
Wisconsin Legislative Council

ACT MEMO



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2023 Wisconsin Act 157 [2023 Senate Bill 413]

Highway Setback Areas

2023 Wisconsin Act 157 establishes parameters governing the Department of Transportation’s (DOT) authority to regulate “highway setback areas.” For this purpose, the act defines “highway setback area” to mean “an area abutting a highway in which the construction or placement of structures¹ and improvements² is prohibited without a special exception permit issued by the department consistent with [the act’s provisions].”

Under the act, all of the following apply to a highway setback area maintained by DOT:

- A highway setback area established after March 23, 2024, may not extend more than 50 feet from the right-of-way of the highway.
- DOT’s authority to impose a setback requirement is limited to regulating structures and improvements that adversely affect the safety of entrance upon or departure from state trunk or connecting highways or the preservation of public interest and investment in those highways, as determined by the department in its reasonable discretion.
- Similarly, DOT may only prohibit the placement of any structure or improvement in the highway setback area if the structure or improvement adversely affects the safety of the entrance upon or departure from the state trunk or connecting highways, or the preservation of the public interest and investment in those highways, as determined by the department in its reasonable discretion.
- DOT may order the removal, at the owner’s expense, of any structure or improvement located in a highway setback area, except that it may not order removal if either: the owner demonstrates that the structure or improvement was placed prior to establishing the highway setback area; or a special exception is granted for the setback or improvement.
- DOT must provide a procedure for an owner of property subject to a highway setback area to request a special exception to a requirement.

¹ The term “structure,” under the act, “includes a temporary or permanent addition to or betterment of real property that is not portable in nature, but that adversely affects the safety of entrance upon or departure from state trunk or connecting highways or the preservation of public interest and investment in those highways, as determined by the department in its reasonable discretion.

² “Improvement,” under the act, “means any permanent addition to or betterment of real property that involves the expenditure of labor or money to make the property more useful or valuable.” The term “includes parking lots, parallel driveways, surface or sub-surface utility structures, storm water facilities, loading docks, in-ground swimming pools, wells, septic systems, retaining walls, signs, buildings, building appendages such as porches, and drainage facilities.” It does not include “terraces, patios, landscaping, or open fences.”

The act provides detailed requirements for DOT's special exception procedure. Specifically, under the act, this procedure must adhere to and include all of the following:

- DOT may only deny a special exception request due to a risk to public safety or to the preservation of the public interest and investment in the highway if it finds that substantial evidence³ demonstrates the risk.
- If DOT imposes a requirement in connection with granting a special exception, the requirement must be: consistent with the department's general authority to regulate or prohibit setback areas under the act; related to the purpose of the highway setback area; based on substantial evidence; reasonable; and, to the extent practicable, measurable.
- As a condition of a special exception, DOT must require that the owner waive any claim or right to compensation related to any structure or improvement constructed or placed in the highway setback area if any portion of the highway setback area is used for highway purposes within 20 years of the date of issuance of the special exception. This waiver must be recorded in a document that meets various requirements. DOT may also record a renewal of a waiver one time for up to another 20 years if the department has any projects planned within the improvement program or has any documented future plans for corridor or spot location improvement.
- DOT must grant the special exception if an owner demonstrates by substantial evidence that the application and all relevant requirements and conditions are or shall be satisfied.
- An application for a special exception must be filed in the regional office in which the property is located. If the application is denied and the owner files a written request within 30 days, DOT must review the decision. If DOT confirms or modifies the decision of the regional office, DOT must notify the owner of the action and the grounds for the action and shall also notify the owner of a right to a hearing before the Division of Hearings and Appeals.
- DOT must provide accurate and current information about the special exception process on its website.

Effective date: March 23, 2024

For a full history of the bill, visit the Legislature's [bill history page](#).

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³ The act defines "substantial evidence" to mean "facts and information, other than merely personal preferences or speculation, directly pertaining to public safety of the preservation of public interest and investment in state trunk or connecting highways, and directly pertaining to or the requirements and conditions an owner must meet to obtain a special exception and that reasonable persons would accept in support of a conclusion."