



1995 SENATE BILL 197

May 16, 1995 - Introduced by Senators LEEAN, ELLIS and RUDE, by request of Governor Tommy G. Thompson. Referred to Committee on State Government Operations and Corrections.

1 **AN ACT** *to repeal* 45.72 (4), 46.017, 101.02 (2) and 301.04; *to amend* 25.15 (1),
2 25.17 (intro.), 25.18 (1) (e), 36.07 (1), 44.01 (1), 45.351 (2) (f), 45.356 (4), 195.03
3 (28), 196.02 (12) and 775.01; and *to create* 895.45 of the statutes; **relating to:**
4 a restatement of the doctrine of sovereign immunity, suits against the state and
5 state agencies and powers and attributes of certain state agencies.

Analysis by the Legislative Reference Bureau

Under a portion of the common law, which pursuant to the state constitution is in effect in this state unless modified by the constitution or by act of the legislature, the state has "sovereign immunity". In other words, it is generally not possible to sue the state in state court unless a statute or constitutional provision authorizes the suit to be brought. The state constitution (article IV, section 27) directs the legislature to provide by law the manner in which suits may be brought against the state. There are a number of judicial interpretations which define the boundaries of the sovereign immunity doctrine.

In *Bahr v. Investment Board*, 186 Wis. 2d 379 (Ct. App. 1994), the state court of appeals held that the state investment board could be sued, notwithstanding sovereign immunity, in part because the statutes provide that it is a "body corporate with power to sue and be sued" and because it is an "independent agency of the state" and its operations are not funded with general purpose revenue.

This bill creates a statute which reasserts the state's right not to be sued unless suit is expressly authorized to be brought by law or by the constitution. The bill further provides that no powers, functions or source of funding provided by law to any instrumentality of this state which is engaged in a governmental function constitute a waiver of the state's sovereign immunity to suit. The bill also deletes statutory provisions which provide that certain state agencies may "sue and be sued" and that certain state agencies are a "body corporate" or a "body corporate and politic". Under

judicial interpretations, when suits are otherwise permitted to be brought, an agency may be sued notwithstanding the absence of this language. The bill further deletes a provision that the investment board is an “independent agency of the state”. (The statutes contain numerous references to independent agencies, including the investment board, in an apparent attempt to distinguish them from the state departments and the agencies that are attached to them, but the bill does not affect these references.)

In addition, the bill clarifies, in accordance with judicial interpretations, that if the legislature refuses to allow a claim against the state, suit may be brought only if suit is authorized to be brought (i.e., sovereign immunity does not apply).

Finally, the bill provides that the reassertion of sovereign immunity by the state is intended as a restatement of existing law.

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

1 **SECTION 1.** 25.15 (1) of the statutes is amended to read:

2 25.15 (1) **PURPOSE.** The purpose of the board is to provide professional
3 investment management of trusts, operating funds and capital funds established by
4 law. ~~It is the intent of the legislature that the~~ The board be an independent agency
5 ~~of the state which is to~~ shall manage money and property for the state, its agencies
6 and trust funds. The goal of board management shall be towards accomplishing the
7 purpose of each trust or fund.

8 **SECTION 2.** 25.17 (intro.) of the statutes is amended to read:

9 **25.17 Powers and duties of board.** (intro.) ~~The “State of Wisconsin~~
10 ~~Investment Board” shall be a body corporate with power to sue and be sued in said~~
11 ~~name.~~ The investment board shall have a seal with the words, “State of Wisconsin
12 Investment Board”. The board shall:

13 **SECTION 3.** 25.18 (1) (e) of the statutes is amended to read:

14 25.18 (1) (e) Take such action as may be necessary to make investments in
15 mortgage loans or in the purchase of interests in real estate in any other state or in

1 Canada, including but not excluding because of enumeration, qualifying to do
2 business, filing reports, paying franchise, license or other fees and taxes, designating
3 agents, and designating an office ~~and subjecting itself to suit.~~

4 **SECTION 4.** 36.07 (1) of the statutes is amended to read:

5 36.07 (1) (title) ~~CORPORATE STATUS AND TITLE~~ TITLE. The board ~~and their~~
6 ~~successors in office shall constitute a body corporate by~~ shall bear the name of “Board
7 of Regents of the University of Wisconsin System”.

8 **SECTION 5.** 44.01 (1) of the statutes is amended to read:

9 44.01 (1) The historical society shall ~~constitute a body politic and corporate by~~
10 bear the name of “The State Historical Society of Wisconsin,” and shall possess all
11 the powers necessary to accomplish the objects and perform the duties prescribed by
12 law. The historical society shall be an official agency and the trustee of the state.

13 **SECTION 6.** 45.351 (2) (f) of the statutes is amended to read:

14 45.351 (2) (f) The department may execute necessary instruments, collect
15 interest and principal, compromise indebtedness, ~~sue and be sued~~, post bonds and
16 write off indebtedness that it deems uncollectible. If a loan under this subsection is
17 secured by a real estate mortgage, the department may exercise the rights of owners
18 and mortgagees generally and the rights and powers set forth in s. 45.72. Interest
19 and repaid principal shall be paid into the veterans trust fund.

20 **SECTION 7.** 45.356 (4) of the statutes is amended to read:

21 45.356 (4) The department shall administer this program as a fiduciary for the
22 purpose of maximizing the asset and income base of the veterans trust fund. The
23 department may execute necessary instruments, collect interest and principal,
24 compromise indebtedness, ~~sue and be sued~~, post bonds and write off indebtedness
25 that it considers uncollectible. If a loan under this subsection is secured by a real

1 estate mortgage, the department may exercise the rights of owners and mortgagees
2 generally and the rights and powers set forth in s. 45.72. The department shall pay
3 all interest and principal repaid on the loan into the veterans trust fund.

4 **SECTION 8.** 45.72 (4) of the statutes is repealed.

5 **SECTION 9.** 46.017 of the statutes is repealed.

6 **SECTION 10.** 101.02 (2) of the statutes is repealed.

7 **SECTION 11.** 195.03 (28) of the statutes is amended to read:

8 195.03 (28) TITLE. The office may ~~sue and be sued in that name, and may confer~~
9 with or participate in any proceedings before any regulatory agency of any other
10 state or of the federal government.

11 **SECTION 12.** 196.02 (12) of the statutes is amended to read:

12 196.02 (12) (title) ~~SUE, BE SUED~~ PARTICIPATION IN PROCEEDINGS. The commission
13 may ~~sue and be sued in its own name, and may confer with or participate in any~~
14 proceedings before any regulatory agency of any other state or of the federal
15 government.

16 **SECTION 13.** 301.04 of the statutes is repealed.

17 **SECTION 14.** 775.01 of the statutes is amended to read:

18 **775.01 Actions against state; bond.** Upon the refusal of the legislature to
19 allow a claim against the state, if suit is authorized to be brought against the state,
20 the claimant may commence an action against the state. The action may be
21 commenced by service as provided in s. 801.11 (3) and by filing with the clerk of court
22 a bond, not exceeding \$1,000, with 2 or more sureties, to be approved by the attorney
23 general, to the effect that the claimant will indemnify the state against all costs that
24 may accrue in such action and pay to the clerk of court all costs, in case the claimant
25 fails to obtain judgment against the state.

