

SECOND REGULAR SESSION

HOUSE BILL NO. 1629

102ND GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE WRIGHT.

2849H.011

DANA RADEMAN MILLER, Chief Clerk

AN ACT

To repeal section 105.955, RSMo, and to enact in lieu thereof one new section relating to the Missouri ethics commission, with an emergency clause.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Section 105.955, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 105.955, to read as follows:

105.955. 1. A bipartisan "Missouri Ethics Commission", composed of six members, is hereby established. The commission shall be assigned to the office of administration with supervision by the office of administration only for budgeting and reporting as provided by subdivisions (4) and (5) of subsection 6 of section 1 of the Reorganization Act of 1974. Supervision by the office of administration shall not extend to matters relating to policies, regulative functions or appeals from decisions of the commission, and the commissioner of administration, any employee of the office of administration, or the governor, either directly or indirectly, shall not participate or interfere with the activities of the commission in any manner not specifically provided by law and shall not in any manner interfere with the budget request of or withhold any moneys appropriated to the commission by the general assembly. All members of the commission shall be appointed by the governor with the advice and consent of the senate from lists submitted pursuant to this section. Each congressional district committee of the political parties having the two highest number of votes cast for their candidate for governor at the last gubernatorial election shall submit two names of eligible nominees for membership on the commission to the governor, and the governor shall select six members from such nominees to serve on the commission.

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

17 2. Within thirty days of submission of the person's name to the governor as provided
18 in subsection 1 of this section, and in order to be an eligible nominee for appointment to the
19 commission, a person shall file a financial interest statement in the manner provided by
20 section 105.485 and shall provide the governor, the president pro tempore of the senate, and
21 the commission with a list of all political contributions and the name of the candidate or
22 committee, political party, or continuing committee, as defined in chapter 130, to which those
23 contributions were made within the four-year period prior to such appointment, made by the
24 nominee, the nominee's spouse, or any business entity in which the nominee has a substantial
25 interest. The information shall be maintained by the commission and available for public
26 inspection during the period of time during which the appointee is a member of the
27 commission. In order to be an eligible nominee for membership on the commission, a person
28 shall be a citizen and a resident of the state and shall have been a registered voter in the state
29 for a period of at least five years preceding the person's appointment.

30 3. The term of each member shall be for four years, except that of the members first
31 appointed, the governor shall select three members from even-numbered congressional
32 districts and three members from odd-numbered districts. Not more than three members of
33 the commission shall be members of the same political party, nor shall more than one member
34 be from any one United States congressional district. Not more than two members appointed
35 from the even-numbered congressional districts shall be members of the same political party,
36 and no more than two members from the odd-numbered congressional districts shall be
37 members of the same political party. Of the members first appointed, the terms of the
38 members appointed from the odd-numbered congressional districts shall expire on March 15,
39 1994, and the terms of the members appointed from the even-numbered congressional
40 districts shall expire on March 15, 1996. Thereafter all successor members of the commission
41 shall be appointed for four-year terms. Terms of successor members of the commission shall
42 expire on March fifteenth of the fourth year of their term. No member of the commission
43 shall serve on the commission after the expiration of the member's term. No person shall be
44 appointed to more than one full four-year term on the commission.

45 4. Vacancies or expired terms on the commission shall be filled in the same manner as
46 the original appointment was made, except as provided in this subsection. Within thirty days
47 of the vacancy or ninety days before the expiration of the term, the names of two eligible
48 nominees for membership on the commission shall be submitted to the governor by the
49 congressional district committees of the political party or parties of the vacating member or
50 members, from the even- or odd-numbered congressional districts, based on the residence of
51 the vacating member or members, other than from the congressional district committees from
52 districts then represented on the commission and from the same congressional district party
53 committee or committees which originally appointed the member or members whose

