

SENATE AMENDMENT NO. _____

Offered by _____ of _____

Amend SS/SCS/Senate Bill No. 11, Page 1, Section title, Line 6

of said page, by inserting after "session," the following:
"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"; and

Further amend said bill, Page 25, Section 105.499, Line 26
of said page, by inserting after all of said line the following:

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

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

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

(3) That additional time is necessary to complete
the investigation, and the status and progress of the
investigation to date. The commission, in its

1 discretion, may allow the investigation to proceed for
2 no more than two additional successive periods of
3 ninety days each, pending reports regarding the status
4 and progress of the investigation at the end of each
5 such period.

6 2. When the commission concludes, based on the
7 report from the special investigator, or based on an
8 investigation conducted pursuant to section 105.959,
9 that there are reasonable grounds to believe that a
10 violation of any criminal law has occurred, and if the
11 commission believes that criminal prosecution would be
12 appropriate upon a vote of four members of the
13 commission, the commission shall refer the report to
14 the Missouri office of prosecution services,
15 prosecutors coordinators training council established
16 in section 56.760, which shall submit a panel of five
17 attorneys for recommendation to the court having
18 criminal jurisdiction, for appointment of an attorney
19 to serve as a special prosecutor; except that, the
20 attorney general of Missouri or any assistant attorney
21 general shall not act as such special prosecutor. The
22 court shall then appoint from such panel a special
23 prosecutor pursuant to section 56.110 who shall have
24 all the powers provided by section 56.130. The court
25 shall allow a reasonable and necessary attorney's fee
26 for the services of the special prosecutor. Such fee
27 shall be assessed as costs if a case is filed, or
28 ordered by the court if no case is filed, and paid
29 together with all other costs in the proceeding by the
30 state, in accordance with rules and regulations
31 promulgated by the state courts administrator, subject
32 to funds appropriated to the office of administration
33 for such purposes. If the commission does not have
34 sufficient funds to pay a special prosecutor, the
35 commission shall refer the case to the prosecutor or
36 prosecutors having criminal jurisdiction. If the
37 prosecutor having criminal jurisdiction is not able to
38 prosecute the case due to a conflict of interest, the
39 court may appoint a special prosecutor, paid from
40 county funds, upon appropriation by the county or the
41 attorney general to investigate and, if appropriate,
42 prosecute the case. The special prosecutor or
43 prosecutor shall commence an action based on the report
44 by the filing of an information or seeking an
45 indictment within sixty days of the date of such
46 prosecutor's appointment, or shall file a written
47 statement with the commission explaining why criminal
48 charges should not be sought. If the special
49 prosecutor or prosecutor fails to take either action
50 required by this subsection, upon request of the
51 commission, a new special prosecutor, who may be the
52 attorney general, shall be appointed. The report may

1 also be referred to the appropriate disciplinary
2 authority over the person who is the subject of the
3 report.

4 3. When the commission concludes, based on the
5 report from the special investigator or based on an
6 investigation conducted pursuant to section 105.959,
7 that there are reasonable grounds to believe that a
8 violation of any law has occurred which is not a
9 violation of criminal law or that criminal prosecution
10 is not appropriate, the commission shall conduct a
11 hearing which shall be a closed meeting and not open to
12 the public. The hearing shall be conducted pursuant to
13 the procedures provided by sections 536.063 to 536.090
14 and shall be considered to be a contested case for
15 purposes of such sections. The commission shall
16 determine, in its discretion, whether or not that there
17 is probable cause that a violation has occurred. If
18 the commission determines, by a vote of at least four
19 members of the commission, that probable cause exists
20 that a violation has occurred, the commission may refer
21 its findings and conclusions to the appropriate
22 disciplinary authority over the person who is the
23 subject of the report, as described in subsection 8 of
24 this section.

25 4. If the appropriate disciplinary authority
26 receiving a report from the commission pursuant to
27 subsection 3 of this section fails to follow, within
28 sixty days of the receipt of the report, the
29 recommendations contained in the report, or if the
30 commission determines, by a vote of at least four
31 members of the commission that some action other than
32 referral for criminal prosecution or for action by the
33 appropriate disciplinary authority would be
34 appropriate, the commission shall take any one or more
35 of the following actions:

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

41 (2) Notify the person of the requirement to file,
42 amend or correct any report, statement, or other
43 document or information required by sections 105.473,
44 105.483 to 105.492, or chapter 130 and that the
45 commission may seek judicial enforcement of its
46 decision pursuant to subsection 5 of this section; and

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

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

52 (5) Issue a letter that no further action shall

1 be taken, which would be maintained as a public
2 document; or

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

7
8 5. Upon vote of at least four members, the
9 commission may initiate formal judicial proceedings in
10 the circuit court of Cole County seeking to obtain any
11 of the following orders:

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

15 (2) Pay any civil penalties required by sections
16 105.450 to 105.496 or chapter 130;

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

20 (4) Pay restitution for any unjust enrichment the
21 violator obtained as a result of any violation of any
22 criminal statute as described in subsection 7 of this
23 section.

