

2003 DRAFTING REQUEST

Bill

Received: **02/19/2003**

Received By: **tfast**

Wanted: **Soon**

Identical to LRB:

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

By/Representing: **Scott Southworth**

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

Drafter: **tfast**

May Contact:

Addl. Drafters:

Subject: **Transportation - highways**

Extra Copies: **ARG, PJH - 1**

Submit via email: **YES**

Requester's email: **Rep.Albers@legis.state.wi.us**

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Highway maintenance liability

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>
/?	tfast 02/24/2003	jdye 02/25/2003		_____			Local
		jdye 02/25/2003		_____			
/1			chaskett 02/26/2003	_____	lemery 02/26/2003	mbarman 03/03/2003	

Vers. Drafted Reviewed Typed Proofed Submitted Jacketed Required

FE Sent For:

At intro

<END>

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For Assembly per Scott

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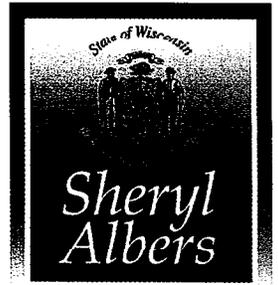
See Attached

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1?	tfast	1/25 jld	1/26 cph	rs/cph 2/26			

FE Sent For:

<END>



To: LRB - Drafting
From: Representative Sheryl K. Albers

TNF

Date: February 13, 2003
Subject: Highway Maintenance Liability

Please redraft 2001 AB 6, relating to highway maintenance liability, as a 2003 bill.

If any changes need to be made, or if there are any questions, please contact my staff attorney, Scott Harold Southworth, at 266-8531.

Thank you.

2003

Date (time) needed

D-NOTE
SOON
(turned in 2/24)

LRB - 209111

BILL

TNE: jld:

Use the appropriate components and routines developed for bills.

AN ACT . . . [generate catalog] *to repeal . . . ; to renumber . . . ; to consolidate and renumber . . . ; to renumber and amend . . . ; to consolidate, renumber and amend . . . ; to amend . . . ; to repeal and recreate . . . ; and to create . . .* of the statutes; relating to:

.....
.....

[NOTE: See section 4.02 (2) (br), Drafting Manual, for specific order of standard phrases.]

Analysis by the Legislative Reference Bureau

If titles are needed in the analysis, in the component bar:

For the main heading, execute: create → anal: → title: → head

For the subheading, execute: create → anal: → title: → sub

For the sub-subheading, execute: create → anal: → title: → sub-sub

For the analysis text, in the component bar:

For the text paragraph, execute: create → anal: → text

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

SECTION #.

~~2001 ASSEMBLY BILL 6~~

~~January 16, 2001 - Introduced by Representatives ALBERS, KREUSER, LADWIG, GRONEMUS, MUSSER, GUNDERSON, WADE, M. LEHMAN, MONTGOMERY, PETROWSKI, STARZYK, SYKORA, SERATTI, GROTHMAN, HAHN, OWENS and NASS, cosponsored by Senators BRESKE, SCHULTZ, HUELSMAN, WELCH, A. LASEE and FARROW. Referred to Committee on Urban and Local Affairs.~~

1 ~~AN Act to repeal §1.12 and to amend §1.13 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~~ ^{that} 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

ASSEMBLY BILL 6

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 specific 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 damages of up to \$50,000[✓] 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:

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

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

RWJ

ASSEMBLY BILL 6

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~~town for its proportion only. The amount recoverable by any person for any damages so sustained shall not exceed \$50,000. The procedures under s. 893.80 shall apply to the commencement of actions brought under this section.~~ No action may be maintained against a city, village, town, or county 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. 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.

9 SECTION 2. 81.17^X 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 actions arising on the effective date of this subsection. This act

12 (END)

13 D-note
↓

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

2091
LRB-1220/1dn
TNF:km

December 15, 2000 } new date

JLD

bill

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. Amending ~~section~~ 81.15, stats., and repealing ~~section~~ 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, s. 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 statute~~ that affirmatively states that a municipality may not be held liable for damages resulting from an insufficiency or lack of repairs of any highway.

statutory [✓]

Timothy N. Fast
Senior Legislative Attorney
Phone: (608) 266-9739
E-mail: tim.fast@legis.state.wi.us

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-2091/1dn
TNF:jld:cph

February 25, 2003

Please note that this bill 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 bill 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. Amending s. 81.15, stats., and repealing s. 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, s. 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 statutory language that affirmatively states that a municipality may not be held liable for damages resulting from an insufficiency or lack of repairs of any highway.

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