## THE GENERAL ASSEMBLY OF PENNSYLVANIA

## SENATE BILL

No. 292

Session of 2013

INTRODUCED BY FOLMER, RAFFERTY, VANCE AND VULAKOVICH, FEBRUARY 1, 2013

REFERRED TO JUDICIARY, FEBRUARY 1, 2013

9301. Short title of chapter.

18

## AN ACT

Amending Title 18 (Crimes and Offenses) of the Pennsylvania Consolidated Statutes, reenacting and amending provisions relating to independent counsel. 3 4 The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows: 6 Section 1. Chapter 93 of Title 18 of the Pennsylvania 7 Consolidated Statutes is reenacted and amended to read: CHAPTER 93 8 9 INDEPENDENT COUNSEL 10 Subchapter 11 A. Preliminary Provisions 12 General Provisions В. C. Authority and Duties of Independent Counsel 13 14 [D. Miscellaneous Provisions] 15 SUBCHAPTER A 16 PRELIMINARY PROVISIONS 17 Sec.

- 1 9302. Definitions.
- 2 § 9301. Short title of chapter.
- 3 This chapter shall be known and may be cited as the
- 4 Independent Counsel Authorization Act.
- 5 § 9302. Definitions.
- 6 The following words and phrases when used in this chapter
- 7 shall have, unless the context clearly indicates otherwise, the
- 8 meanings given to them in this section:
- 9 "General Counsel." The General Counsel of the Commonwealth.
- "Grounds to investigate." Information which would lead a
- 11 reasonable person to suspect that a crime is being or has been
- 12 committed.
- "Independent counsel." A person appointed by the Special
- 14 Independent Prosecutor's Panel upon the request of a special
- 15 investigative counsel.
- 16 "Panel." The Special Independent Prosecutor's Panel
- 17 established under this chapter.
- "Special investigative counsel." A person appointed by the
- 19 General Counsel to conduct a preliminary investigation under
- 20 this chapter.
- 21 SUBCHAPTER B
- 22 GENERAL PROVISIONS
- 23 Sec.
- 24 9311. Organization of panel.
- 25 9312. Preliminary investigation.
- 26 9313. Conduct of preliminary investigation.
- 27 9314. Determination that further investigation not warranted.
- 28 9315. Determination that further investigation is warranted.
- 29 9316. Contents of application.
- 30 9317. Disclosure of information.

- 1 9318. Limitation on judicial review.
- 2 9319. Duties of panel.
- 3 § 9311. Organization of panel.
- 4 (a) Composition and selection. -- The Special Independent
- 5 Prosecutor's Panel shall be composed of one judge of the
- 6 Commonwealth Court and two judges, including senior judges, of
- 7 the courts of common pleas of the Commonwealth. The members of
- 8 the panel shall be chosen by lot. The procedure shall be
- 9 determined by and supervised by the Court Administrator of
- 10 Pennsylvania in the Administrative Office of Pennsylvania
- 11 Courts. The Administrative Office of Pennsylvania Courts shall
- 12 disclose to the public the membership of the panel.
- 13 (b) Term of members.--Each member of the panel shall hold
- 14 office for a term of three years. Judges who are members of the
- 15 panel and are required to retire under section 16 of Article V
- 16 of the Constitution of Pennsylvania shall also vacate their
- 17 positions on the panel unless assigned under Chapter 7 of the
- 18 Rules of Judicial Administration. A judge who is otherwise
- 19 removed or suspended from office shall automatically forfeit the
- 20 position held by that judge on the panel.
- 21 (c) Vacancies. -- Any vacancy in the panel shall be filled
- 22 only for the remainder of the three-year period in which the
- 23 vacancy occurs and in the same manner as initial assignments to
- 24 the panel were made.
- 25 (d) Decisions by majority vote. -- All decisions of the panel
- 26 shall be by majority vote of the members.
- 27 (e) Clerk.--The Prothonotary of Commonwealth Court shall
- 28 serve as the clerk of the panel and shall provide such services
- 29 as are needed by the panel.
- 30 (f) Restriction. -- No member of the panel who participated in

