
A BILL FOR AN ACT

RELATING TO A SPECIAL COUNSEL.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The Hawaii Revised Statutes is amended by adding
2 a new chapter to be appropriately designated and to read as
3 follows:

4 "CHAPTER

5 INDEPENDENT COUNSEL

6 § -1 Preliminary investigation with respect to certain
7 covered persons. (a) The attorney general shall conduct a
8 preliminary investigation, in accordance with section -4,
9 whenever the attorney general receives information sufficient to
10 constitute grounds to investigate whether any of the following
11 persons may have violated any state criminal law other than an
12 offense classified as a petty misdemeanor or violation:

- 13 (1) The governor and lieutenant governor;
- 14 (2) Any individual serving in a position listed in section
15 26-52 or 26-53;
- 16 (3) Any individual working in the governor's office who is
17 compensated at a rate of pay at or above \$;



- 1 (4) Any individual who leaves any office or position
2 described in any of paragraphs (1) to (3) during the
3 incumbency of the governor under whom the individual
4 served in the office or position plus one year after
5 such incumbency, but in no event longer than a period
6 of three years after the individual leaves the office
7 or position;
- 8 (5) Any individual who held an office or position
9 described in any of paragraphs (1) to (3) during the
10 incumbency of one governor and who continued to hold
11 the office or position for not more than ninety days
12 into the term of the next governor, during the one-
13 year period after the individual leaves the office or
14 position; and
- 15 (6) The chairperson and treasurer of the principal state
16 campaign committee seeking the election or reelection
17 of the governor and any officer of that committee
18 exercising authority at the state level, during the
19 incumbency of the governor.
- 20 (b) The attorney general may conduct a preliminary
21 investigation in accordance with section -4 if:



- 1 (1) The attorney general receives information sufficient
2 to constitute grounds to investigate whether any
3 person other than a person described in subsection (a)
4 may have violated any law other than an offense
5 classified as a petty misdemeanor or a violation; and
6 (2) The attorney general determines that an investigation
7 or prosecution of the person, with respect to the
8 information received, by the attorney general may
9 result in a personal, financial, or political conflict
10 of interest.

11 § -2 Examination of information to determine need for
12 preliminary investigation; time period. (a) In determining
13 whether grounds to investigate exist, the attorney general shall
14 consider only:

- 15 (1) The specificity of the information received; and
16 (2) The credibility of the source of the information.
17 (b) The attorney general shall determine whether grounds
18 to investigate exist not later than fifteen days after the
19 information is first received. If within the fifteen-day period
20 the attorney general determines that the information is not
21 specific or is not from a credible source, then the attorney
22 general shall close the matter. If within the fifteen-day



1 period the attorney general determines that the information is
2 specific and from a credible source, the attorney general, upon
3 making that determination, shall commence a preliminary
4 investigation with respect to that information. If the attorney
5 general is unable to determine, within the fifteen-day period,
6 whether the information is specific and from a credible source,
7 the attorney general, at the end of the fifteen-day period,
8 shall commence a preliminary investigation with respect to that
9 information.

10 § -3 **Recusal of attorney general.** (a) If information
11 received under this chapter involves the attorney general or an
12 individual with whom the attorney general has a current or
13 recent personal or financial relationship, the attorney general
14 shall designate the next most senior deputy attorney general
15 whom that information does not involve and who does not have a
16 current or recent personal or financial relationship with the
17 individual to perform the duties with respect to that
18 information assigned under this chapter to the attorney general.

19 (b) The attorney general, before personally making any
20 other determination with respect to information received under
21 this chapter, shall determine whether recusal is required under
22 subsection (a) with respect to that information. A



1 determination to recuse shall be in writing, shall identify the
2 facts considered by the attorney general, and shall set forth
3 the reasons for the recusal. The attorney general shall file
4 this determination with any notification or application with
5 respect to the information involved required to be submitted to
6 the special division of the court under this chapter.

