

FIRST REGULAR SESSION

# SENATE BILL NO. 428

98TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR CURLS.

Read 1st time February 11, 2015, and ordered printed.

ADRIANE D. CROUSE, Secretary.

1984S.011

## AN ACT

To repeal section 105.961 as enacted by senate bill no. 844, ninety-fifth general assembly, second regular session, and section 105.961 as enacted by senate bill no. 16, ninety-first general assembly, first regular session, RSMo, and to enact in lieu thereof one new section relating to the enforcement power of the Missouri ethics commission, with existing penalty provisions.

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

Section A. Section 105.961 as enacted by senate bill no. 844, ninety-fifth  
2 general assembly, second regular session, and section 105.961 as enacted by  
3 senate bill no. 16, ninety-first general assembly, first regular session, RSMo, are  
4 repealed and one new section enacted in lieu thereof, to be known as section  
5 105.961, to read as follows:

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

**EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.**

14 determine:

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

17 (2) That there are no reasonable grounds for belief that a  
18 violation exists and the complaint or investigation shall be  
19 dismissed; or

20 (3) That additional time is necessary to complete the  
21 investigation, and the status and progress of the investigation to  
22 date. The commission, in its discretion, may allow the  
23 investigation to proceed for no more than two additional successive  
24 periods of ninety days each, pending reports regarding the status  
25 and progress of the investigation at the end of each such period.

26 2. When the commission concludes, based on the report  
27 from the special investigator, or based on an investigation  
28 conducted pursuant to section 105.959, that there are reasonable  
29 grounds to believe that a violation of any criminal law has  
30 occurred, and if the commission believes that criminal prosecution  
31 would be appropriate upon a vote of four members of the  
32 commission, the commission shall refer the report to the Missouri  
33 office of prosecution services, prosecutors coordinators training  
34 council established in section 56.760, which shall submit a panel  
35 of five attorneys for recommendation to the court having criminal  
36 jurisdiction, for appointment of an attorney to serve as a special  
37 prosecutor; except that, the attorney general of Missouri or any  
38 assistant attorney general shall not act as such special  
39 prosecutor. The court shall then appoint from such panel a special  
40 prosecutor pursuant to section 56.110 who shall have all the  
41 powers provided by section 56.130. The court shall allow a  
42 reasonable and necessary attorney's fee for the services of the  
43 special prosecutor. Such fee shall be assessed as costs if a case is  
44 filed, or ordered by the court if no case is filed, and paid together  
45 with all other costs in the proceeding by the state, in accordance  
46 with rules and regulations promulgated by the state courts  
47 administrator, subject to funds appropriated to the office of  
48 administration for such purposes. If the commission does not have  
49 sufficient funds to pay a special prosecutor, the commission shall

50 refer the case to the prosecutor or prosecutors having criminal  
51 jurisdiction. If the prosecutor having criminal jurisdiction is not  
52 able to prosecute the case due to a conflict of interest, the court  
53 may appoint a special prosecutor, paid from county funds, upon  
54 appropriation by the county or the attorney general to investigate  
55 and, if appropriate, prosecute the case. The special prosecutor or  
56 prosecutor shall commence an action based on the report by the  
57 filing of an information or seeking an indictment within sixty days  
58 of the date of such prosecutor's appointment, or shall file a written  
59 statement with the commission explaining why criminal charges  
60 should not be sought. If the special prosecutor or prosecutor fails  
61 to take either action required by this subsection, upon request of  
62 the commission, a new special prosecutor, who may be the attorney  
63 general, shall be appointed. The report may also be referred to the  
64 appropriate disciplinary authority over the person who is the  
65 subject of the report.

66 3. When the commission concludes, based on the report  
67 from the special investigator or based on an investigation  
68 conducted pursuant to section 105.959, that there are reasonable  
69 grounds to believe that a violation of any law has occurred which  
70 is not a violation of criminal law or that criminal prosecution is not  
71 appropriate, the commission shall conduct a hearing which shall be  
72 a closed meeting and not open to the public. The hearing shall be  
73 conducted pursuant to the procedures provided by sections 536.063  
74 to 536.090 and shall be considered to be a contested case for  
75 purposes of such sections. The commission shall determine, in its  
76 discretion, whether or not that there is probable cause that a  
77 violation has occurred. If the commission determines, by a vote of  
78 at least four members of the commission, that probable cause exists  
79 that a violation has occurred, the commission may refer its findings  
80 and conclusions to the appropriate disciplinary authority over the  
81 person who is the subject of the report, as described in subsection  
82 8 of this section.

