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## WISCONSIN LEGISLATIVE COUNCIL STAFF MEMORANDUM

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DATE: December 15, 1999

TO: SENATOR ROGER BRESKE

FROM: Don Salm, Senior Staff Attorney

SUBJECT: Analysis of 1999 Assembly Bill 35, Relating to Following Snowplows and Liability for Damages Caused by Operation of a Snowplow, as Amended by the Assembly; and 1999 Senate Bill 5, Relating to Following Snowplows

This memorandum, prepared at your request, analyzes Assembly Bill 35, relating to following snowplows and liability for damages caused by operation of a snowplow, as amended by the Assembly; and 1999 Senate Bill 5, relating to following snowplows. 1999 Assembly Bill 35, as amended by the Assembly, passed the Assembly on a vote of Ayes, 70; Noes, 24; and has been referred to the Senate Committee on Insurance, Tourism, Transportation and Corrections. 1999 Senate Bill 5 passed the Senate on a voice vote, with no amendments, and is currently in the Assembly Highway Safety Committee.

### A. CURRENT LAW

Under current law, with certain exceptions, no person may drive a motor vehicle closer than 500 feet behind an *authorized emergency vehicle*, including a police car, fire truck or ambulance, that is responding to a call or alarm. The person violating this prohibition may be required to forfeit not less than \$20 nor more than \$40 for a first conviction, and not less than \$50 nor more than \$100 for a second or subsequent conviction within one year of the first conviction. *There is no similar prohibition applicable to following behind snowplows.*

### B. 1999 ASSEMBLY BILL 35, AS AMENDED BY THE ASSEMBLY

1999 Assembly Bill 35, as amended by the Assembly (hereafter, "Assembly Bill 35"), does the following:

1. Definition of "snowplow." Creates a definition of "snowplow" in the general definitions section in the Motor Vehicle Code. Under the bill, "snowplow" is defined to mean a vehicle that is operated by a person employed by or on behalf of an authority in charge of the

maintenance of a highway to perform highway winter maintenance snow and ice removal, including plowing, salting and sanding, during either a storm or cleanup following a storm.

2. *New provision on following snowplows.* Creates a new section, s. 346.915, Stats., relating to following snowplows. Under the bill, the operator of any vehicle that is not a snowplow may not follow a snowplow closer than 200 feet upon any highway having a posted speed limit of more than 35 miles per hour, if the snowplow is engaged in highway winter maintenance snow and ice removal, and is using lamps described in s. 347.26 (7), Stats. (a copy of which is attached). The bill specifies that this provision does not apply when overtaking and passing a snowplow, but the fact that the operator of any vehicle upon a highway having a posted speed limit of more than 35 miles per hour follows the snowplow more closely than 200 feet for one mile or more or follows more closely than 200 feet when the snowplow is moving at the maximum speed limit is *prima facie* evidence that the operator of such following vehicle is violating this new provision. The bill specifies that the new provision does not apply to a snowplow that is stopped or standing in the highway.

3. *Liability exemption for municipalities.* Creates an exemption from civil liability for municipalities operating snowplows engaged in highway winter maintenance snow and ice removal during a storm or cleanup following a storm.

Under *current* s. 345.05 (2), Stats., a person suffering any damage proximately resulting from the negligent operation of a motor vehicle owned and operated by a municipality, which damage was occasioned by the operation of the motor vehicle in the course of its business, may file a claim for damages against the municipality concerned and the governing body of a municipality may allow, compromise, settle and pay the claim. This provision specifies that a motor vehicle is deemed to be owned and operated by a municipality if the vehicle is either being rented or leased, or is being purchased under a contract whereby the municipality will acquire title to the vehicle.

Under the *bill*, a person suffering any damage proximately resulting from the negligent operation of a *snowplow* owned and operated by a municipality, which damage was occasioned by the operation of the snowplow in the course of its business, may file a claim for damages against the municipality concerned and the governing body of the municipality may allow, compromise, settle and pay the claim. In this provision, a snowplow is considered owned and operated by a municipality if the vehicle is either being rented or leased, or is being purchased under a contract whereby the municipality will acquire title to the snowplow. The bill specifies that this provision *does not apply* to damages to a moving motor vehicle or its occupants resulting from the operation of a snowplow engaged in highway winter maintenance snow and ice removal, as described in s. 343.23 (2) (a) 2., Stats. (a copy of which is attached), during either a storm or cleanup following a storm. The bill specifies that the exemption from liability does not relieve that the operator of the snowplow from the duty to drive or ride with due regard under the circumstances for the safety of all persons nor does it protect such operator from the consequences of his or her reckless disregard for the safety of others.

