

Public Law 103-270
103d Congress

An Act

June 30, 1994
[S. 24]

To reauthorize the independent counsel law for an additional 5 years, and for other purposes.

Independent
Counsel
Reauthorization
Act of 1994.
28 USC 1 note.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Independent Counsel Reauthorization Act of 1994".

SEC. 2. FIVE-YEAR REAUTHORIZATION.

Section 599 of title 28, United States Code, is amended by striking "1987" and inserting "1994".

SEC. 3. ADDED CONTROLS.

(a) **COST CONTROLS AND ADMINISTRATIVE SUPPORT.**—Section 594 of title 28, United States Code, is amended by adding at the end the following new subsection:

"(1) **COST CONTROLS AND ADMINISTRATIVE SUPPORT.**—

"(1) **COST CONTROLS.**—

"(A) **IN GENERAL.**—An independent counsel shall—

"(i) conduct all activities with due regard for expense;

"(ii) authorize only reasonable and lawful expenditures; and

"(iii) promptly, upon taking office, assign to a specific employee the duty of certifying that expenditures of the independent counsel are reasonable and made in accordance with law.

"(B) **LIABILITY FOR INVALID CERTIFICATION.**—An employee making a certification under subparagraph (A)(iii) shall be liable for an invalid certification to the same extent as a certifying official certifying a voucher is liable under section 3528 of title 31.

"(C) **DEPARTMENT OF JUSTICE POLICIES.**—An independent counsel shall comply with the established policies of the Department of Justice respecting expenditures of funds, except to the extent that compliance would be inconsistent with the purposes of this chapter.

"(2) **ADMINISTRATIVE SUPPORT.**—The Director of the Administrative Office of the United States Courts shall provide administrative support and guidance to each independent counsel. No officer or employee of the Administrative Office of the United States Courts shall disclose information related

to an independent counsel's expenditures, personnel, or administrative acts or arrangements without the authorization of the independent counsel.

"(3) OFFICE SPACE.—The Administrator of General Services, in consultation with the Director of the Administrative Office of the United States Courts, shall promptly provide appropriate office space for each independent counsel. Such office space shall be within a Federal building unless the Administrator of General Services determines that other arrangements would cost less. Until such office space is provided, the Administrative Office of the United States Courts shall provide newly appointed independent counsels immediately upon appointment with appropriate, temporary office space, equipment, and supplies."

(b) INDEPENDENT COUNSEL PER DIEM EXPENSES.—Section 594(b) of title 28, United States Code, is amended—

(1) by striking "(b) COMPENSATION.—An" and inserting the following:

"(b) COMPENSATION.—

"(1) IN GENERAL.—An"; and

(2) by adding at the end the following new paragraphs:

"(2) TRAVEL EXPENSES.—Except as provided in paragraph (3), an independent counsel and persons appointed under subsection (c) shall be entitled to the payment of travel expenses as provided by subchapter I of chapter 57 of title 5, United States Code, including travel, per diem, and subsistence expenses in accordance with section 5703 of title 5.

"(3) TRAVEL TO PRIMARY OFFICE.—

"(A) IN GENERAL.—After 1 year of service under this chapter, an independent counsel and persons appointed under subsection (c) shall not be entitled to the payment of travel, per diem, or subsistence expenses under subchapter I of chapter 57 of title 5, United States Code, for the purpose of commuting to or from the city in which the primary office of the independent counsel or person is located. The 1-year period may be extended by 6 months if the employee assigned duties under subsection (1)(1)(A)(iii) certifies that the payment is in the public interest to carry out the purposes of this chapter.

"(B) RELEVANT FACTORS.—In making any certification under this paragraph with respect to travel and subsistence expenses of an independent counsel or person appointed under subsection (c), such employee shall consider, among other relevant factors—

"(i) the cost to the Government of reimbursing such travel and subsistence expenses;

"(ii) the period of time for which the independent counsel anticipates that the activities of the independent counsel or person, as the case may be, will continue;

"(iii) the personal and financial burdens on the independent counsel or person, as the case may be, of relocating so that such travel and subsistence expenses would not be incurred; and

"(iv) the burdens associated with appointing a new independent counsel, or appointing another person under subsection (c), to replace the individual involved who is unable or unwilling to so relocate."

