



SPONSOR: Sen. Bonini & Rep. Shupe

DELAWARE STATE SENATE
151st GENERAL ASSEMBLY

SENATE BILL NO. 338

AN ACT TO AMEND TITLE 29 OF THE DELAWARE CODE RELATING TO STATE GOVERNMENT.

WHEREAS, there is currently no comprehensive procedure or system to investigate potential violations of the Delaware Constitution, statutes, or regulations or allegations of conflict of interest by the members of the General Assembly; and

WHEREAS, meaningful oversight is essential in deterring corruption, generating public confidence in elected government officials, and maintaining the integrity of Delaware's legislative process; and

WHEREAS, the people of Delaware need an independent advocate and guardian of legislative ethics.

NOW, THEREFORE:

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Chapter 10, Title 29 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 1005. Establishment of Office of Legislative Ethics.

(a) The Office of Legislative Ethics is established.

(b) For administrative and budgetary purposes, the Office of Legislative Ethics shall be placed within the General Assembly. The Office of Legislative Ethics, however, shall act independent of the General Assembly as provided in this chapter.

§ 1006. Membership of the Board of Office of Legislative Ethics; Executive Director.

(a) The Board of the Office of Legislative Ethics ("Board") shall consist of 5 voting members consisting of former elected officials, attorneys and law professors, and other experts with experience in legislative ethics.

(b) Members shall be appointed as follows: 1 each by the President Pro Tempore and Minority Leader of the Senate and the Speaker and Minority Leader of the House of Representatives; and 1 member by the Chief Justice of the Supreme Court. Board members will serve without compensation but shall be reimbursed for reasonable expenses actually incurred in the performance of the board members' duties.

(1) An individual is not eligible to serve as a member of the Board if that individual (i) has been convicted of a felony or a crime of dishonesty or moral turpitude, (ii) is, or was within the preceding 12 months,

engaged in activities that require registration as a lobbyist under § 5833 of this title, (iii) is a relative of the appointing authority, (iv) is a current State officer or employee, or (v) is a candidate for any elective office.

(2) No member during the member's term shall: (i) become a candidate for any elective office; or (ii) hold any other elected or appointed public office except for appointment on governmental advisory boards or study commissions or as otherwise expressly authorized by law.

a. The terms of the initial members shall commence upon qualification. Each appointing authority from the Senate shall designate one appointee who shall serve for a 4-year term running through June 30, 2026. Each appointing authority from the House shall designate one appointee who shall serve for a 2-year term running June 30, 2024. The Chief Justice of the Supreme Court shall designate one appointee who shall serve for a 3-year term running through June 30, 2025. The initial appointments shall be made with 60 days after [the effective date of this act]. After the initial terms, members shall serve for 4-year terms commencing on July 1 of the year of appointment and running through June 30 of the fourth year. Members may be reappointed to one or more subsequent terms. A vacancy shall occur upon a member's death, resignation, removal, disqualification, or other inability to act. Vacancies occurring other than at the end of a term shall be filled by the appointing authority only for the balance of the term of the member whose position is vacant.

b. The Board shall appoint a full-time Executive Director subject to the approval of at least 3 of its members. The Executive Director shall be an attorney and will also serve as the Office of Legislative Ethics' Lead Investigator. The compensation of the Executive Director shall be determined by the Board. The Executive Director of the Office of Legislative Ethics may employ, subject to approval of at least 3 members of the Board, and determine the compensation of staff, as appropriations permit. The Executive Director shall not engage in the practice of law or any other business, employment, or vocation while employed by the Office of Legislative Ethics. The Board may remove the Executive Director only for cause. At the time of the removal, the Board must report to the General Assembly the justification for the removal.

§ 1007. Jurisdiction; duties.

(a) The Office of Legislative Ethics shall have jurisdiction over current and former members of the General Assembly regarding events occurring during a member's term of office.

(b) In addition to duties otherwise assigned by law, the Board shall have the following duties:

54 (1) To promulgate rules governing the exercise of its powers and governing the investigations of Office
55 of Legislative Ethics. The rules shall be available on the Office of Legislative Ethics' website and any proposed
56 changes to the rules must be made available to the public on the Office of Legislative Ethics' website no less than
57 7 days before the adoption of the changes. The public shall be given an opportunity to provide written or oral
58 testimony before the Board in support of or opposition to proposed rules.

59 (2) To prepare public information materials to facilitate compliance, implementation, and enforcement
60 of this chapter.

61 (3) To submit reports as required by law.

