

2019 DRAFTING REQUEST**Bill**

For: **Administration-Budget** Drafter: **mgallagh**
 By: **Potts** Secondary Drafters:
 Date: **2/20/2019** May Contact:

Same as LRB:

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

Pre Topic:

DOA:.....Potts, BB0447 -

Topic:

Legislative intervention (Act 369)

Instructions:

See attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	mgallagh 2/20/2019	csicilia 2/20/2019			
/P1	mgallagh 2/21/2019	kfollett 2/21/2019	dwalker 2/20/2019		
/P2			mbarman 2/21/2019		

FE Sent For:

<END>

Gallagher, Michael

From: Hanaman, Cathlene
Sent: Wednesday, February 20, 2019 12:09 PM
To: Gallagher, Michael; Walkenhorst Barber, Sarah
Subject: FW: Statutory Language Drafting Request - 2019-21

From: Potts, Andrew - DOA <Andrew.Potts@wisconsin.gov>
Sent: Wednesday, February 20, 2019 12:09 PM
To: Hanaman, Cathlene <Cathlene.Hanaman@legis.wisconsin.gov>
Cc: Potts, Andrew - DOA <Andrew.Potts@wisconsin.gov>; Potts, Andrew - DOA <Andrew.Potts@wisconsin.gov>
Subject: Statutory Language Drafting Request - 2019-21

Biennial Budget: 2019-21

Topic: Legislative Intervention

Tracking Code: BB0447

SBO Team: AEJ

SBO Analyst: Potts, Andrew
Phone: 608-266-2081
E-mail: andrew.potts@wisconsin.gov

Agency Acronym: 455

Agency Number: 455

Priority: High

Intent:

Please make the following changes to 2017 Act 369:

- Repeal Wis. Stat. § 13.365 (Act 369, s. 5)
- Undo the changes made by Act 369, ss. 7, 8, 28, 29, 98, and 99.
- Repeal Wis. Stat. § 803.09(2m). (Act 369, s. 97).
- Repeal Wis. Stat. § 893.825 (Act 369, s. 101)

Attachments: False

Please send completed drafts to SBOSatlanguage@spmail.enterprise.wistate.us



State of Wisconsin
2019 - 2020 LEGISLATURE

LRB-2174?
MPG:...

GJS

DOA:.....Potts, BB0447 - Legislative intervention (Act 369)

FOR 2019-2021 BUDGET -- NOT READY FOR INTRODUCTION

1/31

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Statcamp /
SA ✓

⊙

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

Analysis by the Legislative Reference Bureau

STATE GOVERNMENT

LEGISLATURE

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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:

2 X SECTION 1. 13.365 of the statutes is repealed.

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

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

History: 1973 c. 90, 162; 1973 c. 334 s. 58; 1973 c. 336; 1975 c. 224; 1975 c. 414 s. 28; 1977 c. 29, 277, 449; 1979 c. 34 ss. 2qcm, 2102 (32) (b); 1979 c. 270; 1981 c. 253; 1983 a. 27; 1985 a. 182 ss. 1 to 6, 57; 2003 a. 33; 2005 a. 25; 2017 a. 369.

Cross-reference: See s. 227.19 (1) for a statement of legislative policy regarding legislative review of administrative rules. See s. 227.26 for review after promulgation of rules.

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

11 13.90 (2) The cochairpersons of the joint committee on legislative organization
 12 or their designated agent shall accept service made under ss. s. 806.04 (11) and
 13 893.825 (2). If the committee, the senate organization committee, or the assembly
 14 organization committee, determines that the legislature should intervene be
 15 represented in the proceeding as provided under s. 803.09 (2m), the assembly shall
 16 represent the assembly, the senate shall represent the senate, and the joint
 17 committee on legislative organization shall represent the legislature, that
 18 committee shall designate the legislature's representative for the proceeding. The
 19 costs of participation in the proceeding shall be paid equally from the appropriations
 20 under s. 20.765 (1) (a) and (b), except that such costs incurred by the department of
 21 justice shall be paid from the appropriation under s. 20.455 (1) (d).

