2019 SENATE BILL 460

September 27, 2019 - Introduced by Senators WANGGAARD and BERNIER, cosponsored by Representatives TUSLER, McGUIRE, BORN, OTT, BOWEN, EDMING, KURTZ, MURSAU, NEUBAUER, NOVAK, PETRYK, RIEMER, SCHRAA, TITTL, ZAMARRIPA and VRUWINK. Referred to Committee on Insurance, Financial Services, Government Oversight and Courts.

AN ACT to repeal 978.001 (1p) and 978.11; to amend 13.093 (2) (a), 230.33 (1), 978.03, 978.045 (1g), 978.045 (1r) (bm) (intro.), 978.045 (2), 978.05 (9) and 978.12 (1) (c); and to create 13.0967, 15.105 (7), 15.77, 20.548, 20.923 (4) (f) 7x., 20.923 (6) (hs), 230.08 (2) (qp), 978.001 (1b), (1d) and (1n), 978.003, 978.004 and 978.005 of the statutes; relating to: creation of a prosecutor board and a state prosecutors office and making an appropriation.

Analysis by the Legislative Reference Bureau

This bill creates an independent prosecutor board that oversees and sets policies for a state prosecutors office, also created in this bill. Under this bill, the executive director of the state prosecutors office manages the office; prepares personnel policies, fiscal estimates, and an annual report; and represents the board before the governor, the legislature, bar associations, and courts. The executive director may also identify methods and practices for district attorneys that promote professional competence and ethical practices. Under this bill, the state prosecutors office assumes duties relating to district attorneys that current law assigns to the Department of Administration, such as preparing a budget for all of the prosecutorial units, approving appointments of special prosecutors when needed, and making requests for assistant district attorneys in certain prosecutorial units.
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:

SECTION 1. 13.093 (2) (a) of the statutes is amended to read:

13.093 (2) (a)  Any bill making an appropriation, any bill increasing or decreasing existing appropriations or state or general local government fiscal liability or revenues, and any bill that modifies an existing surcharge or creates a new surcharge that is imposed under ch. 814, shall, before any vote is taken thereon by either house of the legislature if the bill is not referred to a standing committee, or before any public hearing is held before any standing committee or, if no public hearing is held, before any vote is taken by the committee, incorporate a reliable estimate of the anticipated change in appropriation authority or state or general local government fiscal liability or revenues under the bill, including to the extent possible a projection of such changes in future biennia. The estimate shall also indicate whether any increased costs incurred by the state under the bill can be mitigated through the use of contractual service contracts let in accordance with competitive procedures. For purposes of this paragraph, a bill increasing or decreasing the liability or revenues of the unemployment reserve fund is considered to increase or decrease state fiscal liability or revenues. Except as otherwise provided by joint rules of the legislature or this paragraph, such estimates shall be made by the department or agency administering the appropriation or fund or collecting the revenue. The legislative council staff shall prepare the fiscal estimate with respect to the provisions of any bill referred to the joint survey committee on retirement systems which create or modify any system for, or make any provision for,
the retirement of or payment of pensions to public officers or employees. The director
d of state courts shall prepare the fiscal estimate with respect to the provisions of any
bill that modifies an existing surcharge or creates a new surcharge that is imposed
under ch. 814. The executive director of the state prosecutors office shall prepare the
fiscal estimate with respect to the provisions of any bill that affects prosecutors or
the state prosecutors office, including bills modifying or creating crimes or
sentencing practices. When a fiscal estimate is prepared after the bill has been
introduced, it shall be printed and distributed as are amendments.

SECTION 2. 13.0967 of the statutes is created to read:

13.0967 Review of bills affecting state prosecutors office. Any bill that
is introduced in either house of the legislature that directly affects the state
prosecutors office shall have a notation to that effect on its jacket when the jacket is
prepared. When a bill that has that notation on the jacket is introduced, the
legislative reference bureau shall submit a copy of the bill to the state prosecutors
office.

SECTION 3. 15.105 (7) of the statutes is created to read:

15.105 (7) STATE PROSECUTORS OFFICE. There is created a prosecutors office that
is attached to the department of administration under s. 15.03. The executive
director shall be appointed by the prosecutor board.

SECTION 4. 15.77 of the statutes is created to read:

15.77 Prosecutor board. There is created a prosecutor board consisting of
11 members, appointed for staggered 3-year terms, as follows:

(1) From each district under s. 752.11 (1) (b), (c), and (d), 2 district attorneys
appointed by a majority of district attorneys from the district.
(2) From the district under s. 752.11 (1) (a), the district attorney and a deputy
district attorney appointed by the district attorney.

