



## Legislative Fiscal Bureau

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Joint Committee on Finance

Paper #262

### Special Prosecutor Appointments (District Attorneys)

[LFB 2015-17 Budget Summary: Page 135, #5]

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#### CURRENT LAW

A court may, on its own motion or at the request of the District Attorney (DA), appoint a special prosecutor. A judge may appoint an attorney as a special prosecutor if the DA is physically unable to attend to his or her duties, or the DA has a mental incapacity that impairs his or her ability to substantially perform the duties of a district attorney. In addition, a judge may appoint an attorney as a special prosecutor if any of the following conditions exists: (a) there is no DA for the county; (b) the DA is absent from the county; (c) the DA has acted as the attorney for an accused party in a matter relating to which the accused stands to be tried; (d) the DA is near of kin to the accused party; (e) the DA is serving in the U.S. armed forces; (f) the DA stands charged with a crime; (g) the DA determines that a conflict of interest exists regarding the DA or the DA's staff; or (h) a complaint received by the court relates to the conduct of the DA to whom the judge would normally refer the complaint.

Private bar attorneys that are appointed as a special prosecutor are to be paid at the following statutorily defined rate: (a) \$50 per hour for time spent in court; (b) \$40 per hour for time spent out of court, excluding travel; and (c) \$25 per hour for time spent in travel if any portion of the trip is outside the county in which the private attorney's principal's office is located or if the trip requires traveling a distance of more than 30 miles, one way, from the attorney's principle office. After providing services as a special prosecutor, a private attorney must submit a list of time spent related to a case to be approved by the court for payment. After the court approves the billing statements, the statements are sent to the Department of Administration (DOA) to be processed and paid. If a private attorney is not paid within 30 days of DOA receiving the billing statements, the private attorneys receive interest on the billed amount at a 12% annual rate compounded monthly.

## **GOVERNOR**

Modify current law relating to the circumstances under which a special prosecutor may be appointed. Specify that a court may appoint a special prosecutor because the DA is unable to attend to his or her duties, only if the DA is unable to attend to his or her duties due to a health issue or a mental incapacity that impairs the DA's ability to substantially perform his or her duties.

Modify current law to specify that a court may appoint an attorney as a special prosecutor only if the judge or the requesting district attorney submits an affidavit to the Department of Justice (DOJ) attesting that one of the conditions necessary for the appointment of a special prosecutor exists. Further, require that DOJ approve the appointment of a special prosecutor prior to the court fixing the amount of compensation for the special prosecutor.

Finally, exempt the District Attorneys from incurring interest fees on payments made to private attorneys appointed as a special prosecutor after 30 days. This provision would first apply to all special prosecutor appointments made on the effective date of the bill.

## **DISCUSSION POINTS**

### **Background**

1. District attorney offices may be aided by special prosecutors, who are not regular employees of the Office but have temporarily been given the powers and duties of the District Attorney. Special prosecutors are generally private bar attorneys or attorneys who are employed by other DA offices or the Department of Justice.

2. A court may, on its own motion or at the request of the district attorney, appoint an attorney as a special prosecutor. A court may appoint a special prosecutor at the request of a DA to assist the DA in the following: (a) the prosecution of persons charged with a crime; (b) grand jury proceedings; (c) John Doe proceedings; (d) sexually violent person commitment proceedings; and (e) investigations. Attorneys appointed as a special prosecutor have all of the powers of the district attorney. Special prosecutors may be appointed to prosecute a specific case, or to perform the duties of a district attorney for a determined period of time.

3. A judge may appoint an attorney as a special prosecutor if the DA is physically unable to attend to his or her duties or the DA has a mental incapacity that impairs the DA's ability to substantially perform his or her duties. In addition, a judge may appoint an attorney as a special prosecutor if one of the following conditions exists: (a) there is no DA for the county; (b) the DA is absent from the county; (c) the DA has acted as the attorney for an accused party in a matter relating to which the accused stands to be tried; (d) the DA is near of kin to the accused party; (e) the DA is serving in the U.S. armed forces; (f) the DA stands charged with a crime; (g) the DA determines that a conflict of interest exists regarding the DA or the DA's staff; or (h) a complaint received by the court relates to the conduct of the DA to whom the judge would normally refer the complaint.

