

**2015 DRAFTING REQUEST**

**Bill**

Received: 1/3/2015 Received By: chanaman  
Wanted: As time permits Same as LRB:  
For: Administration-Budget By/Representing: Ley  
May Contact: Drafter: chanaman  
Subject: Criminal Law - procedure Addl. Drafters:  
Extra Copies:

Submit via email: YES  
Requester's email:  
Carbon copy (CC) to: sbostatlanguage@webapps.wi.gov

---

**Pre Topic:**

DOA:.....Ley, BB0375 -

---

**Topic:**

Restricted use of special prosecutors

---

**Instructions:**

See attached

---

**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>
/?	chanaman 1/4/2015	kfollett 1/9/2015	rschluet 1/12/2015	_____			
/P1	chanaman 1/22/2015	kfollett 1/22/2015	rschluet 1/22/2015	_____	lparisi 1/12/2015		State
/P2	chanaman 1/23/2015	kfollett 1/23/2015	rschluet 1/23/2015	_____	sbasford 1/22/2015		State
/P3				_____	lparisi		State

Vers. Drafted

Reviewed

Typed

Proofed

Submitted  
1/23/2015

Jacketed

Required

FE Sent For:

<END>

**2015 DRAFTING REQUEST**

**Bill**

Received: 1/3/2015 Received By: chanaman  
Wanted: As time permits Same as LRB:  
For: Administration-Budget By/Representing: Ley  
May Contact: Drafter: chanaman  
Subject: Criminal Law - procedure Addl. Drafters:  
Extra Copies:

Submit via email: YES  
Requester's email:  
Carbon copy (CC) to: sbostatlanguage@webapps.wi.gov

---

**Pre Topic:**

DOA:.....Ley, BB0375 -

---

**Topic:**

Restricted use of special prosecutors

---

**Instructions:**

See attached

---

**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>
/?	chanaman 1/4/2015	kfollett 1/9/2015	rschluet 1/12/2015	_____			
/P1	chanaman 1/22/2015	kfollett 1/22/2015	rschluet 1/22/2015	_____	lparisi 1/12/2015		State
/P2		1/p3kf 1/23	J 1/23/15	_____	sbasford 1/22/2015		State

FE Sent For:

**<END>**

**2015 DRAFTING REQUEST**

**Bill**

Received: 1/3/2015 Received By: chanaman  
Wanted: As time permits Same as LRB:  
For: Administration-Budget By/Representing: Ley  
May Contact: Drafter: chanaman  
Subject: Criminal Law - procedure Addl. Drafters:  
Extra Copies:

Submit via email: YES  
Requester's email:  
Carbon copy (CC) to: sbostatlanguage@webapps.wi.gov

---

**Pre Topic:**

DOA:.....Ley, BB0375 -

---

**Topic:**

Restricted use of special prosecutors

---

**Instructions:**

See attached

---

**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>
/?	chanaman 1/4/2015	kfollett 1/9/2015	rschluet 1/12/2015	_____			
/P1		1/21/15 1/22			lparisi 1/12/2015		State

FE Sent For:

<END>

2015 DRAFTING REQUEST

Bill

Received: 1/3/2015 Received By: chanaman  
 Wanted: As time permits Same as LRB:  
 For: Administration-Budget By/Representing: Ley  
 May Contact: Drafter: chanaman  
 Subject: Criminal Law - procedure Addl. Drafters:  
 Extra Copies:

Submit via email: YES  
 Requester's email:  
 Carbon copy (CC) to: sbostatlanguage@webapps.wi.gov ✓

Pre Topic:

DOA:.....Ley, BB0375 -


Topic:

Restricted use of special prosecutors ✓

Instructions:

See attached

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>
/?	chanaman	1/15/15 1/9		==			

FE Sent For:

<END>

## Hanaman, Cathlene

---

**From:** CathleneH <cathleneh@gmail.com>  
**Sent:** Monday, December 29, 2014 1:10 PM  
**To:** Hanaman, Cathlene  
**Subject:** Fwd: Statutory Language Drafting Request - BB0375

Sent from my iPhone

Begin forwarded message:

**From:** <[Emily.Ley@wisconsin.gov](mailto:Emily.Ley@wisconsin.gov)>  
**Date:** December 29, 2014 at 2:15:12 PM AST  
**To:** <[cathlene.hanaman@legis.wisconsin.gov](mailto:cathlene.hanaman@legis.wisconsin.gov)>  
**Cc:** <[Caitlin.Frederick@wisconsin.gov](mailto:Caitlin.Frederick@wisconsin.gov)>, <[Emily.Ley@wisconsin.gov](mailto:Emily.Ley@wisconsin.gov)>, <[Christopher.Connor@wisconsin.gov](mailto:Christopher.Connor@wisconsin.gov)>  
**Subject:** **Statutory Language Drafting Request - BB0375**

Biennial Budget: 2015-17

DOA Tracking Code: BB0375

Topic: Restricted use of Special Prosecutors

SBO Team: AEJ

SBO Analyst: Ley, Emily - DOA  
Phone: 608-266-2213  
E-mail: [Emily.Ley@wisconsin.gov](mailto:Emily.Ley@wisconsin.gov)

Agency Acronym: DA

Agency Number: 475

Priority: Medium

Intent:

Modify statutes to limit District Attorneys utilization of special prosecutors.

Specifically:

- 1.) Eliminate s. 978.045(1r)(e) ("unable to attend to duties");
- 2.) Add the requirement that DOA approve special prosecutor appointments (without DOA approval, the state would not pay for the appointment);
- 3.) Require the court or requesting district attorney to sign an affidavit attesting to the need for a special prosecutor appointment; and
- 4.) Create a statutory exemption to eliminate the 12 percent interest rate charged on delinquent special prosecutor contracts (carve out an exemption for both the district attorney and public defender offices).

I'm not certain if these modifications are possible (especially the 2nd point). Please give me a call at 6-2213 to discuss if you have questions.



State of Wisconsin  
2015 - 2016 LEGISLATURE



LRB-10827  
CMH:...

Handwritten initials: GP

DOA:.....Ley, BB0375 – Restricted use of special prosecutors

**FOR 2015-2017 BUDGET – NOT READY FOR INTRODUCTION**

Handwritten circled note: 1/13  
1/12

Handwritten circled note: Don't Gen

1 AN ACT ...; relating to: the budget.

*Analysis by the Legislative Reference Bureau*

**COURTS AND PROCEDURE**

**STATE PUBLIC DEFENDER**

Current law requires the state public defender to enter into as many annual contracts as possible with private attorneys or firms to provide legal representation. This bill requires each such contract to contain a provision stating that late payments do not accrue interest.

**CRIMES**

Under current law, a judge may appoint a special prosecutor, or a district attorney may request a judge to appoint a special prosecutor, to perform the duties of the district attorney if certain circumstances exist such as: there is no district attorney, the district attorney is absent, or the district attorney is serving in the armed forces; the district attorney is related to the party to be tried or has determined that a conflict of interest exists; or 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. This bill eliminates the circumstance that 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, and this bill requires the judge, or the requesting district attorney, to submit an affidavit attesting to the existence of the circumstance that qualifies for the

X

X



appointment of a special prosecutor. Under current law, the court fixes the amount of compensation for a special prosecutor based on the rates provided to private attorneys providing legal representation through a contract with the state public defender and DOA must pay that compensation. Under this bill, DOA must approve the appointment of a special prosecutor before the court may fix the amount of compensation. In addition, this bill provides that late payment of compensation does not accrue interest.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

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

1           **SECTION 1.** 20.475 (1) (d) of the statutes is amended to read:

2           20.475 (1) (d) *Salaries and fringe benefits.* The amounts in the schedule for  
3 salaries and fringe benefits of district attorneys and state employees of the office of  
4 the district attorney and for payments under s. 978.045 (2) (b).

5 **History:** 1989 a. 31, 117, 122; 336; 1991 a. 39; 1993 a. 16; 1995 a. 27, 448; 1999 a. 9; 2001 a. 16; 2003 a. 33, 139, 326; 2005 a. 25; 2009 a. 28; 2011 a. 238; 2013 a. 20.

