



Sen. Kwame Raoul

Adopted in Senate on Mar 28, 2017

10000SB1843sam001

LRB100 09946 AWJ 23644 a

1 AMENDMENT TO SENATE BILL 1843

2 AMENDMENT NO. _____. Amend Senate Bill 1843 by replacing
3 everything after the enacting clause with the following:

4 "Section 5. The Counties Code is amended by changing
5 Section 3-9008 as follows:

6 (55 ILCS 5/3-9008) (from Ch. 34, par. 3-9008)

7 Sec. 3-9008. Appointment of attorney to perform duties.

8 (a) (Blank).

9 (a-5) The court on its own motion, or an interested person
10 in a cause or proceeding, civil or criminal, may file a
11 petition alleging that the State's Attorney is sick, absent, or
12 unable to fulfill his or her duties. The court shall consider
13 the petition, any documents filed in response, and if
14 necessary, grant a hearing to determine whether the State's
15 Attorney is sick, absent, or otherwise unable to fulfill his or
16 her duties. If the court finds that the State's Attorney is

1 sick, absent, or otherwise unable to fulfill his or her duties,
2 the court may appoint some competent attorney to prosecute or
3 defend the cause or proceeding.

4 (a-10) The court on its own motion, or an interested person
5 in a cause or proceeding, civil or criminal, may file a
6 petition alleging that the State's Attorney has an actual
7 conflict of interest in the cause or proceeding. The court
8 shall consider the petition and~~7~~ any documents filed in
9 response~~7~~ and ~~if necessary~~~~7~~ grant a hearing to determine
10 whether the State's Attorney has an actual conflict of interest
11 in the cause or proceeding. If the court finds that the
12 petitioner has proven by sufficient facts and evidence that the
13 State's Attorney has an actual conflict of interest in a
14 specific case, the court may appoint some competent attorney to
15 prosecute or defend the cause or proceeding.

16 (a-12) A court considering the petition of an interested
17 person to appoint a special prosecutor as prescribed under this
18 Section shall presume, without demonstration from the
19 petitioner, a rebuttable prosecutorial conflict of interest
20 for cases in which the defendant or defendants are members of a
21 law enforcement agency, unless the prosecutor is either (i)
22 exclusively assigned to cases of public or official misconduct,
23 or (ii) a prosecutor whose assignments do not regularly involve
24 communication, cooperation, consultation, or collaboration
25 with the law enforcement agency or department of which that
26 defendant is a member.

1 (a-15) Notwithstanding subsections (a-5) and (a-10) of
2 this Section, the State's Attorney may file a petition to
3 recuse himself or herself from a cause or proceeding for any
4 other reason he or she deems appropriate and the court shall
5 appoint a special prosecutor as provided in this Section.

6 (a-20) Prior to appointing a private attorney under this
7 Section, the court shall contact public agencies, including,
8 but not limited to, the Office of Attorney General, Office of
9 the State's Attorneys Appellate Prosecutor, or local State's
10 Attorney's Offices throughout the State, to determine a public
11 prosecutor's availability to serve as a special prosecutor at
12 no cost to the county and shall appoint a public agency if they
13 are able and willing to accept the appointment. An attorney so
14 appointed shall have the same power and authority in relation
15 to the cause or proceeding as the State's Attorney would have
16 if present and attending to the cause or proceedings.

17 (b) In case of a vacancy of more than one year occurring in
18 any county in the office of State's attorney, by death,
19 resignation or otherwise, and it becomes necessary for the
20 transaction of the public business, that some competent
21 attorney act as State's attorney in and for such county during
22 the period between the time of the occurrence of such vacancy
23 and the election and qualification of a State's attorney, as
24 provided by law, the vacancy shall be filled upon the written
25 request of a majority of the circuit judges of the circuit in
26 which is located the county where such vacancy exists, by

1 appointment as provided in The Election Code of some competent
2 attorney to perform and discharge all the duties of a State's
3 attorney in the said county, such appointment and all authority
4 thereunder to cease upon the election and qualification of a
5 State's attorney, as provided by law. Any attorney appointed
6 for any reason under this Section shall possess all the powers
7 and discharge all the duties of a regularly elected State's
8 attorney under the laws of the State to the extent necessary to
9 fulfill the purpose of such appointment, and shall be paid by
10 the county he serves not to exceed in any one period of 12
11 months, for the reasonable amount of time actually expended in
12 carrying out the purpose of such appointment, the same
13 compensation as provided by law for the State's attorney of the
14 county, apportioned, in the case of lesser amounts of
15 compensation, as to the time of service reasonably and actually
16 expended. The county shall participate in all agreements on the
17 rate of compensation of a special prosecutor.

18 (c) An order granting authority to a special prosecutor
19 must be construed strictly and narrowly by the court. The power
20 and authority of a special prosecutor shall not be expanded
21 without prior notice to the county. In the case of the proposed
22 expansion of a special prosecutor's power and authority, a
23 county may provide the court with information on the financial
24 impact of an expansion on the county. Prior to the signing of
25 an order requiring a county to pay for attorney's fees or
26 litigation expenses, the county shall be provided with a

1 detailed copy of the invoice describing the fees, and the
2 invoice shall include all activities performed in relation to
3 the case and the amount of time spent on each activity.

4 (Source: P.A. 99-352, eff. 1-1-16.)

5 Section 99. Effective date. This Act takes effect January
6 1, 2018."