Good Governance and Ethics Reform
Best Practices and Policy Recommendations

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Campaign Finance

Current Virginia Practice: There are no limits on the amount individuals, corporations, PACs, and unions can donate to state political parties or individual campaigns.

Best Practice: Cap donations to campaigns by individuals, corporations, PACs, and Unions at no greater than $5,000 per election. Cap donations to state parties at no greater than $5,000 for individuals and PACs. Ban corporate and union donations to state parties.

Model State: **Arkansas—** Donations to candidates are capped at $2,000 by individuals, corporations, Unions, and PACs. Donations to candidates by state parties are capped at $2,500.[1]
Maryland—Donations to campaigns are capped at $4,000 by individuals, corporations, and Unions. $6,000 for state parties and PACs.
North Carolina—Corporate and union donations to political parties and individual candidates are banned. These types of bans may ultimately be held unconstitutional following the *Citizens United* and *McCutcheon* cases.

Current Virginia Practice: There are no restrictions or limits on the amount lobbyists can donate to state political parties or individual campaigns.

Best Practice: Prohibit lobbyists from making campaign contributions of any kind. Prohibit the employers and principals of lobbyists from donating to campaigns of legislators or executive officers they are lobbying.

Model State: **South Carolina—** Lobbyists or any person or business acting on the behalf of lobbyists are prohibited from contributing to elected officials or their campaigns.[2]
North Carolina— Lobbyists are prohibited from making campaign contributions to members of the General Assembly or candidates for the General Assembly.[3]

Current Virginia Practice: Members of the General Assembly cannot solicit or accept campaign contributions during "on and after the first day of a regular session of the General Assembly through adjournment sine die of that session." (Va. Code §24.2-954). This exempts special sessions from the ban.

Best Practice: Include extended and special sessions under the prohibition of fundraising during session.

Model State: **Florida**—Legislators may "neither solicit nor accept any campaign contribution during the 60-day regular legislative session or any extended or special session."[4]
Alabama—Ban on fundraising during session applies to special sessions as well. [5]

[1] http://www.ncsl.org/Portals/1/documents/legismgt/Limits_to_Candidates_2012-2014.pdf
[2] http://ethics.sc.gov/Lobbying/Pages/LobbyingLaw.aspx
[3] http://www.ethicscommission.nc.gov/lobbyist.aspx
[4] http://www.ncsl.org/research/elections-and-campaigns/limits-on-contributions-during-session.aspx
[5] http://www.ncsl.org/research/elections-and-campaigns/limits-on-contributions-during-session.aspx

Oversight and Enforcement

Current Virginia Practice: Oversight of campaign disclosures are handled by the State Board of Elections. However, the Board lacks independent investigative and auditing powers and is not required by law to perform audits. Investigations are carried out by an Attorney for the Commonwealth (in Richmond) and by the Attorney General. The Board may assess civil penalties.

Best Practice: Mandate that the State Board perform random audits of 2% of campaign disclosures, perform specific audits and field investigations when there is suspicion of a violation, and grant it powers to investigate possible violations of election and campaign finance rules. The Board may assess civil penalties (up to 3X the infraction) and forward recommendations to pursue criminal charges to the Attorney General.

Model State: **Nebraska**—Nebraska's Accountability and Disclosure Commission performs random audits and field investigations of campaign statements.[6]
North Carolina—The Executive Director of the State Board of Elections is required to examine each campaign report to "determine whether the statement conforms to law and to the truth."

Current Virginia Practice: Oversight of conflicts of interest and lobbyist disclosures are handled by the newly-created Virginia Conflict of Interest and Ethics Advisory Council (VCIEAC). The Council is largely made up of appointees made by the legislature. Complaints are registered with the Council, which then transmits the complaints to the ethics advisory panel for either the House or Senate. Legislators accused of violations are subjects to hearings by the panel, and the proceedings are confidential. If the violation was made unknowingly, the matter is resolved by the House or Senate. If it was made knowingly, the matter is referred to the Attorney General.

Best Practice: Give oversight and enforcement powers to a **single, independent Virginia Ethics Commission**. Empower the Commission to receive complaints, investigate claims, and conduct public hearings. Empower the Commission to issue civil penalties, refer cases to the Attorney General, and issue advisory opinions. Give the Commission oversight of both the Executive and Legislative branches.

