

acquired or held for highway purposes

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

3 **66.1005 (1)** When any highway ~~shall be or public ground~~ is discontinued the
4 same, the land where the highway or public ground is located shall belong to the
5 owner or owners of the adjoining lands; ~~if it shall be.~~ If the highway or public ground
6 is located between the lands of different owners, it shall be annexed to the lots to
7 which it originally belonged if that can be ascertained; if not it. If the lots to which
8 the land originally belonged cannot be ascertained, the land shall be equally divided
9 between the owners of the lands on each side thereof of the highway or public ground.

7 ***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?

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

12 **66.1005 (2) (a) (intro.)** Whenever any public highway or public ground has been
13 vacated or discontinued, ~~any all~~ any easements and rights incidental ~~thereto~~ acquired by
14 or belonging to the easements that belong to any county, school district, town, village
15 or, city or to any, utility, or person and relating that relate to any underground or
16 overground structures, improvements, or services and all rights of entrance,
17 maintenance, construction, and repair of the structures, improvements, or services
18 shall continue, unless one of the following applies:

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

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

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

1 66.1005 (2) (c) Damages for the discontinuance of the easements and rights
2 described in par. (a) shall be assessed against the land benefited in the proceedings
3 for assessment of damages or benefits upon the vacation or discontinuance of the
4 public highway or public ground. The Unless the parties agree on a different amount,
5 the amount of the damages shall be the present value of the property to be removed
6 or abandoned, plus the cost of removal, less the salvage value of the removed or
7 abandoned property, ~~or any other amount that may be agreed upon between the~~
8 ~~interested parties.~~ The owner of the easements and incidental rights, upon
9 application to the treasurer and upon furnishing satisfactory proof, shall be entitled
10 to any payments of or upon the assessment of damages.

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

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

14 **SECTION 92.** 80.32 (5) of the statutes is renumbered 82.19 (2) (c) and amended
15 to read:

16 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.

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

18 **82.17 Highway papers, where filed.** All applications, orders, awards,
19 bonds, and other papers relating to the laying out, altering, widening or
20 discontinuing of highways under this chapter shall be promptly filed in the office of

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1 the town, city, or village clerk where the highway is located, except as otherwise
2 specifically provided in this chapter.

> NOTE: ~~Section 82.17 is based on current s. 80.34.~~ 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. ✓

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

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

6 82.16 (1) Every order ~~of the supervisors or the supervisors and commissioners~~
7 ~~or of the county board or a committee thereof~~ laying out, widening, altering, or
8 discontinuing ~~any a highway, or under this chapter, and any order~~ restoring the
9 records thereof, and the order of any commissioners reversing or affirming the same
10 on appeal, and the record or certified copy thereof record of a highway, shall be
11 presumptive evidence of the facts therein stated and of the regularity of all the
12 proceedings prior to the making of such the order.

13 SECTION 96. 80.34 (2) of the statutes is renumbered 82.16 (2) and amended to
14 read:

15 82.16 (2) The validity of any such an order described in sub. (1), if fair on its
16 face ~~shall, is~~ not be open to collateral attack, but may be tested by certiorari or other
17 proper action or proceeding brought directly for that purpose if commenced within
18 the time after the order is made provided by s. 893.73 (2) challenged in an action
19 brought 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.

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20 SECTION 97. 80.35 of the statutes is repealed.

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

2 **82.33 Lost records; how restored; effect.** (1) Whenever the record of the
3 laying out of any highway is has been lost or destroyed, the ~~supervisors~~ board of the
4 town in which the highway is located, upon notice being served ~~on all interested~~
5 parties in accordance with s. ~~80.05~~ 82.10 (4), may make a new record of the highway.
6 The notice shall ~~fix~~ state the time when and the place where the ~~supervisors~~ board
7 will decide ~~upon making~~ whether to make the new record. The notice shall ~~specify~~
8 as ~~near as may be~~ contain a legal description of the highway for which the proposed
9 record will be made and a scale map of the land that would be affected. Notice need
10 not be given to persons who waive the notice or consent to the ~~making~~ issuance of the
11 order ~~either before or after it is entered~~.

12 (2) ~~The supervisors shall meet pursuant to the notice given under sub. (1) and~~
13 ~~hear any arguments or evidence that may be offered for or against~~ At the time and
14 place stated in the notice, the town board shall hold a public hearing regarding the
15 proposed new record, and shall make a new record as ~~they consider~~ it considers
16 proper. ~~The supervisors may adjourn from time to time, and an entry of each~~
17 ~~adjournment shall be made in the record by the town clerk. If the supervisors find~~
18 board finds that the highway is a legal highway, the record of which is has been lost
19 or destroyed, ~~they~~ the board shall ~~make~~ issue a written order stating those facts and
20 specifying the course, width, and other pertinent description of the highway. The
21 order shall be filed ~~and recorded in the office of~~ with the town clerk, ~~who shall note~~
22 ~~the time of recording the order in the record~~ and recorded in the office of the register
23 of deeds for the county in which the highway is located. Any number of highways may
24 be included in one notice or order under this section. A failure or refusal to make a

1 new record for any highway does not preclude a subsequent proceeding for that
2 purpose.

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

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

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

12 SECTION 100. 80.41 of the statutes is renumbered 66.1006 and amended to
13 read:

14 **66.1006 ~~Discontinuing ways to waters~~ Department of natural**
15 **resources approval of discontinuance.** No resolution, ordinance, order, or
16 similar action of ~~any a~~ a town board or county board, ~~or of a committee thereof of a town~~
17 ~~board or county board,~~ board or county board, discontinuing any highway, street, alley, or right-of-way that
18 provides public access to any navigable lake or stream shall be effective until such
19 resolution, ordinance, order, or similar action is approved by the department of
20 natural resources.

7 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.

