

SENATE, No. 2015

STATE OF NEW JERSEY

INTRODUCED MARCH 24, 1997

By Senators INVERSO and BUBBA

1 AN ACT concerning the Executive Commission on Ethical Standards
2 and amending P.L.1971, c.182 and P.L.1981, c.142.

3

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

6

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

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

17 [(b)] b. The commission shall be composed of [seven] 11 members;
18 six Executive Branch members and five public members appointed by
19 the Governor. The Executive Branch members shall be appointed
20 from among State officers and employees serving in the Executive
21 Branch. [Each member] Executive Branch members shall serve at the
22 pleasure of the Governor during the term of office of the Governor
23 appointing [him and until his successor is appointed and qualified]
24 them. The public members shall be appointed by the Governor, except
25 that a public member shall not be a legislative agent or lobbyist as
26 those terms are defined in section 3 of P.L.1971, c.183 (C.52:13C-20)
27 or a representative of an entity subject to significant regulation by the
28 State. No more than three public members shall be affiliated with the
29 same political party. The Governor shall designate one member to
30 serve as chairman and one member to serve as vice-chairman of the
31 commission, both to serve at the pleasure of the Governor. The public
32 members of the commission shall serve for terms of four years and
33 until the appointment and qualification of their successors, but of the
34 first members appointed, one shall serve for a term of one year, one

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 for a term of two years, one for a term of three years, and one for a
2 term of four years. Upon taking the oath of office at the beginning of
3 a Governor's first term of office, the Secretary of State shall be an ex
4 officio member of the commission and shall serve until the
5 appointment of the first Executive Branch member by the Governor.
6 The Governor may appoint the Secretary of State to be a regular
7 Executive Branch member of the commission.

8 Vacancies in the membership of the commission shall be filled in the
9 same manner as the original appointments but, in the case of public
10 members, for the unexpired term only. None of the public members
11 shall be State officers or employees or special State officers or
12 employees, except by reason of their service on the commission.

13 [(c) Each member] c. Members of the [said] commission shall
14 serve without compensation, but public members shall be entitled to
15 be reimbursed for all actual and necessary expenses incurred in the
16 performance of [his] their duties.

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

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

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

39 [(g)] g. The [said] commission is authorized to render advisory
40 opinions as to whether a given set of facts and circumstances would,
41 in its opinion, constitute a violation of the provisions of this act [or
42 of], a code of ethics promulgated pursuant to the provisions of this
43 act, or an executive order in which the Governor has granted the
44 commission jurisdiction. Advisory opinions shall be filed with the
45 commission and shall be public records, but no opinion so filed shall
46 contain the name of the person or persons who requested or who are

1 the subject of the opinion. The commission is also authorized to
2 develop educational materials and procedures to assist any State
3 officer or employee or any special State officer or employee in
4 understanding and complying with the obligations of that State officer
5 or employee or special State officer or employee under P.L.1971,
6 c.182, as amended and supplemented.

7 [(h)] h. The [said] commission shall have jurisdiction to initiate,
8 receive, hear and review complaints regarding violations, by any State
9 officer or employee or special State officer or employee in the
10 Executive Branch, of the provisions of this act [or], of any code of
11 ethics promulgated pursuant to the provisions of this act, or of any
12 executive order in which the Governor has granted the commission
13 jurisdiction. Any complaint regarding a violation of a code of ethics
14 may be referred by the commission for disposition in accordance with
15 subsection d. of section 12[(d)] of this act (C.52:13D-23).

16 [(i)] i. The commission shall prepare and publish an annual report
17 of its activities for the Governor and the Legislature on or about May
18 1 of each year.

