

CHAPTER 84.

STATE TRUNK HIGHWAYS; FEDERAL AID.

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84.01 [Renumbered section 84.015 by 1943 c. 334 s. 118]

84.01 State highway commission. (1) **CREATED.** There is created a highway commission of 3 members. Such members shall be appointed by the governor with the advice and consent of the senate, for initial terms expiring on March 1, 1931, March 1, 1933, and March 1, 1935, respectively. Thereafter as the various terms expire all appointments shall be for a term of 6 years and until their successors qualify. Upon the expiration of the terms of members serving on July 1, 1943, appointments shall be made so that one member shall come from the north section of the state, one from the east section and one from the west section; provided that any member serving on July 1, 1943 may be reappointed to succeed himself regardless of from what section of the state he or the 2 other members shall come. The north section shall comprise that part of the state north of a line running along the southern boundaries of Pepin, Eau Claire, Clark, Marathon, Shawano and Oconto counties. The division between the east and west sections shall be a line running along the western boundaries of Outagamie, Winnebago, Fond du Lac, Dodge, Jefferson and Walworth counties. At least 2 of the members shall be men who have had comprehensive business experience and also practical knowledge of highway planning and construction. All members shall devote full time to their duties and shall have no other remunerative employment. Any 2 of the members of the commission shall constitute a quorum with power to transact all business of the commission.

(2) **CHAIRMAN; SECRETARY.** After the members first appointed shall have qualified and in March of each odd-numbered year the governor shall designate one of the members of the commission as its chairman, and the commission shall elect one of the other members as its vice chairman and the other as its secretary. Any vacancy occurring in the chairmanship shall be filled by the governor and vacancies in the offices of vice chairman or secretary by election of the members of the commission.

(3) **OFFICES.** The commission shall maintain its principal office in the state capitol at Madison, and division offices at such other cities as the necessities of the work demand.

(4) **POWERS AND DUTIES; GENERAL PROVISION.** The commission shall have charge of all matters pertaining to the expenditure of state and federal aid for the improvement of highways, and shall do all things necessary and expedient in the exercise of such supervision.

(5) **EMPLOYES.** The commission shall employ such persons as may be needed to carry on its work, and assign to them such duties as it deems advisable. All such employes shall be under the exclusive control and direction of the commission, and except as provided herein and in chapter 16, the approval of no other officer shall be necessary to give validity to their appointment.

(6) **CHIEF ENGINEER.** The commission shall, subject to the approval of the governor, appoint a chief engineer, who shall be known as the state highway engineer, and who may be chosen from the members of the commission. The appointment of a member of the commission as state highway engineer shall not terminate his membership on the commission, but in case of such appointment he shall receive no compensation in addition to his salary as a member.

(7) **ADVISE LOCAL AUTHORITIES.** The commission shall advise towns, villages, cities and counties with regard to the construction and maintenance of any highway or bridge, when requested. On the request of any town, village, city or county board, or county highway committee, any supervision or engineering work necessary in connection with highway improvements by any town, village, city or county may be performed by the commis-

sion and charged at cost to such town, village, city or county. Any moneys paid into the state treasury in payment for such supervision or engineering work shall be credited to the appropriation under section 20.49 (13).

(8) **SURVEYS AND PLANS.** The commission shall make provision for and direct the surveys, plans, construction, inspection and maintenance of all highways, whenever the construction or maintenance is under its jurisdiction.

(9) **EXPERIMENTS, MEETINGS, CONVENTIONS.** The commission shall conduct such investigations and experiments, hold such public meetings and attend or be represented at such meetings and conventions inside or outside of the state as may, in its judgment, tend to promote improved highways, and shall co-operate with state and national organizations in experiments and work for the advancement of improved highways.

(10) **DONATIONS.** The commission shall receive gifts, appropriations and bequests made to it or to the state for highway purposes, pay all moneys received by it into the state treasury, and, as far as practicable, expend the same in accordance with the wishes of the donor, such expenditures to be audited and paid as other disbursements of the commission are audited and paid, and shall apportion the allotments of state highway funds among the counties and municipalities as provided by law.

(11) **COUNTY TRUNK SYSTEM.** The commission shall review the system of county trunk highways and alter the same so as to connect the system of adjoining counties into continuous and direct routes.

(12) **RIGHT OF ENTRY.** The commission may enter private lands to make surveys or inspections.

(13) **BIENNIAL REPORT.** The commission shall make a biennial report of its work to the governor for the use of the legislature and issue such bulletins, pamphlets and literature as it deems necessary.

(14) **ACTING COUNTY COMMISSIONER.** The commission shall appoint, upon the request of any county board, a county highway commissioner, who shall have all the powers and duties conferred by statutes upon county highway commissioners.

(15) **ACQUISITION OF LANDS.** The commission may acquire any lands or rights in lands that it deems necessary to carry out any highway improvement made by the state, in the manner provided in section 84.09. Lands permanently acquired shall be held in the name of the state.

(16) **LABORATORIES.** The commission shall maintain in connection with the performance of necessary engineering for highway work and other functions, a materials testing and research laboratory and adequate facilities for highway marking and signing.

(17) **FEDERAL AID SYSTEMS OF HIGHWAYS.** The commission shall plan, select, lay out, add to, decrease, revise, construct, reconstruct, improve and maintain, or arrange for maintenance by subdivisions of the state or by any other means, the federal aid highway system, federal aid secondary highway system, federal aid grade crossing projects, federal forest highway systems and projects and other highway and related projects, all within the meaning of the Federal Aid Road Act approved July 11, 1916 (39 Stats. at L. 355), and all acts amendatory thereof and supplementary thereto, and the federal regulations issued under such acts; and receive all funds provided by any source to match or supplement such federal aid funds, and expend such funds in accordance with the requirements of acts of congress or of this state making such funds available and co-operate with federal authorities and subdivisions of the state in carrying out the provisions of this subsection. The provisions of this subsection shall not limit the other powers of the commission relative to federal aid for highways.

(18) **NOTICE OF COUNTY ALLOTMENTS.** Annually, not later than November 1, the commission shall notify each county clerk of the allotments of state aid to the county.

(19) **IMPROVEMENTS FOR NEXT YEAR.** The commission shall annually determine, as far as possible, what improvements will be made during the succeeding year, and notify the county clerks prior to November 1, as to the improvements in their respective counties.

(20) **WAR EMERGENCY ROADS, BRIDGES, FLIGHT STRIPS.** The commission shall co-operate with the public roads administration, upon request of the commissioner of public roads of the United States, in the making of surveys, plans, specifications and estimates for, and in the construction and maintenance of, flight strips and of roads and bridges necessary to provide access to military and naval reservations, to defense industries and defense-industry sites, and to sources of raw materials, and for replacing existing highways and highway connections shut off from general public use at military and naval reservations and defense-industry sites, and, notwithstanding any other provision of law, may enter into contracts in any manner approved by the commissioner of public roads for the construction of any such flight strips or roads, or may perform such construction and maintenance work by force account. The entire cost of the right of way, surveys, preliminary engineering costs, construction and maintenance of the various construction and maintenance work specified herein shall be paid by the federal government or some agency

other than the state of Wisconsin. None of the cost of the right of way, construction or maintenance of any such work shall be paid by the state of Wisconsin. This subsection does not apply to the improvement and maintenance of state trunk highways. The provisions of this subsection are intended to facilitate the war effort and shall remain in effect for the duration of the present war and until its termination as proclaimed by the president or the congress and for 6 months thereafter.

(21) **STATE TRUNK HIGHWAY ALLOTMENT, PREPARATION OF PROJECTS.** (a) Whenever the county board of any county and the commission shall agree on a project for expenditure of allotments standing to the credit of such county under section 84.03 (3), the commission shall forthwith proceed to make surveys and plans, acquire the right of way, hold public hearings and other requirements necessary to prepare the project to the point preceding the advertisement for bids.

(b) The commission is authorized to advance funds for such surveys and plans, acquisition of right of way, holding of public hearings and other requirements necessary to prepare the project to the point preceding the advertisement for bids out of funds available under section 20.49 (9) which shall be replaced from funds available to the credit of such county under section 84.03 (3) when construction begins.