- 1 a function conferred on the panel under this chapter involving
- 2 an independent counsel shall be eligible to participate in any
- 3 judicial proceeding concerning a matter which involves the
- 4 independent counsel and which involves the exercise of the
- 5 independent counsel's official duties, regardless of whether the
- 6 independent counsel is still serving in that office.
- 7 § 9312. Preliminary investigation.
- 8 (a) Preliminary investigation with respect to certain
- 9 covered persons. -- The General Counsel shall appoint a special
- 10 investigative counsel to conduct a preliminary investigation in
- 11 accordance with this chapter whenever the General Counsel
- 12 receives information sufficient to constitute grounds to
- 13 investigate whether any person described in subsection (c) may
- 14 have committed any of the following:
- 15 (1) An offense which is classified higher than a
- 16 misdemeanor of the second degree.
- 17 (2) An offense which is classified higher than a summary
- 18 offense and which involves a breach of the public trust. This
- 19 paragraph includes a violation of the act of June 3, 1937
- 20 (P.L.1333, No.320), known as the Pennsylvania Election Code,
- or the act of October 4, 1978 (P.L.883, No.170), referred to
- as the Public Official and Employee Ethics Law.
- 23 (b) Preliminary investigation with respect to persons not
- 24 listed in subsection (c).--The Attorney General shall request
- 25 the General Counsel to appoint a special investigative counsel
- 26 to conduct a preliminary investigation under the jurisdiction
- 27 established or conferred under section 205(b) of the act of
- 28 October 15, 1980 (P.L.950, No.164), known as the Commonwealth
- 29 Attorneys Act, and where the Attorney General determines that an
- 30 investigation or prosecution of the person, with respect to the

- 1 information received, by the Attorney General or other officer
- 2 of the Attorney General's office may result in a personal,
- 3 financial or political conflict of interest. In addition, the
- 4 Attorney General may request the General Counsel to appoint a
- 5 special investigative counsel to conduct a preliminary
- 6 investigation where the Attorney General determines that an
- 7 investigation or prosecution of the person, with respect to the
- 8 information received, by the Attorney General or other officer
- 9 of the Attorney General's office may result in a personal,
- 10 financial or political conflict of interest.
- 11 (c) Persons to whom subsection (a) applies.--The persons
- 12 referred to in subsection (a) are as follows:
- 13 (1) The Attorney General, any Deputy Attorney General or
- 14 any individual working in the Attorney General's office who
- is defined as a "public employee" under the Public Official
- 16 and Employee Ethics Law.
- 17 (2) Any individual who leaves any office or position
- 18 described in paragraph (1) during the incumbency of the
- 19 Attorney General with or under whom such individual served in
- the office or position, plus one year after such incumbency,
- 21 but in no event longer than a period of three years after the
- individual leaves the office or position.
- 23 (3) Any individual who held an office or position
- 24 described in paragraph (1) during the incumbency of one
- 25 Attorney General and who continued to hold the office or
- 26 position for not more than 90 days into the term of the next
- 27 Attorney General, during the one-year period after the
- individual leaves the office or position.
- 29 (4) The chairman and treasurer of the principal campaign
- 30 committee seeking the election or reelection of the Attorney

- General, and any officer of that committee exercising
- 2 authority at the State level, during the incumbency of the
- 3 elected Attorney General.
- 4 (d) Examination of information to determine need for
- 5 preliminary investigation. -- In determining under subsection (a)
- 6 whether grounds to investigate exist, the General Counsel shall
- 7 consider only the specificity of the information received and
- 8 the credibility of the source of the information. The General
- 9 Counsel shall determine whether grounds to investigate exist no
- 10 later than 30 days after the information is first received. If
- 11 within that 30-day period the General Counsel determines that
- 12 the information is not specific or is not from a credible
- 13 source, then the General Counsel shall close the matter. If
- 14 within that 30-day period the General Counsel determines that
- 15 the information is specific and from a credible source, the
- 16 General Counsel shall, upon making that determination, appoint a
- 17 special investigative counsel to commence a preliminary
- 18 investigation with respect to that information. If the General
- 19 Counsel is unable to determine within that 30-day period whether
- 20 the information is specific and from a credible source, the
- 21 General Counsel shall at the end of that 30-day period appoint a
- 22 special investigative counsel to commence a preliminary
- 23 investigation with respect to that information. If a special
- 24 investigative counsel is appointed, the special investigative
- 25 counsel may only accept the appointment when such appointment
- 26 would not conflict with the rules governing professional
- 27 conduct.
- 28 <u>(e) Harrisburg investigation.--The General Counsel shall</u>
- 29 appoint a special investigative counsel to investigate the
- 30 financial transactions of the following as they pertain to the