54 positions are vacated. Appointments to fill vacancies or expired terms shall be made within
55 forty-five days after the deadline for submission of names by the congressional district
56 committees, and shall be subject to the same qualifications for appointment and eligibility as
57 is provided in subsections 2 and 3 of this section. Appointments to fill vacancies for
58 unexpired terms shall be for the remainder of the unexpired term of the member whom the
59 appointee succeeds, and such appointees shall be eligible for appointment to one full four-
60 year term. If the congressional district committee does not submit the required two nominees
61 within the thirty days or if the congressional district committee does not submit the two
62 nominees within an additional thirty days after receiving notice from the governor to submit
63 the nominees, then the governor may appoint a person or persons who shall be subject to the
64 same qualifications for appointment and eligibility as provided in subsections 2 and 3 of this
65 section.

66 5. The governor, with the advice and consent of the senate, may remove any member
67 only for substantial neglect of duty, inability to discharge the powers and duties of office,
68 gross misconduct or conviction of a felony or a crime involving moral turpitude. Members of
69 the commission also may be removed from office by concurrent resolution of the general
70 assembly signed by the governor. If such resolution receives the vote of two-thirds or more of
71 the membership of both houses of the general assembly, the signature of the governor shall
72 not be necessary to effect removal. The office of any member of the commission who moves
73 from the congressional district from which the member was appointed shall be deemed
74 vacated upon such change of residence.

75 6. The commission shall elect biennially one of its members as the chairman. The
76 chairman may not succeed himself or herself after two years. No member of the commission
77 shall succeed as chairman any member of the same political party as himself or herself. At
78 least four members are necessary to constitute a quorum, and at least four affirmative votes
79 shall be required for any action or recommendation of the commission.

80 7. No member or employee of the commission, during the person's term of service,
81 shall hold or be a candidate for any other public office.

82 8. In the event that a retired judge is appointed as a member of the commission, the
83 judge shall not serve as a special investigator while serving as a member of the commission.

84 9. No member of the commission shall, during the member's term of service or within
85 one year thereafter:

- 86 (1) Be employed by the state or any political subdivision of the state;
- 87 (2) Be employed as a lobbyist;
- 88 (3) Serve on any other governmental board or commission;
- 89 (4) Be an officer of any political party or political organization;

90 (5) Permit the person's name to be used, or make contributions, in support of or in
91 opposition to any candidate or proposition;

92 (6) Participate in any way in any election campaign; except that a member or
93 employee of the commission shall retain the right to register and vote in any election, to
94 express the person's opinion privately on political subjects or candidates, to participate in the
95 activities of a civic, community, social, labor or professional organization and to be a member
96 of a political party.

97 10. Each member of the commission shall receive, as full compensation for the
98 member's services, the sum of one hundred dollars per day for each full day actually spent on
99 work of the commission, and the member's actual and necessary expenses incurred in the
100 performance of the member's official duties.

101 11. The commission shall appoint an executive director who shall serve subject to the
102 supervision of and at the pleasure of the commission~~[- but in no event for more than six~~
103 ~~years]~~. The executive director shall be responsible for the administrative operations of the
104 commission and perform such other duties as may be delegated or assigned to the director by
105 law or by rule of the commission. The executive director shall employ staff and retain such
106 contract services as the director deems necessary, within the limits authorized by
107 appropriations by the general assembly.

108 12. Beginning on January 1, 1993, all lobbyist registration and expenditure reports
109 filed pursuant to section 105.473, financial interest statements filed pursuant to subdivision
110 (1) of section 105.489, and campaign finance disclosure reports filed other than with election
111 authorities or local election authorities as provided by section 130.026 shall be filed with the
112 commission.

113 13. Within sixty days of the initial meeting of the first commission appointed, the
114 commission shall obtain from the clerk of the supreme court or the state courts administrator a
115 list of retired appellate and circuit court judges who did not leave the judiciary as a result of
116 being defeated in an election. The executive director shall determine those judges who
117 indicate their desire to serve as special investigators and to investigate any and all complaints
118 referred to them by the commission. The executive director shall maintain an updated list of
119 those judges qualified and available for appointment to serve as special investigators. Such
120 list shall be updated at least annually. The commission shall refer complaints to such special
121 investigators on that list on a rotating schedule which ensures a random assignment of each
122 special investigator. Each special investigator shall receive only one unrelated investigation
123 at a time and shall not be assigned to a second or subsequent investigation until all other
124 eligible investigators on the list have been assigned to an investigation. In the event that no
125 special investigator is qualified or available to conduct a particular investigation, the
126 commission may appoint a special investigator to conduct such particular investigation.

