

FIRST REGULAR SESSION
HOUSE COMMITTEE SUBSTITUTE FOR
SENATE COMMITTEE SUBSTITUTE FOR
SENATE BILL NO. 275
90TH GENERAL ASSEMBLY

Reported from the Committee on Criminal Law, March 25, 1999, with recommendation that the House Committee Substitute for Senate Committee Substitute for Senate Bill No. 275 Do Pass by Consent.

ANNE C. WALKER, Chief Clerk

L0644.07C

AN ACT

To repeal sections 56.065, 56.151 and 56.755, RSMo 1994, and sections 56.066, 56.067, 56.265, 56.363, 56.365 and 56.765, RSMo Supp. 1998, relating to prosecution services, and to enact in lieu thereof seven new sections relating to the same subject, with an emergency clause for certain sections.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Sections 56.065 and 56.151, RSMo 1994, and sections 56.066, 56.067, 56.265, 56.363 and 56.365, RSMo Supp. 1998, are repealed and five new sections enacted in lieu thereof, to be known as sections 56.066, 56.067, 56.151, 56.265 and 56.363, to read as follows:

[56.065. Notwithstanding the provisions of section 56.360, the prosecuting attorney of every first class county, except those in which the circuit court sits in more than one city and which were counties of the second class on January 1, 1988, and of counties of the second class having a population of more than one hundred thousand inhabitants, and of counties of the second class having a population of more than thirty thousand containing a part of a city having a population of more than four hundred thousand, and of counties of the second class having a population of more than eighty thousand at the 1970 decennial census, but less than ninety thousand, and of counties of the second class with a medium security correctional facility operated by the Missouri department of corrections and human resources, contiguous to a county of the first class having a population of more than one hundred and forty-five thousand at the 1980 decennial census, but less than one hundred and fifty thousand, and counties of the second class contiguous to the Mississippi River with a population in excess of fifty-five thousand but less than seventy thousand according to the 1980 decennial census, and of counties of the second class contiguous to the Missouri River and contiguous to a charter first class county with a population in excess of nine hundred thousand according to the 1980 decennial census, shall devote his full time to his office, and, except for the performance of official duties, shall not engage in the practice of law.]

56.066. [1. Notwithstanding the provisions of section 56.360, the prosecuting attorney of every first class county, except those in which the circuit court sits in more than one city and which were counties of the second class on January 1, 1988, and of counties of the second class having a population of more than one hundred thousand inhabitants, and of counties of the second class having a population of more than thirty thousand containing a part of a city having a population of more than

four hundred thousand, and of counties of the second class having a population of more than eighty thousand at the 1970 decennial census, but less than ninety thousand, shall devote his full time to his office, and, except for the performance of official duties, shall not engage in the practice of law.

2.] In any county which contains facilities which are operated by the department of corrections with a total average yearly inmate population in excess of seven hundred and fifty persons but less than one thousand five hundred persons, the prosecuting attorney shall receive ten thousand dollars per annum in addition to all other compensation provided by law. In any county which contains facilities which are operated by the department of corrections with a total average yearly inmate population in excess of one thousand five hundred persons but less than three thousand persons, the prosecuting attorney shall receive twelve thousand five hundred dollars per annum in addition to all other compensation provided by law. In any county which contains facilities which are operated by the department of corrections with a total average yearly inmate population in excess of three thousand persons but less than four thousand persons, the prosecuting attorney shall receive fifteen thousand dollars per annum in addition to all other compensation provided by law. In any county which contains facilities which are operated by the department of corrections with a total average inmate population in excess of four thousand persons, the prosecuting attorney shall receive twenty thousand dollars per annum in addition to all other compensation provided by law. The compensation provided in connection with the average inmate population shall not be considered for purposes of determining any increase in compensation from January 1, 1988. The amounts provided in this subsection shall be included in the computation of the maximum allowable compensation as that term is used in section [50.033] **50.333**, RSMo.

[3. In counties of the second class contiguous to the Mississippi River with a population in excess of fifty-five thousand but less than seventy thousand according to the 1980 decennial census, and of counties of the second class contiguous to the Missouri River and contiguous to a charter first class county with a population in excess of nine hundred thousand according to the 1980 decennial census, the prosecutor shall receive, in addition to all other amounts provided by law, additional compensation in the amount of seven thousand dollars per year.]

56.067. In counties of the first [class] **classification** not having a charter form of government, **and counties which have passed the proposition authorized by section 56.363**, the prosecuting attorney, **except in the performance of special prosecutions or otherwise representing the state or its political subdivisions**, shall devote full time to his office, and[, except in the performance of his official duties or special prosecutions,] shall not engage in the practice of law.

