

2003 DRAFTING REQUEST

Bill

Received: 06/05/2003

Received By: agary

Wanted: As time permits

Identical to LRB:

For: Legislative Council - JLC

By/Representing: Nicholas Zavos (LC)

This file may be shown to any legislator: NO

Drafter: agary

May Contact:

Addl. Drafters:

Subject: Transportation - highways

Extra Copies: TNF, PJH, MES

Submit via email: YES

Requester's email: Nicholas.Zavos@legis.state.wi.us

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Town highways - Joint Legislative Council's Special Committee on Recodification of Town Highway Statutes

Instructions:

See Attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
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/P1	agary 08/19/2003						Assembly
/P2			chaugen 08/22/2003				

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/P3	agary 08/25/2003	kgilfoy 09/05/2003	pgreensl 09/11/2003	_____	lnorthro 09/11/2003		
	agary 10/06/2003	kgilfoy 10/06/2003		_____			
/P4	agary 10/17/2003		pgreensl 10/07/2003	_____	sbasford 10/07/2003		
/P5		kgilfoy 10/17/2003	rschluet 10/21/2003	_____	lnorthro 10/21/2003		
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*For Assembly
Per ARG*

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/P1	agary 08/19/2003	1-1/11 <i>Kmg</i>	<i>[Signature]</i>	<i>[Signature]</i>		<i>see below</i>	
/P2			chaugen 08/22/2003				

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<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
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/P4	agary 10/17/2003		pgreensl 10/07/2003	_____	sbasford 10/07/2003		
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*PAs: Please
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/P1	agary 08/19/2003	<i>p5-10/17</i> <i>Kmg</i>		==			
/P2				chaugen 08/22/2003			

[Handwritten signatures and initials]
10-17-03

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/P1	agary 08/19/2003	1/14-10/16 KMG	12/1 ps	6/2			
/P2			chaugen 08/22/2003				

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1P3-8/27
KMG-9/3

JLC
Committee
on
6-5

Chy 8-12
PS

FE Sent For:

9/9
p 8

<END>

9/11
P 8/12

Gary, Aaron

From: Zavos, Nicholas
Sent: Thursday, June 05, 2003 11:45 AM
To: Gary, Aaron
Subject: Town Highways

Hi Aaron -

On Tuesday the Legislative Council approved the town highways recod, so the project now falls to you all. Attached is an electronic copy of the draft; I will send you a paper copy as well. I think it came out well. I should note that the committee did not throw out the statutes and start over. We started with the current law. I tired to clean up the language and the committee fixed what was "broken," but if a provision was not problematic, the committee left it alone.

The one request I have is that you keep a record of all the changes that you make so that I can see what the differences are when I get the final draft. Let me know if I can be of any help as you go.



0009/2

Nicholas R. Zavos
Staff Attorney
Wisconsin Legislative Council
(608) 266-1308
nicholas.zavos@legis.state.wi.us

1 **AN ACT** *to repeal* 60.24 (3) (n), chapter 80, chapter 81, 83.18 (2) and 893.73 (2) (c);
2 *to renumber* 86.26, 86.265 and 86.266; *to amend* 32.035 (4) (a), 32.05 (intro.),
3 59.69 (5) (e) 7., 59.84 (2) (f) 5., 60.10 (1) (d), 60.23 (17), 60.24 (3) (o), 60.24 (3)
4 (p), 60.33 (10), 60.37 (4) (a), 62.73 (1), 66.1003 (2) and (3), 83.015 (2) (b), 83.09,
5 83.18, 83.19, 84.02 (1), 84.14 (3), 86.315 (3), 236.16 (2) and 756.04 (2); and *to*
6 *create* 61.48, 66.1003 (10), 66.1005, 66.1006, 66.1024, 66.1029, 66.1031, 66.1033,
7 66.1035, 66.1037, chapter 82 (title), subchapter I (title) of chapter 82 [precedes
8 82.01], 82.01, 82.03, 82.05, 82.08, 82.09, subchapter II (title) of chapter 82
9 [precedes 82.10], 82.10, 82.11, 82.12, 82.13, 82.14, 82.15, 82.16, 82.17, 82.18,
10 82.19, 82.20, subchapter III (title) of chapter 82 [precedes 82.21], 82.21, 82.23,
11 82.25, 82.27, 82.28, 82.29, subchapter IV (title) of chapter 82 [precedes 82.31],
12 82.31, 82.33, 82.35, 82.37 and 893.83 of the statutes; **relating to:** recodification of
13 chs. 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 draft was prepared for the Joint Legislative Council's Special Committee on Recodification of Town Highway Statutes.

