

SENATE FILE 2288  
BY COMMITTEE ON LOCAL GOVERNMENT  
(SUCCESSOR TO SF 260)

Passed Senate, Date 3/5/02 (p.493) Passed House, Date 3/19/02 (p.958)  
Vote: Ayes 48 Nays 0 Vote: Ayes 92 Nays 0  
Approved April 1, 2002

A BILL FOR

1 An Act relating to the appointment of an acting or a temporary  
2 county attorney.  
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:  
4

~~SENATE FILE 2288~~

S-5096

1 Amend Senate File 2288 as follows:  
2 1. Page 2, by inserting after line 29 the  
3 following:  
4 "7. Notwithstanding subsections 1 through 6, upon  
5 request by a county attorney, the attorney general or  
6 an assistant attorney general may act as county  
7 attorney in a criminal proceeding, on behalf of the  
8 state, without appointment by the board, the chief  
9 judge, or the chief judge's designee."

By JEFF ANGELO

S-5096 FILED MARCH 4, 2002  
Adopted 3/5/02 (p.492)

SF 2288

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1 Section 1. Section 331.754, Code 2001, is amended to read  
2 as follows:

3 331.754 ABSENCE OR DISQUALIFICATION OF COUNTY ATTORNEY AND  
4 ASSISTANTS.

5 1. In case of absence, sickness, or disability of the  
6 county attorney and the assistant county attorneys, the board  
7 of supervisors may appoint an attorney to act as county  
8 attorney. Upon application of the county attorney or the  
9 attorney general, the chief judge or the chief judge's  
10 designee may appoint an attorney to act temporarily as county  
11 attorney until the board has had sufficient time to appoint an  
12 acting county attorney. As an alternative, upon the  
13 application of the county attorney or the attorney general,  
14 the chief judge or the chief judge's designee may appoint the  
15 attorney general to temporarily act as county attorney if the  
16 attorney general consents to the appointment. ~~The-acting~~  
17 county-attorney-has-the-same-authority-and-is-subject-to-the  
18 same-responsibilities-as-a-county-attorney-

19 2. If the county attorney and all assistant county  
20 attorneys are disqualified because of a conflict of interest  
21 from performing duties and conducting official business in a  
22 juvenile, criminal, contempt, or commitment proceeding which  
23 requires the attention of the county attorney, the chief judge  
24 or the chief judge's designee, upon application by the county  
25 attorney or the attorney general certifying that there is a  
26 bona fide reason for the disqualification based upon a  
27 principal of law or court rule, may appoint an attorney to act  
28 as county attorney in the proceeding. As an alternative, upon  
29 application of the county attorney or attorney general  
30 certifying that there is a bona fide reason for the  
31 disqualification, the chief judge or the chief judge's  
32 designee may appoint the attorney general to act as county  
33 attorney in the proceeding if the attorney general consents to  
34 the appointment. If the attorney general does not consent to  
35 the appointment, the chief judge or the chief judge's designee

1 may appoint an attorney designated by the attorney general.

2 3. Upon any application of the attorney general pursuant  
3 to subsection 1 or 2, the county attorney shall be given  
4 notice and shall be provided an opportunity to file an  
5 objection prior to the appointment of any attorney. This  
6 subsection shall not apply if giving notice would jeopardize a  
7 criminal investigation.

8 4. The board may appoint an attorney to act as county  
9 attorney in a civil proceeding if the county attorney and all  
10 assistant county attorneys are disqualified because of a  
11 conflict of interest from performing duties and conducting  
12 official business.

13 5. A temporary or acting county attorney has the same  
14 authority and is subject to the same responsibilities as a  
15 county attorney.

16 ~~2.~~ 6. The A temporary or acting county attorney shall  
17 receive a reasonable compensation as determined by the board  
18 for services rendered in proceedings before a judicial  
19 magistrate or rendered on behalf of a county officer or  
20 employee. If the proceedings are held before a district  
21 associate judge or a district judge, the judge shall determine  
22 a reasonable compensation for the temporary or acting county  
23 attorney. If the proceedings are held before an associate  
24 juvenile judge or a judicial hospitalization referee, the  
25 temporary or acting county attorney shall be compensated at a  
26 rate approved by the judge who appointed the associate  
27 juvenile judge or referee. The compensation shall be paid  
28 from funds to be appropriated to the office of county attorney  
29 by the board.

30 EXPLANATION

31 This bill relates to the appointment of an acting or a  
32 temporary county attorney.

33 The bill provides that upon the application of a county  
34 attorney or the attorney general, the chief judge or the chief  
35 judge's designee may appoint an attorney to act temporarily as

1 county attorney until the board of supervisors has had  
2 sufficient time to appoint an acting county attorney. The  
3 bill provides that as an alternative, after an application has  
4 been filed, the attorney general may be appointed to  
5 temporarily act as county attorney if the attorney general  
6 consents to the appointment.

