

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL
No. 1733 Session of
1987

INTRODUCED BY DeWEESE, MOEHLMANN, HECKLER, BLAUM, KOSINSKI,
HAGARTY, McHALE, CALTAGIRONE, MAIALE, KUKOVICH, BALDWIN AND
JOSEPHS, SEPTEMBER 29, 1987

REFERRED TO COMMITTEE ON JUDICIARY, SEPTEMBER 29, 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 10, 11, 12 and 13 of the act of October 4, 1978 (P.L.883,
16 No.170), referred to as the Public Official and Employee Ethics
17 Law, are reenacted 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
22 public employees from engaging in certain conflict of

1 interest activities requiring certain disclosures and
2 providing penalties.

3 Section 1. Purpose.

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

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

22 Section 2. Definitions.

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

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

1 "Anything of value." Any money, service, political
2 contribution, loan or promise of future or continued employment.
3 "Anything of value" does not include honoraria and expenses
4 reportable under paragraph (7) of section 5, a gift reportable
5 under paragraph (6) of section 5, or income and expenses paid by
6 an employing governmental body.

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

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

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

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

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

1 such office.

2 "Candidate" includes announced write-in candidates, whether or
3 not they are elected to or nominated for an office, and
4 unannounced write-in candidates who are elected to or nominated
5 for an office.

6 "Commission." The State Ethics Commission.

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

12 "Conflict" or "conflict of interest." A transaction where a
13 public official or public employee uses the authority of his
14 office or employment for the private pecuniary benefit or
15 detriment of himself, a member of his immediate family, or a
16 business with which he or a member of his immediate family is
17 associated. "Conflict" or "conflict of interest" does not
18 include an action having a de minimis economic impact or which
19 affects to the same degree a class consisting of the general
20 public or a subclass consisting of an industry, occupation or
21 other group which includes the public official or public
22 employee, a member of his immediate family or a business with
23 which he or a member of his immediate family is associated.

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

1 reimbursement, salary, wage, retirement or other benefit, tenure
2 or other matters in consideration of his employment with a State
3 or political subdivision.

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

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

13 "Financial interest." Any financial interest in a legal
14 entity engaged in business for profit which comprises more than
15 5% of the equity of the business or more than 5% of the assets
16 of the economic interest in indebtedness.

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

19 "Gift." [A payment, subscription, advance, forbearance,
20 rendering or deposit of money, services or anything of value,
21 unless consideration of equal or greater value is received]
22 Anything which is received without consideration. "Gift" shall
23 not include a political contribution otherwise reported as
24 required by law, a commercially reasonable loan made in the
25 ordinary course of business, [or] honoraria or expenses
26 reportable under paragraph (7) of section 5, a gift received
27 from a member of the person's immediate family or from a
28 relative within the third degree of consanguinity of the person
29 or of the person's spouse or from the spouse of any such
30 relative, or a gift received from a person having no direct

interest in a matter before the governmental body with which the public official or public employee is associated.

"Governmental body." Any department, authority, commission, committee, council, board, bureau, division, service, office, officer, administration, legislative body, or other establishment in the Executive, Legislative or Judicial Branch of the State or a political subdivision thereof.

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

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

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

"Income." Any money or [thing of value] property received, or to be received as a claim on future services, whether in the form of a payment, fee, salary, expense, allowance, forbearance, forgiveness, interest, dividend, royalty, rent, capital gain, reward or any other form of recompense or any combination thereof. "Income" refers to gross income and includes prize winnings and tax-exempt income. The term does not include honoraria or expenses reportable under paragraph (7) of section 5, gifts, social security, welfare, general assistance, domiciliary care programs, retirement, pension and annuity

1 payments funded totally by contributions of the public official
2 or employee, unemployment compensation, including employer and
3 union-funded programs, worker's compensation, or miscellaneous,
4 incidental income of minor dependent children.

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

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

11 "Nominee." Any person whose name has been formally
12 submitted, in writing, to a public official or governing body
13 vested with the power to finally confirm or reject proposed
14 appointments to public office.

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

18 "Opinion." An opinion of the commission issued pursuant to
19 paragraph (10) of section 7.

20 "Order." A directive of the commission issued pursuant to
21 paragraph (13) of section 7 after a person who is the subject of
22 an investigation has had an opportunity to seek reconsideration
23 of the preliminary finding and proposed order of the commission
24 issued at the conclusion of an investigation.