(c) INDEPENDENT COUNSEL EMPLOYEE PAY COMPARABILITY.—Section 594(c) of title 28, United States Code, is amended by striking the last sentence and inserting: “Such employees shall be compensated at levels not to exceed those payable for comparable positions in the Office of United States Attorney for the District of Columbia under sections 548 and 550, but in no event shall any such employee be compensated at a rate greater than the rate of basic pay payable for level ES-4 of the Senior Executive Service Schedule under section 5382 of title 5, as adjusted for the District of Columbia under section 5304 of that title regardless of the locality in which an employee is employed.”

(d) ETHICS ENFORCEMENT.—Section 594(j) of title 28, United States Code, is amended by adding at the end the following new paragraph:

“(5) ENFORCEMENT.—The Attorney General and the Director of the Office of Government Ethics have authority to enforce compliance with this subsection.”

(e) COMPLIANCE WITH POLICIES OF THE DEPARTMENT OF JUSTICE.—Section 594(f) of title 28, United States Code, is amended—

(1) by striking “shall, except where not possible, comply” and inserting “shall, except to the extent that to do so would be inconsistent with the purposes of this chapter, comply”;

(2) by adding at the end the following: “To determine these policies and policies under subsection (1)(1)(B), the independent counsel shall, except to the extent that doing so would be inconsistent with the purposes of this chapter, consult with the Department of Justice.”;

(3) by striking “An independent” and inserting the following:

“(1) IN GENERAL.—An independent”; and

(4) by adding at the end the following new paragraph:

“(2) NATIONAL SECURITY.—An independent counsel shall comply with guidelines and procedures used by the Department in the handling and use of classified material.”

(f) PUBLICATION OF REPORTS.—Section 594(h) of title 28, United States Code, is amended by adding at the end the following new paragraph:

“(3) PUBLICATION OF REPORTS.—At the request of an independent counsel, the Public Printer shall cause to be printed any report previously released to the public under paragraph (2). The independent counsel shall certify the number of copies necessary for the public, and the Public Printer shall place the cost of the required number to the debit of such independent counsel. Additional copies shall be made available to the public through the depository library program and Superintendent of Documents sales program pursuant to sections 1702 and 1903 of title 44.”

(g) ANNUAL REPORTS TO CONGRESS.—Section 595(a)(2) of title 28, United States Code, is amended by striking “such statements” and all that follows through “appropriate” and inserting “annually a report on the activities of the independent counsel, including a description of the progress of any investigation or prosecution conducted by the independent counsel. Such report may omit any matter that in the judgment of the independent counsel should be kept confidential, but shall provide information adequate to justify the expenditures that the office of the independent counsel has made”.

Classified
information.

Public
information.

(h) PERIODIC REAPPOINTMENT OF INDEPENDENT COUNSEL.—Section 596(b)(2) of title 28, United States Code, is amended by adding at the end the following new sentence: “If the Attorney General has not made a request under this paragraph, the division of the court shall determine on its own motion whether termination is appropriate under this paragraph no later than 2 years after the appointment of an independent counsel, at the end of the succeeding 2-year period, and thereafter at the end of each succeeding 1-year period.”

Courts.

(i) AUDITS BY THE COMPTROLLER GENERAL.—Section 596(c) of title 28, United States Code, is amended to read as follows:

“(c) AUDITS.—(1) On or before June 30 of each year, an independent counsel shall prepare a statement of expenditures for the 6 months that ended on the immediately preceding March 31. On or before December 31 of each year, an independent counsel shall prepare a statement of expenditures for the fiscal year that ended on the immediately preceding September 30. An independent counsel whose office is terminated prior to the end of the fiscal year shall prepare a statement of expenditures on or before the date that is 90 days after the date on which the office is terminated.

“(2) The Comptroller General shall—

“(A) conduct a financial review of a mid-year statement and a financial audit of a year-end statement and statement on termination; and

“(B) report the results to the Committee on the Judiciary, Committee on Governmental Affairs, and Committee on Appropriations of the Senate and the Committee on the Judiciary, Committee on Government Operations, and Committee on Appropriations of the House of Representatives not later than 90 days following the submission of each such statement.”.

(j) THRESHOLD INQUIRY.—Section 591(d)(2) of title 28, United States Code, is amended by striking “15” each time it appears and inserting “30”.

(k) RECUSAL.—Section 591(e) of title 28, United States Code, is amended to read as follows:

“(e) RECUSAL OF ATTORNEY GENERAL.—

“(1) WHEN RECUSAL IS REQUIRED.—(A) If information received under this chapter involves the Attorney General, the next most senior official in the Department of Justice who is not also recused shall perform the duties assigned under this chapter to the Attorney General.

