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HOUSE BILL NO. 2380

Offered January 17, 2017

A *BILL to amend the Code of Virginia by adding a section numbered 30-356.3, relating to the Virginia Conflict of Interest and Ethics Advisory Council; investigative authority.*

Patrons—Simon, Boysko, Kory, Plum and Tyler

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding a section numbered 30-356.3 as follows:

§ 30-356.3. Investigations.

A. The Council shall have the authority to investigate alleged violations of the Acts. Such investigations may be initiated upon the Council's own motion or in response to the signed written complaint of any citizen of the Commonwealth. No investigation shall be initiated in the 60 days immediately preceding a primary election or other nominating event or before a general election in which the subject of such motion or complaint is a candidate for office.

B. Upon its own motion, the Council, through its executive director, may initiate an investigation into an alleged violation of the Acts. Such investigation shall begin no later than 30 days after the Council's discovery of the facts giving rise to the alleged violation.

C. Upon receipt of a citizen complaint, the Council, through its executive director, shall conduct a preliminary inquiry into any alleged violation of the Acts no later than 30 days after receipt of the complaint. The Council shall notify the subject of the inquiry and forward to him a copy of the complaint. During its preliminary inquiry, the Council shall determine whether the facts stated in the complaint, when taken as true, are sufficient to show a violation of the Acts. It shall complete its preliminary inquiry within 30 days of the initiation of the inquiry. All documents, records, and other information related to the preliminary inquiry are confidential and are excluded from the provisions of the Virginia Freedom of Information Act (§ 2.2-3700 et seq.). If the preliminary inquiry establishes that the facts stated in the complaint taken as true are not sufficient to show a violation of the Acts, the complaint shall be dismissed, and the Council shall notify the subject of the inquiry and the complainant. If the preliminary inquiry establishes that the facts stated in the complaint taken as true are sufficient to show a violation of the Acts, the Council, through its executive director, shall initiate an investigation to determine if there has been a violation. The investigation shall begin within 30 days of the completion of the preliminary inquiry.

D. An investigation initiated pursuant to subsection B or C shall not begin until the subject of the investigation has been notified and provided with a general statement of the alleged violation and the applicable statutes with respect to such violation. Service of notice is complete upon mailing by certified or registered mail. During the investigation, the Council, its executive director, and its staff shall conduct interviews, take statements, receive and inspect documents and records, and gather other evidence as may be relevant. The Council shall have the authority to issue subpoenas to compel the production of documents, records, and other information. The Council shall complete its investigation no later than 180 days after the initiation of the investigation and within 30 days of completion of the investigation shall make a written report of its findings and shall provide a copy of that report to the subject of the investigation. If the Council finds that no violation was committed, the Council shall put in the written report its reasons for dismissal of the complaint and shall notify the subject of the investigation and the complainant, if there is one. In all other cases, the written report shall include the pertinent findings of fact and the Council shall schedule a hearing on the matter. Any person subpoenaed pursuant to this subsection may immediately procure by petition a decision on the validity of the subpoena in the circuit court as provided in § 2.2-4003.

E. Any hearing conducted pursuant to subsection D shall be open to the public and shall be held no later than 30 days after the issuance of the findings report. At any hearing, the Council shall have the authority to issue subpoenas to compel the attendance of witnesses or the production of documents, records, and other information, and the Council shall issue such subpoenas upon the request of the subject of the investigation. The subject of the investigation shall have the right to request the issuance of subpoenas, present evidence, have access to any evidence used or developed by the Council during its investigation, cross-examine witnesses, face and examine the complainant, if there is one, and be represented by counsel. At the conclusion of the hearing, the Council shall deliberate on the evidence and determine whether a violation of the Acts has been proven by clear and convincing evidence. Any person subpoenaed pursuant to this subsection may immediately procure by petition a decision on the

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59 *validity of the subpoena in the circuit court as provided in § 2.2-4003.*

60 *F. Within 30 days following the conclusion of a hearing conducted pursuant to subsections D and E,*
61 *the Council shall issue a final order. The final order shall set forth the alleged violation, the findings of*
62 *fact, and the conclusions of law. It may also include recommendations for disciplinary action, civil*
63 *penalties, or criminal prosecution. Final orders are public record and shall be published on the*
64 *Council's website.*

65 *1. If the Council finds that a person subject to the requirements of the State and Local Government*
66 *Conflict of Interests Act (§ 2.2-3100 et seq.) has knowingly violated one or more provisions of that Act,*
67 *it shall refer a matter involving a state officer or employee by its final order to the Attorney General*
68 *and a matter involving a local officer or employee by its final order to the attorney for the*
69 *Commonwealth within the political subdivision for which such local officer or employee was elected or*
70 *is employed. The final order referred to the appropriate authority pursuant to this section shall contain*
71 *recommendations for civil penalties or criminal prosecution.*

72 *2. If the Council finds that a person subject to the requirements of the General Assembly Conflicts of*
73 *Interests Act (§ 30-100 et seq.) has knowingly violated one or more of the provisions of that Act, it shall*
74 *refer the matter by its final order to the Attorney General. The final order referred to the Attorney*
75 *General pursuant to this section shall contain recommendations for civil penalties or criminal*
76 *prosecution. The Council shall transmit a copy of the final order to the Clerk of the appropriate house,*
77 *for the information of the House or Senate.*