

1999 DRAFTING REQUEST**Bill**Received: **01/14/99**Received By: **kuesejt**Wanted: **Soon**

Identical to LRB:

For: **Scott Jensen 1-9482**By/Representing: **R.J. Pirlot**This file may be shown to any legislator: **NO**Drafter: **kuesejt**

May Contact:

Alt. Drafters: **nelsorp1
dykmapj
kahlepj
nilsepe
olsenje**Subject: **State Government - miscellaneous
Military Affairs
Legislature - miscellaneous
Courts - immunity liability
Munis - miscellaneous
Counties**

Extra Copies:

Topic:Year 2000/ leap year changes

Instructions:Per LRB's -1090, -1118, -1192, -1796, -1799, -1802.

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	kuesejt 01/15/99			_____			S&L
/P1	kuesejt 01/16/99	jgeller 01/18/99	haugeca 01/15/99	_____	lrb_docadmin 01/15/99		S&L

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typist</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
	kuesejt 01/16/99 olsenje 01/18/99			_____			
/P2			lpaasch 01/19/99	_____	lrb_docadmin 01/19/99		S&L
/1	kuesejt 01/19/99	jgeller 01/19/99	jfrantze 01/19/99	_____	lrb_docadmin 01/19/99	lrb_docadmin 01/19/99	

FE Sent For: *1/19/99*

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(DNBTE)

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**KMG
JLG**

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*PA's no need
to copy in
everyone, just
Drafter & Alt.
Drafters.*

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/?	kuesejt 01/15/99	<i>1/22/98 JLG 1/19 JLG</i>		_____			S&L
/P1	kuesejt 01/16/99		haugeca 01/15/99	_____	lrb_docadmin 01/15/99		

**LP1-K LP1-18
IS**

(DNOR)

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~~**dykmapj**~~
kahlepj
nilsepe

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1/15	kuesejt 1/15		J 1/15	J/ch 1/15	LP11-NO		

FE Sent For:

<END>

(DNSTR)

1999

LRS-1800/P1

JTK, RPN, PSD, PSK + PEN;

COMPLETE

LRS 1090

1092

1118

1796

1799

1802



State of Wisconsin
1999 - 2000 LEGISLATURE

LRB-1800/P1 P2

Needed 1/19 8:30 am

JTK, RPN, PSD, PSK, PEN + JED: all

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

(regenerate)

1 AN ACT to repeal 13.0992; to amend 134.99(1); and to create 13.0992, 121.91

2 (4)(h), 134.92, 904.16 and 904.17 of the statutes; relating to: gathering of

3 information by state and local governmental officers and agencies concerning

4 year 2000-related processing, ^{and leap year} public access to such information; ^{recovery of} increasing a

5 damages in certain actions against state and local governmental units and officers, employees and agents thereof caused by the incorrect processing, transmittal or receipt of certain data; school district's revenue limit by the amount spent for school security

6 measures; admissibility of statements regarding the year 2000 processing

7 capabilities of a product or service; preparation of year 2000 impact statements;

8 educational outreach concerning year 2000 and leap year-related computer

9 failures; testing of local emergency contingency plans for responding to year

10 2000 computer problems; granting rule-making authority; and providing a

11 penalty.

Analysis by the Legislative Reference Bureau

Subsco Information processing

*** ANALYSIS FROM 1090/8 ***

This bill permits any state or local governmental unit which or officer who has regulatory power over any person to require that person to provide to the unit or officer information relating to year 2000 processing, including any communication

Year 2000 processing information includes

made by the person to any other person or persons: 1) concerning an assessment, projection or estimate relating to, or plans, objectives or timetables for implementing or verifying year 2000 processing capabilities of an entity, product, service or set of products or services; 2) concerning test plans, dates or results, or operational problems or solutions related to year 2000 processing by products or services that incorporate or otherwise utilize products; 3) concerning the correction or avoidance of a year 2000 processing failure in computer hardware, a computer system, a component of a computer system, a computer program or software or services utilizing any computer hardware, system, component, program or software or services; or 4) reviewing, commenting on, or otherwise directly or indirectly relating to year 2000 processing capabilities. The information may only pertain to a matter relating to public health or safety that is regulated by that authority or a matter relating to public health or safety that has an effect upon a matter that is regulated by that authority. The bill defines "year 2000 processing" as processing, transmitting or receiving data from, into and between the 20th and 21st centuries and during the years 1999 and 2000, and from leap year calculations. Currently, no such authority exists.

Under the bill, if any business fails to provide the information required, knowingly gives a false answer to a request for information or evades the answer to any request for information, each director, partner or proprietor of that business is subject to a forfeiture (civil penalty) of \$100 for each offense. Each day of violation constitutes a separate offense.

The bill requires each state or local governmental unit which or officer who receives information under the bill to withhold from access all information provided to the unit or officer under the public records access law, except that the unit or officer must provide the information to the department of administration upon written request of the department and may, upon written consent of a person who provides information to the unit or officer, provide the information to another specified person or to any person. (DOA)

The bill also provides that no information provided to a governmental unit under the bill may be used as evidence in any civil action or proceeding.

***** ANALYSIS FROM -1092/1 *****

Current law generally limits the increase in the total amount of revenue that a school district may receive from general school aids and property taxes in a school year to approximately \$209 per pupil in the 1998-99 school year and, in subsequent school years, to the amount of revenue increase allowed per pupil in the previous school year increased by the percentage change in the consumer price index. Several exceptions are provided. For example, if a school district increases the services that it provides by adding responsibility for providing a service transferred to it from another governmental unit, its revenue limit is increased by the cost of that service.

This bill provides that a school district's revenue limit is increased by an amount equal to the amount spent by the school district for measures designed to prevent criminal activity in schools.

***** ANALYSIS FROM -1118/5 *****

- 3 -
Anal. insert A ✓

~~This bill provides that no information contained in any statement that discloses the year 2000 processing capabilities of a product, service or set of products and services may be used in any civil action or proceeding. This evidence limitation applies to any statement that concerns an assessment, comment, correction, estimate, objective, plan, projection, review, timetable or test regarding the year 2000 processing capabilities of a product or service. The limitation does not apply to a year 2000 processing capabilities statement made by a person who knew that the statement was false, misleading or deceptive or that was made with reckless disregard as to the truth or falsity of the statement, to a republished year 2000 statement that the person who republished the statement knew was false, inaccurate or misleading, to a statement made by a person who was compensated for providing a year 2000 statement as part of a contractual service or made by a person when soliciting a consumer or to any action brought by the state or a local governmental unit acting in regulatory, supervisory or enforcement capacity.~~

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year 2000 impact statements ~~ANALYSIS FROM -1796/1~~

This bill provides that whenever a bill is introduced in either house of the legislature that would have an impact on the ability of a state governmental unit, a local governmental unit or any other person to avoid a year 2000 problem, as defined in the bill, the speaker of the assembly, or president of the senate may require that a year 2000 impact statement be prepared by the department of administration. The statement describes the impact upon the year 2000 problem that would result from enactment of the bill.

DOA

sub sub

Educational outreach ~~ANALYSIS FROM -1799/1~~

This bill permits the department of administration ~~DOA~~ to contract with one or more private contractors to provide educational outreach with respect to the potential failure of computers to process, transmit or receive data from, into and between the 20th and 21st centuries and during the years 1999 and 2000 and from leap year calculations, and the methods of correction and contingency planning for such failures. Under the bill, DOA has discretion to determine the persons to whom the outreach is to be provided.

Currently, DOA has no authority or responsibility to conduct outreach for this purpose. Under current law, state agencies may contract for services that they are authorized or required to provide if the services can be provided more economically or efficiently by contract, subject to certain statutory requirements, rules of DOA and collective bargaining laws and agreements. State agencies must justify the need for contractual service procurements. ~~The~~ bill provides that certain of these statutes and rules do not apply to the contractual services that DOA is permitted to procure under the bill.

sub sub

Emergency management ~~ANALYSIS FROM -1802/1~~

Under current law, the adjutant general, as the head of the department of military affairs (DMA), is required to develop and promulgate a statewide plan of emergency management for the security of persons and property and to provide training to and standards for local emergency management services agencies.

This bill requires DMA to review all of the local emergency management services agency contingency plans for responding to the failure of a computer to

handle and correctly interpret year 2000 data. If DMA determines that those plans are inadequate or in need of testing, the bill authorizes DMA to prepare a plan for the funding of a local governmental unit to test those contingency plans and to submit that funding plan to the joint committee on finance. The bill allows the joint committee on finance to supplement DMA appropriations to implement the testing of the contingency plans.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

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

1 **SECTION 1.** 13.0992 of the statutes is created to read:

2 **13.0992 Review of bills impacting on year 2000 problem. (1)**

3 DEFINITIONS. In this section:

4 (a) “Department” means the department of administration.

5 (b) “Electronic computing device” means any computer hardware or software,
6 computer chip, embedded chip, process control equipment or other information
7 system used to capture, store, manipulate or process information, or that controls,
8 monitors or assists in the operation of physical apparatus that relies on automation
9 or digital technology to function.

10 (c) “Local governmental unit” means a political subdivision of this state, a
11 special purpose district in this state, an instrumentality or corporation of such a
12 political subdivision or special purpose district or a combination or subunit of any of
13 the foregoing or an instrumentality of the state and any of the foregoing.

14 (d) “Processing” includes calculating, comparing, sequencing, displaying or
15 storing.

16 (e) “State governmental unit” means this state, and every subunit or
17 instrumentality of this state, including any institution or authority, regardless of
18 whether moneys are appropriated to the unit.

1 (f) “Year 2000 problem” means a failure in year 2000 processing of an electronic
2 computing device.

3 (g) “Year 2000 processing” means the processing, transmitting or receiving of
4 date data from, into, and between the 20th and 21st centuries and during the years
5 1999 and 2000, and from leap year calculations.

6 **(2) REPORT ON BILLS IMPACTING ON YEAR 2000 PROBLEM.** (a) Whenever a bill is
7 introduced in either house of the legislature that would have an impact on the ability
8 of a state governmental unit, a local governmental unit or any other person to avoid
9 a year 2000 problem, the department, upon the request of the speaker of the
10 assembly or the president of the senate, shall prepare a report on the bill within 5
11 working days of the request. The department shall request information from any
12 individual, organization or state or local governmental unit that the department
13 considers likely to be affected by the bill, if enacted. Individuals, organizations and
14 state and local governmental units shall comply with requests by the department for
15 information that is reasonably necessary for the department to prepare the report.
16 To the greatest extent possible, reports under this section shall be based on the
17 information obtained by the department from individuals, organizations and state
18 and local governmental units under this paragraph.

19 (b) The report prepared under this section shall be printed as an appendix to
20 that applicable bill and shall be distributed in the same manner as amendments.

21 **(3) FINDINGS OF THE DEPARTMENT TO BE CONTAINED IN THE REPORT.** The report of
22 the department shall contain the following information:

23 (a) A statement of the year 2000 problem affected by the bill, including all of
24 the following:

25 1. Whether current law creates a hardship and, if so, the degree of the hardship.

SECTION 1

1 2. The costs associated with complying with current law and any anticipated
2 savings likely to result from the bill, if enacted.

3 3. Whether any other efforts have been made to resolve the year 2000 problem
4 affected by the bill.

5 4. The degree of control by those affected by the bill over the year 2000 problem
6 affected by the bill.

7 (b) A description of the proposed effect of the bill, if enacted, on the year 2000
8 problem.

9 (c) Any other special considerations concerning the effect of the bill, such as the
10 frequency of use of the proposed change and the support and involvement of
11 businesses, industries, state governmental units and local governmental units
12 affected by the proposed change.

13 (4) **RULE-MAKING AUTHORITY.** The department may promulgate any rules
14 necessary for the administration of this section.

15 **SECTION 2.** 13.0992 of the statutes, as created by 1999 Wisconsin Act (this
16 act), is repealed.

INS
6-16

17 **SECTION 3.** 121.91 (4) (h) of the statutes is created to read:
18 121.91(4)(h) The limit otherwise applicable to a school district's revenue under
19 sub. (2m) in any school year is increased by an amount equal to the amount spent by
20 the school district in that school year for security measures designed to prevent
21 criminal activity in schools, as determined by the state superintendent.

22 **SECTION 4.** 134.92 of the statutes is created to read:

23 **134.92 Year 2000 processing information.** (1) In this section:

24 (a) "Agent" means an authorized person, other than a director, officer or
25 employe, who acts on behalf of or at the direction of another person.

1 (b) “Authority” has the meaning given in s. 19.32 (1).

2 (c) “Processing” includes calculating, comparing, sequencing, displaying or
3 storing.

4 (d) “Regulatory power” means the power to authorize or require a specific class
5 of persons to perform certain acts.

6 (e) “Year 2000 processing” means the processing, transmitting or receiving of
7 date data from, into, and between the 20th and 21st centuries and during the years
8 1999 and 2000, and from leap year calculations.

9 (f) “Year 2000 statement” means any communication or other conveyance of
10 information by a person to another person or to the public, in any form or medium,
11 including a computer program:

12 1. Concerning an assessment, projection or estimate relating to year 2000
13 processing capabilities of an entity, product, service or set of products and services.

14 2. Concerning plans, objectives, or timetables for implementing or verifying the
15 year 2000 processing capabilities of an entity, product, service or set of products and
16 services.

17 3. Concerning test plans, test dates, test results or operational problems or
18 solutions related to year 2000 processing by products or services that incorporate or
19 utilize products.

20 4. Concerning the correction or avoidance of a year 2000 processing failure in
21 computer hardware, a computer system, a component of a computer system, a
22 computer program or software or services utilizing any computer hardware, system,
23 component, program or software or services.

24 5. Reviewing, commenting on, or otherwise directly or indirectly relating to
25 year 2000 processing capabilities.

1 (2) Each authority may require any person over whom the authority exercises
2 regulatory power to provide to the authority information relating to year 2000
3 processing including a year 2000 statement, with respect to any matter relating to
4 public health or safety that is regulated by that authority or any matter relating to
5 public health or safety that has an effect upon a matter that is regulated by that
6 authority.

