

Calendar No. 145

103D CONGRESS
1ST SESSION

S. 24

[Report No. 103-101]

A BILL

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

JULY 20 (legislative day; JUNE 30), 1993
Reported with an amendment

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

IN THE SENATE OF THE UNITED STATES

JANUARY 21 (legislative day, JANUARY 5), 1993

Mr. LEVIN (for himself, Mr. COHEN, and Mr. DECONCINI) introduced the following bill; which was read twice and referred to the Committee on Governmental Affairs

JULY 20 (legislative day, JUNE 30), 1993

Reported by Mr. GLENN (for himself and Mr. ROTH), with an amendment

[Strike out all after the enacting clause and insert the part printed in italic]

A BILL

To reauthorize the independent counsel law for an additional 5 years, 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 Reauthorization Act of 1993”.

1 **SEC. 2. FIVE-YEAR REAUTHORIZATION.**

2 Section 599 of title 28, United States Code, is
3 amended by striking “1987” and inserting “1993”.

4 **SEC. 3. ADDED CONTROLS.**

5 (a) **COST CONTROLS AND ADMINISTRATIVE SUP-**
6 **PORT.**—Section 594 of title 28, United States Code, is
7 amended by adding at the end the following new sub-
8 section:

9 “(1) **COST CONTROLS AND ADMINISTRATIVE SUP-**
10 **PORT.**—

11 “(1) **COST CONTROLS.**—

12 “(A) **IN GENERAL.**—An independent coun-
13 sel shall—

14 “(i) conduct all activities with due re-
15 gard for expense;

16 “(ii) authorize only reasonable and
17 lawful expenditures; and

18 “(iii) promptly, upon taking office, as-
19 sign to a specific employee the duty of cer-
20 tifying that expenditures of the independ-
21 ent counsel are reasonable and made in ac-
22 cordance with law.

23 “(B) **DEPARTMENT OF JUSTICE POLI-**
24 **CIES.**—An independent counsel shall comply
25 with the established policies of the Department
26 of Justice respecting expenditures of funds, ex-

1 cept to the extent that compliance would be in-
2 consistent with the purposes of this chapter.

3 ~~“(2) ADMINISTRATIVE SUPPORT.—The Admin-~~
4 ~~istrative Office of the United States Courts shall~~
5 ~~provide administrative support and guidance to each~~
6 ~~independent counsel. The Administrative Office shall~~
7 ~~not disclose information related to an independent~~
8 ~~counsel’s expenditures, personnel, or administrative~~
9 ~~acts or arrangements without the authorization of~~
10 ~~the independent counsel.~~

11 ~~“(3) OFFICE SPACE.—The General Services Ad-~~
12 ~~ministration, in consultation with the Administrative~~
13 ~~Office, shall promptly provide appropriate office~~
14 ~~space for each independent counsel. Such office~~
15 ~~space shall be within a Federal building unless the~~
16 ~~General Services Administration determines that~~
17 ~~other arrangements would cost less.”.~~

18 ~~(b) INDEPENDENT COUNSEL PER DIEM EX-~~
19 ~~PENSES.— Section 594(b) of title 28, United States Code,~~
20 ~~is amended—~~

21 (1) by striking “An independent counsel” and
22 inserting “(1) IN GENERAL.—An independent coun-
23 sel”; and

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

1 ~~“(2) TRAVEL EXPENSES.—~~Except as provided
2 in paragraph (3), an independent counsel and per-
3 sons appointed under subsection (c) shall be entitled
4 to the payment of travel expenses as provided by
5 subchapter 1 of chapter 57 of title 5, United States
6 Code, including travel expenses and per diem in lieu
7 of subsistence in accordance with section 5703 of
8 title 5.

9 ~~“(3) TRAVEL TO PRIMARY OFFICE.—~~An inde-
10 pendent counsel and persons appointed under sub-
11 section (c) shall not be entitled to the payment of
12 travel and subsistence expenses under subchapter 1
13 of chapter 57 of title 5, United States Code, with re-
14 spect to duties performed in the city in which the
15 primary office of that independent counsel or person
16 is located after 1 year of service under this chapter
17 unless the employee assigned duties under sub-
18 section (l)(1)(A)(iii) certifies that the payment is in
19 the public interest to carry out the purposes of this
20 chapter.”.

