



## Legislative Fiscal Bureau

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May 5, 2015

Joint Committee on Finance

Paper #263

### **Transfer State Prosecutors Office from the Department of Administration to the Department of Justice (Administration, District Attorneys, and Justice)**

[LFB 2015-17 Budget Summary: Page 40, #15; Page 135, #4; and Page 276, #13]

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#### **CURRENT LAW**

**State Prosecutors Office.** Prior to January 1, 1990, district attorneys (DAs), deputy DAs, and assistant DAs were county employees. Under 1989 Wisconsin Act 31, prosecutors became state employees on January 1, 1990, and the state now pays for prosecutors' salaries and fringe benefits. In order to administer the state's responsibility as the employer of the DAs, deputy DAs, and assistant DAs, 1989 Act 31 created the State Prosecutors Office in the Department of Administration (DOA). The State Prosecutors Office (SPO) is responsible for coordinating administrative duties relating to the district attorney offices.

Major responsibilities of the Office include: (a) payroll; (b) fringe benefits; (c) budgets; (d) billing counties for grant-funded positions; (e) collective bargaining (restricted to salary increases only); (f) advising elected DAs on their rights and responsibilities under the state compensation plan, Office of State Employment Relations administrative code, and the statutes; (g) producing fiscal notes and bill analyses for legislative proposals affecting the DAs; and (h) serving as a central point of contact for all prosecutors. According to the administration, base funding for the SPO is \$181,700 GPR and 1.0 position.

**Department of Justice.** The Department of Justice (DOJ) is headed by the Attorney General, an elected constitutional officer. The Department provides legal, criminal investigatory, and other law enforcement services to the state, as well as services to the victims of crimes. The agency's mission is focused on public protection and the defense of the state in litigation. The Department of Justice is comprised of the following four divisions and one office: (a) the Division of Legal Services, (b) the Division of Law Enforcement Services; (c) the Division of Criminal Investigation; (d) the Division of Management Services; and (e) the Office of Crime

Victim Services.

## **GOVERNOR**

Transfer the State Prosecutors Office, and \$181,700 GPR and 1.0 GPR position annually, from the Department of Administration to the Department of Justice. Further, as determined by the Secretary of DOA, transfer the assets and liabilities, position, incumbent employee (along with the incumbent employee's current civil service status and benefits), tangible personal property, contracts, pending matters, and promulgated rules primarily related to the State Prosecutors Office from DOA to DOJ. Finally, require DOJ, rather than DOA, to prepare the District Attorneys biennial agency budget request.

## **DISCUSSION POINTS**

### **State Prosecutors Office Funding**

1. When 1989 Act 31 converted prosecutors from county employment to state employment, the Legislature appropriated resources to the Department of Administration to support this new state function. Under Act 31, the Legislature provided DOA \$106,800 GPR in 1989-90, \$115,600 GPR in 1990-91, and 3.0 GPR positions to support the administrative, payroll and benefits management, and clerical duties that would fall to DOA. Act 31 established these resources under a separate program and appropriation within DOA. This separate function became to be known as the State Prosecutors Office.

2. Under the 1991-93 biennial budget act, \$11,500 GPR in 1991-92 and \$15,200 GPR in 1992-93 was provided to DOA to support an additional 0.5 position in the State Prosecutors Office to assist in payroll and benefits administration for district attorney personnel. In total, the 1991-93 biennial budget provided \$142,500 GPR in 1991-92, \$144,800 GPR in 1992-93, and 3.5 GPR positions annually for the State Prosecutors Office.

3. During the 1993-95 biennium and the 1995-97 biennium, the State Prosecutors Office continued to be budgeted as a separate DOA program with increases in funding for standard budget adjustments. Then, under the 1997-99 biennial budget act, the separate program for the State Prosecutors Office was eliminated, however an appropriation to fund the State Prosecutors Office was transferred to DOA's supervision and management program. The 1997-99 biennial budget appropriated \$203,500 GPR and 3.5 positions annually for the State Prosecutors Office.

4. The 1999-01 biennial budget act repealed the separate appropriation for the State Prosecutors Office and merged the associated funding and position authority with DOA's supervision and management general program operations appropriation. While the separate appropriation for the SPO was eliminated under the 1999-01 budget act, funding and position authority for the SPO continued to be separately tracked for budgetary purposes. During the 1999-01 biennium, the SPO was budgeted \$200,300 PGR and 3.5 GPR positions annually.

5. Finally, under the 2001-03 biennial budget, separate budgetary tracking of the funding

and position authority associated with the SPO was eliminated. At that time, base level funding for the Office was \$214,300 GPR and 3.5 GPR positions annually.

