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THE GENERAL ASSEMBLY OF PENNSYLVANIA

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HOUSE BILL

No. 2048 Session of  
2014

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INTRODUCED BY HAGGERTY, ROZZI, SWANGER AND THOMAS,  
FEBRUARY 26, 2014

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REFERRED TO COMMITTEE ON STATE GOVERNMENT, FEBRUARY 26, 2014

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AN ACT

1 Amending Title 65 (Public Officers) of the Pennsylvania  
2 Consolidated Statutes, prohibiting hiring of local government  
3 officials in district offices of members of the General  
4 Assembly; and providing penalties.

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

7 Section 1. Title 65 of the Pennsylvania Consolidated  
8 Statutes is amended by adding a chapter to read:

9 CHAPTER 15

10 HIRING PRACTICES FOR THE GENERAL ASSEMBLY

11 Sec.

12 1501. Legislative findings.

13 1502. Definitions.

14 1503. Prohibited hiring practices.

15 1504. Powers and duties of commission.

16 1505. Investigations by commission.

17 1506. Penalties.

18 § 1501. Legislative findings.

19 (a) Declaration.--The General Assembly hereby declares that

1 intergovernmental cooperation is vital in the efficient and  
2 effective delivery of services to the citizens of this  
3 Commonwealth. The General Assembly further declares that public  
4 office is a public trust and that any effort to realize personal  
5 financial gain through public office other than compensation  
6 provided by law is a violation of that trust. In order to  
7 strengthen the faith and confidence of the people of this  
8 Commonwealth in their government, the General Assembly further  
9 declares that the people have a right to be assured that the  
10 hiring practices of the members of the General Assembly do not  
11 conflict with the public trust. While previously enacted  
12 measures of law were implemented to ensure the public trust  
13 through financial disclosure by public officials and  
14 prohibitions on seeking and accepting improper influence,  
15 certain hiring practices could create the potential for  
16 additional conflicts of interest.

17 (b) Recognition.--It is recognized that many public  
18 officials, including most local officials and members of the  
19 General Assembly, are employers who require the skills and  
20 assistance of qualified individuals in order to address the  
21 concerns of and provide services to constituents and taxpayers.  
22 Members of the General Assembly should not be discouraged from  
23 hiring the most qualified applicants to fill necessary  
24 occupations and professions. Likewise, qualified job seekers  
25 should not be discouraged from pursuing public service  
26 positions. Thus, in order to foster maximum compliance with its  
27 terms, this chapter shall be administered in a manner that  
28 emphasizes guidance to members of the General Assembly and local  
29 officials regarding the ethical standards established by this  
30 chapter.

1 § 1502. Definitions.

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

5 "Commission." The State Ethics Commission.

6 "District office." An office, which provides constituent  
7 services, located within the legislative district of a member of  
8 the General Assembly.

9 "Local official." Any person elected by the public or  
10 elected or appointed by a governmental body or an appointed  
11 official in any political subdivision of this Commonwealth,  
12 provided that the term shall not include members of advisory  
13 boards that have no authority to expend public funds other than  
14 reimbursement for personal expense or to otherwise exercise the  
15 power of any political subdivision of this Commonwealth.

16 "Member." A Senator or Representative in the General  
17 Assembly.

18 "Political subdivision." Any county, city, borough,  
19 incorporated town, township, school district, vocational school,  
20 county institution district, and any authority, entity or body  
21 organized by the aforementioned.

22 § 1503. Prohibited hiring practices.

23 No member of the General Assembly shall knowingly and  
24 willingly employ, in any capacity in the member's district  
25 office, a local official from a political subdivision within the  
26 member's legislative district.

27 § 1504. Powers and duties of commission.

28 In addition to other powers and duties prescribed by law, the  
29 commission shall:

30 (1) Prescribe and publish rules and regulations to carry

1 out the provisions of this chapter.

2 (2) Issue to any person upon such person's request or to  
3 the appointing authority or employer of that person upon the  
4 request of such appointing authority or employer an opinion  
5 with respect to such person's duties under this chapter. The  
6 commission shall, within 14 days, either issue the opinion or  
7 advise the person who made the request whether an opinion  
8 will be issued. No person who acts in good faith on an  
9 opinion issued to the person by the commission shall be  
10 subject to criminal or civil penalties for so acting,  
11 provided that the material facts are as stated in the opinion  
12 request. The commission's opinions shall be public records  
13 and may from time to time be published. The person requesting  
14 the opinion may, however, require that the opinion shall  
15 contain such deletions and changes as shall be necessary to  
16 protect the identity of the persons involved.

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

1 time. The person requesting the advice may, however, require  
2 that the advice shall contain such deletions and changes as  
3 shall be necessary to protect the identity of the persons.

4 (4) Initiate an inquiry under section 1505(a) (relating  
5 to investigations by commission) where a complaint has not  
6 been filed but where there is a reasonable belief that a  
7 conflict may exist.

