

ASSEMBLY, No. 585

STATE OF NEW JERSEY

Introduced Pending Technical Review by Legislative Counsel

PRE-FILED FOR INTRODUCTION IN THE 1996 SESSION

By Assemblymen LUSTBADER and BAGGER

1 AN ACT regulating transactions of certain State officials with the
2 State, providing penalties therefor and amending and supplementing
3 P.L.1971, c.182.

4

5 **BE IT ENACTED** by the Senate and General Assembly of the State
6 of New Jersey:

7

8 1. Section 2 of P.L.1971, c.182 (C.52:13D-13) is amended to read
9 as follows:

10 2. As used in this act, and unless a different meaning clearly
11 appears from the context, the following terms shall have the following
12 meanings:

13 a. "State agency" means any of the principal departments in the
14 Executive Branch of the State Government, and any division, board,
15 bureau, office, commission or other instrumentality within or created
16 by such department, the Legislature of the State and any office, board,
17 bureau or commission within or created by the Legislative Branch,
18 and, to the extent consistent with law, any interstate agency to which
19 New Jersey is a party and any independent State authority,
20 commission, instrumentality or agency. A county or municipality shall
21 not be deemed an agency or instrumentality of the State.

22 b. "State officer or employee" means any person, other than a
23 special State officer or employee (1) holding an office or employment
24 in a State agency, excluding an interstate agency, other than a member
25 of the Legislature or (2) appointed as a New Jersey member to an
26 interstate agency.

27 c. "Member of the Legislature" means any person elected to serve
28 in the General Assembly or the Senate.

29 d. "Head of a State agency" means (1) in the case of the Executive
30 Branch of government, except with respect to interstate agencies, the
31 department head or, if the agency is not assigned to a department, the
32 Governor, and (2) in the case of the Legislative Branch, the chief

EXPLANATION - Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and intended to be omitted in the law.

Matter underlined thus is new matter.

1 presiding officer of each House of the Legislature.

2 e. "Special State officer or employee" means (1) any person
3 holding an office or employment in a State agency, excluding an
4 interstate agency, for which office or employment no compensation is
5 authorized or provided by law, or no compensation other than a sum
6 in reimbursement of expenses, whether payable per diem or per annum,
7 is authorized or provided by law; (2) any person, not a member of the
8 Legislature, holding a part-time elective or appointive office or
9 employment in a State agency, excluding an interstate agency, or (3)
10 any person appointed as a New Jersey member to an interstate agency
11 the duties of which membership are not full-time.

12 f. "Person" means any natural person, association or corporation.

13 g. "Interest" means (1) the ownership or control of more than 10%
14 of the profits or assets of a firm, association, or partnership, or more
15 than 10% of the stock in a corporation for profit other than a
16 professional service corporation organized under the "Professional
17 Service Corporation Act," P.L.1969, c.232 (C.14A:17-1 et seq.); [or]
18 (2) the ownership or control of more than 1% of the profits of a firm,
19 association, or partnership, or more than 1% of the stock in any
20 corporation, which is the holder of, or an applicant for, a casino
21 license or in any holding or intermediary company with respect
22 thereto, as defined by the "Casino Control Act," P.L.1977, c.110
23 (C.5:12-1 et seq.)]; or (3) applicable percentages of profits, assets or
24 stock as set forth in (1) and (2) above constituting the beneficial
25 interest of a member of the Legislature or a State officer or employee,
26 in the principal or income of a trust, regardless of the identity of the
27 trustee, restrictions on the disposal of the assets of the trust or
28 limitations on communications with the trustee, and commonly
29 referred to as a "blind trust" or "qualified trust." The provisions of
30 this act governing the conduct of individuals are applicable to
31 shareholders, associates or professional employees of a professional
32 service corporation regardless of the extent or amount of their
33 shareholder interest in such a corporation.

34 h. "Cause, proceeding, application or other matter" means a
35 specific cause, proceeding or matter and does not mean or include
36 determinations of general applicability or the preparation or review of
37 legislation which is no longer pending before the Legislature or the
38 Governor.

39 i. "Member of the immediate family" of any person means the
40 person's spouse, child, parent or sibling residing in the same
41 household.

