

SENATE BILL No. 1399

September 28, 2000, Introduced by Senators HAMMERSTROM, SCHUETTE, SIKKEMA, GOUGEON and HOFFMAN and referred to the Committee on Judiciary.

A bill to amend 1846 RS 14, entitled "Of county officers," by amending section 60 (MCL 49.160).

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 60. (1) If the prosecuting attorney of a county ~~is~~
2 DETERMINES HIMSELF OR HERSELF TO BE disqualified by reason of
3 conflict of interest or is otherwise unable to attend to the
4 duties of the office, ~~the supreme court, the court of appeals or~~
5 ~~the circuit court for that county, upon a finding to that effect~~
6 ~~by the court, may appoint an attorney at law as~~ HE OR SHE SHALL
7 FILE WITH THE ATTORNEY GENERAL A PETITION STATING THE CONFLICT OR
8 THE REASON HE OR SHE IS UNABLE TO SERVE AND REQUESTING THE
9 APPOINTMENT OF a special prosecuting attorney to perform the
10 duties of the prosecuting attorney ~~in the respective court~~ in

SENATE BILL No. 1399

1 any matter in which the prosecuting attorney is disqualified or
2 until ~~such time as~~ the prosecuting attorney is able to serve.

3 (2) If the ~~prosecuting attorney of a county is disqualified~~
4 ~~by reason of conflict of interest or is otherwise unable to~~
5 ~~attend to the duties of the office, the circuit court for that~~
6 ~~county, upon a finding to that effect by the court, may appoint~~
7 ~~an attorney at law~~ ATTORNEY GENERAL DETERMINES THAT A PROSECUT-
8 ING ATTORNEY IS DISQUALIFIED OR OTHERWISE UNABLE TO SERVE, HE OR
9 SHE MAY ELECT TO PROCEED IN THE MATTER OR MAY APPOINT A PROSECUT-
10 ING ATTORNEY OR ASSISTANT PROSECUTING ATTORNEY WHO CONSENTS TO
11 THE APPOINTMENT TO ACT as a special prosecuting attorney to per-
12 form the duties of the prosecuting attorney ~~in the probate~~
13 ~~court, the district court, or any other court within the county~~
14 in any matter in which the prosecuting attorney is disqualified
15 or until ~~such time as~~ the prosecuting attorney is able to
16 serve.

17 (3) A special prosecuting attorney appointed under this sec-
18 tion is vested with all of the powers of the prosecuting attorney
19 for the purpose of the appointment and during the period of
20 appointment. THE COST OF PROSECUTION, OTHER THAN PERSONAL COSTS,
21 IN ANY MATTER HANDLED BY A SPECIAL PROSECUTING ATTORNEY SHALL BE
22 BORNE BY THE OFFICE OF THE PROSECUTING ATTORNEY WHO HAS BEEN
23 DETERMINED TO BE DISQUALIFIED OR OTHERWISE UNABLE TO SERVE. A
24 COMPLAINT THAT IS AUTHORIZED BY A SPECIAL PROSECUTING ATTORNEY
25 SHALL ALSO BE AUTHORIZED BY THE ATTORNEY GENERAL OR THE ATTORNEY
26 GENERAL'S REPRESENTATIVE BEFORE PRESENTMENT OF THE COMPLAINT TO A
27 COURT FOR THE ISSUANCE OF AN ARREST WARRANT.

1 (4) This section ~~shall~~ DOES not apply if an assistant
2 prosecuting attorney has been or can be appointed by the prose-
3 cuting attorney pursuant to section 18 of chapter 16 of ~~Act~~
4 ~~No. 175 of the Public Acts of 1927, being section 776.18 of the~~
5 ~~Michigan Compiled Laws~~ THE CODE OF CRIMINAL PROCEDURE, 1927 PA
6 175, MCL 776.18, to perform the necessary duties within the con-
7 straints of that section or if an assistant prosecuting attorney
8 has been otherwise appointed by the prosecuting attorney pursuant
9 to law and is not disqualified from acting in place of the prose-
10 cuting attorney.