

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 1031 Session of 2015

INTRODUCED BY GORDNER, SCARNATI, RAFFERTY, BROWNE, MENSCH, ALLOWAY, VULAKOVICH, SCAVELLO, WARD, GREENLEAF AND HAYWOOD, OCTOBER 15, 2015

SENATOR GREENLEAF, JUDICIARY, AS AMENDED, MARCH 15, 2016

AN ACT

1 Amending Title 18 (Crimes and Offenses) of the Pennsylvania
2 Consolidated Statutes, PROVIDING FOR CONFLICTS OF INTEREST; <--
3 AND repealing and adding provisions relating to independent
4 counsel.

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

7 Section 1. Chapter 93 of Title 18 of the Pennsylvania <--
8 Consolidated Statutes is repealed:

9 SECTION 1. TITLE 18 OF THE PENNSYLVANIA CONSOLIDATED <--
10 STATUTES IS AMENDED BY ADDING A CHAPTER TO READ:

CHAPTER 92

CONFLICTS OF INTEREST

SEC.

9201. PROCEDURES.

§ 9201. PROCEDURES.

IF A DISTRICT ATTORNEY REQUESTS THAT THE ATTORNEY GENERAL
EXERCISE THE POWER TO PROSECUTE IN A COUNTY CRIMINAL COURT UNDER
SECTION 205(A)(3) OF THE ACT OF OCTOBER 15, 1980 (P.L.950,

1 NO.164), KNOWN AS THE COMMONWEALTH ATTORNEYS ACT, AND THE
2 ATTORNEY GENERAL DECLINES TO ACCEPT OR ACT ON THE REQUEST, THE
3 FOLLOWING SHALL APPLY:

4 (1) THE DISTRICT ATTORNEY MAY REFER THE MATTER TO A
5 DISTRICT ATTORNEY OF A CONTIGUOUS COUNTY WHO HAS SUFFICIENT
6 RESOURCES AND HAS NO CONFLICT OF INTEREST IN REPRESENTING THE
7 COMMONWEALTH.

8 (2) IF THE DISTRICT ATTORNEYS OF THE CONTIGUOUS COUNTIES
9 DECLINE TO ACCEPT THE REFERRAL FOR ANY REASON, THE REFERRING
10 DISTRICT ATTORNEY MAY REFER THE MATTER TO A DISTRICT ATTORNEY
11 OF A NONCONTIGUOUS COUNTY.

12 (3) A DISTRICT ATTORNEY WHO HAS ACCEPTED A CASE UNDER
13 PARAGRAPH (1) OR (2) AND A DEPUTY OR ASSISTANT DISTRICT
14 ATTORNEY ON THE DISTRICT ATTORNEY'S STAFF SHALL HAVE THE SAME
15 AUTHORITY TO INVESTIGATE AND PROSECUTE AS THE DISTRICT
16 ATTORNEY WHO REFERRED THE MATTER.

17 SECTION 2. CHAPTER 93 OF TITLE 18 IS REPEALED:

18 [CHAPTER 93
19 INDEPENDENT COUNSEL

20 Subchapter

- 21 A. Preliminary Provisions
- 22 B. General Provisions
- 23 C. Authority and Duties of Independent Counsel
- 24 D. Miscellaneous Provisions

25 SUBCHAPTER A
26 PRELIMINARY PROVISIONS

27 Sec.

28 9301. Short title of chapter.

29 9302. Definitions.

30 § 9301. Short title of chapter.

1 This chapter shall be known and may be cited as the
2 Independent Counsel Authorization Act.

3 § 9302. Definitions.

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

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

8 "Grounds to investigate." Information which would lead a
9 reasonable person to suspect that a crime is being or has been
10 committed.

11 "Independent counsel." A person appointed by the Special
12 Independent Prosecutor's Panel upon the request of a special
13 investigative counsel.

14 "Panel." The Special Independent Prosecutor's Panel
15 established under this chapter.

16 "Special investigative counsel." A person appointed by the
17 General Counsel to conduct a preliminary investigation under
18 this chapter.

19 SUBCHAPTER B

20 GENERAL PROVISIONS

21 Sec.

22 9311. Organization of panel.

23 9312. Preliminary investigation.

24 9313. Conduct of preliminary investigation.

25 9314. Determination that further investigation not warranted.

26 9315. Determination that further investigation is warranted.

27 9316. Contents of application.

28 9317. Disclosure of information.

29 9318. Limitation on judicial review.

30 9319. Duties of panel.

1 § 9311. Organization of panel.

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

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

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

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

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

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

1 judicial proceeding concerning a matter which involves the
2 independent counsel and which involves the exercise of the
3 independent counsel's official duties, regardless of whether the
4 independent counsel is still serving in that office.

5 § 9312. Preliminary investigation.

6 (a) Preliminary investigation with respect to certain
7 covered persons.--The General Counsel shall appoint a special
8 investigative counsel to conduct a preliminary investigation in
9 accordance with this chapter whenever the General Counsel
10 receives information sufficient to constitute grounds to
11 investigate whether any person described in subsection (c) may
12 have committed any of the following:

13 (1) An offense which is classified higher than a
14 misdemeanor of the second degree.

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

21 (b) Preliminary investigation with respect to persons not
22 listed in subsection (c).--The Attorney General shall request
23 the General Counsel to appoint a special investigative counsel
24 to conduct a preliminary investigation under the jurisdiction
25 established or conferred under section 205(b) of the act of
26 October 15, 1980 (P.L.950, No.164), known as the Commonwealth
27 Attorneys Act, and where the Attorney General determines that an
28 investigation or prosecution of the person, with respect to the
29 information received, by the Attorney General or other officer
30 of the Attorney General's office may result in a personal,

1 financial or political conflict of interest. In addition, the
2 Attorney General may request the General Counsel to appoint a
3 special investigative counsel to conduct a preliminary
4 investigation where the Attorney General determines that an
5 investigation or prosecution of the person, with respect to the
6 information received, by the Attorney General or other officer
7 of the Attorney General's office may result in a personal,
8 financial or political conflict of interest.

