



2023 ASSEMBLY BILL 422

September 19, 2023 - Introduced by Representatives MURPHY, O'CONNOR, BODDEN, DITTRICH, GREEN, GUNDRUM and WITTKE, cosponsored by Senators TOMCZYK and FEYEN. Referred to Committee on Transportation.

AUTHORS SUBJECT TO CHANGE

1 **AN ACT** *to amend* 236.13 (1) (e); and *to create* 86.074 of the statutes; **relating**
2 **to:** highway setback areas and the Department of Transportation's authority
3 to approve subdivision plats.

Analysis by the Legislative Reference Bureau

This bill limits the authority of the Department of Transportation with regard to any highway setback requirements maintained by DOT. In particular, under the bill, the authority of DOT is limited in the following ways:

1. A setback area regulated by DOT may not extend more than 50 feet from the nearest edge of the right-of-way of the highway.

2. Any setback requirements imposed by DOT may regulate only structures that adversely affect the safety of entrance upon or departure from state trunk or connecting highways or the preservation of public interest and investment in those highways.

3. DOT must provide a procedure by which a person affected by setback requirements may request a variance to a requirement.

4. DOT must provide accurate and current information about its setback requirements on its website.

Under current law, DOT reviews, and has the right to object to, maps of certain divisions of land that abut or adjoin state trunk highways or connecting highways (plats). Currently, DOT reviews a plat to determine whether DOT has any objection based on the plat failing to comply with the rules of DOT relating to provision for the safety of entrance upon and departure from the abutting state trunk highways or

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connecting highways and for the preservation of the public interest and investment in such highways. The bill specifies that, as part of DOT's review, DOT must review the plat for compliance with DOT's requirements regarding variance requests related to setbacks created in the 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.** 86.074 of the statutes is created to read:

2 **86.074 Highway setback areas. (1)** In this section:

3 (a) "Highway setback area" means an area abutting a highway in which the
4 construction or placement of structures is subject to requirements imposed by the
5 department.

6 (b) "Structure" includes a temporary or permanent addition to or betterment
7 of real property that is not portable in nature. "Structure" does not include items
8 such as portable swing sets, movable lawn sheds without pads or footings, above
9 ground swimming pools without decks, sidewalks, bike paths, storm water facilities,
10 or natural features, including landscaping or berms.

11 (c) "Substantial evidence" means facts and information, other than merely
12 personal preferences or speculation, directly pertaining to public safety or the
13 requirements and conditions an applicant must meet to obtain a variance and that
14 reasonable persons would accept in support of a conclusion.

15 **(2)** All of the following apply to any highway setback area maintained by the
16 department:

17 (a) The highway setback area may not extend more than 50 feet from the
18 nearest edge of the right-of-way of the highway.

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1 (b) The requirements imposed by the department may regulate only structures
2 that adversely affect the safety of entrance upon or departure from state trunk or
3 connecting highways or the preservation of public interest and investment in those
4 highways, as determined by the department in its reasonable discretion.

5 (c) The requirements imposed by the department shall include a specification
6 of requirements and conditions that may be imposed as a condition of granting a
7 variance to a requirement.

8 (d) The requirements imposed by the department shall include a procedure by
9 which a person affected by a highway setback area may request a variance to a
10 requirement. The procedure shall include all of the following:

11 1. The department may not deny a variance request due to a risk to public
12 safety unless the department finds that substantial evidence demonstrates the risk.

13 2. The department may impose on an applicant for a variance only
14 requirements and conditions specified under par. (c). Any requirement or condition
15 imposed under this subdivision shall be related to the purpose of the highway
16 setback area, based on substantial evidence, reasonable, and, to the extent
17 practicable, measurable. The department may require as a condition of a variance
18 that the applicant waive any claim or right to relocation compensation related to any
19 structure or improvement constructed or placed in the highway setback area if any
20 portion of the highway setback area is used for highway purposes within 20 years of
21 the date of issuance of the variance.

22 3. If an applicant demonstrates by substantial evidence that the application
23 and all requirements and conditions imposed under subd. 2. are or shall be satisfied,
24 the department shall grant the variance.