56.151. 1. The prosecuting attorney of all counties of the first class not having a charter form of government may appoint such assistant prosecuting attorneys, and may employ such investigators and stenographic and clerical help as he deems necessary for the proper discharge of the duties of his office, and may set their compensation within the limits of the allocations made for that purpose by the county commission. The compensation for the assistant prosecuting attorneys, investigators and stenographic and clerical help shall be paid in equal installments out of the county treasury in the same manner as other county employees are paid.

2. The assistant prosecuting attorneys shall [possess the same qualifications and shall] be subject to the same fines and penalties for neglect of duty or misdemeanor in office as the prosecuting attorney.

3. All assistant prosecuting attorneys, investigators, and stenographic and clerical help shall hold office at the pleasure of the prosecuting attorney.

56.265. 1. The county prosecuting attorney in any county, other than in a chartered county,

shall receive an annual salary computed using the following schedule, when applicable. The assessed valuation factor shall be the amount thereof as shown for the year immediately preceding the year for which the computation is done.

(1) For a full-time prosecutor the prosecutor shall receive compensation equal to the compensation of an associate circuit judge;

(2) For a part-time prosecutor:

Assessed Valuation	Amount
\$ 18,000,000 to 40,999,999	\$37,000
41,000,000 to 53,999,999	38,000
54,000,000 to 65,999,999	39,000
66,000,000 to 85,999,999	41,000
86,000,000 to 99,999,999	43,000
100,000,000 to 130,999,999	45,000
131,000,000 to 159,999,999	47,000
160,000,000 to 189,999,999	49,000
190,000,000 to 249,999,999	51,000
250,000,000 to 299,999,999	53,000
300,000,000 or more	55,000

2. Two thousand dollars of the salary authorized in this section shall be payable to the prosecuting attorney only if the prosecuting attorney has completed at least twenty hours of classroom instruction each calendar year relating to the operations of the prosecuting attorney's office when approved by a professional association of the county prosecuting attorneys of Missouri unless exempted from the training by the professional association. The professional association approving the program shall provide a certificate of completion to each prosecuting attorney who completes the training program and shall send a list of certified prosecuting attorneys to the treasurer of each county. Expenses incurred for attending the training session may be reimbursed to the county prosecuting attorney in the same manner as other expenses as may be appropriated for that purpose.

3. As used in this section, the term "prosecuting attorney" includes the circuit attorney of any city not within a county.

4. [In a county of the first classification, which was a county of the second classification on January 1, 1988, and in which the circuit court sits in two different cities, the prosecuting attorney shall be part time and the compensation shall be five percent less than the formula provided for prosecuting attorney compensation in subdivision (1) of subsection 1 of this section.

5. The provisions of section 56.067, to the contrary notwithstanding,] The prosecuting attorney of any county which becomes a county of the first classification [after December 31, 1996,] **during a four-year term of office or a county which passed the proposition authorized by section 56.363 shall not be required to devote full time [until the expiration of the prosecuting attorney's current term of office] to such office pursuant to section 56.067 until the beginning of the prosecuting attorney's next term of office or until the proposition otherwise becomes effective.**

[6.] 5. The provisions of [subsections 2 and 3 of] section 56.066 shall not apply to full-time prosecutors who are compensated pursuant to subdivision (1) of subsection 1 of this section.

56.363. 1. The county commission of any county may on its own motion and shall upon the petition of ten percent of the total number of people who voted in the previous general election in the county submit to the voters at a general or special election the proposition of making the county

prosecutor a full-time position. The commission shall cause notice of the election to be published in a newspaper published within the county, or if no newspaper is published within the county, in a newspaper published in an adjoining county, for three weeks consecutively, the last insertion of which shall be at least ten days and not more than thirty days before the day of the election, and by posting printed notices thereof at three of the most public places in each township in the county. The proposition shall be put before the voters substantially in the following form:

Shall the office of prosecuting attorney be made a full-time position in County?

☐ Yes

☐ No

If a majority of the voters voting on the proposition vote in favor of making the county prosecutor a full-time position, it shall become effective upon the date that the prosecutor who is elected at the next election subsequent to the passage of such proposal is sworn into office.

2. The provisions of subsection 1 of this section notwithstanding, in any county where the proposition of making the county prosecutor a full-time position was submitted to the voters at a general election in 1998 and where a majority of the voters voting on the proposition voted in favor of making the county prosecutor a full-time position, the proposition shall become effective on May 1, 1999. Any prosecuting attorney whose position becomes full time on May 1, 1999, under the provisions of this subsection shall have the additional duty of providing not less than three hours of continuing education to peace officers in the county served by the prosecuting attorney in each year of the term beginning January 1, 1999.

