



State of Wisconsin
2003 - 2004 LEGISLATURE

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LRB-2811/14 PY
ARG:kmg:pg

RMR

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

D-Note

Gen. Cat.

1 AN ACT *to repeal* 60.24 (3) (n), chapter 80 (title), 80.01 (title), 80.01 (1) (title),
2 80.02 (title), 80.03, 80.04 (title), 80.05 (2) (intro.) and (c), 80.06 (title), 80.07
3 (title), 80.09, 80.10, 80.11 (2) (a) 1. to 4., (b) and (c), 80.11 (4), 80.11 (8), 80.12
4 (title), 80.12 (1), 80.12 (3) and (4), 80.13 (title), 80.17 (title), 80.22 (title), 80.24
5 to 80.30, 80.31 (title), (1) and (2), 80.35, 80.38 to 80.40, 80.48, 80.65, chapter 81
6 (title), 81.01 (5), (6), (7) and (9), 81.02 (title), 81.04, 81.05, 81.06 (title), 81.07,
7 81.11 (title) and (1) to (4), 81.12, 81.14 (3), 81.36, 81.39, 81.42 (title), 83.18 (1)
8 (title), 83.18 (2) and 893.73 (2) (c); *to renumber* 80.01 (1m) (title), 80.15 (title),
9 80.23 (title), 80.32 (4) (a) 1. and 2., 80.32 (4) (b), 80.32 (4) (d), 80.34 (title), 81.08
10 (title), 81.38 (title), 86.26, 86.265 and 86.266; *to renumber and amend* 80.01
11 (1), 80.01 (1m), 80.01 (2), 80.01 (3), 80.01 (4) (title), 80.01 (4), 80.01 (5), 80.02,
12 80.025, 80.04, 80.05 (title), 80.05 (1), 80.05 (2) (a), 80.05 (2) (b), 80.06, 80.08,
13 80.11 (title), 80.11 (1), 80.11 (2) (a) (intro.), 80.11 (3) (a), (b) 1. and 2. and (c),
14 80.11 (5), 80.11 (6), 80.11 (7), 80.12 (2), 80.12 (5), 80.125, 80.13 (1), 80.13 (1m),
15 80.13 (3), 80.13 (4), 80.13 (4m), 80.13 (5), 80.14, 80.15, 80.16, 80.17, 80.22, 80.23

1 (1), 80.23 (2), 80.31 (3), 80.32 (title), 80.32 (1), 80.32 (2), 80.32 (3), 80.32 (4) (a)
2 (intro.), 80.32 (4) (c), 80.32 (5), 80.33, 80.34 (1), 80.34 (2), 80.37, 80.41, 80.47,
3 80.64, 81.01 (title), 81.01 (2), 81.01 (3), 81.01 (4), 81.01 (8), 81.01 (10), 81.01 (11),
4 81.02, 81.03 (title), 81.03, 81.06, 81.08 (1), 81.08 (2), 81.08 (3), 81.11 (5), 81.14
5 (title), 81.14 (1), 81.14 (2), 81.14 (4), 81.15, 81.17, 81.35, 81.38 (1), 81.38 (2),
6 81.38 (3), 81.38 (4), 81.38 (5), 81.38 (6), 81.38 (7), 81.42 (1), 81.42 (2) and 83.18
7 (1); **to consolidate, renumber and amend** 80.07 (1) and (2) and 81.01 (intro.)
8 and (1); **to amend** 32.035 (4) (a), 32.05 (intro.), 59.69 (5) (e) 7., 59.84 (2) (f) 5.,
9 60.10 (1) (d), 60.23 (17), 60.24 (3) (o), 60.24 (3) (p), 60.33 (10), 60.37 (4) (a), 62.73
10 (1), 66.1003 (2) and (3), 83.015 (2) (b), 83.09, 83.19, 84.02 (1), 84.07 (1), 84.14
11 (3), 86.315 (3), 236.16 (2) and 756.04 (2); and **to create** 66.1003 (10), 66.1005
12 (title), 66.1033 (1) and (3), chapter 82 (title), subchapter I (title) of chapter 82
13 [precedes 82.01], 82.01 (intro.), (1) to (6) and (8) to (10), 82.03 (1) (title), 82.03
14 (1) (c), (5) (title) and (c), (6) and (9) to (19), 82.05 (1), 82.05 (4), 82.08 (8),
15 subchapter II (title) of chapter 82 [precedes 82.10], 82.10 (title), (1) (b), (2), (4)
16 (title) and (b) and (5), 82.11 (title), 82.12 (title), 82.14 (title), (1) and (3), 82.15,
17 82.16 (3), 82.19 (2) (b) 1., subchapter III (title) of chapter 82 [precedes 82.21],
18 82.21 (1) (a) and (b), (4) (title) and (5) (title), 82.27 (title), (1), (5) (c) and (d), (9)
19 and (10), subchapter IV (title) of chapter 82 [precedes 82.31], 82.35 (1) (intro.)

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and 893.83 (title) of the statutes; relating to: ^{the reorganization, modernization, and modification} ~~recodification~~ of chapters 80 and 81.

Analysis by the Legislative Reference Bureau

This bill is explained in the NOTES provided by the Joint Legislative Council in the bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

JOINT LEGISLATIVE COUNCIL PREFATORY NOTE: This bill was prepared for the Joint Legislative Council's Special Committee on Recodification of Town Highway Statutes.

The committee was directed to recodify chs. 80 and 81 and any matters related to those statutes. The special committee was instructed that the recodification may include a study of the reorganization of the chapter in a logical manner, renumbering and retitling sections, consolidating related provisions, modernizing language, resolving ambiguities in language, codifying court decisions, and making minor substantive changes.

Many of the provisions in chs. 80 and 81 date from the 1800s. The changes and additions to those chapters over the years seem to have occurred piecemeal without regard to any internal organization. As a result, current chs. 80 and 81 are unwieldy and difficult to use.