- 1 Harrisburg incinerator, water and sewer matters and by matters
- 2 related to the Harrisburg incinerator, water and sewer matters:
- 3 (1) The Harrisburg Authority.
- 4 (2) The City of Harrisburg.
- 5 <u>(3) Dauphin County.</u>
- 6 § 9313. Conduct of preliminary investigation.
- 7 (a) In general. -- A preliminary investigation conducted under
- 8 this chapter shall be of matters as the special investigative
- 9 counsel considers appropriate in order to make a determination
- 10 under section 9314 (relating to determination that further
- 11 investigation not warranted) or 9315 (relating to determination
- 12 that further investigation is warranted) of whether further
- 13 investigation is warranted with respect to each potential
- 14 violation or allegation of a violation of criminal law. The
- 15 special investigative counsel shall make the determination no
- 16 later than 90 days after the preliminary investigation is
- 17 commenced. The special investigative counsel shall promptly
- 18 notify the panel of the date of the commencement of the
- 19 preliminary investigation.
- 20 (b) Limited authority of special investigative counsel. --
- 21 (1) In conducting preliminary investigations under this
- chapter, the special investigative counsel shall have no
- authority to convene grand juries, plea bargain, grant
- immunity or issue subpoenas.
- 25 (2) The special investigative counsel shall not base a
- 26 determination under this chapter that information with
- 27 respect to a violation of criminal law by a person is not
- specific and from a credible source upon a determination that
- the person lacked the state of mind required for the
- 30 violation of criminal law. The special investigative counsel

- shall not base a determination under this chapter that there
- 2 are no reasonable grounds to believe that further
- 3 investigation is warranted upon a determination that the
- 4 person lacked the state of mind required for the violation of
- 5 criminal law involved unless there is clear and convincing
- 6 evidence that the person lacked the required state of mind.
- 7 (c) Extension of time for preliminary investigation. -- The
- 8 special investigative counsel may apply to the panel for a
- 9 single extension, for a period of no more than 60 days, of the
- 10 90-day period referred to in subsection (a). The panel may, upon
- 11 a showing of good cause, grant the extension.
- 12 § 9314. Determination that further investigation not warranted.
- 13 (a) Notification of panel.--If the special investigative
- 14 counsel upon completion of a preliminary investigation under
- 15 this chapter determines that there are no reasonable grounds to
- 16 believe that further investigation is warranted, the special
- 17 investigative counsel shall promptly so notify the panel, and
- 18 the panel shall have no power to appoint an independent counsel
- 19 with respect to the matters involved.
- 20 (b) Form of notification. -- The notification shall contain a
- 21 summary of the information received and a summary of the results
- 22 of the preliminary investigation. The summary shall be
- 23 confidential and not subject to public disclosure, except that
- 24 the person who was the subject of the investigation may request
- 25 a copy of the summary from the panel.
- 26 § 9315. Determination that further investigation is warranted.
- 27 (a) Application for appointment of independent counsel. -- The
- 28 special investigative counsel shall apply to the panel for the
- 29 appointment of an independent counsel if:
- 30 (1) the special investigative counsel, upon completion

- of a preliminary investigation under this chapter, determines
- 2 that there are reasonable grounds to believe that further
- 3 investigation is warranted; or
- 4 (2) the 90-day period referred to in section 9313(a)
- 5 (relating to conduct of preliminary investigation) and any
- 6 extension granted under section 9313(c) have elapsed and the
- 7 special investigative counsel has not filed a notification
- 8 with the panel under section 9314(a) (relating to
- 9 determination that further investigation not warranted).
- 10 (b) Receipt of additional information.--If, after submitting
- 11 a notification under section 9314(a), the special investigative
- 12 counsel receives additional information sufficient to constitute
- 13 grounds to investigate the matters to which the notification
- 14 related, the special investigative counsel shall:
- 15 (1) Conduct an additional preliminary investigation as
- the special investigative counsel considers appropriate for a
- period of no more than 90 days after the date on which the
- 18 additional information is received.
- 19 (2) Otherwise comply with the provisions of this
- subchapter with respect to the additional preliminary
- 21 investigation to the same extent as any other preliminary
- investigation under this chapter.
- 23 § 9316. Contents of application.
- 24 Any application for the appointment of an independent counsel
- 25 under this chapter shall contain sufficient information to
- 26 assist the panel in selecting an independent counsel and in
- 27 defining that independent counsel's prosecutorial jurisdiction
- 28 so that the independent counsel has adequate authority to fully
- 29 investigate and prosecute the subject matter and all matters
- 30 related to that subject matter.

