

HOUSE
AMENDMENT

THIS AMENDMENT
ADOPTED

DRAFFIN/PAIR
MAY 20, 2014

CLERK OF THE HOUSE

REP. BEDINGFIELD PROPOSES THE FOLLOWING
AMENDMENT No. TO H. 3945
(COUNCIL\DKA\3945C015.DKA.SD14):

REFERENCE IS TO PRINTER'S DATE 5/7/14--H.

**AMEND THE BILL, AS AND IF AMENDED, BY
STRIKING SECTIONS 1 THROUGH 5 AND
INSERTING:**

/ SECTION 1. Section 8-13-310 of the 1976 Code, as last amended by Act 279 of 2012, is further amended to read:

~~“Section 8-13-310. (A) The State Ethics Commission as constituted under law in effect before July 1, 1992, is reconstituted to continue in existence with the appointment and qualification of the at-large members as prescribed in this section and with the changes in duties and powers as prescribed in this chapter. On July 1, 1993, when the duties and powers given to the Secretary of State in Chapter 17 of Title 2 are transferred to the State Ethics Commission, the Code Commissioner is directed to change all references to “this chapter” in Article 3 of Chapter 13 of Title 8 to “this chapter and Chapter 17 of Title 2”.~~

~~(B) There is created the State Ethics Commission composed of nine members appointed by the Governor, upon the advice and consent of the General Assembly. One member shall represent each of the seven congressional districts, and two members must be appointed from the State at large. No member of the General Assembly or other public official must be eligible to serve on the State Ethics Commission. The Governor shall make the appointments based on merit regardless of race, color, creed, or gender and shall strive to assure that the membership of the commission is representative of all citizens of the State of South Carolina.~~

~~(C) The terms of the members are for five years and until their successors are appointed and qualify. The members of the State Ethics Commission serving on this chapter's effective date may continue to serve until the expiration of their terms. These members may then be appointed to serve one full five year term under the provisions of this chapter.~~

~~Members representing the first, third, and sixth congressional districts on this chapter's effective date are eligible to be appointed for a full five year term in or after 1991. Members currently representing the second, fourth, and fifth congressional districts on this chapter's effective date are eligible to be appointed for a full five year term in or after 1993. The initial appointments for the at large members of the commission created by this chapter must be for a one, two, or three year term, but these at large members are eligible subsequently for a full five year term. Under this section, the at large members of the commission are to be appointed to begin service on or after July 1, 1992. Vacancies must be filled in the manner of the original appointment for the unexpired portion of the term only. Members of the commission who have completed a full five year term are not eligible for reappointment.~~

~~(D) The commission shall elect a chairman, a vice chairman, and such other officers as it considers necessary. Five members of the commission shall constitute a quorum. The commission must adopt a policy concerning the attendance of its members at commission meetings. The commission meets at the call of the chairman or a majority of its members. Members of the commission, while serving on business of the commission, receive per diem, mileage, and subsistence as is provided by law for members of state boards, committees, and commissions.~~

(A) There is created the State Ethics Commission composed of the members provided for in this subsection:

(1) four members must be appointed by the Governor, no more than two of whom are members of the appointing Governor's political party. Prior to serving on the commission, each appointee shall sign an affidavit stating the length of time he has been a registered voter in this State, with which political party he is associated if any, that he is not nor has been an officer or member of the executive committee of the state or county party of the Governor, that he is not nor has ever served as a poll watcher or precinct officer of the Governor's party, and identify which primary elections he cast a ballot within ten years immediately preceding the appointment;

(2) four members must be appointed by the Supreme Court, each of whom must not be actively serving judges of any court of this State, including summary court judges or retired judges sitting or permitted to sit as judges in the courts of this State.

(3) two members must be appointed by the President Pro Tempore of the Senate with one appointment in consultation with the Senate Majority Leader and with one appointment in consultation with the Senate Minority Leader of the largest minority party, and upon confirmation by the Senate Ethics Committee, unless otherwise provided for by the Rules of the Senate; and

(4) two members must be appointed by the Speaker of the House of Representatives with one appointment in consultation with the House Majority Leader and with one appointment in consultation with the House Minority Leader of the largest minority party, and upon confirmation by the House of Representatives Ethics Committee, unless otherwise provided for by the Rules of the House of Representatives.