This bill:

1. Reorganizes chs. 80 and 81 by:

a. Moving most of the provisions in current chs. 80 and 81 into a new ch. 82. The special committee decided to create ch. 82 in order to avoid confusion between the original and the recodified law.

b. Arranging the provisions of the new ch. 82 into a logical order. The bill 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.

Arranging

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

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

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

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

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

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

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

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

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

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

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

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

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

****NOTE: Nicholas, The cross-reference to s. 82.03 (19) will need to be corrected,
but I am not sure of the correct cross-reference since s. 81.05 is actually repealed in the
attached draft. Do you want to simply repeal s. 60.10 (1) (d) as well?

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

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

9 **SECTION 7.** 60.24 (3) (n) of the statutes is repealed.

NOTE: Section 60.24 (3) (n) reads as follows: "Perform duties in connection with
selection of jurors in actions relating to the taking of property to provide access to a
cemetery, fairground, or land used for industrial expositions under s. 80.48 (3) and (4)".
The special committee deleted current s. 80.48 because it concluded that the section was
no longer necessary.

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

11 60.24 (3) (o) Sign orders for payment of work performed and materials
12 furnished on town highways ~~under s. 81.04~~.

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

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

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

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

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

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

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

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

9 62.73 (1) The common council of a 1st class city may vacate in whole or in part
10 highways, streets, alleys, grounds, waterways, public walks and other public
11 grounds within the corporate limits of the city that it determines the public interest
12 requires to be vacated or are of no public utility, subject to s. ~~80.32 (4)~~ 66.1005 (2).
13 Proceedings under this section shall be commenced either by a petition presented to
14 the common council signed by the owners of all property which abuts the portion of
15 the public facilities proposed to be vacated, or by a resolution adopted by the common
16 council. The requirements of s. 840.11 apply to proceedings under this section.

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

18 66.1003 (2) The common council of any city, except a 1st class city, or a village
19 or town board may discontinue all or part of a public way upon the written petition
20 of the owners of all the frontage of the lots and lands abutting upon the public way
21 sought to be discontinued, and of the owners of more than one-third of the frontage
22 of the lots and lands abutting on that portion of the remainder of the public way
23 which lies within 2,650 feet of the ends of the portion to be discontinued, or lies within
24 so much of that 2,650 feet as is within the corporate limits of the city, village or town.
25 The beginning and ending of an alley shall be considered to be within the block in

1 which it is located. This subsection does not apply to a highway upon the line
2 between 2 towns that is subject to s. ~~80.11~~ 82.21.

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

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

11 66.1003 (10) Notwithstanding ss. 82.10 and 82.21, no city council or county,
12 village, or town board ~~shall~~ ^{may} discontinue a highway when the discontinuance would
13 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.

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

15 66.1005 (title) **Reversion of title.**

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

17 66.1033 (1) In this section: political subdivision

18 (a) ~~Municipality~~ means a ~~county, town,~~ city, ~~or~~ village, ~~or~~ town, or county

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

20 (3) For proceedings taken, or for plats, deeds, orders, or resolutions executed
21 after the effective date of this subsection [revisor inserts date], except as provided

by, [✓] a political subdivision

of, [✓]

1 in s. 840.11, no defect, omission, or informality in the proceedings [✓] or execution of a [✓]
 2 plat, deed of dedication, order, or resolution shall affect or invalidate the proceedings,
 3 plat, deed, order, or resolution after 5 years from the date of the proceedings, plat,
 4 deed, order, or resolution. The public way dedicated, laid out, or altered by a
 5 defective [✓] or informal proceeding, plat, deed, order, or resolution shall be limited in
 6 length to the portion actually worked and used.

7 SECTION 17. Chapter 80 (title) of the statutes is repealed.

8 SECTION 18. 80.01 (title) of the statutes is repealed.

9 SECTION 19. 80.01 (1) (title) of the statutes is repealed. [✓]

10 SECTION 20. 80.01 (1) of the statutes is renumbered 82.01 ⁸ (7) and amended to
 11 read:

12 82.01 ⁸ (7) [✓] In this section, “recorded Recorded highway” means a highway for
 13 which the order laying out or altering the highway, or a certified copy of the order,
 14 has been ~~filed~~ recorded in the office of the ~~clerk of the town or~~ register of deeds in the
 15 county in which the highway is situated or, for highways that were laid out or altered
 16 before the effective date of this subsection ... [revisor inserts date], in the office of the
 17 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”.

18 SECTION 21. 80.01 (1m) (title) of the statutes is renumbered 82.31 (title).

19 SECTION 22. 80.01 (1m) of the statutes is renumbered 82.31 (1) and amended
 20 to read:

21 **82.31 (1) RECORDED HIGHWAYS.** Any recorded highway that has been laid out
 22 ~~by the town supervisors, the county board or by a committee of the board, or by~~

1 ~~commissioners appointed by the legislature, or by any other authority, any portion~~
 2 ~~of which has been opened and worked for 3 years~~ ^{under} ~~purportedly~~ ~~(this chapter~~ is a legal
 3 highway only to the extent that it has been opened and worked for 3 years. Any laid
 4 out highway that has not been fully and sufficiently described or recorded or for
 5 which the records have been lost or destroyed is presumed to be 66 feet wide.

6 **SECTION 23.** 80.01 (2) of the statutes is renumbered 82.31 (2), and 82.31 (2)
 7 (title), (b) and (c), as renumbered, are amended to read:

8 **82.31 (2) (title)** UNRECORDED HIGHWAYS ~~VALIDATED, EXCEPTION, GRANTS FOR~~
 9 ~~HIGHWAY PURPOSES, PRESUMPTIVE WIDTH.~~

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

14 (c) No lands granted for highway purposes that did not become a legal highway
 15 prior to July 1, 1913, shall become a legal highway unless the grant is accepted by
 16 the town board or by the town meeting of the town ~~wherein~~ where the lands and
 17 proposed highway are located, and until a resolution of acceptance of the grant is
 18 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.

