



State of Wisconsin  
2003 - 2004 LEGISLATURE

Needed  
by Sept. 22  
end of day

LRB-2811/25 P3

ARG: lch  
King  
RMR

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

D-note

~~Prop A~~ all demanded stuff  
Equip done by ch.

LPS: AFTER typing &  
proofing, sort draft to  
put sections  
in order.  
KG

Gen. Cat.

1 AN ACT to repeal 60.24 (3) (n), 80.02 (title), 80.03, 80.04 (title), 80.06 (title), 80.07  
2 (title), 80.09, 80.09, 80.10, 80.30 (1) and 80.24 to 80.29, 80.10, 80.11 (2) (a) 1. to  
3 4., (b) and (c), 80.11 (4), (8) and 80.12 (1), (3) and (4), 80.12 (title), 80.12 (1), 80.22  
4 (title), 80.24 to 80.29, 80.30, 80.31 (title), (1) and (2), 80.31 (title), (1) and (2),  
5 80.35, 80.38 to 80.40, 80.48, 80.65, 81.01 (5), (6), (7) and (9), 81.02 (title), 81.04  
6 and 81.05, 81.06, 81.07, 81.11 (1) to (4), 81.12, 81.39 and 80.30 (2) to (5), 81.14  
7 (3), 81.36, 81.39, 83.18 (1) (title), 83.18 (2) and 893.73 (2) (c); to renumber 80.01  
8 (1m) (title), 80.15 (title), 80.23 (title), 80.32 (4) (a) 1. and 2., 80.32 (4) (b), 80.32  
9 (4) (d), 80.34 (title), 81.08 (title), 81.38 (title), 86.26, 86.265 and 86.266; to  
10 renumber and amend 80.01 (1), 80.01 (1m), 80.01 (2), 80.01 (3), 80.01 (4)  
11 (title), 80.01 (4), 80.01 (5), 80.02, 80.025, 80.04, 80.05, 80.06, 80.07, 80.08, 80.11  
12 (title), 80.11 (1), 80.11 (2) (a) (intro.), 80.11 (3), 80.11 (5), 80.11 (6), 80.11 (7),  
13 80.12 (2), 80.12 (5), 80.125, 80.13 (1), 80.13 (1m), 80.13 (4m), 80.13 (5), 80.14,  
14 80.15, 80.16, 80.17, 80.17, 80.22, 80.23 (1), 80.23 (2), 80.31 (3), 80.32 (title),  
15 80.32 (1), 80.32 (2), 80.32 (3), 80.32 (4) (a) (intro.), 80.32 (4) (c), 80.32 (5), 80.33,

1 80.34 (1), 80.34 (2), 80.37, 80.41, 80.47, 80.64, 81.01 (title), 81.01 (intro.) and (1),  
 2 81.01 (2), 81.01 (3), 81.01 (4), 81.01 (8), 81.01 (10), 81.01 (11), 81.02, 81.03, 81.08  
 3 (1), 81.08 (2), 81.08 (3), 81.11 (title), 81.11 (5), 81.14 (title), 81.14 (1), 81.14 (2),  
 4 81.14 (4), 81.15, 81.17, 81.35, 81.38 (1), 81.38 (2), 81.38 (3), 81.38 (4), 81.38 (5),  
 5 81.38 (6), 81.38 (7), 81.42 (title), 81.42 (1), 81.42 (2) and 83.18 (1); **to**  
 6 **consolidate, renumber and amend** 80.13 (3) and (4); **to amend** 32.035 (4)  
 7 (a), 32.05 (intro.), 59.69 (5) (e) 7., 59.84 (2) (f) 5., 60.10 (1) (d), 60.23 (17), 60.24  
 8 (3) (o), 60.24 (3) (p), 60.33 (10), 60.37 (4) (a), 62.73 (1), 66.1003 (2) and (3), 83.015  
 9 (2) (b), 83.09, 83.19, 84.02 (1), 84.07 (1), 84.14 (3), 86.315 (3), 236.16 (2) and  
 10 756.04 (2); and **to create** 66.1003 (10), 66.1005 (title), 66.1033 (1) and (3),  
 11 chapter 82 (title), subchapter I (title) of chapter 82 [precedes 82.01], 82.01  
 12 (intro.), (1) to (6) and (8) to (10), 82.03 (1) (title), 82.03 (1) (c), (5) (c), (6), (9) to  
 13 (19), 82.05 (4), 82.08 (8), subchapter II (title) of chapter 82 [precedes 82.10],  
 14 82.10 (title), (2), (4) (b) and (5), 82.11 (title), 82.12 (title), 82.14 (title), (1) and  
 15 (3), 82.16 (3), subchapter III (title) of chapter 82 [precedes 82.21], 82.21 (1) (a),  
 16 (b) and (5) (title), 82.27 (title), (1), (5) (c), (d), (9) and (10), subchapter IV (title)  
 17 of chapter 82 [precedes 82.31] and 893.83 (title) of the statutes; **relating to:**  
 18 recodification of ~~chs.~~ 80 and 81.

→ chapters

**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 ~~bill~~ <sup>bill</sup> 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

insert Anal

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. Arraigning the provisions of the new ch. 82 into a logical order. The ~~draft~~ <sup>bill</sup> creates 3 subchapters.
  - c. Reorganizing some of the individual sections within current chs. 80 and 81 by combining them with other sections, dividing single sections into multiple sections, and internally reorganizing single sections.
  - d. Relocating whole or partial sections of current chs. 80 and 81 outside of the new ch. 82. This was done mainly for provisions that apply to municipalities other than towns.
2. Makes nonsubstantive changes to modernize language and reflect modern drafting style.
3. Repeals several sections of the current chs. 80 and 81 that the special committee concluded were unnecessary.
4. Makes substantive changes.

There are detailed notes following each of the sections. The notes indicate which provisions from chs. 80 and 81 the section is based on, and the substantive change, if any. If the note does not indicate a substantive change, none is intended. If a question arises about the effect of any modification made by this bill, the special committee intends that the revisions in this bill be construed to have the same effect as the prior statute.

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

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

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

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

2           **32.05 Condemnation for sewers and transportation facilities.** (intro.)

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

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

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

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

13           59.84 (2) (f) 5. The governing body of the municipality shall, within 30 days  
14 after filing, take the necessary action to comply with the order and in so doing shall  
15 not be limited by the objections of an abutting owner, and s. ~~80.32~~ <sup>✓</sup>(4) <sup>✓</sup>66.1005 (2) shall  
16 not be applicable to any vacation or discontinuance required by the order, and any  
17 such municipality may act upon the initiative of its governing body without the  
18 necessity of obtaining the consent of an abutting owner, notwithstanding chs. 60, 61,  
19 62 and 66 and s. ~~80.32~~ <sup>✓</sup>(4) <sup>✓</sup>66.1005 (2) and any other provisions of law to the contrary.

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

21           60.10 (1) (d) *Public waterways.* Appropriate money for the improvement and  
22 maintenance of a public waterway under s. ~~81.05~~ <sup>✓</sup>82.03 (19).

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

24           60.23 (17) **CHANGE STREET NAMES.** Name, or change the name of, any street in  
25 the town under s. ~~81.01~~ <sup>✓</sup>(11) <sup>✓</sup>82.03 (7).

Insert  
5-22

1           **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.

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

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

NOTE: This ~~that~~ <sup>bill</sup> entirely deletes the language in current s. 81.04. Therefore, this section deletes the cross-reference.

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

6           60.24 (3) (p) See that all tunnels in the town are constructed under s. ~~81.35~~  
7 82.37 and that they are kept in good repair.

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

9           60.33 (10) HIGHWAYS AND BRIDGES. Perform the duties specified in chs. ~~80~~ <sup>82</sup> to  
10 92, relating to highways, bridges and drains.

