CHAPTER 82

TOWN HIGHWAYS

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NOTE: 2003 Wis. Act 214, which affected this chapter, contains extensive explanatory notes including a conversion table showing the location of prior statutes in the current chapter.

SUBCHAPTER I

FUNDING AND GOVERNANCE

82.01 Definitions. In this chapter, the following words and phrases have the designated meanings unless specifically noted:

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

(2) "Freeholder" means a person who owns a fee simple or life estate interest in land, a person who is a land contract vendee, or a person who has an interest in land arising under ch. 766.

(3) "Highway order" means an order laying out, altering, or discontinuing a highway or a part of a highway, that contains a legal description of what the order intends to accomplish and a scale map of the land affected by the order.

(4) "Laid out" means any formal act or process by which a municipality determines the location of a highway.

(5) "Legal description" means a complete description of land without internal references to any other document, and shall be described in one of the following ways:

(a) By metes and bounds commencing at a monument at the section or quarter section corner or at the end of a boundary line of a recorded private claim or federal reservation in which the annexed land is located and in one of the following ways:

1. By government lot.
2. By recorded private claim.
3. By quarter section, section, township, and range.

(b) If the land is located in a recorded and filed subdivision or in an area that is subject to a certified survey map, by reference as described in s. 236.28 or 236.34 (3).

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

(6) "Municipality" means a city, village, or town.

(7) "Opened" means the completion of work on a highway that places the highway in a condition ready for public use.

(8) "Recorded highway" means a highway for which the order laying out or altering the highway, or a certified copy of the order, has been recorded in the office of the register of deeds in the county in which the highway is situated or, for highways that were laid out or altered before January 1, 2005, in the office of the clerk of the town or the county in which the highway is situated.

(9) "Town line highway" means a highway that runs on or across the boundary line between a town and another town, a village, or a city.

(10) "Unrecorded highway" means a highway that is not a recorded highway.

(11) "Worked" means action of the town in regularly maintaining a highway for public use, including hauling gravel, grading, clearing or plowing, and any other maintenance by or on behalf of the town on the road.

History: 2003 a. 214 s. 20, 154.

NOTE: 2003 Wis. Act 214, which affected this section, contains extensive explanatory notes.

82.03 Duties of town board. (1) OVERSIGHT OF HIGHWAYS, SUPERINTENDENT OF HIGHWAYS. (a) The town board shall have the care and supervision of all highways under the town's jurisdiction, including the highways specified in s. 83.06. The town board may appoint in writing a superintendent of highways to supervise, under the board's direction, the construction, repair, and maintenance of the highways and bridges under the town's jurisdiction. Where no superintendent of highways is appointed, it shall be the duty of the town board to perform all of the duties that are prescribed by law for the superintendent of highways to perform, including keeping the highways passable at all times.

(b) The town board may appoint more than one superintendent of highways. If more than one superintendent is appointed, the town board shall divide the town into as many districts as there are superintendents. The districts shall be numbered and a superintendent shall be assigned to each district. A superintendent may be a member of the town board.

(c) The town board shall fix the compensation and may require and set the amount of a bond of the superintendent. The town board may reimburse the superintendent for expenses incurred in performing his or her duties as superintendent.

(d) The town board shall provide the superintendent of highways with necessary forms and books made in compliance with standards prescribed by the department.

(2) FUNDING AND EQUIPMENT. The town board shall provide machinery, implements, material, and equipment needed to construct, maintain, and repair the highways and bridges under the town's jurisdiction, and for those purposes may acquire by purchase or by condemnation under ch. 32 stone, gravel, sand, clay,

earth, gravel pits, stone quarries, and interests in land under s. 83.07.

(3) OVERSIGHT OF SUPERINTENDENT. The town board shall direct the superintendent of highways in the performance of the superintendent's official duties.

(4) CONTROL OF EXPENDITURES. The town board shall direct when and where all highway funds shall be expended.

(5) MAINTENANCE. (a) The town supervisors may enter any lands near any highway in the town to construct necessary drains or ditches or embankments for the improvement or protection of the highway.

(b) The town supervisors may enter any private lands with their employees and agents for the following purposes:

1. To remove weeds and brush to keep the highway reasonably safe for travel.

2. To erect or remove snow fences to keep highways reasonably free from snow and open for travel during the winter season.

(c) To erect on the right−of−way fences other than snow fences.

(6) LIABILITY. (a) The town shall be responsible for any damage resulting from activities undertaken under the authority granted by sub. (5). The owner of lands entered upon or used for any of the purposes identified in sub. (5) may apply to the town board to appraise the resulting damages, and such damages may be determined by agreement. If the parties are unable to agree upon the damages, the board shall make an award of damages and file the award with the town clerk, and the clerk shall give notice, by certified mail with return receipt requested, of the filing to the owner.

(b) Within 60 days after the date of filing of a town board's award of damages under par. (a), the owner may appeal to the circuit court following the same procedures provided under s. 32.05 (10) for condemnation proceedings. The clerk of courts shall enter the appeal as an action pending in the court with the owner as plaintiff and the town as defendant. The action shall proceed as an action in the court subject to all of the provisions of law relating to actions brought therein, but the only issue to be tried shall be the amount of just compensation to be paid by the town, and the action shall have precedence over all other actions not then on trial. The action shall be tried by jury unless waived by both the plaintiff and the defendant. The amount of the town's award shall not be disclosed to the jury during the trial. Costs shall be allowed or litigation expenses awarded in an action under this paragraph in the same manner as provided under s. 32.28 for condemnation proceedings.

(7) HIGHWAY NAMES. The town board shall, by ordinance, assign a name to each of the roads that are under the town's jurisdiction. No road name may be used on more than one road within the jurisdiction of the town.

(8) USE OF DAMS AS ROADWAYS. The town board may contract with the owner of a dam that has a roadway on it for the use of the roadway. The contract shall provide who shall be responsible for keeping the roadway in repair and may be for a period of time that the board determines.

(9) RUSTIC ROADS. As specified in s. 83.42, the town board shall maintain the rustic roads under its jurisdiction and may apply to have a highway designated as a rustic road or withdrawn from the rustic road system.

