



1995 SENATE BILL 42

January 26, 1995 - Introduced by Senators ADELMAN, BURKE, CHVALA, MOEN and PLEWA, cosponsored by Representatives BALDWIN, BLACK, BOYLE, NOTESTEIN, PLACHE, L. YOUNG and R. YOUNG, by request of Attorney General James Doyle. Referred to Committee on Judiciary.

1 **AN ACT to amend** 59.76 (1), 59.77 (1), 60.44 (1) (a), 60.44 (1) (b), 60.44 (3), 62.25
2 (1), 66.044 (1) (intro.), 88.145, 118.26, 119.68 (2), 198.12 (2), 893.80 (1) (intro.),
3 893.80 (1) (b), 893.80 (1p), 893.80 (5), 893.80 (6) and 893.82 (3) of the statutes;
4 **relating to:** claims against governmental bodies and their officers, employes
5 and agents.

Analysis by the Legislative Reference Bureau

The Wisconsin supreme court, in *DNR v. City of Waukesha*, 184 Wis. 2d 178 (1994), held that the current requirement to provide a notice of a claim against a governmental body and its officers, employes and agents before commencing an action applies to all types of causes of action, including requests for injunctive relief and claims for money damages. The notice provision requires the person who has a claim against a governmental body or its officers, employes or agents to submit a notice within 120 days after the event that gave rise to the claim. The governmental body has, under the law, 120 days after the claim is submitted to decide to allow or disallow the claim. The claimant is required to wait until the 120-day period is up, or until the claim is disallowed, whichever is sooner, before commencing an action in court on the claim. Under current law, for claims against state officers, employes or agents, the claimant is not required to wait until the claim is disallowed to commence an action in court.

This bill limits the notice-of-claim provisions related to state officers, employes and agents and local governmental bodies and their officers, employes and agents to

causes of action to recover money due under a contract, for services rendered or for property damage, injuries or death.

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

1 **SECTION 1.** 59.76 (1) of the statutes is amended to read:

2 59.76 (1) No action may be brought or maintained against a county upon a
3 claim or cause of action under a contract, for services rendered or for property
4 damage, injury or death unless the claimant complies with s. 893.80.

5 **SECTION 2.** 59.77 (1) of the statutes is amended to read:

6 59.77 (1) IN GENERAL. Every person, except jurors, witnesses and interpreters,
7 and except physicians or other persons entitled to receive from the county fees for
8 reporting to the register of deeds births or deaths, which have occurred under their
9 care, having any claim against any county under a contract, for services rendered or
10 for property damage, injury or death shall comply with s. 893.80.

11 **SECTION 3.** 60.44 (1) (a) of the statutes is amended to read:

12 60.44 (1) (a) Claims for money under a contract, for services rendered or for
13 property damage, injury or death against a town or against officers, officials, agents
14 or employes of the town arising out of acts done in their official capacity shall be filed
15 with the town clerk as provided under s. 893.80 (1) (b).

16 **SECTION 4.** 60.44 (1) (b) of the statutes is amended to read:

17 60.44 (1) (b) The town board shall allow or disallow the claim. Notice of
18 disallowance shall be made as provided under s. 893.80 ~~(1) (b)~~ (1g).

19 **SECTION 5.** 60.44 (3) of the statutes is amended to read:

20 60.44 (3) COURT ACTIONS TO RECOVER CLAIMS. Subsection (2), or an ordinance
21 adopted under that subsection, does not affect the applicability of s. 893.80. No

1 action may be brought or maintained against a town upon a claim under a contract,
2 for services rendered or for property damage, injury or death unless the claimant
3 complies with s. 893.80.

4 **SECTION 6.** 62.25 (1) of the statutes is amended to read:

5 62.25 (1) CLAIMS. No action may be brought or maintained against a city upon
6 a claim or cause of action under a contract, for services rendered or for property
7 damage, injury or death unless the claimant complies with s. 893.80.

8 **SECTION 7.** 66.044 (1) (intro.) of the statutes is amended to read:

9 66.044 (1) (intro.) The governing body of any village or of any city of the 2nd,
10 3rd or 4th class may by ordinance enact an alternative system to s. 893.80 of
11 approving financial claims against the municipal treasury ~~other than claims subject~~
12 ~~to s. 893.80~~ under a contract or for services rendered. The ordinance shall provide
13 that payments may be made from the city or village treasury after the comptroller
14 or clerk of the city or village audits and approves each claim as a proper charge
15 against the treasury, and endorses his or her approval on the claim after having
16 determined that the following conditions have been complied with:

17 **SECTION 8.** 88.145 of the statutes is amended to read:

18 **88.145 Limitation of damages and suits.** In any action under a contract,
19 for services rendered or for property damage, injury or death against a drainage
20 district, drainage board, drainage board member, drainage board employe or an
21 owner of land within the district who undertakes work approved by the drainage
22 board, s. 893.80 is applicable and the limit on the amount recoverable by any person
23 under s. 893.80 (3) applies to the drainage board, the members and employes of the
24 drainage board, the drainage district and any owner of land within the district who
25 undertakes work approved by the drainage board.

1 **SECTION 9.** 118.26 of the statutes is amended to read:

2 **118.26 Claim against school district.** No action may be brought or
3 maintained against a school district upon a claim or cause of action under a contract,
4 for services rendered or for property damage, injury or death unless the claimant
5 complies with s. 893.80.

