

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

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

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

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

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

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

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

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

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

**NOTE:** New s. 82.03 (1) through (8) are based on current ss. 81.01, 81.06, 81.42 (1), and the first 4 sentences of s. 81.02. The special committee decided that the following language from s. 81.01, which concerns the duties of the town board, was unnecessary and did not carry it over into this draft:

“ . . . (5) Erect and repair guideboards where deemed necessary on main traveled highways.

(6) Assess the highway taxes in their town in each year.

(7) Expend for highway purposes so much of the income taxes of the town as the board shall deem best . . . .

(9) Designate highways that shall be known as dragged roads, and divide the same into sections, and to appoint draggers for each section whose duty it shall be to drag that section under the direction of the town board, or to contract to have any section dragged, and fix the compensation therefor, preference to be given to occupants of lands abutting such road.”

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.

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).

The new s. 82.03 (5) is 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.

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 also 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.

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.

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.

1           **SECTION 26.** 82.05 of the statutes is created to read:

2           **82.05 Superintendent of highways.** (1) The term of office of highway  
3 superintendents shall be one year from the date of their appointment.

4           (2) The superintendent of highways shall supervise the construction and maintenance  
5 of all highways in the superintendent's district required to be maintained by the town, and keep  
6 them passable at all times, and perform such other services in connection with the highways  
7 as the town board requires. The superintendent may arrange for the prosecution of the highway  
8 work as the superintendent deems necessary and appoint overseers as the highway work  
9 requires.

10           (3) When any highway under the superintendent's charge becomes impassable, the  
11 superintendent shall put the highway in passable condition as soon as practicable. Upon actual  
12 notice of the existence of any depression, ditch, hump, or embankment that impedes the use  
13 of any highway under the superintendent's charge, the superintendent, or in the absence of a  
14 superintendent, the chairperson of the town board, shall as soon as practicable, take action to  
15 make the highway safe for travel, which may include closing the highway.

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

**NOTE:** Section 82.05 is based on current s. 81.03 and on the 4th sentence of current s. 81.02. 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".

1           **SECTION 27.** 82.08 of the statutes is created to read:

2           **82.08 Town bridges or culverts; construction and repair; county aid. (1) PETITIONS.**

3           A town that has voted to construct or repair any culvert or bridge on a highway maintained  
4           by the town may file a petition for county aid with the county highway commissioner. The  
5           petition shall describe the location and size of the bridge or culvert and shall contain a  
6           statement that the town has provided the funds required by sub. (3).

7           **(2) FUNDING REQUIREMENTS.** (a) Except as provided in this sub (b), upon receipt of a  
8           petition for a bridge or culvert with a 36-inch span or greater, or a structure of equivalent  
9           capacity to carry water, the county board shall appropriate the sum required by sub. (3) and  
10          shall levy a tax therefor. The tax, when collected, shall be held in a separate account  
11          administered by the county highway committee.

12          (b) If, on January 1, 2003, a county has a policy of providing funding only for bridges  
13          and culverts larger than the requirement of par. (a), the county may refuse to fund bridges and  
14          culverts that do not meet the minimum requirements of that policy. The minimum size bridge  
15          or culvert that a county is required to fund under this section may be raised, but not lowered,  
16          by the vote of a majority of the towns in the county. The county board of any county that has  
17          never granted aid under this section may, in its discretion, refuse all applications under sub.  
18          (1).

19          **(3) SHARED COST.** The town and county shall each pay one-half of the cost of  
20          construction or repair. In determining the cost of construction or repair of any culvert or

1 bridge, the cost of constructing or repairing any approach not exceeding 100 feet in length  
2 shall be included.

3 (4) EMERGENCY PETITION. Whenever the construction or repair of any culvert or bridge  
4 must be made without delay, the town board may file its petition with the county clerk and the  
5 county highway committee, explaining the necessity for immediate construction or repairs.  
6 It shall then be the duty of the town board and the county highway committee to construct or  
7 repair the bridge or culvert as soon as practicable. The construction or repair of a culvert or  
8 bridge undertaken pursuant to this subsection shall entitle the town to the same county aid that  
9 the town would have been entitled to had it filed its petition with the county board as provided  
10 in sub. (1).

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

16 (6) CONSTRUCTION REQUIREMENTS. No county order may be drawn under sub. (2) for  
17 the construction of a culvert or bridge unless the design and construction comply with  
18 requirements under s. 84.01 (23).

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

22 (8) ADMINISTRATION CHARGE. The county may charge the towns that apply for aid under  
23 this section an administration charge. The administration charge shall be fixed as a percentage

1 of the total costs of administering aid under this section and the percentage shall be no more  
2 than the percentage that the county charges the state for records and reports.

**NOTE:** Section 82.08 is based on current s. 81.38. 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.

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.

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

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.

New sub. (8) allows the county to charge the towns an administration charge.

