

FIRST REGULAR SESSION

SENATE BILL NO. 97

98TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR LeVOTA.

Pre-filed December 1, 2014, and ordered printed.

ADRIANE D. CROUSE, Secretary.

0451S.01I

AN ACT

To repeal section 105.955 as enacted by senate bill no. 844, ninety-fifth general assembly, second regular session, section 105.955 as enacted by senate bills nos. 31 & 285, ninety-second general assembly, first regular session, section 105.959 as enacted by senate bill no. 844, ninety-fifth general assembly, second regular session, section 105.959 as enacted by house bill no. 1900, ninety-third general assembly, second regular session, 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 four new sections relating to ethics, with existing penalty provisions.

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

Section A. Section 105.955 as enacted by senate bill no. 844, ninety-fifth
2 general assembly, second regular session, section 105.955 as enacted by senate
3 bills nos. 31 & 285, ninety-second general assembly, first regular session, section
4 105.959 as enacted by senate bill no. 844, ninety-fifth general assembly, second
5 regular session, section 105.959 as enacted by house bill no. 1900, ninety-third
6 general assembly, second regular session, section 105.961 as enacted by senate
7 bill no. 844, ninety-fifth general assembly, second regular session, and section
8 105.961 as enacted by senate bill no. 16, ninety-first general assembly, first
9 regular session, RSMo, are repealed and four new sections enacted in lieu thereof,
10 to be known as sections 105.955, 105.959, 105.961, and 130.032, to read as
11 follows:

 [105.955. 1. A bipartisan "Missouri Ethics Commission",
2 composed of six members, is hereby established. The commission

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

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

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

the commission, a person shall be a citizen and a resident of the state and shall have been a registered voter in the state for a period of at least five years preceding the person's appointment.

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

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

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

93 5. The governor, with the advice and consent of the senate,
94 may remove any member only for substantial neglect of duty,
95 inability to discharge the powers and duties of office, gross
96 misconduct or conviction of a felony or a crime involving moral
97 turpitude. Members of the commission also may be removed from
98 office by concurrent resolution of the general assembly signed by
99 the governor. If such resolution receives the vote of two-thirds or
100 more of the membership of both houses of the general assembly,
101 the signature of the governor shall not be necessary to effect
102 removal. The office of any member of the commission who moves
103 from the congressional district from which the member was
104 appointed shall be deemed vacated upon such change of residence.

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

111 any action or recommendation of the commission.

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

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

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

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

122 (2) Be employed as a lobbyist;

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

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

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

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

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

140 11. The commission shall appoint an executive director who
141 shall serve subject to the supervision of and at the pleasure of the
142 commission, but in no event for more than six years. The executive
143 director shall be responsible for the administrative operations of
144 the commission and perform such other duties as may be delegated
145 or assigned to the director by law or by rule of the
146 commission. The executive director shall employ staff and retain

147 such contract services as the director deems necessary, within the
148 limits authorized by appropriations by the general assembly.

149 12. Beginning on January 1, 1993, all lobbyist registration
150 and expenditure reports filed pursuant to section 105.473, financial
151 interest statements filed pursuant to subdivision (1) of section
152 105.489, and campaign finance disclosure reports filed other than
153 with election authorities or local election authorities as provided by
154 section 130.026 shall be filed with the commission.

155 13. Within sixty days of the initial meeting of the first
156 commission appointed, the commission shall obtain from the clerk
157 of the supreme court or the state courts administrator a list of
158 retired appellate and circuit court judges who did not leave the
159 judiciary as a result of being defeated in an election. The executive
160 director shall determine those judges who indicate their desire to
161 serve as special investigators and to investigate any and all
162 complaints referred to them by the commission. The executive
163 director shall maintain an updated list of those judges qualified
164 and available for appointment to serve as special
165 investigators. Such list shall be updated at least annually. The
166 commission shall refer complaints to such special investigators on
167 that list on a rotating schedule which ensures a random
168 assignment of each special investigator. Each special investigator
169 shall receive only one unrelated investigation at a time and shall
170 not be assigned to a second or subsequent investigation until all
171 other eligible investigators on the list have been assigned to an
172 investigation. In the event that no special investigator is qualified
173 or available to conduct a particular investigation, the commission
174 may appoint a special investigator to conduct such particular
175 investigation.

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

180 (1) Receive and review complaints regarding alleged
181 violation of sections 105.450 to 105.496 and chapter 130, conduct
182 initial reviews and investigations regarding such complaints as

provided herein; refer complaints to appropriate prosecuting authorities and appropriate disciplinary authorities along with recommendations for sanctions; and initiate judicial proceedings as allowed by sections 105.955 to 105.963;

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

(3) Conduct investigations as provided in subsection 2 of section 105.959;

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

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

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

(7) Render advisory opinions as provided by this section;

(8) Promulgate rules relating to the provisions of sections

219 105.955 to 105.963 and chapter 130. All rules and regulations
220 issued by the commission shall be prospective only in operation;

221 (9) Request and receive from the officials and entities
222 identified in subdivision (6) of section 105.450 designations of
223 decision-making public servants.

