

ASSEMBLY, No. 1326

STATE OF NEW JERSEY

INTRODUCED JUNE 24, 1996

By Assemblymen LeFEVRE, BLEE and Assemblywoman
Crecco

1 AN ACT concerning the State Commission of Investigation and
2 amending and supplementing P.L.1968, c.266.

3

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

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7 1. Section 8 of P.L.1968, c.266 (C.52:9M-8) is amended to read
8 as follows:

9 8. Whenever the commission or any employee of the commission
10 obtains any information or evidence of a reasonable possibility of
11 criminal wrongdoing, or it shall appear to the commission that there
12 is cause for the prosecution for a crime, or for the removal or
13 discipline of a public officer or public employee for misconduct, the
14 Commission shall immediately bring the information or evidence of
15 such crime or misconduct [shall be called] to the attention of the
16 Attorney General as soon as practicable by the commission, unless the
17 commission shall, by majority vote, determine that [special
18 circumstances exist which require the delay in transmittal of the
19 information or evidence] there is probable cause to believe that there
20 is criminal wrongdoing of misconduct on the part of the Attorney
21 General, in which case the information or evidence shall immediately
22 be referred to the Governor, the Senate President and the Speaker of
23 the General Assembly for further direction to the Commission pursuant
24 to section 52:9M-3 or other action authorized by the laws of this State
25 of the United States. [However, if] If the commission or any
26 employee of the commission obtains any information or evidence
27 indicating a reasonable possibility of an unauthorized disclosure of
28 information or a violation of any provision of this act, such
29 information or evidence shall be immediately brought by the
30 commission to the attention of the Attorney General.
31 (cf: P.L.1979, c.254, s.10)

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 2. Section 9 of P.L.1968, c.266 (C.52:9M-9) is amended to read
2 as follows:

3 9. a. The commission shall be authorized to appoint and employ
4 and at pleasure remove an executive director, counsel, investigators,
5 accountants, and such other persons as it may deem necessary, without
6 regard to civil service; and to determine their duties and fix their
7 salaries or compensation within the amounts appropriated therefor.
8 Investigators and accountants appointed by the commission shall be
9 and have all the powers of peace officers.

10 b. No person shall serve as executive director of the commission
11 for more than 12 years. The provisions of this subsection shall not
12 apply to any person serving as executive director on the effective date
13 of P.L. .c. (now pending before the Legislature as this bill).
14 (cf: P.L.1968, c.266, s.9)

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16 3. Section 10 of P.L.1968, c.266 (C.52:9M-10) is amended to read
17 as follows:

18 10. The commission shall make an annual report to the Governor
19 and Legislature which shall include its recommendations. The
20 commission shall, consistent with the provisions of sections 7 and 8 of
21 P.L. c. (C.) (now pending before the Legislature as sections
22 7 and 8 of this bill), make such further interim reports to the Governor
23 and Legislature, or either thereof, as it shall deem advisable, or as shall
24 be required by the Governor or by concurrent resolution of the
25 Legislature.

26 (cf: P.L.1968, c.266, s.10)

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28 4. Section 11 of P.L.1968, c.266 (C.52:9M-11) is amended to read
29 as follows:

30 11. By such means and to such extent as it shall deem appropriate,
31 the commission shall, consistent with the provisions of sections 7 and
32 8 of P.L. c. (C.) (now pending before the Legislature as
33 sections 7 and 8 of this bill) keep the public informed as to the
34 operations of organized crime, problems of criminal law enforcement
35 in the State and other activities of the commission.

