



**WISCONSIN LEGISLATIVE COUNCIL
AMENDMENT MEMO**

2003 Senate Bill 119	Assembly Amendment 1
<i>Memo published:</i> March 8, 2004	<i>Contact:</i> Don Dyke, Chief of Legal Services (266-0

Current law authorizes, but does not require, a city, town, village, school district, technical college district, or county to pay reasonable expenses incurred by an officer of the governmental unit when an action is brought or charge filed against the officer in his or her official capacity and the charge or action is discontinued or dismissed, the matter is determined favorably to the officer, or the officer is reinstated. Section 895.35, Stats. (In connection with civil actions, it appears this provision applies to actions not involving the recovery of money damages; s. 895.46 appears to cover those actions.)

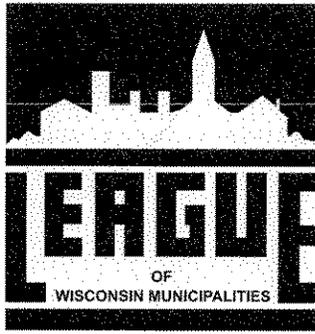
Senate Bill 119 requires the governmental unit to pay reasonable expenses incurred in connection with a charge filed or an action brought against an officer in the officer's official capacity when those expenses are incurred by emergency medical services personnel, a fire fighter, or a law enforcement or correctional officer. The mandatory payment does not apply if the person resigns before the expenses are incurred or the person's employment is terminated for cause.

Under *Assembly Amendment 1* payment of expenses is not mandatory, if, in relation to the charge or action resulting in the expenses: (1) the person is convicted of a crime; (2) the person's employment is terminated for cause; (3) the person resigns for reasons other than retirement before the expenses are incurred; (4) the person is demoted or reduced in rank; or (5) the person is suspended without for pay for 10 or more working days.

Legislative History

Assembly Amendment 1 was introduced by Representative Gottlieb. The Assembly Committee on Urban and Local Affairs recommended adoption of the amendment by a vote of Ayes, 8; Noes, 0.

DD:tlu:ksm



202 State Street
Suite 300
Madison, Wisconsin 53703-2215

608/267-2380
800/991-5502
Fax: 608/267-0645

E-mail: league@lwm-info.org
www.lwm-info.org

To: Members of the Senate Committee on Homeland Security, Veterans and Military Affairs and Government Reform

From: Curt Witynski, Assistant Director, League of Wisconsin Municipalities

Date: October 28, 2003

Re: **Opposition to SB 119, Mandating that Municipalities Pay the Legal Fees of Public Safety Employees in Disciplinary and other Actions That Do Not Lead to a Judgment for Money Damages**

The League of Wisconsin Municipalities opposes Senate Bill 119, mandating that a municipality pay the legal defense costs incurred by fire fighters and police officers in disciplinary and other actions that do not lead to a judgment for money damages. A public hearing is scheduled on the bill tomorrow. Unfortunately, I'll not be able to testify because I'll be attending the League's Annual Conference, which starts tomorrow in Milwaukee.

Municipal officials oppose Senate Bill 119 because it changes the voluntary indemnification statute, Sec. 895.35, to a mandatory indemnification requirement for public safety employees. Sec. 895.35 currently allows a municipal governing body to choose to reimburse municipal employees and officers for fees, legal costs and even forfeitures in actions that do not lead to a judgment for money damages.

We believe that this option should remain discretionary, and not made mandatory. Otherwise, municipalities would be put in the position of having to reimburse a police officer's legal fees incurred in defending against a disciplinary action that the municipality filed against the officer with the police and fire commission. Not only would the municipality be responsible for paying the cost of prosecuting the disciplinary charges against the officer but also the cost of defending the officer against the charges should the commission not terminate the officer's employment. This would be a ludicrous and expensive proposition to explain to municipal taxpayers.

We strongly urge you to vote against recommending passage of SB 119. Thanks for considering the comments and concerns of municipalities regarding this ill-advised legislation.

WISCONSIN STATE FIREFIGHTER'S ASSOCIATION, INC.

Of Wisconsin

P.O. Box 126
Durand, WI 54736

800-588-2989
Fax 715-672-8333



OCT 31 2003

October 28, 2003

The Honorable Senator
Ronald W. Brown
PO Box 7882
Madison, WI 53707-7882

Re: Senate Bill 119

Dear Senator Brown:

On behalf of the Wisconsin State Firefighter's Association, I would like to ask for your support of Senate Bill 119 relating to: payment of litigation expenses of emergency medical services personnel, firefighters, and law enforcement or correctional officers.

Our Association supports Bill 119 because a growing number of volunteers that now hold an officer position no longer wish to accept these positions because of the liability of being sued. EMT's, firefighters, especially volunteers, need protection against this.

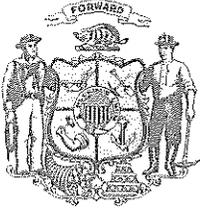
I thank you for your attention to this matter and if you have any questions or comments, please do not hesitate to contact me.

Sincerely,

Larry A. Plumer
President
Wisconsin State Firefighter's Association

RWB
11/04/03
File

LAP/biw



TED KANAVAS

STATE SENATOR

Date: Wednesday, October 29, 2003

To: Members of the Senate Committee on Homeland Security, Veterans and Military Affairs and Government Reform

From: Senator Kanavas

Re: Testimony in support of SB 119 - payment of litigation expenses of emergency medical services personnel, fire fighters, and law enforcement or correctional officers.

Good morning Chairman Brown and Committee members. Thank you for allowing me the opportunity to testify before the Senate Committee on Homeland Security, Veterans and Military Affairs and Government Reform.

I am here today to ask you to support a bill that Representative Mickey Lehman and I co-authored, Senate Bill 119, which will require municipalities to pay the litigation expenses of emergency medical services personnel, fire fighters and law enforcement and correctional officers.

The Waukesha Sheriff's Department asked Rep. Lehman and I to author this legislation.

Last Spring, a Waukesha County police officer used deadly force to defend himself and other officers during a stand off with a suicidal subject. As a result of this action, an investigation took place by the Department and the Waukesha County DA's Office.

As the investigation proceeded, the Department became aware that the officer may not be entitled to legal representation by his employer, the municipality. Wisconsin State Statutes 895.35 and 895.46 were found to be potentially applicable, however s. 895.35 indicates the municipality *may* pay for reasonable expenses. However, the municipality was not required to pay for legal expenses.

To clarify the statutes, the bill says that if an emergency services technician, first responder, firefighter or police officer is sued for actions done doing his or her job, the municipality will be required to pay for their legal expenses. However, there is a stipulation that if the officer is terminated for cause or resigns before any expenses are incurred, the municipality is not required to pay for his or her legal expenses.

In light of the wonderful work that our protective service people do for all of us, we should make them feel secure knowing their employer will stand behind them for doing their duty.

I thank you for your time and attention this morning and I ask you to support SB 119.

STATE CAPITOL

P.O. BOX 7882 • MADISON, WISCONSIN 53707-7882
(608) 266-9174 • (800) 863-8883 • FAX: (608) 264-6914

Office of Chief of Police



Chief of Police David H. Spenner

City of Racine, Wisconsin

October 30, 2003

Senator Ron Brown
31st Senate District
Room 104 South, State Capitol
P. O. Box 7882
Madison, WI 53707-7882

NOV 03 2003

Dear Senator Brown:

Please allow me to correct my October 29 testimony before the Senate Committee on Homeland Security, Veterans and Military Affairs, and Government Reform. Prior to the public hearing, I received incorrect information about Senate Bill 119 and the effect it would have on State Statute 895.35. Further, I was told that my organization, the Wisconsin Chiefs of Police Association, opposed the passage of Senate Bill 119. After the hearing, I learned that Senate Bill 119 would help all Wisconsin law enforcement officers, fire fighters, and emergency medical technicians. I also learned that the Wisconsin Chiefs of Police Association fully support Senate Bill 119.

I apologize for the confusion my appearance created. If possible, at this time, please change the minutes of your committee meeting to reflect my support for Senate Bill 119. I regret not doing proper diligence before the hearing and thank you for your understanding.

Sincerely,

Alan D. Baker
Assistant Chief of Police

ADB/df

cc: Senator David A. Zien
Senator Scott L. Fitzgerald
Senator Robert W. Wirsch
Senator Roger M. Breske
Senator Theodore J. Kanavas
Chief Douglas H. Pettit
Oregon, Wisconsin, Police Department
Inspector Robert Johannek
Waukesha County, Wisconsin, Sheriff's Department





Wisconsin State Senator
Ron Brown
District 31

November 13, 2003

Assistant Chief Alan D. Baker
Racine Police Department
Safety Building – 730 Center St.
Racine, WI 53403-1134

Dear Mr. Baker,

Thank you for writing to inform me that you now support Senate Bill 119. As you know, this legislation requires municipalities to pay litigation expenses for public safety personnel who are sued in the course of performing job-related duties unless those employees resign or are terminated for cause.

I understand that you wish to have the committee record altered to reflect your new stance on SB 119. Unfortunately, legislative procedure does not allow my office to change your position on the official Record of Committee Proceedings; however, a copy of your correspondence has been placed in the bill file for future reference. Your letter will serve as a permanent record of your actual position on the bill.

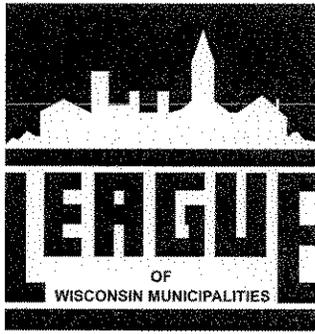
Once again, thank you for sharing your support for SB 119. Please let me know if I may provide additional assistance.

Sincerely,

Sen. Ron Brown
Committee Chair
Homeland Security, Veterans and Military Affairs and Government Reform

*Chief Baker, I appreciate your
having reconsidered your position
on this bill. If given the
opportunity to express your position
on the Senate floor I will do so.
Happy Holidays
& God Bless*

RB: mlg



202 State Street
Suite 300
Madison, Wisconsin 53703-2215

608/267-2380
800/991-5502
Fax: 608/267-0645

E-mail: league@lwm-info.org
www.lwm-info.org

To: Members of the Wisconsin State Senate
From: Curt Witynski, Assistant Director, League of Wisconsin Municipalities
Date: January 20, 2004
Re: **Opposition to SB 119, Mandating that Municipalities Pay the Legal Fees of Public Safety Employees in Disciplinary and other Actions That Do Not Lead to a Judgment for Money Damages**

The League of Wisconsin Municipalities opposes Senate Bill 119, mandating that a municipality pay the legal defense costs incurred by fire fighters and police officers in disciplinary and other actions that do not lead to a judgment for money damages. The bill has been scheduled for a vote of the Senate at tomorrow's floor session.

Municipal officials oppose Senate Bill 119 because it changes the voluntary indemnification statute, Sec. 895.35, to a mandatory indemnification requirement for public safety employees. Sec. 895.35 currently allows a municipal governing body to choose to reimburse municipal employees and officers for fees, legal costs and even forfeitures in actions that do not lead to a judgment for money damages.

We believe that this option should remain discretionary, and not made mandatory. Otherwise, municipalities would be put in the position of having to reimburse a police officer's legal fees incurred in defending against a disciplinary action that the municipality filed against the officer with the police and fire commission. Not only would the municipality be responsible for paying the cost of prosecuting the disciplinary charges against the officer but also the cost of defending the officer against the charges should the commission not terminate the officer's employment. If the commission, for example, voted to suspend the officer or impose other discipline, short of termination, the municipality would be required to pay the officer's legal defense costs. This would be a ludicrous and expensive proposition to explain to municipal taxpayers.

We strongly urge you to vote against the passage of SB 119. Thanks for considering the comments and concerns of municipalities regarding this ill-advised legislation imposing another state mandate on local governments.

Gilbert, Melissa

From: mark matthew [markmatt7@hotmail.com]
Sent: Tuesday, January 27, 2004 6:06 PM
To: sen.leibham@legis.state.wi.us; sen.panzer@legis.state.wi.us;
sen.fitzgerald@legis.state.wi.us; sen.darling@legis.state.wi.us; sen.brown@legis.state.wi.us
Cc: gregory.hubbard@legis.state.wi.us; tom.rhatican@legis.state.wi.us;
brett.davis@legis.state.wi.us; tom.petri@legis.state.wi.us; melissa.gilbert@legis.state.wi.us
Subject: opposed SB-119

Senators:

Outagamie County Board of Supervisors opposes unfunded state mandates upon the property taxpayers. SB-119 imposes another state mandate on local government. Current law allows a municipal governing body to choose to reimburse municipal employee and officers for fees, legal costs and even forfeitures in actions that do not lead to a judgment for money damages. If the law is changed and becomes mandatory rather than discretionary, property taxpayers will pay the costs.

Thanks for your consideration,

Mark Wadium

Outagamie County Lobbyist

(608) 446-0440 cell

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THE WISCONSIN PROFESSIONAL POLICE ASSOCIATION

FOR IMMEDIATE RELEASE:

January 21, 2004

Contact: James L. Palmer, II, 608-273-3840

WPPA URGES SENATORS TO PASS SB 119

MADISON—The Wisconsin Professional Police Association, the state's largest law enforcement association, praises Senate Majority Leader Mary Panzer's decision to schedule Senate Bill 119 for a vote on the senate floor for today, January 21, 2003.

Current law requires a municipality to pay the judgment and costs of a municipal officer or employee who is sued in his or her official capacity or for actions taken in the scope of his or her employment. Current law also permits a municipality to pay the reasonable litigation expenses of a municipal officer against whom criminal charges or a civil lawsuit not involving the recovery of damages is brought. SB 119, introduced by State Senator Ted Kanavas (R-Brookfield), requires municipalities to pay these litigation expenses for an emergency medical services technician, first responder, fire fighter, or law enforcement officer, unless the person resigns or their employment is terminated for cause before the expenses are incurred.

Some critics of SB 119 have suggested that if a police and fire commission decides to suspend an officer, or impose other discipline short of termination, it is unfair to require the municipality to pay the officer's legal expenses. This argument is complete nonsense. If just cause is lacking for a particular employee's termination, then why shouldn't the municipal employer pay the employee's expenses? There is absolutely nothing ludicrous about a municipality having to pay a police officer's legal fees when a police and fire commission have decided that the officer's conduct did not warrant his or her termination.

A local police officer should not be forced into financial ruin when they didn't do anything wrong. Current law allows for this inequitable result. The only thing SB 119 mandates is fairness and common sense. The dedicated men and women of Wisconsin's law enforcement workforce strongly urge legislators to support passage of SB 119, and we thank you for your consideration.

* * *