



January 31, 2014

SENATE BILL No. 223

DIGEST OF SB 223 (Updated January 29, 2014 10:17 am - DI 84)

Citations Affected: IC 4-2; IC 33-39.

Synopsis: Senior and special prosecutors. Repeals and recodifies provisions concerning the appointment of senior prosecuting attorneys, special prosecutors, and special deputy prosecuting attorneys. Provides that a person may be appointed as a senior prosecuting attorney if the person was employed for at least eight years as a: (1) prosecuting attorney; (2) chief deputy prosecuting attorney; (3) deputy prosecuting attorney; or (4) deputy prosecuting attorney employed full time to perform certain duties related to child support provisions. Requires a person who files an affidavit to be considered for appointment as a senior prosecuting attorney to file a request to withdraw from consideration when the person is no longer willing to serve as a senior prosecuting attorney. Requires the prosecuting attorneys council to maintain and publish a list of persons who are eligible to be appointed as senior prosecuting attorneys. Allows a senior prosecuting attorney to be appointed as a special prosecutor in a county in which the senior prosecuting attorney previously served if the appointing court finds that the appointment would not create the appearance of impropriety. Removes provisions that limit the number of days a senior prosecuting attorney may be compensated during a calendar year. Requires a special prosecutor to file a progress report with the appointing court at least one time every six months. Makes conforming amendments.

Effective: July 1, 2014.

Holdman

January 9, 2014, read first time and referred to Committee on Judiciary.
January 30, 2014, reported favorably — Do Pass.

SB 223—LS 6667/DI 69



January 31, 2014

Second Regular Session 118th General Assembly (2014)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2013 Regular Session and 2013 First Regular Technical Session of the General Assembly.

SENATE BILL No. 223

A BILL FOR AN ACT to amend the Indiana Code concerning courts and court officers.

Be it enacted by the General Assembly of the State of Indiana:

- 1 SECTION 1. IC 4-2-7-4, AS ADDED BY P.L.222-2005, SECTION
2 14, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1,
3 2014]: Sec. 4. To carry out the duties described in section 3 of this
4 chapter, the inspector general has the following powers:
5 (1) As part of an investigation, the inspector general may:
6 (A) administer oaths;
7 (B) examine witnesses under oath;
8 (C) issue subpoenas and subpoenas duces tecum; and
9 (D) examine the records, reports, audits, reviews, papers,
10 books, recommendations, contracts, correspondence, or any
11 other documents maintained by an agency.
12 (2) The inspector general may apply to a circuit or superior court
13 for an order holding an individual in contempt of court if the
14 individual refuses to give sworn testimony under a subpoena
15 issued by the inspector general or otherwise disobeys a subpoena
16 or subpoena duces tecum issued by the inspector general.

SB 223—LS 6667/DI 69



- 1 (3) The inspector general shall prepare a report summarizing the
 2 results of every investigation. The report is confidential in
 3 accordance with section 8 of this chapter.
- 4 (4) If the attorney general has elected not to file a civil action for
 5 the recovery of funds misappropriated, diverted, missing, or
 6 unlawfully gained, the inspector general may file a civil action for
 7 the recovery of the funds in accordance with section 6 of this
 8 chapter.
- 9 (5) The inspector general may prosecute a criminal matter as a
 10 special prosecuting attorney or special deputy prosecuting
 11 attorney in accordance with:
- 12 (A) section 7 of this chapter; or
 13 (B) ~~IC 33-39-2-6~~. **IC 33-39-10-3.**
- 14 SECTION 2. IC 4-2-7-7, AS ADDED BY P.L.222-2005, SECTION
 15 14, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1,
 16 2014]: Sec. 7. (a) If the inspector general discovers evidence of
 17 criminal activity, the inspector general shall certify to the appropriate
 18 prosecuting attorney the following information:
- 19 (1) The identity of any person who may be involved in the
 20 criminal activity.
- 21 (2) The criminal statute that the inspector general believes has
 22 been violated.
- 23 In addition, the inspector general shall provide the prosecuting attorney
 24 with any relevant documents, transcripts, or written statements. If the
 25 prosecuting attorney decides to prosecute the crime described in the
 26 information certified to the prosecuting attorney, or any other related
 27 crimes, the inspector general shall cooperate with the prosecuting
 28 attorney in the investigation and prosecution of the case. Upon request
 29 of the prosecuting attorney, the inspector general may participate on
 30 behalf of the state in any resulting criminal trial.
- 31 (b) If:
- 32 (1) the prosecuting attorney to whom the inspector general issues
 33 a certification under subsection (a):
- 34 (A) is disqualified from investigating or bringing a criminal
 35 prosecution in the matter addressed in the certification;
 36 (B) does not file an information or seek an indictment not later
 37 than one hundred eighty (180) days after the date on which the
 38 inspector general certified the information to the prosecuting
 39 attorney; or
 40 (C) refers the case back to the inspector general; and
- 41 (2) the inspector general finds that there may be probable cause
 42 to believe that a person identified in a certification under



