



Selected Summary Notes from 2017 AB 1070

11-30-18

AB 1070, Relating to: legislative powers and duties, state agency and authority composition and operations, and administrative rule-making process.

- **Eliminates the employees and the Office of the Solicitor General in the Department of Justice,** which represents the state in certain cases on appeal in state and federal courts.
- Requires any party challenging the constitutionality of a state law to serve the Senate and Assembly leaders with notice of the proceeding, AND, **allows the Senate and Assembly leaders to intervene in such a case, obtain their own legal counsel other than the Attorney General, and dismiss the Attorney General from defending the state.**
- **Removes the authority of the Attorney General to determine where to allocate legal settlement funds** and instead requires that all such settlement funds be deposited in the general fund.
- **Eliminates the discretion of the Attorney General to compromise or discontinue a legal action,** and instead requires the Joint Committee on Finance (JCF) to provide passive review of such decisions. This would prevent for example, the AG's ability to withdraw from the suit seeking to overturn the Affordable Care Act to which Wisconsin is currently a party.
- **Removes control of the Governor over the Wisconsin Economic Development Corporation Board** by reducing the number of the Governor's appointees from six to four, and giving the Assembly Speaker and Senate Majority Leader a total of six appointments. The WEDC CEO would no longer be appointed by the Governor, but by the newly constituted WEDC board, which will have a majority of members selected by the Senate and Assembly leaders.
- **Requires all executive branch state agencies, except the UW, to submit a quarterly report to the Joint Committee on Finance listing all state agency expenditures,** including "supplies and services that are made at the discretion of or to be used by heads of state agencies, secretaries, deputy secretaries, assistant deputy secretaries, and executive assistants." **This provision potentially requires checkbook level accounting reports be provided every three months to legislators from every agency.**



- **Allows the Joint Committee for Review of Administrative Rules (JCRAR) to require a state agency to prepare retrospective Economic Impact Analysis (EIA) of any Administrative Rule at any time.** If the JCRAR does not agree with the results of the EIA it has requested the agency to prepare, JCRAR can have an independent EIA prepared. If the EIA does not agree with the agency's EIA, the agency is required to pay for the additional EIA.
- **Prohibits a court from giving deference to a state agencies interpretation of the law or giving deference to the expertise of state agency staff in legal proceedings involving actions of the agency enforcing the law.** The practical effect of this provision is to completely discount the expertise of public servants in legal cases. So the opinion of a 30 year career field biologist or sociologist will be treated equally with that of an individual with no expertise – even individuals who have no special expertise whatsoever, who have knowingly violated the law, or who have previous criminal convictions.
- **“The bill also provides that no agency may seek deference in any proceeding based on the agency's interpretation of any law.”** This, and the proceeding provision are astonishingly blatant attempts to make it almost impossible for state agencies to enforce the law or fulfill their public trust.
- Requires that agency publications such as handbooks, manuals and information circulars collectively known as “guidance documents” go through an extensive process of public comment and publication in the Legislative Reference Bureau register. **The bill explicitly prevents agencies from relying on guidance documents when making decisions** or from affording guidance documents the force of law, and the bill allows any individual to challenge the validity of a guidance document. Ironically however, the bill also places a burden on agency's own actions if they are not consistent with their guidance documents. **The bill provides that ANY guidance document that does not meet these standards within six months will automatically be rescinded.** This requirement alone will require many thousands of hours of staff effort to comply with – and likely result in many of the likely thousands of existing guidance documents being rescinded, which would create a huge degree of uncertainty in day to day agency operations.