

1 Introduced by the Committee on Government Operations and Military Affairs

2 Date:

3 Subject: Municipal and County Government

4 Statement of purpose of bill as introduced: This bill proposes to create a  
5 uniform Municipal Code of Ethics. This bill will also repeal redundant  
6 municipal ethics law and require municipal officers currently in office to  
7 complete initial ethics training.

8 An act relating to creating a uniform Municipal Code of Ethics

9 It is hereby enacted by the General Assembly of the State of Vermont:

10 \* \* \* Repeal of Redundant Ethics Law \* \* \*

11 Sec. 1. REPEAL

12 24 V.S.A. § 1984 (conflict of interest prohibition) is repealed.

13 Sec. 2. 24 V.S.A. § 2291 is amended to read:

14 § 2291. ENUMERATION OF POWERS

15 For the purpose of promoting the public health, safety, welfare, and  
16 convenience, a town, city, or incorporated village shall have the following  
17 powers:

18 \* \* \*

19 (20) ~~To establish a conflict of interest policy to apply to all elected and~~  
20 ~~appointed officials of the town, city, or incorporated village or ethical conduct~~

1 ~~policies to apply to all elected and appointed officials and employees of the~~  
2 ~~municipality, or both. [Repealed.]~~

3 \* \* \*

4 \* \* \* Creation of Municipal Code of Ethics \* \* \*

5 Sec. 3. 24 V.S.A. chapter 60 is added to read:

6 CHAPTER 60. MUNICIPAL CODE OF ETHICS

7 § 1991. DEFINITIONS

8 As used in this chapter:

9 (1) “Candidate” and “candidate’s committee” have the same meanings  
10 as in 17 V.S.A. § 2901.

11 (2) “Commission” means the State Ethics Commission established  
12 under 3 V.S.A. chapter 31, subchapter 3.

13 (3) “Confidential information” means information that is exempt from  
14 public inspection and copying under 1 V.S.A. § 315 et seq. or is otherwise  
15 designated by law as confidential.

16 (4) “Conflict of interest” means a direct or indirect interest of a  
17 municipal officer or such an interest, known to the officer, of a member of the  
18 officer’s immediate family or household, or of a business associate, in the  
19 outcome of a particular matter pending before the officer or the officer’s public  
20 body, or that is in conflict with the proper discharge of the officer’s duties.

1 “Conflict of interest” does not include any interest that is not greater than that  
2 of other individuals generally affected by the outcome of a matter.

3 (5) “Domestic partner” means an individual in an enduring domestic  
4 relationship of a spousal nature with the municipal officer or the public  
5 servant, provided the individual and municipal officer or public servant:

6 (A) have shared a residence for at least six consecutive months;

7 (B) are at least 18 years of age;

8 (C) are not married to or considered a domestic partner of another  
9 individual;

10 (D) are not related by blood closer than would bar marriage under  
11 State law; and

12 (E) have agreed between themselves to be responsible for each  
13 other’s welfare.

14 (6) “Immediate family” means an individual’s spouse, domestic partner,  
15 or civil union partner; child or foster child; sibling; parent; or such relations by  
16 marriage or by civil union or domestic partnership; or an individual claimed as  
17 a dependent for federal income tax purposes.

18 (7) “Legislative body” means the selectboard in the case of a town, the  
19 mayor, alderpersons, and city council members in the case of a city, the  
20 president and trustees in the case of an incorporated village, **the members of**

1 the prudential committee in the case of a fire district, and the supervisor in the  
2 case of an unorganized town or gore.

3 (8) “Municipal employee” means an individual performing services for  
4 or holding an office, position, employment, or membership in any  
5 municipality, whether by election, appointment, contract of hire, or  
6 engagement, whether serving with or without compensation, on a full-time,  
7 regular, part-time, temporary, intermittent, permanent, or consultant basis.

8 (9) “Municipal officer” or “officer” means any individual who holds the  
9 position of, exercises the function of, or executes the authority of any position  
10 in or on behalf of any municipality, including:

11 (A) any member of a public body, meaning any legislative body or  
12 quasijudicial body of a municipality, including any board, council,  
13 commission, committee, or any like group of a municipality; and

14 (B) any other elected or appointed member of a municipal  
15 government.

16 (10) “Municipality” has the same meaning as 1 V.S.A. § 126, but does  
17 not include town or incorporated school districts.