1 subsection (a)(1) has violated a criminal statute identified in a
2 certification under subsection (a)(2);
3 the inspector general may request that the governor recommend the
4 inspector general be appointed as a special prosecuting attorney under
5 subsection (h) so that the inspector general may prosecute the matter
6 addressed in the certification.

7 (c) The governor may recommend the inspector general be
8 appointed as a special prosecuting attorney if:

9 (1) one (1) of the conditions set forth in subsection (b)(1) relating
10 to the prosecuting attorney is met; and

11 (2) the governor finds that the appointment of the inspector
12 general as a special prosecuting attorney is in the best interests of
13 justice.

14 (d) If the governor has recommended the appointment of the
15 inspector general as a special prosecuting attorney, the inspector
16 general shall file a notice with the chief judge of the court of appeals,
17 stating:

18 (1) that the governor has recommended that the inspector general
19 be appointed as a special prosecutor;

20 (2) the name of the county in which the crime that the inspector
21 general intends to prosecute is alleged to have been committed;
22 and

23 (3) that the inspector general requests the chief judge to assign a
24 court of appeals judge to determine whether the inspector general
25 should be appointed as a special prosecuting attorney.

26 Upon receipt of the notice, the chief judge of the court of appeals shall
27 randomly select a judge of the court of appeals to determine whether
28 the inspector general should be appointed as a special prosecuting
29 attorney. The chief judge shall exclude from the random selection a
30 judge who resided in the county in which the crime is alleged to have
31 been committed at the time the judge was appointed to the court of
32 appeals.

33 (e) The inspector general shall file a verified petition for
34 appointment as a special prosecuting attorney with the court of appeals
35 judge assigned under subsection (d). In the verified petition, the
36 inspector general shall set forth why the inspector general should be
37 appointed as a special prosecutor. The inspector general may support
38 the verified petition by including relevant documents, transcripts, or
39 written statements in support of the inspector general's position. The
40 inspector general shall serve a copy of the verified petition, along with
41 any supporting evidence, on the prosecuting attorney to whom the case
42 was originally certified under subsection (a).



1 (f) The prosecuting attorney shall file a verified petition in support
2 of or opposition to the inspector general's verified petition for
3 appointment as a special prosecuting attorney not later than fifteen (15)
4 days after receipt of the inspector general's verified petition for
5 appointment as a special prosecuting attorney.

6 (g) Upon a showing of particularized need, the court of appeals
7 judge may order the verified petitions filed by the inspector general and
8 the prosecuting attorney to be confidential.

9 (h) After considering the verified petitions, the court of appeals
10 judge may appoint the inspector general or a prosecuting attorney,
11 other than the prosecuting attorney to whom the case was certified
12 under this section, as a special prosecuting attorney if the judge finds
13 that:

- 14 (1) one (1) of the conditions set forth in subsection (b)(1) is met;
15 and
16 (2) appointment of a special prosecuting attorney is in the best
17 interests of justice.

18 In making its determination under this subsection, the court of appeals
19 judge shall consider only the arguments and evidence contained in the
20 verified petitions.

21 (i) Except as provided in subsection (k), a special prosecuting
22 attorney appointed under this section has the same powers as the
23 prosecuting attorney of the county. However, the court of appeals judge
24 shall:

- 25 (1) limit the scope of the special prosecuting attorney's duties as
26 a special prosecuting attorney to include only the investigation or
27 prosecution of a particular case or particular grand jury
28 investigation, including any matter that reasonably results from
29 the investigation, prosecution, or grand jury investigation; and
30 (2) establish for a time certain the length of the special
31 prosecuting attorney's term.

