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| Taylor (NC) | Vucanovich | Weldon |
| Thomas (CA) | Walker | Zeliff |

NOT VOTING—23

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| Andrews (TX) | Fazio | Neal (NC) |
| Bilirakis | Gutierrez | Ridge |
| Brown (CA) | Hastert | Royce |
| Clay | Hastings | Slattery |
| Coleman | Laughlin | Underwood (GU) |
| de la Garza | McMillan | Washington |
| Duncan | Michel | Williams |
| Ewing | Miller (CA) | |

So the amendment, as amended, was agreed to.

After some further time,

§9.15 RECORDED VOTE

A recorded vote by electronic device was ordered in the Committee of the Whole on the following amendment in the nature of a substitute submitted by Mr. HYDE:

Strike out all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Independent Counsel Accountability and Reform Act of 1994".

SEC. 2. EXTENSION.

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

SEC. 3. APPLICATION TO MEMBERS OF CONGRESS.

Section 591(b) of title 28, United States Code, is amended—

(1) by striking "and" at the end of paragraph (7);

(2) by striking the period at the end of paragraph (8) and inserting "; and"; and

(3) by adding at the end the following:

"(9) any Senator, or any Representative in, or Delegate or Resident Commissioner to, the Congress, or any person who has served as a Senator or such a Representative, Delegate, or Resident Commissioner within the 2-year period before the receipt of the information under subsection (a) with respect to conduct that occurred while such person was a Senator or such a Representative, Delegate, or Resident Commissioner."

SEC. 4. BASIS FOR PRELIMINARY INVESTIGATION.

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

(1) in subsection (a)—

(A) by striking "information" and inserting "specific information from a credible source that is"; and

(B) by striking "may have" and inserting "has";

(2) in subsection (c)(1)—

(A) by striking "information" and inserting "specific information from a credible source that is"; and

(B) by striking "may have" and inserting "has"; and

(3) by amending subsection (d) to read as follows:

"(d) TIME PERIOD FOR DETERMINING NEED FOR PRELIMINARY INVESTIGATION.—The Attorney General shall determine, under subsection (a) or (c) (or section 592(c)(2)), whether grounds to investigate exist not later than 15 days after the information is first received. If within that 15-day period the Attorney General determines that there is insufficient evidence of a violation of Federal criminal law referred to in subsection (a), then the Attorney General shall close the matter. If within that 15-day period the Attorney General determines there is sufficient evidence of such a violation, the Attorney General shall, upon making that determina-

tion, commence a preliminary investigation with respect to that information. If the Attorney General is unable to determine, within that 15-day period, whether there is sufficient evidence of such a violation, the Attorney General shall, at the end of that 15-day period, commence a preliminary investigation with respect to that information."

(b) RECEIPT OF ADDITIONAL INFORMATION.—Section 592(c)(2) of title 28, United States Code, is amended by striking "information" and inserting "specific information from a credible source that is".

SEC. 5. SUBPOENA POWER.

Section 592(a)(2) of title 28, United States Code, is amended by striking "grant immunity, or issue subpoenas" and inserting "or grant immunity, but may issue subpoenas duces tecum".

SEC. 6. PROSECUTORIAL JURISDICTION OF INDEPENDENT COUNSEL.

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

(1) in paragraph (1)—

(A) by striking "define" and inserting "with specificity, define"; and

(B) by adding at the end the following: "Such jurisdiction shall be limited to the alleged violations of criminal law with respect to which the Attorney General has requested the appointment of the independent counsel, and matters directly related to such criminal violations."; and

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

"(3) SCOPE OF PROSECUTORIAL JURISDICTION.—In defining the independent counsel's prosecutorial jurisdiction, the division of the court shall assure that the independent counsel has adequate authority to fully investigate and prosecute the alleged violations of criminal law with respect to which the Attorney General has requested the appointment of the independent counsel, and matters directly related to such criminal violations, including perjury, obstruction of justice, destruction of evidence, and intimidation of witnesses."