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

12          60.37 (4) (a) An elected town officer who also serves as a town employee may  
13 be paid an hourly wage for serving as a town employee, not exceeding a total of \$5,000  
14 each year. Amounts that are paid under this paragraph may be paid in addition to  
15 any amount that an individual receives under s. 60.32 or as a volunteer fire fighter,  
16 emergency medical technician, or first responder under s. 66.0501 (4). The \$5,000  
17 maximum in this paragraph includes amounts paid to a town board supervisor who  
18 is acting as superintendent of highways under s. ~~81.01~~ <sup>82.03</sup> (1).

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

20          62.73 (1) The common council of a 1st class city may vacate in whole or in part  
21 highways, streets, alleys, grounds, waterways, public walks and other public

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

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

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

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

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

and 82.21

*[Handwritten signature]*

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.

4

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

5

66.1005 (title) Reversion of title.

6

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

7

66.1033 (1) In this section:

8

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

9

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

10

(3) For proceedings taken, or for plats, deeds, orders, or resolutions executed

11

after the effective date of this ~~section~~ <sup>subsection</sup> .... [revisor inserts date], except as provided in s.

12

840.11, no defect, omission, or informality in the proceedings or execution of a plat,

13

deed of dedication, order, or resolution shall affect or invalidate the proceedings, plat,

14

deed, order, or resolution after 5 years from the date of the proceedings, plat, deed,

15

order, or resolution. The public way dedicated, laid out, or altered by a defective, or

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informal proceeding, plat, deed, order, or resolution shall be limited in length to the

17

portion actually worked and used.

SEC. # Chapter 80 (title) of the statutes is repealed.

18

SECTION 17. 80.01 (1) of the statutes is renumbered 82.01 (7) and amended to

SEC. # 80.01 (title) of the statutes is repealed.

19

read:

20

82.01 (7) ~~DEFINITION~~ *[Handwritten signature]* In this section, "recorded Recorded highway" means a

21

highway for which the order laying out or altering the highway, or a certified copy

SEC. # 80.01 (1) (title) of the statutes is repealed.

1 of the order, has been ~~filed~~ recorded in the office of the clerk of the town or register  
 2 of deeds in the county in which the highway is situated or, for highways that were  
 3 laid out or altered before the effective date of this ~~act~~ <sup>subsection A . . . .</sup> [revisor inserts date], in the  
 4 office of the clerk of the town or the county in which the highway is situated.

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

5 **SECTION 18.** 80.01 (1m) (title) of the statutes is renumbered 82.31 (title).

6 **SECTION 19.** 80.01 (1m) <sup>✓</sup> of the statutes is renumbered 82.31 (1) and amended  
 7 to read:

8 **82.31 (1) RECORDED HIGHWAYS.** Any recorded highway that has been laid out  
 9 ~~by the town supervisors, the county board or by a committee of the board, or by~~  
 10 ~~commissioners appointed by the legislature, or by any other authority, any portion~~  
 11 ~~of which has been opened and worked for 3 years pursuant to this chapter~~ is a legal  
 12 highway only to the extent that it has been opened and worked for 3 years. Any laid  
 13 out highway that has not been fully and sufficiently described or recorded or for  
 14 which the records have been lost or destroyed is presumed to be 66 feet wide.

15 **SECTION 20.** 80.01 (2) <sup>✓</sup> of the statutes is renumbered 82.31 (2), and 82.31 (2)  
 16 (title), (b) and (c), as renumbered, are amended to read:

17 **82.31 (2) (title) UNRECORDED HIGHWAYS VALIDATED, EXCEPTION, GRANTS FOR**  
 18 **HIGHWAY PURPOSES, PRESUMPTIVE WIDTH.**

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

1 (c) No lands granted for highway purposes that did not become a legal highway  
 2 prior to July 1, 1913, shall become a legal highway unless the grant is accepted by  
 3 the town board or by the town meeting of the town ~~wherein~~ where the lands and  
 4 proposed highway are located, and until a resolution of acceptance of the grant is  
 5 recorded in the office of the town clerk.

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

6 **SECTION 21.** 80.01 (3) of the statutes is renumbered 66.1037 and amended to  
 7 read:

8 **66.1037 Beautification and protection.** No lands abutting on any highway,  
 9 and acquired or held for highway purposes, shall be deemed discontinued for such  
 10 purpose so long as they abut on any highway. All lands acquired for highway  
 11 purposes after June 23, 1931<sup>✓</sup> may be used for any purpose that the public authorities  
 12 town, city, village, or county in control of such the highway shall deem <sup>plain space</sup> to <sup>deems</sup> conduce to  
 13 the public use and enjoyment thereof. Such authorities. The town, city, village, or  
 14 county may improve such lands by suitable planting, to prevent the erosion of the  
 15 soil, or to beautify the highway. The right to protect and to plant vegetation in any  
 16 highway laid out prior to ~~said date~~ June 23, 1931<sup>✓</sup> may be acquired in any manner that  
 17 lands may be acquired for highway purposes. It shall be unlawful for any person to  
 18 injure any tree or shrub, or cut or trim any vegetation other than grass, or make any  
 19 excavation in any highway laid out after ~~said date~~ June 23, 1931<sup>✓</sup> or where the right  
 20 to protect vegetation has been acquired, without the consent of the highway  
 21 authorities and under their direction ~~but such.~~ The authorities shall remove, cut, or  
 22 trim or consent to the removing<sup>✓</sup>, cutting<sup>✓</sup>, or removal of any tree, shrub, or vegetation  
 23 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.

1 SECTION 22. 80.01 (4) (title) of the statutes is renumbered 66.1033 (title) and  
2 amended to read:

3 66.1033 (title) ~~Highways, streets and alleys, piers, plats, curative~~  
4 Curative provisions.

5 SECTION 23. 80.01 (4) of the statutes is renumbered 66.1033 (2) and amended  
6 to read:

7 66.1033 (2) ~~HIGHWAYS, STREETS AND ALLEYS, PIERS, PLATS, CURATIVE PROVISIONS.~~

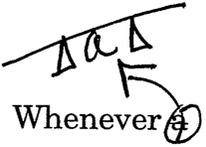
8 ~~Every street, highway and alley, pier and slip, dedicated or attempted and intended~~  
9 ~~to be dedicated in any plat or laid out, altered, vacated or discontinued, or attempted~~  
10 ~~or intended to be laid out, altered, vacated or discontinued by the authorities of any~~  
11 ~~county, town, city or village shall be held to have been lawfully so dedicated, laid out,~~  
12 ~~altered, vacated or discontinued from and after the expiration of 5 years from the~~  
13 ~~date of the deed, instrument, plat, order, resolution or other final proceeding had or~~  
14 ~~taken to effectuate such purpose. No~~ For proceedings taken, or for plats, deeds,  
15 orders, or resolutions executed before the effective date of this ~~2~~ subsection  
16 datel, notwithstanding s. 840.11, no defect, omission or informality in the  
17 proceedings or execution of any a plat or, deed of dedication or in any proceedings,  
18 order or resolution ~~on the part of such authorities for the purposes aforesaid shall~~  
19 ~~affect or invalidate such~~ the proceedings, plat, deed, order, or resolution or  
20 proceeding, after the expiration of 5 years from the date of the proceeding, plat, deed,  
21 proceeding, order, or resolution; provided, the street or alley. The public way  
22 dedicated, laid out, or altered by such a defective, or informal proceeding, plat, deed,

1 ~~proceeding~~, order, or resolution, shall be limited in length to the portion actually  
2 worked and used ~~thereunder~~.

NOTE: The new s. 66.1029 is based on current s. 80.01 (4). The following language was not carried over because the special committee decided it was redundant of the rest of the provision: "Every street, highway and alley, pier and slip, dedicated or attempted and intended to be dedicated in any plat or laid out, altered, vacated, or discontinued, or attempted or intended to be laid out, altered, vacated, or discontinued by the authorities of any county, town, city, or village shall be held to have been lawfully so dedicated, laid out, altered, vacated, or discontinued from and after the expiration of 5 years from the date of the deed, instrument, plat, order, resolution, or other final proceeding had or taken to effectuate such purpose."