3 **SECTION 28.** 82.09 of the statutes is created to read:

4 **82.09 County aid for dams used for bridges.** A town board may file a petition with  
5 the county board stating that the town board has voted to acquire the right to use a roadway  
6 on a dam. The petition shall contain a legal description and scale map of the dam and roadway,  
7 and shall state the amount agreed to be paid to the owner for the use of the roadway. Upon  
8 receipt of a petition, the county board shall appropriate a sum equal to one-half the amount

1 agreed to be paid for the use. The county board shall, on the order of the chairperson of the  
2 county board and county clerk, cause such sum to be paid to the treasurer of the town whenever  
3 the town board notifies the county highway commissioner that a contract for the use of the  
4 roadway has been executed.

**NOTE:** Section 82.09 is based on current s. 81.42 (2). 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.

5 **SECTION 29.** Subchapter II (title) of chapter 82 [precedes 82.10] of the statutes is created  
6 to read:

7 **SUBCHAPTER II**

8 **BASIC PROCEDURES**

9 **SECTION 30.** 82.10 of the statutes is created to read:

10 **82.10 Initiation of procedures. (1) APPLICATION.** Six or more resident freeholders may  
11 apply to the town board to have a highway laid out, altered, or discontinued. The application  
12 shall be in writing and shall be delivered to the town clerk. The application shall contain all  
13 of the following:

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

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

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

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

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

2 (3) NOTICE REQUIREMENTS. Upon receipt of an application under sub. (1) or the  
3 introduction of a resolution under sub. (2), the board shall provide notice of the time and place  
4 it will meet to consider the application or resolution. The notice shall contain a legal  
5 description of the highway to be discontinued or of the proposed highway to be laid out or  
6 altered and a scale map of the land that would be affected by the application.

7 (4) NOTICE RECIPIENTS. (a) The town board or, at the town board's direction, the  
8 applicants shall publish a class 3 notice under ch. 985 and shall, at least 30 days before the  
9 hearing, give notice by registered mail to:

10 1. The department of natural resources;

11 2. The county land conservation committee in each county through which the highway  
12 may pass;

13 3. All owners of record of lands through which the highway may pass; and

14 4. The owners of record of all lands abutting the highway.

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

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

**NOTE:** Section 82.10 is based on current ss. 80.02 and 80.05. Except as noted, no substantive change is intended.

New sub. (1) is based on the first half of current s. 80.02. 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 draft, all applications must be delivered to the town clerk.

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.

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 draft 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."

The new sub. (3) is based on current s. 80.05 (1). No substantive change is intended.

The new sub. (4) is based on current s. 80.05 (2). 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 timelines 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.

1           **SECTION 31.** 82.11 of the statutes is created to read:

2           **82.11 Meeting.** (1) The town supervisors shall personally examine the highway or  
3 proposed highway that is the subject of an application or resolution under s. 82.10. At the time  
4 and place stated in the notice under s. 82.10, the board shall hold a public hearing to decide,  
5 in its discretion, whether granting the application or resolution is in the public interest. Before  
6 the town board holds a public hearing on or takes any action on the application or resolution,  
7 the town board must be satisfied, by affidavit of the applicant or otherwise, that the notices  
8 in s. 82.10 (4) have been given.

9           (2) (a) No town official may act in laying out, altering, or discontinuing a highway if  
10 acting would result in a violation of the code of ethics under s. 19.59 or of a local ordinance  
11 enacted under s. 19.59 (1m). If a town official is prevented from acting, the remaining town  
12 officials shall act.

13           (b) Every town shall have a written policy on how the town board will act on an  
14 application or resolution when there are fewer than 2 supervisors in the town who are able to  
15 act on that application or resolution. In the absence of a policy, the town clerk may act. If the  
16 town clerk is prevented from acting, the treasurer may act.

**NOTE:** Section 82.11 is based on current s. 80.06. 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 draft because the special committee decided that it was unnecessary.

Section 82.11 is based on current s. 80.04. 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.

17           **SECTION 32.** 82.12 of the statutes is created to read:

1           **82.12 Highway order.** (1) The town board shall make a determination upon any  
2 application or resolution within 90 days after receipt of the application or introduction of a  
3 resolution. If the board decides to lay out, alter, or discontinue any highway, it shall issue a  
4 highway order.

5           (2) The highway order shall be recorded with the register of deeds for the county in  
6 which the highway is or will be located and shall be filed with the town clerk. The town clerk  
7 shall submit a certified copy of the order to the county highway commissioner. If the town  
8 has an official map, the order shall be incorporated into the official map.

9           (3) The determination not to issue a highway order shall be final for one year. No  
10 application to lay out, alter, or discontinue a highway shall be filed within one year from the  
11 date of a determination not to issue a highway order covering the highway or portion of the  
12 highway covered in the refused application.

**NOTE:** Section 82.12 is based on the 2nd sentence of current s. 80.17 which reads: "Failure of the supervisors to file their decision upon any application to lay out, alter, or discontinue any highway within 60 days after the application is made shall be deemed a refusal of the application." The special committee deleted the portion of the provision that deemed a failure to act within 60 days a refusal.