- 1 § 9317. Disclosure of information.
- 2 Except as otherwise provided in this chapter, no officer or
- 3 employee of the office of special investigative counsel or the
- 4 office of independent counsel may, without leave of the panel,
- 5 disclose to any individual outside the office of special
- 6 investigative counsel or office of independent counsel any
- 7 notification, application or any other document, material or
- 8 memorandum supplied to the panel under this chapter. Nothing in
- 9 this chapter shall be construed as authorizing the withholding
- 10 of information from the General Assembly.
- 11 § 9318. Limitation on judicial review.
- 12 The determination of the special investigative counsel under
- 13 this chapter to apply to the panel for the appointment of an
- 14 independent counsel shall not be reviewable in any court.
- 15 § 9319. Duties of panel.
- 16 (a) Appointment and jurisdiction of independent counsel. --
- 17 (1) Upon receipt of an application, the panel shall
- 18 appoint an appropriate independent counsel and shall define
- 19 that independent counsel's prosecutorial jurisdiction. The
- 20 appointment shall occur no later than 30 days after the
- 21 receipt of the application.
- 22 (2) The panel shall appoint as independent counsel an
- individual who has appropriate experience and who will
- 24 conduct the investigation and any prosecution in a prompt,
- responsible and cost-effective manner. The panel shall seek
- to appoint as independent counsel an individual who will
- serve to the extent necessary to complete the investigation
- and any prosecution without undue delay. The panel may not
- 29 appoint as an independent counsel any person who holds any
- 30 office of profit or trust with the Commonwealth. No person

- 1 who is serving as a special investigative counsel may be
- 2 appointed or serve as an independent counsel in the matter
- 3 for which they had been appointed to investigate as special
- 4 investigative counsel. If an independent counsel is
- 5 appointed, the independent counsel may only accept the
- 6 appointment when such appointment would not conflict with the
- 7 rules governing professional conduct.
- 8 (3) In defining the independent counsel's prosecutorial
- 9 jurisdiction, the panel shall assure that the independent
- 10 counsel has adequate authority to fully investigate and
- 11 prosecute the subject matter with respect to which the
- 12 special investigative counsel has requested the appointment
- 13 of the independent counsel and all matters related to that
- subject matter. Jurisdiction shall also include the authority
- to investigate and prosecute the following offenses which may
- arise out of the investigation with respect to which the
- 17 special investigative counsel's request was made:
- 18 (i) An offense classified higher than a misdemeanor
- of the second degree.
- 20 (ii) An offense which is classified higher than a
- 21 summary offense and which involves a breach of the public
- trust. This paragraph includes a violation of the act of
- June 3, 1937 (P.L.1333, No.320), known as the
- Pennsylvania Election Code, or the act of October 4, 1978
- 25 (P.L.883, No.170), referred to as the Public Official and
- 26 Employee Ethics Law.
- 27 (4) The panel shall disclose the identity of the
- independent counsel upon appointment.
- 29 (b) Expansion of jurisdiction.--
- 30 (1) The panel upon the request of the General Counsel

- may expand the prosecutorial jurisdiction of an independent counsel. The expansion may be in lieu of the appointment of another independent counsel.
- If the independent counsel discovers or receives 4 (2) 5 information about possible violations of criminal law by 6 persons as provided in section 9312 (relating to preliminary 7 investigation) which are not covered by the prosecutorial 8 jurisdiction of the independent counsel, the independent 9 counsel may submit the information to the General Counsel. In 10 accordance with this subchapter, the General Counsel shall 11 appoint a special investigative counsel to conduct a 12 preliminary investigation of the information, except that the 13 preliminary investigation shall not exceed 30 days from the 14 date the information is received. In making the 15 determinations required by this subchapter, the special 16 investigative counsel shall give great weight to any 17 recommendations of the independent counsel.
  - (3) If the special investigative counsel determines, after according great weight to the recommendations of the independent counsel, that there are no reasonable grounds to believe that further investigation is warranted, the special investigative counsel shall promptly so notify the panel, and the panel shall have no power to expand the jurisdiction of the independent counsel or to appoint another independent counsel with respect to the matters involved.
  - (4) The panel shall expand the jurisdiction of the appropriate independent counsel to include the matters involved or shall appoint another independent counsel to investigate the matters if:
- 30 (i) the special investigative counsel determines

