

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 543

Session of
1975

INTRODUCED BY YOHN, SPENCER, BUTERA, POLITE, PITTS, PANCOAST,
ZEARFOSS, FISHER, D. S. HAYES, CESSAR, McCLATCHY, SCIRICA,
M. E. MILLER JR., PYLES, VROON, KLINGAMAN, MOEHLMANN,
HOPKINS, SIRIANNI, FAWCETT, WEIDNER, CRAWFORD, E. H. SMITH,
REED, MEBUS AND WILSON, FEBRUARY 24, 1975

REFERRED TO COMMITTEE ON ETHICS, FEBRUARY 24, 1975

AN ACT

1 Establishing a Code of Ethics for the Administrative Branch of
2 the Commonwealth and providing for its enforcement and for
3 penalties.

4 The General Assembly of the Commonwealth of Pennsylvania
5 hereby enacts as follows:

6 Section 1. Short Title.--This act shall be known and may be
7 cited as the "Commonwealth Ethics and Public Disclosure
8 Commission Act."

9 Section 2. Definitions.--As used in this act:

10 "Commission" means the Commonwealth Ethics and Public
11 Disclosure Commission.

12 "Ethics laws" means the act of July 10, 1968 (P.L.316,
13 No.154), known as the "Legislative Code of Ethics," and the act
14 of , 19 , known as the "Commonwealth Ethics and
15 Public Disclosure Act."

16 "Legislative member" includes a Senator, Representative,
17 officer or employee of the General Assembly or any committee

1 thereof. For the purposes of this act, the term shall not
2 include an employee whose salary, received from the General
3 Assembly or any committee thereof, is less than \$12,000 a year
4 but the term shall include persons employed on a contractual
5 basis for a particular project as an economic interest statement
6 relates to the general subject matter of the particular project
7 but shall not be deemed to require a complete economic interest
8 statement of such persons.

9 "Public employee" means an employee in the service of a State
10 agency other than a public official who receives a salary or
11 wage for such service.

12 "Public officer" means (i) a person holding an elective
13 office within the executive branch of the Commonwealth
14 government of Pennsylvania; (ii) persons whose appointment to a
15 position in government is subject to the consent of the Senate
16 whether or not such person has in fact been confirmed by the
17 Senate. The term "public officer" shall not include any person
18 defined as a State advisor or State consultant unless otherwise
19 provided by this act.

20 "Public servant" means (i) a public officer; or (ii) persons
21 who are compensated for services to the State as employees for a
22 State agency at the rate of \$20,000 per year, or more.

23 "State agency" means a department, board, commission or other
24 part of the executive or legislative branch of government of the
25 Commonwealth, or the Pennsylvania Turnpike Commission, The
26 General State Authority, other State authority created by a
27 statute, or a regulatory agency.

28 Section 3. Creation of Commission; Qualifications;
29 Removal.--(a) The Ethics and Public Disclosure Commission is
30 hereby established as an independent commission of the

1 Commonwealth. The commission shall consist of three members of
2 outstanding character and reputation not more than one of whom
3 shall be a lawyer and not more than two of whom shall be from
4 the same political party. All members of the commission shall be
5 appointed by the Governor with the consent of the Senate.

6 (b) Of the original members, all of whom shall be appointed
7 within 45 days after the effective date of this act, one shall
8 be appointed for a term of 1 year, one for a term of 3 years,
9 and one for a term of 5 years or until a successor is appointed
10 and qualified. Thereafter each appointment shall be for a term
11 of 5 years or until a successor is appointed or qualified.

12 (c) The members of the commission shall hold no other public
13 position with any State agency nor shall members be eligible for
14 any office or position filled by appointment of the Governor
15 within 2 years after termination of their membership on the
16 commission. No person who within 2 years preceding his
17 appointment has been an officer of a political party, a public
18 officer, a legislator or legislative employee shall be eligible
19 to serve as a commissioner.

20 (d) Each member of the commission shall receive actual
21 traveling expenses and per diem compensation at the rate of \$100
22 per day for the time actually devoted to the business of the
23 commission.

24 (e) Any person appointed as a member of the commission shall
25 be a citizen and legal resident of the Commonwealth for a period
26 of not less than 1 year.

27 (f) The Governor may only remove a member of the commission
28 for malfeasance or misfeasance in office or for neglect of duty.
29 The Governor shall provide such member with a statement in
30 writing of the charges against him, and shall afford him, after

1 notice of not less than 10 days, an opportunity of making a
2 written answer and upon request being publicly heard in person
3 by counsel. A copy of the charges and answer to the Governor's
4 findings and a transcript of the record shall be filed with the
5 executive director of the commission.

6 Section 202. Powers and Duties of the Commission.--The
7 commission shall have the following powers and duties:

8 (1) The commission shall be authorized to establish, adopt
9 and amend such rules and regulations, in accordance with the act
10 of July 31, 1968 (P.L.769, No.240), known as the "Commonwealth
11 Documents Law," as are necessary to implement the provisions of
12 this act.

13 (2) The commission shall initiate, receive and consider
14 charges concerning alleged violations of ethics laws, initiate
15 or make investigations, and hold hearings.

16 (3) The commission may subpoena witnesses, administer oaths,
17 and take testimony relating to matters before it and require the
18 production for examination of any books or papers relative to
19 any matter under investigation or in question before it.

20 (4) The commission shall have jurisdiction for purposes of
21 investigation and taking appropriate action on alleged
22 violations of ethics laws during the term of appointment or
23 employment of a public employee, a public servant, or
24 legislative member and for a period of 2 terms after a public
25 employee or public servant has left his position with a State
26 agency.