(10) ADDITIONS TO AND DELETIONS FROM COUNTY TRUNK HIGHWAY SYSTEM. The town board shall approve or deny additions to and deletions from the county trunk highway system as provided in s. 83.025 (1).

(11) EMERGENCY CLOSURE OF COUNTY TRUNK HIGHWAY. The town chairperson may close county trunk highways when they have been rendered dangerous for travel and immediately notify the county highway commissioner under s. 83.09.

(12) CONTROLLED−ACCESS HIGHWAYS. The town board shall work with the county and other governmental bodies in establishing and maintaining controlled−access highways under s. 83.027.

(13) COUNTY−CONTROLLED HIGHWAYS IN A TOWN. The town board may contract under s. 83.035 with the county to enable the county to construct and maintain streets and highways in the town.

(14) PURCHASE OF EQUIPMENT. The town board may purchase road building and maintenance supplies from the county under s. 83.018.

(15) AGREEMENTS WITH OTHER GOVERNMENTAL BODIES. The town board, under s. 83.027 (9), may enter into agreements with other governmental bodies respecting the financing, planning, establishment, improvement, maintenance, use, regulation, or vacation of controlled−access highways or other public ways in their respective jurisdictions.

(16) COUNTY AID HIGHWAYS. The town board may improve county aid highways under s. 83.14.

(17) HIGHWAY LIGHTING. The town board may provide lighting for highways located in the town under s. 60.50 (4).

(18) SOLID WASTE TRANSPORTATION. The town board may designate highways on which solid waste may be transported under s. 60.54.

(19) TUNNELS UNDER HIGHWAYS. The town board shall ensure that all tunnels constructed pursuant to s. 82.37 are constructed in accordance with the requirements of s. 82.37 and are kept in good repair by the landowner.

History: 2003 a. 214 ss. 106 to 116, 122, 150, 155, 156; 2005 a. 253; 2015 a. 105.

NOTE: 2003 Wis. Act 214, which affected this section, contains extensive explanatory notes.

The duty to keep highways passable is made mandatory by former ss. 81.01 and 81.03 [now ss. 82.03 and 82.05], when read together. State ex rel. Cabott, Inc. v. Wojcik, 47 Wis. 2d 759, 177 N.W.2d 828 (1970).

A town has initial authority to name town roads under sub. (7). However, the town's authority is subject to the county's discretionary authority under s. 59.54 (4) to establish a road naming and numbering system for the specific purpose of aiding in fire protection, emergency services, and civil defense. A county may cooperate with a town regarding road name changes, but ultimately the county has authority to implement name changes, even if a town does not consent, when the name changes are made under s. 59.54 (4). Liberty Grove Town Board v. Door County Board of Supervisors, 2005 WI App 166, 284 Wis. 2d 814, 702 N.W.2d 33, 04−2358.

82.05 Superintendent of highways. (1) The term of office of highway superintendents shall be one year from the date of their appointment.

(2) The superintendent of highways shall supervise the construction and maintenance of all highways in the superintendent's district that are required to be maintained by the town, and keep them passable at all times, and perform such other services in connection with the highways as the town board requires. The superintendent may arrange for the prosecution of the highway work as the superintendent considers necessary and appoint any overseers that the highway work requires.

(3) When any highway under the superintendent's charge becomes impassable, the superintendent shall put the highway in passable condition as soon as practicable. Upon actual notice of the existence of any depression, ditch, hump, or embankment that impedes the use of any highway under the superintendent's charge, the superintendent, or in the absence of a superintendent the chairperson of the town board, shall as soon as practicable take action to make the highway safe for travel, which may include closing the highway.

(4) The superintendent shall routinely notify the town board of all highway work.

History: 1991 a. 316; 2003 a. 214 ss. 117, 118, 157, 158; Stats. 2003 s. 82.05.

NOTE: 2003 Wis. Act 214, which affected this section, contains extensive explanatory notes.

The duty to keep highways passable is made mandatory by former ss. 81.01 and 81.03 [now ss. 82.03 and 82.05], when read together. State ex rel. Cabott, Inc. v. Wojcik, 47 Wis. 2d 759, 177 N.W.2d 828 (1970).

82.08 Town bridges or culverts; construction and repair; county aid. (1) PETITIONS. A town that has voted to

construct or repair any bridge or culvert that is on, or that after the construction will be connected to, an existing highway maintained by the town may file a petition for county aid with the county highway commissioner. The petition shall describe the location and size of the bridge or culvert and shall contain a statement that the town has provided the funds required by sub. (3).

(2) FUNDING REQUIREMENTS. (a) Except as provided in par. (b), upon receipt of a petition for a bridge or culvert with a 36−inch or greater span, or a structure of equivalent capacity to carry water, the county board shall appropriate the sum required by sub. (3) and shall levy a tax therefor. The tax, when collected, shall be held in a separate account administered by the county highway committee.

(b) If on January 1, 2003, a county has a policy of providing funding only for bridges and culverts larger than the requirement of par. (a), the county may refuse to fund bridges and culverts that do not meet the minimum requirements of that policy. The minimum size bridge or culvert that a county is required to fund under this section may be raised, but not lowered, by the affirmative vote of a majority of the towns in the county. The county board of any county that has never granted aid under this section may, in its discretion, refuse all petitions under sub. (1).

(3) SHARED COST. The town and county shall each pay one−half of the cost of construction or repair. In determining the cost of construction or repair of any bridge or culvert, the cost of constructing or repairing any approach not exceeding 100 feet in length shall be included.

(4) EMERGENCY PETITION. Whenever the construction or repair of any bridge or culvert must be made without delay, the town board may file its petition with the county clerk and the county highway committee, explaining the necessity for immediate construction or repairs. It shall then be the duty of the town board and the county highway committee to construct or repair the bridge or culvert as soon as practicable. The construction or repair of a bridge or culvert undertaken pursuant to this subsection shall entitle the town to the same county aid that the town would have been entitled to had it filed its petition with the county board as provided in sub. (1).

(5) SUPERVISION OVER DESIGN, CONSTRUCTION, AND COST. The county highway committee and the town board shall have full charge of design, sizing, letting, inspecting, and accepting the construction or repair, but the town board may leave the matter entirely in the hands of the county highway committee. The county highway committee and the town board must agree on the cost of the project and must consult each other during construction.

