
THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 146 Session of
2015

INTRODUCED BY GROVE, SAYLOR, JAMES, METCALFE, GABLER, MILLARD,
BAKER, BLOOM, KAUFFMAN, A. HARRIS, BARRAR, D. COSTA AND
M. K. KELLER, JANUARY 21, 2015

REFERRED TO COMMITTEE ON JUDICIARY, JANUARY 21, 2015

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7 Consolidated Statutes is repealed: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 93A

30 INDEPENDENT COUNSEL

- 1 Subchapter
- 2 A. Preliminary Provisions
- 3 B. General Provisions
- 4 C. Authority and Duties of Independent Counsel
- 5 D. Miscellaneous Provisions

6 SUBCHAPTER A

7 PRELIMINARY PROVISIONS

8 Sec.

9 93A01. Scope of chapter.

10 93A02. Definitions.

11 93A03. Applicability.

12 § 93A01. Scope of chapter.

13 This chapter relates to independent counsel authorization.

14 § 93A02. Definitions.

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

18 "Constitution." The Constitution of Pennsylvania.

19 "Executive agency." As defined in section 102 of the act of
20 October 15, 1980 (P.L.950, No.164), known as the Commonwealth
21 Attorneys Act.

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 agency." As defined in section 102 of the act
27 of October 15, 1980 (P.L.950, No.164), known as the Commonwealth
28 Attorneys Act.

29 "Independent counsel." A person appointed by the special
30 independent counsel's panel upon the request of a special

1 investigative counsel.

2 "Panel." The special independent counsel's panel established
3 under this chapter.

4 "Regulation." A regulation as defined under section 3 of the
5 act of June 25, 1982 (P.L.633, No.181), known as the Regulatory
6 Review Act.

7 "Special investigative counsel." A person appointed by the
8 General Counsel to conduct a preliminary investigation under
9 this chapter.

10 "Statute." A statute as defined under 1 Pa.C.S. § 1991
11 (relating to definitions).

12 § 93A03. Applicability.

13 This chapter shall not apply to a matter pending before an
14 independent counsel before February 19, 2003.

15 SUBCHAPTER B

16 GENERAL PROVISIONS

17

18 Sec.

19 93A11. Organization of panel.

20 93A12. Preliminary investigation.

21 93A13. Conduct of preliminary investigation.

22 93A14. Determination that further investigation not warranted.

23 93A15. Determination that further investigation is warranted.

24 93A15.1. Determination that defense of a regulation, statute or
25 constitutional provision is warranted.

26 93A16. Contents of application.

27 93A17. Disclosure of information.

28 93A18. Limitation on judicial review.

29 93A19. Duties of panel.

30 § 93A11. Organization of panel.

1 (a) Composition and selection.--The panel shall be composed
2 of one judge of the Commonwealth Court, one judge of the
3 Superior Court and three judges, including senior judges, of the
4 courts of common pleas of the Commonwealth. The members of the
5 panel shall be chosen by lot. The procedure shall be determined
6 by and supervised by the Court Administrator of Pennsylvania in
7 the Administrative Office of Pennsylvania Courts. The
8 Administrative Office of Pennsylvania Courts shall disclose to
9 the public the membership of the panel.

10 (b) Term of members.--Each member of the panel shall hold
11 office for a term of three years. Judges who are members of the
12 panel and are required to retire under section 16 of Article V
13 of the Constitution of Pennsylvania shall also vacate their
14 positions on the panel unless assigned under 201 Pa. Code
15 Chapter 7 (relating to assignment of judges). A judge who is
16 otherwise removed or suspended from office shall automatically
17 forfeit the position held by that judge on the panel.

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

22 (d) Decisions by super-majority vote.--All decisions of the
23 panel shall be by vote of at least four of the members.

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

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

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

4 § 93A12. Preliminary investigation.

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

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

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

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

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

9 (b.1) Preliminary investigation at request of General
10 Assembly.--

11 (1) The Speaker of the House of Representatives may
12 request in writing that the panel appoint a special
13 investigative counsel to conduct a preliminary investigation
14 in accordance with this chapter if the Speaker receives
15 information sufficient to constitute grounds to investigate
16 whether a member of the House of Representatives may have
17 committed any of the following:

18 (i) An offense which is classified higher than a
19 misdemeanor of the second degree.

