

No. 1989-9

## AN ACT

## HB 75

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

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

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

## AN ACT

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

## Section 1. Purpose.

(a) The Legislature hereby declares that public office is a public trust and that any effort to realize personal financial gain through public office other than compensation provided by law is a violation of that trust. In order to strengthen the faith and confidence of the people of the State in their government, the Legislature further declares that the people have a right to be assured that the financial interests of holders of or *nominees* or candidates for public office **do not [present neither a conflict nor the appearance of a] conflict** with the public trust. Because public confidence in government can best be sustained by assuring the people of the impartiality and honesty of public officials, this act shall be liberally construed to promote complete [disclosure.] *financial disclosure as specified in this act. Furthermore, it is recognized that clear guidelines are needed in order to guide public officials and employees in their actions. Thus, the General Assembly by this act intends to define as clearly as possible those areas which represent conflict with the public trust.*

(b) *It is recognized that many public officials, including most local officials and members of the General Assembly, are citizen-officials who bring to their public office the knowledge and concerns of ordinary citizens and taxpayers. They should not be discouraged from maintaining their contacts with their community through their occupations and professions. Thus, in*

*order to foster maximum compliance with its terms, this act shall be administered in a manner that emphasizes guidance to public officials and public employees regarding the ethical standards established by this act.*

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

## Section 2. Definitions.

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

*“Advice.” Any directive of the chief counsel of the commission issued under section 7(11) and based exclusively on prior commission opinions, this act, regulations promulgated pursuant to this act, and court opinions which interpret this act.*

*“Aggregate.” The total of all gifts received from a single source as provided in section 5(b)(6).*

*“Authority of office or employment.” The actual power provided by law, the exercise of which is necessary to the performance of duties and responsibilities unique to a particular public office or position of public employment.*

*“Business.” Any corporation, partnership, sole proprietorship, firm, enterprise, franchise, association, organization, self-employed individual, holding company, joint stock company, receivership, trust or any legal entity organized for profit.*

*“Business with which he is associated.” Any business in which the person or a member of the person’s immediate family is a director, officer, owner, employee or [holder of stock] has a financial interest.*

*“Candidate.” Any individual who seeks nomination or election to public office by vote of the electorate, other than a judge of elections, inspector of elections or official of a political party, whether or not such individual is nominated or elected. An individual shall be deemed to be seeking nomination or election to such office if he has:*

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

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

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

*“Commission.” The State Ethics Commission.*

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

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

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

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

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

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

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

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

**"Fivolous complaint."** A complaint filed in a grossly negligent manner without basis in law or fact.

**"Gift."** [A payment, subscription, advance, forbearance, rendering or deposit of money, services or anything of value, unless consideration of equal or greater value is received] Anything which is received without consideration of equal or greater value. "Gift" shall not include a political contri-

bution otherwise reported as required by law[,] or a commercially reasonable loan made in the ordinary course of business[, or a gift received from a member of the person's immediate family or from a relative within the third degree of consanguinity of the person or of the person's spouse or from the spouse of any such relative].

**"Governmental body."** Any department, authority, commission, committee, council, board, bureau, division, service, office, officer, administration, legislative body, or other establishment in the Executive, Legislative or Judicial Branch [of the State or a political subdivision thereof] of a state, a nation or a political subdivision thereof or any agency performing a governmental function.

**"Governmental body with which a public official or public employee is or has been associated."** The governmental body within State government or a political subdivision by which the public official or employee is or has been employed or to which the public official or employee is or has been appointed or elected and subdivisions and offices within that governmental body.

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

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

**"Income."** Any money or thing of value received, or to be received as a claim on future services or in recognition of services rendered in the past, whether in the form of a payment, fee, salary, expense, allowance, forbearance, forgiveness, interest, dividend, royalty, rent, capital gain, reward, severance payment, proceeds from the sale of a financial interest in a corporation, professional corporation, partnership or other entity resulting from termination or withdrawal therefrom upon assumption of public office or employment or any other form of recompense or any combination thereof. "Income" refers to gross income and includes prize winnings and tax-exempt income. The term does not include gifts, governmentally mandated payments or benefits, retirement, pension or annuity payments funded totally by contributions of the public official or employee, or miscellaneous, incidental income of minor dependent children.

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

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

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

**“Nonministerial actions.”** *An action in which the person exercises his own judgment as to the desirability of the action taken.*

**“Opinion.”** *A directive of the commission issued pursuant to section 7(10) setting forth a public official’s or public employee’s duties under this act.*

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

**“Person.”** A business, *governmental body*, individual, corporation, union, association, firm, partnership, committee, club or other organization or group of persons.

