

# House Bill 2226

Sponsored by Representative WHISNANT; Representative NEARMAN (Pre-session filed.)

## SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Authorizes Legislative Assembly to direct by joint resolution Attorney General to conduct preliminary investigation of matters involving alleged misconduct of executive branch personnel. Requires Attorney General to report findings of preliminary investigation to Legislative Assembly. Provides reporting exceptions. Authorizes Attorney General to apply to circuit court for appointment of independent counsel if Attorney General determines appointment is warranted. Requires Attorney General to apply to circuit court for appointment of independent counsel if Attorney General fails to report on preliminary investigation to Legislative Assembly. Vests independent counsel with all powers of district attorney for purposes of investigating matters involving alleged misconduct of executive branch personnel.

Declares emergency, effective on passage.

## A BILL FOR AN ACT

1  
2 Relating to investigations of Executive Branch misconduct authorized by the Legislative Assembly;  
3 and declaring an emergency.

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

5 **SECTION 1. (1) The Legislative Assembly, by joint resolution, may request that the At-**  
6 **torney General conduct a preliminary investigation of matters involving alleged misconduct**  
7 **of executive branch personnel that the Attorney General considers appropriate in order to**  
8 **make a determination on whether further investigation is warranted, with respect to poten-**  
9 **tial violations, or allegations of violations, of ethics laws or criminal laws identified in the**  
10 **joint resolution. Upon the Legislative Assembly adopting a joint resolution as described in**  
11 **this subsection, the Attorney General must conduct a preliminary investigation and shall:**

12 (a) **Promptly notify the appropriate circuit court of the commencement of the prelimi-**  
13 **nary investigation and the date of the commencement.**

14 (b) **Make a determination under this subsection not later than the 60th day after the date**  
15 **the joint resolution is adopted.**

16 (2) **In determining whether reasonable grounds exist to warrant further investigation,**  
17 **the Attorney General shall comply with the written or other established policies of the De-**  
18 **partment of Justice with respect to the conduct of criminal investigations.**

19 (3) **The Attorney General, upon completion of the preliminary investigation described in**  
20 **subsection (1) of this section, shall report the results of the preliminary investigation to the**  
21 **Legislative Assembly. The Attorney General's report must summarize the investigation and**  
22 **findings but may not disclose:**

23 (a) **Information that is confidential or privileged under any other provision of law;**

24 (b) **Information relating to confidential informants, law enforcement personnel involved**  
25 **in the investigation or law enforcement techniques utilized in the investigation, and that is**  
26 **not otherwise described in paragraph (a) of this subsection;**

27 (c) **Private personal information of victims of alleged misconduct or other third parties;**

**NOTE:** Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted. New sections are in **boldfaced** type.

1 or

2 (d) Any information that would tend to jeopardize a defendant's right to a fair trial.

3 (4) If the Attorney General, upon completion of a preliminary investigation described in  
4 subsection (1) of this section:

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

9 (b) Determines that there are reasonable grounds to believe that further investigation is  
10 warranted, the Attorney General shall include that determination in the report to the Leg-  
11 islative Assembly described in subsection (3) of this section and shall apply to the circuit  
12 court for the appointment of an independent counsel.

13 (5) If the 60-day period referred to in subsection (1)(b) of this section has elapsed and the  
14 Attorney General has not made a report to the Legislative Assembly under subsection (3)  
15 of this section, the Attorney General shall apply to the circuit court for the appointment of  
16 an independent counsel. The Attorney General shall proceed under this subsection if the  
17 Attorney General determines that the release of information under subsections (3) and (4)  
18 of this section would jeopardize any ongoing investigation or would be so constrained by the  
19 requirements of subsection (3) of this section as to not convey useful information to the  
20 Legislative Assembly. The Attorney General shall notify the President of the Senate and the  
21 Speaker of the House of Representatives of the Attorney General's decision to proceed under  
22 this subsection.

23 (6)(a) Applications for the appointment of an independent counsel under this section must  
24 contain sufficient information to assist the circuit court in selecting an independent counsel  
25 and in defining that independent counsel's prosecutorial jurisdiction so that the independent  
26 counsel has adequate authority to fully investigate and prosecute the subject matter and all  
27 matters related to that subject matter.

28 (b) The Attorney General's determination under subsection (4) or (5) of this section to  
29 apply to the circuit court for the appointment of an independent counsel may not be reviewed  
30 by any court.

31 (7) If after making a report to the Legislative Assembly under subsection (3) of this  
32 section the Attorney General receives additional information sufficient to constitute grounds  
33 to investigate the matters to which the report related, the Attorney General shall:

34 (a) Conduct an additional preliminary investigation of matters involving alleged miscon-  
35 duct of executive branch personnel as the Attorney General considers appropriate for a pe-  
36 riod of not more than 30 days after the date on which the additional information is received;  
37 and

38 (b) Otherwise comply with the provisions of this section with respect to the additional  
39 preliminary investigation to the same extent as any other preliminary investigation under  
40 this section.

41 (8) The Attorney General, upon making a determination under subsection (4)(b) of this  
42 section, shall provide to the independent counsel a summary of the information received  
43 during the preliminary investigation and a summary of the results of the preliminary inves-  
44 tigation, along with any notification, application or other document, material or memoran-  
45 dum discovered, produced or relied upon by the Attorney General as part of the preliminary

1 investigation. Any information provided by the Attorney General to the independent counsel  
2 under this section shall be exempt from disclosure under ORS 192.410 to 192.505.

3 (9) The independent counsel appointed under this section shall have all the powers of a  
4 district attorney, and as part of any investigation of matters involving alleged misconduct  
5 of executive branch personnel by the independent counsel, the independent counsel may:

6 (a) Execute in writing and serve a subpoena or subpoena duces tecum upon any person  
7 the independent counsel believes to have information or material relevant to the investi-  
8 gation;

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

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

16 (10) In addition to the powers provided to the independent counsel under subsection (9)  
17 of this section, the independent counsel shall have the power to investigate potential vio-  
18 lations and allegations of violations of ethics laws by executive branch personnel identified  
19 in the joint resolution described in subsection (1) of this section. The independent counsel  
20 may, in the discretion of the independent counsel, seek civil enforcement of violations of  
21 ethics laws under ORS chapter 244.

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

28 **SECTION 2.** This 2017 Act being necessary for the immediate preservation of the public  
29 peace, health and safety, an emergency is declared to exist, and this 2017 Act takes effect  
30 on its passage.