



February 1, 2002

## SENATE BILL No. 263

DIGEST OF SB 263 (Updated January 30, 2002 2:05 PM - DI 105)

**Citations Affected:** IC 33-2.1; IC 33-14.

**Synopsis:** Senior prosecuting attorneys. Provides that: (1) a senior prosecuting attorney may be appointed to serve as a special prosecutor; and (2) a person must have at least eight years of experience as a prosecuting attorney or chief deputy prosecuting attorney to be a senior prosecuting attorney. Prohibits a person from serving as a senior prosecuting attorney if certain disciplinary sanctions have been imposed upon the person. Removes a requirement that a person must wait five years before being eligible to serve as a senior prosecutor in the county in which the person previously served as a prosecutor or chief deputy. Provides that a senior prosecuting attorney: (1) shall be indemnified by the state for certain costs related to civil litigation against the senior prosecuting attorney; (2) shall be defended by the attorney general in a civil suit for acts performed in the course of employment; (3) is exempt from contributions to the prosecuting attorney's retirement fund; (4) is eligible to receive pension benefits while acting as a senior prosecuting attorney; (5) may not receive compensation that exceeds the minimum compensation paid to a full-time prosecuting attorney and may not receive compensation for more than 100 days in a calendar year; and (6) may file an affidavit requesting designation in as a senior prosecuting attorney in any county in which the senior prosecuting attorney is willing to serve.

**Effective:** July 1, 2002.

**Hume, Bray, Kenley, Simpson**

January 7, 2002, read first time and referred to Committee on Judiciary.  
January 31, 2002, amended, reported favorably — Do Pass.

SB 263—LS 6727/DI 105+



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February 1, 2002

Second Regular Session 112th General Assembly (2002)

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 2001 General Assembly.

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## SENATE BILL No. 263

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 33-2.1-9-1 IS AMENDED TO READ AS  
2 FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 1. (a) As used in this  
3 chapter, "judge" has the meaning set forth in IC 33-13-17-3.  
4 (b) **As used in this chapter, "prosecuting attorney" includes a**  
5 **senior prosecuting attorney appointed under IC 33-14-1.**  
6 (c) If a judge or prosecuting attorney is sued for civil damages or  
7 equitable relief and the suit would be construed, under notice pleading,  
8 as arising out of an act performed within the scope of the duties of the  
9 judge or prosecuting attorney, the attorney general shall:  
10 (1) defend the judge or prosecuting attorney in the suit; or  
11 (2) authorize the executive director of the division of state court  
12 administration to hire private counsel to provide the defense.  
13 SECTION 2. IC 33-14-1-1.1 IS ADDED TO THE INDIANA CODE  
14 AS A **NEW SECTION** TO READ AS FOLLOWS [EFFECTIVE JULY  
15 1, 2002]: **Sec. 1.1. (a) As used in this chapter, "senior prosecuting**  
16 **attorney" means a person who:**  
17 (1) **was employed for at least eight (8) years as a prosecuting**

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attorney or chief deputy prosecuting attorney; and  
(2) files an affidavit requesting designation as a senior prosecuting attorney in the circuit 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 Indiana supreme court.
- (3) The length of time the person served as a deputy prosecuting attorney or prosecuting attorney.
- (4) The name of any county in which the person served as a deputy prosecuting attorney or prosecuting attorney.

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

SECTION 3. IC 33-14-1-6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 6. (a) Special prosecutors may be appointed only in accordance with this section.

(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; and

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

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

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

8 **(i) The combination of:**

9 **(1) the compensation paid to a senior prosecuting attorney**  
 10 **under this chapter; and**

11 **(2) retirement benefits that the person appointed as a senior**  
 12 **prosecuting attorney is receiving or entitled to receive;**  
 13 **may not exceed the minimum compensation to which a full-time**  
 14 **prosecuting attorney is entitled under IC 33-14-7-5.**

15 **(j) A senior prosecuting attorney appointed under this chapter**  
 16 **may not be compensated as senior prosecuting attorney for more**  
 17 **than one hundred (100) calendar days in the aggregate during a**  
 18 **calendar year.**

19 SECTION 4. IC 33-14-1-6.5 IS ADDED TO THE INDIANA CODE  
 20 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
 21 1, 2002]: **Sec. 6.5. A person may not be appointed a senior**  
 22 **prosecuting attorney under section 6 of this chapter if the person:**

23 **(1) is not available for the minimum period of commitment**  
 24 **for 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 5. IC 33-14-9-7 IS AMENDED TO READ AS  
 29 FOLLOWS [EFFECTIVE JULY 1, 2002]: **Sec. 7. (a) As used in this**  
 30 **chapter, "services" means the period beginning on the first day upon**  
 31 **which a person first became:**

32 **(1) a prosecuting attorney or chief deputy prosecuting attorney;**

33 **(2) any other deputy prosecuting attorney who is:**

34 **(A) appointed under IC 33-14-7-2; and**

35 **(B) paid by the state from the state general fund; or**

36 **(3) the executive director or the assistant executive director of the**  
 37 **prosecuting attorneys council of Indiana;**

38 **whether that date is before, on, or after January 1, 1990, and ending on**  
 39 **the date under consideration, including all intervening employment in**  
 40 **a position described in subdivisions (1) through (3). If an individual is**  
 41 **elected or appointed to a position described in subdivisions (1) through**  
 42 **(3) and serves one (1) or more terms or part of a term, then retires from**



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1 office, but at a later period or periods is appointed or elected and serves  
 2 in a position described in subdivisions (1) through (3), the individual  
 3 shall pay into the fund during all the periods that the individual serves  
 4 in that position, except as otherwise provided in this chapter, whether  
 5 the periods are connected or disconnected.

