



State of Wisconsin
2019 - 2020 LEGISLATURE

LRB-3875/2
CMH:amn

2019 ASSEMBLY BILL 513

October 7, 2019 - Introduced by Representatives TUSLER, MCGUIRE, BORN, OTT, BOWEN, EDMING, KURTZ, MURSAU, NEUBAUER, NOVAK, PETRYK, RIEMER, SCHRAA, TITTL, ZAMARRIPA and VRUWINK, cosponsored by Senators WANGGAARD and BERNIER. Referred to Committee on Government Accountability and Oversight.

1 **AN ACT** *to repeal* 978.001 (1p) and 978.11; *to amend* 13.093 (2) (a), 230.33 (1),
2 978.03, 978.045 (1g), 978.045 (1r) (bm) (intro.), 978.045 (2), 978.05 (9) and
3 978.12 (1) (c); and *to create* 13.0967, 15.105 (7), 15.77, 20.548, 20.923 (4) (f) 7x.,
4 20.923 (6) (hs), 230.08 (2) (qp), 978.001 (1b), (1d) and (1n), 978.003, 978.004 and
5 978.005 of the statutes; **relating to:** creation of a prosecutor board and a state
6 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.

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

2 13.093 (2) (a) Any bill making an appropriation, any bill increasing or
3 decreasing existing appropriations or state or general local government fiscal
4 liability or revenues, and any bill that modifies an existing surcharge or creates a
5 new surcharge that is imposed under ch. 814, shall, before any vote is taken thereon
6 by either house of the legislature if the bill is not referred to a standing committee,
7 or before any public hearing is held before any standing committee or, if no public
8 hearing is held, before any vote is taken by the committee, incorporate a reliable
9 estimate of the anticipated change in appropriation authority or state or general
10 local government fiscal liability or revenues under the bill, including to the extent
11 possible a projection of such changes in future biennia. The estimate shall also
12 indicate whether any increased costs incurred by the state under the bill can be
13 mitigated through the use of contractual service contracts let in accordance with
14 competitive procedures. For purposes of this paragraph, a bill increasing or
15 decreasing the liability or revenues of the unemployment reserve fund is considered
16 to increase or decrease state fiscal liability or revenues. Except as otherwise
17 provided by joint rules of the legislature or this paragraph, such estimates shall be
18 made by the department or agency administering the appropriation or fund or
19 collecting the revenue. The legislative council staff shall prepare the fiscal estimate
20 with respect to the provisions of any bill referred to the joint survey committee on
21 retirement systems which create or modify any system for, or make any provision for,

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1 the retirement of or payment of pensions to public officers or employees. The director
2 of state courts shall prepare the fiscal estimate with respect to the provisions of any
3 bill that modifies an existing surcharge or creates a new surcharge that is imposed
4 under ch. 814. The executive director of the state prosecutors office shall prepare the
5 fiscal estimate with respect to the provisions of any bill that affects prosecutors or
6 the state prosecutors office, including bills modifying or creating crimes or
7 sentencing practices. When a fiscal estimate is prepared after the bill has been
8 introduced, it shall be printed and distributed as are amendments.

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

10 **13.0967 Review of bills affecting state prosecutors office.** Any bill that
11 is introduced in either house of the legislature that directly affects the state
12 prosecutors office shall have a notation to that effect on its jacket when the jacket is
13 prepared. When a bill that has that notation on the jacket is introduced, the
14 legislative reference bureau shall submit a copy of the bill to the state prosecutors
15 office.

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

17 15.105 (7) STATE PROSECUTORS OFFICE. There is created a prosecutors office that
18 is attached to the department of administration under s. 15.03. The executive
19 director shall be appointed by the prosecutor board.

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

21 **15.77 Prosecutor board.** There is created a prosecutor board consisting of
22 11 members, appointed for staggered 3-year terms, as follows:

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

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1 (2) From the district under s. 752.11 (1) (a), the district attorney and a deputy
2 district attorney appointed by the district attorney.