1 **SECTION 101.** 80.47 of the statutes is renumbered 66.1035 and amended to
2 read:

3 **66.1035 Rights of abutting owners.** The owners of land abutting on any
4 highway, street, or alley shall have a common right in the free and unobstructed use
5 ~~thereof to its of the full width, and no of the highway, street, or alley.~~ No town, village,
6 city, county, company, or corporation shall close up, use, or obstruct any part of the
7 highway, street, or alley so as to materially interfere with its usefulness as a highway
8 or so as to damage abutting property ~~abutting thereon~~, or permit the same to be done,
9 without due just compensation being made for any resulting damage ~~resulting~~
10 ~~therefrom to the owners of land upon either side of such highway, street or alley.~~ This
11 section does not impose liability for damages to property ~~on both sides of any street,~~
12 ~~highway or alley~~ arising from the use, maintenance, and operation of tracks or other
13 public improvement legally laid down, built, or established in any street, highway,
14 or alley prior to April 7, 1889. All rights of in property ~~which would that could~~ entitle
15 ~~the owners an owner~~ to damages for injury ~~thereto under the foregoing provisions~~
16 this section may be condemned and permanently appropriated by any corporation
17 ~~authorized to use or obstruct any highway, street or alley that is listed in s. 32.02 in~~
18 the same manner that other property may be condemned and appropriated by such
19 by the corporation.

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

20 **SECTION 102.** 80.48 of the statutes is repealed.

21 **SECTION 103.** 80.64 of the statutes is renumbered 66.1031, and 66.1031 (1), (2)
22 and (3) (intro.) and (b), as renumbered, are amended to read:

1 66.1031 (1) With the approval of the governing body of ~~the municipality~~ a city,
2 village, or town in which a street or highway or part thereof of a street or highway
3 is located, the county board, to promote the general welfare, may establish street and
4 highway widths in excess of the widths in use and adopt plans showing the location
5 and width proposed for any future street or highway, which shall not be subject to
6 s. ~~80.32~~ 82.19 (2). Streets or highways or plans ~~therefor~~ for streets or highways
7 established or adopted under this section shall be shown on a map showing present
8 and proposed street or highway lines and, except in counties having a population of
9 500,000 or more, property lines and owners. The map shall be recorded in the office
10 of the register of deeds. Notice of the recording shall be published as a class 1 notice,
11 under ch. 985, in ~~the territory~~ any city, village, or town in which the affected streets
12 or highways are located. The notice shall briefly set forth the action of the county
13 board. ~~The county board, upon like approval, publication and notice, may from time~~
14 ~~to time supplement or change the same, and such supplements or changes shall be~~
15 ~~similarly recorded in the office of the register of deeds.~~

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

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

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

7 NOTE: ~~Section 66.1021 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.

13 **SECTION 104.** 80.65 of the statutes is repealed.

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

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

17 **82.03 (title) ~~Highways; duties~~ Duties of town board.**

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

20 82.03 (1) (a) The town board shall have the care and supervision of all highways
21 ~~in the town, except as otherwise provided~~ under the town's jurisdiction, including the
22 highways specified in s. 83.06. The town board shall: (1) ~~Appoint~~ may appoint in
23 writing ~~if it deems advisable~~ a superintendent of highways to supervise, under the

1 ~~board's direction of the board, the construction and, repair of said, and maintenance~~
2 ~~of the highways and bridges and fix the compensation and the amount of the bond~~
3 ~~of such superintendent under the town's jurisdiction.~~ Where no superintendent of
4 highways is appointed, it shall be the duty of the town board to perform all of the
5 duties that are prescribed by law for the superintendent of highways to perform.

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

8 82.03 (1) (d) ~~Provide~~ The town board shall provide the superintendent of
9 highways with necessary forms and books made in compliance with standards
10 prescribed by the department of transportation.

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

13 82.03 (2) FUNDING AND EQUIPMENT (intro.) ~~Provide~~ The town board shall
14 provide machinery, implements, material, and equipment needed to construct,
15 maintain, and repair said ~~the~~ highways and bridges under the town's jurisdiction,
16 and for ~~that purpose~~ those purposes may acquire by purchase or by condemnation
17 ~~in the manner provided by~~ under ch. 32 stone, gravel, sand, clay, earth, gravel pits
18 ~~and, stone quarries, but the~~ and interests in land under s. 83.07. The total sum spent
19 under this subsection in any year for construction, maintenance, and repair of
20 highways and bridges may not exceed the product of \$5,000 multiplied by the miles
21 of highway under the jurisdiction of the town measured by the most recent highway
22 mileage for the town, as determined under s. 86.302, unless one of the following
23 occurs:

24 (b) The town board, by resolution, submits to the electors of the town as a
25 referendum at a general or special town election the question of exceeding the limit

1 set under this subsection. A copy of the resolution shall be filed as provided in s. 8.37.
2 The board shall abide by the majority vote of the electors of the town on the question.
3 The question shall read as follows:

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

9 FOR SPENDING AGAINST SPENDING

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NOTE: A

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

11 to read:

12 82.03 (3) OVERSIGHT OF SUPERINTENDENT. ~~Compel~~ The town board shall direct
13 the superintendent of highways from time to time to perform in the performance of
14 the superintendent's official duties.

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

16 SECTION 112. 81.01 (8) of the statutes is renumbered 82.03 (4) and amended
17 to read:

18 82.03 (4) CONTROL OF EXPENDITURES. ~~Direct~~ The town board shall direct when
19 and where all ~~town moneys received from highway taxes and other available~~
20 highway funds shall be expended.

21 SECTION 113. 81.01 (10) of the statutes is renumbered 82.03 (5) (b) (intro) and
22 amended to read:

23 82.03 (5) (b) (intro.) ~~Enter~~ The town supervisors may enter any private lands
24 with their employees and agents for the following purposes ~~of removing:~~

1 1. To remove weeds and brush and of erecting or removing such to keep the
2 highway reasonably safe for travel.

