



State of Wisconsin
2023 - 2024 LEGISLATURE

LRB-1074/P1
SWB:kms&emw

DOA:.....Schmidt, BB0148 - Attorney General's Settlement Authority

FOR 2023-2025 BUDGET -- NOT READY FOR INTRODUCTION

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

Analysis by the Legislative Reference Bureau

JUSTICE

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. The bill reestablishes these settlement powers as they existed under the law before [2017 Wisconsin 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 a compromise or discontinuance from a legislative intervenor or JCF. It also eliminates the requirement for the attorney general to obtain approval of a compromise or discontinuance by the Joint Committee on Legislative Organization in certain circumstances before submitting a proposed plan to JCF.

Under the bill, when DOJ is defending the state, 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 must 1) obtain the approval of any legislative intervenor or 2) if there is no intervenor, submit a proposed plan to JCF and, in certain circumstances, obtain approval of JCF. The bill also eliminates the requirement for the attorney general to obtain approval from JCLO in certain circumstances 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:

SECTION 1. 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.

SECTION 2. 165.12 (2) (a) of the statutes is repealed.

****NOTE: This initial version includes a provision to repeal s. 165.12 (2) (a), which was part of additions made during the 2021 session relating to the opioid settlement and the attorney general's authority to enter a settlement agreement. Subsection (2) (a) includes a requirement for joint finance approval under the s. 165.08 (1) process that is amended out under the bill. Please let me know if you would like to make any changes.

SECTION 3. 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.~~

(END)