Model State: **Washington State**—their Legislative Ethics Board can investigate signed complaints from any person, or can initiate complaints on its own motion. The Board can conduct public hearings and subpoena witnesses. The Board may issue civil penalties up to $5,000 or three times the value of the infraction. The Board may also recommend to the Assembly removal or suspension of the Member, or refer the case to the Attorney General.
Bill Bolling— Made recommendations in 2013 to "establish a statewide Ethics Review Commission to investigate malfeasance, disclosure and ethics complaints against elected officials. The Commission could also assist in providing advisory opinions to elected officials and others on matters related to public service. The Commission would be composed of five members appointed by the Supreme Court of Virginia."[7]

[6] http://nebraskalegislature.gov/laws/statutes.php?statute=49-14,122
[7] http://www.billbolling.com/wp-content/uploads/2013/08/Ethics-Reform-Policy-Proposals-8-6-13.pdf

Gifts, Loans, and Conflicts of Interest

Current Virginia Practice: Tangible gifts to elected officials and most executive-level officials over $250 are prohibited. There are no limits on intangible gifts such as travel or entertainment. Members must disclose gifts they or their immediate family members receive in excess of $50 (or $100 cumulatively). Gifts from personal friends are not prohibited but may need to be disclosed (the form indicates that gifts from personal friends "for reasons clearly unrelated to your public position" are exempt).

Best Practice: Prohibit tangible and intangible gifts above $100 for elected officials, public employees, and their immediate family members. Prohibit entirely gifts from lobbyists or firms that employ lobbyists. Gifts from personal friends over $250 must receive a waiver from the Ethics Commission. Legislators cannot accept cash prizes or awards. Prohibited gifts must be returned to the individual or organization that gave them. Provide exemptions for travel required to fulfill public duties or pursue economic development outside of the state, subject to a **preclearance waiver** from the VCIEA Council or appropriate board for travel expenses over $1,000. Provide exemptions for Widely Attended Opportunities (WAOs).

Model State: **The United States Senate**—Gifts over $50 ($100 cumulatively) are prohibited. No gifts from lobbyists or foreign agents. A member, officer, or employee who inadvertently receives a gift whose value is over the dollar limit either has to pay the donor the fair market value of the gift, or to return it to the donor without using it. Provides exemptions for WAOs. Gifts from personal friends over $250 (in most cases) require a waiver from the Senate Ethics Committee. [8]

Current Virginia Practice: Members sitting on a Board or Commission are subject to Virginia's State and Local Government Conflict of Interest Act. Unless spelled out in the statute establishing the Board or Commission, appointees are not required to recuse themselves from awarding grants or influencing decisions that may have a direct financial benefit to family members, personal friends, or close business associates.

Best Practice: Members of Boards and Agencies may not vote, issue opinions, or otherwise influence a decision that directly benefits the interests of themselves, a family member, business associates, or a personal friend. Allow an independent Board (ideally, a Virginia Ethics Commission) to receive complaints about conflicts of interest and pursue investigations.

Model State: **Ohio**—" A state board or commission member is prohibited from taking any action, including voting, discussing, deliberating, and formally or informally lobbying, on any matter where the official, his family, his business associates, or others with whom he has a relationship that would affect his objectivity, would receive anything of substantial value."

Maryland—"A board member may not participate as a board member in a matter involving relatives or entities with which he or she has an interest. A board member may not participate in a matter that involves as a party a business entity in which the board member or certain relatives have employment, contractual, or creditor relationships."

[8] http://www.ethics.senate.gov/public/index.cfm/gifts

Current Virginia Practice: Loans are currently considered gifts under Virginia law. However, there is an exemption on "gifts" from family members and personal friends.

Best Practice: Make the prohibition on loans to legislators apply to spouses, and that loans from personal friends or business associates above $10,000 must be pre-cleared with the VCIEAC (or, ideally, a Virginia Ethics Commission) through a waiver. In essence, legislators and their spouses should be going through commercial intermediaries if they need loans.

Model State: **Rhode Island**—Loan bans apply to the "spouse (if not estranged), dependent child, or business associate of the person, or any business by which the person is employed or which the person represents."[9]
The United States Senate—Loans are treated the same as gifts, and any loan not from a financial institution (at rates generally available to the public) is prohibited. The Senate Ethics Committee may grant waivers for exceptional circumstances.[10]

Current Virginia Practice: Legislators, elected executives, and public employees must fill out disclosure forms detailing their economic interests and any gifts they've received. Lobbyists must fill out disclosure forms related to their activities and compensation. These forms are registered with the Secretary of the Commonwealth. The content and format of these forms are spelled out in statute. As a result, altering or updating these forms requires a separate act by the General Assembly.