9 (c) Persons to whom subsection (a) applies.--The persons
10 referred to in subsection (a) are as follows:

11 (1) The Attorney General, any Deputy Attorney General or
12 any individual working in the Attorney General's office who
13 is defined as a "public employee" under the Public Official
14 and Employee Ethics Law.

15 (2) Any individual who leaves any office or position
16 described in paragraph (1) during the incumbency of the
17 Attorney General with or under whom such individual served in
18 the office or position, plus one year after such incumbency,
19 but in no event longer than a period of three years after the
20 individual leaves the office or position.

21 (3) Any individual who held an office or position
22 described in paragraph (1) during the incumbency of one
23 Attorney General and who continued to hold the office or
24 position for not more than 90 days into the term of the next
25 Attorney General, during the one-year period after the
26 individual leaves the office or position.

27 (4) The chairman and treasurer of the principal campaign
28 committee seeking the election or reelection of the Attorney
29 General, and any officer of that committee exercising
30 authority at the State level, during the incumbency of the

1 elected Attorney General.

2 (d) Examination of information to determine need for
3 preliminary investigation.--In determining under subsection (a)
4 whether grounds to investigate exist, the General Counsel shall
5 consider only the specificity of the information received and
6 the credibility of the source of the information. The General
7 Counsel shall determine whether grounds to investigate exist no
8 later than 30 days after the information is first received. If
9 within that 30-day period the General Counsel determines that
10 the information is not specific or is not from a credible
11 source, then the General Counsel shall close the matter. If
12 within that 30-day period the General Counsel determines that
13 the information is specific and from a credible source, the
14 General Counsel shall, upon making that determination, appoint a
15 special investigative counsel to commence a preliminary
16 investigation with respect to that information. If the General
17 Counsel is unable to determine within that 30-day period whether
18 the information is specific and from a credible source, the
19 General Counsel shall at the end of that 30-day period appoint a
20 special investigative counsel to commence a preliminary
21 investigation with respect to that information. If a special
22 investigative counsel is appointed, the special investigative
23 counsel may only accept the appointment when such appointment
24 would not conflict with the rules governing professional
25 conduct.

26 § 9313. Conduct of preliminary investigation.

27 (a) In general.--A preliminary investigation conducted under
28 this chapter shall be of matters as the special investigative
29 counsel considers appropriate in order to make a determination
30 under section 9314 (relating to determination that further

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

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

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

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

27 (c) Extension of time for preliminary investigation.--The
28 special investigative counsel may apply to the panel for a
29 single extension, for a period of no more than 60 days, of the
30 90-day period referred to in subsection (a). The panel may, upon

1 a showing of good cause, grant the extension.

2 § 9314. Determination that further investigation not warranted.

3 (a) Notification of panel.--If the special investigative
4 counsel upon completion of a preliminary investigation under
5 this chapter determines that there are no reasonable grounds to
6 believe that further investigation is warranted, the special
7 investigative counsel shall promptly so notify the panel, and
8 the panel shall have no power to appoint an independent counsel
9 with respect to the matters involved.

10 (b) Form of notification.--The notification shall contain a
11 summary of the information received and a summary of the results
12 of the preliminary investigation. The summary shall be
13 confidential and not subject to public disclosure, except that
14 the person who was the subject of the investigation may request
15 a copy of the summary from the panel.

16 § 9315. Determination that further investigation is warranted.

17 (a) Application for appointment of independent counsel.--The
18 special investigative counsel shall apply to the panel for the
19 appointment of an independent counsel if:

20 (1) the special investigative counsel, upon completion
21 of a preliminary investigation under this chapter, determines
22 that there are reasonable grounds to believe that further
23 investigation is warranted; or

24 (2) the 90-day period referred to in section 9313(a)
25 (relating to conduct of preliminary investigation) and any
26 extension granted under section 9313(c) have elapsed and the
27 special investigative counsel has not filed a notification
28 with the panel under section 9314(a) (relating to
29 determination that further investigation not warranted).

30 (b) Receipt of additional information.--If, after submitting

1 a notification under section 9314(a), the special investigative
2 counsel receives additional information sufficient to constitute
3 grounds to investigate the matters to which the notification
4 related, the special investigative counsel shall:

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

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

13 § 9316. Contents of application.

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

21 § 9317. Disclosure of information.

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

1 § 9318. Limitation on judicial review.

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

5 § 9319. Duties of panel.

6 (a) Appointment and jurisdiction of independent counsel.--

7 (1) Upon receipt of an application, the panel shall
8 appoint an appropriate independent counsel and shall define
9 that independent counsel's prosecutorial jurisdiction. The
10 appointment shall occur no later than 30 days after the
11 receipt of the application.

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

28 (3) In defining the independent counsel's prosecutorial
29 jurisdiction, the panel shall assure that the independent
30 counsel has adequate authority to fully investigate and

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

8 (i) An offense classified higher than a misdemeanor
9 of the second degree.

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

17 (4) The panel shall disclose the identity of the
18 independent counsel upon appointment.

19 (b) Expansion of jurisdiction.--

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

24 (2) If the independent counsel discovers or receives
25 information about possible violations of criminal law by
26 persons as provided in section 9312 (relating to preliminary
27 investigation) which are not covered by the prosecutorial
28 jurisdiction of the independent counsel, the independent
29 counsel may submit the information to the General Counsel. In
30 accordance with this subchapter, the General Counsel shall

1 appoint a special investigative counsel to conduct a
2 preliminary investigation of the information, except that the
3 preliminary investigation shall not exceed 30 days from the
4 date the information is received. In making the
5 determinations required by this subchapter, the special
6 investigative counsel shall give great weight to any
7 recommendations of the independent counsel.

8 (3) If the special investigative counsel determines,
9 after according great weight to the recommendations of the
10 independent counsel, that there are no reasonable grounds to
11 believe that further investigation is warranted, the special
12 investigative counsel shall promptly so notify the panel, and
13 the panel shall have no power to expand the jurisdiction of
14 the independent counsel or to appoint another independent
15 counsel with respect to the matters involved.

