

SENATE BILL NO. 854

102ND GENERAL ASSEMBLY

INTRODUCED BY SENATOR LUETKEMEYER.

3891S.02I

KRISTINA MARTIN, Secretary

AN ACT

To repeal section 105.955, RSMo, and to enact in lieu thereof one new section relating to the operations and procedures of the Missouri ethics commission, with an emergency clause.

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Section A. Section 105.955, RSMo, is repealed and one new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

105.955. 1. A bipartisan "Missouri Ethics
2 Commission", composed of six members, is hereby
3 established. The commission shall be assigned to the office
4 of administration with supervision by the office of
5 administration only for budgeting and reporting as provided
6 by subdivisions (4) and (5) of subsection 6 of section 1 of
7 the Reorganization Act of 1974. Supervision by the office
8 of administration shall not extend to matters relating to
9 policies, regulative functions or appeals from decisions of
10 the commission, and the commissioner of administration, any
11 employee of the office of administration, or the governor,
12 either directly or indirectly, shall not participate or
13 interfere with the activities of the commission in any
14 manner not specifically provided by law and shall not in any
15 manner interfere with the budget request of or withhold any
16 moneys appropriated to the commission by the general
17 assembly. All members of the commission shall be appointed

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

18 by the governor with the advice and consent of the senate
19 from lists submitted pursuant to this section. Each
20 congressional district committee of the political parties
21 having the two highest number of votes cast for their
22 candidate for governor at the last gubernatorial election
23 shall submit two names of eligible nominees for membership
24 on the commission to the governor, and the governor shall
25 select six members from such nominees to serve on the
26 commission.

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

48 3. The term of each member shall be for four years,
49 except that of the members first appointed, the governor

50 shall select three members from even-numbered congressional
51 districts and three members from odd-numbered districts.
52 Not more than three members of the commission shall be
53 members of the same political party, nor shall more than one
54 member be from any one United States congressional
55 district. Not more than two members appointed from the even-
56 numbered congressional districts shall be members of the
57 same political party, and no more than two members from the
58 odd-numbered congressional districts shall be members of the
59 same political party. Of the members first appointed, the
60 terms of the members appointed from the odd-numbered
61 congressional districts shall expire on March 15, 1994, and
62 the terms of the members appointed from the even-numbered
63 congressional districts shall expire on March 15, 1996.
64 Thereafter all successor members of the commission shall be
65 appointed for four-year terms. Terms of successor members
66 of the commission shall expire on March fifteenth of the
67 fourth year of their term. No member of the commission
68 shall serve on the commission after the expiration of the
69 member's term. No person shall be appointed to more than
70 one full four-year term on the commission.

71 4. Vacancies or expired terms on the commission shall
72 be filled in the same manner as the original appointment was
73 made, except as provided in this subsection. Within thirty
74 days of the vacancy or ninety days before the expiration of
75 the term, the names of two eligible nominees for membership
76 on the commission shall be submitted to the governor by the
77 congressional district committees of the political party or
78 parties of the vacating member or members, from the even- or
79 odd-numbered congressional districts, based on the residence
80 of the vacating member or members, other than from the
81 congressional district committees from districts then

82 represented on the commission and from the same
83 congressional district party committee or committees which
84 originally appointed the member or members whose positions
85 are vacated. Appointments to fill vacancies or expired
86 terms shall be made within forty-five days after the
87 deadline for submission of names by the congressional
88 district committees, and shall be subject to the same
89 qualifications for appointment and eligibility as is
90 provided in subsections 2 and 3 of this section.
91 Appointments to fill vacancies for unexpired terms shall be
92 for the remainder of the unexpired term of the member whom
93 the appointee succeeds, and such appointees shall be
94 eligible for appointment to one full four-year term. If the
95 congressional district committee does not submit the
96 required two nominees within the thirty days or if the
97 congressional district committee does not submit the two
98 nominees within an additional thirty days after receiving
99 notice from the governor to submit the nominees, then the
100 governor may appoint a person or persons who shall be
101 subject to the same qualifications for appointment and
102 eligibility as provided in subsections 2 and 3 of this
103 section.

104 5. The governor, with the advice and consent of the
105 senate, may remove any member only for substantial neglect
106 of duty, inability to discharge the powers and duties of
107 office, gross misconduct or conviction of a felony or a
108 crime involving moral turpitude. Members of the commission
109 also may be removed from office by concurrent resolution of
110 the general assembly signed by the governor. If such
111 resolution receives the vote of two-thirds or more of the
112 membership of both houses of the general assembly, the
113 signature of the governor shall not be necessary to effect

114 removal. The office of any member of the commission who
115 moves from the congressional district from which the member
116 was appointed shall be deemed vacated upon such change of
117 residence.

