

52:9M-1 et al.

LEGISLATIVE HISTORY CHECKLIST

NJSA: 52:9M-1 et al

(State Commission of
Investigation--revises law)

LAWS OF: 1984

CHAPTER: 110

Bill No: S825

Sponsor(s): Orechio and Russo

Date Introduced: Pre-filed

Committee: Assembly: Judiciary

Senate: Judiciary

Amended during passage: Yes

Amendments during passage denoted
by asterisks. Substituted for A553
(Assembly Committee Statement-
attached)

Date of Passage:

Assembly: March 20, 1984

Senate: February 6, 1984

Date of Approval: August 3, 1984

Following statements are attached if available:

Sponsor statement:

Yes Also attached: Senate
amendments, adopted 6-18-84 (with
statement)

Committee statement:

Assembly

Yes

Senate

Yes

Fiscal Note:

No

Veto Message:

No

Message on Signing:

Yes

Following were printed:

Reports:

Yes

Hearings:

No

Report, referred to in statements:

(OVER)

974.90
R424
1983w

New Jersey. State Commission of Investigation Review Committee.
Report.....June 1, 1983. Trenton, 1983.

[SECOND OFFICIAL COPY REPRINT]

SENATE, No. 825

STATE OF NEW JERSEY

PRE-FILED FOR INTRODUCTION IN THE 1984 SESSION

By Senators ORECHIO and RUSSO

AN ACT concerning the State Commission of Investigation and amending P. L. 1966, c. 266 and P. L. 1968, c. 376.

1 BE IT ENACTED by the Senate and General Assembly of the State
2 of New Jersey:

1 1. Section 1 of P. L. 1968, c. 266 (C. 52:9M-1) is amended to
2 read as follows:

3 1. There is hereby created a temporary State Commission of
4 Investigation. The commission shall consist of four members, to
5 be known as commissioners.

6 Two members of the commission shall be appointed by the
7 Governor. One each shall be appointed by the President of the
8 Senate and by the Speaker of the General Assembly. Each mem-
9 ber shall serve for a term of three years and until the appointment
10 and qualification of his successor. *No person shall serve, in suc-*
11 *cession, more than two three-year terms and any portion of an*
12 *unexpired term as a member of the commission.* The Governor
13 shall designate one of the members to serve as chairman of the
14 commission.

15 The members of the commission appointed by the President of
16 the Senate and the Speaker of the General Assembly and at least
17 one of the members appointed by the Governor shall be attorneys
18 admitted to the bar of this State. No member or employee of the
19 commission shall hold any other public office or public employment.
20 Not more than two of the members shall belong to the same political
21 party.

22 Each member of the commission shall receive an annual salary

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter printed in italics thus is new matter.

Matter enclosed in asterisks or stars has been adopted as follows:

*—Assembly committee amendments adopted March 15, 1984.

**—Senate amendment adopted June 18, 1984.

23 of *~~[\$15,000.00~~ until January 1, 1980, when each member of the com-
 24 mission shall receive an annual salary of ~~]~~* \$18,000.00. Each member
 25 shall also be entitled to reimbursement for his expenses actually
 26 and necessarily incurred in the performance of his duties, includ-
 27 ing expenses of travel outside of the State.

28 Vacancies in the commission shall be filled for the unexpired term
 29 in the same manner as original appointments. Vacancies in the
 30 commission shall be filled by the appropriate appointing authority
 31 within 90 days. If the appropriate appointing authority does
 32 not fill a vacancy within that time period, the vacancy shall be
 33 filled by the Chief Justice of the Supreme Court within 60 days. A
 34 vacancy in the commission shall not impair the right of the remain-
 35 ing members to exercise all the powers of the commission.

36 Any determination made by the commission shall be by majority
 37 vote. "Majority vote" means the affirmative vote of at least three
 38 members of the commission if there are no vacancies on the com-
 39 mission or the affirmative vote of at least two members of the com-
 40 mission if there is a vacancy.

1 2. Section 6 of P. L. 1979, c. 254 (C. 52:9M-4.2) is amended to
 2 read as follows:

3 6. The commission shall, within ~~[60]~~ 120 days of holding a public
 4 hearing, advise the Governor and the Legislature of any recom-
 5 mendations for administrative or legislative action which they
 6 have developed as a result of the public hearing.

1 3. Section 17 of P. L. 1968, c. 266 (C. 52:9M-17) is amended
 2 to read as follows:

3 17. a. If, in the course of any investigation or hearing conducted
 4 by the commission pursuant to this act, a person refuses to answer
 5 a question or questions or produce evidence of any kind on the
 6 ground that he will be exposed to criminal prosecution or penalty
 7 or to a forfeiture of his estate thereby, the commission may order
 8 the person to answer the question or questions or produce the re-
 9 quested evidence and confer immunity as in this section provided.
 10 No order to answer or produce evidence with immunity shall be
 11 made except by majority vote and after the Attorney General, *the*
 12 *United States Attorney for New Jersey* and the appropriate county
 13 prosecutor shall have been given at least seven days written notice
 14 of the commission's intention to issue such order and afforded an
 15 opportunity to be heard in respect to any objections they or either
 16 of them may have to the granting of immunity.

17 b. If upon issuance of such an order, the person complies there-
 18 with, he shall be immune from having such responsive answer given
 19 by him or such responsive evidence produced by him, or evidence

20 derived therefrom used to expose him to criminal prosecution or
 21 penalty or to a forfeiture of his estate, except that such person may
 22 nevertheless be prosecuted for any perjury committed in such
 23 answer or in producing such evidence, or be prosecuted for willful
 24 refusal to give an answer or produce evidence in accordance with
 25 an order of the commission pursuant to section 13, or held in
 26 contempt for failing to give an answer or produce evidence in
 27 accordance with the order of the commission pursuant to section
 28 11; and any such answer given or evidence produced shall be
 29 admissible against him upon any criminal investigation, proceed-
 30 ing or trial against him for such perjury, or upon any investigation,
 31 proceeding or trial against him for such contempt or willful refusal
 32 to give an answer or produce evidence in accordance with an order
 33 of the commission.

34 c. If the commission proceeds against any witness for contempt
 35 of court for refusal to answer, subsequent to a grant of immunity,
 36 said witness may be incarcerated at the discretion of the Superior
 37 Court; provided, however, that (1) no incarceration for civil con-
 38 tempt shall exceed a period of five years of actual incarceration
 39 exclusive of releases for whatever reason; (2) the commission may
 40 seek the release of a witness for good cause on appropriate motion
 41 to the Superior Court; and (3) nothing contained herein shall be
 42 deemed to limit any of the vested constitutional rights of any wit-
 43 ness before the commission.

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

2 20. This act shall take effect immediately and remain in effect
 3 until **[December 31, 1984]** *December 31, ***[1989]**** ******[*1991*]******
 4 ****1989****.

1 5. Section 9 of P. L. 1968, c. 376 (C. 52:13E-9) is amended to
 2 read as follows:

3 9. No temporary State commission having more than two mem-
 4 bers shall have the power to take testimony at a public or private
 5 hearing unless at least two of its members are present at such
 6 hearing.

7 *Nothing in this section, however, shall be deemed to prevent*
 8 *the State Commission of Investigation from conducting private*
 9 *hearings, on an investigation previously undertaken by a majority*
 10 *of the members of the commission, with one commissioner present,*
 11 *when so designated by resolution pursuant to the provisions of*
 12 *section 12 of P. L. 1968, c. 266 (C. 52:9M-12).*

1 6. This act shall take effect immediately.

STATEMENT

This bill implements the recommendations contained in the report of the State Commission of Investigation Review Committee. The following is a description of the bill's provisions:

1. The present authorization for the SCI will expire on December 31, 1984. This bill extends the SCI's authorization until December 31, 1989.

This provision reflects the review committee's recommendation that while authorization for the SCI should be extended, the SCI should not be granted permanent status. The committee reasoned that although the history of the SCI has not shown a record of serious abuse, the SCI, because of the scope of its investigative authority and its considerable powers, has the potential for abuse. The committee decided that periodic legislative review was the best check on this potential abuse and analogized the SCI with the wiretapping statute which is also subject to periodic review.

2. Presently, there is no limitation on the number of terms which an individual can serve as an SCI commissioner. This bill limits to two the number of terms which a person can serve on the SCI. This limitation was suggested by the review committee which concluded that the continued infusion of new thought and perspective on the SCI was desirable.