6           **SECTION 2.** 977.08 (3) (f) of the statutes is amended to read:

7           977.08 (3) (f) The state public defender shall enter into as many annual  
8 contracts as possible, subject to par. (fg), with private local attorneys or law firms for  
9 the provision of legal representation. Under any such contract, the state public  
10 defender shall assign cases without regard to pars. (c) and (d), shall set a fixed-fee  
11 total amount for all cases handled, and shall pay that amount, except that the state  
12 public defender may not pay an attorney more for a case than he or she would receive  
13 according to the rates under sub. (4m). Any such contract shall include a provision  
14 that late payments may not accrue interest. The contract shall include a procedure  
15 authorizing the state public defender to make additional payments for a case or to  
16 reassign a case if the circumstances surrounding the case justify the additional  
payment or reassignment.

**History:** 1977 c. 29, 354; 1979 c. 352, 356; 1981 c. 20; 1983 a. 377; 1985 a. 29 ss. 2473 to 2476a, 3202 (42); 1985 a. 120; 1987 a. 27, 399; 1989 a. 12; 1991 a. 39, 263; 1993 a. 16, 318, 423, 451, 491; 1995 a. 27, 77; 1997 a. 27; 1999 a. 9; 2005 a. 443 s. 265; 2007 a. 20.

\*\*\*\*NOTE: Should the provision specify instead that payment not received after 30 days may not accrue interest?

1           **SECTION 3.** 978.045 (1r) (intro.) of the statutes is <sup>✓</sup>amended to read:

2           978.045 (1r) (intro.) Any judge of a court of record, by an order entered in the  
3 record stating the cause for it, may appoint an attorney as a special prosecutor to  
4 perform, for the time being, or for the trial of the accused person, the duties of the  
5 district attorney. An attorney appointed under this subsection shall have all of the  
6 powers of the district attorney. The judge may appoint an attorney as a special  
7 prosecutor at the request of a district attorney to assist the district attorney in the  
8 prosecution of persons charged with a crime, in grand jury proceedings or John Doe  
9 proceedings under s. 968.26, in proceedings under ch. 980, or in investigations. The  
10 judge may appoint an attorney as a special prosecutor only if the judge or the  
11 requesting district attorney submits an affidavit attesting that any of the following  
12 conditions exists:

13 History: 1989 a. 117; 1991 a. 39, 188; 1993 a. 16; 1995 a. 27; 1997 a. 27; 2005 a. 434; 2009 a. 24.

13           **SECTION 4.** 978.045 (1r) (e) of the statutes is repealed. ✕

14           **SECTION 5.** 978.045 (2) (a), (b) and (c) of the statutes are consolidated,  
15 renumbered 978.045 (2) and amended to read: ✕

16           978.045 (2) The If the department of administration approves the appointment  
17 of a special prosecutor under sub. (1r), the court shall fix the amount of compensation  
18 for any the attorney appointed as a special prosecutor under sub. (1r) according to  
19 the rates specified in s. 977.08 (4m) (b). (b) The department of administration shall  
20 pay the compensation ordered by the court from the appropriation under s. 20.475  
21 (1) (d). ~~(e)~~ <sup>✓</sup>and late payment of compensation may not accrue interest. The court,

1 district attorney, and the special prosecutor shall provide any information regarding  
2 a payment ~~under par. (b)~~<sup>✓</sup> of compensation<sup>✓</sup> that the department requests.

History: 1989 a. 117; 1991 a. 39, 188; 1993 a. 16; 1995 a. 27; 1997 a. 27; 2005 a. 434; 2009 a. 24.

\*\*\*\*NOTE: Should the statute specify instead that payment not received after 30 days may not accrue interest?

3 **SECTION 9301. Initial applicability; Administration.**

4 (1) INTEREST ON COMPENSATION FOR SPECIAL PROSECUTORS. The treatment of  
5 section 978.045 (2) (a), (b)<sup>✓</sup>, and (c)<sup>✓</sup> of the statutes first applies to appointments made  
6 on the effective date of this subsection<sup>✓</sup>.

