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THE GENERAL ASSEMBLY OF PENNSYLVANIA

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SENATE BILL

No. 1031 Session of  
2015

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

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REFERRED TO JUDICIARY, OCTOBER 15, 2015

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AN ACT

1 Amending Title 18 (Crimes and Offenses) of the Pennsylvania  
2 Consolidated Statutes, repealing and adding provisions  
3 relating to independent counsel.

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

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7 Consolidated Statutes is repealed:

8 [CHAPTER 93

9 INDEPENDENT COUNSEL

10 Subchapter

11 A. Preliminary Provisions

12 B. General Provisions

13 C. Authority and Duties of Independent Counsel

14 D. Miscellaneous Provisions

15 SUBCHAPTER A

16 PRELIMINARY PROVISIONS

17 Sec.

18 9301. Short title of chapter.

1 9302. Definitions.

2 § 9301. Short title of chapter.

3 This chapter shall be known and may be cited as the  
4 Independent Counsel Authorization Act.

5 § 9302. Definitions.

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

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

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

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

16 "Panel." The Special Independent Prosecutor's Panel  
17 established under this chapter.

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

21 SUBCHAPTER B

22 GENERAL PROVISIONS

23 Sec.

24 9311. Organization of panel.

25 9312. Preliminary investigation.

26 9313. Conduct of preliminary investigation.

27 9314. Determination that further investigation not warranted.

28 9315. Determination that further investigation is warranted.

29 9316. Contents of application.

30 9317. Disclosure of information.

1 9318. Limitation on judicial review.

2 9319. Duties of panel.

3 § 9311. Organization of panel.

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

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

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

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

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

30 (f) Restriction.--No member of the panel who participated in

1 a function conferred on the panel under this chapter involving  
2 an independent counsel shall be eligible to participate in any  
3 judicial proceeding concerning a matter which involves the  
4 independent counsel and which involves the exercise of the  
5 independent counsel's official duties, regardless of whether the  
6 independent counsel is still serving in that office.

7 § 9312. Preliminary investigation.

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

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

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

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

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

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

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

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

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

29 (4) The chairman and treasurer of the principal campaign  
30 committee seeking the election or reelection of the Attorney

1 General, and any officer of that committee exercising  
2 authority at the State level, during the incumbency of the  
3 elected Attorney General.

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

28 § 9313. Conduct of preliminary investigation.

29 (a) In general.--A preliminary investigation conducted under  
30 this chapter shall be of matters as the special investigative

1 counsel considers appropriate in order to make a determination  
2 under section 9314 (relating to determination that further  
3 investigation not warranted) or 9315 (relating to determination  
4 that further investigation is warranted) of whether further  
5 investigation is warranted with respect to each potential  
6 violation or allegation of a violation of criminal law. The  
7 special investigative counsel shall make the determination no  
8 later than 90 days after the preliminary investigation is  
9 commenced. The special investigative counsel shall promptly  
10 notify the panel of the date of the commencement of the  
11 preliminary investigation.

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

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

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

29 (c) Extension of time for preliminary investigation.--The  
30 special investigative counsel may apply to the panel for a

1 single extension, for a period of no more than 60 days, of the  
2 90-day period referred to in subsection (a). The panel may, upon  
3 a showing of good cause, grant the extension.

4 § 9314. Determination that further investigation not warranted.

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

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

18 § 9315. Determination that further investigation is warranted.

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

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

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



1 determination that further investigation not warranted).

2 (b) Receipt of additional information.--If, after submitting  
3 a notification under section 9314(a), the special investigative  
4 counsel receives additional information sufficient to constitute  
5 grounds to investigate the matters to which the notification  
6 related, the special investigative counsel shall:

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

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

15 § 9316. Contents of application.

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

23 § 9317. Disclosure of information.

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

1 this chapter shall be construed as authorizing the withholding  
2 of information from the General Assembly.

3 § 9318. Limitation on judicial review.

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

7 § 9319. Duties of panel.

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

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

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

30 (3) In defining the independent counsel's prosecutorial

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

10 (i) An offense classified higher than a misdemeanor  
11 of the second degree.

