

## 2009 ASSEMBLY BILL 62

February 17, 2009 – Introduced by Representatives KESSLER, SOLETSKI, HUBLER, CULLEN, HILGENBERG, BLACK, BERCEAU, BENEDICT, DANOU, POPE-ROBERTS, HIXSON and PARISI, cosponsored by Senators SULLIVAN, RISSER and LEHMAN. Referred to Committee on Judiciary and Ethics.

1     **AN ACT to repeal** 801.50 (5t), 801.64, 971.19 (12) and 971.223; and **to amend**  
2             5.05 (1) (c), 5.05 (2m) (a), 5.05 (2m) (c) 4., 5.05 (2m) (c) 11., 5.05 (2m) (c) 14., 5.05  
3             (2m) (i), 5.08, 6.56 (4), 6.56 (5), 11.22 (4), 11.60 (4), 11.61 (2), 12.13 (5) (a), 801.52,  
4             971.225 (1) (intro.), 978.05 (1) and 978.05 (2) of the statutes; **relating to:** the  
5             prosecution and venue for trial of certain offenses by certain state residents.

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### ***Analysis by the Legislative Reference Bureau***

Under current law, with certain limited exceptions, civil violations of the elections, ethics, and lobbying regulation laws and of all other laws arising from or in relation to the official functions of the subject of an investigation or any matter that relates to elections, ethics, or lobbying regulation that are alleged to be committed by a resident of this state are prosecuted by the Government Accountability Board or by the district attorney for the prosecutorial unit (in most cases, the county) where the subject resides. With similar exceptions, civil violations of these laws by nonresidents are prosecuted by the board or by the district attorney for the prosecutorial unit where an alleged violation occurs. Criminal violations of these laws are prosecuted solely by the same district attorney, subject to the same exceptions. With certain limited exceptions, the trial in any such civil or criminal prosecution of a resident of this state, as well as in any lobbying license revocation action brought by the board, is held in circuit court for the county where the subject resides. With similar exceptions, the trial in any such civil or criminal prosecution of a nonresident of this state is held in circuit court for the county where an alleged violation occurs.

**ASSEMBLY BILL 62**

This bill provides, with similar exceptions, that all such civil violations shall be prosecuted by the board or by the district attorney for the prosecutorial unit where an alleged violation occurs, irrespective of the residence of the defendant. The bill also provides, with similar exceptions, that all such criminal violations shall be prosecuted solely by the district attorney for the prosecutorial unit where an alleged violation occurs, irrespective of the residence of the defendant. In addition, the bill provides, with limited exceptions, that the trial in any such civil or criminal prosecution, as well as in any lobbying license revocation action brought by the board, shall be held in circuit court for the county where the alleged violation occurs. Under the bill, the board has no responsibility for prosecution of any violations other than violations of the elections, ethics, and lobbying regulation laws.

The bill also deletes a statutory restriction on the disclosure of certain information related to the investigation or prosecution of laws arising from or in relation to the official functions of the person who is investigated or prosecuted. Under the bill, the information may still be withheld if other laws authorize or require the information to be withheld or if the custodian can demonstrate that the public interest requires withholding.

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

1           **SECTION 1.** 5.05 (1) (c) of the statutes is amended to read:

2           5.05 (1) (c) Bring civil actions to require a forfeiture for any violation of chs. 5  
3 to 12, subch. III of ch. 13, or subch. III of ch. 19 or a license revocation for any violation  
4 of subch. III of ch. 13 for which the offender is subject to a revocation. The board may  
5 compromise and settle any civil action or potential action brought or authorized to  
6 be brought by it which, in the opinion of the board, constitutes a minor violation, a  
7 violation caused by excusable neglect, or which for other good cause shown, should  
8 not in the public interest be prosecuted under such chapter. Notwithstanding s.  
9 778.06, a civil action or proposed civil action authorized under this paragraph may  
10 be settled for such sum as may be agreed between the parties. Any settlement made  
11 by the board shall be in such amount as to deprive the alleged violator of any benefit  
12 of his or her wrongdoing and may contain a penal component to serve as a deterrent  
13 to future violations. In settling civil actions or proposed civil actions, the board shall