7 (3) (a) Each director, partner or proprietor of a business shall forfeit \$100 if the
8 business does any of the following:

9 1. Fails to provide any information required under sub. (2).

10 2. Knowingly gives a false answer to any request for information made under
11 sub. (2).

12 3. Evades the answer to any request for information made under sub. (2).

13 (b) Each day of violation under par. (a) constitutes a separate offense.

14 (4) (a) Except as provided in pars. (b) and (c), each authority shall withhold
15 from access by any person under s. 19.35 (1) all information provided to the authority
16 under sub. (2).

17 (b) Each authority shall provide to the department of administration, upon
18 written request of the department, any information provided to the authority under
19 sub. (2). The department of administration shall withhold from access by any person
20 under s. 19.35 (1) any information provided to the department under this paragraph.

21 (c) Any person who provides information to an authority under sub. (2) may
22 consent in writing to that authority for the authority to provide that information to
23 another specified person or to any person.

24 (5) No information provided to an authority upon request of the authority
25 under sub. (2) may be used as evidence in any civil action or proceeding.

1 SECTION 5. 134.99 (1) of the statutes is amended to read:

2 134.99 (1) Whoever is concerned in the commission of a violation of this
3 chapter, except s. 134.92, for which a forfeiture is imposed is a principal and may be
4 charged with and convicted of the violation although he or she did not directly
5 commit it and although the person who directly committed it has not been convicted
6 of the violation.

✓
RWS
9-6

7 ~~SECTION 6. 904.16 of the statutes is created to read:~~

8 ~~904.16 Year 2000 processing information. No information provided to an~~
9 ~~authority, as defined under s. 134.92 (1) (b), upon request of the authority under s.~~
10 ~~134.92 (2) is admissible in evidence in any civil action or proceeding.~~

11 SECTION 7. 904.17 of the statutes is created to read:

12 **904.17 Year 2000 ~~readiness disclosure~~ statements.** (1) In this section:

13 (a) "Local governmental unit" means a political subdivision of this state, a
14 special purpose district in this state, an instrumentality or corporation of such a
15 political subdivision or special purpose district, a combination or subunit of any of
16 the foregoing or an instrumentality of the state and any of the foregoing.

17 (b) "Processing" includes calculating, comparing, sequencing, displaying or
18 storing.

19 (c) "Year 2000 processing" means the processing, transmitting or receiving of
20 date data from, into and between the 20th and 21st centuries, and during the years
21 1999 and 2000, and from leap year calculations.

22 (d) "Year 2000 statement" means any communication or other conveyance of
23 information by a person to another or to the public in any form or medium, including
24 a computer program:

1 1. Concerning an assessment, projection, or estimate relating to year 2000
2 processing capabilities of an entity, product, service or set of products and services.

3 2. Concerning plans, objectives or timetables for implementing or verifying the
4 year 2000 processing capabilities of an entity, product, service or set of products and
5 services.

6 3. Concerning test plans, test dates, test results or operational problems or
7 solutions related to year 2000 processing by products or services that incorporate or
8 utilize products.

9 4. Concerning the correction or avoidance of a year 2000 processing failure in
10 computer hardware, a computer system, a component of a computer system, a
11 computer program or software or services utilizing any computer hardware, system,
12 component, program or software or services.

13 5. Reviewing, commenting on, or otherwise directly or indirectly relating to
14 year 2000 processing capabilities.

JWS
10-15

15 ~~(2) Except as provided in sub. (3), no information contained in a year 2000~~
16 ~~statement may be used in any civil action or proceeding.~~

17 (3) The limitation under sub. (2) does not apply to any of the following:

18 (a) A year 2000 statement made by a person who knew that the statement was
19 false, misleading or deceptive or that was made with reckless disregard as to the
20 truth or falsity of the statement.

21 (b) A republished year 2000 statement that the person who republished the
22 statement knew was false, ~~inaccurate or~~ misleading. or deceptive ✓

23 (c) A year 2000 statement that was made by a person who was compensated
24 for making that statement as part of a contractual service related to the assessment,
25 contingency planning, remediation or testing of a failure in year 2000 processing.

1 (d) A year 2000 statement that was made by a person when soliciting a
2 consumer, including when advertising or offering to sell a product.

3 (e) A civil action or proceeding brought by a local governmental unit acting in
4 a regulatory, supervisory or enforcement capacity or by a state governmental unit
5 acting in a regulatory, supervisory or enforcement capacity.

6 **SECTION 8. Nonstatutory provisions.**

7 (1) YEAR 2000 EDUCATIONAL OUTREACH.

8 (a) In this subsection:

9 1. "Electronic computing device" means any computer hardware or software,
10 computer chip, embedded chip, process control equipment, or other information
11 system used to capture, store, manipulate, or process information, or that controls,
12 monitors, or assists in the operation of physical apparatus that relies on automation
13 or digital technology to function.

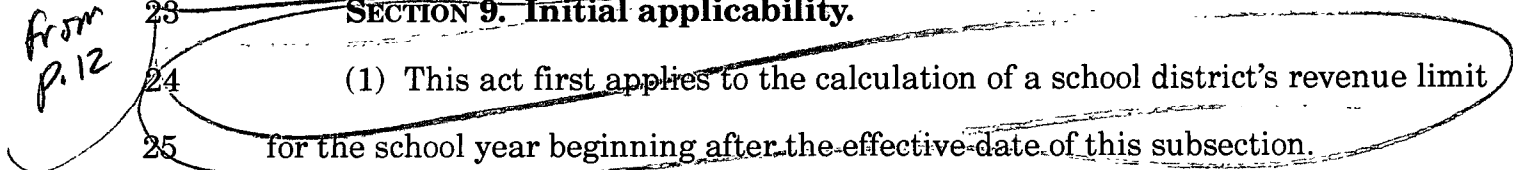
14 2. "Process" includes calculate, compare, sequence, display or store.

15 (b) Notwithstanding section 16.705 (1) of the statutes, the department of
16 administration may contract with one or more private contractors to provide
17 educational outreach with respect to potential failures of electronic computing
18 devices to process, transmit or receive data from, into and between the 20th and
19 21st centuries and during the years 1999 and 2000, and from leap year calculations,
20 and methods of correction of and contingency planning for such failures. No contract
21 entered into under this subsection may extend beyond December 31, 1999. Section
22 16.705 (2) and (3) of the statutes do not apply to any such contract.

23 **SECTION 9. Initial applicability.**

24 (1) This act first applies to the calculation of a school district's revenue limit
25 for the school year beginning after the effective date of this subsection.

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JWS
From
p. 12



1 **SECTION 10. Initial applicability.**

2 (1) IMMUNITY FOR YEAR 2000 STATEMENTS. The treatment of section 904.17 of the
3 statutes first applies to a year 2000 statement made on the effective date of this
4 subsection.

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~~SECTION 11. Initial applicability; legislature.~~

~~(*) YEAR 2000 IMPACT STATEMENTS, ← (CS)~~

6 (1) The creation of section 13.0992 of the statutes first applies to bills
7 introduced on the effective date of this subsection.

8 **SECTION 12. Effective dates.** This act takes effect on the day after
9 publication, except as follows:

10 (1) The repeal of section 13.0992 of the statutes takes effect on January 1, 2001.

~~SECTION 9135. Nonstatutory provisions; military affairs.~~

~~(*) EMERGENCY MANAGEMENT CONTINGENCY PLANS.~~

Handwritten note: Move to p. 11

13 (a) In this subsection, "electronic computing device" means any computer
14 hardware or software, computer chip, embedded chip, process control equipment or
15 other information system used to capture, store, manipulate or process information,
16 or that controls, monitors or assists in the operation of physical apparatus that relies
17 on automation or digital technology to function.

18 (b) The department of military affairs shall review all of the local emergency
19 management services agency contingency plans for responding to the failure of an
20 electronic computing device to process, transmit or receive data from, into and
21 between the 20th and 21st centuries, and during the years 1999 and 2000, and from
22 leap year calculations. If that review determines that those local emergency
23 management services agency contingency plans are not adequate or need testing, the
24 department of military affairs shall prepare a plan for the funding of one or more
25 counties, cities or villages to test those contingency plans. The adjutant general shall

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submit its findings and plan for funding to the joint committee on finance by the 60th day after the effective date of this paragraph. If the joint committee on finance approves the funding plan, the joint committee on finance may supplement the appropriation under section 20.465 (3) (a) of the statutes from the appropriation under section 20.865 (4) (a) of the statutes. Notwithstanding section 13.101 (3) (a) of the statutes, the joint committee on finance is not required to find that an emergency exists.

8

(END)

John →

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-1083/2dn
PJD-kmg:ijs

JTK

~~December 18, 1998~~

CAC - 1800/P1

JTK, RPN + PJD :

From LRB-1083 :

1. The standard for triggering the requirement for a year 2000 impact statement requires a "significant impact". I'm not sure whether either the LRB or DOA can accurately make that determination at the time of introduction.
2. The language of proposed s. 13.0992 (2) to the effect "that a bill for which a year 2000 impact statement is required or requested may not be heard or reported by a standing committee to which the bill is referred until the statement is received" creates a rule of procedure under article IV, section 8, of the constitution. The supreme court has held that the remedy for noncompliance with this type of provision lies exclusively within the legislative branch. See *State ex rel. La Follette v. Stitt*, 114 Wis. 2d 358, 363-369 (1983). In other words, while this type of provision may be effective to govern internal legislative procedure, the courts will not enforce this type of provision and it does not affect the validity of any enactment resulting from a procedure that may be viewed as contravening the provision.

Atty. Peter J. Dykman
Deputy Chief
266-7098

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-1090/2dn
JTK:jlj:jf

December 11, 1998

from LRB-1090:

1. This draft does not prescribe a penalty for a violation of proposed s. 134.92 (2) by any person who is ordered to provide a 'Y2K' statement; it only prescribes a penalty for an officer, employe or agent, other than a director, of such a person. Is this consistent with your intent? Do you wish to limit the scope of proposed s. 134.92 to persons other than individuals?

2. I did not provide a penalty for failure to provide access to private records, corresponding to the penalty prescribed under s. 196.65 (3) (b) 5., stats., because the draft does not authorize authorities to examine such records. If you intend to permit authorities to examine such records, please let me know. If you do, you may wish to grant them subpoena powers.

3. The instructions did not specify whether access to 'Y2K' information by DOA is to be authorized or required. This draft provides, in proposed s. 134.92 (4) (b), that access to such information by DOA is mandatory if DOA requests access.

4. I have not used the term "special year 2000 data gathering request" in this draft because I did not find it necessary or expedient to use it and also because the term as used in federal law refers to an order rather than a request.

5. This draft incorporates the substance of the federal terms "year 2000 statement" and "year 2000 processing". Note that these terms are very broad, and have the effect of extending the scope of the draft to apply to noncomputer issues.

~~Jeffery T. Kuesel
Assistant Chief Counsel
266-6778~~

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-1090/3dn
JTK:jlg:km

December 14, 1998

6. Application of a penalty to individuals who do not participate in an offense under proposed s. 134.92 (3) (b) may not be enforceable in this state under *Elections Board v. Ward*, 105 Wis.2d 543 (1982). However, this principle should not impair the validity of this paragraph as applied to participants in an offense.

Jeffery T. Kuesel
Assistant Chief Counsel
266-6778

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-1090/4dn
JTK:jl:ijs

December 15, 1998

7. With respect to your concern that 'Y2K' statements should relate only to matters that may contain a 'Y2K' error, the definition of a "year 2000 statement" in proposed s. 134.92 (1) (f) is limited only to matters relating to "year 2000 processing", which is defined in proposed s. 134.92 (1)(e). This language is essentially taken from the federal law. The federal law is broadly drafted. The language in LRB-1091/4 is more specifically directed at computer failures. However, I did not use this language because I understood that you wanted the statements provided for in this draft to correspond to the federal statements so that potentially the same statements can be used to comply with both federal and state law.

Jeffery T. Kuesel
Assistant Chief Counsel
266-6778

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-1090/7dn

JTK:jlg:hmh

Tuesday, December 30, 1998

8. ¶. This draft includes the change you requested which limits the scope of the evidentiary provision to civil actions and proceedings only.
9. ¶. Concerning the change that was made in LRB-1090/6 in the definition of "Year 2000 processing", I realize this change reflects the federal text but I intentionally departed from that text because syntactically it doesn't work. Because "calculating" is included in the definition of "processing" the text results in the following: "Year 2000 processing' means the [calculating, comparing, sequencing, displaying, storing], transmitting or receiving of date data ... from leap year calculations". Also, the federal language extends the scope of the draft beyond the 'Y2K' issue to apply to all leap year calculations regardless of the year to which they apply, past or future. As a result, the relating clause of the draft is no longer accurate. This issue is also present in the other drafts employing this language.

Jeffery T. Kuesel
Assistant Chief Counsel
266-6778

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-1118/P2dn
RPN:cmh&jlg:lp

December 14, 1998

JTK
2

From LRB 1118:

1. I redrafted this proposal with some changes. Wisconsin statutes do not use the term "reckless indifference". I changed that term to what is used in Wisconsin: "reckless disregard". I left out the term "entity" because it adds nothing to the meaning of the draft and is confusing if you look at what it means in a dictionary. (An independent being or existence.) Subsection (1) (b) 4. was added although I cannot find anything like it in the federal law.
2. I had the same problem with sub. (3) (c), which I added as requested, except that this exception creates other problems. This language seems to remove the immunity from everyone, because everyone is going to be compensated for issuing a year 2000 statement. That will be part of the person's job. This language has to be narrowed in some way, but since I do not know your intent, I did not know how to narrow the language.

Robert P. Nelson
~~Senior Legislative Attorney~~
267-7511

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-1118/5dn
RPN:cmh&jlg:jf

JTK

January 14, 1999

3. There appears to be one discrepancy between this draft and LRBs0002. This draft allows the use of a year 2000 statement (which is defined) made by a person who knew the statement was false.... LRBs0002 prohibits a person from making any year 2000 statement (which is not defined as in LRB-1118) which is false.... The definitions create some ambiguity and the knowledge of the person is important in LRB-1118, but not in LRBs0002. Is this okay?

