

2009 DRAFTING REQUEST

Bill

Received: **11/13/2008**

Received By: **jkuesel**

Wanted: **As time permits**

Identical to LRB:

For: **Frederick Kessler (608) 266-5813**

By/Representing: **him**

This file may be shown to any legislator: **NO**

Drafter: **jkuesel**

May Contact:

Addl. Drafters:

Subject: **Elections - campaign finance**
 Elections - miscellaneous
 Ethics
 Lobbying
 Criminal Law - procedure
 Courts - civil procedure

Extra Copies:

Submit via email: **YES**

Requester's email: **Rep.Kessler@legis.wisconsin.gov**

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Venue for trial and prosecution of certain criminal and civil offenses

Instructions:

Reverse provisions of 07 Act 1 that changed venue for trial and responsibility for prosecution of certain criminal and civil offenses.

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	jkuesel 12/07/2008	kfollett 12/09/2008		_____			
/1	jkuesel 12/09/2008	kfollett 12/09/2008	mduchek 12/09/2008	_____	mbarman 12/10/2008	cduerst 01/28/2009	

Vers. Drafted Reviewed Typed Proofed Submitted Jacketed Required

mduchek _____
12/10/2008 _____

FE Sent For:

<END>

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Vers. Drafted Reviewed Typed Proofed Submitted Jacketed Required

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DNOTES

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Vers.	Drafted	Reviewed	Typed	Proofed	Submitted	Jacketed	Required
1/1	jkuesel 12/7/08	11 Kif 12/9	MD 12/9	MD RS 12/9			

FE Sent For:

wanted Thu 12/11

2009
2007 BILL

PWF

1 AN ACT ^(regenerate) to repeal 801.64, 971.19 (12) and 971.223; to amend 5.05 (2m) (a), 5.05
2 (2m) (c) 11., 5.05 (2m) (c) 15., 5.05 (2m) (c) 16., 5.05 (2m) (c) 18., 5.05 (2m) (i),
3 5.08, 6.56 (4), 6.56 (5), 11.22 (4), 11.61 (2), 801.50 (5t), 801.52, 971.225 (1) (intro.)
4 and 978.05 (1); and to create 5.075 of the statutes; relating to: the ^{any}
5 responsibility for prosecution and venue for trial of certain offenses by certain
6 state residents.

in such prosecuting, as well as in lobbying license revocation actions brought by the board,

Analysis by the Legislative Reference Bureau

Under current law, with certain limited exceptions, ^{civil} ~~criminal~~ 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 district attorney for the prosecutorial unit (in most cases, the county) where the subject resides. (With certain limited exceptions, the trial is also held in circuit court for the county where the subject resides. With similar exceptions, ^{civil} ~~criminal~~ violations of these laws by other state residents or by nonresidents are prosecuted by the district attorney for the prosecutorial unit where the alleged violation occurs, and with similar exceptions, the trial is held in circuit court for the county where the alleged violation occurs.

This bill provides, with similar exceptions, that all such ^{civil} ~~criminal~~ violations shall be prosecuted by the ^{board or by the} ~~district attorney~~ for the prosecutorial unit where the ^{an} ~~trial~~

use 2 times
the
Government
Accountability
Board
or by

the board or by

With
civil,

Criminal violations of those laws by those persons are prosecuted solely by that district attorney, subject to the same exceptions.

an
Criminal violations of those laws are prosecuted solely by that district attorney, subject to the same exceptions.

BILL

alleged violation ^{occurs}, irrespective of the residency of the defendant and with limited exceptions, that the trial shall be held in circuit court for the county where the alleged violation occurs.

with similar exceptions
The bill also provides that all such criminal violations of those laws shall be prosecuted solely by the district attorney for the prosecutive unit where an alleged violation occurs, irrespective of the residency of the defendant.

in such prosecutions, as well as in my lobbying license revocation actions brought by the board,

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

RWS 2-14

RWS 2-1

irrespective of the residency of the defendant. In addition, the bill provides that,

1 SECTION 1. 5.05 (2m) (a) of the statutes, as created by 2007 Wisconsin Act 1,

2 is amended to read:

3 5.05 (2m) (a) The board shall investigate violations of laws administered by the
4 board and may prosecute alleged civil violations of those laws, directly or through its
5 agents under this subsection, pursuant to all statutes granting or assigning that
6 authority or responsibility to the board. Prosecution of alleged criminal violations
7 investigated by the board may be brought only as provided in par. (c) 11., 14., 15., and
8 16. and s. 978.05 (1).