6. Of the 3.5 GPR positions originally provided to DOA to support the operations of the State Prosecutors Office, 2.8 positions currently remain with DOA. Currently, however, only 1.0 position (the Director of the SPO) is formally identified as a part of the State Prosecutors Office. The remaining positions have been assigned to comparable payroll, fiscal, and clerical responsibilities in DOA's Division of Administrative Services. Currently, program revenue-supported staff in DOA's Division of Administrative Services provides the State Prosecutors Office with assistance in administering the state's function as the employer of DAs, deputy DAs, and assistant DAs. According to the administration, DOA currently utilizes a number of positions totaling approximately a 0.7 full-time equivalent position to support the state prosecutor's office.

### **Transferring the State Prosecutors Office to DOJ**

7. Under the bill, the Governor recommends that DOA transfers the State Prosecutors Office to the Department of Justice. Associated with the transfer of the SPO, the bill transfers \$181,700 GPR and 1.0 GPR position (the Director of the SPO) annually from DOA to DOJ. The bill does not transfer additional support staff from DOA to DOJ to assist with the Office's administrative functions.

8. In the Governor's Budget in Brief, the administration indicates that the purpose for transferring the SPO to DOJ is to consolidate the administration of prosecution services into one agency. In further support of the transfer, the administration indicates the following:

"The Administration has been working to focus the DOA on its core mission of providing executive assistance to other agencies. To this end, non-core programs have been moved to agencies to align more closely with the goals of the programs. For example, OJA [the Office of Justice Assistance] was transferred from DOA to DOJ. The transfer of State Prosecutor's Office to DOJ is a continuation of this effort."

9. Under 2013 Act 20, the Office of Justice Assistance (OJA) was dissolved and its justice-related responsibilities were transferred from DOA to DOJ. Prior to its dissolution, OJA was responsible for the following: (a) acting as the state administering agency for a series of federal grant programs in the area of criminal justice; (b) administering several state-funded grant programs related to criminal justice; (c) administering a statistical analysis center and the Wisconsin justice information sharing program (WiJIS); and (d) overseeing the operation of the Wisconsin interoperable system for communications (WISCOM).

10. It could be argued that if the SPO is transferred to DOJ, the Attorney General, as chief law enforcement officer for the state, could become a more influential advocate for district attorneys statewide. The Division of Legal Services provides the district attorneys with legal advice, support and other training. In addition, DOJ attorneys typically represent the state in felony appeals, and may also act as a special prosecutor at the request of a district attorney. Given the experience DOJ has with criminal prosecutions and appeals DOJ institutionally would have a better understanding of the concerns and needs of district attorneys.

11. For the reasons outlined above, the Committee could approve the Governor's recommendation to transfer the State Prosecutors Office from DOA to DOJ [Alternative 1].

12. The Department of Justice has expressed concerns with regards its ability to provide the necessary financial, payroll and benefits management, and administrative duties that would be associated with supporting the State Prosecutors Office, should only 1.0 position be transferred from DOA to DOJ. The Department of Justice indicates that, due to the current workload of its administrative staff, DOJ would be unable to utilize base resources to provide administrative support to the SPO.

13. While DOA currently only identifies 1.0 position (the Director) as specifically assigned to the State Prosecutors Office, DOA budget and payroll staff does provide the SPO with necessary assistance in administering the state's function as employer of DAs, deputy DAs, and assistant DAs. Appendix I is a list provided by the State Prosecutors Office of the services that DOA staff currently provide to the Office. Appendix II is a list provided by the State Prosecutors Office of the duties that are performed by the Director of the State Prosecutors Office.

14. Despite the services provided by DOA staff for the SPO, the administration indicates that, "it would not be necessary to transfer additional position authority [to the Department of Justice]." According to the administration, DOJ would be able to absorb the additional work associated with the transfer. As previously indicated, the administration estimates that DOA utilizes 0.7 full-time equivalent positions to provide services to the SPO.

15. Having reviewed the list of duties that DOA staff provides the State Prosecutors Office, however, DOJ indicates that it would require 5.0 administrative positions (in addition to the Director position transferred under the bill) in order to provide the necessary support to the SPO. Specifically, DOJ indicates that it would require 1.0 financial specialist, 1.0 budget and policy analyst, 1.0 payroll and benefits specialist, 1.0 human resources specialist, and 1.0 operations program associate. The Department estimated its additional staffing needs based on: (a) the number of prosecutor positions statewide (429.05 prosecutors); and (b) the number of similar staff (17.0 positions) DOJ currently utilizes to support its 684.75 positions.