7 **SECTION 9333. Initial applicability; Public Defender Board.**

8 (1) INTEREST ON PAYMENTS FOR LEGAL REPRESENTATION. The treatment of section  
9 977.08 (3) (f)<sup>✓</sup> of the statutes first applies to contracts entered into, or modified,  
10 renewed, or extended, on the effective date of this subsection<sup>✓</sup>.

11 (END)

## Hanaman, Cathlene

---

**From:** Ley, Emily A - DOA <Emily.Ley@wisconsin.gov>  
**Sent:** Wednesday, January 21, 2015 5:09 PM  
**To:** Hanaman, Cathlene  
**Subject:** Notes on LRB 1028 Restricted Use of Special Prosecutors

Hi Cathlene,

Thanks for your great work on these drafts.

I have a couple notes on LRB 1082/P1:

- 1.) I agree with your notes on Section 2 (page 2, line 12-13) and Section 5 (page 3, line 21) about the provision specifying that payments not received in after 30 days may not accrue interest. Please incorporate those into the draft.
- 2.) Can we explicitly add the DA and SPD exemption from the 12% interest? What do you think of adding a "nonwithstanding" the normal 12% interest rate statutes under s. 71.82? or s. 16.528(2)(a) to exempt them?
- 3.) My team leader has some concerns about repealing s. 978.045 (1r)(e) Section 4 (page 3, line 13). Her thoughts are that we need to keep an exemption for physical or mental incapacity. Can you think of a way to tighten up the "physically unable" language to nail down and specify physical or mental disability or incapacity? We want to avoid the ambiguity of a simple a scheduling conflict making someone 'physically unable' to attend their duties, versus someone with a legitimate health or physical condition preventing them from performing their duties. I'd appreciate any thoughts you have on this.

Thank you! Please let me know if you have any questions.

Emily Ley  
Executive Policy & Budget Analyst  
Department of Administration  
Division of Executive Budget and Finance  
(608)-266-2213  
[emily.ley@wisconsin.gov](mailto:emily.ley@wisconsin.gov)



p2

DOA:.....Ley, BB0375 – Restricted use of special prosecutors

**FOR 2015-2017 BUDGET – NOT READY FOR INTRODUCTION**

1/23

*done for*

1 AN ACT ...; relating to: the budget.

*Analysis by the Legislative Reference Bureau*

**COURTS AND PROCEDURE**

**PUBLIC DEFENDER**

Current law requires the state public defender to enter into as many annual contracts as possible with private attorneys or firms to provide legal representation. This bill requires each such contract to contain a provision stating that late payments do not accrue interest.

**CRIMES**

Under current law, a judge may appoint a special prosecutor, or a district attorney may request a judge to appoint a special prosecutor, to perform the duties of the district attorney if certain circumstances exist such as: there is no district attorney, the district attorney is absent, or the district attorney is serving in the armed forces; the district attorney is related to the party to be tried or has determined that a conflict of interest exists; or 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. This bill eliminates the circumstance that 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, and this bill requires the judge, or the requesting district attorney, to submit an affidavit attesting to the existence of the circumstance that qualifies for the

*specifies a inability due to a health issue*

the 12 percent - 2 - percent

appointment of a special prosecutor. Under current law, the court fixes the amount of compensation for a special prosecutor based on the rates provided to private attorneys providing legal representation through a contract with the state public defender and DOA must pay that compensation. Under this bill, DOA must approve the appointment of a special prosecutor before the court may fix the amount of compensation. In addition, this bill provides that late payment of compensation does not accrue interest, that certain other late payments do

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

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

insert 2-1 ✓

1 SECTION 1. 20.475 (1) (d) of the statutes is amended to read:

2 20.475 (1) (d) *Salaries and fringe benefits.* The amounts in the schedule for  
3 salaries and fringe benefits of district attorneys and state employees of the office of  
4 the district attorney and for payments under s. 978.045 (2) (b).

