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**HOUSE BILL NO. 655**

Offered January 13, 2010

Prefiled January 12, 2010

*A BILL to amend and reenact §§ 30-112, 30-114, 30-116, 30-117, 30-119, 30-122, and 30-126 of the Code of Virginia, relating to the General Assembly Conflicts of Interests Act; House and Senate Ethics Advisory Panels.*

Patrons—Armstrong, Abbott, Bell, Robert B. and Kory

Referred to Committee on Rules

**Be it enacted by the General Assembly of Virginia:**

**1. That §§ 30-112, 30-114, 30-116, 30-117, 30-119, 30-122, and 30-126 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.

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~~ who shall not have previously held such office. All members of the Panel shall be citizens of the Commonwealth.

*One member shall be nominated by the Governor who shall be a retired justice or judge of a court of record and who shall serve as chair of the Panel. The Two members shall be nominated by the Speaker of the House of Delegates, including a former member of the House of Delegates and a citizen of the Commonwealth at large who shall not have previously held such office, and two members shall be nominated by the minority leader of the House of Delegates, including a former member of the House of Delegates and a citizen of the Commonwealth at large who shall not have previously held such office. All members shall be 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 Senate Panel shall elect its own chairman and vice-chairman from among its membership. The House Panel shall elect its own 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 the call of the chairman or whenever the majority of the members so request.

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 through 5 (§ 30-102 et seq.) of

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59 this chapter by any member of the respective house of the General Assembly in his current term or his  
60 ~~immediate prior term~~ *the four years immediately preceding his current term*. Complaints shall be filed  
61 with the Director of the Division of Legislative Services, who shall promptly (i) submit the complaint to  
62 the chairman of the appropriate Panel and (ii) *forward a copy of the complaint to the legislator named*  
63 *in the complaint. The chairman shall promptly notify the Panel of the complaint. However, if a*  
64 *complaint is filed 60 or fewer days before a general election in which the cited legislator is running for*  
65 *office, the Director and chairman shall hold the complaint until 60 days after that general election*  
66 *before forwarding the complaint to the Panel.*

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

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

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

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

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

92 § 30-116. Disposition of cases.

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

96 1-A. If the Panel determines *in its preliminary investigation* that the complaint is without merit, the  
97 Panel shall dismiss the complaint, so advise the complainant *and legislator*, and take no further action.  
98 In such case, the Panel shall retain its records and findings in confidence unless the legislator under  
99 inquiry requests in writing that the records and findings be made public.

100 1-B. *If the Panel determines in the course of its proceedings that the facts and evidence show that*  
101 *the complaint is without merit, the Panel shall dismiss the complaint, so advise the complainant and*  
102 *legislator, and report its action to the clerk of the House or Senate, as appropriate, for the information*  
103 *of the House or Senate.*

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

115 3. If the Panel determines that there is a reasonable basis to conclude that the legislator knowingly  
116 violated *or should have known that he had violated* any provision of Article 2 (§ 30-102 et seq.), 3  
117 (§ 30-104 et seq.), 4 (§ 30-107 et seq.) or 5 (§ 30-109 et seq.) of this chapter, except § 30-108 or  
118 subsection C of § 30-110, it shall refer the matter by a written report setting forth its findings and the  
119 reasons therefor to the Attorney General for such action he deems appropriate. The Panel shall also file  
120 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 that the legislator knew or should have known that he violated § 30-108 or subsection C of § 30-110,~~ 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. ;

§ 30-117. Confidentiality of proceedings.

All proceedings during the investigation of any complaint by the *Senate* 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.

*All proceedings during the preliminary investigation of any complaint by the House 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 and the Division of Legislative Services. Once the Panel has determined to proceed with an inquiry, its meetings and hearings shall be public.*

§ 30-119. Jurisdiction of Panel.

The Senate and House Ethics Advisory Panels 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.~~

§ 30-122. Enforcement.

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

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

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

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

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

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