

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 75

Session of
1989

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McHALE, CALTAGIRONE, ITKIN, HECKLER, MOEHLMANN, COWELL,
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LEVDANSKY, LINTON, MILLER, MICHLOVIC, MORRIS, MRKONIC,
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SCRIMENTI, BISHOP, LANGTRY AND BROUJOS, JANUARY 24, 1989

SENATOR TILGHMAN, APPROPRIATIONS, IN SENATE, RE-REPORTED AS
AMENDED, JUNE 12, 1989

AN ACT

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

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

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

1 and amended to read:

2 AN ACT

3 Relating to conflicts of interest involving certain public
4 officials serving in State or State agencies and local
5 political subdivision positions and prohibiting certain
6 public employees from engaging in certain conflict of
7 interest activities requiring certain disclosures and
8 providing penalties.

9 Section 1. Purpose.

10 (a) The Legislature hereby declares that public office is a
11 public trust and that any effort to realize personal financial
12 gain through public office other than compensation provided by
13 law is a violation of that trust. In order to strengthen the
14 faith and confidence of the people of the State in their
15 government, the Legislature further declares that the people
16 have a right to be assured that the financial interests of
17 holders of or nominees or candidates for public office do not
18 [present neither a conflict nor the appearance of a] conflict
19 with the public trust. Because public confidence in government
20 can best be sustained by assuring the people of the impartiality
21 and honesty of public officials, this act shall be liberally
22 construed to promote complete [disclosure.] FINANCIAL DISCLOSURE ←
23 AS SPECIFIED IN THIS ACT. Furthermore, it is recognized that
24 clear guidelines are needed in order to guide public officials
25 and employees in their actions. Thus, the General Assembly by
26 this act intends to define as clearly as possible those areas
27 which represent conflict with the public trust.

28 (b) It is recognized that many public officials, including
29 most local officials and members of the General Assembly, are
30 citizen-officials who bring to their public office the knowledge

1 and concerns of ordinary citizens and taxpayers. They should not
2 be discouraged from maintaining their contacts with their
3 community through their occupations and professions. Thus, in
4 order to foster maximum compliance with its terms, this act
5 shall be administered in a manner that emphasizes guidance to
6 public officials and public employees regarding the ethical
7 standards established by this act.

8 (c) It is the intent of the General Assembly that this act
9 be administered by an independent commission composed of members
10 who are cognizant of the responsibilities and burdens of public
11 officials and employees and who have demonstrated an interest in
12 promoting public confidence in government.

13 Section 2. Definitions.

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

17 "Advice." Any directive of the ~~general~~ CHIEF counsel of the ←
18 commission issued under section 7(11) and based exclusively on
19 prior commission opinions, this act, regulations promulgated
20 pursuant to this act, and court opinions which interpret this
21 act.

22 "AGGREGATE." THE TOTAL OF ALL GIFTS RECEIVED FROM A SINGLE ←
23 SOURCE AS PROVIDED IN SECTION 5(B)(6).

24 "Authority of office or employment." The actual power
25 provided by law, the exercise of which is necessary to the
26 performance of duties and responsibilities unique to a
27 particular public office or position of public employment.

28 "Business." Any corporation, partnership, sole
29 proprietorship, firm, enterprise, franchise, association,
30 organization, self-employed individual, holding company, joint

1 stock company, receivership, trust or any legal entity organized
2 for profit.

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

7 "Candidate." Any individual who seeks nomination or election
8 to public office by vote of the electorate, other than a judge
9 or OF ELECTIONS, inspector of elections or official of a ←
10 political party, whether or not such individual is nominated or
11 elected. An individual shall be deemed to be seeking nomination
12 or election to such office if he has:

13 (1) received a contribution or made an expenditure or
14 given his consent for any other person or committee to
15 receive a contribution or make an expenditure for the purpose
16 of influencing his nomination or election to such office,
17 whether or not the individual has announced the specific
18 office for which he will seek nomination or election at the
19 time the contribution is received or the expenditure is made;
20 or

21 (2) taken the action necessary under the laws of this
22 Commonwealth to qualify himself for nomination or election to
23 such office.

24 The term shall include individuals nominated or elected as
25 write-in candidates unless they resign such nomination or
26 elected office within 30 days of having been nominated or
27 elected.

28 "Commission." The State Ethics Commission.

29 ["Compensation." Anything of economic value, however
30 designated, which is paid, loaned, granted, given, donated or

1 transferred, or to be paid, loaned, granted, given, donated or
2 transferred for or in consideration of personal services to any
3 person, official or to the State.]

4 "Confidential information." Information not obtainable from
5 reviewing a public document or from making inquiry to a publicly
6 available source of information.

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

20 "Contract." An agreement or arrangement for the acquisition,
21 use or disposal by ~~a State or~~ THE COMMONWEALTH OR A political
22 subdivision of consulting or other services or of supplies,
23 materials, equipment, land or other personal or real property.

24 "Contract" shall not mean an agreement or arrangement between
25 the State or political subdivision as one party and a public
26 official or public employee as the other party, concerning his
27 expense, reimbursement, salary, wage, retirement or other
28 benefit, tenure or other matters in consideration of his current
29 public employment with ~~a State or~~ THE COMMONWEALTH OR A
30 political subdivision.

1 "De minimis economic impact." An economic consequence which
2 has an insignificant effect.

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

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

14 "Findings report." An initial report containing findings of
15 fact as determined by the commission's investigation but not
16 containing any conclusions of law or any determination of
17 whether there has been a violation of law.

