

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 ENROLLED ACT No. 223

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

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

SECTION 1. IC 4-2-7-4, AS ADDED BY P.L.222-2005, SECTION 14, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 4. To carry out the duties described in section 3 of this chapter, the inspector general has the following powers:

- (1) As part of an investigation, the inspector general may:
  - (A) administer oaths;
  - (B) examine witnesses under oath;
  - (C) issue subpoenas and subpoenas duces tecum; and
  - (D) examine the records, reports, audits, reviews, papers, books, recommendations, contracts, correspondence, or any other documents maintained by an agency.
- (2) The inspector general may apply to a circuit or superior court for an order holding an individual in contempt of court if the individual refuses to give sworn testimony under a subpoena issued by the inspector general or otherwise disobeys a subpoena or subpoena duces tecum issued by the inspector general.
- (3) The inspector general shall prepare a report summarizing the results of every investigation. The report is confidential in accordance with section 8 of this chapter.
- (4) If the attorney general has elected not to file a civil action for the recovery of funds misappropriated, diverted, missing, or

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unlawfully gained, the inspector general may file a civil action for the recovery of the funds in accordance with section 6 of this chapter.

(5) The inspector general may prosecute a criminal matter as a special prosecuting attorney or special deputy prosecuting attorney in accordance with:

(A) section 7 of this chapter; or

(B) ~~IC 33-39-2-6~~. **IC 33-39-10-3.**

SECTION 2. IC 4-2-7-7, AS ADDED BY P.L.222-2005, SECTION 14, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 7. (a) If the inspector general discovers evidence of criminal activity, the inspector general shall certify to the appropriate prosecuting attorney the following information:

(1) The identity of any person who may be involved in the criminal activity.

(2) The criminal statute that the inspector general believes has been violated.

In addition, the inspector general shall provide the prosecuting attorney with any relevant documents, transcripts, or written statements. If the prosecuting attorney decides to prosecute the crime described in the information certified to the prosecuting attorney, or any other related crimes, the inspector general shall cooperate with the prosecuting attorney in the investigation and prosecution of the case. Upon request of the prosecuting attorney, the inspector general may participate on behalf of the state in any resulting criminal trial.

(b) If:

(1) the prosecuting attorney to whom the inspector general issues a certification under subsection (a):

(A) is disqualified from investigating or bringing a criminal prosecution in the matter addressed in the certification;

(B) does not file an information or seek an indictment not later than one hundred eighty (180) days after the date on which the inspector general certified the information to the prosecuting attorney; or

(C) refers the case back to the inspector general; and

(2) the inspector general finds that there may be probable cause to believe that a person identified in a certification under subsection (a)(1) has violated a criminal statute identified in a certification under subsection (a)(2);

the inspector general may request that the governor recommend the inspector general be appointed as a special prosecuting attorney under subsection (h) so that the inspector general may prosecute the matter

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addressed in the certification.

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

- (1) one (1) of the conditions set forth in subsection (b)(1) relating to the prosecuting attorney is met; and
- (2) the governor finds that the appointment of the inspector general as a special prosecuting attorney is in the best interests of justice.

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

- (1) that the governor has recommended that the inspector general be appointed as a special prosecutor;
- (2) the name of the county in which the crime that the inspector general intends to prosecute is alleged to have been committed; and
- (3) that the inspector general requests the chief judge to assign a court of appeals judge to determine whether the inspector general should be appointed as a special prosecuting attorney.

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

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

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

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

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

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

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

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

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

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

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

(k) An inspector general or prosecuting attorney appointed to serve as a special prosecuting attorney under this section may bring a criminal charge only after obtaining an indictment from a grand jury. An inspector general or prosecuting attorney appointed under this



section to serve as a special prosecuting attorney may not bring a criminal charge by filing an information.

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

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

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

- (1) was employed for at least eight (8) years as a prosecuting attorney or chief deputy prosecuting attorney; and
- (2) files an affidavit requesting designation as a senior prosecuting attorney in the circuit court and each superior court in a county in which the person is willing to serve as a senior prosecuting attorney.

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

- (1) The name of the person filing the affidavit.
- (2) The person's attorney number issued by the supreme court.
- (3) The length of time the person served as a chief deputy prosecuting attorney or prosecuting attorney.
- (4) The name of any county in which the person served as a chief deputy prosecuting attorney or prosecuting attorney.