RWS 2-18

9 SECTION 2. 5.05 (2m) (c) 11. of the statutes, as created by 2007 Wisconsin Act

10 is amended to read:

11 5.05 (2m) (c) 11. If the board finds that there is probable cause to believe that
12 a violation under subd. 2. has occurred or is occurring, the board may, in lieu of civil
13 prosecution of any matter by the board, refer the matter to the district attorney for
14 the county in which the alleged violator resides, or if the alleged violator is a
15 nonresident, to the district attorney for the county where the matter arises, having
16 civil or criminal jurisdiction, or both, ^{to prosecute the alleged violation} or if subd. 15. or par. (i) applies, to the attorney
17 general or a special prosecutor. For purposes of this subdivision, a person other than
18 a natural person resides within a county if the person's principal place of operation
19 is located within that county the governor

RWS 2-19

BILL

1 ~~SECTION 3. 5.05 (2m) (c) 15. of the statutes, as created by 2007 Wisconsin Act~~

2 ~~is amended to read:~~

3 5.05 (2m) (c) 15. Except as provided in subd. 17., if the board refers a matter
4 to the district attorney specified in subd. 11. for prosecution of a potential civil
5 violation under subd. 2. or 14. and the district attorney informs the board that he or
6 she declines to prosecute any alleged ~~civil or criminal~~ violation related to any matter
7 referred to the district attorney by the board, or the district attorney fails to
8 commence a prosecution of any ~~civil or criminal~~ violation related to any matter
9 referred to the district attorney by the board within 60 days of the date of the board's
10 referral, the board may refer the matter to the district attorney for another
11 prosecutorial unit that is contiguous to the prosecutorial unit of the district attorney
12 to whom the matter was originally referred. If there is more than one such
13 prosecutorial unit, the chairperson of the board shall determine the district attorney
14 to whom the matter shall be referred by publicly drawing lots at a meeting of the
15 board. The district attorney may then commence a ~~civil or criminal~~ prosecution
16 relating to the matter. Except as provided in par. (i), if any such matter concerns a
17 potential criminal violation, the board may refer the matter to the district attorney
18 for the county where the alleged violation occurs.

19 ~~SECTION 4. 5.05 (2m) (c) 16. of the statutes, as created by 2007 Wisconsin Act~~

20 ~~is amended to read:~~

21 5.05 (2m) (c) 16. Except as provided in subd. 17., if the board refers a matter
22 to a district attorney under subd. 15. for prosecution of a potential civil violation
23 under subd. 2. or 14. and the district attorney informs the board that he or she
24 declines to prosecute any alleged ~~civil or criminal~~ violation related to any matter
25 referred to the district attorney by the board, or the district attorney fails to

BILL

SECTION 4

1 commence a prosecution of any civil or criminal violation related to any matter
2 referred to the district attorney by the board within 60 days of the date of the board's
3 referral, the board may refer the matter to the attorney general. The attorney
4 general may then commence a civil or criminal prosecution relating to the matter.

5 SECTION 5. 5.05 (2m) (c) 18. of the statutes, as created by 2007 Wisconsin Act
6 is amended to read:

7 5.05 (2m) (c) 18. Whenever the board refers a matter to special counsel or, to
8 a district attorney, or to the attorney general, or to the governor under this subsection,
9 the special counsel, district attorney, or attorney general, or the special counsel,
10 whether appointed by the board or by the governor, shall report to the board
11 concerning any action taken regarding the matter. The report shall be transmitted
12 no later than 40 days after the date of the referral. If the matter is not disposed of
13 during that period, the special counsel, district attorney, or attorney general, or
14 special counsel shall file a subsequent report at the end of each 30-day period
15 following the filing of the initial report until final disposition of the matter.

16 SECTION 6. 5.05 (2m) (i) of the statutes, as created by 2007 Wisconsin Act 1, is
17 amended to read:

18 5.05 (2m) (i) If the defendant in an action for a an alleged criminal violation
19 of chs. 5 to 12, subch. III of ch. 13, or subch. III of ch. 19 is concerns a district attorney
20 or a circuit judge or a candidate for either such office, the action shall be brought by
21 the attorney general. 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 the attorney
23 general or a candidate for that office, the ~~board~~ governor may appoint a special
24 prosecutor under s. 14.11(2) to conduct the prosecution on behalf of the state.