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

19 (4) The panel shall disclose the identity of the  
20 independent counsel upon appointment.

21 (b) Expansion of jurisdiction.--

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

26 (2) If the independent counsel discovers or receives  
27 information about possible violations of criminal law by  
28 persons as provided in section 9312 (relating to preliminary  
29 investigation) which are not covered by the prosecutorial  
30 jurisdiction of the independent counsel, the independent

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

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

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 9312 and

1 which are not covered by the prosecutorial jurisdiction of  
2 the independent counsel and a request for expansion under  
3 this subsection has not been made by the General Counsel or  
4 the request for expansion under this subsection has been  
5 denied by the panel, the independent counsel shall submit the  
6 information to the appropriate law enforcement authority.

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

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

## 22 SUBCHAPTER C

### 23 AUTHORITY AND DUTIES OF INDEPENDENT COUNSEL

24 Sec.

25 9331. Authorities.

26 9332. Compensation and travel expenses.

27 9333. Additional personnel.

28 9334. Assistance of Pennsylvania State Police.

29 9335. Referral of other matters to independent counsel.

30 9336. Dismissal of matters.

- 1 9337. Reports by independent counsel.
- 2 9338. Independence from Office of Attorney General.
- 3 9339. Standards of conduct applicable to independent counsel,  
4 persons serving in office of independent counsel and  
5 their law firms.
- 6 9340. Custody of records of independent counsel.
- 7 9341. Cost controls and administrative support.
- 8 9342. Legislative oversight.
- 9 9343. Removal of independent counsel and termination of office.
- 10 9344. Audits.
- 11 9345. Relationship with Office of Attorney General.
- 12 9346. Venue.
- 13 § 9331. Authorities.

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

24 (1) Conducting proceedings before grand juries and other  
25 investigations.

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

29 (3) Appealing any decision of a court in any case or  
30 proceeding in which the independent counsel participates in

1 an official capacity.

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

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

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

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

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

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

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

27 § 9332. Compensation and travel expenses.

28 An independent counsel appointed under this chapter shall  
29 receive compensation at the per diem rate equal to the annual  
30 rate of basic pay payable to the Attorney General. An

1 independent counsel and persons appointed under section 9333  
2 (relating to additional personnel) shall be entitled to the  
3 payment of travel expenses.

4 § 9333. Additional personnel.

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

14 § 9334. Assistance of Pennsylvania State Police.

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

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



1 days after the end of each fiscal year, a report on amounts paid  
2 during that fiscal year for expenses of investigations and  
3 prosecutions by independent counsel. Each report shall include a  
4 statement of all payments made for activities of independent  
5 counsel.

6 § 9335. Referral of other matters to independent counsel.

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

14 § 9336. Dismissal of matters.

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

19 § 9337. Reports by independent counsel.

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

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

29 (2) Before the termination of the independent counsel's  
30 office under section 9343(b) (relating to removal of

1 independent counsel and termination of office), file a final  
2 report with the panel, setting forth fully and completely a  
3 description of all prosecutions. All other information shall  
4 be confidential and not subject to public disclosure.

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

19 § 9338. Independence from Office of Attorney General.

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

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

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

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

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

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

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

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

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

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

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

8 § 9340. Custody of records of independent counsel.

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

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

21 § 9341. Cost controls and administrative support.

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

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

24 (2) Authorize only reasonable and lawful expenditures.

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

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

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

4 § 9342. Legislative oversight.

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

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

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

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

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

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

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

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

26 (b) Termination of office.--

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

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

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

4 (ii) files a final report in compliance with section  
5 9337.

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

12 § 9344. Audits.

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

23 § 9345. Relationship with Office of Attorney General.

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

1 and shall turn over to the independent counsel all materials,  
2 files and other data relating to that matter.

3 § 9346. Venue.

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

10 SUBCHAPTER D

11 MISCELLANEOUS PROVISIONS

12 Sec.

13 9351. Severability of chapter.

14 9352. Expiration of chapter.

15 § 9351. Severability of chapter.

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

21 § 9352. Expiration of chapter.