5 SECTION 2. 977.08 (3) (f) of the statutes is amended to read:

6 977.08 (3) (f) The state public defender shall enter into as many annual  
7 contracts as possible, subject to par. (fg), with private local attorneys or law firms for  
8 the provision of legal representation. Under any such contract, the state public  
9 defender shall assign cases without regard to pars. (c) and (d), shall set a fixed-fee  
10 total amount for all cases handled, and shall pay that amount, except that the state  
11 public defender may not pay an attorney more for a case than he or she would receive  
12 according to the rates under sub. (4m). Any such contract shall include a provision  
13 that late payments may not accrue interest. The contract shall include a procedure  
14 authorizing the state public defender to make additional payments for a case or to  
15 reassign a case if the circumstances surrounding the case justify the additional  
16 payment or reassignment.

\*\*\*NOTE: Should the provision specify instead that payment not received after 30 days may not accrue interest?

1 SECTION 3. 978.045 (1r) (intro.) of the statutes is amended to read:

2 978.045 (1r) (intro.) Any judge of a court of record, by an order entered in the  
3 record stating the cause for it, may appoint an attorney as a special prosecutor to  
4 perform, for the time being, or for the trial of the accused person, the duties of the  
5 district attorney. An attorney appointed under this subsection shall have all of the  
6 powers of the district attorney. The judge may appoint an attorney as a special  
7 prosecutor at the request of a district attorney to assist the district attorney in the  
8 prosecution of persons charged with a crime, in grand jury proceedings or John Doe  
9 proceedings under s. 968.26, in proceedings under ch. 980, or in investigations. The  
10 judge may appoint an attorney as a special prosecutor only if the judge or the  
11 requesting district attorney submits an affidavit attesting that any of the following  
12 conditions exists:

13 SECTION 4. 978.045 (1r) (e) of the statutes is repealed.

14 SECTION 5. 978.045 (2) (a), (b) and (c) of the statutes are consolidated,  
15 renumbered 978.045 (2) and amended to read:

16 978.045 (2) The If the department of administration approves the appointment  
17 of a special prosecutor under sub. (1r), the court shall fix the amount of compensation  
18 for any the attorney appointed as a special prosecutor under sub. (1r) according to  
19 the rates specified in s. 977.08 (4m) (b). (b) The department of administration shall  
20 pay the compensation ordered by the court from the appropriation under s. 20.475  
21 (1) (d) (e) and late payment of compensation may not accrue interest. The court,  
22 district attorney, and the special prosecutor shall provide any information regarding  
23 a payment under par. (b) of compensation that the department requests.

\*\*\*\*NOTE: Should the statute specify instead that payment not received after 30 days may not accrue interest?

plain

16.528 (3)(f) ✓

1  
2  
3  
4  
5  
6  
7  
8  
9

**SECTION 9301. Initial applicability; Administration.**

(1) INTEREST ON COMPENSATION FOR SPECIAL PROSECUTORS. The treatment of section 978.045 (2) (a), (b), and (c) of the statutes first applies to appointments made on the effective date of this subsection.

(with respect to compensation ordered)

**SECTION 9333. Initial applicability; Public Defender Board.**

(1) INTEREST ON PAYMENTS FOR LEGAL REPRESENTATION. The treatment of section 977.08 (3) (f) of the statutes first applies to contracts entered into, or modified, renewed, or extended, on the effective date of this subsection.

(END)

16.528 (3)(f) (with respect to public defender contracts)



**2015-2016 DRAFTING INSERT  
FROM THE  
LEGISLATIVE REFERENCE BUREAU**

LRB-1082/p2ins  
CMH:.....

1           Insert 2-1

2           **SECTION 1.** 16.528 (3) (f) of the statutes is created to read:

3           16.528 (3) (f) A contract under s. 977.08 (3) (f) or compensation ordered under  
4 s. 978.045 (2).

5  
6           Insert 3-14

7           **SECTION 2.** 978.045 (1r) (e) of the statutes is amended to read:

8           978.045 (1r) (e) The district attorney is ~~physically~~ unable to attend to his or her  
9 duties due to a health issue or has a mental incapacity that impairs his or her ability  
10 to substantially perform his or her duties.