25 SECTION 7. 5.075 of the statutes is created to read:

restore

BILL

1 ~~5.075 Criminal violations.~~ ^{Actions for} An action for a ^{civil or} criminal violation of chs. 5 to 12,
 2 subch. III of ch. 13, or subch. III of ch. 19 or any other law relating to elections or
 3 election campaigns may be brought by the district attorney for the county where the
 4 alleged violation occurs, except as provided in s. 5.05 (2m) (c) 15. and (i).

5 **SECTION 8.** 5.08 of the statutes, as affected by 2007 Wisconsin Act 1, is amended
 6 to read:

7 **5.08 Petition for enforcement.** In addition to or in lieu of filing a complaint,
 8 any elector may file a verified petition alleging such facts as are within his or her
 9 knowledge to indicate that an election official has failed or is failing to comply with
 10 any law regulating the conduct of elections or election campaigns or proposes to act
 11 in a manner inconsistent with such a law, and requesting that an action be
 12 commenced for injunctive relief, a writ of mandamus or prohibition or other such
 13 legal or equitable relief as may be appropriate to compel compliance with the law.

14 ~~The~~ ^{Unless another prosecutor has jurisdiction to prosecute the alleged} petition shall be filed with the district attorney for the county having jurisdiction ^{failure}
 15 to prosecute the alleged failure to comply under s. 978.05 (1) ~~or~~ (2). ^{and} The district ^{to}
 16 attorney ^{or other prosecutor} may then commence the action or dismiss the petition. If the district ^{comply}
 17 attorney ^{or other prosecutor} declines to act upon the petition or if the district attorney fails to act upon ^{the}
 18 the petition within 15 days of the date of filing, the petitioner may file the same
 19 petition with the attorney general, who may then commence the action.

20 **SECTION 9.** 6.56 (4) of the statutes, as affected by 2007 Wisconsin Act 1, is
 21 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

If another prosecutor has jurisdiction to prosecute the alleged failure to comply, the petition shall be filed with that prosecutor or the person having authority to appoint

BILL

SECTION 9

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, the district attorney for the county where~~ ^{any} a potential violation
8 occurs, and the board.

9 **SECTION 10.** 6.56 (5) of the statutes, as affected by 2007 Wisconsin Act 1, is
10 amended to read:

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

20 **SECTION 11.** 11.22 (4) of the statutes, as affected by 2007 Wisconsin Act 1, is
21 amended to read:

22 11.22 (4) Notify the board and the district attorney, ~~or the attorney general or~~
23 ~~governor~~ [↓] where ~~appropriate~~ [↓] under s. 5.05 (2m) (c) ~~15~~ ^{any} or (f), in writing, of any facts
24 within the filing officer's knowledge or evidence in the officer's possession, including
25 errors or discrepancies in reports or statements and delinquencies in filing which

BILL

1 may be grounds for civil action or criminal prosecution. The filing officer shall
2 transmit a copy of such notification to the board. The board and the district attorney
3 or the attorney general shall advise the filing officer in writing at the end of each
4 30-day period of the status of such matter until the time of disposition.

5 **SECTION 12.** 11.61 (2) of the statutes, as affected by 2007 Wisconsin Act 1, is
6 amended to read:

7 11.61 (2) Except as otherwise provided in ~~ss. 5.05 (2m) (c) 15. and 16. and (i),~~
8 ~~5.08, and 5.081,~~ all prosecutions under this section shall be conducted by the district
9 attorney for the county where the defendant resides or, if the defendant is a
10 nonresident, by the district attorney for the county where the violation is alleged to
11 have occurred. For purposes of this subsection, a person other than a natural person
12 resides within a county if the person's principal place of operation is located within
13 that county ~~alleged violation occurs~~.

14 **SECTION 13.** 801.50 (5t) of the statutes, as created by 2007 Wisconsin Act 1, is
15 amended to read: ~~repealed.~~

16 801.50 (5t) Except as otherwise provided in ss. 801.52 and 971.223 (1) and (2),
17 venue in a civil action to impose a forfeiture upon a resident of this state for a
18 violation of chs. 5 to 12, subch. III of ch. 13, or subch. III of ch. 19, or for a violation
19 of any other law arising from or in relation to the official functions of the subject of
20 the investigation or any matter that involves elections, ethics, or lobbying regulation
21 under chs. 5 to 12, subch. III of ch. 13, or subch. III of ch. 19, shall be in circuit court
22 for the county where the defendant resides. For purposes of this subsection, a person
23 other than a natural person resides within a county if the person's principal place of
24 operation is located within that county. This subsection does not affect which
25 prosecutor has responsibility under s. 978.05 (2) to prosecute civil actions arising

JNS 7-4

repealed

JNS 7-14
changes component

JNS 7-13

BILL

SECTION 13

1 from violations under s. 971.223 (1) a violation of chs. 5 to 12, subch. III of ch. 13, or
2 subch. III of ch. 19, or from a violation of any law arising from or in relation to the
3 official functions of the subject of the investigation or any matter that involves
4 elections, ethics, or lobbying regulation under chs. 5 to 12, subch. III of ch. 13, or
5 subch. III of ch. 19.