20 (ii) An offense which is classified higher than a
21 summary offense and which involves a breach of the public
22 trust. This paragraph shall include a violation of any of
23 the following:

24 (A) The Pennsylvania Election Code.

25 (B) The Public Official and Employee Ethics Law.

26 (2) The President pro tempore of the Senate may request
27 in writing that the panel appoint a special investigative
28 counsel to conduct a preliminary investigation in accordance
29 with this chapter if the President pro tempore receives
30 information sufficient to constitute grounds to investigate

1 whether a member of the Senate may have committed any of the
2 following:

3 (i) An offense which is classified higher than a
4 misdemeanor of the second degree.

5 (ii) An offense which is classified higher than a
6 summary offense and which involves a breach of the public
7 trust. This paragraph shall include a violation of any of
8 the following:

9 (A) The Pennsylvania Election Code.

10 (B) The Public Official and Employee Ethics Law.

11 (3) The President pro tempore of the Senate and the
12 Speaker of the House of Representatives may request in
13 writing that the panel appoint a special investigative
14 counsel to conduct a preliminary investigation in accordance
15 with this chapter if they jointly determine that a pending
16 judicial proceeding challenges the constitutionality,
17 legality, validity or enforceability of all or part of a
18 regulation or statute or a provision of the Constitution of
19 Pennsylvania and the Attorney General or an executive agency
20 or an independent agency will not defend the regulation,
21 statute or constitutional provision in the proceeding.

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

24 (1) The Attorney General, any deputy attorney general or
25 any individual working in the Attorney General's office who
26 is defined as a "public employee" under the Public Official
27 and Employee Ethics Law.

28 (2) Any individual who leaves any office or position
29 described in paragraph (1) during the incumbency of the
30 Attorney General with or under whom such individual served in

1 the office or position, plus one year after such incumbency,
2 but in no event longer than a period of three years after the
3 individual leaves the office or position.

4 (3) Any individual who held an office or position
5 described in paragraph (1) during the incumbency of one
6 Attorney General and who continued to hold the office or
7 position for not more than 90 days into the term of the next
8 Attorney General, during the one-year period after the
9 individual leaves the office or position.

10 (4) The chairman and treasurer of the principal campaign
11 committee seeking the election or reelection of the Attorney
12 General, and any officer of that committee exercising
13 authority at the State level, during the incumbency of the
14 elected Attorney General.

15 (d) Examination of information to determine need for
16 preliminary investigation.--In determining under subsection (a)
17 whether grounds to investigate exist, the General Counsel shall
18 consider only the specificity of the information received and
19 the credibility of the source of the information. The General
20 Counsel shall determine whether grounds to investigate exist no
21 later than 30 days after the information is first received. If
22 within that 30-day period the General Counsel determines that
23 the information is not specific or is not from a credible
24 source, then the General Counsel shall close the matter. If
25 within that 30-day period the General Counsel determines that
26 the information is specific and from a credible source, the
27 General Counsel shall, upon making that determination, request
28 in writing that the panel appoint a special investigative
29 counsel to commence a preliminary investigation with respect to
30 that information. If the General Counsel is unable to determine

1 within that 30-day period whether the information is specific
2 and from a credible source, the General Counsel shall, at the
3 end of that 30-day period, request in writing that the panel
4 appoint a special investigative counsel to commence a
5 preliminary investigation with respect to that information. If a
6 special investigative counsel is appointed, the special
7 investigative counsel may only accept the appointment when such
8 appointment would not conflict with the rules governing
9 professional conduct.

10 § 93A13. Conduct of preliminary investigation.

