

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

AS AMENDED ON THIRD CONSIDERATION, MAY 9, 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. Title 18 of the Pennsylvania Consolidated
8 Statutes is amended by adding a chapter to read:

9 CHAPTER 92

10 CONFLICTS OF INTEREST

11 Sec.

12 9201. Procedures.

13 § 9201. Procedures.

14 If a district attorney requests that the Attorney General
15 exercise the power to prosecute in a county criminal court under
16 section 205(a)(3) of the act of October 15, 1980 (P.L.950,
17 No.164), known as the Commonwealth Attorneys Act, and the
18 Attorney General declines to accept or act on the request, the

1 following shall apply:

2 (1) The district attorney may refer the matter to a  
3 district attorney of a contiguous county who has sufficient  
4 resources and has no conflict of interest in representing the  
5 Commonwealth.

6 (2) If the district attorneys of the contiguous counties  
7 decline to accept the referral for any reason, the referring  
8 district attorney may refer the matter to a district attorney  
9 of a noncontiguous county.

10 (3) A district attorney who has accepted a case under  
11 paragraph (1) or (2) and a deputy or assistant district  
12 attorney on the district attorney's staff shall have the same  
13 authority to investigate and prosecute as the district  
14 attorney who referred the matter.

15 Section 2. Chapter 93 of Title 18 is repealed:

16 [CHAPTER 93  
17 INDEPENDENT COUNSEL

18 Subchapter

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

23 SUBCHAPTER A  
24 PRELIMINARY PROVISIONS

25 Sec.

26 9301. Short title of chapter.

27 9302. Definitions.

28 § 9301. Short title of chapter.

29 This chapter shall be known and may be cited as the  
30 Independent Counsel Authorization Act.

1 § 9302. Definitions.

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

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

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

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

12 "Panel." The Special Independent Prosecutor's Panel  
13 established under this chapter.

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

17 SUBCHAPTER B

18 GENERAL PROVISIONS

19 Sec.

20 9311. Organization of panel.

21 9312. Preliminary investigation.

22 9313. Conduct of preliminary investigation.

23 9314. Determination that further investigation not warranted.

24 9315. Determination that further investigation is warranted.

25 9316. Contents of application.

26 9317. Disclosure of information.

27 9318. Limitation on judicial review.

28 9319. Duties of panel.

29 § 9311. Organization of panel.

30 (a) Composition and selection.--The Special Independent

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

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

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

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

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

26 (f) Restriction.--No member of the panel who participated in  
27 a function conferred on the panel under this chapter involving  
28 an independent counsel shall be eligible to participate in any  
29 judicial proceeding concerning a matter which involves the  
30 independent counsel and which involves the exercise of the

1 independent counsel's official duties, regardless of whether the  
2 independent counsel is still serving in that office.

3 § 9312. Preliminary investigation.

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

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

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

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

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

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

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

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

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

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

30 (d) Examination of information to determine need for

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

24 § 9313. Conduct of preliminary investigation.

25 (a) In general.--A preliminary investigation conducted under  
26 this chapter shall be of matters as the special investigative  
27 counsel considers appropriate in order to make a determination  
28 under section 9314 (relating to determination that further  
29 investigation not warranted) or 9315 (relating to determination  
30 that further investigation is warranted) of whether further

1 investigation is warranted with respect to each potential  
2 violation or allegation of a violation of criminal law. The  
3 special investigative counsel shall make the determination no  
4 later than 90 days after the preliminary investigation is  
5 commenced. The special investigative counsel shall promptly  
6 notify the panel of the date of the commencement of the  
7 preliminary investigation.

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

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

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

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

30 § 9314. Determination that further investigation not warranted.



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

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

14 § 9315. Determination that further investigation is warranted.

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

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

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

28 (b) Receipt of additional information.--If, after submitting  
29 a notification under section 9314(a), the special investigative  
30 counsel receives additional information sufficient to constitute

1 grounds to investigate the matters to which the notification  
2 related, the special investigative counsel shall:

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

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

11 § 9316. Contents of application.

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

19 § 9317. Disclosure of information.

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

29 § 9318. Limitation on judicial review.