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

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

1 "Governmental body." Any department, authority, commission,
2 committee, council, board, bureau, division, service, office,
3 officer, administration, legislative body, or other
4 establishment in the Executive, Legislative or Judicial Branch
5 [of the State or a political subdivision thereof] OF A STATE, A <—
6 NATION OR A POLITICAL SUBDIVISION THEREOF OR ANY AGENCY
7 PERFORMING A GOVERNMENTAL FUNCTION.

8 "Governmental body with which a public official or public
9 employee is or has been associated." The entity GOVERNMENTAL <—
10 BODY within State government or a political subdivision by which
11 the public official or employee is or has been employed or to
12 which the public official or employee is or has been appointed
13 or elected and subdivisions and offices within that entity <—
14 GOVERNMENTAL BODY. <—

15 "Honorarium." Payment made in recognition of published
16 works, appearances, speeches and presentations and which is not
17 intended as consideration for the value of such services which
18 are nonpublic occupational or professional in nature. The term
19 does not include tokens presented or provided which are of de
20 minimis economic impact.

21 "Immediate family." [A spouse residing in the person's
22 household and minor dependent children.] A parent, spouse,
23 child, brother or sister.

24 "Income." Any money or thing of value received, or to be
25 received as a claim on future services or in recognition of
26 services rendered in the past, whether in the form of a payment,
27 fee, salary, expense, allowance, forbearance, forgiveness,
28 interest, dividend, royalty, rent, capital gain, reward,
29 severance payment, proceeds from the sale of a financial
30 interest in a corporation, professional corporation, partnership

1 or other entity resulting from termination or withdrawal
2 therefrom upon assumption of public office or employment or any
3 other form of recompense or any combination thereof. "Income"
4 refers to gross income and includes prize winnings and tax-
5 exempt income. The term does not include honoraria, gifts, ←
6 governmentally mandated payments or benefits, retirement,
7 pension or annuity payments funded totally by contributions of
8 the public official or employee, or miscellaneous, incidental
9 income of minor dependent children.

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

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

16 "Nominee." Any person whose name has been submitted to a
17 public official or governmental body vested with the power to
18 finally confirm or reject proposed appointments to public office
19 or employment.

20 "Nonministerial actions." An action in which the person
21 exercises his own judgment as to the desirability of the action
22 taken.

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

26 "Order." A directive of the commission issued pursuant to
27 section 7(13) at the conclusion of an investigation which
28 contains findings of fact, conclusions of law and penalties.

29 "Person." A business, governmental body, individual,
30 corporation, union, association, firm, partnership, committee,

1 club or other organization or group of persons.

2 "Political contribution." Any advance, conveyance, deposit,
3 distribution, transfer of funds, loan, payment, pledge, purchase
4 of a ticket to a testimonial or similar fund-raising affair, or
5 subscription of money or anything of value, except volunteer
6 services, in connection with a political campaign, and any
7 contract, agreement, promise, or other obligations, whether or
8 not legally enforceable, to make a political contribution.

9 "Political subdivision." Any county, city, borough,
10 incorporated town, township, school district, vocational school,
11 county institution district, and any authority, entity or body
12 organized by the aforementioned.

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

- 17 (1) contracting or procurement;
- 18 (2) administering or monitoring grants or subsidies;
- 19 (3) planning or zoning;
- 20 (4) inspecting, licensing, regulating or auditing any
21 person; or

22 (5) any other activity where the official action has an
23 economic impact of greater than a de minimis nature on the
24 interests of any person.

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

28 "Public official." Any [elected] person elected by the
29 public or ELECTED OR APPOINTED BY A GOVERNMENTAL BODY, OR AN
30 appointed official in the Executive, Legislative or Judicial

<—

1 Branch of the State or any political subdivision thereof,
2 provided that it shall not include members of advisory boards
3 that have no authority to expend public funds other than
4 reimbursement for personal expense, or to otherwise exercise the
5 power of the State or any political subdivision thereof.

6 ["Public official" shall not include any appointed official who
7 receives no compensation other than reimbursement for actual
8 expenses.]

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

14 "SOLICITOR." A PERSON ELECTED OR APPOINTED TO THE OFFICE OF ←
15 SOLICITOR FOR THE POLITICAL SUBDIVISION.

16 "SOURCE." ANY PERSON WHO IS A PROVIDER OF AN ITEM REPORTABLE
17 UNDER SECTION 5.

18 "State consultant." A person who, as an independent
19 contractor, performs professional, scientific, technical or
20 advisory service for a State agency, and who receives a fee,
21 honorarium or similar compensation for such services. A "State
22 consultant" is not an executive-level employee.
23 Section 3. Restricted activities.

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

1 (b) No person shall offer or give to a public official, [or]
2 public employee or nominee or candidate for public office or a
3 member of his immediate family or a business with which he is
4 associated, ANYTHING OF MONETARY VALUE, INCLUDING A GIFT, LOAN, ←
5 POLITICAL CONTRIBUTION, REWARD OR PROMISE OF FUTURE EMPLOYMENT
6 based on the offeror's or donor's understanding that the vote,
7 official action or judgment of the public official or public
8 employee or nominee or candidate for public office would be ←
9 influenced thereby, and no public official, [or] public BE ←
10 INFLUENCED THEREBY.