**ASSEMBLY BILL 62**

1 treat comparable situations in a comparable manner and shall assure that any  
2 settlement bears a reasonable relationship to the severity of the offense or alleged  
3 offense. ~~Except as otherwise provided in sub. (2m) (c) 15. and 16. and ss. 5.08, 5.081,~~  
4 ~~19.535, and 19.59 (8), forfeiture~~ Forfeiture and license revocation actions brought by  
5 the board shall be brought in the circuit court for the county where the defendant  
6 resides, or if the defendant is a nonresident of this state, in circuit court for the county  
7 wherein the violation is alleged to occur. ~~For purposes of this paragraph, a person~~  
8 ~~other than a natural person resides within a county if the person's principal place of~~  
9 ~~operation is located within that county.~~ Whenever the board enters into a settlement  
10 agreement with an individual who is accused of a civil violation of chs. 5 to 12, subch.  
11 III of ch. 13, or subch. III of ch. 19 or who is investigated by the board for a possible  
12 civil violation of one of those provisions, the board shall reduce the agreement to  
13 writing, together with a statement of the board's findings and reasons for entering  
14 into the agreement and shall retain the agreement and statement in its office for  
15 inspection.

16 **SECTION 2.** 5.05 (2m) (a) of the statutes is amended to read:

17 5.05 **(2m)** (a) The board shall investigate violations of laws administered by the  
18 board and may prosecute alleged civil violations of those laws, directly or through its  
19 agents under this subsection, pursuant to all statutes granting or assigning that  
20 authority or responsibility to the board. ~~Prosecution of alleged criminal violations~~  
21 ~~investigated by the board may be brought only as provided in par. (c) 11., 14., 15., and~~  
22 ~~16. and s. 978.05 (1).~~

23 **SECTION 3.** 5.05 (2m) (c) 4. of the statutes is amended to read:

24 5.05 **(2m)** (c) 4. If the board reviews a complaint and fails to find that there is  
25 a reasonable suspicion that a violation under subd. 2. has occurred or is occurring,

**ASSEMBLY BILL 62****SECTION 3**

1 the board shall dismiss the complaint. If the board believes that there is reasonable  
2 suspicion that a violation under subd. 2. has occurred or is occurring, the board may  
3 by resolution authorize the commencement of an investigation. The resolution shall  
4 specifically set forth any matter that is authorized to be investigated. To assist in  
5 the investigation, the board may elect to retain a special investigator. If the board  
6 elects to retain a special investigator, the administrator of the ethics and  
7 accountability division shall submit to the board the names of 3 qualified individuals  
8 to serve as a special investigator. The board may retain one or more of the  
9 individuals. If Unless another prosecutor has jurisdiction to prosecute the alleged  
10 violation, if the board retains a special investigator to investigate a complaint  
11 against a person who is a resident of this state alleging a violation under subd. 2.,  
12 the board shall provide to the district attorney for the county ~~in which the person~~  
13 ~~resides~~ where the violation is alleged to occur a copy of the complaint and shall notify  
14 the district attorney that it has retained a special investigator to investigate the  
15 complaint. ~~For purposes of this subdivision, a person other than a natural person~~  
16 ~~resides within a county if the person's principal place of operation is located within~~  
17 ~~that county.~~ If another prosecutor has jurisdiction to prosecute the alleged violation,  
18 the board shall provide the copy of the complaint and notification to that prosecutor  
19 or the person having authority to appoint that prosecutor. The board shall enter into  
20 a written contract with any individual who is retained as a special investigator  
21 setting forth the terms of the engagement. A special investigator who is retained by  
22 the board may request the board to issue a subpoena to a specific person or to  
23 authorize the special investigator to request a circuit court to issue a search warrant.  
24 The board may grant the request by approving a motion to that effect at a meeting  
25 of the board if the board finds that such action is legally appropriate.

