

CHAPTER 86

MISCELLANEOUS HIGHWAY PROVISIONS

86.001	Definitions.	86.18	Milwaukee County highways; location, alteration, maintenance.
86.01	Materials left in highway; penalty.	86.185	Populous counties; power over county trunk highways.
86.02	Injury to highway.	86.19	Highway signs, regulation, prohibition.
86.021	Highways, cultivation of; injury by farm machinery.	86.191	Advertising in highways prohibited, where.
86.022	Obstructing highway with embankment or ditch.	86.192	Penalty for injuring guide board, markers, etc.
86.025	Camping on highways.	86.195	Specific information signs.
86.03	Trees on and adjacent to highway.	86.196	Tourist-oriented directional signs.
86.04	Highway encroachments.	86.20	Interstate bridge corporations.
86.05	Entrances to highways restored.	86.21	Interstate toll bridges.
86.06	Highways closed to travel; penalties.	86.22	Interstate railroad bridges must have convenient approaches.
86.07	Digging in highways or using bridges for advertising.	86.23	Maintenance of drawbridges owned jointly.
86.073	Review of denial of permit.	86.25	Municipal cooperation as to highways improved with state or federal aid.
86.075	Highway authorities to notify drainage board of highway construction.	86.255	Limitation on moneys used to purchase land remote from highway project.
86.08	Dust-free surfacing at licensed dairy or meat packing plants.	86.257	Transfer of highways.
86.09	Access to cemetery preserved.	86.30	General transportation aids.
86.10	Salvage in highway construction.	86.302	Local roads; inventory.
86.105	Snow removal in private driveways.	86.303	Cost determinations.
86.11	Highways; railroad crossings; grade separation.	86.305	Eligibility for transportation aids.
86.12	Highway railroad grade crossings; construction and repair.	86.31	Local roads improvement program.
86.13	Railroads to maintain highway crossings.	86.312	Local roads for job preservation program.
86.135	Railroad highway crossings; traffic control.	86.315	County forest road aids.
86.14	Strength of bridges.	86.32	Connecting highways.
86.15	Donations of highway aid to adjoining municipalities.	86.33	Population estimates.
86.16	Utility lines on highways; place of poles; penalty.	86.34	Flood damage aids.
86.17	Taking water from highway streams.		

86.001 Definitions. In this chapter:

(1m) “Department” means the department of transportation.

(2) “Division of hearings and appeals” means the division of hearings and appeals in the department of administration.

(2m) “Office” means the office of the commissioner of railroads.

(3) “Secretary” means the secretary of transportation.

History: 1987 a. 137; 1991 a. 39; 1993 a. 16, 123.

86.01 Materials left in highway; penalty. It shall be unlawful for any highway superintendent or any other person to leave any materials in the traveled portion of any highway not closed to public travel in piles or rows after sunset without placing within one hour after sunset upon such piles or at the end of such rows a lighted lantern containing sufficient oil or fuel to keep the same burning until daylight. Any person violating any of the provisions of this section shall be liable to a fine of not less than \$10 nor more than \$100.

86.02 Injury to highway. Any person who shall injure any highway by obstructing or diverting any creek or watercourse or sluiceway, or by dragging logs or timber thereon, or by any other act, shall be liable in treble damages, to be recovered by the political division chargeable with the maintenance of highway injured, and the amount recovered shall be credited to the highway maintenance fund.

86.021 Highways, cultivation of; injury by farm machinery. (1) No person shall, within the limits of any public highway, plow, cultivate or otherwise work any lands in such manner as to interfere with or obstruct the drainage in any public highway ditch, nor shall any person operate any farm or other machinery on, over, along or across any public highway in such manner as to materially damage the said highway.

(2) Any person who shall violate the provisions of this section shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than \$10 nor more than \$50, or by imprisonment in the county jail not less than 10 days nor more than 30 days, and shall in addition pay the whole cost of restoring the ditch or highway, or both, to their former condition.