11 (a) In general.--A preliminary investigation conducted under
12 this chapter shall be of matters as the special investigative
13 counsel considers appropriate in order to make a determination
14 under section 93A14 (relating to determination that further
15 investigation not warranted) or 93A15 (relating to determination
16 that further investigation is warranted) of whether further
17 investigation is warranted with respect to each potential
18 violation or allegation of a violation of criminal law or under
19 section 93A15.1 (relating to determination that defense of a
20 regulation, statute or constitutional provision is warranted) of
21 whether the defense of a regulation, statute or constitutional
22 provision is warranted. The special investigative counsel shall
23 make the determination no later than 90 days after the
24 preliminary investigation is commenced. The special
25 investigative counsel shall promptly notify the panel of the
26 date of the commencement of the preliminary investigation.

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

28 (1) In conducting preliminary investigations under this
29 chapter, the special investigative counsel shall have no
30 authority to convene grand juries, plea bargain, grant

1 immunity or issue subpoenas.

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

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

19 § 93A14. Determination that further investigation not
20 warranted.

21 (a) Notification of panel.--If the special investigative
22 counsel, upon completion of a preliminary investigation under
23 this chapter, determines that there are no reasonable grounds to
24 believe that further investigation is warranted, the special
25 investigative counsel shall promptly so notify the panel, and
26 the panel shall have no power to appoint an independent counsel
27 with respect to the matters involved.

28 (b) Form of notification.--The notification shall contain a
29 summary of the information received and a summary of the results
30 of the preliminary investigation. The summary shall be

1 confidential and not subject to public disclosure, except that
2 the person who was the subject of the investigation may request
3 a copy of the summary from the panel.

4 § 93A15. Determination that further investigation is warranted.

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

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

12 (2) the 90-day period referred to in section 93A13(a)
13 (relating to conduct of preliminary investigation) and any
14 extension granted under section 93A13(c) have elapsed and the
15 special investigative counsel has not filed a notification
16 with the panel under section 93A14(a) (relating to
17 determination that further investigation not warranted).

18 (b) Receipt of additional information.--If, after submitting
19 a notification under section 93A14(a), the special investigative
20 counsel receives additional information sufficient to constitute
21 grounds to investigate the matters to which the notification
22 related, the special investigative counsel shall:

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

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

1 § 93A15.1. Determination that defense of a regulation, statute
2 or constitutional provision is warranted.

3 (a) Notification of panel.--If the special investigative
4 counsel, upon completion of a preliminary investigation under
5 this chapter, determines that there are no reasonable grounds to
6 believe that a pending judicial proceeding challenges the
7 constitutionality, legality, validity or enforceability of all
8 or part of a regulation or statute or provision of the
9 Constitution of Pennsylvania and the Attorney General and the
10 executive branch of government will not defend the regulation,
11 statute or constitutional provision, the special investigative
12 counsel shall promptly notify the panel, and the panel shall
13 have no power to appoint an independent counsel with respect to
14 the matters involved. The notification shall contain a summary
15 of the information received and a summary of the results of the
16 preliminary investigation. The summary shall be confidential and
17 not subject to public disclosure.

18 (b) Application for appointment.--The special investigative
19 counsel shall apply to the panel for the appointment of an
20 independent counsel if either of the following apply:

21 (1) The special investigative counsel, upon completion
22 of a preliminary investigation under this chapter, determines
23 that there are reasonable grounds to believe a pending
24 judicial proceeding challenges the constitutionality,
25 legality, validity or enforceability of all or part of a
26 regulation or statute or provision of the Constitution of
27 Pennsylvania and the Attorney General or an executive agency
28 or an independent agency will not defend the regulation,
29 statute or constitutional provision in the proceeding.

30 (2) The 90-day period referred to under section 93A13(a)

1 (relating to conduct of preliminary investigation) and any
2 extension granted under section 93A13(c) have elapsed and the
3 special investigative counsel has not filed a notification
4 with the panel under section 93A14(a) (relating to
5 determination that further investigation not warranted).

6 (c) Receipt of additional information.--If, after submitting
7 a notification under subsection (a), the special investigative
8 counsel receives additional information sufficient to constitute
9 grounds to recommend appointment of an independent counsel as to
10 the matters to which the notification related, the special
11 investigative counsel shall:

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

16 (2) Otherwise comply with the provisions of this
17 subchapter with respect to the additional preliminary
18 investigation to the same extent as any other preliminary
19 investigation under this chapter.

