

AMENDMENTS TO HOUSE BILL NO. 1118

Sponsor:

Printer's No. 1965

1 Amend Bill, page 1, lines 2 through 32; page 2, lines 1
2 through 4; by striking out "providing for independent counsel;
3 and" in line 2, all of lines 3 through 32 on page 1 and all of
4 lines 1 through 4 on page 2 and inserting
5 providing for conflicts of interest; and repealing and adding
6 provisions relating to independent counsel.

7 Amend Bill, page 2, lines 7 through 32; pages 3 through 50,
8 lines 1 through 30; page 51, lines 1 through 3; by striking out
9 all of said lines on said pages and inserting

10 Section 1. Title 18 of the Pennsylvania Consolidated
11 Statutes is amended by adding a chapter to read:

12 CHAPTER 92

13 CONFLICTS OF INTEREST

14 Sec.

15 9201. Procedures.

16 § 9201. Procedures.

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

23 (1) The district attorney may refer the matter to a
24 district attorney of a contiguous county who has sufficient
25 resources and has no conflict of interest in representing the
26 Commonwealth.

27 (2) If the district attorneys of the contiguous counties
28 decline to accept the referral for any reason, the referring
29 district attorney may refer the matter to a district attorney
30 of a noncontiguous county.

31 (3) A district attorney who has accepted a case under
32 paragraph (1) or (2) and a deputy or assistant district
33 attorney on the district attorney's staff shall have the same
34 authority to investigate and prosecute as the district

1 attorney who referred the matter.

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 Chapter 93 of Title 18 is repealed:

3 [CHAPTER 93

4 INDEPENDENT COUNSEL

5 Subchapter

6 A. Preliminary Provisions

7 B. General Provisions

8 C. Authority and Duties of Independent Counsel

9 D. Miscellaneous Provisions

10 SUBCHAPTER A

11 PRELIMINARY PROVISIONS

12 Sec.

13 9301. Short title of chapter.

14 9302. Definitions.

15 § 9301. Short title of chapter.

16 This chapter shall be known and may be cited as the
17 Independent Counsel Authorization Act.

18 § 9302. Definitions.

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

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

23 "Grounds to investigate." Information which would lead a
24 reasonable person to suspect that a crime is being or has been
25 committed.

26 "Independent counsel." A person appointed by the Special
27 Independent Prosecutor's Panel upon the request of a special
28 investigative counsel.

29 "Panel." The Special Independent Prosecutor's Panel
30 established under this chapter.

31 "Special investigative counsel." A person appointed by the
32 General Counsel to conduct a preliminary investigation under
33 this chapter.

34 SUBCHAPTER B

35 GENERAL PROVISIONS

36 Sec.

37 9311. Organization of panel.

38 9312. Preliminary investigation.

39 9313. Conduct of preliminary investigation.

40 9314. Determination that further investigation not warranted.

41 9315. Determination that further investigation is warranted.

42 9316. Contents of application.

43 9317. Disclosure of information.

44 9318. Limitation on judicial review.

45 9319. Duties of panel.

46 § 9311. Organization of panel.

47 (a) Composition and selection.--The Special Independent
48 Prosecutor's Panel shall be composed of one judge of the
49 Commonwealth Court and two judges, including senior judges, of
50 the courts of common pleas of the Commonwealth. The members of
51 the panel shall be chosen by lot. The procedure shall be

1 determined by and supervised by the Court Administrator of
2 Pennsylvania in the Administrative Office of Pennsylvania
3 Courts. The Administrative Office of Pennsylvania Courts shall
4 disclose to the public the membership of the panel.

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

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

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

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

22 (f) Restriction.--No member of the panel who participated in
23 a function conferred on the panel under this chapter involving
24 an independent counsel shall be eligible to participate in any
25 judicial proceeding concerning a matter which involves the
26 independent counsel and which involves the exercise of the
27 independent counsel's official duties, regardless of whether the
28 independent counsel is still serving in that office.

29 § 9312. Preliminary investigation.

30 (a) Preliminary investigation with respect to certain
31 covered persons.--The General Counsel shall appoint a special
32 investigative counsel to conduct a preliminary investigation in
33 accordance with this chapter whenever the General Counsel
34 receives information sufficient to constitute grounds to
35 investigate whether any person described in subsection (c) may
36 have committed any of the following:

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

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

45 (b) Preliminary investigation with respect to persons not
46 listed in subsection (c).--The Attorney General shall request
47 the General Counsel to appoint a special investigative counsel
48 to conduct a preliminary investigation under the jurisdiction
49 established or conferred under section 205(b) of the act of
50 October 15, 1980 (P.L.950, No.164), known as the Commonwealth
51 Attorneys Act, and where the Attorney General determines that an

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

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

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

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

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

30 (4) The chairman and treasurer of the principal campaign
31 committee seeking the election or reelection of the Attorney
32 General, and any officer of that committee exercising
33 authority at the State level, during the incumbency of the
34 elected Attorney General.

35 (d) Examination of information to determine need for
36 preliminary investigation.--In determining under subsection (a)
37 whether grounds to investigate exist, the General Counsel shall
38 consider only the specificity of the information received and
39 the credibility of the source of the information. The General
40 Counsel shall determine whether grounds to investigate exist no
41 later than 30 days after the information is first received. If
42 within that 30-day period the General Counsel determines that
43 the information is not specific or is not from a credible
44 source, then the General Counsel shall close the matter. If
45 within that 30-day period the General Counsel determines that
46 the information is specific and from a credible source, the
47 General Counsel shall, upon making that determination, appoint a
48 special investigative counsel to commence a preliminary
49 investigation with respect to that information. If the General
50 Counsel is unable to determine within that 30-day period whether
51 the information is specific and from a credible source, the

1 General Counsel shall at the end of that 30-day period appoint a
2 special investigative counsel to commence a preliminary
3 investigation with respect to that information. If a special
4 investigative counsel is appointed, the special investigative
5 counsel may only accept the appointment when such appointment
6 would not conflict with the rules governing professional
7 conduct.

