

2003 DRAFTING REQUEST

Assembly Amendment (AA-AB678)

Received: **01/14/2004**

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:

Certain notice to DOT re town highway recodification

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>

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1/?	agary	1-1/14 kmj	1/14 DS	1/14 self			

FE Sent For:

<END>

Gary, Aaron

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

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

Gary, Aaron

From: Nilsen, Paul
Sent: Tuesday, January 13, 2004 1:28 PM
To: Zavos, Nicholas
Cc: Gary, Aaron; Thiel, Jim; Wisner, Fred; Romanski, Randy; Klein, Rose; Gonzalez-Velez, Hector - DOT
Subject: FW: SB 315 / AB 678

Nicholas,

Would you please have "SB315 changes" drafted as an amendment to AB678 for consideration at the hearing. AB 678 relates to reorganization of chs. 80 and 81. AB678 is up for possible exec THIS THURSDAY, January 15, at 10 before Rep. Ainsworth's Committee on Trans, Room 417.

I have drafted some amendments to AB678/SB315 for some minor modifications requested by WisDOT. The amendments effectuate items 1, 2, 5 and 6 of the attached drafting request ("sb315 12_4_03.doc"). Items 3, 4, 7 and 8 should not be included in WisDOT's requested amendment to AB678/SB315.

I have included internal emails summarizing communications between WisDOT and Wisconsin Towns Association and others concerning the changes suggested by the drafting request.



SB315
changes.doc



sb315 12_4_03.doc

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

From: Thiel, Jim
Sent: Friday, January 09, 2004 3:37 PM
To: Nilsen, Paul
Cc: Wisner, Fred; Gonzalez-Velez, Hector - DOT
Subject: RE: SB 315 / AB 678

Correction, don't draft #4. Do the others first, leave out #3 unless you agree -- it's just not a big deal.

#4 is too substantive for a leg. council recod., but if you want and have time to do a separate draft amendment just on that, o.k. but I doubt if it will get the time of day at this late stage so use your own judgment and discretion.

Rick S. of Towns and Tom Harnisch should get copy of draft as well as to Nicholask Zavos with Leg. Council. Here's what Rick reacted too. He thought #6 was a really good idea in our conversation today. By the way, #5 says we don't cut grass, we still do, just not as much as we used to.



Recodification of
Chapters 80 ...

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

From: Gonzalez-Velez, Hector - DOT
Sent: Friday, January 09, 2004 3:22 PM
To: Nilsen, Paul
Cc: Thiel, Jim; Wisner, Fred
Subject: SB 315 / AB 678

<< File: sb915 12_4_03.doc >>

Paul, could you help us with drafting language that accomplishes the changes in the attached file. The Wisconsin Towns Association supports these changes to the bill. WTA is not opposed to #4 but we will not likely get it passed.

Jim and I were in a conference call with the Wisconsin Towns Association to get their impression on our proposed changes. In general, the WTA supports the changes. WTA is not opposed to #4 but cautions that we will not likely get it passed. (WTA anticipates some opposition.) With #5, WTA would supports language that preserves DOT's ability to preserve-right-of way and keeps at bar issues of reversionary interests and adverse possession. (WTA suggested to work with Nick Zavos, JLC staff attorney to get the changes to the LRB, but you possibly know others at LRB that can help.) WTA welcomes and supports the idea of the filing or recording of plat maps rather than property descriptions in #6. Items #7 and #8 are essentially the same as #2.

2003 Assembly Bill 678/Senate Bill 315
Modifications requested by WisDOT

Page 8, line 7: after that line insert:

"Section 13g. 66.1003 (8) is renumbered 66.1003 (8)(b).

Section 13m. 66.1003 (8)(a) is created to read:

66.1003 (8)(a) Upon receiving a petition under sub. (2) or (3) or upon the introduction of a resolution under sub. (4), the city, village, town or county shall deliver a copy of the petition or resolution to the secretary of transportation, if the public way that is the subject of the petition or resolution lies within one-quarter mile of a state trunk highway or connecting highway."

****Note: This section delivers notice to WisDOT of proposed discontinuance of public ways proximate to state trunk highways. This section must refer to counties due to s. 236.445, stats., which allows counties to discontinue public ways in the manner provided by this section.

Page 66, line 11: after "(4) (title)" insert ", (a) 5."

Page 66, line 21: after that line insert:

(a) 5. The secretary of transportation, if the highway that is the subject of the application or resolution lies within one-quarter mile of a state trunk highway or connecting highway.

****Note: This section delivers notice to WisDOT of proposed discontinuance of public ways proximate to state trunk highways. Page 21, line 3 provides that applications to discontinue a highway under proposed s. 82.21 proceed under s. 82.10 (so this section also provides WisDOT with notices of discontinuance commenced under s. 82.21).

Page 10, line 23: delete "~~public~~" and substitute "public".

Page 10, line 24: delete "~~authorities city, village, town, or county~~" and substitute "authorities".

Page 10, line 25: delete "~~Such~~" and substitute "Such".

Page 11, line 11: delete "~~authorities. The city, village, town or county~~" and substitute "authorities".

Page 11, line 6: delete "~~other than grass~~".

Page 11, line 9: after "~~but such~~" insert ", except that a person may cut or trim grass without consent along any highway that is not a state trunk highway".

****Note: The treatment of page 10, line 23 to Page 11, line 9 prohibits individuals from cutting grass along state trunk highways without consent.

