

## AN ACT

1 Amending Title 18 (Crimes and Offenses) of the Pennsylvania  
2 Consolidated Statutes, providing for independent counsel.

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

5 Section 1. Chapter 93 of Title 18 of the Pennsylvania  
6 Consolidated Statutes is repealed:

## [CHAPTER 93

## INDEPENDENT COUNSEL

## 9 Subchapter

- 10 A. Preliminary Provisions  
11 B. General Provisions  
12 C. Authority and Duties of Independent Counsel  
13 D. Miscellaneous Provisions

## SUBCHAPTER A

## PRELIMINARY PROVISIONS

16 Sec.

17 9301. Short title of chapter.

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 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  
15 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  
20 the office or position, plus one year after such incumbency,  
21 but in no event longer than a period of three years after the  
22 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  
28 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

1 counsel considers appropriate in order to make a determination  
2 under section 9314 (relating to determination that further  
3 investigation not warranted) or 9315 (relating to determination  
4 that further investigation is warranted) of whether further  
5 investigation is warranted with respect to each potential  
6 violation or allegation of a violation of criminal law. The  
7 special investigative counsel shall make the determination no  
8 later than 90 days after the preliminary investigation is  
9 commenced. The special investigative counsel shall promptly  
10 notify the panel of the date of the commencement of the  
11 preliminary investigation.

12 (b) Limited authority of special investigative counsel.--

13 (1) In conducting preliminary investigations under this  
14 chapter, the special investigative counsel shall have no  
15 authority to convene grand juries, plea bargain, grant  
16 immunity or issue subpoenas.

17 (2) The special investigative counsel shall not base a  
18 determination under this chapter that information with  
19 respect to a violation of criminal law by a person is not  
20 specific and from a credible source upon a determination that  
21 the person lacked the state of mind required for the  
22 violation of criminal law. The special investigative counsel  
23 shall not base a determination under this chapter that there  
24 are no reasonable grounds to believe that further  
25 investigation is warranted upon a determination that the  
26 person lacked the state of mind required for the violation of  
27 criminal law involved unless there is clear and convincing  
28 evidence that the person lacked the required state of mind.

29 (c) Extension of time for preliminary investigation.--The  
30 special investigative counsel may apply to the panel for a

1 determination that further investigation not warranted).

2 (b) Receipt of additional information.--If, after submitting  
3 a notification under section 9314(a), the special investigative  
4 counsel receives additional information sufficient to constitute  
5 grounds to investigate the matters to which the notification  
6 related, the special investigative counsel shall:

7 (1) Conduct an additional preliminary investigation as  
8 the special investigative counsel considers appropriate for a  
9 period of no more than 90 days after the date on which the  
10 additional information is received.

11 (2) Otherwise comply with the provisions of this  
12 subchapter with respect to the additional preliminary  
13 investigation to the same extent as any other preliminary  
14 investigation under this chapter.

15 § 9316. Contents of application.

16 Any application for the appointment of an independent counsel  
17 under this chapter shall contain sufficient information to  
18 assist the panel in selecting an independent counsel and in  
19 defining that independent counsel's prosecutorial jurisdiction  
20 so that the independent counsel has adequate authority to fully  
21 investigate and prosecute the subject matter and all matters  
22 related to that subject matter.

23 § 9317. Disclosure of information.

24 Except as otherwise provided in this chapter, no officer or  
25 employee of the office of special investigative counsel or the  
26 office of independent counsel may, without leave of the panel,  
27 disclose to any individual outside the office of special  
28 investigative counsel or office of independent counsel any  
29 notification, application or any other document, material or  
30 memorandum supplied to the panel under this chapter. Nothing in

1 jurisdiction, the panel shall assure that the independent  
2 counsel has adequate authority to fully investigate and  
3 prosecute the subject matter with respect to which the  
4 special investigative counsel has requested the appointment  
5 of the independent counsel and all matters related to that  
6 subject matter. Jurisdiction shall also include the authority  
7 to investigate and prosecute the following offenses which may  
8 arise out of the investigation with respect to which the  
9 special investigative counsel's request was made:

10 (i) An offense classified higher than a misdemeanor  
11 of the second degree.

12 (ii) An offense which is classified higher than a  
13 summary offense and which involves a breach of the public  
14 trust. This paragraph includes a violation of the act of  
15 June 3, 1937 (P.L.1333, No.320), known as the  
16 Pennsylvania Election Code, or the act of October 4, 1978  
17 (P.L.883, No.170), referred to as the Public Official and  
18 Employee Ethics Law.

