



SOUTH CAROLINA
State Ethics Commission

AGENCY OVERVIEW

LEGISLATIVE OVERSIGHT HEARING

Agency Mission

Mission

The State Ethics Commission is the agency of state government responsible for enforcement of the Ethics Reform Act of 1991.

The Commission carries out this mandate by conducting criminal and administrative investigations of violations of the state's ethics laws; prosecuting violators; ensuring compliance with the state's laws on financial disclosures, lobbyist's/lobbyist's principal disclosures, and prosecuting those not in compliance; regulating lobbyists and lobbying organizations; issuing advisory opinions interpreting the Act; and educating public officeholders and the public on the requirements of the state's ethics laws.

Key Dates in Agency's History

Key Dates in History

1975 – Ethics Act signed and Commission created

- May 29, 1975, Act 191, the “Ethics Act,” was signed into law by Governor James Edwards. Act 191 created the State Ethics Commission (Commission) to apply the Ethics Act to public officials and employees, except members of the General Assembly and the judiciary.

1976 – First Commissioners confirmed and first director hired

- February 18, 1976 the first six Commissioners were confirmed for service. The Commission’s first employee, Acting Director Gary Baker, began work on February 20, 1976, and formally accepted the position on March 6, 1976.

1983 – Physical Office moved

- The Commission moved physical locations from the Rembert Dennis Building to the SCN Center.

Key Dates in History

1989 – Physical Office moved

- On August 1, 1989, the Commission moved its office to The Pavilion on Thurmond Mall.

1991 – Ethics Reform signed into law

- After Operation Lost Trust, a law enforcement investigation which resulted in criminal convictions of twenty-seven legislators and lobbyists, calls for sweeping ethics reform in South Carolina were made. In an attempt at comprehensive ethics reform, 25 bills were introduced in the House of Representatives and 49 bills were introduced in the Senate. After lengthy deliberation in the House and Senate and being called back to a special 3-day session, H.3743 passed on September 23, 1991 and was signed into law on October 1, 1991 as the Ethics, Government Accountability, and Campaign Reform Act of 1991, with an effective date of January 1, 1992.

Key Dates in History

1992 – Ethics, Government Accountability, and Campaign Reform Act took effect

- January 1, 1992, the Act took effect.

1999 – Original director retired (hired in 1976) and new director hired

- On June 30, 1999, Gary Baker retired as the first Executive Director of the Commission. Herbert R. Hayden, Jr. was hired to fill the vacancy.

2002 – Debtors List first published

- The Commission began publishing a list of public officials and employees who failed to pay late filing penalties. This list is now known as the Debtors List.

2005 – Funding provided for online filing system

- Funding was provided by the General Assembly for the Commission to develop and implement an online filing system for candidates and public officeholders.

Key Dates in History

2008 – Online filing system received award

- SC receives “Most Improved” award for disclosure of campaign finance records from Campaign Disclosure Project after developing and implementing an online filing system for campaign disclosures and economic interests disclosures.

2010 – Filings required to be done electronically

- All Campaign Disclosures, Statements of Economic Interests, and Lobbyist/Lobbyist’s Principal filings are required to be filed electronically.

2010 – Commission prevented from enforcing many statutes

- Statutory definition of committee was found to be unconstitutional in *SC Citizens for Life, Inc. v. Krawcheck*, 759 F. Supp.2d 708 (D.S.C. 2010). This decision rendered the Commission unable to enforce a multitude of statutes related to committees.

Key Dates in History

2016 –

Commission can investigate General Assembly and membership decreased from 9 to 8

- H.3184 reconstituted the Commission with eight members, four gubernatorial appointees and four appointees from the General Assembly. The Commission also received investigative jurisdiction over members of the General Assembly.

Private source of income disclosure required

- H.3186 passed simultaneously and required information regarding private source of income to be disclosed on Statements of Economic Interests. Commission staff worked to educate Commissioners and all affected parties on these changes to the Act.

Director retired (originally hired in 1999)

- Executive Director Herb Hayden retired December 31, 2016.

Key Dates in History

2018 – New director hired; General Counsel hired

- Meghan Walker was hired as Executive Director. The Commission also hired a new General Counsel.

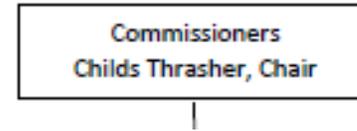
2019 – Commission fully staffed

- The Commission became fully staffed, allowing it to be more proactive in its mission of receiving campaign disclosure and financial disclosure forms, investigating complaint matters, issuing advisory opinions, levying and collecting late filing penalties, and conducting training sessions.

Agency Organization: Governing Body, Director, and Employees

Organizational Chart

(as of December 2020)



Commissioners

The agency is governed by eight Commissioners, appointed as follows:

- four members by the Governor,
- two by the Senate, and
 - 1 upon recommendation of the majority political party
 - 1 upon recommendation of the minority political party
- two by the House of Representatives
 - 1 upon recommendation of the majority political party
 - 1 upon recommendation of the minority political party

Commissioner Duties

The duties and responsibilities of the Commissioners are as follows:

- Hire and remove, at their pleasure, an executive director who administers the daily business of the agency.
- Conduct probable cause hearings.
- Conduct formal public hearings.
- Issue formal advisory opinions.

Commissioner Qualifications

Qualifications that must be considered when making appointments:

Constitutional qualifications	Ethical fitness
Character	Mental stability
Experience	Judicial temperament

- Appointments
 - are based upon merit
 - ensure geographic and political balance by taking into consideration demographic factors such as race, gender and national origin.
- Commissioners should represent all segments of the S.C. population.