11 (C) NO [AND NO] PUBLIC OFFICIAL, [OR] PUBLIC employee or ←
12 nominee or candidate for public office shall solicit or accept,
13 anything of monetary value, including a gift, loan, political
14 contribution, reward, or promise of future employment based on
15 any understanding of that public official, public employee or
16 nominee that the vote, official action, or judgment of the
17 public official or public employee or nominee or candidate for
18 public office would be influenced thereby.

19 ~~(c)~~ (D) (1) No public official or public employee shall ←
20 accept an honorarium.

21 (2) This subsection shall not be applied retroactively.

22 ~~(d)~~ (E) (1) No person shall solicit or accept a severance ←
23 payment or anything of monetary value contingent upon the
24 assumption or acceptance of public office or employment.

25 (2) This subsection shall not prohibit:

26 (i) Payments received pursuant to an employment
27 agreement in existence prior to the time a person becomes
28 a candidate or is notified by a member of a transition
29 team, a search committee or a person with appointive
30 power that he is under consideration for public office or

1 makes application for public employment.

2 (ii) Receipt of a salary, fees, severance payment or
3 proceeds resulting from the sale of a person's interest
4 in a corporation, professional corporation, partnership
5 or other entity resulting from termination or withdrawal
6 therefrom upon the assumption or acceptance of public
7 office or employment.

8 (3) Payments made or received pursuant to paragraph
9 (2)(i) and (ii) shall not be based on the agreement, written
10 or otherwise, that the vote or official action of the
11 prospective public official or employee would be influenced
12 thereby.

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

14 [(c)] ~~(e)~~ (F) No public official or public employee or [a ←
15 member of his immediate family or any business in which the
16 person or a member of the person's immediate family is a
17 director, officer, owner or holder of stock exceeding 5% of the
18 equity at fair market value of the business] his spouse or child
19 or any business in which the person or his spouse or child is
20 associated shall enter into any contract valued at \$500 or more
21 [with a governmental body unless the contract has been awarded
22 through an open and public process, including prior public
23 notice and subsequent public disclosure of all proposals
24 considered and contracts awarded.] with the governmental body
25 with which the public official or public employee is associated
26 or any subcontract valued at \$500 or more with any person who
27 has been awarded a contract with the governmental body with
28 which the public official or public employee is associated,
29 unless the contract has been awarded through an open and public
30 process, including prior public notice and subsequent public

1 disclosure of all proposals considered and contracts awarded. IN ←
2 SUCH A CASE, THE PUBLIC OFFICIAL OR PUBLIC EMPLOYEE SHALL NOT
3 HAVE ANY SUPERVISORY OR OVERALL RESPONSIBILITY FOR THE
4 IMPLEMENTATION OR ADMINISTRATION OF THE CONTRACT. Any contract
5 or subcontract made in violation of this subsection shall be
6 voidable by a court of competent jurisdiction if the suit is
7 commenced within 90 days of the making of the contract or
8 subcontract.

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

11 [(e)] ~~(f)~~ (G) No former public official or public employee ←
12 shall represent a person, with [or without] promised or actual
13 compensation, on any matter before the governmental body with
14 which he has been associated for one year after he leaves that
15 body.

16 [(f)] ~~(g)~~ (H) No person shall use for any commercial purpose ←
17 information copied from statements of financial interests
18 required by this act or from lists compiled from such
19 statements.

20 [(g)] ~~(h)~~ (I) No former executive-level State employee may ←
21 for a period of two years from the time that he terminates his
22 State employment be employed by, receive compensation from,
23 assist or act in a representative capacity for a business or
24 corporation that he actively participates in recruiting to the
25 Commonwealth of Pennsylvania or that he actively participated in
26 inducing to open a new plant, facility or branch in the
27 Commonwealth or that he actively participated in inducing to
28 expand an existent plant or facility within the Commonwealth,
29 provided that the above prohibition shall be invoked only when
30 the recruitment or inducement is accomplished by a grant or loan

1 of money or a promise of a grant or loan of money from the
2 Commonwealth to the business or corporation recruited or induced
3 to expand.

4 [(h) (1) Any individual who holds an appointive office in
5 any political subdivision shall not have an interest in any
6 contract or construction in which that political subdivision
7 shall enter or have an interest.

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

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

16 (i) (J) Where voting conflicts are not otherwise addressed <—
17 by the Constitution of Pennsylvania or by any law, rule,
18 regulation, order or ordinance, the following procedure shall be
19 employed. Any public official or public employee, who in the
20 discharge of his official duties, would be required to vote on a
21 matter that would result in a conflict of interest shall abstain
22 from voting and, prior to the vote being taken, publicly
23 announce and disclose the nature of his interest as a public
24 record in a written memorandum filed with the person responsible
25 for recording the minutes of the meeting at which the vote is
26 taken, provided that whenever a governing body would be unable
27 to take any action on a matter before it because a majority of <—
28 members of the body are required to abstain from voting under
29 the provisions of this subsection THE NUMBER OF MEMBERS OF THE <—
30 BODY REQUIRED TO ABSTAIN FROM VOTING UNDER THE PROVISIONS OF

1 THIS SECTION MAKES THE MAJORITY OR OTHER LEGALLY REQUIRED VOTE
2 OF APPROVAL UNATTAINABLE, then such members shall be permitted
3 to vote if disclosures are made as otherwise provided herein. IN ←
4 THE CASE OF A THREE-MEMBER GOVERNING BODY OF A POLITICAL
5 SUBDIVISION, WHERE ONE MEMBER HAS ABSTAINED FROM VOTING AS A
6 RESULT OF A CONFLICT OF INTEREST, AND THE REMAINING TWO MEMBERS
7 OF THE GOVERNING BODY HAVE CAST OPPOSING VOTES, THE MEMBER WHO
8 HAS ABSTAINED SHALL BE PERMITTED TO VOTE TO BREAK THE TIE VOTE
9 IF DISCLOSURE IS MADE AS OTHERWISE PROVIDED HEREIN.

