

---

# Wisconsin Legislative Council

## AMENDMENT MEMO

---



**Memo published:** February 17, 2020

**Contact:** Michael Queensland, Senior Staff Attorney  
Steve McCarthy, Staff Attorney

**2019 Assembly Bill 862**

**Assembly  
Substitute Amendment 1**

### 2019 ASSEMBLY BILL 862

Assembly Bill 862 creates the following two methods for depositing and expending moneys derived from opioid-related litigation:

- An opioid settlement trust fund to consist of all moneys received by the state resulting from any judgment against or settlement with a member of the opioid industry that are awarded or designated for **past** opioid-related damages. The employee that directs opioid initiatives at the Department of Health Services must submit a proposal for the expenditure of funds to the Joint Committee on Finance (JCF) for passive review.
- A nonstock, nonprofit corporation, organized by the Attorney General, to receive and distribute moneys from an opioid-related judgment or settlement between the opioid industry and state and local governments that are attributed to **future** efforts to abate the opioid crisis. The board of directors of the corporation must be composed of 15 members serving staggered three-year terms.

### ASSEMBLY SUBSTITUTE AMENDMENT 1

The substitute amendment creates a mechanism to receive, manage, and distribute moneys from opioid-related litigation.

#### **Grant of Authority for the Attorney General to Settle Opioid-Related Litigation**

Under the substitute amendment, the Attorney General may cooperate with local governments who are parties in the proceedings titled *In re: National Prescription Opiate Litigation*, Case No.: MDL 2804, in entering into a settlement agreement of the state and local governments regarding opioids with any person or entity that engages in or has engaged in the manufacture, marketing, promotion, distribution, or dispensing of an opioid product. The substitute amendment requires a proposed settlement to be submitted to the JCF for review under a 10-day passive review process. The proposed settlement agreement must include the total amount of proceeds to be received, the net settlement proceeds allocated to the state, and the amount of attorney fees payable as a result of the settlement.

#### **Creation of a Corporation to Receive, Manage, and Distribute Proceeds**

The substitute amendment requires the Attorney General to organize a nonstock, nonprofit corporation by July 1, 2020, for the purposes of administering, receiving, and distributing all proceeds received from a settlement regarding opioids with any person or entity that engages in or has engaged in the manufacture, marketing, promotion, distribution, or dispensing of an opioid product. As a condition of receiving the moneys, the substitute amendment requires the corporation to do all of the following:

- Have a board of directors, composed of 19 members, appointed as follows:

- The attorney general, or his or her designee.
- The majority leader of the Senate, or his or her designee.
- The minority leader of the Senate, or his or her designee.
- The governor, or his or her designee.
- The speaker of the Assembly, or his or her designee.
- The minority leader of the Assembly, or his or her designee.
- The secretary of health services, or his or her designee.
- A nominee of the president of the Wisconsin Hospital Association, and with advice and consent of the Senate appointed, for a three-year term.
- A nominee of the board of directors of the Great Lakes Inter-Tribal Council, and with advice and consent of the Senate appointed, for a three-year term.
- Four individuals nominated by the executive director of the Wisconsin Counties Association, and with advice and consent of the Senate appointed, for staggered three-year terms.
- Four individuals whose nomination is agreed to unanimously by the Milwaukee County executive, the Dane County executive, and the Waukesha County executive, and with advice and consent of the Senate appointed, for staggered three-year terms.
- Two individuals nominated by the executive director of the League of Wisconsin Municipalities, and with advice and consent of the Senate appointed, for staggered three-year terms.
- Comply with state's open meetings laws and open records laws.
- Be subject to a financial audit by the Legislative Audit Bureau.
- Consider applications for attorney fees and costs, if attorney fees and costs have not been paid before receipt of settlement proceeds.
- Allocate 15 percent of the moneys received to the state, 15 percent to the counties, and the remaining as determined by the board of the corporation.
- Have board members serve as fiduciaries.
- Refrain from expending the moneys unless the expenditure is in accordance with any applicable court order and is either an actual and reasonable administrative expense or is included in a comprehensive abatement plan and is consistent with a purpose specified in the substitute amendment.
- Submit an annual report describing the activities and expenditures of the corporation and any outcomes achieved by the expenditure.

Proposed applications for opioid settlement moneys for the state must be submitted to the JCF for review under a 14-day passive review process in order to obtain any of the settlement moneys.

## **BILL HISTORY**

Representative Nygren introduced Assembly Substitute Amendment 1 on February 11, 2020. The Assembly Committee on Substance Abuse and Prevention voted on February 12, 2020, to recommend adoption of the substitute amendment and passage of the bill, as amended, on votes of Ayes, 6; Noes, 3.

MQ:SM:ksm