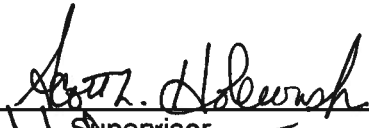
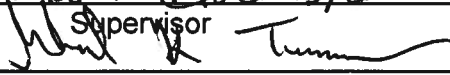


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Supervisor


Supervisor

_____ Ayes

_____ Nays

_____ Absent

_____ Abstain

_____ Enacted

by the County Board of Supervisors this ____ day of _____, 2019.

_____ Defeated

Tracy Hartman, County Clerk

David Hintz, County Board Chair

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

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

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

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

82.05 Superintendent of highways.

- (1) The term of office of highway superintendents shall be one year from the date of their appointment.
- (2) The superintendent of highways shall supervise the construction and maintenance of all highways in the superintendent's district that are required to be maintained by the town, and keep them passable at all times, and perform such other services in connection with the highways as the town board requires. The superintendent may arrange for the prosecution of the highway work as the superintendent considers necessary and appoint any overseers that the highway work requires.
- (3) When any highway under the superintendent's charge becomes impassable, the superintendent shall put the highway in passable condition as soon as practicable. Upon actual notice of the existence of any depression, ditch, hump, or embankment that impedes the use of any highway under the superintendent's charge, the superintendent, or in the absence of a superintendent the chairperson of the town board, shall as soon as practicable take action to make the highway safe for travel, which may include closing the highway.
- (4) The superintendent shall routinely notify the town board of all highway work.

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

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

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

82.08 Town bridges or culverts; construction and repair; county aid.

- (1) **PETITIONS.** A town that has voted to construct or repair any bridge or culvert that is on, or that after the construction will be connected to, an existing highway maintained by the town may file a petition for county aid with the county highway commissioner. The petition shall describe the location and size of the bridge or culvert and shall contain a statement that the town has provided the funds required by sub. (3).
- (2) **FUNDING REQUIREMENTS.**
 - (a) Except as provided in par. (b), upon receipt of a petition for a bridge or culvert with a 36-inch or greater span, or a structure of equivalent capacity to carry water, the county board shall appropriate the sum required by sub. (3) and shall levy a tax therefor. The tax, when collected, shall be held in a separate account administered by the county highway committee.
 - (b) If on January 1, 2003, a county has a policy of providing funding only for bridges and culverts larger than the requirement of par. (a), the county may refuse to fund bridges and culverts that do not meet the minimum requirements of that policy. The minimum size bridge or culvert that a county is required to fund under this section may be raised, but not lowered, by the affirmative vote of a majority of the towns in the county. The county board of any county that has never granted aid under this section may, in its discretion, refuse all petitions under sub. (1).
- (3) **SHARED COST.** The town and county shall each pay one-half of the cost of construction or repair. In determining the cost of construction or repair of any bridge or culvert, the cost of constructing or repairing any approach not exceeding 100 feet in length shall be included.
- (4) **EMERGENCY PETITION.** Whenever the construction or repair of any bridge or culvert must be made without delay, the town board may file its petition with the county clerk and the county highway committee, explaining the necessity for immediate construction or repairs. It shall then be the duty of the town board and the county highway committee to construct or repair the bridge or culvert as soon as practicable. The construction or repair of a bridge or culvert undertaken pursuant to this subsection shall entitle the town to the same county aid that the town would have been entitled to had it filed its petition with the county board as provided in sub. (1).

- (5) **SUPERVISION OVER DESIGN, CONSTRUCTION, AND COST.** The county highway committee and the town board shall have full charge of design, sizing, letting, inspecting, and accepting the construction or repair, but the town board may leave the matter entirely in the hands of the county highway committee. The county highway committee and the town board must agree on the cost of the project and must consult each other during construction.
- (6) **CONSTRUCTION REQUIREMENTS.** No county order may be drawn under sub. (2) for the construction of a bridge or culvert unless the design and construction comply with requirements under s. 84.01 (23).
- (7) **NO TAX.** Except as provided in ss. 61.48 and 84.14 (3), nothing contained in this section shall authorize the levy of a tax upon the property in any city or village that is required to maintain its own bridges.
- (8) **ADMINISTRATION CHARGE.** The county may charge the towns that apply for aid under this section an administration charge. The administration charge shall be fixed as a percentage of the total costs of administering aid under this section and the percentage shall be no more than the percentage that the county charges the state for records and reports.

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

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

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

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

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

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

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

History: 2003 a. 214 s. 151.

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

SUBCHAPTER II

BASIC PROCEDURES

82.10 Initiation of procedures.

- (1) **APPLICATION FOR HIGHWAY CHANGES.** Six or more resident freeholders may apply to the town board to have a highway laid out, altered, or discontinued. The application shall be in writing and shall be delivered to the town clerk. The application shall contain all of the following:
 - (a) A legal description of the highway to be discontinued or of the proposed highway to be laid out or altered.
 - (b) A scale map of the land that would be affected by the application.
- (2) **RESOLUTION.** Notwithstanding sub. (1), the town board may initiate the process of laying out, altering, or discontinuing a town highway by the introduction of a resolution. The resolution shall contain all of the following: