

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

SECTION 92. 80.32 (5) of the statutes is renumbered 82.19 (2) (c) and amended

to read:

82.19 (2) (c) ~~Subsection (2)~~ This subsection does not apply to state or county

trunk highways or to any highway, street, alley, or right-of-way that provides public

access to a navigable lake or stream.

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

SECTION 93. 80.33 of the statutes is renumbered 82.17 and amended to read:

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82.17 Highway papers, where filed. All applications, orders, awards,

bonds, and other papers relating to the laying out, altering, widening or

discontinuing of highways pursuant to this chapter shall be promptly filed in the

office of the town, city, or village clerk where the highway is located, except as

otherwise specifically provided in this chapter.

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

SECTION 94. 80.34 (title) of the statutes is renumbered 82.16 (title).

SECTION 95. 80.34 (1) of the statutes is renumbered 82.16 (1) and amended to

read:

82.16 (1) Every order of the supervisors or the supervisors and commissioners

or of the county board or a committee thereof laying out, widening, altering, or

discontinuing any a highway, or ~~providing for~~ <sup>under</sup> this chapter, and any order restoring the

records thereof, and the order of any commissioners reversing or affirming the same

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1 on appeal, and the record or certified copy thereof record of a highway, shall be

2 presumptive evidence of the facts therein stated and of the regularity of all the

3 proceedings prior to the making of such the order.

4 SECTION 96. 80.34 (2) of the statutes is renumbered 82.16 (2) and amended to

5 read:

6 82.16 (2) The validity of any such an order described in sub. (1) if fair on its face

7 shall be not be open to collateral attack, but may be tested by certiorari or other proper

8 action or proceeding brought directly for that purpose if commenced within the time

9 after the order is made provided by s. 893.73 (2) challenged in an action brought

10 under s. 82.15.

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 bill, the time frame under current s. 80.34 has been eliminated. New sub. (3) is based on the last sentence of current s. 80.07. No substantive change is intended.

11 SECTION 97. 80.35 of the statutes is repealed.

12 SECTION 98. 80.37 of the statutes is renumbered 82.33 and amended to read:

13 82.33 Lost records; how restored; effect. (1) Whenever the record of the

14 laying out of any highway is has been lost or destroyed, the supervisors board of the

15 town in which the highway is located, upon notice being served on all interested

16 parties in accordance with s. 80.05 82.10 (4), may make a new record of the highway.

17 The notice shall fix state the time when and the place where the supervisors will

18 decide upon making whether to make the new record. The notice shall specify as near

19 as may be contain a legal description of the highway for which the proposed record

20 will be made and a scale map of the land that would be affected. Notice need not be

21 given to persons who waive the notice or consent to the making of the order either

22 before or after it is entered.

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1 (2) The supervisors shall meet pursuant to the notice given under sub. (1) and

2 hear any arguments or evidence that may be offered for or against. At the time and

3 place stated in the notice, the town board shall hold a public hearing regarding the

4 proposed new record, and shall make a new record as they consider it considers

5 proper. The supervisors may adjourn from time to time, and an entry of each

6 adjournment shall be made in the record by the town clerk. If the supervisors find

7 board finds that the highway is a legal highway, the record of which has been lost

8 or destroyed, they the board shall make a written order stating those facts and

9 specifying the course, width, and other pertinent description of the highway. The

10 order shall be filed and recorded in the office of with the town clerk, who shall note

11 the time of recording the order in the record and recorded in the office of the register

12 of deeds for the county in which the highway is located. Any number of highways may

13 be included in one notice or order under this section. A failure or refusal to make a

14 new record for any highway does not preclude a subsequent proceeding for that

15 purpose.

16 (3) Any person through whose land a highway described in an order entered

17 under sub. (2) passes may appeal from the order under s. 82.15 on the ground

18 grounds that the highway described in the order was not a legal highway in fact. The

19 appeal shall be made in the time and manner provided for appealing from orders

20 laying out highways, and proceedings shall be had on the appeal as in case of appeals

21 from orders laying out highways. No person may call into question the regularity of

22 proceedings under this section except owners of land on whom notice should have

23 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

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filed

be" and that the notice be served on all interested parties. New s. 82.33 requires the notice to contain a legal description and scale map. In addition, the notice must be served on the parties specified in new s. 82.10 (4).

SECTION 99. 80.38 to 80.40 of the statutes are repealed.

SECTION 100. 80.41 of the statutes is renumbered 66.1006 and amended to

read:

66.1006 ~~Discontinuing ways to waters~~ Department of natural

resources approval of discontinuance. No resolution, ordinance, order, or

similar action of ~~any a town board or county board, or a committee thereof of a town~~

or county board <sup>discontinuing</sup> any highway, street, alley, or right-of-way that

provides public access to any navigable lake or stream shall be effective until such

resolution, ordinance, order, or similar action is approved by the department of

natural resources.

NOTE: New s. 66.1006 is based on current s. 80.41. No substantive change is intended, however, the special committee decided this provision was more appropriately placed in ch. 66.

SECTION 101. 80.47 of the statutes is renumbered 66.1035 and amended to

read:

66.1035 Rights of abutting owners. The owners of land abutting on any

highway, street, or alley shall have a common right in the free and unobstructed use

thereof to its of the full width, and no of the highway, street, or alley. No town, village,

city, county, company, or corporation shall close up, use, or obstruct any part of the

highway, street, or alley so as to materially interfere with its usefulness as a highway

or so as to damage abutting property abutting thereon, or permit the same to be done,

without due just compensation being made for any resulting damage resulting

therefrom to the owners of land upon either side of such highway, street or alley. This

section does not impose liability for damages to property on both sides of any street,

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

NOTE: New s. 66.1035 is based on current s. 80.47. No substantive change is intended. The special committee decided it was more appropriate placed in ch. 66.

SECTION 102. 80.48 of the statutes is repealed.

SECTION 103. 80.64 of the statutes is renumbered 66.1031, and 66.1031 (1), (2)

and (3) (intro.) and (b), as renumbered, are amended to read:

66.1031 (1) With the approval of the governing body of the municipality ~~town~~ <sup>or town</sup>

city, ~~village~~ in which a street or highway or part thereof of a street or highway is

located, the county board, to promote the general welfare, may establish street and

highway widths in excess of the widths in use and adopt plans showing the location

and width proposed for any future street or highway, <sup>plain</sup> which shall not be subject to

s. 80.32 82.19 (2). Streets or highways or plans therefor for streets or highways

established or adopted under this section shall be shown on a map showing present

and proposed street or highway lines and, except in counties having a population of

500,000 or more, property lines and owners. The map shall be recorded in the office

of the register of deeds. Notice of the recording shall be published as a class 1 notice,

under ch. 985, in the territory <sup>St. Joe</sup> in which the affected streets or highways are located.

The notice shall briefly set forth the action of the county board. The county board,

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1 upon like approval, publication and notice, may from time to time supplement or  
2 change the same, and such supplements or changes shall be similarly recorded in the  
3 office of the register of deeds.

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

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

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

NOTE: Section 66.1031 is based on current s. 80.64. No substantive change is intended, however, the special committee decided this provision was more appropriately placed in ch. 66.

SECTION 104. 80.65 of the statutes is repealed.

SECTION 105. Chapter 81 (title) of the statutes is repealed.

SECTION 106. 81.01 (title) of the statutes is renumbered 82.03 (title) and amended to read:

82.03 (title) ~~Highways; duties~~ **Duties of town board.**

SECTION 107. 81.01 (intro.) and (1) of the statutes are consolidated, renumbered 82.03 (1) (a) and amended to read:

82.03 (1) (a) The town board shall have the care and supervision of all highways in the town, except as otherwise provided under the town's jurisdiction, including the highways specified in s. 83.06. The town board shall: (1) ~~Appoint~~ may appoint in writing if it deems advisable a superintendent of highways to supervise, under the board's direction of the board, the construction and repair of said, and maintenance of the highways and bridges and fix the compensation and the amount of the bond of such superintendent under the town's jurisdiction. Where no superintendent of highways is appointed, it shall be the duty of the town board to perform all of the duties that are prescribed by law for the superintendent of highways to perform.

