



WISCONSIN LEGISLATIVE COUNCIL
REPORT TO THE LEGISLATURE

SPECIAL COMMITTEE ON
RECODIFICATION OF TOWN
HIGHWAY STATUTES

December 4, 2003

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**SPECIAL COMMITTEE ON RECODIFICATION OF TOWN HIGHWAY STATUTES
REPORT TO THE LEGISLATURE**

Prepared by:
Nicholas Zavos and Philip Cardis, Staff Attorneys
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CONTENTS

<i>PART I - KEY PROVISIONS OF COMMITTEE RECOMMENDATION.....</i>	<i>3</i>
2003 Assembly Bill 678 and 2003 Senate Bill 315.....	3
<i>PART II - COMMITTEE ACTIVITY.....</i>	<i>5</i>
Assignment.....	5
Summary of Meetings.....	5
<i>PART III - RECOMMENDATION INTRODUCED BY THE JOINT LEGISLATIVE COUNCIL</i>	<i>7</i>
2003 Assembly Bill 678 and 2003 Senate Bill 315.....	7
<i>APPENDIX 1 - COMMITTEE AND JOINT LEGISLATIVE COUNCIL VOTES</i>	<i>11</i>
<i>APPENDIX 2 - LIST OF JOINT LEGISLATIVE COUNCIL MEMBERS.....</i>	<i>13</i>
<i>APPENDIX 3 - LIST OF COMMITTEE MEMBERS</i>	<i>15</i>
<i>APPENDIX 4 - COMMITTEE MATERIALS LIST.....</i>	<i>17</i>

PART I

KEY PROVISIONS OF COMMITTEE RECOMMENDATION

The Special Committee on Recodification of Town Highway Statutes recommends the following proposal to the Joint Legislative Council for introduction in the 2003-04 Session of the Legislature.

2003 ASSEMBLY BILL 678 AND 2003 SENATE BILL 315, RELATING TO RECODIFICATION OF CHS. 80 AND 81

- The bill reorganizes chs. 80 and 81 by:
 - a. Moving most of the provisions in current chs. 80 and 81 into a new ch. 82.
 - b. Arranging the provisions of the new ch. 82 into a logical order.
 - 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.
- The bill makes nonsubstantive changes to modernize language and reflect modern drafting style.
- The bill repeals several sections of current chs. 80 and 81 that the Special Committee concluded were unnecessary.
- The bill makes substantive changes regarding:
 - a. Curative provisions.
 - b. County aid for bridges and culverts.
 - c. Initiation of procedures.
 - d. Condemnation.
 - e. Landlocked property.
 - f. Discontinuance by operation of law.

PART II

COMMITTEE ACTIVITY

ASSIGNMENT

The Joint Legislative Council established the Special Committee on Recodification of Town Highway Statutes and appointed the co-chairs by a May 15, 2002 mail ballot. The committee was directed to recodify chs. 80 and 81, Stats., regarding town highways and any other matters contained within those statutes or related statutes. The recodification may include a study of 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.

Membership of the Special Committee, appointed by a July 8, 2002 mail ballot, consisted of one Senator, three Representatives, and eight Public Members. A list of the committee membership is set forth in *Appendix 3*.

SUMMARY OF MEETINGS

The Special Committee held five meetings at the State Capitol in Madison on the following dates:

September 12, 2002
October 17, 2002
November 19, 2002
January 21, 2003
April 3, 2003

September 12, 2002: The aim of the meeting was to define the scope of the Special Committee's work. To this end, the Special Committee heard presentations from four groups with an interest in chs. 80 and 81. Tom Harnisch, Education Coordinator, Lobbyist, Wisconsin Towns Association, gave an overview of the revisions that had been suggested by the Towns Association, and drew the committee's attention to a handful of particularly important and difficult issues. Curt Witynski, Assistant Director, Wisconsin League of Municipalities, stressed that a number of provisions in chs. 80 and 81 also apply to cities and villages, and pointed out a few provisions in particular need of review. Daniel Fedderly, St. Croix County Highway Commissioner, spoke from the perspective of the counties and Lloyd Holterman, Professional Dairy Producers of Wisconsin, dairy farmer, raised issues that town highway users would like the Special Committee to address.