(c) Whenever the county board of any county and the commission shall agree on projects for construction as provided in paragraph (a), the commission shall forthwith prepare a future construction program the estimated cost of which shall as nearly as practicable equal all outstanding credits available under section 84.03 (3) as of July 1, 1943, plus anticipated federal aid and any other funds available for construction, and annually thereafter subject to provisions of paragraph (a), the commission shall forthwith prepare a construction program the estimated cost of which shall equal all funds available under section 84.03 (3), proposed bond issues, anticipated federal aid, and the portion of 20.49 (9) available for construction and make surveys and plans, acquire the right of way, hold public hearings and other requirements necessary to prepare the projects included in the program to the point preceding the advertisement for bids. Such preparations shall be completed and on file in the office of the commission on or before November 1 of each year. [1931 c. 22 s. 3; 1931 c. 79 s. 13; 1931 c. 295 s. 2; 1937 c. 303, 393; 1943 c. 129, 279; 1943 c. 334 s. 116, 116a; 1943 c. 491, 523]

Note: Commission may not adjudicate merits of claims filed under provisions of 289.53, but must withhold payments of sufficient amount to pay such claims pending adjudication thereof. 20 Atty. Gen. 486.

Highway commission has no power to convey or grant rights in land acquired for highway purposes. 22 Atty. Gen. 307.

State authorities having power to purchase compensation insurance covering persons working on survey financed by federal government may purchase such insurance out of federal moneys, particularly in view of 84.01 and 82.02 (6), Stats. 1935 (84.015 and 84.01 (10), Stats. 1943). 25 Atty. Gen. 383.

84.011 Secretary may sign authorized contracts. The secretary of the commission is authorized to sign and execute, in its name, any contract or agreement with the federal government or its departments, subdivisions of the state, corporations, associations, copartnerships and individuals, which has previously been officially determined upon and approved by the commission as a body. [1943 c. 334 s. 117]

84.015 Federal highway aid accepted. (1) The state of Wisconsin assents to the provisions of the act of congress, approved July 11, 1916, entitled "An act to provide that the United States shall aid the states in the construction of rural post roads, and for other purposes," (39 Stats. at L. 355) and all acts of congress amendatory thereof and supplementary thereto. The state of Wisconsin hereby declares its purpose and intent to give assent to all federal highway acts and to make provisions that will insure receipt by this state of any federal highway aids that heretofore have been or hereafter may be allotted to the state including all increased and advanced appropriations, and insure that such highways and related facilities in this state as may be eligible to be improved or constructed in accordance with the provisions of any such federal highway acts may be improved, constructed and maintained in accordance therewith. The good faith of the state is hereby pledged to make available funds sufficient as required to adequately carry out such construction and maintenance.

(2) The state highway commission is authorized to enter into all contracts and agreements with the United States relating to the construction and maintenance of streets and highways and related facilities under the provisions of the Federal Aid Road Act, approved July 11, 1916, and all acts amendatory thereof and supplementary thereto, to submit such scheme or program of construction and maintenance as may be required by said acts or rules and regulations of the United States promulgated thereunder and to do all other things necessary fully to carry out the co-operation contemplated and provided for by said acts. [1931 c. 22 s. 3; 1943 c. 334 c. 118]

84.02 State trunk highway system. (1) **DESIGNATION.** The system of highways known as the trunk highway system heretofore selected and laid out by the legislature

and by the state highway commission and by special legislative state trunk highway committees and approved by said commission and as revised, altered and changed by and under authority vested by law in the state highway commission, is hereby validated and confirmed and designated the state trunk highway system but without prejudice to the exercise of the power given to change such system, and all acts by which parts of said system were heretofore adopted or declared to be trunk highways are confirmed and validated. Section 80.32 (2) does not apply to the state trunk highway system.

(2) COUNTY LINE HIGHWAYS APPORTIONED. The apportionment heretofore made by the highway commission of portions of the state trunk highway system that lie on county lines is hereby ratified. The portion of such county line highways assigned to any county shall be considered as lying wholly within such county, and all the provisions for construction and maintenance shall apply to such portion just as though it lay wholly within the county to which assigned. Bridges on the state trunk highway system which span streams forming the boundary between 2 counties shall be considered as lying one-half in each county.

(3) CHANGES IN SYSTEM. (a) Changes may be made in the state trunk system from time to time by the commission, if it deems that the public good is best served by making such changes. The commission, in making such changes, may lay out new highways by the procedure under this subsection. Due notice shall be given to the localities concerned of the intention to make changes or discontinuances, and if the proposed change affects more than one mile of the system, a hearing at or near the proposed change shall be held prior to making the change effective. Whenever the commission decides to change more than one mile of the system such change shall not be effective until the decision of the commission has been referred to and approved by the county board of each county in which any part of the proposed change is situated. A copy of the decision shall be filed in the office of the clerk of each county in which a change is made or proposed.

(b) The action of any town, village or county board or city council discontinuing, relocating or altering any highway on the state trunk system shall be void unless the highway commission approves the same in writing.

(4) GUIDEBOARDS; WARNINGS; ROUTE MARKING. (a) The highway commission shall mark the highways of the state trunk highway system and also the connecting streets. The markers shall be uniform, except that the numbers thereon shall correspond with the numbers given to various routes by the commission and found on the official highway maps issued by the commission. No similar design or marker shall be used for marking other highway routes.

(b) No person shall mark any other highway routes or trails unless the route marked shall coincide exactly with the state trunk system. No such routes shall be marked until exact descriptions of the routes selected for marking have been filed with and the routes and markings approved by the commission. Every route laid out and marked shall be made to conform to the state trunk system, and the person responsible for the marking of such route shall remove or erase such marks from every portion of such route which does not coincide with the state trunk highway system. The commission shall report to the secretary of state any violations of or failure to comply with the provisions of this subsection, and the secretary of state shall thereupon revoke the privilege, license or incorporation of the offender, and the commission shall cause the offending marks to be erased, removed or destroyed. The expense of such erasure, removal or destruction shall be paid out of funds appropriated to the commission, and may be recovered in the name of the state from the person responsible for such unauthorized marking.

(c) The commission shall erect and maintain such standard guide and warning signs as it deems necessary along the state trunk system, and it shall be unlawful to erect or display any other guide or warning signs upon the state trunk system, except in cases of emergency or when approved by the commission. Any erection in violation hereof may be removed by the commission.

(d) The commission may co-operate with the Public Roads Administration or other designated agency of the federal government in formulating and adopting or changing a uniform system of numbering, or designating highways of interstate character within this state, and in the selection and erection of uniform danger signals and safety devices for the protection and direction of traffic.

(5) MAPS. As often as it may deem necessary, the commission shall publish maps showing the state trunk highway system and such other main highways and other features as may seem desirable. Such maps shall be furnished to the director of purchases upon the requisition of the commission and shall be sold by him at a price to be fixed by the commission, which price shall be not less than cost. The commission may permit the use of the base plates for other maps and publications in consideration of a fair fee for such use.

(6) ALTERNATE ROUTES THROUGH CITIES AND VILLAGES. In cases where any state

trunk highway passes near but not through the central or business portion of any city or village, the commission may upon petition of any city or village designate an alternate route through such central or business portion, and shall install suitable marking to guide travelers over such alternate route. No such designation shall be made unless the commission finds that public travel will be benefited. Any such designation may be revoked on 30 days' notice to the city or village if the commission finds that public travel is not benefited. Such designation shall impose no responsibility on the state, except the cost of marking in the first instance. Such alternate routes shall be constructed and maintained and kept clear of snow, in a condition satisfactory to the commission without expense to the state, and the commission may require assurances to that effect before making such designation.

(7) **ADDITIONS FROM COUNTY TRUNK HIGHWAYS.** Whenever the traffic on any county trunk highway averages in any year 250 or more vehicles daily, the county board may by resolution request that such county trunk highway be added to the state trunk highway system. A copy of such resolution shall be filed with the commission. If after investigation the commission finds that the traffic on said county trunk highway meets the requirements of this subsection, it may by order add said highway to the state trunk highway system, but the total additions under this subsection shall not exceed 500 miles. Whenever the traffic on any portion of a state trunk highway averages in any year 150 or less vehicles daily, the county board of the county wherein such state trunk highway is situated may by resolution request that such be transferred to the county trunk highway system. A copy of such resolution shall be filed with the commission. If after investigation the commission finds that the traffic on said state trunk highway is as stated in said resolution, it may order said highway taken from the state trunk highway system and made a county trunk highway.

(10) **TEMPORARY ROUTES; DETOURS.** (a) In case it is impracticable to maintain any portion of the state trunk highway system as laid out, pending its improvement or construction, the commission may designate a temporary route as part of the state trunk highway system, and in such case the temporary route shall be considered part of the state trunk highway system in every respect, except that it may not be constructed as a state trunk highway.

