



## 93RD GENERAL ASSEMBLY

### State of Illinois

#### 2003 and 2004

Introduced 02/04/04, by Mike Boland

#### SYNOPSIS AS INTRODUCED:

740 ILCS 175/2.5 new

740 ILCS 175/6

from Ch. 127, par. 4106

Amends the Whistleblower Reward and Protection Act. Provides that, for purposes of the Act, the State's Attorney of a county shall have the power to carry out the same functions as the Attorney General under the Act for actions brought on behalf of a school district, public community college district, municipality, municipal corporation, unit of local government, or any combination of these entities under an intergovernmental agreement that includes provisions for a governing body of the agency created by agreement, if the entity is located entirely in that county. Provides that in the case of an action by a private person brought on behalf of an entity, the State's Attorney shall have primary jurisdiction. Requires the State's Attorney to refer the matter to the Attorney General within 60 days of receiving the complaint if the State's Attorney declines involvement in the action. Provides that for any matter that is referred to the Attorney General by the State's Attorney, the Attorney General shall act in the same manner as if the action was brought on behalf of the State of Illinois or an agency of the State. Provides that the Attorney General may delegate authority to use subpoenas to the Department of State Police or, if the county State's Attorney is acting instead of the Attorney General, then to the county sheriff.

LRB093 20168 LCB 46676 b

1 AN ACT concerning whistleblowers.

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

4 Section 5. The Whistleblower Reward and Protection Act is  
5 amended by changing Section 6 and by adding Section 2.5 as  
6 follows:

7 (740 ILCS 175/2.5 new)

8 Sec. 2.5. State's Attorneys powers. For purposes of this  
9 Act, the State's Attorney of a county shall have the power to  
10 carry out the same functions as the Attorney General under this  
11 Act for actions brought on behalf of a school district, public  
12 community college district, municipality, municipal  
13 corporation, unit of local government, or any combination of  
14 these entities under an intergovernmental agreement that  
15 includes provisions for a governing body of the agency created  
16 by agreement, if the entity is located entirely in that county.  
17 In the case of an action by a private person brought on behalf  
18 of such an entity, pursuant to subsection (b) of Section 4, the  
19 State's Attorney shall have primary jurisdiction. If the  
20 State's Attorney declines involvement in the action prior to  
21 conducting a thorough review of the complaint and written  
22 disclosure served on the State, pursuant to subdivision (b)(2)  
23 of Section 4, the State's Attorney shall refer the matter to  
24 the Attorney General within 60 days of receiving the complaint.  
25 Otherwise, the State's Attorney shall follow the procedure  
26 described in subdivision (b)(4) of Section 4.

27 For any matter that is referred to the Attorney General by  
28 the State's Attorney, the Attorney General shall act in the  
29 same manner as if the action was brought on behalf of the State  
30 of Illinois or an agency of the State.

31 (740 ILCS 175/6) (from Ch. 127, par. 4106)

1           Sec. 6. Subpoenas.

2           (a) In general.

3           (1) Issuance and service. Whenever the Attorney  
4           General has reason to believe that any person may be in  
5           possession, custody, or control of any documentary  
6           material or information relevant to an investigation, the  
7           Attorney General may, before commencing a civil proceeding  
8           under this Act, issue in writing and cause to be served  
9           upon such person, a subpoena requiring such person:

10           (A) to produce such documentary material for  
11           inspection and copying,

12           (B) to answer, in writing, written interrogatories  
13           with respect to such documentary material or  
14           information,

15           (C) to give oral testimony concerning such  
16           documentary material or information, or

17           (D) to furnish any combination of such material,  
18           answers, or testimony.

19           The Attorney General may delegate the authority to issue  
20           subpoenas under this subsection (a) to the Department of  
21           State Police or, if the county State's Attorney is acting  
22           instead of the Attorney General, then to the county sheriff  
23           subject to conditions as the Attorney General deems  
24           appropriate. Whenever a subpoena is an express demand for  
25           any product of discovery, the Attorney General or his or  
26           her delegate shall cause to be served, in any manner  
27           authorized by this Section, a copy of such demand upon the  
28           person from whom the discovery was obtained and shall  
29           notify the person to whom such demand is issued of the date  
30           on which such copy was served.

31           (2) Contents and deadlines. Each subpoena issued  
32           under paragraph (1):

33           (A) Shall state the nature of the conduct  
34           constituting an alleged violation that is under  
35           investigation and the applicable provision of law  
36           alleged to be violated.

1 (B) Shall identify the individual causing the  
2 subpoena to be served and to whom communications  
3 regarding the subpoena should be directed.

