

2021 - 2022 LEGISLATURE

2021 ASSEMBLY BILL 374

June 4, 2021 - Introduced by Representative PLUMER, cosponsored by Senator TESTIN. Referred to Committee on State Affairs.

1 **AN ACT** *to create* 165.12 of the statutes; **relating to:** settlement of the
2 multidistrict opiate litigation.

Analysis by the Legislative Reference Bureau

This bill requires the attorney general to cooperate with local governments that are parties to the multidistrict litigation titled In re: National Prescription Opiate Litigation, Case No.: MDL 2804, in entering into a joint settlement agreement of the claims of the state and local governments regarding opioids with any person engaged in the manufacture, marketing, promotion, distribution, or dispensing of an opioid product if all of the following are satisfied: 1) the Joint Committee on Finance approves the proposed settlement agreement under the procedure specified in current law; 2) the settlement agreement identifies 30 percent of the proceeds as payable to the state; and 3) the settlement agreement identifies 70 percent of the proceeds as payable to local governments that are parties to the multidistrict opiate litigation.

The bill allocates the share of settlement proceeds payable to the state to the Department of Health Services for expenditure for purposes that comply with the settlement agreement or court order. DHS, to expend the moneys, must annually submit to the Joint Committee on Finance a proposal of expenditure for the next fiscal year. The Joint Committee on Finance must review the expenditure proposal under its passive review process. If DHS, during the fiscal year, seeks to deviate from its expenditure proposal, it must submit the deviation to the Joint Committee on Finance for approval under its passive review process.

The bill requires that moneys payable in a settlement to local governments be paid directly only to local governments that are parties to the multidistrict opiate

litigation. The share of settlement proceeds for such a local government must be deposited by the local government in a segregated account; may not be commingled with other moneys, except for settlement moneys of another local government; must be expended for the purposes identified by the settlement agreement or court order; may be allocated to another political subdivision if used for the same purposes as the local government may expend the moneys; and must be included in the local government's typical audit process. A local government may sell its right to receive a payment under the settlement agreement, if approved by the governing body of the local government. The local government may use a portion of the proceeds payable to it for attorney fees and expenses if a separate fund created in the multidistrict opiate litigation is insufficient to pay the entire amount.

Nothing in the bill alters a local government's right to litigate or resolve a lawsuit or claim as a party to the multidistrict opiate litigation if the lawsuit or claim was pending as of June 1, 2021. If the political subdivision of the state, or officer or agent of the political subdivision, however, is not a party to the multidistrict opiate litigation on or before June 1, 2021, the political subdivision, officer, or agent may not maintain a claim to proceeds of a settlement of the multidistrict opiate litigation and may not maintain any claim or commence any action against a person that is a defendant in the multidistrict opiate litigation and that would be released in a settlement agreement of the multidistrict opiate litigation.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 165.12 of the statutes is created to read:

165.12 Opioid settlement. (1) DEFINITION. In this section, "opiate litigation" means the proceedings titled In re: National Prescription Opiate Litigation, Case No.: MDL 2804.

(2) SETTLEMENT PROCEEDS. The attorney general shall cooperate with local governments in the state that are parties in the opiate litigation in entering into a joint settlement agreement of the legal or equitable claims of the state, subject to sub. (7), and the claims of local governments regarding opioids with any person that has engaged in the manufacture, marketing, promotion, distribution, or dispensing of an opioid product, including any person named as a defendant in the opiate litigation, if all of the following are satisfied:

(a) The joint committee on finance approves the proposed settlement agreement under the procedure under s. 165.08 (1).

(b) The settlement agreement or any document that effectuates the settlement identifies 30 percent of the settlement proceeds as payable to the state.

(c) The settlement agreement or any document that effectuates the settlement identifies 70 percent of the settlement proceeds as payable to local governments in the state that are parties in the opiate litigation.

(3) MONEYS PAYABLE TO THE STATE. (a) Moneys payable to the state under sub. (2) (b) shall be allocated to the department of health services for expenditure for purposes that comply with any settlement agreement or order of the court. In order to expend moneys payable to the state under sub. (2) (b), the department of health services shall submit by April 1 of each year until the moneys are expended to the joint committee on finance a proposal of expenditure for the next fiscal year. If the cochairpersons of the joint committee on finance do not notify the department within 14 working days after the date of the submittal under this paragraph that the committee has scheduled a meeting for the purpose of reviewing the expenditure proposal, the department may expend the moneys as described in the proposal. If, within 14 working days after the date of the submittal under this paragraph by the department, the cochairpersons of the committee notify the department that the committee has scheduled a meeting for the purpose of reviewing the expenditure proposal, the department may expend the moneys only upon approval by the committee.