4. Before a court appoints a private attorney as a special prosecutor for an appointment that exceeds six hours per case, the Court or the DA must request assistance from either the Department of Justice's (DOJ) Criminal Litigation Unit, or from a district attorney, deputy district attorney, or assistant district attorney from another prosecutorial unit. Prosecutors from another prosecutorial unit and assistant attorneys general from DOJ's Criminal Litigation Unit are not paid any rate in addition to their normal state salary and benefits for acting as a special prosecutor. [Each county is a prosecutorial unit, except that Shawano and Menominee counties form one unit.]

5. When appointing a private attorney as a special prosecutor, the DA or the Court must notify the Department of Administration (DOA) of the inability to obtain assistance from another prosecutorial unit or from DOJ. According to the State Prosecutors' Office (SPO), an Office within DOA, the SPO does, "not require that a District Attorney or Judge certify that they have sought assistance from another prosecutorial unit or the Attorney General's Office prior to the appointment of a private bar special prosecutor. [The State Prosecutors Office] believes that DAs and the Judges are familiar with the statutory requirement, and are therefore following the law." In 2013-14, DOJ's Criminal Litigation Unit was referred 412 criminal cases for special prosecution. Data does not exist as to how often DAs and Judges have sought assistance from other prosecutorial units for special prosecution.

6. Generally, however, attorneys appointed as a special prosecutor are members of the private bar employed in private practice, and are owed payments for their services. Under current law, private bar attorneys appointed as a special prosecutor are to be paid at the following rate: (a) \$50 per hour for time spent in court; (b) \$40 per hour for time spent out of court, excluding travel; and (c) \$25 per hour for time spent in travel if any portion of the trip is outside the county in which the private attorney's principal's office is located or if the trip requires traveling a distance of more than 30 miles, one way, from the attorney's principle office. Judges, on occasion, establish a rate of pay higher or lower than the statutorily defined rate due to the special prosecutor's level of experience and the complexity of the case.

7. After providing services as a special prosecutor, a private attorney must submit a list of time spent related to a case to be approved by the court for payment. After the court approves the billing statements, the statements are sent to DOA to be processed and paid. If a private attorney is not paid within 30 days of DOA receiving the billing statements, the private attorney receives an additional 12% annual interest compounded monthly on the amount owed.

8. The State Prosecutors Office indicates that it does not have information relating to the number of cases special prosecutors have litigated in recent years, since some special prosecutors are contracted for a specified period of time rather than for a specific case. Table 1 does, however, identify the following information for fiscal years 2010-11 through 2013-14: (a) the number of district attorney offices that utilized private bar special prosecutor appointments; (b) the amount expended by the state on special prosecutor appointments, excluding interest payments; and (c) interest payments made by the state for special prosecutor appointments.

**TABLE 1**

**Costs and Frequency of Special Prosecutor Appointments  
2010-11 through 2013-14**

	<u>2010-11</u>	<u>2011-12</u>	<u>2012-13</u>	<u>2013-14</u>	<u>Total</u>
District Attorney offices utilizing special prosecutor appointments	24	30	31	31	116
State expenditures for special prosecutor appointments, excluding interest	\$437,700	\$478,700	\$529,400	\$513,300	\$1,959,100
Interest payments to special prosecutors	\$0	\$7,400	\$28,600	\$21,100	\$57,100

9. State funding for DA offices is provided primarily from an annual GPR appropriation titled "Salaries and fringe benefits." Base funding for this appropriation is \$42,597,500. This appropriation provides funding for the salary and fringe benefit costs of the 71 locally elected district attorneys, as well as the 359.25 deputy and assistant district attorneys working for these officials. Included within the salaries and fringe benefits appropriation, \$223,200 GPR annually is budgeted for supplies and services costs. The supplies and services line is utilized to support special prosecutor costs, as well as other administrative and human resource costs. Table 2 identifies the amounts budgeted and expended from the supplies and services line from 2010-11 to 2013-14.

