

ASSEMBLY, No. 2102

STATE OF NEW JERSEY

INTRODUCED JUNE 3, 1996

By Assemblymen MORAN and DORIA

1 AN ACT concerning the Executive Commission on Ethical Standards  
2 and amending P.L.1971, c.182.

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

9 10. (a) The Executive Commission on Ethical Standards created  
10 pursuant to P.L.1967, chapter 229, and as continued and established  
11 pursuant to P.L.1971, c.182, is continued and established in **but not of**  
12 the Department of Law and Public Safety and shall [constitute the  
13 first commission under this act] be independent of any supervision or  
14 control by the department or any board or office thereof.

15 (b) The commission shall be composed of seven members. Two  
16 members shall be public members appointed by the Governor [from  
17 among State officers and employees serving in the Executive Branch.  
18 Each member shall serve at the pleasure of the Governor] , each of  
19 whom shall be a member of a different political party. One public  
20 member shall be appointed by the President of the Senate or the  
21 minority leader thereof, whichever person is a member of a political  
22 party different from that of the Governor, and shall be a member of the  
23 same party as the person making the appointment; and one public  
24 member shall be appointed by the Speaker of the General Assembly or  
25 the minority leader thereof, whichever person is a member of a  
26 political party different from that of the Governor, and shall be a  
27 member of the same political party as the person making the  
28 appointment. The other three members shall be appointed by the  
29 Governor from among State officers or employees and special State  
30 officers or employees serving in the Executive Branch and shall serve  
31 during the term of office and at the pleasure of the Governor  
32 appointing [him and until his successor is] them and until their  
33 successors are appointed and have qualified. Each of the Executive  
34 Branch members may designate an officer or employee under his

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 supervision to act on his behalf. The Governor shall designate one  
2 public member to serve as chairman and one public member to serve  
3 as vice-chairman of the commission; both members shall serve in those  
4 positions at the Governor's pleasure. Each of the public members of  
5 the commission shall serve for terms of four years and until the  
6 appointment and qualification of their successors, but of the first such  
7 members appointed, one appointed by the Governor shall serve for a  
8 term of one year, the one appointed by the Speaker of the General  
9 Assembly or minority leader thereof, as the case may be, shall serve  
10 for a term of two years, one appointed by the Governor shall serve for  
11 a term of three years and the one appointed by the President of the  
12 Senate or the minority leader thereof, as the case may be, shall serve  
13 for a term of four years.

14 Vacancies in the membership of the commission shall be filled in the  
15 same manner as the original appointments were made but, in the case  
16 of public members, vacancies shall be filled for the unexpired term  
17 only. None of the public members shall be State officers or employees  
18 or special State officers or employees except by reason of their service  
19 on the commission.

20 (c) Each member of the [said] commission shall serve without  
21 compensation but shall be entitled to be reimbursed for all actual and  
22 necessary expenses incurred in the performance of his duties.

23 (d) The Attorney General shall act as legal adviser and counsel to  
24 the [said] commission. He shall upon request advise the commission  
25 in the rendering of advisory opinions by the commission, in the  
26 approval and review of codes of ethics adopted by State agencies in  
27 the Executive Branch [and], in the recommendation of revisions in  
28 codes of ethics or legislation relating to the conduct of State officers  
29 [and] or employees or special State officers or employees in the  
30 Executive Branch, and in the performance of any of its other duties  
31 under P.L.1971, c.182.

32 (e) The [said] commission [may], within the limits of funds  
33 appropriated or otherwise made available to it for the purpose, may  
34 employ such other professional, technical, clerical or other assistants,  
35 excepting legal counsel, and incur such expenses as may be necessary  
36 for the performance of its duties.

37 (f) The [said] commission, in order to perform its duties pursuant  
38 to the provisions of this act, shall have the power to conduct  
39 investigations, hold hearings, compel the attendance of witnesses and  
40 the production before it of such books and papers as it may deem  
41 necessary, proper and relevant to the matter under investigation. The  
42 members of the [said] commission and the persons appointed by the  
43 commission for such purpose are hereby empowered to administer  
44 oaths and examine witnesses under oath.

