



SPONSOR: Rep. Michael Smith & Sen. Richardson & Rep. Hilovsky
& Rep. Shupe
Reps. Collins, Postles

HOUSE OF REPRESENTATIVES
152nd GENERAL ASSEMBLY

HOUSE BILL NO. 261

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

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

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

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

7 NOW, THEREFORE:

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

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

11 § 1005. Establishment of Office of Legislative Ethics.

12 (a) The Office of Legislative Ethics is established.

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

16 § 1006. Membership of the Board of Office of Legislative Ethics; Executive Director.

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

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

23 (1) An individual is not eligible to serve as a member of the Board if that individual (i) has been convicted of a
24 felony or a crime of dishonesty or moral turpitude, (ii) is, or was within the preceding 12 months, engaged in activities that
25 require registration as a lobbyist under § 5833 of this title, (iii) is a relative of the appointing authority, (iv) is a current
26 State officer or employee, or (v) is a candidate for any elective office.

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

30 a. The terms of the initial members shall commence upon qualification. Each appointing authority from the
31 Senate shall designate one appointee who shall serve for a 4-year term running through June 30, 2026. Each appointing
32 authority from the House shall designate one appointee who shall serve for a 2-year term running June 30, 2024. The Chief
33 Justice of the Supreme Court shall designate one appointee who shall serve for a 3-year term running through June 30,
34 2025. The initial appointments shall be made with 60 days after [the effective date of this act]. After the initial terms,
35 members shall serve for 4-year terms commencing on July 1 of the year of appointment and running through June 30 of the
36 fourth year. Members may be reappointed to one or more subsequent terms. A vacancy shall occur upon a member's death,
37 resignation, removal, disqualification, or other inability to act. Vacancies occurring other than at the end of a term shall be
38 filled by the appointing authority only for the balance of the term of the member whose position is vacant.

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

47 § 1007. Jurisdiction; duties.

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

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

51 (1) To promulgate rules governing the exercise of its powers and governing the investigations of Office of
52 Legislative Ethics. The rules shall be available on the Office of Legislative Ethics' website and any proposed changes to the

53 rules must be made available to the public on the Office of Legislative Ethics' website no less than 7 days before the
54 adoption of the changes. The public shall be given an opportunity to provide written or oral testimony before the Board in
55 support of or opposition to proposed rules.

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

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

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

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

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

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

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

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

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

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

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

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

82 § 1008. Meetings; appointment of Chair.

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

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

89 § 1009. Initiation of complaints; anonymity; confidentiality.

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

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

95 § 1010. Actions on complaints; voting of Board.

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

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

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

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

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

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

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

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

115 § 1011. Referral to legislative ethics committee; written reports.

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

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

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

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

128 § 1012. Confidentiality.

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

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

136 (c) Not later than 30 days thereafter following the disposal of a matter by a legislative ethics committee, that
137 legislative ethics committee shall make public the Board's report. If a legislative ethics committee fails to release the
138 Board's report within the required timeframe, the Office of Legislative Ethics may release the report on its own accord, or
139 any member of the public may receive a copy of the report on request.

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

142 § 1013. Reporting to the General Assembly.

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

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

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

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

149 a. When the matter was commenced.

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

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

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

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

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

161 § 10002. Definitions.

162 (k) "Public Body" means, unless specifically excluded, any regulatory, administrative, advisory, executive,
163 appointive or legislative body of the State, or of any political subdivision of the State, including, but not limited to, any
164 board, bureau, commission, department, agency, committee, ad hoc committee, special committee, temporary committee,
165 advisory board and committee, subcommittee, legislative committee, association, group, panel, council or any other entity
166 or body established by an act of the General Assembly of the State, or established by any body established by the General
167 Assembly of the State, or appointed by any body or public official of the State or otherwise empowered by any state
168 governmental entity, which:

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

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

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

173 “Public body” shall not include any caucus of the House of Representatives or Senate of the State , the Office of
174 Legislative Ethics or the Office of Legislative Ethics Board . “Public body” shall include any authority created under
175 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.