224 15. In connection with such powers provided by sections
225 105.955 to 105.963 and chapter 130, the commission may:

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

229 (2) Administer oaths and affirmations;

230 (3) Take evidence and require by subpoena duces tecum the
231 production of books, papers, and other records relating to any
232 matter being investigated or to the performance of the commission's
233 duties or exercise of its powers. Subpoenas duces tecum shall be
234 served and enforced in the same manner provided by section
235 536.077;

236 (4) Employ such personnel, including legal counsel, and
237 contract for services including legal counsel, within the limits of its
238 appropriation, as it deems necessary provided such legal counsel,
239 either employed or contracted, represents the Missouri ethics
240 commission before any state agency or before the courts at the
241 request of the Missouri ethics commission. Nothing in this section
242 shall limit the authority of the Missouri ethics commission as
243 provided for in subsection 2 of section 105.961; and

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

249 16. (1) Upon written request for an advisory opinion
250 received by the commission, and if the commission determines that
251 the person requesting the opinion would be directly affected by the
252 application of law to the facts presented by the requesting person,
253 the commission shall issue a written opinion advising the person
254 who made the request, in response to the person's particular

request, regarding any issue that the commission can receive a complaint on pursuant to section 105.957. The commission may decline to issue a written opinion by a vote of four members and shall provide to the requesting person the reason for the refusal in writing. The commission shall give an approximate time frame as to when the written opinion shall be issued. Such advisory opinions shall be issued no later than ninety days from the date of receipt by the commission. Such requests and advisory opinions, deleting the name and identity of the requesting person, shall be compiled and published by the commission on at least an annual basis. Advisory opinions issued by the commission shall be maintained and made available for public inspection and copying at the office of the commission during normal business hours. Any advisory opinion or portion of an advisory opinion rendered pursuant to this subsection shall be withdrawn by the commission if, after hearing thereon, the joint committee on administrative rules finds that such advisory opinion is beyond or contrary to the statutory authority of the commission or is inconsistent with the legislative intent of any law enacted by the general assembly, and after the general assembly, by concurrent resolution, votes to adopt the findings and conclusions of the joint committee on administrative rules. Any such concurrent resolution adopted by the general assembly shall be published at length by the commission in its publication of advisory opinions of the commission next following the adoption of such resolution, and a copy of such concurrent resolution shall be maintained by the commission, along with the withdrawn advisory opinion, in its public file of advisory opinions. The commission shall also send a copy of such resolution to the person who originally requested the withdrawn advisory opinion. Any advisory opinion issued by the ethics commission shall act as legal direction to any person requesting such opinion and no person shall be liable for relying on the opinion and it shall act as a defense of justification against prosecution. An advisory opinion of the commission shall not be withdrawn unless:

- (a) The authorizing statute is declared unconstitutional;

291 (b) The opinion goes beyond the power authorized by
292 statute; or

293 (c) The authorizing statute is changed to invalidate the
294 opinion.

295 (2) Upon request, the attorney general shall give the
296 attorney general's opinion, without fee, to the commission, any
297 elected official of the state or any political subdivision, any member
298 of the general assembly, or any director of any department, division
299 or agency of the state, upon any question of law regarding the
300 effect or application of sections 105.450 to 105.496 or chapter
301 130. Such opinion need be in writing only upon request of such
302 official, member or director, and in any event shall be rendered
303 within sixty days after such request is delivered to the attorney
304 general.

305 17. The state auditor and the state auditor's duly
306 authorized employees who have taken the oath of confidentiality
307 required by section 29.070 may audit the commission and in
308 connection therewith may inspect materials relating to the
309 functions of the commission. Such audit shall include a
310 determination of whether appropriations were spent within the
311 intent of the general assembly, but shall not extend to review of
312 any file or document pertaining to any particular investigation,
313 audit or review by the commission, an investigator or any staff or
314 person employed by the commission or under the supervision of the
315 commission or an investigator. The state auditor and any employee
316 of the state auditor shall not disclose the identity of any person
317 who is or was the subject of an investigation by the commission and
318 whose identity is not public information as provided by law.

319 18. From time to time but no more frequently than annually
320 the commission may request the officials and entities described in
321 subdivision (6) of section 105.450 to identify for the commission in
322 writing those persons associated with such office or entity which
323 such office or entity has designated as a decision-making public
324 servant. Each office or entity delineated in subdivision (6) of
325 section 105.450 receiving such a request shall identify those so
326 designated within thirty days of the commission's request.]