19 (4) The panel shall disclose the identity of the  
20 independent counsel upon appointment.

21 (b) Expansion of jurisdiction.--

22 (1) The panel upon the request of the General Counsel  
23 may expand the prosecutorial jurisdiction of an independent  
24 counsel. The expansion may be in lieu of the appointment of  
25 another independent counsel.

26 (2) If the independent counsel discovers or receives  
27 information about possible violations of criminal law by  
28 persons as provided in section 9312 (relating to preliminary  
29 investigation) which are not covered by the prosecutorial  
30 jurisdiction of the independent counsel, the independent

1 which are not covered by the prosecutorial jurisdiction of  
2 the independent counsel and a request for expansion under  
3 this subsection has not been made by the General Counsel or  
4 the request for expansion under this subsection has been  
5 denied by the panel, the independent counsel shall submit the  
6 information to the appropriate law enforcement authority.

7 (c) Return for further explanation.--Upon receipt of a  
8 notification under this subchapter that there are no reasonable  
9 grounds to believe that further investigation is warranted with  
10 respect to information received under this chapter, the panel  
11 shall have no authority to overrule this determination but may  
12 return the matter to the special investigative counsel for  
13 further explanation of the reasons for the determination.

14 (d) Vacancies.--If a vacancy in office arises by reason of  
15 the resignation, death or removal of an independent counsel, the  
16 panel shall appoint an independent counsel to complete the work  
17 of the independent counsel whose resignation, death or removal  
18 caused the vacancy, except that, in the case of a vacancy  
19 arising by reason of the removal of an independent counsel, the  
20 panel may appoint an acting independent counsel to serve until  
21 any judicial review of the removal is completed.

## 22 SUBCHAPTER C

### 23 AUTHORITY AND DUTIES OF INDEPENDENT COUNSEL

24 Sec.

25 9331. Authorities.

26 9332. Compensation and travel expenses.

27 9333. Additional personnel.

28 9334. Assistance of Pennsylvania State Police.

29 9335. Referral of other matters to independent counsel.

30 9336. Dismissal of matters.

1 an official capacity.

2 (4) Reviewing all documentary evidence available from  
3 any source.

4 (5) Determining whether to contest the assertion of any  
5 testimonial privilege.

6 (6) Receiving appropriate security clearances and, if  
7 necessary, contesting in court, including, where appropriate,  
8 participating in an in camera proceeding, any claim of  
9 privilege or attempt to withhold evidence on grounds of  
10 security.

11 (7) Making applications to any State court for a grant  
12 of immunity to any witness, consistent with applicable  
13 statutory requirements, or for warrants, subpoenas or other  
14 court orders and exercising the authority vested in the  
15 Attorney General or a district attorney.

16 (8) Inspecting, obtaining or using the original or a  
17 copy of any tax return in accordance with applicable statutes  
18 and regulations.

19 (9) Initiating and conducting prosecutions in any court  
20 of competent jurisdiction, framing and signing indictments,  
21 filing information and handling all aspects of any case in  
22 the name of the Commonwealth.

23 (10) Consulting with the district attorney for the  
24 county in which any violation of law with respect to which  
25 the independent counsel is appointed was alleged to have  
26 occurred.

27 § 9332. Compensation and travel expenses.

28 An independent counsel appointed under this chapter shall  
29 receive compensation at the per diem rate equal to the annual  
30 rate of basic pay payable to the Attorney General. An

1 days after the end of each fiscal year, a report on amounts paid  
2 during that fiscal year for expenses of investigations and  
3 prosecutions by independent counsel. Each report shall include a  
4 statement of all payments made for activities of independent  
5 counsel.

6 § 9335. Referral of other matters to independent counsel.

7 An independent counsel may ask the panel to refer to the  
8 independent counsel matters related to the independent counsel's  
9 prosecutorial jurisdiction, and the panel may refer these  
10 matters. If the Attorney General refers a matter to an  
11 independent counsel on the Attorney General's own initiative,  
12 the independent counsel may accept the referral if the matter  
13 relates to the independent counsel's prosecutorial jurisdiction.

14 § 9336. Dismissal of matters.

15 The independent counsel shall have full authority to dismiss  
16 matters within the independent counsel's prosecutorial  
17 jurisdiction without conducting an investigation or at any  
18 subsequent time before prosecution.

19 § 9337. Reports by independent counsel.

20 (a) Required reports.--An independent counsel shall:

21 (1) File with the panel, with respect to the six-month  
22 period beginning on the date of his appointment and with  
23 respect to each six-month period thereafter until the office  
24 of that independent counsel terminates, a report which  
25 identifies and explains major expenses, summarizes all other  
26 expenses incurred by that office during the six-month period  
27 with respect to which the report is filed and estimates  
28 future expenses of that office.