36 (cf: P.L.1968, c.266, s.11)

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38 5. Section 15 of P.L.1968, c.266 (C.52:9M-15) is amended to read
39 as follows:

40 15. a. Any person conducting or participating in any examination
41 or investigation who shall disclose or any person who, coming into
42 possession of or knowledge of the substance of any examination or
43 investigation, shall disclose, or any person who shall cause, encourage
44 or induce a person, including any witness or informant, to disclose,
45 other than as authorized or required by law, to any person other than
46 the commission or an officer having the power to appoint one or more

1 of the commissioners the name of any witness examined, or any
2 information obtained or given upon such examination or investigation,
3 except as directed by the Governor or commission, or any person
4 other than a member or employee of the commission or any person
5 entitled to assert a legal privilege who, coming into possession of or
6 knowledge of the substance of any pending examination or
7 investigation who fails to advise the Attorney General and the
8 commission of such possession or knowledge and to deliver to the
9 Attorney General and the commission any documents or materials
10 containing such information, shall be guilty of a misdemeanor until
11 September 1, 1979 when such person shall be guilty of a crime of the
12 third degree. Any member or employee of the commission who shall
13 violate this section shall be dismissed from his office or discharged
14 from his employment.

15 b. Any statement made by a member of the commission or an
16 employee thereof relevant to any proceedings before or investigative
17 activities of the commission shall be absolutely privileged and such
18 privilege shall be a complete defense to any action for libel or slander;
19 provided, however, that nothing in this subsection shall be deemed to
20 grant immunity for any grossly negligent action or for any action taken
21 in bad faith.

22 c. Nothing contained in this section shall in any way prevent the
23 commission from furnishing information or making reports, as required
24 by this act, or from furnishing information to the Legislature, or to a
25 standing reference committee thereof, pursuant to a resolution duly
26 adopted by a standing reference committee or pursuant to a duly
27 authorized subpoena or subpoena duces tecum, provided, however, that
28 nothing herein shall be deemed to preclude the commission from
29 seeking from a court of competent jurisdiction a protective order to
30 avoid compliance with such subpoena or duces tecum.

31 (cf: P.L.1979, c.254, s.14)

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33 6. Section 20 of P.L.1968, c.266 is amended to read as follows:

34 20. This act shall take effect immediately and remain in effect until
35 [July 1, 1996] July 1, 2002.

36 (cf: P.L.1994, c.191, s.3)

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38 7. (New section) a. The State Commission of Investigation shall
39 not conduct a public hearing pursuant to the provisions of section 12
40 of P.L.1968, c.266 (C.52:9M-12) unless the commission determines
41 that no other method of proceeding would satisfy the public interest.

42 b. Whenever a referral has been made to the Attorney General
43 pursuant to the provisions of section 8 of P.L.1968, c.266
44 (C.53:9M-8), the commission shall not hold a public hearing in
45 connection with that investigation unless the Attorney General
46 approves of the public hearing or the Attorney General notifies the

1 commission that any prosecution resulting from that investigation have
2 been initiated or that the Attorney General has determined not to seek
3 any prosecution in connection with that investigation.

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5 8. (New section) a. Whenever a referral has been made by the
6 State Commission of Investigation to the Attorney General pursuant
7 to the provisions of section 8 of P.L.1968, c.266 (C.52:9M-8), the
8 commission shall not issue a report concerning that investigation
9 unless the Attorney General approves of the release of the report or
10 until the Attorney General notifies the commission that any
11 prosecution resulting from that investigation has been initiated or that
12 the Attorney General has determined not to seek any prosecution in
13 connection with that investigation.

14 b. The purpose of any report issued by the commission shall be to
15 inform the public of systemic problems in governmental operations and
16 shall not include specifics which identify any individual unless such
17 identifying facts are necessary for a meaningful and credible
18 explanation of the subject described in the report.

19 c. Whenever a proposed commission report is critical of a person's
20 conduct, a copy of the proposed report shall be sent to that person
21 prior to the release of the report. Upon receipt of the report, the
22 person criticized shall have 15 days to submit a written response which
23 the commission shall include in the report together with any evidence
24 submitted by that person.

25 d. Any report issued by the commission shall include any evidence
26 concerning a person criticized in the report which is of an exculpatory
27 nature or which tends to exonerate the criticized person.