PLAIN

History: 1971 c. 215; 1973 c. 90; 1975 c. 224, 421; 1977 c. 449; 1979 c. 34 ss. 7d to 7s, 2102 (32) (b); 1981 c. 372 s. 18; 1983 a. 27, 308; 1985 a. 29, 332; 1987 a. 27; 1989 a. 31, 359, 366; 1993 a. 52; 1995 a. 27, 162, 417; 1997 a. 27, 237; 1999 a. 4, 29, 81; 2001 a. 16; 2003 a. 33; 2005 a. 25; 2007 a. 20; 2017 a. 369.

22 **SECTION 4.** 165.25 (1) of the statutes is amended to read:

← INS A

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

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.

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

11 165.25 (1m) REPRESENT STATE IN OTHER MATTERS. If requested by the governor
 12 or either house of the legislature, appear for and represent the state, any state
 13 department, agency, official, employee or agent, whether required to appear as a
 14 party or witness in any civil or criminal matter, and prosecute or defend in any court
 15 or before any officer, any cause or matter, civil or criminal, in which the state or the
 16 people of this state may be interested. ~~The joint committee on legislative~~
 17 ~~organization may intervene as permitted under s. 803.09 (2m) at any time.~~ The
 18 public service commission may request under s. 196.497 (7) that the attorney general
 19 intervene in federal proceedings. All expenses of the proceedings shall be paid from
 20 the appropriation under s. 20.455 (1) (d).

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.

21 **SECTION 6.** 803.09 (2m) of the statutes is repealed.

22 **SECTION 7.** 806.04 (11) of the statutes is amended to read:

← INS B

X

X

1 806.04 (11) PARTIES. When declaratory relief is sought, all persons shall be
2 made parties who have or claim any interest which would be affected by the
3 declaration, and no declaration may prejudice the right of persons not parties to the
4 proceeding. In any proceeding which involves the validity of a municipal ordinance
5 or franchise, the municipality shall be made a party, and shall be entitled to be heard.
6 If a statute, ordinance or franchise is alleged to be unconstitutional, ~~or to be in~~
7 ~~violation of or preempted by federal law, or if the construction or validity of a statute~~
8 ~~is otherwise challenged,~~ the attorney general shall also be served with a copy of the
9 proceeding and be entitled to be heard. ~~If a statute is alleged to be unconstitutional,~~
10 ~~or to be in violation of or preempted by federal law, or if the construction or validity~~
11 ~~of a statute is otherwise challenged,~~ the speaker of the assembly, the president of the
12 senate, and the senate majority leader shall also be served with a copy of the
13 ~~proceeding, and the assembly, the senate, and the state legislature are entitled to be~~
14 ~~heard. If the assembly, the senate, or the joint committee on legislative organization~~
15 ~~intervenes as provided under s. 803.09 (2m), the assembly shall represent the~~
16 ~~assembly, the senate shall represent the senate, and the joint committee on~~
17 ~~legislative organization shall represent the legislature.~~ In any proceeding under this
18 section in which the constitutionality, construction or application of any provision of
19 ch. 227, or of any statute allowing a legislative committee to suspend, or to delay or
20 prevent the adoption of, a rule as defined in s. 227.01 (13) is placed in issue by the
21 parties, the joint committee for review of administrative rules shall be served with
22 a copy of the petition and, with the approval of the joint committee on legislative
23 organization, shall be made a party and be entitled to be heard. In any proceeding
24 under this section in which the constitutionality, construction or application of any
25 provision of ch. 13, 20, 111, 227 or 230 or subch. I, III or IV of ch. 16 or s. 753.075, or

1 of any statute allowing a legislative committee to suspend, or to delay or prevent the
2 adoption of, a rule as defined in s. 227.01 (13) is placed in issue by the parties, the
3 joint committee on legislative organization shall be served with a copy of the petition
4 and the joint committee on legislative organization, the senate committee on
5 organization or the assembly committee on organization may intervene as a party
6 to the proceedings and be heard.

