

105TH CONGRESS
1ST SESSION

H. R. 139

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

IN THE HOUSE OF REPRESENTATIVES

JANUARY 7, 1997

Mr. DICKEY (for himself, Mr. DUNCAN, Mr. Hefley, Mr. INGLIS of South Carolina, Mr. KING, Mr. NORWOOD, Mr. SHAYS, and Mr. TAYLOR of North Carolina) introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To reform 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. BASIS FOR INVESTIGATION.**

7 (a) PRELIMINARY INVESTIGATION.—Section 591 of
8 title 28, United States Code, is amended—

9 (1) in subsection (a)—

1 (A) by striking “information” and insert-
 2 ing “specific information from a credible source
 3 that is”; and

4 (B) by striking “may have” and inserting
 5 “has”; and

6 (2) in subsection (c)(1)—

7 (A) by striking “information” and insert-
 8 ing “specific information from a credible source
 9 that is”; and

10 (B) by striking “may have” and inserting
 11 “has”.

12 (b) FURTHER INVESTIGATION.—Section 592(c)(2) of
 13 title 28, United States Code, is amended by striking “in-
 14 formation” and inserting “specific information from a
 15 credible source that is”.

16 **SEC. 3. SUBPOENA POWER.**

17 Section 592(a)(2) of title 28, United States Code, is
 18 amended by striking “grant immunity, or issue subpoe-
 19 nas” and inserting “or grant immunity, but may issue
 20 subpoenas duces tecum”.

21 **SEC. 4. AUTHORITY OF ATTORNEY GENERAL.**

22 Section 592(a)(2) of title 28, United States Code, is
 23 amended by striking subparagraph (B), by striking “(A)”,
 24 and by running the text of subparagraph (A) into the
 25 paragraph heading.

1 **SEC. 5. PROSECUTORIAL JURISDICTION OF INDEPENDENT**
2 **COUNSEL.**

3 (a) PROSECUTORIAL JURISDICTION.—Section 593(b)
4 of title 28, United States Code, is amended—

5 (1) in paragraph (1)—

6 (A) by striking “define” and inserting
7 “, with specificity, define”; and

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

9 “Such jurisdiction shall be limited to the al-
10 leged violations of criminal law with respect to
11 which the Attorney General has requested the
12 appointment of the independent counsel and
13 matters directly related to such criminal viola-
14 tions.”; and

15 (2) by amending paragraph (3) to read as
16 follows:

17 “(3) SCOPE OF PROSECUTORIAL JURISDIC-
18 TION.—In defining the independent counsel’s pros-
19 ecutorial jurisdiction, the division of the court shall
20 assure that the independent counsel has adequate
21 authority to fully investigate and prosecute the al-
22 leged violations of criminal law with respect to which
23 the Attorney General has requested the appointment
24 of the independent counsel and matters directly re-
25 lated to such criminal violations, including perjury,

1 obstruction of justice, destruction of evidence, and
2 intimidation of witnesses.”.

3 (b) CONFORMING AMENDMENT.—Section 592(d) of
4 title 28, United States Code, is amended by striking “sub-
5 ject matter and all matters related to that subject matter”
6 and inserting “the alleged violations of criminal law with
7 respect to which the application is made and matters di-
8 rectly related to such criminal violations”.

9 **SEC. 6. ATTORNEYS’ FEES.**

10 Section 593(f) of title 28, United States Code, is
11 amended—

12 (1) in the first sentence of paragraph (1)—

13 (A) by striking “the court may” and in-
14 serting “the court shall”;

15 (B) by inserting after “pursuant to that
16 investigation,” the following: “if such individual
17 is acquitted of all charges, or no conviction is
18 obtained against such individual, at a trial
19 brought pursuant to that investigation, or if the
20 conviction of such individual at such a trial is
21 overturned on appeal,”; and

22 (C) by inserting “, trial, and appeal (if
23 any)” after “during that investigation”; and

1 (2) by striking paragraph (2) and striking “(1)
2 AWARD OF FEES.—” and running the matter in
3 paragraph (1) into the subsection heading.

4 **SEC. 7. ADMINISTRATIVE SUPPORT.**

5 (a) ADMINISTRATOR OF GENERAL SERVICES.—Sec-
6 tion 594(l)(2) of title 28, United States Code, is amend-
7 ed—

8 (1) by striking “Director of the Administrative
9 Office of the United States Courts” and inserting
10 “Administrator of General Services”; and

11 (2) by striking “Administrative Office of the
12 United States Courts” and inserting “General Serv-
13 ices Administration”.

14 (b) OFFICE SPACE.—Section 594(l)(3) of title 28,
15 United States Code, is amended to read as follows:

16 “(3) OFFICE SPACE.—The Administrator of
17 General Services shall promptly provide appropriate
18 office space for each independent counsel. Such of-
19 fice space shall be within a Federal building unless
20 the Administrator of General Services determines
21 that other arrangements would cost less.”.

22 **SEC. 8. AUTHORITIES AND DUTIES OF INDEPENDENT**
23 **COUNSEL.**

24 (a) COMPLIANCE WITH POLICIES OF THE DEPART-
25 MENT OF JUSTICE.—Section 594(f) of title 28, United

1 States Code, is amended by striking “enforcement of the
2 criminal laws” and inserting “the enforcement of criminal
3 laws and the release of information relating to criminal
4 proceedings”.

