

1 ~~(3) The determination not to issue a highway order shall be final for one year.~~
 2 ~~No application to lay out, alter, or discontinue a highway shall be filed within one~~
 3 ~~year from the date of a determination not to issue a highway order covering the~~
 4 ~~highway or portion of the 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.

5 **SECTION 37.** 82.13 of the statutes is created to read:

6 **82.13 Highways to school buildings.** Upon being notified that a public
 7 school in the town lacks highway access, the town board shall lay out a highway to
 8 the public school, using the procedures in this subchapter. No application for the
 9 highway shall be necessary. Section 82.12 (3) shall not apply to proceedings under
 10 this section.

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

11 **SECTION 38.** 82.14 ^{(title), (1), and (3) are} of the statutes ~~is~~ created to read:

12 **82.14 Acquiring rights to land; damages from discontinuance. (1)**
 13 Unless the acquisition can be made by mutual agreement, the town board shall
 14 utilize the procedures under s. 32.05 to acquire rights to land for the purpose of
 15 laying, or altering a town highway.

16 ~~(2) If lands acquired by contract for highway purposes are encumbered, and the~~
 17 ~~owners of the fee and of the encumbrance do not agree on the allocation of any~~

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1 ~~damages to be paid due to the taking, the damages may be paid to the clerk of the~~
 2 ~~circuit court of the county. Upon the application of any interested party and upon~~
 3 ~~not less than 5 days written notice to the other party, the court may apportion the~~
 4 ~~damages paid to the clerk among the parties.~~

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

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

7 ~~SECTION 39. 82.15 of the statutes is created to read:~~

8 ~~**82.15 Appeal of a highway order.** Any person aggrieved by a highway order,~~
 9 ~~or a refusal to issue such an order, may seek judicial review under s. 68.13. If the~~
 10 ~~highway is on the line between 2 counties, the appeal may be filed in the circuit court~~
 11 ~~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.

12 SECTION 40. 82.16⁽³⁾ of the statutes is created to read:

13 ~~**82.16 Highway orders; presumptions; limitation of actions.** (1) Every~~
 14 ~~order laying out, altering, or discontinuing a highway pursuant to this chapter, and~~
 15 ~~any order restoring the record of a highway shall be presumptive evidence of the facts~~
 16 ~~therein stated and of the regularity of all the proceedings prior to the making of the~~
 17 ~~order.~~

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

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

- 6 (a) An order laying out the highway has been filed for more than 30 years.
- 7 (b) No award of damages or agreement or release has been filed.
- 8 (c) The highway, or a part of the highway, has been used by the public and public
- 9 money 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.

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10 **SECTION 41.** 82.17 of the statutes is created to read:
11 **82.17 Highway papers; where filed.** (1) All applications, orders, awards,
12 bonds, and other papers relating to the laying out, altering, or discontinuing of
13 highways pursuant to this chapter shall be promptly filed in the office of the town,
14 city, or village clerk, where the highway is located except as otherwise specifically
15 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.

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16 **SECTION 42.** 82.18 of the statutes is created to read:
17 **82.18 Width of highways.** Except as otherwise provided in this chapter,
18 highways laid out pursuant to this chapter shall be laid out at least 66 feet wide
19 unless, in the town board's discretion, that width is impractical. If the town board
20 determines that a 66-foot width is impractical, the width shall be determined by the

1 ~~town board but shall be at least 49.5 feet in width. When no width is specified in the~~
 2 ~~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.

SECTION 43. 82.19 of the statutes is created to read:

4 **82.19 Discontinuance of highways.** (1) An unrecorded highway, or any part
 5 of an unrecorded highway, that has become or is in the process of becoming a public
 6 highway by user in any town may be discontinued using the procedures under ss.
 7 82.10 through 82.12. Any proceedings to discontinue an unrecorded highway shall
 8 not be evidence of the acceptance at any time by the town of the highway or any part
 9 of the highway.