History: Sup. Ct. Order, 67 Wis. 2d 585, 718 (1975); 1975 c. 218; Sup. Ct. Order, 82 Wis. 2d ix (1978); 1977 c. 449; 1979 c. 38, 89, 175; 1979 c. 330 s. 13; 1979 c. 352, 355; 1981 c. 96 s. 67; 1981 c. 187 s. 10; 1981 c. 390 s. 252; 1983 a. 255 s. 6; 1985 a. 182 s. 57, Sup. Ct. Order, 166 Wis. 2d xix (1992); 2001 a. 102, 109; 2005 a. 177, 387; 2017 a. 369.

Judicial Council Committee's Note, 1977: Sub. (3m), as created by ch. 263, laws of 1973, is added. Sub. (3m), which was created during the time the rules of civil procedure were in the process of being adopted, was inadvertently not included in new s. 806.04 along with the other provisions of former s. 269.56. The only intent of the Judicial Council during the preparation of the Rules of Civil Procedure in regard to old s. 269.56 was to renumber it to s. 806.04. [Re Order effective July 1, 1978]

Judicial Council Note, 1991: Sub. (1) is amended to clarify that a declaratory judgment is not appealable as of right unless it disposes of the entire matter in litigation as to one or more of the parties. [Re Order effective July 1, 1992]

7 **SECTION 8.** 809.13 of the statutes is amended to read:

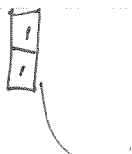
8 **809.13 Rule (Intervention).** A person who is not a party to an appeal may
9 file in the court of appeals a petition to intervene in the appeal. A party may file a
10 response to the petition within 11 days after service of the petition. The court may
11 grant the petition upon a showing that the petitioner's interest meets the
12 requirements of s. 803.09 (1), or (2), ~~or (2m).~~

History: Sup. Ct. Order, 83 Wis. 2d xiii (1978); 1981 c. 390 s. 252; Sup. Ct. Order No. 00-02, 2001 WI 39, 242 Wis. 2d xxvii; 2017 a. 369.


Judicial Council Committee's Note, 1978: Former s. 817.12 (6) permitted the addition of parties but did not set the criteria for doing so. This void is filled by making the intervention rule in the Rules of Civil Procedure applicable to proceedings in the Court of Appeals. [Re Order effective July 1, 1978]

Judicial Council Note, 2001: The 7-day time limit has been changed to 11 days. Please see the comment to s. 808.07 (6) concerning time limits. [Re Order No. 00-02 effective July 1, 2001]

13 **SECTION 9.** Subchapter VIII (title) of chapter 893 of the statutes is amended to
14 read:


CHAPTER 893
SUBCHAPTER VIII
CLAIMS AGAINST GOVERNMENTAL BODIES, OFFICERS AND EMPLOYEES;
STATUTORY CHALLENGES

[precedes 893.80]



15
16
17
18
19 **SECTION 10.** 893.825 of the statutes is repealed.

20 (END)

**2019-2020 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-2174/P1ins
MPG:...

INSERT A

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

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

END INSERT A

INSERT B

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

14 165.25 (6) (a) 1. At the request of the head of any department of state
15 government, the attorney general may appear for and defend any state department,
16 or any state officer, employee, or agent of the department in any civil action or other
17 matter brought before a court or an administrative agency which is brought against
18 the state department, or officer, employee, or agent for or on account of any act
19 growing out of or committed in the lawful course of an officer's, employee's, or agent's
20 duties. Witness fees or other expenses determined by the attorney general to be

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

END INSERT B



State of Wisconsin
2019 - 2020 LEGISLATURE

LRB-2174/P1
MPG:cjs

J-SWB
1PC

DOA:.....Potts, BB0447 - Legislative intervention (Act 369)

FOR 2019-2021 BUDGET -- NOT READY FOR INTRODUCTION

D-Note
Insects

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

Insect A

Analysis by the Legislative Reference Bureau

STATE GOVERNMENT

LEGISLATURE

1. 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:

2 SECTION 1. 13.365 of the statutes is repealed.

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

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

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

11 13.90 (2) The cochairpersons of the joint committee on legislative organization
12 or their designated agent shall accept service made under ss. ~~s. 806.04 (11) and~~
13 ~~893.825 (2)~~. If the committee, the senate organization committee, or the assembly
14 organization committee determines that the legislature should ~~intervene be~~
15 represented in the proceeding as ~~provided under s. 803.09 (2m)~~, ~~the assembly shall~~
16 ~~represent the assembly, the senate shall represent the senate, and the joint~~
17 ~~committee on legislative organization shall represent the legislature, that~~
18 committee shall designate the legislature's representative for the proceeding. The
19 costs of participation in the proceeding shall be paid equally from the appropriations
20 under s. 20.765 (1) (a) and (b), except that such costs incurred by the department of
21 justice shall be paid from the appropriation under s. 20.455 (1) (d).

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

23 ~~165.08 (1) Any civil action prosecuted by the department by direction of any~~
24 ~~officer, department, board, or commission, or any civil action prosecuted by the~~
25 ~~department on the initiative of the attorney general, or at the request of any~~

~~1 individual may be compromised or discontinued with the approval of an intervenor
2 under s. 803.09 (2m) or, if there is no intervenor, by submission of a proposed plan
3 to the joint committee on finance for the approval of the committee. The compromise
4 or discontinuance may occur only if the joint committee on finance approves the
5 proposed plan. No proposed plan may be submitted to the joint committee on finance
6 if the plan concedes the unconstitutionality or other invalidity of a statute, facially
7 or as applied, or concedes that a statute violates or is preempted by federal law,
8 without the approval of the joint committee on legislative organization.~~

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

10 165.25 (1) REPRESENT STATE IN APPEALS AND ON REMAND. Except as provided in
11 ss. 5.05 (2m) (a), 19.49 (2) (a), and 978.05 (5), appear for the state and prosecute or
12 defend all actions and proceedings, civil or criminal, in the court of appeals and the
13 supreme court, in which the state is interested or a party, and attend to and prosecute
14 or defend all civil cases sent or remanded to any circuit court in which the state is
15 a party. ~~The joint committee on legislative organization may intervene as permitted~~
16 ~~under s. 803.09 (2m) at any time.~~ Nothing in this subsection deprives or relieves the
17 attorney general or the department of justice of any authority or duty under this
18 chapter.

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

20 165.25 (1m) REPRESENT STATE IN OTHER MATTERS. If requested by the governor
21 or either house of the legislature, appear for and represent the state, any state
22 department, agency, official, employee or agent, whether required to appear as a
23 party or witness in any civil or criminal matter, and prosecute or defend in any court
24 or before any officer, any cause or matter, civil or criminal, in which the state or the
25 people of this state may be interested. ~~The joint committee on legislative~~

1 organization may intervene as permitted under s. 803.09 (2m) at any time. The
2 public service commission may request under s. 196.497 (7) that the attorney general
3 intervene in federal proceedings. All expenses of the proceedings shall be paid from
4 the appropriation under s. 20.455 (1) (d).

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

6 165.25 (6) (a) 1. At the request of the head of any department of state
7 government, the attorney general may appear for and defend any state department,
8 or any state officer, employee, or agent of the department in any civil action or other
9 matter brought before a court or an administrative agency which is brought against
10 the state department, or officer, employee, or agent for or on account of any act
11 growing out of or committed in the lawful course of an officer's, employee's, or agent's
12 duties. Witness fees or other expenses determined by the attorney general to be
13 reasonable and necessary to the defense in the action or proceeding shall be paid as
14 provided for in s. 885.07. The attorney general may compromise and settle the action
15 as the attorney general determines to be in the best interest of the state except that,
16 if the action is for injunctive relief or there is a proposed consent decree, the attorney
17 general may not compromise or settle the action without the approval of an
18 intervenor under s. 803.09 (2m) or, if there is no intervenor, without first submitting
19 a proposed plan to the joint committee on finance. If, within 14 working days after
20 the plan is submitted, the cochairpersons of the committee notify the attorney
21 general that the committee has scheduled a meeting for the purpose of reviewing the
22 proposed plan, the attorney general may compromise or settle the action only with
23 the approval of the committee. The attorney general may not submit a proposed plan
24 to the joint committee on finance under this subdivision in which the plan concedes
25 the unconstitutionality or other invalidity of a statute, facially or as applied, or

1 concedes that a statute violates or is preempted by federal law, without the approval
2 of the joint committee on legislative organization.