21 ~~(c) INDEPENDENT COUNSEL EMPLOYEE PAY COM-~~
22 PARABILITY.—Section 594(c) of title 28, United States
23 Code, is amended by striking the last sentence and insert-
24 ing: “Such employees shall be compensated at levels not
25 to exceed those payable for comparable positions in the

1 Office of United States Attorney for the District of Colum-
2 bia under sections 548 and 550, but in no event shall any
3 such employee be compensated at a rate greater than the
4 rate of basic pay payable for level IV of the Executive
5 Schedule under section 5315 of title 5.”.

6 (d) ETHICS ENFORCEMENT.—Section 594(j) of title
7 28, United States Code, is amended by adding at the end
8 the following new paragraph:

9 “(5) ENFORCEMENT.—The Department of Jus-
10 tice and Office of Government Ethics have authority
11 to enforce compliance with this subsection.”.

12 (e) COMPLIANCE WITH POLICIES OF THE DEPART-
13 MENT OF JUSTICE.—Section 594(f) is amended by strik-
14 ing “shall, except where not possible, comply” and insert-
15 ing “shall, except to the extent that to do so would be
16 inconsistent with the purposes of this chapter, comply”.

17 (f) PUBLICATION OF REPORTS.—Section 594(h) of
18 title 28, United States Code, is amended—

19 (1) by adding at the end the following new
20 paragraph:

21 “(3) PUBLICATION OF REPORTS.—At the re-
22 quest of an independent counsel, the Public Printer
23 shall cause to be printed any report previously re-
24 leased to the public under paragraph (2). The inde-
25 pendent counsel shall certify the number of copies

1 necessary for the public service, and the Public
2 Printer shall place the cost of the required number
3 to the debit of such independent counsel. Additional
4 copies shall be made available to the public through
5 the depository library program and Superintendent
6 of Documents sales program pursuant to sections
7 1702 and 1903 of title 44.”; and

8 (2) in the first sentence of paragraph (2), by
9 striking “appropriate” the second place it appears
10 and inserting “in the public interest, consistent with
11 maximizing public disclosure, ensuring a full expla-
12 nation of independent counsel activities and decision-
13 making, and facilitating the release of information
14 and materials which the independent counsel has de-
15 termined should be disclosed”.

16 (g) ANNUAL REPORTS TO CONGRESS.—Section
17 595(a)(2) of title 28, United States Code, is amended by
18 striking “such statements” and all that follows through
19 “appropriate” and inserting “annually a report on the ac-
20 tivities of the independent counsel, including a description
21 of the progress of any investigation or prosecution con-
22 ducted by the independent counsel. Such report may omit
23 any matter that in the judgment of the independent coun-
24 sel should be kept confidential, but shall provide informa-

1 tion adequate to justify the expenditures that the office
2 of the independent counsel has made”.

3 (h) PERIODIC REAPPOINTMENT OF INDEPENDENT
4 COUNSEL.—Section 596(b)(2) of title 28, United States
5 Code, is amended by adding at the end the following new
6 sentence: “If the Attorney General has not made a request
7 under this paragraph, the division of the court shall deter-
8 mine on its own motion whether termination is appro-
9 priate under this paragraph no later than 3 years after
10 the appointment of an independent counsel and at the end
11 of each succeeding 3-year period.”.

12 (i) AUDITS BY THE COMPTROLLER GENERAL.—Sec-
13 tion 596(c) of title 28, United States Code, is amended
14 to read as follows:

15 “(c) AUDITS.—By December 31 of each year, an
16 independent counsel shall prepare a statement of expendi-
17 tures for the fiscal year that ended on the immediately
18 preceding September 30. An independent counsel whose
19 office is terminated prior to the end of the fiscal year shall
20 prepare a statement of expenditures by the date that is
21 90 days after the date on which the office is terminated.
22 The Comptroller General shall audit each such statement
23 and report the results of each audit to the appropriate
24 committees of the Congress not later than March 31 of
25 the year following the submission of any such statement.”.

1 **SEC. 4. MEMBERS OF CONGRESS.**

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

4 (1) by redesignating paragraphs (1) and (2) as
5 subparagraphs (A) and (B), respectively;

6 (2) by designating the text as paragraph (1)
7 and inserting at the beginning of the text the follow-
8 ing: “(1) IN GENERAL.—”; and

9 (3) by adding at the end the following new
10 paragraph:

11 “(2) MEMBERS OF CONGRESS.—When the At-
12 torney General determines that it would be in the
13 public interest, the Attorney General may conduct a
14 preliminary investigation in accordance with section
15 592 if the Attorney General receives information
16 sufficient to constitute grounds to investigate wheth-
17 er a Member of Congress may have violated any
18 Federal criminal law other than a violation classified
19 as a Class B or C misdemeanor or an infraction.”.