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

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

18 (c) This subsection does not apply to state or county trunk highways or to any
 19 highway, street, alley, or right-of-way that provides public access to a navigable lake
 20 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

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travel. The intent is to exclude the use of a road for hiking or berry picking as a means of keeping a highway open.

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SECTION 44. 82.20 of the statutes is created to read:

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

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

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

NOTE: Section 82.20 is based on current s. 80.23. Language was added in new sub. (1) to allow the town to charge the landowner for the removal of the landowner's fences.

SECTION 45. Subchapter III (title) of chapter 82 [precedes 82.21] of the statutes is created to read:

SUBCHAPTER III

SPECIAL PROCEDURES

*(1) (a) ad (b) ad
(5) (+title)*

SECTION 46. 82.21 of the statutes ~~is~~ ^{is} created to read:

1 **82.21 Highways on and across town and municipal lines. (1) INITIATING**
 2 ~~THE PROCEDURE. The procedure to lay out, alter, or discontinue a highway on the line~~
 3 ~~between a town and another town, a city, or a village, or a highway extending from~~
 4 ~~one town into an adjoining town, city, or village shall begin only when one of the~~
 5 ~~following occurs in each affected municipality:~~

6 **82.21(1)(a)** Six resident freeholders of the town, city, or village deliver an application
 7 to lay out, alter, or discontinue a town line highway to the clerk of every town, city,
 8 or village that would be affected by the proposal.

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

Handwritten note: "insert 36-10" with an arrow pointing to line 10.

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

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

22 **(4) APPORTIONMENT OF AUTHORITY AND RESPONSIBILITY.** (a) A highway order
 23 issued by 2 towns or by a town and a village or city may designate the part of the
 24 highway that each shall construct and repair, and pay the damages for, if any. As to
 25 the portion of the highway that the town, city, or village agrees to construct, keep in

1 repair and pay damages for, the town, city, or village shall have all of the authority
2 and be subject to all of the responsibility in relation to that part of the highway as
3 if that part were wholly located in the town, city, or village.

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

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

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

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

22 (5) APPEAL OF APPORTIONMENT. (a) If an order laying out, or altering a town line
23 highway has not apportioned the authority and responsibility on account of the
24 highway or if a municipality feels that the current apportionment is inequitable, the
25 municipality may apply to the circuit judge of the county in which the affected town,

1 village, or city is located, for the appointment of 3 commissioners to apportion the
2 authority and responsibility between each affected municipality. The municipality
3 filing the application shall serve a copy of the application on the clerk of each
4 municipality to be affected. The circuit judge may set the time and place of the
5 hearing before the commissioners at least 10 days after the application is filed with
6 the judge.

7 (b) Upon receipt of an application under par. (a), the circuit judge shall appoint
8 3 residents of the county as commissioners. The commissioners shall, on not less
9 than 10 nor more than 60 days notice in writing to the clerk of each affected
10 municipality, apportion the authority and responsibility of each affected
11 municipality on account of the highway. The commissioners shall make the
12 determination in writing and shall file the determination with the clerk of each
13 affected municipality. The commissioners' determination shall have the same effect
14 as an order made under sub. (4).

15 (6) WHERE PAPERS FILED. All awards, notices, and papers required to be filed
16 shall be filed in the office of the clerk of every affected municipality. Any highway
17 orders issued under this section shall be recorded with the register of deeds for the
18 county or counties in which the highway is or will be located.

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

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

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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.

