~~Indicates Matter Stricken~~

Indicates New Matter

AMENDED--NOT PRINTED IN THE HOUSE

May 19, 2016

Amt. No. 1A (3184C004.ggs.zw16)

**H. 3184**

Introduced by Reps. Pope, Cole, Anderson, Bales, G.A. Brown, R.L. Brown, Finlay, Funderburk, Hart, Knight, Lucas, Murphy, Newton, Norman, Norrell, Putnam, Rivers, Southard, Spires, Tallon, Taylor, Wells, Williams, Willis, Bernstein, Long, Douglas, Henderson, G.M. Smith, G.R. Smith, McCoy, McKnight, Clary, M.S. McLeod, Thayer, W.J. McLeod, Weeks, J.E. Smith and Stavrinakis

S. Printed 4/27/16--S.

Read the first time January 29, 2015.

**A** **BILL**

TO AMEND SECTION 8‑13‑310, AS AMENDED, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE STATE ETHICS COMMISSION AND ITS MEMBERSHIP, SO AS TO RECONSTITUTE THE MEMBERSHIP OF THE COMMISSION EFFECTIVE JULY 1, 2015, TO CONSIST OF FOUR MEMBERS APPOINTED BY THE GOVERNOR, FOUR MEMBERS ELECTED BY THE SUPREME COURT, TWO MEMBERS ELECTED BY THE HOUSE OF REPRESENTATIVES, AND TWO MEMBERS ELECTED BY THE SENATE, RESPECTIVELY, TO PROVIDE FOR THE QUALIFICATIONS OF THESE MEMBERS, TO PROVIDE FOR OFFICERS OF THE COMMISSION, AND TO PROVIDE FOR THE MEMBERS’ TERMS OF OFFICE AND MANNER OF THEIR REMOVAL UNDER CERTAIN CONDITIONS; TO AMEND SECTION 8‑13‑320, AS AMENDED, RELATING TO THE DUTIES, POWERS, AND PROCEDURES OF THE STATE ETHICS COMMISSION, SO AS TO REVISE THESE DUTIES, POWERS, AND PROCEDURES INCLUDING PROVISIONS TO VEST WITH THE COMMISSION THE ADDITIONAL RESPONSIBILITY TO INITIATE OR RECEIVE COMPLAINTS AGAINST MEMBERS OF THE GENERAL ASSEMBLY, ITS STAFF, AND CANDIDATES FOR ELECTION TO THE GENERAL ASSEMBLY, TO INITIATE OR RECEIVE COMPLAINTS AGAINST JUDGES AND OTHER JUDICIAL OFFICIALS OF THE UNIFIED JUDICIAL SYSTEM AND THEIR STAFFS, TO PROVIDE FOR THE INVESTIGATION AND PROCESSING OF COMPLAINTS AGAINST GENERAL ASSEMBLY MEMBERS, STAFF, AND CANDIDATES PURSUANT TO SPECIFIED PROCEDURES AND FOR THE REFERRAL OF SUBSTANTIVE COMPLAINTS TO THE APPROPRIATE HOUSE OR SENATE ETHICS COMMITTEES FOR DISPOSITION TOGETHER WITH THE ETHICS COMMISSION’S RECOMMENDATION AS TO WHETHER OR NOT THERE IS PROBABLE CAUSE TO BELIEVE A VIOLATION HAS OCCURRED, TO PROVIDE FOR THE INVESTIGATION AND PROCESSING OF COMPLAINTS AGAINST JUDGES AND OTHER JUDICIAL OFFICIALS OR THEIR STAFF PURSUANT TO SPECIFIED PROCEDURES AND, AFTER INVESTIGATION, FOR THE REFERRAL OF SUBSTANTIVE COMPLAINTS TO THE COMMISSION ON JUDICIAL CONDUCT AND THE SUPREME COURT FOR DISPOSITION TOGETHER WITH THE ETHICS COMMISSION’S RECOMMENDATION AS TO WHETHER OR NOT THERE IS PROBABLE CAUSE TO BELIEVE A VIOLATION HAS OCCURRED; TO AMEND SECTIONS 8‑13‑530 AND 8‑13‑540, BOTH AS AMENDED, RELATING TO THE DUTIES, FUNCTIONS, AND PROCEDURES OF THE HOUSE AND SENATE ETHICS COMMITTEES, SO AS TO REVISE THESE DUTIES, FUNCTIONS, AND PROCEDURES IN ORDER TO BE CONSISTENT WITH THE ABOVE PROVISIONS AND TO MAKE OTHER CHANGES; BY ADDING SECTION 8‑13‑545 SO AS TO AUTHORIZE THE HOUSE OR SENATE ETHICS COMMITTEES TO ISSUE FORMAL ADVISORY OPINIONS AND PROVIDE FOR THEIR EFFECT AND APPLICABILITY; AND BY ADDING ARTICLE 6 TO CHAPTER 13, TITLE 8 SO AS TO PROVIDE FOR JUDICIAL COMPLAINT PROCEDURES IN REGARD TO THE ABOVE PROVISIONS.

Amend Title To Conform

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Article 3, Chapter 13, Title 8 of the 1976 Code is amended by adding:

“Section 8-13-322. It is unlawful for the Governor, a member of the General Assembly, or anyone who is the subject of a pending investigation or open complaint, to contact or attempt to contact, either directly or indirectly, a member of the commission or a legislative ethics committee to influence or attempt to influence the outcome of a pending investigation or open complaint.”