Best Practice: Remove proscribed formatting of disclosure forms from statute and give power to draft, amend, and distribute forms to the Virginia Ethics Commission. Have the Commission offer detailed guidance for how these forms should be filled out.

Model State: **Maryland:** The vast majority of states (including **North Carolina** and **Pennsylvania**) leave it to their Ethics Commissions to develop their disclosure forms. In Maryland, disclosure forms related to lobbying, conflicts of interest, and financial assets/liabilities are developed their ethics commission (State Code §15–205).

[9] http://www.ethics.ri.gov/code/
[10] https://www.citizen.org/documents/Gift-Rules-for-Congress.pdf

Independent Expenditures and Electioneering Communications

Current Practice**:** Virginia requires disclosure of independent expenditures of $1,000 or more for statewide candidates and $200 or more for other candidates.[11] These expenditures must be reported to the State Board of Elections within 24 hours. Virginia has no real electioneering communications provisions outside of the requirement that corporations or any other person that spends $1,000 or more ($200 for non-statewide candidates) on advertising must identify themselves in the ads and say that the ad was not authorized by the candidate.

Best Practice**:** Mandate disclosure to the State Board of Elections any electioneering communication (above $1,000) 90 days before a general election and 60 days before a primary. Mandate that such ads display a natural person who is ultimately responsible for the advertising and display the organization that paid for the advertisement. Mandate that such ads provide an address to a website that lists the organization's top five donors and whether or not these donors have (or represent others that have) business interests in Virginia (and what those interests are).

Model State**:** **Oklahoma**—Electioneering communication within the last 60 days before a general election and the last 30 days before a primary election must be disclosed.[12]

Colorado— Any independent expenditure communication of over $1,000 that is broadcast or printed must indicate who paid for it and identify a natural person who is the registered agent for the entity.

Alaska—All electioneering communications must indicate who paid for them with the name and address of the source, along with the name and title of the source's principal officer. It requires that the independent expenditure group list its top three donors in the ad by name and address.

California—Ads paid for by independent expenditures must indicate who paid for them and the two highest contributors to the group paying for them (if any contributor has given $50,000 or more).

Connecticut—Ads must contain a disclaimer that the expenditure is independent of any candidate. In addition, at the end of the ad, there must appear at least a four second message from the chief executive of the entity saying "I am responsible for this ad" with proper identification of the person. Any PAC must list its top five donors within the past 12 months in the ad except that in radio ads, where the organization can refer the listener to a website with this information. These provisions apply to automated telephone calls as well.

[11] http://www.sbe.virginia.gov/Files/CandidatesAndPACs/LawsAndPolicies/CandidatesSummary.pdf

[12] https://www.citizen.org/documents/sunlight-state-by-state-report.pdf (same source for all the other model states)

Personal Use of Campaign Funds

Current Practice**:** Virginia law forbids personal use of a candidate's campaign funds.[13] However, the definition of permitted use is very broad, applying to any use of money or services for advocating election or defeat of a candidate. And this definition does not appear to apply to all forms of political committees, such as a state political party or a PAC.

Best Practice**:** Mandate that the "personal use ban" apply to funds from any political committee (that includes state parties and PACs) and make it apply to candidates and direct family members. Prohibit loans from campaigns for any personal use. Empower the State Board of Elections to investigate, assess civil penalties up to 10X the infraction (that must be paid with personal funds), and forward complaints to the Attorney General. Make violations of this ban a misdemeanor and grounds for removal from office.

Model State**:** **Bill Bolling**—"Prohibit the use of campaign funds or funds held by any political committee for the personal benefit of any candidate or elected official, or their spouse or dependent family member, unless such funds are being used as reimbursement for expenses incurred on behalf of the campaign or political committee."[14]

U.S House—House rules go into great detail about what constitutes personal use, enumerating on what entails "bona fide" campaign use.[15] Trips that have *any* portion of recreational purpose cannot use campaign funds. Payments cannot be made for clothing, rents or mortgages for personal residences, tickets, fees at clubs, or tuition.