(6) CONSTRUCTION REQUIREMENTS. No county order may be drawn under sub. (2) for the construction of a bridge or culvert unless the design and construction comply with requirements under s. 84.01 (23).

(7) NO TAX. Except as provided in ss. 61.48 and 84.14 (3), nothing contained in this section shall authorize the levy of a tax upon the property in any city or village that is required to maintain its own bridges.

(8) ADMINISTRATION CHARGE. The county may charge the towns that apply for aid under this section an administration charge. The administration charge shall be fixed as a percentage of the total costs of administering aid under this section and the percentage shall be no more than the percentage that the county charges the state for records and reports.

History: 1977 c. 190; 1981 c. 296; 1983 a. 192 s. 303 (2); 1983 a. 532; 2003 a. 214 ss. 140 to 145, 147, 159; Stats. 2003 s. 82.08; 2013 a. 152.

NOTE: 2003 Wis. Act 214, which affected this section, contains extensive explanatory notes.

The county is obligated to pay its half of the cost of construction or repair of a bridge even if the final cost exceeds the amount the town requested in the petition. An estimate is sufficient in a petition for aid. Costs need not be determined exactly. Town of Grand Chute v. Outagamie County, 2004 WI App 35, 269 Wis. 2d 657, 676 N.W.2d 540, 03−1897.

The bridge at issue in this case was not a "bridge on a highway maintainable by the town" under s. 81.38 [now s. 82.08] because the bridge aid petition did not request funding to help connect the bridge to a highway maintainable by the town, there was no existing highway extending to the planned bridge site at the time of the petition, and the bridge was not connected to a highway maintainable by the town upon completion. Section 81.38 requires funding for only those bridges built on highways in existence at the time of a bridge's construction. Town of Madison v. County of Dane, 2008 WI 83, 311 Wis. 2d 402, 752 N.W.2d 260, 06−2554.

Although a 2003 act changed the phrase "highway maintainable" to "highway maintained," this amendment did not change the substantive meaning of the statute. Town of Madison v. County of Dane, 2008 WI 83, 311 Wis. 2d 402, 752 N.W.2d 260, 06−2554.

NOTE: The above annotations cite to s. 81.38, the predecessor statute to s. 82.08.

82.09 County aid for dams used for bridges. A town board may file a petition with the county board stating that the town board has voted to acquire the right to use a roadway on a dam. The petition shall contain a legal description and scale map of the dam and roadway, and shall state the amount agreed to be paid to the owner for the use of the roadway. Upon receipt of a petition, the county board shall appropriate a sum equal to 50 percent of the amount agreed to be paid for the use. The county board shall, on the order of the chairperson of the county board and county clerk, cause such sum to be paid to the treasurer of the town whenever the town board notifies the county highway commissioner that a contract for the use of the roadway has been executed.

History: 2003 a. 214 s. 151.

NOTE: 2003 Wis. Act 214, which affected this section, contains extensive explanatory notes.

SUBCHAPTER II

BASIC PROCEDURES

82.10 Initiation of procedures. (1) APPLICATION FOR HIGHWAY CHANGES. Six or more resident freeholders may apply to the town board to have a highway laid out, altered, or discontinued. The application shall be in writing and shall be delivered to the town clerk. The application shall contain all of the following:

(a) A legal description of the highway to be discontinued or of the proposed highway to be laid out or altered.

(b) A scale map of the land that would be affected by the application.

(2) RESOLUTION. Notwithstanding sub. (1), the town board may initiate the process of laying out, altering, or discontinuing a town highway by the introduction of a resolution. The resolution shall contain all of the following:

(a) A legal description of the highway to be discontinued or of the proposed highway to be laid out or altered.

(b) A scale map of the land that would be affected by the resolution.

(3) NOTICE REQUIREMENTS. Upon receipt of an application under sub. (1) or the introduction of a resolution under sub. (2), the board shall provide notice of the time that and the place where it will meet to consider the application or resolution. The notice shall contain a legal description of the highway to be discontinued or of the proposed highway to be laid out or altered and a scale map of the land that would be affected by the application or resolution.

(4) NOTICE RECIPIENTS. (a) The town board or, at the town board's direction, the applicants shall publish a class 3 notice under ch. 985 and shall, at least 30 days before the hearing, give notice by registered mail to all of the following:

1. The owners of record of lands through which the highway may pass.

2. The owners of record of all lands abutting the highway.

3. The department of natural resources.

4. The county land conservation committee in each county through which the highway may pass.

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

6. The commissioner of railroads, if there is a railroad highway crossing, within the portion of the highway that is the subject of the application or resolution.

(b) If procedures are begun under sub. (1), the applicants shall bear the cost of publication. If the procedures are begun under sub. (2), the town shall bear the cost of publication.

(5) LIS PENDENS. In the case of an application under sub. (1), the applicant shall file a lis pendens under s. 840.11. In the case of a resolution under sub. (2), the board shall file a lis pendens within 10 days of the introduction of the resolution.

History: 2003 a. 214 ss. 29, 34 to 38, 161; 2009 a. 107, 223.

NOTE: 2003 Wis. Act 214, which affected this section, contains extensive explanatory notes.

82.11 Meeting. (1) The town supervisors shall personally examine the highway or proposed highway that is the subject of an application or resolution under s. 82.10. At the time and place stated in the notice under s. 82.10, the town board shall hold a public hearing to decide, in its discretion, whether granting the application or resolution is in the public interest. Before the town board holds a public hearing on or takes any action on the application or resolution, the town board must be satisfied, by affidavit of the applicant or otherwise, that the notices in s. 82.10 (4) have been given.

(2) (a) No town official may act in laying out, altering, or discontinuing a highway if acting would result in a violation of the code of ethics under s. 19.59 or of a local ordinance enacted under s. 19.59 (1m). If a town official is prevented from acting, the remaining town officials shall act.

(b) Every town shall have a written policy on how the town board will act on an application or resolution when there are fewer than 2 supervisors in the town who are able to act on the application or resolution. In the absence of a policy, the town clerk may act. If the town clerk is prevented from acting, the treasurer may act.

History: 2003 a. 214 ss. 33, 40, 162.

NOTE: 2003 Wis. Act 214, which affected this section, contains extensive explanatory notes.

