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THE GENERAL ASSEMBLY OF PENNSYLVANIA

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HOUSE BILL

No. 166

Session of  
1977

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INTRODUCED BY MESSRS. FREIND, ZEARFOSS, SPITZ, BURD, LYNCH,  
W. D. HUTCHINSON AND DAVIES, FEBRUARY 8, 1977

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REFERRED TO COMMITTEE ON JUDICIARY, FEBRUARY 8, 1977

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AN ACT

1 Creating the Pennsylvania State Commission of Investigation to  
2 replace the Pennsylvania Crime Commission, prescribing the  
3 procedure for the exercise of its powers and duties, and  
4 providing for the protection of the rights of those involved  
5 in its operation.

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25 The General Assembly of the Commonwealth of Pennsylvania

26 hereby enacts as follows:

27 Section 1. Statement of purpose.

28 The General Assembly recognizing the potential for abuse of

29 individual rights by law enforcement agencies not subject to

30 statutory controls, herein establishes an investigative

1 commission and sets standards to protect the rights of witnesses  
2 before and of others adversely affected by evidence presented to  
3 that commission. It seeks to protect the ability of that  
4 commission to perform expeditiously its powers and duties. This  
5 act is also intended to remove members of the commission from  
6 partisan political control and protect them from excessive  
7 gubernatorial control.

8 Section 2. Pennsylvania State Commission of Investigation.

9 (a) The Pennsylvania State Commission of Investigation is  
10 hereby created. All of the powers and duties of the Pennsylvania  
11 Crime Commission are hereby transferred to the Pennsylvania  
12 State Commission of Investigation. It shall consist of four  
13 commissioners appointed by the Governor, pursuant to the terms  
14 of this act, and the Attorney General. The chairman shall be  
15 elected by majority vote of the members of the commission.

16 (b) The commissioners, other than the Attorney General, whom  
17 the Governor shall appoint to fill the terms which will expire  
18 on July 1 next following the effective date of this act shall  
19 serve for terms of six years. The commissioners whom the  
20 Governor shall appoint to fill the terms which will expire on  
21 the second July 1 following the effective date of this act shall  
22 serve for terms of two years. The commissioners whom the  
23 Governor shall appoint to fill the terms which will expire on  
24 the fourth July 1 following the effective date of this act shall  
25 serve for terms of six years. Thereafter, all commissioners,  
26 other than the Attorney General, shall serve for terms of six  
27 years except those appointed to fill the balance of an unexpired  
28 term who shall serve only for the balance of such term.

29 (c) Each commissioner may be appointed for more than one  
30 term.

(d) Commissioners shall receive \$50 per day as compensation for their services.

Section 3. Minority commissioners.

Whenever vacancies shall occur on the commission, whether through expiration of a term or otherwise, the Governor shall appoint commissioners so as to insure that two of the appointed members be of different political parties from the other two appointed members. Whenever two of the appointed members are of different political parties from the other two appointed members, all subsequent appointments shall be made by the Governor so as to insure that the commission shall continue to have two appointed members of different political parties from the other two appointed members.

Section 4. Senate confirmation required.

All appointments by the Governor to the commission shall be subject to the consent of a majority of the Senate, according to the provisions of section 8, Article IV of the Constitution of Pennsylvania.

Section 5. Removal of commissioners for cause.

(a) A commissioner shall be removed by the Governor only for malfeasance or misfeasance in office, neglect of duty, or physical or mental incapacity, or upon indictment or any substituted procedure for any felony or conviction of any misdemeanor against the United States, this or any other state.

(b) A commissioner so removed may petition the Commonwealth Court for reinstatement within ten days of his removal. The court shall hold an expedited hearing and render a decision thereon within 30 days. There shall be no appeal from the decision of the Commonwealth Court.

(c) Any citizen of this Commonwealth may petition the

1 Commonwealth Court to remove a commissioner upon indictment or  
2 any other procedure for a felony or upon conviction of a  
3 misdemeanor against the United States, this or any other state.

4 Section 6. Ban or partisan activities by commissioners and  
5 employees; civil service.

6 (a) A commissioner, other than the Attorney General, and an  
7 employee of the commission, shall not engage in any partisan  
8 activity, other than voting and making but not soliciting  
9 contributions to candidates for office. A violation of this  
10 subsection shall be deemed "misfeasance in office" under section  
11 5.

12 (b) Commission employees, other than attorneys and  
13 investigators, shall be hired and promoted and shall retain  
14 their employment subject to the provisions of the act of August  
15 5, 1941 (P.L.752, No.286), known as the "Civil Service Act."  
16 Section 7. Executive director.

17 (a) The commission shall appoint an executive director,  
18 subject to the approval of a majority of the Senate, who shall  
19 serve at the pleasure of the commission.

