



## Legislative Fiscal Bureau

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Joint Committee on Finance

Paper #261

### **Transfer of the State Administration of the District Attorneys Function to the Department of Justice (District Attorneys and Administration -- General Agency Provisions)**

[LFB 2005-07 Budget Summary: Page 21, #5 (part) and Page 142, #2]

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#### **CURRENT LAW**

The office of district attorney is a partisan office. A district attorney is elected for a two-year term at the general election held in each even-numbered year. [First effective with the term of office beginning on January 3, 2007, district attorneys will serve for four years, pursuant to a constitutional amendment approved April 5, 2005.] There are 71 district attorneys in Wisconsin. Each county in the state is termed a "prosecutorial unit" except that Shawano and Menominee Counties form a two-county prosecutorial unit and jointly elect a single district attorney.

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. Under the bill, the adjusted base for the District Attorneys function is \$38,904,700 GPR and \$2,058,400 PR and 375.4 GPR and 40.1 PR prosecutor positions annually.

In order to administer the state's responsibility as employer of DAs, deputy DAs and assistant DAs, Act 31 also created a State Prosecutors Office in the Department of Administration (DOA). The State Prosecutors Office is responsible for coordinating DOA's administrative duties relating to district attorney offices.

The major responsibilities of the State Prosecutors Office include: (1) performing payroll and fringe benefits management functions; (2) compiling and overseeing the state-funded elements of DA budgets; (3) billing counties for PR-funded position expenses; (4) advising and representing DOA with respect to collective bargaining issues affecting assistant DA positions; (5) advising elected DAs on management rights and responsibilities to assistant DAs under the

existing collective bargaining agreement between the state and such employees; (6) preparing fiscal notes and bill analyses for legislative proposals affecting DAs; and (7) serving as a central point of contact and information clearinghouse for all prosecutors. According to DOA staff, the adjusted base for the State Prosecutors Office is currently \$118,900 GPR and 1.0 GPR position.

## **GOVERNOR**

Transfer the duties and responsibilities associated with the state administration of the DA function from DOA to the Department of Justice (DOJ). Delete \$96,300 GPR and 1.0 GPR position annually as a base budget reduction under DOA to reflect the elimination of the State Prosecutors Office function.

Delete DOA's responsibilities with respect to all of the following functions or activities that DOA must currently perform. Provide instead that: (1) state funding for DA prosecutor positions and certain PR funded clerks in the Milwaukee County DA's office would be appropriated to DOJ; (2) DOJ would prepare and submit the state-funded budget of the DA offices; (3) the authority to request assistant DA positions would reside with DOJ; (4) subject to the relevant statutes, compensation plans, and collective bargaining agreements, DOJ would have the authority to set salaries for deputy DAs and assistant DAs; (5) for collective bargaining involving assistant DAs, the Director of the Office of State Employment Relations would have to maintain close liaison with DOJ; (6) a DA office in any prosecutorial unit with a population of 100,000 or more would be authorized to appoint temporary counsel, as authorized by DOJ; (7) elected DAs would submit vouchers for the payment of prosecutor salaries and fringe benefits to DOJ; (8) the Milwaukee County DA would submit similar vouchers for the payment of salaries and fringe benefits for certain PR-funded clerks to DOJ; (9) DOJ would be notified if a suspended DA is cleared of wrongdoing; (10) official oaths and bonds of elected DAs would be filed with DOJ; and (11) for purposes of the Code of Ethics for Public Officials and Employees involving a DA, "department" would generally mean DOJ.

Provide that a county board would now have to notify DOJ rather than DOA if it reassigns responsibility from the county's DA office to the county's corporation counsel, or vice versa, for certain cases arising under Chapter 48 (the Children's Code). Similarly, specify that a county board would now have to notify DOJ if it reassigns responsibility from the county's DA office to the county's corporation counsel, or vice versa, for certain cases arising under Chapter 938 (the Juvenile Justice Code).

Specify that a DA (or in some cases, a court) requesting the appointment of a special prosecutor would now have to notify DOJ rather than DOA of the requestor's inability to obtain prosecutorial assistance from another DA office or from an assistant attorney general. Provide that DOJ would have to pay the compensation ordered by a court for a special prosecutor from amounts appropriated to DOJ under the DA function.

