



State of Wisconsin
2019 - 2020 LEGISLATURE

LRB-2174/P2
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DOA:.....Potts, BB0447 - Legislative intervention (Act 369)

FOR 2019-2021 BUDGET -- NOT READY FOR INTRODUCTION

AN ACT ...; **relating to:** the budget.

Analysis by the Legislative Reference Bureau

JUSTICE

1. Powers of the attorney general

This bill repeals changes made to the powers of the attorney general in [2017 Wisconsin Act 369](#) relating to the power to compromise or discontinue civil actions prosecuted by DOJ and the power to compromise and settle actions in cases where DOJ is defending the state. This bill reestablishes these settlement powers as they existed under the law before Act 369 was enacted.

The bill allows the attorney general to compromise or discontinue actions prosecuted by DOJ 1) when directed by the officer, department, board, or commission that directed the prosecution; or 2) with the approval of the governor when the action is prosecuted by DOJ on the initiative of the attorney general or at the request of any individual. The bill eliminates the requirement for approval of compromise or discontinuance from a legislative intervenor or JCF. It also eliminates the requirement, in certain circumstances, for the attorney general to obtain approval of a settlement or discontinuance by the Joint Committee on Legislative Organization before submitting a proposed plan to JCF.

Under the bill, when DOJ is representing the defense, the attorney general may compromise and settle the action as the attorney general determines to be in the best interest of the state. The bill eliminates the requirement under current law that, in actions for injunctive relief or if there is a proposed consent decree, the attorney

general obtain approval of any legislative intervenor or, if there is no intervenor, JCF. The bill also eliminates the requirement, in certain circumstances, that the attorney general obtain approval from JCLO before submitting a proposed plan of settlement or compromise to JCF.

STATE GOVERNMENT

LEGISLATURE

2. Legislative intervention in certain court proceedings

Current law, under [2017 Wisconsin Act 369](#), provides that the legislature may intervene as a matter of right in an action when a party to the action, as part of a claim or affirmative defense, challenges in state or federal court the constitutionality of a statute, facially or as applied, challenges a statute as violating or preempted by federal law, or otherwise challenges the construction or validity of a statute. Act 369 also provides that the legislature must be served with a copy of the proceedings in all such actions, regardless of whether the legislature intervenes. This bill repeals those provisions.

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

SECTION 1. 13.365 of the statutes is repealed.

SECTION 2. 13.56 (2) of the statutes is amended to read:

13.56 (2) PARTICIPATION IN CERTAIN PROCEEDINGS. The cochairpersons of the joint committee for review of administrative rules or their designated agents shall accept service made under ss. 227.40 (5) and 806.04 (11). If the committee determines that the legislature should be represented in the proceeding, it shall request the joint committee on legislative organization to intervene in designate the legislature's representative for the proceeding as ~~provided under s. 806.04 (11)~~. The costs of participation in the proceeding shall be paid equally from the appropriations under s. 20.765 (1) (a) and (b), except that such costs incurred by the department of justice shall be paid from the appropriation under s. 20.455 (1) (d).

SECTION 3. 13.90 (2) of the statutes is amended to read:

13.90 (2) The cochairpersons of the joint committee on legislative organization or their designated agent shall accept service made under ss. s. 806.04 (11) ~~and~~

~~893.825 (2). If the committee, the senate organization committee, or the assembly organization committee determines that the legislature should intervene be represented in the proceeding as provided under s. 803.09 (2m), the assembly shall represent the assembly, the senate shall represent the senate, and the joint committee on legislative organization shall represent the legislature, that committee shall designate the legislature's representative for the proceeding. The costs of participation in the proceeding shall be paid equally from the appropriations under s. 20.765 (1) (a) and (b), except that such costs incurred by the department of justice shall be paid from the appropriation under s. 20.455 (1) (d).~~

SECTION 4. 165.08 (1) of the statutes is amended to read:

165.08 (1) Any civil action prosecuted by the department by direction of any officer, department, board, or commission, ~~or any~~ shall be compromised or discontinued when so directed by such officer, department, board, or commission. Any civil action prosecuted by the department on the initiative of the attorney general, or at the request of any individual may be compromised or discontinued with the approval of an intervenor under s. 803.09 (2m) or, if there is no intervenor, by ~~submission of a proposed plan to the joint committee on finance for the approval of the committee. The compromise or discontinuance may occur only if the joint committee on finance approves the proposed plan. No proposed plan may be submitted to the joint committee on finance if the plan concedes the unconstitutionality or other invalidity of a statute, facially or as applied, or concedes that a statute violates or is preempted by federal law, without the approval of the joint committee on legislative organization~~ the governor.

***NOTE: This is reconciled s. 165.08 (1). This SECTION has been affected by drafts with the following LRB numbers: -2072/P1 and -2174/P1.

SECTION 5. 165.25 (1) of the statutes is amended to read:

165.25 (1) REPRESENT STATE IN APPEALS AND ON REMAND. Except as provided in ss. 5.05 (2m) (a), 19.49 (2) (a), and 978.05 (5), appear for the state and prosecute or defend all actions and proceedings, civil or criminal, in the court of appeals and the supreme court, in which the state is interested or a party, and attend to and prosecute or defend all civil cases sent or remanded to any circuit court in which the state is a party. ~~The joint committee on legislative organization may intervene as permitted under s. 803.09 (2m) at any time.~~ Nothing in this subsection deprives or relieves the attorney general or the department of justice of any authority or duty under this chapter.

