

FIRST REGULAR SESSION

# SENATE BILL NO. 463

99TH GENERAL ASSEMBLY

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INTRODUCED BY SENATOR KEHOE.

Read 1st time February 23, 2017, and ordered printed.

ADRIANE D. CROUSE, Secretary.

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## AN ACT

To repeal section 105.955, RSMo, and to enact in lieu thereof one new section relating to the Missouri ethics commission.

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

Section A. Section 105.955, RSMo, is repealed and one new section  
2 enacted in lieu thereof, to be known as section 105.955, to read as follows:

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

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

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

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

53           4. Vacancies or expired terms on the commission shall be filled in the  
54 same manner as the original appointment was made, except as provided in this  
55 subsection. Within thirty days of the vacancy or ninety days before the expiration

56 of the term, the names of two eligible nominees for membership on the  
57 commission shall be submitted to the governor by the congressional district  
58 committees of the political party or parties of the vacating member or members,  
59 from the even- or odd-numbered congressional districts, based on the residence  
60 of the vacating member or members, other than from the congressional district  
61 committees from districts then represented on the commission and from the same  
62 congressional district party committee or committees which originally appointed  
63 the member or members whose positions are vacated. Appointments to fill  
64 vacancies or expired terms shall be made within forty-five days after the deadline  
65 for submission of names by the congressional district committees, and shall be  
66 subject to the same qualifications for appointment and eligibility as is provided  
67 in subsections 2 and 3 of this section. Appointments to fill vacancies for  
68 unexpired terms shall be for the remainder of the unexpired term of the member  
69 whom the appointee succeeds, and such appointees shall be eligible for  
70 appointment to one full four-year term. If the congressional district committee  
71 does not submit the required two nominees within the thirty days or if the  
72 congressional district committee does not submit the two nominees within an  
73 additional thirty days after receiving notice from the governor to submit the  
74 nominees, then the governor may appoint a person or persons who shall be  
75 subject to the same qualifications for appointment and eligibility as provided in  
76 subsections 2 and 3 of this section.

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

87         6. The commission shall elect biennially one of its members as the  
88 chairman. The chairman may not succeed himself or herself after two years. No  
89 member of the commission shall succeed as chairman any member of the same  
90 political party as himself or herself. At least four members are necessary to  
91 constitute a quorum, and at least four affirmative votes shall be required for any

92 action or recommendation of the commission.

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

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

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

100 (1) Be employed by the state or any political subdivision of the state;

101 (2) Be employed as a lobbyist;

102 (3) Serve on any other governmental board or commission;

103 (4) Be an officer of any political party or political organization;

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

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

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

115 11. The commission shall appoint an executive director who shall serve  
116 subject to the supervision of and at the pleasure of the commission, but in no  
117 event for more than **two terms of six years each**. The executive director shall  
118 be responsible for the administrative operations of the commission and perform  
119 such other duties as may be delegated or assigned to the director by law or by  
120 rule of the commission. The executive director shall employ staff and retain such  
121 contract services as the director deems necessary, within the limits authorized by  
122 appropriations by the general assembly.

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

128 commission.

129           13. Within sixty days of the initial meeting of the first commission  
130 appointed, the commission shall obtain from the clerk of the supreme court or the  
131 state courts administrator a list of retired appellate and circuit court judges who  
132 did not leave the judiciary as a result of being defeated in an election. The  
133 executive director shall determine those judges who indicate their desire to serve  
134 as special investigators and to investigate any and all complaints referred to  
135 them by the commission. The executive director shall maintain an updated list  
136 of those judges qualified and available for appointment to serve as special  
137 investigators. Such list shall be updated at least annually. The commission shall  
138 refer complaints to such special investigators on that list on a rotating schedule  
139 which ensures a random assignment of each special investigator. Each special  
140 investigator shall receive only one unrelated investigation at a time and shall not  
141 be assigned to a second or subsequent investigation until all other eligible  
142 investigators on the list have been assigned to an investigation. In the event that  
143 no special investigator is qualified or available to conduct a particular  
144 investigation, the commission may appoint a special investigator to conduct such  
145 particular investigation.