(B) Upon the nomination of candidates by the General Assembly for the State Ethics Commission, the appropriate ethics committee shall conduct an investigation and hold a public hearing to determine the qualifications of each candidate for office. Any person who desires to testify at the hearing, including candidates, shall furnish a written statement of his proposed testimony to the chairman of the committee. These statements must be furnished no later than forty-eight hours prior to the date and time set for the hearing. The committee shall determine the persons who shall testify at the hearing. All testimony, including documents furnished to the committee, must be submitted under oath and persons knowingly furnishing false information either orally or in writing are subject to the penalties provided by law for perjury and false swearing. During the course of the investigation, the committee may schedule an executive session at which each candidate, and other persons whom the committee wishes to interview, may be interviewed by the committee on matters pertinent to the candidate's qualification for the office to be filled. A reasonable time thereafter the committee shall render its findings as to whether the candidate is qualified for the office and whether the candidate has been confirmed for the office for which he was nominated.

(C) As soon as possible after the completion of the hearing, a verbatim copy of the testimony, documents submitted at the hearing, and findings of fact must be made available to the members of both houses and to the public.

(D)(1) The qualifications the appointing authorities shall consider for the appointees include, but are not limited to:

- (a) constitutional qualifications;
- (b) ethical fitness;
- (c) character;
- (d) mental stability;
- (e) experience;
- (f) temperament; and

(g) if the appointee has contributed to the election campaign of the individual appointing him to the State Ethics Commission within the previous four years.

(2) The appointing authorities shall make their appointments based on merit. However, in making appointments to the commission, the appointing authorities shall ensure that race, color, gender, national origin, and other demographic factors are considered to ensure the geographic and political balance of the appointments, and shall strive to assure that the membership of the commission represents, to the greatest extent possible, all segments of the population of this State.

(3) The following are not eligible to serve on the State Ethics Commission:

(a) a member of the General Assembly;

(b) a former member of the General Assembly within eight years following the termination of his service in the General Assembly;

(c) a family member, as defined by Section 8-13-100(15), of a member of the General Assembly, the Governor, or any member of the Supreme Court;

(d) a person who made a campaign contribution, as defined by Section 8-13-1300(7), within the previous four years to the individual who appointed the person to serve on the State Ethics Commission;

(e) a person who registered as a lobbyist within four years of being appointed to serve on the State Ethics Commission;

(f) a person who is under the jurisdiction of the State Ethics Commission, House of Representatives Ethics Committee or Senate Ethics Committee; and

(g) an actively serving judge of any court of this State, including summary court judges, and any retired judge sitting or permitted to sit in any court of this State.

(E) The terms of the members are for five years. The terms of the members currently serving expire on June 30, 2015; however, a member who is serving at that time may be appointed for a new five-year term. For the initial appointments made by the Governor, two must be for a term of two years, the third must be for a term of four years, and the fourth must be for a full five-year term. For the initial appointments made by the Speaker of the House of Representatives and the President Pro Tempore of the Senate, one must be for a three-year term and the other must be for a full five-year term. The initial members who have served terms that are less than five years are eligible to be reappointed for one full five-year term. Vacancies must be filled in the manner of the original appointment for the unexpired portion of the term only. Members of the commission who have completed a full five-year term are not eligible for reappointment and shall not serve on the commission after their term expires.

(F) The commission shall elect a chairman, a vice chairman, and such other officers as it considers necessary. Five members of the commission constitutes a quorum. The commission shall adopt a policy concerning the attendance of its members at commission meetings. The commission meets at the call of the chairman or a majority of its members. Members of the commission, while serving on business of the commission, receive per diem, mileage, and subsistence as is provided by law for members of state boards, committees, and commissions.

(G)(1) A commission member appointed by the Governor may be removed from office by the Governor for malfeasance, misfeasance, incompetency, absenteeism, conflicts of interest, misconduct, persistent neglect of duty in office, or incapacity, pursuant to Section 1-3-240.

