

SENATE, No. 1217

STATE OF NEW JERSEY

INTRODUCED MAY 16, 1996

By Senator DiFRANCESCO

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)

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

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

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

12 (cf: P.L.1968, c.266, s.9)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 any prosecution in connection with that investigation.

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

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

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

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

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

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

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43 10. This act shall take effect immediately.

STATEMENT

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 SCI 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 SCI obtains evidence of criminal
12 wrongdoing. Under present law, the SCI 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 SCI that the SCI immediately refer that evidence to
18 the Attorney General.

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

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

- 38 1. Limit the time a person could serve as executive director of the
 - 39 S.C.I to 12 years.
 - 40 2. Provide that the S.C.I. not issue any report to the public until
 - 41 any person adversely mentioned in the report has an opportunity to
 - 42 submit a written response.
 - 43 3. Require that the S.C.I. include in its reports any evidence of an
 - 44 exculpatory nature.
 - 45 4. Provide that S.C.I. reports not include information identifying
 - 46 individuals unless such information is necessary for a meaningful

1 report.

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

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

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

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

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