

105TH CONGRESS
1ST SESSION

H. R. 117

To reauthorize the independent counsel statute, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JANUARY 7, 1997

Mr. CONYERS introduced the following bill; which was referred to the
Committee on the Judiciary

A BILL

To reauthorize the independent counsel statute, 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 “Independent Counsel
5 Accountability and Reform Act of 1997”.

6 **SEC. 2. EXTENSION.**

7 Section 599 of title 28, United States Code, is
8 amended by striking “Reauthorization Act of 1994” and
9 inserting “Accountability and Reform Act of 1997”.

1 **SEC. 3. APPOINTMENT AUTHORITY.**

2 (a) DIVISION.—Section 49 of title 28, United States
3 Code, is amended by adding at the end the following:

4 “(g) One member of such division of the court must
5 have been appointed to the Federal bench by a President
6 of a different political party than the President who ap-
7 pointed the other 2 members of such division.

8 “(h) The District Court of the District of Columbia
9 shall have jurisdiction over members of such division with
10 respect to matters regarding the appointment or activities
11 of an independent counsel.”.

12 (b) CODE OF CONDUCT FOR JUDGES.—Section
13 593(b)(1) of title 28, United States Code, is amended by
14 adding at the end the following: “The division of the court
15 appointed by the Chief Justice of the United States to ap-
16 point independent counsels shall comply with the Code of
17 Conduct for United States Judges.”.

18 (c) EX PARTE COMMUNICATION.—Section 593(b)(1)
19 of title 28, United States Code, as amended by subsection
20 (b), is amended by adding at the end the following: “In
21 determining the qualifications of a candidate to be ap-
22 pointed as independent counsel, the special division may
23 solicit and receive oral and written ex parte communica-
24 tions if the fact of such communications are in writing
25 or are memorialized by a writing. All such writings shall

1 become public documents at such time as the special divi-
2 sion, in the exercise of its discretion, deems appropriate,
3 except that the division may, for good cause, redact any
4 portion of such writings.

5 (d) LIMITATION ON INITIAL INVESTIGATION.—Sec-
6 tion 593(b) of title 28, United States Code, is amended
7 by adding at the end the following:

8 “(5) The court shall appoint the independent counsel
9 for an initial period not to exceed 6 months after which
10 the independent counsel shall report back to the court with
11 a recommendation as to whether further investigation is
12 necessary, whether the matter should be dispensed with,
13 or whether the matter may be appropriately referred to
14 the Department of Justice. If the independent counsel rec-
15 ommends further investigation and the court determines
16 that further investigation is appropriate, the court shall
17 direct the independent counsel to pursue the investigation
18 and the appointment of the independent counsel shall be
19 extended to the completion of the investigation.”.

20 (e) CONSIDERATIONS.—Section 593(b)(2) of title 28,
21 United States Code, is amended by adding at the end the
22 following: “In making an appointment of an individual to
23 be an independent counsel for an investigation, the divi-
24 sion of the court shall consider the following factors:

1 “(A) Whether the division should require such
2 individual to refrain from other professional employ-
3 ment during all or some of the period of the individ-
4 ual’s service as independent counsel.

5 “(B) Whether the nature of the individual’s
6 continued employment during any period that the in-
7 dividual is also serving as independent counsel cre-
8 ates, or is likely to lead to, a conflict of interest be-
9 tween the individual’s duties to the United States
10 and the individual’s duties to the individual’s clients
11 or others.

12 “(C) Whether the individual or any person pro-
13 fessionally associated with the individual is then act-
14 ing or has acted as a lawyer on behalf of a private
15 party or government entity in any matter in which
16 the interest of such party or entity are or were ad-
17 verse to the interests of any of the subjects of the
18 independent counsel’s investigation.

19 “(D) Whether any other facts in the individ-
20 ual’s professional business or private life would raise
21 a reasonable question about the appearance of inde-
22 pendence of the individual as independent counsel.

23 “(E) Whether the individual has substantial
24 prosecutorial experience.

1 The division of the court shall issue an opinion explaining
2 its application of this paragraph to the appointment of the
3 independent counsel and explaining any other issues con-
4 sidered in making the appointment.”.

5 **SEC. 4. BASIS FOR PRELIMINARY INVESTIGATION.**

6 (a) INITIAL RECEIPT OF INFORMATION.—Section
7 591 of title 28, United States Code, is amended—

8 (1) in subsection (a), by striking “any Federal
9 criminal law other than a violation classified as a
10 Class B or Class C misdemeanor infraction” and in-
11 serting “any Federal felony or any Federal mis-
12 demeanor for which there is an established practice
13 of prosecution and which is alleged to have occurred
14 or commenced while the target of the investigation
15 was in office”;

16 (2) in subsection (c)(1)—

17 (A) by striking “information” and insert-
18 ing “specific information from a credible source
19 that is”; and

20 (B) by striking “may have” and inserting
21 “has”.