16 (4) The panel shall expand the jurisdiction of the
17 appropriate independent counsel to include the matters
18 involved or shall appoint another independent counsel to
19 investigate the matters if:

20 (i) the special investigative counsel determines
21 that there are reasonable grounds to believe that further
22 investigation is warranted; or

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

26 (5) If the independent counsel discovers or receives
27 information about possible violations of criminal law by
28 persons other than those provided for in section 9312 and
29 which are not covered by the prosecutorial jurisdiction of
30 the independent counsel and a request for expansion under

1 this subsection has not been made by the General Counsel or
2 the request for expansion under this subsection has been
3 denied by the panel, the independent counsel shall submit the
4 information to the appropriate law enforcement authority.

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

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

20 SUBCHAPTER C

21 AUTHORITY AND DUTIES OF INDEPENDENT COUNSEL

22 Sec.

23 9331. Authorities.

24 9332. Compensation and travel expenses.

25 9333. Additional personnel.

26 9334. Assistance of Pennsylvania State Police.

27 9335. Referral of other matters to independent counsel.

28 9336. Dismissal of matters.

29 9337. Reports by independent counsel.

30 9338. Independence from Office of Attorney General.

- 1 9339. Standards of conduct applicable to independent counsel,
2 persons serving in office of independent counsel and
3 their law firms.
- 4 9340. Custody of records of independent counsel.
- 5 9341. Cost controls and administrative support.
- 6 9342. Legislative oversight.
- 7 9343. Removal of independent counsel and termination of office.
- 8 9344. Audits.
- 9 9345. Relationship with Office of Attorney General.
- 10 9346. Venue.

11 § 9331. Authorities.

12 Notwithstanding any other provision of law, an independent
13 counsel appointed under this chapter shall have, with respect to
14 all matters in the independent counsel's prosecutorial
15 jurisdiction established under this chapter, full power and
16 independent authority to exercise all investigative and
17 prosecutorial functions and powers of the Office of Attorney
18 General, the Attorney General and any other officer or employee
19 of the Office of Attorney General. Investigative and
20 prosecutorial functions and powers shall include, but are not
21 limited to:

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

24 (2) Participating in court proceedings and engaging in
25 any litigation, including civil and criminal matters, that
26 the independent counsel considers necessary.

27 (3) Appealing any decision of a court in any case or
28 proceeding in which the independent counsel participates in
29 an official capacity.

30 (4) Reviewing all documentary evidence available from

1 any source.

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

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

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

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

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

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

25 § 9332. Compensation and travel expenses.

26 An independent counsel appointed under this chapter shall
27 receive compensation at the per diem rate equal to the annual
28 rate of basic pay payable to the Attorney General. An
29 independent counsel and persons appointed under section 9333
30 (relating to additional personnel) shall be entitled to the

1 payment of travel expenses.

2 § 9333. Additional personnel.

3 For the purposes of carrying out the duties of the office of
4 independent counsel, the independent counsel may appoint, fix
5 the compensation and assign the duties of the employees the
6 independent counsel considers necessary, including, but not
7 limited to, investigators, attorneys and necessary experts to
8 assist with the criminal investigation. The positions of these
9 employees are exempted from the competitive service. Employees
10 shall be compensated at levels not to exceed those payable for
11 comparable positions in the Office of Attorney General.

12 § 9334. Assistance of Pennsylvania State Police.

13 (a) Carrying out functions.--An independent counsel may
14 request assistance from the Pennsylvania State Police in
15 carrying out the functions of the independent counsel, and the
16 Pennsylvania State Police shall provide that assistance, which
17 may include the use of the resources and personnel necessary to
18 perform the independent counsel's duties.

19 (b) Payment of and reports on expenditures of independent
20 counsel.--Upon the request of the Governor, the General Assembly
21 shall appropriate the necessary funds to the State Treasurer for
22 the use and operation in executing the duties and
23 responsibilities of the position of independent counsel. Upon
24 the request of the Governor, the General Assembly shall
25 appropriate the necessary funds to the Pennsylvania State Police
26 for costs incurred when rendering assistance to the independent
27 counsel as provided for under subsection (a). The State
28 Treasurer shall submit to the General Assembly, no later than 30
29 days after the end of each fiscal year, a report on amounts paid
30 during that fiscal year for expenses of investigations and

1 prosecutions by independent counsel. Each report shall include a
2 statement of all payments made for activities of independent
3 counsel.

4 § 9335. Referral of other matters to independent counsel.

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

12 § 9336. Dismissal of matters.

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

17 § 9337. Reports by independent counsel.

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

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

27 (2) Before the termination of the independent counsel's
28 office under section 9343(b) (relating to removal of
29 independent counsel and termination of office), file a final
30 report with the panel, setting forth fully and completely a

1 description of all prosecutions. All other information shall
2 be confidential and not subject to public disclosure.

3 (b) Disclosure of information in reports.--The panel may
4 release to the General Assembly, the Governor, the State
5 Treasurer, the public or any appropriate person the portions of
6 a report made under this section as the panel considers
7 appropriate. The panel shall make any orders as are appropriate
8 to protect the rights of any individual named in the report and
9 to prevent undue interference with any pending prosecution. The
10 panel may make any portion of a final report filed under
11 subsection (a)(2) available to any individual named in the
12 report for the purposes of receiving within a time limit set by
13 the panel any comments or factual information that the
14 individual may submit. The comments and factual information, in
15 whole or in part, may in the discretion of the panel be included
16 as an appendix to the final report.

17 § 9338. Independence from Office of Attorney General.

18 Each independent counsel appointed under this chapter and the
19 persons appointed by that independent counsel under section 9333
20 (relating to additional personnel) are separate from and
21 independent of the Office of Attorney General.

22 § 9339. Standards of conduct applicable to independent counsel,
23 persons serving in office of independent counsel and
24 their law firms.

25 (a) Restrictions on employment while independent counsel and
26 appointees are serving.--During the period in which an
27 independent counsel is serving under this chapter, the
28 independent counsel and any person associated with a firm with
29 which the independent counsel is associated may not represent in
30 any matter any person involved in any investigation or

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

7 (b) Postemployment restrictions on independent counsel and
8 appointees.--

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

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

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

29 (d) Definitions.--As used in this section, the following
30 words and phrases shall have the meanings given to them in this

1 subsection:

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

4 "Firm." A law firm, whether organized as a partnership or
5 corporation.