(3) Two nonelected prosecutors, each from a different county, appointed by a
majority of nonelected prosecutors. Under this subsection, “prosecutor” does not
include a special prosecutor appointed under s. 978.045 or 978.05 (8) (b).

(4) The attorney general or his or her designee.

SECTION 5. 20.005 (3) (schedule) of the statutes: at the appropriate place, insert
the following amounts for the purposes indicated:

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<tr>
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<th>2019-20</th>
<th>2020-21</th>
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<tbody>
<tr>
<td>Prosecutor</td>
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<tr>
<td>board</td>
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20.548 Prosecutor board

(1) COORDINATION AND ADMINISTRATION OF
PROSECUTOR FUNCTIONS

(a) Program administration GPR A -0- 250,000

SECTION 6. 20.548 of the statutes is created to read:

20.548 Prosecutor board. There is appropriated to the prosecutor board for
the following program:

(1) COORDINATION AND ADMINISTRATION OF PROSECUTOR FUNCTIONS. (a) Program
administration. The amounts in the schedule for program administration costs of
the office of state prosecutors.

(g) Gifts, grants, and proceeds. All moneys received from gifts and grants and
all proceeds from services, conferences, and sales of publications and promotional
materials for the purposes for which made or received.

SECTION 7. 20.923 (4) (f) 7x. of the statutes is created to read:

20.923 (4) (f) 7x. State prosecutors office: executive director.
SECTION 8. 20.923 (6) (hs) of the statutes is created to read:


SECTION 9. 230.08 (2) (qp) of the statutes is created to read:

230.08 (2) (qp) The executive director and legislative liaison in the office of state prosecutors.

SECTION 10. 230.33 (1) of the statutes is amended to read:

230.33 (1) A person appointed to an unclassified position by the governor, elected officer, judicial body, or prosecutor board, or by a legislative body or committee shall be granted a leave of absence without pay for the duration of the appointment and for 3 months thereafter, during which time the person has restoration rights to the former position or equivalent position in the department in which last employed in a classified position without loss of seniority. The person shall also have reinstatement privileges for 5 years following appointment to the unclassified service or for one year after termination of the unclassified appointment whichever is longer. Restoration rights and reinstatement privileges shall be forfeited if the reason for termination of the unclassified appointment would also be reason for discharge from the former position in the classified service.

SECTION 11. 978.001 (1b), (1d) and (1n) of the statutes are created to read:

978.001 (1b) “Board” means the prosecutor board.

(1d) “Executive director” means the executive director appointed under s. 978.003 (3).

(1n) “Office” means the state prosecutors office.

SECTION 12. 978.001 (1p) of the statutes is repealed.

SECTION 13. 978.003 of the statutes is created to read:

978.003 Board; duties. The board shall do all of the following:
(1) Submit the budget in accordance with s. 16.42 after the executive director submits the budget to the board and the board approves it.

(2) At least annually submit to the joint committee on finance recommendations on the allocation of prosecutor resources.

(3) Appoint an attorney with experience in criminal prosecution as the executive director of the office.

(4) Oversee, and set policy initiatives for, the executive director.

(5) Review existing law or proposed legislation and make recommendations to the legislature.

SECTION 14. 978.004 of the statutes is created to read:

978.004 State prosecutors office executive director. (1) The executive director shall do all of the following:

(a) Manage and direct the office subject to the policy initiatives set under s. 978.003 (4).

(b) Prepare and submit to the board for its approval a budget and any personnel and employment policies that the board requires.

(c) Prepare and submit to the board and other appropriate persons an annual report of the activities of the office in the form that the board directs.

(d) Represent the board before the governor, the legislature, bar associations, courts, and other appropriate entities.

(e) Appoint in the classified service an executive assistant and all other employees of the office. Before making an appointment under this paragraph, the executive director shall notify the board of any prospective appointment. If the board does not object to the prospective appointment within 7 working days after notification, the executive director may make the appointment. If the board objects
to a prospective appointment, the executive director may not make the appointment until the board approves it.

(f) Prepare fiscal estimates on bills affecting prosecutors or the office, including bills modifying or creating crimes or sentencing practices. To prepare a fiscal estimate, the executive director shall consult with and obtain data from district attorneys. The executive director shall transmit a draft fiscal estimate to the board. If the board does not object to the draft fiscal estimate within 7 working days after receiving it, the executive director may submit the fiscal estimate. If the board objects to a draft fiscal estimate, the executive director may not submit the fiscal estimate until the board approves it.

