

Final Report of the Commission on Integrity and Public Confidence in State Government

Members of the Commission

Commission co-chairmen:

Former U.S. Rep. Rick Boucher

Former Lt. Gov. Bill Bolling

Commission members:

Former Delegate Viola Baskerville

Chairman of the Fairfax County Board of Supervisors Sharon Bulova

Former President of the University of Virginia John T. Casteen III

President of Hampden-Sydney College Christopher Howard

Vice President for Advancement at George Washington's Mount Vernon Susan A. Magill

Attorney and former Assistant Attorney General Courtney M. Malveaux

Former Delegate Joe T. May

Former President and CEO of BB&T Scott & Stringfellow, Inc. John Sherman, Jr.

Executive Summary

Governor Terry McAuliffe signed Executive Order 28 on Sept. 25, 2014, establishing the Commission on Integrity and Public Confidence in State Government. He instructed its co-chairmen, former Congressman Rick Boucher and former Lt. Gov. Bill Bolling, and the other eight Commission members, who are evenly divided in partisan affiliation, to produce recommendations that will guide him in his pursuit of a better state government that is more accountable to the citizens of the Commonwealth.

“I am creating this Commission because it is imperative that we foster a culture of professionalism in state government that attracts future leaders of the highest caliber,” Governor McAuliffe said during his announcement at the state Capitol. “I want to guarantee superior service to the next generation of Virginians. And I want to establish an enduring culture of integrity on which this state can prosper. These are not merely my values. They are the essential covenant of democracy.”

At the beginning of their work, co-chairmen Boucher and Bolling signaled their commitment to public participation in the Commission’s work. They upheld that commitment by holding a forum to receive public comment on Nov. 6, 2014, hosted by the University of Virginia’s School of Law and the Center for Politics. Virginians from as far away as Loudoun County, Norfolk and Roanoke, in addition to a number of residents from the Charlottesville area, attended the forum and shared their ideas with commission members.

The Commission also established a website, <https://governor.virginia.gov/integrity-commission/>, and received comments from individuals, all posted online along with formal testimony submitted by various organizations. The Commission’s website also makes available to the public a variety of research documents, news articles and background material, along with audio recordings of meetings and the public forum.

“Stemming from an intensive year-long effort, the bipartisan recommendations our Commission is making will help to ensure that among Virginia public officials no interest comes before the public interest. Our recommendations are comprehensive. If adopted, they would strengthen our state’s laws regarding conflicts of interests, gifts to public officials, disclosure requirements, oversight, transparency and accountability, legislative redistricting and legislative compensation. The members of our Commission have exhibited extraordinary dedication to the task before us. The results of our work merit careful consideration and adoption by the General Assembly in its 2016 session,” said Co-chairman Boucher.

“These issues are complex, and they are crucial to regaining the public’s trust in their leaders,” said Co-chairman Bolling. “We have taken our mission seriously, and these recommendations represent our collective effort to provide the Governor with realistic and meaningful reforms.”

Year One: Ethics

The Commission's first year focused on ethics laws and policies. Gov. McAuliffe asked the Commission to put this subject at the top of its list and to provide him with recommendations by Dec. 1, 2014, with the goal of having the Commission's recommendations considered during the Virginia General Assembly's 2015 session.

Given the two-month time frame and the importance of their task, Commission members approached their assignment with urgency and a sense of purpose. They held two meetings at the state Capitol, each lasting several hours, conducted a public hearing in Charlottesville and reached broad bipartisan consensus on reform recommendations.

In the Commission's first meeting, on Oct. 27, 2014, members adopted a set of guiding principles [See Appendix] and received presentations on existing state ethics laws, previous reform efforts and best practices in other states. Commission members then engaged in a wide-ranging discussion of reform recommendations. During the second meeting, on Nov. 14, 2014, the Commission adopted recommendations organized into five topics:

- Ethics oversight and enforcement
- Gifts and loans
- Conflicts of interests
- Disclosure requirements
- Post-public service restrictions

Redistricting

On Oct. 7, 2014, the U.S. District Court for the Eastern District of Virginia ruled that Virginia's 3rd congressional district has an unconstitutional configuration. The ruling gave fresh immediacy to the need for nonpartisan redistricting reforms, and Commission members convened a special meeting on Dec. 22, 2014, to address the issue.

Commission members reviewed recommendations from the two co-chairmen and adopted recommendations organized into three topics:

- Nonpartisan criteria to be incorporated into the Code of Virginia
- A state constitutional amendment creating an independent redistricting commission
- A short-term process for handling 2015 redistricting decisions

Year Two: Broad-based, Pragmatic Reforms

Commission members reconvened for their second year of work on June 3, 2015. They received a presentation on ethics legislation considered during the 2015 General Assembly session and a report on how the Commission's 2014 recommendations fared during the 2015 session. The Commission then began considering topics for inclusion in its 2015 recommendations.

In contrast to the first year, which was focused on ethics and legislative redistricting reforms, the Commission's work in 2015 was devoted to a variety of issues united by a common theme: the need for broad-based, pragmatic reforms designed to improve transparency in all areas of state government. Commission members carefully considered the potential for each of their recommendations to attract bipartisan support in the state legislature.

Commission members benefited from the insights of individuals external to the Commission who provided volunteer assistance during the course of the year. Sidley Austin Attorney Marc Korman provided a thorough analysis of state laws related to personal use of campaign funds at the June meeting.

