1999 DRAFTING REQUEST

Bill

Received: **12/1/98**

Received By: **kuesejt**

Wanted: **Soon**

Identical to LRB:

For: **Administration-Budget-in 6-0777**

By/Representing: **Caucutt**

This file may be shown to any legislator: **NO**

Drafter: **kuesejt**

May Contact:

Alt. Drafters: **kahlepj**
nilsepe

Subject: **State Finance - claims agnst st**

Extra Copies: **RPN - 1**

Pre Topic:

DOA:.....Caucutt -

Topic:

Computational date error claims against the state and local governments

Instructions:

Per LRB-0394.

Drafting History:

Vers.	Drafted	Reviewed	Typed	Proofed	Submitted	Jacketed	Required
/?	kuesejt 12/3/98	ptellez 12/4/98		_____ _____			S&L
/1			jfrantze 12/4/98	_____ _____	lrb_docadmin 12/4/98		S&L
/2	kuesejt 01/22/99	jgeller 01/23/99	jfrantze 01/24/99	_____ _____	lrb_docadmin 01/25/99		S&L
/3	kuesejt	jgeller	jfrantze	_____	lrb_docadmin		S&L

Vers.	Drafted	Reviewed	Typist	Proofed	Submitted	Jacketed	Required
	01/25/99	01/25/99	01/26/99	_____	01/26/99		
/4	kuesejt 01/31/99	jgeller 01/31/99	jfrantze 01/31/99	_____ _____	gretskl 01/31/99		S&L
/5	kuesejt 02/10/99	jgeller 02/11/99	hhagen 02/11/99	_____ _____	lrb_docadmin 02/11/99		

FE Sent For:

<END>

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DOA:.....Caucutt - Computational date error claims against the state and local governments

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/3	kuesejt 01/25/99	jgeller 01/25/99	jfrantze 01/26/99	_____ _____	lrb_docadmin 01/26/99		S&L
/4	kuesejt 01/31/99	jgeller 01/31/99	jfrantze 01/31/99	_____ _____	gretskl 01/31/99		

/5 kuesejt 2/10 /5 2/11 jlg 2/11 2/11 2/11

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<END>

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/2	kuesejt 01/22/99	jgeller 01/23/99	jfrantze 01/24/99	_____ _____	lrb_docadmin 01/25/99		S&L
/3	kuesejt 01/25/99	jgeller 01/25/99	jfrantze 01/26/99	_____ _____	lrb_docadmin 01/26/99		
/4	kuesejt	1/31/99	1/31	1/31			

FE Sent For:

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Extra Copies: **RPN - 1**

Topic:

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Instructions:

Per LRB-0394.

Drafting History:

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/?	kuesejt 12/3/98	ptellez 12/4/98		_____ _____			S&L
/1			jfrantze 12/4/98	_____ _____	lrb_docadmin 12/4/98		S&L
/2	kuesejt 01/22/99	jgeller 01/23/99	jfrantze 01/24/99	_____ _____	lrb_docadmin 01/25/99		S&L
/3	kuesejt 01/25/99	lrb_editor /3 1/25 jg		_____ _____			

FE Sent For: 1/25 | 1/25

1999 DRAFTING REQUEST

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Wanted: **Soon**

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For: **Administration-Budget 6-0777**

By/Representing: **Caucutt**

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May Contact:

Alt. Drafters: **kahlepj**
nilsepe

Subject: **State Finance - claims agnst st**

Extra Copies: **RPN - 1**

Topic:

DOA:.....Caucutt - Y2K Claims against the state and local governments

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Instructions:

Per LRB-0394.

Drafting History:

Vers.	Drafted	Reviewed	Typed	Proofed	Submitted	Jacketed	Required
/?	kuesejt 12/3/98	ptellez 12/4/98		_____ _____			S&L
/1			jfrantze 12/4/98	_____ _____	lrb_docadmin 12/4/98		S&L
/2	kuesejt 01/22/99	jgeller 01/23/99	jfrantze 01/24/99	_____ _____	lrb_docadmin 01/25/99		

FE Sent For:

<END>

1999 DRAFTING REQUEST

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This file may be shown to any legislator: **NO**

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May Contact:

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nilsepe

Subject: **State Finance - claims agnst st**

Extra Copies: **RPN - 1**

Topic:

DOA:.....Caucutt - Y2K Claims against the state and local governments

Instructions:

Per LRB-0394.

Drafting History:

Vers.	Drafted	Reviewed	Typed	Proofed	Submitted	Jacketed	Required
/?	kuesejt 12/3/98	ptellez 12/4/98		_____ _____			S&L
/1	12 kuesejt 1/22	12 1/23 jfg	jfrantze 12/4/98	_____ _____	lrb_docadmin 12/4/98		S&L

FE Sent For: 1/24 <END> 1/24

1999 DRAFTING REQUEST

Bill

Received: **12/1/98**

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Wanted: **Soon**

Identical to LRB:

For: **Administration-Budget 6-0777**

By/Representing: **Caucutt**

This file may be shown to any legislator: **NO**

Drafter: **kuesejt**

May Contact:

Alt. Drafters:

Subject: **State Finance - claims agnst st**

Extra Copies:

Topic:

DOA:.....Caucutt - Y2K Claims against the state

Instructions:

Per LRB-0394.

Drafting History:

Vers.	Drafted	Reviewed	Typed	Proofed	Submitted	Jacketed	Required
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/1 /2 kuesejt 1/2			jfrantze 12/4/98	_____ _____	lrb_docadmin 12/4/98		

FE Sent For:

<END>

D NOTE

LRB-1085

1999 DRAFTING REQUEST

Bill

Received: **12/1/98**

Received By: **kuesejt**

Wanted: **Soon**

Identical to LRB:

For: **Administration-Budget 6-0777**

By/Representing: **Caucutt**

This file may be shown to any legislator: **NO**

Drafter: **kuesejt**

May Contact:

Alt. Drafters:

Subject: **State Finance - claims agnst st**

Extra Copies: RPN - 1

Topic:

DOA:.....Caucutt - Y2K Claims against the state

Instructions:

Per LRB-0394.

Drafting History:

Vers.	Drafted	Reviewed	Typed	Proofed	Submitted	Jacketed	Required
~~12~~/1	kuesejt	12/3/1 pgt 12/3/98 /1 12/3 jLg	6/12/4				

FE Sent For:

<END>

1999 **Date (time) needed** DN 8/12 S 08N

LRB – 1085 / 1

DOA BUDGET DRAFT

JTR : pgt + jlg :

Use the appropriate components and routines developed for bills.

>>FOR 1999–01 BUDGET — NOT READY FOR INTRODUCTION<<

AN ACT . . . [DO NOT generate catalog]; **relating to:** ~~the budget~~ . . . . . .

. . . . . .

. . . . . .

. . . . . .

. . . . . .

Analysis by the Legislative Reference Bureau

For the 3 titles used in an analysis, in the component bar:

For the main heading [old =M], execute: . . . . . **create → anal: → title: → head**

For the subheading [old =S], execute: . . . . . **create → anal: → title: → sub**

For the sub–subheading [old =P], execute: . . . . . **create → anal: → title: → sub–sub**

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

SECTION #.

State of Wisconsin
1999 – 2000 LEGISLATURE

LRB–0394/1
JTK&PJK&PEN:kmg:hmh

1999 BILL

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

COURTS AND PROCEDURE ← head PROCEDURE ← sub
OTHER COURTS AND
[small caps]

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 do not enjoy such broad immunity, although narrower grants of immunity are provided to such authorities 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. No punitive damages (damages not resulting from direct or indirect loss but awarded, instead, as punishment for wrongful conduct) may be awarded in any such lawsuit based upon tort (a noncontractual claim based upon alleged wrongful conduct). Damages in tort lawsuits against a state officer, employe or agent are generally limited to $250,000. Currently, with certain exceptions, the state must pay interest on late payments to vendors.

This bill provides that no person may recover any damages against any state 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 recognize, process, distinguish or interpret the year 2000 or a subsequent year or the failure of an electronic computing device to produce, generate or calculate a correct date if the year 2000 or a subsequent year is a part of that date. The bill also provides that any contract entered into on or after the day on which the bill becomes law that contains a contrary provision is void. In addition, the bill provides that the state is 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 government by which the legal custodian under s. 19.33 is employed and may not become a personal liability of any public official.

(b) ~~In~~ Except as provided in s. 893.83, in any action filed under sub. (1) relating to access to a record or part of a record under s. 19.35 (1) (am), if the court finds that the authority acted in a wilful or intentional manner, the court shall award the

individual actual damages sustained by the individual as a consequence of the failure.

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

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

SECTION 4. 218.015 (7) of the statutes is amended to read:

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

SECTION 5. 560.05 (3) of the statutes is amended to read:

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

SECTION 6. 775.01 of the statutes is amended to read:

775.01 Actions against state; bond. ~~Upon~~ Except as provided in s. 893.83, upon the refusal of the legislature to allow a claim against the state, the claimant may

[INSERT comma]

commence an action against the state by service as provided in s. 801.11 (3) and by filing with the clerk of court a bond, not exceeding $1,000, with 2 or more sureties, to be approved by the attorney general, to the effect that the claimant will indemnify the state against all costs that may accrue in such action and pay to the clerk of court all costs, in case the claimant fails to obtain judgment against the state.

SECTION 7. 893.83 of the statutes is created to read:

893.83 Claims against state resulting from certain incorrect dates. (1) In this section:

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

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

(2) No person may maintain an action against any state governmental unit, or any officer, employe or agent of such a unit acting in his or her capacity as an officer, employe or agent, for any damages arising from any wrongful act or omission caused by the failure of an electronic computing device that is controlled by such a unit, officer, employe or agent to recognize, process, distinguish or interpret the year 2000 or a subsequent year, or the failure of such an electronic computing device to produce, generate or calculate a correct date if the year 2000 or a subsequent year is a part of that date.

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

SECTION 9. Initial applicability.

(1) The treatment of sections 19.37 (2) and (3), 218.015 (7), 560.05 (3), 775.01 and 893.83 of the statutes 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)

-1085/1

LRB ~~-0394/1dn~~

JTK ...:hmh

rjt & jlg

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

new date ~~Monday, October 5, 1998~~

#1. This draft is the same as LRB-0394/1, which was requested by Paul McMahon. Ed Main or Brian Hayes may have redraft instructions. You may wish to follow up with them.

#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. You may wish to consider the following collateral issues:

#a. ~~1.~~ Currently, a state 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. 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 risk 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. 2. 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 state 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. You may therefore wish to consider limiting 'Y2K' liability for consequential damages only.

#c. ~~b.~~ Under ss. 16.528 and 66.285, stats., state governmental units must pay interest on payments that are made late as a result of a 'Y2K' problem. This draft deletes this requirement because under the draft, state governmental units have no liability in any situation resulting from a 'Y2K' problem. 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 the draft, no lawsuit may be brought whenever damages are incurred as a result

of a 'Y2K' problem. If you decide to allow some general (out–of–pocket) damages to be recovered, however, you may wish to provide an exemption for interest recovery.

¶ d. 4. You may wish to consider excluding from the scope of this proposal actions resulting from gross negligence or wilful misconduct.

¶ e. 5. 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 state 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–1085/1dn
JTK:pgt&jlg:jf

December 4, 1998

1. This draft is the same as LRB–0394/1, which was requested by Paul McMahon. Ed Main or Brian Hayes may have redraft instructions. You may wish to follow up with them.

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. You may wish to consider the following collateral issues:

a. Currently, a state 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. 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 risk 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 state 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. You may therefore wish to consider limiting 'Y2K' liability for consequential damages only.

c. Under ss. 16.528 and 66.285, stats., state governmental units must pay interest on payments that are made late as a result of a 'Y2K' problem. This draft deletes this requirement because under the draft, state governmental units have no liability in any situation resulting from a 'Y2K' problem. 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

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d. You may wish to consider excluding from the scope of this proposal actions resulting from gross negligence or wilful misconduct.

e. 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 state governmental units to remedy 'Y2K' problems within a reasonable period.

Jeffery T. Kuesel
Assistant Chief Counsel
266–6778

TH

Department of Administration (agency) Drafting Request to the Legislative Reference Bureau

➡ Draft for Possible 99-01 Budget Bill Introduction (*Agency DI No*: NA)

Draft for Possible Introduction as Department-sponsored or Independent Bill

Subject: Year 2000 Issue

Request Date: September 14, 1998

Reviewed by:

Contact Name in DOA for Drafter (phone no): Ed Main, Department Legal Counsel (6-2765)

Brief Description of Intent:

Modify s.893.82(9) to prohibit claims against the state on the basis that a computer or other information system operated by such persons produced, calculated, or generated an incorrect date, regardless of the cause of error.

Related Stat. Citations

None

➡ ❒ Additional material(s) are attached if checked

Wisconsin Department of Administration

101 E. Wilson St.
P.O. Box 7864
Madison, WI 53707-7864

FAX

Date: 10-30-98
Number of pages including cover sheet: 4

To:
JEFF KUESEL
Phone: 6-6778
Fax phone: 6-8648
CC:

From:
Edward D. Main
Legal Counsel
Phone: (608) 266-2765
Fax phone: (608) 267-3842

REMARKS: ☐ Urgent ☐ For your review ☐ Reply ASAP ☐ Please comment

PLEASE CALL ME AND LET ME KNOW IF YOU HAD THE DOT PROPOSAL WHEN YOU DRAFTED THE LEGISLATION?

Proposed s. 893.82 (8)

No claimant may bring an action against a state officer, employe or agent on the basis that a computer or other information system that is operated by any such persons produced, calculated, or generated an incorrect date, regardless of the cause of the error.

DOJ proposal

895.86 Liability exemption; Computational date errors.

(1) In this section:

(a) "Computational date error" means:

1. The failure of a computer system as defined herein to handle correctly and consistently all dates before, during and after the year 2000; or

2. The inability of a computer system as defined herein to correctly interpret, produce, calculate, generate, utilize, manipulate, represent and account for all dates before, during and after the year 2000.

(b) "Computer system" means any electronic device or collection of devices, including support devices, networks, and embedded chips that contains computer programs or electronic instructions and that performs functions including, but not limited to, logic, arithmetic, data processing, data storage and retrieval, communication or control.

(c) "Action" means any civil action or proceeding including any action for declaratory or injunctive relief.

(2) No person may bring an action against a state officer, employe or agent by reason of the alleged failure of such officer, employe or agent to plan for, test for, detect, disclose, prevent, report on, reprogram or remediate a computational date error or to have in place alternative provisions to deal with the effects of a computational date error or for any other act or omission related to a computational date error for which there would otherwise be liability.

STATE OF WISCONSIN
DEPARTMENT OF ADMINISTRATION
101 East Wilson Street, Madison, Wisconsin

TOMMY G. THOMPSON
GOVERNOR
JAMES R. KLAUSER
SECRETARY

Mailing address:
Post Office Box 7864
Madison, WI 53707-7864

FACSIMILE COVER SHEET

FAX NUMBER: 608/267-3842

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Number of pages attached, including this cover page: 4

PLEASE DELIVER TO:

Jeff Kuesel

FROM:

Brian Hayes DOA- office of Legal Counsel

If pages are not all received or are illegible, please call:

261-7523

MESSAGE:

Per our discussion. My office # is 261-7523.
Please call me after you have reviewed these suggestions to LRB-0394 to discuss alterations. Thanks. Brian Hayes

DOA Secy's Office Fax:608-267-3842 Dec 3 '98 11:30 P.01

CORRESPONDENCE/MEMORANDUM

STATE OF WISCONSIN

Date: November 16, 1998

To: Charles D. Hoornstra
Civil Litigation Unit Director

From: Richard A. Victor
Assistant Attorney General

Subject: Review of LRB-0394/1 Re: State Y2K Liability

At your request I have reviewed the above captioned LRB draft and have the following comments:

Section 1 – What is "[a]n order or contract to which s. 893.83 applies."? Seems that the following would be better: "The failure to pay timely due to an occurrence to which s. 893.83 applies."

Section 2 -- Should make clear that the s. 893.83 exception applies to committed or incarcerated persons as well as to the general case so that a court cannot award damages in either the general case or in the case of the committed or incarcerated requestor.

Section 3 -- Okay

New Section – What about s. 19.37(4)? Shouldn't the s. 893.83 exception be placed there as well? Is there liability here?

Section 4 -- I don't see the relationship between s. 218.015(7) and the State's Y2K liability.

Section 5 – Okay.

Section 6 – Okay.

NOTE – The preceding specific statutory amendments raise the question as to whether there are other sections that should be similarly amended. If there are, what is the effect of including specific treatment for these sections and not for others. A broad coverage in s. 893.83 may be better than trying to find all of the places to reference s. 893.83. Note, however, that s. 560.05(6) would appear to require express exclusion because of its superceding language.

Section 7 -- (1)(a) – This definition is not as broad as the one I drafted. I would be interested to know what the drafter was trying to accomplish by redrafting it. I attempted to define this term by function rather than by type of device. The new draft defines it by type of device and then attempts to broaden the definition by including the undefined "other information system" language. Under the new draft, if a device is not included in those denominated, it would not be included regardless of its function. In addition, the new draft uses a number of undefined terms such as:

computer chip
embedded chip
process control equipment
other information system
automation
digital technology

The terms which I used that were not specifically defined were merely examples within the class of "electronic devices or collection of devices" and, unlike the undefined terms in the new draft, do not set the bounds of coverage.

Section 7 -- (1)(b) -- The inclusion of the State may give rise to arguments that sovereign immunity would not have protected the State from this liability in the absence of this legislation.

Section 7 -- (2) – The requirement that the electronic computing device be "controlled by such a [State governmental] unit" is unnecessarily narrow.

My language defining "computational date error" is broader than the types of functions which are included within the definition of this section.

The new language only covers dates of 2000 or subsequent. Mine covers all dates.

Section 7 -- (3) -- There should probably be a way that an agency can contract explicitly for this liability, perhaps by express reference to this section or by signature of someone such as the Governor or head of DOA.

Section 8 -- I think the drafter is correct that we can't make this applicable to existing contracts without subjecting it to challenge as an impairment of contract. I thought we had concluded that the State could, however, deprive a person of a tort cause of action without running into a similar problem.

I'd be happy to discuss this with you at your convenience.

RAV:ss

State of Wisconsin

LEGISLATIVE REFERENCE BUREAU

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

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

December 4, 1998

MEMORANDUM

To: Brian Hayes, DOA

From: Jeff Kuesel

Subject: LRB–0394/1 – Dick Victor comments

SECTION 1. This change is an improvement.

SECTION 2. Point well taken.

Section 19.37 (4), stats. This is a policy decision, but my judgment was that it wouldn't be appropriate to treat this penalty since it only applies to arbitrary and capricious denials and delays or charging excessive fees, and aY2K failure should not be used as an excuse to act arbitrarily or capriciously or to charge excessive fees.

SECTION 4. Paul Nilsen inserted this section. This section is designed to address the situation in which DOR fails to issue sales tax refunds under the motor vehicle warranty law because of a Y2K failure. While there is no deadline for issuing refunds, at some point it seemed to us that consequential damages might be claimed if an unreasonable situation developed and negligence on the part of state officer was proven. While this addresses a real potential problem, a more serious issue would bc raiscd by DOR's failure to issue refunds under other laws. We don't amend those laws in thedraft and maybe we should do so.

NOTE: Some time ago, I asked the other attorneys on staff to review this draft and identify for amendment any conflicting provisions in their assigned areas. Some of them, I think, understood what I was after better than others. We could take another look at identifying conflicting provisions, but even if we do, we probably won't find them all, because they are probably worded in various ways that we can't completely anticipate when searching for them. However, as to general policy, the joint rules of the legislatuire require us to identify conflicting provisions and to specifically treat them when required. This policy is based on the notion, which we think is valid, that this method of drafting is much more likely to ensure that legislative intent is effectuated than to draft general preemption provisions which the courts must sort out.

SECTION 8. As I explained to Ed Main, the DOJ draft was not in our hands at the time we prepared this draft. When I saw it, I thought that it had some advantages over this draft but suggested that before redrafting this draft, Ed should send it to DOJ so DOJ could react to the draft and drafter's

note. The definition of "electronic computing device" in the draft was pulled from the Y2K law of another state (Washington, I believe). I will take a closer look at the two definitions. The DOJ definition might offer some advantages. One minor problem I had with it was the use of the word "control" as a function like arithmetic is a function. Is this necessary or is there a better word here?

(1)(b) I agree. As I'm sure your'e aware, there are some exceptions to the sovereign immuniy bar. If DOJ is comfortable that the exceptions wouldn't enter into play here, I would delete reference to the state and just focus on the state officers, employes and agents.

(2) The inclusion of the language "controlled by such a unit..." was not intended to limit the scope of the provision, but only to tie the Y2K failure to the unit, officer, etc. associated with it, which any lawsuit would have to do in order to be successful. (The DOJ draft used the term "operated by" rather than "controlled by".) I think if there is no tie, the provision is overbroad. In my mind, a finding of control would be a necessary antecedent to a finding of liability.

Regarding the scope of the dates covered, this is a policy question but if you bring in all dates, rather than just dates in the year 2000 and thereafter, in my mind you've got a draft that goes beyond the Y2K issue.

SECTION 7 (3) This was my point as explained in the drafter's note to LRB–0394/1, #1. This draft makes a shift in Y2K liability the default option. There are probably some governmental units out there that would be better off with the default option being no shift in liability, because they will have little or no liability, they can already limit their liability by contract if they want to and they could suffer cost increases by forcing others to accept their liability.

SECTION 8. I think the point regarding the initial applicaibility of tort liability suits might be well taken. I would suggest, however, that the initial applicability shown in this draft might be the most logical from a policy or administrative standpoint. Another choice might change the rules of the game in the middle of a lawsuit or even after a judgment is entered. In any event, the desired initial applicability should be made clear in the draft..

Kuesel, Jeffery

From: Hayes, Brian [brian.hayes@doa.state.wi.us]
Sent: Tuesday, January 19, 1999 8:53 AM
To: Kuesel, Jeffery
Subject: Y2k draft for budget

Y2k legislation draft.doc

Here is the draft we talked about. It's intent is the same as yours except that:

I included municipalities (I used your language from one of the assembly drafts).

I removed the exception for punitive damages under the open records law.

I used the AG's method of exemption and tried to exclude state immunity because I didn't want to puncture the sovereign immunity but wanted to cover state employees, authorities and local governments and their employees, agents, etc.

<<Y2k legislation draft.doc>>

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) The failure to pay timely due to an occurrence 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, unless the claim is filed under s.893.83. 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 government by which the legal custodian under s.19.33 is employed and may not become a personal liability of any public official.

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

Section 3. 66.285 (4)(f) of the statutes is created to read:

66.285 (4)(f) An order or contract to which s.893.93 applies.

Section 4. 218.015(7) of the statutes is amended to read:

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

Section 5. 560.05(3) of the statutes is amended to read:

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

Section 6. 775.01 of the statutes is amended to read:

775.01 Actions against state; bond Except as provided in s. 893.83, upon the refusal of the legislature to allow a claim against the state the claimant may commence an action against the state by service as provided in s. 801.11(3) and by filing with the clerk of court a bond, not exceeding $1,000, with 2 or more sureties, to be approved by the

Section 8. Initial applicability.

(1) The treatment of sections 19.37(2), 218.015 (7), 560.05(3), 775.01 and 893.83 of the statutes 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.

State of Wisconsin
1999 – 2000 LEGISLATURE

LRB–1085/1 2
JTK:pgt&jlg:jf
PJK+PEN:

WANTED SOON

DOA:.....Caucutt – Y2K Claims against the state and local governments

FOR 1999–01 BUDGET — NOT READY FOR INTRODUCTION

do not gen

AN ACT ...; **relating to:** recovery of damages in actions against ~~the~~ state and local governments and local governmental officers, employes and agents thereof caused by ~~the incorrect interpretation, production or use of dates in the year 2000 and subsequent years~~ certain computational date errors.

Analysis by the Legislative Reference Bureau

COURTS AND PROCEDURE

OTHER COURTS AND PROCEDURE

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 do not enjoy such broad immunity, although narrower grants of immunity are provided to such authorities 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. No punitive damages (damages not resulting from direct or indirect loss but awarded, instead, as punishment for wrongful conduct) may be awarded in any such lawsuit based upon tort (a noncontractual claim based upon alleged wrongful conduct). Damages in tort lawsuits against a state officer, employe or agent are generally limited to $250,000. Currently, with certain exceptions, the state must pay interest on late payments to vendors.

and local governments

This bill provides that no person may recover any damages against any state 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 recognize, process, distinguish or interpret the year 2000 or a subsequent year or the failure of an electronic computing device to produce, generate or calculate a correct date if the year 2000 or a subsequent year is a part of that date. The bill also provides that any contract entered into on or after the day on which the bill becomes law that contains a contrary provision is void. In addition, the bill provides that the state is 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 government by which the legal custodian under s. 19.33 is employed and may not become a personal liability of any public official.

(b) In Except as provided in s. 893.83, in any action filed under sub. (1) relating to access to a record or part of a record under s. 19.35 (1) (am), if the court finds that

the authority acted in a wilful or intentional manner, the court shall award the individual actual damages sustained by the individual as a consequence of the failure.

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

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

SECTION 4. 218.015 (7) of the statutes is amended to read:

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

SECTION 5. 560.05 (3) of the statutes is amended to read:

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

SECTION 6. 775.01 of the statutes is amended to read:

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

SECTION 7. 893.83 of the statutes is created to read:

893.83 Claims against state and local governments resulting from ~~certain incorrect dates~~. (1) In this section:

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

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

~~(2) No person may~~ maintain an action against any state governmental unit, or any officer, employe or agent of such a unit acting in his or her capacity as an officer, employe or agent, for any damages arising from any wrongful act or omission caused by the failure of an electronic computing device that is controlled by such a unit, officer, employe or agent to recognize, process, distinguish or interpret the year 2000 or a subsequent year, or the failure of such an electronic computing device to produce,

generate or calculate a correct date if the year 2000 or a subsequent year is a part of that date.

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

SECTION 9158. Initial applicability; other.

(1) YEAR 2000 – RELATED INJURIES. The treatment of sections 16.528 (3) (f), 19.37 (2) and (3), 66.285 (4) (f), 218.015 (7), 560.05 (3), 775.01 and 893.83 of the statutes 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)

D-Note

JW52A

NO
JP bring a lawsuit against a state authority or local governmental unit, or an officer, employe or agent of a state or local governmental unit (including a state authority) acting within the scope of his or her employment or agency, for the alleged failure of the authority, unit, officer, employe or agent to plan for, test for, detect, disclose, prevent, report on, reprogram, remediate or otherwise deal with the effects of the failure of a compter system to handle corectly and consistently any date, or the inability of a computer system to correctly interpret, produce, calculate, generate, utilize, manipulate, represent or account for any date, or for any act or omission related to such an alleged failure for which there would otherwise be liability, if the authority, unit, officer, employe or agent made a good faith effort to address the alleged failure

1999–2000 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB–1085/2ins
JTK...:...:...

FNS 3-8

SECTION 1. 66.285 (4)(f) of the statutes is created to read:

66.285 (4)(f) The failure to pay timely due to an occurrence to which s. 893.83 applies.

INS 4-10

attorney general, to the effect that the claimant will indemnify the state against all costs that may accrue in such action and pay to the clerk of court all costs, in case the claimant fails to obtain judgement against the state.

Section 7. 893.83 of the statutes is created to read:

893.83 Claims against state resulting from computational date errors. (1) In this section:

(b) "Computational date error" means:

1. (1) The failure of a computer system ~~as defined herein~~ to handle correctly and consistently all dates before, during and after the year 2000; or

2. (2) The inability of a computer system ~~as defined herein~~ to correctly interpret, produce, calculate, generate, utilize, manipulate, represent and account for all dates before, during and after the year 2000.

(c) "Computer system" means any electronic or collection of devices, including support devices, networks, and embedded chips that contains computer programs or electronic instructions and that performs functions including ~~, but not limited to,~~ logic, arithmetic, data processing, data storage and retrieval, communication or control.

(a) "Action" means any civil action or proceeding including any action for declaratory or injunctive relief.

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

(end ins 4-10)

(2) No person may bring an action against a ~~state or local~~ officer, employee or agent acting within the scope of his employment or agency for the alleged failure of such officer, employee or agent to plan for, test for, detect, disclose, prevent, report on, reprogram, remediate or otherwise effect control over a computational date error or to have in place alternative provisions to deal with the effects of a computational date error or for any other act or omission related to a computational date error for which there would otherwise be liability. ~~Independent authorities, commissions, agencies, institutions and local governmental units, with the right to be sued, and their officers, employees, or agents acting within their scope of employment or agency, are included under this section, regardless of whether moneys are appropriated therefor by the Legislature.~~

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

if the authority, unit, officer, employee or agent made a good faith effort to address the alleged failure

(end ins 4-18)

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB–1085/2dn
JTK...:.....
JLG

I restored the definition of "state governmental unit" in proposed s. 893.83 (1)(e), which includes the state institutions and authorities.

1 so I could use it to make clear who is a state officer, employe or agent

Jeffery T. Kuesel
Managing Attorney
266–6778

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB–1085/2dn
JTK:jlg:jf

January 24, 1999

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Jeffery T. Kuesel
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State of Wisconsin
1999 - 2000 LEGISLATURE

LRB-1085/1 3
JTK/PJK/PEN:pgt&jlg:jf

wanted soon
computational date error claims

DOA:.....Caucutt – ~~Y2K Claims~~ against the state and local governments

FOR 1999-01 BUDGET — NOT READY FOR INTRODUCTION

WPO - fixed on request sheet

do not gen

AN ACT ...; **relating to:** recovery of damages in actions against local governments and state and local governmental officers, employes and agents caused by certain computational date errors.

Analysis by the Legislative Reference Bureau

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legal custodian under s. 19.33 is employed and may not become a personal liability of any public official.

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be sued therefor on contract as in other contract actions under ch. 775, except that it shall not be necessary for the lessor under any such lease or sublease or any assignee of such lessor or any person or other legal entity proceeding on behalf of such lessor to file any claim with the legislature prior to the commencement of any such action.

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

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

893.83 Claims against state and local governments resulting from computational date errors. (1) In this section:

(a) "Action" means any civil action or proceeding including any action for declaratory or injunctive relief.

(b) "Computational date error" means:

1. The failure of a computer system to handle correctly and consistently all dates before, during and after the year 2000; or

2. The inability of a computer system to correctly interpret, produce, calculate, generate, utilize, manipulate, represent or account for all dates before, during and after the year 2000.

(c) "Computer system" means any electronic or collection of devices, including support devices, networks, and embedded chips, that contains computer programs or electronic instructions and that performs functions including logic, arithmetic, data processing, data storage and retrieval, communication or control.

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

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

(2) No person may bring an action against a state authority or local governmental unit or an officer, employe or agent of a state or local governmental unit acting within the scope of his or her employment or agency for the alleged failure of the authority, unit, officer, employe or agent to plan for, test for, detect, disclose, prevent, report on, reprogram, remediate or otherwise effect control over a computational date error or to have in place alternative provisions to deal with the effects of a computational date error or for any other act or omission related to a computational date error for which there would otherwise be liability if the authority, unit, officer, employe or agent made a good faith effort to address the alleged failure.

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

SECTION 9158. Initial applicability; other.

RELATED TO COMPUTATIONAL DATE ERRORS

(1) ~~YEAR 2000 RELATED~~ INJURIES. The treatment of sections 16.528 (3) (f), 19.37 (2) and (3), 66.285 (4) (f), 218.015 (7), 560.05 (3), 775.01 and 893.83 of the statutes 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)

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB–1085/~~2dn~~ 3dn
JTK:jlg:jf

January 24, 1999 3 new date

I restored the definition of "state governmental unit" in proposed s. 893.83 (1) (e), which includes the state institutions and authorities, so I could use it to make clear who is a state officer, employe or agent.

Jeffery T. Kuesel
Managing Attorney
266–6778

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB–1085/3dn
JTK:jlg:jf

January 25, 1999

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State of Wisconsin
1999 - 2000 LEGISLATURE

LRB-1085/3 4
JTK/PJK/PEN:pgt&jlg:jf

want ASAP soon

DOA:.....Caucutt – Computational date error claims against the state and local governments

FOR 1999-01 BUDGET — NOT READY FOR INTRODUCTION

do not gen

AN ACT ...; **relating to:** recovery of damages in actions against local governments and state and local governmental officers, employes and agents caused by certain computational date errors.

Analysis by the Legislative Reference Bureau

COURTS AND PROCEDURE

OTHER COURTS AND PROCEDURE

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 do not enjoy such broad immunity, although narrower grants of immunity are provided to such authorities 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. No punitive damages (damages not resulting from direct or indirect loss but awarded, instead, as punishment for wrongful conduct) may be awarded in any such lawsuit based upon tort (a noncontractual claim based upon alleged wrongful conduct). Damages in tort lawsuits against a state officer, employe or agent are generally limited to $250,000. Currently, with certain exceptions, the state and local governments must pay interest on late payments to vendors.

This bill provides that no person may bring a lawsuit against a state authority or local governmental unit, or an officer, employe or agent of a state or local governmental unit (including a state authority) acting within the scope of his or her employment or agency, for the alleged failure of the authority, unit, officer, employe or agent to plan for, test for, detect, disclose, prevent, report on, reprogram, remediate or otherwise deal with the effects of the failure of a computer system to handle correctly and consistently any date, or the inability of a computer system to correctly interpret, produce, calculate, generate, utilize, manipulate, represent or account for any date, or for any act or omission related to such an alleged failure for which there would otherwise be liability, if the authority, unit, officer, employe or agent made a good faith effort to address the alleged failure. The bill also provides that any contract entered into on or after the day on which the bill becomes law that contains a contrary provision is void. 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 computational date error 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) The failure to pay timely due to an occurrence 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 unless the action relates to a matter specified in s. 893.83. 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 government by which the

legal custodian under s. 19.33 is employed and may not become a personal liability of any public official.

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

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

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

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

66.285 **(4)** (f) The failure to pay timely due to an occurrence to which s. 893.83 applies.

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

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

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

560.05 **(3)** ~~The~~ Subject to s. 893.83, the state shall be liable for accrued rentals and for any other default under any lease or sublease made under sub. (2) (c) and may

be sued therefor on contract as in other contract actions under ch. 775, except that it shall not be necessary for the lessor under any such lease or sublease or any assignee of such lessor or any person or other legal entity proceeding on behalf of such lessor to file any claim with the legislature prior to the commencement of any such action.

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

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

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

893.83 Claims against state and local governments resulting from computational date errors. (1) In this section:

(a) "Action" means any civil action or proceeding including any action for declaratory or injunctive relief.

(b) "Computational date error" means:

1. The failure of a computer system to handle correctly and consistently all dates before, during and after the year 2000; or

2. The inability of a computer system to correctly interpret, produce, calculate, generate, utilize, manipulate, represent or account for all dates before, during and after the year 2000.

(c) "Computer system" means any electronic or collection of devices, including support devices, networks, and embedded chips, that contains computer programs or electronic instructions and that performs functions including logic, arithmetic, data processing, data storage and retrieval, communication or control.

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

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

(2) No person may bring an action against a state authority or local governmental unit or an officer, employe or agent of a state or local governmental unit acting within the scope of his or her employment or agency for the alleged failure of the authority, unit, officer, employe or agent to plan for, test for, detect, disclose, prevent, report on, reprogram, remediate or otherwise effect control over a computational date error or to have in place alternative provisions to deal with the effects of a computational date error or for any other act or omission related to a computational date error for which there would otherwise be liability if the authority, unit, officer, employe or agent made a good faith effort to address the alleged failure.

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

SECTION 9158. Initial applicability; other.

(1) INJURIES RELATED TO COMPUTATIONAL DATE ERRORS. The treatment of sections 16.528 (3) (f), 19.37 (2) and (3), 66.285 (4) (f), 218.015 (7), 560.05 (3), 775.01 and 893.83 of the statutes 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)

State of Wisconsin
1999 – 2000 LEGISLATURE

LRB-1085/4
JTK/PJK/PEN:pgt&jlg:jf

wanted soon

DOA:.....Caucutt – Computational date error claims against the state and local governments

FOR 1999-01 BUDGET — NOT READY FOR INTRODUCTION

Do not gen

AN ACT ...; **relating to:** recovery of damages in actions against local governments and state and local governmental officers, employes and agents caused by certain computational date errors.

Analysis by the Legislative Reference Bureau

COURTS AND PROCEDURE

OTHER COURTS AND PROCEDURE

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 do not enjoy such broad immunity, although narrower grants of immunity are provided to such authorities 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. No punitive damages (damages not resulting from direct or indirect loss but awarded, instead, as punishment for wrongful conduct) may be awarded in any such lawsuit based upon tort (a noncontractual claim based upon alleged wrongful conduct). Damages in tort lawsuits against a state officer, employe or agent are generally limited to $250,000. Currently, with certain exceptions, the state and local governments must pay interest on late payments to vendors.

NB # The state and its authorities and local governments may also currently limit their liability or the liability of their officers, employes and agents by contract.

This bill provides that no person may bring a lawsuit against a state authority or local governmental unit, or an officer, employe or agent of a state or local governmental unit (including a state authority) acting within the scope of his or her employment or agency, for the alleged failure of the authority, unit, officer, employe or agent to plan for, test for, detect, disclose, prevent, report on, reprogram, remediate or otherwise deal with the effects of the failure of a computer system to handle correctly and consistently any date, or the inability of a computer system to correctly interpret, produce, calculate, generate, utilize, manipulate, represent or account for any date, or for any act or omission related to such an alleged failure for which there would otherwise be liability, if the authority, unit, officer, employe or agent made a good faith effort to address the alleged failure. The bill also provides that any contract entered into on or after the day on which the bill becomes law that contains a contrary provision is void. 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 computational date error 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) The failure to pay timely due to an occurrence 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 unless the action relates to a matter specified in s. 893.83. 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 government by which the

legal custodian under s. 19.33 is employed and may not become a personal liability of any public official.

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

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

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

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66.285 **(4)** (f) The failure to pay timely due to an occurrence to which s. 893.83 applies.

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

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

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

560.05 **(3)** ~~The~~ Subject to s. 893.83, the state shall be liable for accrued rentals and for any other default under any lease or sublease made under sub. (2) (c) and may

be sued therefor on contract as in other contract actions under ch. 775, except that it shall not be necessary for the lessor under any such lease or sublease or any assignee of such lessor or any person or other legal entity proceeding on behalf of such lessor to file any claim with the legislature prior to the commencement of any such action.

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

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

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

893.83 Claims against state and local governments resulting from computational date errors. (1) In this section:

(a) "Action" means any civil action or proceeding including any action for declaratory or injunctive relief.

(b) "Computational date error" means:

1. The failure of a computer system to handle correctly and consistently all dates before, during and after the year 2000; or

2. The inability of a computer system to correctly interpret, produce, calculate, generate, utilize, manipulate, represent or account for all dates before, during and after the year 2000.

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

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

(2) No person may bring an action against a state authority or local governmental unit or an officer, employe or agent of a state or local governmental unit acting within the scope of his or her employment or agency for the alleged failure of the authority, unit, officer, employe or agent to plan for, test for, detect, disclose, prevent, report on, reprogram, remediate or otherwise effect control over a computational date error or to have in place alternative provisions to deal with the effects of a computational date error or for any other act or omission related to a computational date error for which there would otherwise be liability if the authority, unit, officer, employe or agent made a good faith effort to address the alleged failure.

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

SECTION 9158. Initial applicability; other.

(1) INJURIES RELATED TO COMPUTATIONAL DATE ERRORS. The treatment of sections 16.528 (3) (f), 19.37 (2) and (3), 66.285 (4) (f), 218.015 (7), 560.05 (3), 775.01 and 893.83 of the statutes 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)

State of Wisconsin
1999 - 2000 LEGISLATURE

LRB-1085/5
JTK/PJK/PEN:pgt&jlg:hmh

DOA:.....Caucutt – Computational date error claims against the state and local governments

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

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

SECTION 9358. Initial applicability; other.

(1) INJURIES RELATED TO COMPUTATIONAL DATE ERRORS. The treatment of sections 16.528 (3) (f), 19.37 (2) and (3), 66.285 (4) (f), 218.015 (7), 560.05 (3), 775.01 and 893.83 of the statutes 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)