

## CHAPTER 86

## MISCELLANEOUS HIGHWAY PROVISIONS

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**86.01 Materials left in highway; penalty.** It shall be unlawful for any highway superintendent or any other person to leave any materials in the traveled portion of any highway not closed to public travel in piles or rows after sunset without placing within one hour after sunset upon such piles or at the end of such rows a lighted lantern containing sufficient oil or fuel to keep the same burning until daylight. Any person violating any of the provisions of this section shall be liable to a fine of not less than \$10 nor more than \$100.

**86.02 Injury to highway.** Any person who shall injure any highway by obstructing or diverting any creek or watercourse or sluiceway, or by dragging logs or timber thereon, or by any other act, shall be liable in treble damages, to be recovered by the political division chargeable with the maintenance of highway injured, and the amount recovered shall be credited to the highway maintenance fund.

**86.021 Highways, cultivation of; injury by farm machinery.** (1) No person shall, within the limits of any public highway, plow, cultivate or otherwise work any lands in such manner as to interfere with or obstruct the drainage in any public highway ditch, nor shall any person

operate any farm or other machinery on, over, along or across any public highway in such manner as to materially damage the said highway.

(2) Any person who shall violate the provisions of this section shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than \$10 nor more than \$50, or by imprisonment in the county jail not less than 10 days nor more than 30 days, and shall in addition pay the whole cost of restoring the ditch or highway, or both, to their former condition.

**86.022 Obstructing highway with embankment or ditch.** Any person who shall wilfully or maliciously make any ditch, depression or embankment or place any obstruction in any public highway intended or calculated to impede or incommode the use of such highway, or who shall place any obstruction in any ditch constructed to drain any highway, shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than \$10 nor more than \$100.

**86.025 Camping on highways.** It shall be unlawful for any person or persons to camp in wagons, tent or otherwise on the public high-

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ways or lands adjacent thereto, after a notice to remove therefrom by the owners of such adjacent lands, or the owner of land abutting on the highway, or by a member of the board of supervisors or any trustee of any town or village where such camping place is made. Any person or persons violating the provisions of this section shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined not exceeding \$10, or imprisoned in the county jail not exceeding 30 days, or both.

**86.03 Trees on and adjacent to highway. (1)**

**REMOVAL OF FALLEN TREES.** If any tree falls from adjacent land into any highway, the owner or occupant of the land shall immediately remove the tree from the highway. It shall be the duty of every highway patrolman, street commissioner, or other officer in charge of the maintenance of streets or highways, to remove from any highway any fallen tree or trees therein.

**(2) OWNERSHIP.** All trees on land over which any highway is laid out shall be for the use of the owner of the land or person otherwise entitled thereto, except trees that have been acquired by and for the public in the acquisition of the highway right of way and except such trees within the highway as may be requisite to make or repair the highways on the land or within one mile of the same; but no trees reserved for shade or ornament, unless acquired by the public, shall be used for such purpose.

**(3) PLANTING TREES AND SHRUBS IN HIGHWAY.** Any person owning or occupying land adjoining any highway may, with the approval of the public authority maintaining the highway, plant, cultivate and maintain trees, shrubs or hedges on the side of the highway contiguous to and within 10 feet of his land. Such trees, shrubs or hedges shall be cut or removed only by the owner or occupant of the abutting land or by the public authority having control of the highway.

**(4) CUTTING OR INJURING TREES ON HIGHWAY.** No person shall cut down, break, girdle, bruise the bark or in any other manner injure, or allow any animal under his control to injure, any public or private trees, shrubs or hedges growing within the highway, except as the owner thereof or the public authority maintaining the highway may cut down, trim and remove trees, shrubs and hedges for the purpose of and conducting to the benefit and improvement of the owner's land or the highway facility.

**(5) MUTILATION OF TREES.** It shall be unlawful for any person to injure, mutilate, cut down or destroy any shade tree growing on or within any

street or highway in any incorporated village in this state, unless express permission so to do be first granted by the board of trustees of such village.

**(6) FINES.** Any person violating any of the provisions of this section shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by a fine not to exceed \$25 for each tree or shrub damaged, felled or destroyed.

**86.04 Highway encroachments. (1) ORDER**

**FOR REMOVAL.** If any highway right of way shall be encroached upon, under or over by any fence, stand, building or any other structure or object, and including encroachments caused by acquisition by the public of new or increased widths of highway right of way, the department of transportation (in case of a state trunk highway), the county highway committee (in case of a county trunk highway), or the city council, village or town board (in case of a street or highway maintained by or under the authority of any city, village or town) may order the occupant or owner of the land through or by which such highway runs, and to which the encroachment shall be appurtenant, to remove the same beyond the limits of such highway within 30 days. The order shall specify the extent and location of the encroachment with reasonable certainty, and shall be served upon such occupant or owner.

**(2) NONREMOVAL.** If the occupant or owner upon whom the order is served shall not deny such encroachment, under sub. (3), and the encroachment is not removed within 30 days after the service of such order, the occupant or owner shall forfeit \$1 for every day after the expiration of that time during which the encroachment continues. An action to recover such penalty may be brought in any court of record in the county. In all cases where a judgment is rendered, the judgment shall order that the occupant or owner remove the encroachment within the time fixed by the judgment, and upon failure to obey the order, the department of transportation, county highway committee, or city council, village or town board, as appropriate, may remove the encroachment and recover from the occupant or owner the cost thereof.

**(3) DENIAL OF ENCROACHMENT, PROCEDURE.** If, within 30 days after service of the order issued under sub. (1) upon him, the owner or occupant delivers a denial in writing of the alleged encroachment to the ordering body, or fails to make a denial, the ordering body may commence an action to remove the encroach-

ment in a court of record in the county where the property is located.

**History:** 1977 c. 29 s. 1654 (8) (c); 1977 c. 273.

**Cross Reference:** For highway obstructions see 86.022. Adverse possession is defense to encroachment action under this section. Dept. of Transp. v. Black Angus Steak House, 111 W (2d) 342, 330 NW (2d) 240 (Ct. App. 1983).

#### **86.05 Entrances to highways restored.**

Whenever it is necessary, in making any highway improvement to cut or fill or otherwise grade the highway in front of any entrance to abutting premises, a suitable entrance to the premises shall be constructed as a part of the improvements; and if the premises are divided by the highway, then one such entrance shall be constructed on each side of the highway. Thereafter each entrance shall be maintained by the owner of the premises. During the time the highway is under construction, the state, county, city, village or town shall not be responsible for any damage that may be sustained through the absence of an entrance to any such premises.

#### **86.06 Highways closed to travel; penalties.**

(1) Whenever any highway is impassable or unsafe for travel or during the construction or repair of any such highway and until it is ready for traffic the authorities in charge of the maintenance or construction thereof may keep it closed by maintaining barriers at each end of the closed portion. The barriers shall be of such material and construction and so placed as to indicate that the highway is closed and shall be lighted at night.

(2) Any person who, without lawful authority, removes, takes down, alters the position of, destroys, passes over or beyond any barrier so erected, or travels with any vehicle upon any portion of a highway closed by barriers as in this section provided, or walks or travels in any manner upon the materials placed thereon as part of the repair or construction work, shall be liable to a fine of not less than \$10 nor more than \$100, or to imprisonment not less than 10 nor more than 60 days, or both, and in addition thereto shall be liable for all damages done to the highway, said damages to be recovered by such governmental agency.

Where county has contract to maintain state trunk highways, county highway commissioner can temporarily close highway in case of emergency. 67 Atty. Gen. 335.

#### **86.07 Depositing rubbish or digging in highways or using bridges for advertising.**

(1) Any person who throws, leaves or deposits any weeds, sod, brush or other waste or rubbish in any highway shall be fined not less than \$10 nor more than \$200 or imprisoned not more than 30 days or both; and every person who draws, paints, prints or pastes upon any culvert, bridge

or guard rail on any highway shall be liable to a like fine.

(2) No person shall make any excavation or fill or install any culvert or make any other alteration in any highway or in any manner disturb any highway or bridge without a permit therefor from the highway authority maintaining the highway. Such permit shall contain the statement and be subject to the condition that the work shall be constructed subject to such rules and regulations as may be prescribed by said authority and be performed and completed to its satisfaction, and in the case of temporary alterations that the highway or bridge shall be restored to its former condition, and that the permittee shall be liable to the town or county or state, as the case may be, for all damages which occur during the progress of said work or as a result thereof. Nothing herein shall abridge the right of the department of transportation or the county board or its highway committee to make such additional rules, regulations and conditions not inconsistent herewith as may be deemed necessary and proper for the preservation of highways, or for the safety of the public, and to make the granting of any such permit conditional thereon. If any culvert is installed or any excavation or fill or any other alteration is made in violation of the provisions of this subsection, the highway may be restored to its former condition by the highway authority in charge of the maintenance thereof; and any person who violates this subsection shall be punished by a fine of not less than \$5 nor more than \$100, or by imprisonment not exceeding 6 months, or both.

(2a) The restriction or depriving of used access to highways from abutting lands through the use of posts under any program to delineate driveways is prohibited.