3 2. To erect or remove snow fences as may be necessary to keep highways
4 reasonably free from snow and open for travel during the winter season.

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NOTE: A

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

5 **SECTION 114.** 81.01 (11) of the statutes is renumbered 82.03 (7) and amended
6 to read:

7 82.03 (7) HIGHWAY NAMES. By The town board shall, by ordinance, assign a
8 name to each of the roads ~~in the town that are under town board~~ the town's
9 jurisdiction. No road name may be used on more than one road within the
10 jurisdiction of the town.

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

12 **SECTION 116.** 81.02 of the statutes is renumbered 82.03 (1) (b) and amended
13 to read:

14 82.03 (1) (b) The town board may appoint more than one superintendent of
15 highways. If more than one superintendent is appointed, the town board shall divide
16 the town into as many districts as there are superintendents. The districts shall be
17 numbered and a superintendent shall be assigned to each district. ~~The term of office~~
18 ~~of highway superintendents shall be one year from the date of their appointment.~~
19 ~~A superintendent of highways may be compensated by a regular salary or by a per~~
20 ~~diem allowance, to be paid out of the highway fund or out of the general fund of the~~
21 ~~town. In addition to a salary or per diem compensation the superintendent may be~~
22 ~~paid out of either of said funds a stated amount for the maintenance and upkeep of~~
23 ~~a horse or automobile or motor truck. Such superintendent before entering upon the~~

1 ~~duties of superintendent shall execute an official bond in such sum as the town board~~
2 ~~shall require, with sureties to be approved by the board, and file said bond with the~~
3 ~~town clerk~~ A superintendent may be a member of the town board.

NOTE: ↗

4 SECTION 117. 81.03 (title) of the statutes is renumbered 82.05 (title) and
5 amended to read:

6 **82.05 (title) Superintendent of highways; duties.**

7 SECTION 118. 81.03 of the statutes is renumbered 82.05 (2) and amended to
8 read:

9 82.05 (2) The superintendent of highways shall supervise the construction and
10 maintenance of all highways in the superintendent's district that are required to be
11 maintained by the town, and keep them passable at all times, and perform such other
12 services in connection with said the highways as the town board requires, ~~and keep~~
13 ~~a full account of all the superintendent's receipts and disbursements.~~ The
14 superintendent may ~~make such arrangement~~ arrange for the prosecution of the
15 highway work as the superintendent deems considers necessary and appoint such
16 supervisors ~~as~~ any overseers that the highway work requires.

17 (3) When any highway under the superintendent's charge becomes
18 impassable, the superintendent shall put the ~~same~~ highway in passable condition as
19 soon as practicable. ~~The superintendent shall make a complete and full report of all~~
20 ~~funds received and disbursed by the superintendent whenever requested so to do by~~
21 ~~the town board, and shall also make a complete and full report to each annual town~~
22 ~~meeting. The superintendent, and in the superintendent's absence the town board,~~
23 ~~shall immediately upon notice of its existence fill or remove~~ Upon actual notice of the
24 existence of any depression, ditch, hump, or embankment which that impedes the
25 use of any highway ~~in~~ under the superintendent's district charge, the

1 superintendent, or in the absence of a superintendent the chairperson of the town
2 board, shall as soon as practicable take action to make the highway safe for travel,
3 which may include closing the highway.

7 NOTE: ~~Section 82.05 is based on current s. 81.03 and on the 4th sentence of current s. 82.02.~~ 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”.

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4 SECTION 119. 81.04 of the statutes is repealed.

5 SECTION 120. 81.05 of the statutes is repealed.

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

7 SECTION 122. 81.06 of the statutes is renumbered 82.03 (5) (a) and amended
8 to read:

9 82.03 (5) (a) The town board supervisors may enter upon any lands near any
10 highway in the town and there to construct necessary drains or ditches or
11 embankments for the improvement or protection of the highway; and may enter upon
12 any unimproved lands near any highway in the town and take stone, gravel, sand,
13 clay, earth or trees for the purposes of improving any highway, but shall carefully
14 avoid doing any unnecessary injury to the premises; and may take stone, gravel or
15 other suitable materials within the highway of the town to improve any highway
16 therein. No such material shall be removed from any town without the consent of
17 the town board unless the highway on which the same is found is maintained by the
18 county, in which case the county may use the same for any highway purpose.

19 SECTION 123. 81.07 of the statutes is repealed.

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

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1 **SECTION 125.** 81.08 (1) of the statutes is renumbered 82.35 (1) (a) and amended
2 to read:

3 82.35 (1) (a) When any highway shall be is practically impassable or be
4 dangerous to travel ~~or when it shall be deemed.~~

5 ~~(b) When the town board considers it necessary on account of construction or~~
6 ~~repair work thereon or for other reasons to suspend travel thereon or upon on a~~
7 ~~highway or on any part of such a highway, the town board may upon its own motion~~
8 ~~lay out and open temporary highways for the accommodation of public travel through~~
9 ~~any lands due to construction, repair, or other reasons.~~

10 **(2) (a)** The board may contract in writing with the owner or ~~occupant, or both,~~
11 ~~lessee~~ of any land through which it proposes to lay out ~~such a temporary highways~~
12 ~~highway~~, as to the location of the ~~same highway~~, and the damages ~~that~~ the owner or
13 ~~occupant lessee~~ is to receive, ~~which.~~ The contract shall be filed with the town clerk.

14 **(b)** In the absence of ~~such a contract under par. (a),~~ the board shall determine
15 ~~by the location of the temporary highway and the award of damages. Unless an~~
16 ~~emergency exists, the board shall serve the landowner with notice of the location of~~
17 ~~the highway and the award of damages and shall provide the landowner with 48~~
18 ~~hours to object. The town board shall file a written order filed with the town clerk~~
19 ~~both specifying the location of the temporary highway and the damages, and may~~
20 ~~immediately open such temporary highways. Such highways awarded.~~

21 **(4)** A temporary highway shall exist only so long as needed and shall be deemed
22 ~~considered~~ vacated and discontinued when the permanent highway is again opened
23 for public travel.

