Illinois Reform Commission

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Initial Recommendations
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INTRODUCTION

In the midst of an unprecedented integrity crisis in Illinois, today, the Illinois Reform Commission proposes its initial "pay to play" reforms in the areas of campaign finance, procurement, enforcement and transparency. The 15-member Commission unanimously makes these recommendations after six full Commission hearings, five town hall meetings across the state and over 1,000 proposals received through its website.

With its 100-day mission far from complete, the Commission also briefly previews the core topics it expects to tackle in the days ahead in its six chosen topics. Based on its exhaustive and ongoing independent review of these issues, the Commission is unanimous in its view that reform is urgently needed to address a multitude of problems in Illinois government. While the recommendations today come after considerable thought and deliberation, they remain a work in progress. In the coming weeks, the Commission expects to further refine and supplement its recommendations. We announce these preliminary recommendations now in order to allow sufficient time for them to be considered by the public and legislature so that action can be taken prior to the end of the 2009 legislative session.

We appreciate that a number of our recommendations are bold; yet we do not contend that our proposals alone will solve all that ills Illinois. However, we think that enacting these tangible proposals---with an accompanying attitudinal shift---will be a positive first step to address the crisis directly. We expect and hope that these proposals will generate thoughtful public discourse and debate. While reasonable people may disagree on the best approach to address the culture of corruption that has pervaded Illinois politics, there can be no denial of the fact that action is needed now to address the multi-faceted corruption problems that have plagued the State. Through our hearings, town hall meetings and website, we have heard the voice of a public that is demanding change -- demanding accountability -- demanding reform. We urge the Governor and the Legislature to listen to that collective voice.

The time for action is now.

CAMPAIGN FINANCE

Issues

At best, big money in politics creates the appearance of undue influence over public officials and at worst it fosters actual corruption. Illinois is one of a few remaining states without significant campaign finance regulation. The recent election cycle with never-before seen expenditures in judicial races, out-of-control spending on legislative races, and the scandals that have brought down the last two governors leaves little doubt that the system is broken.

Recommendations

1. **Amend the Election Code to enhance campaign disclosure filing requirements.**

   a. **Year-Round "Real Time" Reporting.** Require year-round electronic submission of A-1 forms to the Illinois State Board of Elections within 5 business days after receipt of any contribution of $1000 or more for statewide elections and within 5 business days after receipt of any contribution of $500 or more for any other elections.

   b. **Bundling Disclosures.** Require political committees to disclose the identity, occupation, employer and amounts received through the efforts of any person or entity that coordinated contributions each time the aggregate total of those contributions equals or exceeds a threshold amount ($16,000) during any reporting period.

      Contributions are "coordinated" if (a) a person or entity physically or electronically forwards the contributions to the political committee, (b) the political committee credits the person or entity through records, designations, or other means of recognizing that the person or entity has raised the money or (c) the political committee knows or has reason to know that the person or entity raised the funds. Political committees must file the disclosures within 5 business days after receiving the contribution that causes the coordinator's aggregate amount raised to exceed the threshold and update it each time the contributor's efforts generate a new amount of contributions equal to or greater than the threshold.

      "Coordinated expenditure" are to be defined to recognize that no express agreement is necessary for the expenditure to be "coordinated" and, therefore, subject to disclosure requirements.

   c. **Independent Expenditure Disclosure.** Require any person or entity making an independent expenditure in support of the candidacy of any person to disclose their identity, occupation and employer as well as the

nature, beneficiary and recipient of any expenditures which individually or in the aggregate, are equal to or greater than $5,000.

2. **Enhance Enforcement Function and Transparency of State Board of Elections.** Amend the Election Code to increase transparency and enforcement of Election Code violations. Require the Board to hear complaints publicly and make available a searchable, on-line database of violations and penalties assessed or waived. Update the database within 5 business days of any Board action. Encourage greater imposition of existing penalties for knowing or willful violations, and more consistent use of available enforcement tools such as subpoena power and random audits to discover violations.