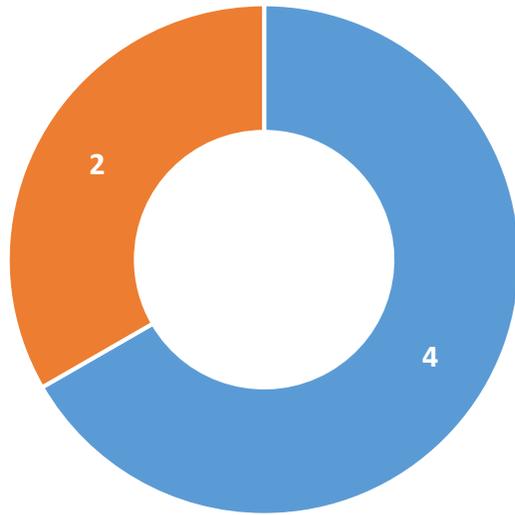
Commissioner Training

Newly appointed commissioners receive staff conducted training on the following:

- Duties and Powers of the Commission
- Restrictions on Political Activities of Commissioners
- The Commission's Internal Policies and Procedures
- Role of the House and Senate Ethics Committees
- Rules of Conduct for Public Officials, Public Members and Public Employees
- Disclosures of Economic Interests
- Campaign Practices
- Noncompliance Issues
- The Complaint Process
- The Hearing Process
- The Appellate Process

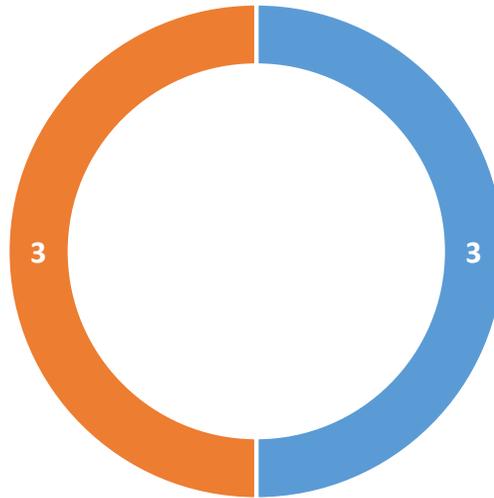
Commissioner Demographics

Gender



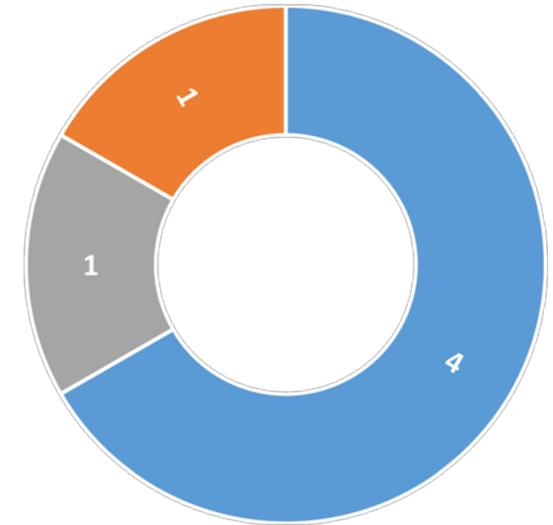
■ Male ■ Female

Race



■ African-American ■ Caucasian

Occupation



■ Attorney
■ Administrator (Retired)
■ Business Owner (Retired)

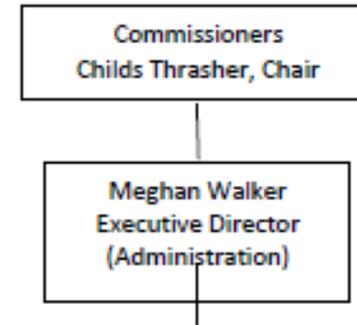
Commissioner Appointments

In order by appointment date – Vacancies separated as requested by Committee

Appointing Body	Member	Appointment Date	Expiration of Term
Governor	Brian Barnwell	April 1, 2017	April 1, 2022
Governor	Childs C. Thrasher	April 1, 2017	April 1, 2022
Senate	Donald Gist	April 1, 2017	March 31, 2022
House of Representatives	Don Jackson	April 1, 2017	April 1, 2022
House of Representatives	AJ Holloway	April 8, 2020	April 8, 2023
Governor	Brandolyn Pinkston	April 8, 2020	April 8, 2023
Current vacancies			
Governor	Vacant	Vacant since March 10, 2020	
Senate	Vacant	Vacant since March 31, 2020	

Organizational Chart

(as of December 2020)



Executive Director Qualifications and Duties

Commission employs, at its privilege, an executive director.

- Required qualifications:

- None defined by statute

- Duties:

- Employing and terminating other personnel as necessary,
- Administering the daily business of the Commission,
- Other duties assigned by the Commission.

(See S.C. Code Section 8-13-330 for Commission's privilege and Executive Director's duties)

Current Executive Director Background

Meghan Walker (2018-Present)

- Graduate of the University of South Carolina School of Law (2009)
- Judicial clerk for S.C. Circuit Judge L. Casey Manning (2009)
- Assistant S.C. Attorney General in State Grand Jury Division (2010)
- Assistant Solicitor in the Fifth Judicial Circuit (2011-2018)