19 **SECTION 24.** 80.01 (3) of the statutes is renumbered 66.1037 and amended to
 20 read:

21 **66.1037 Beautification and protection.** No lands abutting on any highway,
 22 ~~strike~~ and acquired or held for highway purposes, shall be deemed discontinued for such
 23 purpose so long as they abut on any highway. All lands acquired for highway

purposes

determines promotes

plain space

strike

1 purposes after June 23, 1931, may be used for any purpose that the public authorities

2 town, city, village, or county in control of such the highway shall deem ~~it~~ to

3 ~~conduct~~ to the public use and enjoyment thereof. Such authorities. The town, city,

4 village, or county may improve such lands by suitable planting, to prevent the

5 erosion of the soil, or to beautify the highway. The right to protect and to plant

6 vegetation in any highway laid out prior to said date June 23, 1931, may be acquired

7 in any manner that lands may be acquired for highway purposes. It shall be unlawful

8 for any person to injure any tree or shrub, or cut or trim any vegetation other than

9 grass, or make any excavation in any highway laid out after said date June 23, 1931,

10 or where the right to protect vegetation has been acquired, without the consent of the

11 highway authorities and under their direction ~~but such~~. The authorities shall

12 remove, cut, or trim or consent to the removing, cutting, or ~~removal~~ of any tree, shrub,

13 or vegetation in order to provide safety to users of the highway.

strike

trimming

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.

SECTION 25. 80.01 (4) (title) of the statutes is renumbered 66.1033 (title) and amended to read:

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

SECTION 26. 80.01 (4) of the statutes is renumbered 66.1033 (2) and amended to read:

66.1033 (2) ~~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~~

by, a political subdivision

1 have been lawfully so dedicated, laid out, altered, vacated or discontinued from and
 2 after the expiration of 5 years from the date of the deed, instrument, plat, order,
 3 resolution or other final proceeding had or taken to effectuate such purpose. No For
 4 proceedings taken, or for plats, deeds, orders, or resolutions executed before the
 5 effective date of this subsection ... [revisor inserts date], notwithstanding s. 840.11,
 6 no defect, omission or informality in the proceedings ^{of,} or execution of any a plat or,
 7 deed of dedication or in any proceedings, order, or resolution on the part of such
 8 authorities for the purposes aforesaid shall affect or invalidate such the proceedings,
 9 plat, deed, order, or resolution or proceeding, after the expiration of 5 years from the
 10 date of the proceeding, plat, deed, proceeding, order, or resolution; provided, the
 11 street or alley. The public way dedicated, laid out, or altered by such a defective, or
 12 informal proceeding, plat, deed, proceeding, order, or resolution, shall be limited in
 13 length to the portion actually worked and used thereunder.

strike comma

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.

14 SECTION 27. 80.01 (5) of the statutes is renumbered 66.1024 and amended to
 15 read:

1 **66.1024 Effect of reservation or exception in conveyance.** Whenever ~~a~~
2 an executed and recorded deed, land contract, or mortgage of lands abutting on an
3 existing public street, highway, or alley or a projected extension thereof ~~hereafter~~
4 ~~executed and recorded~~ contains language reserving or excepting certain lands for
5 street, highway, or alley purposes, such the reservation or exception shall constitute
6 a dedication for such purpose to the public body having jurisdiction over such the
7 highway, street, alley, or projected extension thereof, unless the language of such the
8 reservation or exception plainly indicates an intent to create a private way. ~~Such~~
9 ~~dedication may be~~ Any reservation or exception shall not be effective until it is
10 accepted by a resolution of the governing body having jurisdiction over such street,
11 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.

12 **SECTION 28.** 80.02 (title) of the statutes is repealed.

13 **SECTION 29.** 80.02 of the statutes is renumbered 82.10 (1) (intro.) and amended
14 to read:

15 (15) CS Application for highway changes.
16 82.10 (1) (intro.) ~~When 6~~ Six or more resident freeholders ~~wish~~ may apply to
17 the town board to have a highway laid out, ~~widened~~, altered, or discontinued ~~in their~~
18 town, ~~they may make application in writing to the supervisors of said town for that~~
19 purpose. The application ~~may~~ shall be in writing and shall be delivered ~~to any~~
20 supervisor or to the town clerk. ~~In case the application is for the discontinuance of~~
21 all or of a part of any highway, and it is desired, as permitted by s. 80.05, to omit from
22 the notice the description of the lands abutting upon such highway which will be
23 benefited, injured or damaged by the discontinuance of such highway or any part
 thereof, ~~the~~ The application shall contain the all of the following:

1 ~~(a) A legal description of the lands abutting upon such highway which will be~~
2 ~~benefited, injured or damaged by the discontinuance of such highway or any part~~
3 ~~thereof and shall be delivered to the town clerk with a request in writing that such~~
4 ~~application remain on file with the clerk until the time set for hearing for reference~~
5 ~~and inspection by any parties concerned. When all the owners of lands abutting on~~
6 ~~the part of a highway sought to be altered, desire such alteration, and the supervisors~~
7 ~~are of the opinion that the public will not be materially affected by such alteration,~~
8 ~~the board may make the same, and may take into consideration donations of money,~~
9 ~~land or services for the making of such alterations. When the laying out of a highway~~
10 ~~would require the construction of a bridge costing more than \$1,000, exclusive of~~
11 ~~donations, the order of the supervisors laying out such highway shall not be effective~~
12 ~~unless approved by the electors of the town, and an estimate by the department of~~
13 ~~transportation shall be conclusive of the cost of such bridge for the purposes of this~~
14 ~~section. No town board shall discontinue any part of a state trunk or county trunk~~
15 ~~highway, nor discontinue any highway when such discontinuance would deprive the~~
16 ~~owner of lands of access therefrom to a highway to be discontinued or of the proposed~~
17 ~~highway to be laid out or altered.~~

18 SECTION 30. 80.025 of the statutes is renumbered 82.29 and amended to read:

19 **82.29 Highways abutted by state park lands; discontinuance or**
20 **relocation.** Any part of a highway lying wholly within state park lands may be
21 discontinued or relocated by the state agency having jurisdiction over such abutting
22 lands the state park by filing written notice of such the discontinuance or relocation
23 with the town clerk or county clerk of the municipality that has jurisdiction over the
24 highway and upon approval by the supervisors municipality after holding a hearing
25 as provided in s. 80.05 ~~unless such~~ 82.10. No discontinuance or relocation would

1 under this section may deprive any other owner of lands a landowner of all highway
2 access thereto from a highway. This section does not apply to state trunk highways
3 or connecting highways.

