

SENATE, No. 1482

STATE OF NEW JERSEY

INTRODUCED SEPTEMBER 19, 1996

By Senators McGREEVEY and LYNCH

1 **AN ACT** concerning the appointment of an independent counsel.

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

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6 1. The Legislature finds and declares that:

7 a. Michael D. Francis, who resigned as chairman of the New Jersey
8 Sports and Exposition Authority on Tuesday, July 16, 1996 amid
9 reports that State officials are investigating allegations of improper
10 conduct made against him, has been an important fund-raiser in
11 Republican political campaigns and has close ties to many high-level
12 State officials;

13 b. Mr. Francis was in charge of fund-raising during Governor
14 Whitman's gubernatorial campaign, chaired the Governor's inaugural
15 committee, and previously raised campaign funds for then-Governor
16 Thomas Kean;

17 c. Attorney General Peter Verniero has confirmed that an
18 investigation is ongoing concerning allegations about Mr. Francis
19 which were made by an unnamed third party. That party, who is
20 allegedly connected with organized crime, is reported to have boasted
21 that his connections with Mr. Francis allowed him to unlawfully have
22 input in the awarding of contracts made by the authority;

23 d. According to reports, in May, 1996, the allegations led then-
24 Attorney General Deborah Poritz to order State Police to perform a
25 new background check on Mr. Francis. The background check, which
26 was completed on July 1, raised concerns among administration
27 officials and these concerns ultimately led to Mr. Francis's resignation;

28 e. Although Governor Whitman has stated that the State
29 investigation involves Mr. Francis's private business, a building
30 maintenance company, and not his role as chairman of the authority,
31 Mr. Francis contradicted her statement by saying that the investigation
32 does involve his former role as chairman of the authority. This
33 contradiction is confusing to the public;

34 f. Michael Francis's relationship with the administration raises
35 questions about the impropriety of the ongoing investigation, or, at the
36 very least, about the appearance of such impropriety;

37 g. In order to resolve such improprieties and restore the public's

1 faith in the justice system, it is in the public interest that an
2 independent counsel be appointed to conduct an investigation into the
3 circumstances surrounding Michael Francis's resignation, his
4 background and the reported allegations against him.

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6 2.a. The Chief Justice of the New Jersey Supreme Court shall
7 appoint three Appellate Division judges to a judicial panel established
8 for the purposes of: (1) selecting an individual to serve as independent
9 counsel to investigate the allegations concerning Michael Francis, and
10 (2) determining the independent counsel's jurisdiction.

11 b. Within 30 days of the establishment of the judicial panel, the
12 panel shall nominate three candidates with appropriate experience,
13 none of whom hold any public office in this State, for the position of
14 independent counsel. Within 15 days of the panel's decision, the
15 Attorney General shall choose one candidate among the three to serve
16 as the independent counsel.

17 c. In defining the independent counsel's prosecutorial jurisdiction,
18 the judicial panel shall assure that the independent counsel has
19 adequate authority to fully investigate and prosecute all aspects of the
20 case.

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22 3. a. Notwithstanding any other provisions of law, an independent
23 counsel appointed pursuant to the provisions of this act shall have,
24 with respect to all matters in the independent counsel's jurisdiction, full
25 power and independent authority to exercise all investigative and
26 prosecutorial functions and powers of the Attorney General. Such
27 investigative and prosecutorial functions and powers shall include:

28 (1) Conducting proceedings before the grand jury and other
29 investigations;

30 (2) Participating in court proceedings and engaging in any litigation,
31 including civil and criminal matters, that the independent counsel
32 considers necessary;

33 (3) Appealing any decision of a court in any case or proceeding in
34 which the independent counsel participates in an official capacity;

35 (4) Reviewing all documentary evidence available from any source;

36 (5) Determining whether to contest the assertion of any testimonial
37 privilege;

38 (6) Making application to the Superior Court for a grant of
39 immunity to any witness or for warrants, subpoenas or other court
40 orders; and

41 (7) Initiating and conducting prosecutions, framing and signing
42 indictments, filing information, and handling all aspects of any case, in
43 the name of the State of New Jersey.

44 b. The independent counsel appointed pursuant to this act shall
45 receive compensation at the per diem rate established by the Supreme
46 Court for retired Superior Court judges serving on a recall basis.

1 c. The independent counsel may request assistance from the
2 Department of Law and Public Safety in carrying out the functions of
3 the independent counsel, and the department shall provide that
4 assistance, which may include access to any records, files, or other
5 material relevant to matters within the independent counsel's
6 jurisdiction and the use of the resources and personnel necessary to
7 perform such duties.

8 d. The Department of Law and Public Safety shall pay all costs
9 relating to the establishment and operation of the office of independent
10 counsel.

11 e. The independent counsel shall where possible comply with the
12 written or other established policies of the Department of Law and
13 Public Safety with respect to the enforcement of the criminal laws.

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15 4. The independent counsel appointed under this act may be
16 removed from office by the Attorney General only for good cause,
17 physical disability, mental incapacity or any other condition which
18 substantially impairs the performance of the independent counsel's
19 duties.

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21 5. The appointment of the independent counsel shall terminate
22 when:

23 a. The independent counsel notifies the Attorney General that the
24 investigation of all matters within the jurisdiction of the independent
25 counsel and any resulting prosecutions have been completed or so
26 substantially completed that it would be appropriate for the
27 Department of Law and Public Safety to complete such investigations
28 and prosecutions; and

29 b. The independent counsel has filed a final report with the
30 Legislature with regard to the investigation.

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32 6. This act shall take effect immediately.

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STATEMENT

37 This bill would authorize the appointment of an independent
38 counsel to investigate allegations surrounding the recent resignation
39 of Michael Francis, chairman of the New Jersey Sports and Exposition
40 Authority, from that post. The Attorney General has confirmed that
41 the State is investigating allegations about Mr. Francis which were
42 made by an unnamed third party. That party, who is allegedly
43 connected with organized crime, is reported to have boasted that his
44 connections with Mr. Francis allowed him to unlawfully have input in
45 the awarding of contracts made by the authority.

46 Because of Mr. Francis's close ties to many high-level officials in

1 the administration, including the Governor, the sponsors believe that
2 an investigation by the Attorney General's office would be
3 inappropriate and would, at the least, give the appearance of
4 impropriety.

5 The appointment of an independent counsel to carry out any
6 investigation would resolve this potential impropriety.

7 The independent counsel would be selected by the Attorney General
8 from a list of three candidates chosen by a panel of three Appellate
9 Division judges. The judges would define the scope of the
10 independent counsel's jurisdiction. The independent counsel would
11 have full power and independent authority to exercise all investigative
12 and prosecutorial functions and powers of the Attorney General in
13 this matter.

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18 Authorizes appointment of an independent counsel to investigate all
19 matters arising out of allegations made against former Sports and
20 Exposition Authority chairman Michael Francis.