

2003 DRAFTING REQUEST**Assembly Amendment (AA-AB678)**Received: **01/07/2004**Received By: **agary**Wanted: **As time permits**

Identical to LRB:

For: **John Ainsworth (608) 266-3097**By/Representing: **Kristina Boardman (aide)**This file may be shown to any legislator: **NO**Drafter: **agary**

May Contact:

Addl. Drafters:

Subject: **Transportation - highways**Extra Copies: **PJH**Submit via email: **YES**Requester's email: **Rep.Ainsworth@legis.state.wi.us**

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Restoring appeal procedure for landowner upon entry of private land

Instructions:

See Attached

Drafting History:

| <u>Vers.</u> | <u>Drafted</u> | <u>Reviewed</u> | <u>Typed</u> | <u>Proofed</u> | <u>Submitted</u> | <u>Jacketed</u> | <u>Required</u> |
|--------------|---------------------|-----------------------|------------------------|----------------|------------------------|------------------------|-----------------|
| /? | | | | | | | |
| /1 | agary 01/14/2004 | kgilfoy 01/14/2004 | pgreensl 01/14/2004 | _____ | sbasford 01/14/2004 | sbasford 01/14/2004 | |

FE Sent For:

<END>

2003 DRAFTING REQUEST

Assembly Amendment (AA-AB678)

Received: 01/07/2004

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For: John Ainsworth (608) 266-3097

By/Representing: Kristina Boardman (aide)

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|--------------|----------------|-----------------|--------------|----------------|------------------|-----------------|-----------------|
| 1? | agary | 1-1/14 Kmg | 1/14 PO | 1/14 jell | | | |
| FE Sent For: | | | | | | | |
| <END> | | | | | | | |

Gary, Aaron

From: Boardman, Kristina
Sent: Wednesday, January 07, 2004 2:47 PM
To: Gary, Aaron
Subject: AB 678 amendment

Aaron:

Via AB 678, the Legislative Special Committee on the Recodification of Town Highway Statutes erroneously deleted landowner appeal procedures in the event of a town or county entering private land.

Representative Ainsworth has been working with Nick Zavos at Legislative Council to address this issue, and Nick has crafted new language for 82.03 (6) that captures the spirit of appeal procedures provided in chaps 32 and 80/81. Representative Ainsworth would like to draft an amendment to AB 678, adding this language.

Language offered by Nick Zavos:

82.03(6) Liability.

- (a) The town shall be responsible for any damages resulting from activities undertaken under the authority granted by sub. (5). The owner of lands entered upon or used for any of the purposes mentioned in sub (5) may apply to the town board to appraise the resulting damages, and such damages may be determined by agreement. If the parties are unable to agree upon the damages the board shall make and file an award of damages.
- (b) Within 30 days after the filing of the award, the owner may appeal that award to the circuit court for a jury to assess the damages. The amount of the town's award shall not be disclosed to the jury during the trial. If the jury's award exceeds the town's award the owner shall recover the excess plus interest thereon until payment from the date of the damage. If the jury's award is less than the basic award, the town shall recover the difference with interest until payment.

If you have any questions regarding this request, please do not hesitate to contact either me or Nick. As always - thank you for your help. If there is any way this amendment could be received by the morning of January 14th - I would be most appreciative! The bill has a public hearing on the 15th.

Kristina Boardman

Representative Ainsworth's Office

608.266.3097

Gary, Aaron

From: Gary, Aaron
Sent: Tuesday, January 13, 2004 9:59 AM
To: Zavos, Nicholas
Subject: FW: AB 678 amendment

Nicholas,

I will forward by separate e-mail a "clean" working document for this amendment. It includes two changes from the e-mail below: 1) adding the word "offset", and 2) changing the interest period from judgment to town award.

Let me know what you think. Thanks. Aaron

Aaron R. Gary
Legislative Attorney
Legislative Reference Bureau
608.261.6926 (voice)
608.264.6948 (fax)
aaron.gary@legis.state.wi.us

-----Original Message-----

From: Gary, Aaron
Sent: Tuesday, January 13, 2004 9:38 AM
To: Zavos, Nicholas
Subject: FW: AB 678 amendment

Hi Nicholas,

Would the following work for you, as changed below. (Sorry the text appearance is a little confusing - I'm not so technologically saavy; the striking and scoring/blue are just for identification - the amendment would all be in plain text; may I'll e-mail a working draft copy which is cleaner).

Aaron R. Gary
Legislative Attorney
Legislative Reference Bureau
608.261.6926 (voice)
608.264.6948 (fax)
aaron.gary@legis.state.wi.us

-----Original Message-----

From: Boardman, Kristina
Sent: Wednesday, January 07, 2004 2:47 PM
To: Gary, Aaron
Subject: AB 678 amendment

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Language offered by Nick Zavos:

82.03(6) Liability.

