

111TH CONGRESS
1ST SESSION

H. R. 277

To provide an alternate procedure for the prosecution of certain criminal contempts referred for prosecution by the House of Representatives, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JANUARY 7, 2009

Mr. MILLER of North Carolina (for himself, Mr. CONYERS, and Ms. LEE of California) introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To provide an alternate procedure for the prosecution of certain criminal contempts referred for prosecution by the House of Representatives, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Special Criminal Con-
5 tempt of Congress Procedures Act of 2009”.

6 **SEC. 2. ALTERNATE PROCEDURE.**

7 (a) SCOPE OF APPLICATION.—If the House of Rep-
8 resentatives finds a current or former officer or employee
9 of the Executive branch has violated section 102 of the

1 Revised Statutes of the United States (2 U.S.C. 192), the
2 procedures of this Act apply.

3 (b) CERTIFICATION BY SPEAKER.—Upon the finding
4 by the House of Representatives of a violation to which
5 this Act applies, the Speaker shall certify that finding to
6 the appropriate United States attorney, whose duty it
7 shall be to bring the matter before the grand jury for its
8 action.

9 (c) CIRCUMSTANCES LEADING TO APPOINTMENT OF
10 SPECIAL COUNSEL.—If—

11 (1) the Attorney General or the United States
12 attorney to whom the finding was certified informs
13 the court or the House that the Department of Jus-
14 tice will not prosecute the case; or

15 (2) by the end of the 30th day after the date
16 of receipt of a certification made under subsection

17 (b) a grand jury has not returned an indictment
18 based on the violation alleged in the certification;

19 the Chief Judge of the United States district court for
20 the district to whose United States Attorney the certifi-
21 cation was made (hereinafter in this Act referred to as
22 the “Chief Judge”) shall appoint a special counsel under
23 section 3. It shall be the duty of the Attorney General
24 to inform that court and the House if a grand jury does
25 not return an indictment by the end of the 30-day period.

1 The Speaker of the House, or any interested congressional
2 party, may file with the Chief Judge a suggestion that
3 circumstances giving rise to a duty to appoint a special
4 counsel have occurred after the 30-day period ends with-
5 out the return of an indictment.

6 **SEC. 3. APPOINTMENT, QUALIFICATIONS, AND PROSECU-**
7 **TORIAL JURISDICTION OF SPECIAL COUN-**
8 **SEL, AND ADMINISTRATIVE MATTERS RELAT-**
9 **ING TO THE SPECIAL COUNSEL.**

10 (a) APPOINTMENT, QUALIFICATIONS, AND PROSECU-
11 TORIAL JURISDICTION OF SPECIAL COUNSEL.—

12 (1) APPOINTMENT AND QUALIFICATIONS.—The
13 Chief Judge shall appoint the special counsel, who
14 must be an attorney in good standing with substan-
15 tial prosecutorial experience who has not served in
16 any capacity in the administration of the President
17 who is or was in office when the Speaker of the
18 House certified the finding of a violation.

19 (2) PROSECUTORIAL JURISDICTION.—The Chief
20 Judge shall define the special counsel’s prosecutorial
21 jurisdiction as comprising the investigation and
22 prosecution of the alleged violation, any conspiracy
23 to commit the alleged violation, and any perjury,
24 false statement, or obstruction of justice occurring
25 in relation to such investigation and prosecution.

1 (b) AUTHORITY OF SPECIAL COUNSEL WITH RE-
2 SPECT TO MATTERS WITHIN PROSECUTORIAL JURISDIC-
3 TION.—With respect to all matters in that special coun-
4 sel’s prosecutorial jurisdiction, a special counsel appointed
5 under this Act shall have full power and independent au-
6 thority to exercise all prosecutorial functions and powers,
7 and any other functions and powers normally ancillary
8 thereto, of the Department of Justice, the Attorney Gen-
9 eral, and any other officer or employee of the Department
10 of Justice, except that the Attorney General shall exercise
11 direction or control as to those matters that specifically
12 require the Attorney General’s personal action under sec-
13 tion 2516 of title 18, United States Code.

