

106TH CONGRESS
1ST SESSION

S. RES. 222

To revise the procedures of the Select Committee on Ethics.

IN THE SENATE OF THE UNITED STATES

NOVEMBER 5, 1999

Mr. SMITH of New Hampshire (for himself and Mr. REID) submitted the following resolution; which was considered and agreed to

RESOLUTION

To revise the procedures of the Select Committee on Ethics.

1 *Resolved,*

2 **SECTION 1. SHORT TITLE.**

3 This resolution may be cited as the “Senate Ethics
4 Procedure Reform Resolution of 1999”.

5 **SEC. 2. ESTABLISHMENT AND MEMBERSHIP OF THE SE-**
6 **LECT COMMITTEE.**

7 The first section of Senate Resolution 338, agreed to
8 July 24, 1964 (88th Congress, 2d Session) (referred to
9 as the “resolution”) is amended—

10 (1) in subsection (c), by amending paragraph
11 (1) to read as follows:

1 “(1) A majority of the members of the Select Com-
 2 mittee shall constitute a quorum for the transaction of
 3 business involving complaints or allegations of, or informa-
 4 tion about, misconduct, including resulting preliminary in-
 5 quiries, adjudicatory reviews, recommendations or reports,
 6 and matters relating to Senate Resolution 400, agreed to
 7 May 19, 1976.”;

8 (2) in subsection (d), by amending paragraph
 9 (1) to read as follows:

10 “(1) A member of the Select Committee shall be ineli-
 11 gible to participate in—

12 “(A) any preliminary inquiry or adjudicatory
 13 review relating to—

14 “(i) the conduct of—

15 “(I) such member;

16 “(II) any officer or employee the
 17 member supervises; or

18 “(III) any employee of any officer the
 19 member supervises; or

20 “(ii) any complaint filed by the member;

21 and

22 “(B) the determinations and recommendations
 23 of the Select Committee with respect to any prelimi-
 24 nary inquiry or adjudicatory review described in sub-
 25 paragraph (A).

1 For purposes of this paragraph, a member of the Select
2 Committee and an officer of the Senate shall be deemed
3 to supervise any officer or employee consistent with the
4 provision of paragraph 12 of rule XXXVII of the Standing
5 Rules of the Senate.”;

6 (3) in subsection (d)(2), by amending the first
7 sentence to read as follows: “A member of the Select
8 Committee may, at the discretion of the member,
9 disqualify himself or herself from participating in
10 any preliminary inquiry or adjudicatory review pend-
11 ing before the Select Committee and the determina-
12 tions and recommendations of the Select Committee
13 with respect to any such preliminary inquiry or adju-
14 dicatory review.”; and

15 (4) in subsection (d), by amending paragraph
16 (3) to read as follows:

17 “(3) Whenever any member of the Select Committee
18 is ineligible under paragraph (1) to participate in any pre-
19 liminary inquiry or adjudicatory review or disqualifies
20 himself or herself under paragraph (2) from participating
21 in any preliminary inquiry or adjudicatory review, another
22 Senator shall, subject to the provisions of subsection (d),
23 be appointed to serve as a member of the Select Com-
24 mittee solely for purposes of such preliminary inquiry or
25 adjudicatory review and the determinations and rec-

1 ommendations of the Select Committee with respect to
 2 such preliminary inquiry or adjudicatory review. Any
 3 Member of the Senate appointed for such purposes shall
 4 be of the same party as the Member who is ineligible or
 5 disqualifies himself or herself.”.

6 **SEC. 3. DUTIES OF THE SELECT COMMITTEE.**

7 Section 2 of the resolution is amended—

8 (1) in subsection (a), by striking paragraphs
 9 (2), (3), and (4) and inserting the following:

10 “(2)(A) recommend to the Senate by report or
 11 resolution by a majority vote of the full committee
 12 disciplinary action to be taken with respect to such
 13 violations which the Select Committee shall deter-
 14 mine, after according to the individual concerned
 15 due notice and opportunity for a hearing, to have oc-
 16 curred;

17 “(B) pursuant to subparagraph (A) recommend
 18 discipline, including—

19 “(i) in the case of a Member, a rec-
 20 ommendation to the Senate for expulsion, cen-
 21 sure, payment of restitution, recommendation to
 22 a Member’s party conference regarding the
 23 Member’s seniority or positions of responsi-
 24 bility, or a combination of these; and

1 “(ii) in the case of an officer or employee,
2 dismissal, suspension, payment of restitution, or
3 a combination of these;