7 § -4 Conduct of preliminary investigation; extension of
8 time. (a) A preliminary investigation conducted under this
9 chapter shall be of matters as the attorney general considers
10 appropriate in order to make a determination, under section
11 -6 or -7 on whether further investigation is warranted,
12 with respect to each potential violation or allegation of a
13 violation of criminal law. The attorney general shall make the
14 determination not later than ninety days after the preliminary
15 investigation is commenced; except that, in the case of a
16 preliminary investigation commenced following a legislative
17 request under section -11, the attorney general shall make
18 the determination not later than ninety days after the request
19 is received. The attorney general promptly shall notify the
20 special division of the court specified in section -12 of the
21 commencement of the preliminary investigation and the date of
22 the commencement.



1 (b) The attorney general may apply to the special division
2 of the court for a single extension, for a period of not more
3 than sixty days, of the ninety-day period. The special division
4 of the court, upon a showing of good cause, may grant the
5 extension.

6 § -5 Limited authority of attorney general. (a) In
7 conducting preliminary investigations under this chapter, the
8 attorney general shall have no authority to convene grand
9 juries, plea bargain, grant immunity, or issue subpoenas.

10 (b) The attorney general shall not base a determination
11 under this chapter that information with respect to a violation
12 of criminal law by a person is not specific and from a credible
13 source upon a determination that the person lacked the state of
14 mind required for the violation of criminal law.

15 (c) The attorney general shall not base a determination
16 under this chapter that there are no reasonable grounds to
17 believe that further investigation is warranted upon a
18 determination that the person lacked the state of mind required
19 for the violation of criminal law involved, unless there is
20 clear and convincing evidence that the person lacked the
21 required state of mind.



1 § -6 Determination that further investigation not
2 warranted; notification to special division of the court. If
3 the attorney general, upon completion of a preliminary
4 investigation under this chapter, determines that there are no
5 reasonable grounds to believe that further investigation is
6 warranted, the attorney general promptly shall so notify the
7 special division of the court, and the special division of the
8 court shall have no power to appoint an independent counsel with
9 respect to the matters involved. The notification shall contain
10 a summary of the information received and a summary of the
11 results of the preliminary investigation.

12 § -7 Determination that further investigation is
13 warranted; application for appointment of independent counsel.

14 (a) The attorney general shall apply to the special division of
15 the court for the appointment of an independent counsel if:

16 (1) The attorney general, upon completion of a preliminary
17 investigation under this chapter, determines that
18 there are reasonable grounds to believe that further
19 investigation is warranted; or

20 (2) The ninety-day period and any extension granted under
21 section -4(b) have elapsed and the attorney general



1 has not filed a notification with the special division
2 of the court required under section -6.

3 In determining under this section whether reasonable grounds
4 exist to warrant further investigation, the attorney general
5 shall comply with the written or other established policies of
6 the department of the attorney general with respect to the
7 conduct of criminal investigations.

8 (b) Any application for the appointment of an independent
9 counsel under this chapter shall contain sufficient information
10 to assist the special division of the court in selecting an
11 independent counsel and in defining that independent counsel's
12 prosecutorial jurisdiction so that the independent counsel has
13 adequate authority to investigate and prosecute fully the
14 subject matter and all matters related to that subject matter.

15 § -8 **Receipt of additional information.** If, after
16 submitting a notification to the special division of the court
17 under section -6, the attorney general receives additional
18 information sufficient to constitute grounds to investigate the
19 matters to which the notification related, the attorney general
20 shall:

21 (1) Conduct any additional preliminary investigation as
22 the attorney general considers appropriate for a



1 period of not more than ninety days after the date on
2 which the additional information is received; and
3 (2) Otherwise comply with this chapter with respect to the
4 additional preliminary investigation to the same
5 extent as any other preliminary investigation under
6 this chapter.

7 § -9 Disclosure of information. Except as otherwise
8 provided in this chapter, no officer or employee of the
9 department of the attorney general or an office of independent
10 counsel, without leave of the special division of the court, may
11 disclose to any individual outside the department or office any
12 notification, application, or any other document, material, or
13 memorandum supplied to the special division of the court under
14 this chapter. Nothing in this chapter shall be construed as
15 authorizing the withholding of information from the legislature.

16 § -10 Limitation on judicial review. The attorney
17 general's determination under this chapter to apply to the
18 special division of the court for the appointment of an
19 independent counsel shall not be reviewable in any court.