**TABLE 2**

**DA's Supplies and Services, Budgeted Amounts and Expenditures  
2010-11 through 2013-14**

	<u>2010-11</u>	<u>2011-12</u>	<u>2012-13</u>	<u>2013-14</u>
Budgeted Amount	\$248,000	\$223,200	\$223,200	\$223,200
Expenditures				
Special prosecutor costs	\$437,700	\$486,100	\$558,000	\$534,400
Administrative and human resource costs	<u>83,100</u>	<u>85,600</u>	<u>3,200</u>	<u>55,000</u>
Total Expenditures	\$520,800	\$571,700	\$561,200	\$589,400
Difference	-\$272,800	-\$348,500	-\$338,000	-\$366,200

10. While in recent years the supplies and services line has incurred more expenditures than initially budgeted, the DA's annual GPR appropriation as a whole has remained within its authorized budget. In order to fund all special prosecutor and non-special prosecutor costs associated with the supplies and services budget line, the State Prosecutors Office (SPO) has been able to: (a) reallocate additional resources from within the DA's annual GPR appropriation from funding for salaries and fringe benefits to funding for supplies and services; and (b) use the SPO's annual GPR budget to pay some of the non-special prosecutor administrative and human resource costs. Reallocated funds have become available predominately due to staff position turnover and

position vacancies. Table 3 identifies the amounts budgeted and expended from the DA's annual GPR appropriation from 2010-11 through 2013-14.

**TABLE 3**

**DA's Salaries and Fringe Benefits Appropriation Budget and Expenditures  
2010-11 through 2013-14**

	<u>2010-11</u>	<u>2011-12</u>	<u>2012-13</u>	<u>2013-14</u>
Total Budget	\$35,831,900	\$44,025,900	\$42,432,300	\$42,466,200
Expenditures	<u>35,716,000</u>	<u>43,889,100</u>	<u>42,427,600</u>	<u>42,451,800</u>
Difference	\$115,900	\$136,800	\$4,700	\$14,400

**Reason for Appointment**

11. As indicated above, a court may appoint a special prosecutor if one of several conditions exists. One such condition under which a court may appoint a special prosecutor is if the District Attorney is "physically unable to attend to his or her duties or has a mental incapacity that impairs his or her ability to substantially perform his or her duties." Some DAs and courts in the state have interpreted the phrase "physically unable to attend to his or her duties" as a reason for appointing a special prosecutor in order to provide the DA's office with caseload relief.

12. The bill would modify the current "physically unable" provision. The modification would specify that a court may appoint a special prosecutor if a DA is unable to attend to his or her duties, only if the DA is unable to attend to his or her duties due to a health issue or a mental incapacity that impairs the DA's ability to substantially perform his or her duties. Under the bill, a special prosecutor could still be appointed if one of other conditions for appointing a special prosecutor exists (see Point #3).

13. According to the administration, the purpose of the modification is as follows: "...The language was clarified to ensure that special prosecutor appointments under the amended language were intended for absences due to health, rather than the vague 'physically unable to attend' to one's duties, which could be more broadly interpreted. Special prosecutors were not intended to be used as additional staff resources, but only for special circumstances only."

14. The "physically unable" provision was modified to its current form by the Legislature under 1997 Act 27 (the 1997-99 budget act). Prior to Act 27, the provision stated that a special prosecutor could be appointed if, "the district attorney is unable to attend to his or her duties." A Legislative Fiscal Bureau issue paper from that budget published in connection with the modification (Paper #347) indicates that the provision was modified under Act 27 to restrict special prosecutors from being appointed strictly to provide caseload relief.

15. According to the State Prosecutors Office, special prosecutors appointed because the DA is physically unable to attend to his or her duties are generally appointed to provide the DA's office with caseload relief, rather than due to a DA's health issue. To the extent that this currently

occurs, it may be expected that special prosecutor appointments would decrease under provisions of the bill.

16. Table 4 identifies the payments made to special prosecutors (excluding interest) by reason for appointment, from 2010-11 through 2013-14. Further, Appendices I, II, III, and IV identify the payments made to special prosecutors (excluding interest) by county and reason for appointment, from 2010-11 and 2013-14. [Note that the total payments to special prosecutors identified in Table 4, as well as in Appendices I, II, III, and IV, do not equal the amount expended by the state on special prosecutor appointments, as indicated in Table 1. The slight discrepancies are due to the fact that payment amounts to special prosecutors categorized by reason for appointment are based on billing statements received by the special prosecutors. Budget and accounting staff in the Department of Administration audit billing statements prior to making payments to ensure that the state is being correctly billed.]

