

1999 ASSEMBLY BILL 580

November 5, 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 calendar.

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.

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

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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.

This bill eliminates the immunity exception under which cities, villages, towns and counties may be held liable for an insufficiency or want of repairs of a highway. This bill does not affect the immunity exception under which cities, villages, towns and counties may be held liable 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.

For further information see the *local* fiscal estimate, which will be printed as an appendix to this bill.

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

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

2 **81.15 Damages caused by highway defects accumulation of snow or**
3 **ice; liability of city, village, town and county.** If damages happen to any person
4 or his or her property by reason of the insufficiency or want of repairs of any highway
5 which any town, city or village is bound to keep in repair, the person sustaining the
6 damages has a right to recover the damages from the town, city or village. If the
7 damages happen by reason of the insufficiency or want of repairs of a highway which
8 any county by law or by agreement with any town, city or village is bound to keep in
9 repair, or which occupies any land owned and controlled by the county, the county is
10 liable for the damages and the claim for damages shall be against the county. If the
11 damages happen by reason of the insufficiency or want of repairs of a bridge erected
12 or maintained at the expense of 2 or more towns the action shall be brought against
13 all the towns liable for the repairs of the bridge and upon recovery of judgment the
14 damages and costs shall be paid by the towns in the proportion in which they are
15 liable for the repairs; and the court may direct the judgment to be collected from each

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1 ~~town for its proportion only. The amount recoverable by any person for any damages~~
2 ~~so sustained shall not exceed \$50,000. The procedures under s. 893.80 shall apply~~
3 ~~to the commencement of actions brought under this section. No action may be~~
4 ~~maintained against a city, village, town or county to recover damages for injuries~~
5 ~~sustained by reason of an accumulation of snow or ice upon any bridge or highway,~~
6 ~~unless the accumulation existed for 3 weeks. Any action to recover damages for~~
7 ~~injuries sustained by reason of an accumulation of snow or ice that has existed for~~
8 ~~3 weeks or more upon any bridge or highway is subject to s. 893.80.~~

9 **SECTION 2.** 81.17 of the statutes is repealed.

10 **SECTION 3. Initial applicability.**

11 (1) The treatment of sections 81.15 and 81.17 of the statutes first applies to
12 actions arising on the effective date of this subsection.

13 (END)