19 j. Any State officer or employee or special State officer or
20 employee in the Executive Branch found [guilty by the commission of
21 violating] by the commission to have violated any provision of this act
22 [or of], a code of ethics promulgated pursuant to the provisions of
23 this act, or an executive order in which the Governor has granted the
24 commission jurisdiction shall be fined not less than [\$100.00] \$500
25 nor more than [\$500.00] \$1,500, which penalty may be collected in a
26 summary proceeding pursuant to [the Penalty Enforcement Law
27 (N.J.S.2A:58-1)] "the penalty enforcement law," N.J.S.2A:58-1 et
28 seq., may be reprimanded and ordered to pay restitution where
29 appropriate, and may be suspended from [his] office or employment
30 by order of the commission for a period of not in excess of [1] one
31 year. If the commission finds that the conduct of such officer or
32 employee, given the nature and frequency of the conduct and the
33 functions and responsibilities of the officer or employee, evidences a
34 careless disregard of the provisions of P.L.1971, c.182, as amended
35 and supplemented, a code of ethics promulgated pursuant to the
36 provisions of that act, or an executive order in which the Governor has
37 granted the commission jurisdiction, it may order such person removed
38 from the person's 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 not exceeding two years from the
41 date on which the person was found to have violated any provision of
42 P.L.1971, c.182, as amended and supplemented, a code of ethics
43 promulgated pursuant to the provisions of that act, or an executive
44 order in which the Governor has granted the commission jurisdiction.
45 If the commission finds that the conduct of such officer or employee
46 constitutes a willful and continuous disregard of the provisions of this

1 act [or of], a code of ethics promulgated pursuant to the provisions of
2 this act, or an executive order in which the Governor has granted the
3 commission jurisdiction, it may order such person removed from [his]
4 the person's office or employment and may further bar such person
5 from holding any public office or employment in this State in any
6 capacity whatsoever for a period of not exceeding [5] five years from
7 the date on which [he] the person was found [guilty by the
8 commission] to have violated any provision of P.L.1971, c.182, as
9 amended and supplemented, a code of ethics promulgated pursuant to
10 the provisions of that act, or an executive order in which the Governor
11 has granted the commission jurisdiction.

12 k. The commission shall have the primary responsibility for
13 assuring the proper administration and implementation of P.L.1971,
14 c.182, as amended and supplemented, and shall have the power to
15 perform the acts necessary and convenient to administering and
16 implementing that act. The commission in its discretion may provide
17 for the extension of any filing period provided in that act. The
18 commission shall set appropriate conditions for an extension of time
19 during the period of the extension. The commission may from time to
20 time delegate matters within its jurisdiction to its chief administrative
21 officer. A delegation shall remain in effect until removed or modified
22 by the commission. Delegations involving advisory opinions rendered
23 pursuant to subsection g. of section 10 of P.L.1971, c.182 (C.52:13D-
24 21) shall only be made subject to commission review.

25 (cf: P.L.1971, c.182, s.10)

26

27 2. Section 4 of P.L.1981, c.142 (C.52:13D-17.2) is amended to
28 read as follows:

29 4. a. As used in this section "person" means any State officer or
30 employee subject to financial disclosure by law or executive order and
31 any other State officer or employee with responsibility for matters
32 affecting casino activity; any special State officer or employee with
33 responsibility for matters affecting casino activity; the Governor; any
34 member of the Legislature or any full-time member of the Judiciary;
35 any full-time professional employee of the Office of the Governor, or
36 the Legislature; members of the Casino Reinvestment Development
37 Authority; the head of a principal department; the assistant or deputy
38 heads of a principal department, including all assistant and deputy
39 commissioners; the head of any division of a principal department; any
40 member of the governing body, or the municipal judge or the
41 municipal attorney of a municipality wherein a casino is located; any
42 member of or attorney for the planning board or zoning board of
43 adjustment of a municipality wherein a casino is located, or any
44 professional planner, or consultant regularly employed or retained by
45 such planning board or zoning board of adjustment.