105.955. 1. A bipartisan "Missouri Ethics Commission", composed of [six]
2 **eight** members, is hereby established. The commission shall be assigned to the
3 office 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] **One**
13 **member** of the commission shall be appointed by the governor, **the lieutenant**
14 **governor, the attorney general, the secretary of state, the state auditor,**
15 **the state treasurer, the president pro tempore of the senate, and the**
16 **speaker of the house of representatives**, with the advice and consent of the
17 senate [from lists submitted pursuant to this section. Each congressional district
18 committee of the political parties having the two highest number of votes cast for
19 their candidate for governor at the last gubernatorial election shall submit two
20 names of eligible nominees for membership on the commission to the governor,
21 and the governor shall select six members from such nominees to serve on the
22 commission].

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

37 period of at least five years preceding the person's appointment.

38 3. The term of each member shall be for four years[, except that of the
39 members first appointed, the governor shall select three members from
40 even-numbered congressional districts and three members from odd-numbered
41 districts]. Not more than [three] **four** members of the commission shall be
42 members of the same political party, nor shall more than one member be from any
43 one United States congressional district. [Not more than two members appointed
44 from the even-numbered congressional districts shall be members of the same
45 political party, and no more than two members from the odd-numbered
46 congressional districts shall be members of the same political party.] Of the
47 members first appointed, the terms of the members appointed from the
48 odd-numbered congressional districts shall expire on March 15, 1994, and the
49 terms of the members appointed from the even-numbered congressional districts
50 shall expire on March 15, 1996. Thereafter all successor members of the
51 commission shall be appointed for four-year terms. Terms of successor members
52 of the commission shall expire on March fifteenth of the fourth year of their term.
53 No member of the commission shall serve on the commission after the expiration
54 of the member's term. No person shall be appointed to more than one full
55 four-year term on the commission. **In the case of an expired or vacant term**
56 **occurring after August 28, 2015, the governor shall appoint the first**
57 **member followed by appointments by the lieutenant governor, attorney**
58 **general, secretary of state, state auditor, state treasurer, president pro**
59 **tempore of the senate and speaker of the house of representatives,**
60 **respectively.**

61 4. Vacancies or expired terms on the commission shall be filled in the
62 same manner as the original appointment was made[, except as provided in this
63 subsection. Within thirty days of the vacancy or ninety days before the expiration
64 of the term, the names of two eligible nominees for membership on the
65 commission shall be submitted to the governor by the congressional district
66 committees of the political party or parties of the vacating member or members,
67 from the even- or odd-numbered congressional districts, based on the residence
68 of the vacating member or members, other than from the congressional district
69 committees from districts then represented on the commission and from the same
70 congressional district party committee or committees which originally appointed
71 the member or members whose positions are vacated. Appointments to fill
72 vacancies or expired terms shall be made within forty-five days after the deadline

73 for submission of names by the congressional district committees, and shall be
74 subject to the same qualifications for appointment and eligibility as is provided
75 in subsections 2 and 3 of this section] **in the order established in subsection**
76 **3 of this section.** Appointments to fill vacancies for unexpired terms shall be
77 for the remainder of the unexpired term of the member whom the appointee
78 succeeds, and such appointees shall be eligible for appointment to one full
79 four-year term. [If the congressional district committee does not submit the
80 required two nominees within the thirty days or if the congressional district
81 committee does not submit the two nominees within an additional thirty days
82 after receiving notice from the governor to submit the nominees, then the
83 governor may appoint a person or persons who shall be subject to the same
84 qualifications for appointment and eligibility as provided in subsections 2 and 3
85 of this section.]

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

96 6. The commission shall elect biennially one of its members as the
97 chairman. The chairman may not succeed himself or herself after two years. No
98 member of the commission shall succeed as chairman any member of the same
99 political party as himself or herself. At least **[four] five** members are necessary
100 to constitute a quorum, and at least four affirmative votes shall be required for
101 any action or recommendation of the commission.

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

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

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

109 (1) Be employed by the state or any political subdivision of the state;
110 (2) Be employed as a lobbyist;
111 (3) Serve on any other governmental board or commission;
112 (4) Be an officer of any political party or political organization;
113 (5) Permit the person's name to be used, or make contributions, in support
114 of or in opposition to any candidate or proposition;
115 (6) Participate in any way in any election campaign; except that a member
116 or employee of the commission shall retain the right to register and vote in any
117 election, to express the person's opinion privately on political subjects or
118 candidates, to participate in the activities of a civic, community, social, labor or
119 professional organization and to be a member of a political party.

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

124 11. The commission shall appoint an executive director who shall serve
125 subject to the supervision of and at the pleasure of the commission, but in no
126 event for more than six years. The executive director shall be responsible for the
127 administrative operations of the commission and perform such other duties as
128 may be delegated or assigned to the director by law or by rule of the
129 commission. The executive director shall employ staff and retain such contract
130 services as the director deems necessary, within the limits authorized by
131 appropriations by the general assembly.

