



## SENATE OF PENNSYLVANIA BILL SUMMARY

### Senate Bill 1031 Printer's No. 1322

Prime Sponsor: Senator Gordner  
Committee: Judiciary

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#### **SYNOPSIS:**

This bill amends Title 18 (Crimes and Offenses) to re-authorize the Independent Counsel.

#### **SUMMARY:**

This bill repeals the expired provisions of Chapter 93 (Independent Counsel) of Title 18. The bill creates a new Chapter 95 (Independent Counsel) to replace the expired Chapter 93. The bill relates to investigations of criminal conduct by the Attorney General, any Deputy Attorney General, any public employee who works or worked in the Office of Attorney General until three years after the employee's departure from the Office of Attorney General, or any chairman or treasurer of a political campaign of the Attorney General.

#### *Special Independent Prosecutor's Panel*

This Panel would be comprised of one Commonwealth Court judge and two common pleas judges. They will be chosen in accordance with a procedure developed by the Administrative Office of Pennsylvania Courts. The members of the Panel will serve for three years unless they reach the mandatory retirement age. Vacancies shall be filled only for the remainder of the three-year period. All decisions by the panel shall be made by majority vote.

#### *Preliminary Investigations*

The Panel, upon the petition of a district attorney with reasonable grounds to believe that an offense greater than a summary offense has occurred, shall appoint a special investigative counsel to conduct a preliminary investigation. A district attorney must make a determination regarding grounds for an investigation, based on the specificity of information and the credibility of the source, within 30 days after receiving that information. If the district attorney either determines, or is unable to determine, in that 30-day period that the information is sufficiently credible and specific, the district attorney shall petition the Panel to commence a preliminary investigation.

The preliminary investigation shall be of matters as the special investigative counsel considers appropriate in order to determine whether further investigation is warranted with respect to each potential violation. The special investigative counsel shall determine whether further investigation is warranted within 90 days after the commencement of the preliminary investigation. The special investigative counsel shall have no authority to convene grand juries, plea bargain, grant immunity, or issue subpoenas. Any decision that the information lacks credibility or specificity shall not be made on the basis that the accused person did not have the requisite state of mind to commit the offense unless

there is clear and convincing evidence that the accused person lacked the required state of mind. The special investigative counsel may apply to the Panel for a single extension of time for a period of no longer than 60 days.

The special investigative counsel shall promptly notify the Panel of a conclusion that there are no reasonable grounds to believe that further investigation is warranted. The notification shall summarize the information received and the results of the preliminary investigation. The summary shall be confidential and not subject to public disclosure, except that the person who was the subject of the investigation may request a copy of the summary. If the special investigative counsel believes that further investigation is warranted or if a notification of no grounds for further investigation has not been filed within 90 days and any extension, the special investigative counsel shall apply to the Panel for the appointment of an independent counsel. If after a notification is submitted to the Panel the special investigative counsel receives additional information that merits investigation, the special investigative counsel shall conduct an additional preliminary investigation.

#### *Independent Counsel*

The application for independent counsel shall contain sufficient information to assist the Panel in selecting the counsel and determining the counsel's prosecutorial discretion. No employee of the special investigative counsel or independent counsel may disclose information outside of their offices without leave of the Panel.

The independent counsel shall have appropriate experience and shall conduct the investigation in a prompt, responsible, and cost-effective manner. The independent counsel may not hold any office of profit or trust with the Commonwealth. The Panel shall disclose the identity of the independent counsel upon appointment. Upon the request of a district attorney or a judge, the Panel may expand the prosecutorial jurisdiction of an independent counsel. If the independent counsel receives information of criminal violations that are outside the counsel's prosecutorial jurisdiction, the independent counsel may notify a district attorney and a special investigative counsel may be appointed with regard to the newly discovered violations.

The independent counsel shall have the full power and independent authority to exercise all investigative and prosecutorial functions and powers of the Office of Attorney General. These powers include conducting proceedings before a grand jury, engaging in civil and criminal litigation, reviewing documentary evidence from any source, asserting privileges, receiving security clearances, applying for warrants and subpoenas, inspecting tax returns, signing indictments, and consulting with district attorneys. An independent counsel shall receive compensation at a per diem rate equal to the annual rate of compensation payable to the Attorney General. The independent counsel may appoint, fix the compensation, and fix the duties of employees as necessary, including attorneys, investigators, and experts. These positions are exempted from competitive service and shall be compensated at levels comparable to similar positions in the Office of Attorney General. An independent counsel may request assistance from the Pennsylvania State Police. The independent counsel shall be removed only for good cause, physical disability, mental incapacity, or any other condition that substantially impairs the performance of the independent counsel's duties.

The independent counsel shall file reports with the Panel every six months identifying and explaining major expenses incurred and estimating future expenses. A final report must describe all prosecutions. The Panel may release to the General Assembly, the Governor, the State Treasurer, the public, or any appropriate person the portions of a report as the Panel considers appropriate. The Panel shall make any orders necessary to protect the rights of any individual named in the report and to prevent any undue interference with any pending investigation. The independent counsel shall submit a report to the General Assembly detailing all funds expended and shall submit an annual report on the activities of the independent counsel. The reports may omit information that should be kept confidential. The independent counsel shall advise the House of Representatives of credible information that would form the grounds for impeachment.

During the service of an independent counsel, the independent counsel and any person associated with a firm with which the independent counsel is associated may not represent in any matter a person involved in any investigation or prosecution of the independent counsel. For a period of three years following the termination of service, the independent counsel may not represent a person who was the subject of an investigation or prosecution of the independent counsel. Upon termination of service, the independent counsel shall transfer all records to the State Archives.

**AMENDMENT:**

Amendment A\_\_\_\_\_ creates a Chapter 92 pertaining to Conflicts of Interest. If the district attorney requests that the Office of Attorney General prosecute a criminal case in county court on the basis of a conflict of interest, and the Attorney General declines to accept or act on the request, this amendment would authorize the district attorney to refer the matter to a district attorney of a contiguous county who has sufficient resources and has no conflict of interest. If the district attorneys of the contiguous counties decline to accept the referral for any reason, the district attorney may refer the matter to a district attorney of a non-contiguous county.

The amendment also clarifies that the subject of the Independent Counsel Act is the Attorney General. Any Deputy Attorney General or employee of the Office of Attorney General may only be the subject of this Act if the conduct at issue involves the performance of his or her duties in the Office of Attorney General. All other criminal violations by a Deputy Attorney General or OAG employee will be prosecuted by the district attorneys.

The amendment extends the time period for a district attorney to decide whether grounds for a preliminary investigation exist from 30 to 90 days.

**EFFECTIVE DATE:**

This bill is effective in sixty days.

**BILL HISTORY:**

There is no history for this bill during this legislative session.

Prepared by: Cawley 3/11/2016