127 14. The commission shall have the following duties and responsibilities relevant to
128 the impartial and effective enforcement of sections 105.450 to 105.496 and chapter 130, as
129 provided in sections 105.955 to 105.963:

130 (1) Receive and review complaints regarding alleged violation of sections 105.450 to
131 105.496 and chapter 130, conduct initial reviews and investigations regarding such
132 complaints as provided herein; refer complaints to appropriate prosecuting authorities and
133 appropriate disciplinary authorities along with recommendations for sanctions; and initiate
134 judicial proceedings as allowed by sections 105.955 to 105.963;

135 (2) Review and audit any reports and statements required by the campaign finance
136 disclosure laws contained in chapter 130, and financial interest disclosure laws or lobbyist
137 registration and reporting laws as provided by sections 105.470 to 105.492, for timeliness,
138 accuracy and completeness of content as provided in sections 105.955 to 105.963;

139 (3) Develop appropriate systems to file and maintain an index of all such reports and
140 statements to facilitate public access to such information, except as may be limited by
141 confidentiality requirements otherwise provided by law, including cross-checking of
142 information contained in such statements and reports. The commission may enter into
143 contracts with the appropriate filing officers to effectuate such system. Such filing officers
144 shall cooperate as necessary with the commission as reasonable and necessary to effectuate
145 such purposes;

146 (4) Provide information and assistance to lobbyists, elected and appointed officials,
147 and employees of the state and political subdivisions in carrying out the provisions of sections
148 105.450 to 105.496 and chapter 130;

149 (5) Make recommendations to the governor and general assembly or any state agency
150 on the need for further legislation with respect to the ethical conduct of public officials and
151 employees and to advise state and local government in the development of local government
152 codes of ethics and methods of disclosing conflicts of interest as the commission may deem
153 appropriate to promote high ethical standards among all elected and appointed officials or
154 employees of the state or any political subdivision thereof and lobbyists;

155 (6) Render advisory opinions as provided by this section;

156 (7) Promulgate rules relating to the provisions of sections 105.955 to 105.963 and
157 chapter 130. All rules and regulations issued by the commission shall be prospective only in
158 operation;

159 (8) Request and receive from the officials and entities identified in subdivision (6) of
160 section 105.450 designations of decision-making public servants.

161 15. In connection with such powers provided by sections 105.955 to 105.963 and
162 chapter 130, the commission may:

163 (1) Subpoena witnesses and compel their attendance and testimony. Subpoenas shall
164 be served and enforced in the same manner provided by section 536.077;

165 (2) Administer oaths and affirmations;

166 (3) Take evidence and require by subpoena duces tecum the production of books,
167 papers, and other records relating to any matter being investigated or to the performance of
168 the commission's duties or exercise of its powers. Subpoenas duces tecum shall be served and
169 enforced in the same manner provided by section 536.077;

170 (4) Employ such personnel, including legal counsel, and contract for services
171 including legal counsel, within the limits of its appropriation, as it deems necessary provided
172 such legal counsel, either employed or contracted, represents the Missouri ethics commission
173 before any state agency or before the courts at the request of the Missouri ethics commission.
174 Nothing in this section shall limit the authority of the Missouri ethics commission as provided
175 for in subsection 2 of section 105.961; and

176 (5) Obtain information from any department, division or agency of the state or any
177 political subdivision reasonably calculated to lead to the discovery of evidence which will
178 reasonably assist the commission in carrying out the duties prescribed in sections 105.955 to
179 105.963 and chapter 130.

