

1999 DRAFTING REQUEST

Bill

Received: **02/10/99**

Received By: **isagerro**

Wanted: **Soon**

Identical to LRB:

For: **Sheryl Albers (608) 266-8531**

By/Representing:

This file may be shown to any legislator: **NO**

Drafter: **isagerro**

May Contact:

Alt. Drafters:

Subject: **Transportation - highways**

Extra Copies: **PEN
TNF**

Pre Topic:

No specific pre topic given

Topic:

Liability of municipalities for highway defects, repeal s. 81.15 & 81.17

Instructions:

See Attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/1	isagerro 03/17/99	jgeller 03/17/99	hhagen 03/18/99	_____	lrb_docadmin 03/18/99	lrb_docadminLocal 03/25/99	

FE Sent For:

05-06-99

<END>

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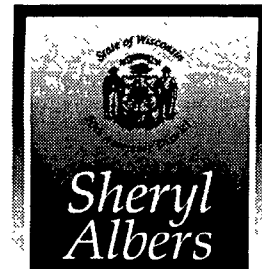
See Attached

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/?	isagerro	1 3/17 jg	1 3/18	1 3/18 km			

FE Sent For:

<END>



To: Legislative Reference Bureau
From: Representative Sheryl K. Albers

Date: February 12, 1999

Subject: Liability of any Towns, Cities and Villages for Highway Defects

Please draft two relatively simple pieces of legislation:

(1) One bill amending Sections 81.15 and 81.17 of the Wisconsin Statutes – *SEE ATTACHED, DRAFTED LANGUAGE.*

(2) One bill repealing sections 81.15 and 81.17 of the Wisconsin Statutes.

This legislation results from the Wisconsin Supreme Court decision, *Morris v. Juneau County* (No. 96-2507; June 30, 1998).

Please forward these two bills to my office as soon as possible. With warm weather fast approaching, road defects will begin to occur as the frost melts. Thus, I would like to have one of these two proposals passed into law as soon as possible. Thank you.



State of Wisconsin
1999 - 2000 LEGISLATURE

LRB-2181/1

ISR:.....

Dnote

SOON

JG

1999 BILL

gen cat

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

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 non-discretionary duty.

plain

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 ~~2~~ three weeks.

I

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 city, village, town or county is secondarily liable only if the negligent person or the person who committed the wrong does not satisfy the judgment, and the city, village, town or county is otherwise liable for the damages.

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-2181/1dn

ISR:.....

jlq

March ~~16~~¹⁷ 1999

Representative Albers:

Please note that this draft does not grant a municipality absolute immunity from claims for damages sustained as a result of the negligent repair or maintenance of a highway. The effect of this draft is to provide a municipality with immunity from suits arising out of negligent repair or maintenance of a highway if the duty to repair or maintain a highway is a discretionary duty as opposed to a ministerial duty. Wisconsin courts define a discretionary duty as a duty that involves a choice or judgment on the part of the government. In contrast, a ministerial duty is defined as a duty that involves the performance of a specific task within certain parameters prescribed by law and does not require the use of one's judgment or discretion. See Lister v. Board of Regents, 72 Wis. 2d 282, 301; Bauder v. Delavan-Darien Sch. Dist., 207 Wis. 2d 310, 314 (Ct. Apps. 1996).

Section 893.80 (4), stats., grants immunity to government entities for discretionary acts. Repealing sections 81.15 and 81.17, stats., does not guarantee a municipality absolute immunity from liability for highway defects. If the repair and maintenance of the highway is not a discretionary duty, then the municipality may be held liable. If, however, repair and maintenance is a discretionary duty, section 893.80 (4) ensures that a municipality will not face liability.

At this time, it is difficult to determine to what extent highway maintenance and repair is a discretionary duty. The Wisconsin Supreme Court in Morris declined to decide whether Juneau County's duty to keep the highway in good repair constituted a discretionary duty. If your intent is to ensure that municipalities are immune from all claims for damages arising from an "insufficiency or want of repairs of any highway," it might be best to include language in the statutes that affirmatively states that a municipality may not be held liable for damages resulting from an insufficiency or lack of repairs of any highway.