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

3 **SECTION 24.** 80.01 (5) of the statutes is renumbered 66.1024 and amended to  
4 read:

5 **66.1024 Effect of reservation or exception in conveyance.** Whenever   
6 an executed and recorded deed, land contract, or mortgage of lands abutting on an  
7 existing public street, highway, or alley or a projected extension thereof hereafter  
8 executed and recorded contains language reserving or excepting certain lands for  
9 street, highway, or alley purposes, ~~such~~ the reservation or exception shall constitute  
10 a dedication for such purpose to the public body having jurisdiction over ~~such~~ the  
11 highway, street, alley, or projected extension thereof, unless the language of ~~such~~ the  
12 reservation or exception plainly indicates an intent to create a private way. ~~Such~~  
13 ~~dedication may be~~ Any reservation or exception shall not be effective until it is  
14 accepted by a resolution of the governing body having jurisdiction over such street,  
15 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.

SECTION 25. 80.02 (title) of the statutes is repealed.

SECTION 26. 80.02 of the statutes is renumbered 82.10 (1) and amended to read:

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

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

1 ~~transportation shall be conclusive of the cost of such bridge for the purposes of this~~  
 2 ~~section. No town board shall discontinue any part of a state trunk or county trunk~~  
 3 ~~highway, nor discontinue any highway when such discontinuance would deprive the~~  
 4 ~~owner of lands of access therefrom to a highway to be discontinued or of the proposed~~  
 5 ~~highway to be laid out or altered.~~ plain

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

move to  
 Ins. 4  
 67-4  
 67

7 SECTION 27. 80.025 of the statutes is renumbered 82.29 and amended to read:

8 **82.29 Highways abutted by state park lands; discontinuance or**  
 9 **relocation.** Any part of a highway lying wholly within state park lands may be  
 10 discontinued or relocated by the state agency having jurisdiction over such abutting  
 11 lands the state park by filing written notice of such the discontinuance or relocation  
 12 with the ~~town clerk or county clerk of the municipality~~ that has jurisdiction over the  
 13 highway and upon approval by the supervisors municipality after holding a hearing  
 14 as provided in s. 80.05 unless such 82.10. No discontinuance or relocation would  
 15 under this section may deprive any other owner of lands a landowner of all highway  
 16 access thereto from a highway. This section does not apply to state trunk highways  
 17 or connecting highways.

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

18 SECTION 28. 80.03 of the statutes is repealed.

19 SECTION 29. 80.04 (title) of the statutes is repealed.

20 SECTION 30. 80.04 of the statutes is renumbered 82.11 (2) and amended to read:

21 82.11 (2) (a) No supervisor town official may act in laying out, altering,  
 22 widening or discontinuing any a highway in which the supervisor may be personally  
 23 interested if acting would result in a violation of the code of ethics under s. 19.59 or

1 of a local ordinance enacted under s. 19.59 (1m). If one supervisor is interested the  
2 other 2 supervisors a town official is prevented from acting, the remaining town  
3 officials shall act. If 2 supervisors are interested the 3rd supervisor shall act in the  
4 matter. Whenever

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

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.

*SEC. #. 80.05 (title) of the statutes is renumbered 82.10 (3) (title) and amended to read:*

13 **SECTION 31. 80.05** of the statutes is renumbered 82.10 (3) and amended to read: B  
14 **82.10 (3) NOTICE OF MEETING, SERVICE AND PUBLICATION REQUIREMENTS.** (3) On Upon  
15 receipt of an application made to supervisors for laying out, widening, altering or  
16 discontinuing any highway the supervisors shall prepare a under sub. (1) or the  
17 introduction of a resolution under sub. (2), the board shall provide notice fixing  
18 therein a of the time and place at which they it will meet and decide upon to consider  
19 the application or resolution. The notice shall specify, as near as practicable, contain  
20 a legal description of the highway to be discontinued or of the proposed highway to  
21 be laid out, widened, or altered or discontinued and the tracts of land through which

SEC. #. 80.05 (2) (intro.) <sup>AND (C)</sup> <sup>are</sup> of the statutes <sup>is</sup> repealed.  
SEC. #. RA; 80.05 (2)(a); 82.10 (4) (a) (intro.)

1 the highway passes or, if the application is for discontinuing the whole or any portion  
2 of the highway, the tracts of land abutting on the highway which will be benefited  
3 or injured by such discontinuance. When the description in the aggregate exceeds  
4 200 words in length, the notice may state that such descriptions are contained in the  
5 application as provided in s. 80.02, and shall give the name and address of the town  
6 clerk to whom the application has been delivered;

repeal this

~~The applicants shall~~

plain  
move

~~At~~ and a scale map of the land that would be affected by the application.

9 (a) (Intro.)

~~(4) NOTICE RECIPIENTS. (2)~~ The town board or, at the town board's direction, the  
10 applicants shall publish a class 3 notice under ch. 985 and shall, at least 10 30 days  
11 prior to the date of before the hearing give notice by registered mail to all occupants  
12 and of the following:

plain space

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

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

16 ~~3. Give~~ notice by registered mail to the ~~the~~ department of natural  
17 resources and to the

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

82.10 (4) (a)

20 ~~publish a class 2 notice under ch. 985.~~

bill

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

New sub. (1) is based on the first half of current s. 80.02. Under current law, an application for laying out or altering, can be delivered to either a supervisor or the town clerk, while an application for discontinuance can only be delivered to the town clerk. Under the ~~bill~~, 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 ~~bill~~ because the special committee decided it was unnecessary. The sentence reads: “When all the owners of lands abutting on the part of a highway sought to be altered, desire such alteration, and the supervisors are of the opinion that the public will not be materially affected by such alteration, the board may make the same, and may take into consideration donations of money, land or services for the making of such alterations.”

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.

- 1           **SECTION 32.** 80.06 (title) of the statutes is repealed.
- 2           **SECTION 33.** 80.06 of the statutes is renumbered 82.11 (1) and amended to read:
- 3           82.11 (1) The town supervisors shall meet at the time and place stated in their
- 4 notice, and upon being satisfied that the notices required in s. 80.05 have been duly
- 5 given, proof of which may be shown by affidavit or otherwise as they may require,
- 6 shall proceed to examine personally such examine the highway, and shall hear any
- 7 reason that may be offered for or against laying out, widening, altering or
- 8 discontinuing the same, and shall decide upon or proposed highway that is the
- 9 subject of an application or resolution under s. 82.10. At the time and place stated
- 10 in the notice under s. 82.10, the board shall hold a public hearing to decide, in its
- 11 discretion, whether granting the application and shall grant or refuse the same as
- 12 they shall deem best for the public good; and they may adjourn from time to time, not

1 ~~exceeding in all 30 days from the time of the first meeting, giving public notice of the~~  
 2 ~~time and place of such adjournment when made, and by forthwith filing notice of~~  
 3 ~~such adjournment in the office of the town clerk~~ <sup>e</sup> or resolution is in the public interest.  
 4 Before the town board holds a public hearing on or takes any action on the application  
 5 or resolution, the town board must be satisfied, by affidavit of the applicant or  
 6 otherwise, that the notices in s. 82.10 (4) have been given. <sup>claim</sup>

7 SECTION 34. 80.07 (title) of the statutes is repealed.

8 SECTION 35. 80.07 of the statutes ~~is~~ <sup>(1) and (2) are consolidated,</sup> renumbered 82.12 (2) and amended to read:

9 82.12 (2) ~~When the supervisors~~ If the board determines under sub. (1) to lay  
 10 out, alter, widen or discontinue any highway they, it shall make and sign an issue a  
 11 highway order therefor, incorporating therein a description of the highway and cause  
 12 survey thereof to be made when necessary. The highway order shall be filed and  
 13 recorded in the office of with the register of deeds for the county in which the highway  
 14 is or will be located and shall be filed with the town clerk, who shall note in the record  
 15 the time of recording. The order together with the award of damages shall be so filed  
 16 within 10 days after the date fixed by their notice or adjournment for deciding upon  
 17 the application. In case the supervisors fail to file the order and award within the  
 18 10 days aforesaid they shall be deemed to have decided against the application.  
 19 ~~When an order has been filed for more than 30 years and no award of damages or~~  
 20 ~~agreement or release has been filed and when the highway, or a part thereof, has been~~  
 21 ~~used by the public and public money has been expended thereon, for at least 5 years,~~  
 22 ~~it shall be presumed that a release was given by the owners of the lands over which~~  
 23 ~~the highway was laid out and the public shall be entitled to use the full width of the~~  
 24 ~~highway, as laid out, without further compensation.~~ Whenever the supervisors lay  
 25 ~~out, alter or discontinue any highway the.~~ The town clerk shall transmit submit a

Handwritten vertical text on the left margin: "L. X. C. O. S. O. A. T. H. 2003-04"

Handwritten circled number (2) with an arrow pointing to the end of the text on line 24.

