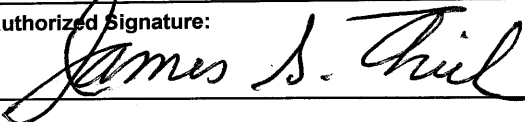


1999 Session		LRB Number (99-2181/1)
FISCAL ESTIMATE DOA-2048 N(R06/99)		Bill Number AB 325
<input checked="" type="checkbox"/> ORIGINAL <input type="checkbox"/> UPDATED <input type="checkbox"/> CORRECTED <input type="checkbox"/> SUPPLEMENTAL		Amendment No. if Applicable
Subject Liability of Cities, Villages, Towns and Counties for Damages Caused by Insufficiency or Want of Repair of a Highway		Administrative Rule Number
Fiscal Effect		
State: <input checked="" type="checkbox"/> No State Fiscal Effect Check columns below only if bill makes a direct appropriation or affects a sum sufficient appropriation.		
<input type="checkbox"/> Increase Existing Appropriation <input type="checkbox"/> Increase Existing Revenues <input type="checkbox"/> Decrease Existing Appropriation <input type="checkbox"/> Decrease Existing Revenues <input type="checkbox"/> Create New Appropriation		<input type="checkbox"/> Increase Costs - May be possible to Absorb Within Agency's Budget <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Decrease Costs
Local: <input type="checkbox"/> No local government costs		
1. <input checked="" type="checkbox"/> Increase Costs <input type="checkbox"/> Permissive <input checked="" type="checkbox"/> Mandatory 2. <input checked="" type="checkbox"/> Decrease Costs <input type="checkbox"/> Permissive <input checked="" type="checkbox"/> Mandatory	3. <input type="checkbox"/> Increase Revenues <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory 4. <input type="checkbox"/> Decrease Revenues <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory	5. Types of Local Governmental Units Affected: <input checked="" type="checkbox"/> Towns <input checked="" type="checkbox"/> Villages <input checked="" type="checkbox"/> Cities <input checked="" type="checkbox"/> Counties <input type="checkbox"/> Others _____ <input type="checkbox"/> School Districts <input type="checkbox"/> WTCS Districts
Assumptions Used in Arriving at Fiscal Estimate		
<p>1. AB 325 repeals two statutes. The first, sec. 81.15, Stats., does two things. It creates local liability up to \$50,000 for damages to any person due to insufficiency or want of repairs of any highway that the local government is responsible for maintaining. The last sentence of the statute creates local immunity for damages resulting from snow or ice on a highway, unless the snow has been there for 3 weeks. The second, sec. 81.17, Stats., simply creates a secondary local liability for a highway defect if someone else contributes to the highway defect. The local government does not pay unless the other person fails to pay. There is no purpose for the second statute if the first is repealed.</p> <p>2. It is difficult to attribute a local fiscal effect to the repeal of these statutes. Repeal of the 3 week local immunity for damages due to ice or snow may increase local exposure to liability. The Supreme Court has upheld this 3-week snow and ice immunity; it applies to natural accumulations of snow or ice upon any bridge or highway, but artificial accumulations of ice and snow must be removed as soon as reasonably possible. <i>Sambs v. Brookfield</i>, 66 Wis.2d 296, 304-307 (1975). It is difficult to determine what effect repeal has because another general statute, sec. 893.80(3), Stats., provides a similar general limitation of \$50,000, and incorporates a statutory version of the long-standing, common law immunity for discretionary governmental decisions, sec. 893.80(4), Stats.</p> <p>3. Section 81.15, Stats., in substantially the same form as today, has been on the books since 1849. The Supreme Court has pointed out that when the Court and Legislature made changes affecting local governmental 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 sec. 81.15, Stats. Rights and remedies under sec. 81.15, Stats., have existed for 150 years. A computer search shows that 175 Wisconsin appellate court cases applied sec. 81.15, Stats., over the years from 1884 to the present.</p> <p>4. This bill is prompted by <i>Morris v. Juneau County</i>, 219 Wis.2d 544 (1998); Motion for Reconsideration denied August 25, 1998, affirming <i>Morris v. Juneau County</i>, 211 Wis.2d 890 (Unpublished) (Ct. App. 1997). A subsequent case had the same result: <i>Mariades v. Marquette County</i>, No.97-3549 (Unpublished Ct. App. October 15, 1998). Juneau County had argued that it was immune from liability because maintenance of a highway involves discretionary decisions for which governmental units are immune from liability. The trial court agreed and dismissed the case on this legal basis, not on the merits. The injured party, Morris, appealed to the Court of Appeals. The Court of Appeals said 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 County is not immune as a matter of law from any and all liability for damage due to highway maintenance defects.</p>		
CONCLUSION: It is not possible to determine whether this legislation will result in a net increase or net decrease in costs for local units of government. The statutes repealed do not apply to the State or the Wisconsin Department of Transportation and the legislation has no state fiscal effect.		
Long-Range Fiscal Implications: Indeterminate		
Prepared by: James S. Thiel, General Counsel	Telephone No. 608 266 8928	Agency DOT
Authorized Signature: 	Telephone No.	Date 8/17/1999

FISCAL ESTIMATE WORKSHEET

1999 Session

Detailed Estimate of Annual Fiscal Effect
DOA-2047 (R06/99)

LRB Number	Amendment No. if Applicable
Bill Number AB 325	Administrative Rule Number

ORIGINAL UPDATED
 CORRECTED SUPPLEMENTAL

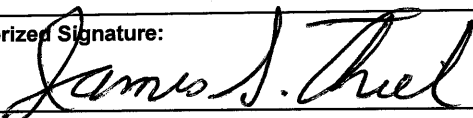
Subject
Liability of Cities, Villages, Towns and Counties for Damages Caused by Insufficiency or Want of Repair of a Highway

I. One-time Costs or Revenue Impacts for State and/or Local Government (do not include in annualized fiscal effect):
NO ONE TIME COSTS

II. Annualized Costs:		Annualized Fiscal impact on State funds from:	
		Increased Costs	Decreased Costs
A. State Costs by Category			
State Operations - Salaries and Fringes		\$ -	\$ -
(FTE Position Changes)	(FTE)	(- FTE)	(- FTE)
State Operations - Other Costs		-	-
Local Assistance		-	-
Aids to Individuals or Organizations		-	-
TOTAL State Costs by Category		\$ None	\$ -None
B. State Costs by Source of Funds			
GPR		\$ -	\$ -
FED		-	-
PRO/PRS		-	-
SEG/SEG-S		None	-None
III. State Revenues	Complete this only when proposal will increase or decrease state revenues (e.g., tax increase, decrease in license fee, etc.)	Increased Rev.	Decreased Rev.
GPR Taxes		\$ -	\$ -
GPR Earned		-	-
FED		-	-
PRO/PRS		-	-
SEG/SEG-S		-	-
TOTAL State Revenues		\$ None	\$ -None

NET ANNUALIZED FISCAL IMPACT

	<u>STATE</u>	<u>LOCAL</u>
NET CHANGE IN COSTS	\$ <u>None</u>	\$ <u>Indeterminate</u>
NET CHANGE IN REVENUES	\$ <u>None</u>	\$ <u>None</u>

Prepared by: James S. Thiel, General Counsel	Telephone No. 608 266 8928	Agency DOT
Authorized Signature: 	Telephone No.	Date 8/17/99