10 Section 4. Statement of financial interests required to be
11 filed.

12 (a) Each public official of the Commonwealth shall file a
13 statement of financial interests for the preceding calendar year
14 with the commission no later than May 1 of each year that he
15 holds such a position and of the year after he leaves such a
16 position. Each public employee [employed by] and public official
17 of the Commonwealth shall file a statement of financial
18 interests for the preceding calendar year with the department,
19 agency, body or bureau in which he is employed or to which he is
20 appointed or elected no later than May 1 of each year that he
21 holds such a position and of the year after he leaves such a
22 position. Any other public employee or public official shall
23 file a statement of financial interests with the governing
24 authority of the political subdivision by which he is employed
25 or within which he is appointed or elected no later than May 1
26 of each year that he holds such a position and of the year after
27 he leaves such a position. Persons who are full-time or part-
28 time solicitors for political subdivisions are required to file
29 under this section.

30 [(b) Each candidate for public office shall file a statement

1 of financial interests for the preceding calendar year with the
2 commission prior to filing a petition to appear on the ballot
3 for election as a public official. A petition to appear on the
4 ballot shall not be accepted by an election official unless the
5 petition includes an affidavit that the candidate has filed the
6 required statement of financial interests with the commission.]

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

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

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

28 (c) Each [candidate] STATE-LEVEL nominee for public office ←
29 [nominated by a public official or governmental body and subject
30 to confirmation by a public official or governmental body] shall

1 file a statement of financial interests for the preceding
2 calendar year with the commission and with the official or body
3 that is vested with the power of confirmation at least ten days
4 before the official or body shall approve or reject the
5 nomination. EACH NOMINEE FOR A COUNTY-LEVEL OR LOCAL OFFICE
6 SHALL FILE A STATEMENT OF FINANCIAL INTERESTS FOR THE PRECEDING
7 CALENDAR YEAR WITH THE GOVERNING AUTHORITY OF THE POLITICAL
8 SUBDIVISION IN WHICH HE OR SHE IS A NOMINEE AND, IF DIFFERENT,
9 WITH THE OFFICIAL OR BODY THAT IS VESTED WITH THE POWER OF
10 CONFIRMATION AT LEAST TEN DAYS BEFORE THE OFFICIAL OR BODY SHALL
11 APPROVE OR REJECT THE NOMINATION.

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

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

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

27 (f)] All statements of financial [interest] INTERESTS filed
28 pursuant to the provisions of this act shall be made available
29 for public inspection and copying during regular office hours,
30 and copying facilities shall be made available at a charge not

1 to exceed actual cost.

2 Section 5. Statement of financial interests.

3 (a) The statement of financial interests filed pursuant to
4 this act shall be on a form prescribed by the commission. All
5 information requested on the statement shall be provided to the
6 best of the knowledge, information and belief of the person
7 required to file and shall be signed under [penalty of perjury
8 by the person required to file the statement] oath or equivalent
9 affirmation.

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

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

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

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

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

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

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

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

15 (6) The name and address of the source and the amount of
16 any gift or gifts valued in the aggregate at \$200 or more and
17 the circumstances of each gift. This paragraph shall not
18 apply to a gift or gifts received from a spouse, parent,
19 parent by marriage, sibling, child, grandchild, other family
20 member or friend when the circumstances make it clear that
21 the motivation for the action was a personal or family
22 relationship. However, for the purposes of this subsection,
23 the term "friend" shall not include a registered lobbyist or
24 an employee of a registered lobbyist. This paragraph shall
25 not be applied retroactively.

26 (7) (i) The name and address of the source and the
27 amount of any payment for or reimbursement of actual
28 expenses for transportation and lodging or hospitality
29 received in connection with public office or employment
30 where such actual expenses for transportation, AND

1 lodging or hospitality exceed \$200 \$500 in the course of ←
2 a single occurrence. This paragraph shall not apply to
3 expenses reimbursed by the governmental body with which ←
4 the public official or employee is associated, OR TO ←
5 EXPENSES REIMBURSED BY A GOVERNMENTAL BODY, OR TO
6 EXPENSES REIMBURSED BY AN ORGANIZATION OR ASSOCIATION OF
7 PUBLIC OFFICIALS OR EMPLOYEES OF POLITICAL SUBDIVISIONS
8 WHICH THE PUBLIC OFFICIAL OR EMPLOYEE SERVES IN AN
9 OFFICIAL CAPACITY.

10 (ii) This paragraph shall not be applied
11 retroactively.

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

14 (9) Any financial interest in any legal entity engaged
15 in business for profit.

16 (10) The identity of any financial interest in a
17 business with which the reporting person is or has been
18 associated in the preceding calendar year which has been
19 transferred to a member of the reporting person's immediate
20 family.

21 (c) [The] Except where an amount is required to be reported
22 pursuant to paragraphs (6) and (7), the statement of financial
23 [interest] interests need not include specific amounts for [any
24 of] the items required to be listed.