16. Given DOJ's concerns over its ability to effectively provide administrative services to the State Prosecutors Office, and the fact that DOA was provided more than 1.0 position when the SPO was created, it could be argued that if the Committee decides to transfer the SPO to DOJ, it may be prudent to provide DOJ a greater amount of resources than what is provided under the bill. As a result, if the Committee were to decide to transfer the SPO to DOJ, the Committee could consider transferring additional resources from DOA to DOJ in one of the following manners. [Any additional funding and position authority transferred from DOA to DOJ would be transferred from DOA's Supervision and Management general program operations GPR appropriation to DOJ's Administrative Services general program operations GPR appropriation. Additional funding identified in the following bullet points would support salary and fringe benefits costs.]

- *Positions Remaining in DOA.* Transfer an additional \$110,300 GPR and 1.8 GPR positions (1.0 human resources assistant - advanced, 0.5 financial specialist, and 0.3 payroll and benefits specialist) annually from DOA to DOJ [Alternative 2a]. This alternative would account

for the fact that 2.5 positions were initially provided to DOA to support the SPO (excluding the 1.0 Director position), and of those 2.5 positions, 1.8 position remain with DOA. As a result of this alternative, DOA would transfer a total of \$292,000 GPR and 2.8 GPR positions to DOJ.

- *Staffing Currently Utilized by DOA.* Transfer an additional \$45,400 GPR and 0.7 GPR position (0.7 human resources assistant - advanced) annually from DOA to DOJ [Alternative 2b]. This alternative would account for the administration's indication that DOA utilizes 0.7 full-time equivalent positions to provide services to the SPO. As a result of this alternative, DOA would transfer a total of \$227,100 GPR and 1.7 GPR positions to DOJ.

- *Staffing as Indicated by DOJ.* Based on the fact that DOJ indicated it would require an additional 5.0 positions to administer the SPO, the Committee could provide DOJ with an additional \$223,800 GPR and 5.0 GPR positions annually. Likewise, the Committee could eliminate \$223,800 GPR and 5.0 GPR positions annually from DOA [Alternative 2c]. [Funding and position authority under this alternative is not transferred, but rather eliminated and recreated. This is because DOJ indicates that it would require a greater number of positions to administer the SPO than what was originally provided to DOA]. Under this alternative, funding and position authority for DOJ would increase by a total of \$405,500 GPR and 6.0 GPR positions annually, and funding and position authority for DOA would be reduced by a total of \$405,500 GPR and 6.0 GPR positions annually.

17. On the other hand, the Committee could decide not to transfer the State Prosecutors Office to DOJ at this time. As previously indicated, DOJ has expressed concerns with the transfer of the State Prosecutors Office, as provided under the bill. The Department does not believe that its current staffing level could provide the support necessary to effectively administer the Office. Further, the Department of Justice has indicated that it would require a total of 6.0 positions to administer the State Prosecutors Office, while DOA indicates that it only requires 1.7 positions to administer the Office. Therefore, it could be argued that DOA's institutional knowledge would allow DOA to more efficiently administer the SPO.

18. The State Prosecutors Office has been administered by DOA since its inception under 1989 Act 31. In discussing reasons why the bill transfers the SPO to DOJ, the administration did not indicate that DOA has been ineffective in its administration of the Office but rather the SPO would align more closely with the institutional responsibilities of DOJ. Given DOA's long experience with providing administrative services to and through the SPO, however, it could be argued that the SPO should remain with DOA.

19. As a result of the reasons discussed above, the Committee could deny the Governor's recommendation [Alternative 3]. Under this alternative, the State Prosecutors Office would remain with DOA and DOA would continue to prepare the District Attorneys biennial budget request.

## **ALTERNATIVES**

1. Approve the Governor's recommendation and transfer the State Prosecutors Office from the Department of Administration to the Department of Justice. In addition, DOJ, rather than

DOA, would be required to prepare the District Attorney's biennial budget request. Under this alternative, DOA would transfer \$181,700 GPR and 1.0 GPR position annually to DOJ.

2. Modify the bill in one of the following manners in order to provide DOJ additional resources to support the administration of the State Prosecutors Office:

a. Transfer a total of \$292,000 GPR and 2.8 GPR positions annually from DOA to DOJ.

b. Transfer a total of \$227,100 GPR and 1.7 GPR positions annually from DOA to DOJ.

c. Transfer \$181,700 GPR and 1.0 GPR position annually from DOA to DOJ. In addition, provide DOJ with \$223,800 GPR and 5.0 GPR positions annually and eliminate \$223,800 GPR and 5.0 GPR positions annually from DOA.

