out, relocate, widen, enlarge, extend, pave, repave, improve and maintain state and county trunk highways therein, and when requested by resolution adopted by the governing body of any municipality situated therein, any other highway located in such municipality; to construct and lay water pipes, sewers, curbs, gutters and all other public facilities in such highways; to make assessments of benefits and damages, levy assessments, and issue assessment certificates and bonds in the making of and paying for said improvement to the same extent as is given to cities on the same subject matter.

(2) In acquiring property for any purpose covered by subsection (1) the county board shall proceed under the provisions of chapter 32, except that the board shall determine the necessity of the taking, and the county highway commissioner shall perform all the duties of the commissioners in making awards and appraisals under sections 32.08 to 32.10.

(3) Any party to the condemnation proceedings may appeal from the award of the county highway commissioner in the manner provided for appeals from awards of commissioners in chapter 32 and such appeal shall be heard and delivered as are appeals in said chapter.

(4) The county highway commissioner shall have all the powers now given to the city board of public works in making assessments of benefits and damages in highway improvements, and the same proceedings shall be had and taken after his report is filed with the county clerk as by chapter 62 is had and taken in the report of such board of public works in city assessments. Notices of both the preliminary and final reports shall be published for two successive weeks in the official county paper, and the date of hearing in each case shall not be earlier than five days after the last publication. Appeals from the final determination of said highway commissioner may be had, and shall thereafter be heard as provided in section 62.16 and such remedy shall be exclusive. [1943 c. 334 s. 159]

86.19 Highways, signs, regulations, prohibition. (1) No sign shall be placed within the limits of any street or highway except such as are necessary for the guidance or warning of traffic or as provided by section 66.45. The authorities charged with the maintenance of streets or highways shall cause the removal therefrom and the disposal of all other signs.

(2) The state highway commission shall prescribe regulations with respect to the erection of signs on public highways. Such regulations shall be published in the official state paper and shall have the full force of law within 30 days after such publication. No advertising sign shall use prominently any words, or combination of words, commonly used for the guidance or warning of travel, nor shall any advertising sign be erected or be permitted to remain in any place or manner so as to be a cause of danger to travel on the highways, either by reason of causing an obstruction to the view or otherwise.

(3) Any person who shall erect any sign on any public highway, or elsewhere in violation of any of the provisions of this section or the regulations of the highway commission, or without the written consent of the state highway commission if the sign is to be erected on a state trunk highway, the county highway committee in the case of a county trunk highway, or the city council, village or town board in case of a street or highway maintained by a city, village or town, shall be fined not less than \$10 nor more than \$100, and for a second or subsequent violation shall be fined not less than \$10 nor more than \$500.

(4) This section shall not be construed as prohibiting the erection of such historical monuments or markers within the limits of public streets and highways as shall be approved by the state highway commission. [1937 c. 419; 1943 c. 334 s. 160]

Note: Campaign material in form of placards and posters, advertising candidacy of individual, are signs and when placed within limits of public street or highway violate this section. 27 Atty. Gen. 808.

86.20 [Repealed by 1935 c. 28]

86.20 **Interstate bridge corporations.** Any corporation organized for the purpose of constructing, operating and maintaining a bridge over navigable boundary waters of this state and authorized by congress to erect such bridge shall have all the rights and powers with respect to entry upon, and acquisition, of real estate for the construction, operation and maintenance of such bridge, with the necessary approaches, terminals and appurtenances thereto, that are possessed by railroad corporations. [1943 c. 334 s. 161]

86.21 **Interstate toll bridges.** (1) Any town, or any village or city however organized, bordering upon any navigable waters which form the boundary line between this and another state, may construct, maintain and operate a foot and vehicular toll bridge over and across such river or waters, commencing at a point within or near the limits of such town, village or city, or may acquire, maintain and operate any such toll bridge which spans any such river or waters, whether such bridge is located wholly or partly only within the boundaries of this state and whether such bridge is located within or only partly within and partly without the limits of such town, village or city.

(2) (a) Before any such toll bridge is constructed or acquired under this section, a resolution authorizing the construction or acquisition thereof and specifying the method of payment therefor, shall be adopted by a majority of the members of the governing body of such town, village or city at a regular meeting, after publication of said resolution, at least one week previous in the official newspaper. The resolution shall include a general description of the property it is proposed to acquire or construct. Any town, village or city constructing or acquiring a toll bridge under this section may provide for the payment of the same or any part thereof from the general fund, from taxation, or from the proceeds of either municipal bonds, mortgage bonds, mortgage certificates or as otherwise provided by law. Such resolution shall not be of force or effect until 15 days after its passage and publication. If within said 15 days a petition shall be filed with the clerk of such municipality signed by 20 per cent of the electors thereof requesting that the question of acquiring such toll bridge be submitted to the said electors, such question shall be submitted at any general or regular municipal election that may be held not less than 10 nor more than 40 days from the date of filing such petition. In case no such general or regular municipal election is to be held within such stated period, then the governing body of such municipality shall order a special election to be held within 30 days from the filing of such petition upon the question of whether such toll bridge shall be acquired by said municipality. The question submitted to the electors shall specify the method of payment for such toll bridge as provided in the resolution for the acquisition thereof. If no such petition shall be filed, or if the majority of votes cast at such referendum election shall be in favor of the acquisition of such toll bridge, then the resolution of the governing body for the acquisition of such toll bridge shall be of full force and effect.

