

Fiscal Estimate - 2003 Session



Original



Updated



Corrected



Supplemental

LRB Number **03-2091/1**

Introduction Number **AB-255**

Subject

Highway maintenance liability

Fiscal Effect

State:



No State Fiscal Effect



Indeterminate



Increase Existing
Appropriations



Decrease Existing
Appropriations



Create New Appropriations



Increase Existing
Revenues



Decrease Existing
Revenues



Increase Costs - May be possible to
absorb within agency's budget

☐ Yes

☐ No



Decrease Costs

Local:



No Local Government Costs



Indeterminate

1. ☐

Increase Costs



Permissive ☐ Mandatory

2. ☐

Decrease Costs



Permissive ☐ Mandatory

3. ☐

Increase Revenue



Permissive ☐ Mandatory

4. ☐

Decrease Revenue



Permissive ☐ Mandatory

5.Types of Local Government Units Affected

☒ Towns

☒ Village

☒ Cities

☒ Counties

☐ Others

☐ School
Districts

☐ WTCS
Districts

Fund Sources Affected

Affected Ch. 20 Appropriations



GPR



FED



PRO



PRS



SEG



SEGS

Agency/Prepared By

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Authorized Signature

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Date

4/23/2003

Fiscal Estimate Narratives

DOT 4/23/2003

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|-------------------------------|-----------|---------------------|--------|---------------|----------|
| LRB Number | 03-2091/1 | Introduction Number | AB-255 | Estimate Type | Original |
| Subject | | | | | |
| Highway maintenance liability | | | | | |

Assumptions Used in Arriving at Fiscal Estimate

1. AB 255 repeals 81.17, Wis. Stats. and amends 81.15, Wis. Stats. The bill eliminates the specific immunity exception under which cities, villiages, towns and counties may be held liable for an insufficiency or want of repairs of a highway. The bill does not affect the immunity exception under which cities, villiages, 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, villiages, towns, and counties.
2. It is difficult to attribute a local fiscal effect to the repeal of these statutes. It is difficult to determine what effect the repeal has because another general statute, Section 893.80(3) Wis. Stats., provides a similar general limitation of \$50,000, and incorporates a statutory version of the long-standing, common law immunity for discretionary government decisions, Section 893.80(4), Wis. Stats.
3. Section 81.15, Wis. Stats., in substantially the same form as today, has been on the books since 1849. The Supreme Court has noted that when the Court and Legislature made changes affecting local government 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 Section 81.15, Wis. Stats. Rights and remedies under 81.15, Wis. Stats., have existed for 150 years. A computer search shows that 175 Wisconsin appellate court cases applied 81.15, Wis. Stats., over the years 1884 to the present.
4. This bill is prompted by *Morris v. Juneau County*, 219 Wis.2d 544 (1998); Motion for reconsideration denied August 25, 1998, affirming *Morris v. Juneau County*, 211 Wis.2d 890 (unpublished)(Ct. App 1997). A subsequent case, *Mariades v. Marquette County*, No. 97-3549 (Unpublished Ct. App. October 15, 1998) had the same result. Juneau County had argued it was immune from liability because maintenance of a highway involved discretionary decisions for which governmental units are immune from liability. The court agreed and dismissed the case based on this legal basis, not on the merits. The injured party, Morris, appealed to the Court of Appeals, which ruled 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 the County is not immune as a matter of law from any and all liability for damage due to highway maintenance defects.

Long-Range Fiscal Implications

It is not possible to determine whether this legislation will result in a net increase or decrease in costs for local units of government. The statutory changes do not apply to the State or the Wisconsin Department of Transportation and the legislation has no fiscal effect at this level.

Fiscal Estimate Worksheet - 2003 Session

Detailed Estimate of Annual Fiscal Effect



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| LRB Number 03-2091/1 | Introduction Number AB-255 |
| Subject | |
| Highway maintenance liability | |
| I. One-time Costs or Revenue Impacts for State and/or Local Government (do not include in annualized fiscal effect): | |
| No impact for state. Impact unknown for local government. | |
| II. Annualized Costs: | Annualized Fiscal Impact on funds from: |
| | Increased Costs Decreased Costs |
| A. State Costs by Category | |
| State Operations - Salaries and Fringes | \$0 0 |
| (FTE Position Changes) | (0.0 FTE) (0.0 FTE) |
| State Operations - Other Costs | 0 0 |
| Local Assistance | 0 0 |
| Aids to Individuals or Organizations | 0 0 |
| TOTAL State Costs by Category | \$0 \$0 |
| B. State Costs by Source of Funds | |
| GPR | 0 0 |
| FED | 0 0 |
| PRO/PRS (0) | 0 0 |
| SEG/SEG-S (0) | 0 0 |
| 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 | \$0 \$0 |
| GPR Earned | 0 0 |
| FED | 0 0 |
| PRO/PRS (0) | 0 0 |
| SEG/SEG-S (0) | 0 0 |
| TOTAL State Revenues | \$0 \$0 |
| NET ANNUALIZED FISCAL IMPACT | |
| | State Local |
| NET CHANGE IN COSTS | \$0 \$Unknown |
| NET CHANGE IN REVENUE | \$0 \$0 |
| Agency/Prepared By | |
| DOT/ Richard Moss (608) 267-7830 | Authorized Signature |
| | Carol Buckmaster (608) 267-6979 |
| | Date |
| | 4/23/2003 |