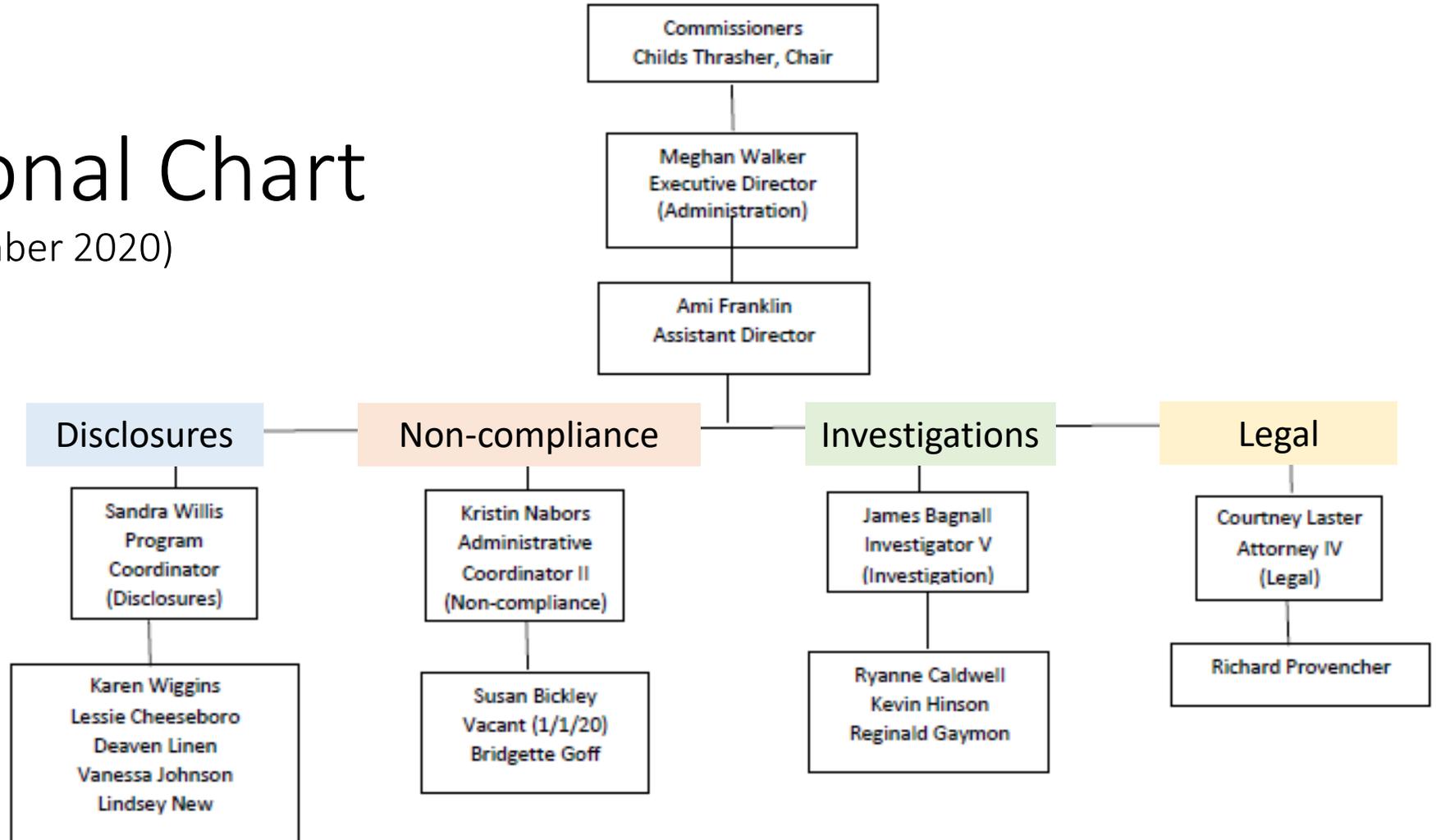
Current Executive Director Duties

While specific duties of the director are not provided in law, duties of the current director described in the job description include:

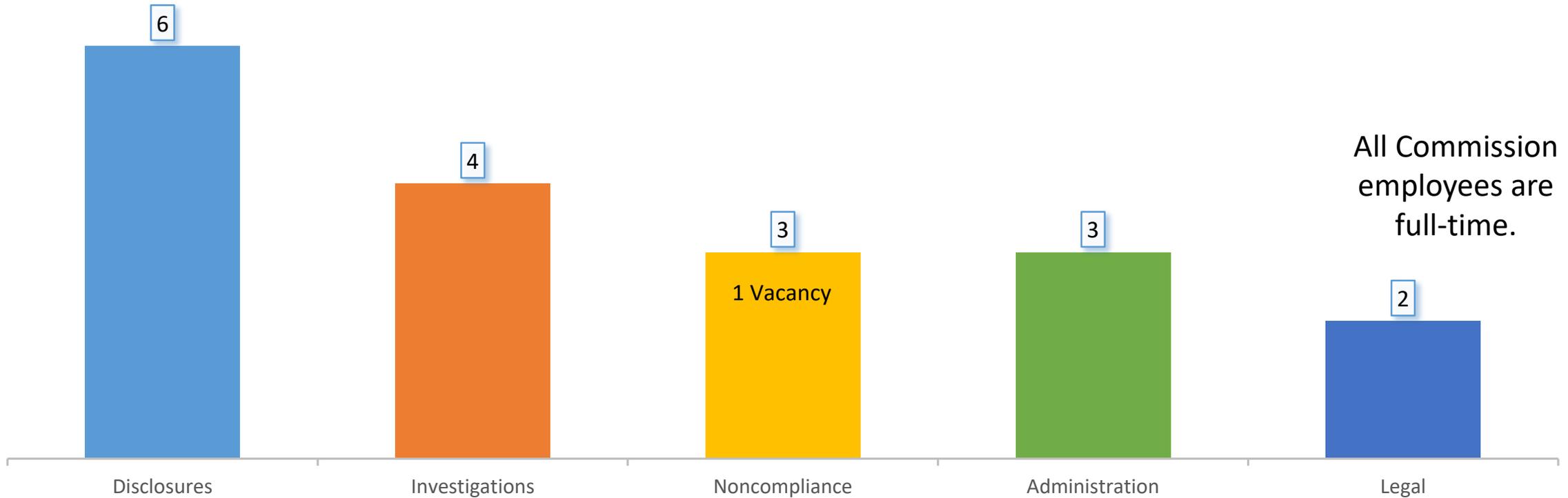
- Direct or supervise all law enforcement operations of the Commission
- Provide oversight to all Commission investigations and prosecutions.
- Report and advise the Commissioners regarding agency law enforcement and administrative matters.
- Inform the Attorney General about matters of significant interest to the State's chief prosecutor.
- Respond to inquiries and issue legal advice to state government officials, employees, and lobbyists.
- Draft and review staff opinion letters, advisory opinions, legal memoranda, and other related documents.
- Oversee administration of laws requiring registration and financial statement filing by lobbyists
- Update and revise forms and instructions;
- Facilitates compliance by filers with filing requirements;
- Implement audits or review procedures to ensure that filings comply with the law;
- Oversees enforcement proceedings against individuals who do not comply with filing requirements;
- Be accountable for the overall fiscal and administrative management of the Commission.