20 (b) The executive director shall be a full-time employee of  
21 the commission and shall retain no outside assistance. His  
22 salary shall be fixed at \$30,000, unless changed by the  
23 commission. It shall not be diminished during his tenure.

24 Section 8. Commission staff; expenses.

25 (a) The executive director shall appoint, employ and promote  
26 such personnel as he deems necessary to carry out the duties of  
27 the commission, subject to the limitations of section 6(b).  
28 Salaries of such personnel shall be fixed by the commission.

29 (b) Subject to the limitations of section 6(b), the  
30 appointment of any such personnel shall require the approval of

1 a majority vote at a meeting at which a majority of the  
2 commissioners is actually present, upon motion of any  
3 commissioner timely filed under rules which the commission shall  
4 promulgate.

5 (c) Expenses incurred by commissioners or employees of the  
6 commission shall be allowed and paid upon the presentation of  
7 itemized vouchers therefor and approval by the commission, in  
8 the same manner and procedure as set forth for employees of the  
9 Department of Justice.

10 Section 9. Notice of meetings.

11 All meetings of the commission shall be called only upon a  
12 minimum of 72 hours notice to the office of each commissioner,  
13 although this provision may be waived by the assent of a  
14 majority of the commissioners after reasonable notice to all  
15 commissioners.

16 Section 10. Scheduling and conduct of hearings and  
17 investigations.

18 (a) Commission hearings, in public or executive session, and  
19 all commission investigations, shall be scheduled and conducted  
20 only upon a majority vote at a meeting at which a majority of  
21 the commissioners is actually present.

22 (b) Testimony may be given and evidence taken at a meeting  
23 at which less than a majority, but at least one, of the  
24 commissioners is actually present.

25 (c) A member of the commission who is absent from a hearing  
26 shall be given full access to a transcript thereof or, if no  
27 transcript is made, a report of the information received  
28 therein, prior to the making by the commission of any finding,  
29 recommendation or report based in any part upon information  
30 received in such hearing.

1 Section 11. Resolutions scheduling hearings or ordering  
2 investigations.

3 A resolution scheduling hearings or ordering investigations  
4 shall state clearly and with particularity the subject thereof  
5 and the county or counties, agency or agencies, or individual or  
6 individuals concerned with the subject, which resolution may be  
7 amended by a majority vote at a meeting at which a majority of  
8 the commissioners is actually present.

9 Section 12. Liaison with other law enforcement agencies.

10 (a) A commissioner of the executive director shall consult  
11 with the district attorney or president judge in the county or  
12 counties set forth in any resolution adopted pursuant to section  
13 11 hereof to prevent any interference with any confidential  
14 investigation already undertaken. He shall also consult with the  
15 United States Attorney for the district or districts in which  
16 such investigation is to be undertaken and with the Commissioner  
17 of the State Police, or the Attorney General or the Governor of  
18 the Commonwealth for the same purpose. The results of the  
19 consultation shall be reported to the commission before any  
20 interviews are conducted in connection with the investigation or  
21 any witnesses called to testify therein.

22 (b) The provisions of this section may be waived as to any  
23 or all of the officials named in the preceding subsection by a  
24 majority vote at a meeting at which a majority of the  
25 commissioners is actually present.

26 Section 13. Issuance of reports.

27 No commission report shall be issued unless a draft of such  
28 report is submitted to the office of each commissioner at least  
29 two weeks in advance of the meeting at which it is to be  
30 considered and unless the report is adopted by a majority vote

1 at a meeting at which a majority of the commissioners is  
2 actually present.

3 Section 14. Release of testimony taken in executive session.

4 (a) No testimony taken in executive session, any part  
5 thereof, or any summary thereof shall be released or disclosed  
6 to any person either orally or in writing by any member or  
7 employee of the commission without the authorization of the  
8 commission by a majority vote at a meeting at which a majority  
9 of the commissioners is actually present.

10 (b) A violation of subsection (a) by any employee of the  
11 commission, shall, upon motion of any commissioner and the  
12 affirmative vote of at least four commissioners at a meeting at  
13 which said four commissioners are actually present, result in  
14 the dismissal of such employee and his permanent  
15 disqualification from future employment by the commission. The  
16 employee shall first be granted a hearing, with at least 30 days  
17 notice, at which he may dispute the allegations personally or  
18 through counsel of his own choosing. A commissioner who has not  
19 attended the hearing in person shall not be eligible to vote for  
20 the removal of the employee. The burden of proving such  
21 violation by clear and convincing proof shall be on the  
22 commission. The employee may appeal his dismissal to the  
23 Commonwealth Court, within ten days thereof. The only basis for  
24 a reversal of the dismissal shall be abuse of discretion by the  
25 commission.

26 (c) A violation of subsection (a) by a commissioner, shall  
27 be grounds for removal of him under section 5.