**History:** 1989 a. 117; 1991 a. 39, 188; 1993 a. 16; 1995 a. 27; 1997 a. 27; 2005 a. 434; 2009 a. 24.

## Hanaman, Cathlene

---

**From:** Ley, Emily A - DOA <Emily.Ley@wisconsin.gov>  
**Sent:** Friday, January 23, 2015 11:39 AM  
**To:** Hanaman, Cathlene  
**Subject:** RE: Notes on LRB 1028 Restricted Use of Special Prosecutors

Hi Cathlene,

I've reviewed LRB 1082/P2.

Because the Office of the State Prosecutor is transferring from DOA to DOJ, we want DOJ to approve the special prosecutor appointments. This modifies:

Section 3 (line 18): can you specify that affidavits are to be submitted to DOJ?

Section 5 (page 3, line 7): we want DOJ, not DOA, to approve the special prosecutor appointments.

Other than that, the draft looks great. Thank you!

Emily

---

**From:** Ley, Emily A - DOA [<mailto:Emily.Ley@wisconsin.gov>]  
**Sent:** Wednesday, January 21, 2015 5:09 PM  
**To:** Hanaman, Cathlene  
**Subject:** Notes on LRB 1028 Restricted Use of Special Prosecutors

Hi Cathlene,

Thanks for your great work on these drafts.

I have a couple notes on LRB 1082/P1:

- 1.) I agree with your notes on Section 2 (page 2, line 12-13) and Section 5 (page 3, line 21) about the provision specifying that payments not received in after 30 days may not accrue interest. Please incorporate those into the draft.
- 2.) Can we explicitly add the DA and SPD exemption from the 12% interest? What do you think of adding a "nonwithstanding" the normal 12% interest rate statutes under s. 71.82? or s. 16.528(2)(a) to exempt them?
- 3.) My team leader has some concerns about repealing s. 978.045 (1r)(e) Section 4 (page 3, line 13). Her thoughts are that we need to keep an exemption for physical or mental incapacity. Can you think of a way to tighten up the "physically unable" language to nail down and specify physical or mental disability or incapacity? We want to avoid the ambiguity of a simple a scheduling conflict making someone 'physically unable' to attend their duties, versus someone with a legitimate health or physical condition preventing them from performing their duties. I'd appreciate any thoughts you have on this.

Thank you! Please let me know if you have any questions.

Emily Ley  
Executive Policy & Budget Analyst  
Department of Administration  
Division of Executive Budget and Finance  
(608)-266-2213  
[emily.ley@wisconsin.gov](mailto:emily.ley@wisconsin.gov)



State of Wisconsin  
2015 - 2016 LEGISLATURE



LRB-1082/P2 P3  
CMH:kjf.rs

DOA:.....Ley, BB0375 – Restricted use of special prosecutors

**FOR 2015-2017 BUDGET – NOT READY FOR INTRODUCTION**

Don't Gen

1 **AN ACT ...; relating to:** the budget.

---

*Analysis by the Legislative Reference Bureau*

**COURTS AND PROCEDURE**

**PUBLIC DEFENDER**

Current law requires the state public defender to enter into as many annual contracts as possible with private attorneys or firms to provide legal representation. This bill requires each such contract to contain a provision stating that late payments do not accrue interest.

**CRIMES**

Under current law, a judge may appoint a special prosecutor, or a district attorney may request a judge to appoint a special prosecutor, to perform the duties of the district attorney if certain circumstances exist such as: there is no district attorney, the district attorney is absent, or the district attorney is serving in the armed forces; the district attorney is related to the party to be tried or has determined that a conflict of interest exists; or the district attorney is physically unable to attend to his or her duties. This bill specifies that inability to attend to duties must be due to a health issue, and this bill requires the judge, or the requesting district attorney, to submit an affidavit attesting to the existence of the circumstance that qualifies for the appointment of a special prosecutor. Under current law, the court fixes the amount of compensation for a special prosecutor based on the rates provided to private attorneys providing legal representation through a contract with the state

X  
X

to DOT

public defender and DOA must pay that compensation. Under this bill, <sup>DOJ</sup>DOA must approve the appointment of a special prosecutor before the court may fix the amount of compensation. In addition, this bill provides that late payment of compensation does not accrue the 12 percent interest that certain other late payments do.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

---

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

1           **SECTION 1.** 16.528 (3) (f) of the statutes is created to read:

2           16.528 (3) (f) A contract under s. 977.08 (3) (f) or compensation ordered under  
3 s. 978.045 (2).