Page 63, line 9: after that line insert:

"(c) If the land is depicted in a transportation project plat filed or recorded under s. 84.095, by reference as described in s. 84.095(7)(a)."

****Note: This section allows reference to a transportation project plat to serve as the legal description of property.

(END)

Recently, SB 315 was introduced. It relates to the recodification of the town highway statutes. The Department of Transportation has been monitoring its evolution throughout the legislative process. With the introduction of the bill, the Department would like to know the position of the Wisconsin Towns Association on the effect of the proposed SB 315 language. In addition, the Department of Transportation would like to know whether the Wisconsin Towns Association would support, oppose or take no position on the following changes and additions the Department may propose regarding SB 315:

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.
3. Section 66.1003(10): Propose removing this section from the bill except reference to ss. 82.10 and 82.21 and reference to public school could be incorporated into current s. 66.1003(4)(a). This proposed subsection establishes a prohibition of highway discontinuance where such action would deprive landowner or public school of "all access to a highway." However, current s. 66.1003(4)(a) states: "No discontinuance of a public way under this subsection may result in a landlocked parcel of property." "Public way" is defined in s. 66.1003(1) as all or any part of a road, street, slip, pier, lane or paved alley. It appears that proposed s. 66.1003(10) is redundant and unnecessary.

4. Section 66.1031: Propose adding a separate subsection authorizing DOT to map highway corridors to establish uniform setbacks for acquisition for future state trunk highway expansion. This process would be subject to a public hearing prior to the finalization of the highway corridor map. This section currently authorizes counties to carry out mapping to establish setbacks for future highway expansion. This section replaces s. 80.64 relating to the establishment of highway excess widths.
5. Section 66.1037: Propose reinstating original language found in s. 80.01(3). DOT has relied on original language to preserve its highway right-of-way. Also, DOT is not currently cutting grass in the right-of-way to safeguard the natural habitats for various bird species, etc. DOT has invested considerable resources in planning, planting, and maintaining these habitats and the growth and expansion of wild flowers planted on the highway right-of-way. The current language permits the cutting or trimming of grass by any person.
6. Section 82.01(5): Propose adding language to the definition of "legal description" to include reference to s. 84.095 because the process under that section is available to towns. Section 84.095(2) provides for the filing or recording of transportation project plats in connection with a transportation project.
7. Section 82.10: Propose Reconciling any differences with this section and s. 66.1003 related to discontinuance of streets, roads and alleys. Also, propose adding language that provides for notification to the DOT Secretary by a town upon receipt of a petition for discontinuing a street, road or highway under ss. 82.10 and 82.21 or upon a 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.
8. Section 82.21: Same proposals as with s. 82.10. See 7 above.

TODAY

ARG: King

**ASSEMBLY AMENDMENT ,
TO 2003 ASSEMBLY BILL 678**

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

2 ✓ 1. Page 8, line 7: after that line insert:

3 "SECTION 13d. 66.1003 (4) (b) of the statutes is amended to read:

4 66.1003 (4) (b) A hearing on the passage of a resolution under par. (a) shall be
5 set by the common council or village or town board on a date which shall not be less
6 than 40 days after the date on which the resolution is introduced. Notice of the
7 hearing shall be given as provided in sub. (8) (b), except that in addition notice of the
8 hearing shall be served on the owners of all of the frontage of the lots and lands
9 abutting upon the public way or unpaved alley sought to be discontinued in a manner
10 provided for the service of summons in circuit court at least 30 days before the
11 hearing. When service cannot be made within the city, village or town, a copy of the
1 notice shall be mailed to the owner's last-known address at least 30 days before the
2 hearing.

3 **SECTION 13h.** 66.1003 (7) of the statutes is amended to read:

4 66.1003 (7) The city council or village or town board may by resolution
5 discontinue any alley or any portion of an alley which has been abandoned, at any
6 time after the expiration of 5 years from the date of the recording of the plat by which
7 it was dedicated. Failure or neglect to work or use any alley or any portion of an alley
8 for a period of 5 years next preceding the date of notice provided for in sub. (8) (b) shall
9 be considered an abandonment for the purpose of this section.

10 History: 1973 c. 189 s. 20; Sup. Ct. Order, 67 Wis. 2d 585, 774 (1975); 1975 c. 46; 1993 a. 184, 246, 491; 1995 a. 239; 1999 a. 150 ss. 265, 337 to 343; Stats. 1999 s. 66.1003.
11 **SECTION 13m.** 66.1003 (8) of the statutes is renumbered 66.1003 (8) (b).

12 **SECTION 13r.** 66.1003 (8) (a) of the statutes is created to read:

13 66.1003 (8) (a) Upon receiving a petition under sub. (2) or (3) or upon the
14 introduction of a resolution under sub. (4), the city, village, town, or county shall
15 deliver a copy of the petition or resolution to the secretary of transportation, if the
16 public way or unpaved alley that is the subject of the petition or resolution is located
17 within one-quarter mile of a state trunk highway or connecting highway.”

18 ✓ **2.** Page 66, line 11: after “(4) (title)” insert “, (a) 5.”

19 ✓ **3.** Page 66, line 21: after that line insert:

20 “(a) 5. The secretary of transportation, if the highway that is the subject of the
21 application or resolution is located within one-quarter mile of a state trunk highway
22 or connecting highway.”

(END)