(b) CONFORMING AMENDMENT.—Section 592(d) of title 28, United States Code, is amended by striking "subject matter" and inserting "the alleged violations of criminal law with respect to which the application is made, and matters directly related to such criminal violations".

SEC. 7. USE OF STATE AND LOCAL PROSECUTORS; STAFF OF INDEPENDENT COUNSEL.

(a) PROSECUTORS AS INDEPENDENT COUNSEL.—Section 593(b)(1) of title 28, United States Code, as amended by section 7 of this Act, is further amended by adding at the end the following: "The division of the court should strongly consider exercising the authority of section 3372 of title 5 so that it may appoint as independent counsel prosecutors from State or local governments, and the division of the court may exercise the authorities of such section 3372 for such purpose to the same extent as the head of a Federal agency."

(b) STAFF OF INDEPENDENT COUNSEL.—Section 594(c) of title 28, United States Code, is amended by striking the last sentence and inserting the following: "Not more than 2 such employees may be compensated at a rate not to exceed the rate of basic pay payable for level V of the Executive schedule under section 5316 of title 5, and all other such employees shall be compensated at rates not to exceed the maximum rate of basic pay payable for GS-15 of the General Schedule under section 5332 of title 5. The independent counsel should, to the greatest extent possible, use personnel of the Department of Justice, on a reimbursable basis, in

lieu of appointing employees, to carry out the duties of such independent counsel. The independent counsel should also strongly consider exercising the authority of section 3372 of title 5 so that he or she may appoint as employees under this subsection prosecutors of State or local governments. In order to carry out the preceding sentence, each independent counsel shall, for purposes of such section 3372, be considered to be the head of a Federal agency."

SEC. 8. ATTORNEYS' FEES.

Section 593(f)(1) of title 28, United States Code, is amended in the first sentence—

(1) by striking "the court may" and inserting "the court shall";

(2) by inserting after "pursuant to that investigation," the following: "if such individual is acquitted of all charges, or no conviction is obtained against such individual, at a trial brought pursuant to that investigation, or if the conviction of such individual at such a trial is overturned on appeal."; and

(3) by inserting ", trial, and appeal (if any)" after "during that investigation".

SEC. 9. TREATMENT OF CLASSIFIED INFORMATION.

Section 594(a) of title 28, United States Code, is amended by adding at the end the following:

"An independent counsel appointed under this chapter who gains access to classified information shall follow all procedures established by the United States Government regarding the maintenance, use, and disclosure of such information. The failure to follow such procedures shall be grounds for removal for good cause under section 596(a)(1), in addition to any penalty provided in section 798 of title 18 or any other law that may apply."

SEC. 10. INDEPENDENT COUNSEL PER DIEM EXPENSES.

Section 594(b) of title 28, United States Code, is amended to read as follows:

"(b) COMPENSATION.—

"(1) IN GENERAL.—Except as provided in paragraph (2), an independent counsel appointed under this chapter shall receive compensation at the per diem rate not to exceed the annual rate of basic pay payable for level IV of the Executive Schedule under section 5315 of title 5.

"(2) TRAVEL AND LODGING IN WASHINGTON.—An independent counsel and persons appointed under subsection (c) shall not be entitled to the payment of travel and subsistence expenses under subchapter 1 of chapter 57 of title 5, with respect to duties performed in the District of Columbia after 1 year of service under this chapter."

SEC. 11. AUTHORITIES AND DUTIES OF INDEPENDENT COUNSEL.

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

"(1) ADMINISTRATIVE SERVICES.—

"(1) ADMINISTRATIVE SUPPORT.—The Administrator of General Services shall provide administrative support to each independent counsel.

"(2) OFFICE SPACE.—The Administrator of General Services 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."

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

(1) by striking "except where not possible," and inserting "at all times"; and

(2) by striking "enforcement of the criminal laws" and inserting "the enforcement of criminal laws and the release of information relating to criminal proceedings".