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~~SECTION 47. 82.23 of the statutes is created to read:
82.23 Municipal line bridges. (1) Unless otherwise provided by statute or agreement, every highway bridge on a town, village, or city boundary shall be repaired and maintained by the municipalities in which the bridge is located. The cost of repairs and maintenance shall be paid by the adjoining municipalities in proportion to the last equalized valuation of the property in the adjoining municipalities.~~

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~~SECTION 48. 82.25 of the statutes is created to read:
82.25 Highway taxes for limited-use road. (1) Notwithstanding s. 60.10 (1) (a) and (2) (a), the town board may levy and collect a tax on property located in a recorded and filed plat that existed on January 1, 2003, situated in a town requiring the approval of such town board, and adjoining a private road used by the public located therein, and on property adjoining, where the owner regularly uses such road which is not a portion of any town, county, state, or federal highway system, not exceeding 3 mills for each dollar of assessed valuation thereof. The proceeds of the tax shall be expended for the improvement and maintenance of any private roads~~

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1 used by the public located within the recorded and filed plat. The town board shall
2 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.

(title), (1), (5)(c)
and (d), (9), and (10)

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SECTION 49. 82.27 of the statutes ^{are} created to read:

4 **82.27 Landlocked property and property with insufficient highway**
5 **access. (1) DEFINITIONS.** In this section, "advantages" means the greater of the
6 following:

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

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

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

19 ~~(a) The real estate is shut out from all public highways by being surrounded
20 by real estate owned by other persons, or by real estate owned by other persons and
21 by water, and that the owner is unable to purchase a right-of-way to a public~~

1 highway from the owners of the adjoining real estate or that such a right-of-way
2 cannot be purchased except at an exorbitant price, which price shall be stated in the
3 affidavit.

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

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

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

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

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

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

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

16 (a) ~~Attorney fees reasonably incurred by the town.~~

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

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

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

22 (6) ~~REAL ESTATE LANDLOCKED BY SALE.~~ In a town, if the owner of land that is
23 ~~accessible, or provided with an easement to a public highway, subdivides and~~
24 ~~transfers any part of the land, the owner shall provide a cleared easement at least~~
25 ~~66 feet in width that shall be continuous from the highway to the part of the~~

1 subdivision sold. If the seller fails to provide the required easement, the town board
2 may, pursuant to proceedings under this section, lay out a road at least 66 feet wide
3 from the inaccessible land to the public highway over the remaining lands of the
4 seller without assessment of damages or compensation to the seller.

5 (7) LAYING OUT A HIGHWAY TO AN ADJOINING TOWN. If it is impracticable to lay out
6 a highway to an existing public highway that is in the town where the land is
7 situated, a landowner may apply to have a highway laid out to a highway in an
8 adjoining town. The application shall comply with the requirements of sub. (2)
9 except that the affidavit shall also state that it is impracticable to lay out a new
10 highway to an existing highway in the town the land is located in and that it is
11 practicable to lay out a highway to an existing highway in the adjoining town. The
12 owner shall execute the application in duplicate and present one copy to the clerk of
13 the town where the land is located and one copy to the clerk of the town where the
14 proposed highway is to be laid out. The town boards shall proceed as provided under
15 this section, except that all orders and notices shall be signed by both boards, and all
16 papers required to be filed shall be made in duplicate and filed with each town clerk.
17 The applicant shall pay the amount determined as advantages to the treasurer of the
18 town in which the applicant's land is situated within 30 days of the decision. The
19 order shall be recorded within 10 days of payment. All damages assessed shall be
20 paid by the town where the applicant's land is situated.

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

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

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

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

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

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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.

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SECTION 50. 82.28 of the statutes is created to read:

82.28 Highways and bridges on state boundaries. The board of any town or county that is bounded in part by a river or a highway that is also a state boundary line may enter into an agreement with the adjoining municipality in the other state for the maintenance and construction of boundary line bridges or for the maintenance and reconstruction of boundary 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.

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SECTION 51. 82.29 of the statutes is created to read:

82.29 Highways abutted by state park lands; discontinuance or relocation. Any part of a highway lying wholly within state park lands may be discontinued or relocated by the state agency having jurisdiction over the state park by filing written notice of the discontinuance or relocation with the clerk of the municipality that has jurisdiction over the highway and upon approval by the municipality after holding a hearing as provided in s. 82.10. No discontinuance or relocation under this section may deprive a landowner of all highway 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.