6 SECTION 14. 801.52 of the statutes, as affected by 2007 Wisconsin Act 1, is
7 amended to read:

8 **801.52 Discretionary change of venue.** The court may at any time, upon
9 its own motion, the motion of a party or the stipulation of the parties, change the
10 venue to any county in the interest of justice or for the convenience of the parties or
11 witnesses, ~~except that venue in a civil action to impose forfeiture for a violation of chs.~~
12 ~~5 to 12, subch. III of ch. 13, or subch. III of ch. 19 or for a violation of any other law~~
13 ~~arising from or in relation to the official functions of the subject of the investigation~~
14 ~~or any matter that involves elections, ethics, or lobbying regulation under chs. 5 to~~
15 ~~12, subch. III of ch. 13, or subch. III of ch. 19, may be changed only as provided in s.~~
16 ~~971.223 (1) and (2) or in the same manner that is authorized for a change in the venue~~
17 ~~of a criminal trial under s. 971.22.~~ This section does not apply to proceedings under
18 ch. 980.

19 SECTION 15. 801.64 of the statutes, as created by 2007 Wisconsin Act 1, is
20 repealed.

21 SECTION 16. 971.19 (12) of the statutes, as created by 2007 Wisconsin Act 1, is
22 repealed.

23 SECTION 17. 971.223 of the statutes, as created by 2007 Wisconsin Act 1, is
24 repealed.

BILL

1 SECTION 18. 971.225 (1) (intro.) of the statutes, as affected by 2007 Wisconsin
2 Act 1, is amended to read:

3 971.225 (1) (intro.) In lieu of changing the place of trial under s. 971.22 (3) or
4 971.223, the court may require the selection of a jury under sub. (2) if:

5 SECTION 19. 978.05 (1) of the statutes, as affected by 2007 Wisconsin Act 1, is
6 amended to read:

7 978.05 (1) CRIMINAL ACTIONS. Except as otherwise provided by law, prosecute
8 all criminal actions before any court within his or her prosecutorial unit and have
9 sole responsibility for prosecution of all criminal actions arising from violations of
10 chs. 5 to 12, subch. III of ch. 13, or subch. III of ch. 19 and from violations of other
11 laws arising from or in relation to the official functions of the subject of the
12 investigation or any matter that involves elections, ethics, or lobbying regulation
13 under chs. 5 to 12, subch. III of ch. 13, or subch. III of ch. 19, that are alleged to be
14 committed by a resident of his or her prosecutorial unit, or if alleged to be committed
15 by a nonresident of this state, that are alleged to occur in his or her prosecutorial unit

16 unless another prosecutor is substituted under s. 5.05 (2m) (i) or this chapter or by
17 referral of the government accountability board under s. 5.05 (2m) (c) 15. or 16. For
18 purposes of this subsection, a person other than a natural person is a resident of a
19 prosecutorial unit if the person's principal place of operation is located in that
20 prosecutorial unit.

21 **SECTION 20. Effective date.**

22 (1) This act takes effect on the initiation date specified in 2007 Wisconsin Act
23 1, section 209 (1), or the day after publication, whichever is later.

24 (END)

restore

no strike

*FWS
9-2-08*

D-Note

STATE OF WISCONSIN - LEGISLATIVE REFERENCE BUREAU

LRB

Research (608-266-0341)

Library (608-266-7040)

Legal (608-266-3561)

LRB

certain

§ 2A

The bill also deletes a statutory restriction on the disclosure of information related to the investigation or prosecution of laws relating to 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, or if the custodian ~~can~~ can demonstrate that the ^{public} interest requires ~~non-disclosure~~ ^{disclosure} if other laws ^{authorize} require the information to be ~~held~~ withheld.

withholding

NO A

Under the bill, the board has no responsibility for prosecution of any violations other than violations of the elections, ~~ethics~~ ethics, and lobbying regulation laws.

2009-2010 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0766/lins
JTK.....