30 The determination of the special investigative counsel under

1 this chapter to apply to the panel for the appointment of an  
2 independent counsel shall not be reviewable in any court.

3 § 9319. Duties of panel.

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

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

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

26 (3) In defining the independent counsel's prosecutorial  
27 jurisdiction, the panel shall assure that the independent  
28 counsel has adequate authority to fully investigate and  
29 prosecute the subject matter with respect to which the  
30 special investigative counsel has requested the appointment

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

6 (i) An offense classified higher than a misdemeanor  
7 of the second degree.

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

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

17 (b) Expansion of jurisdiction.--

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

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

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

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

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

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

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

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

1 denied by the panel, the independent counsel shall submit the  
2 information to the appropriate law enforcement authority.

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

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

#### 18 SUBCHAPTER C

#### 19 AUTHORITY AND DUTIES OF INDEPENDENT COUNSEL

20 Sec.

21 9331. Authorities.

22 9332. Compensation and travel expenses.

23 9333. Additional personnel.

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25 9335. Referral of other matters to independent counsel.

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- 1           their law firms.
- 2   9340.   Custody of records of independent counsel.
- 3   9341.   Cost controls and administrative support.
- 4   9342.   Legislative oversight.
- 5   9343.   Removal of independent counsel and termination of office.
- 6   9344.   Audits.
- 7   9345.   Relationship with Office of Attorney General.
- 8   9346.   Venue.
- 9   § 9331.  Authorities.

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

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

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

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

28           (4)   Reviewing all documentary evidence available from  
29        any source.

30           (5)   Determining whether to contest the assertion of any

1 testimonial privilege.

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

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

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

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

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

23 § 9332. Compensation and travel expenses.

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

30 § 9333. Additional personnel.



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

10 § 9334. Assistance of Pennsylvania State Police.

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

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

1 counsel.

2 § 9335. Referral of other matters to independent counsel.

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

10 § 9336. Dismissal of matters.

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

15 § 9337. Reports by independent counsel.

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

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

25 (2) Before the termination of the independent counsel's  
26 office under section 9343(b) (relating to removal of  
27 independent counsel and termination of office), file a final  
28 report with the panel, setting forth fully and completely a  
29 description of all prosecutions. All other information shall  
30 be confidential and not subject to public disclosure.

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

15 § 9338. Independence from Office of Attorney General.

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

20 § 9339. Standards of conduct applicable to independent counsel,  
21 persons serving in office of independent counsel and  
22 their law firms.

23 (a) Restrictions on employment while independent counsel and  
24 appointees are serving.--During the period in which an  
25 independent counsel is serving under this chapter, the  
26 independent counsel and any person associated with a firm with  
27 which the independent counsel is associated may not represent in  
28 any matter any person involved in any investigation or  
29 prosecution under this chapter. During the period in which any  
30 person appointed by an independent counsel under section 9333

1 (relating to additional personnel) is serving in the office of  
2 independent counsel, the person may not represent in any matter  
3 any person involved in any investigation or prosecution under  
4 this chapter.

5 (b) Postemployment restrictions on independent counsel and  
6 appointees.--

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

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

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

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

30 "Associated with a firm." A person who is an officer,

1 director, partner or other member or employee of a law firm.

2 "Firm." A law firm, whether organized as a partnership or  
3 corporation.

4 § 9340. Custody of records of independent counsel.

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

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

17 § 9341. Cost controls and administrative support.

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

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

20 (2) Authorize only reasonable and lawful expenditures.

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

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

30 § 9342. Legislative oversight.

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

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

21 § 9343. Removal of independent counsel and termination of  
22 office.

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

24 (1) An independent counsel appointed under this chapter  
25 may be removed from office only by the personal action of the  
26 General Counsel and only for good cause, physical disability,  
27 mental incapacity or any other condition that substantially  
28 impairs the performance of the independent counsel's duties.  
29 For purposes of this paragraph, the term "good cause"  
30 includes, but is not limited to, violations of any ethical

1 rules governing the independent counsel, the Attorney General  
2 or district attorneys.

