

SENATE MOTION

MADAM PRESIDENT:

I move that Senate Bill 262 be amended to read as follows:

- 1 Page 7, line 31, strike "IC 35-44-1-3." and insert "**IC 35-44.1-1.**".
- 2 Page 7, between lines 32 and 33, begin a new paragraph and insert:
- 3 "SECTION 5. IC 4-2-7-6, AS ADDED BY P.L.222-2005, SECTION
- 4 14, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1,
- 5 2012]: Sec. 6. (a) This section applies if the inspector general finds
- 6 evidence of misfeasance, malfeasance, nonfeasance, misappropriation,
- 7 fraud, or other misconduct that has resulted in a financial loss to the
- 8 state or in an unlawful benefit to an individual in the conduct of state
- 9 business.
- 10 (b) If the inspector general finds evidence described in subsection
- 11 (a), the inspector general shall certify a report of the matter to the
- 12 attorney general and provide the attorney general with any relevant
- 13 documents, transcripts, or written statements. Not later than one
- 14 hundred eighty (180) days after receipt of the report from the inspector
- 15 general, the attorney general shall do one (1) of the following:
- 16 (1) File a civil action (including an action upon a state officer's
- 17 official bond) to secure for the state the recovery of funds
- 18 misappropriated, diverted, missing, or unlawfully gained. Upon
- 19 request of the attorney general, the inspector general shall assist
- 20 the attorney general in the investigation, preparation, and
- 21 prosecution of the civil action.
- 22 (2) Inform the inspector general that the attorney general does not
- 23 intend to file a civil action for the recovery of funds
- 24 misappropriated, diverted, missing, or unlawfully gained. If the
- 25 attorney general elects not to file a civil action, the attorney
- 26 general shall return to the inspector general all documents and
- 27 files initially provided by the inspector general.
- 28 (3) Inform the inspector general that the attorney general is
- 29 diligently investigating the matter and after further investigation
- 30 may file a civil action for the recovery of funds misappropriated,

1 diverted, missing, or unlawfully gained. However, if more than
 2 three hundred sixty-five (365) days have passed since the
 3 inspector general certified the report to the attorney general, the
 4 attorney general loses the authority to file a civil action for the
 5 recovery of funds misappropriated, diverted, missing, or
 6 unlawfully gained and shall return to the inspector general all
 7 documents and files initially provided by the inspector general.

8 (c) If the inspector general has found evidence described in
 9 subsection (a) and reported to the attorney general under subsection (b)
 10 and:

11 (1) the attorney general has elected under subsection (b)(2) not to
 12 file a civil action for the recovery of funds misappropriated,
 13 diverted, missing, or unlawfully gained; or

14 (2) under subsection (b)(3) more than three hundred sixty-five
 15 (365) days have passed since the inspector general certified the
 16 report to the attorney general under subsection (b) and the
 17 attorney general has not filed a civil action;

18 the inspector general may file a civil action for the recovery of funds
 19 misappropriated, diverted, missing, or unlawfully gained.

20 (d) If the inspector general has found evidence described in
 21 subsection (a), the inspector general may institute forfeiture
 22 proceedings under IC 34-24-2 in a court having jurisdiction in a county
 23 where property derived from or realized through the misappropriation,
 24 diversion, disappearance, or unlawful gain of state funds may be
 25 located, unless a prosecuting attorney has already instituted forfeiture
 26 proceedings against that property.

27 **(e) The inspector general may directly institute civil proceedings**
 28 **against a person who has failed to pay civil penalties imposed by**
 29 **the ethics commission under IC 4-2-6-12."**

30 Page 8, between lines 3 and 4, begin a new paragraph and insert:

31 "SECTION 7. IC 4-6-3-2, AS AMENDED BY P.L.111-2009,
 32 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 33 JULY 1, 2012]: Sec. 2. (a) The attorney general shall have charge of
 34 and direct the prosecution of all civil actions that are brought in the
 35 name of the state of Indiana or any state agency.

36 (b) In no instance under this section shall the state or a state agency
 37 be required to file a bond.

38 (c) This section does not affect the authority of prosecuting
 39 attorneys to prosecute civil actions.

40 (d) This section does not affect the authority of the inspector general
 41 to prosecute a civil action under IC 4-2-7-6 for the recovery of **any of**
 42 **the following:**

43 (1) Funds misappropriated, diverted, missing, or unlawfully
 44 gained.