8 § 9313. Conduct of preliminary investigation.

9 (a) In general.--A preliminary investigation conducted under
10 this chapter shall be of matters as the special investigative
11 counsel considers appropriate in order to make a determination
12 under section 9314 (relating to determination that further
13 investigation not warranted) or 9315 (relating to determination
14 that further investigation is warranted) of whether further
15 investigation is warranted with respect to each potential
16 violation or allegation of a violation of criminal law. The
17 special investigative counsel shall make the determination no
18 later than 90 days after the preliminary investigation is
19 commenced. The special investigative counsel shall promptly
20 notify the panel of the date of the commencement of the
21 preliminary investigation.

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

23 (1) In conducting preliminary investigations under this
24 chapter, the special investigative counsel shall have no
25 authority to convene grand juries, plea bargain, grant
26 immunity or issue subpoenas.

27 (2) The special investigative counsel shall not base a
28 determination under this chapter that information with
29 respect to a violation of criminal law by a person is not
30 specific and from a credible source upon a determination that
31 the person lacked the state of mind required for the
32 violation of criminal law. The special investigative counsel
33 shall not base a determination under this chapter that there
34 are no reasonable grounds to believe that further
35 investigation is warranted upon a determination that the
36 person lacked the state of mind required for the violation of
37 criminal law involved unless there is clear and convincing
38 evidence that the person lacked the required state of mind.

39 (c) Extension of time for preliminary investigation.--The
40 special investigative counsel may apply to the panel for a
41 single extension, for a period of no more than 60 days, of the
42 90-day period referred to in subsection (a). The panel may, upon
43 a showing of good cause, grant the extension.

44 § 9314. Determination that further investigation not warranted.

45 (a) Notification of panel.--If the special investigative
46 counsel upon completion of a preliminary investigation under
47 this chapter determines that there are no reasonable grounds to
48 believe that further investigation is warranted, the special
49 investigative counsel shall promptly so notify the panel, and
50 the panel shall have no power to appoint an independent counsel
51 with respect to the matters involved.

1 (b) Form of notification.--The notification shall contain a
2 summary of the information received and a summary of the results
3 of the preliminary investigation. The summary shall be
4 confidential and not subject to public disclosure, except that
5 the person who was the subject of the investigation may request
6 a copy of the summary from the panel.

7 § 9315. Determination that further investigation is warranted.

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

11 (1) the special investigative counsel, upon completion
12 of a preliminary investigation under this chapter, determines
13 that there are reasonable grounds to believe that further
14 investigation is warranted; or

15 (2) the 90-day period referred to in section 9313(a)
16 (relating to conduct of preliminary investigation) and any
17 extension granted under section 9313(c) have elapsed and the
18 special investigative counsel has not filed a notification
19 with the panel under section 9314(a) (relating to
20 determination that further investigation not warranted).

21 (b) Receipt of additional information.--If, after submitting
22 a notification under section 9314(a), the special investigative
23 counsel receives additional information sufficient to constitute
24 grounds to investigate the matters to which the notification
25 related, the special investigative counsel shall:

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

30 (2) Otherwise comply with the provisions of this
31 subchapter with respect to the additional preliminary
32 investigation to the same extent as any other preliminary
33 investigation under this chapter.

34 § 9316. Contents of application.

35 Any application for the appointment of an independent counsel
36 under this chapter shall contain sufficient information to
37 assist the panel in selecting an independent counsel and in
38 defining that independent counsel's prosecutorial jurisdiction
39 so that the independent counsel has adequate authority to fully
40 investigate and prosecute the subject matter and all matters
41 related to that subject matter.

42 § 9317. Disclosure of information.

43 Except as otherwise provided in this chapter, no officer or
44 employee of the office of special investigative counsel or the
45 office of independent counsel may, without leave of the panel,
46 disclose to any individual outside the office of special
47 investigative counsel or office of independent counsel any
48 notification, application or any other document, material or
49 memorandum supplied to the panel under this chapter. Nothing in
50 this chapter shall be construed as authorizing the withholding
51 of information from the General Assembly.

1 § 9318. Limitation on judicial review.

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

5 § 9319. Duties of panel.

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

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

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

28 (3) In defining the independent counsel's prosecutorial
29 jurisdiction, the panel shall assure that the independent
30 counsel has adequate authority to fully investigate and
31 prosecute the subject matter with respect to which the
32 special investigative counsel has requested the appointment
33 of the independent counsel and all matters related to that
34 subject matter. Jurisdiction shall also include the authority
35 to investigate and prosecute the following offenses which may
36 arise out of the investigation with respect to which the
37 special investigative counsel's request was made:

38 (i) An offense classified higher than a misdemeanor
39 of the second degree.

40 (ii) An offense which is classified higher than a
41 summary offense and which involves a breach of the public
42 trust. This paragraph includes a violation of the act of
43 June 3, 1937 (P.L.1333, No.320), known as the
44 Pennsylvania Election Code, or the act of October 4, 1978
45 (P.L.883, No.170), referred to as the Public Official and
46 Employee Ethics Law.

47 (4) The panel shall disclose the identity of the
48 independent counsel upon appointment.

49 (b) Expansion of jurisdiction.--

50 (1) The panel upon the request of the General Counsel
51 may expand the prosecutorial jurisdiction of an independent

1 counsel. The expansion may be in lieu of the appointment of
2 another independent counsel.

3 (2) If the independent counsel discovers or receives
4 information about possible violations of criminal law by
5 persons as provided in section 9312 (relating to preliminary
6 investigation) which are not covered by the prosecutorial
7 jurisdiction of the independent counsel, the independent
8 counsel may submit the information to the General Counsel. In
9 accordance with this subchapter, the General Counsel shall
10 appoint a special investigative counsel to conduct a
11 preliminary investigation of the information, except that the
12 preliminary investigation shall not exceed 30 days from the
13 date the information is received. In making the
14 determinations required by this subchapter, the special
15 investigative counsel shall give great weight to any
16 recommendations of the independent counsel.

