



State of Wisconsin
2015 - 2016 LEGISLATURE

LRB-3722/1
ARG:kjf

2015 SENATE BILL 390

November 12, 2015 – Introduced by Senators PETROWSKI, GUDEx, HARSDORF, LASSA, MARKLEIN, MOULTON, STROEBEL and VINEHOUT, cosponsored by Representatives EDMING, TRANEL, ALLEN, E. BROOKS, R. BROOKS, CZAJA, JACQUE, JARCHOW, KITCHENS, KREMER, KRUG, KULP, T. LARSON, LOUDENBECK, MURSAU, NERISON, A. OTT, PETRYK, QUINN, RIPP and TITTL. Referred to Committee on Transportation and Veterans Affairs.

1 **AN ACT to renumber and amend** 86.07 (2); **to amend** 66.0425 (7), 83.015 (2)
2 (b), 86.073 (1), 86.16 (1), 86.16 (5) and 88.68 (4); and **to create** 86.07 (2) (b) and
3 86.16 (1m) of the statutes; **relating to:** lines transporting manure within
4 highway rights-of-way and providing a penalty.

Analysis by the Legislative Reference Bureau

This bill specifies the process for authorizing pipelines or hoses transmitting liquid manure within or across a highway right-of-way.

Under current law, no person may excavate, fill, install a culvert in, or otherwise alter or disturb any highway without a permit (often referred to as a driveway permit) from the authority maintaining the highway (highway authority). Current law also requires written consent (often referred to as a utility permit) of the highway authority before utility lines or pipes, including water pipes, are constructed within or across the limits of a highway.

Also under current law, upon application, if certain conditions are satisfied, the governing body of a municipality may grant a “privilege” to place an obstruction or excavation within a highway in a municipality. A privilege is not required to be granted for an obstruction or excavation that is in place for less than 90 days and for which a permit has been granted.

Under this bill, a utility permit, issued by the applicable highway authority, is required to construct a subterranean pipe or pipeline transmitting liquid manure within or across a highway right-of-way. A utility permit, issued by the Department of Transportation, is also required if the pipe or pipeline transmitting liquid manure

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is not subterranean but crosses or lies within the right-of-way of a state trunk highway. A utility permit may be obtained, but is not required, for a pipe or pipeline transmitting liquid manure that is not subterranean and does not cross or lie within the right-of-way of a state trunk highway; however, if a utility permit is not obtained, a driveway permit from the local highway authority is required.

Under this bill, for purposes of a driveway permit, a manure hose is defined as a hose, pipeline, or other conduit, whether temporary or permanent, for the transmission of liquid manure within or across a highway right-of-way to a destination for spreading in a farm field or for storage. The bill specifies that a driveway permit authorizing the permittee to lay out or install any manure hose within or across a highway right-of-way may also authorize the permittee to temporarily affix to a bridge under the jurisdiction of the highway authority hooks, flanges, fasteners, or other devices to or by which a manure hose may be attached or supported. The highway authority may require the driveway permit applicant to submit, for approval, a plan specifying how the manure hose would be attached to or supported by the bridge. The driveway permit may impose reasonable conditions related to the authorization provided under the permit.

The bill also clarifies that, if a utility permit is issued for a pipe or pipeline transmitting liquid manure, a driveway permit is not required and, if either a utility permit or driveway permit is issued, a privilege granted by a municipality is not required. The bill further specifies that a driveway permit may not be issued for a subterranean pipe or pipeline transmitting liquid manure within or across a highway right-of-way or for a pipe or pipeline transmitting liquid manure within or across the right-of-way of a state trunk highway.

Under current law, if a highway authority issues a driveway permit, the permit must contain the statement and be subject to the condition that the work must be constructed subject to rules and regulations prescribed by the highway authority and be performed and completed to its satisfaction, that for temporary alterations the highway be restored to its former condition, and that the permittee be liable for damages which occur during the progress of, or as a result of, the work. If work for which a permit is required is performed without a permit, or if a permit is issued and there is any violation of the foregoing with respect to the permit, the highway authority may restore the highway to its former condition and the violator is subject to a criminal penalty of a fine of not less than \$5 nor more than \$100 or imprisonment not exceeding six months or both.

This bill increases this penalty to a fine of not less than \$50 nor more than \$500 and specifies that, if the highway authority restores the highway to its former condition in connection with a violation, the restoration is done at the violator's expense.

