

2007 ASSEMBLY BILL 804

February 13, 2008 – Introduced by Representatives M. WILLIAMS, GRONEMUS, BALLWEG, BIES, GUNDERSON, MURSAU, MURTHA, NERISON, A. OTT, PETERSEN, SUDER and TAUCHEN, cosponsored by Senators GROTHMAN, KEDZIE, A. LASEE, OLSEN and SCHULTZ. Referred to Committee on Property Rights.

1 **AN ACT** *to renumber and amend* 823.02; and *to create* 823.02 (1g) and 823.02
2 (2) and (3) of the statutes; **relating to:** the authority of the Department of
3 Justice and public nuisance actions.

Analysis by the Legislative Reference Bureau

Under current law, the Department of Justice (DOJ), counties, and local units of government may bring an action to enjoin a public nuisance. Generally, the costs of bringing the action and defending the action are born by each party, except for disbursements and specific amounts for expert and attorney fees. This bill requires a court to award the defendant all of the defendant's costs and expenses, including reasonable attorney fees, expert fees, and engineering fees, if the court determines that the defendant's activity was not a public nuisance. The bill also prohibits DOJ from bringing an action to enjoin a public nuisance if the alleged activity is not in violation of a statute, rule, permit, or ordinance.

For further information see the **state** 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:

4 **SECTION 1.** 823.02 of the statutes is renumbered 823.02 (1m) and amended to
5 read:

ASSEMBLY BILL 804**SECTION 1**

1 **823.02 (1m)** An action to enjoin a public nuisance may be commenced and
2 prosecuted in the name of the state, either by the attorney general on information
3 obtained by the department of justice, or upon the relation of a private individual,
4 sewerage commission created under ss. 200.01 to 200.15 or a county, having first
5 obtained leave therefor from the court. An action to enjoin a public nuisance may be
6 commenced and prosecuted by a city, village, town or a metropolitan sewerage
7 district created under ss. 200.21 to 200.65 in the name of the municipality or
8 metropolitan sewerage district, and it is not necessary to obtain leave from the court
9 to commence or prosecute the action. ~~The same rule as to liability for costs shall~~
10 ~~govern as in other actions brought by the state.~~ No stay of any order or judgment
11 enjoining or abating, in any action under this section, may be had unless the appeal
12 is taken within 5 days after notice of entry of the judgment or order or service of the
13 injunction. Upon appeal and stay, the return to the court of appeals or supreme court
14 shall be made immediately.

15 **SECTION 2.** 823.02 (1g) of the statutes is created to read:

16 **823.02 (1g)** In this section, “litigation expenses” means the sum of the costs,
17 disbursements, and expenses, including reasonable attorney fees, expert witnesses,
18 and engineering fees, necessary to prepare or participate in a court action under this
19 section.

20 **SECTION 3.** 823.02 (2) and (3) of the statutes are created to read:

21 **823.02 (2)** No action may be commenced and prosecuted under sub. (1m) by the
22 attorney general if the activity, use, or practice alleged to be a nuisance is not in
23 violation of any statute, rule, order, permit, approval, or local ordinance or
24 regulation.