42 (cf: P.L.1987, c.432, s.2)

43

44 2. (New section) The depositing of assets in a trust regardless of
45 the identity of the trustee, restrictions on the disposal of the assets of
46 the trust or limitations on communications with the trustee, commonly

1 referred to as a "blind trust" or "qualified trust," or similar instrument,
2 by a member of the Legislature, State officer or employee, where a
3 beneficial interest is retained in the principal or income of the trust by
4 a member, State officer or employee or spouse or minor or dependent
5 child of the member, State officer or employee, shall not eliminate any
6 of the restrictions imposed by this act, P.L.1971, c.182 (C.52:13D-12
7 et seq.) or any supplement thereto or discharge any responsibility for
8 compliance with the provisions of these laws.

9
10 3. Section 4 of P.L.1971, c.182 (C.52:13D-15) is amended to read
11 as follows:

12 4. No member of the Legislature or State officer or employee shall
13 represent, appear for, or negotiate on behalf of, or agree to represent,
14 appear for, or negotiate on behalf of, whether by himself or by or
15 through any partnership, firm or corporation in which he has an
16 interest or by any partner, officer or employee of any such
17 partnership, firm or corporation any person or party other than the
18 State in any negotiations for the acquisition or sale by the State or a
19 State agency of any interest in real or tangible or intangible personal
20 property, or in any proceedings relative to such acquisition or sale
21 before a condemnation commission or court; provided, however,
22 nothing contained in this section shall be deemed to prohibit any
23 person from representing himself in [negotiations or] condemnation
24 proceedings concerning his own interest in real property.

25 A member of the Legislature or a State officer or employee may
26 participate in the sale to the State or a State agency of real property
27 owned in whole or in part by him, upon prior approval of the
28 Executive Commission on Ethical Standards or Joint Legislative
29 Committee on Ethical Standards, as appropriate, if the following are
30 found:

31 a. There is no undue influence by the member, State officer or
32 employee;

33 b. A competitive process was available and will be utilized;

34 c. The member, State officer or employee is not directly involved
35 in and in control of the negotiation process with the State or State
36 agency;

37 d. The transaction is advantageous to the State or State agency;

38 e. There is an adequate review process in connection with the
39 transaction;

40 f. The member, State officer or employee does not hold a position
41 the specific duties or responsibilities of which would make approval of
42 the transaction inappropriate.

43 (cf: P.L.1971, c.182, s.4)

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45 4. Section 8 of P.L.1971, c.182 (C.52:13D-19) is amended to read
46 as follows:

1 8. a. No member of the Legislature or State officer or employee,
2 or special State officer or employee having any duties or
3 responsibilities in connection with the purchase or acquisition of
4 property or services by the State agency where he is employed or is an
5 officer, shall knowingly himself, or by his partners or through any
6 corporation which he controls or in which he owns or controls more
7 than 1% of the stock, or by any other person for his use or benefit or
8 on his account, undertake or execute, in whole or in part, any contract,
9 lease, agreement, sale or purchase of the value of \$25.00 or more,
10 made, entered into, awarded or granted by any State agency, except
11 as provided in subsection b. of this section. [No special State officer
12 or employee having any duties or responsibilities in connection with
13 the purchase or acquisition of property or services by the State agency
14 where he is employed or an officer shall knowingly himself, by his
15 partners or through any corporation which he controls or in which he
16 owns or controls more than 1% of the stock, or by any other person
17 for his use or benefit or on his account, undertake or execute, in whole
18 or in part, any contract, agreement, sale or purchase of the value of
19 \$25.00 or more, made, entered into, awarded or granted by that State
20 agency, except as provided in subsection b. of this section.] The
21 restriction contained in this subsection shall apply to the contracts of
22 interstate agencies to the extent consistent with law only if the
23 contract, agreement, sale or purchase is undertaken or executed by a
24 New Jersey member to that agency or by his partners or a corporation
25 in which he owns or controls more than 1% of the stock.