During the meeting on July 27, 2015, Joseph Condo, chairman of the Virginia State Bar's Judicial Candidate Evaluation Committee, shared his suggestions for reforms to the judicial selection process. Commission members continued to gather information on that topic at their meeting on September 10, 2015, with presentations from Douglas Kay, president of the Fairfax Bar Association; Helivi Holland, president of the Old Dominion Bar Association; and Karen Gould, executive director of the Virginia State Bar.

Commission members held their final meeting on Oct. 19, 2015. They reapproved recommendations from 2014 that were not adopted during the 2015 General Assembly session, and they adopted new recommendations on the following topics:

- Expand current rules for personal use of campaign funds to apply while the campaign fund is active.
- Prohibit fundraising during special state legislative sessions lasting more than one day and during the veto override session.
- Improve the transparency of legislative compensation by establishing a clear separation between official salaries and office and staff expenses.
- Develop comprehensive evaluation procedures for judicial candidates at all levels.
- Align the state budget cycle to gubernatorial terms.
- Provide public funding for the transition expenses of governors-elect.
- Require local registrars and electoral board members to file economic disclosure forms.
- Establish rules on gifts to public officials from personal friends that would set a value threshold for disclosure and a higher value threshold for a ban subject to waiver by the state Ethics Council after a consideration of all circumstances.

Year One (November 2014) Recommendations:

Ethics Oversight and Enforcement

Current Virginia Practice: Oversight of conflicts of interests of legislative, executive, and local government officials and lobbyist disclosures is handled by the newly created Virginia Conflict of Interest and Ethics Advisory Council (VCIEAC).¹ The Council is largely made up of appointees chosen 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 subject 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.

Commission Recommendation: – Establish an independent, seven-member Ethics Review Commission vested with investigative and enforcement powers to oversee ethics issues related to executive and legislative branch officials, local government officials and members of boards and commissions. Members of the commission could not be holders of any compensated Virginia state or local government office.

The speaker and minority leader of the House of Delegates and the majority and minority leaders of the state Senate would each appoint one member. At least one member appointed by each chamber would be a retired lawmaker. The Governor would appoint three members to the commission, including one retired city official, one retired county official and one retired justice of the Supreme Court of Virginia or a retired judge from the Virginia Court of Appeals or a circuit court. The Governor would consult with organizations representing Virginia cities and counties in the selection of local government appointments. Commission members would be appointed for a term of three years, and the terms of the members would be staggered to ensure continuity.

Responsibilities and authorities of the Ethics Review Commission include:

- Provide advisory opinions and educational opportunities to public officials

¹ § 30-355: <http://leg1.state.va.us/cgi-bin/legp504.exe?000+cod+30-355>

- Investigate malfeasance, disclosure and ethics complaints filed with the commission
- Initiate investigations
- Issue civil penalties and refer criminal cases to the appropriate law enforcement authority
- Receive and maintain disclosure forms of public officials and lobbyists
- Conduct regular random audits of disclosure documents
- Create and manage an online database of disclosure forms accessible to the public and media
- Consider and act on applications for waivers from public officials for certain gifts, including third-party reimbursed travel expenses for activities directly related to the performance of their official duties

The Ethics Review Commission would receive an appropriation sufficient to hire the legal and administrative staff necessary to effectively and efficiently fulfill its responsibilities.

Analysis: This recommendation is at the core of the Commission’s interim recommendations. Other proposed reforms presume the existence of an independent watchdog with the authority to implement random audits, to initiate investigations of potential violations of ethics laws and policies, rather than merely react to external complaints, and to issue sanctions and waivers when necessary and appropriate.

However, Commission members also felt strongly that the proposed Ethics Review Commission’s primary purpose should not be punitive in nature. Rather, the new panel’s staff would devote a substantial part of their time to providing guidance to those who seek advice in an earnest effort to avoid error.

The Commission engaged in much discussion over the issue of civil penalties and how best to balance the need for meaningful enforcement with the desire to ensure that the penalty range would be reasonable given the circumstances of individual matters the Ethics Review Commission may consider. While the Commission decided not to spell out the range of penalties that might be imposed, members suggest that the Governor consider the establishment of appropriate penalty parameters in drafting legislation.

In doing so, it may be useful to examine the range of penalties that under current law may be imposed by the Board of Elections.

The Commission also desires to ensure that the work of the Ethics Review Commission occurs with adequate transparency to ensure public trust, while also encouraging individuals to seek advice in good faith. The Commission proposes that formal written opinions be posted on the Ethics Review Commission website along with the name of the individuals seeking the opinions.

In order to further understanding of and compliance with ethical rules, the Ethics Review Commission may receive anonymous informal oral requests for advice about how current ethical rules apply to given factual situations. Answers may be provided by staff members of the commission on a confidential basis. Online information about such informal oral requests should be noted in the commission's annual reports based on the category of the requesters, such as government officials, media and the public.

This recommendation was adopted 8-1. Mr. Malveaux expressed concerns related to the separation of powers and noted his preference for separate Ethics Review Commissions with oversight over the legislative and executive branches. Other members expressed confidence that a commission with members appointed by both branches passes constitutional analysis, and legal advice has affirmed that opinion.

Outcome: The 2015 General Assembly did not approve legislation establishing an Independent Ethics Commission with the authority to initiate its own investigations, impose civil penalties or audit disclosure documents.

Lawmakers directed the Virginia Conflict of Interest and Ethics Advisory Council to notify the Secretary of the Commonwealth when a lobbyist fails to file required disclosure forms so that the Secretary may assess a civil penalty. Likewise, the Council is directed to notify the Attorney General when a state or local official fails to file a disclosure form. Civil penalties are assessed by the Attorney General on state officials and by the appropriate Commonwealth's attorney on local officials.