20 § -11 Legislative request; report by the attorney
21 general; disclosure. (a) The judiciary committee of either
22 house of the legislature or a majority of majority party members



1 or a majority of all non-majority party members of either
2 committee may request in writing that the attorney general apply
3 for the appointment of an independent counsel.

4 (b) Not later than thirty days after the receipt of a
5 request under subsection (a), the attorney general shall submit,
6 to the committee making the request, or to the committee on
7 which the persons making the request serve, a report on whether
8 the attorney general has begun or will begin a preliminary
9 investigation under this chapter of the matters with respect to
10 which the request is made. The report shall set forth the
11 reasons for the attorney general's decision regarding the
12 preliminary investigation as it relates to each matter raised in
13 the legislative request. If there is a preliminary
14 investigation, the report shall include the date on which the
15 preliminary investigation began or will begin.

16 (c) At the same time as any notification, application, or
17 any other document, material, or memorandum is supplied to the
18 special division of the court with respect to a preliminary
19 investigation of any matter concerning which a request is made
20 under subsection (a), the notification, application, or other
21 document, material, or memorandum shall be supplied to the
22 committee making the request, or to the committee on which the



1 persons making the request serve. If no application for the
2 appointment of an independent counsel is made to the special
3 division of the court under this section pursuant to a
4 preliminary investigation, the attorney general shall submit a
5 report to that committee stating the reasons why the application
6 was not made, addressing each matter raised in the legislative
7 request.

8 (d) Any report, notification, application, or other
9 document, material, or memorandum supplied to a committee under
10 this section shall not be revealed to any third party; except
11 that the committee, either on its own initiative or upon the
12 request of the attorney general, may make public such portion or
13 portions of the report, notification, application, document,
14 material, or memorandum as will not in the committee's judgment
15 prejudice the rights of any individual.

16 **§ -12 Duties of the special division of the court;**
17 **appointment, qualifications, and jurisdiction of independent**
18 **counsel.** (a) The special division of the court to which this
19 chapter refers is the division established under section 601-

20 (b) Upon receipt of an application under section -7,
21 the special division of the court shall appoint an appropriate



1 independent counsel and shall define that independent counsel's
2 prosecutorial jurisdiction.

3 (c) The special division of the court shall appoint as
4 independent counsel an individual who has appropriate experience
5 and who will conduct the investigation and any prosecution in a
6 prompt, responsible, and cost-effective manner. The special
7 division of the court shall seek to appoint as independent
8 counsel an individual who shall serve to the extent necessary to
9 complete the investigation and any prosecution without undue
10 delay. The special division of the court shall not appoint as
11 an independent counsel any person who holds any office of profit
12 or trust under the State.

13 (d) In defining the independent counsel's prosecutorial
14 jurisdiction, the special division of the court shall ensure
15 that the independent counsel has adequate authority to
16 investigate and prosecute fully the subject matter with respect
17 to which the attorney general has requested the appointment of
18 the independent counsel and all matters related to that subject
19 matter. Such jurisdiction also shall include the authority to
20 investigate and prosecute state crimes, other than those
21 classified as petty misdemeanors or violations, that may arise
22 out of the investigation or prosecution of the matter with



1 respect to which the attorney general's request was made,
2 including perjury, obstruction of justice, destruction of
3 evidence, and intimidation of witnesses.

4 **§ -13 Disclosure of identity and prosecutorial**
5 **jurisdiction.** An independent counsel's identity and
6 prosecutorial jurisdiction (including any expansion under
7 section -14) may not be made public except upon the request
8 of the attorney general or upon a determination by the special
9 division of the court that disclosure of the identity and
10 prosecutorial jurisdiction of the independent counsel would be
11 in the best interests of justice. In any event, the identity
12 and prosecutorial jurisdiction of the independent counsel shall
13 be made public when any indictment is returned or any criminal
14 information is filed pursuant to the independent counsel's
15 investigation.

16 **§ -14 Expansion of jurisdiction; procedure for**
17 **requesting.** (a) The special division of the court, upon the
18 request of the attorney general, may expand the prosecutorial
19 jurisdiction of an independent counsel, and this expansion may
20 be in lieu of the appointment of another independent counsel.