**ASSEMBLY BILL 62**

1           **SECTION 4.** 5.05 (2m) (c) 11. of the statutes is amended to read:

2           5.05 **(2m)** (c) 11. If the board finds that there is probable cause to believe that  
3 a violation under subd. 2. has occurred or is occurring, the board may, in lieu of civil  
4 prosecution of any matter by the board, refer the matter to the district attorney for  
5 the county ~~in which the alleged violator resides, or if the alleged violator is a~~  
6 ~~nonresident, to the district attorney for the county where the matter arises, having~~  
7 ~~jurisdiction to prosecute the alleged violation, or if subd. 16. or par. (i) applies, to the~~  
8 ~~attorney general or a special prosecutor. For purposes of this subdivision, a person~~  
9 ~~other than a natural person resides within a county if the person's principal place of~~  
10 ~~operation is located within that county.~~

11           **SECTION 5.** 5.05 (2m) (c) 14. of the statutes is amended to read:

12           5.05 **(2m)** (c) 14. If a special investigator or the administrator of the ethics and  
13 accountability division of the board, in the course of an investigation authorized by  
14 the board, discovers evidence of a potential violation of a law that is not administered  
15 by the board arising from or in relation to the official functions of the subject of the  
16 investigation or any matter that involves elections, ethics, or lobbying regulation,  
17 the special investigator or the administrator may present that evidence to the board.  
18 The board may thereupon refer the matter to the appropriate district attorney  
19 ~~specified~~ except as otherwise provided in subd. 11.

20           **SECTION 6.** 5.05 (2m) (i) of the statutes is amended to read:

21           5.05 **(2m)** (i) ~~If the defendant in an action for a~~ an alleged criminal violation  
22 of chs. 5 to 12, subch. III of ch. 13, or subch. III of ch. 19 ~~is~~ concerns a district attorney  
23 or a circuit judge or a candidate for either such office, the action shall be brought by  
24 the attorney general. ~~If the defendant in an action for a~~ an alleged criminal violation  
25 of chs. 5 to 12, subch. III of ch. 13, or subch. III of ch. 19 ~~is~~ concerns the attorney

**ASSEMBLY BILL 62**

1 general or a candidate for that office, the board may appoint a special prosecutor to  
2 conduct the prosecution on behalf of the state.

3 **SECTION 7.** 5.08 of the statutes is amended to read:

4 **5.08 Petition for enforcement.** In addition to or in lieu of filing a complaint,  
5 any elector may file a verified petition alleging such facts as are within his or her  
6 knowledge to indicate that an election official has failed or is failing to comply with  
7 any law regulating the conduct of elections or election campaigns or proposes to act  
8 in a manner inconsistent with such a law, and requesting that an action be  
9 commenced for injunctive relief, a writ of mandamus or prohibition or other such  
10 legal or equitable relief as may be appropriate to compel compliance with the law.  
11 The Unless another prosecutor has jurisdiction to prosecute the alleged failure to  
12 comply, the petition shall be filed with the district attorney for the county having  
13 jurisdiction to prosecute the alleged failure to comply under s. 978.05 (1) and (2). If  
14 another prosecutor has jurisdiction to prosecute the alleged failure to comply, the  
15 petition shall be filed with that prosecutor or the person having authority to appoint  
16 that prosecutor. The district attorney or other prosecutor may then commence the  
17 action or dismiss the petition. If the district attorney or other prosecutor declines to  
18 act upon the petition or if the district attorney fails to act upon the petition within  
19 15 days of the date of filing, the petitioner may file the same petition with the  
20 attorney general, who may then commence the action.