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

28 Section 2. Title 18 is amended by adding a chapter to read:

29 CHAPTER 95

30 INDEPENDENT COUNSEL



1 Subchapter

2 A. Preliminary Provisions

3 B. General Provisions

4 C. Authority and Duties of Independent Counsel

5 SUBCHAPTER A

6 PRELIMINARY PROVISIONS

7 Sec.

8 9501. Scope of chapter.

9 9502. Definitions.

10 § 9501. Scope of chapter.

11 This chapter relates to independent counsel authorization.

12 § 9502. Definitions.

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

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

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

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

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

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

29 SUBCHAPTER B

30 GENERAL PROVISIONS

1 Sec.

2 9511. Organization of panel.

3 9512. Preliminary investigation.

4 9513. Conduct of preliminary investigation.

5 9514. Determination that further investigation not warranted.

6 9515. Determination that further investigation is warranted.

7 9516. Contents of application.

8 9517. Disclosure of information.

9 9518. Limitation on judicial review.

10 9519. Duties of panel.

11 § 9511. Organization of panel.

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

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

29 (c) Vacancies.--Any vacancy in the panel shall be filled  
30 only for the remainder of the three-year period in which the

1 vacancy occurs and in the same manner as initial assignments to  
2 the panel were made.

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

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

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

15 § 9512. Preliminary investigation.

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

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

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

5       (2) Any individual who leaves any office or position  
6 described in paragraph (1) during the incumbency of the  
7 Attorney General with or under whom the individual served in  
8 the office or position, plus one year after the incumbency,  
9 but not longer than a period of three years after the  
10 individual leaves the office or position.

11       (3) Any individual who held an office or position  
12 described in paragraph (1) during the incumbency of one  
13 Attorney General and who continued to hold the office or  
14 position for not more than 90 days into the term of the next  
15 Attorney General, during the one-year period after the  
16 individual leaves the office or position.

17       (4) The chairman and treasurer of the principal campaign  
18 committee seeking the election or reelection of the Attorney  
19 General, and any officer of that committee exercising  
20 authority at the State level, during the incumbency of the  
21 elected Attorney General.

22       (c) Examination of information to determine need for  
23 preliminary investigation.--In determining under subsection (a)  
24 whether grounds to investigate exist, a district attorney shall  
25 consider only the specificity of the information received and  
26 the credibility of the source of the information. A district  
27 attorney shall determine whether grounds to investigate exist no  
28 later than 30 days after the information is first received. If  
29 within that 30-day period a district attorney determines that  
30 the information is not specific or is not from a credible

1 source, then a district attorney shall close the matter. If  
2 within that 30-day period a district attorney determines that  
3 the information is specific and from a credible source, the  
4 district attorney shall, upon making that determination,  
5 petition the panel to appoint a special investigative counsel to  
6 commence a preliminary investigation with respect to that  
7 information. If a district attorney is unable to determine  
8 within that 30-day period whether the information is specific  
9 and from a credible source, the district attorney shall at the  
10 end of that 30-day period petition the panel to appoint a  
11 special investigative counsel to commence a preliminary  
12 investigation with respect to that information. If a special  
13 investigative counsel is appointed, the special investigative  
14 counsel may only accept the appointment when the appointment  
15 would not conflict with the rules governing professional  
16 conduct.

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

23 § 9513. Conduct of preliminary investigation.

24 (a) In general.--A preliminary investigation conducted under  
25 this chapter shall be of matters as the special investigative  
26 counsel considers appropriate in order to make a determination  
27 under section 9514 (relating to determination that further  
28 investigation not warranted) or 9515 (relating to determination  
29 that further investigation is warranted) of whether further  
30 investigation is warranted with respect to each potential

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

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

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

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

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

29 § 9514. Determination that further investigation not warranted.

30 (a) Notification of panel.--If the special investigative

1 counsel upon completion of a preliminary investigation under  
2 this chapter determines that there are no reasonable grounds to  
3 believe that further investigation is warranted, the special  
4 investigative counsel shall promptly so notify the panel.