24 **SECTION 126.** 81.08 (2) of the statutes is renumbered 82.35 (2) (c) and amended
25 to read:

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1 82.35 (2) (c) The owner or occupant of any land occupied by such a temporary
2 highway may, at any time after it is opened and within 30 days after it is so vacated
3 or discontinued, apply to the town board to determine the owner's or occupant's
4 damages; and thereafter the same proceedings may be had as in the case of a claim
5 for damages under s. 81.07.

6 **SECTION 127.** 81.08 (3) of the statutes is renumbered 82.35 (3) and amended
7 to read:

8 82.35 (3) ~~In case such~~ If a temporary highway is opened in connection with or
9 on account of road ~~and or~~ bridge construction, the damages agreed upon or awarded
10 pursuant to this section may be treated as part of the construction cost and paid out
11 of the construction funds ~~in the customary manner of disbursing the same.~~

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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.

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

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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.

13 **SECTION 129.** 81.11 (5) of the statutes is renumbered 82.25 and amended to
14 read:

15 **82.25 Highway taxes for limited-use road.** The Notwithstanding s. 60.10
16 (1) (a) and (2) (a), the town board, upon its own authority and without direction from
17 the annual town meeting, may levy and collect a tax on property located in a recorded
18 and filed plat that existed on January 1, 2003, situated in a town requiring the
19 approval of such town board, and adjoining a private road used by the public located
20 therein, and on property adjoining, where the owner regularly uses such road which

1 is not a portion of any town, county, state, or federal highway system, not exceeding
2 3 mills for each dollar of assessed valuation thereof. The proceeds of ~~such~~ the tax
3 shall be expended for the improvement and maintenance of any private roads used
4 by the public located within ~~such~~ the recorded and filed plat. The town board shall
5 not expend any of ~~such~~ the funds collected under this section upon a private
driveway.

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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 of the refusal to open or repair a highway or bridge.

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, village, or town 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 city, village, or town 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 city, village, or town or towns.

1 (b) For the purpose of this section ~~all~~, highways on city, village, or town lines,
2 ~~which shall~~ that have been apportioned between the respective cities, villages, or
3 towns shall be considered as wholly within the city, village, or town to which ~~such~~ the
4 part of said ~~the~~ highway or bridge is apportioned. ~~In case of town highways which~~
5 ~~are upon~~ If a highway is on county lines and ~~which have~~ has not been apportioned
6 for the purpose of ~~maintenance~~ authority and responsibility, the appeal may be made
7 to the county board of either county. ~~When it is appealed to,~~

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

21 **SECTION 133.** 81.14 (2) of the statutes is renumbered 66.1029 (2) and amended
22 to read:

23 66.1029 (2) If any county fails to ~~aid in putting~~ create an established plan,
24 agreed to by the city, village, or town, to put any county line highway in reasonable
25 condition for travel ~~any county line highway~~, the adjoining county may, after not less

1 than ~~20~~ 30 days' notice in writing given to the county clerk of ~~such~~ the other county,
2 put ~~such~~ the highway in reasonable condition for travel and keep an accurate account
3 of the expense thereof. ~~Such.~~ The expense, when audited and allowed by the county
4 board, shall be prorated and charged to the county whose duty it is to keep the
5 highway in condition for travel. Such county may then charge the expense to the
6 affected city, village, or town whose duty it is to keep the highway in repair and add
7 it to the next county tax, ~~apportion it thereto and collect it therewith~~ apportioned and
8 collected.

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

10 **SECTION 135.** 81.14 (4) of the statutes is renumbered 66.1029 (3) and amended
11 to read:

12 66.1029 (3) ~~In case of~~ If a county line highway ~~which~~ has not been apportioned
13 between cities, villages, or towns for the purpose of ~~maintenance, and where~~
14 authority and responsibility, an appeal may be taken to the county board of any
15 county bounded by ~~said~~ the highway, ~~the.~~ The expense incurred in opening and
16 putting in reasonable condition for travel ~~such~~ highway, or in repairing it ~~the~~
17 highway, or in building or repairing any bridge ~~thereon~~ on the highway, shall be paid
18 primarily by the county to which the appeal is taken, ~~and by said county apportioned.~~
19 The county to which the appeal is taken shall apportion the expense among all of the
20 counties ~~which~~ that are bounded in whole or in part by ~~such~~ the highway, ~~and the~~
21 ~~proportionate share of such costs and expense shall be paid by the other counties.~~
22 The other counties shall pay their apportioned share to the county to which the
23 appeal is taken, upon ~~presentation~~ receipt of a proper claim ~~therefor, and when such.~~
24 When the expense has been paid by the counties ~~liable therefor~~ it shall be charged
25 by the respective counties to their proper towns and added, the counties shall charge

1 their affected cities, villages, or towns and add the charge to the next county tax
2 apportioned to such the cities, villages, or 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.

3 **SECTION 136.** 81.15 of the statutes is renumbered 893.83 (1) and amended to
4 read:

5 **893.83 (1) DAMAGES CAUSED BY HIGHWAY DEFECTS; LIABILITY OF TOWN AND COUNTY**
6 **MUNICIPALITY.** If damages happen to any person or his or her property by reason of
7 the insufficiency or want of repairs of any highway ~~which~~ that any town, city, or
8 village is bound to keep in repair, the person sustaining the damages has a right to
9 recover the damages from the town, city, or village. If the damages happen by reason
10 of the insufficiency or want of repairs of a highway ~~which~~ that any county by law or
11 by agreement with any town, city, or village is bound to keep in repair, or ~~which~~ that
12 occupies any land owned and controlled by the county, the county is liable for the
13 damages and the claim for damages shall be against the county. If the damages
14 happen by reason of the insufficiency or want of repairs of a bridge erected or
15 maintained at the expense of 2 or more towns, cities, villages, or counties, the action
16 shall be brought against all of the towns, cities, villages, or counties that are liable
17 for the repairs of the bridge ~~and upon.~~ Upon recovery of judgment, the damages and

1 costs shall be paid by the towns, cities, villages, or counties in the proportion in which
2 they are liable for the repairs; ~~and the.~~ The court may direct the judgment to be
3 collected from each town, city, village, or county for its proportion only. The amount
4 recoverable by any person for any damages so sustained shall not exceed \$50,000.
5 The procedures under s. 893.80 shall apply to the commencement of actions brought
6 under this ~~section~~ subsection. No action may be maintained to recover damages for
7 injuries sustained by reason of an accumulation of snow or ice upon any bridge or
8 highway, unless the accumulation existed for 3 weeks.