New subs. (1) and (2) are based on the first 4 sentences of current s. 80.07 (1) and on current s. 80.07 (2). 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 allowed a town board to change its mind after a decision had been made. The time limit in new sub. (1) for acting on an application or resolution has been increased from 60 to 90 days. In addition, the language requiring the town to incorporate the order into its official map is new.

New sub. (3) is based on s. 80.22. No substantive change is intended.

13           **SECTION 33.** 82.13 of the statutes is created to read:

1           **82.13 Highways to school buildings.** Upon being notified that a public school in the  
2 town lacks highway access, the town board shall lay out a highway to the public school, using  
3 the procedures in this subchapter. No application for the highway shall be necessary. Section  
4 82.12 (3) shall not apply to proceedings under this section.

**NOTE:** Section 82.13 is based on current s. 80.16. No substantive  
change is intended.

5           **SECTION 34.** 82.14 of the statutes is created to read:

6           **82.14 Acquiring rights to land; damages from discontinuance.** (1) Unless the  
7 acquisition can be made by mutual agreement, the town board shall utilize the procedures  
8 under s. 32.05 to acquire rights to land for the purpose of laying, or altering a town highway.

9           (2) If lands acquired by contract for highway purposes are encumbered, and the owners  
10 of the fee and of the encumbrance do not agree on the allocation of any damages to be paid  
11 due to the taking, the damages may be paid to the clerk of the circuit court of the county. Upon  
12 the application of any interested party and upon not less than 5 days written notice to the other  
13 party, the court may apportion the damages paid to the clerk among the parties.

14           (3) An owner of property abutting on a discontinued highway whose property is  
15 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 draft: ss. 80.09, 80.10, 80.30 (1), and 80.24  
through 80.29.

          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.

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

16           **SECTION 35.** 82.15 of the statutes is created to read:

1           **82.15 Appeal of a highway order.** Any person aggrieved by a highway order, or a  
2 refusal to issue such an order, may seek judicial review under s. 68.13. If the highway is on  
3 the line between 2 counties, the appeal may be filed 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.

4           **SECTION 36.** 82.16 of the statutes is created to read:

5           **82.16 Highway orders; presumptions; limitation of actions. (1)** Every order laying  
6 out, altering, or discontinuing a highway pursuant to this chapter, and any order restoring the  
7 record of a highway shall be presumptive evidence of the facts therein stated and of the  
8 regularity of all the proceedings prior to the making of the order.

9           (2) The validity of an order described in sub. (1) if fair on its face is not open to collateral  
10 attack, but may be challenged in an action brought under s. 82.15.

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

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

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

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

**NOTE:** Section 82.16 (1) and (2) are based on current s. 80.34. Current s. 80.34 provides a time frame for challenging an order that is different from current s. 80.17. In this draft, the time frame under current s. 80.34 has been eliminated.

New sub. (3) is based on the last sentence of current s. 80.07. No substantive change is intended.

1           **SECTION 37.** 82.17 of the statutes is created to read:

2           **82.17 Highway papers; where filed.** (1) All applications, orders, awards, bonds, and  
3 other papers relating to the laying out, altering, or discontinuing of highways pursuant to this  
4 chapter shall be promptly filed in the office of the town, city, or village clerk, where the  
5 highway is located except as otherwise specifically provided in this chapter.

**NOTE:** Section 82.17 is based on current s. 80.33. Currently, under ch. 80, orders must be filed with the town, city, or village clerk. This draft 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.

6           **SECTION 38.** 82.18 of the statutes is created to read:

7           **82.18 Width of highways.** Except as otherwise provided in this chapter, highways laid  
8 out pursuant to this chapter shall be laid out at least 66 feet wide unless, in the town board's  
9 discretion, that width is impractical. If the town board determines that a 66-foot width is  
10 impractical, the width shall be determined by the town board but shall be at least 49.5 feet in  
11 width. When no width is specified in the order, the highway shall be 66 feet wide.

**NOTE:** Section 82.18 is based on current s. 80.08. 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.

12           **SECTION 39.** 82.19 of the statutes is created to read:

13           **82.19 Discontinuance of highways.** (1) An unrecorded highway, or any part of an  
14 unrecorded highway, that has become or is in the process of becoming a public highway by  
15 user in any town may be discontinued using the procedures under ss. 82.10 through 82.12.  
16 Any proceedings to discontinue an unrecorded highway shall not be evidence of the  
17 acceptance at any time by the town of the highway or any part of the highway.

1           (2) (a) Every highway shall cease to be a public highway 4 years from the date it was  
2 laid out, except the parts of the highway that have been opened, traveled, or worked within  
3 that time.

4           (b) Any highway that has been entirely abandoned as a route of vehicular travel, and  
5 on which no highway funds have been expended for 5 years, shall be considered discontinued.  
6 In this paragraph, "vehicular travel" means travel using any motor-driven vehicle required to  
7 be registered under ch. 341 or exempt from registration under s. 341.05.

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

NOTE: Section 82.19 (1) is based on current s. 80.32 (1). No substantive change is intended. Section 82.19 (2) is based on current s. 80.32 (2). 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.