(3) The prohibitions in this section do not apply to highway authorities in the performance of their duties.

**History:** 1977 c. 29 s. 1654 (8) (c).

See note to 32.09, citing *Narloch v. Department of Transportation*, 115 W (2d) 419, 340 NW (2d) 542 (1983).

#### **86.073 Review of denial of permit.**

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

(2) After review, the department may reverse, confirm or modify the decision of the district office.

(3) If the department confirms or modifies the decision of the district office, the depart-

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ment shall notify the applicant of the action and the grounds for the action and shall also notify the applicant of a right to a hearing before the office of the commissioner of transportation. Upon written request by the applicant within 30 days after the notice is mailed to the applicant, the office of the commissioner of transportation shall schedule a hearing to be held within 60 days after receipt of the request.

**History:** 1983 a. 177.

**86.075 Highway authorities to notify drainage board of highway construction.** Whenever a highway crossing any draining ditch of a drainage district governed by ch. 88 is being constructed or reconstructed or a culvert in any such ditch is being replaced, the highway authority in charge of such work shall consult with the drainage board having jurisdiction of such district for the purpose of determining the depth at which such drainage ditch was laid out. If any culvert or similar opening in a highway is installed at a grade higher than the depth at which such drainage ditch was laid out, the expenses involved in any future lowering of the culvert pursuant to s. 88.68 (4) shall be borne by the unit of government in charge of maintenance of the highway unless the highway authority in charge of the installation was misled by the drainage board as to the proper grade at which to install the culvert. This section applies only to work done after January 1, 1965.

**86.08 Dust-free surfacing at licensed dairy or meat packing plants. (1)** The duly constituted authority charged with the maintenance of any highway not having a dust-free surface shall cause the main traveled portion thereof within 400 feet of any licensed dairy or meat packing plant to be rendered dust-free by palliative treatment or an improved surface approved by the department of transportation. The cost of such treatment or surface shall be paid from the funds for maintenance or improvement of highways which shall be made available by the division of government responsible for the highway.

**(2)** If such treatment or surface is not applied by the division of government responsible on or before June 1 of any year, the county shall cause the work to be done. It shall keep an accurate account of the cost of such work and the county clerk shall, on or before November 1 of each year, certify to the department of transportation the cost of such work. The amount so certified shall be credited to the county in its allotment and deducted from the allotment to the division of government responsible.

**History:** 1977 c. 29 s. 1654 (8) (c)

**86.09 Access to cemetery preserved.** In all cases where the paving, improvement, change of grade or any other change in the condition of any street or highway in this state shall operate to cut off, impede or obstruct the access or approach from such highway to a cemetery, it shall be the duty of the local or state authorities in charge of such paving, improvement or change to include in such work provisions for and to effect such grading and improvement of the access and approach to such cemetery as shall be necessary to preserve such access or approach in an equal degree of usability. And whenever in any city, village or town such paving, improvement or change of grade or condition heretofore made has operated so as to cut off, impede or obstruct the access or approach from such highway to a cemetery, it shall be the duty of the council or board of such city, village or town upon the request of any person to restore such access or approach to its former condition of usefulness, and to provide for such work in the same way that street or highway improvements are provided.

**86.10 Salvage in highway construction.** Materials removed from a highway incident to its improvement or maintenance which are suitable for reuse or have a market value, and which are not used in or disposed of under the contract for the work, shall become the property of the duly constituted authority maintaining the highway from which the material was removed and may be used or disposed of by such authority in the manner as in its judgment is for the best interest of the public, and any money received for such material shall be paid into the maintenance fund.

**86.105 Snow removal in private driveways.** The governing body of any county, town, city or village may enter into contracts to remove snow from private roads and driveways.

This section must be construed to include restrictions in 50 Atty. Gen. 98. Plowing of private parking lots is not authorized. 67 Atty. Gen. 304.

**86.11 Highways; railroad crossings; grade separation.** Whenever any highway crosses a railroad at grade and the town, village or county board or the city council or city commissioners other than in a city of the first class, as the case may be, shall deem it for the best interest of the public that said highway and railroad shall cross at separate grades, and when an agreement can be made between such board and the railroad company as to the manner of constructing of such separated grade crossing and doing the necessary work they may contract therefor; and such board shall after

entering into such contract levy a tax sufficient to raise the money required to carry out such contract on its part, which tax shall be collected at the time and in the manner as other taxes are, and when collected shall be set aside as a special fund and used for said purpose. The plans for such grade separation shall have the approval of the department before the contract shall be binding or the change shall be made.

**History:** 1977 c 29 s. 1654 (10) (e)

**86.12 Highway railroad grade crossings; construction and repair.** All railroad companies owning or operating tracks crossing streets or highways at grade shall keep the surface of the crossings between the tracks and rails and extending 4 feet on either side of the outside rails, in good condition and repair for highway travel. The common council, the village board, or town board of the municipality in which the crossing is located, may by resolution require any such railroad company to pave, plank, repair, change or otherwise improve the crossings, as the needs require. The clerk of the city, village or town shall cause to be served upon the local agent of the railroad company a copy of the resolution. If the railroad company fails for 30 days thereafter to comply with the resolution, the city, village or town may pave, plank, repair, change or otherwise improve the crossing as designated by the resolution, and may recover the reasonable cost thereof from the railroad company in the manner under s. 66.695. The duty imposed upon railroad companies, and the remedy given by this section, are in addition to other duties and remedies, and may not be construed to repeal any other duties or remedies.

**History:** 1977 c 29 s. 1654 (10) (b); 1977 c 72

**86.13 Railroads to maintain highway crossings.** (1) When any street or highway crosses any railroad track at grade, the company owning or operating the railroad shall grade, construct and maintain in good and safe condition for public travel the portion of such street or highway extending across said track. When such street or highway shall be or is about to be paved, surfaced or otherwise improved, the railway company shall improve, pave or surface such crossing between the tracks and rails and extending 4 feet beyond the outside rails on its right of way in substantially the same manner as the adjacent highway and with substantially the same materials, but this provision applies in cities only when the work is under ch. 83 or 84. This section shall not restrict the application of s. 66.694 relating to special assessments against railroads for street improvements.

(2) When the improvement of the portion of a street or highway adjacent to a railroad crossing has been decided upon, notice thereof may be given to the railway company. Unless the company, within 30 days after receipt of such notice, informs the public board, committee or officer in charge of such improvement that it will do the improvement work at the crossing, the company shall be deemed to have elected to have the work done by and under the direction of the highway authorities in charge of the adjacent improvement, and to pay the cost thereof as in case of failure to improve the crossing as required by law.

(3) When any company fails to grade, construct, pave, surface or otherwise improve or maintain in good and safe condition for public travel as required by this section any street or highway crossing after having been notified so to do by the officer in charge thereof or of the highway improvement for 30 days after such notification, the highway authorities may grade, construct, pave, surface, improve or repair the street or highway across the railroad right of way, and the cost shall be paid by the company to and may be collected by that unit of government out of whose treasury the original cost of the work was disbursed.

(4) The notice to the company shall be in writing and shall specify with reasonable certainty the work to be done by the company and may be served on any station agent of the company in this state. But failure to give such notice shall not prevent a recovery from the company of such sum as may be equitably due for the performance of a duty imposed by this section upon the company.

(5) Any railroad company that receives notice from the department under this section with respect to a state trunk highway may file a claim for reimbursement with the department of transportation. The department shall reimburse claimants for 85% of the eligible costs incurred in the repair of a highway grade crossing. No claim for reimbursement may be paid by the department under this subsection unless the department approved the plans and estimated cost of the project prior to the start of the project. The department may inspect each completed project to verify the amount of the claim for reimbursement. The department shall create a procedure for establishing the priority for projects with respect to state trunk highways under this section for the purpose of programming reimbursements.

**History:** 1977 c 29; 1979 c 34; 1981 c 20

**86.135 Railroad highway crossings; traffic control.** All railroad companies, and their officers, agents, and employes, constructing,

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maintaining, or repairing railroad highway crossings shall comply with the traffic control provisions directed to the safe and expeditious movement of traffic through construction and maintenance zones and to the safety of the work force performing these operations contained in the manual establishing a uniform system of traffic control as adopted by the department of transportation under s. 84.02 (4) (e).

**History:** 1983 a. 27.

**86.14 Strength of bridges.** (1) After July 1, 1943, no bridge or culvert shall be constructed in any highway unless it shall be designed to have sufficient strength to carry at least 15 ton truck loading in accordance with standard specifications covering design for structures as adopted by the department of transportation and in force at the time of design. Repairs to any bridge or culvert shall be of substantial character, strengthening same as much as practical.

(2) Any person who subjects any bridge or culvert to a load in excess of maximum limitations on weight of vehicles on highways imposed by law or regulations thereunder or limitation as to gross weight of vehicles as posted on or at any such bridge or culvert shall be liable for double the amount of damages that may be caused thereby. There shall be no recovery for any injury to himself or to the property in his keeping.