6 **(b) A senior prosecuting attorney appointed under IC 33-14-1**  
 7 **may not be required to pay into the fund during any period of**  
 8 **service as a senior prosecuting attorney.**

9 SECTION 6. IC 33-14-9-13 IS AMENDED TO READ AS  
 10 FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 13. A participant whose  
 11 employment in a position described in section 7 of this chapter is  
 12 terminated is entitled to a retirement benefit computed under section  
 13 14 or 16 of this chapter, beginning on the date specified by the  
 14 participant in a written application, if all of the following conditions are  
 15 met:

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

19 (A) after the cessation of the participant's service;

20 (B) on the first day of a month; and

21 (C) not more than six (6) months before the date the  
 22 application is received by the board.

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

27 (2) The participant:

28 (A) is at least sixty-two (62) years of age and has at least ten  
 29 (10) years of service credit; or

30 (B) meets the requirements for disability benefits under  
 31 section 15 of this chapter.

32 (3) The participant is not receiving and is not entitled to receive  
 33 any salary for services currently performed, **except for services**  
 34 **rendered as a senior prosecuting attorney under IC 33-14-1.**

35 SECTION 7. IC 33-14-11-2 IS AMENDED TO READ AS  
 36 FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 2. As used in the  
 37 chapter, "prosecuting attorney" means a prosecuting attorney, **or a**  
 38 **deputy prosecuting attorney, or a senior prosecuting attorney**  
 39 **appointed under IC 33-14-1.**

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SENATE MOTION

Mr. President: I move that Senator Bray be added as second author of Senate Bill 263.

HUME

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SENATE MOTION

Mr. President: I move that Senators Kenley and Simpson be added as coauthors of Senate Bill 263.

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## COMMITTEE REPORT

Mr. President: The Senate Committee on Judiciary, to which was referred Senate Bill No. 263, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 1, between the enacting clause and line 1, begin a new paragraph and insert:

"SECTION 1. IC 33-2.1-9-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 1. (a) As used in this chapter, "judge" has the meaning set forth in IC 33-13-17-3.

(b) **As used in this chapter, "prosecuting attorney" includes a senior prosecuting attorney appointed under IC 33-14-1.**

(c) If a judge or prosecuting attorney is sued for civil damages or equitable relief and the suit would be construed, under notice pleading, as arising out of an act performed within the scope of the duties of the judge or prosecuting attorney, the attorney general shall:

- (1) defend the judge or prosecuting attorney in the suit; or
- (2) authorize the executive director of the division of state court administration to hire private counsel to provide the defense."

Page 1, line 6, after "or" insert "**chief**".

Page 1, line 9, delete "served as a prosecuting attorney or deputy" and insert "**is willing to serve as a senior**".

Page 2, between lines 2 and 3, begin a new paragraph and insert:

**"(c) The circuit court shall promptly forward each affidavit received under this section to the prosecuting attorneys council of Indiana."**

Page 3, line 5, delete "if:" and insert "**if**".

Page 3, delete lines 6 through 8.

Page 3, line 9, delete "(2)"

Page 3, run in lines 5 through 10.

Page 3, between lines 39 and 40, begin a new paragraph and insert:

**"(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 33-14-7-5.**

**(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 the aggregate during a calendar year."**

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Page 3, line 42, delete "senior prosecuting attorney" and insert "person".

Page 4, delete lines 1 through 7, begin a new line blocked left and insert:

**"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 5. IC 33-14-9-7 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 7. **(a)** As used in this chapter, "services" means the period beginning on the first day upon which a person first became:

- (1) a prosecuting attorney or chief deputy prosecuting attorney;
- (2) any other deputy prosecuting attorney who is:
  - (A) appointed under IC 33-14-7-2; 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;

whether that date is before, on, or after January 1, 1990, and ending on the date under consideration, including all intervening employment in a position described in subdivisions (1) through (3). 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, 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 33-14-1 may not be required to pay into the fund during any period of service as a senior prosecuting attorney.**

SECTION 6. IC 33-14-9-13 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 13. A participant whose employment in a position described in section 7 of this chapter is terminated is entitled to a retirement benefit computed under section 14 or 16 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

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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 ten (10) years of service credit; or
- (B) meets the requirements for disability benefits under section 15 of this chapter.

(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 33-14-1.**

SECTION 7. IC 33-14-11-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 2. As used in the chapter, "prosecuting attorney" means a prosecuting attorney, ~~or~~ a deputy prosecuting attorney, **or a senior prosecuting attorney appointed under IC 33-14-1.**

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to SB 263 as introduced.)

BRAY, Chairperson

Committee Vote: Yeas 10, Nays 0.

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