25 (D) ON A BIENNIAL BASIS COMMENCING IN JANUARY 1991, THE ←
26 COMMISSION SHALL REVIEW THE DOLLAR AMOUNTS SET FORTH IN THIS
27 SECTION AND MAY INCREASE THESE AMOUNTS TO SUCH RATES AS ARE
28 DEEMED REASONABLE FOR ASSURING APPROPRIATE DISCLOSURE. THE
29 COMMISSION SHALL PUBLISH ANY SUCH ADJUSTED THRESHOLD AMOUNTS IN
30 THE PENNSYLVANIA BULLETIN BY FEBRUARY 1, 1991, AND EVERY TWO

1 YEARS THEREAFTER AS NECESSARY.

2 Section 6. State Ethics Commission.

3 (a) There is established a State Ethics Commission composed
4 of seven members[,]. The President pro tempore of the Senate,
5 the Minority Leader of the Senate, the Speaker of the House, and
6 the Minority Leader of the House shall each appoint one member.
7 Three members shall be appointed by the Governor without
8 confirmation. No more than two of the members appointed by the
9 Governor shall be of the same political party. No appointee
10 shall have served as an officer in a political party for one
11 year prior to his appointment.

12 (b) Members of the commission shall serve for terms of [five ←
13 years], except that, of the members first appointed: ←

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

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

19 (3) of the three members appointed by the Governor two
20 shall serve for three years, and one shall serve for five
21 years] THREE YEARS, EXCEPT THAT MEMBERS SHALL CONTINUE TO ←

22 SERVE UNTIL THEIR SUCCESSORS ARE APPOINTED AND QUALIFIED.

23 (c) No member shall be appointed to more than [one full ←
24 five-year term] TWO FULL THREE-YEAR TERMS on the commission. ←

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

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

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

30 (3) actively participate in or contribute to any

1 political campaign;

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

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

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

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

22 (g) Four members of the commission shall constitute a quorum
23 and, EXCEPT AS PROVIDED IN SECTION 8(G), the votes of a majority
24 of the members present is required for any action or
25 recommendation of the commission. The chairman or any four
26 members of the commission may call a meeting provided that
27 advance written notice is mailed to each member and to any
28 person who requests notice of such meetings.

29 (h) Members of the commission shall be compensated at a rate
30 of [\$50] \$125 per day and shall receive reimbursement for their

1 actual and necessary expenses while performing the business of
2 the commission.

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

17 (J) WITHIN SIX MONTHS OF THE EFFECTIVE DATE OF THIS
18 SUBSECTION, THE COMMISSION SHALL DEVELOP REGULATIONS THAT
19 PROVIDE FOR A CODE OF CONDUCT TO GOVERN THE ACTIVITIES AND
20 ETHICAL STANDARDS OF ITS MEMBERS, WHICH CODE SHALL SUBJECT THE
21 MEMBERS OF THE COMMISSION TO NO LESS THAN IS REQUIRED FOR PUBLIC
22 OFFICIALS OR PUBLIC EMPLOYEES UNDER THIS ACT.

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

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

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

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

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

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

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

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

24 ~~[(6)]~~ (7) Compile and maintain an index of all reports
25 and statements filed with the commission to facilitate public
26 access to such reports and statements and instruct other
27 State and local agencies which receive and file financial
28 interest statements in the maintenance of systems which
29 facilitate public access to such statements.

30 ~~[(7)]~~ (8) Prepare and publish annual summaries of

1 statements and reports filed with the commission.

2 [(8)] (9) Preserve statements and reports filed with the
3 commission for a period of five years from date of receipt
4 and advise other State and local agencies which receive and
5 store financial interests statements to preserve such
6 statements for a period of five years from date of receipt.

7 [(9) (i)] (10) Issue to any person, upon such person's
8 request, OR TO THE APPOINTING AUTHORITY OR EMPLOYER OF THAT ←
9 PERSON UPON THE REQUEST OF SUCH APPOINTING AUTHORITY OR
10 EMPLOYER, an opinion with respect to such person's duties
11 under this act. The commission shall, within 14 days, either
12 issue the opinion or advise the person who made the request
13 whether an opinion will be issued. No person who acts in good
14 faith on an opinion issued to him by the commission shall be
15 subject to criminal or civil penalties for so acting,
16 provided that the material facts are as stated in the opinion
17 request. The commission's opinions shall be public records
18 and may from time to time be published. The person requesting
19 the opinion may, however, require that the opinion shall
20 contain such deletions and changes as shall be necessary to
21 protect the identity of the persons involved.

22 [(ii)] (11) Provide written advice to any person or
23 the appointing authority or employer of ~~said official~~ SUCH ←
24 PERSON, upon their request with respect to such person's
25 duties under this act. Such advice shall be provided within
26 21 working days of the request, provided that the time may be
27 extended for good cause. It shall be a complete defense in
28 any enforcement proceeding initiated by the commission, and
29 evidence of good faith conduct in any other civil or criminal
30 proceeding, if the requester, at least 21 working days prior

1 to the alleged violation, requested written advice from the
2 commission in good faith, disclosed truthfully all the
3 material facts and committed the acts complained of either in
4 reliance on the advice or because of the failure of the
5 commission to provide advice within 21 days of the request
6 [of] or such later extended time. The person requesting the
7 advice may, however, require that the advice shall contain
8 such deletions and changes as shall be necessary to protect
9 the identity of the persons involved.

