

103^D CONGRESS
1ST SESSION

S. RES. 23

To establish a procedure for the appointment of independent counsels to investigate ethics violations in the Senate, transfer to the Committee on Rules and Administration the remaining authority of the Select Committee on Ethics, and abolish the Select Committee on Ethics.

IN THE SENATE OF THE UNITED STATES

JANUARY 21 (legislative day, JANUARY 5), 1993

Mr. COATS submitted the following resolution; which was referred to the Committee on Rules and Administration

RESOLUTION

To establish a procedure for the appointment of independent counsels to investigate ethics violations in the Senate, transfer to the Committee on Rules and Administration the remaining authority of the Select Committee on Ethics, and abolish the Select Committee on Ethics.

1 *Resolved,*

2 **SECTION 1. INDEPENDENT ETHICS COMMISSION.**

3 (a) ESTABLISHMENT.—There is established a com-
4 mission to be known as the Independent Ethics Com-
5 mission of the Senate (referred to as the “Ethics
6 Commission”).

1 (b) MEMBERSHIP.—(1) The Ethics Commission shall
2 be comprised of 8 members appointed in accordance with
3 paragraph (2).

4 (2) The majority leader and the minority leader shall
5 each appoint to the Commission at the beginning of a Con-
6 gress—

7 (A) 1 member who is a retired judge of a Fed-
8 eral or State court;

9 (B) 1 member who is a former member of the
10 Senate; and

11 (C) 2 members who are private citizens and are
12 not employees of the United States.

13 (c) TERMS.—(1) A member of the Commission shall
14 serve a term of 2 years and may be reappointed for 2 addi-
15 tional terms.

16 (2) In the case of the death or resignation of a mem-
17 ber of the Commission a successor shall be appointed in
18 the same manner as the member was appointed to serve
19 until the end of the term of that member.

20 (d) REMOVAL.—A member of the Commission may
21 be removed only by resolution of the Senate.

22 (e) DUTIES.—It shall be the duty of the Commission
23 to—

24 (1) receive requests for review of an allegation
25 described in section 2(b);

1 (2) make such informal preliminary inquiries in
2 response to such a request as the Commission deems
3 to be appropriate;

4 (3) if, as a result of those inquiries, the Com-
5 mission determines that a full investigation is not
6 warranted, submit a report pursuant to section 2(e);
7 and

8 (4) if, as a result of those inquiries, the Com-
9 mission determines that a full investigation is war-
10 ranted, appoint an independent counsel pursuant to
11 section 3.

12 (f) COMPENSATION OF MEMBERS.—(1) Each mem-
13 ber of the Commission shall be compensated at a rate
14 equal to the daily equivalent of the annual rate of basic
15 pay prescribed for level IV of the Executive Schedule
16 under section 5315 of title 5, United States Code, for each
17 day (including travel time) during which the member is
18 engaged in the performance of the duties of the Com-
19 mission.

20 (2) The members of the Commission shall be allowed
21 travel expenses, including per diem in lieu of subsistence,
22 at rates authorized for employees of agencies under sub-
23 chapter I of chapter 57 of title 5, United States Code,
24 while away from their homes or regular places of business
25 in the performance of services for the Commission.

1 (g) STAFF.—(1) The Commission may, without re-
2 gard to the civil service laws and regulations, appoint, and
3 terminate an executive director and such other additional
4 personnel as are necessary to enable the Commission to
5 perform its duties.

6 (2) The Commission may fix the compensation of the
7 executive director and other personnel without regard to
8 the provisions of chapter 51 and subchapter III of chapter
9 53 of title 5, United States Code, relating to classification
10 of positions and General Schedule pay rates, except that
11 the rate of pay for the executive director and other person-
12 nel may not exceed the rate payable for level V of the
13 Executive Schedule under section 5316 of that title.

14 (3) Any Federal Government employee may be de-
15 tailed to the Commission without reimbursement, and
16 such detail shall be without interruption or loss of civil
17 service status or privilege.