20 **SEC. 5. EFFECTIVE DATE.**

21 The amendments made by this Act shall become ef-
22 fective on the date of enactment of this Act.

23 **SECTION 1. SHORT TITLE.**

24 *This Act may be cited as the “Independent Counsel*
25 *Reauthorization Act of 1993”.*

1 **SEC. 2. FIVE-YEAR REAUTHORIZATION.**

2 *Section 599 of title 28, United States Code, is amended*
 3 *by striking “1987” and inserting “1993”.*

4 **SEC. 3. ADDED CONTROLS.**

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

8 *“(l) COST CONTROLS AND ADMINISTRATIVE SUP-*
 9 *PORT.—*

10 *“(1) COST CONTROLS.—*

11 *“(A) IN GENERAL.—An independent counsel*
 12 *shall—*

13 *“(i) conduct all activities with due re-*
 14 *gard for expense;*

15 *“(ii) authorize only reasonable and*
 16 *lawful expenditures; and*

17 *“(iii) promptly, upon taking office, as-*
 18 *sign to a specific employee the duty of cer-*
 19 *tifying that expenditures of the independent*
 20 *counsel are reasonable and made in accord-*
 21 *ance with law.*

22 *“(B) DEPARTMENT OF JUSTICE POLICIES.—*
 23 *An independent counsel shall comply with the es-*
 24 *tablished policies of the Department of Justice*
 25 *respecting expenditures of funds, except to the ex-*

1 *tent that compliance would be inconsistent with*
2 *the purposes of this chapter.*

3 “(2) *ADMINISTRATIVE SUPPORT.*—*The Adminis-*
4 *trative Office of the United States Courts shall pro-*
5 *vide administrative support and guidance to each*
6 *independent counsel. The Administrative Office shall*
7 *not disclose information related to an independent*
8 *counsel’s expenditures, personnel, or administrative*
9 *acts or arrangements without the authorization of the*
10 *independent counsel.*

11 “(3) *OFFICE SPACE.*—*The General Services Ad-*
12 *ministration, in consultation with the Administrative*
13 *Office, shall promptly provide appropriate office*
14 *space for each independent counsel. Such office space*
15 *shall be within a Federal building unless the General*
16 *Services Administration determines that other ar-*
17 *rangements would cost less. Until such office space is*
18 *provided, the Administrative Office of the United*
19 *States Courts shall provide newly appointed inde-*
20 *pendent counsels immediately upon appointment with*
21 *appropriate, temporary office space, equipment, and*
22 *supplies.”.*

23 (b) *INDEPENDENT COUNSEL PER DIEM EXPENSES.*—
24 *Section 594(b) of title 28, United States Code, is amend-*
25 *ed—*

1 (1) by striking “(b) COMPENSATION.—An” and
2 inserting the following:

3 “(b) COMPENSATION.—

4 “(1) IN GENERAL.—An”; and

5 (2) by adding at the end the following new para-
6 graphs:

7 “(2) TRAVEL EXPENSES.—Except as provided in
8 paragraph (3), an independent counsel and persons
9 appointed under subsection (c) shall be entitled to the
10 payment of travel expenses as provided by subchapter
11 1 of chapter 57 of title 5, United States Code, includ-
12 ing travel expenses and per diem in lieu of subsist-
13 ence in accordance with section 5703 of title 5.

14 “(3) TRAVEL TO PRIMARY OFFICE.—An inde-
15 pendent counsel and persons appointed under sub-
16 section (c) shall not be entitled to the payment of
17 travel and subsistence expenses under subchapter 1 of
18 chapter 57 of title 5, United States Code, with respect
19 to duties performed in the city in which the primary
20 office of that independent counsel or person is located
21 after 1 year of service under this chapter unless the
22 employee assigned duties under subsection
23 (l)(1)(A)(iii) certifies that the payment is in the pub-
24 lic interest to carry out the purposes of this chapter.”.

1 (c) *INDEPENDENT COUNSEL EMPLOYEE PAY COM-*
2 *PARABILITY.*—Section 594(c) of title 28, United States
3 Code, is amended by striking the last sentence and insert-
4 ing: “Such employees shall be compensated at levels not to
5 exceed those payable for comparable positions in the Office
6 of United States Attorney for the District of Columbia
7 under sections 548 and 550, but in no event shall any such
8 employee be compensated at a rate greater than the rate
9 of basic pay payable for level IV of the Executive Schedule
10 under section 5315 of title 5.”.