10 [(iii)] (12) Initiate an inquiry, pursuant to
11 section 8(a), where [an opinion] a complaint has not been
12 [requested] filed but where there is a reasonable belief that
13 a conflict may exist. [Such inquiry shall be conducted in
14 privacy with full respect to the confidentiality of all the
15 parties involved in the alleged conflict. If the commission
16 finds that there is a conflict, the information shall be
17 provided for criminal proceedings unless the alleged offender
18 removes himself from the conflict with receiving financial
19 gain.

20 (iv) Issue advisory opinions to any present or
21 former State employee who contemplates terminating his
22 State employment and/or becoming employed by, contracting
23 with, assisting or acting in a representative capacity
24 for a business or corporation, upon such employee's
25 request. That opinion shall state whether, upon the facts
26 presented, such employment, contract, assistance or
27 representation would be in violation of section 3(g). If
28 the advisory opinion states that such employment,
29 contract, assistance or representation would not be in
30 violation of the provisions of section 3(g), the person

1 who requested the opinion may not be prosecuted or
2 penalized, either criminally or civilly, under the
3 provisions of this act provided that the actions under
4 question bear a substantial similarity to the facts
5 presented to the commission.]

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

19 [(10)] (14) Hold hearings, take testimony, issue
20 subpoenas and compel the attendance of witnesses.

21 [(11)] (15) Make recommendations to law enforcement
22 officials either for criminal prosecution or dismissal of
23 charges arising out of violations of this act.

24 [(12)] (16) Prepare and publish special reports,
25 educational materials, and technical studies to further the
26 purposes of this act.

27 [(13)] (17) Prepare and publish, prior to June 1 of each
28 year, an annual report summarizing the activities of the
29 commission.

30 (18) Transmit, free of charge, copies of each order,

1 advice and opinion which has become a matter of public record
2 to the Governor, each member of the General Assembly and at ←
3 least one public library in each county. QUARTERLY TO THE LAW ←
4 LIBRARY OF EACH COUNTY, ONE PUBLIC LIBRARY IN EACH COUNTY,
5 THE STATE LIBRARY, THE STATE SENATE LIBRARY, EACH AUTHORITY ←
6 APPOINTING COMMISSION MEMBERS UNDER THIS ACT, THE
7 PENNSYLVANIA ASSOCIATION OF COUNTY COMMISSIONERS, THE
8 PENNSYLVANIA ASSOCIATION OF BOROUGHES, THE PENNSYLVANIA STATE
9 ASSOCIATION OF TOWNSHIP SUPERVISORS, THE PENNSYLVANIA STATE
10 ASSOCIATION OF TOWNSHIP COMMISSIONERS, THE PENNSYLVANIA
11 SCHOOL BOARDS ASSOCIATION AND THE PENNSYLVANIA LEAGUE OF
12 CITIES.

13 (19) Hold at least two public hearings each year, of
14 which at least one shall be held in Harrisburg and at least
15 one shall be held in a location other than Harrisburg, to
16 seek input from persons and organizations who represent any
17 individual subject to the provisions of this act and from
18 other interested parties.

19 Section 8. Investigations by the commission.

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

1 30 days thereafter until the matter is terminated, the executive
2 director shall notify the complainant of the action taken to
3 date by the commission together with the reasons for such action
4 or nonaction.] The commission shall keep information, records
5 and proceedings relating to a preliminary inquiry confidential.
6 The commission shall, however, have the authority to refer the
7 case to law enforcement officials during a preliminary inquiry
8 or anytime thereafter without providing notice to the subject of
9 the inquiry. The commission shall complete its preliminary
10 inquiry within 60 days of its initiation.

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

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

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

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

20 (e) The commission, upon the completion of an investigation,
21 shall issue a findings report to the subject of the
22 investigation setting forth the pertinent findings of fact. The
23 subject shall have the right to respond to said findings and to
24 request an evidentiary hearing on said matter. The commission
25 shall grant any request for a hearing. Said hearing shall be
26 held in Harrisburg or, at the request of the subject, in either
27 Philadelphia or Pittsburgh. Any response to the findings report
28 must either admit or deny by corresponding number and letter the
29 pertinent facts set forth. The subject of the investigation
30 shall have access to any evidence intended to be used by the

1 commission at the hearing and any exculpatory evidence developed
2 by the commission in the course of its investigation. Matters
3 not specifically denied in the response shall be deemed
4 admitted. The response must be filed within 30 days of the
5 issuance of the findings report unless the time period is
6 extended by the commission for good cause shown. Hearings
7 conducted upon request shall be instituted within 45 days after
8 the filing of the response.

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

16 (g) Hearings conducted pursuant to this section shall be
17 closed to the public unless the subject requests an open
18 hearing. Any person who appears before the commission shall have
19 all of the due process rights, privileges and responsibilities
20 of a party or witness appearing before an administrative agency
21 of this Commonwealth. All witnesses summoned for such hearings
22 shall receive reimbursement for reasonable expenses in
23 accordance with 42 Pa.C.S. § 5903 (relating to compensation and
24 expenses of witnesses). At the conclusion of a hearing
25 concerning an alleged violation and in a timely manner, the
26 commission shall deliberate on the evidence and determine, by <—
27 majority vote of the members present, whether there has been a
28 violation of this act. At least four members of the commission
29 present at a meeting must find a violation beyond a reasonable <—
30 doubt BY CLEAR AND CONVINCING PROOF. The names of the members <—

1 finding a violation and the names of those dissenting and
2 abstaining shall be listed in the order. The determination of
3 the commission, in the form of a final order and findings of
4 fact, shall be a matter of public record.