(b) When any portion of the state trunk highway system is impassable or dangerous to travel or when it shall be deemed necessary because of construction or maintenance work or for other reasons to suspend all or part of the travel thereon, the state highway commission may route such travel over a detour around such portion of the state trunk highway system. Such detour may be routed over any other public highway or temporary highway which may be improved or maintained as part of the cost of constructing or maintaining the state trunk highway system to the extent necessary, as determined by the commission, because of such additional travel. Such routing of state trunk highway traffic over other public highways shall not alter the existing status of such other public highways.

(11) **CONNECTING STREETS.** The state trunk highway system shall not include the marked routes thereof over the streets or highways in cities and villages having population of 2,500 or more except those portions extending inward from or along the corporate limits determined by the highway commission as being comparatively rural or suburban in character. The portions of streets, or highways in such cities and villages so excluded as state trunk highways but marked as such are designated connecting streets. The state trunk highway system shall include the routes thereof in or through cities and villages having population less than 2,500.

(12) **STATE TRUNK SYSTEM MAPS.** The state highway commission shall maintain in its permanent record a map of each county on a scale of not less than one-half inch per mile showing the official layout of the state trunk highway system. Annually, as soon as practical after January 1, a copy of such map, showing the official layout of the state trunk highway system in each county as it existed at the close of the previous calendar year, shall be filed with the county clerk and county highway commissioner thereof. [1931 c. 22 s. 1; 1931 c. 45 s. 14; 1931 c. 79 s. 14; 1931 c. 470 s. 4; 1933 c. 196; 1935 c. 133; 1937 c. 393; 1939 c. 420; 1943 c. 334 s. 119 to 121]

Note: Word "change" used in 84.02 (3) (a), Stats. 1933, does not include "relocation" which highway commission may make under 83.08, Stats. 1933 (84.09, Stats. 1943). Commission need not secure approval of county board for relocation, but must secure such approval for change in trunk system involving more than one mile of said system. 22 Atty. Gen. 654.

Legislative committee and highway commission need not secure approval of county board as provided in 84.02 (3) (a), Stats. 1933,

to revise state trunk highway system. 22 Atty. Gen. 962.

Where state highway commission prior to passage of 84.02 (2), Stats. 1937, apportioned state trunk highway on county line between two counties such apportionment was ratified and confirmed by (2) and cost of construction of bridge on portion apportioned to one county is properly chargeable to that county's allotment of state aid if bridge does not span stream forming part of boundary between two counties. 26 Atty. Gen. 232.

84.025 [Repealed by 1943 c. 334 s. 122]

84.03 Federal aid; state and local funds. (1) **STATE AND FEDERAL AID.** All moneys granted or allotted to the state of Wisconsin as federal aid for highways and all state appropriations available to match or supplement such federal aid funds and so utilized by the state highway commission shall be expended by the commission in accordance with the act of congress relating to federal aid funds. Any county, city, village or town may, with the approval of the commission and by any lawful means provide funds to construct, reconstruct or improve the state trunk highway system within such municipality or to match or supplement federal aid for projects to be constructed, reconstructed or improved within such municipality pursuant to acts of congress relating to federal highway aid, and all funds so raised or provided shall be paid to the commission or to the state treasury as the commission may require and shall be expended in accordance with the provisions of section 84.06 and the congressional acts referred to in this subsection. The use of state or federal aid in the construction, reconstruction or improvement of any highway, street or bridge not on the state trunk highway system within any county, city, village or town shall not be construed to relieve the county, city, village or town of its obligation to maintain such highway, street or bridge.

(3) **STATE TRUNK HIGHWAY ALLOTMENT; COUNTY MINIMUM.** (a) The appropriation made by section 20.49 (4) (b) shall be allotted by the state highway commission for the construction, reconstruction and improvement of the state trunk highway system in the several counties and expended by the commission in accordance with the provisions of section 84.06 upon projects which have been approved by the counties, but such allotment shall be so expended subject to the provisions of section 84.03 (4) relative to the retirement of bonds issued under section 67.13 or 67.14. Not more than 3 per cent of such allotment shall be used to pay the cost of supervision by the commission. All or any part of any such allotment not required for the retirement of bonds as herein provided may, with the consent of the county involved, be allocated by the commission to match or supplement federal aid for projects on the state trunk highway system within the county to which the allotment is credited. Eight million dollars of such appropriation shall be allotted, 40 per cent in the ratio that the number of motor vehicles registered from each county bears to the total number registered in the state and 60 per cent in the ratio that the mileage of highways in each county, exclusive of highways and streets in cities and villages, bears to the total mileage of highways in the state.

(b) In counties where more than 60 per cent of the state trunk highway system is constructed and surfaced with high type surfacing, satisfactory to the commission, and to the extent that there is no necessity to meet obligations on account of outstanding bonds, such portion of the allotment under this subsection as the commission approves may be added to the appropriation provided for such county by section 83.10 (1).

(c) Under the provisions of this section no county shall be allotted less than \$40,000 and no county which has constructed portions of its state trunk highway system with the proceeds of bonds issued under section 67.13 or 67.14, and expended with the approval of the state highway commission, shall be allotted for any year less than the amount necessary to pay the principal of such bonds maturing in such year.

(4) **RETIREMENT OF BONDS.** All allotments under subsection (3) to counties having bonds outstanding which were issued under section 67.13 or 67.14, and expended for construction on the state trunk highway system, shall be used exclusively to retire such bonds to the extent necessary each year.

(5) **ALLOTMENTS NONLAPSIBLE.** Allotments under subsection (3) shall not lapse, but shall stand to the county's credit until expended as provided by law. If the commission determines that the public welfare and the best interests of travel make it necessary to complete any portion of the system as a single project, the commission and the county board of the county in which the project is located may agree that more than one year's allotment to the county may be used for the project. The cost of construction shall be advanced by the state from any funds available and unexpended under section 20.49, and the amounts so advanced shall be deducted from subsequent allotments to the credit of the county as agreed upon by the commission and the county board.

(9) **COMMISSION TO IMPROVE STATE TRUNKS.** That part of the appropriation made by section 20.49 (9), not required for the other purposes therein provided, may be used by the commission for the improvement and traffic service of the state trunk highway system and to match or supplement federal aid for the construction, reconstruction or improvement of the federal aid highway system, secondary or feeder roads, the elimination of hazards at railroad grade crossings and for any other highway purpose for which the state may match or supplement federal aid funds pursuant to any act of congress. Where such funds are used for the improvement of the state trunk highway system or to match or supplement federal aid they shall be expended in accordance with section 84.06 and any applicable

act of congress. Any funds expended pursuant to this subsection shall be expended by the commission on such projects within the provisions of this subsection, and executed in such manner, as the commission shall from time to time determine will best meet the needs of travel and best promote the general welfare. Such funds may be used for improvements, within the provisions of this subsection, independent of or in conjunction with other funds available for such improvements. The requirements of any federal highway act, or regulations issued thereunder, may be met from such appropriation.

(9a) **LANDSCAPING AND ACQUISITION OF ROADSIDE PARKS.** The commission shall landscape rights of way along the state trunk highway system; and develop and maintain roadside park areas along, or in close proximity with the state trunk highways. Such areas may be developed within existing or acquired rights of way and upon lands publicly owned or controlled or in proximity therewith. No area not within rights of way shall exceed 5 acres. The commission may purchase lands needed for such purposes. Development and maintenance includes planting, landscaping, the furnishing of sanitary, parking, cooking and picnicking facilities and any other facility which the commission deems reasonably necessary to accommodate travelers and provide convenient and safe access thereto by pedestrians and vehicles. Funds appropriated by section 20.49 (6a) shall be expended for the purposes set forth in this section but nothing herein shall limit the commission's power to expend funds appropriated by section 20.49 (9) for similar purposes when said funds are used to match federal funds pursuant to Title 23, Paragraph 10B, U.S.C. nor limit the power of the commission to expend money appropriated for maintenance purposes as defined by sections 84.07 and 80.01 (3).

(10) **IMPROVEMENT OF CONNECTING STREETS.** All connecting streets shall be constructed or reconstructed by the state in the same manner as portions of the state trunk highway system. It shall not be compulsory for the state to construct or reconstruct any such street or highway to a greater width than those portions of the state trunk system connecting therewith. [1931 c. 22 s. 3; 1931 c. 346; 1931 c. 391 s. 4; 1937 c. 55, 393; 1941 c. 117; 1943 c. 334 s. 123; 1943 c. 531, 564]

Note: Under 84.03 (4) (as amended by chapter 22, Laws 1931) counties are required to pay from allotment under (3) principal and interest of bonds, but counties may use such allotment for retirement of bonds only to amount of original cost of construction. 20 Atty. Gen. 1055.