4 (C) Shall state the date, place, and time at which  
5 the person is required to appear, produce written  
6 answers to interrogatories, produce documentary  
7 material or give oral testimony. The date shall not be  
8 less than 10 days from the date of service of the  
9 subpoena. Compliance with the subpoena shall be at the  
10 Office of the Attorney General in either the  
11 Springfield or Chicago location or at other location by  
12 agreement.

13 (D) If the subpoena is for documentary material or  
14 interrogatories, shall describe the documents or  
15 information requested with specificity.

16 (E) Shall notify the person of the right to be  
17 assisted by counsel.

18 (F) Shall advise that the person has 20 days from  
19 the date of service or up until the return date  
20 specified in the demand, whichever date is earlier, to  
21 move, modify, or set aside the subpoena pursuant to  
22 subparagraph (j) (2) (A) of this Section.

23 (b) Protected material or information.

24 (1) In general. A subpoena issued under subsection (a)  
25 may not require the production of any documentary material,  
26 the submission of any answers to written interrogatories,  
27 or the giving of any oral testimony if such material,  
28 answers, or testimony would be protected from disclosure  
29 under:

30 (A) the standards applicable to subpoenas or  
31 subpoenas duces tecum issued by a court of this State  
32 to aid in a grand jury investigation; or

33 (B) the standards applicable to discovery requests  
34 under the Code of Civil Procedure, to the extent that  
35 the application of such standards to any such subpoena  
36 is appropriate and consistent with the provisions and

1 purposes of this Section.

2 (2) Effect on other orders, rules, and laws. Any such  
3 subpoena which is an express demand for any product of  
4 discovery supersedes any inconsistent order, rule, or  
5 provision of law (other than this Section) preventing or  
6 restraining disclosure of such product of discovery to any  
7 person. Disclosure of any product of discovery pursuant to  
8 any such subpoena does not constitute a waiver of any right  
9 or privilege which the person making such disclosure may be  
10 entitled to invoke to resist discovery of trial preparation  
11 materials.

12 (c) Service in general. Any subpoena issued under  
13 subsection (a) may be served by any person so authorized by the  
14 Attorney General or by any person authorized to serve process  
15 on individuals within Illinois, through any method prescribed  
16 in the Code of Civil Procedure or as otherwise set forth in  
17 this Act.

18 (d) Service upon legal entities and natural persons.

19 (1) Legal entities. Service of any subpoena issued  
20 under subsection (a) or of any petition filed under  
21 subsection (j) may be made upon a partnership, corporation,  
22 association, or other legal entity by:

23 (A) delivering an executed copy of such subpoena or  
24 petition to any partner, executive officer, managing  
25 agent, general agent, or registered agent of the  
26 partnership, corporation, association or entity;

27 (B) delivering an executed copy of such subpoena or  
28 petition to the principal office or place of business  
29 of the partnership, corporation, association, or  
30 entity; or

31 (C) depositing an executed copy of such subpoena or  
32 petition in the United States mails by registered or  
33 certified mail, with a return receipt requested,  
34 addressed to such partnership, corporation,  
35 association, or entity as its principal office or place  
36 of business.

1           (2) Natural person. Service of any such subpoena or  
2 petition may be made upon any natural person by:

3           (A) delivering an executed copy of such subpoena or  
4 petition to the person; or

5           (B) depositing an executed copy of such subpoena or  
6 petition in the United States mails by registered or  
7 certified mail, with a return receipt requested,  
8 addressed to the person at the person's residence or  
9 principal office or place of business.

10          (e) Proof of service. A verified return by the individual  
11 serving any subpoena issued under subsection (a) or any  
12 petition filed under subsection (j) setting forth the manner of  
13 such service shall be proof of such service. In the case of  
14 service by registered or certified mail, such return shall be  
15 accompanied by the return post office receipt of delivery of  
16 such subpoena.

17          (f) Documentary material.

18           (1) Sworn certificates. The production of documentary  
19 material in response to a subpoena served under this  
20 Section shall be made under a sworn certificate, in such  
21 form as the subpoena designates, by:

22           (A) in the case of a natural person, the person to  
23 whom the subpoena is directed, or

24           (B) in the case of a person other than a natural  
25 person, a person having knowledge of the facts and  
26 circumstances relating to such production and  
27 authorized to act on behalf of such person.

28          The certificate shall state that all of the documentary  
29 material required by the demand and in the possession,  
30 custody, or control of the person to whom the subpoena is  
31 directed has been produced and made available to the  
32 Attorney General.

