



## Fiscal Estimate Narratives

DOT 1/11/2006

LRB Number	05-2048/1	Introduction Number	AB-509	Estimate Type	Original
<b>Subject</b>					
Transportation					

### Assumptions Used in Arriving at Fiscal Estimate

1. AB 509 repeals 893.83(2), Wis. Stats. and amends 893.83(1), Wis. Stats. The bill eliminates the specific immunity exception under which cities, villages, towns and counties may be held liable for an insufficiency or want of repairs of a highway. The bill does not affect the immunity exception under which cities, villages, towns, and counties may be held liable for damages of up to \$50,000 for the accumulation of snow or ice that has existed on a highway for at least three weeks. The bill also eliminates secondary liability for cities, villages, towns, and counties.

2. It is difficult to attribute a local fiscal effect to the repeal of these statutes. It is difficult to determine what effect the repeal has because another general provision, Section 893.80(3) Wis. Stats., establishes a similar general limitation of \$50,000, and incorporates a statutory version of the long-standing, common law immunity for discretionary government decisions, Section 893.80(4), Wis. Stats.

3. The language in 893.83(1), Wis. Stats., in substantially the same form, has been on the books since 1849. The Supreme Court has noted when the Court and Legislature made changes affecting local government immunity in the 1960s and 1970s, the Legislature never changed this statute. Hence, there is not now and never has been discretionary immunity for highway defects under Section 893.83, Wis. Stats. Rights and remedies under the section have existed for 150 years. A computer search shows that 175 Wisconsin appellate court cases applied these provisions (previously numbered 81.15, Wis. Stats.), over the years 1884 to the present.

4. This bill is prompted by *Morris v. Juneau County*, 219 Wis.2d 544 (1998); Motion for reconsideration denied August 25, 1998, affirming *Morris v. Juneau County*, 211 Wis.2d 890 (unpublished)(Ct. App 1997). A subsequent case, *Mariades v. Marquette County*, No. 97-3549 (Unpublished Ct. App. October 15, 1998) had the same result. Juneau County had argued it was immune from liability because maintenance of a highway involved discretionary decisions for which governmental units are immune from liability. The court agreed and dismissed the case based on this legal basis, not on the merits. The injured party, Morris, appealed to the Court of Appeals, which ruled no. The case must go to trial because sec. 81.15 Stats., applies and has nothing to do with discretionary functions. The court decided the County is not always immune from damage due to alleged highway maintenance defects. The case must go to trial. The Court of Appeals did not decide that the County is liable, just that the County is not immune as a matter of law from any and all liability for damage due to highway maintenance defects.

### Long-Range Fiscal Implications

It is not possible to determine whether this legislation will result in a net increase or decrease in costs for local units of government. The statutory changes do not apply to the State or the Wisconsin Department of Transportation and the legislation has no fiscal effect at this level.

## Fiscal Estimate Worksheet - 2005 Session

Detailed Estimate of Annual Fiscal Effect

Original     
  Updated     
  Corrected     
  Supplemental

<b>LRB Number</b> 05-2048/1		<b>Introduction Number</b> AB-509	
<b>Subject</b>			
Transportation			
<b>I. One-time Costs or Revenue Impacts for State and/or Local Government (do not include in annualized fiscal effect):</b>			
No impact for state. Impact unknown for local government.			
<b>II. Annualized Costs:</b>		<b>Annualized Fiscal Impact on funds from:</b>	
		Increased Costs	Decreased Costs
<b>A. State Costs by Category</b>			
State Operations - Salaries and Fringes	\$0	0	
(FTE Position Changes)	(0.0 FTE)	(0.0 FTE)	
State Operations - Other Costs	0	0	
Local Assistance	0	0	
Aids to Individuals or Organizations	0	0	
<b>TOTAL State Costs by Category</b>	<b>\$0</b>	<b>\$0</b>	
<b>B. State Costs by Source of Funds</b>			
GPR	0	0	
FED	0	0	
PRO/PRS	0	0	
SEG/SEG-S	0	0	
<b>III. State Revenues - Complete this only when proposal will increase or decrease state revenues (e.g., tax increase, decrease in license fee, etc.)</b>			
	Increased Rev	Decreased Rev	
GPR Taxes	\$0	\$0	
GPR Earned	0	0	
FED	0	0	
PRO/PRS	0	0	
SEG/SEG-S	0	0	
<b>TOTAL State Revenues</b>	<b>\$0</b>	<b>\$0</b>	
<b>NET ANNUALIZED FISCAL IMPACT</b>			
	<u>State</u>	<u>Local</u>	
NET CHANGE IN COSTS	\$0	\$Unknown	
NET CHANGE IN REVENUE	\$0	\$0	
<b>Agency/Prepared By</b>		<b>Authorized Signature</b>	
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		<b>Date</b>	
		1/10/2006	