

Senate Fiscal Agency
P. O. Box 30036
Lansing, Michigan 48909-7536



Telephone: (517) 373-5383
Fax: (517) 373-1986
TDD: (517) 373-0543

Senate Bill 115 (as introduced 2-6-01)
Sponsor: Senator Bill Schuette
Committee: Judiciary

Date Completed: 2-16-01

CONTENT

The bill would amend Chapter 14 of the Revised Statutes of 1846, which deals with county officers, to modify the procedure for appointment of a special prosecuting attorney when a county prosecuting attorney is disqualified by reason of conflict of interest or is otherwise unable to perform duties of the office.

Currently, if a prosecuting attorney is disqualified for conflict of interest or is otherwise unable to attend to the duties of office, the Supreme Court, the Court of Appeals, or the circuit court for that county, upon a finding to that effect, may appoint an attorney at law as a special prosecuting attorney to perform the duties of the prosecuting attorney in the respective court in any matter in which the prosecuting attorney is disqualified or until the prosecuting attorney is able to serve. Under the same circumstances, the circuit court for that county also may appoint an attorney as a special prosecuting attorney to perform the prosecutor's duties in any other court within the county in any matter in which the prosecutor is disqualified or until he or she is able to serve.

The bill provides, instead, that if the prosecuting attorney of a county determined himself or herself to be disqualified by reason of conflict of interest or were otherwise unable to attend to the duties of the office, he or she would have to file with the Attorney General a petition stating the conflict or reason for being unable to serve and requesting the appointment of a special prosecuting attorney. If the Attorney General determined that a prosecuting attorney was disqualified or otherwise unable to serve, the Attorney General could elect to proceed in the matter or appoint a prosecuting attorney or assistant prosecuting attorney who consented to the appointment to act as a special prosecuting attorney to perform the duties of the prosecuting attorney in any matter in which he or she was disqualified or until the prosecuting attorney was able to serve.

The bill specifies that the cost of prosecution, other than personnel costs, in any matter handled by a special prosecuting attorney would have to be borne by the office of the prosecuting attorney who had been determined to be disqualified or otherwise unable to serve. A complaint that was authorized by a special prosecuting attorney also would have to be authorized by the Attorney General or the Attorney General's representative before presentment of the complaint to a court for the issuance of an arrest warrant.

The bill would retain a provision that vests a special prosecuting attorney with all of the powers of the prosecuting attorney for the purpose of the appointment and during the period of appointment, and language specifying that the appointment provisions do not apply if an assistant prosecuting attorney has been or can be appointed by the prosecuting attorney to perform the necessary duties and is not disqualified from acting in place of the prosecuting attorney.

MCL 49.160

Legislative Analyst: P. Affholter

FISCAL IMPACT

Under State law, the Attorney General supervises the work of prosecuting attorneys and consults and advises prosecuting attorneys in all matters pertaining to the duties of their offices. The Department of Attorney General states that the bill would not result in additional costs to the Department. The current annual number of prosecutor disqualifications is minimal.

Fiscal Analyst: B. Bowerman

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.