22 (b) RECEIPT OF ADDITIONAL INFORMATION.—Sec-
23 tion 592(c)(2) of title 28, United States Code, is amended
24 by striking “information” and inserting “specific informa-
25 tion from a credible source that is”.

1 **SEC. 5. SUBPOENA POWER.**

2 Section 592(a)(2) of title 28, United States Code, is
 3 amended by striking “grant immunity, or issue subpoe-
 4 nas” and inserting “or grant immunity but may issue sub-
 5 poenas duces tecum”.

6 **SEC. 6. LEVEL OF EVIDENCE.**

7 Section 592(a)(2)(B)(ii) is amended by striking
 8 “clear and convincing evidence” and inserting “a prepon-
 9 derance of the evidence”.

10 **SEC. 7. PROSECUTORIAL JURISDICTION OF INDEPENDENT**
 11 **COUNSEL.**

12 Section 593(b) of title 28, United States Code, as
 13 amended by section 3(b), is amended—

14 (1) in paragraph (1)—

15 (A) by striking “define” and inserting
 16 “, with specificity, define”; and

17 (B) by adding at the end the following:

18 “Such jurisdiction shall be limited to the al-
 19 leged violations of criminal law with respect to
 20 which the Attorney General has requested the
 21 appointment of the independent counsel, and
 22 matters directly related to such criminal viola-
 23 tions.”; and

24 (2) by amending paragraph (3) to read as fol-
 25 lows:

1 “(3) SCOPE OF PROSECUTORIAL JURISDIC-
2 TION.—In defining the independent counsel’s pros-
3 ecutorial jurisdiction, the division of the court shall
4 assure that the independent counsel has adequate
5 authority to fully investigate and prosecute the al-
6 leged violations of criminal law with respect to which
7 the Attorney General has requested the appointment
8 of the independent counsel, and matters directly re-
9 lated to such criminal violations, including perjury,
10 obstruction of justice, destruction of evidence, and
11 intimidation of witnesses.”.

12 **SEC. 8. ATTORNEY’S FEES.**

13 The first sentence of section 593(f)(1) of title 28,
14 United States Code, is amended—

15 (1) by inserting after “investigation” the first
16 time it occurs the following: “or a witness in an in-
17 vestigation”;

18 (2) by striking “the court may” and inserting
19 “the court shall”;

20 (3) by inserting after “pursuant to that inves-
21 tigation” the following: “or if such individual is ac-
22 quitted of all charges or no conviction is obtained
23 against such individual at a trial brought pursuant
24 to that investigation or if the conviction of that indi-
25 vidual is overturned on appeal”; and

1 (4) by inserting after “during that investiga-
 2 tion” the following: “, trial, and appeal (if any)”.

3 **SEC. 9. CONSULTATION WITH THE DEPARTMENT OF JUS-**
 4 **TICE.**

5 Section 594(d) is amended by adding after the first
 6 sentence the following: “An independent counsel may, in
 7 the independent counsel’s discretion, consult with the ap-
 8 propriate components of the Department of Justice on
 9 policies and practices of the Department so long as such
 10 consultation does not compromise the independent coun-
 11 sel’s independence.”.

12 **SEC. 10. AUTHORITIES AND DUTIES OF INDEPENDENT**
 13 **COUNSEL.**

14 (a) COMPLIANCE WITH POLICIES OF THE DEPART-
 15 MENT OF JUSTICE.—Section 594(f) of title 28, United
 16 States Code, is amended by striking “enforcement of the
 17 criminal laws” and inserting “the enforcement of criminal
 18 laws and the release of information relating to criminal
 19 proceedings”.

20 (b) LIMITATION ON EXPENDITURES.—Section 594 of
 21 title 28, United States Code is amended by adding at the
 22 end the following:

23 “(m) LIMITATION ON EXPENDITURES.—No funds
 24 may be expended for the operation of any office of inde-
 25 pendent counsel after the end of the 2-year period after

1 its establishment, except to the extent that the appointing
 2 court specifically makes available funds for such office for
 3 use after the end of that 2-year period.”.

4 (c) PERIODIC REPORTS.—The last sentence of sec-
 5 tion 595(a)(2) of title 28, United States Code, is amended
 6 to read as follows: “Such report need not contain informa-
 7 tion which would—

8 “(A) compromise or undermine the con-
 9 fidentiality of an ongoing investigation under
 10 this chapter,

11 “(B) adversely affect the outcome of any
 12 prosecution under this chapter, or

13 “(C) violate the personal privacy of any in-
 14 dividual,

15 but shall provide information adequate to justify the
 16 expenditures which the office of that independent
 17 counsel has made, and indicate in general terms the
 18 state of the work of the independent counsel.”.

19 **SEC. 11. REMOVAL, TERMINATION, AND PERIODIC RE-**
 20 **APPOINTMENT OF INDEPENDENT COUNSEL.**

21 (a) GROUNDS FOR REMOVAL.—Section 596(a)(1) of
 22 title 28, United States Code, is amended by adding at the
 23 end the following: “Failure to comply with the established
 24 policies of the Department of Justice as required by sec-
 25 tion 594(f), or to comply with section 594(j) may be

1 grounds for removing that independent counsel from office
2 for good cause under this subsection.”.