1 certified copy of the order therefor to the county highway commissioner. If the town  
2 has an official map, the order shall be incorporated into the official map.

3 SECTION 36. 80.08 of the statutes is renumbered 82.18 and amended to read:

4 **82.18 Width of highways.** Except as otherwise provided in s. ~~80.13~~ this  
5 chapter, highways laid out pursuant to this chapter shall be laid out at least 49.5 66  
6 feet wide, and when unless, in the town board's discretion, that width is impractical.  
7 If the town board determines that a 66-foot width is impractical, the width shall be  
8 determined by the town board but shall be at least 49.5 feet in width. When no width  
9 is specified in the order, the highway shall be 66 feet wide.

NOTE: Section 82.18 is based on current s. 80.08. Current law sets the minimum width at 49.5 feet. New s. 82.18 sets the minimum width at 66 feet, however, the language also gives the board the option to lay a narrower highway if it determines that 66 feet is impractical.

10 ~~SECTION 37. 80.09 of the statutes is repealed.~~

~~NOTE: Nicholas: this has cross-references 80.24 (1) and (2) and 80.18 (2)~~

11 SECTION 38. ~~80.09, 80.10, 80.30 (1) and 80.24 to 80.29~~ of the statutes ~~are~~ is  
12 repealed.

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

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).

~~SEC.#. 80.10 of the statutes is repealed.~~  
13 SECTION 39. ~~80.10 of the statutes is repealed.~~

14 SECTION 40. 80.11 (title) of the statutes is renumbered 82.21 (title) and  
15 amended to read:

16 **82.21 (title) Highways on and across town and municipal lines.**

insert  
19-2

10

11

12

13

14

15

16

copy note  
to  
34-17  
(p. 34)

bill

1 SECTION 41. 80.11 (1) of the statutes is renumbered 82.21 (1) (intro.) and  
2 amended to read:

3 82.21 (1) INITIATING THE PROCEDURE (intro.) Whenever it is considered  
4 necessary The procedure to lay out, alter, widen or discontinue a highway upon on  
5 the line between 2 towns a town and another town, a city, or a village, or a highway  
6 extending from one town into an adjoining town, it shall be done by the supervisors  
7 of the 2 towns acting together. If the highway is laid out or altered it may be either  
8 upon or as near to the town line as the situation of the ground will admit. The  
9 supervisors of the 2 towns acting together may vary the location on either side of the  
10 town line as they consider to be necessary. city, or village shall begin only when one  
11 of the following occurs in each affected municipality:

12 SECTION 42. 80.11 (2) (a) (intro.) of the statutes is renumbered 82.21 (2) and  
13 amended to read:

14 82.21 (2) CONTENTS OF THE APPLICATION OR RESOLUTION. An application or  
15 resolution under sub. (1) shall be all of the following: contain a legal description of  
16 the highway to be discontinued or of the proposed highway to be laid out or altered  
17 and a scale map of the land that would be affected by the application. Upon  
18 completion of the requirements of sub. (1), the governing bodies of the municipalities,  
19 acting together, shall proceed as under ss. 82.10 to 82.13.

20 SECTION 43. 80.11 (2) (a) 1. to 4., (b) and (c) of the statutes are repealed.

21 SECTION 44. 80.11 (3) (a), (b) 1. and 2. and (c) of the statutes are renumbered 82.21 (4) and amended to  
22 read:

23 82.21 (4) APPORTIONMENT OF AUTHORITY AND RESPONSIBILITY. (a) The A highway  
24 order under sub. (2) (e) issued by 2 towns or by a town and a village or city may  
25 designate the part of the highway that each shall be made and kept in construct and

score

B (4) (title)

(a), (b), (c) and (d)  
INS. 68-21 move to p. 68

*EM. to change #'s; can't strike and score stat. #15*  
*M. 7*  
*8*  
*12*  
*14*  
*15*  
*19*  
*23*

1 repair by each town, and the share of, and pay the damages for, if any, that shall be  
2 paid by each town. Each town. As to the portion of the highway that the town, city,  
3 or village agrees to construct, keep in repair<sup>2</sup> and pay damages for, the town, city, or  
4 village shall have all of the rights authority and be subject to the liabilities all of the  
5 responsibility in relation to the that part of the highway to be made or repaired by  
6 it as if it that part were wholly located in that the town, city, or village.

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

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

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

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

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

(d) Any written order or agreement made before August 27, 1947, by a  
majority of the supervisors of each town concerned, acting together, apportioning or

1 reapportioning a town line highway has the same effect as though made on or after  
2 August 27, 1947.

3 **SECTION 45.** 80.11 (4), ~~(8)~~ and 80.12 (1), ~~(3)~~ and ~~(4)~~ of the statutes ~~is~~ repealed.

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

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

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

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

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

4 **SECTION 46.** 80.11 (5) of the statutes is renumbered 82.21 (5) (a) and amended  
5 to read:

6 82.21 (5) (a) ~~If no agreement is reached under sub. (4) (b), or if an order laying~~  
7 ~~out, or~~ altering or widening a town line highway has not apportioned the liability of  
8 ~~the towns or village~~ authority and responsibility on account of the highway, the  
9 ~~supervisors of an affected town or the president of an affected village, after 10 days'~~  
10 ~~notice of the time and place of hearing served on the clerk of each town and village~~

1 ~~to be affected, or if a municipality feels that the current apportionment is~~  
 2 ~~inequitable, the municipality may apply to the circuit judge of the county in which~~  
 3 ~~the affected town, city, or village is located, for the appointment of 3 commissioners~~  
 4 ~~to apportion the liabilities of authority and responsibility between each affected town~~  
 5 ~~and village on account of the town line highway municipality. The municipality filing~~  
 6 ~~the application shall serve a copy of the application on the clerk of each municipality~~  
 7 ~~to be affected. The circuit judge may set the time and place of the hearing before the~~  
 8 ~~commissioners at least 10 days after the application is filed with the judge.~~

9 SECTION 47. 80.11 (6) of the statutes is renumbered 82.21 (5) (b) and amended  
 10 to read:

11 82.21 (5) (b) Upon receipt of an application under sub. (5) par. (a), the circuit  
 12 judge shall appoint 3 residents of the county as commissioners. The commissioners  
 13 shall, on not less than ~~5 days~~ <sup>10 days</sup> ~~nor more than 60 days~~ <sup>notice</sup> in writing to the  
 14 clerk of each town and village affected municipality, apportion the liabilities  
 15 authority and responsibility of each affected town and village municipality on  
 16 account of the highway. The commissioners shall make the determination in writing  
 17 and shall file the determination with the clerk of each town and village affected  
 18 municipality. The commissioners' determination ~~has~~ <sup>shall have</sup> the same effect as  
 19 an order made under sub. (2), (3) or (4).