1 SECTION 52. Subchapter IV (title) of chapter 82 [precedes 82.31] of the statutes
2 is created to read:

3 SUBCHAPTER IV

4 EXISTING HIGHWAYS

5 SECTION 53. 82.31 of the statutes is created to read:

6 **82.31 Validation of highways. (1) RECORDED HIGHWAYS.** Any recorded
7 highway that has been laid out pursuant to this chapter is a legal highway only to
8 the extent that it has been opened and worked for 3 years. Any laid out highway that
9 has not been fully and sufficiently described or recorded or for which the records have
10 been lost or destroyed is presumed to be 66 feet wide.

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

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

18 (c) No lands granted for highway purposes that did not become a legal highway
19 prior to July 1, 1913, shall become a legal highway unless the grant is accepted by
20 the town board or by the town meeting of the town where the lands and proposed
21 highway are located, and until a resolution of acceptance of the grant is recorded in
22 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.

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46-51 →

1 **SECTION 54.** 82.33 of the statutes is created to read:

2 **82.33 Lost records; how restored; effect.** (1) Whenever the record of the
3 laying out of any highway has been lost or destroyed, the board of the town in which
4 the highway is located, upon notice being served in accordance with s. 82.10 (4), may
5 make a new record of the highway. The notice shall state the time and place where
6 the supervisors will decide whether to make the new record. The notice shall contain
7 a legal description of the highway for which the proposed record will be made and a
8 scale map of the land that would be affected. Notice need not be given to persons who
9 waive the notice or consent to the making of the order.

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

20 (3) Any person through whose land a highway described in an order entered
21 under sub. (2) passes may appeal under s. 82.15 on the grounds that the highway
22 described in the order was not a legal highway in fact. No person may call into
23 question the regularity of proceedings under this section except owners of land on
24 whom notice should have been served but in fact was not and persons claiming under
25 those owners.

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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).

SECTION 55. 82.35 of the statutes is created to read:

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

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

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

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

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

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

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1 ~~(3) If a temporary highway is opened in connection with or on account of road~~
 2 ~~or bridge construction, the damages agreed upon or awarded pursuant to this section~~
 3 ~~may be treated as part of the construction cost and paid out of the construction funds.~~
 4 ~~(4) A temporary highway shall exist only so long as needed and shall be deemed~~
 5 ~~vacated and discontinued when the permanent highway is again opened for public~~
 6 ~~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.

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7 ~~SECTION 56. 82.37 of the statutes is created to read:~~
 8 ~~82.37 Tunnel under highway by landowner. The owner of land on both~~
 9 ~~sides of a town highway may construct a tunnel under the highway, and may erect~~
 10 ~~fences that are necessary for the use of the tunnel. The tunnel shall not interfere~~
 11 ~~with or endanger travel on the highway. The owner shall maintain the tunnel and~~
 12 ~~shall be liable for all damages that occur as a result of the failure to keep the tunnel~~
 13 ~~in repair. Unless authorized by a town meeting, the tunnel shall not be less than 25~~
 14 ~~feet in length. The electors of the town at an annual town meeting may authorize~~
 15 ~~the construction of a tunnel that is less than 25 feet, but at least 16 feet in length.~~

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

16 SECTION 57. 83.015 (2) (b) of the statutes is amended to read:

17 83.015 (2) (b) In any county with a highway commissioner appointed under s.
 18 83.01 (1) (b) or (c), the county highway committee shall be only a policy-making body
 19 determining the broad outlines and principles governing administration and the
 20 county highway commissioner shall have the administrative powers and duties
 21 prescribed for the county highway committee under par. (a), sub. (3) (a) and ss.
 22 27.065 (4) (b) and (13), 32.05 (1) (a), ~~81.38 (1), (3) and (4),~~ 82.08, 83.01 (6), 83.013,

