

2003 Assembly Bill 678

Date of enactment: **April 8, 2004**
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2003 WISCONSIN ACT 214

AN ACT *to repeal* 60.10 (1) (d), 60.24 (3) (n), chapter 80 (title), 80.01 (title), 80.01 (1) (title), 80.02 (title), 80.03, 80.04 (title), 80.05 (2) (intro.) and (c), 80.06 (title), 80.07 (title), 80.09, 80.10, 80.11 (2) (a) 1. to 4., (b) and (c), 80.11 (4), 80.11 (8), 80.12 (title), 80.12 (1), 80.12 (3) and (4), 80.13 (title), 80.17 (title), 80.22 (title), 80.24 to 80.30, 80.31 (title), (1) and (2), 80.35, 80.38 to 80.40, 80.48, 80.65, chapter 81 (title), 81.01 (5), (6), (7) and (9), 81.02 (title), 81.04, 81.05, 81.06 (title), 81.07, 81.11 (title) and (1) to (4), 81.12, 81.14, 81.36, 81.39, 81.42 (title), 83.18 (1) (title), 83.18 (2) and 893.73 (2) (c); *to renumber* 66.1003 (8), 80.01 (1m) (title), 80.01 (3) (title), 80.15 (title), 80.23 (title), 80.32 (4) (a) 1. and 2., 80.32 (4) (b), 80.32 (4) (d), 80.34 (title), 81.08 (title), 81.38 (title), 86.26, 86.265 and 86.266; *to renumber and amend* 80.01 (1), 80.01 (1m), 80.01 (2), 80.01 (3), 80.01 (4) (title), 80.01 (4), 80.01 (5), 80.02, 80.025, 80.04, 80.05 (title), 80.05 (1), 80.05 (2) (a), 80.05 (2) (b), 80.06, 80.08, 80.11 (title), 80.11 (1), 80.11 (2) (a) (intro.), 80.11 (3) (a), (b) 1. and 2. and (c), 80.11 (5), 80.11 (6), 80.11 (7), 80.12 (2), 80.12 (5), 80.125, 80.13 (1), 80.13 (1m), 80.13 (3), 80.13 (4), 80.13 (4m), 80.13 (5), 80.14, 80.15, 80.16, 80.17, 80.22, 80.23 (1), 80.23 (2), 80.31 (3), 80.32 (title), 80.32 (1), 80.32 (2), 80.32 (3), 80.32 (4) (a) (intro.), 80.32 (4) (c), 80.32 (5), 80.33, 80.34 (1), 80.34 (2), 80.37, 80.41, 80.47, 80.64, 81.01 (title), 81.01 (2), 81.01 (3), 81.01 (4), 81.01 (8), 81.01 (10), 81.01 (11), 81.02, 81.03 (title), 81.03, 81.06, 81.08 (1), 81.08 (2), 81.08 (3), 81.11 (5), 81.15, 81.17, 81.35, 81.38 (1), 81.38 (2), 81.38 (3), 81.38 (4), 81.38 (5), 81.38 (6), 81.38 (7), 81.42 (1), 81.42 (2) and 83.18 (1); *to consolidate, renumber and amend* 80.07 (1) and (2) and 81.01 (intro.) and (1); *to amend* 32.035 (4) (a), 32.05 (intro.), 59.69 (5) (e) 7., 59.84 (2) (f) 5., 60.23 (17), 60.24 (3) (o), 60.24 (3) (p), 60.33 (10), 60.37 (4) (a), 62.73 (1), 66.1003 (2) and (3), 66.1003 (4) (b), 66.1003 (7), 83.015 (2) (b), 83.09, 83.19, 84.02 (1), 84.07 (1), 84.14 (3), 86.315 (3), 236.16 (2) and 756.04 (2); and *to create* 66.1003 (8) (a), 66.1003 (10), 66.1005 (title), 66.1033 (1) and (3), 66.1037 (2), chapter 82 (title), subchapter I (title) of chapter 82 [precedes 82.01], 82.01 (intro.), (1) to (7) and (9) to (11), 82.03 (1) (title), 82.03 (1) (c), (5) (title) and (c), (6) and (9) to (19), 82.05 (1), 82.05 (4), 82.08 (8), subchapter II (title) of chapter 82 [precedes 82.10], 82.10 (title), (1) (b), (2), (4) (title), (a) 5. and (b) and (5), 82.11 (title), 82.12 (title), 82.14 (title), (1) and (3), 82.15, 82.16 (3), 82.19 (2) (b) 1., subchapter III (title) of chapter 82 [precedes 82.21], 82.21 (1) (a) and (b), (4) (title) and (5) (title), 82.27 (title), (1), (5) (c) and (d), (9) and (10), subchapter IV (title) of chapter 82 [precedes 82.31], 82.35 (1) (intro.) and 893.83 (title) of the statutes; **relating to:** the reorganization, modernization, and modification of chapters 80 and 81.

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

JOINT LEGISLATIVE COUNCIL PREFATORY NOTE: This bill was prepared for the Joint Legislative Council's Special Committee on Recodification of Town Highway Statutes.

* Section 991.11, WISCONSIN STATUTES 2001-02 : Effective date of acts. "Every act and every portion of an act enacted by the legislature over the governor's partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication as designated" by the secretary of state [the date of publication may not be more than 10 working days after the date of enactment].

The committee was directed to recodify chs. 80 and 81 and any matters related to those statutes. The special committee was instructed that the recodification may include a study of the reorganization of the chapter in a logical manner, renumbering and retitling sections, consolidating related provisions, modernizing language, resolving ambiguities in language, codifying court decisions, and making minor substantive changes.

Many of the provisions in chs. 80 and 81 date from the 1800s. The changes and additions to those chapters over the years seem to have occurred piecemeal without regard to any internal organization. As a result, current chs. 80 and 81 are unwieldy and difficult to use.

This bill:

1. Reorganizes chs. 80 and 81 by:
 - a. Moving most of the provisions in current chs. 80 and 81 into a new ch. 82. The special committee decided to create ch. 82 in order to avoid confusion between the original and the recodified law.
 - b. Arranging the provisions of the new ch. 82 into a logical order. The bill creates 3 subchapters.
 - c. Reorganizing some of the individual sections within current chs. 80 and 81 by combining them with other sections, dividing single sections into multiple sections, and internally reorganizing single sections.
 - d. Relocating whole or partial sections of current chs. 80 and 81 outside of the new ch. 82. This was done mainly for provisions that apply to municipalities other than towns.
2. Makes nonsubstantive changes to modernize language and reflect modern drafting style.
3. Repeals several sections of the current chs. 80 and 81 that the special committee concluded were unnecessary.
4. Makes substantive changes.

There are detailed notes following the sections that indicate the substantive change, if any. If the note does not indicate a substantive change, none is intended. If a question arises about the effect of any modification made by this bill, the special committee intends that the revisions in this bill be construed to have the same effect as the prior statute.

To aid in locating the renumbered sections, a table is located at the end of this bill that identifies the treatment of each of the provisions in current chs. 80 and 81.

SECTION 1. 32.035 (4) (a) of the statutes is amended to read:

32.035 (4) (a) *When an impact statement is required; permitted.* The department shall prepare an agricultural impact statement for each project, except a project under ch. ~~81~~ 82 or a project located entirely within the boundaries of a city or village, if the project involves the actual or potential exercise of the powers of eminent domain and if any interest in more than 5 acres of any farm operation may be taken. The department may prepare an agricultural impact statement on a project located entirely within the boundaries of a city ~~or~~ village, or town or involving any interest in 5 or fewer acres of any farm operation if the condemnation would have a significant effect on any farm operation as a whole.

SECTION 2. 32.05 (intro.) of the statutes is amended to read:

32.05 Condemnation for sewers and transportation facilities. (intro.) In this section, "mass transit facility" includes, without limitation because of enumeration, exclusive or preferential bus lanes if those lanes are limited to abandoned railroad rights-of-way or existing

expressways constructed before May 17, 1978, highway control devices, bus passenger loading areas and terminal facilities, including shelters, and fringe and corridor parking facilities to serve bus and other public mass transportation passengers, together with the acquisition, construction, reconstruction and maintenance of lands and facilities for the development, improvement and use of public mass transportation systems for the transportation of passengers. This section does not apply ~~to town highways created or altered under ch. 80 except as to jury trials on appeals under ss. 80.24 and 80.25, nor to proceedings in 1st class cities under subch. II. In any city, condemnation for housing under ss. 66.1201 to 66.1211, for urban renewal under s. 66.1333, or for cultural arts facilities under subch. V of ch. 229, may proceed under this section or under s. 32.06 at the option of the condemning authority. Condemnation by a local exposition district under subch. II of ch. 229 for any exposition center or exposition center facility may proceed under this section or under s. 32.06 at the option of the local exposition district. All other condemnation of property for public alleys, streets, highways, airports, mass transit facilities, or other transportation facilities, gas or leachate extraction systems to remedy environmental pollution from a solid waste disposal facility, storm sewers and sanitary sewers, watercourses or water transmission and distribution facilities shall proceed as follows:~~

SECTION 3. 59.69 (5) (e) 7. of the statutes is amended to read:

59.69 (5) (e) 7. When any lands previously under the jurisdiction of a county zoning ordinance have been finally removed from such jurisdiction by reason of annexation to an incorporated municipality, and after the regulations imposed by the county zoning ordinance have ceased to be effective as provided in sub. (7), the board may, on the recommendation of its zoning agency, enact amendatory ordinances that remove or delete the annexed lands from the official zoning map or written descriptions without following any of the procedures provided in subs. 1. to 6., and such amendatory ordinances shall become effective upon enactment and publication. A copy of the ordinance shall be forwarded by the clerk to the clerk of each town in which the lands affected were previously located. Nothing in this paragraph shall be construed to nullify or supersede s. ~~80.64~~ 66.1031.

SECTION 4. 59.84 (2) (f) 5. of the statutes is amended to read:

59.84 (2) (f) 5. The governing body of the municipality shall, within 30 days after filing, take the necessary action to comply with the order and in so doing shall not be limited by the objections of an abutting owner, and s. ~~80.32 (4)~~ 66.1005 (2) shall not be applicable to any vacation or discontinuance required by the order, and any such municipality may act upon the initiative of its governing body without the necessity of obtaining the consent of an

abutting owner, notwithstanding chs. 60, 61, 62 and 66 and s. ~~80.32(4)~~ 66.1005(2) and any other provisions of law to the contrary.

SECTION 5. 60.10 (1) (d) of the statutes is repealed.

NOTE: The committee repealed s. 81.05 because the committee believed that it was no longer used by towns. Current s. 60.10 (1) (d) is merely a cross-reference to s. 81.05.

SECTION 6. 60.23 (17) of the statutes is amended to read:

60.23 (17) CHANGE STREET NAMES. Name, or change the name of, any street in the town under s. ~~81.01(11)~~ 82.03(7).

SECTION 7. 60.24 (3) (n) of the statutes is repealed.

NOTE: Section 60.24 (3) (n) reads as follows: "Perform duties in connection with selection of jurors in actions relating to the taking of property to provide access to a cemetery, fair-ground, or land used for industrial expositions under s. 80.48 (3) and (4)." The special committee deleted current s. 80.48 because it concluded that the section was no longer necessary.

SECTION 8. 60.24 (3) (o) of the statutes is amended to read:

60.24 (3) (o) Sign orders for payment of work performed and materials furnished on town highways under s. ~~81.04~~.

NOTE: This bill entirely deletes the language in current s. 81.04. Therefore, this section deletes the cross-reference.

SECTION 9. 60.24 (3) (p) of the statutes is amended to read:

60.24 (3) (p) See that all tunnels in the town are constructed under s. ~~81.35~~ 82.37 and that they are kept in good repair.

SECTION 10. 60.33 (10) of the statutes is amended to read:

60.33 (10) HIGHWAYS AND BRIDGES. Perform the duties specified in chs. ~~80~~ 82 to 92, relating to highways, bridges and drains.

SECTION 11. 60.37 (4) (a) of the statutes is amended to read:

60.37 (4) (a) An elected town officer who also serves as a town employee may be paid an hourly wage for serving as a town employee, not exceeding a total of \$5,000 each year. Amounts that are paid under this paragraph may be paid in addition to any amount that an individual receives under s. 60.32 or as a volunteer fire fighter, emergency medical technician, or first responder under s. 66.0501 (4). The \$5,000 maximum in this paragraph includes amounts paid to a town board supervisor who is acting as superintendent of highways under s. ~~81.04~~ 82.03(1).

SECTION 12. 62.73 (1) of the statutes is amended to read:

62.73 (1) The common council of a 1st class city may vacate in whole or in part highways, streets, alleys, grounds, waterways, public walks and other public grounds within the corporate limits of the city that it determines the public interest requires to be vacated or are of no public utility, subject to s. ~~80.32(4)~~ 66.1005(2). Proceedings under this section shall be commenced

either by a petition presented to the common council signed by the owners of all property which abuts the portion of the public facilities proposed to be vacated, or by a resolution adopted by the common council. The requirements of s. 840.11 apply to proceedings under this section.

SECTION 13. 66.1003 (2) and (3) of the statutes are amended to read:

66.1003 (2) The common council of any city, except a 1st class city, or a village or town board may discontinue all or part of a public way upon the written petition of the owners of all the frontage of the lots and lands abutting upon the public way sought to be discontinued, and of the owners of more than one-third of the frontage of the lots and lands abutting on that portion of the remainder of the public way which lies within 2,650 feet of the ends of the portion to be discontinued, or lies within so much of that 2,650 feet as is within the corporate limits of the city, village or town. The beginning and ending of an alley shall be considered to be within the block in which it is located. This subsection does not apply to a highway upon the line between 2 towns that is subject to s. ~~80.11~~ 82.21.

(3) The common council of any city, except a 1st class city, or a village or town board may discontinue all or part of an unpaved alley upon the written petition of the owners of more than 50% of the frontage of the lots and lands abutting upon the portion of the unpaved alley sought to be discontinued. The beginning and ending of an unpaved alley shall be considered to be within the block in which it is located. This subsection does not apply to a highway upon the line between 2 towns that is subject to s. ~~80.11~~ 82.21.

SECTION 13d. 66.1003 (4) (b) of the statutes is amended to read:

66.1003 (4) (b) A hearing on the passage of a resolution under par. (a) shall be set by the common council or village or town board on a date which shall not be less than 40 days after the date on which the resolution is introduced. Notice of the hearing shall be given as provided in sub. (8) (b), except that in addition notice of the hearing shall be served on the owners of all of the frontage of the lots and lands abutting upon the public way or unpaved alley sought to be discontinued in a manner provided for the service of summons in circuit court at least 30 days before the hearing. When service cannot be made within the city, village or town, a copy of the notice shall be mailed to the owner's last-known address at least 30 days before the hearing.

SECTION 13h. 66.1003 (7) of the statutes is amended to read:

66.1003 (7) The city council or village or town board may by resolution discontinue any alley or any portion of an alley which has been abandoned, at any time after the expiration of 5 years from the date of the recording of the plat by which it was dedicated. Failure or neglect to work

or use any alley or any portion of an alley for a period of 5 years next preceding the date of notice provided for in sub. (8) (b) shall be considered an abandonment for the purpose of this section.