17 (3) If the special investigative counsel determines,
18 after according great weight to the recommendations of the
19 independent counsel, that there are no reasonable grounds to
20 believe that further investigation is warranted, the special
21 investigative counsel shall promptly so notify the panel, and
22 the panel shall have no power to expand the jurisdiction of
23 the independent counsel or to appoint another independent
24 counsel with respect to the matters involved.

25 (4) The panel shall expand the jurisdiction of the
26 appropriate independent counsel to include the matters
27 involved or shall appoint another independent counsel to
28 investigate the matters if:

29 (i) the special investigative counsel determines
30 that there are reasonable grounds to believe that further
31 investigation is warranted; or

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

35 (5) If the independent counsel discovers or receives
36 information about possible violations of criminal law by
37 persons other than those provided for in section 9312 and
38 which are not covered by the prosecutorial jurisdiction of
39 the independent counsel and a request for expansion under
40 this subsection has not been made by the General Counsel or
41 the request for expansion under this subsection has been
42 denied by the panel, the independent counsel shall submit the
43 information to the appropriate law enforcement authority.

44 (c) Return for further explanation.--Upon receipt of a
45 notification under this subchapter that there are no reasonable
46 grounds to believe that further investigation is warranted with
47 respect to information received under this chapter, the panel
48 shall have no authority to overrule this determination but may
49 return the matter to the special investigative counsel for
50 further explanation of the reasons for the determination.

51 (d) Vacancies.--If a vacancy in office arises by reason of

1 the resignation, death or removal of an independent counsel, the
2 panel shall appoint an independent counsel to complete the work
3 of the independent counsel whose resignation, death or removal
4 caused the vacancy, except that, in the case of a vacancy
5 arising by reason of the removal of an independent counsel, the
6 panel may appoint an acting independent counsel to serve until
7 any judicial review of the removal is completed.

8 SUBCHAPTER C

9 AUTHORITY AND DUTIES OF INDEPENDENT COUNSEL

10 Sec.

11 9331. Authorities.

12 9332. Compensation and travel expenses.

13 9333. Additional personnel.

14 9334. Assistance of Pennsylvania State Police.

15 9335. Referral of other matters to independent counsel.

16 9336. Dismissal of matters.

17 9337. Reports by independent counsel.

18 9338. Independence from Office of Attorney General.

19 9339. Standards of conduct applicable to independent counsel,
20 persons serving in office of independent counsel and
21 their law firms.

22 9340. Custody of records of independent counsel.

23 9341. Cost controls and administrative support.

24 9342. Legislative oversight.

25 9343. Removal of independent counsel and termination of office.

26 9344. Audits.

27 9345. Relationship with Office of Attorney General.

28 9346. Venue.

29 § 9331. Authorities.

30 Notwithstanding any other provision of law, an independent
31 counsel appointed under this chapter shall have, with respect to
32 all matters in the independent counsel's prosecutorial
33 jurisdiction established under this chapter, full power and
34 independent authority to exercise all investigative and
35 prosecutorial functions and powers of the Office of Attorney
36 General, the Attorney General and any other officer or employee
37 of the Office of Attorney General. Investigative and
38 prosecutorial functions and powers shall include, but are not
39 limited to:

40 (1) Conducting proceedings before grand juries and other
41 investigations.

42 (2) Participating in court proceedings and engaging in
43 any litigation, including civil and criminal matters, that
44 the independent counsel considers necessary.

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

48 (4) Reviewing all documentary evidence available from
49 any source.

50 (5) Determining whether to contest the assertion of any
51 testimonial privilege.

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

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

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

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

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

22 § 9332. Compensation and travel expenses.

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

29 § 9333. Additional personnel.

30 For the purposes of carrying out the duties of the office of
31 independent counsel, the independent counsel may appoint, fix
32 the compensation and assign the duties of the employees the
33 independent counsel considers necessary, including, but not
34 limited to, investigators, attorneys and necessary experts to
35 assist with the criminal investigation. The positions of these
36 employees are exempted from the competitive service. Employees
37 shall be compensated at levels not to exceed those payable for
38 comparable positions in the Office of Attorney General.

39 § 9334. Assistance of Pennsylvania State Police.

40 (a) Carrying out functions.--An independent counsel may
41 request assistance from the Pennsylvania State Police in
42 carrying out the functions of the independent counsel, and the
43 Pennsylvania State Police shall provide that assistance, which
44 may include the use of the resources and personnel necessary to
45 perform the independent counsel's duties.

46 (b) Payment of and reports on expenditures of independent
47 counsel.--Upon the request of the Governor, the General Assembly
48 shall appropriate the necessary funds to the State Treasurer for
49 the use and operation in executing the duties and
50 responsibilities of the position of independent counsel. Upon
51 the request of the Governor, the General Assembly shall

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

10 § 9335. Referral of other matters to independent counsel.

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

18 § 9336. Dismissal of matters.

19 The independent counsel shall have full authority to dismiss
20 matters within the independent counsel's prosecutorial
21 jurisdiction without conducting an investigation or at any
22 subsequent time before prosecution.

23 § 9337. Reports by independent counsel.

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

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

33 (2) Before the termination of the independent counsel's
34 office under section 9343(b) (relating to removal of
35 independent counsel and termination of office), file a final
36 report with the panel, setting forth fully and completely a
37 description of all prosecutions. All other information shall
38 be confidential and not subject to public disclosure.

39 (b) Disclosure of information in reports.--The panel may
40 release to the General Assembly, the Governor, the State
41 Treasurer, the public or any appropriate person the portions of
42 a report made under this section as the panel considers
43 appropriate. The panel shall make any orders as are appropriate
44 to protect the rights of any individual named in the report and
45 to prevent undue interference with any pending prosecution. The
46 panel may make any portion of a final report filed under
47 subsection (a)(2) available to any individual named in the
48 report for the purposes of receiving within a time limit set by
49 the panel any comments or factual information that the
50 individual may submit. The comments and factual information, in
51 whole or in part, may in the discretion of the panel be included

1 as an appendix to the final report.