62 (4) To the extent authorized by this chapter, to conduct investigations, make referrals and make
63 recommendations, in connection with the implementation and interpretation of this chapter.

64 (5) To conspicuously display on the Office of Legislative Ethics' website the forms and procedure for
65 making complaints and other requests to investigate, including how to make complaints anonymously and the
66 legal protections extended to whistleblowers.

67 (c) In addition to duties otherwise assigned by law, the Executive Director of the Office of Legislative Ethics shall
68 have the following duties:

69 (1) To receive complaints and other requests to investigate allegations of wrongdoing by current members
70 of the General Assembly.

71 (2) To independently initiate, upon approval of the Board, investigations concerning wrongdoing by
72 current members of the General Assembly.

73 (3) To investigate, upon approval of the Board, complaints, and other requests to investigate. The
74 Executive Director shall have the discretion to determine the appropriate means the appropriate means of
75 investigation as permitted by law.

76 (4) To request information relating to an investigation from any person when the Executive Director
77 deems that information necessary in conducting an investigation.

78 (5) To submit reports as required by law.

79 (6) To establish procedures and policies that ensure the appropriate handling and correct recording of
80 complaints and other requests to investigate and to ensure that the procedures and policies are accessible via the
81 Office of Legislative Ethics' website.

(d) Neither the Board nor the Executive Director of the Office of Legislative Ethics shall have subpoena authority. Participation in an Office of Legislative Ethics investigation shall be voluntary. However, the Board may draw negative inferences from the refusal to cooperate or provide documents and information in connection with an investigation.

§ 1008. Meetings; appointment of Chair.

(a) The Board of the Office of Legislative Ethics shall meet, either in person or by other technological means, monthly or as often as necessary; provided, however, that if there is no matter currently pending before the Office of Legislative Ethics, then the Executive Director may so advise the Board and decline to schedule that month's meeting.

(b) At the first meeting of the Board, the members shall appoint from their number a Chair and any other officers deemed appropriate. Meetings shall be held at the call of the Chair or any 3 members. Except as provided in § 1010 of this title, official action by the Board shall require the affirmative vote of 3 members, and a quorum shall consist of 3 members.

§ 1009. Initiation of complaints; anonymity; confidentiality.

(a) Any member of the public may file a complaint or request that the Office of Legislative Ethics commence an investigation. The forms and procedure for making complaints and other request to investigate shall be accessible on the Office of Legislative Ethics' website, including instructions on how to make complaints anonymously.

(b) Unless otherwise provided under this chapter, the complaint or request to commence an investigation shall be confidential.

§ 1010. Actions on complaints; voting of Board.

(a) Within 30 days or at the next scheduled meeting of the Board following the receipt of an complaint or request to investigate, whichever is earlier, every complaint or other request filed with the Office of Legislative Ethics should be presented to the full Board by the Executive Director. On presentation, the Board shall either commence an investigation or decline to take up the matter.

(b) An investigation into a complaint or other request shall be commenced by the Office of Legislative Ethics on 2 votes of the Board.

(c) If an investigation has been on-going for more than 60 days, the investigation can be terminated by 3 votes of the Board.

(d) Following an Office of Legislative Ethics' investigation, by 4 votes of the Board, a matter can be referred to the appropriate legislative ethics committee, established under § 1003 of this title, for further action.

(e) If the Board of the Office of Legislative Ethics refuses to take up a matter for investigation, or terminates an investigation in process under § 1010(c) of this title, the Office of Legislative Ethics shall issue a written statement explaining the basis for the Board's determination.

(1) Statements of refusal may be drafted and issued by the Executive Director following the vote of the Board without further review by the Board.

(2) Statements of termination shall be drafted by the Executive Director and approved by an affirmative vote of at least 3 members of the Board.

(f) The Executive Director may notify complainants or subjects of an investigation with an update on the status of the respective investigation, including when the investigation is opened and closed.

§ 1011. Referral to legislative ethics committee; written reports.

(a) If the Board refers a matter to a Legislative Ethics Committee under § 1010(d) of this title, that legislative ethics committee shall conduct a full and thorough review and assessment of the matter. The review and assessment may include such additional investigations as the legislative ethics committee deems warranted under the circumstances.

(b) Each referral by the Board to a legislative ethics committee shall be accompanied by a written report explaining the Office of Legislative Ethics' findings and conclusions. The written report shall be drafted by the Executive Director and approved by an affirmative vote of at least 4 members of the Board.

(c) Within 45 days of receiving a referral from the Office of Legislative Ethics, a legislative ethics committee must meet to review and consider the matter.