(3) Every person who wilfully injures any highway structure shall be liable for treble damages to the subdivision of the state chargeable with the maintenance or repair of such structure.

**History:** 1977 c. 29 s. 1654 (8) (c).

**86.15 Donations of highway aid to adjoining municipalities.** (1) Any town, city or village to which is or has been bequeathed or donated money or other property for the construction of a proposed highway or the improvement of an existing highway, either or both of the terminals or any part of which highway are outside the limits of such town, city or village, may accept such bequest or donation, and with the consent of the councils of the cities, the boards of the towns and villages and the boards or other bodies in control of any state lands, through or into which such proposed highway may be constructed or such existing highway may be improved, which permission said councils and boards are hereby authorized to grant, may enter such towns, cities, villages, and state land, and may do all other things necessary for the purpose of carrying out the terms and conditions of such bequest or donation.

(2) Any city, of the fourth class, however organized, may appropriate a sum not to exceed one-fourth of one mill on each dollar of the assessed valuation of such city, according to the last preceding assessment therein, for the purpose of aiding any adjoining town, city or village in the construction or improvement of any highway or part thereof in accordance with the terms and conditions of any bequest or donation to such adjoining town, city or village, and any part of such moneys so appropriated may be expended within or without the corporate limits of such city.

**86.16 Utility lines on highways; place of poles; penalty.** (1) Any person, firm or corporation, including any foreign corporation authorized to transact business in this state may, with the written consent of the department with respect to state trunk highways, and with the written consent of local authorities with respect to highways under their jurisdiction, including connecting highways, construct and operate telegraph, telephone or electric lines, or pipes or pipelines for the purpose of transmitting messages, water, heat, light or power along, across or within the limits of the highway.

(2) All poles used in the construction of such lines shall be set in such manner as not to interfere with the use of such highway by the public, nor with the use of the adjoining land by the owner thereof; and all pole lines shall hereafter be constructed so as to meet the requirements of the Wisconsin state electrical code.

(3) No tree shall be cut, trimmed or the branches thereof cut or broken in the construction or maintenance of any such line without the consent of the owner of the tree.

(4) Any person erecting any telephone, telegraph, electric light or other pole or stringing any telephone, telegraph, electric light or other wire, or constructing any pipes or pipe lines in violation of the provisions of this section shall forfeit a sum not less than \$10 nor more than \$50.

(5) Any person, firm or corporation whose written application for permission to construct such lines within the limits of a highway has been refused, or when such application has been on file with the department or local authority for 20 days and no action has been taken thereon, the applicant may file with the department or local authority a notice of appeal to the office of the commissioner of transportation. The department or local authority shall thereupon return all the papers and action of the department or local authority to the office of the commissioner of transportation, and the office of the commissioner of transportation

shall hear and try and determine the appeal on 10 days' notice to the department or local authority, and the applicant. The order entered by the office of the commissioner of transportation shall be final.

**History:** 1977 c. 29 s. 1654 (8) (d), (e); 1979 c. 34; 1981 c. 347 s. 80 (2)

Commission had power under this section to grant conditional approval. *City of Appleton v. Transportation Commission*, 116 W (2d) 352, 342 NW (2d) 68 (Ct. App. 1983)

The highway commission may approve the construction of coaxial cable pole lines by community antenna television operators along, across or within highways in towns 58 Atty. Gen. 31.

#### **86.17 Taking water from highway streams.**

(1) The general public shall have the right to use and take water from any spring, creek or running water that may be found running in or across the limits of any public highway, provided that this section shall not interfere with the tunneling or piping of water for the purpose of draining or improving lands on either side of such highway.

(2) Any person who shall wantonly interfere with the free use of the water from any spring or in any creek or stream running across or in any highway shall be guilty of a misdemeanor and be liable to any person damaged thereby for all damages sustained.

#### **86.18 Milwaukee county highways; location, alteration, maintenance.**

(1) The county board of any county having a population of 250,000 or more, shall have power and authority to acquire, establish, lay out, relocate, widen, enlarge, extend, pave, repave, improve and maintain state and county trunk highways therein, and when requested by resolution adopted by the governing body of any municipality situated therein, any other highway located in such municipality; to construct and lay water pipes, sewers, curbs, gutters and all other public facilities in such highways; to make assessments of benefits and damages, levy assessments, and issue assessment certificates and bonds in the making of and paying for said improvement to the same extent as is given to cities on the same subject matter.

(2) In acquiring property for any purpose covered by sub. (1) the county board shall proceed under ch. 32, except that the board shall determine the necessity of the taking, and the county highway commissioner shall perform all the duties of the commissioners in making awards and appraisals under s. 32.05.

(3) Any party to the condemnation proceedings may appeal from the award of the county highway commissioner in the manner provided for appeals from awards of commissioners in ch. 32 and such appeal shall be heard and delivered as are appeals in ch. 32.

(4) The county highway commissioner shall have all the powers now given to the city board of public works in making assessments of benefits and damages in highway improvements, and the same proceedings shall be had and taken after his report is filed with the county clerk as by s. 66.60 is had and taken in the report of such board of public works in city assessments. Notices of both the preliminary and final reports shall be published as a class 2 notice, under ch. 985, in the official county paper, and the date of hearing in each case shall not be earlier than 5 days after the last insertion. Appeals from the final determination of said highway commission may be had, and shall thereafter be heard as provided in s. 66.60 (12) and such remedy shall be exclusive.

#### **86.185 Populous counties; power over state and county trunk highways.**

Counties having a population of at least 150,000 may exercise any corresponding power conferred upon cities in the widening or improving and maintaining of state trunk or county trunk highways, the constructing or laying of water pipes, sewers and all other public service facilities therein, and in the levying of special assessments and issuing of assessment certificates and special improvement bonds.

#### **86.19 Highway signs, regulation, prohibition.**

(1) Except as provided in sub. (1m), no sign shall be placed within the limits of any street or highway except such as are necessary for the guidance or warning of traffic or as provided by s. 66.046. The authorities charged with the maintenance of streets or highways shall cause the removal therefrom and the disposal of all other signs.

(1m) Notwithstanding sub. (1), the department shall place 100 signs near highways and in waysides that display a slogan or logo, or both, developed by the department of agriculture, trade and consumer protection to promote Wisconsin agricultural products. The signs shall be placed in prominent locations where they are likely to be seen by tourists from other states, except that no sign may be placed in violation of federal law.

(2) The department of transportation shall prescribe regulations with respect to the erection of signs on public highways. Such regulations shall have the full force of law. No advertising sign shall use prominently any words, or combination of words, commonly used for the guidance or warning of travel, nor shall any advertising sign be erected or be permitted to remain in any place or manner so as to endanger travel on the highways, either by

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reason of causing an obstruction to the view or otherwise.

(3) Any person who shall erect any sign on any public highway, or elsewhere in violation of any of the provisions of this section or the regulations of the department of transportation, or without the written consent of the department of transportation if the sign is to be erected on a state trunk highway, the county highway committee in the case of a county trunk highway, or the city council, village or town board in case of a street or highway maintained by a city, village or town, shall be fined not less than \$10 nor more than \$100, and for a second or subsequent violation shall be fined not less than \$10 nor more than \$500.

(4) This section shall not be construed as prohibiting the erection of such historical monuments or markers within the limits of public streets and highways as shall be approved by department of transportation. The name of a newspaper on a newspaper tube or receptacle shall not be deemed a sign within the meaning of this section.

(5) The department of transportation shall assign to each county and local authority responsible for the placement and maintenance of signs, guide boards, mile posts, signals or markers erected for the warning, instruction or information of the public a code number which the county or local authority shall place on each warning, instruction or information device at the time of replacement or new installation of such device.

(6) At the request of an incorporated city or village, the department shall erect directional signs on state trunk highways at the intersection of those highways with streets or other highways where the streets or other highways lead to the incorporated city or village, provided the city or village is located within 5 miles of the intersection and provided the city or village agrees to pay for the installation and maintenance of the sign. The directional sign shall show the name of the incorporated city or village. For the purpose of this subsection, the term "intersection" includes exit ramps from any expressway or freeway or interstate highway.

**History:** 1975 c. 169; 1977 c. 29 s. 1654 (8) (c); 1977 c. 188; 1983 a. 92.

**86.191 Advertising in highways prohibited,**

**where.** (1) No person shall erect, or cause to be erected, any advertising, direction, guide, warning or other sign or marker within any public highway within a distance of 1,000 feet from the intersection of any 2 or more highways, when such intersection is beyond the corporate limits of any city or villages, unless permission is first

obtained from the officials charged with the maintenance of such highways. The name of a newspaper on a newspaper tube or receptacle shall not be deemed to be any advertising, direction, guide, warning or other sign or marker within the meaning of this section.

(2) In case any person shall violate the provisions of this section, the authorities in charge of the maintenance of the highway upon which such violation occurs shall promptly remove such advertising, direction, guide, warning or other sign or marker.