21 (b) If the independent counsel discovers or receives
22 information about possible violations of criminal law by persons



1 as provided in section -1 that are not covered by the
2 prosecutorial jurisdiction of the independent counsel, the
3 independent counsel may submit the information to the attorney
4 general. The attorney general shall conduct a preliminary
5 investigation of the information in accordance with this
6 chapter; provided that the preliminary investigation shall not
7 exceed thirty days from the date the information is received.
8 Thereafter, in making the determinations required by sections
9 -6 and -7, the attorney general shall give great weight to
10 any recommendations of the independent counsel.

11 (c) If the attorney general determines, after according
12 great weight to the recommendations of the independent counsel,
13 that there are no reasonable grounds to believe that further
14 investigation is warranted, the attorney general promptly shall
15 so notify the special division of the court and the special
16 division of the court shall have no power to expand the
17 jurisdiction of the independent counsel or to appoint another
18 independent counsel with respect to the matters involved.

19 (d) If:

20 (1) The attorney general determines that there are
21 reasonable grounds to believe that further
22 investigation is warranted; or



1 (2) The thirty-day period elapses without a notification
2 to the special division of the court that no further
3 investigation is warranted;
4 the special division of the court shall expand the jurisdiction
5 of the appropriate independent counsel to include the matters
6 involved or shall appoint another independent counsel to
7 investigate the matters.

8 § -15 **Return for further explanation.** Upon receipt of a
9 notification under section -14(c) or section -6 from the
10 attorney general that there are no reasonable grounds to believe
11 that further investigation is warranted with respect to
12 information received under this chapter, the special division of
13 the court shall have no authority to overrule this determination
14 but may return the matter to the attorney general for further
15 explanation of the reasons for the determination.

16 § -16 **Vacancies.** If a vacancy in office arises by
17 reason of the resignation, death, or removal of an independent
18 counsel, the special division of the court shall appoint an
19 independent counsel to complete the work of the independent
20 counsel whose resignation, death, or removal caused the vacancy;
21 except that, in the case of a vacancy arising by reason of the
22 removal of an independent counsel, the special division of the



1 court may appoint an acting independent counsel to serve until
2 any judicial review of the removal is completed.

3 § -17 Award of attorneys' fees; evaluation. (a) Upon
4 the request of an individual who is the subject of an
5 investigation conducted by an independent counsel pursuant to
6 this chapter, the special division of the court, if no
7 indictment is brought against the individual pursuant to the
8 investigation, may award reimbursement for those reasonable
9 attorneys' fees incurred by the individual during the
10 investigation that would not have been incurred but for the
11 requirements of this chapter. The special division of the court
12 shall notify the attorney general of any request for attorneys'
13 fees under this section.

14 (b) The special division of the court may direct the
15 attorney general to file a written evaluation of any request for
16 attorneys' fees under this section, analyzing for each expense:

- 17 (1) The sufficiency of the documentation;
18 (2) The need or justification for the underlying item; and
19 (3) The reasonableness of the amount of money requested.

20 § -18 Disclosure of information by the special division
21 of the court. (a) The special division of the court, subject
22 to section -26, may allow the disclosure of any notification,



1 application, or any other document, material, or memorandum
2 supplied to the special division of the court under this
3 chapter.

4 (b) When presented with significant legal issues, the
5 special division of the court may disclose sufficient
6 information about the issues to permit the filing of timely
7 amicus curiae briefs.

8 § -19 Authority and duties of an independent counsel.