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

4 **SECTION 31.** 80.03 of the statutes is repealed.

5 **SECTION 32.** 80.04 (title) of the statutes is repealed.

6 **SECTION 33.** 80.04 of the statutes is renumbered 82.11 (2) and amended to read:

7 82.11 (2) (a) No ~~supervisor~~ town official may act in laying out, altering,
8 widening or discontinuing any a highway in which the supervisor may be personally
9 interested if acting would result in a violation of the code of ethics under s. 19.59 or
10 of a local ordinance enacted under s. 19.59 (1m). If ~~one supervisor is interested the~~
11 ~~other 2 supervisors~~ a town official is prevented from acting, the remaining town
12 officials shall act. If ~~2 supervisors are interested the 3rd supervisor shall act in the~~
13 ~~matter.~~

14 (b) ~~Whenever~~ Every town shall have a written policy on how the town board
15 will act on an application or resolution when there are fewer than 2 supervisors in
16 ~~a the town, the application authorized by s. 80.02 may be made to the county board,~~
17 ~~which shall promptly appoint a committee of 3 of its members. The committee shall~~
18 ~~act upon the~~ who are able to act on ^{the} application in the same manner and with the
19 same powers in every respect as the supervisors of the town might do or resolution.
20 In the absence of a policy, the town clerk may act. If the town clerk is prevented from
21 acting, the treasurer may act.

NOTE: Section 82.11 is based on current s. 80.06. The language from current s. 80.06 specifying how the supervisors may adjourn for a period not exceeding 30 days was not carried into this bill 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.

1 SECTION 34. 80.05 (title) of the statutes is renumbered 82.10 (3) (title) and
2 amended to read:

3 82.10 (3) (title) NOTICE OF MEETING; SERVICE AND PUBLICATION REQUIREMENTS.

4 SECTION 35. 80.05 (1) of the statutes is renumbered 82.10 (3) and amended to
5 read:

6 82.10 (3) ~~On~~ Upon receipt of an application made to supervisors for laying out,
7 ~~widening, altering or discontinuing any highway the supervisors shall prepare a~~
8 ~~under sub. (1) or the introduction of a resolution under sub. (2), the board shall~~
9 ~~provide notice fixing therein a~~ of the time that and the place at which they where
10 ~~it will meet and decide upon to consider the application or resolution.~~ The notice
11 shall specify, as near as practicable, contain a legal description of the highway to be
12 discontinued or of the proposed highway to be laid out, widened, or altered or
13 ~~discontinued and the tracts of land through which the highway passes or, if the~~
14 ~~application is for discontinuing the whole or any portion of the highway, the tracts~~
15 ~~of land abutting on the highway which will be benefited or injured by such~~
16 ~~discontinuance. When the description in the aggregate exceeds 200 words in length,~~
17 ~~the notice may state that such descriptions are contained in the application as~~
18 ~~provided in s. 80.02, and shall give the name and address of the town clerk to whom~~
19 ~~the application has been delivered and a scale map of the land that would be affected~~
20 by the application. *or resolution*

21 SECTION 36. 80.05 (2) (intro.) and (c) of the statutes are repealed.

22 SECTION 37. 80.05 (2) (a) of the statutes is renumbered 82.10 (4) (a) (intro.) and
23 amended to read:

✓ (20)
→ insert 16-20 ✓

1 82.10 (4) (a) (intro.) The town board or, at the town board's direction, the
2 applicants shall publish a class 3 notice under ch. 985 and shall, at least 10 30 days
3 prior to the date of before the hearing, give notice by registered mail to all occupants
4 and of the following:

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

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

8 **SECTION 38.** 80.05 (2) (b) of the statutes is renumbered 82.10 (4) (a) 3. and
9 amended to read:

10 82.10 (4) (a) 3. Give notice by registered mail to the The department of natural
11 resources and to the,

12 4. The county land conservation committee in each county through which the
13 highway may pass.

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 39.** 80.06 (title) of the statutes is repealed.

2 **SECTION 40.** 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 ^{town}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~~

13 ~~exceeding in all 30 days from the time of the first meeting, giving public notice of the~~

14 ~~time and place of such adjournment when made, and by forthwith filing notice of~~

15 ~~such adjournment in the office of the town clerk or resolution is in the public interest.~~

16 Before the town board holds a public hearing on or takes any action on the application

17 or resolution, the town board must be satisfied, by affidavit of the applicant or

18 otherwise, that the notices in s. 82.10 (4) have been given.

1 **SECTION 41.** 80.07 (title) of the statutes is repealed.

2 **SECTION 42.** 80.07 (1) and (2) of the statutes are consolidated, renumbered
3 82.12 (2) and amended to read:

4 82.12 (2) ~~When the supervisors~~ If the board determines under sub. (1) to lay
5 out, alter, widen or discontinue any highway they, it shall make and sign an issue a
6 highway order therefor, incorporating therein a description of the highway and cause
7 survey thereof to be made when necessary. The highway order shall be filed and
8 recorded in the office of with the register of deeds for the county in which the highway
9 is or will be located and shall be filed with the town clerk, who shall note in the record
10 the time of recording. The order together with the award of damages shall be so filed
11 within 10 days after the date fixed by their notice or adjournment for deciding upon
12 the application. In case the supervisors fail to file the order and award within the
13 10 days aforesaid they shall be deemed to have decided against the application.
14 When an order has been filed for more than 30 years and no award of damages or
15 agreement or release has been filed and when the highway, or a part thereof, has been
16 used by the public and public money has been expended thereon, for at least 5 years,
17 it shall be presumed that a release was given by the owners of the lands over which
18 the highway was laid out and the public shall be entitled to use the full width of the
19 highway, as laid out, without further compensation. (2) Whenever the supervisors
20 lay out, alter or discontinue any highway the. The town clerk shall transmit submit
21 a certified copy of the order therefor to the county highway commissioner. If the town
22 has an official map, the order shall be incorporated into the official map.