(3) If any signs at present exist in the public right of way on any highway within 1,000 feet of the intersection of any 2 or more highways or streets beyond the limits of any incorporated city or village which are, in the opinion of the officials in charge of the maintenance of such highway, a menace to the safety of the public traveling along such highways, said officials shall notify the owners of such signs to remove the same, or to remove the danger producing features, and in case the owners do not do so, or in case the owners cannot be found with reasonable effort, the authorities in charge of said highway shall remove said signs from within the right of way.

(4) The triangles bounded by any 2 adjacent intersecting highways and a line drawn between the points on the center lines of said highways 1,000 feet from the intersection of their center lines, are declared prohibited ground for the erection of any danger producing advertising signs, when such intersection is beyond the corporate limits of any city or village. No advertising sign, design or insignia shall hereafter be erected within said triangles which will endanger the safety of the public traveling along any highways, and if there now exist in any such triangle any advertising signs, designs, or insignia endangering the safety of the public traveling along such highways, the authorities in charge of the maintenance of such highways shall take up the matter with the owner of the sign and with the owner of the land, and shall cause the same to be removed, or to be so altered as to remove the danger producing features. Within the same triangles the authorities in charge of maintaining any road shall require the property owner to minimize the obstruction to the view across the triangle insofar as is possible, and shall make such arrangements with him as will make travel on the intersecting highways as safe as is reasonably possible.

(5) Any person who violates any of the provisions of this section shall be guilty of a misdemeanor and on conviction thereof shall be punished by a fine of not less than \$25 nor more



than \$100 for each offense, or by imprisonment in the county jail for a period not exceeding 30 days, or by both such fine and imprisonment in the discretion of the court.

**86.192 Penalty for injuring guide board, markers, etc. (1)** No person may injure, deface or remove any sign, guide board, mile post, signal or marker erected by the state or by any municipality thereof for the warning, instruction or information of the public. The following warning shall be affixed to the front of each such sign, guide board, mile post, signal or marker: "WARNING: \$25 to \$100 fine or imprisonment for removing or tampering with this sign."

**(1m)** No person may possess any sign, guide board, mile post, signal or marker of the type erected by the state or by any municipality for the warning, instruction or information of the public, unless the person can demonstrate that he or she obtained it in a legal manner. Possession of such a sign, guide board, mile post, signal or marker creates a rebuttable presumption of illegal possession. In this subsection, "possession" means the presence of such a sign, guide board, mile post, signal or marker on premises owned or controlled by the person, including but not limited to a rented apartment, rented room or dormitory room. Persons who voluntarily notify a law enforcement agency of the presence on their premises of such a sign, guide board, mile post, signal or marker shall be exempt from prosecution under this subsection.

**(2)** Any person who violates this section shall be fined \$25 for the first violation, \$100 for a subsequent violation, or imprisoned not exceeding 30 days for the first violation, or 60 days for a subsequent violation, or both fined and imprisoned in the discretion of the court. The court may, in addition, order any such person either to restore or replace any such damaged sign, mile post, signal or marker, or to pay the cost thereof.

**(3)** On conviction of any person of a violation of this section, the person or persons who informed against and aided in the prosecution of such offense to conviction shall be paid by the court one-half of the amount of the fine paid into the court.

**(4)** Any person who violates this section shall be fined up to \$10,000 or imprisoned not more than 2 years, or both fined and imprisoned, if the injury, defacement or removal causes the death of a person.

History: 1975 c. 169, 421

**86.195 Specific information signs. (1) DEFINITIONS.** Unless defined differently in this sec-

tion, the terms used in this section are defined in accordance with the manual of uniform traffic control devices adopted by the department under s. 84.02 (4) (e). In this section:

(a) "Business sign" means a separately attached sign mounted on the rectangular sign panel to show the brand, symbol, trademark, or name, or combination of these; for a motorist service available on a crossroad at or near an interchange or an intersection.

(b) "Department" means the department of transportation.

(c) "Motorist service" means a business which qualifies under sub. (3).

(d) "Specific information sign" means a rectangular sign panel which displays:

1. One or more of the words "GAS", "FOOD", "LODGING" and "CAMPING";
2. Directional information; and
3. One or more business signs.

(e) "Zoned commercial or industrial area" means an area which is zoned for business, industry, commerce or trade under a state or local zoning ordinance or regulation.

**(2) SIGNS AND FEES.** (a) Upon the request of any person, the department may authorize the erection and maintenance of a specific information sign within the right-of-way of a federal-aid primary highway subject to the following restriction:

1. No specific information sign may be erected within any city or village.

2. No specific information sign may be erected to identify any motorist service located within the limits of any zoned commercial or industrial area.

(b) 1. Subject to the restriction in subd. 2, upon the request of any person, the department may authorize the installation and maintenance of a business sign on an existing specific information sign.

2. No business sign may be installed for any business advertising on a sign authorized or permitted under s. 84.30.

(c) A person who requests the erection or installation of a sign under par. (a) or (b) shall pay to the department an annual permit fee of \$40 to cover administrative costs and the cost of inspection of the signs erected or installed under this section. In addition, the person requesting a sign under par. (a) or (b) shall pay a fee for the manufacture, installation and maintenance of the business sign and the specific information sign.

(d) The department shall contract for the erection, installation and maintenance of signs under this section. The department shall contract under this section for a period of not less than 5 years on the basis of qualified bids. The department may require the contractor to pro-

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vide liability insurance for purposes of this section.

(3) **MOTORIST SERVICES.** Specific information signs may only include business signs for the following categories of motorist services: "GAS", "FOOD", "LODGING" and "CAMPING". To qualify for display on a specific information sign a business must meet the following standards for the respective category of motorist service:

(a) "GAS" shall have:

1. Vehicle services including fuel, oil, tire repair and water;

2. Restroom facilities and drinking water;

3. Continuous operation of at least 16 hours a day, 7 days a week for freeways and expressways, and continuous operation of at least 12 hours a day, 7 days a week for other highways, provided automotive fuel is available under the energy fuel allocation program established under P.L. 93-159; and

4. Public telephone.

(b) "FOOD" shall have:

1. Licensing or approval, where required;

2. Regular operation at least 5 days a week for a total of at least 40 hours a week;

3. Fifty percent of the gross receipts of the business are from meal, food, food product and beverage sales taxable under s. 77.54 (20) (c); and

4. Public telephone.

(c) "LODGING" shall have:

1. Licensing or approval, where required;

2. Adequate sleeping accommodations; and

3. Public telephone.

(d) "CAMPING" shall have:

1. Licensing or approval, where required;

2. Adequate parking accommodations; and

3. Modern sanitary facilities and drinking water.

(4) **LOCATION.** (a) Specific information signs shall be located so as to take advantage of natural terrain, to have the least impact on the scenic environment and to avoid visual conflict with other signs within the highway right-of-way.

(b) The relative location of successive specific information signs near a particular intersection shall be in the following order, as seen by the traveling public: "CAMPING", "LODGING", "FOOD" and "GAS".

(5) **CRITERIA.** (a) *Distance to services.* 1. Except as provided in subd. 2, a motorist service may not be located more than 3 miles from the federal-aid primary highway on which the specific information sign for the motorist service is erected.

2. If no business in the category of motorist service is available within the 3-mile limit, the

limit in subd. 1 may be extended in 3-mile increments to a maximum distance of 15 miles from the federal-aid primary highway until a business in the category of motorist service is reached.

(b) *Number of signs permitted.* No more than one specific information sign for each category of motorist service may be erected along an approach to an interchange or intersection. The specific information sign for "GAS" may contain no more than 6 business signs. The specific information sign for "FOOD", "LODGING" or "CAMPING" may contain no more than 4 business signs.

(c) *Conformity with discrimination laws.* Each business identified as a motorist service on a specific information sign shall, as a condition of eligibility for erection, installation and maintenance of a sign under this section, give written assurance to the department that the business conforms with all applicable laws concerning the provisions of public accommodations without regard to race, religion, color, sex or national origin.

(6) **COMPOSITION.** (a) Specific information signs and business signs shall have a blue reflectorized background with a white reflectorized border and white reflectorized legend. Sign panels may be illuminated.

(b) The design, lettering, spacing and size of specific information signs and business signs shall conform with the federal standards on specific information signs adopted under 23 USC 131 (f) on November 1, 1982 and with the manual of uniform traffic control devices adopted by the department under s. 84.02 (4) (e).

(7) **EXIT RAMP SIGNS.** If motorist services are not visible from the ramp terminal at single exit interchanges on freeways and expressways, specific information signs shall be installed along the ramp or at the ramp terminal and may be provided along the crossroad.

(8) **SEASONAL SERVICES.** Any sign for a "LODGING" or "CAMPING" motorist service which is operated on a seasonal basis shall be removed or covered during off seasons. The cost of removal and replacement or covering and uncovering shall be included in the fee paid.

(9) **SIGN REMOVAL.** (a) A sign may be removed upon the following grounds:

1. Failure to comply with the applicable motor service standards under sub. (3).

2. Failure to comply with the assurance of nondiscrimination required by sub. (5) (c).

3. Failure to pay the permit fee or the fee for the erection, installation or maintenance of a sign.

(b) Contested cases concerning removals under this subsection shall be heard and decided by the office of the commissioner of transportation.