The Council also is given the authority to provide advisory opinions, receive and maintain disclosure forms, create an online database, and consider and act on applications for waivers related to travel expenses for public purposes.

Gifts and Loans

Previous Virginia Practice: Tangible gifts valued at more than \$250 given to elected officials or most executive-level officials by a registered lobbyist, a lobbyist's principal, or a party—or someone seeking to become a party—to a contract were prohibited.² There were no limits on intangible gifts such as travel, meals or entertainment. Members were required to disclose gifts they or their immediate family members receive in excess of \$50 (or \$100 cumulatively). Legislators are required to file semi-annual disclosures of economic interests such as gifts, loans and travel.³

Governor McAuliffe's Executive Order: Officers and employees of the executive branch and their immediate family members may not accept anything of value from any lobbyist or from any principal or employee or agent of a principal. Any gift valued at more than \$100 from any one source, singularly or in the aggregate, over the course of a calendar year is banned, but any gift with a value of \$25 or less does not count toward the \$100 cumulative total.

Recommendation: Prohibit gifts (tangible and intangible) to legislators, executive-level officials, local government officials, board and commission members, their spouses and dependents exceeding \$250 in aggregate, over a calendar year, from any one source, and require officials to disclose any gift exceeding \$100. Additional provisions include:

- Allow the Ethics Review Commission to provide waivers for third-party sponsored travel that exceeds the gift limit for activities directly related to public duties. Detailed itinerary, agenda and estimated costs must be provided to the Ethics Review Commission and would be subject to public disclosure. Waivers shall be posted on the Ethics Review Commission website within 48 hours of approval. In determining whether to grant waivers, the Ethics Review Commission would evaluate the purpose of the trip as revealed by the detailed agenda in light of the public official's duties and responsibilities. Duration of trips would be limited.
- Disclosure forms must reveal dates of the travel, destination, purpose of the travel, the sponsoring entity and the amount expended for the travel by the sponsoring entity.
- Standard exemptions would be provided for travel reimbursement by a government entity. This exemption does not apply to travel reimbursed by a foreign government.
- "Bundled gift" is defined as a gift delivered by any person comprised of separate gifts derived from another person, organization, or group of persons or organizations. The value of any bundled gift must be reported along with the identities of the individuals, groups or organizations that contributed to it. The full value of the gift counts toward the

² § 30-103.1: <https://leg1.state.va.us/cgi-bin/legp504.exe?000+cod+30-103.1>

³ § 30-110: <https://leg1.state.va.us/cgi-bin/legp504.exe?000+cod+30-110>

\$250 aggregate cap on gifts in a calendar year for each of the contributors. The full value also must be used for determining disclosure requirements.

- Exemptions would be provided for unsolicited, personally inscribed awards of appreciation or recognition in the form of a plaque, trophy, wall memento, or similar item given in recognition of public, civic, charitable, or professional service.
- Any loan to officials, their spouses or dependent children in excess of \$5,000 that is not from a commercial lender must be pre-cleared by the Ethics Review Commission and reported on disclosure forms.

- Gifts and loans among immediate family members of public officials are exempt.

Analysis: The Commission retained the \$250 cap on gifts that exists in the Code of Virginia, but significantly strengthened the law in two important ways:

First, the \$250 cap covered only tangible gifts under the previous law. The Commission's recommendation greatly expanded that restriction to cover all gifts, both tangible and intangible. At least one watchdog group noted that the vast majority of gifts reported by legislators are intangibles, including meals, tickets and trips.

Second, the limits proposed by the Commission apply broadly to all givers. Under existing law, those limits apply only to gifts received from lobbyists, a lobbyist's principal, or a party – or someone seeking to become a party – to a state contract.

The recommendation also gives the independent Ethics Review Commission authority to issue waivers for travel after reviewing the details of a request and determining whether the trip serves a legitimate purpose related to the official's duties and responsibilities.

The Commission included standard exemptions for certain government-reimbursed travel, gifts and loans among immediate family members, and for personally inscribed rewards.

Outcome: The General Assembly approved new gift restrictions that cover both tangible and intangible gifts. After lengthy debate, lawmakers agreed to Governor McAuliffe's call for a \$100 annual aggregate cap. Personally inscribed awards are exempted, as are gifts and loans among immediate family members. No review is required for gifts from personal friends.

The Ethics Council is vested with the authority to provide waivers for third-party sponsored travel that exceeds the gift limit for activities directly related to public duties. The Council is required to grant or deny a request within five business days of receipt, and it is instructed to consider the duration of travel, the destination, the estimated value and any previous or recurring travel. Standard exemptions are provided for travel reimbursed by a government entity.

The legislature did not accept recommendations to require reporting of bundled gifts and pre-clearance of non-commercial loans to officials, spouses and dependent children in excess of \$5,000.

Conflicts of Interests

Current Virginia Practice: Legislators are prohibited from voting on matters in which they have a personal interest in the result of a question.⁴ A personal interest is defined as “a financial benefit or liability accruing to a legislator or to a member of his immediate family.”⁵ This interest must be at least 3 percent equity in a business, entail annual income or personal benefit exceeding \$5,000 a year, or involve real or personal property owned by the member valued at more than \$5,000.

Members sitting on a board or commission are subject to Virginia’s State and Local Government Conflict of Interests 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 immediate family members, personal friends or close business associates, even when the law requires them to disclose a personal interest.⁶

Recommendation - Prohibit members of boards and commissions from voting, authorizing grants, awarding contracts, issuing opinions or otherwise influencing a decision that directly benefits the interests of themselves, an immediate family member or business associate. For purposes of the Commission’s interim recommendations, “immediate family” shall be defined as spouses, children (regardless of whether they are legal dependents), siblings, parents and grandchildren.