20 § 93A16. Contents of application.

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

28 § 93A17. Disclosure of information.

29 Except as otherwise provided in this chapter, no officer or
30 employee of the office of special investigative counsel or the

1 office of independent counsel may, without leave of the panel,
2 disclose to any individual outside the office of special
3 investigative counsel or office of independent counsel any
4 notification, application or any other document, material or
5 memorandum supplied to the panel under this chapter. Nothing in
6 this chapter shall be construed as authorizing the withholding
7 of information from the General Assembly.

8 § 93A18. Limitation on judicial review.

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

12 § 93A19. Duties of panel.

13 (a) Appointment and jurisdiction of prosecutorial
14 independent counsel.--

15 (1) Upon receipt of an application for the appointment
16 of a prosecutorial independent counsel, the panel shall
17 appoint an appropriate independent counsel and shall define
18 that independent counsel's prosecutorial jurisdiction. The
19 appointment shall occur no later than 30 days after the
20 receipt of the application.

21 (2) The panel shall appoint as independent counsel an
22 individual who has appropriate experience and who will
23 conduct the investigation and any prosecution in a prompt,
24 responsible and cost-effective manner. The panel shall seek
25 to appoint as independent counsel an individual who will
26 serve to the extent necessary to complete the investigation
27 and any prosecution without undue delay. The panel may not
28 appoint as an independent counsel any person who holds any
29 office of profit or trust with the Commonwealth. No person
30 who is serving as a special investigative counsel may be

1 appointed or serve as an independent counsel in the matter
2 for which they had been appointed to investigate as special
3 investigative counsel. If an independent counsel is
4 appointed, the independent counsel may only accept the
5 appointment when such appointment would not conflict with the
6 rules governing professional conduct.

7 (3) In defining the independent counsel's prosecutorial
8 jurisdiction, the panel shall assure that the independent
9 counsel has adequate authority to fully investigate and
10 prosecute the subject matter with respect to which the
11 special investigative counsel has requested the appointment
12 of the independent counsel and all matters related to that
13 subject matter. Jurisdiction shall also include the authority
14 to investigate and prosecute the following offenses which may
15 arise out of the investigation with respect to which the
16 special investigative counsel's request was made:

17 (i) An offense classified higher than a misdemeanor
18 of the second degree.

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

26 (4) The panel shall disclose the identity of the
27 independent counsel upon appointment.

28 (a.1) Appointment and jurisdiction of independent counsel in
29 defense of a regulation, statute or constitutional provision.--

30 (1) Upon receipt of an application for appointment of an

1 independent counsel in defense of regulation, statute or
2 constitutional provision, the panel shall appoint an
3 appropriate independent counsel and shall define the
4 independent counsel's jurisdiction. The appointment shall
5 occur no later than 30 days after the receipt of the
6 application.

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

22 (3) In defining the independent counsel's jurisdiction,
23 the panel shall assure that the independent counsel has
24 adequate authority to fully defend the subject matter with
25 respect to which the special investigative counsel has
26 requested the appointment of the independent counsel and all
27 matters related to that subject matter.

28 (4) The panel shall disclose the identity of the
29 independent counsel upon appointment.

30 (b) Expansion of jurisdiction.--

1 (1) The panel, upon the request of the General Counsel,
2 may expand the jurisdiction of an independent counsel. The
3 expansion may be in lieu of the appointment of another
4 independent counsel.

5 (2) If the independent counsel discovers or receives
6 information about possible violations of criminal law by
7 persons as provided in section 93A12 (relating to preliminary
8 investigation) which are not covered by the prosecutorial
9 jurisdiction of the independent counsel, the independent
10 counsel may submit the information to the panel. In
11 accordance with this subchapter, the panel shall appoint a
12 special investigative counsel to conduct a preliminary
13 investigation of the information, except that the preliminary
14 investigation shall not exceed 30 days from the date the
15 information is received. In making the determinations
16 required by this subchapter, the special investigative
17 counsel shall give great weight to any recommendations of the
18 independent counsel.