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 draft 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 each of the sections. The notes indicate which provisions from chs. 80 and 81 the section is based on, and 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.

- 1 **SECTION 1.** 32.035 (4) (a) of the statutes is amended to read:
- 2 32.035 (4) (a) *When an impact statement is required; permitted.* The department shall
- 3 prepare an agricultural impact statement for each project, except a project under ~~ch. 81~~ ch. 82
- 4 or a project located entirely within the boundaries of a city or village, if the project involves

1 the actual or potential exercise of the powers of eminent domain and if any interest in more
2 than 5 acres of any farm operation may be taken. The department may prepare an agricultural
3 impact statement on a project located entirely within the boundaries of a town, city, or village
4 or involving any interest in 5 or fewer acres of any farm operation if the condemnation would
5 have a significant effect on any farm operation as a whole.

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

7 **32.05 Condemnation for sewers and transportation facilities.** (intro.) In this
8 section, "mass transit facility" includes, without limitation because of enumeration, exclusive
9 or preferential bus lanes if those lanes are limited to abandoned railroad rights-of-way or
10 existing expressways constructed before May 17, 1978, highway control devices, bus
11 passenger loading areas and terminal facilities, including shelters, and fringe and corridor
12 parking facilities to serve bus and other public mass transportation passengers, together with
13 the acquisition, construction, reconstruction and maintenance of lands and facilities for the
14 development, improvement and use of public mass transportation systems for the
15 transportation of passengers. This section does not apply to town highways created or altered
16 under ch. 80 except as to jury trials on appeals under ss. 80.24 and 80.25, nor to proceedings
17 in 1st class cities under subch. II. In any city, condemnation for housing under ss. 66.1201 to
18 66.1211, for urban renewal under s. 66.1333, or for cultural arts facilities under subch. V of
19 ch. 229, may proceed under this section or under s. 32.06 at the option of the condemning
20 authority. Condemnation by a local exposition district under subch. II of ch. 229 for any
21 exposition center or exposition center facility may proceed under this section or under s. 32.06
22 at the option of the local exposition district. All other condemnation of property for public
23 alleys, streets, highways, airports, mass transit facilities, or other transportation facilities, gas
24 or leachate extraction systems to remedy environmental pollution from a solid waste disposal

1 facility, storm sewers and sanitary sewers, watercourses or water transmission and distribution
2 facilities shall proceed as follows:

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

4 59.69 (5) (e) 7. When any lands previously under the jurisdiction of a county zoning
5 ordinance have been finally removed from such jurisdiction by reason of annexation to an
6 incorporated municipality, and after the regulations imposed by the county zoning ordinance
7 have ceased to be effective as provided in sub. (7), the board may, on the recommendation of
8 its zoning agency, enact amendatory ordinances that remove or delete the annexed lands from
9 the official zoning map or written descriptions without following any of the procedures
10 provided in subds. 1. to 6., and such amendatory ordinances shall become effective upon
11 enactment and publication. A copy of the ordinance shall be forwarded by the clerk to the clerk
12 of each town in which the lands affected were previously located. Nothing in this paragraph
13 shall be construed to nullify or supersede s. ~~80.64~~ 66.1031.

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

15 59.84 (2) (f) 5. The governing body of the municipality shall, within 30 days after filing,
16 take the necessary action to comply with the order and in so doing shall not be limited by the
17 objections of an abutting owner, and s. ~~80.32(4)~~ 66.1005 (2) shall not be applicable to any
18 vacation or discontinuance required by the order, and any such municipality may act upon the
19 initiative of its governing body without the necessity of obtaining the consent of an abutting
20 owner, notwithstanding chs. 60, 61, 62 and 66 and s. ~~80.32(4)~~ 66.1005 (2) and any other
21 provisions of law to the contrary.