Robert P. Nelson
Senior Legislative Attorney
267-7511

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-1119/P1dn

~~RPN:jlgr:ijs~~

JTK

December 7, 1998

from LRB 1119:

1. Please note that s. 16.47 (2), stats., states that neither house may pass any bill containing an appropriation, increasing the cost of state government or decreasing state revenues by more than \$10,000 annually until both houses pass the executive budget bill, except that the governor or joint committee on finance or, under certain circumstances, the committee on organization of either house may enact emergency appropriation bills prior to the passage of the executive budget bill.
2. Note that if this bill is introduced and enacted as an emergency measure prior to passage of the budget, the appropriation set forth in this bill will be repealed by action of the budget bill (which repeals and recreates the appropriations schedule).

Robert P. Nelson
Senior Legislative Attorney
267-7511

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-1192/1dn
JTK....lp



December 15, 1998

From LRB 1192:

1. Unlike the other 'Y2K' drafts, this draft does not necessarily cover all incorrect dates occurring after the year 2000 because of a year 2000-type failure. For example, it would not cover a date in the year 1901 that is incorrectly substituted for a date in the year 2001 unless the substitution is caused by the failure of a computing device to recognize, process, distinguish or interpret the year 2000. Also, unlike the other drafts, this draft covers only reactive 'Y2K' errors (recognition, processing, distinguishing or interpretation) as opposed to initiation errors (production, generation, calculation). Please let me know if this is not in accord with your intent.

2. This draft initially applies to liability incurred under contracts entered into, extended, modified or renewed on its effective date (so as not to impair preexisting contracts) and to noncontractual injuries occurring on its effective date (so as not to raise a due process issue by retroactively shifting liability for injuries that have already occurred). Please let me know if you intend otherwise.

3. Currently, the major exception to the sovereign immunity bar against state governmental units is to assert that a state governmental officer, employe or agent was negligent in the performance of a ministerial (nondiscretionary) duty. A state or local governmental officer, employe or agent will generally not be found negligent if the officer, employe or agent can show that he or she made a good faith attempt to resolve the problem that results in the allegedly negligent act or omission. This draft overlays this rule of law with a new rule that is narrower, for purposes of certain 'Y2K'-related acts or omissions, in that "good faith" means: a) a remediation plan; and b) a reasonable effort to find and rectify flawed chips. This may have the effect of limiting a finding of good faith under these circumstances if these two elements are not present.

4. You may also wish to consider the following collateral issues:

a. Currently, the state or a local governmental unit may, by contract, absolve itself of 'Y2K' liability. The party with whom the unit contracts must then assume the 'Y2K' risk of the governmental unit. This draft eliminates that option. In some cases, this will mean that the cost of this risk is passed back to the governmental unit by way of increased costs for goods or services provided. Because the party with whom the unit contracts has no way of knowing what the unit's 'Y2K' exposure is, it is possible that it will cost that exposure on the basis of a worst case assumption. If the governmental unit is reasonably confident that it has little or no 'Y2K' exposure, it may therefore find it advantageous not to shift its contractual 'Y2K' liability in order to obtain the best possible price for goods or services.

b. In litigation, damages are of 3 types: 1) general or compensatory (direct, out-of-pocket damages); 2) consequential (indirect damages such as lost profits or increased borrowing costs); and 3) punitive or exemplary (damages awarded as punishment for wrongful conduct). Under ss. 893.80 (3) and 893.82 (6), stats., punitive damages are not recoverable against a local government or a state or local governmental officer, employe or agent. General damages may include payments to which an injured party is now legally entitled such as a governmental benefit or payment in the ordinary course of business. It is possible that denial of all general damages may not be constitutionally enforceable. You may therefore wish to consider limiting 'Y2K' liability for consequential damages only.

c. Under ss. 16.528 and 66.285, stats., the state and local governments must pay interest on payments that are made late as a result of a 'Y2K' problem. This draft deletes this requirement in the situation covered by the draft because where there is no liability there is no liability for interest. Under ss. 814.04 (4) and 815.05 (8), stats., interest is generally recoverable in civil lawsuits from the time that a verdict or decision is made for the recovery of money, or in some cases from the time that offer of settlement is not accepted, until the judgment is paid (recovery of interest in lawsuits against the state is more limited). This draft does not change these laws. Because under this draft it is still possible to recover damages in some 'Y2K' situations, you may wish to provide an exemption for interest recovery in those situations.

d. You may wish to consider placing an expiration (sunset) date on the liability limitation created by this draft in order to provide an incentive for governmental units to remedy 'Y2K' problems within a reasonable period.

~~Jeffery T. Kuesel~~
~~Assistant Chief Counsel~~
~~266-6778~~

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-1192/5dn
JTK:kmg&jlg:jf

2

January 8, 1999

5. Concerning the definition of "remediation plan", as mentioned in the drafter's note to LRB-1090/7, because "calculate" is included in the definition of "process", the text results in the following: "Remediation plan' means a written document ... developed to implement changes to ensure that electronic computing devices will accurately [calculate, compare, sequence, display, store], transmit and receive date data ... from leap year calculations." The syntax in this sentence needs to be corrected. Also, this language extends the scope of the draft beyond the "Y2K" issue to apply to all leap year calculations regardless of the year to which they apply, past or future. As a result, the relating clause of the draft is no longer accurate.

Jeffery T. Kuesel
Assistant Chief Counsel
266-6778

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-1800/P1dn
JTK/RPN/PJD:....jf

January 15, 1999

1. The standard for triggering the requirement for a year 2000 impact statement requires a "significant impact". I'm not sure whether either the LRB or DOA can accurately make that determination at the time of introduction.

2. The language of proposed s. 13.0992 (2) to the effect "that a bill for which a year 2000 impact statement is required or requested may not be heard or reported by a standing committee to which the bill is referred until the statement is received" creates a rule of procedure under article IV, section 8, of the constitution. The supreme court has held that the remedy for noncompliance with this type of provision lies exclusively within the legislative branch. See *State ex rel. La Follette v. Stitt*, 114 Wis. 2d 358, 363-369 (1983). In other words, while this type of provision may be effective to govern internal legislative procedure, the courts will not enforce this type of provision and it does not affect the validity of any enactment resulting from a procedure that may be viewed as contravening the provision.

Atty. Peter J. Dykman
Deputy Chief
266-7098

1. This draft does not prescribe a penalty for a violation of proposed s. 134.92 (2) by any person who is ordered to provide a 'Y2K' statement; it only prescribes a penalty for an officer, employe or agent, other than a director, of such a person. Is this consistent with your intent? Do you wish to limit the scope of proposed s. 134.92 to persons other than individuals?

2. I did not provide a penalty for failure to provide access to private records, corresponding to the penalty prescribed under s. 196.65 (3) (b) 5., stats., because the draft does not authorize authorities to examine such records. If you intend to permit authorities to examine such records, please let me know. If you do, you may wish to grant them subpoena powers.

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4. I have not used the term “special year 2000 data gathering request” in this draft because I did not find it necessary or expedient to use it and also because the term as used in federal law refers to an order rather than a request.

5. This draft incorporates the substance of the federal terms “year 2000 statement” and “year 2000 processing”. Note that these terms are very broad, and have the effect of extending the scope of the draft to apply to noncomputer issues.

6. Application of a penalty to individuals who do not participate in an offense under proposed s. 134.92 (3) (b) may not be enforceable in this state under *Elections Board v. Ward*, 105 Wis.2d 543 (1982). However, this principle should not impair the validity of this paragraph as applied to participants in an offense.

7. With respect to your concern that ‘Y2K’ statements should relate only to matters that may contain a ‘Y2K’ error, the definition of a “year 2000 statement” in proposed s. 134.92 (1) (f) is limited only to matters relating to “year 2000 processing”, which is defined in proposed s. 134.92 (1) (e). This language is essentially taken from the federal law. The federal law is broadly drafted. The language in LRB-1091/4 is more specifically directed at computer failures. However, I did not use this language because I understood that you wanted the statements provided for in this draft to correspond to the federal statements so that potentially the same statements can be used to comply with both federal and state law.

8. This draft includes the change you requested which limits the scope of the evidentiary provision to civil actions and proceedings only.

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Jeffery T. Kuesel
Assistant Chief Counsel
266-6778

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5. Note that if this bill is introduced and enacted as an emergency measure prior to passage of the budget, the appropriation set forth in this bill will be repealed by action of the budget bill (which repeals and recreates the appropriations schedule).

Robert P. Nelson
Senior Legislative Attorney
267-7511

1. Unlike the other 'Y2K' drafts, this draft does not necessarily cover all incorrect dates occurring after the year 2000 because of a year 2000-type failure. For example, it would not cover a date in the year 1901 that is incorrectly substituted for a date in the year 2001 unless the substitution is caused by the failure of a computing device to recognize, process, distinguish or interpret the year 2000. Also, unlike the other drafts, this draft covers only reactive 'Y2K' errors (recognition, processing, distinguishing or interpretation) as opposed to initiation errors (production, generation, calculation). Please let me know if this is not in accord with your intent.

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3. Currently, the major exception to the sovereign immunity bar against state governmental units is to assert that a state governmental officer, employe or agent was negligent in the performance of a ministerial (nondiscretionary) duty. A state or local

governmental officer, employe or agent will generally not be found negligent if the officer, employe or agent can show that he or she made a good faith attempt to resolve the problem that results in the allegedly negligent act or omission. This draft overlays this rule of law with a new rule that is narrower, for purposes of certain 'Y2K'-related acts or omissions, in that "good faith" means: a) a remediation plan; and b) a reasonable effort to find and rectify flawed chips. This may have the effect of limiting a finding of good faith under these circumstances if these two elements are not present.

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a. Currently, the state or a local governmental unit may, by contract, absolve itself of 'Y2K' liability. The party with whom the unit contracts must then assume the 'Y2K' risk of the governmental unit. This draft eliminates that option. In some cases, this will mean that the cost of this risk is passed back to the governmental unit by way of increased costs for goods or services provided. Because the party with whom the unit contracts has no way of knowing what the unit's 'Y2K' exposure is, it is possible that it will cost that exposure on the basis of a worst case assumption. If the governmental unit is reasonably confident that it has little or no 'Y2K' exposure, it may therefore find it advantageous not to shift its contractual 'Y2K' liability in order to obtain the best possible price for goods or services.

b. In litigation, damages are of 3 types: 1) general or compensatory (direct, out-of-pocket damages); 2) consequential (indirect damages such as lost profits or increased borrowing costs); and 3) punitive or exemplary (damages awarded as punishment for wrongful conduct). Under ss. 893.80 (3) and 893.82 (6), stats., punitive damages are not recoverable against a local government or a state or local governmental officer, employe or agent. General damages may include payments to which an injured party is now legally entitled such as a governmental benefit or payment in the ordinary course of business. It is possible that denial of all general damages may not be constitutionally enforceable. You may therefore wish to consider limiting 'Y2K' liability for consequential damages only.

c. Under ss. 16.528 and 66.285, stats., the state and local governments must pay interest on payments that are made late as a result of a 'Y2K' problem. This draft deletes this requirement in the situation covered by the draft because where there is no liability there is no liability for interest. Under ss. 814.04 (4) and 815.05 (8), stats., interest is generally recoverable in civil lawsuits from the time that a verdict or decision is made for the recovery of money, or in some cases from the time that offer of settlement is not accepted, until the judgment is paid (recovery of interest in lawsuits against the state is more limited). This draft does not change these laws. Because under this draft it is still possible to recover damages in some 'Y2K' situations, you may wish to provide an exemption for interest recovery in those situations.

d. You may wish to consider placing an expiration (sunset) date on the liability limitation created by this draft in order to provide an incentive for governmental units to remedy 'Y2K' problems within a reasonable period.

5. Concerning the definition of "remediation plan", as mentioned in the drafter's note to LRB-1090/7, because "calculate" is included in the definition of "process", the text results in the following: "Remediation plan' means a written document ...

developed to implement changes to ensure that electronic computing devices will accurately [calculate, compare, sequence, display, store], transmit and receive date data ... from leap year calculations.” The syntax in this sentence needs to be corrected. Also, this language extends the scope of the draft beyond the “Y2K” issue to apply to all leap year calculations regardless of the year to which they apply, past or future. As a result, the relating clause of the draft is no longer accurate.

Jeffery T. Kuesel
Assistant Chief Counsel
266-6778

1 **ANALYSIS INSERT A:**

This bill provides that no year 2000 processing information is admissible in any civil action or proceeding. This evidentiary exclusion is absolute for any information provided by a person at the request of a governmental unit that has regulatory power over the person. For any other year 2000 processing information, the evidentiary exclusion does not apply if the information is in a

2 **INSERT 10-15:**

3 (2) No information provided to an authority under s. 134.92 (2) is admissible
4 in evidence in any civil action or proceeding.

5 (3) No information contained in a year 2000 statement, other than information
6 covered under sub. (2), is admissible in evidence in any civil action or proceeding,
7 except that this exclusion does not apply to any of the following:



1999 BILL

1 **AN ACT to amend** 19.37 (2), 19.37 (3), 218.015 (7), 560.05 (3) and 775.01; and to
 2 **create** 16.528 (3) (f), 66.285 (4) (f) and 893.83 of the statutes; **relating to:**
 3 **recovery of damages in certain actions against state and local governmental**
 4 **units and officers, employes and agents thereof caused by the incorrect**
 5 **interpretation of dates in the year 2000 and subsequent years.**

Subsib **Analysis by the Legislative Reference Bureau**

Currently, under the common law doctrine of sovereign immunity, the state is immune from lawsuits, except in certain instances in which laws permit the state to be sued or the enforcement of a federal or constitutional right is involved. State authorities and local governmental units do not enjoy such broad immunity, although narrower grants of immunity are provided to such authorities and units under various specific laws. Also, in certain limited circumstances, a state governmental officer, employe or agent may be sued for certain acts or omissions even though a lawsuit arising from the same acts or omissions may not be brought against the governmental unit that the officer, employe or agent serves. A state or local governmental officer, employe or agent who is sued for a negligent action or omission may be protected from liability currently if the officer, employe or agent makes a good faith attempt to resolve the problem that results in the act or omission. No punitive damages (damages not resulting from direct or indirect loss but awarded, instead, as punishment for wrongful conduct) may be awarded in any lawsuit against a state or local governmental officer, employe or agent based upon

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tort (a noncontractual claim based upon alleged wrongful conduct). Damages in tort lawsuits are generally limited to \$250,000 in the case of a state officer, employe or agent, or \$50,000 in the case of a local governmental unit or officer, employe or agent thereof. Currently, with certain exceptions, the state and local governments must pay interest on late payments to vendors.

