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HOUSE BILL NO. 657

Offered January 13, 2010

Prefiled January 12, 2010

A BILL to amend and reenact §§ 30-112, 30-113, 30-114, 30-116 through 30-119, 30-122, 30-126, and 30-127 of the Code of Virginia, relating to the General Assembly Conflicts of Interests Act; establishment of the General Assembly Ethics Review Panel.

Patrons—Armstrong, Abbott, BaCote, Barlow, Brink, Bulova, Carr, Dance, Englin, Herring, Hope, James, Johnson, Keam, Kory, McClellan, McQuinn, Miller, P.J., Morrissey, Plum, Scott, J.M., Shuler, Sickles, Spruill, Surovell, Torian, Tyler, Ward and Watts

Referred to Committee on Rules

Be it enacted by the General Assembly of Virginia:

1. That §§ 30-112, 30-113, 30-114, 30-116 through 30-119, 30-122, 30-126, and 30-127 of the Code of Virginia are amended and reenacted as follows:

§ 30-112. General Assembly Ethics Review Panel; membership; terms; quorum; compensation and expenses.

A. The ~~Senate General Assembly Ethics Advisory Review Panel and the House Ethics Advisory Panel~~ *are is* established in the legislative branch of state government. The provisions of §§ 30-112 through 30-119 shall be applicable to ~~each panel~~ *the Panel*.

B. The ~~Senate Ethics Advisory Panel~~ shall be composed of five nonlegislative citizen members: ~~three of whom shall be former members of the Senate; and two of whom shall be citizens of the Commonwealth at large who have not previously held such office one each appointed by the Speaker of the House of Delegates, the minority leader of the House of Delegates, the majority leader of the Senate, the minority leader of the Senate, and the Governor.~~ All members of the Panel shall be citizens of the Commonwealth, *and at least three members shall not have previously held office in the General Assembly. The Governor shall appoint a retired justice or judge of a court of record who has not previously held office as a member of the General Assembly and who shall serve as chair of the Panel. The Speaker shall appoint a former member of the House of Delegates. The majority leader of the Senate shall appoint a former member of the Senate. The minority leaders of the House and Senate shall each appoint a citizen of the Commonwealth who has not previously held office as a member of the General Assembly. All appointments shall be subject to confirmation by the General Assembly.*

~~The members shall be nominated by the Committee on Rules of the Senate and confirmed by the Senate. After initial appointments, all appointments shall be for terms of four years each except for unexpired terms. Nominations shall be made so as to assure bipartisan representation on the Panel. Initial appointments shall be effective July 1, 2010, and the appointments by the Speaker and Governor shall be for four years; the appointment by the majority leader of the Senate shall be for three years; the appointment by the minority leader of the House shall be for two years; and the appointment by the minority leader of the Senate shall be for one year.~~

C. The House Ethics Advisory Panel shall be composed of five nonlegislative citizen members: ~~one of whom shall be a retired justice or judge of a court of record; two of whom shall be former members of the House of Delegates; and two of whom shall be citizens of the Commonwealth at large, at least one of whom shall not have previously held such office.~~ All members of the Panel shall be citizens of the Commonwealth.

~~The members shall be nominated by the Speaker of the House of Delegates and confirmed by the House of Delegates. After initial appointments, all appointments shall be for terms of four years each except for unexpired terms. Nominations shall be made so as to assure bipartisan representation on the Panel.~~

D. ~~Each panel~~ *The Panel* shall elect its own ~~chairman~~ and vice-chairman from among its membership. *The Panel shall establish its rules of procedure, including rules for the conduct of open meetings and hearings.*

~~ED.~~ No member shall serve more than three successive four-year terms. Vacancies shall be filled only for the unexpired term. Vacancies shall be filled in the same manner as the original appointments. The remainder of any term to which a member is appointed to fill a vacancy shall not constitute a term in determining the member's eligibility for reappointment.