11 (d) *ETHICS ENFORCEMENT.*—Section 594(j) of title
12 28, United States Code, is amended by adding at the end
13 the following new paragraph:

14 “(5) *ENFORCEMENT.*—The Department of Jus-
15 tice and Office of Government Ethics have authority
16 to enforce compliance with this subsection.”.

17 (e) *COMPLIANCE WITH POLICIES OF THE DEPART-*
18 *MENT OF JUSTICE.*—Section 594(f) of title 28, United
19 States Code, is amended by—

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

24 (2) adding at the end thereof the following: “To
25 determine these policies and policies under subsection

1 *(l)(1)(B), the independent counsel shall, to the extent*
2 *possible throughout his or her term of office, consult*
3 *with the Department of Justice.”;*

4 *(3) striking “An independent” and inserting the*
5 *following:*

6 *“(1) IN GENERAL.—An independent”;* and

7 *(4) adding at the end thereof the following new*
8 *paragraph:*

9 *“(2) NATIONAL SECURITY MATTERS.—An inde-*
10 *pendent counsel shall consult with the Department of*
11 *Justice with respect to national security matters and*
12 *shall comply with guidelines and procedures utilized*
13 *by the Department for the handling and use of classi-*
14 *fied material.”.*

15 *(f) PUBLICATION OF REPORTS.—Section 594(h) of title*
16 *28, United States Code, is amended by adding at the end*
17 *the following new paragraph:*

18 *“(3) PUBLICATION OF REPORTS.—At the request*
19 *of an independent counsel, the Public Printer shall*
20 *cause to be printed any report previously released to*
21 *the public under paragraph (2). The independent*
22 *counsel shall certify the number of copies necessary*
23 *for the public service, and the Public Printer shall*
24 *place the cost of the required number to the debit of*
25 *such independent counsel. Additional copies shall be*

1 *made available to the public through the depository*
2 *library program and Superintendent of Documents*
3 *sales program pursuant to sections 1702 and 1903 of*
4 *title 44.”.*

5 (g) *ANNUAL REPORTS TO CONGRESS.—Section*
6 *595(a)(2) of title 28, United States Code, is amended by*
7 *striking “such statements” and all that follows through “ap-*
8 *propriate” and inserting “each quarter a report detailing*
9 *all monies expended and annually a report on the activities*
10 *of the independent counsel, including a description of the*
11 *progress of any investigation or prosecution conducted by*
12 *the independent counsel. Such report may omit any matter*
13 *that in the judgment of the independent counsel should be*
14 *kept confidential, but shall provide information adequate*
15 *to justify the expenditures that the office of the independent*
16 *counsel has made”.*

17 (h) *PERIODIC REAPPOINTMENT OF INDEPENDENT*
18 *COUNSEL.—Section 596(b)(2) of title 28, United States*
19 *Code, is amended by adding at the end the following new*
20 *sentence: “If the Attorney General has not made a request*
21 *under this paragraph, the division of the court shall deter-*
22 *mine on its own motion whether termination is appropriate*
23 *under this paragraph no later than 3 years after the ap-*
24 *pointment of an independent counsel and at the end of each*
25 *succeeding 3-year period.”.*

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

4 “(c) *AUDITS.*—By December 31 of each year, an inde-
5 pendent counsel shall prepare a statement of expenditures
6 for the fiscal year that ended on the immediately preceding
7 September 30. An independent counsel whose office is termi-
8 nated prior to the end of the fiscal year shall prepare a
9 statement of expenditures by the date that is 90 days after
10 the date on which the office is terminated. The Comptroller
11 General shall audit each such statement and report the re-
12 sults of each audit to the appropriate committees of the Con-
13 gress not later than March 31 of the year following the sub-
14 mission of any such statement.”.

15 (j) *THRESHOLD INQUIRY.*—Section 591(d)(2) of title
16 28, United States Code, is amended by striking “15” each
17 time it appears and inserting “30”.