9 **SECTION 137.** 81.17 of the statutes is renumbered 893.83 (2) and amended to
10 read:

11 **893.83 (2) HIGHWAY DEFECTS; LIABILITY OF WRONGDOER; PROCEDURE.** Whenever
12 damages happen to any person or property by reason of any defect in any highway
13 or other public ground, or from any other cause for which any town, city, village, or
14 county would be liable, and such damages are caused by, or arise from, the wrong,
15 default, or negligence thereof and of any person, or private corporation, such person
16 or private corporation shall be primarily liable therefor; ~~but the.~~ The town, city,
17 village, or county may be sued with the person or private corporation so primarily
18 liable. If the town, city, village, or county denies its primary liability and proves upon
19 whom such liability rests, the judgment shall be against all of the defendants shown
20 by the verdict or finding to be liable for the damages; ~~but judgment.~~ Judgment
21 against the town, city, village, or county shall not be enforceable until execution has
22 been issued against the party found to be primarily liable and returned unsatisfied
23 in whole or in part; ~~on.~~ On such return being made, the defendant town, city, village,
24 or county shall be bound by the judgment. The unpaid balance shall be collected in
25 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.

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

2 **82.37 Tunnel under highway by landowner.** The owner of land on both
3 sides of a town highway may construct a tunnel under the highway, and the
4 necessary ~~may erect fences for the passage of stock, and other purposes, in such~~
5 ~~manner as will~~ that are necessary for the use of the tunnel. The tunnel shall not
6 interfere with or endanger travel on the highway. ~~The tunnel shall not be less than~~
7 ~~25 feet in length and shall be maintained by the owner.~~ The owner shall maintain
8 the tunnel and shall be liable for all damages ~~which may be occasioned by that occur~~
9 as a result of the failure to keep the tunnel in repair. Unless authorized by a town
10 meeting, the tunnel shall not be less than 25 feet in length. The electors of the town
11 at an annual town meeting may authorize the construction of ~~any designated a~~
12 ~~tunnel not less than~~ that is less than 25 feet, but at least 16 feet in length. The
13 ~~chairperson of the town shall see that all tunnels in the town are made in accordance~~
14 ~~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?~~

15 SECTION 139. 81.36 of the statutes is repealed.

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

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

19 82.08 (1) PETITIONS. ~~When any A town that has voted to construct or repair any~~
20 ~~culvert or bridge~~ or culvert ~~on a highway maintainable~~ maintained by the town, and has
21 ~~provided for such portion of the cost of such construction or repair as is required by~~

Strike
20

1 this section, the town board shall may file a petition with the county board setting
 2 forth said facts and for county aid with the county highway commissioner. The
 3 petition shall describe the location and size of the ~~culvert or bridge~~; and shall contain
 4 a statement that the town has provided the funds required by sub. (3).

5 (2) FUNDING REQUIREMENTS. (a) Except as provided in par. (b), upon receipt of
 6 a petition for a ~~culvert or~~ bridge ^{or culvert} with a 36-inch or greater span, or a structure of
 7 equivalent capacity to carry water, the county board, except as herein provided, shall
 8 thereupon appropriate such the sum as will, with the money provided by the town,
 9 be sufficient to defray the expense of constructing or repairing such culvert or bridge,
 10 required by sub. (3) and shall levy a tax therefor, which. The tax, when collected,
 11 shall be disbursed on the order of the chairperson of the county board and the county
 12 clerk, when the town board and county highway committee files a written notice with
 13 the clerk that the work has been completed and accepted held in a separate account
 14 administered by the county highway committee.

15 (b) If on January 1, 2003, a county has a policy of providing funding only for
 16 ~~culverts and bridges~~ ^{and culverts} larger than the requirement of par. (a), the county may refuse
 17 to fund ~~culverts and~~ ^{and culverts} bridges that do not meet the minimum requirements of that
 18 policy. The minimum size bridge or culvert that a county is required to fund under
 19 this section may be raised, but not lowered, by the ^{affirmative} vote of a majority of the towns in
 20 the county. The county board of any county which that has never granted aid under
 21 this section may, in its discretion, refuse to make any appropriation all petitions
 22 under sub. (1).

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

Move from 61-11 →

1 SECTION 142. 81.38 (2) of the statutes is renumbered 82.08 (3) and amended
2 to read:

3 82.08 (3) SHARED COST. The county shall pay the cost in excess of \$750 up to
4 \$1,500. The town and county shall each pay one-half of the cost of construction or
5 repair above \$1,500. In determining the cost of construction or repair of any culvert
6 ~~or bridge~~ ^{or culvert}, the cost of constructing or repairing any approach not exceeding 100 feet
7 in length shall be included.

