

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1733

Session of
1987

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

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

AN ACT

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

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

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

AN ACT

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

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

4 Section 1. Purpose.

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

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

23 Section 2. Definitions.

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

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

1 interpret this act.

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

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

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

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

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

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

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

3 "Commission." The State Ethics Commission.

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

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

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

1 employment with a State or political subdivision.

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

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

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

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

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

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

1 of the State or a political subdivision thereof.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

18 Section 3. Restricted activities.

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

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

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

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

9 (2) This subsection shall not prohibit:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 nomination.

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

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

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

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

22 Section 5. Statement of financial interests.

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

30 (b) The statement shall include the following information

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

12 Section 6. State Ethics Commission.

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

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

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

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

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

1 years].

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 required to file such statements and reports.

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

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

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

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

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

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

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

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

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

1 [of] or such later extended time.

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

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

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

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

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

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

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

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

25 Section 8. Investigations by the commission.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

11 Section 9. Penalties.

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

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

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

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

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

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

25 Section 10. [Court employees.] Constables.

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

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

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

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

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

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

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

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

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

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

1 information.

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

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

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

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

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

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

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

18 Section 11. Supplemental provisions.

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

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

24 Section 12. Conflict of law.

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

28 Section 13. Severability.

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

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

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

5 Section 14. Effective date.

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

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

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

1 amendatory act.

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

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

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