



State of Wisconsin  
2019 - 2020 LEGISLATURE

LRB-4110/1  
SWB:cdc

## 2019 BILL

1     **AN ACT to amend** 165.08 (1), 165.10 and 165.25 (6) (a) 1. of the statutes; **relating**  
2           **to:** powers of the attorney general.

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### *Analysis by the Legislative Reference Bureau*

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 the Department of Justice 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 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 the Joint Committee on Finance. 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

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general obtain approval from JCLO before submitting a proposed plan of settlement or compromise to JCF.

The bill also repeals the requirement that the attorney general must deposit all settlement funds into the general fund and restores procedures relating to discretionary settlement funds under which the attorney general could expend certain settlement funds not committed under the terms of a settlement after submitting a plan to JCF for passive review and either the cochairpersons of the committee do not schedule a meeting or a meeting is scheduled and JCF approves a plan for expenditure.

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*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.

15           **SECTION 2.** 165.10 of the statutes is amended to read:

16           **165.10 Deposit Limits on expenditure of discretionary settlement**  
17 **funds.** The Notwithstanding s. 20.455 (3), before the attorney general shall deposit

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1 ~~all may expend settlement funds into the general fund under s. 20.455 (3) (g) that are~~  
2 ~~not committed under the terms of the settlement, the attorney general shall submit~~  
3 ~~to the joint committee on finance a proposed plan for the expenditure of the funds.~~  
4 ~~If the cochairpersons of the committee do not notify the attorney general within 14~~  
5 ~~working days after the submittal that the committee has scheduled a meeting for the~~  
6 ~~purpose of reviewing the proposed plan, the attorney general may expend the funds~~  
7 ~~to implement the proposed plan. If, within 14 working days after the submittal, the~~  
8 ~~cochairpersons of the committee notify the attorney general that the committee has~~  
9 ~~scheduled a meeting for the purpose of reviewing the proposed plan, the attorney~~  
10 ~~general may expend the funds only to implement the plan as approved by the~~  
11 ~~committee.~~

12 **SECTION 3.** 165.25 (6) (a) 1. of the statutes is amended to read:

13 165.25 **(6)** (a) 1. At the request of the head of any department of state  
14 government, the attorney general may appear for and defend any state department,  
15 or any state officer, employee, or agent of the department in any civil action or other  
16 matter brought before a court or an administrative agency which is brought against  
17 the state department, or officer, employee, or agent for or on account of any act  
18 growing out of or committed in the lawful course of an officer's, employee's, or agent's  
19 duties. Witness fees or other expenses determined by the attorney general to be  
20 reasonable and necessary to the defense in the action or proceeding shall be paid as  
21 provided for in s. 885.07. The attorney general may compromise and settle the action  
22 as the attorney general determines to be in the best interest of the state ~~except that,~~  
23 ~~if the action is for injunctive relief or there is a proposed consent decree, the attorney~~  
24 ~~general may not compromise or settle the action without the approval of an~~  
25 ~~intervenor under s. 803.09 (2m) or, if there is no intervenor, without first submitting~~

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1 ~~a proposed plan to the joint committee on finance. If, within 14 working days after~~  
2 ~~the plan is submitted, the cochairpersons of the committee notify the attorney~~  
3 ~~general that the committee has scheduled a meeting for the purpose of reviewing the~~  
4 ~~proposed plan, the attorney general may compromise or settle the action only with~~  
5 ~~the approval of the committee. The attorney general may not submit a proposed plan~~  
6 ~~to the joint committee on finance under this subdivision in which the plan concedes~~  
7 ~~the unconstitutionality or other invalidity of a statute, facially or as applied, or~~  
8 ~~concedes that a statute violates or is preempted by federal law, without the approval~~  
9 ~~of the joint committee on legislative organization.~~

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(END)