29 (2) Before the termination of the independent counsel's  
30 office under section 9343(b) (relating to removal of

1 which the independent counsel is associated may not represent in  
2 any matter any person involved in any investigation or  
3 prosecution under this chapter. During the period in which any  
4 person appointed by an independent counsel under section 9333  
5 (relating to additional personnel) is serving in the office of  
6 independent counsel, the person may not represent in any matter  
7 any person involved in any investigation or prosecution under  
8 this chapter.

9 (b) Postemployment restrictions on independent counsel and  
10 appointees.--

11 (1) Each independent counsel and each person appointed  
12 by that independent counsel under section 9333 may not for  
13 three years following the termination of service under this  
14 chapter of that independent counsel or appointed person, as  
15 the case may be, represent any person in any matter if that  
16 individual was the subject of an investigation or prosecution  
17 conducted by that independent counsel under this chapter.

18 (2) Each independent counsel and each person appointed  
19 by that independent counsel under section 9333 may not for  
20 one year following the termination of service under this  
21 chapter of that independent counsel or appointed person, as  
22 the case may be, represent any person in any matter involving  
23 any investigation or prosecution under this chapter.

24 (c) One-year ban on representation by members of firms of  
25 independent counsel.--Any person who is associated with a firm  
26 with which an independent counsel is associated or becomes  
27 associated after termination of service of that independent  
28 counsel under this chapter may not for one year following the  
29 termination represent any person in any matter involving any  
30 investigation or prosecution under this chapter.

1 of Administration of the Governor respecting expenditures of  
2 funds, except to the extent that compliance would be  
3 inconsistent with the purposes of this chapter.

4 § 9342. Legislative oversight.

5 (a) Oversight of conduct of independent counsel.--An  
6 independent counsel appointed under this chapter shall submit to  
7 the General Assembly a report detailing all moneys expended as  
8 required under section 9337(a)(1) (relating to reports by  
9 independent counsel). In addition, the independent counsel shall  
10 submit annually a report on the activities of the independent  
11 counsel, including a description of the progress of any  
12 investigation or prosecution conducted by the independent  
13 counsel. The report may omit any matter that in the judgment of  
14 the independent counsel should be kept confidential but shall  
15 provide information adequate to justify the expenditures that  
16 the office of the independent counsel has made.

17 (b) Information relating to impeachment.--An independent  
18 counsel shall advise the House of Representatives of any  
19 substantial and credible information which the independent  
20 counsel receives in carrying out the independent counsel's  
21 responsibilities under this chapter that may constitute grounds  
22 for an impeachment. Nothing in this chapter shall prevent the  
23 General Assembly or either house thereof from obtaining  
24 information in the course of an impeachment proceeding.

25 § 9343. Removal of independent counsel and termination of  
26 office.

27 (a) Removal, report on removal and termination.--

28 (1) An independent counsel appointed under this chapter  
29 may be removed from office only by the personal action of the  
30 General Counsel and only for good cause, physical disability,

1 independent counsel or accepted by the independent  
2 counsel, and any resulting prosecutions, have been  
3 completed; and

4 (ii) files a final report in compliance with section  
5 9337.

6 (2) The panel shall determine on its own motion whether  
7 termination is appropriate under this subsection no later  
8 than two years after the appointment of an independent  
9 counsel or the reported expenditures of the independent  
10 counsel have reached \$2,000,000, whichever occurs first, and  
11 at the end of each succeeding one-year period.

12 § 9344. Audits.

13 By December 31 of each year, an independent counsel shall  
14 prepare a statement of expenditures for the fiscal year that  
15 ended on the immediately preceding June 30. An independent  
16 counsel whose office is terminated prior to the end of the  
17 fiscal year shall prepare a statement of expenditures within 90  
18 days of the date on which the office is terminated. The Auditor  
19 General shall audit each statement and report the results of  
20 each audit to the appropriate committees of the General Assembly  
21 no later than March 31 of the year following the submission of  
22 the statement.

23 § 9345. Relationship with Office of Attorney General.

24 Whenever a matter is in the prosecutorial jurisdiction of an  
25 independent counsel or has been accepted by an independent  
26 counsel under section 9335 (relating to referral of other  
27 matters to independent counsel), the Office of Attorney General,  
28 the Attorney General, all other officers and employees of the  
29 Office of Attorney General and any district attorney shall  
30 suspend all investigations and proceedings regarding that matter

1 Subchapter

2 A. Preliminary Provisions

3 B. General Provisions

4 C. Authority and Duties of Independent Counsel

5 D. Miscellaneous Provisions

6 SUBCHAPTER A

7 PRELIMINARY PROVISIONS

8 Sec.

9 93A01. Scope of chapter.