2 § 9338. Independence from Office of Attorney General.

3 Each independent counsel appointed under this chapter and the
4 persons appointed by that independent counsel under section 9333
5 (relating to additional personnel) are separate from and
6 independent of the Office of Attorney General.

7 § 9339. Standards of conduct applicable to independent counsel,
8 persons serving in office of independent counsel and
9 their law firms.

10 (a) Restrictions on employment while independent counsel and
11 appointees are serving.--During the period in which an
12 independent counsel is serving under this chapter, the
13 independent counsel and any person associated with a firm with
14 which the independent counsel is associated may not represent in
15 any matter any person involved in any investigation or
16 prosecution under this chapter. During the period in which any
17 person appointed by an independent counsel under section 9333
18 (relating to additional personnel) is serving in the office of
19 independent counsel, the person may not represent in any matter
20 any person involved in any investigation or prosecution under
21 this chapter.

22 (b) Postemployment restrictions on independent counsel and
23 appointees.--

24 (1) Each independent counsel and each person appointed
25 by that independent counsel under section 9333 may not for
26 three years following the termination of service under this
27 chapter of that independent counsel or appointed person, as
28 the case may be, represent any person in any matter if that
29 individual was the subject of an investigation or prosecution
30 conducted by that independent counsel under this chapter.

31 (2) Each independent counsel and each person appointed
32 by that independent counsel under section 9333 may not for
33 one year following the termination of service under this
34 chapter of that independent counsel or appointed person, as
35 the case may be, represent any person in any matter involving
36 any investigation or prosecution under this chapter.

37 (c) One-year ban on representation by members of firms of
38 independent counsel.--Any person who is associated with a firm
39 with which an independent counsel is associated or becomes
40 associated after termination of service of that independent
41 counsel under this chapter may not for one year following the
42 termination represent any person in any matter involving any
43 investigation or prosecution under this chapter.

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

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

49 "Firm." A law firm, whether organized as a partnership or
50 corporation.

51 § 9340. Custody of records of independent counsel.

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

9 (b) Maintenance, use and disposal of records.--Records
10 transferred to the Bureau of Archives and History under this
11 section shall be maintained, used and disposed of as provided by
12 law.

13 § 9341. Cost controls and administrative support.

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

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

16 (2) Authorize only reasonable and lawful expenditures.

17 (3) Promptly upon taking office assign to a specific
18 employee the duty of certifying that expenditures of the
19 independent counsel are reasonable and made in accordance
20 with law.

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

26 § 9342. Legislative oversight.

27 (a) Oversight of conduct of independent counsel.--An
28 independent counsel appointed under this chapter shall submit to
29 the General Assembly a report detailing all moneys expended as
30 required under section 9337(a)(1) (relating to reports by
31 independent counsel). In addition, the independent counsel shall
32 submit annually a report on the activities of the independent
33 counsel, including a description of the progress of any
34 investigation or prosecution conducted by the independent
35 counsel. The report may omit any matter that in the judgment of
36 the independent counsel should be kept confidential but shall
37 provide information adequate to justify the expenditures that
38 the office of the independent counsel has made.

39 (b) Information relating to impeachment.--An independent
40 counsel shall advise the House of Representatives of any
41 substantial and credible information which the independent
42 counsel receives in carrying out the independent counsel's
43 responsibilities under this chapter that may constitute grounds
44 for an impeachment. Nothing in this chapter shall prevent the
45 General Assembly or either house thereof from obtaining
46 information in the course of an impeachment proceeding.

47 § 9343. Removal of independent counsel and termination of
48 office.

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

50 (1) An independent counsel appointed under this chapter
51 may be removed from office only by the personal action of the

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

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

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

27 (b) Termination of office.--

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

30 (i) notifies the panel that the investigation of all
31 matters within the prosecutorial jurisdiction of the
32 independent counsel or accepted by the independent
33 counsel, and any resulting prosecutions, have been
34 completed; and

35 (ii) files a final report in compliance with section
36 9337.

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

43 § 9344. Audits.

44 By December 31 of each year, an independent counsel shall
45 prepare a statement of expenditures for the fiscal year that
46 ended on the immediately preceding June 30. An independent
47 counsel whose office is terminated prior to the end of the
48 fiscal year shall prepare a statement of expenditures within 90
49 days of the date on which the office is terminated. The Auditor
50 General shall audit each statement and report the results of
51 each audit to the appropriate committees of the General Assembly

1 no later than March 31 of the year following the submission of
2 the statement.

3 § 9345. Relationship with Office of Attorney General.

4 Whenever a matter is in the prosecutorial jurisdiction of an
5 independent counsel or has been accepted by an independent
6 counsel under section 9335 (relating to referral of other
7 matters to independent counsel), the Office of Attorney General,
8 the Attorney General, all other officers and employees of the
9 Office of Attorney General and any district attorney shall
10 suspend all investigations and proceedings regarding that matter
11 and shall turn over to the independent counsel all materials,
12 files and other data relating to that matter.

13 § 9346. Venue.

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

20 SUBCHAPTER D

21 MISCELLANEOUS PROVISIONS

22 Sec.

23 9351. Severability of chapter.

24 9352. Expiration of chapter.

25 § 9351. Severability of chapter.

26 The provisions of this chapter are severable. If any
27 provision of this chapter or its application to any person or
28 circumstance is held invalid, the invalidity shall not affect
29 other provisions or applications of this chapter which can be
30 given effect without the invalid provision or application.

31 § 9352. Expiration of chapter.

32 This chapter shall expire five years after the date of the
33 enactment of this chapter, except with respect to any matters
34 pending before an independent counsel that in the judgment of
35 the independent counsel require continuation. Matters shall be
36 continued until the independent counsel determines the matters
37 are completed.]

