



## 98TH GENERAL ASSEMBLY

### State of Illinois

2013 and 2014

SB1188

Introduced 1/30/2013, by Sen. Tim Bivins

#### 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 their 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.

LRB098 06097 JDS 36136 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 after  
3 the date upon which his or her term of office has expired.  
4 After that 60 days, each such office is considered vacant and  
5 shall be filled only pursuant to the law applicable to making  
6 appointments to that office, subject to the provisions of this  
7 Section. If the term of office of a person who is subject to  
8 this paragraph expires more than 60 calendar days prior to the  
9 effective date of this amendatory Act of the 97th General  
10 Assembly, then that office is considered vacant on the  
11 effective date of this amendatory Act of the 97th General  
12 Assembly, and that vacancy shall be filled only pursuant to the  
13 law applicable to making appointments to that office. For the  
14 purposes of this subsection (a), "affected office" means (i) an  
15 office in which one receives any form of compensation,  
16 including salary or per diem, but not including expense  
17 reimbursement, or (ii) membership on the board of trustees of a  
18 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, pursuant to Article V, Section  
22 9(b) of the Illinois Constitution or any other applicable  
23 statute, to any office to which appointment requires the advice  
24 and consent of the Senate shall not continue in office after  
25 the next meeting of the Senate unless the Governor has filed a  
26 message with the Secretary of the Senate nominating that person

1 to fill that office on or before that meeting date. After that  
2 meeting date, each such office is considered vacant and shall  
3 be filled only pursuant to the law applicable to making  
4 appointments to that office, subject to the provisions of this  
5 Section.

6 A person who has been appointed by the Governor before  
7 August 26, 2011 (the effective date of Public Act 97-582) to  
8 serve as a temporary appointee, pursuant to Article V, Section  
9 9(b) of the Illinois Constitution or any other applicable  
10 statute, to any office to which appointment requires the advice  
11 and consent of the Senate shall not continue in office after  
12 August 26, 2011 or the next meeting of the Senate after August  
13 26, 2011, as applicable, unless the Governor has filed a  
14 message with the Secretary of the Senate nominating that person  
15 to fill that office on or before the next meeting of the Senate  
16 after that temporary appointment was made. After that effective  
17 date or meeting date, as applicable, each such office is  
18 considered vacant and shall be filled only pursuant to the law  
19 applicable to making appointments to that office, subject to  
20 the provisions of this Section.

21 For the purposes of this subsection (b), a meeting of the  
22 Senate does not include a perfunctory session day as designated  
23 by the Senate under its rules.

24 (c) A person who is designated by the Governor on or after  
25 August 26, 2011 (the effective date of Public Act 97-582) to  
26 serve as an acting appointee to any office to which appointment

1 requires the advice and consent of the Senate shall not  
2 continue in office more than 60 calendar days unless the  
3 Governor files a message with the Secretary of the Senate  
4 nominating that person to fill that office within that 60 days.  
5 After that 60 days, each such office is considered vacant and  
6 shall be filled only pursuant to the law applicable to making  
7 appointments to that office, subject to the provisions of this  
8 Section. No person who has been designated by the Governor to  
9 serve as an acting appointee to any office to which appointment  
10 requires the advice and consent of the Senate shall, except at  
11 the Senate's request, be designated again as an acting  
12 appointee for that office at the same session of that Senate,  
13 subject to the provisions of this Section.

14 A person who has been designated by the Governor before  
15 August 26, 2011 (the effective date of Public Act 97-582) to  
16 serve as an acting appointee to any office to which appointment  
17 requires the advice and consent of the Senate shall not  
18 continue in office longer than 60 calendar days after August  
19 26, 2011 unless the Governor has filed a message with the  
20 Secretary of the Senate nominating that person to fill that  
21 office on or before that 60 days. After that 60 days, each such  
22 office is considered vacant and shall be filled only pursuant  
23 to the law applicable to making appointments to that office,  
24 subject to the provisions of this Section. No person who has  
25 been designated by the Governor to serve as an acting appointee  
26 to any office to which appointment requires the advice and

1 consent of the Senate shall, except at the Senate's request, be  
2 designated again as an acting appointee for that office at the  
3 same session of that Senate, subject to the provisions of this  
4 Section.

5 During the term of a General Assembly, the Governor may not  
6 designate a person to serve as an acting appointee to any  
7 office to which appointment requires the advice and consent of  
8 the Senate if that person's nomination to serve as the  
9 appointee for the same office was rejected by the Senate of the  
10 same General Assembly.

11 For the purposes of this subsection (c), "acting appointee"  
12 means a person designated by the Governor to serve as an acting  
13 director or acting secretary pursuant to Section 5-605 of the  
14 Civil Administrative Code of Illinois. "Acting appointee" also  
15 means a person designated by the Governor pursuant to any other  
16 statute to serve as an acting holder of any office, to execute  
17 the duties and functions of any office, or both.

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

23 (e) Except as otherwise provided by law, for purposes of  
24 determining the partisanship of any person who is appointed by  
25 the Governor to an office that either requires specific  
26 partisanship or limits the number of appointees from a single

1 political party that may be appointed, the vote of that person  
2 in the 3 general primary elections immediately preceding the  
3 effective date of the appointment shall determine that person's  
4 partisanship for his or her term of office. A person who did  
5 not vote, or who voted but did not request a partisan ballot,  
6 in the 3 general primary elections immediately preceding the  
7 effective date of the appointment or who voted but requested  
8 partisan ballots for 2 or more different political parties in  
9 the 3 general primary elections immediately preceding the  
10 effective date of the appointment shall be deemed an  
11 independent for purposes of determining partisanship for that  
12 person's term of office. After being appointed to an office, no  
13 person shall be disqualified from continuing in that office  
14 during the term for which that person was appointed, or for  
15 holding over thereafter, based on that person's voting in a  
16 general primary election after his or her appointment.

17 This subsection (e) shall apply to a person who is  
18 nominated by the Governor on or after the effective date of  
19 this amendatory Act of the 98th General Assembly and shall  
20 apply to all appointments, including those which are acting or  
21 temporary.

22 (Source: P.A. 97-582, eff. 8-26-11; 97-719, eff. 6-29-12.)