Repeal an obsolete statutory provision relating to DOA's payment of certain unfunded pension liabilities of Milwaukee County prosecutors who became state employees on January 1, 1990.

## **DISCUSSION POINTS**

1. There are two issues that the Finance Committee may wish to address as it considers whether or not to transfer the administration of the district attorney function from DOA to DOJ. First, if such a transfer were authorized, would there be sufficient resources at DOJ for the effective administration of the program? Second, are there any aspects of the current duties and responsibilities of the Attorney General or of prosecutors that would suggest that a shift in program administration would be desirable or undesirable? The following discussion touches on each of these matters.

### **Administration of the DA Function by the State Prosecutors Office**

2. When 1989 Wisconsin Act 31 converted prosecutors from county employment to state employment, the Legislature appropriated resources to DOA to provide the necessary staffing to support this new state function. At that time, a total of \$106,800 GPR in 1989-90 and \$115,600 GPR in 1990-91 and 3.0 GPR positions annually was provided to support the necessary administrative, payroll and benefits management, and clerical duties that would fall to DOA. Act 31 established these resources under a separate agency program ["District Attorneys"] and appropriation structure. This separate function came to be known as the State Prosecutors Office.

3. Under the 1991-93 biennial budget act, an additional \$11,500 GPR in 1991-92 and \$15,200 GPR in 1992-93 and 0.5 GPR position were authorized under DOA to assist in payroll and benefits administration for the DA function. In total, the 1991-93 biennial budget provided \$142,500 GPR in 1991-92 and \$144,800 GPR in 1992-93 and 3.5 GPR positions annually for the State Prosecutors Office.

4. 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, a separate program for the State Prosecutors Office was deleted; however, a separate appropriation for DA administration was established under DOA's general supervision and management program. The State Prosecutors Office was budgeted \$203,500 GPR and 3.5 GPR positions annually under that appropriation.

5. The 1999-01 biennial budget act repealed the separate appropriation for the State Prosecutors Office and the associated base level funding and position authority was merged with DOA's general program operations appropriation under its general supervision and management program. Although the separate appropriation for the State Prosecutors Office was deleted, the funding and position authority for the Office continued to be separately tracked for budgetary purposes. Thus, during the 1999-01 biennium, the State Prosecutors Office was budgeted \$200,300 GPR and 3.5 GPR positions annually.

6. Finally, under the 2001-03 biennial budget, separate budgetary tracking of the funding and position authority associated with the State Prosecutors Office was eliminated. At that time, base level funding for the Office was \$214,300 GPR and 3.5 GPR positions annually.

#### **Availability of Adequate Resources Following the Transfer**

7. Of the 3.5 GPR positions originally provided to DOA to support the operations of the State Prosecutors Office, all currently remain at the Department. However, at this juncture, only 1.0 GPR position (the Director of the State Prosecutors Office) is formally identified in connection with this function. The remaining 2.5 GPR positions have been assigned to comparable payroll, fiscal, and clerical responsibilities in other units of the Department. Currently, the additional personnel-, payroll-, and budget-related requirements of the State Prosecutors Office in connection with the administration of the DA function is being supported by PR-funded staff.

8. Transferring the administrative functions for DA operations from DOA to DOJ would, at minimum, impose the following additional workload on DOJ:

- Preparing a biweekly payroll for at least 405.9 FTE new employees (the corrected staffing level provided under the bill for the district attorney function during 2006-07).
- Billing counties for PR-funded prosecutor positions supported by grant funding received by the county.
- Reimbursing counties for county costs of providing pension or other fringe benefits to those prosecutors who retained their county benefits following their transfer to state service on January 1, 1990.
- Responding to prosecutor inquiries regarding state salaries and fringe benefits matters.
- Processing position authorization requests to be submitted to DOA (and ultimately to the Finance Committee) under s. 16.505(2).
- Reimbursing Milwaukee County semiannually for the cost of 6.5 clerk positions supported by the special prosecution clerks fee assessed in that county.
- Processing claims for the payment of "special prosecutors," when such prosecutors are appointed by a court to assist a DA.
- Addressing personnel issues that arise in the 71 prosecutorial units, including the suspension and firing of employees.
- Advising state negotiators with respect to collective bargaining issues relating to assistant DAs.