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

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

(b) A circuit or superior court judge:

- (1) shall appoint a special prosecutor if:
  - (A) any person other than the prosecuting attorney or the prosecuting attorney's deputy files a verified petition requesting the appointment of a special prosecutor; and
  - (B) the prosecuting attorney agrees that a special prosecutor is needed;
- (2) may appoint a special prosecutor if:
  - (A) a person files a verified petition requesting the appointment of a special prosecutor; and



- (B) the court, after:
  - (i) notice is given to the prosecuting attorney; and
  - (ii) an evidentiary hearing is conducted at which the prosecuting attorney is given an opportunity to be heard; finds by clear and convincing evidence that the appointment is necessary to avoid an actual conflict of interest or there is probable cause to believe that the prosecutor has committed a crime;
- (3) may appoint a special prosecutor if:
  - (A) the prosecuting attorney files a petition requesting the court to appoint a special prosecutor; and
  - (B) the court finds that the appointment is necessary to avoid the appearance of impropriety;
- (4) may appoint a special prosecutor if:
  - (A) an elected public official, who is a defendant in a criminal proceeding, files a verified petition requesting a special prosecutor within ten (10) days after the date of the initial hearing; and
  - (B) the court finds that the appointment of a special prosecutor is in the best interests of justice; and
- (5) shall appoint a special prosecutor if:
  - (A) a previously appointed special prosecutor:
    - (i) files a motion to withdraw as special prosecutor; or
    - (ii) has become incapable of continuing to represent the interests of the state; and
  - (B) the court finds that the facts that established the basis for the initial appointment of a special prosecutor still exist.

The elected prosecuting attorney of the appointing jurisdiction shall receive notice of all pleadings filed and orders issued under this subdivision.
- (e) Each person appointed to serve as a special prosecutor:
  - (1) must consent to the appointment; and
  - (2) must be:
    - (A) the prosecuting attorney or a deputy prosecuting attorney in a county other than the county in which the person is to serve as special prosecutor; or
    - (B) except as provided in subsection (d), a senior prosecuting attorney.
  - (d) A senior prosecuting attorney may be appointed in the county in which the senior prosecuting attorney previously served if the court finds that an appointment under this subsection would not create the appearance of impropriety.



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

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

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

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

(2) may not exceed:

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

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

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

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

(ii) the court approves the expenses.

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

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

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

(2) must include a per diem equal to the regular salary of a full-time prosecuting attorney of the appointing circuit, travel expenses, and reasonable accommodation expenses actually incurred.

(i) The combination of:

(1) the compensation paid to a senior prosecuting attorney under



this chapter; and

(2) retirement benefits that the person appointed as a senior prosecuting attorney is receiving or entitled to receive; may not exceed the minimum compensation to which a full-time prosecuting attorney is entitled under IC 33-39-6-5.

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

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

- (1) is not available for the minimum period of commitment for service as a special prosecutor; or
- (2) has had a disciplinary sanction imposed by the Indiana supreme court disciplinary commission or a similar body in another state that restricts the person's ability to practice law.

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

(b) With the consent of the attorney general, a prosecuting attorney may appoint the attorney general or a deputy attorney general who is licensed to practice law in Indiana as a special deputy prosecuting attorney to assist in any criminal proceeding involving environmental law.

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

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





prosecuting attorneys council of Indiana.

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

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

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

(1) The application for retirement benefits and the choice of the retirement date is filed on a form provided by the board, and the retirement date is:

- (A) after the cessation of the participant's service;
- (B) on the first day of a month; and
- (C) not more than six (6) months before the date the application is received by the board.

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

(2) The participant:

- (A) is at least sixty-two (62) years of age and has at least eight (8) years of service credit;
- (B) is at least fifty-five (55) years of age and the participant's age in years plus the participant's years of service is at least eighty-five (85); or
- (C) has become permanently disabled.

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

**IC 33-39-10-1.**

SECTION 9. IC 33-39-9-3 IS AMENDED TO READ AS

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FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 3. As used in the chapter, "prosecuting attorney" means:

- (1) a prosecuting attorney;
- (2) a deputy prosecuting attorney; or
- (3) a senior prosecuting attorney appointed under ~~IC 33-39-1~~  
**IC 33-39-10-1.**

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

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

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

- (1) was employed for at least eight (8) years as a:
  - (A) prosecuting attorney;
  - (B) chief deputy prosecuting attorney;
  - (C) deputy prosecuting attorney appointed under IC 33-39-6-2; or
  - (D) deputy prosecuting attorney employed full time to perform activities described in IC 31-25-4-13.1(b), subject to subsection (d); and
- (2) files an affidavit requesting designation as a senior prosecuting attorney in:
  - (A) the circuit court; and
  - (B) each superior court;

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

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

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

- (1) The name of the person filing the affidavit.
- (2) The person's attorney number issued by the supreme court.
- (3) The length of time the person served, as described in subsection (a)(1).
- (4) The name of any county in which the person served, as described in subsection (a)(1).

(c) A circuit court or superior court promptly shall forward each:



- (1) affidavit; and
- (2) request to withdraw;

received under subsection (a) to the prosecuting attorneys council of Indiana. The prosecuting attorneys council of Indiana shall maintain and publish a list of persons who are eligible to be appointed under this section as senior prosecuting attorneys.

