

DISTRICT ATTORNEYS

Creation of a Prosecutor Board and a Statutory State Prosecutors Office

Motion:

Move to modify current law as follows:

Establish a Prosecutor Board

Establish a Prosecutor Board (Board) consisting of 11 members, appointed for staggered three-year terms. Provide that the Board would be comprised of the following 11 members: (a) two District Attorneys (DA) from District II, District III, and District IV of the Court of Appeals appointed by a majority of the DAs from each district; (b) the DA and a deputy district attorney from District I of the Court of Appeals (Milwaukee County); (c) two nonelected prosecutors, each from a different county, appointed by a majority of nonelected prosecutors (excluding special prosecutors); and (d) the Attorney General or his or her designee. Notwithstanding the staggered three-year terms for the members of the Prosecutor Board, provide that for initial members, one member representing District II and District IV of the Court of Appeals, and one nonelected prosecutor member under "c", must serve for a one-year term. Further, one member representing District III and District I of the Court of Appeals and one nonelected prosecutor member under "c" must serve for a two-year term.

Establish the following duties for the Prosecutor Board: (a) submit the agency budget request for the District Attorney function after the executive director of the State Prosecutors Office submits the budget to the Board and the Board approves the budget; (b) at least annually submit to the Joint Committee on Finance recommendations on the allocation of prosecutor resources; (c) appoint an attorney with experience in criminal prosecution as the executive director of the State Prosecutors Office; (d) oversee and set policy initiatives for the executive director of the State Prosecutors Office; and (e) review existing law or proposed legislation and make recommendations to the Legislature. Repeal the current law provision that the agency budget request for the District Attorney function is prepared by the Department of Administration (DOA). [The creation of the State Prosecutors Office under the Board is discussed below.]

Create two appropriations for the Prosecutor Board. First, create an annual GPR appropriation for program administration costs of the Office of State Prosecutors. Provide \$225,000 GPR and 2.0 unclassified GPR positions annually to this appropriation, in order to support 1.0 executive director of the State Prosecutors Office and 1.0 legislative liaison position for the State Prosecutors Office. Second, create a continuing gifts, grants, and proceeds PR appropriation that may receive all proceeds from services, conferences, and sales of publications and promotional materials to be used for the purposes for which the proceeds are made or received. Provide no funding to this continuing

PR appropriation. [Although no funding would be appropriated to the gifts, grants, and proceeds PR appropriation, since the appropriation is continuing, the Prosecutor Board would be authorized to make expenditures from the appropriation based on available cash balances.]

Require the Prosecutor Board, in consultation with DOA, to submit to the Joint Committee on Finance by August 31, 2017, a plan to house the State Prosecutors Office in the space that, on the effective date of the bill, is occupied by the existing director of the State Prosecutors Office that currently exists in DOA. Require the plan to 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. Provide that the plan must provide office space for a legislative liaison and a space to accommodate meetings of the Prosecutor Board. Provide that the plan submitted by the Prosecutor Board would be subject to a 14-working day passive review process.

Establish an Office of State Prosecutors Under the Prosecutor Board

Establish an Office of State Prosecutors that is attached to DOA for administrative purposes only. Provide that the executive director of the State Prosecutors Office be appointed by the Prosecutor Board (created under this motion, above). Transfer the assets and liabilities, tangible personal property, contracts, pending matters, and rules and orders primarily related to the State Prosecutors Office that currently exists under DOA, as determined by the Secretary of DOA, to the Prosecutor Board. Associated with this transfer, reduce funding and position authority in DOA by \$181,700 GPR and 1.0 GPR position annually.

Provide that the executive director of the State Prosecutors Office be assigned to executive salary group (ESG) six for the purposes of compensation. [Under the 2015-17 state employee compensation plan, the minimum annual salary for an individual assigned to ESG-6 is \$88,712, while the maximum annual salary is \$146,390.] Provide that the salary of the State Prosecutors Office' legislative liaison position be established by the appointing authority, subject to the restrictions otherwise set forth in statutes and the state employee compensation plan.