- Advising elected DAs on their management rights and responsibilities towards assistant DAs pursuant to the collective bargaining agreement.
- Developing the biennial budget for the District Attorney function.
- Producing fiscal notes and bill analyses for legislative proposals affecting DAs.
- Serving as a central point of contact for all prosecutors.

9. None of the 3.5 GPR positions and associated funding that were originally authorized for administration of the DA function and that are still budgeted under DOA would be transferred to DOJ under the Governor's recommendation. Only \$118,900 GPR and 1.0 GPR position has been identified as now being budgeted for the State Prosecutors Office in 2004-05. As part of a base budget reduction recommended for DOA under the bill, \$96,300 GPR and 1.0 GPR position annually associated with the Office would be deleted. The remaining \$22,600 GPR annually in the base associated with this position has not been deleted.

10. Concerns have been expressed by DOJ (and by representatives of the Wisconsin District Attorneys Association and the Association of State Prosecutors) that the agency could not properly support the transferred District Attorney function without additional staffing resources.

11. DOJ has indicated that if the State Prosecutors Office were to be transferred to the Department, an estimated 4.0 FTE positions would likely be required to properly manage the responsibilities of the Office and to provide the requisite services to the 71 DA offices across the state. DOJ estimated its additional overall staffing needs based on the payroll, fiscal and human resources ratios used in the administration's Accountability, Consolidation and Efficiency (ACE) initiative. That initiative prescribes an optimal payroll, fiscal and human resources staffing ratio of approximately one such position to every 100 to 125 employees. Based on 405.9 FTE prosecutor positions statewide, this indicated staffing requirement is consistent with the ACE-identified staffing level and would appear reasonable.

12. If the Committee were to conclude that the State Prosecutors Office should be transferred to DOJ, two staffing options would appear to be available.

13. First, the Committee could authorize 1.0 GPR Director of the State Prosecutors Office position and provide \$66,500 GPR annually under DOJ to replace the position being deleted under DOA. Since the current incumbent in the DOA position is retiring from state service, the funding would be budgeted at the minimum for the position. Further, the Committee could delete the residual \$22,600 GPR annually remaining in DOA's base budget for the Director to offset this additional position cost in DOJ, resulting in a net fiscal change of \$43,900 GPR annually.

14. If the Committee ultimately retains the administration of the DA function in DOA, it could also restore the Director of the State Prosecutors Office position in a similar fashion, by restoring the 1.0 GPR position authority, providing additional funding of \$43,900 GPR annually, and reallocating \$22,600 GPR of base level funding under DOA.

15. Second, the Committee could also consider providing additional payroll, fiscal and human resources staff to DOJ for the transferred DA function. Under this alternative the Committee could transfer the 2.5 GPR base level positions and associated funding of \$136,800 GPR annually that were originally provided to DOA for the State Prosecutors Office support staffing to DOJ. Combined with the 1.0 FTE Director position, a total of 3.5 FTE positions would be available to staff the transferred function. Whether additional staffing would ultimately be required could be determined at a later date, once workload experience at DOJ had been gained. It should be noted, however, that DOA has expressed the concern that the remaining 2.5 GPR positions have not been a part of the State Prosecutors Office in recent years, and that they should not now be considered Office staff available for transfer.

16. The Governor has taken the position that the functions of the State Prosecutors Office should be transferred to DOJ and absorbed by that agency without the resources for the function that have previously been provided to DOA. If the Committee concurs in this view, it may want to question why the base level position authority and funding originally provided for DA administration under DOA is not also being deleted from that agency at this time.

17. Under either a transfer of the DA function to DOJ or its retention in DOA, the Committee could extend the Governor's rationale to DOA by deleting an additional \$159,400 GPR and 2.5 GPR positions annually from DOA's supervision and management general program operations appropriation associated with the remaining 2.5 FTE support staff (\$136,800 GPR annually) and residual base level funding (\$22,600 GPR annually) associated with the operation of the Office. However, as with the case of transferring the function to DOJ with no additional resources, the deletion of resources under DOA (if administration of the function was retained in that agency) could adversely affect the efficient operation of an essential state law enforcement function.

