



## 103RD GENERAL ASSEMBLY

### State of Illinois

2023 and 2024

SB0237

Introduced 1/31/2023, by Sen. Jil Tracy

#### SYNOPSIS AS INTRODUCED:

5 ILCS 420/3A-40

Amends the Illinois Governmental Ethics Act. Provides that, for purposes of determining the partisanship of any person who is appointed by the Governor to an office that either requires specific partisanship or limits the number of appointees from a single political party that may be appointed, the vote of that person in the 3 general primary elections immediately preceding the effective date of the appointment shall determine his or her partisanship for that person's term of office. Provides that a person who did not vote, or who voted but did not request a partisan ballot, in the 3 general primary elections immediately preceding the effective date of the appointment or who voted but requested partisan ballots for 2 or more different political parties in the 3 general primary elections immediately preceding the effective date of the appointment shall be deemed an independent for purposes of determining partisanship for that person's term of office.

LRB103 25555 DTM 51904 b

1 AN ACT concerning government.

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

4 Section 5. The Illinois Governmental Ethics Act is amended  
5 by changing Section 3A-40 as follows:

6 (5 ILCS 420/3A-40)

7 Sec. 3A-40. Appointees with expired terms; temporary and  
8 acting appointees.

9 (a) A person who is nominated by the Governor on or after  
10 August 26, 2011 (the effective date of Public Act 97-582) for  
11 any affected office to which appointment requires the advice  
12 and consent of the Senate, who is appointed pursuant to that  
13 advice and consent, and whose term of office expires on or  
14 after August 26, 2011 shall not continue in office longer than  
15 60 calendar days after the expiration of that term of office.  
16 After that 60th day, each such office is considered vacant and  
17 shall be filled only pursuant to the law applicable to making  
18 appointments to that office, subject to the provisions of this  
19 Section.

20 A person who has been nominated by the Governor before  
21 August 26, 2011 (the effective date of Public Act 97-582) for  
22 any affected office to which appointment requires the advice  
23 and consent of the Senate, who has been appointed pursuant to

1 that advice and consent, and whose term of office has expired  
2 shall not continue in office longer than 60 calendar days  
3 after the date upon which his or her term of office has  
4 expired. After that 60 days, each such office is considered  
5 vacant and shall be filled only pursuant to the law applicable  
6 to making appointments to that office, subject to the  
7 provisions of this Section. If the term of office of a person  
8 who is subject to this paragraph expires more than 60 calendar  
9 days prior to the effective date of this amendatory Act of the  
10 97th General Assembly, then that office is considered vacant  
11 on the effective date of this amendatory Act of the 97th  
12 General Assembly, and that vacancy shall be filled only  
13 pursuant to the law applicable to making appointments to that  
14 office. For the purposes of this subsection (a), "affected  
15 office" means (i) an office in which one receives any form of  
16 compensation, including salary or per diem, but not including  
17 expense reimbursement, or (ii) membership on the board of  
18 trustees of a public university.

19 (b) A person who is appointed by the Governor on or after  
20 August 26, 2011 (the effective date of Public Act 97-582) to  
21 serve as a temporary appointee during a recess of the Senate,  
22 pursuant to Article V, Section 9(b) of the Illinois  
23 Constitution or any other applicable statute, to any office to  
24 which appointment requires the advice and consent of the  
25 Senate shall not continue in office after the next meeting of  
26 the Senate unless the Governor has filed a message with the

1 Secretary of the Senate nominating that person to fill that  
2 office on or before that meeting date. After that meeting  
3 date, each such office is considered vacant and shall be  
4 filled only pursuant to the law applicable to making  
5 appointments to that office, subject to the provisions of this  
6 Section. Any temporary appointment made pursuant to subsection  
7 (b) of Section 9 of Article V of the Illinois Constitution or  
8 any applicable statute shall be filed with the Secretary of  
9 State and the Secretary of the Senate. The form of the  
10 temporary appointment message shall be established by the  
11 Senate under its rules.

12 For the purposes of this subsection (b), a meeting of the  
13 Senate does not include a perfunctory session day as  
14 designated by the Senate under its rules. For the purposes of  
15 this subsection (b), the Senate is in recess on a day in which  
16 it is not in session and does not include a perfunctory session  
17 day as designated by the Senate under its rules.

18 (c) A person who is designated by the Governor on or after  
19 August 26, 2011 (the effective date of Public Act 97-582) to  
20 serve as an acting appointee to any office to which  
21 appointment requires the advice and consent of the Senate  
22 shall not continue in office more than 60 calendar days unless  
23 the Governor files a message with the Secretary of the Senate  
24 nominating that person to fill that office within that 60  
25 days. After that 60 days, each such office is considered  
26 vacant and shall be filled only pursuant to the law applicable

1 to making appointments to that office, subject to the  
2 provisions of this Section. The Governor shall file with the  
3 Secretary of the Senate the name of any person who the Governor  
4 designates as an acting appointee under this Section. The form  
5 of the message designating an appointee as acting shall be  
6 established by the Senate under its rules. No person who has  
7 been designated by the Governor to serve as an acting  
8 appointee to any office to which appointment requires the  
9 advice and consent of the Senate shall, except at the Senate's  
10 request, be designated again as an acting appointee for that  
11 office at the same session of that Senate, subject to the  
12 provisions of this Section.

13 During the term of a General Assembly, the Governor may  
14 not designate a person to serve as an acting appointee to any  
15 office to which appointment requires the advice and consent of  
16 the Senate if that person's nomination to serve as the  
17 appointee for the same office was rejected by the Senate of the  
18 same General Assembly.

19 For the purposes of this subsection (c), "acting  
20 appointee" means a person designated by the Governor to serve  
21 as an acting director or acting secretary pursuant to Section  
22 5-605 of the Civil Administrative Code of Illinois. "Acting  
23 appointee" also means a person designated by the Governor  
24 pursuant to any other statute to serve as an acting holder of  
25 any office, to execute the duties and functions of any office,  
26 or both.

1 (d) The provisions of this Section apply notwithstanding  
2 any law to the contrary. However, the provisions of this  
3 Section do not apply to appointments made under Article 1A of  
4 the Election Code or to the appointment of any person to serve  
5 as Director of the Illinois Power Agency.

6 (e) Except as otherwise provided by law, for purposes of  
7 determining the partisanship of any person who is appointed by  
8 the Governor to an office that either requires specific  
9 partisanship or limits the number of appointees from a single  
10 political party that may be appointed, the vote of that person  
11 in the 3 general primary elections immediately preceding the  
12 effective date of the appointment shall determine that  
13 person's partisanship for his or her term of office. A person  
14 who did not vote, or who voted but did not request a partisan  
15 ballot, in the 3 general primary elections immediately  
16 preceding the effective date of the appointment or who voted  
17 but requested partisan ballots for 2 or more different  
18 political parties in the 3 general primary elections  
19 immediately preceding the effective date of the appointment  
20 shall be deemed an independent for purposes of determining  
21 partisanship for that person's term of office. After being  
22 appointed to an office, no person shall be disqualified from  
23 continuing in that office during the term for which that  
24 person was appointed, or for holding over thereafter, based on  
25 that person's voting in a general primary election after his  
26 or her appointment.

1       This subsection (e) shall apply to a person who is  
2       nominated by the Governor on or after the effective date of  
3       this amendatory Act of the 103rd General Assembly and shall  
4       apply to all appointments, including those which are acting or  
5       temporary.

6       (Source: P.A. 97-582, eff. 8-26-11; 97-719, eff. 6-29-12;  
7       98-692, eff. 7-1-14.)