

FIRST REGULAR SESSION

# HOUSE BILL NO. 1313

## 101ST GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE BUTZ.

1413H.011

DANA RADEMAN MILLER, Chief Clerk

### AN ACT

To repeal sections 105.955, 105.957, 105.959, and 105.961, RSMo, and to enact in lieu thereof four 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Section A. Sections 105.955, 105.957, 105.959, and 105.961, RSMo, are repealed and  
2 four new sections enacted in lieu thereof, to be known as sections 105.955, 105.957, 105.959,  
3 and 105.961, to read as follows:

105.955. 1. A bipartisan "Missouri Ethics Commission", composed of six members, is  
2 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 or  
8 indirectly, shall not participate or interfere with the activities of the commission in any manner  
9 not specifically provided by law and shall not in any manner interfere with the budget request  
10 of or withhold any moneys appropriated to the commission by the general assembly. All  
11 members of the commission shall be appointed by the governor with the advice and consent of  
12 the senate from lists submitted pursuant to this section. Each congressional district committee  
13 of the political parties having the two highest number of votes cast for their candidate for  
14 governor at the last gubernatorial election shall submit two names of eligible nominees for  
15 membership on the commission to the governor, and the governor shall select six members from  
16 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 in  
18 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 section  
20 105.485 and shall provide the governor, the president pro tempore of the senate, and the  
21 commission with a list of all political contributions and the name of the candidate or committee,  
22 political party, or ~~[continuing]~~ **political action** committee, as defined in chapter 130, to which  
23 those contributions were made within the four-year period prior to such appointment, made by  
24 the 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 commission.  
27 In order to be an eligible nominee for membership on the commission, a person shall be a citizen  
28 and a resident of the state and shall have been a registered voter in the state for a period of at  
29 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 districts  
32 and three members from odd-numbered districts. Not more than three members of the  
33 commission shall be members of the same political party, nor shall more than one member be  
34 from any one United States congressional district. Not more than two members appointed from  
35 the even-numbered congressional districts shall be members of the same political party, and no  
36 more than two members from the odd-numbered congressional districts shall be members of the  
37 same political party. Of the members first appointed, the terms of the members appointed from  
38 the odd-numbered congressional districts shall expire on March 15, 1994, and the terms of the  
39 members appointed from the even-numbered congressional districts shall expire on March 15,  
40 1996. Thereafter all successor members of the commission shall be appointed for four-year  
41 terms. Terms of successor members of the commission shall expire on March fifteenth of the  
42 fourth year of their term. No member of the commission shall serve on the commission after the  
43 expiration of the member's term. No person shall be appointed to more than one full four-year  
44 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 of  
47 the vacancy or ninety days before the expiration of the term, the names of two eligible nominees  
48 for membership on the commission shall be submitted to the governor by the congressional  
49 district committees of the political party or parties of the vacating member or members, from the  
50 even- or odd-numbered congressional districts, based on the residence of the vacating member  
51 or members, other than from the congressional district committees from districts then represented  
52 on the commission and from the same congressional district party committee or committees

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

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

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

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

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

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

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

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

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

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

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

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

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

investigator is qualified or available to conduct a particular investigation, the commission may appoint a special investigator to conduct such particular investigation.

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

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

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

**(3) Conduct investigations as provided in subsection 2 of section 105.959;**

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

~~[(4)]~~ **(5)** Provide information and assistance to lobbyists, elected and appointed officials, and employees of the state and political subdivisions in carrying out the provisions of sections 105.450 to 105.496 and chapter 130;

~~[(5)]~~ **(6)** Make recommendations to the governor and general assembly or any state agency on the need for further legislation with respect to the ethical conduct of public officials and employees and to advise state and local government in the development of local government codes of ethics and methods of disclosing conflicts of interest as the commission may deem appropriate to promote high ethical standards among all elected and appointed officials or employees of the state or any political subdivision thereof and lobbyists;

~~[(6)]~~ **(7)** Render advisory opinions as provided by this section;

~~[(7)]~~ **(8)** Promulgate rules relating to the provisions of sections 105.955 to 105.963 and chapter 130. All rules and regulations issued by the commission shall be prospective only in operation;

~~[(8)]~~ **(9)** Request and receive from the officials and entities identified in subdivision (6) of section 105.450 designations of decision-making public servants.