INS 2-1:

✓

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

5.05 (1) (c) Bring civil actions to require a forfeiture for any violation of chs. 5 to 12, subch. III of ch. 13, or subch. III of ch. 19 or a license revocation for any violation of subch. III of ch. 13 for which the offender is subject to a revocation. The board may compromise and settle any civil action or potential action brought or authorized to be brought by it which, in the opinion of the board, constitutes a minor violation, a violation caused by excusable neglect, or which for other good cause shown, should not in the public interest be prosecuted under such chapter. Notwithstanding s. 778.06, a civil action or proposed civil action authorized under this paragraph may be settled for such sum as may be agreed between the parties. Any settlement made by the board shall be in such amount as to deprive the alleged violator of any benefit of his or her wrongdoing and may contain a penal component to serve as a deterrent to future violations. In settling civil actions or proposed civil actions, the board shall treat comparable situations in a comparable manner and shall assure that any settlement bears a reasonable relationship to the severity of the offense or alleged offense. ~~Except as otherwise provided in sub. (2m) (c) 15. and 16. and ss. 5.08, 5.081, [19.535], and 19.59 (8), forfeiture and license revocation actions brought by the board shall be brought in the circuit court for the county where the defendant resides, or if the defendant is a nonresident of this state, in circuit court for the county wherein the violation is alleged to occur. For purposes of this paragraph, a person other than a natural person resides within a county if the person's principal place of operation is located within that county.~~ Whenever the board enters into a settlement

agreement with an individual who is accused of a civil violation of chs. 5 to 12, subch. III of ch. 13, or subch. III of ch. 19 or who is investigated by the board for a possible civil violation of one of those provisions, the board shall reduce the agreement to writing, together with a statement of the board's findings and reasons for entering into the agreement and shall retain the agreement and statement in its office for inspection.

NOTE: NOTE: Section 19.535 was repealed by 2007 Wis. Act 1. Corrective legislation is pending. NOTE:
History: 1973 c. 334; 1975 c. 85, 93, 199; 1977 c. 29; 1977 c. 196 s. 131; 1977 c. 418, 427, 447; 1979 c. 32 s. 92 (8); 1979 c. 89, 154, 328; 1983 a. 27, 484, 524, 538; 1985 a. 303; 1985 a. 304 ss. 3, 155; 1989 a. 31, 192; 1999 a. 182; 2001 a. 109; 2003 a. 35, 265, 266, 327; 2005 a. 177; 2007 a. 1 ss. 2 to 19, 94, 99, 100, 103, 104, 107, 109, 111, 112, 114, 116, 127, 128; 2007 a. 20.

INS 2-8:

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

5.05 (2m) (c) 4. If the board reviews a complaint and fails to find that there is a reasonable suspicion that a violation under subd. 2. has occurred or is occurring, the board shall dismiss the complaint. If the board believes that there is reasonable suspicion that a violation under subd. 2. has occurred or is occurring, the board may by resolution authorize the commencement of an investigation. The resolution shall specifically set forth any matter that is authorized to be investigated. To assist in the investigation, the board may elect to retain a special investigator. If the board elects to retain a special investigator, the administrator of the ethics and accountability division shall submit to the board the names of 3 qualified individuals to serve as a special investigator. The board may retain one or more of the individuals. ~~If the board retains a special investigator to investigate a complaint against a person who is a resident of this state, the board shall provide to the district attorney for the county in which the person resides a copy of the complaint and shall notify the district attorney that it has retained a special investigator to investigate~~

Unless another prosecutor has jurisdiction to prosecute

alleging a violation under subd. 2.

where the violation is alleged to occur

the alleged violation if

occur

the complaint. ~~For purposes of this subdivision, a person other than a natural person resides within a county if the person's principal place of operation is located within that county.~~ *If another prosecutor has jurisdiction to prosecute the alleged violation, the board shall provide the copy of the complaint and notification to that prosecutor of the person having authority to appoint that prosecutor.* The board shall enter into a written contract with any individual who is retained as a special investigator setting forth the terms of the engagement. A special investigator who is retained by the board may request the board to issue a subpoena to a specific person or to authorize the special investigator to request a circuit court to issue a search warrant. The board may grant the request by approving a motion to that effect at a meeting of the board if the board finds that such action is legally appropriate.