~~FE.~~ Three members shall constitute a quorum ~~on each panel~~. A vacancy shall not impair the right of the remaining members to exercise all powers of the Panel. Meetings of ~~each panel~~ shall be held at the call of the chairman or whenever the majority of the members so request.

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57 GF. The members of ~~each panel~~ *the Panel*, while serving on the business of the Panel, are
58 performing legislative duties and shall be entitled to the compensation and reimbursement of expenses to
59 which members of the General Assembly are entitled when performing legislative duties pursuant to
60 §§ 30-19.12, 2.2-2813 and 2.2-2825. Funding for the cost of compensation and expenses of the members
61 of the ~~Senate Ethics Advisory Panel~~ shall be provided by the Office of the Clerk of the Senate ~~and the~~
62 ~~funding for the cost of compensation and expenses of the House Ethics Advisory Panel shall be~~
63 ~~provided~~ or by the Office of the Clerk of the House of Delegates *as appropriate depending on the*
64 *complaint's subject being a Senate or House member.*

65 § 30-113. Powers and duties of the Panel.

66 The powers and duties of the Panel shall be applied and used only in relation to members of the
67 ~~respective house~~ of the General Assembly ~~for which it is created~~. In addition to the other powers and
68 duties specified in this article, the Panel has the power to organize and preserve statements and reports
69 filed with the Panel for a period of five years from the date of receipt. At the end of the five-year
70 period, these documents may be destroyed.

71 § 30-114. Filing of complaints; procedures; disposition.

72 A. In response to the signed and sworn complaint of any citizen of the Commonwealth submitted to
73 the Panel, the Panel shall inquire into any alleged violation of Articles 2 through 5 (§ 30-102 et seq.) of
74 ~~this chapter~~ by any member of the ~~respective house~~ of the General Assembly in his current term or his
75 ~~immediate prior term~~ *the four years immediately preceding his current term*. Complaints shall be filed
76 with the Director of the Division of Legislative Services, who shall promptly (i) submit the complaint to
77 the chairman of the ~~appropriate~~ Panel and (ii) *forward a copy of the complaint to the legislator named*
78 *in the complaint. The chairman shall promptly notify the Panel of the complaint. However, if a*
79 *complaint is filed 60 or fewer days before a general election in which the cited legislator is running for*
80 *office, the Director and chairman shall hold the complaint until 60 days after that general election*
81 *before forwarding the complaint to the Panel.*

82 The Panel may use the Director of the Division of Legislative Services, and such additional staff as
83 he may assign, to assist the Panel during its preliminary investigation *and during its proceedings. The*
84 *Panel shall determine during its preliminary investigation whether the facts stated in the complaint*
85 *taken as true are sufficient to show a violation of Articles 2 through 5 (§ 30-102 et seq.) by any*
86 *member. If the facts are insufficient, the complaint shall be dismissed. If the facts are sufficient, the*
87 *Panel shall proceed with its inquiry.*

88 B. If after such preliminary investigation as it may make, the Panel determines to proceed with an
89 inquiry into the conduct of any legislator, the Panel (i) shall immediately notify in writing the individual
90 *who filed the complaint and the cited legislator* as to the fact of the inquiry and the charges against ~~him~~
91 *the legislator* and (ii) shall schedule one or more hearings on the matter. The legislator shall have the
92 right to present evidence, cross-examine witnesses, face and examine the accuser, and be represented by
93 counsel at any hearings. In its discretion, the Panel may grant the legislator any other rights or privileges
94 not specifically enumerated in this subsection; ~~and, in addition, may hold hearings in closed session.~~
95 ~~However, the legislator whose conduct is under inquiry, by written request filed with the Panel, may~~
96 ~~require that all hearings before the Panel concerning the legislator be public. Once the Panel has~~
97 ~~determined to proceed with an inquiry, its meetings and hearings shall be public.~~

98 C. *Once the Panel determines to proceed with an inquiry into the conduct of any legislator, the*
99 *Panel shall complete its investigations and dispose of the matter as provided in § 30-116*
100 *notwithstanding the resignation of the legislator during the course of the Panel's proceedings.*