6 **SECTION 10.** 119.68 (2) of the statutes is amended to read:

7 **119.68 (2)** No action may be brought or maintained against the school upon a
8 claim or cause of action under a contract, for services rendered or for property
9 damage, injury or death unless the claimant complies with s. 893.80.

10 **SECTION 11.** 198.12 (2) of the statutes is amended to read:

11 **198.12 (2) SERVICE OF PROCESS ON, PERSONAL INJURY CLAIMS, VENUE.** The district
12 shall sue or be sued in its corporate name and service of process upon the district
13 shall be by service upon the chairperson of the board and the clerk of the district, but
14 no action shall be brought or maintained against a district upon a claim or cause of
15 action under a contract, for services rendered or for property damage, injury or death
16 unless the claimant complies with s. 893.80. All actions by or against the district,
17 except condemnation proceedings and actions to which the state or any officer or
18 commission thereof is a party, shall be brought in the circuit court for the county in
19 which its principal administrative office is located.

20 **SECTION 12.** 893.80 (1) (intro.) of the statutes is amended to read:

21 **893.80 (1) (intro.)** Except as provided in subs. (1g), (1m) and (1p), no action to
22 recover money due under a contract, for services rendered or for property damage,
23 injury or death may be brought or maintained against any volunteer fire company
24 organized under ch. 213, political corporation, governmental subdivision or agency
25 thereof nor against any officer, official, agent or employe of the corporation,

1 subdivision or agency for acts done in their official capacity or in the course of their
2 agency or employment upon a claim or cause of action unless:

3 **SECTION 13.** 893.80 (1) (b) of the statutes is amended to read:

4 893.80 (1) (b) A claim containing the address of the claimant and an itemized
5 statement of the relief sought is presented to the appropriate clerk or person who
6 performs the duties of a clerk or secretary for the defendant fire company,
7 corporation, subdivision or agency and the claim is disallowed. Failure of the
8 appropriate body to disallow within 120 days after presentation is a disallowance.

9 **(1g)** Notice of disallowance of the claim submitted under sub. (1) shall be
10 served on the claimant by registered or certified mail and the receipt therefor, signed
11 by the claimant, or the returned registered letter, shall be proof of service. Failure
12 of the appropriate body to disallow a claim within 120 days after presentation of the
13 written notice of the claim is a disallowance. No action on a claim under this section
14 against any defendant fire company, corporation, subdivision or agency nor against
15 any defendant officer, official, agent or employe, may be brought after 6 months from
16 the date of service of the notice of disallowance, and the notice of disallowance shall
17 contain a statement to that effect.

18 **SECTION 14.** 893.80 (1p) of the statutes is amended to read:

19 893.80 (1p) No action may be brought or maintained with regard to a claim to
20 recover money due under a contract, for services rendered or for property damages,
21 injuries or death against any political corporation, governmental subdivision or
22 agency thereof for the negligent inspection of any property, premises, place of
23 employment or construction site for the violation of any statute, rule, ordinance or
24 health and safety code unless the alleged negligent act or omission occurred after
25 November 30, 1976. In any such action, the time period under sub. (1) (a) shall be

1 one year after discovery of the negligent act or omission or the date on which, in the
2 exercise of reasonable diligence the negligent act or omission should have been
3 discovered.

4 **SECTION 15.** 893.80 (5) of the statutes is amended to read:

5 893.80 (5) Except as provided in this subsection, the provisions and limitations
6 of this section shall be exclusive and shall apply to all claims to recover money due
7 under a contract, for services rendered or for property damage, injury or death
8 against a volunteer fire company organized under ch. 213, political corporation,
9 governmental subdivision or agency or against any officer, official, agent or employe
10 thereof for acts done in an official capacity or the course of his or her agency or
11 employment. When rights or remedies are provided by any other statute against any
12 political corporation, governmental subdivision or agency or any officer, official,
13 agent or employe thereof ~~for injury, damage~~ to recover money due under a contract,
14 for services rendered or for property damage, injury or death, such that statute shall
15 apply and the limitations in sub. (3) ~~shall be~~ are inapplicable.

16 **SECTION 16.** 893.80 (6) of the statutes is amended to read:

17 893.80 (6) A 1st class city, its officers, officials, agents or employes shall not be
18 liable for any claim to recover money for damages to a person or property arising out
19 of any act or omission in providing or failing to provide police services upon the
20 interstate freeway system or in or upon any grounds, building or other improvement
21 owned by a county and designated for stadium or airport purposes and appurtenant
22 uses.

23 **SECTION 17.** 893.82 (3) of the statutes is amended to read:

24 893.82 (3) Except as provided in sub. (5m), no civil action or civil proceeding to
25 recover for injury, damage or death may be brought against any state officer, employe

1 or agent for or on account of any act growing out of or committed in the course of the
2 discharge of the officer's, employe's or agent's duties, and no civil action or civil
3 proceeding may be brought to recover for injury, damage or death against any
4 nonprofit corporation operating a museum under a lease agreement with the state
5 historical society, unless within 120 days of the event causing the injury, damage or
6 death giving rise to the civil action or civil proceeding, the claimant in the action or
7 proceeding serves upon the attorney general written notice of a claim stating the
8 time, date, location and the circumstances of the event giving rise to the claim for the
9 injury, damage or death and the names of persons involved, including the name of
10 the state officer, employe or agent involved. A specific denial by the attorney general
11 is not a condition precedent to bringing the civil action or civil proceeding.

12 **SECTION 18. Initial applicability.**

13 (1) This act first applies to actions arising against governmental bodies,
14 officers, agents or employes on the effective date of this subsection.

15 (END)