28 (d) A provision of this section shall not work to abrogate  
29 or limit any right extended by the act of June 25, 1937

30 (P.L.2123, No.433), relating to confidential communications to



1 news reporters.

2 Section 15. Right to counsel.

3 (a) Witnesses at commission hearings, in public or executive  
4 session, shall have the right to be accompanied by counsel of  
5 their own choosing who shall have the right to advise the  
6 witness of his rights and to make brief objections to the  
7 procedures and to the relevancy of the questions.

8 (b) A witness refusing to answer a question on the grounds  
9 of relevancy may raise the issue of relevancy as a defense in  
10 any prosecution for contempt of the commission. The burden of  
11 proving irrelevancy by the witness shall be by clear and  
12 convincing proof.

13 Section 16. Testimony; rulings on motions and objections.

14 (a) The testimony on matters of fact received at hearings  
15 shall be under oath or affirmation. The presiding officer may  
16 receive any evidence, by testimony, deposition, exhibit or  
17 otherwise, which he deems relevant.

18 (b) Rulings on motions and objections shall be made by the  
19 commission member presiding, subject to appeal to the members  
20 present on motion of a member.

21 Section 17. Notice to witnesses of subject matter.

22 At least 24 hours prior to the scheduled time for his  
23 testimony, a witness shall be given a copy of that portion of  
24 the resolution scheduling the hearing and stating the subject  
25 matter thereof, as well as a copy of any and all statutes or  
26 rules governing the conduct of the commission. A witness shall  
27 be entitled only to that portion of said resolution relevant to  
28 his testimony and shall not be entitled to examine testimony and  
29 evidence previously taken by the commission, except for such  
30 testimony and evidence as has already been made public by order

1 of the commission.

2 Section 18. Claims of privilege.

3 (a) The commission shall respect all testimonial privileges  
4 granted by law.

5 (b) A witness refusing to answer a question on the grounds  
6 of privilege may raise the issue of privilege as a defense in  
7 any prosecution for contempt of the commission. Whenever  
8 evidence of such privilege is introduced, the burden shall be on  
9 the commission to disprove such privilege by a preponderance of  
10 the evidence, unless a greater burden or different procedure is  
11 constitutionally required.

12 Section 19. Right to make complete answers and submit written  
13 statement.

14 (a) A witness shall have the right to make complete answers  
15 to questions and explanations of such answers, subject to  
16 termination for irrelevancy or unnecessary length.

17 (b) A witness shall have the right to file a sworn written  
18 statement, which shall be a part of the transcript of the  
19 hearing, provided it is relevant and free of scandalous or  
20 impertinent material. A witness at a public hearing shall be  
21 given ten minutes before questioning to read such a statement or  
22 part thereof, provided the statement is submitted to the  
23 commission at least 24 hours in advance of the hearing.

24 Section 20. Availability of transcripts of hearings.

25 (a) A stenographic verbatim transcript shall be made of all  
26 commission hearings, in public or executive session.

27 (b) A copy of all transcripts of public hearings shall be  
28 available to the public for inspection in the commission office  
29 during regular business hours and for purchase at regularly  
30 prescribed rates from the official reporter.

1 (c) A witness and his counsel shall have the right to  
2 inspect only the complete transcript of his own testimony taken  
3 in executive session in the commission office during regular  
4 business hours.

5 Section 21. Review of evidence and testimony adversely  
6 affecting a party.

7 All material reflecting adversely on the character or  
8 reputation of an individual shall be reviewed in executive  
9 session to determine its relevance, reliability and probative  
10 value before being presented in public session. The commission  
11 may, based on staff report, waive this section by a majority  
12 vote at a meeting at which a majority of the commissioners is  
13 actually present.

14 Section 22. Right to appear of adversely affected party.

15 (a) If a person is adversely affected by evidence or  
16 testimony given in a public hearing, that person shall have the  
17 right, upon the filing of an application within 30 days after  
18 the introduction of such evidence or the termination of adverse  
19 testimony, to have the commission convene a hearing within 30  
20 days of his application. He shall have the right at such  
21 hearing:

22 (1) To be represented by counsel at his own choosing.

23 (2) To file a sworn written statement, which shall be a  
24 part of the transcript of the hearing provided it is relevant  
25 and free of scandalous or impertinent material.

26 (3) To read the statement before any questioning,  
27 subject to termination after 20 minutes, provided such  
28 statement is submitted to the commission at least 24 hours in  
29 advance of the hearing.

30 (b) A person exercising a privilege of reply under this

1 section shall be subject to questioning at the hearing so  
2 convened, as if he had been validly subpoenaed by the  
3 commission.

4 (c) A party aggrieved by the provisions of this section may  
5 appeal to Commonwealth Court.