SECTION 13m. 66.1003 (8) of the statutes is renumbered 66.1003 (8) (b).

SECTION 13r. 66.1003 (8) (a) of the statutes is created to read:

66.1003 (8) (a) Upon receiving a petition under sub. (2) or (3) or upon the introduction of a resolution under sub. (4), the city, village, town, or county shall deliver a copy of the petition or resolution to the secretary of transportation, if the public way or unpaved alley that is the subject of the petition or resolution is located within one-quarter mile of a state trunk highway or connecting highway.

SECTION 14. 66.1003 (10) of the statutes is created to read:

66.1003 (10) Notwithstanding ss. 82.10 and 82.21, no city council or county, village, or town board may discontinue a highway when the discontinuance would deprive a landowner or a public school of all access to a highway.

NOTE: New s. 66.1003 is based on the last sentence of current s. 80.02, which reads: "No town board shall discontinue . . . any highway when such discontinuance would deprive the owner of lands of access therefrom to a highway" and on the last sentence of current s. 80.16 which reads: "No highway shall be discontinued when the effect of such discontinuance shall be to exclude a public school from access to the public highways." The special committee believes that, in practice, the current language applies to cities, counties, villages, and towns. Therefore, the new s. 66.1003 specifically includes cities, villages, and counties and moves the provision to ch. 66. No substantive change is intended.

SECTION 15. 66.1005 (title) of the statutes is created to read:

66.1005 (title) Reversion of title.

SECTION 16. 66.1033 (1) and (3) of the statutes are created to read:

66.1033 (1) In this section:

(a) "Political subdivision" means a city, village, town, or county.

(b) "Public way" means a highway, street, slip, pier, or alley.

(3) For proceedings taken, or for plats, deeds, orders, or resolutions executed after the effective date of this subsection . . . [revisor inserts date], except as provided in s. 840.11, no defect, omission, or informality in the proceedings of, or execution of a plat, deed of dedication, order, or resolution by, a political subdivision shall affect or invalidate the proceedings, plat, deed, order, or resolution after 5 years from the date of the proceedings, plat, deed, order, or resolution. The public way dedicated, laid out, or altered by a defective or informal proceeding, plat, deed, order, or resolution shall be limited in length to the portion actually worked and used.

SECTION 17. Chapter 80 (title) of the statutes is repealed.

SECTION 18. 80.01 (title) of the statutes is repealed.

SECTION 19. 80.01 (1) (title) of the statutes is repealed.

SECTION 20. 80.01 (1) of the statutes is renumbered 82.01 (8) and amended to read:

82.01 (8) ~~In this section, "recorded~~ "Recorded highway" means a highway for which the order laying out or altering the highway, or a certified copy of the order, has been ~~filed recorded~~ filed recorded in the office of the ~~clerk of the town or register of deeds~~ clerk of the town or register of deeds in the county in which the highway is situated or, for highways that were laid out or altered before the effective date of this subsection . . . [revisor inserts date], in the office of the clerk of the town or the county in which the highway is situated.

NOTE: All but one of the definitions in s. 82.01 is new. The only term that is specifically defined in chs. 80 and 81 is "recorded highway". That definition has been included with the modification that the order must be filed with the register of deeds rather than the town or county clerk. The term "widened" has been deleted throughout the bill because the special committee concluded that it was redundant of the term "altered".

SECTION 21. 80.01 (1m) (title) of the statutes is renumbered 82.31 (title).

SECTION 22. 80.01 (1m) of the statutes is renumbered 82.31 (1) and amended to read:

82.31 (1) RECORDED HIGHWAYS. Any recorded highway that has been laid out ~~by the town supervisors, the county board or by a committee of the board, or by commissioners appointed by the legislature, or by any other authority, any portion of which has been opened and worked for 3 years under this chapter~~ is a legal highway only to the extent that it has been opened and worked for 3 years. Any laid out highway that has not been fully and sufficiently described or recorded or for which the records have been lost or destroyed is presumed to be 66 feet wide.

SECTION 23. 80.01 (2) of the statutes is renumbered 82.31 (2), and 82.31 (2) (title), (b) and (c), as renumbered, are amended to read:

82.31 (2) (title) ~~UNRECORDED HIGHWAYS VALIDATED; EXCEPTION; GRANTS FOR HIGHWAY PURPOSES; PRESUMPTIVE WIDTH.~~

(b) No road or bridge built upon the bottoms and sloughs of the Mississippi River by citizens or a municipality of any other state shall become a legal highway or a charge upon the town in which the road is located unless upon petition the highway is legally laid out by the town ~~supervisors board~~.

(c) No lands granted for highway purposes that did not become a legal highway prior to July 1, 1913, shall become a legal highway unless the grant is accepted by the town board or by the town meeting of the town ~~wherein~~ where the lands and proposed highway are

located, and until a resolution of acceptance of the grant is recorded in the office of the town clerk.

SECTION 23m. 80.01 (3) (title) of the statutes is renumbered 66.1037 (title).

SECTION 24. 80.01 (3) of the statutes is renumbered 66.1037 (1) and amended to read:

66.1037 (1) No lands abutting on any highway, and acquired or held for highway purposes, shall be deemed discontinued for such ~~purpose~~ purposes so long as they abut on any highway. All lands acquired for highway purposes after June 23, 1931, may be used for any purpose that the public authorities authority in control of such ~~the~~ highway shall ~~deem to conduce to~~ determines promotes the public use and enjoyment thereof. ~~Such authorities. The authority~~ may improve such lands by suitable planting, to prevent the erosion of the soil, or to beautify the highway. The right to protect and to plant vegetation in any highway laid out prior to ~~said date~~ June 23, 1931, may be acquired in any manner that lands may be acquired for highway purposes. ~~It~~ Subject to sub. (2), it shall be unlawful for any person to injure any tree or shrub, or cut or trim any vegetation other than grass, or make any excavation in any highway laid out after ~~said date~~ June 23, 1931, or where the right to protect vegetation has been acquired, without the consent of the highway authorities authority and under ~~their~~ its direction ~~but such authorities. The authority~~ shall remove, cut, or trim or consent to the removing, cutting, or ~~removal~~ trimming of any tree, shrub, or vegetation in order to provide safety to users of the highway.

NOTE: The inclusion of "other than grass" was made to ensure that property owners could trim grass near their property.

SECTION 24g. 66.1037 (2) of the statutes is created to read:

66.1037 (2) (a) Except as provided in par. (b), no person may cut or trim grass along any state trunk highway without the consent of the department of transportation.

(b) A person who owns or leases land abutting a state trunk highway may, without the consent of the department of transportation, cut or trim grass that is within the highway right-of-way and that is located along the land's frontage with the highway right-of-way or within 200 feet of a driveway, railroad crossing, or intersection along the land's frontage with the highway right-of-way. This paragraph does not permit a person to cut or trim grass without the consent of the department of transportation if any of the following applies:

1. The state trunk highway is a freeway, as defined in s. 346.57 (1) (am), or an expressway, as defined in s. 59.84 (1) (b).

2. The person farms or harvests the grass.

3. The grass is located in any of the following:

a. An area where pedestrians are prohibited.

b. An area accessible only by crossing a traffic lane of the state trunk highway.

c. An area located within 50 feet of a sign, as defined in s. 84.30 (2) (j).

SECTION 25. 80.01 (4) (title) of the statutes is renumbered 66.1033 (title) and amended to read:

66.1033 (title) ~~Highways, streets and alleys, piers, plats, curative~~ Curative provisions.

SECTION 26. 80.01 (4) of the statutes is renumbered 66.1033 (2) and amended to read:

66.1033 (2) ~~Every street, highway and alley, pier and slip, dedicated or attempted and intended to be dedicated in any plat or laid out, altered, vacated or discontinued, or attempted or intended to be laid out, altered, vacated or discontinued by the authorities of any county, town, city or village shall be held to have been lawfully so dedicated, laid out, altered, vacated or discontinued from and after the expiration of 5 years from the date of the deed, instrument, plat, order, resolution or other final proceeding had or taken to effectuate such purpose. No For proceedings taken, or for plats, deeds, orders, or resolutions executed before the effective date of this subsection ... [revisor inserts date], notwithstanding s. 840.11, no defect, omission or informality in the proceedings of, or execution of any a plat or, deed of dedication or in any proceedings, order, or resolution on the part of such authorities for the purposes aforesaid by, a political subdivision shall affect or invalidate such the proceedings, plat, deed, order, or resolution or proceeding, after the expiration of 5 years from the date of the proceeding, plat, deed, proceeding, order, or resolution; provided, the street or alley, The public way dedicated, laid out, or altered by such a defective, or informal proceeding, plat, deed, proceeding, order, or resolution, shall be limited in length to the portion actually worked and used thereunder.~~

NOTE: The following language was repealed because the special committee decided it was redundant of the rest of the provision: "Every street, highway and alley, pier and slip, dedicated or attempted and intended to be dedicated in any plat or laid out, altered, vacated, or discontinued, or attempted or intended to be laid out, altered, vacated, or discontinued by the authorities of any county, town, city, or village shall be held to have been lawfully so dedicated, laid out, altered, vacated, or discontinued from and after the expiration of 5 years from the date of the deed, instrument, plat, order, resolution, or other final proceeding had or taken to effectuate such purpose."

The new s. 66.1029 attempts to resolve a conflict between current s. 80.01 (4) and current s. 840.11. Current s. 840.11 requires any person applying to lay out, widen, vacate, or extend a highway to file a notice of the pendency of the application. Failure to file the notice renders all proceedings based on the application void. Current s. 80.01 (4), however, appears to cure all defects and procedural errors after 5 years. The special committee discussed whether one of the provisions should overrule the other and decided on a compromise. Under the new s. 66.1029 a failure to comply with s. 840.11 prior to the effective date of the act will not void an action. But, after the effective date of the act, the new s. 66.1029, would cure all defects except a failure to comply with s. 840.11.

SECTION 27. 80.01 (5) of the statutes is renumbered 66.1024 and amended to read:

66.1024 Effect of reservation or exception in conveyance. Whenever a ~~an executed and recorded~~ deed, land contract, or mortgage of lands abutting on an existing public street, highway, or alley or a projected extension thereof hereafter ~~executed and recorded~~ contains language reserving or excepting certain lands for street, highway, or alley purposes, ~~such the~~ reservation or exception shall constitute a dedication for such purpose to the public body having jurisdiction over ~~such the~~ highway, street, alley, or projected extension thereof, unless the language of ~~such the~~ reservation or exception plainly indicates an intent to create a private way. ~~Such dedication may be~~ Any reservation or exception shall not be effective until it is accepted by a resolution of the governing body having jurisdiction over such street, highway, alley, or projected extension thereof.

NOTE: The special committee decided that s. 80.01 (5) was more appropriately placed in ch. 66. The last sentence of new s. 66.1024 was changed to make clear that the reservation must be accepted by the governing body.

SECTION 28. 80.02 (title) of the statutes is repealed.

SECTION 29. 80.02 of the statutes is renumbered 82.10 (1) (intro.) and amended to read:

82.10 (1) APPLICATION FOR HIGHWAY CHANGES. (intro.) ~~When 6 Six~~ or more resident freeholders wish may apply to the town board to have a highway laid out, widened, altered, or discontinued in their town, they may make application in writing to the supervisors of said town for that purpose. The application shall be in writing and shall be delivered to any supervisor or to the town clerk. ~~In case the application is for the discontinuance of all or of a part of any highway, and it is desired, as permitted by s. 80.05, to omit from the notice the description of the lands abutting upon such highway which will be benefited, injured or damaged by the discontinuance of such highway or any part thereof, the~~ The application shall contain the all of the following:

(a) A legal description of the lands abutting upon such highway which will be benefited, injured or damaged by the discontinuance of such highway or any part thereof and shall be delivered to the town clerk with a request in writing that such application remain on file with the clerk until the time set for hearing for reference and inspection by any parties concerned. ~~When all the owners of lands abutting on the part of a highway sought to be altered, desire such alteration, and the supervisors are of the opinion that the public will not be materially affected by such alteration, the board may make the same, and may take into consideration donations of money, land or services for the making of such alterations. When the laying out of a highway would require the construction of a bridge costing more than \$1,000, exclusive of donations, the order of the supervisors laying out such highway shall not be effective unless approved by the electors~~

~~of the town, and an estimate by the department of transportation shall be conclusive of the cost of such bridge for the purposes of this section. No town board shall discontinue any part of a state trunk or county trunk highway, nor discontinue any highway when such discontinuance would deprive the owner of lands of access therefrom to a highway to be discontinued or of the proposed highway to be laid out or altered.~~

NOTE: Under current law, an application for laying out or altering, can be delivered to either a supervisor or the town clerk, while an application for discontinuance can only be delivered to the town clerk. Under the bill, all applications must be delivered to the town clerk.

Under current s. 80.02, an application for discontinuance must contain a description of the lands that will be benefited, injured, or damaged by the discontinuance only if "it is desired" to exclude such a description from the notice. However, it is the supervisors who make the notice and the freeholders who make the application. Thus, the use of "it is desired" creates an ambiguity as to who wants to exclude the description from the notice. New s. 82.10 (1) requires all applications to contain a legal description of the highway and a scale map of the affected land.

The last 2 sentences of current s. 80.02 are not included in the new s. 82.10. The sentence concerning electors approving construction costing more than \$1,000 was deleted because the special committee decided that the dollar amount was obsolete. The prohibition on discontinuing a state trunk or county trunk highway was deleted because the special committee decided it was unnecessary since the town does not have jurisdiction over those highways. The prohibition on discontinuing a highway where such discontinuance would deprive a landowner of highway access has been moved to new s. 66.1003 (10).

The 3rd-to-last sentence of current s. 80.02 has been left out of this bill because the special committee decided it was unnecessary. The sentence reads: "When all the owners of lands abutting on the part of a highway sought to be altered, desire such alteration, and the supervisors are of the opinion that the public will not be materially affected by such alteration, the board may make the same, and may take into consideration donations of money, land or services for the making of such alterations."

SECTION 30. 80.025 of the statutes is renumbered 82.29 and amended to read:

82.29 Highways abutted by state park lands; discontinuance or relocation. Any part of a highway lying wholly within state park lands may be discontinued or relocated by the state agency having jurisdiction over such abutting lands the state park by filing written notice of such the discontinuance or relocation with the town clerk or county clerk of the municipality that has jurisdiction over the highway and upon approval by the supervisors municipality after holding a hearing as provided in s. 80.05 unless such 82.10. ~~No~~ discontinuance or relocation would under this section may deprive any other owner of lands a landowner of all highway access thereto from a highway. This section does not apply to state trunk highways or connecting highways.

SECTION 31. 80.03 of the statutes is repealed.

SECTION 32. 80.04 (title) of the statutes is repealed.

