

# Legislative Oversight Committee

## Summary Report on the South Carolina State Ethics Commission September 2019

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The South Carolina State Ethics Commission's mission is to develop and enhance public trust in all levels of government by enforcing the Ethics Reform Act of 1991 and all other subsequent ethics legislation adopted by the General Assembly. The commission is governed by a board of eight commissioners which was recently reconstituted in 2017. The commission employs 14 employees and has a budget of \$1.5 million consisting of general funds and earmarked funds primarily from late filing penalties. Under changes made by the Ethics Reform Act of 2016, the commission now has investigative authority over members of the General Assembly, but no disciplinary authority. In 2010 the definition of "committee" found in S.C. Code §8-13-1300(6) was ruled invalid by a U.S. District Court on the ground that it is unconstitutionally overbroad. Since that time, the commission's ability to enforce statutory provisions governing committees was effectively voided. The Commission maintains a 27-page Debtors List on its website of persons who owe late penalties or enforcement fines to the agency totaling over \$2.6 million. State law requires that all disclosures and reports filed with the commission be filed using an internet-based filing system which is difficult for some filers to navigate.

### *Agency at a Glance*

The commission oversees four distinct areas of responsibility, including lobbying, ethical rules of conduct, financial disclosure, and campaign disclosure.

### *Issues*

#### *Ethics Commission Now Responsible for Cases Involving Members of the General Assembly*

Effective April 1, 2017, the Ethics Reform Act of 2016 changed the manner in which investigations and hearings are conducted involving members of the General Assembly. If a complaint is filed with or by the House or Senate Ethics Committees alleging a violation, a copy must be sent to the person alleged to have committed the violation and to the State Ethics Commission within 30 days of filing. Upon completing its investigation, the commission must provide a report to the appropriate ethics committee with a recommendation as to whether there is probable cause to believe a violation has occurred.

#### *Definition of "Committee"*

In 2010 the definition of "committee" found in S.C. Code §8-13-1300(6) was ruled "facially invalid on the ground that the definition is unconstitutionally overbroad" in a United States District Court case brought against the members of the State Ethics Commission. Since that time, the commission's ability to enforce statutory provisions governing committees was effectively voided.

- **Legislative Recommendation:** As envisioned by the legislature, in order to ensure that committees are properly monitored by the State Ethics Commission, the General Assembly should consider redefining "committee" in §8-13-1300(6).

## *Debtors List*

On its website, the State Ethics Commission maintains a 27-page listing of persons who owe late penalties or enforcement fines to the agency totaling over \$2.6 million. Prior to 2011, penalties were not capped and several late filers amassed penalties in the hundreds of thousands of dollars which are still outstanding. To help clear the \$2.6 million of fines outstanding, the commission should explore the possibility of negotiation of settlements of fines on the Debtors List. Modifications to the commission's authority to negotiate such settlements would likely be necessary, and should be explored by commission staff and brought to the attention of the General Assembly.

- **Agency Recommendation: The State Ethics Commission should study the possibility of settlements of fines on the Debtors List and notify the General Assembly of any modifications to existing statutes which would be required.**

State and local election commissions should be directing candidates to the Ethics Commission's website for filing information. However, there are no statutes requiring this. Section 8-13-350 requires a brochure prepared by the Ethics Commission to be given to public officials, public members, and public employees describing responsibilities under the Ethics Act.

- **Agency Recommendation: The State Ethics Commission should make recommendations to the General Assembly regarding legislation requiring state and local election commissions to provide candidates with information concerning requirements of the Ethics Reform Act.**

## *Public Disclosure and Accountability Reporting System*

S.C. Code §8-13-365 requires that all disclosures and reports filed with the State Ethics Commission be filed using an internet-based filing system. The online forms contain highly technical information which can be difficult for some filers to navigate.

- **Agency Recommendation: The State Ethics Commission should explore the development of brief, easy to access, on-line guides to assist filers with questions concerning the filing process.**

In order to facilitate transparency and accurate reporting, the ability to enter information into the Statement of Economic Interest and other forms throughout the year as it is collected rather than listing all information just prior to filing the forms would be helpful. However, we found that for the Statement of Economic Interest the necessary filing year for preparing next year's report is not available as a selection on the electronic menu.

- **Agency Recommendation: Working with the staff of the House and Senate Ethics Committees, the State Ethics Commission should determine if the Statement of Economic Interest form and other forms can be modified so that information can be entered online throughout the year as collected.**

## *Changes to Statutes and Regulations*

The commission's FY 16-17 Accountability Report identified twenty-two statutes that should be considered by the General Assembly for update or repeal. In addition, the commission seeks amendment to proviso 118.6 (in appropriations acts for FYs 17-18 and 18-19), and there are commission regulations which do not coincide with the statutes.

- **Agency Recommendation: The State Ethics Commission should make recommendations to the General Assembly regarding necessary changes to its statutes, regulations, and proviso 118.6.**

# Legislative Oversight Committee

## South Carolina Senate



### Report on State Ethics Commission

September 2019

The South Carolina State Ethics Commission’s mission is to develop and enhance public trust in all levels of government by enforcing the Ethics Reform Act of 1991 and all other subsequent ethics legislation adopted by the General Assembly. The commission is governed by a board of eight commissioners which was recently reconstituted in 2017. The commission employs 14 employees and has a budget of \$1.5 million consisting of general funds and earmarked funds primarily from late filing penalties. Under changes made by the Ethics Reform Act of 2016, the commission now has investigative authority over members of the General Assembly, but no disciplinary authority. In 2010 the definition of “committee” found in S.C. Code §8-13-1300(6) was ruled invalid by a U.S. District Court on the ground that it is unconstitutionally overbroad. Since that time, the commission’s ability to enforce statutory provisions governing committees was effectively voided. . The Commission maintains a 27-page Debtors List on its website of persons who owe late penalties or enforcement fines to the agency totaling over \$2.6 million. State law requires that all disclosures and reports filed with the commission be filed using an internet-based filing system which is difficult for some filers to navigate.

## ***I. Agency at a Glance***

### *Mission*

According to the agency’s accountability report, the mission of the State Ethics Commission is to work diligently to develop and enhance public trust in all levels of government. The State Ethics Commission is responsible for the enforcement of the Ethics Reform Act of 1991 and all other subsequent ethics legislation adopted by the General Assembly.

### *Governing Authority:*

The governing board of the State Ethics Commission was reconstituted under legislation effective April 1, 2017. Section 8-13-310 was revised to create a commission composed of eight rather than nine members, appointed as follows:

- Four members must be appointed by the Governor, no more than two of whom are members of the appointing Governor’s political party;
- Two members must be selected by the Senate, one upon the recommendation of the members of the majority political party in the Senate and one upon the recommendation of the members of the largest minority political party in the Senate;
- Two members must be selected by the House of Representatives, one upon the recommendation of the members of the majority political party in the House and one upon the recommendation of the members of the largest minority political party in the House.

Each member must be appointed with the advice and consent of the General Assembly. Members of the reconstituted commission were appointed for either three- or five-year terms, and those initial members serving less than five years are eligible to be reappointed for one full five-year term. The members of the State Ethics Commission are shown in the table below.

Position	Position Title	Current Members	Appointed By	Appointed Date	Expiration Date
Governor's Appointee	Member	Wilson, Ashleigh R.	Governor Henry McMaster	6/6/2017	4/1/2020
Governor's Appointee	Member	Pinkston, Brandolyn T.	Governor Henry McMaster	6/6/2017	4/1/2020
Governor's Appointee (Governor's Party)	Member	Barnwell, Brian M.	Governor Henry McMaster	6/6/2017	4/1/2022
Governor's Appointee (Governor's Party)	Member	Thrasher, Childs C.	Governor Henry McMaster	6/6/2017	4/1/2022
House Appointee (Majority Party)	Member	Jackson, Donald H.	South Carolina House of Representatives	6/6/2017	4/1/2022
House Appointee (Minority Party)	Member	Li, Victor K.	South Carolina House of Representatives	6/6/2017	4/1/2020
Senate Appointee (Majority Party)	Member	Erwin, Samuel L.	South Carolina Senate	2/27/2018	4/1/2020
Senate Appointee (Minority Party)	Member	Gist, Donald	South Carolina Senate	6/6/2017	3/31/2022

Act No. 282, the Ethics Reform Act of 2016, which was signed by the Governor on June 23, 2016, made statutory changes, including the following:

- 1) Gave the State Ethics Commission investigative authority over members of the General Assembly, but no disciplinary authority [§8-13-540].
- 2) To determine that there is probable cause to believe that a violation has occurred, a vote of six or more of the eight commission members, or a supermajority, is required [§8-13-320(10)(d) and §8-13-540(B)(6)].
- 3) Hearings of the Ethic Commission must be open to the public [§8-13-320(10)(j)] . However, the probable cause hearings before the entire commission are considered confidential and are conducted in executive session. [§8-13-320(10)(g)] .
- 4) It is unlawful for the Governor, a member of the General Assembly, or anyone who is the subject of a pending investigation or open complaint, to contact or attempt to contact, either directly or indirectly, a member of the commission or a legislative ethics committee to influence or attempt to influence the outcome of a pending investigation or open complaint [§8-13-322].

### *Programs*

The State Ethics Commission has one program, Administration, which encompasses four distinct areas of responsibility.

#### **• Lobbying registration and disclosure**

Both lobbyists and the person or entity on whose behalf they are employed, referred to as the lobbyist's principal, are required by law to register electronically with the State Ethics Commission prior to January 5<sup>th</sup> of each year or within 15 days after being hired, employed, or retained or within 15 days of hiring, employing or retaining a lobbyist. A \$100 registration fee is required of both lobbyists and lobbyist's principals. All lobbyist's principals must identify each person who will act as a lobbyist on its behalf during the covered period.

Any state employee who lobbies on behalf of that particular state agency is not required to submit the \$100 registration fee, however, the state agency must submit a registration form identifying each lobbyist who will represent the agency. The Lobbyist and Lobbyist's Principal Disclosure Statement is to be filed by each registered lobbyist and lobbyist's principal prior to June 30 and January 31. Each report should encompass income received and expenditures made through May 31 and December 31, respectively.

#### • **Ethical rules of conduct**

As outlined in the Ethics Reform Act, all public employees, public officeholders, and public members are expected to adhere to and follow rules of conduct. Anyone who is found guilty of violating these rules is subject to prosecution by the State Ethics Commission and the Attorney General's Office. A public official, public member, or public employee may not knowingly use his official office, membership, or employment to influence a government decision to obtain an economic interest for himself, a family member, an individual with whom he is associated, or a business with which he is associated.

A person may not directly or indirectly give, offer, or promise anything of value to a public official, public member, or public employee with intent to influence the public official's, public member's, or public employee's official responsibilities, nor is the public official, public member, or public employee to ask, demand, solicit, or accept anything of value for himself or for another person in return for fulfilling his official responsibilities or duties.

#### • **Financial disclosure - Statements of Economic Interest**

Statements of Economic Interest are required to be filed by elected officeholders and public officials from offices in state, county, and local government. The office holders required to file are as follows:

- All candidates for public office.
- The chief and deputy or assistant chief administrative official or employee or director of a division, institution or facility of any agency or department of state government.
- The chief administrative official of each political subdivision including school districts, libraries, regional planning councils, airport commissions, hospitals, community action agencies, water and sewer districts, and development commissions.
- County and city administrators, managers, supervisors, or chief administrative official, by whatever title.
- School district board members, superintendents of education, county superintendents of education, and county board of education members.
- The chief finance and chief purchasing official/employee of each agency, institution, or facility of state government, and of each county, municipality, or other political subdivision including school districts, libraries, regional planning councils, airport commissions, hospitals, community action agencies, water and sewer districts, and development commissions.

These statements contain the source, type, and amount or value of income received from a governmental entity by the filer or a member of the filer's immediate family. In addition, the source and type of any private income received in the previous year by the filer or a member of his immediate family must be disclosed. Other information relating to public improvements on real property, the reimbursement of expenses related to speaking engagements, compensation received from an individual or business which contracts with the governmental entity with which the filer serves or employed, businesses ownerships over certain dollar amounts, creditor information of debts owed to regulated entities, information on lobbyists who are members of the filer's immediate family, compensation received from an individual or business which contracts with the governmental entity with which the filer serves or is employed by and any gifts received if the gift was believed to be given because of the filer's

position or if the gift is given in hopes of seeking a contractual, business, or financial relationship with the filer's agency must be disclosed.

These statements are due by noon on March 30<sup>th</sup> each year covering the previous calendar year or upon entering the official responsibilities or when registering as a candidate with a political party for public office. All statements of economic interest must be filed electronically, and upon filing, the information is immediately available to the public.

• **Campaign practices and disclosure**

All candidates for public office in the state, with the exception of those for the office of State Senator or State Representative, are under the supervision of the State Ethics Commission. The Senate Ethics Committee supervises elections of State Senators and the House Ethics Committee supervises those of State Representatives.

Campaign Reporting

The Ethics Commission oversees the reporting of campaign contributions and expenditures. An *Initial Report for Candidates* is due within ten days after spending or receiving the first \$500 of campaign funds. A *Pre-Election Report* must be filed by all candidates no later than 15 days prior to each election, whether or not there has been any financial campaign activity. In addition, *Quarterly Reports* of contributions must be filed each quarter, once reporting has begun, whether there has been any financial activity or not. A *Final Report for Candidates* is due only after the campaign account is closed. To file a final report, there must be a zero balance in the campaign account and no outstanding campaign debts. Once a final report is filed, a candidate may not accept or spend any funds for the campaign.

Contribution Limits and Campaign Expenditures

Candidates may not accept more than \$3,500 for statewide candidates or \$1,000 for local candidates from individuals during an election cycle. Regarding contributions from political parties, candidates may not accept more than \$50,000 for statewide candidates or \$5,000 for local candidates. These figures are based on a cumulative total for the election cycle. Expenditures must be related to the campaign or the office held. Use of campaign funds for personal expenses is prohibited.

*Operations*

The commission maintains information on the numbers of forms filed each year as shown in the table below.

<b>Number of Forms/Reports Filed with the State Ethics Commission</b>			
<b>Form</b>	<b>FY 15-16</b>	<b>FY 16-17</b>	<b>FY 17-18</b>
Statement of Economic Interest	9,647	8,841	8,863
Campaign Disclosure	7,358	6,299	5,792
Lobbyist and Lobbyist Principal Registration	1,811	1,807	1,940
State Agency Lobbyist Registration	16	17	12
Lobbyist Disclosure Reports	2,113	2,234	2,346
Lobbyist Principal Disclosure Reports	<u>1,162</u>	<u>1,265</u>	<u>1,217</u>
Total Statements Received	22,107	20,463	20,170

The commission also maintains information on the number of advisory opinions issued, the number of complaints received and pending, and the number of training sessions conducted as well as the number of participants at those sessions, as shown below.

<b>State Ethics Commission Opinions, Complaints and Training Sessions</b>			
	<b>FY 15-16</b>	<b>FY 16-17</b>	<b>FY 17-18</b>
Formal Advisory Opinions	5	5	3
Informal Advisory Opinions	493	481	104
Complaints Received	163	112	70
Complaints Pending	141	132	91
Training Sessions Conducted	31	22	18
Training Session Participants	1,216	844	1,250

As shown in the table above, the agency issues both formal and informal opinions on the applicability of the state’s ethics laws in response to requests from a variety of sources. Formal opinions are numbered and published on the agency’s website, while informal opinions are maintained in-house.

Administrative Policies

The commission has several administrative policies which are in the process of being updated. These policies include the Employee Performance Management Policy and the Use of State Government Telephone Services Policy. To ensure that operations are carried out effectively and efficiently, these policies should be updated and implemented as quickly as possible.

- **Agency Recommendation: The State Ethics Commission should continue its efforts to update and implement its administrative policies and procedures.**

*Finance*

The Ethics Commission receives general funds and earmarked funds primarily from lobbyist registrations and late filing penalties. The table below shows the commission’s revenues and expenditures by fund for the last two fiscal years.

	<b>FY 16-17</b>		<b>FY 17-18</b>	
	<b>Revenues</b>	<b>Expenditures</b>	<b>Revenues</b>	<b>Expenditures</b>
	<b>\$</b>	<b>\$</b>	<b>\$</b>	<b>\$</b>
General Fund	933,243	880,114	1,135,785	1,129,648
Earmarked Funds	378,945	159,365	396,178	198,897
Totals	1,312,188	1,039,478	1,531,963	1,328,546

The commission carried forward \$92,291 for FY 18-19, according to a year-end report on the Comptroller General’s website.

*Budget Request*

In its FY 18-19 budget request, the Ethics Commission requested \$364,689 in state funds, primarily to fund two program assistants, one investigator V, and one law clerk/paralegal. The request included \$35,646 for increased office rent because the agency was required to move since its previous location was sold. The agency was



appropriated three new positions in the FY 18-19 appropriations act for two program assistants and one investigator.

## *Staffing*

Over the last three years, the commission’s staff has increased from 13 to 18 authorized employees, a 38% increase. As of August 2018, fourteen of these eighteen positions were filled. The Ethics Reform Act of 2016 added responsibilities to the agency, including the investigation of complaints regarding members of the General Assembly. The table below shows the general categories of FTE positions.

<b>FTE Positions</b>	<b>Actual</b>	<b>Filled</b>
Administrative Assistant	3.0	3.0
Auditor	1.0	0
Attorney	1.0	1.0
Administrative Manager and Coordinator	2.0	2.0
Program Coordinator and Assistants	5.0	3.0
Investigators	5.75	4.0
Agency Head	<u>1.0</u>	<u>1.0</u>
Totals	18.75	14
Note: As of 8/13/2018		

Currently, vacant positions include an Auditor III position and two Program Assistant positions. According to an agency official, these positions will be advertised in the near future.

## ***II. Issues***

### *Ethics Commission Now Responsible for Cases Involving Members of the General Assembly*

Effective April 1, 2017, under §8-13-540 of the S.C. Code of Laws, the Ethics Reform Act of 2016 changed the manner in which investigations and hearings are conducted involving members of the General Assembly, legislative caucus committees, candidates for the General Assembly, or staff of the General Assembly or legislative caucus committees. When a member of these bodies is alleged to have committed a violation regarding ethics, government accountability, and campaign reform (under Chapter 13 of Title 8 of the S.C. Code of Laws) or lobbying (Chapter 17 of Title 2), it must be a verified complaint in writing and must state the name of the person alleged to have committed the violation and the particulars of the violation. If a complaint is filed with or by the House or Senate Ethics Committees alleging a violation, a copy must be sent to the person alleged to have committed the violation and to the State Ethics Commission within 30 days of filing.

Upon receiving a complaint, the Ethics Commission follows these steps:

- 1) The executive director, assisted by investigative staff, determines whether the complaint alleges facts sufficient to constitute a violation.
- 2) If it is determined that a complaint does not allege facts sufficient to constitute a violation, the complaint must be dismissed.
- 3) If it is determined that a complaint does allege facts sufficient to constitute a violation, an investigation may be conducted of the alleged violation.

- 4) The commission must request a response from the respondent to the complaint and allow thirty days for a response to be submitted.
- 5) If the commission determines only a technical violation pursuant to §8-13-1170 or §8-13-1372 occurred, the complaint must be referred to the appropriate legislative ethics committee for disposition.
- 6) Upon completing its investigation, the commission must provide a report to the appropriate ethics committee with a recommendation as to whether there is probable cause to believe a violation has occurred.
- 7) A recommendation of probable cause requires an affirmative vote by six or more members of the Ethics Commission.
- 8) The report from the commission must include a copy of all relevant reports, evidence, and testimony considered by the commission.

Throughout this process, all inquiries, hearings, investigative proceedings, and accompanying documents are confidential. However, upon a recommendation of probable cause by the commission for a violation other than a technical violation, the following documents become public record: the complaint, the response by the respondent, and the commission's recommendation of probable cause. The ethics committee may concur or nonconcur with the Ethics Commission's recommendation, or within forty-five days from the committee's receipt of the report, request the commission to continue the investigation.

At this time, it appears that the Ethics Commission is adequately staffed to assume the added statutory responsibilities under §8-13-540. The commission currently employs four investigators and plans to hire an auditor in the near future. In addition, under §8-13-540(B)(4), "if the commission determines that it needs assistance in conducting an investigation, the commission shall request the assistance of appropriate agencies as needed." If the investigative workload increases in the future and staffing levels are not adequate, the commission may request additional resources through the yearly budget process.

### *Definition of "Committee"*

A major issue identified by the State Ethics Commission was that in 2010 the definition of "committee" found in S.C. Code §8-13-1300(6) was ruled "facially invalid on the ground that the definition is unconstitutionally overbroad" in a United States District Court case brought against the members of the State Ethics Commission in *South Carolina Citizens for Life, Inc. v. Krawcheck*, 759 F. Supp. 2d 708 (2010). Since that time, the commission's ability to enforce statutory provisions governing committees was effectively voided. Through statute, the legislature provided that the commission would have the responsibility to monitor committees. In order for the commission to fulfill this responsibility, the definition of committee should be redefined.

### Senate Rule 54

In 2011, the Senate put in writing a long standing agreement among the members to not establish or maintain control over a noncandidate committee, also referred to as a leadership political action committee. On June 1, 2011, Senate Resolution S.630 passed which added Senate Rule 54, as follows:

Notwithstanding Section 8-13-1340, a member of the Senate shall not, directly or indirectly, establish, finance, maintain, or control a noncandidate committee as defined in Section 8-13-1300. A noncandidate committee does not include a candidate committee or a legislative caucus committee.

Included in the resolution was the acknowledgement that noncandidate committees “present great potential for abuse by creating loopholes in campaign finance law and allowing members to exert financial control over other members.” This rule does not have any application beyond the membership of the Senate.

In *South Carolina Citizens for Life, Inc. v. Krawcheck*, the court states that the “committee” definition which was invalidated “is a component of a comprehensive legislative scheme that involves detailed regulations governing all entities that are encompassed by the statutory definition.” It goes on to state “the revision of the statutory scheme is a task best suited to the state legislature . . . .”

- **Legislative Recommendation: As envisioned by the legislature, in order to ensure that committees are properly monitored by the State Ethics Commission, the General Assembly should consider redefining “committee” in §8-13-1300(6).**

### *Debtors List*

On its website, the State Ethics Commission maintains a 27-page listing of persons who owe late penalties or enforcement fines to the agency totaling over \$2.6 million. Included on the list are public officials, public members, public employees, lobbyists, lobbyist’s principals, candidates, and committees who have failed to pay debts. The commission levies these fines to enforce the Ethics Reform Act and ensure compliance with the registration and disclosure requirements under state law. The Debtors List provides information to the public, particularly in cases where a candidate may be running for office while having an outstanding debt owed to the State Ethics Commission. Persons who appear on the list may contact the commission to make arrangements for payment at any time.

All information contained in the listing is public information, and the debts were memorialized in public orders and, in some cases, judgments were filed with the Clerks of Court/Register of Deeds in the county of residence of the debtor. Commission staff have sent letters, telephoned, and, in some cases, have made personal contact with the debtors to attempt to collect these debts. For debts which have reached bad debt status, they have been referred to the S.C. Department of Revenue for collection through the Setoff Debt Program and the Governmental Enterprise Accounts Receivable (GEAR) Program. The commission received debt collection amounts for the last three fiscal years from these programs as shown in the table below.

<b>Program</b>	<b>FY 15-16</b>	<b>FY 16-17</b>	<b>FY 17-18</b>
Setoff Debt Program	\$5,287	\$3,404	\$585
Governmental Enterprise Accounts Receivable (GEAR)	\$58,895	\$51,644	\$86,685
<b>Total</b>	<b>\$64,182</b>	<b>\$55,048</b>	<b>\$87,270</b>
Source: State Ethics Commission Compliance Reports			

In addition to the debt collection amounts shown above, the commission collects “Late Filing Penalties” from filers who miss filing deadlines as shown below.

<b>Program</b>	<b>FY 15-16</b>	<b>FY 16-17</b>	<b>FY 17-18</b>
Late Filing Penalty	\$152,309	\$127,439	\$29,330
Source: State Ethics Commission Compliance Reports			

According to an official with the Executive Budget Office, for the majority of agencies, the authorization to retain revenue collected by that agency is addressed within the statutes pertaining to that agency. This official went on to state that unless the agency’s statutes specifically state that the revenue collected is to be remitted elsewhere, the revenue remains with the agency. We noted that the Ethics Commission’s statutes contain conflicting information concerning the amount of fines to be retained by the agency. For example, §8-13-325 states that the Ethics Commission can retain the initial \$100 fine assessed when a report is not received within five or ten days of the due date. However, §8-13-140 authorizes the agency to retain “any funds derived from additional assessments associated with late filing fees . . . .” Under current practice, the Ethics Commission retains all fines, including those collected directly by the agency as well as those collected through the debt collection programs of the S.C. Department of Revenue.

Civil Penalties Capped in 2011

Section 8-13-1510 addresses civil penalties for a person who files a late statement or report or fails to file a required statement or report. A civil penalty must be assessed as follows:

- (1) a fine of \$100 if the statement or report is not filed within 5 days after the established deadline.
- (2) after notice has been given by certified or registered mail that a required statement or report has not been filed, a fine of \$10 per calendar day for the first ten days after notice has been given, and \$100 for each additional calendar day in which the required statement or report is not filed, not exceeding \$5,000.

After the maximum civil penalty has been levied, and the statement or report has not been filed, this statute goes on to provide for legal action in magistrates court for a misdemeanor which upon conviction a person must be fined not more than \$500 or imprisoned not more than 30 days for a first offense case. For a third or subsequent offense, the fine escalates to not more than \$5,000 or imprisoned for not more than one year, or both.

In 2011, an amendment was made to this statute which capped the civil penalties at \$5,000 for filing a late report or statement required under this chapter. Prior to this time, penalties were not capped and several late filers amassed penalties in the hundreds of thousands of dollars. As of September 17, 2018, the five debtors on the list owing the most are shown in the table below.

#	Position	Amount	Default Year
1	Candidate - School Board	\$212,945.28	2009
2	Former Member City Council	\$163,200.00	2004 & 2007
3	Candidate - County Sheriff	\$153,800.00	2009
4	Candidate - City Council	\$151,400.00	2004
5	Candidate - Statewide Office	\$107,794.88	2007

Of these five, the oldest debts are 14 years old, with the most recent being 9 years old. Under the current statute, these fines would have been capped at \$5,000 and would not have grown to these substantial amounts. In addition to these five debts, the Debtors List contains numerous debts owed from \$43 (from 1999) to many owing tens of thousands of dollars. Many of these debts may be uncollectible due to the age of the debts.

Negotiation of Settlements

According to an official with the Ethics Commission, most of the names included on the Debtors List are individuals who ignored numerous letters from the commission and attempts to contact them made by

employees of the commission. Fines and penalties can be negotiated by the parties prior to a final order of the commission. However, once a person's name appears on the Debtors List, the case brought by the commission has been adjudicated and the opportunity for negotiation has ended. To help clear the \$2.6 million of fines outstanding, the commission should explore the possibility of negotiation of settlements of fines on the Debtors List. Modifications to the commission's authority to negotiate such settlements would likely be necessary, and should be explored by commission staff and brought to the attention of the General Assembly.

- **Agency Recommendation: The State Ethics Commission should study the possibility of settlements of fines on the Debtors List and notify the General Assembly of any modifications to existing statutes which would be required.**

### Educating the Public

The state's Ethics Reform Act covers a wide variety of state and local office holders, employees, and candidates who may not be aware of filing requirements. According to an official with the Ethics Commission, state and local election commissions should be directing candidates to the Ethics Commission's website for filing information. However, there are no statutes requiring this. The State Ethics Commission's website is being updated to include a section for first time candidates. In addition, §8-13-350 requires the following:

When hired, filing for office, or appointed and upon assuming the duties of employment, office or position in state government, a public official, public member, and public employee shall receive a brochure prepared by the State Ethics Commission describing the general application of this chapter.

According to an official with the commission, the commission has updated the brochure to be provided to public members and public employees, and staff is in the process of updating the brochure for public officials to comply with this statutory requirement.

Employees of the commission are routinely providing in-person training to interested groups such as the South Carolina School Board Association and the Councils of Government which operate around the state. The commission also coordinates with the Municipal Association of South Carolina and the South Carolina Association of Counties to provide necessary training. Plans are in place to partner with some of these organizations to contribute written materials regarding requirements of the Ethics Reform Act for publication in magazines and newsletters distributed by these groups. In addition, the commission has developed several newsletters covering topics such as the statement of economic interest, what must be disclosed on this statement, and when the statement is due, as well as, how to request an advisory opinion from the commission and avoiding conflicts of interest. These newsletters will be distributed to public members elected to positions, local voter offices, and other appropriate organizations.

- **Agency Recommendation: The State Ethics Commission should make recommendations to the General Assembly regarding legislation requiring state and local election commissions to provide candidates with information concerning requirements of the Ethics Reform Act.**
- **Agency Recommendation: The State Ethics Commission should comply with §8-13-350 regarding brochures to be provided to public officials, public members and employees.**

### *Public Disclosure and Accountability Reporting System*

Beginning in 2004 and phased in for required filers over a period of years, S.C. Code §8-13-365 requires that all disclosures and reports filed with the State Ethics Commission be filed using an internet-based filing system.

The information contained in these reports and forms, with the exception of social security numbers, campaign bank account numbers, and tax ID numbers, must be publicly accessible, searchable, and transferable. The commission uses one system, the Public Disclosure and Accountability Reporting System, which is accessible on its website, to collect forms required for campaign disclosure, statements of economic interest, and lobbying. The following forms are available for online viewing on this system:

<b>South Carolina State Ethics Commission Public Disclosure and Accountability Reporting System</b>	
<b>Form</b>	<b>Required Filers</b>
Campaign Disclosure Form	Constitutional Officers and candidates
	Local Office Holders and candidates
	Non-candidate committees
	Political parties
	Caucuses
Statement of Economic Interest	All elected officials
	All public members of state boards and commissions
	Certain public employees
Lobbying Registration Form	Lobbyists
	Lobbyists Principals

Development and Maintenance of the System

The Public Disclosure and Accountability Reporting System was developed by SC.gov and that entity continues to provide maintenance and upgrades for the system. According to proviso 110.1 of the FY 18-19 appropriations act, the commission must request approval from both the House and Senate Ethics Committees before submitting changes to SC.gov regarding the system:

110.1. (ETHICS: Ethics Commission Website Changes) In the current fiscal year, prior to approving or adopting any changes to the State Ethics Commission Public Disclosure and Accountability Reporting System, the State Ethics Commission shall submit the proposed changes to the Senate Ethics Committee and House of Representatives Ethics Committee for their review and approval. As third party beneficiaries to any agreement between the State Ethics Commission and a vendor relating to the State Ethics Commission Public Disclosure and Accountability Reporting System, the General Assembly through its respective Ethics Committees can submit suggested changes to any proposed agreement or contract relating to the State Ethics Commission Public Disclosure and Accountability Reporting System and the State Ethics Commission shall be required to incorporate those suggestions into any contractual negotiation.

Assistance Needed by Filers

According to commission employees, just prior to the deadline for filing forms, the commission receives numerous telephone calls from filers needing assistance with electronically filing forms using the Public Disclosure and Accountability Reporting System. Filers must have their unique username and password to

access the system, and many do not maintain this information from year to year. In addition, the online forms which must be completed contain highly technical information which can be difficult for some filers to navigate. The commission was granted two additional program assistants in the FY 18-19 appropriations act. When hired, these assistants will assist filers with the electronic system and should help to decrease the wait time for callers during the agency's busiest times.

The commission maintains eleven user guides on its website to assist filers. For example, there is a user's guide for the Statement of Economic Interest which contains 62 pages of explanations and screen shots for use when filing this statement electronically. For someone without experience in electronic filing, the process to file a Statement of Economic Interest may be overwhelming. However, the use of technology makes the information contained in these forms easily accessible to the public, which is the purpose of the collection of this information. The commission should provide guidance for filers which is easy to access and understand. A list of "frequently asked questions" to be posted on the website for a quick reference was mentioned by one official as an area that is being explored.

- **Agency Recommendation: The State Ethics Commission should explore the development of brief, easy to access, on-line guides to assist filers with questions concerning the filing process.**

#### Ability to Update Form During the Reporting Period

In order to facilitate transparency and accurate reporting, the ability to enter information into the Statement of Economic Interest and other forms throughout the year as it is collected rather than listing all information just prior to filing the forms would be helpful. However, we found that for the Statement of Economic Interest the necessary filing year for preparing next year's report is not available as a selection on the electronic menu. This may be a modification that employees of the State Ethics Commission and the House and Senate Ethics Committees can review for possible future implementation.

- **Agency Recommendation: Working with the staff of the House and Senate Ethics Committees, the State Ethics Commission should determine if the Statement of Economic Interest form and other forms can be modified so that information can be entered online throughout the year as collected.**

#### *Changes to Statutes and Regulations*

The commission's FY 16-17 Accountability Report identified twenty-two statutes that should be considered by the General Assembly for update or repeal. For example, §8-13-365 mandates the electronic filing of reports and disclosures, but some statutes contain references to paper filings. In some cases, the commission finds itself in the position of violating its own statutes because of outdated requirements. The commission is also seeking to adjust the due dates for lobbyist and lobbyist's principal disclosures to coincide with the legislative session. Changing the dates would allow the lobbyists and lobbyist's principals to terminate their registrations by June 30<sup>th</sup> and alleviate the requirement to file the second disclosure covering the end of the calendar year.

According to the FY 16-17 Accountability Report, the commission seeks amendment to proviso 118.6 (in appropriations acts for FYs 17-18 and 18-19). This proviso prohibits all state agencies and institutions from using general fund appropriations to compensate employees who engage in lobbying on behalf of the state agency or institution, and requires these agencies and institutions to certify that the lobbying activities reported were not funded by general fund appropriations. The commission proposes to include instructions that it may levy late filing penalties for the reports required under this proviso. Additionally, the commission requests instructions "on what to do with the information once it is received from the agencies."

Correspondingly, there are commission regulations which do not coincide with the statutes, such as those referencing paper forms and forms submitted by facsimile, rather than electronic filing as is the current statutory requirement. According to an official with the commission, plans are in place to begin the process to amend the regulations in December 2018.

- **Agency Recommendation: The State Ethics Commission should make recommendations to the General Assembly regarding necessary changes to its statutes, regulations, and proviso 118.6.**