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

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

22 (b) Termination of office.--

23 (1) An office of independent counsel shall terminate  
24 when the independent counsel:

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

30 (ii) files a final report in compliance with section

1 9337.

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

8 § 9344. Audits.

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

19 § 9345. Relationship with Office of Attorney General.

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

29 § 9346. Venue.

30 The proper venue for all prosecutions conducted by the



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

6 SUBCHAPTER D

7 MISCELLANEOUS PROVISIONS

8 Sec.

9 9351. Severability of chapter.

10 9352. Expiration of chapter.

11 § 9351. Severability of chapter.

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

17 § 9352. Expiration of chapter.

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

24 Section 3. Title 18 is amended by adding a chapter to read:

25 CHAPTER 95

26 INDEPENDENT COUNSEL

27 Subchapter

28 A. Preliminary Provisions

29 B. General Provisions

30 C. Authority and Duties of Independent Counsel

1 SUBCHAPTER A

2 PRELIMINARY PROVISIONS

3 Sec.

4 9501. Scope of chapter.

5 9502. Definitions.

6 9503. ADMINISTRATIVE EXPENSES. <--

7 § 9501. Scope of chapter.

8 This chapter relates to independent counsel authorization.

9 § 9502. Definitions.

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

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

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

18 "Panel." The Special Independent Prosecutor's Panel  
19 established under this chapter.

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

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

26 § 9503. ADMINISTRATIVE EXPENSES. <--

27 ALL EXPENSES ATTRIBUTABLE TO THE APPOINTMENT OF EITHER A  
28 SPECIAL INVESTIGATIVE COUNSEL OR AN INDEPENDENT COUNSEL SHALL BE  
29 PAID FROM THE ANNUAL APPROPRIATION FOR THE OFFICE OF ATTORNEY  
30 GENERAL'S GENERAL GOVERNMENT OPERATIONS.

1 SUBCHAPTER B

2 GENERAL PROVISIONS

3 Sec.

4 9511. Organization of panel.

5 9512. Preliminary investigation.

6 9513. Conduct of preliminary investigation.

7 9514. Determination that further investigation not warranted.

8 9515. Determination that further investigation is warranted.

9 9516. Contents of application.

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 SUPERIOR Court and two judges, 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 AND PUBLISH THE MEMBERSHIP ON ITS PUBLICLY ACCESSIBLE INTERNET <--

23 WEBSITE AND IN THE PENNSYLVANIA BULLETIN.

24 (b) Term of members.--Each member of the panel shall hold

25 office for a term of three years. Judges who are members of the

26 panel and are required to retire under section 16 of Article V

27 of the Constitution of Pennsylvania shall also vacate their

28 positions on the panel unless assigned under Chapter 7 of the

29 Rules of Judicial Administration. A judge who is otherwise

30 removed or suspended from office shall automatically forfeit the

1 position held by that judge on the panel.

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

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

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

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

19 § 9512. Preliminary investigation.

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

1 offense in a county other than the district attorney's county,  
2 the district attorney shall refer the information to the  
3 district attorney of that county.

4 (b) Applicability.--The persons referred to in subsection  
5 (a) shall be as follows:

6 (1) The Attorney General.

7 (1.1) A deputy Attorney General or an individual working  
8 in the Office of Attorney General who is defined as a "public  
9 employee" under 65 Pa.C.S. § 1102 (relating to definitions)  
10 if the grounds to investigate arise from the performance of  
11 the individual's job duties.

12 (2) Any individual who leaves any office or position  
13 described in paragraph (1) or (1.1) during the incumbency of  
14 the Attorney General with or under whom the individual served  
15 in the office or position, plus one year after the  
16 incumbency, but not longer than a period of three years after  
17 the individual leaves the office or position- IF THE GROUNDS <--  
18 TO INVESTIGATE AROSE FROM THE PERFORMANCE OF THE INDIVIDUAL'S  
19 FORMER JOB DUTIES.

20 (3) Any individual who held an office or position  
21 described in paragraph (1) or (1.1) during the incumbency of  
22 one Attorney General and who continued to hold the office or  
23 position for not more than 90 days into the term of the next  
24 Attorney General, during the one-year period after the  
25 individual leaves the office or position- IF THE GROUNDS TO <--  
26 INVESTIGATE AROSE FROM THE PERFORMANCE OF THE INDIVIDUAL'S  
27 FORMER JOB DUTIES.