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

**“Political subdivision.”** *Any county, city, borough, incorporated town, township, school district, vocational school, county institution district, and any authority, entity or body organized by the aforementioned.*

**“Public employee.”** Any individual employed by the Commonwealth or a political subdivision who is responsible for taking or recommending official action of a nonministerial nature with regard to:

- (1) contracting or procurement;
- (2) administering or monitoring grants or subsidies;
- (3) planning or zoning;
- (4) inspecting, licensing, regulating or auditing any person; or
- (5) any other activity where the official action has an economic impact

of greater than a de minimis nature on the interests of any person.

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

**“Public official.”** Any **[elected] person elected by the public or elected or appointed by a governmental body, or an appointed official** in the Executive, Legislative or Judicial Branch of the State or any political subdivision thereof, provided that it shall not include members of advisory boards that have no authority to expend public funds other than reimbursement for personal expense, or to otherwise exercise the power of the State or any political subdivision thereof. **[“Public official” shall not include any appointed official who receives no compensation other than reimbursement for actual expenses.]**

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

**“Solicitor.”** *A person elected or appointed to the office of solicitor for the political subdivision.*

**“Source.”** *Any person who is a provider of an item reportable under section 5.*

**“State consultant.”** A person who, as an independent contractor, performs professional, scientific, technical or advisory service for a State agency, and who receives a fee, honorarium or similar compensation for such services. A “State consultant” is not an executive-level employee.

Section 3. Restricted activities.

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

(b) No person shall offer or give to a public official, [or] public employee or *nominee* or candidate for public office or a member of his immediate family or a business with which he is associated, *anything of monetary value, including a gift, loan, political contribution, reward or promise of future employment based on the offeror’s or donor’s understanding that the vote, official action or judgment of the public official or public employee or nominee or candidate for public office would be influenced thereby.*

(c) **No [and no] public official, [or] public employee or nominee or candidate for public office shall solicit or accept, anything of monetary value, including a gift, loan, political contribution, reward, or promise of future employment based on any understanding of that public official, public employee or nominee that the vote, official action, or judgment of the public official or public employee or nominee or candidate for public office would be influenced thereby.**

(d) (1) **No public official or public employee shall accept an honorarium.**

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

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

(2) **This subsection shall not prohibit:**

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

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

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

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

**[(c)] (f)** No public official or public employee or ~~[a member of his immediate family or any business in which the person or a member of the person's immediate family is a director, officer, owner or holder of stock exceeding 5% of the equity at fair market value of the business]~~ *his spouse or child or any business in which the person or his spouse or child is associated* shall enter into any contract valued at \$500 or more ~~[with a governmental body unless the contract has been awarded through an open and public process, including prior public notice and subsequent public disclosure of all proposals considered and contracts awarded.]~~ *with the governmental body with which the public official or public employee is associated or any subcontract valued at \$500 or more with any person who has been awarded a contract with the governmental body with which the public official or public employee is associated, unless the contract has been awarded through an open and public process, including prior public notice and subsequent public disclosure of all proposals considered and contracts awarded. In such a case, the public official or public employee shall not have any supervisory or overall responsibility for the implementation or administration of the contract.* Any contract *or subcontract* made in violation of this subsection shall be voidable by a court of competent jurisdiction if the suit is commenced within 90 days of *the* making of the contract *or subcontract*.

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

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

**[(f)] (h)** No person shall use for any commercial purpose information copied from statements of financial interests required by this ~~act or from lists~~ compiled from such statements.

**[(g)] (i)** No former executive-level State employee may for a period of two years from the time that he terminates his State employment be employed by, receive compensation from, assist or act in a representative capacity for a business or corporation that he actively participates in recruiting to the Commonwealth of Pennsylvania or that he actively participated in inducing to open a new plant, facility or branch in the Commonwealth or that he actively participated in inducing to expand an existent plant or facility within the Commonwealth, provided that the above prohibition shall be invoked only when the recruitment or inducement is accomplished by a grant or loan of money or a promise of a grant or loan of money from the Commonwealth to the business or corporation recruited or induced ~~to expand~~.

