

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1733 Session of 1987

INTRODUCED BY DeWEESE, MOEHLMANN, BORTNER, HECKLER, BLAUM, KOSINSKI, HAGARTY, McHALE, CALTAGIRONE, MAIALE, KUKOVICH, BALDWIN AND JOSEPHS, SEPTEMBER 28, 1987

AS RE-REPORTED FROM COMMITTEE ON APPROPRIATIONS, HOUSE OF REPRESENTATIVES, AS AMENDED, NOVEMBER 24, 1987

AN ACT

1 Reenacting and amending the act of October 4, 1978 (P.L.883,
2 No.170), entitled "An act relating to conflicts of interest
3 involving certain public officials serving in State or State
4 agencies and local political subdivision positions and
5 prohibiting certain public employees from engaging in certain
6 conflict of interest activities requiring certain disclosures
7 and providing penalties," adding definitions; further
8 providing for the membership, powers and duties of the State
9 Ethics Commission and for persons who must file statements of
10 financial interests; and reestablishing the State Ethics
11 Commission.

12 The General Assembly of the Commonwealth of Pennsylvania
13 hereby enacts as follows:

14 Section 1. The title and sections 1, 2, 3, 4, 5, 6, 7, 8, 9
15 and 10 of the act of October 4, 1978 (P.L.883, No.170), referred
16 to as the Public Official and Employee Ethics Law, are reenacted
17 and amended to read:

AN ACT

18
19 Relating to conflicts of interest involving certain public
20 officials serving in State or State agencies and local
21 political subdivision positions and prohibiting certain

1 public employees from engaging in certain conflict of  
2 interest activities requiring certain disclosures and  
3 providing penalties.

4 Section 1. Purpose.

5 (a) The Legislature hereby declares that public office is a  
6 public trust and that any effort to realize personal financial  
7 gain through public office other than compensation provided by  
8 law is a violation of that trust. In order to strengthen the  
9 faith and confidence of the people of the State in their  
10 government, the Legislature further declares that the people  
11 have a right to be assured that the financial interests of  
12 holders of or nominees or candidates for public office do not  
13 [present neither a conflict nor the appearance of a] conflict  
14 with the public trust. Because public confidence in government  
15 can best be sustained by assuring the people of the impartiality  
16 and honesty of public officials, this act shall be liberally  
17 construed to promote complete disclosure.

18 (b) It is the intent of the General Assembly that this act  
19 be administered by an independent commission composed of members  
20 who are cognizant of the responsibilities of public officials  
21 and employees and who have demonstrated an interest in promoting  
22 public confidence in government.

23 Section 2. Definitions.

24 The following words and phrases when used in this act shall  
25 have, unless the context clearly indicates otherwise, the  
26 meanings given to them in this section:

27 "Advice." Any directive of the general counsel of the  
28 commission issued under paragraph (11) of section 7 and based  
29 exclusively on prior commission opinions, this act, regulations  
30 promulgated pursuant to this act, and court opinions which

1 interpret this act.

2 "Authority of office or employment." The actual power  
3 provided by law, the exercise of which is necessary to the  
4 performance of duties and responsibilities unique to a  
5 particular public office or position of public employment.

6 "Business." Any corporation, partnership, sole  
7 proprietorship, firm, enterprise, franchise, association,  
8 organization, self-employed individual, holding company, joint  
9 stock company, receivership, trust or any legal entity organized  
10 for profit.

11 "Business with which he is associated." Any business in  
12 which the person or a member of the person's immediate family is  
13 a director, officer, owner, employee or [holder of stock] has a  
14 financial interest.

15 "Candidate." Any individual who seeks nomination or election  
16 to public office by vote of the electorate, other than a judge  
17 or inspector of elections, whether or not such individual is  
18 nominated or elected. An individual shall be deemed to be  
19 seeking nomination or election to such office if he has:

20 (1) received a contribution or made an expenditure or  
21 given his consent for any other person or committee to  
22 receive a contribution or make an expenditure for the purpose  
23 of influencing his nomination or election to such office,  
24 whether or not the individual has announced the specific  
25 office for which he will seek nomination or election at the  
26 time the contribution is received or the expenditure is made;  
27 or

28 (2) taken the action necessary under the laws of this  
29 Commonwealth to qualify himself for nomination or election to  
30 such office.

1 The term shall include individuals nominated or elected as  
2 write-in candidates.

3 "Commission." The State Ethics Commission.

4 ["Compensation." Anything of economic value, however  
5 designated, which is paid, loaned, granted, given, donated or  
6 transferred, or to be paid, loaned, granted, given, donated or  
7 transferred for or in consideration of personal services to any  
8 person, official or to the State.]

9 "Conflict" or "conflict of interest." Use by a public  
10 official or public employee of the authority of his office OR ←  
11 EMPLOYMENT or any confidential information received through his  
12 holding public office or employment for the private pecuniary  
13 benefit or detriment of himself, a member of his immediate  
14 family or a business with which he or a member of his immediate  
15 family is associated. "Conflict" or "conflict of interest" does  
16 not include an action having a de minimis economic impact or  
17 which affects to the same degree a class consisting of the  
18 general public or a subclass consisting of an industry,  
19 occupation or other group which includes the public official or  
20 public employee, a member of his immediate family or a business  
21 with which he or a member of his immediate family is associated.

22 "Contract." An agreement or arrangement for the acquisition,  
23 use or disposal by a State or political subdivision of  
24 consulting or other services or of supplies, materials,  
25 equipment, land or other personal or real property. "Contract"  
26 shall not mean an agreement or arrangement between the State or  
27 political subdivision as one party and a public official or  
28 public employee as the other party, concerning his expense,  
29 reimbursement, salary, wage, retirement or other benefit, tenure  
30 or other matters in consideration of his current public

1 employment with a State or political subdivision.

2 "De minimis economic impact." An economic consequence which  
3 has an insignificant effect upon the public interest.