This bill provides that no person may recover any damages against any state or local governmental unit, including a state authority, or any officer, employe or agent thereof, for any act or omission caused by the failure of an electronic computing device that is under the control of such a unit, officer, employe or agent to process, transmit or receive data from, into and between the 20th and 21st centuries and during the years 1999 and 2000 and from leap year calculations if the unit had a remediation plan in effect at the time of the act or omission that was designed to prevent the failure and the unit or the officer, employe or agent made a reasonable effort to find, identify and replace or correct any electronic computing device that may have contributed to the failure. The bill also voids any contrary provision of a contract entered into on or after the day on which the bill becomes law. In addition, the bill provides that the state and local governments are not required to pay interest to vendors on late payments arising from a "year 2000" failure described above.

~~For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.~~

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

SECTION 1. 16.528 (3) (f) of the statutes is created to read:

16.528 (3) (f) An order or contract to which s. 893.83 applies.

SECTION 2. 19.37 (2) of the statutes is amended to read:

19.37 (2) COSTS, FEES AND DAMAGES. (a) Except as provided in this paragraph and s. 893.83, the court shall award reasonable attorney fees, damages of not less than \$100, and other actual costs to the requester if the requester prevails in whole or in substantial part in any action filed under sub. (1) relating to access to a record or part of a record under s. 19.35 (1) (a). If the requester is a committed or incarcerated person, the requester is not entitled to any minimum amount of damages, but the court may award damages. Costs and fees shall be paid by the authority affected or the unit of government of which it is a part, or by the unit of

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1 government by which the legal custodian under s. 19.33 is employed and may not
2 become a personal liability of any public official.

3 (b) ~~In~~ Except as provided in s. 893.83, in any action filed under sub. (1) relating
4 to access to a record or part of a record under s. 19.35 (1) (am), if the court finds that
5 the authority acted in a wilful or intentional manner, the court shall award the
6 individual actual damages sustained by the individual as a consequence of the
7 failure.

8 **SECTION 3.** 19.37 (3) of the statutes is amended to read:

9 19.37 (3) PUNITIVE DAMAGES. If Except as provided in s. 893.83, if a court finds
10 that an authority or legal custodian under s. 19.33 has arbitrarily and capriciously
11 denied or delayed response to a request or charged excessive fees, the court may
12 award punitive damages to the requester.

13 **SECTION 4.** 66.285 (4) (f) of the statutes is created to read:

14 66.285 (4) (f) An order or contract to which s. 893.83 applies.

15 **SECTION 5.** 218.015 (7) of the statutes is amended to read:

16 218.015 (7) ~~In~~ Except as provided in s. 893.83, in addition to pursuing any other
17 remedy, a consumer may bring an action to recover for any damages caused by a
18 violation of this section. The court shall award a consumer who prevails in such an
19 action twice the amount of any pecuniary loss, together with costs, disbursements
20 and reasonable attorney fees, and any equitable relief the court determines
21 appropriate.

22 **SECTION 6.** 560.05 (3) of the statutes is amended to read:

23 560.05 (3) The Subject to s. 893.83, the state shall be liable for accrued rentals
24 and for any other default under any lease or sublease made under sub. (2)(c) and may
25 be sued therefor on contract as in other contract actions under ch. 775, except that

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SECTION 6

1 it shall not be necessary for the lessor under any such lease or sublease or any
2 assignee of such lessor or any person or other legal entity proceeding on behalf of such
3 lessor to file any claim with the legislature prior to the commencement of any such
4 action.

5 **SECTION 7.** 775.01 of the statutes is amended to read:

6 **775.01 Actions against state; bond.** Upon Except as provided in s. 893.83,
7 upon the refusal of the legislature to allow a claim against the state the claimant may
8 commence an action against the state by service as provided in s. 801.11 (3) and by
9 filing with the clerk of court a bond, not exceeding \$1,000, with 2 or more sureties,
10 to be approved by the attorney general, to the effect that the claimant will indemnify
11 the state against all costs that may accrue in such action and pay to the clerk of court
12 all costs, in case the claimant fails to obtain judgment against the state.

13 **SECTION 8.** 893.83 of the statutes is created to read:

14 **893.83 Claims against state and local governmental units resulting**
15 **from certain incorrect dates.** (1) In this section:

16 (a) "Electronic computing device" means any computer hardware or software,
17 computer chip, embedded chip, process control equipment, or other information
18 system used to capture, store, manipulate, or process information, or that controls,
19 monitors, or assists in the operation of physical apparatus that relies on automation
20 or digital technology to function.

21 (b) "Local governmental unit" means a political subdivision of this state, a
22 special purpose district in this state, an instrumentality or corporation of such a
23 political subdivision or special purpose district, a combination or subunit of any of
24 the foregoing or an instrumentality of the state and any of the foregoing.

25 (c) "Process" includes calculate, compare, sequence, display or store.

INS
9-10

BILL

1 (cm) "Remediation plan" means a written document that includes a listing of
 2 tasks, resources and target milestone dates, developed to implement changes to
 3 ensure that electronic computing devices will accurately process, transmit and
 4 receive date data from, into and between the 20th and 21st centuries and during the
 5 years of 1999 and 2000, and from leap year calculations.

6 (d) "State governmental unit" means this state, and every subunit or
 7 instrumentality of this state, including any institution or authority, regardless of
 8 whether moneys are appropriated to the unit, but does not include a local
 9 governmental unit.

10 (2) No person may maintain an action against any state governmental unit or
 11 local governmental unit, or any officer, employe or agent of such a unit acting in his
 12 or her capacity as an officer, employe or agent, for any damages arising from any
 13 wrongful act or omission caused by the failure of an electronic computing device that
 14 is controlled by such a unit, officer, employe or agent to process, transmit or receive
 15 date data from, into and between the 20th and 21st centuries and during the years
 16 1999 and 2000, and from leap year calculations, if the unit had a remediation plan
 17 in effect at the time of the act or omission that was designed to prevent the failure
 18 and the unit or the officer, employe or agent made a reasonable effort to find, identify
 19 and replace or correct any electronic computing device that may have contributed to
 20 the failure.

21 (3) Any provision of a contract entered into, extended, modified or renewed by
 22 a state governmental unit or local governmental unit on or after the effective date
 23 of this subsection [revisor inserts date], contrary to sub. (2) is void.

24 **SECTION 9. Initial applicability.**

Handwritten notes on the left margin: a vertical arrow pointing downwards, and a circled note containing "PWS 9-6".

BILL

SECTION 9

(#) STATE AND LOCAL GOVERNMENTAL LIABILITY.

1
2
3
4

(1) This act first applies with respect to noncontractual injuries occurring or injuries occurring under contracts entered into, extended, modified or renewed on the effective date of this subsection.

(END)

FWS
12-4

The treatment of sections 6.528(3)(F), 19.37(2),
and (3), 60.285(4)(F), 218.015(7), 560.05(3), 775.01
and 893.83 of the Statutes

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-1800/PJDK/AF/JEO...
all

January 15, 1999

sub 6 Year 2000 impact statements

1. The standard for triggering the requirement for a year 2000 impact statement requires a "significant impact". I'm not sure whether either the LRB or DOA can accurately make that determination at the time of introduction of a bill

2. The language of proposed s. 13.0992 (2) to the effect "that a bill for which a year 2000 impact statement is required or requested may not be heard or reported by a standing committee to which the bill is referred until the statement is received" creates a rule of procedure under article IV, section 8, of the constitution. The supreme court has held that the remedy for noncompliance with this type of provision lies exclusively within the legislative branch. See *State ex rel. La Follette v. Stitt*, 114 Wis. 2d 358, 363-369 (1983). In other words, while this type of provision may be effective to govern internal legislative procedure, the courts will not enforce this type of provision and it does not affect the validity of any enactment resulting from a procedure that may be viewed as contravening the provision.

Atty. Peter J. Dykman
Deputy Chief
266-7098

sub 6 Information gathering

1. This draft does not prescribe a penalty for a violation of proposed s. 134.92 (2) by any person who is ordered to provide a 'Y2K' statement; it only prescribes a penalty for an officer, employe or agent, other than a director, of such a person. Is this consistent with your intent? Do you wish to limit the scope of proposed s. 134.92 to persons other than individuals?

2. I did not provide a penalty for failure to provide access to private records, corresponding to the penalty prescribed under s. 196.65 (3) (b) 5, stats., because the draft does not authorize authorities to examine such records. If you intend to permit authorities to examine such records, please let me know. If you do, you may wish to grant them subpoena powers.

3. The instructions did not specify whether access to 'Y2K' information by DOA is to be authorized or required. This draft provides, in proposed s. 134.92 (4) (b), that access to such information by DOA is mandatory if DOA requests access.



4. I have not used the term "special year 2000 data gathering request" in this draft because I did not find it necessary or expedient to use it and also because the term as used in federal law refers to an order rather than a request.

1. This draft incorporates the substance of the federal terms "year 2000 statement" and "year 2000 processing". Note that these terms are very broad, and have the effect of extending the scope of the draft to apply to noncomputer issues.

with the exception of proposed s. 134.92 (1)(f) 4.

2. Application of a penalty to individuals who do not participate in an offense under proposed s. 134.92 (3) (b) may not be enforceable in this state under *Elections Board v. Ward*, 105 Wis.2d 543 (1982). However, this principle should not impair the validity of this paragraph as applied to participants in an offense.

7. With respect to your concern that Y2K statements should relate only to matters that may contain a Y2K error, the definition of a "year 2000 statement" in proposed s. 134.92 (1) (f) is limited only to matters relating to "year 2000 processing", which is defined in proposed s. 134.92 (1) (e). This language is essentially taken from the federal law. The federal law is broadly drafted. The language in LRB-1091/4 is more specifically directed at computer failures. However, I did not use this language because I understood that you wanted the statements provided for in this draft to correspond to the federal statements so that potentially the same statements can be used to comply with both federal and state law.

8. This draft includes the change you requested which limits the scope of the evidentiary provision to civil actions and proceedings only.

JWS
d3A
Cont

3. Concerning the change that was made in LRB-1090/6 in the definition of "Year 2000 processing", I realize this change reflects the federal text but I intentionally departed from that text because syntactically it doesn't work. Because "calculating" is included in the definition of "processing" the text results in the following: "Year 2000 processing" means the [calculating, comparing, sequencing, displaying, storing], transmitting or receiving of date data ... from leap year calculations". Also, the federal language extends the scope of the draft beyond the Y2K issue to apply to all leap year calculations regardless of the year to which they apply, past or future. As a result, the relating clause of the draft is no longer accurate. This issue is also present in the other drafts employing this language.

(end ins d3A)

Jeffery T. Kuesel
Assistant Chief Counsel
266-6778

subsub

Admissibility of year 2000 and leap year processing statements

1. I redrafted this proposal with some changes. Wisconsin statutes do not use the term "reckless indifference". I changed that term to what is used in Wisconsin: "reckless disregard". I left out the term "entity" because it adds nothing to the meaning of the draft and is confusing if you look at what it means in a dictionary. (An independent being or existence.) Subsection (1)(b) 4. was added although I cannot find anything like it in the federal law.

proposed s. 904.17 (1)(a) ✓

proposed s. 904.17 ✓

2. I had the same problem with ~~sub~~ (3) (c), which I added as requested, except that this exception creates other problems. This language seems to remove the immunity from everyone, because everyone is going to be compensated for issuing a year 2000 statement. That will be part of the person's job. This language has to be narrowed in some way, but since I do not know your intent, I did not know how to narrow the language.

JAS
D-N
1-A ✓

3. There appears to be one discrepancy between this draft and LRBs0002. This draft allows the use of a year 2000 statement (which is defined) made by a person who knew the statement was false.... LRBs0002 prohibits a person from making any year 2000 statement (which is not defined as in LRB-1118) which is false.... The definitions create some ambiguity and the knowledge of the person is important in ~~LRB-1118~~, but not in LRBs0002. Is this okay? *this draft*

4. Please note that s. 16.47 (2), stats., states that neither house may pass any bill containing an appropriation, increasing the cost of state government or decreasing state revenues by more than \$10,000 annually until both houses pass the executive budget bill, except that the governor or joint committee on finance or, under certain circumstances, the committee on organization of either house may enact emergency appropriation bills prior to the passage of the executive budget bill.

5. Note that if this bill is introduced and enacted as an emergency measure prior to passage of the budget, the appropriation set forth in this bill will be repealed by action of the budget bill (which repeals and recreates the appropriations schedule).

JAS
d3A

Robert P. Nelson
Senior Legislative Attorney
267-7511

subsec

Liability for processing failures

1. ~~Unlike the other Y2K drafts, this draft does not necessarily cover all incorrect dates occurring after the year 2000 because of a year 2000-type failure. For example, it would not cover a date in the year 1901 that is incorrectly substituted for a date in the year 2001 unless the substitution is caused by the failure of a computing device to recognize, process, distinguish or interpret the year 2000. Also, unlike the other drafts, this draft covers only reactive 'Y2K' errors (recognition, processing, distinguishing or interpretation) as opposed to initiation errors (production, generation, calculation).~~
Please let me know if this is not in accord with your intent.