46 b. No State officer or employee, nor any person, nor any member

1 of the immediate family of any State officer or employee, or person,
2 nor any partnership, firm or corporation with which any such State
3 officer or employee or person is associated or in which he has an
4 interest, nor any partner, officer, director or employee while he is
5 associated with such partnership, firm, or corporation, shall hold,
6 directly or indirectly, an interest in, or hold employment with, or
7 represent, appear for, or negotiate on behalf of, any holder of, or
8 applicant for, a casino license, or any holding or intermediary company
9 with respect thereto, in connection with any cause, application, or
10 matter, except that (1) a State officer or employee other than a State
11 officer or employee included in the definition of person, and (2) a
12 member of the immediate family of a State officer or employee, or of
13 a person, may hold employment with the holder of, or applicant for, a
14 casino license if, in the judgment of the Executive Commission on
15 [Ethical Standards] Conflicts of Interest, the Joint Legislative
16 Committee on Ethical Standards, or the Supreme Court, as
17 appropriate, such employment will not interfere with the
18 responsibilities of the State officer or employee, or person, and will
19 not create a conflict of interest, or reasonable risk of the public
20 perception of a conflict of interest, on the part of the State officer or
21 employee, or person. No special State officer or employee without
22 responsibility for matters affecting casino activity, excluding those
23 serving in the Departments of Education, Health, and Human Services
24 and the Commission on Higher Education, shall hold, directly or
25 indirectly, an interest in, or represent, appear for, or negotiate on
26 behalf of, any holder of, or applicant for, a casino license, or any
27 holding or intermediary company with respect thereto, in connection
28 with any cause, application, or matter. However, a special State
29 officer or employee without responsibility for matters affecting casino
30 activity may hold employment directly with any holder of or applicant
31 for a casino license or any holding or intermediary company thereof
32 and if so employed may hold, directly or indirectly, an interest in, or
33 represent, appear for, or negotiate on behalf of, his employer, except
34 as otherwise prohibited by law.

35 c. No person or any member of his immediate family, nor any
36 partnership, firm or corporation with which such person is associated
37 or in which he has an interest, nor any partner, officer, director or
38 employee while he is associated with such partnership, firm or
39 corporation, shall, within two years next subsequent to the termination
40 of the office or employment of such person, hold, directly or
41 indirectly, an interest in, or hold employment with, or represent,
42 appear for or negotiate on behalf of, any holder of, or applicant for, a
43 casino license in connection with any cause, application or matter, or
44 any holding or intermediary company with respect to such holder of,
45 or applicant for, a casino license in connection with any phase of
46 casino development, permitting, licensure or any other matter

1 whatsoever related to casino activity, except that:

2 (1) a member of the immediate family of a person may hold
3 employment with the holder of, or applicant for, a casino license if, in
4 the judgment of the Executive Commission on [Ethical Standards]
5 Conflicts of Interest, the Joint Legislative Committee on Ethical
6 Standards, or the Supreme Court, as appropriate, such employment
7 will not interfere with the responsibilities of the person and will not
8 create a conflict of interest, or reasonable risk of the public perception
9 of a conflict of interest, on the part of the person; and

10 (2) an employee who is terminated as a result of a reduction in the
11 workforce at the agency where employed, other than an employee who
12 held a policy-making management position at any time during the five
13 years prior to termination of employment, may, at any time prior to the
14 end of the two-year period, accept employment with the holder of, or
15 applicant for, a casino license if, in the judgment of the Executive
16 Commission on [Ethical Standards] Conflicts of Interest, the Joint
17 Legislative Committee on Ethical Standards, or the Supreme Court, as
18 appropriate, such employment will not create a conflict of interest, or
19 reasonable risk of the public perception of a conflict of interest, on the
20 part of the employee. In no case shall the restrictions of this
21 subsection apply to a secretarial or clerical employee. Nothing herein
22 contained shall alter or amend the post-employment restrictions
23 applicable to members and employees of the Casino Control
24 Commission and employees and agents of the Division of Gaming
25 Enforcement pursuant to subsection b. (2) of section 59 and to section
26 60 of P.L.1977, c.110 (C.5:12-59 and C.5:12-60).

27 d. This section shall not apply to the spouse of a State officer or
28 employee, which State officer or employee is without responsibility for
29 matters affecting casino activity, who becomes the spouse subsequent
30 to the State officer's or employee's appointment or employment as a
31 State officer or employee and who is not individually or directly
32 employed by a holder of, or applicant for, a casino license, or any
33 holding or intermediary company.

34 e. The Joint Legislative Committee on Ethical Standards and the
35 Executive Commission on [Ethical Standards] Conflicts of Interest, as
36 appropriate, shall forthwith determine and publish, and periodically
37 update, a list of those positions in State government with responsibility
38 for matters affecting casino activity.

39 f. No person shall solicit or accept, directly or indirectly, any
40 complimentary service or discount from any casino applicant or
41 licensee which he knows or has reason to know is other than a service
42 or discount that is offered to members of the general public in like
43 circumstance.

44 g. No person shall influence, or attempt to influence, by use of his
45 official authority, the decision of the commission or the investigation
46 of the division in any application for licensure or in any proceeding to

1 enforce the provisions of this act or the regulations of the commission.
2 Any such attempt shall be promptly reported to the Attorney General;
3 provided, however, that nothing in this section shall be deemed to
4 proscribe a request for information by any person concerning the
5 status of any application for licensure or any proceeding to enforce the
6 provisions of this act or the regulations of the commission.

7 h. Any person who willfully violates the provisions of this section
8 is a disorderly person and shall be subject to a fine not to exceed
9 \$500.00 or imprisonment not to exceed six months, or both.

10 (cf: P.L.1995, c.18, s.43)

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12 3. Section 12 of P.L.1971, c.182 (C.52:13D-23) is amended to
13 read as follows:

14 12. [(a)] a. The head of each State agency, or the principal officer
15 in charge of a division, board, bureau, commission or other
16 instrumentality within a department of State Government designated
17 by the head of such department for the purposes hereinafter set forth,
18 shall within six months from the date of enactment, promulgate a code
19 of ethics to govern and guide the conduct of the members of the
20 Legislature, the State officers and employees or the special State
21 officers and employees in the agency to which said code is applicable.
22 Such code shall conform to the general standards hereinafter set forth
23 in this section, but it shall be formulated with respect to the particular
24 needs and problems of the agency to which said code is to apply.
25 Notwithstanding any other provisions of this section, the New Jersey
26 members to any interstate agency to which New Jersey is a party and
27 the officers and employees of any State agency which fails to
28 promulgate a code of ethics shall be deemed to be subject to a code of
29 ethics the provisions of which shall be paragraphs (1) through (6) of
30 subsection [(e)] e. of this section.

31 [(b)] b. A code of ethics formulated pursuant to this section to
32 govern and guide the conduct of the State officers and employees or
33 the special State officers and employees in any State agency in the
34 Executive Branch, or any portion of such a code, shall not be effective
35 unless it has first been approved by the Executive Commission on
36 [Ethical Standards] Conflicts of Interest. When a proposed code is
37 submitted to the [said] commission it shall be accompanied by an
38 opinion of the Attorney General as to its compliance with the
39 provisions of this act and any other applicable provision of law.
40 Nothing contained herein shall prevent officers of State agencies in the
41 Executive Branch from consulting with the Attorney General or with
42 the Executive Commission on [Ethical Standards] Conflicts of Interest
43 at any time in connection with the preparation or revision of such
44 codes of ethics.

45 [(c)] c. A code of ethics formulated pursuant to this section to
46 govern and guide the conduct of the members of the Legislature, State

1 officers and employees or special State officers and employees in any
2 State agency in the Legislative Branch, or any portion of such code,
3 shall not be effective unless it has first been approved by the
4 Legislature by concurrent resolution. When a proposed code is
5 submitted to the Legislature for approval it shall be accompanied by
6 an opinion of the chief counsel as to its compliance with the provisions
7 of this act and any other applicable provisions of law. Nothing
8 contained herein shall prevent officers of State agencies in the
9 Legislative Branch from consulting with the Chief Legislative Counsel
10 or the Joint Legislative Committee on Ethical Standards at any time in
11 connection with the preparation or revision of such codes of ethics.

12 [(d)] d. Violations of a code of ethics promulgated pursuant to this
13 section shall be cause for removal, suspension, demotion or other
14 disciplinary action by the State officer or agency having the power of
15 removal or discipline. When a person who is in the classified civil
16 service is charged with a violation of such a code of ethics, the
17 procedure leading to such removal or discipline shall be governed by
18 any applicable provisions of the Civil Service Law and the Rules of the
19 Department of [Civil Service] Personnel. No action for removal or
20 discipline shall be taken under this subsection except upon the referral
21 or with the approval of the Executive Commission on [Ethical
22 Standards] Conflicts of Interest or the Joint Legislative Committee on
23 Ethical Standards, whichever is authorized to exercise jurisdiction with
24 respect to the complaint upon which such action for removal or
25 discipline is to be taken.

26 [(e)] e. A code of ethics for officers and employees of a State
27 agency shall conform to the following general standards:

28 (1) No State officer or employee or special State officer or
29 employee should have any interest, financial or otherwise, direct or
30 indirect, or engage in any business or transaction or professional
31 activity, which is in substantial conflict with the proper discharge of
32 his duties in the public interest.

33 (2) No State officer or employee or special State officer or
34 employee should engage in any particular business, profession, trade
35 or occupation which is subject to licensing or regulation by a specific
36 agency of State Government without promptly filing notice of such
37 activity with the Executive Commission on [Ethical Standards]
38 Conflicts of Interest, if he is an officer or employee in the Executive
39 Branch, or with the Joint Legislative Committee on Ethical Standards,
40 if he is an officer or employee in the Legislative Branch.

41 (3) No State officer or employee or special State officer or
42 employee should use or attempt to use his official position to secure
43 unwarranted privileges or advantages for himself or others.

44 (4) No State officer or employee or special State officer or
45 employee should act in his official capacity in any matter wherein he
46 has a direct or indirect personal financial interest that might reasonably

1 be expected to impair his objectivity or independence of judgment.

2 (5) No State officer or employee or special State officer or
3 employee should undertake any employment or service, whether
4 compensated or not, which might reasonably be expected to impair his
5 objectivity and independence of judgment in the exercise of his official
6 duties.

7 (6) No State officer or employee or special State officer or
8 employee should accept any gift, favor, service or other thing of value
9 under circumstances from which it might be reasonably inferred that
10 such gift, service or other thing of value was given or offered for the
11 purpose of influencing him in the discharge of his official duties.

12 (7) No State officer or employee or special State officer or
13 employee should knowingly act in any way that might reasonably be
14 expected to create an impression or suspicion among the public having
15 knowledge of his acts that he may be engaged in conduct violative of
16 his trust as a State officer or employee or special State officer or
17 employee.

18 (8) Rules of conduct adopted pursuant to these principles should
19 recognize that under our democratic form of government public
20 officials and employees should be drawn from all of our society, that
21 citizens who serve in government cannot and should not be expected
22 to be without any personal interest in the decisions and policies of
23 government; that citizens who are government officials and employees
24 have a right to private interests of a personal, financial and economic
25 nature; that standards of conduct should separate those conflicts of
26 interest which are unavoidable in a free society from those conflicts of
27 interest which are substantial and material, or which bring government
28 into disrepute.

29 [(f)] f. The code of ethics for members of the Legislature shall
30 conform to subsection [(e)] e. hereof as nearly as may be possible.
31 (cf: P.L.1987, c.432, s.6)

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33 4. This act shall take effect immediately, but any increased penalty
34 shall apply only to violations occurring on and after the effective date.

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STATEMENT

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39 The bill reconstitutes the Executive Commission on Ethical
40 Standards in order to incorporate public members and to clarify the
41 enforcement powers of the commission. The bill also renames the
42 commission as the Executive Commission on Conflicts of Interest.

43 At present, all seven commission members are State officers or
44 employees. Under this bill, five commission members would be public
45 members, no more than three of whom shall be of the same political
46 party. The other six members shall be appointed by the Governor from

1 among State officers or employees and special State officers or
2 employees serving in the Executive Branch. Except for those first
3 appointed, public members shall serve for terms of four years. None
4 of the public members shall be State officers or employees or special
5 State officers or employees except by reason of their service on the
6 commission.

7 The commission is authorized to initiate, receive, hear and review
8 complaints regarding violations of any executive order in which the
9 Governor has granted the commission jurisdiction and to render
10 advisory opinions as to whether there has been a violation of such
11 executive orders.

12 The bill increases from \$500 to \$1,500 the maximum fine for a
13 violation by a State officer or employee or special State officer or
14 employee in the Executive Branch of the ethics law, a code of ethics
15 promulgated pursuant to that law, or any executive order in which the
16 Governor has granted the commission jurisdiction.

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21 Reconstitutes Executive Commission on Ethical Standards as
22 Executive Commission on Conflicts of Interest; provides for public
23 members; clarifies its enforcement powers.