4 "Executive-level State employee." The Governor, Lieutenant  
5 Governor, cabinet members, deputy secretaries, the Governor's  
6 office staff, any State employee with discretionary powers which  
7 may affect the outcome of a State agency's decision in relation  
8 to a private corporation or business or any employee who by  
9 virtue of his job function could influence the outcome of such a  
10 decision.

11 "Financial interest." Any financial interest in a legal  
12 entity engaged in business for profit which comprises more than  
13 5% of the equity of the business or more than 5% of the assets  
14 of the economic interest in indebtedness.

15 "Frivolous complaint." A complaint filed in a grossly  
16 negligent manner without basis in law or fact.

17 "Gift." [A payment, subscription, advance, forbearance,  
18 rendering or deposit of money, services or anything of value,  
19 unless consideration of equal or greater value is received]  
20 Anything which is received without consideration. "Gift" shall  
21 not include a political contribution otherwise reported as  
22 required by law[, ] or a commercially reasonable loan made in the  
23 ordinary course of business[, or a gift received from a member  
24 of the person's immediate family or from a relative within the  
25 third degree of consanguinity of the person or of the person's  
26 spouse or from the spouse of any such relative].

27 "Governmental body." Any department, authority, commission,  
28 committee, council, board, bureau, division, service, office,  
29 officer, administration, legislative body, or other  
30 establishment in the Executive, Legislative or Judicial Branch

1 of the State or a political subdivision thereof.

2 "Governmental body with which a public official or public  
3 employee is or has been associated." The entity within State  
4 government or a political subdivision by which the public  
5 official or employee is or has been employed or to which the  
6 public official or employee is or has been appointed or elected,  
7 and not only the particular subdivision or office within that  
8 entity to which the official or employee is or has been  
9 assigned.

10 "Honorarium." Payment made in recognition of published  
11 works, appearances, speeches and presentations and which is not  
12 intended as consideration for the value of such services.

13 "Immediate family." [A spouse residing in the person's  
14 household and minor dependent children] A parent, spouse, child,  
15 brother, sister or like relative-in-law.

16 "Income." Any money or thing of value received, or to be  
17 received as a claim on future services or in recognition of  
18 services rendered in the past, whether in the form of a payment,  
19 fee, salary, expense, allowance, forbearance, forgiveness,  
20 interest, dividend, royalty, rent, capital gain, reward,  
21 severance payment, proceeds from the sale of a financial  
22 interest in a corporation, professional corporation, partnership  
23 or other entity resulting from termination or withdrawal  
24 therefrom upon assumption of public office or employment or any  
25 other form of recompense or any combination thereof. "Income"  
26 refers to gross income and includes prize winnings and tax-  
27 exempt income. The term does not include honoraria, gifts,  
28 social security, welfare, general assistance, domiciliary care  
29 programs, retirement, pension and annuity payments funded  
30 totally by contributions of the public official or employee,

1 unemployment compensation, including employer and union-funded  
2 programs, worker's compensation, or miscellaneous, incidental  
3 income of minor dependent children.

4 "Indirect interest in real estate." Any business entity the  
5 assets of which are 80% or more in real property.

6 "Ministerial action." An action that a person performs in a  
7 prescribed manner in obedience to the mandate of legal  
8 authority, without regard to, or the exercise of, the person's  
9 own judgment as to the desirability of the action being taken.

10 "Nominee." Any person whose name has been submitted to a  
11 public official or governmental body vested with the power to  
12 finally confirm or reject proposed appointments to public office  
13 or employment.

14 "Nonministerial actions." An action in which the person  
15 exercises his own judgment as to the desirability of the action  
16 taken.

17 "Opinion." A directive of the commission issued pursuant to  
18 paragraph (10) of section 7 setting forth a public official's or  
19 public employee's duties under this act.

20 "Order." A directive of the commission issued pursuant to  
21 paragraph (13) of section 7 at the conclusion of an  
22 investigation which contains findings of fact, conclusions of  
23 law and penalties.

24 "Person." A business, governmental body, individual,  
25 corporation, union, association, firm, partnership, committee,  
26 club or other organization or group of persons.

27 "Political contribution." Any advance, conveyance, deposit,  
28 distribution, transfer of funds, loan, payment, pledge, purchase  
29 of a ticket to a testimonial or similar fund-raising affair, or  
30 subscription of money or anything of value, except volunteer

1 services, in connection with a political campaign, and any  
2 contract, agreement, promise, or other obligations, whether or  
3 not legally enforceable, to make a political contribution.

4 "Political subdivision." Any county, city, borough,  
5 incorporated town, township, school district, vocational school,  
6 county institution district, and any authority, entity or body  
7 organized by the aforementioned.

8 "Preliminary finding." An initial decision of the commission  
9 issued at the conclusion of an investigation as set forth in  
10 paragraph (13) of section 7.

11 "Proposed order." An initial directive of the commission  
12 issued at the conclusion of an investigation as set forth in  
13 paragraph (13) of section 7.

14 "Public employee." Any individual employed by the  
15 Commonwealth or a political subdivision who is responsible for  
16 taking or recommending official action of a nonministerial  
17 nature with regard to:

- 18 (1) contracting or procurement;
- 19 (2) administering or monitoring grants or subsidies;
- 20 (3) planning or zoning;
- 21 (4) inspecting, licensing, regulating or auditing any  
22 person; or
- 23 (5) any other activity where the official action has an  
24 economic impact of greater than a de minimis nature on the  
25 interests of any person.

26 "Public employee" shall not include individuals who are employed  
27 by the State or any political subdivision thereof in teaching as  
28 distinguished from administrative duties.

29 "Public official." Any elected or appointed official in the  
30 Executive, Legislative or Judicial Branch of the State or any

1 political subdivision thereof, provided that it shall not  
2 include members of advisory boards that have no authority to  
3 expend public funds other than reimbursement for personal  
4 expense, or to otherwise exercise the power of the State or any  
5 political subdivision thereof. ["Public official" shall not  
6 include any appointed official who receives no compensation  
7 other than reimbursement for actual expenses.]