32 If the special prosecuting attorney's investigation or prosecution
33 acquires a broader scope or requires additional time to complete, the
34 court of appeals judge may at any time increase the scope of the special
35 prosecuting attorney's duties or establish a longer term for the special
36 prosecuting attorney.

37 (j) An inspector general or prosecuting attorney appointed to serve
38 as a special prosecuting attorney may appoint one (1) or more deputies
39 who are licensed to practice law in Indiana to serve as a special deputy
40 prosecuting attorney. A special deputy prosecuting attorney is subject
41 to the same statutory restrictions and other restrictions imposed on the
42 special prosecuting attorney by the court of appeals, but otherwise has



1 the same powers as a deputy prosecuting attorney.

2 (k) An inspector general or prosecuting attorney appointed to serve
3 as a special prosecuting attorney under this section may bring a
4 criminal charge only after obtaining an indictment from a grand jury.
5 An inspector general or prosecuting attorney appointed under this
6 section to serve as a special prosecuting attorney may not bring a
7 criminal charge by filing an information.

8 (l) The inspector general or a deputy inspector general who is
9 licensed to practice law in Indiana may serve as a special deputy
10 prosecuting attorney under ~~IC 33-39-2-6~~. **IC 33-39-10-3.**

11 (m) If the court of appeals appoints a prosecuting attorney to serve
12 as a special prosecuting attorney under this section, the inspector
13 general shall reimburse the prosecuting attorney for the reasonable
14 expenses of investigating and prosecuting the case.

15 SECTION 3. IC 33-39-1-1 IS REPEALED [EFFECTIVE JULY 1,
16 2014]. Sec. 1: (a) As used in this chapter, "senior prosecuting attorney"
17 means a person who:

18 (1) was employed for at least eight (8) years as a prosecuting
19 attorney or chief deputy prosecuting attorney; and

20 (2) files an affidavit requesting designation as a senior
21 prosecuting attorney in the circuit court and each superior court
22 in a county in which the person is willing to serve as a senior
23 prosecuting attorney.

24 (b) An affidavit filed under subsection (a) must contain the
25 following:

26 (1) The name of the person filing the affidavit.

27 (2) The person's attorney number issued by the supreme court.

28 (3) The length of time the person served as a chief deputy
29 prosecuting attorney or prosecuting attorney.

30 (4) The name of any county in which the person served as a chief
31 deputy prosecuting attorney or prosecuting attorney.

32 (c) The circuit or superior court shall promptly forward each
33 affidavit received under this section to the prosecuting attorneys
34 council of Indiana.

35 SECTION 4. IC 33-39-1-6 IS REPEALED [EFFECTIVE JULY 1,
36 2014]. Sec. 6: (a) Special prosecutors may be appointed under this
37 section or in accordance with ~~IC 4-2-7-7~~.

38 (b) A circuit or superior court judge:

39 (1) shall appoint a special prosecutor if:

40 (A) any person other than the prosecuting attorney or the
41 prosecuting attorney's deputy files a verified petition
42 requesting the appointment of a special prosecutor; and



- 1 (B) the prosecuting attorney agrees that a special prosecutor is
 2 needed;
- 3 (2) may appoint a special prosecutor if:
 4 (A) a person files a verified petition requesting the
 5 appointment of a special prosecutor; and
 6 (B) the court, after:
 7 (i) notice is given to the prosecuting attorney; and
 8 (ii) an evidentiary hearing is conducted at which the
 9 prosecuting attorney is given an opportunity to be heard;
 10 finds by clear and convincing evidence that the appointment
 11 is necessary to avoid an actual conflict of interest or there is
 12 probable cause to believe that the prosecutor has committed a
 13 crime;
- 14 (3) may appoint a special prosecutor if:
 15 (A) the prosecuting attorney files a petition requesting the
 16 court to appoint a special prosecutor; and
 17 (B) the court finds that the appointment is necessary to avoid
 18 the appearance of impropriety;
- 19 (4) may appoint a special prosecutor if:
 20 (A) an elected public official, who is a defendant in a criminal
 21 proceeding, files a verified petition requesting a special
 22 prosecutor within ten (10) days after the date of the initial
 23 hearing; and
 24 (B) the court finds that the appointment of a special prosecutor
 25 is in the best interests of justice; and
- 26 (5) shall appoint a special prosecutor if:
 27 (A) a previously appointed special prosecutor:
 28 (i) files a motion to withdraw as special prosecutor; or
 29 (ii) has become incapable of continuing to represent the
 30 interests of the state; and
 31 (B) the court finds that the facts that established the basis for
 32 the initial appointment of a special prosecutor still exist.
 33 The elected prosecuting attorney of the appointing jurisdiction
 34 shall receive notice of all pleadings filed and orders issued under
 35 this subdivision.
- 36 (c) Each person appointed to serve as a special prosecutor:
 37 (1) must consent to the appointment; and
 38 (2) must be:
 39 (A) the prosecuting attorney or a deputy prosecuting attorney
 40 in a county other than the county in which the person is to
 41 serve as special prosecutor; or
 42 (B) except as provided in subsection (d), a senior prosecuting



