

Fiscal Estimate — 2001 Session

- Original Updated
 Corrected Supplemental

| | |
|------------------------------|--------------------------------|
| LRB Number 01-1220/1 | Amendment Number if Applicable |
| Bill Number 2001 AB 00006 | Administrative Rule Number |

Subject
 Liability of cities, villages, towns, and counties for damages caused by an insufficiency or want of repair of highway.

Fiscal Effect

State: No State Fiscal Effect

Check columns below only if bill makes a direct appropriation or affects a sum sufficient appropriation.

- Increase Existing Appropriation Increase Existing Revenues
 Decrease Existing Appropriation Decrease Existing Revenues
 Create New Appropriation

- Increase Costs — May be possible to absorb within agency's budget.
 Yes No

 Decrease Costs

Local: No Local Government Costs

1. Increase Costs
 Permissive Mandatory
 2. Decrease Costs
 Permissive Mandatory

3. Increase Revenues
 Permissive Mandatory
 4. Decrease Revenues
 Permissive Mandatory

5. Types of Local Governmental Units Affected:
 Towns Villages Cities
 Counties Others _____
 School Districts WTCS Districts

Fund Sources Affected

- GPR FFD PRO PRS SEG SEG-S

Affected Chapter 20 Appropriations

Assumptions Used in Arriving at Fiscal Estimate

1. AB 6 repeals 81.17, Wis. Stats. and amends 81.15, 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, sec 893.80(3), 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, sec. 893.80(4), Stats.

3. Section 81.15, 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 sec. 81.15, Stats. Rights and remedies under sec. 81.15, Stats., have existed for 150 years. A computer search shows that 175 Wisconsin appellate court cases applied sec. 81.15, Stats., over the years 1884 to the present.

4. This bill is prompted by *Morris v. Juneau County*, 219 Wis.2nd 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, apealed 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.

Long-Range Fiscal Implications

It is not possible to determine whether this legislation will result in a net increase or net decrease in cost 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.

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Fiscal Estimate Worksheet — 2001 Session

Detailed Estimate of Annual Fiscal Effect

Original Updated
 Corrected Supplemental

| | |
|-------------------------|--------------------------------|
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| Bill Number AB 00006 | Administrative Rule Number |

Subject

Liability of cities, villiages, towns, and counties for damages caused by an insufficiency or want of repair of highway.


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.

| Annualized Costs: | | Annualized Fiscal Impact on State Funds from: | |
|--|---|---|-------------------|
| | | Increased Costs | Decreased Costs |
| A. State Costs by Category | | | |
| State Operations — Salaries and Fringes | | \$ 0 | \$ - 0 |
| (FTE Position Changes) | | (0.00 FTE) | (- 0.00 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 |
| SEG/SEG-S | | 0 | - 0 |
| State Revenues | Complete this only when proposal will increase or decrease state revenues (e.g., tax increase, decrease in license fee, etc.) | Increased Revenue | Decreased Revenue |
| GPR Taxes | | \$ 0 | \$ - 0 |
| GPR Earned | | 0 | - 0 |
| FED | | 0 | - 0 |
| PRO/PRS | | 0 | - 0 |
| SEG/SEG-S | | 0 | - 0 |
| Total State Revenues | | \$ 0 | \$ - 0 |

Net Annualized Fiscal Impact

| | State | Local |
|------------------------|-------|-------|
| Net Change in Costs | \$ 0 | \$ |
| Net Change in Revenues | \$ 0 | \$ |

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|---|-------------------------------|--|
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