

52:9M-1

LEGISLATIVE HISTORY CHECKLIST

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LAWS OF: 2005 **CHAPTER:** 58

NJSA: 52:9M-1 (SCI—amendments)

BILL NO: A1514 (Substituted for S537)

SPONSOR(S): Conaway and others

DATE INTRODUCED: Pre-filed

COMMITTEE: **ASSEMBLY:** Judiciary
SENATE:

AMENDED DURING PASSAGE: Yes

DATE OF PASSAGE: **ASSEMBLY:** February 24, 2005
SENATE: February 14, 2005

DATE OF APPROVAL: March 28, 2005

FOLLOWING ARE ATTACHED IF AVAILABLE:

[FINAL TEXT OF BILL](#) 3rd reprint enacted

A1514

[SPONSOR'S STATEMENT:](#) (Begins on page 6 of original bill) [Yes](#)

COMMITTEE STATEMENT: **ASSEMBLY:** Yes [11-22-2004 \(Judiciary\)](#)
[12-9-2004 \(Judiciary\)](#)

SENATE: No

[FLOOR AMENDMENT STATEMENT:](#) [Yes](#)

LEGISLATIVE FISCAL ESTIMATE: No

S537

[SPONSOR'S STATEMENT:](#) (Begins on page 6 of original bill) [Yes](#)

COMMITTEE STATEMENT **ASSEMBLY:** No

[SENATE:](#) [Yes](#)

FLOOR AMENDMENT STATEMENT: Yes [12-6-2004](#)
[12-13-2004](#)

LEGISLATIVE FISCAL ESTIMATE: No

VETO MESSAGE: No

[GOVERNOR'S PRESS RELEASE ON SIGNING:](#) [Yes](#)

FOLLOWING WERE PRINTED:

To check for circulating copies, contact New Jersey State Government Publications at the State Library (609) 278-2640 ext. 103 or <mailto:refdesk@njstatelib.org>

REPORTS:

No

HEARINGS:

No

NEWSPAPER ARTICLES:

Yes

"SCI gains new power to root out corruption," 3-29-2005 Star Ledger, p.13

"Changes make SCI stronger corruption-fighting agency," The Times 3-29-2005, p.A4

"Law gives new authority to SCI," 3-29-2005 Courier Post, p.4A

"Investigative agency given tougher tools," 3-29-2005 Asbury Park Press, p.A1

P.L. 2005, CHAPTER 58, *approved March 28, 2005*
Assembly, No. 1514 (*Third Reprint*)

1 AN ACT concerning the State Commission of Investigation and
2 amending P.L.1968, c.266, P.L.1996, c.44, P.L.1979, c.254
3 ¹[and],¹ P.L.1993, c.29 ¹and supplementing Title 52 of the Revised
4 Statutes¹.

5

6 **BE IT ENACTED** by the Senate and General Assembly of the State
7 of New Jersey:

8

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

11 1. There is hereby created a permanent State Commission of
12 Investigation. The commission shall consist of four members, to be
13 known as commissioners.

14 Two members of the commission shall be appointed by the
15 Governor. One each shall be appointed by the President of the Senate
16 and by the Speaker of the General Assembly. Each member shall serve
17 for a term of [~~three~~] four years and until the appointment and
18 qualification of his successor ¹[~~provided, however, that in the event~~
19 ~~that a successor is not duly appointed within 120 days after the~~
20 ~~expiration of a member's term, a successor shall be appointed by the~~
21 ~~Chief Justice of the Supreme Court within 60 days~~]¹. No person shall
22 serve, in succession, more than two [~~three-year~~] four-year terms and
23 any portion of an unexpired term as a member of the commission. The
24 Governor shall designate one of the members to serve as chairman of
25 the commission.

26 The members of the commission appointed by the President of the
27 Senate and the Speaker of the General Assembly and at least one of
28 the members appointed by the Governor shall be attorneys admitted to
29 the bar of this State. No member or employee of the commission shall
30 hold any other public office or public employment. ¹No member of the
31 commission shall have held any elective office or have been a
32 candidate for any elective office within the one year preceding his
33 appointment to the commission. No member of the commission shall
34 hold any elective office or be a candidate for any elective office within
35 the one year subsequent to his termination of service as a member of
36 the commission.¹ Not more than two of the members shall belong to
37 the same political party.

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.

Matter enclosed in superscript numerals has been adopted as follows:

¹ Assembly AJU committee amendments adopted November 22, 2004.

² Assembly AJU committee amendments adopted December 9, 2004.

³ Senate floor amendments adopted December 13, 2004.

1 Each member of the commission shall receive an annual salary of
2 \$35,000. Each member shall also be entitled to reimbursement for his
3 expenses actually and necessarily incurred in the performance of his
4 duties, including expenses of travel outside of the State.

5 Vacancies on the commission shall be filled for the unexpired terms
6 in the same manner as original appointments. Vacancies on the
7 commission shall be filled by the appropriate appointing authority
8 within ¹[90] 120¹ days. If the appropriate appointing authority does
9 not fill a vacancy within that time period, the vacancy shall be filled by
10 the Chief Justice of the Supreme Court within 60 days. A vacancy on
11 the commission shall not impair the right of the remaining members to
12 exercise all the powers of the commission.

13 Any determination made by the commission shall be by majority
14 vote. "Majority vote" means the affirmative vote of at least three
15 members of the commission if there are no vacancies on the
16 commission or the affirmative vote of at least two members of the
17 commission if there is a vacancy.

18 (cf: P.L.2001, c.369, s.1).

19
20 2. Section 8 of P.L.1996, c.44 (C.52:9M-12.2) is amended to read
21 as follows:

22 8. [a. Whenever a proposed State Commission of Investigation
23 report is critical of a person's conduct, a copy of the relevant portions
24 of the proposed report thereof shall be sent to that person prior to the
25 release of the report. Upon receipt, the person criticized shall have 15
26 days to submit a written response of a reasonable length which the
27 commission shall include in the report together with any relevant
28 evidence submitted by that person.

29 b. Any report issued by the commission shall include any relevant
30 evidence of a reasonable length concerning a person criticized in the
31 report which is of an exculpatory nature or which tends to exonerate
32 the criticized person.

33 c. A report issued by the commission shall include, upon request
34 of the Attorney General, a statement indicating the results of any
35 criminal prosecution or disciplinary action related to the report.]

36 a. The commission shall make a good faith effort to notify any
37 person whose conduct it intends to criticize in a proposed report.

38 b. The notice required under subsection a. of this section shall
39 describe the general nature and the context of the criticism, but need
40 not include any portion of the proposed report or any testimony or
41 evidence upon which the report is based.

42 c. A person receiving notice under subsection a. of this section
43 shall have 15 days to submit a response, signed by that person ¹[. any
44 part of which may be included in the report, as the commission in its
45 discretion may determine] under oath or affirmation. Thereafter the
46 commission shall consider the response ³[and at its discretion may

1 include all or any portion of the response in the report¹] and shall
2 include the response in the report together with any relevant evidence
3 submitted by that person; except that the commission may redact from
4 the response any discussion or reference to a person who has not
5 received a notice under subsection a. of this section³.

6 d. Nothing in this section shall be construed to prevent the
7 commission from granting such further rights and privileges, as it may
8 determine, to any person whose conduct it intends to criticize in a
9 proposed report.

10 e. Notwithstanding the provisions of R.S.1:1-2, nothing in this
11 section shall be deemed to apply to any entity other than a natural
12 person.

13 ²[f. Any person receiving notice under subsection a. of this section
14 who shall ¹deliberately or intentionally¹ disclose, to any person other
15 than ¹[to an] a licensed¹ attorney retained ¹by that person¹ in
16 connection with the matter, the substance of ¹[that notice or any
17 other]¹ information received from the commission concerning that
18 notice, shall be guilty of a crime of the third degree.]²

19 (cf: P.L.1996, c.44, s.8).