1 attorney:

2 (d) A senior prosecuting attorney may be appointed in the county in
3 which the senior prosecuting attorney previously served if the court
4 finds that an appointment under this subsection would not create the
5 appearance of impropriety:

6 (e) A person appointed to serve as a special prosecutor has the same
7 powers as the prosecuting attorney of the county. However, the
8 appointing judge shall limit scope of the special prosecutor's duties to
9 include only the investigation or prosecution of a particular case or
10 particular grand jury investigation:

11 (f) The court shall establish the length of the special prosecutor's
12 term. If the target of an investigation by the special prosecutor is a
13 public servant (as defined in IC 35-31.5-2-261), the court shall order
14 the special prosecutor to file a report of the investigation with the court
15 at the conclusion of the investigation. The report is a public record:

16 (g) If the special prosecutor is not regularly employed as a full-time
17 prosecuting attorney or full-time deputy prosecuting attorney, the
18 compensation for the special prosecutor's services:

19 (1) shall be paid to the special prosecutor from the unappropriated
20 funds of the appointing county; and

21 (2) may not exceed:

22 (A) an hourly rate based upon the regular salary of a full-time
23 prosecuting attorney of the appointing circuit;

24 (B) travel expenses and reasonable accommodation expenses
25 actually incurred; and

26 (C) other reasonable expenses actually incurred, including the
27 costs of investigation, discovery, and secretarial work, if:

28 (i) before incurring the other reasonable expenses described
29 in this clause, the special prosecutor submits an application
30 to the court to receive the other reasonable expenses; and

31 (ii) the court approves the expenses.

32 The amount of compensation a special prosecutor receives for services
33 performed during a calendar day under subdivision (2)(A) may not
34 exceed the amount of compensation a full-time prosecuting attorney
35 would receive in salary for the calendar day.

36 (h) If the special prosecutor is regularly employed as a full-time
37 prosecuting attorney or deputy prosecuting attorney, the compensation
38 for the special prosecutor's services:

39 (1) shall be paid out of the appointing county's unappropriated
40 funds to the treasurer of the county in which the special
41 prosecutor regularly serves; and

42 (2) must include a per diem equal to the regular salary of a



1 full-time prosecuting attorney of the appointing circuit; travel
 2 expenses; and reasonable accommodation expenses actually
 3 incurred:

4 (i) The combination of:

5 (1) the compensation paid to a senior prosecuting attorney under
 6 this chapter; and

7 (2) retirement benefits that the person appointed as a senior
 8 prosecuting attorney is receiving or entitled to receive;

9 may not exceed the minimum compensation to which a full-time
 10 prosecuting attorney is entitled under IC 33-39-6-5:

11 (j) A senior prosecuting attorney appointed under this chapter may
 12 not be compensated as senior prosecuting attorney for more than one
 13 hundred (100) calendar days in total during a calendar year if the senior
 14 prosecuting attorney receives retirement benefits during the calendar
 15 year. However, if the senior prosecuting attorney does not receive
 16 retirement benefits during a calendar year, the senior prosecuting
 17 attorney may be compensated as a senior prosecuting attorney for not
 18 more than two hundred (200) calendar days in total during the calendar
 19 year:

20 SECTION 5. IC 33-39-1-7 IS REPEALED [EFFECTIVE JULY 1,
 21 2014]. Sec. 7: A person may not be appointed a senior prosecuting
 22 attorney under section 6 of this chapter if the person:

23 (1) is not available for the minimum period of commitment for
 24 service as a special prosecutor; or

