

SB1843



100TH GENERAL ASSEMBLY

State of Illinois

2017 and 2018

SB1843

Introduced 2/9/2017, by Sen. Kwame Raoul

SYNOPSIS AS INTRODUCED:

55 ILCS 5/3-9008

from Ch. 34, par. 3-9008

Amends the Counties Code. Provides that a court considering the petition of an interested person to appoint a special prosecutor shall presume, without demonstration from the petitioner, a conflict of interest on behalf of any State's Attorney not exclusively assigned to cases in which the defendant or defendants are members of any law enforcement agency, when the underlying charges concern misconduct allegedly committed by the officer during the performance of official duties, while in uniform, while on duty, or after announcing his or her status as a law enforcement officer. Effective immediately.

LRB100 09946 AWJ 20117 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, any documents filed in response,
2 and if necessary, grant a hearing to determine whether the
3 State's Attorney has an actual conflict of interest in the
4 cause or proceeding. If the court finds that the petitioner has
5 proven by sufficient facts and evidence that the State's
6 Attorney has an actual conflict of interest in a specific case,
7 the court may appoint some competent attorney to prosecute or
8 defend the cause or proceeding.

9 (a-12) A court considering the petition of an interested
10 person to appoint a special prosecutor as prescribed under this
11 Section shall presume, without demonstration from the
12 petitioner, a conflict of interest on behalf of any State's
13 Attorney not exclusively assigned to cases in which the
14 defendant or defendants are members of any law enforcement
15 agency, when the underlying charges concern misconduct
16 allegedly committed by the officer during the performance of
17 official duties, while in uniform, while on duty, or after
18 announcing his or her status as a law enforcement officer.

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

24 (a-20) Prior to appointing a private attorney under this
25 Section, the court shall contact public agencies, including,
26 but not limited to, the Office of Attorney General, Office of

1 the State's Attorneys Appellate Prosecutor, or local State's
2 Attorney's Offices throughout the State, to determine a public
3 prosecutor's availability to serve as a special prosecutor at
4 no cost to the county and shall appoint a public agency if they
5 are able and willing to accept the appointment. An attorney so
6 appointed shall have the same power and authority in relation
7 to the cause or proceeding as the State's Attorney would have
8 if present and attending to the cause or proceedings.

9 (b) In case of a vacancy of more than one year occurring in
10 any county in the office of State's attorney, by death,
11 resignation or otherwise, and it becomes necessary for the
12 transaction of the public business, that some competent
13 attorney act as State's attorney in and for such county during
14 the period between the time of the occurrence of such vacancy
15 and the election and qualification of a State's attorney, as
16 provided by law, the vacancy shall be filled upon the written
17 request of a majority of the circuit judges of the circuit in
18 which is located the county where such vacancy exists, by
19 appointment as provided in The Election Code of some competent
20 attorney to perform and discharge all the duties of a State's
21 attorney in the said county, such appointment and all authority
22 thereunder to cease upon the election and qualification of a
23 State's attorney, as provided by law. Any attorney appointed
24 for any reason under this Section shall possess all the powers
25 and discharge all the duties of a regularly elected State's
26 attorney under the laws of the State to the extent necessary to

1 fulfill the purpose of such appointment, and shall be paid by
2 the county he serves not to exceed in any one period of 12
3 months, for the reasonable amount of time actually expended in
4 carrying out the purpose of such appointment, the same
5 compensation as provided by law for the State's attorney of the
6 county, apportioned, in the case of lesser amounts of
7 compensation, as to the time of service reasonably and actually
8 expended. The county shall participate in all agreements on the
9 rate of compensation of a special prosecutor.

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

22 (Source: P.A. 99-352, eff. 1-1-16.)

23 Section 99. Effective date. This Act takes effect upon
24 becoming law.