Where county board makes appropriation for acquiring right of way on federal aid

relocation project under 84.03 (5), Stats. 1935, and highway commission is induced thereby to proceed with relocation at considerable expense county board cannot thereafter lawfully rescind appropriation. 25 Atty. Gen. 427.

Allotment provisions of 84.03 (4), Stats. 1937, are revocable as to county issuing bonds thereunder. 27 Atty. Gen. 126.

84.04 [Renumbered 84.01 (18) and (19) by 1943 c. 334 s. 116a]

84.05 Railroad crossing improvements. On a highway which the commission has authority to construct and which crosses a railroad or street railway, if the commission determines that the construction or reconstruction of a grade separation or the rearrangement or elimination of a grade crossing or other rearrangement of the highway or tracks is necessary in the interest of public safety or for convenience of public travel, the commission shall make a plan of the construction proposed and an estimate of the cost thereof, including the cost of needed right of way; and shall endeavor to make an arrangement with all persons concerned as to all matters involved in the plan, including the portion of the cost of the contemplated work which the persons shall defray. If the commission is unable to contract with the persons concerned as to the distribution and payment of the cost of the work, the commission shall lay the matter before the public service commission, and the public service commission shall review the proceedings and hold a hearing thereon in accordance with sections 195.28 and 195.29, and shall fix the portion of the cost which is to be paid by the persons or corporations concerned, and the portion of the cost, if any, to be paid by the public, which portion shall be paid from the highway construction fund. The public service commission shall determine the benefits, if any, which will inure to other highways, and apportion and charge to the units of government responsible for the construction of such other highways a fair portion of the cost. [1943 c. 334 s. 124]

Note: County and not railroad company was liable for land taken by highway committee for construction of overhead crossing to eliminate railroad crossing, since taking was not exclusively for railroad purposes. *Ullrich v County of Kenosha*, 219 W 65, 261 NW 747.

84.06 Highway construction. (1) **DEFINITIONS, PLANS.** The word "improvement" as used in this section includes construction, reconstruction and the activities, operations and processes incidental to building, fabricating or bettering a highway or street, but not maintenance. The state highway commission may prepare plans, estimates and specifications and undertake and perform all surveys, investigations and engineering work for any highway improvement within its jurisdiction. When provision has been made for the necessary funds for any such highway improvement and, if federal aid is to be utilized, when the project has been approved by the proper federal authorities, the commission may

proceed as provided in this section, with due regard to any applicable federal requirement or regulation.

(2) BIDS, CONTRACTS. All such highway improvements shall be executed by contract based on bids unless the commission finds that another method as provided in subsection (3), (4) or (5) would be more feasible and advantageous. Bids shall be advertised for in the manner determined by the commission, and the contract shall be awarded to the lowest competent and responsible bidder, unless his bid shall be found by the commission to be unreasonable, or if federal aid is to be utilized, shall be beyond the estimate approved by the proper federal authorities, in which event the contract shall be awarded to the next lowest competent and responsible bidder whose bid is not unreasonable or beyond such estimate; or all bids may be rejected and further bids may be advertised for by the commission. The commission shall, so far as reasonable, follow uniform methods of advertising for bids and may prescribe and require uniform forms of bids and contracts. The contract shall be entered into on behalf of the state by the commission. Every such contract is excepted from the provisions of sections 15.26 to 15.40 and sections 15.79 and 15.81. Any such contract involving an expenditure of \$1,000 or more shall not be valid until approval of the governor is indorsed thereon. The commission may require the attorney-general to examine any contract and any bond submitted in connection therewith and report as to the sufficiency of the form and execution thereof. The bond required by section 289.16 for any such contract including an expenditure of less than \$1,000 is exempt from approval by the governor and shall be subject to approval by the commission. The provisions of this subsection shall also apply to contracts with private contracts based on bids for maintenance under section 84.07.

(3) CONTRACTS WITH COUNTY; DIRECT LABOR; MATERIALS. If the commission finds that it would be more feasible and advantageous to have the improvement performed by the county in which the proposed improvement is located and without bids, the commission may, by arrangement with the county highway committee of the county, if possible, enter into a contract satisfactory to the commission to have the work done by the county forces and equipment and in such contract may authorize the county to purchase, deliver and store materials and may fix the rental rates of small tools and equipment. The contract shall be between the county and the state and shall not be based on bids, and may be entered into on behalf of the county by the county highway committee and on behalf of the state by the commission. Such contract is excepted from all provisions of chapter 15 and section 289.16, but in case the total indebtedness to be incurred thereby as therein estimated exceeds \$5,000 the contract shall not be valid until the approval of the governor is indorsed thereon.

(4) SPECIAL CONTRACTS WITH RAILROADS AND UTILITIES. If the plans of the commission for any part of the improvement indicate that the improvement will cross or affect, directly or indirectly, the property of any railroad company or public utility, and the commission finds that it would be more feasible and advantageous to have the improvement performed directly and without bids by the railroad company or public utility, the commission may, if possible, make a contract satisfactory to the commission to have the improvement performed by the railroad company or public utility. Such contract shall be between the railroad company or public utility and the state and need not be based on bids; and may be entered into on behalf of the state by the commission. Every such contract is excepted from all provisions of chapter 15 and section 289.16. No such contract in which the total debt to be incurred thereby as therein estimated exceeds \$5,000 shall be valid until the approval of the governor is indorsed thereon. As used herein the term "public utility" means the same as in section 196.01 and the word "railroad" means the same as in section 195.02. The word "property" as used herein includes but is not limited to tracks, trestles, signals, grade crossings, rights of way, stations, pole lines, plants, substations and other facilities. Nothing herein shall be construed to relieve any railroad or public utility from any financial obligation, expense, duty or responsibility otherwise provided by law relative to such property.

(5) CONSTRUCTION WITH CONVICT OR OTHER LABOR. If the commission finds that it would be more feasible and advantageous to have the proposed improvement performed by convict labor or labor employed directly by the commission, it shall submit a written report of its findings to the governor. If he approves the same he shall indorse his approval upon the report and thereupon the commission may do the work by convict labor, in accordance with section 56.04, or by labor employed directly by the commission, and may rent or purchase necessary small tools or equipment.

(6) EXCESS COST. Any excess in construction cost over the funds made available for any piece of work, shall be paid from the unobligated balance of funds allotted by section 84.03 (3) or as the commission may determine, and any balance shall be credited to the appropriation from which the work was financed.

(7) INSPECTION AND PAYMENT. The commission may provide for the inspection of

each piece of work to insure its proper performance. All indebtedness incurred under this section for any highway improvement shall be paid out of the available funds subject, if federal aid is utilized, to any applicable federal requirement or regulation.

(8) **CONTRACT FOR MATERIALS.** Whenever an improvement has been determined upon and provision has been made for fully financing the cost the commission, if it concludes that a probable saving can be effected thereby, may contract for any or all of the materials to be used in the improvement and for the delivery and storage of said materials at suitable points, and pay for the same out of any funds available for the improvement.

(9) **CATTLE PASSES.** As a part of any highway improvement or as a separate project under this section, cattle passes may be constructed at places determined to be necessary and practical. [1937 c. 393; 1943 c. 334 s. 125]

Cross Reference: See 103.50 for regulation of hours of labor and wage rates under highway contracts based on bids under 84.06 (2).

Note: A contract for highway construction, entered into under 84.06, Stats. 1939, on behalf of the state by the state highway commission after a letting by competitive bids, and containing a provision that supplemental agreements pursuant to the rules and specifications of the commission shall constitute a part of such contract, is subject to 15.79, Stats. 1939, so as to require the signed approval of the state chief engineer and the governor, but a supplemental agreement of the type provided for in the rules and specifications of the commission is merely a modification of the partly executed original contract by an adjustment of compensation to the contractor for particular items of work, and does not require the approval of the governor or that of the state chief engineer. That it has never been considered administratively that such supplemental agreements required the approval of the governor or of the state chief engineer is a fact of which the supreme court can take judicial notice. State ex rel. Lathers v. Smith, 238 W 291, 299 NW 43.

It is within the discretion of the state highway commission to require bids at unit prices for the excavation of different types of materials in the process of building a

highway, and to provide for supplemental agreements in its standard specifications and its contracts for highway construction so as to permit of adjustments of compensation to the contractor where the commission's engineer may make such alterations in the plans or quantity of work as may be necessary and the quantities of any items of work may vary from the quantities scheduled on the plans and in the proposals due to unforeseen conditions, such agreements being necessary in the economy of highway construction and primarily for the protection of the state, in order that the unit price as applied to much larger quantities than estimated may not run the cost of the project into unreasonable sums. State ex rel. Lathers v. Smith, 238 W 291, 299 NW 43.

