

# SENATE MOTION

**MADAM PRESIDENT:**

**I move** that Engrossed House Bill 1386 be amended to read as follows:

- 1           Page 3, between lines 31 and 32, begin a new paragraph and insert:  
2           "SECTION 3. IC 33-39-1-6, AS AMENDED BY P.L.222-2005,  
3           SECTION 38, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
4           JULY 1, 2007]: Sec. 6. (a) Special prosecutors may be appointed under  
5           this section, ~~or in accordance with IC 4-2-7-7, or section 6.5 of this~~  
6           **chapter.**  
7           (b) A circuit or superior court judge:  
8           (1) shall appoint a special prosecutor if:  
9           (A) any person other than the prosecuting attorney or the  
10           prosecuting attorney's deputy files a verified petition  
11           requesting the appointment of a special prosecutor; and  
12           (B) the prosecuting attorney agrees that a special prosecutor is  
13           needed;  
14           (2) may appoint a special prosecutor if:  
15           (A) a person files a verified petition requesting the  
16           appointment of a special prosecutor; and  
17           (B) the court, after:  
18           (i) notice is given to the prosecuting attorney; and  
19           (ii) an evidentiary hearing is conducted at which the  
20           prosecuting attorney is given an opportunity to be heard;  
21           finds by clear and convincing evidence that the appointment  
22           is necessary to avoid an actual conflict of interest or there is  
23           probable cause to believe that the prosecutor has committed a  
24           crime;  
25           (3) may appoint a special prosecutor if:  
26           (A) the prosecuting attorney files a petition requesting the  
27           court to appoint a special prosecutor; and  
28           (B) the court finds that the appointment is necessary to avoid  
29           the appearance of impropriety; and  
30           (4) may appoint a special prosecutor if:  
31           (A) an elected public official, who is a defendant in a criminal

- 1 proceeding, files a verified petition requesting a special  
 2 prosecutor within ten (10) days after the date of the initial  
 3 hearing; and  
 4 (B) the court finds that the appointment of a special prosecutor  
 5 is in the best interests of justice.
- 6 (c) Each person appointed to serve as a special prosecutor:  
 7 (1) must consent to the appointment; and  
 8 (2) must be:  
 9 (A) the prosecuting attorney or a deputy prosecuting attorney  
 10 in a county other than the county in which the person is to  
 11 serve as special prosecutor; or  
 12 (B) except as provided in subsection (d), a senior prosecuting  
 13 attorney.
- 14 (d) A senior prosecuting attorney may be appointed in the county in  
 15 which the senior prosecuting attorney previously served if the court  
 16 finds that an appointment under this subsection would not create the  
 17 appearance of impropriety.
- 18 (e) A person appointed to serve as a special prosecutor has the same  
 19 powers as the prosecuting attorney of the county. However, the  
 20 appointing judge shall limit the scope of the special prosecutor's duties  
 21 to include only the investigation or prosecution of a particular case or  
 22 particular grand jury investigation.
- 23 (f) The court shall establish the length of the special prosecutor's  
 24 term. If the target of an investigation by the special prosecutor is a  
 25 public servant (as defined in IC 35-41-1-24), the court shall order the  
 26 special prosecutor to file a report of the investigation with the court at  
 27 the conclusion of the investigation. The report is a public record.
- 28 (g) If the special prosecutor is not regularly employed as a full-time  
 29 prosecuting attorney or full-time deputy prosecuting attorney, the  
 30 compensation for the special prosecutor's services:  
 31 (1) shall be paid to the special prosecutor from the unappropriated  
 32 funds of the appointing county; and  
 33 (2) may not exceed:  
 34 (A) a per diem equal to the regular salary of a full-time  
 35 prosecuting attorney of the appointing circuit; and  
 36 (B) travel expenses and reasonable accommodation expenses  
 37 actually incurred.
- 38 (h) If the special prosecutor is regularly employed as a full-time  
 39 prosecuting attorney or deputy prosecuting attorney, the compensation  
 40 for the special prosecutor's services:  
 41 (1) shall be paid out of the appointing county's unappropriated  
 42 funds to the treasurer of the county in which the special  
 43 prosecutor regularly serves; and  
 44 (2) must include a per diem equal to the regular salary of a  
 45 full-time prosecuting attorney of the appointing circuit, travel  
 46 expenses, and reasonable accommodation expenses actually  
 47 incurred.