**TABLE 4**

**Payments Made to Special Prosecutors (Excluding Interest) By Reason For Appointment  
2010-11 through 2013-14**

<u>Reason for appointment</u>	<u>2010-11</u>		<u>2011-12</u>		<u>2012-13</u>		<u>2013-14</u>	
	<u>Amount</u>	<u>%</u>	<u>Amount</u>	<u>%</u>	<u>Amount</u>	<u>%</u>	<u>Amount</u>	<u>%</u>
DA physically unable to attend to duties	\$199,400	46.2%	\$256,300	53.7%	\$258,100	48.7%	\$106,900	20.8%
Conflict of interest	45,000	10.4	52,800	11.1	85,900	16.2	157,600	30.7
No DA for county	22,900	5.3	18,300	3.8	74,700	14.1	75,200	14.6
ADA on leave*	55,800	12.9	29,200	6.1	52,100	9.8	76,600	14.9
Special need - office/ special caseload*	1,300	0.3	0	0.0	0	0.0	50,200	9.8
DA absent from county	10,100	2.3	17,600	3.7	12,100	2.3	2,500	0.5
Assist DA*	0	0.0	0	0.0	0	0.0	29,400	5.7
DA in U.S. Armed Forces	25,600	5.9	49,600	10.4	28,600	5.4	0	0.0
Unknown / Other*#	70,100	16.2	16,500	3.5	16,900	3.2	0	0.0
Specific request of victim*	0	0.0	0	0.0	0	0.0	4,600	0.9
Prosecutor shortage*	0	0.0	18,400	3.9	100	0.0	9,600	1.9
Appointment by judge*	0	0.0	0	0.0	900	0.2	0	0.0
Allegations of DA impropriety	1,600	0.4	0	0.0	300	0.1	0	0.0
DA declined case*	0	0.0	4,700	1.0	0	0.0	1,000	0.2
Request of DA	0	0.0	9,700	2.0	0	0.0	0	0.0
Vacations*	0	0.0	1,400	0.3	0	0.0	0	0.0
Training a new ADA*	0	0.0	1,600	0.3	0	0.0	0	0.0
Temporary appointment*	0	0.0	900	0.2	0	0.0	0	0.0
<b>Total</b>	<b>\$431,800</b>		<b>\$477,000</b>		<b>\$529,700</b>		<b>\$513,600</b>	

\* The reason for appointment cited by the courts and the DAs is not a specified circumstance under which a special prosecutor may be appointed under current law. However, appointments may still have been made for reasons that would be authorized under current law. For example, while the courts and the DAs have cited "assist DA" as a reason for special prosecutor appointments, it is unknown whether the assistance was provided because the DA had a conflict of interest in the case.

# The category of "unknown" is due to clerical error when compiling the data.

17. As Table 4 indicates, expenditures relating to special prosecutors who were appointed because the DA was physically unable to attend to his or her duties has varied from year to year. From 2010-11 through 2013-14, an average of \$205,200 GPR was expended on special prosecutors because the DA was physically unable to attend to his or her duties.

18. Based on the modification under 1997 Act 27, it appears that it was the intent of the Legislature to prohibit the courts and DAs from appointing special prosecutors for caseload relief. Further, to the extent that less funding is utilized for special prosecutor costs, less may need to be reallocated from salary and fringe benefits funding. Therefore, the Committee could consider modifying the "physically unable" provision as recommended by the Governor [Alternative A1].

19. On the other hand, the Committee could consider maintaining the current "physically unable" provision in order to allow the courts to continue to appoint special prosecutors for caseload relief as the courts determine necessary [Alternative A2]. To this end, the State Prosecutors Office indicates that: "Some special prosecutors are appointed for caseload relief; so, DAs in those situations believe the modification in the law will affect their ability to handle their caseload."

20. Further, it should be noted that special prosecutor appointments are court ordered; and therefore, the court makes the final determination as to whether an appointment should be made. The Committee could decide that it would be prudent to provide the courts with continued discretion in appointing special prosecutors, rather than restricting the circumstances under which an appointment could be made.

21. Finally, as indicated in Table 3, the District Attorneys appropriation has been able to support the costs of special prosecutors as well as the salaries and fringe benefits of the district attorneys, assistant district attorneys, and deputy district attorneys.

22. However, while some courts have utilized current law to appoint special prosecutors in order to provide caseload relief, other courts have not. Were the Committee to determine that caseload relief is an acceptable reason to appoint a special prosecutor, it could be argued that it would set a precedent to encourage an increased number of special prosecutor appointments to provide DA offices with caseload relief.