****NOTE: Nicholas, Parts of s. 80.07 (1) appear in created ss. 82.12 (2) and 82.16
(3). Unfortunately, s. 80.07 (1) cannot be renumbered twice. I have renumbered s. 80.07
(1) to s. 82.12 (2) and created new text in s. 82.16 (3), but it could be done in the opposite
fashion if you prefer.

23 **SECTION 43.** 80.08 of the statutes is renumbered 82.18 and amended to read:

1 **82.18 Width of highways.** Except as otherwise provided in s. 80.13 this
 2 chapter, highways laid out pursuant to this chapter shall be laid out at least 49.5 66
 3 feet wide, and when unless, in the town board's discretion, that width is impractical.
 4 If the town board determines that a 66-foot width is impractical, the width shall be
 5 determined by the town board but shall be at least 49.5 feet in width. When no width
 6 is specified in the order, the highway shall be 66 feet wide.

highway

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.

7 **SECTION 44.** 80.09 of the statutes is repealed.

8 **SECTION 45.** 80.10 of the statutes is repealed.

9 **SECTION 46.** 80.11 (title) of the statutes is renumbered 82.21 (title) and
 10 amended to read:

11 **82.21 (title) Highways on and across town and municipal lines.**

12 **SECTION 47.** 80.11 (1) of the statutes is renumbered 82.21 (1) (intro.) and
 13 amended to read:

14 82.21 (1) INITIATING THE PROCEDURE. (intro.) ~~Whenever it is considered~~
 15 ~~necessary~~ The procedure to lay out, alter, widen or discontinue a highway upon on
 16 the line between 2 towns a town and another town, a city, or a village, or a highway
 17 extending from one town into an adjoining town, it shall be done by the supervisors
 18 of the 2 towns acting together. If the highway is laid out or altered it may be either
 19 upon or as near to the town line as the situation of the ground will admit. The
 20 supervisors of the 2 towns acting together may vary the location on either side of the
 21 town line as they consider to be necessary. city, or village shall begin only when one
 22 of the following occurs in each affected municipality:

1 SECTION 48. 80.11 (2) (a) (intro.) of the statutes is renumbered 82.21 (2) and
2 amended to read:

3 82.21 (2) CONTENTS OF THE APPLICATION OR RESOLUTION. An application or
4 resolution under sub. (1) shall ~~be all of the following:~~ contain a legal description of
5 the highway to be discontinued or of the proposed highway to be laid out or altered
6 and a scale map of the land that would be affected by the application. Upon
7 completion of the requirements of sub. (1), the governing bodies of the municipalities,
8 acting together, shall proceed [✓] ~~as~~ ^e under ss. 82.10 to 82.13.

9 SECTION 49. 80.11 (2) (a) 1. to 4., (b) and (c) of the statutes are repealed.

10 SECTION 50. 80.11 (3) (a), (b) 1. and 2. and (c) of the statutes are renumbered
11 82.21 (4) (a), (b), (c) and (d) and amended to read:

12 82.21 (4) (a) The A highway order under sub. (2) (e) issued by 2 towns or by a
13 town and a ~~village or city~~ may designate the part of the highway that each shall be
14 made and kept in construct and repair by each town, and the share of, and pay the
15 damages for, if any, that shall be paid by each town. Each town. As to the portion
16 of the highway that the town, city, or village agrees to construct, keep in repair, and
17 pay damages for, the town, city, or village shall have all of the rights authority and
18 be subject to the liabilities all of the responsibility in relation to the ~~that~~ part of the
19 highway to be made or repaired by it as if it ~~that part~~ were wholly located in that ~~the~~
20 town, city, or village.

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

LPS:
reverse
these

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

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

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

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

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

16 **SECTION 51.** 80.11 (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 bill because the special committee decided it was unnecessary: "If the highway is laid out or altered, it may be either upon or as near to the town line as the situation of the ground will admit.

The supervisors of the 2 towns acting together may vary the location on either side of the town line as they consider to be necessary.”

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

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

1 **SECTION 52.** 80.11 (5) of the statutes is renumbered 82.21 (5) (a) and amended
2 to read:

3 82.21 (5) (a) If ~~no agreement is reached under sub. (4) (b), or if an order laying~~

4 out, ~~or altering or widening a town line highway has not apportioned the liability of~~

5 the towns or village authority and responsibility ~~on account of~~ ^{more} the highway, the ^{strike}

6 supervisors of an affected town or the president of an affected village, after 10 days²

7 notice of the time and place of hearing served on the clerk of each town and village

8 to be affected, ~~or if a municipality feels that~~ ^{considers} the current apportionment ^{to be}

9 inequitable, ~~the~~ ^{an affected} municipality may apply to the circuit judge of the county in which

10 the affected town ~~or village~~ ^{strike} ~~is~~ ^{municipality} located, for the appointment of 3 commissioners

11 to apportion the ~~liabilities of~~ authority and responsibility between each affected town

12 and village on account of the town line highway municipality. The municipality filing

13 the application shall serve a copy of the application on the clerk of each municipality

14 to be affected. The circuit judge may set the time and place of the hearing before the

15 commissioners at least 10 days after the application is filed with the judge.

16 **SECTION 53.** 80.11 (6) of the statutes is renumbered 82.21 (5) (b) and amended

17 to read:

1 82.21 (5) (b) Upon receipt of an application under sub. ~~(5)~~ par. (a), the circuit
 2 judge shall appoint 3 residents of the county as commissioners. The commissioners
 3 shall, on not less than ~~5~~ 10 days' notice nor more than 60 days' notice in writing to
 4 the clerk of each ~~town and village~~ affected municipality, apportion the liabilities
 5 authority and responsibility of each affected ~~town and village~~ municipality on
 6 account of the highway. The commissioners shall make the determination in writing
 7 and shall file the determination with the clerk of each ~~town and village~~ affected
 8 municipality. The commissioners' determination ~~has~~ shall have the same effect as
 9 an order made under sub. ~~(2), (3) or (4)~~.