(b) Where such payment is to be made in whole or in part through the issuance of mortgage bonds or mortgage certificates, such bonds or certificates shall be issued in the manner provided in section 66.066. The amount of all incidental expenses incurred in connection with the construction or acquisition of the bridge and in connection with the authorization and issuance of the bonds or certificates may be included in the amount for which bonds or certificates are issued. Such mortgage bonds or certificates shall be payable solely from the revenues to be derived from the operation of the bridge and shall not constitute a general indebtedness of the town, village or city. Any toll bridge property owned or acquired pursuant to this section is defined and declared to be a public utility. The provisions of section 66.068 shall be applicable to the management of such bridge and the provisions of sections 66.066 and 66.068 shall govern in so far as they may be applicable. [1937 c. 132; 1941 c. 65; 1943 c. 334 s. 162; 1947 c. 362]

86.22 [Renumbered section 85.665 by 1943 c. 334 s. 137]

86.22 **Interstate railroad bridges must have convenient approaches.** It shall be the duty of any corporation incorporated under the laws of this state and which have been granted a franchise or permit by the United States congress to construct, maintain and operate a railroad bridge and provide for the passage of pedestrians, wagons, vehicles and all kinds of street railway and motor cars across the waters forming a boundary line between this and any other state and to forever maintain such bridge in accessible and serviceable condition, to construct or cause to be constructed, approaches making such bridge accessible and serviceable for the use of pedestrians, wagons, vehicles and all kinds of street railway and motor cars as a connection between this state and the state connected therewith by such bridge, so that such bridge shall be accessible and serviceable to pedes-

trains, wagons and vehicles and all kinds of street railway and motor cars at the time such bridge is used for railroad service, and if any such corporation shall fail or refuse to comply with the provisions of this section within one year from the time such bridge is used for railroad service the charter of such corporation granted by this state shall thereupon be ipso facto forfeited without any further action whatever and such corporation shall forthwith discontinue the transaction or operation of its business in this state. [1943 c. 334 s. 163]

86.23 Maintenance of drawbridges owned jointly. All swing or drawbridges built or purchased by any city and town or by any other two municipalities, and so situated that a part thereof is in one municipality and a part in another, shall be operated and maintained at the joint expense of the municipalities which built or purchased them in proportion to the amount of the cost thereof borne by each. If either such municipality shall not provide for or pay its full share of such expense in any year the other may provide for or pay it, and upon paying the same may recover of the municipality in default its share of the same, with interest from the time of payment and costs of suit; provided, that no action to recover the same shall be brought until thirty days after demand of payment is made. [1943 c. 334 s. 164]

86.24 Highway disaster fund. (1) When any public highway, street, alley, or bridge not on the state trunk highway system is damaged by flood occurring after January 1, 1946, the county highway committee, or the governing body of the municipality having jurisdiction over the maintenance thereof, may adopt a petition for aid pursuant to this section and file a certified copy thereof with the state highway commission. To be eligible for aid such petition shall be filed not later than 2 months after the occurrence of the flood damage, except that petitions for damage occurring after January 1, 1946, and prior to July 1, 1947, may be filed not later than August 31, 1947. All such petitions shall state the dates on which the flood damage occurred and as nearly as practical state the location, nature and extent of the damage.

(2) The commission shall make such investigation as it may deem necessary and within 6 months from the date of filing the petition shall make its findings and determination as to the granting of aid, the amount thereof, and the conditions under which it is granted. In making its determination the commission shall cause an estimate to be made of the cost of repairing or replacing the facilities damaged or destroyed by the flood to standards and efficiency similar to those previously existing, and also an estimate of the cost of reconstructing to a higher type or improving any such facilities if determined to be warranted and advisable. The amount of aid to be granted shall be the total of such estimates of repair or replacement to standards similar to those previously existing, plus one-half of the estimated increased cost of the reconstruction to a higher type or the improvement of any of the facilities, and less one-fourth of the last annual allotment (preceding the date of the commission's finding) to the county under section 20.49 (3), in the case of county trunk highways, or less one-fourth of the last annual allotment to the town, village or city under section 20.49 (8), in the case of highways under their jurisdiction. The commission may revise any of its estimates on the basis of additional facts. The county, town, village or city shall pay the remainder of the cost not allowed as aid, but this shall not invalidate any other provision of the statutes whereby the cost may be shared by the county and the town, village or city.