22 **SECTION 5.** 60.10 (1) (d) of the statutes is amended to read:

23 60.10 (1) (d) *Public waterways.* Appropriate money for the improvement and
24 maintenance of a public waterway under s. ~~81.05~~ 82.03 (19).

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

2 60.23 (17) CHANGE STREET NAMES. Name, or change the name of, any street in the town
3 under s. ~~81.01(11)~~ 82.03 (7).

4 **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, fairground, 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.

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

6 60.24 (3) (o) Sign orders for payment of work performed and materials furnished on
7 town highways ~~under s. 81.04~~.

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

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

9 60.24 (3) (p) See that all tunnels in the town are constructed under s. ~~81.35~~ 82.37 and
10 that they are kept in good repair.

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

12 60.33 (10) HIGHWAYS AND BRIDGES. Perform the duties specified in chs. ~~80~~ 82 to 92,
13 relating to highways, bridges and drains.

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

15 60.37 (4) (a) An elected town officer who also serves as a town employee may be paid
16 an hourly wage for serving as a town employee, not exceeding a total of \$5,000 each year.
17 Amounts that are paid under this paragraph may be paid in addition to any amount that an
18 individual receives under s. 60.32 or as a volunteer fire fighter, emergency medical technician,
19 or first responder under s. 66.0501 (4). The \$5,000 maximum in this paragraph includes

1 amounts paid to a town board supervisor who is acting as superintendent of highways under
2 s. ~~81.01 (1)~~ 82.03 (1).

3 **SECTION 12.** 61.48 of the statutes is created to read:

4 **61.48 County aid for construction and repair of bridges and culverts.** Any village
5 may elect to become subject to all of the provisions of s. 82.08 by a resolution adopted by a
6 two-thirds majority vote of all members of the village board. The election to become subject
7 to s. 82.08 shall be effective when a certified copy of the resolution is filed with the county
8 board and a majority of the towns and the villages in the county that are already subject to s.
9 82.08 vote to approve the village's election. Until the village ceases to be subject to s. 82.08,
10 the words "town" and "town board" as used in s. 82.08 shall also apply to the village and its
11 village board. A village that has become subject to s. 82.08 may cease to be subject to that
12 section by the adoption of a resolution and its approval in the same manner as the village
13 became subject to that section.

NOTE: Section 61.48 is based on current s. 81.38 (6). Since it concerns villages, the special committee decided it 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.

14 **SECTION 13.** 62.73 (1) of the statutes is amended to read:

15 **62.73 (1)** The common council of a 1st class city may vacate in whole or in part
16 highways, streets, alleys, grounds, waterways, public walks and other public grounds within
17 the corporate limits of the city that it determines the public interest requires to be vacated or
18 are of no public utility, subject to s. ~~80.32 (4)~~ 66.1005 (2). Proceedings under this section shall
19 be commenced either by a petition presented to the common council signed by the owners of

1 all property which abuts the portion of the public facilities proposed to be vacated, or by a
2 resolution adopted by the common council. The requirements of s. 840.11 apply to
3 proceedings under this section.

4 **SECTION 14.** 66.1003 (2) and (3) of the statutes are amended to read:

5 66.1003 (2) The common council of any city, except a 1st class city, or a village or town
6 board may discontinue all or part of a public way upon the written petition of the owners of
7 all the frontage of the lots and lands abutting upon the public way sought to be discontinued,
8 and of the owners of more than one-third of the frontage of the lots and lands abutting on that
9 portion of the remainder of the public way which lies within 2,650 feet of the ends of the
10 portion to be discontinued, or lies within so much of that 2,650 feet as is within the corporate
11 limits of the city, village or town. The beginning and ending of an alley shall be considered
12 to be within the block in which it is located. This subsection does not apply to a highway upon
13 the line between 2 towns that is subject to s. ~~80.11~~ 82.21.

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

20 **SECTION 15.** 66.1003 (10) of the statutes is created to read:

21 66.1003 (10) Notwithstanding ss. 82.21 and 82.10, no city council, or county, village
22 or town board shall discontinue a highway when the discontinuance would deprive a
23 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.

1 **SECTION 16.** 66.1005 of the statutes is created to read:

2 **66.1005 Reversion of title.** (1) When any highway or public ground is discontinued,
3 the land shall belong to the owner or owners of the adjoining lands. If the highway is located
4 between the lands of different owners, it shall be annexed to the lots to which it originally
5 belonged if that can be ascertained. If the lots to which the land originally belonged cannot
6 be ascertained, the land shall be equally divided between the owners of the lands on each side
7 of the highway.

8 (2) (a) Whenever any public highway or public ground has been vacated or
9 discontinued, all easements and rights incidental to the easements that belong to any county,
10 school district, town, village, city, utility, or person that relate to any underground or
11 overground structures, improvements or services and all rights of entrance, maintenance,
12 construction and repair of the structures, improvements, or services shall continue, unless one
13 of the following applies:

14 1. The owner of the easements and incidental rights gives written consent to the
15 discontinuance of the easements and rights as a part of the vacation or discontinuance
16 proceedings and the vacation or discontinuance resolution, ordinance, or order refers to the
17 owner's written consent.

1 2. The owner of the easements and incidental rights fails to use the easements and rights
2 for a period of 4 years from the time that the public highway or public ground was vacated or
3 discontinued.

4 (b) The easements and incidental rights described in par. (a) may be discontinued in
5 vacation or discontinuance proceedings in any case where benefits or damages are to be
6 assessed as provided in par. (c), if one of the following applies:

7 1. The interested parties fail to reach an agreement permitting discontinuance of the
8 easements and incidental rights.

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

11 (c) Damages for the discontinuance of the easements and rights described in par. (a)
12 shall be assessed against the land benefited in the proceedings for assessment of damages or
13 benefits upon the vacation or discontinuance of the public highway or public ground. Unless
14 the parties agree on a different amount, the amount of the damages shall be the present value
15 of the property to be removed or abandoned, plus the cost of removal, less the salvage value
16 of the removed or abandoned property. The owner of the easements and incidental rights, upon
17 application to the treasurer and upon furnishing satisfactory proof, shall be entitled to any
18 payments of or upon the assessment of damages.

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

NOTE: Section 66.1006 is based on current s. 80.32 (3) and (4). No substantive change is intended.

1 **SECTION 17.** 66.1006 of the statutes is created to read:

2 **66.1006 Department of natural resources approval of discontinuance.** No
3 resolution, ordinance, order, or similar action of a town or county board, or a committee of a
4 town or county board discontinuing any highway, street, alley, or right-of-way that provides
5 public access to any navigable lake or stream shall be effective until such resolution,
6 ordinance, order, or similar action is approved by the department of natural resources.

NOTE: New s. 66.1006 is based on current s. 80.41. No substantive
change is intended, however, the special committee decided this
provision was more appropriately placed in ch. 66.

7 **SECTION 18.** 66.1024 of the statutes is created to read:

8 **66.1024 Effect of reservation or exception in conveyance.** Whenever an executed
9 and recorded deed, land contract, or mortgage of lands abutting on an existing public street,
10 highway, or alley or a projected extension thereof contains language reserving or excepting
11 certain lands for street, highway, or alley purposes, the reservation or exception shall
12 constitute a dedication for such purpose to the public body having jurisdiction over the
13 highway, street, alley, or projected extension thereof, unless the language of the reservation
14 or exception plainly indicates an intent to create a private way. Any reservation or exception
15 shall not be effective until it is accepted by a resolution of the governing body having
16 jurisdiction over such street, highway, alley, or projected extension thereof.

NOTE: New s. 66.1024 is based on s. 80.01 (5). The special committee
decided that it 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.