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

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

1 (i) the special investigative counsel determines
2 that there are reasonable grounds to believe that further
3 investigation is warranted; or

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

7 (5) If the independent counsel discovers or receives
8 information about possible violations of criminal law by
9 persons other than those provided for in section 93A12 and
10 which are not covered by the prosecutorial jurisdiction of
11 the independent counsel and a request for expansion under
12 this subsection has not been made by the panel or the request
13 for expansion under this subsection has been denied by the
14 panel, the independent counsel shall submit the information
15 to the appropriate law enforcement authority.

16 (6) The following shall apply:

17 (i) If the independent counsel discovers or receives
18 information about a possible pending judicial proceeding
19 which challenges the constitutionality, legality,
20 validity or enforceability of all or part of a regulation
21 or statute or provision of the Constitution of
22 Pennsylvania where the Attorney General or an executive
23 agency or an independent agency will not defend the
24 regulation, statute or constitutional provision in the
25 proceeding, the independent counsel shall submit the
26 information to the panel.

27 (ii) In accordance with this subchapter, the panel
28 shall appoint a special investigative counsel to conduct
29 a preliminary investigation of the information, except
30 that the preliminary investigation may not exceed 30 days

1 from the date the information is received. In making the
2 determinations required under this subchapter, the
3 special investigative counsel shall give great weight to
4 any recommendations of the independent counsel.

5 (iii) If the special investigative counsel
6 determines, after according great weight to the
7 recommendations of the independent counsel, that there
8 are no reasonable grounds to believe that an expansion of
9 jurisdiction is warranted, the special investigative
10 counsel shall promptly notify the panel and the panel
11 shall have no power to expand the jurisdiction of the
12 independent counsel or to appoint another independent
13 counsel with respect to the matters involved. The panel
14 shall expand the jurisdiction of the appropriate
15 independent counsel to include the matters involved or
16 shall appoint another independent counsel to investigate
17 the matters if either of the following apply:

18 (A) The special investigative counsel determines
19 that there are reasonable grounds to believe that a
20 pending judicial proceeding challenges the
21 constitutionality, legality, validity or
22 enforceability of all or part of a Pennsylvania
23 regulation or statute or provision of the
24 Constitution and the Attorney General or an executive
25 agency or an independent agency will not defend the
26 regulation, statute or constitutional provision in
27 the proceeding.

28 (B) The 30-day period under subparagraph (ii)
29 elapses without a notification to the panel that no
30 further investigation is warranted.

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

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

16 SUBCHAPTER C

17 AUTHORITY AND DUTIES OF INDEPENDENT COUNSEL

18 Sec.

19 93A31. Authorities of prosecutorial independent counsel.

20 93A31.1. Authorities of independent counsel in defense of
21 regulation, statute or constitutional provision.

22 93A31.2. Standing of independent counsel in defense of
23 regulation, statute or constitutional provision.

24 93A31.3. Privileges and immunities.

25 93A32. Compensation and travel expenses.

26 93A33. Additional personnel.

27 93A34. Assistance of Pennsylvania State Police.

28 93A35. Referral of other matters to independent counsel.

29 93A36. Dismissal of matters.

30 93A37. Reports by independent counsel.

1 93A38. Independence from Office of Attorney General.

2 93A39. Standards of conduct applicable to independent counsel,
3 persons serving in office of independent counsel and
4 their law firms.

5 93A40. Custody of records of independent counsel.

6 93A41. Cost controls and administrative support.

7 93A42. Legislative oversight.

8 93A43. Removal of independent counsel and termination of
9 office.

10 93A44. Audits.

11 93A45. Relationship with Office of Attorney General.

12 93A46. Venue.

13 § 93A31. Authorities of prosecutorial independent counsel.

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 § 93A31.1. Authorities of independent counsel in defense of
28 regulation, statute or constitutional provision.

