

Testimony of the Vermont League of Cities and Towns
Ted Brady, Executive Director
House Government Operations and Military Affairs
Regarding Municipal Ethics Legislation
January 24, 2024

My name is Ted Brady, and I am the Executive Director of the Vermont League of Cities and Towns, which represents all 247 cities and towns in Vermont. Thank you for asking me in to discuss the committee's consideration of the State Ethics Commission's report on municipal ethics and the possibility of creating a uniform municipal code of ethics.

We support the fundamental goal of establishing ethical standards, educating people about those standards, and holding people accountable to those standards at the municipal level.

I hope you'll consider three critical points as you review this issue:

- Municipal ethics expectations and accountability should be centered at the municipal level;
- The state should invest in VLCT's capabilities to help municipalities meet ethics requirements; and
- Avoid creating a parallel system to hear and investigate municipal ethics concerns outside of municipal government and the existing judicial system.

The current proposal largely ignores these three critical points, and as such, we do not support the proposal's approach to addressing concerns about municipal ethics. I outline the approach VLCT would like to see the Legislature and the Commission take in the letter I submitted to the Ethics Commission this past fall, and that they included in their report. I've attached a copy of that letter to this testimony.

This proposal largely tells the State Ethics Commission to run before it walks – putting the thousands of volunteer, appointed and elected local officials under the same code of conduct that state officials (most of whom are paid, full-time employees of the state) and charging the commission with ensuring they comply, including a provision that appears to give it the authority to reprimand municipal officials. I'm also concerned that the proposal seems based on how Rhode Island and Massachusetts enforce municipal ethics. I want to share a quick reminder that Vermont municipal government is unique. Rhode Island has 39 cities and towns – most, if not all, with either a career manager or career / full-time mayor. Most with significant numbers of employees. Vermont, with its 247 cities and towns, a few gores, and dozens of villages, depends on volunteers to run more than half of its municipalities.

That said, I do see some areas of common ground in the existing proposal.

VLCT Supports the Concept of an Ethics Ombudsman

One area of the draft legislation that we do agree with the committee and the State Ethics Commission

on is the need for a third party / ethics ombudsman to provide municipal officials with a resource capable of issuing non-binding opinions on municipal ethics issues. This would be a good resource for a municipal official who is unsure whether they need to recuse themselves, a trusted place to seek guidance by a “catalyst” candidate who may be challenging established systems, and an ally in identifying unethical behavior. While VLCT’s four Municipal Assistance Center attorneys field dozens of ethics questions a year, we are not the right place to field a question by a member of a board questioning another member of a board. As such, we’d support the provision of the bill on page 8, line 3 of draft 24-0461 that allows municipal officials to seek the opinion of the State Ethics Commission on conflicts of interest.

We also think that including a seat appointed by VLCT to the State Ethics Commission would be appropriate, as is recommended in 04-0229 Section 11.

VLCT Supports Increased Training and Education About Ethics

The second area of the draft legislation that we agree with is the need for more training resources. However, this bill requires local officials to take such training – what we believe would be the first and only training requirement in state statute for any elected municipal official. There are dozens, if not hundreds, of laws that municipal officials need to comply with. We know, because we run a Selectboard Institute every spring for newly elected officials where we cover many of those laws. Requiring local officials to take training on one state law related to ethics seems arbitrary – when open meeting laws, public records laws, and more are as essential to good governance. We also provide model policies, guidance and online toolkits to help municipal officials comply with state laws, such as our model conflict of interest policy, our conflict of interest policy on land use, and our incompatible officers chart. I have included our model conflict of interest policy as an addendum to my written testimony today so you can see the type of resources we provide our members.

Areas of Concern

We have significant concerns with most of the proposal in 24-0461. We urge you to consider a different approach. Below are a few of the largest concerns we have, but please note, these are not exhaustive.

Section 1 and 2 eliminate the relatively new conflict of interest prohibition. Municipalities are still getting used to this provision, and we still receive questions about how to implement this law. Building on this section would be the best path forward, not repealing it.

Section 3 creates a new municipal code of ethics, modeled on the state code of ethics. A few concerning issues with this approach include:

- The entire proposed construct doesn’t require an affirmative action by a legislative body. The existing conflict of interest law requires a town to adopt a policy, own the policy, and hold itself accountable to the policy.

- Section 1992 on page 8, line 12, voids any action taken if a conflict of interest is ever discovered. This essentially means no decision is every settled, as years later a legal action could undue a decision based on a perceived conflict. Does the Legislature, State Government, or private sector operate under the same standard?
- Section 1994 on page 11, line 12, establishes employment prohibitions that mirror state ethics prohibitions on outside employment and post-office employment. Paid, career politicians and government executives of an \$8 billion enterprise are different from volunteer selectboard members with no authority outside of a board vote.

VLCT Urges the Committee to Enact Voter-Accountability Through Recall Authority

Section 1996 starting on page 13, line 17 establishes enforcement and remedies. The best enforcement and remedy of an unethical municipal official is their ouster from office. In the case of elected officials, the buck stops with the voter. Vermont law currently does not allow for municipalities to use the power of recall elections to hold officials accountable (except for a limited number of chartered communities with such authority). VLCT believes giving this authority to municipalities, upon a vote at Town Meeting, would be an effective way to ensure elected municipal officials were held accountable for unethical behavior.

Thank you for asking VLCT for its opinion on this Legislation. I hope you see that VLCT is interested in working on a solution with you. We are not however, interested in the State or the State Ethics Commission doing something to us.