

Cardinal INSTITUTE
FOR WEST VIRGINIA POLICY

**PUBLIC INTEGRITY:
REFORMING THE
ETHICAL CHECKS AND
BALANCES IN WEST
VIRGINIA**

POLICIES TO IMPROVE PUBLIC
ETHICS AND GOVERNMENT
ACCOUNTABILITY

February 2015



**Freedom. Liberty.
Responsibility.**

INTRODUCTION

The State Integrity Investigation (SII) produces a study of ethical conduct in state and local governments across the United States on an ongoing basis. SII is publicly funded by such diverse groups as Omidyar Network and the Rita Allen Foundation, with additional support from Rockefeller Family Fund. The Wyncote Foundation also provides support for follow-up reporting on the project and its findings.

The results of the study are published on-line with the stated goals:

- To examine states' commitment to government integrity and shine light on what's working and what's not.
- To convince state officials to improve their laws and practices. The State Integrity Index highlights "best practices" in state government and can serve as a basis for policy reforms that address the unique challenges facing each state.
- To inspire the public to become interested and invested in ensuring honest, effective state government. The Investigation offers many ways for people to become involved – following news about state integrity, emailing report cards to officials, sharing experiences with state government, proposing solutions, and connecting with local "good government" groups.

In the most recent study published, West Virginia received an abysmal rating of D+ on the Corruption Risk Report Card, which indicates a failure to use best practices to require, achieve and maintain high ethical behaviors in our elected and non-elected officials. The recent raft of indictments in Mingo County and Bridgeport, as well as ethical breaches at the West Virginia Supreme Court underscore the fact that creating a more robust policy framework for ethics in West Virginia is important to overall good governance.

This document will assess the changes West Virginia can make to achieve a higher SII score using the twelve criteria from the study and suggests a new policy model for their implementation.

The Cardinal Institute for West Virginia Policy is a non-partisan non-profit dedicated to research, develop and communicate effective conservative economic public policies in West Virginia.



West Virginia

Corruption Risk Report Card

Rank among 50 states: **29th**

Overall grade: **D+**

Click a category to see detailed scores and notes.

Public Access to Information F view	Political Financing C+ view
Executive Accountability D view	Legislative Accountability C- view
Judicial Accountability C view	State Budget Processes D- view
State Civil Service Management F view	Procurement A view
Internal Auditing A view	Lobbying Disclosure F view
State Pension Fund Management D view	Ethics Enforcement Agencies B- view
State Insurance Commissions C view	Redistricting F view

http://www.stateintegrity.org/west_virginia OVERALL GRADE: D+

EXISTING ETHICS POLICIES

SII identified a number of specific areas where West Virginia could improve its practices to reduce the risk of corruption within state government. These have been summarized below.

PUBLIC ACCESS TO INFORMATION: F

- Citizens have no straightforward process to appeal decisions if the state government denies access to certain basic information under FOIA. Currently, the appeal would go to the circuit court.
- While West Virginia has a Freedom of Information Act (FOIA) procedure, there is no official FOIA request form. There is no central office or official that has the authority to review or enforce FOIA requests.
- No agency monitors or enforces the state's freedom of information or open meetings laws. Recourse is to sue in circuit court.
- State and other government officials are not criminally liable for breaches of FOIA and open meetings laws.
- There are no fixed rates to be paid for document search or photocopying services to comply with a FOIA request. Each agency sets its own rates.
- State and other government officials are not required to provide detailed reasons why FOIA requests are denied. There are no penalties for officials who incorrectly deny access to public information.

EXECUTIVE ACCOUNTABILITY: D

- In practice, the regulations preventing the governor and/or state cabinet-level officials from using state funds for personal purposes are not effective.
- The state attorney general does not have the legal right to charge or prosecute elected or non-elected officials for crimes committed, including breaches of state code. In practice, the county prosecuting attorneys have no desire to challenge the state executive branch for a variety of reasons. In cases involving their own county, they may have conflicts of interest.
- There are few statutory limits regarding the governor's use of executive orders.
- In practice, both the governor and cabinet-level officials are rarely prosecuted for crimes due to the significant difference in political power between the state officials and county prosecutors. This has been exacerbated due to nearly total one-party dominance at the state and local levels since 1931.

- While the governor and cabinet-level officials are required to submit asset disclosure forms, there is no mechanism for independent auditing of them to assure accuracy and completeness.
- In law, the regulations to prevent nepotism (favorable treatment of family members) in the executive branch are very weak.
- In law, there no statutes to prevent cronyism (favorable treatment of friends and colleagues), and patronage (favorable treatment of those who reward their superiors) amongst members of the executive branch.
- Former government officials are barred from lobbying for only one year. Currently, the Ethics Commission issues 15 or 20 exemptions a year to the lobbying ban, most of them to staffers in the Department of Environmental Protection who may be interested in working in the state's coal mining industry.
- In practice, executive branch actions (e.g. hiring, firing, promotions) are often based on nepotism, cronyism, or patronage. Mike Garrison's appointment as WVU president is often cited as an [example](#) of such actions.
- In practice, the asset disclosure records of members of the governor and/or state cabinet-level officials are not accessible by the public online in a meaningful, useable and accessible manner.
- In practice, official government functions are often not adequately kept separate and distinct from the functions of the ruling political party. This includes using government meeting rooms, the Governor's mansion, telephones, state vehicles and other state assets for political purposes.

JUDICIAL ACCOUNTABILITY: C

- Circuit court judges are appointed by the governor to fill unexpired terms without legislative approval. These judges are seldom challenged in the election process due to the consequences for a qualified attorney to practice law within a judge's jurisdiction.
- There is no unbiased system to evaluate judges up for election or reelection. The State Bar Association sends out evaluations to their membership, but this is often treated as a straw poll for the election.
- In practice, judges receive no performance evaluations of any type.
- State-level judiciary disclosures are not audited.
- Supreme court justices only recuse themselves for conflicts of interest on a voluntary basis.
- State judges are not barred by law from setting up non-profits to reward political supporters or evade campaign finance laws.
- There are no laws that prevent nepotism or patronage in the judicial branch.

- In practice, the asset disclosure records of the state-level judiciary are not accessible to the public online in a meaningful and accessible manner.

STATE CIVIL SERVICE MANAGEMENT: F

- There are no laws to prevent cronyism or patronage in either elected or civil service offices.
- There are no laws that prevent convicted felons from serving as civil servants, even if the crime directly relates to their government function.
- Executive branch appointees (including boards and commissions) are required to complete financial disclosures, but they are not publicly available or independently audited.
- There is no policing function that oversees gifts and hospitality for civil servants or elected officials.
- The penalties are not severe enough for civil servants who do not recuse themselves from policy decisions in which they have conflicts of interest.
- The whistleblower laws fail to define retaliation, retribution, recrimination etc.; nor do they provide penalties for such actions. The State Grievance Board has no power to enforce these vague laws, nor do the judges who review cases.
- There is no internal mechanism (i.e. phone hotline, e-mail address, local office) through which civil servants can report corruption.
 - There is no professional full-time staff to receive and investigate reports communicated through the internal mechanism.
 - There is no regular funding for the mechanism.
 - Reports are not acted upon in a timely manner.
 - The mechanism does not trigger automatic investigations
- Contributions to political parties are generally not audited.

INTERNAL AUDITING: A

- The state audit reports are not posted on-line in a manner in which citizens can search for specific information.

STATE PENSION FUND MANAGEMENT: D

- In law, there are no regulations governing the activity of hired third parties used by investment firms to secure business with state-run pension funds.
- In law, hired third parties used by investment firms to secure business with state-run pension funds, are not required to disclose all fees and terms retained for providing “finder” or introduction services.

- In law, placement agents, or hired third parties used by investment firms to secure business with state-run pension funds, are not required to register with the state.
- In law, there are no requirements for the independent auditing of the asset disclosure forms of members of boards and management of the state-run pension funds.
- In law, there are very weak restrictions on members of boards and management of the state-run pension funds entering the private sector after leaving the office. These laws are focused entirely on lobbying restrictions for one year.
- Asset disclosures of members of boards and management of the state-run pension funds are not audited.
- The asset disclosure records of members of boards and management of the state-run pension funds are not accessible to the public online in a meaningful and accessible manner.

STATE INSURANCE COMMISSIONS: C

- In practice, the regulations governing gifts and hospitality offered to the members of the board and senior staff of the state insurance commission are confined to self-reporting.
- In practice, the asset disclosure records of the members of the board and senior staff of the state insurance commission are of poor quality.
- In practice, the asset disclosure records of members of the board and senior staff of the state insurance commission are not accessible to the public online in a meaningful and accessible manner.
- In practice, asset disclosures for members of the state insurance commission are not audited.
- In law, the state insurance commission is not required to publicly disclose all documents filed by insurance companies with the agency.

POLITICAL FINANCING: C+

- In practice, the limits on individual donations to political parties are not effective in regulating an individual's ability to financially support a political party.
- In practice, the limits on corporate donations to political parties are not effective in regulating a company's ability to financially support a political party.
- In practice, the limits on donations to political parties by political action committees are not effective in regulating the organization's ability to financially support a political party.
- In practice, when necessary, the Secretary of State seldom, if ever, initiates investigations after monitoring the financing of political parties.

- In practice, when necessary, the Secretary of State seldom, if ever, imposes penalties on offenders of political party finance laws.
- In practice, contributions to political parties are only randomly audited. These audits are almost always related to specific candidates and are often politically motivated.
- In practice, individuals, corporations, or political action committees often utilize "astroturfing" -- defined here as the financial support of a political party or individual using mechanisms designed to give the appearance of a grassroots movement -- to bypass limits on political financing.
- In practice, the limits on lobbyist donations to political parties are not effective in regulating a lobbyist's ability to financially support a political party.
- In practice, the limits on individual donations to political candidates are not effective in regulating an individual's ability to financially support a particular candidate.
- In practice, the limits on corporate donations to individual candidates are not effective in regulating a company's ability to financially support a candidate.
- In practice, the limits on political action committee donations to individual candidates are not effective in regulating the political action committee's ability to financially support a candidate.
- In practice, the Secretary of State initiates very few investigations and most of these are politically motivated.
- In practice, the limits on lobbyists' donations to individual candidates are not effective in regulating lobbyists' ability to financially support an individual candidate.
- Citizens can access records related to the financing of political parties. However, these reports are not searchable on-line and are often difficult to read.
- Citizens can access records related to the financing of individual candidates' campaigns. However, these reports are not searchable on-line and are often difficult to read.
- The funding of activities on ballot questions is not currently regulated in West Virginia as they are in other states. Those engaged in a campaign related to a statewide ballot question do not have to file any kind of funding or expenditure reports.

LEGISLATIVE ACCOUNTABILITY: C-

- In practice, the judiciary seldom reviews laws passed by the legislature.
- In law, there are no requirements for the independent auditing of the asset disclosure forms of members of the state legislature.
- In practice, the regulations restricting post-government private sector employment for state legislators are not effective.

- In practice, the regulations governing gifts and hospitality offered to state legislators are only somewhat effective.
- In practice, state legislative branch asset disclosures are not audited.
- In law, there are no restrictions on legislators setting up non-profit organizations (e.g. community groups, think tanks) that can be used to reward political supporters and/or evade campaign finance rules.
- In law, there are no regulations to prevent nepotism (favorable treatment of family members), cronyism (favorable treatment of friends and colleagues), and patronage (favorable treatment of those who reward their superiors) in the hiring of legislative staff.
- In practice, legislative branch actions related to the hiring, firing, and promotion of legislative staff are not prohibited from being based on nepotism, cronyism, or patronage.
- In practice, the asset disclosure records of members of the state legislature are not of high quality.
- In practice, the asset disclosure records of members of the state legislature are not accessible to the public online in a meaningful and accessible manner.

STATE BUDGET PROCESS: D-

- Significant public expenditures (defined as any project costing more than 1% of the total state budget) do not require specific legislative approval.
- The WV legislature has the fewest number of budget analysts of the 50 states. They simply do not have the capacity to fully monitor and assess the budget.
- The state budgetary process is not conducted in a transparent manner in the debating stage (i.e. before final approval).
- Citizens do not have adequate input to the state budget process.
- Citizens do not have a searchable version of the final state budget on-line.
- In practice, the legislative Finance committees often act in a partisan manner that actively excludes members of opposition parties serving on the committee in an equitable fashion.
- In practice, when necessary, the legislative Finance committees seldom initiate independent investigations into financial irregularities.
- The state does not have a non-partisan fiscal budget office which provides its fiscal notes and nonpartisan analysis on the costs and benefits of every bill and budget proposals.

PROCUREMENT: A

- In law, there is no mechanism that monitors the assets, incomes, and spending habits of public procurement officials.

LOBBYING DISCLOSURE: F

- In law, lobbyists are only required to file registrations bi-annually.
- In law, lobbyists are not required to report compensation/salary on spending reports.
- In law, employers or principals of lobbyists are not required to fill out spending reports.
- In practice, employers/principals are not required to list the compensation/salary of any lobbyists they hire on spending reports.
- In practice, lobbying disclosure documents are not accessible to the public online in a meaningful and accessible manner.
- In practice, the state imposes only minor penalties on offenders who violate lobbying disclosure and reporting requirements, such as late filing. No significant penalties have ever been assessed.

ETHICS ENFORCEMENT AGENCIES: B-

- The Ethics Commission has barely enough staff to accomplish its minimal code mandated functions.
- Recently, the Ethics Commission has acted in [overtly political manners](#) and have not been isolated from real or perceived political interference.
- Individuals cannot determine if an ethics complaint has been filed against them with the Ethics Commission until the Commission decides to take action on the matter.
- The Ethics Commission has no ability to compel elected officials to comply with reporting and disclosure requirements.
- The Ethics Commission can only impose insignificant fines for breaches of ethics rules.
- In law, there are no requirements for the independent auditing of the asset disclosure forms of members of the Ethics Commission.
- The asset disclosures made by members of the Ethics Commission are not available to the public in a meaningful way.

REDISTRICTING: F

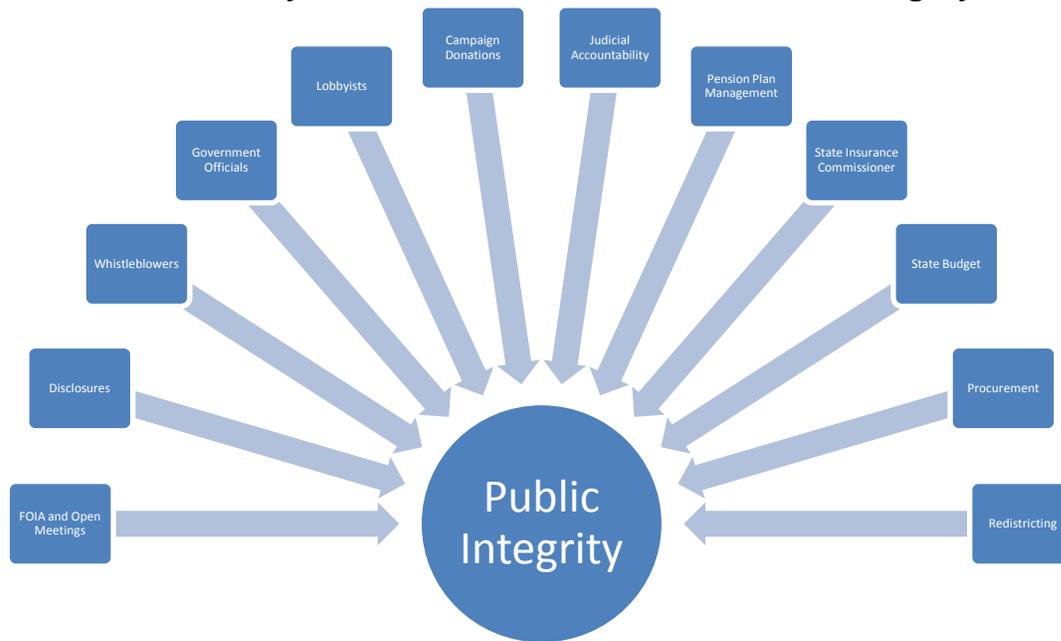
- For the latest redistricting round, few public hearings were held to solicit input on new district maps and they did not actually include maps.
- For the latest redistricting round, the state senate held 12 public meeting that were scheduled in advance and advertised. The state house of delegates had only 1 public meeting and it was not organized in advance.
- For the latest redistricting round, the state senate accepted redistricting maps from the public, but the house of delegates did not.

- For the latest redistricting round, there was little or no use of on-line tools to solicit public input. The state senate used a Facebook page.

OVERARCHING FINDINGS

1. The Ethics Commission is not adequately composed, staffed or authorized to be the sole watchdog for public integrity in West Virginia.
2. The Secretary of State has historically treated candidates and political parties like a doting grandmother, which has allowed them to grow into spoiled children.
3. Government leaders treat disclosures as a nuisance, or with open contempt.
4. The door from government to lucrative lobbying jobs is open to all former elected and unelected officials.
5. Lobbyists [spend money on government officials](#) without accountability.
6. The courts rarely hold free and open elections due to unreviewed appointments by the government that suppresses participation by attorneys that may appear before a specific judge.
7. The State Auditor has little or no role in the checks and balances of public integrity in West Virginia.
8. Government workers ignore open meetings and Freedom of Information Act requirements without threat or penalty.
9. Nepotism and cronyism laws are rampant throughout state and local governments in West Virginia.
10. A civil servant who reports misconduct by government officials puts their career and livelihood at risk.
11. There is no policing function for ethics violations of any sort.
12. Transcripts of public meetings, including public debates on the House and Senate floors and legislative committee hearings, are publicly accessible without using the FOIA process.

Many Areas of Reform to Increase Public Integrity



RECOMMENDATIONS

NO BUDGETARY IMPACT

1. Give the Ethics Commission the power to investigate breaches of state code.
2. The Ethics Commission should be able to specifically refer matters to county prosecutors for indictments.
3. The composition of the Ethics Commission should be made up of equal numbers of Republicans, Democrats and registered Independents (maintained for 5 or more years prior to initial appointment) nominated by the governor and approved by the state senate.
4. The Ethics Commission should have ability to subpoena persons and information as well as the ability to impose fines or criminal penalties for non-compliance with these subpoenas and the state code generally.
5. Encourage the Secretary of State to utilize their authority to investigate and pursue irregularities in political campaigns.

FOIA AND OPEN MEETINGS

1. All state agencies should respond to a FOIA request in writing with a detailed explanation as to the reason the request is being denied. This response should also be sent to the Ethics Commission for their review.

2. All FOIA denials should be able to be appealed to the Ethics Commission. Denials by the Ethics Commission could then be appealed in circuit court.
3. The Ethics Commission should be granted the authority to impose penalties for FOIA non-compliance by government officials.
4. The FOIA request process should be standardized across all state agencies with forms, policies and procedures.
5. FOIA requests should have fixed payment schedules for document searches and photocopying/scanning of electronic file copies across all state agencies.
6. Criminal penalties need to be stiffened for FOIA obstructions and other breaches of ethical standards.

WHISTLEBLOWERS

1. The whistleblower statute should clearly define retaliation, retribution and recrimination as well as provide penalties for such actions.

GOVERNMENT OFFICIALS

1. The State Attorney General should have the legal right to charge and prosecute elected or non-elected government officials for breaches of state code.
2. Nepotism and cronyism laws should be strengthened to bar family members and business associates from being hired by any government agency.
3. Criminal penalties should be imposed on government officials who use any state asset for political purposes, including the use of meeting rooms, telephones, computers, photocopiers, vehicles or security staff.
4. Convicted felons should be barred from government service, if the crime is committed as part of their official duties.
5. The Ethics Commission should police gifts and hospitality for civil services or elected officials, including the ability to investigate and prosecute breaches of state code.
6. Penalties should be strengthened for failures by government officials to recuse themselves from policy or contractual decisions in which they have conflicts of interest.

LOBBYISTS

1. Lobbyists should be required to register with the Ethics Commission every year.
2. The firms or organizations that employ lobbyists should be required to file spending reports to the Ethics Commission on the same schedule as the lobbyists themselves.

3. Government officials should not be allowed to lobby for two years after their last day of service.
4. The Ethics Commission should no longer have the ability to waive the two-year lobbying ban for former-government officials.
5. Lobbyists and their immediate families should not be allowed to make political donations to legislative or statewide elections, or to their campaign committees, political committees or political parties.
6. Prohibit all lobbyist expenditures, or that of their clients, on government officials and staff including but not limited to meals, alcohol, gifts and sporting event tickets.
7. Prohibit senior state political party officials from being lobbyists or liaisons to government officials as a part of any private employment.
8. Eliminate fundraising receptions or events during any legislative session.
9. Ban private legislative receptions or events provided by special interest groups during the legislative session.
10. Stop the practice of special interest groups financially sponsoring legislative interim meetings or any other legislative meeting.

CAMPAIGN DONATIONS

1. Campaign donation limits should be raised to a reasonable level to allow candidates more control over their own finances and campaigns (e.g. \$1500 per individual per election).
2. The Secretary of State should impose fines and penalties on candidates and political parties that do not comply with state code.

JUDICIAL ACCOUNTABILITY

1. All circuit court appointments made by the governor to fill unexpired terms should be approved by both the State Senate and House of Delegates.

PENSION PLAN MANAGEMENT

1. Investment firms, placement agents or hired third parties should be not be allowed to give gifts, hospitality or other gratuity to any government official who make decisions on pension fund placements.

2. Investment firms, placement agents or hired third parties should be required to disclose all fees and terms retained for providing "finder" or introductory services to government officials. Failure to disclose these fees and terms should accrue criminal penalties.
3. Placement agents or hired third parties should be registered with the Ethics Commission in the same manner as a lobbyist.
4. Members of the West Virginia Investment Management Board, West Virginia Consolidated Public Retirement Board and other boards tasked with placement of state pension funds, as well as their professional staffs, should not be allowed to be employed by a firm in which state assets have been placed in the last five years for a period of two years.

STATE INSURANCE COMMISSION

- I. Staff of the West Virginia Insurance Commissioner should not be allowed to accept gifts, hospitality or other gratuity from lobbyists or any individual or corporation that does business with the Office of the Insurance Commissioner.
- II. The Insurance Commission should be required to disclose all documents filed by insurance companies with the OIC. These documents should be made available on-line in a timely manner. Criminal penalties should be imposed for non-compliance with this statute.

STATE BUDGET

1. Significant budget expenditures (defined as any project costing more than 1% of the total state budget) should require separate legislative approval.
2. The rules of both house of the legislature should include additional transparency during the debate stage (prior to approval) of the budget. These rules should be in state code and only able to be modified by 2/3 approval of both houses.
3. The State should create and approve bi-annual budgets to develop greater stability within government.

SOME BUDGETARY IMPACT

1. Reorganize the Ethics Commission to the State Attorney General's office.
2. The State Attorney General should be able to act as a special prosecutor for cases that are cover the jurisdiction of more than one county prosecutor.
3. Authorize the State Auditor to proactively audit all disclosures made by government officials and report the results to the governor, attorney general, legislature and the public.
4. The Ethics Commission should have additional staff to perform investigations and other functions under the new statute.
5. The Ethics Commission should have ability to subpoena persons and information as well as the ability to impose fines or criminal penalties for non-compliance with these subpoenas and the state code generally.
6. All transcripts of public meetings of the any branch of state government should be posted in a searchable format on the internet within 7 days of the meeting.

FOIA AND OPEN MEETINGS

1. The Ethics Commission should be the clearinghouse for all FOIA requests and should compile regular reports on the effectiveness of the FOIA process.
2. The Ethics Commission should actively monitor and enforce both the FOIA and open meetings laws and be given a stronger set of investigative and sanction tools for breeches of these statutes.
3. The Ethics Commission should monitor all FOIA requests, report the results to the legislature and impose penalties for non-compliance by government officials.

DISCLOSURES

1. All asset and financial disclosure forms should be posted on-line and searchable by citizens of the state.
2. All asset and financial disclosure forms should be audited for compliance and completeness.

WHISTLEBLOWERS

1. The Ethics Commission should create mechanisms (i.e. phone hotline, e-mail address, internet tools, local offices) through which civil servants can report corruption.
2. The Ethics Commission should receive and automatically investigate all disclosures of potential ethics violations by whistleblowers.
3. Whistleblower reports should be acted upon in a timely manner.

LOBBYISTS

1. Lobbyists should be required to report their compensation, salaries and gross income and expenses on their spending reports, which should be posted on the internet in searchable formats.

CAMPAIGN DONATIONS

1. All campaign donations to both candidates and parties should be reported into an on-line database, which is searchable by the public.
2. Contributions to political parties and candidates should be audited by the State Auditor and the results made available to the public.
3. The Secretary of State should create a new position to more aggressively pursue legal actions against candidates and political parties that do not comply with state code.

JUDICIAL ACCOUNTABILITY

1. Commission regarding the performance of circuit and supreme court judges on an annual basis.
2. The Ethics Commission should monitor recusals by circuit and supreme court judges and impose fines and penalties if they fail to comply with the state code.

STATE INSURANCE COMMISSION

1. The Insurance Commission should be required to disclose all documents filed by insurance companies with the OIC. These documents should be made available on-line in a timely manner. Criminal penalties should be imposed for non-compliance with this statute.

STATE BUDGET

1. The West Virginia Legislature should hire additional budget analysts to bring them within the norms of operations of other state legislatures (WV is #50).
2. The state budget should be posted on-line throughout the legislative session and on-line comments taken from citizens.
3. The final state budget should be posted on-line and searchable from the internet.

4. The legislature should create a non-partisan fiscal budget office, which will provide fiscal notes and non-partisan analysis on the costs and benefits of every bill and budget proposal.

PROCUREMENT

1. The assets, incomes and spending habits of state government procurement officials should be monitored by the State Auditor and compliance reported to the governor, attorney general, legislature and the public.

REDISTRICTING

1. The legislature should develop processes and procedures in code for the creation of redistricting plans, including mandatory on-line and community-based public input.