#### **Appropriateness of a Transfer of the Administration of the DA Function to DOJ**

18. Some have argued that the transfer of the State Prosecutors Office to DOJ could provide long-term benefits to the DA function, since DOJ would have a better understanding of district attorneys' concerns and needs because of the agency's involvement in law enforcement and prosecution activities. Nonetheless, it also the case that staff for the current DOA-housed State Prosecutors Office developed an intimate knowledge of the issues that affect the DA function. Further, there is no reason to believe that this knowledge and understanding could not be replicated if administration of the function stayed at DOA.

19. Concerns have also been expressed that if the State Prosecutors Office were transferred to DOJ, such a transfer could compromise the budgetary and operational independence of elected DAs statewide.

20. For example, provisions of the 2003-05 biennial budget act resulted in the deletion of 15.0 GPR-funded prosecutor positions. Because the DA offices that would lose positions were not identified, the Governor (through DOA) apportioned the reductions among DA offices

statewide. If a similar provision would apply following the transfer of the DA function to DOJ, it would fall to the Attorney General to apportion the position reductions.

21. District attorneys are not simply state employees but are separately elected public officials with constitutional and statutory responsibilities who are charged with operating 71 independent DA offices. District attorneys could view the Attorney General's staff allocation decisions under such circumstances as encroaching on the DAs' budgetary and operational independence.

22. This issue would arguably not arise to the same degree if the State Prosecutors Office remained at DOA. Unlike the Attorney General, the Governor or DOA does not have concurrent jurisdiction with the district attorney function regarding some prosecutorial matters, in particular criminal appeals.

23. If the State Prosecutors Office were transferred to DOJ, one could anticipate that the institutional understanding of the DA function by DOA would be affected over time. Arguably this could have a negative impact on the DA function. On the other hand, the Attorney General, as the chief law enforcement officer of the state, could prove to be a powerful advocate for the DA function if it were transferred to DOJ.

24. If the Committee ultimately chooses to retain the administration of the DA function at DOA, it still may wish to repeal an obsolete statutory provision relating to DOA's payment of certain unfunded pension liabilities of Milwaukee County prosecutors who became state employees on January 1, 1990. All of the state's unfunded pension liabilities have been liquidated through the issuance of pension obligation bonds.

## ALTERNATIVES

1. Approve the Governor's recommendation to transfer the state administration of the District Attorneys function from the Department of Administration to the Department of Justice.

2. *In addition to Alternative 1*, provide \$66,500 GPR annually and authorize 1.0 GPR Director of the State Prosecutors Office position under the Department of Justice to provide a program administrator for the transferred function. Delete \$22,600 GPR annually under the Department of Administration's general program operations appropriation associated with residual base level funding for the State Prosecutors Office.

<b>Alternative 2</b>	<b>GPR</b>
<b>2005-07 FUNDING</b> (Change to Bill)	\$87,800
<b>2006-07 POSITIONS</b> (Change to Bill)	1.00

3. *In addition to Alternative 2*, transfer 2.5 GPR base level positions and associated funding of \$136,800 GPR annually that were originally provided to the Department of

Administration for State Prosecutors Office support staffing to the Department of Justice to provide staffing for the district attorney function in that agency.

4. Delete the Governor's recommendation, thereby retaining the administration of the district attorney function under DOA.

5. *In addition to Alternative 4*, restore 1.0 GPR position as the Director of the State Prosecutors Office under the Department of Administration, provide additional funding of \$43,900 GPR annually, and reallocate \$22,600 GPR of base level funding under DOA for this purpose.

<b>Alternative 5</b>	<b>GPR</b>
<b>2005-07 FUNDING</b> (Change to Bill)	\$87,800
<b>2006-07 POSITIONS</b> (Change to Bill)	1.00

6. *In addition to Alternative 4*, delete an additional \$159,400 GPR and 2.5 GPR positions annually from the Department of Administration's supervision and management general program operations appropriation associated with the remaining support staff (\$136,800 GPR annually) and residual base level funding (\$22,600 GPR annually) associated with the operation of the State Prosecutors Office.

<b>Alternative 6</b>	<b>GPR</b>
<b>2005-07 FUNDING</b> (Change to Bill)	- \$318,800
<b>2006-07 POSITIONS</b> (Change to Bill)	- 2.50

7. *In addition to Alternatives 4, 5, or 6*, repeal an obsolete statutory provision relating to the Department of Administration's payment of certain unfunded pension liabilities of Milwaukee County prosecutors who became state employees on January 1, 1990.

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