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# Wisconsin Legislative Council

## AMENDMENT MEMO

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**2023 Senate Amendment 413**

**Senate  
Substitute Amendment 1**

### 2023 SENATE BILL 413

2023 Senate Bill 413 establishes parameters governing the Department of Transportation’s (DOT) authority to regulate highway setback areas. A highway setback area, as defined by the bill, is “an area abutting a highway in which the construction or placement of structures is subject to requirements imposed by the department.” The term “structure,” for this purpose, “includes a temporary or permanent addition to or betterment of real property that is not portable in nature.” The term “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, storm water facilities, or natural features, including landscaping or berms.”

Under the bill, a highway setback area may not extend more than 50 feet from the nearest edge of the right-of-way of the highway. The bill provides that DOT’s requirements must:

- 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.
- Include a specification of requirements and conditions that may be imposed as a condition of granting a variance to a requirement.
- Include a procedure by which a person affected by a highway setback area may request a variance to a requirement.

### SENATE SUBSTITUTE AMENDMENT 1

Senate Substitute Amendment 1 also establishes parameters governing DOT’s authority to regulate highway setback areas. Under the substitute amendment, a highway setback area is “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 bill’s provisions].” The substitute amendment defines the terms “structure”<sup>1</sup> and “improvement”<sup>2</sup> for this purpose.

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<sup>1</sup> The term “structure,” under the substitute amendment, “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 up on 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.

<sup>2</sup> “Improvement,” under the substitute amendment, “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.” The term “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.” It does not include “terraces, patios, landscaping, or open fences.”

As under the bill, the substitute amendment provides that a highway setback area may not extend more than 50 feet from the right-of-way of the highway. The substitute amendment, however, applies this requirement to a highway setback area established after the bill's effective date.

Under the substitute amendment, any setback requirement DOT imposes 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. 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 setback or improvement.

The substitute amendment also requires DOT to provide a procedure for an owner of property subject to a highway setback area to request a special exception to a requirement. The substitute amendment specifies that this procedure must adhere to and include all of the following:

- DOT 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 it finds that substantial evidence demonstrates the risk.
- DOT may impose only requirements that are consistent with the bill's provisions and must be related to the purpose of the highway setback area, based on substantial evidence, reasonable, and, to the extent practicable measurable. DOT must require as a condition of a special exception that the downer 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. DOT may also record a renewal of a waiver one time for up to another 20 years.
- DOT must grant the special exception if an owner demonstrates by substantial evidence that the application and all relevant requirements and conditions are or shall be satisfied.
- An application for a special exception must be filed in the regional office in which the property is located. If the application is denied and the owner files a written request within 30 days, DOT must review the decision. If DOT confirms or modifies the decision of the regional office, DOT must 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.
- DOT must provide accurate and current information about the special exception process on its website.

## **BILL HISTORY**

Senator Tomczyk offered Senate Substitute Amendment 1 to Senate Bill 413 on February 7, 2024. On February 8, 2024, the Senate Committee on Transportation and Local Government voted unanimously to recommend adoption of Senate Substitute Amendment 1 and passage of Senate Bill 413, as amended.

For a full history of the bill, visit the Legislature's [bill history page](#).

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