



"Leadership in Public School Governance"

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MEMORANDUM

To: Senator Alberta Darling and Representative John Nygren, Co-Chairs, Joint Finance Committee and Joint Finance Committee Members

From: Dan Rossmiller, Government Relations Director, Wisconsin Association of School Boards

Subject: Deposit and Use of Settlement Funds Received by DOJ Under Proposed Extraordinary Session Legislation (LRB 6071/1 and LRB 6076/1)

Date: December 3, 2018

The Wisconsin Association of School Boards (WASB) has strong concerns about provisions in the extraordinary session legislation before you today that would require that the Wisconsin Department of Justice (DOJ) must deposit all settlement funds into the general fund and further, that all unencumbered settlement funds that are currently in the DOJ appropriation would lapse into the general fund.

(These provisions are described in the Legislative Fiscal Bureau memorandum describing changes affecting the DOJ at pages 8-9 of the section addressing Legislative Powers and Duties, State Agency Operations, and Administrative Rule Process.)

These concerns are based on the recognition that these provisions would formalize a process which may violate Article X, Section 2 of the Wisconsin Constitution. That section requires that:

*"... **all moneys and the clear proceeds of all property that may accrue to the state by forfeiture or escheat shall be set apart as a separate fund to be called "the school fund," the interest of which and all other revenues derived from the school lands shall be exclusively applied to the following objects, to wit:***

- (1) To the support and maintenance of common schools, in each school district, and the purchase of suitable libraries and apparatus therefor.*
- (2) The residue shall be appropriated to the support and maintenance of academies and normal schools, and suitable libraries and apparatus therefor." (emphasis added.)*

In our view, designating a payment made by a party alleged to have violated state laws or administrative rules as a “settlement” does not change its fundamental character as a forfeiture of funds. Corporations and other parties to legal (enforcement) actions brought by the DOJ do not pay money in settlements because they want to make a voluntary contribution to our state’s treasury, they pay these monies because they have (or have been alleged to) violated state law.

The WASB respectfully asks that this legislation be amended to instead require the deposit of discretionary settlement funds into the Common School Fund rather than the general fund. This would bring the state’s handling of settlement funds into alignment with our state constitution.

WASB members have adopted a resolution stating:

“The WASB opposes any legislation to repeal, modify, or jeopardize the constitutional provision of fines and forfeitures as a source of income for the common school fund.”

We respectfully believe the provisions referred to in this memorandum are a perfect example of the type of legislation this resolution is aimed at.

We join with the Wisconsin Educational Media & Technology Association and other education groups in making this request.

For too long, stakeholders and policy makers have deferred to the practices of the DOJ and Attorneys General of both parties that have ignored Article X, Section 2, and have placed settlement funds into discretionary accounts.

The time to end that practice and deference to it is long overdue. Discretionary settlement funds are substantively equivalent to fines and forfeitures and should be going into the Common School Fund according to constitutional provisions in Article X, Section 2 of the Wisconsin Constitution.

Thank you for your consideration of this request.