28 (4) The chairman and treasurer of the principal campaign  
29 committee seeking the election or reelection of the Attorney  
30 General, and any officer of that committee exercising

1 authority at the State level, during the incumbency of the  
2 elected Attorney General if the grounds to investigate arise  
3 from the performance of the individual's campaign-related  
4 activities.

5 (B.1) APPEAL PROHIBITED.--THE DETERMINATION BY A DISTRICT <--  
6 ATTORNEY IF GROUNDS TO INVESTIGATE ARISE FROM THE PERFORMANCE OF  
7 THE INDIVIDUAL'S JOB OR CAMPAIGN-RELATED DUTIES OR ACTIVITIES  
8 UNDER SUBSECTION (B) SHALL BE FINAL AND NOT SUBJECT TO APPEAL.

9 (c) Examination of information to determine need for  
10 preliminary investigation.--In determining under subsection (a)  
11 whether grounds to investigate exist, a district attorney shall  
12 consider only the specificity of the information received and  
13 the credibility of the source of the information. A district  
14 attorney shall determine whether grounds to investigate exist no  
15 later than 90 days after the information is first received. If  
16 within that 90-day period a district attorney determines that  
17 the information is not specific or is not from a credible  
18 source, then a district attorney shall close the matter. If  
19 within that 90-day period a district attorney determines that  
20 the information is specific and from a credible source, the  
21 district attorney shall, upon making that determination,  
22 petition the panel to appoint a special investigative counsel to  
23 commence a preliminary investigation with respect to that  
24 information. If a district attorney is unable to determine  
25 within that 90-day period whether the information is specific  
26 and from a credible source, the district attorney shall at the  
27 end of that 90-day period petition the panel to appoint a  
28 special investigative counsel to commence a preliminary  
29 investigation with respect to that information. If a special  
30 investigative counsel is appointed, the special investigative

1 counsel may only accept the appointment when the appointment  
2 would not conflict with the rules governing professional  
3 conduct.

4 (d) Requesting judge's application.--If a requesting judge  
5 determines that there are reasonable grounds to believe that  
6 there has been a contempt of court committed by any person <--  
7 described in subsection (b) and that investigation by a  
8 prosecutor is warranted, the requesting judge may apply to the  
9 panel for the appointment of a special investigative counsel.

10 (E) COMPENSATION.--A SPECIAL INVESTIGATIVE COUNSEL APPOINTED <--  
11 UNDER THIS CHAPTER SHALL RECEIVE COMPENSATION AT THE PER DIEM  
12 RATE EQUAL TO THE ANNUAL RATE OF BASIC PAY PAYABLE TO THE  
13 ATTORNEY GENERAL. A SPECIAL INVESTIGATIVE COUNSEL SHALL BE  
14 ENTITLED TO THE PAYMENT OF TRAVEL EXPENSES.

15 § 9513. Conduct of preliminary investigation.

16 (a) In general.--A preliminary investigation conducted under  
17 this chapter shall be of matters as the special investigative  
18 counsel considers appropriate in order to make a determination  
19 under section 9514 (relating to determination that further  
20 investigation not warranted) or 9515 (relating to determination  
21 that further investigation is warranted) of whether further  
22 investigation is warranted with respect to each potential  
23 violation or allegation of a violation of criminal law. The  
24 special investigative counsel shall make the determination no  
25 later than 90 days after the preliminary investigation is  
26 commenced. The special investigative counsel shall promptly  
27 notify the panel of the date of the commencement of the  
28 preliminary investigation.

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

30 (1) In conducting preliminary investigations under this

1 chapter, the special investigative counsel shall have no  
2 authority to convene grand juries, plea bargain, grant  
3 immunity or issue subpoenas.

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

16 (c) Extension of time for preliminary investigation.--The  
17 special investigative counsel may apply to the panel for a  
18 single extension, for a period of no more than 60 days, of the  
19 90-day period referred to in subsection (a). The panel may, upon  
20 a showing of good cause, grant the extension.

