

**2019 DRAFTING REQUEST**

**Bill**

For: **Administration-Budget** Drafter: **swalkenh**  
 By: **Schmidt** Secondary Drafters:  
 Date: **2/15/2019** May Contact:

Same as LRB:

Submit via email: **YES**  
 Requester's email:  
 Carbon copy (CC) to: **doasbostatlanguage@wisconsin.gov**  
**sarah.walkenhorstbarber@legis.wisconsin.gov**  
**tamara.dodge@legis.wisconsin.gov**

**Pre Topic:**

DOA:.....Schmidt, BB0392 -

**Topic:**

Powers of the Attorney General

**Instructions:**

See attached

**Drafting History:**

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	swalkenh 2/15/2019	kfollett 2/15/2019			
/P1			jmurphy 2/15/2019		

FE Sent For: **<END>**

## Walkenhorst Barber, Sarah

---

**From:** Hanaman, Cathlene  
**Sent:** Friday, February 15, 2019 11:28 AM  
**To:** Walkenhorst Barber, Sarah; Johns, Melinda  
**Subject:** FW: Statutory Language Drafting Request - 2019-21

**From:** Schmidt, Michael - DOA <Michael2.Schmidt@wisconsin.gov>  
**Sent:** Friday, February 15, 2019 11:25 AM  
**To:** Hanaman, Cathlene <Cathlene.Hanaman@legis.wisconsin.gov>  
**Cc:** Potts, Andrew - DOA <Andrew.Potts@wisconsin.gov>; Schmidt, Michael - DOA <Michael2.Schmidt@wisconsin.gov>  
**Subject:** Statutory Language Drafting Request - 2019-21

Biennial Budget: 2019-21

Topic: Powers of the Attorney General

Tracking Code: BB0392

SBO Team: AEJ

SBO Analyst: Schmidt, Michael  
Phone: 608-267-0370  
E-mail: [michael2.schmidt@wisconsin.gov](mailto:michael2.schmidt@wisconsin.gov)

Agency Acronym: 455

Agency Number: 455

Priority: Medium

Intent:

Repeal 2017 Act 369, ss. 26 and 30, however retain any statutory renumbering from each of those respective sections.

Attachments: False

Please send completed drafts to [SBOSatlanguage@spmail.enterprise.wistate.us](mailto:SBOSatlanguage@spmail.enterprise.wistate.us)



State of Wisconsin  
2019 - 2020 LEGISLATURE

LRB-2072(?)  
SWB:  
1P1

DOA:.....Schmidt, BB0392 - Powers of the Attorney General

**FOR 2019-2021 BUDGET -- NOT READY FOR INTRODUCTION**

1N2/15

1 **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 made in 2017 Wisconsin Act 369 relating to the power to compromise or discontinue civil actions prosecuted by the DOJ and the power to compromise and settle actions in cases where the 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 who 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 the joint committee on finance. 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 the joint committee on finance.

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

that  
JCF

JCF

JCF  
JCO

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, ~~the joint committee on finance.~~ The bill also eliminates the requirement, in certain circumstances, that the attorney general obtain approval from ~~the joint committee on legislative organization~~ before submitting a proposed plan of settlement or compromise to ~~the joint committee on finance.~~ JCF

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

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

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

History: 2007 a. 20; 2015 a. 55; 2017 a. 369.

15           **SECTION 2.** 165.25 (6) (a) 1. of the statutes is amended to read:

16           165.25 (6) (a) 1. At the request of the head of any department of state  
17 government, the attorney general may appear for and defend any state department,  
18 or any state officer, employee, or agent of the department in any civil action or other

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

**History:** 1971 c. 125 s. 522 (1); 1971 c. 215; 1973 c. 333; 1975 c. 81, 199; 1977 c. 29 s. 1656 (27); 1977 c. 187, 260, 273, 344; 1981 c. 20, 62, 96; 1983 a. 27; 1983 a. 36 s. 96 (2), (3), (4); 1983 a. 192; 1985 a. 29, 66; 1987 a. 416; 1989 a. 31, 115, 187, 206, 359; 1991 a. 25, 39, 269; 1993 a. 27, 28, 365; 1995 a. 27 ss. 4453 to 4454m, 9126 (19); 1995 a. 201; 1997 a. 27, 111; 2001 a. 16; 2003 a. 111, 235; 2005 a. 96, 458; 2007 a. 1; 2007 a. 20 ss. 2904, 9121 (6) (a); 2007 a. 76, 79, 96, 130, 225; 2009 a. 2, 28, 42; 2011 a. 32, 35; 2013 a. 20 ss. 164, 166, 167, 180, 1904m; 2013 a. 166 s. 76; 2013 a. 173, 223, 241; 2015 a. 55, 118; 2017 a. 59, 261, 337, 369.



State of Wisconsin  
2019 - 2020 LEGISLATURE

LRB-2072/P1  
SWB:kjf

DOA:.....Schmidt, BB0392 - Powers of the Attorney General

**FOR 2019-2021 BUDGET -- NOT READY FOR INTRODUCTION**

1 **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.

---

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

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

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

15           **SECTION 2.** 165.25 (6) (a) 1. of the statutes is amended to read:

16           165.25 (6) (a) 1. At the request of the head of any department of state  
17 government, the attorney general may appear for and defend any state department,  
18 or any state officer, employee, or agent of the department in any civil action or other  
19 matter brought before a court or an administrative agency which is brought against  
20 the state department, or officer, employee, or agent for or on account of any act

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

18 (END)