118 6. The commission shall elect biennially one of its
119 members as the chairman. The chairman may not succeed
120 himself or herself after two years. No member of the
121 commission shall succeed as chairman any member of the same
122 political party as himself or herself. At least four
123 members are necessary to constitute a quorum, and at least
124 four affirmative votes shall be required for any action or
125 recommendation of the commission.

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

129 8. In the event that a retired judge is appointed as a
130 member of the commission, the judge shall not serve as a
131 special investigator while serving as a member of the
132 commission.

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

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

137 (2) Be employed as a lobbyist;

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

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

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

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

152 10. Each member of the commission shall receive, as
153 full compensation for the member's services, the sum of one
154 hundred dollars per day for each full day actually spent on
155 work of the commission, and the member's actual and
156 necessary expenses incurred in the performance of the
157 member's official duties.

158 11. The commission shall appoint an executive director
159 who shall serve subject to the supervision of and at the
160 pleasure of the commission[, but in no event for more than
161 six years]. The executive director shall be responsible for
162 the administrative operations of the commission and perform
163 such other duties as may be delegated or assigned to the
164 director by law or by rule of the commission. The executive
165 director shall employ staff and retain such contract
166 services as the director deems necessary, within the limits
167 authorized by appropriations by the general assembly.

168 12. Beginning on January 1, 1993, all lobbyist
169 registration and expenditure reports filed pursuant to
170 section 105.473, financial interest statements filed
171 pursuant to subdivision (1) of section 105.489, and campaign
172 finance disclosure reports filed other than with election
173 authorities or local election authorities as provided by
174 section 130.026 shall be filed with the commission.

175 13. Within sixty days of the initial meeting of the
176 first commission appointed, the commission shall obtain from

177 the clerk of the supreme court or the state courts
178 administrator a list of retired appellate and circuit court
179 judges who did not leave the judiciary as a result of being
180 defeated in an election. The executive director shall
181 determine those judges who indicate their desire to serve as
182 special investigators and to investigate any and all
183 complaints referred to them by the commission. The
184 executive director shall maintain an updated list of those
185 judges qualified and available for appointment to serve as
186 special investigators. Such list shall be updated at least
187 annually. The commission shall refer complaints to such
188 special investigators on that list on a rotating schedule
189 which ensures a random assignment of each special
190 investigator. Each special investigator shall receive only
191 one unrelated investigation at a time and shall not be
192 assigned to a second or subsequent investigation until all
193 other eligible investigators on the list have been assigned
194 to an investigation. In the event that no special
195 investigator is qualified or available to conduct a
196 particular investigation, the commission may appoint a
197 special investigator to conduct such particular
198 investigation.

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

203 (1) Receive and review complaints regarding alleged
204 violation of sections 105.450 to 105.496 and chapter 130,
205 conduct initial reviews and investigations regarding such
206 complaints as provided herein; refer complaints to
207 appropriate prosecuting authorities and appropriate
208 disciplinary authorities along with recommendations for

209 sanctions; and initiate judicial proceedings as allowed by
210 sections 105.955 to 105.963;

211 (2) Review and audit any reports and statements
212 required by the campaign finance disclosure laws contained
213 in chapter 130, and financial interest disclosure laws or
214 lobbyist registration and reporting laws as provided by
215 sections 105.470 to 105.492, for timeliness, accuracy and
216 completeness of content as provided in sections 105.955 to
217 105.963;

218 (3) Develop appropriate systems to file and maintain
219 an index of all such reports and statements to facilitate
220 public access to such information, except as may be limited
221 by confidentiality requirements otherwise provided by law,
222 including cross-checking of information contained in such
223 statements and reports. The commission may enter into
224 contracts with the appropriate filing officers to effectuate
225 such system. Such filing officers shall cooperate as
226 necessary with the commission as reasonable and necessary to
227 effectuate such purposes;

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

232 (5) Make recommendations to the governor and general
233 assembly or any state agency on the need for further
234 legislation with respect to the ethical conduct of public
235 officials and employees and to advise state and local
236 government in the development of local government codes of
237 ethics and methods of disclosing conflicts of interest as
238 the commission may deem appropriate to promote high ethical
239 standards among all elected and appointed officials or

240 employees of the state or any political subdivision thereof
241 and lobbyists;

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

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

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

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

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

257 (2) Administer oaths and affirmations;

258 (3) Take evidence and require by subpoena duces tecum
259 the production of books, papers, and other records relating
260 to any matter being investigated or to the performance of
261 the commission's duties or exercise of its powers.

