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January 6, 2009

Governor Deval L. Patrick
State House, Room 360
Boston, MA 02133

Dear Governor Patrick:

Pursuant to Executive Order No. 506, Establishing the Governor's Task Force on Public Integrity, the Task Force respectfully submits the enclosed Report and Recommendations.

Sincerely,

Ben T. Clements
Chair, Public Integrity Task Force

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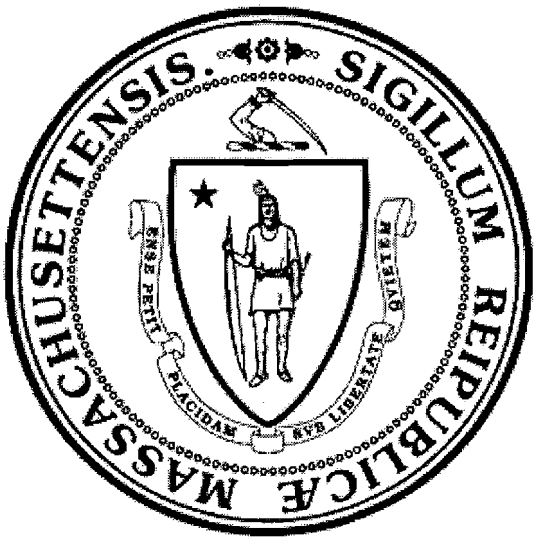

GOVERNOR'S TASK FORCE ON PUBLIC INTEGRITY

REPORT AND RECOMMENDATIONS

JANUARY 6, 2009

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I. INTRODUCTION

On October 31, 2008, Governor Deval Patrick announced plans to form a bi-partisan Task Force on Public Integrity (the "Task Force"), charged with proposing specific recommendations to improve the Commonwealth's ethics and lobbying laws. The Task Force was convened and chaired by the Governor's Chief Legal Counsel and included four legislators and eight members of the public.

The Task Force recognizes that most of the Commonwealth's approximately 375,000 government employees[1] are honest, upstanding, dedicated public servants who do their best to properly perform their responsibilities and comply with the ethics rules. As has been widely recognized, however, recent highly publicized reports of transgressions in different branches and at different levels of government – both here and around the country – have shaken the public's trust in public employees and government as a whole. As Governor Patrick has stated, "when a small few act out, it affects government's ability to function as well as it should."

While particular events may have prompted the creation of the Task Force, the goal was not to address any particular case. Nor should it be assumed that the Task Force's recommendations would necessarily have prevented any specific transgression, as no system of ethics rules and enforcement will prevent all violations. However, a system that has clearer, better understood rules, more effective investigatory and enforcement mechanisms, and, where appropriate, more severe penalties, will help ensure that violations are less frequent, detected sooner and with more certainty, and punished in

[1] *See Compendium of Public Employment: 2002*, U.S. Census Bureau (issued Sept. 2004), p.56 (According to the most recent U.S. Census Bureau data available, Massachusetts has 376,793 state and local government employees).

a manner that reflects the seriousness of the infraction and provides a meaningful measure of deterrence.

The Task Force also recognizes that ethics violations may not always be a failing of the law but, rather, a failing of the individual. At least as important as having clear and well functioning rules and enforcement mechanisms is cultivating a culture of public trust, in which government employees aspire to comply with their ethical obligations, not because of fear of sanction, but because of their commitment to fulfilling their trust to the citizens.

The Task Force concluded that the existing substantive ethics rules governing the conduct of government employees are generally strong and broad, but substantial improvements are needed in the areas of enforcement, penalties, and education. With respect to the state lobbying laws, the Task Force identified significant gaps in all of these areas, as well as in the laws defining the obligations of lobbyists. To address these deficiencies, the Task Force recommends that the Governor file, and the Legislature enact, *An Act to Improve the Laws Relating to Ethics and Lobbying*.[2] The Task Force also recommends ongoing review of the ethics and lobbying laws and further review and consideration of additional proposals relating to campaign finance, government transparency, and legislative process – subjects that are beyond the scope of the Task Force's mandate but are important to enhancing public integrity.

[2] *See* Appendix C.

II. THE TASK FORCE

On November 7, 2008, the Governor issued Executive Order No. 506 creating the Task Force.[3] The Task Force is comprised of the Chair, the Governor's Chief Legal Counsel Ben T. Clements; two members of the Senate Committee on Ethics and Rules; two members of the House Committee on Ethics; and eight private citizens with backgrounds and expertise relating to ethics and public integrity.[4] The Task Force's mandate was to recommend improvements to the ethics and lobbying laws and to submit draft legislation necessary to carry out those recommendations.

Beginning on November 19, 2008, the Task Force held several meetings and heard presentations from various offices affected by the reform the Task Force planned to undertake. The Task Force met with the Executive Director of the State Ethics Commission, the Secretary of State, and the Inspector General. The Chair of the Task Force also met with the Attorney General. The Task Force held a public hearing to receive ideas and perspectives from the public. Throughout the process, the Task Force solicited and received input online through the Task Force's website and through calls and emails to the Governor's Office and to members of the Task Force.

The Task Force gathered ideas from its members and the public on needed improvements to the ethics and lobbying laws. The Task Force synthesized those ideas and developed recommendations and amendments to the current laws. The Task Force believes these recommendations will promote the integrity of government employees and the public's confidence in government and governmental decision-making.

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[3] *See* Appendix D.
[4] *See* Appendix E for a list of all Task Force members.

III. RECOMMENDATIONS REGARDING ETHICS AND LOBBYING LAWS

In assessing the efficacy of our current ethics and lobbying laws, the Task Force reviewed all aspects of these laws, including: the applicable regulatory structures and authority; the investigative and enforcement structures and authority; the applicable penalties for violations of these laws; and the substantive rules that govern government employees and those that govern lobbyists. The Task Force identified significant deficiencies in the existing mechanisms for implementing and enforcing the ethics and lobbying laws. The State Ethics Commission has insufficient regulatory and investigatory authority to effectively implement and enforce the ethics laws, while the Secretary of State has even less authority to implement and enforce the lobbying laws. The Attorney General has authority to enforce criminal violations of the ethics and lobbying laws, but is hampered by the lack of several enforcement tools available in other states and in the federal system. The Task Force has therefore proposed a series of enhancements to the rulemaking, investigative, and enforcement authority of the Commission, the Secretary of State, and the Attorney General.

The Task Force concluded that the existing ethics rules that govern the conduct of government employees are, for the most part, comprehensive, appropriately strong, and relatively clear. However, the rules governing lobbyists are few and, many believe, lacking in clarity. Accordingly, the Task Force's recommendations include a small number of proposals to clarify and strengthen the existing ethics laws and several broader proposals to expand and clarify the lobbying laws.

The Task Force also found the existing civil and criminal penalties for violations of the ethics and lobbying laws to be inadequate for effective enforcement and

deterrence. In both areas, the penal structure has not been updated in decades and includes maximum civil and criminal sanctions that are far below those that apply in the federal system and in many other states and are inadequate to reflect the Commonwealth's necessary commitment to integrity in our public officials and our government.

The Task Force has recommended increases in the maximum applicable fines and other civil sanctions and in the maximum applicable criminal fines and prison terms for bribery and the full range of other ethics and lobbying related offenses. To allow for greater flexibility in effectively and efficiently achieving the appropriate disposition in light of the nature of the specific violation, the Task Force also recommends legislation explicitly providing the Attorney General with concurrent jurisdiction to seek civil sanctions.

In both the areas of ethics and lobbying, the Task Force concluded that there are insufficient mechanisms in place to ensure that those who must comply with rules have a necessary understanding of what those rules require and what steps they can take to ensure their own compliance. The Task Force has made several recommendations to address this deficiency through mandatory education. The Commission will be required to provide all government employees with information concerning the ethics laws and the Secretary of State will be required to provide all lobbyists with information concerning the lobbying laws.

A. ENHANCEMENT OF ETHICS LAWS AND STATE ETHICS COMMISSION'S AUTHORITY

1. Rulemaking Authority of the State Ethics Commission

The State Ethics Commission enforces the Commonwealth's conflict of interest and financial disclosure laws.[5] Unlike many state agencies, however, it has no general authority to issue regulations implementing the laws it is charged with enforcing. In 2004, the Commission was given limited authority to issue regulations to create exemptions to certain sections of Chapter 268A.[6] In the absence of general rulemaking authority, the Commission has implemented the ethics laws through a series of individual rulings – which are often confidential – and advisories, resulting in a patchwork of interpretations rather than a clear set of interpretive guidelines. Full rulemaking authority, with the opportunity for a hearing and public comment, would allow for more clarity and a more open process for interpreting the conflict of interest and financial disclosure laws.

Most other states that have a similar ethics commission structure to ours already empower their ethics commissions to adopt regulations or rules to implement the provisions of the law relevant to the commission's authority.[7] The Task Force recommends legislation to give the Commission broader rulemaking authority to implement Chapters 268A and 268B.[8] This would bring Massachusetts in line with many other states. This would also provide the Commission with the necessary tools to interpret the conflict of interest laws, through regulatory clarifications, so as to remove

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[5] *See* Mass. Gen. Laws ch. 268A, 268B.
[6] Mass. Gen. Laws ch. 268B, § 3(a) (allowing the Ethics Commission to create exemptions from the provisions of sections 3-7, 11-14, 17-20, and 23 of chapter 268A).
[7] *See, e.g.*, Neb. Rev. Stat. § 49-14,123; Conn. Gen. Stat. Ann. § 1-81(g); Or. Rev. Stat. Ann. § 244.290(2); Haw. Rev. Stat. § 84-31(a)(5); Ark. Code Ann. § 7-6-217(g)(1).
[8] *See* SECTION 51 of An Act to Improve the Laws Relating to Ethics and Lobbying.

uncertainties and provide clearer guidance to those who are subject to the law and to the public.

2. *Summons Authority*

The Ethics Commission has the authority to issue a summons to obtain testimony and documents.[9] However, under current law, persons receiving a summons are free to disregard it, forcing the Commission to file a lawsuit in Superior Court if it wishes to pursue the testimony or documents.[10] The Superior Court then has the discretion to decide whether to enforce the Commission's summons.[11] This burdensome process both delays and deters the Commission from gathering the evidence it needs to conduct effective investigations and strains the Commission's limited resources. Indeed, when coupled with the relatively short statute of limitations currently applicable to ethics violations,[12] it creates an incentive for those who are subjects of an investigation to delay by resisting demands for evidence.

To enable the Commission to obtain relevant information more efficiently and expeditiously, the Task Force recommends legislation providing the Commission with the authority to issue a mandatory summons. Subjects and witnesses would still be entitled to object to the summons on the basis of privilege or other legal grounds and would be protected against any overreaching by the Commission through the right to seek a court order quashing or limiting the summons.[13]

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[9] Mass. Gen. Laws ch. 268B, § 4(d).
[10] *Id.*
[11] *Id.*
[12] *See Statute of Limitations for Ethics Violations* Section III.A.3. below.
[13] *See* SECTION 54 of An Act to Improve the Laws Relating to Ethics and Lobbying.

3. Statute of Limitations for Ethics Violations

In many cases, the Commission has been unable to enforce alleged ethics violations due to the expiration of the limitations period, now set by regulation at three years from the date a disinterested person learns of the alleged violation.[14] The current three-year statute of limitations allows the subject of an investigation to use delay as a strategy to run out the clock. The Task Force recommends legislation to allow the Commission to bring an action up to five years from the date it learns of the alleged violation, but not more than six years from the date of the last conduct relating to the alleged offense.[15]

4. Gratuities Statute

The Massachusetts gratuities statute prohibits gifts given "for or because of any official act performed or to be performed."[16] For many years, the Massachusetts gratuities statute and its federal counterpart were interpreted to prohibit payments made for unspecified future consideration. Under this approach, the gratuities statute would bar payments made because of a government employee's "official position—perhaps, for example, to build a reservoir of goodwill that might ultimately affect one or more of a multitude of unspecified acts, now and in the future."[17]

In *United States v. Sun-Diamond Growers of California,* however, the Supreme Court rejected this interpretation of the gratuities statute.[18] Instead, the Court interpreted the gratuities statute in a manner akin to a bribery statute, requiring that the payment be

[14] 930 Mass. Code Regs, § 1.02(10).
[15] *See* SECTION 53 of An Act to Improve the Laws Relating to Ethics and Lobbying.
[16] Mass. Gen. Laws ch. 268A, § 3.
[17] *United States v. Sun-Diamond Growers of California*, 526 U.S. 398, 405 (1999).
[18] *Id.* at 406.

tied to a specific identified act. The Supreme Judicial Court soon followed with an identical reading of the Massachusetts law in *Scaccia v. State Ethics Commission.*[19]

The effect of this constricted interpretation is that the gratuities law no longer prohibits a regulated person or entity from making gifts – of even *unlimited value* – to the public official responsible for regulating the person or entity, unless it can be shown that the purpose of the gift was to reward a *specific* action already taken by the official or to influence a *specific* action in the future. This is so even if the motivation of the giver of the gift is to induce favorable treatment from the official with regard to not yet identified action in the future.

While such gifts are no longer prohibited under the gift statute, their receipt may in some circumstances be a violation of Section 23 of the conflict of interest law. The conflict of interest law prohibits government employees from using their position to obtain unwarranted privileges, and from failing to disclose circumstances which could lead to the appearance of a conflict of interest.[20] Indeed, in part as a result of the *Scaccia* decision, the Ethics Commission relies on Section 23 as an enforcement tool far more often than it relies on the gratuities statute. However, Section 23 is a broad standard of conduct provision, not directed specifically at gifts and gratuities. It therefore does not provide the same level of clarity or guidance to government employees or to regulated persons or entities that a clearly defined gratuities law can provide. Moreover, Section 23 applies only to the public employee receiving the benefit and not the person or entity providing it.

[19] 431 Mass. 351 (2000).
[20] Mass. Gen. Laws ch. 268A, § 23(b).

The most straightforward manner to address this problem is to simply prohibit gifts given to government employees because of the employee's official position. Some commentators, including the United States Supreme Court in *Sun-Diamond*, have suggested that such a prohibition is not workable because, for example, it would ban the Red Sox from giving the President a World Champions jersey when visiting the White House.[21] Concerns have also been raised about whether such a prohibition would bar some gifts that are motivated by family or other personal relations, rather than by any intent to influence. These concerns can be addressed by requiring that the gift be of "substantial value," by excluding gifts motivated by family or other personal relation, and by directing the Commission to issue regulations implementing these limitations and excluding other situations that do not present a genuine risk of a conflict or the appearance of a conflict of interest.

The Massachusetts Supreme Judicial Court's interpretation of the Commonwealth's gratuities statute to require a "link" between the gift and a specific official act appears to be the narrowest construction of a state gratuities statute in the country.[22] No other state court has cited either *Sun-Diamond* or *Scaccia* in a reported decision nor do there appear to be any other state cases interpreting a state gratuities statute to require such a direct "link."

The most common approach is to prohibit gifts that either influence or appear to influence an official's performance of duties generally, as opposed to a specific official

[21] 526 U.S. at 406-07.
[22] *Scaccia*, 431 Mass. at 352.

act.[23] Other states have outright bans on gifts based on the recipient's position as a public employee or official.[24]

The Task Force recommends legislation that would eliminate the specific act requirement, bring Massachusetts law in line with what appears to be the most common approach taken in other states, and more clearly prohibit the provision or receipt of gifts for the purpose of influencing public officials. Specifically, the Task Force proposes legislation prohibiting gifts of substantial value given "for or because of an employee's

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[23] *See, e.g.*, Ariz. Admin. Code § R2-5-501(C)(4) ("A state service employee shall not accept or solicit, directly or indirectly, anything of economic value as a gift, gratuity, favor, entertainment, or loan that is, or may appear to be, designed to influence the employee's *official conduct*.") (emphasis added); Mich. Comp. Laws Ann. § 15.342(2)(4) ("A public officer or employee shall not solicit or accept a gift or loan of money, goods, services or other thing of value for the benefit of a person or organization, other than the state, which tends to influence the manner in which the public officer or employee or another public officer or employee performs *official duties*.") (emphasis added); Mont. Code Ann. § 2-2-104 ("A public officer, legislator, or public employee may not . . . (b) accept a gift of substantial value or a substantial economic benefit tantamount to a gift: (i) that would tend to improperly influence a reasonable person in the person's position to *depart from the faithful and impartial discharge of the person's duties*. . .") (emphasis added); N.J. Stat. Ann. § 52:13D-14 ("No State officer or employee . . . shall accept from any person, whether directly or indirectly, . . . any gift, favor, service, employment or offer of employment or any other thing of value which he knows or has reason to believe is offered to him with the intent to influence him in the *performance of his public duties and responsibilities*.") (emphasis added); Ohio Rev. Code Ann. § 102.03(F) ("No person shall promise or give to a public official or employee anything of value that is of such a character as to manifest a *substantial and improper influence* upon the public official or employee with respect to that person's duties.") (emphasis added); N.Y. Pub. Off. Law § 73(5) ("No statewide elected official, state officer or employee . . . shall, directly or indirectly: (a) solicit, accept or receive any gift . . . *under circumstances in which it could reasonably be inferred that the gift was intended to influence him* ....") (emphasis added).

[24] *See, e.g.*, Ark. Code Ann. § 21-8-801 ("No public servant shall (1) [r]eceive a gift or compensation . . ., other than income and benefits . . . for the performance of the duties and responsibilities of his or her office or position"); Cal. Gov't Code § 89503(a) ("No elected state officer, elected officer of a local government . . . shall accept gifts from any single source in any calendar year with a total value of more than two hundred fifty dollars ($250)."); 5 Ill. Comp. Stat. § 430/10-10 (". . . no officer, member or State employee shall intentionally solicit or accept any gift from any prohibited source. . . . No prohibited source shall intentionally offer or make a gift that violates this Section."); Iowa Code Ann. § 68B.22 ("Except as otherwise provided in this section, a public official, public employee, or candidate, or that person's immediate family member shall not, directly or indirectly, accept or receive any gift or series of gifts from a restricted donor."); N.H. Rev. Stat. Ann. § 15-B:3 ("It shall be unlawful to knowingly give any gift as defined in this chapter, directly or indirectly, to any elected official, public official, public employee, constitutional official or legislative employee."); Tex. Penal Code Ann. § 36.08(f) ("A member of the legislature, the governor, the lieutenant governor, or a person employed by a member of the legislature, the governor, the lieutenant governor, or an agency of the legislature commits an offense if he solicits, accepts, agrees to accept any benefit from any person."); Wyo. Stat. Ann. § 9-13-103 ("(a) No public official, public member or public employee shall use his office or position for his private benefit. (b) As used in this section, "private benefit" means the receipt by the public official, public member or public employee of a gift which resulted from his holding that office.").

official position" and directing the Commission to establish exceptions by regulation and specific advisories where the circumstances do not present a genuine risk of a conflict or appearance of a conflict.[25] The Task Force also proposes legislation directing the Commission to adopt regulations defining "substantial value," which shall in no case be less than $50.[26]

5. Authority of State Ethics Commission to Recover Economic Advantage

In addition to imposing a civil penalty of up to $2,000, the Commission may also recover on behalf of the Commonwealth the amount of the economic advantage obtained by a violator of Sections 2 through 8 of Chapter 268A.[27] However, it may not invoke this remedy as part of its regular administrative procedures but must instead bring a separate civil action against the violator. As a practical matter, given the current funding and staffing levels of the Commission, the Commission is unlikely to expend its scarce resources on the pursuit of such remedies in all but the largest cases.

To address this issue, the Task Force recommends legislation authorizing the Commission to recover up to $25,000 of economic advantage resulting from the violation, on top of its existing power to impose penalties, without having to initiate an action in court.[28] The Task Force also recommends that the Commission's authorization to recover these monies be expanded to include violations of Section 23 of Chapter 268A. The Task Force further recommends that the Commission be authorized to order restitution to an injured party (subject to the same $25,000 cap) in addition to any civil

[25] *See* SECTIONS 22 & 24 of An Act to Improve the Laws Relating to Ethics and Lobbying.
[26] *Id.; see also* 930 Mass. Code Regs. 5.04(1)(a) (stating that it shall not be a violation of Chapter 268A for an individual to give or offer to give or for a public employee to receive a gift or benefit of anything with a value of less than $50).
[27] Mass. Gen. Laws ch. 268A, §§ 9, 15, 21.
[28] *See* SECTIONS 32, 37 & 42 of An Act to Improve the Laws Relating to Ethics and Lobbying.

penalty the Commission may impose. Administrative orders by the Commission to pay the economic advantage or restitution would still be subject to challenge in the Superior Court in accordance with Section 4(k) of Chapter 268B or Chapter 30A. To recover damages for economic advantage and/or restitution from a violator in excess of $25,000, the Commission will still need to file a civil action.

6. Enforcement of False Claims by Government Employees

The Commission does not currently exercise jurisdiction over false claims by government employees, such as cases in which employees submit false time sheets or false expenses for reimbursement, or charge personal expenses to the Commonwealth. There does not appear to be any enforcement agency assuming primary responsibility for addressing such conduct, particularly where there is not a substantial amount of money involved. This conduct is typically more criminal in nature than a conflict of interest, yet may not be viewed as significant enough to be pursued by criminal law enforcement agencies.

The Commission's current position is that, absent some use of the employee's "official position" to commit the wrongdoing, such behavior is beyond the scope of the language of the conflict of interest laws.[29] The Task Force recognizes that in these cases, the appropriate remedy would be for the employer to investigate its employees, and, where warranted, take appropriate disciplinary action, up to and including termination, and referral for prosecution. The Task Force also believes, however, that it is important in many of these cases to have an outside entity (such as the Commission) act as investigator and enforcer. Co-workers or others who have business dealings with the dishonest employee should have some means available to them by which they can

[29] *See* Mass. Gen. Laws ch. 268A, § 23(b)(2).

anonymously submit their complaints. Accordingly, the Task Force recommends legislation to amend Section 23(b)(2) of Chapter 268A to clearly place within the Commission's jurisdiction the ability to investigate and penalize government employees who attempt to defraud their employers.[30]

7. Information and Resource Sharing

The Commission is currently limited in its ability to share information with and to obtain resources from other agencies. This limitation often serves as a barrier to effective and efficient cooperation and coordination among the various agencies having enforcement responsibilities concerning ethics, lobbying, and related areas. The Commission is currently authorized to share information with the Attorney General's Office, the United States Attorney's Office, and district attorney's offices when the information may be used in a criminal proceeding.[31] However, the Commission may not share information with the Secretary of State's Office, the Office of Campaign and Political Finance (OCPF), or the Inspector General's Office.[32] Similarly, the Commission may receive personnel and other assistance from the State Police, the State Auditor, the Comptroller, the Attorney General, and the Director of OCPF, but not from the Secretary of State or the Inspector General.[33]

The Task Force recommends legislation to authorize the Commission to provide information to the Secretary of State's Office, OCPF, and the Inspector General's Office.[34] Any agency receiving information from the Commission would be subject to the same confidentiality restrictions that govern the Commission's handling of

[30] *See* SECTION 43 of An Act to Improve the Laws Relating to Ethics and Lobbying.
[31] Mass. Gen. Laws ch. 268B, § 4(a).
[32] *See id.*
[33] *Id.* § 2(m).
[34] *See* SECTION 52 of An Act to Improve the Laws Relating to Ethics and Lobbying.

investigative information.[35] The Task Force recommends that agencies that are sharing information and/or investigating similar allegations enter into memoranda of understanding to ensure the coordination of their efforts and to minimize duplication and cross-agency interference. The Task Force also recommends legislation to allow the Secretary of State and the Inspector General to provide personnel and other assistance to the Commission.[36]

8. Budget of State Ethics Commission

The Commission's budget is subject to legislative approval. Many believe that the Commission has been inadequately funded throughout its history. An exception to this historical pattern was the Commission's FY09 budget, which included an additional $103,000 for one-time expenditures to upgrade the Commission's website and financial disclosure electronic filing application. The Commission's budget increases over the years have not kept pace with inflation, nor has the Commission's budget increased at a rate comparable to that of other watchdog agencies.

It is critically important to ensure that the Commission is provided with the necessary resources to fulfill its legislatively mandated responsibilities, as well as to preserve its independence. Adequate funding is necessary to ensure that the Commission staff is able to provide timely legal advice and to efficiently complete investigations. The Task Force recommends that the Commission be provided with a legislatively guaranteed annual base budget that would be no lower than the amount appropriated to the Commission in the preceding year.[37] In order to leave the Legislature the needed

[35] *See* Mass. Gen. Laws ch. 268B, § 4(a) ("All commission proceedings and records relating to a preliminary inquiry or initial staff review to determine whether to initiate an inquiry shall be confidential").
[36] *See* SECTION 50 of An Act to Improve the Laws Relating to Ethics and Lobbying.
[37] *See* SECTION 49 of An Act to Improve the Laws Relating to Ethics and Lobbying.

flexibility to deal with budget crises, the proposed legislation would not mandate increases in the Commission's budget. Nonetheless, the Task Force recommends that every effort be made, consistent with budgetary realities, to provide adequate funding to ensure the Commission will continue to be a robust and independent enforcement body.

B. ENHANCEMENT OF LOBBYING LAWS AND SECRETARY OF STATE'S AUTHORITY

1. Definition of Lobbying

The term "lobbying" is undefined by current Massachusetts law.[38] Instead of defining the term "lobbying," Massachusetts defines the terms "executive agent" and "legislative agent."[39] This has resulted in significant uncertainty as to what conduct of lobbyists must be reported. Lobbyists often report only money paid for time spent in direct contact with public officials, omitting the significant time spent on strategizing and other related activity.

Many other states include within their lobbying laws a specific definition of "lobbying."[40] Some states also specifically include lobbyists' preparation time in their definition of "lobbying."[41]

The Task Force recommends removing the current uncertainty in our laws and closing what many believe is a significant loophole in our reporting requirements. Specifically, the Task Force recommends legislation to update the definitions of executive and legislative agent and define executive and legislative lobbying to include

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[38] *See* Mass. Gen. Laws ch. 3, § 39.
[39] *Id.*
[40] *See, e.g.*, Miss. Code Ann. § 5-8-3(k)(i); Kan. Stat. Ann. § 46-225(a); Ark. Code Ann. § 21-8-402(10).
[41] *See, e.g.*, Me. Rev. Stat. Ann. tit. 3, § 312-A(9) ("includes the time spent to prepare and submit to the Governor, an official in the legislative branch, an official in the executive branch, a constitutional officer or a legislative committee oral and written proposals for, or testimony or analyses concerning, a legislative action."); Wis. Stat. Ann. § 13.62(10) ("includes time spent in preparation for such communication and appearances at public hearings or meetings or service on a committee in which such preparation or communication occurs.").

"strategizing, planning, researching and other background work only if performed in connection with or for use in communicating with a government employee."[42] This definition adds an express requirement of contact with a government employee, while also clarifying that lobbying includes the time preparing and strategizing.[43]

Under current law, persons who lobby state officials are required to register with and submit reports to the Secretary of State's Office.[44] However, there are no such requirements with respect to the lobbying of municipal officials.[45] Municipal lobbying raises the same issues of public accountability as does state lobbying. Moreover, there is often a connection between state and municipal activity. Recognizing the importance of the interconnection between state and municipal lobbying activity, a growing body of states enforce laws regulating lobbying on the municipal or local level as well.[46]

The Task Force recommends legislation to extend registration and reporting requirements to municipal lobbying when the municipal lobbying is connected to the state lobbying.[47] Requiring the same registration and reporting with the Secretary of State's Office for municipal lobbying activities will ensure that there is one location where all lobbying information may be found.

2. *Revolving Door Provision*

The "revolving door" of public officials leaving office creates the possibility that former colleagues or employees may be unduly influenced or at least the appearance that they may be unduly influenced. In what many claim was an inadvertent error of the

[42] *See* SECTIONS 1-4 of An Act to Improve the Laws Relating to Ethics and Lobbying.
[43] *Id.*
[44] Mass. Gen. Laws ch. 3, §§ 39, 41.
[45] *See id.*
[46] *See, e.g.*, Ark. Code Ann. § 21-8-402(6), (11)(a); Ala. Code § 36-25-1(17), (25); Ga. Code Ann. § 21-5-70(5)(E); Md. Code Ann., State Gov't §§ 15-803, -806; Minn. Stat. Ann. § 10A.01(21), (24); Miss. Code Ann. § 5-8-3(d); Mo. Rev. Stat. Ann. § 105.470(1); N.Y. Leg. Law § 1-c(c)(vii).
[47] *See* SECTIONS 3 & 4 of An Act to Improve the Laws Relating to Ethics and Lobbying.

lobbying reform legislation of 1994, executive branch lobbying has been omitted from the "cooling off" period which bars former public officials from lobbying their former agencies.[48] The current law prohibits a former state employee or elected official, including members of the Legislature, from acting as a *legislative agent* before the governmental body with which that employee was associated, for one year after he leaves that body.[49]

The Task Force supports expanding this provision to apply to former executive branch officials, whether elected or appointed. The Task Force proposes legislation that would apply the same limitations to "executive agents," and allow the Commission to define the meaning of "governmental body" to ensure that former colleagues or employees are not or do not appear to be unduly influenced. [50]

The limitation of the Massachusetts revolving door provision to legislative agents is unusual. Of the states with a revolving door restriction, almost all of them prohibit former legislators and former members of the executive branch from lobbying the agency in which they served for a specified period of time.[51] Massachusetts' revolving door statute differs from the majority of states only in the sense that it does not include a restriction on executive agents equal to its restriction on legislative agents. This simple addition of the term "executive agent" would allow Massachusetts' statute to mirror that of other states and would address this gap.

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[48] Chapter 43 of the Acts of 1994.
[49] Mass. Gen. Laws ch. 268A, § 5.
[50] *See* SECTIONS 26, 27, 47, 48 & 59 of An Act to Improve the Laws Relating to Ethics and Lobbying.
[51] *See, e.g.*, Ala. Code § 36-25-13; Alaska Stat. § 24-45-121(c); Ariz. Rev. Stat. Ann. § 38-504(A); Fla. Stat. Ann. § 112.313; N.J. Stat. Ann. § 52:13C-21.4; Or. Rev. Stat. Ann. § 244.045.

3. *"Incidental" Lobbying*

Massachusetts law exempts those engaged in only incidental lobbying activities from registering as an executive or legislative agent. A person's lobbying activities are presumed to be incidental if the person engages in such activity for not more than 50 hours, or receives less than $5,000, for engaging in such activity during any six-month reporting period.[52] Other states provide for similar exemptions for those who engage in a minimal amount of lobbying during a reporting period.[53] However, Massachusetts is unusually permissive compared to other states. New Jersey, for example, presumes lobbying activities to be incidental if they constitute less than 20 hours in a one-year reporting period.[54] In Pennsylvania, a person need not register if he has lobbied less than 20 hours during a two-year reporting period.[55]

The Task Force recognizes that there should be a category of "incidental" lobbying that does not trigger registration, but the Task Force believes that 50 hours in a six-month period is a significant amount of time and that that degree of lobbying should require registration. The Task Force recommends legislation to reduce the amount of allowable incidental lobbying to not more than 10 hours or receipt of not more than $2,500 in any reporting period (which will be three months under the proposed legislation).[56]

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[52] Mass. Gen. Laws ch. 3, § 39.
[53] *See, e.g.*, N.J. Admin. Code § 19:25-20.2; 65 Pa. Cons. Stat. § 13A06(5).
[54] N.J. Admin. Code § 19:25-20.2.
[55] 65 Pa. Cons. Stat. § 13A06(5).
[56] *See* SECTION 1 & 2 of An Act to Improve the Laws Relating to Ethics and Lobbying.

4. Clarification of Registration and Reporting Requirements

Persons and lobbyist entities required to register as lobbyists under Section 41 are required to file semi-annual reports under Sections 43 and 47 of Chapter 3.[57] The Secretary of State is, in turn, required to keep a docket of all of the information required to be filed under Section 41.[58] The current language creates a loophole that does not require lobbyists or lobbyist entities whose names do not "appear on the docket" to file reports, even if the lobbyist or lobbyist entity should have lawfully registered. The Task Force proposes legislation to close this loophole to ensure that those who evade the filing requirements are not also lawfully permitted to evade the periodic reporting requirements.[59]

5. Periodic Disclosure Requirements

Currently, reports of lobbying activities are required to be updated semi-annually.[60] According to the Secretary of State, semi-annual reporting is insufficient because lobbyists wait until the very end of a reporting period or even into subsequent reporting periods, to file the required information. This prevents the Secretary of State's Office from receiving timely and accurate information and prevents private citizens from reviewing activities of lobbyists until long after they have occurred. Ideally, the ordinary citizen should be able to go on the internet, to the library or legislative docket, and easily determine, in real time, who is lobbying for or against a bill and other relevant

[57] Mass. Gen. Laws ch. 3, §§ 43 (persons), 47 (lobbyist entities).
[58] *Id.* § 41.
[59] *See* SECTIONS 10 & 16 of An Act to Improve the Laws Relating to Ethics and Lobbying.
[60] Mass. Gen. Laws ch. 3, § 47.

information. The Task Force recommends legislation to require reports of lobbying activities to be updated quarterly.[61]

States utilizing quarterly and monthly reporting are becoming more common.[62] Quarterly reporting would bring Massachusetts in line with the reporting requirements of many other states and would allow the Secretary of State and members of the public to better monitor lobbying activity.

6. *Disclosure of Lobbyist Activities*

Massachusetts currently has confusing statutory requirements regarding the scope of information that must be reported by executive and legislative agents.[63] Pursuant to Section 43 of Chapter 3, executive and legislative agents are required to report campaign contribution expenditures and a list of bill numbers of legislation that they acted to promote, oppose, or influence.[64] According to the Secretary of State's Office, legislative and executive agents often provide inadequate information in their disclosure reports.

Other states provide clear and detailed disclosure requirements and also require the disclosure of information beyond that which Massachusetts currently requires. Many states require disclosure of the name of the client on whose behalf an expenditure has been made.[65] Other states also require registrants to provide a description of the subject matter of their lobbying efforts.[66] Some states require that lobbyists disclose their direct business relationships with public officials.[67]

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[61] *See* SECTIONS 9, 13 & 15 of An Act to Improve the Laws Relating to Ethics and Lobbying.
[62] *See, e.g.*, Ariz. Rev. Stat. Ann. § 41-1232.02; Del. Code Ann. tit. 29, § 5835(a); N.J. Stat. Ann. § 52:13C-22(a).
[63] Mass. Gen. Laws ch. 3, § 43.
[64] *Id.*
[65] *See, e.g.*, Ohio Rev. Code Ann. § 101.73; R.I. Gen. Laws § 22-10-09(a)(1).
[66] *See, e.g.*, Wis. Stat. Ann. § 13.67(1) (requiring a description of "any topic of a lobbying communication with reasonable specificity, sufficient to identify the subject matter of the lobbying communication and whether the communication is an attempt to influence legislative or administrative action, or both"); S.C.

To provide greater transparency and accountability, the Task Force recommends legislation to more clearly specify information that must be reported by executive and legislative agents, including the identity of the client on whose behalf they acted, the identity and description of the legislative bills or other governmental action they sought to influence for each client, the amount of compensation they receive for lobbying, and any business associations they have with public officials.[68]

7. *Availability of Lobbying Information Online*

Online disclosure is an area that is ripe for development. Currently, the docket of lobbyists and their employers and other filings related to lobbying are required to be available for public inspection at the Public Records Division.[69] The Secretary of State maintains an electronic database with legislative and executive agents and now requires all lobbyists to register and report online. Those who do not have access to a computer to complete online registration may visit the Secretary of State's Office to have that office enter the data electronically on their behalf.

The Secretary of State's website devoted to lobbying allows the public to search for lobbying information by "type," "category," "contribution," and "activity." Three of the searches are essentially searches by lobbyist's name.[70] The search by contribution allows searching by the name or position of political candidates. The only search option

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Code Ann. §§ 2-17-30, -35; R.I. Gen. Laws § 22-10-9; Utah Code Ann. § 36-11-201; Tenn. Code Ann. § 3-6-302; Tex. Gov't Code Ann. §§ 305.005, .006; Ala. Code § 36-25-18; N.Y. Legis Law § 1-e(c)(5) (requiring disclosure of the general subject of legislative lobbying efforts and bill numbers, as well as disclosure of information relating to executive orders, state-tribal agreements, rules, regulations, rates, and the titles of any procurement contracts and related documents).

[67] *See, e.g.*, Md. State Gov't Code Ann. § 15-706(c); Mo. Rev. Stat. Ann. § 105.4733(2)(f); S.C. Code §§ 2-17-30(A)(7), -35(A)(7); Tenn. Code Ann. § 3-6-302(b)(2)(E).

[68] *See* SECTION 11 of An Act to Improve the Laws Relating to Ethics and Lobbying.

[69] Mass. Gen. Laws ch. 3, § 47.

[70] Searching by type allows one to search for either clients or lobbyists by name. Searching by category also allows one to search for lobbyists by name, but allows one to restrict the results to those involved in a certain industry. Searching by contribution is also a search by name, but it displays results indicating the amount a lobbyist has contributed to various political candidates.

that does not require a search by name is "activity," which allows one to search for lobbyists by the descriptions the lobbyists have provided regarding their lobbying activity.

Many have expressed frustration over the website's current searching capability, finding that it contains limited information and is difficult to use. According to the Secretary of State' Office, the database is limited because it can only generate the information that is provided online by lobbyists. Moreover, the information supplied is often incomplete. Some contend that that the Secretary of State receives limited data from lobbyists because the disclosure statute is confusing and vague with respect to the scope of information that must be disclosed.[71]

The majority of states provide the public with online searchable databases containing information on lobbyists and their activities.[72] Some of those states provide a greater number of searching categories and a greater combination of search terms than Massachusetts. States, such as Wisconsin, also link various databases.[73] Wisconsin's posted lobbying information integrates seamlessly with their legislative database, providing not only lobbyists' salaries and expenditures but also the text of bills, legislative history, testimony filed, recent commentary, and links to other groups lobbying on that legislation. Both Wisconsin lawmakers and the public use the site to

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[71] *See* Mass. Gen. Laws ch. 3, § 47; *see also Disclosure of Lobbyists Activities* Section III.B.6. above.
[72] *See, e.g.*, Louisiana at http://domino.ethics.state.la.us/LobbyistDb.nsf; North Carolina at http://www.secretary.state.nc.us/lobbyists/lsearch.aspx; Pennsylvania at http://www.palobbyingservices.state.pa.us/Act134/Public/RegistrationSearch.aspx; New York at http://www.nyintegrity.org/public/lobby_data.html; California at http://cal-access.ss.ca.gov/Lobbying/; Texas at http://www.ethics.state.tx.us/main/search.htm; Illinois at http://www.cyberdriveillinois.com/departments/index/lobbyist_search.html; Rhode Island at http://www2.sec.state.ri.us/lt_filing/public/; Colorado at http://www.sos.state.co.us/lobby/inquiryHome.do;jsessionid=0000_6GeFUVDm4LgwOwV64vCfoQ:11mkepqht; Wisconsin at http://ethics.state.wi.us/lobbyingregistrationreports/LobbyingOverview.htm.
[73] *See* http://ethics.state.wi.us/lobbyingregistrationreports/LobbyingOverview.htm.

learn more about the issues and who is promoting them. Such a well-trafficked site also helps encourage lobbyist registration by giving lawmakers and the public the tools to encourage unregistered entities to do so.

The Secretary of State's Office has been working for the last year and a half on a new searchable database that it will launch in March 2009. The site will include a new online registration and disclosure system that will require lobbyists to disclose all of the information required and will not allow lobbyists to complete their registration without supplying all of the information required. The Task Force recommends that, as part of its ongoing efforts, the Secretary of State's Office explore ways of expanding and improving its searchable database. Massachusetts should consider additional and more functional search categories as well as enhancements to its results display.

8. Rulemaking Authority of Secretary of State

The Secretary of State's Public Records Division is currently responsible for overseeing the registration and disclosure requirements for lobbyists. The Task Force is recommending various changes to clarify and further strengthen the lobbying laws.[74] To implement those changes, the Secretary of State will require rulemaking authority. The Task Force believes that the Secretary of State's Office, like the Ethics Commission, should be empowered to issue regulations to implement its laws. Rulemaking authority would allow more clarity and a more open process for interpreting the lobbying laws. Therefore, the Task Force recommends legislation to give the Secretary of State rulemaking authority to implement the lobbying laws under Sections 39 through 50 of

[74] *See Enhancement of Lobbying Laws and Secretary of State's Authority* Section III.B.1-6. above.

Chapter 3 of the General Laws.[75] The Task Force also recommends giving the Secretary of State the authority to provide confidential, binding advisory opinions.[76]

9. Enforcement Authority of Lobbying Laws

While the Secretary of State's Public Records Division is responsible for the registration and disclosure requirements for lobbyists, the Secretary of State lacks any civil enforcement authority over the lobbying laws, other than a loosely defined disqualification authority.[77] The Secretary may direct complaints to the Attorney General's Office, but other than the small number of serious cases that the Attorney General is able to pursue, there is no meaningful enforcement of the lobbying laws.

The Secretary of State has civil enforcement authority with respect to enforcing the securities laws.[78] The securities laws allow the Secretary of State to subpoena witnesses and documents, issue an order requiring compliance, and file an action in Superior Court to enforce the order in a securities investigation.[79] The Task Force believes that the Secretary of State should be granted parallel authority with respect to violations of the lobbying laws. The Task Force recommends legislation to authorize the Secretary to impose fines; initiate a preliminary inquiry and an adjudicatory proceeding, if necessary; issue summonses for records and testimony; issue an order requiring compliance; and file an action in Superior Court to enforce an order.[80]

A number of states vest the Secretary of State with oversight powers, including the power to assess penalties for late filings. Michigan and Rhode Island give the

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[75] *See* SECTION 8 of An Act to Improve the Laws Relating to Ethics and Lobbying.
[76] *Id.*
[77] Mass. Gen. Laws ch. 3, § 45.
[78] Mass. Gen. Laws ch. 110A.
[79] *Id.* § 407.
[80] *See* SECTION 14 of An Act to Improve the Laws Relating to Ethics and Lobbying.

Secretary of State more investigative power before referring a matter to the Attorney General's office, including the power to hold hearings and gather evidence and testimony.[81] California and Wisconsin are states which have comprehensive independent offices with broad authority and substantial power to enforce the lobbying laws.[82] The Task Force's proposal would bring Massachusetts in line with other states leading the efforts in empowering their agencies to enforce their lobbying laws.

C. ENHANCED AUTHORITY OF ATTORNEY GENERAL

1. Civil Enforcement Authority over Ethics Violations

While the Ethics Commission is responsible for civil enforcement of the ethics and financial disclosure laws, the Attorney General has the exclusive authority to seek criminal penalties for ethics and financial disclosure violations. To facilitate this authority, the Ethics Commission is required to provide the Attorney General with notice of all preliminary inquiries.[83] Based on this division of responsibility, the Attorney General typically will not be actively involved in an ethics investigation unless there is reason to believe that a criminal sanction may be appropriate.

In cases in which the Attorney General does become involved and determines that there has been a violation of the ethics laws, but not one sufficiently serious to warrant criminal prosecution, the Attorney General may seek to negotiate a non-criminal resolution. However, the Attorney General has no clear statutory authority to pursue a civil enforcement action. While the Ethics Commission is and should be the primary agency responsible for civil enforcement of ethics violations, in those cases in which the Attorney General has conducted an investigation but determined that a civil sanction is

[81] Mich. Comp. Laws Ann. § 4.423; R.I. Gen. Laws § 22-10-10.
[82] Cal. Gov't Code §§ 83115, 83118; Wis. Stat. Ann. § 5.05.
[83] Mass. Gen. Laws ch. 268B, § 4.

the most appropriate disposition, the Attorney General should have the authority to bring a civil enforcement action. The Task Force therefore proposes legislation to provide the Attorney General with concurrent jurisdiction to enforce the conflict of interest and financial disclosure laws.[84]

2. Civil Enforcement Authority over Lobbying Violations

The Attorney General may institute civil proceedings or refer the case to the proper district attorney for violations of Section 43, 44 or 47 of Chapter 3 of the General Laws – the laws which require legislative and executive agents, their employers, groups, and organizations to file a statement of expenditures and contributions.[85] That civil enforcement authority, however, does not extend to violations of Sections 41 and 42– the laws requiring annual registration and payment of filing fees and prohibiting agreements to influence legislation for compensation, respectively. While the Task Force is recommending that expanded civil authority over lobbying violations be granted to the Secretary of State,[86] for the same reason discussed above with respect to ethics enforcement, the Attorney General should have concurrent jurisdiction to enforce the lobbying laws with civil sanctions. The Task Force therefore proposes legislation to provide the Attorney General with civil enforcement authority for violations of Sections 41 and 42.[87]

3. Recording of Conversations in Corruption Investigations

Some of the most important public corruption cases brought in federal court and in other states have relied on audio recordings of conversations between undercover law

[84] *See* SECTION 58 of An Act to Improve the Laws Relating to Ethics and Lobbying.
[85] Mass. Gen. Laws ch. 3, § 48.
[86] *See Enforcement Authority of Lobbying Laws* Section III.B.9. above.
[87] *See* SECTION 19 of An Act to Improve the Laws Relating to Ethics and Lobbying.

enforcement officers or cooperating witnesses, who have agreed to be recorded, on the one hand and corrupt public employees on the other. These recordings are often critical to the success of such cases. The Massachusetts statute regarding the interception of communications, however, prohibits such recordings except in "organized crime" investigations.[88]

The effect of this prohibition is profound. It means that unless a public corruption case involves "organized crime," state law enforcement cannot make a consensual recording of a conversation conducted by an undercover law enforcement agent or a cooperating witness. When a single public official requests and accepts a bribe from an undercover law enforcement agent, no recording can be made. This can lead to state authorities declining to pursue an investigation for fear that even a successful investigation will not produce sufficient evidence to persuade a jury to convict.

Massachusetts is one of only a few states that require two-party consent when recording a conversation. The federal statute allows for one-party consent in recording or intercepting communications, unless such communication is intercepted for the purpose of committing a criminal act.[89] The majority of states allow some form of one-party consent for recording a conversation.[90] Some states without a consent statute have adopted the federal statute in their common law.[91]

Several current and former law enforcement officials have recommended amending Massachusetts law to make this critical tool available in public corruption

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[88] Mass. Gen. Laws ch. 272, § 99.
[89] 18 U.S.C. § 2511(2)(d).
[90] *See, e.g.*, Ind. Code Ann. § 35-33.5-1-5(2); Iowa Code Ann. §§ 727.8, 808B.2(2)(c); Ohio Rev. Code Ann. § 2933.52(B)(4).
[91] *See State v. Fuller*, 146 Vt. 364, 366, 503 A.2d 550, 551 (1985) (adopting 18 U.S.C. § 2511); *Mays v. Mays*, 267 S.C. 490, 494, 229 S.E.2d 725, 726 (1976) (adopting 18 U.S.C. § 2511(d)(2)).

investigations. Consistent with these recommendations and the prevailing practice in other jurisdictions, the Task Force recommends legislation to amend the interception of communications statute to allow one-party consent monitoring and recording of conversations with judicial approval in state corruption investigations.[92] While Massachusetts law does not require judicial approval to record conversations in all cases involving organized crime, the Task Force believes that this is an essential protection that should be required before law enforcement may record a conversation in a public corruption case.

4. Criminal Penalties for Fraudulent Violations of Standards of Conduct

The Task Force heard recommendations to create an honest services fraud statute – modeled on the existing federal statute – that would provide criminal sanctions for engaging in a fraudulent scheme to deprive citizens of their right to honest services of a public official. Others recommended the adoption of criminal sanctions for violations of the existing standards of conduct statute, Section 23 of Chapter 268A, which prohibits, among other things, a government employee using his office to secure privileges or exemptions not properly available to others and the failure to disclose facts that might present the appearance of a conflict of interest.

Because Section 23 already provides a broad framework applicable to misuse of office and other conduct generally thought to be contrary to the duty of honesty owed by government employees, the Task Force believes it is preferable to adapt any new criminal sanctions to these existing standards, rather than adopting under state law yet another broad statutory standard – especially one carrying criminal penalties.

[92] *See* SECTION 63 of An Act to Improve the Laws Relating to Ethics and Lobbying.

At the same time, however, there are two shortcomings with simply imposing criminal sanctions for Section 23 violations. First, because Section 23 does not require fraudulent intent and is broad enough to reach minor and even unintentional violations, the Task Force does not believe criminal sanctions are appropriate for all Section 23 violations. Second, Section 23 only applies to government employees and would not reach the conduct of a private citizen who seeks to corrupt the services of a government employee or otherwise participates in an employee's violation of Section 23.

Accordingly, to enable prosecutors to reach both the public and the private participants of serious violations of Section 23, without criminalizing minor or inadvertent violations, the Task Force recommends legislation subjecting persons who, with fraudulent intent, violate or cause another to violate Sections 23(b)(1), (2) or 23(c). The proposed legislation imposes a penalty of up to $10,000, up to 5 years imprisonment, or both for a violation of this section.[93]

5. *Obstruction of Justice Statute*

For many years in the Commonwealth, there was no statute addressing efforts by targets of criminal and other official investigations to impede those investigations, whether by intimidating witnesses or destroying evidence. While the federal government and nearly every other state made it clear that such actions are illegal and subject to severe punishment, in the Commonwealth, authorities were forced to rely on a common law misdemeanor that was fraught with exceptions and ambiguities.[94] As a result, there was little deterrence of such conduct, and there were very few prosecutions. In 2006, the

[93] *See* SECTION 45 of An Act to Improve the Laws Relating to Ethics and Lobbying.
[94] *See, e.g.*, *Commonwealth v. Triplett*, 426 Mass. 26, 686 N.E.2d 195 (1997) (recognizing the common law crime but also restricting its use to those instances in which a grand jury had been convened and the defendant was aware of the grand jury's work).

witness intimidation statute was strengthened to include conduct involving threats and violence to witnesses that previously would go unpunished.[95] Destruction of evidence, however, was still not specifically prohibited by the General Laws. This is an omission that has profound consequences. Indeed, in the absence of such a statute, there is little reason why the target of an investigation who suspects that a subpoena or search warrant for inculpatory evidence is forthcoming would not destroy the evidence in the hope of avoiding responsibility altogether. The Task Force recommends legislation that imposes penalties for obstruction of justice, including acts like destruction of evidence.[96]

6. Statewide Grand Jury

Public corruption cases involving state, county, and municipal officials from around the Commonwealth are more often investigated and prosecuted by the Attorney General's Office than by district attorneys' offices. The Attorney General is better situated to handle such cases because it has a statewide constituency and has a team of specially trained investigators and prosecutors who are experts in complex, long-term investigations of white collar crime.

The Attorney General is put at a disadvantage, however, when these investigations occur outside of Suffolk County, as it is only in Suffolk County that the Attorney General has the authority to convene its own special grand jury that it does not share with the district attorney's office. In every other part of the Commonwealth, the Attorney General typically has to borrow a Grand Jury convened by the local district attorney to conduct an investigation. This presents a number of potential complications. Among them are: the Attorney General's case must compete for time – often

[95] *See* Mass. Gen. Laws ch. 268, § 13B, amended by St. 2006, ch. 48, § 3.
[96] *See* SECTION 20 of An Act to Improve the Laws Relating to Ethics and Lobbying.

unsuccessfully – with pressing local investigations involving violent crime such as homicide, rape and robbery; confidentiality may be compromised because of the need for witnesses to come to a location where they are likely to be known by fellow witnesses, media or others in the courthouse; reliance on local courthouse officials for support can be uncomfortable or present an outright conflict; and county grand juries sit for only three months and are difficult to extend, while complex corruption investigations often go on for more than a year. Establishment of a statewide grand jury will also avoid the inefficiencies often associated with the current system. The Task Force therefore proposes legislation to allow the Attorney General's office to investigate crimes that cross county lines and to convene inquiries into local corruption matters without relying exclusively on local grand jurors.[97]

D. Enhanced Penalties for Conflict of Interest Violations

When the conflict of interest law was codified as a criminal statute in 1962 as Chapter 268 of the General Laws, the maximum penalty for bribery was set at three years imprisonment and a $5,000 fine. The maximum penalty for other criminal violations of the conflict of interest laws was set at two years imprisonment and a $3,000 fine. The criminal penalties have remained unchanged since 1962. The maximum civil penalties also remain historically out of date at no more than $2,000 per violation. When the Commonwealth's conflict of interest law was enacted, it was one of the stronger such laws in the country, and the Commonwealth has often been a leader in this area. Our laws governing the applicable penalties, however, have fallen behind and no longer serve as an adequate deterrent. Indeed, the potential financial penalties are so low that, in some cases, they may be viewed as no more than the (relatively inexpensive) cost of doing

[97] *See* SECTION 64 of An Act to Improve the Laws Relating to Ethics and Lobbying.

business, where maximum exposure amounts to a tiny fraction of the financial interest of the employee that is implicated by the transgression. Below are the Task Force's specific recommendations for increasing criminal and civil penalties for ethics violations.

1. Bribery

The current penalty for giving or receiving a bribe to influence an official act is up to $5,000, or up to three years imprisonment, or both.[98] This is lower than the maximum penalty for larceny ($25,000 or five years imprisonment),[99] the maximum penalty for false entries in corporate books (10 years imprisonment),[100] and the maximum penalty for embezzlement ($2,000 and up to 10 years imprisonment).[101] There is no justification for treating crimes against the integrity of our government so much less seriously than we treat other financial crimes. To the contrary, while both are typically financially motivated, and have harmful financial consequences, public integrity crimes also damage the fabric of our democracy.

In addition to being unreasonably lenient when compared with other Massachusetts crimes, our bribery penalties pale by comparison to other states. At least six states currently have a maximum penalty of $100,000 or more for bribery,[102] and 23 states have a maximum sentence of at least ten years for

[98] Mass. Gen. Laws ch. 268A, § 2.
[99] Mass. Gen. Laws ch. 266, § 30 (larceny over $250; larceny over $250 of the property of a person 60 years or older or a person with a disability is punishable by $50,000, up to 10 ten years, or both).
[100] *Id.* § 67.
[101] *Id.* § 57.
[102] Alaska Stat. §§ 11.56.100, .110, 12.55.035(b)(3) ($100,000 maximum fine), Ariz. Rev. Stat. Ann. §§ 13-2602, -801 ($150,000 maximum fine); Colo. Rev. Stat. Ann. §§ 18-8-302, 18-1.3-401(1)(a)(III) ($750,000 maximum fine); Kan. Stat. Ann. §§ 21-3901, -4503a(a)(3) ($100,000 maximum fine); N.J. Stat. Ann. §§ 2C:27-2, :43-3a.(2) ($150,000 maximum fine if bribe amount was $200 or more); Va. Code Ann. §§ 18.2-438, -439, 18.2-10(d) ($100,000 maximum fine).

bribery.[103] Colorado has the highest monetary penalty at $750,000.[104] Georgia, Rhode Island, and Texas have the highest maximum prison sentence for first offenses at 20 years.[105] New York imposes up to 25 years for second offenses in which the bribe affects an investigation, arrest, or prosecution.[106] The Commonwealth's current three-year maximum penalty is the lowest in the nation and is only shared with two other states – Arizona and New Mexico.[107] The Task Force recommends legislation to increase the criminal penalty for bribery to up to $100,000, or up to 10 years imprisonment, or both.[108]

2. *Other Criminal Violations- Gifts and Gratuities / Receiving Compensation for State Action / Revolving Door Provision / Participation in a Matter in Which Employee Has a Financial Interest / Financial Interest in Contract of State Agency / Directing Bidder to Particular Insurer on Public Building or Construction Contract*

In addition to bribery, Massachusetts criminalizes other violations of the conflict of interest laws. Those violations include: (a) giving or receiving anything of substantial

[103] Ala. Code §§ 13A-10-61, -5-6(a)(3) (10 year maximum sentence); Alaska Stat. §§ 11.56.100, .110, 12.55.125(d) (10 year maximum sentence); Conn. Gen. Stat. Ann. §§ 53a-147, -148, -35a (10 year maximum sentence); Fla. Stat. Ann. §§ 838.315, 775.082 (15 year maximum sentence); Ga. Code Ann. § 16-10-2 (20 year maximum sentence); Haw. Rev. Stat. §§ 710-1040, 706-660 (10 year maximum sentence); Md. Code Ann., Crim. Law § 9-201 (12 year maximum sentence); Mich. Comp. Laws Ann. § 750.118 (10 year maximum sentence); Minn. Stat. Ann § 609.42 (10 year maximum sentence); Miss. Code Ann. § 97-11-13 (10 year maximum sentence); Mont. Code Ann. § 45-7-101 (10 year maximum sentence); N.J. Stat. Ann. §§ 2C:27-2, :43-6(2) (10 year maximum sentence if bribe was $200 or more); N.Y. Penal Law §§ 200.12, 70.00 (25 year maximum sentence for specific form of bribery); Or. Rev. Stat. Ann. §§ 162.15, .25, 161.605(2) (10 year maximum sentence); R.I. Gen. Laws §§ 11-7-3, 7-5 (20 year maximum sentence); S.C. Code Ann. §§ 16-9-210, -220 (10 year maximum sentence); S.D. Codified Laws §§ 22-12A-6, -7, -6-1 (10 year maximum sentence); Tex. Penal Code Ann. §§ 36.02, 12.33 (20 year maximum sentence); Utah Code Ann. §§ 76-8-103, -105, 76-3-203 (15 year maximum sentence); Va. Code Ann. §§ 18.2-439, -10 (10 year maximum sentence); Wash. Rev. Code Ann. §§ 9A.68.010, .20.02(1)(b) (10 year maximum sentence); W. Va. Code Ann. §§ 61-5A-3, -9(a) (10 year maximum sentence); Wyo. Stat. Ann. § 6-5-102 (10 year maximum sentence).
[104] Colo. Rev. Stat. Ann. §§ 18-8-302, 18-1.3-401(1)(a)(III).
[105] Ga. Code Ann. § 16-10-2; R.I. Gen. Laws § 11-7-5; Tex. Penal Code Ann. §§ 12.33, 26.02.
[106] N.Y. Penal Law §§ 200.12, 70.00.
[107] Ariz. Rev. Stat. Ann. §§ 13-2602, 13-702; N.M. Stat. Ann. §§ 30-24-1, -2, 31-18-15.
[108] *See* SECTION 21 of An Act to Improve the Laws Relating to Ethics and Lobbying.

value in exchange for an official act;[109] (b) receiving or requesting compensation in relation to any matter in which the state has a direct or substantial interest;[110] (c) acting as a legislative agent before the governmental body with which that employee was associated for one year after he leaves that body;[111] (d) participating, without permission, in a matter in which a state employee has a financial interest;[112] (e) having a financial interest in the contract of a state agency; [113] and (f) directing a bidder on a public building or construction contract to any particular surety or insurance company.[114] The maximum penalties for violations of (a) through (e) are up to $3,000 and up to two years imprisonment, or both.[115] The penalty for directing a bidder on a public building or construction contract to any particular surety or insurance company is up to $5,000, or up to two years imprisonment, or both.[116]

Most states criminalize similar violations of their respective conflict of interest laws. However, other states' penalties are far more severe than Massachusetts' for similar violations. Alaska, for example, imposes a criminal penalty of up to $10,000 for receiving a gift in exchange for an official act.[117] Other states impose penalties of $10,000 (to up to $150,000) and up to 15 years imprisonment for receiving compensation for state action.[118] At least five states have criminal penalties of $10,000 or more for

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[109] Mass. Gen. Laws ch. 268A, § 3. Substantial value has been interpreted to mean $50 or more. *See Commonwealth v. Famigletti*, 4 Mass. App. 584, 587, 354 N.E.2d 890, 893 (1976); *see also* 930 Mass. Code Regs. 5.04(1)(a).
[110] Mass. Gen. Laws ch. 268A, §§ 4, 11, 17.
[111] *Id.* §§ 5, 12, 18.
[112] *Id.* §§ 6, 13, 19.
[113] *Id.* §§ 7, 14, 20.
[114] *Id.* § 8.
[115] *Id.* §§ 4-7, 11-14, 17-20.
[116] *Id.* § 8.
[117] Alaska Stat. §§ 11.56.120, 12.55.035(b)(5).
[118] *See, e.g.*, Fla. Stat. Ann. §§ 838.016, 775.083(b) (up to $10,000) ; N.J. Stat. Ann. §§ 2C:27-10, :43-3 ($15,000 or up to $150,000 depending on the amount received), :43-6(a)(2) (between 5 and 10 years imprisonment); Tenn. Code Ann. §§ 39-16-104, 40-35-111(5) (up to 6 years imprisonment); Wyo. Stat.

violations of those states' revolving door provisions.[119] Wisconsin and Indiana, for example, impose penalties of $10,000 for participating in a matter in which the employee has a financial interest.[120] Delaware provides for penalties of up to $10,000 for each violation of the Delaware law prohibiting public employees from directing bidders to a particular company on a state contract.[121]

The Task Force proposes legislation to increase the penalties for the above listed criminal violations of the conflict of interest laws to up to $10,000, or up to five years imprisonment, or both.[122] These increased penalties would place Massachusetts alongside the majority of other states that impose high penalties and imprisonment terms for criminal violations of conflict of interest laws.

3. Civil Violations of Conflict of Interest Laws

Civil enforcement is an important alternative to the criminal process in the complex field of conflict of interest. The Ethics Commission is currently authorized to impose a maximum civil penalty of $2,000 per violation for a civil violation of any conflict of interest law under G.L. c. 268A.[123] This maximum penalty has been unchanged since 1982, when it was increased from $1,000 to $2,000. The Task Force believes that an increase in civil penalties in addition to the increases in criminal penalties discussed above is also long overdue. In most cases, $2,000 is simply not a meaningful deterrent or penalty. This becomes particularly apparent in those situations where there

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Ann. § 6-5-104 (up to 10 years imprisonment); Fla. Stat. Ann. § 775.082(3)(c) (up to 15 years imprisonment).

[119] *See* Ala. Code §§ 36-25-13, -25-27, 13A-5-11 ($30,000); Ariz. Rev. Stat. Ann. §§ 38-504, -510, 13-801 (up to $150,000); Miss. Code Ann. §§ 25-4-105, -109 ($10,000); N.J. Stat. Ann. § 52:13C-21.4 ($10,000); Or. Rev. Stat. Ann. §§ 244.045, .350 ($25,000).

[120] Wis. Stat. Ann. §§ 946.13, 939.50(3)(i); Ind. Code Ann. §§ 35-44-1-3, -50-2-7.

[121] Del. Code Ann. tit. 18, §§ 2304(21)(e), 2308 (up to an aggregate of $150,000).

[122] *See* SECTIONS 23, 25, 28-31, 33-36, 38-41of An Act to Improve the Laws Relating to Ethics and Lobbying.

[123] Mass. Gen. Laws ch. 268B, § 4(j)(3).

has been a single, but serious, violation of the conflict of interest laws. In those cases, the current maximum penalty of $2,000 is clearly insufficient. The Task Force recommends legislation to increase the civil penalty to up to $10,000 for any civil violation of the conflict of interest laws other than bribery and to increase the civil penalty for bribery to $25,000.[124] This proposal would bring Massachusetts in line with other states' penalties for civil violations of the conflict of interest laws.[125]

E. ENHANCED PENALTIES FOR FINANCIAL DISCLOSURE VIOLATIONS

1. False Statements in Ethics Proceeding and Filing False Disclosures

A Statement of Financial Interest (SFI) must be filed by certain employees holding major policymaking positions to disclose information about potential conflicts of interest.[126] The current penalty for filing a false SFI is up to $1,000, or up to three years imprisonment, or both.[127] However, the statute that imposes the penalty for filing a false SFI does not expressly require the false filing to be willful, nor does it require that the false statement be material. The same statutory provision imposes the same penalty for willfully making a materially false statement in a proceeding before the Commission.

Other states impose penalties of up to $10,000 or up to five years imprisonment for filing a false disclosure, with many of those states including a knowing and willful requirement.[128] The Task Force recommends amending the law to clarify that the willful and material requirement also applies to filing false disclosures. The Task Force also

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[124] *See* SECTION 55 of An Act to Improve the Laws Relating to Ethics and Lobbying.
[125] *See, e.g.*, Conn. Gen. Stat. Ann. §§ 1-85, -88 ($10,000); Fla. Stat. Ann. §§ 112.3143, 112.317(1)(a)(6) ($10,000); Miss. Code Ann. § 25-4-105, -109 ($10,000).
[126] Mass. Gen. Laws ch. 268B, § 5.
[127] *Id.* § 7.
[128] *See* Colo. Rev. Stat. Ann. § 24-6-202(7) (up to $5,000); 5 Ill. Comp. Stat. § 420/4A107 (up to $5,000); La. Rev. Stat. Ann. § 42:1124.1(B) (up to $10,000); Neb. Rev. Stat. §§ 28-105; 49-14,134 (the penalty for knowingly filing a false disclosure statement is a class IV Felony punishable by up to five years imprisonment and/or a fine not to exceed $10,000).

recommends legislation to increase the penalty to up to $10,000, or up to five years imprisonment, or both for willfully making materially false statements in a proceeding before the Commission or willfully filing a materially false SFI.[129] Submitting false statements in ethics proceedings and filing false disclosures seriously impedes the ability of the Commission to enforce the ethics laws and should be punished with the same force and in the same manner as other similar violations of the ethics laws.

2. Civil Violations of Financial Disclosure Laws

The current penalty for a civil violation of any financial disclosure law under Chapter 268B of the General Laws is up to $2,000 per violation.[130] The Task Force recommends legislation to increase the civil penalty to up to $10,000 for any civil violation of the financial disclosure laws.[131]

Civil penalties for disclosure laws vary widely from state to state. Many states impose stiff civil penalties for violations of the financial disclosure laws. For example, in Tennessee, failing to file 35 days after a notice of failure to file is punishable by a fine of up to $10,000.[132] Texas also imposes a fine of up to $10,000.[133] Florida provides a civil penalty of up to $10,000 in addition to a host of penalties for violation of its disclosure laws.[134] An increase in the civil penalty to $10,000 would place Massachusetts among the states with the highest penalties and would maintain the parity between the penalty

[129] *See* SECTIONS 61 & 62 of An Act to Improve the Laws Relating to Ethics and Lobbying.
[130] Mass. Gen. Laws ch. 268B, § 4(j)(3).
[131] *See* SECTION 55 of An Act to Improve the Laws Relating to Ethics and Lobbying.
[132] Tenn. Code Ann. § 3-6-205(a)(2).
[133] Tex. Gov't Code Ann. § 572.033(b) (penalty of up to $10,000 if initial $500 civil penalty is not paid within 10 days of receiving 30-day late notice).
[134] Fla. Stat. Ann. § 112.317(1)(a)-(c) (In addition to the civil fine, (i) if the violator is a public officer, he may be impeached, removed from office, suspended from office, be subject to public censure or reprimand, and forfeiture of no more than one third salary per month for no more than 12 months; (ii) if the violator is an employee, he may be subject to dismissal, suspension for not more than 90 days without pay, demotion, forfeiture of no more than one-third salary per month for no more than 12 months; (iii) in the case of a candidate, the penalties include disqualification, public censure, and reprimand).

applicable to a financial disclosure violation with that applicable to a conflict of interest violation.

F. ENHANCED PENALTIES FOR LOBBYING VIOLATIONS

1. Late Filings

Late filings prevent the Secretary of State's Office from properly assessing violations of the lobbying laws and undermine public transparency and accountability. While the act itself may seem minor, the result can have a significant impact on the Secretary of State's ability to monitor and detect violations of the lobbying laws. The current penalty for lobbyists who file a late statement is $250 (if less than 10 days late) or $500 (if more than 10 days late).[135] The Task Force recommends legislation to increase the penalty to $50 per day for the first 20 days and $100 per day thereafter.[136]

The proposed fines are within the same range as many other states. Many states provide a per day late filing penalty.[137] Other states set a threshold and then provide for a per day penalty beyond that threshold. Virginia, for example, sets a $50 late fee for the first 10 days late and $50 per day for every day thereafter.[138] Other states also set a per-day penalty, but cap the maximum fine.[139] Oregon, for example, provides a $10 per day penalty for the first 14 days late and $50 for each day thereafter, up to $5,000.[140]

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[135] Mass. Gen. Laws ch. 3, § 43 (for legislative and executive agents), § 47 (for employers of legislative and executive agents). The Secretary may waive fees for good cause.
[136] *See* SECTION 12 & 17 of An Act to Improve the Laws Relating to Ethics and Lobbying.
[137] *See, e.g.*, Colo. Rev. Stat. Ann. § 24-6-302(7); Alaska Stat. § 24.45.141; Mich. Comp. Laws Ann. § 4.418(3).
[138] Va. Code Ann. § 2.2-431(A).
[139] *See, e.g.*, Ky. Rev. Stat. Ann. § 6.797(2)(a) (providing for a discretionary fine, determined by the commission, up to $100 per day up to a maximum total of $1,000); Tenn. Code Ann. § 3-6-306(a)(1)(A), (a)(2)(A)(providing that the ethics commission may assess a late fee not to exceed $25 per day up to a maximum of $750).
[140] Or. Rev. Stat. Ann. § 171.992(2)(c).

Louisiana provides for a mandatory penalty of $50 per day for late filings and after 11 days (and a hearing), an additional fine of up to $10,000.[141]

The Task Force's recommendation would place Massachusetts among those states recognizing the importance of enforcing timely compliance with lobbyist disclosure requirements.

2. Registration Violations

Under current Massachusetts law, violation of lobbying laws, including annual registration, filing of expenditure statements, prohibitions on agreements to influence legislation for compensation for lobbyists, lobby entities, and employers of lobbyists are misdemeanors, which result in a fine of $100 to $5,000, and no possibility of jail time.[142] The Task Force recommends legislation to increase the criminal penalty to up to $10,000, up to five years imprisonment, or both.[143]

Several states make a violation of individual and entity lobbyist registration rules a criminal offense. Several states impose penalties of up to a $10,000 fine and 10 years imprisonment.[144] Indiana provides for imprisonment of up to six years.[145] Texas also allows for a penalty of up to $10,000 and up to 10 years imprisonment for violations of prohibitions on agreements to influence legislation for compensation.[146] The Task Force's proposal to increase penalties for violations of lobbyist registration related rules to up to a $10,000 fine and five years imprisonment would similarly recognize the

[141] La. Rev. Stat. Ann. § 24:58(D)(1)-(2).
[142] Mass. Gen. Laws ch. 3, §§ 41, 42, 43, 44, 47, 48.
[143] *See* SECTION 18 of An Act to Improve the Laws Relating to Ethics and Lobbying.
[144] *See, e.g.*, Tenn. Code Ann. §§ 3-6-302, -303, -304, -306(1)(B) (up to $10,000); R.I. Gen. Laws §§ 22-10-5, -9, -11, -12 (up to $10,000); Tex. Gov't Code Ann. §§ 305.005, .006, .022, .031, 12.21, .34.
[145] Ind. Code §§ 2-7-2, -3, -4, 35-50-2-7.
[146] Tex. Gov't Code Ann. §§ 305.005, .006, .022, .031, 12.21, .34.

importance of these laws to ensuring public accountability and integrity in the process of government.

3. Disqualification for Lobbying Violations

Currently, the Secretary of State may disqualify a person from acting as a lobbyist for three regular sessions following the disqualification, which equates to six years.[147] The applicable statute provides little guidance on what procedures the Secretary is to follow in invoking this remedy and it appears that the remedy has not been invoked in recent times. According to a public statement of the Secretary of State on December 5, 2008, he had never before moved to suspend a lobbyist.[148] The Task Force believes that this remedy needs to be better defined to serve as an effective enforcement and deterrent mechanism. Specifically, the Task Force recommends legislation to require legislative and executive agents to obtain a license from the Secretary of State upon registration and to allow the Secretary of State, upon cause shown, to suspend or permanently revoke a legislative or executive agent's license.[149]

4. Gift Restriction

Rules regarding gifts to public officials from legislative agents are inconsistent and confusing. The penalty for a legislative agent providing *anything* of value to a public official (or a member of his family) is not less than $100 and not more than $5,000.[150] However, a separate provision of the ethics laws prohibit gifts from lobbyists to a public

[147] Mass. Gen. Laws ch. 3, § 45.
[148] *Mass. Sec. of State moves to suspend lobbyist*, The Boston Globe, Dec. 5, 2008.
[149] *See* SECTION 14 of An Act to Improve the Laws Relating to Ethics and Lobbying.
[150] Mass. Gen. Laws ch. 3, §§ 43, 48.

official of more than $100 in value in a calendar year and impose a penalty of up to $2,000 for violating that restriction.[151]

The Task Force recommends removing the inconsistency from the ethics law and conforming it to the existing prohibition contained in the lobbying laws.[152] The Task Force also recommends legislation to increase the criminal penalty to up to $10,000, or up to 5 years imprisonment, or both for a lobbyist providing a gift to a public official (or a member of his family) in violation of these provisions.[153]

Several states fall into the category of "zero tolerance" lobbyist gift giving states.[154] Some states impose high penalties for violating the lobbyist gift restriction. South Carolina, for example, makes violation of its gift law a felony punishable by a fine of not more than $10,000 and imprisonment for not more than 10 years.[155] Violation of the Tennessee gift law can result in a civil penalty of $25 or 200 percent the value of the gift for a first offense; subsequent offenses carry a fine up to $10,000.[156]

G. MANDATORY TRAINING AND EDUCATION

The Commission conducts seminars for state, county, and municipal employees. The Commission also publishes a bulletin with updates on the ethics laws. The Task Force understands the critical role that the Commission plays in educating government employees and believes that even greater and more uniform public education is

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[151] Mass. Gen. Laws ch. 268B, §§ 4(j)(3), 6.
[152] *See* SECTION 60 of An Act to Improve the Laws Relating to Ethics and Lobbying.
[153] *See* SECTION 18 of An Act to Improve the Laws Relating to Ethics and Lobbying.
[154] *See, e.g.*, Alaska Stat. § 24.60.080, .990 (exception for immediate consumption of food or beverage); Colo. Constitution Art. XXIX (exception for consumption of food or beverage at which recipient appears to speak or answer questions as part of a scheduled program, among others); Minn. Stat. Ann. § 10A.071(2) (exception for consumption of food or beverage at speech or panel, among others); N.J. Rev. Stat. Ann. § 52:13D-14; Tenn. Code Ann. § 3-6-305(b)(1); Wis. Stat. Ann. §§ 19.42(1), .45, 13.625; *see also* http://www.ncsl.org/programs/ethics/e_Coffee.htm for a listing of all state lobbyist gift restrictions.
[155] S.C. Code Ann. § 8-13-705(F).
[156] Tenn. Code Ann. §§ 3-6-305, -306.

necessary. Many professions require continuing education and achievement of performance standards to remain current and to assure accountability. Government employees should also receive periodic ethics training. The Task Force believes that required training will help government employees identify and avoid conflicts and encourage government employees to seek further advice when a potential problem arises.

1. Summary of Conflict of Interest Laws

Many violations of the ethics and lobbying laws are caused by lack of knowledge rather than intentional misconduct. The majority of government employees, like most people, want to do the right thing. This is easier to accomplish when people have relevant information to guide their actions. Yet, there is no statutory requirement that government employees receive information on the ethics and lobbying laws.

The conflict of interest law currently provides that municipal officials be provided with a copy of the "standards of conduct" section of the conflict of interest law.[157] It also requires that municipal officials sign an acknowledgment that they received this section.[158] It requires only that the language of one section of the statute be provided and it has no provision to provide any material or notice about the conflict of interest law to state and county officials.

The conflict of interest law has 25 sections. Some of the language has been interpreted in ways that are not always intuitive. It restricts what public officials and employees at the state, county, and municipal levels, whether elected or appointed, paid or unpaid, full-time or part-time, can do on the job, after hours, and when they leave public service. Public officials and employees who violate the law may face civil or

[157] Mass. Gen. Laws ch. 268A, §23(f).
[158] *Id.*

criminal penalties. Given the importance of these laws to government employees and to the citizenry, it is essential that our government employees have a reasonable understanding of what they require.

Several other states already mandate various degrees of ethics training.[159] Massachusetts, long a leader in government ethics, should not be left behind. To address this need, the Task Force recommends legislation to require that all state, county, and municipal employees receive a summary of the conflict of interest laws within 30 days of becoming an employee and every year thereafter.[160] The Task Force's proposal provides for a 90-day transition period for current state, county, and municipal employees.[161] The summary would be a short, plain-language synopsis of all of the sections of the conflict of interest laws, including the section on former employees, and would be prepared by the Commission. The Commission would make the summary available on its website for access and distribution by the city and town clerk for municipal employees, appointing authorities for appointed state and county employees, and by the Commission for elected state and county employees. All employees would be required to sign and file a written acknowledgment that they received a summary with the entity that provided them with the summary.

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[159] *See, e.g.*, Alaska Stat. § 24.60.155 (requires ethics training within 30 days of employment and within 10 days of the beginning of each regular legislative session); 5 Ill. Comp. Stat. 430/5-10 (requires training within six months of employment and annually thereafter); N.J. Stat. Ann. §§ 52:13D-21(o), -21.1, -28 (requires employees in the executive branch to certify that they have received, read, and understood a plain language ethics guide prepared by the ethics commission; also requires annual ethics training as well as a biannual ethics online ethics tutorial course for all legislative employees and officers); Nev. Rev. Stat. § 281A.500 (Nevada requires every public officer to acknowledge receipt and understanding the ethical standards); Ohio Rev. Code Ann. § 102.09(D) (requires that each employee of a public agency acknowledge receipt of Ohio's conflict of interest laws within 15 days of beginning employment); Tex. Gov't Code Ann. § 2113.014(b) (requires each state agency to provide its employees with a copy of the Texas conflict of interest laws and that each employee acknowledge receipt by signature).
[160] *See* SECTIONS 44 & 46 of An Act to Improve the Laws Relating to Ethics and Lobbying.
[161] *See* SECTION 66 of An Act to Improve the Laws Relating to Ethics and Lobbying.

Providing government employees with a brief summary of the law, rather than the actual text of a single section of the law as the current law requires, will provide guidance in general, promote awareness of the specific restrictions of the conflict of interest laws, and will provide government employees with information about how to obtain additional information and advice from the Commission.

The Task Force has also considered whether government employees should be required to receive a summary when they leave public employment. The Task Force agrees with the Commission that if employees receive the summaries every year and those summaries include a discussion of the rules applicable to former employees, it is not necessary to also include a requirement that departing employees be given another summary.

2. Periodic Online Training

The Commission promotes education and advice as part of its mission to enforce the conflict of interest laws. The Commission's website includes an online training program for state employees, which the Commonwealth's Human Resources Division has identified as an essential course for all state employees. However, there is currently no statutory requirement that government employees take this training. In recent years, states have shown an increased attention to ensuring that government employees and officials understand conflict of interest laws. Many states now statutorily require certain categories of government employees to complete ethics training programs that address

conflict of interest laws.[162] Most states with mandatory training programs make periodic training a central component of their programs.[163]

The Task Force recommends legislation requiring all state, county, and municipal employees to take the Commission's online training program within 30 days of becoming an employee and every two years thereafter.[164] The Task Force's proposal provides for a 90-day transition period for current state, county, and municipal employees.[165] The Commission would be required to log and maintain a record of completion for each employee who completed the online training program. The Task Force's proposal would bring Massachusetts in line with many states mandating online training for their employees.

Similar to the distribution of the summary of the conflict of interest laws, based on input from the Commission, the Task Force does not believe that it would be feasible to legislatively require online training for outgoing employees. The Commission's online training program will include a component on rules applicable to former employees. Continual review of those rules every year through review of the summary, and every two years through the online training program, should be sufficient to remind employees of the restriction on former employees.

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[162] *See, e.g.*, La. Rev. Stat. Ann. § 42:1170; Cal. Gov't. Code § 53235; N.J. Stat. Ann. § 52:13D-28.
[163] *See, e.g.*, Alaska Stat. § 24.60.155 (requires training within 30 days of employment and within 10 days of the beginning of each regular legislative session).5 Ill. Comp. Stat. 430/5-10 (requires annual training); N.J. Stat. Ann. §§ 52:13D-21.1, -28; (requires ethics training annually; legislative employees and officers must, in addition to annual training, complete an online tutorial course biannually).
[164] *See* SECTION 46 of An Act to Improve the Laws Relating to Ethics and Lobbying.
[165] *See* SECTION 67 of An Act to Improve the Laws Relating to Ethics and Lobbying.

3. Training Program for Municipalities

Individuals appointed or elected to a municipal agency receive a copy of Section 23 of Chapter 268A of the General Laws.[166] The Task Force recommends developing a certification program for municipalities so that each municipality has at least one person knowledgeable about the ethics laws who can educate municipal employees.[167]

The Task Force considered the fiscal and administrative feasibility of administering in-person ethics training to municipal employees and concluded that it would be best to train and establish an ethics liaison in each of the Commonwealth's municipalities. The designated liaison will be available to advise and train municipal employees with respect to ethics laws, as opposed to having the Commission develop training sessions for those employees on a statewide basis. Specifically, the Task Force proposes legislation to create a role for a "designated liaison" who would act as an information disseminator or facilitator in encouraging and assisting employees with requesting opinions from town counsel.[168] The online training, mentioned above, will also prove to be a cost-effective way of ensuring that municipal employees are educated and trained with regard to ethics laws as well.

4. Training for Lobbyists

There is currently no statutory requirement that lobbyists receive training on lobbying laws. The Secretary of State's Public Records Division conducts one-on-one training for any lobbyist who requests it, limited to instructing the lobbyist on the type of information that is required to be disclosed and training on how to use the new online

[166] Mass. Gen. Laws ch. 268A, § 23(f).
[167] *See* SECTION 46 of An Act to Improve the Laws Relating to Ethics and Lobbying.
[168] *Id.*

reporting module. (The Secretary of State's Office currently requires electronic registration and disclosure for all lobbyists.)

Several states already require lobbyists to take an ethics training course. For example, California requires lobbyists to attend an orientation regarding lobbying laws and ethics within 12 months of registering as a lobbyist for the first time and every two years thereafter.[169] Similarly, Maryland requires lobbyists to attend training at least once every two years and currently offers both basic and advanced in-person classes.[170] Alaska requires that lobbyists complete either an in-person or online ethics course within the 12 months preceding their initial registration as a lobbyist and every year thereafter.[171]

The Task Force recommends legislation requiring all legislative and executive agents to take an in-person or online training course offered by the Secretary of State within 90 days of the effective date of the legislation and every year thereafter.[172] All legislative and executive agents must receive a certificate of completion to be filed with the Secretary of State, prior to being able to register.[173] The Task Force's proposal would join Massachusetts with the number of other states that require ethics training for lobbyists.

IV. RELATED ISSUES FOR FURTHER CONSIDERATION

In addition to the areas discussed above concerning ethics, lobbying, and related enforcement, the Task Force heard proposals extending beyond the scope of the Task

[169] Cal. Gov't Code §§ 8956(b), 86103(d)(1)-(2) (effectively requires refresher training every two years. For a brief summary, *see* Fair Political Practices Commission, http://www.fppc.ca.gov/index.html?id=28).
[170] Md. Code Ann., State Gov't § 15-205(e)(1); Maryland State Ethics Commission, http://ethics.gov.state.md.us/lobytrain.htm.
[171] Alaska Stat. §§ 24.45.031(a)(6), .041(b).
[172] *See* SECTIONS 6 & 65 of An Act to Improve the Laws Relating to Ethics and Lobbying.
[173] *Id.*

Force's mandate, including recommendations for consolidating the various agencies charged with enforcing ethics, lobbying, and campaign finance laws; strengthening campaign finance laws; improving home rule and special legislation; and increasing transparency in government. An overview of these proposals follows. While the Task Force is not making any specific recommendations in these areas, it believes that many of the proposals merit further review and consideration.

A. CONSOLIDATION OF PUBLIC INTEGRITY FUNCTIONS

The Task Force discussed proposals that would allow for greater coordination by combining the various regulatory and enforcement functions relating to public integrity. The Task Force believes that there is merit to bringing public integrity functions including, but not limited to, ethics, lobbying, and campaign finance within a single independent agency with sufficient staff and resources to handle all of those areas, but given the urgent need to promptly address ethics and lobbying concerns, the Task Force determined that it would be more productive to focus its recommendations on improvements that can be made within the existing regulatory structure. The Task Force recommends that the efficacy of the Commonwealth's ethics, lobbying, and campaign finance enforcement efforts be reevaluated and reassessed under the proposed information sharing regime,[174] and further review given to whether consolidation of functions would be beneficial.

A combined public integrity office could benefit the Commonwealth in several important respects. First, a single agency would foster consistency in the interpretation and enforcement of public integrity laws. Second, it would eliminate the need for citizens and government employees to approach multiple offices in order to obtain advice

[174] *See Information and Resource Sharing* Section III.A.7. above.

or information, file complaints, or submit reports. Third, combining the investigative and enforcement efforts into a single office would facilitate more effective and efficient investigations into matters that involve a combination of ethics, lobbying, and/or campaign finance issues, and would eliminate duplication of effort among agencies.

Several states have already created a single agency for ethics, campaign, and lobbying oversight. Wisconsin recently created the Government Accountability Board (GAB) to oversee elections, campaign finance, ethics, and lobbyists. In Texas and Arkansas, ethics commissions are responsible for all public integrity matters and candidate and political committee reporting, though their respective secretaries of state remain the chief election officer.

Wisconsin established the GAB in 2008 by legislation merging the State Elections Board and the State Ethics Board.[175] The GAB is divided into two divisions: the Elections Division and the Ethics & Accountability Division.[176] The Elections Division is responsible for registering candidates and political action committees, overseeing campaign finance rules, and overseeing orderly state elections. The Ethics and Accountability division oversees lobbyists, public employee financial disclosures, and standards of conduct for state and local officials. All members of the GAB are former state judges and serve staggered terms.[177] The Wisconsin approach was adopted in part to provide consistency and meet the public desire for a single trusted source for information relating to government accountability.[178]

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[175] *See* 2007 Wisconsin Act 1, *available at* http://www.legis.state.wi.us/2007/data/acts/07Act1.pdf; Wis. Stat. Ann. § 5.02.
[176] *See* Wisconsin Government Accountability Board website, *available at* http://gab.wi.gov/.
[177] Wis. Stat. Ann. § 5.60.
[178] Telephone Interview with Kevin Kennedy, Director and General Counsel, Wisconsin Government Accountability Board (Dec. 26, 2008). Mr. Kennedy explained that proposals to merge the offices began in the 1990s and arose out of a sense from constituents that the various oversight agencies had become

After the legislation's enactment in February 2007, it took approximately eleven months to establish the GAB.[179] The legislature enacted a number of ethics reforms before creating the GAB.[180] The state then faced logistical challenges in nominating and confirming the initial Board members and budgeting for the transition.[181] The process of physically combining the three pre-existing offices into one location is expected to occur January 26, 2009.[182]

The Wisconsin model is not the first of its kind. Both Arkansas and Texas established combined agencies nearly twenty years ago. Today, the Arkansas Ethics Commission is responsible for overseeing all public integrity matters, except elections which are the responsibility of the Secretary of State.[183] However, candidates for public office must establish committees and file reports with the Ethics Commission. The Texas Ethics Commission was created by a voter-approved amendment to the Texas Constitution on November 5, 1991.[184] Legislation following the amendment created additional duties for the Commission covering political contributions and expenditures, lobbyist registration and reporting activities, and public employee financial disclosures and conduct.[185]

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complacent to the point where constituents were frustrated with the lack of consistency and the need to approach different offices to answer a single question. Additionally, in 2006 the Elections Board was criticized by the minority party for making a number of partisan decisions.

[179] *See* 2007 Wisconsin Act 1, *available at* http://www.legis.state.wi.us/2007/data/acts/07Act1.pdf (date of enactment: Feb. 2, 2007); Government Accountability Board website, *available at* http://gab.wi.gov/ ("The GAB is a result of the merger of the staffs of the former State Elections Board and State Ethics Board into a single agency, as of January 10, 2008.").

[180] Telephone Interview with Kevin Kennedy, Director and General Counsel, Wisconsin Government Accountability Board (Dec. 26, 2008).

[181] *Id.*

[182] *Id.*

[183] Ark. Code Ann. §§ 7-6-102, -217.

[184] *See* Texas Ethics Commission website, *available at* http://www.ethics.state.tx.us/tec/duties.htm.

[185] *See id.*; Tex. Gov't Code Ann. § 571.001-.177.

The Task Force recommends that the Governor, Legislature, and relevant enforcement agencies study the benefits and feasibility of combining all state public integrity oversight into a single independent agency. The Task Force is not recommending immediate transition to a single agency. There are a number of logistical challenges in creating a new agency, and the transition could take up to a year. Because of the potential benefits of a single enforcement and oversight agency, however, creating this agency should be given careful study and consideration.

B. CAMPAIGN FINANCE

Massachusetts already has one of the more comprehensive regulatory schemes governing campaign contributions, but there is certainly room for improvement. The Director of the Massachusetts Office of Campaign and Political Finance testified before the Task Force and offered a number of sensible proposals to improve the campaign finance requirements, including: enhancing filing of disclosure reports; electronic filing by mayoral candidates; disclosure of late contributions; reporting of independent expenditures, disclosure of expenditures to sub-vendors; disclosure of ballot question expenditures; and enforcement of the campaign finance laws. Other suggestions in the campaign finance arena, discussed below, include campaign contributions from lobbyists and government contractors, and public financing of elections.

1. Filing of Disclosure Reports

Legislative candidates, political action committees (PACs), and people's committees are required to file reports three times in an election year and only once in an off election year. The Director of OCPF recommended a proposal to add an additional midyear report every year, ensuring timely and more accurate disclosure for the public.

In addition, it has been suggested that legislative committees use the "depository system" for reporting – the same system that is used by statewide candidates and mayoral candidates in the state's largest cities.[186]

2. Electronic Filing by Mayoral Candidates

Current law requires filing for mayoral candidates in cities with populations of 100,000 or more. The Director of OCPF recommended a proposal that would require mayoral candidates in cities with populations between 50,000 and 100,000 to file electronically with OCPF if they raise or spend $5,000 in an election cycle.

3. Disclosure of Late Contributions

Under current law, disclosure of legislative campaign finance activity ends 18 days before the election. For example, activity by legislative candidates and PACs that occurred after October 17, 2008 will not be disclosed until January 20, 2009. The Director of OCPF recommended a proposal to require electronic disclosure of large (*i.e.* $500) contributions within 24 hours of receipt of the contribution if it was received in the 18 day window before an election. Disclosure within 24 hours of receipt would also have been required for independent expenditures over $250 made less than 14 days before the election. Currently, independent expenditure reports must be filed within 7 business days of the date of the expenditure.

4. Reporting of Independent Expenditures

Currently, reports of independent expenditures of $100 or more must be filed in paper form within seven business days. The Director of OCPF recommended a proposal that would require electronic reporting of expenditures of $250 or more. If the

[186] The depository system for reporting to OCPF requires: the designation of a "depository" bank; the use of the bank for all campaign finance activity; and reporting by the bank to OCPF of campaign finance activity on a regular basis.

expenditure is made after the 14th day before an election, the report must be filed within 24 hours.

5. Disclosure of Expenditures to Sub-vendors

Sub-vendor reporting is another area of concern. For example, a candidate can hire a consultant for $40,000. The consultant then spends much of that money on advertisements, printing, and other consultants. Under current law, only the original expenditure to the consultant is disclosed; expenditures made by the consultant to other entities are not required to be disclosed. The Director of OCPF recommended a proposal to require additional disclosure of such expenditures.

6. Disclosure of Ballot Question Expenditures

There is no current requirement that individuals disclose expenditures for ballot questions. The Director of OCPF recommended a proposal to require individuals to file reports disclosing such expenditures.

7. Enforcement of Campaign Finance Laws

From an enforcement perspective, the Director of OCPF recommended a proposal to provide flexibility from the current statute that prevents OCPF from referring alleged violators to the Attorney General until after the relevant election. The current law also imposes a window allowing such referrals only during the 2 years after the relevant election. It is often difficult to meet this strict standard, especially when an investigation, complete with the use of subpoenas, is taking place.

8. Campaign Contributions from Lobbyists

The law currently allows for a $200 contribution from a legislative or executive agent.[187] Some suggested that lobbyists should be precluded from contributing to political campaigns to remove the perception that government decisions are based on the influence of lobbyists. Certain states have already enacted legislation banning campaign contributions from lobbyists.[188]

Massachusetts currently imposes no statutory restrictions on political fundraising by lobbyists. Some have recommended restrictions on political fundraising by lobbyists. Several states restrict lobbyists from soliciting campaign contributions or raising funds for candidates for public office.[189] Other states restrict lobbyists from soliciting campaign contributions, but only while the legislature is in session.[190]

9. Campaign Contributions from Government Contractors

Many states have enacted legislation prohibiting government contractors from making campaign contributions to those responsible for issuing the contract. Some suggested that Massachusetts join other states which ban this type of donation or more generally just prohibit state contractors (or their affiliates, including board members,

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[187] Mass. Gen. Laws ch. 55, § 7A(b).

[188] *See, e.g.*, Ky. Rev. Stat. Ann. § 6.811(6); N.C. Gen. Stat. Ann. § 163-278.13B(c); S.C. Code Ann. § 2-17-80.

[189] *See, e.g.*, Alaska Stat. § 24.45.121(a)(8) (stating that a lobbyist may not "host a fund-raising event, directly or indirectly collect contributions for, or deliver contributions to, a candidate, or otherwise engage in the fund-raising activity of a legislative campaign or campaign for governor or lieutenant governor."); Md. Code Ann., State Gov't § 15-714(d) (stating that a lobbyist may not solicit or fundraise for a political campaign, but may give personal contributions); S.C. Code Ann. § 2-17-110(F) (stating that lobbyists, their employees, and their principals may not host an event to raise funds for a public official).

[190] *See, e.g.*, Ariz. Rev. Stat. § 41-1234.01 (prohibiting lobbyists from soliciting contributions for legislative candidates while the legislature is in session); Colo. Rev. Stat. Ann. § 1-45-105.5 (restricting lobbyists from soliciting campaign contributions while the legislature is in session, but permits lobbyists to engage in other fundraising activities for a party, but not a particular legislative candidate or current legislator); N.C. Gen. Stat. Ann. § 163-278.13B (prohibiting lobbyists from soliciting contributions for legislative candidates while the legislature is in session).

executives, shareholders, and their spouses) from making campaign contributions or raising money for elected officials.[191]

10. Public Financing of Elections

Some believe that Massachusetts has the least competitive legislative elections in the nation, and that lack of competitiveness and accountability is the root cause of ethics problems confronting state government. They contend that public financing of legislative races will ensure contested races as well as accountability.

Two years ago, Connecticut passed a full public financing law which was tested in this fall's election. Over 75 percent of the candidates participated, and incumbents and challengers alike reportedly gave the system good reviews. In Maine, a large majority of candidates, incumbents as well as challengers, are now publicly financed.

Many believe that Massachusetts' private financing system results in a high percentage of incumbents who run unopposed each year. A beneficial consequence of considerably more contested elections is that the challengers can be expected to scrutinize the incumbents' activities for corruption, among other weaknesses. The expectation that this will happen could be a further incentive to resist ethical lapses.

C. HOME RULE LEGISLATION

Although the Task Force has focused on ethics and lobbying reform, it has also discussed other potential improvements in the lawmaking process, including home rule legislation. By many accounts, home rule legislation – bills that authorize a single city or town in the state to take action it is not otherwise authorized to take without the legislature's permission and the Governor's approval – have become the currency for

[191] *See., e.g.*, Conn. Gen. Stat. Ann. § 9-610.

political trade-offs and deal-making on Beacon Hill. Concerns have been raised that the focus on such local legislation increases opportunity and incentive for corrupt behavior.

Our current home rule structure dates back to the 1960s and guarantees that the Legislature spends substantial amount of time deciding when and how localities can tax, borrow, regulate private and civil affairs, and make rules for municipal elections. Since the Governor took office on January 4, 2007, approximately 720 bills have been enacted. Out of those 720 bills, approximately 315 have been home rule bills; which means that over 40 percent of all legislation passed over the last two years are local laws that affect only one community. Accordingly, an inordinate amount of time and legislative resources are spent on matters that, for the most part, are not controversial and are fully supported by the elected officials of the affected municipality and its citizens. Sponsors of a home rule bill often expend a great deal of time and political capital to get the non-controversial, purely local matter moving and enacted, rather than working on matters of statewide concern. This arrangement makes it more difficult for legislators to focus on issues outside the four corners of their district and to focus on the merits of more significant legislative proposals.

The problem with these petitions is not that they are unworthy of attention, but rather that they become the currency of the legislative process and distract the Legislature from matters of statewide concern. Both to enable legislators to focus more of their time and energy on important matters of statewide concern and to reduce the potential for corruption that may arise from excessive entanglement by state officials in municipal matters, consideration should be given to legislation granting greater autonomy to municipalities.

D. TRANSPARENCY

Members of the Task Force and members of the public believe that government transparency helps foster public integrity by increasing civic engagement, helping citizens and enforcement agencies hold public employees accountable, and discouraging inappropriate behavior by making it more likely that such behavior will be detected. Some assert that Massachusetts lags behind other states in transparency laws and procedures. To address this, proponents of greater transparency in government have made various suggestions, including proposals to improve the availability and accessibility of budget information, strengthen the Open Meeting Law and the Public Records Law, and improve the identification of lobbyists.

1. Availability and Accessibility of Budget Information

Currently, the Commonwealth's House and Senate have budget websites, available at www.mass.gov/legis. Members of the public have proposed implementing a searchable online database of government expenditures. While Massachusetts has made significant strides in state budget disclosure, and the Legislature's budget websites have improved, many believe that state budget disclosure can be significantly improved. Many states mandate that citizens be able to access a searchable online database of government expenditures. These budget sites are sometimes referred to as "Transparency 2.0," which is the new standard for comprehensive, one-stop budget accountability and accessibility.[192] Some believe that such sites can save money by highlighting unnecessary spending and, in the context of state contracts, can serve to deter abuse.

[192] MassPIRG Report, *Transparency.gov 2.0- Using the Internet for Budget Transparency to Increase Accountability, Efficiency and Taxpayer Confidence* (Dec. 2008), *available at* http://www.masspirg.org/uploads/av/VF/avVFUhvhAeBN4_jyHK_FPw/MAPIRG-TransGov-final.pdf. MassPIRG is an advocacy organization for the public interest.

MassPIRG's Transparency 2.0 report highlights the national trend towards transparent budgets. It outlines the benefits in the form of money saved and more accountable contracting and expenditures with private entities.[193] The report compares best practices in the 18 states that have "upgraded" their budget transparency this way. Many believe that Massachusetts should enlist new information technology tools to enhance transparency for public money. Searchable web portals to track any government contract or subsidy are becoming standard practice in other states. In those states, public officials know that their spending and fiscal decisions are open to public scrutiny.

ONE Massachusetts offered the following proposals to significantly increase the public's confidence in state government: (1) yearly state budgets prominently displayed on the Commonwealth's website with easy to understand pie chart graphics as well as departmental budgets; (2) detailed and easily accessible information on the budget as it's being drafted, with clear information about how and when the public can give input; (3) detailed and easily accessible information on the tax expenditure budget, which shows the cost to the Commonwealth of the exemptions given to individuals and businesses; and (4) each agency and department should post their proposed budgets, current and past-year budgets for comparison purposes.[194] Agencies and departments should include program/service narratives that describe the program's intent, operational process and measurable outcomes, and social value of each program/service.[195]

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[193] *Id.*

[194] Testimony of Yawu Miller, ONE Massachusetts, at Governor's Task Force on Public Integrity Public Hearing (Dec. 3, 2008), *available at* http://www.mass.gov/Agov3/docs/Miller%20Testimony.doc. ONE Massachusetts is a network of people and organizations working to rebuild public confidence in people and government to expand economic opportunity and improve the quality of life in Massachusetts.

[195] *Id.*

There has also been significant criticism of the budgetary process, specifically with respect to earmarks and concerns that this part of budget process is closed to the public. The Task Force heard requests for ways to allow taxpayers to see how their money is spent. Some proposed reforms for revamping the current budgetary process by removing earmarks.

2. Open Meeting Law

The Legislature is exempt from the Open Meeting Law. While the majority of states subject their legislature to open meeting laws, Massachusetts is among the minority of states that do not. Some believe this exemption is warranted, to foster the type of candid discussion that can be chilled if all meetings must take place in public. Proponents of this view note that legislative committees hold numerous public hearings and that sessions of the full Legislature are open to the public. Others assert, however, that the exemption should be amended and that all legislative committees should be subject to the Open Meeting Law. They believe that there are already adequate provisions for Executive Sessions (which are closed to the public)[196] in the existing law and that such an open process would make the legislative committee structure a meaningful component of the legislative process.

Many of the latter advocates likewise urge that quasi-public entities, and public or private entities performing public work, whether or not they vote in quorum, also should be subject to the Open Meeting Law. They believe that every plenary, caucus, task force and committee meeting or hearing should be publicly noticed, including a complete agenda, at least 48 business-day hours in advance, with minutes and full written transcript of every meeting, hearing, and executive session publicly posted.

[196] *See* Mass. Gen. Laws ch. 39, § 23A.

These are difficult issues that implicate numerous competing considerations that the Task Force believes warrant further consideration.

3. Public Records Law

The Massachusetts Public Records Law is an essential tool for public information. It is intentionally broad in scope and, in several respects, extends materially further than its federal counterpart, the Freedom of Information Act. Some believe it works well in its current form. Others, however, assert that its overarching purpose can be too easily circumvented through inadequate searches, unwarranted claims of exemption, or the imposition of excessive retrieval and copying fees.

Still others urge that the Public Records Law be made applicable to additional components of state government that are currently exempt, such as the legislative and judicial branches, as well as to all appointed, hired or contracted entities, public or private, performing public tasks.

Although the foregoing issues fall outside the Task Force's principal area of focus, they are worthy of future discussion and consideration.

V. CONCLUSION

The Task Force recommends that the Governor file, and the Legislature enact, the attached *Act Improving the Laws Relating to Ethics and Lobbying* to strengthen the applicable rules, penalties, investigative and enforcement tools, and buttress public confidence in government.

SUMMARY OF PROPOSALS

A. ENHANCEMENT OF ETHICS LAWS AND STATE ETHICS COMMISSION'S AUTHORITY

1. Rulemaking Authority of State Ethics Commission

Currently: The Ethics Commission has rulemaking authority to create exemptions. G.L. c. 268B, § 3(a).

Proposal: Amend G.L. c. 268B, § 3(a) to expand the Commission's rulemaking authority to allow it to prescribe and publish rules and regulations to implement chapters 268A.

2. Summons Authority of State Ethics Commission

Currently: The Commission has summons authority, but must file suit to enforce; the Superior Court has the discretion to decide whether to enforce the Commission's summons. G.L. c. 268B, § 4(d).

Proposal: Amend G.L. c. 268B, § 4(d) to make compliance with the Commission's summons mandatory and leave it to the recipient to seek a court order quashing the summons.

3. Statute of Limitations for Ethics Violations

Currently: Pursuant to regulation, the Commission has 3 years from the date it learns of an alleged violation to issue an Order to Show Cause. 930 CMR § 1.02(10). Pursuant to the Commission's website, the Commission will not issue an Order to Show Cause more than 6 years after the alleged violation occurred. http://www.mass.gov/ethics/statute_limitations.html. There is no statutory limitations period for ethical violations.

Proposal: Amend G.L. c. 268B to include a section that allows the Commission to bring an action up to 5 years from the date the Commission learns of the alleged violation, but not more than 6 years from the date of the last conduct relating to the alleged violation.

4. Gratuities Statute

Currently: Gifts of substantial value given to public employees violate the gratuities statute only if given for or because of any specific official act performed or to be performed. G.L. c. 268A, § 3; *see Scaccia v. State Ethics Commission*, 431 Mass. 351 (2000).

Proposal: Amend G.L. c. 268A, § 3 to clarify that gifts of substantial value given "for or because of the employee's official position" violate the gratuities law, and provide the Commission with specific direction to adopt regulations to define "substantial value" (which shall not be less than $50) and establish exceptions where the circumstances do not present a genuine risk of a conflict or appearance of a conflict.

5. Authority of State Ethics Commission to Recover Economic Advantage

Currently: The Commission may bring a civil action against someone who acted to his economic advantage to recover damages in the amount of the

economic advantage. G.L. c. 268A, §§ 9 (state), 15 (county), 21 (municipality).

Proposal: Amend G.L. c. 268A, §§ 9, 15, and 21 to allow the Commission to recover the amount of the economic advantage up to $25,000 without filing a separate lawsuit, subject to review in Superior Court in accordance with G.L. c. 268B, § 4(k) or G.L. c. 30A, while requiring the Commission to file an action in Superior Court to seek to recover a greater amount of economic advantage.

6. Enforcement of False Claims by Public Employees

Currently: The Commission does not have jurisdiction over false claims by public employees (*e.g.*, lying on time sheets or submitting false reimbursement requests).

Proposal: Amend G.L. c. 268A § 23 to explicitly bring such violations within the authority of the Commission.

7. Information and Resource Sharing

Currently: The Commission may share information with the Attorney General, the United States Attorney, and the District Attorneys offices when the information may be used in a criminal proceeding. G.L. c. 268B, § 4(a). The Commission may also receive personnel and other assistance from the State Police, the State Auditor, the Comptroller, the Attorney General, and the Director of OCPF. G.L. c. 268B, § 2(m).

Proposal: Amend G.L. c. 268B, § 4 to expand the Commission's authority to share information to the Inspector General, the Secretary of State, the Office of Campaign and Political Finance, and the Attorney General, consistent with the confidentiality restrictions in G.L. c. 268B, § 4. Amend G.L. c. 268B, § 2(m) to allow the Secretary of State and the Inspector General to provide personnel and other assistance to the Commission.

8. Budget of State Ethics Commission

Currently: The Commission's budget must be approved annually.

Proposal: File legislation to provide the Commission with a guaranteed annual base budget which shall be no lower than the prior fiscal year.

B. ENHANCEMENT OF LOBBYING LAWS AND SECRETARY OF STATE'S AUTHORITY

1. Definition of Lobbying

Currently: The term "lobbying" is undefined. G.L. c. 3, § 39.

Proposal: Amend G.L. c. 3, § 39 to include a definition of legislative lobbying and executive lobbying based on clarified definitions of executive and legislative agents

2. Revolving Door Provision

Currently: Prohibits a former state employee or elected official, including members of the Legislature, from acting as a *legislative* agent before the

governmental body with which he was associated for one year after he leaves that body. G.L. c. 268A, § 5(e), c. 268B, §§ 1, 5, 6.

Proposal: Amend G.L. c. 268A, § 5(e) and c. 268B, §§ 1, 5 and 6 to expand the revolving door provision to include executive agents.
Allow the Ethics Commission to establish by regulation the meaning of "governmental body with which he has been associated."

3. "Incidental" Lobbying

Currently: Authorizes up to 50 hours of incidental lobbying in each 6-month reporting period without triggering filing requirements. G.L. c. 3, § 39.

Proposal: Amend G.L. c. 3, § 39 to reduce the amount of allowable incidental lobbying to not more than 10 hours or not more than $2,500 in any 3-month reporting period.

4. Clarification of Registration and Reporting Requirements

Currently: Persons required to register as a lobbyist under G.L. c. 3, § 41 are required to file semi-annual reports under § 43, and the lobbyist entity must do so under § 47. The current language creates a loophole that does not require lobbyists or lobbyist entities whose names do not "appear on the docket" to file reports, even if the lobbyist or lobbyist entity should have lawfully registered.

Proposal: File legislation to close this loophole.

5. Periodic Disclosure Requirements

Currently: Requires semiannual reporting of lobbying activities. G.L. c. 3, §§ 43, 44, 47.

Proposal: Amend G.L. c. 3, §§ 43, 44, and 47 to increase the reporting requirement to quarterly reporting (Apr. 15; July 15; Oct. 15; Jan. 15).

6. Disclosure of Lobbyist Activities

Currently: Confusing statutory requirements create uncertainty regarding the scope of information that must be reported by legislative and executive agents.

Proposal: Amend G.L. c. 3, § 43 to specify information that must be reported by legislative and executive agents, including the identity of the client on whose behalf they acted; the identity of the legislative bills or other governmental action that they sought to influence for each client; the positions that they took; the compensation they received; and any direct business relationships with public officials.

7. Availability of Lobbying Information Online

Currently: Docket of lobbyists and their employers and other filings related to lobbying are required to be available for public inspection at the Public Records Division. G.L. c. 3, § 47. The Secretary of State maintains an electronic database with legislative and executive agents and lobbyist entities' registration information.

Proposal: Recommend that the Secretary of State's Office explore ways to expand and improve its searchable database.

8. Rulemaking Authority of Secretary of State

Currently: The Secretary has no authority to issue regulations implementing the lobbying laws.

Proposal: File legislation to provide the Secretary of State rulemaking authority to implement the lobbying laws, and to provide confidential, binding advisory opinions.

9. Enforcement Authority of Lobbying Laws

Currently: The Secretary of State may disqualify a person from acting as a lobbyist, but has no other enforcement authority. G.L. c. 3, § 45.

Proposal: Amend G.L. c. 3, § 45 to allow the Secretary of State to impose fines and to have the same civil enforcement authority over violations of the lobbying laws as the Ethics Commission has over violations of the ethics laws.

C. ENHANCED AUTHORITY OF ATTORNEY GENERAL

1. Civil Enforcement Authority over Ethics Violations

Currently: A civil violation of any conflict of interest law is enforced by the Ethics Commission under G.L. c. 268B, § 4(j)(3).

Proposal: File legislation to provide the Attorney General with concurrent jurisdiction to enforce this section.

2. Civil Enforcement Authority over Lobbying Violations

Currently: The Attorney General may institute civil proceedings or refer the case to the proper district attorney for violations of § 43 (filing requirement of statement of expenditures and contributions for legislative and executive agents), § 44 (same for organizations or groups), or § 47 (same for employers of legislative and executive agents). G.L. c. 3, §§ 48, 49.

Proposal: Amend G.L. c. 3, § 49 to provide the Attorney General with civil enforcement authority for violations of §§ 41 and 42.

3. Recording of Conversations in Corruption Investigations

Currently: G.L. c. 272, § 99 requires that the case involve "organized crime" to record a conversation.

Proposal: Amend G.L. c. 272, § 99 to allow one-party consent monitoring and recording of conversations with judicial approval in state corruption investigations.

4. Criminal Penalties for Fraudulent Violations of Standards of Conduct

Currently: No criminal penalties for violations of section 23.

Proposal: File legislation imposing criminal penalties on persons who, with fraudulent intent, violate or cause another to violate section 23(b)(1), (2)

or 23(c) of up to $10,000, up to 5 years imprisonment in a state prison (or 2 1/2 years in a house of correction), or both.

5. *Obstruction of Justice Statute*

Currently: Obstruction of justice is a common law offense under *Commonwealth. v. Triplett*, 426 Mass. 26 (1997).

Proposal: File legislation that imposes penalties for obstruction of justice, including but not limited to the destruction of evidence.

6. *Statewide Grand Jury*

Currently: No statewide grand jury.

Proposal: File legislation authorizing the convening of a statewide grand jury with jurisdiction extending throughout the Commonwealth.

D. ENHANCED PENALTIES FOR CONFLICT OF INTEREST VIOLATIONS

1. *Bribery*

Currently: Penalty for giving or receiving a bribe to influence an official act is up to $5,000, or up to 3 years imprisonment in a state prison (or up to 2 1/2 years in a house of correction), or both. G.L. c. 268A, § 2.

Proposal: Amend G.L. c. 268A, § 2 to increase the penalty to up to $100,000, or up to 10 years imprisonment in a state prison (or up to 2 1/2 years in a house of correction), or both.

2. *Other Criminal Violations*

a. *Gifts and Gratuities (G.L. c. 268A § 3)*
b. *Receiving Compensation for State Action (G.L. c. 268A §§ 4, 11, 17)*
c. *Revolving Door Violations (G.L. c. 268A §§ 5, 12, 18)*
d. *Participation in a Matter in Which Employee has a Financial Interest (G.L. c. 268A §§ 6, 13, 19)*
e. *Financial Interest in Contract of State Agency (G.L. c. 268A §§ 7, 14, 20)*
f. *Directing Bidder to particular Insurer on Public Building or Construction Contract (G.L. c. 268A § 8)*

Currently: Penalty for violations of (a) through (e) is up to $3,000, and up to 2 years imprisonment, or both. The penalty for (f) is up to $5,000, and up to 2 years imprisonment, or both.

Proposal: Amend G.L. c. 268A to increase the maximum penalty for each violation to up to $10,000, or up to 5 years imprisonment in a state prison (or up to 2 1/2 years in a house of correction), or both.

3. *Civil Violations of Conflict of Interest Laws*

Currently: Penalty for a civil violation of any conflict of interest law under G.L. c. 268A is up to $2,000 for each violation. G.L. c. 268B, § 4(j)(3).

Proposal: Amend G.L. c. 268B, § 4(j)(3) to increase the civil penalty to up to $10,000 for each civil violation of the conflict of interest laws other than bribery, and increase the civil penalty for bribery to $25,000.

E. ENHANCED PENALTIES FOR FINANCIAL DISCLOSURE VIOLATIONS

1. False Statements in Ethics Proceeding and Filing False Disclosures

Currently: Penalty for willfully making materially false statements in a proceeding before the Ethics Commission or filing a false Statement of Financial Interest (SFI) (no explicit willful or material requirement for the SFI) is up to $1,000, or up to 3 years imprisonment in state prison (or up to 2 ½ years in a house of correction), or both. G.L. c. 268B, § 7.

Proposal: Amend G.L. c. 268B, § 7 to increase the penalty to up to $10,000, or up to 5 years imprisonment in a state prison (or up to 2 1/2 years in a house of correction), or both for willfully making materially false statements in a proceeding before the Commission or willfully filing a materially false SFI.

2. Civil Violations of Financial Disclosure Laws

Currently: Penalty for a violation of any financial disclosure law under G.L. c. 268B is up to $2,000 for each violation. G.L. c. 268B, § 4(j)(3).

Proposal: Amend G.L. c. 268B, § 4(j)(3) to increase the penalty to up to $10,000 for each violation.

F. ENHANCED PENALTIES FOR LOBBYING VIOLATIONS

1. Late Filings

Currently: Penalty for filing a late statement is $250 (if less than 10 days late) or $500 (if more than 10 days late). G.L. c. 3, § 43 (for legislative and executive agents) and § 47 (for employers of legislative and executive agents). Secretary may waive fees for good cause.

Proposal: Amend G.L. c. 3, §§ 43, 47 to increase the penalty to $50 per day for the first 20 days and $100 per day for every day after the twentieth day.

2. Registration Violations

Currently: Penalty for violating registration-related lobbying rules under G.L. c. 3, §§ 41, 42, 43, 44, and 47, is a misdemeanor punishable by not less than $100 and not more than $5,000, with no possibility of imprisonment. G.L. c. 3, § 48. The Attorney General may prosecute when appropriate for violations of § 41 (annual registration and payment of filing fee) and § 42 (prohibition on agreements to influence legislation for compensation). The Attorney General may institute civil proceedings or refer the case to the proper district attorney for violations of § 43 (filing requirement of statement of expenditures and contributions for legislative and executive agents), § 44 (same for organizations or groups), or § 47 (same for employers of legislative and executive agents).

Proposal: Amend G.L. c. 3, § 48 to increase the criminal penalty to up to $10,000, or up to 5 years imprisonment in a state prison (or up to 2 1/2 years in a house of correction), or both.

3. Disqualification for Lobbying Violations

Currently: The Secretary of State may, upon cause shown, disqualify a person from acting as a lobbyist for 3 regular sessions following the disqualification. G.L. c. 3, § 45.

Proposal: Amend G.L. c. 3, § 45 to allow the Secretary of State, upon cause shown, to suspend or permanently revoke a legislative or executive agent's license.

4. Gift Restriction

Currently: Penalty for a lobbyist providing anything of value to a public official or employee (or a member of their family) is not less than $100 and not more than $5,000. G.L. c. 3, §§ 43, 48. The ethics laws prohibit gifts from a lobbyist to public officials of $100 or more in value in a calendar year and impose a penalty of up to $2,000 for violating that restriction. G.L. c. 268B, §§ 6 and 4(j)(3).

Proposal: Amend G.L. c. 3, § 48 to increase the penalty to up to $10,000, or up to 5 years imprisonment in a state prison (or up to 2 1/2 years in a house of correction), or both for a lobbyist providing anything of value to a public official (or a member of their family). Update G.L. c. 268B, § 6 to remove the inconsistent $100 per year prohibition and bring the language in line with G.L. c. 3, § 43.

G. MANDATORY TRAINING AND EDUCATION

1. Summary of Conflict of Interest Laws

Currently: No statutory requirement that government employees receive a summary of the conflict of interest laws.

Proposal: File legislation to require the Ethics Commission to make a summary of the conflict of interest laws available on its website. Require that all state, county, and municipal employees, within 30 days of becoming an employee and every year thereafter, be furnished with the summary by and file an acknowledgement with: (i) the city or town clerk for municipal employees; (ii) the appointing authority or his designee for appointed state and county employees; or (iii) the Commission for elected state and county employees. Require the Commission to establish procedures for implementing this section and ensuring compliance.

2. Periodic Online Training

Currently: No statutory requirement that government employees take an online training course on the conflict of interest laws. (The Commission has an online training program for state employees).

Proposal: File legislation to require the Commission to make an online training program available on its website. Require that all state, county, and municipal employees, within 30 days of becoming an employee and every 2 years thereafter, take the online training program. Require the Commission to log and maintain a record of completion. Require the Commission to establish procedures for implementing this section and ensuring compliance.

3. Training Program for Municipalities

Currently: No statutory training requirement for municipal employees.

Proposal: File legislation to require the Commission to develop a certification program for municipalities (so that each municipality has at least one person knowledgeable about conflict of interest laws). Require that each municipality designate a senior level employee as its liaison to the Commission. Require the Commission to conduct seminars for designated liaisons.

4. Training for Lobbyists

Currently: No statutory requirement that lobbyists receive training on lobbying laws.

Proposal: Amend G.L. c. 3, § 41 to require all legislative and executive agents, within 90 days of the date of the effective date of the act and every year thereafter, to take either an in-person or online certification course from the Secretary of State's Office and receive a certificate of completion to be filed with the Secretary of State, prior to being able to register as a legislative or executive agent. Require the Secretary of State's Office to issue regulations to implement this section.

SECTION BY SECTION SUMMARY OF PROPOSED LEGISLATION

AN ACT IMPROVING THE LAWS RELATING TO ETHICS AND LOBBYING

SECTIONS 1 & 2. Amends section 39 of chapter 3 to update the definitions of "legislative agent" and "executive agent" to include the terms "legislative lobbying" and "executive lobbying" and to reduce the amount of permissible incidental lobbying from 50 hours or $5,000 in any 6-month reporting period to 10 hours or $2,500 in any 3-month reporting period.

SECTIONS 3 & 4. Amends section 39 of chapter 3 to add definitions of "legislative lobbying" and "executive lobbying" that include municipal lobbying connected to state lobbying and acts done in preparation for an actual communication with a government employee.

SECTION 5. Amends section 39 of chapter 3 to update the definition of "client" to include persons, corporations, partnerships, associations, and other entities.

SECTION 6 & 65. Amends section 41 of chapter 3 to require all legislative and executive agents to annually complete a certification course offered by the Secretary of State's Office prior to registering as a legislative or executive agent.

SECTION 7. Amends section 41 of chapter 3 to require the Secretary of State to issue each legislative and executive agent a license every year.

SECTION 8. Amends section 41 of chapter 3 to direct the Secretary of State to enact regulations to implement the lobbying laws, and to provide confidential, binding advisory opinions.

SECTION 9, 13 & 15. Amends sections 43, 44, and 37 of chapter 3 to require lobbying reports filed by legislative and executive agents, lobbyist organizations, and employers of legislative and executive agents to be filed quarterly.

SECTION 10 & 16. Amends sections 43 and 47of chapter 3 to require all executive and legislative agents to file reports, regardless of whether they are registered and their names appear on the docket.

SECTION 11. Amends section 43 of chapter 3 to update the information that must be reported by legislative and executive agents to include: the identification of the client for whom the agent provided lobbying services; the legislative bills or government action that the agent sought to influence; the position the agent took on each bill or government action; the amount of compensation the agent received; and business associations the agent has with public officials.

SECTION 12 & 17. Amends sections 43 and 47 of chapter 3 to increase the penalty applicable to legislative and executive agents and employers of legislative and executive agents who file late statements from $250 if the statement is less than 10 days late or $500 if the statement is more than 10 days late to $50 per day for the first 20 days late and $100 per day for every day after the twentieth day.

SECTION 14. Amends section 45 of chapter 3 to provide the Secretary of State with civil enforcement authority over the lobbying laws, including authority to subpoena documents and testimony; conduct adjudicatory proceedings; impose civil fines of up to $10,000 per violation; and suspend and revoke a violator's license.

SECTION 18. Amends section 48 of chapter 3 to increase the criminal penalty for violating the lobbying laws from a fine of not less than $100 and not more than $5,000, to a fine of up to $10,000, or up to 5 years imprisonment in a state prison, or up to 2 1/2 years in a house of correction, or both.

SECTION 19. Amends section 49 of chapter 3 to provide the Attorney General with civil enforcement authority over violations of registration, filing fee, identification card requirements, and violations concerning improper agreements to influence decisions of executive branch employees or legislation.

SECTION 20. Adds a new section 13E to chapter 268 providing penalties of up to $25,000, or up 10 years imprisonment in a state prison, or up to 2 1/2 years in a house of correction, or both for obstruction of justice.

SECTION 21. Amends section 2 of chapter 268A to increase the maximum criminal penalty for giving or receiving a bribe to influence an official act from a fine of $5,000, or 3 years imprisonment in a state prison (or 2 1/2 years in a house of correction), or both to a fine of up to $100,000, or up to 10 years imprisonment in a state prison (or up to 2 1/2 years in a house of correction), or both.

SECTIONS 22 & 24. Amends section 3 of chapter 268A to clearly prohibit gratuities of substantial value given to a state, county, or municipal employee for or because of the employee's official position. The Commission is required to adopt regulations to define substantial value (which shall not be less than $50) and establish exceptions where the circumstances do not present a genuine risk of a conflict or appearance of a conflict.

SECTIONS 23, 25, 28-31, 33-36, 38-41. Amends sections 3 to 8, 11 to 14, and 17 to 20 of chapter 268A to increase the penalties for gifts and gratuities, receiving compensation for state action, revolving door violations, participation in a matter in which employee has a financial interest, financial interest in the contract of a state agency, and directing a bidder to a particular insurer on pubic building or construction contract from a maximum of $3,000, or 2 years imprisonment in a state prison (or 2 1/2 years in a house of correction), or both (a maximum of $5,000, or 2 years imprisonment in a state prison (or 2 1/2 years in a house of correction), or both for directing a bidder to a particular insurer)

to a maximum of $10,000, 5 years imprisonment in a state prison (or 2 1/2 years in a house of correction), or both.

SECTIONS 26, 27, 47, 48 & 59. Amends section 5(e) of chapter 268A and section 1 of chapter 268B to include executive agents and executive lobbying to the revolving door provisions.

SECTIONS 32, 37 & 42. Amends sections 9, 15, and 21 of chapter 268A to allow the Commission to recover, after an adjudicatory proceeding, the amount of the economic advantage resulting from a violation or restitution up to $25,000 without filing a separate lawsuit. The violator may obtain review of the Commission's decision in Superior Court.

SECTION 43. Amends section 23 of chapter 268A to give the Commission jurisdiction over false claims by government employees.

SECTION 45. Amends chapter 268A to add section 26 to impose criminal penalties for fraudulently violating section 23(b)(1), (2) or 23(c) or, with fraudulent intent, causing another person to violate section 23(b)(1), (2) or 23(c), of a fine of not more than $10,000, or by imprisonment in the state prison for not more than 5 years, or in a jail or house of correction for not more than 2 1/2 years, or by both such fine and imprisonment.

SECTIONS 44, 46, 66 & 67. Amends chapter 268A to add sections 27 to 29 to provide that all government employees receive a summary of the conflict of interest laws from the Ethics Commission within 30 days of becoming a government employee and every year thereafter (with a 90-day transition period for current employees); to provide that the Ethics Commission establish an online training program on the conflict of interest laws and that all government employees must take the online training program within 30 days of becoming a government employee and every 2 years thereafter (with a 90-day transition period for current employees); and to provide that each municipality designate a senior level employee to serve as its liaison to the Ethics Commission and that the Ethics Commission develop a certification program for municipalities and provide training to the designated liaisons.

SECTION 49. Amends section 2 of chapter 268B to provide that the Commission will be guaranteed an annual base budget of no less than the preceding year.

SECTION 50. Amends section 2(m) of chapter 268B to authorize the Secretary of State and the Inspector General to provide personnel and other assistance to the Commission, just as the State Police, the State Auditor, the Comptroller, the Attorney General, and the Director of OCPF are currently authorized to do.

SECTION 51. Amends section 3(a) of chapter 268B to provide the Ethics Commission with rulemaking authority to implement the conflict of interest laws.

SECTION 52. Amends section 4 of chapter 268B to expand the Commission's authority to share information with the offices of: the Attorney General, the United States

Attorney, the District Attorney, the Inspector General, the Secretary of State, and the Office of Campaign and Political Finance.

SECTION 53. Amends section 4(c) of chapter 268B to include a 5 year statute of limitations for ethics violations, beginning from the date the Commission learns of the violation. Notwithstanding the 5 year statute of limitations, the Commission is prohibited from bringing any action for a violation that occurred more than 6 years from the date of the most recent alleged misconduct.

SECTION 54. Amends section 4(d) of chapter 268B to mandate compliance with summonses issued by the Ethics Commission and allow the recipient to seek a court order quashing the summons.

SECTION 55. Amends section 4(j)(3) of chapter 268B to increase the penalty for a civil violation of any conflict of interest law other than bribery or any financial disclosure law from a maximum of $2,000 per violation to a maximum of $10,000 per violation. The civil penalty for bribery is increased to $25,000.

SECTIONS 56 & 57. Amends sections 4(j) and 4(k) of chapter 268B to clarify that the Ethics Commission's authority to file an action in Superior Court to enforce an order and the Superior Court's ability to review the order applies to orders issued in accordance with chapter 268A in addition to chapter 268B.

SECTION 58. Amends section 4 of chapter 268 B to allow the Attorney General, along with the Ethics Commission, to civilly enforce the conflict of interest laws.

SECTION 60. Amends section 6 of chapter 268B to conform to the existing gift prohibition in the lobbying laws by prohibiting gifts from legislative or executive agents to government officials or employees.

SECTIONS 61 & 62. Amends section 7 of chapter 268B to increase the penalty for willfully making false statements in a proceeding before the Ethics Commission or for willfully filing a materially false SFI from a maximum of a $1,000 fine, or 3 years imprisonment in a state prison or 2 1/2 years in a house of correction, or both to a maximum of a $10,000 fine, 5 years imprisonment in a state prison or 2 1/2 years in a house of correction, or both.

SECTION 63. Amends section 99 of chapter 272 to allow one-party consent monitoring and recording of conversations with judicial approval in state corruption cases.

SECTION 64. Adds a new chapter 277A to provide for a statewide grand jury with jurisdiction throughout Massachusetts.

PROPOSED LEGISLATION

AN ACT IMPROVING THE LAWS RELATING TO ETHICS AND LOBBYING

SECTION 1. Section 39 of chapter 3 of the General Laws, as appearing in the 2006 Official Edition, is hereby amended by striking out the definition of "Executive agent" and inserting in place thereof the following definition:-

"Executive agent", a person who for compensation or reward engages in executive lobbying, which includes at least one communication with a government employee. The term "executive agent" shall include a person who, as part of his regular and usual business or professional activities and not simply incidental thereto, engages in executive lobbying, whether or not any compensation in addition to the salary for such activities is received for such services. For the purposes of this definition a person shall be presumed to engage in activity covered by this definition in a manner that is simply incidental to his regular and usual business or professional activities if he: (i) engages in any activity or activities covered by this definition for not more than 10 hours during any reporting period; and (ii) receives less than $2,500 during any reporting period, for any activity or activities covered by this definition.

SECTION 2. Section 39 of chapter 3, as so appearing, is hereby further amended by striking out the definition of "Legislative agent" and inserting in place thereof the following definition:-

"Legislative agent", a person who for compensation or reward engages in legislative lobbying, which includes at least one communication with a government employee. The term "legislative agent" shall include a person who, as part of his regular and usual business or professional activities and not simply incidental thereto, engages in legislative lobbying, whether or not any compensation in addition to the salary for such activities is received for such services. For purposes of this definition a person shall be presumed to engage in activity covered by this definition in a manner that is simply incidental to his regular and usual business or professional activities if he: (i) engages in any activity or activities covered by this definition for not more than 10 hours during any reporting period; and (ii) receives less than $2,500 during any reporting period, for any activity or activities covered by this definition.

SECTION 3. Section 39 of chapter 3, as so appearing, is hereby further amended by inserting after the definition of "Executive agent" the following definition:-

"Executive lobbying," any act to influence or to attempt to influence the decision of any officer or employee of the executive branch or an authority, including but not limited to statewide constitutional officers and employees thereof, where such decision concerns

legislation or the adoption, defeat or postponement of a standard, rate, rule or regulation pursuant thereto, or any act to communicate directly with a covered executive official to influence a decision concerning policy or procurement. The term includes acts to influence or attempt to influence the decision of any officer or employee of a city or town when those acts are intended to carry out a common purpose with executive lobbying at the state level; and includes strategizing, planning, research, and other background work only if performed in connection with or for use in an actual communication with a government employee for purposes of the acts described in this definition.

SECTION 4. Section 39 of chapter 3, as so appearing, is hereby further amended by inserting after the definition of "Legislative agent" the following definition:-

"Legislative lobbying," any act to promote, oppose or influence legislation, or to promote, oppose or influence the governor's approval or veto thereof. Acts to influence legislation shall include, without limitation, any action to influence the introduction, sponsorship, consideration, action or nonaction with respect to any legislation. The term includes acts to influence or attempt to influence the decision of any officer or employee of a city or town when those acts are intended to carry out a common purpose with legislative lobbying at the state level; and includes strategizing, planning, research, and other background work only if performed in connection with or for use in an actual communication with a government employee for purposes of the acts described in this definition.

SECTION 5. Section 39 of chapter 3, as so appearing, is hereby further amended by striking out the definition of "Client" and inserting in place thereof the following definition:-

"Client", any person, corporation, partnership, association, or other entity that contracts with another person, corporation, partnership, association, or other entity to receive lobbying services.

SECTION 6. Section 41 of chapter 3, as so appearing, is hereby amended by inserting after the first paragraph the following paragraph:-

The state secretary shall offer educational seminars on the requirements of sections 39 to 50, inclusive, for all legislative agents and executive agents. The seminars shall be conducted in-person or offered online through the state secretary's website. All new legislative and executive agents, as defined by section 39, shall, before registering with the state secretary, and every year thereafter, complete an in-person or online seminar offered by the state secretary. Completion of the in-person or online seminar shall be a requirement for annual registration with the state secretary. If requested by the state secretary, the commonwealth, acting through the superintendent of the state bureau of

office buildings, shall provide, at no cost to the state secretary, suitable facilities for such seminars. The state secretary shall adopt regulations for implementing this section.

SECTION 7. The last paragraph of section 41 of chapter 3, as so appearing, is hereby amended by striking out the first sentence and inserting in place thereof the following 3 sentences:- Upon registration, the state secretary shall issue to each legislative agent and executive agent a license which shall entitle the holder to act as an executive or legislative agent for a client that has filed a registration statement under this section. A nontransferable identification card shall evidence this license and shall include the agent's name and photograph. Each license shall expire on December 31 of each year, unless sooner suspended or revoked under section 45.

SECTION 8. Section 41 of chapter 3, as so appearing, is hereby further amended by adding the following 2 paragraphs:-

The state secretary shall adopt regulations under chapter 30A to carry out sections 39 to 50, inclusive.

The state secretary shall, upon written request from a person who is or may be subject to sections 39 to 50, inclusive, render advisory opinions on the requirements of those sections. An opinion rendered by the state secretary, until and unless amended or revoked, shall be a defense in a criminal action brought under sections 39 to 50, inclusive, and shall be binding on the state secretary and the attorney general in any subsequent proceedings concerning the person who requested the opinion and who acted in good faith, unless material facts were omitted or misstated by the person in the request for an opinion. Such requests shall be confidential; but the state secretary may publish such opinions if the name of the requesting person and any other identifying information is not included in such publication unless the requesting person consents to such inclusion.

SECTION 9. Section 43 of chapter 3, as so appearing, is hereby further amended by striking out, in lines 1 to 3, the words "On or before the fifteenth day of July, complete from January first through June thirtieth; and the fifteenth day of January, complete from July first to December thirty-first of the preceding year" and inserting in place thereof the following words:- On or before April 15, complete from January 1 through March 31; on or before July 15, complete from April 1 through June 30; on or before October 15, complete from July 1 through September 30; and on or before January 15, complete from October 1 to December 31 of the preceding year.

SECTION 10. Section 43 of chapter 3, as so appearing, is hereby amended by striking out, in line 4, the words "appearing on the docket".

SECTION 11. Section 43 of chapter 3, as so appearing, is hereby further amended by striking out the third paragraph and inserting in place thereof the following 2 paragraphs:-

Every executive and legislative agent shall include in the statement required by this section for the relevant reporting period: (1) the identification of each client for whom the legislative or executive agent provided lobbying services; (2) a list of all bill numbers of legislation and other governmental action that the executive or legislative agent acted to promote, oppose or influence; (3) a statement of the executive or legislative agent's position on each such bill or other governmental action; (4) the identification of the client or clients on whose behalf the executive or legislative agent was acting with respect to each such bill or governmental action; and (5) the amount of compensation received for executive or legislative lobbying from each client with respect to each such bill or action. The disclosure shall be required regardless of whether the executive or legislative agent specifically referenced the bill number or other governmental action while acting to promote, oppose or influence legislation, and shall be as complete as practicable.

Every executive and legislative agent shall also include in the statement required by this section all direct business associations with public officials.

SECTION 12. The fourth paragraph of section 43 of chapter 3, as so appearing, is hereby amended by striking out the second sentence and inserting in place thereof the following sentence:- This penalty shall be in the amount of $50 per day up to the twentieth day and an additional $100 per day for every day after the twentieth day until the statement is filed. The state secretary may waive the above penalties for good cause.

SECTION 13. Section 44 of chapter 3, as so appearing, is hereby amended by striking out, in lines 1 to 3, the words "On or before the fifteenth day of July, complete from January first through June thirtieth; and the fifteenth day of January, complete from July first to December thirty-first of the preceding year" and inserting in place thereof the following words:- On or before April 15, complete from January 1 through March 31; on or before July 15, complete from April 1 through June 30; on or before October 15, complete from July 1 through September 30; and on or before January 15, complete from October 1 to December 31 of the preceding year.

SECTION 14. Chapter 3 of the General Laws is hereby further amended by striking out section 45 and inserting in place thereof the following section:-

Section 45. (a) Upon receipt of a sworn complaint signed under pains and penalties of perjury, or upon receipt of evidence which is deemed sufficient by the state secretary, the state secretary shall initiate a preliminary inquiry into any alleged violation of sections 39 to 50, inclusive, of this chapter. At the beginning of a preliminary inquiry into any such alleged violation, the state secretary shall notify the attorney general of such action. All

proceedings and records relating to a preliminary inquiry or initial staff review to determine whether to initiate an inquiry shall be confidential, except that the state secretary may provide to: (1) the attorney general, the United States Attorney or a district attorney of competent jurisdiction evidence which may be used in a criminal proceeding; (2) the inspector general information concerning fraud, waste, or abuse in the expenditure of public funds; (3) the state ethics commission concerning violations of chapters 268A and 268B; and (4) the director of the office of campaign and political finance information concerning violations of chapter 55. Any information provided by the state secretary pursuant to this section shall be confidential in accordance with this section and section 4 of chapter 268B, except that such information may be used by the officer or agency to whom it was provided in any investigation or subsequent proceedings. The state secretary shall notify any person who is the subject of the preliminary inquiry of the existence of such inquiry and the general nature of the alleged violation within 30 days of the commencement of the inquiry.

(b) If a preliminary inquiry fails to indicate reasonable cause for belief that any provision of sections 39 to 50, inclusive, of this chapter has been violated, the state secretary shall immediately terminate the inquiry and so notify, in writing, the complainant, if any, and the person who had been the subject of the inquiry.

(c) If a preliminary inquiry indicates reasonable cause for belief that any provision of sections 39 to 50, inclusive, of this chapter has been violated, the state secretary may initiate an adjudicatory proceeding to determine whether there has been such a violation.

(d) The state secretary may require by summons the attendance and testimony of witnesses and the production of books, papers and other records relating to any matter being investigated by it pursuant to this chapter. Such summons may be issued by the state secretary and shall be served in the same manner as summonses for witnesses in civil cases, and all provisions of law relative to summonses issued in such cases, including the compensation of witnesses, shall apply to summonses issued by the state secretary. Such summonses shall have the same force, and be obeyed in the same manner, and under the same penalties in case of default, as if issued by order of a justice of the superior court and may be quashed only upon motion of the summonsed party and by order of a justice of the superior court .

(e) The state secretary or his designee may administer oaths and may hear testimony or receive other evidence in any proceeding.

(f) All testimony in an adjudicatory proceeding shall be under oath. All parties shall have the right to call and examine witnesses, to introduce exhibits, to cross-examine witnesses who testify, to submit evidence, and to be represented by counsel. Before testifying, all witnesses shall be given a copy of the regulations governing adjudicatory proceedings. All witnesses shall be entitled to be represented by counsel.

(g) Any person whose name is mentioned during an adjudicatory proceeding of the state secretary and who may be adversely affected thereby may appear personally before the

state secretary on his own behalf, with or without an attorney, to give a statement in opposition to such adverse mention or file a written statement of such opposition for incorporation into the record of the proceeding.

(h) All hearings in adjudicatory proceedings of the state secretary carried out pursuant to the provisions of this section shall be public.

(i) Within 30 days after completion of deliberations, the state secretary shall publish a written report of his findings and conclusions.

(j) Upon a finding pursuant to an adjudicatory proceeding that there has been a violation of this chapter, the state secretary may issue an order:

(1) requiring the violator to cease and desist such violation of sections 39 to 50, inclusive, of this chapter;
(2) requiring the violator to file any report, statement or other information as required by sections 39 to 50, inclusive, of this chapter;
(3) suspending for a specified period or revoking the license and registration of the violator; or
(4) requiring the violator to pay a civil penalty of not more than $10,000 for each violation of this chapter.

The state secretary may file a civil action in superior court to enforce this order.

(k) Final action by the state secretary under this section shall be subject to review in superior court upon petition of any party in interest filed within 30 days after the action for which review is sought. The court shall enter a judgment enforcing, modifying, or setting aside the order of the state secretary, or it may remand the proceedings to the state secretary for such further action as the court may direct. If the court modifies or sets aside the state secretary's order or remands the proceedings to the state secretary, the court shall determine whether such modification, set aside, or remand is substantial. If the court does find such modification, set aside, or remand to be substantial, the petitioner shall be entitled to be reimbursed from the treasury of the commonwealth for reasonable attorneys' fees and all court costs incurred by him in the defense of the charges contained in the proceedings. The amount of such reimbursement shall be awarded by the court but shall not exceed $20,000 per person, per case.

SECTION 15. Section 47 of chapter 3, as so appearing, is hereby amended by striking out, in lines 1 to 3, the words "On or before the fifteenth day of July, complete from January first through June thirtieth; and the fifteenth day of January, complete from July first to December thirty-first of the preceding year" and inserting in place thereof the following words:- On or before April 15, complete from January 1 through March 31; on or before July 15, complete from April 1 through June 30; on or before October 15, complete from July 1 through September 30; and on or before January 15, complete from October 1 to December 31 of the preceding year.

SECTION 16. Section 47 of chapter 3, as so appearing, is hereby further amended by striking out, in lines 4 and 5, the words "whose name appears upon the docket".

SECTION 17. The second paragraph of section 47 of chapter 3, as so appearing, is hereby amended by striking out the second sentence and inserting in place thereof the following sentence:- This penalty shall be in the amount of $50 per day up to the twentieth day and an additional $100 per day for every day after the twentieth day until the statement is filed. The state secretary may waive these penalties for good cause.

SECTION 18. Section 48 of chapter 3, as so appearing, is hereby amended by striking out, in line 3, the words "five thousand dollars" and inserting in place thereof the following words:- $10,000, or by imprisonment in the state prison for not more than 5 years, or in a jail or house of correction for not more than 2 1/2 years, or by both such fine and imprisonment.

SECTION 19. Section 49 of chapter 3, as so appearing, is hereby amended by inserting after the first sentence the following 2 sentences:- These courts may also, upon application of the attorney general, grant equitable or mandamus relief to enforce sections 41 and 42 and the provisions of section 43 prohibiting the offering or giving of or paying for gifts, meals, beverages, or other items. Relief under this section may include (a) an order to pay to the commonwealth an amount equal to the value of any compensation or thing paid or received in violation of section 42, or the value of any gift, meal, beverage, or other item given or received in violation of section 43; and (b) a civil penalty of up to $10,000 for each violation of sections 41 to 47, inclusive.

SECTION 20. Chapter 268 of the General Laws is hereby amended by inserting after section 13D the following section:-

Section 13E. (a) As used in this section, "official proceeding" means a proceeding before a court or grand jury of the commonwealth, or a proceeding before a state agency or commission, which proceeding is authorized by law and relates to an alleged violation of a criminal statute or the laws and regulations enforced by the state ethics commission, the state secretary, the office of the inspector general, or the office of campaign and political finance, or for which the attorney general may issue a civil investigative demand.

(b) Whoever alters, destroys, mutilates, or conceals a record, document, or other object, or attempts to do so, with the intent to impair the record, document or object's integrity or availability for use in an official proceeding, whether or not the proceeding is pending at that time, shall be punished, by (i) a fine of not more than $10,000, or by imprisonment in the state prison for not more than 5 years, or in a jail or house of correction for not more

than 2 1/2 years, or by both such fine and imprisonment, or (ii) if the official proceeding involves a violation of a criminal statute, by a fine of not more than $25,000, or by imprisonment in the state prison for not more than 10 years, or in a jail or house of correction for not more than 2 1/2 years, or by both such fine and imprisonment.

(c) The record, document, or other object need not be admissible in evidence or free of a claim of privilege.

(d) A prosecution under this section may be brought in the county where the official proceeding was or would have been convened or where the alleged conduct constituting an offense occurred.

SECTION 21. Section 2 of chapter 268A of the General Laws, as so appearing, is hereby amended by striking out, in lines 46 to 49, the words "five thousand dollars or by imprisonment in the state prison for not more than three years or in a jail or house of correction for not more than two and one half years, or by both such fine and imprisonment in a jail or house of correction" and inserting in place thereof the following words:- $100,000, or by imprisonment in the state prison for not more than 10 years, or in a jail or house of correction for not more than 2 1/2 years, or by both such fine and imprisonment.

SECTION 22 . Section 3 of chapter 268A, as so appearing, is hereby amended by striking out clauses (a) and (b) and inserting in place thereof the following 2 clauses:-

(a) Whoever, otherwise than as provided by law for the proper discharge of his official duties, directly or indirectly gives, offers, or promises anything of substantial value to any present or former state, county, or municipal employee or to any member of the judiciary, or to any person selected to be such an employee or member of the judiciary for or because of the employee's official position; or

(b) Whoever, being a present or former state, county, or municipal employee or member of the judiciary, or person selected to be such an employee or member of the judiciary, otherwise than as provided by law for the proper discharge of his official duties, directly or indirectly asks, demands, exacts, solicits, seeks, accepts, receives, or agrees to receive anything of substantial value for himself for or because of the employee's official position; or.

SECTION 23. Section 3 of chapter 268A, as so appearing, is hereby further amended by striking out, in lines 30 and 31, the words "three thousand dollars or by imprisonment for not more than three years, or both" and inserting in place thereof the following words:- $10,000, or by imprisonment in the state prison for not more than 5 years, or in a jail or house of correction for not more than 2 1/2 years, or by both such fine and imprisonment.

SECTION 24. Section 3 of chapter 268A, as so appearing, is hereby further amended by adding the following paragraph:-

The commission shall adopt regulations: (i) defining "substantial value," provided however that "substantial value" shall not be less than $50; (ii) establishing exclusions for ceremonial gifts; (iii) establishing exclusions for gifts given solely because of family or friendship; and (iv) establishing additional exclusions for other situations that do not present a genuine risk of a conflict or the appearance of a conflict of interest.

SECTION 25. Section 4 of chapter 268A, as so appearing, is hereby amended by striking out, in lines 17 and 18, the words "three thousand dollars or by imprisonment for not more than two years, or both" and inserting in place thereof the following words:- $10,000, or by imprisonment in the state prison for not more than 5 years, or in a jail or house of correction for not more than 2 1/2 years, or by both such fine and imprisonment.

SECTION 26. Section 5 of chapter 268A, as so appearing, is hereby amended by inserting after the word "legislative", in line 26, the following words:- or executive.

SECTION 27. Section 5 of chapter 268A, as so appearing, is hereby further amended by inserting after the word "body", in line 28, the following words:- , as determined by the commission pursuant to regulation.

SECTION 28. Section 5 of chapter 268A, as so appearing, is hereby further amended by striking out, in lines 41 and 42, the words "three thousand dollars or by imprisonment for not more than two years, or both" and inserting in place thereof the following words:- $10,000, or by imprisonment in the state prison for not more than 5 years, or in a jail or house of correction for not more than 2 1/2 years, or by both such fine and imprisonment.

SECTION 29. Section 6 of chapter 268A, as so appearing, is hereby amended by striking out, in lines 7 and 8, the words "three thousand dollar or by imprisonment for not more than two years, or both" and inserting in place thereof the following words:- $10,000, or by imprisonment in the state prison for not more than 5 years, or in a jail or house of correction for not more than 2 1/2 years, or by both such fine and imprisonment.

SECTION 30. Section 7 of chapter 268A, as so appearing, is hereby amended by striking out, in lines 5 and 6, the words "three thousand dollar or by imprisonment for not more than two years, or both" and inserting in place thereof the following words:- $10,000, or by imprisonment in the state prison for not more than 5 years, or in a jail or house of correction for not more than 2 1/2 years, or by both such fine and imprisonment.

SECTION 31. Section 8 of chapter 268A, as so appearing, is hereby amended by striking out, in lines 17 and 18, the words "five thousand dollars or by imprisonment for not more than two years, or both" and inserting in place thereof the following words:- $10,000, or by imprisonment in the state prison for not more than 5 years, or in a jail or house of correction for not more than 2 1/2 years, or by both such fine and imprisonment.

SECTION 32. Chapter 268A is hereby further amended by striking out section 9 and inserting in place thereof the following section:-

Section 9. (a) In addition to any other remedies provided by law, any violation of sections 2 to 8, inclusive, which has substantially influenced the action taken by any state agency in any particular matter, shall be grounds for avoiding, rescinding or canceling the action on such terms as the interests of the commonwealth and innocent third persons require.

(b) In addition to the remedies set forth in subsection (a), the state ethics commission upon a finding pursuant to an adjudicatory proceeding that a person has acted to his economic advantage in violation of sections 2 to 8, inclusive, or section 23, may issue an order: (1) requiring the violator to pay the commission on behalf of the commonwealth damages in the amount of the economic advantage or $500, whichever is greater; and (2) requiring the violator to make restitution to an injured third party. If there has been no final criminal judgment of conviction or acquittal of the same violation, upon receipt of the written approval of the attorney general, the commission may order payment of additional damages in an amount not exceeding twice the amount of the economic advantage or $500, and payment of such additional damages shall bar any criminal prosecution for the same violation.

The maximum damages that the commission may order a violator to pay under this section shall be $25,000. If the commission determines that the damages authorized by this section exceed $25,000, it may bring a civil action against the violator to recover such damages.

(c) The remedies authorized by this section shall be in addition to any civil penalty imposed by the state ethics commission in accordance with clause (3) of subsection (j) of section 4 of chapter 268B.

SECTION 33. Section 11 of chapter 268A, as so appearing, is hereby amended by striking out, in lines 16 and 17, the words "three thousand dollars or by imprisonment for not more than two years, or both" and inserting in place thereof the following words:- $10,000, or by imprisonment in the state prison for not more than 5 years, or in a jail or house of correction for not more than 2 1/2 years, or by both such fine and imprisonment.

SECTION 34. Section 12 of chapter 268A, as so appearing, is hereby amended by striking out, in lines 24 and 25, the words "three thousand dollars or by imprisonment for not more than two years, or both" and inserting in place thereof the following words:- $10,000, or by imprisonment in the state prison for not more than 5 years, or in a jail or house of correction for not more than 2 1/2 years, or by both such fine and imprisonment.

SECTION 35. Section 13 of chapter 268A, as so appearing, is hereby amended by striking out, in lines 7 and 8, the words "three thousand dollars or by imprisonment for not more than two years, or both" and inserting in place thereof the following words:- $10,000, or by imprisonment in the state prison for not more than 5 years, or in a jail or house of correction for not more than 2 1/2 years, or by both such fine and imprisonment.

SECTION 36. Section 14 of chapter 268A, as so appearing, is hereby amended by striking out, in lines 5 and 6, the words "three thousand dollars or by imprisonment for not more than two years, or both" and inserting in place thereof the following words:- $10,000, or by imprisonment in the state prison for not more than 5 years, or in a jail or house of correction for not more than 2 1/2 years, or by both such fine and imprisonment.

SECTION 37. Chapter 268A of the General Laws is hereby further amended by striking out section 15 and inserting in place thereof the following section:-

Section 15. (a) In addition to any other remedies provided by law, a violation of sections 2, 3, 8, or 11 to 14, inclusive, which has substantially influenced the action taken by any county agency in any particular matter, shall be grounds for avoiding, rescinding, or canceling the action on such terms as the interests of the county and innocent third persons require.

(b) In addition to the remedies set forth in subsection (a), the state ethics commission, upon a finding pursuant to an adjudicatory proceeding that a person has acted to his economic advantage in violation of sections 2, 3, 8, 11 to 14, inclusive, or 23, may issue an order (1) requiring the violator to pay the commission on behalf of the county damages in the amount of the economic advantage or $500, whichever is greater; and (2) requiring the violator to make restitution to an injured third party. If there has been no final criminal judgment of conviction or acquittal of the same violation, upon receipt of the written approval of the attorney general and the district attorney, the commission may order payment of additional damages in an amount not exceeding twice the amount of the economic advantage or $500, and payment of such additional damages shall bar any criminal prosecution for the same violation.

The maximum damages that the commission may order a violator to pay under this section shall be $25,000. If the commission determines that the damages authorized by

this section exceed $25,000, it may bring a civil action against the violator to recover such damages.

(c) The remedies authorized by this section shall be in addition to any civil penalty imposed by the commission in accordance with clause (3) of subsection (j) of section 4 of chapter 268B.

SECTION 38. Section 17 of chapter 268A, as so appearing, is hereby amended by striking out, in lines 16 and 17, the words "three thousand dollars or by imprisonment for not more than two years, or both" and inserting in place thereof the following words:- $10,000, or by imprisonment in the state prison for not more than 5 years, or in a jail or house of correction for not more than 2 1/2 years, or by both such fine and imprisonment.

SECTION 39. Section 18 of chapter 268A, as so appearing, is hereby amended by striking out, in lines 22 and 23, the words "three thousand dollars or by imprisonment for not more than two years, or both" and inserting in place thereof the following words:- $10,000, or by imprisonment in the state prison for not more than 5 years, or in a jail or house of correction for not more than 2 1/2 years, or by both such fine and imprisonment.

SECTION 40. Section 19 of chapter 268A, as so appearing, is hereby amended by striking out, in lines 7 and 8, the words "three thousand dollars or by imprisonment for not more than two years, or both" and inserting in place thereof the following words:- $10,000, or by imprisonment in the state prison for not more than 5 years, or in a jail or house of correction for not more than 2 1/2 years, or by both such fine and imprisonment.

SECTION 41. Section 20 of chapter 268A, as so appearing, is hereby amended by striking out, in lines 5 and 6, the words "three thousand dollars or by imprisonment for not more than two years, or both" and inserting in place thereof the following words:- $10,000, or by imprisonment in the state prison for not more than 5 years, or in a jail or house of correction for not more than 2 1/2 years, or by both such fine and imprisonment.

SECTION 42. Chapter 268A is hereby further amended by striking out section 21 and inserting in place thereof the following section:-

Section 21. (a) In addition to any other remedies provided by law, a finding by the commission pursuant to an adjudicatory proceeding that there has been any violation of sections 2, 3, 8, or 17 to 20, inclusive, which has substantially influenced the action taken by any municipal agency in any particular matter, shall be grounds for avoiding, rescinding, or canceling the action of said municipal agency upon request by said municipal agency on such terms as the interests of the municipality and innocent third persons require.

(b) In addition to the remedies set forth in subsection (a), the commission, upon a finding pursuant to an adjudicatory proceeding that a person has acted to his economic advantage in violation of sections 2, 3, 8, 17 to 20, inclusive, or 23, may issue an order (1) requiring the violator to pay the commission on behalf of the municipality damages in the amount of the economic advantage or $500, whichever is greater; and (2) requiring the violator to make restitution to an injured third party. If there has been no final criminal judgment of conviction or acquittal of the same violation, upon receipt of the written approval of the district attorney, the commission may order payment of additional damages in an amount not exceeding twice the amount of the economic advantage or $500, and payment of such additional damages shall bar any criminal prosecution for the same violation.

The maximum damages that the commission may order a violator to pay under this section shall be $25,000. If the commission determines that the damages authorized by this section exceed $25,000, it may bring a civil action against the violator to recover such damages.

(c) The remedies authorized by this section shall be in addition to any civil penalty imposed by the commission in accordance with clause (3) of subsection (j) of section 4 of chapter 268B.

SECTION 43. Section 23 of chapter 268A, as so appearing, is hereby amended by inserting after clause (3) of subsection (b), the following clause:-

(4) present a false or fraudulent claim to his employer for any payment or benefit of substantial value.

SECTION 44. Section 23 of chapter 268A, as so appearing, is hereby further amended by striking out subsection (f).

SECTION 45. Chapter 268A is hereby further amended by adding the following section:-

Section 26. Any person who, with fraudulent intent, violates subsection (b)(1), (b)(2) or (c) of Section 23, and any person who, with fraudulent intent, causes any other person to violate subsection (b)(1), (2) or (c) of Section 23 shall be punished by a fine of not more than $10,000, or by imprisonment in the state prison for not more than 5 years, or in a jail or house of correction for not more than 2 1/2 years, or by both such fine and imprisonment.

SECTION 46. Chapter 268A is hereby further amended by adding the following 3 sections:-

Section 27. The state ethics commission shall prepare, and update as necessary, summaries of this chapter for state, county, and municipal employees, respectively, which the commission shall publish on its official website. Every state, county, and municipal employee shall, within 30 days of becoming such an employee, and on an annual basis thereafter, be furnished with a summary of this chapter prepared by the commission and sign a written acknowledgment that he has been provided with such a summary. Municipal employees shall be furnished with the summary by, and file an acknowledgment with, the city or town clerk. Appointed state and county employees shall be furnished with the summary by, and file an acknowledgment with, the employee's appointing authority or his designee. Elected state and county employees shall be furnished with the summary by, and file an acknowledgment with, the commission. The commission shall establish procedures for implementing this section and ensuring compliance.

Section 28. The state ethics commission shall prepare and update from time to time the following online training programs, which the commission shall publish on its official website:

> (1) a program which shall provide a general introduction to the requirements of this chapter. Every state, county, and municipal employee shall, within 30 days after becoming such an employee, and every 2 years thereafter, complete the online training program. Upon completion of the online training program, the Commission shall log and maintain an electronic record of completion for 6 years.
>
> (2) a program which shall provide information on the requirements of this chapter applicable to former state, county, and municipal employees.
>
> The state ethics commission shall establish procedures for implementing this section and ensuring compliance.

Section 29. Each municipality , acting through its city council, board of selectmen, or board of aldermen, shall designate a senior level employee of the municipality as its liaison to the state ethics commission. The municipality shall notify the commission in writing of any change to such designation within 30 days of such change. The commission shall disseminate information to the designated liaisons and conduct educational seminars for designated liaisons on a regular basis on a schedule to be determined by the commission in consultation with the municipalities.

SECTION 47. Section 1 of chapter 268B, as so appearing, is hereby amended by inserting after clause (f) the following clause:-

(f 1/2) "executive agent" means any person who is an executive agent as defined in section 39 of chapter 3;.

SECTION 48. Section 1 of chapter 268B, as so appearing, is hereby further amended by striking out clause (k) and inserting in place thereof the following clause:-

(k) "legislative agent" means any person who is a legislative agent as defined in section 39 of chapter 3;.

SECTION 49. Section 2 of chapter 268B, as so appearing, is hereby amended by adding the following subsection:-
(n) Subject to appropriation, the commission shall receive an appropriation for the operations of the commission in an amount no less than the amount of the appropriation for the immediately preceding fiscal year. The general court shall appropriate additional amounts to the state ethics commission as may be necessary and appropriate.

SECTION 50. Section 2 of chapter 268B, as so appearing, is hereby further amended by inserting after the words "attorney general,", in line 61, the following words:- inspector general, state secretary,.

SECTION 51. Section 3 of chapter 268B, as so appearing, is hereby amended by striking out, in lines 4 and 5, the words "; provided, however, that the rules and regulations shall be" and inserting in place thereof the following words:- , including but not.

SECTION 52. Subsection (a) of section 4 of chapter 268B of the General Laws, is hereby amended by striking out the third sentence and inserting in place thereof the following 2 sentences:- All commission proceedings and records relating to a preliminary inquiry or initial staff review to determine whether to initiate an inquiry shall be confidential, except that the commission may provide to: (1) the attorney general, the United States Attorney or a district attorney of competent jurisdiction information which may be used in a criminal proceeding; (2) the inspector general information concerning fraud, waste, or abuse in the expenditure of public funds; (3) the state secretary information concerning violations of sections 39 to 50, inclusive, of chapter 3; and (4) the director of the office of campaign and political finance information concerning violations of chapter 55. Any information provided by the commission pursuant to this section shall be confidential in accordance with this section, except that such information may be used by the officer or agency to whom it was provided in any investigation or subsequent proceedings.

SECTION 53. Subsection (c) of section 4 of chapter 268B, as so appearing, is hereby amended by adding the following sentence:- The commission shall initiate such an adjudicatory hearing within 5 years from the date the commission learns of the alleged

violation, but not more than 6 years from the date of the last conduct relating to the alleged violation.

SECTION 54. Subsection (d) of section 4 of chapter 268B, as so appearing, is hereby amended by striking out the last sentence and inserting in place thereof the following sentence:- Such summonses shall have the same force, and be obeyed in the same manner, and under the same penalties in case of default, as if issued by order of a justice of the superior court and may be quashed only upon motion of the summonsed party and by order of a justice of the superior court.

SECTION 55. Subsection (j) of section 4 of chapter 268B, as so appearing, is hereby further amended by striking out, in lines 73 and 74, the words "two thousand dollars for each violation of this chapter or said chapter two hundred and sixty-eight A" and inserting in place thereof the following words:- $10,000 for each violation of this chapter or chapter 268A, with the exception of a violation of section 2 of chapter 268A, which shall be subject to a civil penalty of not more than $25,000.

SECTION 56. Subsection (j) of section 4 of chapter 268B, as so appearing, is hereby further amended by inserting after the word "order", in line 76, the following words:- and any order issued by the commission in accordance with chapter 268A.

SECTION 57. Subsection (k) of section 4 of chapter 268B, as so appearing, is hereby further amended by inserting after the words "pursuant to this chapter", in line 77, the following words:- or chapter 268A.

SECTION 58. Section 4 of chapter 268B, as so appearing, is hereby further amended by inserting after subsection (k) the following subsection:-

(l) The superior court shall have concurrent jurisdiction to issue orders under subsection (j) in a civil action brought by the attorney general. In any such action, an advisory opinion of the commission under clause (g) of section 3 shall be binding to the same extent as it is against the commission under that clause.

SECTION 59. Section 5 of chapter 268B, as so appearing, is hereby amended by inserting after the word "legislative", in line 68, the following words:- or executive

SECTION 60. Chapter 268B, is hereby further amended by striking out section 6 and inserting in place thereof the following section:-

Section 6. No executive or legislative agent shall knowingly and willfully offer or give to any public official or public employee or a member of such person's immediate family, and no public official or public employee or member of such person's immediate family shall knowingly and willfully solicit or accept from any executive or legislative agent, any gift of any kind or nature; provided, however, that these prohibitions shall not apply to gifts given by an executive or legislative agent to a public official or public employee who is a member of his immediate family or a relative within the third degree of consanguinity or of such agent's spouse or the spouse of any such relative.

SECTION 61. Section 7 of chapter 268B, as so appearing, is hereby amended by striking out, in line 7, the words "files a false" and inserting in place thereof the following words:- willfully files a materially false

SECTION 62. Section 7 of chapter 268B, as so appearing, is hereby further amended by striking out, in lines 9 and 10, the words "one thousand dollars or by imprisonment in the state prison for not more than three years" and inserting in place thereof the following words:- $10,000, or by imprisonment in the state prison for not more than 5 years, or in a jail or house of correction for not more than 2 1/2 years, or by both such fine and imprisonment.

SECTION 63. Paragraph 4 of subsection B of section 99 of chapter 272, as so appearing, is hereby amended by adding the following 2 sentences:- Furthermore, it shall not constitute an interception for an investigative or law enforcement officer, as defined in this section, to record or transmit a wire or oral communication if the officer is a party to such communication or has been given prior authorization to record or transmit the communication by such a party and (a) the recording or transmission is made in the course of an investigation of bribery or other crime involving the use or prospective use of an official position by a state, municipal, or county employee; and (b) a judge of competent jurisdiction determines pursuant to the procedures set out in chapter 276 that there is probable cause that evidence of such a crime will be recorded or transmitted. There shall not be a requirement that any investigation of bribery or other crime involving the use or prospective use of an official position by a state, municipal, or county employee involves organized crime in order to obtain such judicial approval.

SECTION 64. The General Laws are hereby further amended by inserting after chapter 277 the following chapter:-

CHAPTER 277A
Statewide Grand Jury

Section 1. Upon written application of the attorney general to the chief justice of the superior court department, with good cause stated therein, the chief justice may authorize

the convening of a statewide grand jury with jurisdiction extending throughout the commonwealth.

Section 2. The chief justice of the superior court department shall, upon granting an application, receive recommendations from the attorney general as to the county in which the statewide grand jury shall sit. Upon receiving the attorney general's recommendations, the chief justice shall choose 1 of those recommended locations as the site where the grand jury shall sit. Once a county has been selected, the chief justice shall direct the regional administrative judge from the county selected to appoint, and reappoint as necessary, a superior court judge to preside over the statewide grand jury.

Section 3. The presiding superior court judge shall consult with the attorney general and district attorney for the relevant district about the nature and scope of the investigation and shall thereafter designate and authorize an existing county grand jury to serve as a statewide grand jury for purposes of the investigation specified in the written application, or, alternatively, convene and preside over a specially empaneled statewide grand jury.

Section 4. A specially empaneled statewide grand jury shall be drawn and selected in the same manner as the county grand jury in the county in which the specially empaneled statewide grand jury sits. A specially empaneled statewide grand jury may, at the discretion of the presiding superior court judge, draw jurors from counties adjoining the one in which the statewide grand jury is to sit.

Section 5. A specially empaneled statewide grand jury convened pursuant to this chapter shall sit for a period not to exceed 18 months. The presiding superior court judge may extend this period if, in accordance with section 1A of chapter 277 and section 41 of chapter 234A, public necessity requires further time by the grand jury to complete an investigation then in progress.

Section 6. The attorney general or her assistant shall attend each session of a statewide grand jury and may prosecute any indictment returned by it. The attorney general or her assistant shall have the same powers and duties in relation to a statewide grand jury that she has in relation to a county grand jury, except as otherwise provided by law.

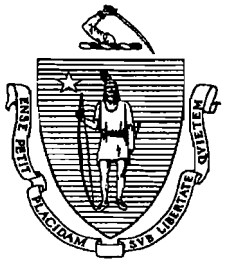
Section 7. Indictments shall be returned in the county where the statewide grand jury sits and shall thereafter be transferred to the county specified by the grand jury on the indictment. Venue for purposes of trial of offenses indicted by a statewide grand jury shall be in any county where venue would otherwise be proper.

Section 8. No provision of this chapter shall be construed as limiting the jurisdiction of county grand juries or district attorneys in the commonwealth. Except as otherwise provided by law, an investigation by a statewide grand jury shall not preempt an investigation by any other grand jury or agency having jurisdiction over the same subject matter.

SECTION 65. Every person who is a legislative agent or executive agent as defined by section 39 of chapter 3 of the General Laws on the effective date of this act, shall, within 90 days after the effective date of this act, and every year thereafter, complete an in-person or online seminar offered by the state secretary in accordance with section 41 of chapter 3.

SECTION 66. In accordance with section 26 of chapter 268A of the General Laws, inserted by this act, within 90 days after the effective date of this act every state, county, and municipal employee shall be provided a summary of chapter 268A prepared by the state ethics commission and shall file a written acknowledgment as required by that section.

SECTION 67 . Within 90 days after the effective date of this act, each municipality shall provide written notification to the state ethics commission of the liaison designated under section 28 of chapter 268A of the General Laws.



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DEVAL L. PATRICK
GOVERNOR

TIMOTHY P. MURRAY
LIEUTENANT GOVERNOR

By His Excellency

DEVAL L. PATRICK
GOVERNOR

EXECUTIVE ORDER NO. 506

Establishing the Governor's Task Force on Public Integrity

WHEREAS, the people of the Commonwealth of Massachusetts have entrusted public officials and employees with operating our government in an open and honest manner, free of any improper influence;

WHEREAS, it is imperative that public officials and employees at all levels of government earn and maintain the confidence of the people they represent;

WHEREAS, to earn and maintain that confidence, all public officials and employees must adhere to the highest standards of honesty and integrity;

WHEREAS, strong and effective laws governing ethics and lobbying activities are essential components to defining and enforcing such standards; and

WHEREAS, the Commonwealth's existing laws pertaining to ethics and lobbying were enacted separately, at different times, and would benefit from a comprehensive reexamination that assesses the adequacy of the existing regulatory frameworks, the sufficiency of the current enforcement mechanisms and penalties, and whether gaps

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exist between the separate systems that could be closed through greater coordination.

NOW, THEREFORE, I, Deval L. Patrick, Governor of the Commonwealth of Massachusetts, by virtue of the authority vested in me by the Constitution, Part 2, c. 2, § I, Art. I, hereby order as follows:

Section 1. There is hereby established the Governor's Task Force on Public Integrity (the "Task Force").

Section 2. The Task Force shall consist of the Chief Legal Counsel, who shall serve as Chairperson, and up to 12 additional members to be appointed by the Governor, including two members of the Senate Committee on Ethics and Rules, two members of the House Committee on Ethics, and up to eight additional individuals with expertise on issues relating to ethics and public integrity. All members of the Task Force shall serve in an advisory capacity. The Task Force will meet at such times and places as determined by the Chairperson.

Section 3. The Task Force shall examine the existing legal and regulatory frameworks governing ethics and lobbying and make recommendations concerning any need for amendments to the current laws, regulations, investigative and enforcement mechanisms, and penalties. The Task Force's assessment shall include the sufficiency of the current legal and regulatory schemes, and the potential for strengthening the system through greater coordination among the offices responsible for ensuring the integrity of the Commonwealth's governmental processes. In formulating its recommendations, the Task Force shall confer with representatives of the various state offices responsible for overseeing state ethics and lobbying as well as with academics, practitioners and others with expertise in these areas.

Section 4. The Task Force may report to the Governor from time to time and shall issue a final report to the Governor presenting its assessment and recommendations no later than 60 days from the date of this order.

Section 5. Nothing in this Executive Order shall be construed to require or permit action inconsistent with any applicable state or federal law.

Section 6. This Executive Order shall continue in effect until amended, superseded or revoked by subsequent Executive Order.

Given at the Executive Chamber in Boston this 7th day of November in the year of our Lord two thousand and eight and of the Independence of the United States, two hundred and thirty-two.

DEVAL L. PATRICK
GOVERNOR
Commonwealth of Massachusetts

WILLIAM FRANCIS GALVIN
Secretary of the Commonwealth

GOD SAVE THE COMMONWEALTH OF MASSACHUSETTS

TASK FORCE MEMBERS

Ben T. Clements, *Chair*
Chief Legal Counsel, Office of the Governor

Charlie Baker
CEO, Harvard Pilgrim Healthcare

George Brown
Professor, Boston College Law School

Kimberly Budd
Director, Community Values Program, Harvard Business School

Benjamin Downing
State Senator, Commonwealth of Massachusetts

James Fagan
State Representative, Commonwealth of Massachusetts

Scott Harshbarger
Senior Counsel, Proskauer Rose LLP

Michael Knapik
State Senator, Commonwealth of Massachusetts

Mary Rogeness
State Representative, Commonwealth of Massachusetts

Joseph Savage
Partner, Goodwin Procter LLP

Peter Sturges
General Counsel, Harvest Automation, Inc.

Andrew Tarsy
Senior Executive, Facing History & Ourselves

Pam Wilmot
Executive Director, Common Cause Massachusetts

MEETING SCHEDULE

Date	Location	Purpose
Nov. 19, 2008	Governor's Council Chamber State House, Room 360	Organizational Meeting State Ethics Commission Presentation
Nov. 25, 2008	Governor's Council Chamber State House, Room 360	Working Meeting Secretary of State Presentation Inspector General Presentation
Dec. 3, 2008	Hearing Room A-1 State House	Public Hearing
Dec. 10, 2008	Governor's Council Chamber State House, Room 360	Working Meeting
Dec. 17, 2008	Governor's Council Chamber State House, Room 360	Working Meeting
Jan. 5, 2009	Governor's Council Chamber State House, Room 360	Working Meeting

LIST OF PUBLIC HEARING PARTICIPANTS*

Representative Jennifer Callahan

Dan Iagatta

Michael Sullivan, Office of Campaign and Political Finance

Thomas Colo

Stephen Kaiser

Karen Nober, State Ethics Commission

John Grossman, Executive Office of Public Safety & Security

Chester Chalupowski

Yawu Miller, ONE Massachusetts

Shirley Kressel

Deirdre Cummings, MassPIRG

Kristi Devine

Cathy Su

Kathleen Devine

Frances Burke, Integrity International

Eli Beckman, Green-Rainbow Party

Janet Aldrich

Julius Levine+

Barbara Hildt+

* In order of testimony.
+ Written testimony provided, but unable to attend public hearing.

SUMMARY OF PUBLIC COMMENTS

Authority of State Ethics Commission

1. Increase the Ethics Commission's budget commensurate with any increase in responsibilities or expansion of jurisdiction.
2. Fold the Ethics Commission's budget into the Attorney General's budget. Allow the Attorney General to direct additional resources to the Ethics Commission and other oversight agencies.
3. Adopt a rule that any person who fails to keep confidential the fact of their complaint filed with the Ethics Commission shall be deemed to have waived that complaint.

Lobbying Requirements for Municipalities

Include municipality lobbyists in registration and reporting requirements.

Availability of Lobbyist Information

1. Require lobbyists to report the client on whose behalf they received payment.
2. Require lobbyists to report the amount of payment and the activities for which they received payment.
3. Require lobbyists to report every meeting and the subject of every meeting with decision makers.
4. Link the databases of lobbying expenditures, campaign contributions, and corporate officers with information about what bills are being advocated on behalf of which corporations.

Lobbyist Qualifications

1. No convicted felon should be eligible to register as a lobbyist or executive agent.
2. Other than attorneys, all lobbyists/executive agents should be required to take a 6-hour certification course, consisting of 2-hour segments by the Ethics Commission, OCPF, and the Secretary of State.
3. Require lobbyists "on duty" in public facilities to wear name tags identifying them as lobbyists to remind public officials that such conversations are in the course of lobbying.

Prosecution

Establish a specialized office of public corruption to prosecute state public corruption cases.

Training and Education

1. Teach ethics in school and make ethics a subject on standardized exams.
2. Require ethics training for all government employees.

Legislative Process

1. Increase transparency of the legislative process.

2. Home rule petitions should go through committee before a vote on the House and Senate floors.
3. Mandate ethics training for legislators each legislative cycle.
4. Strip legislators who have been fined or have received disciplinary action by the State Ethics Commission of their leadership titles.

Availability and Accessibility of Budget Information

1. Allow taxpayers to see how their money is spent.
2. Remove earmarks from state budgetary process.
3. Review process for outside sections to the budget.
4. Prohibit legislative appropriations directly to persons or corporations, except to satisfy a judicial judgment, unless the money has been subject to a public, competitive, and open procurement process.

Open Meeting Law

1. Subject the Legislature to the open meeting law.
2. Expand open meeting law to municipal meetings, quasi-state agencies and other entities who are discussing the use of public resources.
3. Strengthen open meeting law.

Public Records Law

1. Subject the Legislature to the public records law.
2. Limit exemptions from public records law.
3. Disclose public records on official websites, not just in the State Archives.
4. Provide public records without cost to requesters.
5. Subject any advance payments required for record searches to review by the Secretary of State's Office who would decide whether such costs need to be paid.

Campaign Finance

1. Greater disclosure of campaign contributions, including contributions made to ballot measures.
2. Re-enact and fund a comprehensive, voluntary, public campaign financing system.
3. Require candidates to turn over excess campaign funds after each election cycle, either to the state treasury, the state political party, a recognized charity, or pro rata to donors. Establish a minimum "allowance" to help offset the costs of incumbency.
4. Expand oversight of OCPF reports, including particular expense reports.
5. Publish candidate spending on the internet.
6. Require candidates to file weekly reports and daily reports during the last 7 days of the campaign, rather than periodic reports.
7. Increase the campaign contribution limit from $500 per year to $2,300 per year.
8. Ban lobbyists from making political contributions.

Miscellaneous

1. Greater disclosure of rates paid and the nature of services provided by "consultants" to elected officials.
2. Cap consulting fees/bidding rates of consultants and contractors.
3. Establish a citizens' review board of all public contracting and increase transparency and accountability over quasi-public agencies.
4. Make zoning documents immediately available online and in public libraries.
5. Broaden the definition of "state employee" to include municipal employees.
6. Tighten deadlines for the statement of financial interest and gift disclosures.
7. Fairness in liquor licensing procedures.
8. Implement a fraud statute.
9. Strengthen whistleblower provisions.
10. Institute an anti-nepotism law that immediate family members of a legislator, governor, or councilor are ineligible for state employment.
11. Establish term limits for members of the legislature and other elected officials.
12. Consider increasing elected official compensation.

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