18 (11) “Retaliate” or “retaliation” means:

19 (A) the discharge, suspension, reprimand, demotion, denial of  
20 promotion, imposition of a performance warning period, involuntary transfer  
21 or reassignment, or adverse employment action; or

1           (B) the use of official authority or position to deny, deprive, or  
2           interfere with any right or privilege otherwise available to an individual under  
3           the law.

4           § 1992. CONFLICTS OF INTEREST

5           (a) Duty to avoid conflicts of interest. In the municipal officer’s official  
6           capacity, the officer shall avoid any conflict of interest or the appearance of a  
7           conflict of interest. The appearance of a conflict shall be determined from the  
8           perspective of a reasonable individual with knowledge of the relevant facts.

9           (b) Recusal.

10           (1) If a municipal officer is confronted with a conflict of interest or the  
11           appearance of one, the officer shall immediately recuse themselves from the  
12           matter, except as otherwise provided in subdivisions (2) and (5) of this  
13           subsection, and not take further action on the matter or participate in any way  
14           or act to influence a decision regarding the matter. The officer shall make a  
15           public statement explaining the officer’s recusal.

16           (2) Notwithstanding subdivision (1) of this subsection, an officer may  
17           continue to act in a matter involving the officer’s conflict of interest or  
18           appearance of a conflict of interest if the officer first:

19           (A) determines there is good cause for the officer to proceed,  
20           meaning:

21           (i) the conflict is amorphous, intangible, or otherwise speculative;

1                   (ii) the officer cannot legally or practically delegate the matter; or  
2                   (iii) the action to be taken by the officer is purely ministerial and  
3                   does not involve substantive decision-making; and

4                   (B) the officer submits a written nonrecusal statement to the  
5                   legislative body of the **municipality** regarding the nature of the conflict that  
6                   shall:

7                   (i) include a description of the matter requiring action;

8                   (ii) include a description of the nature of the potential conflict or  
9                   actual conflict of interest;

10                  (iii) include an explanation of why good cause exists so that the  
11                  public servant can take action in the matter fairly, objectively, and in the public  
12                  interest;

13                  (iv) be written in plain language and with sufficient detail so that  
14                  the matter may be understood by the public; and

15                  (v) be signed by the municipal officer.

16                  (3) If an **officer**'s conflict of interest or the appearance of a conflict of  
17                  interest concerns an official act or actions that take place outside a public  
18                  meeting, the officer's nonrecusal statement shall be filed with the clerk of the  
19                  **municipality** and be available to the public for the duration of the officer's  
20                  service plus a minimum of five years.

1           (4) If an officer’s conflict of interest is related to an official municipal  
2           act or actions considered at a public meeting, the officer’s nonrecusal  
3           statement shall be filed as part of the minutes of the meeting of the public body  
4           in which the municipal officer serves.

5           (5) If, at a meeting of a public body, an officer becomes aware of a  
6           conflict of interest or the appearance of a conflict of interest for the officer and  
7           the officer determines there is good cause to proceed, the officer may proceed  
8           with the matter after announcing and fully stating the conflict on the record.

9           The officer shall submit a written nonrecusal statement pursuant to subdivision  
10          (2) of this subsection within 24 hours after the start of the meeting. The  
11          meeting minutes shall be subsequently amended to reflect the submitted  
12          written nonrecusal statement.

13          (c) Authority to inquire about conflicts of interest. If a municipal officer is  
14          a member of a public body, the other members of that body shall have the  
15          authority to inquire of the officer about any possible conflict of interest or any  
16          appearance of a conflict of interest and to recommend that the member recuse  
17          themselves from the matter.

18          (d) Confidential information. Nothing in this section shall require a  
19          municipal officer to disclose confidential information or information that is  
20          otherwise privileged under law.

21          § 1993. PROHIBITED CONDUCT

1        (a) Directing unethical conduct. A municipal officer shall not direct any  
2        individual to act in a manner that would:

3            (1) benefit a municipal officer in a manner related to the officer’s  
4        conflict of interest;

5            (2) create a conflict of interest or the appearance of a conflict of interest  
6        for the officer or for the directed individual; or

7            (3) otherwise violate the Municipal Code of Ethics as described in this  
8        chapter.

9        (b) Preferential treatment. A municipal officer shall act impartially and not  
10       unduly favor or prejudice any person in the course of conducting official  
11       business. An officer shall not give, or represent an ability to give, undue  
12       preference or special treatment to any person because of the person’s wealth,  
13       position, or status or because of a person’s personal relationship with the  
14       officer, unless otherwise permitted or required by State or Federal law.