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

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

(2) Administer oaths and affirmations;

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

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

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

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

assembly, and after the general assembly, by concurrent resolution, votes to adopt the findings and conclusions of the joint committee on administrative rules. Any such concurrent resolution adopted by the general assembly shall be published at length by the commission in its publication of advisory opinions of the commission next following the adoption of such resolution, and a copy of such concurrent resolution shall be maintained by the commission, along with the withdrawn advisory opinion, in its public file of advisory opinions. The commission shall also send a copy of such resolution to the person who originally requested the withdrawn advisory opinion. Any advisory opinion issued by the ethics commission shall act as legal direction to any person requesting such opinion and no person shall be liable for relying on the opinion and it shall act as a defense of justification against prosecution. An advisory opinion of the commission shall not be withdrawn unless:

- (a) The authorizing statute is declared unconstitutional;
- (b) The opinion goes beyond the power authorized by statute; or
- (c) The authorizing statute is changed to invalidate the opinion.

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

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

18. From time to time but no more frequently than annually the commission may request the officials and entities described in subdivision (6) of section 105.450 to identify for the commission in writing those persons associated with such office or entity which such office or entity has designated as a decision-making public servant. Each office or entity delineated in

231 subdivision (6) of section 105.450 receiving such a request shall identify those so designated  
232 within thirty days of the commission's request.

105.957. 1. The commission shall receive any complaints alleging violation of the  
2 provisions of:

3 (1) The requirements imposed on lobbyists by sections 105.470 to 105.478;

4 (2) The financial interest disclosure requirements contained in sections 105.483 to  
5 105.492;

6 (3) The campaign finance disclosure requirements contained in chapter 130;

7 (4) Any code of conduct promulgated by any department, division or agency of state  
8 government, or by state institutions of higher education, or by executive order;

9 (5) The conflict of interest laws contained in sections 105.450 to 105.468 and section  
10 171.181; and

11 (6) The provisions of the constitution or state statute or order, ordinance or resolution  
12 of any political subdivision relating to the official conduct of officials or employees of the state  
13 and political subdivisions.

14 2. Complaints filed with the commission shall be in writing and filed only by a natural  
15 person. The complaint shall contain all facts known by the complainant that have given rise to  
16 the complaint and the complaint shall be sworn to, under penalty of perjury, by the complainant.  
17 No complaint shall be investigated unless the complaint alleges facts which, if true, fall within  
18 the jurisdiction of the commission. Within five days after receipt ~~[of a complaint]~~ by the  
19 commission **of a complaint which is properly signed and notarized and which alleges facts**  
20 **which, if true, fall within the jurisdiction of the commission**, a copy of the complaint,  
21 including the name of the complainant, shall be delivered to the alleged violator.

22 3. No complaint shall be investigated which concerns alleged criminal conduct which  
23 allegedly occurred previous to the period of time allowed by law for criminal prosecution for  
24 such conduct. The commission may refuse to investigate any conduct which is the subject of  
25 civil or criminal litigation. The commission, its executive director or an investigator shall not  
26 investigate any complaint concerning conduct which is not criminal in nature which occurred  
27 more than two years prior to the date of the complaint. A complaint alleging misconduct on the  
28 part of a candidate for public office, other than those alleging failure to file the appropriate  
29 financial interest statements or campaign finance disclosure reports, shall not be accepted by the  
30 commission within sixty days prior to the primary election at which such candidate is running  
31 for office, and until after the general election.

32 4. If the commission finds that any complaint is frivolous in nature or finds no probable  
33 cause to believe that there has been a violation, the commission shall dismiss the case. For  
34 purposes of this subsection, "frivolous" shall mean a complaint clearly lacking any basis in fact



35 or law. Any person who submits a frivolous complaint shall be liable for actual and  
36 compensatory damages to the alleged violator for holding the alleged violator before the public  
37 in a false light. If the commission finds that a complaint is frivolous or that there is not probable  
38 cause to believe there has been a violation, the commission shall issue a public report to the  
39 complainant and the alleged violator stating with particularity its reasons for dismissal of the  
40 complaint. Upon such issuance, the complaint and all materials relating to the complaint shall  
41 be a public record as defined in chapter 610.