18 (4) The Commission may procure temporary and
19 intermittent services under section 3109(b) of title 5,
20 United States Code, at rates for individuals that do not
21 exceed the daily equivalent of the annual rate of basic pay
22 prescribed for level V of the Executive Schedule under sec-
23 tion 5316 of that title.

24 (5) Except at a time when additional personnel are
25 needed to assist the Commission in its review of a particu-

1 lar request for review under section 2, the total number
2 of staff personnel employed by or detailed to the Commis-
3 sion under this subsection shall not exceed 5.

4 (h) INAPPLICABILITY OF THE FEDERAL ADVISORY
5 COMMITTEE ACT.—The Federal Advisory Committee Act
6 (5 U.S.C. App.) shall not apply to the Commission.

7 **SEC. 2. REVIEW OF ALLEGATIONS OF IMPROPER MIS-**
8 **CONDUCT AND VIOLATIONS OF LAW.**

9 (a) DEFINITIONS.—As used in this section, the term
10 “officer or employee of the Senate” means—

11 (1) an elected officer of the Senate who is not
12 a member of the Senate;

13 (2) an employee of the Senate, any committee
14 or subcommittee of the Senate, or any member of
15 the Senate;

16 (3) the Legislative Counsel of the Senate or any
17 employee of his office;

18 (4) an Official Reporter of Debates of the Sen-
19 ate and any person employed by the Official Report-
20 ers of Debates of the Senate in connection with the
21 performance of their official duties;

22 (5) a member of the Capitol Police force whose
23 compensation is disbursed by the Secretary of the
24 Senate;

1 (6) an employee of the Vice President if such
2 employee's compensation is disbursed by the Sec-
3 retary of the Senate; and

4 (7) an employee of a joint committee of the
5 Congress whose compensation is disbursed by the
6 Secretary of the Senate.

7 (b) REQUEST FOR REVIEW.—Any person may
8 present to the Commission a request to review and to con-
9 sider the propriety of appointing an independent counsel
10 to investigate an allegation of—

11 (1) improper conduct that may reflect upon the
12 Senate;

13 (2) a violation of law;

14 (3) a violation of the Senate Code of Official
15 Conduct (rules XXXIV, XXXV, XXXVII, XXXVIII,
16 XXXIX, XL, XLI, and XLII of the Standing Rules
17 of the Senate); or

18 (4) a violation of a rule or regulation of the
19 Senate,
20 relating to the conduct of a person in the performance of
21 his or her duties as a member, officer, or employee of the
22 Senate.

23 (c) SWORN STATEMENT.—A request for review under
24 subsection (b) shall be accompanied by a sworn statement,
25 made under penalty of perjury under the laws of the Unit-

1 ed States, of facts within the personal knowledge of the
2 person making the statement alleging improper conduct
3 or a violation described in subsection (b).

4 (d) PUBLIC DISCLOSURE.—(1) The contents of a re-
5 quest for review and sworn statement submitted under
6 subsections (b) and (c), all proceedings of the Commission,
7 and all facts that come to the knowledge of the Commis-
8 sion during its inquiries shall be made available to the
9 public except as provided in paragraph (2).

10 (2) The Commission may withhold information from
11 public disclosure if the Commission, in its sole discretion,
12 determines that the public interest in disclosure is out-
13 weighed by—

14 (A) harm that may be caused to the reputation
15 of a person; or

16 (B) prejudice that may be caused to the rights
17 of a person.

18 (e) DETERMINATION NOT TO APPOINT INDEPEND-
19 ENT COUNSEL.—(1) If, after making preliminary inquir-
20 ies, the Commission determines not to appoint an inde-
21 pendent counsel pursuant to section 3, the Commission
22 shall submit to the members of the Senate a report that—

23 (A) states findings of fact made as a result of
24 the inquiries;

1 (B) states any conclusions that may be drawn
2 with respect to whether there is substantial credible
3 evidence that improper conduct or a violation of law
4 may have occurred; and

5 (C) states its reasons for concluding that fur-
6 ther investigation is not warranted.