October 17, 2002: The Special Committee heard a presentation from Jeff Musche, Clerk for the Town of Lisbon. Mr. Musche commented on the need for updating and reorganizing chs. 80 and 81. He also expressed his support for allowing a town to adopt an official map and for allowing towns to lay, alter, and discontinue highways on their own initiative. Following this presentation, the Special Committee had an extensive discussion about WLC: 0009/P1, which contained provisions concerning the basic procedures for laying, altering, and discontinuing town highways. The Special Committee made a number of changes to the draft.

November 19, 2002: The Special Committee heard a presentation from Joseph Nestler, Chief of the Data Management Section at WisDOT. Mr. Nestler and his staff gave a presentation on the Wisconsin Information System for Local Roads (WISLR) database. Mr. Nestler discussed the advantages of using their database which included: (1) access to key data for decision-making; (2) getting more value for your improvement dollars; (3) indicating statewide local road pavement needs; and (4) providing local control of data quality. Following the presentation, the Special Committee had an extensive discussion about WLC: 0009/P2, which contained provisions relating to funding and procedures for laying, altering, and discontinuing town highways. The Special Committee made a number of changes to the draft.

January 21, 2003: The Special Committee reviewed WLC: 0009/P3, relating to the recodification of chs. 80 and 81, in great detail. The Special Committee discussed each new or changed proposal in the draft. The Special Committee ultimately decided to make numerous changes to the draft for consideration at the next meeting.

April 3, 2003: The Special Committee considered the following drafts: (1) WLC: 0130/P1, relating to the designation of low-maintenance roads; and (2) WLC: 0009/P4, relating to the recodification of chs. 80 and 81. The Special Committee discussed WLC: 0130/P1 and ultimately decided to table the draft by a vote of Ayes, 8; Noes, 0; and Absent, 4. The Special Committee then discussed WLC: 0009/P4 and decided to make numerous changes to the draft. The Special Committee decided that after the changes to WLC: 0009/P4 were completed, a mail ballot would be sent out to the Special Committee for their approval.

PART III

RECOMMENDATION INTRODUCED BY THE JOINT LEGISLATIVE COUNCIL

This part of the report provides background information on, and a description of, the draft recommended by the Special Committee on Recodification of Town Highway Statutes for introduction in the 2003-04 Session of the Legislature.

2003 ASSEMBLY BILL 678 AND 2003 SENATE BILL 315, RELATING TO RECODIFICATION OF CHS. 80 AND 81

Organization

Many of the provisions in chs. 80 and 81 date from the 1800s. The changes and additions to those chapters over the years seem to have occurred piecemeal without regard to any internal organization. As a result the organization of the two chapters make, current chs. 80 and 81 unwieldy and difficult to use. The draft moves most of the provisions of chs. 80 and 81 into a new ch. 82. Provisions that apply to municipalities other than towns have been moved to more appropriate chapters such as ch. 66. Provisions that the Special Committee concluded were obsolete or unnecessary were deleted altogether. The new ch. 82 is divided into four subchapters with the following titles: Funding and Governance, Basic Procedures, Special Procedures, Existing Highways.