42 5. Complaints which allege violations as described in this section which are filed with  
43 the commission shall be handled as provided by section 105.961.

105.959. 1. The executive director of the commission, under the supervision of the  
2 commission, shall review reports and statements filed with the commission or other appropriate  
3 officers pursuant to sections 105.470, 105.483 to 105.492, and chapter 130 for completeness,  
4 accuracy and timeliness of filing of the reports or statements **and any records relating to the**  
5 **reports or statements**, and upon review, if there are reasonable grounds to believe that a  
6 violation has occurred, shall conduct an ~~[audit]~~ **investigation** of such reports ~~[and]~~ , statements,  
7 **and records and assign a special investigator following the provisions of subsection 1 of**  
8 **section 105.961.** ~~[All investigations by the executive director of an alleged violation shall be~~  
9 ~~strictly confidential with the exception of notification of the commission and the complainant~~  
10 ~~or the person under investigation. All investigations by the executive director shall be limited~~  
11 ~~to the information contained in the reports or statements. The commission shall notify the~~  
12 ~~complainant or the person under investigation, by registered mail, within five days of the~~  
13 ~~decision to conduct such investigation. Revealing any such confidential investigation~~  
14 ~~information shall be cause for removal or dismissal of the executive director or a commission~~  
15 ~~member or employee.]~~

16 2. (1) **If there are reasonable grounds to believe that a violation has occurred and**  
17 **after the commission unanimously votes to proceed with all six members voting, the**  
18 **executive director shall, without receipt of a complaint, conduct an independent**  
19 **investigation of any potential violations of:**

20 (a) **The requirements imposed on lobbyists by sections 105.470 to 105.478;**

21 (b) **The financial interest disclosure requirements in sections 105.483 to 105.492;**

22 (c) **The campaign finance disclosure requirements in chapter 130;**

23 (d) **Any code of conduct promulgated by any department, division, or agency of**  
24 **state government; by state institutions of higher education; or by executive order;**

25 (e) **Conflicts of interest governed by sections 105.450 to 105.468 and 171.181; and**

26           **(f) The provisions of the constitution or state statutes or order, ordinance, or**  
27 **resolution of any political subdivision relating to the conduct of officials or employees of**  
28 **the state and its political subdivisions.**

29           **(2) If an investigation conducted under this subsection fails to establish reasonable**  
30 **grounds to believe that a violation has occurred, the investigation shall be terminated and**  
31 **the person under investigation shall be notified of the reasons for the disposition of the**  
32 **complaint.**

33           **3.** Upon findings of the appropriate filing officer which are reported to the commission  
34 in accordance with the provisions of section 130.056, the executive director shall audit disclosure  
35 reports, statements and records pertaining to such findings within a reasonable time after receipt  
36 of the reports from the appropriate filing officer.

37           ~~[3. Upon a sworn written complaint of any natural person filed with the commission~~  
38 ~~pursuant to section 105.957, the commission shall audit and investigate alleged violations.~~  
39 ~~Within sixty days after receipt of a sworn written complaint alleging a violation, the executive~~  
40 ~~director shall notify the complainant in writing of the action, if any, the executive director has~~  
41 ~~taken and plans to take on the complaint. If an investigation conducted pursuant to this~~  
42 ~~subsection fails to establish reasonable grounds to believe that a violation has occurred, the~~  
43 ~~investigation shall be terminated and the complainant and the person who had been under~~  
44 ~~investigation shall be notified of the reasons for the disposition of the complaint.]~~

45           **4.** The commission may make such investigations and inspections within or outside of  
46 this state as are necessary to determine compliance.