9 Notwithstanding any other provision of law, an independent
10 counsel appointed under this chapter, with respect to all
11 matters in the independent counsel's prosecutorial jurisdiction
12 established under this chapter, shall have full power and
13 independent authority to exercise all investigative and
14 prosecutorial functions and powers of the attorney general and
15 any other officer or employee of the department of the attorney
16 general, including those specified in part IV of chapter 803.
17 These investigative and prosecutorial functions and powers shall
18 include but not be limited to:

19 (1) Conducting proceedings before grand juries and other
20 investigations;



- 1 (2) Participating in court proceedings and engaging in any
2 litigation, including civil and criminal matters, that
3 the independent counsel considers necessary;
- 4 (3) Appealing any decision of a court in any case or
5 proceeding in which the independent counsel
6 participates in an official capacity;
- 7 (4) Reviewing all documentary evidence available from any
8 source;
- 9 (5) Determining whether to contest the assertion of any
10 testimonial privilege;
- 11 (6) Making applications to any court for a grant of
12 immunity to any witness, consistent with chapter 621C,
13 or for warrants, subpoenas, or other court orders;
- 14 (7) Initiating and conducting prosecutions in any court of
15 competent jurisdiction, framing and signing
16 indictments, filing informations, and handling all
17 aspects of any case, in the name of the State; and
- 18 (8) Consulting with the United States district attorney
19 and county prosecuting attorneys concerning any
20 alleged violation of law with respect to which the
21 independent counsel is appointed.



1 § -20 **Compensation.** An independent counsel appointed
2 under this chapter shall receive compensation at the per diem
3 rate equal to the annual rate of basic pay payable for the first
4 deputy attorney general.

5 § -21 **Additional personnel.** For the purposes of
6 carrying out the duties of an office of independent counsel, the
7 independent counsel may appoint, fix the compensation of, and
8 assign the duties of employees as the independent counsel
9 considers necessary (including investigators, attorneys, and
10 part-time consultants). The positions of these employees shall
11 be exempt from chapter 76; provided that no employee may be
12 compensated at a rate exceeding the maximum rate of pay payable
13 at the salary range of SC-3, L2.

14 § -22 **Assistance of department; payment of and reports**
15 **on expenditures.** (a) An independent counsel may request
16 assistance from the department of the attorney general in
17 carrying out the functions of the independent counsel, and the
18 department shall provide that assistance, which may include
19 access to any records, files, or other materials relevant to
20 matters within the independent counsel's prosecutorial
21 jurisdiction and the use of the resources and personnel
22 necessary to perform the independent counsel's duties.



1 (b) The department shall pay all costs relating to the
2 establishment and operation of any office of independent
3 counsel. The attorney general shall submit to the legislature,
4 not later than thirty days after the end of each fiscal year, a
5 report on amounts paid during that fiscal year for expenses of
6 investigations and prosecutions by independent counsel. Each
7 report shall include a statement of all payments made for
8 activities of independent counsel but may not reveal the
9 identity or prosecutorial jurisdiction of any independent
10 counsel that has not been disclosed under section -13.

11 § -23 **Compliance with policies of the department.** An
12 independent counsel shall comply, except where not possible,
13 with the written or other established policies of the department
14 of the attorney general respecting enforcement of the criminal
15 laws.

16 § -24 **Referral of other matters to an independent**
17 **counsel.** An independent counsel may ask the attorney general or
18 the special division of the court to refer to the independent
19 counsel matters related to the independent counsel's
20 prosecutorial jurisdiction, and the attorney general or the
21 special division of the court, as the case may be, may refer the
22 matters. If the attorney general refers a matter to an



1 independent counsel on the attorney general's own initiative,
2 the independent counsel may accept the referral if the matter
3 relates to the independent counsel's prosecutorial jurisdiction.
4 If the attorney general refers any matter to the independent
5 counsel pursuant to the independent counsel's request, or if the
6 independent counsel accepts a referral made by the attorney
7 general on the attorney general's own initiative, the
8 independent counsel shall so notify the special division of the
9 court.

10 § -25 **Dismissal of matters.** The independent counsel
11 shall have full authority to dismiss matters within the
12 independent counsel's prosecutorial jurisdiction without
13 conducting an investigation or at any subsequent time before
14 prosecution, if to do so would be consistent with the written or
15 other established policies of the department of the attorney
16 general with respect to the enforcement of criminal laws.

17 § -26 **Reports by independent counsel.** (a) An
18 independent counsel shall file with the special division of the
19 court, with respect to the six-month period beginning on the
20 date of appointment and with respect to each six-month period
21 thereafter until the office of that independent counsel
22 terminates, a report that identifies and explains major



1 expenses, and summarizes all other expenses, incurred by that
2 office during the six-month period with respect to which the
3 report is filed and estimates future expenses of that office.