History: 1973 c. 334; 1975 c. 85, 93, 199; 1977 c. 29; 1977 c. 196 s. 131; 1977 c. 418, 427, 447; 1979 c. 32 s. 92 (8); 1979 c. 89, 154, 328; 1983 a. 27, 484, 524, 538; 1985 a. 303; 1985 a. 304 ss. 3, 155; 1989 a. 31, 192; 1999 a. 182; 2001 a. 109; 2003 a. 35, 265, 266, 327; 2005 a. 177; 2007 a. 1 ss. 2 to 19, 94, 99, 100, 103, 104, 107, 109, 111, 112, 114, 116, 127, 128; 2007 a. 20.

INS 7-4:

SECTION 3. 11.60 (4) of the statutes is amended to read:

~~11.60 (4) Except as otherwise provided in ss. 5.05 (2m) (c) 15. and 16. and (h), 5.08, and 5.081, actions under this section may be brought by the board or by the district attorney for the county where the defendant resides or, if the defendant is a nonresident, by the district attorney for the county where the violation is alleged to have occurred. For purposes of this subsection, a person other than a natural person resides within a county if the person's principal place of operation is located within that county.~~ *INS 3A*

History: 1973 c. 334; 1977 c. 449; 1979 c. 328; 1985 a. 303; 1997 a. 27, 230; 1999 a. 182; 2001 a. 109; 2003 a. 321; 2005 a. 177; 2007 a. 1.

INS 9-20:

SECTION 4. 978.05 (2) of the statutes is amended to read:

978.05 (2) FORFEITURES. Except as otherwise provided by law, prosecute all state forfeiture actions, county traffic actions and actions concerning violations of county ordinances which are in conformity with state criminal laws in the courts within his or her prosecutorial unit and have joint responsibility, together with the government accountability board, for prosecution of all forfeiture actions arising from violations of chs. 5 to 12, subch. III of ch. 13, or subch. III of ch. 19 and from violations of other laws arising from or in relation to the official functions of the subject of the investigation or any matter that involves elections, ethics, or lobbying regulation under chs. 5 to 12, subch. III of ch. 13, or subch. III of ch. 19 that are alleged to be committed by a resident of his or her prosecutorial unit, or if alleged to be committed by a nonresident of this state, that are alleged to occur within his or her prosecutorial unit unless another prosecutor is substituted under s. 5.05 (2m) (h) or this chapter or by referral of the government accountability board under s. 5.05 (2m) (c) 15. or 16. For purposes of this subsection, a person other than a natural person is a resident of a prosecutorial unit if the person's principal place of operation is located in that prosecutorial unit.

History: 1989 a. 31, 117, 336; 1991 a. 16, 32, 39; 1993 a. 98; 1995 a. 27 ss. 7291, 7292, 9116 (5), 9130 (4); 1995 a. 77, 201, 448; Sup. Ct. Order No. 96-08, 207 Wis. 2d xv (1997); 1997 a. 3, 35, 73; 1999 a. 9; 2001 a. 16; 2005 a. 25, 434; 2007 a. 1; 2007 a. 20 ss. 3927, 9121 (6) (a).

ANS 2-19

Section #. 5.05 (2m) (c) 14. of the statutes is amended to read:

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

History: 1973 c. 334; 1975 c. 85, 93, 199; 1977 c. 29; 1977 c. 196 s. 131; 1977 c. 418, 427, 447; 1979 c. 32 s. 92 (8); 1979 c. 89, 154, 328; 1983 a. 27, 484, 524, 538; 1985 a. 303; 1985 a. 304 ss. 3, 155; 1989 a. 31, 192; 1999 a. 182; 2001 a. 109; 2003 a. 35, 265, 266, 327; 2005 a. 177; 2007 a. 1 ss. 2 to 19, 94, 99, 100, 103, 104, 107, 109, 111, 112, 114, 116, 127, 128; 2007 a. 20.

From 2007 Wisconsin Act 1

TWS 3A13

~~2005 Stats.~~

11.60(4)

(4) Actions under this section arising out of an election for state office or a statewide referendum may be brought by the board or by the district attorney of the county where the violation is alleged to have occurred, except as specified in s. 11.38. Actions under this section arising out of an election for local office or a local referendum may be brought by the district attorney of the county where the violation is alleged to have occurred. Actions under this section arising out of an election for county office or a county referendum may be brought by the county board of election commissioners of the county wherein the violation is alleged to have occurred. If a violation concerns a district attorney or circuit judge or candidate for such office, the action shall be brought by the attorney general. If a violation concerns the attorney general or a candidate for such office, the governor may appoint special counsel under s. 14.11(2) to bring suit in behalf of the state. The counsel shall be independent of the attorney general and need not be a state employee at the time of appointment.

either

board

on

From 2007
Wisconsin Act
1

INS 7-13

~~2005
STATS.~~

11.61(2)

PDF
SEARCH

(2) Except as provided in s. 11.38 (5), all prosecutions under this section shall be conducted by the district attorney of the county where the violation is alleged to have occurred.