18 (k) *CRIMINAL INTENT.*—Section 592(a)(2)(B) of title
19 28, United States Code, is amended to read as follows:

20 “(B) After conducting an examination under sec-
21 tion 591(d) or preliminary investigation under this
22 subsection, the Attorney General shall not decline to
23 proceed under this chapter based upon a lack of evi-
24 dence that the subject acted with the state of mind re-
25 quired for a violation of criminal law, unless the At-

1 *torney General determines that, based upon the infor-*
2 *mation obtained, there are no reasonable grounds to*
3 *believe that the subject acted with the state of mind*
4 *required for a violation of criminal law, and no rea-*
5 *sonable possibility that further investigation would*
6 *develop such evidence.”.*

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

9 *“(e) RECUSAL OF ATTORNEY GENERAL.—*

10 *“(1) WHEN RECUSAL IS REQUIRED.—(A) If in-*
11 *formation received under this chapter involves the At-*
12 *torney General, the next most senior official in the*
13 *Department of Justice who is not also recused shall*
14 *perform the duties assigned under this chapter to the*
15 *Attorney General.*

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

23 *“(2) REQUIREMENTS FOR RECUSAL DETERMINA-*
24 *TION.—Before personally making any other deter-*
25 *mination under this chapter with respect to a matter,*

1 *the Attorney General shall determine under para-*
2 *graph (1)(B) whether recusal is necessary. The Attor-*
3 *ney General shall set forth this determination in writ-*
4 *ing, identify the facts considered by the Attorney Gen-*
5 *eral, and set forth the reasons for the recusal. The At-*
6 *torney General shall file this determination with any*
7 *notification or application submitted to the division*
8 *of the court under this chapter with respect to the*
9 *matter.”.*

10 *(m) DISCLOSURE OF INFORMATION.—Section 592(e) of*
11 *title 28, United States Code, is amended by inserting after*
12 *“Except as otherwise provided in this chapter” the follow-*
13 *ing: “or as necessary for law enforcement purposes”.*

14 *(n) CLARIFY AUTHORITY TO USE JUSTICE PERSON-*
15 *NEL.—Section 594(d)(1) of title 28, United States Code, is*
16 *amended by adding at the end thereof the following: “At*
17 *the request of an independent counsel, prosecutors, adminis-*
18 *trative personnel, and other employees of the Department*
19 *of Justice may be detailed to the staff of the independent*
20 *counsel.”.*

21 *(o) ATTORNEY FEES.—Section 593(f) of title 28,*
22 *United States Code, is amended—*

23 *(1) in paragraph (1), by inserting before the last*
24 *sentence the following: “No award of attorneys’ fees*
25 *shall be made for any fees that would have been in-*

1 *curred by the individual if the investigation had been*
2 *conducted by the Department of Justice.”; and*

3 *(2) in paragraph (2), by striking everything*
4 *after “subsection,” and inserting the following: “ad-*
5 *dress—*

6 *“(A) the sufficiency of the demonstration;*

7 *“(B) the need or justification for the under-*
8 *lying item;*

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

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

14 **SEC. 4. MEMBERS OF CONGRESS.**

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

17 *“(c) PRELIMINARY INVESTIGATION WITH RESPECT TO*
18 *OTHER PERSONS AND MATTERS.—*

19 *“(1) IN GENERAL.—When the Attorney General*
20 *determines that an investigation or prosecution of a*
21 *person or matter by the Department of Justice may*
22 *result in a personal, financial, or political conflict of*
23 *interest, the Attorney General may conduct a prelimi-*
24 *nary investigation of such person or matter in ac-*
25 *cordance with section 592 if the Attorney General re-*

1 *ceives information sufficient to constitute grounds to*
2 *investigate whether there may have been a violation*
3 *of Federal criminal law other than a violation classi-*
4 *fied as a Class B or C misdemeanor or an infraction.*

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

14 *(b) POSTEMPLOYMENT COVERAGE.—Section 591(b) of*
15 *title 28, United States Code, is amended by striking para-*
16 *graphs (6) and (7) and inserting the following:*

17 *“(6) any individual who held an office or posi-*
18 *tion described in paragraphs (1) through (5), for 1*
19 *year after leaving the office or position or until the*
20 *President under whom the individual served leaves of-*
21 *fice, whichever period expires first;*

22 *“(7) any individual who held an office or posi-*
23 *tion described in paragraphs (1) through (5) during*
24 *the incumbency of 1 President and who continued to*
25 *hold that office or position for not more than 90 days*

1 *into the term of the next President, until the individ-*
2 *ual leaves such office or position; and”.*

3 **SEC. 5. EFFECTIVE DATE.**

4 *The amendments made by this Act shall become effec-*
5 *tive on the date of enactment of this Act, except that the*
6 *compensation restrictions added by section 3(c) of this Act*
7 *shall apply only to employees appointed after the date of*
8 *enactment of this Act.*

S 24 RS—2