24 6. After the commission determines by a vote of
25 at least four members of the commission that a
26 violation has occurred, other than a referral for
27 criminal prosecution, and the commission has referred
28 the findings and conclusions to the appropriate
29 disciplinary authority over the person who is the
30 subject of the report, or has taken an action under
31 subsection 4 of this section, the subject of the report
32 may appeal the determination of the commission to the
33 circuit court of Cole County. The court shall conduct
34 a de novo review of the determination of the
35 commission. Such appeal shall stay the action of the
36 Missouri ethics commission. Such appeal shall be filed
37 not later than the fourteenth day after the subject of
38 the commission's action receives actual notice of the
39 commission's action. If a petition for judicial review
40 of a final order is not filed as provided in this
41 section or when an order for fees under subsection 4 of
42 this section becomes final following an appeal to the
43 circuit court of Cole County, the commission may file a
44 certified copy of the final order with the circuit
45 court of Cole County. When any order for fees under
46 subsection 4 of this section becomes final, the
47 commission may file a certified copy of the final order
48 with the circuit court of Cole County. The order so
49 filed shall have the same effect as a judgment of the
50 court and may be recorded, enforced, or satisfied in
51 the same manner as a judgment of the court.

52 7. In the proceeding in the circuit court of Cole

1 County, the commission may seek restitution against any
2 person who has obtained unjust enrichment as a result
3 of violation of any provision of sections 105.450 to
4 105.496, or chapter 130 and may recover on behalf of
5 the state or political subdivision with which the
6 alleged violator is associated, damages in the amount
7 of any unjust enrichment obtained and costs and
8 attorney's fees as ordered by the court.

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

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

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

21 (3) In the case of a person holding an elective
22 office of a political subdivision, the report shall be
23 referred to the governing body of the political
24 subdivision;

25 (4) In the case of any officer or employee of the
26 state or of a political subdivision, the report shall
27 be referred to the person who has immediate supervisory
28 authority over the employment by the state or by the
29 political subdivision of the subject of the report;

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

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

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

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

44 9. The special investigator having a complaint
45 referred to the special investigator by the commission
46 shall have the following powers:

47 (1) To request and shall be given access to
48 information in the possession of any person or agency
49 which the special investigator deems necessary for the
50 discharge of the special investigator's
51 responsibilities;

52 (2) To examine the records and documents of any

1 person or agency, unless such examination would violate
2 state or federal law providing for confidentiality;

3 (3) To administer oaths and affirmations;

4 (4) Upon refusal by any person to comply with a
5 request for information relevant to an investigation,
6 an investigator may issue a subpoena for any person to
7 appear and give testimony, or for a subpoena duces
8 tecum to produce documentary or other evidence which
9 the investigator deems relevant to a matter under the
10 investigator's inquiry. The subpoenas and subpoenas
11 duces tecum may be enforced by applying to a judge of
12 the circuit court of Cole County or any county where
13 the person or entity that has been subpoenaed resides
14 or may be found, for an order to show cause why the
15 subpoena or subpoena duces tecum should not be
16 enforced. The order and a copy of the application
17 therefor shall be served in the same manner as a
18 summons in a civil action, and if, after hearing, the
19 court determines that the subpoena or subpoena duces
20 tecum should be sustained and enforced, the court shall
21 enforce the subpoena or subpoena duces tecum in the
22 same manner as if it had been issued by the court in a
23 civil action; and

24 (5) To request from the commission such
25 investigative, clerical or other staff assistance or
26 advancement of other expenses which are necessary and
27 convenient for the proper completion of an
28 investigation. Within the limits of appropriations to
29 the commission, the commission may provide such
30 assistance, whether by contract to obtain such
31 assistance or from staff employed by the commission, or
32 may advance such expenses.

33 10. (1) Any retired judge may request in writing
34 to have the judge's name removed from the list of
35 special investigators subject to appointment by the
36 commission or may request to disqualify himself or
37 herself from any investigation. Such request shall
38 include the reasons for seeking removal;

39 (2) By vote of four members of the commission,
40 the commission may disqualify a judge from a particular
41 investigation or may permanently remove the name of any
42 retired judge from the list of special investigators
43 subject to appointment by the commission.