Organizational Chart

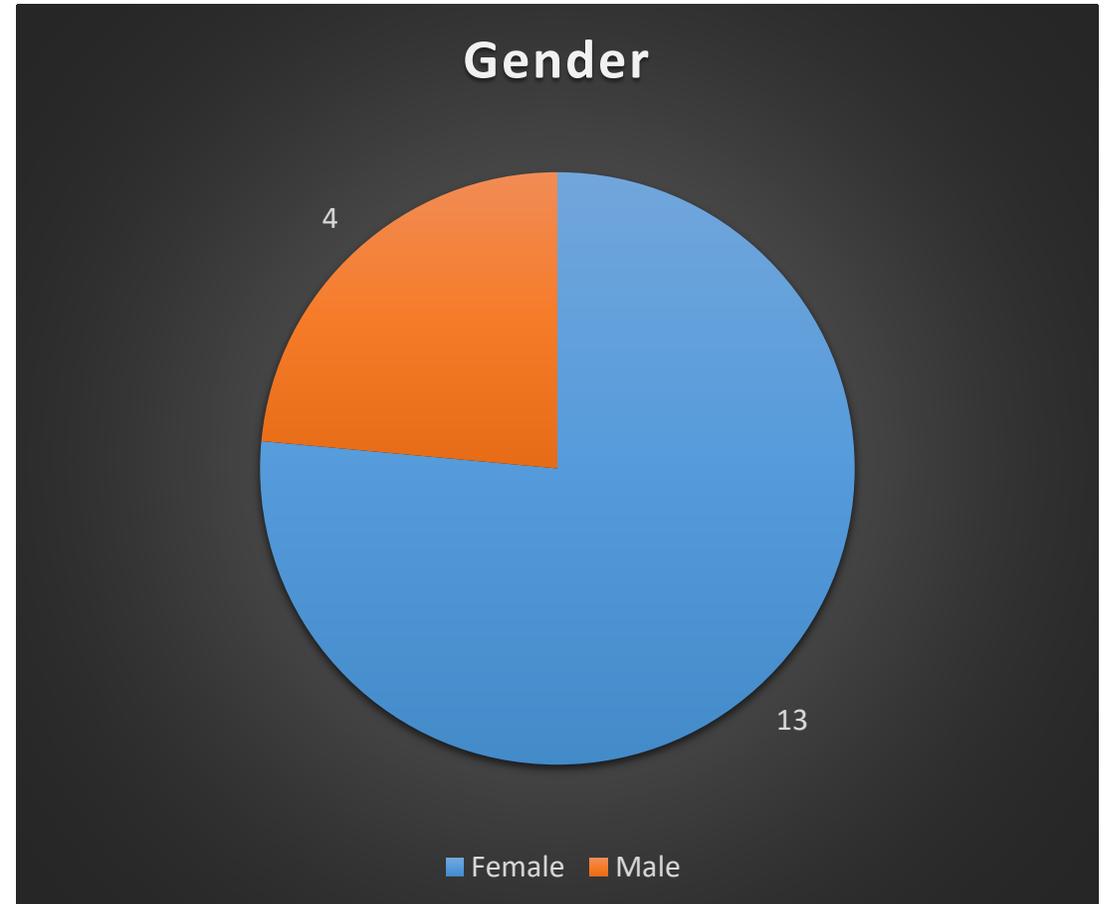
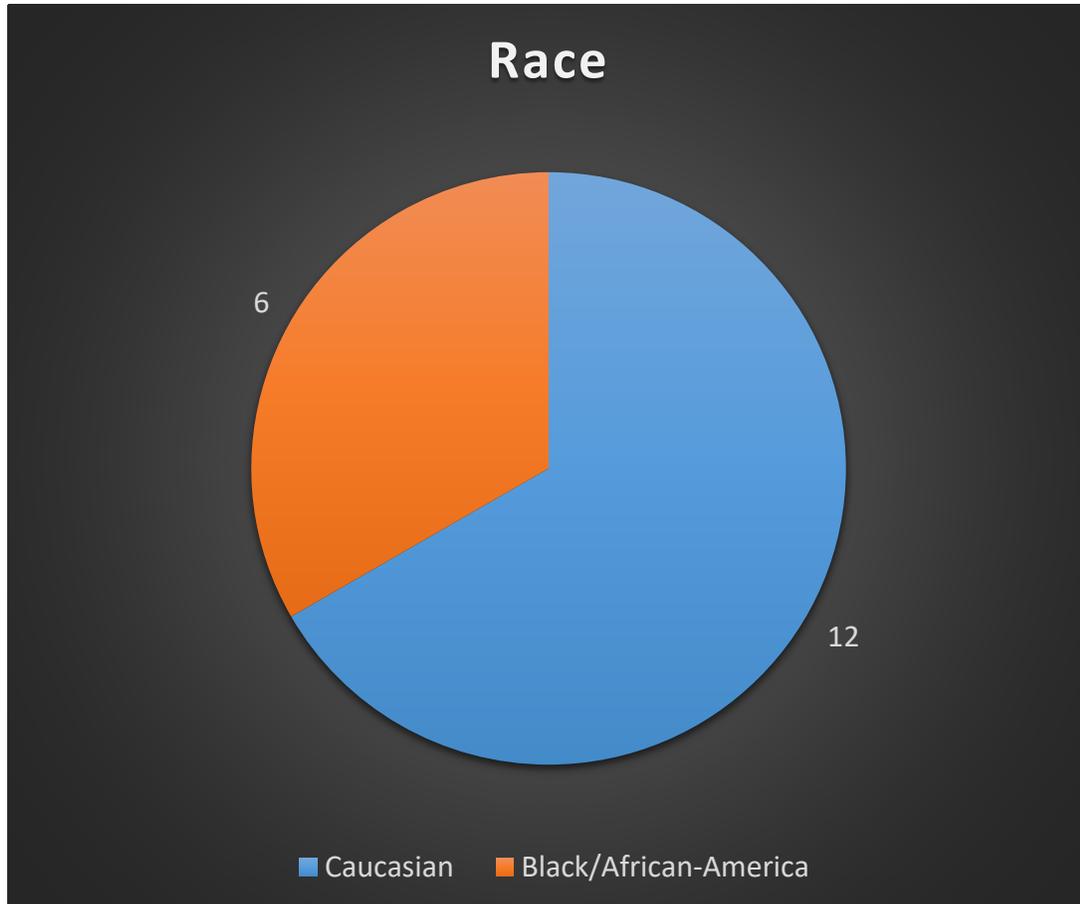
(as of December 2020)