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

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

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

(j) *Where voting conflicts are not otherwise addressed by the Constitution of Pennsylvania or by any law, rule, regulation, order or ordinance, the following procedure shall be employed. Any public official or public employee who in the discharge of his official duties would be required to vote on a matter that would result in a conflict of interest shall abstain from voting and, prior to the vote being taken, publicly announce and disclose the nature of his interest as a public record in a written memorandum filed with the person responsible for recording the minutes of the meeting at which the vote is taken, provided that whenever a governing body would be unable to take any action on a matter before it because the number of members of the body required to abstain from voting under the provisions of this section makes the majority or other legally required vote of approval unattainable, then such members shall be permitted to vote if disclosures are made as otherwise provided herein. In the case of a three-member governing body of a political subdivision, where one member has abstained from voting as a result of a conflict of interest, and the remaining two members of the governing body have cast opposing votes, the member who has abstained shall be permitted to vote to break the tie vote if disclosure is made as otherwise provided herein.*

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

(a) *Each public official of the Commonwealth shall file a statement of financial interests for the preceding calendar year with the commission no later than May 1 of each year that he holds such a position and of the year after he leaves such a position. Each public employee [employed by] and public official of the Commonwealth shall file a statement of financial interests for the preceding calendar year with the department, agency, body or bureau in which he is employed or to which he is appointed or elected no later than May 1 of each year that he holds such a position and of the year after he leaves such a position. Any other public employee or public official shall file a statement of financial interests with the governing authority of the political subdivision by which he is employed or within which he is appointed or elected no later than May 1 of each year that he holds such a position and of the year after he leaves such a position. Persons who are full-time or part-time solicitors for political subdivisions are required to file under this section.*

[(b) Each candidate for public office shall file a statement of financial interests for the preceding calendar year with the commission prior to filing a petition to appear on the ballot for election as a public official. A petition to appear on the ballot shall not be accepted by an election official unless the petition includes an affidavit that the candidate has filed the required statement of financial interests with the commission.]

(b) (1) *Any candidate for a State-level public office shall file a statement of financial interests for the preceding calendar year with the commission on or before the last day for filing a petition to appear on the*

*ballot for election. A copy of the statement of financial interests shall also be appended to such petition.*

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

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

(c) Each [candidate] *State-level nominee* for public office [nominated by a public official or governmental body and subject to confirmation by a public official or governmental body] shall file a statement of financial interests for the preceding calendar year with the commission and with the official or body that is vested with the power of confirmation at least ten days before the official or body shall approve or reject the nomination. *Each nominee for a county-level or local office shall file a statement of financial interests for the preceding calendar year with the governing authority of the political subdivision in which he or she is a nominee and, if different, with the official or body that is vested with the power of confirmation at least ten days before the official or body shall approve or reject the nomination.*

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

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

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

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

Section 5. Statement of financial interests.

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

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

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

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

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

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

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

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

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

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

**(7) (i) *The name and address of the source and the amount of any payment for or reimbursement of actual expenses for transportation and lodging or hospitality received in connection with public office or employment where such actual expenses for transportation and lodging or hospitality exceed \$500 in the course of a single occurrence. This paragraph shall not apply to expenses reimbursed by a governmental body, or to expenses reimbursed by an organization or association of public officials or employees of political subdivisions which the public official or employee serves in an official capacity.***

(ii) *This paragraph shall not be applied retroactively.*

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

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

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

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

(d) *On a biennial basis commencing in January 1991, the commission shall review the dollar amounts set forth in this section and may increase these amounts to such rates as are deemed reasonable for assuring appropriate disclosure. The commission shall publish any such adjusted threshold amounts in the Pennsylvania Bulletin by February 1, 1991, and every two years thereafter as necessary.*

#### Section 6. State Ethics Commission.

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

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

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

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

(3) *of the three members appointed by the Governor two shall serve for three years, and one shall serve for five years] three years, except that members shall continue to serve until their successors are appointed and qualified.*

(c) No member shall be appointed to more than [one full five-year term] *two full three-year terms* on the commission.

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

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

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

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

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

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

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

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

(g) Four members of the commission shall constitute a quorum and, *except as provided in section 8(g)*, the votes of a majority of the members present is required for any action or recommendation of the commission. The chairman or any four members of the commission may call a meeting provided that advance written notice is mailed to each member and to any person who requests notice of such meetings.

(h) Members of the commission shall be compensated at a rate of **[\$50] \$125** per day and shall receive reimbursement for their actual and necessary expenses while performing the business of the commission.

