

2001 ASSEMBLY BILL 844

February 20, 2002 – Introduced by Representatives GROTHMAN, KRAWCZYK, LADWIG, STONE, OTT, NASS, HAHN, OWENS and TOWNSEND, cosponsored by Senators DARLING, LAZICH and SCHULTZ. Referred to Committee on Judiciary.

1 **AN ACT to amend** 14.11 (1), 14.11 (2) (a) (intro.), 165.25 (1), 165.25 (4) (a) and
2 165.25 (4) (ar); and **to create** 14.11 (3) and 165.24 of the statutes; **relating to:**
3 restricting the states' authority to bring lawsuits involving contingency fee
4 arrangements.

Analysis by the Legislative Reference Bureau

Under current law, if the governor determines that the rights, interests, or property of the state have been or will be injured, the governor may require the attorney general to prosecute any action or proceeding to redress or prevent such an injury. In addition, under current law, the governor may appoint a special counsel to assist the attorney general in prosecuting an action or proceeding, to defend any action or proceeding instituted by the attorney general against an officer of the state, to prosecute any action or proceeding in which the attorney general's interests are contrary to those of the state, or to prosecute any action or proceeding that the attorney general believes it is his or her duty to defend rather than prosecute.

This bill requires that before the governor may require the attorney general to prosecute an action on behalf of the state, or before the governor may employ a special counsel to prosecute an action on behalf of the state, the governor must receive approval from the appropriate standing committees of each house of the legislature if the action or proceeding involves the determination and payment of attorney compensation under a contingency fee arrangement. This bill requires also that before the state or any department, board, or agency of the state may prosecute any action or proceeding that involves the determination and payment of attorney

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compensation under a contingency fee arrangement, the attorney representing the state or agency must receive approval from the appropriate standing committees of each house of the legislature. The bill does not apply to cases when the state or agency is acting in the capacity of a trust fund fiduciary for state trust funds.

For further information see the *state and local* 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:

1 **SECTION 1.** 14.11 (1) of the statutes is amended to read:

2 14.11 (1) STATE PROPERTY; LEGAL PROTECTION OF. The Except as provided in sub.
3 (3), the governor, whenever in the governor's opinion the rights, interests, or
4 property of the state have been or are liable to be injuriously affected, may require
5 the attorney general to institute and prosecute any proper action or proceeding for
6 the redress or prevention thereof; and whenever the governor receives notice of any
7 action or proceeding between other parties by which the rights, interests, or property
8 of the state are liable to be injuriously affected, the governor shall inform the
9 attorney general thereof and require the attorney general to take such steps as may
10 be necessary to protect such rights, interests, or property.

11 **SECTION 2.** 14.11 (2) (a) (intro.) of the statutes is amended to read:

12 14.11 (2) (a) (intro.) The Except as provided in sub. (3), the governor, if in the
13 governor's opinion the public interest requires such action, may employ special
14 counsel in the following cases:

15 **SECTION 3.** 14.11 (3) of the statutes is created to read:

16 14.11 (3) APPROVAL OF LEGISLATURE. Before the governor may employ special
17 counsel in any action or proceeding under sub. (2) or require the attorney general to
18 institute and prosecute any action or proceeding under sub. (1), that involves the
19 determination and payment of compensation for the attorney representing the state

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1 under a contingency fee arrangement, the governor shall obtain approval of the
2 appropriate standing committees of each house of the legislature, as determined by
3 the presiding officer of each house.

4 **SECTION 4.** 165.24 of the statutes is created to read:

5 **165.24 Approval of certain state actions and proceedings.** Before the
6 state or any department, board, or agency of the state may institute and prosecute
7 any action or proceeding that involves the state or determination and payment of
8 attorney compensation for the attorney representing the state or department, board,
9 or agency of the state under a contingency fee arrangement, that attorney shall
10 obtain approval of the appropriate standing committees of each house of the
11 legislature, as determined by the presiding officer of each house. This section does
12 not apply to contingency fees in actions or proceedings undertaken by a department,
13 board, or agency when acting in the capacity of a trust fund fiduciary under ch. 25.

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

15 165.25 (1) REPRESENT STATE. Except as provided in s. 165.24 or 978.05 (5),
16 appear for the state and prosecute or defend all actions and proceedings, civil or
17 criminal, in the court of appeals and the supreme court, in which the state is
18 interested or a party, and attend to and prosecute or defend all civil cases sent or
19 remanded to any circuit court in which the state is a party; and, if requested by the
20 governor or either house of the legislature, appear for and represent the state, any
21 state department, agency, official, employee, or agent, whether required to appear
22 as a party or witness in any civil or criminal matter, and prosecute or defend in any
23 court or before any officer, any cause or matter, civil, or criminal, in which the state
24 or the people of this state may be interested. The public service commission may
25 request under s. 196.497 (7) that the attorney general intervene in federal

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1 proceedings. All expenses of the proceedings shall be paid from the appropriation
2 under s. 20.455 (1) (d).

3 **SECTION 6.** 165.25 (4) (a) of the statutes is amended to read:

4 165.25 (4) (a) ~~The Except as provided in s. 165.24,~~ the department of justice
5 shall furnish all legal services required by the investment board, the lottery division
6 in the department of revenue, the public service commission, the department of
7 transportation, the department of natural resources, the department of tourism, and
8 the department of employee trust funds, together with any other services, including
9 stenographic and investigational, as are necessarily connected with the legal work.

10 **SECTION 7.** 165.25 (4) (ar) of the statutes, as affected by 2001 Wisconsin Act 16,
11 section 2856b, is amended to read:

12 165.25 (4) (ar) ~~The Except as provided in s. 165.24,~~ the department of justice
13 shall furnish all legal services required by the department of agriculture, trade and
14 consumer protection relating to the enforcement of ss. 100.171, 100.173, 100.174,
15 100.175, 100.177, 100.18, 100.182, 100.20, 100.205, 100.207, 100.209, 100.21,
16 100.28, 100.37, 100.42, 100.50, and 100.51 and chs. 126, 136, 344, 704, 707, and 779,
17 together with any other services as are necessarily connected to the legal services.

18 **SECTION 8. Effective date.**

19 (1) This act takes effect on January 1, 2002, or on the day after publication,
20 whichever is later.

21 (END)