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PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

1 **AN ACT** *to repeal* 60.24 (3) (n), chapter 80, chapter 81, 83.18 (2) and 893.73 (2)
2 (c); *to renumber* 86.26, 86.265 and 86.266; *to amend* 32.035 (4) (a), 32.05
3 (intro.), 59.69 (5) (e) 7., 59.84 (2) (f) 5., 60.10 (1) (d), 60.23 (17), 60.24 (3) (o), 60.24
4 (3) (p), 60.33 (10), 60.37 (4) (a), 62.73 (1), 66.1003 (2) and (3), 83.015 (2) (b),
5 83.09, 83.18, 83.19, 84.02 (1), 84.14 (3), 86.315 (3), 236.16 (2) and 756.04 (2); and
6 *to create* 61.48, 66.1003 (10), 66.1005, 66.1006, 66.1024, 66.1029, 66.1031,
7 66.1033, 66.1035, 66.1037, chapter 82 (title), subchapter I (title) of chapter 82
8 [precedes 82.01], 82.01, 82.03, 82.05, 82.08, 82.09, subchapter II (title) of
9 chapter 82 [precedes 82.10], 82.10, 82.11, 82.12, 82.13, 82.14, 82.15, 82.16,
10 82.17, 82.18, 82.19, 82.20, subchapter III (title) of chapter 82 [precedes 82.21],
11 82.21, 82.23, 82.25, 82.27, 82.28, 82.29, subchapter IV (title) of chapter 82

1 [precedes 82.31], 82.31, 82.33, 82.35, 82.37 and 893.83 of the statutes; **relating**
2 **to:** recodification of chs. 80 and 81.

Analysis by the Legislative Reference Bureau

This is a preliminary draft. An analysis will be provided in a later version.

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.

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

1 32.035 (4) (a) *When an impact statement is required; permitted.* The
2 department shall prepare an agricultural impact statement for each project, except
3 a project under ~~ch. 81~~ ch. 82 or a project located entirely within the boundaries of a
4 city or village, if the project involves the actual or potential exercise of the powers of
5 eminent domain and if any interest in more than 5 acres of any farm operation may
6 be taken. The department may prepare an agricultural impact statement on a
7 project located entirely within the boundaries of a town, city, or village or involving
8 any interest in 5 or fewer acres of any farm operation if the condemnation would have
9 a significant effect on any farm operation as a whole.

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

11 **32.05 Condemnation for sewers and transportation facilities.** (intro.)

12 In this section, “mass transit facility” includes, without limitation because of
13 enumeration, exclusive or preferential bus lanes if those lanes are limited to
14 abandoned railroad rights-of-way or existing expressways constructed before
15 May 17, 1978, highway control devices, bus passenger loading areas and terminal
16 facilities, including shelters, and fringe and corridor parking facilities to serve bus
17 and other public mass transportation passengers, together with the acquisition,
18 construction, reconstruction and maintenance of lands and facilities for the
19 development, improvement and use of public mass transportation systems for the
20 transportation of passengers. This section does not apply to ~~town highways created~~
21 ~~or altered under ch. 80 except as to jury trials on appeals under ss. 80.24 and 80.25,~~
22 ~~nor~~ to proceedings in 1st class cities under subch. II. In any city, condemnation for
23 housing under ss. 66.1201 to 66.1211, for urban renewal under s. 66.1333, or for
24 cultural arts facilities under subch. V of ch. 229, may proceed under this section or
25 under s. 32.06 at the option of the condemning authority. Condemnation by a local

1 exposition district under subch. II of ch. 229 for any exposition center or exposition
2 center facility may proceed under this section or under s. 32.06 at the option of the
3 local exposition district. All other condemnation of property for public alleys, streets,
4 highways, airports, mass transit facilities, or other transportation facilities, gas or
5 leachate extraction systems to remedy environmental pollution from a solid waste
6 disposal facility, storm sewers and sanitary sewers, watercourses or water
7 transmission and distribution facilities shall proceed as follows:

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

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

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

21 59.84 (2) (f) 5. The governing body of the municipality shall, within 30 days
22 after filing, take the necessary action to comply with the order and in so doing shall
23 not be limited by the objections of an abutting owner, and s. ~~80.32 (4)~~ 66.1005 (2) shall
24 not be applicable to any vacation or discontinuance required by the order, and any
25 such municipality may act upon the initiative of its governing body without the

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

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

4 60.10 (1) (d) *Public waterways.* Appropriate money for the improvement and
5 maintenance of a public waterway under s. ~~81.05~~ 82.03 (19).