Establish the following duties for the executive director of the State Prosecutors Office: (a) manage and direct the State Prosecutors Office subject to the policy initiatives established by the Prosecutor Board; (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 State Prosecutors 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; and (f) prepare fiscal estimates on bills affecting prosecutors or the State Prosecutors Office, including bills modifying or creating crimes or sentencing practices. Provide that the executive director may also identify methods and practices for district attorneys that promote professional competence, ethical practices, and evidence-based practices. With regards to making employee appointments under "e," the executive director would be required to notify the Prosecutor Board of any prospective appointment. If the Board does not object to the appointment within seven working days after notification, the executive director may make the appointment. If

the Board objects to an appointment, the executive director may not make the appointment until approved by the Board. With regards to the preparation of fiscal estimates under "f", the executive director must consult with and obtain data from district attorneys, and must submit a draft copy of the fiscal estimate to the Board. If the Board does not object to the draft fiscal estimate within seven working days after received the estimate, 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 approved by the Board.

Provide that any bill that is introduced in either house of the Legislature that directly affects the State Prosecutors Office must have a notification to that effect in its jacket when the jacket is prepared. Provide that when a bill is introduced with such a notification, the Legislative Reference Bureau must submit a copy of the bill to the State Prosecutors Office. In addition, provide that the executive director of the State Prosecutors Office must prepare fiscal estimates 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.

Provide that, if a proposed administrative rule directly affects the State Prosecutors Office, the agency proposing the rule must, prior to submitting the proposed rule to Legislative Council staff, submit the proposed rule to the State Prosecutors Office. Require the State Prosecutors Office to prepare a report on the proposed rule before the rule is submitted to the Legislative Council staff. Provide that the State Prosecutors Office may request any information from other state agencies, local governments, individuals, or organizations that is reasonably necessary for the Office to prepare the report. Require the State Prosecutors Office to prepare the report within 30 days after the rule is submitted to the Office. Require the report to contain information about the effect of the proposed rule on the State Prosecutors Office. Provide that this reporting requirement does not apply to emergency rules. Provide that the agency preparing the proposed rule must include the State Prosecutors Office report in its notice to the Legislature when the proposed rule is in final draft form.

Modify current law related to the appointment of a special prosecutor to provide that, if a District Attorney requests the appointment of a special prosecutor or if a court appoints a special prosecutor on its own motion, the District Attorney must notify the State Prosecutors Office (as opposed to the Department of Administration) that the DA or the court, whichever is appropriate, is unable to obtain assistance from another prosecutorial unit or from an assistant attorney general. Further, provide that a judge or DA must submit an affidavit to the State Prosecutors Office (as opposed to DOA), attesting that one of the necessary conditions for appointment of a special prosecutor exists. Provide that appointment of the special prosecutor must be approved by the State Prosecutors Office, and not DOA. [Under current law, the DA or the court must submit information and receive approval for special prosecutor appointments from DOA since the current law State Prosecutors Office is housed within DOA.]

Provide that the administrator of the Division of Personnel Management within DOA must establish one or more classifications for assistant district attorneys in consultation with the State Prosecutors Office. [Under current law, such consultation is not required.]

Modify current law to provide that a District Attorney may appoint temporary counsel as may be authorized by the Prosecutor Board, as opposed to the Department of Administration.

Require DOA to provide the State Prosecutors Office with general access to a case management system currently used by the Department of Justice to manage case-related information and to share information among prosecutors.

Limit of Authority of Prosecutor Board and State Prosecutors Office

Provide that neither the Prosecutor Board nor the executive director of the State Prosecutors Office may make any decision regarding the handling of any case or interfere with any district attorney in carrying out professional duties. Provide that 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.

Note:

This motion establishes a Prosecutor Board comprised of various elected District Attorneys, nonelected prosecutors, and the Attorney General or his or her designee. The motion also transfers the existing State Prosecutors Office that is housed under DOA to the Prosecutor Board. The bill appropriates \$225,000 GPR and 2.0 GPR positions annually to the Prosecutor Board to support the functions of the State Prosecutors Office. Associated with the transfer of the existing State Prosecutors Office under DOA to the Prosecutor Board, the motion reduces DOA's funding by \$181,700 GPR and 1.0 GPR position annually.

The motion creates various duties for the new Prosecutor Board and State Prosecutors Office. Generally, these duties relate to submitting to the Joint Committee on Finance recommendations regarding prosecutorial staffing, preparing fiscal estimates and recommendations on bills and reviewing administrative rules that may affect prosecutors, preparing the District Attorney function's biennial budget request, and representing the District Attorney function in front of appropriate entities.

[Change to Base:

Prosecutor Board: \$450,000 GPR and 2.0 GPR positions

Department of Administration: -\$363,400 GPR and -1.0 GPR position]

[Change to Bill:

Prosecutor Board: \$450,000 GPR and 2.0 GPR positions

Department of Administration: -\$363,400 GPR and -1.0 GPR position]