

Report of the committee of conference on the disagreeing votes of the two branches, with reference to the Senate amendment (striking out all after the enacting clause and inserting in place thereof the text of Senate document numbered 2662) of the House Bill relative to the administration of the financial disclosure and conflict of interest laws (House, No. 6529, amended), — recommending that the House recede from its non-concurrence with the Senate in its amendment and concur therein with a further amendment by striking out all after the enacting clause and inserting in place thereof the following:

### The Commonwealth of Massachusetts

In the Year One Thousand Nine Hundred and Eighty-Five.

1 "SECTION 1. The general court recognizes that in connection with standards  
2 for the conduct of public officials it should be recognized that under our  
3 democratic form of government, public officials and employees should be drawn  
4 from all of our society; that citizens who serve in government cannot and  
5 should not be expected to be without any personal interest in the decisions  
6 and policies of government; that citizens who are government officials and  
7 employees have a right to private interests of a personal, financial and eco-  
8 nomic nature; that such standards of conduct should separate those situations  
9 of conflicting interest which are inherent in a free society from those which  
10 are unacceptable.

1 SECTION 2. Chapter 268A of the General Laws is hereby amended by striking  
2 out section 23, as appearing in the 1984 Official Edition, and inserting in  
3 place thereof the following section:-

4 Section 23. (a) In addition to the other provisions of this chapter, and  
5 in supplement thereto, standards of conduct, as hereinafter set forth, are  
6 hereby established for all state, county, and municipal employees.

7 (b) No current officer or employee of a state, county or municipal agency  
8 shall knowingly, or with reason to know:

9 (1) accept other employment involving compensation of substantial value,  
10 the responsibilities of which are inherently incompatible with the responsi-  
11 bilities of his public office;

12 (2) use or attempt to use his official position to secure for himself or  
13 others unwarranted privileges or exemptions which are of substantial value and  
14 which are not properly available to similarly situated individuals;

15 (3) act in a manner which would cause a reasonable person, having knowl-  
16 edge of the relevant circumstances, to conclude that any person can improperly  
17 influence or unduly enjoy his favor in the performance of his official duties,  
18 or that he is likely to act or fail to act as a result of kinship, rank, posi-  
19 tion or undue influence of any party or person. It shall be unreasonable to  
20 so conclude if such officer or employee has disclosed in writing to his  
21 appointing authority or, if no appointing authority exists, discloses in a  
22 manner which is public in nature, the facts which would otherwise lead to such  
23 a conclusion.

24 (c) No current or former officer or employee of a state, county or munic-  
25 ipal agency shall knowingly, or with reason to know:

26 (1) accept employment or engage in any business or professional activity  
27 which will require him to disclose confidential information which he has  
28 gained by reason of his official position or authority;

29 (2) improperly disclose materials or data within the exemptions to the

30 definition of public records as defined by section seven of chapter four, and  
31 were acquired by him in the course of his official duties nor use such infor-  
32 mation to further his personal interest.

33 (d) Any activity specifically exempted from any of the prohibitions con-  
34 tained elsewhere in this chapter shall also be exempt from the provisions of  
35 this section. The state ethics commission shall not enforce the provisions of  
36 this section with respect to any such exempted activity.

37 (e) Where a current employee is found to have violated the provisions of  
38 this section, appropriate administrative action as is warranted may also be  
39 taken by the appropriate constitutional officer, by the head of a state,  
40 county or municipal agency. Nothing in this section shall preclude any such  
41 constitutional officer or head of such agency from establishing and enforcing  
42 additional standards of conduct.

43 (f) Upon qualification for office following an appointment or election to  
44 a municipal agency, such appointed or elected person shall be furnished by the  
45 city or town clerk with a copy of this section. Each such person shall sign a  
46 written acknowledgment that he has been provided with such copy.

1 SECTION 3. Section 3 of chapter 268B of the General Laws, as so appear-  
2 ing, is hereby amended by striking out paragraph (d) and inserting in place  
3 thereof the following paragraph:-

4 (d) Make statements and reports filed with the commission available for  
5 public inspection and copying during regular office hours upon the written  
6 request of any individual who provides identification acceptable to the com-  
7 mission, including his affiliation, if any, at a charge not to exceed the  
8 actual administrative and material costs required in reproducing said state-  
9 ments and reports; the commission shall forward a copy of said request to the  
10 person whose statement has been examined.

1 SECTION 4. Said section 3 of said chapter 268B, as so appearing, is  
2 hereby further amended by striking out paragraph (i) and inserting in place  
3 thereof the following paragraph:-

4 (i) Act as the primary civil enforcement agency for violations of all  
5 sections of chapter two hundred and sixty-eight A, and of this chapter.

1 SECTION 5. Chapter 268B of the General Laws is hereby amended by striking  
2 out section 4, as so appearing, and inserting in place thereof the following  
3 section:-

4 Section 4. (a) Upon receipt of a sworn complaint signed under pains and  
5 penalties of perjury, or upon receipt of evidence which is deemed sufficient  
6 by the commission, the commission shall initiate a preliminary inquiry into  
7 any alleged violation of chapter two hundred and sixty-eight A or of this  
8 chapter. At the beginning of a preliminary inquiry into any such alleged  
9 violation, the general counsel shall notify the attorney general of such  
10 action. All commission proceedings and records relating to a preliminary  
11 inquiry or initial staff review to determine whether to initiate an inquiry  
12 shall be confidential, except that the general counsel may turn over to the  
13 attorney general, the United States Attorney or a district attorney of compe-  
14 tent jurisdiction evidence which may be used in a criminal proceeding. The  
15 general counsel shall notify any person who is the subject of the preliminary  
16 inquiry of the existence of such inquiry and the general nature of the alleged  
17 violation within thirty days of the commencement of the inquiry.

18 (b) If a preliminary inquiry fails to indicate reasonable cause for  
19 belief that this chapter or said chapter two hundred and sixty-eight A has  
20 been violated, the commission shall immediately terminate the inquiry and so  
21 notify, in writing, the complainant, if any, and the person who had been the  
22 subject of such inquiry. All commission records and proceedings from any such  
23 preliminary inquiry, or from any initial staff review to determine whether to  
24 initiate an inquiry, shall be confidential.

25 (c) If a preliminary inquiry indicates reasonable cause for belief that  
26 this chapter or said chapter two hundred and sixty-eight A has been violated,  
27 the commission may, upon a majority vote, initiate an adjudicatory proceeding  
28 to determine whether there has been such a violation.

29 (d) The commission may require by summons the attendance and testimony of

30 witnesses and the production of books, papers and other records relating to  
31 any matter being investigated by it pursuant to this chapter or chapter two  
32 hundred and sixty-eight A. Such summons may be issued by the commission only  
33 upon a majority vote of the commission and shall be served in the same manner  
34 as summonses for witnesses in civil cases, and all provisions of law relative  
31 to summonses issued in such cases, including the compensation of witnesses,  
32 shall apply to summonses issued by the commission. Any justice of the superior  
33 court may, upon application by the commission, in his discretion issue an  
34 order requiring the attendance of witnesses summoned as aforesaid and the  
35 giving of testimony or the production of books, papers and other records  
36 before the commission in furtherance of any investigation pursuant to the  
37 provisions of this chapter or of chapter two hundred and sixty-eight A.

38 (e) Any member of the commission may administer oaths and any member of  
39 the commission may hear testimony or receive other evidence in any proceeding  
40 before the commission.

41 (f) All testimony in a commission adjudicatory proceeding shall be under  
42 oath. All parties shall have the right to call and examine witnesses, to  
43 introduce exhibits, to cross-examine witnesses who testify, to submit evidence,  
44 and to be represented by counsel. Before testifying, all witnesses  
45 shall be given a copy of the regulations governing commission proceedings.  
46 All witnesses shall be entitled to be represented by counsel.

47 (g) Any person whose name is mentioned during an adjudicatory proceeding  
48 of the commission and who may be adversely affected thereby may appear personally  
49 before the commission on his own behalf, with or without an attorney, to  
50 give a statement in opposition to such adverse mention or file a written  
51 statement of such opposition for incorporation into the record of the proceeding.  
52

53 (h) All adjudicatory proceedings of the commission carried out pursuant  
54 to the provisions of this section shall be public, unless the members vote to  
55 go into executive session.

56 (i) Within thirty days after the end of an adjudicatory proceeding pursuant  
57 to the provisions of this section, the commission shall meet in executive  
58 session for the purpose of reviewing the evidence before it. Within  
59 thirty days after completion of deliberations, the commission shall publish a  
60 written report of its findings and conclusions.

61 (j) The commission, upon a finding pursuant to an adjudicatory proceeding  
62 that there has been a violation of chapter two hundred and sixty-eight A or a  
63 violation of this chapter, may issue an order requiring the violator to:

64 (1) cease and desist such violation of said chapter two hundred and  
65 sixty-eight A or of this chapter;

66 (2) file any report, statement or other information as required by said  
67 chapter two hundred and sixty-eight A or this chapter; or

68 (3) pay a civil penalty of not more than two thousand dollars for each  
69 such violation of this chapter or of said chapter two hundred and sixty-eight  
70 A.

71 The commission may file a civil action in superior court to enforce such  
72 order.

73 (k) Any final action by the commission made pursuant to this chapter  
74 shall be subject to review in superior court upon petition of any party in  
75 interest filed within thirty days after the action for which such review is  
76 sought. The court shall enter a judgment enforcing, modifying or setting  
77 aside the order of the commission or it may remand the proceedings to the  
78 commission for such further action as the court may direct.

1 SECTION 6. Section 7 of said chapter 268B, as so appearing, is hereby  
2 amended by striking out the first paragraph and inserting in place thereof the  
3 following paragraph:-

4 Any participant in a preliminary inquiry or in an initial staff review to  
5 determine whether to initiate an inquiry, who violates the confidentiality of  
6 such inquiry or review by disclosing its nature or existence to a  
7 non-participant, shall be punished by a fine of not more than one thousand  
8 dollars or by imprisonment for not more than one year, or both. For the purpose  
9 of this paragraph, 'participant' shall include any member or employee of  
10 the commission, a complainant, and any potential witness who has been contacted  
11 by a commission member or employee, but shall not include the subject  
12 of the inquiry or staff review.

1 SECTION 7. This act shall take effect upon its passage and except with  
2 respect to any violation of section twenty-three of chapter two hundred and  
3 sixty-eight A of the General Laws, it shall apply to all complaints,  
4 inquiries, investigations and adjudicatory proceedings which were pending  
5 before the state ethics commission as of July ninth, nineteen hundred and  
6 eighty-five or which were filed or initiated after such date. With respect to  
7 any violation of said section twenty-three, the commission shall exercise  
8 jurisdiction of any violation occurring on or after the effective date.”; that the House recede from its  
9 non-concurrence with the Senate and concur therein in its amendment striking out the title and inserting  
10 in place thereof the following title: “An Act further regulating the conduct of public officials.”; and that  
11 the House recede from its non-concurrence with the Senate and concur therein in its amendment striking  
12 out the emergency preamble and inserting in place thereof the following emergency preamble:  
13 “Whereas, The deferred operation of this act would tend to defeat its purpose, which is to immediately  
14 regulate the conduct of public officials, therefore, it is hereby declared an emergency law, necessary for  
15 the immediate preservation of the public convenience.”; and that the Senate concur in the further  
16 amendment.