33           (2) Production of materials. Any person upon whom any  
34 subpoena for the production of documentary material has  
35 been served under this Section shall make such material  
36 available for inspection and copying to the Attorney

1 General at the place designated in the subpoena, or at such  
2 other place as the Attorney General and the person  
3 thereafter may agree and prescribe in writing, or as the  
4 court may direct under subsection (j)(1). Such material  
5 shall be made so available on the return date specified in  
6 such subpoena, or on such later date as the Attorney  
7 General may prescribe in writing. Such person may, upon  
8 written agreement between the person and the Attorney  
9 General, substitute copies for originals of all or any part  
10 of such material.

11 (g) Interrogatories. Each interrogatory in a subpoena  
12 served under this Section shall be answered separately and  
13 fully in writing under oath and shall be submitted under a  
14 sworn certificate, in such form as the subpoena designates by:

15 (1) in the case of a natural person, the person to whom  
16 the subpoena is directed, or

17 (2) in the case of a person other than a natural  
18 person, the person or persons responsible for answering  
19 each interrogatory.

20 If any interrogatory is objected to, the reasons for the  
21 objection shall be stated in the certificate instead of an  
22 answer. The certificate shall state that all information  
23 required by the subpoena and in the possession, custody,  
24 control, or knowledge of the person to whom the demand is  
25 directed has been submitted. To the extent that any information  
26 is not furnished, the information shall be identified and  
27 reasons set forth with particularity regarding the reasons why  
28 the information was not furnished.

29 (h) Oral examinations.

30 (1) Procedures. The examination of any person pursuant  
31 to a subpoena for oral testimony served under this Section  
32 shall be taken before an officer authorized to administer  
33 oaths and affirmations by the laws of this State or of the  
34 place where the examination is held. The officer before  
35 whom the testimony is to be taken shall put the witness on  
36 oath or affirmation and shall, personally or by someone

1 acting under the direction of the officer and in the  
2 officer's presence, record the testimony of the witness.  
3 The testimony shall be taken stenographically and shall be  
4 transcribed. When the testimony is fully transcribed, the  
5 officer before whom the testimony is taken shall promptly  
6 transmit a certified copy of the transcript of the  
7 testimony in accordance with the instructions of the  
8 Attorney General. This subsection shall not preclude the  
9 taking of testimony by any means authorized by, and in a  
10 manner consistent with, the Code of Civil Procedure.

11 (2) Persons present. The investigator conducting the  
12 examination shall exclude from the place where the  
13 examination is held all persons except the person giving  
14 the testimony, the attorney for and any other  
15 representative of the person giving the testimony, the  
16 attorney for the State, any person who may be agreed upon  
17 by the attorney for the State and the person giving the  
18 testimony, the officer before whom the testimony is to be  
19 taken, and any stenographer taking such testimony.

20 (3) Where testimony taken. The oral testimony of any  
21 person taken pursuant to a subpoena served under this  
22 Section shall be taken in the county within which such  
23 person resides, is found, or transacts business, or in such  
24 other place as may be agreed upon by the Attorney General  
25 and such person.

26 (4) Transcript of testimony. When the testimony is  
27 fully transcribed, the Attorney General or the officer  
28 before whom the testimony is taken shall afford the  
29 witness, who may be accompanied by counsel, a reasonable  
30 opportunity to review and correct the transcript, in  
31 accordance with the rules applicable to deposition  
32 witnesses in civil cases. Upon payment of reasonable  
33 charges, the Attorney General shall furnish a copy of the  
34 transcript to the witness, except that the Attorney General  
35 may, for good cause, limit the witness to inspection of the  
36 official transcript of the witness' testimony.



1 (5) Conduct of oral testimony.

2 (A) Any person compelled to appear for oral  
3 testimony under a subpoena issued under subsection (a)  
4 may be accompanied, represented, and advised by  
5 counsel, who may raise objections based on matters of  
6 privilege in accordance with the rules applicable to  
7 depositions in civil cases. If such person refuses to  
8 answer any question, a petition may be filed in circuit  
9 court under subsection (j)(1) for an order compelling  
10 such person to answer such question.

11 (B) If such person refuses any question on the  
12 grounds of the privilege against self-incrimination,  
13 the testimony of such person may be compelled in  
14 accordance with Article 106 of the Code of Criminal  
15 Procedure of 1963.

16 (6) Witness fees and allowances. Any person appearing  
17 for oral testimony under a subpoena issued under subsection  
18 (a) shall be entitled to the same fees and allowances which  
19 are paid to witnesses in the circuit court.

20 (i) Custodians of documents, answers, and transcripts.

21 (1) Designation. The Attorney General or his or her  
22 delegate shall serve as custodian of documentary material,  
23 answers to interrogatories, and transcripts of oral  
24 testimony received under this Section.

