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**S. 322**

**STATUS INFORMATION**

General Bill

Sponsors: Senators Hayes, Peeler, Rose and Rankin

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Summary: Ethics Commission

**HISTORY OF LEGISLATIVE ACTIONS**

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12/15/2010 Senate Referred to Committee on **Judiciary**

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3/7/2011 Senate Referred to Subcommittee: Rankin (ch), Campsen, Coleman, Davis, Nicholson

**VERSIONS OF THIS BILL**

[12/15/2010](file:///p:\pprever\2011-12\322_20101215.docx)

**A** **BILL**

TO AMEND SECTION 8‑13‑320, AS AMENDED, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO DUTIES AND POWERS OF THE STATE ETHICS COMMISSION, SO AS TO REQUIRE CERTAIN INFORMATION BE RELEASED UPON A FINDING OF PROBABLE CAUSE, DISMISSAL, OR WAIVER OF CONFIDENTIALITY; TO AMEND SECTION 8-13-510 RELATING TO THE GOVERNANCE AND JURISDICTION OF THE ETHICS COMMITTEES OF THE HOUSE OF REPRESENTATIVES AND THE SENATE; TO AMEND SECTION 8-13-530 TO DELETE CERTAIN REQUIREMENTS OF THE HOUSE AND SENATE ETHICS COMMITTEES; TO ADD SECTION 8-13-535, RELATING TO THE CHAIRMAN OF THE HOUSE OR SENATE ETHICS COMMITTEE AND HIS SUBPOENA AUTHORITY; TO AMEND SECTION 8-13-540 SO AS TO DELETE SOME PROVISIONS REGARDING THE PROCEDURES OF THE HOUSE OR SENATE ETHICS COMMITTEE AND TO ESTABLISH THE WILFUL RELEASE OF CONFIDENTIAL INFORMATION IS A MISDEMEANOR; TO AMEND SECTION 8-13-550 TO PROVIDE WHEN THE SPEAKER OF THE HOUSE OR THE PRESIDENT PRO TEMPORE SHALL CALL THE HOUSE OR SENATE INTO OPEN SESSION TO CONSIDER TO THE ACTION OF THE ETHICS COMMITTEE; TO AMEND SECTION 8-13-560 CONCERNING THE SUSPENSION OF A MEMBER OF THE GENERAL ASSEMBLY WHO WINS A REELECTION DURING A SUSPENSION FROM THE GENERAL ASSEMBLY FOR AN INDICTMENT FOR A CRIME THAT IS A FELONY, MORAL TURPITUDE, HAS A SENTENCE OF TWO OR MORE YEARS OR VIOLATES ELECTION LAWS; AND TO REPEAL SECTION 8-13-520 .

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Section 8‑13‑320(10)(g) of the 1976 Code, as last amended by Act 387 of 2006, is further amended to read:

“(g) All investigations, inquiries, hearings, and accompanying documents must remain confidential until ~~final disposition of a matter~~ a finding of probable cause or dismissal unless the respondent waives the right to confidentiality. Documents that may be released following a finding of probable cause or dismissal are the complaint, the response by the respondent, exhibits introduced at any hearing in open session, and the final order. Exhibits introduced are subject to redaction to protect personal information where the public disclosure would constitute an unreasonable invasion of personal privacy. The willful release of confidential information is a misdemeanor, and any person releasing ~~such~~ confidential information, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than one year.”

SECTION 2 Section 8-13-510 of the 1976 Code is amended to read:

“Section 8-13-510 (A) There is created a House of Representatives Legislative Ethics Committee and a Senate Legislative Ethics Committee.

Each ethics committee ~~is composed of six members. Terms are coterminous with the term for which members are elected to the House or Senate. Vacancies must be filled for the unexpired term in the manner of the original selection. The members of each ethics committee must be elected by the House or the Senate, as appropriate. One member of each ethics committee must be elected as chairman by a majority of the members of the ethics committee.~~ will be governed according to its Rules and applicable statutes that are not inconsistent with the Rules.

(B) Pursuant to its respective Rules, each ethics committee may receive complaints and investigate possible violations of this chapter or Chapter 17 of Title 2 or the ethics rules and prescribe punishment for such violation for the following:

(i) members of the General Assembly;

(ii) former members, provided the allegations are related to the former member’s service in the General Assembly;

(iii) candidates for an office in the General Assembly;

(iv) former candidates, provided the allegations are related to the former candidate’s bid for General Assembly;

(v) officers and employees of the General Assembly;

(vi) staff and independent contractors for a legislative caucus committee.