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

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

1 subscription of money or anything of value, except volunteer
2 services, in connection with a political campaign, and any
3 contract, agreement, promise, or other obligations, whether or
4 not legally enforceable, to make a political contribution.

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

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

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

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

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

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

30 "Public official." Any elected or appointed official in the

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

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

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

19 Section 3. Restricted activities.

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

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

1 nominee or candidate for public office shall solicit or accept,
2 any income, honorarium, gift or anything of value[, including a
3 gift, loan, political contribution, reward, or promise of future
4 employment] based on [any] his understanding that [the] a
5 vote[, or official action[, or judgment of the public official
6 or public employee or candidate for public office] would be
7 influenced thereby. This subsection does not prohibit payment or
8 receipt of a salary, fees, severance payment or proceeds
9 resulting from the sale of a person's interest in a corporation,
10 professional corporation, partnership or other entity resulting
11 from termination of or withdrawal from a corporation,
12 professional corporation, partnership or other entity upon the
13 assumption of public office or payments pursuant to an agreement
14 or contract in existence prior to the time a person becomes a
15 nominee or candidate for public office: Provided, however, That
16 such agreement or contract is not based on the understanding,
17 written or otherwise, that the vote or official action of the
18 prospective public official would be influenced thereby.

19 (c) No public official or public employee shall accept
20 reimbursement or payment of honoraria, fees or actual and
21 reasonable expenses for a published work or for the presentation
22 of a speech or participation in a meeting unless the work is
23 published or the activity is accomplished by the official or
24 employee without the use of the State's or political
25 subdivision's time, facilities, services or supplies not
26 generally available to all citizens of the State or political
27 subdivision and outside the course of his or her official
28 duties. If a public official or public employee receives a
29 payment not authorized by this subsection, in cash or otherwise,
30 for a published work or a speech or meeting, the official or

1 employee may not retain it, but shall designate a non-profit,
2 charitable organization as defined in the Internal Revenue Code
3 cite, other than one with which the official or employee is
4 associated, to receive such payment.

5 ~~[(c)]~~ (d) No public official or public employee or a member
6 of his immediate family or any business in which the person or a
7 member of the person's immediate family is associated [a
8 director, officer, owner or holder of stock exceeding 5% of the
9 equity at fair market value of the business] shall enter into
10 any contract valued at \$500 or more [with a governmental body
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 with the governmental body with which the public official or
15 public employee is associated or any subcontract valued at \$500
16 or more with any person who has been awarded a contract with the
17 governmental body with which the public official or public
18 employee is associated. Any contract or subcontract made in
19 violation of this subsection shall be voidable by a court of
20 competent jurisdiction if the suit is commenced within 90 days
21 of the making of the contract or subcontract.

22 ~~[(d)]~~ (e) Other areas of possible conflict shall be
23 addressed by the commission pursuant to [paragraph (9)]
24 paragraphs (10), (11), (12), (13), (14) and (15) of section 7.

25 ~~[(e)]~~ (f) No former public official or public employee shall
26 represent a person, with or without compensation, on any matter
27 before the governmental body with which he has been associated
28 for one year after he leaves that body.

29 ~~[(f)]~~ (g) No person shall use for any commercial purpose
30 information copied from statements of financial interests

1 required by this act or from lists compiled from such
2 statements.

3 ~~[(g)]~~ (h) No former executive-level State employee may for a
4 period of two years from the time that he terminates his State
5 employment be employed by, receive compensation from, assist or
6 act in a representative capacity for a business or corporation
7 that he actively participates in recruiting to the Commonwealth
8 of Pennsylvania or that he actively participated in inducing to
9 open a new plant, facility or branch in the Commonwealth or that
10 he actively participated in inducing to expand an existent plant
11 or facility within the Commonwealth, provided that the above
12 prohibition shall be invoked only when the recruitment or
13 inducement is accomplished by a grant or loan of money or a
14 promise of a grant or loan of money from the Commonwealth to the
15 business or corporation recruited or induced to expand.

16 ~~[(h)~~ (1) Any individual who holds an appointive office in
17 any political subdivision shall not have an interest in any
18 contract or construction in which that political subdivision
19 shall enter or have an interest.