4 (b) Before the termination of the independent counsel's
5 office under section -33, an independent counsel shall file a
6 final report with the special division of the court, setting
7 forth fully and completely a description of the work of the
8 independent counsel, including the disposition of all cases
9 brought and the reasons for not prosecuting any matter within
10 the prosecutorial jurisdiction of the independent counsel.

11 (c) The special division of the court may release to the
12 legislature, the public, or any appropriate person, such
13 portions of a report made under this section as the special
14 division of the court considers appropriate. The special
15 division of the court shall make such orders as are appropriate
16 to protect the rights of any individual named in the report and
17 to prevent undue interference with any pending prosecution.

18 (d) The special division of the court may make any portion
19 of a final report filed under subsection (b) available to any
20 individual named in the report for the purposes of receiving,
21 within a time limit set by the special division of the court,
22 any comments or factual information that the individual may



1 submit. Such comments and factual information, in whole or in
2 part, may be included, in the discretion of the special division
3 of the court, as an appendix to the final report.

4 § -27 Independence from department. Each independent
5 counsel appointed under this chapter, and the persons appointed
6 by that independent counsel under section -21, are separate
7 from and independent of the department of the attorney general
8 for purposes of section 26-8.

9 § -28 Standards of conduct applicable to independent
10 counsel, persons serving in the office of an independent
11 counsel, and their law firms; restrictions on employment. (a)
12 During the period in which an independent counsel is serving
13 under this chapter:

- 14 (1) The independent counsel; and
15 (2) Any person associated with a firm with which the
16 independent counsel is associated;
17 may not represent in any matter any person involved in any
18 investigation or prosecution under this chapter.

19 During the period in which any person appointed by an
20 independent counsel under section -21 is serving in the
21 office of independent counsel, the person may not represent in



1 any matter any person involved in any investigation or
2 prosecution under this chapter.

3 (b) Each independent counsel and each person appointed by
4 that independent counsel under section -21, for three years
5 following the termination of the service of that independent
6 counsel or appointed person, as the case may be, may not
7 represent any individual in any matter if that individual was
8 the subject of an investigation or prosecution under this
9 chapter that was conducted by that independent counsel.

10 (c) Each independent counsel and each person appointed by
11 that independent counsel under section -21, for one year
12 following the termination of the service of that independent
13 counsel or appointed person, as the case may be, may not
14 represent any person in any matter involving any investigation
15 or prosecution under this chapter.

16 (d) Any person who is associated with a firm with which an
17 independent counsel is associated or becomes associated after
18 termination of the service of that independent counsel, for one
19 year following the termination, may not represent any person in
20 any matter involving any investigation or prosecution under this
21 chapter.

22 (e) For purposes of this section:



- 1 (1) "Firm" means a law firm, whether organized as a
2 partnership or corporation; and
- 3 (2) A person is "associated" with a firm if that person is
4 an officer, director, partner, or other member or
5 employee of that firm.

6 § -29 Custody of records of an independent counsel;
7 transfer of; access to. (a) Upon termination of the office of
8 an independent counsel, that independent counsel shall transfer
9 to the state comptroller all records that have been created or
10 received by that office. Before this transfer, the independent
11 counsel shall clearly identify which of these records are
12 subject to rule 6(e) of the Hawaii rules of penal procedure as
13 grand jury materials.

14 (b) Except as provided in this section, records
15 transferred to the state comptroller under this chapter shall be
16 maintained, used, and disposed of in accordance with chapter 94.
17 Subject to subsections (c) and (d), access to the records
18 transferred to the state comptroller under this chapter shall be
19 governed by chapter 92F.

20 (c) The state comptroller, upon written application by the
21 attorney general, shall disclose any records to the department
22 of the attorney general for purposes of an ongoing law



1 enforcement investigation or court proceeding; except that, in
2 the case of grand jury materials, such records shall be so
3 disclosed only by order of the court of jurisdiction under rule
4 6(e) of the Hawaii rules of penal procedure.