SECTION 2. Article 5, Chapter 13, title 8 of the 1976 Code is amended by adding:

“Section 8‑13‑535. (A) The committee, may issue a formal advisory opinion, based on real or hypothetical sets of circumstances. In considering and formulating an advisory opinion either legislative ethics committee shall consider its previous opinions, the relevant opinions of the other legislative ethics committee, as well as relevant opinions issued by the commission in an attempt to create uniformity among the bodies. A formal advisory opinion issued by the committee is binding on the committee, until amended or revoked, in any subsequent charges concerning the person who requested the formal opinion and any other person who acted in reliance upon it in good faith, unless material facts were omitted or misstated by the person in the request for the opinion. A formal advisory opinion must be in writing and is considered rendered when approved by a majority of the committee members subscribing to the advisory opinion. Advisory opinions must be made available to the public unless the committee, by majority vote of the total membership of the committee, requires an opinion to remain confidential. However, the identities of the parties involved must be withheld upon request.

(B) The appropriate ethics committee only may issue formal advisory opinions for public officials, public members, and public employees for which it has proper jurisdiction to make findings of fact and impose penalties pursuant to this chapter.

(C) The appropriate ethics committee must consider whether a person relied in good faith upon a formal advisory opinion or written informal staff opinion when considering a finding of misconduct.”

SECTION 3. Section 8‑13‑130 of the 1976 Code, as added by Act 353 of 2008, is further amended to read:

“Section 8‑13‑130 (A) The State Ethics Commission, Senate Ethics Committee, and House of Representatives Ethics Committee may levy an enforcement or administrative fee on a person who is found in violation, or who admits to a violation, ~~of the “Ethics, Government Accountability and Campaign Reform Act of 1991”~~ pursuant to Title 2 or Title 8. The fee must be used to reimburse the commission, the appropriate legislative Ethics Committee, or combination thereof, for costs associated with the investigation and hearing of a violation. The costs associated include:

(1) the investigator’s time;

(2) mileage, meals, and lodging;

(3) the prosecutor’s time;

(4) the hearing panel’s travel, per diem, and meals;

(5) administrative time;

(6) subpoena costs to include witness fees and mileage; and

(7) miscellaneous costs such as postage and supplies.

~~This fee is~~ These fees and costs are in addition to any fines as otherwise provided by law.”

SECTION 4. Section 8‑13‑310 of the 1976 Code, as last amended by Act 279 of 2012, is further amended to read:

“Section 8‑13‑310. ~~(A)~~ ~~The State Ethics Commission as constituted under law in effect before July 1, 1992, is reconstituted to continue in existence with the appointment and qualification of the at‑large members as prescribed in this section and with the changes in duties and powers as prescribed in this chapter. On July 1, 1993, when the duties and powers given to the Secretary of State in Chapter 17 of Title 2 are transferred to the State Ethics Commission, the Code Commissioner is directed to change all references to ‘this chapter’ in Article 3 of Chapter 13 of Title 8 to ‘this chapter and Chapter 17 of Title 2’.~~

~~(B)~~(A)(1) There is created the State Ethics Commission composed of ~~nine~~ eight members who must be appointed in the following manner:

(a) four members must be appointed by the Governor, ~~upon the advice and consent of the General Assembly.~~ no more than two of whom are members of the appointing Governor’s political party;

(b) two members must be selected by the Senate, one upon the recommendation of the members of the majority political party in the Senate and one upon the recommendation of the members of the largest minority political party in the Senate;

(c) two members must be selected by the House of Representatives, one upon the recommendation of the members of the majority political party in the House and one upon the recommendation of the members of the largest minority political party in the House.

Each member must be appointed with the advice and consent of the General Assembly. ~~One member shall represent each of the seven congressional districts, and two members must be appointed from the State at large.~~

(2) The terms of the members serving on the State Ethics Commission as of March 30, 2017, shall end on March 31, 2017. A member who is serving at that time and who has not completed a full five-year term may be reappointed pursuant to this subsection. The initial appointments for service to begin on April 1, 2017, must be made as follows:

(a) two members appointed by the Governor must be appointed for a three-year term;

(b) two members appointed by the Governor must be appointed for a five-year term;

(c) one member appointed by the Senate upon the recommendation of the members of the majority political party in the Senate shall serve a three-year term;

(d) one member appointed by the Senate upon the recommendation of the members of the largest minority political party of the Senate must be appointed for a five-year term;

(e) one member appointed by the House upon the recommendation of the members of the majority political party of the House of Representatives must be appointed for a five-year term; and

(f) one member appointed by the House upon the recommendation of the members of the largest minority political party of the House of Representatives must be appointed for a three-year term.

The initial members who have served terms that are less than five years are eligible to be reappointed for one full five-year term.

(B)(1) In addition to other information that may be requested, candidates for appointment must provide the following information to the appointing authority, which must be shared with the General Assembly during the confirmation process:

(a) The candidate’s membership in any civic, charitable, or social groups within the previous four years;

(b) A contribution made by the candidate to a candidate for Governor, the Lieutenant Governor, or a member of the General Assembly within the previous four years; and

(c) A contribution, as defined in 8‑13‑1300(9), made by the candidate within the previous four years to a candidate as defined in 8‑13‑100(5).

(2) The appointing authorities shall make their appointments based on merit. However, in making appointments to the commission, the appointing authorities shall ensure that race, color, gender, national origin, and other demographic factors are considered to ensure the geographic and political balance of the appointments, and shall strive to assure that the membership of the commission will represent, to the greatest extent possible, all segments of the population of the State.