- (a) The town shall be responsible for any damages resulting from activities undertaken under the authority granted by sub. (5). The owner of lands entered upon or used for any of the purposes ~~mentioned~~ **[Gary,**

Aaron] identified in sub (5) may apply to the town board to appraise the resulting damages, and such damages may be determined by agreement. If the parties are unable to agree upon the damages the board shall make and file an award of damages.

- (b) Within 30 days after the filing of the **[Gary, Aaron]** an award **[Gary, Aaron]** **[Gary, Aaron]** under par. (a) , the owner may appeal that award to the circuit court for a jury to assess the damages. The amount of the town's award shall not be disclosed to the jury during the trial. If the jury's award exceeds the town's award the owner shall recover ~~the excess~~ **[Gary, Aaron]** **[Gary, Aaron]** the amount of the jury's award plus interest ~~thereon~~ **[Gary, Aaron]** on the amount by which the jury's award exceeds the town's award ~~until payment from the date of the damage~~ **[Gary, Aaron]** **[Gary, Aaron]** until payment . If the jury's award is less than the ~~basic~~ **[Gary, Aaron]** town's award, **[Gary, Aaron]** the owner shall recover the amount of the jury's award and the town shall recover the **[Gary, Aaron]** amount by which the town's award exceeds the jury's award ~~difference~~ **[Gary, Aaron]** with interest **[Gary, Aaron]** on this amount from the date of judgment until payment.

If you have any questions regarding this request, please do not hesitate to contact either me or Nick. As always - thank you for your help. If there is any way this amendment could be received by the morning of January 14th - I would be most appreciative! The bill has a public hearing on the 15th.

Kristina Boardman
Representative Ainsworth's Office
608.266.3097

Gary, Aaron

From: Gary, Aaron
Sent: Tuesday, January 13, 2004 10:01 AM
To: Zavos, Nicholas
Subject: amendment to AB-678



03a1914/7

Aaron R. Gary
Legislative Attorney
Legislative Reference Bureau
608.261.6926 (voice)
608.264.6948 (fax)
aaron.gary@legis.state.wi.us

LRB 19147
ARG:.....
[Handwritten signature]

**PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION
ASSEMBLY AMENDMENT,
TO 2003 ASSEMBLY BILL 678**

*sent to Nick - 1/13 4:00
He w/ Nick - this is OK
it can go w/it, but just
received info. from committee
member so hold off a
final ~~edit~~*

1 At the locations indicated, amend the bill as follows:

2 1. Page 64, line 5: before "The" insert "(a)".

3 2. Page 64, line 6: after "(5)." insert "The owner of lands entered upon or used
4 for any of the purposes identified in sub. (5) may apply to the town board to appraise
5 the resulting damages, and such damages may be determined by agreement. If the
6 parties are unable to agree upon the damages, the board shall make and file an
7 award of damages.

8 (b) Within 30 days after the filing of an award under par. (a), the owner may
9 appeal that award to the circuit court for a jury to assess the damages. The amount
10 of the town's award shall not be disclosed to the jury during the trial. If the jury's
11 award exceeds the town's award, the owner shall recover the amount of the jury's
12 award plus interest on the amount by which the jury's award exceeds the town's

1 award from the date of the damage until payment. If the jury's award is less than
2 the town's award, the owner shall recover the amount of the jury's award and the
3 town shall recover an offset of the amount by which the town's award exceeds the
4 jury's award with interest on this amount from the date of the town's award until
5 payment.".

6

(END)

MURPHY DESMOND

L A W Y E R S

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lbechler@murphydesmond.com

9 January 2004

Representative John H. Ainsworth
State Representative, Sixth Assembly District
Co-Chair, Wisconsin Legislative Council
Special Committee on Recodification of
Town Highway Statutes
309 North Capitol Building
Madison, WI 53703

Senator Roger M. Breske
State Senator, 12th Senate District
Co-Chair, Wisconsin Legislative Council
Special Committee on Recodification of
Town Highway Statutes
310 South Capitol Building
Madison, WI 53703

Dear ~~Rep. Ainsworth~~ ^{John} and ~~Sen. Breske~~ ^{Roger}:

Thank you very much for your December 29, 2003 letter regarding the issue concerning what appears to be an inadvertent elimination of a remedy for damages following entry onto property under current Wis. Stats. § 81.06 and, by cross reference, current Wis. Stats. § 83.18. I apologize for the delay in my response; I was out of state when your letter arrived and the press of other business has prevented my response until now.

In its current form, 2003-4 A.B. 678 does seem to have the flaw identified in your letter. I note that in Version P4 (dated March 27, 2003), the Committee considered several different versions to deal with appeals, and I thought we had settled on a cross reference to what was, in that version, the condemnation procedures in § 82.15. In the Assembly Bill, they are now found in § 82.14.