21 § 9514. Determination that further investigation not warranted.

22 (a) Notification of panel.--If the special investigative  
23 counsel upon completion of a preliminary investigation under  
24 this chapter determines that there are no reasonable grounds to  
25 believe that further investigation is warranted, the special  
26 investigative counsel shall promptly so notify the panel.

27 (b) Form of notification.--The notification shall contain a  
28 summary of the information received, a summary of the results of  
29 the preliminary investigation and all materials collected as  
30 part of the preliminary investigation. The summaries shall be



1 confidential and not subject to public disclosure. The summaries  
2 shall be considered an exception for the purposes of section  
3 708(b)(16) of the act of February 14, 2008 (P.L.6, No.3), known  
4 as the Right-to-Know Law.

5 § 9515. Determination that further investigation is warranted.

6 (a) Application for appointment of independent counsel.--The  
7 special investigative counsel shall apply to the panel for the  
8 appointment of an independent counsel if: <--

9 ~~(1) the IF THE special investigative counsel, upon~~ <--  
10 completion of a preliminary investigation under this chapter,  
11 determines that there are reasonable grounds to believe that  
12 further investigation is warranted; <-- ~~or.~~

13 ~~(2) the 90 day period referred to in section 9513(a)~~ <--

14 (A.1) REVIEW BY PANEL.--THE PANEL SHALL REVIEW AND CONSIDER <--  
15 APPOINTING INDEPENDENT COUNSEL IF THE 90-DAY PERIOD REFERRED TO  
16 IN SECTION 9513(A) (relating to conduct of preliminary  
17 investigation) and any extension granted under section 9513(c)  
18 have elapsed and the special investigative counsel has not filed  
19 a notification with the panel under section 9514(a) (relating to  
20 determination that further investigation not warranted).

21 (b) Receipt of additional information.--If, after submitting  
22 a notification under section 9514(a), the special investigative  
23 counsel receives additional information sufficient to constitute  
24 grounds to investigate the matters to which the notification  
25 related, the special investigative counsel shall:

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

30 (2) Otherwise comply with the provisions of this

1 subchapter with respect to the additional preliminary  
2 investigation to the same extent as any other preliminary  
3 investigation under this chapter.

4 § 9516. Contents of application.

5 Any application for the appointment of an independent counsel  
6 under this chapter shall contain sufficient information to  
7 assist the panel in selecting an independent counsel and in  
8 defining that independent counsel's prosecutorial jurisdiction  
9 so that the independent counsel has adequate authority to fully  
10 investigate and prosecute the subject matter and all matters  
11 related to that subject matter.

12 § 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.

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 PETITION the panel to refer to <--  
11 the independent counsel matters related to the independent  
12 counsel's prosecutorial jurisdiction, and the panel may refer  
13 these matters.

14 § 9536. Dismissal of matters.

15 The independent counsel shall have full authority to dismiss  
16 matters within the independent counsel's prosecutorial  
17 jurisdiction at any subsequent time before prosecution.

18 § 9537. Reports by independent counsel.

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

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

28 (2) Before the termination of the independent counsel's  
29 office under section 9543(b) (relating to removal of  
30 independent counsel and termination of office), file a final

1 report with the panel, setting forth fully and completely a  
2 description of all prosecutions. All other information shall  
3 be confidential and not subject to public disclosure.

4 (A.1) SUBJECT TO REQUIREMENTS.--INDIVIDUALS SERVING AS AN <--  
5 INDEPENDENT COUNSEL AND PERSONS EMPLOYED BY OR SERVING AN  
6 INDEPENDENT COUNSEL SHALL BE SUBJECT TO THE REQUIREMENTS OF THE  
7 FOLLOWING ACTS:

8 (1) THE ACT OF JULY 19, 1957 (P.L.1017, NO.451), KNOWN  
9 AS THE STATE ADVERSE INTEREST ACT.

10 (2) THE PROVISIONS OF 65 PA.C.S. CH. 11 (RELATING TO  
11 ETHICS STANDARDS AND FINANCIAL DISCLOSURE).

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

26 § 9538. Independence from Office of Attorney General.