Substance

The fact that such old statutes are still being used indicates that, for the most part, the statutes worked. The Special Committee did not wipe the slate clean and start anew. There are a number of small substantive changes throughout the draft. These changes include things like increasing the time that a town board has to make a decision on an application and requiring an application be delivered to the town clerk instead of a supervisor. The more major substantive changes are as follows:

Curative provisions. In current law there appears to be a conflict between how procedural defects will be treated. Current s. 840.11, Stats., requires any person applying to lay out, widen, vacate, or extend a highway to file a notice of the pendency of the application. Failure to file the notice renders all proceedings based on the application void. Current s. 80.01 (4), Stats., however, appears to cure all defects and procedural errors after five years. The Special Committee discussed whether one of the provisions should overrule the other and decided on a compromise. Under the draft, a failure to comply with s. 840.11 prior to the effective date of the act will not void an action. But, after the effective date of the act, the new s. 66.1029, would cure all defects except a failure to comply with s. 840.11.

County aid for bridges and culverts. The Special Committee had long discussions about the current provisions relating to county aid for bridges and culverts. Current s. 81.38 requires all petitions for county aid to be granted. The Special Committee discussed whether the county should

be involved in projects that are very small, what to do about the fact that some counties currently put a minimum size requirement on the bridges and culverts that they fund.

The bill limits the funding requirements to bridges or culverts with a span of 36 inches or greater. However, counties that had a greater size requirement in place on January 1, 2003 can continue to abide by that policy. In addition, the size limit can be raised, but not lowered, by the vote of the majority of towns in the county. The bill also adds the requirement that the town and county mutually agree on costs and consult with each other during construction, and allows the county to charge the towns an administration charge.

Initiation of procedures. Current law seems to require the petition of six resident freeholders to lay, alter, or discontinue a highway. The bill allows the board to lay, alter, or discontinue a highway on its own initiative by the introduction of a resolution. After introduction, the resolution is treated the same as an application. The type of notice required has been changed from a class 2 to a class 3, and notices by registered mail have been changed from 10 days before the hearing to 30 days before the hearing. These changes were made to make the timelines more reasonable and to be consistent with ch. 66. In addition, the Special Committee decided that if the procedures are begun by an application, the cost of publishing a notice should be borne by the applicants.

Condemnation. The Special Committee decided to eliminate the provisions for acquiring land in chs. 80 and 81 in favor of requiring the town to utilize the procedures under s. 32.05. As a result, the following provisions were not carried over into this bill: ss. 80.09, 80.10, 80.30 (1), and 80.24 through 80.29.

Landlocked property. The Special Committee decided to make a number of changes to the procedures for laying out a highway to landlocked property. The current law requires the town board to assess the advantages to the applicant, but the term “advantages” is not defined. The Special Committee decided that since the highway would primarily benefit the landowner, the landowner should bear the cost. The bill retains the term “advantages,” but defines it as the greater of the increased value of the property or the estimated cost of constructing the highway and the damages paid to the owner of the land taken for the highway.

In the bill, administrative costs and per diems were added as costs that could be charged to the applicant, and the language was changed to allow only half of these costs to be charged to the applicant when the application is refused.

The Special Committee discussed the fact that landlocked property owners sometimes file repeated applications to wear down the town board. Thus, the bill puts a three-year limit on filing a new application. The Special Committee also discussed the potential problem of a town constructing the highway and then immediately giving the highway back to the applicant. The bill requires the highway to remain a public highway for at least two years.

Discontinuance by operation of law. The Special Committee had lengthy discussions about what to do with current s. 80.32 (2). That section provides that any highway that has been entirely abandoned as a route of travel, and on which no highway funds have been expended for five years shall be considered discontinued. According to many of the committee members, this

section is frequently litigated and often ignored by the courts. After discussing a number of options, including deleting the section altogether, the Special Committee finally decided to retain the provision, but to modify it so that it is limited to “vehicular travel.” The Special Committee’s intent is to exclude the use of a road for activities such as hiking or berry picking as a means of keeping a highway open. One result of that change should be a reduction in the amount of litigation over the issue.

