

**CHAPTER 285, Laws of 1977**

AN ACT to repeal 345.05 (3) (c) to (g); to amend 81.15 and 345.05 (4); and to repeal and recreate 59.76, 59.77 (1), 60.36, 62.25 (1), 118.26, 119.68 (2), 345.05 (3) (b) and 895.43 of the statutes, relating to a uniform procedure for claims brought against local governments.

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

PREFATORY NOTE: At present various provisions of the Wisconsin statutes contain a variety of procedural steps to follow when bringing a claim against a county, town, city, school district or other municipality.

This bill consolidates these procedures [SECTIONS 1 to 10 and 12] and makes them uniform by repealing and recreating s. 895.43, Wis. stats., [SECTION 11] to include the following procedures when prosecuting a claim against any volunteer fire company organized under ch. 213, political corporation, governmental subdivision or agency thereof or against any officer, official, agent or employe of such corporation, subdivision or agency or volunteer fire company for acts done in their official capacity or in the course of their agency or employment:

a) A 120-day period for filing written notice of injury. However, the failure to give the required notice will not bar an action if the appropriate body had actual notice and failure to provide written notice was not prejudicial to the defendant.

b) No time limit for filing a claim.

c) A time limit of 120 days for disallowing a claim; the failure of an appropriate body to act on a claim within 120 days is treated as a disallowance.

d) Notice of disallowance of a claim which shall include a statement of the date of disallowance and the time during which a claimant may commence a court action.

e) A requirement that suits be commenced within 6 months of the date of service of notice of disallowance.

The act will take effect 6 months after its publication [SECTION 13].

SECTION 1. 59.76 of the statutes is repealed and recreated to read:

**59.76 Claims against counties; actions on.** No action may be brought or maintained against a county upon a claim or cause of action unless the claimant complies with s. 895.43.

SECTION 2. 59.77 (1) of the statutes is repealed and recreated to read:

59.77 (1) IN GENERAL. Every person, except jurors, witnesses and interpreters, and except physicians or other persons entitled to receive from the county fees for reporting to the register of deeds births or deaths, which have occurred under their care, having any claim against any county shall comply with s. 895.43.

SECTION 3. 60.36 of the statutes is repealed and recreated to read:

**60.36 Filing claims.** No action may be brought or maintained against a town upon a claim or cause of action unless the claimant complies with s. 895.43.

SECTION 4. 62.25 (1) of the statutes is repealed and recreated to read:

62.25 (1) CLAIMS. No action may be brought or maintained against a city upon a claim or cause of action unless the claimant complies with s. 895.43.

SECTION 5. 81.15 of the statutes is amended to read:

**81.15 Damages caused by highway defects; liability of 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 ~~such the~~ damages shall have a right to recover the ~~same~~ damages from ~~such the~~ town, city or village. If ~~such 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 shall be liable ~~therefor 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 ~~such the~~ towns in the proportion in which they are liable for ~~such the~~ repairs; and the court may direct the judgment to be collected from each town for its proportion only. ~~No such action shall be maintained unless within 120 days after the happening of the event causing such damages, notice in writing signed by the party, his agent or attorney shall be given to the county clerk of the county, a supervisor of the town, one of the trustees of the village or mayor or city clerk of the city against which damages are claimed, stating the place where such damages occurred, and describing generally the insufficiency or want of repair which occasioned it and that satisfaction therefor is claimed of such county, town, city or village. No notice given hereunder shall be deemed insufficient or invalid solely because of any inaccuracy or failure therein in stating the time, describing the place or the insufficiency or want of repairs which caused the damages for which satisfaction is claimed, if it appears that there was no intention on the part of the person giving the notice to mislead the other party and that such party was not in fact misled thereby.~~ The amount recoverable by any person for any damages so sustained shall ~~in no case not~~ exceed \$25,000. The procedures under s. 895.43 shall apply to the commencement of actions brought under this section. No action shall ~~may~~ be maintained to recover damages for injuries sustained by reason of an accumulation of snow or ice upon any bridge or highway, unless ~~such the~~ accumulation existed for 3 weeks.

SECTION 6. 118.26 of the statutes is repealed and recreated to read:

**118.26 Claim against school district.** No action may be brought or maintained against a school district upon a claim or cause of action unless the claimant complies with s. 895.43.

SECTION 7. 119.68 (2) of the statutes is repealed and recreated to read:

119.68 (2) No action may be brought or maintained against the school upon a claim or cause of action unless the claimant complies with s. 895.43.

