

# HB5858



## 103RD GENERAL ASSEMBLY

State of Illinois

2023 and 2024

HB5858

Introduced 5/25/2024, by Rep. Dan Ugaste

### SYNOPSIS AS INTRODUCED:

55 ILCS 5/3-9008

from Ch. 34, par. 3-9008

55 ILCS 5/3-9014 new

Amends the Counties Code. Establishes a procedure for an election to recall a State's Attorney in counties with a population over 2,000,000 and to elect the recalled State's Attorney's successor. Effective immediately.

LRB103 40925 AWJ 73938 b

A BILL FOR

1 AN ACT concerning local government.

2 **Be it enacted by the People of the State of Illinois,**  
3 **represented in the General Assembly:**

4 Section 5. The Counties Code is amended by changing  
5 Section 3-9008 and by adding Section 3-9014 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,  
12 or unable to fulfill the State's Attorney's duties. The court  
13 shall consider the petition, any documents filed in response,  
14 and if necessary, grant a hearing to determine whether the  
15 State's Attorney is sick, absent, or otherwise unable to  
16 fulfill the State's Attorney's duties. If the court finds that  
17 the State's Attorney is sick, absent, or otherwise unable to  
18 fulfill the State's Attorney's duties, the court may appoint  
19 some competent attorney to prosecute or defend the cause or  
20 proceeding.

21 (a-10) The court on its own motion, or an interested  
22 person in a cause, proceeding, or other matter arising under  
23 the State's Attorney's duties, civil or criminal, may file a

1 petition alleging that the State's Attorney has an actual  
2 conflict of interest in the cause, proceeding, or other  
3 matter. The court shall consider the petition, any documents  
4 filed in response, and if necessary, grant a hearing to  
5 determine whether the State's Attorney has an actual conflict  
6 of interest in the cause, proceeding, or other matter. If the  
7 court finds that the petitioner has proven by sufficient facts  
8 and evidence that the State's Attorney has an actual conflict  
9 of interest in a specific case, the court may appoint some  
10 competent attorney to prosecute or defend the cause,  
11 proceeding, or other matter.

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

18 (a-20) Prior to appointing a private attorney under this  
19 Section, the court shall contact public agencies, including,  
20 but not limited to, the Office of Attorney General, Office of  
21 the State's Attorneys Appellate Prosecutor, or local State's  
22 Attorney's Offices throughout the State, to determine a public  
23 prosecutor's availability to serve as a special prosecutor at  
24 no cost to the county and shall appoint a public agency if they  
25 are able and willing to accept the appointment. An attorney so  
26 appointed shall have the same power and authority in relation

1 to the cause or proceeding as the State's Attorney would have  
2 if present and attending to the cause or proceedings.

3 (b) In case of (i) a vacancy of more than one year  
4 occurring in any county in the office of State's attorney, by  
5 death, resignation or otherwise, and it becomes necessary for  
6 the transaction of the public business, that some competent  
7 attorney act as State's attorney in and for such county during  
8 the period between the time of the occurrence of such vacancy  
9 and the election and qualification of a State's attorney, as  
10 provided by law, or (ii) a vacancy that has occurred as  
11 provided in paragraph (i) of subsection (f) of Section 3-9014,  
12 the vacancy shall be filled upon the written request of a  
13 majority of the circuit judges of the circuit in which is  
14 located the county where such vacancy exists, by appointment  
15 as provided in the Election Code of some competent attorney to  
16 perform and discharge all the duties of a State's attorney in  
17 the said county, such appointment and all authority thereunder  
18 to cease upon the election and qualification of a State's  
19 attorney, as provided by law. Any attorney appointed for any  
20 reason under this Section shall possess all the powers and  
21 discharge all the duties of a regularly elected State's  
22 attorney under the laws of the State to the extent necessary to  
23 fulfill the purpose of such appointment, and shall be paid by  
24 the county the State's Attorney serves not to exceed in any one  
25 period of 12 months, for the reasonable amount of time  
26 actually expended in carrying out the purpose of such

1 appointment, the same compensation as provided by law for the  
2 State's attorney of the county, apportioned, in the case of  
3 lesser amounts of compensation, as to the time of service  
4 reasonably and actually expended. The county shall participate  
5 in all agreements on the rate of compensation of a special  
6 prosecutor.