(3) The following are not eligible to serve on the State Ethics Commission:

(a) a member of the General Assembly;

(b) a former member of the General Assembly within eight years following the termination of his service in the General Assembly;

(c) a family member, as defined by Section 8‑13‑100(15), of a member of the General Assembly or the Governor, Lieutenant Governor or other statewide elected official;

(d) a person who made a campaign contribution, as defined by Section 8‑13‑1300(7), within the previous four years to the Governor who appointed the person to serve on the State Ethics Commission, as well as that Governor’s Lieutenant Governor;

(e) a person who registered as a lobbyist within four years of being appointed to the State Ethics Commission;

(f) a person who is under the jurisdiction of the State Ethics Commission, House of Representatives Ethics Committee, or Senate Ethics Committee.

~~No member of the General Assembly or other public official must be eligible to serve on the State Ethics Commission.~~

~~The Governor shall make the appointments based on merit regardless of race, color, creed, or gender and shall strive to assure that the membership of the commission is representative of all citizens of the State of South Carolina.~~

(C) The terms of the members are for five years ~~and until their successors are appointed and qualify. The members of the State Ethics Commission serving on this chapter’s effective date may continue to serve until the expiration of their terms. These members may then be appointed to serve one full five‑year term under the provisions of this chapter. Members representing the first, third, and sixth congressional districts on this chapter’s effective date are eligible to be appointed for a full five‑year term in or after 1991. Members currently representing the second, fourth, and fifth congressional districts on this chapter’s effective date are eligible to be appointed for a full five‑year term in or after 1993. The initial appointments for the at large members of the commission created by this chapter must be for a one‑, two‑, or three‑year term, but these at‑large members are eligible subsequently for a full five‑year term. Under this section, the at‑large members of the commission are to be appointed to begin service on or after July 1, 1992.~~ Vacancies must be filled in the manner of the original appointment for the unexpired portion of the term only. Members of the commission who serve less than a full five‑year term may be reappointed for one full five‑year term. Members of the commission who have completed a full five‑year term are not eligible for reappointment. A member shall not serve on the commission in hold‑over status after the member’s term expires. An appointee shall not serve on the commission, even in interim capacity, until he has been confirmed by the General Assembly.

(D) The commission shall elect a chairman, vice‑chairman, and such other officers as it considers necessary. Fivemembers of the commission shall constitute a quorum. The commission ~~must~~ shall adopt a policy concerning the attendance of its members at commission meetings. The commission meets at the call of the chairman or a majority of its members. Members of the commission, while serving on business of the commission, receive per diem, mileage, and subsistence as provided by law for members of state boards, committees, and commissions.

(E)(1) A commission member appointed by the Governor may be removed from office by the Governor for malfeasance, misfeasance, incompetency, absenteeism, conflicts of interest, misconduct, persistent neglect of duty in office, or incapacity pursuant to Section 1‑3‑240.

(2) A commission member appointed by the Senate may be removed for malfeasance, misfeasance, incompetency, absenteeism, conflicts of interest, misconduct, persistent neglect of duty in office, or incapacity upon a vote of two‑thirds of the membership of the Senate.

(3) A commission member appointed by the House of Representatives may be removed for malfeasance, misfeasance, incompetency, absenteeism, conflicts of interest, misconduct, persistent neglect of duty in office, or incapacity upon a vote of two‑thirds of the membership of the House of Representatives.”

SECTION 5. Section 8‑13‑320(9) of the 1976 Code, as last amended by Act 245 of 2008, is further amended to read:

“(9) to initiate or receive complaints and make investigations, as provided in item (10), or as provided in Section 8‑13‑540, as appropriate, of statements filed or allegedly failed to be filed ~~under~~ pursuant to the provisions of this chapter and Chapter 17, ~~of~~ Title 2 and, upon complaint by an individual, of an alleged violation of this chapter or Chapter 17, ~~of~~ Title 2 by a public official, public member, or public employee ~~except members or staff, including staff elected to serve as officers of or candidates for the General Assembly unless otherwise provided for under House or Senate rules~~. ~~Any~~ A person charged with a violation of this chapter or Chapter 17, ~~of~~ Title 2 is entitled to the administrative hearing process contained in this section or in Article 5 of this chapter, as appropriate.

(a) The commission may commence an investigation on the filing of a complaint by an individual or by the commission, as provided in item (10)(d), upon a majority vote of the total membership of the commission.

(b)(1) ~~No~~ A complaint may not be accepted by the commission concerning a candidate for elective office during the fifty‑day period before an election in which he is a candidate. During this fifty‑day period, ~~any~~ a person may petition the court of common pleas alleging the violations complained of and praying for appropriate relief by way of mandamus or injunction, or both. Within ten days, a rule to show cause hearing must be held, and the court ~~must either~~ either shall dismiss the petition or direct that a mandamus order or an injunction, or both, be issued. A violation of this chapter by a candidate during this fifty‑day period must be considered to be an irreparable injury for which no adequate remedy at law exists. The institution of an action for injunctive relief does not relieve ~~any~~ a party to the proceeding from any penalty prescribed for violations of this chapter. The court ~~must~~ shall award reasonable attorneys fees and costs to the nonpetitioning party if a petition for mandamus or injunctive relief is dismissed based upon a finding that the:

(i) petition is being presented for an improper purpose such as harassment or to cause delay;

(ii) claims, defenses, and other legal contentions are not warranted by existing law or are based upon a frivolous argument for the extension, modification, or reversal of existing law or the establishment of new law; and

(iii) allegations and other factual contentions do not have evidentiary support or, if specifically so identified, are not likely to have evidentiary support after reasonable opportunity for further investigation or discovery.