SECTION 33. 80.04 of the statutes is renumbered 82.11 (2) and amended to read:

82.11 (2) (a) No supervisor town official may act in laying out, altering, widening or discontinuing any a highway in which the supervisor may be personally interested if acting would result in a violation of the code of ethics under s. 19.59 or of a local ordinance enacted under s. 19.59 (1m). ~~If one supervisor is interested the other 2 supervisors a town official is prevented from acting, the remaining town officials shall act. If 2 supervisors are interested the 3rd supervisor shall act in the matter.~~

(b) ~~Whenever Every town shall have a written policy on how the town board will act on an application or resolution when there are fewer than 2 supervisors in a the town, the application authorized by s. 80.02 may be made to the county board, which shall promptly appoint a committee of 3 of its members. The committee shall act upon the who are able to act on the application in the same manner and with the same powers in every respect as the supervisors of the town might do or resolution. In the absence of a policy, the town clerk may act. If the town clerk is prevented from acting, the treasurer may act.~~

NOTE: The special committee decided to eliminate the process of applying to the county under current s. 80.04 (2). Instead, the special committee decided to allow the town board to formulate its own plan to deal with situations where there is a conflict of interest. In the absence of such a plan, new s. 82.11 (2) authorizes the town clerk and treasurer to act in turn.

SECTION 34. 80.05 (title) of the statutes is renumbered 82.10 (3) (title) and amended to read:

82.10 (3) (title) ~~NOTICE OF MEETING; SERVICE AND PUBLICATION REQUIREMENTS.~~

SECTION 35. 80.05 (1) of the statutes is renumbered 82.10 (3) and amended to read:

82.10 (3) ~~On Upon receipt of an application made to supervisors for laying out, widening, altering or discontinuing any highway the supervisors shall prepare a under sub. (1) or the introduction of a resolution under sub. (2), the board shall provide notice fixing therein a of the time that and the place at which they where it will meet and decide upon to consider the application or resolution.~~ The notice shall specify, as near as practicable, contain a legal description of the highway to be discontinued or of the proposed highway to be laid out, widened, or altered or discontinued and the tracts of land through which the highway passes or, if the application is for discontinuing the whole or any portion of the highway, the tracts of land abutting on the highway which will be benefited or injured by such discontinuance. When the description in the aggregate exceeds 200 words in length, the notice may state that such descriptions are contained in the application as provided in s. 80.02, and shall give the name and address of the town clerk to whom the application has been delivered and a scale map of the land that would be affected by the application or resolution.

SECTION 36. 80.05 (2) (intro.) and (c) of the statutes are repealed.

SECTION 37. 80.05 (2) (a) of the statutes is renumbered 82.10 (4) (a) (intro.) and amended to read:

82.10 (4) (a) (intro.) The town board or, at the town board's direction, the applicants shall publish a class 3 notice under ch. 985 and shall, at least 40 30 days prior to the date of before the hearing, give notice by registered mail to all occupants and of the following:

1. The owners of record of lands through which the highway may pass or, if the application is for discontinuance, to the occupants and to the,

2. The owners of record of all lands abutting on the highway.

SECTION 38. 80.05 (2) (b) of the statutes is renumbered 82.10 (4) (a) 3. and amended to read:

82.10 (4) (a) 3. Give notice by registered mail to the The department of natural resources and to the,

4. The county land conservation committee in each county through which the highway may pass.

NOTE: Section 82.10 is based on current ss. 80.02 and 80.05.

The type of notice required has been changed from a class 2 to a class 3, and notices by registered mail have been changed from 10 days before the hearing to 30 days before the hearing. These changes were made to make the timeliness more reasonable and to be consistent with ch. 66. In addition, the special committee decided that if the procedures are begun by an application, the cost of publishing a notice should be borne by the applicants.

Except as noted, no substantive change is intended.

SECTION 39. 80.06 (title) of the statutes is repealed.

SECTION 40. 80.06 of the statutes is renumbered 82.11 (1) and amended to read:

82.11 (1) ~~The town supervisors shall meet at the time and place stated in their notice, and upon being satisfied that the notices required in s. 80.05 have been duly given, proof of which may be shown by affidavit or otherwise as they may require, shall proceed to examine personally such examine the highway, and shall hear any reason that may be offered for or against laying out, widening, altering or discontinuing the same, and shall decide upon or proposed highway that is the subject of an application or resolution under s. 82.10. At the time and place stated in the notice under s. 82.10, the town board shall hold a public hearing to decide, in its discretion, whether granting the application and shall grant or refuse the same as they shall deem best for the public good; and they may adjourn from time to time, not exceeding in all 30 days from the time of the first meeting, giving public notice of the time and place of such adjournment when made, and by forthwith filing notice of such adjournment in the office of the town clerk or resolution is in the public interest. Before the town board holds a public hearing on or takes any action on the application or resolution, the town board must be satisfied, by affidavit of the applicant or otherwise, that the notices in s. 82.10 (4) have been given.~~

NOTE: The language from current s. 80.06 specifying how the supervisors may adjourn for a period not exceeding 30 days was not carried into this bill because the special committee decided that it was unnecessary.

SECTION 41. 80.07 (title) of the statutes is repealed.

SECTION 42. 80.07 (1) and (2) of the statutes are consolidated, renumbered 82.12 (2) and amended to read:

82.12 (2) ~~When the supervisors~~ If the board determines under sub. (1) to lay out, alter, widen or discontinue any highway they, it shall make and sign an issue a highway order therefor, incorporating therein a description of the highway and cause survey thereof to be made when necessary. The highway order shall be filed and recorded in the office of with the register of deeds for the county in which the highway is or will be located and shall be filed with the town clerk, who shall note in the record the time of recording. The order together with the award of damages shall be so filed within 10 days after the date fixed by their notice or adjournment for deciding upon the application. In case the supervisors fail to file the order and award within the 10 days aforesaid they shall be deemed to have decided against the application. When an order has been filed for more than 30 years and no award of damages or agreement or release has been filed and when the highway, or a part thereof, has been used by the public and public money has been expended thereon, for at least 5 years, it shall be presumed that a release was given by the owners of the lands over which the highway was laid out and the public shall be entitled to use the full width of the highway, as laid out, without further compensation. (2) Whenever the supervisors lay out, alter or discontinue any highway the, The town clerk shall transmit submit a certified copy of the order therefor to the county highway commissioner. If the town has an official map, the order shall be incorporated into the official map.

NOTE: The special committee did not carry over from current s. 80.07 the following language: "In case the supervisors fail to file the order and award within the 10 days aforesaid, they shall be deemed to have decided against the application." The special committee decided that this might allow a town board to change its mind after a public decision had been made.

SECTION 43. 80.08 of the statutes is renumbered 82.18 and amended to read:

82.18 Width of highways. Except as otherwise provided in s. 80.13 this chapter, highways laid out under this chapter shall be laid out at least 49.5 66 feet wide, and when unless, in the town board's discretion, that width is impractical. If the town board determines that a 66-foot width is impractical, the width shall be determined by the town board but shall be at least 49.5 feet in width. When no width is specified in the highway order, the highway shall be 66 feet wide.

NOTE: Current law sets the minimum width at 49.5 feet. New s. 82.18 sets the minimum width at 66 feet, however, the language also gives the board the option to lay a narrower highway if it determines that 66 feet is impractical.

SECTION 44. 80.09 of the statutes is repealed.

SECTION 45. 80.10 of the statutes is repealed.

SECTION 46. 80.11 (title) of the statutes is renumbered 82.21 (title) and amended to read:

82.21 (title) Highways on and across town and municipal lines.

SECTION 47. 80.11 (1) of the statutes is renumbered 82.21 (1) (intro.) and amended to read:

82.21 (1) ~~INITIATING THE PROCEDURE.~~ (intro.) ~~Whenever it is considered necessary The procedure~~ to lay out, alter, widen or discontinue a highway upon on the line between 2 towns a town and another town, a city, or a village, or a highway extending from one town into an adjoining town, it shall be done by the supervisors of the 2 towns acting together. If the highway is laid out or altered it may be either upon or as near to the town line as the situation of the ground will admit. The supervisors of the 2 towns acting together may vary the location on either side of the town line as they consider to be necessary: city, or village, shall begin only when one of the following occurs in each affected municipality:

SECTION 48. 80.11 (2) (a) (intro.) of the statutes is renumbered 82.21 (2) and amended to read:

82.21 (2) ~~CONTENTS OF THE APPLICATION OR RESOLUTION.~~ An application or resolution under sub. (1) shall be all of the following: contain a legal description of the highway to be discontinued or of the proposed highway to be laid out or altered and a scale map of the land that would be affected by the application. Upon completion of the requirements of sub. (1), the governing bodies of the municipalities, acting together, shall proceed under ss. 82.10 to 82.13.

SECTION 49. 80.11 (2) (a) 1. to 4., (b) and (c) of the statutes are repealed.

SECTION 50. 80.11 (3) (a), (b) 1. and 2. and (c) of the statutes are renumbered 82.21 (4) (a), (b), (c) and (d) and amended to read:

82.21 (4) (a) ~~The A highway order under sub. (2) (c) issued by 2 towns or by a town and a city or village may designate the part of the highway that each shall be made and kept in construct and repair by each town, and the share of, and pay the damages for, if any, that shall be paid by each town. Each town. As to the portion of the highway that the town, city, or village agrees to construct, keep in repair, and pay damages for, the town, city, or village shall have all of the rights authority and be subject to the liabilities all of the responsibility in relation to the that part of the highway to be made or repaired by it as if it that part were wholly located in that the town, city, or village.~~

(b) ~~A majority of the supervisors of each town Two town boards or a town board and a city council or village board, meeting together, may make an order in accordance with par. (a) apportioning or reapportioning the authority and responsibility for a town line highway or any part of the a town line highway that they consider advisable, if any of the following conditions exists:~~

1. No apportionment has been made in an a highway order laying out, altering or widening the highway or a part of the highway.

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

3. In the judgment of the supervisors town boards, or the town board and the city council or village board, circumstances have been so altered since the last apportionment of the highway or part of the highway that the current apportionment or reapportionment has been rendered inequitable or impracticable.

(c) An order made under this paragraph par. (b) shall be filed as provided in sub. (2)(c) with the clerk of each affected municipality and shall have the same effect as an order apportionment made in connection with the original laying out of the highway order.

(d) Any written order or agreement made before August 27, 1947, by a majority of the supervisors of each town concerned, acting together, apportioning, or reapportioning a town line highway has the same effect as though made on or after August 27, 1947.

SECTION 51. 80.11 (4) of the statutes is repealed.

SECTION 52. 80.11 (5) of the statutes is renumbered 82.21 (5) (a) and amended to read:

82.21 (5) (a) If no agreement is reached under sub. (4) (b), or if an order laying out, or altering or widening a town line highway has not apportioned the liability of the towns or village on account of authority and responsibility for the highway, the supervisors of an affected town or the president of an affected village, after 10 days' notice of the time and place of hearing served on the clerk of each town and village to be affected, or if a municipality considers the current apportionment to be inequitable, an affected municipality may apply to the circuit judge of the county in which the affected town or village municipality is located, for the appointment of 3 commissioners to apportion the liabilities of authority and responsibility between each affected town and village on account of the town line highway municipality. The municipality filing the application shall serve a copy of the application on the clerk of each municipality to be affected. The circuit judge may set the time and place of the hearing before the commissioners at least 10 days after the application is filed with the judge.

SECTION 53. 80.11 (6) of the statutes is renumbered 82.21 (5) (b) and amended to read:

82.21 (5) (b) Upon receipt of an application under sub. (5) par. (a), the circuit judge shall appoint 3 residents of the county as commissioners. The commissioners shall, on not less than 5 10 days' notice nor more than 60 days' notice in writing to the clerk of each town and village affected municipality, apportion the liabilities authority and responsibility of each affected town and village municipality on account of the highway. The commissioners shall make the determination in writing and shall file the determination with the clerk of each

town and village affected municipality. The commissioners' determination has shall have the same effect as an order made under sub. (2), (3) or (4).

SECTION 54. 80.11 (7) of the statutes is renumbered 82.23 and amended to read:

82.23 Municipal line bridges. Any Unless otherwise provided by statute or agreement, every highway bridge on a highway that became a highway under s. 80.01 (2) as a result of having been worked, that is between 2 towns, or between a town on one side and a city, village, or a town and village on the other side, and that has not been assigned to either of the adjoining towns or village, boundary shall be repaired and maintained by the any adjoining towns and village municipality in which the bridge is located. The cost of repairs and maintenance shall be paid by the adjoining towns and village municipalities in proportion to the last equalized valuation of the property in the adjoining towns and village as equalized by the county board or boards at the last equalization municipalities.

SECTION 55. 80.11 (8) of the statutes is repealed.

SECTION 56. 80.12 (title) of the statutes is repealed.

SECTION 57. 80.12 (1) of the statutes is repealed.

SECTION 58. 80.12 (2) of the statutes is renumbered 82.21 (3) and amended to read:

82.21 (3) APPOINTMENT OF CITY OR VILLAGE COMMISSIONERS. Upon receipt of an application under sub. (1), the common or introduction of a resolution, the city council or village board of trustees shall may appoint 3 commissioners on the part to act on behalf of the affected city or village in all respects. The commissioners shall be duly sworn to faithfully discharge their duties as commissioners before entering upon those duties. The commissioners and town supervisors shall then give notice and proceed in all respects as provided in s. 80.11.

SECTION 59. 80.12 (3) and (4) of the statutes are repealed.

SECTION 60. 80.12 (5) of the statutes is renumbered 82.21 (6) and amended to read:

82.21 (6) WHERE PAPERS FILED. All proceedings and orders awards, notices, and papers required to be filed and recorded shall be filed and recorded in the office of the clerk of the each affected city, village or town municipality. Any highway orders issued under this section shall be recorded with the register of deeds for any county in which the highway is or will be located.

NOTE: Section 82.21 is based on current ss. 80.11 (1) through (6) and 80.12. Current s. 80.12 is ambiguous as to whether the procedure in that section is the exclusive procedure for laying, altering, or discontinuing a highway on the line between a town and a city or village, or whether it merely provides a means to allow citizens to petition their municipal governments. The special committee decided to resolve the ambiguity in favor of making the provision the exclusive means. In addition, the special committee allowed the governing body of each municipality to initiate the procedures in different manners.

The special committee decided not to carryover current s. 80.11 (4) which vacated an apportionment in certain situations. The special committee decided that current s. 80.11 (4) was unnecessary and could cause a gap in the responsibility for a highway. Any reapportionment that is necessary should be covered under the provision allowing a reapportionment in situations where the current apportionment is judged to be inequitable or impracticable. However, the special committee changed the language to allow one municipality to petition the court for reapportionment if that municipality feels the current apportionment is inequitable. The appealing municipality must serve a copy of the application on any affected municipality.

The following language from s. 80.11 (1) was not carried over to this bill because the special committee decided it was unnecessary: "If the highway is laid out or altered, it may be either upon or as near to the town line as the situation of the ground will admit. The supervisors of the 2 towns acting together may vary the location on either side of the town line as they consider to be necessary."

Current s. 80.12 (4) was entirely deleted because the committee decided it was unnecessary. Current s. 80.12 (4) reads as follows: "The municipalities responsible for a municipal line highway may cause any municipal line highway or part of a municipal line highway that is not less than 264 feet in length, to be graded, paved, macadamized or otherwise improved, including the establishment of the grade, construction of curbs and gutters and installation of water and sewer mains and service pipes. The municipalities may levy special assessments for the whole or any part of the cost of the improvements as a tax upon the property that they determine is especially benefited by the improvements initiated under this subsection, in the manner provided in s. 66.0703."