4. *Initial applicability.* Specifies that the new provisions on local governmental liability for snowplow operation *first apply* to snowplows operated on the effective date of the bill, if enacted into law.

C. 1999 SENATE BILL 5

1999 Senate Bill 5, as passed by the Senate (with no amendments), is identical to the *original* 1999 Assembly Bill 35 except that it does *not include* the following provision found in the original Assembly Bill 35:

This subsection [the prohibition against following a snowplow closer than 200 feet] does not apply when overtaking and passing a snowplow, but the fact that the operator of any vehicle upon a highway having a posted speed limit of more than 35 miles per hour follows the snowplow more closely than 200 feet for one mile or more or follows more closely than 200 feet when the snowplow is moving at the maximum speed limit is *prima facie* evidence that the operator of such following vehicle is violating this subsection. no push.

Under Senate Bill 5, "snowplow" is defined to mean a vehicle that is operated by a person employed by or on behalf of an authority in charge of the maintenance of the highway to perform highway winter maintenance snow and ice removal, including plowing, salting and sanding, during either a storm or cleanup following a storm. Under the bill, the operator of any vehicle that is not a snowplow may not follow a snowplow closer than 200 feet upon any highway having a posted speed limit of 35 miles per hour or more.

D. DISCUSSION

Assembly Bill 35, as amended by the Assembly, is the more complete and technically accurate of the two bills, containing several technical suggestions suggested by Legislative Council Staff. However, the bills do raise a number of issues:

1. How readily enforceable would either bill be in real life situations? For example, on urban streets, such as University Drive in Madison, where the speed limit is more than 35 miles per hour in some parts but less in other parts, does a car have to stay 200 feet behind a snow plow? What happens if the plow stops at a stop light and then starts up again on a green light? The motor vehicles behind it are surely going to be closer than 200 feet for quite a while after the light turns green and the snowplow proceeds ahead. Are the motor vehicles suppose to wait until the snowplow gets 200 feet ahead before going through the green light? Not likely, but that seems to be what the law says. صحة الجواب

2. What is the purpose of granting immunity from liability to municipalities for negligent acts by snowplow operators? In the past, some legislators have argued that these immunity provisions are proliferating in the statutes and seem to be chipping away at the reason we have a civil court system--to determine liability and apportion damages.

3. Does Assembly Bill 35 exempt the *operator* of a snowplow from liability for negligently or recklessly causing damage to the person or property of another on the same basis as it exempts *municipalities* from this liability? The response is that it is not clear that the bill provides any immunity from *personal liability* for an employe of a municipality operating a

snowplow. Further, s. 345.05, Stats., has been interpreted by the Wisconsin Supreme Court as applying only to lawsuits against a municipality and not to lawsuits against an employe of a municipality, even if that employe is acting within the scope of his or her employment at the time the event giving cause to the action occurs. [*Shannon v. City of Milwaukee*, 94 Wis. 2d 364, 289 N.W.2d 564.] Thus, the meaning of the statement in the bill that "the exemption granted to the operator of a snowplow by this subsection . . ." is unclear, because the subsection as created in the bill only addresses municipal liability, not personal liability. Assuming this reference to an "exemption" for snowplow operators does not confer an exemption from liability, it appears that the bill would exempt only a "municipality" from liability for negligent acts of the municipality as occasioned by the use of a snowplow owned and operated by the municipality if the damages occur to a "moving motor vehicle or its occupants." However, it should be noted that s. 895.46, Stats. (copy attached), requires a municipality to pay judgments against employes because of acts committed while acting within the scope of their employment. Therefore, it appears that, under the bill, and s. 895.46, Stats., a municipality could be liable to pay for damages caused by negligent acts of employe snowplow operators to a moving motor vehicle or its occupants even though the municipality itself is not liable for damages caused by a snowplow to a moving motor vehicle or its occupants.

4. Does Assembly Bill 35 exempt a person operating a snowplow as an *independent contractor* hired by a municipality from liability for negligently or recklessly causing damage to the person or property of another? The response is that the bill does not provide immunity from liability to snowplow operators who are independent contractors doing work for a municipality because: (a) as discussed above, s. 345.05, Stats., only applies to actions against a municipality and not persons performing work for a municipality; and (b) even if s. 345.05, Stats., as affected by the bill, were construed to apply to actions other than actions against municipalities, the bill provides that the immunity applies only if the snowplow is "owned and operated" by a municipality.

Despite the above comments, it appears that, if certain language is clarified to meet some of the concerns set forth above, Assembly Bill 35, as amended by the Assembly, may be workable if law enforcement officers use proper judgment in determining when to apply the law (that is, applying it only in those circumstances that the bill is really directed at correcting).

If I can be of any further assistance to you in this matter, please feel free to contact me at 266-8540.