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- that there are reasonable grounds to believe that further investigation is warranted; or
- (ii) the 30-day period referred to in paragraph (2)
  elapses without a notification to the panel that no
  further investigation is warranted.
  - information about possible violations of criminal law by persons other than those provided for in section 9312 and which are not covered by the prosecutorial jurisdiction of the independent counsel and a request for expansion under this subsection has not been made by the General Counsel or the request for expansion under this subsection has heen denied by the panel, the independent counsel shall submit the information to the appropriate law enforcement authority.
- 15 (c) Return for further explanation.--Upon receipt of a
  16 notification under this subchapter that there are no reasonable
  17 grounds to believe that further investigation is warranted with
  18 respect to information received under this chapter, the panel
  19 shall have no authority to overrule this determination but may
  20 return the matter to the special investigative counsel for
  21 further explanation of the reasons for the determination.
- 22 (d) Vacancies. -- If a vacancy in office arises by reason of 23 the resignation, death or removal of an independent counsel, the 24 panel shall appoint an independent counsel to complete the work 25 of the independent counsel whose resignation, death or removal 26 caused the vacancy, except that, in the case of a vacancy arising by reason of the removal of an independent counsel, the 27 28 panel may appoint an acting independent counsel to serve until 29 any judicial review of the removal is completed.

30 SUBCHAPTER C

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- 1 AUTHORITY AND DUTIES OF INDEPENDENT COUNSEL
- 2 Sec.
- 3 9331. Authorities.
- 4 9332. Compensation and travel expenses.
- 5 9333. Additional personnel.
- 6 9334. Assistance of Pennsylvania State Police.
- 7 9335. Referral of other matters to independent counsel.
- 8 9336. Dismissal of matters.
- 9 9337. Reports by independent counsel.
- 10 9338. Independence from Office of Attorney General.
- 11 9339. Standards of conduct applicable to independent counsel,
- 12 persons serving in office of independent counsel and
- their law firms.
- 14 9340. Custody of records of independent counsel.
- 15 9341. Cost controls and administrative support.
- 16 9342. Legislative oversight.
- 17 9343. Removal of independent counsel and termination of office.
- 18 9344. Audits.
- 19 9345. Relationship with Office of Attorney General.
- 20 9346. Venue.
- 21 § 9331. Authorities.
- Notwithstanding any other provision of law, an independent
- 23 counsel appointed under this chapter shall have, with respect to
- 24 all matters in the independent counsel's prosecutorial
- 25 jurisdiction established under this chapter, full power and
- 26 independent authority to exercise all investigative and
- 27 prosecutorial functions and powers of the Office of Attorney
- 28 General, the Attorney General and any other officer or employee
- 29 of the Office of Attorney General. Investigative and
- 30 prosecutorial functions and powers shall include, but are not

1 limited to:

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- 2 (1) Conducting proceedings before grand juries and other investigations.
  - (2) Participating in court proceedings and engaging in any litigation, including civil and criminal matters, that the independent counsel considers necessary.
- 7 (3) Appealing any decision of a court in any case or 8 proceeding in which the independent counsel participates in 9 an official capacity.
- 10 (4) Reviewing all documentary evidence available from 11 any source.
- 12 (5) Determining whether to contest the assertion of any 13 testimonial privilege.
  - (6) Receiving appropriate security clearances and, if necessary, contesting in court, including, where appropriate, participating in an in camera proceeding, any claim of privilege or attempt to withhold evidence on grounds of security.
    - (7) Making applications to any State court for a grant of immunity to any witness, consistent with applicable statutory requirements, or for warrants, subpoenas or other court orders and exercising the authority vested in the Attorney General or a district attorney.
- 24 (8) Inspecting, obtaining or using the original or a 25 copy of any tax return in accordance with applicable statutes 26 and regulations.
- 27 (9) Initiating and conducting prosecutions in any court
  28 of competent jurisdiction, framing and signing indictments,
  29 filing information and handling all aspects of any case in
  30 the name of the Commonwealth.