If the district attorney refuses to act upon a sworn complaint, or fails to act upon such a complaint within 60 days of the date on which the complaint is received, the attorney general may then conduct the prosecution under this section. If a violation concerns a district

attorney or circuit judge or candidate for such offices, the prosecution shall be conducted by the attorney general. If a violation concerns the attorney general or a candidate for such office,

the governor may appoint a special prosecutor under s. 14.11(2) to conduct the prosecution in on behalf of the state. The prosecutor shall be independent of the attorney general and need not be a state employee at the time of appointment.

either

In addition to
the remedy
provided in
S.S. 05 (2m) (c)
15. to 17. if

board

JNS 7-14

Section #. 12.13 (5) (a) of the statutes is amended to read:

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

History: 1973 c. 334; 1975 c. 85, 93, 199; 1977 c. 427, 447; 1979 c. 89, 249, 260, 311, 357; 1983 a. 183 s. 45; 1983 a. 192 s. 304; 1983 a. 484 ss. 135, 172 (3), 174; 1983 a. 491; 1985 a. 304; 1987 a. 391; 1989 a. 192; 1991 a. 316; 1999 a. 49; 2001 a. 16; 2003 a. 265; 2005 a. 451; 2007 a. 1.

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0766/1dn

JTK...kyf

Date

LPS:
add spaces
as necessary
pls.

Representative Kessler:

1. Currently, s. 12.13 (5) (a), stats. [created by 2007 Wisconsin Act 1], prohibits disclosure of certain investigative and prosecutorial information related to a potential violation of the elections, ethics, or lobbying regulation laws or other laws arising from or in relation to the official functions of the subject of the investigation. Such laws might include, for example, misconduct in public office. Because this draft changes the venue and prosecutorial responsibility for actions relating to violations of all these laws to the venue and prosecutorial responsibility that existed before the enactment of Act 1, I did not think it would make sense to retain the statutory restriction in the election laws on access to information relating to the investigation and prosecution of these other laws. As noted in the analysis, this does not mean that access to the information will necessarily be open but rather that access to the information will be controlled by other laws (including common law) that govern generally access to investigative and prosecutorial information. Please let me know if you would like to see this matter treated differently.

2. 2007 Wisconsin Act 1 deleted authority for the Milwaukee County Board of Election Commissioners to bring civil actions to enforce the campaign finance law. This draft does not restore this authority. Please let me know if you would like to see this treated differently.

Jeffery T. Kuesel
Managing Attorney
Phone: (608) 266-6778

of
violations

LPS: don't use this - keep with file.

2009-2010 DRAFTING INSERT

LRB-0766/?insKJF

FROM THE
LEGISLATIVE REFERENCE BUREAU

(B) changes for your review
Highlights are from your handwritten changes

Under current law, with certain limited exceptions, a **civil violation** 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 is prosecuted by the Government Accountability Board or by the district attorney for the prosecutorial unit (in most cases, the county) where the subject resides. A **criminal violation** of those laws is prosecuted solely by that district attorney, subject to the same exceptions. With certain limited exceptions, the trial in such prosecutions, as well as in a lobbying license revocation **action** brought by the board, is held in circuit court for the county where the subject resides. With similar exceptions, **civil** violations of these laws by other state residents or by nonresidents are prosecuted by the Government Accountability Board or by the district **attorneys** for the prosecutorial **units** where the alleged **violations occur**. Criminal violations of those laws by those persons are prosecuted solely by **those** district **attorneys**, subject to the same exceptions. With similar exceptions, the **trials are** held in circuit **courts** for the **counties** where the alleged **violations occur**.

(Board)

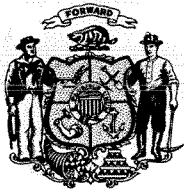
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2009 BILL

Regen

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.