(2) A commission member appointed by the President Pro Tempore of the Senate or the Speaker of the House of Representatives may be removed for malfeasance, misfeasance, incompetency, absenteeism, conflicts of interest, misconduct, persistent neglect of duty in office, or incapacity upon a finding by two-thirds of the membership of the appropriate body."

SECTION 2. A. The first paragraph of Section 8-13-320(9) of the 1976 Code of Laws, as last amended by Act 245 of 2008, is further amended to read:

"(9) to initiate or receive complaints and make investigations, as provided in item (10), of statements filed or allegedly failed to be filed under the provisions of this chapter and Chapter 17, of Title 2 and, upon complaint by an individual, of an alleged violation of this chapter or Chapter 17, of Title 2 by a public official, public member, or public employee except members or staff, including staff elected to serve as officers of or candidates for the General Assembly unless otherwise provided for under House or Senate rules. Any person charged with a violation of this chapter or Chapter 17, of Title 2 is entitled to the administrative hearing process contained in this section."

B. Section 8-13-320(10)(g) of the 1976 Code, as last amended by Act 1 of 2011, is further amended to read:

~~“(g) 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 and only may be released pursuant to this subsection. After a finding of probable cause by a majority of the commission, the following documents become public record: the complaint, the response by the respondent, and the notice of hearing, exhibits introduced at a hearing, the commission’s findings, and the final order. Exhibits introduced must be redacted prior to release to exclude personal information where the public disclosure would constitute an unreasonable invasion of personal privacy. The respondent may waive the right to confidentiality. The willful 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.”~~

C. Section 8-13-320(10)(j) of the 1976 Code is amended to read:

~~“(j) If a hearing is to be held, the respondent must be allowed to examine and make copies of all evidence in the commission’s possession relating to the charges. The same discovery techniques which are available to the commission must be equally available to the respondent, including the right to request the commission to subpoena witnesses or materials and the right to conduct depositions as prescribed by subitem (f). A panel of three commissioners must conduct a hearing in accordance with Chapter 23, of Title 1 (Administrative Procedures Act), except as otherwise expressly provided. Panel action requires the participation of the three panel members. During a commission panel hearing conducted to determine whether a violation of the chapter has occurred, the respondent 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 evidence, including records the commission considers, must be offered fully and made a part of the record in the proceedings. The hearings must be held in executive session unless the respondent requests an open hearing open to the public.”~~

D. Section 8-13-320(11) of the 1976 Code amended to read:

~~“(11)(a) to issue, upon request from persons covered by this chapter, and publish formal advisory opinions on the requirements of this chapter, based on real or hypothetical sets of circumstances; provided, that an opinion rendered by the commission or an opinion issued by the commission prior to the effective date of this act, until amended or revoked, is binding on the commission in any subsequent charges concerning the person who requested the opinion and who acted in reliance on it in good faith unless material facts were omitted or misstated by the person in the request for the opinion. Formal advisory opinions must be in writing and are considered rendered when approved by five or more a majority of the commission members subscribing to the advisory opinion. Advisory opinions must be made available to the public unless the commission, by majority vote of the total membership of the commission, requires an opinion to remain confidential. However, the identities of the parties involved must be withheld upon request;~~

~~“(b) The State Ethics Commission may issue a written informal advisory opinion, based on real or hypothetical sets of circumstances, to a person or governmental entity within the commission’s jurisdiction upon that person’s or governmental entity’s request. If raised in response to a complaint, the commission shall consider whether the person who requested the opinion or who is a member of the governmental entity who requested the informal opinion and who is affected by the circumstances described within the request for the informal opinion, relied in good faith upon on a written informal opinion prior to making a probable cause determination. A written informal advisory opinion is binding on the State Ethics Commission, until amended or revoked, in any subsequent charges concerning the person who either requested the informal opinion or a member of the governmental entity who requested the informal opinion and who is affected by the circumstances described within the request for the informal opinion unless material facts were omitted or misstated by the person in the request for the opinion.”~~

E. Section 8-13-320 of the 1976 Code, as last amended by Act 1 of 2011, is further amended by adding appropriately numbered items to read:

~~“() to initiate upon the vote of a majority of the membership, and to receive complaints against a member or staff of the appropriate house or legislative caucus committee, or a candidate for the appropriate house, alleging a violation of this chapter or Chapter 17, Title 2 and to conduct an investigation into the complaint pursuant to Section 8-13-540;~~

() to initiate upon the vote of a majority of the membership, and to receive complaints against judges and other judicial officials of the unified judicial system and their staffs whose conduct is now regulated and supervised by the Commission on Judicial Conduct as governed by the Supreme Court and to conduct an investigation into the complaint pursuant to Article 6, Chapter 13 of this title;

() to provide a copy of the complaint and accompanying materials to the Attorney General if the commission finds that there is probable cause to support the existence of criminal intent on the part of the respondent when the violation occurred.”

SECTION 3. Article 5, Chapter 13, Title 8 of the 1976 Code is amended by adding:

“Section 8-13-515. The General Assembly recognizes that the authority of each house to punish its members for disorderly behavior pursuant to Section 12, Article III of the South Carolina Constitution is not limited to violations of this chapter and Chapter 17, Title 2 and specifically includes any conduct the house determines to constitute disorderly behavior.”

SECTION 4. Section 8-13-530 of the 1976 Code, as last amended by Act 245 of 2008, is further 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 a rule or 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. Upon the filing of a complaint alleging a violation by a member or staff of the appropriate house or legislative caucus committee, or a candidate for the appropriate house, for a violation of this chapter or Chapter 17, Title 2, except a technical violation pursuant to Section 8-13-1170 or 8-13-1372, the ethics committee shall refer the complaint to the State Ethics Commission for an investigation pursuant to Section 8-13-540. The appropriate ethics committee shall investigate and make determinations for technical violations of Section 8-13-1170 or 8-13-1372;

(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;~~

(5) no complaint may be accepted by the ethics committee or the State Ethics Commission 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 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)(6) obtain information and investigate~~ hear 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 issued by a majority vote of the committee the attendance and testimony of witnesses and the production of pertinent books and papers;

~~(6)(7)~~ administer or recommend sanctions appropriate to a particular member, or staff of, or candidate for, the appropriate house pursuant to Section 8-13-540, including the recovery of the value of anything transferred or received in breach of the ethical standards, or dismiss the charges; and

~~(7)(8)~~ 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 and to issue, upon request from persons covered by this chapter and Chapter 17, Title 2, and publish advisory opinions on the requirements of these chapters.”

SECTION 5. A. Section 8-13-540 of the 1976 Code, as last amended by Act 184 of 1993, is further 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. 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. 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.~~

(A)(1) When a complaint is filed with or by the ethics committee, a copy must be sent to the person alleged to have committed the violation and to the State Ethics Commission, within thirty days from the date the complaint was filed, for an investigation as provided in this subsection. The State Ethics Commission may commence an investigation of an alleged violation of this chapter or Chapter 17, Title 2 of a member of the General Assembly, its staff, or candidates for the General Assembly upon the filing of a complaint by the commission or an individual, or by the referral of a complaint by the appropriate ethics committee. A copy of the complaint must be sent to the appropriate ethics committee. However, the appropriate ethics committee shall investigate and make a determination for a complaint that alleges only a technical violation of Section 8-13-1170 or 8-13-1372.

(2) If an alleged violation is found to be groundless by the State Ethics Commission, a report must be provided to the appropriate ethics committee. The appropriate ethics committee may concur or nonconcur with the commission's report or, within fifteen days from the receipt of the State Ethics Commission's report, request the commission to continue the investigation and consider additional matters not considered by the commission. If the commission finds that the complaining party wilfully filed a groundless complaint, the finding must be reported to the Attorney General. The wilful filing of a groundless complaint is a misdemeanor and, upon conviction, the 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 item, 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.

(3) Action may not be taken on a complaint filed more than four years after the violation is alleged to have occurred unless a person, by fraud or other device, prevents discovery of the violation.