10           **SECTION 40.** 82.20 of the statutes is created to read:

11           **82.20 Removal of fences from highway; notice.** (1) If the town board issues an order  
12 to lay out or alter a highway through enclosed, cultivated, or improved lands, the town board  
13 or highway superintendent shall give the owner or occupant of the lands through which the  
14 proposed highway will pass written notice of its intent to remove the fences in the path of the  
15 new or altered highway. The notice shall state when the board intends to remove the fences,  
16 which shall not be less than 30 days from the date the notice was given to the owner or  
17 occupant. If the owner or occupant does not remove the fences before the time stated in the  
18 notice, the town board or highway superintendent shall remove the fences and may charge the  
19 landowner for the costs of the removal under s. 66.0027.



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

6           (3) APPOINTMENT OF CITY OR VILLAGE COMMISSIONERS. Upon receipt of an application  
7 or introduction of a resolution, the city council or village board may appoint 3 commissioners  
8 to act on behalf of the affected city or village in all respects. The commissioners shall be duly  
9 sworn to faithfully discharge their duties as commissioners before entering upon those duties.

10           (4) APPORTIONMENT OF AUTHORITY AND RESPONSIBILITY. (a) A highway order issued by  
11 2 towns or by a town and a village or city may designate the part of the highway that each shall  
12 construct and repair, and pay the damages for, if any. As to the portion of the highway that  
13 the town, city, or village agrees to construct, keep in repair and pay damages for, the town, city,  
14 or village shall have all of the authority and be subject to all of the responsibility in relation  
15 to that part of the highway as if that part were wholly located in the town, city, or village.

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

- 20           1. No apportionment has been made in a highway order.
- 21           2. The highway or a part of the highway had its origin in user.
- 22           3. In the judgment of the town boards, or the town board and the city council or village  
23 board, circumstances have been so altered since the last apportionment of the highway or part  
24 of the highway that the current apportionment has been rendered inequitable or impracticable.

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

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

7           **(5) APPEAL OF APPORTIONMENT.** (a) If an order laying out, or altering a town line highway  
8 has not apportioned the authority and responsibility on account of the highway or if a  
9 municipality feels that the current apportionment is inequitable, the municipality may apply  
10 to the circuit judge of the county in which the affected town, village, or city is located, for the  
11 appointment of 3 commissioners to apportion the authority and responsibility between each  
12 affected municipality. The municipality filing the application shall serve a copy of the  
13 application on the clerk of each municipality to be affected. The circuit judge may set the time  
14 and place of the hearing before the commissioners at least 10 days after the application is filed  
15 with the judge.

16           (b) Upon receipt of an application under par. (a), the circuit judge shall appoint 3  
17 residents of the county as commissioners. The commissioners shall, on not less than 10 nor  
18 more than 60 days notice in writing to the clerk of each affected municipality, apportion the  
19 authority and responsibility of each affected municipality on account of the highway. The  
20 commissioners shall make the determination in writing and shall file the determination with  
21 the clerk of each affected municipality. The commissioners' determination shall have the  
22 same effect as an order made under sub. (4).

23           **(6) WHERE PAPERS FILED.** All awards, notices, and papers required to be filed shall be  
24 filed in the office of the clerk of every affected municipality. Any highway orders issued under

1 this section shall be recorded with the register of deeds for the county or counties in which the  
2 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 draft 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.

1           **SECTION 43.** 82.23 of the statutes is created to read:

2           **82.23 Municipal line bridges.** (1) Unless otherwise provided by statute or agreement,  
3 every highway bridge on a town, village, or city boundary shall be repaired and maintained  
4 by the municipalities in which the bridge is located. The cost of repairs and maintenance shall  
5 be paid by the adjoining municipalities in proportion to the last equalized valuation of the  
6 property in the adjoining municipalities.

**NOTE:** Section 82.23 is based on current s. 80.11 (7) and (8) (a). No substantive change is intended.

7           **SECTION 44.** 82.25 of the statutes is created to read:

8           **82.25 Highway taxes for limited-use road.** (1) Notwithstanding s. 60.10 (1) (a) and  
9 (2) (a), the town board may levy and collect a tax on property located in a recorded and filed  
10 plat that existed on January 1, 2003, situated in a town requiring the approval of such town  
11 board, and adjoining a private road used by the public located therein, and on property  
12 adjoining, where the owner regularly uses such road which is not a portion of any town, county,  
13 state, or federal highway system, not exceeding 3 mills for each dollar of assessed valuation  
14 thereof. The proceeds of the tax shall be expended for the improvement and maintenance of  
15 any private roads used by the public located within the recorded and filed plat. The town board  
16 shall not expend any of the funds collected under this subsection 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 draft. The special committee decided that these provisions were obsolete or better covered by other parts of the statutes.