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

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

28 (i) Where voting conflicts are not otherwise addressed by
29 law, rule, regulation, order or ordinance, the following
30 procedure shall be employed. Any public official or public

1 employee, who in the discharge of his official duties, would be
2 required to vote on a matter that would result in a private
3 pecuniary gain or loss for himself, a member of his immediate
4 family, or a business with which he or a member of his immediate
5 family is associated, which is distinct from any gain or loss
6 that might be experienced by a class consisting of the general
7 public or a subclass consisting of an industry, occupation or
8 other group which includes the official or employee, a member of
9 his immediate family or a business with which he or a member of
10 his immediate family is associated, shall, prior to voting,
11 publicly announce and also disclose the nature of his interest
12 as a public record in a written memorandum filed with the person
13 responsible for recording the minutes of the meeting at which
14 the vote will be taken.

15 Section 4. Statement of financial interests required to be
16 filed.

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

1 of each year that he holds such a position and of the year after
2 he leaves such a position.

3 [(b) Each candidate for public office shall file a statement
4 of financial interests for the preceding calendar year with the
5 commission prior to filing a petition to appear on the ballot
6 for election as a public official. A petition to appear on the
7 ballot shall not be accepted by an election official unless the
8 petition includes an affidavit that the candidate has filed the
9 required statement of financial interests with the commission.]

10 (b) (1) Any candidate for a State-level public office shall
11 file a statement of financial interests for the preceding
12 calendar year with the commission on or before the last day
13 for filing a petition to appear on the ballot for election. A
14 copy of the statement of financial interests shall also be
15 appended to such petition.

16 (2) Any candidate for county-level or local office shall
17 file a statement of financial interests for the preceding
18 calendar year with the governing authority of the political
19 subdivision in which he is a candidate on or before the last
20 day for filing a petition to appear on the ballot for
21 election. A copy of the statement of financial interests
22 shall also be appended to such petition.

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

1 (c) Each [candidate] nominee for public office [nominated by
2 a public official or governmental body and subject to
3 confirmation by a public official or governmental body] shall
4 file a statement of financial interests for the preceding
5 calendar year with the commission and with the official or body
6 that is vested with the power of confirmation at least ten days
7 before the official or body shall approve or reject the
8 nomination.

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

14 (e) [(1) Any candidate for State or county-wide public
15 office shall file a statement of financial interests with the
16 commission pursuant to this act and shall file a copy of that
17 statement with the Board of Elections in the county in which
18 the candidate resides.

19 (2) Any candidate for local office shall file a
20 statement of financial interests with the commission pursuant
21 to this act and shall file a copy of that statement with the
22 governing authority of the political subdivision in which he
23 is a candidate.

24 (f)] All statements of financial interest filed pursuant to
25 the provisions of this act shall be made available for public
26 inspection and copying during regular office hours, and copying
27 facilities shall be made available at a charge not to exceed
28 actual cost.

29 Section 5. Statement of financial interests.

30 (a) The statement of financial interests filed pursuant to

1 this act shall be on a form prescribed by the commission. All
2 information requested on the statement shall be provided to the
3 best of the knowledge, information and belief of the person
4 required to file and shall be signed under [penalty of perjury
5 by the person required to file the statement] oath or equivalent
6 affirmation.

7 (b) The statement shall include the following information
8 for the prior calendar year with regard to the person required
9 to file the statement [and the members of his immediate family].

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

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

15 (3) Any direct or indirect interest in any real estate
16 which was sold or leased to the Commonwealth, any of its
17 agencies or political subdivisions; purchased or leased from
18 the Commonwealth, any of its agencies or political
19 subdivisions; or which was the subject of any condemnation
20 proceedings by the Commonwealth, any of its agencies or
21 political subdivisions.

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

28 (5) The name and address of any [person who is the]
29 direct or indirect source of income totalling in the
30 aggregate [\$500] \$1,000 or more. However, this provision

1 shall not be construed to require the divulgence of
2 confidential information protected by statute or existing
3 professional codes of ethics.

4 (6) The name and address of any [person] source from
5 whom a gift or gifts valued in the aggregate at \$200 or more
6 were received, and the fair market value, if determinable,
7 and the circumstances of each gift. [However, this provision
8 shall not be applicable to gifts received from the
9 individual's spouse, parents, parents by marriage, siblings,
10 children or grandchildren.]

11 (7) The name and address of the source, and the fair
12 market value, if determinable, of any honorarium, fee,
13 lodging, transportation, or other thing received in
14 connection with a published work, presentation of a speech or
15 participation in a meeting which is in excess of \$100, if the
16 source of such honoraria, fee, lodging, transportation or
17 other thing received is a person having a direct interest in
18 a matter before the governmental body with which the
19 recipient is associated. This paragraph does not require the
20 disclosure of the value of food or beverage offered
21 coincidentally with presentation of a speech or participation
22 in a meeting.