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

9 (i) Any person aggrieved by an opinion or order which
10 becomes final in accordance with the provisions of this act who
11 has direct interest in such opinion or order shall have the
12 right to appeal therefrom in accordance with law and general
13 rules.

14 (j) No public official or public employee shall discharge
15 any official or employee or change his official rank, grade or
16 compensation, or deny him a promotion, or threaten to do so, for
17 filing a complaint with or providing information to the
18 commission or testifying in any commission proceeding. No member
19 of the commission and no employee of the commission shall
20 discharge any employee of the commission or change his official
21 rank, grade or compensation, or threaten to do so, for providing
22 any information about the internal operations of the commission,
23 not required by law to be kept secret, to any legislator or
24 legislative staff member, or testifying in any legislative
25 proceeding.

26 (k) As a general rule, no person shall disclose or
27 acknowledge, to any other person, any information relating to a
28 complaint, preliminary inquiry, investigation, hearing or
29 petition for reconsideration which is before the commissioner
30 COMMISSION. However, a person may disclose or acknowledge to

1 another person matters held confidential in accordance with this
2 subsection when the matters pertain to any of the following:

3 (1) final orders of the commission as provided in
4 section 8(h);

5 (2) hearings conducted in public pursuant to section
6 8(g);

7 (3) for the purpose of seeking advice of legal counsel;

8 (4) filing an appeal from a commission order;

9 (5) communicating with the commission or its staff, in
10 the course of a preliminary inquiry, investigation, hearing
11 or petition for reconsideration by the commission;

12 (6) consulting with a law enforcement official or agency
13 for the purpose of initiating, participating in or responding
14 to an investigation or prosecution by the law enforcement
15 official or agency;

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

18 (8) any information, records or proceedings relating to
19 a complaint, preliminary inquiry, investigation, hearing or
20 petition for reconsideration which the person is the subject
21 of; or

22 (9) such other exceptions as the commission, by
23 regulation, may direct.

24 (L) IF A PUBLIC OFFICIAL OR PUBLIC EMPLOYEE HAS REASON TO
25 BELIEVE THE COMPLAINT IS FRIVOLOUS AS DEFINED BY THIS ACT, OR
26 WITHOUT PROBABLE CAUSE AND MADE PRIMARILY FOR A PURPOSE OTHER
27 THAN THAT OF REPORTING A VIOLATION OF THIS ACT, OR A PERSON
28 PUBLICLY DISCLOSED OR CAUSED TO BE DISCLOSED THAT A COMPLAINT
29 AGAINST THE PUBLIC OFFICIAL OR PUBLIC EMPLOYEE HAS BEEN FILED
30 WITH THE COMMISSION, THE PUBLIC OFFICIAL OR PUBLIC EMPLOYEE

1 SHALL NOTIFY THE COMMISSION AND THE COMMISSION, THROUGH ITS
2 EXECUTIVE DIRECTOR, SHALL CONDUCT AN INVESTIGATION.

3 (1) (M) The commission may conduct an investigation within ←
4 five years after the alleged occurrence of any violation of this
5 act.

6 Section 9. Penalties.

7 (a) Any person who violates the provisions of section 3(a)
8 [and (b)] , (b) and (c) is guilty of a felony and shall be fined
9 not more than \$10,000 or imprisoned for not more than five
10 years, or be both fined and imprisoned.

11 (b) Any person who violates the provisions of section [3(c)]
12 3(d) through [(h) or] (i) (J), section 4 or section 5(a) is ←
13 guilty of a misdemeanor and shall be fined not more than \$1,000
14 or imprisoned for not more than one year, or be both fined and
15 imprisoned.

16 (c) Any person who obtains financial gain from violating any
17 provision of this act, in addition to any other penalty provided
18 by law, shall pay [into the State Treasury] a sum of money equal
19 to three times the amount of the financial gain resulting from
20 such violation into the State Treasury or the treasury of the
21 political subdivision. Treble damages shall not be assessed
22 against a person who acted in good faith reliance on the advice
23 of legal counsel.

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

28 (e) Any person who violates the confidentiality of a
29 commission proceeding pursuant to section 8, is guilty of a
30 misdemeanor and shall be fined not more than \$1,000 or

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

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

22 (g) A public official of a political subdivision who acts in
23 good faith reliance on a written, nonconfidential opinion of the
24 solicitor of the political subdivision or upon an opinion of the
25 solicitor of the political subdivision, publicly stated at an
26 open meeting of the political subdivision and recorded in the
27 official minutes of the meeting shall not be subject to the
28 penalties provided for in subsections (a) and (b), nor for the
29 treble damages provided for in subsection (c). HOWEVER, THIS
30 SUBSECTION SHALL NOT APPLY IN SITUATIONS WHERE THE SOLICITOR'S

1 OPINION HAS BEEN RENDERED UNDER DURESS, OR WHERE THE PARTIES
2 SEEKING AND RENDERING THE SOLICITOR'S OPINION HAVE COLLUDED TO
3 PURPOSEFULLY COMMIT A VIOLATION OF THIS ACT.

4 Section 10. [Court employees.] Constables.

5 Nothing in this act, or in any other law or court rule shall
6 be construed to prohibit any constable [or any employee of a
7 court of common pleas, the Municipal Court of Philadelphia, the
8 Traffic Court of Philadelphia, or any employee of a district
9 justice] from also being an officer of a political body or
10 political party as such terms are defined in the act of June 3,
11 1937 (P.L.1333, No.320), known as the "Pennsylvania Election
12 Code," and the same may hold the office of a county, State or
13 national committee of any political party, and may run for and
14 hold any elective office, and may participate in any election
15 day activities.