(c) Sign removal shall not affect a sign requester's liability for unpaid fees.

**(10) COMPLIANCE WITH FEDERAL LAW.** (a) Subsections (2) to (8) are adapted from and in substantial conformity with the federal standards promulgated by the U.S. secretary of transportation under 23 USC 109 (d), 131 (f) and 315 as codified in 23 CFR 655.301 to 655.310 (1980).

(b) If, after November 1, 1982, the federal standards become more restrictive, the department shall submit proposed legislation to the appropriate standing committees of the legislature, as designated by the presiding officer of each house to bring this section into compliance with the federal standards. The department may promulgate an emergency administrative rule under s. 227.027 which supersedes this section until such time as the legislature acts on the legislation submitted under this paragraph or until the expiration of the effective period of the rule under s. 227.027 (1), whichever comes first.

**History:** 1981 c. 362, 391.

**86.20 Interstate bridge corporations.** Any corporation organized for the purpose of constructing, operating and maintaining a bridge over navigable boundary waters of this state and authorized by congress to erect such bridge shall have all the rights and powers with respect to entry upon, and acquisition, of real estate for the construction, operation and maintenance of such bridge, with the necessary approaches, terminals and appurtenances thereto, that are possessed by railroad corporations.

**86.21 Interstate toll bridges. (1)** Any county or town, or any village or city however organized, bordering upon any navigable waters which form the boundary line between this and another state, may construct, maintain and operate a foot and vehicular toll bridge over and across such river or waters, commencing at a point within or near the limits of such county, town, village or city, and may acquire land in this and in such other state for approaches, abutments and piers, or may acquire, maintain and operate any such toll bridge which spans any such river or waters, whether such bridge is located wholly or partly only within the boundaries of this state and whether such bridge is located within or only partly within and partly without the limits of such county, town, village or city.

**(2) (a)** Before any such toll bridge is constructed or acquired under this section, a resolution authorizing the construction or acquisition thereof, and specifying the method of payment therefor, shall be adopted by a majority of the members of the governing body of such county, town, village or city at a regular meeting, after publication of said resolution, as a class 2 notice, under ch. 985. The resolution shall include a general description of the property it is proposed to acquire or construct. Any county, town, village or city constructing or acquiring a toll bridge under this section may provide for the payment of the same or any part thereof from the general fund, from taxation, or from the proceeds of either municipal bonds, revenue bonds or as otherwise provided by law. Such resolution shall not be effective until 15 days after its passage and publication. If within said 15 days a petition is filed with the clerk of such municipality signed by 20% of the electors thereof requesting that the question of acquiring such toll bridge be submitted to the said electors, such question shall be submitted at any general or regular municipal election that may be held not less than 10 nor more than 40 days from the date of filing such petition. In case no such general or regular municipal election is to be held within such stated period, then the governing body of such municipality shall order a special election to be held within 30 days from the filing of such petition upon the question of whether such toll bridge shall be acquired by said municipality. The question submitted to the electors shall specify the method of payment for such toll bridge as provided in the resolution for the acquisition thereof. If no such petition is filed, or if the majority of votes cast at such referendum election are in favor of the acquisition of such toll bridge, then the resolution of the governing body for the acquisition of such toll bridge shall be in effect.

**(b)** Where such payment is to be made in whole or in part through the issuance of revenue bonds, such bonds shall be issued as provided in s. 66.066. The amount of all incidental expenses incurred in connection with the construction or acquisition of the bridge and in connection with the authorization and issuance of the bonds may be included in the amount for which bonds are issued. Such revenue bonds shall be payable solely from the revenues to be derived from the operation of the bridge or bridges as acquired or constructed, and shall not constitute an indebtedness of the county, town, village or city. Any toll bridge property owned or acquired pursuant to this section is declared to be a public utility. The provisions of s. 66.068 shall be applicable to the management of such bridge and the provisions of ss. 66.066 and 66.068 shall

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govern insofar as they may be applicable. For purposes of management, operation and financing, 2 or more such bridges, whether acquired or constructed, may be combined into a single project or public utility, and such revenue bonds may be issued payable from the revenues of such combined project or utility.

**History:** 1983 a 207.

**86.22 Interstate railroad bridges must have convenient approaches.**

Each corporation incorporated under the laws of this state and granted a franchise or permit by the U.S. congress to construct, maintain and operate a railroad bridge and provide for the passage of pedestrians, wagons, vehicles and all kinds of street railway and motor cars across the waters forming a boundary line between this and any other state and to forever maintain the bridge in accessible and serviceable condition, shall construct or cause to be constructed, approaches making the bridge accessible and serviceable for the use of pedestrians, wagons, vehicles and all kinds of street railway and motor cars as a connection between this state and the state connected therewith by the bridge, so that the bridge shall be accessible and serviceable to pedestrians, wagons and vehicles and all kinds of street railway and motor cars at the time such bridge is used for railroad service, and if any such corporation fails or refuses to comply with this section within one year from the time the bridge is used for railroad service the charter of the corporation granted by this state shall thereupon be forfeited, as a result of the failure or refusal to comply with this section, without any further action whatever and the corporation shall forthwith discontinue the transaction or operation of its business in this state.

**History:** 1979 c. 110, 355.

**86.23 Maintenance of drawbridges owned jointly.**

All swing or drawbridges built or purchased by any city and town or by any other two municipalities, and so situated that a part thereof is in one municipality and a part in another, shall be operated and maintained at the joint expense of the municipalities which built or purchased them in proportion to the amount of the cost thereof borne by each. If either such municipality shall not provide for or pay its full share of such expense in any year the other may provide for or pay it, and upon paying the same may recover of the municipality in default its share of the same, with interest from the time of payment and costs of suit; provided, that no action to recover the same shall be brought until thirty days after demand of payment is made.

**86.25 Municipal cooperation as to highways improved with state or federal aid. (1)**

Any county, city, village or town may by any lawful means provide funds to match or supplement state or federal aid for the construction, reconstruction or improvement, under ch. 84, of any highway, street or bridge which it is authorized to construct, reconstruct or improve, and to pay such funds to the department of transportation or state treasury as provided in s. 84.03 (1) (b).

**(1m)** If lands or interests in lands necessary for an improvement under ch. 84 are acquired by a county or local municipality specifically for such improvement, the department may reimburse such county or local municipality therefor from funds available for such improvement.

**(2)** Any county, city, village or town, through its governing body or a committee which it may designate, may enter into agreements with the department of transportation providing for the construction, reconstruction or improvement with state or federal aid, of highways, streets or bridges which such county, city, village or town is authorized to construct, reconstruct or improve, providing for the subsequent maintenance by such county, city, village or town of any such highway, street or bridge improved with state or federal aid which it has authority to maintain, and providing for the subsequent regulation as to the location, form and character of informational, regulatory and warning signs, curb and pavement or other markings and traffic signals on any such highway, street or bridge improved with state or federal aid.

**(3)** Any city or village may levy special assessments pursuant to s. 66.60 not exceeding the cost to such city or village against the property benefited thereby to provide funds to match or supplement state or federal aid or both for the construction, reconstruction or improvement under ch. 84, or under any other statute of any highway or street which it is authorized to construct, reconstruct or improve, and any city or village is authorized to pay the proceeds of such assessments, certificates or special assessment bonds issued to finance said improvement to the department of transportation or state treasury as provided in s. 84.03 (1) (b).

**(4)** Sections 61.55, 62.15 and 66.29 shall not apply to funds provided or agreements made pursuant to this section.

**History:** 1977 c. 29 s. 1654 (8) (c); 1977 c. 418 s. 924 (48); 1981 c. 314.

**86.26 Town road standards. (1)** The following minimum geometric design standards are established for improvements on town roads:

Annual Average 24-hour Traffic (ADT)	Minimum Design Standards
--------------------------------------------	-----------------------------