I think that Nick Zavos' language is largely satisfactory, although I think that further protection for property owners could be created by an explicit cross reference to the condemnation procedure. What I suggest is not simply a reference to § 32.05 (the standard highway condemnation procedure) but, rather, a reference solely to § 32.05(10) – the trial procedure for such matters. In fact, since non-highway condemnations use the same procedure, there is language similar to what would work well here in § 32.06(10), and what follows in this letter is based strongly on § 32.06(10).

The other problem arising from the shorthand reference to a jury trial is that a property owner who is successful does not have access to the substantial remedy of actual litigation expenses in the condemnation laws, found in § 32.28. In this law, if the property owner convinces the jury that the property owner should receive 15% or \$700, whichever is greater, more than the final position of the acquiring agency, the property owner can recover its actual attorneys' fees, appraisal costs and other litigation costs rather than the standard court costs, which are usually very inadequate. Experience has told me that the "hammer" of

facing actual litigation costs has many times meant that acquiring agencies try harder to find a reasonable proposal to avoid the possibility of paying the property owner's actual costs. My basic point remains the same – why should a municipal activity entering or damaging land have different (and, in this case, lesser) remedies just because a town (or, by cross reference, county) road is involved?

By comparison, the condemnation statutes have a procedure in § 32.10 for “inverse condemnation” – that is, where land is occupied by a condemning agency without going through the condemnation procedures. In inverse condemnation, once it is determined that the occupation took place and the property owner should have been compensated, the procedures revert to standard condemnation procedures. In current §§ 81.06 and 83.18, the town or county will have acted, but a shorthand remedy like a trial will assure there is only one kind of trial in any kind of eminent domain proceeding, even when town (and, indirectly, county) roads are involved and that property owners potentially can receive the same litigation expenses they would receive in all other contexts under Wisconsin law.

I suggest the following language:

§ 82.03(6) Liability.

- (a) The town shall be responsible for any damages resulting from activities undertaken under the authority granted by sub. (5). The owner of lands entered upon or used for any of the purposes mentioned in sub. (5) may apply to the town board to appraise the resulting damages, and such damages may be determined by agreement. If the parties are unable to agree upon the damages the board shall make an award of damages and file the award with the town clerk, and the clerk shall give certified mail notice with return receipt requested of such filing to the owner.

[This language is parallel to notice after a condemnation commissioners hearing under § 32.08.]

- (b) (1) Within 60 days after the date of filing of the town board's award of damages, the owner may appeal to the circuit court as provided in s. 32.05(10). The clerk of courts shall thereupon enter the appeal as an action pending in said court with the owner as plaintiff and the town as defendant. It shall thereupon proceed as an action in said court subject to all of the provisions of law relating to actions brought therein, but the only issue to be tried shall be the amount of just compensation to be paid by the town, and it shall have precedence over all other actions not then on trial. It shall be tried by jury unless waived by both plaintiff and defendant. The amount of the town's award of compensation shall not be disclosed to the jury during the trial.

Representative John H. Ainsworth
Senator Roger M. Breske
9 January 2004
Page 3

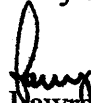
(2) S. 32.28 shall apply to any award of costs or litigation expenses after trial.

[(1) largely based on § 32.06(10). All other condemnations must be appealed to court within 60 days after the condemnation commissioners hearing, so this is consistent with all other condemnations]

I have also received a copy of Assembly Amendment 1 offered by Rep. Ainsworth on January 7, 2004. I have no significant objections to the amendment. The Special Committee action took a provision that applied only to towns and made it equally applicable to cities and villages so that 15 dissatisfied property owners could ask the County Board to overturn the municipal action. It has been my position that this procedure should either be applicable to all local governments within a county, as the current text of A.B. 678 does, or be eliminated entirely. Thus, elimination of current § 81.14 takes another odd, antiquated and seldom, if ever, used procedure out of the highway laws. This seems like a useful step.

Thank you again for providing me the opportunity to comment. I am hoping that my schedule permits me to attend the January 15 hearing, although I do not currently intend to testify. I would be pleased to speak with either of you, the other members of the Committee or legislative council staff about the issues in this letter.

Very truly yours,



Lawrence E. Bechler

LEB:kka

040024/Ainsworth Breske 010904

cc: Rep. Barbara Gronemus
Rep. Michael A. Lehman
Attorney Nicholas Zavos
Attorney David A. Crass
Mr. Robert Maass
Mr. John Norwell
Mr. Rodney Burgener, Sr.
Mr. Gaylord King
Mr. Terrence McMann
Mr. Ernest Wittwer

Gary, Aaron

From: Boardman, Kristina
Sent: Tuesday, January 13, 2004 4:42 PM
To: Gary, Aaron
Subject: Recodification

*1/13 H/C w/ Kristina
- want audit based
in this version*

Amended language for appeal procedure (per Larry Bechler's suggestion):

82.03(6) Liability.

