

SENATE STATE GOVERNMENT COMMITTEE

STATEMENT TO

SENATE COMMITTEE SUBSTITUTE FOR **SENATE, Nos. 2017, 2015, 1630 and 673**

STATE OF NEW JERSEY

DATED: MAY 15, 1997

The Senate State Government Committee reports favorably a Senate Committee Substitute for Senate, Nos. 2017, 2015, 1630 and 673.

This committee substitute, which amends and supplements the "New Jersey Conflicts of Interest Law", revises the membership, powers, and duties of the Executive Commission on Ethical Standards; requires various public officers and employees to disclose certain financial information; and prohibits those officers and employees from holding certain interests.

Executive Commission: Membership and Administrative Independence

The committee substitute:

(1) Provides that the Executive Commission on Ethical Standards (hereinafter, "the commission"), while continuing to be allocated to the Department of Law and Public Safety, shall be independent of the department's supervision or control;

(2) Expands the membership of the commission from seven to nine members, all of whom are to be appointed by the Governor, just as at present; and

(3) Provides that, rather than Executive Branch officials only as at present, the commission's membership shall consist of:

(a) Five Executive Branch officers or employees; and

(b) Four public members, appointed with the advice and consent of the Senate, none of whom shall be a State officer or employee or special State officer or employee or a legislative agent, lobbyist, or representative of an entity subject to significant State regulation, and no more than two of whom shall be members of the same political party. The public members are to serve staggered four-year terms.

Executive Commission: Powers and Duties

The committee substitute:

(1) Empowers the commission to issue advisory opinions on possible violations of executive orders and to implement and enforce

any executive order with respect to which the Governor has granted jurisdiction over such implementation and enforcement;

(2) Directs the commission to establish and conduct an ethics orientation for high-level State officers and certain employees, attendance to which shall be mandatory;

(3) Authorizes the commission to develop educational materials and procedures to assist State employees and officers in complying with the employees' or officers' obligations under the conflicts law;

(4) Requires the commission to publish an annual report of its activities by May 1 in each year;

(5) Directs the commission to include in its next annual report its recommendations on the need for legislation prohibiting employment by the spouse or other family members of a State officer or employee or special State officer or employee in an industry over which that officer or employee has regulatory responsibilities;

(6) Confers upon the commission the primary responsibility for assuring the proper administration of the conflicts law and the power to perform the acts necessary and convenient to its administration;

(7) Authorizes the commission to require a State officer or employee or special State officer or employee to provide a written delegation of decision-making responsibility to another appropriate officer or employee whenever the commission determines that the potential exists for ethical violations in regard to certain matters;

(8) Authorizes the commission to delegate matters within its jurisdiction to its chief administrative officer;

(9) Makes penalties that may be imposed upon officers and employees of the Executive Branch for ethics violations consistent with the penalties which currently may be applied to officers and employees of the Legislative Branch; and

(10) Expands the power of the commission to impose penalties for violation of the conflicts law (see "Penalties", *infra*).

Financial Disclosure

The committee substitute requires each "filing employee" and "filing officer" to file with the commission, on May 15 in each year, a signed, sworn, and notarized financial disclosure statement.

The term "filing employee" includes: the Governor; the Governor's chief of staff, chief counsel, chief of policy and planning, communications director, and any executive assistant to the Governor or deputy or principal administrative assistant to any of the foregoing members of the Governor's staff; the head of each principal department in the Executive Branch headed by a single executive; the assistant or deputy heads of each such department; the head or assistant heads of a division of a principal department or person exercising similar authority for any independent board, commission, or authority; the executive or administrative head and assistant heads of any independent board, commission, or authority; members of the State Board of Agriculture, State Board of Education, Board of Public

Utilities, and State Parole Board; and presidents of the State colleges and universities. "Filing employee" also includes anyone holding an office not specified that is determined by the chief counsel to the Governor or the appropriate department head or other administrative officer to be functionally equivalent to such an office.

The term "filing officer" includes members of any of several enumerated New Jersey independent boards, commissions, authorities, and public corporations, as well as the New Jersey members of various enumerated interstate agencies.

The financial disclosure statement shall identify the name and position of the filing official, specify any occupation, trade, business or profession engaged in by the official or the official's spouse or dependent children, and include the following financial information:

(1) Assets. The statement shall list all assets worth more than \$1,000 in which the filing employee or officer or the spouse or dependent children of the employee or officer hold an interest. If the interest is in equity or debt, the issuer is to be identified unless the interest is held through an investment or holding company or blind trust. The percentage of ownership of a corporation, if over 10%, is to be stated. Also to be listed are interests in any contract with a federal entity, a State agency or a county, municipality, school board, or other local public entity in the State. Any real estate interest listed (including vested and contingent interests) is to identify the location, size, general nature and acquisition date of the property, the names of others sharing an interest therein, and the name of any State or local government entity that is a tenant in the property or that has before it an application, complaint, or proceeding directly affecting the property.

Assets of a filing employee and the employee's spouse are to be listed by categories of value that range from "greater than \$1,000 but not more than \$5,000" to "greater than \$400,000". The value of assets of a filing employee's dependent children, or of a filing officer or the officer's spouse or dependent children, need not be disclosed unless specifically requested by the Governor or the commission.

(2) Liabilities. Liabilities of the filing employee or officer and that employee or officer's spouse and dependent children are to be listed in the same manner and, where applicable, in the same value categories as assets, except that liabilities under \$1,000 (\$10,000 if owed to a relative) and automobile, household personalty, and credit card debt under \$10,000 need not be disclosed. Liabilities of the employer, officer, spouse, or children forgiven by a creditor within the 12 months preceding the statement date, and the name of the former creditor, are to be listed.

(3) Sources of income. Sources of income are to be listed and, in the case of a filing employee and the employee's spouse, valued by category in the same manner as assets. Cash gifts of under \$100, non-cash gifts valued at under \$200, and gifts of either kind worth under \$3,000 and received from a relative need not be reported.

(4) Business management positions. The statement is to list offices, trusteeships, directorships or other positions held by the filing officer, filing employee, or spouse or dependent children of either, the name of the business with which the position is held, and, if the latter does business with or is licensed, regulated or inspected by a State agency or does business with a casino license holder or applicant, the agency or license holder or applicant must be identified.

(5) Interest in public contractors. The statement is to identify those entities in which the filing employee or filing officer or employee's or officer's spouse has an "interest" that do business with a federal, State or local government entity.

The substitute also establishes a procedure for establishing a blind trust for filing officers and filing employees permitted to use such an instrument by the commission by codifying the provisions of Executive Order No. 2 (Whitman) of 1994 concerning such trusts.

Prohibited Interests

The committee substitute prohibits a filing employee or filing officer from retaining or acquiring ownership or control of the profits or assets of a closely held business entity doing business with a federal, State or local government agency and bars the employment or appointment of someone as a filing employee or filing officer who holds such an interest. An exemption is provided with respect to a closely held business entity doing business with a non-State agency under a contract awarded after public notice and competitive bidding, provided that the contract receives prior approval by the commission. The commission is empowered to waive the prohibition if the filing employee's or filing officer's interest in the closely held business will not interfere with the employee's or officer's responsibilities and will not give rise to an actual or apparent conflict of interest. A filing employee or filing officer who acquires a prohibited interest by inheritance or otherwise in a manner beyond the person's control may dispose of the interest subject to regulations of the commission, but such disposition may not be effected by transfer to an immediate family member or subject to return of the asset to the transferor after completion of the transferor's State service.

Though not a prohibited interest, the substitute does provide that a State officer or employee or a special State officer or employee who possesses a license issued by a State agency which entitles the officer or employee to engage in a particular business, profession, trade or occupation shall file notice of that fact with the commission.

Penalties

Under the committee substitute:

(1) The civil penalty for violation of the conflicts law is revised, with the amount of the minimum penalty increasing from \$100 to \$500 and that of the maximum penalty increasing from \$500 to \$5,000;

(2) The provisions of the current Conflicts Law are strengthened

in regard to attempts or use by a State officer or employee or special State officer or employee of that person's position to secure unwarranted privileges;

(3) The tampering with public records by a public servant is made a crime of the third degree;

(4) The commission is authorized to impose a reprimand and order to pay restitution upon a person who violates the law; and

(5) If the commission finds that a person's conduct evidences a careless disregard for the provisions of the conflicts law or a related code of ethics or executive order, it may order the person removed from office or employment in any capacity for up to two years.