(2) Action on a complaint filed against a candidate which was received more than fifty days before the election but which cannot be disposed of or dismissed by the commission at least thirty days before the election must be postponed until after the election.

(c) If an alleged violation is found to be groundless by the commission, the entire matter must be stricken from public record. If the commission finds that the complaining party wilfully filed a groundless complaint, the finding must be reported to the Attorney General. The wilful filing of a groundless complaint is a misdemeanor and, upon conviction, a person must be fined not more than one thousand dollars or imprisoned not more than one year. In lieu of the criminal penalty provided by this item, a civil penalty of not more than one thousand dollars may be assessed against the complainant upon proof, by a preponderance of the evidence, that the filing of the complaint was wilful and without just cause or with malice. In addition to any civil or criminal penalties, the filer of the groundless complaint may be ordered to reimburse the commission for the commission’s costs associated with the investigation and disposition of the complaint.

(d) Action may not be taken on a complaint filed more than four years after the violation is alleged to have occurred unless a person, by fraud or other device, prevents discovery of the violation. The Attorney General may initiate an action to recover a fee, compensation, gift, or profit received by a person as a result of a violation of the chapter no later than one year after a determination by the commission that a violation of this chapter has occurred;”

SECTION 6. Section 8‑13‑320(10)(d) of the 1976 Code is amended to read:

“(d) If the commission, upon the receipt of any information, finds probable cause to believe that a violation of the chapter has occurred, it may, upon its own motion and an affirmative vote of ~~the majority of the total membership~~ six or more members of the commission, file a verified complaint, in writing, that states the name of the person alleged to have committed a violation of this chapter and the particulars of the violation. The commission shall forward a copy of the complaint, a general statement of the applicable law with respect to the complaint, and a statement explaining the due process rights of the respondent including, but not limited to, the right to counsel to the respondent within ten days of the filing of the complaint.”

SECTION 7. Section 8‑13‑320(10)(g) of the 1976 Code, as last amended by Act 1 of 2011, is further amended to read:

“(g) All investigations, inquiries, hearings, and accompanying documents ~~must remain~~ are confidential and may only be released pursuant to this section ~~until a finding of probable cause or dismissal unless the respondent waives the right to confidentiality~~.

(i) After a dismissal following a finding of probable cause, except for dismissal pursuant to item (10)(b) or a technical violation pursuant to Section 8-13-1170 or 8-13-1372, the following documents become public record: the complaint, the response by the respondent, and the notice of dismissal.

(ii) After a finding of probable cause, except for a technical violation pursuant to Section 8‑13‑1170 or 8‑13‑1372, the following documents become public record: the complaint, the response by the respondent, and the notice of hearing. If a hearing is held on the matter, the final order and all exhibits introduced at the hearing shall become public record upon issuance of the final order by the commission. Exhibits introduced must be redacted prior to release to exclude personal information where the public disclosure would constitute an unreasonable invasion of personal privacy. In the event a hearing is not held on a matter after a finding of probable cause, the final disposition of the matter becomes public record.

The respondent or his counsel, by written notice, may waive the confidentiality requirement. The commission shall not accept any partial waivers. The wilful release of confidential information is a misdemeanor, and ~~any~~ a person releasing such confidential information, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than one year.”

SECTION 8. Section 8‑13‑320(10)(i) of the 1976 Code is amended to read:

“(i) At the conclusion of its investigation, the commission staff, in a preliminary written decision with findings of fact and conclusions of law, must make a recommendation whether probable cause exists to believe that a violation of this chapter has occurred. If the commission determines that probable cause does not exist, it shall send a written decision with findings of fact and conclusions of law to the respondent and the complainant. If the commission determines, by an affirmative vote of six or more commission members, that there is probable cause to believe that a violation has been committed, its preliminary decision may contain an order setting forth a date for a hearing before a panel of three commissioners, selected at random, to determine whether a violation of the chapter has occurred. If the commission finds probable cause, by an affirmative vote of six or more commission members, to believe that a violation of this chapter has occurred, the commission may waive further proceedings if the respondent takes action to remedy or correct the alleged violation. Probable cause is a finding that the allegations contained in the complaint are more likely than not to have occurred and constitute a violation of this chapter or chapter 17, Title 2.”

SECTION 9. Section 8‑13‑320(10)(j) of the 1976 Code is amended to read:

“(j) If a hearing is to be held, the respondent must be allowed to examine and make copies of all evidence in the commission’s possession relating to the charges. The same discovery techniques which are available to the commission must be equally available to the respondent, including the right to request the commission to subpoena witnesses or materials and the right to conduct depositions as prescribed by subitem (f). A panel of three commissioners must conduct a hearing in accordance with Chapter 23, ~~of~~ Title 1 (Administrative Procedures Act), except as otherwise expressly provided. Panel action requires the participation of the three panel members. During a commission panel hearing conducted to determine whether a violation of the chapter has occurred, the respondent must be afforded appropriate due process protections, including the right to be represented by counsel, the right to call and examine witnesses, the right to introduce exhibits, and the right to cross‑examine opposing witnesses. All evidence, including records the commission considers, must be offered fully and made a part of the record in the proceedings. The hearings must be ~~held in executive session unless the respondent requests an open hearing~~ open to the public.”