SECTION 3. Section 8-13-530 of the 1976 Code is amended to read:

“Section 8-13-530 ~~Each ethics committee shall:~~

~~(1) ascertain whether a person has failed to comply fully and accurately with the disclosure requirements of this chapter and promptly notify the person to file the necessary notices and reports to satisfy the requirements of this chapter;~~

~~(2) receive complaints filed by individuals and, upon a majority vote of the total membership of the committee, file complaints when alleged violations are identified;~~

~~(3) upon the filing of a complaint, investigate possible violations of breach of a privilege governing a member or staff of the appropriate house, the alleged breach of a rule governing a member of, legislative caucus committees for, or a candidate, or staff for the appropriate house, misconduct of a member or staff of, legislative caucus committees for, or a candidate for the appropriate house, or a violation of this chapter or Chapter 17 of Title 2;~~

~~(4) receive and hear a complaint which alleges a breach of a privilege governing a member or staff of the appropriate house, the alleged breach of a rule governing a member or staff of or candidate for the appropriate house, misconduct of a member or staff of or candidate for the appropriate house, or a violation of this chapter or Chapter 17 of Title 2. No complaint may be accepted by the ethics committee concerning a member of or candidate for the appropriate house during the fifty‑day period before an election in which the member or candidate is a candidate. During this fifty‑day period, any person~~ If any person alleges a breach of privilege, breach of rule, misconduct or a violation of this chapter or of Chapter 17 of Title 2 concerning a member of or candidate for the House or Senate during the fifty-day period before an election in which the member or candidate is a candidate, the person may petition the court of common pleas alleging the violations complained of and praying for appropriate relief by way of mandamus or injunction, or both. Within ten days, a rule to show cause hearing must be held, and the court must either dismiss the petition or direct that a mandamus order or an injunction, or both, be issued. A violation of this chapter by a candidate during this fifty‑day period must be considered to be an irreparable injury for which no adequate remedy at law exists. The institution of an action for injunctive relief does not relieve any party to the proceeding from any penalty prescribed for violations of this chapter. The court must award reasonable attorney’s fees and costs to the nonpetitioning party if a petition for mandamus or injunctive relief is dismissed based upon a finding that the:

(i) petition is being presented for an improper purpose such as harassment or to cause delay;

(ii) claims, defenses, and other legal contentions are not warranted by existing law or are based upon a frivolous argument for the extension, modification, or reversal of existing law or the establishment of new law; and

(iii) allegations and other factual contentions do not have evidentiary support or, if specifically so identified, are not likely to have evidentiary support after reasonable opportunity for further investigation or discovery.

~~Action on a complaint filed against a member or candidate which was received more than fifty days before the election but which cannot be disposed of or dismissed by the ethics committee at least thirty days before the election must be postponed until after the election;~~

~~(5) obtain information and investigate complaints as provided in Section 8‑13‑540 with respect to any complaint filed pursuant to this chapter or Chapter 17 of Title 2 and to that end may compel by subpoena the attendance and testimony of witnesses and the production of pertinent books and papers;~~

~~(6) administer or recommend sanctions appropriate to a particular member or staff of or candidate for the appropriate house pursuant to Section 8‑13‑540 or dismiss the charges; and~~

~~(7) act as an advisory body to the General Assembly and to individual members of or candidates for the appropriate house on questions pertaining to the disclosure and filing requirements of members of or candidates for the appropriate house~~.”

SECTION 4. The 1976 Code is amended by adding Section 8‑13‑535.

“An ethics committee of the House of Representatives or the Senate may compel by subpoena, signed by the committee chairman, the attendance and testimony of witnesses and the production of pertinent books and papers with respect to any complaint filed with the committee.”

SECTION 5. Section 8-13-540 of the 1976 Code is amended to read:

“Section 8-13-540 ~~Unless otherwise provided for by House or Senate rule, as appropriate, each ethics committee must conduct its investigation of a complaint filed pursuant to this chapter or Chapter 17 of Title 2 in accordance with this section.~~

~~(1) When a complaint is filed with or by the ethics committee, a copy must promptly be sent to the person alleged to have committed the violation. If the ethics committee determines the complaint does not allege facts sufficient to constitute a violation, the complaint must be dismissed and the complainant and respondent notified.~~

(A) If the ethics committee finds that the complaining party wilfully filed a groundless complaint, the finding must be reported to appropriate law enforcement authorities. The wilful filing of a groundless complaint is a misdemeanor and, upon conviction, a person must be fined not more than one thousand dollars or imprisoned not more than one year. In lieu of the criminal penalty provided by this subsection, a civil penalty of not more than one thousand dollars may be assessed against the complainant upon proof, by a preponderance of the evidence, that the filing of the complaint was wilful and without just cause or with malice.