6 Section 23. Contents of reports recommending indictments.

7 A commission report recommending criminal indictment of or  
8 information against any person shall include specific references  
9 to the statutes or common law allegedly violated and set forth  
10 such details of the alleged offense or offenses as to enable the  
11 prosecuting authority to provide for the issuance of arrest  
12 warrants.

13 Section 24. Subpoenas.

14 (a) Subpoenas shall be issued in the name of the commission  
15 over the signature of the executive director only upon 72 hours  
16 written notice to all members of the commission with a statement  
17 as to the identity of the witness or material and the relevance  
18 to the investigation or hearing already authorized, and with the  
19 prior consent of three commissioners. Subpoenas shall be  
20 notarized and shall not be signed in blank or in advance by the  
21 executive director. Three commissioners may, by oral  
22 instructions to the executive director, veto the issuance of a  
23 subpoena. A subpoena shall not be valid unless issued in  
24 compliance with this section. Three commissioners may waive the  
25 72 hours notice by oral instructions to the executive director  
26 reduced to writing and filed in the office of the commissioner.

27 (b) Persons deemed to have information relevant to any  
28 investigation may be required by subpoena to appear and testify  
29 at a commission hearing. Persons, corporations, entities or  
30 associations of any kind having possession or control of

1 documents or records deemed relevant to any investigation may be  
2 required by subpoena to produce such materials at a commission  
3 hearing or, at the election of the commission, to make them  
4 available for inspection by one or more members of the  
5 commission, or one or more members of the staff of the  
6 commission designated for such purpose by the commission.  
7 Subpoenas may be served by any person designated by the  
8 executive director.

9 (c) The commission shall have the right to retain or have  
10 access to subpoenaed documents and records for a reasonable  
11 period, and to make copies of such documents and records.

12 (d) Witnesses subpoenaed by the commission shall be entitled  
13 to compensation and payment for expenses as the commission shall  
14 provide by regulation.

#### 15 Section 25. Conduct of communications media.

16 The commission shall insure that the various equipment,  
17 devices and instruments of the communications media does not  
18 needlessly distract, harass or confuse the witness and interfere  
19 with his presentation. It shall not bar the media from the  
20 hearing. Upon request of the witness, the commission may bar the  
21 use of flashcubes during testimony or reading of a written  
22 statement so long as a reasonable period for use of flashcubes  
23 is allowed prior to the witness' presentation and after the oath  
24 has been administered. Nothing in the preceding sentence shall  
25 be interpreted to bar the use of television cameras or  
26 television lights during the presentation of the witness.

#### 27 Section 26. Appeals.

28 Appeals from actions of the commission shall be taken to  
29 Commonwealth Court within 30 days of the action complained of.

#### 30 Section 27. Open meetings; quorums; votes; minutes.

1 (a) The commission shall not be deemed an "agency" within  
2 the meaning of the act of July 19, 1974 (P.L.486, No.175),  
3 referred to as the Public Agency Open Meeting Law, or the act of  
4 June 21, 1957 (P.L.390, No.212), referred to as the Right-to-  
5 Know Law, when it meets or acts other than in public session.

6 (b) A majority of the commissioners shall constitute a  
7 quorum, unless otherwise provided in this act.

8 (c) All votes shall be of record but need not be published  
9 if, in the judgment of the commission, such publication would  
10 jeopardize a confidential investigation. Unless otherwise  
11 provided in this act, the commission shall act only upon a  
12 majority vote at a quorum meeting.

13 (d) Minutes of meetings shall be kept by the executive  
14 director and filed at the executive office of the commission.  
15 Minutes shall not be open to inspection by persons other than  
16 members of the commission and its staff, except as otherwise  
17 authorized by the commission.

18 Section 28. Presiding officer.

19 (a) The chairman of the commission shall preside over all  
20 hearings at which he is present. He may designate a member of  
21 the commission to preside over any hearing at which he will not  
22 be present. In the absence of such designation, a member shall  
23 be chosen by the majority vote of the members present and voting  
24 to preside over such hearing.

25 (b) The presiding officer shall administer oaths and  
26 affirmations to witnesses, rule upon matters arising in the  
27 course of the hearing, and take necessary actions to insure that  
28 the hearing proceeds in an orderly and proper manner.

29 Section 29. References in other laws.

30 Whenever in any law reference is made to the Pennsylvania

1 Crime Commission such reference shall be deemed to refer to and  
2 include the Pennsylvania State Commission of Investigation.

3 Section 30. Severability.

4 If any provisions of this act or the application thereof to  
5 any person or circumstance is held invalid, the other provisions  
6 and their application to other persons and circumstances shall  
7 not be affected.

8 Section 31. Repealer.

9 All acts and parts of acts are repealed insofar as they are  
10 inconsistent herewith.

11 Section 32. Effective date.

12 This act shall take effect immediately.