



Legislative Fiscal Bureau

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March 29, 2005

TO: Members
Joint Committee on Finance

FROM: Bob Lang, Director

SUBJECT: Senate Bill 47: Claim by the Village of Sturtevant

BACKGROUND

In 2003, the Village of Sturtevant filed a claim with the State of Wisconsin Claims Board alleging that the state is required to pay the Village a sewer connection charge of \$158,800, plus interest, associated with the construction of a 150-bed probation and parole hold facility, 150-bed inmate workhouse, and garage adjacent to the Racine Correctional Institution in Sturtevant. The Departments of Administration and Corrections argued that the sewer connection charge was a permit fee, and the state is exempt from permit fees under s. 13.48(13)(a) of the statutes. The statute states that every building, structure or facility that is constructed for the benefit of or use of the state "shall be in compliance with all applicable state laws, rules, codes and regulations but the construction is not subject to the ordinances or regulations of the municipality in which the construction takes place except zoning, including without limitation because of enumeration ordinances or regulations relating to materials used, permits, supervision of construction or installation, payment of permit fees, or other restrictions."

The Village of Sturtevant argued that the sewer connection charge was not a permit fee nor a charge relating to construction, but rather a "sewerage service charge" authorized under s. 66.0821(4)(a). In addition, the Village argued that under s. 70.119(1), the state must "make reasonable payments at established rates for water, sewer and electrical services and all other services directly provided by a municipality to state facilities." Based on these two statutes, the Village claimed the state was required to pay the sewer connection charge.

The Departments of Administration and Corrections argued that in order to be governed by local laws and ordinances, the state must clearly and unambiguously indicate that it consents to a waiver of its sovereign immunity. The state contended that s. 66.0821(4) is of general applicability and lacks and express reference to the state or its agencies. Further, the state argued that the sewer

connection charge was a one-time permit fee, imposed during construction, not a "rate" under s. 70.119(1).

On July 15, 2004, the Claim Board concluded that there was an insufficient showing of negligence on the part of the state, its officers, agents or employees and the claim is neither one for which the state is legally liable nor one which the state should assume and pay based on equitable principles.

SUMMARY OF BILL

Senate Bill 47 was introduced on February 8, 2005, and referred to the Joint Committee on Finance. The bill would direct the state to pay \$158,800 plus interest from the date of billing to the date of payment to the Village of Sturtevant from the Department of Administration's general program revenue sum sufficient appropriation for claims awards for charges levied by the Village to connect the probation and parole holding facility, workhouse, and garage with the village sewage system. The bill specifies that acceptance of the payment would release the state from any further liability resulting from expenses incurred by the Village in making these connections.

FISCAL EFFECT

The bill would require the Department of Administration to pay the Village of Sturtevant \$158,800 plus interest from the claims awards GPR sum sufficient appropriation. The appropriation is estimated at \$23,700 in 2005-06. As of March 21, 2005, \$48,800 has been expended.

Prepared by: Chris Carmichael