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

*(j) Within six months of the effective date of this subsection, the commission shall develop regulations that provide for a code of conduct to govern the activities and ethical standards of its members, which code shall subject the members of the commission to no less than is required for public officials or public employees under this act.*

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

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

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

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

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

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

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

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

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

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

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

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

*[(ii)] (11) Provide written advice to any person or the appointing authority or employer of such person, upon their request with respect to such person's duties under this act. Such advice shall be provided within 21 working days of the request, provided that the time may be extended for good cause. It shall be a complete defense in any enforcement proceeding*

initiated by the commission, and evidence of good faith conduct in any other civil or criminal proceeding, if the requester, at least 21 working days prior to the alleged violation, requested written advice from the commission in good faith, disclosed truthfully all the material facts and committed the acts complained of either in reliance on the advice or because of the failure of the commission to provide advice within 21 days of the request [of] or such later extended time. *The person requesting the advice may, however, require that the advice shall contain such deletions and changes as shall be necessary to protect the identity of the persons involved.*

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

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

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

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

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

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

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

**(18)** *Transmit, free of charge, copies of each order, advice and opinion which has become a matter of public record quarterly to the law library of each county, one public library in each county, the State Library, the State Senate Library, each authority appointing commission members under this act, the Pennsylvania Association of County Commissioners, the Pennsylvania Association of Boroughs, the Pennsylvania State Association of Township Supervisors, the Pennsylvania State Association of Township Commissioners, the Pennsylvania School Boards Association and the Pennsylvania League of Cities.*

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

Section 8. Investigations by the commission.

(a) Upon a complaint signed under penalty of perjury by any person or upon its own motion, the commission **[shall investigate]**, *through its executive director, shall conduct a preliminary inquiry into any alleged violation of this act. [All commission proceedings and records relating to an investigation shall be confidential until a final determination is made by the commission. The executive director shall notify any person under investigation by the commission of the investigation and of the nature of the alleged violation within five days of the commencement of the investigation. Within 15 days of the filing of a sworn complaint by a person alleging a violation, and every 30 days thereafter until the matter is terminated, the executive director shall notify the complainant of the action taken to date by the commission together with the reasons for such action or nonaction.] The commission shall keep information, records and proceedings relating to a preliminary inquiry confidential. The commission shall, however, have the authority to refer the case to law enforcement officials during a preliminary inquiry or anytime thereafter without providing notice to the subject of the inquiry. The commission shall complete its preliminary inquiry within 60 days of its initiation.*

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

(c) *If a preliminary inquiry establishes reason to believe that this act has been violated, the commission may, through its executive director, initiate an investigation to determine if there has been a violation. The commission shall keep information, records and proceedings relating to an investigation confidential until a final determination is made, except as otherwise provided in subsection (g). No investigation may be commenced until the person who is*

*the subject of the investigation has been notified and provided a general statement of the alleged violation or violations of the act and other applicable statutes with respect to such investigation. Service of notice is complete upon mailing which shall be by certified or registered mail. The commission shall notify the complainant within 72 hours of the commencement of an investigation and, thereafter, the commission shall advise the complainant and the person who is the subject of the investigation of the status of the investigation at least every 90 days until the investigation is terminated. The commission shall, within 180 days of the initiation of an investigation, either terminate the investigation pursuant to subsection (d) or issue a findings report pursuant to subsection (e). Upon a showing by the executive director of the need for extension of this period, the commission may extend an investigation for up to two 90-day periods, provided that each 90-day extension shall be approved by a majority vote of members present. In no event shall a findings report be issued later than 360 days after initiation of an investigation.*

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

*(e) The commission, upon the completion of an investigation, shall issue a findings report to the subject of the investigation setting forth the pertinent findings of fact. The subject shall have the right to respond to said findings and to request an evidentiary hearing on said matter. The commission shall grant any request for a hearing. Said hearing shall be held in Harrisburg or, at the request of the subject, in either Philadelphia or Pittsburgh. Any response to the findings report must either admit or deny by corresponding number and letter the pertinent facts set forth. The subject of the investigation shall have access to any evidence intended to be used by the commission at the hearing and any exculpatory evidence developed by the commission in the course of its investigation. Matters not specifically denied in the response shall be deemed admitted. The response must be filed within 30 days of the issuance of the findings report unless the time period is extended by the commission for good cause shown. Hearings conducted upon request shall be instituted within 45 days after the filing of the response.*

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

*(g) Hearings conducted pursuant to this section shall be closed to the public unless the subject requests an open hearing. Any person who appears before the commission shall have all of the due process rights, privileges and responsibilities of a party or witness appearing before an administrative agency of this Commonwealth. All witnesses summoned for such hearings shall receive reimbursement for reasonable expenses in accordance with 42*