The new s. 82.21 changes the obligation of a city or village to appoint commissioners from mandatory to permissive.

SECTION 61. 80.125 of the statutes is renumbered 82.28 and amended to read:

82.28 Highways and bridges on state boundaries.

~~A town or county~~ The board of any town or county that is bounded in part by a river, or by a highway, either of which that is also a state boundary line may enter into an agreement with the any adjoining municipality or county in such the other state for the maintenance and, construction, and reconstruction of boundary line highways and bridges and for the maintenance and reconstruction of any boundary line highway including its bridges, by appropriation therefor not exceeding 50% of the total costs assignable to the boundary line facility. The costs shall be apportioned by agreement.

NOTE: The current law seems to limit the town or county to paying 50% of the costs. The special committee decided that it would be more appropriate to allow the local government to decide how much it is willing to pay. Thus, the new s. 82.28 states that the apportionment shall be by agreement.

SECTION 62. 80.13 (title) of the statutes is repealed.

SECTION 63. 80.13 (1) of the statutes is renumbered 82.27 (3) and amended to read:

82.27 (3) SETTING THE HEARING DATE; NOTICE. ~~When any person presents the town board with an affidavit that meets the requirements~~ Upon receipt of an application under sub. (1m) (2), the town board shall set a time and place to conduct a hearing regarding the laying out or widening of a highway application. The hearing shall be held after 10 days and within 30 days of the receipt of the

affidavit application by the town board. Notice of the time and place of the hearing shall be served as required by s. ~~80.05~~ 82.10 and published as a class 2 notice under ch. 985.

SECTION 64. 80.13 (1m) of the statutes is renumbered 82.27 (2) and amended to read:

82.27 (2) APPLICATION. ~~The affidavit required under sub. (1) shall be executed by the owner or lessee of real estate located within the a town, may apply to the town board to have a highway laid out to the owner's land. Except as provided in sub. (7), the application shall be delivered to the town clerk of the town in which the real estate is located. The application shall contain a description of an affidavit, executed by the applicant, that describes the affected real estate and shall contain recites facts that satisfy the supervisors board that any of the following circumstances exists either in par. (a) or in par. (b) exist:~~

(a) ~~The real estate described in the affidavit is shut out from all public highways by being surrounded on all sides by real estate owned by other persons, or by real estate owned by other persons and by water, and that the owner or lessee is unable to purchase a right-of-way to a public highway from the owners of the adjoining real estate or that such a right-of-way cannot be purchased except at an exorbitant price, which price shall be stated in the affidavit.~~

(b) 1. ~~The owner or lessee is the owner of a private way or road, whose width shall be stated in the affidavit, that leads from the described real estate to a public highway but the way or road is too narrow to afford the owner or lessee reasonable access from the described real estate to the public highway; and~~

2. ~~The owner or lessee is unable to purchase a right-of-way from the described real estate to a public highway, or is unable to purchase land on either or both sides of the owner's or lessee's existing way or road to make the way or road of sufficient width or that the right-of-way or additional land cannot be purchased except at an exorbitant price, which price shall be stated in the affidavit.~~

SECTION 65. 80.13 (3) of the statutes is renumbered 82.27 (4) and amended to read:

82.27 (4) HEARING. (a) ~~The town board shall meet at the time and place stated in the notice given under sub. (1) and shall in their and decide, in its discretion lay out a highway of not less than 33 feet nor more than 49.5 feet in width from the public highway to the real estate described in the affidavit under sub. (1m) (a) or (b) either by, whether to grant the application. The board may grant the application by either laying out a new highway across the surrounding land or by adding enough land to the width of the existing way or road described in the affidavit under sub. (1m) (b) to make it. If the board decides to lay out a new highway, the new highway shall be at least 66 feet wide unless the board determines this width~~

to be impracticable. ~~If the board decides to widen an existing way or road, the resulting highway shall not be less than 33 49.5 feet nor more than 49.5 66 feet in width.~~

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

SECTION 66. 80.13 (4) of the statutes is renumbered 82.27 (4) (c) and amended to read:

82.27 (4) (c) Upon laying out a highway ~~under sub. (3) or widening a private way or road,~~ the town board shall make and sign an issue a highway order describing the laid-out highway and, if it is necessary to include a turnaround, the turnaround shall be laid out on the applicant's land. The applicant shall pay the town treasurer the amount determined as advantages within 30 days of the board's decision. Within 10 days of payment, the town board shall file the order with the town clerk together with its award of damages. The and record the order shall be recorded by the clerk; provided, that the amount assessed as advantages to the applicant under sub. (3) is paid to the town treasurer before the order laying out such highway shall be filed with the register of deeds for the county in which the land is located.

SECTION 67. 80.13 (4m) of the statutes is renumbered 82.27 (5) and amended to read:

82.27 (5) CHARGING COSTS TO THE APPLICANT. The following costs may be assessed If the town board grants the application, the items listed in pars. (a) to (d) may be included in the determination of advantages. If the town board denies the application, 50 percent of all of the following may be charged to the applicant as a special charge under s. 66.0627:

(a) Attorney fees reasonably incurred by the town under subs. (3) and (4).

(b) The cost of any survey or ~~the~~ fee of any expert on valuation, or both, reasonably incurred by the town under subs. (3) and (4).

SECTION 68. 80.13 (5) of the statutes is renumbered 82.27 (6) and amended to read:

82.27 (6) REAL ESTATE LANDLOCKED BY SALE. ~~Whenever a parcel in a town, if the owner of land in any town which that is accessible, or that is provided with a right-of-way an easement to a public highway, is subdivided and the owner subdivides and transfers any part of the subdivided parcel by metes and bounds that would otherwise be shut out from all public highways by reason of being surrounded on all sides by real estate belonging to other persons or by real estate belonging to other persons and by water without an adequate right-of-way to a public highway, the seller land, the owner shall provide a cleared right-of-way easement at least 50 66 feet in width that shall be continuous from the highway to the~~

part of the subdivision sold. ~~In case If the seller fails to provide the required right-of-way easement, the town board may, pursuant to proceedings under this section, lay out a road at least 66 feet wide from the inaccessible land to the public highway over the remaining lands of the seller without assessment of damages or compensation to the seller.~~

SECTION 69. 80.14 of the statutes is renumbered 82.27 (7) and amended to read:

82.27 (7) HIGHWAY FROM SHUT-OFF LAND THROUGH LAYING OUT A HIGHWAY TO AN ADJOINING TOWN. ~~When the owner of land that is shut out from all highways by being surrounded by lands belonging to other persons, and If it is impracticable to lay out a road from that owner's land to a public highway to an existing highway that is in the town where the land is situated, and it is practicable to lay out a highway from said land a landowner may apply to have a highway laid out to a highway in an adjoining town, that owner may. The application shall comply with the requirements of sub. (2), except that the affidavit shall also state that it is impracticable to lay out a new highway to an existing highway in the town where the land is located and that it is practicable to lay out a highway to an existing highway in the adjoining town. The owner shall execute an affidavit the application in duplicate and present one copy to a supervisor the clerk of the town where the land is situated located and one copy to a supervisor the clerk of the town where the proposed highway is to be laid out. The affidavit shall set forth the facts above stated, together with the facts required in the affidavit provided under s. 80.13. The supervisors of the 2 towns town boards shall proceed as provided under said s. 80.13 in this section, except that all orders and notices shall be signed by the supervisors of both boards, and all papers required to be filed shall be made in duplicate and filed with each town clerk. The applicant shall pay the amount assessed determined as advantages to the applicant shall be paid by the applicant to the town treasurer of the town where in which the applicant's land is situated before the order laying out the highway is filed, and all within 30 days of the decision. The order shall be recorded within 10 days of payment. All damages assessed shall be paid by the town where the applicant's land of the applicant is situated.~~

SECTION 70. 80.15 (title) of the statutes is renumbered 82.27 (8) (title).

SECTION 71. 80.15 of the statutes is renumbered 82.27 (8) (a) and amended to read:

82.27 (8) (a) The owner of an island in the bottoms of the Mississippi River which may submit an application under this section if the island is shut out from the bank of said the river and from a all highway access by islands and sloughs, and by the lands of others, and a right-of-way through the same cannot be purchased the owner cannot purchase any highway access at a reasonable price, ~~may present to the supervisors of the town,~~

(b) ~~The application shall describe the affected land and shall contain an affidavit setting forth such that recites the facts and describing that owner's land. The said supervisors shall then proceed according to the provisions of s. 80.13 and the provisions of said section shall apply to proceedings under this section. in par. (a).~~

(c) ~~The town shall not be liable for want lack of repair or for defects in any a highway laid out pursuant to this section subsection, nor shall the town be liable for any accident or injury thereon on a highway laid out under this subsection.~~

NOTE: Section 82.27 (1) through (7) is based on current ss. 80.13 and 80.14.

In s. 82.27 (4) (c), there is new language specifying that a turnaround, if necessary, should be constructed on the applicant's land. The special committee decided that this was a fair way to distribute the displacement of the highway. Since the applicant's land is primarily being benefited, the special committee felt it would be unfair to the landowner whose land is being taken, to construct a turnaround on the taken land as well.

In s. 82.27 (3), the width of roads has been changed. Current s. 80.13 (3) (a) requires the road to be between 33 and 49.5 feet wide. New s. 82.27 (4) requires a newly laid out road to be at least 66 feet wide.

In s. 82.27 (5), administrative costs and per diems were added as costs that could be charged to the applicant, and the language was changed to allow only half of these costs to be charged to the applicant when the application is refused.

Section 82.27 (7) and (8) (c) add a time requirement for when the applicant must pay the advantages. Current ss. 80.13 (4) and 80.14 only require the applicant to pay the amount determined as advantages before the order is filed. Current s. 80.07 (1) states that a failure to file an order within 10 days of the board's decision is deemed a refusal of the application. In *Northern States Power Company v. Town of Hunter*, 57 Wis. 2d 118, the Wisconsin Supreme Court stated that the 10-day limitation should apply to s. 80.14 to prevent the landowner whose land is taken from being in limbo as to whether the land would actually be taken. Since the special committee deleted the 10-day limitation in current s. 80.07 (1), the special committee decided there needed to be a time limit in new s. 82.27 (7) and (9) (c). New s. 82.27 requires the applicant to pay the advantages within 30 days; the order shall be recorded within 10 days of payment.

Section 82.27 (8) is based on current s. 80.15. No substantive change is intended.

SECTION 72. 80.16 of the statutes is renumbered 82.13 and amended to read:

82.13 Shut-off Highways to school buildings; how laid. ~~Whenever Upon being notified that a public school in any a town is shut off from all public highways lacks highway access, the supervisors of the town board shall lay out a highway to the site thereof public school, using the procedures in this subchapter. No application for such the highway shall be necessary, but in every other respect the procedure for laying out an ordinary town highway shall be pursued. No highway shall be discontinued when the effect of such discontinuance shall be to exclude a public school from access to the public highways. Section 80.22 82.12 (3) shall not apply to proceedings under this section.~~

SECTION 73. 80.17 (title) of the statutes is repealed.

SECTION 74. 80.17 of the statutes is renumbered 82.12 (1) and amended to read:

82.12 (1) ~~Any order of the town supervisors laying out, altering, widening or discontinuing any highway, or refusing so to do, is subject to judicial review under s. 68.13, except that only a person aggrieved by the order or determination may seek review. Failure of the supervisors to file their decision upon A town board shall make a determination upon any application or resolution to lay out, alter, widen or discontinue any highway within 60 90 days after receipt of the application is made shall be deemed a refusal of the application. In case of highways upon a line between 2 counties the appeal may be made to the circuit court of either county or introduction of a resolution.~~

SECTION 75. 80.22 (title) of the statutes is repealed.

SECTION 76. 80.22 of the statutes is renumbered 82.12 (3) and amended to read:

82.12 (3) ~~The determination refusing to lay out, alter, widen or discontinue any not to issue a highway order shall be final, unless appealed from, for the term of one year after the making of such determination; and no other. No application for laying out, widening, altering or discontinuing any such to lay out, alter, or discontinue a highway shall be acted upon filed within said term of one year from the date of a determination not to issue a highway order covering the highway or portion of the highway covered in the refused application.~~

NOTE: The time limit in new sub. (1) for acting on an application or resolution has been increased from 60 to 90 days. The committee decided that it was more practical to allow 90 days. In addition, the language requiring the town to incorporate the order into its official map is new.

SECTION 77. 80.23 (title) of the statutes is renumbered 82.20 (title).

SECTION 78. 80.23 (1) of the statutes is renumbered 82.20 (1) and amended to read:

82.20 (1) ~~Whenever pursuant to this chapter any highway is laid out, widened or altered If the town board issues an order to lay out or alter a highway through enclosed, cultivated, or improved lands and the determination has not been appealed from, the town board or highway authorities superintendent shall give the owner or occupant of the lands through which the proposed highway will pass written notice of its, his, or her intent to remove the fences located on the highway within a time determined by the highway authorities to be reasonable, but in the path of the new or altered highway. The notice shall state when the town board or highway superintendent intends to remove the fences, which shall not be less than 30 days after giving from the date on which the notice was given to the owner or occupant. If the owner or occupant does not remove the fences within before the time required by stated in the notice, the town board or highway authorities superintendent shall remove the fences and direct the highway to be opened.~~

If the determination has been appealed from, may charge the landowner for the costs of the removal under s. 66.0627.

(2) The notice under sub. (1) shall be given after the final decision of the not be sent until the time for filing an appeal under s. 82.15 has expired and no appeal was taken or until all appeals under s. 82.15 have been brought to a final determination.

NOTE: Language was added in new sub. (1) to allow the town to charge the landowner for the removal of the landowner's fences.

SECTION 79. 80.23 (2) of the statutes is renumbered 82.20 (3) and amended to read:

82.20 (3) This section does not authorize the opening of a highway through enclosed, cultivated, or improved lands or the removal of fences between May 15 and September 15, except in cases of emergency to be determined by the highway authorities town board.

SECTION 80. 80.24 to 80.30 of the statutes are repealed.

NOTE: The special committee decided to eliminate the provisions for acquiring land in chs. 80 and 81 in favor of requiring the town to utilize the procedures under s. 32.05. As a result, the following provisions were not carried over into this bill: ss. 80.09, 80.10, 80.30 (1), and 80.24 through 80.29.

SECTION 81. 80.31 (title), (1) and (2) of the statutes are repealed.

SECTION 82. 80.31 (3) of the statutes is renumbered 82.14 (2) and amended to read:

82.14 (2) In case any If lands taken acquired by contract or condemnation for highway purposes shall be are encumbered, and the owners of the fee and of the encumbrance shall do not agree upon the division to be made between them on the allocation of any damages to be paid on account of such due to the taking, said the damages may be paid to the clerk of the circuit court of the county, and when so paid may be apportioned among the parties entitled thereto by said court upon in which the land is located. Upon the application of any party interested party and upon not less than 5 days' written notice to the other party, the court may apportion the damages paid to the clerk among the parties.