(B) All investigations, inquiries, hearings, and accompanying documents must remain confidential until a finding of probable cause or dismissal unless the respondent waives the right to confidentiality. The wilful release of confidential information is a misdemeanor, and any person releasing confidential information, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than one year.

~~If the ethics committee determines the complaint alleges facts sufficient to constitute a violation, it shall promptly investigate the alleged violation and may compel by subpoena the attendance and testimony of witnesses and the production of pertinent books and papers.~~

~~If after such preliminary investigation, the ethics committee finds that probable cause exists to support an alleged violation, it shall, as appropriate:~~

~~(a) render an advisory opinion to the respondent and require the respondent’s compliance within a reasonable time; or~~

~~(b) convene a formal hearing on the matter within thirty days of the respondent’s failure to comply with the advisory opinion. All ethics committee investigations and records relating to the preliminary investigation are confidential. No complaint shall be accepted which is filed later than four years after the alleged violation occurred.~~

~~(2) If a hearing is to be held, the respondent must be allowed to examine and make copies of all evidence in the ethics committee’s possession relating to the charges. At the hearing the charged party must be afforded appropriate due process protections, including the right to be represented by counsel, the right to call and examine witnesses, the right to introduce exhibits, and the right to cross‑examine opposing witnesses. All hearings must be conducted in executive session.~~

~~(3) After the hearing, the ethics committee shall determine its findings of fact. If the ethics committee, based on competent and substantial evidence, finds the respondent has violated this chapter or Chapter 17 of Title 2, it shall:~~

~~(a) administer a public or private reprimand;~~

~~(b) determine that a technical violation as provided for in Section 8‑13‑1170 has occurred;~~

~~(c) recommend expulsion of the member; and/or,~~

~~(d) in the case of an alleged criminal violation, refer the matter to the Attorney General for investigation. The ethics committee shall report its findings in writing to the Speaker of the House or President Pro Tempore of the Senate, as appropriate. The report must be accompanied by an order of punishment and supported and signed by a majority of the ethics committee members. If the ethics committee finds the respondent has not violated a code or statutory provision, it shall dismiss the charges.~~

~~(4) An individual has ten days from the date of the notification of the ethics committee’s action to appeal the action to the full legislative body.~~

~~(5) No ethics committee member may participate in any matter in which he is involved.~~

~~(6) The ethics committee shall establish procedures which afford respondents appropriate due process protections, including the right to be represented by counsel, the right to call and examine witnesses, the right to introduce exhibits, and the right to cross‑examine opposing witnesses.~~”

SECTION 6. Section 8-13-550 of the 1976 Code is amended to read:

“Section 8-13-550 ~~(A)~~ Upon receipt of a recommendation of expulsion or an appeal from an order of the ethics committee ~~made pursuant to the provisions of Section 8‑13‑540~~, the ~~presiding officer~~ Speaker of the House or the President Pro Tempore of the Senate shall call the House or Senate into open session at a time to be determined at his discretion ~~or in executive session if the House or Senate chooses, as a committee of the whole,~~ to consider the action of the ethics committee. The House or Senate shall sustain or overrule the ethics committee’s action or order other action consistent with the House or Senate rules, or the provisions of this chapter or Chapter 17 of Title 2 that are not inconsistent with the rules.

~~(B) Upon consideration of an ethics committee report by the House or the Senate, whether in executive or open session, the results of the consideration, except in the case of the issuance of a private reprimand, are a matter of public record.~~”

SECTION 7. Section 8-13-560 of the 1976 Code is amended to read:

“Section 8-13-560 ~~Unless otherwise currently or hereafter provided for by House or Senate rule, as is appropriate:~~

~~(1) A member of the General Assembly who is indicted in a state court or a federal court for a crime that is a felony, a crime that involves moral turpitude, a crime that has a sentence of two or more years, or a crime that violates election laws must be suspended immediately without pay by the presiding officer of the House or Senate, as appropriate. The suspension remains in effect until the public official is acquitted, convicted, pleads guilty, or pleads nolo contendere. In the case of a conviction, the office must be declared vacant. In the event of an acquittal or dismissal of charges against the public official, he is entitled to reinstatement and back pay.~~

~~(2) If the public official~~ If a member of the General Assembly ~~is~~ ~~involved in an election between the time of the suspension and final conclusion of the indictment,~~ is successful in a bid for reelection while suspended pursuant to the Rules of the House of Senate due to an indictment the ~~presiding officer of the~~ Speaker of the House or ~~Senate~~ the President *Pro Tempore* of the Senate~~, or the Governor,~~ as appropriate, shall again suspend him at the beginning of his next term. The suspended public official may not participate in the business of his public office.”

SECTION 8. Repeals Section 8-13-520 of the 1976 Code of Laws.

SECTION 9. This act takes effect upon approval by the Governor.

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