SECTION 10. Section 8‑13‑320(11) of the 1976 Code is amended to read:

“(11) ~~to issue, upon request from persons covered by this chapter, and publish advisory opinions on the requirements of this chapter, based on real or hypothetical sets of circumstances; provided, that an opinion rendered by the commission, until amended or revoked, is binding on the commission in any subsequent charges concerning the person who requested the opinion and who acted in reliance on it in good faith unless material facts were omitted or misstated by the person in the request for the opinion. Advisory opinions must be in writing and are considered rendered when approved by five or more commission members subscribing to the advisory opinion. Advisory opinions must be made available to the public unless the commission, by majority vote of the total membership of the commission, requires an opinion to remain confidential. However, the identities of the parties involved must be withheld upon request;~~

(a) The commission may issue a formal advisory opinion, based on real or hypothetical sets of circumstances. In considering and formulating an advisory opinion, the commission shall consider its previous opinions as well as relevant opinions issued by either legislative ethics committee in an attempt to create uniformity among the bodies. A formal advisory opinion issued by the commission is binding on the commission, until amended or revoked, in any subsequent charges concerning the person who requested the formal opinion and any other person who acted in reliance upon it in good faith, unless material facts were omitted or misstated by the person in the request for the opinion. A formal advisory opinion must be in writing and is considered rendered when approved by a majority of the commission members subscribing to the advisory opinion. Advisory opinions must be made available to the public unless the commission, by majority vote of the total membership of the commission, requires an opinion to remain confidential. However, the identities of the parties involved must be withheld upon request.

(b) The commission only may issue formal advisory opinions for public officials, public members, and public employees for which it has proper jurisdiction to make findings of fact and impose penalties pursuant to this chapter.

(c) The commission must consider whether a person relied in good faith upon a formal advisory opinion or written informal staff opinion when considering a determination of probable cause and when considering a finding of misconduct.”

SECTION 11. Section 8‑13‑530 of the 1976 Code, as last amended by Act 245 of 2008, is further amended to read:

“Section 8‑13‑530. Each ethics committee shall:

(1) ascertain whether a person has failed to comply fully and accurately with the disclosure requirements of this chapter, which may include, but is not limited to, an audit of filed reports and applicable campaign bank statements, and to promptly notify the person to file the necessary notices and reports to satisfy the requirements of this chapter;

(2) receive complaints filed by individuals and, upon a majority vote of the total membership of the committee, file complaints when alleged violations are identified;

(3) upon the filing of a complaint~~, investigate possible violations of breach of a privilege governing a member or staff of the appropriate house, the alleged breach of a rule governing a member of, legislative caucus committees for, or a candidate, or staff for the appropriate house, misconduct of a member or staff of, legislative caucus committees for, or a candidate for the appropriate house, or a violation of this chapter or Chapter 17 of Title 2~~ alleging a violation by a member or staff of the appropriate house, or a member or staff of a legislative caucus committee, or a candidate for the appropriate house, for a violation of this chapter or Chapter 17, Title 2, other than a violation of a rule of the appropriate house, the ethics committee shall refer the complaint to the State Ethics Commission for an investigation pursuant to Section 8‑13‑540;

(4) receive, investigate, and hear a complaint which alleges a possible violation of a breach of a privilege or a rule governing a member or staff of the appropriate house or legislative caucus committee, or candidate for the appropriate house~~, the alleged breach of a rule governing a member or staff of or candidate for the appropriate house, misconduct of a member or staff of or candidate for the appropriate house, or a violation of this chapter or Chapter 17 of Title 2.~~;

(5) ~~no~~ a complaint may not be accepted by the ethics committee concerning a member of or candidate for the appropriate house during the fifty‑day period before an election in which the member or candidate is a candidate. During this fifty‑day period, ~~any~~ a person may petition the court of common pleas alleging the violations complained of and praying for appropriate relief by way of mandamus or injunction, or both. Within ten days, a rule to show cause hearing must be held, and the court either must dismiss the petition or direct that a mandamus order or an injunction, or both, be issued. A violation of this chapter by a candidate during this fifty‑day period must be considered to be an irreparable injury for which no adequate remedy at law exists. The institution of an action for injunctive relief does not relieve any party to the proceeding from any penalty prescribed for violations of this chapter. The court must award reasonable attorney’s fees and costs to the nonpetitioning party if a petition for mandamus or injunctive relief is dismissed based upon a finding that the:

(i) petition is being presented for an improper purpose such as harassment or to cause delay;

(ii) claims, defenses, and other legal contentions are not warranted by existing law or are based upon a frivolous argument for the extension, modification, or reversal of existing law or the establishment of new law; and

(iii) allegations and other factual contentions do not have evidentiary support or, if specifically so identified, are not likely to have evidentiary support after reasonable opportunity for further investigation or discovery.

Action on a complaint filed against a member or candidate which was received more than fifty days before the election but which cannot be disposed of or dismissed by the ethics committee at least thirty days before the election must be postponed until after the election;

~~(5)~~(6) obtain information, ~~and~~ investigate technical violation complaints, and hear complaints as provided in Section 8‑13‑540 with respect to any complaint filed pursuant to this chapter or Chapter 17, ~~of~~ Title 2 and to that end may compel by subpoena issued by a majority vote of the committee the attendance and testimony of witnesses and the production of pertinent books and papers;

~~(6)~~(7) administer or recommend sanctions appropriate to a particular member, or staff of, or candidate for, the appropriate house pursuant to Section 8‑13‑540, including the recovery of the value of anything transferred or received in breach of the ethical standards, or dismiss the charges; and

~~(7)~~(8) act as an advisory body to the General Assembly and to individual members of or candidates for the appropriate house on questions pertaining to the disclosure and filing requirements of members of or candidates for the appropriate house, and may issue, upon request from a member or staff of the appropriate house, or legislative caucus committee, or candidate for the appropriate house, and publish advisory opinions on the requirements of these chapters.”