The definition applied in these recommendations does not affect the definition of immediate family in other sections of the Code of Virginia.

Analysis: This topic generated the swiftest consensus among Commission members. Indeed, Co-chairman Bolling several times expressed his surprise that the conduct described in the recommendation was not already prohibited. Yet members also acknowledged the complexity of this area of law, given the many types of officials and boards and commissions covered by sometimes confusing rules.

This recommendation would strengthen the law in several respects. First, the Commission supports a clear prohibition against voting by board and commission members on any matter in which a conflict of interests exists.

⁴ Rule 69 in the House: <http://lis.virginia.gov/cgi-bin/legp604.exe?141+ful+HR65ER> Rule 36 in the Senate: <http://hodcap.state.va.us/publications/SenateRules.pdf>

⁵ <https://leg1.state.va.us/cgi-bin/legp504.exe?000+cod+30-101>

⁶ Virginia code § 2.2-3112.2

Second, the Commission proposes a definition of immediate family that expands the scope of the prohibition. Finally, the Commission proposes an expanded definition of conflicts of interests to include business associates.

Outcome: The General Assembly did not approve recommendations to strengthen laws on conflicts of interests.

Disclosure Requirements

Current Virginia Practice: Legislators, all elected executives and public employees must fill out disclosure forms detailing their economic interests in any gifts they've received. These statements of economic interests must be filed with the Secretary of the Commonwealth twice a year.⁷ Lobbyists must fill out disclosure forms related to their activities and compensation. The content and format of these forms are spelled out in statute; therefore, altering or updating the forms requires a separate act by the General Assembly.

Recommendation - Remove prescribed formatting of disclosure forms from the statutes and give the power to draft, amend and distribute forms to the Ethics Review Commission. The Code would outline categories of information required for disclosure. The Ethics Review Commission would offer detailed guidance on how these forms should be filled out. Additional provisions include:

- Require that disclosure forms be filed electronically and that the Ethics Review Commission develop an online, searchable database of these forms.
- Disclosure forms may be submitted electronically by local officials via their local clerk. Responsibility for filing in a timely manner remains with the official.
- Require individuals who file the longer Statement of Economic Interests to do so semiannually, while shorter financial disclosure forms are annual.
- Require that all travel and gift waivers approved by the Ethics Review Commission are disclosed on the website within 48 hours.
- The Ethics Review Commission shall approve, reject or request modifications to a waiver request within 10 business days of receipt.

Analysis: The goals of the Commission are to improve flexibility in amending the required contents of disclosure forms while also improving transparency. Again, the existence of a new Ethics Review Commission is crucial to meeting that two-pronged goal.

Members strongly agreed that the disclosure forms should not be frozen in the Code of Virginia.

Rather, the Ethics Review Commission should have the authority to revise the short and long forms to ensure that the contents are meaningful, and to update them as needed in future years.

⁷ § 30-110: <https://leg1.state.va.us/cgi-bin/legp504.exe?000+cod+30-110>

Finally, full transparency demands that the Ethics Review Commission provide online access to the disclosure forms for public examination.

Outcome: The General Assembly approved legislation that requires disclosure forms to be filed electronically and also clarified that longer Statements of Economic Interests must be filed semiannually while shorter financial disclosure forms are annual.

Lawmakers rejected recommendations to remove formatting of the disclosure forms from statute but directed the Ethics Council to make recommendations for revisions by Nov. 15, 2016.

Legislators declined to require that waivers be posted on the Ethics Council website in 48 hours.

Post-Public Service Restrictions

Current Virginia Practice: Virginia law states that: “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.”⁸

Recommendation – The current one-year lobbying ban is consistent with other states’ practices and requires no change.

Clarify state law to ensure that the one-year restriction on representation by former Cabinet secretaries covers all agencies within their secretariats.

Analysis: Commission members learned during their first meeting that only eight states restrict lobbying for more than one year after an individual has left public employment or service. They concluded that the provision in existing law is appropriate and does not require a change.

During the Commission’s second meeting, Del. May called attention to language in the statute that could be interpreted to permit a former Cabinet secretary to lobby agencies within his or her former secretariat without abiding by the one-year waiting period. The Commission proposes the adoption by the General Assembly of language clarifying that the prohibition on lobbying by former Cabinet secretaries extends to all agencies within the secretariat over which they presided.

Outcome: Lawmakers clarified that the one-year restriction on representation by former Cabinet secretaries covers all agencies within their secretariats.

⁸ <https://leg1.state.va.us/cgi-bin/legp504.exe?000+cod+2.2-3104>

Redistricting

Current Virginia Practice: The General Assembly draws political maps for congressional and state legislative districts in the year following each decennial Census. The political party that holds a majority in each chamber controls the process for member districts. House and Senate leaders negotiate to reach consensus on congressional districts in consultation with members of the congressional delegation.

Recommendations: Members of the Integrity Commission believe that to the greatest extent possible, the congressional and state legislative districts should be drawn without regard to partisan considerations. The Commission believes that the interests of the citizens should be the highest priority in the redistricting process. In keeping with that guiding principle of a citizen-centered approach, members of the Integrity Commission offer the following recommendations.

- **Nonpartisan criteria to be incorporated into the Code of Virginia** – The Commission proposes that the General Assembly adopt legislation establishing nonpartisan criteria to govern congressional and state legislative redistricting decisions. These criteria would be incorporated into the Code of Virginia and would guide decisions whether they are made by an independent redistricting commission or by the legislature. The criteria are in keeping with draft legislation prepared by One Virginia 2021, and Commission members believe they represent an appropriate framework for guiding future reapportionment decisions.