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

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

5 806.04 (11) PARTIES. When declaratory relief is sought, all persons shall be
6 made parties who have or claim any interest which would be affected by the
7 declaration, and no declaration may prejudice the right of persons not parties to the
8 proceeding. In any proceeding which involves the validity of a municipal ordinance
9 or franchise, the municipality shall be made a party, and shall be entitled to be heard.
10 If a statute, ordinance or franchise is alleged to be unconstitutional, or to be in
11 violation of or preempted by federal law, or if the construction or validity of a statute
12 is otherwise challenged, the attorney general shall also be served with a copy of the
13 proceeding and be entitled to be heard. If a statute is alleged to be unconstitutional,
14 or to be in violation of or preempted by federal law, or if the construction or validity
15 of a statute is otherwise challenged, the speaker of the assembly, the president of the
16 senate, and the senate majority leader shall also be served with a copy of the
17 proceeding, and the assembly, the senate, and the state legislature are entitled to be
18 heard. If the assembly, the senate, or the joint committee on legislative organization
19 intervenes as provided under s. 803.09 (2m), the assembly shall represent the
20 assembly, the senate shall represent the senate, and the joint committee on
21 legislative organization shall represent the legislature. In any proceeding under this
22 section in which the constitutionality, construction or application of any provision of
23 ch. 227, or of any statute allowing a legislative committee to suspend, or to delay or
24 prevent the adoption of, a rule as defined in s. 227.01 (13) is placed in issue by the
25 parties, the joint committee for review of administrative rules shall be served with

Inserts 5 - 2 A & B

1 a copy of the petition and, with the approval of the joint committee on legislative
2 organization, shall be made a party and be entitled to be heard. In any proceeding
3 under this section in which the constitutionality, construction or application of any
4 provision of ch. 13, 20, 111, 227 or 230 or subch. I, III or IV of ch. 16 or s. 753.075, or
5 of any statute allowing a legislative committee to suspend, or to delay or prevent the
6 adoption of, a rule as defined in s. 227.01 (13) is placed in issue by the parties, the
7 joint committee on legislative organization shall be served with a copy of the petition
8 and the joint committee on legislative organization, the senate committee on
9 organization or the assembly committee on organization may intervene as a party
10 to the proceedings and be heard.

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

12 **809.13 Rule (Intervention).** A person who is not a party to an appeal may
13 file in the court of appeals a petition to intervene in the appeal. A party may file a
14 response to the petition within 11 days after service of the petition. The court may
15 grant the petition upon a showing that the petitioner's interest meets the
16 requirements of s. 803.09 (1), or (2), or (2m).

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

19 **CHAPTER 893**

20 **SUBCHAPTER VIII**

21 **CLAIMS AGAINST GOVERNMENTAL**
22 **BODIES, OFFICERS AND EMPLOYEES;**
23 **STATUTORY CHALLENGES**

24 SECTION 12. 893.825 of the statutes is repealed.

25 (END)

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB
19-2174/P2dn
MPG&SWB...

KS

Date

Andy Potts and Michael Schmidt:

This draft reconciles LRB-2072/P1 and LRB-2174/P1. It replaces LRB-2072/P1 in the compiled bill.

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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

This is Inset A

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

This is insert A (end)

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.

This is insert 3-8 A

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

This is insert 5-2 A

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)~~

This is Enact 5-2 (end)

**2019-2020 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-2174/P2ins
MPG...

INSERT 3-8B

****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 (1)

END INSERT 3-8B

INSERT 5-2B

****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 (1)

END INSERT 5-2B

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

19-2174/P2dn
MPG&SWB:kjf

February 21, 2019

LRB 2174/

Andy Potts and Michael Schmidt:

This draft reconciles LRB-2072/P1 and LRB-2174/P1. It replaces LRB-2072/P1 in the compiled bill.