7 (c) An order granting authority to a special prosecutor  
8 must be construed strictly and narrowly by the court. The  
9 power and authority of a special prosecutor shall not be  
10 expanded without prior notice to the county. In the case of the  
11 proposed expansion of a special prosecutor's power and  
12 authority, a county may provide the court with information on  
13 the financial impact of an expansion on the county. Prior to  
14 the signing of an order requiring a county to pay for  
15 attorney's fees or litigation expenses, the county shall be  
16 provided with a detailed copy of the invoice describing the  
17 fees, and the invoice shall include all activities performed  
18 in relation to the case and the amount of time spent on each  
19 activity.

20 (Source: P.A. 102-56, eff. 7-9-21; 102-657, eff. 1-1-22;  
21 102-813, eff. 5-13-22.)

22 (55 ILCS 5/3-9014 new)

23 Sec. 3-9014. State's Attorney Recall.

24 (a) As used in this Section:

25 "Chief proponent" means the person whose name and

1 signature is on the affidavit of intent initiating the recall  
2 process.

3 "Proponent county" means the county where the chief  
4 proponent is a resident.

5 "Proponent county clerk" means the county clerk of the  
6 proponent county.

7 (b) This Section applies to counties with a population  
8 over 2,000,000.

9 (c) The recall of an elected State's Attorney may be  
10 initiated by filing, in the proponent county, an affidavit of  
11 intent to circulate a petition to recall the State's Attorney  
12 of that county and filing a certified copy of the affidavit in  
13 all other counties in which the State's Attorney is elected to  
14 serve. The affidavit may be filed no sooner than 6 months after  
15 the beginning of the State's Attorney's term of office. The  
16 affidavit shall contain (i) the name and title of the State's  
17 Attorney to be recalled, (ii) a statement, not exceeding 200  
18 words in length, of the reasons for the proposed recall, and  
19 (iii) the printed name, signature, and residential address of  
20 the chief proponent, who shall be a registered voter and  
21 qualified to vote for the office of State's Attorney in the  
22 proponent county. The chief proponent shall publish a copy of  
23 the affidavit of intent in an English language newspaper of  
24 general circulation in each county in which the State's  
25 Attorney serves. If no newspaper is in general circulation in  
26 a county, the chief proponent shall post a copy of the

1 affidavit of intent in at least 3 public places in that county.

2 Not more than 150 days after the affidavit of intent has  
3 been filed, a petition to recall the State's Attorney shall be  
4 filed in the proponent county and a certified copy of the  
5 petition shall be filed in all other counties in which the  
6 State's Attorney is elected to serve. The petition shall be  
7 signed by a number of electors equal in number to at least 5%  
8 of the total votes cast for the office of State's Attorney in  
9 the preceding election in all counties in which the State's  
10 Attorney is elected to serve. All electors signing a recall  
11 petition must be registered voters who, based on their  
12 residence, are qualified to vote for the office of State's  
13 Attorney in the county or counties in which the State's  
14 Attorney serves.

15 The following must be included in a recall petition filed  
16 under this subsection:

17 (1) The name and title of the State's Attorney to be  
18 recalled under the petition.

19 (2) The statement of the reasons for the proposed  
20 recall contained in the affidavit of intent.

21 (3) The printed name, signature, and residential  
22 address of each elector signing the recall petition.

23 No later than 7 days after the filing of a recall petition,  
24 the State's Attorney may file an answer, including any  
25 statement of defense, against the recall attempt. The answer  
26 may not exceed 200 words in length. The answer shall be filed

1 in the proponent county and a certified copy of the answer  
2 shall be filed in all other counties in which the State's  
3 Attorney is elected to serve.

4 (d) The county clerk shall certify the petition to the  
5 proper election authority or authorities not more than 7 days  
6 after the date the petition was filed, and the question "Shall  
7 (name of State's Attorney) be recalled from the office of  
8 State's Attorney?" must be submitted to the electors of each  
9 county in which the State's Attorney is elected to serve at a  
10 special recall election called by the proponent county clerk  
11 to occur not more than 60 days after certification of the  
12 petition. A recall petition certified by the county clerk may  
13 not be withdrawn.