5 (b) Form of notification.--The notification shall contain a  
6 summary of the information received and a summary of the results  
7 of the preliminary investigation. The summary shall be  
8 confidential and not subject to public disclosure, except that  
9 the person who was the subject of the investigation may request  
10 a copy of the summary from the panel. The summary shall be  
11 considered an exception for the purposes of section 708(b)(16)  
12 of the act of February 14, 2008 (P.L.6, No.3), known as the  
13 Right-to-Know Law.

14 § 9515. Determination that further investigation is warranted.

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

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

22 (2) the 90-day period referred to in section 9513(a)  
23 (relating to conduct of preliminary investigation) and any  
24 extension granted under section 9513(c) have elapsed and the  
25 special investigative counsel has not filed a notification  
26 with the panel under section 9514(a) (relating to  
27 determination that further investigation not warranted).

28 (b) Receipt of additional information.--If, after submitting  
29 a notification under section 9514(a), the special investigative  
30 counsel receives additional information sufficient to constitute

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

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

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

11 § 9516. Contents of application.

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

19 § 9517. Disclosure of information.

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

29 § 9518. Limitation on judicial review.

30 The determination of the special investigative counsel under



1 this chapter to apply to the panel for the appointment of an  
2 independent counsel shall be reviewable by the panel.

3 § 9519. Duties of panel.

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

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

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

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

1 of the independent counsel and all matters related to that  
2 subject matter. Jurisdiction shall also include the authority  
3 to investigate and prosecute an offense classified higher  
4 than a summary offense or a contempt of court which may arise  
5 out of the investigation with respect to which the special  
6 investigative counsel's request was made.

7 (4) The panel shall disclose the identity of the  
8 independent counsel upon appointment.

9 (b) Expansion of jurisdiction.--

10 (1) The panel upon the request of a district attorney or  
11 a requesting judge may expand the prosecutorial jurisdiction  
12 of an independent counsel. The expansion may be in lieu of  
13 the appointment of another independent counsel.

14 (2) If the independent counsel discovers or receives  
15 information about possible violations of criminal law by  
16 persons as provided in section 9512 (relating to preliminary  
17 investigation) which are not covered by the prosecutorial  
18 jurisdiction of the independent counsel, the independent  
19 counsel may submit the information to a district attorney. In  
20 accordance with this subchapter, a district attorney shall  
21 petition the panel to appoint a special investigative counsel  
22 to conduct a preliminary investigation of the information,  
23 except that the preliminary investigation shall not exceed 30  
24 days from the date the information is received. In making the  
25 determinations required by this subchapter, the special  
26 investigative counsel shall give great weight to any  
27 recommendations of the independent counsel.

28 (3) If the special investigative counsel determines,  
29 after according great weight to the recommendations of the  
30 independent counsel, that there are no reasonable grounds to

1 believe that further investigation is warranted, the special  
2 investigative counsel shall promptly notify the panel.

3 (4) The panel shall expand the jurisdiction of the  
4 appropriate independent counsel to include the matters  
5 involved or shall appoint another independent counsel to  
6 investigate the matters if:

7 (i) the special investigative counsel determines  
8 that there are reasonable grounds to believe that further  
9 investigation is warranted; or

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

13 (5) If the independent counsel discovers or receives  
14 information about possible violations of criminal law by  
15 persons other than those provided for in section 9512 and  
16 which are not covered by the prosecutorial jurisdiction of  
17 the independent counsel and a request for expansion under  
18 this subsection has not been made by a district attorney or a  
19 requesting judge or the request for expansion under this  
20 subsection has been denied by the panel, the independent  
21 counsel shall submit the information to the appropriate law  
22 enforcement authority.

23 (c) Return for further explanation.--Upon receipt of a  
24 notification under this subchapter that there are no reasonable  
25 grounds to believe that further investigation is warranted with  
26 respect to information received under this chapter, the panel  
27 shall have no authority to overrule this determination but may  
28 return the matter to the special investigative counsel for  
29 further explanation of the reasons for the determination.

30 (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 9531. Authorities.

12 9532. Compensation and travel expenses.

13 9533. Additional personnel.

14 9534. Assistance of Pennsylvania State Police.

15 9535. Referral of other matters to independent counsel.

16 9536. Dismissal of matters.

17 9537. Reports by independent counsel.