15       (c) Misuse of position. A municipal officer shall not use the officer’s  
16       official position for the personal or financial gain of the officer, a member of  
17       the officer’s immediate family or household, or the officer’s business  
18       associate.

19       (d) Misuse of information. A municipal officer shall not use nonpublic or  
20       confidential information acquired during the course of official business for  
21       personal or financial gain of the officer or for the personal or financial gain of



1 a member of the officer’s immediate family or household or of an officer’s  
2 business associate.

3 (e) Misuse of government resources. A municipal officer shall not make  
4 use of a town’s, city’s, or village’s materials, funds, property, personnel,  
5 facilities, or equipment, or permit another person to do so, for any purpose  
6 other than for official business unless the use is expressly permitted or required  
7 by State law; ordinance; or a written agency, departmental, or institutional  
8 policy or rule. An officer shall not engage in or direct another person to  
9 engage in work other than the performance of official duties during working  
10 hours, except as permitted or required by law or a written agency,  
11 departmental, or institutional policy or rule.

12 (f) Gifts.

13 (1) No person shall offer or give to a municipal officer or candidate, or  
14 the officer’s or candidate’s immediate family, anything of value, including a  
15 gift, loan, political contribution, reward, or promise of future employment  
16 based on any understanding that the vote, official action, or judgment of the  
17 municipal officer or candidate would be, or had been, influenced thereby.

18 (2) A municipal officer or candidate shall not solicit or accept anything  
19 of value, including a gift, loan, political contribution, reward, or promise of  
20 future employment based on any understanding that the vote, official action, or

1 judgment of the municipal officer or candidate would be or had been  
2 influenced thereby.

3 (3) Nothing in subdivision (1) or (2) of this subsection shall be  
4 construed to apply to any campaign contribution that is lawfully made to a  
5 candidate or candidate’s committee pursuant to 17 V.S.A. chapter 61 or to  
6 permit any activity otherwise prohibited by 13 V.S.A. chapter 21.

7 (g) Unauthorized commitments. A municipal officer shall not make  
8 unauthorized commitments or promises of any kind purporting to bind the  
9 municipality unless otherwise permitted by law.

10 (h) Benefit from contracts. A municipal officer shall not benefit from any  
11 contract executed by the officer’s municipality in the officer’s official  
12 business, but not including any benefit that is not greater than that of other  
13 individuals generally affected by the contract.

14 **§ 1994. GUIDANCE AND ADVISORY OPINIONS**

15 **(a) Guidance.**

16 **(1) The Executive Director of the State Ethics Commission may provide**  
17 **guidance only to any individual with respect to a municipal officer’s duties**  
18 **regarding any provision of this chapter or regarding any other issue related to**  
19 **governmental ethics.**

20 **(2) The Executive Director may consult with members of the State**  
21 **Ethics Commission and the municipality in preparing this guidance.**

1           (3) Guidance provided under this subsection shall be exempt from  
2 public inspection and copying under the Public Records Act and shall be kept  
3 confidential unless the receiving entity has publicly disclosed it.

4           (b) Advisory opinions.

5           (1) On the written request of any individual, the Executive Director may  
6 issue an advisory opinion to that individual that provides general advice or  
7 interpretation with respect to a municipal officer’s duties regarding any  
8 provision of this chapter or regarding any other issue related to governmental  
9 ethics.

10           (2) The Executive Director may consult with members of the  
11 Commission and the municipality in preparing these advisory opinions.

12           (3) The Executive Director may seek comment from persons interested  
13 in the subject of an advisory opinion under consideration.

14           (4) The Executive Director shall post on the Commission’s website any  
15 advisory opinions that the Executive Director issues.

16           § 1995. ETHICS TRAINING

17           (a) Initial ethics training. Within 120 days after a municipal officer is  
18 elected or appointed, the officer shall complete ethics training, as approved by  
19 the State Ethics Commission. The officer, the officer’s employer, or another  
20 individual designated by the municipality shall document the officer’s  
21 completed ethics training.

1        (b) Continuing ethics training. Upon completing initial ethics training, a  
2        municipal officer shall complete additional ethics training, as determined by  
3        the State Ethics Commission, every three years.