20

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

23 15. a. Any person conducting or participating in any examination
24 or investigation who shall disclose or any person who, coming into
25 possession of or knowledge of the substance of any examination or
26 investigation, shall disclose, or any person who shall cause, encourage
27 or induce a person, including any witness or informant, to disclose,
28 other than as authorized or required by law, to any person other than
29 the commission or an officer having the power to appoint one or more
30 of the commissioners the name of any witness examined, or any
31 information obtained or given upon such examination or investigation,
32 except as directed by the Governor or commission, or any person
33 other than a member or employee of the commission or any person
34 entitled to assert a legal privilege who, coming into possession of or
35 knowledge of the substance of any pending examination or
36 investigation who fails to advise the Attorney General and the
37 commission of such possession or knowledge and to deliver to the
38 Attorney General and the commission any documents or materials
39 containing such information, shall be guilty of a misdemeanor until
40 September 1, 1979 when such person shall be guilty of a crime of the
41 third degree. Any member or employee of the commission who shall
42 violate this section shall be dismissed from his office or discharged
43 from his employment.

44 b. Any statement made by a member of the commission or an
45 employee thereof relevant to any proceedings before or investigative
46 activities of the commission shall be absolutely privileged and such

1 privilege shall be a complete defense to any action for libel or slander;
2 provided, however, that nothing in this subsection shall be deemed to
3 grant immunity for [any statement made with knowledge of its falsity
4 or with reckless disregard as to whether it was true or false] conduct
5 that was outside the scope of his employment or constituted a crime,
6 actual fraud, actual malice or willful misconduct.

7 c. Nothing contained in this section shall in any way prevent the
8 commission from furnishing information or making reports, as required
9 by this act, or from furnishing information to the Legislature, or to a
10 standing reference committee thereof, pursuant to a resolution duly
11 adopted by a standing reference committee or pursuant to a duly
12 authorized subpoena or subpoena duces tecum, provided, however, that
13 nothing herein shall be deemed to preclude the commission from
14 seeking from a court of competent jurisdiction a protective order to
15 avoid compliance with such subpoena or duces tecum.

16 d. Nothing in P.L.1963, c.73 (C.47:1A-1 et. seq.), as amended and
17 supplemented by P.L.2001, c.404, shall be construed to require the
18 commission to disclose any information acquired or any records
19 created, except as provided by this section.

20 (cf: P.L.1996, c.44, s.5)

21
22 4. Section 2 of P.L.1979, c.254 (C.52:9M-1.1) is amended to read
23 as follows:

24 2. Terms of members appointed after December 1, 1978.
25 Notwithstanding the provisions of section 1 of this act (C.52:9M-1)
26 and ¹[in order to effect the staggering of the terms of members of the
27 commission] in order to effect the staggering of the terms of members
28 of the commission¹ notwithstanding the term for which they were
29 originally appointed, the terms of the members [appointed after
30 December 1, 1978 shall be as follows: the first member appointed by
31 the Governor, 36 months; the second member appointed by the
32 Governor, 18 months; the member appointed by the President of the
33 Senate, 30 months; the member appointed by the Speaker of the
34 General Assembly, 24 months. Thereafter, the terms of the members
35 shall be as provided in P.L.1968, c.266, S.1 (C.52:9M-1)] ¹[in office
36 on the effective date of P.L. , c. (C.)(now pending before the
37 Legislature as this bill) shall end on the following dates: the term of
38 the member appointed by the Governor before January 1, 2001, on
39 December 31, 2002; the term of the member appointed by the
40 Governor after January 1, 2001, on December 31, 2003; the term of
41 the member appointed by the Speaker of the General Assembly on
42 December 31, 2004; and the term of the member appointed by the
43 President of the Senate, on December 31, 2005] appointed after
44 December 1, 1978 shall be as follows: the first member appointed by
45 the Governor, 36 months; the second member appointed by the
46 Governor, 18 months; the member appointed by the President of the

1 Senate, 30 months; the member appointed by the Speaker of the
 2 General Assembly, 24 months. Thereafter, the terms of the members
 3 shall be as provided in P.L.1968, c.266, s.1 (C.52:9M-1)¹.
 4 (cf: P.L.1979, c.254, s.2)

5
 6 ¹5. (New section). Terms of members of State Commission of
 7 Investigation serving on or appointed after the effective date of P.L. ,
 8 c. (C.)(now pending before the Legislature as this bill).

9 a. End of Terms. Notwithstanding the provisions of section 1 of
 10 P.L.1968, c.266 (C.52:9M-1) and the terms for which the members
 11 were originally appointed, the terms of the members in office on the
 12 effective date of P.L. , c. (C.)(now pending before the Legislature
 13 as this bill) shall end ²before 12 o'clock noon² on the following dates:
 14 the term of the member appointed by the Governor on or after
 15 November 5, 2004 would end on December 31, 2008; the term of the
 16 member appointed by the Governor after December 31, 2001 ²but
 17 before November 2004² would end on December 31, 2007; the term
 18 of the member appointed by the President of the Senate before
 19 December 31, 2002 would end on December 31, 2006; and the term
 20 of the member appointed by the Speaker of the General Assembly after
 21 December 31, 2001 would end on December 31, 2005.

22 b. Beginning of Terms. After terms end pursuant to subsection a.
 23 of this section, the four-year terms of the members appointed shall be
 24 as provided in section 1 of P.L.1968, c. 266 (C. 52:9M-1) in order to
 25 effect the staggering of terms, with each term of the members next
 26 appointed beginning ²at 12 o'clock noon² as follows: one
 27 appointment by the Governor for which the member's term shall begin
 28 on December 31, 2008; a second appointment by the Governor for
 29 which the member's term shall begin on December 31, 2007; an
 30 appointment by the Senate President for which the member's term shall
 31 begin on December 31, 2006; and an appointment by the Speaker of
 32 the General Assembly for which the member's term shall begin on
 33 December 31, 2005.¹

34
 35 ¹6. (New section) Any member of the State Commission of
 36 Investigation who is currently serving the member's first or second
 37 three-year term or portion of an unexpired term on the effective date
 38 of P.L. , c. (C.) (now pending before the Legislature as this bill)
 39 shall be subject to the provisions of subsection a. of section 5 of
 40 P.L. , c. (C.)(now pending before this Legislature) and shall be
 41 eligible to be reappointed to the commission for not more than one
 42 additional four-year term beginning as set forth in subsection b. of
 43 section 5 of P.L. , c. (C.)(now pending before this Legislature).¹
 44

45 ¹[5.] 7¹ Section 23 of P.L 1993, c 29 (C.2A:156A-29) is
 46 amended to read as follows:

1 23. Requirements for access.

2 a. A law enforcement agency, but no other governmental entity,
3 may require the disclosure by a provider of electronic communication
4 service or remote computing service of the contents of an electronic
5 communication without notice to the subscriber or the customer if the
6 law enforcement agency obtains a warrant.

7 b. Except as provided in subsection c. of this section, a provider of
8 electronic communication service or remote computing service may
9 disclose a record or other information pertaining to a subscriber or
10 customer of the service to any person other than a governmental
11 entity. This subsection shall not apply to the contents covered by
12 subsection a. of this section.

13 c. A provider of electronic communication service or remote
14 computing service shall disclose a record or other information
15 pertaining to a subscriber or customer of the service, other than
16 contents covered by subsections a. and f. of this section, to a law
17 enforcement agency under the following circumstances:

18 (1) the law enforcement agency has obtained a warrant;

19 (2) the law enforcement agency has obtained the consent of the
20 subscriber or customer to the disclosure; or

21 (3) the law enforcement agency has obtained a court order for such
22 disclosure under subsection e. of this section.

23 A law enforcement agency receiving records or information
24 pursuant to this subsection is not required to provide notice to the
25 customer or subscriber.

26 d. Notwithstanding any other provision of law to the contrary, no
27 service provider, its officers, employees, agents or other specified
28 persons shall be liable in any civil action for damages as a result of
29 providing information, facilities or assistance in accordance with the
30 terms of a court order or warrant under this section.

31 e. A court order for disclosure under subsection b. or c. may be
32 issued by a judge of competent jurisdiction and shall issue only if the
33 law enforcement agency offers specific and articulable facts showing
34 that there are reasonable grounds to believe that the record or other
35 information pertaining to a subscriber or customer of an electronic
36 communication service or remote computing service is relevant and
37 material to an ongoing criminal investigation. A judge who has issued
38 an order pursuant to this section, on a motion made promptly by the
39 service provider, may quash or modify such order, if the information
40 or records requested are unusually voluminous in nature or compliance
41 with such order otherwise would cause an undue burden on such
42 provider.

43 f. A provider of electronic communication service or remote
44 computing service shall disclose to a law enforcement agency or to
45 the State Commission of Investigation the name, address, telephone
46 number or other subscriber number or identity, and length of service

1 provided to a subscriber or customer of such service and the types of
2 services the subscriber or customer utilized, when the law enforcement
3 entity obtains a grand jury or trial subpoena or when the State
4 Commission of Investigation issues a subpoena.

5 g. Upon the request of a law enforcement agency, a provider of
6 wire or electronic communication service or a remote computing
7 service shall take all necessary steps to preserve, for a period of 90
8 days, records and other evidence in its possession pending the issuance
9 of a warrant. The preservation period shall be extended for an
10 additional 90 days upon the request of the law enforcement agency.
11 (cf: P.L.1999, c.151, s.6).

12

13 ¹[6.] 8.¹ This act shall take effect immediately.

14

15

16

17

18 Proposes series of amendments to statutes governing SCI.

ASSEMBLY, No. 1514

STATE OF NEW JERSEY

211th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2004 SESSION

Sponsored by:

Assemblyman HERBERT CONAWAY, JR.

District 7 (Burlington and Camden)

Assemblywoman LINDA R. GREENSTEIN

District 14 (Mercer and Middlesex)

Assemblyman PETER J. BARNES, JR.

District 18 (Middlesex)

SYNOPSIS

Proposes series of amendments to statutes governing SCI.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel.



(Sponsorship Updated As Of: 12/3/2004)

A1514 CONAWAY, GREENSTEIN

2

1 AN ACT concerning the State Commission of Investigation and
2 amending P.L.1968, c.266, P.L.1996, c.44, P.L.1979, c.254 and
3 P.L.1993, c.29.

4

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

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

10 1. There is hereby created a permanent State Commission of
11 Investigation. The commission shall consist of four members, to be
12 known as commissioners.

13 Two members of the commission shall be appointed by the
14 Governor. One each shall be appointed by the President of the Senate
15 and by the Speaker of the General Assembly. Each member shall serve
16 for a term of [~~three~~] four years and until the appointment and
17 qualification of his successor provided, however, that in the event that
18 a successor is not duly appointed within 120 days after the expiration
19 of a member's term, a successor shall be appointed by the Chief Justice
20 of the Supreme Court within 60 days. No person shall serve, in
21 succession, more than two [~~three-year~~] four-year terms and any
22 portion of an unexpired term as a member of the commission. The
23 Governor shall designate one of the members to serve as chairman of
24 the commission.

25 The members of the commission appointed by the President of the
26 Senate and the Speaker of the General Assembly and at least one of
27 the members appointed by the Governor shall be attorneys admitted to
28 the bar of this State. No member or employee of the commission shall
29 hold any other public office or public employment. Not more than two
30 of the members shall belong to the same political party.

31 Each member of the commission shall receive an annual salary of
32 \$35,000. Each member shall also be entitled to reimbursement for his
33 expenses actually and necessarily incurred in the performance of his
34 duties, including expenses of travel outside of the State.

35 Vacancies on the commission shall be filled for the unexpired terms
36 in the same manner as original appointments. Vacancies on the
37 commission shall be filled by the appropriate appointing authority
38 within 90 days. If the appropriate appointing authority does not fill a
39 vacancy within that time period, the vacancy shall be filled by the Chief
40 Justice of the Supreme Court within 60 days. A vacancy on the
41 commission shall not impair the right of the remaining members to
42 exercise all the powers of the commission.

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 Any determination made by the commission shall be by majority
2 vote. "Majority vote" means the affirmative vote of at least three
3 members of the commission if there are no vacancies on the
4 commission or the affirmative vote of at least two members of the
5 commission if there is a vacancy.

6 (cf: P.L.2001, c.369, s.1).

7
8 2. Section 8 of P.L.1996, c.44 (C.52:9M-12.2) is amended to read
9 as follows:

10 8. [a. Whenever a proposed State Commission of Investigation
11 report is critical of a person's conduct, a copy of the relevant portions
12 of the proposed report thereof shall be sent to that person prior to the
13 release of the report. Upon receipt, the person criticized shall have 15
14 days to submit a written response of a reasonable length which the
15 commission shall include in the report together with any relevant
16 evidence submitted by that person.

17 b. Any report issued by the commission shall include any relevant
18 evidence of a reasonable length concerning a person criticized in the
19 report which is of an exculpatory nature or which tends to exonerate
20 the criticized person.

21 c. A report issued by the commission shall include, upon request
22 of the Attorney General, a statement indicating the results of any
23 criminal prosecution or disciplinary action related to the report.]

24 a. The commission shall make a good faith effort to notify any
25 person whose conduct it intends to criticize in a proposed report.

26 b. The notice required under subsection a. of this section shall
27 describe the general nature and the context of the criticism, but need
28 not include any portion of the proposed report or any testimony or
29 evidence upon which the report is based.

30 c. A person receiving notice under subsection a. of this section
31 shall have 15 days to submit a response, signed by that person, any
32 part of which may be included in the report, as the commission in its
33 discretion may determine.

34 d. Nothing in this section shall be construed to prevent the
35 commission from granting such further rights and privileges, as it may
36 determine, to any person whose conduct it intends to criticize in a
37 proposed report.

38 e. Notwithstanding the provisions of R.S.1:1-2, nothing in this
39 section shall be deemed to apply to any entity other than a natural
40 person.

41 f. Any person receiving notice under subsection a. of this section
42 who shall disclose, to any person other than to an attorney retained in
43 connection with the matter, the substance of that notice or any other
44 information received from the commission concerning that notice, shall
45 be guilty of a crime of the third degree.

46 (cf: P.L.1996, c.44, s.8).

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

3 15. a. Any person conducting or participating in any examination
4 or investigation who shall disclose or any person who, coming into
5 possession of or knowledge of the substance of any examination or
6 investigation, shall disclose, or any person who shall cause, encourage
7 or induce a person, including any witness or informant, to disclose,
8 other than as authorized or required by law, to any person other than
9 the commission or an officer having the power to appoint one or more
10 of the commissioners the name of any witness examined, or any
11 information obtained or given upon such examination or investigation,
12 except as directed by the Governor or commission, or any person
13 other than a member or employee of the commission or any person
14 entitled to assert a legal privilege who, coming into possession of or
15 knowledge of the substance of any pending examination or
16 investigation who fails to advise the Attorney General and the
17 commission of such possession or knowledge and to deliver to the
18 Attorney General and the commission any documents or materials
19 containing such information, shall be guilty of a misdemeanor until
20 September 1, 1979 when such person shall be guilty of a crime of the
21 third degree. Any member or employee of the commission who shall
22 violate this section shall be dismissed from his office or discharged
23 from his employment.

24 b. Any statement made by a member of the commission or an
25 employee thereof relevant to any proceedings before or investigative
26 activities of the commission shall be absolutely privileged and such
27 privilege shall be a complete defense to any action for libel or slander;
28 provided, however, that nothing in this subsection shall be deemed to
29 grant immunity for [any statement made with knowledge of its falsity
30 or with reckless disregard as to whether it was true or false]conduct
31 that was outside the scope of his employment or constituted a crime,
32 actual fraud, actual malice or willful misconduct.

33 c. Nothing contained in this section shall in any way prevent the
34 commission from furnishing information or making reports, as required
35 by this act, or from furnishing information to the Legislature, or to a
36 standing reference committee thereof, pursuant to a resolution duly
37 adopted by a standing reference committee or pursuant to a duly
38 authorized subpoena or subpoena duces tecum, provided, however, that
39 nothing herein shall be deemed to preclude the commission from
40 seeking from a court of competent jurisdiction a protective order to
41 avoid compliance with such subpoena or duces tecum.

42 d. Nothing in P.L.1963, c.73 (C.47:1A-1 et. seq.), as amended and
43 supplemented by P.L.2001, c.404, shall be construed to require the
44 commission to disclose any information acquired or any records
45 created, except as provided by this section.

46 (cf: P.L.1996, c.44, s.5)

1 4. Section 2 of P.L.1979, c.254 (C.52:9M-1.1) is amended to read
2 as follows:

3 2. Notwithstanding the provisions of section 1 of this act
4 (C.52:9M-1) and [in order to effect the staggering of the terms of
5 members of the commission] notwithstanding the term for which they
6 were originally appointed, the terms of the members [appointed after
7 December 1, 1978 shall be as follows: the first member appointed by
8 the Governor, 36 months; the second member appointed by the
9 Governor, 18 months; the member appointed by the President of the
10 Senate, 30 months; the member appointed by the Speaker of the
11 General Assembly, 24 months. Thereafter, the terms of the members
12 shall be as provided in P.L.1968, c.266, S.1 (C.52:9M-1)] in office
13 on the effective date of P.L. , c. (C.)(now pending before the
14 Legislature as this bill) shall end on the following dates: the term of
15 the member appointed by the Governor before January 1, 2001, on
16 December 31, 2002; the term of the member appointed by the
17 Governor after January 1, 2001, on December 31, 2003; the term of
18 the member appointed by the Speaker of the General Assembly on
19 December 31, 2004; and the term of the member appointed by the
20 President of the Senate, on December 31, 2005.

21 (cf: P.L.1979, c.254, s.2)

22

23 5. Section 23 of P.L 1993, c 29 (C.2A:156A-29) is amended to
24 read as follows:

25 23. Requirements for access.

26 a. A law enforcement agency, but no other governmental entity,
27 may require the disclosure by a provider of electronic communication
28 service or remote computing service of the contents of an electronic
29 communication without notice to the subscriber or the customer if the
30 law enforcement agency obtains a warrant.

31 b. Except as provided in subsection c. of this section, a provider of
32 electronic communication service or remote computing service may
33 disclose a record or other information pertaining to a subscriber or
34 customer of the service to any person other than a governmental
35 entity. This subsection shall not apply to the contents covered by
36 subsection a. of this section.

37 c. A provider of electronic communication service or remote
38 computing service shall disclose a record or other information
39 pertaining to a subscriber or customer of the service, other than
40 contents covered by subsections a. and f. of this section, to a law
41 enforcement agency under the following circumstances:

42 (1) the law enforcement agency has obtained a warrant;

43 (2) the law enforcement agency has obtained the consent of the
44 subscriber or customer to the disclosure; or

45 (3) the law enforcement agency has obtained a court order for such
46 disclosure under subsection e. of this section.

1 A law enforcement agency receiving records or information
2 pursuant to this subsection is not required to provide notice to the
3 customer or subscriber.

4 d. Notwithstanding any other provision of law to the contrary, no
5 service provider, its officers, employees, agents or other specified
6 persons shall be liable in any civil action for damages as a result of
7 providing information, facilities or assistance in accordance with the
8 terms of a court order or warrant under this section.

9 e. A court order for disclosure under subsection b. or c. may be
10 issued by a judge of competent jurisdiction and shall issue only if the
11 law enforcement agency offers specific and articulable facts showing
12 that there are reasonable grounds to believe that the record or other
13 information pertaining to a subscriber or customer of an electronic
14 communication service or remote computing service is relevant and
15 material to an ongoing criminal investigation. A judge who has issued
16 an order pursuant to this section, on a motion made promptly by the
17 service provider, may quash or modify such order, if the information
18 or records requested are unusually voluminous in nature or compliance
19 with such order otherwise would cause an undue burden on such
20 provider.

21 f. A provider of electronic communication service or remote
22 computing service shall disclose to a law enforcement agency or to
23 the State Commission of Investigation the name, address, telephone
24 number or other subscriber number or identity, and length of service
25 provided to a subscriber or customer of such service and the types of
26 services the subscriber or customer utilized, when the law enforcement
27 entity obtains a grand jury or trial subpoena or when the State
28 Commission of Investigation issues a subpoena.

29 g. Upon the request of a law enforcement agency, a provider of
30 wire or electronic communication service or a remote computing
31 service shall take all necessary steps to preserve, for a period of 90
32 days, records and other evidence in its possession pending the issuance
33 of a warrant. The preservation period shall be extended for an
34 additional 90 days upon the request of the law enforcement agency.
35 (cf: P.L.1999, c.151, s.6).

36
37 6. This act shall take effect immediately.
38
39

40 STATEMENT
41

42 This bill proposes a series of amendments to the statutes governing
43 the State Commission of Investigation (SCI). Those amendments are
44 as follows:

45 **Section 1.** Currently, the SCI consist of four members appointed
46 on a bipartisan basis. The members serve a term of three years. This

1 bill would amend this section in the law, N.J.S.A.52:9M-1, and
2 change the term to four years. In addition, this bill would provide that
3 if a successor is not appointed within 120 days after the expiration of
4 the member's term, a successor would be appointed by the Chief
5 Justice of the Supreme Court within 60 days. Presently, when the
6 term of a member of the SCI expires, that person is authorized to
7 remain in office until a successor is appointed.

8 **Section 2.** Presently, whenever a proposed SCI report is critical of
9 a person's conduct, the SCI is required to send the relevant portions
10 of the report to that person prior to the report's release. The person
11 then has 15 days to submit a written response which the SCI is
12 required to include in the report. This bill would modify this section,
13 N.J.S.A.52:9M-12.2, to require that the SCI make a good faith effort
14 to notify any person criticized in a proposed report. The notice is
15 required to describe the general nature and context of the criticism but
16 not the actual contents of the report. A person whose conduct was
17 criticized would still have 15 days in which to submit a response. The
18 SCI, however, would not be required to include that response in its
19 report. The bill would also make it a crime of the third degree for any
20 person who has received notification concerning a proposed SCI
21 report to disclose the substance of that notification to any other person
22 other than an attorney retained in the matter. A crime of the third
23 degree is punishable by a term of imprisonment of three to five years,
24 a fine of up to \$15,000.00 or both.

25 **Section 3.** N.J.S.A.52:9M-15 presently provides to the members
26 of SCI and its staff immunity from suits for defamation except for any
27 statement which is made with knowledge of its falsity or with reckless
28 regard as to whether it was true or false. Prior to its being amended
29 in 1997, N.J.S.A.52:9M-15 had provided complete immunity to the
30 SCI and its staff.

31 This bill amends this section to include new language with regard
32 to the immunity provision which would be similar to language found
33 in the "New Jersey Tort Claims Act," N.J.S.A.59:1-1, concerning
34 public employees. The new language provides immunity for statements
35 by members or employees of the commission, provided, however that
36 conduct that was not outside the scope of his employment nor
37 constituted a crime, actual fraud, actual malice or willful misconduct.

38 **Section 4.** This bill would amend N.J.S.A.52:9M-1.1 to provide
39 that the terms of members in office on the effective date of this bill
40 would end on the following dates: the term of the member appointed
41 by the Governor before January 1, 2001, on December 31, 2002; the
42 term of the member appointed by the Governor after January 1, 2001,
43 on December 31, 2003; the term of the member appointed by the
44 Speaker of the General Assembly on December 31, 2004; and the term
45 of the member appointed by the President of the Senate, on December
46 31, 2005.

1 **Section 5.** This bill would amend the wiretapping statute to
2 authorize the SCI to obtain certain information from a provider of
3 electronic communication service or remote computing service upon
4 issuance of a subpoena by the SCI.

ASSEMBLY JUDICIARY COMMITTEE

STATEMENT TO

ASSEMBLY, No. 1514

with committee amendments

STATE OF NEW JERSEY

DATED: NOVEMBER 22, 2004

The Assembly Judiciary Committee reports favorably and with committee amendments Assembly Bill No. 1514.

This bill, as introduced, makes a series of amendments to the statutes governing the State Commission of Investigation (SCI) which include: (1) increasing the members' terms from three years to four years; (2) clarifying the notification requirements for those individuals who have been criticized in a proposed report; (3) qualifying the immunity provision for members or employees of the commission for statements made outside the scope of employment or constituting a crime, actual fraud, actual malice or willful misconduct; (4) providing for a new staggering sequence for members' terms; (5) amending the wiretapping statute to authorize the SCI to obtain certain information from a provider of electronic communication service or remote computing service upon issuance of a subpoena by the SCI.

Length of Terms (Section 1). Currently, the SCI consists of four members who are appointed on a bipartisan basis for a term of three years. This bill expands the terms from three to four years. The committee amended this section to clarify that any vacancies on the commission must be filled by the appointing authority within 120 days. (The current time frame to fill a vacancy is 90 days). In addition, the amendments delete that language in the bill which authorized the Chief Justice of the Supreme Court to fill the vacancy within 60 days, if the appointing authority fails to do so, since this amendatory language was unnecessary because the Chief Justice currently has that authority.

The committee also amended the bill to prohibit commission members from holding or being a candidate for elective office within the one year prior to appointment and the one year after termination of service as a member of the commission.

Notification Requirements (Section 2). Currently, prior to releasing any report, the SCI is required to send the relevant portions of that report to the person whose conduct is criticized by the report. The person then has 15 days to submit a written response which the SCI is required to include in the report. The bill modifies this section by requiring the SCI to make a good faith effort to notify any person criticized in a proposed report and requiring that the notice describe

the general nature and context of the criticism but not necessarily the actual contents of the report. The amendments require that if the person criticized in the report issues a response that the response must be signed under oath or affirmation. The amendments also clarify that the commission has the discretion to include all or any portion of the response in the report.

In addition, the amendments would clarify that it would be a crime of the third degree for any person who receives a notice *to deliberately or intentionally disclose* to any person, other than an attorney retained by that person, the substance of the information received from the commission concerning that notice.

Qualified Immunity (Section 3). That section of the bill, which amends N.J.S.A.52:9M-15 which provides qualified immunity to members or employees of the commission for statements made outside the scope of employment or constituting a crime, actual fraud, actual malice or willful misconduct, remains unchanged.

New Staggering Sequence (Sections 4, 5 and 6). Under the current law, N.J.S.A.52:9M-1, a member cannot serve, in succession, more than two three-year terms and any portion of an unexpired term. The purpose of this term limitation language was to insure "periodic infusion of new thought and perspective" on the SCI as stated in the Senate Judiciary Committee Statement to Senate Bill No. 825 of 1984 (P.L. 1984, c. 110). The committee amendments would retain term limitations for the members but would expand the actual terms from three to four years and provide that a newly appointed member cannot serve more than two four-year terms. Current members of the commission, however, would be eligible to serve one additional four-year term. See section 6 being added by the amendments.

In order to clearly delineate the differences between those staggered terms which began in 1978 and the new four-year staggered terms which would begin with the enactment of this bill, the committee amendments retain the current statutory language in N.J.S.A.52:9M-1.1, which sets out the staggered terms of those members appointed after December 1, 1978. The committee amendments restore the current language in section 4 of the bill and then supplement this law with a new staggered terms provision for those members serving on or appointed after the effective date of this bill in section 5. This new section 5 provides that the terms of those commission members in office on the effective date of the bill would end as follows: the term of the member appointed by the Governor on or after November 5, 2004 would end on December 31, 2008; the term of the member appointed by the Governor after December 31, 2001 would end on December 31, 2007; the term of the member appointed by the President of the Senate before December 31, 2002 would end on December 31, 2006; and the term of the member appointed by the Speaker of the General Assembly after December 31, 2001 would end on December 31, 2005. The new four-year terms for members appointed subsequently would then begin on those same dates.

Any member of the State Commission of Investigation who is currently serving his first or second three-year term or portion of an unexpired term on the effective date of the bill shall be subject to the new staggering terms and shall be eligible to be reappointed to the commission for not more than one additional four-year term.

Wiretapping (Section 7). That section of the bill, which amends the wiretapping statute, N.J.S.2A:156A-29, to authorize the SCI to obtain certain information from a provider of electronic communication service or remote computing service upon issuance of a subpoena by the SCI, remains unchanged.

This bill was pre-filed for introduction in the 2004-2005 session pending technical review. As reported, the bill includes the changes required by technical review, which has been performed.

ASSEMBLY JUDICIARY COMMITTEE

STATEMENT TO

[First Reprint]

ASSEMBLY, No. 1514

with committee amendments

STATE OF NEW JERSEY

DATED: DECEMBER 9, 2004

The Assembly Judiciary Committee reports favorably and with committee amendments Assembly Bill No. 1514 (2R). The committee first released this bill on November 22, 2004. The bill was later recommitted to the committee.

At the November 22nd meeting, the committee raised some questions including possible First Amendment implications concerning subsection f. of N.J.S.A.52:9M-12.2. This section of the bill made it a crime of the third degree for any person, including the target of an SCI investigation, to deliberately or intentionally disclose to any person, other than to an attorney retained by that person, the substance of the information in a notice of a proposed SCI report. As a result of that discussion, the committee amendments adopted today eliminate subsection f. in its entirety in an effort to protect those individuals' freedom of speech and due process rights. Therefore, a "target" of an SCI investigation who discloses any information he received from the SCI notice would be able to disclose that information to anyone without fear of being charged with a criminal offense. The committee discussion of November 22, 2004 is available by accessing "Archived Proceedings" on the Legislature's Web site: <http://www.njleg.state.nj.us>.

These amendments make this bill identical to S-537(2R).

COMMITTEE AMENDMENTS

- C Section 2 of the bill, N.J.S.A.52:9M-12.2, is amended to delete subsection f. of that section, which would have made it a crime of the third degree for any person who has received notification concerning a proposed SCI report to deliberately or intentionally disclose the substance of that notification to any person other than an attorney retained in the matter.
- C Section 5 is amended in order to clarify the reference to the term of the second member appointed by the Governor. Also, 12 o'clock noon is used to be precise with regard to the terms.

STATEMENT TO
[Second Reprint]
ASSEMBLY, No. 1514

with Senate Floor Amendments
(Proposed By Senator VITALE)

ADOPTED: DECEMBER 13, 2004

This floor amendment would require the SCI to include in the report a response from any person whose conduct was criticized in the report. However, the amendment provides that the SCI may redact from that response any discussion or reference to a person who has not received a notice under subsection a.

SENATE, No. 537

STATE OF NEW JERSEY
211th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2004 SESSION

Sponsored by:

Senator JOSEPH F. VITALE

District 19 (Middlesex)

Senator RICHARD J. CODEY

District 27 (Essex)

SYNOPSIS

Proposes series of amendments to statutes governing SCI.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel.



S537 VITALE, CODEY

2

1 AN ACT concerning the State Commission of Investigation and
2 amending P.L.1968, c.266, P.L.1996, c.44, P.L.1979, c.254 and
3 P.L.1993, c.29.

4

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

7

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

10 1. There is hereby created a permanent State Commission of
11 Investigation. The commission shall consist of four members, to be
12 known as commissioners.

13 Two members of the commission shall be appointed by the
14 Governor. One each shall be appointed by the President of the Senate
15 and by the Speaker of the General Assembly. Each member shall serve
16 for a term of [~~three~~] four years and until the appointment and
17 qualification of his successor provided, however, that in the event that
18 a successor is not duly appointed within 120 days after the expiration
19 of a member's term, a successor shall be appointed by the Chief Justice
20 of the Supreme Court within 60 days. No person shall serve, in
21 succession, more than two [~~three-year~~] four-year terms and any
22 portion of an unexpired term as a member of the commission. The
23 Governor shall designate one of the members to serve as chairman of
24 the commission.

25 The members of the commission appointed by the President of the
26 Senate and the Speaker of the General Assembly and at least one of
27 the members appointed by the Governor shall be attorneys admitted to
28 the bar of this State. No member or employee of the commission shall
29 hold any other public office or public employment. Not more than two
30 of the members shall belong to the same political party.

31 Each member of the commission shall receive an annual salary of
32 \$35,000. Each member shall also be entitled to reimbursement for his
33 expenses actually and necessarily incurred in the performance of his
34 duties, including expenses of travel outside of the State.

35 Vacancies on the commission shall be filled for the unexpired terms
36 in the same manner as original appointments. Vacancies on the
37 commission shall be filled by the appropriate appointing authority
38 within 90 days. If the appropriate appointing authority does not fill a
39 vacancy within that time period, the vacancy shall be filled by the Chief
40 Justice of the Supreme Court within 60 days. A vacancy on the
41 commission shall not impair the right of the remaining members to
42 exercise all the powers of the commission.

43 Any determination made by the commission shall be by majority

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 vote. "Majority vote" means the affirmative vote of at least three
2 members of the commission if there are no vacancies on the
3 commission or the affirmative vote of at least two members of the
4 commission if there is a vacancy.

5 (cf: P.L.2001, c.369, s.1).

6

7 2. Section 8 of P.L.1996, c.44 (C.52:9M-12.2) is amended to read
8 as follows:

9 8. [a. Whenever a proposed State Commission of Investigation
10 report is critical of a person's conduct, a copy of the relevant portions
11 of the proposed report thereof shall be sent to that person prior to the
12 release of the report. Upon receipt, the person criticized shall have 15
13 days to submit a written response of a reasonable length which the
14 commission shall include in the report together with any relevant
15 evidence submitted by that person.

16 b. Any report issued by the commission shall include any relevant
17 evidence of a reasonable length concerning a person criticized in the
18 report which is of an exculpatory nature or which tends to exonerate
19 the criticized person.

20 c. A report issued by the commission shall include, upon request
21 of the Attorney General, a statement indicating the results of any
22 criminal prosecution or disciplinary action related to the report.]

23 a. The commission shall make a good faith effort to notify any
24 person whose conduct it intends to criticize in a proposed report.

25 b. The notice required under subsection a. of this section shall
26 describe the general nature and the context of the criticism, but need
27 not include any portion of the proposed report or any testimony or
28 evidence upon which the report is based.

29 c. A person receiving notice under subsection a. of this section
30 shall have 15 days to submit a response, signed by that person, any
31 part of which may be included in the report, as the commission in its
32 discretion may determine.

33 d. Nothing in this section shall be construed to prevent the
34 commission from granting such further rights and privileges, as it may
35 determine, to any person whose conduct it intends to criticize in a
36 proposed report.

37 e. Notwithstanding the provisions of R.S.1:1-2, nothing in this
38 section shall be deemed to apply to any entity other than a natural
39 person.

40 f. Any person receiving notice under subsection a. of this section
41 who shall disclose, to any person other than to an attorney retained in
42 connection with the matter, the substance of that notice or any other
43 information received from the commission concerning that notice, shall
44 be guilty of a crime of the third degree.

45 (cf: P.L.1996, c.44, s.8).

S537 VITALE, CODEY

4

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

3 15. a. Any person conducting or participating in any examination
4 or investigation who shall disclose or any person who, coming into
5 possession of or knowledge of the substance of any examination or
6 investigation, shall disclose, or any person who shall cause, encourage
7 or induce a person, including any witness or informant, to disclose,
8 other than as authorized or required by law, to any person other than
9 the commission or an officer having the power to appoint one or more
10 of the commissioners the name of any witness examined, or any
11 information obtained or given upon such examination or investigation,
12 except as directed by the Governor or commission, or any person
13 other than a member or employee of the commission or any person
14 entitled to assert a legal privilege who, coming into possession of or
15 knowledge of the substance of any pending examination or
16 investigation who fails to advise the Attorney General and the
17 commission of such possession or knowledge and to deliver to the
18 Attorney General and the commission any documents or materials
19 containing such information, shall be guilty of a misdemeanor until
20 September 1, 1979 when such person shall be guilty of a crime of the
21 third degree. Any member or employee of the commission who shall
22 violate this section shall be dismissed from his office or discharged
23 from his employment.

24 b. Any statement made by a member of the commission or an
25 employee thereof relevant to any proceedings before or investigative
26 activities of the commission shall be absolutely privileged and such
27 privilege shall be a complete defense to any action for libel or slander;
28 provided, however, that nothing in this subsection shall be deemed to
29 grant immunity for ~~[any statement made with knowledge of its falsity~~
30 ~~or with reckless disregard as to whether it was true or false]~~ provided,
31 however, that nothing in this subsection shall be deemed to grant
32 immunity for conduct that was outside the scope of his employment or
33 constituted a crime, actual fraud, actual malice or willful misconduct.

34 c. Nothing contained in this section shall in any way prevent the
35 commission from furnishing information or making reports, as required
36 by this act, or from furnishing information to the Legislature, or to a
37 standing reference committee thereof, pursuant to a resolution duly
38 adopted by a standing reference committee or pursuant to a duly
39 authorized subpoena or subpoena duces tecum, provided, however, that
40 nothing herein shall be deemed to preclude the commission from
41 seeking from a court of competent jurisdiction a protective order to
42 avoid compliance with such subpoena or duces tecum.

43 d. Nothing in P.L.1963, c.73 (C.47:1A-1 et. seq.), as amended and
44 supplemented by P.L.2001, c.404, shall be construed to require the
45 commission to disclose any information acquired or any records
46 created, except as provided by this section.

47 (cf: P.L.1996, c.44, s.5)

1 4. Section 2 of P.L.1979, c.254 (C.52:9M-1.1) is amended to read
2 as follows:

3 2. Notwithstanding the provisions of section 1 of this act
4 (C.52:9M-1) and [in order to effect the staggering of the terms of
5 members of the commission] notwithstanding the term for which they
6 were originally appointed, the terms of the members [appointed after
7 December 1, 1978 shall be as follows: the first member appointed by
8 the Governor, 36 months; the second member appointed by the
9 Governor, 18 months; the member appointed by the President of the
10 Senate, 30 months; the member appointed by the Speaker of the
11 General Assembly, 24 months. Thereafter, the terms of the members
12 shall be as provided in P.L.1968, c.266, S.1 (C.52:9M-1)] in office
13 on the effective date of P.L. , c. (C.)(now pending before the
14 Legislature as this bill) shall end on the following dates: the term of
15 the member appointed by the Governor before January 1, 2001, on
16 December 31, 2002; the term of the member appointed by the
17 Governor after January 1, 2001, on December 31, 2003; the term of
18 the member appointed by the Speaker of the General Assembly on
19 December 31, 2004; and the term of the member appointed by the
20 President of the Senate, on December 31, 2005.

21 (cf: P.L.1979, c.254, s.2)

22

23 5. Section 23 of P.L 1993, c 29 (C.2A:156A-29) is amended to
24 read as follows:

25 23. Requirements for access.

26 a. A law enforcement agency, but no other governmental entity,
27 may require the disclosure by a provider of electronic communication
28 service or remote computing service of the contents of an electronic
29 communication without notice to the subscriber or the customer if the
30 law enforcement agency obtains a warrant.

31 b. Except as provided in subsection c. of this section, a provider of
32 electronic communication service or remote computing service may
33 disclose a record or other information pertaining to a subscriber or
34 customer of the service to any person other than a governmental
35 entity. This subsection shall not apply to the contents covered by
36 subsection a. of this section.

37 c. A provider of electronic communication service or remote
38 computing service shall disclose a record or other information
39 pertaining to a subscriber or customer of the service, other than
40 contents covered by subsections a. and f. of this section, to a law
41 enforcement agency under the following circumstances:

42 (1) the law enforcement agency has obtained a warrant;

43 (2) the law enforcement agency has obtained the consent of the
44 subscriber or customer to the disclosure; or

45 (3) the law enforcement agency has obtained a court order for such
46 disclosure under subsection e. of this section.

47 A law enforcement agency receiving records or information

1 pursuant to this subsection is not required to provide notice to the
2 customer or subscriber.

3 d. Notwithstanding any other provision of law to the contrary, no
4 service provider, its officers, employees, agents or other specified
5 persons shall be liable in any civil action for damages as a result of
6 providing information, facilities or assistance in accordance with the
7 terms of a court order or warrant under this section.

8 e. A court order for disclosure under subsection b. or c. may be
9 issued by a judge of competent jurisdiction and shall issue only if the
10 law enforcement agency offers specific and articulable facts showing
11 that there are reasonable grounds to believe that the record or other
12 information pertaining to a subscriber or customer of an electronic
13 communication service or remote computing service is relevant and
14 material to an ongoing criminal investigation. A judge who has issued
15 an order pursuant to this section, on a motion made promptly by the
16 service provider, may quash or modify such order, if the information
17 or records requested are unusually voluminous in nature or compliance
18 with such order otherwise would cause an undue burden on such
19 provider.

20 f. A provider of electronic communication service or remote
21 computing service shall disclose to a law enforcement agency or to
22 the State Commission of Investigation the name, address, telephone
23 number or other subscriber number or identity, and length of service
24 provided to a subscriber or customer of such service and the types of
25 services the subscriber or customer utilized, when the law enforcement
26 entity obtains a grand jury or trial subpoena or when the State
27 Commission of Investigation issues a subpoena.

28 g. Upon the request of a law enforcement agency, a provider of
29 wire or electronic communication service or a remote computing
30 service shall take all necessary steps to preserve, for a period of 90
31 days, records and other evidence in its possession pending the issuance
32 of a warrant. The preservation period shall be extended for an
33 additional 90 days upon the request of the law enforcement agency.
34 (cf: P.L.1999, c.151, s.6).

35

36 6. This act shall take effect immediately.

37

38

39

STATEMENT

40 The bill amends the statutes governing the State Commission of
41 Investigation (SCI) as follows:

42 **Section 1.** Currently, the SCI consists of four members appointed
43 on a bipartisan basis. The members serve a term of three years. This
44 bill amends this section in the law, N.J.S.A.52:9M-1, and change the
45 term to four years. In addition, this bill provides that if a successor is
46 not appointed within 120 days after the expiration of the member's
47 term, a successor would be appointed by the Chief Justice of the

1 Supreme Court within 60 days. Presently, when the term of a member
2 of the SCI expires, that person is authorized to remain in office until
3 a successor is appointed.

4 **Section 2.** Presently, whenever a proposed SCI report is critical of
5 a person's conduct, the SCI is required to send the relevant portions
6 of the report to that person prior to the report's release. The person
7 then has 15 days to submit a written response which the SCI is
8 required to include in the report. This bill would modify this section,
9 N.J.S.A.52:9M-12.2, to require that the SCI make a good faith effort
10 to notify any person criticized in a proposed report. The notice is
11 required to describe the general nature and context of the criticism but
12 not the actual contents of the report. A person whose conduct was
13 criticized would still have 15 days in which to submit a response. The
14 SCI, however, would not be required to include that response in it's
15 report. The bill would also make it a crime of the third degree for any
16 person who has received notification concerning a proposed SCI
17 report to disclose the substance of that notification to any other person
18 other than an attorney retained in the matter. A crime of the third
19 degree is punishable by a term of imprisonment of three to five years,
20 a fine of up to \$15,000.00 or both.

21 **Section 3.** N.J.S.A.52:9M-15 presently provides to the members
22 of SCI and its staff immunity from suits for defamation except for any
23 statement which is made with knowledge of its falsity or with reckless
24 regard as to whether it was true or false. Prior to its being amended
25 in 1997, N.J.S.A.52:9M-15 had provided complete immunity to the
26 SCI and its staff.

27 This bill would provide immunity for statements by members or
28 employees of the commission, provided, however that conduct that
29 was not outside the scope of his employment nor constituted a crime,
30 actual fraud, actual malice or willful misconduct.

31 **Section 4.** The bill would amend N.J.S.A.52:9M-1.1 to provide
32 that the terms of members in office on the effective date of this
33 substitute would end on the following dates:; the term of the member
34 appointed by the Governor before January 1, 2001, on December 31,
35 2002; the term of the member appointed by the Governor after January
36 1, 2001, on December 31, 2003; the term of the member appointed by
37 the Speaker of the General Assembly on December 31, 2004; and the
38 term of the member appointed by the President of the Senate, on
39 December 31, 2005.

40 **Section 5.** This bill would amend the wiretapping statute to
41 authorize the SCI to obtain certain information from a provider of
42 electronic communication service or remote computing service upon
43 issuance of a subpoena by the SCI.

SENATE JUDICIARY COMMITTEE

STATEMENT TO

SENATE, No. 537

with committee amendments

STATE OF NEW JERSEY

DATED: NOVEMBER 8, 2004

The Senate Judiciary Committee reports favorably and with committee amendments Senate Bill No. 537.

This bill, as introduced, makes a series of amendments to the statutes governing the State Commission of Investigation (SCI) which include: (1) increasing the commission members' terms from three years to four years; (2) requiring notification of any individual criticized in a proposed report; (3) providing immunity for statements by members or employees of the commission, except for conduct that was outside the scope of his employment or constituted a crime, actual fraud, actual malice or willful misconduct; (4) providing for changes in members' terms; (5) amending the wiretapping statute to authorize the SCI to obtain certain information from a provider of electronic communication service or remote computing service upon issuance of a subpoena by the SCI.

The committee amendments would make changes to the term limitation provisions for the commission members, expand the time frame for the appropriate authority to appoint a member and clarify the requirements for those individuals who wish to respond to a proposed commission report. The amendments would also prohibit commission members from holding or being a candidate for elective office for two years prior to appointment and two years after termination of service as a member of the commission. The committee amended the bill concerning N.J.S.A. 52:9M-12.2 to provide that any person who is criticized by a commission report and submits a response shall do so under oath or affirmation. The amendments also provide that the commission has the discretion of including all or any portion of the response in its report.

