



State of Wisconsin
2021 - 2022 LEGISLATURE

LRB-6253/1
ZDW:amn

2021 ASSEMBLY BILL 1111

March 10, 2022 - Introduced by Representative PLUMER, cosponsored by Senator PETROWSKI. Referred to Committee on Energy and Utilities.

AUTHORS SUBJECT TO CHANGE

1 **AN ACT** *to renumber* 84.063 (1) (a) and 84.063 (1) (b); *to renumber and amend*
2 84.063 (3) (c); *to amend* 84.01 (31), 84.062 (1) (L), 84.063 (2) (a), 84.063 (2) (b),
3 84.063 (3) (title), 84.063 (3) (a), 84.063 (3) (b) (intro.), 84.063 (3) (b) 1., 84.063
4 (3) (d), 84.063 (4) (title), 84.063 (4) (b) and 84.063 (4) (c); and *to create* 84.063
5 (1) (d), 84.063 (1) (f), 84.063 (1) (g), 84.063 (1) (h), 84.063 (3) (ag), 84.063 (3) (c)
6 2., 84.063 (3) (cd), 84.063 (3) (e), 84.063 (3g), 84.063 (3r), 84.063 (4) (d), 84.063
7 (4) (e), 84.063 (4) (f) and 84.063 (4) (g) of the statutes; **relating to:** relocation
8 of utilities in a highway right-of-way, modifying administrative rules
9 promulgated by the Department of Transportation, and providing an
10 exemption from emergency rule procedures.

Analysis by the Legislative Reference Bureau

This bill makes numerous changes to requirements relating to the relocation of utility facilities located in a highway right-of-way. "Utility facility" means any pipe, pipeline, duct, wire line, conduit, pole, tower, equipment, or other structure used for transmission, distribution, or delivery of electrical power, light, heat, water, gas, sewer, telegraph, or telecommunication services.

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Under current law, if a utility facility is within the right-of-way of a proposed highway project, the Department of Transportation must notify the owner, who must then provide DOT with a description and general location of each utility facility. DOT must then provide the owner with a set of plans for the proposed project. The owner must submit a work plan to DOT proposing any relocations or adjustments to utility facilities required by the proposed project. DOT must review work plans for compliance with permit requirements and, once approved, notify the owner when utility facility relocation work may begin. The bill creates deadlines by which the various steps of this process must occur.

The bill provides that an owner must complete the work described in the work plan according to the specified schedule. An owner must notify DOT immediately if the owner cannot meet a scheduling deadline or must otherwise deviate from an approved work plan.

The bill provides that, subject to conditions, DOT must compensate the highway project contractor for delay costs that are the result of 1) DOT advertising or letting a project prior to certification of completion of utility facility work; 2) DOT advertising or letting a project that allows utility facility work after advertising or during construction; 3) DOT allowing or requiring utility facility work after letting and during construction that is different from the approved work plan or schedule; or 4) any utility conflict not identified in the schedule, bid materials, or any bid addendum within construction limits. Under the bill, an owner is liable to DOT for any damage amounts.

The bill repeals administrative rules promulgated by DOT relating to utility facilities relocation and requires DOT to promulgate rules to administer the utility facilities relocation process, as modified by this bill.

For further information see the state fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 84.01 (31) of the statutes is amended to read:
2 84.01 (31) ACCOMMODATION OF UTILITY FACILITIES WITHIN HIGHWAY RIGHTS-OF-WAY.
3 Notwithstanding ss. 84.06 (4), 84.063, 84.065, and 84.093, the department may, upon
4 finding that it is feasible and advantageous to the state, negotiate and enter into an
5 agreement to accept any plant or equipment used for the conveyance, by wire, optics,
6 radio signal, or other means, of voice, data, or other information at any frequency
7 over any part of the electromagnetic spectrum, or to accept any services associated

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1 with the collection, storage, forwarding, switching, and delivery incidental to such
2 communication, as payment for the accommodation of a utility facility, as defined in
3 s. 84.063 (1) ~~(b)~~ (i), within a highway right-of-way. Any agreement under this
4 subsection is exempt from ss. 16.70 to 16.75, 16.755 to 16.82, and 16.85 to 16.89, but
5 ss. 16.528, 16.752, and 16.754 apply to such agreement.

6 **SECTION 2.** 84.062 (1) (L) of the statutes, as created by 2021 Wisconsin Act 58,
7 is amended to read:

8 84.062 (1) (L) “Project” means a project involving a highway improvement, as
9 defined in s. 84.063 (1) ~~(a)~~ (e).