17 **SECTION 18.** 66.1029 of the statutes is created to read:

18 **66.1029 Appeal to county the refusal of a town, village, or city to open or repair**
19 **a highway or bridge.** (1) (a) If any town, city, or village does not open a highway, within

1 one year from the date the highway was laid out, or does not repair any highway or build or
2 repair a bridge on a highway, 15 freeholders of the town, city, or village may appeal to the
3 county board of the county in which the highway or bridge is located, by notice in writing
4 served on the county clerk, with copies delivered to the clerk of the town or towns.

5 (b) For the purpose of this section, highways on town, city, or village lines that have
6 been apportioned between the respective towns, cities, or villages, shall be considered as
7 wholly within the town, city, or village to which the part of the highway or bridge is
8 apportioned. If a highway is on county lines and has not been apportioned for the purpose of
9 authority and responsibility, the appeal may be made to the county board of either county.

10 (c) Upon receipt of an appeal, the county board shall, at the next regular meeting, either
11 by a majority of its members or by a committee of not less than 3, examine the highway or
12 bridge. If it determines that the appeal should be granted, the county board shall appropriate
13 sufficient funds to defray the estimated cost of opening or repairing the highway or building
14 or repairing the bridge and the chairperson of the county board shall cause the highway to be
15 opened and put in reasonable condition for travel or cause the bridge to be repaired or built,
16 and shall keep an accurate account of the expense. The expense, when audited and allowed
17 by the county board, shall be charged to the affected towns, cities, or villages in amounts and
18 proportions as the county board shall determine and shall be added to the next county tax
19 apportioned and collected.

20 (2) If any county fails to create an established plan, agreed to by the town, city, or
21 village, to put any county line highway in reasonable condition for travel, the adjoining county
22 may, after not less than 30 days' notice in writing given to the county clerk of the other county,
23 put the highway in reasonable condition for travel and keep an accurate account of the
24 expense. The expense, when audited and allowed by the county board, shall be prorated and

1 charged to the county whose duty it is to keep the highway in condition for travel. Such county
2 may then charge the expense to the affected town, city, or village whose duty it is to keep the
3 highway in repair and add it to the next county tax apportioned and collected.

4 (3) If a county line highway has not been apportioned between towns, cities, or villages
5 for the purpose of authority and responsibility, an appeal may be taken to the county board of
6 any county bounded by the highway. The expense incurred in opening and putting in
7 reasonable condition for travel, or in repairing the highway, or in building or repairing any
8 bridge on the highway, shall be paid primarily by the county to which the appeal is taken. The
9 county to which the appeal is taken shall apportion the expense among all of the counties that
10 are bounded in whole or in part by the highway. The other counties shall pay their apportioned
11 share to the county to which the appeal is taken, upon receipt of a proper claim. When the
12 expense has been paid by the respective counties, the counties shall charge their affected
13 towns, cities, or villages and add the charge to the next county tax apportioned to the towns.

NOTE: Section 66.1029 is based on current s. 81.14. Under current s. 81.14, the county's oversight is only over towns. This section expands the county's oversight to cities and villages. Since the county is given the same oversight over cities and villages, the section has been moved to ch. 66.

New s. 66.1029 changes where the application must be delivered. Under current s. 81.14, an appeal is begun by serving notice on the chairperson of town or towns. Since the appeal is to the county, the special committee decided that it would be more appropriate to serve the notice on the county. Thus, new s. 66.1029 requires service on the county clerk and copies to be delivered to the towns.

Current s. 81.14 (3) was deleted. That subsection concerned highways that were laid out by commissioners reversing the decision of the supervisors. The provisions for commissioners reversing supervisors was eliminated in 1995 Wisconsin Act 186.

In new sub. (2), the language about a county failing to aid in putting the highway in reasonable condition was changed to require a plan to put the highway in reasonable condition that is agreed to by the town or village.

In addition, new sub. (2) was modified to require 30 rather than 20 days' notice.