8 "Represent." To act on behalf of any other person in any  
9 activity which includes, but is not limited to, the following:  
10 personal appearances, negotiations, lobbying and submitting bid  
11 or contract proposals which are signed by or contain the name of  
12 a former public official or public employee.

13 "State consultant." A person who, as an independent  
14 contractor, performs professional, scientific, technical or  
15 advisory service for a State agency, and who receives a fee,  
16 honorarium or similar compensation for such services. A "State  
17 consultant" is not an executive-level employee.

18 Section 3. Restricted activities.

19 (a) [No public official or public employee shall use his  
20 public office or any confidential information received through  
21 his holding public office to obtain financial gain other than  
22 compensation provided by law for himself, a member of his  
23 immediate family, or a business with which he is associated] No  
24 public official or public employee shall engage in conduct that  
25 constitutes a conflict of interest.

26 (b) No person shall offer or give to a public official, [or]  
27 public employee or nominee or candidate for public office or a  
28 member of his immediate family or a business with which he is  
29 associated, and no public official, [or] public employee or  
30 nominee or candidate for public office shall solicit or accept,

1 anything of monetary value, including a gift, loan, political  
2 contribution, reward, or promise of future employment based on  
3 [any] his understanding that the vote, official action, or  
4 judgment of the public official or public employee or nominee or  
5 candidate for public office would be influenced thereby.

6 (c) (1) No person shall solicit or accept a severance  
7 payment or anything of monetary value contingent upon the  
8 assumption or acceptance of public office or employment.

9 (2) This subsection shall not prohibit:

10 (i) Payments received pursuant to an employment  
11 agreement in existence prior to the time a person becomes  
12 a candidate or is under consideration for public office  
13 or makes application for public employment.

14 (ii) Receipt of a salary, fees, severance payment or  
15 proceeds resulting from the sale of a person's interest  
16 in a corporation, professional corporation, partnership  
17 or other entity resulting from termination or withdrawal  
18 therefrom upon the assumption or acceptance of public  
19 office or employment.

20 (3) Payments made or received pursuant to paragraph  
21 (2)(i) and (ii) shall not be based on the understanding,  
22 written or otherwise, that the vote or official action of the  
23 prospective public official or employee would be influenced  
24 thereby.

25 (4) This subsection shall not be applied retroactively.

26 ~~[(c)]~~ (d) No public official or public employee or [a member  
27 of his immediate family or any business in which the person or a  
28 member of the person's immediate family is a director, officer,  
29 owner or holder of stock exceeding 5% of the equity at fair  
30 market value of the business] his spouse or child or any

1 business in which the person or his spouse or child is  
2 associated shall enter into any contract valued at \$500 or more  
3 [with a governmental body unless the contract has been awarded  
4 through an open and public process, including prior public  
5 notice and subsequent public disclosure of all proposals  
6 considered and contracts awarded] with the governmental body  
7 with which the public official or public employee is associated  
8 or any subcontract valued at \$500 or more with any person who  
9 has been awarded a contract with the governmental body with  
10 which the public official or public employee is associated,  
11 unless the contract has been awarded through an open and public  
12 process, including prior public notice and subsequent public  
13 disclosure of all proposals considered and contracts awarded.  
14 Any contract or subcontract made in violation of this subsection  
15 shall be voidable by a court of competent jurisdiction if the  
16 suit is commenced within 90 days of the making of the contract  
17 or subcontract.

18 [(d) Other areas of possible conflict shall be addressed by  
19 the commission pursuant to paragraph (9) of section 7.]

20 (e) No former public official or public employee shall  
21 represent a person, with or without compensation, on any matter  
22 before the governmental body with which he has been associated  
23 for one year after he leaves that body.

24 (f) No person shall use for any commercial purpose  
25 information copied from statements of financial interests  
26 required by this act or from lists compiled from such  
27 statements.

28 (g) No former executive-level State employee may for a  
29 period of two years from the time that he terminates his State  
30 employment be employed by, receive compensation from, assist or

1 act in a representative capacity for a business or corporation  
2 that he actively participates in recruiting to the Commonwealth  
3 of Pennsylvania or that he actively participated in inducing to  
4 open a new plant, facility or branch in the Commonwealth or that  
5 he actively participated in inducing to expand an existent plant  
6 or facility within the Commonwealth, provided that the above  
7 prohibition shall be invoked only when the recruitment or  
8 inducement is accomplished by a grant or loan of money or a  
9 promise of a grant or loan of money from the Commonwealth to the  
10 business or corporation recruited or induced to expand.

11 [(h) (1) Any individual who holds an appointive office in  
12 any political subdivision shall not have an interest in any  
13 contract or construction in which that political subdivision  
14 shall enter or have an interest.

15 (2) Any person violating the provisions of this  
16 subsection shall be barred for a period of five years from  
17 engaging in any business or contract with any political  
18 subdivision or the Commonwealth or any of its agencies.

19 (3) For purposes of this subsection the term "interest"  
20 shall not include the ownership of shares of stock in any  
21 corporation in an amount of 5% or less of the total issue for  
22 said corporation.]

23 (h) Where voting conflicts are not otherwise addressed by  
24 law, rule, regulation, order or ordinance, the following  
25 procedure shall be employed. Any public official or public  
26 employee, who in the discharge of his official duties, would be  
27 required to vote on a matter that would result in a conflict of  
28 interest shall abstain from voting and, prior to the vote being  
29 taken, publicly announce and disclose the nature of his interest  
30 as a public record in a written memorandum filed with the person

1 responsible for recording the minutes of the meeting at which  
2 the vote is taken, provided that whenever a governing body would  
3 be unable to take any action on a matter before it because a  
4 majority of members of the body are required to abstain from  
5 voting under the provisions of this subsection, then such  
6 members shall be permitted to vote if disclosures are made as  
7 otherwise provided herein.