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

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

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

2019-20 2020-21

9 **20.548 Prosecutor board**

10 (1) COORDINATION AND ADMINISTRATION OF
11 PROSECUTOR FUNCTIONS

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

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

14 **20.548 Prosecutor board.** There is appropriated to the prosecutor board for
15 the following program:

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

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

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

23 20.923 (4) (f) 7x. State prosecutors office: executive director.

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1 **SECTION 8.** 20.923 (6) (hs) of the statutes is created to read:

2 20.923 **(6)** (hs) State prosecutors office: legislative liaison.

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

4 230.08 **(2)** (qp) The executive director and legislative liaison in the office of
5 state prosecutors.

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

7 230.33 **(1)** A person appointed to an unclassified position by the governor,
8 elected officer, judicial body, or prosecutor board, or by a legislative body or
9 committee shall be granted a leave of absence without pay for the duration of the
10 appointment and for 3 months thereafter, during which time the person has
11 restoration rights to the former position or equivalent position in the department in
12 which last employed in a classified position without loss of seniority. The person
13 shall also have reinstatement privileges for 5 years following appointment to the
14 unclassified service or for one year after termination of the unclassified appointment
15 whichever is longer. Restoration rights and reinstatement privileges shall be
16 forfeited if the reason for termination of the unclassified appointment would also be
17 reason for discharge from the former position in the classified service.

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

19 978.001 **(1b)** “Board” means the prosecutor board.

20 **(1d)** “Executive director” means the executive director appointed under s.
21 978.003 (3).

22 **(1n)** “Office” means the state prosecutors office.

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

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

25 **978.003 Board; duties.** The board shall do all of the following:

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1 (1) Submit the budget in accordance with s. 16.42 after the executive director
2 submits the budget to the board and the board approves it.

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

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

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

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

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

11 **978.004 State prosecutors office executive director.** (1) The executive
12 director shall do all of the following:

13 (a) Manage and direct the office subject to the policy initiatives set under s.
14 978.003 (4).

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

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

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

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

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1 to a prospective appointment, the executive director may not make the appointment
2 until the board approves it.

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

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

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

15 **978.005 Limits on board and executive director.** Neither the board nor
16 the executive director may make any decision regarding the handling of any case nor
17 interfere with any district attorney in carrying out professional duties. Neither the
18 board nor the office may interfere with or infringe upon the autonomy of a district
19 attorney or upon the authority of a district attorney to manage his or her own
20 prosecutorial unit.

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

22 **978.03 Deputies and assistants in certain prosecutorial units.** (1) The
23 district attorney of any prosecutorial unit having a population of 750,000 or more
24 may appoint 7 deputy district attorneys and such assistant district attorneys as may
25 be requested by the department of administration, or by the board, and authorized

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1 in accordance with s. 16.505. The district attorney shall rank the deputy district
2 attorneys for purposes of carrying out duties under this section. The deputies,
3 according to rank, may perform any duty of the district attorney, under the district
4 attorney's direction. In the absence or disability of the district attorney, the deputies,
5 according to rank, may perform any act required by law to be performed by the
6 district attorney. Any such deputy must have practiced law in this state for at least
7 2 years prior to appointment under this section.

8 (1m) The district attorney of any prosecutorial unit having a population of
9 200,000 or more but less than 750,000 may appoint 3 deputy district attorneys and
10 such assistant district attorneys as may be requested by the department of
11 administration, or by the board, and authorized in accordance with s. 16.505. The
12 district attorney shall rank the deputy district attorneys for purposes of carrying out
13 duties under this section. The deputies, according to rank, may perform any duty
14 of the district attorney, under the district attorney's direction. In the absence or
15 disability of the district attorney, the deputies, according to rank, may perform any
16 act required by law to be performed by the district attorney. Any such deputy must
17 have practiced law in this state for at least 2 years prior to appointment under this
18 section.