### **Role of the Department of Justice**

23. Under the bill, a court would be able to appoint a special prosecutor only if the judge, or the DA requesting the appointment of the special prosecutor, submits an affidavit to the state Department of Justice (DOJ) attesting that one of the necessary conditions for the appointment of a special prosecutor exists. Further, the bill would require DOJ to approve the court's appointment of a special prosecutor prior to the court fixing the amount of compensation for the special prosecutor. Under current law, no such affidavit or approval by DOJ is required.

24. The administration indicates that the intent of the bill is to have the State Prosecutors Office receive affidavits from the courts and DAs, and provide approval for special prosecutor appointments. The bill specifies that the courts and DAs would have to seek approval for special prosecutor appointments from DOJ because, under the bill, the State Prosecutors Office would be

transferred from DOA to DOJ (Paper #263). If the Committee decides not to transfer the State Prosecutors Office from DOA to the Department of Justice, the administration believes that the Courts and the DAs should have to seek approval for special prosecutor appointments from the Department of Administration.

25. According to the administration, the purpose for requiring the Courts and DAs to submit an affidavit and seek approval prior to a special prosecutor appointment is as follows: "This provision was designed to ensure that the use of special prosecutors met the original intent of the provision, which was for the appointment of special prosecutors for specific prescribed circumstances, rather than for the purposes of additional caseload support."

26. Currently, when appointing a special prosecutor, the courts and the DAs must submit a form to the Special Prosecutors Office indicating the reason for appointment. As indicated in Table 4, the courts and the DAs have cited a number of reasons for appointment of a special prosecutor that are not specified under current law.

27. In 2012-13, \$70,000 GPR (excluding interest) was paid to special prosecutors who were appointed for reasons not specified under current law. In 2013-14, \$171,400 GPR (excluding interest) was paid to special prosecutors in these same circumstances. [As Table 4 indicates, however, while the courts and DAs may not have cited a reason for appointment authorized under current law, some of these appointments may have been made for reasons that would be in keeping with current law.] Therefore, to the extent that special prosecutors are appointed for reasons not specifically authorized under current law, special prosecutor costs may lessen if an additional review and approval process were initiated and the law was more uniformly implemented.

28. In light of this, the Committee could approve the Governor's recommendation [Alternative B1]. As a result, special prosecutors would only be appointed if: (a) the court or the requesting DA submitted an affidavit to DOJ (or DOA, depending on whether or not the committee decides to transfer the State Prosecutors Office); and (b) DOJ (or DOA) approves the appointment.

29. On the other hand, the Committee could decide that it would be prudent for special prosecutors to be appointed at the discretion of the courts and the DAs, independent of DOJ or DOA approval. The bill does not specify the criteria that DOJ or DOA would utilize in rejecting a special prosecutor appointment, and, as a result, it is unclear when DOJ or DOA would reject these appointments. Therefore, the Committee could deny the Governor's recommendation and maintain current law [Alternative B2]. Under this alternative, special prosecutor appointments would not require an affidavit from the courts or DAs or approval by DOJ.

### **Payment of Interest**

30. After providing services as a special prosecutor, a private attorney must submit a list of time spent related to a case to be approved by the court for payment. After the court approves the billing statements, the statements are sent to DOA to be processed and paid. Under current law, if a private attorney is not paid within 30 days of DOA receiving the billing statements, the private attorney receives an additional 12% annual interest compounded monthly. Under the bill, payments made to private attorneys appointed as a special prosecutor after 30 days would no longer accrue

interest.

31. The requirement that an agency must pay interest on payments made more than 30 days after services have been rendered and the agency has received a properly completed invoice is commonly known as the state's prompt pay law. The following transactions are currently exempt from the prompt pay law: (a) any portion of an order or contract under which the payment is made from federal monies; (b) an order or contract that is subject to late payment interest or another late payment charge required by another law or rule specifically authorized by law; (c) an order or contract between two or more state agencies except if the order or contract involves prison industries; (d) an order or contract for services that provides for the time of payment and the consequences of untimely payment; and (e) an order or contract under which the amount due is subject to a good faith dispute.

