

110TH CONGRESS
2^D SESSION

H. R. 6508

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

JULY 16, 2008

Mr. MILLER of North Carolina (for himself, Mr. CONYERS, Mr. NADLER, Ms. LINDA T. SÁNCHEZ of California, and Mr. PRICE of North Carolina) 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 2008”.

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

7 (a) SCOPE OF APPLICATION.—If the House of Rep-
8 resentatives finds an officer or employee of the Executive

1 branch, or a former officer or employee of the Executive
2 branch has violated section 102 of the Revised Statutes
3 of the United States (2 U.S.C. 192), the procedures of
4 this Act apply in lieu of the procedures set forth in section
5 104 of the Revised Statutes of the United States (2 U.S.C.
6 194).

7 (b) CERTIFICATION BY SPEAKER.—Upon the finding
8 by the House of Representatives of a violation to which
9 this Act applies, the Speaker shall certify that finding to
10 the Attorney General for presentation to a grand jury and
11 to the Special Division of the Court created by this Act.

12 (c) CIRCUMSTANCES LEADING TO APPOINTMENT OF
13 SPECIAL ADVOCATE.—If—

14 (1) the Attorney General informs the Special
15 Division of the Court that the Department of Justice
16 will not present the matter to a grand jury because
17 political or institutional considerations create a con-
18 flict that would prevent redress to an affront to the
19 authority of the House through presentment or pros-
20 ecution by the Department of Justice;

21 (2) the Attorney General informs the Special
22 Division of the Court that the Department of Jus-
23 tice will not present the matter to a grand jury for
24 any other reason; or

1 (3) by the end of the 30th day after the date
2 of receipt of a certification under subsection (b) the
3 Attorney General has not presented the matter to a
4 grand jury;
5 the Special Division of the Court shall appoint a special
6 advocate under section 3.

7 **SEC. 3. APPOINTMENT, QUALIFICATIONS, AND PROSECU-**
8 **TORIAL JURISDICTION OF SPECIAL ADVO-**
9 **CATE, AND ADMINISTRATIVE MATTERS RE-**
10 **LATING TO THE SPECIAL ADVOCATE.**

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

13 (1) APPOINTMENT AND QUALIFICATIONS.—The
14 Special Division of the Court shall appoint the spe-
15 cial advocate, who must be an attorney in good
16 standing with substantial prosecutorial experience
17 who has not served in any capacity in the adminis-
18 tration of the President who is or was in office when
19 the Speaker of the House certified the finding of a
20 violation.

21 (2) PROSECUTORIAL JURISDICTION.—The Spe-
22 cial Division of the Court shall define the special ad-
23 vocate's prosecutorial jurisdiction as comprising the
24 investigation and prosecution of the alleged violation
25 and any perjury, false statement, and any obstruc-

1 tion of justice occurring during and in relation to
2 such investigation and prosecution.

3 (b) **AUTHORITY OF SPECIAL ADVOCATE WITH RE-**
4 **SPECT TO MATTERS WITHIN PROSECUTORIAL JURISDIC-**
5 **TION.**—With respect to all matters in that special advo-
6 cate’s prosecutorial jurisdiction, a special advocate ap-
7 pointed under this Act shall have full power and inde-
8 pendent authority to exercise all prosecutorial functions
9 and powers, and any other functions and powers normally
10 ancillary thereto, of the Department of Justice, the Attor-
11 ney General, and any other officer or employee of the De-
12 partment of Justice, except that the Attorney General
13 shall exercise direction or control as to those matters that
14 specifically require the Attorney General’s personal action
15 under section 2516 of title 18, United States Code.

16 (c) **SALARY.**—The special advocate shall receive a sal-
17 ary equivalent to the salary of the United States Attorney
18 for the District of Columbia.

19 (d) **STAFF.**—The special advocate may appoint and
20 fix the salaries of such staff, not to exceed 12 in number,
21 as the special advocate deems necessary to carry out the
22 functions of the special advocate under this Act. However,
23 no salary of a member of such staff may exceed the salary
24 of the special advocate.

1 (e) EXPENSES.—The Department of Justice shall
2 pay all costs relating to the establishment and operation
3 of any office of special advocate. The Attorney General
4 shall submit to the Congress, not later than 30 days after
5 the end of each fiscal year, a report on amounts paid dur-
6 ing that fiscal year for expenses of investigations and pros-
7 ecutions the special advocate.