82.12 Highway order. (1) A town board shall make a determination upon any application or resolution to lay out, alter, or discontinue any highway within 90 days after receipt of the application or introduction of a resolution.

(2) If the board determines under sub. (1) to lay out, alter, or discontinue any highway, it shall issue a highway order. The highway order shall be recorded with the register of deeds for the county in which the highway is or will be located and shall be filed with the town clerk. The town clerk shall submit a certified copy of the order to the county highway commissioner. If the town has an official map, the order shall be incorporated into the official map.

(3) The determination not to issue a highway order shall be final for one year. No application to lay out, alter, or discontinue a highway shall be filed within one year from the date of a determination not to issue a highway order covering the highway or portion of the highway covered in the refused application.

History: 2003 a. 214 ss. 42, 74, 76, 163.

NOTE: 2003 Wis. Act 214, which affected this section, contains extensive explanatory notes.

82.13 Highways to school buildings. Upon being notified that a public school in a town lacks highway access, the town board shall lay out a highway to the public school, using the procedures in this subchapter. No application for the highway shall be necessary. Section 82.12 (3) shall not apply to proceedings under this section.

History: 2003 a. 214 s. 72; Stats. 2003 s. 82.13.

NOTE: 2003 Wis. Act 214, which affected this section, contains extensive explanatory notes.

82.14 Acquiring rights to land; damages from discontinuance. (1) Unless the acquisition can be made by mutual agreement, the town board shall utilize the procedures under s. 32.05 to acquire rights to land for the purpose of laying out or altering a town highway.

(2) If lands acquired by contract for highway purposes are encumbered, and the owners of the fee and of the encumbrance do not agree on the allocation of any damages to be paid due to the taking, the damages may be paid to the clerk of the circuit court of the county in which the land is located. Upon the application of any interested party and upon not less than 5 days' written notice to the other party, the court may apportion the damages paid to the clerk among the parties.

(3) An owner of property abutting on a discontinued highway whose property is damaged by the discontinuance may recover damages as provided in ch. 32.

History: 2003 a. 214 ss. 82, 164.

NOTE: 2003 Wis. Act 214, which affected this section, contains extensive explanatory notes.

82.15 Appeal of a highway order. Any person aggrieved by a highway order, or a refusal to issue such an order, may seek judicial review under s. 68.13. If the highway is on the line between 2 counties, the appeal may be in the circuit court of either county.

History: 2003 a. 214.

NOTE: 2003 Wis. Act 214, which affected this section, contains extensive explanatory notes.

The judge's role is administrative and not judicial. Entry of judgment is beyond a circuit judge's jurisdiction under this section. Town of Taycheedah v. Webb, 118 Wis. 2d 362, 348 N.W.2d 591 (Ct. App. 1984).

This section contemplates certiorari review under s. 68.13 as the prescribed method for review of a highway order or of a refusal to issue such an order. Section 68.13 establishes both the procedure and a time limit for seeking review of a highway order under most circumstances. Inasmuch as the plaintiffs were seeking a determination that a town's refusal to issue a highway order was not in accordance with law, they should have proceeded under s. 68.13. Dawson v. Town of Jackson, 2011 WI 77, 336 Wis. 2d 318, 801 N.W.2d 316, 09−0120.

NOTE: The above annotations cite to s. 80.17, the predecessor statute to s. 82.15.

82.16 Highway orders; presumptions. (1) Every order laying out, altering, or discontinuing a highway under this chapter, and any order restoring the record of a highway, shall be presumptive evidence of the facts therein stated and of the regularity of all the proceedings prior to the making of the order.

(2) The validity of an order described in sub. (1), if fair on its face, is not open to collateral attack, but may be challenged in an action brought under s. 82.15.

(3) It shall be presumed that a release was given by the owners of the lands over which the highway was laid out and the public shall be entitled to use the full width of the highway, as laid out, without further compensation if all of the following apply:

(a) An order laying out the highway has been filed for more than 30 years.

(b) No award of damages or agreement or release has been filed.

(c) The highway, or a part of the highway, has been used by the public and public money has been expended on the highway for at least 5 years.

History: 1979 c. 323; 2003 a. 214 ss. 94 to 96, 166; Stats. 2003 s. 82.16; 2003 a. 327.

NOTE: 2003 Wis. Act 214, which affected this section, contains extensive explanatory notes.

82.17 Highway papers, where filed. All applications, orders, awards, bonds, and other papers relating to the laying out, altering, or discontinuing of highways under this chapter shall be promptly filed in the office of the town, city, or village clerk where the highway is located, except as otherwise specifically provided in this chapter.

History: 2003 a. 214 s. 93; Stats. 2003 s. 82.17.

NOTE: 2003 Wis. Act 214, which affected this section, contains extensive explanatory notes.

82.18 Width of highways. Except as otherwise provided in this chapter, highways laid out under this chapter shall be laid out at least 66 feet wide unless, in the town board's discretion, that width is impractical. If the town board determines that a 66−foot width is impractical, the width shall be determined by the town board but shall be at least 49.5 feet in width. When no width is specified in the highway order, the highway shall be 66 feet wide.

History: 1999 a. 97; 2003 a. 214 s. 43; Stats. 2003 s. 82.18.

NOTE: 2003 Wis. Act 214, which affected this section, contains extensive explanatory notes.

82.19 Discontinuance of highways. (1) An unrecorded highway, or any part of an unrecorded highway, that has become or is in the process of becoming a public highway by user in any town may be discontinued using the procedures under ss. 82.10 to 82.12. Any proceedings to discontinue an unrecorded highway shall not be evidence of the acceptance at any time by the town of the highway or any part of the highway.

(2) (a) Every highway shall cease to be a public highway 4 years from the date on which it was laid out, except the parts of the highway that have been opened, traveled, or worked within that time.

(b) 1. In this paragraph, "vehicular travel" means travel using any motor vehicle required to be registered under ch. 341 or exempt from registration under s. 341.05.

2. Any highway that has been entirely abandoned as a route of vehicular travel, and on which no highway funds have been expended for 5 years, shall be considered discontinued.

(c) This subsection does not apply to state or county trunk highways or to any highway, street, alley, or right−of−way that provides public access to a navigable lake or stream.