10 **SECTION 54.** 80.11 (7) of the statutes is renumbered 82.23 and amended to read:

11 **82.23 Municipal line bridges.** Any Unless otherwise provided by statute or
 12 agreement, every highway bridge on a highway that became a highway under s.
 13 ~~80.01 (2) as a result of having been worked, that is between 2 towns, or between a~~
 14 ~~town on one side and a~~ ^{city, ~~or~~ village} ~~on a town and village on the other side, and~~
 15 ~~that has not been assigned to either of the adjoining towns or village, boundary shall~~
 16 ~~be repaired and maintained by the adjoining towns and village municipalities~~ ⁱⁿ
 17 ~~which the bridge is located.~~ ^{strike} The cost of repairs and maintenance shall be paid by the
 18 adjoining ~~towns and village~~ municipalities in proportion to the last equalized
 19 ~~valuation of the property in the adjoining towns and village as equalized by the~~
 20 ~~county board or boards at the last equalization~~ municipalities.

21 **SECTION 55.** 80.11 (8) of the statutes is repealed.

22 **SECTION 56.** 80.12 (title) of the statutes is repealed.

23 **SECTION 57.** 80.12 (1) of the statutes is repealed.

24 **SECTION 58.** 80.12 (2) of the statutes is renumbered 82.21 (3) and amended to
 25 read:

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

8 **SECTION 59.** 80.12 (3) and (4) of the statutes are repealed.

9 **SECTION 60.** 80.12 (5) of the statutes is renumbered 82.21 (6) and amended to
10 read:

11 82.21 (6) WHERE PAPERS FILED. All ~~proceedings and orders~~ awards, notices, and
12 papers required to be filed ~~and recorded~~ shall be filed ~~and recorded~~ in the office of the
13 clerk of the ~~city~~ ^{each} affected city, village or town municipality. Any highway orders
14 issued under this section shall be recorded with the register of deeds for ^{any} ~~the~~ county
15 or counties in which the highway is or will be located.

16 **SECTION 61.** 80.125 of the statutes is renumbered 82.28 and amended to read:

17 **82.28 Highways and bridges on state boundaries.** ~~A town or county~~ The
18 board of any town or county that is bounded in part by a river; or ~~by~~ a highway; either ^{state}
19 of which that is also a state boundary line may enter into an agreement with ~~the~~ ^{any}
20 adjoining municipality ^{or county} in such the other state for the maintenance and construction
21 of boundary line bridges and or for the maintenance and reconstruction of any
22 boundary line highway highways, including its bridges, ~~by~~ appropriation therefor
23 not exceeding 50% of the total costs assignable to the boundary line facility. The costs
24 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.

1 **SECTION 62.** 80.13 (title) of the statutes is repealed.

2 **SECTION 63.** 80.13 (1) of the statutes is renumbered 82.27 (3) and amended to
3 read:

4 82.27 (3) SETTING THE HEARING DATE; NOTICE. ~~When any person presents the~~
5 ~~town board with an affidavit that meets the requirements~~ Upon receipt of an
6 application under sub. (1m) (2), the town board shall set a time and place to conduct
7 a hearing regarding the ~~laying out or widening of a highway~~ application. The
8 hearing shall be held after 10 days and within 30 days of the receipt of the ~~affidavit~~
9 application by the town board. Notice of the time and place of the hearing shall be
10 served as required by s. ~~80.05~~ 82.10 and published as a class 2 notice under ch. 985.

11 **SECTION 64.** 80.13 (1m) of the statutes is renumbered 82.27 (2) and amended
12 to read:

13 82.27 (2) APPLICATION. ~~The affidavit required under sub. (1) shall be executed~~
14 ~~by the owner or lessee of real estate located within the a town,~~ may apply to the town
15 board to have a highway laid out to the owner's land. Except as provided in sub. (7),
16 the application shall be delivered to the town clerk of the town in which the real
17 estate is located. The application shall contain a description of an affidavit, executed
18 by the applicant, that describes the affected real estate and shall contain recites facts
19 that satisfy the supervisors board that any of the following circumstances exists
20 either in par. (a) or in par. (b) exist:

21 (a) ~~The real estate described in the affidavit~~ is shut out from all public highways
22 by being surrounded on all sides by real estate owned by other persons, or by real
23 estate owned by other persons and by water, and that the owner or lessee is unable

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

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

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

13 **SECTION 65.** 80.13 (3) of the statutes is renumbered 82.27 (4) and amended to
14 read:

15 82.27 (4) HEARING. (a) The town board shall meet at the time and place stated
16 in the notice ~~given under sub. (1) and shall in their and decide, in its~~ discretion lay
17 out a highway of not less than 33 feet nor more than 49.5 feet in width from the public
18 highway to the real estate described in the affidavit under sub. (1m) (a) or (b) either
19 by, whether to grant the application. The board may grant the application by either
20 laying out a new highway across the surrounding land or by adding enough land to
21 ~~the width of the existing way or road described in the affidavit under sub. (1m) (b)~~
22 to make it. If the board decides to lay out a new highway, the new highway shall be
23 at least 66 feet wide unless the board determines ^{this width to be} ~~that 66 feet is~~ impracticable. If the
24 board decides to widen an existing way or road, the resulting highway shall not be
25 less than 33 49.5 feet nor more than 49.5 66 feet in width.

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

6 SECTION 66. 80.13 (4) of the statutes is renumbered 82.27 (4) (c) and amended
 7 to read:

8 82.27 (4) (c) Upon laying out a highway ~~under sub. (3)~~ or widening a private
 9 way or road, the town board shall ~~make and sign an order~~ ^{issue} a highway order describing
 10 the laid out highway and. If it is necessary to include a turnaround, the turnaround
 11 shall be laid out on the applicant's land. The applicant shall pay the town treasurer
 12 the amount ^{determined} ~~assessed~~ as advantages within 30 days of the board's decision. Within
 13 10 days of payment, the town board shall file the order with the town clerk together
 14 with its award of damages. The ~~and record the~~ order shall be recorded by the clerk;
 15 provided, that the amount assessed as advantages to the applicant under sub. (3) is
 16 paid to the town treasurer before the order laying out such highway shall be filed
 17 with the register of deeds for the county in which the land is located.

