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HOUSE BILL NO. 655

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on Rules
on February 11, 2010)

(Patron Prior to Substitute—Delegate Armstrong)

A BILL to amend and reenact §§ 30-113, 30-114, 30-116, 30-117, and 30-118 of the Code of Virginia, and to amend the Code of Virginia by adding a section numbered 30-113.1, relating to the General Assembly Conflicts of Interests Act; House and Senate Ethics Advisory Panels.

Be it enacted by the General Assembly of Virginia:

1. That §§ 30-113, 30-114, 30-116, 30-117, and 30-118 of the Code of Virginia are amended and reenacted, and that the Code of Virginia is amended by adding a section numbered 30-113.1, as follows:

§ 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. The Panel shall establish its rules of procedure, including rules for the conduct of open meetings and hearings.

§ 30-113.1. Records.

If a complaint is dismissed during the preliminary investigation, such records shall remain confidential and be retained for a period of five years and then destroyed. Records related to a complaint that has proceeded to an inquiry beyond a preliminary investigation shall be made available to the public and retained in a manner prescribed by the Virginia Public Records Act (§ 42.1-76 et seq.).

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

A. In response to the signed and sworn complaint of any citizen of the Commonwealth, which is subscribed by the maker as true under penalty of perjury, 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 promptly (i) 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 chairman shall promptly notify the Panel of the complaint. However, if a complaint is filed 60 or fewer days before a primary or general election in which the cited legislator is running for office, the Director and chairman shall hold the complaint until after that primary or general election before forwarding the complaint to the 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. The Panel shall determine, during its preliminary investigation, whether the facts stated in the complaint taken as true are sufficient to show a violation of Articles 2 (§ 30-102 et seq.) through 5 (§ 30-109 et seq.) of this chapter. If the facts, as stated in the complaint, fail to give rise to such a violation, then the Panel shall dismiss the complaint. If the facts, as stated in the complaint, give rise to such a violation, then the Panel shall request that the complainant appear and testify under oath as to the complaint and the allegations therein. After hearing the testimony and reviewing any other evidence provided by the complainant, the Panel shall dismiss the complaint if the Panel fails to find probable cause for such a violation. If the Panel finds otherwise, it shall proceed with the inquiry.

C. 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 (i) shall immediately notify in writing the individual who filed the complaint and the cited legislator as to the fact of the inquiry and the charges against him the legislator and (ii) 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 House Panel has determined to proceed with an inquiry, its meetings and hearings shall be open to the public.

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

§ 30-116. Disposition of cases.

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

1. *a.* If the Panel determines *in its preliminary investigation* that the complaint is without merit, the Panel shall dismiss the complaint, so advise the complainant *and legislator*, 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.

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

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~~ *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.

A. All proceedings during the investigation of any complaint by the Senate Panel shall be confidential. This rule of confidentiality shall apply to the Senate 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 House Panel, and prior to its determination to proceed with an inquiry, shall be confidential. This rule of confidentiality shall apply to the House Panel members, their staff, and the Division of Legislative Services.

§ 30-118. Staff for Panel.

The Panel ~~shall have the authority to~~ *may* hire staff and outside counsel to assist the Panel and to conduct examinations of witnesses, subject to the 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. *The Panel may have the Director of the Division of Legislative Services, and such additional staff as he may assign, assist the Panel during its preliminary investigation and during its proceedings.*