83 4. If the appropriate disciplinary authority receiving a  
84 report from the commission pursuant to subsection 3 of this section  
85 fails to follow, within sixty days of the receipt of the report, the

86 recommendations contained in the report, or if the commission  
87 determines, by a vote of at least four members of the commission  
88 that some action other than referral for criminal prosecution or for  
89 action by the appropriate disciplinary authority would be  
90 appropriate, the commission shall take any one or more of the  
91 following actions:

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

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

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

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

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

107 (6) Through reconciliation agreements or action of the  
108 commission, the power to seek fees for violations in an amount not  
109 greater than one thousand dollars or double the amount involved  
110 in the violation.

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

114 (1) Cease and desist violation of any provision of sections  
115 105.450 to 105.496, or chapter 130, or sections 105.955 to 105.963;

116 (2) Pay any civil penalties required by sections 105.450 to  
117 105.496 or chapter 130;

118 (3) File any reports, statements, or other documents or  
119 information required by sections 105.450 to 105.496, or chapter  
120 130; or

121 (4) Pay restitution for any unjust enrichment the violator

122 obtained as a result of any violation of any criminal statute as  
123 described in subsection 7 of this section.

124 6. After the commission determines by a vote of at least  
125 four members of the commission that a violation has occurred,  
126 other than a referral for criminal prosecution, and the commission  
127 has referred the findings and conclusions to the appropriate  
128 disciplinary authority over the person who is the subject of the  
129 report, or has taken an action under subsection 4 of this section,  
130 the subject of the report may appeal the determination of the  
131 commission to the circuit court of Cole County. The court shall  
132 conduct a de novo review of the determination of the  
133 commission. Such appeal shall stay the action of the Missouri  
134 ethics commission. Such appeal shall be filed not later than the  
135 fourteenth day after the subject of the commission's action receives  
136 actual notice of the commission's action. If a petition for judicial  
137 review of a final order is not filed as provided in this section or  
138 when an order for fees under subsection 4 of this section becomes  
139 final following an appeal to the circuit court of Cole County, the  
140 commission may file a certified copy of the final order with the  
141 circuit court of Cole County. When any order for fees under  
142 subsection 4 of this section becomes final, the commission may file  
143 a certified copy of the final order with the circuit court of Cole  
144 County. The order so filed shall have the same effect as a  
145 judgment of the court and may be recorded, enforced, or satisfied  
146 in the same manner as a judgment of the court.

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

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

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

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

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

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

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

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

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

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

183 9. The special investigator having a complaint referred to  
184 the special investigator by the commission shall have the following  
185 powers:

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

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

193 (3) To administer oaths and affirmations;

194 (4) Upon refusal by any person to comply with a request for  
195 information relevant to an investigation, an investigator may issue  
196 a subpoena for any person to appear and give testimony, or for a  
197 subpoena duces tecum to produce documentary or other evidence  
198 which the investigator deems relevant to a matter under the  
199 investigator's inquiry. The subpoenas and subpoenas duces tecum  
200 may be enforced by applying to a judge of the circuit court of Cole  
201 County or any county where the person or entity that has been  
202 subpoenaed resides or may be found, for an order to show cause  
203 why the subpoena or subpoena duces tecum should not be  
204 enforced. The order and a copy of the application therefor shall be  
205 served in the same manner as a summons in a civil action, and if,  
206 after hearing, the court determines that the subpoena or subpoena  
207 duces tecum should be sustained and enforced, the court shall  
208 enforce the subpoena or subpoena duces tecum in the same manner  
209 as if it had been issued by the court in a civil action; and

210 (5) To request from the commission such investigative,  
211 clerical or other staff assistance or advancement of other expenses  
212 which are necessary and convenient for the proper completion of an  
213 investigation. Within the limits of appropriations to the  
214 commission, the commission may provide such assistance, whether  
215 by contract to obtain such assistance or from staff employed by the  
216 commission, or may advance such expenses.

217 10. (1) Any retired judge may request in writing to have  
218 the judge's name removed from the list of special investigators  
219 subject to appointment by the commission or may request to  
220 disqualify himself or herself from any investigation. Such request  
221 shall include the reasons for seeking removal;

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

227 11. Any person who is the subject of any investigation  
228 pursuant to this section shall be entitled to be represented by  
229 counsel at any proceeding before the special investigator or the

230 commission.