20 SECTION 48. 80.11 (7) of the statutes is renumbered 82.23 and amended to read:

21 82.23 Municipal line bridges. ~~Any Unless otherwise provided by statute or~~  
 22 ~~agreement, every highway bridge on a highway that became a highway under s.~~  
 23 80.01 (2) as a result of having been worked, that is between 2 towns, or between a  
 24 town on one side and a city, or village or a town and village on the other side, and  
 25 that has not been assigned to either of the adjoining towns or village, boundary shall

*50 days* → *days'*      *(plain)* → *days'*

*notice*

*strike a page*

1 be repaired and maintained by the adjoining towns and village municipalities in  
 2 which the bridge is located. The cost of repairs and maintenance shall be paid by the  
 3 adjoining towns and village municipalities in proportion to the last equalized  
 4 valuation of the property in the adjoining towns and village as equalized by the  
 5 county board or boards at the last equalization municipalities.

Insert  
24-5

6 SECTION 49. 80.12 (title) of the statutes is repealed.

7 SECTION 50. 80.12 (1) of the statutes is repealed.

8 SECTION 51. 80.12 (2) of the statutes is renumbered 82.21 (3) and amended to  
 9 read:

10 82.21 (3) APPOINTMENT OF CITY OR VILLAGE COMMISSIONERS. Upon receipt of an  
 11 application under sub. (1) or introduction of a resolution, the common city council or  
 12 village board of trustees shall may appoint 3 commissioners on the part to act on  
 13 behalf of the affected city or village in all respects. The commissioners shall be duly  
 14 sworn to faithfully discharge their duties as commissioners before entering upon  
 15 those duties. ~~The commissioners and town supervisors shall then give notice and~~  
 16 ~~proceed in all respects as provided in s. 80.11.~~

the

Insert  
24-16

17 SECTION 52. 80.12 (5) of the statutes is renumbered 82.21 (6) and amended to

18 read:

19 82.21 (6) WHERE PAPERS FILED. All ~~proceedings and orders~~ awards, notices, and  
 20 papers required to be filed and recorded shall be filed and recorded in the office of the  
 21 clerk of the every affected city, village or town municipality. Any highway orders  
 22 issued under this section shall be recorded with the register of deeds for the county  
 23 or counties in which the highway is or will be located.

24 SECTION 53. 80.125 of the statutes is renumbered 82.28 and amended to read:

24

1

**82.28 Highways and bridges on state boundaries.** ~~A town or county~~ The

2 board of any town or county that is bounded in part by a river, or by a highway, either

3

of ~~which~~ that is also a state boundary line may enter into <sup>an</sup> agreement with the

4 adjoining municipality in ~~such~~ the other state for the maintenance and construction

5 of boundary line bridges and or for the maintenance and reconstruction of any

6 boundary line ~~highway~~ highways, including its bridges, ~~by appropriation therefor~~

7

~~not exceeding 50% of the total costs assignable to the boundary line facility.~~ The costs

8 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.

9

→ SEC. #. RP: 80.13 (title)

SECTION 54. 80.13 (1) of the statutes is renumbered 82.27 (3) and amended to

10 read:

11 82.27 (3) SETTING THE HEARING DATE; NOTICE. ~~When any person presents the~~

12 ~~town board with an affidavit that meets the requirements~~ Upon receipt of an

13 application under sub. <sup>✓</sup> ~~(1m)~~ <sup>✓</sup> (2), the town board shall set a time and place to conduct

14 a hearing regarding the ~~laying out or widening of a highway~~ application. The

15 hearing shall be held after 10 days and within 30 days of the receipt of the ~~affidavit~~

16 application by the town board. Notice of the time and place of the hearing shall be

17 served as required by s. ~~80.05~~ <sup>✓</sup> 82.10 and published as a class 2 notice under ch. 985.

18 SECTION 55. 80.13 (1m) of the statutes is renumbered 82.27 (2) and amended

19 to read:

20

82.27 (2) <sup>plain</sup> (The) ~~affidavit required under sub. (1) shall be executed by the~~

21

<sup>move</sup> APPLICATION. ~~The~~ owner or lessee of real estate located within the a town, may apply

22

to the town board to have a highway to the owner's land laid out. Except as provided

23

in sub. (7), the application shall be delivered to the town clerk of the town in which

1 the real estate is located. The application shall contain a description of an affidavit,  
 2 executed by the applicant, that describes the affected real estate and shall contain  
 3 recites facts that satisfy the supervisors board that any of the following  
 4 circumstances exists either in par. (a) or (b) exist: *in par.*

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

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

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

20 **SECTION 56.** 80.13 (3) and (4) of the statutes are consolidated, renumbered  
 21 82.27 (4) and amended to read:

22 82.27 (4) **HEARING.** (a) The town board shall meet at the time and place stated  
 23 in the notice given under sub. (1) and shall *in* and decide, in their *in* its discretion lay out  
 24 a highway of not less than 33 feet nor more than 49.5 feet in width from the public  
 25 highway to the real estate described in the affidavit under sub. (1m) (a) or (b) either

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by, whether to grant the application. The board may grant the application by either  
 laying out a new highway across the surrounding land or by adding enough land to  
 the width of the existing way or road described in the affidavit under sub. (1m) (b)  
 to make it. If the board decides to lay out a new highway, the new highway shall be  
 at least 66 feet wide unless the board determines that 66 feet is impracticable. If the  
 board decides to widen an existing way or road, the resulting highway shall not be  
 less than 33 49.5 feet nor more than 49.5 66 feet in width.

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

→ SEC. #. RA; 80.13 (4) ; 82.27 (4) (C) ←

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

SECTION 57. 80.13 (4m) of the statutes is renumbered 82.27 (5) and amended  
 to read:

1           82.27 (5) CHARGING COSTS TO THE APPLICANT. ~~The following costs may be~~  
2 ~~assessed~~ If the town board grants the application, the items listed in pars. (a) to (d)  
3 may be included in the determination of advantages. ~~If the town board denies the~~  
4 application, <sup>✓</sup> half of all of the following may be charged to the applicant as a special  
5 charge under s. 66.0227:

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

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

9           **SECTION 58.** 80.13 (5) of the statutes is renumbered 82.27 (6) and amended to  
10 read:

11           82.27 (6) REAL ESTATE LANDLOCKED BY SALE. ~~Whenever a parcel~~ In a town, if the  
12 owner of land in any town which that is accessible, or provided with a right-of-way  
13 an easement to a public highway, ~~is subdivided and the owner subdivides and~~  
14 ~~transfers any part of the subdivided parcel by metes and bounds that would~~  
15 ~~otherwise be shut out from all public highways by reason of being surrounded on all~~  
16 ~~sides by real estate belonging to other persons or by real estate belonging to other~~  
17 ~~persons and by water without an adequate right-of-way to a public highway, the~~  
18 seller land, the owner shall provide a cleared right-of-way easement at least 50 66  
19 feet in width that shall be continuous from the highway to the part of the subdivision  
20 sold. In case If the seller fails to provide the required right-of-way easement, the  
21 town board may, pursuant to proceedings under this section, lay out a road at least  
22 66 feet wide from the inaccessible land to the public highway over the remaining  
23 lands of the seller without assessment of damages or compensation to the seller.

