



STATE OF VERMONT
OFFICE OF THE ATTORNEY GENERAL
109 STATE STREET
MONTPELIER, VT
05609-1001

To: Senate Committee on Government Operations
From: Robert F. McDougall, Deputy Attorney General
Date: May 2, 2023
Re: Draft 2.6 – H.429 (dated 5/1/23)

Understanding that the Committee's time may be limited, in lieu of testimony on the above bill, the Attorney General's Office offers the following points for consideration.

We understand the Committee is looking at new provisions related to penalties for late or inaccurate financial disclosures by candidates for state office, county office, state Senator, or state representative.

References below refer to the language of Draft 2.6 – H.429, dated 5/1/23. In summary, the Attorney General's Office recommend using (i) the complaint handling and reporting provisions that already exist in the Vermont Ethics Code and Campaign Finance law, and (ii) the definition of "material fact" already in existence in the False Claims Act. More specifically, we recommend:

- (1) **Continuing to have the Commission receive complaints.** In proposed 17 V.S.A. § 2415(e) it states that complaints concerning the failure to file a disclosure "with the intent to defraud, falsify, conceal, or cover up a material fact..." may be "filed with the Office of the Attorney General, or with the State Ethics Commission and referred to the Office of Attorney General, for investigation." Elsewhere in Vermont's Ethics Code, the Legislature has directed that complaints be received by the Commission and referred to the relevant authority. *See* 3 V.S.A. § 1223 (Procedure for handling complaints). For the sake of consistency and efficiency, instead of a new process unique to late financial disclosures in proposed new 17 V.S.A. § 2415(e), we recommend cross-referencing the existing "procedure for handling complaints" in 3 V.S.A. § 1223. Moreover, given that it is already performing very similar work, the Commission is likely best positioned to educate candidates regarding disclosure requirements.
- (2) **Avoiding conflicts of interest by adding shared enforcement authority.** Elsewhere in Vermont's Ethics Code and Campaign Finance law, the Legislature has created shared enforcement authority of the Attorney General's Office and State's Attorneys. *See* 3 V.S.A. § 1223 and 17 V.S.A. § 2903. This is important if there was a complaint made regarding the Attorney General. It is also important if a conflict is presented by the Attorney General's Office's representation of elected officials in lawsuits. Instead of a structure unique to financial disclosures, we therefore recommend cross-referencing the provisions cited above in Vermont's Ethic Code and Campaign Finance law regarding shared enforcement authority.

- (3) **Aligning timeframes with Vermont’s Ethics Code and Campaign Finance law.** Draft bill language creating a new 17 V.S.A. § 2415(f)) states:

The Attorney General’s office shall notify the State Ethics Commission within 10 days after receipt after a complaint under this subchapter and, within 90 days after receipt of a complaint, shall file a report with the Executive Director of the State Ethics Commission with the results of any investigation undertaken under this subchapter or, if the Attorney General’s office declines to initiate an investigation, a summary of the reasons why an investigation was not initiated.

This language and its required timeframe are a departure from the current practice laid out in statute. The current reporting requirements in Vermont’s Ethics Code and Campaign Finance law are in 3 V.S.A. § 1223 (Process for handling complaints) and 17 V.S.A. § 2904a (Reports to the State Ethics Commission). The Attorney General’s Office currently reports to the Ethics Commission following these statutory processes.

If we are reading it correctly, the draft language creates a novel requirement that the Attorney General’s Office complete any investigation 90 days from receipt of a complaint. Such a requirement may pose legal problems both for enforcement of the law and defense of the statute, which would be handled by the Attorney General’s Office. Also, it may not account for the time needed to review a complaint, receive a response – particularly from a potentially uncooperative target of an investigation or one who may be intentionally delaying – and review and analyze evidence and materials. We recommend removing the novel 90-day reporting language and simply cross-referencing existing reporting language in 3 V.S.A. § 1223 (Process for handling complaints) and 17 V.S.A. § 2904a (Reports to the State Ethics Commission).

- (4) **Using a definition of “material fact” that currently exists in statute.** Draft bill language creating a new 17 V.S.A. § 2415(d) creates a novel definition of “material fact” regarding financial disclosures for the criminal offense of false claim under 13 V.S.A. § 3016. This creation of a new definition in a related statute may create confusion. If the Legislature seeks to modify the crime of false claim related to financial disclosures by Executive office holders, we would recommend doing so directly in Title 13 to avoid confusion. Another option would be to simply adopt the existing statute and case law associated with the False Claims Act, 13 V.S.A. § 3016.

Finally, a brief suggestion regarding proposed 17 V.S.A. § 2414(c). Under existing law a candidate may redact from his or her U.S. Income Tax Return Form 1040 information including: (1) the candidate’s Social Security number and that of his or her spouse; (2) the names of any dependent and the dependent’s Social Security number; and (3) the signature of the candidate and that of his or her spouse. In addition to that information, we suggest that candidates should also be allowed to redact (a) his or her street address; and (b) identifying information and signature of a paid preparer. We make these suggestions out of concern for safety and privacy.

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