8 (5) Issue findings, reports and orders relating to  
9 investigations initiated under section 1505 which set forth  
10 the alleged violation, findings of fact and conclusions of  
11 law. An order may include recommendations to law enforcement  
12 officials. Any order resulting from a finding that a local  
13 official or member has obtained a financial gain in violation  
14 of Chapter 11 (relating to ethics standards and financial  
15 disclosure) may require the restitution plus interest of that  
16 gain to the appropriate governmental body. The commission or  
17 the Office of Attorney General shall have standing to apply  
18 to Commonwealth Court to seek enforcement of an order  
19 requiring such restitution. This restitution requirement  
20 shall be in addition to any other penalties provided for in  
21 this chapter.

22 (6) Hold hearings, take testimony, issue subpoenas and  
23 compel the attendance of witnesses.

24 (7) Make recommendations to law enforcement officials  
25 either for criminal prosecution or dismissal of charges  
26 arising out of violations of this chapter.

27 (8) Prepare and publish special reports, educational  
28 materials and technical studies to further the purposes of  
29 this chapter.

30 (9) Prepare and publish prior to June 1 of each year an

1 annual report summarizing the activities of the commission.  
2 § 1505. Investigations by commission.

3 (a) Preliminary inquiry.--Upon a complaint signed under  
4 penalty of perjury by any person or upon its own motion, the  
5 commission, through its executive director, shall conduct a  
6 preliminary inquiry into any alleged violation of this chapter.  
7 The commission shall keep information, records and proceedings  
8 relating to a preliminary inquiry confidential. The commission  
9 shall, however, have the authority to refer the case to law  
10 enforcement officials during a preliminary inquiry or anytime  
11 thereafter without providing notice to the subject of the  
12 inquiry. The commission shall complete its preliminary inquiry  
13 within 60 days of its initiation.

14 (b) Termination of preliminary inquiry.--If a preliminary  
15 inquiry fails to establish reason to believe that this chapter  
16 has been violated, the commission shall terminate the inquiry  
17 and so notify the complainant and the person who had been the  
18 subject of the inquiry. If the commission determines that a  
19 complaint is frivolous, it shall so state.

20 (c) Initiation of investigation.--If a preliminary inquiry  
21 establishes reason to believe that this chapter has been  
22 violated, the commission may, through its executive director,  
23 initiate an investigation to determine if there has been a  
24 violation. The commission shall keep information, records and  
25 proceedings relating to an investigation confidential until a  
26 final determination is made, except as otherwise provided in  
27 subsection (g). No investigation may be commenced until the  
28 person who is the subject of the investigation has been notified  
29 and provided a general statement of the alleged violation or  
30 violations of this chapter and other applicable statutes with

1 respect to such investigation. Service of notice is complete  
2 upon mailing which shall be by certified or registered mail. The  
3 commission shall notify the complainant within 72 hours of the  
4 commencement of an investigation, and, thereafter, the  
5 commission shall advise the complainant and the person who is  
6 the subject of the investigation of the status of the  
7 investigation at least every 90 days until the investigation is  
8 terminated. The commission shall, within 180 days of the  
9 initiation of an investigation, either terminate the  
10 investigation under subsection (d) or issue a finding report  
11 under subsection (e). Upon a showing by the executive director  
12 of the need for extension of this period, the commission may  
13 extend an investigation for up to two 90-day periods, provided  
14 that each 90-day extension shall be approved by a majority vote  
15 of members present. In no event shall a findings report be  
16 issued later than 360 days after initiation of an investigation.

17 (d) Termination of investigation.--If an investigation  
18 conducted under this chapter indicates that no violation has  
19 been committed, the commission shall immediately terminate the  
20 investigation and send written notice of such determination to  
21 the complainant and the person who was the subject of the  
22 investigation.

23 (e) Findings report.--The commission, upon the completion of  
24 an investigation, shall issue a findings report to the subject  
25 of the investigation setting forth the pertinent findings of  
26 fact. The subject shall have the right to respond to said  
27 findings and to request an evidentiary hearing on said matter.  
28 The commission shall grant any request for a hearing. Said  
29 hearing shall be held in Harrisburg or, at the request of the  
30 subject, in either Philadelphia or Pittsburgh. Any response to

1 the findings report must either admit or deny by corresponding  
2 number and letter the pertinent facts set forth. The subject of  
3 the investigation shall have access to any evidence intended to  
4 be used by the commission at the hearing and any exculpatory  
5 evidence developed by the commission in the course of its  
6 investigation. Matters not specifically denied in the response  
7 shall be deemed admitted. The response must be filed within 30  
8 days of the issuance of the findings report unless the time  
9 period is extended by the commission for good cause shown.  
10 Hearings conducted upon request shall be instituted within 45  
11 days after the filing of the response.

12 (f) Final order.--Within 30 days of the receipt by the  
13 commission of the hearing record or, if no hearing is to be  
14 held, within 30 days of the receipt by the commission of the  
15 response to the findings report, the commission shall issue an  
16 order which shall be final. Upon receipt of a final order, the  
17 subject shall have the right to file a petition for  
18 reconsideration in accordance with the regulations of the  
19 commission.