10 **SECTION 3.** 84.063 (1) (a) of the statutes is renumbered 84.063 (1) (e).

11 **SECTION 4.** 84.063 (1) (b) of the statutes is renumbered 84.063 (1) (i).

12 **SECTION 5.** 84.063 (1) (d) of the statutes is created to read:

13 84.063 (1) (d) “Approved work plan” means a work plan approved under sub.
14 (3) (c) or (cm) or modified under sub. (3) (d).

15 **SECTION 6.** 84.063 (1) (f) of the statutes is created to read:

16 84.063 (1) (f) “Highway improvement contractor” means a person seeking a
17 highway improvement contract with the department under s. 84.06.

18 **SECTION 7.** 84.063 (1) (g) of the statutes is created to read:

19 84.063 (1) (g) “Owner” means an owner of a utility facility.

20 **SECTION 8.** 84.063 (1) (h) of the statutes is created to read:

21 84.063 (1) (h) “Permit” means a permit for the adjustment or relocation of a
22 utility facility in a highway right-of-way.

23 **SECTION 9.** 84.063 (2) (a) of the statutes is amended to read:

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1 84.063 (2) (a) If the department determines that a utility facility is likely within
2 the right-of-way of a proposed highway improvement, the department shall identify
3 the owner and notify the owner in writing of the proposed improvement.

4 **SECTION 10.** 84.063 (2) (b) of the statutes is amended to read:

5 84.063 (2) (b) ~~Within a specified period after the date the notice is received~~ No
6 later than 60 days after receipt of the notice under par. (a), the utility facility each
7 owner shall provide the department with a description and the general location of
8 each utility facility in the proposed highway improvement right-of-way, in the
9 manner required by the department after reasonable consultation with each owner.

10 **SECTION 11.** 84.063 (3) (title) of the statutes is amended to read:

11 84.063 (3) (title) ~~PLANS~~ WORK PLANNING.

12 **SECTION 12.** 84.063 (3) (a) of the statutes is amended to read:

13 84.063 (3) (a) ~~If a utility facility~~ an owner provides the information required
14 under sub. (2) ~~(b)~~, the department shall ~~send~~ provide the utility facility owner at least
15 one set of available project plans for the proposed highway improvement, including
16 the location of the owner's existing utility facilities.

17 **SECTION 13.** 84.063 (3) (ag) of the statutes is created to read:

18 84.063 (3) (ag) 1. Except as provided in subd. 2., the owner shall provide the
19 department a proposed work plan to adjust or relocate the utility facility to
20 accommodate the proposed highway improvement containing all the material
21 required under par. (b), no later than the following number of days after receipt of
22 a project plan under par. (a) as determined by the department:

23 a. For a resurfacing project, 60 days.

24 b. For a minor reconditioning project, 90 days.

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1 c. For a major reconditioning, reconstruction, or new construction project, 120
2 days.

3 2. If the owner is required to coordinate its proposed work plan with another
4 owner, the applicable period under subd. 1. is increased by 30 days.

5 **SECTION 14.** 84.063 (3) (b) (intro.) of the statutes is amended to read:

6 84.063 (3) (b) (intro.) ~~Within a specified period after receiving the project plans,~~
7 ~~the owner shall provide the department with a work plan. The period of time within~~
8 ~~which the owner is required to provide the department with a work plan shall reflect~~
9 ~~whether the utility facility owner is required to coordinate its work plan with another~~
10 ~~utility facility owner. The proposed work plan provided by the owner shall include~~
11 ~~all of the following:~~

12 **SECTION 15.** 84.063 (3) (b) 1. of the statutes is amended to read:

13 84.063 (3) (b) 1. A copy of the project plans that verifies the location of all of the
14 owner's existing utility facilities specified on the plans provided by the department
15 and that identifies the owners' proposed location of relocated or additional utility
16 facilities within the right-of-way of the proposed improvement.

17 **SECTION 16.** 84.063 (3) (c) of the statutes is renumbered 84.063 (3) (c) (intro.)
18 and amended to read:

19 84.063 (3) (c) (intro.) ~~The No later than 30 days after receipt, the department~~
20 ~~shall review and approve a proposed work plan submitted under par. (b) for~~
21 ~~compliance with permit requirements and to ensure that the plan (ag) and shall do~~
22 ~~one of the following:~~

23 1. Approve the work plan if the department determines that the work plan is
24 reasonable and can be accommodated within the proposed project.