10 93A02. Definitions.

11 93A03. Applicability.

12 § 93A01. Scope of chapter.

13 This chapter relates to independent counsel authorization.

14 § 93A02. Definitions.

15 The following words and phrases when used in this chapter  
16 shall have the meanings given to them in this section unless the  
17 context clearly indicates otherwise:

18 "Constitution." The Constitution of Pennsylvania.

19 "Executive agency." As defined in section 102 of the act of  
20 October 15, 1980 (P.L.950, No.164), known as the Commonwealth  
21 Attorneys Act.

22 "General Counsel." The General Counsel of the Commonwealth.

23 "Grounds to investigate." Information which would lead a  
24 reasonable person to suspect that a crime is being or has been  
25 committed.

26 "Independent agency." As defined in section 102 of the act  
27 of October 15, 1980 (P.L.950, No.164), known as the Commonwealth  
28 Attorneys Act.

29 "Independent counsel." A person appointed by the Special  
30 Independent Counsel's Panel upon the request of a special

1       (a) Composition and selection.--The Special Independent  
2 Counsel's Panel shall be composed of one judge of the  
3 Commonwealth Court, one judge of the Superior Court and three  
4 judges, including senior judges, of the courts of common pleas  
5 of the Commonwealth. The members of the panel shall be chosen by  
6 lot. The procedure shall be determined by and supervised by the  
7 Court Administrator of Pennsylvania in the Administrative Office  
8 of Pennsylvania Courts. The Administrative Office of  
9 Pennsylvania Courts shall disclose to the public the membership  
10 of the panel.

11       (b) Term of members.--Each member of the panel shall hold  
12 office for a term of three years. Judges who are members of the  
13 panel and are required to retire under section 16 of Article V  
14 of the Constitution shall also vacate their positions on the  
15 panel unless assigned under Chapter 7 of the Pennsylvania Rules  
16 of Judicial Administration. A judge who is otherwise removed or  
17 suspended from office shall automatically forfeit the position  
18 held by that judge on the panel.

19       (c) Vacancies.--Any vacancy in the panel shall be filled  
20 only for the remainder of the three-year period in which the  
21 vacancy occurs and in the same manner as initial assignments to  
22 the panel were made.

23       (d) Decisions by super-majority vote.--All decisions of the  
24 panel shall be by vote of at least four of the members.

25       (e) Clerk.--The Prothonotary of Commonwealth Court shall  
26 serve as the clerk of the panel and shall provide such services  
27 as are needed by the panel.

28       (f) Restriction.--No member of the panel who participated in  
29 a function conferred on the panel under this chapter involving  
30 an independent counsel shall be eligible to participate in any

1 Attorney General or other officer of the Attorney General's  
2 office may result in a personal, financial or political conflict  
3 of interest. In addition, the Attorney General may request in  
4 writing that the Special Independent Counsel's Panel 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 (b.1) Preliminary investigation at request of General  
12 Assembly.--

13 (1) The Speaker of the House of Representatives may  
14 request in writing that the Special Independent Counsel's  
15 Panel appoint a special investigative counsel to conduct a  
16 preliminary investigation in accordance with this chapter if  
17 the Speaker receives information sufficient to constitute  
18 grounds to investigate whether a member of the House of  
19 Representatives may have committed any of the following:

20 (i) An offense which is classified higher than a  
21 misdemeanor of the second degree.

22 (ii) An offense which is classified higher than a  
23 summary offense and which involves a breach of the public  
24 trust. This paragraph shall include a violation of any of  
25 the following:

26 (A) The act of June 3, 1937 (P.L.1333, No.320),  
27 known as the Pennsylvania Election Code.

28 (B) The act of October 4, 1978 (P.L.883,  
29 No.170), referred to as the Public Official and  
30 Employee Ethics Law.

1 is defined as a "public employee" under the Public Official  
2 and Employee Ethics Law.

3 (2) Any individual who leaves any office or position  
4 described in paragraph (1) during the incumbency of the  
5 Attorney General with or under whom such individual served in  
6 the office or position, plus one year after such incumbency,  
7 but in no event longer than a period of three years after the  
8 individual leaves the office or position.