Committee and Joint Legislative Council Votes

This Appendix identifies the votes by the Special Committee on Recodification of Town Highway Statutes and the Joint Legislative Council on the proposals that were approved by the Special Committee for recommendation to the Joint Legislative Council for introduction in the 2003-04 Session of the Legislature:

SPECIAL COMMITTEE VOTES

By a mail ballot dated May 12, 2003, the Special Committee voted to recommend WLC: 0009/1 to the Joint Legislative Council for introduction in the 2003-04 Session of the Legislature. The vote on the draft is as follows:

- WLC: 0009/1, relating to recodification of chs. 80 and 81: Ayes 10 (Sen. Breske; Reps. Ainsworth, Gronemus, and Lehman; and Public Members Bechler, Burgener, Crass, King, Maass, McMahon, and Norwell), Noes, 0; and Not Voting, 1 (Public Member Wittwer).

JOINT LEGISLATIVE COUNCIL VOTES

At its June 3, 2003 meeting, the Joint Legislative Council voted to introduce WLC: 0009/1 on a roll call vote as follows: Ayes, 17 (Reps. Weickert, Freese, Gard, Kaufert, Lehman, Schneider, Townsend, and Travis; and Sens. Lasee, Brown, Darling, Decker, Ellis, Erpenbach, Harsdorf, Risser, and Welch); Noes, 0; and Absent, 5 (Reps. Coggs, Foti, and Kreuser; and Sens. George and Panzer).

WLC 0009/1 was subsequently introduced as 2003 Assembly Bill 678 and its companion bill 2003 Senate Bill 315.

JOINT LEGISLATIVE COUNCIL
s. 13.81, Stats.

CO-CHAIR

ALAN LASEE
Senate President
2259 Lasee Road
De Pere, WI 54115

CO-CHAIR

STEVE WIECKERT
Representative
1702 S. Irma Street
Appleton, WI 54915

SENATORS

ALBERTA DARLING
1325 West Dean Road
River Hills, WI 53217

GARY R. GEORGE
1100 West Wells Street, #1711
Milwaukee, WI 53233

MARY E. PANZER
Majority Leader
635 Tamarack Drive West
West Bend, WI 53095

RUSSELL DECKER
6803 Lora Lee Lane
Schofield, WI 54476

SHEILA HARSDORF
N6627 County Road E
River Falls, WI 54022

FRED A. RISSER
5008 Risser Road
Madison, WI 53705

MICHAEL G. ELLIS
1752 County Road GG
Neenah, WI 54956

RONALD W. BROWN
1112 Violet Avenue
Eau Claire, WI 54701

ROBERT WELCH
President Pro Tempore
P.O. Box 523
Redgranite, WI 54970

JON ERPENBACH
Minority Leader
2385 Branch St.
Middleton, WI 53562

REPRESENTATIVES

G. SPENCER COGGS
3732 North 40th Street
Milwaukee, WI 53216

DEAN KAUFERT
1360 Alpine Lane
Neenah, WI 54956

MARLIN D. SCHNEIDER
3820 Southbrook Lane
Wisconsin Rapids, WI 54494

STEVEN M. FOTI
Majority Leader
351 Lisbon Road
Oconomowoc, WI 53066

JIM KREUSER
Minority Leader
3505 14th Place
Kenosha, WI 53144

JOHN TOWNSEND
297 Roosevelt Street
Fond du Lac, WI 54935

STEPHEN J. FREESE
Speaker Pro Tempore
310 East North Street
Dodgeville, WI 53533

MICHAEL LEHMAN
1317 Honeysuckle Road
Hartford, WI 53027

DAVID TRAVIS
5440 Willow Road
Waunakee, WI 53597

JOHN GARD
Speaker
481 Aubin Street
P.O. Box 119
Peshtigo, WI 54157

This 22-member committee consists of the majority and minority party leadership of both houses of the Legislature, the cochairs and ranking minority members of the Joint Committee on Finance, and 5 Senators and 5 Representatives appointed as are members of standing committees.

