

SECOND REGULAR SESSION

HOUSE BILL NO. 2146

102ND GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE MCGAUGH.

3450H.02I

DANA RADEMAN MILLER, Chief Clerk

AN ACT

To repeal sections 105.487 and 105.955, RSMo, and to enact in lieu thereof three new sections relating to the Missouri ethics commission.

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

Section A. Sections 105.487 and 105.955, RSMo, are repealed and three new sections
2 enacted in lieu thereof, to be known as sections 105.484, 105.487, and 105.955, to read as
3 follows:

105.484. 1. Before July sixteenth of each calendar year, the governing body of
2 **each political subdivision shall submit an attestation to the commission of whether the**
3 **body's annual operating budget for the current fiscal year exceeds one million dollars.**

4 **2. Before December sixteenth of each calendar year, all offices or entities**
5 **delineated in paragraphs (a) to (h) of subdivision (6) of section 105.450, shall send the**
6 **commission a list of the names of all officials, appointees, or employees required by**
7 **statute, or by designation as a decision-making public servant, to file a financial interest**
8 **statement with the commission including, but not limited to, those required to file under**
9 **section 105.483.**

105.487. The financial interest statements shall be filed at the following times, but no
2 person is required to file more than one financial interest statement in any calendar year:

3 (1) Each candidate for elective office, except those candidates for county committee
4 of a political party pursuant to section 115.609 or section 115.611, who is required to file a
5 personal financial disclosure statement shall file a financial interest statement no later than
6 fourteen days after the close of filing at which the candidate seeks nomination or election, and
7 the statement shall be for the twelve months prior to the closing date, except that in the event

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.

8 an individual does not become a candidate until after the date of certification for candidates,
9 the statement shall be filed within fourteen days of the individual's nomination by caucus. An
10 individual required to file a financial interest statement because of the individual's candidacy
11 for office prior to a primary election in accordance with this section is also required to amend
12 such statement no later than the close of business on Monday prior to the general election to
13 reflect any changes in financial interest during the interim. The appropriate election authority
14 shall provide to the candidate at the time of filing for election written notice of the candidate's
15 obligation to file pursuant to sections 105.483 to 105.492 and the candidate shall sign a
16 statement acknowledging receipt of such notice. **Election authorities shall provide a list of**
17 **all candidates required to file under this subdivision to the commission no later than two**
18 **business days after the close of candidate filing;**

19 (2) Each person appointed to office, except any person elected for county committee
20 of a political party pursuant to section 115.617, and each official or employee described in
21 section 105.483 who is not otherwise covered in this subsection shall file the statement within
22 thirty days of such appointment or employment;

23 (3) Every other person required by sections 105.483 to 105.492 to file a financial
24 interest statement shall file the statement annually not later than the first day of May and the
25 statement shall cover the calendar year ending the immediately preceding December thirty-
26 first; provided that the governor, lieutenant governor, any member of the general assembly or
27 any member of the governing body of a political subdivision may supplement such person's
28 financial interest statement to report additional interests acquired after December thirty-first
29 of the covered year until the date of filing of the financial interest statement;

30 (4) The deadline for filing any statement required by sections 105.483 to 105.492
31 shall be 5:00 p.m. of the last day designated for filing the statement. When the last day of
32 filing falls on a Saturday or Sunday or on an official state holiday, the deadline for filing is
33 extended to 5:00 p.m. on the next day which is not a Saturday or Sunday or official holiday.
34 Any statement required within a specified time shall be deemed to be timely filed if it is
35 postmarked not later than midnight of the day previous to the last day designated for filing the
36 statement.

105.955. 1. A bipartisan "Missouri Ethics Commission", composed of six members,
2 is hereby established. The commission shall be assigned to the office of administration with
3 supervision by the office of administration only for budgeting and reporting as provided by
4 subdivisions (4) and (5) of subsection 6 of section 1 of the Reorganization Act of 1974.
5 Supervision by the office of administration shall not extend to matters relating to policies,
6 regulative functions or appeals from decisions of the commission, and the commissioner of
7 administration, any employee of the office of administration, or the governor, either directly
8 or indirectly, shall not participate or interfere with the activities of the commission in any

9 manner not specifically provided by law and shall not in any manner interfere with the budget
10 request of or withhold any moneys appropriated to the commission by the general assembly.
11 All members of the commission shall be appointed by the governor with the advice and
12 consent of the senate from lists submitted pursuant to this section. Each congressional district
13 committee of the political parties having the two highest number of votes cast for their
14 candidate for governor at the last gubernatorial election shall submit two names of eligible
15 nominees for membership on the commission to the governor, and the governor shall select
16 six members from such nominees to serve on the commission.