9 (3) Any individual who held an office or position  
10 described in paragraph (1) during the incumbency of one  
11 Attorney General and who continued to hold the office or  
12 position for not more than 90 days into the term of the next  
13 Attorney General, during the one-year period after the  
14 individual leaves the office or position.

15 (4) The chairman and treasurer of the principal campaign  
16 committee seeking the election or reelection of the Attorney  
17 General, and any officer of that committee exercising  
18 authority at the State level, during the incumbency of the  
19 elected Attorney General.

20 (d) Examination of information to determine need for  
21 preliminary investigation.--In determining under subsection (a)  
22 whether grounds to investigate exist, the General Counsel shall  
23 consider only the specificity of the information received and  
24 the credibility of the source of the information. The General  
25 Counsel shall determine whether grounds to investigate exist no  
26 later than 30 days after the information is first received. If  
27 within that 30-day period the General Counsel determines that  
28 the information is not specific or is not from a credible  
29 source, then the General Counsel shall close the matter. If  
30 within that 30-day period the General Counsel determines that

1 notify the panel of the date of the commencement of the  
2 preliminary investigation.

3 (b) Limited authority of special investigative counsel.--

4 (1) In conducting preliminary investigations under this  
5 chapter, the special investigative counsel shall have no  
6 authority to convene grand juries, plea bargain, grant  
7 immunity or issue subpoenas.

8 (2) The special investigative counsel shall not base a  
9 determination under this chapter that information with  
10 respect to a violation of criminal law by a person is not  
11 specific and from a credible source upon a determination that  
12 the person lacked the state of mind required for the  
13 violation of criminal law. The special investigative counsel  
14 shall not base a determination under this chapter that there  
15 are no reasonable grounds to believe that further  
16 investigation is warranted upon a determination that the  
17 person lacked the state of mind required for the violation of  
18 criminal law involved unless there is clear and convincing  
19 evidence that the person lacked the required state of mind.

20 (c) Extension of time for preliminary investigation.--The  
21 special investigative counsel may apply to the panel for a  
22 single extension, for a period of no more than 60 days, of the  
23 90-day period referred to in subsection (a). The panel may, upon  
24 a showing of good cause, grant the extension.

25 § 93A14. Determination that further investigation not  
26 warranted.

27 (a) Notification of panel.--If the special investigative  
28 counsel upon completion of a preliminary investigation under  
29 this chapter determines that there are no reasonable grounds to  
30 believe that further investigation is warranted, the special

1 period of no more than 90 days after the date on which the  
2 additional information is received.

3 (2) Otherwise comply with the provisions of this  
4 subchapter with respect to the additional preliminary  
5 investigation to the same extent as any other preliminary  
6 investigation under this chapter.

7 § 93A15.1. Determination that defense of a regulation, statute  
8 or constitutional provision is warranted.

9 (a) Notification of panel.--If the special investigative  
10 counsel, upon completion of a preliminary investigation under  
11 this chapter, determines that there are no reasonable grounds to  
12 believe that a pending judicial proceeding challenges the  
13 constitutionality, legality, validity or enforceability of all  
14 or part of a regulation or statute or provision of the  
15 constitution and the Attorney General and the executive branch  
16 of government will not defend the regulation, statute or  
17 constitutional provision, the special investigative counsel  
18 shall promptly notify the panel and the panel shall have no  
19 power to appoint an independent counsel with respect to the  
20 matters involved. The notification shall contain a summary of  
21 the information received and a summary of the results of the  
22 preliminary investigation. The summary shall be confidential and  
23 not subject to public disclosure.

24 (b) Application for appointment.--The special investigative  
25 counsel shall apply to the panel for the appointment of an  
26 independent counsel if either of the following apply:

27 (1) The special investigative counsel, upon completion  
28 of a preliminary investigation under this chapter, determines  
29 that there are reasonable grounds to believe a pending  
30 judicial proceeding challenges the constitutionality,

1 so that the independent counsel has adequate authority to fully  
2 investigate and prosecute the subject matter and all matters  
3 related to that subject matter.

4 § 93A17. Disclosure of information.

5 Except as otherwise provided in this chapter, no officer or  
6 employee of the office of special investigative counsel or the  
7 office of independent counsel may, without leave of the panel,  
8 disclose to any individual outside the office of special  
9 investigative counsel or office of independent counsel any  
10 notification, application or any other document, material or  
11 memorandum supplied to the panel under this chapter. Nothing in  
12 this chapter shall be construed as authorizing the withholding  
13 of information from the General Assembly.

14 § 93A18. Limitation on judicial review.

15 The determination of the special investigative counsel under  
16 this chapter to apply to the panel for the appointment of an  
17 independent counsel shall not be reviewable in any court.