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

138 13. Within sixty days of the initial meeting of the first commission
139 appointed, the commission shall obtain from the clerk of the supreme court or the
140 state courts administrator a list of retired appellate and circuit court judges who
141 did not leave the judiciary as a result of being defeated in an election. The
142 executive director shall determine those judges who indicate their desire to serve
143 as special investigators and to investigate any and all complaints referred to
144 them by the commission. The executive director shall maintain an updated list

145 of those judges qualified and available for appointment to serve as special
146 investigators. Such list shall be updated at least annually. The commission shall
147 refer complaints to such special investigators on that list on a rotating schedule
148 which ensures a random assignment of each special investigator. Each special
149 investigator shall receive only one unrelated investigation at a time and shall not
150 be assigned to a second or subsequent investigation until all other eligible
151 investigators on the list have been assigned to an investigation. In the event that
152 no special investigator is qualified or available to conduct a particular
153 investigation, the commission may appoint a special investigator to conduct such
154 particular investigation.

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

158 (1) Receive and review complaints regarding alleged violation of sections
159 105.450 to 105.496 and chapter 130, conduct initial reviews and investigations
160 regarding such complaints as provided herein; refer complaints to appropriate
161 prosecuting authorities and appropriate disciplinary authorities along with
162 recommendations for sanctions; and initiate judicial proceedings as allowed by
163 sections 105.955 to 105.963;

164 (2) Review and audit any reports and statements required by the
165 campaign finance disclosure laws contained in chapter 130, and financial interest
166 disclosure laws or lobbyist registration and reporting laws as provided by sections
167 105.470 to 105.492, for timeliness, accuracy and completeness of content as
168 provided in sections 105.955 to 105.963;

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

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

180 (5) Make recommendations to the governor and general assembly or any

181 state agency on the need for further legislation with respect to the ethical conduct
182 of public officials and employees and to advise state and local government in the
183 development of local government codes of ethics and methods of disclosing
184 conflicts of interest as the commission may deem appropriate to promote high
185 ethical standards among all elected and appointed officials or employees of the
186 state or any political subdivision thereof and lobbyists;

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

188 (7) Promulgate rules relating to the provisions of sections 105.955 to
189 105.963 and chapter 130. All rules and regulations issued by the commission
190 shall be prospective only in operation;

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

193 15. In connection with such powers provided by sections 105.955 to
194 105.963 and chapter 130, the commission may:

195 (1) Subpoena witnesses and compel their attendance and testimony.
196 Subpoenas shall be served and enforced in the same manner provided by section
197 536.077;

198 (2) Administer oaths and affirmations;

199 (3) Take evidence and require by subpoena duces tecum the production of
200 books, papers, and other records relating to any matter being investigated or to
201 the performance of the commission's duties or exercise of its powers. Subpoenas
202 duces tecum shall be served and enforced in the same manner provided by section
203 536.077;

204 (4) Employ such personnel, including legal counsel, and contract for
205 services including legal counsel, within the limits of its appropriation, as it deems
206 necessary provided such legal counsel, either employed or contracted, represents
207 the Missouri ethics commission before any state agency or before the courts at the
208 request of the Missouri ethics commission. **However, legal counsel employed**
209 **by the commission shall not carry out any duties or responsibilities**
210 **under sections 105.955 to 105.983 relating to investigations or audits**
211 **and shall only serve as advisors to the commission. Legal counsel used**
212 **by the commission to perform investigations or audits shall be**
213 **conducted by a special investigator which may include legal counsel**
214 **from the office of the attorney general or a special investigator as**
215 **described in subsection 13 of this section.** Nothing in this section shall
216 limit the authority of the Missouri ethics commission as provided for in

217 subsection 2 of section 105.961; and

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

222 16. (1) Upon written request for an advisory opinion received by the
223 commission, and if the commission determines that the person requesting the
224 opinion would be directly affected by the application of law to the facts presented
225 by the requesting person, the commission shall issue a written opinion advising
226 the person who made the request, in response to the person's particular request,
227 regarding any issue that the commission can receive a complaint on pursuant to
228 section 105.957. The commission may decline to issue a written opinion by a vote
229 of **[four] five** members and shall provide to the requesting person the reason for
230 the refusal in writing. The commission shall give an approximate time frame as
231 to when the written opinion shall be issued. Such advisory opinions shall be
232 issued no later than ninety days from the date of receipt by the
233 commission. Such requests and advisory opinions, deleting the name and identity
234 of the requesting person, shall be compiled and published by the commission on
235 at least an annual basis. Advisory opinions issued by the commission shall be
236 maintained and made available for public inspection and copying at the office of
237 the commission during normal business hours. Any advisory opinion or portion
238 of an advisory opinion rendered pursuant to this subsection shall be withdrawn
239 by the commission if, after hearing thereon, the joint committee on administrative
240 rules finds that such advisory opinion is beyond or contrary to the statutory
241 authority of the commission or is inconsistent with the legislative intent of any
242 law enacted by the general assembly, and after the general assembly, by
243 concurrent resolution, votes to adopt the findings and conclusions of the joint
244 committee on administrative rules. Any such concurrent resolution adopted by
245 the general assembly shall be published at length by the commission in its
246 publication of advisory opinions of the commission next following the adoption of
247 such resolution, and a copy of such concurrent resolution shall be maintained by
248 the commission, along with the withdrawn advisory opinion, in its public file of
249 advisory opinions. The commission shall also send a copy of such resolution to
250 the person who originally requested the withdrawn advisory opinion. Any
251 advisory opinion issued by the ethics commission shall act as legal direction to
252 any person requesting such opinion and no person shall be liable for relying on

