

103<sup>D</sup> CONGRESS  
1<sup>ST</sup> SESSION

# H. R. 3545

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

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## IN THE HOUSE OF REPRESENTATIVES

NOVEMBER 19, 1993

Mr. HYDE (for himself, Mr. MICHEL, Mr. GINGRICH, Mr. ARMEY, Mr. HUNTER, Mr. MCCOLLUM, Mr. DELAY, Mr. PAXON, Mr. FISH, Mr. MOORHEAD, Mr. GEKAS, and Mr. LIVINGSTON) introduced the following bill; which was referred to the Committee on the Judiciary

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## 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 1993”.

6        **SEC. 2. EXTENSION.**

7        Section 599 of title 28, United States Code, is  
8        amended by striking “Reauthorization Act of 1987” and  
9        inserting “Act of 1993”.

1 **SEC. 3. APPLICATION TO MEMBERS OF CONGRESS.**

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

4 (1) by striking “and” at the end of paragraph  
5 (7);

6 (2) by striking the period at the end of para-  
7 graph (8) and inserting “; and”; and

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

9 “(9) any Senator, or any Representative in, or  
10 Delegate or Resident Commissioner to, the Con-  
11 gress, or any person who has served as a Senator or  
12 such a Representative, Delegate, or Resident Com-  
13 missioner within the 2-year period before the receipt  
14 of the information under subsection (a) with respect  
15 to conduct that occurred while such person was a  
16 Senator or such a Representative, Delegate, or Resi-  
17 dent Commissioner.”.

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

19 (a) INITIAL RECEIPT OF INFORMATION.—Section  
20 591 of title 28, United States Code, is amended—

21 (1) in subsection (a)—

22 (A) by striking “information” and insert-  
23 ing “specific information from a credible source  
24 that is”; and

25 (B) by striking “may have” and inserting  
26 “has”;

1 (2) in subsection (c)(1)—

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

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

7 (3) by amending subsection (d) to read as fol-  
8 lows:

9 “(d) TIME PERIOD FOR DETERMINING NEED FOR  
10 PRELIMINARY INVESTIGATION.—The Attorney General  
11 shall determine, under subsection (a) or (c) (or section  
12 592(c)(2)), whether grounds to investigate exist not later  
13 than 15 days after the information is first received. If  
14 within that 15-day period the Attorney General deter-  
15 mines that there is insufficient evidence of a violation of  
16 Federal criminal law referred to in subsection (a), then  
17 the Attorney General shall close the matter. If within that  
18 15-day period the Attorney General determines there is  
19 sufficient evidence of such a violation, the Attorney Gen-  
20 eral shall, upon making that determination, commence a  
21 preliminary investigation with respect to that information.  
22 If the Attorney General is unable to determine, within that  
23 15-day period, whether there is sufficient evidence of such  
24 a violation, the Attorney General shall, at the end of that

1 15-day period, commence a preliminary investigation with  
2 respect to that information.”.

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

7 **SEC. 5. SUBPOENA POWER.**

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

12 **SEC. 6. PROSECUTORIAL JURISDICTION OF INDEPENDENT**  
13 **COUNSEL.**

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

16 (1) in paragraph (1)—

17 (A) by striking “define” and inserting  
18 “, with specificity, define”; and

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

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

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

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

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

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

22           (a) PROSECUTORS AS INDEPENDENT COUNSEL.—  
23 Section 593(b)(1) of title 28, United States Code, as  
24 amended by section 7 of this Act, is further amended by  
25 adding at the end the following: “The division of the court

1 should strongly consider exercising the authority of section  
2 3372 of title 5 so that it may appoint as independent  
3 counsel prosecutors from State or local governments, and  
4 the division of the court may exercise the authorities of  
5 such section 3372 for such purpose to the same extent  
6 as the head of a Federal agency.”.