3 (b) TERMINATION.—Section 596(b)(2) of title 28,
4 United States Code, is amended to read as follows:

5 “(2) TERMINATION BY DIVISION OF THE
6 COURT.—The division of the court may terminate an
7 office of independent counsel at any time—

8 “(A) on its own motion,

9 “(B) upon the request of the Attorney
10 General, or

11 “(C) upon the petition of the subject of an
12 investigation conducted by such independent
13 counsel, if the petition is made more than 2
14 years after the appointment of such independ-
15 ent counsel,

16 on the ground that the investigation conducted by
17 the independent counsel has been completed and
18 that it would be appropriate for the Department of
19 Justice to complete such investigation or to conduct
20 any prosecution brought pursuant to such investiga-
21 tion.”.

22 (c) PERIODIC REAPPOINTMENT.—Section 596 of title
23 28, United States Code, is amended by adding at the end
24 the following:

1 “(d) PERIODIC REAPPOINTMENT OF INDEPENDENT
2 COUNSEL.—If an office of independent counsel has not
3 terminated before—

4 “(1) the date that is 2 years after the original
5 appointment to that office, or

6 “(2) the end of each succeeding 2-year period,
7 such counsel shall apply to the division of the court
8 for reappointment. The court shall first determine
9 whether the office of that independent counsel
10 should be terminated under subsection (b)(2). If the
11 court determines that such office will not be termi-
12 nated under such subsection, the court shall re-
13 appoint the applicant if the court determines that
14 such applicant remains the appropriate person to
15 carry out the duties of the office. If not, the court
16 shall appoint some other person whom it considers
17 qualified under the standards set forth in section
18 593 of this title.”.

19 **SEC. 12. JOB PROTECTIONS FOR INDIVIDUALS UNDER IN-**
20 **VESTIGATION.**

21 (a) IN GENERAL.—Section 597 of title 28, United
22 States Code, is amended—

23 (1) by amending the section caption to read as
24 follows:

1 **“§ 597. Relationship with Department of Justice; job**
2 **protection for individuals under inves-**
3 **tigation”; and**

4 (2) by adding at the end the following:

5 “(c) JOB PROTECTION FOR INDIVIDUALS UNDER IN-
6 VESTIGATION.—

7 “(1) PROHIBITED PERSONNEL PRACTICE.—Ex-
8 cept as provided in paragraph (3), it shall be a pro-
9 hibited personnel practice for an employee of the
10 United States Government who has authority to
11 take, direct others to take, recommend, or approve
12 any personnel action (as defined in section
13 2302(a)(2)(A) of title 5) with respect to an individ-
14 ual described in paragraph (2) who is the subject of
15 an investigation or prosecution under this chapter,
16 to take or fail to take, or threaten to take or fail to
17 take, such a personnel action with respect to such
18 individual, solely on account of such investigation or
19 prosecution.

20 “(2) APPLICABILITY.—The individuals referred
21 to in paragraph (1) are individuals other than—

22 “(A) any person described in section
23 591(a); and

24 “(B) any employee of the Federal Govern-
25 ment whose position is excepted from the com-
26 petitive service on the basis of its confidential,

1 policy-determining, policy-making, or policy-ad-
2 vocating character.

3 “(3) EXEMPTION.—Paragraph (1) does not
4 apply in the case of an individual who is convicted
5 of a criminal offense pursuant to an investigation or
6 prosecution described in paragraph (1), unless such
7 conviction is overturned on appeal.

8 “(4) REMEDIES.—An individual with respect to
9 whom a prohibited personnel practice applies under
10 paragraph (1) may seek corrective action from the
11 Merit Systems Protection Board to the same extent
12 as an employee may seek corrective action under sec-
13 tion 1221 of title 5 (including subsection (h) of such
14 section), except that, for purposes of such section,
15 any reference to section 2302(b)(8) of title 5 shall
16 be deemed to refer to paragraph (1) of this sub-
17 section, and any reference to a disclosure under such
18 section 2302(b)(8) shall be deemed to refer to an in-
19 vestigation or prosecution described in paragraph (1)
20 of this subsection.”.

21 (b) CONFORMING AMENDMENT.—The item relating
22 to section 597 in the table of sections at the beginning
23 of chapter 40 of title 28, United States Code, is amended
24 to read as follows:

“597. Relationship with Department of Justice; job protection for individuals
under investigation.”.

1 **SEC. 13. GAO REPORT.**

2 The Comptroller General of the United States shall
3 submit to the Congress, not later than 1 year after the
4 date of the enactment of this Act, a report setting forth
5 recommendations of ways to improve controls on costs of
6 offices of independent counsel under chapter 40 of title
7 28, United States Code.

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