24           **SECTION 59.** 80.14 of the statutes is renumbered 82.27 (7) and amended to read:

AAA

1           82.27 (7) ~~HIGHWAY FROM SHUT OFF LAND THROUGH~~ LAYING OUT A HIGHWAY TO AN  
2           ADJOINING TOWN. ~~When the owner of land that is shut out from all highways by being~~  
3           ~~surrounded by lands belonging to other persons, and If it is impracticable to lay out~~  
4           a road from that owner's land ~~highway to~~ <sup>→ move</sup> ~~an existing public highway that is in the~~  
5           town where the land is situated, and it is practicable to lay out a highway from said  
6           land a landowner may apply to have a highway laid out to a highway in an adjoining  
7           town, that owner may. The application shall comply with the requirements of sub.  
8           (2) <sup>↓</sup> ~~except that the affidavit shall also state that it is impracticable to lay out a new~~  
9           highway to an existing highway in the town <sup>where</sup> ~~the land is located~~ <sup>g</sup> ~~and that it is~~  
10           practicable to lay out a highway to an existing highway in the adjoining town. The  
11           owner shall execute an affidavit the application in duplicate and present one copy  
12           to <sup>✓</sup> ~~a supervisor~~ the clerk of the town where the land is situated located and one copy  
13           to <sup>✓</sup> ~~a supervisor~~ the clerk of the town where the proposed highway is to be laid out.  
14           <sup>plain</sup> ~~The affidavit shall set forth the facts above stated, together with the facts required~~  
15           ~~in the affidavit provided under s. 80.13. The supervisors of the 2 towns~~ ~~The town~~  
16           boards shall proceed as provided ~~under said s. 80.13~~ <sup>✓</sup> this section, <sup>in</sup> ~~except that all~~  
17           orders and notices shall be signed by the supervisors of both boards, and all papers  
18           required to be filed shall be made in duplicate and filed with each town clerk. The  
19           applicant shall pay the amount assessed <sup>✓</sup> determined <sup>✓</sup> as advantages to the applicant  
20           ~~shall be paid by the applicant to the town treasurer of the town where~~ in which  
21           applicant's land is situated ~~before the order laying out the highway is filed, and all~~  
22           within 30 days of the decision. The order shall be recorded within 10 days of  
23           payment. All damages assessed shall be paid by the town where the applicant's land  
24           of the applicant is situated.

25           SECTION 60. 80.15 (title) of the statutes is renumbered 82.27 (8) (title).

## SECTION 61

1 SECTION 61. 80.15 of the statutes is renumbered 82.27 (8)<sup>(a)</sup> and amended to read: ✓

2 82.27 (8) <sup>(a)</sup> ✓ The owner of an island in the bottoms of the Mississippi River ✓  
 3 which may submit an application under this section if the island is shut out from the  
 4 bank of said the river and from ~~all~~ highway access by islands and, sloughs, and by  
 5 the lands of others, and ~~a right-of-way through the same cannot be purchased~~ the  
 6 owner cannot purchase any highway access at a reasonable price, ~~may present to the~~  
 7 supervisors of the town.

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

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

NOTE: Section 82.27 (1) through (7) is based on current ss. 80.13 and 80.14. The definition of "advantages" in s. 82.27 (1) is new. Under current s. 80.13, the term "advantages" is not defined. In *Roberts v. Town of Springvale*, 204 Wis. 2d 110, 552 N.W.2d 898, the court held that advantages "... refers to how much of a financial benefit has inured to the applicant or the enhancement in value of the applicant's land as a result of the town's decision to lay the highway". While the special committee agreed that this was a reasonable construction of the statutory language, it decided that the costs should be allocated differently. Constructing a highway could increase the value of the landlocked property by a far smaller amount than the cost of construction. The result would be that the town would pay the difference between the construction cost and the increased property value. The special committee decided that since the highway would primarily benefit the landowner, the landowner should bear the cost. The new s. 82.27 retains the term "advantages", but defines it as the greater of the increased value of the property or the estimated cost of constructing the highway and the damages paid to the owner.

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

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

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

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

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

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

1 SECTION 62. 80.16 of the statutes is renumbered 82.13 and amended to read:

2 **82.13 Shut-off Highways to school buildings; how laid.** ~~Whenever Upon~~  
3 ~~being notified that~~ a public school in any ~~the town is shut off from all public highways~~  
4 ~~lacks highway access,~~ the supervisors of the town ~~board~~ shall lay out a highway to  
5 the site thereof ~~public school,~~ using the procedures in this subchapter. No  
6 application for such ~~the~~ highway shall be necessary, but in every other respect the  
7 procedure for laying out an ordinary town highway shall be pursued. No highway  
8 shall be discontinued when the effect of such discontinuance shall be to exclude a  
9 public school from access to the public highways. Section ~~80.22~~ ~~82.12~~ (3) shall not  
10 apply to proceedings under this section.

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

11 SECTION 63. 80.17 of the statutes is renumbered 82.12 (1) and amended to read:

12 82.12 (1) ~~Appeal from highway order.~~ Any order of the town supervisors  
13 laying out, altering, widening or discontinuing any highway, or refusing so to do, is  
14 subject to judicial review under s. 68.13, except that only a person aggrieved by the

Insert  
31-10

1 order or determination may seek review. Failure of the supervisors to file their  
 2 decision upon The town board shall make a determination upon any application or  
 3 resolution to lay out, alter, widen or discontinue any highway within 60 90 days after  
 4 receipt of the application is made shall be deemed a refusal of the application. In case  
 5 of highways upon a line between 2 counties the appeal may be made to the circuit  
 6 court of either county or introduction of a resolution. If the <sup>town</sup> board decides to lay out,  
 7 alter, or discontinue any highway, it shall issue a highway order.

① Nicholas  
 \*\*\*\*NOTE: I included "to lay out, alter, or discontinue any highway" after application or resolution for purposes of clarity. Is this okay? I also moved the order requirement into sub. (2) for ease of renumbering and slightly changed the language to fit the move. Is this okay?

82.15 created  
 SECTION 64. ~~80.22~~ of the statutes is ~~renumbered 82.15 and amended~~ to read:

9 82.15 Appeal ~~of~~ <sup>plain</sup> of a highway order. Any ~~order of the town supervisors~~  
 10 ~~laying out, altering, widening or discontinuing any highway, or refusing so to do, is~~  
 11 ~~subject to judicial review under s. 68.13, except that only a person aggrieved by the~~  
 12 ~~a highway order or determination, or a refusal to issue such an order, may seek~~  
 13 ~~judicial review. Failure of the supervisors to file their decision upon any application~~  
 14 ~~to lay out, alter, widen or discontinue any highway within 60 days after the~~  
 15 ~~application is made shall be deemed a refusal of the application. In case of highways~~  
 16 ~~upon~~ <sup>plain</sup> under s. 68.13. If the highway is on the line between 2 counties, the appeal  
 17 may be made ~~to~~ <sup>in</sup> the circuit court of either county.

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

18 SECTION 65. 80.22 (title) of the statutes is repealed.

19 SECTION 66. 80.22 of the statutes is renumbered 82.12 (3) and amended to read:

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 move to 68.2 changes  
 Sort; out - of - order

32-8  
 delete  
 scan  
 move to p. 68

1           82.12 (3) ~~The determination refusing to lay out, alter, widen or discontinue any~~  
 2           ~~not to issue a highway order~~ shall be final, ~~unless appealed from, for the term of one~~  
 3           ~~year after the making of such determination; and no other.~~ No application for laying  
 4           ~~out, widening, altering or discontinuing any such~~ to lay out, alter, or discontinue a  
 5           ~~highway shall be acted upon~~ filed within said term of one year from the date of a  
 6           ~~determination~~ not to issue a highway order covering the highway or portion of the  
 7           ~~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.

8           **SECTION 67.** 80.23 (title) of the statutes is renumbered 82.20 (title).

9           **SECTION 68.** 80.23 (1) of the statutes is renumbered 82.20 (1) and amended to  
 10          read:

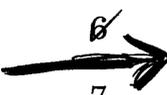
11          82.20 (1) ~~Whenever pursuant to this chapter any highway is laid out, widened~~  
 12          ~~or altered~~ If the town board issues an order to lay out or alter a highway through  
 13          ~~enclosed, cultivated, or improved lands and the determination has not been appealed~~  
 14          ~~from, the town board or highway authorities~~ superintendent shall give the owner or  
 15          occupant of the lands through which the proposed highway will pass written notice  
 16          of its intent to remove the fences located on the highway within a time determined  
 17          by the highway authorities to be reasonable, but in the path of the new or altered  
 18          highway. The notice shall state when the board intends to remove the fences, which

→ its, his, or her

*on which*

1 shall not be less than 30 days after giving from the date the notice was given to the  
 2 owner or occupant. If the owner or occupant does not remove the fences within before  
 3 the time required by stated in the notice, the town board or highway authorities  
 4 superintendent shall remove the fences and direct the highway to be opened. If the  
 5 determination has been appealed from, may charge the landowner for the costs of the  
 6 removal under s. 66.0027.