SECTION 108. 81.01 (2) of the statutes is renumbered 82.03 (1) (d) and amended to read:

82.03 (1) (d) ~~Provide~~ The town board shall provide the superintendent of highways with necessary forms and books made in compliance with standards prescribed by the department of transportation. ~~of transportation.~~ <sup>Strike</sup>

SECTION 109. 81.01 (3) of the statutes is renumbered 82.03 (2), and 82.03 (2) (intro.) and (b), as renumbered, are amended to read:

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82.03 (2) FUNDING AND EQUIPMENT. (intro.) Provide The town board shall

provide machinery, implements, material, and equipment needed to construct, maintain, and repair said the highways and bridges under <sup>the town's</sup> jurisdiction, and for that purpose those purposes may acquire by purchase or by condemnation in the manner provided by under ch. 32 stone, gravel, sand, clay, earth, gravel pits and, stone quarries, but the and interests in land under s. 83.07. The total sum spent under this subsection in any year for construction, maintenance, and repair of highways and bridges may not exceed the product of \$5,000 multiplied by the miles of highway under the jurisdiction of the town measured by the most recent highway mileage for the town, as determined under s. 86.302, unless one of the following occurs:

(b) The town board, by resolution, submits to the electors of the town as a referendum at a general or special town election the question of exceeding the limit set under this subsection. A copy of the resolution shall be filed as provided in s. 8.37. The board shall abide by the majority vote of the electors of the town on the question. The question shall read as follows:

Shall the town of ... spend up to \$.... over ...., which is the annual limit of the product of \$5,000 multiplied by the miles of highway under the jurisdiction of the town measured by the most recent highway mileage for the town, as determined under section 86.302 of the Wisconsin Statutes, for the construction, maintenance, and repair of its highways and bridges?

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SECTION 110. 81.01 (4) of the statutes is renumbered 82.03 (3) and amended

to read:





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82.03 (3) OVERSIGHT OF SUPERINTENDENT. ~~Compel~~ The town board shall ~~compel~~ <sup>direct</sup>

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the superintendent of highways ~~from time to time to perform~~ the superintendent's <sup>strike</sup>

official duties. <sup>performance of</sup>

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SECTION 111. 81.01 (5), (6), (7) and (9) of the statutes are repealed. ~~the~~

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SECTION 112. 81.01 (8) of the statutes is renumbered 82.03 (4) and amended

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to read:

82.03 (4) CONTROL OF EXPENDITURES. ~~Direct~~ The town board shall direct when

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and where all ~~town moneys received from highway taxes and other available~~

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highway funds shall be expended.

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SECTION 113. 81.01 (10) of the statutes is renumbered 82.03 (5) (b) (intro) and

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amended to read:

82.03 (5) (b) (intro.) ~~Butter~~ The town supervisors may enter any private lands

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with their employees and agents for the following purposes of removing:

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1. To remove weeds and brush and of erecting or removing such to keep the

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highway reasonably safe for travel.

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2. To erect or remove snow fences as may be necessary to keep highways

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reasonably free from snow and open for travel during the winter season.

\*\*\*\*NOTE: Nicholas, I have parsed this subsection to facilitate renumbering and amending to capture as much existing text as possible.

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SECTION 114. 81.01 (11) of the statutes is renumbered 82.03 (7) and amended

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to read:

82.03 (7) HIGHWAY NAMES. By The town board shall, by ordinance, assign a

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name to each of the roads in the town that are under town board jurisdiction. ~~No road~~ <sup>the town's</sup>

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name may be used on more than one road within the jurisdiction of the town.

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SECTION 115. 81.02 (title) of the statutes is repealed.

1 SECTION 116. 81.02 of the statutes is renumbered 82.03 (1) (b) and amended

2 to read:

3 82.03 (1) (b) The town board may appoint more than one superintendent of

4 highways. If more than one superintendent is appointed, the town board shall divide

5 the town into as many districts as there are superintendents. The districts shall be

6 numbered and a superintendent shall be assigned to each district. The term of office

7 of highway superintendents shall be one year from the date of their appointment.

8 A superintendent of highways may be compensated by a regular salary or by a per

9 diem allowance, to be paid out of the highway fund or out of the general fund of the

10 town. In addition to a salary or per diem compensation the superintendent may be

11 paid out of either of said funds a stated amount for the maintenance and upkeep of

12 a horse or automobile or motor truck. Such superintendent before entering upon the

13 duties of superintendent shall execute an official bond in such sum as the town board

14 shall require, with sureties to be approved by the board, and file said bond with the

15 town clerk. A superintendent may be a member of the town board.

16 SECTION 117. 81.03 (title) of the statutes is renumbered 82.05 (title) and

17 amended to read:

18 82.05 (title) Superintendent of highways; duties.

19 SECTION 118. 81.03 of the statutes is renumbered 82.05 (2) and amended to

20 read:

21 82.05 (2) The superintendent of highways shall supervise the construction and

22 maintenance of all highways in the superintendent's district that are required to be

23 maintained by the town, and keep them passable at all times, and perform such other

24 services in connection with said highways as the town board requires, and keep

25 a full account of all the superintendent's receipts and disbursements. The

SECTION 118

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1 superintendent may make such arrangement arrange for the prosecution of the

highway work as the superintendent deems considers necessary and appoint such

supervisors ~~overseers~~ <sup>any overseers that</sup> the highway work requires.

4 (3) When any highway under the superintendent's charge becomes

5 impassable, the superintendent shall put the same highway in passable condition as

6 soon as practicable. The superintendent shall make a complete and full report of all

7 funds received and disbursed by the superintendent whenever requested so to do by

8 the town board, and shall also make a complete and full report to each annual town

9 meeting. The superintendent, and in the superintendent's absence the town board,

10 shall immediately upon notice of its existence fill or remove Upon actual notice of the

11 existence of any depression, ditch, hump, or embankment which that impedes the

12 use of any highway in under the superintendent's district charge, the

13 superintendent, or in the absence of a superintendent the chairperson of the town

14 board, shall as soon as practicable take action to make the highway safe for travel,

15 which may include closing the highway.

NOTE: Section 82.05 is based on current s. 81.03 and on the 4th sentence of current s. 81.02. Current s. 81.03 seemed to contemplate the superintendent having a separate set of accounting books and paying and receiving money. The special committee decided that such a system had the potential for fraud and confusion. Instead, new s. 82.05 (4) simply requires the superintendent to report all actions to the board, and the board can handle making and receiving payments.  
In new sub. (3), the language has been changed from "notice" to "actual notice".

16 SECTION 119. 81.04 of the statutes is repealed.

17 SECTION 120. 81.05 of the statutes is repealed.

18 SECTION 121. 81.06 (title) of the statutes is repealed.

19 SECTION 122. 81.06 of the statutes is renumbered 82.03 (5) (a) and amended

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1 82.03 (5) (a) The town board supervisors may enter upon any lands near any

2 highway in the town and there to construct necessary drains or ditches or

3 embankments for the improvement or protection of the highway; and may enter upon

4 any unimproved lands near any highway in the town and take stone, gravel, sand,

5 clay, earth or trees for the purposes of improving any highway, but shall carefully

6 avoid doing any unnecessary injury to the premises; and may take stone, gravel or

7 other suitable materials within the highway of the town to improve any highway

8 therein. No such material shall be removed from any town without the consent of

9 the town board unless the highway on which the same is found is maintained by the

10 county, in which case the county may use the same for any highway purpose.