32. According to the administration, the bill exempts the DAs from the prompt pay law as a cost saving measure. As Table 1 above indicates, the District Attorneys paid the following amounts in interest fees to special prosecutors from 2010-11 to 2013-14: (a) \$0 in 2010-11; (b) \$7,400 in 2011-12; (c) \$28,600 in 2012-13; and (d) \$21,100 in 2013-14. Interest payments have risen in recent years with an increase in special prosecutor payments.

33. The State Prosecutors Office indicates that payments to special prosecutors have been made past the 30 day time limit because of a lack of funding budgeted on the supplies and services line of the District Attorneys' GPR annual salaries and fringe benefit appropriation. As indicated in Table 2 above, annual expenditures from the supplies and services budget line has exceeded budgeted amounts by an average of \$331,400 from 2010-11 to 2013-14. Because expenditures from the supplies and services line exceed annual budgeted amounts, payments to special prosecutors are delayed until the agency can transfer funding from its salaries and fringe benefits budget line to supplies and services. Funding becomes available for transfer predominately due to position turnover and vacancies.

34. Like the District Attorneys, the State Public Defender (SPD) also enters into contracts with private bar attorneys in order to assign those attorneys indigent legal defense cases. The State Public Defender assigns those cases to private bar attorneys if there is an excess of cases that can be handled by SPD staff, or if SPD staff may have a conflict of interest with a particular case. While contracts entered into by the SPD are also subject to the prompt pay law, under the state's accounting manual, the SPD has 120 days to make payments to private attorneys without incurring interest fees.

35. The State Public Defender makes payments to private bar attorneys in one of the two following ways: (a) at a statutorily defined rate of \$40 per hour for time spent related to a case and \$25 per hour for travel; or (b) a flat, per case contracted fee that may not result in the private attorney receiving more than the attorney would have if the attorney was reimbursed pursuant to the statutory rate. Under the bill, the SPD would no longer have to make interest payments to attorneys paid pursuant to a flat, per case contracted fee. [Under the bill, the SPD would still have to make interest payments to private attorneys paid pursuant to the statutorily defined rate. ]

36. Given that the DAs have had difficulties making special prosecutor payments within

the 30 day time limit, the Committee could decide to approve the Governor's recommendation to exempt the DA's from incurring interest fees on payments to special prosecutors [Alternative C1].

37. On the other hand, the Committee could continue to require the DAs to make interest payments to special prosecutors [Alternative C3]. It could be argued that the state has an obligation to make payments to individuals it contracts with in a timely manner, and, therefore, the state should incur interest fees in instances where it fails to do so.

38. Further, should the Committee adopt the other recommendations under the bill relating to the appointment of special prosecutors and the role of DOJ, it may be expected that special prosecutor payments will decrease. As a result, providing payments to special prosecutors in a timely manner should be less difficult.

39. Alternatively, the Committee may wish to continue to require the DAs to make interest payments to private attorneys appointed as a special prosecutor, but grant the DAs the same amount of time the SPD is granted to pay these costs without incurring interest. Under this alternative, the Committee could decide to adopt an exemption to the prompt pay law which would allow the DAs to make payments to private attorneys within 120 days without incurring interest fees [Alternative C2].

## **ALTERNATIVES**

### **A. Reason for Appointment**

1. Approve the Governor's recommendation to modify current law related to special prosecutor appointments. [Under the alternative, a special prosecutor may be appointed if a DA is unable to attend to his or her duties only if the DA is unable to attend to his or her duties due to a health issue or a mental incapacity that impairs the DA's ability to substantially perform his or her duties.]

2. Deny the Governor's recommendation and maintain current law. [Special prosecutors could be appointed if the DA is physically unable to attend to his or her duties.]

### **B. Role of the Department of Justice**

1. Approve the Governor's recommendation to modify current law to specify that a special prosecutor may be appointed only if the following occurs: (a) the court or the requesting DA submit an affidavit to the Department of Justice attesting that one of conditions necessary for the appointment of a special prosecutor under statute exists; and (b) the appointment is approved by DOJ.

[Note that under this alternative, the role of DOJ is contingent upon the Committee deciding to transfer the State Prosecutors Office from the Department of Administration to DOJ (Paper #263). If the Committee decides not to transfer the State Prosecutors Office from DOA to DOJ, DOA would receive affidavits and approve special prosecutor appointments.]

2. Deny the Governor's recommendation and maintain current law. [Courts or requesting DAs would not be required to submit an affidavit to DOJ prior to the appointment of a special prosecutor and special prosecutor appointments would not require approval by DOJ.]