253 the opinion and it shall act as a defense of justification against prosecution. An
254 advisory opinion of the commission shall not be withdrawn unless:

- 255 (a) The authorizing statute is declared unconstitutional;
 - 256 (b) The opinion goes beyond the power authorized by statute; or
 - 257 (c) The authorizing statute is changed to invalidate the opinion.
- 258 (2) Upon request, the attorney general shall give the attorney general's
259 opinion, without fee, to the commission, any elected official of the state or any
260 political subdivision, any member of the general assembly, or any director of any
261 department, division or agency of the state, upon any question of law regarding
262 the effect or application of sections 105.450 to 105.496, or chapter 130. Such
263 opinion need be in writing only upon request of such official, member or director,
264 and in any event shall be rendered within sixty days that such request is
265 delivered to the attorney general.

266 17. The state auditor and the state auditor's duly authorized employees
267 who have taken the oath of confidentiality required by section 29.070 may audit
268 the commission and in connection therewith may inspect materials relating to the
269 functions of the commission. Such audit shall include a determination of whether
270 appropriations were spent within the intent of the general assembly, but shall not
271 extend to review of any file or document pertaining to any particular
272 investigation, audit or review by the commission, an investigator or any staff or
273 person employed by the commission or under the supervision of the commission
274 or an investigator. The state auditor and any employee of the state auditor shall
275 not disclose the identity of any person who is or was the subject of an
276 investigation by the commission and whose identity is not public information as
277 provided by law.

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

[105.959. 1. The executive director of the commission,
2 under the supervision of the commission, shall review reports and
3 statements filed with the commission or other appropriate officers
4 pursuant to sections 105.470, 105.483 to 105.492, and chapter 130

5 for completeness, accuracy and timeliness of filing of the reports or
6 statements and any records relating to the reports or statements,
7 and upon review, if there are reasonable grounds to believe that a
8 violation has occurred, shall conduct an investigation of such
9 reports, statements, and records and assign a special investigator
10 following the provisions of subsection 1 of section 105.961.

11 2. (1) If there are reasonable grounds to believe that a
12 violation has occurred and after the commission unanimously votes
13 to proceed with all six members voting, the executive director shall,
14 without receipt of a complaint, conduct an independent
15 investigation of any potential violations of the provisions of:

16 (a) The requirements imposed on lobbyists by sections
17 105.470 to 105.478;

18 (b) The financial interest disclosure requirements contained
19 in sections 105.483 to 105.492;

20 (c) The campaign finance disclosure requirements contained
21 in chapter 130;

22 (d) Any code of conduct promulgated by any department,
23 division, or agency of state government, or by state institutions of
24 higher education, or by executive order;

25 (e) The conflict of interest laws contained in sections
26 105.450 to 105.468 and section 171.181; and

27 (f) The provisions of the constitution or state statute or
28 order, ordinance, or resolution of any political subdivision relating
29 to the official conduct of officials or employees of the state and
30 political subdivisions.

31 (2) If an investigation conducted under this subsection fails
32 to establish reasonable grounds to believe that a violation has
33 occurred, the investigation shall be terminated and the person who
34 had been under investigation shall be notified of the reasons for
35 the disposition of the complaint.

36 3. Upon findings of the appropriate filing officer which are
37 reported to the commission in accordance with the provisions of
38 section 130.056, the executive director shall investigate disclosure
39 reports, statements and records pertaining to such findings within
40 a reasonable time after receipt of the reports from the appropriate

41 filing officer.

42 4. The commission may make such investigations and
43 inspections within or outside of this state as are necessary to
44 determine compliance.

45 5. The commission shall notify the person under
46 investigation under this section, by registered mail, within five
47 days of the decision to conduct such investigation and assign a
48 special investigator following the provisions of subsection 1 of
49 section 105.961.

50 6. After completion of an investigation, the executive
51 director shall provide a detailed report of such investigation to the
52 commission. Upon determination that there are reasonable
53 grounds to believe that a person has violated the requirements of
54 sections 105.470, 105.483 to 105.492, or chapter 130, by a vote of
55 four members of the commission, the commission may refer the
56 report with the recommendations of the commission to the
57 appropriate prosecuting authority together with the details of the
58 investigation by the commission as is provided in subsection 2 of
59 section 105.961.

60 7. All investigations by the executive director of an alleged
61 violation shall be strictly confidential with the exception of
62 notification of the commission and the complainant and the person
63 under investigation. Revealing any such confidential investigation
64 information shall be cause for removal or dismissal of the executive
65 director or a commission member or
66 employee.]