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

8 “(m) LIMITATION ON EXPENDITURES.—No funds
9 may be expended for the operation of any office of inde-
10 pendent counsel after the end of the 2-year period after
11 its establishment, except to the extent that an appropria-
12 tions Act enacted after such establishment specifically
13 makes available funds for such office for use after the end
14 of that 2-year period.”.

15 **SEC. 9. TREATMENT OF CLASSIFIED INFORMATION.**

16 Section 594(a) of title 28, United States Code, is
17 amended by adding at the end the following: “An inde-
18 pendent counsel appointed under this chapter who gains
19 access to classified information shall follow all procedures
20 established by the United States Government regarding
21 the maintenance, use, and disclosure of such information.
22 The failure to follow such procedures shall be grounds for
23 removal for good cause under section 596(a)(1), in addi-
24 tion to any penalty provided in section 798 of title 18 or
25 any other law that may apply.”.

1 **SEC. 10. OUTSIDE LEGAL WORK.**

2 Section 594(j)(1) of title 28, United States Code, is
3 amended by inserting before the period the following: “and
4 any such independent counsel may not during such period
5 engage in any legal work which is additional to the legal
6 work the counsel is engaged in as such a counsel”.

7 **SEC. 11. ELIMINATION OF REPORTS.**

8 (a) SECTION 594.—Section 594(h) of title 28, United
9 States Code, is amended—

10 (1) by striking subparagraph (B) of paragraph
11 (1), by striking the dash, and by striking “(A)” and
12 running the text of subparagraph (A) after “shall”;

13 (2) by striking everything after the first sen-
14 tence in paragraph (2); and

15 (3) by striking paragraph (3).

16 (b) SECTION 595.—Section 595(a) of title 28, United
17 States Code, is amended—

18 (1) by striking paragraph (2); and

19 (2) by striking the heading for paragraph (1)
20 and running the text of such paragraph into the
21 heading for subsection (a).

22 (c) SECTION 596.—Section 596(b) of title 28, United
23 States Code, is amended—

24 (1) in paragraph (1), by striking subparagraph
25 (B) of paragraph (1), by striking the dash, and by

1 striking “(A)” and running the text of subparagraph
 2 (A) after “when”; and
 3 (2) in paragraph (2), by striking the second
 4 sentence.

5 **SEC. 12. REMOVAL, TERMINATION, AND PERIODIC RE-**
 6 **APPOINTMENT OF INDEPENDENT COUNSEL.**

7 (a) **GROUND FOR REMOVAL.**—Section 596(a)(1) of
 8 title 28, United States Code, is amended by adding at the
 9 end the following: “Failure of the independent counsel to
 10 comply with—

11 “(A) the established policies of the Depart-
 12 ment of Justice as required by section 594(f),
 13 and

14 “(B) section 594(j),
 15 may be grounds for removing that independent
 16 counsel from office for good cause under this sub-
 17 section.”.

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

20 “(2) **TERMINATION BY DIVISION OF THE**
 21 **COURT.**—The division of the court may terminate an
 22 office of independent counsel at any time—

23 “(A) on its own motion, or

24 “(B) upon the request of the Attorney
 25 General,

1 on the ground that the investigation conducted by
2 the independent counsel has been completed or sub-
3 stantially completed and that it would be appro-
4 priate for the Department of Justice to complete
5 such investigation or to conduct any prosecution
6 brought pursuant to such investigation, or on the
7 ground that continuation of the investigation or
8 prosecution conducted by the independent counsel is
9 not in the public interest.”.

10 (c) QUARTERLY EXPENDITURES.—

11 (1) AMENDMENT.—Section 596(c) of title 28,
12 United States Code, is amended by adding at the
13 end the following:

14 “(3) On or before the end of March 31, June 30,
15 September 30, and December 31 of each year, an inde-
16 pendent counsel shall report to the committees listed in
17 paragraph (2)(B) the aggregate amount expended in the
18 previous quarter. The requirement to report such amount
19 shall not be construed to require a disclosure of the inves-
20 tigation for which such amount was expended.”.

21 (2) EFFECTIVE DATE.—The amendment made
22 by paragraph (1), shall take effect at the end of the
23 1st quarter beginning after the date of the enact-
24 ment of this Act.

1 (d) PERIODIC REAPPOINTMENT.—Section 596 of title
2 28, United States Code, is amended by adding at the end
3 the following:

4 “(d) PERIODIC REAPPOINTMENT OF INDEPENDENT
5 COUNSEL.—If an office of independent counsel has not
6 terminated before—

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

9 “(2) the end of each succeeding 2-year period,
10 such counsel shall apply to the division of the court for
11 reappointment. The court shall first determine whether
12 the office of that independent counsel should be termi-
13 nated under subsection (b)(2). If the court determines
14 that such office will not be terminated under such sub-
15 section, the court shall reappoint the applicant if the court
16 determines that such applicant remains the appropriate
17 person to carry out the duties of the office. If not, the
18 court shall appoint some other person whom it considers
19 qualified under the standards set forth in section 593 of
20 this title. If the court has not taken the actions required
21 by this subsection within 90 days after the end of the ap-
22 plicable 2-year period, then that office of independent
23 counsel shall terminate at the end of that 90-day period.”.

1 **SEC. 13. EFFECTIVE DATE.**

2 The amendments made by this Act shall not apply
3 with respect to any investigation which is pending, before
4 an independent counsel appointed under chapter 40 of
5 title 28, United States Code, on the date of enactment
6 of this Act.

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