7 (b) STAFF OF INDEPENDENT COUNSEL.—Section  
8 594(c) of title 28, United States Code, is amended by  
9 striking the last sentence and inserting the following: “Not  
10 more than 2 such employees may be compensated at a rate  
11 not to exceed the rate of basic pay payable for level V  
12 of the Executive schedule under section 5316 of title 5,  
13 and all other such employees shall be compensated at rates  
14 not to exceed the maximum rate of basic pay payable for  
15 GS–15 of the General Schedule under section 5332 of title  
16 5. The independent counsel should, to the greatest extent  
17 possible, use personnel of the Department of Justice, on  
18 a reimbursable basis, in lieu of appointing employees, to  
19 carry out the duties of such independent counsel. The  
20 independent counsel should also strongly consider exercis-  
21 ing the authority of section 3372 of title 5 so that he or  
22 she may appoint as employees under this subsection pros-  
23 ecutors of State or local governments. In order to carry  
24 out the preceding sentence, each independent counsel

1 shall, for purposes of such section 3372, be considered to  
2 be the head of a Federal agency.”.

3 **SEC. 8. ATTORNEYS’ FEES.**

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

6 (1) by striking “the court may” and inserting  
7 “the court shall”;

8 (2) by inserting after “pursuant to that inves-  
9 tigation,” the following: “if such individual is acquit-  
10 ted of all charges, or no conviction is obtained  
11 against such individual, at a trial brought pursuant  
12 to that investigation, or if the conviction of such in-  
13 dividual at such a trial is overturned on appeal,”;  
14 and

15 (3) by inserting “, trial, and appeal (if any)”  
16 after “during that investigation”.

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

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

20 “An independent counsel appointed under this chapter  
21 who gains access to classified information shall follow all  
22 procedures established by the United States Government  
23 regarding the maintenance, use, and disclosure of such in-  
24 formation. The failure to follow such procedures shall be  
25 grounds for removal for good cause under section

1 596(a)(1), in addition to any penalty provided in section  
2 798 of title 18 or any other law that may apply.”.

3 **SEC. 10. INDEPENDENT COUNSEL PER DIEM EXPENSES.**

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

6 “(b) COMPENSATION.—

7 “(1) IN GENERAL.—Except as provided in para-  
8 graph (2), an independent counsel appointed under  
9 this chapter shall receive compensation at the per  
10 diem rate equal to the annual rate of basic pay pay-  
11 able for level IV of the Executive Schedule under  
12 section 5315 of title 5.

13 “(2) TRAVEL AND LODGING IN WASHINGTON.—  
14 An independent counsel and persons appointed  
15 under subsection (c) shall not be entitled to the pay-  
16 ment of travel and subsistence expenses under sub-  
17 chapter 1 of chapter 57 of title 5, with respect to  
18 duties performed in the District of Columbia after 1  
19 year of service under this chapter.”.

20 **SEC. 11. AUTHORITIES AND DUTIES OF INDEPENDENT**  
21 **COUNSEL.**

22 (a) ADMINISTRATIVE SUPPORT.—Section 594 of title  
23 28, United States Code, is amended by adding at the end  
24 the following new subsection:

25 “(l) ADMINISTRATIVE SERVICES.—

1           “(1) ADMINISTRATIVE SUPPORT.—The Admin-  
2           istrator of General Services shall provide administra-  
3           tive support to each independent counsel.

4           “(2) OFFICE SPACE.—The Administrator of  
5           General Services shall promptly provide appropriate  
6           office space for each independent counsel. Such of-  
7           fice space shall be within a Federal building unless  
8           the Administrator of General Services determines  
9           that other arrangements would cost less.”.

10          (b) COMPLIANCE WITH POLICIES OF THE DEPART-  
11          MENT OF JUSTICE.—Section 594(f) of title 28, United  
12          States Code, is amended—

13                 (1) by striking “, except where not possible,”  
14                 and inserting “at all times”; and

15                 (2) by striking “enforcement of the criminal  
16                 laws” and inserting “the enforcement of criminal  
17                 laws and the release of information relating to crimi-  
18                 nal proceedings”.

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

22                 “(m) LIMITATION ON EXPENDITURES.—No funds  
23                 may be expended for the operation of any office of inde-  
24                 pendent counsel after the end of the 2-year period after  
25                 its establishment, except to the extent that an appropria-

1 tions Act enacted after such establishment specifically  
2 makes available funds for such office for use after the end  
3 of that 2-year period.”.