- 1 (10) Consulting with the district attorney for the
- 2 county in which any violation of law with respect to which
- 3 the independent counsel is appointed was alleged to have
- 4 occurred.
- 5 § 9332. Compensation and travel expenses.
- 6 An independent counsel appointed under this chapter shall
- 7 receive compensation at the per diem rate equal to the annual
- 8 rate of basic pay payable to the Attorney General. An
- 9 independent counsel and persons appointed under section 9333
- 10 (relating to additional personnel) shall be entitled to the
- 11 payment of travel expenses.
- 12 § 9333. Additional personnel.
- 13 For the purposes of carrying out the duties of the office of
- 14 independent counsel, the independent counsel may appoint, fix
- 15 the compensation and assign the duties of the employees the
- 16 independent counsel considers necessary, including, but not
- 17 limited to, investigators, attorneys and necessary experts to
- 18 assist with the criminal investigation. The positions of these
- 19 employees are exempted from the competitive service. Employees
- 20 shall be compensated at levels not to exceed those payable for
- 21 comparable positions in the Office of Attorney General.
- 22 § 9334. Assistance of Pennsylvania State Police.
- 23 (a) Carrying out functions. -- An independent counsel may
- 24 request assistance from the Pennsylvania State Police in
- 25 carrying out the functions of the independent counsel, and the
- 26 Pennsylvania State Police shall provide that assistance, which
- 27 may include the use of the resources and personnel necessary to
- 28 perform the independent counsel's duties.
- 29 (b) Payment of and reports on expenditures of independent
- 30 counsel.--Upon the request of the Governor, the General Assembly

- 1 shall appropriate the necessary funds to the State Treasurer for
- 2 the use and operation in executing the duties and
- 3 responsibilities of the position of independent counsel. Upon
- 4 the request of the Governor, the General Assembly shall
- 5 appropriate the necessary funds to the Pennsylvania State Police
- 6 for costs incurred when rendering assistance to the independent
- 7 counsel as provided for under subsection (a). The State
- 8 Treasurer shall submit to the General Assembly, no later than 30
- 9 days after the end of each fiscal year, a report on amounts paid
- 10 during that fiscal year for expenses of investigations and
- 11 prosecutions by independent counsel. Each report shall include a
- 12 statement of all payments made for activities of independent
- 13 counsel.
- 14 § 9335. Referral of other matters to independent counsel.
- 15 An independent counsel may ask the panel to refer to the
- 16 independent counsel matters related to the independent counsel's
- 17 prosecutorial jurisdiction, and the panel may refer these
- 18 matters. If the Attorney General refers a matter to an
- 19 independent counsel on the Attorney General's own initiative,
- 20 the independent counsel may accept the referral if the matter
- 21 relates to the independent counsel's prosecutorial jurisdiction.
- 22 § 9336. Dismissal of matters.
- 23 The independent counsel shall have full authority to dismiss
- 24 matters within the independent counsel's prosecutorial
- 25 jurisdiction without conducting an investigation or at any
- 26 subsequent time before prosecution.
- 27 § 9337. Reports by independent counsel.
- 28 (a) Required reports. -- An independent counsel shall:
- 29 (1) File with the panel, with respect to the six-month
- 30 period beginning on the date of his appointment and with

- 1 respect to each six-month period thereafter until the office
- of that independent counsel terminates, a report which
- 3 identifies and explains major expenses, summarizes all other
- 4 expenses incurred by that office during the six-month period
- 5 with respect to which the report is filed and estimates
- future expenses of that office.
- 7 (2) Before the termination of the independent counsel's
- 8 office under section 9343(b) (relating to removal of
- 9 independent counsel and termination of office), file a final
- 10 report with the panel, setting forth fully and completely a
- description of all prosecutions. All other information shall
- 12 be confidential and not subject to public disclosure.
- 13 (b) Disclosure of information in reports. -- The panel may
- 14 release to the General Assembly, the Governor, the State
- 15 Treasurer, the public or any appropriate person the portions of
- 16 a report made under this section as the panel considers
- 17 appropriate. The panel shall make any orders as are appropriate
- 18 to protect the rights of any individual named in the report and
- 19 to prevent undue interference with any pending prosecution. The
- 20 panel may make any portion of a final report filed under
- 21 subsection (a)(2) available to any individual named in the
- 22 report for the purposes of receiving within a time limit set by
- 23 the panel any comments or factual information that the
- 24 individual may submit. The comments and factual information, in
- 25 whole or in part, may in the discretion of the panel be included
- 26 as an appendix to the final report.
- 27 § 9338. Independence from Office of Attorney General.
- 28 Each independent counsel appointed under this chapter and the
- 29 persons appointed by that independent counsel under section 9333
- 30 (relating to additional personnel) are separate from and