47           **5.** ~~[If, during an audit or investigation, the commission determines that a formal~~  
48 ~~investigation is necessary, the commission shall assign the investigation to a special investigator~~  
49 ~~in the manner provided by subsection 1 of section 105.961.]~~ **The commission shall notify the**  
50 **person under investigation under this section, by registered mail, within five days of the**  
51 **decision to conduct an investigation and assign a special investigator following the**  
52 **provisions of subsection 1 of section 105.961.**

53           **6.** After completion of an ~~[audit or]~~ investigation, the executive director shall provide  
54 a detailed report of such ~~[audit or]~~ investigation to the commission. Upon determination that  
55 there are reasonable grounds to believe that a person has violated the requirements of sections  
56 105.470, 105.483 to 105.492, or chapter 130, by a vote of four members of the commission, the  
57 commission may refer the report with the recommendations of the commission to the appropriate  
58 prosecuting authority together with ~~[a copy of the audit and]~~ the details of the investigation by  
59 the commission as is provided in subsection 2 of section 105.961.

60           **7. All investigations by the executive director of an alleged violation shall be strictly**  
61 **confidential with the exception of notification of the commission, the complainant, and the**  
62 **person under investigation.**

105.961. 1. Upon receipt of a complaint as described by section 105.957 **or upon**  
2 **notification by the commission of an investigation under subsection 5 of section 105.959,**  
3 the commission shall assign the complaint **or investigation** to a special investigator, who may  
4 be a commission employee, who shall investigate and determine the merits of the complaint **or**  
5 **investigation.** Within ten days of such assignment, the special investigator shall review such  
6 complaint and disclose, in writing, to the commission any conflict of interest which the special  
7 investigator has or might have with respect to the investigation and subject thereof. Within ~~one~~  
8 ~~hundred twenty~~ **ninety** days of receipt of the complaint from the commission, the special  
9 investigator shall submit the special investigator's report to the commission. The commission,  
10 after review of such report, shall determine:

11           (1) That there is reasonable grounds for belief that a violation has occurred; or

12           (2) That there are no reasonable grounds for belief that a violation exists and the  
13 complaint ~~should~~ **or investigation shall** be dismissed; or

14           (3) That additional time is necessary to complete the investigation, and the status and  
15 progress of the investigation to date. The commission, in its discretion, may allow the  
16 investigation to proceed for **no more than two** additional successive periods of ~~one hundred~~  
17 ~~twenty~~ **ninety** days each, pending reports regarding the status and progress of the investigation  
18 at the end of each such period.

19           2. When the commission concludes, based on the report from the special investigator,  
20 or based on an ~~audit~~ **investigation** conducted pursuant to section 105.959, that there are  
21 reasonable grounds to believe that a violation of any criminal law has occurred, and if the  
22 commission believes that criminal prosecution would be appropriate upon a vote of four  
23 members of the commission, the commission shall refer the report to the Missouri office of  
24 prosecution services, prosecutors coordinators training council established in section 56.760,  
25 which shall submit a panel of five attorneys for recommendation to the court having criminal  
26 jurisdiction, for appointment of an attorney to serve as a special prosecutor; except that, the  
27 attorney general of Missouri or any assistant attorney general shall not act as such special  
28 prosecutor. The court shall then appoint from such panel a special prosecutor pursuant to section  
29 56.110 who shall have all the powers provided by section 56.130. The court shall allow a  
30 reasonable and necessary attorney's fee for the services of the special prosecutor. Such fee shall  
31 be assessed as costs if a case is filed, or ordered by the court if no case is filed, and paid together  
32 with all other costs in the proceeding by the state, in accordance with rules and regulations  
33 promulgated by the state courts administrator, subject to funds appropriated to the office of

34 administration for such purposes. If the commission does not have sufficient funds to pay a  
35 special prosecutor, the commission shall refer the case to the prosecutor or prosecutors having  
36 criminal jurisdiction. If the prosecutor having criminal jurisdiction is not able to prosecute the  
37 case due to a conflict of interest, the court may appoint a special prosecutor, paid from county  
38 funds, upon appropriation by the county or the attorney general to investigate and, if appropriate,  
39 prosecute the case. The special prosecutor or prosecutor shall commence an action based on the  
40 report by the filing of an information or seeking an indictment within sixty days of the date of  
41 such prosecutor's appointment, or shall file a written statement with the commission explaining  
42 why criminal charges should not be sought. If the special prosecutor or prosecutor fails to take  
43 either action required by this subsection, upon request of the commission, a new special  
44 prosecutor, who may be the attorney general, shall be appointed. The report may also be referred  
45 to the appropriate disciplinary authority over the person who is the subject of the report.