NOTE: λ

8 SECTION 143. 81.38 (3) of the statutes is renumbered 82.08 (4) and amended
9 to read:

10 ~~strike~~ 82.08 (4) EMERGENCY PETITION. Whenever the construction or repair of any such
11 ~~culvert or bridge~~ ^{or culvert} must be made without delay, the town board may file its petition
12 with the county clerk and the county highway committee, ~~setting forth the facts~~
13 ~~respecting~~ explaining the necessity for immediate construction or repairs. It shall
14 then be the duty of the town board and the county highway committee to ~~make such~~
15 ~~construction or repairs with the least possible delay. The town board is authorized~~
16 ~~to borrow the entire cost of the work, and to include the town's share of such cost in~~
17 ~~the next tax levy~~ construct or repair the ~~culvert~~ or bridge ^{or culvert} as soon as practicable. The
18 construction or repair of a ~~culvert or bridge~~ ^{or culvert} performed and accepted undertaken
19 pursuant to this subsection shall entitle the town to the same county aid that the
20 town would have been entitled to had it filed its petition with the county board as
21 provided in sub. (1).

22 SECTION 144. 81.38 (4) of the statutes is renumbered 82.08 (5) and amended
23 to read:

24 82.08 (5) SUPERVISION OVER DESIGN, CONSTRUCTION, AND COST. The county
25 highway committee and the town board shall have full charge of design, sizing,

1 letting, inspecting, and accepting the work construction or repair, but the town board
2 may leave the matter entirely in the hands of the county highway committee. The
3 county highway committee and the town board must agree on the cost of the project
4 and must consult each other during construction.

Move from 62-1

NOTE: λ

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

7 82.08 (6) CONSTRUCTION REQUIREMENTS. No county order may be drawn under
8 sub. (1) (2) for the construction of an arch, ^{e strike} a culvert or ^a bridge ^{or culvert} unless it is constructed
9 in a workmanlike manner and built of creosoted wood or timber, steel, stone or
10 concrete or a combination thereof, and the design and construction comply with
11 requirements under s. 84.01 (23).

Move from 62-1

NOTE: λ

12 SECTION 146. 81.38 (6) of the statutes is renumbered 61.48 and amended to
13 read:

14 **61.48 County aid for construction and repair of bridges and culverts.**

15 Any village, ~~by a resolution adopted by a two-thirds majority vote of all members of~~
16 ~~the village board~~, may elect to become subject to all of the provisions of this section.
17 Such s. 82.08 by a resolution adopted by a two-thirds majority vote of all of the
18 members of the village board. The election to become subject to s. 82.08 shall be
19 effective when a certified copy of such the resolution is filed with the county board
20 and approved by a majority of the towns and villages in the county that are already
21 subject to s. 82.08 vote of the members of the county board representing towns and
22 representing villages which have become subject to the provisions of this section as
23 provided in this subsection; and thereafter, until such to approve the village's
24 election. Until the village ceases to be subject to the provisions of this section s. 82.08,
25 the words "town" and "town board" as used in this section s. 82.08 shall also apply

1 respectively to ~~such to the~~ village and its village board. A village which ~~that~~ has
 2 become subject to the ~~provisions of this section as provided in this subsection s. 82.08~~
 3 may cease to be subject to ~~such provisions only~~ that section by the adoption of a
 4 resolution and its approval by the county board in the same manner ~~and by the same~~
 5 procedure by which a ~~as the~~ village may ~~become~~ became subject to ~~such provisions~~
 6 ~~as provided in this subsection~~ that section.

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

> ***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.

> ***NOTE: See also s. 81.38 (1), renumbered 82.08 (1), 2nd to last sentence in new
 > s. 82.08 (2) (b), which has similar text regarding the required vote: but it does not specify
 that the "vote" be an "affirmative majority" but only that a "majority" of the towns vote.
 Should this read, i.e., "the affirmative vote"?

7 SECTION 147. 81.38 (7) of the statutes is renumbered 82.08 (7) and amended
 8 to read:
 9 82.08 (7) NO TAX. Except as provided in sub. (6) and s. ss. 61.48 and 84.14 (3),
 10 nothing ~~herein~~ contained in this section shall authorize the levy of a tax upon the
 11 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.

MOVE

to
S8-22

✓

move to 59-7 ✓

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.

move to 60-4 ✓

New sub. (5) adds the requirement that the town and county mutually agree on costs and consult with each other during construction.

move to 60-11 ✓

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. (9) allows the county to charge the towns an administration charge.~~

1 SECTION 148. 81.39 of the statutes is repealed.

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

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

4 to read:

5 82.03 (8) USE OF DAMS AS ROADWAYS. The town board may contract with the
6 owner of any a dam with that has a roadway thereon on it for the use of such the
7 roadway for highway purposes for such period of time as the board may determine.

8 The contract shall provide that who shall be responsible for keeping the roadway
9 shall at all times be kept in repair by the owner and may be for a period of time that
10 the board determines.

LPS: *cont on next page*

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."

move to 48-3 ✓

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.

move to 46-9 ✓

In new s. 82.03 (2) (b), the ballot language has been changed. The change in the wording of the ballot makes the ballot include 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).

move to
47-4 ✓

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.

move to
67-12 ✓

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.

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

3 **82.09 County aid for dams used for bridges.** Whenever any A town board
4 shall may file its a petition with the county board, ~~setting forth the fact that said~~
5 stating that the town board has voted to acquire the right to use any such a roadway,
6 designating as near as may be the location of such dam and roadway, and stating on
7 a dam. The petition shall contain a legal description and scale map of the dam and
8 roadway, and shall state the amount agreed to be paid to the owner for the use ~~thereof~~
9 of the roadway. Upon receipt of a petition, the county board shall appropriate a sum
10 equal to ~~one-half~~ 50 percent of the amount ~~so~~ agreed to be paid for such the use, ~~and.~~
11 The county board shall, on the order of the chairperson of the county board and
12 county clerk, cause such sum to be paid to the treasurer of said the town ~~on the order~~
13 ~~of the chairperson of the county board and county clerk~~ whenever the town board
14 ~~shall notify them~~ notifies the county highway commissioner that a contract for the
15 use of such the roadway has been executed.

7

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.