29 Notwithstanding any other provision of law, an independent
30 counsel, in defense of a regulation, statute or constitutional

1 provision appointed under this chapter, shall have, with respect
2 to all matters in the independent counsel's jurisdiction
3 established under this chapter, full power and independent
4 authority to exercise all functions and powers of the Office of
5 Attorney General, the Attorney General and any other officer or
6 employee of the Office of Attorney General. Powers shall
7 include, but not be limited to:

8 (1) Participating in court proceedings and engaging in
9 any litigation, including civil and criminal matters, that
10 the independent counsel considers necessary.

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

14 (3) Reviewing all documentary evidence available from
15 any source.

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

18 § 93A31.2. Standing of independent counsel in defense of
19 regulation, statute or constitutional provision.

20 An independent counsel appointed under this chapter in
21 defense of a regulation, statute or constitutional provision
22 shall have standing to intervene as a party in any judicial
23 proceeding on behalf of the Commonwealth consistent with the
24 panel's grant of jurisdiction under section 93A19(a.1) (relating
25 to duties of panel).

26 § 93A31.3. Privileges and immunities.

27 Appointment of a special investigative counsel or independent
28 counsel may not constitute a waiver of sovereign, governmental,
29 legislative or other applicable privilege or immunity. Special
30 investigative counsel or independent counsel shall have no power

1 to waive sovereign, governmental, legislative or any other
2 applicable privilege or immunity.

3 § 93A32. Compensation and travel expenses.

4 An independent counsel appointed under this chapter shall
5 receive compensation at the per diem rate equal to the annual
6 rate of basic pay payable to the Attorney General. An
7 independent counsel and persons appointed under section 93A33
8 (relating to additional personnel) shall be entitled to the
9 payment of travel expenses.

10 § 93A33. Additional personnel.

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

20 § 93A34. Assistance of Pennsylvania State Police.

21 (a) Carrying out functions.--An independent counsel with
22 prosecutorial jurisdiction may request assistance from the
23 Pennsylvania State Police in carrying out the functions of the
24 independent counsel, and the Pennsylvania State Police shall
25 provide that assistance, which may include the use of the
26 resources and personnel necessary to perform the independent
27 counsel's duties.

28 (b) Payment of and reports on expenditures of independent
29 counsel.--Upon the request of the Governor, the General Assembly
30 shall appropriate the necessary funds to the State Treasurer for

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

13 § 93A35. Referral of other matters to independent counsel.

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

21 § 93A36. Dismissal of matters.

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

26 § 93A37. 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 his appointment and with
30 respect to each six-month period thereafter until the office

1 of that independent counsel terminates, a report which
2 identifies and explains major expenses, summarizes all other
3 expenses incurred by that office during the six-month period
4 with respect to which the report is filed and estimates
5 future expenses of that office.

6 (2) Before the termination of the independent counsel's
7 office under section 93A43(b) (relating to removal of
8 independent counsel and termination of office), file a final
9 report with the panel, setting forth fully and completely a
10 description of all prosecutions. All other information shall
11 be confidential and not subject to public disclosure.

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

25 § 93A38. Independence from Office of Attorney General.

26 Each independent counsel appointed under this chapter and the
27 persons appointed by that independent counsel under section
28 93A33 (relating to additional personnel) are separate from and
29 independent of the Office of Attorney General.

30 § 93A39. Standards of conduct applicable to independent

1 counsel, persons serving in office of independent
2 counsel and their law firms.

3 (a) Restrictions on employment while independent counsel and
4 appointees are serving.--During the period in which an
5 independent counsel is serving under this chapter, the
6 independent counsel and any person associated with a firm with
7 which the independent counsel is associated may not represent in
8 any matter any person involved in any investigation or
9 prosecution under this chapter. During the period in which any
10 person appointed by an independent counsel under section 93A33
11 (relating to additional personnel) is serving in the office of
12 independent counsel, the person may not represent in any matter
13 any person involved in any investigation or prosecution under
14 this chapter.

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

17 (1) Each independent counsel and each person appointed
18 by that independent counsel under section 93A33 may not, for
19 three years following the termination of service under this
20 chapter of that independent counsel or appointed person, as
21 the case may be, represent any person in any matter if that
22 individual was the subject of an investigation or prosecution
23 conducted by that independent counsel under this chapter.