2. This draft initially applies to liability incurred under contracts entered into, extended, modified or renewed on its effective date (so as not to impair preexisting contracts) and to noncontractual injuries occurring on its effective date (so as not to raise a due process issue by retroactively shifting liability for injuries that have already occurred). Please let me know if you intend otherwise.

2. Currently, the major exception to the sovereign immunity bar against state governmental units is to assert that a state governmental officer, employe or agent was negligent in the performance of a ministerial (nondiscretionary) duty. A state or local

calculating, comparing, sequencing, displaying, storing, transmitting or receiving

involving the production or generation of data

electronic computing devices ✓

governmental officer, employe or agent will generally not be found negligent if the officer, employe or agent can show that he or she made a good faith attempt to resolve the problem that results in the allegedly negligent act or omission. This draft overlays this rule of law with a new rule that is narrower, for purposes of certain 'Y2K'-related acts or omissions, in that "good faith" means: a) a remediation plan; and b) a reasonable effort to find and rectify flawed chips. This may have the effect of limiting a finding of good faith under these circumstances if these two elements are not present.

4. You may also wish to consider the following collateral issues:

a. Currently, the state or a local governmental unit may, by contract, absolve itself of 'Y2K' liability. The party with whom the unit contracts must then assume the 'Y2K' risk of the governmental unit. This draft eliminates that option. In some cases, this will mean that the cost of this risk is passed back to the governmental unit by way of increased costs for goods or services provided. Because the party with whom the unit contracts has no way of knowing what the unit's 'Y2K' exposure is, it is possible that it will cost that exposure on the basis of a worst case assumption. If the governmental unit is reasonably confident that it has little or no 'Y2K' exposure, it may therefore find it advantageous not to shift its contractual 'Y2K' liability in order to obtain the best possible price for goods or services.

b. In litigation, damages are of 3 types: 1) general or compensatory (direct, out-of-pocket damages); 2) consequential (indirect damages such as lost profits or increased borrowing costs); and 3) punitive or exemplary (damages awarded as punishment for wrongful conduct). Under ss. 893.80 (3) and 893.82 (6), stats., punitive damages are not recoverable against a local government or a state or local governmental officer, employe or agent. General damages may include payments to which an injured party is now legally entitled such as a governmental benefit or payment in the ordinary course of business. It is possible that denial of all general damages may not be constitutionally enforceable. You may therefore wish to consider limiting 'Y2K' liability for consequential damages only.

c. Under ss. 16.528 and 66.285, stats., the state and local governments must pay interest on payments that are made late as a result of a 'Y2K' problem. This draft deletes this requirement in the situation covered by the draft because where there is no liability there is no liability for interest. Under ss. 814.04 (4) and 815.05 (8), stats., interest is generally recoverable in civil lawsuits from the time that a verdict or decision is made for the recovery of money, or in some cases from the time that offer of settlement is not accepted, until the judgment is paid (recovery of interest in lawsuits against the state is more limited). This draft does not change these laws. Because under this draft it is still possible to recover damages in some 'Y2K' situations, you may wish to provide an exemption for interest recovery in those situations.

d. You may wish to consider placing an expiration (sunset) date on the liability limitation created by this draft in order to provide an incentive for governmental units to remedy 'Y2K' problems within a reasonable period.

5. Concerning the definition of "remediation plan", as mentioned in the drafter's note to LRB-1090/7, because "calculate" is included in the definition of "process", the text results in the following: "Remediation plan' means a written document ...

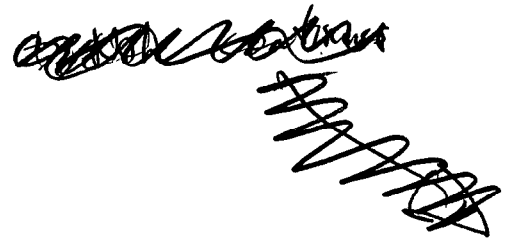
the term

the term

'Y2K'

developed to implement changes to ensure that electronic computing devices will accurately [calculate, compare, sequence, display, store], transmit and receive date data ... from leap year calculations." The syntax in this sentence needs to be corrected. Also, this language extends the scope of the draft beyond the "Y2K" issue to apply to all leap year calculations regardless of the year to which they apply, past or future. ~~As a result, the relating clause of the draft is no longer accurate.~~

Jeffery T. Kuesel
Assistant Chief Counsel
266-6778

Handwritten signature and scribbles, likely representing the signature of Jeffery T. Kuesel.

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-1800/P2dnins
RPN & JEO:.....

INSERT D-NOTE 1-A:

3. ~~M~~ There are no exceptions to the evidentiary exclusion created for information provided to authorities under proposed s. 134.92 (2).[✓] At the same time, there *are* exceptions to the evidentiary exclusion created for year 2000 statements generally under proposed s. 904.17, as it was originally drafted. This draft combines the two exclusions and maintains the total exclusion of information provided to authorities under proposed s. 134.92 (2) as well as the exceptions to the exclusion for all other year 2000 statements. *See* proposed s. 904.17 (2) and (3).[✓] Is that your intent, or should the exceptions under proposed s. 940.17 (3) also apply to information provided to authorities under proposed s. 134.92 (2)?

Do you intend to require exclusion of the *information* provided in statements made to authorities, or do you intend only to prevent a civil litigant from getting at those statements during the civil litigation discovery process? By creating a blanket exclusion for *information* provided in statements to authorities, a person could bury all unfavorable information about its year 2000 preparations in a statement to an authority and then the information could never be used in a civil proceeding, no matter how false or misleading and no matter whether the information is available from sources other than the statement made to an authority.

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-1800/P27n
ALL:all:lp

January 18, 1999

~~Chg draft
3/1/99~~

~~PLB~~
1

Year 2000 impact statements

1. The standard for triggering the requirement for a year 2000 impact statement requires a "significant impact". I'm not sure whether either the LRB or DOA can accurately make that determination at the time of introduction of a bill.

2. The language of proposed s. 13.0992 (2) to the effect "that a bill for which a year 2000 impact statement is required or requested may not be heard or reported by a standing committee to which the bill is referred until the statement is received" creates a rule of procedure under article IV, section 8, of the constitution. The supreme court has held that the remedy for noncompliance with this type of provision lies exclusively within the legislative branch. See *State ex rel. La Follette v. Stitt*, 114 Wis. 2d 358, 363-369 (1983). In other words, while this type of provision may be effective to govern internal legislative procedure, the courts will not enforce this type of provision and it does not affect the validity of any enactment resulting from a procedure that may be viewed as contravening the provision.

Atty. Peter J. Dykman
Deputy Chief
266-7098

Admissibility of year 2000 and leap year processing statements

1. ~~I redrafted this proposal with some changes.~~ Wisconsin statutes do not use the term "reckless indifference". I changed that term to what is used in Wisconsin: "reckless disregard". I left out the term "entity" because it adds nothing to the meaning of the draft and is confusing if you look at what it means in a dictionary. (An independent being or existence.) Proposed s. 904.17 (1) (d) 4. was added although I cannot find anything like it in the federal law.

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and by providing for the limited admissibility

narrowed in some way, but since I do not know your intent, I did not know how to narrow the language.

3. There are no exceptions to the evidentiary exclusion created for information provided to authorities under proposed s. 134.92 (2). At the same time, there are exceptions to the evidentiary exclusion created for year 2000 statements generally under proposed s. 904.17, as it was originally drafted. This draft combines the two exclusions and maintains the total exclusion of information provided to authorities under proposed s. 134.92 (2) as well as the exceptions to the exclusion for all other year 2000 statements. See proposed s. 904.17 (2) and (3). Is that your intent, or should the exceptions under proposed s. 940.17 (3) also apply to information provided to authorities under proposed s. 134.92 (2)?

Do you intend to require exclusion of the information provided in statements made to authorities, or do you intend only to prevent a civil litigant from getting at those statements during the civil litigation discovery process? By creating a blanket exclusion for information provided in statements to authorities, a person could bury all unfavorable information about its year 2000 preparations in a statement to an authority and then the information could never be used in a civil proceeding, no matter how false or misleading and no matter whether the information is available from sources other than the statement made to an authority.

by maintaining

circumstances for admitting year 2000 state-ments

Robert P. Nelson
Senior Legislative Attorney
267-7511

Information gathering

1. This draft incorporates the federal terms "year 2000 statement" and "year 2000 processing" with the exception of proposed s. 134.92 (1) (f) 4. Note that these terms are very broad, and have the effect of extending the scope of the draft to apply to noncomputer issues.

2. Application of a penalty to individuals who do not participate in an offense under proposed s. 134.92 (3) (b) may not be enforceable in this state under *Elections Board v. Ward*, 105 Wis.2d 543 (1982). However, this principle should not impair the validity of this paragraph as applied to actual participants in an offense.

3. Concerning the definition of "Year 2000 processing", I realize this change reflects the federal text but syntactically it doesn't work. Because "calculating" is included in the definition of "processing" the text results in the following: "Year 2000 processing" means the [calculating, comparing, sequencing, displaying, storing], transmitting or receiving of date data ... from leap year calculations". Also, the federal language extends the scope of the draft beyond the 'Y2K' issue to apply to all leap year calculations regardless of the year to which they apply, past or future.

Liability for processing failures

1. This draft covers only reactive 'Y2K' errors (processing, calculating comparing, sequencing, displaying, storing, transmitting or receiving) as opposed to errors

involving the production or generation of data. Please let me know if this is not in accord with your intent.

2. Currently, the major exception to the sovereign immunity bar against state governmental units is to assert that a state governmental officer, employe or agent was negligent in the performance of a ministerial (nondiscretionary) duty. A state or local governmental officer, employe or agent will generally not be found negligent if the officer, employe or agent can show that he or she made a good faith attempt to resolve the problem that results in the allegedly negligent act or omission. This draft overlays this rule of law with a new rule that is narrower, for purposes of certain 'Y2K'-related acts or omissions, in that "good faith" means: a) a remediation plan; and b) a reasonable effort to find and rectify flawed electronic computing devices. This may have the effect of limiting a finding of good faith under these circumstances if these two elements are not present.

4. You may also wish to consider the following collateral issues:

a. Currently, the state or a local governmental unit may, by contract, absolve itself of 'Y2K' liability. The party with whom the unit contracts must then assume the 'Y2K' risk of the governmental unit. This draft eliminates that option. In some cases, this will mean that the cost of this risk is passed back to the governmental unit by way of increased costs for goods or services provided. Because the party with whom the unit contracts has no way of knowing what the unit's 'Y2K' exposure is, it is possible that it will cost that exposure on the basis of a worst case assumption. If the governmental unit is reasonably confident that it has little or no 'Y2K' exposure, it may therefore find it advantageous not to shift its contractual 'Y2K' liability in order to obtain the best possible price for goods or services.

b. In litigation, damages are of 3 types: 1) general or compensatory (direct, out-of-pocket damages); 2) consequential (indirect damages such as lost profits or increased borrowing costs); and 3) punitive or exemplary (damages awarded as punishment for wrongful conduct). Under ss. 893.80 (3) and 893.82 (6), stats., punitive damages are not recoverable against a local government or a state or local governmental officer, employe or agent. General damages may include payments to which an injured party is now legally entitled such as a governmental benefit or payment in the ordinary course of business. It is possible that denial of all general damages may not be constitutionally enforceable. You may therefore wish to consider limiting 'Y2K' liability for consequential damages only.

c. Under ss. 16.528 and 66.285, stats., the state and local governments must pay interest on payments that are made late as a result of a 'Y2K' problem. This draft deletes this requirement in the situation covered by the draft because where there is no liability there is no liability for interest. Under ss. 814.04 (4) and 815.05 (8), stats., interest is generally recoverable in civil lawsuits from the time that a verdict or decision is made for the recovery of money, or in some cases from the time that offer of settlement is not accepted, until the judgment is paid (recovery of interest in lawsuits against the state is more limited). This draft does not change these laws. Because under this draft it is still possible to recover damages in some 'Y2K' situations, you may wish to provide an exemption for interest recovery in those situations.

d. You may wish to consider placing an expiration (sunset) date on the liability limitation created by this draft in order to provide an incentive for governmental units to remedy 'Y2K' problems within a reasonable period.

5. Concerning the definition of "remediation plan", because the term "calculate" is included in the definition of the term "process", the text results in the following: "Remediation plan' means a written document ... developed to implement changes to ensure that electronic computing devices will accurately [calculate, compare, sequence, display, store], transmit and receive date data ... from leap year calculations." The syntax in this sentence needs to be corrected. Also, this language extends the scope of the draft beyond the 'Y2K' issue to apply to all leap year calculations regardless of the year to which they apply, past or future.

Jeffery T. Kuesel
Assistant Chief Counsel
266-6778

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-1800/1dn
ALL:all:jf

January 19, 1999

Admissibility of year 2000 and leap year processing statements

1. Wisconsin statutes do not use the term “reckless indifference”. I changed that term to what is used in Wisconsin: “reckless disregard”. I left out the term “entity” because it adds nothing to the meaning of the draft and is confusing if you look at what it means in a dictionary. (An independent being or existence.) Proposed s. 904.17 (1) (d) 4. was added although I cannot find anything like it in the federal law.

2. There are no exceptions to the evidentiary exclusion created for information provided to authorities under proposed s. 134.92 (2). At the same time, there *are* exceptions to the evidentiary exclusion created for year 2000 statements generally under proposed s. 904.17, as it was originally drafted. This draft combines the two exclusions by maintaining the total exclusion of information provided to authorities under proposed s. 134.92 (2) and by providing for the limited admissibility for all other year 2000 statements. See proposed s. 904.17 (2) and (3). Is that your intent, or should the circumstances for admitting year 2000 statements under proposed s. 940.17 (3) also apply to information provided to authorities under proposed s. 134.92 (2)?

Do you intend to require exclusion of the *information* provided in statements made to authorities, or do you intend only to prevent a civil litigant from getting at those statements during the civil litigation discovery process? By creating a blanket exclusion for *information* provided in statements to authorities, a person could bury all unfavorable information about its year 2000 preparations in a statement to an authority and then the information could never be used in a civil proceeding, no matter how false or misleading and no matter whether the information is available from sources other than the statement made to an authority.