8 Section 4. Statement of financial interests required to be  
9 filed.

10 (a) Each public official of the Commonwealth shall file a  
11 statement of financial interests for the preceding calendar year  
12 with the commission no later than May 1 of each year that he  
13 holds such a position and of the year after he leaves such a  
14 position. Each public employee [employed by] and public official  
15 of the Commonwealth shall file a statement of financial  
16 interests for the preceding calendar year with the department,  
17 agency, body or bureau in which he is employed or to which he is  
18 appointed or elected no later than May 1 of each year that he  
19 holds such a position and of the year after he leaves such a  
20 position. Any other public employee or public official shall  
21 file a statement of financial interests with the governing  
22 authority of the political subdivision by which he is employed  
23 or within which he is appointed or elected no later than May 1  
24 of each year that he holds such a position and of the year after  
25 he leaves such a position.

26 [(b) Each candidate for public office shall file a statement  
27 of financial interests for the preceding calendar year with the  
28 commission prior to filing a petition to appear on the ballot  
29 for election as a public official. A petition to appear on the  
30 ballot shall not be accepted by an election official unless the

1 petition includes an affidavit that the candidate has filed the  
2 required statement of financial interests with the commission.]

3 (b) (1) Any candidate for a State-level public office shall  
4 file a statement of financial interests for the preceding  
5 calendar year with the commission on or before the last day  
6 for filing a petition to appear on the ballot for election. A  
7 copy of the statement of financial interests shall also be  
8 appended to such petition.

9 (2) Any candidate for county-level or local office shall  
10 file a statement of financial interests for the preceding  
11 calendar year with the governing authority of the political  
12 subdivision in which he is a candidate on or before the last  
13 day for filing a petition to appear on the ballot for  
14 election. A copy of the statement of financial interests  
15 shall also be appended to such petition.

16 (3) No petition to appear on the ballot for election  
17 shall be accepted by the respective State or local election  
18 officials unless the petition has appended thereto a  
19 statement of financial interests as set forth in paragraphs  
20 (1) and (2). Failure to file the statement in accordance with  
21 the provisions of this act shall, in addition to any other  
22 penalties provided, be a fatal defect to the nomination  
23 petition.

24 (c) Each [candidate] nominee for public office [nominated by  
25 a public official or governmental body and subject to  
26 confirmation by a public official or governmental body] shall  
27 file a statement of financial interests for the preceding  
28 calendar year with the commission and with the official or body  
29 that is vested with the power of confirmation at least ten days  
30 before the official or body shall approve or reject the

1 nomination.

2 (d) No public official shall be allowed to take the oath of  
3 office or enter or continue upon his duties, nor shall he  
4 receive compensation from public funds, unless he has filed a  
5 statement of financial interests with the commission as required  
6 by this act.

7 (e) [(1) Any candidate for State or county-wide public  
8 office shall file a statement of financial interests with the  
9 commission pursuant to this act and shall file a copy of that  
10 statement with the Board of Elections in the county in which  
11 the candidate resides.

12 (2) Any candidate for local office shall file a  
13 statement of financial interests with the commission pursuant  
14 to this act and shall file a copy of that statement with the  
15 governing authority of the political subdivision in which he  
16 is a candidate.

17 (f)] All statements of financial interest filed pursuant to  
18 the provisions of this act shall be made available for public  
19 inspection and copying during regular office hours, and copying  
20 facilities shall be made available at a charge not to exceed  
21 actual cost.

22 Section 5. Statement of financial interests.

23 (a) The statement of financial interests filed pursuant to  
24 this act shall be on a form prescribed by the commission. All  
25 information requested on the statement shall be provided to the  
26 best of the knowledge, information and belief of the person  
27 required to file and shall be signed under [penalty of perjury  
28 by the person required to file the statement] oath or equivalent  
29 affirmation.

30 (b) The statement shall include the following information

1 for the prior calendar year with regard to the person required  
2 to file the statement [and the members of his immediate family].

3 (1) [The name] Name, address and public position [of the  
4 person required to file the statement].

5 (2) [The occupations or professions of the person  
6 required to file the statement and those of his immediate  
7 family] Occupation or profession.

8 (3) Any direct or indirect interest in any real estate  
9 which was sold or leased to the Commonwealth, any of its  
10 agencies or political subdivisions; purchased or leased from  
11 the Commonwealth, any of its agencies or political  
12 subdivisions; or which was the subject of any condemnation  
13 proceedings by the Commonwealth, any of its agencies or  
14 political subdivisions.

15 (4) The name and address of each creditor to whom is  
16 owed in excess of \$5,000 and the interest rate thereon.  
17 However, loans or credit extended between members of the  
18 immediate family and mortgages securing real property which  
19 is the principal residence of the person filing [or of his  
20 spouse] shall not be included.

21 (5) The name and address of any [person who is the]  
22 direct or indirect source of income totalling in the  
23 aggregate [\$500] \$1,000 or more. However, this provision  
24 shall not be construed to require the divulgence of  
25 confidential information protected by statute or existing  
26 professional codes of ethics or common law privileges.

27 [(6) The name and address of any person from whom a gift  
28 or gifts valued in the aggregate at \$200 or more were  
29 received, and the value and the circumstances of each gift.  
30 However, this provision shall not be applicable to gifts

1 received from the individual's spouse, parents, parents by  
2 marriage, siblings, children or grandchildren.

3 (7) The source of any honorarium received which is in  
4 excess of \$100.]

5 (6) (i) The name and address of the source and the  
6 amount of any gift or gifts valued in the aggregate at  
7 \$200 or more and the circumstances of each gift. This  
8 paragraph shall not apply to the payment for or  
9 reimbursement of actual expenses for transportation and  
10 lodging or hospitality received in connection with public  
11 office or employment, unless such actual expenses for  
12 transportation and lodging exceed \$150 in the course of a  
13 single occurrence or unless the value received for such  
14 hospitality exceeds \$50 in the course of a single  
15 occurrence. This paragraph shall not apply to expenses  
16 eligible for reimbursement by the governmental body with  
17 which the public official or employee is associated; nor  
18 shall this paragraph apply to a gift or gifts received  
19 from a spouse, parent, parent by marriage, sibling,  
20 child, grandchild, other family member or friend when the  
21 circumstances make it clear that the motivation for the  
22 action was a personal or family relationship.