46 3. When the commission concludes, based on the report from the special investigator or  
47 based on an ~~audit~~ **investigation** conducted pursuant to section 105.959, that there are  
48 reasonable grounds to believe that a violation of any law has occurred which is not a violation  
49 of criminal law or that criminal prosecution is not appropriate, the commission shall conduct a  
50 hearing which shall be a closed meeting and not open to the public. The hearing shall be  
51 conducted pursuant to the procedures provided by sections 536.063 to 536.090 and shall be  
52 considered to be a contested case for purposes of such sections. The commission shall  
53 determine, in its discretion, whether or not that there is probable cause that a violation has  
54 occurred. If the commission determines, by a vote of at least four members of the commission,  
55 that probable cause exists that a violation has occurred, the commission may refer its findings  
56 and conclusions to the appropriate disciplinary authority over the person who is the subject of  
57 the report, as described in subsection [7] 8 of this section. ~~[After the commission determines by~~  
58 ~~a vote of at least four members of the commission that probable cause exists that a violation has~~  
59 ~~occurred, and the commission has referred the findings and conclusions to the appropriate~~  
60 ~~disciplinary authority over the person subject of the report, the subject of the report may appeal~~  
61 ~~the determination of the commission to the administrative hearing commission. Such appeal~~  
62 ~~shall stay the action of the Missouri ethics commission. Such appeal shall be filed not later than~~  
63 ~~the fourteenth day after the subject of the commission's action receives actual notice of the~~  
64 ~~commission's action.]~~

65 4. If the appropriate disciplinary authority receiving a report from the commission  
66 pursuant to subsection 3 of this section fails to follow, within sixty days of the receipt of the  
67 report, the recommendations contained in the report, or if the commission determines, by a vote  
68 of at least four members of the commission that some action other than referral for criminal

69 prosecution or for action by the appropriate disciplinary authority would be appropriate, the  
70 commission shall take any one or more of the following actions:

71 (1) Notify the person to cease and desist violation of any provision of law which the  
72 report concludes was violated and that the commission may seek judicial enforcement of its  
73 decision pursuant to subsection 5 of this section;

74 (2) Notify the person of the requirement to file, amend or correct any report, statement,  
75 or other document or information required by sections 105.473, 105.483 to 105.492, or chapter  
76 130 and that the commission may seek judicial enforcement of its decision pursuant to  
77 subsection 5 of this section; and

78 (3) File the report with the executive director to be maintained as a public document; or

79 (4) Issue a letter of concern or letter of reprimand to the person, which would be  
80 maintained as a public document; or

81 (5) Issue a letter that no further action shall be taken, which would be maintained as a  
82 public document; or

83 (6) Through reconciliation agreements or ~~[civil action]~~ **action of the commission**, the  
84 power to seek fees for violations in an amount not greater than one thousand dollars or double  
85 the amount involved in the violation.

86 5. Upon vote of at least four members, the commission may initiate formal judicial  
87 proceedings **in the circuit court of Cole County** seeking to obtain any of the following orders:

88 (1) Cease and desist violation of any provision of sections 105.450 to 105.496, or chapter  
89 130, or sections 105.955 to 105.963;

90 (2) Pay any civil penalties required by sections 105.450 to 105.496 or chapter 130;

91 (3) File any reports, statements, or other documents or information required by sections  
92 105.450 to 105.496, or chapter 130; or

93 (4) Pay restitution for any unjust enrichment the violator obtained as a result of any  
94 violation of any criminal statute as described in subsection 6 of this section.