*NOTE: This cross-reference needs to be corrected.*



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

11 **SECTION 69.** 80.23 (2) of the statutes is renumbered 82.20 (3) and amended to  
 12 read:

13 82.20 (3) This section does not authorize the opening of a highway through  
 14 enclosed, cultivated, or improved lands or the removal of fences between May 15 and  
 15 September 15, except in cases of emergency to be determined by the highway  
 16 authorities 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.

17 **SECTION 70.** 80.24 to ~~80.29~~<sup>80.30</sup> of the statutes are repealed.

*copy note from 19-12 see p. 19*

~~NOTE: Nicholas: this has cross-references 80.24 (1) and (2) and 83.18 (2).~~

18 **SECTION 71.** ~~80.30~~ of the statutes is repealed.

~~\*\*\*NOTE: Include this above? This has cross-references 80.24 (1) and (2) and 83.18 (2). RN sub. (1)?~~

19 **SECTION 72.** 80.31 (title), (1) and (2) of the statutes are repealed.

20 ~~**SECTION 73.** 80.31 (title), (1) and (2) of the statutes are repealed.~~

1 SECTION 74. 80.31 (3) of the statutes is renumbered 82.14 (2) and amended to  
2 read:

3 82.14 (2) ~~In case any If lands taken acquired by contract or condemnation for~~  
4 ~~highway purposes shall be are encumbered, and the owners of the fee and of the~~  
5 ~~encumbrance shall do not agree upon the division to be made between them on the~~  
6 ~~allocation of any damages to be paid on account of such due to the taking, said the~~  
7 ~~damages may be paid to the clerk of the circuit court of the county, and when so paid~~  
8 ~~may be apportioned among the parties entitled thereto by said court upon. Upon the~~  
9 ~~application of any party interested party and upon not less than 5 days' written~~  
10 ~~notice to the other party, the court may apportion the damages paid to the clerk~~  
11 ~~among the parties.~~

7  
\*\*\*NOTE: *Nicholas,* I think we need to keep "of" the encumbrance. Is this okay?

12 SECTION 75. 80.32 (title) of the statutes is renumbered 82.19 (title) and  
13 amended to read:

14 **82.19 (title) Discontinuance of highways; reversion of title.**

15 SECTION 76. 80.32 (1) of the statutes is renumbered 82.19 (1) and amended to  
16 read:

17 82.19 (1) ~~Any An unrecorded road highway, or any part thereof which of an~~  
18 ~~unrecorded highway, that has become or is in the process of becoming a public~~  
19 ~~highway by user in any town may be discontinued in the manner hereinbefore~~  
20 ~~provided using the procedures under ss. 82.10 to 82.12. Any proceedings taken~~  
21 ~~therefor to discontinue an unrecorded highway shall not be evidence of the~~  
22 ~~acceptance at any time by the town of such road the highway or any part thereof of~~  
23 ~~the highway.~~

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SECTION 77. 80.32 (2) of the statutes is renumbered 82.19 (2) and amended to read:

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

<sup>2.</sup> (b) Any highway which shall have that has been entirely abandoned as a route of vehicular travel, and on which no highway funds have been expended for 5 years, shall be considered discontinued. <sup>→ SEC. #. CR; 82.19(2)(b) 1. 4 82.19(2)(b) 1.</sup> In this paragraph, "vehicular travel" means travel

using any motor-driven vehicle required to be registered under ch. 341 or exempt from registration under s. 341.05.

SECTION 78. 80.32 (3) of the statutes is renumbered 66.1005 (1) and amended to read:

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

SECTION 79. 80.32 (4) (a) (intro.) of the statutes is renumbered 66.1005 (2) (a) (intro.) and amended to read:

66.1005 (2) (a) (intro.) Whenever any public highway or public ground has been vacated or discontinued, any all easements and rights incidental thereto acquired by or belonging to the easements that belong to any county, school district, town, village

part;  
out of  
order

plain

1 ~~er, city or to any~~, utility, or person ~~and relating that relate~~ to any underground or  
2 overground structures, improvements, or services and all rights of entrance,  
3 maintenance, construction, and repair of the structures, improvements, or services  
4 shall continue, unless one of the following applies:

5 **SECTION 80.** 80.32 (4) (a) 1. and 2. of the statutes are renumbered 66.1005 (2)  
6 (a) 1. and 2.

7 **SECTION 81.** 80.32 (4) (b) of the statutes is renumbered 66.1005 (2) (b).

8 **SECTION 82.** 80.32 (4) (c) of the statutes is renumbered 66.1005 (2) (c) and  
9 amended to read:

10 66.1005 (2) (c) Damages for the discontinuance of the easements and rights  
11 described in par. (a) shall be assessed against the land benefited in the proceedings  
12 for assessment of damages or benefits upon the vacation or discontinuance of the  
13 public highway or public ground. ~~The~~ Unless the parties agree on a different amount,  
14 the amount of the damages shall be the present value of the property to be removed  
15 or abandoned, plus the cost of removal, less the salvage value of the removed or  
16 abandoned property, ~~or any other amount that may be agreed upon between the~~  
17 ~~interested parties.~~ 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 **SECTION 83.** 80.32 (4) (d) of the statutes is renumbered 66.1005 (2) (d).

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

21 **SECTION 84.** 80.32 (5) of the statutes is renumbered 82.19 (2) (c) and amended  
22 to read:

1           82.19 (2) (c) Subsection ~~(2)~~ <sup>✓</sup> This subsection does not apply to state or county  
2 trunk highways or to any highway, street, alley, or right-of-way that provides public  
3 access to a navigable lake or stream.

NOTE: Section 82.19 (1) is based on current s. 80.32 (1). No substantive change is intended. Section 82.19 (2) is based on current s. 80.32 (2). The special committee had lengthy discussions about what to do with current s. 80.32 (2). The special committee finally decided to retain the provision, but to modify it so that it is limited to vehicular travel. The intent is to exclude the use of a road for hiking or berry picking as a means of keeping a highway open.

4           **SECTION 85.** 80.33 of the statutes is renumbered 82.17 and amended to read:

5           **82.17 Highway papers, where filed.** All applications, <sup>x</sup> orders, awards,  
6 bonds, and other papers relating to <sup>✓</sup> the laying out, altering, widening or  
7 discontinuing of highways pursuant to this chapter shall be promptly filed in the  
8 office of the town, city, or village clerk where the highway is located, except as  
9 otherwise specifically provided in this chapter.

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

10          **SECTION 86.** 80.34 (title) of the statutes is renumbered 82.16 (title).

11          **SECTION 87.** 80.34 (1) of the statutes is renumbered 82.16 (1) and amended to  
12 read:

13           82.16 (1) Every order ~~of the supervisors or the supervisors and commissioners~~  
14 ~~or of the county board or a committee thereof~~ laying out, widening, altering, or  
15 discontinuing ~~any a~~ highway, or pursuant to this chapter, and any order restoring the  
16 records thereof, and the order of any commissioners reversing or affirming the same  
17 ~~on appeal, and the record or certified copy thereof~~ record of a highway, shall be  
18 presumptive evidence of the facts therein stated and of the regularity of all the  
19 proceedings prior to the making of such the order.