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

39 CHAPTER 95

40 INDEPENDENT COUNSEL

41 Subchapter

42 A. Preliminary Provisions

43 B. General Provisions

44 C. Authority and Duties of Independent Counsel

45 SUBCHAPTER A

46 PRELIMINARY PROVISIONS

47 Sec.

48 9501. Scope of chapter.

49 9502. Definitions.

50 9503. Administrative expenses.

51 § 9501. Scope of chapter.

1 This chapter relates to independent counsel authorization.

2 § 9502. Definitions.

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

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

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

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

13 "Requesting judge." A judge of a court of common pleas, or a
14 judge of an intermediate court sitting in the court's original
15 jurisdiction, who applies for the appointment of a special
16 investigative counsel to investigate a contempt of court.

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

19 § 9503. Administrative expenses.

20 All expenses attributable to the appointment of either a
21 special investigative counsel or an independent counsel shall be
22 paid from the annual appropriation for the Office of Attorney
23 General's general government operations.

24 SUBCHAPTER B

25 GENERAL PROVISIONS

26 Sec.

27 9511. Organization of panel.

28 9512. Preliminary investigation.

29 9513. Conduct of preliminary investigation.

30 9514. Determination that further investigation not warranted.

31 9515. Determination that further investigation is warranted.

32 9516. Contents of application.

33 9517. Duties of panel.

34 9518. Disclosure of information.

35 § 9511. Organization of panel.

36 (a) Composition and selection.--The Special Independent
37 Prosecutor's Panel shall be composed of one judge of the
38 Superior Court and two judges, which may include senior judges,
39 of the courts of common pleas of the Commonwealth. The members
40 of the panel shall be chosen by lot. The procedure shall be
41 determined and supervised by the Court Administrator of
42 Pennsylvania in the Administrative Office of Pennsylvania
43 Courts. The Administrative Office of Pennsylvania Courts shall
44 disclose to the public the membership of the panel and publish
45 the membership on its publicly accessible Internet website and
46 in the Pennsylvania Bulletin.

47 (b) Term of members.--Each member of the panel shall hold
48 office for a term of three years. Judges who are members of the
49 panel and are required to retire under section 16 of Article V
50 of the Constitution of Pennsylvania shall also vacate their
51 positions on the panel unless assigned under Chapter 7 of the

1 Rules of Judicial Administration. A judge who is otherwise
2 removed or suspended from office shall automatically forfeit the
3 position held by that judge on the panel.

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

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

10 (e) Clerk.--The Prothonotary of the Superior Court shall
11 serve as the clerk of the panel and shall provide services as
12 are needed by the panel.

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

21 § 9512. Preliminary investigation.

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

35 (a.1) Special investigative counsel.--The panel, upon the
36 petition of the requesting judge, shall appoint a special
37 investigative counsel to conduct a preliminary investigation in
38 accordance with this chapter whenever the panel receives
39 information from a requesting president judge sufficient to
40 constitute grounds to investigate criminal contempt of court as
41 described in subsection (d).

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

44 (1) The Attorney General.

45 (1.1) A deputy Attorney General or an individual working
46 in the Office of Attorney General who is defined as a "public
47 employee" under 65 Pa.C.S. § 1102 (relating to definitions)
48 acting in concert with the Attorney General to commit an
49 offense which is classified higher than a summary offense.

50 (2) Any individual who leaves any office or position
51 described in paragraph (1) or (1.1) during the incumbency of

1 the Attorney General with or under whom the individual served
2 in the office or position, plus one year after the
3 incumbency, but not longer than a period of three years after
4 the individual leaves the office or position. This paragraph
5 shall only apply to an individual described in paragraph
6 (1.1) who may have acted in concert with an individual
7 described in paragraph (1) to commit an offense which is
8 classified higher than a summary offense.

9 (3) Any individual who held an office or position
10 described in paragraph (1) or (1.1) during the incumbency of
11 one Attorney General and who continued to hold the office or
12 position for not more than 90 days into the term of the next
13 Attorney General, during the one-year period after the
14 individual leaves the office or position. This paragraph
15 shall only apply to an individual described in paragraph
16 (1.1) who may have acted in concert with an individual
17 described in paragraph (1) to commit an offense which is
18 classified higher than a summary offense.

19 (4) The chairman and treasurer of the principal campaign
20 committee seeking the election or reelection of the Attorney
21 General, and any officer of that committee exercising
22 authority at the State level, during the incumbency of the
23 elected Attorney General. This paragraph shall only apply to
24 an individual described in paragraph (1.1) who may have acted
25 in concert with an individual described in paragraph (1) to
26 commit an offense which is classified higher than a summary
27 offense.

28 (b.1) Petition for special investigative counsel.--A
29 district attorney, at his or her discretion, may petition the
30 panel to appoint special investigative counsel, if the district
31 attorney receives information that any person described in
32 subsections (b) (1.1), (b) (2), (b) (3) or (b) (4) may have
33 committed an offense higher than a summary offense regardless of
34 whether or not the individual acted in concert with a person
35 described in subsection (b) (1).

36 (c) Examination of information to determine need for
37 preliminary investigation.--In determining under subsection (a)
38 whether grounds to investigate exist, a district attorney shall
39 consider only the specificity of the information received and
40 the credibility of the source of the information. A district
41 attorney shall determine whether grounds to investigate exist no
42 later than 90 days after the information is first received. If
43 within that 90-day period a district attorney determines that
44 the information is not specific or is not from a credible
45 source, then a district attorney shall close the matter. If
46 within that 90-day period a district attorney determines that
47 the information is specific and from a credible source, the
48 district attorney shall, upon making that determination,
49 petition the panel to appoint a special investigative counsel to
50 commence a preliminary investigation with respect to that
51 information. If a district attorney is unable to determine

1 within that 90-day period whether the information is specific
2 and from a credible source, the district attorney shall at the
3 end of that 90-day period petition the panel to appoint a
4 special investigative counsel to commence a preliminary
5 investigation with respect to that information. If a special
6 investigative counsel is appointed, the special investigative
7 counsel may only accept the appointment when the appointment
8 would not conflict with the rules governing professional
9 conduct.