25 (2) has had a disciplinary sanction imposed by the Indiana
 26 supreme court disciplinary commission or a similar body in
 27 another state that restricts the person's ability to practice law:

28 SECTION 6. IC 33-39-2-6 IS REPEALED [EFFECTIVE JULY 1,
 29 2014]. Sec. 6: (a) With the consent of the inspector general; a
 30 prosecuting attorney may appoint the inspector general or a deputy
 31 inspector general who is licensed to practice law in Indiana as a special
 32 deputy prosecuting attorney to assist in any criminal proceeding
 33 involving public misconduct:

34 (b) With the consent of the attorney general; a prosecuting attorney
 35 may appoint the attorney general or a deputy attorney general who is
 36 licensed to practice law in Indiana as a special deputy prosecuting
 37 attorney to assist in any criminal proceeding involving environmental
 38 law:

39 SECTION 7. IC 33-39-7-8, AS AMENDED BY P.L.160-2013,
 40 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 41 JULY 1, 2014]: Sec. 8. (a) As used in this chapter, "services" means
 42 the sum of all periods in which a person is employed as:



- 1 (1) a prosecuting attorney or chief deputy prosecuting attorney;
 2 (2) any other deputy prosecuting attorney who is:
 3 (A) appointed under IC 33-39-6-2; and
 4 (B) paid by the state from the state general fund; or
 5 (3) the executive director or the assistant executive director of the
 6 prosecuting attorneys council of Indiana.

7 If an individual is elected or appointed to a position described in
 8 subdivisions (1) through (3) and serves one (1) or more terms or part
 9 of a term, then retires from office or otherwise separates from service,
 10 but at a later period or periods is appointed or elected and serves in a
 11 position described in subdivisions (1) through (3), the individual shall
 12 pay into the fund during all the periods that the individual serves in that
 13 position, except as otherwise provided in this chapter, whether the
 14 periods are connected or disconnected.

15 (b) A senior prosecuting attorney appointed under ~~IC 33-39-1~~
 16 **IC 33-39-10-1** is not required to pay into the fund during any period of
 17 service as a senior prosecuting attorney.

18 SECTION 8. IC 33-39-7-15, AS AMENDED BY P.L.160-2013,
 19 SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 20 JULY 1, 2014]: Sec. 15. A participant whose employment in a position
 21 described in section 8 of this chapter is terminated is entitled to a
 22 retirement benefit computed under section 16 or 18 of this chapter,
 23 beginning on the date specified by the participant in a written
 24 application, if all of the following conditions are met:

- 25 (1) The application for retirement benefits and the choice of the
 26 retirement date is filed on a form provided by the board, and the
 27 retirement date is:
 28 (A) after the cessation of the participant's service;
 29 (B) on the first day of a month; and
 30 (C) not more than six (6) months before the date the
 31 application is received by the board.

32 However, if the board determines that a participant is incompetent
 33 to file for benefits and choose a retirement date, the retirement
 34 date may be any date that is the first of the month after the time
 35 the participant became incompetent.

- 36 (2) The participant:
 37 (A) is at least sixty-two (62) years of age and has at least eight
 38 (8) years of service credit;
 39 (B) is at least fifty-five (55) years of age and the participant's
 40 age in years plus the participant's years of service is at least
 41 eighty-five (85); or
 42 (C) has become permanently disabled.



1 (3) The participant is not receiving and is not entitled to receive
 2 any salary for services currently performed, except for services
 3 rendered as a senior prosecuting attorney under ~~IC 33-39-1~~.
 4 **IC 33-39-10-1.**

5 SECTION 9. IC 33-39-9-3 IS AMENDED TO READ AS
 6 FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 3. As used in the
 7 chapter, "prosecuting attorney" means:

8 (1) a prosecuting attorney;

9 (2) a deputy prosecuting attorney; or

10 (3) a senior prosecuting attorney appointed under ~~IC 33-39-1~~.
 11 **IC 33-39-10-1.**

12 SECTION 10. IC 33-39-10 IS ADDED TO THE INDIANA CODE
 13 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE
 14 JULY 1, 2014]:

15 **Chapter 10. Senior Prosecuting Attorneys, Special Prosecutors,**
 16 **and Special Deputy Prosecuting Attorneys**

17 **Sec. 1. (a) A person may be appointed as a senior prosecuting**
 18 **attorney if the person:**

19 (1) was employed for at least eight (8) years as a:

20 (A) prosecuting attorney;

21 (B) chief deputy prosecuting attorney;

22 (C) deputy prosecuting attorney appointed under
 23 IC 33-39-6-2; or

24 (D) deputy prosecuting attorney employed full time to
 25 perform activities described in IC 31-25-4-13.1(b), subject
 26 to subsection (d); and

27 (2) files an affidavit requesting designation as a senior
 28 prosecuting attorney in:

29 (A) the circuit court; and

30 (B) each superior court;

31 in a county in which the person is willing to serve as a senior
 32 prosecuting attorney.

