



**Testimony of Alisa Kaplan, Policy Director
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Joint Commission on Ethics and Lobbying Reform

Re: State Officials and Employees Ethics Act

February 6, 2020

Leader Harris, Senator Sims, members of the Commission, thank you for the opportunity to testify. My name is Alisa Kaplan and I am the Policy Director of Reform for Illinois. Reform for Illinois is dedicated to advocating for reforms that enhance the effectiveness, accountability, and integrity of Illinois government.

Illinois is facing a crisis. Even before the latest wave of scandals, our state ranked [dead last](#) in the United States for trust in state government. Ongoing revelations about statehouse corruption show that clearly, something is not working. The people of Illinois know it, and it's reflected in their opinion of their government.

This is not to impugn the many honest public servants who do their best for their constituents, but to underscore just how important it is for the legislature to take serious, even difficult steps towards restoring the public trust. One key step it could take is to improve oversight over its legislative members and staff by strengthening the Legislative Inspector General and the Legislative Ethics Commission.

The Legislative Inspector General and the Legislative Ethics Commission Can Play an Important Role in Reducing Wrongdoing

The Inspector General's office and the Ethics Commission can play a critical part in reducing corruption and other wrongdoing. While much has been made of the role of already illegal activity in recent scandals, strong internal oversight can help nip these problems in the bud. It can create

a culture in which misconduct is less tolerated and more likely to be reported, and in which situations that may otherwise give rise to illegal corruption are identified and managed. The Legislative Inspector General can also make referrals to law enforcement, increasing the possibility that illegal as well as unethical conduct will be addressed.

In addition, these offices have the potential to make a difference in a range of ethical areas including harassment, conflicts, fraud, abuse of power, and other forms of misconduct. Strengthening them is therefore perhaps one of the most powerful things the legislature can do to deter wrongdoing, promote a culture of integrity, and restore trust in Illinois government.

That means giving the Legislative Inspector General the tools to act as an independent office and expanding the jurisdiction of the Legislative Ethics Commission to include the Governmental Ethics Act.

Empowering the Legislative Inspector General

The Legislative Inspector General is intended to act as an independent investigator. She is selected in a three-part process designed to be as bipartisan as possible and to result in the selection of an independent, fair-minded individual who is not likely to be subject to political bias or whims.

The introduction of the Legislative Inspector General in 2003 was, in theory, an important step towards independent oversight of the General Assembly. However, every individual who has held the office has said they were simply too hamstrung to perform their intended function. Moreover, they have all named similar problems and made similar recommendations for solving them.

Currently, the Legislative Inspector General must get permission from the Legislative Ethics Commission to do nearly every significant part of her job. She must ask legislators permission to open an investigation into almost every type of ethics complaint, which not only undercuts her independence but can compromise the confidentiality of complainants and deter them from coming forward. She must ask permission to subpoena documents and witnesses. She must ask permission before publishing her findings against members of the legislature, even when she finds evidence of wrongdoing and the Attorney General agrees with her.

The Public Deserves to Know When Wrongdoing is Found

We are particularly concerned about the Inspector General's inability to publish her reports without permission, because it appears that the Legislative Ethics Commission has rejected several requests by Inspectors General to publish founded reports. As best we can tell from the available records, the Commission rejected two out of the last six Inspectors General's requests to publish founded reports.

If the Inspector General finds evidence of misconduct by a public official, the public deserves to know about it. Leaving reports of governmental wrongdoing in the shadows does not inspire trust. It promotes cynicism and speculation, leaving people wondering why their government won't tell them the truth. That's the opposite of what ethics oversight should do.

The Fox Watching the Henhouse

In short, the Legislative Inspector General's office has not been given the ability to do what it was established to do. It is not exercising real independence. Instead, legislators are still overseeing legislators. Friends and colleagues are still asked to open investigations targeted at one another, to sit in judgment of each other, and to make decisions about publishing potentially negative information about each other.

This arrangement can best be described as the fox watching the henhouse. This description isn't meant to disparage the legislators on the Ethics Commission, who undoubtedly take their roles seriously. It identifies a common-sense, structural problem that almost every legitimate oversight mechanism is meant to address - that even with the best intentions, people are inherently conflicted when they're policing themselves or their friends and colleagues. These are the same friends and colleagues whose votes they may need in the future to pass legislation, the same friends and colleagues who may be judging them in the future. It's simply a conflict of interest.

The Legislative Inspector General's office is meant to balance this dynamic, but to do so she must be given the independence and tools necessary to do her job. These include subpoena power and the ability to open investigations and publish founded reports about members of the legislature without asking permission from the Legislative Ethics Commission. We need not go far to look for models - Illinois' Executive Inspector General has the ability to issue subpoenas and open investigations on its own. Other jurisdictions, such as [Florida](#), allow their investigative bodies to publish founded reports regardless of whether their legislative disciplinary committees do so.¹

Appointing Members of the Public to the Legislative Ethics Commission

There is a fourth measure that would help instill independence and transparency into the current structure: including members of the public on the Legislative Ethics Commission. Current law says that members of the public "may" be appointed to the Commission, but this has never happened. We recommend making the appointment of members of the public mandatory, and setting out criteria for their appointment, such as that appointees have experience as judges or prosecutors.

¹ Some independent commissions (i.e. with no legislator members) that are empowered to publish founded violation reports have both investigative and enforcement power. These include New Mexico, Kentucky, and others mentioned below. Others, like Florida, separate those functions, but, unlike Illinois, still empower their investigative arm to publish founded violation reports without permission from their legislative enforcement bodies.

There are models around the country for including members of the public on ethics commissions. States including [New York](#) and [Washington](#) split their commission membership between legislators and non-legislators, mandating five members of the public and four legislators. Others prohibit legislators from serving entirely, including [New Mexico](#), [Kentucky](#), [California](#), and [Connecticut](#). There are also models for how to appoint members of the public to ethics commissions. Independent appointment panels are considered one [best practice](#) to attenuate the influence of legislators. But even if these members were appointed by legislative leaders, they would be a step removed from the social and professional environment of the legislature and more likely to bring an outside perspective and increased accountability to the process.

Expanding the Jurisdiction of the Legislative Ethics Commission

Our final recommendation is to expand the jurisdiction of the Legislative Ethics Commission. Here it is important to distinguish between the State Officials and Employees Ethics Act, which we're discussing today, and the Illinois Governmental Ethics Act, which covers subjects like legislator conduct and conflicts of interest.

Both the Inspector General and the Ethics Commission currently have jurisdiction over the State Officials and Employees Ethics Act. However, while the Inspector General may make findings about the Illinois Governmental Ethics Act, the Ethics Commission has no jurisdiction over that Act, and therefore no ability to issue sanctions. Thus, even if the Inspector General finds that, for example, a senator has engaged in "conduct unbecoming a legislator" or abused their office, nothing can be done about it except - *if the Ethics Commission agrees* - publishing the Inspector General's report.

The Illinois Governmental Ethics Act, including provisions about abuse of office and conflicts of interest, should be made enforceable with fines and other penalties, and the Legislative Ethics Commission should be given jurisdiction to enforce it. Other commissions and investigatory bodies issue advisory opinions to increase the fairness of the enforcement process, help head off violations, and build a body of definitions and guidelines that can guide others seeking to behave ethically.

Conclusion

We hope you will consider these measures and take an important step towards giving the people of Illinois the ethical, accountable government it deserves. Thank you.