

# D R A F T

## SUMMARY

Authorizes Legislative Assembly to request appointment of independent counsel by joint resolution.

Declares emergency, effective on passage.

## A BILL FOR AN ACT

Relating to investigations of Executive Branch misconduct authorized by the Legislative Assembly; and declaring an emergency.

**Be It Enacted by the People of the State of Oregon:**

**SECTION 1. (1) The Legislative Assembly, by joint resolution, may request that the Attorney General conduct a preliminary investigation of such matters as the Attorney General considers appropriate in order to make a determination on whether further investigation is warranted, with respect to potential violations or allegations of violations identified in the joint resolution of ethics or criminal laws. Upon the Legislative Assembly's passing a joint resolution as described in this subsection, the Attorney General shall conduct a preliminary investigation and shall:**

**(a) Promptly notify the appropriate circuit court of the commencement of the preliminary investigation and the date of the commencement.**

**(b) Make a determination under this subsection not later than the 90th day after the date of adoption of the joint resolution.**

**(2) In determining whether reasonable grounds exist to warrant further investigation, the Attorney General shall comply with the**

1 written or other established policies of the Department of Justice with  
2 respect to the conduct of criminal investigations.

3 (3) The Attorney General, upon completion of the preliminary in-  
4 vestigation, shall report the results of the preliminary investigation  
5 to the Legislative Assembly. All reports of preliminary investigation  
6 results by the Attorney General to the Legislative Assembly must  
7 contain a summary of the information received and a summary of the  
8 results of the preliminary investigation. The Attorney General shall  
9 make public all reports of preliminary investigation results to the  
10 Legislative Assembly.

11 (4) If the Attorney General, upon completion of a preliminary in-  
12 vestigation:

13 (a) Determines that there are no reasonable grounds to believe that  
14 further investigation is warranted, the Attorney General shall include  
15 this determination in the report to the Legislative Assembly described  
16 in subsection (3) of this section, and the Legislative Assembly shall  
17 have no power to appoint an independent counsel with respect to the  
18 matters involved.

19 (b) Determines that there are reasonable grounds to believe that  
20 further investigation is warranted, the Attorney General shall include  
21 this determination in the report to the Legislative Assembly described  
22 in subsection (3) of this section and shall apply to the circuit court for  
23 the appointment of an independent counsel.

24 (5) If the 90-day period referred to in subsection (1)(b) of this section  
25 has elapsed and the Attorney General has not made a report to the  
26 Legislative Assembly under subsection (3) of this section, the Attorney  
27 General shall apply to the circuit court for the appointment of an in-  
28 dependent counsel.

29 (6)(a) Applications for the appointment of an independent counsel  
30 under this section must contain sufficient information to assist the  
31 circuit court in selecting an independent counsel and in defining that

1 independent counsel's prosecutorial jurisdiction so that the independ-  
2 ent counsel has adequate authority to fully investigate and prosecute  
3 the subject matter and all matters related to that subject matter.

4 (b) The Attorney General's determination under this section to ap-  
5 ply to the circuit court for the appointment of an independent counsel  
6 is not reviewable in any court.

7 (7) If, after reporting to the Legislative Assembly under subsection  
8 (3) of this section, the Attorney General receives additional informa-  
9 tion sufficient to constitute grounds to investigate the matters to  
10 which the report related, the Attorney General shall:

11 (a) Conduct an additional preliminary investigation as the Attorney  
12 General considers appropriate for a period of not more than 60 days  
13 after the date on which the additional information is received; and

14 (b) Otherwise comply with the provisions of this section with re-  
15 spect to the additional preliminary investigation to the same extent  
16 as with respect to any other preliminary investigation under this sec-  
17 tion.

18 (8) The Attorney General, upon making a determination under  
19 subsection (4)(b) of this section, shall provide to the independent  
20 counsel a summary of the information received during the preliminary  
21 investigation and a summary of the results of the preliminary inves-  
22 tigation, along with any notification, application or other document,  
23 material or memorandum discovered, produced or relied upon by the  
24 Attorney General as part of the preliminary investigation. Any infor-  
25 mation provided by the Attorney General to the independent counsel  
26 under this section is exempt from disclosure under ORS 192.410 to  
27 192.505.

28 (9) The independent counsel appointed under this section shall have  
29 all the powers of a district attorney, and, as part of any investigation  
30 conducted by the independent counsel, the independent counsel may:

31 (a) Execute in writing and serve a subpoena or subpoena duces

tecum upon any person the independent counsel believes to have information or material relevant to the investigation;

(b) Call upon the Department of State Police or any other peace officer or department for assistance in making the investigation or, in the discretion of the independent counsel, employ special investigators; and

(c) Direct a grand jury to convene for the investigation and consideration of the matters of a criminal nature that the independent counsel desires to submit to it, take full charge of the presentation of the matters to the grand jury, issue subpoenas, prepare indictments and do all other things necessary to the same extent as a district attorney may do.

(10) In addition to the powers provided to the independent counsel under subsection (9) of this section, the independent counsel shall have the power to investigate potential violations and allegations of violations of ethics laws identified in the joint resolution described in subsection (1) of this section. The independent counsel may, in the discretion of the independent counsel, seek civil enforcement of violations of ethics laws under ORS chapter 244.

(11) Except as otherwise provided in this section or as is deemed necessary for law enforcement purposes, an officer or employee of the Department of Justice or an office of independent counsel may not, without leave of the circuit court, disclose to any individual outside the Department of Justice or office of independent counsel any notification, any application or any other document, materials or memorandum supplied to the circuit court under this section.

**SECTION 2.** This 2016 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2016 Act takes effect on its passage.