*Pa.C.S. § 5903 (relating to compensation and expenses of witnesses). At the conclusion of a hearing concerning an alleged violation and in a timely manner, the commission shall deliberate on the evidence and determine whether there has been a violation of this act. At least four members of the commission present at a meeting must find a violation by clear and convincing proof. The names of the members finding a violation and the names of those dissenting and abstaining shall be listed in the order. The determination of the commission, in the form of a final order and findings of fact, shall be a matter of public record.*

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

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

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

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

- (1) final orders of the commission as provided in subsection (h);*
- (2) hearings conducted in public pursuant to subsection (g);*
- (3) for the purpose of seeking advice of legal counsel;*
- (4) filing an appeal from a commission order;*
- (5) communicating with the commission or its staff, in the course of a preliminary inquiry, investigation, hearing or petition for reconsideration by the commission;*
- (6) consulting with a law enforcement official or agency for the purpose of initiating, participating in or responding to an investigation or prosecution by the law enforcement official or agency;*
- (7) testifying under oath before a governmental body or a similar body of the United States of America;*
- (8) any information, records or proceedings relating to a complaint, preliminary inquiry, investigation, hearing or petition for reconsideration which the person is the subject of; or*

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

*(l) If a public official or public employee has reason to believe the complaint is frivolous as defined by this act, or without probable cause and made primarily for a purpose other than that of reporting a violation of this act, or a person publicly disclosed or caused to be disclosed that a complaint against the public official or public employee has been filed with the commission, the public official or public employee shall notify the commission and the commission, through its executive director, shall conduct an investigation.*

*(m) The commission may conduct an investigation within five years after the alleged occurrence of any violation of this act.*

Section 9. Penalties.

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

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

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

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

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

(f) In addition to any other civil remedy or criminal penalty provided for in this act, the commission may, after notice has been served in accordance with section 7(5) and upon a majority vote of its members, levy a civil penalty upon any person subject to this act who fails to file a statement of financial interests in a timely manner or who files a deficient statement of financial interests, at a rate of not more than \$25 for each day such statement

*remains delinquent or deficient. The maximum penalty payable under this paragraph is \$250.*

*(g) A public official of a political subdivision who acts in good faith reliance on a written, nonconfidential opinion of the solicitor of the political subdivision or upon an opinion of the solicitor of the political subdivision, publicly stated at an open meeting of the political subdivision and recorded in the official minutes of the meeting, shall not be subject to the penalties provided for in subsections (a) and (b), nor for the treble damages provided for in subsection (c). However, this subsection shall not apply in situations where the solicitor's opinion has been rendered under duress or where the parties seeking and rendering the solicitor's opinion have colluded to purposefully commit a violation of this act.*

**Section 10. [Court employees.] Constables.**

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

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

**Section 10.1. Wrongful use of act.**

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

*(1) the complaint was frivolous, as defined by this act, or without probable cause and made primarily for a purpose other than that of reporting a violation of this act; or*

*(2) he publicly disclosed or caused to be disclosed that a complaint against a person had been filed with the commission.*

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

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

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

*(c) When the commission determines that a complainant has violated the provisions set forth in subsection (a), the commission, upon receiving a written request from the subject of the complaint, shall provide the name and address of the complainant to said subject. If the commission determines that a complainant has not violated the provisions of subsection (a), the commission shall notify the subject accordingly. The subject shall have the right to appeal the commission's determination, and the commission shall schedule an appeal hearing. The subject shall show cause why the complainant vio-*

*lated the provisions of this section. If the commission grants the appeal, the commission shall immediately release the complainant's name and address to the subject. If the commission denies the appeal, it shall present evidence why the complainant's name and address shall not be released.*

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

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

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

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

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

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

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

Section 11. Supplemental provisions.

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

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

Section 12. Conflict of law.

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

Section 13. Severability.

If any provision of this act, or the application thereof to any person or circumstance, is held invalid, the validity of the remainder of this act and the application of such provisions to other persons and circumstances shall not be affected thereby.

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

Section 14. Effective date.

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

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

Section 7. All rules and regulations promulgated by the State Ethics Commission shall remain in full force and effect until amended or rescinded

by the commission, provided that the commission shall immediately initiate action to rescind or amend any rule or regulation that is in conflict with the provisions of this amendatory act or to promulgate additional regulations which may be required to implement the provisions of this amendatory act.

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

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

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

Section 11. This act shall apply as follows:

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

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

Section 12. This act shall take effect immediately.

APPROVED—The 26th day of June, A. D. 1989.

ROBERT P. CASEY