18 SECTION 67. 80.13 (4m) of the statutes is renumbered 82.27 (5) and amended
 19 to read:

20 82.27 (5) CHARGING COSTS TO THE APPLICANT. ~~The following costs may be~~
 21 assessed If the town board grants the application, the items listed in pars. (a) to (d)
 22 may be included in the determination of advantages. If the town board denies the
 23 application, ~~any~~ of all of the following may be charged to the applicant as a special
 24 charge under s. 66.0227:

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

50
~~percent~~
percent

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

3 **SECTION 68.** 80.13 (5) of the statutes is renumbered 82.27 (6) and amended to
4 read:

5 82.27 (6) REAL ESTATE LANDLOCKED BY SALE. ~~Whenever a parcel~~ In a town, if the
6 owner of land in any town which ~~that~~ ^{strike} is accessible, ~~or provided with a right of way~~ ^{that is}
7 an easement to a public highway, ~~is subdivided and the owner subdivides and~~ ^{strike}
8 transfers any part of the subdivided parcel by metes and bounds that would
9 otherwise be shut out from all public highways by reason of being surrounded on all
10 sides by real estate belonging to other persons or by real estate belonging to other
11 persons and by water without an adequate right of way to a public highway, the
12 seller land, the owner shall provide a cleared right of way easement at least 50 66
13 feet in width that shall be continuous from the highway to the part of the subdivision
14 sold. ~~In case~~ If the seller fails to provide the required right of way easement, the
15 town board may, pursuant to proceedings under this section, lay out a road at least
16 66 feet wide from the inaccessible land to the public highway over the remaining
17 lands of the seller without assessment of damages or compensation to the seller.

18 **SECTION 69.** 80.14 of the statutes is renumbered 82.27 (7) and amended to read:

19 82.27 (7) ~~HIGHWAY FROM SHUT-OFF LAND THROUGH~~ LAYING OUT A HIGHWAY TO AN
20 ADJOINING TOWN. ~~When the owner of land that is shut out from all highways by being~~
21 ~~surrounded by lands belonging to other persons, and~~ If it is impracticable to lay out
22 a road from that owner's land to a ^{move} highway to an existing ~~public highway~~ ^{strike} that is in
23 the town where the land is situated, and it is practicable to lay out a highway from
24 said land a landowner may apply to have a highway laid out to a highway in an
25 adjoining town, ~~that owner may.~~ The application shall comply with the requirements

1 of sub. (2), except that the affidavit shall also state that it is impracticable to lay out
2 a new highway to an existing highway in the town where the land is located and that
3 it is practicable to lay out a highway to an existing highway in the adjoining town.
4 The owner shall execute an affidavit the application in duplicate and present one
5 copy to ~~a supervisor~~ the clerk of the town where the land is situated ~~located~~ and one
6 copy to ~~a supervisor~~ the clerk of the town where the proposed highway is to be laid
7 out. ~~The affidavit shall set forth the facts above stated, together with the facts~~
8 ~~required in the affidavit provided under s. 80.13. The supervisors of the 2 towns town~~
9 boards shall proceed as provided under said s. 80.13 in this section, except that all
10 orders and notices shall be signed by ~~the supervisors of both boards~~, and all papers
11 required to be filed shall be made in duplicate and filed with each town clerk. The
12 applicant shall pay the amount assessed determined as advantages ~~to the applicant~~
13 ~~shall be paid by the applicant to the town treasurer of the town where in which the~~
14 ~~applicant's land is situated before the order laying out the highway is filed, and all~~
15 within 30 days of the decision. The order shall be recorded within 10 days of
16 payment. All damages assessed shall be paid by the town where the applicant's land
17 of the applicant is situated.

18 **SECTION 70.** 80.15 (title) of the statutes is renumbered 82.27 (8) (title).

19 **SECTION 71.** 80.15 of the statutes is renumbered 82.27 (8) (a) and amended to
20 read:

21 82.27 (8) (a) The owner of an island in the bottoms of the Mississippi River
22 ~~which~~ may submit an application under this section if the island is shut out from the
23 bank of said the river and from ~~a~~ all highway access by islands and, sloughs, and
24 by the lands of others, and ~~a right of way through the same cannot be purchased~~

1 the owner cannot purchase any highway access at a reasonable price, ~~may present~~
2 ~~to the supervisors of the town.~~

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

7 (c) The town shall not be liable for want lack of repair or for defects in any a
8 highway laid out pursuant to this section subsection, nor shall the town be liable for
9 any accident or injury thereon on a highway laid out pursuant to ^{under} 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 72.** 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~~ ^a ~~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 73.** 80.17 (title) of the statutes is repealed.

12 **SECTION 74.** 80.17 of the statutes is renumbered 82.12 (1) and amended to read:

13 **82.12 (1)** ~~Any order of the town supervisors laying out, altering, widening or~~
 14 ~~discontinuing any highway, or refusing so to do, is subject to judicial review under~~
 15 ~~s. 68.13, except that only a person aggrieved by the order or determination may seek~~
 16 ~~review. Failure of the supervisors to file their decision upon~~ ^A ~~the~~ ~~town board shall~~ *str. 60*
 17 ~~make a determination upon any application or resolution to lay out, alter, widen or~~
 18 ~~discontinue any highway within 60 90 days after receipt of the application is made~~
 19 ~~shall be deemed a refusal of the application. In case of highways upon a line between~~

1 ~~2 counties the appeal may be made to the circuit court of either county or introduction~~
2 ~~of a resolution. If the town board decides to lay out, alter, or discontinue any highway,~~
3 ~~it shall issue a highway order.~~

****NOTE: Nicholas, 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?

4 **SECTION 75.** 80.22 (title) of the statutes is repealed.

