



GENERAL ASSEMBLY

STATE OF ILLINOIS

HOUSE OF REPRESENTATIVES

SPECIAL INVESTIGATING COMMITTEE OF THE NINETY-SEVENTH GENERAL ASSEMBLY

Chair

Rep. Elaine Nekritz

Minority Spokesman

Rep. Dennis M. Reboletti

Members

Rep. William Davis

Rep. JoAnn D. Osmond

Rep. André M. Thapedi

Rep. Jil Tracy

Report of the Special Investigating Committee:

**Statement of Charges and Specifications
Against Representative Derrick Smith
and Appointment of House Managers**

Filed June 6, 2012

**THE SPECIAL INVESTIGATING COMMITTEE OF THE ILLINOIS HOUSE OF REPRESENTATIVES,
97TH GENERAL ASSEMBLY, REPORTS AS FOLLOWS:**

PREAMBLE

WHEREAS, Illinois State Representative Derrick Smith, representing the 10th Representative District in the State of Illinois (“Rep. Smith”), was arrested on March 13, 2012, by federal agents on the charge of violating 18 U.S.C. § 666(a)(1)(B), namely a charge that Rep. Smith accepted a cash bribe in exchange for recommending an Early Childhood Construction Grant (an “ECC Grant”) to the Capital Development Board, an Illinois state agency; and

WHEREAS, on March 12, 2012, a Criminal Complaint was filed in the United States District Court for the Northern District of Illinois, Eastern Division against Rep. Smith (the “Criminal Complaint”) alleging that Rep. Smith violated 18 U.S.C. § 666(a)(1)(B) by accepting a cash bribe in exchange for recommending an ECC Grant to the Capital Development Board, an Illinois state agency; and

WHEREAS, attached to the Criminal Complaint was an Affidavit sworn to and signed by Special Agent Bryan M. Butler of the Federal Bureau of Investigation (the “Butler Affidavit”), which contained numerous factual allegations supporting the ultimate allegation that Rep. Smith violated 18 U.S. C. § 666(a)(1)(B) by accepting a cash bribe in exchange for recommending an ECC Grant to the Capital Development Board, an Illinois state agency; and

WHEREAS, the Butler Affidavit alleges that Rep. Smith was covertly recorded engaging in several discussions with an individual cooperating with the federal government, known as the “Cooperating Source,” between December, 2011 and March, 2012; and

WHEREAS, the Butler Affidavit alleges that Rep. Smith and the Cooperating Source were covertly recorded on several occasions in which Rep. Smith indicated that, in exchange for

a cash bribe, Rep. Smith would be willing to write a letter on behalf of a daycare center in support of an ECC Grant from the Capital Development Board; and

WHEREAS, the Butler Affidavit alleges that Rep. Smith and the Cooperating Source were covertly recorded discussing on several occasions that the cash bribe Rep. Smith would accept in exchange for writing that letter of support would be in the amount of \$7,000; and

WHEREAS, the Butler Affidavit alleges that Rep. Smith did, in fact, sign a letter of support for an ECC Grant for the above-mentioned daycare center, and that he did so on official state letterhead; and

WHEREAS, the Butler Affidavit alleges that, in exchange for writing this letter of support, Rep. Smith did, in fact, accept \$7,000 in cash; and

WHEREAS, on April 10, 2012, a federal grand jury indicted Rep. Smith on the charge of violating 18 U.S.C. § 666(a)(1)(B), which indictment further contained a forfeiture allegation pursuant to 18 U.S.C. § 981(a)(1)(C) and 28 U.S.C. § 2461(c) for unrecovered proceeds approximating \$4,500 of the cash bribe that Rep. Smith was alleged to have received; and

WHEREAS, on March 21, 2012, pursuant to Rule 91 of the Rules of the Illinois House of Representatives for the 97th General Assembly (“House Rule 91”), five members of the Illinois House of Representatives filed a petition (the “Petition”) containing suggested charges against Rep. Smith that outlined the allegations contained in the Criminal Complaint and the Butler Affidavit; and

WHEREAS, pursuant to House Rule 91, following the filing of the Petition on March 21, 2012, this Special Investigating Committee (“SIC”) was formed, consisting of three members appointed by the Speaker of the House and three members appointed by the Minority Leader of the House; and

WHEREAS, the SIC held a public hearing on March 27, 2012, at which State Representative Jim Sacia, one of the signatories to the Petition, submitted a suggested charge as follows:

Representative Smith provided an official letter of support on his letterhead for a daycare owner's application for a state grant from the [Illinois] Capital Development Board in exchange for personally accepting a \$7,000 bribe.