10 (d) President judge's application.--A president judge, on
11 his own or at the request of another judge, may apply to the
12 panel for appointment of a special investigative counsel upon a
13 certification that there are reasonable grounds to believe that:

14 (1) there has been a criminal contempt of court;

15 (2) investigation by a prosecutor may be necessary to
16 address a breach in the sanctity of court proceedings; and

17 (3) the prosecutor with statutory authority to conduct
18 the investigation has or is likely to have a conflict of
19 interest.

20 (e) Compensation.--A special investigative counsel appointed
21 under this chapter shall receive compensation at the per diem
22 rate equal to the annual rate of basic pay payable to the
23 Attorney General. A special investigative counsel shall be
24 entitled to the payment of travel expenses.

25 § 9513. Conduct of preliminary investigation.

26 (a) In general.--A preliminary investigation conducted under
27 this chapter shall be of matters as the special investigative
28 counsel considers appropriate in order to make a determination
29 under section 9514 (relating to determination that further
30 investigation not warranted) or 9515 (relating to determination
31 that further investigation is warranted) of whether further
32 investigation is warranted with respect to each potential
33 violation or allegation of a violation of criminal law. The
34 special investigative counsel shall make the determination no
35 later than 90 days after the preliminary investigation is
36 commenced. The special investigative counsel shall promptly
37 notify the panel of the date of the commencement of the
38 preliminary investigation.

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

40 (1) In conducting preliminary investigations under this
41 chapter, the special investigative counsel shall have no
42 authority to convene grand juries, plea bargain, grant
43 immunity or issue subpoenas.

44 (2) The special investigative counsel shall not base a
45 determination under this chapter that information with
46 respect to a violation of criminal law by a person is not
47 specific and from a credible source upon a determination that
48 the person lacked the state of mind required for the
49 violation of criminal law. The special investigative counsel
50 shall not base a determination under this chapter that there
51 are no reasonable grounds to believe that further

1 investigation is warranted upon a determination that the
2 person lacked the state of mind required for the violation of
3 criminal law involved unless there is clear and convincing
4 evidence that the person lacked the required state of mind.

5 (c) Extension of time for preliminary investigation.--The
6 special investigative counsel may apply to the panel for a
7 single extension, for a period of no more than 60 days, of the
8 90-day period referred to in subsection (a). The panel may, upon
9 a showing of good cause, grant the extension.

10 § 9514. Determination that further investigation not warranted.

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

16 (b) Form of notification.--The notification shall contain a
17 summary of the information received, a summary of the results of
18 the preliminary investigation and all materials collected as
19 part of the preliminary investigation. The summaries shall be
20 confidential and not subject to public disclosure. The summaries
21 shall be considered an exception for the purposes of section
22 708(b)(16) of the act of February 14, 2008 (P.L.6, No.3), known
23 as the Right-to-Know Law.

24 § 9515. Determination that further investigation is warranted.

25 (a) Application for appointment of independent counsel.--The
26 special investigative counsel shall apply to the panel for the
27 appointment of an independent counsel if the special
28 investigative counsel, upon completion of a preliminary
29 investigation under this chapter, determines that there are
30 reasonable grounds to believe that further investigation is
31 warranted.

32 (a.1) Review by panel.--The panel shall review and consider
33 appointing independent counsel if the 90-day period referred to
34 in section 9513(a) (relating to conduct of preliminary
35 investigation) and any extension granted under section 9513(c)
36 have elapsed and the special investigative counsel has not filed
37 a notification with the panel under section 9514(a) (relating to
38 determination that further investigation not warranted).

39 (b) Receipt of additional information.--If, after submitting
40 a notification under section 9514(a), the special investigative
41 counsel receives additional information sufficient to constitute
42 grounds to investigate the matters to which the notification
43 related, the special investigative counsel shall:

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

48 (2) Otherwise comply with the provisions of this
49 subchapter with respect to the additional preliminary
50 investigation to the same extent as any other preliminary
51 investigation under this chapter.

1 § 9516. Contents of application.

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

9 § 9517. Duties of panel.

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

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

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

32 (3) In defining the independent counsel's prosecutorial
33 jurisdiction, the panel shall assure that the independent
34 counsel has adequate authority to fully investigate and
35 prosecute the subject matter with respect to which the
36 special investigative counsel has requested the appointment
37 of the independent counsel and all matters related to that
38 subject matter. Jurisdiction shall also include the authority
39 to investigate and prosecute an offense classified higher
40 than a summary offense or a contempt of court which may arise
41 out of the investigation with respect to which the special
42 investigative counsel's request was made.

43 (4) The panel shall disclose the identity of the
44 independent counsel upon appointment.

45 (b) Expansion of jurisdiction.--

46 (1) The panel upon the request of a district attorney or
47 a requesting judge may expand the prosecutorial jurisdiction
48 of an independent counsel. The expansion may be in lieu of
49 the appointment of another independent counsel.

50 (2) If the independent counsel discovers or receives
51 information about possible violations of criminal law by

1 persons as provided in section 9512 (relating to preliminary
2 investigation) which are not covered by the prosecutorial
3 jurisdiction of the independent counsel, the independent
4 counsel may submit the information to a district attorney. In
5 accordance with this subchapter, a district attorney shall
6 petition the panel to appoint a special investigative counsel
7 to conduct a preliminary investigation of the information,
8 except that the preliminary investigation shall not exceed 30
9 days from the date the information is received. In making the
10 determinations required by this subchapter, the special
11 investigative counsel shall give great weight to any
12 recommendations of the independent counsel.

13 (3) If the special investigative counsel determines,
14 after according great weight to the recommendations of the
15 independent counsel, that there are no reasonable grounds to
16 believe that further investigation is warranted, the special
17 investigative counsel shall promptly notify the panel.