18 § 93A19. Duties of panel.

19 (a) Appointment and jurisdiction of prosecutorial  
20 independent counsel.--

21 (1) Upon receipt of an application for the appointment  
22 of a prosecutorial independent counsel, the panel shall  
23 appoint an appropriate independent counsel and shall define  
24 that independent counsel's prosecutorial jurisdiction. The  
25 appointment shall occur no later than 30 days after the  
26 receipt of the application.

27 (2) The panel shall appoint as independent counsel an  
28 individual who has appropriate experience and who will  
29 conduct the investigation and any prosecution in a prompt,  
30 responsible and cost-effective manner. The panel shall seek

1 Employee Ethics Law.

2 (4) The panel shall disclose the identity of the  
3 independent counsel upon appointment.

4 (a.1) Appointment and jurisdiction of independent counsel in  
5 defense of a regulation, statute or constitutional provision.--

6 (1) Upon receipt of an application for appointment of an  
7 independent counsel in defense of regulation, statute or  
8 constitutional provision, the panel shall appoint an  
9 appropriate independent counsel and shall define the  
10 independent counsel's jurisdiction. The appointment shall  
11 occur no later than 30 days after the receipt of the  
12 application.

13 (2) The panel shall appoint as independent counsel an  
14 individual who has appropriate experience and who will  
15 conduct the defense in a prompt, responsible and cost-  
16 effective manner. The panel shall seek to appoint as  
17 independent counsel an individual who will serve to the  
18 extent necessary to complete the defense without undue delay.  
19 The panel may not appoint as an independent counsel any  
20 person who holds any office of profit or trust with the  
21 Commonwealth. No person who is serving as a special  
22 investigative counsel may be appointed or serve as an  
23 independent counsel in the matter for which they had been  
24 appointed to investigate as special investigative counsel. If  
25 an independent counsel is appointed, the independent counsel  
26 may only accept the appointment when such appointment would  
27 not conflict with the rules governing professional conduct.

28 (3) In defining the independent counsel's jurisdiction,  
29 the panel shall assure that the independent counsel has  
30 adequate authority to fully defend the subject matter with

1 the independent counsel or to appoint another independent  
2 counsel with respect to the matters involved.

3 (4) The panel shall expand the jurisdiction of the  
4 appropriate independent counsel to include the matters  
5 involved or shall appoint another independent counsel to  
6 investigate the matters if:

7 (i) the special investigative counsel determines  
8 that there are reasonable grounds to believe that further  
9 investigation is warranted; or

10 (ii) the 30-day period referred to in paragraph (2)  
11 elapses without a notification to the panel that no  
12 further investigation is warranted.

13 (5) If the independent counsel discovers or receives  
14 information about possible violations of criminal law by  
15 persons other than those provided for in section 93A12 and  
16 which are not covered by the prosecutorial jurisdiction of  
17 the independent counsel and a request for expansion under  
18 this subsection has not been made by the panel or the request  
19 for expansion under this subsection has been denied by the  
20 panel, the independent counsel shall submit the information  
21 to the appropriate law enforcement authority.

22 (6) The following shall apply:

23 (i) If the independent counsel discovers or receives  
24 information about a possible pending judicial proceeding  
25 which challenges the constitutionality, legality,  
26 validity or enforceability of all or part of a regulation  
27 or statute or provision of the Constitution where the  
28 Attorney General or an executive agency or an independent  
29 agency will not defend the regulation, statute or  
30 constitutional provision in the proceeding, the

1 agency or an independent agency, will not defend the  
2 regulation, statute or constitutional provision in  
3 the proceeding.

4 (B) The 30-day period under subparagraph (ii)  
5 elapses without a notification to the panel that no  
6 further investigation is warranted.

7 (c) Return for further explanation.--Upon receipt of a  
8 notification under this subchapter that there are no reasonable  
9 grounds to believe that further investigation is warranted with  
10 respect to information received under this chapter, the panel  
11 shall have no authority to overrule this determination but may  
12 return the matter to the special investigative counsel for  
13 further explanation of the reasons for the determination.

14 (d) Vacancies.--If a vacancy in office arises by reason of  
15 the resignation, death or removal of an independent counsel, the  
16 panel shall appoint an independent counsel to complete the work  
17 of the independent counsel whose resignation, death or removal  
18 caused the vacancy, except that, in the case of a vacancy  
19 arising by reason of the removal of an independent counsel, the  
20 panel may appoint an acting independent counsel to serve until  
21 any judicial review of the removal is completed.