(2) The executive director may identify methods and practices for district attorneys that promote professional competence, ethical practices, and evidence-based practices.

SECTION 15. 978.005 of the statutes is created to read:

978.005 Limits on board and executive director. Neither the board nor the executive director may make any decision regarding the handling of any case nor interfere with any district attorney in carrying out professional duties. Neither the board nor the office may interfere with or infringe upon the autonomy of a district attorney or upon the authority of a district attorney to manage his or her own prosecutorial unit.

SECTION 16. 978.03 of the statutes is amended to read:

978.03 Deputies and assistants in certain prosecutorial units. (1) The district attorney of any prosecutorial unit having a population of 750,000 or more may appoint 7 deputy district attorneys and such assistant district attorneys as may be requested by the department of administration, or by the board, and authorized
in accordance with s. 16.505. The district attorney shall rank the deputy district attorneys for purposes of carrying out duties under this section. The deputies, according to rank, may perform any duty of the district attorney, under the district attorney’s direction. In the absence or disability of the district attorney, the deputies, according to rank, may perform any act required by law to be performed by the district attorney. Any such deputy must have practiced law in this state for at least 2 years prior to appointment under this section.

(1m) The district attorney of any prosecutorial unit having a population of 200,000 or more but less than 750,000 may appoint 3 deputy district attorneys and such assistant district attorneys as may be requested by the department of administration, or by the board, and authorized in accordance with s. 16.505. The district attorney shall rank the deputy district attorneys for purposes of carrying out duties under this section. The deputies, according to rank, may perform any duty of the district attorney, under the district attorney’s direction. In the absence or disability of the district attorney, the deputies, according to rank, may perform any act required by law to be performed by the district attorney. Any such deputy must have practiced law in this state for at least 2 years prior to appointment under this section.

(2) The district attorney of any prosecutorial unit having a population of 100,000 or more but not more than 199,999 may appoint one deputy district attorney and such assistant district attorneys as may be requested by the department of administration, or by the board, and authorized in accordance with s. 16.505. The deputy may perform any duty of the district attorney, under the district attorney’s direction. In the absence or disability of the district attorney, the deputy may perform any act required by law to be performed by the district attorney. The deputy
must have practiced law in this state for at least 2 years prior to appointment under this section.

(3) Any assistant district attorney under sub. (1), (1m), or (2) must be an attorney admitted to practice law in this state and, except as provided in s. 978.043 (1), may perform any duty required by law to be performed by the district attorney. The district attorney of the prosecutorial unit under sub. (1), (1m), or (2) may appoint such temporary counsel as may be authorized by the department of administration board.

SECTION 17. 978.045 (1g) of the statutes is amended to read:

978.045 (1g) A court on its own motion may appoint a special prosecutor under sub. (1r) or a district attorney may request a court to appoint a special prosecutor under that subsection. Before a court appoints a special prosecutor on its own motion or at the request of a district attorney for an appointment that exceeds 6 hours per case, the court or district attorney shall request assistance from a district attorney, deputy district attorney or assistant district attorney from other prosecutorial units or an assistant attorney general. A district attorney requesting the appointment of a special prosecutor, or a court if the court is appointing a special prosecutor on its own motion, shall notify the department of administration, on a form provided by that department, of office that the district attorney’s attorney or the court’s inability court, whichever is appropriate, is unable to obtain assistance from another prosecutorial unit or from an assistant attorney general.

SECTION 18. 978.045 (1r) (bm) (intro.) of the statutes is amended to read:

978.045 (1r) (bm) (intro.) The judge may appoint an attorney as a special prosecutor at the request of a district attorney to assist the district attorney in the prosecution of persons charged with a crime, in grand jury proceedings, in
proceedings under ch. 980, or in investigations. Except as provided under par. (bp),
the judge may appoint an attorney as a special prosecutor only if the judge or the
requesting district attorney submits an affidavit to the department of
administration office attesting that any of the following conditions exists:

SECTION 19. 978.045 (2) of the statutes is amended to read:

978.045 (2) If the department of administration office approves the
appointment of a special prosecutor under sub. (1r), the court shall fix the amount
of compensation for the attorney appointed according to the rates specified in s.
977.08 (4m) (b). The department of administration shall pay the compensation
ordered by the court from the appropriation under s. 20.475 (1) (d). The court, district
attorney, and the special prosecutor shall provide any information regarding a
payment of compensation that the department requests. Any payment under this
subsection earns interest on the balance due from the 121st day after receipt of a
properly completed invoice or receipt and acceptance of the property or service under
the order or contract, whichever is later, at the rate specified in s. 71.82 (1) (a)
compounded monthly.