SECTION 12. Section 8‑13‑540 of the 1976 Code, as last amended by Act 184 of 1993, is further amended to read:

“Section 8‑13‑540. ~~Unless otherwise provided for by House or Senate rule, as appropriate, each ethics committee must conduct its investigation of a complaint filed pursuant to this chapter or Chapter 17 of Title 2 in accordance with this section.~~

~~(1)~~ ~~When a complaint is filed with or by the ethics committee, a copy must promptly be sent to the person alleged to have committed the violation. If the ethics committee determines the complaint does not allege facts sufficient to constitute a violation, the complaint must be dismissed and the complainant and respondent notified. If the ethics committee finds that the complaining party wilfully filed a groundless complaint, the finding must be reported to appropriate law enforcement authorities. The wilful filing of a groundless complaint is a misdemeanor and, upon conviction, a person must be fined not more than one thousand dollars or imprisoned not more than one year. In lieu of the criminal penalty provided by this subsection, a civil penalty of not more than one thousand dollars may be assessed against the complainant upon proof, by a preponderance of the evidence, that the filing of the complaint was wilful and without just cause or with malice. If the ethics committee determines the complaint alleges facts sufficient to constitute a violation, it shall promptly investigate the alleged violation and may compel by subpoena the attendance and testimony of witnesses and the production of pertinent books and papers.~~

~~If after such preliminary investigation, the ethics committee finds that probable cause exists to support an alleged violation, it shall, as appropriate:~~

~~(a)~~ ~~render an advisory opinion to the respondent and require the respondent’s compliance within a reasonable time; or~~

~~(b)~~ ~~convene a formal hearing on the matter within thirty days of the respondent’s failure to comply with the advisory opinion. All ethics committee investigations and records relating to the preliminary investigation are confidential. No complaint shall be accepted which is filed later than four years after the alleged violation occurred.~~

~~(2)~~ ~~If a hearing is to be held, the respondent must be allowed to examine and make copies of all evidence in the ethics committee’s possession relating to the charges. At the hearing the charged party must be afforded appropriate due process protections, including the right to be represented by counsel, the right to call and examine witnesses, the right to introduce exhibits, and the right to cross‑examine opposing witnesses. All hearings must be conducted in executive session.~~

~~(3)~~ ~~After the hearing, the ethics committee shall determine its findings of fact. If the ethics committee, based on competent and substantial evidence, finds the respondent has violated this chapter or Chapter 17 of Title 2, it shall:~~

~~(a)~~ ~~administer a public or private reprimand;~~

~~(b)~~ ~~determine that a technical violation as provided for in Section 8‑13‑1170 has occurred;~~

~~(c)~~ ~~recommend expulsion of the member; and/or,~~

~~(d)~~ ~~in the case of an alleged criminal violation, refer the matter to the Attorney General for investigation. The ethics committee shall report its findings in writing to the Speaker of the House or President Pro Tempore of the Senate, as appropriate. The report must be accompanied by an order of punishment and supported and signed by a majority of the ethics committee members. If the ethics committee finds the respondent has not violated a code or statutory provision, it shall dismiss the charges.~~

~~(4)~~ ~~An individual has ten days from the date of the notification of the ethics committee’s action to appeal the action to the full legislative body.~~

~~(5)~~ ~~No ethics committee member may participate in any matter in which he is involved.~~

~~(6)~~ ~~The ethics committee shall establish procedures which afford respondents appropriate due process protections, including the right to be represented by counsel, the right to call and examine witnesses, the right to introduce exhibits, and the right to cross‑examine opposing witnesses.~~ (A)(1) A complaint alleging a member of the General Assembly, legislative caucus committees, candidates for the General Assembly, or staff of the General Assembly or legislative caucus committee has committed a violation of this chapter or Chapter 17, Title 2 must be a verified complaint in writing and state the name of the person alleged to have committed the violation and the particulars of the violation.

(2) When a complaint is filed with or by the ethics committee alleging a violation of this chapter or Chapter 17, Title 2, a copy must be sent to the person alleged to have committed the violation and to the State Ethics Commission, hereinafter referred to as ‘the commission’ within thirty days from the date the complaint was filed, for an investigation as provided in this section. However, if the complaint only alleges a violation of a rule of the House of Representatives or of the Senate, the appropriate ethics committee must forward a copy of the complaint to the person alleged to have committed the violation, and the appropriate ethics committee shall investigate and make a determination for a complaint.

(3)(a) The commission, upon receipt of information, may initiate and file a complaint upon an affirmative vote of six or more members of the commission. The commission shall accept complaints referred by the ethics committees and verified complaints from individuals, whether personally or on behalf of an organization or governmental body.

(b) The commission shall forward a copy of the complaint, a general statement of the applicable law with respect to the complaint, and a statement explaining the due process rights of the respondent including, but not limited to, the right to counsel to the respondent within ten days of the filing of the complaint. Unless the complaint was referred by an ethics committee, the commission shall send a copy of the complaint to the appropriate ethics committee.

(4) Action may not be taken on a complaint filed more than four years after the violation is alleged to have occurred unless the person alleged to have committed the violation, by fraud or other device, prevents discovery of the violation.

(B)(1) Upon receiving a complaint filed pursuant to subsection (A), the commission, its executive director, or other staff as designated by the commission, must determine whether the complaint alleges facts sufficient to constitute a violation of this chapter or Chapter 17, Title 2. If the commission, its executive director, or its other designated staff determines the complaint does not allege facts sufficient to constitute a violation of this chapter or Chapter 17, Title 2, the complaint must be dismissed. If the commission, its executive director, or its designated staff determines the complaint alleges facts sufficient to constitute a violation, an investigation may be conducted of the alleged violation.

