

1999 DRAFTING REQUEST**Assembly Substitute Amendment (ASA-AB325)**Received: **08/19/1999**Received By: **isagerro**Wanted: **Soon**

Identical to LRB:

For: **Sheryl Albers (608) 266-8531**By/Representing: **Scott**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 for pot holes

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>
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8/23 8/23
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/?	isagerro	/1 WLj 8/20	MRC 8/20	MRC/jlg 8/20			

FE Sent For:

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State of Wisconsin
1999 - 2000 LEGISLATURE

LRBs0110/1

ISR: /.....

Wlj

ASSEMBLY SUBSTITUTE AMENDMENT,
TO 1999 ASSEMBLY BILL 325

~~Man am.~~
Man am. 8/23/99

Gen cat

1 AN ACT ^{Gen cat} relating to liability of cities, villages, towns and counties for damages
2 caused by an insufficiency or want of repair of a highway.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

3 SECTION 1. 81.15[✓] of the statutes is amended to read:

4 **81.15 Damages caused by highway defects accumulation of snow or**
5 **ice; liability of city, village, town and county. No action may be maintained**
6 **against a city, village, town or county to recover damages for injuries sustained by**
7 **reason of an accumulation of snow or ice upon any bridge or highway, unless the**
8 **accumulation^{has}/existed for 3 weeks.** If damages happen to any person or his or her
9 property by reason of the ~~insufficiency or want of repairs of~~ accumulation of snow or
10 **ice that has existed for 3 weeks on any highway ^{that} which any town, city or village is**
11 **bound to keep in repair clear of snow or ice,** the person sustaining the damages has
12 a right to recover the damages from the town, city or village. If the damages happen

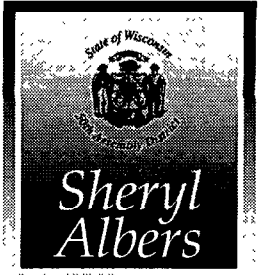
1 by reason of the ~~insufficiency or want of repairs of~~ accumulation of snow or ice that
 2 has existed for 3 weeks on a highway ~~which~~ ^{that} any county by law or by agreement with
 3 any town, city or village is bound to keep ~~in repair~~ clear of snow or ice, or ~~which~~ ^{that}
 4 occupies any land owned and controlled by the county, the county is liable for the
 5 damages and the claim for damages shall be against the county. If the damages
 6 happen by reason of the ~~insufficiency or want of repairs of~~ accumulation of snow or
 7 ice that has existed for 3 weeks on a bridge erected or maintained at the expense of
 8 2 or more towns ² the action shall be brought against all the towns liable for the repairs
 9 of removal of snow or ice on the bridge and upon recovery of judgment the damages
 10 and costs shall be paid by the towns in the proportion in which they are liable for the
 11 STET all ~~repairs removal and the~~ court may direct the judgment to be collected from each
 12 town for its proportion only. The amount recoverable by any person for any damages
 13 so sustained shall not exceed \$50,000. The procedures under s. 893.80 shall apply
 14 to the commencement of actions brought under this section. ~~No action may be~~
 15 ~~maintained to recover damages for injuries sustained by reason of an accumulation~~
 16 ~~of snow or ice upon any bridge or highway, unless the accumulation existed for 3~~
 17 ~~weeks.~~

History: 1977 c. 285, 1979 c. 323 s. 33; 1981 c. 63. ✓

SECTION 2. 81.17 of the statutes is repealed.

(END)

ISR ?



To: Legislative Reference Bureau
From: Attorney Scott Harold Southworth

Date: August 18, 1999
Subject: 1999 AB 325

Please draft an amendment that will include the portion of section 81.15 of the statutes quoted below. Although some questions have arisen about the specific language (“accumulation,” “3 weeks,” etc.), I do not want to change any of the language, given the fact that case law already applies to this portion of section 81.15, and any changes could negatively impact the bill’s chances for successful passage.

I recommend that the provision go in section 893.80, since removal of §81.15 will direct the courts to a decision on the discretionary or ministerial nature of highway maintenance. Though we believe that the courts are likely to hold highway maintenance discretionary (therefore providing immunity from liability), inclusion of the following language will provide clear-cut immunity should the Wisconsin Supreme Court ultimately hold that highway maintenance is a ministerial duty:

“No action may be maintained to recover damages for injuries sustained by reason of an accumulation of snow or ice upon any bridge or highway, unless the accumulation existed for 3 weeks.”

Thank you.

***NOTE:** The hearing for AB 325 will occur at 10:00 a.m. on Tuesday, August 24. Therefore, we will need to have this amendment prepared for adoption at that time.*

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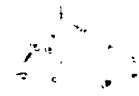
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*Scott Southworth, aide to Rep Alben 8/19/99

- just keep snow accumulation provision

- worried about bare pavement (ministerial duty?)