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

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

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

28 (5) If the independent counsel discovers or receives
29 information about possible violations of criminal law by
30 persons other than those provided for in section 9512 and
31 which are not covered by the prosecutorial jurisdiction of
32 the independent counsel and a request for expansion under
33 this subsection has not been made by a district attorney or a
34 requesting judge or the request for expansion under this
35 subsection has been denied by the panel, the independent
36 counsel shall submit the information to the appropriate law
37 enforcement authority.

38 (c) Return for further explanation.--Upon receipt of a
39 notification under this subchapter that there are no reasonable
40 grounds to believe that further investigation is warranted with
41 respect to information received under this chapter, the panel
42 shall have no authority to overrule this determination but may
43 return the matter to the special investigative counsel for
44 further explanation of the reasons for the determination.

45 (d) Vacancies.--If a vacancy in office arises by reason of
46 the resignation, death or removal of an independent counsel, the
47 panel shall appoint an independent counsel to complete the work
48 of the independent counsel whose resignation, death or removal
49 caused the vacancy, except that, in the case of a vacancy
50 arising by reason of the removal of an independent counsel, the
51 panel may appoint an acting independent counsel to serve until

1 any judicial review of the removal is completed.

2 § 9518. Disclosure of information.

3 Except as otherwise provided in this chapter, no officer or
4 employee of the office of special investigative counsel or the
5 office of independent counsel may, without leave of the panel,
6 disclose to any individual outside the office of special
7 investigative counsel or office of independent counsel any
8 notification, application or any other document, material or
9 memorandum supplied to the panel under this chapter. including
10 an application submitted under section 9516 (relating to
11 contents of application) or the identity of a special
12 investigative counsel or independent counsel. Nothing in this
13 chapter shall be construed as authorizing the withholding of
14 information from the General Assembly unless the panel
15 determines that disclosure of the information would not be in
16 the best interest of justice.

17 SUBCHAPTER C

18 AUTHORITY AND DUTIES OF INDEPENDENT COUNSEL

19 Sec.

20 9531. Authorities.

21 9532. Compensation and travel expenses.

22 9533. Additional personnel.

23 9534. Assistance of Pennsylvania State Police.

24 9535. Referral of other matters to independent counsel.

25 9536. Dismissal of matters.

26 9537. Reports by independent counsel.

27 9538. Independence from Office of Attorney General.

28 9539. Standards of conduct.

29 9540. Custody of records of independent counsel.

30 9541. Cost controls and administrative support.

31 9542. Legislative oversight.

32 9543. Removal of independent counsel and termination of office.

33 9544. Audits.

34 9545. Relationship with Office of Attorney General.

35 9546. Venue.

36 § 9531. Authorities.

37 Notwithstanding any other provision of law, an independent
38 counsel appointed under this chapter shall have, with respect to
39 all matters in the independent counsel's prosecutorial
40 jurisdiction established under this chapter, full power and
41 independent authority to exercise all investigative and
42 prosecutorial functions and powers of the Office of Attorney
43 General, the Attorney General and any other officer or employee
44 of the Office of Attorney General. Investigative and
45 prosecutorial functions and powers shall include, but are not
46 limited to:

47 (1) Conducting proceedings before grand juries and other
48 investigations.

49 (2) Participating in court proceedings and engaging in
50 any litigation, including civil and criminal matters, that
51 the independent counsel considers necessary.

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

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

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

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

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

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

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

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

29 § 9532. Compensation and travel expenses.

30 An independent counsel appointed under this chapter shall
31 receive compensation at the per diem rate equal to the annual
32 rate of basic pay payable to the Attorney General. An
33 independent counsel and persons appointed under section 9533
34 (relating to additional personnel) shall be entitled to the
35 payment of travel expenses.

36 § 9533. Additional personnel.

37 For the purposes of carrying out the duties of the office of
38 independent counsel, the independent counsel may appoint, fix
39 the compensation and assign the duties of the employees the
40 independent counsel considers necessary, including, but not
41 limited to, investigators, attorneys and necessary experts to
42 assist with the criminal investigation. The positions of these
43 employees are exempted from the competitive service. Employees
44 shall be compensated at levels not to exceed those payable for
45 comparable positions in the Office of Attorney General.

46 § 9534. Assistance of Pennsylvania State Police.

47 (a) Carrying out functions.--An independent counsel may
48 request assistance from the Pennsylvania State Police in
49 carrying out the functions of the independent counsel, and the
50 Pennsylvania State Police shall provide that assistance, which
51 may include the use of the resources and personnel necessary to

1 perform the independent counsel's duties.

2 (b) Payment of and reports on expenditures of independent
3 counsel.--Upon the request of the Governor, the General Assembly
4 shall appropriate the necessary funds to the State Treasurer for
5 the use and operation in executing the duties and
6 responsibilities of the position of independent counsel. Upon
7 the request of the Governor, the General Assembly shall
8 appropriate the necessary funds to the Pennsylvania State Police
9 for costs incurred when rendering assistance to the independent
10 counsel as provided for under subsection (a). The State
11 Treasurer shall submit to the General Assembly, no later than 30
12 days after the end of each fiscal year, a report on amounts paid
13 during that fiscal year for expenses of investigations and
14 prosecutions by independent counsel. Each report shall include a
15 statement of all payments made for activities of independent
16 counsel.

17 § 9535. Referral of other matters to independent counsel.

18 An independent counsel may petition the panel to refer to the
19 independent counsel matters related to the independent counsel's
20 prosecutorial jurisdiction, and the panel may refer these
21 matters.

22 § 9536. Dismissal of matters.

23 The independent counsel shall have full authority to dismiss
24 matters within the independent counsel's prosecutorial
25 jurisdiction at any subsequent time before prosecution.

26 § 9537. Reports by independent counsel.

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

28 (1) File with the panel, with respect to the six-month
29 period beginning on the date of appointment and with respect
30 to each six-month period thereafter until the office of that
31 independent counsel terminates, a report which identifies and
32 details all actual expenses, summarizes all other expenses
33 incurred by that office during the six-month period with
34 respect to which the report is filed and estimates future
35 expenses of that office.