- (a) The town shall be responsible for any damages resulting from activities undertaken under the authority granted by sub. (5). The owner of lands entered upon or used for any of the purposes mentioned in sub (5) may apply to the town board to appraise the resulting damages, and such damages may be determined by agreement. If the parties are unable to agree upon the damages the board shall make an award of damages and file the award with the town clerk, and the clerk shall give certified mail notice with return receipt requested of such filing to the owner.

- (b) (1) Within 60 days after the date of filing of the town board's award of damages, the owner may appeal to the circuit court as provided in s. 32.05(10). The clerk of courts shall thereupon enter the appeal as an action pending in said court with the owner as plaintiff and the town as defendant. It shall thereupon proceed as an action in said court subject to all of the provisions of law relating to actions brought therein, but the only issue to be tried shall be the amount of just compensation to be paid by the town, and it shall have precedence over all other actions not then on trial. It shall be tried by jury unless waived by both plaintiff and defendant. The amount of the town's award of compensation shall not be disclosed to the jury during the trial.

- (2) S. 32.28 shall apply to any award of costs or litigation expenses after trial.

DOT Amendment Suggestion:

1. Section 66.1003: Propose adding language that provides for notification to the DOT Secretary by a city, village or town upon receipt of a petition for discontinuing a street, road or highway under s. 66.1003 or upon a city's, village's or town's own initiative to ensure that the proposed discontinuance of a street, road or highway abutting, intersecting or within one-quarter mile of a state trunk highway will not cause safety problems or that such street, road or highway will not be required for, or be an integral part of a future state trunk highway improvement project.

2. Sections 82.10 and 82.21: Propose adding language that provides for notification to the DOT Secretary by a town upon receipt of a petition or upon a town's own initiative for discontinuing a street, road or highway under ss. 82.10 and 82.21 to ensure that the proposed discontinuance of a street, road or highway abutting, intersecting or within one-quarter mile of a state trunk highway will not cause safety problems or that such street, road or highway will not be required for, or be an integral part of a future state trunk highway improvement project.

I assume both of these points can be rolled into one amendment???

Again - we agree with what you pointed out regarding the statutory reference on what requirements the town's street/highway map should conform with. Please draft the language you suggested - and skip the "filed" issue.

THANK YOU!!!!!!

Talk to you soon.
Kristina

Kristina Boardman
Representative Ainsworth's Office
608.266.3097

ARG: King

TODAY

ASSEMBLY AMENDMENT,
TO 2003 ASSEMBLY BILL 678

D-Note

1 At the locations indicated, amend the bill as follows:

2 ✓ 1. Page 64, line 5: before "The" insert "(a)".

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4 for any of the purposes identified in sub. (5) may apply to the town board to appraise
5 the resulting damages, and such damages may be determined by agreement. If the
6 parties are unable to agree upon the damages, the board shall make an award of
7 damages and file the award with the town clerk, and the clerk shall give notice, by
8 certified mail with return receipt requested, of the filing to the owner. ") .

9 " (b) Within 60 days after the date of filing of a town board's award of damages
10 under par. (a), the owner may appeal to the circuit court following the same
11 procedures provided under s. 32.05 (10) for condemnation proceedings. The clerk of
12 courts shall enter the appeal as an action pending in the court with the owner as
13 plaintiff and the town as defendant. The action shall proceed as an action in the court

→ #. Page 64, line 7: before that line insert:

1 subject to all of the provisions of law relating to actions brought therein, but the only
2 issue to be tried shall be the amount of just compensation to be paid by the town, and
3 the action shall have precedence over all other actions not then on trial. The action
4 shall be tried by jury unless waived by both ^{the} plaintiff and ^{the} defendant. The amount of
5 the town's award shall not be disclosed to the jury during the trial. Costs shall be
6 allowed or litigation expenses awarded in an action under this paragraph in the same
7 manner as provided under s. 32.28 for condemnation proceedings.”

8 (END)

D-Note

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRBa1914/1dn

ARG:.....
King

ATTN: Kristina Boardman

The attached amendment is not identical to the suggested language provided. While the suggested language appears to be modeled largely from existing statutes in ch. 32, since one of the purposes of the bill is to remove "legalese" from the new ch. 82, I have also attempted to do so in this amendment. Also, with respect to the cross-references to ss. 32.05 (10) and 32.28, these provisions cannot be pulled wholesale into ch. 82 because of the difference in the nature of the actions and the specific wording in ss. 32.05 (10) and 32.28, so I have modified the cross-reference language.

Aaron R. Gary
Legislative Attorney
Phone: (608) 261-6926
E-mail: aaron.gary@legis.state.wi.us

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRBa1914/1dn
ARG:kmg:pg

January 14, 2004

ATTN: Kristina Boardman

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