



## PATRICK TESTIN

STATE SENATOR

DATE: June 15, 2021  
RE: Testimony on Senate Bill 386  
TO: The Senate Committee on Health  
FROM: Senator Patrick Testin

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I would like to thank my fellow members of the committee for accepting my testimony on Senate Bill 386 (SB 386). This legislation deals with the settlement of the National Prescription Opiate Litigation Case. As you know, almost all of Wisconsin's counties have joined in this lawsuit. Given the crime and health care issues that counties have struggled with due to opioid addictions, the counties are looking to hold the defendants accountable for their role in this epidemic.

Now that a settlement is in sight, it is important that we pass SB 386 to ensure any settlement proceeds from this case are applied fairly and directed to abatement activities. SB 386 requires that potential settlements be split 70/30 between the participating counties and the state. The counties have invested the time and the funds to be in this suit and have a unique perspective on how best to use the funds to serve their communities. They know what they have spent, and what they will need going forward. Importantly, SB 386 requires all settlement funds be used for abatement purposes, and not for other government functions, or to plug budget holes.

We are joined today by several individuals who represent the counties with first-hand experience in this case, and can offer expert opinion on the nuts and bolts of this litigation. I would be happy to answer any questions you may have and I thank you again for listening to my testimony and I hope that you will join me in supporting this bill.

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# JON PLUMER

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STATE REPRESENTATIVE • 42<sup>nd</sup> ASSEMBLY DISTRICT

Testimony – **Senate Bill 386** – Relating to settlement of the multidistrict opiate litigation

## **Senate Committee on Health**

### **June 15, 2021**

Mr. Chairman and members of the committee, thank you for the opportunity to testify on this important piece of legislation today. Senate Bill 386 relates to the ongoing litigation between Wisconsin county governments and the manufacturers, distributors, and retailers of opioids. Thousands of local governments, as well as dozens of states, have filed lawsuits against these companies to hold them responsible for their role in the nationwide opioid epidemic and Wisconsin counties were some of the first in the country to lead this effort. While we applaud our county partners for their work in making settlement discussions a reality, we must now take action on SB 386 to ensure any settlement proceeds from the opioid litigation are put to good use in Wisconsin to combat the epidemic in a timely manner and without delay.

SB 386 ensures Wisconsin is positioned to receive settlement proceeds by outlining the following:

- Requiring the state and counties to work in partnership to reach a joint settlement agreement with opioid manufacturers, distributors, and retailers.
- Requiring proceeds from potential settlements be split between the state and litigating local governments. SB 386 requires that local governments that had filed suit and actively litigated against the defendants receive 70% of settlement funds, while the state retains 30%.
- Requiring that settlement funds can only be used for opioid abatement activities and cannot be diverted to government general funds.

Everyone in this room knows somebody who has been impacted by the opioid epidemic. Now that we have a realistic chance to get necessary and overdue financial resources from the companies responsible for the epidemic, we need to make sure we are poised to put those resources to their best use. SB 386 leverages the existing state/county partnership on health and human services program and puts the resources in the hands of the front-line providers who know what it takes to attack the epidemic.

Settlement discussions are ongoing between Wisconsin counties and the opioid distributors and we are fortunate to be joined by some of the individuals on the front lines of this litigation. While I am happy to answer any questions you have, the experts we have here that can better explain details of the litigation and why components of this legislation are critical to ensuring Wisconsin receives any settlement proceeds.



**STATE OF WISCONSIN  
DEPARTMENT OF JUSTICE**

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**PREPARED TESTIMONY OF ATTORNEY GENERAL KAUL**

**2021 Senate Bill 386  
Senate Committee on Health**

**Tuesday, June 15, 2021**

Dear Senator Testin, Chair, Senator Kooyenga, Vice-Chair, and members of the committee:

I am submitting written testimony on 2021 Senate Bill 386, relating to the settlement of multi-district opioid litigation ("SB 386").

The opioid epidemic remains one of the most significant public safety and public health issues we face, and the pandemic has only exacerbated it. I continue to be committed to holding accountable opioid manufacturers and distributors that engaged in unlawful conduct that contributed to the epidemic, and the Wisconsin Department of Justice is continuing to pursue financial recoveries from opioid manufacturers and distributors.

As I testified in regard to previously proposed legislation, I believe it would be beneficial to set up a structure for distributing funds recovered in these matters (the "opioid matters"). SB 386, however, is fundamentally flawed. While I will not detail all of the changes that the Wisconsin Department of Justice would like to have made to this bill, I note the following issues.

To begin with, the language in proposed section 165.12(2) unconstitutionally grants in part to a legislative committee what is the responsibility of the executive branch: the enforcement of state law through the opioid matters. Moreover, informed legislative review of potential resolutions of the opioid matters is not practical. These matters encompass voluminous document and witness discovery, developed over years. Reducing the complexity of these matters to an abbreviated legislative review, without an agreed-upon process for the review of confidential information that protects the interests of the State, is not consistent with meaningful consideration of the issues. SB 386 should unambiguously provide that the opioid matters can be

Prepared Testimony of Attorney General Kaul  
2021 Senate Bill 386  
Senate Committee on Health

STATE OF WISCONSIN  
DEPARTMENT OF JUSTICE



Josh Kaul  
Attorney General

resolved at the sole discretion of the attorney general.

Another issue with this proposed legislation is that section 165.12(6) would allow local governments to compensate private attorneys using funds otherwise designated for opioids abatement and would not cap or limit the amount of such payments. This provision would allow payments to private attorneys even if a national settlement provided a pool of funding specifically set aside for payment of attorneys' fees. Proposed section 165.12(6) could diminish funding for opioid abatement measures throughout Wisconsin.

For these reasons, I oppose SB 386. The Wisconsin Department of Justice is, however, happy to work with the legislature and other interested parties to develop legislation that would more effectively address this important topic.

If you have any questions, please contact the Department of Justice's Government Affairs Director, Chris McKinny, directly at [McKinnyCJ@doj.state.wi.us](mailto:McKinnyCJ@doj.state.wi.us) or (608) 224-9207.