23 (ii) A person who is the source of any gift or gifts  
24 required to be reported pursuant to this subsection  
25 shall, quarterly, inform the recipient of the value and  
26 aggregate value and circumstances of such gift or gifts.

27 (7) The name and address of the source and the amount of  
28 any honorarium received which is in excess of \$100.

29 (8) Any office, directorship or employment of any nature  
30 whatsoever in any business entity.

1 (9) Any financial interest in any legal entity engaged  
2 in business for profit.

3 (10) The identity of any financial interest in a  
4 business with which the reporting person is or has been  
5 associated in the preceding calendar year which has been  
6 transferred to a member of the reporting person's immediate  
7 family.

8 (c) [The] EXCEPT WHERE AN AMOUNT IS REQUIRED TO BE REPORTED <—  
9 PURSUANT TO PARAGRAPHS (6) AND (7), THE statement of financial  
10 interest need not include specific amounts for [any of] the <—  
11 items required to be listed.

12 Section 6. State Ethics Commission.

13 (a) There is established a State Ethics Commission composed  
14 of seven members[,]. The President pro tempore of the Senate,  
15 the Minority Leader of the Senate, the Speaker of the House, and  
16 the Minority Leader of the House shall each appoint one member.  
17 Three members shall be appointed by the Governor without  
18 confirmation. No more than two of the members appointed by the  
19 Governor shall be of the same political party. No appointee  
20 shall have served as an officer in a political party for one  
21 year prior to his appointment.

22 (b) Members of the commission shall serve for terms of five  
23 years[, except that, of the members first appointed:

24 (1) the two members appointed by the President pro  
25 tempore and Minority Leader of the Senate shall serve for  
26 four years;

27 (2) the two members appointed by the Speaker and the  
28 Minority Leader of the House shall serve for two years; and

29 (3) of the three members appointed by the Governor two  
30 shall serve for three years, and one shall serve for five

1 years].

2 (c) No member shall be appointed to more than one full five-  
3 year term on the commission.

4 (d) No individual, while a member or employee of the  
5 commission, shall:

6 (1) hold or campaign for any other public office;

7 (2) hold office in any political party or political  
8 committee;

9 (3) actively participate in or contribute to any  
10 political campaign;

11 (4) directly or indirectly attempt to influence any  
12 decision by a governmental body, other than a court of law or  
13 as a representative of the commission on a matter within the  
14 jurisdiction of the commission; or

15 (5) be employed by the Commonwealth or a political  
16 subdivision in any other capacity, whether or not for  
17 compensation.

18 (e) A majority of the commission by resolution shall declare  
19 vacant the position on the commission of any member who takes  
20 part in activities prohibited by subsection (d). An individual  
21 appointed to fill a vacancy occurring other than by the  
22 expiration of a term of office shall be appointed for the  
23 unexpired term of the member he succeeds, and is eligible for  
24 appointment to one full five-year term thereafter. Any vacancy  
25 occurring on the commission shall be filled within 30 days in  
26 the manner in which that position was originally filled.

27 (f) The commission shall elect a chairman and a vice  
28 chairman. The vice chairman shall act as chairman in the absence  
29 of the chairman or in the event of a vacancy in that position.

30 (g) Four members of the commission shall constitute a quorum

1 and the votes of a majority of the members present is required  
2 for any action or recommendation of the commission. The chairman  
3 or any four members of the commission may call a meeting  
4 provided that advance written notice is mailed to each member  
5 and to any person who requests notice of such meetings.

6 (h) Members of the commission shall be compensated at a rate  
7 of [~~\$50~~] \$75 per day and shall receive reimbursement for their  
8 actual and necessary expenses while performing the business of  
9 the commission.

10 (i) The commission shall employ an executive director, a  
11 general counsel, and such other staff as are necessary to carry  
12 out its duties pursuant to this act. The executive director  
13 shall be responsible for the administrative operations of the  
14 commission and shall perform such other duties as may be  
15 delegated or assigned to him by the commission, except that the  
16 commission shall not delegate the making of regulations to the  
17 executive director. The general counsel shall be the chief legal  
18 officer of the commission. The commission may obtain the  
19 services of experts and consultants as necessary to carry out  
20 its duties pursuant to this act. The State Treasurer and the  
21 Attorney General shall make available to the commission such  
22 personnel, facilities, and other assistance as the commission  
23 may request.

24 Section 7. [~~Duties~~] Powers and duties of the commission.

25 In addition to other powers and duties prescribed by law, the  
26 commission shall:

27 (1) Prescribe and publish rules and regulations to carry  
28 out the provisions of this act.

29 (2) Prescribe forms for statements and reports required  
30 to be filed by this act and furnish such forms to persons

1 required to file such statements and reports.

2 (3) Prepare and publish guidelines setting forth  
3 recommended uniform methods of accounting and reporting for  
4 use by persons required to file statements and reports by  
5 this act.

6 (4) Accept and file any information voluntarily supplied  
7 that exceeds the requirements of this act.

8 (5) Inspect statements of financial interests which have  
9 been filed in order to ascertain whether any reporting person  
10 has failed to file such a statement or has filed a deficient  
11 statement. If, upon inspection, it is determined that a  
12 reporting person has failed to file a statement of financial  
13 interests or that any statement which has been filed fails to  
14 conform with the requirements of section 5, then the  
15 commission shall, in writing, notify the person. Such notice  
16 shall state in detail the deficiency and the penalties for  
17 failure to file or for filing a deficient statement of  
18 financial interests.

19 [(5) Make] (6) Provide that statements and reports  
20 filed with the commission be made available for public  
21 inspection and copying during regular office hours and [make]  
22 provide that copying facilities be made available at a charge  
23 not to exceed actual cost and advise other State and local  
24 agencies of the provisions of this paragraph.