State highway commission has authority, under 84.06 (2) (a), Stats. 1941, to enter into contracts with counties for performance of highway construction or reconstruction which provide for counties being compensated at maximum unit price rate of compensation—overall maximum compensation for job. County highway committees have power to enter into such contracts on behalf of county. County is not entitled to extra compensation merely because contract proves to be improvident one. Commission may not increase compensation rates provided for in contract except pursuant to terms of some provision in contract authorizing some subsequent adjustment. 31 Atty. Gen. 236.

84.07 Maintenance of state trunk highways. (1) **STATE EXPENSE; WHEN DONE BY COUNTY; DEFINITION.** The state trunk highway system shall be maintained by the state at state expense. The commission shall prescribe regulations and specifications for such maintenance. The commission may arrange with any county highway committee to have the state trunk highways within its county maintained by the county. Maintenance of state trunk highways includes the operations, activities and continuing processes for their repair, preservation, restoration and reinforcement, the removal and control of snow and ice, and all measures deemed necessary to provide adequate traffic service. It also includes the care and protection of trees and other roadside vegetation and suitable planting to prevent soil erosion or to beautify highways pursuant to section 80.01 (3).

(2) **COUNTY REPAID FOR STATE WORK.** When any county maintains the state trunk highways, in compliance with the arrangement with the state highway commission, the commission shall pay the actual cost of such maintenance, including the allowance for the use of county machinery and overhead expense agreed upon in advance. Such payments shall be made upon presentation by the county clerk of a properly itemized and verified account by the county highway committee.

(3) **WEED CONTROL.** The highway patrolman shall destroy or cut to the center of any highway which he patrols, all weeds named in Class I and Class II in section 94.20 (1) at such time and manner as shall effectually prevent them from bearing seed, or spreading to adjoining property.

(4) **EMERGENCY REPAIRS; BLOCKING STREETS; DETOURS.** Except in case of emergency, no city or village shall obstruct any street over which any state trunk highway is marked unless it first makes arrangements with the state highway commission for marking a detour. [1931 c. 22 s. 3; 1931 c. 283 s. 2; 1935 c. 550 s. 408; 1941 c. 117; 1943 c. 443 s. 126]

Note: A county using a truck in the maintenance of a state trunk highway pursuant to this section was discharging a governmental function; hence the county incurred no liability for an automobile accident in which the truck became involved while being so used, regardless of the negligence of employees of the county in parking

the truck. Lickert v. Harp, 213 W 614, 252 NW 296.

See note to 85.06, citing Crowley v. Clark County, 219 W 76, 261 NW 221.

County is liable to county highway workers for compensation for injuries received while constructing highways under arrangement between state highway commission and county highway committee. 21 Atty. Gen. 9.

84.08 Franchises. No franchise or permit granted by any town or village or city to any corporation to use any state trunk highway shall become effective unless such fran-

chise or permit has been approved by the state highway commission. The order of the commission shall provide for or approve the method by which the work authorized by the franchise or permit is to be done or by which the highway is to be restored to its former condition. [1937 c. 365; 1943 c. 334 s. 127]

84.09 [Renumbered section 84.07 by 1943 c. 334 s. 126]

84.09 Relocation, acquisition of right of way. (1) Whenever the state highway commission deems it necessary to acquire any lands or interests therein for the proper improvement, maintenance, relocation or change of any state trunk highway or any bridge thereon the commission shall so order and shall prepare a map showing the old and new locations and rights to be acquired and shall file a copy of the order and map with the county clerk and county highway committee of each county in which such lands or rights are required. The commission shall endeavor to obtain easements, conveyances or deeds for the lands or rights required at a price including any damages deemed reasonable by the commission. The easements, conveyances or deeds shall name the state as grantee of the lands and rights acquired and shall be recorded in the office of register of deeds.

(2) If any of the needed lands and rights cannot be purchased for a reasonable price the commission may acquire the same by condemnation proceedings under chapter 32 or in the manner provided for counties under section 83.07, or may make an award of damages to the landowner and file the award with the county clerk; and thereupon the amount so awarded shall be payable the same as when the land is acquired by purchase; and the landowner may receive the award without prejudice to his right to claim and to contest for a greater sum. When the award has been filed the highway authorities and their contractors and employes may take possession of the premises and proceed with the contemplated highway improvement. A copy of the award shall be delivered or mailed to the landowner if his address is known and if not known then to the occupant of the land. If the land is unoccupied and the address of the owner is unknown the award shall be published for 3 successive weeks in a newspaper having a general circulation in the county. The landowner may, within 2 years after the filing of the award, proceed as provided in chapter 32 to have his damages appraised, or he may within said period apply to the county judge on 5 days' written notice to the commission to appraise his damages and thereafter the proceedings shall be as provided in section 83.07.

(3) The commission may order that all or certain parts of the required lands or interests therein shall be acquired by the county highway committee. When so ordered, the county highway committee and the commission shall jointly appraise and agree on the price, including damages, considered reasonable for the lands or rights to be so acquired, and the county highway committee shall endeavor to obtain easements, conveyances or deeds for the lands or rights required and provide for the relocation or change within 90 days after the filing of said order. The easements, conveyances or deeds shall name the county as grantee, shall be subject to approval by the commission, and shall be filed with the county clerk and recorded in the office of the register of deeds. If the needed lands and rights cannot be purchased for a reasonable price the county highway committee may acquire them by condemnation proceedings under chapter 32 or in the manner provided in section 83.07, or, subject to approval by the commission, in the manner provided in section 83.08 (2).

(4) The cost of the land and rights acquired pursuant to this section, including any damages allowed and other expenses connected therewith, shall be paid out of the available improvement or maintenance funds. [1943 c. 334 s. 128]

Note: Relocation of state trunk highway reverts to its former status as town road and effects closing of such portions of old road may be vacated by town action only. [Stats. 1929] 19 Atty. Gen. 421.
as are rendered unnecessary thereby; but where there is any need for such old road it

84.10 State maintenance funds; allotment and disbursement. From the appropriation made by section 20.49 (9) the commission shall annually on July 1 make the allotments as provided in this section.

(1) The commission shall allot for the maintenance of the state trunk highway system as provided in section 84.07, such sum as the commission deems to be reasonably necessary to meet the requirements. Such allotment may be subsequently increased or decreased by the commission as conditions may require.

(2) The commission shall allot to each city and village a sum computed at \$500 per mile of connecting streets within its limits. The allotments may be used for maintenance, repair, construction, snow and ice removal and control, cleaning, drainage, and traffic regulation on such connecting streets, and may be cumulated for such purposes. The funds shall be held to the credit of such cities and villages, and paid to the treasurers thereof upon presentation to and approval by the commission of certified statements, itemized as required by the commission, setting forth the amounts expended on connecting streets; provided the maintenance thereof is satisfactory to the commission.

(3) The commission shall allot to cities of the first, second and third class, for the maintenance and operation of free, swing or lift bridges located on connecting streets in such cities, not to exceed \$130,000. Such allotment shall be distributed by the commission on February 15 of each year and shall be apportioned pro rata upon the basis of, but not exceeding, the necessary and actual expenditures by each city. Each city shall annually, on or before January 31, submit a written report to the commission showing the actual expenditures during the previous calendar year for the maintenance and operation of such bridges.

(4) The commission shall allot for the maintenance and operation of bridges constructed, reconstructed, or purchased under sections 84.11 and 84.12 and free bridges located on state trunk highways or connecting streets in cities of the fourth class which have a length, not including approaches, of 300 feet or more, or a swing or lift span, \$75,000. All matters relating to the maintenance and operation of such bridges shall be under the control of the commission. Maintenance and operation shall not include the roadway lighting system and shall not include snow and ice removal and control for bridges located on connecting streets. The commission may arrange with the county highway committee or with the village or city for the operation or maintenance or both of any such bridge in the county, village or city.

(5) Of the allotments under this section, not more than 3 per cent shall be deducted and used to pay the cost of supervision by the state highway commission.

(6) Any city or village may arrange to have any work on connecting streets or swing or lift bridges for which an allotment is made under this section, performed by the county. [1931 c. 22 s. 1, 2; 1935 c. 30, 299, 540; 1943 c. 81; 1943 c. 334 s. 129; 1943 c. 491, 564]

Note: Term "traffic regulation" in 84.10 (1) (b), Stats. 1935 (84.10 (2), Stats. 1943) includes upkeep and repair of traffic control signals such as speed signs, stop signs and stop and go lights installed pursuant to 85.70. 25 Atty. Gen. 211.