45 (2) A civil penalty imposed by the state ethics commission
 46 under IC 4-2-6-12.

1 (e) The attorney general may bring an action to collect unpaid
 2 registration fees owed by a commercial dog broker or a commercial
 3 dog breeder under IC 15-21."

4 Page 11, between lines 18 and 19, begin a new paragraph and insert:
 5 "SECTION 17. IC 5-11-5-1, AS AMENDED BY P.L.176-2009,
 6 SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 7 JULY 1, 2012]: Sec. 1. (a) Whenever an examination is made under
 8 this article, a report of the examination shall be made. The report must
 9 include a list of findings and shall be signed and verified by the
 10 examiner making the examination. A finding that is critical of an
 11 examined entity must be based upon one (1) of the following:

12 (1) Failure of the entity to observe a uniform compliance
 13 guideline established under IC 5-11-1-24(a).

14 (2) Failure of the entity to comply with a specific law.

15 A report that includes a finding that is critical of an examined entity
 16 must designate the uniform compliance guideline or the specific law
 17 upon which the finding is based. The reports shall immediately be filed
 18 with the state examiner, and, after inspection of the report, the state
 19 examiner shall immediately file one (1) copy with the officer or person
 20 examined, one (1) copy with the auditing department of the
 21 municipality examined and reported upon, and one (1) copy in an
 22 electronic format under IC 5-14-6 of the reports of examination of state
 23 agencies, instrumentalities of the state, and federal funds administered
 24 by the state with the legislative services agency, as staff to the general
 25 assembly. Upon filing, the report becomes a part of the public records
 26 of the office of the state examiner, of the office or the person examined,
 27 of the auditing department of the municipality examined and reported
 28 upon, and of the legislative services agency, as staff to the general
 29 assembly. A report is open to public inspection at all reasonable times
 30 after it is filed. If an examination discloses malfeasance, misfeasance,
 31 or nonfeasance in office or of any officer or employee, a copy of the
 32 report, signed and verified, shall be placed by the state examiner with
 33 the attorney general **and the inspector general**. The attorney general
 34 shall diligently institute and prosecute civil proceedings against the
 35 delinquent officer, or upon the officer's official bond, or both, and
 36 against any other proper person that will secure to the state or to the
 37 proper municipality the recovery of any funds misappropriated,
 38 diverted, or unaccounted for.

39 (b) Before an examination report is signed, verified, and filed as
 40 required by subsection (a), the officer or the chief executive officer of
 41 the state office, municipality, or entity examined must have an
 42 opportunity to review the report and to file with the state examiner a
 43 written response to that report. If a written response is filed, it becomes
 44 a part of the examination report that is signed, verified, and filed as
 45 required by subsection (a).

46 (c) Except as required by subsections (b) and (d), it is unlawful for

1 any deputy examiner, field examiner, or private examiner, before an
 2 examination report is made public as provided by this section, to make
 3 any disclosure of the result of any examination of any public account,
 4 except to the state examiner or if directed to give publicity to the
 5 examination report by the state examiner or by any court. If an
 6 examination report shows or discloses the commission of a crime by
 7 any person, it is the duty of the state examiner to transmit and present
 8 the examination report to the grand jury of the county in which the
 9 crime was committed at its first session after the making of the
 10 examination report and at any subsequent sessions that may be
 11 required. The state examiner shall furnish to the grand jury all evidence
 12 at the state examiner's command necessary in the investigation and
 13 prosecution of the crime.

14 (d) If, during an examination under this article, a deputy examiner,
 15 field examiner, or private examiner acting as an agent of the state
 16 examiner determines that the following conditions are satisfied, the
 17 examiner shall report the determination to the state examiner:

18 (1) A substantial amount of public funds has been
 19 misappropriated or diverted.

20 (2) The deputy examiner, field examiner, or private examiner
 21 acting as an agent of the state examiner has a reasonable belief
 22 that the malfeasance or misfeasance that resulted in the
 23 misappropriation or diversion of the public funds was committed
 24 by the officer or an employee of the office.