Robert P. Nelson
Senior Legislative Attorney
267-7511

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Jeffery T. Kuesel
Assistant Chief Counsel
266-6778

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-1800/P2dn
ALL:all:lp

January 18, 1999

Year 2000 impact statements

1. The standard for triggering the requirement for a year 2000 impact statement requires a "significant impact". I'm not sure whether either the LRB or DOA can accurately make that determination at the time of introduction of a bill.

2. The language of proposed s. 13.0992 (2) to the effect "that a bill for which a year 2000 impact statement is required or requested may not be heard or reported by a standing committee to which the bill is referred until the statement is received" creates a rule of procedure under article IV, section 8, of the constitution. The supreme court has held that the remedy for noncompliance with this type of provision lies exclusively within the legislative branch. See *State ex rel. La Follette v. Stitt*, 114 Wis. 2d 358, 363-369 (1983). In other words, while this type of provision may be effective to govern internal legislative procedure, the courts will not enforce this type of provision and it does not affect the validity of any enactment resulting from a procedure that may be viewed as contravening the provision.

Atty. Peter J. Dykman
Deputy Chief
266-7098

Admissibility of year 2000 and leap year processing statements

1. I redrafted this proposal with some changes. Wisconsin statutes do not use the term "reckless indifference". I changed that term to what is used in Wisconsin: "reckless disregard". I left out the term "entity" because it adds nothing to the meaning of the draft and is confusing if you look at what it means in a dictionary. (An independent being or existence.) Proposed s. 904.17 (1) (d) 4. was added although I cannot find anything like it in the federal law.

2. I had the same problem with proposed s. 904.17 (3) (c), which I added as requested, except that this exception creates other problems. This language seems to remove the immunity from everyone, because everyone is going to be compensated for issuing a year 2000 statement. That will be part of the person's job. This language has to be

narrowed in some way, but since I do not know your intent, I did not know how to narrow the language.

3. There are no exceptions to the evidentiary exclusion created for information provided to authorities under proposed s. 134.92 (2). At the same time, there *are* exceptions to the evidentiary exclusion created for year 2000 statements generally under proposed s. 904.17, as it was originally drafted. This draft combines the two exclusions and maintains the total exclusion of information provided to authorities under proposed s. 134.92 (2) as well as the exceptions to the exclusion for all other year 2000 statements. See proposed s. 904.17 (2) and (3). Is that your intent, or should the exceptions under proposed s. 904.17 (3) also apply to information provided to authorities under proposed s. 134.92 (2)?

Do you intend to require exclusion of the *information* provided in statements made to authorities, or do you intend only to prevent a civil litigant from getting at those statements during the civil litigation discovery process? By creating a blanket exclusion for *information* provided in statements to authorities, a person could bury all unfavorable information about its year 2000 preparations in a statement to an authority and then the information could never be used in a civil proceeding, no matter how false or misleading and no matter whether the information is available from sources other than the statement made to an authority.

Robert P. Nelson
Senior Legislative Attorney
267-7511

Information gathering

1. This draft incorporates the federal terms “year 2000 statement” and “year 2000 processing” with the exception of proposed s. 134.92 (1) (f) 4. Note that these terms are very broad, and have the effect of extending the scope of the draft to apply to noncomputer issues.

2. Application of a penalty to individuals who do not participate in an offense under proposed s. 134.92 (3) (b) may not be enforceable in this state under *Elections Board v. Ward*, 105 Wis.2d 543 (1982). However, this principle should not impair the validity of this paragraph as applied to actual participants in an offense.

3. Concerning the definition of “Year 2000 processing”, I realize this change reflects the federal text but syntactically it doesn’t work. Because “calculating” is included in the definition of “processing” the text results in the following: “Year 2000 processing’ means the [calculating, comparing, sequencing, displaying, storing], transmitting or receiving of date data ... from leap year calculations”. Also, the federal language extends the scope of the draft beyond the ‘Y2K’ issue to apply to all leap year calculations regardless of the year to which they apply, past or future.

Liability for processing failures

1. This draft covers only reactive ‘Y2K’ errors (processing, calculating comparing, sequencing, displaying, storing, transmitting or receiving) as opposed to errors

involving the production or generation of data. Please let me know if this is not in accord with your intent.

2. Currently, the major exception to the sovereign immunity bar against state governmental units is to assert that a state governmental officer, employe or agent was negligent in the performance of a ministerial (nondiscretionary) duty. A state or local governmental officer, employe or agent will generally not be found negligent if the officer, employe or agent can show that he or she made a good faith attempt to resolve the problem that results in the allegedly negligent act or omission. This draft overlays this rule of law with a new rule that is narrower, for purposes of certain 'Y2K'-related acts or omissions, in that "good faith" means: a) a remediation plan; and b) a reasonable effort to find and rectify flawed electronic computing devices. This may have the effect of limiting a finding of good faith under these circumstances if these two elements are not present.

4. You may also wish to consider the following collateral issues:

a. Currently, the state or a local governmental unit may, by contract, absolve itself of 'Y2K' liability. The party with whom the unit contracts must then assume the 'Y2K' risk of the governmental unit. This draft eliminates that option. In some cases, this will mean that the cost of this risk is passed back to the governmental unit by way of increased costs for goods or services provided. Because the party with whom the unit contracts has no way of knowing what the unit's 'Y2K' exposure is, it is possible that it will cost that exposure on the basis of a worst case assumption. If the governmental unit is reasonably confident that it has little or no 'Y2K' exposure, it may therefore find it advantageous not to shift its contractual 'Y2K' liability in order to obtain the best possible price for goods or services.

b. In litigation, damages are of 3 types: 1) general or compensatory (direct, out-of-pocket damages); 2) consequential (indirect damages such as lost profits or increased borrowing costs); and 3) punitive or exemplary (damages awarded as punishment for wrongful conduct). Under ss. 893.80 (3) and 893.82 (6), stats., punitive damages are not recoverable against a local government or a state or local governmental officer, employe or agent. General damages may include payments to which an injured party is now legally entitled such as a governmental benefit or payment in the ordinary course of business. It is possible that denial of all general damages may not be constitutionally enforceable. You may therefore wish to consider limiting 'Y2K' liability for consequential damages only.

c. Under ss. 16.528 and 66.285, stats., the state and local governments must pay interest on payments that are made late as a result of a 'Y2K' problem. This draft deletes this requirement in the situation covered by the draft because where there is no liability there is no liability for interest. Under ss. 814.04 (4) and 815.05 (8), stats., interest is generally recoverable in civil lawsuits from the time that a verdict or decision is made for the recovery of money, or in some cases from the time that offer of settlement is not accepted, until the judgment is paid (recovery of interest in lawsuits against the state is more limited). This draft does not change these laws. Because under this draft it is still possible to recover damages in some 'Y2K' situations, you may wish to provide an exemption for interest recovery in those situations.

d. You may wish to consider placing an expiration (sunset) date on the liability limitation created by this draft in order to provide an incentive for governmental units to remedy 'Y2K' problems within a reasonable period.

5. Concerning the definition of "remediation plan", because the term "calculate" is included in the definition of the term "process", the text results in the following: "Remediation plan' means a written document ... developed to implement changes to ensure that electronic computing devices will accurately [calculate, compare, sequence, display, store], transmit and receive date data ... from leap year calculations." The syntax in this sentence needs to be corrected. Also, this language extends the scope of the draft beyond the 'Y2K' issue to apply to all leap year calculations regardless of the year to which they apply, past or future.

Jeffery T. Kuesel
Assistant Chief Counsel
266-6778

Barman, Mike

From: Barman, Mike
Sent: Tuesday, January 19, 1999 9:08 AM
To: Conley, Julie
Cc: Kuesel, Jeffery
Subject: LRB 99-1800/P2 ... "Relating To"

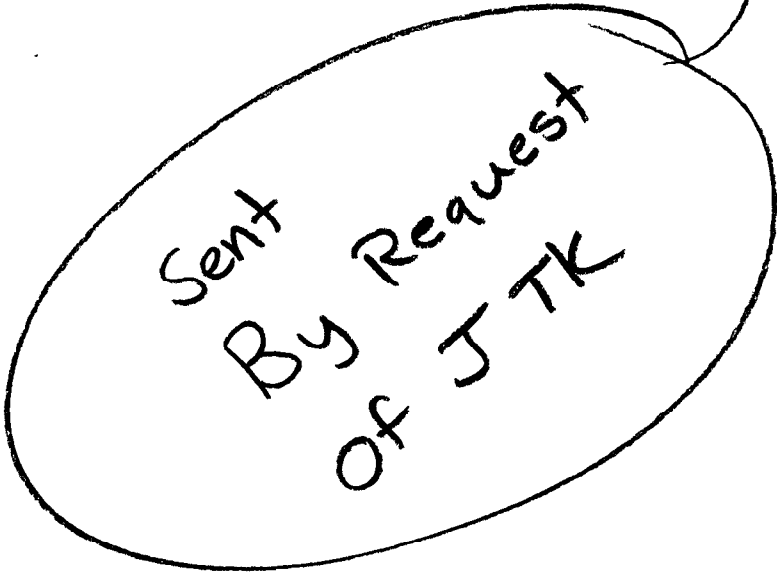
LRB-1800/P2

Drafter: ALL

1999 - 2000 LEGISLATURE

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

AN ACT to repeal 13.0992; to amend 19.37 (2), 19.37 (3), 134.99 (1), 218.015 (7), 560.05 (3) and 775.01; and to create 13.0992, 16.528 (3) (f), 66.285 (4) (f), 134.92, 893.83 and 904.17 of the statutes; **relating to:** gathering of information by state and local governmental officers and agencies concerning year 2000 and leap year-related processing and public access to such information; recovery of damages in certain actions against state and local governmental units and officers, employes and agents thereof caused by the incorrect processing, transmittal or receipt of certain date data; admissibility of statements regarding the year 2000 processing capabilities of a product or service; preparation of year 2000 impact statements; educational outreach concerning year 2000 and leap year-related computer failures; testing of local emergency contingency plans for responding to year 2000 computer problems; granting rule-making authority; and providing a penalty.



Sent
By Request
Of JTK



State of Wisconsin
1999 - 2000 LEGISLATURE

LRB-1800/P2
ALL:all:lp

New

D-Note

~~PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION~~

Regen

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6 damages in certain actions against state and local governmental units and
7 officers, employes and agents thereof caused by the incorrect processing;
8 transmittal or receipt of certain date data; admissibility of statements
9 regarding the year 2000 processing capabilities of a product or service;
10 preparation of year 2000 impact statements; educational outreach concerning
11 year 2000 and leap year-related computer failures; testing of local emergency

1 contingency plans for responding to year 2000 computer problems; granting
2 rule-making authority; and providing a penalty.

Analysis by the Legislative Reference Bureau

Information Gathering

This bill permits any state or local governmental unit which or officer who has regulatory power over any person to require that person to provide to the unit or officer information relating to year 2000 processing. Year 2000 processing information includes any communication made by the person to any other person or persons: 1) concerning an assessment, projection or estimate relating to, or plans, objectives or timetables for implementing or verifying year 2000 processing capabilities of an entity, product, service or set of products or services; 2) concerning test plans, dates or results, or operational problems or solutions related to year 2000 processing by products or services that incorporate or otherwise utilize products; 3) concerning the correction or avoidance of a year 2000 processing failure in computer hardware, a computer system, a component of a computer system, a computer program or software or services utilizing any computer hardware, system, component, program or software or services; or 4) reviewing, commenting on, or otherwise directly or indirectly relating to year 2000 processing capabilities. The information may only pertain to a matter relating to public health or safety that is regulated by that authority or a matter relating to public health or safety that has an effect upon a matter that is regulated by that authority. The bill defines "year 2000 processing" as processing, transmitting or receiving data from, into and between the 20th and 21st centuries and during the years 1999 and 2000, and from leap year calculations. Currently, no such authority exists.

Under the bill, if any business fails to provide the information required, knowingly gives a false answer to a request for information or evades the answer to any request for information, each director, partner or proprietor of that business is subject to a forfeiture (civil penalty) of \$100 for each offense. Each day of violation constitutes a separate offense.

The bill requires each state or local governmental unit which or officer who receives information under the bill to withhold from access all information provided to the unit or officer under the public records access law, except that the unit or officer must provide the information to the department of administration (DOA) upon written request of the department and may, upon written consent of a person who provides information to the unit or officer, provide the information to another specified person or to any person.

This bill provides that no year 2000 processing information is admissible in any civil action or proceeding. ~~This evidentiary exclusion is absolute for any information provided by a person at the request of a governmental unit that has regulatory power over the person's ~~and~~ any other year 2000 processing information, ~~the evidentiary exclusion does not apply~~ if the information is in a statement made by a person who knew that the statement was false, misleading or deceptive or that was made with~~

rule

may be offered in evidence only ✓

if the information is in

or deceptive

reckless disregard as to the truth or falsity of the statement, ~~to~~ a republished year 2000 statement that the person who republished the statement knew was false, ~~inaccurate or misleading, to~~ a statement made by a person who was compensated for providing a year 2000 statement as part of a contractual service or made by a person when soliciting a consumer, or ~~to~~ any action brought by the state or a local governmental unit acting in regulatory, supervisory or enforcement capacity.

if the information is offered in

State and local governmental liability

Currently, under the common law doctrine of sovereign immunity, the state is immune from lawsuits, except in certain instances in which laws permit the state to be sued or the enforcement of a federal or constitutional right is involved. State authorities and local governmental units do not enjoy such broad immunity, although narrower grants of immunity are provided to such authorities and units under various specific laws. Also, in certain limited circumstances, a state governmental officer, employe or agent may be sued for certain acts or omissions even though a lawsuit arising from the same acts or omissions may not be brought against the governmental unit that the officer, employe or agent serves. A state or local governmental officer, employe or agent who is sued for a negligent action or omission may be protected from liability currently if the officer, employe or agent makes a good faith attempt to resolve the problem that results in the act or omission. No punitive damages (damages not resulting from direct or indirect loss but awarded, instead, as punishment for wrongful conduct) may be awarded in any lawsuit against a state or local governmental officer, employe or agent based upon tort (a noncontractual claim based upon alleged wrongful conduct). Damages in tort lawsuits are generally limited to \$250,000 in the case of a state officer, employe or agent, or \$50,000 in the case of a local governmental unit or officer, employe or agent thereof. Currently, with certain exceptions, the state and local governments must pay interest on late payments to vendors.