(2)(a) In conducting the investigation into the allegations contained in a complaint, the Commission shall request a response from the respondent to the complaint and allow for thirty days from the date of the request for the respondent to submit a response.

(b) The Commission shall review any complaint, investigation, and respondent’s response to a complaint to determine whether probable cause exists that a violation occurred. A determination of probable cause is made upon an affirmative vote of six or more commission members. Probable cause is a finding that the allegations contained in the complaint are more likely than not to have occurred and constitute a violation of this chapter or chapter 17, Title 2.

(c) If the commission does not find probable cause that a violation occurred, the complaint must be dismissed. The commission must notify the complainant, and respondent, and the appropriate legislative ethics committee.

(d) If the commission determines only a technical violation pursuant to Section 8‑13‑1170 or 8‑13‑1372 occurred, the complaint must be referred to the appropriate legislative ethics committee for disposition.

(e) If the commission finds that the complaining party wilfully filed a groundless complaint, the finding must be reported to the Attorney General. The wilful filing of a groundless complaint is a misdemeanor and, upon conviction, the person must be fined not more than one thousand dollars or imprisoned not more than one year. In lieu of the criminal penalty provided by this item, a civil penalty of not more than one thousand dollars may be assessed against the complainant upon proof by a preponderance of the evidence that the filing of the complaint was wilful and without just cause or with malice. In addition to any civil or criminal penalties, the filer of the groundless complaint may be ordered to reimburse the commission for the commission’s costs associated with the investigation and disposition of the complaint.

(f) If the commission determines, by an affirmative vote of six or more commission members that probable cause exist that a violation of this chapter or Chapter 17, Title 2 has occurred a further investigation may be conducted into the alleged violation.

(3) If the commission finds evidence that the person alleged to have committed the violation wilfully violated a section of this chapter or Chapter 17, Title 2 that imposes a criminal penalty, the commission, when appropriate, may forward the complaint and accompanying materials to the Attorney General or circuit solicitor.

(4) If the commission determines that it needs assistance in conducting an investigation, the commission shall request the assistance of appropriate agencies as needed, and may hire or retain auditors, investigators, or other assistance as necessary.

(5) In conducting its investigation, the commission may order testimony to be taken in any investigation or deposition before a person who is designated by the commission and has the power to administer oaths and, in these instances, to compel testimony. The commission may administer oaths and affirmation for the testimony of witnesses and issue subpoenas, by approval of the chairman and subject to judicial enforcement, for the procurement of witnesses and materials including books, papers, records, documents, or other tangible objects relevant to the agency’s investigation. A person to whom a subpoena has been issued may move before a commission panel or the commission for an order quashing a subpoena issued pursuant to this section.

(6) Upon completing its investigation, the commission must provide a report to the appropriate ethics committee as to whether or not the commission found probable cause that a violation of this chapter or of Chapter 17, Title 2 has occurred. A determination requires an affirmative vote by six or more members of the commission. The report must include a copy of all relevant reports, evidence, and testimony considered by the commission.

(C)(1) All investigations, inquiries, hearings and accompanying documents are confidential and only may be released pursuant to this section.

(2) Upon a determination of probable cause by the commission for a violation, other than a technical violation pursuant to Section 8‑13‑1170 or 8‑13‑1372, the following documents become public record: the complaint, the response by the respondent, and the commission’s determination of probable cause. In addition, any documents in the commission’s report that substantiate the commission’s determination of probable cause that would constitute a public document and are not exempt from disclosure under the Freedom of Information Act or other state or federal law shall also become public record. These documents must be redacted, as appropriate, in compliance with state or federal law.

(D)(1) Upon receipt of the Commission’s report, the appropriate ethics committee may concur or nonconcur with the commission’s determination, or within forty‑five days from the committee’s receipt of the report, request the commission to continue the investigation in order to review information previously received or consider additional matters not considered by the commission.

(2) If, after reviewing the commission’s determination and relevant evidence, the ethics committee determines that there is not competent and substantial evidence a violation of this chapter or of Chapter 17, Title 2 has occurred, the committee shall dismiss the complaint and send a written decision to the respondent and the complainant. The notice of dismissal must be made public if the commission made a determination that probable cause existed.

(3) If, after reviewing the commission’s determination and relevant evidence, the ethics committee determines that the respondent has committed only a technical violation pursuant to Section 8‑13‑1170 or 8‑13‑1372, the provisions of the appropriate section apply.

(4) If, after reviewing the commission’s determination and relevant evidence, the ethics committee determines that there is competent and substantial evidence that a violation of this chapter or of Chapter 17, Title 2 has occurred, except for a technical violation of Section 8‑13‑1170 or Section 8‑13‑1372, the committee shall, as appropriate:

(a) render an advisory opinion to the respondent and require the respondent’s compliance within a reasonable time; or

(b) convene a formal public hearing on the matter.

The ethics committee may obtain its own information, or request additional investigation by the State Ethics Commission, if it needs additional information to make a determination as to whether or not competent and substantial evidence of a violation exists. An advisory opinion to the respondent pursuant to subitem (a) must be made public.