1           **SECTION 45.** 82.27 of the statutes is created to read:

2           **82.27 Landlocked property and property with insufficient highway access. (1)**

3           DEFINITIONS. In this section, "advantages" means the greater of the following:

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

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

9           **(2) APPLICATION.** The owner of real estate located within a town may apply to the town  
10          board to have a highway to the owner's land laid out. Except as provided in sub. (7), the  
11          application shall be delivered to the town clerk of the town in which the real estate is located.  
12          The application shall contain an affidavit, executed by the applicant, that describes the  
13          affected real estate and recites facts that satisfy the board that the circumstances either in par.  
14          (a) or (b) exist.

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

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

23          2. The owner is unable to purchase a right-of-way from the described real estate to a  
24          public highway, or is unable to purchase land on either or both sides of the existing way or road

1 to make the way or road of sufficient width or that the right-of-way or additional land cannot  
2 be purchased except at an exorbitant price, which price shall be stated in the affidavit.

3 (3) SETTING THE HEARING DATE; NOTICE. Upon receipt of an application under sub. (2),  
4 the town board shall set a time and place to conduct a hearing regarding the application. The  
5 hearing shall be held after 10 days and within 30 days of the receipt of the application by the  
6 town board. Notice of the time and place of the hearing shall be served as required by s. 82.10  
7 and published as a class 2 notice under ch. 985.

8 (4) HEARING. (a) The town board shall meet at the time and place stated in the notice  
9 and decide, in its discretion, whether to grant the application. The board may grant the  
10 application by either laying out a new highway across the surrounding land or by adding land  
11 to the existing way or road described in the affidavit. If the board decides to lay out a new  
12 highway, the new highway shall be at least 66 feet wide unless the board determines that 66  
13 feet is impracticable. If the board decides to widen an existing way or road, the resulting  
14 highway shall not be less than 49.5 feet nor more than 66 feet in width.

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

19 (c) Upon laying out a highway or widening a private way or road, the town board shall  
20 adopt a highway order. If it is necessary to include a turnaround, the turnaround shall be laid  
21 out on the applicant's land. The applicant shall pay the town treasurer the amount assessed  
22 as advantages within 30 days of the board's decision. Within 10 days of payment, the town  
23 board shall file the order with the town clerk and record the order with the register of deeds  
24 for the county in which the land is located.

1           (5) CHARGING COSTS TO THE APPLICANT. If the town board grants the application, the  
2 items listed in pars. (a) through (d) may be included in the determination of advantages. If the  
3 town board denies the application, half of all of the following may be charged to the applicant  
4 as a special charge under s. 66.0227:

5           (a) Attorney fees reasonably incurred by the town.

6           (b) The cost of any survey or the fee of any expert on valuation, or both, reasonably  
7 incurred by the town.

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

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

11           (6) REAL ESTATE LANDLOCKED BY SALE. In a town, if the owner of land that is accessible,  
12 or provided with an easement to a public highway, subdivides and transfers any part of the  
13 land, the owner shall provide a cleared easement at least 66 feet in width that shall be  
14 continuous from the highway to the part of the subdivision sold. If the seller fails to provide  
15 the required easement, the town board may, pursuant to proceedings under this section, lay out  
16 a road at least 66 feet wide from the inaccessible land to the public highway over the remaining  
17 lands of the seller without assessment of damages or compensation to the seller.

18           (7) LAYING OUT A HIGHWAY TO AN ADJOINING TOWN. If it is impracticable to lay out a  
19 highway to an existing public highway that is in the town where the land is situated, a  
20 landowner may apply to have a highway laid out to a highway in an adjoining town. The  
21 application shall comply with the requirements of sub. (2) except that the affidavit shall also  
22 state that it is impracticable to lay out a new highway to an existing highway in the town the  
23 land is located in and that it is practicable to lay out a highway to an existing highway in the  
24 adjoining town. The owner shall execute the application in duplicate and present one copy

1 to the clerk of the town where the land is located and one copy to the clerk of the town where  
2 the proposed highway is to be laid out. The town boards shall proceed as provided under this  
3 section, except that all orders and notices shall be signed by both boards, and all papers  
4 required to be filed shall be made in duplicate and filed with each town clerk. The applicant  
5 shall pay the amount determined as advantages to the treasurer of the town in which the  
6 applicant's land is situated within 30 days of the decision. The order shall be recorded within  
7 10 days of payment. All damages assessed shall be paid by the town where the applicant's land  
8 is situated.

9 (8) HIGHWAY TO ISLANDS IN MISSISSIPPI RIVER. (a) The owner of an island in the bottoms  
10 of the Mississippi River may submit an application under this section if the island is shut out  
11 from the bank of the river and from all highway access by islands, sloughs, and the lands of  
12 others, and the owner cannot purchase any highway access at a reasonable price.

13 (b) The application shall describe the affected land and shall contain an affidavit that  
14 recites the facts in par. (a).

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

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

21 (10) HIGHWAY TO REMAIN PUBLIC FOR AT LEAST 2 YEARS. A highway laid out under this  
22 section shall be a public road and shall remain and be maintained as a public road for at least  
23 2 years from the date of the order.