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

2 **CHAPTER 82**

3 **TOWN HIGHWAYS**

4 **SECTION 153.** Subchapter I (title) of chapter 82 [precedes 82.01] of the statutes
5 is created to read:

6 **CHAPTER 82**

7 **SUBCHAPTER I**

8 **FUNDING AND GOVERNANCE**

9 **SECTION 154.** 82.01 (intro.), (1) to (7) and (9) to (11) of the statutes are created
10 to read:

11 **82.01 Definitions.** (intro.) In this chapter, the following words and phrases
12 have the designated meanings unless specifically noted:

13 (1) “Department” means the department of transportation.

14 (2) “Freeholder” means a person who owns a fee simple or life estate interest
15 in land, a person who is a land contract vendee, or a person who has an interest in
16 land arising under ch. 766.

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

20 (4) “Laid out” means any formal act or process by which a municipality
21 determines the location of a highway.

22 (5) “Legal description” means a complete description of land without internal
23 references to any other document, and shall be described in one of the following ways:

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

- 4 1. By government lot.
- 5 2. By recorded private claim.
- 6 3. By quarter section, section, township, and range.

7 (b) If the land is located in a recorded and filed subdivision or in an area that
8 is subject to a certified survey map, by reference as described in s. 236.28 or 236.34
9 (3).

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

11 (7) "Opened" means the completion of work on a highway that places the
12 highway in a condition ready for public use.

13 (9) "Town line highway" means a highway that runs on or across the boundary
14 line between a town and another town, a village, or a city.

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

16 (11) "Worked" means action of the town in regularly maintaining a highway
17 for public use, including hauling gravel, grading, clearing or plowing, and any other
18 maintenance by or on behalf of the town on the road.

7 ~~***NOTE I have added a definition for "department"***~~

19 **SECTION 155.** 82.03 (1) (title) of the statutes is created to read:

20 82.03 (1) (title) OVERSIGHT OF HIGHWAYS, SUPERINTENDENT OF HIGHWAYS.

21 **SECTION 156.** 82.03 (1) (c), (5) (title) and (c), (6) and (9) to (19) of the statutes
22 are created to read:

23 82.03 (1) (c) The town board shall fix the compensation and may require and
24 set the amount of a bond of the superintendent. The town board may reimburse the

1 superintendent for expenses incurred in performing his or her duties as
2 superintendent.

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

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

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

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

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

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

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

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

24 (15) AGREEMENTS WITH OTHER GOVERNMENTAL BODIES. The town board, under s.
25 83.027 (9), may enter into agreements with other governmental bodies respecting the

1 financing, planning, establishment, improvement, maintenance, use, regulation, or
2 vacation of controlled-access highways or other public ways in their respective
3 jurisdictions.

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

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

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

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

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

14 82.05 (1) The term of office of highway superintendents shall be one year from
15 the date of their appointment.

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

17 82.05 (4) The superintendent shall routinely notify the town board of all
18 highway work.

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

20 82.08 (8) ADMINISTRATION CHARGE. The county may charge the towns that apply
21 for aid under this section an administration charge. The administration charge shall
22 be fixed as a percentage of the total costs of administering aid under this section and
23 the percentage shall be no more than the percentage that the county charges the
24 state for records and reports.

✓
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NOTE: A

1 **82.12 (title) Highway order.**

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

3 **82.14 (title) Acquiring rights to land; damages from discontinuance.**

4 (1) Unless the acquisition can be made by mutual agreement, the town board shall
5 utilize the procedures under s. 32.05 to acquire rights to land for the purpose of laying
6 out or altering a town highway.

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

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

10 **82.15 Appeal of a highway order.** Any person aggrieved by a highway order,
11 or a refusal to issue such an order, may seek judicial review under s. 68.13. If the
12 highway is on the line between 2 counties, the appeal may be in the circuit court of
13 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.

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

15 **82.16 (3)** It shall be presumed that a release was given by the owners of the
16 lands over which the highway was laid out and the public shall be entitled to use the
17 full width of the highway, as laid out, without further compensation if all of the
18 following apply:

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

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

2 82.19 (2) (b) 1. In this paragraph, “vehicular travel” means travel using any
 3 motor vehicle required to be registered under ch. 341 or exempt from registration
 4 under s. 341.05.

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

7 **CHAPTER 82**

8 **SUBCHAPTER III**

9 **SPECIAL PROCEDURES**

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

12 82.21 (1) (a) Six resident freeholders of the town, city, or village deliver an
 13 application to lay out, alter, or discontinue a town line highway to the clerk of every
 14 town, city, or village that would be affected by the proposal.

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

17 (4) (title) APPORTIONMENT OF AUTHORITY AND RESPONSIBILITY.

18 (5) (title) APPEAL OF APPORTIONMENT.

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

21 **82.27 (title) Landlocked property and property with insufficient**
 22 **highway access.** (1) DEFINITION. In this section, “advantages” means the greater
 23 of the following:

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

1 (b) The administrative costs under sub. (5), and the estimated cost of
2 constructing or widening the highway, including both the cost of constructing a
3 turnaround, if one is necessary, and the damages paid to the owner of the land over
4 which the highway is laid out. *or the way or road is widened*

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

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

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

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

13 **SECTION 171.** Subchapter IV (title) of chapter 82 [precedes 82.31] of the
14 statutes is created to read:
15

16 **CHAPTER 82**

17 **SUBCHAPTER IV**

18 **EXISTING HIGHWAYS**

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

20 82.35 (1) (intro.) The town board, upon its own motion, may lay out and open
21 temporary highways through any lands in the following situations:

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

23 83.015 (2) (b) In any county with a highway commissioner appointed under s.
24 83.01 (1) (b) or (c), the county highway committee shall be only a policy-making body
25 determining the broad outlines and principles governing administration and the

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1 county highway commissioner shall have the administrative powers and duties
2 prescribed for the county highway committee under par. (a), sub. (3) (a) and ss.
3 27.065 (4) (b) and (13), 32.05 (1) (a), ~~81.38 (1), (3) and (4)~~, 82.08, 83.01 (6), 83.013,
4 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
5 (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)
6 (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),
7 349.07 (2), 349.11 (4) and (10) and 349.15 (2). No statutory power, duty or function
8 specified elsewhere for the county highway commissioner may be deemed impliedly
9 repealed for the sole reason that reference to it has been omitted in this paragraph.