DLS:wu:rv:tlu;rv

Attachment

**ATTACHMENT**

**Section 347.26 (7), 343.23 (2) (a) 2., and 895.46, Stats.**

**347.26 (7) WARNING LAMPS ON CERTAIN HIGHWAY VEHICLES.** Any vehicle of the department or a county or municipal highway department which by reason of its use upon a highway creates a vehicular traffic hazard requiring the exercise of unusual care in approaching, overtaking or passing may be equipped with a flashing red or amber lamp of the dome-light type or with 2 flashing red or amber lamps, one showing to the front and one showing to the rear. Such lamp or lamps shall be mounted approximately midway between the extremities of the width of the vehicle and at the highest practicable point and shall be used only for the purpose of warning operators of other vehicles of the presence of the traffic hazard.

**343.23 (2) (a) 2.** The licensee's employment as a person engaged, by an authority in charge of the maintenance of the highway, in highway winter maintenance snow and ice removal during either a storm or cleanup following a storm. For purposes of this subdivision, "highway winter maintenance snow and ice removal" includes plowing, sanding, salting and the operation of vehicles in the delivery of those services.

**895.46 State and political subdivisions thereof to pay judgments taken against officers.**

**(1) (a)** If the defendant in any action or special proceeding is a public officer or employe and is proceeded against in an official capacity or is proceeded against as an individual because of acts committed while carrying out duties as an officer or employe and the jury or the court finds that the defendant was acting within the scope of employment, the judgment as to damages and costs entered against the officer or employe in excess of any insurance applicable to the officer or employe shall be paid by the state or political subdivision of which the defendant is an officer or employe. Agents of any department of the state shall be covered by this section while acting within the scope of their agency. Regardless of the results of the litigation the governmental unit, if it does not provide legal counsel to the defendant officer or employe, shall pay reasonable attorney fees and costs of defending the action, unless it is found by the court or jury that the defendant officer or employe did not act within the scope of employment. The duty of a governmental unit to provide or pay for the provision of legal representation does not apply to the extent that applicable insurance provides that representation. If the employing state agency or the attorney general denies that the state officer, employe or agent was doing any act growing out of or committed in the course of the discharge of his or her duties, the attorney general may appear on behalf of the state to contest that issue without waiving the state's sovereign immunity to suit. Failure by the officer or employe to give notice to his or her department head of an action or special proceeding commenced against the defendant officer or employe as soon as reasonably possible is a bar to recovery by the officer or employe from the state or political subdivision of reasonable attorney fees and costs of defending the action. The attorney fees and expenses shall not be recoverable if the state or political subdivision offers the officer or employe legal counsel and the offer is refused by the defendant officer or employe. If the officer, employe or agent of the state refuses to cooperate in the defense of the litigation, the officer, employe or agent is not eligible for any indemnification or for the provision of legal counsel by the governmental unit under this section.

**(am)** If a court determines that costs are awardable to an employe or official who has been provided representation by a governmental unit under par. (a), the court shall award those costs to the unit of government that provided the representation.

(b) Persons holding the office of county sheriff on March 1, 1983, are covered by this subsection. This subsection covers other county sheriffs who have:

1. Satisfactorily completed or are currently enrolled in the preparatory program of law enforcement training under s. 165.85 (4) (b) 1. and, if applicable, the recertification programs under s. 165.85 (4) (bn) 1., or have provided evidence of equivalent law enforcement training and experience as determined by the law enforcement standards board; or

2. At least 5 years of full-time employment as a law enforcement officer, as defined in s. 165.85 (2) (c).

(c) This subsection does not apply to any action or special proceeding brought by a county against its county sheriff if the action or proceeding is determined in favor of the county.

(d) On and after March 1, 1983, all persons employed as deputy sheriffs, as defined in s. 40.02 (48) (b) 3., are covered by this subsection. The county board shall adopt written policies for payments under this subsection on behalf of any other person, provided that person has satisfied the minimum standards of the law enforcement standards board, who serves at the discretion of the sheriff as a law enforcement officer as defined in s. 165.85 (2) (c), and the county may make the payments upon approval by the county board.

(e) Any nonprofit corporation operating a museum under a lease agreement with the state historical society, and all officers, directors, employes and agents of such a corporation, and any local emergency planning committee appointed by a county board under s. 59.54 (8) (a) and all members of such a committee, are state officers, employes or agents for the purposes of this subsection.

(2) Any town officer held personally liable for reimbursement of any public funds paid out in good faith pursuant to the directions of electors at any annual or special town meeting shall be reimbursed by the town for the amount of the judgment for damages and costs entered against the town officer.