25 (e) After receiving a preliminary report under subsection (d), the
 26 state examiner may provide a copy of the report to the attorney general.
 27 The attorney general may institute and prosecute civil proceedings
 28 against the delinquent officer or employee, or upon the officer's or
 29 employee's official bond, or both, and against any other proper person
 30 that will secure to the state or to the proper municipality the recovery
 31 of any funds misappropriated, diverted, or unaccounted for.

32 (f) In an action under subsection (e), the attorney general may attach
 33 the defendant's property under IC 34-25-2.

34 (g) A preliminary report under subsection (d) is confidential until
 35 the final report under subsection (a) is issued, unless the attorney
 36 general institutes an action under subsection (e) on the basis of the
 37 preliminary report.

38 SECTION 18. IC 5-11-6-1, AS AMENDED BY P.L.176-2009,
 39 SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 40 JULY 1, 2012]: Sec. 1. (a) The state examiner, personally or through
 41 the deputy examiners, field examiners, or private examiners, upon the
 42 petition of twenty-five (25) interested taxpayers showing that effective
 43 local relief has not and cannot be obtained after due effort, shall make
 44 the inquiries, tests, examinations, and investigations that may be
 45 necessary to determine whether:

46 (1) any public contract has been regularly and lawfully executed

- 1 and performed; or
2 (2) any public work, building, or structure has been or is being
3 performed, built, or constructed in accordance with the terms and
4 provisions of the contract, and in compliance with the plans and
5 specifications, if any.

6 Upon a written petition of twenty-five (25) taxpayers the state examiner
7 may also require all plans, specifications, and estimates to be submitted
8 to the state examiner for corrections and approval before a contract is
9 awarded.

10 (b) The state examiner, deputy examiner, and any field examiner,
11 when engaged in making an inquiry, test, examination, or investigation
12 under subsection (a), is entitled to examine and inspect any public
13 records, documents, data, contracts, plans, and specifications contained
14 or found in any public office or other place pertaining or relating to the
15 public contract or public work, building, or structure. In addition,
16 subpoenas may be issued to witnesses to appear before the examiner in
17 person or to produce books and papers for inspection and examination.
18 The state examiner, deputy, field, and private examiner may administer
19 oaths and examine witnesses under oath either orally or by
20 interrogatories on all matters under examination and investigation.
21 Under order of the state examiner, the examination may be transcribed,
22 with the reasonable expense paid by the municipality in the same
23 manner as the compensation of the field examiner is paid.

24 (c) The state examiner, the deputy examiner, and a field examiner
25 may enforce attendance and answers to questions and interrogatories,
26 as provided by law, with respect to examinations and investigations
27 made by the state examiner, deputy examiner, field examiner, or
28 private examiner of public offices.

29 (d) The state examiner, deputy examiner, any field examiner, and
30 any private examiner, when making an examination or investigation
31 under subsection (a), shall examine, inspect, and test the public works,
32 buildings, or structures in the manner that the examiner sees fit to
33 determine whether it is being performed, built, or constructed
34 according to the contract and plans and specifications.

35 (e) The state examiner shall file a report covering any examination
36 or investigation that discloses:

- 37 (1) fraud, collusion, misconduct, or negligence in the letting or
38 the execution of any public contract or in the performance of any
39 of the terms and conditions of any public contract; or
40 (2) any failure to comply with the terms or conditions of any
41 public contract in the construction of any public work, building,
42 or structure or to perform, build, or construct it according to the
43 plans and specifications, if any, provided in the contract;
44 that causes loss, injury, waste, or damage to the state, the municipality,
45 taxing or assessment district, other public entity, or to its citizens, if it
46 is enforceable by assessment or taxation.

