

# HB3716



## 100TH GENERAL ASSEMBLY

State of Illinois

2017 and 2018

HB3716

by Rep. Marcus C. Evans, Jr.

### SYNOPSIS AS INTRODUCED:

55 ILCS 5/3-9008

from Ch. 34, par. 3-9008

Amends the Counties Code. Provides that on the court's own motion or an interested person's petition alleging that the State's Attorney has an actual conflict of interest in the cause or proceeding, the court shall grant a hearing (currently, may grant a hearing if necessary) to determine whether the State's Attorney has an actual conflict.

LRB100 11353 AWJ 21737 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 Section  
5 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  
17 sick, absent, or otherwise unable to fulfill his or her duties,  
18 the court may appoint some competent attorney to prosecute or  
19 defend the cause or proceeding.

20 (a-10) The court on its own motion, or an interested person  
21 in a cause or proceeding, civil or criminal, may file a  
22 petition alleging that the State's Attorney has an actual  
23 conflict of interest in the cause or proceeding. The court

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

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

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

25 (b) In case of a vacancy of more than one year occurring in  
26 any county in the office of State's attorney, by death,

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

26 (c) An order granting authority to a special prosecutor

1 must be construed strictly and narrowly by the court. The power  
2 and authority of a special prosecutor shall not be expanded  
3 without prior notice to the county. In the case of the proposed  
4 expansion of a special prosecutor's power and authority, a  
5 county may provide the court with information on the financial  
6 impact of an expansion on the county. Prior to the signing of  
7 an order requiring a county to pay for attorney's fees or  
8 litigation expenses, the county shall be provided with a  
9 detailed copy of the invoice describing the fees, and the  
10 invoice shall include all activities performed in relation to  
11 the case and the amount of time spent on each activity.  
12 (Source: P.A. 99-352, eff. 1-1-16.)