105.959. 1. The executive director of the commission, under the
2 supervision of the commission, shall review reports and statements filed with the
3 commission or other appropriate officers pursuant to sections 105.470, 105.483
4 to 105.492, and chapter 130 for completeness, accuracy and timeliness of filing
5 of the reports or statements, and upon review, if there are reasonable grounds to
6 believe that a violation has occurred, shall conduct an audit of such reports and
7 statements. All investigations by the executive director of an alleged violation
8 shall be strictly confidential with the exception of notification of the commission
9 and the complainant or the person under investigation. All investigations by the
10 executive director shall be limited to the information contained in the reports or

11 statements. The commission shall notify the complainant or the person under
12 investigation, by registered mail, within five days of the decision to conduct such
13 investigation. Revealing any such confidential investigation information shall be
14 cause for removal or dismissal of the executive director or a commission member
15 or employee.

16 2. Upon findings of the appropriate filing officer which are reported to the
17 commission in accordance with the provisions of section 130.056, the executive
18 director shall audit disclosure reports, statements and records pertaining to such
19 findings within a reasonable time after receipt of the reports from the appropriate
20 filing officer.

21 3. Upon a sworn written complaint of any natural person filed with the
22 commission pursuant to section 105.957, the commission shall audit and
23 investigate alleged violations. Within sixty days after receipt of a sworn written
24 complaint alleging a violation, the executive director shall notify the complainant
25 in writing of the action, if any, the executive director has taken and plans to take
26 on the complaint. If an investigation conducted pursuant to this subsection fails
27 to establish reasonable grounds to believe that a violation has occurred, the
28 investigation shall be terminated and the complainant and the person who had
29 been under investigation shall be notified of the reasons for the disposition of the
30 complaint.

31 4. The commission may make such investigations and inspections within
32 or outside of this state as are necessary to determine compliance.

33 5. If, during an audit or investigation, the commission determines that a
34 formal investigation is necessary, the commission shall assign the investigation
35 to a special investigator in the manner provided by subsection 1 of section
36 105.961.

37 6. After completion of an audit or investigation, the executive director
38 shall provide a detailed report of such audit or investigation to the
39 commission. Upon determination that there are reasonable grounds to believe
40 that a person has violated the requirements of sections 105.470, 105.483 to
41 105.492, or chapter 130, by a vote of [four] **five** members of the commission, the
42 commission may refer the report with the recommendations of the commission to
43 the appropriate prosecuting authority together with a copy of the audit and the
44 details of the investigation by the commission as is provided in subsection 2 of
45 section 105.961.

[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
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

assistant attorney general shall not act as such special prosecutor. The court shall then appoint from such panel a special prosecutor pursuant to section 56.110 who shall have all the powers provided by section 56.130. The court shall allow a reasonable and necessary attorney's fee for the services of the special prosecutor. Such fee shall be assessed as costs if a case is filed, or ordered by the court if no case is filed, and paid together with all other costs in the proceeding by the state, in accordance with rules and regulations promulgated by the state courts administrator, subject to funds appropriated to the office of administration for such purposes. If the commission does not have sufficient funds to pay a special prosecutor, the commission shall refer the case to the prosecutor or prosecutors having criminal jurisdiction. If the prosecutor having criminal jurisdiction is not able to prosecute the case due to a conflict of interest, the court may appoint a special prosecutor, paid from county funds, upon appropriation by the county or the attorney general to investigate and, if appropriate, prosecute the case. The special prosecutor or prosecutor shall commence an action based on the report by the filing of an information or seeking an indictment within sixty days of the date of such prosecutor's appointment, or shall file a written statement with the commission explaining why criminal charges should not be sought. If the special prosecutor or prosecutor fails to take either action required by this subsection, upon request of the commission, a new special prosecutor, who may be the attorney general, shall be appointed. The report may also be referred to the appropriate disciplinary authority over the person who is the subject of the report.

3. When the commission concludes, based on the report from the special investigator or based on an investigation conducted pursuant to section 105.959, that there are reasonable grounds to believe that a violation of any law has occurred which is not a violation of criminal law or that criminal prosecution is not appropriate, the commission shall conduct a hearing which shall be a closed meeting and not open to the public. The hearing shall be 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

in the violation.

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

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

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

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

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

6. After the commission determines by a vote of at least four members of the commission that a violation has occurred, other than a referral for criminal prosecution, and the commission has referred the findings and conclusions to the appropriate disciplinary authority over the person who is the subject of the report, or has taken an action under subsection 4 of this section, the subject of the report may appeal the determination of the commission to the circuit court of Cole County. The court shall conduct a de novo review of the determination of the commission. Such appeal shall stay the action of the Missouri ethics commission. Such appeal shall be filed not later than the fourteenth day after the subject of the commission's action receives actual notice of the commission's action. If a petition for judicial review of a final order is not filed as provided in this section or when an order for fees under subsection 4 of this section becomes final following an appeal to the circuit court of Cole County, the commission may file a certified copy of the final order with the circuit court of Cole County. When any order for fees under subsection 4 of this section becomes final, the commission may file a certified copy of the final order with the circuit court of Cole County. The order so filed shall have the same effect as a 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

be referred to the prosecuting attorney of Cole County.