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

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 (9) (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 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.

1           **SECTION 46.** 82.28 of the statutes is created to read:

2           **82.28 Highways and bridges on state boundaries.** The board of any town or county  
3 that is bounded in part by a river or a highway that is also a state boundary line may enter into  
4 an agreement with the adjoining municipality in the other state for the maintenance and  
5 construction of boundary line bridges or for the maintenance and reconstruction of boundary  
6 line highways, including bridges. The costs shall be apportioned by agreement.

**NOTE:** New s. 82.28 is based on current s. 80.125. 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. The new s. 82.28 states that the apportionment shall be by agreement.

7           **SECTION 47.** 82.29 of the statutes is created to read:

8           **82.29 Highways abutted by state park lands; discontinuance or relocation.** Any  
9 part of a highway lying wholly within state park lands may be discontinued or relocated by  
10 the state agency having jurisdiction over the state park by filing written notice of the  
11 discontinuance or relocation with the clerk of the municipality that has jurisdiction over the  
12 highway and upon approval by the municipality after holding a hearing as provided in s. 82.10.

1 No discontinuance or relocation under this section may deprive a landowner of all highway  
2 access. This section does not apply to state trunk highways or connecting highways.

NOTE: Section 82.29 is based on current s. 80.025. No substantive  
change is intended.

3 SECTION 48. Subchapter IV (title) of chapter 82 [precedes 82.31] of the statutes is  
4 created to read:

5 SUBCHAPTER IV

6 EXISTING HIGHWAYS

7 SECTION 48. 82.31 of the statutes is created to read:

8 **82.31 Validation of highways. (1) RECORDED HIGHWAYS.** Any recorded highway that  
9 has been laid out pursuant to this chapter is a legal highway only to the extent that it has been  
10 opened and worked for 3 years. Any laid out highway that has not been fully and sufficiently  
11 described or recorded or for which the records have been lost or destroyed is presumed to be  
12 66 feet wide.

13 (2) UNRECORDED HIGHWAYS. (a) Except as provided in pars. (b) and (c), any unrecorded  
14 highway that has been worked as a public highway for 10 years or more is a public highway  
15 and is presumed to be 66 feet wide.

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

20 (c) No lands granted for highway purposes that did not become a legal highway prior  
21 to July 1, 1913, shall become a legal highway unless the grant is accepted by the town board

1 or by the town meeting of the town where the lands and proposed highway are located, and  
2 until a resolution of acceptance of the grant is recorded in the office of the town clerk.

**NOTE:** Section 82.31 is based on current s. 80.01 (1m) and (2). No substantive change is intended.

3 **SECTION 50.** 82.33 of the statutes is created to read:

4 **82.33 Lost records; how restored; effect.** (1) Whenever the record of the laying out  
5 of any highway has been lost or destroyed, the board of the town in which the highway is  
6 located, upon notice being served in accordance with s. 82.10 (4), may make a new record of  
7 the highway. The notice shall state the time and place where the supervisors will decide  
8 whether to make the new record. The notice shall contain a legal description of the highway  
9 for which the proposed record will be made and a scale map of the land that would be affected.  
10 Notice need not be given to persons who waive the notice or consent to the making of the order.

11 (2) At the time and place stated in the notice, the town board shall hold a public hearing  
12 regarding the proposed new record, and make a new record as it considers proper. If the board  
13 finds that the highway is a legal highway, the record of which has been lost or destroyed, the  
14 board shall make a written order stating those facts and specifying the course, width, and other  
15 pertinent description of the highway. The order shall be filed with the town clerk and recorded  
16 in the office of the register of deeds for the county in which the highway is located. Any  
17 number of highways may be included in one notice or order under this section. A failure or  
18 refusal to make a new record for any highway does not preclude a subsequent proceeding for  
19 that purpose.

20 (3) Any person through whose land a highway described in an order entered under sub.  
21 (2) passes may appeal under s. 82.15 on the grounds that the highway described in the order  
22 was not a legal highway in fact. No person may call into question the regularity of proceedings

1 under this section except owners of land on whom notice should have been served but in fact  
2 was not and persons claiming under those owners.

**NOTE:** Section 82.33 is based on current s. 80.37. 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).

3 **SECTION 51.** 82.35 of the statutes is created to read:

4 **82.35 Temporary highways and detours; damages.** (1) The town board, upon its  
5 own motion, may lay out and open temporary highways through any lands in the following  
6 situations:

7 (a) When any highway is practically impassable or dangerous to travel.

8 (b) When the town board deems it necessary to suspend travel on a highway or on any  
9 part of a highway due to construction, repair, or other reasons.

10 (2) (a) The board may contract in writing with the owner or lessee of any land through  
11 which it proposes to lay out a temporary highway, as to the location of the highway, and the  
12 damages the owner or lessee is to receive. The contract shall be filed with the town clerk.

