



Sen. Kwame Raoul

Filed: 4/28/2017

10000SB1843sam002

LRB100 09946 AWJ 25664 a

1 AMENDMENT TO SENATE BILL 1843

2 AMENDMENT NO. _____. Amend Senate Bill 1843, AS AMENDED,
3 by replacing everything after the enacting clause with the
4 following:

5 "Section 5. The Counties Code is amended by changing
6 Section 3-9008 as follows:

7 (55 ILCS 5/3-9008) (from Ch. 34, par. 3-9008)

8 Sec. 3-9008. Appointment of attorney to perform duties.

9 (a) (Blank).

10 (a-5) The court on its own motion, or an interested person
11 in a cause or proceeding, civil or criminal, may file a
12 petition alleging that the State's Attorney is sick, absent, or
13 unable to fulfill his or her duties. The court shall consider
14 the petition, any documents filed in response, and if
15 necessary, grant a hearing to determine whether the State's
16 Attorney is sick, absent, or otherwise unable to fulfill his or

1 her duties. If the court finds that the State's Attorney is
2 sick, absent, or otherwise unable to fulfill his or her duties,
3 the court may appoint some competent attorney to prosecute or
4 defend the cause or proceeding.

5 (a-10) The court on its own motion, or an interested person
6 in a cause or proceeding, civil or criminal, may file a
7 petition alleging that the State's Attorney has an actual
8 conflict of interest in the cause or proceeding. The court
9 shall consider the petition, any documents filed in response,
10 and if necessary, grant a hearing to determine whether the
11 State's Attorney has an actual conflict of interest in the
12 cause or proceeding. If the court finds that the petitioner has
13 proven by sufficient facts and evidence that the State's
14 Attorney has an actual conflict of interest in a specific case,
15 the court may appoint some competent attorney to prosecute or
16 defend the cause or proceeding.

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

22 (a-17) In a county exceeding a population of 3,000,000, if
23 the court determines that the appointment of a special
24 prosecutor is required under subsection (a-10) or (a-15), the
25 court shall request the Office of the State's Attorneys
26 Appellate Prosecutor to serve as the special prosecutor where

1 the cause or proceeding is an officer-involved death, as that
2 term is defined in Section 1-5 of the Police and Community
3 Relations Improvement Act. If the Office of the State's
4 Attorneys Appellate Prosecutor accepts the request, the
5 State's Attorneys Appellate Prosecutor shall be appointed by
6 the court and shall have the same power and authority in
7 relation to the cause or proceeding as the State's Attorney
8 would have had if present and attending to the cause or
9 proceedings.

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

22 (b) In case of a vacancy of more than one year occurring in
23 any county in the office of State's attorney, by death,
24 resignation or otherwise, and it becomes necessary for the
25 transaction of the public business, that some competent
26 attorney act as State's attorney in and for such county during

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

23 (c) An order granting authority to a special prosecutor
24 must be construed strictly and narrowly by the court. The power
25 and authority of a special prosecutor shall not be expanded
26 without prior notice to the county. In the case of the proposed

1 expansion of a special prosecutor's power and authority, a
2 county may provide the court with information on the financial
3 impact of an expansion on the county. Prior to the signing of
4 an order requiring a county to pay for attorney's fees or
5 litigation expenses, the county shall be provided with a
6 detailed copy of the invoice describing the fees, and the
7 invoice shall include all activities performed in relation to
8 the case and the amount of time spent on each activity.

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

10 Section 10. The State's Attorneys Appellate Prosecutor's
11 Act is amended by changing Section 4.01 as follows:

12 (725 ILCS 210/4.01) (from Ch. 14, par. 204.01)

13 Sec. 4.01. (a) The Office and all attorneys employed
14 thereby may represent the People of the State of Illinois on
15 appeal in all cases which emanate from a county containing less
16 than 3,000,000 inhabitants, when requested to do so and at the
17 direction of the State's Attorney, otherwise responsible for
18 prosecuting the appeal, and may, with the advice and consent of
19 the State's Attorney prepare, file and argue such appellate
20 briefs in the Illinois Appellate Court and, when requested and
21 authorized to do so by the Attorney General, in the Illinois
22 Supreme Court.

23 (b) Notwithstanding the population restriction contained
24 in subsection (a), the ~~The~~ Office may also assist County

1 State's Attorneys in the discharge of their duties under the
2 Illinois Controlled Substances Act, the Cannabis Control Act,
3 the Methamphetamine Control and Community Protection Act, the
4 Drug Asset Forfeiture Procedure Act, the Narcotics Profit
5 Forfeiture Act, and the Illinois Public Labor Relations Act,
6 including negotiations conducted on behalf of a county or
7 pursuant to an intergovernmental agreement as well as in the
8 trial and appeal of said cases and of tax objections, and the
9 counties which use services relating to labor relations shall
10 reimburse the Office on pro-rated shares as determined by the
11 board based upon the population and number of labor relations
12 cases of the participating counties. In addition, the Office
13 and all attorneys employed by the Office may also assist
14 State's Attorneys in the discharge of their duties in the
15 prosecution, trial, or hearing on post-conviction of other
16 cases when requested to do so by, and at the direction of, the
17 State's Attorney otherwise responsible for the case. In
18 addition, the Office and all attorneys employed by the Office
19 may act as Special Prosecutor if duly appointed to do so by a
20 court having jurisdiction. Except when the appointment of a
21 Special Prosecutor is made pursuant to subsection (a-17) of
22 Section 3-9008 of the Counties Code, to ~~be~~ be effective, the
23 order appointing the Office or its attorneys as Special
24 Prosecutor must (i) identify the case and its subject matter
25 and (ii) state that the Special Prosecutor serves at the
26 pleasure of the Attorney General, who may substitute himself or

1 herself as the Special Prosecutor when, in his or her judgment,
2 the interest of the people of the State so requires. Within 5
3 days after receiving a copy of an order from the court
4 appointing the Office or any of its attorneys as a Special
5 Prosecutor, the Office must forward a copy of the order to the
6 Springfield office of the Attorney General.
7 (Source: P.A. 97-1012, eff. 8-17-12.)".