**C. Payment of Interest**

1. Approve the Governor's recommendation to specify that District Attorneys would be exempt from incurring interest fees on payments made to private attorneys appointed as a special prosecutor, even if payment was made more than 30 days after the receipt of a properly completed invoice. The exemption would first apply to special prosecutor appointments made on the effective date of the bill.

2. Deny the Governor's recommendation and, instead, extend the amount of time that the District Attorneys would have to make payments to private attorneys without accruing interest from 30 days to 120 days.

3. Deny the Governor's recommendation and maintain current law. [District Attorneys would continue to incur interest fees if payments were made to private attorneys appointed as a special prosecutor more than 30 days after the receipt of a properly completed invoice.]

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Appendix



## APPENDIX I

### Compensation to Special Prosecutors (Excluding Interest) by County and Reason for Appointment, 2010-11

<u>County</u>	<u>Amount</u>	<u>Reason(s) for special prosecutor appointment</u>
Adams	\$6,900	No DA for the county
Bayfield	1,800	Conflict of interest
Brown	25,600	DA in U.S. armed forces
Buffalo	3,300	Conflict of interest (\$2,700); unknown (\$600)
Calumet	5,100	DA absent from the county (\$4,200); No DA for the county (\$900)
Chippewa	71,500	DA physically unable to attend to his or her duties (\$2,000); other (\$69,500)
Dane	179,500	DA physically unable to attend to his or her duties
Florence	5,000	Conflict of interest (\$4,600); DA absent from the county (\$400)
Forest	900	Conflict of interest
Jackson	1,400	Conflict of interest
Jefferson	3,200	DA absent from the county
Kenosha	28,100	ADA on leave
Lafayette	100	DA absent from the county
Manitowoc	1,800	DA absent from the county
Marinette	200	DA absent from the county
Oconto	19,700	Conflict of interest
Ozaukee	500	Conflict of interest
Rusk	1,800	DA absent from county (\$200); Allegations of DA impropriety (\$1,600)
Sheboygan	17,900	DA physically unable to attend to his or her duties
St Croix	6,000	Conflict of interest (\$4,700); Special office need/special caseload (\$1,300)
Washington	15,100	No DA for the county
Waukesha	6,700	ADA on leave
Winnebago	8,700	Conflict of interest
Wood	<u>21,000</u>	ADA on leave
Total	\$431,800	

## APPENDIX II

### Compensation to Special Prosecutors (Excluding Interest) by County and Reason for Appointment, 2011-12

<u>County</u>	<u>Amount</u>	<u>Reason(s) for special prosecutor appointment</u>
Adams	\$2,800	DA absent from county
Brown	3,200	DA physically unable to attend to his or her duties
Buffalo	2,400	Conflict of interest
Burnett	4,700	DA physically unable to attend to his or her duties
Calumet	19,100	DA physically unable to attend to his or her duties
Chippewa	19,400	Prosecutor shortage (\$4,500); unknown (\$14,900)
Crawford	500	DA absent from county
Dane	152,000	DA physically unable to attend to his or her duties (\$147,300); DA declined case (\$4,700)
Door	3,700	Conflict of interest (\$2,100); other (\$1,600)
Eau Claire	16,000	No DA for the county
Florence	3,100	Conflict of interest
Green Lake	6,300	Conflict of interest (\$4,500); DA absent from county (\$1,800)
Jackson	57,600	DA in the U.S. armed forces (\$49,600); conflict of interest (\$8,000)
Jefferson	12,000	DA absent from the county
Manitowoc	16,500	Prosecutor shortage (\$13,300); vacations (\$1,400); training a new ADA (\$1,600); conflict of interest (\$200)
Marathon	9,700	Request of DA
Marinette	4,500	Conflict of interest (\$4,000); DA absent from county (\$500)
Marquette	2,300	No DA for the county
Oconto	26,100	Conflict of interest
Outagamie	600	Conflict of interest
Racine	15,600	ADA on leave
Sauk	600	Prosecutor shortage
Sheboygan	43,500	DA physically unable to attend to his or her duties
St Croix	10,300	DA physically unable to attend to his or her duties (\$10,200); conflict of interest (\$100)
Washburn	9,600	DA physically unable to attend to his or her duties
Washington	8,400	ADA on leave
Waukesha	5,200	ADA on leave
Waushara	900	Temporary appointment
Winnebago	1,700	Conflict of interest
Wood	<u>18,700</u>	DA physically unable to attend to his or her duties
Total	\$477,000	