Every electoral district shall be constituted so as to adhere to the following criteria. The criteria are listed in ranked order to reflect the priority to be given each one. They are:

- **Equal Population** – For state legislative districts, population shall be substantially equal to the population of every other district as practicable. The maps shall be guided by the most recent federal and state judicial decisions defining standards for equal population for state legislative districts, including permissible deviations from ideal population if the deviation is necessary in order to achieve some other, legitimate districting criteria. For congressional districts, population shall be as nearly equal as practicable. The maps shall be guided by the most recent federal and state judicial decisions defining standards for equal population of congressional districts, including permissible deviations from ideal population if the deviation is necessary in order to achieve some other, legitimate districting criteria.
- **Racial and Ethnic Fairness** – Districts shall be drawn in accordance with the requirements of state and federal laws, and judicial decisions interpreting those laws, addressing racial and ethnic considerations, including, but not limited to, the Equal Protection Clause of the Constitution of the United States, and the provisions of the Voting Rights Act of 1965.

- **Respect for Existing Political Subdivision Boundaries** – Existing political subdivision boundaries shall be respected to the maximum extent possible. This includes county boundaries, city boundaries, town boundaries, magisterial and councilmanic districts, and voting precincts. It does not include existing legislative or congressional district boundaries. If a departure from existing political subdivision boundaries is necessary in order to achieve compliance with other districting criteria, such as equal population or racial fairness, then the district shall be drawn using clearly observable physical boundaries, such as highways, roads, railroad lines, rivers, streams, or any other natural or man-made features observable on official maps.
- **Compactness** – Compactness refers to the shape of a district. The maps should avoid districts that are oddly shaped or with contorted boundaries, unless justified because the district adheres to political subdivision lines. Fingers or tendrils jutting out from a district core should be avoided, along with thin, elongated districts, or districts with multiple, central cores connected by thin strips of land or water. There are multiple, numerical measures of individual and average district compactness. The maps should employ one or more of these mathematical measures to provide an objective assessment of district plan compactness, statewide and district by district.
- **Contiguity** – A district is contiguous if a person can travel from one point in the district to any other point without crossing the district’s boundary. Point contiguity is not permissible. Districts divided by water will be considered contiguous if a common means of transport, such as a bridge or ferry, connects the two sides of the district, or if the water, river or bay were removed, the land on one side would be wholly contiguous with the land on the other side.
- **Political Data** –No district shall be drawn using political data or election results in order to favor a political party or incumbent legislator or member of Congress. These data include addresses of incumbent legislators or members of Congress, political affiliations of registered voters, or previous election results. This limitation will not apply to minority or ethnic districts drawn under the Racial and Ethnic Fairness part of this section if an analysis of election data is required in order to determine if racial or ethnic minorities can have the ability to elect candidates of their choice.
- **Pursuit of an amendment to the Virginia Constitution** – Commission members propose that the General Assembly give approval to the first passage of an amendment to the Virginia Constitution creating an independent redistricting commission. Following a second vote in support of the amendment by the 2016 General Assembly, the constitutional revision would be submitted to the voters of the Commonwealth in November 2016.

The independent commission would be granted the power to draw state legislative and congressional districts. Commission members would be entrusted to apply the statutory nonpolitical redistricting criteria described above in fulfilling that task.

The commission would be comprised of five members, one each chosen by the speaker and minority leader of the House of Delegates and one each chosen by the majority leader and minority leader of the state Senate. The four members so chosen would then select the fifth member. In the event that 60 calendar days pass between the selection of the initial four members and the selection of a fifth member, the Chief Justice of the Virginia Supreme Court would appoint the fifth member.

- **A short-term process for handling 2015 redistricting decisions --** Recognizing that a permanent, constitutional solution requires a two-year process, Commission members propose the following interim process for resolution of the congressional map should a redistricting occur in 2015.

First, Commission members strongly urge the Governor and General Assembly leadership to work together on new congressional maps that meet the criteria laid out previously in our recommendations.

If upon the 10th business day following the convening of the 2015 regular General Assembly session the Governor and General Assembly leadership have failed to agree on a process for meeting the above goal, Commission members propose that the Governor appoint a redistricting commission of his choosing and task its members with recommending congressional districts that meet the nonpartisan criteria endorsed by the Integrity Commission.

Analysis: The current methodology used for reapportionment of congressional and legislative districts in Virginia has many negative consequences that have long been acknowledged, but have yet to be confronted in a serious effort at reform.

When politicians choose who they will represent, rather than being chosen by their constituents, that decision is based predominantly on personal political preservation and enhancing the number of districts represented by the party that controls the redistricting process.

Gerrymandering is a self-evident conflict of interests, inherently undemocratic and a disservice to the communities and people of the Commonwealth.

A redistricting process that diminishes the right of voters to choose their own leaders reinforces public dissatisfaction, discourages political engagement, is a major cause of legislative gridlock and contributes to a decline in voter participation in the political process.

The proliferation of split precincts, excessive partitioning of localities and illogically drawn political districts make politics opaque and bewildering, causing confusion among voters and further estranging them from civic engagement and their elected leaders.

Because of partisan redistricting, legislators are more likely to represent a district comprised of subsets of multiple localities. These piecemeal districts make it more difficult for legislators to provide meaningful representation of those communities and dilute the voice of affected localities during the legislative process.