History: 2003 a. 214 ss. 83 to 85, 92, 167.

NOTE: 2003 Wis. Act 214, which affected this section, contains extensive explanatory notes.

Whether a highway has been entirely abandoned for a discontinuation to occur under sub. (2) depends on whether the highway has remained open to all who had occasion to use it. Even if a single family and their guests used the highway, that could be sufficient to keep it from being abandoned. Lange v. Tumm, 2000 WI App 160, 237 Wis. 2d 752, 615 N.W.2d 187, 99−3247.

An owner may not convert a public highway to a private road by taking control of the road and leading others to believe that they need permission to use it, even when the state or local government has discontinued maintenance of the road. A public highway is not entirely abandoned if it is used only by the owner of the land over which the highway lies. Under sub. (2), the identity of the user is irrelevant. Markos v. Schaller, 2003 WI App 174, 266 Wis. 2d 470, 668 N.W.2d 755, 02−1824.

That a roadway was overgrown and difficult or impossible for vehicles to travel without damage and that members of the public sought permission to use the road were considerations that underpinned a finding that the road was not open to all. Povolny v. Totzke, 2003 WI App 184, 266 Wis. 2d 852, 668 N.W.2d 834, 02−3011.

NOTE: The above annotations cite to s. 80.32 (1) or (2), the predecessor statutes to s. 82.19.

To establish abandonment under this section, the higher burden of proof of clear and convincing evidence, rather than the lower preponderance of the evidence standard, must be applied. Town of Schoepke v. Rustick, 2006 WI App 222, 296 Wis. 2d 471, 723 N.W. 2d 770, 05−3183.

82.20 Removal of fences from highway; notice. (1) If the town board issues an order to lay out or alter a highway through enclosed, cultivated, or improved lands, the town board or highway superintendent shall give the owner or occupant of the lands through which the proposed highway will pass written notice of its, his, or her intent to remove the fences in the path of the new or altered highway. The notice shall state when the town board or highway superintendent intends to remove the fences, which shall not be less than 30 days from the date on which the notice was given to the owner or occupant. If the owner or occupant does not remove the fences before the time stated in the notice, the town board or highway superintendent shall remove the fences and may charge the landowner for the costs of the removal under s. 66.0627.

(2) The notice under sub. (1) shall not be sent until the time for filing an appeal under s. 82.15 has expired and no appeal was taken or until all appeals under s. 82.15 have been brought to a final determination.

(3) This section does not authorize the opening of a highway through enclosed, cultivated, or improved lands or the removal of fences between May 15 and September 15, except in cases of emergency to be determined by the town board.

History: 1991 a. 316; 1999 a. 97; 2003 a. 214 ss. 77 to 79; Stats. 2003 s. 82.20.

NOTE: 2003 Wis. Act 214, which affected this section, contains extensive explanatory notes.

SUBCHAPTER III

SPECIAL PROCEDURES

82.21 Highways on and across town and municipal lines. (1) INITIATING THE PROCEDURE. The procedure to lay out, alter, or discontinue a highway on the line between a town and another town, a city, or a village, or a highway extending from one town into an adjoining town, city, or village, shall begin only when one of the following occurs in each affected municipality:

(a) Six resident freeholders of the town, city, or village deliver an application to lay out, alter, or discontinue a town line highway to the clerk of every town, city, or village that would be affected by the proposal.

(b) The town board, city council, or village board introduces a resolution to lay out, alter, or discontinue a town line highway.

(2) CONTENTS OF THE APPLICATION OR RESOLUTION. An application or resolution under sub. (1) shall contain a legal description of the highway to be discontinued or of the proposed highway to be laid out or altered and a scale map of the land that would be affected by the application. Upon completion of the requirements of sub. (1), the governing bodies of the municipalities, acting together in cooperation, but voting upon applications or resolutions as separate governing bodies, shall proceed under ss. 82.10 to 82.13.

(3) APPOINTMENT OF CITY OR VILLAGE COMMISSIONERS. Upon receipt of an application or introduction of a resolution, the city council or village board may appoint 3 commissioners to act on behalf of the affected city or village in all respects. The commissioners shall be duly sworn to faithfully discharge their duties as commissioners before entering upon those duties.

(4) APPORTIONMENT OF AUTHORITY AND RESPONSIBILITY. (a) A highway order issued by 2 towns or by a town and a city or village may designate the part of the highway that each shall construct and repair, and pay the damages for, if any. As to the portion of the highway that the town, city, or village agrees to construct, keep in repair, and pay damages for, the town, city, or village shall have all of the authority and be subject to all of the responsibility in relation to that part of the highway as if that part were wholly located in the town, city, or village.

(b) Two town boards or a town board and a city council or village board, meeting together, may make an order in accordance with par. (a) apportioning or reapportioning the authority and responsibility for a town line highway or any part of a town line highway that they consider advisable, if any of the following conditions exists:

1. No apportionment has been made in a highway order.

2. The highway or part of the highway had its origin in user.

3. In the judgment of the town boards, or the town board and the city council or village board, circumstances have been so altered since the last apportionment of the highway or part of the highway that the current apportionment has been rendered inequitable or impracticable.

(c) An order made under par. (b) shall be filed with the clerk of each affected municipality and shall have the same effect as an apportionment made in connection with the original highway order.

(d) Any written order or agreement made before August 27, 1947, by a majority of the supervisors of each town concerned, acting together, apportioning, or reapportioning a town line highway has the same effect as though made on or after August 27, 1947.

(5) APPEAL OF APPORTIONMENT. (a) If an order laying out or altering a town line highway has not apportioned the authority and responsibility for the highway or if a municipality considers the current apportionment to be inequitable, an affected municipality may apply to the circuit judge of the county in which the affected municipality is located, for the appointment of 3 commissioners to apportion the authority and responsibility between each affected municipality. The municipality filing the application shall serve a copy of the application on the clerk of each municipality to be affected. The circuit judge may set the time and place of the hearing before the commissioners at least 10 days after the application is filed with the judge.

(b) Upon receipt of an application under par. (a), the circuit judge shall appoint 3 residents of the county as commissioners. The commissioners shall, on not less than 10 days' notice nor more than 60 days' notice in writing to the clerk of each affected municipality, apportion the authority and responsibility of each affected municipality on account of the highway. The commissioners shall make the determination in writing and shall file the determination with the clerk of each affected municipality. The commissioners' determination shall have the same effect as an order made under sub. (4).