18 9538. Independence from Office of Attorney General.

19 9539. Standards of conduct.

20 9540. Custody of records of independent counsel.

21 9541. Cost controls and administrative support.

22 9542. Legislative oversight.

23 9543. Removal of independent counsel and termination of office.

24 9544. Audits.

25 9545. Relationship with Office of Attorney General.

26 9546. Venue.

27 § 9531. Authorities.

28 Notwithstanding any other provision of law, an independent  
29 counsel appointed under this chapter shall have, with respect to  
30 all matters in the independent counsel's prosecutorial

1 jurisdiction established under this chapter, full power and  
2 independent authority to exercise all investigative and  
3 prosecutorial functions and powers of the Office of Attorney  
4 General, the Attorney General and any other officer or employee  
5 of the Office of Attorney General. Investigative and  
6 prosecutorial functions and powers shall include, but are not  
7 limited to:

8       (1) Conducting proceedings before grand juries and other  
9 investigations.

10       (2) Participating in court proceedings and engaging in  
11 any litigation, including civil and criminal matters, that  
12 the independent counsel considers necessary.

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

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

18       (5) Determining whether to contest the assertion of any  
19 testimonial privilege.

20       (6) Receiving appropriate security clearances and, if  
21 necessary, contesting in court, including, where appropriate,  
22 participating in an in camera proceeding, any claim of  
23 privilege or attempt to withhold evidence on grounds of  
24 security.

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

30       (8) Inspecting, obtaining or using the original or a

1 copy of any tax return in accordance with applicable statutes  
2 and regulations.

3 (9) Initiating and conducting prosecutions in any court  
4 of competent jurisdiction, framing and signing indictments,  
5 filing information and handling all aspects of any case in  
6 the name of the Commonwealth.

7 (10) Consulting with the district attorney for the  
8 county in which any violation of law with respect to which  
9 the independent counsel is appointed was alleged to have  
10 occurred.

11 § 9532. Compensation and travel expenses.

12 An independent counsel appointed under this chapter shall  
13 receive compensation at the per diem rate equal to the annual  
14 rate of basic pay payable to the Attorney General. An  
15 independent counsel and persons appointed under section 9533  
16 (relating to additional personnel) shall be entitled to the  
17 payment of travel expenses.

18 § 9533. Additional personnel.

19 For the purposes of carrying out the duties of the office of  
20 independent counsel, the independent counsel may appoint, fix  
21 the compensation and assign the duties of the employees the  
22 independent counsel considers necessary, including, but not  
23 limited to, investigators, attorneys and necessary experts to  
24 assist with the criminal investigation. The positions of these  
25 employees are exempted from the competitive service. Employees  
26 shall be compensated at levels not to exceed those payable for  
27 comparable positions in the Office of Attorney General.

28 § 9534. Assistance of Pennsylvania State Police.

29 (a) Carrying out functions.--An independent counsel may  
30 request assistance from the Pennsylvania State Police in

1 carrying out the functions of the independent counsel, and the  
2 Pennsylvania State Police shall provide that assistance, which  
3 may include the use of the resources and personnel necessary to  
4 perform the independent counsel's duties.

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

20 § 9535. Referral of other matters to independent counsel.

21 An independent counsel may ask the panel to refer to the  
22 independent counsel matters related to the independent counsel's  
23 prosecutorial jurisdiction, and the panel may refer these  
24 matters. If the Attorney General refers a matter to an  
25 independent counsel on the Attorney General's own initiative,  
26 the independent counsel may accept the referral if the matter  
27 relates to the independent counsel's prosecutorial jurisdiction.

28 § 9536. Dismissal of matters.

29 The independent counsel shall have full authority to dismiss  
30 matters within the independent counsel's prosecutorial

1 jurisdiction at any subsequent time before prosecution.

2 § 9537. Reports by independent counsel.

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

4 (1) File with the panel, with respect to the six-month  
5 period beginning on the date of appointment and with respect  
6 to each six-month period thereafter until the office of that  
7 independent counsel terminates, a report which identifies and  
8 explains major expenses, summarizes all other expenses  
9 incurred by that office during the six-month period with  
10 respect to which the report is filed and estimates future  
11 expenses of that office.

