



1995 SENATE BILL 435

November 22, 1995 - Introduced by LAW REVISION COMMITTEE. Referred to Committee on Judiciary.

1 **AN ACT to amend** 802.06 (1); and **to create** 895.46 (1) (am) of the statutes;
2 **relating to:** the time to answer a summons in certain cases and requiring that
3 the costs awarded to an individual represented by a unit of government be paid
4 to the unit of government (suggested as remedial legislation by the department
5 of justice).

Analysis by the Legislative Reference Bureau

Current law has conflicting provisions regarding when the state has to answer a summons in a case involving the state or an officer, agent, employe or agency of the state. One provision allows the state 45 days to answer the summons if the action is brought under either of 2 specific statutes, while the other provision allows the state 45 days to answer the summons only if the action is brought under both of the 2 specific statutes. This bill changes the latter provision to allow the state the 45-day period to answer a summons in an action brought under either of the 2 specific statutes.

Under current law, employes and officials of governmental units who are sued in their official capacity or for acts committed while carrying out their official duties may be provided representation by the unit of government either directly or through the payment of the individual's reasonable attorney fees and costs. Under current law, if the court finds in favor of the employe or official, the court may award costs to that individual. This bill provides that if the unit of government provides for the representation of the employe or official, any costs awardable to that individual shall be awarded to the unit of government that provided the representation.

For further information, see the NOTES provided by the law revision committee of the joint legislative council.

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

LAW REVISION COMMITTEE PREFATORY NOTE: This bill is a remedial legislation proposal, requested by the department of justice and introduced by the law revision committee under s. 13.83 (1) (c) 4., stats. After careful consideration of the various provisions of this bill, the law revision committee has determined that this bill makes minor substantive changes in the statutes, and that these changes are desirable as a matter of public policy.

1 **SECTION 1.** 802.06 (1) of the statutes is amended to read:

2 802.06 (1) WHEN PRESENTED. A defendant shall serve an answer within 20 days
3 after the service of the complaint upon the defendant. If a guardian ad litem is
4 appointed for a defendant, the guardian ad litem shall have 20 days after
5 appointment to serve the answer. A party served with a pleading stating a
6 cross-claim against the party shall serve an answer thereto within 20 days after the
7 service upon the party. The plaintiff shall serve a reply to a counterclaim in the
8 answer within 20 days after service of the answer. The state or an agency of the state
9 or an officer, employe or agent of the state in an action brought within the purview
10 of ~~ss.~~ s. 893.82 and or 895.46 shall serve an answer to the complaint or to a
11 cross-claim or a reply to a counterclaim within 45 days after service of the pleading
12 in which the claim is asserted. If any pleading is ordered by the court, it shall be
13 served within 20 days after service of the order, unless the order otherwise directs.
14 The service of a motion permitted under sub. (2) alters these periods of time as
15 follows, unless a different time is fixed by order of the court: if the court denies the
16 motion or postpones its disposition until the trial on the merits, the responsive
17 pleading shall be served within 10 days after notice of the court's action; or if the court

1 grants a motion for a more definite statement, the responsive pleading shall be
2 served within 10 days after the service of the more definite statement.

3 **SECTION 2.** 895.46 (1) (am) of the statutes is created to read:

4 895.46 (1) (am) If a court determines that costs are awardable to an employe
5 or official who has been provided representation by a governmental unit under par.
6 (a), the court shall award those costs to the unit of government that provided the
7 representation.

8 **SECTION 3. Initial applicability.**

9 (1) The treatment of section 895.46 (1) (am) of the statutes first applies to
10 actions pending on the effective date of this subsection.

11 (END)