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1 ~~(cb)~~ Approval of a work plan under ~~this paragraph~~ par. (c) does not waive any
2 requirement for approval of the work plan by any other governmental agency. The
3 ~~utility facility~~

4 ~~(cm)~~ An owner shall notify the department when all ~~required~~ approvals
5 required to commence work under the approved work plan have been obtained. After
6 receiving the notification ~~that all approvals have been obtained~~, the department
7 shall notify the owner of the date on which the owner may proceed with its ~~utility~~
8 ~~facility relocation work~~ under the approved work plan.

9 **SECTION 17.** 84.063 (3) (c) 2. of the statutes is created to read:

10 84.063 **(3)** (c) 2. Notify the owner of any changes required for approval. No later
11 than 30 days after receiving notice under this subdivision, the owner shall submit
12 the required changes to the department. No later than 30 days after resubmission
13 by the owner, the department shall approve the changes or notify the owner that
14 additional changes are required.

15 **SECTION 18.** 84.063 (3) (cd) of the statutes is created to read:

16 84.063 **(3)** (cd) An owner shall apply for a permit no later than 30 days after
17 the approval of a proposed work plan by the department.

18 **SECTION 19.** 84.063 (3) (d) of the statutes is amended to read:

19 84.063 **(3)** (d) ~~The department shall notify the utility facility owner of any~~ If
20 an owner has relocated its facilities and a change in the highway improvement that
21 requires additional relocation or adjustment of utility facilities ~~other than as~~
22 provided in the approved work plan, the department shall notify the owner. The
23 department and the owner shall agree on a ~~reasonable time to accomplish the~~
24 ~~additional work~~ modification to the approved work plan to accommodate the change.

25 **SECTION 20.** 84.063 (3) (e) of the statutes is created to read:

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1 84.063 (3) (e) The department may require an owner to attend one or more
2 highway improvement work coordination meetings.

3 **SECTION 21.** 84.063 (3g) of the statutes is created to read:

4 84.063 (3g) PERFORMANCE. (a) An owner shall perform and complete the work
5 described in the approved work plan according to the schedule specified in the
6 approved work plan. If an owner determines that it is not able to complete its work
7 according to the approved work plan or schedule in the approved work plan, the
8 owner shall comply with the reporting requirements of sub. (3r).

9 (b) The department may not advertise or let a highway improvement contract
10 prior to certifying that all utility facility work has been completed unless, prior to
11 approving a work plan, the department determines that portions of the utility facility
12 work must begin or continue after advertising or during construction. When such
13 a determination is made, the approved work plan shall specify the dates on which
14 the owner shall start and complete the work, locate or relocate utility facilities, and
15 complete other work plan requirements.

16 **SECTION 22.** 84.063 (3r) of the statutes is created to read:

17 84.063 (3r) NOTIFICATION OF DEVIATION FROM WORK PLAN. An owner performing
18 work under an approved work plan shall immediately notify the department if the
19 owner cannot meet a scheduling deadline in the approved work plan or otherwise
20 needs to deviate from an approved work plan. The owner shall immediately submit
21 proposed amendments to the work plan for review by the department. The
22 department shall immediately notify the impacted highway improvement
23 contractor. The department shall promptly review and approve any proposed
24 amendments to the work plan if the proposed amendments are reasonable and can
25 be accommodated within the improvement project.

ASSEMBLY BILL 1111**SECTION 23**

1 **SECTION 23.** 84.063 (4) (title) of the statutes is amended to read:

2 84.063 (4) (title) ~~RESPONSIBILITIES~~ REMEDIES.

3 **SECTION 24.** 84.063 (4) (b) of the statutes is amended to read:

4 84.063 (4) (b) The ~~project~~ highway improvement contractor shall be
5 responsible for any damages that it negligently caused to a utility facility.

6 **SECTION 25.** 84.063 (4) (c) of the statutes is amended to read:

7 84.063 (4) (c) If the ~~utility facility~~ owner fails to ~~comply with sub. (3)~~ provide
8 a work plan that includes the material required under sub. (3) (b), the department
9 ~~or~~ and its highway improvement contractor shall not be liable to the owner for
10 damages to a utility facility resulting from the highway improvement if. If the
11 ~~department or~~ and its highway improvement contractor ~~complies~~ comply with s.
12 182.0175 (2), and the owner shall be liable to the department or its the highway
13 improvement contractor for damages resulting from the ~~failure to comply~~ owner's
14 failure to comply with the final approved work plan and schedule.