4 “(3) subject to the provisions of subsection (e),
5 by a unanimous vote of 6 members, order that a
6 Member, officer, or employee be reprimanded or pay
7 restitution, or both, if the Select Committee deter-
8 mines, after according to the Member, officer, or
9 employee due notice and opportunity for a hearing,
10 that misconduct occurred warranting discipline less
11 serious than discipline by the full Senate;

12 “(4) in the circumstances described in sub-
13 section (d)(3), issue a public or private letter of ad-
14 monition to a Member, officer, or employee, which
15 shall not be subject to appeal to the Senate;

16 “(5) recommend to the Senate, by report or
17 resolution, such additional rules or regulations as
18 the Select Committee shall determine to be nec-
19 essary or desirable to insure proper standards of
20 conduct by Members of the Senate, and by officers
21 or employees of the Senate, in the performance of
22 their duties and the discharge of their responsibil-
23 ities;

24 “(6) by a majority vote of the full committee,
25 report violations of any law, including the provision

1 of false information to the Select Committee, to the
2 proper Federal and State authorities; and

3 “(7) develop and implement programs and ma-
4 terials designed to educate Members, officers, and
5 employees about the laws, rules, regulations, and
6 standards of conduct applicable to such individuals
7 in the performance of their duties.”;

8 (2) by amending subsection (b) to read as fol-
9 lows:

10 “(b) For the purposes of this resolution—

11 “(1) the term ‘sworn complaint’ means a writ-
12 ten statement of facts, submitted under penalty of
13 perjury, within the personal knowledge of the com-
14 plainant alleging a violation of law, the Senate Code
15 of Official Conduct, or any other rule or regulation
16 of the Senate relating to the conduct of individuals
17 in the performance of their duties as Members, offi-
18 cers, or employees of the Senate;

19 “(2) the term ‘preliminary inquiry’ means a
20 proceeding undertaken by the Select Committee fol-
21 lowing the receipt of a complaint or allegation of, or
22 information about, misconduct by a Member, officer,
23 or employee of the Senate to determine whether
24 there is substantial credible evidence which provides
25 substantial cause for the Select Committee to con-

1 clude that a violation within the jurisdiction of the
2 Select Committee has occurred; and

3 “(3) the term ‘adjudicatory review’ means a
4 proceeding undertaken by the Select Committee
5 after a finding, on the basis of a preliminary inquiry,
6 that there is substantial credible evidence which pro-
7 vides substantial cause for the Select Committee to
8 conclude that a violation within the jurisdiction of
9 the Select Committee has occurred.”;

10 (3) in subsection (c), by amending paragraph
11 (1) to read as follows:

12 “(1) No—

13 “(A) adjudicatory review of conduct of a Mem-
14 ber or officer of the Senate may be conducted;

15 “(B) report, resolution, or recommendation re-
16 lating to such an adjudicatory review of conduct may
17 be made; and

18 “(C) letter of admonition pursuant to sub-
19 section (d)(3) may be issued,

20 unless approved by the affirmative recorded vote of no
21 fewer than 4 members of the Select Committee.”;

22 (4) by amending subsection (d) to read as fol-
23 lows:

24 “(d)(1) When the Select Committee receives a sworn
25 complaint or other allegation or information about a Mem-

1 ber, officer, or employee of the Senate, it shall promptly
2 conduct a preliminary inquiry into matters raised by that
3 complaint, allegation, or information. The preliminary in-
4 quiry shall be of duration and scope necessary to deter-
5 mine whether there is substantial credible evidence which
6 provides substantial cause for the Select Committee to
7 conclude that a violation within the jurisdiction of the Se-
8 lect Committee has occurred. The Select Committee may
9 delegate to the chairman and vice chairman the discretion
10 to determine the appropriate duration, scope, and conduct
11 of a preliminary inquiry.

12 “(2) If, as a result of a preliminary inquiry under
13 paragraph (1), the Select Committee determines by a re-
14 corded vote that there is not such substantial credible evi-
15 dence, the Select Committee shall dismiss the matter. The
16 Select Committee may delegate to the chairman and vice
17 chairman the authority, on behalf of the Select Committee,
18 to dismiss any matter that they determine, after a prelimi-
19 nary inquiry, lacks substantial merit. The Select Com-
20 mittee shall inform the individual who provided to the Se-
21 lect Committee the complaint, allegation, or information,
22 and the individual who is the subject of the complaint,
23 allegation, or information, of the dismissal, together with
24 an explanation of the basis for the dismissal.