24 (2) Each independent counsel and each person appointed
25 by that independent counsel under section 93A33 may not, for
26 one year 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 involving
29 any investigation or prosecution under this chapter.

30 (c) One-year ban on representation by members of firms of

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

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

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

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

14 § 93A40. Custody of records of independent counsel.

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

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

27 § 93A41. Cost controls and administrative support.

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

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

30 (2) Authorize only reasonable and lawful expenditures.

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

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

10 § 93A42. Legislative oversight.

11 (a) Oversight of conduct of independent counsel.--An
12 independent counsel appointed under this chapter shall submit to
13 the General Assembly a report detailing all moneys expended as
14 required under section 93A37(a)(1) (relating to reports by
15 independent counsel). In addition, the independent counsel shall
16 submit annually a report on the activities of the independent
17 counsel, including a description of the progress of any
18 investigation or prosecution conducted by the independent
19 counsel. The report may omit any information that, in the
20 judgment of the independent counsel, should be kept confidential
21 to prevent undue interference with any pending prosecution but
22 shall provide information adequate to justify the expenditures
23 that the office of the independent counsel has made.

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

1 information in the course of an impeachment proceeding.
2 § 93A43. Removal of independent counsel and termination of
3 office.

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

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

14 (2) If an independent counsel is removed from office,
15 the General Counsel shall promptly submit to the panel, the
16 Judiciary Committee of the Senate and the Judiciary Committee
17 of the House of Representatives a report specifying the facts
18 found and the ultimate grounds for the removal. The
19 committees may make available to the public the report,
20 except that each committee may, if necessary to protect the
21 rights of any individual named in the report or to prevent
22 undue interference with any pending prosecution, postpone or
23 refrain from publishing any or all of the report. The panel
24 may release any or all of the report in accordance with
25 section 93A37(b) (relating to reports by independent
26 counsel).

27 (3) An independent counsel removed from office may
28 obtain judicial review of the removal in a civil action
29 commenced in the Commonwealth Court. The independent counsel
30 may be reinstated or granted other appropriate relief by

1 order of the Commonwealth Court. A member of the panel may
2 not hear or determine any such civil action or any appeal of
3 a decision in any such civil action.

4 (b) Termination of office.--

5 (1) An office of independent counsel shall terminate
6 when the independent counsel:

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

12 (ii) files a final report in compliance with section
13 93A37.

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

20 § 93A44. Audits.

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

1 § 93A45. Relationship with Office of Attorney General.

2 Whenever a matter is in the prosecutorial jurisdiction of an
3 independent counsel or has been accepted by an independent
4 counsel under section 93A35 (relating to referral of other
5 matters to independent counsel), the Office of Attorney General,
6 the Attorney General, all other officers and employees of the
7 Office of Attorney General and any district attorney shall
8 suspend all investigations and proceedings regarding that matter
9 and shall turn over to the independent counsel all materials,
10 files and other data relating to that matter.

11 § 93A46. Venue.

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

18 SUBCHAPTER D

19 MISCELLANEOUS PROVISIONS

20 Sec.

21 93A51. Severability of chapter.

22 93A51.1. Exemption.

23 93A52. Expiration of chapter.

24 § 93A51. Severability of chapter.

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

30 § 93A51.1. Exemption.

1 All proceedings and documents or other materials produced
2 under this chapter shall be exempt from disclosure under and
3 shall not be subject to any of the following:

4 (1) The act of February 14, 2008 (P.L.6, No.3), known as
5 the Right-to-Know Law.

6 (2) 65 Pa.C.S. Ch. 7 (relating to open meetings).
7 § 93A52. Expiration of chapter.

8 (a) Time.--Except as provided under subsection (b), this
9 chapter shall expire December 31, 2020.

10 (b) Exception.--This chapter shall not expire with respect
11 to any matter pending before an independent counsel that in the
12 judgment of the independent counsel requires continuation. A
13 matter shall be continued until the independent counsel
14 determines the matter is completed.

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