NOTE: New s. 82.14 (2) is based on current s. 80.31. The language from current s. 80.31 (3) was modified to eliminate the reference to condemnation because ch. 32 has provisions to deal with where and when money is paid.

SECTION 83. 80.32 (title) of the statutes is renumbered 82.19 (title) and amended to read:

82.19 (title) Discontinuance of highways; reversion of title.

SECTION 84. 80.32 (1) of the statutes is renumbered 82.19 (1) and amended to read:

82.19 (1) Any An unrecorded road highway, or any part thereof which of an unrecorded highway, that has become or is in the process of becoming a public highway by user in any town may be discontinued in the manner hereinbefore provided using the procedures under ss. 82.10 to 82.12. Any proceedings taken therefor to dis-

continue an unrecorded highway shall not be evidence of the acceptance at any time by the town of such road the highway or any part thereof of the highway.

SECTION 85. 80.32 (2) of the statutes is renumbered 82.19 (2) (a) and amended to read:

82.19 (2) (a) Except as provided in sub. (5), every Every highway shall cease to be a public highway at the expiration of 4 years from the time date on which it was laid out, except such the parts thereof as shall of the highway that have been opened, traveled, or worked within such that time, and any.

(b) 2. Any highway which shall have that has been entirely abandoned as a route of vehicular travel, and on which no highway funds have been expended for 5 years, shall be considered discontinued.

NOTE: The special committee had lengthy discussions about what to do with current s. 80.32 (2). The special committee finally decided to retain the provision, but to modify it so that it is limited to vehicular travel. The intent is to exclude the use of a road for hiking or berry picking as a means of keeping a highway open.

SECTION 86. 80.32 (3) of the statutes is renumbered 66.1005 (1) and amended to read:

66.1005 (1) When any highway shall be or public ground acquired or held for highway purposes is discontinued the same, the land where the highway or public ground is located shall belong to the owner or owners of the adjoining lands; if it shall be. If the highway or public ground is located between the lands of different owners, it shall be annexed to the lots to which it originally belonged if that can be ascertained; if not it. If the lots to which the land originally belonged cannot be ascertained, the land shall be equally divided between the owners of the lands on each side thereof of the highway or public ground.

SECTION 87. 80.32 (4) (a) (intro.) of the statutes is renumbered 66.1005 (2) (a) (intro.) and amended to read:

66.1005 (2) (a) (intro.) Whenever any public highway or public ground acquired or held for public purposes has been vacated or discontinued, any all easements and rights incidental thereto acquired by or belonging to the easements that belong to any county, school district, town, village or city or to any utility, or person and relating that relate to any underground or overground structures, improvements, or services and all rights of entrance, maintenance, construction, and repair of the structures, improvements, or services shall continue, unless one of the following applies:

SECTION 88. 80.32 (4) (a) 1. and 2. of the statutes are renumbered 66.1005 (2) (a) 1. and 2.

SECTION 89. 80.32 (4) (b) of the statutes is renumbered 66.1005 (2) (b).

SECTION 90. 80.32 (4) (c) of the statutes is renumbered 66.1005 (2) (c) and amended to read:

66.1005 (2) (c) Damages for the discontinuance of the easements and rights described in par. (a) shall be

assessed against the land benefited in the proceedings for assessment of damages or benefits upon the vacation or discontinuance of the public highway or public ground. ~~The~~ Unless the parties agree on a different amount, the amount of the damages shall be the present value of the property to be removed or abandoned, plus the cost of removal, less the salvage value of the removed or abandoned property, ~~or any other amount that may be agreed upon between the interested parties.~~ The owner of the easements and incidental rights, upon application to the treasurer and upon furnishing satisfactory proof, shall be entitled to any payments of or upon the assessment of damages.

SECTION 91. 80.32 (4) (d) of the statutes is renumbered 66.1005 (2) (d).

SECTION 92. 80.32 (5) of the statutes is renumbered 82.19 (2) (c) and amended to read:

82.19 (2) (c) ~~Subsection (2)~~ This subsection does not apply to state or county trunk highways or to any highway, street, alley, or right-of-way that provides public access to a navigable lake or stream.

SECTION 93. 80.33 of the statutes is renumbered 82.17 and amended to read:

82.17 Highway papers, where filed. All applications, orders, awards, bonds, and other papers relating to the laying out, altering, ~~widening~~ or discontinuing of highways under this chapter shall be promptly filed in the office of the town, city, or village clerk where the highway is located, except as otherwise specifically provided in this chapter.

NOTE: Currently, under ch. 80, orders must be filed with the town, city, or village clerk. This bill requires orders to be filed with the register of deeds. New s. 82.17 is intended to cover all documents other than the highway order.

SECTION 94. 80.34 (title) of the statutes is renumbered 82.16 (title).

SECTION 95. 80.34 (1) of the statutes is renumbered 82.16 (1) and amended to read:

82.16 (1) Every order of ~~the supervisors or the supervisors and commissioners or of the county board or a committee thereof~~ laying out, ~~widening~~, altering, or discontinuing ~~any a~~ highway, ~~or under this chapter, and any order~~ restoring the records thereof, and ~~the order of any commissioners reversing or affirming the same on appeal, and the record or certified copy thereof~~ record of a highway, shall be presumptive evidence of the facts therein stated and of the regularity of all the proceedings prior to the making of such the order.

SECTION 96. 80.34 (2) of the statutes is renumbered 82.16 (2) and amended to read:

82.16 (2) The validity of any such an order described in sub. (1), if fair on its face shall, ~~is~~ not be open to collateral attack, but may be tested by certiorari or other proper action or proceeding brought directly for that purpose if commenced within the time after the order is made pro-

vided by s. 893.73 (2) challenged in an action brought under s. 82.15.

NOTE: Current s. 80.34 provides a time frame for challenging an order that is different from current s. 80.17. In this bill, the time frame under current s. 80.34 has been eliminated.

SECTION 97. 80.35 of the statutes is repealed.

SECTION 98. 80.37 of the statutes is renumbered 82.33 and amended to read:

82.33 Lost records; how restored; effect. (1) Whenever the record of the laying out of any highway is has been lost or destroyed, the supervisors board of the town in which the highway is located, upon notice being served ~~on all interested parties~~ in accordance with s. ~~80.05~~ 82.10 (4), may make a new record of the highway. The notice shall ~~fix~~ state the time when and the place where the supervisors board will decide ~~upon making whether to make~~ the new record. The notice shall ~~specify as near as may be~~ contain a legal description of the highway for which the proposed record will be made and a scale map of the land that would be affected. Notice need not be given to persons who waive the notice or consent to the making issuance of the order ~~either before or after it is entered~~.

(2) The supervisors shall meet pursuant to the notice given under sub. (1) and hear any arguments or evidence that may be offered for or against At the time and place stated in the notice, the town board shall hold a public hearing regarding the proposed new record, and shall make a new record as ~~they consider it~~ considers proper. The supervisors may adjourn from time to time, and an entry of each adjournment shall be made in the record by the town clerk. If the supervisors ~~find~~ board finds that the highway is a legal highway, the record of which is has been lost or destroyed, ~~they~~ the board shall make issue a written order stating those facts and specifying the course, width, and other pertinent description of the highway. The order shall be filed ~~and recorded in the office of~~ with the town clerk, ~~who shall note the time of recording the order in the record and recorded in the office of the register of deeds for the county in which the highway is located.~~ Any number of highways may be included in one notice or order under this section. A failure or refusal to make a new record for any highway does not preclude a subsequent proceeding for that purpose.

(3) Any person through whose land a highway described in an order ~~entered~~ filed under sub. (2) passes may appeal ~~from the order~~ under s. 82.15 on the ground grounds that the highway described in the order was not a legal highway in fact. ~~The appeal shall be made in the time and manner provided for appealing from orders laying out highways, and proceedings shall be had on the appeal as in case of appeals from orders laying out highways.~~ No person may call into question the regularity of proceedings under this section except owners of land on

whom notice should have been served but in fact was not and persons claiming under those owners.

NOTE: The contents of the notice and who must be served with notice have been changed to be consistent with the rest of the new ch. 82. Current s. 80.37 requires that the notice specify the highway "as near as may be" and that the notice be served on all interested parties. New s. 82.33 requires the notice to contain a legal description and scale map. In addition, the notice must be served on the parties specified in new s. 82.10 (4).

SECTION 99. 80.38 to 80.40 of the statutes are repealed.

SECTION 100. 80.41 of the statutes is renumbered 66.1006 and amended to read:

66.1006 ~~Discontinuing ways to waters Department of natural resources approval of discontinuance.~~ No resolution, ordinance, order, or similar action of any a town board or county board, or of a committee thereof of a town board or county board, discontinuing any highway, street, alley, or right-of-way that provides public access to any navigable lake or stream shall be effective until such resolution, ordinance, order, or similar action is approved by the department of natural resources.

NOTE: No substantive change is intended, however, the special committee decided this provision was more appropriately placed in ch. 66.

SECTION 101. 80.47 of the statutes is renumbered 66.1035 and amended to read:

66.1035 Rights of abutting owners. The owners of land abutting on any highway, street, or alley shall have a common right in the free and unobstructed use thereof to its of the full width, and no of the highway, street, or alley. No town, village, city, county, company, or corporation shall close up, use, or obstruct any part of the highway, street, or alley so as to materially interfere with its usefulness as a highway or so as to damage abutting property abutting thereon, or permit the same to be done, without due just compensation being made for any resulting damage resulting therefrom to the owners of land upon either side of such highway, street or alley. This section does not impose liability for damages to property on both sides of any street, highway or alley arising from the use, maintenance, and operation of tracks or other public improvement legally laid down, built, or established in any street, highway, or alley prior to April 7, 1889. All rights of in property which would that could entitle the owners an owner to damages for injury thereto under the foregoing provisions this section may be condemned and permanently appropriated by any corporation authorized to use or obstruct any highway, street or alley that is listed in s. 32.02 in the same manner that other property may be condemned and appropriated by such by the corporation.

NOTE: No substantive change is intended. The special committee decided it was more appropriately placed in ch. 66.

SECTION 102. 80.48 of the statutes is repealed.

SECTION 103. 80.64 of the statutes is renumbered 66.1031, and 66.1031 (1), (2) and (3) (intro.) and (b), as renumbered, are amended to read:

66.1031 (1) With the approval of the governing body of the municipality a city, village, or town in which a street or highway or part thereof of a street or highway is located, the county board, to promote the general welfare, may establish street and highway widths in excess of the widths in use and adopt plans showing the location and width proposed for any future street or highway, which shall not be subject to s. 80.32 82.19 (2). Streets or highways or plans therefor for streets or highways established or adopted under this section shall be shown on a map showing present and proposed street or highway lines and, except in counties having a population of 500,000 or more, property lines and owners. The map shall be recorded in the office of the register of deeds, subject to s. 59.43 (2m) and, if applicable, the requirements under s. 84.095. Notice of the recording shall be published as a class 1 notice, under ch. 985, in the territory any city, village, or town in which the affected streets or highways are located. The notice shall briefly set forth the action of the county board. The county board, upon like approval, publication and notice, may from time to time supplement or change the same, and such supplements or changes shall be similarly recorded in the office of the register of deeds.

(2) The excess width for streets or highways in use for the right-of-way required for those planned, may be acquired at any time either in whole or in part by the state or, county or municipality, city, village, or town in which located; but no part shall be acquired in less than the full extent, in width, of the excess width to be made up of land on the same side of the street or highway, nor for less than the full length of such excess width lying within contiguous land owned by the same owner. Any land so acquired, whether the excess width is acquired for the full length of the street or highway or not, shall at once become available for highway purposes. The power to acquire such right-of-way or additional width in portions as provided herein in this section may be exercised to acquire the land on advantageous terms.

(3) (intro.) In counties containing a population of 500,000 or more if, subsequent to the establishment of widths on streets or highways by a county board with the approval of the governing body of the municipality in which the streets or highways lie under sub. (2), in conformity with this section or s. 59.69, any area embracing a street or highway upon which a width has been established under this section is annexed to a city or village or becomes a city or village by incorporation, the city or village shall thereafter adhere to the established width, and shall not, subsequent to any annexation or incorporation,

except with the approval of the county board, do any of the following:

(b) Permit or sanction any construction or development ~~which that~~ will interfere with, prevent, or jeopardize the obtaining of the necessary right-of-way to such established width.

SECTION 104. 80.65 of the statutes is repealed.

SECTION 105. Chapter 81 (title) of the statutes is repealed.

SECTION 106. 81.01 (title) of the statutes is renumbered 82.03 (title) and amended to read:

82.03 (title) ~~Highways; duties~~ **Duties of town board.**

SECTION 107. 81.01 (intro.) and (1) of the statutes are consolidated, renumbered 82.03 (1) (a) and amended to read:

82.03 (1) (a) The town board shall have the care and supervision of all highways ~~in the town, except as otherwise provided under the town's jurisdiction, including the highways specified in s. 83.06.~~ The town board shall: (1) ~~Appoint may appoint~~ in writing if it deems advisable a superintendent of highways to supervise, under the ~~board's direction of the board, the construction and, repair of said, and maintenance of the~~ highways and bridges ~~and fix the compensation and the amount of the bond of such superintendent under the town's jurisdiction.~~ Where no superintendent of highways is appointed, it shall be the duty of the town board to perform all ~~of~~ the duties that are prescribed by law for the superintendent of highways to perform, including keeping the highways passable at all times.

SECTION 108. 81.01 (2) of the statutes is renumbered 82.03 (1) (d) and amended to read:

82.03 (1) (d) ~~Provide~~ The town board shall provide the superintendent of highways with necessary forms and books made in compliance with standards prescribed by the department ~~of transportation.~~

SECTION 109. 81.01 (3) of the statutes is renumbered 82.03 (2), and 82.03 (2) (intro.) and (b), as renumbered, are amended to read:

82.03 (2) FUNDING AND EQUIPMENT. (intro.) ~~Provide~~ The town board shall provide machinery, implements, material, and equipment needed to construct, maintain, and repair ~~said the~~ highways and bridges under the town's jurisdiction, and for ~~that purpose those purposes~~ may acquire by purchase or by condemnation ~~in the manner provided by under ch. 32 stone, gravel, sand, clay, earth, gravel pits and, stone quarries, but the and interests in land under s. 83.07.~~ The total sum spent under this subsection in any year for construction, maintenance, and repair of highways and bridges may not exceed the product of \$5,000 multiplied by the miles of highway under the jurisdiction of the town measured by the most recent highway mileage for the town, as determined under s. 86.302, unless one of the following occurs:

(b) The town board, by resolution, submits to the electors of the town as a referendum at a general or special town election the question of exceeding the limit set under this subsection. A copy of the resolution shall be filed as provided in s. 8.37. The board shall abide by the majority vote of the electors of the town on the question. The question shall read as follows:

Shall the town of spend up to \$.... over, which is the annual limit of the product of \$5,000 multiplied by the miles of highway under the jurisdiction of the town measured by the most recent highway mileage for the town, as determined under section 86.302 of the Wisconsin Statutes, for the construction, maintenance, and repair of its highways and bridges?