- 1 (f) The report must meet the following requirements:
2 (1) The report must be made, signed, and verified in
3 quadruplicate by the examiner making the examination.
4 (2) The report shall be filed promptly with the state examiner.
5 After inspection of the report, the state examiner shall file a copy of the
6 report promptly with the attorney general **and the inspector general**.
7 (g) The attorney general shall diligently institute and prosecute civil
8 proceedings against any or all officers, individuals, and persons in the
9 form and manner that the attorney general determines will secure a
10 proper recovery to the state, municipality, taxing or assessment district,
11 or other public entity injured, defrauded, or damaged by the matters in
12 the report. These prosecutions may be made by the attorney general and
13 the recovery may be had, either upon public official bonds, contractors'
14 bonds, surety or other bonds, or upon individual liability, either upon
15 contract or in tort, as the attorney general determines is wise. No action
16 or recovery in any form or manner, or against any party or parties,
17 precludes further or additional action or recovery in any other form or
18 manner or against another party, either concurrently with or later found
19 necessary, to secure complete recovery and restitution with respect to
20 all matters exhibited, set out, or described in the report. The suits may
21 be brought in the name of the state on the relation of the attorney
22 general for the benefit of the state, or the municipality, taxing or
23 assessment district, or other public entity that may be proper. The
24 actions brought against any defendants may be joined, as to parties,
25 form, and causes of action, in the manner that the attorney general
26 decides.
27 (h) Any report described in this section or a copy duly certified by
28 the state examiner shall be taken and received in any and all courts of
29 this state as prima facie evidence of the facts stated and contained in
30 the reports.
31 (i) If an examination, investigation, or test is made without a petition
32 being first filed and the examination, investigation, or test shows that
33 the terms of the contract are being complied with, then the expense of
34 the examination, investigation, or test shall be paid by the state upon
35 vouchers approved by the state examiner from funds available for
36 contractual service of the state board of accounts. If such a report
37 shows misfeasance, malfeasance, or nonfeasance in public office or
38 shows that the terms of the plans and specifications under which a
39 contract has been awarded are not being complied with, it is unlawful
40 to make the report public until the report has been certified to the
41 attorney general.
42 (j) If, during an examination under this article, a deputy examiner,
43 field examiner, or private examiner acting as an agent of the state
44 examiner determines that all of the following conditions are satisfied,
45 the examiner shall report the determination to the state examiner:

- 1 (1) A substantial amount of public funds has been
2 misappropriated or diverted.
- 3 (2) The deputy examiner, field examiner, or private examiner
4 acting as an agent of the state examiner has a reasonable belief
5 that the malfeasance or misfeasance that resulted in the
6 misappropriation or diversion of public funds was committed by
7 the officer or an employee of the office.
- 8 (k) After receiving a preliminary report under subsection (j), the
9 state examiner may provide a copy of the report to the attorney general.
10 The attorney general may institute and prosecute civil proceedings
11 against the delinquent officer or employee, or upon the officer's or
12 employee's official bond, or both, and against any other proper person
13 that will secure to the state or to the proper municipality the recovery
14 of any funds misappropriated, diverted, or unaccounted for.
- 15 (l) In an action under subsection (k), the attorney general may attach
16 the defendant's property under IC 34-25-2.
- 17 (m) A preliminary report under subsection (j) is confidential until
18 the final report under subsection (e) is issued, unless the attorney
19 general institutes an action under subsection (k) on the basis of the
20 preliminary report.
- 21 SECTION 19. IC 5-11-6-3 IS AMENDED TO READ AS
22 FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 3. If any examination
23 or investigation made by the state examiner personally or through a
24 deputy examiner, field examiner, or private examiner under ~~of~~ this
25 chapter or ~~of~~ **under** any other statute discloses:
- 26 (1) malfeasance, misfeasance, or nonfeasance in office, or of any
27 officer or employee;
- 28 (2) that any public money has been:
- 29 (A) unlawfully expended, either by having been expended for
30 a purpose not authorized by law in an amount exceeding that
31 authorized by law, or by having been paid to a person not
32 lawfully entitled to receive it; or
- 33 (B) obtained by fraud or in any unlawful manner; or
- 34 (3) that any money has been wrongfully withheld from the public
35 treasury;
- 36 a duly verified copy of the report shall be submitted by the state
37 examiner to the attorney general, who shall institute and prosecute civil
38 proceedings as provided in section 1 of this chapter, **and to the**
39 **inspector general.**"
- 40 Page 15, line 35, delete "IC 35-42-2-2));" and insert
41 "IC 35-42-2-2);".
- 42 Page 31, line 18, delete "IC 35-44.1-3-5)." and insert
43 "(**IC 35-44.1-3-5).**".
- 44 Page 45, line 13, delete "Subdivision" and insert "**Subsection**".
- 45 Page 63, line 36, delete "class" and insert "**Class**".

- 1 Page 66, line 10, strike "(IC 35-44-1-1)." and insert "(IC
- 2 **35-44.1-1-2)."**
- 3 Renumber all SECTIONS consecutively.
(Reference is to SB 262 as printed January 20, 2012.)

Senator BRAY