21 **SECTION 8.** 6.56 (4) of the statutes is amended to read:

22 6.56 (4) After each election, the municipal clerk shall perform an audit to  
23 assure that no person has been allowed to vote more than once. Whenever the  
24 municipal clerk has good reason to believe that a person has voted more than once  
25 in an election, the clerk shall send the person a 1st class letter marked in accordance

**ASSEMBLY BILL 62**

1 with postal regulations to ensure that it will be returned to the clerk if the elector  
2 does not reside at the address given on the letter. The letter shall inform the person  
3 that all registrations relating to that person may be changed from eligible to  
4 ineligible status within 7 days unless the person contacts the office of the clerk to  
5 clarify the matter. A copy of the letter and of any subsequent information received  
6 from or about the addressee shall be sent to the district attorney for the county where  
7 ~~the person resides~~ any potential violation occurs and the board.

8 **SECTION 9.** 6.56 (5) of the statutes is amended to read:

9 6.56 (5) Whenever any letter or postcard mailed under this section is returned  
10 undelivered, or whenever the U.S. postal service notifies the clerk of an improper  
11 address which was apparently improper on the day of the election or whenever it  
12 otherwise appears that a person has voted who is not qualified or has voted more  
13 than once in an election, and the person has been permitted to vote after  
14 corroboration was made under s. 6.55 (2) or 6.86 (3) (a) 2., the name of the  
15 corroborator shall also be provided to the district attorney for the county where the  
16 ~~person resides~~ any potential violation occurs and the board.

17 **SECTION 10.** 11.22 (4) of the statutes is amended to read:

18 11.22 (4) Notify the board and the district attorney, ~~or the attorney general~~  
19 ~~where appropriate under s. 5.05 (2m) (i),~~ in writing, of any facts within the filing  
20 officer's knowledge or evidence in the officer's possession, including errors or  
21 discrepancies in reports or statements and delinquencies in filing which may be  
22 grounds for civil action or criminal prosecution. The filing officer shall transmit a  
23 copy of such notification to the board. The board and the district attorney or the  
24 attorney general shall advise the filing officer in writing at the end of each 30-day  
25 period of the status of such matter until the time of disposition.

**ASSEMBLY BILL 62****SECTION 11**

1           **SECTION 11.** 11.60 (4) of the statutes is amended to read:

2           11.60 (4) Except as otherwise provided in ss. s. 5.05 (2m) (c) 15. and 16. and (h),  
3 5.08, and 5.081, actions under this section may be brought by the board or by the  
4 district attorney for the county where the defendant resides or, if the defendant is a  
5 nonresident, by the district attorney for the county where the violation is alleged to  
6 have occurred. For purposes of this subsection, a person other than a natural person  
7 resides within a county if the person's principal place of operation is located within  
8 that county violation is alleged to have occurred. If a violation concerns a district  
9 attorney or circuit judge or candidate for either such office, the action shall be  
10 brought by the attorney general. If a violation concerns the attorney general or a  
11 candidate for such office, the board may appoint special counsel to bring suit on  
12 behalf of the state.

13           **SECTION 12.** 11.61 (2) of the statutes is amended to read:

14           11.61 (2) Except as otherwise provided in ss. s. 5.05 (2m) (c) 15. and 16. and (i),  
15 5.08, and 5.081, all prosecutions under this section shall be conducted by the district  
16 attorney for the county where the defendant resides or, if the defendant is a  
17 nonresident, by the district attorney for the county where the violation is alleged to  
18 have occurred. For purposes of this subsection, a person other than a natural person  
19 resides within a county if the person's principal place of operation is located within  
20 that county violation is alleged to have occurred. In addition to the remedy provided  
21 in s. 5.05 (2m) (c) 15. to 17., if the district attorney refuses to act upon a sworn  
22 complaint, or fails to act upon such a complaint within 60 days of the date on which  
23 the complaint is received, the attorney general may then conduct the prosecution  
24 under this section. If a violation concerns a district attorney or circuit judge or  
25 candidate for either such office, the prosecution shall be conducted by the attorney

**ASSEMBLY BILL 62**

1 general. If a violation concerns the attorney general or a candidate for such office,  
2 the board may appoint a special prosecutor to conduct the prosecution on behalf of  
3 the state.