45 (g) The [said] commission is authorized to render advisory  
46 opinions as to whether a given set of facts and circumstances would,

1 in its opinion, constitute a violation of the provisions of this act [or  
2 of], a code of ethics promulgated pursuant to the provisions of this  
3 act, or an executive order in which the Governor has granted the  
4 commission jurisdiction of its provisions. These advisory opinions  
5 shall be filed with the commission and shall be public records, but no  
6 opinion so filed shall contain the name of the person or persons who  
7 shall have requested the opinion.

8 (h) The [said] commission shall have jurisdiction to initiate,  
9 receive, hear and review complaints regarding violations, by any State  
10 officer or employee or special State officer or employee in the  
11 Executive Branch, of the provisions of this act [or], of any code of  
12 ethics promulgated pursuant to the provisions of this act or of any  
13 executive order in which the Governor has granted the commission  
14 jurisdiction. Any complaint regarding a violation of a code of ethics  
15 or such executive order may be referred by the commission for  
16 disposition in accordance with subsection 12(d) of this act. All  
17 investigations and hearings conducted by the commission shall be  
18 conducted pursuant to the provisions of the "Administrative Procedure  
19 Act," P.L.1968, c.410 (C.52:14B-1 et seq.).

20 (i) The commission shall prepare and publish, prior to May 1 of  
21 each year, an annual report to the Governor and the Legislature.

22 [(i)](j) Any State officer or employee or special State officer or  
23 employee in the Executive Branch found [guilty by the commission of  
24 violating] by the commission to have violated any provision of this act  
25 [or of], a code of ethics promulgated pursuant to the provisions of  
26 this act or an executive order in which the Governor has granted the  
27 commission jurisdiction of its provisions shall be fined not less than  
28 \$100.00 nor more than \$500.00, which penalty may be collected in a  
29 summary proceeding pursuant to [the Penalty Enforcement Law  
30 (N.J.S.2A:58-1)] "the penalty enforcement law" (N.J.S.2A:58-1 et  
31 seq.), and may be suspended from his office or employment by order  
32 of the commission for a period of not in excess of [1] one year. If the  
33 commission finds that the conduct of such officer or employee  
34 constitutes a willful and continuous disregard of the provisions of this  
35 act [or of], a code of ethics promulgated pursuant to the provisions of  
36 this act or an executive order in which the Governor has granted the  
37 commission jurisdiction of its provisions, it may order such person  
38 removed from his office or employment and may further bar such  
39 person from holding any public office or employment in this State in  
40 any capacity whatsoever for a period of not exceeding [5] five years  
41 from the date on which he was found [guilty] to have violated any  
42 provision of P.L.1971, c.182, a code or an executive order by the  
43 commission.

44 In the event that an investigation of such an officer or employee  
45 proceeds to a hearing before an administrative law judge, pursuant to  
46 the provisions of the "Administrative Procedure Act," P.L.1968, c.410

1 (C.52:14B-1 et seq.), and the officer or employee is found not guilty  
2 of a violation of one or more of the provisions of P.L.1971, c.182, a  
3 code of ethics promulgated pursuant to the provisions of P.L.1971,  
4 c.182 or an executive order in which the Governor has granted the  
5 commission jurisdiction of its provisions, the State shall pay the  
6 reasonable legal fees incurred by that officer or employee in an amount  
7 to be determined by the administrative law judge presiding over the  
8 hearing, except that whenever such an officer or employee is  
9 represented at a hearing by counsel provided by the Attorney General  
10 or some other State agency no legal fees shall be imposed on the  
11 officer or employee or paid by the State.

12 Notwithstanding the provisions of this subsection to the contrary,  
13 any constitutional officer subject to P.L.1971, c.182, a code of ethics  
14 promulgated pursuant to the provisions of P.L.1971, c.182 or an  
15 executive order in which the Governor has granted the commission  
16 jurisdiction of its provisions may not be suspended or barred from  
17 office or employment but shall be subject to impeachment as provided  
18 in Article VII, Section III, paragraph 1 of the New Jersey  
19 Constitution.

20 (k) The commission shall be assigned suitable quarters.  
21 (cf: P.L.1971, c.182, s.10)

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23 2. (New section) a. The head of each State agency in the  
24 Executive Branch of government required to promulgate a code of  
25 ethics to guide the conduct of the State officers and employees and  
26 special State officers and employees of that agency, pursuant to  
27 section 12 of P.L.1971, c.182 (C.52:13D-23), shall provide a program  
28 that explains the provisions of that code and of P.L.1971, c.182  
29 (C.52:13D-12 et seq.), as amended and supplemented, to the officers  
30 and employees of that agency no later than April 1 of every even-  
31 numbered year. The head of each such agency shall provide biennially  
32 to the Executive Commission on Ethical Standards a copy of the  
33 training materials used in the program of that agency and certify to it  
34 the date or dates when the program occurred.