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

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

9 **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.

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

11 60.24 (3) (o) Sign orders for payment of work performed and materials
12 furnished on 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.

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

14 60.24 (3) (p) See that all tunnels in the town are constructed under s. ~~81.35~~
15 82.37 and that they are kept in good repair.

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

17 60.33 (10) HIGHWAYS AND BRIDGES. Perform the duties specified in chs. ~~80~~ 82 to
18 92, relating to highways, bridges and drains.

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

20 60.37 (4) (a) An elected town officer who also serves as a town employee may
21 be paid an hourly wage for serving as a town employee, not exceeding a total of \$5,000

1 each year. Amounts that are paid under this paragraph may be paid in addition to
 2 any amount that an individual receives under s. 60.32 or as a volunteer fire fighter,
 3 emergency medical technician, or first responder under s. 66.0501 (4). The \$5,000
 4 maximum in this paragraph includes amounts paid to a town board supervisor who
 5 is acting as superintendent of highways under s. ~~81.01 (1)~~ 82.03 (1).

Insert 6-6
 6 **SECTION 12.** 61.48 of the statutes is created to read:

7 **61.48 County aid for construction and repair of bridges and culverts.**
 8 Any village may elect to become subject to all of the provisions of s. 82.08 by a
 9 resolution adopted by a two-thirds majority vote of all members of the village board.
 10 The election to become subject to s. 82.08 shall be effective when a certified copy of
 11 the resolution is filed with the county board and a majority of the towns and the
 12 villages in the county that are already subject to s. 82.08 vote to approve the village's
 13 election. Until the village ceases to be subject to s. 82.08, the words "town" and "town
 14 board" as used in s. 82.08 shall also apply to the village and its village board. A village
 15 that has become subject to s. 82.08 may cease to be subject to that section by the
 16 adoption of a resolution and its approval in the same manner as the village became
 17 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.

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

19 **62.73 (1)** The common council of a 1st class city may vacate in whole or in part
 20 highways, streets, alleys, grounds, waterways, public walks and other public
 21 grounds within the corporate limits of the city that it determines the public interest

1 requires to be vacated or are of no public utility, subject to s. ~~80.32~~(4) 66.1005 (2).
2 Proceedings under this section shall be commenced either by a petition presented to
3 the common council signed by the owners of all property which abuts the portion of
4 the public facilities proposed to be vacated, or by a resolution adopted by the common
5 council. The requirements of s. 840.11 apply to proceedings under this section.

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

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

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

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

1 66.1003 (10) Notwithstanding ss. 82.21 and 82.10, no city council, or county,
 2 village or town board shall discontinue a highway when the discontinuance would
 3 deprive a landowner or a public school of all access to a highway.

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

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

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

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

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

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

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

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

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

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

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

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

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

~~**66.1006 Department of natural resources approval of discontinuance.**~~

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

NOTE: 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.

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

~~**66.1024 Effect of reservation or exception in conveyance.**~~

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

NOTE: 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.

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~~SECTION 19. 66.1029 of the statutes is created to read:~~

~~**66.1029 Appeal to county the refusal of a town, village, or city to open**~~

~~**or repair a highway or bridge.** (1) (a) If any town, city, or village does not open~~

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

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

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

23 (2) If any county fails to create an established plan, agreed to by the town, city,
24 or village, to put any county line highway in reasonable condition for travel, the
25 adjoining county may, after not less than 30 days' notice in writing given to the

1 county clerk of the other county, put the highway in reasonable condition for travel
2 and keep an accurate account of the expense. The expense, when audited and
3 allowed by the county board, shall be prorated and charged to the county whose duty
4 it is to keep the highway in condition for travel. Such county may then charge the
5 expense to the affected town, city, or village whose duty it is to keep the highway in
6 repair and add it to the next county tax apportioned and collected.