4        (c) Approval of training. Ethics trainings shall be approved by the State  
5        Ethics Commission and be conducted by the State Ethics Commission; the  
6        municipality; or a third party approved in advance by the State Ethics  
7        Commission. The State Ethics Commission may approve trainings that are in-  
8        person, online, and synchronous or asynchronous. The State Ethics  
9        Commission shall require ethics training to be designed in a manner as to  
10       achieve improved competency in the subject matter rather than rely on fixed  
11       hours of training as a measure of completed training. The training shall  
12       include information approved by the Secretary of State regarding the State’s  
13       Open Meeting Law and the State’s Public Records Act.

14       (d) State Ethics Commission liaisons. Each municipality, acting through its  
15       legislative body, shall designate a senior-level employee as its liaison to the  
16       State Ethics Commission. The municipality shall notify the Commission in  
17       writing of any newly designated employee within 30 days after such change.  
18       The Commission shall disseminate information to the designated liaisons and  
19       conduct educational seminars for designated liaisons on a regular basis on a  
20       schedule to be determined by the Commission, in consultation with the  
21       municipality.

1     § 1996. ENFORCEMENT AND REMEDIES

2     Each municipality shall:

3             (1) ensure that the Municipal Code of Ethics is posted on the town’s,  
4     city’s, or village’s website or, if no such website exists, ensure that a copy of  
5     the Municipal Code of Ethics is received by all municipal officers and is made  
6     available to the public upon request;

7             (2) maintain a record of municipal officers who have received ethics  
8     training pursuant to section 1995 of this title;

9             (3) designate a municipal officer or body to receive complaints alleging  
10    violations of the Municipal Code of Ethics;

11            (4) where appropriate or necessary, investigate complaints that allege  
12    violations of the Municipal Code of Ethics;

13            (5) maintain a record of received complaints and the disposition of each  
14    complaint for the duration of the municipal officer’s service plus a minimum  
15    of five years; and

16            (6) upon request of the State Ethics Commission, promptly provide the  
17    State Ethics Commission with a summary of complaints received by the  
18    municipality, and the outcome of each complaint.

19    § 1997. WHISTLEBLOWER PROTECTION

20            (a) Protected disclosure. Consistent with 3 V.S.A. §§ 971–978, any  
21    municipal officer, municipal employee, or any other individual shall be free to

1 disclose, in good faith and with candor, any waste, fraud, abuse of authority,  
2 violations of law, or violations of this or other applicable codes regarding  
3 ethical conduct, to any relevant public body, including the municipality’s  
4 legislative body and the State Ethics Commission, without fear of reprisal,  
5 intimidation, or retaliation.

6 (b) Antiwhistleblower policies. A municipal officer, legislative body, or  
7 public body shall not make, adopt, or enforce any policy or practice preventing  
8 the disclosure of waste, fraud, abuse of authority, violations of law, or  
9 violations of this or other applicable codes regarding ethical conduct.

10 (c) Civil action.

11 (1) To avail themselves of any remedies under this section, an individual  
12 must have:

13 (A) at the time of discovering the violation, then disclosed in writing  
14 to the relevant public body of the violation; and

15 (B) in that disclosure, clearly alleged the conduct constituting waste,  
16 fraud, abuse of authority, or violations of law, or violations of this or other  
17 applicable codes regarding ethical conduct.

18 (2) An individual who has been the object of retaliation in violation of  
19 this section may bring a civil action against the municipality and the municipal  
20 officer in the civil division of the Superior Court for relief within one year after

1 discovering the retaliation, or within three years after the retaliation, whichever  
2 is earlier.

3 (3) An individual who brings a claim in the civil division of the Superior  
4 Court may be awarded the following remedies:

5 (A) appropriate injunction relief;

6 (B) reinstatement of the employee to the same position, seniority, and  
7 work location held prior to the retaliatory action;

8 (C) back pay, lost wages, benefits, and other remuneration;

9 (D) other compensatory damages;

10 (E) reasonable costs and attorney’s fees; and

11 (F) punitive damages not more than \$5,000.00.

12 § 1998. MUNICIPAL CHARTERS; SUPPLEMENTAL ETHICS POLICIES

13 (a) To the extent any provisions of this chapter conflict with the provisions  
14 of any municipal charter listed in Title 24 Appendix, the provisions of this  
15 chapter shall prevail.

16 (b) A municipality, may adopt additional ethics or personnel policies,  
17 provided that these are not in conflict with the provisions of this chapter.