The committee adopted an amendment proposed by the SCI which classifies that the limitation on terms on the SCI means no more than two three-year terms and a part of an unexpired term may be served in succession.

3. Presently, the SCI is required to issue a report within 60 days after a public hearing is held in connection with an investigation requested by the Governor or the Legislature. This bill extends this time period to 120 days. This recommendation is based on a concern expressed to the review committee by the SCI that the 60 day period was too short.

4. The Code of Fair Procedure (N. J. S. 52:13E-1 et seq.) governs the operation of investigatory commissions and committees. One of the provisions of the Code of Fair Procedure requires at least two members of an investigatory body to be present to take testimony at either a public or private hearing. This provision is in conflict with a section of the SCI statutes which permits one SCI commissioner to take testimony at a public hearing.

In recognition of the review committee's finding that, because of the SCI's heavy work load, one-commissioner private hearings are a necessity. This bill specifically exempts the SCI from the pro-

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vision of the Code of Fair Procedure requiring attendance of at least two members at a private hearing.

5. Prior to granting testimonial immunity to a witness, the SCI is required, by statute, to give notice to the Attorney General and the appropriate county prosecutor. This is to insure that the granting of immunity will not harm other ongoing investigations.

By practice, the SCI also gives notice of its intention to grant testimonial immunity to the U. S. Attorney's Office for New Jersey. This bill codifies this practice and statutorily requires the SCI to notice of proposed grants of testimonial immunity to the U. S. Attorney for New Jersey.

ASSEMBLY JUDICIARY COMMITTEE
STATEMENT TO
ASSEMBLY COMMITTEE SUBSTITUTE FOR
ASSEMBLY, No. 553

STATE OF NEW JERSEY

DATED: MARCH 5, 1984

This committee substitute was proposed in order to implement the recommendations contained in the recent report issued by the State Commission of Investigation Review Committee. Assembly Bill No. 553, as originally introduced, provided for the State Commission of Investigation (S.C.I.) to become a permanent body. The committee, however, in considering the report, decided that the interests of the public and the ongoing operation of the S.C.I. would be most satisfactorily met by retaining the S.C.I.'s temporary status with periodic review by an independent committee.

The committee substitute provides for a seven year extension of the S.C.I. until December 31, 1991. The provisions of P. L. 1979, c. 254 (C. 52:9M-19) regarding the report of an independent review committee on the activities of the S.C.I. are not changed by this committee substitute.

In addition, the committee substitute provides:

1. That the number of terms a person may serve in succession as a commissioner on the S.C.I. be limited to two full three year terms and any portion of an unexpired term.

2. That the time limitation for the S.C.I. to issue recommendations for administrative or legislative action with regard to a matter under investigation upon the request of the Governor or the Legislature be extended from 60 days to 120 days after a public hearing on the matter.

3. That P. L. 1968, c. 376 (C. 52:13E-1 et seq.), popularly known as the Code of Fair Procedure, be amended to permit the S.C.I. to continue the practice of one-commissioner private hearings.

4. That notice of the S.C.I.'s intent to grant testimonial immunity be required by statute to be given to the New Jersey Office of the United States Attorney.

SENATE JUDICIARY COMMITTEE

STATEMENT TO

SENATE, No. 825

STATE OF NEW JERSEY

DATED: JANUARY 30, 1984

This bill implements the recommendations contained in the report of the State Commission of Investigation Review Committee. The following is a description of the bill's provisions:

1. The present authorization for the SCI will expire on December 31, 1984. This bill extends the SCI's authorization until December 31, 1989.

This provision reflects the review committee's recommendation that while authorization for the SCI should be extended, the SCI should not be granted permanent status. The committee reasoned that although the history of the SCI has not shown a record of serious abuse, the SCI, because of the scope of its investigative authority and its considerable powers, has the potential for abuse. The committee decided that periodic legislative review was the best check on this potential abuse and analogized the SCI with the wiretapping statute which is also subject to periodic review.

2. Presently, there is no limitation on the number of terms which an individual can serve as an SCI commissioner. This bill limits to two the number of terms which a person can serve on the SCI. This limitation was suggested by the review committee which concluded that the continued infusion of new thought and perspective on the SCI was desirable. As clarified by an amendment adopted during the last session, this limitation means that no more than two three-year terms and a part of an unexpired term may be served in succession.