(3) Aid allotted under subsection (2) shall be held to the credit of the county, town, city or village for not more than 2 years or for such extended period as the commission may grant, and, except as otherwise provided herein and in subsection (4), shall be paid to the treasurer thereof upon presentation to and approval by the commission of certified statements setting forth the cost of the construction, reconstruction, repair or improvement of the facilities determined in the commission's finding to be eligible for aid. The certified statement shall set forth separately the amount expended on each such facility. Except as provided in subsection (4), the aid to be paid shall be the summation of the amounts expended on each facility for repair or replacement to standards similar to those previously existing and the commission's original or revised estimate of such repair or replacement of any of the facilities which are reconstructed to a higher type or improved, plus one-half of the increased cost, as determined or estimated by the commission, of the reconstruction to a higher type or the improvement of any of the facilities, and less one-fourth of the annual allotment referred to in subsection (2).

(4) Whenever the aid allotted or determined to be payable exceeds the cash balance in the appropriation under section 20.49 (7e), no further payments shall be made until the following June 30, on which date all amounts allotted or determined to be payable shall be reduced pro rata to the amount of the balance available.

(5) Any town, city or village may, and at the discretion of the commission shall, arrange to have such work for which aid is granted performed by the county, and in such

case, on order of the town, city or village, the aid from the state for such work shall be paid to the county. [1943 c. 148, 491; 1947 c. 474]

86.25 Municipal co-operation as to highways improved with state or federal aid.

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

(2) Any county, city, village or town, through its governing body or a committee which it may designate, may enter into agreements with the state highway commission providing for the construction, reconstruction or improvement with state or federal aid, of highways, streets or bridges which such county, city, village or town is authorized to construct, reconstruct or improve, providing for the subsequent maintenance by such county, city, village or town of any such highway, street or bridge improved with state or federal aid which it has authority to maintain, and providing for the subsequent regulation as to the location, form and character of informational, regulatory and warning signs, curb and pavement or other markings and traffic signals on any such highway, street or bridge improved with state or federal aid.

(3) Any city or village may levy special assessments not exceeding the cost to such city or village against the property benefited thereby to provide funds to match or supplement state or federal aid or both for the construction, reconstruction or improvement under the provisions of chapter 84, or under any other provision of the statutes of any highway or street which it is authorized to construct, reconstruct or improve, and any city or village is authorized to pay the proceeds of such assessments, certificates or special assessment bonds issued to finance said improvement to the state highway commission or state treasury as provided in section 84.03 (1) (b). The provisions of the statutes in reference to the procedure for improving streets and highways under federal or state aid or under both shall be considered as making inapplicable as applied to such situations the provisions of sections 61.40, 61.41, 61.55, 62.15 and 62.16 and the provisions of any of those sections shall not invalidate the special assessments levied by any city or village to finance its share of such improvements, nor shall such provisions invalidate the special assessment bonds issued to finance said improvements. [1945 c. 214, 391]

- 87.01 [Renumbered section 81.38 by 1943 c. 334 s. 80]
- 87.02 [Renumbered section 84.11 by 1943 c. 334 s. 131]
- 87.03 [Renumbered section 84.12 by 1943 c. 334 s. 132]
- 87.04 [Renumbered section 84.13 by 1943 c. 334 s. 133]
- 87.045 [Repealed by 1943 c. 334 s. 134]
- 87.05 [Renumbered section 84.15 by 1943 c. 334 s. 136]
- 87.054 [Renumbered section 86.20 by 1943 c. 334 s. 161]
- 87.055 [Repealed by 1929 c. 528 s. 1]
- 87.06 [Renumbered section 84.14 by 1943 c. 334 s. 135]
- 87.07 [Renumbered section 86.14 by 1943 c. 334 s. 155]
- 87.08 [Renumbered section 86.23 by 1943 c. 334 s. 164]
- 87.09 [Renumbered section 83.15 by 1943 c. 334 s. 110]
- 87.10 [Renumbered section 83.16 by 1943 c. 334 s. 111]
- 87.11 [Renumbered section 86.21 by 1943 c. 334 s. 162]
- 87.12 [Renumbered section 86.22 by 1943 c. 334 s. 163]
- 87.13 [Renumbered section 81.42 by 1943 c. 334 s. 82]
- 87.14 [Renumbered section 81.39 by 1943 c. 334 s. 81]
- 87.15 [Renumbered section 195.32 by 1943 c. 334 s. 167]
- 87.16 [Renumbered section 86.10 by 1943 c. 334 s. 151]