(b) If the department of health services seeks to deviate from the expenditure proposal during the fiscal year for which the expenditure proposal approved under par. (a) applies, the department shall submit to the joint committee on finance a

proposal for the deviation. The joint committee on finance shall review the expenditure proposal using the procedure described in par. (a).

3 (4) **MONEYS PAYABLE TO LOCAL GOVERNMENTS.** (a) No money paid or payable to
4 the local governments under sub. (2) (c) may be considered moneys of the state.
5 Moneys under sub. (2) (c) may be paid directly only to local governments that are
6 parties in the opiate litigation.

7 (b) A local government that receives moneys payable to a local government
8 under sub. (2) (c) shall deposit the moneys in a segregated account that is subject to
9 all of the following:

10 1. Moneys in the segregated account are considered moneys of the local
11 government under s. 66.0603 (1m) and may not be commingled with any other
12 moneys of the local government.

13 2. A local government may expend moneys of the segregated account solely for
14 purposes identified as approved uses for abatement in the settlement agreement or
15 by court order, subject to sub. (6).

16 3. A local government may not use moneys from the segregated account to
17 substitute for budgeted moneys from the other sources.

18 4. A local government may allocate moneys from the segregated account to any
19 other political subdivision in the state if there is an agreement requiring the other
20 political subdivision to expend the moneys for the purposes described in subd. 2.

21 5. Local governments may combine moneys from their segregated accounts if
22 each local government conforms to the reporting requirement under par. (c).

23 6. A local government shall include the segregated account in the local
24 government's typical audit process.

1 (c) By May 1 annually, a local government that receives moneys under sub. (2)
2 (c) shall submit a report to the department of justice and joint committee on finance
3 that includes all of the following:

4 1. The amount of money in the local government's segregated account described
5 under par. (b) as of December 31 of the previous year.

6 2. An accounting of the receipts and disbursements from the segregated
7 account described under par. (b) in the previous year.

8 (5) **SALE OF INTEREST IN PROCEEDS.** (a) Subject to par. (c), a local government may
9 sell for cash or other consideration the right to receive any payment under a
10 settlement agreement and this section if the proceeds of the sale are deposited in the
11 segregated account described under sub. (4) (b).

12 (b) A local government may pledge, grant a lien on, or grant security interest
13 in payments to effectuate a sale under this subsection. Obligations issued under this
14 subsection are governmental obligations that are issued for a public purpose but are
15 not considered debt of the local government and are not calculated for the purposes
16 of any constitutional or statutory debt limitation.

17 (c) Any sale by a local government that is authorized under this subsection
18 shall be approved by a majority vote of the governing body of the local government
19 that is selling the payments. The governing body's approval of the sale under this
20 paragraph is considered conclusive as to the adequacy of the consideration for the
21 sale.

22 (d) The limitations and provisions of s. 893.77 apply to any obligations issued
23 under this subsection. This subsection is an alternative procedure to the procedures
24 under ch. 67.

1 (6) **RESPONSIBILITIES FOR ATTORNEY FEES.** If a separate fund created in a
2 settlement agreement for the opiate litigation is insufficient to pay the entire amount
3 of attorney fees and expenses owed by local governments, a local government may
4 use a portion of the amounts payable to local governments under sub. (2) (c) to
5 supplement amounts owed by the local government for attorney fees and expenses.
6 The state has no responsibility for payment of a local government's attorney fees or
7

8 expenses, and those local government attorney fees or expenses may not be paid from
9 the amounts payable to the state under sub. (2) (b).

10 **(7) CLAIMS BY NONPARTIES TO OPIATE LITIGATION.** (a) Nothing in this section shall
11 alter any local government's right to pursue, litigate, or resolve a lawsuit or claim as
12 a party to the opiate litigation or a related proceeding if the lawsuit or claim was
13 pending as of June 1, 2021.

14 (b) A political subdivision of the state, or an officer or agent of any political
15 subdivision of the state, that was not a party as of June 1, 2021, to the opiate
16 litigation may not do any of the following:

17 1. Maintain a claim to proceeds of any settlement agreement that is described
18 under sub. (2).

19 2. Maintain any claim or commence any action related to opioids against a
20 person that is identified as a party defendant in the opiate litigation that would be
21 released in a settlement agreement if the political subdivision, officer, or agent was
22 a party to a settlement agreement that is described under sub. (2).

(END)