11 SECTION 123. 81.07 of the statutes is repealed.

12 SECTION 124. 81.08 (title) of the statutes is renumbered 82.35 (title).

13 SECTION 125. 81.08 (1) of the statutes is renumbered 82.35 (1) (a) and amended

14 to read:

15 82.35 (1) (a) When any highway shall be is practically impassable or be

16 dangerous to travel or when it shall be deemed,

17 (b) When the town board considers it necessary on account of construction or

18 repair work thereon or for other reasons to suspend travel thereon or upon on a

19 highway or on any part of such a highway, the town board may upon its own motion

20 lay out and open temporary highways for the accommodation of public travel through

21 any lands due to construction, repair, or other reasons.

22 (2) (a) The board may contract in writing with the owner or occupant, or both,

23 lessee of any land through which it proposes to lay out such a temporary highways

24 highway, as to the location of the same highway, and the damages that the owner or

25 occupant lessee is to receive, which. The contract shall be filed with the town clerk.

1 (b) In the absence of such a contract under par. (a), the board shall determine  
 2 by the location of the temporary highway and the award of damages. Unless an  
 3 emergency exists, the board shall serve the landowner with notice of the location of  
 4 the highway and the award of damages and shall provide the landowner with 48  
 5 hours to object. The town board shall file a written order filed with the town clerk  
 6 both specifying the location of the temporary highway and the damages, and may  
 7 immediately open such temporary highways. Such highways awarded.  
 8 (4) A temporary highway shall exist only so long as needed and shall be deemed  
 9 considered vacated and discontinued when the permanent highway is again opened  
 10 for public travel.  
 11 SECTION 126. 81.08 (2) of the statutes is renumbered 82.35 (2) (c) and amended  
 12 to read:  
 13 82.35 (2) (c) The owner or occupant of any land occupied by such a temporary  
 14 highway may, at any time after it is opened and within 30 days after it is so vacated  
 15 or discontinued, apply to the town board to determine the owner's or occupant's  
 16 damages; and thereafter the same proceedings may be had as in the case of a claim  
 17 for damages under s. 81.07.  
 18 SECTION 127. 81.08 (3) of the statutes is renumbered 82.35 (3) and amended  
 19 to read:  
 20 82.35 (3) In case such If a temporary highway is opened in connection with or  
 21 on account of road and or bridge construction, the damages agreed upon or awarded  
 22 pursuant to this section may be treated as part of the construction cost and paid out  
 23 of the construction funds in the customary manner of disbursing the same.

NOTE: Section 82.35 is based on current s. 81.08. The special committee was  
 concerned that current law does not satisfy due process. Unless there is an emergency,  
 new s. 82.35 requires notice to the landowner and 48 hours to object.

SECTION 128. 81.11 (title) and (1) to (4) of the statutes are repealed.

NOTE: Section 82.25 is based on current s. 81.11 (5). The language was changed to limit its application to plats in existence on January 1, 2003. Subsections (1) through (4) of current s. 81.11 were deleted because the special committee decided that they were obsolete.  
Current ss. 81.12 and 81.39, 80.30 (2) through (5), and the 2nd-to-last sentence of s. 80.02 were not carried over into this bill. The special committee decided that these provisions were obsolete or better covered by other parts of the statutes.

SECTION 129. 81.11 (5) of the statutes is renumbered 82.25 and amended to

read:

**82.25 Highway taxes for limited-use road.** The Notwithstanding s. 60.10

(1) (a) and (2) (a), the town board, upon its own authority and without direction from

the annual town meeting, may levy and collect a tax on property located in a recorded

and filed plat that existed on January 1, 2003, situated in a town requiring the

approval of such town board, and adjoining a private road used by the public located

therein, and on property adjoining, where the owner regularly uses such road which

is not a portion of any town, county, state, or federal highway system, not exceeding

3 mills for each dollar of assessed valuation thereof. The proceeds of such the tax

shall be expended for the improvement and maintenance of any private roads used

by the public located within such the recorded and filed plat. The town board shall

not expend any of such the funds collected under this section upon a private

driveway.

SECTION 130. 81.12 of the statutes is repealed.

SECTION 131. 81.14 (title) of the statutes is renumbered 66.1029 (title) and

amended to read:

66.1029 (title) ~~Highways; refusal of town to open; appeal to county~~

~~board; cost of opening Appeal to county; the refusal of a town, village, or city~~

~~to open or repair a highway or bridge.~~

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SECTION 132. 81.14 (1) of the statutes is renumbered 66.1029 (1) (a) and

amended to read:

66.1029 (1) (a) If any town, or towns in case of a town line highway, either by

the proper officers, or by a majority vote of the electors voting on such question,

refuse, fail or neglect to city, ~~or~~ village <sup>or town</sup> does not open and put in reasonable condition

for travel a highway, within one year from the date when it on which the highway

was laid out, or refuse, fail or neglect to does not repair any highway or build or repair

any a bridge thereon, in such town or towns, any on a highway, 15 freeholders thereof

of the ~~town~~ city, ~~or~~ village <sup>or town</sup> may appeal to the county board of the county in which the

highway or bridge is situated located, by notice in writing served on the chairperson

or chairpersons county clerk, with copies delivered to the clerk of the town or towns.

(b) For the purpose of this section all highways on <sup>city, village, or</sup> towns, ~~city, or village~~ lines,

which shall have been apportioned between the respective towns, cities, or

villages shall be considered as wholly within the town, city or village to which such

the part of said the highway or bridge is apportioned. In case of town highways which

are upon If a highway is on county lines and which have has not been apportioned

for the purpose of maintenance authority and responsibility, the appeal may be made

to the county board of either county. ~~When it is appealed to,~~

(c) Upon receipt of an appeal, the county board shall, at the next regular

meeting, either by a majority of its members or by a committee of not less than 3,

examine such highway or bridge, and if they determine that it ought to be put in

reasonable condition for travel or ought to be repaired, If it determines that the

appeal should be granted, the county board shall thereupon appropriate therefor

sufficient funds to defray the estimated cost of opening or repairing the highway or

building or repairing the bridge, and the chairperson of the county board shall cause

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1 the highway to be opened and put in reasonable condition for travel or cause the

2 bridge to be repaired or built, and shall keep an accurate account of the expense

3 thereof and such. The expense, when audited and allowed by the county board, shall

4 be charged to the town and affected ~~towns, cities, or villages~~ <sup>city, village, or</sup> in amounts and

5 proportions that the county board shall determine and shall be added to the next

6 county tax apportioned thereto and collected therewith.

7 SECTION 133. 81.14 (2) of the statutes is renumbered 66.1029 (2) and amended

8 to read:

9 66.1029 (2) If any county fails to aid in putting create an established plan,

10 agreed to by the town, ~~city or village~~ <sup>city, village, or</sup> to put any county line highway in reasonable

11 condition for travel any county line highway, the adjoining county may, after not less

12 than 20 30 days' notice in writing given to the county clerk of such the other county,

13 put such the highway in reasonable condition for travel and keep an accurate account

14 of the expense thereof. Such. The expense, when audited and allowed by the county

15 board, shall be prorated and charged to the county whose duty it is to keep the

16 highway in condition for travel. Such county may then charge the expense to the

17 affected town, ~~city or village~~ <sup>city, village, or</sup> whose duty it is to keep the highway in repair and add

18 it to the next county tax, apportion it thereto and collect it therewith apportioned and

19 collected.

20 SECTION 134. 81.14 (3) of the statutes is repealed.

21 SECTION 135. 81.14 (4) of the statutes is renumbered 66.1029 (3) and amended

22 to read:

23 66.1029 (3) In case of ~~If~~ a county line highway which has not been apportioned

24 between towns, ~~cities, or villages~~ <sup>city, village, or</sup> for the purpose of maintenance, and where

25 authority and responsibility, an appeal may be taken to the county board of any



1 county bounded by said the highway, the. The expense incurred in opening and

2 putting in reasonable condition for travel such highways, or in repairing it the

3 highway, or in building or repairing any bridge thereon on the highway, shall be paid

4 primarily by the county to which the appeal is taken, and by said county apportioned.