27 Each independent counsel appointed under this chapter and the  
28 persons appointed by that independent counsel under section 9533  
29 (relating to additional personnel) are separate from and  
30 independent of the Office of Attorney General.

1 § 9539. Standards of conduct.

2 (a) Restrictions on employment while independent counsel and  
3 appointees are serving.--During the period in which an  
4 independent counsel is serving under this chapter, the  
5 independent counsel and any person associated with a firm with  
6 which the independent counsel is associated may not represent in  
7 any matter any person involved in any investigation or  
8 prosecution under this chapter. During the period in which any  
9 person appointed by an independent counsel under section 9533  
10 (relating to additional personnel) is serving in the office of  
11 independent counsel, the person may not represent in any matter  
12 any person involved in any investigation or prosecution under  
13 this chapter.

14 (b) Postemployment restrictions on independent counsel and  
15 appointees.--

16 (1) Each independent counsel and each person appointed  
17 by that independent counsel under section 9533 may not for  
18 three years 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 if that  
21 individual was the subject of an investigation or prosecution  
22 conducted by that independent counsel under this chapter.

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

29 (c) One-year ban on representation by members of firms of  
30 independent counsel.--Any person who is associated with a firm

1 with which an independent counsel is associated or becomes  
2 associated after termination of service of that independent  
3 counsel under this chapter may not for one year following the  
4 termination represent any person in any matter involving any  
5 investigation or prosecution under this chapter.

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

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

11 "Firm." A law firm, whether organized as a partnership or  
12 corporation.

13 § 9540. Custody of records of independent counsel.

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

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

26 § 9541. Cost controls and administrative support.

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

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

29 (2) Authorize only reasonable and lawful expenditures.

30 (3) Promptly upon taking office assign to a specific

1 employee the duty of certifying that expenditures of the  
2 independent counsel are reasonable and made in accordance  
3 with law.

4 (b) Office of Administration policies.--An independent  
5 counsel shall comply with the established policies of the Office  
6 of Administration of the Governor respecting expenditures of  
7 funds, except to the extent that compliance would be  
8 inconsistent with the purposes of this chapter.

9 § 9542. Legislative oversight.

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

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

30 § 9543. Removal of independent counsel and termination of

1           office.

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

3           (1) An independent counsel appointed under this chapter  
4 may be removed from office only by the personal action of the  
5 panel and only for good cause, physical disability, mental  
6 incapacity or any other condition that substantially impairs  
7 the performance of the independent counsel's duties. For  
8 purposes of this paragraph, the term "good cause" includes, <--  
9 but is not limited to, violations of any ethical rules  
10 governing the independent counsel, the Attorney General or  
11 district attorneys.

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

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

1 (b) Termination of office.--

2 (1) An office of independent counsel shall terminate  
3 when the independent counsel:

4 (i) notifies the panel that the investigation of all  
5 matters within the prosecutorial jurisdiction of the  
6 independent counsel or accepted by the independent  
7 counsel, and any resulting prosecutions, have been  
8 completed; and

9 (ii) files a final report in compliance with section  
10 9537.

11 (2) The panel shall determine on its own motion whether  
12 termination is appropriate under this subsection no later  
13 than two years after the appointment of an independent  
14 counsel or the reported expenditures of the independent  
15 counsel, including personnel costs under sections 9532  
16 (relating to compensation and travel expenses) and 9533  
17 (relating to additional personnel), have reached \$2,000,000,  
18 whichever occurs first, and at the end of each succeeding  
19 one-year period.

20 § 9544. Audits.

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

1 § 9545. Relationship with Office of Attorney General.

2 Whenever a matter is in the prosecutorial jurisdiction of an  
3 independent counsel or has been accepted by an independent  
4 counsel under section 9535 (relating to referral of other  
5 matters to independent counsel), the Office of Attorney General,  
6 the Attorney General, all other officers and employees of the  
7 Office of Attorney General and any district attorney shall  
8 suspend all investigations and proceedings regarding that matter  
9 and shall turn over to the independent counsel all materials,  
10 files and other data relating to that matter.

11 § 9546. Venue.

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

18 Section 4. This act shall take effect in 60 days.