5 **SECTION 76.** 80.22 of the statutes is renumbered 82.12 (3) and amended to read:

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

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

New subs. (1) and (2) are based on the first 4 sentences of current s. 80.07 (1) and on current s. 80.07 (2). The special committee did not carry over from current s. 80.07 the following language: “In case the supervisors fail to file the order and award within the 10 days aforesaid, they shall be deemed to have decided against the application.” The special committee decided that this allowed a town board to change its mind after a decision had been made. The time limit in new sub. (1) for acting on an application or resolution has been increased from 60 to 90 days. In addition, the language requiring the town to incorporate the order into its official map is new.

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

13 **SECTION 77.** 80.23 (title) of the statutes is renumbered 82.20 (title).

14 **SECTION 78.** 80.23 (1) of the statutes is renumbered 82.20 (1) and amended to
15 read:

1 82.20 (1) ~~Whenever pursuant to this chapter any highway is laid out, widened~~
 2 ~~or altered~~ If the town board issues an order to lay out or alter a highway through
 3 enclosed, cultivated, or improved lands and the determination has not been appealed
 4 from, the town board or highway authorities superintendent shall give the owner or
 5 occupant of the lands through which the proposed highway will pass written notice
 6 of its, his, or her intent to remove the fences located on the highway within a time
 7 determined by the highway authorities to be reasonable, but in the path of the new
 8 or altered highway. The notice shall state when the ^{town}board ^{or highway superintendent} intends to remove the
 9 fences, which shall not be less than 30 days after giving from the date on which the
 10 notice was given to the owner or occupant. If the owner or occupant does not remove
 11 the fences within before the time required by stated in the notice, the town board or
 12 highway authorities superintendent shall remove the fences and direct the highway
 13 to be opened. If the determination has been appealed from, may charge the
 14 landowner for the costs of the removal under s. 66.0027.

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

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

19 **SECTION 79.** 80.23 (2) of the statutes is renumbered 82.20 (3) and amended to
 20 read:

21 82.20 (3) This section does not authorize the opening of a highway through
 22 enclosed, cultivated, or improved lands or the removal of fences between May 15 and
 23 September 15, except in cases of emergency to be determined by the highway
 24 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.

1 **SECTION 80.** 80.24 to 80.30 of the statutes are 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).

2 **SECTION 81.** 80.31 (title), (1) and (2) of the statutes are repealed.

3 **SECTION 82.** 80.31 (3) of the statutes is renumbered 82.14 (2) and amended to

4 read:

in which the land is located

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

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

14 **SECTION 83.** 80.32 (title) of the statutes is renumbered 82.19 (title) and
15 amended to read:

16 **82.19 (title) Discontinuance of highways; reversion of title.**

17 **SECTION 84.** 80.32 (1) of the statutes is renumbered 82.19 (1) and amended to

18 read:

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

8 **SECTION 85.** 80.32 (2) of the statutes is renumbered 82.19 (2) (a) and amended
 9 to read:

10 82.19 (2) (a) ~~Except as provided in sub. (5), every~~ Every highway shall cease
 11 to be a public highway ~~at the expiration of 4 years from the time date on which~~ it was
 12 laid out, except such the parts thereof as shall of the highway that have been opened,
 13 traveled, or worked within such that time, ~~and any~~.

14 (b) 2. Any highway ~~which shall have that has~~ been entirely abandoned as a
 15 route of vehicular travel, and on which no highway funds have been expended for 5
 16 years, shall be considered discontinued.

17 **SECTION 86.** 80.32 (3) of the statutes is renumbered 66.1005 (1) and amended
 18 to read:

19 66.1005 (1) When any highway ~~shall be~~ or public ground is discontinued the
 20 same, the land shall belong to the owner or owners of the adjoining lands; if it shall
 21 be. If the highway ^{or public ground} is located between the lands of different owners, it shall be
 22 annexed to the lots to which it originally belonged if that can be ascertained; if not
 23 it. If the lots to which the land originally belonged cannot be ascertained, the land
 24 shall be equally divided between the owners of the lands on each side ~~thereof~~ of the
 25 highway ^{or public ground}

where the highway or public ground is located

1 **SECTION 87.** 80.32 (4) (a) (intro.) of the statutes is renumbered 66.1005 (2) (a)
2 (intro.) and amended to read:

3 66.1005 (2) (a) (intro.) Whenever any public highway or public ground has been
4 vacated or discontinued, any all easements and rights incidental thereto ~~acquired by~~
5 ~~or belonging to the easements that belong~~ to any county, school district, town, village
6 ~~or, city or to any~~, utility, or person and relating that relate to any underground or
7 overground structures, improvements, or services and all rights of entrance,
8 maintenance, construction, and repair of the structures, improvements, or services
9 shall continue, unless one of the following applies:

10 **SECTION 88.** 80.32 (4) (a) 1. and 2. of the statutes are renumbered 66.1005 (2)
11 (a) 1. and 2.

12 **SECTION 89.** 80.32 (4) (b) of the statutes is renumbered 66.1005 (2) (b).

13 **SECTION 90.** 80.32 (4) (c) of the statutes is renumbered 66.1005 (2) (c) and
14 amended to read:

15 66.1005 (2) (c) Damages for the discontinuance of the easements and rights
16 described in par. (a) shall be assessed against the land benefited in the proceedings
17 for assessment of damages or benefits upon the vacation or discontinuance of the
18 public highway or public ground. The Unless the parties agree on a different amount,
19 the amount of the damages shall be the present value of the property to be removed
20 or abandoned, plus the cost of removal, less the salvage value of the removed or
21 abandoned property, ~~or any other amount that may be agreed upon between the~~
22 ~~interested parties.~~ The owner of the easements and incidental rights, upon
23 application to the treasurer and upon furnishing satisfactory proof, shall be entitled
24 to any payments of or upon the assessment of damages.

25 **SECTION 91.** 80.32 (4) (d) of the statutes is renumbered 66.1005 (2) (d).