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

“(m) LIMITATION ON EXPENDITURES.—No funds may be expended for the operation of any office of independent counsel after the end of the 2-year period after its establishment, except to the extent that an appropriations Act enacted after such establishment specifically makes available funds for such office for use after the end of that 2-year period.”.

SEC. 12. PERIODIC REPORTS.

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 such independent counsel, including a description of the progress of any investigation or prosecution conducted by such independent counsel. Such report need not contain information which would—

“(A) compromise or undermine the confidentiality of an ongoing investigation under this chapter,

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

“(C) violate the personal privacy of any individual,

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

SEC. 13. REMOVAL, TERMINATION, AND PERIODIC REAPPOINTMENT OF INDEPENDENT COUNSEL.

(a) GROUNDS FOR REMOVAL.—Section 596(a)(1) of title 28, United States Code, is amended by adding at the end the following: “Failure of the independent counsel to comply with the established policies of the Department of Justice as required by section 594(f) or to comply with section 594(j) may be grounds for removing that independent counsel from office for good cause under this subsection.”.

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

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

“(A) on its own motion,

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

“(C) upon the petition of the subject of an investigation conducted by such independent counsel, if the petition is made more than 2 years after the appointment of such independent counsel,

on the ground that the investigation conducted by the independent counsel has been completed or substantially completed and that it would be appropriate for the Department of Justice to complete such investigation or to conduct any prosecution brought pursuant to such investigation, or on the ground that continuation of the investigation or prosecution conducted by the independent counsel is not in the public interest.”.

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

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

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

“(2) the end of each succeeding 2-year period,

such counsel shall apply to the division of the court for reappointment. The court shall first determine whether the office of that independent counsel should be terminated under subsection (b)(2). If the court deter-

mines that such office will not be terminated under such subsection, the court shall reappoint the applicant if the court determines that such applicant remains the appropriate person to carry out the duties of the office. If not, the court shall appoint some other person whom it considers qualified under the standards set forth in section 593 of this title. If the court has not taken the actions required by this subsection within 90 days after the end of the applicable 2-year period, then that office of independent counsel shall terminate at the end of that 90-day period.”.

SEC. 14. JOB PROTECTIONS FOR INDIVIDUALS UNDER INVESTIGATION.

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

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

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

(2) by adding at the end the following:

“(c) JOB PROTECTION FOR INDIVIDUALS UNDER INVESTIGATION.—

“(1) PROHIBITED PERSONNEL PRACTICE.—It shall be a prohibited personnel practice for an employee of the United States Government who has authority to take, direct others to take, recommend, or approve any personnel action (as defined in section 2302(a)(2)(A) of title 5) with respect to an individual described in paragraph (2) who is the subject of an investigation or prosecution under this chapter, to take or fail to take, or threaten to take or fail to take, such a personnel action with respect to such individual, on account of such investigation or prosecution.

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

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

“(B) any employee of the Federal Government whose position is excepted from the competitive service on the basis of its confidential, policy-determining, policy-making, or policy-advocating character.

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

“(4) REMEDIES.—An individual with respect to whom a prohibited personnel practice applies under paragraph (1) may seek corrective action from the Merit Systems Protection Board to the same extent as an employee may seek corrective action under section 1221 of title 5 (including subsection (h) of such section), except that, for purposes of such section, any reference to section 2302(b)(8) of title 5 shall be deemed to refer to paragraph (1) of this subsection, and any reference to a disclosure under such section 2302(b)(8) shall be deemed to refer to an investigation or prosecution described in paragraph (1) of this subsection.”.

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

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

SEC. 15. EFFECT OF TERMINATION OF CHAPTER.

Section 599 of title 28, United States Code, is amended by inserting “, or until 120 days have elapsed, whichever is earlier” after “completed”.

SEC. 16. GAO REPORT.