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

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



1 as an appendix to the final report.

2 § 9538. 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 9533  
5 (relating to additional personnel) are separate from and  
6 independent of the Office of Attorney General.

7 § 9539. Standards of conduct.

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

20 (b) Postemployment restrictions on independent counsel and  
21 appointees.--

22 (1) Each independent counsel and each person appointed  
23 by that independent counsel under section 9533 may not for  
24 three years following the termination of service under this  
25 chapter of that independent counsel or appointed person, as  
26 the case may be, represent any person in any matter if that  
27 individual was the subject of an investigation or prosecution  
28 conducted by that independent counsel under this chapter.

29 (2) Each independent counsel and each person appointed  
30 by that independent counsel under section 9533 may not for

1 one year following the termination of service under this  
2 chapter of that independent counsel or appointed person, as  
3 the case may be, represent any person in any matter involving  
4 any investigation or prosecution under this chapter.

5 (c) One-year ban on representation by members of firms of  
6 independent counsel.--Any person who is associated with a firm  
7 with which an independent counsel is associated or becomes  
8 associated after termination of service of that independent  
9 counsel under this chapter may not for one year following the  
10 termination represent any person in any matter involving any  
11 investigation or prosecution under this chapter.

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

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

17 "Firm." A law firm, whether organized as a partnership or  
18 corporation.

19 § 9540. Custody of records of independent counsel.

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

28 (b) Maintenance, use and disposal of records.--Records  
29 transferred to the Bureau of the Pennsylvania State Archives  
30 under this section shall be maintained, used and disposed of as

1 provided by law.

2 § 9541. Cost controls and administrative support.

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

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

5 (2) Authorize only reasonable and lawful expenditures.

6 (3) Promptly upon taking office assign to a specific  
7 employee the duty of certifying that expenditures of the  
8 independent counsel are reasonable and made in accordance  
9 with law.

10 (b) Office of Administration policies.--An independent  
11 counsel shall comply with the established policies of the Office  
12 of Administration of the Governor respecting expenditures of  
13 funds, except to the extent that compliance would be  
14 inconsistent with the purposes of this chapter.

15 § 9542. Legislative oversight.

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

28 (b) Information relating to impeachment.--An independent  
29 counsel shall advise the House of Representatives of any  
30 substantial and credible information which the independent

1 counsel receives in carrying out the independent counsel's  
2 responsibilities under this chapter that may constitute grounds  
3 for an impeachment. Nothing in this chapter shall prevent the  
4 General Assembly or either house thereof from obtaining  
5 information in the course of an impeachment proceeding.

6 § 9543. Removal of independent counsel and termination of  
7 office.

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

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

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

30 (3) An independent counsel removed from office may

1 obtain judicial review of the removal in a civil action  
2 commenced in the Commonwealth Court. The independent counsel  
3 may be reinstated or granted other appropriate relief by  
4 order of the Commonwealth Court. A member of the panel may  
5 not hear or determine the civil action or any appeal of a  
6 decision in the civil action.

7 (b) Termination of office.--

8 (1) An office of independent counsel shall terminate  
9 when the independent counsel:

10 (i) notifies the panel that the investigation of all  
11 matters within the prosecutorial jurisdiction of the  
12 independent counsel or accepted by the independent  
13 counsel, and any resulting prosecutions, have been  
14 completed; and

15 (ii) files a final report in compliance with section  
16 9537.

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

23 § 9544. Audits.

24 By December 31 of each year, an independent counsel shall  
25 prepare a statement of expenditures for the fiscal year that  
26 ended on the immediately preceding June 30. An independent  
27 counsel whose office is terminated prior to the end of the  
28 fiscal year shall prepare a statement of expenditures within 90  
29 days of the date on which the office is terminated. The Auditor  
30 General shall audit each statement and report the results of

1 each audit to the appropriate committees of the General Assembly  
2 no later than March 31 of the year following the submission of  
3 the statement.

4 § 9545. Relationship with Office of Attorney General.

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

14 § 9546. Venue.

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

21 Section 3. This act shall take effect in 60 days.