(6) WHERE PAPERS FILED. All awards, notices, and papers required to be filed shall be filed in the office of the clerk of each affected municipality. Any highway orders issued under this section shall be recorded with the register of deeds for any county in which the highway is or will be located.

History: 2003 a. 214 ss. 46 to 53, 58, 60, 169; 2015 a. 11.

NOTE: 2003 Wis. Act 214, which affected this section, contains extensive explanatory notes.

"Acting together" in sub. (2) does not require that separate votes taken by two governing bodies in deciding an application to lay out, alter, or discontinue a public highway on or across municipal lines be counted in the aggregate as if the two bodies voted as one. Approval of both boards is necessary to approve an application. Dawson v. Town of Jackson, 2011 WI 77, 336 Wis. 2d 318, 801 N.W.2d 316, 09−0120.

82.23 Municipal line bridges. Unless otherwise provided by statute or agreement, every highway bridge on a city, village, or town boundary shall be repaired and maintained by any adjoining municipality in which the bridge is located. The cost of repairs and maintenance shall be paid by the adjoining municipalities in proportion to the last equalized valuation of the property in the adjoining municipalities.

History: 2003 a. 214 s. 54.

NOTE: 2003 Wis. Act 214, which affected this section, contains extensive explanatory notes.

82.25 Highway taxes for limited−use road. Notwithstanding s. 60.10 (1) (a) and (2) (a), the town board may levy and collect a tax on property located in a recorded and filed plat that existed on January 1, 2003, situated in a town requiring the approval of such town board, and adjoining a private road used by the public located therein, and on property adjoining, where the owner regularly uses such road which is not a portion of any town, county, state, or federal highway system, not exceeding 3 mills for each dollar of assessed valuation thereof. The proceeds of the tax shall be expended for the improvement and maintenance of any private roads used by the public located within the recorded and filed plat. The town board shall not expend any of the funds collected under this section upon a private driveway.

History: 1985 a. 29; 1991 a. 316; 1997 a. 35; 1999 a. 96; 2003 a. 214 s. 129.

NOTE: 2003 Wis. Act 214, which affected this section, contains extensive explanatory notes.

82.27 Landlocked property and property with insufficient highway access. (1) DEFINITION. In this section, "advantages" means the greater of the following:

(a) The increase in value of the landlocked property after the highway is laid out or the way or road is widened.

(b) The administrative costs under sub. (5), and the estimated cost of constructing or widening the highway, including both the cost of constructing a turnaround, if one is necessary, and the damages paid to the owner of the land over which the highway is laid out or the way or road is widened.

(2) APPLICATION. The owner of real estate located within a town may apply to the town board to have a highway laid out to the owner's land. Except as provided in sub. (7), the application shall be delivered to the town clerk of the town in which the real estate is located. The application shall contain an affidavit, executed by the applicant, that describes the affected real estate and recites facts that satisfy the board that the circumstances either in par. (a) or in par. (b) exist:

(a) The real estate is shut out from all public highways by being surrounded by real estate owned by other persons, or by real estate owned by other persons and by water, and that the owner is unable to purchase a right−of−way to a public highway from the owners of the adjoining real estate or that such a right−of−way cannot be purchased except at an exorbitant price, which price shall be stated in the affidavit.

(b) 1. The owner is the owner of a private way or road, whose width shall be stated in the affidavit, that leads from the described real estate to a public highway but the way or road is too narrow to afford the owner reasonable access from the described real estate to the public highway; and

2. The owner is unable to purchase a right−of−way from the described real estate to a public highway, or is unable to purchase land on either or both sides of the existing way or road to make the way or road of sufficient width or that the right−of−way or additional land cannot be purchased except at an exorbitant price, which price shall be stated in the affidavit.

(3) SETTING THE HEARING DATE; NOTICE. Upon receipt of an application under sub. (2), the town board shall set a time and place to conduct a hearing regarding the application. The hearing shall be held after 10 days and within 30 days of the receipt of the application by the town board. Notice of the time and place of the hearing shall be served as required by s. 82.10 and published as a class 2 notice under ch. 985.

(4) HEARING. (a) The town board shall meet at the time and place stated in the notice and decide, in its discretion, whether to grant the application. The board may grant the application by either laying out a new highway across the surrounding land or by adding land to the existing way or road described in the affidavit. If the board decides to lay out a new highway, the new highway shall be at least 66 feet wide unless the board determines this width to be impracticable. If the board decides to widen an existing way or road, the resulting highway shall not be less than 49.5 feet nor more than 66 feet in width.

(b) The town board shall determine the damages to the owner or owners of the real estate on which the highway shall be laid out or from whom land shall be taken and the advantages to the applicant. The town board may not determine damages in an amount exceeding the price stated in the affidavit of the applicant.

(c) Upon laying out a highway or widening a private way or road, the town board shall issue a highway order. If it is necessary to include a turnaround, the turnaround shall be laid out on the applicant's land. The applicant shall pay the town treasurer the amount determined as advantages within 30 days of the board's decision. Within 10 days of payment, the town board shall file the order with the town clerk and record the order with the register of deeds for the county in which the land is located.

(5) CHARGING COSTS TO THE APPLICANT. If the town board grants the application, the items listed in pars. (a) to (d) may be included in the determination of advantages. If the town board denies the application, 50 percent of all of the following may be charged to the applicant as a special charge under s. 66.0627:

(a) Attorney fees reasonably incurred by the town.

(b) The cost of any survey or the fee of any expert on valuation, or both, reasonably incurred by the town.

(c) Administrative costs such as clerical costs and publication costs.

(d) If special meetings are held only for the purpose of considering the application, per diem compensation for the supervisors.

(6) REAL ESTATE LANDLOCKED BY SALE. In a town, if the owner of land that is accessible or that is provided with an easement to a public highway subdivides and transfers any part of the land, the owner shall provide a cleared easement at least 66 feet in width that shall be continuous from the highway to the part of the subdivision sold. If the seller fails to provide the required easement, the town board may, pursuant to proceedings under this section, lay out a road at least 66 feet wide from the inaccessible land to the public highway over the remaining lands of the seller without assessment of damages or compensation to the seller.

