

SENATE BILL 125 (LRB -2039)

An Act to repeal 893.83 (title) and 893.83 (2); and to renumber and amend 893.83 (1) of the statutes; relating to: liability of cities, villages, towns, and counties for damages caused by an insufficiency or want of repair of a highway. (FE)

2011

06-10.	S.	Introduced by Senators Grothman, Galloway, Lasee and Lazich ; cosponsored by Representatives Jacque, Brooks, Bernier, Kaufert, Knudson, LeMahieu, Litjens, Spanbauer, Strachota, Vos and Weininger.	
06-10.	S.	Read first time and referred to committee on Judiciary, Utilities, Commerce, and Government Operations	333
06-29.	S.	Fiscal estimate received.	
07-07.	S.	Fiscal estimate received.	
10-04.	S.	Public hearing held.	
11-01.	S.	Executive action taken.	
11-01.	S.	Report passage recommended by committee on Judiciary, Utilities, Commerce, and Government Operations, Ayes 3, Noes 2	561
11-01.	S.	Available for scheduling.	
11-01.	S.	Placed on calendar 11-2-2011 pursuant to Senate Rule 18(1)	562
11-02.	S.	Read a second time	569
11-02.	S.	Ordered to a third reading	569
11-02.	S.	Rules suspended	569
11-02.	S.	Read a third time and passed , Ayes 21, Noes 11	569
11-02.	S.	Ordered immediately messaged	571
11-07.	A.	Received from Senate	676
12-20.	A.	Read first time and referred to committee on Rules	723

2012

01-24.	A.	Placed on calendar 1-26-2012 by committee on Rules.	
01-26.	A.	Rules suspended to withdraw from calendar and take up.	
01-26.	A.	Read a second time.	
01-26.	A.	Assembly amendment 1 offered by Representatives Mason, Vruwink, Pasch, C. Taylor, Ringhand, Zamarripa, Doyle, Hulsey, Bernard Schaber, Danou, Sinicki, Zepnick, Kessler, Hebl, Pope-Roberts, Clark, Seidel, Roys, Barca, Molepske Jr, E. Coggs, Hintz, Bewley, Pocan, Billings, Richards and Jorgensen (LRB a2198).	
01-26.	A.	Assembly amendment 1 laid on table, Ayes 60, Noes 36.	
01-26.	A.	Ordered to a third reading.	
01-26.	A.	Rules suspended.	
01-26.	A.	Read a third time and concurred in .	
01-26.	A.	Ordered immediately messaged.	
01-27.	S.	Received from Assembly concurred in.	

JP

2011
ENROLLED BILL

11en SB-125

ADOPTED DOCUMENTS:

Orig **Engr** **SubAmdt**

11 - 20391

Amendments to above (if none, write "NONE"): NONE

Corrections - show date (if none, write "NONE"): NONE

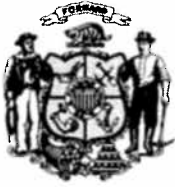
Topic Rel

1-27-12

Date



Enrolling Drafter



2011 SENATE BILL 125

June 10, 2011 – Introduced by Senators GROTHMAN, GALLOWAY, LASEE and LAZICH, cosponsored by Representatives JACQUE, BROOKS, BERNIER, KAUFERT, KNUDSON, LEMAHIEU, LITJENS, SPANBAUER, STRACHOTA, VOS and WEININGER. Referred to Committee on Judiciary, Utilities, Commerce, and Government Operations.

1 **AN ACT to repeal** 893.83 (title) and 893.83 (2); and **to renumber and amend**
2 893.83 (1) of the statutes; **relating to:** liability of cities, villages, towns, and
3 counties for damages caused by an 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 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

SENATE BILL 125

city, village, town, or county is secondarily liable only if the negligent person or the person who committed the wrongdoing 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:

1 SECTION 1. 893.83 (title) of the statutes is repealed.

2 SECTION 2. 893.83 (1) of the statutes is renumbered 893.83 and amended to
3 read:

4 **893.83 Damages caused by highway defects accumulation of snow or**
5 **ice; liability of municipality city, village, town, and county.** If damages
6 happen to any person or his or her property by reason of the insufficiency or want of
7 repairs of any highway that any town, city, or village is bound to keep in repair, the
8 person sustaining the damages has a right to recover the damages from the town,
9 city, or village. If the damages happen by reason of the insufficiency or want of
10 repairs of a highway that any county by law or by agreement with any town, city, or
11 village is bound to keep in repair, or that occupies any land owned and controlled by
12 the county, the county is liable for the damages and the claim for damages shall be
13 against the county. If the damages happen by reason of the insufficiency or want of
14 repairs of a bridge erected or maintained at the expense of 2 or more towns, cities,
15 villages, or counties, the action shall be brought against all of the towns, cities,
16 villages, or counties that are liable for the repairs of the bridge. Upon recovery of

SENATE BILL 125

1 ~~judgment, the damages and costs shall be paid by the towns, cities, villages, or~~
2 ~~counties in the proportion in which they are liable for the repairs. The court may~~
3 ~~direct the judgment to be collected from each town, city, village, or county for its~~
4 ~~proportion only. The amount recoverable by any person for any damages so~~
5 ~~sustained shall not exceed \$50,000. The procedures under s. 893.80 shall apply to~~
6 ~~the commencement of actions brought under this subsection. No action may be~~
7 ~~maintained against a city, village, town, or county to recover damages for injuries~~
8 ~~sustained by reason of an accumulation of snow or ice upon any bridge or highway,~~
9 ~~unless the accumulation existed for 3 weeks. Any action to recover damages for~~
10 ~~injuries sustained by reason of an accumulation of snow or ice that has existed for~~
11 ~~3 weeks or more upon any bridge or highway is subject to s. 893.80.~~

12 SECTION 3. 893.83 (2) of the statutes is repealed.

13 SECTION 4. Initial applicability.

14 (1) This act first applies to actions arising on the effective date of this
15 subsection.

16 (END)