5 The county to which the appeal is taken shall apportion the expense among all of the

6 counties which that are bounded in whole or in part by such the highway, and the

7 proportionate share of such costs and expense shall be paid by the other counties.

8 The other counties shall pay their apportioned share to the county to which the

9 appeal is taken, upon presentation receipt of a proper claim therefor, and when such

10 When the expense has been paid by the counties liable therefor it shall be charged

11 by the respective counties to their proper towns and added, the counties shall charge

12 their affected ~~towns, cities, or villages~~ <sup>cities, villages, or</sup> and add the charge to the next county tax

apportioned to such the towns and collected therewith.

NOTE: Section 66.1029 is based on current s. 81.14. Under current s. 81.14, the county's oversight is only over towns. This section expands the county's oversight to cities and villages. Since the county is given the same oversight over cities and villages, the section has been moved to ch. 66.

New s. 66.1029 changes where the application must be delivered. Under current s. 81.14, an appeal is begun by serving notice on the chairperson of town or towns. Since the appeal is to the county, the special committee decided that it would be more appropriate to serve the notice on the county. Thus, new s. 66.1029 requires service on the county clerk and copies to be delivered to the towns.

Current s. 81.14 (3) was deleted. That subsection concerned highways that were laid out by commissioners reversing the decision of the supervisors. The provisions for commissioners reversing supervisors was eliminated in 1995 Wisconsin Act 186.

In new sub. (2), the language about a county failing to aid in putting the highway in reasonable condition was changed to require a plan to put the highway in reasonable condition that is agreed to by the town or village. In addition, new sub. (2) was modified to require 30 rather than 20 days' notice.

14 SECTION 136. 81.15 of the statutes is renumbered 893.83 (1) and amended to

15 read:

16 893.83 (1) DAMAGES CAUSED BY HIGHWAY DEFECTS; LIABILITY OF TOWN AND COUNTY

17 MUNICIPALITY. If damages happen to any person or his or her property by reason of

13

1 the insufficiency or want of repairs of any highway which that any town, city, or  
2 village is bound to keep in repair, the person sustaining the damages has a right to  
3 recover the damages from the town, city, or village. If the damages happen by reason  
4 of the insufficiency or want of repairs of a highway which that any county by law or  
5 by agreement with any town, city, or village is bound to keep in repair, or which that  
6 occupies any land owned and controlled by the county, the county is liable for the  
7 damages and the claim for damages shall be against the county. If the damages  
8 happen by reason of the insufficiency or want of repairs of a bridge erected or  
9 maintained at the expense of 2 or more towns, cities, villages, or counties, the action  
10 shall be brought against all of the towns, cities, villages, or counties that are liable  
11 for the repairs of the bridge and upon ~~Upon recovery of judgment, the damages and~~  
12 ~~costs shall be paid by the towns, cities, villages, or counties in the proportion in which~~  
13 ~~they are liable for the repairs, and the.~~ The court may direct the judgment to be  
14 collected from each town, city, village, or county for its proportion only. The amount  
15 recoverable by any person for any damages so sustained shall not exceed \$50,000.  
16 The procedures under s. 893.80 shall apply to the commencement of actions brought  
17 under this section subsection. No action may be maintained to recover damages for  
18 injuries sustained by reason of an accumulation of snow or ice upon any bridge or  
19 highway, unless the accumulation existed for 3 weeks.

20 SECTION 137. 81.17 of the statutes is renumbered 893.83 (2) and amended to  
21 read:  
22 893.83 (2) HIGHWAY DEFECTS; LIABILITY OF WRONGDOER; PROCEDURE. Whenever  
23 damages happen to any person or property by reason of any defect in any highway  
24 or other public ground, or from any other cause for which any town, city, village, or  
25 county would be liable, and such damages are caused by, or arise from, the wrong,

1 default, or negligence thereof and of any person, or private corporation, such person  
 2 or private corporation shall be primarily liable therefor; but the. The town, city,  
 3 village, or county may be sued with the person or private corporation so primarily  
 4 liable. If the town, city, village, or county denies its primary liability and proves upon  
 5 whom such liability rests, the judgment shall be against all of the defendants shown  
 6 by the verdict or finding to be liable for the damages; but judgment. Judgment  
 7 against the town, city, village, or county shall not be enforceable until execution has  
 8 been issued against the party found to be primarily liable and returned unsatisfied  
 9 in whole or in part; or. On such return being made, the defendant town, city, village,  
 10 or county shall be bound by the judgment. The unpaid balance shall be collected in  
 11 the same way as other judgments.

NOTE: Section 893.83 is based on current ss. 81.15 and 81.17. The special  
 committee decided it was more appropriately placed in ch. 893. Though some of the  
 language has been modified to make it more current, no substantive change is intended.

12 SECTION 138. 81.35 of the statutes is renumbered 82.37 and amended to read:

13 82.37 Tunnel under highway by landowner. The owner of land on both

14 sides of a town highway may construct a tunnel under the highway, and the  
 15 necessary may erect fences for the passage of stock, and other purposes, in such  
 16 manner as will that are necessary for the use of the tunnel. The tunnel shall not  
 17 interfere with or endanger travel on the highway. The tunnel shall not be less than  
 18 25 feet in length and shall be maintained by the owner. The owner shall maintain  
 19 the tunnel and shall be liable for all damages which may be occasioned by that occur  
 20 as a result of the failure to keep the tunnel in repair. Unless authorized by a town  
 21 meeting, the tunnel shall not be less than 25 feet in length. The electors of the town  
 22 at an annual town meeting may authorize the construction of any designated a  
 23 tunnel not less than that is less than 25 feet, but at least 16 feet in length. The

1 chairperson of the town shall see that all tunnels in the town are made in accordance  
2 with this section and that they are kept in good repair.

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

\*\*\*\*NOTE: Nicholas, Do you want any cross-references between ss. 60.24 (3) (p) and  
82.03 (19), which derive from s. 82.37 and are very similar?

3 SECTION 139. 81.36 of the statutes is repealed.

4 SECTION 140. 81.38 (title) of the statutes is renumbered 82.08 (title).

5 SECTION 141. 81.38 (1) of the statutes is renumbered 82.08 (1) and amended  
6 to read:

7 82.08 (1) PETITIONS. ~~When any~~ A town that has voted to construct or repair any  
8 culvert or bridge on a highway maintainable maintained by the town, and has  
9 provided for such portion of the cost of such construction or repair as is required by  
10 this section, the town board shall may file a petition with the county board setting  
11 forth said facts and for county aid with the county highway commissioner. The  
12 petition shall describe the location and size of the culvert or bridge; and shall contain  
13 a statement that the town has provided the funds required by sub. (3).

14 (2) FUNDING REQUIREMENTS. (a) Except as provided in par. (b), upon receipt of  
15 a petition for a culvert or bridge with a 36-inch or greater span, or a structure of  
16 equivalent capacity to carry water, the county board, except as herein provided, shall  
17 thereupon appropriate such the sum as will, with the money provided by the town,  
18 be sufficient to defray the expense of constructing or repairing such culvert or bridge,  
19 required by sub. (3) and shall levy a tax therefor, which. The tax, when collected,  
20 shall be disbursed on the order of the chairperson of the county board and the county  
21 clerk, when the town board and county highway committee files a written notice with

1 the clerk that the work has been completed and accepted and held in a separate account

2 administered by the county highway committee.

3 (b) If on January 1, 2003, a county has a policy of providing funding only for

4 culverts and bridges larger than the requirement of par. (a), the county may refuse

5 to fund culverts and bridges that do not meet the minimum requirements of that

6 policy. The minimum size bridge or culvert that a county is required to fund under

7 this section may be raised, but not lowered, by the vote of a majority of the towns in

8 the county. The county board of any county which that has never granted aid under

9 this section may, in its discretion, refuse to make any appropriation all applications

*petitions*

10 under sub. (1).