(7) LAYING OUT A HIGHWAY TO AN ADJOINING TOWN. If it is impracticable to lay out a highway to an existing highway that is in the town where the land is situated, a landowner may apply to have a highway laid out to a highway in an adjoining town. The application shall comply with the requirements of sub. (2), except that the affidavit shall also state that it is impracticable to lay out a new highway to an existing highway in the town where the land is located and that it is practicable to lay out a highway to an existing highway in the adjoining town. The owner shall execute the application in duplicate and present one copy to the clerk of the town where the land is located and one copy to the clerk of the town where the proposed highway is to be laid out. The town boards shall proceed as provided in this section, except that all orders and notices shall be signed by both boards, and all papers required to be filed shall be made in duplicate and filed with each town clerk. The applicant shall pay the amount determined as advantages to the treasurer of the town in which the applicant's land is situated within 30 days of the decision. The order shall be recorded within 10 days of payment. All damages assessed shall be paid by the town where the applicant's land is situated.

(8) HIGHWAY TO ISLANDS IN MISSISSIPPI RIVER. (a) The owner of an island in the bottoms of the Mississippi River may submit an application under this section if the island is shut out from the bank of the river and from all highway access by islands, sloughs, and the lands of others, and the owner cannot purchase any highway access at a reasonable price.

(b) The application shall describe the affected land and shall contain an affidavit that recites the facts in par. (a).

(c) The town shall not be liable for lack of repair or for defects in a highway laid out pursuant to this subsection, nor shall the town be liable for any accident or injury on a highway laid out under this subsection.

(9) LIMIT ON APPLICATIONS. The determination to deny an application under this section shall be final for the term of 3 years. No application to lay out a highway to the same property shall be considered within 3 years from the date of the refusal.

(10) HIGHWAY TO REMAIN PUBLIC FOR AT LEAST 2 YEARS. A highway laid out under this section shall be a public road and shall remain and be maintained as a public road for at least 2 years from the date of the order.

History: 2003 a. 214 ss. 63 to 71, 170.

NOTE: 2003 Wis. Act 214, which affected this section, contains extensive explanatory notes.

A town board need not lay the road over land of the seller under former s. 80.13 (5) [now sub. (6)] but may lay the road over land of another under former s. 80.13 (3) [now sub. (4)]. Gaethke v. Town of Clay Banks, 86 Wis. 2d 495, 273 N.W.2d 764 (1979).

In the exercise of the discretion provided for under former s. 80.13 (3) [now sub. (4)], the town board may elect not to lay out a town road at all. Tagatz v. Township of Crystal Lake, 2001 WI App 80, 243 Wis. 2d 108, 626 N.W.2d 876, 00−1035.

82.28 Highways and bridges on state boundaries. The board of any town or county that is bounded in part by a river or a highway that is also a state boundary line may enter into an agreement with any adjoining municipality or county in the other state for the maintenance, construction, and reconstruction of boundary line highways and bridges. The costs shall be apportioned by agreement.

History: 2003 a. 214.

NOTE: 2003 Wis. Act 214, which affected this section, contains extensive explanatory notes.

82.29 Highways abutted by state park lands; discontinuance or relocation. Any part of a highway lying wholly within state park lands may be discontinued or relocated by the state agency having jurisdiction over the state park by filing written notice of the discontinuance or relocation with the clerk of the municipality that has jurisdiction over the highway and upon approval by the municipality after holding a hearing as provided in s. 82.10. No discontinuance or relocation under this section may deprive a landowner of all highway access. This section does not apply to state trunk highways or connecting highways.

History: 1977 c. 29 s. 1654 (3); 2003 a. 214 s. 30; Stats. 2003 s. 82.29.

NOTE: 2003 Wis. Act 214, which affected this section, contains extensive explanatory notes.

SUBCHAPTER IV

EXISTING HIGHWAYS

82.31 Validation of highways. (1) RECORDED HIGHWAYS. Any recorded highway that has been laid out under this chapter is a legal highway only to the extent that it has been opened and worked for 3 years. Any laid out highway that has not been fully and sufficiently described or recorded or for which the records have been lost or destroyed is presumed to be 66 feet wide.

(2) UNRECORDED HIGHWAYS. (a) Except as provided in pars. (b) and (c), any unrecorded highway that has been worked as a public highway for 10 years or more is a public highway and is presumed to be 66 feet wide.

(b) No road or bridge built upon the bottoms and sloughs of the Mississippi River by citizens or a municipality of any other state shall become a legal highway or a charge upon the town in which the road is located unless upon petition the highway is legally laid out by the town board.

(c) No lands granted for highway purposes that did not become a legal highway prior to July 1, 1913, shall become a legal highway unless the grant is accepted by the town board or by the town meeting of the town where the lands and proposed highway are located, and until a resolution of acceptance of the grant is recorded in the office of the town clerk.

History: 2003 a. 214 ss. 21 to 23.

NOTE: 2003 Wis. Act 214, which affected this section, contains extensive explanatory notes.

When a governmental unit shows public use of a road for 20 years or public maintenance for 10 years, a landowner claiming that the road is private has the burden of proving permissive use. Ruchti v. Monroe, 83 Wis. 2d 551, 266 N.W.2d 309 (1978).

When a highway was established by user, the existence of ancient fences within 2 rods of either side of the center of the highway was sufficient to rebut the sub. (2) presumption that the highway was 4 rods in width. Threlfall v. Town of Muscoda, 190 Wis. 2d 121, 527 N.W.2d 367 (Ct. App. 1994).

The test under sub. (2) for whether a highway has been "worked" is whether the work demonstrates the public's ownership of the road so that the public use of the road is not merely permissive. Continuous work on a road by a public entity is more likely to demonstrate ownership than sporadic work. County of Langlade v. Kaster, 202 Wis. 2d 448, 550 N.W.2d 722 (Ct. App. 1996), 95−2694.