44 11. Any person who is the subject of any
45 investigation pursuant to this section shall be
46 entitled to be represented by counsel at any proceeding
47 before the special investigator or the commission.

48 12. The provisions of sections 105.957, 105.959
49 and 105.961 are in addition to other provisions of law
50 under which any remedy or right of appeal or objection
51 is provided for any person, or any procedure provided
52 for inquiry or investigation concerning any matter.

1 The provisions of this section shall not be construed
2 to limit or affect any other remedy or right of appeal
3 or objection.

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

8 14. If, in the opinion of the commission, the
9 complaining party was motivated by malice or reason
10 contrary to the spirit of any law on which such
11 complaint was based, in filing the complaint without
12 just cause, this finding shall be reported to
13 appropriate law enforcement authorities. Any person
14 who knowingly files a complaint without just cause, or
15 with malice, is guilty of a class A misdemeanor.

16 15. A respondent party who prevails in a formal
17 judicial action brought by the commission shall be
18 awarded those reasonable fees and expenses incurred by
19 that party in the formal judicial action, unless the
20 court finds that the position of the commission was
21 substantially justified or that special circumstances
22 make such an award unjust.

23 16. The special investigator and members and
24 staff of the commission shall maintain confidentiality
25 with respect to all matters concerning a complaint,
26 with the exception of communications with any person
27 which are necessary to the investigation. Any person
28 who violates the confidentiality requirements imposed
29 by this section or subsection 17 of section 105.955
30 required to be confidential is guilty of a class A
31 misdemeanor and shall be subject to removal from or
32 termination of employment by the commission.

33 17. Any judge of the court of appeals or circuit
34 court who ceases to hold such office by reason of the
35 judge's retirement and who serves as a special
36 investigator pursuant to this section shall receive
37 annual compensation, salary or retirement for such
38 services at the rates of compensation provided for
39 senior judges by subsections 1, 2 and 4 of section
40 476.682. Such retired judges shall by the tenth day of
41 each month following any month in which the judge
42 provided services pursuant to this section certify to
43 the commission and to the state courts administrator
44 the amount of time engaged in such services by hour or
45 fraction thereof, the dates thereof, and the expenses
46 incurred and allowable pursuant to this section. The
47 commission shall then issue a warrant to the state
48 treasurer for the payment of the salary and expenses to
49 the extent, and within limitations, provided for in
50 this section. The state treasurer upon receipt of such
51 warrant shall pay the same out of any appropriations
52 made for this purpose on the last day of the month

1 during which the warrant was received by the state
2 treasurer.]
3

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

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

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

20 (3) That additional time is necessary to complete the
21 investigation, and the status and progress of the investigation
22 to date. The commission, in its discretion, may allow the
23 investigation to proceed for additional successive periods of one
24 hundred twenty 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 from
27 the special investigator, or based on an audit conducted pursuant
28 to section 105.959, that there are reasonable grounds to believe
29 that a violation of any criminal law has occurred, and if the
30 commission believes that criminal prosecution would be

1 appropriate upon a vote of four members of the commission, the
2 commission shall refer the report to the Missouri office of
3 prosecution services, prosecutors coordinators training council
4 established in section 56.760, which shall submit a panel of five
5 attorneys for recommendation to the court having criminal
6 jurisdiction, for appointment of an attorney to serve as a
7 special prosecutor; except that, the attorney general of Missouri
8 or any assistant attorney general shall not act as such special
9 prosecutor. The court shall then appoint from such panel a
10 special prosecutor pursuant to section 56.110 who shall have all
11 the powers provided by section 56.130. The court shall allow a
12 reasonable and necessary attorney's fee for the services of the
13 special prosecutor. Such fee shall be assessed as costs if a
14 case is filed, or ordered by the court if no case is filed, and
15 paid together with all other costs in the proceeding by the
16 state, in accordance with rules and regulations promulgated by
17 the state courts administrator, subject to funds appropriated to
18 the office of administration for such purposes. If the
19 commission does not have sufficient funds to pay a special
20 prosecutor, the commission shall refer the case to the prosecutor
21 or prosecutors having criminal jurisdiction. If the prosecutor
22 having criminal jurisdiction is not able to prosecute the case
23 due to a conflict of interest, the court may appoint a special
24 prosecutor, paid from county funds, upon appropriation by the
25 county or the attorney general to investigate and, if
26 appropriate, prosecute the case. The special prosecutor or
27 prosecutor shall commence an action based on the report by the
28 filing of an information or seeking an indictment within sixty
29 days of the date of such prosecutor's appointment, or shall file

1 a written statement with the commission explaining why criminal
2 charges should not be sought. If the special prosecutor or
3 prosecutor fails to take either action required by this
4 subsection, upon request of the commission, a new special
5 prosecutor, who may be the attorney general, shall be appointed.
6 The report may also be referred to the appropriate disciplinary
7 authority over the person who is the subject of the report.