6 § 9340. Custody of records of independent counsel.

7 (a) Transfer of records.--Upon termination of the office of
8 independent counsel, that independent counsel shall transfer to
9 the Bureau of Archives and History of the Pennsylvania
10 Historical and Museum Commission all records which have been
11 created or received by that office. Before this transfer, the
12 independent counsel shall clearly identify which of these
13 records are subject to the Pennsylvania Rules of Criminal
14 Procedure as grand jury materials.

15 (b) Maintenance, use and disposal of records.--Records
16 transferred to the Bureau of Archives and History under this
17 section shall be maintained, used and disposed of as provided by
18 law.

19 § 9341. Cost controls and administrative support.

20 (a) Cost controls.--An independent counsel shall:

21 (1) Conduct all activities with due regard for expense.

22 (2) Authorize only reasonable and lawful expenditures.

23 (3) Promptly upon taking office assign to a specific
24 employee the duty of certifying that expenditures of the
25 independent counsel are reasonable and made in accordance
26 with law.

27 (b) Office of Administration policies.--An independent
28 counsel shall comply with the established policies of the Office
29 of Administration of the Governor respecting expenditures of
30 funds, except to the extent that compliance would be

1 inconsistent with the purposes of this chapter.

2 § 9342. Legislative oversight.

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

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

23 § 9343. Removal of independent counsel and termination of
24 office.

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

26 (1) An independent counsel appointed under this chapter
27 may be removed from office only by the personal action of the
28 General Counsel and only for good cause, physical disability,
29 mental incapacity or any other condition that substantially
30 impairs the performance of the independent counsel's duties.

1 For purposes of this paragraph, the term "good cause"
2 includes, but is not limited to, violations of any ethical
3 rules governing the independent counsel, the Attorney General
4 or district attorneys.

5 (2) If an independent counsel is removed from office,
6 the General Counsel shall promptly submit to the panel, the
7 Judiciary Committee of the Senate and the Judiciary Committee
8 of the House of Representatives a report specifying the facts
9 found and the ultimate grounds for the removal. The
10 committees may make available to the public the report,
11 except that each committee may, if necessary to protect the
12 rights of any individual named in the report or to prevent
13 undue interference with any pending prosecution, postpone or
14 refrain from publishing any or all of the report. The panel
15 may release any or all of the report in accordance with
16 section 9337(b) (relating to reports by independent counsel).

17 (3) An independent counsel removed from office may
18 obtain judicial review of the removal in a civil action
19 commenced in the Commonwealth Court. The independent counsel
20 may be reinstated or granted other appropriate relief by
21 order of the Commonwealth Court. A member of the panel may
22 not hear or determine any such civil action or any appeal of
23 a decision in any such civil action.

24 (b) Termination of office.--

25 (1) An office of independent counsel shall terminate
26 when the independent counsel:

27 (i) notifies the panel that the investigation of all
28 matters within the prosecutorial jurisdiction of the
29 independent counsel or accepted by the independent
30 counsel, and any resulting prosecutions, have been

1 completed; and

2 (ii) files a final report in compliance with section
3 9337.

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

10 § 9344. Audits.

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

21 § 9345. Relationship with Office of Attorney General.

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

1 § 9346. Venue.

2 The proper venue for all prosecutions conducted by the
3 independent counsel shall be determined in accordance with the
4 Pennsylvania Rules of Criminal Procedure. For the purposes of
5 convenience and fairness, the panel may, however, set the venue
6 in any other county on its own motion or at the request of the
7 independent counsel or on petition of the defendant.

8 SUBCHAPTER D
9 MISCELLANEOUS PROVISIONS

10 Sec.

11 9351. Severability of chapter.

12 9352. Expiration of chapter.

13 § 9351. Severability of chapter.

14 The provisions of this chapter are severable. If any
15 provision of this chapter or its application to any person or
16 circumstance is held invalid, the invalidity shall not affect
17 other provisions or applications of this chapter which can be
18 given effect without the invalid provision or application.

19 § 9352. Expiration of chapter.

20 This chapter shall expire five years after the date of the
21 enactment of this chapter, except with respect to any matters
22 pending before an independent counsel that in the judgment of
23 the independent counsel require continuation. Matters shall be
24 continued until the independent counsel determines the matters
25 are completed.]

26 Section ~~2~~ 3. Title 18 is amended by adding a chapter to
27 read:

28 CHAPTER 95
29 INDEPENDENT COUNSEL
30 Subchapter

<--

1 A. Preliminary Provisions

2 B. General Provisions

3 C. Authority and Duties of Independent Counsel

4 SUBCHAPTER A

5 PRELIMINARY PROVISIONS

6 Sec.

7 9501. Scope of chapter.

8 9502. Definitions.

9 § 9501. Scope of chapter.

10 This chapter relates to independent counsel authorization.

11 § 9502. Definitions.

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

15 "Grounds to investigate." Information which would lead a
16 reasonable person to suspect that a crime is being or has been
17 committed.

18 "Independent counsel." A person appointed by the panel upon
19 the request of a special investigative counsel.

20 "Panel." The Special Independent Prosecutor's Panel
21 established under this chapter.

22 "Requesting judge." A judge of a court of common pleas, or a
23 judge of an intermediate court sitting in the court's original
24 jurisdiction, who applies for the appointment of a special
25 investigative counsel to investigate a contempt of court.

26 "Special investigative counsel." A person appointed by the
27 panel to conduct a preliminary investigation under this chapter.

28 SUBCHAPTER B

29 GENERAL PROVISIONS

30 Sec.

1 9511. Organization of panel.
2 9512. Preliminary investigation.
3 9513. Conduct of preliminary investigation.
4 9514. Determination that further investigation not warranted.
5 9515. Determination that further investigation is warranted.
6 9516. Contents of application.
7 9517. Disclosure of information. <--
8 9518. Limitation on judicial review.
9 9519. Duties of panel.
10 9517. DUTIES OF PANEL. <--
11 9518. DISCLOSURE OF INFORMATION.
12 § 9511. Organization of panel.