1 **SECTION 19.** 66.1031 of the statutes is created to read:

2 **66.1031 Widening of highways; establishment of excess widths.** (1) With the
3 approval of the governing body of the town, city, or village in which a street or highway or
4 part of a street or highway is located, the county board, to promote the general welfare, may
5 establish street and highway widths in excess of the widths in use and adopt plans showing
6 the location and width proposed for any future street or highway which shall not be subject
7 to s. 82.19 (2). Streets or highways or plans for streets or highways established or adopted
8 under this section shall be shown on a map showing present and proposed street or highway
9 lines and, except in counties having a population of 500,000 or more, property lines and
10 owners. The map shall be recorded in the office of the register of deeds. Notice of the
11 recording shall be published as a class 1 notice under ch. 985, in the territory in which the
12 affected streets or highways are located. The notice shall briefly set forth the action of the
13 county board.

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

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

8 (a) Alter or void the established width.

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

NOTE: Section 66.1031 is based on current s. 80.64. No substantive change is intended, however, the special committee decided this provision was more appropriately placed in ch. 66.

11 **SECTION 20.** 66.1033 of the statutes is created to read:

12 **66.1033 Curative provisions.** (1) (a) In this section, "public way" means a highway,
13 street, slip, pier, or alley.

14 (b) In this section, "municipality" means a county, town, city, or village.

15 (2) For proceedings taken, or for plats, deeds, orders, or resolutions executed before the
16 effective date of this act [revisor inserts date], notwithstanding s. 840.11, no defect,
17 omission or informality in the proceedings or execution of a plat, deed of dedication, order or
18 resolution shall affect or invalidate the proceedings, plat, deed, order, or resolution after 5
19 years from the date of the proceedings, plat, deed, order, or resolution. The public way
20 dedicated, laid out, or altered by a defective, or informal proceeding, plat, deed, order, or
21 resolution shall be limited in length to the portion actually worked and used.

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

NOTE: The new s. 66.1029 is based on current s. 80.01 (4). The following language was not carried over 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.

8 **SECTION 54.** 66.1035 of the statutes is created to read:

9 **66.1035 Rights of abutting owners.** The owners of land abutting on any highway,
10 street, or alley shall have a common right in the free and unobstructed use of the full width of
11 the highway, street, or alley. No town, village, city, county, company, or corporation shall

1 close up, use, or obstruct any part of the highway, street, or alley so as to materially interfere
2 with its usefulness as a highway or so as to damage abutting property, or permit the same to
3 be done, without just compensation being made for any resulting damage. This section does
4 not impose liability for damages arising from the use, maintenance, and operation of tracks
5 or other public improvement legally laid down, built, or established in any street, highway,
6 or alley prior to April 7, 1889. All rights in property that could entitle an owner to damages
7 under this section may be condemned by any corporation that is listed in s. 32.02 in the same
8 manner that other property may be condemned by the corporation.

NOTE: New s. 66.1035 is based on current s. 80.47. No substantive
change is intended. The special committee decided it was more
appropriately placed in ch. 66.

9 SECTION 55. 66.1037 of the statutes is created to read:

10 **66.1037 Beautification and protection.** No lands abutting on any highway, and
11 acquired or held for highway purposes, shall be deemed discontinued for such purpose so long
12 as they abut on any highway. All lands acquired for highway purposes after June 23, 1931 may
13 be used for any purpose that the town, city, village, or county in control of the highway deem
14 to conduce to the public use and enjoyment. The town, city, village, or county may improve
15 such lands by suitable planting, to prevent the erosion of the soil, or to beautify the highway.
16 The right to protect and to plant vegetation in any highway laid out prior to June 23, 1931 may
17 be acquired in any manner that lands may be acquired for highway purposes. It shall be
18 unlawful for any person to injure any tree or shrub, or cut or trim any vegetation other than
19 grass, or make any excavation in any highway laid out after June 23, 1931 or where the right
20 to protect vegetation has been acquired, without the consent of the highway authorities and
21 under their direction. The authorities shall remove, cut, or trim or consent to the removing,

1 cutting, or removal of any tree, shrub, or vegetation in order to provide safety to users of the
2 highway.

NOTE: Section 66.1037 is based on current s. 80.01 (3). The inclusion of "other than grass" was made to ensure that property owners could trim grass near their property.

3 **SECTION 21.** Chapter 80 of the statutes is repealed.

4 **SECTION 22.** Chapter 81 of the statutes is repealed.