101 D. *If at any point during its inquiry, the Panel determines that a signed and sworn complaint filed*
102 *by a citizen is frivolous and without merit, the Panel may impose on the complainant a civil penalty not*
103 *to exceed \$250. The civil penalty shall be paid to the Office of the Clerk of the Senate or the Office of*
104 *the Clerk of the House of Delegates as appropriate depending on the complaint's subject being a Senate*
105 *or House member.*

106 E. *Any person who willfully files a signed and sworn complaint knowing that the material statements*
107 *in the complaint are not true is guilty of perjury under § 18.2-434.*

108 § 30-116. Disposition of cases.

109 Within 120 days of the chairman's ~~receiving~~ *a forwarding the* signed and sworn complaint to the
110 Panel, the Panel, or a majority of its members acting in its name, shall dispose of the matter in one of
111 the following ways:

112 1-A. If the Panel determines *in its preliminary investigation* that the complaint is without merit, the
113 Panel shall dismiss the complaint, so advise the complainant *and legislator*, and take no further action.
114 In such case, the Panel shall retain its records and findings in confidence unless the legislator under
115 inquiry requests in writing that the records and findings be made public.

116 1-B. *If the Panel determines in the course of its proceedings that the facts and evidence show that*
117 *the complaint is without merit, the Panel shall dismiss the complaint, so advise the complainant and*
118 *legislator, and report its action to the Clerks of the House and Senate for the information of the*

119 *General Assembly.*

120 2. If the Panel determines that there is a reasonable basis to conclude that the legislator has violated
 121 the provisions of this chapter but that the violation was not made knowingly, the Panel shall refer the
 122 matter by a written report setting forth its findings and the reasons therefor to the appropriate house of
 123 the General Assembly for appropriate action. All Panel reports, which are advisory only, shall be
 124 delivered to the Clerk of the appropriate house, who shall refer the report to the Committee on
 125 Privileges and Elections in accordance with the rules of the appropriate house. Said Committee shall in
 126 all cases report, after due hearings and consideration, its determination of the matter and its
 127 recommendations and reasons for its resolves to the appropriate house. If the Committee deems
 128 disciplinary action warranted, it shall report a resolution to express such action. The appropriate house as
 129 a whole shall then consider the resolution, and if it finds the legislator in violation of any provision of
 130 this chapter, it may by recorded vote take such disciplinary action as it deems warranted.

131 3. If the Panel determines that there is a reasonable basis to conclude that the legislator knowingly
 132 violated *or should have known that he had violated* any provision of Article 2 (§ 30-102 et seq.), 3
 133 (§ 30-104 et seq.), 4 (§ 30-107 et seq.) or 5 (§ 30-109 et seq.) of this chapter, except § 30-108 or
 134 subsection C of § 30-110, it shall refer the matter by a written report setting forth its findings and the
 135 reasons therefor to the Attorney General for such action he deems appropriate. The Panel shall also file
 136 its report with the Clerk of the appropriate house, who shall refer the report in accordance with the rules
 137 of his house. In the event the Attorney General determines not to prosecute the alleged violation, he
 138 shall notify the Clerk of the appropriate house of his determination and the Clerk shall send the report
 139 to the Committee on Privileges and Elections. The matter shall thereafter be handled in accordance with
 140 the provisions of subdivision 2.

141 4. If the Panel determines that there is a reasonable basis to conclude that the legislator has violated
 142 § 30-108 or subsection C of § 30-110, it shall refer the matter by a written report to the appropriate
 143 house pursuant to subdivision 2. As its first order of business other than organizational matters and
 144 committee work, the house in which the member sits shall immediately upon the convening of the next
 145 regular or special session take up and dispose of the matter by taking one or more of the following
 146 actions: (i) dismiss the complaint; (ii) sustain the complaint and reprimand the member; (iii) sustain the
 147 complaint, censure the member, and strip the member of his seniority; (iv) sustain the complaint and
 148 expel the member by a two-thirds vote of the elected members; (v) in the event the house finds a
 149 ~~knowing violation that the legislator knew or should have known that he violated § 30-108 or subsection~~
 150 ~~C of § 30-110~~, it may refer the matter to the Attorney General pursuant to subdivision 3.