## 22 SUBCHAPTER C

### 23 AUTHORITY AND DUTIES OF INDEPENDENT COUNSEL

#### 24 25 Sec.

26 93A31. Authorities of prosecutorial independent counsel.

27 93A31.1. Authorities of independent counsel in defense of  
28 regulation, statute or constitutional provision.

29 93A31.2. Standing of independent counsel in defense of  
30 regulation, statute or constitutional provision.

1           (1) Conducting proceedings before grand juries and other  
2 investigations.

3           (2) Participating in court proceedings and engaging in  
4 any litigation, including civil and criminal matters, that  
5 the independent counsel considers necessary.

6           (3) Appealing any decision of a court in any case or  
7 proceeding in which the independent counsel participates in  
8 an official capacity.

9           (4) Reviewing all documentary evidence available from  
10 any source.

11           (5) Determining whether to contest the assertion of any  
12 testimonial privilege.

13           (6) Receiving appropriate security clearances and, if  
14 necessary, contesting in court, including, where appropriate,  
15 participating in an in camera proceeding, any claim of  
16 privilege or attempt to withhold evidence on grounds of  
17 security.

18           (7) Making applications to any State court for a grant  
19 of immunity to any witness, consistent with applicable  
20 statutory requirements, or for warrants, subpoenas or other  
21 court orders and exercising the authority vested in the  
22 Attorney General or a district attorney.

23           (8) Inspecting, obtaining or using the original or a  
24 copy of any tax return in accordance with applicable statutes  
25 and regulations.

26           (9) Initiating and conducting prosecutions in any court  
27 of competent jurisdiction, framing and signing indictments,  
28 filing information and handling all aspects of any case in  
29 the name of the Commonwealth.

30           (10) Consulting with the district attorney for the

1 panel's grant of jurisdiction under section 93A19(a.1) (relating  
2 to duties of panel).

3 § 93A31.3. Privileges and immunities.

4 Appointment of a special investigative counsel or independent  
5 counsel may not constitute a waiver of sovereign, governmental,  
6 legislative or other applicable privilege or immunity. Special  
7 investigative counsel or independent counsel shall have no power  
8 to waive sovereign, governmental, legislative or any other  
9 applicable privilege or immunity.

10 § 93A32. Compensation and travel expenses.

11 An independent counsel appointed under this chapter shall  
12 receive compensation at the per diem rate equal to the annual  
13 rate of basic pay payable to the Attorney General. An  
14 independent counsel and persons appointed under section 93A33  
15 (relating to additional personnel) shall be entitled to the  
16 payment of travel expenses.

17 § 93A33. Additional personnel.

18 For the purposes of carrying out the duties of the office of  
19 independent counsel, the independent counsel may appoint, fix  
20 the compensation and assign the duties of the employees the  
21 independent counsel considers necessary, including, but not  
22 limited to, investigators, attorneys and necessary experts to  
23 assist with the criminal investigation. The positions of these  
24 employees are exempted from the competitive service. Employees  
25 shall be compensated at levels not to exceed those payable for  
26 comparable positions in the Office of Attorney General.

27 § 93A34. Assistance of Pennsylvania State Police.

28 (a) Carrying out functions.--An independent counsel with  
29 prosecutorial jurisdiction may request assistance from the  
30 Pennsylvania State Police in carrying out the functions of the

1 jurisdiction without conducting an investigation or at any  
2 subsequent time before prosecution.

3 § 93A37. Reports by independent counsel.

4 (a) Required reports.--An independent counsel shall:

5 (1) File with the panel, with respect to the six-month  
6 period beginning on the date of his appointment and with  
7 respect to each six-month period thereafter until the office  
8 of that independent counsel terminates, a report which  
9 identifies and explains major expenses, summarizes all other  
10 expenses incurred by that office during the six-month period  
11 with respect to which the report is filed and estimates  
12 future expenses of that office.

13 (2) Before the termination of the independent counsel's  
14 office under section 93A43(b) (relating to removal of  
15 independent counsel and termination of office), file a final  
16 report with the panel, setting forth fully and completely a  
17 description of all prosecutions. All other information shall  
18 be confidential and not subject to public disclosure.