7 (3) If a county line highway has not been apportioned between towns, cities,
8 or villages for the purpose of authority and responsibility, an appeal may be taken
9 to the county board of any county bounded by the highway. The expense incurred in
10 opening and putting in reasonable condition for travel, or in repairing the highway,
11 or in building or repairing any bridge on the highway, shall be paid primarily by the
12 county to which the appeal is taken. The county to which the appeal is taken shall
13 apportion the expense among all of the counties that are bounded in whole or in part
14 by the highway. The other counties shall pay their apportioned share to the county
15 to which the appeal is taken, upon receipt of a proper claim. When the expense has
16 been paid by the respective counties, the counties shall charge their affected towns,
17 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.

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SECTION 20. 66.1031 of the statutes is created to read:

66.1031 Widening of highways; establishment of excess widths. (1)

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

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

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

(a) Alter or void the established width.

(b) Permit or sanction any construction or development that will interfere with, prevent, 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.

SECTION 21. 66.1033 of the statutes is created to read:

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

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

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

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

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 or attempted 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.

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~~SECTION 22. 66.1035 of the statutes is created to read:
66.1035 Rights of abutting owners. The owners of land abutting on any highway, street, or alley shall have a common right in the free and unobstructed use of the full width of the highway, street, or alley. No town, village, city, county, company, or corporation shall close up, use, or obstruct any part of the highway, street, or alley so as to materially interfere with its usefulness as a highway or so as to damage abutting property, or permit the same to be done, without just compensation being made for any resulting damage. This section does not impose~~

1 liability for damages arising from the use, maintenance, and operation of tracks or
 2 other public improvement legally laid down, built, or established in any street,
 3 highway, or alley prior to April 7, 1889. All rights in property that could entitle an
 4 owner to damages under this section may be condemned by any corporation that is
 5 listed in s. 32.02 in the same manner that other property may be condemned by the
 6 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.

SECTION 23. 66.1037 of the statutes is created to read:

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

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~~SECTION 24. Chapter 80 of the statutes is repealed.~~

~~SECTION 25. Chapter 81 of the statutes is repealed.~~

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

CHAPTER 82

TOWN HIGHWAYS

SECTION 27. Subchapter 1 (title) of chapter 82 [precedes 82.01] of the statutes

is created to read:

SUBCHAPTER I

FUNDING AND GOVERNANCE

SECTION 28. 82.01 of the statutes ^{(title), (intro.), (1) to (6), and (8) to (10)} ~~is~~ created to read: *are*

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

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

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

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

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

1. By government lot.

2. By recorded private claim.

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

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

(4) "Laid out" means any formal act or process by which a municipality

determines the location of a highway.

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

(6) "Opened" means the completion of work on a highway that places the

highway in a condition ready for public use.

(7) "Recorded highway" means a highway for which the order laying out or

altering, the highway, or a certified copy of the order, has been recorded in the office

of the register of deeds in the county in which the highway is situated or, for highways

that were laid out, or altered before the effective date of this act . . . [revisor inserts

date], in the office of the clerk of the town or the county in which the highway is

situated.

(8) "Town line highway" means a highway that runs on or across the boundary

line between a town and another town, a village, or a city.

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

(10) "Worked" means action of the town in regularly maintaining a highway for

public use. Actions of the town that shall constitute "work" include, but are not

limited to: hauling gravel, grading, clearing or plowing, and expending town funds

for any other maintenance on 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".