and

WHEREAS, the SIC engaged in written and oral communications with the United States Attorney for the Northern District of Illinois in an attempt to determine (i) whether the SIC could obtain evidence in the U.S. Attorney's possession and (ii) whether the U.S. Attorney would consider any independent investigation by the SIC to be an interference with the federal investigation; and

WHEREAS, the U.S. Attorney informed the SIC that he could not provide the SIC with any information or evidence in his possession and that he would consider an independent investigation by the SIC to constitute an interference with his federal investigation, which he characterized as "ongoing"; and

WHEREAS, the SIC held subsequent public hearings on April 26, 2012, and May 10, 2012, prior to the drafting of this Statement of Charges and Specifications; and

WHEREAS, the SIC has entered into the Record eleven exhibits, including Exhibit 11, which was recently received from Rep. Smith's counsel and which has been entered into the Record by unanimous consent of the SIC members; and

WHEREAS, the exhibits, public notices, and transcripts of hearings are included in the Record (the "SIC Record"), available for public view on the General Assembly's website at <http://www.ilga.gov/house/committees/Reports.asp?CommitteeID=1169&GA=97>; and

WHEREAS, the SIC Record is adopted and incorporated herein as if fully set forth; and

WHEREAS, the SIC has given ample notice to Rep. Smith and his attorney of every hearing and has confirmed with Rep. Smith's attorney that he has received such notice; and

WHEREAS, the SIC has given Rep. Smith the opportunity to testify under oath but he has declined to do so; and

WHEREAS, the SIC has given Rep. Smith's attorney the opportunity to specifically admit or deny various allegations in the Butler Affidavit but he has declined to do so; and

WHEREAS, the SIC has given Rep. Smith the opportunity to provide the SIC with any information he deems relevant to the SIC's investigation; and

WHEREAS, the Butler Affidavit contains alleged lengthy excerpts of statements that were recorded and attributed to Rep. Smith that indicate that Rep. Smith was intentionally and knowingly trading a letter of support for an ECC Grant for a cash bribe of \$7,000; and

WHEREAS, Rep. Smith's refusal to testify under oath, while within his rights, is an impediment to the SIC's fact-finding mission and permits (but does not require) an inference that Rep. Smith did not deny the allegations in the Butler Affidavit because he could not truthfully deny them under oath; and

WHEREAS, the allegations contained in the Criminal Complaint and the Butler Affidavit, if true, constitute a gross breach of Rep. Smith's public duties as a State Representative and constitute misconduct that warrants further consideration by the Select Committee on Discipline;

NOW, THEREFORE, the Special Investigating Committee finds that reasonable grounds exist to bring a charge against State Representative Derrick Smith for formal disciplinary action by the House as follows:

CHARGE AND SPECIFICATIONS

Charge: Representative Derrick Smith abused the power of his office by participating in a scheme to obtain a personal benefit in exchange for his official acts.

Specifications

Some or all of the following specifications support this Charge:

1. Representative Smith, in his official capacity as a State Representative, has an obligation to faithfully discharge his duties in the best interests of the people of the State of Illinois and not for his own personal benefit;
2. During the time period beginning on or about December, 2011 through March, 2012, Representative Smith agreed that, in exchange for a cash bribe, he would provide an official letter of support for a daycare's Early Childhood Construction Grant to the Illinois Capital Development Board;
3. On or about March 1, 2012, Representative Smith did, in fact, sign this official letter of support in his official capacity as a State Representative and planned or intended for that letter to be submitted to the Illinois Capital Development Board;
4. On or about March 10, 2012, Representative Smith did, in fact, receive a cash bribe in exchange for providing this official letter of support;
5. Accepting a cash bribe in exchange for an official act, or even plotting or attempting to do so, constitutes a breach of Representative Smith's obligation as a public official to faithfully discharge his duties in the best interests of the people of the State of Illinois and warrants disciplinary action by the House of Representatives.

APPOINTMENT OF HOUSE MANAGERS

The Special Investigating Committee, having determined to prefer a formal statement of charges and specifications against Representative Derrick Smith by unanimous vote, hereby appoints the following members of the House of Representatives to serve as House Managers to present the case for disciplinary action before the Select Committee on Discipline:

Representative Lou Lang from the Majority Caucus and **Representative Jim Durkin** from the Minority Caucus.

Signed by the Members of the Special Investigating Committee this fifth day of June, 2012:



Representative Elaine Nekritz
Chair



Representative Dennis M. Reboletti
Minority Spokesman



Representative William Davis



Representative JoAnn D. Osmond



Representative André M. Thapedi



Representative Jil Tracy