

House Study Bill 80

Bill Text

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1 1 Section 1. Section [331.754](#), Code 2001, is amended to read
1 2 as follows:

1 3 331.754 ABSENCE OR DISQUALIFICATION OF COUNTY ATTORNEY AND
1 4 ASSISTANTS.

1 5 1. In case of absence, sickness, or disability of the
1 6 county attorney and the assistant county attorneys, the board
1 7 of supervisors may appoint an attorney to act as county
1 8 attorney. If the need for an appointment occurs, a district
1 9 judge may appoint an attorney to act temporarily as county
1 10 attorney until the board has had sufficient time to appoint an
1 11 acting attorney. As an alternative, a district judge may
1 12 appoint the attorney general to act temporarily as county
1 13 attorney, if the attorney general consents to the appointment.
1 14

~~The acting county attorney has the same authority and is~~

1 15

~~subject to the same responsibilities as a county attorney.~~

1 16 2. If the county attorney and all assistant county
1 17 attorneys are disqualified because of a conflict of interest
1 18 from performing duties and conducting official business in a
1 19 juvenile, criminal, or commitment proceeding which requires
1 20 the attention of the county attorney, a district judge may
1 21 appoint an attorney to act as county attorney in the
1 22 proceeding. As an alternative, a district judge may appoint
1 23 the attorney general to act as county attorney if the attorney
1 24 general consents to the appointment.

1 25 3. If the county attorney and all assistant county
1 26 attorneys are disqualified because of a conflict of interest
1 27 from performing duties or conducting official business in a
1 28 civil proceeding, the board of supervisors may appoint an
1 29 attorney to act as county attorney.

1 30 4. A temporary or acting county attorney has the same
1 31 authority and is subject to the same responsibilities as a
1 32 county attorney.

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~~2.~~

~~5.~~

~~The~~

~~A temporary or acting county attorney shall~~

1 34 receive a reasonable compensation as determined by the board
1 35 for services rendered in proceedings before a judicial
2 1 magistrate or rendered on behalf of a county officer or
2 2 employee. If the proceedings are held before a district
2 3 associate judge or a district judge, the judge shall determine
2 4 a reasonable compensation for the temporary or acting county
2 5 attorney. If the proceedings are held before an associate
2 6 juvenile judge or a judicial hospitalization referee, the
2 7 temporary or acting county attorney shall be compensated at a
2 8 rate approved by the judge who appointed the associate
2 9 juvenile judge or referee. The compensation shall be paid

2 10 from funds to be appropriated to the office of county attorney
2 11 by the board.

2 12

EXPLANATION

2 13 This bill relates to the appointment of an acting or a
2 14 temporary county attorney.

2 15 Under current law, the county board of supervisors may
2 16 appoint an acting county attorney if the county attorney and
2 17 assistant county attorneys are unable to carry out the
2 18 official duties of office because of absence, sickness, or
2 19 disability. The bill provides that a district judge may
2 20 appoint an attorney or the attorney general to act temporarily
2 21 as county attorney until the county board of supervisors has
2 22 had sufficient time to appoint an acting county attorney. The
2 23 bill provides that the attorney general must consent to being
2 24 appointed by the court.

2 25 The bill also provides that if the county attorney and
2 26 assistant county attorneys are disqualified in a juvenile,
2 27 criminal, or commitment proceeding because of a conflict of
2 28 interest, a district judge may appoint an attorney to act as
2 29 county attorney in the proceeding. The court in the
2 30 alternative may appoint the attorney general to act as county
2 31 attorney, if the attorney general consents to the appointment.

2 32 The bill further provides that if the county attorney and
2 33 assistant county attorneys are disqualified in a civil
2 34 proceeding because of a conflict of interest, the county board
2 35 of supervisors is responsible for appointing an attorney to
3 1 act as county attorney.

3 2 LSB 1123DP 79

3 3 jm/pj/5.2