(4)(a) To conduct its investigation:

(i) the State Ethics commission, upon receipt of information, may initiate a complaint upon an affirmative vote of the commission or shall accept notarized complaints referred from the ethics committees or from an individual, whether personally or on behalf of an organization or governmental body, that states the name of a person alleged to have committed a violation of this chapter or Chapter 17, Title 2 and the particulars of the violation. The commission shall forward a copy of the complaint, a general statement of the applicable law with respect to the complaint, and a statement explaining the due process rights of the respondent including, but not limited to, the right to counsel to the respondent within ten days of the filing of the complaint;

(ii) if the commission or its executive director determines that the complaint does not allege facts sufficient to constitute a violation, a report must be provided to the appropriate ethics committee. The appropriate ethics committee may concur or nonconcur with the commission's report, or within fifteen days from the committee's receipt of the finding, the committee may request the commission to continue the investigation and consider additional matters not considered by the commission. If the appropriate ethics committee concurs with the recommendation to dismiss the complaint, the committee must notify the complainant and respondent. All documents related to a complaint that result in a dismissal or a finding of no probable cause remains confidential, unless the respondent waives the right to confidentiality;

(iii) if the commission or its executive director determines that the complaint alleges facts sufficient to constitute a violation, an investigation may be conducted into the alleged violation. However, if the commission receives or initiates a complaint regarding a member of the General Assembly, legislative staff, or a candidate for the General Assembly, that only alleges a technical violation pursuant to Section 8-13-1170 or 8-13-1372, the complaint must be forwarded to the appropriate ethics committee for an investigation and disposition of the matter;

(iv) if the commission finds that there is probable cause to support the existence of criminal intent on the part of the respondent when the violation occurred, then the complaint and accompanying materials must also be provided to the Attorney General;

(v) if the commission determines that assistance is needed in conducting an investigation, the commission shall request the assistance of appropriate agencies;

(vi) the commission may order testimony to be taken in any investigation or hearing by deposition before a person who is designated by the commission and has the power to administer oaths and, in these instances, to compel testimony. The commission may administer oaths and affirmation for the testimony of witnesses and issue subpoenas by approval of the chairman, subject to judicial enforcement, and issue subpoenas for the procurement of witnesses and materials including books, papers, records, documents, or other tangible objects relevant to the agency's investigation by

approval of the chairman, subject to judicial enforcement. A person to whom a subpoena has been issued may move before a commission panel or the commission for an order quashing a subpoena issued pursuant to this section.

(b) All investigations and accompanying documents are confidential and only may be released pursuant to this item. Thirty days after a recommendation of probable cause by the commission after it completes its investigation, the following documents become public record: the complaint, the response by the respondent, the notice of hearing before the appropriate ethics committee, the investigative findings, exhibits introduced at any hearing, and the final order. However, if the appropriate committee requests a further investigation, the documents must not be released until thirty days after the conclusion of the investigation or upon a finding of probable cause by the committee, whichever occurs earlier.

(c) Exhibits introduced must be redacted prior to release to exclude personal information where the public disclosure would constitute an unreasonable invasion of personal privacy. The respondent may waive the right to confidentiality. The wilful release of confidential information is a misdemeanor, and a person releasing confidential information, upon conviction, must be fined not more than one thousand dollars or imprisoned for not more than one year.

(5) Upon completion of the commission's investigation, the commission shall make a recommendation as to whether there is probable cause to believe a violation of this chapter or of Chapter 17, Title 2 has occurred. The commission shall forward a copy of its recommendation, along with a copy of all relevant reports, evidence, and testimony, to the appropriate ethics committee.

(6) If after reviewing the commission's recommendation and relevant evidence, the ethics committee determines that probable cause does not exist, it shall send a written decision to the respondent and the complainant. If the ethics committee determines 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 public hearing on the matter within thirty days of the respondent's failure to comply with the advisory opinion. A complaint must not be accepted which is filed later than four years after the alleged violation occurred.