SECTION 29. 82.03 of the statutes created to read:

(1)(c), (5)(c), (6)

(9) & (19)

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~~(2) FUNDING AND EQUIPMENT. The town board shall provide machinery, implements, material, and equipment needed to construct, maintain, and repair the highways and bridges under its jurisdiction, and for those purposes may acquire by purchase or by condemnation under ch. 32 stone, gravel, sand, clay, earth, gravel pits, stone quarries, and interests in land under s. 83.07. The total sum spent under~~

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

~~superintendent.
superintendent for expenses incurred in performing his or her duties as amount of a bond of the superintendent. The town board may reimburse the amount of a bond of the superintendent and may require and set the~~

82.03(1)(c)

~~82.03 Duties of town board. (1) OVERSIGHT OF HIGHWAYS, SUPERINTENDENT OF HIGHWAYS. (a) The town board shall have the care and supervision of all highways under the town's jurisdiction, including the highways specified in s. 83.06. The town board may appoint in writing a superintendent of highways to supervise, under the board's direction, the construction, and repair and maintenance of the highways and bridges under the town's jurisdiction. Where no superintendent of highways is appointed, it shall be the duty of the town board to perform all of the duties that are prescribed by law for the superintendent of highways to perform.
(b) The town board may appoint more than one superintendent of highways. If more than one superintendent is appointed, the town board shall divide the town into as many districts as there are superintendents. The districts shall be numbered and a superintendent shall be assigned to each district. A superintendent may be a member of the town board.~~

1 this subsection in any year for construction, maintenance, and repair of highways
2 and bridges may not exceed the product of \$5,000 multiplied by the miles of highway
3 under the jurisdiction of the town measured by the most recent highway mileage for
4 the town, as determined under s. 86.302, unless one of the following occurs:
5 (a) A greater sum is authorized by the town meeting.
6 (b) The town board, by resolution, submits to the electors of the town as a
7 referendum at a general or special town election the question of exceeding the limit
8 set under this subsection. A copy of the resolution shall be filed as provided in s. 8.37.
9 The board shall abide by the majority vote of the electors of the town on the question.
10 The question shall read as follows:
11 Shall the town of ... spend up to \$... over ..., which is the annual limit of the
12 product of \$5,000 multiplied by the miles of highway under the jurisdiction of the
13 town measured by the most recent highway mileage for the town, as determined
14 under section 86.302 of the Wisconsin statutes for the construction, maintenance,
15 and repair of its highways and bridges?
16 FOR SPENDING (BALLOT BOX) AGAINST SPENDING (BALLOT BOX)
17 (3) OVERSIGHT OF SUPERINTENDENT. The town board shall compel the
18 superintendent of highways from time to time to perform the superintendent's
19 official duties.
20 (4) CONTROL OF EXPENDITURES. The town board shall direct when and where all
21 highway funds shall be expended.
22 (5) MAINTENANCE. The town supervisors may enter any lands near any highway
23 in the town to construct necessary drains or ditches or embankments for the
24 improvement or protection of the highway. The town supervisors may enter any
25 private lands with its employees and agents for the following purposes:

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highways under s. 83.027.

and other governmental bodies in establishing and maintaining controlled-access
(12) CONTROLLED-ACCESS HIGHWAYS. The town board shall work with the county
immediately notify the county highway commissioner under s. 83.09.

close county trunk highways when they have been rendered dangerous for travel and
(11) EMERGENCY CLOSURE OF COUNTY TRUNK HIGHWAY. The town chairperson may
system as provided in s. 83.025 (1).

shall approve or deny additions to and deletions from the county trunk highway
(10) ADDITIONS TO AND DELETIONS FROM COUNTY TRUNK SYSTEM. The town board
a rustic road or withdrawn from the rustic road system.

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

~~of time as the board may determine.
who shall be responsible for keeping the roadway in repair and may be for a period
a dam that has a roadway on it for the use of the roadway. The contract shall provide
(8) USE OF DAMS AS ROADWAYS. The town board may contract with the owner of
one road within the jurisdiction of the town.
of the roads under town board jurisdiction. No road name may be used on more than
(7) HIGHWAY NAMES. The town board shall, by ordinance, assign a name to each
activities undertaken under the authority granted by sub. (5).~~

(6) LIABILITY. The town shall be responsible for any damage resulting from
(c) To erect on the right-of-way fences other than snow fences.