[13] https://www.sbe.virginia.gov/Files/CandidatesAndPACs/LawsAndPolicies/AttorneyGeneralPersonalUseExplanation.pdf

[14] http://www.billbolling.com/wp-content/uploads/2013/08/Ethics-Reform-Policy-Proposals-8-6-13.pdf

[15] http://ethics.house.gov/campaign-activity/proper-use-campaign-funds-and-resources

Post-Legislator Employment Rules

Current Virginia Practice: "For one year after the termination of public employment or service, no state officer or employee shall, before the agency of which he was an officer or employee, represent a client or act in a representative capacity on behalf of any person or group, for compensation, on matters related to legislation, executive orders, or regulations promulgated by the agency of which he was an officer or employee."

Best Practice: Impose a two-year ban on legislators and elected executives (maintain one-year ban for state employees). Tighten definition to include influencing all legislative and executive matters, not just ones that the member or elected executive (for state employees, make one-year ban apply only to former offices).

Model State: **Kentucky**—Places a two-year ban on legislators engaging in lobbying work.[16]
Maryland—For the legislative session following departure from office, "a former legislator may not assist or represent any party for compensation in a matter that is the subject of legislative action."
New Jersey—Legislators cannot, within one year of termination of office, register as a governmental affairs agent. A governmental affairs agent is defined as someone who receives more than $100 compensation, including reimbursement of expenses, over a three month period to influence legislation or regulations.
New York—No legislator within two years after termination of service, may receive compensation for any services on behalf of anyone to promote or oppose the passage of bills or resolutions by the legislature.

[16] http://www.ncsl.org/research/ethics/50-state-table-revolving-door-prohibitions.aspx

Lobbyists and Lobbying

Current Virginia Practice: In Virginia, lobbying is defined as influencing or attempting to influence executive or legislative action through your own or a representative's oral or written communication. Lobbyists must register with the Secretary of the Commonwealth before lobbying.

A lobbyist is defined as someone who is paid or expects to be compensated over $500 and is either (1.) An individual who is employed and receives payments, or who contracts for economic consideration, including reimbursement for reasonable travel and living expenses, for the purpose of lobbying; (2.) An individual who represents an organization, association, or other group for the purpose of lobbying; or (3.) A local government employee who lobbies.

Best Practice: Require routine and random independent auditing of lobbyist disclosures (ideally, by a new Virginia Ethics Commission). Empower the Commission to investigate signed complaints of improper or unregistered conduct. Empower the Commission to levy civil penalties.

Model State: **Florida**—3% of lobbying firms are chosen at random and then their disclosures are audited by the Auditor General's Office.[17]
North Carolina—The North Carolina State Ethics Commission receives complaints and can initiate independent investigations. Lobbyists are not allowed to be paid contingent fees.[18]
New York—the state ethics board has a separate lobbying commission that investigates unregistered lobbying conduct and monitors registered lobbyists. In 2007, the lobbying commission opened 54 investigations and settled 172 cases.[19]

Current Virginia Practice: Employers or principals of lobbyists are not required to file spending reports with the VCIEA Council.

Best Practice: Require employers and principals of lobbyists to file spending reports with the Virginia Ethics Commission (or appropriate Board). Include requirements to report compensation/salary levels for lobbyists.

Model State: **Pennsylvania**— the Pennsylvania State Ethics Commission requires that lobbyists, the employers of lobbyists, and their principals register with the Commission and file spending reports. [20]
South Carolina—the state ethics commission requires that principals of lobbyists register as well (and separately from their lobbyists).[21]

[17] http://www.saintpetersblog.com/archives/133845
[18] http://www.ncga.state.nc.us/EnactedLegislation/Statutes/HTML/BySection/Chapter_138A/GS_138A-12.html
[19] http://www.jcope.ny.gov/public/annual_report_2007/ann_rept_07.html
[20] Sections 53.1 through 53.7 at
http://www.ethics.state.pa.us/portal/server.pt/community/lobbying/9042/lobbying_regulations/1010857
[21] http://ethics.sc.gov/Lobbying/Pages/LobbyingLaw.aspx Section 2-17-25

Redistricting

Current Virginia Practice: Virginia is one of 28 states in which legislators are wholly responsible for redrawing maps. However, if the General Assembly cannot agree on a plan, the Virginia Circuit Court may intervene.

Model State: **New Jersey**— the Chairpersons of both major parties each select five persons to serve on the commission. If a plan is not in place, the New Jersey Supreme Court selects an eleventh member.