- |                                         |           |
|-----------------------------------------|-----------|
| (a) Local service, intermittent traffic |           |
| 1. Right of way .....                   | 3 rods    |
| 2. Roadway width .....                  | 20 feet   |
| 3. Surface width .....                  | 16 feet   |
| 4. Bridge design load .....             | H-15      |
| 5. Bridge width .....                   | 24 feet   |
| (b) Under 100 ADT                       |           |
| 1. Right of way .....                   | 3 rods    |
| 2. Roadway width .....                  | 24 feet   |
| 3. Surface width .....                  | 18 feet   |
| 4. Maximum grades .....                 | 9%-11%    |
| 5. Bridge design load .....             | H-15      |
| 6. Bridge width .....                   | 24 feet   |
| (c) 100 to 250 ADT                      |           |
| 1. Right of way .....                   | 4 rods    |
| 2. Roadway width .....                  | 26 feet   |
| 3. Surface width .....                  | 20 feet   |
| 4. Maximum grades .....                 | 8%-11%    |
| 5. Bridge design load .....             | H-15      |
| 6. Bridge width .....                   | 24 feet   |
| (d) 251 to 400 ADT                      |           |
| 1. Right of way .....                   | 4 rods    |
| 2. Roadway width .....                  | 32 feet   |
| 3. Surface width .....                  | 22 feet   |
| 4. Maximum grades .....                 | 6%-8%     |
| 5. Curvature .....                      | 6°-12.5°  |
| 6. Bridge design load .....             | H-20      |
| 7. Bridge width .....                   | 26 feet   |
| (e) 401 to 1,000 ADT                    |           |
| 1. Right of way .....                   | 4 rods    |
| 2. Roadway width .....                  | 34 feet   |
| 3. Surface width .....                  | 22 feet   |
| 4. Maximum grades .....                 | 5%-8%     |
| 5. Curvature .....                      | 5°-12.5°  |
| 6. Bridge design load .....             | H-20      |
| 7. Bridge width .....                   | 28 feet   |
| (f) 1,001 to 2,400 ADT                  |           |
| 1. Right of way .....                   | 4 rods    |
| 2. Roadway width .....                  | 44 feet   |
| 3. Surface width .....                  | 24 feet   |
| 4. Maximum grades .....                 | 5%-7%     |
| 5. Curvature .....                      | 4.5°-7.5° |
| 6. Bridge design load .....             | H-20      |
| 7. Bridge width .....                   | 30 feet   |
| (g) Over 2,400 .....                    |           |

(2) The department of transportation may approve deviations from the minimum standards in special cases where the strict application of the standards is impractical and where such deviation is not contrary to the public interest and safety and the intent of this section.

(3) The minimum design standards specified for bridge design load and bridge width under sub. (1) do not apply after April 1, 1982 or after the department of transportation establishes

standards by rule under s. 86.265, whichever comes first.

History: 1981 c. 20.

**86.265 Rules for town road bridge standards.** The department of transportation shall establish by rule uniform minimum design standards for the improvement of town road bridges.

History: 1981 c. 20.

**86.30 Local transportation aids. (1) DEFINITIONS.** In this section:

(a) "Basic aids" means the amount of local transportation aids distributed to each county or municipality as determined under sub. (4) (a).

(b) "Base year distribution" means the amount of basic and supplemental highway aids distributed to a county, city, village or town under s. 20.395 (1) (qa) and (qb), 1975 stats., for the purpose of ss. 83.10 and 86.31, 1975 stats., for fiscal year 1976-77 subject to adjustments made under sub. (6).

(be) "Formula aids" means the amounts distributed to a county or municipality on the basis of the formula specified under sub. (2).

(bm) "Hold harmless aids" means the amount by which the base year distribution for a county or municipality exceeds the formula aids for the county or municipality.

(bs) "Minimum aid per mile guarantee" means the amount determined under sub. (4) (b) 1.

(c) "Municipality" means cities, villages and towns.

(d) "State formula aids level" means the amount of basic aids specified under sub. (9) minus the amount required to fully fund the statewide total of hold harmless aids necessary for the particular calendar year.

(2) **FORMULA AIDS.** (a) For the purpose of determining the formula aids amount a "local formula factor" shall first be calculated for every county and municipality which reports costs data in accordance with s. 86.303.

(b) The "local formula factor" shall be determined by multiplying the following factors: the functionally classified road mileage under the jurisdiction of the county or municipality as determined under s. 86.302; the appropriate cost factor established under s. 86.303; and the appropriate responsibility factor established under s. 86.304.

(c) The proportion of the "local formula factor" for a particular county or municipality to the total of all "local formula factors" shall be considered the "local proportionate share" of the particular county or municipality. The amount determined by multiplying the local

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proportionate share times the state formula aids level is the formula aids amount for the particular county or municipality.

**(4) TRANSPORTATION AIDS DISTRIBUTION.** (a) *Basic aids.* The amount of basic aids payable by the department to each county and municipality shall be the formula aids amount or the base year distribution, whichever is greater, except that commencing with calendar year 1985 and thereafter, once a county or municipality is paid the formula aids amount for a calendar year, it shall thereafter continue to be paid the amount determined under sub. (2).

(b) *Mileage aids.* 1. Each county and municipality is guaranteed a minimum aid per mile payment for each mile of road or street under the jurisdiction of the county or municipality as determined under s. 86.302. In calendar year 1984, the minimum aid per mile guarantee shall be an amount equal to \$535 for each mile of road or street. In calendar year 1985 and thereafter, the minimum aid per mile guarantee shall be an amount equal to \$550 for each mile of road or street. The amount distributed under this subdivision shall be the amount by which the minimum aid per mile guarantee for a county or municipality exceeds the basic aids amount for the county or municipality.

2. If the basic aids amount for a county or municipality exceeds the minimum aid per mile guarantee, the county or municipality shall receive a mileage-based payment of \$70 for each mile of road or street under the jurisdiction of the county or municipality as determined under s. 86.302.

(c) *Aid limitation based on reported costs.* No county or municipality may be paid an amount under this section greater than 80% of its average calendar year cost data. For 1984, the average calendar year cost data shall be based on the 5 most recent years for which complete annual cost data is available under s. 86.303 (5). For 1985 and each calendar year thereafter, the average calendar year cost data shall be based on the 6 most recent years for which complete annual cost data is available under s. 86.303 (5).

(d) *Aid payments.* Local transportation aids under this section shall be calculated and distributed on the basis of a calendar year. Local transportation aids shall be paid in 4 equal instalments on the first Monday in January, April, July and October. If adjustments are necessary, the department may adjust any of the scheduled aid payments in a calendar year. The payments shall be made from the appropriation under s. 20.395 (1) (aq) for the fiscal year in which the payments are made. If the amount appropriated under s. 20.395 (1) (aq) is insufficient to pay the local transportation aids distri-

bution under this section, the department shall prorate the amount appropriated in the manner it deems desirable.

**(6) ADJUSTMENTS IN BASE YEAR DISTRIBUTION.** (a) If the jurisdictional road mileage of a county or municipality is reduced as a result of incorporation, consolidation, annexation, detachment, abandonment or some similar procedure whereby the jurisdiction of the county or municipality is transferred, in whole or in part, to a new or another county or municipality, the percentage reduction in jurisdictional road mileage shall be reflected by making a proportionate reduction in the base year distribution figure for the county or municipality. The adjusted base year distribution figure shall be used under sub. (4) (a) to determine transportation aids payable in calendar years following certification of the change in jurisdictional mileage responsibility under s. 86.305.

(b) If a county or municipality receives additional road mileage as the result of a jurisdictional transfer from the state, a county or municipality, a base year distribution for the county or municipality shall be determined under this paragraph. The base year distribution shall be the amount of basic and supplemental highway aids which the county or municipality would have been entitled to receive for fiscal year 1976-77 under s. 20.395 (1) (qa) and (qb), 1975 stats., if it had exercised jurisdiction over the additional road mileage at the time.

**(6m) BASE YEAR DISTRIBUTION FOR RECENTLY INCORPORATED MUNICIPALITIES.** If a municipality incorporated after July 1, 1977, a base year distribution for the municipality shall be determined under this subsection. The base year distribution for a municipality which incorporated after July 1, 1977, shall be the amount of basic and supplemental highway aids which the municipality would have been entitled to receive for fiscal year 1976-77 under s. 20.395 (1) (qa) and (qb), 1975 stats., if the municipality had been incorporated during fiscal year 1976-77.

**(7) USE OF AIDS.** All transportation aids distributed under this section shall be used for transportation related expenditures.

**(8) TRANSPORTATION AIDS FOR 1980-81.** If the department is directed by a court to pay counties and municipalities the amount by which the 1980-81 local transportation aids were reduced because of revenue deficiencies, the department shall make the payment from the transportation aids appropriation for the next fiscal year after the court order is final.

**(9) AIDS CALCULATIONS FOR 1984 AND 1985.** For the purpose of calculating and distributing

basic aids under sub. (4) (a), the amounts for basic aids are \$145,400,000 in calendar year 1984 and \$149,700,000 in calendar year 1985. These amounts, to the extent practicable, shall be used to determine the distribution of formula aids and hold harmless aids in the particular calendar year.

**History:** 1977 c. 29; 1979 c. 32 s. 92 (1); 1979 c. 34 ss 934b, 2102 (52) (a); 1981 c. 20, 248; 1983 a. 27.

**86.301 Functional classification. (1) DEFINITIONS.** In this section:

(a) "Functional classification" means the process by which public highways, streets, and roads are grouped into classes according to the character of service they provide, ranging from a high degree of travel mobility to a high degree of land access.

(2) **PERIODIC ANALYSES.** The department shall conduct periodic analyses of the entire state and local highway system using statewide criteria adopted by the secretary, and based thereon, shall subdivide and classify, and from time to time reclassify, all public highways, streets and roads according to the following functional classes: a) "arterials" which are roads serving corridor movements having trip length and traffic density characteristics of an interstate or inter-area nature; b) "collectors" which are roads serving short distance intra-area traffic or which provide connections between roads classified as arterials and local roads; and c) "local roads" which are all roads within municipalities or in rural areas not included in other classifications which provide property access and short distance local mobility services. The secretary shall appoint an advisory body of local officials to make recommendations on the establishment of functional classification criteria and on the application of the criteria.