NOTE: Nicholas, under created s. 82.08 (2) (a), in the first line, should it be this subsection or par. (b)?

11 SECTION 142. 81.38 (2) of the statutes is renumbered 82.08 (3) and amended

12 to read:

13 82.08 (3) SHARED COST. The county shall pay the cost in excess of \$750 up to

14 \$1,500. The town and county shall each pay one-half of the cost of construction or

15 repair above \$1,500. In determining the cost of construction or repair of any culvert

16 or bridge, the cost of constructing or repairing any approach not exceeding 100 feet

17 in length shall be included.

18 SECTION 143. 81.38 (3) of the statutes is renumbered 82.08 (4) and amended

19 to read:

20 82.08 (4) EMERGENCY PETITION. Whenever the construction or repair of any such

21 culvert or bridge must be made without delay, the town board may file its petition

22 with the county clerk and the county highway committee, setting forth the facts

23 respecting explaining the necessity for immediate construction or repairs. It shall

1 then be the duty of the town board and the county highway committee to make such  
 2 ~~construction or repairs with the least possible delay. The town board is authorized~~  
 3 ~~to borrow the entire cost of the work, and to include the town's share of such cost in~~  
 4 ~~the next tax levy construct or repair the culvert or bridge as soon as practicable. The~~  
 5 ~~construction or repair of a culvert or bridge performed and accepted undertaken~~  
 6 pursuant to this subsection shall entitle the town to the same county aid that the  
 7 town would have been entitled to had it filed its petition with the county board as  
 8 provided in sub. (1).

10 to read:

9 SECTION 144. 81.38 (4) of the statutes is renumbered 82.08 (5) and amended

11 82.08 (5) SUPERVISION OVER DESIGN, CONSTRUCTION, AND COST. The county

12 highway committee and the town board shall have full charge of design, sizing,  
 13 letting, inspecting, and accepting the work construction or repair, but the town board  
 14 may leave the matter entirely in the hands of the county highway committee. The

15 county highway committee and the town board must agree on the cost of the project  
 16 and must consult each other during construction.

18 to read:

17 SECTION 145. 81.38 (5) of the statutes is renumbered 82.08 (6) and amended

19 82.08 (6) CONSTRUCTION REQUIREMENTS. No county order may be drawn under

20 sub. (1) (2) for the construction of an arch, a culvert or bridge unless it is constructed  
 21 in a workmanlike manner and built of creosoted wood or timber, steel, stone or  
 22 concrete or a combination thereof, and the design and construction comply with

23 requirements under s. 84.01 (23).

24 SECTION 146. 81.38 (6) of the statutes is renumbered 61.48 and amended to

25 read:

as provided in this subsection that section.

~~procedure by which a as the village may become subject to such provisions~~

~~resolution and its approval by the county board in the same manner and by the same~~

~~may cease to be subject to such provisions only that section by the adoption of a~~

~~become subject to the provisions of this section as provided in this subsection s. 82.08~~

~~respectively to such to the village and its village board. A village which that has~~

~~the words "town" and "town board" as used in this section s. 82.08 shall also apply~~

~~election. Until the village ceases to be subject to the provisions of this section s. 82.08,~~

~~provided in this subsection; and thereafter, until such to approve the villages~~

~~representing villages which have become subject to the provisions of this section as~~

~~subject to s. 82.08 vote of the members of the county board representing towns and~~

~~and approved by a majority of the towns and villages in the county that are already~~

~~effective when a certified copy of such the resolution is filed with the county board~~

~~members of the village board. The election to become subject to s. 82.08 shall be~~

~~Such s. 82.08 by a resolution adopted by a two-thirds majority vote of all of the~~

~~the village board, may elect to become subject to all of the provisions of this section.~~

~~Any village, by a resolution adopted by a two-thirds majority vote of all members of~~

~~61.48 County aid for construction and repair of bridges and culverts.~~

SECTION 146

LRB-2811/P3  
ARG:kmg:pg

SECTION 147. 81.38 (7) of the statutes is renumbered 82.08 (7) and amended

NOTE: Section 61.48 is based on current s. 81.38 (6). Since it concerns villages, the special committee decided it was more appropriately placed in ch. 61. New s. 61.48 changes how the election to be subject to the provisions of new s. 82.08 is approved. The current language in s. 81.38 requires approval "...by a majority vote of the members of the county board representing towns and villages that have become subject to this section". Since the members of the county board no longer represent towns and villages in that manner, new s. 61.48 requires a vote of the majority of the towns and villages that are already subject to s. 82.08.

60-18

1 82.08 (7) NO TAX. Except as provided in sub. (6) and s. ss. 61.48 and 84.14 (3),  
 2 nothing herein contained in this section shall authorize the levy of a tax upon the  
 3 property in any city or village which that is required to maintain its own bridges.

NOTE: Section 82.08 is based on current s. 81.38. Current s. 81.38 requires all  
 petitions for county aid to be granted. The special committee had a number of discussions  
 about whether the county should be involved in projects that are very small, and about  
 the fact that some counties currently put a minimum size requirement on the bridges and  
 culverts that they fund.

The new s. 80.28 (2) limits the funding requirements to bridges or culverts with a  
 span of 36 inches or greater. However, counties that had a greater size requirement in  
 place on January 1, 2003 can continue to abide by that policy. In addition, the size limit  
 can be raised, but not lowered, by the vote of the majority of towns in the county. Current  
 s. 81.38 also seemed to require the town to apply to the county for aid. That has been  
 changed so that a town "may" apply for aid. Finally, the new sub. (2) requires the tax that  
 the county levies to be held in a separate account.

New sub. (3) changes the way projects are funded. The current law requires the  
 town to pay for the first \$750, the county to pay for the second \$750, and the town and  
 county to split amounts in excess of \$1,500. The new sub. (3) requires a straight 50% split.  
 New sub. (5) adds the requirement that the town and county mutually agree on  
 costs and consult with each other during construction.

New sub. (6) does not carry over the language from current s. 82.38 (5) that  
 specified what materials the culvert or bridge should be made of. The special committee  
 decided that the list was unnecessary and that some of the listed materials were outdated.  
 New sub. (8) allows the county to charge the towns an administration charge.

SECTION 148. 81.39 of the statutes is repealed.

SECTION 149. 81.42 (title) of the statutes is repealed.

SECTION 150. 81.42 (1) of the statutes is renumbered 82.03 (8) and amended  
 to read:

82.03 (8) USE OF DAMS AS ROADWAYS. The town board may contract with the  
 owner of any a dam with that has a roadway thereon on it for the use of such the  
 roadway for highway purposes for such period of time as the board may determine.  
 11 The contract shall provide that who shall be responsible for keeping the roadway  
 12 shall at all times be kept in repair by the owner and may be for a period of time that  
 13 the board determines.

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



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

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

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

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

In new s. 82.03 (1), language was included to state that the superintendent of highways could be a member of the town board. Current s. 60.37 (4) (a) already authorizes this.

In new s. 82.03 (2) (b), the ballot language has been changed. The change in the wording of the ballot makes the actual amount that the town is already authorized to spend. Current law seems to only require a statement of the means by which the dollar limit is arrived at. The list of materials in current s. 81.06 has been added to new s. 82.03 (2).

The new s. 82.03 (5) is based on current s. 81.01 (3) and the first one-third of current s. 81.06. It gives the supervisors the additional authority to enter private land in order to erect fences on the right-of-way. The new sub. (6) makes it clear that the town will be responsible for any resulting damages.

Current s. 81.02 requires the superintendent to file a bond before assuming office. The special committee discussed this requirement and concluded that town boards rarely require such bonds. As a result, s. 82.03 (1) gives the board discretion over whether to require a bond. Current s. 81.02 also specifies what fund the superintendent may be paid from. The special committee discussed this requirement and decided it should be left to the town board's discretion.