8 3. When the commission concludes, based on the report from
9 the special investigator or based on an audit conducted pursuant
10 to section 105.959, that there are reasonable grounds to believe
11 that a violation of any law has occurred which is not a violation
12 of criminal law or that criminal prosecution is not appropriate,
13 the commission shall conduct a hearing which shall be a closed
14 meeting and not open to the public. The hearing shall be
15 conducted pursuant to the procedures provided by sections 536.063
16 to 536.090 and shall be considered to be a contested case for
17 purposes of such sections. The commission shall determine, in
18 its discretion, whether or not that there is probable cause that
19 a violation has occurred. If the commission determines, by a
20 vote of at least four members of the commission, that probable
21 cause exists that a violation has occurred, the commission may
22 refer its findings and conclusions to the appropriate
23 disciplinary authority over the person who is the subject of the
24 report, as described in subsection 7 of this section. After the
25 commission determines by a vote of at least four members of the
26 commission that probable cause exists that a violation has
27 occurred, and the commission has referred the findings and
28 conclusions to the appropriate disciplinary authority over the
29 person subject of the report, the subject of the report may

1 appeal the determination of the commission to the administrative
2 hearing commission. Such appeal shall stay the action of the
3 Missouri ethics commission. Such appeal shall be filed not later
4 than the fourteenth day after the subject of the commission's
5 action receives actual notice of the commission's action.

6 4. If the appropriate disciplinary authority receiving a
7 report from the commission pursuant to subsection 3 of this
8 section fails to follow, within sixty days of the receipt of the
9 report, the recommendations contained in the report, or if the
10 commission determines, by a vote of at least four members of the
11 commission that some action other than referral for criminal
12 prosecution or for action by the appropriate disciplinary
13 authority would be appropriate, the commission shall take any one
14 or more of the following actions:

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

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

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

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

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

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

5 5. In the event that an individual is convicted of a crime
6 under power granted by this section for violation of any
7 provision of sections 105.450 to 105.496 or sections 105.955 to
8 105.963 or chapter 130, the ethics commission shall not seek
9 civil penalties against such individual for violations of
10 sections 105.450 to 105.496 or sections 105.955 to 105.963 or
11 chapter 130.

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

15 (1) Cease and desist violation of any provision of sections
16 105.450 to 105.496, or chapter 130, or sections 105.955 to
17 105.963;

18 (2) Pay any civil penalties required by sections 105.450 to
19 105.496 or chapter 130;

20 (3) File any reports, statements, or other documents or
21 information required by sections 105.450 to 105.496, or chapter
22 130; or

23 (4) Pay restitution for any unjust enrichment the violator
24 obtained as a result of any violation of any criminal statute as
25 described in subsection 6 of this section. The Missouri ethics
26 commission shall give actual notice to the subject of the
27 complaint of the proposed action as set out in this section. The
28 subject of the complaint may appeal the action of the Missouri
29 ethics commission, other than a referral for criminal

1 prosecution, to the administrative hearing commission. Such
2 appeal shall stay the action of the Missouri ethics commission.
3 Such appeal shall be filed no later than fourteen days after the
4 subject of the commission's actions receives actual notice of the
5 commission's actions.

6 [6.] 7. In the proceeding in circuit court, the commission
7 may seek restitution against any person who has obtained unjust
8 enrichment as a result of violation of any provision of sections
9 105.450 to 105.496, or chapter 130 and may recover on behalf of
10 the state or political subdivision with which the alleged
11 violator is associated, damages in the amount of any unjust
12 enrichment obtained and costs and attorney's fees as ordered by
13 the court.