13 (a) Composition and selection.--The Special Independent
14 Prosecutor's Panel shall be composed of one judge of the
15 Commonwealth Court and two judges, including WHICH MAY INCLUDE <--
16 senior judges, of the courts of common pleas of the
17 Commonwealth. The members of the panel shall be chosen by lot.
18 The procedure shall be determined and supervised by the Court
19 Administrator of Pennsylvania in the Administrative Office of
20 Pennsylvania Courts. The Administrative Office of Pennsylvania
21 Courts shall disclose to the public the membership of the panel.

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

30 (c) Vacancies.--Any vacancy in the panel shall be filled

1 only for the remainder of the three-year period in which the
2 vacancy occurs and in the same manner as initial assignments to
3 the panel were made.

4 (d) Decisions by majority vote.--All decisions of the panel
5 shall be by majority vote of the members.

6 (e) Clerk.--The Prothonotary of the Commonwealth Court shall
7 serve as the clerk of the panel and shall provide services as
8 are needed by the panel.

9 (f) Restriction.--A member of the panel who participated in
10 a function conferred on the panel under this chapter involving
11 an independent counsel shall not be eligible to participate in
12 any judicial proceeding concerning a matter which involves the
13 independent counsel and which involves the exercise of the
14 independent counsel's official duties, notwithstanding whether
15 the independent counsel is still serving in that office.

16 § 9512. Preliminary investigation.

17 (a) Covered persons.--The panel, upon the petition of a
18 district attorney OR A REQUESTING JUDGE, shall appoint a special <--
19 investigative counsel to conduct a preliminary investigation in
20 accordance with this chapter whenever the panel receives
21 information from a district attorney sufficient to constitute
22 grounds to investigate whether any person described in
23 subsection (b) may have committed an offense which is classified
24 higher than a summary offense in the district attorney's county.
25 If a district attorney receives information that any person
26 described in subsection (b) may have committed an offense which
27 is classified higher than a summary offense in a county other
28 than the district attorney's county, the district attorney shall
29 refer the information to the district attorney of that county.

30 (b) Applicability.--The persons referred to in subsection

1 (a) shall be as follows:

2 (1) The Attorney General., any Deputy Attorney General <--
3 or any individual working in the Office of Attorney General
4 who is defined as a "public employee" under 65 Pa.C.S. § 1102
5 (relating to definitions).

6 (1.1) A DEPUTY ATTORNEY GENERAL OR AN INDIVIDUAL WORKING <--
7 IN THE OFFICE OF ATTORNEY GENERAL WHO IS DEFINED AS A "PUBLIC
8 EMPLOYEE" UNDER 65 PA.C.S. § 1102 (RELATING TO DEFINITIONS)
9 IF THE GROUNDS TO INVESTIGATE ARISE FROM THE PERFORMANCE OF
10 THE INDIVIDUAL'S JOB DUTIES.

11 (2) Any individual who leaves any office or position
12 described in paragraph (1) OR (1.1) during the incumbency of <--
13 the Attorney General with or under whom the individual served
14 in the office or position, plus one year after the
15 incumbency, but not longer than a period of three years after
16 the individual leaves the office or position.

17 (3) Any individual who held an office or position
18 described in paragraph (1) OR (1.1) during the incumbency of <--
19 one Attorney General and who continued to hold the office or
20 position for not more than 90 days into the term of the next
21 Attorney General, during the one-year period after the
22 individual leaves the office or position.

23 (4) The chairman and treasurer of the principal campaign
24 committee seeking the election or reelection of the Attorney
25 General, and any officer of that committee exercising
26 authority at the State level, during the incumbency of the
27 elected Attorney General IF THE GROUNDS TO INVESTIGATE ARISE <--
28 FROM THE PERFORMANCE OF THE INDIVIDUAL'S CAMPAIGN-RELATED
29 ACTIVITIES.

30 (c) Examination of information to determine need for

1 preliminary investigation.--In determining under subsection (a)
2 whether grounds to investigate exist, a district attorney shall
3 consider only the specificity of the information received and
4 the credibility of the source of the information. A district
5 attorney shall determine whether grounds to investigate exist no
6 later than ~~30~~ 90 days after the information is first received. <--
7 If within that ~~30-day~~ 90-DAY period a district attorney <--
8 determines that the information is not specific or is not from a
9 credible source, then a district attorney shall close the
10 matter. If within that ~~30-day~~ 90-DAY period a district attorney <--
11 determines that the information is specific and from a credible
12 source, the district attorney shall, upon making that
13 determination, petition the panel to appoint a special
14 investigative counsel to commence a preliminary investigation
15 with respect to that information. If a district attorney is
16 unable to determine within that ~~30-day~~ 90-DAY period whether the <--
17 information is specific and from a credible source, the district
18 attorney shall at the end of that ~~30-day~~ 90-DAY period petition <--
19 the panel to appoint a special investigative counsel to commence
20 a preliminary investigation with respect to that information. If
21 a special investigative counsel is appointed, the special
22 investigative counsel may only accept the appointment when the
23 appointment would not conflict with the rules governing
24 professional conduct.

25 (d) Requesting judge's application.--If a requesting judge
26 determines that there are reasonable grounds to believe that
27 there has been a contempt of court committed by any person
28 described in subsection (b) and that investigation by a
29 prosecutor is warranted, the requesting judge may apply to the
30 panel for the appointment of a special investigative counsel.

1 § 9513. Conduct of preliminary investigation.

2 (a) In general.--A preliminary investigation conducted under
3 this chapter shall be of matters as the special investigative
4 counsel considers appropriate in order to make a determination
5 under section 9514 (relating to determination that further
6 investigation not warranted) or 9515 (relating to determination
7 that further investigation is warranted) of whether further
8 investigation is warranted with respect to each potential
9 violation or allegation of a violation of criminal law. The
10 special investigative counsel shall make the determination no
11 later than 90 days after the preliminary investigation is
12 commenced. The special investigative counsel shall promptly
13 notify the panel of the date of the commencement of the
14 preliminary investigation.

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

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

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

1 evidence that the person lacked the required state of mind.