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

25 (9) Any financial interest in any legal entity engaged
26 in business for profit.

27 (10) The identity of any financial interest in a
28 business with which the reporting person is or has been
29 associated in the preceding calendar year which has been
30 transferred to a member of the reporting person's immediate

1 family: Provided, however, That a member of the reporting
2 person's immediate family need not report any such transfer
3 to the reporting person.

4 (c) The statement of financial interest need not include
5 specific amounts for any of the items required to be listed.

6 Section 6. State Ethics Commission.

7 (a) There is established a State Ethics Commission composed
8 of seven members[,]. The President pro tempore of the Senate,
9 the Minority Leader of the Senate, the Speaker of the House, and
10 the Minority Leader of the House shall each appoint one member.
11 Three members shall be appointed by the Governor without
12 confirmation. No more than two of the members appointed by the
13 Governor shall be of the same political party.

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

16 (1) the two members appointed by the President pro
17 tempore and Minority Leader of the Senate shall serve for
18 four years;

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

21 (3) of the three members appointed by the Governor two
22 shall serve for three years, and one shall serve for five
23 years].

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

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

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

29 (2) hold office in any political party or political
30 committee;

1 (3) actively participate in or contribute to any
2 political campaign;

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

7 (5) be employed by the Commonwealth or a political
8 subdivision in any other capacity, whether or not for
9 compensation.

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

19 (f) The commission shall elect a chairman and a vice
20 chairman. The vice chairman shall act as chairman in the absence
21 of the chairman or in the event of a vacancy in that position.

22 (g) Four members of the commission shall constitute a quorum
23 and the votes of a majority of the members present is required
24 for any action or recommendation of the commission. The chairman
25 or any four members of the commission may call a meeting
26 provided that advance written notice is mailed to each member
27 and to any person who requests notice of such meetings.

28 (h) Members of the commission shall be compensated at a rate
29 of [\$50] \$75 per day and shall receive reimbursement for their
30 actual and necessary expenses while performing the business of

1 the commission.

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

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

17 In addition to other powers and duties prescribed by law, the
18 commission shall:

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

21 (2) Prescribe forms for statements and reports required
22 to be filed by this act and furnish such forms to persons
23 required to file such statements and reports.

24 (3) Prepare and publish guidelines setting forth
25 recommended uniform methods of accounting and reporting for
26 use by persons required to file statements and reports by
27 this act.

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

30 (5) Inspect all statements of financial interests filed

1 with the commission and receive reports from other agencies
2 which serve as depositories for such statements in order to
3 ascertain whether any reporting person has failed to file
4 such a statement or has filed a deficient statement. If, upon
5 inspection, it is determined that a reporting person has
6 failed to file a statement of financial interests or that any
7 statement which has been filed fails to conform with the
8 requirements of section 5, then the commission shall, in
9 writing, notify the person. Such notice shall state in detail
10 the deficiency and the penalties for failure to file or for
11 filing a deficient statement of financial interests.

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

18 [(6)] (7) Compile and maintain an index of all reports
19 and statements filed with the commission to facilitate public
20 access to such reports and statements and instruct other
21 State and local agencies which receive and file financial
22 interest statements in the maintenance of systems which
23 facilitate public access to such statements.

24 [(7)] (8) Prepare and publish annual summaries of
25 statements and reports filed with the commission.

26 [(8)] (9) Preserve statements and reports filed with the
27 commission for a period of five years from date of receipt
28 and advise other State and local agencies which receive and
29 store financial interest statements to preserve such
30 statements for a period of five years from date of receipt.

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

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

25 [(iii)] (12) Initiate an inquiry, pursuant to
26 section 8(a), where [an opinion] a complaint has not been
27 [requested] filed but where there [is a reasonable belief]
28 may be reason to believe that a conflict [may exist] exists.
29 [Such inquiry shall be conducted in privacy with full respect
30 to the confidentiality of all the parties involved in the

1 alleged conflict. If the commission finds that there is a
2 conflict, the information shall be provided for criminal
3 proceedings unless the alleged offender removes himself from
4 the conflict with receiving financial gain.

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

21 (13) Issue preliminary findings, proposed orders and
22 orders relating to investigations initiated pursuant to
23 section 8, which set forth the alleged violation, findings of
24 fact and conclusions of law. An order may include
25 recommendations to law enforcement officials. Any order
26 resulting from a finding that a public official or public
27 employee has obtained a financial gain in violation of this
28 act may, after affording the person who is the subject of the
29 investigation an opportunity for a hearing in accordance with
30 section 8(f), require the restitution plus interest of that

1 gain to the appropriate governmental body. The commission or
2 the Office of Attorney General shall have standing to apply
3 to the Commonwealth Court to seek enforcement of an order
4 requiring such restitution. This restitution requirement
5 shall be in addition to any other penalties provided for in
6 this act.