231 12. The provisions of sections 105.957, 105.959 and 105.961  
232 are in addition to other provisions of law under which any remedy  
233 or right of appeal or objection is provided for any person, or any  
234 procedure provided for inquiry or investigation concerning any  
235 matter. The provisions of this section shall not be construed to  
236 limit or affect any other remedy or right of appeal or objection.

237 13. No person shall be required to make or file a complaint  
238 to the commission as a prerequisite for exhausting the person's  
239 administrative remedies before pursuing any civil cause of action  
240 allowed by law.

241 14. If, in the opinion of the commission, the complaining  
242 party was motivated by malice or reason contrary to the spirit of  
243 any law on which such complaint was based, in filing the complaint  
244 without just cause, this finding shall be reported to appropriate law  
245 enforcement authorities. Any person who knowingly files a  
246 complaint without just cause, or with malice, is guilty of a class A  
247 misdemeanor.

248 15. A respondent party who prevails in a formal judicial  
249 action brought by the commission shall be awarded those  
250 reasonable fees and expenses incurred by that party in the formal  
251 judicial action, unless the court finds that the position of the  
252 commission was substantially justified or that special  
253 circumstances make such an award unjust.

254 16. The special investigator and members and staff of the  
255 commission shall maintain confidentiality with respect to all  
256 matters concerning a complaint, with the exception of  
257 communications with any person which are necessary to the  
258 investigation. Any person who violates the confidentiality  
259 requirements imposed by this section or subsection 17 of section  
260 105.955 required to be confidential is guilty of a class A  
261 misdemeanor and shall be subject to removal from or termination  
262 of employment by the commission.

263 17. Any judge of the court of appeals or circuit court who  
264 ceases to hold such office by reason of the judge's retirement and  
265 who serves as a special investigator pursuant to this section shall



266 receive annual compensation, salary or retirement for such services  
267 at the rates of compensation provided for senior judges by  
268 subsections 1, 2 and 4 of section 476.682. Such retired judges shall  
269 by the tenth day of each month following any month in which the  
270 judge provided services pursuant to this section certify to the  
271 commission and to the state courts administrator the amount of  
272 time engaged in such services by hour or fraction thereof, the dates  
273 thereof, and the expenses incurred and allowable pursuant to this  
274 section. The commission shall then issue a warrant to the state  
275 treasurer for the payment of the salary and expenses to the extent,  
276 and within limitations, provided for in this section. The state  
277 treasurer upon receipt of such warrant shall pay the same out of  
278 any appropriations made for this purpose on the last day of the  
279 month during which the warrant was received by the state  
280 treasurer.]

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

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

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

15 (3) That additional time is necessary to complete the investigation, and  
16 the status and progress of the investigation to date. The commission, in its  
17 discretion, may allow the investigation to proceed for additional successive  
18 periods of one hundred twenty days each, pending reports regarding the status  
19 and progress of the investigation at the end of each such period.

20 2. When the commission concludes, based on the report from the special  
21 investigator, or based on an audit conducted pursuant to section 105.959, that

22 there are reasonable grounds to believe that a violation of any criminal law has  
23 occurred, and if the commission believes that criminal prosecution would be  
24 appropriate upon a vote of four members of the commission, the commission shall  
25 refer the report to the Missouri office of prosecution services, prosecutors  
26 coordinators training council established in section 56.760, which shall submit a  
27 panel of five attorneys for recommendation to the court having criminal  
28 jurisdiction, for appointment of an attorney to serve as a special prosecutor;  
29 except that, the attorney general of Missouri or any assistant attorney general  
30 shall not act as such special prosecutor. The court shall then appoint from such  
31 panel a special prosecutor pursuant to section 56.110 who shall have all the  
32 powers provided by section 56.130. The court shall allow a reasonable and  
33 necessary attorney's fee for the services of the special prosecutor. Such fee shall  
34 be assessed as costs if a case is filed, or ordered by the court if no case is filed,  
35 and paid together with all other costs in the proceeding by the state, in  
36 accordance with rules and regulations promulgated by the state courts  
37 administrator, subject to funds appropriated to the office of administration for  
38 such purposes. If the commission does not have sufficient funds to pay a special  
39 prosecutor, the commission shall refer the case to the prosecutor or prosecutors  
40 having criminal jurisdiction. If the prosecutor having criminal jurisdiction is not  
41 able to prosecute the case due to a conflict of interest, the court may appoint a  
42 special prosecutor, paid from county funds, upon appropriation by the county or  
43 the attorney general to investigate and, if appropriate, prosecute the case. The  
44 special prosecutor or prosecutor shall commence an action based on the report by  
45 the filing of an information or seeking an indictment within sixty days of the date  
46 of such prosecutor's appointment, or shall file a written statement with the  
47 commission explaining why criminal charges should not be sought. If the special  
48 prosecutor or prosecutor fails to take either action required by this subsection,  
49 upon request of the commission, a new special prosecutor, who may be the  
50 attorney general, shall be appointed. The report may also be referred to the  
51 appropriate disciplinary authority over the person who is the subject of the  
52 report.

