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SENATE BILL NO. 524

Offered January 13, 2010

Prefiled January 13, 2010

A *BILL to amend and reenact §§ 30-112, 30-113, 30-114, 30-116 through 30-119, 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.*

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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, 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~~ *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 President Pro Tempore of the Senate, the Attorney General, the Chief Justice of the Supreme Court, and the Governor. All members of the Panel shall be citizens of the Commonwealth. No person shall be appointed to the Panel who is a current or former member of the General Assembly. No person shall be appointed to the Panel who, within the prior five years, was (i) an elected or appointed official of any federal, state, or local government or governmental entity; (ii) a candidate for any federal, state, or local elective office; (iii) an officer of a state, local, or district level political party committee; or (iv) a lobbyist required to register pursuant to Article 3 (§ 2.2-418 et seq.) of Chapter 4 of Title 2.2. No more than three members of the Panel may belong to the same political party.*

~~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 President Pro Tempore and Speaker shall be for four years; the appointment by the Governor shall be for three years; the appointment by the Attorney General shall be for two years; and the appointment by the Chief Justice 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.

~~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.

~~GF.~~ The members of ~~each panel~~ *the 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

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SB524

§§ 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 *jointly* 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.

§ 30-113. Powers and duties of Panel.

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

§ 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, *or upon its own motion*, the Panel shall inquire into any alleged violation of Articles 2 through 5 (§ 30-102 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~~ *Except for complaints instituted by the Panel, complaints* shall be filed with the Director of the Division of Legislative Services, who shall promptly submit the complaint to the chairman of the ~~appropriate~~ 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.

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

C. *If at any point during its inquiry, the Panel determines that a signed and sworn complaint filed by a citizen is frivolous and without merit, the Panel may impose on the complainant a civil penalty not to exceed \$250. The civil penalty shall be paid equally to the Office of the Clerk of the Senate and the Office of the Clerk of the House of Delegates.*

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

§ 30-116. Disposition of cases.

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

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

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

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

4. If the Panel determines that there is a reasonable basis to conclude that the legislator has violated § 30-108 or subsection C of § 30-110, it shall refer the matter by a written report to the appropriate house pursuant to subdivision 2. As its first order of business other than organizational matters and committee work, the house in which the member sits shall immediately upon the convening of the next 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 pursuant to the provisions of subdivision 1, 2, 3 or 4 on the date it refers its report.

§ 30-117. Confidentiality of proceedings.

All proceedings during the *preliminary* investigation of any complaint by the Panel, *and prior to its determination to proceed with an inquiry*, 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. *Once the 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 hire staff, subject to the *joint* approval of the President Pro Tempore of the Senate ~~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~~. *If an inquiry involves either the President Pro Tempore or the Speaker, the approval of the other officer shall be sufficient.*

§ 30-119. Jurisdiction of Panel.

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

§ 30-127. Criminal prosecutions.

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

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