(3) The protection afforded by this section shall apply to any state officer, employe or agent while operating a state-owned vehicle for personal use in accordance with s. 20.916 (7).

(4) The protection afforded by this section applies to members of the board of governors created under s. 619.04 (3), members of a committee or subcommittee of that board of governors, members of the patients compensation fund peer review council created under s. 655.275 (2) and persons consulting with that council under s. 655.275 (5) (b), with respect to judgments, attorney fees and costs awarded before, on or after April 25, 1990.

(5) The protection afforded by this section applies to any of the following:

(a) A volunteer health care provider who provides services under s. 146.89, for the provision of those services.

(b) A physician under s. 252.04 (9) (b).

(6) The protection afforded by this section applies to any criminal action under s. 291.97 (2) or 293.87 (2) or under 7 USC 136L (b), 15 USC 2616 (b), 33 USC 1319 (c), 42 USC 2284, 6928

(d) and (e), 6973 (b), 6992 (b) and (c), 7413 (c), 9603 (b), 9606 (b) and 11045 (b) or 49 USC appendix 1809 (b) that is commenced against a state officer or state employe who is proceeded against in his or her official capacity or as an individual because of acts committed in the storage, transportation, treatment or disposal of hazardous substances, as defined in s. 289.01 (11), if that officer or employe is found to be acting within the scope of his or her employment and if the attorney general determines that the state officer or state employe acted in good faith. Regardless of the determination made by the attorney general, the protection afforded by this section applies if the state officer or agent is not found guilty of the criminal action commenced under this subsection. This protection includes the payment of reasonable attorney fees in defending the action and costs or fines arising out of the action.

(7) The protection afforded by this section does not apply to any law enforcement officer of another state acting in Wisconsin under an agreement authorized under s. 175.46.

(8) The protection afforded by this section applies to any owner of land within a drainage district established under ch. 88 who undertakes work on a drain if the work is approved by the drainage board.



**MEMORANDUM**

**TO:** The Honorable Members of the Senate Committee on Insurance, Tourism, Transportation and Corrections

**FROM:** Allison Kujawa, <sup>AK</sup> Legislative Associate

**DATE:** April 14, 1999

**SUBJECT:** Support for Senate Bill 5

The Wisconsin Counties Association (WCA) strongly supports Senate Bill 5 (SB 5). SB 5 will provide for safer roads during Wisconsin's winters. Currently, there is no law that requires drivers to travel a safe distance behind a snowplow. Requiring that no person can follow closer than 200 feet behind a snowplow that is in the act of plowing, will help avoid potential accidents that result when drivers follow too closely behind a snowplow and lose visibility in the cloud of spray that a snowplow kicks up.

SB 5 will allow counties to continue to do the difficult job of snow removal in adverse conditions during Wisconsin's winters without the concern that many drivers are following behind them at a dangerously close distance.

WCA would also like the Senate Committee on Insurance, Tourism, Transportation and Corrections to consider adding language to SB 5 that would exempt local governments from liability due to their snow removal activities. This language will ensure that counties will be able to use tax dollars for snow and ice removal rather than costly lawsuits.

County highway departments have the very difficult task of maintaining safe roads during Wisconsin's winters. SB 5 will provide counties and other municipalities with the proper latitude to effectively carry out this public service, as well as providing standards that will result in safer roads. For these reasons WCA respectfully requests your positive action on SB 5.

Thank you for considering our comments.



# History of Senate Bill 5

## SENATE BILL 5

An Act to create 346.915 of the statutes; relating to: following snowplows.

1999

01-20.	S. Introduced by Senators Plache, Drzewiecki, Shibilski, Breske, Moen, Roessler, Wirch, Schultz, Clausing, Rude and Erpenbach; cosponsored by Representatives Ainsworth, Hasenohrl, Ourada, M. Lehman, Musser, Spillner, Freese, Nass, Kreibich, Stone, Gunderson, Ziegelbauer, J. Lehman, Kreuser, Turner, Plouff and Boyle.	
01-20.	S. Read first time and referred to committee on Insurance, Tourism, Transportation and Corrections ..	18
04-14.	S. Public hearing held.	
11-08.	S. Executive action taken.	
11-09.	S. Report passage recommended by committee on Insurance, Tourism, Transportation and Corrections, Ayes 7, Noes 0 .....	328
11-09.	S. Available for scheduling.	
11-10.	S. Read a second time .....	339
11-10.	S. Ordered to a third reading .....	339
11-10.	S. Rules suspended .....	339
11-10.	S. Read a third time and passed .....	340
11-10.	S. Ordered immediately messaged .....	340
11-18.	A. Received from Senate .....	564
11-18.	A. Read first time and referred to committee on Highway Safety .....	564

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