This bill provides that no person may recover any damages against any state or local governmental unit, including a state authority, or any officer, employe or agent thereof, for any act or omission caused by the failure of an electronic computing device that is under the control of such a unit, officer, employe or agent to process, transmit or receive data from, into and between the 20th and 21st centuries and during the years 1999 and 2000 and from leap year calculations if the unit had a remediation plan in effect at the time of the act or omission that was designed to prevent the failure and the unit or the officer, employe or agent made a reasonable effort to find, identify and replace or correct any electronic computing device that may have contributed to the failure. The bill also voids any contrary provision of a contract entered into on or after the day on which the bill becomes law. In addition, the bill provides that the state and local governments are not required to pay interest to vendors on late payments arising from a "year 2000" failure described above.

Year 2000 impact statements

This bill provides that whenever a bill is introduced in either house of the legislature that would have an impact on the ability of a state governmental unit, a local governmental unit or any other person to avoid a year 2000 problem, as defined in the bill, the speaker of the assembly or president of the senate may require that

X

X

a year 2000 impact statement be prepared by DOA. The statement describes the impact upon the year 2000 problem that would result from enactment of the bill.

Educational outreach

This bill permits DOA to contract with one or more private contractors to provide educational outreach with respect to the potential failure of computers to process, transmit or receive data from, into and between the 20th and 21st centuries and during the years 1999 and 2000 and from leap year calculations, and the methods of correction and contingency planning for such failures. Under the bill, DOA has discretion to determine the persons to whom the outreach is to be provided.

Currently, DOA has no authority or responsibility to conduct outreach for this purpose. Under current law, state agencies may contract for services that they are authorized or required to provide if the services can be provided more economically or efficiently by contract, subject to certain statutory requirements, rules of DOA and collective bargaining laws and agreements. State agencies must justify the need for contractual service procurements. This bill provides that certain of these statutes and rules do not apply to the contractual services that DOA is permitted to procure under the bill.

Emergency management contingency plans

Under current law, the adjutant general, as the head of the department of military affairs (DMA), is required to develop and promulgate a statewide plan of emergency management for the security of persons and property and to provide training to and standards for local emergency management services agencies.

This bill requires DMA to review all of the local emergency management services agency contingency plans for responding to the failure of a computer to handle and correctly interpret year 2000 data. If DMA determines that those plans are inadequate or in need of testing, the bill authorizes DMA to prepare a plan for the funding of a local governmental unit to test those contingency plans and to submit that funding plan to the joint committee on finance. The bill allows the joint committee on finance to supplement DMA appropriations to implement the testing of the contingency plans.

For further information see the ***state and local*** fiscal estimate, which will be printed as an appendix to this bill.

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

- 1 **SECTION 1.** 13.0992 of the statutes is created to read:
- 2 **13.0992 Review of bills impacting on year 2000 problem. (1)**
- 3 **DEFINITIONS.** In this section:
- 4 (a) “Department” means the department of administration.

1 (b) "Electronic computing device" means any computer hardware or software,
2 computer chip, embedded chip, process control equipment or other information
3 system used to capture, store, manipulate or process information, or that controls,
4 monitors or assists in the operation of physical apparatus that relies on automation
5 or digital technology to function.

6 (c) "Local governmental unit" means a political subdivision of this state, a
7 special purpose district in this state, an instrumentality or corporation of such a
8 political subdivision or special purpose district or a combination or subunit of any of
9 the foregoing or an instrumentality of the state and any of the foregoing.

10 (d) "Processing" includes calculating, comparing, sequencing, displaying or
11 storing.

12 (e) "State governmental unit" means this state, and every subunit or
13 instrumentality of this state, including any institution or authority, regardless of
14 whether moneys are appropriated to the unit.

15 (f) "Year 2000 problem" means a failure in year 2000 processing of an electronic
16 computing device.

17 (g) "Year 2000 processing" means the processing, transmitting or receiving of
18 date data from, into, and between the 20th and 21st centuries and during the years
19 1999 and 2000, and from leap year calculations.

20 (2) REPORT ON BILLS IMPACTING ON YEAR 2000 PROBLEM. (a) Whenever a bill is
21 introduced in either house of the legislature that would have an impact on the ability
22 of a state governmental unit, a local governmental unit or any other person to avoid
23 a year 2000 problem, the department, upon the request of the speaker of the
24 assembly or the president of the senate, shall prepare a report on the bill within 5
25 working days of the request. The department shall request information from any

1 individual, organization or state or local governmental unit that the department
2 considers likely to be affected by the bill, if enacted. Individuals, organizations and
3 state and local governmental units shall comply with requests by the department for
4 information that is reasonably necessary for the department to prepare the report.
5 To the greatest extent possible, reports under this section shall be based on the
6 information obtained by the department from individuals, organizations and state
7 and local governmental units under this paragraph.

8 (b) The report prepared under this section shall be printed as an appendix to
9 that applicable bill and shall be distributed in the same manner as amendments.

10 (3) FINDINGS OF THE DEPARTMENT TO BE CONTAINED IN THE REPORT. The report of
11 the department shall contain the following information:

12 (a) A statement of the year 2000 problem affected by the bill, including all of
13 the following:

- 14 1. Whether current law creates a hardship and, if so, the degree of the hardship.
- 15 2. The costs associated with complying with current law and any anticipated
16 savings likely to result from the bill, if enacted.
- 17 3. Whether any other efforts have been made to resolve the year 2000 problem
18 affected by the bill.
- 19 4. The degree of control by those affected by the bill over the year 2000 problem
20 affected by the bill.

21 (b) A description of the proposed effect of the bill, if enacted, on the year 2000
22 problem.

23 (c) Any other special considerations concerning the effect of the bill, such as the
24 frequency of use of the proposed change and the support and involvement of

1 businesses, industries, state governmental units and local governmental units
2 affected by the proposed change.

3 (4) RULE-MAKING AUTHORITY. The department may promulgate any rules
4 necessary for the administration of this section.

5 SECTION 2. 13.0992 of the statutes, as created by 1999 Wisconsin Act (this
6 act), is repealed.

7 SECTION 3. 16.528 (3) (f) of the statutes is created to read:

8 16.528 (3) (f) An order or contract to which s. 893.83 applies.

9 SECTION 4. 19.37 (2) of the statutes is amended to read:

10 19.37 (2) COSTS, FEES AND DAMAGES. (a) Except as provided in this paragraph
11 and s. 893.83, the court shall award reasonable attorney fees, damages of not less
12 than \$100, and other actual costs to the requester if the requester prevails in whole
13 or in substantial part in any action filed under sub. (1) relating to access to a record
14 or part of a record under s. 19.35 (1) (a). If the requester is a committed or
15 incarcerated person, the requester is not entitled to any minimum amount of
16 damages, but the court may award damages. Costs and fees shall be paid by the
17 authority affected or the unit of government of which it is a part, or by the unit of
18 government by which the legal custodian under s. 19.33 is employed and may not
19 become a personal liability of any public official.

20 (b) ~~In~~ Except as provided in s. 893.83, in any action filed under sub. (1) relating
21 to access to a record or part of a record under s. 19.35 (1) (am), if the court finds that
22 the authority acted in a wilful or intentional manner, the court shall award the
23 individual actual damages sustained by the individual as a consequence of the
24 failure.

25 SECTION 5. 19.37 (3) of the statutes is amended to read:

1 19.37 (3) PUNITIVE DAMAGES. ~~If~~ Except as provided in s. 893.83, if a court finds
2 that an authority or legal custodian under s. 19.33 has arbitrarily and capriciously
3 denied or delayed response to a request or charged excessive fees, the court may
4 award punitive damages to the requester.

5 **SECTION 6.** 66.285 (4) (f) of the statutes is created to read:

6 66.285 (4) (f) An order or contract to which s. 893.83 applies.

7 **SECTION 7.** 134.92 of the statutes is created to read:

8 **134.92 Year 2000 processing information. (1)** In this section:

9 (a) “Agent” means an authorized person, other than a director, officer or
10 employe, who acts on behalf of or at the direction of another person.

11 (b) “Authority” has the meaning given in s. 19.32 (1).

12 (c) “Processing” includes calculating, comparing, sequencing, displaying or
13 storing.

14 (d) “Regulatory power” means the power to authorize or require a specific class
15 of persons to perform certain acts.

16 (e) “Year 2000 processing” means the processing, transmitting or receiving of
17 date data from, into, and between the 20th and 21st centuries and during the years
18 1999 and 2000, and from leap year calculations.

19 (f) “Year 2000 statement” means any communication or other conveyance of
20 information by a person to another person or to the public, in any form or medium,
21 including a computer program:

22 1. Concerning an assessment, projection or estimate relating to year 2000
23 processing capabilities of an entity, product, service or set of products and services.

1 2. Concerning plans, objectives, or timetables for implementing or verifying the
2 year 2000 processing capabilities of an entity, product, service or set of products and
3 services.

4 3. Concerning test plans, test dates, test results or operational problems or
5 solutions related to year 2000 processing by products or services that incorporate or
6 utilize products.

7 4. Concerning the correction or avoidance of a year 2000 processing failure in
8 computer hardware, a computer system, a component of a computer system, a
9 computer program or software or services utilizing any computer hardware, system,
10 component, program or software or services.

11 5. Reviewing, commenting on, or otherwise directly or indirectly relating to
12 year 2000 processing capabilities.

13 (2) Each authority may require any person over whom the authority exercises
14 regulatory power to provide to the authority information relating to year 2000
15 processing, including a year 2000 statement, with respect to any matter relating to
16 public health or safety that is regulated by that authority or any matter relating to
17 public health or safety that has an effect upon a matter that is regulated by that
18 authority.

19 (3) (a) Each director, partner or proprietor of a business shall forfeit \$100 if the
20 business does any of the following:

21 1. Fails to provide any information required under sub. (2).

22 2. Knowingly gives a false answer to any request for information made under
23 sub. (2).

24 3. Evades the answer to any request for information made under sub. (2).

25 (b) Each day of violation under par. (a) constitutes a separate offense.

1 (4) (a) Except as provided in pars. (b) and (c), each authority shall withhold
2 from access by any person under s. 19.35(1) all information provided to the authority
3 under sub. (2).

4 (b) Each authority shall provide to the department of administration, upon
5 written request of the department, any information provided to the authority under
6 sub. (2). The department of administration shall withhold from access by any person
7 under s. 19.35 (1) any information provided to the department under this paragraph.

8 (c) Any person who provides information to an authority under sub. (2) may
9 consent in writing to that authority for the authority to provide that information to
10 another specified person or to any person.

11 (5) No information provided to an authority upon request of the authority
12 under sub. (2) ^{is admissible in} ~~may be used as~~ evidence in any civil action or proceeding.

13 SECTION 8. 134.99 (1) of the statutes is amended to read:

14 134.99 (1) Whoever is concerned in the commission of a violation of this
15 chapter, except s. 134.92, for which a forfeiture is imposed is a principal and may be
16 charged with and convicted of the violation although he or she did not directly
17 commit it and although the person who directly committed it has not been convicted
18 of the violation.

19 SECTION 9. 218.015 (7) of the statutes is amended to read:

20 218.015 (7) ~~In~~ Except as provided in s. 893.83, in addition to pursuing any other
21 remedy, a consumer may bring an action to recover for any damages caused by a
22 violation of this section. The court shall award a consumer who prevails in such an
23 action twice the amount of any pecuniary loss, together with costs, disbursements
24 and reasonable attorney fees, and any equitable relief the court determines
25 appropriate.

1 **SECTION 10.** 560.05 (3) of the statutes is amended to read:

2 560.05 (3) ~~The Subject to s. 893.83, the~~ state shall be liable for accrued rentals
3 and for any other default under any lease or sublease made under sub. (2)(c) and may
4 be sued therefor on contract as in other contract actions under ch. 775, except that
5 it shall not be necessary for the lessor under any such lease or sublease or any
6 assignee of such lessor or any person or other legal entity proceeding on behalf of such
7 lessor to file any claim with the legislature prior to the commencement of any such
8 action.

9 **SECTION 11.** 775.01 of the statutes is amended to read:

10 **775.01 Actions against state; bond.** ~~Upon~~ Except as provided in s. 893.83,
11 upon the refusal of the legislature to allow a claim against the state the claimant may
12 commence an action against the state by service as provided in s. 801.11 (3) and by
13 filing with the clerk of court a bond, not exceeding \$1,000, with 2 or more sureties,
14 to be approved by the attorney general, to the effect that the claimant will indemnify
15 the state against all costs that may accrue in such action and pay to the clerk of court
16 all costs, in case the claimant fails to obtain judgment against the state.

17 **SECTION 12.** 893.83 of the statutes is created to read:

18 **893.83 Claims against state and local governmental units resulting**
19 **from certain incorrect dates.** (1) In this section:

20 (a) “Electronic computing device” means any computer hardware or software,
21 computer chip, embedded chip, process control equipment, or other information
22 system used to capture, store, manipulate, or process information, or that controls,
23 monitors, or assists in the operation of physical apparatus that relies on automation
24 or digital technology to function.

1 (b) “Local governmental unit” means a political subdivision of this state, a
2 special purpose district in this state, an instrumentality or corporation of such a
3 political subdivision or special purpose district, a combination or subunit of any of
4 the foregoing or an instrumentality of the state and any of the foregoing.

5 (c) “Process” includes calculate, compare, sequence, display or store.

6 (cm) “Remediation plan” means a written document that includes a listing of
7 tasks, resources and target milestone dates, developed to implement changes to
8 ensure that electronic computing devices will accurately process, transmit and
9 receive data from, into and between the 20th and 21st centuries and during the
10 years of 1999 and 2000, and from leap year calculations.

