

FIRST REGULAR SESSION

# HOUSE BILL NO. 512

101ST GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVE LOVASCO.

1187H.011

DANA RADEMAN MILLER, Chief Clerk

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## AN ACT

To repeal sections 105.955 and 115.646, RSMo, and to enact in lieu thereof two new sections relating to the expenditure of public funds on printed matter, with penalty provisions.

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

Section A. Sections 105.955 and 115.646, RSMo, are repealed and two new sections enacted in lieu thereof, to be known as sections 105.955 and 115.646, to read as follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

126           14. The commission shall have the following duties and responsibilities relevant to the  
127 impartial and effective enforcement of sections 105.450 to 105.496, **section 115.646**, and chapter  
128 130, as provided in sections 105.955 to 105.963:

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

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

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

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

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

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

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

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

159           15. In connection with such powers provided by sections 105.955 to 105.963 and chapter  
160 130, the commission may:

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

163           (2) Administer oaths and affirmations;

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

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

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

178           16. (1) Upon written request for an advisory opinion received by the commission, and  
179 if the commission determines that the person requesting the opinion would be directly affected  
180 by the application of law to the facts presented by the requesting person, the commission shall  
181 issue a written opinion advising the person who made the request, in response to the person's  
182 particular request, regarding any issue that the commission can receive a complaint on pursuant  
183 to section 105.957. The commission may decline to issue a written opinion by a vote of four  
184 members and shall provide to the requesting person the reason for the refusal in writing. The  
185 commission shall give an approximate time frame as to when the written opinion shall be issued.  
186 Such advisory opinions shall be issued no later than ninety days from the date of receipt by the  
187 commission. Such requests and advisory opinions, deleting the name and identity of the  
188 requesting person, shall be compiled and published by the commission on at least an annual  
189 basis. Advisory opinions issued by the commission shall be maintained and made available for  
190 public inspection and copying at the office of the commission during normal business hours.  
191 Any advisory opinion or portion of an advisory opinion rendered pursuant to this subsection shall  
192 be withdrawn by the commission if, after hearing thereon, the joint committee on administrative  
193 rules finds that such advisory opinion is beyond or contrary to the statutory authority of the  
194 commission or is inconsistent with the legislative intent of any law enacted by the general

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

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

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

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

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

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

115.646. **1.** No contribution or expenditure of public funds shall be made directly by any  
2 officer, employee or agent of any political subdivision to advocate, support, or oppose any ballot  
3 measure or candidate for public office. This section shall not be construed to prohibit any public  
4 official of a political subdivision from making public appearances or from issuing press releases  
5 concerning any such ballot measure.

**2.** No contribution or expenditure of public funds on printed matter shall be made  
7 directly by any officer, employee, director, board member, or agent of any state  
8 department, political subdivision, or special district to advocate for, support, oppose, or  
9 provide education on any ballot measure, any matter pending before the general assembly,  
10 or any candidate for public office. This section shall not be construed to prohibit any  
11 public official or agent of any state department, political subdivision, or special district  
12 from issuing press releases or preparing documents intended for internal distribution or  
13 distribution to another governmental entity.

**3.** It shall not be a violation of subsection 2 of this section for a state department,  
15 political subdivision, or special district of this state to publish the full text of a proposed  
16 ballot measure or the ballot language approved by the secretary of state if that ballot  
17 measure is scheduled to appear on the ballot within sixty days of the publication. Nothing  
18 in subsection 2 of this section shall prohibit any publication that is required to comply with  
19 federal law or the laws of this state.

**4.** Any printed matter that is published by a state department, political subdivision,  
21 or special district of this state shall, in a clear and conspicuous manner, contain the words  
22 "Paid for by" followed by the department, political subdivision, or special district that paid  
23 for the printed matter as well as the name of the director, principal officer, or other lead  
24 administrator. The provisions of this subsection shall become effective on August 28, 2022.

**5.** For the purposes of this section, the term "printed matter" shall include any  
26 pamphlet, circular, handbill, sample ballot, advertisement, sign, bumper sticker, or other  
27 imprinted or lettered material; but shall not include any news story, commentary, or  
28 editorial published by a newspaper, periodical, or news website without charge to the  
29 department, political subdivision, or any other person. "Printed matter" shall also not  
30 include content displayed or distributed via website, email, social media platform, or other  
31 electronic form of communication.

**6.** The following provisions shall apply if a state department, political subdivision,  
33 or special district violates the provisions of this section:



34           **(1) For violations of section 115.646 by a state department or the director of a state**  
35 **department, any person may file a complaint with the Missouri ethics commission alleging**  
36 **the violation. For violations of section 115.646 by a political subdivision or the principal**  
37 **officer or lead administrator of the political subdivision, any person within the jurisdiction**  
38 **of the political subdivision may file a complaint with the Missouri ethics commission**  
39 **alleging the violation;**

40           **(2) Within thirty days of receiving a complaint, the Missouri ethics commission**  
41 **shall notify the person filing the complaint whether the commission has dismissed the**  
42 **complaint or will commence an investigation. The commission shall also notify the person**  
43 **filing the complaint at the conclusion of the investigation and indicate whether the**  
44 **complaint was dismissed or legal action under subdivision (3) of this subsection was taken;**

45           **(3) The Missouri ethics commission, upon finding reasonable evidence that a**  
46 **violation of section 115.646 occurred, or any person with standing as described in**  
47 **subdivision (1) of this subsection, upon a belief that section 115.646 has been violated and**  
48 **after the commission has investigated and declined to take action, shall follow the following**  
49 **procedure:**

50           **(a) For violations of 115.646 by a state department or the director of a state**  
51 **department, file a petition in the circuit court of Cole County naming the state department**  
52 **and director of the state department as defendants;**

53           **(b) For violations of 115.646 by a political subdivision or special district or the**  
54 **principal officer or lead administrator of the political subdivision or special district, file**  
55 **a petition in the circuit court with jurisdiction over the political subdivision naming the**  
56 **political subdivision and the principal officer or lead administrator of the political**  
57 **subdivision as defendants; and**

58           **(c) File a petition that shall identify the specific violation of section 115.646, provide**  
59 **evidence of the violation, and ask the court to grant the relief provided for in this**  
60 **subsection; and**

61           **(4) The court shall hear arguments and consider the evidence presented by both**  
62 **parties in making its decision. If the court determines that there was a violation of section**  
63 **115.646, it shall impose the following penalties:**

64           **(a) The department, political subdivision, or special district shall be subject to a**  
65 **civil penalty in an amount equal to ten times the expenditure that violated section 115.646**  
66 **or ten thousand dollars, whichever is greater;**

67           **(b) The director of the state department or the principal officer or lead**  
68 **administrator of the political subdivision or special district shall be subject to a civil**

69 **penalty in an amount equal to ten times the expenditure that violated section 115.646 or**  
70 **one thousand dollars, whichever is lesser; and**

71 **(c) The defendant shall be ordered to pay the plaintiff's costs and attorney's fees.**

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