



Rep. Elgie R. Sims, Jr.

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10000HB3355ham002

LRB100 08485 AWJ 25576 a

1 AMENDMENT TO HOUSE BILL 3355

2 AMENDMENT NO. _____. Amend House Bill 3355, AS AMENDED, by
3 inserting immediately below the enacting clause the following:

4 "Section 3. 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, any documents filed in response,
9 and if necessary, grant a hearing to determine whether the
10 State's Attorney has an actual conflict of interest in the
11 cause or proceeding. If the court finds that the petitioner has
12 proven by sufficient facts and evidence that the State's
13 Attorney has an actual conflict of interest in a specific case,
14 the court may appoint some competent attorney to prosecute or
15 defend the cause or proceeding.

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

21 (a-17) In a county exceeding a population of 3,000,000, if
22 the court determines that the appointment of a special
23 prosecutor is required under subsection (a-10) or (a-15), the
24 court shall request the Office of the State's Attorneys
25 Appellate Prosecutor to serve as the special prosecutor where
26 the cause or proceeding is an officer-involved death, as that

1 term is defined in Section 1-5 of the Police and Community
2 Relations Improvement Act. If the Office of the State's
3 Attorneys Appellate Prosecutor accepts the request, the
4 State's Attorneys Appellate Prosecutor shall be appointed by
5 the court and shall have the same power and authority in
6 relation to the cause or proceeding as the State's Attorney
7 would have had if present and attending to the cause or
8 proceedings.

9 (a-20) Except as provided in subsection (a-17), prior ~~Prior~~
10 to appointing a private attorney under this Section, the court
11 shall contact public agencies, including, but not limited to,
12 the Office of Attorney General, Office of the State's Attorneys
13 Appellate Prosecutor, or local State's Attorney's Offices
14 throughout the State, to determine a public prosecutor's
15 availability to serve as a special prosecutor at no cost to the
16 county and shall appoint a public agency if they are able and
17 willing to accept the appointment. An attorney so appointed
18 shall have the same power and authority in relation to the
19 cause or proceeding as the State's Attorney would have if
20 present and attending to the cause or proceedings.

21 (b) In case of a vacancy of more than one year occurring in
22 any county in the office of State's attorney, by death,
23 resignation or otherwise, and it becomes necessary for the
24 transaction of the public business, that some competent
25 attorney act as State's attorney in and for such county during
26 the period between the time of the occurrence of such vacancy

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

22 (c) An order granting authority to a special prosecutor
23 must be construed strictly and narrowly by the court. The power
24 and authority of a special prosecutor shall not be expanded
25 without prior notice to the county. In the case of the proposed
26 expansion of a special prosecutor's power and authority, a

1 county may provide the court with information on the financial
2 impact of an expansion on the county. Prior to the signing of
3 an order requiring a county to pay for attorney's fees or
4 litigation expenses, the county shall be provided with a
5 detailed copy of the invoice describing the fees, and the
6 invoice shall include all activities performed in relation to
7 the case and the amount of time spent on each activity.

8 (Source: P.A. 99-352, eff. 1-1-16.)"; and

9 by inserting immediately below Section 40 the following:

10 "Section 43. The State's Attorneys Appellate Prosecutor's
11 Act is amended by changing Section 4.01 as follows:

12 (725 ILCS 210/4.01) (from Ch. 14, par. 204.01)

13 Sec. 4.01. (a) The Office and all attorneys employed
14 thereby may represent the People of the State of Illinois on
15 appeal in all cases which emanate from a county containing less
16 than 3,000,000 inhabitants, when requested to do so and at the
17 direction of the State's Attorney, otherwise responsible for
18 prosecuting the appeal, and may, with the advice and consent of
19 the State's Attorney prepare, file and argue such appellate
20 briefs in the Illinois Appellate Court and, when requested and
21 authorized to do so by the Attorney General, in the Illinois
22 Supreme Court.

23 (b) Notwithstanding the population restriction contained

1 in subsection (a), the ~~The~~ Office may also assist County
2 State's Attorneys in the discharge of their duties under the
3 Illinois Controlled Substances Act, the Cannabis Control Act,
4 the Methamphetamine Control and Community Protection Act, the
5 Drug Asset Forfeiture Procedure Act, the Narcotics Profit
6 Forfeiture Act, and the Illinois Public Labor Relations Act,
7 including negotiations conducted on behalf of a county or
8 pursuant to an intergovernmental agreement as well as in the
9 trial and appeal of said cases and of tax objections, and the
10 counties which use services relating to labor relations shall
11 reimburse the Office on pro-rated shares as determined by the
12 board based upon the population and number of labor relations
13 cases of the participating counties. In addition, the Office
14 and all attorneys employed by the Office may also assist
15 State's Attorneys in the discharge of their duties in the
16 prosecution, trial, or hearing on post-conviction of other
17 cases when requested to do so by, and at the direction of, the
18 State's Attorney otherwise responsible for the case. In
19 addition, the Office and all attorneys employed by the Office
20 may act as Special Prosecutor if duly appointed to do so by a
21 court having jurisdiction. Except when the appointment of a
22 Special Prosecutor is made pursuant to subsection (a-17) of
23 Section 3-9008 of the Counties Code, to ~~To~~ be effective, the
24 order appointing the Office or its attorneys as Special
25 Prosecutor must (i) identify the case and its subject matter
26 and (ii) state that the Special Prosecutor serves at the

1 pleasure of the Attorney General, who may substitute himself or
2 herself as the Special Prosecutor when, in his or her judgment,
3 the interest of the people of the State so requires. Within 5
4 days after receiving a copy of an order from the court
5 appointing the Office or any of its attorneys as a Special
6 Prosecutor, the Office must forward a copy of the order to the
7 Springfield office of the Attorney General.

8 (Source: P.A. 97-1012, eff. 8-17-12.)".