(B) If a formal public hearing is to be held:

(1) the investigator or attorney handling the investigation from the ethics commission shall present the evidence related to the complaint to the appropriate ethics committee;

(2) it is the duty of the investigator or attorney to further investigate the subject of the complaint and any related matters under the jurisdiction and at the direction of the ethics committee, to request assistance from appropriate state agencies as needed, to request authorization from the committee for funds for the hiring of auditors, investigators, or other assistance as necessary, to prepare subpoenas, and to present evidence to the committee at any public hearing. The appropriate committee shall maintain the authority to approve subpoenas, authorize expenditures, dismiss complaints, schedule hearings, grant continuances, and any other authority as provided for by their rules;

(3) 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 open to the public.

(C)(a) 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, Title 2, it shall:

(1) administer a public reprimand;

(2) determine that a technical violation as provided in Section 8-13-1170 or 8-13-1372 has occurred;

(3) require the respondent to pay a civil penalty not to exceed two thousand dollars for each nontechnical violation that is unrelated to the late filing of a required statement or report or failure to file a required statement or report;

(4) require the forfeiture of gifts, receipts, or profits, or the value of each, obtained in violation of Chapter 13, Title 8 or Chapter 17, Title 2;

(5) recommend expulsion of the member;

(6) provide a copy of the complaint and accompanying materials to the Attorney General if the committee finds that there is probable cause to support the existence of criminal intent on the part of the respondent when the violation occurred;

(7) require a combination of items (1) through (6) as necessary and appropriate.

(b) The ethics committee shall report its findings in writing to the Speaker of the House of Representatives 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.

(D) 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.

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

(F) 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."

B. Article 5, Chapter 13, Title 8 of the 1976 Code is amended by adding:

"Section 8-13-545. (A) The ethics committee may issue a formal advisory opinion, based on real or hypothetical sets of circumstances. A formal advisory opinion issued by the committee is binding on the State Ethics Commission and the committee, until amended or revoked, in any subsequent charges concerning the person who requested the formal opinion and any other person who acted in reliance upon it in good faith unless material facts were omitted or misstated by the person in the request for the opinion. A formal advisory opinion must be in writing and is considered rendered when approved by a majority of the committee members subscribing to the advisory opinion. Advisory opinions must be made available to the public unless the committee, by majority vote of the total membership of the committee, requires an opinion to remain confidential. However, the identities of the parties involved must be withheld upon request.

(B) Staff of the appropriate ethics committee may issue a written informal advisory opinion, based on real or hypothetical set of circumstances, to a member upon that member's request. If raised in response to a complaint, the State Ethics Commission and the committee shall consider whether the member relied, in good faith, upon a written informal opinion prior to making a probable cause determination or concurring in a determination, as applicable. A written informal advisory opinion issued by the committee staff is binding on the State Ethics Commission and the committee, until amended or revoked, in any subsequent charges concerning the person who requested the informal opinion unless material facts were omitted or misstated by the person in the request for the opinion.

(C) The State Ethics Commission and the appropriate ethics committee shall consider whether a person relied in good faith upon a formal advisory opinion or written informal opinion issued by the committee prior to the effective date of this act, unless amended or revoked prior to the action considered as a possible violation, prior to making a probable cause decision."

SECTION 6. Chapter 13, Title 8 of the 1976 Code is amended by adding:

"Article 6

Judicial Complaints and Procedures

Section 8-13-610. When a complaint is filed with or by the Commission on Judicial Conduct, a copy must be sent to the person alleged to have committed the violation and to the State Ethics Commission, within thirty days from the date the complaint was filed, for an investigation as provided in this subsection. The State Ethics Commission may commence an investigation of an alleged violation of the Canons of Judicial Conduct, Chapter 17, Title 2 and Chapter 13, Title 8, as applicable, of a judge and other judicial officials of the unified judicial system upon the filing of a complaint by the commission or an individual, or by the referral of a complaint by the Commission on Judicial Conduct. A copy of the complaint must be sent to the Commission on Judicial Conduct.

Section 8-13-620. If an alleged violation is found to be groundless by the State Ethics Commission, a report must be provided to the Commission on Judicial Conduct. The Commission on Judicial Conduct may concur or nonconcur with the commission's report or, within fifteen days from the receipt of the State Ethics Commission's report, request the commission to continue the investigation and consider additional matters not considered by the commission. If the commission finds that the complaining party wilfully filed a groundless complaint, the finding must be reported to the Attorney General. The wilful filing of a groundless complaint is a misdemeanor and, upon conviction, the 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 section, 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.