Bridge constructed under 87.02 (84.11, Stats. 1943) in city of second class and over which connecting street was subsequently routed is subject to maintenance and operation allotment provided by 84.10 (1) (d), Stats. 1939 (84.10 (4), Stats. 1943). 30 Atty. Gen. 6.

Funds may not be used by municipalities under 84.10 (1) (b), Stats. 1939 (84.10 (2), Stats. 1943) for street lighting but may be used for following purposes when actually performed on selected connecting streets; routine sweeping or cleaning of streets, including flushing or sprinkling with water; painting vehicle or pedestrian lane markings and restricted parking area designations; policing to prevent traffic violations or to apprehend traffic violators; policing for purpose of directing traffic. 30 Atty. Gen. 32.

84.105 National parkways. (1) **HIGHWAY COMMISSION TO CO-OPERATE WITH FEDERAL AGENCIES.** The legislature of the state of Wisconsin hereby declares that the intent of this section is to assent to any act of the United States congress authorizing the development of any national parkway located wholly or partly within the state of Wisconsin, to the full extent that is necessary to secure any benefits under such act, provided that the hunting of migratory waterfowl and other game and fishing shall not be prohibited or otherwise restricted by the United States government or any of its designated agencies in control of said project, and to authorize the appropriate state boards, commissions, departments and the governing bodies of counties, cities, towns and villages and especially the state highway commission to co-operate in the planning and development of all national parkways that may be proposed for development in Wisconsin, with any agency or department of the government of the United States in which is vested the necessary authority to construct or otherwise develop such national parkways. Whenever authority shall exist for the planning and development of any national parkway, of which any portion shall be located in this state, it shall be the duty of the state highway commission to make such investigations and studies in co-operation with the appropriate federal agency, and such state boards, commissions and departments as shall have an interest in such parkway development, to the extent that shall be desirable and necessary in order to provide that the state shall secure all advantages that may accrue through such parkway development and that the interests of the counties, cities, villages and towns along the route shall be conserved.

(2) **DEFINITIONS.** For the purposes of this section, all terms applying to any parkway, such as "secretary", "parkway", "scenic landscape", "sightly or safety easement", "access", "parkway road", "frontage", and other or similar terms, which are defined in any act of the United States congress applicable to such national parkway, shall have the meanings set forth in such act.

(3) **HIGHWAY COMMISSION SHALL MAKE INVESTIGATIONS.** The state highway commission shall have full authority to make such investigations, surveys, studies and plans in connection with any proposed national parkway or parkway development as it shall deem necessary or desirable in order to determine if the proposed development, under the terms of the act of the United States congress applicable to such parkway or any regulations under such act, are advantageous to the state. Such parkway development may be any portion of the proposed parkway, which it may be proposed to construct as a project

under such act. The state highway commission may hold such hearings in connection with such investigations as it shall deem necessary or desirable, and shall give at least seven days' notice of such hearings by publication in at least two newspapers having general circulation in the locality.

(4) FINDING AND DETERMINATION. When the state highway commission has completed its investigations with respect to any proposed national parkway development, it shall make its findings and determination with respect to such proposed development. Such finding and determination shall state whether or not such proposed national parkway development is deemed advantageous to the state, shall include such information with respect to the development as shall be necessary to state its character and extent, and shall estimate the cost thereof and separately, the amount and character of lands necessary to be acquired in fee simple and in easements, with their cost, and needed to carry out the development.

(5) PARKWAY TO BE STATE TRUNK HIGHWAY. If the state highway commission, after such investigations and studies, shall find that the proposed parkway development is advantageous to the state, it shall have full authority to perform, on behalf of the state, each and every duty required of the state by the act of the United States congress applicable to such parkway development, in order to secure the proposed development project for the state. For the purposes of such development project, the parkway shall be a portion of the state trunk highway system. Any moneys that may be available for the improvement of the state trunk highway system within any county shall be available for any proposed national parkway development within such county, in the same manner as such moneys shall be available for state trunk highways. The county board of any county may authorize the use of any moneys available to the county under section 20.49, chapter 83 or chapter 84, for the purposes of the proposed parkway development, to the same amount as for state trunk highways under such section 20.49 and chapters 83 and 84. The county boards may provide money for any national parkway development project in the same manner and in the same amount as for state trunk highways, and any county bonds issued to provide funds for any such parkway development shall be retired in the same manner as bonds issued for state trunk highways.

(6) RIGHT OF WAY AND EASEMENTS. All lands for right of way to be acquired in fee simple and all easements necessary to be acquired for the purposes of the proposed national parkway development shall be acquired by the state highway commission in the name of the state, as may be required by the act of the United States congress applicable thereto. Any lands owned by the state or by any county, city, village or town, may be conveyed to the United States for the purposes of the parkway in the manner provided by law. The commission may acquire such lands by gift, purchase agreement, or by exercising the right of eminent domain in any manner that may be provided by law for the acquirement of lands for public purposes. The commission shall have authority to convey such lands to the United States government or any of its agencies, as may be required by the act of the United States congress applicable to such national parkway.

(7) SECTION TO BE LIBERALLY CONSTRUED. All powers granted in this section shall be liberally construed in favor of the state highway commission and any proposed national parkway development projects. [1939 c. 133; 1943 c. 334 s. 130]

84.11 Intrastate bridges. (1) ELIGIBILITY. Bridge projects shall include all approaches and embankments, all lands necessary for right of way or other purposes, and all other necessary appurtenances. The word "construction" as used in this section shall include reconstruction. The word "commission" as used in this section means highway commission of Wisconsin. The following classes of bridge projects located wholly within the state shall be eligible to construction under the provisions of this section, provided that such eligibility shall not require that any such project be constructed under this section exclusively or bar any such eligible project from construction under any other provision of law that may be applicable:

(a) Any bridge project not eligible under paragraph (b) in which the bridge portion necessarily must be 475 feet in length or more, not including approaches;

(b) Any bridge project located wholly or partly on the state trunk highway system or on a street in a fourth class city, not a portion of the state trunk highway system, but selected by the commission as a direct connection between portions of such system, provided the bridge portion necessarily must be 300 feet or more in length not including approaches, or the cost of the bridge portion as estimated by the commission in its finding and determination is \$75,000 or more, or there must be provided a movable span to permit navigation.

(2) INITIATION OF PROCEEDINGS. (a) *By any county, city, village or town.* Proceedings for the construction of a bridge project under paragraphs (a) or (b) of subsection (1) may be initiated by a petition filed with the commission. Such petition shall

state that the petitioner desires such construction, and the approximate location thereof, and shall further state that, in the opinion of petitioner, such construction is necessary and is a bridge project eligible to construction under the provisions of this section. Such petition may be filed by any county, city, village or town required to pay a portion of the cost of construction, in the case of a bridge project eligible under paragraph (a) of subsection (1), or by any county, city, village or town in which a portion of the bridge project will be located in the case of a bridge project eligible to construction under the provisions of paragraph (b) of subsection (1). Such petition shall be duly adopted by the governing body of the county, city, village or town, and a certified copy of the adopted petition shall be filed with the commission.

(b) *By the highway commission.* Proceedings for the construction of a bridge project under this section may also be initiated by the commission by the adoption of a resolution stating the approximate location of such construction and that such construction appears to be necessary and to be a bridge project eligible to construction under this section.

(3) **HEARING.** Within 60 days of the receipt of a petition under paragraph (a) of subsection (2) or the adoption of a resolution under paragraph (b) of subsection (2) the commission shall fix a time and place for a hearing which shall be held thereon, and give ten days' notice of such hearing by publication in at least one newspaper published in and having general circulation in the vicinity of one of the counties, cities, villages or towns, in which any portion of the bridge project will be located, or if no newspaper is so published, in one or more newspapers deemed by the commission as likely to give notice of such hearing. Notice shall also be given by registered letter addressed to the clerks of the counties, cities, villages and towns in which any part of the bridge project will be located. Such hearings may be held in any county, city, village or town in which any part of the bridge project will be located.

(4) **FINDING, DETERMINATION AND ORDER.** After such hearing the commission shall make such investigation as it shall deem necessary in order to make a decision in the matter. If the commission shall find that the construction is necessary it shall determine the location thereof, and if the project as so located is eligible to construction under this section the commission shall determine the character and kind of bridge most suitable for such location and estimate separately the cost of the bridge portion and the entire project. In the case of projects eligible to construction under subsection (1) (a) the commission shall also determine the respective portions of such estimated cost of the entire project to be paid by each county, city, village and town required to provide any portion thereof, and the portion to be paid by the state. The commission shall make its finding, determination and order, in writing, and file a certified copy thereof with the clerk of each county, city, village and town in which any portion of the bridge project will be located and also with the secretary of state and the state treasurer. The determination of the location of the project made by the commission and set forth in its finding, determination and order, shall be conclusive as to such location and shall constitute full authority for any relocations of highways made necessary for the construction of the project and for acquirement of any lands necessary for such relocation or construction. The estimate of cost made by the commission shall be conclusive in so far as cost may determine eligibility of construction under this section.

