

# House Bill 4138

Sponsored by Representative WHITSETT; Representatives BARRETO, NEARMAN, OLSON, SPRENGER, WILSON  
(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 request appointment of independent counsel by joint resolution.

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 such matters as the Attorney General**  
7 **considers appropriate in order to make a determination on whether further investigation is**  
8 **warranted, with respect to potential violations or allegations of violations identified in the**  
9 **joint resolution of ethics or criminal laws. Upon the Legislative Assembly's passing a joint**  
10 **resolution as described in this subsection, the Attorney General shall conduct a preliminary**  
11 **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 90th day after the date**  
15 **of adoption of the joint resolution.**

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, shall report**  
20 **the results of the preliminary investigation to the Legislative Assembly. All reports of pre-**  
21 **liminary investigation results by the Attorney General to the Legislative Assembly must**  
22 **contain a summary of the information received and a summary of the results of the pre-**  
23 **liminary investigation. The Attorney General shall make public all reports of preliminary**  
24 **investigation results to the Legislative Assembly.**

25 (4) **If the Attorney General, upon completion of a preliminary investigation:**

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

30 (b) **Determines that there are reasonable grounds to believe that further investigation is**

**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 warranted, the Attorney General shall include this determination in the report to the Leg-  
2 islative Assembly described in subsection (3) of this section and shall apply to the circuit  
3 court for the appointment of an independent counsel.

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

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

13 (b) The Attorney General's determination under this section to apply to the circuit court  
14 for the appointment of an independent counsel is not reviewable in any court.

15 (7) If, after reporting to the Legislative Assembly under subsection (3) of this section, the  
16 Attorney General receives additional information sufficient to constitute grounds to investi-  
17 gate the matters to which the report related, the Attorney General shall:

18 (a) Conduct an additional preliminary investigation as the Attorney General considers  
19 appropriate for a period of not more than 60 days after the date on which the additional in-  
20 formation is received; and

21 (b) Otherwise comply with the provisions of this section with respect to the additional  
22 preliminary investigation to the same extent as with respect to any other preliminary in-  
23 vestigation under this section.

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

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

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

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

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

44 (10) In addition to the powers provided to the independent counsel under subsection (9)  
45 of this section, the independent counsel shall have the power to investigate potential vio-

1 **lations and allegations of violations of ethics laws identified in the joint resolution described**  
2 **in subsection (1) of this section. The independent counsel may, in the discretion of the inde-**  
3 **pendent counsel, seek civil enforcement of violations of ethics laws under ORS chapter 244.**

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

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

13 \_\_\_\_\_