

SENATE BILL No. 1021

May 17, 2018, Introduced by Senators BIEDA, ANANICH, HOPGOOD, KNEZEK, HERTEL, GREGORY, WARREN and YOUNG and referred to the Committee on Government Operations.

A bill to create the independent counsel act; to provide for the powers and duties of certain state and local governmental officers and entities; and to create a fund.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1. This act shall be known and may be cited as the
2 "independent counsel act".

3 Sec. 3. (1) If the governor or the attorney general determines
4 that the attorney general has a conflict of interest or the
5 appearance of a conflict of interest with respect to a specific
6 criminal investigation or specific criminal case, the governor or
7 the attorney general may petition the court of appeals to appoint
8 an independent counsel to proceed on the specific criminal
9 investigation or specific criminal case as provided in this act.

10 (2) A panel of the court of appeals, assigned as provided

1 under section 311 of the revised judicature act of 1961, 1961 PA
2 236, MCL 600.311, shall determine if an independent counsel must be
3 appointed by determining if the attorney general has a conflict of
4 interest in fact, or if the circumstances surrounding a specific
5 criminal investigation or specific criminal case present the
6 appearance of a conflict of interest.

7 (3) If the court of appeals determines that an independent
8 counsel must be appointed, the court shall do both of the
9 following:

10 (a) Select the individual who shall serve as the independent
11 counsel from a list of 5 attorneys licensed in this state who have
12 prosecutorial experience provided by the attorney general.

13 (b) Issue an order disqualifying the attorney general and
14 defining the scope of the independent counsel's investigatory and
15 prosecutorial duties, including the length of the term to be served
16 by the independent counsel.

17 (4) If the governor made the petition under subsection (1),
18 the attorney general may appeal his or her disqualification under
19 subsection (3) to the full court of appeals. If the full court of
20 appeals affirms the determination of the panel under subsection
21 (3), the attorney general may appeal to the supreme court, the
22 decision of which is final.

23 (5) An independent counsel appointed under this section is
24 vested with all of the powers of a prosecuting attorney for the
25 purpose of the appointment and during the period of appointment,
26 including the power to investigate and initiate charges. The cost
27 of investigation and prosecution in any matter handled by an

1 independent counsel must be funded by the funds appropriated to the
2 independent counsel fund created under section 5.

3 (6) If after an independent counsel is appointed under
4 subsection (3) he or she discovers facts or evidence in the course
5 of his or her investigation or prosecution indicating that to
6 properly investigate or prosecute the criminal matter he or she
7 must exceed the scope of the order issued under subsection (3)(b),
8 the independent counsel shall petition the court of appeals panel
9 that appointed the independent counsel to amend that order.

10 (7) If a petition to amend the order issued under subsection
11 (3)(b) is denied, the independent counsel may appeal the denial to
12 the full court of appeals. If the full court of appeals affirms the
13 determination of the panel under subsection (6), the independent
14 counsel may appeal to the supreme court, the decision of which is
15 final.

16 (8) The supreme court may adopt rules regarding the procedure
17 governing the appointment of an independent counsel under this act.

18 Sec. 5. (1) The independent counsel fund is created within the
19 department of the attorney general.

20 (2) The department of the attorney general shall use the money
21 in the fund, on appropriation, only for the costs of administration
22 and implementation of this act and for any costs associated with
23 the administration of this act, including funding the costs of an
24 investigation and prosecution by an independent counsel.

25 (3) The state treasurer shall direct the investment of the
26 fund. The state treasurer shall credit to the fund interest and
27 earnings from fund investments.

1 (4) Money in the fund at the close of the fiscal year shall
2 remain in the fund and shall not lapse to the general fund.

3 Enacting section 1. This act takes effect 90 days after the
4 date it is enacted into law.