25 [(6)] (7) Compile and maintain an index of all reports  
26 and statements filed with the commission to facilitate public  
27 access to such reports and statements and instruct other  
28 State and local agencies which receive and file financial  
29 interest statements in the maintenance of systems which  
30 facilitate public access to such statements.

1            [(7)] (8) Prepare and publish annual summaries of  
2 statements and reports filed with the commission.

3            [(8)] (9) Preserve statements and reports filed with the  
4 commission for a period of five years from date of receipt  
5 and advise other State and local agencies which receive and  
6 store financial interest statements to preserve such  
7 statements for a period of five years from date of receipt.

8            [(9) (i)] (10) Issue to any person, upon such person's  
9 request, an opinion with respect to such person's duties  
10 under this act. The commission shall, within 14 days, either  
11 issue the opinion or advise the person who made the request  
12 whether an opinion will be issued. No person who acts in good  
13 faith on an opinion issued to him by the commission shall be  
14 subject to criminal or civil penalties for so acting,  
15 provided that the material facts are as stated in the opinion  
16 request. The commission's opinions shall be public records  
17 and may from time to time be published.

18            [(ii)] (11) Provide written advice to any person  
19 upon their request with respect to such person's duties under  
20 this act. Such advice shall be provided within 21 working  
21 days of the request, provided that the time may be extended  
22 for good cause. It shall be a complete defense in any  
23 enforcement proceeding initiated by the commission, and  
24 evidence of good faith conduct in any other civil or criminal  
25 proceeding, if the requester, at least 21 working days prior  
26 to the alleged violation, requested written advice from the  
27 commission in good faith, disclosed truthfully all the  
28 material facts and committed the acts complained of either in  
29 reliance on the advice or because of the failure of the  
30 commission to provide advice within 21 days of the request

1 [of] or such later extended time.

2 [(iii)] (12) Initiate an inquiry, pursuant to  
3 section 8(a), where [an opinion] a complaint has not been  
4 [requested] filed but where there [is a reasonable belief]  
5 may be reason to believe that a conflict [may exist] exists.  
6 [Such inquiry shall be conducted in privacy with full respect  
7 to the confidentiality of all the parties involved in the  
8 alleged conflict. If the commission finds that there is a  
9 conflict, the information shall be provided for criminal  
10 proceedings unless the alleged offender removes himself from  
11 the conflict with receiving financial gain.

12 (iv) Issue advisory opinions to any present or  
13 former State employee who contemplates terminating his  
14 State employment and/or becoming employed by, contracting  
15 with, assisting or acting in a representative capacity  
16 for a business or corporation, upon such employee's  
17 request. That opinion shall state whether, upon the facts  
18 presented, such employment, contract, assistance or  
19 representation would be in violation of section 3(g). If  
20 the advisory opinion states that such employment,  
21 contract, assistance or representation would not be in  
22 violation of the provisions of section 3(g), the person  
23 who requested the opinion may not be prosecuted or  
24 penalized, either criminally or civilly, under the  
25 provisions of this act provided that the actions under  
26 question bear a substantial similarity to the facts  
27 presented to the commission.]

28 (13) Issue preliminary findings, proposed orders and  
29 orders relating to investigations initiated pursuant to  
30 section 8, which set forth the alleged violation, findings of

1 fact and conclusions of law. An order may include  
2 recommendations to law enforcement officials. Any order  
3 resulting from a finding that a public official or public  
4 employee has obtained a financial gain in violation of this  
5 act may, after affording the person who is the subject of the  
6 investigation an opportunity for a hearing in accordance with  
7 section 8(g), require the restitution plus interest of that  
8 gain to the appropriate governmental body. The commission or  
9 the Office of Attorney General shall have standing to apply  
10 to the Commonwealth Court to seek enforcement of an order  
11 requiring such restitution. This restitution requirement  
12 shall be in addition to any other penalties provided for in  
13 this act.

14 [(10)] (14) Hold hearings, take testimony, issue  
15 subpoenas and compel the attendance of witnesses.

16 [(11)] (15) Make recommendations to law enforcement  
17 officials either for criminal prosecution or dismissal of  
18 charges arising out of violations of this act.

19 [(12)] (16) Prepare and publish special reports,  
20 educational materials, and technical studies to further the  
21 purposes of this act.

22 [(13)] (17) Prepare and publish, prior to June 1 of each  
23 year, an annual report summarizing the activities of the  
24 commission.

25 Section 8. Investigations by the commission.

26 (a) Upon a complaint signed under penalty of perjury by any  
27 person or upon its own motion, the commission [shall  
28 investigate], through its executive director, shall conduct a  
29 preliminary inquiry into any alleged violation of this act. [All  
30 commission proceedings and records relating to an investigation

1 shall be confidential until a final determination is made by the  
2 commission. The executive director shall notify any person under  
3 investigation by the commission of the investigation and of the  
4 nature of the alleged violation within five days of the  
5 commencement of the investigation. Within 15 days of the filing  
6 of a sworn complaint by a person alleging a violation, and every  
7 30 days thereafter until the matter is terminated, the executive  
8 director shall notify the complainant of the action taken to  
9 date by the commission together with the reasons for such action  
10 or nonaction.] The commission shall keep information, records  
11 and proceedings relating to a preliminary inquiry confidential.  
12 The commission shall, however, have the authority to refer the  
13 case to law enforcement officials during a preliminary inquiry  
14 or anytime thereafter without providing notice to the subject of  
15 the inquiry. The commission shall complete its preliminary  
16 inquiry within 30 days of its initiation.

17 (b) If a preliminary [investigation] inquiry fails to  
18 [indicate probable cause for belief] establish reason to believe  
19 that this act has been violated, the commission shall terminate  
20 the [investigation] inquiry and so notify the complainant and  
21 the person who had been [under investigation.] the subject of  
22 the inquiry. If the commission determines that a complaint is  
23 frivolous, it shall so state.