33 A person who files an affidavit under this subsection shall file a
 34 request to withdraw from being appointed as a senior prosecuting
 35 attorney when the person is no longer willing to serve as a senior
 36 prosecuting attorney.

37 (b) An affidavit filed under subsection (a) must contain the
 38 following:

39 (1) The name of the person filing the affidavit.

40 (2) The person's attorney number issued by the supreme
 41 court.

42 (3) The length of time the person served, as described in



- 1 subsection (a)(1).
 2 (4) The name of any county in which the person served, as
 3 described in subsection (a)(1).
 4 (c) A circuit court or superior court promptly shall forward
 5 each:
 6 (1) affidavit; and
 7 (2) request to withdraw;
 8 received under subsection (a) to the prosecuting attorneys council
 9 of Indiana. The prosecuting attorneys council of Indiana shall
 10 maintain and publish a list of persons who are eligible to be
 11 appointed under this section as senior prosecuting attorneys.
 12 (d) A deputy prosecuting attorney who was employed full time
 13 to perform activities described in IC 31-25-4-13.1(b) may be
 14 appointed to serve as a senior prosecuting attorney only to perform
 15 activities described in IC 31-25-4-13.1(b).
 16 (e) A person may not be appointed as a senior prosecuting
 17 attorney under this section if a disciplinary sanction has been
 18 imposed on the person by:
 19 (1) the Indiana supreme court disciplinary commission; or
 20 (2) a similar body in another state;
 21 that restricts the person's ability to practice law.
 22 **Sec. 2. (a) A person may be appointed as a special prosecutor:**
 23 (1) as provided under this section; or
 24 (2) in accordance with IC 4-2-7-7.
 25 **(b) A circuit court or superior court judge:**
 26 (1) shall appoint a special prosecutor if:
 27 (A) any person, other than a prosecuting attorney or the
 28 prosecuting attorney's deputy, files a verified petition
 29 requesting the appointment of a special prosecutor; and
 30 (B) the prosecuting attorney agrees that a special
 31 prosecutor is needed;
 32 (2) may appoint a special prosecutor if:
 33 (A) a person files a verified petition requesting the
 34 appointment of a special prosecutor; and
 35 (B) the court, after:
 36 (i) notice is given to the prosecuting attorney; and
 37 (ii) an evidentiary hearing is conducted at which the
 38 prosecuting attorney is given an opportunity to be heard;
 39 finds by clear and convincing evidence that the
 40 appointment is necessary to avoid an actual conflict of
 41 interest or there is probable cause to believe that the
 42 prosecuting attorney has committed a crime;



- 1 **(3) may appoint a special prosecutor if:**
 2 **(A) the prosecuting attorney files a petition requesting the**
 3 **court to appoint a special prosecutor; and**
 4 **(B) the court finds that the appointment is necessary to**
 5 **avoid the appearance of impropriety;**
 6 **(4) may appoint a special prosecutor if:**
 7 **(A) an elected public official who is a defendant in a**
 8 **criminal proceeding files a verified petition requesting a**
 9 **special prosecutor within ten (10) days after the date of the**
 10 **initial hearing; and**
 11 **(B) the court finds that the appointment of a special**
 12 **prosecutor is in the best interests of justice; and**
 13 **(5) shall appoint a special prosecutor if:**
 14 **(A) a previously appointed special prosecutor:**
 15 **(i) files a motion to withdraw as special prosecutor; or**
 16 **(ii) has become incapable of continuing to represent the**
 17 **interests of the state; and**
 18 **(B) the court finds that the facts that established the basis**
 19 **for the initial appointment of a special prosecutor still**
 20 **exist.**
 21 **The elected prosecuting attorney who serves in the**
 22 **jurisdiction of the appointing court shall receive notice of all**
 23 **pleadings filed and orders issued under this subdivision.**
 24 **(c) A person appointed to serve as a special prosecutor:**
 25 **(1) must consent to the appointment; and**
 26 **(2) must be:**
 27 **(A) the prosecuting attorney or a deputy prosecuting**
 28 **attorney in a county other than the county in which the**
 29 **person is to serve as special prosecutor; or**
 30 **(B) a senior prosecuting attorney as described in section 1**
 31 **of this chapter. A senior prosecuting attorney may be**
 32 **appointed to serve as a special prosecutor in a county in**
 33 **which the senior prosecuting attorney previously served if**
 34 **the court finds that the appointment would not create the**
 35 **appearance of impropriety.**
 36 **(d) A person appointed to serve as a special prosecutor in a**
 37 **county has the same powers as the prosecuting attorney of the**
 38 **county. However, the appointing judge shall limit the scope of the**
 39 **special prosecutor's duties to include only the investigation or**
 40 **prosecution of a particular case or particular grand jury**
 41 **investigation.**
 42 **(e) Upon making an appointment under this section, the court**