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

11 **83.09 Emergency repairs of county trunk highways.** Whenever a flood
12 or other casualty renders any county trunk highway dangerous for travel, the town
13 chairperson shall may immediately close it and notify the county highway
14 commissioner thereof, and the commissioner shall promptly make repairs necessary
15 to render the highway safe for travel. If sufficient funds are not available in the
16 county maintenance fund, the commissioner may, with the consent of the
17 chairperson of the county board or of the county highway committee, make the
18 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.

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

20 **SECTION 176.** 83.18 (1) of the statutes is renumbered 83.18 and amended to
21 read:

1 **83.18 Entry on lands.** For constructing or maintaining any highway by the
2 county, the county highway committee or commissioner shall possess all of the
3 powers to acquire and enter lands conferred upon town boards by s. ~~81.06~~ 82.03 (2)
4 and (5).

7 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.

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

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

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

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

20 **84.02 (1) DESIGNATION.** The system of highways known as the trunk highway
21 system heretofore selected and laid out by the legislature and by the highway
22 commission and by special legislative state trunk highway committees and approved
23 by said highway commission and as revised, altered and changed by and under

1 authority vested by law in the highway commission, is hereby validated and
2 confirmed and designated the state trunk highway system but without prejudice to
3 the exercise of the power given to change such system, and all acts by which parts
4 of said system were heretofore adopted or declared to be trunk highways are
5 confirmed and validated. Section ~~80.32~~ 82.19 (2) does not apply to the state trunk
6 highway system.

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

8 84.07 (1) STATE EXPENSE; WHEN DONE BY COUNTY OR MUNICIPALITY. The state trunk
9 highway system shall be maintained by the state at state expense. The department
10 shall prescribe by rule specifications for such maintenance and may contract with
11 any county highway committee or municipality to have all or certain parts of the
12 work of maintaining the state trunk highways within or beyond the limits of the
13 county or municipality, including interstate bridges, performed by the county or
14 municipality, and any county or municipality may enter into such contract. General
15 maintenance activities include the application of protective coatings, the removal
16 and control of snow, the removal, treatment and sanding of ice, interim repair of
17 highway surfaces and adjacent structures, and all other operations, activities and
18 processes required on a continuing basis for the preservation of the highways on the
19 state trunk system, and including the care and protection of trees and other roadside
20 vegetation and suitable planting to prevent soil erosion or to beautify highways
21 pursuant to s. ~~80.01 (3)~~ 66.1037, and all measures deemed necessary to provide
22 adequate traffic service. Special maintenance activities include the restoration,
23 reinforcement, complete repair or other activities which the department deems are
24 necessary on an individual basis for specified portions of the state trunk system.
25 Maintenance activities also include the installation, replacement, rehabilitation, or

1 maintenance of highway signs, traffic control signals, highway lighting, pavement
2 markings, and intelligent transportation systems. The department may contract
3 with a private entity for services or materials or both associated with the installation,
4 replacement, rehabilitation, or maintenance of highway signs, traffic control signals,
5 highway lighting, pavement markings, and intelligent transportation systems.

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

7 84.14 (3) PARTICIPATION IN TOWN BRIDGE CONSTRUCTION. Whenever any
8 municipality has participated in the cost of the construction, reconstruction, or
9 purchase of a bridge under s. 84.11 or 84.12, the property in such municipality shall
10 thereafter be subject to taxation by the county for the construction and repair of
11 bridges within the county under s. ~~81.38~~ 82.08.

12 **SECTION 182.** 86.26 of the statutes is renumbered 82.50.

13 **SECTION 183.** 86.265 of the statutes is renumbered 82.51.

14 **SECTION 184.** 86.266 of the statutes is renumbered 82.52.

15 **SECTION 185.** 86.315 (3) of the statutes is amended to read:

16 86.315 (3) County forest roads must meet the minimum design standards
17 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.

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

19 236.16 (2) MINIMUM STREET WIDTH. All streets shall be of the width specified on
20 the master plan or official map or of a width at least as great as that of the existing
21 streets if there is no master plan or official map, but no full street shall be less than
22 60 feet wide unless otherwise permitted by local ordinance. Widths of town roads
23 platted after January 1, 1966, shall, however, comply with minimum standards for

1 town roads prescribed by s. ~~86.26~~ 82.50. Streets or frontage roads auxiliary to and
 2 located on the side of a full street for service to the abutting property may not after
 3 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.

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

5 756.04 (2) Jurors for all circuit courts, ~~except jurors under ch. 80,~~ shall be
 6 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 juries. Thus, no ~~new~~ cross-reference is necessary.

7 **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.

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

9 **893.83 (title) Highway defects.**

10 **SECTION 190. Effective date.**

11 (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

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

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

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

1

(END)

2003-2004 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-2811/P5ins
ARG:.....

INSERT 6-5: ^X

SECTION 1. 60.10 (1) (d) of the statutes is repealed.

NOTE: The committee repealed s. 81.05 because the committee believed that it was no longer used by towns.

INSERT 46-15: ✓

NOTE: The special committee decided that s. 81.01 (5, (6), (7), and (9) were obsolete.

INSERT 49-5: ✓

NOTE: The special committee repealed s. 81.05 because it believed that it was no longer used by towns.

INSERT 69-22: ✓

> NOTE: New s. 82.16 (3) is based on the last sentence of current s. 80.07. No substantive change is intended. ⁽¹⁾ X

10/16

Mtg w/ Nick Zanos of CC

- make these changes