13 (b) In the absence of a contract under par (a), the board shall determine the location of  
14 the temporary highway and the award of damages. Unless an emergency exists, the board shall  
15 serve the landowner with notice of the location of the highway and the award of damages and  
16 shall provide the landowner with 48 hours to object. The town board shall file a written order  
17 with the town clerk specifying the location of the temporary highway and the damages  
18 awarded.

1 (c) The owner or occupant of any land occupied by a temporary highway may, at any  
2 time after it is opened and within 30 days after it is vacated or discontinued, apply to the town  
3 board to determine the owner's or occupant's damages.

4 (3) If a temporary highway is opened in connection with or on account of road or bridge  
5 construction, the damages agreed upon or awarded pursuant to this section may be treated as  
6 part of the construction cost and paid out of the construction funds.

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

NOTE: Section 82.35 is based on current s. 81.08. 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.

9 SECTION 57. 82.37 of the statutes is created to read:

10 **82.37 Tunnel under highway by landowner.** The owner of land on both sides of a  
11 town highway may construct a tunnel under the highway, and may erect fences that are  
12 necessary for the use of the tunnel. The tunnel shall not interfere with or endanger travel on  
13 the highway. The owner shall maintain the tunnel and shall be liable for all damages that occur  
14 as a result of the failure to keep the tunnel in repair. Unless authorized by a town meeting, the  
15 tunnel shall not be less than 25 feet in length. The electors of the town at an annual town  
16 meeting may authorize the construction of a tunnel that is less than 25 feet, but at least 16 feet  
17 in length.

NOTE: Section 82.41 is based on all but the last sentence of current s.  
81.35. No substantive change is intended.

18 SECTION 60. 83.015 (2) (b) of the statutes is amended to read:

19 83.015 (2) (b) In any county with a highway commissioner appointed under s. 83.01  
20 (1) (b) or (c), the county highway committee shall be only a policy-making body determining

1 the broad outlines and principles governing administration and the county highway  
2 commissioner shall have the administrative powers and duties prescribed for the county  
3 highway committee under par. (a), sub. (3) (a) and ss. 27.065 (4) (b) and (13), 32.05 (1) (a),  
4 ~~81.38 (1), (3) and (4)~~, 82.08, 83.01 (6), 83.013, 83.018, 83.025 (1) and (3), 83.026, 83.035,  
5 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),  
6 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  
7 (2), 86.19 (3), 86.34 (1), 114.33 (5), 349.07 (2), 349.11 (4) and (10) and 349.15 (2). No  
8 statutory power, duty or function specified elsewhere for the county highway commissioner  
9 may be deemed impliedly repealed for the sole reason that reference to it has been omitted in  
10 this paragraph.

11 **SECTION 59.** 83.09 of the statutes is amended to read:

12 **83.09 Emergency repairs of county trunk highways.** Whenever a flood or other  
13 casualty renders any county trunk highway dangerous for travel, the town chairperson shall  
14 may immediately close it and notify the county highway commissioner thereof, and the  
15 commissioner shall promptly make repairs necessary to render the highway safe for travel.  
16 If sufficient funds are not available in the county maintenance fund, the commissioner may,  
17 with the consent of the chairperson of the county board or of the county highway committee,  
18 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.

19 **SECTION 61.** 83.18 of the statutes is amended to read:

1           **83.18 Entry on lands. (1) ENTRY; PURPOSES; ROAD MATERIALS IN HIGHWAYS.** For  
2 constructing or maintaining any highway by the county, the county highway committee or  
3 commissioner shall possess all the powers to acquire and enter lands conferred upon town  
4 boards by s. ~~81.06~~ 82.03 (2) and (5).

**NOTE:** This draft deletes current s. 83.18 (2). That section referred to  
          appeal procedures in current chs. 80 and 81 that the special committee  
          deleted.

5           **SECTION 60.** 83.18 (2) of the statutes is repealed.

6           **SECTION 62.** 83.19 of the statutes is amended to read:

7           **83.19 Temporary highways and detours.** When any highway which is maintained  
8 or to be maintained by the county shall be practically impassable or be dangerous to travel or  
9 when it shall be deemed necessary on account of construction or repair work thereon or for  
10 other reasons to suspend travel upon any part of such highway, the county highway  
11 commissioner may lay out and open temporary highways for the accommodation of public  
12 travel through any lands, and the county highway commissioner shall possess the powers  
13 conferred by s. ~~81.08~~ 82.35 upon town boards. Said powers shall be exercised by the county  
14 highway commissioner in like manner and the procedure shall be the same except that the  
15 contract and orders and claim for damages and other papers relating to the matter shall be filed  
16 with the county clerk, and claims for damages shall be acted upon by the county board in the  
17 manner provided by s. 893.80.

18           **SECTION 63.** 84.02 (1) of the statutes is amended to read:

19           **84.02 (1) DESIGNATION.** The system of highways known as the trunk highway system  
20 heretofore selected and laid out by the legislature and by the highway commission and by  
21 special legislative state trunk highway committees and approved by said highway commission  
22 and as revised, altered and changed by and under authority vested by law in the highway

1 commission, is hereby validated and confirmed and designated the state trunk highway system  
2 but without prejudice to the exercise of the power given to change such system, and all acts  
3 by which parts of said system were heretofore adopted or declared to be trunk highways are  
4 confirmed and validated. Section ~~80.32 (2)~~ 82.19 (2) does not apply to the state trunk highway  
5 system.