86.022 Obstructing highway with embankment or ditch. Any person who shall willfully or maliciously make any ditch, depression or embankment or place any obstruction in any public highway intended or calculated to impede or incommode the use of such highway, or who shall place any obstruction in any ditch constructed to drain any highway, shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than \$10 nor more than \$100.

86.025 Camping on highways. It shall be unlawful for any person or persons to camp in wagons, tent or otherwise on the public highways or lands adjacent thereto, after a notice to remove therefrom by the owners of such adjacent lands, or the owner of land abutting on the highway, or by a member of the board of supervisors or any trustee of any town or village where such camping place is made. Any person or persons violating the provisions of this section shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined not exceeding \$10, or imprisoned in the county jail not exceeding 30 days, or both.

86.03 Trees on and adjacent to highway. (1) **REMOVAL OF FALLEN TREES.** If any tree falls from adjacent land into any highway, the owner or occupant of the land shall immediately remove the tree from the highway. It shall be the duty of every highway patrolman, street commissioner, or other officer in charge of the maintenance of streets or highways, to remove from any highway any fallen tree or trees therein.

(2) **OWNERSHIP.** All trees on land over which any highway is laid out shall be for the use of the owner of the land or person otherwise entitled thereto, except trees that have been acquired by and for the public in the acquisition of the highway right-of-way and except such trees within the highway as may be requisite to make or repair the highways on the land or within one mile of the same; but no trees reserved for shade or ornament, unless acquired by the public, shall be used for such purpose.

(3) **PLANTING TREES AND SHRUBS IN HIGHWAY.** Any person owning or occupying land adjoining any highway may, with the approval of the public authority maintaining the highway, plant, cultivate and maintain trees, shrubs or hedges on the side of the highway contiguous to and within 10 feet of that person's land. Such trees, shrubs or hedges shall be cut or removed only by the

86.03 MISCELLANEOUS HIGHWAY PROVISIONS

owner or occupant of the abutting land or by the public authority having control of the highway.

(4) **CUTTING OR INJURING TREES ON HIGHWAY.** No person shall cut down, break, girdle, bruise the bark, or in any other manner injure, or allow any animal under that person's control to injure, any public or private trees, shrubs, or hedges growing within the highway, except as the owner thereof or the public authority maintaining the highway may cut down, trim and remove trees, shrubs, and hedges for the purpose of and conducting to the benefit and improvement of the owner's land or the highway facility, subject to sub. (7).

(5) **MUTILATION OF TREES.** It shall be unlawful for any person to injure, mutilate, cut down, or destroy any shade tree growing on or within any street or highway in any village in this state, unless express permission to do so has been granted by the village's board of trustees.

(6) **FINES.** Except as provided in sub. (7), any person violating any of the provisions of this section shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by a fine not to exceed \$25 for each tree or shrub damaged, felled or destroyed.

(7) **CUTTING OF VETERANS MEMORIAL TREES; PENALTY.** No person may cut or trim any tree planted along any federal or state trunk highway as a memorial to the men and women who served in the armed forces of the United States in time of war, without the written permission of the department. Violations of this section shall be punishable by a fine of not less than \$10 nor more than \$200 or by imprisonment for not more than 30 days or both. Nothing in this section shall interfere with the rights of abutting property owners in those trees.

History: 1991 a. 316; 1993 a. 490; 2001 a. 107; 2005 a. 22, 253.

86.04 Highway encroachments. (1) ORDER FOR REMOVAL. If any highway right-of-way shall be encroached upon, under or over by any fence, stand, building or any other structure or object, and including encroachments caused by acquisition by the public of new or increased widths of highway right-of-way, the department, in case of a state trunk highway, the county highway committee, in case of a county trunk highway, or the city council, village or town board, in case of a street or highway maintained by or under the authority of any city, village or town, may order the occupant or owner of the land through or by which the highway runs, and to which the encroachment shall be appurtenant, to remove the encroachment beyond the limits of the highway within 30 days. The order shall specify the extent and location of the encroachment with reasonable certainty, and shall be served upon the occupant or owner of the land through or by which the highway runs, and to which the encroachment shall be appurtenant.