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 years.
103 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 **and a list of all other**
161 **individuals connected to the official or entity who are otherwise required to file a**
162 **financial interest statement with the commission;**

163 (9) **Request and receive from all political subdivisions the statement required**
164 **under subsection 1 of section 105.484;**

165 (10) **Request and receive from all political subdivisions a list of all candidates**
166 **required to file a financial interest statement with the commission.**

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

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

171 (2) Administer oaths and affirmations;

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

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

182 (5) Obtain information from any department, division or agency of the state or any
183 political subdivision reasonably calculated to lead to the discovery of evidence which will
184 reasonably assist the commission in carrying out the duties prescribed in sections 105.955 to
185 105.963 and chapter 130.

186 16. (1) Upon written request for an advisory opinion received by the commission,
187 and if the commission determines that the person requesting the opinion would be directly
188 affected by the application of law to the facts presented by the requesting person, the
189 commission shall issue a written opinion advising the person who made the request, in
190 response to the person's particular request, regarding any issue that the commission can
191 receive a complaint on pursuant to section 105.957. The commission may decline to issue a
192 written opinion by a vote of four members and shall provide to the requesting person the

193 reason for the refusal in writing. The commission shall give an approximate time frame as to
194 when the written opinion shall be issued. Such advisory opinions shall be issued no later than
195 ninety days from the date of receipt by the commission. Such requests and advisory opinions,
196 deleting the name and identity of the requesting person, shall be compiled and published by
197 the commission on at least an annual basis. Advisory opinions issued by the commission
198 shall be maintained and made available for public inspection and copying at the office of the
199 commission during normal business hours. Any advisory opinion or portion of an advisory
200 opinion rendered pursuant to this subsection shall be withdrawn by the commission if, after
201 hearing thereon, the joint committee on administrative rules finds that such advisory opinion
202 is beyond or contrary to the statutory authority of the commission or is inconsistent with the
203 legislative intent of any law enacted by the general assembly, and after the general assembly,
204 by concurrent resolution, votes to adopt the findings and conclusions of the joint committee
205 on administrative rules. Any such concurrent resolution adopted by the general assembly
206 shall be published at length by the commission in its publication of advisory opinions of the
207 commission next following the adoption of such resolution, and a copy of such concurrent
208 resolution shall be maintained by the commission, along with the withdrawn advisory
209 opinion, in its public file of advisory opinions. The commission shall also send a copy of
210 such resolution to the person who originally requested the withdrawn advisory opinion. Any
211 advisory opinion issued by the ethics commission shall act as legal direction to any person
212 requesting such opinion and no person shall be liable for relying on the opinion and it shall
213 act as a defense of justification against prosecution. An advisory opinion of the commission
214 shall not be withdrawn unless:

- 215 (a) The authorizing statute is declared unconstitutional;
- 216 (b) The opinion goes beyond the power authorized by statute; or
- 217 (c) The authorizing statute is changed to invalidate the opinion.
- 218 (2) Upon request, the attorney general shall give the attorney general's opinion,
219 without fee, to the commission, any elected official of the state or any political subdivision,
220 any member of the general assembly, or any director of any department, division or agency of
221 the state, upon any question of law regarding the effect or application of sections 105.450 to
222 105.496, or chapter 130. Such opinion need be in writing only upon request of such official,
223 member or director, and in any event shall be rendered within sixty days that such request is
224 delivered to the attorney general.

225 17. The state auditor and the state auditor's duly authorized employees who have
226 taken the oath of confidentiality required by section 29.070 may audit the commission and in
227 connection therewith may inspect materials relating to the functions of the commission. Such
228 audit shall include a determination of whether appropriations were spent within the intent of
229 the general assembly, but shall not extend to review of any file or document pertaining to any

230 particular investigation, audit or review by the commission, an investigator or any staff or
231 person employed by the commission or under the supervision of the commission or an
232 investigator. The state auditor and any employee of the state auditor shall not disclose the
233 identity of any person who is or was the subject of an investigation by the commission and
234 whose identity is not public information as provided by law.

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

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