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

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

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

(3) To administer oaths and affirmations;

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

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

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.

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

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

105.961. 1. Upon receipt of a complaint as described by section 105.957, the commission shall assign the complaint to a special investigator, [who may be a commission employee,] who shall investigate and determine the merits of the complaint. 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 one hundred twenty 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

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]~~ **five** members of the commission, the
25 commission shall refer the report to the Missouri office of prosecution services,
26 prosecutors coordinators training council established in section 56.760, which
27 shall submit a panel of five attorneys for recommendation to the court having
28 criminal jurisdiction, for appointment of an attorney to serve as a special
29 prosecutor; except that, the attorney general of Missouri or any assistant attorney
30 general shall not act as such special prosecutor. The court shall then appoint
31 from such panel a special prosecutor pursuant to section 56.110 who shall have
32 all the 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 **five** 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]** **five** members of the commission that
68 probable cause exists that a violation has occurred, and the commission has
69 referred the findings and conclusions to the appropriate disciplinary authority
70 over the person subject of the report, the subject of the report may appeal the
71 determination of the commission to the administrative hearing commission. Such
72 appeal shall stay the action of the Missouri ethics commission. Such appeal shall
73 be filed not later than the fourteenth day after the subject of the commission's
74 action receives 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]** **five** 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. Upon vote of at least **[four] five** members, the commission may initiate
99 formal judicial proceedings seeking to obtain any of the following orders:

100 (1) Cease and desist violation of any provision of sections 105.450 to
101 105.496, or chapter 130, or sections 105.955 to 105.963;

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

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

106 (4) Pay restitution for any unjust enrichment the violator obtained as a
107 result of any violation of any criminal statute as described in subsection 6 of this
108 section.

109 The Missouri ethics commission shall give actual notice to the subject of the
110 complaint of the proposed action as set out in this section. The subject of the
111 complaint may appeal the action of the Missouri ethics commission, other than
112 a referral for criminal prosecution, to the administrative hearing
113 commission. Such appeal shall stay the action of the Missouri ethics
114 commission. Such appeal shall be filed no later than fourteen days after the
115 subject of the commission's actions receives actual notice of the commission's
116 actions.

117 6. In the proceeding in circuit court, the commission may seek restitution

118 against any person who has obtained unjust enrichment as a result of violation
119 of any provision of sections 105.450 to 105.496, or chapter 130 and may recover
120 on behalf of the state or political subdivision with which the alleged violator is
121 associated, damages in the amount of any unjust enrichment obtained and costs
122 and attorney's fees as ordered by the court.

123 7. The appropriate disciplinary authority to whom a report shall be sent
124 pursuant to subsection 2 or 3 of this section shall include, but not be limited to,
125 the following:

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

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

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

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

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

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

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

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

148 8. The special investigator having a complaint referred to the special
149 investigator by the commission shall have the following powers:

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

153 (2) To examine the records and documents of any person or agency, unless

154 such examination would violate state or federal law providing for confidentiality;
155 (3) To administer oaths and affirmations;
156 (4) Upon refusal by any person to comply with a request for information
157 relevant to an investigation, an investigator may issue a subpoena for any person
158 to appear and give testimony, or for a subpoena duces tecum to produce
159 documentary or other evidence which the investigator deems relevant to a matter
160 under the investigator's inquiry. The subpoenas and subpoenas duces tecum may
161 be enforced by applying to a judge of the circuit court of Cole County or any
162 county where the person or entity that has been subpoenaed resides or may be
163 found, for an order to show cause why the subpoena or subpoena duces tecum
164 should not be enforced. The order and a copy of the application therefor shall be
165 served in the same manner as a summons in a civil action, and if, after hearing,
166 the court determines that the subpoena or subpoena duces tecum should be
167 sustained and enforced, the court shall enforce the subpoena or subpoena duces
168 tecum in the same manner as if it had been issued by the court in a civil action;
169 and
170 (5) To request from the commission such investigative, clerical or other
171 staff assistance or advancement of other expenses which are necessary and
172 convenient for the proper completion of an investigation. Within the limits of
173 appropriations to the commission, the commission may provide such assistance,
174 whether by contract to obtain such assistance or from staff employed by the
175 commission, or may advance such expenses.

176 9. (1) Any retired judge may request in writing to have the judge's name
177 removed from the list of special investigators subject to appointment by the
178 commission or may request to disqualify himself or herself from any
179 investigation. Such request shall include the reasons for seeking removal;

180 (2) By vote of **[four] five** members of the commission, the commission may
181 disqualify a judge from a particular investigation or may permanently remove the
182 name of any retired judge from the list of special investigators subject to
183 appointment by the commission.