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

42 (a.1) Subject to requirements.--Individuals serving as an
43 independent counsel and persons employed by or serving an
44 independent counsel shall be subject to the requirements of the
45 following acts:

46 (1) The act of July 19, 1957 (P.L.1017, No.451), known
47 as the State Adverse Interest Act.

48 (2) The provisions of 65 Pa.C.S. Ch. 11 (relating to
49 ethics standards and financial disclosure).

50 (b) Disclosure of information in reports.--The panel may
51 release to the General Assembly, the Governor, the State

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

13 § 9538. Independence from Office of Attorney General.

14 Each independent counsel appointed under this chapter and the
15 persons appointed by that independent counsel under section 9533
16 (relating to additional personnel) are separate from and
17 independent of the Office of Attorney General.

18 § 9539. Standards of conduct.

19 (a) Restrictions on employment while independent counsel and
20 appointees are serving.--During the period in which an
21 independent counsel is serving under this chapter, the
22 independent counsel and any person associated with a firm with
23 which the independent counsel is associated may not represent in
24 any matter any person involved in any investigation or
25 prosecution under this chapter. During the period in which any
26 person appointed by an independent counsel under section 9533
27 (relating to additional personnel) is serving in the office of
28 independent counsel, the person may not represent in any matter
29 any person involved in any investigation or prosecution under
30 this chapter.

31 (b) Postemployment restrictions on independent counsel and
32 appointees.--

33 (1) Each independent counsel and each person appointed
34 by that independent counsel under section 9533 may not for
35 three years following the termination of service under this
36 chapter of that independent counsel or appointed person, as
37 the case may be, represent any person in any matter if that
38 individual was the subject of an investigation or prosecution
39 conducted by that independent counsel under this chapter.

40 (2) Each independent counsel and each person appointed
41 by that independent counsel under section 9533 may not for
42 one year following the termination of service under this
43 chapter of that independent counsel or appointed person, as
44 the case may be, represent any person in any matter involving
45 any investigation or prosecution under this chapter.

46 (c) One-year ban on representation by members of firms of
47 independent counsel.--Any person who is associated with a firm
48 with which an independent counsel is associated or becomes
49 associated after termination of service of that independent
50 counsel under this chapter may not for one year following the
51 termination represent any person in any matter involving any

1 investigation or prosecution under this chapter.

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

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

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

9 § 9540. Custody of records of independent counsel.

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

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

22 § 9541. Cost controls and administrative support.

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

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

25 (2) Authorize only reasonable and lawful expenditures.

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

30 (b) Office of Administration policies.--An independent
31 counsel shall comply with the established policies of the Office
32 of Administration of the Governor respecting expenditures of
33 funds, except to the extent that compliance would be
34 inconsistent with the purposes of this chapter.

35 § 9542. Legislative oversight.

36 (a) Oversight of conduct of independent counsel.--An
37 independent counsel appointed under this chapter shall submit to
38 the General Assembly a report detailing all funds expended as
39 required under section 9537(a)(1) (relating to reports by
40 independent counsel) and shall submit annually a report on the
41 activities of the independent counsel, including a description
42 of the progress of any investigation or prosecution conducted by
43 the independent counsel. The report may omit any matter that in
44 the judgment of the independent counsel should be kept
45 confidential but shall provide information adequate to justify
46 the expenditures that the office of the independent counsel has
47 made.

48 (b) Information relating to impeachment.--An independent
49 counsel shall advise the House of Representatives of any
50 substantial and credible information which the independent
51 counsel receives in carrying out the independent counsel's

1 responsibilities under this chapter that may constitute grounds
2 for an impeachment. Nothing in this chapter shall prevent the
3 General Assembly or either house thereof from obtaining
4 information in the course of an impeachment proceeding.
5 § 9543. Removal of independent counsel and termination of
6 office.

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

8 (1) An independent counsel appointed under this chapter
9 may be removed from office only by the personal action of the
10 panel and only for good cause, physical disability, mental
11 incapacity or any other condition that substantially impairs
12 the performance of the independent counsel's duties. For
13 purposes of this paragraph, the term "good cause" includes
14 violations of any ethical rules governing the independent
15 counsel, the Attorney General or district attorneys.

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

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

35 (b) Termination of office.--

36 (1) An office of independent counsel shall terminate
37 when the independent counsel;

38 (i) notifies the panel that the investigation of all
39 matters within the prosecutorial jurisdiction of the
40 independent counsel or accepted by the independent
41 counsel, and any resulting prosecutions, have been
42 completed; and

43 (ii) files a final report in compliance with section
44 9537.

45 (2) The panel shall determine on its own motion whether
46 termination is appropriate under this subsection no later
47 than two years after the appointment of an independent
48 counsel or the reported expenditures of the independent
49 counsel, including personnel costs under sections 9532
50 (relating to compensation and travel expenses) and 9533
51 (relating to additional personnel), have reached \$2,000,000,

1 whichever occurs first, and at the end of each succeeding
2 one-year period.

3 § 9544. Audits.

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

14 § 9545. Relationship with Office of Attorney General.

15 Whenever a matter is in the prosecutorial jurisdiction of an
16 independent counsel or has been accepted by an independent
17 counsel under section 9535 (relating to referral of other
18 matters to independent counsel), the Office of Attorney General,
19 the Attorney General, all other officers and employees of the
20 Office of Attorney General and any district attorney shall
21 suspend all investigations and proceedings regarding that matter
22 and shall turn over to the independent counsel all materials,
23 files and other data relating to that matter.

24 § 9546. Venue.

25 The proper venue for all prosecutions conducted by the
26 independent counsel shall be determined in accordance with the
27 Pennsylvania Rules of Criminal Procedure, except that for the
28 purposes of convenience and fairness, the panel may set the
29 venue in any other county on its own motion or at the request of
30 the independent counsel or on petition of the defendant.

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