“(B) If information received under this chapter involves a person with whom the Attorney General has a personal or financial relationship, the Attorney General shall recuse himself or herself by designating the next most senior official in the Department of Justice who is not also recused to perform the duties assigned under this chapter to the Attorney General.

“(2) REQUIREMENTS FOR RECUSAL DETERMINATION.—Before personally making any other determination under this chapter with respect to information received under this chapter, the Attorney General shall determine under paragraph (1)(B) whether recusal is necessary. The Attorney General shall set forth this determination in writing, identify the facts considered by the Attorney General, and set forth the reasons for the recusal. The Attorney General shall file this determination with any notification or application submitted to the division

of the court under this chapter with respect to such information.”.

(l) **DISCLOSURE OF INFORMATION.**—Section 592(e) of title 28, United States Code, is amended by inserting after “Except as otherwise provided in this chapter” the following: “or as is deemed necessary for law enforcement purposes”.

(m) **CLARIFICATION OF AUTHORITY TO USE DEPARTMENT OF JUSTICE PERSONNEL.**—Section 594(d)(1) of title 28, United States Code, is amended by adding at the end the following: “At the request of an independent counsel, prosecutors, administrative personnel, and other employees of the Department of Justice may be detailed to the staff of the independent counsel.”.

(n) **ATTORNEYS’ FEES.**—Section 593(f) of title 28, United States Code, is amended—

(1) in the last sentence of paragraph (1) by inserting before “Attorney General” the following: “the independent counsel who conducted the investigation and”; and

(2) in paragraph (2)—

(A) by striking “may direct” and inserting “shall direct such independent counsel and”; and

(B) by striking all after “subsection,” and inserting the following: “addressing—

“(A) the sufficiency of the documentation;

“(B) the need or justification for the underlying item;

“(C) whether the underlying item would have been incurred but for the requirements of this chapter; and

“(D) the reasonableness of the amount of money requested.”.

(o) **FINAL REPORT.**—Section 594(h)(1)(B) of title 28, United States Code, is amended by striking “, and the reasons” and all that follows through the period and inserting a period.

SEC. 4. MEMBERS OF CONGRESS.

(a) **DISCRETIONARY AUTHORITY.**—Section 591(c) of title 28, United States Code, is amended to read as follows:

“(c) **PRELIMINARY INVESTIGATION WITH RESPECT TO OTHER PERSONS.**—

“(1) **IN GENERAL.**—When the Attorney General determines that an investigation or prosecution of a person by the Department of Justice may result in a personal, financial, or political conflict of interest, the Attorney General may conduct a preliminary investigation of such person in accordance with section 592 if the Attorney General receives information sufficient to constitute grounds to investigate whether that person may have violated Federal criminal law other than a violation classified as a Class B or C misdemeanor or an infraction.

“(2) **MEMBERS OF CONGRESS.**—When the Attorney General determines that it would be in the public interest, the Attorney General may conduct a preliminary investigation in accordance with section 592 if the Attorney General receives information sufficient to constitute grounds to investigate whether a Member of Congress may have violated any Federal criminal law other than a violation classified as a Class B or C misdemeanor or an infraction.”.

(b) **POSTEMPLOYMENT COVERAGE.**—Section 591(b) of title 28, United States Code, is amended—

(1) by striking paragraphs (6) and (7);

(2) by redesignating paragraph (8) as paragraph (6), and, at the end of that paragraph, striking the period and inserting “; and”; and

(3) by adding at the end the following new paragraph:
“(7) any individual who held an office or position described in paragraph (1), (2), (3), (4), or (5) for 1 year after leaving the office or position.”

SEC. 5. GROUNDS FOR REMOVAL.

Section 596(a)(1) of title 28, United States Code, is amended by striking “physical disability, mental incapacity” and inserting “physical or mental disability (if not prohibited by law protecting persons from discrimination on the basis of such a disability)”.

SEC. 6. REPORT ON WHITE HOUSE OFFICE PERSONNEL.

3 USC 113 note.

(a) **SUBMISSION OF REPORT.**—On July 1 of each year, the President shall submit a report described in subsection (b) to the Committee on Governmental Affairs of the Senate and the Committee on Government Operations of the House of Representatives.

(b) **CONTENTS.**—A report under subsection (a) shall, except as provided in subsection (c), include—

- (1) a list of each individual—
 - (A) employed by the White House Office; or
 - (B) detailed to the White House Office; and
- (2) with regard to each individual described in paragraph (1), the individual's—
 - (A) name;
 - (B) position and title; and
 - (C) annual rate of pay.