FOR SPENDING AGAINST SPENDING

NOTE: In new s. 82.03 (2) (b), the ballot language has been changed. The change in the wording of the ballot makes the ballot include the actual amount that the town is already authorized to spend. Current law seems to only require a statement of the means by which the dollar limit is arrived at. The list of materials in current s. 81.06 has been added to new s. 82.03 (2).

SECTION 110. 81.01 (4) of the statutes is renumbered 82.03 (3) and amended to read:

82.03 (3) OVERSIGHT OF SUPERINTENDENT. ~~Compel~~ The town board shall direct the superintendent of highways ~~from time to time to perform in the performance of~~ the superintendent's official duties.

SECTION 111. 81.01 (5), (6), (7) and (9) of the statutes are repealed.

NOTE: The special committee decided that s. 81.01 (5), (6), (7), and (9) were obsolete.

SECTION 112. 81.01 (8) of the statutes is renumbered 82.03 (4) and amended to read:

82.03 (4) CONTROL OF EXPENDITURES. ~~Direct~~ The town board shall direct when and where all town moneys ~~received from highway taxes and other available high-~~ way funds shall be expended.

SECTION 113. 81.01 (10) of the statutes is renumbered 82.03 (5) (b) (intro) and amended to read:

82.03 (5) (b) (intro.) ~~Enter~~ The town supervisors may enter any private lands with their employees and agents for the ~~following purposes of removing:~~

1. ~~To remove weeds and brush and of erecting or removing such~~ to keep the highway reasonably safe for travel.

2. ~~To erect or remove snow fences as may be necessary~~ to keep highways reasonably free from snow and open for travel during the winter season.

NOTE: The new s. 82.03 (5) is also based on current s. 81.01 (3) and the first one-third of current s. 81.06. It gives the supervisors the additional authority to enter private land in order to erect fences on the right-of-way. The new sub. (6) makes it clear that the town will be responsible for any resulting damages.

SECTION 114. 81.01 (11) of the statutes is renumbered 82.03 (7) and amended to read:

82.03 (7) HIGHWAY NAMES. By The town board shall, by ordinance, assign a name to each of the roads in the town that are under town board the town's jurisdiction. No road name may be used on more than one road within the jurisdiction of the town.

SECTION 115. 81.02 (title) of the statutes is repealed.

SECTION 116. 81.02 of the statutes is renumbered 82.03 (1) (b) and amended to read:

82.03 (1) (b) The town board may appoint more than one superintendent of highways. If more than one superintendent is appointed, the town board shall divide the town into as many districts as there are superintendents. The districts shall be numbered and a superintendent shall be assigned to each district. The term of office of highway superintendents shall be one year from the date of their appointment. A superintendent of highways may be compensated by a regular salary or by a per diem allowance, to be paid out of the highway fund or out of the general fund of the town. In addition to a salary or per diem compensation the superintendent may be paid out of either of said funds a stated amount for the maintenance and upkeep of a horse or automobile or motor truck. Such superintendent before entering upon the duties of superintendent shall execute an official bond in such sum as the town board shall require, with sureties to be approved by the board, and file said bond with the town clerk. A superintendent may be a member of the town board.

NOTE: In new s. 82.03 (1), language was included to state that the superintendent of highways could be a member of the town board. Current s. 60.37 (4) (a) already authorizes this.

SECTION 117. 81.03 (title) of the statutes is renumbered 82.05 (title) and amended to read:

82.05 (title) Superintendent of highways; duties.

SECTION 118. 81.03 of the statutes is renumbered 82.05 (2) and amended to read:

82.05 (2) The superintendent of highways shall supervise the construction and maintenance of all highways in the superintendent's district that are required to be maintained by the town, and keep them passable at all times, and perform such other services in connection with said the highways as the town board requires, and keep a full account of all the superintendent's receipts and disbursements. The superintendent may make such arrangement arrange for the prosecution of the highway work as the superintendent deems considers necessary and appoint such supervisors as any overseers that the highway work requires.

(3) When any highway under the superintendent's charge becomes impassable, the superintendent shall put the same highway in passable condition as soon as practicable. The superintendent shall make a complete and full report of all funds received and disbursed by the superintendent whenever requested so to do by the town board, and shall also make a complete and full report to each annual town meeting. The superintendent, and in the

superintendent's absence the town board, shall immediately upon notice of its existence fill or remove Upon actual notice of the existence of any depression, ditch, hump, or embankment which that impedes the use of any highway in under the superintendent's district charge, the superintendent, or in the absence of a superintendent the chairperson of the town board, shall as soon as practicable take action to make the highway safe for travel, which may include closing the highway.

NOTE: Current s. 81.03 seemed to contemplate the superintendent having a separate set of accounting books and paying and receiving money. The special committee decided that such a system had the potential for fraud and confusion. Instead, new s. 82.05 (4) simply requires the superintendent to report all actions to the board, and the board can handle making and receiving payments.

In new sub. (3), the language has been changed from "notice" to "actual notice".

SECTION 119. 81.04 of the statutes is repealed.

SECTION 120. 81.05 of the statutes is repealed.

NOTE: The special committee repealed s. 81.05 because it believed that it was no longer used by towns.

SECTION 121. 81.06 (title) of the statutes is repealed.

SECTION 122. 81.06 of the statutes is renumbered 82.03 (5) (a) and amended to read:

82.03 (5) (a) The town board supervisors may enter upon any lands near any highway in the town and there to construct necessary drains or ditches or embankments for the improvement or protection of the highway; and may enter upon any unimproved lands near any highway in the town and take stone, gravel, sand, clay, earth or trees for the purposes of improving any highway, but shall carefully avoid doing any unnecessary injury to the premises; and may take stone, gravel or other suitable materials within the highway of the town to improve any highway therein. No such material shall be removed from any town without the consent of the town board unless the highway on which the same is found is maintained by the county, in which case the county may use the same for any highway purpose.

SECTION 123. 81.07 of the statutes is repealed.

SECTION 124. 81.08 (title) of the statutes is renumbered 82.35 (title).

SECTION 125. 81.08 (1) of the statutes is renumbered 82.35 (1) (a) and amended to read:

82.35 (1) (a) When any highway shall be is practically impassable or be dangerous to travel or when it shall be deemed,

(b) When the town board considers it necessary on account of construction or repair work thereon or for other reasons to suspend travel thereon or upon on a highway or on any part of such a highway, the town board may upon its own motion lay out and open temporary highways for the accommodation of public travel through any lands due to construction, repair, or other reasons.

(2) (a) The board may contract in writing with the owner or occupant, or both, lessee of any land through

which it proposes to lay out ~~such a~~ temporary highway highway, as to the location of the ~~same~~ highway, and the damages that the owner or occupant lessee is to receive, which. The contract shall be filed with the town clerk.

(b) In the absence of ~~such a~~ contract under par. (a), the board shall determine by the location of the temporary highway and the award of damages. Unless an emergency exists, the board shall serve the landowner with notice of the location of the highway and the award of damages and shall provide the landowner with 48 hours to object. The town board shall file a written order filed with the town clerk ~~both~~ specifying the location of the temporary highway and the damages, ~~and may immediately open such temporary highways. Such highways awarded.~~

(4) A temporary highway shall exist only so long as needed and shall be ~~deemed~~ considered vacated and discontinued when the permanent highway is again opened for public travel.

NOTE: The special committee was concerned that current law does not satisfy due process. Unless there is an emergency, new s. 82.35 requires notice to the landowner and 48 hours to object.

SECTION 126. 81.08 (2) of the statutes is renumbered 82.35 (2) (c) and amended to read:

82.35 (2) (c) The owner or occupant of any land occupied by ~~such a~~ temporary highway may, at any time after it is opened and within 30 days after it is so vacated or discontinued, apply to the town board to determine the owner's or occupant's damages; ~~and thereafter the same proceedings may be had as in the case of a claim for damages under s. 81.07.~~

SECTION 127. 81.08 (3) of the statutes is renumbered 82.35 (3) and amended to read:

82.35 (3) ~~In case such~~ If a temporary highway is opened in connection with or on account of road ~~and~~ or bridge construction, the damages agreed upon or awarded pursuant to this section may be treated as part of the construction cost and paid out of the construction funds ~~in the customary manner of disbursing the same.~~

SECTION 128. 81.11 (title) and (1) to (4) of the statutes are repealed.

SECTION 129. 81.11 (5) of the statutes is renumbered 82.25 and amended to read:

82.25 Highway taxes for limited-use road. The Notwithstanding s. 60.10 (1) (a) and (2) (a), the town board, upon its own authority and without direction from the annual town meeting, may levy and collect a tax on property located in a recorded and filed plat that existed on January 1, 2003, situated in a town requiring the approval of such town board, and adjoining a private road used by the public located therein, and on property adjoining, where the owner regularly uses such road which is not a portion of any town, county, state, or federal highway system, not exceeding 3 mills for each dollar of assessed valuation thereof. The proceeds of ~~such~~ the tax shall be expended for the improvement and main-

tenance of any private roads used by the public located within ~~such~~ the recorded and filed plat. The town board shall not expend any of ~~such~~ the funds collected under this section upon a private driveway.

NOTE: Section 82.25 is based on current s. 81.11 (5). The language was changed to limit its application to plats in existence on January 1, 2003. Subsections (1) through (4) of current s. 81.11 were deleted because the special committee decided that they were obsolete.

Current ss. 81.12 and 81.39, 80.30 (2) through (5), and the 2nd-to-last sentence of s. 80.02 were not carried over into this bill. The special committee decided that these provisions were obsolete or better covered by other parts of the statutes.

SECTION 130. 81.12 of the statutes is repealed.

SECTION 134. 81.14 of the statutes is repealed.

SECTION 136. 81.15 of the statutes is renumbered 893.83 (1) and amended to read:

893.83 (1) ~~DAMAGES CAUSED BY HIGHWAY DEFECTS; LIABILITY OF TOWN AND COUNTY MUNICIPALITY.~~ If damages happen to any person or his or her property by reason of the insufficiency or want of repairs of any highway ~~which that~~ any town, city, or village is bound to keep in repair, the person sustaining the damages has a right to recover the damages from the town, city, or village. If the damages happen by reason of the insufficiency or want of repairs of a highway ~~which that~~ any county by law or by agreement with any town, city, or village is bound to keep in repair, or ~~which that~~ occupies any land owned and controlled by the county, the county is liable for the damages and the claim for damages shall be against the county. If the damages happen by reason of the insufficiency or want of repairs of a bridge erected or maintained at the expense of 2 or more towns, cities, villages, or counties, the action shall be brought against all of the towns, cities, villages, or counties that are liable for the repairs of the bridge ~~and upon~~. Upon recovery of judgment, the damages and costs shall be paid by the towns, cities, villages, or counties in the proportion in which they are liable for the repairs; ~~and the~~. The court may direct the judgment to be collected from each town, city, village, or county for its proportion only. The amount recoverable by any person for any damages so sustained shall not exceed \$50,000. The procedures under s. 893.80 shall apply to the commencement of actions brought under this section subsection. No action may be maintained to recover damages for injuries sustained by reason of an accumulation of snow or ice upon any bridge or highway, unless the accumulation existed for 3 weeks.

SECTION 137. 81.17 of the statutes is renumbered 893.83 (2) and amended to read:

893.83 (2) ~~HIGHWAY DEFECTS; LIABILITY OF WRONGDOER; PROCEDURE.~~ Whenever damages happen to any person or property by reason of any defect in any highway or other public ground, or from any other cause for which any town, city, village, or county would be liable, and such damages are caused by, or arise from, the wrong, default, or negligence thereof and of any person, or private corporation, such person or private corporation shall

be primarily liable therefor; ~~but the~~. The town, city, village, or county may be sued with the person or private corporation so primarily liable. If the town, city, village, or county denies its primary liability and proves upon whom such liability rests, the judgment shall be against all of the defendants shown by the verdict or finding to be liable for the damages; but judgment, Judgment against the town, city, village, or county shall not be enforceable until execution has been issued against the party found to be primarily liable and returned unsatisfied in whole or in part; on. On such return being made, the defendant town, city, village, or county shall be bound by the judgment. The unpaid balance shall be collected in the same way as other judgments.

NOTE: Section 893.83 is based on current ss. 81.15 and 81.17. The special committee decided it was more appropriately placed in ch. 893. Though some of the language has been modified to make it more current, no substantive change is intended.

SECTION 138. 81.35 of the statutes is renumbered 82.37 and amended to read:

82.37 Tunnel under highway by landowner. The owner of land on both sides of a town highway may construct a tunnel under the highway, and ~~the necessary may erect fences for the passage of stock, and other purposes, in such manner as will that are necessary for the use of the tunnel. The tunnel shall not interfere with or endanger travel on the highway. The tunnel shall not be less than 25 feet in length and shall be maintained by the owner. The owner shall maintain the tunnel and shall be liable for all damages which may be occasioned by that occur as a result of the failure to keep the tunnel in repair. Unless authorized by a town meeting, the tunnel shall not be less than 25 feet in length.~~ The tunnel shall not interfere with or endanger travel on the highway. The tunnel shall not be less than 25 feet in length and shall be maintained by the owner. The owner shall maintain the tunnel and shall be liable for all damages which may be occasioned by that occur as a result of the failure to keep the tunnel in repair. Unless authorized by a town meeting, the tunnel shall not be less than 25 feet in length. The electors of the town at an annual town meeting may authorize the construction of any designated a tunnel not less than that is less than 25 feet, but at least 16 feet in length. The chairperson of the town shall see that all tunnels in the town are made in accordance with this section and that they are kept in good repair.

SECTION 139. 81.36 of the statutes is repealed.

SECTION 140. 81.38 (title) of the statutes is renumbered 82.08 (title).

SECTION 141. 81.38 (1) of the statutes is renumbered 82.08 (1) and amended to read:

82.08 (1) PETITIONS. ~~When any A town that has voted to construct or repair any culvert or bridge or culvert on a highway maintainable maintained by the town, and has provided for such portion of the cost of such construction or repair as is required by this section, the town board shall may file a petition with the county board setting forth said facts and for county aid with the county highway commissioner. The petition shall describe the location and size of the culvert or bridge; and bridge or culvert and shall contain a statement that the town has provided the funds required by sub. (3).~~

(2) FUNDING REQUIREMENTS. (a) ~~Except as provided in par. (b), upon receipt of a petition for a bridge or culvert with a 36-inch or greater span, or a structure of equivalent capacity to carry water, the county board, except as herein provided, shall thereupon appropriate such the sum as will, with the money provided by the town, be sufficient to defray the expense of constructing or repairing such culvert or bridge, required by sub. (3) and shall levy a tax therefor, which. The tax, when collected, shall be disbursed on the order of the chairperson of the county board and the county clerk, when the town board and county highway committee files a written notice with the clerk that the work has been completed and accepted held in a separate account administered by the county highway committee.~~

(b) ~~If on January 1, 2003, a county has a policy of providing funding only for bridges and culverts larger than the requirement of par. (a), the county may refuse to fund bridges and culverts that do not meet the minimum requirements of that policy. The minimum size bridge or culvert that a county is required to fund under this section may be raised, but not lowered, by the affirmative vote of a majority of the towns in the county. The county board of any county which that has never granted aid under this section may, in its discretion, refuse to make any appropriation all petitions under sub. (1).~~

NOTE: Current s. 81.38 requires all petitions for county aid to be granted. The special committee had a number of discussions about whether the county should be involved in projects that are very small, and about the fact that some counties currently put a minimum size requirement on the bridges and culverts that they fund.