7 (2) After submission of a report under paragraph (1),
8 no action may be taken in the Senate to impose a sanction
9 on a person who was the subject of the Commission's in-
10 quiries on the basis of any conduct that was alleged in
11 the request for review and sworn statement.

12 (3) If the Commission determines that any part of
13 a sworn statement presented to it under subsection (c)
14 may have been a false statement made knowingly and will-
15 fully, the Commission may refer the matter to the Attor-
16 ney General for prosecution.

17 **SEC. 3. INDEPENDENT COUNSEL.**

18 (a) APPOINTMENT.—(1) If, after making preliminary
19 inquiries, the Commission determines that—

20 (A) there is substantial credible evidence that
21 improper conduct or a violation described in section
22 2(b) may have occurred; and

23 (B) in view of the seriousness of the allegation
24 and other relevant considerations, a full investiga-

1 tion of the alleged misconduct or violation is war-
2 ranted,
3 the Commission shall appoint an independent counsel to
4 conduct an investigation.

5 (2)(A) The Commission shall appoint as independent
6 counsel a person who has appropriate experience and who
7 undertakes to conduct the investigation in a prompt, re-
8 sponsible, and cost-effective manner and to serve to the
9 extent necessary to complete the investigation.

10 (B) The Commission may not appoint as independent
11 counsel a person who holds any office of profit or trust
12 under the United States.

13 (b) COMPENSATION.—An independent counsel shall
14 receive compensation at the per diem rate equal to the
15 annual rate of basic pay payable for level IV of the Execu-
16 tive Schedule under section 5315 of title 5, United States
17 Code.

18 (c) SCOPE OF INVESTIGATION.—(1) At the time that
19 the Commission appoints an independent counsel, the
20 Commission shall describe with specificity in the appoint-
21 ment the subject matter with respect to which the inves-
22 tigation shall be conducted.

23 (2) The Commission may enlarge the subject matter
24 with respect to which an investigation shall be con-
25 ducted—

1 (A) at the recommendation of the independent
2 counsel, based on facts that come to the knowledge
3 of the independent counsel during an investigation;
4 or

5 (B) in response to a request for review and
6 sworn statement alleging new facts that is presented
7 to the Commission by any person prior to the con-
8 clusion of an investigation.

9 (d) GENERAL AUTHORITIES.—(1) An independent
10 counsel may—

11 (A) make such expenditures;

12 (B) hold such hearings;

13 (C) require by subpoena or otherwise the at-
14 tendance of such witnesses and the production of
15 such correspondence, books, papers, documents, or
16 other records of any kind;

17 (D) administer such oaths;

18 (E) take such testimony orally or by deposition;

19 and

20 (F) employ and fix the compensation of such
21 assistant counsel, investigators, technical assistants,
22 consultants, and clerical staff as the independent
23 counsel deems advisable.

24 (2) An independent counsel may procure the tem-
25 porary services (not in excess of 1 year) or intermittent

1 services of consultants by contract as independent contrac-
2 tors or by employment at daily rates of compensation not
3 in excess of the per diem equivalent of the highest rate
4 of compensation that may be paid to a regular employee
5 of the Committee on Rules and Administration.

6 (e) USE OF SERVICES, FACILITIES, INFORMATION,
7 AND EMPLOYEES.—(1) With the consent of the depart-
8 ment or agency concerned, an independent counsel may—

9 (A) use the services, facilities, and information
10 of any department or agency of the United States;
11 and

12 (B) employ on a reimbursable basis or other-
13 wise the services of such personnel of such a depart-
14 ment or agency as the independent counsel deems
15 advisable.

16 (2) With the consent of the committee, subcommittee,
17 or office concerned, an independent counsel may use the
18 services, facilities, and information of any committee, sub-
19 committee, or office of the Senate when the independent
20 counsel determines that to do so is necessary and appro-
21 priate.