RECODIFICATION OF TOWN HIGHWAY STATUTES

Representative John H. Ainsworth, **Co-Chair**
W6382 Waukechon Road
Shawano, WI 54166

Senator Roger M. Breske, **Co-Chair**
8800 Hwy. 29
Eland, WI 54427

Representative Barbara Gronemus
P. O. Box 676, 36301 West Street
Whitehall, WI 54773

Representative Michael A. Lehman
1317 Honeysuckle Road
Hartford, WI 53027

Larry Bechler
Murphy & Desmond, S.C.
2 East Mifflin Street, Suite 800
P.O. Box 2038
Madison, WI 53701

Rodney Burgener, Sr.
Town of Russell, Lincoln County
P.O. Box 45
Gleason, WI 54435

David A. Crass
Michael Best & Friedrich
One South Pinckney Street, Suite 700
Madison, WI 53703

Gaylord King
Town of Silver Cliff, Marinette County
N12330 Wheeler Lane
Silver Cliff, WI 54104-9502

Robert Maass
Oneida County
P.O. Box 696
Rhineland, WI 54501

Terrence McMahon
WI Towns Association
18114 52nd Road
Union Grove, WI 53182

John Norwell
Dane County Hwy. & Transportation Dept.
7514 Polar Bear Trail
Madison, WI 53719

Ernest Wittwer
Midwest Regional Univ. Trans. Center
1415 Engineering Drive
Madison, WI 53706

STUDY ASSIGNMENT: The Committee is directed to recodify chs. 80 and 81, Stats., regarding town highways and any other matters contained within those statutes or related statutes. The recodification may include a study of 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.

Established and Co-Chairs appointed by a May 22, 2002 mail ballot; members appointed by a July 15, 2002 mail ballot.

12 MEMBERS: 1 Senator, 3 Representatives, and 8 Public Members.

LEGISLATIVE COUNCIL STAFF: Nicholas Zavos and Philip Cardis, Staff Attorneys, and Julie Learned, Support Staff.

Committee Materials List

April 3, 2003 Meeting

[WLC: 0009/P4](#), relating to recodification of chs. 80 and 81

[WLC: 0130/P1](#), relating to designation of minimum-maintenance roads

[Letter](#) from Tom Harnisch, Wisconsin Towns Association (1-22-03)

[Letter](#) from Mr. Daniel J. Fedderly, Administrative Coordinator, Wisconsin County Highway Association (2-10-03)

[Letter](#) from Tom Harnisch, Wisconsin Towns Association (2-13-03)

January 21, 2003 Meeting

[WLC: 0009/P3](#), relating to recodification of chs. 80 and 81

[Memo No. 2](#), Comparison Chart (1-14-03)

[Letter](#) from Mr. Thomas Harnisch (11-22-02)

A [letter](#) from Curt Witynski, Assistant Director, League of Wisconsin Municipalities, to Senator Breske and Representative Ainsworth

Department of Commerce [brochure](#) on the procedures under s. 32.05, **The Rights of Landowners Under Wisconsin Eminent Domain Law**

[Letter](#) to committee members from the co-chairs regarding the last meeting

November 19, 2002 Meeting

[WLC: 0009/P2](#), relating to recodification of chs. 80 and 81

[Section 19.59](#), Stats.

[Testimony](#), Joseph Nestler, Chief of Data Management Section, WisDOT

October 17, 2002 Meeting

[WLC: 0009/P1](#), relating to recodification of chs. 80 and 81

[Memorandum](#) from Lawrence E. Bechler, Issues in Town Highway Statutes

September 12, 2002 Meeting

[Memo No. 1](#), Introduction to the Recodification of Town Highway Statutes (9-5-02)

[Letter](#) from Thomas Harnisch containing the Wisconsin Towns Association's suggested revisions (8-21-02)

[Letter](#) from **Rick Schaumberg** concerning the time limits in ch. 80 (8-28-02)

[Chapter 80](#), Stats., **Laying Highways**

[Chapter 81](#), Stats., **Town Highways**