7 [(10)] (14) Hold hearings, take testimony, issue
8 subpoenas and compel the attendance of witnesses.

9 [(11)] (15) Make recommendations to law enforcement
10 officials either for criminal prosecution or dismissal of
11 charges arising out of violations of this act.

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

15 [(13)] (17) Prepare and publish, prior to June 1 of each
16 year, an annual report summarizing the activities of the
17 commission.

18 Section 8. Investigations by the commission.

19 (a) Upon a complaint signed under penalty of perjury by any
20 person or upon its own motion, the commission [shall
21 investigate], through its executive director, shall conduct a
22 preliminary inquiry into any alleged violation of this act. [All
23 commission proceedings and records relating to an investigation
24 shall be confidential until a final determination is made by the
25 commission. The executive director shall notify any person under
26 investigation by the commission of the investigation and of the
27 nature of the alleged violation within five days of the
28 commencement of the investigation. Within 15 days of the filing
29 of a sworn complaint by a person alleging a violation, and every
30 30 days thereafter until the matter is terminated, the executive

1 director shall notify the complainant of the action taken to
2 date by the commission together with the reasons for such action
3 or nonaction.] The commission shall keep information, records
4 and proceedings relating to a preliminary inquiry confidential.
5 The commission shall complete its preliminary inquiry within 30
6 days of its initiation.

7 (b) If a preliminary [investigation] inquiry fails to
8 [indicate probable cause for belief] establish reason to believe
9 that this act has been violated, the commission shall terminate
10 the [investigation] inquiry and so notify the complainant and
11 the person who had been [under investigation.] the subject of
12 the inquiry. If the commission determines that a complaint is
13 frivolous, it shall so state.

14 (c) If a preliminary inquiry establishes reason to believe
15 that this act has been violated, the commission may, through its
16 executive director, initiate an investigation to determine if
17 there has been a violation. The commission shall keep
18 information, records and proceedings relating to an
19 investigation confidential until a final determination is made,
20 except as otherwise provided in subsection (f). No investigation
21 may be commenced until the person who is the subject of the
22 investigation has been notified of the investigation and
23 provided a general statement of the alleged violation or
24 violations of the act and other applicable statutes with respect
25 to such investigation. Service of notice is complete upon
26 mailing. The commission shall notify the complainant within five
27 days of the commencement of an investigation and, thereafter,
28 the commission shall advise the complainant and the person who
29 is the subject of the investigation of the status of the
30 investigation at least every 90 days until the investigation

1 terminated. The commission shall complete its investigation
2 within 180 days: Provided, however, That the commission may, by
3 a majority vote of the members present, extend an investigation
4 for an additional 90-day period.

5 (d) If an investigation conducted under this act indicates
6 that no violation has been committed, the commission shall
7 immediately file an order terminating the investigation and send
8 written notice of such determination to the complainant and the
9 person who was the subject of the investigation.

10 (e) If an investigation conducted under this act indicates
11 that there is probable cause for believing that a violation of
12 the act has been committed, the commission may take appropriate
13 action in accordance with paragraphs (13), (14) and (15) of
14 section 7.

15 (f) Orders shall be final within 15 days of service thereof
16 unless a request for reconsideration of the order is filed with
17 the commission. Any person who is the subject of an order may
18 request a hearing before the commission in conjunction with a
19 petition for reconsideration of the order. Any such request for
20 a hearing shall be granted by the commission. A hearing pursuant
21 to this subsection shall be by closed session unless the person
22 who is the subject of the order requests an open session. The
23 hearing shall be held within 60 days of the date it is requested
24 unless the person who is the subject of the order petitions for
25 a later date. Any person who appears before the commission shall
26 have all of the due process rights, privileges and
27 responsibilities of a party or witness appearing before an
28 administrative agency of this Commonwealth. All witnesses
29 summoned before the commission shall receive reimbursement for
30 reasonable expenses in accordance with 42 Pa.C.S. § 5903

1 (relating to compensation and expenses of witnesses). At the
2 conclusion of a hearing concerning an alleged violation and in a
3 timely manner, the commission shall deliberate on the evidence
4 and determine, by majority vote of the members present, whether
5 there has been a violation of this act. The determination of the
6 commission, in the form of a final order and findings of fact,
7 shall be a matter of public record.