SECTION 6. 165.25 (1m) of the statutes is amended to read:

165.25 (1m) REPRESENT STATE IN OTHER MATTERS. If requested by the governor or either house of the legislature, appear for and represent the state, any state department, agency, official, employee or agent, whether required to appear as a party or witness in any civil or criminal matter, and prosecute or defend in any court or before any officer, any cause or matter, civil or criminal, in which the state or the people of this state may be interested. ~~The joint committee on legislative organization may intervene as permitted under s. 803.09 (2m) at any time.~~ The public service commission may request under s. 196.497 (7) that the attorney general intervene in federal proceedings. All expenses of the proceedings shall be paid from the appropriation under s. 20.455 (1) (d).

SECTION 7. 165.25 (6) (a) 1. of the statutes is amended to read:

165.25 (6) (a) 1. At the request of the head of any department of state government, the attorney general may appear for and defend any state department, or any state officer, employee, or agent of the department in any civil action or other

matter brought before a court or an administrative agency which is brought against the state department, or officer, employee, or agent for or on account of any act growing out of or committed in the lawful course of an officer's, employee's, or agent's duties. Witness fees or other expenses determined by the attorney general to be reasonable and necessary to the defense in the action or proceeding shall be paid as provided for in s. 885.07. The attorney general may compromise and settle the action as the attorney general determines to be in the best interest of the state ~~except that, if the action is for injunctive relief or there is a proposed consent decree, the attorney general may not compromise or settle the action without the approval of an intervenor under s. 803.09 (2m) or, if there is no intervenor, without first submitting a proposed plan to the joint committee on finance. If, within 14 working days after the plan is submitted, the cochairpersons of the committee notify the attorney general that the committee has scheduled a meeting for the purpose of reviewing the proposed plan, the attorney general may compromise or settle the action only with the approval of the committee. The attorney general may not submit a proposed plan to the joint committee on finance under this subdivision in which the plan concedes the unconstitutionality or other invalidity of a statute, facially or as applied, or concedes that a statute violates or is preempted by federal law, without the approval of the joint committee on legislative organization.~~

***NOTE: This is reconciled s. 165.25 (6) (a) 1. This SECTION has been affected by drafts with the following LRB numbers: -2072/P1 and -2174/P1.

SECTION 8. 803.09 (2m) of the statutes is repealed.

SECTION 9. 806.04 (11) of the statutes is amended to read:

806.04 (11) PARTIES. When declaratory relief is sought, all persons shall be made parties who have or claim any interest which would be affected by the

declaration, and no declaration may prejudice the right of persons not parties to the proceeding. In any proceeding which involves the validity of a municipal ordinance or franchise, the municipality shall be made a party, and shall be entitled to be heard. If a statute, ordinance or franchise is alleged to be unconstitutional, ~~or to be in violation of or preempted by federal law, or if the construction or validity of a statute is otherwise challenged,~~ the attorney general shall also be served with a copy of the proceeding and be entitled to be heard. ~~If a statute is alleged to be unconstitutional, or to be in violation of or preempted by federal law, or if the construction or validity of a statute is otherwise challenged, the speaker of the assembly, the president of the senate, and the senate majority leader shall also be served with a copy of the proceeding, and the assembly, the senate, and the state legislature are entitled to be heard. If the assembly, the senate, or the joint committee on legislative organization intervenes as provided under s. 803.09 (2m), the assembly shall represent the assembly, the senate shall represent the senate, and the joint committee on legislative organization shall represent the legislature.~~ In any proceeding under this section in which the constitutionality, construction or application of any provision of ch. 227, or of any statute allowing a legislative committee to suspend, or to delay or prevent the adoption of, a rule as defined in s. 227.01 (13) is placed in issue by the parties, the joint committee for review of administrative rules shall be served with a copy of the petition and, with the approval of the joint committee on legislative organization, shall be made a party and be entitled to be heard. In any proceeding under this section in which the constitutionality, construction or application of any provision of ch. 13, 20, 111, 227 or 230 or subch. I, III or IV of ch. 16 or s. 753.075, or of any statute allowing a legislative committee to suspend, or to delay or prevent the adoption of, a rule as defined in s. 227.01 (13) is placed in issue by the parties, the

joint committee on legislative organization shall be served with a copy of the petition and the joint committee on legislative organization, the senate committee on organization or the assembly committee on organization may intervene as a party to the proceedings and be heard.

SECTION 10. 809.13 of the statutes is amended to read:

809.13 Rule (Intervention). A person who is not a party to an appeal may file in the court of appeals a petition to intervene in the appeal. A party may file a response to the petition within 11 days after service of the petition. The court may grant the petition upon a showing that the petitioner's interest meets the requirements of s. 803.09 (1), or (2), or (2m).

SECTION 11. Subchapter VIII (title) of chapter 893 [precedes 893.80] of the statutes is amended to read:

CHAPTER 893

SUBCHAPTER VIII

CLAIMS AGAINST GOVERNMENTAL BODIES, OFFICERS AND EMPLOYEES; STATUTORY CHALLENGES

SECTION 12. 893.825 of the statutes is repealed.

(END)