



STATE OF WISCONSIN
DEPARTMENT OF JUSTICE

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August 27, 2019

VIA EMAIL

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VIA INTERDEPARTMENTAL MAIL

The Honorable Alberta Darling
Co-Chair, Joint Committee on Finance
Room 317 East, State Capitol

The Honorable John Nygren
Co-Chair, Joint Committee on Finance
Room 309 East, State Capitol

The Honorable Amy Loudenbeck
Vice-Chair, Joint Committee on Finance
Room 304 East, State Capitol

The Honorable Luther Olsen
Vice-Chair, Joint Committee on Finance
Room 122 South, State Capitol

Members of the Joint Committee on Finance
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The Honorable Thomas Tiffany
Member, Joint Committee on Finance
Room 316 South, State Capitol

The Honorable Howard Marklein
Member, Joint Committee on Finance
Room 8 South, State Capitol

The Honorable Duey Stroebel
Member, Joint Committee on Finance
Room 18 South, State Capitol

The Honorable Devin LeMahieu
Member, Joint Committee on Finance
Room 409 South, State Capitol

The Honorable Jon Erpenbach
Member, Joint Committee on Finance
Room 415 South, State Capitol

The Honorable LaTonya Johnson
Member, Joint Committee on Finance
Room 19 South, State Capitol

The Honorable Mark Born
Member, Joint Committee on Finance
Room 324 East, State Capitol

The Honorable Mike Rohrkaste
Member, Joint Committee on Finance
Room 321 East, State Capitol

The Honorable Terry Katsma
Member, Joint Committee on Finance
Room 306 East, State Capitol

The Honorable Shannon Zimmerman
Member, Joint Committee on Finance
Room 320 East, State Capitol

The Honorable Chris Taylor
Member, Joint Committee on Finance
Room 306 West, State Capitol

The Honorable Evan Goyke
Member, Joint Committee on Finance
Room 111 North, State Capitol

Re: Joint Committee on Finance hearing held on August 27, 2019

Dear Co-Chairs, Vice-Chairs, and Members of the Committee:

Thank you for meeting today on short notice.

Comments in today's hearing strongly indicated that members of the Joint Committee on Finance (JFC) have not been apprised of many of the communications that the Department of Justice (DOJ) and the JFC Co-Chairs have had relating to Act 369 and confidentiality agreements. Attached to this letter are copies of communications between DOJ and the JFC Co-Chairs.

As those communications show, DOJ has attempted for some time to reach agreement with the Co-Chairs as to a process for resolving cases that are subject to Act 369.

- As reflected in my June 27 letter to the Co-Chairs and their July 2 letter, we met on February 7 and DOJ staff and legislative agency staff subsequently worked to develop a process for the review of proposed plans.
- My June 17 letter to the Co-Chairs states, "We respectfully request to work with you and your staff *as soon as possible*" to put a process in place for the review of proposed plans.
- In a June 21 email, DOJ attorney Charlotte Gibson wrote, "Time is of the essence. We need to begin presenting proposed plans to you so efforts to resolve cases can go forward."
- My June 27 letter to the Co-Chairs states that "[w]e should work *together*—as we attempted to in the winter—to create an efficient process for the review of proposed plans" and noted that one aspect such a process could include was that "JFC members and staff will sign confidentiality agreements promising to keep materials provided to them and information disclosed at hearings confidential."
- My July 9 letter to the Co-Chairs states, "**I am again requesting that a hearing be scheduled for this week. If a hearing is not scheduled for this week, I request that one be scheduled for next week.**"

While the Co-Chairs recently informed me that they were not willing to sign a confidentiality agreement, that was a change in their position. In a July 12 letter, the Co-Chairs wrote, "We understand your desire to keep proposed settlements confidential. We are open to signing a confidentiality agreement even though we are under no obligation to do so." The Co-Chairs added that they had modified an agreement attached to a letter I had previously sent and asked that I "review and sign" the revised confidentiality agreement "at [my] earliest convenience." Yet in a press release issued today by the Co-Chairs, they stated that "signing a confidentiality agreement is a nonstarter."

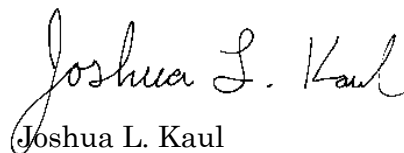
Maintaining the confidentiality of certain legal discussions is important. With respect to the matter we had hoped to discuss today, moreover, there is a common interest agreement that applies. We have therefore requested that JFC members either sign a confidentiality agreement or sign the common interest agreement so confidential information can be shared.

This issue cannot be addressed simply by having JFC convene in closed session. A Wisconsin court decision indicates that material shared in closed session need not be kept confidential. Further, the requirements of the applicable common interest agreement would not be met by having JFC convene in closed session.

While JFC has asserted that it will not enter into the confidentiality agreement, it is not clear *why* that is the case. Considering confidential information and keeping that information confidential is part and parcel of the review of settlements. And if the information discussed in closed session will in fact be kept confidential, signing the agreement will confirm that it must be kept confidential.

Again, thank you for meeting today. I hope to meet with you again this week. It is important to the State of Wisconsin that we reach agreement soon.

Sincerely,



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Attorney General

JLK:alm

Enclosures

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