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**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-2174/P2dn
MPG&SWB:kjf

February 21, 2019

Andy Potts and Michael Schmidt:

This draft reconciles LRB-2072/P1 and LRB-2174/P1. It replaces LRB-2072/P1 in the compiled bill.

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State of Wisconsin
2019 - 2020 LEGISLATURE

LRB-2174/P2
MPG&SWB:cjs&kjf

DOA:.....Potts, BB0447 - Legislative intervention (Act 369)

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.

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:

1 **SECTION 1.** 13.365 of the statutes is repealed.

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

3 13.56 (2) PARTICIPATION IN CERTAIN PROCEEDINGS. The cochairpersons of the joint
4 committee for review of administrative rules or their designated agents shall accept
5 service made under ss. 227.40 (5) and 806.04 (11). If the committee determines that
6 the legislature should be represented in the proceeding, it shall request the joint
7 committee on legislative organization to ~~intervene in~~ designate the legislature's
8 representative for the proceeding as provided under s. 806.04 (11). The costs of
9 participation in the proceeding shall be paid equally from the appropriations under
10 s. 20.765 (1) (a) and (b), except that such costs incurred by the department of justice
11 shall be paid from the appropriation under s. 20.455 (1) (d).

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

13 13.90 (2) The cochairpersons of the joint committee on legislative organization
14 or their designated agent shall accept service made under ss. s. 806.04 (11) and

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

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

11 165.08 (1) Any civil action prosecuted by the department by direction of any
12 officer, department, board, or commission, ~~or any~~ shall be compromised or
13 discontinued when so directed by such officer, department, board, or commission.
14 Any civil action prosecuted by the department on the initiative of the attorney
15 general, or at the request of any individual may be compromised or discontinued with
16 the approval of an intervenor under s. 803.09 (2m) ~~or, if there is no intervenor, by~~
17 ~~submission of a proposed plan to the joint committee on finance for the approval of~~
18 ~~the committee. The compromise or discontinuance may occur only if the joint~~
19 ~~committee on finance approves the proposed plan. No proposed plan may be~~
20 ~~submitted to the joint committee on finance if the plan concedes the~~
21 ~~unconstitutionality or other invalidity of a statute, facially or as applied, or concedes~~
22 ~~that a statute violates or is preempted by federal law, without the approval of the~~
23 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

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

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

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

12 165.25 (1m) REPRESENT STATE IN OTHER MATTERS. If requested by the governor
13 or either house of the legislature, appear for and represent the state, any state
14 department, agency, official, employee or agent, whether required to appear as a
15 party or witness in any civil or criminal matter, and prosecute or defend in any court
16 or before any officer, any cause or matter, civil or criminal, in which the state or the
17 people of this state may be interested. ~~The joint committee on legislative~~
18 ~~organization may intervene as permitted under s. 803.09 (2m) at any time.~~ The
19 public service commission may request under s. 196.497 (7) that the attorney general
20 intervene in federal proceedings. All expenses of the proceedings shall be paid from
21 the appropriation under s. 20.455 (1) (d).

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

23 165.25 (6) (a) 1. At the request of the head of any department of state
24 government, the attorney general may appear for and defend any state department,
25 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.~~

****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.

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

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

22 806.04 (11) PARTIES. When declaratory relief is sought, all persons shall be
23 made parties who have or claim any interest which would be affected by the

SECTION 9

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

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

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

6 **809.13 Rule (Intervention).** A person who is not a party to an appeal may
7 file in the court of appeals a petition to intervene in the appeal. A party may file a
8 response to the petition within 11 days after service of the petition. The court may
9 grant the petition upon a showing that the petitioner's interest meets the
10 requirements of s. 803.09 (1), or (2), or (2m).

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

13 **CHAPTER 893**

14 **SUBCHAPTER VIII**

15 **CLAIMS AGAINST GOVERNMENTAL**

16 **BODIES, OFFICERS AND EMPLOYEES;**

17 **STATUTORY CHALLENGES**

18 **SECTION 12.** 893.825 of the statutes is repealed.

19 **(END)**