15 **SECTION 26.** 84.063 (4) (d) of the statutes is created to read:

16 84.063 (4) (d) Upon notice from the department that a contractor has filed a
17 utility delay damages claim, the owner may respond to the claim by providing
18 evidence contrary to the claim. The department shall consider all evidence provided
19 by the contractor and the owner in making its decision under par. (e), pursuant to
20 rules promulgated by the department under sub. (5).

21 **SECTION 27.** 84.063 (4) (e) of the statutes is created to read:

22 84.063 (4) (e) The department shall compensate the highway improvement
23 contractor for delay costs incurred by the contractor, as reviewed and approved by
24 the department, that are the result of any of the following, if the highway

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1 improvement contractor has agreed to accept a department change order that
2 addresses the cause of the delay:

3 1. The department advertising or letting a highway improvement contract
4 prior to certifying that all utility facility work has been completed, if notice is not
5 provided to the improvement contractor as part of the bid materials or any bid
6 addendum.

7 2. The department advertising or letting a highway improvement contract that
8 allows utility facility work after advertising or during construction, if notice is not
9 provided to the improvement contractor as part of the bid materials or any bid
10 addendum.

11 3. The department allowing or requiring any utility facility work after letting
12 and during construction that is different from the approved work plan or the
13 schedule specified in the bid documents, if the improvement contractor is unable to
14 avoid delay by rescheduling or performing other work while the utility work is being
15 performed.

16 4. Any utility conflict not identified in the schedule, bid materials, or any bid
17 addendum within construction limits.

18 **SECTION 28.** 84.063 (4) (f) of the statutes is created to read:

19 84.063 (4) (f) 1. An owner shall be liable to the department for any amount
20 approved under par. (e) and shall pay that amount to the department no later than
21 60 days after receiving notice of the amount owed. This subdivision does not apply
22 to an owner that appeals a decision of the department under subd. 2.

23 2. If an owner responds to a claim as provided in par. (d), the owner may appeal
24 the decision of the department under par. (e) as provided in s. 227.42.

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1 3. If an owner fails to make payment of amounts owed under this paragraph,
2 the department may seek remedy by filing a civil suit against the owner. If an owner
3 is found liable or partially liable, the owner shall owe the department treble the
4 amount of damages for which the owner is liable.

5 **SECTION 29.** 84.063 (4) (g) of the statutes is created to read:

6 84.063 (4) (g) Paragraphs (d), (e), and (f) do not apply to projects under s.
7 84.062.

8 **SECTION 30.** Chapter Trans 220 of the administrative code is repealed.

9 **SECTION 31. Nonstatutory provisions.**

10 (1) (a) No later than the first day of the 6th month following the effective date
11 of this subsection, the department of transportation shall use the procedure under
12 s. 227.24 to promulgate rules authorized under s. 84.063, as affected by this act, for
13 the period before the effective date of permanent rules under s. 84.063, as affected
14 by this act. The emergency rules shall remain in effect until February 28, 2024,
15 subject to any extension under par. (c), or the effective date of the repeal of the
16 emergency rule, whichever is earlier.

17 (b) Notwithstanding s. 227.24 (1) (a) and (3), the department of transportation
18 is not required to provide evidence that promulgating a rule under this subsection
19 as an emergency rule is necessary for the preservation of public peace, health, safety,
20 or welfare and is not required to provide a finding of emergency for a rule
21 promulgated under this subsection.

22 (c) Notwithstanding s. 227.24 (2) (a), the joint committee for review of
23 administrative rules may, at any time prior to the expiration date of the emergency
24 rule promulgated under this subsection, extend the effective period of the emergency
25 rule at the request of the department of transportation for a period specified by the

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1 committee not to exceed 60 days. The committee may grant no more than 10
2 extensions under this paragraph. Notwithstanding s. 227.24 (2) (b) 1., the
3 department of transportation is not required to provide evidence that there is a
4 threat to the public peace, health, safety, or welfare that can be avoided only by
5 extension of the emergency rule when making a request for an extension under this
6 paragraph, but s. 227.24 (2) (am) to (c) shall otherwise apply to extensions under this
7 paragraph.

8 **SECTION 32. Effective dates.** This act takes effect on the first day of the 6th
9 month beginning after publication, except as follows:

10 (1) SECTION 31 (1) of this act takes effect on the day after publication.

11 (END)