SECTION 8. 345.05 (3) (b) of the statutes is repealed and recreated to read:

345.05 (3) (b) If against any municipality, as provided in s. 895.43, except the limitations of s. 895.43 (3) shall be inapplicable.

SECTION 9. 345.05 (3) (c) to (g) of the statutes are repealed.

SECTION 10. 345.05 (4) of the statutes is amended to read:

345.05 (4) Failure of the ~~governing body~~ state to pass upon the claim within 90 days after presentation constitutes a disallowance. Disallowance by the ~~governing body~~ state bars any action founded on the claim unless brought within 6 months after disallowance. Actions against the state and payment of the amount recovered shall be as provided in ss. 285.01 and 285.04. For the purposes of this section, judgments against municipalities shall be certified, filed and collected as provided in s. 66.09 whether named therein or not.

SECTION 11. 895.43 of the statutes is repealed and recreated to read:

**895.43 Claims against political corporations, governmental subdivisions or agencies and officers, agents or employees; notice of injury; limitation of damages and suits.** (1) No action may be brought or maintained against any volunteer fire company organized under ch. 213, political corporation, governmental subdivision or agency thereof nor against any officer, official, agent or employe of the corporation, subdivision or agency for acts done in their official capacity or in the course of their agency or employment upon a claim or cause of action unless:

(a) Within 120 days after the happening of the event giving rise to the claim, written notice of the circumstances of the claim signed by the party, agent or attorney is served on the volunteer fire company, political corporation, governmental subdivision or agency and on the officer, official, agent or employe under s. 801.11. Failure to give the requisite notice shall not bar action on the claim if the fire company, corporation, subdivision or agency had actual notice of the claim and the claimant shows to the satisfaction of the court that the delay or failure to give the requisite notice has not been prejudicial to the defendant fire company, corporation, subdivision or agency or to the defendant officer, official, agent or employe; and

(b) A claim containing the address of the claimant and an itemized statement of the relief sought is presented to the appropriate clerk or person who performs the duties of a clerk or secretary for the defendant fire company, corporation, subdivision or agency and the claim is disallowed. Failure of the appropriate body to disallow within 120 days after presentation is a disallowance. Notice of disallowance shall be served on the claimant by registered or certified mail and the receipt therefor, signed by the claimant, or the returned registered letter, shall be proof of service. No action on a claim against any defendant fire company, corporation, subdivision or agency nor against any defendant officer, official, agent or employe, may be brought after 6 months from the date of service of the notice, and the notice shall contain a statement to that effect.

(2) The claimant may accept payment of a portion of the claim without waiving the right to recover the balance. No interest may be recovered on any portion of a claim after an order is drawn and made available to the claimant. If in an action the claimant recovers a greater sum than was allowed, the claimant shall recover costs, otherwise the defendant shall recover costs.

(3) The amount recoverable by any person for any damages, injuries or death in any action founded on tort against any volunteer fire company organized under ch. 213, political corporation, governmental subdivision or agency thereof and against their officers, officials, agents or employes for acts done in their official capacity or in the course of their agency or employment, whether proceeded against jointly or severally, shall not exceed \$25,000. No punitive damages may be allowed or recoverable in any such action.

(4) no suit may be brought against any volunteer fire company organized under ch. 213, political corporation, governmental subdivision or any agency thereof for the intentional torts of its officers, officials, agents or employes nor may any suit be brought against such corporation, subdivision or agency or volunteer fire company or against its officers, officials, agents or employes for acts done in the exercise of legislative, quasi-legislative, judicial or quasi-judicial functions.

(5) Except as provided in this subsection, the provisions and limitations of this section shall be exclusive and shall apply to all claims against a volunteer fire company organized under ch. 213, political corporation, governmental subdivision or agency or against any officer, official, agent or employe thereof for acts done in an official capacity or the course of his or her agency or employment. When rights or remedies are provided by any other statute against any political corporation, governmental subdivision or agency or any officer, official, agent or employe thereof for injury, damage or death, such statute shall apply and the limitations in sub. (3) shall be inapplicable.

**SECTION 12. Cross reference changes.** In the sections of the statutes listed in Column A, the cross references shown in Column B are changed to the cross references shown in Column C:

<b>A</b>	<b>B</b>	<b>C</b>
<b>Statute Sections</b>	<b>Old Cross References</b>	<b>New Cross References</b>
61.51 (4)	62.25 (1)	895.43
66.044 (5)	62.25	895.43
66.60 (12)(b)	62.25 (1)(d)	895.43
83.19	59.76	895.43

**SECTION 13. Effective date.** This act shall take effect 6 months after its publication.

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