262 Subpoenas duces tecum shall be served and enforced in the
263 same manner provided by section 536.077;

264 (4) Employ such personnel, including legal counsel,
265 and contract for services including legal counsel, within
266 the limits of its appropriation, as it deems necessary
267 provided such legal counsel, either employed or contracted,
268 represents the Missouri ethics commission before any state
269 agency or before the courts at the request of the Missouri
270 ethics commission. Nothing in this section shall limit the

271 authority of the Missouri ethics commission as provided for
272 in subsection 2 of section 105.961; and

273 (5) Obtain information from any department, division
274 or agency of the state or any political subdivision
275 reasonably calculated to lead to the discovery of evidence
276 which will reasonably assist the commission in carrying out
277 the duties prescribed in sections 105.955 to 105.963 and
278 chapter 130.

279 16. (1) Upon written request for an advisory opinion
280 received by the commission, and if the commission determines
281 that the person requesting the opinion would be directly
282 affected by the application of law to the facts presented by
283 the requesting person, the commission shall issue a written
284 opinion advising the person who made the request, in
285 response to the person's particular request, regarding any
286 issue that the commission can receive a complaint on
287 pursuant to section 105.957. The commission may decline to
288 issue a written opinion by a vote of four members and shall
289 provide to the requesting person the reason for the refusal
290 in writing. The commission shall give an approximate time
291 frame as to when the written opinion shall be issued. Such
292 advisory opinions shall be issued no later than ninety days
293 from the date of receipt by the commission. Such requests
294 and advisory opinions, deleting the name and identity of the
295 requesting person, shall be compiled and published by the
296 commission on at least an annual basis. Advisory opinions
297 issued by the commission shall be maintained and made
298 available for public inspection and copying at the office of
299 the commission during normal business hours. Any advisory
300 opinion or portion of an advisory opinion rendered pursuant
301 to this subsection shall be withdrawn by the commission if,
302 after hearing thereon, the joint committee on administrative

303 rules finds that such advisory opinion is beyond or contrary
304 to the statutory authority of the commission or is
305 inconsistent with the legislative intent of any law enacted
306 by the general assembly, and after the general assembly, by
307 concurrent resolution, votes to adopt the findings and
308 conclusions of the joint committee on administrative rules.
309 Any such concurrent resolution adopted by the general
310 assembly shall be published at length by the commission in
311 its publication of advisory opinions of the commission next
312 following the adoption of such resolution, and a copy of
313 such concurrent resolution shall be maintained by the
314 commission, along with the withdrawn advisory opinion, in
315 its public file of advisory opinions. The commission shall
316 also send a copy of such resolution to the person who
317 originally requested the withdrawn advisory opinion. Any
318 advisory opinion issued by the ethics commission shall act
319 as legal direction to any person requesting such opinion and
320 no person shall be liable for relying on the opinion and it
321 shall act as a defense of justification against
322 prosecution. An advisory opinion of the commission shall
323 not be withdrawn unless:

324 (a) The authorizing statute is declared
325 unconstitutional;

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

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

330 (2) Upon request, the attorney general shall give the
331 attorney general's opinion, without fee, to the commission,
332 any elected official of the state or any political
333 subdivision, any member of the general assembly, or any
334 director of any department, division or agency of the state,

335 upon any question of law regarding the effect or application
336 of sections 105.450 to 105.496, or chapter 130. Such
337 opinion need be in writing only upon request of such
338 official, member or director, and in any event shall be
339 rendered within sixty days that such request is delivered to
340 the attorney general.

341 17. The state auditor and the state auditor's duly
342 authorized employees who have taken the oath of
343 confidentiality required by section 29.070 may audit the
344 commission and in connection therewith may inspect materials
345 relating to the functions of the commission. Such audit
346 shall include a determination of whether appropriations were
347 spent within the intent of the general assembly, but shall
348 not extend to review of any file or document pertaining to
349 any particular investigation, audit or review by the
350 commission, an investigator or any staff or person employed
351 by the commission or under the supervision of the commission
352 or an investigator. The state auditor and any employee of
353 the state auditor shall not disclose the identity of any
354 person who is or was the subject of an investigation by the
355 commission and whose identity is not public information as
356 provided by law.

357 18. From time to time but no more frequently than
358 annually the commission may request the officials and
359 entities described in subdivision (6) of section 105.450 to
360 identify for the commission in writing those persons
361 associated with such office or entity which such office or
362 entity has designated as a decision-making public servant.
363 Each office or entity delineated in subdivision (6) of
364 section 105.450 receiving such a request shall identify
365 those so designated within thirty days of the commission's
366 request.

Section B. Because of the need to ensure the continued
2 enforcement of ethics laws, section A of this act is deemed
3 necessary for the immediate preservation of the public
4 health, welfare, peace, and safety, and is hereby declared
5 to be an emergency act within the meaning of the
6 constitution, and section A of this act shall be in full
7 force and effect upon its passage and approval.

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