22 (f) OPPORTUNITY TO BE HEARD.—An independent
23 counsel shall provide a person that is the subject of an
24 investigation notice of the investigation and a full oppor-
25 tunity to respond orally and in writing and submit evi-

1 dence in response to allegations made concerning the
2 person.

3 (g) REPORT AND RECOMMENDATION.—(1) At the
4 conclusion of an investigation, an independent counsel
5 shall submit to the members of the Senate a report that—

6 (A) states findings of fact made in the inves-
7 tigation;

8 (B) states any conclusions that may be drawn
9 with respect to whether improper conduct or a viola-
10 tion of law has occurred; and

11 (C) recommends an appropriate sanction for
12 any improper conduct or violation of law that is
13 found to have occurred.

14 (2) A sanction recommended by an independent coun-
15 sel in a report under paragraph (1) may include—

16 (A) in the case of improper conduct or a viola-
17 tion of law by a Member of the Senate, censure, ex-
18 pulsion, or recommendation to the appropriate party
19 conference regarding the Member's seniority or posi-
20 tion of responsibility; and

21 (B) in the case of improper conduct or a viola-
22 tion of law by an officer or employee of the Senate,
23 suspension or dismissal from employment by the
24 Senate.

1 (3) At any time at which an independent counsel
2 finds facts that give reason to believe that a violation of
3 law has occurred, the independent counsel shall report
4 those facts to the appropriate Federal or State law en-
5 forcement authorities.

6 (h) SENATE ACTION.—After a report is submitted
7 under subsection (g), any member of the Senate may in-
8 troduce a resolution proposing that the Senate adopt the
9 report of the independent counsel with or without modi-
10 fication and impose an appropriate sanction.

11 (i) PAYMENT OF EXPENSES.—Expenses of the Com-
12 mission and compensation and expenses of an independent
13 counsel shall be paid out of the contingent fund of the
14 Senate.

15 **SEC. 4. TRANSFER OF FUNCTIONS TO THE COMMITTEE ON**
16 **RULES AND ADMINISTRATION.**

17 (a) AMENDMENT OF RULE XXV.—Paragraph 1(n)
18 of rule XXV of the Standing Rules of the Senate is
19 amended—

20 (1) by striking “and” at the end of clause

21 (2)(A);

22 (2) by striking the period at the end of clause

23 (2)(B) and inserting “; and”;

24 (3) by adding at the end of clause (2) the fol-
25 lowing new subclauses:

1 “(C) administer the reporting requirements of
2 title I of the Ethics in Government Act of 1978 (5
3 U.S.C. App.);

4 “(D) recommend to the Senate, by report or
5 resolution, such additional rules or regulations as
6 the committee determines to be necessary or desir-
7 able to ensure proper standards of conduct by mem-
8 bers, officers, and employees of the Senate in the
9 performance of their duties and the discharge of
10 their responsibilities;

11 “(E) issue interpretative rulings explaining and
12 clarifying the application of any law, the Code of Of-
13 ficial Conduct, or any rule or regulation of the Sen-
14 ate within its jurisdiction;

15 “(F) render an advisory opinion, in writing
16 within a reasonable time, in response to a written re-
17 quest by a Member or officer of the Senate or a can-
18 didate for nomination for election, or election to the
19 Senate, concerning the application of any law, the
20 Senate Code of Official Conduct, or any rule or reg-
21 ulation of the Senate within its jurisdiction to a spe-
22 cific factual situation pertinent to the conduct or
23 proposed conduct of the person seeking the advisory
24 opinion;

1 “(G) in its discretion render an advisory opin-
2 ion in writing within a reasonable time in response
3 to a written request by any employee of the Senate
4 concerning the application of any law, the Senate
5 Code of Official Conduct, or any rule or regulation
6 of the Senate within its jurisdiction to a specific fac-
7 tual situation pertinent to the conduct or proposed
8 conduct of the person seeking the advisory opinion;