2 (c) Extension of time for preliminary investigation.--The
3 special investigative counsel may apply to the panel for a
4 single extension, for a period of no more than 60 days, of the
5 90-day period referred to in subsection (a). The panel may, upon
6 a showing of good cause, grant the extension.

7 § 9514. Determination that further investigation not warranted.

8 (a) Notification of panel.--If the special investigative
9 counsel upon completion of a preliminary investigation under
10 this chapter determines that there are no reasonable grounds to
11 believe that further investigation is warranted, the special
12 investigative counsel shall promptly so notify the panel.

13 (b) Form of notification.--The notification shall contain a
14 summary of the information received and, a summary of the <--
15 results of the preliminary investigation AND ALL MATERIALS <--
16 COLLECTED AS PART OF THE PRELIMINARY INVESTIGATION. The summary <--
17 SUMMARIES shall be confidential and not subject to public <--
18 disclosure, except that the person who was the subject of the <--
19 investigation may request a copy of the summary from the panel.
20 The summary. THE SUMMARIES shall be considered an exception for <--
21 the purposes of section 708(b)(16) of the act of February 14,
22 2008 (P.L.6, No.3), known as the Right-to-Know Law.

23 § 9515. Determination that further investigation is warranted.

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

27 (1) the special investigative counsel, upon completion
28 of a preliminary investigation under this chapter, determines
29 that there are reasonable grounds to believe that further
30 investigation is warranted; or

1 (2) the 90-day period referred to in section 9513(a)
2 (relating to conduct of preliminary investigation) and any
3 extension granted under section 9513(c) have elapsed and the
4 special investigative counsel has not filed a notification
5 with the panel under section 9514(a) (relating to
6 determination that further investigation not warranted).

7 (b) Receipt of additional information.--If, after submitting
8 a notification under section 9514(a), the special investigative
9 counsel receives additional information sufficient to constitute
10 grounds to investigate the matters to which the notification
11 related, the special investigative counsel shall:

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

16 (2) Otherwise comply with the provisions of this
17 subchapter with respect to the additional preliminary
18 investigation to the same extent as any other preliminary
19 investigation under this chapter.

20 § 9516. Contents of application.

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

28 ~~§ 9517. Disclosure of information.~~

29 ~~Except as otherwise provided in this chapter, no officer or~~
30 ~~employee of the office of special investigative counsel or the~~

<--

~~1 office of independent counsel may, without leave of the panel,
2 disclose to any individual outside the office of special
3 investigative counsel or office of independent counsel any
4 notification, application or any other document, material or
5 memorandum supplied to the panel under this chapter. Nothing in
6 this chapter shall be construed as authorizing the withholding
7 of information from the General Assembly.~~

~~8 § 9518. Limitation on judicial review.~~

~~9 The determination of the special investigative counsel under
10 this chapter to apply to the panel for the appointment of an
11 independent counsel shall be reviewable by the panel.~~

~~12 § 9519 9517. Duties of panel.~~

<--

~~13 (a) Appointment and jurisdiction of independent counsel.--~~

~~14 (1) Upon receipt of an application, the panel shall
15 appoint an appropriate independent counsel and shall define
16 that independent counsel's prosecutorial jurisdiction. The
17 appointment shall occur no later than 30 days after the
18 receipt of the application.~~

~~19 (2) The panel shall appoint as independent counsel an
20 individual who has appropriate experience and who will
21 conduct the investigation and any prosecution in a prompt,
22 responsible and cost-effective manner. The panel shall seek
23 to appoint as independent counsel an individual who will
24 serve to the extent necessary to complete the investigation
25 and any prosecution without undue delay. The panel may not
26 appoint as an independent counsel any person who holds any
27 office of profit or trust with the Commonwealth. A person who
28 is serving as a special investigative counsel may not be
29 appointed or serve as an independent counsel in the matter
30 for which the person had been appointed to investigate as~~

1 special investigative counsel. If an independent counsel is
2 appointed, the independent counsel may only accept the
3 appointment when the appointment would not conflict with the
4 rules governing professional conduct.

5 (3) In defining the independent counsel's prosecutorial
6 jurisdiction, the panel shall assure that the independent
7 counsel has adequate authority to fully investigate and
8 prosecute the subject matter with respect to which the
9 special investigative counsel has requested the appointment
10 of the independent counsel and all matters related to that
11 subject matter. Jurisdiction shall also include the authority
12 to investigate and prosecute an offense classified higher
13 than a summary offense or a contempt of court which may arise
14 out of the investigation with respect to which the special
15 investigative counsel's request was made.

16 (4) The panel shall disclose the identity of the
17 independent counsel upon appointment.

18 (b) Expansion of jurisdiction.--

19 (1) The panel upon the request of a district attorney or
20 a requesting judge may expand the prosecutorial jurisdiction
21 of an independent counsel. The expansion may be in lieu of
22 the appointment of another independent counsel.

23 (2) If the independent counsel discovers or receives
24 information about possible violations of criminal law by
25 persons as provided in section 9512 (relating to preliminary
26 investigation) which are not covered by the prosecutorial
27 jurisdiction of the independent counsel, the independent
28 counsel may submit the information to a district attorney. In
29 accordance with this subchapter, a district attorney shall
30 petition the panel to appoint a special investigative counsel

1 to conduct a preliminary investigation of the information,
2 except that the preliminary investigation shall not exceed 30
3 days from the date the information is received. In making the
4 determinations required by this subchapter, the special
5 investigative counsel shall give great weight to any
6 recommendations of the independent counsel.

7 (3) If the special investigative counsel determines,
8 after according great weight to the recommendations of the
9 independent counsel, that there are no reasonable grounds to
10 believe that further investigation is warranted, the special
11 investigative counsel shall promptly notify the panel.

12 (4) The panel shall expand the jurisdiction of the
13 appropriate independent counsel to include the matters
14 involved or shall appoint another independent counsel to
15 investigate the matters if:

16 (i) the special investigative counsel determines
17 that there are reasonable grounds to believe that further
18 investigation is warranted; or

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

22 (5) If the independent counsel discovers or receives
23 information about possible violations of criminal law by
24 persons other than those provided for in section 9512 and
25 which are not covered by the prosecutorial jurisdiction of
26 the independent counsel and a request for expansion under
27 this subsection has not been made by a district attorney or a
28 requesting judge or the request for expansion under this
29 subsection has been denied by the panel, the independent
30 counsel shall submit the information to the appropriate law

1 enforcement authority.

