



State of Wisconsin
2021 - 2022 LEGISLATURE

LRB-0457/P2
MPG:skw

DOA:.....Schmidt, BB0119 - Legislative Intervention

FOR 2021-2023 BUDGET -- NOT READY FOR INTRODUCTION

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

Analysis by the Legislative Reference Bureau

STATE GOVERNMENT

LEGISLATURE

Legislative intervention in certain court proceedings

Current law as established in [2017 Wisconsin Act 369](#) provides that the legislature may intervene as a matter of right in an action in state or federal court when a party to the action does any of the following:

1. Challenges the constitutionality of a statute.
2. Challenges a statute as violating or preempted by federal law.
3. Otherwise challenges the construction or validity of a statute.

Current law as established in 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 in the action.

This bill repeals all of 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SECTION 1. 13.365 of the statutes is repealed.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. 165.25 (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 5. 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 6. 803.09 (2m) of the statutes is repealed.

SECTION 7. 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 8. 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 9. 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 10. 893.825 of the statutes is repealed.

(END)