(3) **UNIFORM CRITERIA.** The secretary shall establish uniform criteria so that any functional systems developed for any one year for all state and federal purposes are compatible and directly relatable. The criteria to be utilized by the department in making such functional classifications shall be adopted by the secretary by rule, and shall consider:

(a) Population centers within and without the state, stratified and ranked according to size.

(b) Important traffic generating activities, including but not limited to recreational, agricultural, governmental, business and industrial activity centers.

(c) Directness of travel and distance between points of economic importance.

(d) Length of trips.

(e) Character and volume of traffic.

(f) Appropriate spacing.

(g) System continuity.

(4) **ANNUAL AND PERIODIC UPDATE.** The department shall update the functional classification annually to reflect new construction, and conduct a complete review of all functional classifications on the entire state and local highway system not less than once every 5 years. Other changes in functional classification may be made biennially by the department when the character of travel on a specific road changes significantly. The review and other changes shall be made in cooperation with appropriate local officials.

(5) **FINAL DETERMINATION.** The secretary is responsible for making the final determination of a road's functional classification. However, the decision of the secretary may be appealed to the office of the commissioner of transportation which may affirm, reverse or modify the secretary's decision.

**History:** 1977 c. 29; 1981 c. 20; 1981 c. 347 s. 80 (2)

**86.302 Jurisdictional responsibility. (1)** The board of every town, village and county, and the governing body of every city, shall annually not later than December 15, file with the department and with the county clerk, a certified plat of such town, village, city or county showing the roads and streets under their jurisdiction and the mileage thereof to be open and used for travel as of the succeeding January 1, which may be used by the department in making computations of transportation aids. One-half of the mileage of roads or streets on boundary lines shall be considered as lying in each town, village, city or county.

(2) The department shall establish uniform regulations and criteria for the classification of roads and shall disseminate such information to local units of government. The department shall cooperate with and provide assistance to local units of government in their functional classification and jurisdictional mileage determination efforts. The department shall inventory and verify all road mileage in a county or municipality once every 5 years.

(3) For the purposes of transportation aid determinations under s. 86.30 the following factors shall be considered by the department:

(a) New roads shall be added to a local unit's mileage total in the calendar year following the year in which the road is first open to traffic.

(b) Abandoned roads shall be deleted from a local units mileage total in the calendar year following the year in which the road is closed to traffic.

(c) Islands of this state consisting of one or more towns shall receive all state aids regularly payable to towns under s. 86.30 and in addition thereto shall receive such aids for the number of

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miles equal to the distance between an island port and the closest mainland port where such distance is regularly traveled by a licensed ferry transporting persons, cars, trucks, buses and other mechanized equipment. Such additional aids are given for the purpose of maintenance and construction of public docks, parking areas at docks as well as approaches and ramps leading to the docks and for maintenance, clearing and marking of traveled ways over frozen waters between the islands and the mainland.

**History:** 1977 c. 29; 1981 c. 20; 1983 a. 27

**86.303 Cost determinations. (1) AVERAGE COST FACTOR ANALYSIS.** The department shall conduct continuing analyses of the average cost-per-mile of construction and maintenance on the state and local highway systems and shall select average cost factors that establish the differences in highway related costs between functionally classified road mileages. This data shall be used to recommend revisions to the average cost factors under sub. (3). Average cost factor data shall be developed based on the functional classification system in s. 86.301.

**(1m) BUDGET REQUEST DATA.** The department shall select a functionally classified system as determined under s. 86.301 (4) and a set of average cost factor data as determined under sub. (1) for its biennial budget request.

**(2) MULTIYEAR COST FACTOR CALCULATION.** The department shall calculate multiyear cost

factors based on functional classification for each county and municipality. The multiyear cost factors shall be calculated in the following manner:

(a) The functionally classified road mileage under the jurisdiction of the county or municipality as determined under s. 86.302 shall be weighted by multiplying this mileage times the functionally classified average cost factors as determined under sub. (3).

(b) The proportion of each functionally classified weighted mileage to the total weighted mileage shall be used to calculate the functionally classified weighted costs for each county and municipality from the multiyear average costs under sub. (4).

(c) The functionally classified weighted costs shall be divided by functionally classified mileage to determine the multiyear cost factors for each county and municipality.

**(3) AVERAGE COST FACTORS.** For the purposes of determining aids to local units of government under s. 86.30 the following average cost factors shall be utilized by the department until new average cost factors are developed under sub. (1). For the purposes of determining average costs, the average cost factors shall be multiplied by each functionally classified mileage. [See Figure 86.303 (3) following]

	<u>Arterials</u>	<u>Collectors</u>	<u>Local Roads</u>
Rural	225	55	30
Incorporated Areas:			
Less than 10,000 population	275	110	60
10,000 - 35,000 population	325	185	75
35,001 - 150,000 population	425	260	85
Over 150,000 population	625	410	90

**(4) MULTIYEAR AVERAGE COSTS.** The multiyear cost factors used to determine the formula aids amount for local units of governments for calendar year 1984 shall be based on the actual costs for calendar years 1978 to 1982 and one year of average costs under sub. (3). For calendar year 1985 and thereafter, the multiyear average shall be based on the 6 most recent years for which actual costs are available.

**(5) ANNUAL COSTS DATA.** (a) The department, with the assistance of the department of revenue and representatives of local governments and their associations appointed by the secretary, shall prescribe a uniform cost reporting procedure.

(b) Cost data shall be reported on a calendar year basis, and financial report forms or a

written request for extension shall be submitted to the department of revenue as provided under pars. (c) and (d). All extensions under this paragraph shall be until May 15 and no extension beyond that date may be granted.

(c) The department and the department of revenue shall prescribe a statewide uniform financial reporting procedure under s. 73.10 for municipalities having a population of 2,500 or less. The financial report form or a written request for extension shall be submitted to the department of revenue by March 31 by municipalities having a population of 2,500 or less for the purposes under this section. All extensions under this paragraph shall be until May 15 and no extension beyond that date may be granted.



The department of revenue shall forward the highway related cost data to the department.

(d) The department and the department of revenue shall prescribe a statewide uniform financial reporting procedure under s. 73.10 for counties and for municipalities over 2,500 population. The financial report forms or a written request for extension shall be submitted to the department of revenue by May 1 by counties and by municipalities over 2,500 population for the purposes under this section. All extensions under this paragraph shall be until May 15 and no extension beyond that date may be granted. The department of revenue shall forward the highway related cost data to the department.

(e) If a county or municipality fails to submit a substantially complete and accurate financial report form by the date required under par. (c) or (d) each year, as provided under this subsection, the aids payable to the county or municipality during the following year shall be equal to 90% of the aids actually paid to the county or municipality under s. 86.30 (4) during the preceding year.

(6) **ELIGIBLE COST ITEMS.** All road or street construction and maintenance expenditures within the right-of-way are generally reportable as eligible cost items.

(a) Maintenance items include without limitation because of enumeration:

1. Pavement and curb and gutter repair.
2. Maintenance of bridges, culverts and storm sewers.
3. Snow plowing and ice control.
4. Maintenance of traffic control devices.

(b) Construction items include without limitation because of enumeration:

1. Storm drainage systems, culverts and bridges.
2. Grading, base and surface.
3. Marking, signs and traffic control signals.
4. Engineering.
5. Right-of-way acquisition, including relocation assistance.

(c) The following other costs to the extent to which they are highway related are reportable:

1. Machinery and vehicle costs.
2. Expenditures for buildings required for road or street purposes.
3. Interest cost related to funds borrowed to finance any eligible cost item.
4. Traffic police and street lighting costs.

(d) Road or street costs not eligible include costs that may be financed with public funds other than road or street funds, items that are by statute, ordinance or local policy not a public expense or responsibility and all administrative costs.

(e) Cost data shall not include state or federal contributions to the work, all other public

agency fund contributions, and all private contributions other than local assessments or special assessments paid by governmental agencies.

(f) The department shall provide a manual of cost reporting guidelines which further details eligible and ineligible costs.

(7) **COST REVIEW AND AUDIT.** (a) The department shall analyze the county and municipal highway-related cost data to identify that data that does not conform to reasonable averages and statistical groups or with previous reported costs. The department may request information from those municipalities or counties to explain the deviation. If not satisfied, the department may order the municipality or county to conduct and report to the department an independent certified audit of their financial report, and the audit costs shall be a reportable cost item if the audit substantially verifies the original financial report.

(b) If the county or municipality fails to conduct such an audit, the aids payable during the following year shall be equal to 90% of the aids actually paid during the preceding year. If the department has reason to believe that the 90% payment will be greater than the actual payment should be, the department may itself order an independent audit and deduct the audit costs from the transportation aids paid to the county or municipality under s. 86.30 (4). Any underpayment or overpayment of aids resulting from financial reporting errors shall be rectified by adjusting aids paid in the following year.