7 The bill provides that if the county attorney and all  
8 assistant county attorneys are disqualified because of a  
9 conflict of interest from performing duties and conducting  
10 official business in any juvenile, criminal, contempt, or  
11 commitment proceeding which requires the attention of the  
12 county attorney, the chief judge or the chief judge's designee  
13 may appoint an attorney to act as county attorney in the  
14 proceeding, upon the application of the county attorney or the  
15 attorney general. As an alternative, after an application has  
16 been filed, the attorney general may be appointed to act as  
17 county attorney in the proceeding if the attorney general  
18 consents to the appointment. The bill provides that if the  
19 attorney general does not consent to the appointment, the  
20 chief judge or the chief judge's designee may appoint an  
21 attorney designated by the attorney general.

22 The bill also provides that the board may appoint an  
23 attorney to act as county attorney in any civil proceeding if  
24 the county attorney and all assistant county attorneys are  
25 disqualified because of a conflict of interest.

26 The bill provides that upon an application by the attorney  
27 general under this bill, the county attorney shall be provided  
28 notice and an opportunity to object to any appointment.

29 Under current law, the county board of supervisors may  
30 appoint an acting county attorney if the county attorney and  
31 assistant county attorneys are unable to carry out the  
32 official duties of office because of absence, sickness, or  
33 disability.

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H. 3/13/02 Do Pass

SENATE FILE 2288  
BY COMMITTEE ON LOCAL GOVERNMENT

(SUCCESSOR TO SF 260)

(AS AMENDED AND PASSED BY THE SENATE MARCH 5, 2002)  
\_\_\_\_\_ - New Language by the Senate

Passed Senate, Date \_\_\_\_\_ Passed House, <sup>(p. 658)</sup> Date 3/19/02  
Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_ Vote: Ayes 92 Nays 0  
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S.F. 2288

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16 attorney general consents to the appointment. ~~The acting~~  
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19 2. If the county attorney and all assistant county  
20 attorneys are disqualified because of a conflict of interest  
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22 juvenile, criminal, contempt, or commitment proceeding which  
23 requires the attention of the county attorney, the chief judge  
24 or the chief judge's designee, upon application by the county  
25 attorney or the attorney general certifying that there is a  
26 bona fide reason for the disqualification based upon a  
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28 as county attorney in the proceeding. As an alternative, upon  
29 application of the county attorney or attorney general  
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31 disqualification, the chief judge or the chief judge's  
32 designee may appoint the attorney general to act as county  
33 attorney in the proceeding if the attorney general consents to  
34 the appointment. If the attorney general does not consent to  
35 the appointment, the chief judge or the chief judge's designee

1 may appoint an attorney designated by the attorney general.

2 3. Upon any application of the attorney general pursuant  
3 to subsection 1 or 2, the county attorney shall be given  
4 notice and shall be provided an opportunity to file an  
5 objection prior to the appointment of any attorney. This  
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7 criminal investigation.

8 4. The board may appoint an attorney to act as county  
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11 conflict of interest from performing duties and conducting  
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13 5. A temporary or acting county attorney has the same  
14 authority and is subject to the same responsibilities as a  
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16 2- 6. The A temporary or acting county attorney shall  
17 receive a reasonable compensation as determined by the board  
18 for services rendered in proceedings before a judicial  
19 magistrate or rendered on behalf of a county officer or  
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21 associate judge or a district judge, the judge shall determine  
22 a reasonable compensation for the temporary or acting county  
23 attorney. If the proceedings are held before an associate  
24 juvenile judge or a judicial hospitalization referee, the  
25 temporary or acting county attorney shall be compensated at a  
26 rate approved by the judge who appointed the associate  
27 juvenile judge or referee. The compensation shall be paid  
28 from funds to be appropriated to the office of county attorney  
29 by the board.

30 7. Notwithstanding subsections 1 through 6, upon request  
31 by a county attorney, the attorney general or an assistant  
32 attorney general may act as county attorney in a criminal  
33 proceeding, on behalf of the state, without appointment by the  
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SENATE FILE 2288

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7. Notwithstanding subsections 1 through 6, upon request by a county attorney, the attorney general or an assistant attorney general may act as county attorney in a criminal proceeding, on behalf of the state, without appointment by the board, the chief judge, or the chief judge's designee.

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MARY E. KRAMER  
President of the Senate

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BRENT SIEGRIST  
Speaker of the House

I hereby certify that this bill originated in the Senate and is known as Senate File 2288, Seventy-ninth General Assembly.

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MICHAEL E. MARSHALL  
Secretary of the Senate

Approved 4/1, 2002

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THOMAS J. VILSACK  
Governor