



**SENATE SUBSTITUTE AMENDMENT 1,
TO 1995 ASSEMBLY BILL 207**

December 27, 1995 - Offered by COMMITTEE ON JUDICIARY.

1 **AN ACT to amend** 19.32 (3), 19.35 (5), 19.37 (2) (a), 59.76 (1), 59.77 (1), 60.44 (1),
2 60.44 (3), 62.25 (1), 88.145, 118.26, 119.68 (2), 198.12 (2), 893.80 (1) (intro.) and
3 893.80 (1) (b); and **to create** 19.32 (1c) and (1e), 19.37 (1m), 19.37 (1n), 19.97
4 (5), 893.80 (8) and 893.82 (8) of the statutes; **relating to:** access to public
5 records and claims against governmental bodies and their officers, employes
6 and agents.

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

7 **SECTION 1.** 19.32 (1c) and (1e) of the statutes are created to read:

8 19.32 (1c) "Incarcerated person" means a person who is incarcerated in a penal
9 facility or who is placed on probation and given confinement under s. 973.09 (4) as
10 a condition of placement, during the period of confinement for which the person has
11 been sentenced.

12 (1e) "Penal facility" means a state prison under s. 302.01, county jail, county
13 house of correction or other state, county or municipal correctional or detention
14 facility.

1 **SECTION 2.** 19.32 (3) of the statutes is amended to read:

2 19.32 **(3)** “Requester” means any person who requests inspection or copies of
3 a record, except an incarcerated person, unless the person requests inspection or
4 copies of a record that contains specific references to that person or his or her minor
5 children for whom he or she has not been denied physical placement under ch. 767,
6 and the record is otherwise accessible to the person by law.

7 **SECTION 3.** 19.35 (5) of the statutes is amended to read:

8 19.35 **(5)** RECORD DESTRUCTION. No authority may destroy any record at any
9 time after the receipt of a request for inspection or copying of the record under sub.
10 (1) until after the request is granted or until at least 60 days after the date that the
11 request is denied or, if the requester is an incarcerated person, until at least 90 days
12 after the date that the request is denied. If an authority receives written notice that
13 an action is relating to a record has been commenced under s. 19.37, the requested
14 record may not be destroyed until after the order of the court in relation to such
15 record is issued and the deadline for appealing that order has passed, or, if appealed,
16 until after the order of the court hearing the appeal is issued. If the court orders the
17 production of any record and the order is not appealed, the requested record may not
18 be destroyed until after the request for inspection or copying is granted.

19 **SECTION 4.** 19.37 (1m) of the statutes is created to read:

20 19.37 **(1m)** TIME FOR COMMENCING ACTION. No action for mandamus under sub.
21 (1) to challenge the denial of a request for access to a record or part of a record may
22 be commenced by any incarcerated person later than 90 days after the date that the
23 request is denied by the authority having custody of the record or part of the record.

24 **SECTION 5.** 19.37 (1n) of the statutes is created to read:

1 19.37 (1n) NOTICE OF CLAIM. Sections 893.80 and 893.82 do not apply to actions
2 commenced under this section.

3 **SECTION 6.** 19.37 (2) (a) of the statutes is amended to read:

4 19.37 (2) (a) The Except as provided in this paragraph, the court shall award
5 reasonable attorney fees, damages of not less than \$100, and other actual costs to the
6 requester if the requester prevails in whole or in substantial part in any action filed
7 under sub. (1) relating to access to a record or part of a record under s. 19.35 (1) (a).
8 If the requester is an incarcerated person, the requester is not entitled to any
9 minimum amount of damages, but the court may award damages. Costs and fees
10 shall be paid by the authority affected or the unit of government of which it is a part,
11 or by the unit of government by which the legal custodian under s. 19.33 is employed
12 and may not become a personal liability of any public official.

13 **SECTION 7.** 19.97 (5) of the statutes is created to read:

14 19.97 (5) Sections 893.80 and 893.82 do not apply to actions commenced under
15 this section.

16 **SECTION 8.** 59.76 (1) of the statutes is amended to read:

17 59.76 (1) No action may be brought or maintained against a county upon a
18 claim or cause of action unless the claimant complies with s. 893.80. This subsection
19 does not apply to actions commenced under s. 19.37 or 19.97.

20 **SECTION 9.** 59.77 (1) of the statutes is amended to read:

21 59.77 (1) IN GENERAL. Every person, except jurors, witnesses and interpreters,
22 and except physicians or other persons entitled to receive from the county fees for
23 reporting to the register of deeds births or deaths, which have occurred under their
24 care, having any claim against any county shall comply with s. 893.80. This
25 subsection does not apply to actions commenced under s. 19.37 or 19.97.

1 **SECTION 10.** 60.44 (1) of the statutes is amended to read:

2 60.44 **(1)** GENERAL PROCEDURE. (a) Claims for money against a town or against
3 officers, officials, agents or employes of the town arising out of acts done in their
4 official capacity shall be filed with the town clerk as provided under s. 893.80 (1) (b).
5 This paragraph does not apply to actions commenced under s. 19.37 or 19.97.