(c) Any municipality having a population of 2,500 or less which has submitted its financial report form may amend it prior to March 31 or prior to May 15 if a written request for extension has been received by the department of revenue. Any county or any municipality having a population over 2,500 which has submitted its financial report form may amend it prior to May 1 or prior to May 15 if a written request for extension has been received by the department of revenue. Any amendments shall be submitted to the department of revenue. Any county or municipality which desires to amend its financial report form after May 15 shall submit an independent, certified audit to the department of revenue no later than August 15.

(d) Any county or municipality that desires to amend past-year cost reports shall submit an independent, certified audit to the department. Any county or municipality that desires to amend past-year financial report forms shall submit amendments to the department of revenue.

**History:** 1977 c. 29; 1979 c. 34, 221; 1981 c. 20; 1983 a 27, 192, 405.

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**86.304 State—local responsibility factor.** In order to reflect the varying public services performed by different functional classes of roads, it is established that the following state responsibility factors be applied to the 3 classes of roads: for arterials, a factor of 800; for collectors, a factor of 550; and for local roads, a factor of 300. These factors shall only be used for the purpose of determining aids under s. 86.30 and shall not be considered when making jurisdictional mileage determinations under s. 86.302.

*History:* 1977 c. 29

**86.305 Annual adjustments in jurisdictional mileage.** The incorporated status and boundaries of municipalities and changes in jurisdictional mileage responsibilities under s. 86.302 shall be certified by the department by May 1 in order to be reflected in transportation aid calculations for the following calendar year.

*History:* 1977 c. 29; 1983 a. 27

**86.32 Connecting highways. (1)** The department may designate, or rescind the designation of, certain marked routes of the state trunk highway system over the streets or highways in any municipality for which the municipality will be responsible for maintenance and traffic control and the maintenance and operation of any swing or lift bridge. Such maintenance, operation and traffic control of the connecting highways and swing and lift bridges shall be subject to review and approval by the department. Those marked routes of the state trunk highway system designated as connecting streets prior to July 1, 1977, shall become the connecting highways in municipalities which are eligible for aids payments under this section. The character of travel service provided by a route, uniformity of maintenance, the effect on the maintaining agency, and the municipality's maintenance capability will be considerations by the secretary, in cooperation with the municipalities and counties in making changes in the connecting highways of the state trunk highway system in municipalities. The decision of the secretary to designate or rescind a designation may be appealed to the office of the commissioner of transportation, which may affirm, reverse or modify the secretary's decision.

**(2)** (a) Cities of the 1st, 2nd and 3rd class shall be reimbursed for actual costs, as approved by the department, incurred in maintaining and operating lift bridges. Documentation of costs shall be submitted by each municipality by January 31 and reimbursement shall be made, starting in 1982-83, on the first Monday in July for costs incurred during the prior calendar year. If the amount appropriated under s.

20.395 (1) (au) is insufficient to pay the actual costs approved by the department for the maintenance and operation of lift bridges, the department shall prorate the amount appropriated in the manner it deems desirable.

(b) 1. Reimbursement for maintenance of connecting highways for calendar year 1983 shall be determined as follows: \$7,030 per lane mile for municipalities having a population over 500,000; \$6,510 per lane mile for municipalities having a population of 150,001 to 500,000; \$5,810 per lane mile for municipalities having a population of 35,001 to 150,000; \$5,110 per lane mile for municipalities having a population of 10,000 to 35,000; and \$4,400 per lane mile for municipalities having a population under 10,000. For the first 2 lanes of a highway, the applicable rate per lane mile shall be paid in full. For the 2nd 2 lanes of a highway, the payable rate per lane mile shall be 75% of the appropriate rate per lane mile prescribed in this section. For the 3rd 2 lanes, and any additional lanes, of highway, the payable rate per lane mile shall be 50% of the appropriate rate per lane mile prescribed in this section.

2. For the purpose of this section, the term "lane miles" means miles of through traffic carrying lanes and does not include lanes on which parking is permitted. Lane miles on any section of connecting highway which have been certified by the department for payment purposes under this section shall not be increased unless they are needed for through traffic and approved by the department. The "lane miles" as of January 1, 1977, are the certified lane miles.

3. The amount appropriated under s. 20.395 (1) (as) shall be distributed according to the per lane mile rate established in this subsection as adjusted by the inflation rate determined under sub. (3).

4. Annual connecting highway aids shall be paid in 4 instalments on the first Monday in July, October, January and April. Unless fiscal year adjustments are necessary, the July and October instalments shall equal the January and April instalments of the previous fiscal year. If fiscal year adjustments are necessary, the department shall make these fiscal year adjustments in the July instalment. If a fiscal year adjustment is made in the July instalment, the next subsequent October instalment shall equal the average of the most recent January, April and July instalments.

5. If the amount appropriated under s. 20.395 (1) (as) is insufficient to make the payments for lane mile reimbursement under this subsection and sub. (3), the department shall prorate the amount appropriated in the manner it deems desirable.

(3) (a) Except as provided in par. (b), the per lane mile reimbursement rate established in sub. (2) shall be adjusted for calendar year 1986 and annually thereafter to reflect the percentage of change attributed to the rate of inflation. For purposes of this paragraph, the percentage attributable to inflation shall be the same percentage as the inflationary rate adjustment to the appropriation under s. 20.395 (3) (eq). The per lane mile reimbursement rate adjusted under this subsection shall be rounded to the nearest \$10 per lane mile.

(b) For calendar years 1984 and 1985, the per lane mile reimbursement rate established in sub. (2) shall be adjusted by 3% to reflect the percentage of change attributed to the rate of inflation.

(4) Municipalities may arrange to participate in the cost of improvement projects on connecting highways. When a connecting highway is reconstructed the municipality shall be required to pay to the department the construction cost of that part of the connecting highway on which parking is to be permitted. However, if lanes on which parking is permitted are required for through traffic and parking is no longer allowed, the department shall reimburse the municipality for the remaining life of those lanes based on a pavement life of 25 years and the original municipal cost for the lanes.

**History:** 1973 c. 333 s. 201w; 1975 c. 224 s. 146; 1977 c. 29; 1979 c. 34, 221; 1981 c. 20; 1981 c. 347 s. 80 (2); 1983 a. 27

**86.33 Population estimates.** Population determination for the purpose of calculating aids under ss. 86.30 and 86.32 shall be based on the final population estimates arrived at by the department of administration under s. 16.96 as of November 30 of the preceding year.

**History:** 1973 c. 333 s. 201w; 1977 c. 29

**86.34 Flood damage aids. (1)** When any public highway, street, alley or bridge not on the state trunk highway system is damaged by flood, the county highway committee, or the governing body of the municipality having jurisdiction over the maintenance thereof, may adopt a petition for aid pursuant to this section and file a certified copy thereof with the department of transportation. To be eligible for aid such petition shall be filed not later than 2 months after the occurrence of the flood damage. All such petitions shall state the dates on which the flood damage occurred and as nearly as practical state the location, nature and extent of the damage.

(2) The department shall make such investigation as it deems necessary and within 6 months from the date of filing the petition shall

make its findings and determination as to the granting of aid, the amount thereof, and the conditions under which it is granted. In making its determination the department shall cause an estimate to be made of the cost of repairing or replacing the facilities damaged or destroyed by the flood to standards and efficiency similar to those previously existing, and also an estimate of the cost of reconstructing to a higher type or improving any such facilities if determined to be warranted and advisable. The amount of aid to be granted shall be one-half of the increased cost of the reconstruction to a higher type or the improvement of any of the facilities, plus three-fourths of the cost of repair or replacement to standards similar to those previously existing or the amount by which such costs exceed one-fourth of the last annual aids paid to the petitioner from s. 20.395 (1) (aq), whichever is greater. The department may revise any of its estimates on the basis of additional facts. The county, town, village or city shall pay the remainder of the cost not allowed as aid, but this shall not invalidate any other provision of the statutes whereby the cost may be shared by the county and the town, village or city.

(3) Aid allotted under sub. (2) shall be held to the credit of the county, town, city or village for not more than 2 years or for such extended period as the department may grant, and, except as otherwise provided herein and in sub. (4), shall be paid to the treasurer thereof upon presentation to and approval by the department of certified statements setting forth the cost of the construction, reconstruction, repair or improvement of the facilities determined in the department's finding to be eligible for aid. The certified statement shall set forth separately the amount expended on each such facility. Except as provided in sub. (4), the aid to be paid shall be the summation of the amounts determined or revised under sub. (2).

(4) Whenever the aid determined to be payable exceeds the cash balance of the appropriation made under s. 20.395 (1) (at), no further payments shall be made until the following June 30, on which date all amounts determined to be payable shall be reduced proportionally to the amount of the balance available.

(5) Any town, city or village may, and at the discretion of the department of transportation shall, arrange to have such work for which aid is granted performed by the county, and in such case, on order of the town, city or village, the aid from the state for such work shall be paid to the county.

**History:** 1971 c. 125 s. 522 (1); 1973 c. 333 s. 201w; 1977 c. 29 ss. 981, 1654 (8) (c); 1979 c. 34 s. 2102 (52) (a); 1979 c. 110 s. 60 (12); 1981 c. 20