TERMS Under the current law, N.J.S.A.52:9M-1, a member cannot serve, in succession, more than two three-year terms and any portion of an unexpired term. The purpose for this term limitation language was to insure "periodic infusion of new thought and perspective" on the SCI as stated in the Senate Judiciary Committee Statement to Senate Bill No. 825 of 1984 (P.L.1984, c.110). The committee amendments would retain term limitations for the members

but would expand the actual terms from three to four years and provide that a newly appointed member cannot serve more than two four-year terms. Current members of the commission, however would be eligible to serve one additional four-year term. See section 6 being added by the amendments.

In order to clearly delineate the differences between those staggered terms which began in 1978 and the new four-year staggered terms which would begin with the enactment of this bill, the committee amendments retain the current statutory language in N.J.S.A.52:9M-1.1, which sets out the staggered term of those members appointed after December 1, 1978. The committee amendments restore the current language in section 4 of the bill and then supplement this law with a new staggered terms provision for those members serving on or appointed after the effective date of this bill in section 5 added by the committee amendments. This new section 5 provides that the terms of those commission members in office on the effective date of this bill would end as follows: the term of the member appointed by the Governor on or after November 5, 2004 would end on December 31, 2008; the term of the member appointed by the Governor after December 31, 2001 would end on December 31, 2007; the term of the member appointed by the President of the Senate before December 31, 2002 would end on December 31, 2006; and the term of the member appointed by the Speaker of the General Assembly after December 31, 2001 would end on December 31, 2005. The new four-year terms for members appointed subsequently would then begin on those same dates.

Any member of the State Commission of Investigation who is currently serving the member's first or second three-year term or portion of an unexpired term on the effective date of this bill shall be subject to the provisions of subsection a. of section 5 and shall be eligible to be reappointed to the commission for not more than one additional four-year term beginning as set forth in subsection b. of section 5.

This bill was pre-filed for introduction in the 2004-2005 session pending technical review. As reported, the bill includes the changes required by technical review, which has been performed.

STATEMENT TO
[First Reprint]
SENATE, No. 537

with Senate Floor Amendments
(Proposed By Senator VITALE)

ADOPTED: DECEMBER 6, 2004

These floor amendments would amend section 1 of the bill, N.J.S.A.52:9M-1, to prohibit commission members from holding or being a candidate for elective office for the one year prior to appointment and the one year after termination of service as a member of the commission.

These floor amendments would also amend section 2 of the bill, N.J.S.A.52:9M-12, to delete subsection f. of that section, which would have made it a crime of the third degree for any person who has received notification concerning a proposed SCI report to deliberately or intentionally disclose the substance of that notification to any other person other than an attorney retained in the matter.

In addition, these amendments would clarify the reference to the term of the second member appointed by the Governor. Also, 12 o'clock noon is used to be precise with regard to the terms.

STATEMENT TO
[Second Reprint]
SENATE, No. 537

with Senate Floor Amendments
(Proposed By Senator VITALE)

ADOPTED: DECEMBER 13, 2004

This floor amendment would require the SCI to include in the report a response from any person whose conduct was criticized in the report. However, the amendment provides that the SCI may redact from that response any discussion or reference to a person who has not received a notice under subsection a.

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RELEASE: March 28, 2005

Codey Signs Law Strengthening the State Commission of Investigation

(TRENTON)—Acting Governor Richard J. Codey today signed the bill A-1514/S-537, amending the statutes governing the State Commission of Investigation.

The new law gives the SCI greater independence, authority, and power to conduct investigations, to fulfill Codey's commitment to restore accountability to state government. Codey signed the bill during a public ceremony in the Governor's Outer Office.

As Senate President, Codey is also a primary sponsor of the bill. The others are Assembly Members Herb Conaway, Linda R. Greenstein, Peter J. Barnes, Christopher J. Connors, and Senator Joseph F. Vitale. SCI Chair W. Cary Edwards, Commissioners Kathy Flicker, Joseph R. Mariniello Jr. and Patrick E. Hobbs, and SCI Executive Director Alan A. Rockoff attended the bill signing.

The SCI consists of four Commissioners charged with investigating organized crime, government corruption and waste, fraud and abuse of taxpayer dollars. The Commission is designed to conduct fact-finding investigations, bring the facts to the public's attention through reports and public hearings, refer findings to law enforcement agencies for possible prosecution, and make recommendations on how the laws and operations of government can be improved to prevent further abuse.

"The SCI was created in 1968 when New Jersey was known as the national headquarters of organized crime. The SCI's mission was to investigate, let the public know which government officials were too cozy with the mob, and recommend ways we could make the system better by improving New Jersey's laws," Codey said.

"The SCI branched out to become the original watchdog on public officials and the public interest. Now more than ever, New Jersey needs a strong and independent SCI. And the SCI needs us to give them the tools to fulfill their mandate," Codey continued.

The new law makes a number of changes in the SCI's governing statutes. They include:

- Increasing members' terms from three years to four years – and staggering the terms to prevent abuse of the appointment process.
- Giving the SCI power to subpoena records of phone calls and other electronic

information. This change does not give the SCI power to tap wires, listen to private phone calls or read private emails – but it allows the SCI to track the numbers an individual has called or the addresses to which they have corresponded by email.

- Clarifying certain of the SCI’s powers and requirements.

“The work of the SCI is invaluable in uncovering waste, mismanagement, and fraud,” said Assemblyman Conaway. “Now, this investigatory body will have its power and teeth restored so it can go after wrongdoers and hold them to public scrutiny.”

“The SCI must be a fully armed watchdog on behalf of the state, with every means at its disposal to get its job done properly,” Assemblywoman Greenstein said. “It is unconscionable that such an invaluable body could ever have its power diminished to provide cover for political wrongdoing. Now, that mistake has been corrected.”

“Time and again, the SCI has unearthed instances of dishonesty and corruption in state government,” said Assemblyman Barnes. “With this new law, the SCI will again be a vigilant and powerful protector of the public trust.”

“One aspect of this bill that will greatly improve the fairness of the SCI’s investigative process is the provision allowing the subject of these investigations an opportunity to respond to these charges and criticisms,” Assemblyman Connors said. “The SCI performs a vital service for the state’s taxpayers through its efforts to eliminate waste, corruption and criminal activity and this legislation will allow this organization to continue its important work.”

“New Jerseyans deserve better from their elected officials than a State reputation as the corruption capital of the world,” said Senator Vitale. “The SCI was created to serve as a watchdog agency to keep politicians honest, and to ensure that elected officials operate at the highest level of governmental integrity. With the new tools that we’ve made available to the SCI through this law, the organization will be better prepared to carry out that mission.”

“This is a major milestone for government oversight and accountability, and the citizens of New Jersey should be deeply gratified for the timely action of the Governor and Legislature,” said SCI Chair W. Cary Edwards. “Thanks to these statutory changes, the SCI will be stronger and better equipped to fulfill its unique mission as an independent ‘watchdog’ that not only investigates and reveals systemic problems but also formulates and suggests practical systemic reforms.”

The bill’s full text can be found by doing a “Bill Search” for A1514 or S537 at the Legislature’s website, <http://www.nileg.state.nj.us/>.

Today’s bill signing is part of Codey’s broader effort to restore accountability and the public’s trust in government.

Codey's other accomplishments toward that goal include:

- Sponsoring and then signing into law New Jersey's statewide pay-to-play ban, one of the strongest in the nation.
- A proposed Fiscal 2006 budget with the largest investment in public accountability in recent history, with nearly \$7 million in new funding for the Commission on Ethical Standards, Office of the Inspector General, State Commission on Investigation, Office of the Public Advocate and Election Law Enforcement Commission.
- Creation of the Special Counsel on Ethics Reform, which recently completed an unprecedented, thorough audit into the ethics codes that apply to employees of the state Executive Branch. The Counsel recommended sweeping reforms that will be enacted under Codey's investment in the Fiscal 2006 budget.
- The appointment of Mary Jane Cooper as New Jersey's first Inspector General, with a mandate to root out waste, mismanagement and fraud.