4           **SECTION 2.** 20.475 (1) (d) of the statutes is amended to read:

5           20.475 (1) (d) *Salaries and fringe benefits.* The amounts in the schedule for  
6 salaries and fringe benefits of district attorneys and state employees of the office of  
7 the district attorney and for payments under s. 978.045 (2) ~~(b)~~.

8           **SECTION 3.** 978.045 (1r) (intro.) of the statutes is amended to read:

9           978.045 (1r) (intro.) Any judge of a court of record, by an order entered in the  
10 record stating the cause for it, may appoint an attorney as a special prosecutor to  
11 perform, for the time being, or for the trial of the accused person, the duties of the  
12 district attorney. An attorney appointed under this subsection shall have all of the  
13 powers of the district attorney. The judge may appoint an attorney as a special  
14 prosecutor at the request of a district attorney to assist the district attorney in the  
15 prosecution of persons charged with a crime, in grand jury proceedings or John Doe  
16 proceedings under s. 968.26, in proceedings under ch. 980, or in investigations. The  
17 judge may appoint an attorney as a special prosecutor only if the judge or the  
18 requesting district attorney submits an affidavit attesting that any of the following  
19 conditions exists:

to the department of  
justice

1           **SECTION 4.** 978.045 (1r) (e) of the statutes is amended to read:

2           978.045 (1r) (e) The district attorney is ~~physically~~ unable to attend to his or her  
3 duties due to a health issue or has a mental incapacity that impairs his or her ability  
4 to substantially perform his or her duties.

5           **SECTION 5.** 978.045 (2) (a), (b) and (c) of the statutes are consolidated,  
6 renumbered 978.045 (2) and amended to read:

7           978.045 (2) ~~The~~ If the department of <sup>justice</sup> administration approves the appointment  
8 of a special prosecutor under sub. (1r), the court shall fix the amount of compensation  
9 for ~~any~~ the attorney appointed as ~~a special prosecutor under sub. (1r)~~ according to  
10 the rates specified in s. 977.08 (4m) (b). ~~(b)~~ The department of administration shall  
11 pay the compensation ordered by the court from the appropriation under s. 20.475  
12 (1) (d). ~~(e)~~ The court, district attorney, and the special prosecutor shall provide any  
13 information regarding a payment ~~under par. (b)~~ of compensation that the  
14 department requests.

15           **SECTION 9301. Initial applicability; Administration.**

16           (1) INTEREST ON COMPENSATION FOR SPECIAL PROSECUTORS. The treatment of  
17 section 16.528 (3) (f) (with respect to compensation ordered) of the statutes first  
18 applies to appointments made on the effective date of this subsection.

19           **SECTION 9333. Initial applicability; Public Defender Board.**

20           (1) INTEREST ON PAYMENTS FOR LEGAL REPRESENTATION. The treatment of section  
21 16.528 (3) (f) (with respect to public defender contracts) of the statutes first applies  
22 to contracts entered into, or modified, renewed, or extended, on the effective date of  
23 this subsection.

24

(END)



State of Wisconsin  
2015 - 2016 LEGISLATURE

LRB-1082/P3  
CMH:kjfrs

DOA:.....Ley, BB0375 – Restricted use of special prosecutors

**FOR 2015-2017 BUDGET -- NOT READY FOR INTRODUCTION**

1 **AN ACT ...; relating to:** the budget.

---

*Analysis by the Legislative Reference Bureau*

**COURTS AND PROCEDURE**

**PUBLIC DEFENDER**

Current law requires the state public defender to enter into as many annual contracts as possible with private attorneys or firms to provide legal representation. This bill requires each such contract to contain a provision stating that late payments do not accrue interest.