1 SECTION 88. 80.34 (2) of the statutes is renumbered 82.16 (2) and amended to  
2 read:

3 82.16 (2) The validity of ~~any such~~ an order described in sub. (1) if fair on its face  
4 shall is not be open to collateral attack, but may be ~~tested by certiorari or other proper~~ <sup>plain space</sup>  
5 ~~action or proceeding brought directly for that purpose if commenced within the time~~  
6 ~~after the order is made provided by s. 893.73 (2)~~ challenged in an action brought  
7 under s. 82.15.

7 \*\*\*NOTE: to ARG – does it make more sense to RN 80.07 (1) here as 82.16 (3) or  
~~where it is RN'd already (82.12 (1) and (2))???~~

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 ~~case~~, the time frame under current s. 80.34 has been eliminated.

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

8 SECTION 89. 80.35 <sup>✓</sup> of the statutes is repealed.

9 SECTION 90. 80.37 of the statutes is renumbered 82.33 and amended to read:

10 **82.33 Lost records; how restored; effect.** (1) Whenever the record of the  
11 laying out of any highway is has been lost or destroyed, the supervisors board of the  
12 town in which the highway is located, upon notice being served ~~on all interested~~  
13 ~~parties~~ in accordance with s. 80.05 <sup>✓</sup> 82.10 (4), may make a new record of the highway.  
14 The notice shall ~~fix~~ state the time ~~when~~ <sup>the</sup> and ~~place~~ <sup>place</sup> where the supervisors will decide  
15 ~~upon making whether to make~~ the new record. <sup>plain</sup> The notice shall ~~specify as near as~~  
16 ~~may be~~ contain a legal description of the highway for which the proposed record will  
17 be made and a scale map of the land that would be affected. Notice need not be given  
18 to persons who waive the notice or consent to the making of the order ~~either before~~  
19 ~~or after it is entered~~.

20 (2) The supervisors shall ~~meet pursuant to the notice given under sub. (1) and~~  
21 ~~hear any arguments or evidence that may be offered for or against~~ At the time and

1 place stated in the notice, the town board shall hold a public hearing regarding the  
 2 proposed new record, and <sup>shall</sup> make a new record as they consider it considers proper.  
 3 ~~The supervisors may adjourn from time to time, and an entry of each adjournment~~  
 4 ~~shall be made in the record by the town clerk. If the <sup>plain space</sup> supervisors find board finds that~~  
 5 ~~the highway is a legal highway, the record of which is has been lost or destroyed, they~~  
 6 ~~the board shall make a written order stating those facts and specifying the course,~~  
 7 ~~width, and other pertinent description of the highway. The order shall be filed and~~  
 8 ~~recorded in the office of with the town clerk, who shall note the time of recording the~~  
 9 ~~order in the record and recorded in the office of the register of deeds for the county~~  
 10 ~~in which the highway is located.~~ Any number of highways may be included in one  
 11 notice or order under this section. A failure or refusal to make a new record for any  
 12 highway does not preclude a subsequent proceeding for that purpose.

13 (3) Any person through whose land a highway described in an order entered  
 14 under sub. (2) passes may appeal ~~from the order~~ under s. 82.15 on the ground  
 15 grounds that the highway described in the order was not a legal highway in fact. ~~The~~  
 16 ~~appeal shall be made in the time and manner provided for appealing from orders~~  
 17 ~~laying out highways, and proceedings shall be had on the appeal as in case of appeals~~  
 18 ~~from orders laying out highways.~~ No person may call into question the regularity of  
 19 proceedings under this section except owners of land on whom notice should have  
 20 been served but in fact was not and persons claiming under those owners.

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

21 **SECTION 91.** 80.38 to 80.40 of the statutes are repealed.

22 **SECTION 92.** 80.41 of the statutes is renumbered 66.1006 and amended to read:

1           **66.1006** ~~Discontinuing ways to waters~~ Department of natural  
 2 resources approval of discontinuance. No resolution, ordinance, order, or  
 3 similar action of any a town board or county board, or a committee thereof of a town  
 4 or county board discontinuing any highway, street, alley, or right-of-way that  
 5 provides public access to any navigable lake or stream shall be effective until such  
 6 resolution, ordinance, order, or similar action is approved by the department of  
 7 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.

8           **SECTION 93.** 80.47 of the statutes is renumbered 66.1035 and amended to read:

9           **66.1035 Rights of abutting owners.** The owners of land abutting on any  
 10 highway, street, or alley shall have a common right in the free and unobstructed use  
 11 thereof to its of the full width, ~~and no of the highway, street, or alley.~~ No town, village,  
 12 city, county, company, or corporation shall close up, use, or obstruct any part of the  
 13 highway, street, or alley so as to materially interfere with its usefulness as a highway  
 14 or so as to damage abutting property ~~abutting thereon~~, or permit the same to be done,  
 15 without ~~due~~ just compensation being made for any resulting damage ~~resulting~~  
 16 ~~therefrom to the owners of land upon either side of such highway, street or alley.~~ This  
 17 section does not impose liability for damages to property on both sides of any street,  
 18 highway or alley arising from the use, maintenance, and operation of tracks or other  
 19 public improvement legally laid down, built, or established in any street, highway,  
 20 or alley prior to April 7, 1889. All rights of in property ~~which would that could~~ entitle  
 21 ~~the owners~~ an owner to damages for injury thereto under the foregoing provisions  
 22 this section may be condemned and permanently appropriated by any corporation  
 23 ~~authorized to use or obstruct any highway, street or alley that is listed in s. 32.02 in~~

1 the same manner that other property may be condemned and appropriated by such  
 2 the corporation. <sup>by</sup>

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.

3 SECTION 94. 80.48 of the statutes is repealed.

~~NOTE: Nicholas: this has cross-references~~

4 SECTION 95. 80.64 of the statutes is renumbered 66.1031, and 66.1031 (1), (2)  
 5 and (3) (intro.) and (b), as renumbered, are amended to read:

6 ~~66.1031~~ <sup>No (B)</sup> ~~Widening of highways; establishment of excess widths~~ (1)

7 With the approval of the governing body of the municipality town, city, or village in  
 8 which a street or highway or part thereof of a street or highway is located, the county  
 9 board, to promote the general welfare, may establish street and highway widths in  
 10 excess of the widths in use and adopt plans showing the location and width proposed  
 11 for any future street or highway, which shall not be subject to s. 80.32 ~~(1)~~ <sup>X</sup> ~~82.19 (2)~~ ✓  
 12 Streets or highways or plans ~~therefor~~ for streets or highways established or adopted  
 13 under this section shall be shown on a map showing present and proposed street or  
 14 highway lines and, except in counties having a population of 500,000 or more,  
 15 property lines and owners. The map shall be recorded in the office of the register of  
 16 deeds. Notice of the recording shall be published as a class 1 notice <sup>plain</sup> under ch. 985, ✓  
 17 in the territory in which the affected streets or highways are located. The notice shall  
 18 briefly set forth the action of the county board. ~~The county board, upon like approval,~~  
 19 ~~publication and notice, may from time to time supplement or change the same, and~~  
 20 ~~such supplements or changes shall be similarly recorded in the office of the register~~  
 21 ~~of deeds.~~

22 (2) The excess width for streets or highways in use for the right-of-way  
 23 required for those planned, <sup>←</sup> may be acquired at any time either in whole or in part

1 by the state or county or municipality in which located; but no part shall be acquired  
 2 in less than the full extent, in width, of the excess width to be made up of land on the  
 3 same side of the street or highway, nor for less than the full length of such excess  
 4 width lying within contiguous land owned by the same owner. Any land so acquired,  
 5 whether the excess width is acquired for the full length of the street or highway or  
 6 not, shall at once become available for highway purposes. The power to acquire such  
 7 right-of-way or additional width in portions as provided ~~herein~~ in this section may  
 8 be exercised to acquire the land on advantageous terms.

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

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

~~\*\*\*NOTE: ARG. how does this fit with width provisions of ch. 86?~~

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.

21 SECTION 96. 80.65 of the statutes is repealed.

SEC.#. Chapter 81 (title) of the statutes is repealed.