Also note that currently the secondary liability provision in ~~section~~^{s.} 81.17 requires a person injured by a highway defect caused in part by the negligence of a person to collect damages first from the negligent person. If the negligent person cannot pay all of the damages, the injured person may then collect the balance from the municipality. See Dickens v. Kensmoe, 61 Wis. 2d 211, 214 (1973). By repealing ~~section~~^{s.} 81.17 a municipality may be held jointly and severally liable for damages arising from a highway defect caused in part by the negligence of another person. This means that

if damages to a person or property are caused in part by another person's negligence, but for which the municipality is also liable, the person injured may sue the municipality for all of the damages and would not have to collect from the negligent person. The municipality would then have to sue the negligent person to recover the negligent person's share of damages. Is this your intent?

Please review this draft carefully to make sure it reflects your intent. If you have any questions or comments, please feel free to contact me.

Ivy G. Sager-Rosenthal
Legislative Attorney
Phone: (608) 261-4455
E-mail: Ivy.Sager-Rosenthal@legis.state.wi.us

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-2181/1dn
ISR:jlg:hmh

March 18, 1999

Representative Albers:

Please note that this draft does not grant a municipality absolute immunity from claims for damages sustained as a result of the negligent repair or maintenance of a highway. The effect of this draft is to provide a municipality with immunity from suits arising out of negligent repair or maintenance of a highway if the duty to repair or maintain a highway is a discretionary duty as opposed to a ministerial duty. Wisconsin courts define a discretionary duty as a duty that involves a choice or judgment on the part of the government. In contrast, a ministerial duty is defined as a duty that involves the performance of a specific task within certain parameters prescribed by law and does not require the use of one's judgment or discretion. See *Lister v. Board of Regents*, 72 Wis. 2d 282, 301; *Bauder v. Delavan-Darien Sch. Dist.*, 207 Wis. 2d 310, 314 (Ct. Apps. 1996).

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if damages to a person or property are caused in part by another person's negligence, but for which the municipality is also liable, the person injured may sue the municipality for all of the damages and would not have to collect from the negligent person. The municipality would then have to sue the negligent person to recover the negligent person's share of damages. Is this your intent?

Please review this draft carefully to make sure it reflects your intent. If you have any questions or comments, please feel free to contact me.

Ivy G. Sager-Rosenthal
Legislative Attorney
Phone: (608) 261-4455
E-mail: Ivy.Sager-Rosenthal@legis.state.wi.us

**SUBMITTAL
FORM**

**LEGISLATIVE REFERENCE BUREAU
Legal Section Telephone: 266-3561
5th Floor, 100 N. Hamilton Street**

The attached draft is submitted for your inspection. Please check each part carefully, proofread each word, and sign on the appropriate line(s) below.

Date: 3/18/99

To: Representative Albers

Relating to LRB drafting number: LRB-2181

Topic

Liability of municipalities for highway defects, repeal s. 81.15 & 81.17

Subject(s)

Transportation - highways

1. **JACKET** the draft for introduction SA

in the **Senate** ____ or the **Assembly** (check only one). Only the requester under whose name the drafting request is entered in the LRB's drafting records may authorize the draft to be submitted. Please allow one day for the preparation of the required copies.

2. **REDRAFT**. See the changes indicated or attached _____.

A revised draft will be submitted for your approval with changes incorporated.

3. Obtain **FISCAL ESTIMATE NOW**, prior to introduction _____.

If the analysis indicates that a fiscal estimate is required because the proposal makes an appropriation or increases or decreases existing appropriations or state or general local government fiscal liability or revenues, you have the option to request the fiscal estimate prior to introduction. If you choose to introduce the proposal without the fiscal estimate, the fiscal estimate will be requested automatically upon introduction. It takes about 10 days to obtain a fiscal estimate. Requesting the fiscal estimate prior to introduction retains your flexibility for possible redrafting of the proposal.

If you have any questions regarding the above procedures, please call 266-3561. If you have any questions relating to the attached draft, please feel free to call me.

Ivy G. Sager-Rosenthal, Legislative Attorney
Telephone: (608) 261-4455

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