8 (g) Orders which become final in accordance with the
9 provisions of this section shall be available as public
10 documents, but the files and records of the commission relating
11 to the case shall remain confidential.

12 (h) No action may be taken by the commission on a complaint
13 filed against a public official or public employee unless the
14 alleged offense was committed during the period of time within
15 which the official or employee was in public office, was a
16 nominee or candidate for public office, or was employed as a
17 public employee, or within five years thereafter.

18 (i) Any person aggrieved by an opinion or order which
19 becomes final in accordance with the provisions of this act who
20 has direct interest in such opinion or order shall have the
21 right to appeal therefrom in accordance with law and general
22 rules.

23 (j) No public official or public employee shall discharge
24 any official or employee or change his official rank, grade or
25 compensation, or deny him a promotion, or threaten to do so, for
26 filing a complaint with or providing information to the
27 commission or testifying in any commission proceeding.

28 Section 9. Penalties.

29 (a) Any person who violates the provisions of section 3(a)
30 and (b) is guilty of a felony and shall be fined not more than

1 \$10,000 or imprisoned for not more than five years, or be both
2 fined and imprisoned.

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

8 (c) Any person who obtains financial gain from violating any
9 provision of this act, in addition to any other penalty provided
10 by law, shall pay [into the State Treasury] a sum of money equal
11 to or up to three times the amount of the financial gain
12 resulting from such violation into the State Treasury or the
13 treasury of the political subdivision, whichever suffered a loss
14 because of the violation.

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

19 (e) Any person who violates the confidentiality of a
20 commission proceeding pursuant to section 8, is guilty of a
21 misdemeanor and shall be fined not more than \$1,000 or
22 imprisoned for not more than one year, or be both fined and
23 imprisoned. Any person who engages in retaliatory activity
24 proscribed by section 8(j) is guilty of a misdemeanor and, in
25 addition to any other penalty provided by law, shall be fined
26 not more than \$1,000 or imprisoned for not more than one year,
27 or be both fined and imprisoned. Any person who willfully
28 affirms or swears falsely in regard to any material matter
29 before a commission proceeding pursuant to section 8 is guilty
30 of a felony and shall be fined not more than \$5,000 or

1 imprisoned for not more than five years, or be both fined and
2 imprisoned.

3 (f) In addition to any other civil remedy or criminal
4 penalty provided for in this act, the commission may, after
5 notice has been served in accordance with paragraph (5) of
6 section 7 and upon a majority vote of its members, levy a civil
7 penalty upon any person subject to this act who fails to file a
8 statement of financial interest in a timely manner or who files
9 a deficient statement of financial interests, at a rate of not
10 more than \$25 for each day such statement remains delinquent or
11 deficient.

12 [Section 10. Court employees.

13 Nothing in this act, or in any other law or court rule shall
14 be construed to prohibit any constable or any employee of a
15 court of common pleas, the Municipal Court of Philadelphia, the
16 Traffic Court of Philadelphia, or any employee of a district
17 justice from also being an officer of a political body or
18 political party as such terms are defined in the act of June 3,
19 1937 (P.L.1333, No.320), known as the "Pennsylvania Election
20 Code," and the same may hold the office of a county, State or
21 national committee of any political party, and may run for and
22 hold any elective office, and may participate in any election
23 day activities.]

24 Section 11. Supplemental provisions.

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

28 Section 12. Conflict of law.

29 If the provisions of this act conflict with any other
30 statute, ordinance, regulation or rule, the provisions of this

1 act shall control.

2 Section 13. Severability.

3 If any provision of this act, or the application thereof to
4 any person or circumstance, is held invalid, the validity of the
5 remainder of this act and the application of such provisions to
6 other persons and circumstances shall not be affected thereby.

7 Section 2. Section 14 of the act, amended February 26, 1979
8 (P.L.1, No.1), is reenacted to read:

9 Section 14. Effective date.

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

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

28 Section 4. All rules and regulations promulgated by the
29 State Ethics Commission shall remain in full force and effect
30 until amended or rescinded by the commission, provided that the

1 commission shall immediately initiate action to rescind or amend
2 any rule or regulation that is in conflict with the provisions
3 of this amendatory act or to promulgate additional regulations
4 which may be required to implement the provisions of this
5 amendatory act.

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

17 Section 6. This act shall take effect January 1, 1988.