53           3. When the commission concludes, based on the report from the special  
54 investigator or based on an audit conducted pursuant to section 105.959, that  
55 there are reasonable grounds to believe that a violation of any law has occurred  
56 which is not a violation of criminal law or that criminal prosecution is not  
57 appropriate, the commission shall conduct a hearing which shall be a closed

58 meeting and not open to the public. The hearing shall be conducted pursuant to  
59 the procedures provided by sections 536.063 to 536.090 and shall be considered  
60 to be a contested case for purposes of such sections. The commission shall  
61 determine, in its discretion, whether or not that there is probable cause that a  
62 violation has occurred. If the commission determines, by a vote of at least four  
63 members of the commission, that probable cause exists that a violation has  
64 occurred, the commission may refer its findings and conclusions to the  
65 appropriate disciplinary authority over the person who is the subject of the  
66 report, as described in subsection 7 of this section. After the commission  
67 determines by a vote of at least four members of the commission that probable  
68 cause exists that a violation has occurred, and the commission has referred the  
69 findings and conclusions to the appropriate disciplinary authority over the person  
70 subject of the report, the subject of the report may appeal the determination of  
71 the commission to the administrative hearing commission. Such appeal shall stay  
72 the action of the Missouri ethics commission. Such appeal shall be filed not later  
73 than the fourteenth day after the subject of the commission's action receives  
74 actual notice of the commission's action.

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

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

85 (2) Notify the person of the requirement to file, amend or correct any  
86 report, statement, or other document or information required by sections 105.473,  
87 105.483 to 105.492, or chapter 130 and that the commission may seek judicial  
88 enforcement of its decision pursuant to subsection 5 of this section; and

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

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

93 (5) Issue a letter that no further action shall be taken, which would be

94 maintained as a public document; or

95 (6) Through reconciliation agreements or civil action, the power to seek  
96 fees for violations in an amount not greater than one thousand dollars or double  
97 the amount involved in the violation.

98 **5. In the event that an individual is convicted of a crime under**  
99 **power granted by this section for violation of any provision of sections**  
100 **105.450 to 105.496 or sections 105.955 to 105.963 or chapter 130, the**  
101 **ethics commission shall not seek civil penalties against such individual**  
102 **for violations of sections 105.450 to 105.496 or sections 105.955 to**  
103 **105.963 or chapter 130.**

104 **6.** Upon vote of at least four members, the commission may initiate formal  
105 judicial proceedings seeking to obtain any of the following orders:

106 (1) Cease and desist violation of any provision of sections 105.450 to  
107 105.496, or chapter 130, or sections 105.955 to 105.963;

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

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

112 (4) Pay restitution for any unjust enrichment the violator obtained as a  
113 result of any violation of any criminal statute as described in subsection 6 of this  
114 section. The Missouri ethics commission shall give actual notice to the subject  
115 of the complaint of the proposed action as set out in this section. The subject of  
116 the complaint may appeal the action of the Missouri ethics commission, other  
117 than a referral for criminal prosecution, to the administrative hearing  
118 commission. Such appeal shall stay the action of the Missouri ethics  
119 commission. Such appeal shall be filed no later than fourteen days after the  
120 subject of the commission's actions receives actual notice of the commission's  
121 actions.

122 [6.] **7.** In the proceeding in circuit court, the commission may seek  
123 restitution against any person who has obtained unjust enrichment as a result  
124 of violation of any provision of sections 105.450 to 105.496, or chapter 130 and  
125 may recover on behalf of the state or political subdivision with which the alleged  
126 violator is associated, damages in the amount of any unjust enrichment obtained  
127 and costs and attorney's fees as ordered by the court.