25 (2) Except as otherwise provided in this Section, no  
26 documentary material, answers to interrogatories, or  
27 transcripts of oral testimony, or copies thereof, while in  
28 the possession of the custodian, shall be available for  
29 examination by any individual, except as determined  
30 necessary by the Attorney General and subject to the  
31 conditions imposed by him or her for effective enforcement  
32 of the laws of this State, or as otherwise provided by  
33 court order.

34 (3) Conditions for return of material. If any  
35 documentary material has been produced by any person in the  
36 course of any investigation pursuant to a subpoena under

1           this Section and:

2                   (A) any case or proceeding before the court or  
3           grand jury arising out of such investigation, or any  
4           proceeding before any State agency involving such  
5           material, has been completed, or

6                   (B) no case or proceeding in which such material  
7           may be used has been commenced within a reasonable time  
8           after completion of the examination and analysis of all  
9           documentary material and other information assembled  
10          in the course of such investigation,  
11          the custodian shall, upon written request of the person who  
12          produced such material, return to such person any such  
13          material which has not passed into the control of any  
14          court, grand jury, or agency through introduction into the  
15          record of such case or proceeding.

16

17          (j) Judicial proceedings.

18                  (1) Petition for enforcement. Whenever any person  
19          fails to comply with any subpoena issued under subsection  
20          (a), or whenever satisfactory copying or reproduction of  
21          any material requested in such demand cannot be done and  
22          such person refuses to surrender such material, the  
23          Attorney General may file, in the circuit court of any  
24          county in which such person resides, is found, or transacts  
25          business, or the circuit court of the county in which an  
26          action filed pursuant to Section 4 of this Act is pending  
27          if the action relates to the subject matter of the subpoena  
28          and serve upon such person a petition for an order of such  
29          court for the enforcement of the subpoena.

30                  (2) Petition to modify or set aside subpoena.

31                   (A) Any person who has received a subpoena issued  
32          under subsection (a) may file, in the circuit court of  
33          any county within which such person resides, is found,  
34          or transacts business, and serve upon the Attorney  
35          General a petition for an order of the court to modify  
36          or set aside such subpoena. In the case of a petition

1 addressed to an express demand for any product of  
2 discovery, a petition to modify or set aside such  
3 demand may be brought only in the circuit court of the  
4 county in which the proceeding in which such discovery  
5 was obtained is or was last pending. Any petition under  
6 this subparagraph (A) must be filed:

7 (i) within 20 days after the date of service of  
8 the subpoena, or at any time before the return date  
9 specified in the subpoena, whichever date is  
10 earlier, or

11 (ii) within such longer period as may be  
12 prescribed in writing by the Attorney General.

13 (B) The petition shall specify each ground upon  
14 which the petitioner relies in seeking relief under  
15 subparagraph (A), and may be based upon any failure of  
16 the subpoena to comply with the provisions of this  
17 Section or upon any constitutional or other legal right  
18 or privilege of such person. During the pendency of the  
19 petition in the court, the court may stay, as it deems  
20 proper, the running of the time allowed for compliance  
21 with the subpoena, in whole or in part, except that the  
22 person filing the petition shall comply with any  
23 portion of the subpoena not sought to be modified or  
24 set aside.

25 (3) Petition to modify or set aside demand for product  
26 of discovery. In the case of any subpoena issued under  
27 subsection (a) which is an express demand for any product  
28 of discovery, the person from whom such discovery was  
29 obtained may file, in the circuit court of the county in  
30 which the proceeding in which such discovery was obtained  
31 is or was last pending, a petition for an order of such  
32 court to modify or set aside those portions of the subpoena  
33 requiring production of any such product of discovery,  
34 subject to the same terms, conditions, and limitations set  
35 forth in subparagraph (j) (2) of this Section.

36 (4) Jurisdiction. Whenever any petition is filed in any

1 circuit court under this subsection (j), such court shall  
2 have jurisdiction to hear and determine the matter so  
3 presented, and to enter such orders as may be required to  
4 carry out the provisions of this Section. Any final order  
5 so entered shall be subject to appeal in the same manner as  
6 appeals of other final orders in civil matters. Any  
7 disobedience of any final order entered under this Section  
8 by any court shall be punished as a contempt of the court.

9 (k) Disclosure exemption. Any documentary material,  
10 answers to written interrogatories, or oral testimony provided  
11 under any subpoena issued under subsection (a) shall be exempt  
12 from disclosure under the Illinois Administrative Procedure  
13 Act.

14 (Source: P.A. 92-651, eff. 7-11-02; 93-579, eff. 1-1-04.)