151 5. The Panel shall make public any report that it refers pursuant to the provisions of subdivision 1-B,
 152 2, 3, or 4 on the date it refers its report.

153 § 30-117. Confidentiality of proceedings.

154 All proceedings during the *preliminary* investigation of any complaint by the Panel, *and prior to its*
 155 *determination to proceed with an inquiry*, shall be confidential. This rule of confidentiality shall apply to
 156 Panel members and their staff, ~~the Committee on Privileges and Elections and its staff~~ and the Division
 157 of Legislative Services. *Once the Panel has determined to proceed with an inquiry, its meetings and*
 158 *hearings shall be public.*

159 § 30-118. Staff for Panel.

160 The Panel shall have the authority to hire staff *and outside counsel to assist the Panel and Division*
 161 *and to conduct examinations of witnesses*, subject to the joint approval of the President Pro Tempore of
 162 the Senate ~~for the Senate Ethics Advisory Panel~~ and subject to the approval of the Speaker of the House
 163 of Delegates ~~for the House Ethics Advisory Panel~~. *If an inquiry involves either the President Pro*
 164 *Tempore or the Speaker, the approval of the other officer shall be sufficient.*

165 § 30-119. Jurisdiction of Panel.

166 ~~The Senate and House Ethics Advisory Panels~~ Panel shall have jurisdiction over any complaint
 167 alleging a violation of Articles 2 (§ 30-102 et seq.) through 5 (§ 30-109 et seq.) ~~of this chapter that~~
 168 ~~occurs on or after August 1, 1987, and over any complaint alleging a violation of the Comprehensive~~
 169 ~~Conflict of Interests Act occurring after July 1, 1984, and prior to August 1, 1987.~~

170 § 30-122. Enforcement.

171 The provisions of this chapter shall be enforced by the Attorney General. In addition to any other
 172 powers and duties prescribed by law, the Attorney General shall have the following powers and duties:

173 1. If he determines that any legislator has knowingly violated *or should have known that he had*
 174 *violated* any provision of this chapter, he shall designate an attorney for the Commonwealth who shall
 175 have complete and independent discretion in the prosecution of the legislator; and

176 2. He shall render advisory opinions to any legislator who seeks advice as to whether the facts in a
 177 particular case would constitute a violation of the provisions of this chapter. He shall determine which
 178 of his opinions or portions thereof are of general interest to the public and which may, from time to
 179 time, be published.

180 Irrespective of whether an opinion of the Attorney General has been requested and rendered, any
181 legislator has the right to seek a declaratory judgment or other judicial relief as provided by law.

182 § 30-126. Forfeiture of money, etc., derived from violation of this chapter.

183 In addition to any other fine or penalty provided by law, any money or other thing of value derived
184 by a legislator from a violation of §§ 30-103 through 30-108 shall be forfeited and, in the event of a
185 ~~knowing violation that the legislator knew or should have known that he violated §§ 30-103 through~~
186 30-108, there may also be imposed a civil penalty in an amount equal to the amount of money or thing
187 of value forfeited to the Commonwealth. If the thing of value received by the legislator in violation of
188 this chapter should enhance in value between the time of the violation and the time of discovery of the
189 violation, the greater value shall determine the amount of forfeiture.

190 § 30-127. Criminal prosecutions.

191 A. Violations of this chapter may be prosecuted notwithstanding the jurisdiction of, or any pending
192 proceeding before, the ~~House or Senate~~ General Assembly Ethics Advisory Review Panel.

193 B. Nothing in this chapter shall limit or affect the application of other criminal statutes and penalties
194 as provided in the Code of Virginia, including but not limited to bribery, embezzlement, perjury,
195 conspiracy, fraud, and violations of the Campaign Finance Disclosure Act Chapter 9.3 (§ 24.2-945 et
196 seq.) of Title 24.2.