16 Section 2. The act is amended by adding a section to read:

17 Section 10.1. Wrongful use of act.

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

21 ~~(1) (i) he acted in a grossly negligent manner or~~ ←
22 ~~without probable cause and primarily for a purpose other than~~
23 ~~that of reporting a violation of this act; or~~

24 ~~(ii) he publicly disclosed or caused to be disclosed~~
25 ~~that a complaint against a person had been filed with the~~
26 ~~commission; and~~

27 ~~(2) the complaint was frivolous as defined by this act~~
28 ~~or there was a lack of probable cause for belief that this~~
29 ~~act had been violated by the person.~~

30 (1) THE COMPLAINT WAS FRIVOLOUS, AS DEFINED BY THIS ACT, ←

1 OR WITHOUT PROBABLE CAUSE AND MADE PRIMARILY FOR A PURPOSE
2 OTHER THAN THAT OF REPORTING A VIOLATION OF THIS ACT; OR

3 (2) HE PUBLICLY DISCLOSED OR CAUSED TO BE DISCLOSED THAT
4 A COMPLAINT AGAINST A PERSON HAD BEEN FILED WITH THE
5 COMMISSION.

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

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

12 (2) believes to this effect in reliance upon the advice
13 of counsel, sought in good faith and given after full
14 disclosure of all relevant facts within his knowledge and
15 information.

16 (c) When the commission determines that a complainant has
17 violated the provisions set forth in section 10.1(a) the
18 commission upon receiving a written request from the subject of
19 the complaint shall provide the name and address of the
20 complainant to said subject. If the commission determines that a
21 complainant has not violated the provisions of subsection (a),
22 the commission shall notify the subject accordingly. The subject
23 shall have the right to appeal the commission's determination
24 and the commission shall schedule an appeal hearing. The subject
25 shall show cause why the complainant violated the provisions of
26 this section. If the commission grants the appeal, the
27 commission shall immediately release the complainant's name and
28 address to the subject. If the commission denies the appeal, it
29 shall present evidence why the complainant's name and address
30 shall not be released.

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

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

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

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

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

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

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

17 Section 11. Supplemental provisions.

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

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

23 Section 12. Conflict of law.

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

27 Section 13. Severability.

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

1 other persons and circumstances shall not be affected thereby.

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

4 Section 14. Effective date.

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

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

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

1 Section 8. This act, with respect to the State Ethics
2 Commission, constitutes the legislation required to reestablish
3 an agency pursuant to the act of December 22, 1981 (P.L.508,
4 No.142), known as the Sunset Act. The State Ethics Commission
5 shall continue, together with its statutory functions and
6 duties, until December 31, ~~1994~~ 1999, when it shall terminate ←
7 and go out of existence unless reestablished or continued by the
8 General Assembly for an additional ten years. Evaluation,
9 review, termination, reestablishment and continuation of the
10 agency beyond December 31, ~~1994~~ 1999, and every tenth year ←
11 thereafter, shall be conducted pursuant to the Sunset Act.

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

19 Section 10. The sum of \$30,000 is hereby appropriated to the
20 State Ethics Commission for the indexing of all opinions, orders
21 or advice of the commission, and for the maintenance of this
22 index.

23 Section 11. This act shall apply as follows:

24 (1) Section 1 (the definitions in section 2 of the act
25 that are used in sections 4 and 5 of the act, insofar as the
26 definitions relate to sections 4 and 5) shall apply to
27 occurrences which take place after the effective date of this
28 act.

29 (2) Section 1 (sections 4 and 5 of the act) shall apply
30 to occurrences which take place after the effective date of

1 this act.

2 Section 12. This act shall take effect immediately.

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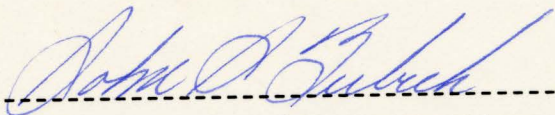
ACT No. 1989-9

HOUSE BILL No. 75

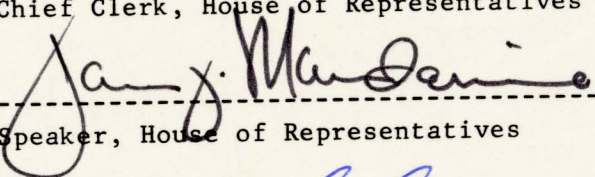
SESSION OF 1989



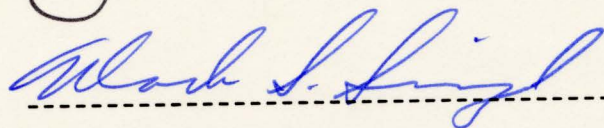
We certify that this bill, House Bill No. 75 , Printer's No. 2027 ,
has passed the House of Representatives and the Senate.



Chief Clerk, House of Representatives

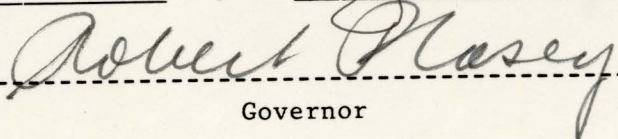


Speaker, House of Representatives



President Pro ~~Tempore~~, Senate

Approved the 26th day of June A.D. 19 89



Governor