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. Criminal violations of these laws are prosecuted solely by that district attorney, subject to the same exceptions. With certain limited exceptions, the trial in any such prosecution, 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, civil violations of these laws by other state residents or by nonresidents are prosecuted by the board or by the district attorney for the prosecutorial unit where an alleged violation occurs. Criminal violations of those laws by those persons are prosecuted solely by that district attorney, subject to the same exceptions. With similar exceptions, the trial is held in circuit court for the county where an alleged violation occurs.

of a resident of this state

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in any such criminal or civil prosecution of a nonresident of this state

persons

BILL

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 ~~residency~~ ^{residence} of the defendant. The bill also provides, with similar exceptions, that all such criminal violations of these laws 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 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. civil or Criminal

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.

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

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1 treat comparable situations in a comparable manner and shall assure that any
2 ^{get} 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~~
5 by 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,

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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.

BILL

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

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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

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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.

BILL**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

BILL

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~~

BILL**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:

BILL

1 978.05 (2) FORFEITURES. Except as otherwise provided by law, prosecute all
2 state forfeiture actions, county traffic actions and actions concerning violations of
3 county ordinances which are in conformity with state criminal laws in the courts
4 within his or her prosecutorial unit and have joint responsibility, together with the
5 government accountability board, for prosecution of all forfeiture actions arising
6 from violations of chs. 5 to 12, subch. III of ch. 13, or subch. III of ch. 19 and from
7 ~~violations of other laws arising from or in relation to the official functions of the~~
8 ~~subject of the investigation or any matter that involves elections, ethics, or lobbying~~
9 ~~regulation under chs. 5 to 12, subch. III of ch. 13, or subch. III of ch. 19 that are alleged~~
10 ~~to be committed by a resident of his or her prosecutorial unit, or if alleged to be~~
11 ~~committed by a nonresident of this state, that are alleged to occur within his or her~~
12 ~~prosecutorial unit unless another prosecutor is substituted under s. 5.05 (2m) (h) or~~
13 ~~this chapter or by referral of the government accountability board under s. 5.05 (2m)~~
14 ~~(c) 15. or 16. For purposes of this subsection, a person other than a natural person~~
15 ~~is a resident of a prosecutorial unit if the person's principal place of operation is~~
16 ~~located in that prosecutorial unit.~~

(END)

wanted
12/11

LRB Number: 0766 , 1

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or

| 2 | Return only the camera-ready copy to the primary drafting attorney.

After you have completed typing this draft, clip this form to the camera-ready copy and return these materials to the primary drafting attorney. Place the drafting file in the HOLD basket in the LPS room. Forward the electronic file to Typing — lrb_lps, so that the electronic file can be viewed by all LPSes.

When the attorney finishes reviewing the draft, the attorney will bring the camera-ready copy back to the LPS room. If the attorney has found any typos or minor corrections, correct the draft as indicated and print out a new camera-ready copy. Take the final camera-ready copy, retrieve the drafting file from the HOLD basket in the LPS room, discard this form, place the camera-ready copy and the drafting file in the PA submit basket, and forward the electronic file to the PAs for submitting. (If, after reviewing the draft, the attorney decides to redraft it, give the attorney the drafting file and forward the electronic file to the attorney for drafting.)

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0766/1dn
JTK:kjf.md

December 9, 2008

Representative Kessler:

1. Currently, s. 12.13 (5) (a), stats. [created by 2007 Wisconsin Act 1], prohibits disclosure of certain investigative and prosecutorial information related to a potential violation of the elections, ethics, or lobbying regulation laws *or other laws arising from or in relation to the official functions of the subject of the investigation*. Such laws might include, for example, misconduct in public office. Because this draft changes the venue and prosecutorial responsibility for actions relating to violations of all these laws to the venue and prosecutorial responsibility that existed before the enactment of Act 1, I did not think it would make sense to retain the statutory restriction in the election laws on access to information relating to the investigation and prosecution of violations of these other laws. As noted in the analysis, this does not mean that access to the information will necessarily be open but rather that access to the information will be controlled by other laws (including common law) that govern generally access to investigative and prosecutorial information. Please let me know if you would like to see this matter treated differently.

2. 2007 Wisconsin Act 1 deleted authority for the Milwaukee County Board of Election Commissioners to bring civil actions to enforce the campaign finance law. This draft does not restore this authority. Please let me know if you would like to see this treated differently.

Jeffery T. Kuesel
Managing Attorney
Phone: (608) 266-6778

Duerst, Christina

From: Little, Sharon
Sent: Wednesday, January 28, 2009 10:02 AM
To: LRB.Legal
Subject: Draft Review: LRB 09-0766/1 Topic: Venue for trial and prosecution of certain criminal and civil offenses

Please Jacket LRB 09-0766/1 for the ASSEMBLY.