180 16. (1) Upon written request for an advisory opinion received by the commission,
181 and if the commission determines that the person requesting the opinion would be directly
182 affected by the application of law to the facts presented by the requesting person, the
183 commission shall issue a written opinion advising the person who made the request, in
184 response to the person's particular request, regarding any issue that the commission can
185 receive a complaint on pursuant to section 105.957. The commission may decline to issue a
186 written opinion by a vote of four members and shall provide to the requesting person the
187 reason for the refusal in writing. The commission shall give an approximate time frame as to
188 when the written opinion shall be issued. Such advisory opinions shall be issued no later than
189 ninety days from the date of receipt by the commission. Such requests and advisory opinions,
190 deleting the name and identity of the requesting person, shall be compiled and published by
191 the commission on at least an annual basis. Advisory opinions issued by the commission
192 shall be maintained and made available for public inspection and copying at the office of the
193 commission during normal business hours. Any advisory opinion or portion of an advisory
194 opinion rendered pursuant to this subsection shall be withdrawn by the commission if, after
195 hearing thereon, the joint committee on administrative rules finds that such advisory opinion
196 is beyond or contrary to the statutory authority of the commission or is inconsistent with the
197 legislative intent of any law enacted by the general assembly, and after the general assembly,
198 by concurrent resolution, votes to adopt the findings and conclusions of the joint committee
199 on administrative rules. Any such concurrent resolution adopted by the general assembly

200 shall be published at length by the commission in its publication of advisory opinions of the
201 commission next following the adoption of such resolution, and a copy of such concurrent
202 resolution shall be maintained by the commission, along with the withdrawn advisory
203 opinion, in its public file of advisory opinions. The commission shall also send a copy of
204 such resolution to the person who originally requested the withdrawn advisory opinion. Any
205 advisory opinion issued by the ethics commission shall act as legal direction to any person
206 requesting such opinion and no person shall be liable for relying on the opinion and it shall
207 act as a defense of justification against prosecution. An advisory opinion of the commission
208 shall not be withdrawn unless:

209 (a) The authorizing statute is declared unconstitutional;

210 (b) The opinion goes beyond the power authorized by statute; or

211 (c) The authorizing statute is changed to invalidate the opinion.

212 (2) Upon request, the attorney general shall give the attorney general's opinion,
213 without fee, to the commission, any elected official of the state or any political subdivision,
214 any member of the general assembly, or any director of any department, division or agency of
215 the state, upon any question of law regarding the effect or application of sections 105.450 to
216 105.496, or chapter 130. Such opinion need be in writing only upon request of such official,
217 member or director, and in any event shall be rendered within sixty days that such request is
218 delivered to the attorney general.

219 17. The state auditor and the state auditor's duly authorized employees who have
220 taken the oath of confidentiality required by section 29.070 may audit the commission and in
221 connection therewith may inspect materials relating to the functions of the commission. Such
222 audit shall include a determination of whether appropriations were spent within the intent of
223 the general assembly, but shall not extend to review of any file or document pertaining to any
224 particular investigation, audit or review by the commission, an investigator or any staff or
225 person employed by the commission or under the supervision of the commission or an
226 investigator. The state auditor and any employee of the state auditor shall not disclose the
227 identity of any person who is or was the subject of an investigation by the commission and
228 whose identity is not public information as provided by law.

229 18. From time to time but no more frequently than annually the commission may
230 request the officials and entities described in subdivision (6) of section 105.450 to identify for
231 the commission in writing those persons associated with such office or entity which such
232 office or entity has designated as a decision-making public servant. Each office or entity
233 delineated in subdivision (6) of section 105.450 receiving such a request shall identify those
234 so designated within thirty days of the commission's request.

Section B. Because of the need to ensure the continued enforcement of ethics laws,
2 section A of this act is deemed necessary for the immediate preservation of the public health,

3 welfare, peace, and safety, and is hereby declared to be an emergency act within the meaning
4 of the constitution, and section A of this act shall be in full force and effect upon its passage
5 and approval.

✓