6 **SECTION 64.** 84.14 (3) of the statutes is amended to read:

7 84.14 (3) PARTICIPATION IN TOWN BRIDGE CONSTRUCTION. Whenever any municipality  
8 has participated in the cost of the construction, reconstruction, or purchase of a bridge under  
9 s. 84.11 or 84.12, the property in such municipality shall thereafter be subject to taxation by  
10 the county for the construction and repair of bridges within the county under s. ~~81.38~~ 82.08.

11 **SECTION 65.** 86.26 of the statutes is renumbered 82.50.

12 **SECTION 66.** 86.265 of the statutes is renumbered 82.51.

13 **SECTION 67.** 86.266 of the statutes is renumbered 82.52.

14 **SECTION 68.** 86.315 (3) of the statutes is amended to read:

15 86.315 (3) County forest roads must meet the minimum design standards under s. ~~86.26~~  
16 ~~(1) (a) 2. and 3.~~ 82.50 (1) (a) 2. and 3. in order to qualify for aids under this section.

**NOTE:** This draft 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.

17 **SECTION 69.** 236.16 (2) of the statutes is amended to read:

18 236.16 (2) MINIMUM STREET WIDTH. All streets shall be of the width specified on the  
19 master plan or official map or of a width at least as great as that of the existing streets if there  
20 is no master plan or official map, but no full street shall be less than 60 feet wide unless  
21 otherwise permitted by local ordinance. Widths of town roads platted after January 1, 1966,  
22 shall, however, comply with minimum standards for town roads prescribed by s. ~~86.26~~ 82.50.

1 Streets or frontage roads auxiliary to and located on the side of a full street for service to the  
2 abutting property may not after January 1, 1966, be less than 49.5 feet wide.

**NOTE:** This draft 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.

3 **SECTION 70.** 756.04 (2) of the statutes is amended to read:

4 756.04 (2) Jurors for all circuit courts, ~~except jurors under ch. 80,~~ shall be selected under  
5 ss. 756.04 to 756.07.

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

6 **SECTION 71.** 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.

7 **SECTION 58.** 893.83 of the statutes is created to read:

8 **893.83 Highway defects. (1) DAMAGES CAUSED BY HIGHWAY DEFECTS; LIABILITY OF**  
9 MUNICIPALITY. If damages happen to any person or his or her property by reason of the  
10 insufficiency or want of repairs of any highway that any town, city, or village is bound to keep  
11 in repair, the person sustaining the damages has a right to recover the damages from the town,  
12 city, or village. If the damages happen by reason of the insufficiency or want of repairs of a  
13 highway that any county by law or by agreement with any town, city, or village is bound to  
14 keep in repair, or that occupies any land owned and controlled by the county, the county is  
15 liable for the damages and the claim for damages shall be against the county. If the damages  
16 happen by reason of the insufficiency or want of repairs of a bridge erected or maintained at  
17 the expense of 2 or more towns, cities, villages, or counties, the action shall be brought against

1 all the towns, cities, villages, or counties liable for the repairs of the bridge. Upon recovery  
2 of judgment the damages and costs shall be paid by the towns, cities, villages, or counties in  
3 the proportion in which they are liable for the repairs. The court may direct the judgment to  
4 be collected from each town, city, village, or county for its proportion only. The amount  
5 recoverable by any person for any damages so sustained shall not exceed \$50,000. The  
6 procedures under s. 893.80 shall apply to the commencement of actions brought under this  
7 section. No action may be maintained to recover damages for injuries sustained by reason of  
8 an accumulation of snow or ice upon any bridge or highway, unless the accumulation existed  
9 for 3 weeks.

10 (2) HIGHWAY DEFECTS; LIABILITY OF WRONGDOER; PROCEDURE. Whenever damages  
11 happen to any person or property by reason of any defect in any highway or other public  
12 ground, or from any other cause for which any town, city, village, or county would be liable,  
13 and such damages are caused by, or arise from, the wrong, default or negligence thereof and  
14 of any person, or private corporation, such person or private corporation shall be primarily  
15 liable therefor. The town, city, village, or county may be sued with the person or private  
16 corporation so primarily liable. If the town, city, village, or county denies its primary liability  
17 and proves upon whom such liability rests the judgment shall be against all the defendants  
18 shown by the verdict or finding to be liable for the damages. Judgment against the town, city,  
19 village, or county shall not be enforceable until execution has been issued against the party  
20 found to be primarily liable and returned unsatisfied in whole or in part. On such return being  
21 made, the defendant town, city, village, or county shall be bound by the judgment. The unpaid  
22 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.

1           **SECTION 72. Effective date.**

- 2           (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

<i>Current</i>	<i>New</i>
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

<i>Current</i>	<i>New</i>
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.