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

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

17 § 9518. DISCLOSURE OF INFORMATION.

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18 EXCEPT AS OTHERWISE PROVIDED IN THIS CHAPTER, NO OFFICER OR
19 EMPLOYEE OF THE OFFICE OF SPECIAL INVESTIGATIVE COUNSEL OR THE
20 OFFICE OF INDEPENDENT COUNSEL MAY, WITHOUT LEAVE OF THE PANEL,
21 DISCLOSE TO ANY INDIVIDUAL OUTSIDE THE OFFICE OF SPECIAL
22 INVESTIGATIVE COUNSEL OR OFFICE OF INDEPENDENT COUNSEL ANY
23 NOTIFICATION, APPLICATION OR ANY OTHER DOCUMENT, MATERIAL OR
24 MEMORANDUM SUPPLIED TO THE PANEL UNDER THIS CHAPTER. NOTHING IN
25 THIS CHAPTER SHALL BE CONSTRUED AS AUTHORIZING THE WITHHOLDING
26 OF INFORMATION FROM THE GENERAL ASSEMBLY.

27 SUBCHAPTER C

28 AUTHORITY AND DUTIES OF INDEPENDENT COUNSEL

29 Sec.

30 9531. Authorities.

- 1 9532. Compensation and travel expenses.
2 9533. Additional personnel.
3 9534. Assistance of Pennsylvania State Police.
4 9535. Referral of other matters to independent counsel.
5 9536. Dismissal of matters.
6 9537. Reports by independent counsel.
7 9538. Independence from Office of Attorney General.
8 9539. Standards of conduct.
9 9540. Custody of records of independent counsel.
10 9541. Cost controls and administrative support.
11 9542. Legislative oversight.
12 9543. Removal of independent counsel and termination of office.
13 9544. Audits.
14 9545. Relationship with Office of Attorney General.
15 9546. Venue.
16 § 9531. Authorities.

17 Notwithstanding any other provision of law, an independent
18 counsel appointed under this chapter shall have, with respect to
19 all matters in the independent counsel's prosecutorial
20 jurisdiction established under this chapter, full power and
21 independent authority to exercise all investigative and
22 prosecutorial functions and powers of the Office of Attorney
23 General, the Attorney General and any other officer or employee
24 of the Office of Attorney General. Investigative and
25 prosecutorial functions and powers shall include, but are not
26 limited to:

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

29 (2) Participating in court proceedings and engaging in
30 any litigation, including civil and criminal matters, that

1 the independent counsel considers necessary.

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

5 (4) Reviewing all documentary evidence available from
6 any source.

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

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

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

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

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

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

30 § 9532. Compensation and travel expenses.

1 An independent counsel appointed under this chapter shall
2 receive compensation at the per diem rate equal to the annual
3 rate of basic pay payable to the Attorney General. An
4 independent counsel and persons appointed under section 9533
5 (relating to additional personnel) shall be entitled to the
6 payment of travel expenses.
7 § 9533. Additional personnel.

8 For the purposes of carrying out the duties of the office of
9 independent counsel, the independent counsel may appoint, fix
10 the compensation and assign the duties of the employees the
11 independent counsel considers necessary, including, but not
12 limited to, investigators, attorneys and necessary experts to
13 assist with the criminal investigation. The positions of these
14 employees are exempted from the competitive service. Employees
15 shall be compensated at levels not to exceed those payable for
16 comparable positions in the Office of Attorney General.
17 § 9534. Assistance of Pennsylvania State Police.

18 (a) Carrying out functions.--An independent counsel may
19 request assistance from the Pennsylvania State Police in
20 carrying out the functions of the independent counsel, and the
21 Pennsylvania State Police shall provide that assistance, which
22 may include the use of the resources and personnel necessary to
23 perform the independent counsel's duties.

24 (b) Payment of and reports on expenditures of independent
25 counsel.--Upon the request of the Governor, the General Assembly
26 shall appropriate the necessary funds to the State Treasurer for
27 the use and operation in executing the duties and
28 responsibilities of the position of independent counsel. Upon
29 the request of the Governor, the General Assembly shall
30 appropriate the necessary funds to the Pennsylvania State Police

1 for costs incurred when rendering assistance to the independent
2 counsel as provided for under subsection (a). The State
3 Treasurer shall submit to the General Assembly, no later than 30
4 days after the end of each fiscal year, a report on amounts paid
5 during that fiscal year for expenses of investigations and
6 prosecutions by independent counsel. Each report shall include a
7 statement of all payments made for activities of independent
8 counsel.

9 § 9535. Referral of other matters to independent counsel.

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

17 § 9536. Dismissal of matters.

18 The independent counsel shall have full authority to dismiss
19 matters within the independent counsel's prosecutorial
20 jurisdiction at any subsequent time before prosecution.

21 § 9537. Reports by independent counsel.

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

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

1 (2) Before the termination of the independent counsel's
2 office under section 9543(b) (relating to removal of
3 independent counsel and termination of office), file a final
4 report with the panel, setting forth fully and completely a
5 description of all prosecutions. All other information shall
6 be confidential and not subject to public disclosure.

7 (b) Disclosure of information in reports.--The panel may
8 release to the General Assembly, the Governor, the State
9 Treasurer, the public or any appropriate person the portions of
10 a report made under this section as the panel considers
11 appropriate. The panel shall make any orders as are appropriate
12 to protect the rights of any individual named in the report and
13 to prevent undue interference with any pending prosecution. The
14 panel may make any portion of a final report filed under
15 subsection (a) (2) available to any individual named in the
16 report for the purposes of receiving within a time limit set by
17 the panel any comments or factual information that the
18 individual may submit. The comments and factual information, in
19 whole or in part, may in the discretion of the panel be included
20 as an appendix to the final report.

21 § 9538. Independence from Office of Attorney General.