1 shall establish the length of the special prosecutor's term. At least
 2 one (1) time every six (6) months throughout the appointed term,
 3 a special prosecutor shall file a progress report with the appointing
 4 court. A progress report:

5 (1) must inform the court of the:

6 (A) status of the investigation; and

7 (B) estimated time for completion of the special
 8 prosecutor's duties; and

9 (2) may not:

10 (A) include substantive facts or legal issues; or

11 (B) offer preliminary conclusions.

12 The court may extend the term of appointment upon the request of
 13 the special prosecutor or terminate any appointment if the special
 14 prosecutor has failed to file reports or a request for an extended
 15 term under this subsection.

16 (f) If the target of an investigation by the special prosecutor is
 17 a public servant (as defined in IC 35-31.5-2-261), the court shall
 18 order the special prosecutor to file a report of the investigation
 19 with the court at the conclusion of the investigation. A report filed
 20 under this subsection is a public record under IC 5-14-3.

21 (g) If a special prosecutor is not regularly employed as a
 22 full-time prosecuting attorney or full-time deputy prosecuting
 23 attorney, the compensation for the special prosecutor's services:

24 (1) shall be paid, as incurred, to the special prosecutor,
 25 following an application to the county auditor, from the
 26 unappropriated funds of the appointing county; and

27 (2) may not exceed:

28 (A) an hourly rate based upon the regular salary of a
 29 full-time prosecuting attorney of the appointing circuit;

30 (B) travel expenses and reasonable accommodation
 31 expenses actually incurred; and

32 (C) other reasonable expenses actually incurred, including
 33 the costs of investigation, trial and discovery preparation,
 34 and other trial expenses.

35 The amount of compensation a special prosecutor receives for
 36 services performed during a calendar day under subdivision (2)(A)
 37 may not exceed the amount of compensation a full-time
 38 prosecuting attorney would receive in salary for the calendar day.

39 (h) If the special prosecutor is regularly employed as a full-time
 40 prosecuting attorney or deputy prosecuting attorney, the
 41 compensation for the special prosecutor's services:

42 (1) shall be paid out of the appointing county's



1 unappropriated funds to the treasurer of the county in which
2 the special prosecutor regularly serves; and
3 (2) must include a per diem equal to the regular salary of a
4 full-time prosecuting attorney of the appointing circuit, travel
5 expenses, and reasonable accommodation expenses actually
6 incurred.
7 Sec. 3. (a) With the consent of the inspector general, a
8 prosecuting attorney may appoint the inspector general or a
9 deputy inspector general who is licensed to practice law in Indiana
10 as a special deputy prosecuting attorney to assist in any criminal
11 proceeding involving public misconduct.
12 (b) With the consent of the attorney general, a prosecuting
13 attorney may appoint the attorney general or a deputy attorney
14 general who is licensed to practice law in Indiana as a special
15 deputy prosecuting attorney to assist in any criminal proceeding
16 involving environmental law.



COMMITTEE REPORT

Madam President: The Senate Committee on Judiciary, to which was referred Senate Bill No. 223, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill DO PASS.

(Reference is to SB 223 as introduced.)

Committee Vote: Yeas 7, Nays 0

Senator Steele, Chairperson