(5) **APPORTIONMENT OF COST.** (a) The cost of projects eligible to construction under the provisions of paragraph (a) of subsection (1) shall be borne as follows: The state shall pay one-third, the county or counties in which the bridge project will be located shall pay one-third, and the one or more cities, villages and towns in which any part of such bridge project will be located shall pay one-third. The portion to be paid by the counties shall be borne equally by the counties in which such bridge project will be located; provided, that no bridge project shall be considered as located within a county unless an entrance to the bridge proper shall be wholly or partly within the limits of such county. If a bridge project wholly within one county is located in more than one city, village or town, their respective portions of the cost shall be in proportion to their respective assessed valuations as last equalized by the county board. If such cities, villages or towns are located in more than one county, the portion of the cost paid by all cities, villages and towns shall first be apportioned equally according to the number of counties, and then to the cities, villages and towns in each county in proportion to their respective assessed valuations as hereinbefore provided.

(b) The cost of bridge projects eligible under paragraph (b) of subsection (1) shall be borne as follows: The county or counties in which any part of the bridge project will be located are authorized, but not required, to pay, jointly or severally, a total of not more than one-fourth; the one or more cities, villages or towns in which any part of the bridge project will be located are authorized, but not required, to pay, jointly or severally, a total of not more than one-fourth. The commission shall include in its finding, determination and order a statement of the amounts it shall find to be equitable for the respec-

tive counties, cities, villages and towns to pay toward such construction but such statement shall not require any such county, city, village or town to make any payment. Any county, city, village or town may, with the approval of the commission, make all or part of its total authorized payment by furnishing land necessary or suitable for use in such bridge project. The state shall pay the entire cost not otherwise paid as provided in this paragraph; provided, that if any bridge project to be constructed under this section meets the requirements for construction with federal aid, the commission may in its discretion apply federal aid to such project, in accordance with a project agreement to be entered into with the proper representatives of the federal government and use any money provided by the state or paid by any county, city, village or town to match such federal aid.

(6) PROVISION OF PORTIONS OF COSTS BY LOCAL UNITS. When the commission shall have made and filed its finding, determination and order favorable to the construction of any bridge project under the provisions of this section, the governing body of each county, city, village and town required by such order to pay a portion of the cost in the case of bridge projects eligible to construction under the provisions of paragraph (a) of subsection (1) shall take action at its next regular or special meeting to arrange to provide such portion. Within 5 days after the adjournment of such meeting the governing body of any such city, village or town shall cause its clerk to certify the action of such governing body to the county clerk and the commission. Within 5 days after the adjournment of such meeting of the county board the county clerk shall certify the action of the county board to the commission. In the case of projects eligible to construction under the provisions of paragraph (b) of subsection (1), when the commission shall have made and filed its findings, determination and order favorable to such construction, the governing body of each county, city, village or town in which any part of the project will be located shall take action at its next regular or special meeting to determine what amount, if any, shall be offered and paid toward such construction and to arrange to provide any amount that shall be so determined upon. Such action shall be certified to the commission within 5 days after such meeting.

(7) EXECUTION AND CONTROL OF WORK. Subject to the control and supervision over the navigable waters of the state conferred by law upon the public service commission, and the control exercised by the United States, the construction under this section of any bridge project shall be wholly under the supervision and control of the commission. The commission shall make and execute all contracts and have complete supervision over all matters pertaining to such construction and shall have the power to suspend or discontinue proceedings or construction relative to any bridge project at any time in the event any county, city, village or town shall fail to pay the amount required of it as to any project eligible to construction under the provisions of paragraph (a) of subsection (1) or offered by it as to any project eligible to construction under the provisions of paragraph (b) of subsection (1), or in the event the commission shall determine that sufficient funds to pay the state's part of the cost of such bridge project are not available. All moneys to be provided by counties, cities, villages and towns shall be deposited by them in the state treasury, when required by the commission, and paid out on order of the commission. Any of such moneys remaining in the state treasury after the completion of such project shall be repaid to the respective counties, cities, villages and towns in the proportion paid in. [*Spl. S. 1931 c. 14; 1935 c. 285; 1937 c. 55; 1943 c. 334 s. 131*]

Note: A provision in 87.02 (5) (b), Stats. 1935 (84.11 (5) (b), Stats. 1943) that if a bridge eligible to construction under (1) (b) (84.11 (1) (b), Stats. 1943) is located on a United States highway no portion of the cost shall be paid by any county is valid; and bonds proposed to be issued by the county for the purpose of raising funds to contribute to such a bridge above described are not authorized by law. *Schaettle v. State Highway Commission*, 223 W 528, 271 NW 63. [87.02 (1) (b) was later amended by ch. 55, Laws 1937.]

Where city has acquired right of way and let contracts, which have been partially executed, for construction of bridge, it is

too late to apply for apportionment of costs thereof. [Stats. 1931] 21 Atty. Gen. 968.

Money raised by bond issue under 87.02 (1) (b) [*Spl. S. 1931*] cannot be used for any other purpose. If bonds have not been sold action for bond issue may be rescinded and county's share of bridge may be paid out of general fund without levying county tax for that specific purpose. 22 Atty. Gen. 113.

Bridge constructed under 87.02, Stats. 1939 (84.11, Stats. 1943) in second class city, over which connecting street was subsequently routed, is subject to maintenance and operation allotment provided by 84.10 (1) (d), Stats. 1939 (84.10 (4), Stats. 1943). 30 Atty. Gen. 6.

84.12 Interstate bridges. (1) ELIGIBILITY. All bridge projects which include bridges located over any state boundary waters shall be eligible to construction and reconstruction under this section, but such eligibility shall not require that any such project be constructed under this section exclusively or bar any eligible project from construction under any other provision of law that may be applicable. Projects shall include all approaches and embankments, all lands necessary for right of way or other purposes, and all other necessary appurtenances. The word "commission" as used in this section means highway commission of Wisconsin. Such bridge projects shall be classified as follows:

(a) Any bridge project not included in paragraph (b).

(b) Any bridge project so located as to form an interstate connection between the state trunk highway system of this state and the corresponding system of the adjoining state, and where such bridge and approach in the adjoining state is under the jurisdiction of the state highway department of the said state.

(2) INITIATION OF PROCEEDINGS. (a) *By county, city, village or town.* Proceedings under this section may be initiated by a petition filed with the commission by any county, city, village or town in which a portion of the bridge project will be located. The petition shall state that the petitioner desires such construction and the approximate location thereof; and shall further state that, in the opinion of petitioner, such construction is necessary and is a bridge project eligible under this section. The petition shall be duly adopted by the governing body of the county, city, village or town and a certified copy of the petition, as adopted, shall be filed with the commission.

(b) *By the highway commission.* Proceedings under this section may also be initiated by the commission by the adoption of a resolution stating the approximate location of the construction and that it appears to be necessary and to be a bridge project eligible under this section.

(3) HEARING, INVESTIGATION AND NEGOTIATIONS. Within 60 days of the receipt of such a petition or the adoption of such a resolution the commission shall fix a time and place for a hearing thereon. The commission shall give notice and hold the hearing in the manner provided by section 84.11 (3). The commission shall also give notice by registered letter addressed to the state highway department of the adjoining state and to the governing body of the county, and of the city, village or town of the adjoining state in which any portion of the bridge project will be located. The commission may make such investigation as it deems necessary and conduct such negotiations with the state highway department and other authorities in the adjoining state as it deems advisable.

(4) FINDING, DETERMINATION AND ORDER. If the commission finds that the construction is necessary, and that provision has been made or will be made by the adjoining state or its subdivisions to bear its or their portions of the cost of the project, the commission, in co-operation with the state highway department of the adjoining state, shall determine the location thereof, the character and kind of bridge and other construction most suitable at such location, estimate the cost of the project, and determine the respective portions of the estimated cost to be paid by each state and its subdivisions. In the case of projects eligible to construction under subsection (1) (a) the commission shall further determine the respective portions of the cost to be paid by this state and by its subdivisions which are required to pay portions of the cost. The commission, after such hearing, investigation and negotiations, shall make its finding, determination and order in writing and file a certified copy thereof with the clerk of each county, city, village or town in this state in which any part of the bridge project will be located, with the secretary of state and the state treasurer and with the state highway department of the adjoining state. The determination of the location set forth in the finding, determination and order of the commission shall be conclusive as to such location and shall constitute full authority for any relocations of the highways made necessary for the construction of the project and for acquiring lands necessary for such relocation or construction.