14 [7.] 8. The appropriate disciplinary authority to whom a
15 report shall be sent pursuant to subsection 2 or 3 of this
16 section shall include, but not be limited to, the following:

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

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

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

27 (4) In the case of any officer or employee of the state or
28 of a political subdivision, the report shall be referred to the
29 person who has immediate supervisory authority over the

1 employment by the state or by the political subdivision of the
2 subject of the report;

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

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

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

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

14 [8.] 9. The special investigator having a complaint
15 referred to the special investigator by the commission shall have
16 the following powers:

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

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

24 (3) To administer oaths and affirmations;

25 (4) Upon refusal by any person to comply with a request for
26 information relevant to an investigation, an investigator may
27 issue a subpoena for any person to appear and give testimony, or
28 for a subpoena duces tecum to produce documentary or other
29 evidence which the investigator deems relevant to a matter under

1 the investigator's inquiry. The subpoenas and subpoenas duces
2 tecum may be enforced by applying to a judge of the circuit court
3 of Cole County or any county where the person or entity that has
4 been subpoenaed resides or may be found, for an order to show
5 cause why the subpoena or subpoena duces tecum should not be
6 enforced. The order and a copy of the application therefor shall
7 be served in the same manner as a summons in a civil action, and
8 if, after hearing, the court determines that the subpoena or
9 subpoena duces tecum should be sustained and enforced, the court
10 shall enforce the subpoena or subpoena duces tecum in the same
11 manner as if it had been issued by the court in a civil action;
12 and

13 (5) To request from the commission such investigative,
14 clerical or other staff assistance or advancement of other
15 expenses which are necessary and convenient for the proper
16 completion of an investigation. Within the limits of
17 appropriations to the commission, the commission may provide such
18 assistance, whether by contract to obtain such assistance or from
19 staff employed by the commission, or may advance such expenses.

20 [9.] 10. (1) Any retired judge may request in writing to
21 have the judge's name removed from the list of special
22 investigators subject to appointment by the commission or may
23 request to disqualify himself or herself from any investigation.
24 Such request shall include the reasons for seeking removal;

25 (2) By vote of four members of the commission, the
26 commission may disqualify a judge from a particular investigation
27 or may permanently remove the name of any retired judge from the
28 list of special investigators subject to appointment by the
29 commission.

1 [10.] 11. Any person who is the subject of any
2 investigation pursuant to this section shall be entitled to be
3 represented by counsel at any proceeding before the special
4 investigator or the commission.

5 [11.] 12. The provisions of sections 105.957, 105.959 and
6 105.961 are in addition to other provisions of law under which
7 any remedy or right of appeal or objection is provided for any
8 person, or any procedure provided for inquiry or investigation
9 concerning any matter. The provisions of this section shall not
10 be construed to limit or affect any other remedy or right of
11 appeal or objection.

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

16 [13.] 14. If, in the opinion of the commission, the
17 complaining party was motivated by malice or reason contrary to
18 the spirit of any law on which such complaint was based, in
19 filing the complaint without just cause, this finding shall be
20 reported to appropriate law enforcement authorities. Any person
21 who knowingly files a complaint without just cause, or with
22 malice, is guilty of a class A misdemeanor.

23 [14.] 15. A respondent party who prevails in a formal
24 judicial action brought by the commission shall be awarded those
25 reasonable fees and expenses incurred by that party in the formal
26 judicial action, unless the court finds that the position of the
27 commission was substantially justified or that special
28 circumstances make such an award unjust.

29 [15.] 16. The special investigator and members and staff of

1 the commission shall maintain confidentiality with respect to all
2 matters concerning a complaint until and if a report is filed
3 with the commission, with the exception of communications with
4 any person which are necessary to the investigation. The report
5 filed with the commission resulting from a complaint acted upon
6 under the provisions of this section shall not contain the name
7 of the complainant or other person providing information to the
8 investigator, if so requested in writing by the complainant or
9 such other person. Any person who violates the confidentiality
10 requirements imposed by this section or subsection 17 of section
11 105.955 required to be confidential is guilty of a class A
12 misdemeanor and shall be subject to removal from or termination
13 of employment by the commission.

14 [16.] 17. Any judge of the court of appeals or circuit
15 court who ceases to hold such office by reason of the judge's
16 retirement and who serves as a special investigator pursuant to
17 this section shall receive annual compensation, salary or
18 retirement for such services at the rates of compensation
19 provided for senior judges by subsections 1, 2 and 4 of section
20 476.682. Such retired judges shall by the tenth day of each
21 month following any month in which the judge provided services
22 pursuant to this section certify to the commission and to the
23 state courts administrator the amount of time engaged in such
24 services by hour or fraction thereof, the dates thereof, and the
25 expenses incurred and allowable pursuant to this section. The
26 commission shall then issue a warrant to the state treasurer for
27 the payment of the salary and expenses to the extent, and within
28 limitations, provided for in this section. The state treasurer
29 upon receipt of such warrant shall pay the same out of any

1 appropriations made for this purpose on the last day of the month
2 during which the warrant was received by the state treasurer.";
3 and

4 Further amend the title and enacting clause accordingly.