



## WISCONSIN LEGISLATIVE COUNCIL AMENDMENT MEMO

**2003 Assembly Bill 678**

**Assembly Amendments 1, 2, 3,  
4, 5, and 6**

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**Assembly Bill 678** was prepared for the Joint Legislative Council's Special Committee on Recodification of Town Highway Statutes.

That committee was directed to recodify chs. 80 and 81 and any matters related to those statutes. The Special Committee was instructed that the recodification may include a study of the reorganization of the chapter in a logical manner, renumbering and retitling sections, consolidating related provisions, modernizing language, resolving ambiguities in language, codifying court decisions, and making minor substantive changes.

The bill:

1. Reorganizes chs. 80 and 81 by:
  - a. Moving most of the provisions in current chs. 80 and 81 into a new ch. 82. The Special Committee decided to create ch. 82 in order to avoid confusion between the original and the recodified law.
  - b. Arranging the provisions of the new ch. 82 into a logical order. The bill creates four subchapters.
  - c. Reorganizing some of the individual sections within current chs. 80 and 81 by combining them with other sections, dividing single sections into multiple sections, and internally reorganizing single sections.
  - d. Relocating whole or partial sections of current chs. 80 and 81 outside of the new ch. 82. This was done mainly for provisions that apply to municipalities other than towns.
2. Makes nonsubstantive changes to modernize language and reflect modern drafting style.

3. Repeals several sections of the current chs. 80 and 81 that the Special Committee concluded were unnecessary.

4. Makes substantive changes.

To aid in locating the renumbered sections, a table is located at the end of the bill that identifies the treatment of each of the provisions in current chs. 80 and 81.

### **ASSEMBLY AMENDMENT 1**

Current s. 81.14, Stats., gives the counties some oversight over town roads. If a town or towns fail to open a town road and put it in reasonable condition for travel, 15 freeholders can appeal to the county. The Special Committee decided to retain this provision, but expanded the counties' oversight to cities and villages as well.

Assembly Amendment 1 deletes that provision relating to county oversight over town, city, and village roads for failure to open. So the counties will not have that authority.

### **ASSEMBLY AMENDMENT 2**

Current law provides a unique method for towns to acquire land for town highways. Under these procedures, the town board can make an award of damages. A landowner can appeal this award to circuit court where a five-person jury is appointed to assess the damages. The Special Committee decided to eliminate these procedures and require towns to use the procedures in ch. 32. The current procedures for assessing the damages when acquiring land are also used to assess the damages for entry onto land.

Current s. 81.06 allows the town to enter land to construct drains and ditches and to get materials. Under current s. 81.08, the town can assess the damages that resulted from that entry and the landowner can use the appeal procedures for the acquisition of land to challenge that assessment. Current s. 83.18 gives the county those same powers and appeal procedures. The Special Committee retained those powers in the new draft. *However, as mentioned above, in connection with its consideration of how the town should acquire land, the committee deleted those appeal procedures. The result is that the town and county are able to enter the lands, but there is not an appeal procedure for the landowner to use.*

Assembly Amendment 2 corrects this omission by adding language for 82.03 (6) that references condemnation procedure language in ch. 32. Specifically, the amendment language is based on that currently found in 32.08 and 32.06 (10). This language provides an appeal procedure for property owners by offering access to a jury trial and the remedy of actual litigation expenses.

### **ASSEMBLY AMENDMENT 3**

Includes references to 84.095 and 59.43 (2m) to clarify the recording requirements of highway orders and street maps recorded in the office of the Register of Deeds.

Section 84.095 relates to Transportation Project Plats (i.e., maps). Section 59.43 (2m), Stats., provides the standard format requirements for recorded documents (i.e., highway order).

#### ASSEMBLY AMENDMENT 4

Adds language to the definition of “legal description” in the bill to include reference to 84.095 (Transportation Project Plats). Thus, Assembly Amendment 4 treats Transportation Project Plats the same as Certified Survey Maps and Subdivision Plats with regard to a “legal description” in the bill.

#### ASSEMBLY AMENDMENT 5

Assembly Amendment 5 provides for:

- Notification to the Department of Transportation (DOT) Secretary by a city, village, or town upon receipt of a petition for discontinuing a street, road, or highway under s. 66.1003 or upon a city’s, village’s, or town’s own initiative to ensure that the proposed discontinuance of a street, road, or highway abutting, intersecting, or within ¼ mile of a state trunk highway will not cause safety problems or that such street, road, or highway will not be required for, or be an integral part of a future state trunk highway improvement project.
- Notification to the DOT Secretary by a town upon receipt of a petition or upon a town’s own initiative for discontinuing a street, road, or highway under ss. 82.10 and 82.21 to ensure that the proposed discontinuance of a street, road, or highway abutting, intersecting or within ¼ mile of a state trunk highway will not cause safety problems or that such street, road, or highway will not be required for, or be an integral part of, a future state trunk highway improvement project.

#### ASSEMBLY AMENDMENT 6

Assembly Amendment 6 provides that:

- No person may cut or trim grass along any state trunk highway without the consent of DOT.

#### Exception

- A person who owns or leases land abutting a state trunk highway **may, without the consent of DOT**, cut or trim grass that is within the highway right-of-way and that is located along the land’s frontage with the highway right-of-way or within 200 feet of a driveway, railroad crossing, or intersection along the land’s frontage with the highway right-of-way. However, this does not permit a person to cut or trim grass without the consent of DOT if any of the following applies:

1. The state trunk highway is a freeway, as defined in s. 346.57 (1) (am), Stats., or an expressway, as defined in s. 59.84 (1) (b), Stats.
2. The person farms or harvests the grass.
3. The grass is located in any of the following:
  - a. An area where pedestrians are prohibited.

- b. An area accessible only by crossing a traffic lane of the state trunk highway.
- c. An area located within 50 feet of a sign, as defined in s. 84.30 (2) (j), Stats.

**LEGISLATIVE HISTORY**

On January 15, 2004, the Assembly Committee on Transportation recommended for adoption Assembly Amendments 1, 2, 3, 4, and 5 by a vote of Ayes, 16; Noes, 0. The Assembly Committee on Transportation recommended passage of the bill, as amended, by a vote of Ayes, 16; Noes, 0.

On February 3, 2004, the Assembly adopted Assembly Amendments 1, 2, 3, 4, 5, and 6 by a voice vote. The Assembly passed the bill, as amended, by a vote of Ayes, 99; Noes, 0.

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