

FROM: Senators Jon Erpenbach & LaTonya Johnson
Representatives Chris Taylor & Evan Goyke

DATE: September 5th, 2019

RE: Co-sponsor LRB-4110/1 relating to: powers of the attorney general.

Deadline: Thursday, September 19th at noon

In the November 2018 general election, Attorney General Josh Kaul was democratically elected by the people of Wisconsin to execute the duties of his office in the manner in which Wisconsin Attorneys General have done throughout state history—without the interference of Speaker Vos, Leader Fitzgerald, or the Co-Chairs of the Joint Finance Committee. Shortly thereafter, Republicans engaged in unprecedented power grabs to try to usurp as much power from the Attorney General and Governor Evers as possible, which has never been done in the history of our state.

One of the laws passed in the lame duck session was 2017 Wisconsin Act 369, which kneecapped the long standing and central role of our Attorney General in bringing and settling lawsuits on behalf of our state. The lame duck law requires that the Attorney General have settlement agreements approved by 16 legislators on the Joint Finance Committee or from a legislative intervenor. Many of these lawsuits are to protect consumers, our environment, and taxpayers, and a number of the cases the Department of Justice is bringing before the committee are personal injury cases. These are real cases with real consequences for people, including substantial settlement funds, and they should not be treated like a political football.

Last week, we saw firsthand the dysfunction caused by these reckless, ill-conceived and unworkable laws. The Republican Co-Chairs, in an unprecedented and unlawful action, moved the committee into closed session, shutting the doors to the press and the public. It became crystal clear that Republicans had no understanding of the law, nor of the conflict the lame duck laws present to attorneys bound by ethical and legal client confidentiality requirements. In open session, every Republican member then voted against allowing the Attorney General to proceed with settlement of a complex, multi-state case involving substantial settlement monies.

The last general election proved that the people of Wisconsin trust Attorney General Kaul to represent their interests and pursue justice on behalf of the State of Wisconsin.

The Wisconsin Department of Justice, and the state government as a whole, cannot continue to serve its citizens under this unbalanced law. This bill repeals the changes made to the powers of the Attorney General in 2017 Wisconsin Act 369 and restores the powers afforded to Republican and Democratic Attorneys General throughout our state's history. The simplest way to resolve this issue is to let the Attorney General do the job the people elected him to do.

If you would like to be a co-sponsor of this legislation, please contact Representative Chris Taylor's office at 6-5342 or at rep.taylor@legis.wi.gov by **Thursday, September 19th at noon**.

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 general obtain approval from JCF 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 co-chairpersons of the committee do not schedule a meeting or a meeting is scheduled and JCF approves a plan for expenditure.