(d) Within 120 days of receiving a referral from the Office of Legislative Ethics, a legislative ethics committee, must either (i) refer the matter to the full legislative body with a recommendation for sanction; (ii) dismiss the matter with a written explanation; or (iii) extend its investigation for a period no less than 30 and no more than 60 days, with a maximum extension of 180 days.

§ 1012. Confidentiality.

(a) The identity of any individual providing information or reporting any possible or alleged misconduct to the Office of Legislative Ethics shall be kept confidential and may not be disclosed without the consent of that individual unless the individual consents to disclosure of his or her name or disclosure of the individual's identity is otherwise required by law.

(b) Each referral by the Board to a legislative ethics committee and the accompanying written report shall be and remain confidential until such time as the legislative ethics committee completes its review, investigation, or assessment and disposes of the matter.

(c) Not later than 30 days thereafter following the disposal of a matter by a legislative ethics committee, that legislative ethics committee shall make public the Board's report. If a legislative ethics committee fails to release the

Board's report within the required timeframe, the Office of Legislative Ethics may release the report on its own accord, or any member of the public may receive a copy of the report on request.

(d) The Executive Director, Board members, and other employees or agents of the Office of Legislative Ethics shall keep confidential and shall not disclose information unless otherwise required by law.

§ 1013. Reporting to the General Assembly.

The Office of Legislative Ethics shall issue a quarterly report to the General Assembly within 30 days after the end of each quarter containing the following information for the preceding quarter:

(1) The total number of complaints or requests to investigate that were received by the Office of Legislative Ethics.

(2) The total number of matters that were investigated on the Office of Legislative Ethics' own initiative.

(3) For each matter, the following shall be reported:

a. When the matter was commenced.

b. Which law, regulation, or provision the matter concerns.

c. The current state of the matter within the process detailed in § 1010 and § 1011 of this title.

Section 2. Amend § 5115, Title 29 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

(b) No public employee shall be discharged, threatened or otherwise discriminated against with respect to the terms or conditions of employment because that public employee reported, in a written or oral communication to an elected official of the Office of Legislative Ethics or Office of Legislative Ethics Board, a violation or suspected violation of a law or regulation promulgated under the law of the United States, this State, its school districts, or a county or municipality of this State unless the employee knows that the report is false.

Section 3. Amend § 10002, Title 29 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 10002. Definitions.

(k) "Public Body" means, unless specifically excluded, any regulatory, administrative, advisory, executive, appointive or legislative body of the State, or of any political subdivision of the State, including, but not limited to, any board, bureau, commission, department, agency, committee, ad hoc committee, special committee, temporary committee, advisory board and committee, subcommittee, legislative committee, association, group, panel, council or any other entity or body established by an act of the General Assembly of the State, or established by any body established by the General

Assembly of the State, or appointed by any body or public official of the State or otherwise empowered by any state governmental entity, which:

(1) Is supported in whole or in part by any public funds; or

(2) Expends or disburses any public funds, including grants, gifts or other similar disbursement and distributions; or

(3) Is impliedly or specifically charged by any other public official, body, or agency to advise or to make reports, investigations or recommendations.

“Public body” shall not include any caucus of the House of Representatives or Senate of the State, the Office of Legislative Ethics or the Office of Legislative Ethics Board. “Public body” shall include any authority created under Chapter 14 of Title 16.

SYNOPSIS

This Act establishes the Office of Legislative Ethics for the General Assembly. The establishment of an Office of Legislative Ethics is necessary to ensure that potential violations of Delaware’s laws or allegations of conflict of interest by the members of the General Assembly are fully investigated. The Board of the Office of Legislative Ethics will be made up of five respected members of the community with expertise in law and legislative ethics who will volunteer to serve. The Office of Legislative Ethics will be headed by an Executive Director who will also serve as the lead investigator.

Any member of the public will be able to file a complaint or request the Office of Legislative Ethics to commence an investigation and can do so anonymously. The Act provides for the specific procedures to be followed once the Office of Legislative Ethics receives a complaint or request for investigation. The Act further provides for certain reporting to the General Assembly on a quarterly basis.

The Act also adds the Office of Legislative Ethics to Delaware’s whistleblower statute, ensuring that public employees who make a complaint to the Office of Legislative Ethics are afforded the same protections as employees reporting suspected violations to other reporting bodies.

Finally, the Act removes the Office of Legislative Ethics and the Office of Legislative Ethics Board from the meaning of “public body” within Delaware’s Freedom of Information Act.

Author: Senator Bonini