Employee Breakdown by Department

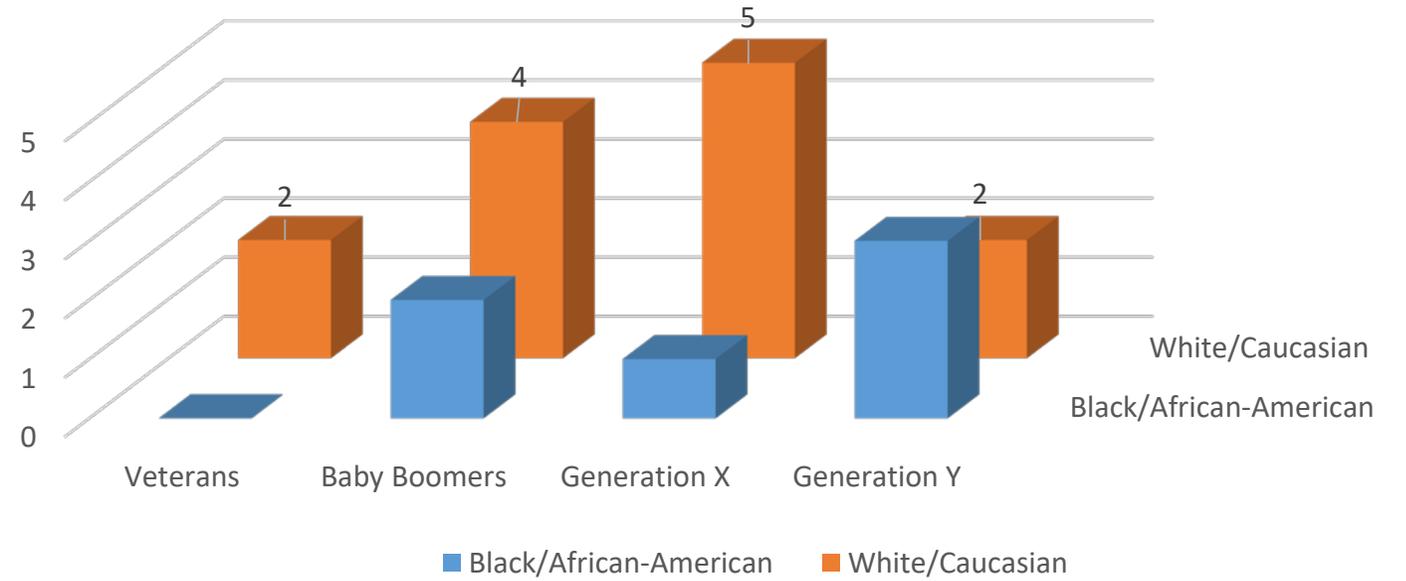


Employee Demographics



Accurate as of 1/1/2021

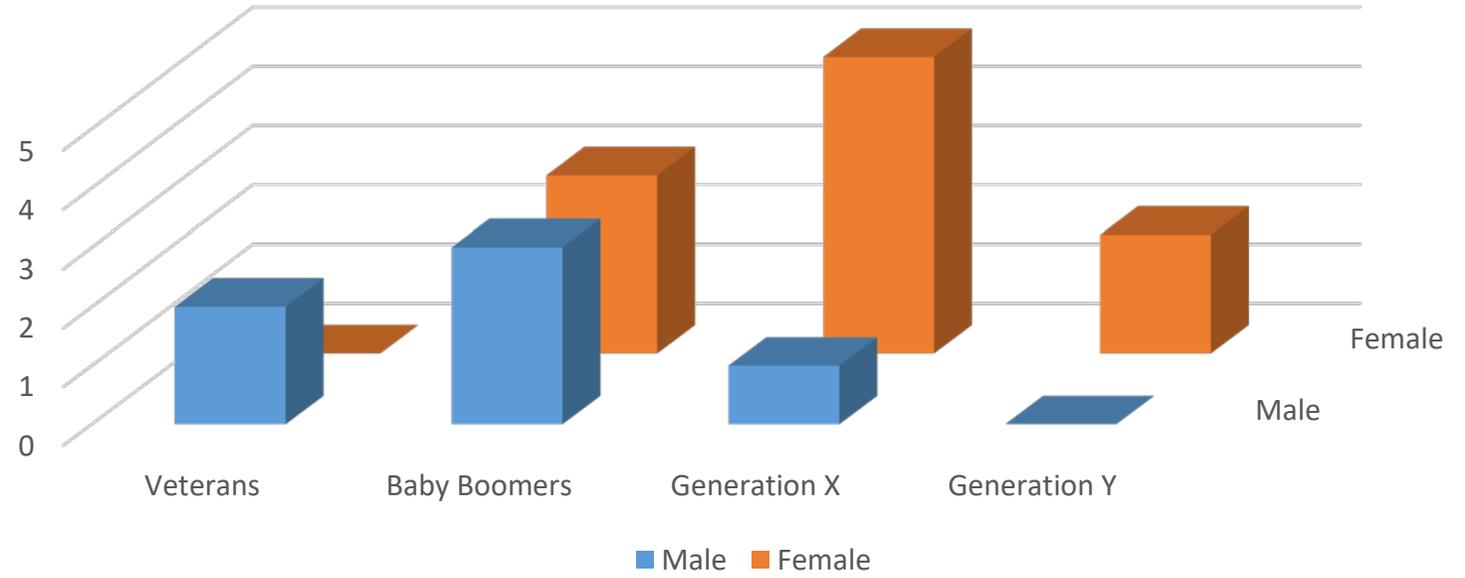
Commission Employees



- Generation by race.

- Accurate as of 1/1/2021

Commission Employees



- Generation by gender.

- Accurate as of 1/1/2021

Employee Morale and Training

Year	Did the Commission conduct a morale survey?	Did the Commission conduct agency-wide training?
2016-2017	No	No
2017-2018	Yes*	Yes
2018-2019	No	Yes
2019-2020	No	Yes

*The Commission plans to conduct an employee engagement study every three years.

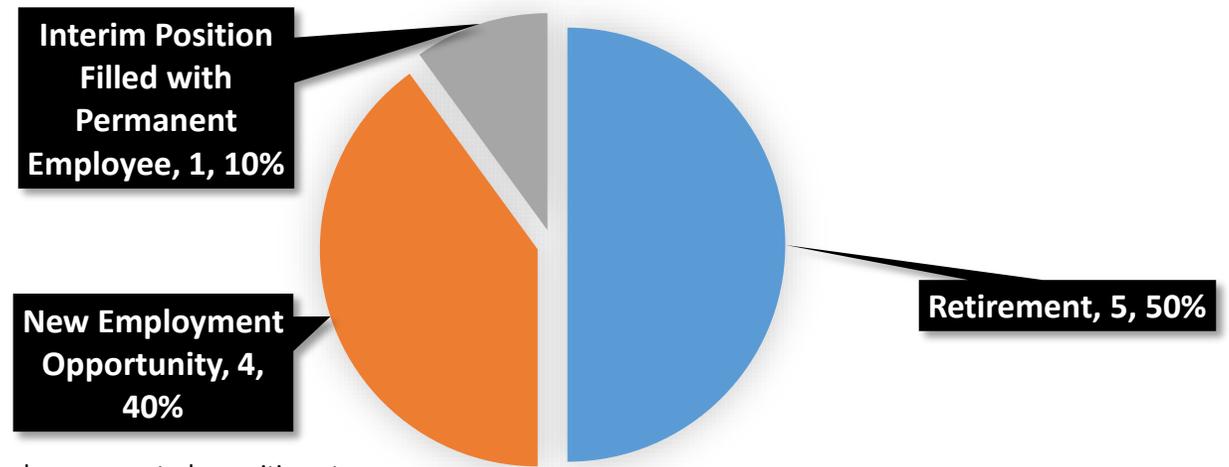
Employee Training

- Commission employees have recently received training on the following:
 - Campaign Practices
 - Financial Disclosures
 - Lobbyist and Lobbyist's Principal Disclosures
 - Rules of Conduct
 - Recent Advisory Opinions
 - Myers Briggs Type Indicator

Employee Retention

Year	Did the Commission experience turnover?	Rate	Number of Staff
2016-2017	Yes	25%	3
2017-2018	Yes	31.37%	5
2018-2019	Yes	13.11%	1
2019-2020	Yes	6.06%	1

Reason for Employee Separation



One employee accepted a position at another state agency.

Funding and Expenditures

Sources of Funds

State General Fund

Appropriated by the General Assembly

Carryforward of General Fund