1 83.018, 83.025 (1) and (3), 83.026, 83.035, 83.04, 83.05 (1), 83.07 to 83.09, 83.12, 83.14
 2 (6), 83.17, 83.18, 83.42 (3) and (4), 84.01 (5), 84.06 (3), 84.07 (1) and (2), 84.09 (1), (3)
 3 (a) to (c) and (4), 84.10 (1), 86.04 (1) and (2), 86.07 (2), 86.19 (3), 86.34 (1), 114.33 (5),
 4 349.07 (2), 349.11 (4) and (10) and 349.15 (2). No statutory power, duty or function
 5 specified elsewhere for the county highway commissioner may be deemed impliedly
 6 repealed for the sole reason that reference to it has been omitted in this paragraph.

7 **SECTION 58.** 83.09 of the statutes is amended to read:

8 **83.09 Emergency repairs of county trunk highways.** Whenever a flood
 9 or other casualty renders any county trunk highway dangerous for travel, the town
 10 chairperson shall may immediately close it and notify the county highway
 11 commissioner thereof, and the commissioner shall promptly make repairs necessary
 12 to render the highway safe for travel. If sufficient funds are not available in the
 13 county maintenance fund, the commissioner may, with the consent of the
 14 chairperson of the county board or of the county highway committee, make the
 15 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.

16 **SECTION 59.** 83.18⁽¹⁾ of the statutes is^{renumbered 83.18 and} amended to read:

17 **83.18 Entry on lands.** **(1) ENTRY; PURPOSES; ROAD MATERIALS IN HIGHWAYS.** For
 18 constructing or maintaining any highway by the county, the county highway
 19 committee or commissioner shall possess all the powers to acquire and enter lands
 20 conferred upon town 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.

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

1 **SECTION 61.** 83.19 of the statutes is amended to read:

2 **83.19 Temporary highways and detours.** When any highway which is
3 maintained or to be maintained by the county shall be practically impassable or be
4 dangerous to travel or when it shall be deemed necessary on account of construction
5 or repair work thereon or for other reasons to suspend travel upon any part of such
6 highway, the county highway commissioner may lay out and open temporary
7 highways for the accommodation of public travel through any lands, and the county
8 highway commissioner shall possess the powers conferred by s. ~~81.08~~ 82.35 upon
9 town boards. Said powers shall be exercised by the county highway commissioner
10 in like manner and the procedure shall be the same except that the contract and
11 orders and claim for damages and other papers relating to the matter shall be filed
12 with the county clerk, and claims for damages shall be acted upon by the county
13 board in the manner provided by s. 893.80.

14 **SECTION 62.** 84.02 (1) of the statutes is amended to read:

15 **84.02 (1) DESIGNATION.** The system of highways known as the trunk highway
16 system heretofore selected and laid out by the legislature and by the highway
17 commission and by special legislative state trunk highway committees and approved
18 by said highway commission and as revised, altered and changed by and under
19 authority vested by law in the highway commission, is hereby validated and
20 confirmed and designated the state trunk highway system but without prejudice to
21 the exercise of the power given to change such system, and all acts by which parts
22 of said system were heretofore adopted or declared to be trunk highways are
23 confirmed and validated. Section ~~80.32 (2)~~ 82.19 (2) does not apply to the state trunk
24 highway system.

25 **SECTION 63.** 84.14 (3) of the statutes is amended to read:

51-24

1 84.14 (3) PARTICIPATION IN TOWN BRIDGE CONSTRUCTION. Whenever any
2 municipality has participated in the cost of the construction, reconstruction, or
3 purchase of a bridge under s. 84.11 or 84.12, the property in such municipality shall
4 thereafter be subject to taxation by the county for the construction and repair of
5 bridges within the county under s. ~~81.38~~ 82.08.

6 **SECTION 64.** 86.26 of the statutes is renumbered 82.50.

7 **SECTION 65.** 86.265 of the statutes is renumbered 82.51.