~~and open for travel during the winter season.
(b) To erect or remove snow fences to keep highways reasonably free from snow
(a) To remove weeds and brush to keep the highway reasonably safe for travel.~~

- 1 (13) COUNTY-CONTROLLED HIGHWAYS IN A TOWN. The town board may contract under s. 83.035 with the county to enable the county to construct and maintain streets and highways in the town.
 - 2 (14) PURCHASE OF EQUIPMENT. The town board may purchase road building and maintenance supplies from the county under s. 83.018.
 - 3 (15) AGREEMENTS WITH OTHER GOVERNMENTAL BODIES. The town board, under s. 83.027 (9), may enter into agreements with other governmental bodies respecting the financing, planning, establishment, improvement, maintenance, use, regulation, or vacation of controlled-access highways or other public ways in their respective jurisdictions.
 - 4 (16) COUNTY-AID HIGHWAYS. The town board may improve county-aid highways under s. 83.14.
 - 5 (17) HIGHWAY LIGHTING. The town board may provide lighting for highways located in the town under s. 60.50 (4).
 - 6 (18) SOLID WASTE TRANSPORTATION. The town board may designate which highways solid waste may be transported on under s. 60.54.
 - 7 (19) TUNNELS UNDER HIGHWAYS. The town board shall ensure that all tunnels constructed pursuant to s. 82.37 are constructed in accordance with the requirements of s. 82.37 and are kept in good repair by the landowner.
- NOTE: 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,

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

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

~~(3) When any highway under the superintendent's charge becomes impassable, the superintendent shall put the highway in passable condition as soon~~

SECTION 30. 82.05 of the statutes is created to read:

(4)

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 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.

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

82.05 (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".

SECTION 31. 82.08 of the statutes is created to read:

82.08 Town bridges or culverts; construction and repair; county aid.

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

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

(b) If, on January 1, 2003, a county has a policy of providing funding only for bridges and culverts larger than the requirement of par. (a), the county may refuse

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to fund bridges and culverts that do not meet the minimum requirements of that
policy. The minimum size bridge or culvert that a county is required to fund under
this section may be raised, but not lowered, by the vote of a majority of the towns in
the county. The county board of any county that has never granted aid under this
section may, in its discretion, refuse all applications under sub. (1).
(3) SHARED COST. The town and county shall each pay one-half of the cost of
construction or repair. In determining the cost of construction or repair of any culvert
or bridge, the cost of constructing or repairing any approach not exceeding 100 feet
in length shall be included.
(4) EMERGENCY PETITION. Whenever the construction or repair of any culvert or
bridge must be made without delay, the town board may file its petition with the
county clerk and the county highway committee, explaining the necessity for
immediate construction or repairs. It shall then be the duty of the town board and
the county highway committee to construct or repair the bridge or culvert as soon as
practicable. The construction or repair of a culvert or bridge undertaken pursuant
to this subsection shall entitle the town to the same county aid that the town would
have been entitled to had it filed its petition with the county board as provided in sub.
(1).
(5) SUPERVISION OVER DESIGN, CONSTRUCTION, AND COST. The county highway
committee and the town board shall have full charge of design, sizing, letting,
inspecting, and accepting the construction or repair, but the town board may leave
the matter entirely in the hands of the county highway committee. The county
highway committee and the town board must agree on the cost of the project and
must consult each other during construction.

~~(6) CONSTRUCTION REQUIREMENTS. No county order may be drawn under sub. (2) for the construction of a culvert or bridge unless the design and construction comply with requirements under s. 84.01 (23).
 (7) NO TAX. Except as provided in ss. 61.48 and 84.14 (3), nothing contained in this section shall authorize the levy of a tax upon the property in any city or village that is required to maintain its own bridges.~~

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

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.