[56.365. In any county in which the voters have passed the proposition pursuant to section 56.363, the prosecuting attorney shall devote full time to the prosecuting attorney's office, and, except for the performance of official duties, shall not engage in the practice of law.]

Section B. Because immediate action is necessary to promote justice, section A of this act is deemed necessary for the immediate preservation of the public health, welfare, peace and safety, and is hereby declared to be an emergency act within the meaning of the constitution, and section A of this act shall be in full force and effect upon its passage and approval.

Section C. Section 56.755, RSMo 1994, and section 56.765, RSMo Supp. 1998, are repealed and two new sections enacted in lieu thereof, to be known as section 56.755 and 56.765, to read as follows:

56.755. There shall be an executive director of the office of prosecution services with a staff [of not more than three persons], within the limits of appropriations for the purpose, to carry out the purpose of this office. The prosecutors coordinators training council may establish an independent office site or provide an office for the executive director and staff in another appropriate office site. The executive director and staff will be employed solely for the purpose of providing training for the prosecuting attorneys and circuit attorney and their assistants, and for the other legitimate services necessary to provide the prosecutorial services set forth in section 56.750.

56.765. 1. A surcharge of one dollar shall be assessed as costs in each court proceeding filed in any court in the state in all criminal cases including violations of any county ordinance or any violation of a criminal or traffic law of the state, including an infraction; except that no such surcharge shall be collected in any proceeding in any court when the proceeding or the defendant has been dismissed by the court or when costs are to be paid by the state, county or municipality.

2. One-half of all moneys collected under the provisions of subsection 1 of this section shall be payable to the state [treasurer] **of Missouri and remitted to the director of revenue** who shall deposit the amount **collected pursuant to this section** to the credit of the "Missouri Office of

Prosecution Services Fund" which is hereby created **in the state treasury**. The moneys credited to the Missouri office of prosecution services fund from each county shall be used only for the purposes set forth in sections 56.750, 56.755, and 56.760, and no [other] moneys from [either] the state's general revenue [or any other source except the sources described in section 56.760] shall be used to fund [the Missouri office of prosecution services.] **staff positions for the office. The state treasurer shall be the custodian of the fund, and shall make disbursements, as allowed by lawful appropriations. All earnings resulting from the investment of money in the fund shall be credited to the Missouri office of prosecution services fund.** The Missouri office of prosecution services may collect a registration fee to pay for actual expenses included in sponsoring training conferences. The revenues and expenditures of the Missouri office of prosecution services shall be subject to an annual audit to be performed by the Missouri state auditor. The Missouri office of prosecution services shall also be subject to any other audit authorized and directed by the state auditor.

3. One-half of all moneys collected under the provisions of subsection 1 of this section shall be payable to the county treasurer of each county from which such funds were generated. The county treasurer shall deposit all of such funds into the county treasury in a separate fund to be used solely for the purpose of additional training for circuit and prosecuting attorneys and their staffs. If the funds collected and deposited by the county are not totally expended annually for the purposes set forth in this subsection, then the unexpended moneys shall remain in said fund and the balance shall be kept in said fund to accumulate from year to year, or at the request of the circuit or prosecuting attorney, with the approval of the county commission or the appropriate governing body of the county or the city of St. Louis, and may be used to pay for expert witness fees, travel expenses incurred by victim/witnesses in case preparation and trial, for expenses incurred for changes of venue, for expenses incurred for special prosecutors, and for other lawful expenses incurred by the circuit or prosecuting attorney in operation of that office.

4. There is hereby established in the state treasury the "Missouri Office of Prosecution Services Revolving Fund". Any moneys received by or on behalf of the Missouri office of prosecution services from registration fees, federal and state grants or any other source established in section 56.760 in connection with the purposes set forth in sections 56.750, 56.755, and 56.760 shall be deposited into the fund.

5. The moneys in the Missouri office of [prosecution] **prosecution** services revolving fund shall be kept separate and apart from all other moneys in the state treasury. The state treasurer shall administer the fund and shall disburse moneys from the fund to the Missouri office of prosecution services pursuant to appropriations for the purposes set forth in sections 56.750, 56.755 and 56.760.

6. Any [unexpected balance] **unexpended balances** remaining in the **Missouri office of prosecution services fund and the Missouri office of prosecution services revolving** fund at each biennium shall be exempt from the provisions of section 33.080, RSMo, relating to the transfer of unexpended balances to general revenue.