(5) APPORTIONMENT OF COST. The portion of the cost of such project to be paid by this state and its subdivisions shall be borne as follows:

(a) The cost of projects eligible to construction under subsection (1) (a) to be borne by this state and its subdivisions shall be borne by the state and the counties, cities, villages and towns in which any part of the project in this state will be located in the manner and proportion provided by section 84.11 (5) (a).

(b) The cost of projects eligible to construction under subsection (1) (b), to be borne by this state and its subdivisions shall be borne by the state; provided that such cost may be shared in the manner and proportion provided in section 84.11 (5) (b) by the one or more counties, cities, villages and towns in which any part of the bridge project in this state will be located and by the application and matching of federal aid in the manner and proportion provided in section 84.11 (5) (b).

(6) PROVISION OF COSTS BY LOCAL UNITS. When the commission has made and filed its finding, determination and order favorable to the construction of any bridge project under this section, the governing body of each county, city, village and town of this state required by the order to pay a portion of the cost, in the case of bridge projects eligible to construction under subsection (1) (a), shall take action at its next regular or special meeting to arrange to provide such portion. Within 5 days after the adjournment of such meeting the clerk of the governing body of the city, village or town shall certify the action of the governing body to the county clerk and the commission. Within 5 days after the adjournment of such meeting of the county board the clerk shall certify the action of the county board to the commission. In the case of projects eligible to construction under

subsection (1) (b), when the commission shall have made and filed its finding, determination and order favorable to such construction, the governing body of each county, city, village and town in which any part of the bridge project in this state will be located shall take action at its next meeting to determine what amount, if any, shall be offered and paid toward such construction and to arrange to provide any amount so determined upon. Such action shall be certified to the commission within 5 days after any such meeting.

(7) **EXECUTION AND CONTROL OF WORK.** Subject to the control and supervision over the navigable waters of the state conferred upon the public service commission, and the control exercised by the United States, the construction under this section of any bridge project shall be under the joint supervision and control of the commission and of the state highway department of the other state concerned. If the highway department of the other state is not authorized to act jointly with this state in such bridge project arrangements may be made with such subdivisions of the other state as may have proper authority, represented by their proper officers. Control shall be exercised in the manner deemed most expedient by the commission and such department or by the commission and the officers of the subdivisions of the other state concerned in the said construction. All contracts for the construction of said bridge projects shall be made and executed by the commission and the highway department of the other state jointly, or jointly by the commission and such subdivisions of the other state as may participate in the said construction. The commission may suspend or discontinue proceedings or construction relative to any bridge project at any time in the event any county, city, village or town fails to pay the amount required of it as to any project eligible to construction under subsection (1) (a) or offered by it as to any project eligible to construction under subsection (1) (b), or in the event the commission determines that sufficient funds to pay the state's part of the cost of the bridge project are not available. All moneys available from this state, or its subdivisions, shall be deposited in the state treasury when required by the commission and shall be paid out only upon order of the commission. Moneys so deposited by such subdivisions and remaining in the state treasury after the completion of such project shall be repaid to the respective subdivisions in the proportion paid in.

(8) **CONNECTION WITH STATE TRUNK HIGHWAY SYSTEM.** To carry out the provisions of this section the commission may add to the state trunk highway system any bridge constructed or purchased under this section, and any road or street eligible to become a portion of the state trunk highway system, which will form the most reasonable and practical connection from such bridge to the state trunk highway system. In such cases limitations on the total mileage included in the state trunk highway system shall not apply. [*Spl. S. 1931 c. 14; 1937 c. 55; 1943 c. 334 s. 132*]

84.13 Purchase of toll bridges. Any toll bridge eligible to be reconstructed as a free bridge under the provisions of section 84.11 or 84.12, may be purchased under such section and made a free bridge, and the procedure in such case, so far as applicable, shall be the same as for the construction or reconstruction of bridges. If the state highway commission is unable to agree with the owners of such toll bridge as to purchase price, the said toll bridge may be condemned, by exercising the right of eminent domain, in the following manner: The state highway commission shall petition the public service commission to fix a time and place for public hearing in the matter of the just compensation to be paid for the taking of said toll bridge, as provided by section 197.05, and the subsequent procedure, so far as applicable, shall be as provided by sections 197.05 to 197.09. The word "municipality" as used in such sections means the state highway commission in all proceedings brought under this section. Any toll bridge so purchased or acquired may be later reconstructed under the provisions of this chapter in the same manner as other free bridges may be reconstructed. [*1943 c. 334 s. 133*]

84.14 Bridge construction. (1) **ORDER OF CONSTRUCTION.** The state highway commission shall hold hearings on proposed bridge projects under sections 84.11 and 84.12 in the order in which they are initiated by a petition filed with the commission or by a resolution adopted by the commission. The commission shall allot aid for the construction, reconstruction or purchase of bridges and may undertake such projects in the order the commission deems advisable.

(2) **ANTICIPATION OF FUNDS.** If the funds appropriated by the state in any year shall not be sufficient to pay the state's share of all bridges certified under section 84.11 or 84.12, the appropriation for the ensuing year may be drawn upon to supply the necessary funds.

(3) **PARTICIPATION IN TOWN BRIDGE CONSTRUCTION.** Whenever any municipality has participated in the cost of the construction, reconstruction, or purchase of a bridge under section 84.11 or 84.12, the property in such municipality shall thereafter be subject to taxation by the county for the construction and repair of bridges within the county under section 81.38.

(4) LEGALITY OF PROCEEDINGS HERETOFORE HAD. All bridges constructed, reconstructed or purchased pursuant to proceedings initiated by petitions heretofore filed with the state highway commission, or by the commission on its own motion, under the provisions of sections 87.02, 87.03, 87.04, 87.05 or 87.055 of pre-existing statutes, shall be construed to have been constructed, reconstructed or purchased under section 84.11 or 84.12, and shall be operated and maintained as provided by section 84.15, and all proceedings, findings and determinations and all contracts for bridge projects now being or to be constructed, reconstructed or purchased with funds now available, are declared to be valid. All proceedings relative to the construction of any bridge project, including, without limitation because of enumeration, all contracts, any authorization, issuance, sale, execution or delivery of bonds and all bonds issued in connection with any such project, constructed subsequent to January 1, 1928 which project was eligible to construction under present or pre-existing statutes, are hereby validated and confirmed notwithstanding any defects or irregularities therein or lack of power therefor other than constitutional and notwithstanding any such project was not constructed under sections 84.11, 84.12, 87.02, 87.03, 87.04, 87.05 or 87.055 of present or pre-existing statutes. [1937 c. 55; 1943 c. 334 s. 135]

84.15 Bridges. (1) MAINTENANCE AND OPERATION OF INTRASTATE BRIDGES. All matters relating to the maintenance and operation of bridges constructed, reconstructed or purchased under the provisions of section 84.11 shall be under the jurisdiction and complete control of the state highway commission and the cost of such maintenance and operation thereof shall be the direct obligation of the state. Such portion of the approaches as may be determined by the state highway commission shall be considered a part of such bridge for maintenance and operation purposes. Authority is given the commission to carry fire or tornado insurance, or both, on bridges where such hazard exists and the premium on such insurance shall be included as a portion of such maintenance and operation costs.

(2) ACROSS BAY OF GREAT LAKES. In the case of any intrastate bridge built across a bay of any of the Great Lakes, the maintenance under subsection (1) of this section shall be deemed to include repair or reconstruction necessitated by any accidental damage done to such bridge by vessels using such bay, or some other catastrophe, in which event the highway commission may use for such repair or reconstruction moneys available for the construction of such bridges.

(3) INTERSTATE BRIDGES, WISCONSIN'S SHARE. The provisions of this section shall also apply to all interstate bridges constructed, reconstructed or purchased under the provisions of section 84.12; and the term "bridge" as used in subsection (1) of this section means Wisconsin's portion of such interstate bridges. [1931 c. 436; 1935 c. 30; 1943 c. 334 s. 136]

84.20 State repair of town and county roads and city and village streets. When any town or county road or city or village street is used as a detour or for hauling material for repair or construction because of the use thereof incident to the repair or construction of any state trunk or federal highway or street carrying such highway, the damages to such road or street caused by such use shall be repaired by and at the expense of the state. [1943 c. 543]