

# State of Wisconsin



2023 Senate Bill 413

Date of enactment: **March 21, 2024**

Date of publication\*: **March 22, 2024**

## 2023 WISCONSIN ACT 157

AN ACT *to create* 86.074 of the statutes; **relating to:** highway setback areas.

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

**SECTION 1.** 86.074 of the statutes is created to read:

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

(a) "Highway setback area" means an area abutting a highway in which the construction or placement of structures and improvements is prohibited without a special exception permit issued by the department consistent with the terms of sub. (2).

(b) "Improvement" means any permanent addition to or betterment of real property that involves the expenditure of labor or money to make the property more useful or valuable. "Improvement" includes parking lots, parallel driveways, surface or sub-surface utility structures, storm water facilities, loading docks, in-ground swimming pools, wells, septic systems, retaining walls, signs, buildings, building appendages such as porches, and drainage facilities. "Improvement" does not include terraces, patios, landscaping, or open fences.

(c) "Special exception" means a special exception permit or waiver of requirement relating to placement of a structure or improvement in a highway setback area.

(d) "Structure" includes a temporary or permanent addition to or betterment of real property that is not portable in nature, but that adversely affects the safety of entrance upon or departure from state trunk or connecting highways or the preservation of public interest and investment in those highways, as determined by the

department in its reasonable discretion. "Structure" does not include items such as portable swing sets, movable lawn sheds without pads or footings, above ground swimming pools without decks, sidewalks, bike paths, or natural features, including landscaping or berms.

(e) "Substantial evidence" means facts and information, other than merely personal preferences or speculation, directly pertaining to public safety or the preservation of public interest and investment in state trunk or connecting highways, and directly pertaining to or the requirements and conditions an owner must meet to obtain a special exception and that reasonable persons would accept in support of a conclusion.

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

(a) A highway setback area established after the effective date of this paragraph .... [LRB inserts date], shall extend not more than 50 feet from the right-of-way line of the highway.

(b) Any setback requirement imposed by the department under this section may regulate only structures and improvements 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, as determined by the department in its reasonable discretion.

(c) Notwithstanding par. (b), the department may prohibit the placement of any structure or improvement

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\* Section 991.11, WISCONSIN STATUTES: Effective date of acts. "Every act and every portion of an act enacted by the legislature over the governor's partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication."

in the highway setback area only if the structure or improvement adversely affects the safety of the entrance upon or departure from the state trunk or connecting highways, or the preservation of the public interest and investment in those highways, as determined by the department in its reasonable discretion. The department may order the removal, at the owner's expense, of any structure or improvement located in a highway setback area unless the owner demonstrates that the structure or improvement was placed prior to establishing the highway setback area or a special exception is granted for the structure or improvement.

(d) The department shall establish a special exception process to allow an owner to obtain a special exception to the requirements of par. (b) or (c).

(e) The requirements imposed by the department under this section relating to the placement of a structure or improvement in a highway setback area shall include a procedure by which an owner of the property subject to a highway setback area may request a special exception to a requirement. The special exception procedure under this paragraph applies to a person affected by a highway setback area, whenever the highway setback area requirement was established by the department. The procedure shall adhere to and include all of the following:

1. The department may not deny a special exception request due to a risk to public safety or to the preservation of the public interest and investment in the highway unless the department finds that substantial evidence demonstrates the risk.

2. The department may impose on an owner only the requirements and conditions consistent with par. (b) or (c). Any requirement or condition imposed under this subdivision shall be related to the purpose of the highway setback area, based on substantial evidence, reasonable, and, to the extent practicable, measurable. The department shall require as a condition of a special exception that the owner waive any claim or right to compensation related to any structure or improvement constructed or placed in the highway setback area if any portion of the highway setback area is used for highway purposes within 20 years of the date of issuance of the special exception. If the department has any projects planned within the improvement program or has documented future plans for corridor or spot location improvement,

the department may record a renewal of a waiver under this subdivision one time for up to another 20 years from the date of expiration of the original special exception. The department shall record a document notarized with the owner and department representative's signature in the property subject to the special exception's chain of title setting forth the owner's waiver under this subdivision for the period set forth in this subdivision. The recorded document shall state that the waiver under this subdivision waives any right to compensation, relocation assistance, or damages associated with the department's acquisition of the structure or improvement for a transportation improvement, including any damage to property outside the setback caused by removal of the structure or improvement in the setback that was allowed by special exception and that the waiver is binding upon future owners of the property and runs with the land. All costs of recording shall be paid by the owner. The department may not pay damages for any structure or improvement that is subject to a valid special exception and waiver under this subdivision.

3. If an owner demonstrates by substantial evidence that the application and all requirements and conditions imposed under subd. 2. are or shall be satisfied, the department shall grant the special exception.

4. An owner shall file an application for a special exception in the regional office of the department in which the property is located. If a regional office of the department denies a request for a special exception or revokes a special exception, the department shall, upon written request by the owner within 30 days after the denial, review the decision of the regional office. After review, the department may reverse, confirm, or modify the decision of the regional office. If the department confirms or modifies the decision of the regional office, the department shall notify the owner of the action and the grounds for the action and shall also notify the owner of a right to a hearing before the division of hearings and appeals. Upon written request by the owner within 30 days after the notice is mailed to the owner, the division of hearings and appeals shall schedule a hearing to be held within 60 days after receipt of the request.

(f) The department shall provide accurate and current information about the special exception process on the department's website.