8 (f) REPORT TO CONGRESS.—Each special advocate
9 shall report to Congress annually on the special advocate’s
10 activities under this Act. The report shall include a de-
11 scription of the progress of any investigation or prosecu-
12 tion conducted by the special advocate and provide infor-
13 mation justifying the costs of the activities reported on.

14 **SEC. 4. SPECIAL DIVISION OF THE COURT.**

15 (a) DESIGNATION.—The Chief Justice shall designate
16 three judges or justices of the United States, one of whom
17 shall be an active judge of the United States Court of Ap-
18 peals for the District of Columbia, to be the Special Divi-
19 sion of the Court for the purposes of this Act. The Chief
20 Justice shall make the first such designation not later
21 than 45 days after the date of the enactment of this Act.

22 (b) SPECIAL DIVISION TO BE A DIVISION WITHIN
23 THE UNITED STATES COURT OF APPEALS FOR THE DIS-
24 TRICT OF COLUMBIA CIRCUIT.—The Special Division of

1 the Court shall be a division within the United States
2 Court of Appeals for the District of Columbia Circuit.

3 (c) LENGTH OF DESIGNATION.—Each designation to
4 the Special Division of the Court shall be for a term of
5 2 years, but the Chief Justice may fill any vacancy arising
6 before the end of a term for the remainder of that term.

7 (d) PRIORITY TO BE GIVEN TO SENIOR CIRCUIT
8 JUDGES AND RETIRED JUSTICES OF THE UNITED
9 STATES SUPREME COURT.—In designating judges and
10 justices to serve on the Special Division of the Court, the
11 Chief Justice shall give priority to senior circuit judges
12 and retired justices of the United States Supreme Court.

13 (e) VARIETY OF COURTS TO BE REPRESENTED.—
14 Not more than one person may be designated to such divi-
15 sion from a particular court.

16 **SEC. 5. REMOVAL OF SPECIAL ADVOCATE.**

17 (a) IN GENERAL.—A special advocate may be re-
18 moved from office, other than by impeachment and convic-
19 tion, only by the personal action of the Attorney General,
20 and only for good cause, physical or mental disability, or
21 any other condition that impairs the performance of that
22 special advocate's duties.

23 (b) REPORT UPON REMOVAL.—If a special advocate
24 is removed from office, the Attorney General shall prompt-
25 ly submit to the Special Division of the Court and the Con-

1 gress a report specifying the facts found and the ultimate
2 grounds for the removal.

3 (c) **JUDICIAL REVIEW OF REMOVAL.**—A special advo-
4 cate removed from office may obtain judicial review of the
5 removal in a civil action commenced in the United States
6 District Court for the District of Columbia. A member of
7 the Special Division of the Court may not hear or deter-
8 mine any such civil action or any appeal of a decision in
9 any such civil action. The special advocate may be rein-
10 stated or granted other appropriate relief by order of the
11 court.

12 **SEC. 6. TERMINATION OF SPECIAL ADVOCATE'S AUTHOR-**
13 **ITY.**

14 (a) **IN GENERAL.**—The authority of the special advo-
15 cate shall cease two years after the date of the special ad-
16 vocates appointment, but the Special Division of the Court
17 may extend that authority for an additional period not to
18 exceed one year, if the court finds good cause to do so.
19 Good cause to do so includes that the investigation or
20 prosecution undertaken by the special advocate has been
21 delayed by dilatory tactics by persons who could provide
22 evidence that would significantly assist the investigation
23 or prosecution, and also includes the need to allow the spe-
24 cial advocate to participate in any appellate proceedings
25 related to prosecutions engaged in by the special advocate.

1 (b) TERMINATION BY SPECIAL DIVISION OF THE
2 COURT.—The Special Division of the court, either on its
3 own motion or upon the request of the Attorney General,
4 may terminate an office of special advocate at any time,
5 on the ground that the investigation of all matters within
6 the prosecutorial jurisdiction of such special advocate, and
7 any resulting prosecutions, have been completed or so sub-
8 stantially completed that it would be appropriate for the
9 Department of Justice to complete such investigations and
10 prosecutions.

11 **SEC. 7. EFFECTIVE DATE.**

12 This Act takes effect on January 20, 2009.

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