8 **SECTION 66.** 86.266 of the statutes is renumbered 82.52.

9 **SECTION 67.** 86.315 (3) of the statutes is amended to read:

10 86.315 (3) County forest roads must meet the minimum design standards
11 under s. ~~86.26 (1) (a) 2. and 3.~~ 82.50 (1) (a) 2. and 3. in order to qualify for aids under
12 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.

13 **SECTION 68.** 236.16 (2) of the statutes is amended to read:

14 236.16 (2) MINIMUM STREET WIDTH. All streets shall be of the width specified on
15 the master plan or official map or of a width at least as great as that of the existing
16 streets if there is no master plan or official map, but no full street shall be less than
17 60 feet wide unless otherwise permitted by local ordinance. Widths of town roads
18 platted after January 1, 1966, shall, however, comply with minimum standards for
19 town roads prescribed by s. ~~86.26~~ 82.50. Streets or frontage roads auxiliary to and
20 located on the side of a full street for service to the abutting property may not after
21 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.

1 SECTION 69. 756.04 (2) of the statutes is amended to read:

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

4 SECTION 70. 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.

5 SECTION 71. 893.83^(title) of the statutes is created to read:

6 **893.83 Highway defects. (1) DAMAGES CAUSED BY HIGHWAY DEFECTS; LIABILITY**
7 **OF MUNICIPALITY.** If damages happen to any person or his or her property by reason
8 of the insufficiency or want of repairs of any highway that any town, city, or village
9 is bound to keep in repair, the person sustaining the damages has a right to recover
10 the damages from the town, city, or village. If the damages happen by reason of the
11 insufficiency or want of repairs of a highway that any county by law or by agreement
12 with any town, city, or village is bound to keep in repair, or that occupies any land
13 owned and controlled by the county, the county is liable for the damages and the
14 claim for damages shall be against the county. If the damages happen by reason of
15 the insufficiency or want of repairs of a bridge erected or maintained at the expense
16 of 2 or more towns, cities, villages, or counties, the action shall be brought against
17 all the towns, cities, villages, or counties liable for the repairs of the bridge. Upon
18 recovery of judgment the damages and costs shall be paid by the towns, cities,
19 villages, or counties in the proportion in which they are liable for the repairs. The
20 court may direct the judgment to be collected from each town, city, village, or county
21 for its proportion only. The amount recoverable by any person for any damages so

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1 sustained shall not exceed \$50,000. The procedures under s. 893.80 shall apply to
2 the commencement of actions brought under this section. No action may be
3 maintained to recover damages for injuries sustained by reason of an accumulation
4 of snow or ice upon any bridge or highway, unless the accumulation existed for 3
5 weeks.

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

21 **SECTION 72. Effective date.**

22 (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.

Insert
54-20

The following chart shows where the special committee decided to move the provisions of chs. 80 and 81:

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

<i>Current</i>	<i>New</i>
80.16--all but second-to-last sentence	82.13
80.16--second-to-last sentence	66.1003 (10)
80.17	82.15, substantively changed.
80.22	82.12 (3)
80.23	82.20, substantively changed.
80.24	Deleted
80.25	Deleted
80.26	Deleted
80.27	Deleted
80.28	Deleted
80.29	Deleted
80.30	Deleted
80.31 (1) and (2)	Deleted
80.31 (3)	82.14 (2), substantively changed.
80.32 (1)	82.19 (1)
80.32 (2)	82.19 (2)
80.32 (3) and (4)	66.1005
80.33	82.17
80.34	82.16, substantively changed.
80.35	Deleted
80.37	82.33
80.38	Deleted
80.39	Deleted
80.40	Deleted
80.41	66.1006
80.47	66.1035
80.48	Deleted
80.64	66.1031
80.65	Deleted
81.01	82.03, substantively changed.
81.02--first three sentences	82.03 (1), substantively changed.
81.02--fourth sentence	82.05 (1)

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