**CRIMES**

Under current law, a judge may appoint a special prosecutor, or a district attorney may request a judge to appoint a special prosecutor, to perform the duties of the district attorney if certain circumstances exist such as: there is no district attorney, the district attorney is absent, or the district attorney is serving in the armed forces; the district attorney is related to the party to be tried or has determined that a conflict of interest exists; or the district attorney is physically unable to attend to his or her duties. This bill specifies that inability to attend to duties must be due to a health issue, and this bill requires the judge, or the requesting district attorney, to submit to DOJ an affidavit attesting to the existence of the circumstance that qualifies for the appointment of a special prosecutor. Under current law, the court fixes the amount of compensation for a special prosecutor based on the rates provided to private attorneys providing legal representation through a contract with the state

public defender and DOA must pay that compensation. Under this bill, DOJ must approve the appointment of a special prosecutor before the court may fix the amount of compensation. In addition, this bill provides that late payment of compensation does not accrue the 12 percent interest that certain other late payments do.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

---

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

1           **SECTION 1.** 16.528 (3) (f) of the statutes is created to read:

2           16.528 (3) (f) A contract under s. 977.08 (3) (f) or compensation ordered under  
3 s. 978.045 (2).

4           **SECTION 2.** 20.475 (1) (d) of the statutes is amended to read:

5           20.475 (1) (d) *Salaries and fringe benefits.* The amounts in the schedule for  
6 salaries and fringe benefits of district attorneys and state employees of the office of  
7 the district attorney and for payments under s. 978.045 (2) (b).

8           **SECTION 3.** 978.045 (1r) (intro.) of the statutes is amended to read:

9           978.045 (1r) (intro.) Any judge of a court of record, by an order entered in the  
10 record stating the cause for it, may appoint an attorney as a special prosecutor to  
11 perform, for the time being, or for the trial of the accused person, the duties of the  
12 district attorney. An attorney appointed under this subsection shall have all of the  
13 powers of the district attorney. The judge may appoint an attorney as a special  
14 prosecutor at the request of a district attorney to assist the district attorney in the  
15 prosecution of persons charged with a crime, in grand jury proceedings or John Doe  
16 proceedings under s. 968.26, in proceedings under ch. 980, or in investigations. The  
17 judge may appoint an attorney as a special prosecutor only if the judge or the  
18 requesting district attorney submits an affidavit to the department of justice  
19 attesting that any of the following conditions exists:

1           **SECTION 4.** 978.045 (1r) (e) of the statutes is amended to read:

2           978.045 (1r) (e) The district attorney is ~~physically~~ unable to attend to his or her  
3 duties due to a health issue or has a mental incapacity that impairs his or her ability  
4 to substantially perform his or her duties.

5           **SECTION 5.** 978.045 (2) (a), (b) and (c) of the statutes are consolidated,  
6 renumbered 978.045 (2) and amended to read:

7           978.045 (2) ~~The~~ If the department of justice approves the appointment of a  
8 special prosecutor under sub. (1r), the court shall fix the amount of compensation for  
9 any ~~the~~ attorney appointed as a special prosecutor under ~~sub. (1r)~~ according to the  
10 rates specified in s. 977.08 (4m) (b). ~~(b)~~ The department of administration shall pay  
11 the compensation ordered by the court from the appropriation under s. 20.475 (1) (d).  
12 ~~(e)~~ The court, district attorney, and the special prosecutor shall provide any  
13 information regarding a payment ~~under par. (b)~~ of compensation that the  
14 department requests.

15           **SECTION 9301. Initial applicability; Administration.**

16           (1) INTEREST ON COMPENSATION FOR SPECIAL PROSECUTORS. The treatment of  
17 section 16.528 (3) (f) (with respect to compensation ordered) of the statutes first  
18 applies to appointments made on the effective date of this subsection.

19           **SECTION 9333. Initial applicability; Public Defender Board.**

20           (1) INTEREST ON PAYMENTS FOR LEGAL REPRESENTATION. The treatment of section  
21 16.528 (3) (f) (with respect to public defender contracts) of the statutes first applies  
22 to contracts entered into, or modified, renewed, or extended, on the effective date of  
23 this subsection.

24

(END)