California— California requires its redistricting commission to follow the following redistricting principles in ranked order of importance

1. *Population Equality*: Districts must comply with the U.S. Constitution's requirement of "one person, one vote"
2. *Federal Voting Rights Act:* Districts must ensure an equal opportunity for minorities to elect a candidate of their choice.
3. *Geographic Contiguity:* All areas within a district must be connected to each other, except for the special case of islands.
4. *Geographic Integrity:* Districts must minimize the division of cities, counties, local neighborhoods and communities of interests to the extent possible, without violating previous criteria. A community of interest is a contiguous population which shares common social and economic interests that should be included within a single district for purposes of its effective and fair representation.
5. *Geographic Compactness:* To the extent practicable, and where this does not conflict with previous criteria, districts must not bypass nearby communities for more distant communities.

Best Practice: Proposed Model:

i) The Redistricting Commission consists of seven members, all of whom cannot be current legislators or members of the executive branch. Each house's majority and minority leader appoints a commission member. The Virginia Supreme Court appoints three members.
ii) The Board will be staffed by the Division of Legislative Services at levels requested by the commission.
iii) The Board must comply with the following redistricting principles in ranked order (the California Model):
   (1) *Population Equality*:
   (2) *Federal Voting Rights Act*
   (3) *Geographic Contiguity*
   (4) *Geographic Integrity*
   (5) *Geographic Compactness*
iv) The map is then presented to the Governor, who has 10 days to review it. He may veto it only on the grounds that it violates in some material way the above principles.
v) If no map is agreed upon by the Board, the State Supreme Court draws the map.

NOTE: Several redistricting reform plans have been introduced by members of the Virginia General Assembly such as Senator John Miller (D) and Delegate Betsy Carr (D). Any redistricting reform would almost certainly require amending the Virginia State Constitution.

Judicial Selection

Current Virginia Practice: Justices of the Virginia Supreme Court are elected to 12 year terms in the state legislature. Court of Appeals and Circuit Court justices serve 8 years. District Court justices serve 6 years. A joint judicial advisory committee evaluates candidates for the court and advises the legislature on the qualifications.

According to DLS, "Once a vacancy is 'certified' by the appropriate body, the House and Senate Committees for Courts of Justice begin taking nominations from General Assembly members. Names of candidates are then submitted by General Assembly members to the House and Senate Committees for Courts of Justice. These Committees determine whether or not each individual is 'qualified' for the judgeship he or she seeks."

"Following the Courts Committees' determination of qualification, a report listing qualified candidates is made to each house of the General Assembly. The House of Delegates and the Senate vote separately, under a procedural resolution, and the candidate receiving the most votes in each house is elected to the vacant judgeship or new seat. Incumbent judges standing for election to a subsequent term must go through the same process. The election does not require action by the Governor."

Best Practice: "The Missouri Plan" or merit-based selection. A nominating commission (made up of attorneys and former justices appointed by the Governor, the legislature, and the state Bar) select the five most qualified justices. The Governor then selects from these choices. Annual retention elections are held every two years, with no opponent on the ballot.

Model State: **Georgia**— When a vacancy occurs, the Judicial Nominating Commission accepts applications from any qualified Georgian lawyer. Two co-chairs and five members create a list of candidates they recommend, with no minimum or maximum on the number of candidates they recommend. The governor then appoints one of these candidates to fill the vacancy.

Kentucky— When a mid-term judicial vacancy occurs, the governor appoints a replacement from a list submitted by a judicial nominating commission.

General Best Practices for Ethics Reform

- Establish a "cop on the beat" through a single, independent ethics commission with the power to perform audits and investigate claims. Fellow legislators or executive branch members should not (when constitutionally possible) be their own judges on whether ethical violations have occurred.

- Do not provide too many exceptions to rules. Instead, empower an ethics commission to grant waivers in cases when there is evidence to suggest no conflict of interest exists.

- Narrowly define what legislators are allowed to do in terms of employment after leaving office. Part-time legislators should already have established professions.

- In the absence of clear rules and clear lines of responsibility, legislators and lobbyists will almost always discount the notion that their own behavior is corrupting or unlawful. Write rules that prohibit behavior even if it only causes the *appearance* of a conflict of interest.

- Disclosure is no substitute for clear rules with effective oversight and enforcement.