Current law allows an applicant for a utility permit, whose application to construct "lines" within a highway right-of-way has been refused, to appeal to the Division of Hearings and Appeals in the Department of Administration.

This bill specifies that this appeal right also applies with respect to applications to construct pipes or pipelines.

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For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 66.0425 (7) of the statutes is amended to read:

2 66.0425 (7) This section does not apply to an obstruction or excavation that is
3 in place for less than 90 days, and for which a permit has been granted by the proper
4 official. This section does not apply if a permit has been issued under s. 86.07 (2) with
5 respect to a manure hose, or written consent has been given under s. 86.16 (1) with
6 respect to a pipe or pipeline, transmitting liquid manure within or across the
7 right-of-way of a highway.

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

9 83.015 (2) (b) In any county with a highway commissioner appointed under s.
10 83.01 (1) (b) or (c), the county highway committee shall be only a policy-making body
11 determining the broad outlines and principles governing administration and the
12 county highway commissioner shall have the administrative powers and duties
13 prescribed for the county highway committee under par. (a), sub. (3) (a) and ss.
14 27.065 (4) (b) and (13), 32.05 (1) (a), 82.08, 83.01 (6), 83.013, 83.018, 83.025 (1) and
15 (3), 83.026, 83.035, 83.04, 83.05 (1), 83.07 to 83.09, 83.12, 83.14 (6), 83.17, 83.18,
16 83.42 (3) and (4), 84.01 (5), 84.06 (3), 84.07 (1) and (2), 84.09 (1), (3) (a) to (c) and (4),
17 84.10 (1), 86.04 (1) and (2), 86.07 (2) (a), 86.19 (3), 86.34 (1m), 114.33 (5), 349.07 (2),
18 349.11 (4) and (10) and 349.15 (2). No statutory power, duty or function specified
19 elsewhere for the county highway commissioner may be deemed impliedly repealed
20 for the sole reason that reference to it has been omitted in this paragraph.

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1 **SECTION 3.** 86.07 (2) of the statutes is renumbered 86.07 (2) (a) and amended
2 to read:

3 86.07 (2) (a) ~~No~~ Subject to par. (b) and s. 86.16 (1m) (a) 2. and (c), no person shall
4 make any excavation or fill or install any culvert or make any other alteration in any
5 highway or in any manner disturb any highway or bridge without a permit therefor
6 from the highway authority maintaining the highway. Such permit shall contain the
7 statement and be subject to the condition that the work shall be constructed subject
8 to such rules and regulations as may be prescribed by said authority and be
9 performed and completed to its satisfaction, and in the case of temporary alterations
10 that the highway or bridge shall be restored to its former condition, and that the
11 permittee shall be liable to the town or county or state, as the case may be, for all
12 damages which occur during the progress of said work or as a result thereof. Nothing
13 herein shall abridge the right of the department ~~or~~, the county board or its highway
14 committee, or any other local authority to make such additional rules, regulations
15 and conditions not inconsistent herewith as may be deemed necessary and proper for
16 the preservation of highways, or for the safety of the public, and to make the granting
17 of any such permit conditional thereon. If any culvert is installed or any excavation
18 or fill or any other alteration is made in violation of the provisions of this subsection
19 paragraph, the highway or bridge may be restored to its former condition by the
20 highway authority in charge of the maintenance thereof at the expense of the
21 violator; and any person who violates this subsection paragraph shall be punished
22 by a fine of not less than \$5 \$50 nor more than \$100 \$500, or by imprisonment not
23 exceeding 6 months, or both.

24 **SECTION 4.** 86.07 (2) (b) of the statutes is created to read:

25 86.07 (2) (b) 1. In this paragraph:

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1 a. “Manure hose” means any hose, pipeline, or other conduit, whether
2 temporary or permanent in nature, for the transmission of liquid manure within or
3 across the right-of-way of a highway to a destination for spreading in a farm field
4 or for storage.

5 b. “State trunk highway” has the meaning given in s. 340.01 (60).

6 2. A permit may not be issued under par. (a) for a manure hose that is
7 subterranean or that is laid out or installed within or across the right-of-way of a
8 state trunk highway. Section 86.16 applies with respect to any manure hose that is
9 subterranean or that is laid out or installed within or across the right-of-way of a
10 state trunk highway.