4 **SEC. 12. PERIODIC REPORTS.**

5 Section 595(a)(2) of title 28, United States Code, is  
6 amended by striking “such statements” and all that fol-  
7 lows through “appropriate” and inserting “annually a re-  
8 port on the activities of such independent counsel, includ-  
9 ing a description of the progress of any investigation or  
10 prosecution conducted by such independent counsel. Such  
11 report need not contain information which would—

12 “(A) compromise or undermine the con-  
13 fidentiality of an ongoing investigation under  
14 this chapter,

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

17 “(C) violate the personal privacy of any in-  
18 dividual,

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

1 **SEC. 13. REMOVAL, TERMINATION, AND PERIODIC RE-**  
2 **APPOINTMENT OF INDEPENDENT COUNSEL.**

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

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

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

16 “(A) on its own motion,

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

19 “(C) upon the petition of the subject of an  
20 investigation conducted by such independent  
21 counsel, if the petition is made more than 2  
22 years after the appointment of such independ-  
23 ent counsel,

24 on the ground that the investigation conducted by  
25 the independent counsel has been completed or sub-  
26 stantially completed and that it would be appro-

1        appropriate for the Department of Justice to complete  
2        such investigation or to conduct any prosecution  
3        brought pursuant to such investigation, or on the  
4        ground that continuation of the investigation or  
5        prosecution conducted by the independent counsel is  
6        not in the public interest.”.

7        (c) PERIODIC REAPPOINTMENT.—Section 596 of title  
8        28, United States Code, is amended by adding at the end  
9        the following:

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

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

15                “(2) the end of each succeeding 2-year period,  
16        such counsel shall apply to the division of the court for  
17        reappointment. The court shall first determine whether  
18        the office of that independent counsel should be termi-  
19        nated under subsection (b)(2). If the court determines  
20        that such office will not be terminated under such sub-  
21        section, the court shall reappoint the applicant if the court  
22        determines that such applicant remains the appropriate  
23        person to carry out the duties of the office. If not, the  
24        court shall appoint some other person whom it considers  
25        qualified under the standards set forth in section 593 of

1 this title. If the court has not taken the actions required  
2 by this subsection within 90 days after the end of the ap-  
3 plicable 2-year period, then that office of independent  
4 counsel shall terminate at the end of that 90-day period.”.

5 **SEC. 14. JOB PROTECTIONS FOR INDIVIDUALS UNDER IN-**  
6 **VESTIGATION.**

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

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

11 **“§ 597. Relationship with Department of Justice; job**  
12 **protection for individuals under inves-**  
13 **tigation”**; and

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

15 **“(c) JOB PROTECTION FOR INDIVIDUALS UNDER IN-**  
16 **VESTIGATION.—**

17 **“(1) PROHIBITED PERSONNEL PRACTICE.—**It  
18 shall be a prohibited personnel practice for an em-  
19 ployee of the United States Government who has au-  
20 thority to take, direct others to take, recommend, or  
21 approve any personnel action (as defined in section  
22 2302(a)(2)(A) of title 5) with respect to an individ-  
23 ual described in paragraph (2) who is the subject of  
24 an investigation or prosecution under this chapter,  
25 to take or fail to take, or threaten to take or fail to

1 take, such a personnel action with respect to such  
2 individual, on account of such investigation or pros-  
3 ecution.

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

6 “(A) any person described in section  
7 591(a); and

8 “(B) any employee of the Federal Govern-  
9 ment whose position is excepted from the com-  
10 petitive service on the basis of its confidential,  
11 policy-determining, policy-making, or policy-ad-  
12 vocating character.

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

18 “(4) REMEDIES.—An individual with respect to  
19 whom a prohibited personnel practice applies under  
20 paragraph (1) may seek corrective action from the  
21 Merit Systems Protection Board to the same extent  
22 as an employee may seek corrective action under sec-  
23 tion 1221 of title 5 (including subsection (h) of such  
24 section), except that, for purposes of such section,  
25 any reference to section 2302(b)(8) of title 5 shall

1 be deemed to refer to paragraph (1) of this sub-  
2 section, and any reference to a disclosure under such  
3 section 2302(b)(8) shall be deemed to refer to an in-  
4 vestigation or prosecution described in paragraph (1)  
5 of this subsection.”.

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

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

10 **SEC. 15. EFFECT OF TERMINATION OF CHAPTER.**

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

14 **SEC. 16. GAO REPORT.**

15 The Comptroller General of the United States shall  
16 submit to the Congress, not later than 1 year after the  
17 date of the enactment of this Act, a report setting forth  
18 recommendations of ways to improve controls on costs of  
19 offices of independent counsel under chapter 40 of title  
20 28, United States Code.

○