### APPENDIX III

#### Compensation to Special Prosecutors (Excluding Interest) by County and Reason for Appointment, 2012-13

<u>County</u>	<u>Amount</u>	<u>Reason(s) for Appointment</u>
Adams	\$4,700	Conflict of interest (\$3,900); DA absent from county (\$800)
Bayfield	300	Allegations of DA impropriety
Buffalo	3,200	Conflict of interest
Crawford	100	DA absent from county
Dane	154,800	DA physically unable to attend to duties
Dodge	14,300	DA physically unable to attend to duties
Door	8,200	Conflict of interest
Eau Claire	41,400	No DA for the county
Florence	11,100	Conflict of interest
Fond du Lac	2,100	Unknown
Forest	1,400	Conflict of interest
Green Lake	600	Conflict of interest
Jackson	29,200	DA in U.S. Armed Forces (\$28,600); DA physically unable to attend to duties (\$600)
Jefferson	100	Conflict of interest
Kenosha	31,200	ADA on leave
Lafayette	100	DA absent from county
Manitowoc	1,200	Conflict of interest (\$1,100); prosecutor shortage (\$100)
Marathon	1,900	Conflict of interest
Marinette	1,100	Appointment by Judge (\$900); conflict of interest (\$200)
Oconto	28,400	Conflict of interest
Oneida	17,300	No DA for the county (\$16,400); conflict of interest (\$900)
Ozaukee	200	Conflict of interest
Polk	17,200	DA absent from county (\$8,900); ADA on leave (\$8,300)
Portage	16,900	No DA for the county
St. Croix	44,800	DA physically unable to attend to duties (\$42,600); conflict of interest (\$2,200)
Sheboygan	20,100	DA physically unable to attend to duties
Trempealeau	25,700	DA physically unable to attend to duties
Washington	12,600	ADA on leave
Waushara	2,200	DA absent from county
Winnebago	16,700	Unknown (\$14,800); conflict of interest (\$1,900)
Wood	<u>20,600</u>	Conflict of interest
Total	\$529,700	

## APPENDIX IV

### Compensation to Special Prosecutors (Excluding Interest), by County and Reason for Appointment, 2013-14

<u>County</u>	<u>Amount</u>	<u>Reason(s) for Appointment</u>
Adams	\$22,600	DA physically unable to attend to duties (\$21,000); no DA for county (\$1,600)
Buffalo	800	Conflict of interest
Columbia	3,900	ADA on leave
Crawford	500	No DA for county
Dane	61,900	DA physically unable to attend to duties
Door	1,300	Conflict of interest
Dunn	2,400	ADA on leave
Florence	4,200	Conflict of interest
Fond du Lac	2,200	Conflict of interest
Forest	20,400	Assist DA
Iron	5,000	Conflict of interest
Jackson	2,200	DA absent from county
Kenosha	31,900	ADA on leave
Lafayette	200	Conflict of interest
Manitowoc	37,200	No DA for county (\$22,000); Prosecutor shortage (\$9,400); conflict of interest (\$5,800)
Marathon	300	Conflict of interest
Marinette	200	Conflict of interest
Monroe	14,000	No DA for county
Oconto	72,100	Conflict of interest (\$66,600); DA physically unable to attend to duties (\$5,200); DA absent from county (\$300)
Oneida	10,300	Assist DA (\$9,000); conflict of interest (\$1,300)
Racine	16,300	ADA on leave
Rusk	11,800	DA physically unable to attend to duties
Sawyer	400	DA physically unable to attend to duties
Sheboygan	6,600	DA physically unable to attend to duties
St. Croix	57,700	Special need - office/special caseload (\$50,200); specific request of victim (\$4,600); conflict of interest (\$1,700); DA declined prosecution, (\$1,000); Prosecutor shortage (\$200)
Washburn	37,100	No DA for county
Washington	10,300	ADA on leave
Waukesha	11,800	ADA on leave
Waushara	6,400	Conflict of interest
Winnebago	11,700	Conflict of interest
Wood	<u>49,900</u>	Conflict of interest
Total	\$513,600	