The language of current s. 81.42 (1) requires the contract to provide that the owner of the dam keep the roadway in repair at all times. New s. 82.03 (8) changes this language to require only that the contract specify who shall keep the road in repair. New s. 82.03 (9) through (18) are simply cross-references to sections outside of this chapter. They have been added to create a more comprehensive list of the duties of the town board in relation to the highways under its jurisdiction. New s. 82.03 (19) is based on the last sentence of current s. 81.35. No substantive change is intended.

SECTION 151. 81.42 (2) of the statutes is renumbered 82.09 and amended to

read:

**82.09 County aid for dams used for bridges.** Whenever any town board

shall may file its a petition with the county board, setting forth the fact that said

stating that the town board has voted to acquire the right to use any such a roadway,

designating as near as may be the location of such dam and roadway, and stating on

a dam. The petition shall contain a legal description and scale map of the dam and

roadway, and shall state the amount agreed to be paid to the owner for the use thereof

*Down Arrow*

1 of the roadway. Upon receipt of a petition, the county board shall appropriate a sum

2 equal to one-half of the amount so agreed to be paid for such the use, and. The county

3 board shall, on the order of the chairperson of the county board and county clerk,

4 cause such sum to be paid to the treasurer of said the town on the order of the

5 chairperson of the county board and county clerk whenever the town board shall

6 notify them notifies the county highway commissioner that a contract for the use of

7 such the roadway has been executed.

NOTE: Section 82.09 is based on current s. 81.42 (2). The contents of the petition have been changed. The original language required the petition to designate "as near as may be" the location of the dam and roadway. New s. 82.09 requires a legal description and scale map.

8 SECTION 152. Chapter 82 (title) of the statutes is created to read:

CHAPTER 82

TOWN HIGHWAYS

11 SECTION 153. Subchapter I (title) of chapter 82 [precedes 82.01] of the statutes

12 is created to read:

CHAPTER 82

SUBCHAPTER I

FUNDING AND GOVERNANCE

16 SECTION 154. 82.01 (intro.), (1) to (9) and (10) of the statutes are created

17 to read:

18 82.01 Definitions. (intro.) In this chapter, the following words and phrases

19 have the designated meanings unless specifically noted:

20 (1) "Freeholder" means a person who owns a fee simple or life estate interest

21 in land, a person who is a land contract vendee, or a person who has an interest in

22 land arising under ch. 766.

"Department" means the department of transportation.

50

2

20

16

(1)  
8

- 1 "Highway order" means an order laying out, altering, or discontinuing a highway or a part of a highway, that contains a legal description of what the order intends to accomplish and a scale map of the land affected by the order.
  - 2
  - 3
  - 4 "Laid out" means any formal act or process by which a municipality determines the location of a highway.
  - 5
  - 6 "Legal description" means a complete description of land without internal references to any other document, and shall be described in one of the following ways:
    - 7 (a) By metes and bounds commencing at a monument at the section or quarter section corner or at the end of a boundary line of a recorded private claim or federal reservation in which the annexed land is located and in one of the following ways:
      - 8
      - 9
      - 10 1. By government lot.
      - 11 2. By recorded private claim.
      - 12 3. By quarter section, section, township, and range.
      - 13 (b) If the land is located in a recorded and filed subdivision or in an area that is subject to a certified survey map, by reference as described in s. 236.28 or 236.34
      - 14 (3).
      - 15
      - 16 "Municipality" means a city, village, or town.
      - 17
      - 18 "Opened" means the completion of work on a highway that places the highway in a condition ready for public use.
      - 19
      - 20 "Town line highway" means a highway that runs on or across the boundary line between a town and another town, a village, or a city.
      - 21
      - 22 "Unrecorded highway" means a highway that is not a recorded highway.
      - 23
      - 24 "Worked" means action of the town in regularly maintaining a highway
- ~~Actions of the town that shall constitute "work" include, but are not~~

1 limited to hauling gravel, grading, clearing or plowing, and ~~expending town funds~~  
by or on behalf of the town <sup>including</sup> any other maintenance on the road. <sup>have added</sup>

\*\*\*\*NOTE: ~~Whereas, I recommend adding a definition for "department" as a~~

3 SECTION 155. 82.03 (1) (title) of the statutes is created to read:  
4 82.03 (1) (title) OVERSIGHT OF HIGHWAYS, SUPERINTENDENT OF HIGHWAYS.  
5 SECTION 156. 82.03 (1) (c), (5) (title) and (c), (6) and (9) to (19) of the statutes  
6 are created to read:

7 82.03 (1) (c) The town board shall fix the compensation and may require and  
8 set the amount of a bond of the superintendent. The town board may reimburse the  
9 superintendent for expenses incurred in performing his or her duties as  
10 superintendent.

11 (5) (title) MAINTENANCE. (c) To erect on the right-of-way fences other than  
12 snow fences.

13 (6) LIABILITY. The town shall be responsible for any damage resulting from  
14 activities undertaken under the authority granted by sub. (5).

15 (9) RUSTIC ROADS. As specified in s. 83.42, the town board shall maintain the  
16 rustic roads under its jurisdiction and may apply to have a highway designated as  
17 a rustic road or withdrawn from the rustic road system.

18 (10) ADDITIONS TO AND DELETIONS FROM COUNTY TRUNK HIGHWAY SYSTEM. The town  
19 board shall approve or deny additions to and deletions from the county trunk  
20 highway system as provided in s. 83.025 (1).

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

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

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

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

9 (15) AGREEMENTS WITH OTHER GOVERNMENTAL BODIES. The town board, under s.  
10 83.027 (9), may enter into agreements with other governmental bodies respecting the  
11 financing, planning, establishment, improvement, maintenance, use, regulation, or  
12 vacation of controlled-access highways or other public ways in their respective  
13 jurisdictions.

14 (16) COUNTY AID HIGHWAYS. The town board may improve county aid highways  
15 under s. 83.14.

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

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

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

23 SECTION 157. 82.05 (1) of the statutes is created to read:

24 82.05 (1) The term of office of highway superintendents shall be one year from  
25 the date of their appointment.

1 SECTION 158. 82.05 (4) of the statutes is created to read:

2 82.05 (4) The superintendent shall routinely notify the town board of all  
3 highway work.

4 SECTION 159. 82.08 (8) of the statutes is created to read:

5 82.08 (8) ADMINISTRATION CHARGE. The county may charge the towns that apply

6 for aid under this section an administration charge. The administration charge shall  
7 be fixed as a percentage of the total costs of administering aid under this section and  
8 the percentage shall be no more than the percentage that the county charges the  
9 state for records and reports.

10 SECTION 160. Subchapter II (title) of chapter 82 [precedes 82.10] of the statutes  
11 is created to read:

12 CHAPTER 82

13 SUBCHAPTER II

14 BASIC PROCEDURES

15 SECTION 161. 82.10 (title), (1) (b), (2), (4) (title) and (b) and (5) of the statutes  
16 are created to read:

17 82.10 (title) Initiation of procedures.

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

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

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

24 (b) A scale map of the land that would be affected by the application  
25 (4) (title) NOTICE RECIPIENTS.

*resolution*  
*application*

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

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

3 of publication.

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

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

6 shall file a lis pendens within 10 days of the introduction of the resolution.

7 SECTION 162. 82.11 (title) of the statutes is created to read:

8 82.11 (title) Meeting.

9 SECTION 163. 82.12 (title) of the statutes is created to read:

10 82.12 (title) Highway order.

11 SECTION 164. 82.14 (title), (1) and (3) of the statutes are created to read:

12 82.14 (title) Acquiring rights to land; damages from discontinuance.