3. **Establish Contribution Limits.** Amend the Election Code to incorporate contribution limits as follows:

Recipient \ Contributor	from natural person	from State party committee*	from legislative caucus committee	from any other political committee	from corporation, ** labor org, association
to candidate for statewide office	$2,400	$50,000 (gen'l election)		$5,000	$5,000
to candidate for legislative office	$2,400	$30,000	$30,000	$5,000	$5,000
to candidate for other state office	$2,400	$10,000		$5,000	$5,000
to candidate for local office	$2,400	$10,000		$5,000	$5,000
to State party committee*	$2,400			$5,000	$5,000
to leg. caucus committee	$2,400			$5,000	$5,000
to any other committee	$2,400 (each 2 years)			$5,000	$5,000

*References to "State" party committees reflect the fact that multiple committees of a political party are treated as a single committee for these purposes, such that the limit applies in the aggregate.

**The term "corporation" also includes limited liability companies, partnerships, and similar entities.

4. **Extend Pay-to-Play Ban.** Ban contributions to state constitutional or legislative campaigns from contractors who have obtained or are seeking state contracts of more than $50,000 during the election cycle and companies engaged in regulated practices.

5. **Amend the Election Code to ban certain contributions altogether.** Ban contributions from lobbyists and trusts.

6. **Hold Primary Election Closer to General Election.** Amend the Election Code to hold primary elections no earlier than June.

7. **Set up Pilot Project for Public Finance.** We recommend a pilot program for public finance of judicial elections to commence in the 2010 election cycle and to give consideration for a broader, phased-in program involving the legislature and constitutional offices. The program will have the following attributes:

    a. **Qualifying Contributions.** Require candidates to establish credibility by raising a minimum number of qualifying contributions not to exceed $200 per contribution. (The number of contributions required to qualify will vary by office.)

    b. **Initial Grant.** Candidates who qualify will receive initial grants, which will vary depending on the type of race (circuit, appellate or judicial court). These grants will be sufficiently large to keep the campaign viable.

    c. **Spending caps.** In return for the qualifying grant, candidate will agree to abide by predetermined spending limitations. Violations of the spending limitation will result in disqualifications from the program, and return of previously provided funds.

    d. **Matching funds.** After the initial grants, legislative and constitutional officers may continue to solicit private contributions in amounts not to exceed $500. The State will match these funds on a sliding scale (matching less as the candidate raises more) up to a capped amount. Judicial candidates may not fundraise after accepting the initial grant.

    e. **Rescue funds.** The State will increase the amount of matching funds available to public financing candidates who face opponents who have opted not to participate in the public financing program and are outspending the publicly financed candidate. This amount will be capped.

PROCUREMENT

Issues

The current system has failed to stop pay-to-play abuse of the procurement system, resulting in widespread manipulation of the system in awarding State contracts. Clouted and favored companies have benefited from large contracts through corrupt processes, to the detriment of companies without the right connections. Consequently, the reduced competition raises the cost of goods and services; and a system where connected companies do best means tax dollars are leveraged for political advantage.

Recommendations

1. Move State procurement officials into an insulated, central, independent procurement office

Summary: In light of the extensive history of abuse in the awarding of State contracts, the procurement professionals in State government must be insulated from political pressure to the maximum degree possible. To achieve this, they must be part of a separate procurement department with the ability (a) to resist pressure from political officials (or employees working on their behalf) and (b) to make decisions about the awarding of contracts by following the rules and applying professional criteria.

a. Place the five existing chief procurement officers ("CPO") in the executive branch, as well as their staffs, in a new department called the Department of Procurement. If the CPO is currently the head of the agency (as in IDOT), the lead procurement official in that agency or the equivalent would become the CPO for that area. The five CPOs would report to the Executive Procurement Officer (EPO), who would head the Department of Procurement and would have ultimate authority for procurement and contracting decisions

b. The EPO would be appointed by the Governor, subject to the approval of a supermajority of the legislature (e.g., 60% or two-thirds). The EPO would be appointed to a 5-year term and would not serve at the pleasure of the Governor. Instead, the EPO could only be removed from office by impeachment for cause

c. The EPO would hire and supervise the five CPO's, and would delegate purchasing authority to them. Subject to the EPO's approval, the current staff of the CPOs would become part of the Department of Procurement, though their offices would physically remain in their current locations.

2. Cut back Loopholes and Exemptions in Procurement Code

Summary: Loopholes that exempt large parts of State government from the procurement rules should be closed, so that State contracts are not awarded without approval of the procurement professionals.

a. All State contracts above a certain amount (e.g., $25,000) must be approved by the Department of Procurement.

b. Sections of the Procurement Code that (i) allow CPO's to delegate the power to award contracts back to the "user" agencies themselves, or (ii) create a separate tier of officials with the power to award contracts called "Associate Procurement Officers," should be abolished.

c. No-bid contracts (also called "sole source" contracts), which should be very rare, must be approved by the EPO personally. Additional transparency requirements must be met, described below in the Transparency section.

d. Emergency contracts must be approved by the EPO or the EPO's designee, and such contracts should only be awarded for a 90-day term unless an extension (of no more than 90 days) is approved by the EPO, with both the request for extension and the approval posted on-line.

e. The approval of the EPO or designated CPO should be required for any material changes, including extensions of the contract beyond its original term; change orders for contract limit increases over a specific amount (e.g., 10% over the original contract amount); changes to the contract's scope; substitution of subcontractors; changes to Minority-and Female-Owned Business Enterprise goals (including those resulting from change orders); and modifications of the vendor's Disclosure of Financial Interests (DFS).

f. All procurements for any good or service above a specified dollar amount (e.g., $25,000) by all branches of State government, including any quasi-governmental agencies, should be covered by the Procurement Code. The Legislative and Judicial branches should be not be exempt from the Procurement Code. Exemptions for other parts of State government should be abolished.

g. The current procurement processes under the other constitutional officers should have to conform to all of the requirements set out above, including the requirement that independent procurement officers be given authority to approve contracts, hire and fire staff, and serve for a defined term of office.

h. Exemptions for certain types of contracts – such as "purchase of care" contracts – should be abolished within one year, unless the head of the

new Independent Contract Monitoring Office (described below) recommends that they be retained after studying the matter.

3. Establish an Independent Contract Monitor to oversee and review the procurement process

Summary: Oversight and monitoring of the procurement process by an outside, independent agency is critical to ensure integrity in the procurement system, especially in a place like Illinois where powerful interests have succeeded in corrupting parts of the procurement process in the past. This oversight would include real-time monitoring of the contract-award process and related activities. Only through a strong, independent oversight effort will the existing rules be enforced – and therefore have meaning. Two places around the country that do this well (Miami-Dade County and the State of Massachusetts) house this oversight function in their Inspector General's Offices. Other options include housing it the Auditor General's Office, or making it a separate office.

a. Establish an Independent Contract Monitoring Office (the "Monitor") to provide outside oversight and review of the procurement process as it occurs. The Monitor's office would ideally be established as a new independent agency but, alternatively, could be housed in the Inspector General's Office or incorporated into the Auditor General's Office. If the Monitor is a separate, independent agency, its head would be selected, and protected from removal, in a way that ensures the agency's independence. The Monitor would have a 5-year term and could only be removed by impeachment for cause.

b. The Monitor's jurisdiction should include all of state government, including all contracts issued by agencies under all constitutional officers (not just the Governor), and the Legislative and Judicial Branches.

c. The budget of the Monitor's office must be sufficient to make the office effective, and must be protected from large retaliatory cuts for acting independently and forcefully. To guard against any retaliatory budget cuts, the budget of the Monitor's office would have a "floor" that is tied to a specified percentage of the Executive Branch budget.

d. Any additional cost of creating the Monitor's office would be paid for by withdrawing from each state agency a small "integrity surcharge" (0.1%) each time the agency makes a contract payment to a vendor. For example, if an agency is making a $10,000 payment to a vendor, an integrity surcharge of $10 would be charged to the agency and deducted from the agency's budget for contractual services. Thus, the agency could still spend 99.9% of the funds budgeted to it for contractors, but the last 0.1% would go to the Monitor.

e. The Monitor will have access to all procurement files and databases in real time so that all phases of procurement can be monitored. Timely notices

of all procurements should be forwarded to the monitor. The Ethics Act should be amended to include a duty for employees and vendors to cooperate with the Monitor and to provide all requested records.

f. The Monitor or its staff should attend any meeting regarding procurement. The Monitor may also initiate reviews of procurements, or groups of procurements or procurement data, for "red flags" of misconduct, waste or inefficiency. The Monitor should also receive advance notification of significant contract modifications, such as change orders over 10% of the contract award amount, and should attend hearings regarding no-bid contracts. The Monitor should also maintain staff and publicize a tip-line and tip-email to receive complaints.

g. If the Monitor observes a problem in the procurement process, the Monitor will have the option of attempting to persuade the relevant State officials to correct the problem by changing their process or decision, or to issue a public report if it cannot correct the problem otherwise.

h. The Monitor will be required to file regular public reports on its activities, and regularly appear before the legislature to discuss those reports or as otherwise requested. By resolution, either chamber of the legislature will have the authority to request that the Monitor review a specific procurement or procurements (as it does with the Auditor General).

i. The Monitor will be charged with ensuring and maintaining complete transparency of the procurement process, including an all-inclusive procurement website described below.

j. The Monitor will also hear appeals of protests on bid specifications and contract awards. Initial protests to contract awards will be lodged with the Department of Procurement (or its equivalent in the other constitutional offices), which will have a short time period to rule on a protest. The aggrieved party may appeal that decision to the Monitor. If a bid protest is granted, the Monitor's Office will have the power to block a procurement, but will not have the power to award the contract to another vendor. The action will simply require the Department of Procurement to re-bid the contract or take a different action.

4. Mandate Greater Disclosures for Contractors, Lobbyists and Others

Summary (for sections 4 and 5): Transparency in the contracting process – including more robust disclosure requirements – makes it much more difficult for corrupt interests to manipulate the contract process. While the main problem in this area has been that existing transparency rules are not consistently followed, important improvements are required in the transparency and disclosure rules.

a. The Disclosure of Financial Interests (DFS) submitted by vendors should include all individuals (other than company employees) who are or will be

having any communications with State officials in relation to the pertinent contract or bid. This includes lobbyists, but also includes non-lobbyists who are acting in any way as the agent for the company.

b. Vendors must disclose the names of all subcontractors, including information about payments to subcontractors.

c. The DFS requirements should also require disclosure of all officers and directors, any debarments, adverse judgments or findings, bankruptcies, and criminal convictions for crimes related to the veracity of the entity, its 5% or more owners, and its officers/directors. If any owners are corporate entities, then those corporate entities should also have a duty to file a DFS, and so on, until individual owners of more than 5% are disclosed.

d. All disclosure obligations must be ongoing, so that as a company adds lobbyists or agents, or changes subcontractors, it will have an obligation to update its disclosures.

e. The DFS must require signature under penalty of perjury, must be incorporated as a material term in the contract with the State, and must be filed with the State in a searchable and sortable format, preferably in on-line form. Penalties for knowing violation of disclosure requirements should include the immediate cancellation of the vendor's contract with the State, and possible debarment from future State contracts.

f. The Procurement Code should require that all procurement staff keep a log of all contact with vendors and their agents, including lobbyists, and any other interested parties. On a regular basis, this log should be posted in the on-line searchable database with all other procurement information. This disclosure should be part of an expanded Recommendation of Award process, where all employees involved in a procurement are required to sign off that they are not aware of any violations of State law, and are required to disclose any contacts with any agents for the bidders.

g. State employees should have to disclose, as part of their annual Statement of Economic Interest, any equity/debt interest of more than 5% in any company that does business with the State. Those disclosures should be collected and made available in a searchable, sortable format on the central procurement website.

5. Enhance Transparency in the Procurement Process

a. All information regarding State procurement – by the executive, legislative and judicial branches, and every constitutional officer and quasi-governmental agency – should be collected in one website in a format that is easy to use, searchable, and sortable. The information collected should include: current procurement opportunities; all applicable procurement rules and regulations; interactive training modules; a

continuously updated FAQs file; current and pending awards, including change orders and bid protests; links to the Monitor, the Inspector General's Office, Auditor General and Attorney General's Public Corruption Unit; payments to prime vendors and prime vendor payments to associated subcontractors, including the invoices/vouchers submitted; a description, with relevant links, of the bid protest process; Vendor Disclosures of Financial Interests; Employee Statements of Economic Interest; agenda and meeting schedule for the Non-Competitive Procurement Review Committee; vendor political contributions; and information required as part of the vendor registration with the Board of Elections.

b. The Procurement Code should mandate that all documents related to the recommendation by an RFP/RFI committee be made public after the award is made, including the identity of the members of the committee and their scoring sheets.

c. The Procurement Code should be amended to require a public hearing by the Department of Procurement (or its equivalent in the other constitutional offices) prior to the approval of any "no-bid" or sole source contract. The state agency must provide its justification for the "no bid" process at the hearing. The Department may hear from the vendors or other members of the public at the hearing. The Department must publish its agenda and meeting time and place in advance of meeting. All documents reviewed by the Department, as well as its decision and reasoning, will be publicly posted. Only the EPO could close the hearing.

d. The Procurement Code should be amended to require that all approvals for emergency contracts include a written justification regarding the emergency and must be posted on-line within 48 hours, or as soon as is feasible if the emergency makes posting within 48 hours impossible. Such contracts should only be awarded for a 90-day term unless an extension (of no more than 90 days) is approved by the EPO, with both the request for extension and the approval and justification posted on-line within the same time period.

ENFORCEMENT

Issues

The ability of state and local enforcement agencies to fully and effectively investigate corruption in Illinois is limited by the current scope of investigative powers, available resources and, in certain circumstances, at least a perceived lack of independence between the enforcement agencies and the potential targets of corruption investigations.

Additional enforcement issues will be addressed at the Commission's April 9 hearing on this topic, including the issues of penalties for corruption offenses, the powers of state

enforcement agencies such as the Attorney General's Office, the Illinois State Police, the state Inspector General's Offices, and issues of transparency regarding the Executive Ethics Commission and the Inspector General's Offices.

Recommendations

1. Amend Illinois law to allow for one-party consent to recordings in criminal investigations with the approval of a prosecutor.

2. Amend Illinois law to include corruption-related offenses as predicates for wiretap applications.

TRANSPARENCY

Issues

Transparency and openness are essential to the effective functioning of our democracy. Existing laws in Illinois, however, are neither adequately enforced, nor broad enough to prevent public officials from conducting business without significant scrutiny—all of which enables corruption.

Recommendations

1. Adopt a presumption in favor of disclosure when considering requests for documents made under the Illinois Freedom of Information Act, 5 ILCS 140/1 *et seq*. ("FOIA"). Require the government to redact only the exempt information while still disclosing the relevant documents as much as possible. If full disclosure is not possible, redactions of exempt information should be clearly identified. Exemptions to disclosure must be narrowly construed.

2. Require the State to disclose requested information with as much expediency and efficiency as possible and adhere to deadlines set forth in FOIA.

3. Require annual FOIA training for all government employees who are involved in responding to or evaluating FOIA disclosure requests.

4. Prohibit the State from charging any more than the actual reproduction and certification costs borne by the applicable agency when responding to an information request, as specifically set forth in FOIA.

5. Require the State to publicize what information is available and comply with FOIA's requirement to "make available for inspection and copying a reasonably current list of all types of categories of records under its control." 5 ILCS 140/5.

6. Provide that the General Assembly is governed by the Open Meetings Act, 5 ILCS 120/1 *et seq*. ("OMA").

7. Make it easier for citizens to obtain judicial enforcement of OMA by extending the statute of limitations for citizens to file a lawsuit to enforce OMA.

8. Reduce permissible reasons to convene in closed session and increase disclosure of certain information about any closed session.

9. Amend OMA to mandate that any audio and video recordings be available to the public within 5 business days following the meeting and in the absence of audio and video recordings, requiring government agencies to disclose meeting minutes that are more substantive.

10. Require annual on-line training about OMA's requirements for all public officials and require each to certify their completion of the training.

11. Issue an executive order requiring each agency to conduct a review of its data needs and reporting capabilities within 90 days and require each agency to identify any technological improvements and enhancements it needs to comply with FOIA and OMA.

12. Institute an open competition to solicit ideas from the public about how to improve the State's technology infrastructure to increase access, transparency and openness.

13. Require all elected and public officials to submit financial disclosure statements electronically in an accessible and searchable database.

14. Establish a toll-free 1-800 number to allow anonymous reporting of potential violations of FOIA and OMA.

GOVERNMENT STRUCTURE

Issues

Fairness of representation and efficiency of government operations are necessary components of effective and credible democratic representation. However, existing laws and current practices in Illinois, particularly with respect to redistricting, centralization of power, term limits and the number of government units, do not serve to enhance such fairness or efficiency.

Recommendations

On March 30, the Commission held a hearing in Peoria to address issues relating to Government Structure. At the hearing, experts testified regarding proposals for redistricting, term limits, recall of elected officials, voter initiatives and specific legislative reforms. In the coming days, the Commission will be reviewing these topics more closely and will speak publicly once it reaches consensus. For example, on the issue of redistricting, the Commission unanimously believes that the current regime

should be discarded and is studying which of two prominent redistricting options is most appropriate for Illinois.

INSPIRING BETTER GOVERNMENT

While the core of the proposals we anticipate making in this area are non-legislative in nature (for example, a voluntary public official's code of conduct) and while our Commission meeting on this topic occurs on April 24, we nonetheless have preliminarily identified several areas that warrant legislative or executive order consideration.

Issues

In changing the culture of corruption, government leaders must inspire their employees to a higher calling. When government employees see the politically-active receiving workplace rewards and benefits, it sends a perverse message to employees who focus their efforts on performing their government work with quality and pride. Leaders in government must inspire their employees to care about their work and set a high ethical example for others to follow---reminding all employees to leave politics and campaigning to their own time outside the workplace.

Recommendations

1. **Amend the Ethics Act to require enhanced training.** Require new employees to complete ethics training within one month after hire, at the latest. Require all state employees to: (a) pass a test on the substantive provisions of the Ethics Act and (b) sign an affidavit certifying that they have completed the mandatory ethics training and understand that they are subject to and will not violate the code of conduct.

2. **Reduce exempt positions.** The legislature should undertake a full evaluation and reclassification of positions that are exempt from the patronage ban (i.e., policy-making decisions), applying a narrow interpretation of "policy-making" to significantly reduce the number of positions that may be filled by political appointees.

3. **Prohibit campaign contributions by state employees to Constitutional Officers.** All Constitutional officers should issue executive orders, comparable to George Ryan's Executive Order #2 (1999), prohibiting their campaign funds from accepting contributions from state employees under their control. The Commission further encourages all candidates for public office to adopt similar policies.