26 b. The provisions of subsection a. of this section shall not apply to
27 (a) purchases, contracts, agreements or sales which (1) are made or let
28 after public notice and competitive bidding or which (2), pursuant to
29 section 5 of chapter 48 of the laws of 1944 (C.52:34-10) or such other
30 similar provisions contained in the public bidding laws or regulations
31 applicable to other State agencies, may be made, negotiated or
32 awarded without public advertising for bids, or (b) any contract of
33 insurance entered into by the Director of the Division of Purchase and
34 Property pursuant to section 10 of article 6 of chapter 112 of the laws
35 of 1944 (C.52:27B-62), if such purchases, contracts or agreements,
36 including change orders and amendments thereto, shall receive prior
37 approval of the Joint Legislative Committee on Ethical Standards if a
38 member of the Legislature or State officer or employee or special
39 State officer or employee in the Legislative Branch has an interest
40 therein, or the Executive Commission on Ethical Standards if a State
41 officer or employee or special State officer or employee in the
42 Executive Branch has an interest therein.
43 (cf: P.L.1987, c.432, s.5)

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45 5. Section 10 of P.L.1971, c.182 (C.52:13D-21) is amended to
46 read as follows:

1 10. (a) The Executive Commission on Ethical Standards created
2 pursuant to P.L.1967, chapter 229 is continued and established in the
3 Department of Law and Public Safety and shall constitute the first
4 commission under this act.

5 (b) The commission shall be composed of seven members
6 appointed by the Governor from among State officers and employees
7 serving in the Executive Branch. Each member shall serve at the
8 pleasure of the Governor during the term of office of the Governor
9 appointing him and until his successor is appointed and qualified. The
10 Governor shall designate one member to serve as chairman and one
11 member to serve as vice-chairman of the commission.

12 (c) Each member of the said commission shall serve without
13 compensation but shall be entitled to be reimbursed for all actual and
14 necessary expenses incurred in the performance of his duties.

15 (d) The Attorney General shall act as legal adviser and counsel to
16 the said commission. He shall upon request advise the commission in
17 the rendering of advisory opinions by the commission, in the approval
18 and review of codes of ethics adopted by State agencies in the
19 Executive Branch and in the recommendation of revisions in codes of
20 ethics or legislation relating to the conduct of State officers and
21 employees in the Executive Branch.

22 (e) The said commission may, within the limits of funds
23 appropriated or otherwise made available to it for the purpose, employ
24 such other professional, technical, clerical or other assistants,
25 excepting legal counsel, and incur such expenses as may be necessary
26 for the performance of its duties.

27 (f) The said commission, in order to perform its duties pursuant to
28 the provisions of this act, shall have the power to conduct
29 investigations, hold hearings, compel the attendance of witnesses and
30 the production before it of such books and papers as it may deem
31 necessary, proper and relevant to the matter under investigation. The
32 members of the said commission and the persons appointed by the
33 commission for such purpose are hereby empowered to administer
34 oaths and examine witnesses under oath.

35 (g) The said commission is authorized to render advisory opinions
36 as to whether a given set of facts and circumstances would, in its
37 opinion, constitute a violation of the provisions of this act or of a code
38 of ethics promulgated pursuant to the provisions of this act.

39 (h) The said commission shall have jurisdiction to initiate, receive,
40 hear and review complaints regarding violations, by any State officer
41 or employee or special State officer or employee in the Executive
42 Branch, of the provisions of this act or of any code of ethics
43 promulgated pursuant to the provisions of this act. Any complaint
44 regarding a violation of a code of ethics may be referred by the
45 commission for disposition in accordance with subsection 12(d) of this
46 act.

1 (i) Any State officer or employee or special State officer or
2 employee found guilty by the commission of violating any provision of
3 this act or of a code of ethics promulgated pursuant to the provisions
4 of this act shall be fined not less than~~[\$100.00]~~ \$500.00 nor more
5 than~~[\$500.00]~~ \$1,500.00, or not less than \$500.00 nor more than
6 \$7,500.00 in the case of violations of sections 4 or 8 of this act
7 (C.52:13D-15 or 52:13D-19), which penalty may be collected in a
8 summary proceeding pursuant to the Penalty Enforcement Law
9 (N.J.S.2A:58-1), and may be suspended from his office or employment
10 by order of the commission for a period of not in excess of ~~[1 year]~~ 2
11 years. If the commission finds that the conduct of such officer or
12 employee constitutes a willful and continuous disregard of the
13 provisions of this act or of a code of ethics promulgated pursuant to
14 the provisions of this act, it may order such person removed from his
15 office or employment and may further bar such person from holding
16 any public office or employment in this State in any capacity
17 whatsoever for a period of not exceeding 5 years from the date on
18 which he was found guilty by the commission.
19 (cf: P.L.1971, c.182, s.10)

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21 6. Section 11 of P.L.1971, c.182 (C.52:13D-22) is amended to
22 read as follows:

23 11. (a) The Joint Legislative Committee on Ethical Standards
24 created pursuant to the provisions of P.L.1967, chapter 229, as
25 continued and established pursuant to P.L.1971, c.182, is continued
26 and established in the Legislative Branch of State Government with the
27 addition of the public members as set forth in this section.