13 (1) Unless the acquisition can be made by mutual agreement, the town board shall

14 utilize the procedures under s. 32.05 to acquire rights to land for the purpose of laying

15 or altering a town highway.

16 (3) An owner of property abutting on a discontinued highway whose property

17 is damaged by the discontinuance may recover damages as provided in ch. 32.

18 SECTION 165. 82.15 of the statutes is created to read:

19 82.15 Appeal of a highway order. Any person aggrieved by a highway order,

20 or a refusal to issue such an order, may seek judicial review under s. 68.13. If the

21 highway is on the line between 2 counties, the appeal may be in the circuit court of

22 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.

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1 SECTION 166. 82.16 (3) of the statutes is created to read:

2 82.16 (3) It shall be presumed that a release was given by the owners of the  
3 lands over which the highway was laid out and the public shall be entitled to use the  
4 full width of the highway, as laid out, without further compensation if all of the  
5 following apply:

- 6 (a) An order laying out the highway has been filed for more than 30 years.
- 7 (b) No award of damages or agreement or release has been filed.
- 8 (c) The highway, or a part of the highway, has been used by the public and public  
9 money has been expended on the highway for at least 5 years.

10 SECTION 167. 82.19 (2) (b) 1. of the statutes is created to read:

11 82.19 (2) (b) 1. In this paragraph, "vehicular travel" means travel using any  
12 motor ~~vehicle~~ vehicle required to be registered under ch. 341 or exempt from  
13 registration under s. 341.05.

14 SECTION 168. Subchapter III (title) of chapter 82 [precedes 82.21] of the  
15 statutes is created to read:

16 CHAPTER 82  
17 SUBCHAPTER III  
18 SPECIAL PROCEDURES

19 SECTION 169. 82.21 (1) (a) and (b), (4) (title) and (5) (title) of the statutes are  
20 created to read:

21 82.21 (1) (a) Six resident freeholders of the town, city, or village deliver an  
22 application to lay out, alter, or discontinue a town line highway to the clerk of every  
23 town, city, or village that would be affected by the proposal.

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



1 (4) (title) APPOINTMENT OF AUTHORITY AND RESPONSIBILITY.

2 (5) (title) APPEAL OF APPOINTMENT.

3 SECTION 170. 82.27 (title), (1), (5) (c) and (d), (9) and (10) of the statutes are  
4 created to read:

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

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

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

14 (5) (c) Administrative costs such as clerical costs and publication costs.  
15 (d) If special meetings are held only for the purpose of considering the  
16 application, per diem compensation for the supervisors.

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

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

23 SECTION 171. Subchapter IV (title) of chapter 82 [precedes 82.31] of the  
24 statutes is created to read:

25 CHAPTER 82

SUBCHAPTER IV

EXISTING HIGHWAYS

SECTION 172. 82.35 (1) (intro.) of the statutes is created to read:

82.35 (1) (intro.) The town board, upon its own motion, may lay out and open

temporary highways through any lands in the following situations:

SECTION 173. 83.015 (2) (b) of the statutes is amended to read:

83.015 (2) (b) In any county with a highway commissioner appointed under s.

83.01 (1) (b) or (c), the county highway committee shall be only a policy-making body

determining the broad outlines and principles governing administration and the

county highway commissioner shall have the administrative powers and duties

prescribed for the county highway committee under par. (a), sub. (3) (a) and ss.

27.065 (4) (b) and (13), 32.05 (1) (a), ~~81.38 (1), (3) and (4)~~, 82.08, 83.01 (6), 83.013,

83.018, 83.025 (1) and (3), 83.026, 83.035, 83.04, 83.05 (1), 83.07 to 83.09, 83.12, 83.14

(6), 83.17, 83.18, 83.42 (3) and (4), 84.01 (5), 84.06 (3), 84.07 (1) and (2), 84.09 (1), (3)

(a) to (c) and (4), 84.10 (1), 86.04 (1) and (2), 86.07 (2), 86.19 (3), 86.34 (1), 114.33 (5),

349.07 (2), 349.11 (4) and (10) and 349.15 (2). No statutory power, duty or function

specified elsewhere for the county highway commissioner may be deemed impliedly

repealed for the sole reason that reference to it has been omitted in this paragraph.

SECTION 174. 83.09 of the statutes is amended to read:

83.09 Emergency repairs of county trunk highways. Whenever a flood

or other casualty renders any county trunk highway dangerous for travel, the town

chairperson shall may immediately close it and notify the county highway

commissioner thereof, and the commissioner shall promptly make repairs necessary

to render the highway safe for travel. If sufficient funds are not available in the

county maintenance fund, the commissioner may, with the consent of the

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1 chairperson of the county board or of the county highway committee, make the  
2 necessary repairs, and the cost thereof shall be paid as soon as funds are available.

NOTE: In the course of discussing a cross-reference to current s. 83.09, the special  
committee discussed that section's use of mandatory language. The special committee  
concluded that it should be changed to "may". The special committee members had  
concerns about the mandatory language breeding litigation and about the town using this  
authority unnecessarily.

3 SECTION 175. 83.18 (1) (title) of the statutes is repealed.

4 SECTION 176. 83.18 (1) of the statutes is renumbered 83.18 and amended to  
5 read:

6 **83.18 Entry on lands.** For constructing or maintaining any highway by the  
7 county, the county highway committee or commissioner shall possess all of the  
8 powers to acquire and enter lands conferred upon town boards by s. 81-06 82.03 (2)  
9 and (5).

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

10 SECTION 177. 83.18 (2) of the statutes is repealed.

11 SECTION 178. 83.19 of the statutes is amended to read:

12 **83.19 Temporary highways and detours.** When any highway which is  
13 maintained or to be maintained by the county shall be practically impassable or be  
14 dangerous to travel or when it shall be deemed necessary on account of construction  
15 or repair work thereon or for other reasons to suspend travel upon any part of such  
16 highway, the county highway commissioner may lay out and open temporary  
17 highways for the accommodation of public travel through any lands, and the county  
18 highway commissioner shall possess the powers conferred by s. 81-08 82.35 upon  
19 town boards. Said powers shall be exercised by the county highway commissioner  
20 in like manner and the procedure shall be the same except that the contract and  
21 orders and claim for damages and other papers relating to the matter shall be filed

1 with the county clerk, and claims for damages shall be acted upon by the county

2 board in the manner provided by s. 893.80.

3 **SECTION 179.** 84.02 (1) of the statutes is amended to read:

4 84.02 (1) DESIGNATION. The system of highways known as the trunk highway

5 system heretofore selected and laid out by the legislature and by the highway

6 commission and by special legislative state trunk highway committees and approved

7 by said highway commission and as revised, altered and changed by and under

8 authority vested by law in the highway commission, is hereby validated and

9 confirmed and designated the state trunk highway system but without prejudice to

10 the exercise of the power given to change such system, and all acts by which parts

11 of said system were heretofore adopted or declared to be trunk highways are

12 confirmed and validated. Section ~~80.32~~ 82.19 (2) does not apply to the state trunk

13 highway system.

14 **SECTION 180.** 84.07 (1) of the statutes is amended to read:

15 84.07 (1) STATE EXPENSE; WHEN DONE BY COUNTY OR MUNICIPALITY. The state trunk

16 highway system shall be maintained by the state at state expense. The department

17 shall prescribe by rule specifications for such maintenance and may contract with

18 any county highway committee or municipality to have all or certain parts of the

19 work of maintaining the state trunk highways within or beyond the limits of the

20 county or municipality, including interstate bridges, performed by the county or

21 municipality, and any county or municipality may enter into such contract. General

22 maintenance activities include the application of protective coatings, the removal

23 and control of snow, the removal, treatment and sanding of ice, interim repair of

24 highway surfaces and adjacent structures, and all other operations, activities and

25 processes required on a continuing basis for the preservation of the highways on the

1 state trunk system, and including the care and protection of trees and other roadside  
2 vegetation and suitable planting to prevent soil erosion or to beautify highways  
3 pursuant to s. 80.01(3) 66.1037, and all measures deemed necessary to provide  
4 adequate traffic service. Special maintenance activities include the restoration,  
5 reinforcement, complete repair or other activities which the department deems are  
6 necessary on an individual basis for specified portions of the state trunk system.  
7 Maintenance activities also include the installation, replacement, rehabilitation, or  
8 replacement of highway signs, traffic control signals, highway lighting, pavement  
9 markings, and intelligent transportation systems. The department may contract  
10 with a private entity for services or materials or both associated with the installation,  
11 replacement, rehabilitation, or maintenance of highway signs, traffic control signals,  
12 highway lighting, pavement markings, and intelligent transportation systems.