9 “(H) perform the functions assigned to the Se-
10 lect Committee on Standards and Conduct of the
11 Senate in section 6 of Public Law 93–191 (2 U.S.C.
12 502); and

13 “(I) be deemed to be an ‘employing agency’
14 under section 7342(a)(6)(B) in place of the Select
15 Committee on Ethics.”; and

16 (4) by adding at the end the following new
17 clauses:

18 “(3)(A) Notwithstanding any provision of the Senate
19 Code of Official Conduct or any rule or regulation of the
20 Senate, a person who relies on any provision or finding
21 of an advisory opinion rendered under clause (2) (F) or
22 (G) and who acts in good faith in accordance with the
23 provisions and findings of such an advisory opinion shall
24 not, as a result of any such act, be subject to any sanction
25 by the Senate.

1 “(B) An advisory opinion rendered under clause (2)
2 (F) or (G) may be relied on by—

3 “(i) any person involved in the specific trans-
4 action or activity with respect to which the advisory
5 opinion is rendered if the request for the advisory
6 opinion included a complete and accurate statement
7 of the specific factual situation; and

8 “(ii) any person involved in any specific trans-
9 action or activity which is indistinguishable in all its
10 material aspects from the transaction or activity
11 with respect to which the advisory opinion is ren-
12 dered.

13 “(C) An advisory opinion rendered under clause (2)
14 (F) or (G) shall be printed in the Congressional Record
15 with appropriate deletions to assure the privacy of the in-
16 dividual concerned. Before rendering an advisory opinion
17 the committee shall, to the extent practicable, provide any
18 interested party with an opportunity to transmit written
19 comments to the committee with respect to the request
20 for such advisory opinion. The advisory opinions issued by
21 the committee shall be compiled, indexed, reproduced, and
22 made available on a periodic basis.

23 “(D) A brief description of a waiver granted under
24 section 102(a)(2)(B) of title I of Ethics in Government
25 Act of 1978 (5 U.S.C. App.) or paragraph 1 of rule XXXV

1 shall be made available upon request in the committee of-
2 fice with appropriate deletions to assure the privacy of the
3 person concerned.

4 “(4)(A) The responsibilities of the Committee on
5 Rules and Administration under clause (3) (C), (D), (E),
6 (F), (G), (H), and (I) and under the Senate Code of Offi-
7 cial Conduct shall be administered by a Subcommittee on
8 Ethics comprised of an equal number of members of the
9 major political parties.

10 “(B) A determination made or action taken by the
11 Subcommittee on Ethics may be modified by—

12 “(i) the Committee on Rules and Administra-
13 tion by a vote of the majority of the members of
14 each of the major political parties; or

15 “(ii) resolution of the Senate.”.

16 (b) AMENDMENT OF SENATE CODE OF OFFICIAL
17 CONDUCT.—Rules XXXV, XXXVII, and XLI of the
18 Standing Rules of the Senate are amended—

19 (1) by striking “Select Committee on Ethics”
20 each place it appears and inserting “Committee on
21 Rules and Administration”; and

22 (2) by striking “Select Committee” each place
23 it appears and inserting “Committee on Rules and
24 Administration”.

1 **SEC. 5. ABOLISHMENT OF SELECT COMMITTEE ON ETHICS.**

2 Effective on the date that the initial 8 members of
3 the Commission take office, the following resolutions are
4 repealed:

5 (1) Senate Resolution 338, 88th Cong., 2d
6 Sess., 100 Cong. Rec. 16939 (1964).

7 (2) Senate Resolution 223, 96th Cong., 1st
8 Sess., 125 Cong. Rec. 22471 (1979).

9 (3) Senate Resolution 290, 96th Cong., 1st
10 Sess., 125 Cong. Rec. 33623 (1979).

11 (4) Senate Resolution 425, 97th Cong., 2nd
12 Sess., 128 Cong. Rec. 20820 (1982).

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SRES 23 IS—2