3. Delete provision.

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Attachments

## APPENDIX I

### Services Provided by Department of Administration Staff Members to the State Prosecutors Office

#### **Payroll duties:**

- Provide employment and fringe benefit materials to new prosecutors
- Establish employees on payroll system
- Counsel employees regarding fringe benefits
- Make appropriate changes to payroll each pay period (for example: salary, fringe benefits, and tax withholdings)
- Ensure accurate completion of time and leave reporting, which may include counseling DAs, DDAs, and ADAs
- Inform employees of leave accounting options (such as carryover of vacation time) and implement employees' requests
- On a biweekly basis, process reimbursement of Milwaukee County prosecutors who have remained on the Milwaukee County payroll system
- Maintain sick leave records of prosecutors who converted from county employment to State employment effective January 1, 1990
- Counsel prosecutors that are considering switching from county fringe benefits to state fringe benefits
- Process pay adjustments for Milwaukee prosecutors who work on the weekend and over-time
- Counsel employees regarding retirement

#### **Human Resource duties:**

- Counsel District Attorneys regarding personnel/employment relations matters (including performance, the family and medical leave act, the employee assistance program, and affirmative action)
- Post vacancy notices on UW-Madison and Marquette Law School websites, and share them with all prosecutors
- Provide training opportunities for prosecutors

#### **Financial duties:**

- Document all grant-funded expenses and bill appropriate counties for reimbursement on a quarterly basis
- Secure funds from the Department of Children & Families on a quarterly basis
- Audit and approve the payment of: (a) special prosecutors and the interest payable to them; (b) biweekly reimbursement of Milwaukee County for prosecutors still on the Milwaukee County payroll system; and (c) semi-annual reimbursement of counties with prosecutors still participating in the county fringe benefits program
- Process program budgetary adjustments when necessary
- Provide insight regarding the program's budget

#### **Administrative duties:**

- Provide insight/guidance regarding various aspects of the program (such as policies and pay progression)

#### **Legal Counsel duties:**

- Provide advice regarding certain aspects of the program (including advice on the open records law)





## APPENDIX II

### Duties of the Director of the State Prosecutors Office

- Seek input from District Attorneys, then prepare and submit the biennial budget request for the District Attorney program
- Prepare fiscal estimates, verbal positions, and written analyses pertaining to prospective legislation
- In accordance with s. 16.505 of the statutes, prepare and submit requests for position authorization for District Attorney offices that have secured non-GPR funding
- Calculate and advise District Attorneys regarding the salary and fringe benefit costs of non-GPR funded prosecutors
- Provide grant expenditure data to District Attorneys upon request so they may report to their grant sources and claim funding
- Calculate the long-term and short-term end dates of grants so that appropriate personnel actions can be undertaken in a timely fashion and positions are not filled beyond their available budgets
- Calculate attorney staff allocation options among GPR and various grant sources for elected District Attorneys so they may maximize their use of available resources
- Act as administrative contact for the 71 elected District Attorneys
- Work closely with District Attorneys, the DOA Bureau of Human Resources, DOA Legal Counsel, and the Office of State Employment Relations (OSER) regarding employment relations issues
- Coordinate pay and benefits issues with the Bureau of Human Resources and, when necessary, the Office of State Employment Relations
- Provide compensation and other recommendations to OSER for upcoming Compensation Plan implementation
- Work with the Bureau of Human Resources to post vacancy notices
- Conduct an annual workload analysis of all District Attorney offices
- Reimburse the cost of county-paid fringe benefits for those prosecutors who retained county fringe benefits upon their appointment to State employment effective January 1, 1990
- Semi-annually process payments for special prosecution clerks in Milwaukee County
- Audit and process special prosecutor appointments and requests for compensation
- Implement and administer the pay progression program for Deputy and Assistant District Attorneys
- Work closely with the Bureau of Financial Management and the State Budget Office regarding the District Attorney program budget, grant funding, and payroll
- Establish and maintain an excellent working relationship with prosecutors
- Participate in monthly Wisconsin District Attorneys Association (WDAA) executive board meetings
- Participate in the IT subcommittee of the WDAA
- Maintain a strong relationship with DA information technology staff in DOA
- Monitor and update payroll information on an ongoing basis
- Provide information to the Legislative Fiscal Bureau upon request
- Communicate pertinent information to all prosecutors
- Participate in semi-annual conferences for prosecutors
- Maintain position and vacancy control systems to ensure all vacancies are accounted for
- On a biweekly basis, provide DOA the DAs' payroll with an itemization of all payroll changes for a pay period
- Prepare and submit to the State Budget Office salary and fringe benefit supplement requests
- Provide information to the DOA Communications Officer so that the Officer may respond to requests for information