22 Each independent counsel appointed under this chapter and the
23 persons appointed by that independent counsel under section 9533
24 (relating to additional personnel) are separate from and
25 independent of the Office of Attorney General.

26 § 9539. Standards of conduct.

27 (a) Restrictions on employment while independent counsel and
28 appointees are serving.--During the period in which an
29 independent counsel is serving under this chapter, the
30 independent counsel and any person associated with a firm with

1 which the independent counsel is associated may not represent in
2 any matter any person involved in any investigation or
3 prosecution under this chapter. During the period in which any
4 person appointed by an independent counsel under section 9533
5 (relating to additional personnel) is serving in the office of
6 independent counsel, the person may not represent in any matter
7 any person involved in any investigation or prosecution under
8 this chapter.

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

11 (1) Each independent counsel and each person appointed
12 by that independent counsel under section 9533 may not for
13 three years following the termination of service under this
14 chapter of that independent counsel or appointed person, as
15 the case may be, represent any person in any matter if that
16 individual was the subject of an investigation or prosecution
17 conducted by that independent counsel under this chapter.

18 (2) Each independent counsel and each person appointed
19 by that independent counsel under section 9533 may not for
20 one year following the termination of service under this
21 chapter of that independent counsel or appointed person, as
22 the case may be, represent any person in any matter involving
23 any investigation or prosecution under this chapter.

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

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

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

6 "Firm." A law firm, whether organized as a partnership or
7 corporation.

8 § 9540. Custody of records of independent counsel.

9 (a) Transfer of records.--Upon termination of the office of
10 independent counsel, that independent counsel shall transfer to
11 the Bureau of the Pennsylvania State Archives of the
12 Pennsylvania Historical and Museum Commission all records which
13 have been created or received by that office. Before this
14 transfer, the independent counsel shall clearly identify which
15 of these records are subject to the Pennsylvania Rules of
16 Criminal Procedure as grand jury materials.

17 (b) Maintenance, use and disposal of records.--Records
18 transferred to the Bureau of the Pennsylvania State Archives
19 under this section shall be maintained, used and disposed of as
20 provided by law.

21 § 9541. Cost controls and administrative support.

22 (a) Cost controls.--An independent counsel shall:

23 (1) Conduct all activities with due regard for expense.

24 (2) Authorize only reasonable and lawful expenditures.

25 (3) Promptly upon taking office assign to a specific
26 employee the duty of certifying that expenditures of the
27 independent counsel are reasonable and made in accordance
28 with law.

29 (b) Office of Administration policies.--An independent
30 counsel shall comply with the established policies of the Office

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

4 § 9542. Legislative oversight.

5 (a) Oversight of conduct of independent counsel.--An
6 independent counsel appointed under this chapter shall submit to
7 the General Assembly a report detailing all funds expended as
8 required under section 9537(a)(1) (relating to reports by
9 independent counsel) and shall submit annually a report on the
10 activities of the independent counsel, including a description
11 of the progress of any investigation or prosecution conducted by
12 the independent counsel. The report may omit any matter that in
13 the judgment of the independent counsel should be kept
14 confidential but shall provide information adequate to justify
15 the expenditures that the office of the independent counsel has
16 made.

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

25 § 9543. Removal of independent counsel and termination of
26 office.

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

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

1 incapacity or any other condition that substantially impairs
2 the performance of the independent counsel's duties. For
3 purposes of this paragraph, the term "good cause" includes,
4 but is not limited to, violations of any ethical rules
5 governing the independent counsel, the Attorney General or
6 district attorneys.

7 (2) If an independent counsel is removed from office,
8 the panel shall promptly submit to the Judiciary Committee of
9 the Senate and the Judiciary Committee of the House of
10 Representatives a report specifying the facts found and the
11 ultimate grounds for the removal. The committees may make
12 available to the public the report, except that each
13 committee may, if necessary to protect the rights of any
14 individual named in the report or to prevent undue
15 interference with any pending prosecution, postpone or
16 refrain from publishing any or all of the report. The panel
17 may release any or all of the report in accordance with
18 section 9537(b) (relating to reports by independent counsel).

19 (3) An independent counsel removed from office may
20 obtain judicial review of the removal in a civil action
21 commenced in the Commonwealth Court. The independent counsel
22 may be reinstated or granted other appropriate relief by
23 order of the Commonwealth Court. A member of the panel may
24 not hear or determine the civil action or any appeal of a
25 decision in the civil action.

26 (b) Termination of office.--

27 (1) An office of independent counsel shall terminate
28 when the independent counsel:

29 (i) notifies the panel that the investigation of all
30 matters within the prosecutorial jurisdiction of the

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

4 (ii) files a final report in compliance with section
5 9537.

6 (2) The panel shall determine on its own motion whether
7 termination is appropriate under this subsection no later
8 than two years after the appointment of an independent
9 counsel or the reported expenditures of the independent
10 counsel, INCLUDING PERSONNEL COSTS UNDER SECTIONS 9532 <--
11 (RELATING TO COMPENSATION AND TRAVEL EXPENSES) AND 9533
12 (RELATING TO ADDITIONAL PERSONNEL), have reached \$2,000,000,
13 whichever occurs first, and at the end of each succeeding
14 one-year period.

15 § 9544. Audits.

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

26 § 9545. Relationship with Office of Attorney General.

27 Whenever a matter is in the prosecutorial jurisdiction of an
28 independent counsel or has been accepted by an independent
29 counsel under section 9535 (relating to referral of other
30 matters to independent counsel), the Office of Attorney General,

1 the Attorney General, all other officers and employees of the
2 Office of Attorney General and any district attorney shall
3 suspend all investigations and proceedings regarding that matter
4 and shall turn over to the independent counsel all materials,
5 files and other data relating to that matter.

6 § 9546. Venue.

7 The proper venue for all prosecutions conducted by the
8 independent counsel shall be determined in accordance with the
9 Pennsylvania Rules of Criminal Procedure, except that for the
10 purposes of convenience and fairness, the panel may set the
11 venue in any other county on its own motion or at the request of
12 the independent counsel or on petition of the defendant.

13 Section 3 4. This act shall take effect in 60 days.

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