An agency is permitted to carryforward up to 10% of the total funding from the previous year.

Other Fund

- Generated by the agency from lobbyist registrations; lobbyist's principal registrations; late filing penalties levied and collected; complaint fines paid.
- General Assembly authorizes the amount the agency can spend

Carryforward of Other Fund

The following code sections allow the agency to carryforward unexpended funds:

- 8-13-120 (education/training fee)
- 8-13-130(enforcement fee)
- 8-13-140(late filing fees)
- 8-13-150 (lobbyists and lobbyist's principals registration fees)

Fiscal Year 2016-2017

	2016-17	2017-18	2018-19	2019-20	2016-17 to 2019-20
General Fund		+255,671	+312,303	+0	
Funding	\$966,268	\$1,221,939	\$1,534,242	\$1,518,479	↑ 67.50%
Expenditures	<u>-\$880,114</u>	<u>-\$1,129,648</u>	<u>-\$1,404,162</u>	<u>-\$1,519,576</u>	↑ 72.66%
Remaining	\$86,154	\$92,291	\$130,080	\$98,903	
Other Fund		+0	+0	+0	
Funding	\$517,508	\$517,508	\$517,508	\$517,508	0.00%
Expenditures	<u>-\$159,365</u>	<u>-\$198,897</u>	<u>-\$286,761</u>	<u>-\$319,689</u>	↑ 100.60%
Remaining	\$358,143	\$318,611	\$230,747	\$197,819	
Org. Unit Staff		+0.5	+3.5	+2	
Administration	3	3	3	3	+0
Compliance	3	3	4	3	+0
Legal	1	1	2	2	+50%
Investigations	3	4.5	4	4	+33%
Disclosures	2	1	3	6	+200%
Cash Balance	\$576,542	\$773,882	\$955,680	\$1,153,164	↑ 100.01%

Note: The amount remaining from General Fund money, up to 10% of the total original funding, is included in the next year's funding for the agency. The following code sections allow the agency to carryforward unexpended funds: 8-13-120 (education/training fee); -130(enforcement fee); -140(late filing fees); -150 (lobbyists and lobbyist's principals registration fees)

Fiscal Year 2017-2018

	2016-17	2017-18	2018-19	2019-20	2016-17 to 2019-20
General Fund		+255,671	+312,303	+0	
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Counterparts

Counterparts

Entities that perform similar services as State Ethics Commission

	<i>Administer and enforce campaign finance law</i>	<i>Prevent conflicts of interest in executive branch</i>
Federal Counterpart	Federal Election Commission (FEC)	U.S. Office of Government Ethics (OGE)
State House Counterpart	House Ethics Committee	
State Senate Counterpart	Senate Ethics Committee	

Federal Counterparts

Federal Election Commission

Service: **Administer and enforce campaign finance law**

Entity: Federal Election Commission (FEC)

- Independent regulatory agency charged with administering and enforcing the federal campaign finance law.
- Jurisdiction over the financing of campaigns for
 - U.S. House
 - U.S. Senate
 - Presidency
 - Vice Presidency
- No overlapping jurisdiction with S.C. State Ethics Commission.

Federal Counterparts

U.S. Office of Government Ethics

Service: **Prevent conflicts of interest in executive branch**

Entity: U.S. Office of Government Ethics (OGE)

- Ethics in Government Act charges OGE with leading the effort to prevent conflicts of interest in the executive branch.
- Jurisdiction over conflicts of interests in
 - Executive branch agencies
 - Entities whose work focuses on institutional integrity
- Potential violations are primarily investigated by Inspectors General staff members across the executive branch.
- No overlapping jurisdiction with S.C. State Ethics Commission.

State Counterparts House and Senate Ethics Committees

- **SECTION 8-13-530.** Additional powers and duties of committee.

Each ethics committee shall:

(1) ascertain whether a person has failed to comply fully and accurately with the disclosure requirements of this chapter, which may include, but is not limited to, an audit of filed reports and applicable campaign bank statements, and to promptly notify the person to file the necessary notices and reports to satisfy the requirements of this chapter;

(2) receive complaints filed by individuals and, upon a majority vote of the total membership of the committee, file complaints when alleged violations are identified;

(3) upon the filing of a complaint alleging a violation by a member or staff of the appropriate house, or a member or staff of a legislative caucus committee, or a candidate for the appropriate house, for a violation of this chapter or Chapter 17, Title 2, other than a violation of a rule of the appropriate house, the ethics committee shall refer the complaint to the State Ethics Commission for an investigation pursuant to Section 8-13-540;

State Counterparts

House and Senate Ethics Committees

- (4) receive, investigate, and hear a complaint which alleges a possible violation of a breach of a privilege or a rule governing a member or staff of the appropriate house or legislative caucus committee, or candidate for the appropriate house;

(5) a complaint may not be accepted by the ethics committee concerning a member of or candidate for the appropriate house during the fifty-day period before an election in which the member or candidate is a candidate. During this fifty-day period, any person may petition the court of common pleas alleging the violations complained of and praying for appropriate relief by way of mandamus or injunction, or both. Within ten days, a rule to show cause hearing must be held, and the court must either dismiss the petition or direct that a mandamus order or an injunction, or both, be issued. A violation of this chapter by a candidate during this fifty-day period must be considered to be an irreparable injury for which no adequate remedy at law exists. The institution of an action for injunctive relief does not relieve any party to the proceeding from any penalty prescribed for violations of this chapter. The court must award reasonable attorney's fees and costs to the nonpetitioning party if a petition for mandamus or injunctive relief is dismissed based upon a finding that the:

(i) petition is being presented for an improper purpose such as harassment or to cause delay;

(ii) claims, defenses, and other legal contentions are not warranted by existing law or are based upon a frivolous argument for the extension, modification, or reversal of existing law or the establishment of new law; and

(iii) allegations and other factual contentions do not have evidentiary support or, if specifically so identified, are not likely to have evidentiary support after reasonable opportunity for further investigation or discovery.

Action on a complaint filed against a member or candidate which was received more than fifty days before the election but which cannot be disposed of or dismissed by the ethics committee at least thirty days before the election must be postponed until after the election;

State Counterparts

House and Senate Ethics Committees

- (6) obtain information, investigate technical violation complaints, and hear complaints as provided in Section 8-13-540 with respect to any complaint filed pursuant to this chapter or Chapter 17, Title 2 and to that end may compel by subpoena issued by a majority vote of the committee the attendance and testimony of witnesses and the production of pertinent books and papers;
- (7) administer or recommend sanctions appropriate to a particular member, or staff of, or candidate for, the appropriate house pursuant to Section 8-13-540, including the recovery of the value of anything transferred or received in breach of the ethical standards, or dismiss the charges; and
- (8) act as an advisory body to the General Assembly and to individual members of or candidates for the appropriate house on questions pertaining to the disclosure and filing requirements of members of or candidates for the appropriate house, and may issue, upon request from a member or staff of the appropriate house, or legislative caucus committee, or candidate for the appropriate house, and publish advisory opinions on the requirements of these chapters.

Regulations, Policies, Records, and Audits

Commission Regulations

- Currently under review by Commission staff
- In 2021, plan to publish a notice of drafting to begin the formal process of promulgating, amending, or repealing regulations pursuant to S.C. Code Ann. § 1-23-110

Commission Policies

- Last updated in 2018
- Modified as needed to comply with the following:
 - changes in law,
 - advancement of technology and
 - newly identified customer needs

Records Management

- The Commission, in coordination with the South Carolina Department of Archives and History, is in compliance with our records management policy.

III. Specific Records Retention Schedule

a. COMPLAINTS (DISMISSED AND MERITED)

- i. Documents complaints against public officials, public employees, lobbyists, and lobbyist's principals filed with the commission alleging a violation of the State Ethics Act. Records contain complaint forms which include the complainant's name, address, respondent's name, address, and title. Also included are the actual complaint against the respondent and any public record consisting of the pleadings, decision and orders, and record of hearing. Dismissed complaints are restricted to commission staff, while merited complaints are matters for public review with the exception of the Commission's internal and investigatory papers, including attorney work product which are confidential.

1. Dismissed Complaints: Retain 5 years after dismissal stage, destroy.

2. Merited Complaints:

- a. Public Records – Includes Complaint, Response, Notice of Hearing and Order. Retain five years after final disposition of complaint. Send to State Archives for permanent retention.
- b. Attorney/Investigative Summary – Retain five years after final disposition of complaint and destroy.

Oversight process brought this matter to our attention.

Internal Audits

- ***Procurement***

- Monthly and annual reviews for various functions that fall under the Commission's purview
- Includes monthly purchase order audits to ensure that goods and services have been received and invoices paid in a timely manner and within state guidelines
- Completes annual asset inventory and fleet audit along with an internal review of the agency's annual insurance coverage renewal

- ***Finance***

- Finance operations are designed to ensure there is a separation of duties
- All financial transactions are processed and reviewed by multiple employees to ensure that minor variances and timely payment of invoices are priorities.

- ***Human Resources***

- Separation of duties is established so the individual performing a task is not the same individual reviewing that the task was completed correctly.
- Audited human resources transactions include recruitment and on-boarding new hires, pay and transfers modifications, EPMS, and terminations.

External Audits

- State Auditor audits the Ethics Commission annually
- Issues found during audits include:
 - Commission could not provide supporting documentation for one of twenty-five non-payroll disbursement transactions tested. The Commission reimbursed one employee approximately \$131 for mileage while traveling on official business however the Commission could not provide documentation in the form of a travel voucher to support the trip.
 - Approximately \$31,000 was inadvertently excluded from the Commission's future minimum lease payment schedule filed with the Comptroller General's Office.

External Audits

- Issues found during audits include (cont.)
 - Liability reported for compensated absences was understated by approximately \$2,400 due to the inadvertent omission of compensatory time from the reported liability.
 - One of the twenty receipt transactions selected included a receipt that was not deposited in a timely manner. The receipt was deposited approximately one month after it was received.
 - One reporting package, the Subsequent Events Questionnaire, was submitted to the CG one day after its due date.

Manual Data Entry

Data Overview

- Databases maintained by the Commission include:

Database	Information stored
Late Filing Penalty Log	Individuals owing late filing penalties to the Commission.
Complainant Index*	Individuals who have filed complaints with the Commission.
Respondent Index*	Individuals against whom complaints have been filed with the Commission.
Call Logs	Individuals requesting telephone assistance with required filings.
Internal Control Sheets	Amount of money owed to the Commission.
Debtors List	Individuals owing a debt to the Commission.

* Denotes database containing confidential information.

Manual Data Entry

Database	Information From	Frequency received	Information provided	Information manually entered in Commission database to... (how information is used)
Electronic Filing System	Secretary of State's Office	Biennially	The composition of municipal boards and special purpose districts.	Add and delete entities required to file Statements of Economic Interests
Internal Control Sheets	S.C. Dept. of Revenue	Monthly	Amounts DOR collected on behalf of the Commission through Setoff Debt Collection and GEAR programs.	Amounts used to compile data for Debtors List and debts that must be re-submitted to DOR.

Note: These will be discussed in further detail in the "Required Filings" and the "Investigation" presentations.

Emerging Issues, Successes, and Challenges

Emerging Issues

- **Digital Currency*** - As the popularity of cryptocurrency such as “Bitcoin” grows, the Commission is tasked with regulating potential campaign contributions utilizing cryptocurrency.
- **Accountability and Reporting Portal*** - The application filers use to complete their filings is archaic and difficult to use.
- **Registration of Local Lobbyists*** - Governor McMaster has frequently called for the Commission’s jurisdiction to be expanded to include the registration of individuals lobbying local government officials. The Commission does not currently have the required levels of staffing to regulate local lobbyists.

*Will be discussed in further detail during the “Required Filings ” presentation

Challenges

- **Definition of “Committee”*** - The Ethics Act requires committees to maintain and file certain records with the Commission. However, in 2010 the definition of “committee” was found to be unconstitutional by a federal district court judge.
- **Increased Flagging^** - The increased flagging has resulted in a backlog for penalizing late filers. The Commission has increased staffing to reduce the backlog and provide timelier accountability for late filers.
- **Case Management^** - The Commission has never had case management software. Instead, case files have historically been stored on a shared network resulting in confusion and redundancy. The Commission has contracted with Spartan Technology - secure case management software will be fully implemented in the coming months.

*Will be discussed in further detail during the “Required Filings” presentation

^ Will be discussed in further detail during the “Investigations” presentation

Successes

- **Going Green** - Beginning in 2018, the Commission increased efforts towards “going green,” resulting in increased efficiency and a reduction in both costs and environmental impact.
- **Increased Training** - In partnering with various entities including, but not limited to, the South Carolina Association of Counties and the Municipal Association of South Carolina, the Commission has trained more than two thousand people over the past two years.
- **Elimination of Backlog** - In 2017, the Commission was facing a backlog of cases pending a hearing with more than 50 cases awaiting newly appointed Commissioners. Since March 2018, the Commission has resolved 120 cases, leaving 16 cases currently pending a hearing.