24 (c) If a preliminary inquiry establishes reason to believe  
25 that this act has been violated, the commission may, through its  
26 executive director, initiate an investigation to determine if  
27 there has been a violation. The commission shall keep  
28 information, records and proceedings relating to an  
29 investigation confidential until a final determination is made,  
30 except as otherwise provided in subsection (f). No investigation

1 may be commenced until the person who is the subject of the  
2 investigation has been notified and provided a general statement  
3 of the alleged violation or violations of the act and other  
4 applicable statutes with respect to such investigation. Service  
5 of notice is complete upon mailing which shall be by certified  
6 or registered mail. The commission shall notify the complainant  
7 within 72 hours of the commencement of an investigation and,  
8 thereafter, the commission shall advise the complainant and the  
9 person who is the subject of the investigation of the status of  
10 the investigation at least every 90 days until the investigation  
11 IS terminated. The commission shall, within 180 days of the ←  
12 initiation of an investigation, either terminate the  
13 investigation pursuant to subsection (d) or issue preliminary  
14 findings and a proposed order pursuant to subsection (e). Upon a  
15 showing by the executive director of the need for extension of  
16 this period, the commission may extend an investigation for up  
17 to two 90-day periods, provided that each 90-day extension shall  
18 be approved by a majority vote of members present. In no event  
19 shall preliminary findings and a proposed order be issued later  
20 than 360 days after initiation of an investigation.

21 (d) If an investigation conducted under this act indicates  
22 that no violation has been committed, the commission shall  
23 immediately terminate the investigation and send written notice  
24 of such determination to the complainant and the person who was  
25 the subject of the investigation.

26 (e) If the commission determines that a violation has been  
27 committed, it shall issue preliminary findings and a proposed  
28 order to the subject of the investigation. The subject shall  
29 have the right to a hearing. Within 30 days of the conclusion of  
30 the hearing, or, when no hearing is held, then within 30 days of

1 the issuance of the preliminary findings and proposed order, the  
2 commission shall issue an order which shall be final.

3 (f) Upon receipt of a final order, the subject shall have  
4 the right to file a petition for reconsideration by the  
5 commission which may include a request for a hearing.

6 (g) Hearings conducted pursuant to subsections (e) and (f)  
7 shall be closed to the public unless the subject requests an  
8 open hearing. Any person who appears before the commission shall  
9 have all of the due process rights, privileges and  
10 responsibilities of a party or witness appearing before an  
11 administrative agency of this Commonwealth. All witnesses  
12 summoned for such hearings shall receive reimbursement for  
13 reasonable expenses in accordance with 42 Pa.C.S. § 5903  
14 (relating to compensation and expenses of witnesses). At the  
15 conclusion of a hearing concerning an alleged violation and in a  
16 timely manner, the commission shall deliberate on the evidence  
17 and determine, by majority vote of the members present, whether  
18 there has been a violation of this act. The determination of the  
19 commission, in the form of a final order and findings of fact,  
20 shall be a matter of public record.

21 (h) Orders which become final in accordance with the  
22 provisions of this section shall be available as public  
23 documents, but the files and records of the commission relating  
24 to the case shall remain confidential.

25 (i) No action may be taken by the commission on a complaint  
26 filed against a public official or public employee unless the  
27 alleged offense was committed during the period of time within  
28 which the official or employee was in public office, was a  
29 nominee or candidate for public office, or was employed as a  
30 public employee, or within five years thereafter.

1       (j) Any person aggrieved by an opinion or order which  
2 becomes final in accordance with the provisions of this act who  
3 has direct interest in such opinion or order shall have the  
4 right to appeal therefrom in accordance with law and general  
5 rules.

6       (k) No public official or public employee shall discharge  
7 any official or employee or change his official rank, grade or  
8 compensation, or deny him a promotion, or threaten to do so, for  
9 filing a complaint with or providing information to the  
10 commission or testifying in any commission proceeding.

11 Section 9. Penalties.

12       (a) Any person who violates the provisions of section 3(a)  
13 and (b) is guilty of a felony and shall be fined not more than  
14 \$10,000 or imprisoned for not more than five years, or be both  
15 fined and imprisoned.

16       (b) Any person who violates the provisions of section 3(c)  
17 through [(h) or] (h), section 4 or section 5(a) is guilty of a  
18 misdemeanor and shall be fined not more than \$1,000 or  
19 imprisoned for not more than one year, or be both fined and  
20 imprisoned.

21       (c) Any person who obtains financial gain from violating any  
22 provision of this act, in addition to any other penalty provided  
23 by law, shall pay [into the State Treasury] a sum of money equal  
24 to three times the amount of the financial gain resulting from  
25 such violation into the State Treasury or the treasury of the  
26 political subdivision.

27       (d) The penalties prescribed in this act do not limit the  
28 power of either House of the Legislature to discipline its own  
29 members or impeach a public official, and do not limit the power  
30 of agencies or commissions to discipline officials or employees.

1 (e) Any person who violates the confidentiality of a  
2 commission proceeding pursuant to section 8, is guilty of a  
3 misdemeanor and shall be fined not more than \$1,000 or  
4 imprisoned for not more than one year, or be both fined and  
5 imprisoned. Any person who engages in retaliatory activity  
6 proscribed by section 8(k) is guilty of a misdemeanor and, in  
7 addition to any other penalty provided by law, shall be fined  
8 not more than \$1,000 or imprisoned for not more than one year,  
9 or be both fined and imprisoned. Any person who willfully  
10 affirms or swears falsely in regard to any material matter  
11 before a commission proceeding pursuant to section 8 is guilty  
12 of a felony and shall be fined not more than \$5,000 or  
13 imprisoned for not more than five years, or be both fined and  
14 imprisoned.