4 **SECTION 13.** 12.13 (5) (a) of the statutes is amended to read:

5 12.13 (5) (a) Except as specifically authorized by law and except as provided  
6 in par. (b), no investigator, prosecutor, employee of an investigator or prosecutor, or  
7 member or employee of the board may disclose information related to an  
8 investigation or prosecution under chs. 5 to 12, subch. III of ch. 13, or subch. III of  
9 ch. 19 ~~or any other law specified in s. 978.05 (1) or (2)~~ or provide access to any record  
10 of the investigator, prosecutor, or the board that is not subject to access under s. 5.05  
11 (5s) to any person other than an employee or agent of the prosecutor or investigator  
12 or a member, employee, or agent of the board prior to presentation of the information  
13 or record in a court of law.

14 **SECTION 14.** 801.50 (5t) of the statutes is repealed.

15 **SECTION 15.** 801.52 of the statutes is amended to read:

16 **801.52 Discretionary change of venue.** The court may at any time, upon  
17 its own motion, the motion of a party or the stipulation of the parties, change the  
18 venue to any county in the interest of justice or for the convenience of the parties or  
19 witnesses, ~~except that venue in a civil action to impose forfeiture for a violation of chs.~~  
20 ~~5 to 12, subch. III of ch. 13, or subch. III of ch. 19 or for a violation of any other law~~  
21 ~~arising from or in relation to the official functions of the subject of the investigation~~  
22 ~~or any matter that involves elections, ethics, or lobbying regulation under chs. 5 to~~  
23 ~~12, subch. III of ch. 13, or subch. III of ch. 19, may be changed only as provided in s.~~  
24 ~~971.223 (1) and (2) or in the same manner that is authorized for a change in the venue~~

**ASSEMBLY BILL 62****SECTION 15**

1 ~~of a criminal trial under s. 971.22. This section does not apply to proceedings under~~  
2 ~~ch. 980.~~

3 **SECTION 16.** 801.64 of the statutes is repealed.

4 **SECTION 17.** 971.19 (12) of the statutes is repealed.

5 **SECTION 18.** 971.223 of the statutes is repealed.

6 **SECTION 19.** 971.225 (1) (intro.) of the statutes is amended to read:

7 971.225 (1) (intro.) In lieu of changing the place of trial under s. 971.22 (3) ~~or~~  
8 ~~971.223~~, the court may require the selection of a jury under sub. (2) if:

9 **SECTION 20.** 978.05 (1) of the statutes is amended to read:

10 978.05 (1) CRIMINAL ACTIONS. Except as otherwise provided by law, prosecute  
11 all criminal actions before any court within his or her prosecutorial unit ~~and have~~  
12 ~~sole responsibility for prosecution of all criminal actions arising from violations of~~  
13 ~~chs. 5 to 12, subch. III of ch. 13, or subch. III of ch. 19 and from violations of other~~  
14 ~~laws arising from or in relation to the official functions of the subject of the~~  
15 ~~investigation or any matter that involves elections, ethics, or lobbying regulation~~  
16 ~~under chs. 5 to 12, subch. III of ch. 13, or subch. III of ch. 19, that are alleged to be~~  
17 ~~committed by a resident of his or her prosecutorial unit, or if alleged to be committed~~  
18 ~~by a nonresident of this state, that are alleged to occur in his or her prosecutorial unit~~  
19 unless another prosecutor is substituted under s. 5.05 (2m) (i) or this chapter or by  
20 referral of the government accountability board under s. 5.05 (2m) (c) 15. or 16. ~~For~~  
21 ~~purposes of this subsection, a person other than a natural person is a resident of a~~  
22 ~~prosecutorial unit if the person's principal place of operation is located in that~~  
23 ~~prosecutorial unit.~~

24 **SECTION 21.** 978.05 (2) of the statutes is amended to read:

