

## 1999 ASSEMBLY BILL 325

May 6, 1999 – Introduced by Representatives ALBERS, PORTER, JENSEN, M. LEHMAN, KLUSMAN, SPILLNER, MUSSER, GOETSCH, SYKORA, OWENS, GUNDERSON, HAHN, GROTHMAN, NASS, MONTGOMERY, SERATTI and KREUSER, cosponsored by Senators BRESKE, SCHULTZ and HUELSMAN. Referred to Committee on Urban and Local Affairs.

1     **AN ACT to repeal** 81.15 and 81.17 of the statutes; **relating to:** liability of cities,  
 2             villages, towns and counties for damages caused by an insufficiency or want of  
 3             repair of a highway.

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### *Analysis by the Legislative Reference Bureau*

Under current law, cities, villages, towns and counties are immune from claims arising out of the performance of a discretionary duty, or duty which requires a governmental entity to use judgment or discretion in carrying out the duty. Cities, villages, towns and counties are liable for damages of up to \$50,000 arising out of the performance of a nondiscretionary duty.

Also under current law, cities, villages, towns and counties are liable for damages of up to \$50,000 to a person or property resulting from an insufficiency or want of repair of a highway, which includes shoulders, sidewalks and bridges. Cities, villages, towns and counties are also liable for damages resulting from the accumulation of snow or ice that has existed on a highway for at least three weeks.

The Wisconsin Supreme Court in *Morris v. Juneau County*, 219 Wis. 2d 544 (1998), held that the statutory provision imposing liability on cities, villages, towns and counties for highway defects is an exception to the more general provision granting immunity to cities, villages, towns and counties from liability arising out of the performance of discretionary duties.

Finally, under current law, if the negligence or deliberate wrongdoing of a person contributes to the creation of a highway defect that results in damages to a person or property, the negligent or wrongdoing person is primarily liable and the