95

96 ~~[The Missouri ethics commission shall give actual notice to the subject of the complaint of the~~  
97 ~~proposed action as set out in this section. The subject of the complaint may appeal the action~~  
98 ~~of the Missouri ethics commission, other than a referral for criminal prosecution, to the~~  
99 ~~administrative hearing commission. Such appeal shall stay the action of the Missouri ethics~~  
100 ~~commission. Such appeal shall be filed no later than fourteen days after the subject of the~~  
101 ~~commission's actions receives actual notice of the commission's actions.]~~

102 6. **After the commission determines by a vote of at least four members that a**  
103 **violation has occurred, other than a referral for criminal prosecution, and the commission**  
104 **has referred the findings and conclusions to the appropriate disciplinary authority over**

the person who is the subject of the report, or has taken action under subsection 4 of this section, the subject of the report may appeal the determination of the commission to the circuit court of Cole County. The court shall conduct a de novo review of the determination of the commission. Such appeal shall stay the action of the Missouri ethics commission. Such appeal shall be filed not later than the fourteenth day after the subject of the commission's action receives actual notice of the commission's action. If a petition for judicial review of a final order is not filed as provided in this section or when an order for fees under subsection 4 of this section becomes final following an appeal to the circuit court of Cole County, the commission may file a certified copy of the final order with the circuit court of Cole County. When any order for fees under subsection 4 of this section becomes final, the commission may file a certified copy of the final order with the circuit court of Cole County. The order so filed shall have the same effect as a judgment of the court and may be recorded, enforced, or satisfied in the same manner as a judgment of the court.

7. In the proceeding in the circuit court of Cole County, the commission may seek restitution against any person who has obtained unjust enrichment as a result of violation of any provision of sections 105.450 to 105.496, or chapter 130 and may recover on behalf of the state or political subdivision with which the alleged violator is associated, damages in the amount of any unjust enrichment obtained and costs and attorney's fees as ordered by the court.

[7.] 8. The appropriate disciplinary authority to whom a report shall be sent pursuant to subsection 2 or 3 of this section shall include, but not be limited to, the following:

(1) In the case of a member of the general assembly, the ethics committee of the house of which the subject of the report is a member;

(2) In the case of a person holding an elective office or an appointive office of the state, if the alleged violation is an impeachable offense, the report shall be referred to the ethics committee of the house of representatives;

(3) In the case of a person holding an elective office of a political subdivision, the report shall be referred to the governing body of the political subdivision;

(4) In the case of any officer or employee of the state or of a political subdivision, the report shall be referred to the person who has immediate supervisory authority over the employment by the state or by the political subdivision of the subject of the report;

(5) In the case of a judge of a court of law, the report shall be referred to the commission on retirement, removal and discipline, or if the inquiry involves an employee of the judiciary to the applicable presiding judge;

(6) In the case of a person holding an appointive office of the state, if the alleged violation is not an impeachable offense, the report shall be referred to the governor;

141 (7) In the case of a statewide elected official, the report shall be referred to the attorney  
142 general;

143 (8) In a case involving the attorney general, the report shall be referred to the prosecuting  
144 attorney of Cole County.

145 ~~[8-]~~ 9. The special investigator having a complaint referred to the special investigator  
146 by the commission shall have the following powers:

147 (1) To request and shall be given access to information in the possession of any person  
148 or agency which the special investigator deems necessary for the discharge of the special  
149 investigator's responsibilities;

150 (2) To examine the records and documents of any person or agency, unless such  
151 examination would violate state or federal law providing for confidentiality;

152 (3) To administer oaths and affirmations;

153 (4) Upon refusal by any person to comply with a request for information relevant to an  
154 investigation, an investigator may issue a subpoena for any person to appear and give testimony,  
155 or for a subpoena duces tecum to produce documentary or other evidence which the investigator  
156 deems relevant to a matter under the investigator's inquiry. The subpoenas and subpoenas duces  
157 tecum may be enforced by applying to a judge of the circuit court of Cole County or any county  
158 where the person or entity that has been subpoenaed resides or may be found, for an order to  
159 show cause why the subpoena or subpoena duces tecum should not be enforced. The order and  
160 a copy of the application therefor shall be served in the same manner as a summons in a civil  
161 action, and if, after hearing, the court determines that the subpoena or subpoena duces tecum  
162 should be sustained and enforced, the court shall enforce the subpoena or subpoena duces tecum  
163 in the same manner as if it had been issued by the court in a civil action; and

164 (5) To request from the commission such investigative, clerical or other staff assistance  
165 or advancement of other expenses which are necessary and convenient for the proper completion  
166 of an investigation. Within the limits of appropriations to the commission, the commission may  
167 provide such assistance, whether by contract to obtain such assistance or from staff employed  
168 by the commission, or may advance such expenses.