5 Notwithstanding any restriction on access imposed by law,
6 the state archivist and persons employed by the state archives
7 division who are engaged in the performance of normal archival
8 work shall be permitted access to the records transferred to the
9 state archives under this chapter.

10 (d) Records of an investigation conducted by a committee
11 of the house of representatives or the senate that are provided
12 to an independent counsel to assist in an investigation or
13 prosecution conducted by that independent counsel shall:

14 (1) Be maintained as a separate body of records within the
15 records of the independent counsel; and

16 (2) Be made available, except as provided in this section,
17 after the records have been transferred to the state
18 comptroller, in accordance with the rules governing
19 release of the records of the house of the legislature
20 that provided the records to the independent counsel;
21 except that this paragraph shall not apply to those



1 records that have been surrendered pursuant to grand
2 jury or court proceedings.

3 § -30 Legislature oversight; of independent counsel, of
4 attorney general. (a) The appropriate committees of the
5 legislature shall have oversight jurisdiction with respect to
6 the official conduct of any independent counsel appointed under
7 this chapter, and the independent counsel shall have the duty to
8 cooperate with the exercise of the oversight jurisdiction. An
9 independent counsel appointed under this chapter shall submit to
10 the legislature statements or reports on the activities of the
11 independent counsel as the independent counsel considers
12 appropriate.

13 (b) Within fifteen days after receiving an inquiry about a
14 particular case under this chapter that is a matter of public
15 knowledge, from a committee of the legislature with jurisdiction
16 over this chapter, the attorney general shall provide the
17 following information to that committee with respect to the
18 case:

- 19 (1) When the information about the case was received;
20 (2) Whether a preliminary investigation is being
21 conducted, and if so, the date it began; and



1 (3) Whether an application for the appointment of an
2 independent counsel or a notification that further
3 investigation is not warranted has been filed with the
4 special division of the court, and if so, the date of
5 the filing.

6 § -31 Information relating to impeachment. An
7 independent counsel shall advise the house of representatives of
8 any substantial and credible information that the independent
9 counsel receives, in carrying out the independent counsel's
10 responsibilities under this chapter, that may constitute grounds
11 for an impeachment. Nothing in this chapter or section 601- ,
12 shall prevent the legislature or either house thereof from
13 obtaining information in the course of an impeachment
14 proceeding.

15 § -32 Removal of an independent counsel; grounds; report
16 to special division of court and legislature; judicial review.

17 (a) An independent counsel appointed under this chapter may be
18 removed from office, other than by impeachment and conviction,
19 only by the personal action of the attorney general and only for
20 good cause, physical disability, mental incapacity, or any other
21 condition that substantially impairs the performance of the
22 independent counsel's duties.



1 (b) If an independent counsel is removed from office, the
2 attorney general promptly shall submit to the special division
3 of the court and the committees on the judiciary of the senate
4 and the house of representatives a report specifying the facts
5 found and the ultimate grounds for removal. The committees
6 shall make available to the public the report, except that each
7 committee, if necessary to protect the rights of any individual
8 named in the report or to prevent undue interference with any
9 pending prosecution, may postpone or refrain from publishing any
10 or all of the report. The special division of the court may
11 release any or all of the report consistent with section
12 -26(c).

13 (c) An independent counsel removed from office may obtain
14 judicial review of the removal in a civil action commenced in
15 the circuit court. A member of the special division of the
16 court may not hear or determine any such civil action or any
17 appeal of a decision in any such civil action. The independent
18 counsel may be reinstated or granted other appropriate relief by
19 order of the court.

20 § -33 Termination of office, by action of independent
21 counsel; by special division of court. (a) An office of
22 independent counsel shall terminate when:



1 (1) The independent counsel notifies the attorney general
2 that the investigation of all matters within the
3 prosecutorial jurisdiction of the independent counsel
4 or accepted by the independent counsel under section
5 -24, and any resulting prosecutions, have been
6 completed or so substantially completed that it would
7 be appropriate for the department to complete the
8 investigations and prosecutions; and

9 (2) The independent counsel files a final report in
10 compliance with section -26(b).

