

FIRST REGULAR SESSION

HOUSE BILL NO. 525

103RD GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE BUTZ.

1564H.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Section A. Sections 105.955, 105.957, 105.959, and 105.961, RSMo, are repealed
2 and four new sections enacted in lieu thereof, to be known as sections 105.955, 105.957,
3 105.959, and 105.961, to read as follows:

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.

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~~ **political action** committee, as defined in chapter
23 130, to which those contributions were made within the four-year period prior to such
24 appointment, made by the nominee, the nominee's spouse, or any business entity in which the
25 nominee has a substantial interest. The information shall be maintained by the commission
26 and available for public inspection during the period of time during which the appointee is a
27 member of the commission. In order to be an eligible nominee for membership on the
28 commission, a person shall be a citizen and a resident of the state and shall have been a
29 registered voter in the state for a period of at least five years preceding the person's
30 appointment.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

136 (2) Review and ~~audit~~ **investigate** any reports and statements required by the
137 campaign finance disclosure laws contained in chapter 130, and financial interest disclosure
138 laws or lobbyist registration and reporting laws as provided by sections 105.470 to 105.492,
139 for timeliness, accuracy and completeness of content as provided in sections 105.955 to
140 105.963;

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

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

149 ~~(4)~~ (5) Provide information and assistance to lobbyists, elected and appointed
150 officials, and employees of the state and political subdivisions in carrying out the provisions
151 of sections 105.450 to 105.496 and chapter 130;

152 ~~(5)~~ (6) Make recommendations to the governor and general assembly or any state
153 agency on the need for further legislation with respect to the ethical conduct of public
154 officials and employees and to advise state and local government in the development of local
155 government codes of ethics and methods of disclosing conflicts of interest as the commission
156 may deem appropriate to promote high ethical standards among all elected and appointed
157 officials or employees of the state or any political subdivision thereof and lobbyists;

158 ~~(6)~~ (7) Render advisory opinions as provided by this section;

159 ~~(7)~~ (8) Promulgate rules relating to the provisions of sections 105.955 to 105.963
160 and chapter 130. All rules and regulations issued by the commission shall be prospective
161 only in operation;

162 ~~(8)~~ (9) Request and receive from the officials and entities identified in subdivision
163 (6) of section 105.450 designations of decision-making public servants.

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

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

168 (2) Administer oaths and affirmations;

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

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

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

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

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

212 (a) The authorizing statute is declared unconstitutional;

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

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

215 (2) Upon request, the attorney general shall give the attorney general's opinion,
216 without fee, to the commission, any elected official of the state or any political subdivision,
217 any member of the general assembly, or any director of any department, division or agency of
218 the state, upon any question of law regarding the effect or application of sections 105.450 to
219 105.496, or chapter 130. Such opinion need be in writing only upon request of such official,
220 member or director, and in any event shall be rendered within sixty days ~~that~~ **after** such
221 request is delivered to the attorney general.

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

232 18. From time to time but no more frequently than annually the commission may
233 request the officials and entities described in subdivision (6) of section 105.450 to identify for
234 the commission in writing those persons associated with such office or entity which such
235 office or entity has designated as a decision-making public servant. Each office or entity
236 delineated in subdivision (6) of section 105.450 receiving such a request shall identify those
237 so designated 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
13 state and political subdivisions.

14 2. Complaints filed with the commission shall be in writing and filed only by a
15 natural person. The complaint shall contain all facts known by the complainant that have
16 given rise to the complaint and the complaint shall be sworn to, under penalty of perjury, by
17 the complainant. No complaint shall be investigated unless the complaint alleges facts which,
18 if true, fall within the jurisdiction of the commission. Within five days after receipt ~~of a~~
19 ~~complaint~~ **of a complaint properly signed and notarized that alleges**
20 **facts that, 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
28 the 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
30 the commission within sixty days prior to the primary election at which such candidate is
31 running for office, and until after the general election.

32 4. If the commission finds that any complaint is frivolous in nature or finds no
33 probable cause to believe that there has been a violation, the commission shall dismiss the
34 case. For purposes of this subsection, "frivolous" shall mean a complaint clearly lacking any
35 basis in fact or law. Any person who submits a frivolous complaint shall be liable for actual
36 and compensatory damages to the alleged violator for holding the alleged violator before the
37 public in a false light. If the commission finds that a complaint is frivolous or that there is not

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

16 2. (1) **If there are reasonable grounds to believe that a violation has occurred**
17 **and 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 violation 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 section**
26 **171.181; and**

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

30 (2) **If an investigation conducted under this subsection fails to establish**
31 **reasonable grounds to believe that a violation has occurred, the investigation shall be**

32 **terminated and the person under investigation shall be notified of the reasons for the**
33 **disposition of the complaint.**

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

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

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

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

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

61 **7. All investigations by the executive director of an alleged violation shall be**
62 **strictly confidential with the exception of notification of the commission, the**
63 **complainant, and the 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
5 **or investigation.** Within ten days of such assignment, the special investigator shall review

6 such complaint and disclose, in writing, to the commission any conflict of interest which the
7 special investigator has or might have with respect to the investigation and subject thereof.
8 Within [~~one hundred twenty~~] **ninety** days of receipt of the complaint from the commission,
9 the special investigator shall submit the special investigator's report to the commission. The
10 commission, 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
18 investigation 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
29 section 56.110 who shall have all the powers provided by section 56.130. The court shall
30 allow a reasonable and necessary attorney's fee for the services of the special prosecutor.
31 Such fee shall be assessed as costs if a case is filed, or ordered by the court if no case is filed,
32 and paid together with all other costs in the proceeding by the state, in accordance with rules
33 and regulations promulgated by the state courts administrator, subject to funds appropriated to
34 the office of administration for such purposes. If the commission does not have sufficient
35 funds to pay a special prosecutor, the commission shall refer the case to the prosecutor or
36 prosecutors having criminal jurisdiction. If the prosecutor having criminal jurisdiction is not
37 able to prosecute the case due to a conflict of interest, the court may appoint a special
38 prosecutor, paid from county funds, upon appropriation by the county or the attorney general
39 to investigate and, if appropriate, prosecute the case. The special prosecutor or prosecutor
40 shall commence an action based on the report by the filing of an information or seeking an
41 indictment within sixty days of the date of such prosecutor's appointment, or shall file a
42 written statement with the commission explaining why criminal charges should not be sought.