Outcome: The General Assembly failed to adopt any reforms to the redistricting process during the 2015 session. Gov. McAuliffe ordered lawmakers into special session on Aug. 17 in hopes of meeting the court-imposed Sept. 1 deadline for adopting new congressional districts, but legislators made no progress. The U.S. District Court for the Eastern District of Virginia appointed Bernard Grofman, a political scientist and professor at University of California at Irvine, as special master to recommend to the court a plan for new boundaries.

A three-judge panel in a similar lawsuit over House of Delegates districts upheld the maps in a split decision.

First Year Recommendations Not Fully Acted on by the General Assembly

Commission members strongly urge state lawmakers to reconsider the following outstanding recommendations during the 2016 General Assembly session. These items represent unfinished business that is essential to the comprehensive, meaningful ethics reforms necessary to ensure public trust in state government officials.

Ethics

- **Independent Ethics Commission** – Virginia should establish an independent, seven-member Ethics Review Commission with investigative and enforcement powers to oversee ethics issues related to executive and legislative branch officials, local government officials and members of boards and commissions. Members of the ethics commission should not be holders of any compensated Virginia state or local government office. The Governor and legislative leaders would appoint commission members.
- **Audit/Review and Investigative Authority for Forms** – The Ethics Council or independent Ethics Review Commission should be authorized to conduct regular random audits of documents for compliance with disclosure requirements, limitations on gifts, accuracy of information and deadlines, and have the authority to initiate investigations with subpoena power, conduct a hearing process to determine if violations occurred and refer matters to the appropriate law enforcement entity.
- **Clarification on Travel Disclosure** -- Disclosure forms should be revised to ensure reporting of travel dates, destination, purpose of the trip, the identity of the sponsoring entity and the amount spent by the sponsor. This change reflects a consensus that a clarification is needed specifically with regard to disclosure of travel to conferences.
- **Conflicts of Interests for Board and Commission Members** – Members of boards and commissions should be prohibited from voting, authorizing grants, awarding contracts, issuing opinions or otherwise influencing a decision that directly benefits the interests of themselves, immediate family members or business associates.
- **Bundling of Gifts** –The value of any “bundled gift” should be reported along with the identities of the individuals, groups or organizations that contributed to it. A bundled gift is defined as a gift delivered by any person comprised of separate gifts derived from another person, organization, or group of persons or organizations. The full value of the gift should count toward the aggregate cap on gifts in a calendar year for each of the contributors. The full value also should be used for determining disclosure requirements.

- **Removing Disclosure Form from Code** – The prescribed formatting of disclosure forms should be removed from the Code of Virginia, giving the Ethics Review Commission or Council the authority to draft, amend and distribute the documents. The Code should retain an outline of the categories of information required for disclosure. The Ethics Review Commission or Council should offer detailed guidance on how these forms should be filled out.
- **Waiver for Non-commercial Loans exceeding \$5,000** -- Any loan to officials, their spouses or dependent children in excess of \$5,000 that is not from a commercial lender should be pre-cleared by the Ethics Review Commission or Council and reported on disclosure forms.
- **Extend Gift Restrictions Beyond Lobbyists and Principals Ban** – The rules establishing restrictions on gifts to public officials should be expanded to cover givers other than lobbyists and principals of lobbying firms.

Redistricting Reform

- **Independent Redistricting** -- To the greatest extent possible, the state's congressional and state legislative districts should be drawn without regard to partisan considerations. The interests of the citizens should be the highest priority in the redistricting process. In keeping with that guiding principle of a citizen-centered approach, members of the Integrity Commission propose the following recommendations:
 - Nonpartisan criteria to be applied in redistricting proceedings should be incorporated into the Code of Virginia.
 - The Virginia Constitution should be amended to create an independent redistricting commission that would be empowered to draw legislative and congressional maps.
 - A short-term process should be adopted for handling 2015 redistricting decisions in keeping with citizen-centered principles.

Year Two Recommendations: Personal Use of Campaign Funds

Current Virginia Practice: Personal use of campaign funds is only prohibited upon the closure of the campaign account.

Recommendation: The Commission proposes that the law be amended to apply the personal use prohibition both before and after a campaign account is closed.

Analysis: According to the National Conference of State Legislatures, Virginia is one of three states (along with South Dakota and Wyoming) that permits the personal use of campaign funds or does not address the issue in their laws.

In 2010, Attorney General Ken Cuccinelli issued a formal opinion that concluded the “General Assembly has clearly prohibited the personal use of campaign contributions by candidates, but only in the context of the filing of the required final campaign finance report.” Additionally, the Attorney General’s opinion goes on to explain that “expenditure” has a limited, standard-based definition in the Virginia Code, i.e., spending “for the purpose of expressly advocating the election or defeat of a clearly identified candidate.”

An independent legal analysis performed by Marc Korman on behalf of the Integrity Commission concluded that current law allows the opportunity for candidates to use campaign funds for personal use during the campaign or even after, if they are not required to file their final report. While the definition of “expenditure” could be interpreted as restricting campaign expenditures from personal use, the current state of the law in Virginia allows campaign funds to be expended for personal use except when a final campaign finance report is being filed.

Special Session Fundraising

Current Virginia Practice: The Governor, Lieutenant Governor, Attorney General and state lawmakers may not engage in political fundraising during the regular General Assembly session, but no such restriction exists for special sessions or the veto override session.

Recommendation: The Commission proposes that Virginia's ban on fundraising by the Governor, Lieutenant Governor, Attorney General and state lawmakers during the regular General Assembly session be extended to cover special sessions lasting more than one day and the veto override session.

Analysis: Governor McAuliffe raised this issue during the 2015 General Assembly session. Measures were introduced in the Senate and House of Delegates to close the loophole. The Senate bill died in committee 8-7. The House bill was tabled in committee in an unrecorded voice vote.

According to the National Conference of State Legislatures, 29 states place restrictions on giving and receiving campaign contributions during the legislative session. In some states, the ban applies only to contributions by lobbyists, principals and/or political committees; other states, including Virginia, have a general ban on contributions. South Carolina bans lobbyist contributions at any time, not just during a legislative session.

Nine states specifically prohibit fundraising during special legislative sessions. Two of them, Alabama and Alaska, provide exemptions if a special session occurs within a designated period before an election.

Legislator Compensation

Current Virginia Practice: State delegates receive a designated salary of \$17,640, while state senators receive \$18,000. All lawmakers receive an additional \$1,250 monthly office allowance, but that money is counted toward their retirement benefits and may be used for any purpose.

Recommendation: The Commission believes that Virginia lawmakers should receive adequate compensation in order to promote diversity in the legislature. Further, the Commission favors a compensation system that increases transparency by clearly separating compensation from funding intended for legislative staff and office expenses. To achieve those goals, the Commission proposes the following:

- Existing funds designated as legislative compensation should be combined with the existing allowance designated for staff and office expenses, with the sum established as the full and true salary for lawmakers.
- Additional staff and office expense funds should be provided to each legislator, with a requirement that any unspent dollars be returned to the state's general fund. Legislators should be prohibited from using these funds for their own compensation or personal use.
- The amount of the new staff and office expense funds should begin at \$15,000 annually and increase by an amount equal to the inflation adjustment employed by the Virginia Retirement System for cost-of-living adjustments for state workers employed on or after July 1, 2010.

Analysis: In most states, legislators establish their own salaries, and they face political criticism if they award themselves a raise. A 2011 National Conference of State Legislatures analysis found that 14 states had not raised legislative salaries in at least 10 years. The last raise in Virginia was adopted in 1988. Comparisons across the nation are difficult because legislative sessions and duties can vary greatly. At least 19 states have established commissions to provide compensation recommendations, while others have tied compensation to a cost-of-living factor.

Judicial Selection

Current Virginia Practice: The Virginia State Bar evaluates candidates for the Supreme Court of Virginia and the Virginia Court of Appeals. There is no statewide system for screening new candidates seeking seats on circuit, general district or juvenile and domestic relations courts.

Each local legislative delegation has its own method and practice for making judicial selections, and the local delegation decisions are typically accepted by the full legislature. In some jurisdictions, local bars play a significant role and work closely with legislative delegations, but there is no consistent practice across the state.

In Fairfax County, by long-standing practice, when vacancies in the circuit, general district or juvenile and domestic relations courts arise, the Fairfax County Bar Association reviews the qualifications of candidates who apply to be considered for the vacancies. Following the reviews, reports on the qualifications of candidates are prepared and shared with members of the General Assembly representing Fairfax County. Since the practice was established, all candidates who have been elected to judicial positions in Fairfax County have undergone the Fairfax County Bar Association review process. The process enjoys full buy-in from the members of the General Assembly representing Fairfax County.

Recommendations: The Commission proposes the following changes to Virginia's procedures for selecting judges in order to ensure the selection of highly qualified candidates while increasing transparency and minimizing political considerations.

- The Commonwealth should develop a comprehensive, consistent and professional process for evaluating candidates for judgeships, including all levels of the judiciary. The Virginia State Bar (VSB) could serve as the coordinator of this process, and following current practice, conduct the evaluation process for the Supreme Court and Court of Appeals candidates. Local bar associations, individually or on a judicial circuit or other regional basis, could take the lead in evaluating candidates for the circuit, general district, and juvenile and domestic relations courts, using the long-established Fairfax County Bar Association's process as a model. The VSB could also perform this function for those localities without the resources to establish a solid, reliable process. Additional funding for the VSB to support the evaluation activities may be required, and a fee-based application process should be considered, as well as other fee-based or general fund appropriation alternatives, in order to bring about uniform judicial candidate reviews throughout the state.
- The Virginia State Bar and Fairfax Bar Association should conduct educational presentations for local bar associations, regional bar conferences and orientation programs for new state lawmakers.

Analysis: Nationally, state judges are selected in a variety of ways: by appointment without a nominating commission, by merit selection through a nominating commission, by partisan election, by nonpartisan election or by merit selection combined with other methods. Virginia and South Carolina are the only states in which legislators elect judges.

The Commission devoted much of its July and September meetings to this topic and concluded that the best approach was to make recommendations that improve and expand the existing structure for judicial evaluations. The resulting recommendations do not require legislative action and are voluntary in nature. If accepted, they would contribute greatly to the Commission's goals of reducing partisan and political considerations and increasing public confidence in the process.

Align Budget Cycle to Gubernatorial Terms

Current Virginia Practice: Under the existing procedure, outgoing governors develop and submit a new biennial budget less than one month prior to leaving office, and incoming governors have limited time and flexibility to recommend amendments to the budget that will be in place for the first one-half of their gubernatorial term.

Recommendation: The Commission proposes that the state budget cycle be aligned with gubernatorial terms to ensure that governors have the greatest possible opportunity to present and execute budgets and in turn be held accountable for state budget policymaking. Specifically, the Commission proposes that the Code of Virginia be amended to provide that following the next gubernatorial election, the outgoing governor in his final year, develop and submit a budget for one year only. Thereafter, budgeting shall return to a biennial basis.

Analysis: § 2.2-1508 of the Code of Virginia requires the governor to submit a biennial budget or amendments to the biennial budget by December 20. As a result of this law, the governor-elect must work with a two-year budget completed and recommended to the General Assembly by the prior administration. That budget will be in place for fully one half of the term for which the incoming governor is elected.

At least four states have recognized this problem and extended the time for budget submission in the year a governor is elected. Three of those states (Michigan, Pennsylvania and Ohio) have year-round legislatures, and Tennessee's session typically lasts until May. The Commission chose a different solution by proposing a realignment of the two-year budget cycles.

Funding for Governor-elect Transition Office

Current Virginia Practice: The General Assembly has on occasion appropriated funds for a governor-elect during the transition period, but at other times future governors are provided office space only and no resources for staffing or other expenses. As a result, these governors-elect are often dependent on volunteers, including lobbyists, for support in the weeks between the election and inauguration.

Recommendation: The Commission proposes that governors-elect receive for the transition prior to their taking office funding adequate to lease facilities, hire staff and satisfy expenses necessary to effective transition planning and policy development. The public interest will be advanced by public funding of crucial transition activities rather than having the governor-elect rely on volunteers who may have interests divergent from the public interest.

Analysis: During much of the 20th century, transition preparations were relatively smooth because Virginia governors were part of the Byrd political organization, state government was modest in size and there was minimal turnover between administrations. Governors-elect were provided with office space and limited clerical support, but they received significant advice from their predecessors.

Transition support first became an issue in 1969 for Governor-elect Linwood Holton, who established a transition fund in the form of a private corporation to raise \$25,000. After his term began, the General Assembly approved his request to use discretionary funds to reimburse donors. Holton later advanced his successor, Mills Godwin, money from that same account after the General Assembly refused to appropriate funds for the transition.

Lawmakers first budgeted transition funding in 1976 for Governor-elect John Dalton, who supplemented the \$25,000 in public funds with private support. (“Gubernatorial Transitions in Virginia,” by Bernard Caton, The University of Virginia News Letter, April 1978.) Budgetary support has remained sporadic in subsequent years.

Economic Disclosures Required for Registrars and Electoral Board Members

Current Virginia Practice: Local registrars and members of electoral boards are not covered by laws requiring most state and local public officials to file economic disclosure forms.

Recommendation: The Commission proposes that local registrars and electoral board members be required to file the economic disclosure forms required for other local officials under § 2.2-3115 of the Code of Virginia.

Analysis: The Commission believes it is appropriate to include registrars and members of electoral boards in the disclosure requirements in order to promote transparency and ensure the integrity of the electoral process and of procurement decisions related to voting machines and other purchases.

Disclosure Requirements and Limits on Personal Gifts

Current Virginia Practice: Gifts from personal friends are not prohibited but may need to be disclosed if they are in any way related to the official's position. The disclosure form indicates that gifts from personal friends for reasons clearly unrelated to the official's public position are exempt.

Recommendation: The Commission proposes that the Commonwealth adopt rules to deal specifically with gifts from personal friends. The State and Local Government Conflict of Interests Act should be amended to provide for the following:

- Distinguish between gifts from relatives (including engaged persons or other similarly-situated individuals) and gifts from other persons. Gifts from relatives and similarly situated persons would be exempt from limits and reporting requirements.
- Require disclosure of gifts from personal friends valued at more than \$1,000.
- Prohibit acceptance of gifts from personal friends valued at more than \$5,000, provided that upon application from a public official and following review of the circumstances, the Ethics Advisory Council could grant waivers for gifts from personal friends of more than \$5,000.

Analysis: Previous recommendations to address this issue have become entangled in the question of how to define personal friends. This recommendation takes a fresh approach that avoids this complicated question. The Commission instead chose to establish high-dollar thresholds for gifts that must be disclosed and those that are prohibited without a waiver.

Appendix:

Integrity Commission Principles

Principles matter in all aspects of life, from work to family to worship. They are fundamental to public service because they embody a promise to act in the best interest of the Commonwealth rather than to act in furtherance of individual ambitions. As the members of the Governor's Commission on Integrity and Public Confidence in State Government, it is important that we begin our task on a firm footing by declaring the principles that will guide us over the coming months.

A strong set of principles will serve as a compass to guide our deliberations and provide benchmarks by which our recommendations can be judged.

It is our pledge that the principles laid out here will determine not only our decision-making process but also the final product of this endeavor. We make this pledge because we have been charged with bringing forward specific recommendations to elevate the ethical code that will underpin the quality of governance in the Commonwealth.

That ethical code determines how our government is perceived by individual and corporate citizens. An honorable reputation sustains Virginians' confidence in their leaders and enables the state to flourish in today's competitive economy.

Given the importance of our work, we commit ourselves to the following principles:

ACCOUNTABILITY

We believe in meaningful enforcement of the rules and laws that govern ethical conduct, campaign finance and lobbying. We favor the creation of an independent commission with the authority and resources to serve as an effective watchdog for the public.

TRANSPARENCY

We believe in disclosure of information about public officials' economic interests in a manner that promotes public access, clarity and consistency.

INTEGRITY

We believe in clear and realistic rules governing gifts and loans offered to public officials and their immediate family members, including restrictions on high-value items and comparable policies covering both tangible and intangible gifts.

TRUST

We believe in broad-based, consistent policies to ensure that financial decisions made by public boards and commissions are not colored by personal, familial or business interests of individual members.

LOYALTY

We place a high value on post-governmental employment policies that ensure public servants during their time in office are motivated solely by the desire to advance and protect the public's interest in all matters.

FAIRNESS, EQUITY AND TRANSPARENCY IN CONGRESSIONAL AND LEGISLATIVE REDISTRICTING

We believe that to the greatest extent possible the state's congressional and state legislative districts should be drawn without regard to partisan considerations.