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SENATE BILL NO. 186

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on Rules
on February 12, 2010)

(Patrons Prior to Substitute—Senators Northam, Norment [SB 524], and Smith [SB 508])

A BILL to amend and reenact §§ 30-112, 30-114, 30-116, 30-117, and 30-118 of the Code of Virginia, relating to the General Assembly Conflicts of Interests Act; Senate Ethics Advisory Panels.

Be it enacted by the General Assembly of Virginia:

1. That §§ 30-112, 30-114, 30-116, 30-117, and 30-118 of the Code of Virginia are amended and reenacted as follows:

§ 30-112. Senate and House Ethics Advisory Panels; membership; terms; quorum; compensation and expenses.

A. The Senate Ethics Advisory Panel and the House Ethics Advisory Panel are established in the legislative branch of state government. The provisions of §§ 30-112 through 30-119 shall be applicable to each 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. All members of the Panel shall be citizens of the Commonwealth. *No member shall engage in activities requiring him to register as a lobbyist under § 2.2-422 during his tenure on the Panel.*

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.

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 shall elect its own chairman and vice-chairman from among its membership.

E. 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.

F. 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 least once each year and* at the call of the chairman or whenever the majority of the members so request. *The Panel shall establish its rules of procedure, including rules for the conduct of open meetings and hearings.*

G. The members of each panel, while serving on the business of the Panel, are performing legislative duties and shall be entitled to the compensation and reimbursement of expenses to which members of the General Assembly are entitled when performing legislative duties pursuant to §§ 30-19.12, 2.2-2813 and 2.2-2825. Funding for the cost of compensation and expenses of the members of the Senate Ethics Advisory Panel shall be provided by the Office of the Clerk of the Senate and the funding for the cost of compensation and expenses of the House Ethics Advisory Panel shall be provided by the Office of the Clerk of the House of Delegates.

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

A. In response to the signed and sworn complaint of any citizen of the Commonwealth submitted to the Panel, the Panel shall inquire into any alleged violation of Articles 2 (§ 30-102 *et seq.*) through 5 (~~§ 30-102 et seq.~~) (§ 30-109 *et seq.*) of this chapter by any member of the respective house of the General Assembly in his current term or his immediate prior term. Complaints shall be filed with the Director of the Division of Legislative Services, who shall (i) promptly submit the complaint to the chairman of the appropriate Panel and (ii) forward a copy of the complaint to the legislator named in the complaint.

The Panel may use the Director of the Division of Legislative Services, and such additional staff as he may assign, to assist the Panel during its preliminary investigation.

60 The chairman shall promptly notify the Panel of the complaint. However, if a complaint is filed 60
61 or fewer days before a primary or general election in which the cited legislator is running for office, the
62 Director and chairman shall hold the complaint until after that primary or general election before
63 forwarding the complaint to the Panel.

64 B. The Panel shall determine, during its preliminary investigation, whether the facts stated in the
65 complaint taken as true are sufficient to show a violation of Articles 2 (§ 30-102 et seq.) through 5
66 (§ 30-109 et seq.) of this chapter. If the facts, as stated in the complaint, fail to give rise to such a
67 violation, then the Panel shall dismiss the complaint. If the facts, as stated in the complaint, give rise to
68 such a violation, then the Panel shall request that the complainant appear and testify under oath as to
69 the complaint and the allegations therein. After hearing the testimony and reviewing any other evidence
70 provided by the complainant, the Panel shall dismiss the complaint if the Panel fails to find probable
71 cause for such a violation. If the Panel finds otherwise, it shall proceed with the inquiry.

72 B.C. If after such preliminary investigation as it may make, the Panel determines to proceed with an
73 inquiry into the conduct of any legislator, the Panel (i) shall immediately notify in writing the individual
74 who filed the complaint and the cited legislator as to the fact of the inquiry and the charges against him
75 the legislator and (ii) shall schedule one or more hearings on the matter. The legislator shall have the
76 right to present evidence, cross-examine witnesses, face and examine the accuser, and be represented by
77 counsel at any hearings. In its discretion, the Panel may grant the legislator any other rights or privileges
78 not specifically enumerated in this subsection, and, in addition, may hold hearings in closed session.
79 However, the legislator whose conduct is under inquiry, by written request filed with the Panel, may
80 require that all hearings before the Panel concerning the legislator be public.

81 D. Once the Panel determines to proceed with an inquiry into the conduct of any legislator, the
82 Panel shall complete its investigations and dispose of the matter as provided in § 30-116
83 notwithstanding the resignation of the legislator or the completion of his term during the course of the
84 Panel's proceedings.

85 § 30-116. Disposition of cases.

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

89 1. a. If the Panel determines in its preliminary investigation that the complaint is without merit, the
90 Panel shall dismiss the complaint, so advise the complainant and legislator, and take no further action.
91 In such case, the Panel shall retain its records and findings in confidence unless the legislator under
92 inquiry requests in writing that the records and findings be made public.

93 b. If the Panel determines in the course of its proceedings that the facts and evidence show that the
94 complaint is without merit, the Panel shall dismiss the complaint, so advise the complainant and
95 legislator, and report its action to the Clerk of the House or Senate, as appropriate, for the information
96 of the House or Senate.

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

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

117 4. If the Panel determines that there is a reasonable basis to conclude that the legislator has violated
118 § 30-108 or subsection C of § 30-110, it shall refer the matter by a written report to the appropriate
119 house pursuant to subdivision 2. As its first order of business other than organizational matters and
120 committee work, the house in which the member sits shall immediately upon the convening of the next
121 regular or special session take up and dispose of the matter by taking one or more of the following

actions: (i) dismiss the complaint; (ii) sustain the complaint and reprimand the member; (iii) sustain the complaint, censure the member, and strip the member of his seniority; (iv) sustain the complaint and expel the member by a two-thirds vote of the elected members; (v) in the event the house finds a knowing violation, it may refer the matter to the Attorney General pursuant to subdivision 3.

5. The Panel shall make public any report that it ~~refers~~ *makes* pursuant to the provisions of subdivision 1 b, 2, 3, or 4 on the date it refers its report.

For the purposes of this section, a member of the General Assembly shall be presumed to know the provisions of the General Assembly Conflicts of Interests Act (§ 30-100 et seq.).

§ 30-117. Confidentiality of proceedings.

A. All proceedings during the investigation of any complaint by the *House* Panel shall be confidential. This rule of confidentiality shall apply to Panel members and their staff, the Committee on Privileges and Elections and its staff and the Division of Legislative Services.

B. *All proceedings during the preliminary investigation of any complaint by the Senate Panel, and prior to its determination to proceed with an inquiry, shall be confidential. This rule of confidentiality shall apply to the Senate Panel members, their staff, and the Division of Legislative Services. Once the Senate Panel has determined to proceed with an inquiry, its meetings and hearings shall be public.*

§ 30-118. Staff for Panel.

The Panel ~~shall have the authority to~~ *may hire staff and outside counsel to assist the Panel and Division and to conduct examinations of witnesses, subject to the approval of the President Pro Tempore of the Senate Chair of Senate Committee on Rules for the Senate Ethics Advisory Panel and subject to the approval of the Speaker of the House of Delegates for the House Ethics Advisory Panel. The Panel may use the Director of the Division of Legislative Services, and such additional staff as he may assign, to assist the Panel during its preliminary investigation and during its proceedings.*