

Independent Counsel Reform Act of 2003 Summary of Main Differences From 1994 Act

1. Officials Covered by the Statute Reduced: Officials covered by the statute will be limited to the President, the Vice President, the Attorney General, the President's Chief of Staff, and Cabinet members. This is a reduction in the number of covered officials, because there was a concern that the 1994 law covered too broad a group. As in the 1994 law, the AG would still have the discretion to have an independent counsel appointed for non-covered, lower level officials where investigation or prosecution by DOJ would result in a personal, financial or political conflict of interest.

2. Threshold for Seeking an Appointment: The threshold for seeking the appointment of an Independent Counsel will be raised to "substantial grounds to believe that further investigation is warranted" (from the current "reasonable grounds to believe . . ."). There was a concern that the threshold was so low that it sometimes required the Attorney General to appoint an Independent Counsel where one may not have been necessary. This was particularly so, given the limited time and resources the Attorney General had to complete the preliminary investigation.

3. Preliminary Investigation Expanded: The Attorney General will be entitled to issue subpoenas for evidence and convene grand juries during the preliminary investigation, and would be given more time to conduct the preliminary investigation. This addresses the concern that the Attorney General did not have the time or tools to make a proper preliminary determination about the likelihood of wrongdoing. Given the gravity of an Independent Counsel investigation, it is imperative that an Independent Counsel be appointed only when it is truly warranted.

4. Full Time Position: Each Independent Counsel will have to devote his full time to the position for the duration of his tenure. This addresses concerns that past Independent Counsel who were not engaged full time may not have had the incentive to move the process along as expeditiously as possible, and were not able to devote their full attention to this important job.

5. Time limit on Investigations: The bill will impose a time limit of two years on investigations by Independent Counsel. The court could grant extensions of time for good cause and to compensate for dilatory tactics. The 1994 bill had no time limits. This is an effort to encourage quick resolution of matters under Independent Counsel investigation.

6. Public Budget Process: The Independent Counsel will be required to submit a proposed budget each year, and permit the Attorney General and General Accounting Office to comment publicly on this budget. This proposed budget would not bind the Independent Counsel. Some Independent Counsel in the past have run up significant costs. While a cap is not workable, transparency will impose accountability in the process.

7. Expansion of Jurisdiction: It will be impossible for the Independent Counsel to expand his investigation into unrelated matters. The Attorney General's grant of expanded jurisdiction to

Ken Starr, which led to the investigation into the Lewinsky affair and the Travelgate scandal, gave the impression that the Independent Counsel was empowered to pursue the person and not just the alleged wrongdoing. This version will ensure that the Independent Counsel is focused solely on the task for which he or she was appointed.

8. Report to Congress: The provision in the current law requiring the Independent Counsel to provide evidence of impeachable offenses to the House has been removed. The impeachment power is one of Congress' essential Constitutional functions, and no part of that role should be delegated by statute to a prosecutor.