20 (g) Procedure for hearing.--Hearings conducted under this  
21 section shall be closed to the public unless the subject  
22 requests an open hearing. Any person who appears before the  
23 commission shall have all of the due process rights, privileges  
24 and responsibilities of a party or witness appearing before an  
25 administrative agency of this Commonwealth. All witnesses  
26 summoned for such hearings shall receive reimbursement for  
27 reasonable expenses in accordance with 42 Pa.C.S. § 5903  
28 (relating to compensation and expenses of witnesses). At the  
29 conclusion of a hearing concerning an alleged violation and in a  
30 timely manner, the commission shall deliberate on the evidence

1 and determine whether there has been a violation of this  
2 chapter. At least four members of the commission present at a  
3 meeting must find a violation by clear and convincing proof. The  
4 names of the members finding a violation and the names of those  
5 dissenting and abstaining shall be listed in the order. The  
6 determination of the commission, in the form of a final order  
7 and findings of fact, shall be a matter of public record.

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

13 (i) Appeal.--Any person aggrieved by an opinion or order  
14 which becomes final in accordance with the provisions of this  
15 chapter who has direct interest in such opinion or order shall  
16 have the right to appeal therefrom in accordance with law and  
17 general rules.

18 (j) Confidentiality.--As a general rule, no person shall  
19 disclose or acknowledge to any other person any information  
20 relating to a complaint, preliminary inquiry, investigation,  
21 hearing or petition for reconsideration which is before the  
22 commission. However, a person may disclose or acknowledge to  
23 another person matters held confidential in accordance with this  
24 subsection when the matters pertain to any of the following:

- 25 (1) final orders of the commission as provided in  
26 subsection (h);  
27 (2) hearings conducted in public under subsection (g);  
28 (3) for the purpose of seeking advice of legal counsel;  
29 (4) filing an appeal from a commission order;  
30 (5) communicating with the commission or its staff, in

1 the course of a preliminary inquiry, investigation, hearing  
2 or petition for reconsideration by the commission;

3 (6) consulting with a law enforcement official or agency  
4 for the purpose of initiating, participating in or responding  
5 to an investigation or prosecution by the law enforcement  
6 official or agency;

7 (7) testifying under oath before a governmental body or  
8 a similar body of the United States of America;

9 (8) any information, records or proceedings relating to  
10 a complaint, preliminary inquiry, investigation, hearing or  
11 petition for reconsideration which the person is the subject  
12 of; or

13 (9) such other exceptions as the commission by  
14 regulation may direct.

15 (k) Frivolous complaints and wrongful disclosure.--If a  
16 member has reason to believe the complaint is frivolous as  
17 defined by this chapter, or without probable cause and made  
18 primarily for a purpose other than that of reporting a violation  
19 of this chapter, or a person publicly disclosed or caused to be  
20 disclosed that a complaint against the member has been filed  
21 with the commission, the member shall notify the commission and  
22 the commission, through its executive director, shall conduct an  
23 investigation.

24 (l) Limitation of time.--The commission may conduct an  
25 investigation within five years after the alleged occurrence of  
26 any violation of this chapter.

27 § 1506. Penalties.

28 (a) Designation.--A local official shall be given 30 days  
29 from the date the commission's final report is issued to either  
30 resign the position in the member's district office or resign

1 from their elected or appointed position in the political  
2 subdivision without penalty.

3 (b) Fines and costs.--Any member of the General Assembly who  
4 violates this chapter commits a summary offense and shall, upon  
5 conviction, be sentenced to pay:

6 (1) For a first offense, the costs of prosecution plus a  
7 fine of at least \$100 and, in the discretion of the  
8 sentencing authority, of not more than \$1,000.

9 (2) For a second or subsequent offense, the costs of  
10 prosecution plus a fine of at least \$500 and, in the  
11 discretion of the sentencing authority, of not more than  
12 \$2,000.

13 (c) Impeachment and disciplinary action.--The penalties  
14 prescribed in this chapter do not limit the power of either  
15 chamber of the General Assembly to discipline its own members  
16 and do not limit the power of political subdivisions to  
17 discipline local officials.

18 (d) Other violations of chapter.--Any person who violates  
19 the confidentiality of a commission proceeding under section  
20 1505 (relating to investigations by commission) commits a  
21 misdemeanor and shall, upon conviction, be sentenced to pay a  
22 fine of not more than \$1,000 or to imprisonment for not more  
23 than one year, or both. Any person who willfully affirms or  
24 swears falsely in regard to any material matter before a  
25 commission proceeding under section 1505 commits a felony and  
26 shall, upon conviction, be sentenced to pay a fine of not more  
27 than \$5,000 or to imprisonment for not more than five years, or  
28 both.

29 Section 2. This act shall take effect in 120 days.