The new s. 80.28 (2) limits the funding requirements to bridges or culverts with a span of 36 inches or greater. However, counties that had a greater size requirement in place on January 1, 2003 can continue to abide by that policy. In addition, the size limit can be raised, but not lowered, by the vote of the majority of towns in the county. Current s. 81.38 also seemed to require the town to apply to the county for aid. That has been changed so that a town "may" apply for aid. Finally, the new sub. (2) requires the tax that the county levies to be held in a separate account.

SECTION 142. 81.38 (2) of the statutes is renumbered 82.08 (3) and amended to read:

82.08 (3) SHARED COST. ~~The county shall pay the cost in excess of \$750 up to \$1,500. The town and county shall each pay one-half of the cost of construction or repair above \$1,500. In determining the cost of construction or repair of any culvert or bridge or culvert, the cost of constructing or repairing any approach not exceeding 100 feet in length shall be included.~~

NOTE: New sub. (3) changes the way projects are funded. The current law requires the town to pay for the first \$750, the county to pay for the second \$750, and the town and county to split amounts in excess of \$1,500. The new sub. (3) requires a straight 50% split.

SECTION 143. 81.38 (3) of the statutes is renumbered 82.08 (4) and amended to read:

82.08 (4) EMERGENCY PETITION. Whenever the construction or repair of any such culvert or bridge or culvert must be made without delay, the town board may file its petition with the county clerk and the county highway committee, setting forth the facts respecting explaining the necessity for immediate construction or repairs. It shall then be the duty of the town board and the county highway committee to make such construction or repairs with the least possible delay. The town board is authorized to borrow the entire cost of the work, and to include the town's share of such cost in the next tax levy construct or repair the bridge or culvert as soon as practicable. The construction or repair of a culvert or bridge performed and accepted or culvert undertaken pursuant to this subsection shall entitle the town to the same county aid that the town would have been entitled to had it filed its petition with the county board as provided in sub. (1).

SECTION 144. 81.38 (4) of the statutes is renumbered 82.08 (5) and amended to read:

82.08 (5) SUPERVISION OVER DESIGN, CONSTRUCTION, AND COST. The county highway committee and the town board shall have full charge of design, sizing, letting, inspecting, and accepting the work construction or repair, but the town board may leave the matter entirely in the hands of the county highway committee. The county highway committee and the town board must agree on the cost of the project and must consult each other during construction.

NOTE: New sub. (5) adds the requirement that the town and county mutually agree on costs and consult with each other during construction.

SECTION 145. 81.38 (5) of the statutes is renumbered 82.08 (6) and amended to read:

82.08 (6) CONSTRUCTION REQUIREMENTS. No county order may be drawn under sub. (4) (2) for the construction of an arch, culvert or a bridge or culvert unless it is constructed in a workmanlike manner and built of creosoted wood or timber, steel, stone or concrete or a combination thereof, and the design and construction comply with requirements under s. 84.01 (23).

NOTE: New sub. (6) does not carry over the language from current s. 82.38 (5) that specified what materials the culvert or bridge should be made of. The special committee decided that the list was unnecessary and that some of the listed materials were outdated.

SECTION 146. 81.38 (6) of the statutes is renumbered 61.48 and amended to read:

61.48 County aid for construction and repair of bridges and culverts. Any village, by a resolution adopted by a two-thirds majority vote of all members of the village board, may elect to become subject to all of the provisions of this section. Such s. 82.08 by a resolution adopted by a two-thirds majority vote of all of the members of the village board. The election to become subject to s. 82.08 shall be effective when a certified copy of such the resolution is filed with the county board and approved by a majority of the towns and villages in the county that

are already subject to s. 82.08 vote of the members of the county board representing towns and representing villages which have become subject to the provisions of this section as provided in this subsection; and thereafter, until such to approve the village's election. Until the village ceases to be subject to the provisions of this section s. 82.08, the words "town" and "town board" as used in this section s. 82.08 shall also apply respectively to such to the village and its village board. A village which that has become subject to the provisions of this section as provided in this subsection s. 82.08 may cease to be subject to such provisions only that section by the adoption of a resolution and its approval by the county board in the same manner and by the same procedure by which a as the village may become became subject to such provisions as provided in this subsection that section.

NOTE: Since it concerns villages, the special committee decided current s.81.38 (6) was more appropriately placed in ch. 61. New s. 61.48 changes how the election to be subject to the provisions of new s. 82.08 is approved. The current language in s. 81.38 requires approval "...by a majority vote of the members of the county board representing towns and villages that have become subject to this section". Since the members of the county board no longer represent towns and villages in that manner, new s. 61.48 requires a vote of the majority of the towns and villages that are already subject to s. 82.08.

SECTION 147. 81.38 (7) of the statutes is renumbered 82.08 (7) and amended to read:

82.08 (7) NO TAX. Except as provided in sub. (6) and s. ss. 61.48 and 84.14 (3), nothing herein contained in this section shall authorize the levy of a tax upon the property in any city or village which that is required to maintain its own bridges.

SECTION 148. 81.39 of the statutes is repealed.

SECTION 149. 81.42 (title) of the statutes is repealed.

SECTION 150. 81.42 (1) of the statutes is renumbered 82.03 (8) and amended to read:

82.03 (8) USE OF DAMS AS ROADWAYS. The town board may contract with the owner of any a dam with that has a roadway thereon on it for the use of such the roadway for highway purposes for such period of time as the board may determine. The contract shall provide that who shall be responsible for keeping the roadway shall at all times be kept in repair by the owner and may be for a period of time that the board determines.

NOTE: The language of current s. 81.42 (1) requires the contract to provide that the owner of the dam keep the roadway in repair at all times. New s. 82.03 (8) changes this language to require only that the contract specify who shall keep the road in repair.

SECTION 151. 81.42 (2) of the statutes is renumbered 82.09 and amended to read:

82.09 County aid for dams used for bridges. Whenever any A town board shall may file its a petition with the county board, setting forth the fact that said stat-
ing that the town board has voted to acquire the right to use any such a roadway, designating as near as may be the

location of such dam and roadway, and stating on a dam. The petition shall contain a legal description and scale map of the dam and roadway, and shall state the amount agreed to be paid to the owner for the use thereof of the roadway. Upon receipt of a petition, the county board shall appropriate a sum equal to one-half 50 percent of the amount so agreed to be paid for such the use, and. The county board shall, on the order of the chairperson of the county board and county clerk, cause such sum to be paid to the treasurer of said the town on the order of the chairperson of the county board and county clerk whenever the town board shall notify them notifies the county highway commissioner that a contract for the use of such the roadway has been executed.

NOTE: The contents of the petition have been changed. The original language required the petition to designate "as near as may be" the location of the dam and roadway. New s. 82.09 requires a legal description and scale map.

SECTION 152. Chapter 82 (title) of the statutes is created to read:

CHAPTER 82 TOWN HIGHWAYS

SECTION 153. Subchapter I (title) of chapter 82 [precedes 82.01] of the statutes is created to read:

CHAPTER 82 SUBCHAPTER I FUNDING AND GOVERNANCE

SECTION 154. 82.01 (intro.), (1) to (7) and (9) to (11) of the statutes are created to read:

82.01 Definitions. (intro.) In this chapter, the following words and phrases have the designated meanings unless specifically noted:

(1) "Department" means the department of transportation.

(2) "Freeholder" means a person who owns a fee simple or life estate interest in land, a person who is a land contract vendee, or a person who has an interest in land arising under ch. 766.

(3) "Highway order" means an order laying out, altering, or discontinuing a highway or a part of a highway, that contains a legal description of what the order intends to accomplish and a scale map of the land affected by the order.

(4) "Laid out" means any formal act or process by which a municipality determines the location of a highway.

(5) "Legal description" means a complete description of land without internal references to any other document, and shall be described in one of the following ways:

(a) By metes and bounds commencing at a monument at the section or quarter section corner or at the end of a boundary line of a recorded private claim or federal reservation in which the annexed land is located and in one of the following ways:

1. By government lot.

2. By recorded private claim.

3. By quarter section, section, township, and range.

(b) If the land is located in a recorded and filed subdivision or in an area that is subject to a certified survey map, by reference as described in s. 236.28 or 236.34 (3).

(c) If the land is depicted in a transportation project plat filed or recorded under s. 84.095, by reference as described in s. 84.095 (7) (a).

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

(7) "Opened" means the completion of work on a highway that places the highway in a condition ready for public use.

(9) "Town line highway" means a highway that runs on or across the boundary line between a town and another town, a village, or a city.

(10) "Unrecorded highway" means a highway that is not a recorded highway.

(11) "Worked" means action of the town in regularly maintaining a highway for public use, including hauling gravel, grading, clearing or plowing, and any other maintenance by or on behalf of the town on the road.

SECTION 155. 82.03 (1) (title) of the statutes is created to read:

82.03 (1) (title) OVERSIGHT OF HIGHWAYS, SUPERINTENDENT OF HIGHWAYS.

SECTION 156. 82.03 (1) (c), (5) (title) and (c), (6) and (9) to (19) of the statutes are created to read:

82.03 (1) (c) The town board shall fix the compensation and may require and set the amount of a bond of the superintendent. The town board may reimburse the superintendent for expenses incurred in performing his or her duties as superintendent.

(5) (title) MAINTENANCE. (c) To erect on the right-of-way fences other than snow fences.

(6) LIABILITY. (a) The town shall be responsible for any damage resulting from activities undertaken under the authority granted by sub. (5). The owner of lands entered upon or used for any of the purposes identified in sub. (5) may apply to the town board to appraise the resulting damages, and such damages may be determined by agreement. If the parties are unable to agree upon the damages, the board shall make an award of damages and file the award with the town clerk, and the clerk shall give notice, by certified mail with return receipt requested, of the filing to the owner.

(b) Within 60 days after the date of filing of a town board's award of damages under par. (a), the owner may appeal to the circuit court following the same procedures provided under s. 32.05 (10) for condemnation proceedings. The clerk of courts shall enter the appeal as an action pending in the court with the owner as plaintiff and the town as defendant. The action shall proceed as an action in the court subject to all of the provisions of law relating to actions brought therein, but the only issue to be tried shall be the amount of just compensation to be

paid by the town, and the action shall have precedence over all other actions not then on trial. The action shall be tried by jury unless waived by both the plaintiff and the defendant. The amount of the town's award shall not be disclosed to the jury during the trial. Costs shall be allowed or litigation expenses awarded in an action under this paragraph in the same manner as provided under s. 32.28 for condemnation proceedings.

(9) **RUSTIC ROADS.** As specified in s. 83.42, the town board shall maintain the rustic roads under its jurisdiction and may apply to have a highway designated as a rustic road or withdrawn from the rustic road system.

(10) **ADDITIONS TO AND DELETIONS FROM COUNTY TRUNK HIGHWAY SYSTEM.** The town board shall approve or deny additions to and deletions from the county trunk highway system as provided in s. 83.025 (1).

(11) **EMERGENCY CLOSURE OF COUNTY TRUNK HIGHWAY.** The town chairperson may close county trunk highways when they have been rendered dangerous for travel and immediately notify the county highway commissioner under s. 83.09.

(12) **CONTROLLED-ACCESS HIGHWAYS.** The town board shall work with the county and other governmental bodies in establishing and maintaining controlled-access highways under s. 83.027.

(13) **COUNTY-CONTROLLED HIGHWAYS IN A TOWN.** The town board may contract under s. 83.035 with the county to enable the county to construct and maintain streets and highways in the town.

(14) **PURCHASE OF EQUIPMENT.** The town board may purchase road building and maintenance supplies from the county under s. 83.018.

(15) **AGREEMENTS WITH OTHER GOVERNMENTAL BODIES.** The town board, under s. 83.027 (9), may enter into agreements with other governmental bodies respecting the financing, planning, establishment, improvement, maintenance, use, regulation, or vacation of controlled-access highways or other public ways in their respective jurisdictions.

(16) **COUNTY AID HIGHWAYS.** The town board may improve county aid highways under s. 83.14.

(17) **HIGHWAY LIGHTING.** The town board may provide lighting for highways located in the town under s. 60.50 (4).

(18) **SOLID WASTE TRANSPORTATION.** The town board may designate highways on which solid waste may be transported under s. 60.54.

(19) **TUNNELS UNDER HIGHWAYS.** The town board shall ensure that all tunnels constructed pursuant to s. 82.37 are constructed in accordance with the requirements of s. 82.37 and are kept in good repair by the landowner.

NOTE: Current s. 81.02 requires the superintendent to file a bond before assuming office. The special committee discussed this requirement and concluded that town boards rarely require such bonds. As a result, s. 82.03 (1) gives the board discretion over whether to require a bond. Current s.

81.02 specifies what fund the superintendent may be paid from. The special committee discussed this requirement and decided it should be left to the town board's discretion.

New s. 82.03 (9) through (18) are simply cross-references to sections outside of this chapter. They have been added to create a more comprehensive list of the duties of the town board in relation to the highways under its jurisdiction.

New s. 82.03 (19) is based on the last sentence of current s. 81.35. No substantive change is intended.

SECTION 157. 82.05 (1) of the statutes is created to read:

82.05 (1) The term of office of highway superintendents shall be one year from the date of their appointment.

SECTION 158. 82.05 (4) of the statutes is created to read:

82.05 (4) The superintendent shall routinely notify the town board of all highway work.

SECTION 159. 82.08 (8) of the statutes is created to read:

82.08 (8) **ADMINISTRATION CHARGE.** The county may charge the towns that apply for aid under this section an administration charge. The administration charge shall be fixed as a percentage of the total costs of administering aid under this section and the percentage shall be no more than the percentage that the county charges the state for records and reports.

SECTION 160. Subchapter II (title) of chapter 82 [precedes 82.10] of the statutes is created to read:

CHAPTER 82

SUBCHAPTER II

BASIC PROCEDURES

SECTION 161. 82.10 (title), (1) (b), (2), (4) (title), (a) 5. and (b) and (5) of the statutes are created to read:

82.10 (title) **Initiation of procedures.**

(1) (b) A scale map of the land that would be affected by the application.

(2) **RESOLUTION.** Notwithstanding sub. (1), the town board may initiate the process of laying out, altering, or discontinuing a town highway by the introduction of a resolution. The resolution shall contain all of the following:

(a) A legal description of the highway to be discontinued or of the proposed highway to be laid out or altered.

(b) A scale map of the land that would be affected by the resolution.

(4) (title) **NOTICE RECIPIENTS.**

(a) 5. The secretary of transportation, if the highway that is the subject of the application or resolution is located within one-quarter mile of a state trunk highway or connecting highway.

(b) If procedures are begun under sub. (1), the applicants shall bear the cost of publication. If the procedures are begun under sub. (2), the town shall bear the cost of publication.