(d) A deputy prosecuting attorney who was employed full time to perform activities described in IC 31-25-4-13.1(b) may be appointed to serve as a senior prosecuting attorney only to perform activities described in IC 31-25-4-13.1(b).

(e) A person may not be appointed as a senior prosecuting attorney under this section if a disciplinary sanction has been imposed on the person by:

- (1) the Indiana supreme court disciplinary commission; or
- (2) a similar body in another state;

that restricts the person's ability to practice law.

Sec. 2. (a) A person may be appointed as a special prosecutor:

- (1) as provided under this section; or
- (2) in accordance with IC 4-2-7-7.

(b) A circuit court or superior court judge:

(1) shall appoint a special prosecutor if:

- (A) any person, other than a prosecuting attorney or the prosecuting attorney's deputy, files a verified petition requesting the appointment of a special prosecutor; and
- (B) the prosecuting attorney agrees that a special prosecutor is needed;

(2) may appoint a special prosecutor if:

- (A) a person files a verified petition requesting the appointment of a special prosecutor; and
- (B) the court, after:

- (i) notice is given to the prosecuting attorney; and
- (ii) an evidentiary hearing is conducted at which the prosecuting attorney is given an opportunity to be heard; finds by clear and convincing evidence that the appointment is necessary to avoid an actual conflict of interest or there is probable cause to believe that the prosecuting attorney has committed a crime;

(3) may appoint a special prosecutor if:

- (A) the prosecuting attorney files a petition requesting the court to appoint a special prosecutor; and
- (B) the court finds that the appointment is necessary to avoid the appearance of impropriety;



- (4) may appoint a special prosecutor if:
- (A) an elected public official who is a defendant in a criminal proceeding files a verified petition requesting a special prosecutor within ten (10) days after the date of the initial hearing; and
  - (B) the court finds that the appointment of a special prosecutor is in the best interests of justice; and
- (5) shall appoint a special prosecutor if:
- (A) a previously appointed special prosecutor:
    - (i) files a motion to withdraw as special prosecutor; or
    - (ii) has become incapable of continuing to represent the interests of the state; and
  - (B) the court finds that the facts that established the basis for the initial appointment of a special prosecutor still exist.

The elected prosecuting attorney who serves in the jurisdiction of the appointing court shall receive notice of all pleadings filed and orders issued under this subdivision.

- (c) A person appointed to serve as a special prosecutor:
- (1) must consent to the appointment; and
  - (2) must be:
    - (A) the prosecuting attorney or a deputy prosecuting attorney in a county other than the county in which the person is to serve as special prosecutor; or
    - (B) a senior prosecuting attorney as described in section 1 of this chapter. A senior prosecuting attorney may be appointed to serve as a special prosecutor in a county in which the senior prosecuting attorney previously served if the court finds that the appointment would not create the appearance of impropriety.
- (d) A person appointed to serve as a special prosecutor in a county has the same powers as the prosecuting attorney of the county. However, the appointing judge shall limit the scope of the special prosecutor's duties to include only the investigation or prosecution of a particular case or particular grand jury investigation.
- (e) Upon making an appointment under this section, the court shall establish the length of the special prosecutor's term. At least one (1) time every six (6) months throughout the appointed term, a special prosecutor shall file a progress report with the appointing court. A progress report:
- (1) must inform the court of the:



- (A) status of the investigation; and
- (B) estimated time for completion of the special prosecutor's duties; and
- (2) may not:
  - (A) include substantive facts or legal issues; or
  - (B) offer preliminary conclusions.

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

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

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

- (1) shall be paid, as incurred, to the special prosecutor, following an application to the county auditor, from the unappropriated funds of the appointing county; and
- (2) may not exceed:
  - (A) an hourly rate based upon the regular salary of a full-time prosecuting attorney of the appointing circuit;
  - (B) travel expenses and reasonable accommodation expenses actually incurred; and
  - (C) other reasonable expenses actually incurred, including the costs of investigation, trial and discovery preparation, and other trial expenses.

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

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

- (1) shall be paid out of the appointing county's unappropriated funds to the treasurer of the county in which the special prosecutor regularly serves; and
- (2) must include a per diem equal to the regular salary of a full-time prosecuting attorney of the appointing circuit, travel expenses, and reasonable accommodation expenses actually



**incurred.**

**Sec. 3. (a) With the consent of the inspector general, a prosecuting attorney may appoint the inspector general or a deputy inspector general who is licensed to practice law in Indiana as a special deputy prosecuting attorney to assist in any criminal proceeding involving public misconduct.**

**(b) With the consent of the attorney general, a prosecuting attorney may appoint the attorney general or a deputy attorney general who is licensed to practice law in Indiana as a special deputy prosecuting attorney to assist in any criminal proceeding involving environmental law.**



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President of the Senate

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President Pro Tempore

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Speaker of the House of Representatives

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Governor of the State of Indiana

Date: \_\_\_\_\_ Time: \_\_\_\_\_

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