28 (b) The joint committee shall be composed of 12 members as
29 follows: four members of the Senate appointed by the President
30 thereof, no more than two of whom shall be of the same political
31 party; four members of the General Assembly, appointed by the
32 Speaker thereof, no more than two of whom shall be of the same
33 political party; and four public members, one appointed by the
34 President of the Senate, one appointed by the Speaker of the General
35 Assembly, one appointed by the Minority Leader of the Senate and one
36 appointed by the Minority Leader of the General Assembly. No public
37 member shall be a lobbyist or legislative agent as defined by the
38 "Legislative Activities Disclosure Act of 1971," P.L.1971, c.183
39 (C.52:13C-18 et seq.), a full-time State employee or an officer or
40 director of any entity which is required to file a statement with the
41 Election Law Enforcement Commission, and no former lobbyist or
42 legislative agent shall be eligible to serve as a public member for one
43 year following the cessation of all activity by that person as a
44 legislative agent or lobbyist. The legislative members shall serve until
45 the end of the two-year legislative term during which the members are
46 appointed. The public members shall serve for terms of two years and

1 until the appointment and qualification of their successors. The terms
2 of the public members shall run from the second Tuesday in January
3 of an even-numbered year to the second Tuesday in January of the
4 next even-numbered year, regardless of the original date of
5 appointment. Notwithstanding the terms of the public members as
6 established in this section, the public members first appointed shall
7 serve from their initial appointments, all of which shall be made not
8 later than the 60th day following the effective date of this act, until the
9 second Tuesday in January of the next even-numbered year.
10 Vacancies in the membership of the joint committee shall be filled in
11 the same manner as the original appointments, but for the unexpired
12 term only. Public members of the joint committee shall serve without
13 compensation, but shall be entitled to be reimbursed for all actual and
14 necessary expenses incurred in the performance of their duties.

15 (c) The joint committee shall organize as soon as may be
16 practicable after the appointment of its members, by the selection of
17 a chairman and vice chairman from among its membership and the
18 appointment of a secretary, who need not be a member of the joint
19 committee.

20 (d) The Legislative Counsel in the Office of Legislative Services
21 shall act as legal adviser to the joint committee. He shall, upon
22 request, assist and advise the joint committee in the rendering of
23 advisory opinions by the joint committee, in the approval and review
24 of codes of ethics adopted by State agencies in the Legislative Branch,
25 and in the recommendation of revisions in codes of ethics or legislation
26 relating to the conduct of members of the Legislature or State officers
27 and employees in the Legislative Branch.

28 (e) The joint committee may, within the limits of funds
29 appropriated or otherwise available to it for the purpose, employ other
30 professional, technical, clerical or other assistants, excepting legal
31 counsel, and incur expenses as may be necessary to the performance
32 of its duties.

33 (f) The joint committee shall have all the powers granted pursuant
34 to chapter 13 of Title 52 of the Revised Statutes.

35 (g) The joint committee is authorized to render advisory opinions
36 as to whether a given set of facts and circumstances would, in its
37 opinion, constitute a violation of the provisions of this act, of a code
38 of ethics promulgated pursuant to the provisions of this act or of any
39 rule of either or both Houses which gives the joint committee
40 jurisdiction and the authority to investigate a matter.

41 (h) The joint committee shall have jurisdiction to initiate, receive,
42 hear and review complaints regarding violations of the provisions of
43 this act or of a code of ethics promulgated pursuant to the provisions
44 of this act. It shall further have such jurisdiction as to enforcement of
45 the rules of either or both Houses of the Legislature governing the
46 conduct of the members or employees thereof as those rules may

1 confer upon the joint committee. A complaint regarding a violation of
2 a code of ethics promulgated pursuant to the provisions of this act may
3 be referred by the joint committee for disposition in accordance with
4 subsection 12(d) of this act.