6 (b) The town board shall allow or disallow the claim. Notice of disallowance
7 shall be made as provided under s. 893.80 ~~(1) (b)~~ (1g).

8 **SECTION 11.** 60.44 (3) of the statutes is amended to read:

9 60.44 **(3)** COURT ACTIONS TO RECOVER CLAIMS. Subsection (2), or an ordinance
10 adopted under that subsection, does not affect the applicability of s. 893.80. No
11 action may be brought or maintained against a town upon a claim unless the
12 claimant complies with s. 893.80. This subsection does not apply to actions
13 commenced under s. 19.37 or 19.97.

14 **SECTION 12.** 62.25 (1) of the statutes is amended to read:

15 62.25 **(1)** CLAIMS. No action may be brought or maintained against a city upon
16 a claim or cause of action unless the claimant complies with s. 893.80. This
17 subsection does not apply to actions commenced under s. 19.37 or 19.97.

18 **SECTION 13.** 88.145 of the statutes is amended to read:

19 **88.145 Limitation of damages and suits.** In any action against a drainage
20 district, drainage board, drainage board member, drainage board employe or an
21 owner of land within the district who undertakes work approved by the drainage
22 board, s. 893.80 is applicable and the limit on the amount recoverable by any person
23 under s. 893.80 (3) applies to the drainage board, the members and employes of the
24 drainage board, the drainage district and any owner of land within the district who

1 undertakes work approved by the drainage board. This section does not apply to
2 actions commenced under s. 19.37 or 19.97.

3 **SECTION 14.** 118.26 of the statutes is amended to read:

4 **118.26 Claim against school district.** No action may be brought or
5 maintained against a school district upon a claim or cause of action unless the
6 claimant complies with s. 893.80. This section does not apply to actions commenced
7 under s. 19.37 or 19.97.

8 **SECTION 15.** 119.68 (2) of the statutes is amended to read:

9 119.68 (2) No action may be brought or maintained against the school upon a
10 claim or cause of action unless the claimant complies with s. 893.80. This subsection
11 does not apply to actions commenced under s. 19.37 or 19.97.

12 **SECTION 16.** 198.12 (2) of the statutes is amended to read:

13 198.12 (2) SERVICE OF PROCESS ON, PERSONAL INJURY CLAIMS, VENUE. The district
14 shall sue or be sued in its corporate name and service of process upon the district
15 shall be by service upon the chairperson of the board and the clerk of the district, but
16 no action shall be brought or maintained against a district upon a claim or cause of
17 action unless the claimant complies with s. 893.80. Compliance with s. 893.80 is not
18 required under this subsection in actions commenced under s. 19.37 or 19.97. All
19 actions by or against the district, except condemnation proceedings and actions to
20 which the state or any officer or commission thereof is a party, shall be brought in
21 the circuit court for the county in which its principal administrative office is located.

22 **SECTION 17.** 893.80 (1) (intro.) of the statutes is amended to read:

23 893.80 (1) (intro.) Except as provided in subs. (1g), (1m) and, (1p) and (8), no
24 action may be brought or maintained against any volunteer fire company organized
25 under ch. 213, political corporation, governmental subdivision or agency thereof nor

1 against any officer, official, agent or employe of the corporation, subdivision or
2 agency for acts done in their official capacity or in the course of their agency or
3 employment upon a claim or cause of action unless:

4 **SECTION 18.** 893.80 (1) (b) of the statutes is amended to read:

5 893.80 (1) (b) A claim containing the address of the claimant and an itemized
6 statement of the relief sought is presented to the appropriate clerk or person who
7 performs the duties of a clerk or secretary for the defendant fire company,
8 corporation, subdivision or agency and the claim is disallowed. ~~Failure of the~~
9 ~~appropriate body to disallow within 120 days after presentation is a disallowance.~~

10 **(1g)** Notice of disallowance of the claim submitted under sub. (1) shall be
11 served on the claimant by registered or certified mail and the receipt therefor, signed
12 by the claimant, or the returned registered letter, shall be proof of service. Failure
13 of the appropriate body to disallow a claim within 120 days after presentation of the
14 written notice of the claim is a disallowance. No action on a claim under this section
15 against any defendant fire company, corporation, subdivision or agency nor against
16 any defendant officer, official, agent or employe, may be brought after 6 months from
17 the date of service of the notice of disallowance, and the notice of disallowance shall
18 contain a statement to that effect.

19 **SECTION 19.** 893.80 (8) of the statutes is created to read:

20 893.80 (8) This section does not apply to actions commenced under s. 19.37 or
21 19.97.

22 **SECTION 20.** 893.82 (8) of the statutes is created to read:

23 893.82 (8) This section does not apply to actions commenced under s. 19.37 or
24 19.97.

25 **SECTION 21. Initial applicability.**