169 ~~[9-]~~ 10. (1) Any retired judge may request in writing to have the judge's name removed  
170 from the list of special investigators subject to appointment by the commission or may request  
171 to disqualify himself or herself from any investigation. Such request shall include the reasons  
172 for seeking removal;

173 (2) By vote of four members of the commission, the commission may disqualify a judge  
174 from a particular investigation or may permanently remove the name of any retired judge from  
175 the list of special investigators subject to appointment by the commission.

176       ~~[10-]~~ **11.** Any person who is the subject of any investigation pursuant to this section  
177 shall be entitled to be represented by counsel at any proceeding before the special investigator  
178 or the commission.

179       ~~[11-]~~ **12.** The provisions of sections 105.957, 105.959 and 105.961 are in addition to  
180 other provisions of law under which any remedy or right of appeal or objection is provided for  
181 any person, or any procedure provided for inquiry or investigation concerning any matter. The  
182 provisions of this section shall not be construed to limit or affect any other remedy or right of  
183 appeal or objection.

184       ~~[12-]~~ **13.** No person shall be required to make or file a complaint to the commission as  
185 a prerequisite for exhausting the person's administrative remedies before pursuing any civil cause  
186 of action allowed by law.

187       ~~[13-]~~ **14.** If, in the opinion of the commission, the complaining party was motivated by  
188 malice or reason contrary to the spirit of any law on which such complaint was based, in filing  
189 the complaint without just cause, this finding shall be reported to appropriate law enforcement  
190 authorities. Any person who knowingly files a complaint without just cause, or with malice, is  
191 guilty of a class A misdemeanor.

192       ~~[14-]~~ **15.** A respondent party who prevails in a formal judicial action brought by the  
193 commission shall be awarded those reasonable fees and expenses incurred by that party in the  
194 formal judicial action, unless the court finds that the position of the commission was  
195 substantially justified or that special circumstances make such an award unjust.

196       ~~[15-]~~ **16.** The special investigator and members and staff of the commission shall  
197 maintain confidentiality with respect to all matters concerning a complaint ~~[until and if a report~~  
198 ~~is filed with the commission]~~, with the exception of communications with any person which are  
199 necessary to the investigation. ~~[The report filed with the commission resulting from a complaint~~  
200 ~~acted upon under the provisions of this section shall not contain the name of the complainant or~~  
201 ~~other person providing information to the investigator, if so requested in writing by the~~  
202 ~~complainant or such other person.]~~ Any person who violates the confidentiality requirements  
203 imposed by this section or subsection 17 of section 105.955 ~~[required to be confidential]~~ is guilty  
204 of a class A misdemeanor and shall be subject to removal from or termination of employment  
205 by the commission.

206       ~~[16-]~~ **17.** Any judge of the court of appeals or circuit court who ceases to hold such  
207 office by reason of the judge's retirement and who serves as a special investigator pursuant to this  
208 section shall receive annual compensation, salary or retirement for such services at the rates of  
209 compensation provided for senior judges by subsections 1, 2 and 4 of section 476.682. Such  
210 retired judges shall by the tenth day of each month following any month in which the judge  
211 provided services pursuant to this section certify to the commission and to the state courts



212 administrator the amount of time engaged in such services by hour or fraction thereof, the dates  
213 thereof, and the expenses incurred and allowable pursuant to this section. The commission shall  
214 then issue a warrant to the state treasurer for the payment of the salary and expenses to the extent,  
215 and within limitations, provided for in this section. The state treasurer upon receipt of such  
216 warrant shall pay the same out of any appropriations made for this purpose on the last day of the  
217 month during which the warrant was received by the state treasurer.

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