(c) **EXCLUSION FROM REPORT.**—If the President determines that disclosure of any item of information described in subsection (b) with respect to any particular individual would not be in the interest of the national defense or foreign policy of the United States—

- (1) a report under subsection (a) shall—
 - (A) exclude such information with respect to that individual; and
 - (B) include a statement of the number of individuals with respect to whom such information has been excluded; and
- (2) at the request of the Committee on Governmental Affairs of the Senate or the Committee on Government Operations of the House of Representatives, the information that was excluded from the report shall be made available for inspection by such committee.

SEC. 7. TRANSITION PROVISIONS.

Effective dates.
28 USC 591 note.

(a) **IN GENERAL.**—Except as provided in this section, the amendments made by this Act shall apply with respect to independent counsels appointed before, on, or after the date of enactment of this Act.

(b) **ASSIGNMENT OF EMPLOYEE TO CERTIFY EXPENDITURES.**—An independent counsel appointed prior to the date of enactment of this Act shall assign to an employee the duty of certifying expenditures, as required by section 594(l) of title 28, United States Code, as added by section 3(a), by the date that is 30 days after the date of enactment of this Act.

(c) **OFFICE SPACE.**—The Administrator of General Services, in applying section 594(l)(3) of title 28, United States Code, as added

by section 3(a), to determine whether the office of an independent counsel appointed prior to the date of enactment of this Act should be moved to a Federal building, shall take into account the moving, legal, and other expenses that might arise if the office were moved.

(d) TRAVEL AND SUBSISTENCE EXPENSES.—For purposes of the restrictions on reimbursement of travel and subsistence expenses of an independent counsel and employees of an office of independent counsel contained in paragraph (3) of section 594(b) of title 28, United States Code, as amended by section 3(b), as applied to the office of an independent counsel appointed before the date of enactment of this Act, the 1-year service period shall begin on the date of enactment of this Act.

(e) RATES OF COMPENSATION.—The limitation on rates of compensation of employees of an office of independent counsel contained in the last sentence of section 594(c) of title 28, United States Code, as amended by section 3(c), shall not be applied to cause a reduction in the rate of compensation of an employee appointed before the date of enactment of this Act.

(f) PERIODIC REAPPOINTMENT.—The determinations by the division of the court contained in the last sentence of section 596(b)(2) of title 28, United States Code, as amended by section 3(h), shall, for the office of an independent counsel appointed before the date of enactment of this Act, be required no later than 1 year after the date of enactment of this Act and at the end of each succeeding 1-year period.

(g) REPORTING REQUIREMENTS.—No amendment made by this Act that establishes or modifies a requirement that any person submit a report to any other person with respect to an activity occurring during any time period shall be construed to require that a report submitted prior to the date of enactment of this Act, with respect to that time period be supplemented to include information with respect to such activity.

(h) REGULATORY INDEPENDENT COUNSEL.—Notwithstanding the restriction in section 593(b)(2) of title 28, United States Code, the division of the court described in section 49 of that title may appoint as an independent counsel any individual who, on the date of enactment of this Act, is serving as a regulatory independent counsel under parts 600 and 603 of title 28, Code of Federal Regulations. If such an individual is so appointed, such an independent counsel shall comply with chapter 40 of title 28, United States Code, as amended by this Act, in the same manner and to the same extent as an independent counsel appointed before the date of enactment of this Act is required to comply with that chapter, except that subsection (f) of this section shall not apply to such an independent counsel.

(i) WHITE HOUSE PERSONNEL REPORT.—Section 6 shall take effect on January 1, 1995.

Approved June 30, 1994.

LEGISLATIVE HISTORY—S. 24 (H.R. 811):

HOUSE REPORTS: Nos. 103-224 accompanying H.R. 811 (Comm. on the Judiciary) and 103-511 (Comm. of Conference).

SENATE REPORTS: No. 103-101 (Comm. on Governmental Affairs).

CONGRESSIONAL RECORD:

Vol. 139 (1993): Nov. 17, 18, considered and passed Senate.

Vol. 140 (1994): Feb. 10, H.R. 811 considered and passed House; S. 24, amended, passed in lieu.

May 25, Senate agreed to conference report.

June 21, House agreed to conference report.

WEEKLY COMPILATION OF PRESIDENTIAL DOCUMENTS, Vol. 30 (1994):

June 30, Presidential statement.