19 (2) The district attorney of any prosecutorial unit having a population of
20 100,000 or more but not more than 199,999 may appoint one deputy district attorney
21 and such assistant district attorneys as may be requested by the department of
22 administration, or by the board, and authorized in accordance with s. 16.505. The
23 deputy may perform any duty of the district attorney, under the district attorney's
24 direction. In the absence or disability of the district attorney, the deputy may
25 perform any act required by law to be performed by the district attorney. The deputy

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1 must have practiced law in this state for at least 2 years prior to appointment under
2 this section.

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

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

10 978.045 **(1g)** A court on its own motion may appoint a special prosecutor under
11 sub. (1r) or a district attorney may request a court to appoint a special prosecutor
12 under that subsection. Before a court appoints a special prosecutor on its own motion
13 or at the request of a district attorney for an appointment that exceeds 6 hours per
14 case, the court or district attorney shall request assistance from a district attorney,
15 deputy district attorney or assistant district attorney from other prosecutorial units
16 or an assistant attorney general. A district attorney requesting the appointment of
17 a special prosecutor, or a court if the court is appointing a special prosecutor on its
18 own motion, shall notify the ~~department of administration, on a form provided by~~
19 ~~that department, of office that~~ the district attorney's attorney or the court's inability
20 court, whichever is appropriate, is unable to obtain assistance from another
21 prosecutorial unit or from an assistant attorney general.

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

23 978.045 **(1r)** (bm) (intro.) The judge may appoint an attorney as a special
24 prosecutor at the request of a district attorney to assist the district attorney in the
25 prosecution of persons charged with a crime, in grand jury proceedings, in

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1 proceedings under ch. 980, or in investigations. Except as provided under par. (bp),
2 the judge may appoint an attorney as a special prosecutor only if the judge or the
3 requesting district attorney submits an affidavit to the ~~department of~~
4 ~~administration~~ office attesting that any of the following conditions exists:

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

6 978.045 (2) If the ~~department of administration~~ office approves the
7 appointment of a special prosecutor under sub. (1r), the court shall fix the amount
8 of compensation for the attorney appointed according to the rates specified in s.
9 977.08 (4m) (b). The department of administration shall pay the compensation
10 ordered by the court from the appropriation under s. 20.475 (1) (d). The court, district
11 attorney, and the special prosecutor shall provide any information regarding a
12 payment of compensation that the department requests. Any payment under this
13 subsection earns interest on the balance due from the 121st day after receipt of a
14 properly completed invoice or receipt and acceptance of the property or service under
15 the order or contract, whichever is later, at the rate specified in s. 71.82 (1) (a)
16 compounded monthly.

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

18 978.05 (9) BUDGET. Prepare a biennial budget request for submission to the
19 ~~department~~ executive director under s. ~~978.11~~ 978.004 (1) (b) by September 1 of each
20 even-numbered year.

21 **SECTION 21.** 978.11 of the statutes is repealed.

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

23 978.12 (1) (c) *Assistant district attorneys.* Assistant district attorneys shall be
24 employed outside the classified service. For purposes of salary administration, the
25 administrator of the division of personnel management in the department of

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1 administration, in consultation with the office, shall establish one or more
2 classifications for assistant district attorneys in accordance with the classification
3 or classifications allocated to assistant attorneys general. Except as provided in ss.
4 111.93 (3) (b) and 230.12 (10), the salaries of assistant district attorneys shall be
5 established and adjusted in accordance with the state compensation plan for
6 assistant attorneys general whose positions are allocated to the classification or
7 classifications established ~~by the administrator of the division of personnel~~
8 management in the department of administration under this paragraph.

9 **SECTION 23. Nonstatutory provisions.**

10 (1) PROSECUTOR BOARD.

11 (a) *Initial terms for prosecutor board members.*

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

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

22 (b) *Transfer of state prosecutors office.*

23 1. 'Assets and liabilities.' On the effective date of this subdivision, the assets
24 and liabilities of the department of administration that are primarily related to the

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1 state prosecutors office, as determined by the secretary of administration, become
2 the assets and liabilities of the prosecutor board.

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

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

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

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

24 (c) *Plan for office space for prosecutors office.*