~~SECTION 32. 82.09 of the statutes is created to read:
 82.09 County aid for dams used for bridges. A town board may file a petition with the county board stating that the town board has voted to acquire the right to use a roadway on a dam. The petition shall contain a legal description and~~

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scale map of the dam and roadway, and shall state the amount agreed to be paid to the owner for the use of the roadway. Upon receipt of a petition, the county board shall appropriate a sum equal to one-half the amount agreed to be paid for the use. The county board shall, on the order of the chairperson of the county board and county clerk, cause such sum to be paid to the treasurer of the town whenever the town board notifies the county highway commissioner that a contract for the use of the 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.

SECTION 33. Subchapter II (title) of chapter 82 [precedes 82.10] of the statutes

is created to read:

SUBCHAPTER II
(+ title), (2), (4) (7), and (5)

BASIC PROCEDURES

SECTION 34. 82.10 of the statutes ~~is~~ created to read:

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

- ~~(a) A legal description of the highway to be discontinued or of the proposed highway to be laid out or altered.~~
- ~~(b) A scale map of the land that would be affected by the application.~~

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

1 (a) A legal description of the highway to be discontinued or of the proposed

2 highway to be laid out or altered.

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

4 (3) NOTICE REQUIREMENTS. Upon receipt of an application under sub. (1) or the

5 introduction of a resolution under sub. (2), the board shall provide notice of the time

6 and place it will meet to consider the application or resolution. The notice shall

7 contain a legal description of the highway to be discontinued or of the proposed

8 highway to be laid out or altered and a scale map of the land that would be affected

9 by the application.

10 (4) NOTICE RECIPIENTS. (a) The town board or, at the town board's direction, the

11 applicants shall publish a class 3 notice under ch. 985 and shall, at least 30 days

12 before the hearing, give notice by registered mail to:

13 1. The department of natural resources;

14 2. The county land conservation committee in each county through which the

15 highway may pass;

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

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

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

19 publication. If the procedures are begun under sub. (2), the town shall bear the cost

20 of publication.

21 (5) LIS PENDENS. In the case of an application under sub. (1), the applicant shall

22 file a lis pendens under s. 840.11. In the case of a resolution under sub. (2), the board

23 shall file a 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.

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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 timeliness more reasonable and to be consistent with ch. 66. In addition, the special committee decided that if the procedures are begun by an application, the cost of publishing a notice should be borne by the applicants.

SECTION 35. 82.11 of the statutes is created to read:

82.11 Meeting. (1) The town supervisors shall personally examine the

highway or proposed highway that is the subject of an application or resolution under s. 82.10. At the time and place stated in the notice under s. 82.10, the board shall hold a public hearing to decide, in its discretion, whether granting the application or resolution is in the public interest. Before the town board holds a public hearing on or takes any action on the application or resolution, the town board must be

Handwritten notes: "1", "2", "3", "4", "5", "6", "7" with arrows pointing to the corresponding line numbers in the text. There are also handwritten numbers "29-1" and "29-2" in circles.

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satisfied, by affidavit of the applicant or otherwise, that the notices in s. 82.10 (4)

have been given.

(2) (a) No town official may act in laying out, altering, or discontinuing a

highway if acting would result in a violation of the code of ethics under s. 19.59 or

of a local ordinance enacted under s. 19.59 (1m). If a town official is prevented from

acting, the remaining town officials shall act.

(b) Every town shall have a written policy on how the town board will act on

an application or resolution when there are fewer than 2 supervisors in the town who

are able to act on that application or resolution. In the absence of a policy, the town

clerk may act. If the town clerk is prevented from acting, the treasurer may act.

NOTE: 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.

SECTION 36. 82.12 of the statutes is created to read:

(+/-) (1)

82.12 Highway order. (1) The town board shall make a determination upon

any application or resolution within 90 days after receipt of the application or

introduction of a resolution. If the board decides to lay out, alter, or discontinue any

highway, it shall issue a highway order.

(2) The highway order shall be recorded with the register of deeds for the

county in which the highway is or will be located and shall be filed with the town

clerk. The town clerk shall submit a certified copy of the order to the county highway

commissioner. If the town has an official map, the order shall be incorporated into

the official map.

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