1 (i) The combination of:

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

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

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

8 (j) A senior prosecuting attorney appointed under this ~~chapter~~  
9 **section** may not be compensated as senior prosecuting attorney for  
10 more than one hundred (100) calendar days in total during a calendar  
11 year.

12 SECTION 4. IC 33-39-1-6.5 IS ADDED TO THE INDIANA CODE  
13 AS A **NEW SECTION** TO READ AS FOLLOWS [EFFECTIVE JULY  
14 1, 2007]: **Sec. 6.5. (a) A special judge selected under subsection (e)**  
15 **shall appoint a special prosecutor if:**

16 (1) a person files a verified petition requesting the  
17 appointment of a special prosecutor in the circuit court  
18 having jurisdiction in the county where the special prosecutor  
19 is to serve; and

20 (2) the special judge, after:

21 (A) notice is given to the prosecuting attorney in the  
22 county; and

23 (B) conducting an evidentiary hearing at which the  
24 prosecuting attorney is given an opportunity to be heard;  
25 finds by clear and convincing evidence that a special  
26 prosecutor is necessary because of the prosecuting attorney's  
27 malfeasance, misfeasance, or neglect of duty.

28 (b) Each person appointed to serve as a special prosecutor must:

29 (1) consent to the appointment; and

30 (2) be:

31 (A) a prosecuting attorney or a deputy prosecuting  
32 attorney in a county other than the county in which the  
33 person is to serve as special prosecutor; or

34 (B) subject to subsection (c), a senior prosecuting attorney.

35 (c) A senior prosecuting attorney may be appointed as a special  
36 prosecutor in the county in which the senior prosecuting attorney  
37 previously served if the court finds that an appointment under this  
38 subsection would not create the appearance of impropriety.

39 (d) A person appointed to serve as a special prosecutor under  
40 this section has the same powers as the prosecuting attorney of the  
41 county. However, the appointing judge may limit the scope of the  
42 special prosecutor's duties to include only the investigation or  
43 prosecution of particular cases or particular grand jury  
44 investigations.

45 (e) The circuit court judge of the court in which a verified  
46 petition is filed under subsection (a) is disqualified from hearing  
47 the case. A special judge shall be selected in accordance with Trial

- 1       **Rule 79. The special judge must be a judge of a circuit, superior, or**  
2       **probate court in a county other than the county in which the**  
3       **special prosecutor is to serve.**
- 4       (b) The court shall conduct an expedited hearing on the petition  
5       not later than fifteen (15) days after the verified petition is served  
6       on the prosecuting attorney.
- 7       (g) The court shall establish the length of the special  
8       prosecutor's term. If the target of an investigation by the special  
9       prosecutor is a public servant (as defined in IC 35-41-1-24), the  
10      court shall order the special prosecutor to file a report of the  
11      investigation with the court at the conclusion of the investigation.  
12      The report is a public record.
- 13      (h) If the special prosecutor is not regularly employed as a  
14      full-time prosecuting attorney or full-time deputy prosecuting  
15      attorney, the compensation for the special prosecutor's services:  
16      (1) shall be paid to the special prosecutor from the  
17      unappropriated funds of the appointing county; and  
18      (2) may not exceed:  
19      (A) a per diem equal to the regular salary of a full-time  
20      prosecuting attorney of the appointing circuit; and  
21      (B) travel expenses and reasonable accommodation  
22      expenses actually incurred.
- 23      (i) If the special prosecutor is regularly employed as a full-time  
24      prosecuting attorney or deputy prosecuting attorney, the  
25      compensation for the special prosecutor's services:  
26      (1) shall be paid out of the appointing county's  
27      unappropriated funds to the treasurer of the county in which  
28      the special prosecutor regularly serves; and  
29      (2) must include a per diem equal to the regular salary of a  
30      full-time prosecuting attorney of the appointing circuit, travel  
31      expenses, and reasonable accommodation expenses actually  
32      incurred."

- 1 Page 5, line 18, delete "IC 35-43-2-3(a)" and insert "IC
- 2 35-43-2-3(a)",.
- 3 Page 5, line 34, delete "IC 35-43-2-3(a)" and insert "IC
- 4 35-43-2-3(a)",.
- 5 Renumber all SECTIONS consecutively.  
(Reference is to EHB 1386 as printed March 13, 2007.)

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Senator DROZDA