When documents indicate an intent to dedicate roadways to the public, in the absence of official acceptance by the municipality, prior acceptance by the general public users prevents revocation of the offer to dedicate. Nothing prevents the acceptance of the ongoing offer by a municipality. Upon formal acceptance the municipality becomes liable for maintenance and for damages that might result from defects. Cohn v. Town of Randall, 2001 WI App 176, 247 Wis. 2d 118, 633 N.W.2d 674, 00−2176.

A street is presumed to be 66 feet wide unless rebutted, by a preponderance of the evidence, by those contending that the street is some other width. Village of Brown Deer v. Balisterri, 2013 WI App 137, 351 Wis. 2d 665, 841 N.W.2d 59, 13−0748.

The general definition of highway in s. 990.01 (12) governs and does not have any limitation restricting the definition to vehicular traffic. Case law has extended the definition of highway to include roads, streets, bridges, sidewalks, driveway aprons, and shoulders of the highway. Village of Brown Deer v. Balisterri, 2013 WI App 137, 351 Wis. 2d 665, 841 N.W.2d 59, 13−0748.

Rights−of−way boundaries of nondedicated roads are discussed. 69 Atty. Gen. 87.

NOTE: The above annotations cite to s. 80.01 (1) or (2), the predecessor statutes to s. 82.31.

82.33 Lost records; how restored; effect. (1) Whenever the record of the laying out of any highway has been lost or

destroyed, the board of the town in which the highway is located, upon notice being served in accordance with s. 82.10 (4), may make a new record of the highway. The notice shall state the time when and the place where the board will decide whether to make the new record. The notice shall contain a legal description of the highway for which the proposed record will be made and a scale map of the land that would be affected. Notice need not be given to persons who waive the notice or consent to the issuance of the order.

(2) At the time and place stated in the notice, the town board shall hold a public hearing regarding the proposed new record, and shall make a new record as it considers proper. If the board finds that the highway is a legal highway, the record of which has been lost or destroyed, the board shall issue a written order stating those facts and specifying the course, width, and other pertinent description of the highway. The order shall be filed with the town clerk and recorded in the office of the register of deeds for the county in which the highway is located. Any number of highways may be included in one notice or order under this section. A failure or refusal to make a new record for any highway does not preclude a subsequent proceeding for that purpose.

(3) Any person through whose land a highway described in an order filed under sub. (2) passes may appeal under s. 82.15 on the grounds that the highway described in the order was not a legal highway in fact. No person may call into question the regularity of proceedings under this section except owners of land on whom notice should have been served but in fact was not and persons claiming under those owners.

History: 1999 a. 97; 2003 a. 214 s. 98; Stats. 2003 s. 82.33.

NOTE: 2003 Wis. Act 214, which affected this section, contains extensive explanatory notes.

82.35 Temporary highways and detours; damages. (1) The town board, upon its own motion, may lay out and open temporary highways through any lands in the following situations:

(a) When any highway is practically impassable or dangerous to travel.

(b) When the town board considers it necessary to suspend travel on a highway or on any part of a highway due to construction, repair, or other reasons.

(2) (a) The board may contract in writing with the owner or lessee of any land through which it proposes to lay out a temporary highway, as to the location of the highway, and the damages that the owner or lessee is to receive. The contract shall be filed with the town clerk.

(b) In the absence of a contract under par. (a), the board shall determine the location of the temporary highway and the award of damages. Unless an emergency exists, the board shall serve the landowner with notice of the location of the highway and the award of damages and shall provide the landowner with 48 hours to object. The town board shall file a written order with the town clerk specifying the location of the temporary highway and the damages awarded.

(c) The owner or occupant of any land occupied by a temporary highway may, at any time after it is opened and within 30 days after it is vacated or discontinued, apply to the town board to determine the owner's or occupant's damages.

(3) If a temporary highway is opened in connection with or on account of road or bridge construction, the damages agreed upon or awarded pursuant to this section may be treated as part of the construction cost and paid out of the construction funds.

(4) A temporary highway shall exist only so long as needed and shall be considered vacated and discontinued when the permanent highway is again opened for public travel.

History: 1991 a. 316; 2003 a. 214 ss. 124 to 127, 172; Stats. 2003 s. 82.35.

NOTE: 2003 Wis. Act 214, which affected this section, contains extensive explanatory notes.

82.37 Tunnel under highway by landowner. The owner of land on both sides of a town highway may construct a tunnel under the highway, and may erect fences that are necessary for the use of the tunnel. The tunnel shall not interfere with or endanger travel on the highway. The owner shall maintain the tunnel and shall be liable for all damages that occur as a result of the failure to keep the tunnel in repair. Unless authorized by a town meeting, the tunnel shall not be less than 25 feet in length. The electors of the town at an annual town meeting may authorize the construction of a tunnel that is less than 25 feet, but at least 16 feet in length.

History: 1989 a. 56, 359; 2003 a. 214 s. 138; Stats. 2003 s. 82.37.

NOTE: 2003 Wis. Act 214, which affected this section, contains extensive explanatory notes.

82.50 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
(b) Under 100 ADT	
1. Right−of−way	3 rods
2. Roadway width	24 feet
3. Surface width	18 feet
4. Maximum grades	9 percent−11 percent
(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 percent−11 percent
(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 percent−8 percent
5. Curvature	6°−12.5°
(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 percent−8 percent
5. Curvature	5°−12.5°
(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 percent−7 percent
5. Curvature	4.5°−7.5°
(g) Over 2,400	State trunk standards

(2) The department 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) This section does not apply to improvements on town roads existing on October 1, 1992.

History: 1981 c. 20; 1987 a. 137 s. 6; 1989 a. 56; 1991 a. 39; 1993 a. 490; 1999 a. 85; 2003 a. 214 s. 182; Stats. 2003 s. 82.50.

NOTE: 2003 Wis. Act 214, which affected this section, contains extensive explanatory notes.

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

History: 1981 c. 20; 1987 a. 137 s. 6; 2003 a. 214 s. 83; Stats. 2003 s. 82.51.

NOTE: 2003 Wis. Act 214, which affected this section, contains extensive explanatory notes.

82.52 Rules for town road standards. The department shall establish by rule uniform minimum geometric standards for the improvement of existing town roads.

History: 1991 a. 39; 2003 a. 214 s. 184; Stats. 2003 s. 82.52.

NOTE: 2003 Wis. Act 214, which affected this section, contains extensive explanatory notes.