- 1 independent of the Office of Attorney General.
- 2 § 9339. Standards of conduct applicable to independent counsel,
- 3 persons serving in office of independent counsel and
- 4 their law firms.
- 5 (a) Restrictions on employment while independent counsel and
- 6 appointees are serving. -- During the period in which an
- 7 independent counsel is serving under this chapter, the
- 8 independent counsel and any person associated with a firm with
- 9 which the independent counsel is associated may not represent in
- 10 any matter any person involved in any investigation or
- 11 prosecution under this chapter. During the period in which any
- 12 person appointed by an independent counsel under section 9333
- 13 (relating to additional personnel) is serving in the office of
- 14 independent counsel, the person may not represent in any matter
- 15 any person involved in any investigation or prosecution under
- 16 this chapter.
- 17 (b) Postemployment restrictions on independent counsel and
- 18 appointees.--
- 19 (1) Each independent counsel and each person appointed
- 20 by that independent counsel under section 9333 may not for
- 21 three years following the termination of service under this
- 22 chapter of that independent counsel or appointed person, as
- 23 the case may be, represent any person in any matter if that
- individual was the subject of an investigation or prosecution
- conducted by that independent counsel under this chapter.
- 26 (2) Each independent counsel and each person appointed
- 27 by that independent counsel under section 9333 may not for
- one year following the termination of service under this
- 29 chapter of that independent counsel or appointed person, as
- 30 the case may be, represent any person in any matter involving

- any investigation or prosecution under this chapter.
- 2 (c) One-year ban on representation by members of firms of
- 3 independent counsel. -- Any person who is associated with a firm
- 4 with which an independent counsel is associated or becomes
- 5 associated after termination of service of that independent
- 6 counsel under this chapter may not for one year following the
- 7 termination represent any person in any matter involving any
- 8 investigation or prosecution under this chapter.
- 9 (d) Definitions. -- As used in this section, the following
- 10 words and phrases shall have the meanings given to them in this
- 11 subsection:
- "Associated with a firm." A person who is an officer,
- 13 director, partner or other member or employee of a law firm.
- 14 "Firm." A law firm, whether organized as a partnership or
- 15 corporation.
- 16 § 9340. Custody of records of independent counsel.
- 17 (a) Transfer of records. -- Upon termination of the office of
- 18 independent counsel, that independent counsel shall transfer to
- 19 the Bureau of Archives and History of the Pennsylvania
- 20 Historical and Museum Commission all records which have been
- 21 created or received by that office. Before this transfer, the
- 22 independent counsel shall clearly identify which of these
- 23 records are subject to the Pennsylvania Rules of Criminal
- 24 Procedure as grand jury materials.
- 25 (b) Maintenance, use and disposal of records. -- Records
- 26 transferred to the Bureau of Archives and History under this
- 27 section shall be maintained, used and disposed of as provided by
- 28 law.
- 29 § 9341. Cost controls and administrative support.
- 30 (a) Cost controls. -- An independent counsel shall:

- 1 (1) Conduct all activities with due regard for expense.
- 2 (2) Authorize only reasonable and lawful expenditures.
- 3 (3) Promptly upon taking office assign to a specific
- 4 employee the duty of certifying that expenditures of the
- 5 independent counsel are reasonable and made in accordance
- 6 with law.
- 7 (b) Office of Administration policies. -- An independent
- 8 counsel shall comply with the established policies of the Office
- 9 of Administration of the Governor respecting expenditures of
- 10 funds, except to the extent that compliance would be
- 11 inconsistent with the purposes of this chapter.
- 12 § 9342. Legislative oversight.
- 13 (a) Oversight of conduct of independent counsel.--An
- 14 independent counsel appointed under this chapter shall submit to
- 15 the General Assembly a report detailing all moneys expended as
- 16 required under section 9337(a)(1) (relating to reports by
- 17 independent counsel). In addition, the independent counsel shall
- 18 submit annually a report on the activities of the independent
- 19 counsel, including a description of the progress of any
- 20 investigation or prosecution conducted by the independent
- 21 counsel. The report may omit any matter that in the judgment of
- 22 the independent counsel should be kept confidential but shall
- 23 provide information adequate to justify the expenditures that
- 24 the office of the independent counsel has made.
- 25 (b) Information relating to impeachment. -- An independent
- 26 counsel shall advise the House of Representatives of any
- 27 substantial and credible information which the independent
- 28 counsel receives in carrying out the independent counsel's
- 29 responsibilities under this chapter that may constitute grounds
- 30 for an impeachment. Nothing in this chapter shall prevent the

