

Joint Committee for Review of Administrative Rules

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- **Trans 233**

Report to the Legislature Administrative Rule Trans 233 The Joint Committee for Review of Administrative Rules

Produced pursuant to s. 227.26 (2) (g), Stats.

Trans 233 is an administrative rule relating to the division of land abutting a state trunk highway or connecting highway. Section 236.13(1)(e) of the Wisconsin Statutes is the enabling authority for Trans 233. Under this statute, the Wisconsin Department of Transportation (DOT) is authorized to review "subdivision" (defined as 5 or more lots of 1 ½ acre or less within a 5 year period) plats for the purpose of protecting "the safety of entrance upon and departure from the abutting state trunk highways or connecting highways and for the preservation of the public interest and investment in such highways." The rule first went into effect in 1956, but was significantly revised in 1999 and then later amended in 2001.

Description of the Problem

Since Trans. 233 was significantly revised in 1999, property owners, local governments, and economic development professionals have raised numerous concerns about the rule. The major reasons for these concerns centered on DOT's interpretation of its authority over land divisions, requiring unreasonable actions by property owners during the permitting process, and the regulation of lands within the setback area. Although the statutory enabling authority limits DOT's review to just subdivisions, Trans 233 expanded DOT review authority to all land divisions (including certified survey maps and condominium plats) abutting (even some land divisions that do not abut) state highways. The revisions to Trans 233 also authorized DOT to prohibit all improvements within setbacks unless the property owner waived his/her right to

future compensation if DOT to acquire the land for future highway expansion. Finally, the rule has led to excessive delays and unreasonable expenses related to highway improvements and traffic impact studies.

Arguments in Favor of Suspension

- *Counties and local municipalities have the authority to review and impose conditions upon all land divisions (i.e., those reviewed and not reviewed by DOT)*
- *Statutory authority is limited to the regulation of "subdivisions" (5 or more lots of 1 ½ acre or less within a 5 year period) adjacent to state highways, as provided in Wis. Stat. §§ 236.12 and 236.13(1)(e).*
- *By creating excessive delays and significantly increasing the costs of economic development, Trans 233 in its current form is detrimental to job growth in Wisconsin.*
- *DOT can still regulate access to state highways under Trans 231.*
- *None of the surrounding Midwestern states regulate setbacks along state highways.*
- *The setback requirements prohibit all economic beneficial use of private property within 50 feet of highway right of way.*
- *Many citizens and business in Wisconsin are frustrated with DOT regulation of their private property, administered through Trans 233.*
- *The preservation of private property rights, land use, and economic development opportunities along state highways can be maintained without the expense of safety for Wisconsin motorists.*

Arguments Against Objection

- *DOT believes that Trans 233 must be unchanged as it is a significant tool to maintain safety along Wisconsin's highways.*

- *Trans 233 promotes careful planned development along state highways that can prevent the state from having to spend extra tax dollars when future roadway expansions and other projects to alleviate traffic congestion are needed.*

Action by Joint Committee for Review of Administrative Rules

At the request of the JCRAR Co-Chairs, Senator Joe Leibham and Representative Glenn Grothman, the committee held a public hearing on October 29, 2003 and a follow up hearing on December 16, 2003. On January 21, 2004, the committee passed a motion requesting Legislative Council to draft a motion that would suspend sections of Trans 233 in a manner that would make the remaining sections of the rule closely resemble the rule as it existed prior to 1999. The motion would be used for the committee to consider action at the next JCRAR meeting. On January 28, 2004, the committee passed a motion on a 7 to 3 margin, pursuant to s. 227.26(2)(d), Stats., and for the reasons set forth in s. 227.19(4)(d)6., Stats., to suspend portions of Trans 233. On February 19, 2004, the Joint Committee voted to introduce LRB 4246/2 and 4282/1 that suspends portions of Trans 233 and limits the authority of the DOT over the review of lands along a state trunk highway or connecting highway.