11 (d) “State governmental unit” means this state, and every subunit or
12 instrumentality of this state, including any institution or authority, regardless of
13 whether moneys are appropriated to the unit, but does not include a local
14 governmental unit.

15 (2) No person may maintain an action against any state governmental unit or
16 local governmental unit, or any officer, employe or agent of such a unit acting in his
17 or her capacity as an officer, employe or agent, for any damages arising from any
18 wrongful act or omission caused by the failure of an electronic computing device that
19 is controlled by such a unit, officer, employe or agent to process, transmit or receive
20 data from, into and between the 20th and 21st centuries and during the years
21 1999 and 2000, and from leap year calculations, if the unit had a remediation plan
22 in effect at the time of the act or omission that was designed to prevent the failure
23 and the unit or the officer, employe or agent made a reasonable effort to find, identify
24 and replace or correct any electronic computing device that may have contributed to
25 the failure.

1 **(3)** Any provision of a contract entered into, extended, modified or renewed by
2 a state governmental unit or local governmental unit on or after the effective date
3 of this subsection [revisor inserts date], contrary to sub. (2) is void.

4 **SECTION 13.** 904.17 of the statutes is created to read:

5 **904.17 Year 2000 statements.** (1) In this section:

6 (a) “Local governmental unit” means a political subdivision of this state, a
7 special purpose district in this state, an instrumentality or corporation of such a
8 political subdivision or special purpose district, a combination or subunit of any of
9 the foregoing or an instrumentality of the state and any of the foregoing.

10 (b) “Processing” includes calculating, comparing, sequencing, displaying or
11 storing.

12 (c) “Year 2000 processing” means the processing, transmitting or receiving of
13 date data from, into and between the 20th and 21st centuries, and during the years
14 1999 and 2000, and from leap year calculations.

15 (d) “Year 2000 statement” means any communication or other conveyance of
16 information by a person to another or to the public in any form or medium, including
17 a computer program:

18 1. Concerning an assessment, projection, or estimate relating to year 2000
19 processing capabilities of an entity, product, service or set of products and services.

20 2. Concerning plans, objectives or timetables for implementing or verifying the
21 year 2000 processing capabilities of an entity, product, service or set of products and
22 services.

23 3. Concerning test plans, test dates, test results or operational problems or
24 solutions related to year 2000 processing by products or services that incorporate or
25 utilize products.

1 4. Concerning the correction or avoidance of a year 2000 processing failure in
2 computer hardware, a computer system, a component of a computer system, a
3 computer program or software or services utilizing any computer hardware, system,
4 component, program or software or services.

5 5. Reviewing, commenting on, or otherwise directly or indirectly relating to
6 year 2000 processing capabilities.

7 (2) No information provided to an authority under s. 134.92 (2) is admissible
8 in evidence in any civil action or proceeding.

9 (3) ~~Information~~ ^{may be offered} information contained in a year 2000 statement, ^{Except for} ~~other than~~ information
10 covered under sub. (2), ~~is admissible~~ ^{only if one} in evidence in any civil action or proceeding
11 ~~except that this exclusion does not apply to any~~ ^{applies} of the following:

12 (a) ~~A~~ year 2000 statement made by a person who knew that the statement was
13 false, misleading or deceptive or that was made with reckless disregard as to the
14 truth or falsity of the statement. ^{The information is contained in a}

15 (b) ~~A~~ republished year 2000 statement that the person who republished the
16 statement knew was false, misleading or deceptive.

17 (c) ~~A~~ year 2000 statement that was made by a person who was compensated
18 for making that statement as part of a contractual service related to the assessment,
19 contingency planning, remediation or testing of a failure in year 2000 processing.

20 (d) ~~A~~ year 2000 statement that was made by a person when soliciting a
21 consumer, including when advertising or offering to sell a product.

22 (e) ~~A~~ civil action or proceeding brought by a local governmental unit acting in
23 a regulatory, supervisory or enforcement capacity or by a state governmental unit
24 acting in a regulatory, supervisory or enforcement capacity.

25 **SECTION 14. Nonstatutory provisions.**

The information is being offered in a

1 (1) YEAR 2000 EDUCATIONAL OUTREACH.

2 (a) In this subsection:

3 1. “Electronic computing device” means any computer hardware or software,
4 computer chip, embedded chip, process control equipment, or other information
5 system used to capture, store, manipulate, or process information, or that controls,
6 monitors, or assists in the operation of physical apparatus that relies on automation
7 or digital technology to function.

8 2. “Process” includes calculate, compare, sequence, display or store.

9 (b) Notwithstanding section 16.705 (1) of the statutes, the department of
10 administration may contract with one or more private contractors to provide
11 educational outreach with respect to potential failures of electronic computing
12 devices to process, transmit or receive data from, into and between the 20th and
13 21st centuries and during the years 1999 and 2000, and from leap year calculations,
14 and methods of correction of and contingency planning for such failures. No contract
15 entered into under this subsection may extend beyond December 31, 1999. Section
16 16.705 (2) and (3) of the statutes do not apply to any such contract.

17 (2) EMERGENCY MANAGEMENT CONTINGENCY PLANS.

18 (a) In this subsection, “electronic computing device” means any computer
19 hardware or software, computer chip, embedded chip, process control equipment or
20 other information system used to capture, store, manipulate or process information,
21 or that controls, monitors or assists in the operation of physical apparatus that relies
22 on automation or digital technology to function.

23 (b) The department of military affairs shall review all of the local emergency
24 management services agency contingency plans for responding to the failure of an
25 electronic computing device to process, transmit or receive data from, into and

1 between the 20th and 21st centuries, and during the years 1999 and 2000, and from
2 leap year calculations. If that review determines that those local emergency
3 management services agency contingency plans are not adequate or need testing, the
4 department of military affairs shall prepare a plan for the funding of one or more
5 counties, cities or villages to test those contingency plans. The adjutant general shall
6 submit its findings and plan for funding to the joint committee on finance by the 60th
7 day after the effective date of this paragraph. If the joint committee on finance
8 approves the funding plan, the joint committee on finance may supplement the
9 appropriation under section 20.465 (3) (a) of the statutes from the appropriation
10 under section 20.865 (4) (a) of the statutes. Notwithstanding section 13.101 (3) (a)
11 of the statutes, the joint committee on finance is not required to find that an
12 emergency exists.

13 **SECTION 15. Initial applicability.**

CS
ADMISSIBILITY OF

14 (1) ~~IMMUNITY FOR~~ YEAR 2000 STATEMENTS. The treatment of section 904.17 of the
15 statutes first applies to a year 2000 statement made on the effective date of this
16 subsection.

17 (2) STATE AND LOCAL GOVERNMENTAL LIABILITY. The treatment of sections 16.528
18 (3) (f), 19.37 (2) and (3), 66.285 (4) (f), 218.015 (7), 560.05 (3), 775.01 and 893.83 of
19 the statutes first applies with respect to noncontractual injuries occurring or injuries
20 occurring under contracts entered into, extended, modified or renewed on the
21 effective date of this subsection.

22 (3) YEAR 2000 IMPACT STATEMENTS. The creation of section 13.0992 of the statutes
23 first applies to bills introduced on the effective date of this subsection.

24 **SECTION 16. Effective dates.** This act takes effect on the day after
25 publication, except as follows:

1

(1) The repeal of section 13.0992 of the statutes takes effect on January 1, 2001.

2

(END)

D-NOTE
↓





CORRECTIONS IN: CCC (LRB-1800/1)

TO 1999 ASSEMBLY BILL 51

()

Prepared by the Legislative Reference Bureau
(Date)

1. Page 1, line 7: delete "processing;" and substitute "processing,".

KMG:

.....

Minor clerical corrections in legislation are authorized under s. 35.17, stats.; Senate Rule 31, Assembly Rule 37 and Joint Rule 56.



State of Wisconsin
1999-2000 LEGISLATURE

CORRECTIONS IN:

1999 ASSEMBLY BILL 51

Prepared by the Legislative Reference Bureau
(January 21, 1999)

1. Page 1, line 7: delete "processing;" and substitute "processing,".



STEPHEN R. MILLER
CHIEF

State of Wisconsin

LEGISLATIVE REFERENCE BUREAU

100 NORTH HAMILTON STREET
P. O. BOX 2037
MADISON, WI 53701-2037

LEGAL SECTION: (608) 266-3561
LEGAL FAX: (608) 264-8522

REFERENCE SECTION: (608) 266-0341
REFERENCE FAX: (608) 266-5648

LRB
2

Date: February 4, 1999

To: Representative Jensen

From: Mike Barman
LRB Legal Section – Front Office

Subject: Copy Of (New) Fiscal Estimate

Bill Number: AB 51

LRB Number: 99-1800/1

Agency/Prepared By: DOJ

By request of R.J. Pirlot of your office, the “original” fiscal estimate prepared by DOJ (Dated: 01/21/99) on 1999 AB 51 was not released. It has been replaced by a new “original” fiscal estimate prepared by DOJ (Dated: February 1, 1999).

The new “original” fiscal estimate by DOJ was received by the LRB on February 2, 1999, which met the requirement of “Joint Rule 48”. Only the new “original” fiscal estimate was released to the Chief Clerk’s office and sent out for printing.

In addition to the new “original”, one copy of the old fiscal estimate by DOJ has been included in LRB’s AB 51 drafting file.

If you have any questions you can contact me at 266-3561.

Not Released

LRB

FISCAL ESTIMATE			1999 Session		
DOA-2048 (R10/92)	<input checked="" type="checkbox"/> ORIGINAL <input type="checkbox"/> CORRECTED	<input type="checkbox"/> UPDATED <input type="checkbox"/> SUPPLEMENTAL	LRB or Bill No./Adm. Rule No. LRB 1800/1 AB 51	Amendment No.	
Subject Year 2000 problem					
Fiscal Effect State: <input type="checkbox"/> No State Fiscal Effect Check columns below only if bill makes a direct appropriation or affects a sum sufficient appropriation.			<input checked="" type="checkbox"/> Increase Costs - May be possible to Absorb Within Agency's Budget <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> Decrease Costs		
<input type="checkbox"/> Increase Existing Appropriation <input type="checkbox"/> Increase Existing Revenues <input type="checkbox"/> Decrease Existing Appropriation <input type="checkbox"/> Decrease Existing Revenues <input type="checkbox"/> Create New Appropriation					
Local: <input type="checkbox"/> No local government costs					
1. Increase Costs <input type="checkbox"/> Permissive <input checked="" type="checkbox"/> Mandatory		3. Increase Revenues <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory		5. Types of Local Government Units Affected: <input type="checkbox"/> Towns <input type="checkbox"/> Villages <input type="checkbox"/> Cities <input type="checkbox"/> Counties <input type="checkbox"/> Others <input type="checkbox"/> School Districts <input type="checkbox"/> VTAE Districts	
2. Decrease Costs <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory		4. Decrease Revenues <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory			
Fund Sources Affected <input checked="" type="checkbox"/> GPR <input type="checkbox"/> FED <input type="checkbox"/> PRO <input type="checkbox"/> PRS <input type="checkbox"/> SEG <input type="checkbox"/> SEG-S			Affected Ch. 20 Appropriations 20.455(1)(a)		

Assumptions Used in Arriving at Fiscal Estimate

This bill would affect the Department of Justice mainly through the provisions regarding liability of state and local governmental agencies and officers. The way the bill currently is drafted, the state's sovereign immunity and state employees' discretionary immunity may be inadvertently waived in certain situations involving Y2K problems. In other words, litigation costs (including Y2K expert testimony) and risk management costs are potentially significant. The department has no way to estimate the total potential liability.

To handle the expected litigation demands, the Department of Justice would require four new project positions. These would include two attorneys, one paralegal and a legal secretary for the Civil Litigation Unit of the Division of Legal Services.

See attached worksheet for cost breakdowns.

Long-Range Fiscal Implications		
Agency/Prepared by: (Name & Phone No) Kelly Kennedy 6-1221	Authorized Signature/Telephone No. <i>Kelly J. Kennedy</i> 6-1221	Date January 21, 1999

Not Released

FISCAL ESTIMATE WORKSHEET			1999 Session	
Detailed Estimate of Annual Fiscal Effect DOA-2047 (R10/92)	<input checked="" type="checkbox"/> ORIGINAL <input type="checkbox"/> CORRECTED	<input type="checkbox"/> UPDATED <input type="checkbox"/> SUPPLEMENTAL	LRB or Bill No./Adm. Rule No. LRB 1800/1 AB 51	Amendment No.
Subject Year 2000 problem				


I. One-time Costs or Revenue Impacts for State and/or Local Government (do not include in annualized fiscal effect):

\$22,390 in one-time costs

II. Annualized Costs:	Annualized Fiscal impact on State funds from:	
A. State Costs by Category	Increased Costs	Decreased Costs
State Operations-Salaries and Fringes	\$ 178,260	\$-
(FTE Position Changes) Project positions	(4.0 FTE)	(- FTE)
State Operations - Other Costs (Supplies & services)	37,600	-
Local Assistance		-
Aids to Individuals or Organizations		-
TOTAL State Costs by Category	\$ 215,860	-
B. State Costs by Source of Funds	Increased Costs	Decreased Costs
GPR	\$ 215,860	\$-
FED		-
PRO/PRS		-
SEG/SEG-S		-
III. State Revenues- Complete this only when proposal will increase or decrease state revenues (e.g., tax increase, decrease in license fee, etc.)	Increased Rev.	Decreased Rev.
GPR Taxes	\$	\$-
GPR Earned		-
FED		-
PRO/PRS		-
SEG/SEG-S		-
TOTAL State Revenues	\$	\$-

NET ANNUALIZED FISCAL IMPACT

	<u>STATE</u>	<u>LOCAL</u>
NET CHANGE IN COSTS	\$ 215,860	\$
NET CHANGE IN REVENUES	\$	\$

Agency/Prepared by: (Name & Phone No.) Kelly Kennedy 6-1221	Authorized Signature/Telephone No.  6-1221	Date January 21, 1999
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