15 (f) In addition to any other civil remedy or criminal  
16 penalty provided for in this act, the commission may, after  
17 notice has been served in accordance with paragraph (5) of  
18 section 7 and upon a majority vote of its members, levy a civil  
19 penalty upon any person subject to this act who fails to file a  
20 statement of financial interest in a timely manner or who files  
21 a deficient statement of financial interests, at a rate of not  
22 more than \$25 for each day such statement remains delinquent or  
23 deficient. The maximum penalty payable under this paragraph is  
24 \$250.

25 Section 10. [Court employees.] Constables.

26 Nothing in this act, or in any other law or court rule shall  
27 be construed to prohibit any constable [or any employee of a  
28 court of common pleas, the Municipal Court of Philadelphia, the  
29 Traffic Court of Philadelphia, or any employee of a district  
30 justice] from also being an officer of a political body or

1 political party as such terms are defined in the act of June 3,  
2 1937 (P.L.1333, No.320), known as the "Pennsylvania Election  
3 Code," and the same may hold the office of a county, State or  
4 national committee of any political party, and may run for and  
5 hold any elective office, and may participate in any election  
6 day activities.

7 Section 2. The act is amended by adding a section to read:  
8 Section 10.1. Wrongful use of act.

9 (a) A person who signs a complaint alleging a violation of  
10 this act against another is subject to liability for wrongful  
11 use of this act if:

12 (1) he acted in a grossly negligent manner or without  
13 probable cause and primarily for a purpose other than that of  
14 reporting a violation of this act;

15 (2) he publicly disclosed or caused to be disclosed that  
16 a complaint against a person had been filed with the  
17 commission; and

18 (3) the commission determined that the complaint was  
19 frivolous as defined by this act or concluded that there was  
20 a lack of probable cause for belief that this act had been  
21 violated by the person.

22 (b) A person who signs a complaint alleging a violation of  
23 this act has probable cause for doing so if he reasonably  
24 believes in the existence of the facts upon which the claim is  
25 based and either:

26 (1) reasonably believes that under those facts the  
27 complaint may be valid under this act; or

28 (2) believes to this effect in reliance upon the advice  
29 of counsel, sought in good faith and given after full  
30 disclosure of all relevant facts within his knowledge and

1 information.

2 (c) When the essential elements of an action brought  
3 pursuant to this section have been established, the plaintiff is  
4 entitled to recover the following:

5 (1) The harm to his reputation by a defamatory matter  
6 alleged as the basis of the proceeding.

7 (2) The expenses, including any reasonable attorney  
8 fees, that he has reasonably incurred in proceedings before  
9 the commission.

10 (3) Any specific pecuniary loss that has resulted from  
11 the proceedings.

12 (4) Any emotional distress that has been caused by the  
13 proceedings.

14 (5) Any punitive damages according to law in appropriate  
15 cases.

16 Section 3. Section 11 of the act is reenacted and amended to  
17 read:

18 Section 11. Supplemental provisions.

19 Any governmental body may adopt requirements to supplement  
20 this act, provided that no such [requirement] requirements shall  
21 in any way be less restrictive than the act.

22 Section 4. Sections 12 and 13 of the act are reenacted to  
23 read:

24 Section 12. Conflict of law.

25 If the provisions of this act conflict with any other  
26 statute, ordinance, regulation or rule, the provisions of this  
27 act shall control.

28 Section 13. Severability.

29 If any provision of this act, or the application thereof to  
30 any person or circumstance, is held invalid, the validity of the

1 remainder of this act and the application of such provisions to  
2 other persons and circumstances shall not be affected thereby.

3 Section 5. Section 14 of the act, amended February 26, 1979  
4 (P.L.1, No.1), is reenacted to read:

5 Section 14. Effective date.

6 This act shall take effect January 1, 1979 except that  
7 subsections (b) and (e) of section 4 shall take effect August 1,  
8 1979 and subsections (a) and (d) of section 4 shall take effect  
9 January 1, 1980: Provided, however, That the Ethics Commission  
10 shall have the power and duty to require the filing of the  
11 financial disclosure statements of candidates for elective  
12 office between August 1, 1979 and January 1, 1980 at least 60  
13 days prior to such election, or in the case of a special  
14 election at least 15 days prior to such election.

15 Section 6. Persons who are members of the State Ethics  
16 Commission on the effective date of this act shall serve until  
17 their current terms have expired and shall be subject to the  
18 additional restrictions of section 6(d)(3) and (5) of the act of  
19 October 4, 1978 (P.L.883, No.170), referred to as the Public  
20 Official and Employee Ethics Law, unless a current commissioner  
21 was employed by a political subdivision on or before the  
22 effective date of this amendatory act, in which case the  
23 restriction set forth in section 6(d)(5) shall not apply.

24 Section 7. All rules and regulations promulgated by the  
25 State Ethics Commission shall remain in full force and effect  
26 until amended or rescinded by the commission, provided that the  
27 commission shall immediately initiate action to rescind or amend  
28 any rule or regulation that is in conflict with the provisions  
29 of this amendatory act or to promulgate additional regulations  
30 which may be required to implement the provisions of this

1 amendatory act.

2 Section 8. This act, with respect to the State Ethics  
3 Commission, constitutes the legislation required to reestablish  
4 an agency pursuant to the act of December 22, 1981 (P.L.508,  
5 No.142), known as the Sunset Act. The State Ethics Commission  
6 shall continue, together with its statutory functions and  
7 duties, until December 31, 1992, when it shall terminate and go  
8 out of existence unless reestablished or continued by the  
9 General Assembly for an additional ten years. Evaluation,  
10 review, termination, reestablishment and continuation of the  
11 agency beyond December 31, 1992, and every tenth year  
12 thereafter, shall be conducted pursuant to the Sunset Act.

13 Section 9. This amendatory act shall not apply to violations  
14 committed prior to the effective date of this act, and causes of  
15 action initiated for such violations shall be governed by the  
16 prior law, which is continued in effect for that purpose as if  
17 this act were not in force. For the purposes of this section, a  
18 violation was committed prior to the effective date of this act  
19 if any elements of the violation occurred prior thereto.

20 Section 10. This act shall take effect January 1, 1988.