5 (i) Any State officer or employee or special State officer or
6 employee in the Legislative Branch found guilty by the joint committee
7 of violating any provisions of this act, of a code of ethics promulgated
8 pursuant to the provisions of this act or of any rule of either or both
9 Houses which gives the joint committee jurisdiction and the authority
10 to investigate a matter shall be fined not less than \$500.00 nor more
11 than \$1,500.00, or not less than \$500.00 nor more than \$7,500.00 in
12 the case of violations of sections 4 or 8 of this act (C.52:13D-15 or
13 52:13D-19), which penalty may be collected in a summary proceeding
14 pursuant to "the penalty enforcement law" (N.J.S.2A:58-1 et seq.),
15 and may be reprimanded and ordered to pay restitution where
16 appropriate and may be suspended from his office or employment by
17 order of the joint committee for a period not in excess of [1 year] 2
18 years. If the joint committee finds that the conduct of such officer or
19 employee constitutes a willful and continuous disregard of the
20 provisions of this act, of a code of ethics promulgated pursuant to the
21 provisions of this act or of any rule of either or both Houses which
22 gives the joint committee jurisdiction and the authority to investigate
23 a matter, it may order such person removed from his office or
24 employment and may further bar such person from holding any public
25 office or employment in this State in any capacity whatsoever for a
26 period of not exceeding 5 years from the date on which he was found
27 guilty by the joint committee.

28 (j) A member of the Legislature who shall be found guilty by the
29 joint committee of violating the provisions of this act, of a code of
30 ethics promulgated pursuant to the provisions of this act or of any rule
31 of either or both Houses which gives the joint committee jurisdiction
32 and the authority to investigate a matter shall be fined not less than
33 \$500.00 nor more than \$1,500.00, or not less than \$500.00 nor more
34 than \$7,500.00 in the case of violations of sections 4 or 8 of this act
35 (C.52:13D-15 or 52:13D-19), which penalty may be collected in a
36 summary proceeding pursuant to "the penalty enforcement law"
37 (N.J.S.2A:58-1 et seq.), and shall be subject to such further action as
38 may be determined by the House of which he is a member. In such
39 cases the joint committee shall report its findings to the appropriate
40 House and shall recommend to the House such further action as the
41 joint committee deems appropriate, but it shall be the sole
42 responsibility of the House to determine what further action, if any,
43 shall be taken against such member.

44 (cf: P.L.1991, c.505)

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46 7. This act shall take effect on the second Tuesday in January next

1 following enactment and shall apply to transactions entered into after
2 the effective date.

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STATEMENT

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7 There is confusion, conflict and redundancy in the law governing
8 the transaction of business between legislators and State officers and
9 employees, and the State.

10 The purpose of this bill is to articulate the terms and conditions
11 under which legislators and State officers and employees may do
12 business with the State in the sale of real estate, leasing of real estate
13 and other financial transactions.

14 The bill makes clear that legislators and State officers and
15 employees may not lease real property to the State of New Jersey
16 unless there is an open, competitive and publicly advertised process.
17 Presently, contracts for the sale of goods may be made between State
18 officials and the State only where the contracts are publicly bid.

19 Further, the bill authorizes the sale of real property by State
20 officials to the State or a State agency only where there has been prior
21 approval of the Executive Commission on Ethical Standards or Joint
22 Legislative Committee on Ethical Standards, as appropriate. This
23 prior approval can only be granted if there is a finding there was no
24 undue influence in the transaction; that a competitive process was
25 employed; that the State official had no direct involvement in the
26 transaction; that the transaction is advantageous to the State; that
27 there is an adequate review process in connection with the transaction;
28 and that the State official holds no particular position which would
29 make the approval of the transaction inappropriate.

30 The bill dissolves the myth of the use of the "blind trust" or
31 "qualified trust" as a vehicle to shield transactions between State
32 officials and the State by declaring them of no effect in satisfying the
33 requisites of the Conflicts of Interest Law.

34 Also, the bill increases the penalties for violations of the provisions
35 of the Conflicts of Interest Law regarding the sale or lease of property,
36 on the basis that there would or could be significant financial gain from
37 such transactions.

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42 Regulates real estate and contractual transactions by State officials
43 with the State and eliminates the use of "blind trusts."