Section 8-13-630. Action may not be taken on a complaint filed more than four years after the violation is alleged to have occurred unless a person, by fraud or other device, prevents discovery of the violation.

Section 8-13-640. (A) To conduct its investigation:

(1) The State Ethics Commission, upon receipt of information, may initiate a complaint upon an affirmative vote of the commission or shall accept notarized complaints referred from the Commission on Judicial Conduct or from an individual, whether personally or on behalf of an organization or governmental body, that states the name of a person alleged to have committed a violation of the Canons of Judicial Conduct, Chapter 17, Title 2 and Chapter 13, Title 8, as applicable, and the particulars of the violation. The commission shall forward a copy of the complaint, a general statement of the applicable law with respect to the complaint, and a statement explaining the due process rights of the respondent including, but not limited to, the right to counsel the respondent within ten days of the filing of the complaint.

(2) If the commission or its executive director determines that the complaint does not allege facts sufficient to constitute a violation, a report must be provided to the Commission on Judicial Conduct. The Commission on Judicial Conduct may concur or nonconcur with the commission's report, or within fifteen days from the Commission on Judicial Conduct's receipt of the finding, it may request the State Ethics Commission to continue the investigation and consider additional matters not considered by the commission. If the Commission on Judicial Conduct concurs with the recommendation to dismiss the complaint, it must notify the complainant and respondent. All documents related to a complaint that result in a dismissal or a finding of no probable cause must remain confidential, unless the respondent waives the right to confidentiality.

(3) If the commission or its executive director determines that the complaint alleges facts sufficient to constitute a violation, an investigation may be conducted into the alleged violation.

(4) If the commission finds that there is probable cause to support the existence of criminal intent on the part of the respondent when the violation occurred, then the complaint and accompanying materials also must be provided to the Attorney General.

(5) If the commission determines that assistance is needed in conducting an investigation, the commission shall request the assistance of appropriate agencies.

(6) The commission may order testimony to be taken in any investigation or hearing by deposition before a person who is designated by the commission and has the power to administer oaths and, in these instances, to compel testimony. The commission may administer oaths and affirmation for the testimony of witnesses and issue subpoenas by approval of the chairman, subject to judicial enforcement, and issue subpoenas for the procurement of witnesses and materials including books, papers, records, documents, or other tangible objects relevant to the agency's investigation by approval of the chairman, subject to judicial enforcement. A person to whom a subpoena has been issued may move before a commission panel or the commission for an order quashing a subpoena issued under this section.

(7) All investigations and accompanying documents are confidential and only may be released pursuant to this item. Thirty days after a recommendation of probable cause by the commission after it completes its investigation, the following documents become public record: the complaint, the response by the respondent, the notice of hearing before the Commission on Judicial Conduct, the investigative findings, exhibits introduced at any hearing, and the final order. However, if the Commission on Judicial Conduct requests a further investigation, the documents must not be released until thirty days after the conclusion of the investigation or upon a finding of probable cause by the committee, whichever occurs earlier.

(B) Exhibits introduced must be redacted prior to release to exclude personal information where the public disclosure would constitute an unreasonable invasion of personal privacy. The respondent may waive the right to confidentiality. The wilful release of confidential information is a misdemeanor, and a person releasing confidential information, upon conviction, must be fined not more than one thousand dollars or imprisoned for not more than one year.

Section 8-13-650. Upon completion of the commission's investigation, the commission shall make a recommendation as to whether there is probable cause to believe a violation of the Canons of Judicial Conduct, Chapter 17, Title 2 and Chapter 13, Title 8, as applicable, has occurred. The commission shall forward a copy of its recommendation, along with a copy of all relevant reports, evidence, and testimony, to the Commission on Judicial Conduct and the Supreme Court for disposition pursuant to its rules." /

RENUMBER SECTIONS TO CONFORM.
AMEND TITLE TO CONFORM.