1 “(3) If, as a result of a preliminary inquiry under
2 paragraph (1), the Select Committee determines that a
3 violation is inadvertent, technical, or otherwise of a de
4 minimis nature, the Select Committee may dispose of the
5 matter by issuing a public or private letter of admonition,
6 which shall not be considered discipline. The Select Com-
7 mittee may issue a public letter of admonition upon a simi-
8 lar determination at the conclusion of an adjudicatory re-
9 view.

10 “(4) If, as the result of a preliminary inquiry under
11 paragraph (1), the Select Committee determines that
12 there is such substantial credible evidence and the matter
13 cannot be appropriately disposed of under paragraph (3),
14 the Select Committee shall promptly initiate an adjudica-
15 tory review. Upon the conclusion of such adjudicatory re-
16 view, the Select Committee shall report to the Senate, as
17 soon as practicable, the results of such adjudicatory re-
18 view, together with its recommendations (if any) pursuant
19 to subsection (a)(2).”;

20 (5) by amending subsection (e) to read as fol-
21 lows:

22 “(e)(1) Any individual who is the subject of a rep-
23 rimand or order of restitution, or both, pursuant to sub-
24 section (a)(3) may, within 30 days of the Select Commit-
25 tee’s report to the Senate of its action imposing a rep-

1 rimand or order of restitution, or both, appeal to the Sen-
 2 ate by providing written notice of the basis for the appeal
 3 to the Select Committee and the presiding officer of the
 4 Senate. The presiding officer of the Senate shall cause the
 5 notice of the appeal to be printed in the Congressional
 6 Record and the Senate Journal.

7 “(2) A motion to proceed to consideration of an ap-
 8 peal pursuant to paragraph (1) shall be highly privileged
 9 and not debatable. If the motion to proceed to consider-
 10 ation of the appeal is agreed to, the appeal shall be decided
 11 on the basis of the Select Committee’s report to the Sen-
 12 ate. Debate on the appeal shall be limited to 10 hours,
 13 which shall be divided equally between, and controlled by,
 14 those favoring and those opposing the appeal.”;

15 (6) by amending subsection (g) to read as fol-
 16 lows:

17 “(g) Notwithstanding any other provision of this sec-
 18 tion, no adjudicatory review shall be initiated of any al-
 19 leged violation of any law, the Senate Code of Official Con-
 20 duct, rule, or regulation which was not in effect at the
 21 time the alleged violation occurred. No provisions of the
 22 Senate Code of Official Conduct shall apply to or require
 23 disclosure of any act, relationship, or transaction which
 24 occurred prior to the effective date of the applicable provi-
 25 sion of the Code. The Select Committee may initiate an

1 adjudicatory review of any alleged violation of a rule or
 2 law which was in effect prior to the enactment of the Sen-
 3 ate Code of Official Conduct if the alleged violation oc-
 4 curred while such rule or law was in effect and the viola-
 5 tion was not a matter resolved on the merits by the prede-
 6 cessor Select Committee.”; and

7 (7) by amending subsection (h) to read as fol-
 8 lows:

9 “(h) The Select Committee shall adopt written rules
 10 setting forth procedures to be used in conducting prelimi-
 11 nary inquiries and adjudicatory reviews.”.

12 **SEC. 4. AUTHORITY OF THE SELECT COMMITTEE.**

13 Section 3 of the resolution is amended—

14 (1) in subsection (b), by amending paragraph
 15 (2) to read as follows:

16 “(2) Any adjudicatory review as defined in section
 17 2(b)(3) shall be conducted by outside counsel as author-
 18 ized in paragraph (1), unless the Select Committee deter-
 19 mines not to use outside counsel.”; and

20 (2) by amending subsection (d) to read as fol-
 21 lows:

22 “(d)(1) Subpoenas may be authorized by—

23 “(A) the Select Committee; or

24 “(B) the chairman and vice chairman, acting
 25 jointly.

1 “(2) Any such subpoena shall be issued and signed
2 by the chairman and the vice chairman and may be served
3 by any person designated by the chairman and vice chair-
4 man.

5 “(3) The chairman or any member of the Select Com-
6 mittee may administer oaths to witnesses.”.

7 **SEC. 5. EFFECTIVE DATE OF AMENDMENTS.**

8 The amendments made by this resolution shall take
9 effect on the date this resolution is agreed to, except that
10 the amendments shall not apply with respect to further
11 proceedings in any preliminary inquiry, initial review, or
12 investigation commenced before that date under Senate
13 Resolution 338, agreed to July 24, 1964 (88th Congress,
14 2d Session).

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