5 **SECTION 26.** Chapter 82 (title) of the statutes is created to read:

6 **CHAPTER 82**

7 **TOWN HIGHWAYS**

8 **SECTION 23.** Subchapter I (title) of chapter 82 [precedes 82.01] of the statutes is created
9 to read:

10 **SUBCHAPTER I**

11 **FUNDING AND GOVERNANCE**

12 **SECTION 24.** 82.01 of the statutes is created to read:

13 **82.01 Definitions.** In this chapter, the following words and phrases have the designated
14 meanings unless specifically noted:

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

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

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

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

4 1. By government lot.

5 2. By recorded private claim.

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

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

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

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

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

14 (7) "Recorded highway" means a highway for which the order laying out or altering,
15 the highway, or a certified copy of the order, has been recorded in the office of the register of
16 deeds in the county in which the highway is situated or, for highways that were laid out, or
17 altered before the effective date of this act . . . [revisor inserts date], in the office of the clerk
18 of the town or the county in which the highway is situated.

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

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

22 (10) "Worked" means action of the town in regularly maintaining a highway for public
23 use. Actions of the town that shall constitute "work" include, but are not limited to: hauling

1 gravel, grading, clearing or plowing, and expending town funds for any other maintenance on
2 the road.

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 draft because the special committee concluded that it was redundant of the term "altered".

3 **SECTION 25.** 82.03 of the statutes is created to read:

4 **82.03 Duties of town board.** (1) **OVERSIGHT OF HIGHWAYS, SUPERINTENDENT OF**
5 **HIGHWAYS.** (a) The town board shall have the care and supervision of all highways under the
6 town's jurisdiction, including the highways specified in s. 83.06. The town board may appoint
7 in writing a superintendent of highways to supervise, under the board's direction, the
8 construction, and repair and maintenance of the highways and bridges under the town's
9 jurisdiction. Where no superintendent of highways is appointed, it shall be the duty of the
10 town board to perform all of the duties that are prescribed by law for the superintendent of
11 highways to perform.

12 (b) The town board may appoint more than one superintendent of highways. If more
13 than one superintendent is appointed, the town board shall divide the town into as many
14 districts as there are superintendents. The districts shall be numbered and a superintendent
15 shall be assigned to each district. A superintendent may be a member of the town board.

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

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

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

10 (a) A greater sum is authorized by the town meeting.

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

16 Shall the town of ... spend up to \$... over ..., which is the annual limit of the product of
17 \$5,000 multiplied by the miles of highway under the jurisdiction of the town measured by the
18 most recent highway mileage for the town, as determined under section 86.302 of the
19 Wisconsin statutes for the construction, maintenance, and repair of its highways and bridges?
20 FOR SPENDING (BALLOT BOX) AGAINST SPENDING (BALLOT BOX)

21 (3) OVERSIGHT OF SUPERINTENDENT. The town board shall compel the superintendent of
22 highways from time to time to perform the superintendent's official duties.

23 (4) CONTROL OF EXPENDITURES. The town board shall direct when and where all highway
24 funds shall be expended.

1 (5) MAINTENANCE. The town supervisors may enter any lands near any highway in the
2 town to construct necessary drains or ditches or embankments for the improvement or
3 protection of the highway. The town supervisors may enter any private lands with its
4 employees and agents for the following purposes:

5 (a) To remove weeds and brush to keep the highway reasonably safe for travel.

6 (b) To erect or remove snow fences to keep highways reasonably free from snow and
7 open for travel during the winter season.

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

9 (6) LIABILITY. The town shall be responsible for any damage resulting from activities
10 undertaken under the authority granted by sub. (5).

11 (7) HIGHWAY NAMES. The town board shall, by ordinance, assign a name to each of the
12 roads under town board jurisdiction. No road name may be used on more than one road within
13 the jurisdiction of the town.

14 (8) USE OF DAMS AS ROADWAYS. The town board may contract with the owner of a dam
15 that has a roadway on it for the use of the roadway. The contract shall provide who shall be
16 responsible for keeping the roadway in repair and may be for a period of time as the board may
17 determine.

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

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