3. Presently, the SCI is required to issue a report within 60 days after a public hearing is held in connection with an investigation requested by the Governor or the Legislature. This bill extends this time period to 120 days. This recommendation is based on a concern expressed to the review committee by the SCI that the 60 days period was too short.

4. The Code of Fair Procedure (N. J. S. 52:13E-1 et seq.) governs the operation of investigatory commissions and committees. One of the provisions of the Code of Fair Procedure requires at least two members of an investigatory body to be present to take testimony at either a public or private hearing. This provision is in conflict with a section

of the SCI statutes which permits one SCI commissioner to take testimony at a public hearing.

In recognition of the review committee's finding that, because of the SCI's heavy work load, one-commissioner private hearings are a necessity. This bill specifically exempts the SCI from the provision of the Code of Fair Procedure requiring attendance of at least two members at a private hearing.

5. Prior to granting testimonial immunity to a witness, the SCI is required, by statute, to give notice to the Attorney General and the appropriate county prosecutor. This is to insure that the granting of immunity will not harm other ongoing investigations.

By practice, the SCI also gives notice of its intention to grant testimonial immunity to the U. S. Attorney's Office for New Jersey. This bill codifies this practice and statutorily requires the SCI to notice of proposed grants of testimonial immunity to the U. S. Attorney for New Jersey.

ADOPTED

JUN 18 1984

Senate Amendments
To amend Assembly Committee Amendments
to

Senate Bill No. 825 (Assembly Reprint)
Proposed June 18, 1984 by
Senator Orechio

Amend:

Page	Sec.	Line	
3	4	3	Omit "1991" Insert "1989"

STATEMENT

This amendment amends the Assembly Judiciary Committee amendments to reduce the extension of the State Commission of Investigation's authorization from December 31, 1991 to December 31, 1989.



OFFICE OF THE GOVERNOR NEWS RELEASE

CN-001

Contact: PAUL WOLCOTT
609-292-8956

TRENTON, N.J. 08625

Release: FRIDAY, AUGUST 3, 1984

Governor Thomas H. Kean has signed legislation extending the life of the State Commission of Investigation, (SCI) while renewing his call for a bill that provides permanent status for the agency.

Kean signed S-825, sponsored by State Senator John R. Russo, D-Ocean, which provides for a five-year extension of the SCI until December 31, 1989. Authorization for the Commission was set to expire at the end of this year.

"I have long believed that the State Commission of Investigation deserves to be a permanent agency within New Jersey's law enforcement community," Kean said. "I made that very clear when I campaigned for this office, and since I have been Governor I have urged the Legislature to act in this direction.

"The SCI fulfills a unique role in our overall law enforcement efforts. As an independent agency charged with investigation of organized crime and official corruption, it is a potent symbol to residents of New Jersey of our commitment to rooting out the evil of organized crime, and our equal commitment to see that public agencies and public officials at every level of government are held to the highest legal and ethical standards," Kean said.

"Making the SCI a permanent agency can only strengthen the force of that commitment."

- more -

Friday, August 3, 1984

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Kean said he was signing the bill because of his concern that the Legislature might not be able to enact legislation making the SCI permanent before its current expiration of December 31, 1984. He added, however, that he intends to continue to seek permanent status for the agency.

The Governor said he can understand the concern some legislators have expressed over making such an independent agency even more autonomous. He suggested, however, that the SCI could be made permanent without the Legislature relinquishing its authority by retaining the State Commission Review Committee's authority to recommend future changes in the laws governing the SCI.

In addition to extending the life of the Commission the bill makes several other changes in the statutes governing the SCI: It limits members of the Commission to two consecutive terms, plus any portion of an unexpired term to which they are appointed; it extends from 60 to 120 days the time the Commission has from the date of public hearings to the submission of reports and recommendations to the Governor and the Legislature; it extends to the United States Attorney for New Jersey a provision which currently requires the Commission to notify the Attorney General of its intention to grant immunity to a witness; and it permits the SCI to hold private hearings with only one commissioner present, rather than the minimum of two required by statute of other temporary state commissions.

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