The Comptroller General of the United States shall submit to the Congress, not later than 1 year after the date of the enact-

ment of this Act, a report setting forth recommendations of ways to improve controls on costs of offices of independent counsel under chapter 40 of title 28, United States Code.

It was decided in the { Yeas 181 negative } Nays 238

9.16

[Roll No. 21]

AYES—181

Table listing names of members of the House of Representatives, including Allard, Archer, Arney, Bachus (AL), Baker (CA), Baker (LA), Ballenger, Barrett (NE), Bartlett, Barton, Bateman, Bentley, Bereuter, Biley, Blute, Boehlert, Boehner, Bonilla, Bunning, Burton, Buyer, Callahan, Calvert, Camp, Canady, Castle, Clinger, Coble, Collins (GA), Combust, Cooper, Cox, Crane, Crapo, DeLay, Diaz-Balart, Dickey, Doolittle, Dornan, Dreier, Duncan, Dunn, Ehlers, Emerson, Everett, Fawell, Fish, Fowler, Franks (CT), Franks (NJ), Gallegly, Gallo, Gekas, Geren, Gilchrest, Gillmor, Gilman, Gingrich, Goodlatte, Goodling, Goss, Grams, Grandy, Greenwood, Gunderson, Hall (TX), Hancock, Hansen, Hefley, Herger, Hobson, Hoekstra, Hoke, Horn, Houghton, Huffington, Hunter, Hutchinson, Hutto, Hyde, Inglis, Inhofe, Istook, Jacobs, Johnson (CT), Johnson, Sam, Kasich, Kim, Kingston, Klug, Knollenberg, Kolbe, Kyl, Lazio, Leach, Levy, Lewis (CA), Lewis (FL), Lightfoot, Linder, Livingston, Machtley, Manzullo, McCandless, McCollum, McCrery, McDade, McHugh, McInnis, McKeon, Meyers, Mica, Miller (FL), Molinari, Montgomery, Moorhead, Morella, Myers, Nussle, Oxley, Packard, Parker, Paxon, Petri, Pickle, Pombo, Porter, Portman, Pryce (OH), Quillen, Quinn, Ramstad, Ravenel, Regula, Roberts, Rogers, Rohrabacher, Ros-Lehtinen, Roth, Roukema, Royce, Santorum, Saxton, Schaefer, Schiff, Sensenbrenner, Shaw, Shays, Shuster, Skeen, Skelton, Smith (MI), Smith (NJ), Smith (OR), Smith (TX), Snowe, Solomon, Spence, Stearns, Stenholm, Stump, Sundquist, Talent, Tauzin, Taylor (MS), Taylor (NC), Thomas (CA), Thomas (WY), Torkildsen, Upton, Valentine, Vucanovich, Walker, Walsh, Weldon, Wilson, Wolf, Young (AK), Young (FL), Zeliff, Zimmer.

NOES—238

Table listing names of members of the House of Representatives, including Abercrombie, Ackerman, Andrews (ME), Andrews (NJ), Applegate, Bacchus (FL), Baesler, Barca, Barcia, Barlow, Barrett (WI), Becerra, Beilenson, Berman, Bevill, Bilbray, Bishop, Blackwell, Bonior, Borski, Boucher, Brewster, Brooks, Browder, Brown (CA), Brown (FL), Brown (OH), Bryant, Byrne, Cantwell, Cardin, Carr, Chapman, Clay, Clement, Clyburn, Collins (IL), Collins (MI), Condit, Conyers, Coppersmith, Costello, Coyne, Cramer, Danner, Darden, de Lugo (VI), Deal, DeFazio, DeLauro, Dellums, Derrick, Deutsch, Dicks, Dingell, Dixon, Dooley, Durbin, Edwards (CA), Edwards (TX), Engel, English, Eshoo, Evans, Faleomavaega (AS), Farr, Fazio, Fields (LA), Filner, Fingerhut, Flake, Foglietta, Ford (MI), Ford (TN).