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

130 to, the following:

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

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

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

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

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

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

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

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

153 [8.] **9.** The special investigator having a complaint referred to the special  
154 investigator by the commission shall have the following powers:

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

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

160 (3) To administer oaths and affirmations;

161 (4) Upon refusal by any person to comply with a request for information  
162 relevant to an investigation, an investigator may issue a subpoena for any person  
163 to appear and give testimony, or for a subpoena duces tecum to produce  
164 documentary or other evidence which the investigator deems relevant to a matter  
165 under the investigator's inquiry. The subpoenas and subpoenas duces tecum may

166 be enforced by applying to a judge of the circuit court of Cole County or any  
167 county where the person or entity that has been subpoenaed resides or may be  
168 found, for an order to show cause why the subpoena or subpoena duces tecum  
169 should not be enforced. The order and a copy of the application therefor shall be  
170 served in the same manner as a summons in a civil action, and if, after hearing,  
171 the court determines that the subpoena or subpoena duces tecum should be  
172 sustained and enforced, the court shall enforce the subpoena or subpoena duces  
173 tecum in the same manner as if it had been issued by the court in a civil action;  
174 and

175 (5) To request from the commission such investigative, clerical or other  
176 staff assistance or advancement of other expenses which are necessary and  
177 convenient for the proper completion of an investigation. Within the limits of  
178 appropriations to the commission, the commission may provide such assistance,  
179 whether by contract to obtain such assistance or from staff employed by the  
180 commission, or may advance such expenses.

181 [9.] 10. (1) Any retired judge may request in writing to have the judge's  
182 name removed from the list of special investigators subject to appointment by the  
183 commission or may request to disqualify himself or herself from any  
184 investigation. Such request shall include the reasons for seeking removal;

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

189 [10.] 11. Any person who is the subject of any investigation pursuant to  
190 this section shall be entitled to be represented by counsel at any proceeding  
191 before the special investigator or the commission.

192 [11.] 12. The provisions of sections 105.957, 105.959 and 105.961 are in  
193 addition to other provisions of law under which any remedy or right of appeal or  
194 objection is provided for any person, or any procedure provided for inquiry or  
195 investigation concerning any matter. The provisions of this section shall not be  
196 construed to limit or affect any other remedy or right of appeal or objection.

197 [12.] 13. No person shall be required to make or file a complaint to the  
198 commission as a prerequisite for exhausting the person's administrative remedies  
199 before pursuing any civil cause of action allowed by law.

200 [13.] 14. If, in the opinion of the commission, the complaining party was  
201 motivated by malice or reason contrary to the spirit of any law on which such

202 complaint was based, in filing the complaint without just cause, this finding shall  
203 be reported to appropriate law enforcement authorities. Any person who  
204 knowingly files a complaint without just cause, or with malice, is guilty of a class  
205 A misdemeanor.

206 [14.] 15. A respondent party who prevails in a formal judicial action  
207 brought by the commission shall be awarded those reasonable fees and expenses  
208 incurred by that party in the formal judicial action, unless the court finds that  
209 the position of the commission was substantially justified or that special  
210 circumstances make such an award unjust.

211 [15.] 16. The special investigator and members and staff of the  
212 commission shall maintain confidentiality with respect to all matters concerning  
213 a complaint until and if a report is filed with the commission, with the exception  
214 of communications with any person which are necessary to the investigation. The  
215 report filed with the commission resulting from a complaint acted upon under the  
216 provisions of this section shall not contain the name of the complainant or other  
217 person providing information to the investigator, if so requested in writing by the  
218 complainant or such other person. Any person who violates the confidentiality  
219 requirements imposed by this section or subsection 17 of section 105.955 required  
220 to be confidential is guilty of a class A misdemeanor and shall be subject to  
221 removal from or termination of employment by the commission.

222 [16.] 17. Any judge of the court of appeals or circuit court who ceases to  
223 hold such office by reason of the judge's retirement and who serves as a special  
224 investigator pursuant to this section shall receive annual compensation, salary  
225 or retirement for such services at the rates of compensation provided for senior  
226 judges by subsections 1, 2 and 4 of section 476.682. Such retired judges shall by  
227 the tenth day of each month following any month in which the judge provided  
228 services pursuant to this section certify to the commission and to the state courts  
229 administrator the amount of time engaged in such services by hour or fraction  
230 thereof, the dates thereof, and the expenses incurred and allowable pursuant to  
231 this section. The commission shall then issue a warrant to the state treasurer for  
232 the payment of the salary and expenses to the extent, and within limitations,  
233 provided for in this section. The state treasurer upon receipt of such warrant  
234 shall pay the same out of any appropriations made for this purpose on the last  
235 day of the month during which the warrant was received by the state treasurer.

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