13 SECTION 181. 84.14 (3) of the statutes is amended to read:

14 84.14 (3) PARTICIPATION IN TOWN BRIDGE CONSTRUCTION. Whenever any  
15 municipality has participated in the cost of the construction, reconstruction, or  
16 purchase of a bridge under s. 84.11 or 84.12, the property in such municipality shall  
17 thereafter be subject to taxation by the county for the construction and repair of  
18 bridges within the county under s. 81.38 82.08.

19 SECTION 182. 86.26 of the statutes is renumbered 82.50.  
20 SECTION 183. 86.265 of the statutes is renumbered 82.51.  
21 SECTION 184. 86.266 of the statutes is renumbered 82.52.  
22 SECTION 185. 86.315 (3) of the statutes is amended to read:

23 86.315 (3) County forest roads must meet the minimum design standards  
24 under s. 86.26 82.50 (1) (a) 2. and 3. in order to qualify for aids under this section.

NOTE: This bill renumbers the town road standards, which are currently in ch. 86, and moves them into ch. 82. This section merely changes the cross-reference to reflect that move.

**SECTION 186.** 236.16 (2) of the statutes is amended to read:

**236.16 (2) MINIMUM STREET WIDTH.** All streets shall be of the width specified on

the master plan or official map or of a width at least as great as that of the existing

streets if there is no master plan or official map, but no full street shall be less than

60 feet wide unless otherwise permitted by local ordinance. Widths of town roads

platted after January 1, 1966, shall, however, comply with minimum standards for

town roads prescribed by s. 86-26 ~~82.50~~. Streets or frontage roads auxiliary to and

located on the side of a full street for service to the abutting property may not after

January 1, 1966, be less than 49.5 feet wide.

NOTE: This bill renumbers the town road standards which are currently in ch. 86, and moves them into ch. 82. This section merely changes the cross-reference to reflect that move.

**SECTION 187.** 756.04 (2) of the statutes is amended to read:

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

selected under ss. 756.04 to 756.07.

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

**SECTION 188.** 893.73 (2) (c) of the statutes is repealed.

NOTE: The special committee decided that, for judicial economy, all challenges to the issuance of or refusal to issue a highway order should be brought in one action. This section deletes the provisions that provide for a different timeline for an action that challenges the regularity of a highway order.

**SECTION 189.** 893.83 (title) of the statutes is created to read:

**893.83 (title) Highway defects.**

**SECTION 190. Effective date.**

(1) This act takes effect on January 1, 2005.

NOTE: The special committee decided on this effective date so that it corresponds with the publication of the new statute books.

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

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

<i>Current</i>	<i>New</i>
80.15	82.27 (8)
80.16--all but second--to--last sentence	82.13
80.16--second--to--last sentence	66.1003 (10)
80.17	82.15, substantively changed.
80.22	82.12 (3)
80.23	82.20, substantively changed.
80.24	Deleted
80.25	Deleted
80.26	Deleted
80.27	Deleted
80.28	Deleted
80.29	Deleted
80.30	Deleted
80.31 (1) and (2)	Deleted
80.31 (3)	82.14 (2), substantively changed.
80.32 (1)	82.19 (1)
80.32 (2)	82.19 (2)
80.32 (3) and (4)	66.1005
80.33	82.17
80.34	82.16, substantively changed.
80.35	Deleted
80.37	82.33
80.38	Deleted
80.39	Deleted
80.40	Deleted
80.41	66.1006
80.47	66.1035
80.48	Deleted
80.64	66.1031
80.65	Deleted
81.01	82.03, substantively changed.
81.02--first three sentences	82.03 (1), substantively changed.
81.02--fourth sentence	82.05 (1)



1-11-10

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(END)

<i>Current</i>	<i>New</i>
81.02—everything except the first four sentences	Deleted
81.03	82.05 (2) to (4), substantively changed.
81.04	Deleted
81.05	Deleted
81.06 (first 1/3)	82.03 (5)
81.06 (second 2/3)	82.03 (2)
81.07	Deleted
81.08	82.35, substantively changed.
81.11 (5)	82.25, substantively changed.
81.11 (1) through (4)	Deleted
81.12	Deleted
81.14 (1), (2) and (4)	66.1029, substantively changed.
81.14 (3)	Deleted
81.15	893.83 (1)
81.17	893.83 (2)
81.35—all but last sentence	82.37
81.35--last sentence	82.03 (19)
81.36	Deleted
81.38 (1) through (5)	82.08, substantively changed.
81.38 (6)	61.48, substantively changed.
81.39	Deleted
81.42 (1)	82.03 (13)
81.42 (2)	82.09, substantively changed.

INSERT 6-2: ✓

\*\*\*\*NOTE: Because of the renumbering from ch. 80 to ch. 66, a specific cross-reference is no longer necessary, but might be helpful. Do you want to retain the specific cross-reference, or rely on the more general "notwithstanding ... ch. 66"?

INSERT 16-20: ✓

\*\*\*\*NOTE: Did you intend to require the notice to include a scale map only if the proceeding is upon application, but not resolution? This draft requires the notice to contain a scale map regardless of whether it results from application or resolution. Is this consistent with the committee's intent?

INSERT 36-25: ✓

\*\*\*\*NOTE: "Public ground" seems rather broad. Would "public ground acquired or held for highway purposes" be consistent with the intent of the committee's changes?

INSERT 60-18: *was on page 58*

\*\*\*\*NOTE: Under this provision, the election becomes effective when a majority of all towns and villages (taken together) vote to approve the election. I assume this is your intent. If you want to require approval of a majority of towns, and a majority of villages, then the language would need to be slightly modified.

¶ See also s. 81.38 (1), renumbered 82.08(1), and

*in news s. 82.08(2)(b)*

to last sentence, which has *similar*

text regarding the required vote. ~~but~~ *but*

it ~~is~~ *is* ~~not~~ *not* ~~specified~~ *specified* if *does*

"vote" be an *affirmative*

"majority" *or* ~~not~~ *not* ~~only~~ *only* that a "majority" *should* ~~be~~ *be*

of the town *vote*. *Should* ~~the~~ *the*

head, *(I)* "the affirmative vote" *(I)*

**DRAFTER'S NOTE**

**FROM THE**

**LEGISLATIVE REFERENCE BUREAU**

LRB-2811/P4dn

ARG: [Signature]

ATTN: Nicholas Zavos

The statutes generally recognize the unity between a municipality's jurisdiction over a highway and its responsibility for maintenance of a highway. In various places in the attached draft, the phrase "authority and responsibility" over a highway replaces the concept of jurisdiction based upon responsibility for maintenance of a highway. I am not sure that this creates clarity in the statutes, and could potentially result in confusion.

Given the restructuring of the draft from the "P2" to the "P3" (and continuing into this "P4"), the positioning of the Legislative Council notes may need to be significantly modified. Also, the LRB editors do not edit Legislative Council notes (including the table at the end of the draft), so you may want to carefully review the notes again.

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Legislative Attorney

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LRB-2811/P4dn  
ARG:kmg:pg

**DRAFTER'S NOTE  
FROM THE  
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October 7, 2003

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