14 (c) COMPLIANCE WITH POLICIES OF THE DEPART-
15 MENT OF JUSTICE.—

16 (1) IN GENERAL.—A special counsel shall, ex-
17 cept to the extent that to do so would be incon-
18 sistent with the purposes of this Act, comply with
19 the written or other established policies of the De-
20 partment of Justice respecting enforcement of the
21 criminal laws.

22 (2) NATIONAL SECURITY.—A special counsel
23 shall comply with guidelines and procedures used by
24 the Department in the handling and use of classified
25 material.

1 (d) SALARY.—The special counsel shall receive a sal-
2 ary equivalent to the salary of the United States Attorney
3 for the District of Columbia.

4 (e) STAFF.—The special counsel may appoint and fix
5 the salaries of such staff, not to exceed 12 in number,
6 as the special counsel deems necessary to carry out the
7 functions of the special counsel under this Act. However,
8 no salary of a member of such staff may exceed the salary
9 of the special counsel.

10 (f) EXPENSES.—The Department of Justice shall pay
11 all costs relating to the establishment and operation of any
12 office of special counsel. The Attorney General shall sub-
13 mit to the Congress, not later than 30 days after the end
14 of each fiscal year, a report on amounts paid during that
15 fiscal year for expenses of investigations and prosecutions
16 the special counsel.

17 (g) REPORT TO CONGRESS.—Each special counsel
18 shall report to Congress annually on the special counsel's
19 activities under this Act. The report shall include a de-
20 scription of the progress of any investigation or prosecu-
21 tion conducted by the special counsel and provide informa-
22 tion justifying the costs of the activities reported on.

23 **SEC. 4. REMOVAL OF SPECIAL COUNSEL.**

24 (a) IN GENERAL.—A special counsel may be removed
25 from office, other than by impeachment and conviction,

1 only by the personal action of the Attorney General, and
2 only for good cause, physical or mental disability, or any
3 other condition that substantially impairs the performance
4 of that special counsel's duties.

5 (b) REPORT UPON REMOVAL.—If a special counsel
6 is removed from office, the Attorney General shall prompt-
7 ly submit to the Chief Judge and to Congress a report
8 specifying the facts found and the ultimate grounds for
9 the removal.

10 (c) JUDICIAL REVIEW OF REMOVAL.—A special
11 counsel removed from office may obtain judicial review of
12 the removal in a civil action. The Chief Judge may not
13 hear or determine any such civil action or any appeal of
14 a decision in any such civil action. The special counsel may
15 be reinstated or granted other appropriate relief by order
16 of the court.

17 (d) APPOINTMENT OF REPLACEMENT.—Upon re-
18 moval of a special counsel, the Chief Judge shall appoint
19 a similarly qualified individual to continue the functions
20 of the special counsel.

21 **SEC. 5. TERMINATION OF SPECIAL COUNSEL'S AUTHORITY.**

22 (a) IN GENERAL.—The authority of the special coun-
23 sel shall cease two years after the date of the special coun-
24 sel's appointment, but the Chief Judge may extend that
25 authority for an additional period not to exceed one year,

1 if the Chief Judge finds good cause to do so. Good cause
2 to do so includes that the investigation or prosecution un-
3 dertaken by the special counsel has been delayed by dila-
4 tory tactics by persons who could provide evidence that
5 would significantly assist the investigation or prosecution,
6 and also includes the need to allow the special counsel to
7 participate in any appellate proceedings related to pros-
8 ecutions engaged in by the special counsel.

9 (b) **TERMINATION BY COURT.**—The Chief Judge, ei-
10 ther on the judge’s own motion or upon the request of
11 the Attorney General, may terminate an office of special
12 counsel at any time, on the ground that the investigation
13 of all matters within the prosecutorial jurisdiction of such
14 special counsel, and any resulting prosecutions, have been
15 completed or so substantially completed that it would be
16 appropriate for the Department of Justice to complete
17 such investigations and prosecutions.

18 **SEC. 6. INCREASE IN PENALTY FOR CONTEMPT OF CON-**
19 **GRESS.**

20 Section 102 of the Revised Statutes of the United
21 States (2 U.S.C. 194) is amended by striking “deemed”
22 and all that follows through “twelve months” and insert-
23 ing “fined not more than \$1,000,000 or imprisoned not
24 more than 2 years, or both”.

1 **SEC. 7. EFFECTIVE DATE.**

2 This Act takes effect on January 20, 2009.

○