11 (b) The special division of the court, either on its own
12 motion or upon the request of the attorney general, may
13 terminate an office of independent counsel at any time on the
14 ground that the investigation of all matters within the
15 prosecutorial jurisdiction of the independent counsel or
16 accepted by the independent counsel under section -24, and
17 any resulting prosecutions, have been completed or so
18 substantially completed that it would be appropriate for the
19 department of the attorney general to complete the
20 investigations and prosecutions. At the time of the termination
21 under this subsection, the independent counsel shall file the
22 final report required by section -26(b).



1 **§ -34 Audits.** After the termination of the office of an
2 independent counsel, the comptroller shall conduct an audit of
3 the expenditures of that office and shall submit to the
4 appropriate committees of the legislature a report on the audit.

5 **§ -35 Relationship with department of attorney general;
6 suspension of other investigations and proceedings.** Whenever a
7 matter is in the prosecutorial jurisdiction of an independent
8 counsel or has been accepted by an independent counsel under
9 section -24, the department of the attorney general, the
10 attorney general, and all other officers and employees of the
11 department shall suspend all investigations and proceedings
12 regarding the matter, except to the extent required by section
13 -22(a), and except insofar as the independent counsel agrees
14 in writing that the investigation or proceedings may be
15 continued by the department.

16 **§ -36 Presentation as amicus curiae permitted.** Nothing
17 in this chapter shall prevent the attorney general from making a
18 presentation as amicus curiae to any court as to issues of law
19 raised by any case or proceeding in which an independent counsel
20 participates in an official capacity or any appeal of such a
21 case or proceeding."



1 SECTION 2. Chapter 601, Hawaii Revised Statutes, is
2 amended by adding a new section to be appropriately designated
3 and to read as follows:

4 "§601- Assignment of judges to special division of the
5 court to appoint independent counsels. (a) Beginning with the
6 two-year period commencing on the effective date of this
7 section, the chief justice shall assign three judges for each
8 successive two-year period to a division of the first circuit
9 court, to be known as the special division of the court, for the
10 purpose of appointing independent counsels. The clerk of the
11 first circuit shall serve as the clerk of the special division
12 of the court and shall provide such services as are needed by
13 the special division of the court.

14 (b) Except as provided under subsection (f), and
15 notwithstanding any other law to the contrary, assignment to the
16 special division of the court shall not be a bar to other
17 judicial assignments during the term of appointment.

18 (c) The chief justice of the supreme court shall designate
19 and assign three circuit court judges, one of whom shall be a
20 judge of the first circuit court to the special division of the
21 court. Not more than one judge may be named to the special
22 division from a particular circuit.



1 (d) In assigning judges to sit on the special division of
2 the court, priority shall be given to senior circuit judges.
3 Notwithstanding subsection (c), in the chief justice's
4 discretion, the chief justice also may assign retired circuit
5 judges or justices to the special division of the court;
6 provided that not more than one retired judge or justice serves
7 at any one time.

8 (e) Any vacancy in the special division of the court shall
9 be filled only for the remainder of the two-year period in which
10 the vacancy occurs and in the same manner as the initial
11 assignment was made.

12 (f) No member of the special division of the court who
13 participated in a function conferred on the special division
14 involving an independent counsel shall be eligible to
15 participate in any judicial proceeding concerning a matter that
16 involves the independent counsel while the independent counsel
17 is serving in that office or that involves the exercise of the
18 independent counsel's official duties, regardless of whether the
19 independent counsel is still serving in that office."

20 SECTION 3. If any provision of this Act, or the
21 application thereof to any person or circumstance is held
22 invalid, the invalidity does not affect other provisions or



1 applications of the Act which can be given effect without the
2 invalid provision or application, and to this end the provisions
3 of this Act are severable.

4 SECTION 4. New statutory material is underscored.

5 SECTION 5. This Act shall take effect upon its approval.

6

INTRODUCED BY: Scott K. Bauer
[Signature]
[Signature]

JAN 28 2009



Report Title:

Independent Counsel

Description:

Creates office of independent counsel. Specifies duties, authority, and qualification of independent counsel. Specifies role of attorney general with respect to independent counsel. Creates special division of court to appoint independent counsel. Authorizes chief justice to assign judges to special division.