11 3. For a manure hose that is not described in subd. 2., a permit issued under
12 par. (a) that authorizes the permittee to lay out or install the manure hose within or
13 across the right-of-way of a highway may also authorize the permittee to
14 temporarily affix to a bridge under the jurisdiction of the highway authority issuing
15 the permit hooks, flanges, fasteners, or other devices to or by which a manure hose
16 may be attached or supported. The highway authority may require the applicant for
17 the permit to submit with the application, for the highway authority’s approval, a
18 plan specifying how the manure hose would be attached to or supported by the
19 bridge. The permit may impose reasonable conditions related to the authorization
20 under this subdivision, including any of the following:

21 a. Requiring removal of the hooks, flanges, fasteners, or other devices, at the
22 permittee’s expense, at any time, or under any circumstances, specified in the
23 permit.

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1 b. Making the permittee liable to the issuing authority for any damage caused
2 to the bridge by the installation or removal of the hooks, flanges, fasteners, or other
3 devices.

4 **SECTION 5.** 86.073 (1) of the statutes is amended to read:

5 86.073 (1) If a district office of the department denies a request for a permit
6 under s. 86.07 (2) (a) to construct an entrance to a state trunk highway from abutting
7 premises or revokes a permit issued under s. 86.07 (2) (a), the department shall, upon
8 written request by the applicant within 30 days after the denial, review the decision
9 of the district office.

10 **SECTION 6.** 86.16 (1) of the statutes is amended to read:

11 86.16 (1) Any person, firm, or corporation, including any foreign corporation
12 authorized to transact business in this state, may, subject to ss. 30.44 (3m), 30.45 and
13 196.491 (3) (d) 3m., with the written consent of the department with respect to state
14 trunk highways, and with the written consent of local authorities with respect to
15 highways under their jurisdiction, including connecting highways, construct and
16 operate telegraph, telephone, or electric lines, or pipes or pipelines, for the purpose
17 of transmitting messages, water, liquid manure, heat, light, or power along, across,
18 or within the limits of the highway.

19 **SECTION 7.** 86.16 (1m) of the statutes is created to read:

20 86.16 (1m) (a) If a pipe or pipeline transmitting liquid manure along, across,
21 or within the limits of a highway under the jurisdiction of a local authority is not
22 subterranean, all of the following apply:

23 1. Subject to par. (c), a person holding a permit issued by the local authority
24 under s. 86.07 (2) for a manure hose that is the pipe or pipeline is not required to
25 obtain written consent for the pipe or pipeline under sub. (1).

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1 2. Subject to par. (c), a person may obtain written consent under sub. (1) for the
2 pipe or pipeline in lieu of obtaining a permit issued by the local authority under s.
3 86.07 (2).

4 (b) Any culvert installed in the ground for the purpose of running through it
5 a hose transmitting liquid manure is considered a pipe or pipeline transmitting
6 liquid manure under sub. (1) and, before such installation, written consent under
7 sub. (1) is required.

8 (c) A local authority may specify that only the permit described in par. (a) 1. or
9 only the written consent described in par. (a) 2. will be accepted by the local authority
10 as the method for authorizing a pipe or pipeline transmitting liquid manure within
11 or across a highway right-of-way.

12 **SECTION 8.** 86.16 (5) of the statutes is amended to read:

13 86.16 (5) Any person, firm, or corporation whose written application for
14 permission to construct such lines, pipes, or pipelines within the limits of a highway
15 has been refused, or has been on file with the department or local authority for 20
16 days and no action has been taken thereon, may file with the department or local
17 authority a notice of appeal to the division of hearings and appeals. The department
18 or local authority shall thereupon return all of the papers and action of the
19 department or local authority to the division of hearings and appeals, and the
20 division of hearings and appeals shall hear and try and determine the appeal on 10
21 days' notice to the department or local authority, and the applicant. The order
22 entered by the division of hearings and appeals shall be final.

23 **SECTION 9.** 88.68 (4) of the statutes is amended to read:

24 88.68 (4) Whenever the cleaning out, deepening or reconstruction of a drain
25 crossing a public highway requires the lowering of a culvert through such highway

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1 in order to provide effective drainage, the drainage board may proceed to lower such
2 culvert only after obtaining a permit under s. 86.07 (2) (a). In lieu of issuing a permit,
3 the authority in charge of maintenance of the highway may proceed to do the work
4 itself. Except as provided in s. 86.075, the expenses involved in such lowering shall
5 be borne by the drainage district, or as provided by mutual agreement between the
6 highway authority and the drainage board.

7 (END)