184 10. Any person who is the subject of any investigation pursuant to this
185 section shall be entitled to be represented by counsel at any proceeding before the
186 special investigator or the commission.

187 11. The provisions of sections 105.957, 105.959 and 105.961 are in
188 addition to other provisions of law under which any remedy or right of appeal or
189 objection is provided for any person, or any procedure provided for inquiry or

190 investigation concerning any matter. The provisions of this section shall not be
191 construed to limit or affect any other remedy or right of appeal or objection.

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

195 13. If, in the opinion of the commission, the complaining party was
196 motivated by malice or reason contrary to the spirit of any law on which such
197 complaint was based, in filing the complaint without just cause, this finding shall
198 be reported to appropriate law enforcement authorities. Any person who
199 knowingly files a complaint without just cause, or with malice, is guilty of a class
200 A misdemeanor.

201 14. A respondent party who prevails in a formal judicial action brought
202 by the commission shall be awarded those reasonable fees and expenses incurred
203 by that party in the formal judicial action, unless the court finds that the position
204 of the commission was substantially justified or that special circumstances make
205 such an award unjust.

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

217 16. Any judge of the court of appeals or circuit court who ceases to hold
218 such office by reason of the judge's retirement and who serves as a special
219 investigator pursuant to this section shall receive annual compensation, salary
220 or retirement for such services at the rates of compensation provided for senior
221 judges by subsections 1, 2 and 4 of section 476.682. Such retired judges shall by
222 the tenth day of each month following any month in which the judge provided
223 services pursuant to this section certify to the commission and to the state courts
224 administrator the amount of time engaged in such services by hour or fraction
225 thereof, the dates thereof, and the expenses incurred and allowable pursuant to

226 this section. The commission shall then issue a warrant to the state treasurer for
227 the payment of the salary and expenses to the extent, and within limitations,
228 provided for in this section. The state treasurer upon receipt of such warrant
229 shall pay the same out of any appropriations made for this purpose on the last
230 day of the month during which the warrant was received by the state treasurer.

**130.032. 1. In addition to the limitations imposed pursuant to
2 section 130.031, the amount of contributions made by or accepted from
3 any committee, or any person other than the candidate in any one
4 election shall not exceed the following:**

5 **(1) To elect an individual to the office of governor, lieutenant**
6 **governor, secretary of state, state treasurer, state auditor, or attorney**
7 **general, ten thousand dollars;**

8 **(2) To elect an individual to the office of state senator, five**
9 **thousand dollars;**

10 **(3) To elect an individual to the office of state representative,**
11 **two thousand dollars;**

12 **(4) To elect an individual to any other office, including judicial**
13 **office, two thousand dollars.**

14 **2. For purposes of this subsection "base year amount" shall be the**
15 **contribution limits prescribed in this section on January 1, 2016. Such**
16 **limits shall be increased on the first day of January in each**
17 **even-numbered year by multiplying the base year amount by the**
18 **cumulative consumer price index, as defined in section 104.010 and**
19 **rounded to the nearest twenty-five-dollar amount.**

20 **3. Contributions from persons under fourteen years of age shall**
21 **be considered made by the parents or guardians of such person and**
22 **shall be attributed toward any contribution limits prescribed in this**
23 **chapter. Where the contributor under fourteen years of age has two**
24 **custodial parents or guardians, fifty percent of the contribution shall**
25 **be attributed to each parent or guardian, and where such contributor**
26 **has one custodial parent or guardian, all such contributions shall be**
27 **attributed to the custodial parent or guardian.**

28 **4. Contributions received and expenditures made prior to August**
29 **28, 2015, shall be reported as a separate account and pursuant to the**
30 **laws in effect at the time such contributions are received or**
31 **expenditures made. Contributions received and expenditures made**
32 **after August 28, 2015, shall be reported as a separate account from the**

33 aforementioned account and pursuant to the provisions of this
34 chapter. The account reported pursuant to the prior law shall be
35 retained as a separate account and any remaining funds in such
36 account may be used pursuant to this chapter and section 130.034.

37 5. Any committee which accepts or gives contributions other
38 than those allowed shall be subject to a surcharge of one thousand
39 dollars plus an amount equal to the contribution per nonallowable
40 contribution, to be paid to the ethics commission and which shall be
41 transferred to the director of revenue, upon notification of such
42 nonallowable contribution by the ethics commission, and after the
43 candidate has had ten business days after receipt of notice to return
44 the contribution to the contributor. The candidate and the candidate
45 committee treasurer or deputy treasurer owing a surcharge shall be
46 personally liable for the payment of the surcharge or may pay such
47 surcharge only from campaign funds existing on the date of the receipt
48 of notice. Such surcharge shall constitute a debt to the state
49 enforceable under, but not limited to, the provisions of chapter 143.

Bill ✓

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