(5) If the ethics committee convenes a formal public hearing:

(a) the investigator or attorney handling the investigation for the State Ethics Commission shall present the evidence related to the complaint to the appropriate ethics committee;

(b) it is the duty of the investigator or attorney to further investigate the subject of the complaint and any related matters under the jurisdiction and at the direction of the ethics committee, to request assistance from appropriate state agencies as needed, to request authorization from the committee for funds for the hiring of auditors, investigators, or other assistance as necessary, to prepare subpoenas, and to present evidence to the committee at any public hearing. The appropriate committee shall maintain the authority to approve subpoenas, authorize expenditures, dismiss complaints, schedule hearings, grant continuances, and any other authority as provided for by their rules;

(c) the respondent must be allowed to examine and make copies of all evidence in the ethics committee’s possession relating to the charges. At the hearing the respondent must be afforded appropriate due process protections, including the right to be represented by counsel, the right to call and examine witnesses, the right to introduce exhibits, and the right to cross‑examine opposing witnesses.

(d) all hearings must be open to the public.

(6)(a) After the formal public hearing, the ethics committee shall determine its findings of fact and issue its final order.

(b) If the ethics committee, based on competent and substantial evidence, finds the respondent has not violated this chapter or Chapter 17, Title 2, the committee shall dismiss the complaint and send a written decision to the respondent and the complainant.

(c) If the ethics committee, based on competent and substantial evidence, finds the respondent has violated this chapter or Chapter 17, Title 2, the committee shall:

(i) administer a public reprimand;

(ii) determine that a technical violation as provided for in Section 8‑13‑1170 or 8‑13‑1372 has occurred;

(iii) require the respondent to pay a civil penalty not to exceed two thousand dollars for each nontechnical violation that is unrelated to the late filing of a required statement or report or failure to file a required statement or report;

(iv) require the forfeiture of gifts, receipts, or profits, or the value of each, obtained in violation of Chapter 13, Title 8 or Chapter 17, Title 2;

(v) recommend expulsion of the member;

(vi) provide a copy of the complaint and accompanying materials to the Attorney General if the committee finds that there is probable cause to believe the respondent wilfully violated a section of this chapter or Chapter 17, Title 2 that imposes a criminal penalty; or

(vii) require a combination of subitems (i) through (vi) as necessary and appropriate.

(d) The ethics committee shall report its findings in writing to the Speaker of the House of Representatives or President Pro Tempore of the Senate, as appropriate. The report must be accompanied by an order of punishment or dismissal and supported and signed by a majority of the ethics committee members.

(e) Upon the issuance of the final order, the following documents become public record: exhibits introduced at the hearing, the committee’s findings, and the final order. Exhibits introduced must be redacted prior to release to exclude personal information where the public disclosure would constitute an unreasonable invasion of personal privacy.

(E) If, after conducting a formal public hearing, the ethics committee finds the respondent has violated this chapter or Chapter 17, Title 2, the respondent has ten days from the date of receiving the committee’s order of punishment to appeal the action to the full legislative body.

(F) No ethics committee member may take part in consideration of any matter in which they are the respondent, complainant, witness, or otherwise involved.

(G) The ethics committees shall establish procedures which afford respondents appropriate due process protections, including the right to be represented by counsel, the right to call and examine witnesses, the right to introduce exhibits, and the right to cross‑examine opposing witnesses.”

SECTION 13. Section 8‑13‑550(B) of the 1976 Code is amended to read:

“(B) Upon consideration of an ethics committee report by the house or the senate, whether in executive or open session, the results of the consideration~~, except in the case of the issuance of a private reprimand,~~ are a matter of public record.”

SECTION 14. Section 8‑13‑320(10)(b) of the 1976 Code is amended to read:

“(b) If the commission, ~~or~~ its executive director, or staff designated by the commission, determines that the complaint does not allege facts sufficient to constitute a violation, the commission must dismiss the complaint and notify the complainant and respondent. The entire matter must be stricken from public record unless the respondent, by written authorization to the State Ethics Commission, waives the confidentiality of the existence of the complaint and authorizes the release of information about the disposition of the complaint.”

SECTION 15. Section 8‑13‑320(10)(c) of the 1976 Code is amended to read:

“(c) If the commission, ~~or~~ its executive director, or staff designated by the commission determines that the complaint alleges facts sufficient to constitute a violation, an investigation may be conducted of the alleged violation.”

SECTION 16. The provisions of this act are severable. If any section, subsection, paragraph, subparagraph, item, subitem, sentence, clause, phrase, or word of this act is for any reason held to be unconstitutional or invalid, such holding shall not affect the constitutionality or validity of the remaining portions of the act, the General Assembly hereby declaring that it would have passed each and every section, subsection, paragraph, subparagraph, item, subitem, sentence, clause, phrase, and word thereof, irrespective of the fact that any one or more other sections, subsections, paragraphs, subparagraphs, items, subitems, sentences, clauses, phrases, or words hereof may be declared to be unconstitutional, invalid, or otherwise ineffective.

SECTION 17. The provisions of this act are effective as of April 1, 2017 and shall apply to complaints filed on or after April 1, 2017. However, the provisions in Section 8‑13‑310 regarding the selection of the initial members to serve on the State Ethics Commission as of April 1, 2017 and the termination of terms of the members serving on the commission as of March 31, 2017, take effect after the date of the Governor’s signature for the limited purpose of having the initial members of the reconstituted State Ethics Commission begin service on April 1, 2017. The State Ethics Commission, House Ethics Committee and Senate Ethics Committee shall maintain jurisdiction over all open complaints and investigations pending in the appropriate entity on or before March 31, 2017. The reconstituted State Ethics Commission shall have jurisdiction over open complaints and investigations pending within the State Ethics Commission as of March 31, 2017.”

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