35 b. The Executive Commission on Ethical Standards shall monitor  
36 all such programs provided pursuant to the provisions of subsection a.  
37 of this section and, from time to time, shall issue a report to the  
38 Governor and the Legislature on the content of the programs and the  
39 compliance with the provisions of this act by each State agency in the  
40 Executive Branch of government required to promulgate a code of  
41 ethics.

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43 3. (New section) The term of each member of the Executive  
44 Commission on Ethical Standards in office on the effective date of this  
45 act, P.L. , c. (C. ) (now pending before the Legislature as this  
46 bill), shall continue until and terminate upon the appointment by the

1 Governor, the President of the Senate or minority leader thereof, as  
2 the case may be, or the Speaker of the General Assembly or minority  
3 leader thereof, as the case may be, of a replacement public member or  
4 Executive Branch member, as appropriate, pursuant to subsection (b)  
5 of section 10 of P.L.1971, c.182 (C.52:13D-21). Upon the enactment  
6 of this act, P.L. , c. (C. ) (now pending before the Legislature  
7 as this bill), the Governor shall designate which of the current public  
8 members of the commission are to be replaced by an appointment  
9 made by the Governor and which are to be replaced by an appointment  
10 made by the President of the Senate or minority leader thereof, as the  
11 case may be, and by the Speaker of the General Assembly or minority  
12 leader thereof, as the case may be. Any person serving as a member  
13 of the commission on the effective date of this act may, if otherwise  
14 qualified, be appointed as a member of the commission.

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16 4. This act shall take effect immediately.

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#### STATEMENT

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21 This bill reconstitutes the Executive Commission on Ethical  
22 Standards in order to make a majority of its members public members  
23 and to clarify its enforcement powers.

24 At present, all seven commission members are State officers or  
25 employees. Under this bill, two commission members would be public  
26 members appointed by the Governor, each of whom shall be a member  
27 of a different political party. One public member would be appointed  
28 by the President of the Senate or the minority leader thereof,  
29 whichever person is a member of a political party different from that  
30 of the Governor, and shall be a member of the same party as the  
31 person making the appointment; and one public member would be  
32 appointed by the Speaker of the General Assembly or the minority  
33 leader thereof, whichever person is a member of a political party  
34 different from that of the Governor, and shall be a member of the same  
35 political party as the person making the appointment. The other three  
36 members shall be appointed by the Governor from among State  
37 officers or employees and special State officers or employees serving  
38 in the Executive Branch and shall serve during the term of office and  
39 at the pleasure of the Governor appointing them. Except for those  
40 first appointed, public members shall serve for terms of four years.  
41 The Governor shall designate one public member to serve as chairman  
42 and one public member to serve as vice-chairman. None of the public  
43 members shall be State officers or employees or special State officers  
44 or employees except by reason of their service on the commission.

45 The commission is authorized to initiate, receive, hear and review  
46 complaints regarding violations of any executive order in which the

1 Governor has granted the commission jurisdiction and to render  
2 advisory opinions as to whether there has been a violation of such  
3 executive orders. All investigations and hearings involving violations  
4 of the code of ethics established by each State agency conducted by  
5 the commission would be conducted pursuant to the provisions of the  
6 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et  
7 seq.).

8 The bill provides that the head of each State agency in the  
9 Executive Branch of government required to promulgate a code of  
10 ethics would provide a program that explains the provisions of that  
11 code and of P.L.1971, c.182 to the officers and employees of that  
12 agency no later than April 1 of every even-numbered year. The  
13 Executive Commission on Ethical Standards would monitor all such  
14 programs and, from time to time, issue a report to the Governor and  
15 the Legislature on the content of the programs and the compliance  
16 with the provisions of the act by each State agency in the Executive  
17 Branch required to promulgate a code of ethics.

18 The bill also provides that a constitutional officer may not be  
19 suspended or barred from office or employment but shall be subject to  
20 impeachment as provided by the New Jersey Constitution.

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25 Reconstitutes the Executive Commission on Ethical Standards and  
26 clarifies its enforcement powers.