

## 1999 ASSEMBLY BILL 650

January 11, 2000 – Introduced by Representative ALBERS, cosponsored by Senator BURKE, by request of The Claims Board. Referred to Joint committee on Finance.

- 1     **AN ACT relating to:** expenditure of \$9,926 from moneys appropriated to the  
2             department of transportation in payment of a claim against the state made by  
3             Robert and Dorothy Messner.

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### *Analysis by the Legislative Reference Bureau*

This bill directs expenditure of \$9,926 from moneys appropriated to the department of transportation (DOT) for the 1999–2001 fiscal biennium for maintenance and repair of state highways and certain related programs in payment of a claim against DOT by Robert and Dorothy Messner. The claimants operate an apple orchard adjacent to STH 49 near Brownsville (Dodge County). In 1998, the claimants had 136 dead, dying or damaged apple trees near the highway, which a plant pathologist determined to be caused by salt spray. Based on average net income for the years 1994 to 1997, the claimants estimated that the damage resulted in \$9,926 in net loss of income for 1998. DOT asserts that it attempted to reduce the amount of salt applied to the highway in response to the claimants' concerns, but that it has a duty to maintain the roadway in a safe condition for the traveling public, and that discontinuing the use of salt is not a viable option. DOT also asserts that the claimants should exercise prudent planting practices in areas near the highway. On October 19, 1999, the claims board recommended payment of this claim (see *Senate Journal*, p. 307).