- want them held liable if 3in+ accumulation





State of Wisconsin
1999 - 2000 LEGISLATURE

LRBs01101²
ISR:wj:mrc

Redratt maker
not run

ASSEMBLY SUBSTITUTE AMENDMENT,

TO 1999 ASSEMBLY BILL 325

Today

Regen

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

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

4 SECTION 1. 81.15 of the statutes is amended to read:

5 **81.15 Damages caused by highway defects accumulation of snow or**
6 **ice; liability of city, village, town and county. No action may be maintained**
7 **against a city, village, town or county to recover damages for injuries sustained by**
8 **reason of an accumulation of snow or ice upon any bridge or highway, unless the**
9 **accumulation has existed for 3 weeks.** If damages happen to any person or his or her
10 property by reason of the ~~insufficiency or want of repairs of~~ accumulation of snow or
11 ice that has existed for 3 weeks on any highway which that any town, city or village

12 is bound to ~~keep in repair~~ ^{maintain} ~~clear of snow or ice~~, the person sustaining the damages has

1 a right to recover the damages from the town, city or village. If the damages happen
2 by reason of the ~~insufficiency or want of repairs of~~ accumulation of snow or ice that
3 has existed for 3 weeks on a highway ~~which that~~ any county by law or by agreement
4 with any town, city or village is bound to ~~keep in repair~~ ^{maintain} ~~clear of snow or ice~~, or which
5 that occupies any land owned and controlled by the county, the county is liable for
6 the damages and the claim for damages shall be against the county. If the damages
7 happen by reason of the ~~insufficiency or want of repairs of~~ accumulation of snow or
8 ice that has existed for 3 weeks on a bridge erected or maintained at the expense of
9 2 or more towns, the action shall be brought against all the towns liable for the
10 repairs ^{of} ~~removal of snow or ice on~~ the bridge and upon recovery of judgment the
11 damages and costs shall be paid by the towns in the proportion in which they are
12 liable for the ~~repairs~~ ^{maintenance} ~~removal~~; and the court may direct the judgment to be collected
13 from each town for its proportion only. The amount recoverable by any person for any
14 damages so sustained shall not exceed \$50,000. The procedures under s. 893.80 shall
15 apply to the commencement of actions brought under this section. ~~No action may be~~
16 ~~maintained to recover damages for injuries sustained by reason of an accumulation~~
17 ~~of snow or ice upon any bridge or highway, unless the accumulation existed for 3~~
18 ~~weeks.~~

19 SECTION 2. 81.17 of the statutes is repealed.

20 (END)

50110/2

* Scott Southworth 8/23/99 68531

- change "clear of snow and ice" to maintain

- don't want cts to think counties liable if not
have pavement?

[Faint, illegible handwritten text, likely bleed-through from the reverse side of the page.]

* Scott Southworth 4:00 pm 8/23/99

- want to make sure no longer ^{strict liability} SL for munis.
if snow not removed for 3 wks.
injury caused by

- make actions for damages ~~from~~ accumulations
of 3 wks subject to \$893.80

- i.e. no SL ~~and~~ up to CT to decide
if situation was ministerial or
~~not~~



State of Wisconsin
1999 - 2000 LEGISLATURE

LRBs0110/23
ISR:wlj:mrc

RM
not run

ASSEMBLY SUBSTITUTE AMENDMENT,
TO 1999 ASSEMBLY BILL 325

Now 8/24/99
(Hearing @ 10:00am)

Regen

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8 **reason of an accumulation of snow or ice upon any bridge or highway, unless the**
9 **accumulation has existed for 3 weeks.** If damages happen to any person or his or her
10 **property by reason of the insufficiency or want of repairs of accumulation of snow or**
11 **ice that has existed for 3 weeks on any highway which that any town, city or village**
12 **is bound to keep in repair maintain, the person sustaining the damages has a right**

↑
strike

↑
strike

1 ~~to recover the damages from the town, city or village. If the damages happen by~~
 2 ~~reason of the insufficiency or want of repairs of accumulation of snow or ice that has~~
 3 ~~existed for 3 weeks on a highway which that any county by law or by agreement with~~
 4 ~~any town, city or village is bound to keep in repair maintain, or which that occupies~~
 5 ~~any land owned and controlled by the county, the county is liable for the damages and~~
 6 ~~the claim for damages shall be against the county. If the damages happen by reason~~
 7 ~~of the insufficiency or want of repairs of accumulation of snow or ice that has existed~~
 8 ~~for 3 weeks on a bridge erected or maintained at the expense of 2 or more towns, the~~
 9 ~~action shall be brought against all the towns liable for the repairs maintenance of the~~
 10 ~~bridge and upon recovery of judgment the damages and costs shall be paid by the~~
 11 ~~towns in the proportion in which they are liable for the repairs maintenance, and the~~
 12 ~~court may direct the judgment to be collected from each town for its proportion only.~~
 13 ~~The amount recoverable by any person for any damages so sustained shall not exceed~~
 14 ~~\$50,000. The procedures under s. 893.80 shall apply to the commencement of actions~~
 15 ~~brought under this section. No action may be maintained to recover damages for~~
 16 ~~injuries sustained by reason of an accumulation of snow or ice upon any bridge or~~
 17 ~~highway, unless the accumulation existed for 3 weeks.~~

SECTION 2. 81.17 of the statutes is repealed.

(END)

down

score 2

against a city, village, town
or county

score 2

Any action to recover damages for injuries sustained by
 reason of an accumulation of snow or ice that
 has existed for 3 weeks or more upon any
 bridge or highway is subject to s. 893.80.