14 (e) If a recall petition has been filed with the proponent  
15 county clerk, a person eligible to serve as State's Attorney  
16 may propose his or her candidacy for the special successor  
17 primary election by a successor candidate petition signed by  
18 at least 5% of the total votes cast for the office of State's  
19 Attorney in the preceding election in the proponent county,  
20 signed not more than 50 days after a recall petition has been  
21 filed with the proponent county clerk. Each elector signing  
22 the special successor candidate petition must be a registered  
23 voter in the proponent county or one of the counties in which  
24 the State's Attorney is elected to serve. The successor  
25 candidate petition shall be filed in the proponent county and  
26 a certified copy of the petition shall be filed in all other



1 counties in which the State's Attorney is elected to serve. A  
2 successor candidate petition and the procedures concerning  
3 successor candidate petitions shall conform in all other  
4 respects to the provisions of the election and ballot laws  
5 then in force in the proponent county concerning the  
6 nomination of independent candidates for public office by  
7 petition. The proponent county clerk shall certify the  
8 petition not more than 60 days after the date the petition to  
9 recall the State's Attorney was filed.

10 (f) The State's Attorney who is the subject of the  
11 petition is immediately removed from office upon certification  
12 of the special recall election results if a majority of the  
13 electors voting on the question vote to recall the State's  
14 Attorney. If the State's Attorney is removed, then the  
15 following shall occur: (i) if no successor candidate petition  
16 has been certified by the proponent county clerk within the  
17 times required by subsection (e), then a vacancy in the office  
18 of State's Attorney is created and a replacement State's  
19 Attorney shall be appointed as provided in subsection (b) of  
20 Section 3-9008; or (ii) if at least one successor candidate  
21 petition has been certified by the proponent county clerk  
22 within the times required by subsection (e), then a special  
23 successor primary election or special runoff election shall be  
24 held pursuant to subsection (g) to determine the successor  
25 State's Attorney.

26 (g) If the State's Attorney is removed by the special

1 recall election, then the names of candidates certified under  
2 subsection (e) for State's Attorney must be submitted to the  
3 electors of each county previously served by the removed  
4 State's Attorney at a special successor primary election  
5 called by the proponent county clerk to be held no later than  
6 60 days after the special recall election. The candidate  
7 receiving the highest number of votes at the special successor  
8 primary election shall be declared elected, and he or she  
9 shall serve the remaining portion of the recalled State's  
10 Attorney's term.

11 If no candidate receives a majority of the total votes in  
12 the special successor primary election, then a special runoff  
13 election shall be called by the proponent county clerk and  
14 held no later than 60 days after the special successor primary  
15 election, and only the names of the candidates receiving the  
16 highest and second-highest number of votes at the special  
17 successor primary election shall appear on the special runoff  
18 election ballot. If more than one candidate received the  
19 highest or second-highest number of votes at the special  
20 successor primary election, the names of all candidates  
21 receiving the highest and second-highest number of votes shall  
22 appear on the ballot at the special runoff election. The  
23 candidate receiving the highest number of votes at the special  
24 runoff election shall be declared elected, and he or she shall  
25 serve the remaining portion of the recalled State's Attorney's  
26 term.

1       If the State's Attorney is removed by the special recall  
2 election and the special successor primary election or the  
3 special runoff election has not occurred before the date of  
4 the general election at which the State's Attorney is to be  
5 elected, no special successor primary election or special  
6 runoff shall occur and the recalled State's Attorney shall be  
7 replaced by the person elected at the general election.

8       (h) A recall may not be initiated against a State's  
9 Attorney under this Section:

10           (1) during the 6 months after a recall election failed  
11 to remove the State's Attorney;

12           (2) if the State's Attorney has less than 6 months  
13 remaining before his or her term ends; or

14           (3) if an affidavit of intent or recall petition has  
15 already been filed and is pending to recall the State's  
16 Attorney.

17       (i) An affidavit of intent is void if no recall petition  
18 has been filed within 150 days after the affidavit of intent is  
19 filed. If a recall election has not occurred before the date of  
20 the next general election at which the State's Attorney is  
21 elected, then the recall petition is void.

22       (j) Except as provided in this Section, the form of the  
23 affidavit and petitions and the procedure for circulation of  
24 the petitions shall be as otherwise provided by law.

25       (k) If this Section conflicts with any other provision of  
26 law, this Section controls notwithstanding the other provision

1 of law.

2 Section 99. Effective date. This Act takes effect upon  
3 becoming law.