- 1 General Assembly or either house thereof from obtaining
- 2 information in the course of an impeachment proceeding.
- 3 § 9343. Removal of independent counsel and termination of office.
- 5 (a) Removal, report on removal and termination.--
- 6 An independent counsel appointed under this chapter 7 may be removed from office only by the personal action of the 8 General Counsel and only for good cause, physical disability, 9 mental incapacity or any other condition that substantially 10 impairs the performance of the independent counsel's duties. 11 For purposes of this paragraph, the term "good cause" 12 includes, but is not limited to, violations of any ethical 13 rules governing the independent counsel, the Attorney General
  - (2) If an independent counsel is removed from office, the General Counsel shall promptly submit to the panel, the Judiciary Committee of the Senate and the Judiciary Committee of the House of Representatives a report specifying the facts found and the ultimate grounds for the removal. The committees may make available to the public the report, except that each committee may, if necessary to protect the rights of any individual named in the report or to prevent undue interference with any pending prosecution, postpone or refrain from publishing any or all of the report. The panel may release any or all of the report in accordance with section 9337(b) (relating to reports by independent counsel).
    - (3) An independent counsel removed from office may obtain judicial review of the removal in a civil action commenced in the Commonwealth Court. The independent counsel may be reinstated or granted other appropriate relief by

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or district attorneys.

- order of the Commonwealth Court. A member of the panel may
- 2 not hear or determine any such civil action or any appeal of
- 3 a decision in any such civil action.
- 4 (b) Termination of office.--
- 5 (1) An office of independent counsel shall terminate 6 when the independent counsel:
- 7 (i) notifies the panel that the investigation of all
  8 matters within the prosecutorial jurisdiction of the
  9 independent counsel or accepted by the independent
  10 counsel, and any resulting prosecutions, have been
  11 completed; and
- 12 (ii) files a final report in compliance with section 13 9337.
- 14 (2) The panel shall determine on its own motion whether
  15 termination is appropriate under this subsection no later
  16 than two years after the appointment of an independent
  17 counsel or the reported expenditures of the independent
  18 counsel have reached \$2,000,000, whichever occurs first, and
  19 at the end of each succeeding one-year period.
- 20 § 9344. Audits.
- 21 By December 31 of each year, an independent counsel shall
- 22 prepare a statement of expenditures for the fiscal year that
- 23 ended on the immediately preceding June 30. An independent
- 24 counsel whose office is terminated prior to the end of the
- 25 fiscal year shall prepare a statement of expenditures within 90
- 26 days of the date on which the office is terminated. The Auditor
- 27 General shall audit each statement and report the results of
- 28 each audit to the appropriate committees of the General Assembly
- 29 no later than March 31 of the year following the submission of
- 30 the statement.

- 1 § 9345. Relationship with Office of Attorney General.
- Whenever a matter is in the prosecutorial jurisdiction of an
- 3 independent counsel or has been accepted by an independent
- 4 counsel under section 9335 (relating to referral of other
- 5 matters to independent counsel), the Office of Attorney General,
- 6 the Attorney General, all other officers and employees of the
- 7 Office of Attorney General and any district attorney shall
- 8 suspend all investigations and proceedings regarding that matter
- 9 and shall turn over to the independent counsel all materials,
- 10 files and other data relating to that matter.
- 11 § 9346. Venue.
- 12 The proper venue for all prosecutions conducted by the
- 13 independent counsel shall be determined in accordance with the
- 14 Pennsylvania Rules of Criminal Procedure. For the purposes of
- 15 convenience and fairness, the panel may, however, set the venue
- 16 in any other county on its own motion or at the request of the
- 17 independent counsel or on petition of the defendant.
- 18 [SUBCHAPTER D
- 19 MISCELLANEOUS PROVISIONS
- 20 Sec.
- 21 9351. Severability of chapter.
- 22 9352. Expiration of chapter.
- 23 § 9351. Severability of chapter.
- 24 The provisions of this chapter are severable. If any
- 25 provision of this chapter or its application to any person or
- 26 circumstance is held invalid, the invalidity shall not affect
- 27 other provisions or applications of this chapter which can be
- 28 given effect without the invalid provision or application.
- 29 § 9352. Expiration of chapter.
- 30 This chapter shall expire five years after the date of the

- 1 enactment of this chapter, except with respect to any matters
- 2 pending before an independent counsel that in the judgment of
- 3 the independent counsel require continuation. Matters shall be
- 4 continued until the independent counsel determines the matters
- 5 are completed.]
- 6 Section 2. This act shall take effect in 60 days.