(2) **NONREMOVAL.** If the occupant or owner upon whom the order is served shall not deny such encroachment, under sub. (3), and the encroachment is not removed within 30 days after the service of such order, the occupant or owner shall forfeit \$1 for every day after the expiration of that time during which the encroachment continues. An action to recover such penalty may be brought in any court of record in the county. In all cases where a judgment is rendered, the judgment shall order that the occupant or owner remove the encroachment within the time fixed by the judgment, and upon failure to obey the order, the department, county highway committee, or city council, village or town board, as appropriate, may remove the encroachment and recover from the occupant or owner the cost thereof.

(3) **DENIAL OF ENCROACHMENT, PROCEDURE.** If, within 30 days after being served with the order issued under sub. (1), the owner or occupant delivers a denial in writing of the alleged encroachment to the ordering body, or fails to make a denial, the ordering

body may commence an action to remove the encroachment in a court of record in the county where the property is located.

History: 1977 c. 29 s. 1654 (8) (c); 1977 c. 273; 1987 a. 137 s. 6; 1991 a. 316; 1993 a. 490; 1995 a. 225.

Cross-reference: For highway obstructions see s. 86.022.

Adverse possession is a defense to an encroachment action under this section. *Department of Transportation v. Black Angus Steak House*, 111 Wis. 2d 342, 330 N.W.2d 240 (Ct. App. 1983).

86.05 Entrances to highways restored. Whenever it is necessary, in making any highway improvement to cut or fill or otherwise grade the highway in front of any entrance to abutting premises, a suitable entrance to the premises shall be constructed as a part of the improvements; and if the premises are divided by the highway, then one such entrance shall be constructed on each side of the highway. Thereafter each entrance shall be maintained by the owner of the premises. During the time the highway is under construction, the state, county, city, village or town shall not be responsible for any damage that may be sustained through the absence of an entrance to any such premises.

86.06 Highways closed to travel; penalties. (1) Whenever any highway is impassable or unsafe for travel or during the construction or repair of any such highway and until it is ready for traffic the authorities in charge of the maintenance or construction thereof may keep it closed by maintaining barriers at each end of the closed portion. The barriers shall be of such material and construction and so placed as to indicate that the highway is closed and shall be lighted at night.

(2) Any person who, without lawful authority, removes, takes down, alters the position of, destroys, passes over or beyond any barrier so erected, or travels with any vehicle upon any portion of a highway closed by barriers as in this section provided, or walks or travels in any manner upon the materials placed thereon as part of the repair or construction work, shall be liable to a fine of not less than \$10 nor more than \$100, or to imprisonment not less than 10 nor more than 60 days, or both, and in addition thereto shall be liable for all damages done to the highway, said damages to be recovered by such governmental agency.

If a county has a contract to maintain state trunk highways, the county highway commissioner can temporarily close a highway in case of emergency. 67 Atty. Gen. 335.

86.07 Digging in highways or using bridges for advertising. (1) Any person who draws, paints, prints or pastes upon any culvert, bridge or guard rail on any highway shall be fined not less than \$10 nor more than \$200 or imprisoned for not more than 30 days or both.

(2) No person shall make any excavation or fill or install any culvert or make any other alteration in any highway or in any manner disturb any highway or bridge without a permit therefor from the highway authority maintaining the highway. Such permit shall contain the statement and be subject to the condition that the work shall be constructed subject to such rules and regulations as may be prescribed by said authority and be performed and completed to its satisfaction, and in the case of temporary alterations that the highway or bridge shall be restored to its former condition, and that the permittee shall be liable to the town or county or state, as the case may be, for all damages which occur during the progress of said work or as a result thereof. Nothing herein shall abridge the right of the department or the county board or its highway committee to make such additional rules, regulations and conditions not inconsistent herewith as may be deemed necessary and proper for the preservation of highways, or for the safety of the public, and to make the granting of any such permit conditional thereon. If any culvert is installed or any excavation or fill or any other alteration is made in violation of the provisions of this subsection, the highway may be restored to its former condition by the