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

978.05 (9) BUDGET. Prepare a biennial budget request for submission to the
department executive director under s. 978.11 978.004 (1) (b) by September 1 of each
even-numbered year.

SECTION 21. 978.11 of the statutes is repealed.

SECTION 22. 978.12 (1) (c) of the statutes is amended to read:

978.12 (1) (c) Assistant district attorneys. Assistant district attorneys shall be
employed outside the classified service. For purposes of salary administration, the
administrator of the division of personnel management in the department of
administration, in consultation with the office, shall establish one or more classifications for assistant district attorneys in accordance with the classification or classifications allocated to assistant attorneys general. Except as provided in ss. 111.93 (3) (b) and 230.12 (10), the salaries of assistant district attorneys shall be established and adjusted in accordance with the state compensation plan for assistant attorneys general whose positions are allocated to the classification or classifications established by the administrator of the division of personnel management in the department of administration under this paragraph.

**SECTION 23. Nonstatutory provisions.**

(1) PROSECUTOR BOARD.

(a) Initial terms for prosecutor board members.

1. The department of administration and the state prosecutors office shall administer and oversee the election of the initial members of the prosecutor board. The initial members shall select an executive director of the state prosecutors office as provided under s. 978.003 (3) to begin on the effective date of this subdivision.

2. Notwithstanding s. 15.77, of the members of the prosecutor board who are elected under subd. 1. as initial members, one member representing each district under s. 752.11 (1) (b) and (d) and one member under s. 15.77 (3) shall serve for a one-year term and one member representing the district under s. 752.11 (1) (c), one member under s. 15.77 (2), and one member under s. 15.77 (3) shall serve for a 2-year term.

(b) Transfer of state prosecutors office.

1. ‘Assets and liabilities.’ On the effective date of this subdivision, the assets and liabilities of the department of administration that are primarily related to the
state prosecutors office, as determined by the secretary of administration, become
the assets and liabilities of the prosecutor board.

2. ‘Tangible personal property.’ On the effective date of this subdivision, all
tangible personal property, including records, of the department of administration
that is primarily related to the state prosecutors office, as determined by the
secretary of administration, is transferred to the prosecutor board.

3. ‘Contracts.’ All contracts entered into by the department of administration
that are primarily related to the state prosecutors office, as determined by the
secretary of administration, in effect on the effective date of this subdivision, remain
in effect and are transferred to the prosecutor board. The prosecutor board shall
carry out any such contractual obligations unless modified or rescinded by the
prosecutor board to the extent allowed under the contract.

4. ‘Pending matters.’ Any matter pending with the department of
administration that is primarily related to the state prosecutors office, as
determined by the secretary of administration, on the effective date of this
subdivision, is transferred to the prosecutor board, and all materials submitted to or
actions taken by the department of administration, with respect to the pending
matter are considered as having been submitted to or taken by the prosecutor board.

5. ‘Rules and orders.’ All rules promulgated by the department of
administration that are primarily related to the state prosecutors office, as
determined by the secretary of administration, that are in effect on the effective date
of this subdivision remain in effect until their specified expiration dates or until
amended or repealed by the prosecutor board.

(c) Plan for office space for prosecutors office.
1. The prosecutor board, in consultation with the department of administration, shall, no later than March 1, 2020, submit to the joint committee on finance a plan to house the prosecutors office in the space that, on the effective date of this subdivision, is occupied by the director of the state prosecutors office.

2. The plan submitted under subd. 1. shall include provisions for the acquisition or release, as appropriate, of space; the relocation, if necessary, of staff and tangible personal property; and any other provisions necessary for the transition. The plan shall provide office space for a legislative liaison and a space to accommodate meetings of the prosecutor board.

3. If the cochairs of the joint committee on finance do not notify the prosecutor board within 14 working days after the date the plan is submitted under subd. 1. that the committee has scheduled a meeting to take place for the purpose of reviewing the plan, the prosecutor board shall implement the plan. If, within 14 working days after the date the plan is submitted under subd. 1., the cochairs of the joint committee on finance notify the prosecutor board that the committee has scheduled a meeting for the purpose of reviewing the plan, the prosecutor board shall incorporate into the plan all changes made by the committee and implement the plan.

SECTION 24. Effective date.

(1) This act takes effect on July 1, 2020.