(5) **LIS PENDENS.** In the case of an application under sub. (1), the applicant shall file a lis pendens under s. 840.11. In the case of a resolution under sub. (2), the board shall file a lis pendens within 10 days of the introduction of the resolution.

NOTE: Current s. 80.02 seemed to require the petition of 6 resident freeholders to lay, alter, or discontinue a highway. Section 82.10 now allows the board to lay, alter, or discontinue a highway on its own initiative by the introduction of a resolution. After introduction, the resolution is treated the same as an application.

SECTION 162. 82.11 (title) of the statutes is created to read:

82.11 (title) Meeting.

SECTION 163. 82.12 (title) of the statutes is created to read:

82.12 (title) Highway order.

SECTION 164. 82.14 (title), (1) and (3) of the statutes are created to read:

82.14 (title) Acquiring rights to land; damages from discontinuance. (1) Unless the acquisition can be made by mutual agreement, the town board shall utilize the procedures under s. 32.05 to acquire rights to land for the purpose of laying out or altering a town highway.

(3) An owner of property abutting on a discontinued highway whose property is damaged by the discontinuance may recover damages as provided in ch. 32.

NOTE: The special committee decided to eliminate the provisions for acquiring land in chs. 80 and 81 in favor of requiring the town to utilize the procedures under s. 32.05. As a result, the following provisions were not carried over into this bill: ss. 80.09, 80.10, 80.30 (1), and 80.24 through 80.29.

New s. 82.14 (3) is based on language that appears in current ss. 66.1003 (4) and s. 62.73 (3).

SECTION 165. 82.15 of the statutes is created to read:

82.15 Appeal of a highway order. Any person aggrieved by a highway order, or a refusal to issue such an order, may seek judicial review under s. 68.13. If the highway is on the line between 2 counties, the appeal may be in the circuit court of either county.

NOTE: Section 82.15 is based on current s. 80.17. Current s. 80.17 states that the failure to act on an application within 60 days shall be deemed a refusal. The special committee decided that the town board should have to consider the application and affirmatively make a decision. New s. 82.12 creates a 90-day timeline for the board to act, and the failure to act shall not be deemed a refusal.

SECTION 166. 82.16 (3) of the statutes is created to read:

82.16 (3) It shall be presumed that a release was given by the owners of the lands over which the highway was laid out and the public shall be entitled to use the full width of the highway, as laid out, without further compensation if all of the following apply:

(a) An order laying out the highway has been filed for more than 30 years.

(b) No award of damages or agreement or release has been filed.

(c) The highway, or a part of the highway, has been used by the public and public money has been expended on the highway for at least 5 years.

NOTE: New s. 82.16 (3) is based on the last sentence of current s. 80.07 (1). No substantive change is intended.

SECTION 167. 82.19 (2) (b) 1. of the statutes is created to read:

82.19 (2) (b) 1. In this paragraph, “vehicular travel” means travel using any motor vehicle required to be registered under ch. 341 or exempt from registration under s. 341.05.

SECTION 168. Subchapter III (title) of chapter 82 [precedes 82.21] of the statutes is created to read:

CHAPTER 82

SUBCHAPTER III

SPECIAL PROCEDURES

SECTION 169. 82.21 (1) (a) and (b), (4) (title) and (5) (title) of the statutes are created to read:

82.21 (1) (a) Six resident freeholders of the town, city, or village deliver an application to lay out, alter, or discontinue a town line highway to the clerk of every town, city, or village that would be affected by the proposal.

(b) The town board, city council, or village board introduces a resolution to lay out, alter, or discontinue a town line highway.

(4) (title) APPORTIONMENT OF AUTHORITY AND RESPONSIBILITY.

(5) (title) APPEAL OF APPORTIONMENT.

SECTION 170. 82.27 (title), (1), (5) (c) and (d), (9) and (10) of the statutes are created to read:

82.27 (title) Landlocked property and property with insufficient highway access. (1) DEFINITION. In this section, “advantages” means the greater of the following:

(a) The increase in value of the landlocked property after the highway is laid out or the way or road is widened.

(b) The administrative costs under sub. (5), and the estimated cost of constructing or widening the highway, including both the cost of constructing a turnaround, if one is necessary, and the damages paid to the owner of the land over which the highway is laid out or the way or road is widened.

(5) (c) Administrative costs such as clerical costs and publication costs.

(d) If special meetings are held only for the purpose of considering the application, per diem compensation for the supervisors.

(9) LIMIT ON APPLICATIONS. The determination to deny an application under this section shall be final for the term of 3 years. No application to lay out a highway to the same property shall be considered within 3 years from the date of the refusal.

(10) HIGHWAY TO REMAIN PUBLIC FOR AT LEAST 2 YEARS. A highway laid out under this section shall be a public road and shall remain and be maintained as a public road for at least 2 years from the date of the order.

NOTE: The definition of “advantages” in s. 82.27 (1) is new. Under current s. 80.13, the term “advantages” is not defined. In *Roberts v. Town of Springvale*, 204 Wis. 2d 110, 552 N.W.2d 898, the court held that advantages “. . . refers to how much of a financial benefit has inured to the applicant or the enhancement in value of the applicant’s land as a result of the town’s decision to lay the highway”. While the special committee agreed that this was a reasonable construction of the statutory language, it decided that the costs should be allocated differently. Constructing a highway could increase the value of the landlocked property by a far smaller amount than the cost of construction. The result would be that the town would pay the difference between the construction cost and the increased property value. The special committee decided that since the highway would primarily benefit the landowner, the landowner should bear the cost. The new s. 82.27 retains the term “advantages”, but defines it as the greater of the increased value of the property or the estimated cost of constructing the highway and the damages paid to the owner.

Section 82.27 (9) and (10) are new. The special committee discussed the fact that landlocked property owners sometimes file repeated applications to wear down the town board. Thus, new sub. (9) puts a 3-year limit on filing a new application. The special committee also discussed the potential problem of a town constructing the highway and then immediately giving the highway back to the applicant. New sub. (10) requires the highway to remain a public highway for at least 2 years.

SECTION 171. Subchapter IV (title) of chapter 82 [precedes 82.31] of the statutes is created to read:

CHAPTER 82
SUBCHAPTER IV
EXISTING HIGHWAYS

SECTION 172. 82.35 (1) (intro.) of the statutes is created to read:

82.35 (1) (intro.) The town board, upon its own motion, may lay out and open temporary highways through any lands in the following situations:

SECTION 173. 83.015 (2) (b) of the statutes is amended to read:

83.015 (2) (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), ~~81.38 (1), (3) and (4)~~, 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), 86.19 (3), 86.34 (1), 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.

SECTION 174. 83.09 of the statutes is amended to read:

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 shall 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.

NOTE: In the course of discussing a cross-reference to current s. 83.09, the special committee discussed that section’s use of mandatory language. The special committee concluded that it should be changed to “may”. The special committee members had concerns about the mandatory language breeding litigation and about the town using this authority unnecessarily.

SECTION 175. 83.18 (1) (title) of the statutes is repealed.

SECTION 176. 83.18 (1) of the statutes is renumbered 83.18 and amended to read:

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. ~~84.06~~ 82.03 (2) and (5).

SECTION 177. 83.18 (2) of the statutes is repealed.

SECTION 178. 83.19 of the statutes is amended to read:

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. ~~84.08~~ 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.

SECTION 179. 84.02 (1) of the statutes is amended to read:

84.02 (1) DESIGNATION. The system of highways known as the trunk highway system heretofore selected

and laid out by the legislature and by the highway commission and by special legislative state trunk highway committees and approved by said highway commission and as revised, altered and changed by and under authority vested by law in the highway commission, is hereby validated and confirmed and designated the state trunk highway system but without prejudice to the exercise of the power given to change such system, and all acts by which parts of said system were heretofore adopted or declared to be trunk highways are confirmed and validated. Section ~~80.32~~ 82.19 (2) does not apply to the state trunk highway system.

SECTION 180. 84.07 (1) of the statutes is amended to read:

84.07 (1) STATE EXPENSE: WHEN DONE BY COUNTY OR MUNICIPALITY. The state trunk highway system shall be maintained by the state at state expense. The department shall prescribe by rule specifications for such maintenance and may contract with any county highway committee or municipality to have all or certain parts of the work of maintaining the state trunk highways within or beyond the limits of the county or municipality, including interstate bridges, performed by the county or municipality, and any county or municipality may enter into such contract. General maintenance activities include the application of protective coatings, the removal and control of snow, the removal, treatment and sanding of ice, interim repair of highway surfaces and adjacent structures, and all other operations, activities and processes required on a continuing basis for the preservation of the highways on the state trunk system, and including the care and protection of trees and other roadside vegetation and suitable planting to prevent soil erosion or to beautify highways pursuant to s. 80.01(3) ~~66.1037~~, and all measures deemed necessary to provide adequate traffic service. Special maintenance activities include the restoration, reinforcement, complete repair or other activities which the department deems are necessary on an individual basis for specified portions of the state trunk system. Maintenance activities also include the installation, replacement, rehabilitation, or maintenance of highway signs, traffic control signals, highway lighting, pavement markings, and intelligent transportation systems. The department may contract with a private entity for services or materials or both associated with the installation, replacement, rehabilitation, or maintenance of highway signs, traffic control signals, highway lighting, pavement markings, and intelligent transportation systems.

SECTION 181. 84.14 (3) of the statutes is amended to read:

84.14 (3) PARTICIPATION IN TOWN BRIDGE CONSTRUCTION. Whenever any municipality has participated in the

cost of the construction, reconstruction, or purchase of a bridge under s. 84.11 or 84.12, the property in such municipality shall thereafter be subject to taxation by the county for the construction and repair of bridges within the county under s. ~~81.38~~ 82.08.

SECTION 182. 86.26 of the statutes is renumbered 82.50.

SECTION 183. 86.265 of the statutes is renumbered 82.51.

SECTION 184. 86.266 of the statutes is renumbered 82.52.

SECTION 185. 86.315 (3) of the statutes is amended to read:

86.315 (3) County forest roads must meet the minimum design standards under s. ~~86.26~~ 82.50 (1) (a) 2. and 3. in order to qualify for aids under this section.

NOTE: This bill renumbers the town road standards, which are currently in ch. 86, and moves them into ch. 82. This section merely changes the cross-reference to reflect that move.

SECTION 186. 236.16 (2) of the statutes is amended to read:

236.16 (2) MINIMUM STREET WIDTH. All streets shall be of the width specified on the master plan or official map or of a width at least as great as that of the existing streets if there is no master plan or official map, but no full street shall be less than 60 feet wide unless otherwise permitted by local ordinance. Widths of town roads platted after January 1, 1966, shall, however, comply with minimum standards for town roads prescribed by s. ~~86.26~~ 82.50. Streets or frontage roads auxiliary to and located on the side of a full street for service to the abutting property may not after January 1, 1966, be less than 49.5 feet wide.

NOTE: This bill renumbers the town road standards which are currently in ch. 86, and moves them into ch. 82. This section merely changes the cross-reference to reflect that move.

SECTION 187. 756.04 (2) of the statutes is amended to read:

756.04 (2) Jurors for all circuit courts, ~~except jurors under ch. 80~~, shall be selected under ss. 756.04 to 756.07.

NOTE: This bill eliminates all of the provisions in chs. 80 and 81 that concern the selection of juries. Thus, no cross-reference is necessary.

SECTION 188. 893.73 (2) (c) of the statutes is repealed.

NOTE: The special committee decided that, for judicial economy, all challenges to the issuance of or refusal to issue a highway order should be brought in one action. This section deletes the provisions that provide for a different timeline for an action that challenges the regularity of a highway order.

SECTION 189. 893.83 (title) of the statutes is created to read:

893.83 (title) Highway defects.

SECTION 190. Effective date.

(1) This act takes effect on January 1, 2005.

NOTE: The special committee decided on this effective date so that it corresponds with the publication of the new statute books. The following chart shows where the special committee decided to move the provisions of chs. 80 and 81:

<i>Current</i>	<i>New</i>
80.01 (1)	82.01 (7)
80.01 (1m) and (2)	82.31
80.01 (3)	66.1037
80.01 (4)	66.1033, substantively changed.
80.01 (5)	66.1024, substantively changed.
80.02—first three sentences	82.10 (1) and (2), substantively changed.
80.02—third—to—last sentence	Deleted
80.02—second—to—last sentence	Deleted
80.02—last sentence	66.1003 (10)
80.025	82.29
80.03	Deleted
80.04	82.11 (2), substantively changed.
80.05	82.10 (3) and (4), substantively changed.
80.06	82.11 (1), substantively changed.
80.07 (1)—first four sentences	82.12 (1) and (2), substantively changed.
80.07 (1)—last sentence	82.16 (3)
80.07 (2)	82.12 (2)
80.08	82.18, substantively changed.
80.09	Deleted
80.10	Deleted
80.11 (1) through (3), and (5) through (6)	82.21, substantively changed.
80.11 (4)	Deleted
80.11 (7) and (8) (a)	82.23
80.11 (8) (b)	Deleted
80.12 (1), (2), (3) and (5)	82.21, substantively changed.
80.12 (4)	Deleted
80.125	82.28
80.13	82.27, substantively changed.
80.14	82.27
80.15	82.27 (8)
80.16--all but second—to—last sentence	82.13
80.16--second—to—last sentence	66.1003 (10)
80.17	82.15, substantively changed.
80.22	82.12 (3)
80.23	82.20, substantively changed.
80.24	Deleted
80.25	Deleted

80.26	Deleted
80.27	Deleted
80.28	Deleted
80.29	Deleted
80.30	Deleted
80.31 (1) and (2)	Deleted
80.31 (3)	82.14 (2), substantively changed.
80.32 (1)	82.19 (1)
80.32 (2)	82.19 (2)
80.32 (3) and (4)	66.1005
80.33	82.17
80.34	82.16, substantively changed.
80.35	Deleted
80.37	82.33
80.38	Deleted
80.39	Deleted
80.40	Deleted
80.41	66.1006
80.47	66.1035
80.48	Deleted
80.64	66.1031
80.65	Deleted
81.01	82.03, substantively changed.
81.02--first three sentences	82.03 (1), substantively changed.
81.02--fourth sentence	82.05 (1)
81.02--everything except the first four sentences	Deleted
81.03	82.05 (2) to (4), substantively changed.
81.04	Deleted
81.05	Deleted
81.06 (first 1/3)	82.03 (5)
81.06 (second 2/3)	82.03 (2)
81.07	Deleted
81.08	82.35, substantively changed.
81.11 (5)	82.25, substantively changed.
81.11 (1) through (4)	Deleted
81.12	Deleted
81.14 (1), (2) and (4)	66.1029, substantively changed.
81.14 (3)	Deleted
81.15	893.83 (1)

81.17	893.83 (2)
81.35--all but last sentence	82.37
81.35--last sentence	82.03 (19)
81.36	Deleted
81.38 (1) through (5)	82.08, substantively changed.
81.38 (6)	61.48, substantively changed.
81.39	Deleted
81.42 (1)	82.03 (13)
81.42 (2)	82.09, substantively changed.