19 (b) Disclosure of information in reports.--The panel shall  
20 release to the General Assembly, the Governor, the State  
21 Treasurer, the public and any appropriate person a final report  
22 filed under subsection (a) (2). The panel shall make any orders  
23 as are appropriate to protect the rights of any individual named  
24 in the report and to prevent undue interference with any pending  
25 prosecution. The panel may make any portion of a final report to  
26 be filed under subsection (a) (2) available to any individual  
27 named in the report for the purposes of receiving within a time  
28 limit set by the panel any comments or factual information that  
29 the individual may submit. The comments and factual information,  
30 in whole or in part, may in the discretion of the panel be

1           (2) Each independent counsel and each person appointed  
2           by that independent counsel under section 93A33 may not for  
3           one year following the termination of service under this  
4           chapter of that independent counsel or appointed person, as  
5           the case may be, represent any person in any matter involving  
6           any investigation or prosecution under this chapter.

7           (c) One-year ban on representation by members of firms of  
8           independent counsel.--Any person who is associated with a firm  
9           with which an independent counsel is associated or becomes  
10           associated after termination of service of that independent  
11           counsel under this chapter may not for one year following the  
12           termination represent any person in any matter involving any  
13           investigation or prosecution under this chapter.

14           (d) Definitions.--As used in this section, the following  
15           words and phrases shall have the meanings given to them in this  
16           subsection:

17           "Associated with a firm." A person who is an officer,  
18           director, partner or other member or employee of a law firm.

19           "Firm." A law firm, whether organized as a partnership or  
20           corporation.

21           § 93A40. Custody of records of independent counsel.

22           (a) Transfer of records.--Upon termination of the office of  
23           independent counsel, that independent counsel shall transfer to  
24           the Bureau of Archives and History of the Pennsylvania  
25           Historical and Museum Commission all records which have been  
26           created or received by that office. Before this transfer, the  
27           independent counsel shall clearly identify which of these  
28           records are subject to the Pennsylvania Rules of Criminal  
29           Procedure as grand jury materials.

30           (b) Maintenance, use and disposal of records.--Records

1 (b) Information relating to impeachment.--An independent  
2 counsel shall advise the House of Representatives of any  
3 substantial and credible information which the independent  
4 counsel receives in carrying out the independent counsel's  
5 responsibilities under this chapter that may constitute grounds  
6 for an impeachment. Nothing in this chapter shall prevent the  
7 General Assembly or either house thereof from obtaining  
8 information in the course of an impeachment proceeding.

9 § 93A43. Removal of independent counsel and termination of  
10 office.

11 (a) Removal, report on removal and termination.--

12 (1) An independent counsel appointed under this chapter  
13 may be removed from office only by the personal action of the  
14 General Counsel and only for good cause, physical disability,  
15 mental incapacity or any other condition that substantially  
16 impairs the performance of the independent counsel's duties.  
17 For purposes of this paragraph, the term "good cause"  
18 includes, but is not limited to, violations of any ethical  
19 rules governing the independent counsel, the Attorney General  
20 or district attorneys.

21 (2) If an independent counsel is removed from office,  
22 the General Counsel shall promptly submit to the panel, the  
23 Judiciary Committee of the Senate and the Judiciary Committee  
24 of the House of Representatives a report specifying the facts  
25 found and the ultimate grounds for the removal. The  
26 committees may make available to the public the report,  
27 except that each committee may, if necessary to protect the  
28 rights of any individual named in the report or to prevent  
29 undue interference with any pending prosecution, postpone or  
30 refrain from publishing any or all of the report. The panel

1 counsel whose office is terminated prior to the end of the  
2 fiscal year shall prepare a statement of expenditures within 90  
3 days of the date on which the office is terminated. The Auditor  
4 General shall audit each statement and report the results of  
5 each audit to the appropriate committees of the General Assembly  
6 no later than March 31 of the year following the submission of  
7 the statement.

8 § 93A45. Relationship with Office of Attorney General.

9 Whenever a matter is in the prosecutorial jurisdiction of an  
10 independent counsel or has been accepted by an independent  
11 counsel under section 93A35 (relating to referral of other  
12 matters to independent counsel), the Office of Attorney General,  
13 the Attorney General, all other officers and employees of the  
14 Office of Attorney General and any district attorney shall  
15 suspend all investigations and proceedings regarding that matter  
16 and shall turn over to the independent counsel all materials,  
17 files and other data relating to that matter.

18 § 93A46. Venue.

19 The proper venue for all prosecutions conducted by the  
20 independent counsel shall be determined in accordance with the  
21 Pennsylvania Rules of Criminal Procedure. For the purposes of  
22 convenience and fairness, the panel may, however, set the venue  
23 in any other county on its own motion or at the request of the  
24 independent counsel or on petition of the defendant.

25 SUBCHAPTER D

26 MISCELLANEOUS PROVISIONS

27  
28 Sec.

29 93A51. Severability of chapter.

30 93A51.1. Exemption.