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

149           (1) Receive and review complaints regarding alleged violation of sections  
150 105.450 to 105.496 [and], chapter 130, **and section 23, article VIII of the**  
151 **Missouri Constitution**, conduct initial reviews and investigations regarding  
152 such complaints as provided herein; refer complaints to appropriate prosecuting  
153 authorities and appropriate disciplinary authorities along with recommendations  
154 for sanctions; and initiate judicial proceedings as allowed by sections 105.955 to  
155 105.963;

156           (2) Review and audit any reports and statements required by the  
157 campaign finance disclosure laws contained in chapter 130, and financial interest  
158 disclosure laws or lobbyist registration and reporting laws as provided by sections  
159 105.470 to 105.492, for timeliness, accuracy and completeness of content as  
160 provided in sections 105.955 to 105.963;

161           (3) Develop appropriate systems to file and maintain an index of all such  
162 reports and statements to facilitate public access to such information, except as  
163 may be limited by confidentiality requirements otherwise provided by law,

164 including cross-checking of information contained in such statements and  
165 reports. The commission may enter into contracts with the appropriate filing  
166 officers to effectuate such system. Such filing officers shall cooperate as  
167 necessary with the commission as reasonable and necessary to effectuate such  
168 purposes;

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

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

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

180 (7) Promulgate rules relating to the provisions of sections 105.955 to  
181 105.963 and chapter 130. All rules and regulations issued by the commission  
182 shall be prospective only in operation;

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

185 15. In connection with such powers provided by sections 105.955 to  
186 105.963 and chapter 130, the commission may:

187 (1) Subpoena witnesses and compel their attendance and testimony.  
188 Subpoenas shall be served and enforced in the same manner provided by section  
189 536.077;

190 (2) Administer oaths and affirmations;

191 (3) Take evidence and require by subpoena duces tecum the production of  
192 books, papers, and other records relating to any matter being investigated or to  
193 the performance of the commission's duties or exercise of its powers. Subpoenas  
194 duces tecum shall be served and enforced in the same manner provided by section  
195 536.077;

196 (4) Employ such personnel, including legal counsel, and contract for  
197 services including legal counsel, within the limits of its appropriation, as it deems  
198 necessary provided such legal counsel, either employed or contracted, represents  
199 the Missouri ethics commission before any state agency or before the courts at the

200 request of the Missouri ethics commission. Nothing in this section shall limit the  
201 authority of the Missouri ethics commission as provided for in subsection 2 of  
202 section 105.961; and

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

207 16. (1) Upon written request for an advisory opinion received by the  
208 commission, and if the commission determines that the person requesting the  
209 opinion would be directly affected by the application of law to the facts presented  
210 by the requesting person, the commission shall issue a written opinion advising  
211 the person who made the request, in response to the person's particular request,  
212 regarding any issue that the commission can receive a complaint on pursuant to  
213 section 105.957. The commission may decline to issue a written opinion by a vote  
214 of four members and shall provide to the requesting person the reason for the  
215 refusal in writing. The commission shall give an approximate time frame as to  
216 when the written opinion shall be issued. Such advisory opinions shall be issued  
217 no later than ninety days from the date of receipt by the commission. Such  
218 requests and advisory opinions, deleting the name and identity of the requesting  
219 person, shall be compiled and published by the commission on at least an annual  
220 basis. Advisory opinions issued by the commission shall be maintained and made  
221 available for public inspection and copying at the office of the commission during  
222 normal business hours. Any advisory opinion or portion of an advisory opinion  
223 rendered pursuant to this subsection shall be withdrawn by the commission if,  
224 after hearing thereon, the joint committee on administrative rules finds that such  
225 advisory opinion is beyond or contrary to the statutory authority of the  
226 commission or is inconsistent with the legislative intent of any law enacted by the  
227 general assembly, and after the general assembly, by concurrent resolution, votes  
228 to adopt the findings and conclusions of the joint committee on administrative  
229 rules. Any such concurrent resolution adopted by the general assembly shall be  
230 published at length by the commission in its publication of advisory opinions of  
231 the commission next following the adoption of such resolution, and a copy of such  
232 concurrent resolution shall be maintained by the commission, along with the  
233 withdrawn advisory opinion, in its public file of advisory opinions. The  
234 commission shall also send a copy of such resolution to the person who originally  
235 requested the withdrawn advisory opinion. Any advisory opinion issued by the

236 ethics commission shall act as legal direction to any person requesting such  
237 opinion and no person shall be liable for relying on the opinion and it shall act  
238 as a defense of justification against prosecution. An advisory opinion of the  
239 commission shall not be withdrawn unless:

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

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

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

263 18. From time to time but no more frequently than annually the  
264 commission may request the officials and entities described in subdivision (6) of  
265 section 105.450 to identify for the commission in writing those persons associated  
266 with such office or entity which such office or entity has designated as a  
267 decision-making public servant. Each office or entity delineated in subdivision  
268 (6) of section 105.450 receiving such a request shall identify those so designated  
269 within thirty days of the commission's request.