43 If the special prosecutor or prosecutor fails to take either action required by this subsection,
44 upon request of the commission, a new special prosecutor, who may be the attorney general,
45 shall be appointed. The report may also be referred to the appropriate disciplinary authority
46 over the person who is the subject of the report.

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

66 4. If the appropriate disciplinary authority receiving a report from the commission
67 pursuant to subsection 3 of this section fails to follow, within sixty days of the receipt of the
68 report, the recommendations contained in the report, or if the commission determines, by a
69 vote of at least four members of the commission that some action other than referral for
70 criminal prosecution or for action by the appropriate disciplinary authority would be
71 appropriate, the commission shall take any one or more of the following actions:

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

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

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

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

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

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

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

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

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

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

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

98

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

105 6. **After the commission determines by a vote of at least four members that a
106 violation has occurred, other than a referral for criminal prosecution, and the
107 commission has referred the findings and conclusions to the appropriate disciplinary
108 authority over the person who is the subject of the report or has taken action under
109 subsection 4 of this section, the subject of the report may appeal the determination of
110 the commission to the circuit court of Cole County. The court shall conduct a de novo
111 review of the determination of the commission. Such appeal shall stay the action of the
112 Missouri ethics commission. Such appeal shall be filed no later than the fourteenth day
113 after the subject of the commission's action receives actual notice of the commission's
114 action. If a petition for judicial review of a final order is not filed as provided in this
115 section or when an order for fees under subsection 4 of this section becomes final**

116 following an appeal to the circuit court of Cole County, the commission may file a
117 certified copy of the final order with the circuit court of Cole County. When any order
118 for fees under subsection 4 of this section becomes final, the commission may file a
119 certified copy of the final order with the circuit court of Cole County. The order so filed
120 shall have the same effect as a judgment of the court and may be recorded, enforced, or
121 satisfied in the same manner as a judgment of the court.

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

128 ~~[7-]~~ 8. The appropriate disciplinary authority to whom a report shall be sent pursuant
129 to subsection 2 or 3 of this section shall include, but not be limited to, the following:

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

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

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

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

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

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

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

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

149 ~~[8-]~~ 9. The special investigator having a complaint referred to the special investigator
150 by the commission shall have the following powers:

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

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

156 (3) To administer oaths and affirmations;

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

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

174 ~~[9-]~~ **10.** (1) Any retired judge may request in writing to have the judge's name
175 removed from the list of special investigators subject to appointment by the commission or
176 may request to disqualify himself or herself from any investigation. Such request shall
177 include the reasons for seeking removal;

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

181 ~~[10-]~~ **11.** Any person who is the subject of any investigation pursuant to this section
182 shall be entitled to be represented by counsel at any proceeding before the special investigator
183 or the commission.

184 ~~[11-]~~ **12.** The provisions of sections 105.957, 105.959 and 105.961 are in addition to
185 other provisions of law under which any remedy or right of appeal or objection is provided
186 for any person, or any procedure provided for inquiry or investigation concerning any matter.

187 The provisions of this section shall not be construed to limit or affect any other remedy or
188 right of appeal or objection.

189 ~~[12.]~~ **13.** No person shall be required to make or file a complaint to the commission as
190 a prerequisite for exhausting the person's administrative remedies before pursuing any civil
191 cause of action allowed by law.

192 ~~[13.]~~ **14.** If, in the opinion of the commission, the complaining party was motivated
193 by malice or reason contrary to the spirit of any law on which such complaint was based, in
194 filing the complaint without just cause, this finding shall be reported to appropriate law
195 enforcement authorities. Any person who knowingly files a complaint without just cause, or
196 with malice, is guilty of a class A misdemeanor.

197 ~~[14.]~~ **15.** A respondent party who prevails in a formal judicial action brought by the
198 commission shall be awarded those reasonable fees and expenses incurred by that party in the
199 formal judicial action, unless the court finds that the position of the commission was
200 substantially justified or that special circumstances make such an award unjust.

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

211 ~~[16.]~~ **17.** Any judge of the court of appeals or circuit court who ceases to hold such
212 office by reason of the judge's retirement and who serves as a special investigator pursuant to
213 this section shall receive annual compensation, salary or retirement for such services at the
214 rates of compensation provided for senior judges by subsections 1, 2 and 4 of section
215 476.682. Such retired judges shall by the tenth day of each month following any month in
216 which the judge provided services pursuant to this section certify to the commission and to
217 the state courts administrator the amount of time engaged in such services by hour or fraction
218 thereof, the dates thereof, and the expenses incurred and allowable pursuant to this section.
219 The commission shall then issue a warrant to the state treasurer for the payment of the salary
220 and expenses to the extent, and within limitations, provided for in this section. The state
221 treasurer upon receipt of such warrant shall pay the same out of any appropriations made for

222 this purpose on the last day of the month during which the warrant was received by the state
223 treasurer.

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