28 e. A report issued by the commission shall include, upon request
29 of the Attorney General, a statement indicating the results of any
30 criminal prosecution or disciplinary action related to the report.

31
32 9. (New section) In June of the year 2000, a special committee
33 shall be established to review the activities of the State Commission of
34 Investigation for the purpose of determining whether the statutory
35 authorization for the commission's operation should be renewed. The
36 special committee shall consist of seven members: three members to
37 be appointed by the Governor, no more than two of whom shall be of
38 the same political party; two members to be appointed by the President
39 of the Senate, no more than one of whom shall be of the same political
40 party and two members to be appointed by the Speaker of the General
41 Assembly, no more than one of whom shall be of the same political
42 party. This committee shall submit its report to the Governor and the
43 Legislature no later than January 1, 2001.

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45 10. This act shall take effect immediately.

STATEMENT

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3 In February of this year, the Review Committee on the State
4 Committee of Investigation issued its report. In that report, the
5 Review Committee recommended that the present statutory
6 authorization for the S.C.I. which is scheduled to expire on July 1, of
7 this year be extended until July 1, 2002. This bill would implement
8 this recommendation.

9 Other recommendations contained in the Review Committee's
10 report involved the procedures to be followed whenever, during the
11 course of an investigation, the S.C.I. obtains evidence of criminal
12 wrongdoing. Under present law, the S.C.I. is required to report
13 evidence of either criminal wrongdoing or noncriminal misconduct on
14 the part of a public office to the Attorney General as soon as
15 practicable. The Review Committee's report recommends that
16 whenever evidence of criminal wrongdoing or misconduct is
17 discovered by the S.C.I. that the S.C.I. immediately refer that evidence
18 to the Attorney General. The Review Committee further recommends
19 that when a referral is made to the Attorney General, the Attorney
20 General shall assume responsibility for the conduct of the
21 investigation.

22 The report further recommends that when the S.C.I. refers such
23 evidence to the Attorney General that the S.C.I. be required to delay
24 any public hearing or the release of any report until the Attorney
25 General has notified the S.C.I. that any prosecution resulting from that
26 investigation has been initiated or that the Attorney General has
27 determined not to seek any prosecutions. This bill would implement
28 these recommendations and require the S.C.I. to immediately notify
29 the Attorney General of any possible criminal wrongdoing and of any
30 noncriminal misconduct on the part of a public officer or employee
31 which could lead to that persons's removal or discipline. The only
32 exception would be if the wrongdoing or misconduct involved the
33 Attorney General in which case the information would be forwarded
34 to the Governor, the Senate President and the Speaker of the General
35 Assembly. The bill would also implement the Review Committee's
36 recommendations with regard to delaying of the issuance of any report
37 by the SCI. until the Attorney General has made a determination with
38 regard to possible prosecutions.

39 In addition, the bill would implement the following
40 recommendations also contained in the Review Committee's report:

41 1. Limit the time a person could serve as executive director of the
42 S.C.I to 12 years.

43 2. Provide that the S.C.I. not issue any report to the public until
44 any person adversely mentioned in the report has an opportunity to
45 submit a written response.

46 3. Require that the S.C.I. include in its reports any evidence of an

1 exculpatory nature.

2 4. Provide that SCI. reports not include information identifying
3 individuals unless such information is necessary for a meaningful
4 report.

5 5. Require that S.C.I. reports include, at the request of the
6 Attorney General, a statement indicating the results of any criminal
7 investigation or disciplinary action arising from that report.

8 6. Provide that the S.C.I. and its staff not have absolute civil
9 immunity with regard to actions which are grossly negligent or taken
10 in bad faith.

11 7. Provide that the S.C.I. should only hold public hearings if no
12 other method of proceeding would satisfy the public interest.

13 8. Provide for the establishment of a committee to review the
14 status of the S.C.I. in the year 2000.

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Implements recommendations of the S.C.I. Review Committee.