27 (5) The commission may distribute its publications without
28 cost to the public and shall initiate and maintain programs with
29 the purpose of informing the citizenry and public servants on
30 matters of ethics in government employment.

1 (6) The commission may establish forms for public disclosure
2 statements and such other forms as are necessary to implement
3 this act. The forms shall be consistent with the provisions of
4 the ethics laws.

5 (7) The commission shall have the authority to employ its
6 own legal counsel and an executive director, and such other
7 personnel including investigative help, as is necessary to
8 implement the provisions of this act; the commission shall be
9 authorized to fix the compensation of personnel it employs.

10 (8) Upon request of the commission, the State Police and the
11 Attorney General shall provide the commission with reasonable
12 assistance not inconsistent with the orderly operation of their
13 respective departments.

14 (9) The commission shall have the power to administer and
15 carry out the provisions of this act and to take any other
16 action authorized by this or any other law.

17 (10) The commission, in addition to any other officials with
18 appropriate jurisdiction, shall have the power to make
19 determinations with respect to the act of July 19, 1957
20 (P.L.1017, No.451), known as the "State Adverse Interest Act,"
21 and section 516, act of April 9, 1929 (P.L.177, No.175), known
22 as "The Administrative Code of 1929," and to make
23 recommendations not inconsistent with the penalties provided by
24 such acts.

25 Section 4. Procedure upon Receipt or Initiation of a
26 Complaint by the Commission.--(a) A charge may be initiated by
27 either vote of a majority of the commission or through a sworn
28 complaint charging a violation under ethics laws signed by a
29 citizen of the Commonwealth, the commission shall notify in
30 writing any person against whom a charge is initiated or

1 received, hereinafter referred to as the person charged and
2 afford him an opportunity to explain the conduct alleged to be
3 in violation of the ethics laws. The commission shall
4 investigate all charges on a confidential basis, having all the
5 powers herein provided.

6 (b) If the commission determines that the charges warrant
7 further action, a copy of the charge and a further statement of
8 the alleged violation shall be personally served upon the person
9 charged. Such person shall have 20 days after service thereof to
10 respond in writing to the charge and statement. All proceedings
11 at this stage by the commission shall be confidential.

12 Section 5. Procedure for Determination of a Violation.--(a)
13 Twenty days following personal service, the commission shall set
14 a time and place for a hearing giving notice to the complainant,
15 where applicable, and to the party charged.

16 (b) All parties shall have an opportunity to be heard, to
17 subpoena witnesses and require the production of any books or
18 papers relative to the proceedings, to be represented by
19 counsel, and to have the right of cross examination. All
20 hearings shall be in accordance with the act of June 4, 1945
21 (P.L.1388, No.442), known as the "Administrative Agency Law."
22 Witnesses shall testify under oath and the hearings shall be
23 closed to the public unless the party charged requests an open
24 hearing. All testimony and other evidence taken at the hearing
25 shall be recorded.

26 (c) A decision by the commission adverse to the party
27 charged shall contain relevant findings of fact shall be made
28 public. All other records, documents, and papers including
29 investigative reports and hearing transcripts shall remain
30 confidential except with respect to transmission to the

1 appropriate authorities in accordance with the provisions of
2 this act.

3 Section 6. Orders and Recommendations of the Commission.--A
4 decision by the commission adverse to the party charged, which
5 decision shall be published in the Pennsylvania Bulletin, shall
6 contain any one or more of the following recommendations or
7 orders, where applicable:

8 (1) A recommendation for criminal prosecution which shall be
9 referred to the Attorney General for appropriate action. The
10 Attorney General shall, within 60 days of receipt of such
11 recommendation, make a decision whether to prosecute the party
12 charged, which decision shall be published in the Pennsylvania
13 Bulletin. The Attorney General may initiate prosecution upon his
14 own motion or refer the case for prosecution to the district
15 attorney with appropriate jurisdiction.

16 (2) A recommendation for dismissal or which in the case of
17 public employees under civil service shall be referred to the
18 Civil Service Commission. The Civil Service Commission shall
19 make a decision within 60 days as to whether to institute
20 dismissal proceedings in accordance with the act of August 5,
21 1941 (P.L.752, No.286), known as the "Civil Service Act," which
22 decision shall be published in the Pennsylvania Bulletin.

23 (3) A recommendation for dismissal in the case of public
24 employees and public officers appointed by the Governor shall be
25 referred to the Governor. The Governor shall make a decision
26 within 60 days on whether to dismiss such employee or officer,
27 which decision shall be published in the Pennsylvania Bulletin.

28 (4) A recommendation of dismissal in the case of elected
29 public officers or legislative members shall be referred to the
30 House of Representatives for the institution of impeachment

1 proceedings, which proceedings shall be recorded in the House
2 Journal.

3 (5) An order requiring the party charged to divest himself
4 of any interest deemed in violation of ethics laws or requiring
5 the party charged to conform his conduct to the provisions of
6 ethics laws. Any party aggrieved by such order shall be entitled
7 to judicial review in accordance with the procedures set forth
8 in the act of June 4, 1945 (P.L.1388, No.442), known as the
9 "Administrative Agency Law."

10 (6) Such other orders as are necessary and appropriate and
11 as are consistent with the intent and purpose of this act and
12 ethics laws.

13 Section 7. Effective Date.--This act shall take effect in 90
14 days.