

1 Introduced by Committee on Government Operations and Military Affairs

2 Date:

3 Subject: Executive; governmental ethics; State Ethics Commission; State Code
4 of Ethics

5 Statement of purpose of bill as introduced: This bill proposes to require that
6 certain county officers both running for and holding office file financial
7 disclosures. It proposes to modify disclosure requirements for certain elected
8 officers both running for and holding office. This bill will create penalties for
9 delinquent disclosures for candidates for State office, county office, State
10 Senator, and State Representative. It will grant the State Ethics Commission
11 powers to perform supplemental investigations and hearings and to issue
12 warnings, reprimands, and recommended actions. This bill will create a full-
13 time, exempt Legal Counsel position in the State Ethics Commission and
14 reclassify the Executive Director of the State Ethics Commission from a part-
15 time to a full-time, exempt State employee. It will also add a member to the
16 State Ethics Commission to be appointed by the Vermont League of Cities and
17 Towns.

18 An act relating to the State Ethics Commission and the State Code of Ethics

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

2 * * * Candidate Financial Disclosure Requirements * * *

3 Sec. 1. 17 V.S.A. § 2414 is amended to read:

4 § 2414. CANDIDATES FOR STATE AND LEGISLATIVE OFFICE;

5 DISCLOSURE FORM

6 (a) Each candidate for State office, county office, State Senator, or State
7 Representative shall file with the officer with whom consent of candidate
8 forms are filed, along with ~~his or her~~ the candidate's consent, a disclosure form
9 prepared by the State Ethics Commission that contains the following
10 information in regard to the previous ~~calendar year~~ 12 months:

11 (1) ~~Each each~~ source, but not amount, of personal income of the
12 candidate and of ~~his or her~~ the candidate's spouse or domestic partner, and of
13 the candidate together with ~~his or her~~ the candidate's spouse or domestic
14 partner, that totals more than \$5,000.00, ~~including any of the sources meeting~~
15 ~~that total described as follows:~~

16 (A) ~~employment~~, including the candidate's employer or business
17 name and address; and,

18 (B) if self-employed, a description of the nature of the self-
19 employment ~~without needing to disclose any individual clients, including the~~
20 names of any clients, known to the candidate or the candidate's domestic
21 partner, whose principal business activities are regulated by or that have a

1 contract with any municipal or State office, department, or agency, provided
2 that the disclosed information is not confidential information; and

3 ~~(B) investments, described generally as “investment income.”~~

4 (2) ~~Any~~ any board, commission, or other entity that is regulated by law
5 ~~or that receives funding from the State~~ on which the candidate served and the
6 candidate’s position on that entity;

7 (3)(A) ~~Any~~ any company of which the candidate or ~~his or her~~ the
8 candidate’s spouse or domestic partner, or the candidate together with his or
9 ~~her~~ the candidate’s spouse or domestic partner, owned more than 10 percent;
10 and

11 (B) the details of any loan made to any applicable company in
12 subdivision (A) of this subdivision (3) that is not a commercially reasonable
13 loan made in the ordinary course of business;

14 (4) any company of which the candidate or the candidate’s spouse or
15 domestic partner, or the candidate together with the candidate’s spouse or
16 domestic partner, had an ownership or controlling interest in any amount, and
17 in the previous 12 months the company had business before or with any
18 municipal or State office, agency, or department;

19 (5) ~~Any~~ any lease or contract with the State held or entered into by:

20 (A) the candidate or ~~his or her~~ the candidate’s spouse or domestic
21 partner; or

1 (B) a company of which the candidate or ~~his or her~~ the candidate's
2 spouse or domestic partner, or the candidate together with ~~his or her~~ the
3 candidate's spouse or domestic partner, owned more than 10 percent;

4 (6) a generalized description, but not amount, to the best of the
5 candidate's knowledge, of the following investments held by a candidate or the
6 candidate's spouse or domestic partner:

7 (A) publicly traded assets valued at \$25,000.00 or more, which a
8 candidate exercises control over or has the ability to exercise control over,
9 which shall be listed individually;

10 (B) interests in investment funds valued at \$25,000.00 or more, in
11 which a candidate neither exercises control over nor has the ability to exercise
12 control over the financial interests held by a fund, which shall be listed
13 individually;

14 (C) interests in trusts valued at \$25,000.00 or more, which shall be
15 listed individually; and

16 (D) municipal bonds issued in the State of Vermont of any value,
17 which shall be listed individually; and

18 (7) the full name of the candidate's spouse or domestic partner.

19 (b) In addition, if a candidate's spouse or domestic partner is a lobbyist, the
20 candidate shall disclose that fact and provide the name of ~~his or her~~ the

1 candidate's spouse or domestic partner and, if applicable, the name of ~~his or~~
2 ~~her~~ the lobbying firm.

3 (c) In addition, each candidate for State office shall attach to the disclosure
4 form described in subsection (a) of this section a copy of ~~his or her~~ the
5 candidate's most recent U.S. Individual Income Tax Return Form 1040;
6 provided, however, that the candidate may redact from that form the following
7 information:

8 (1) the candidate's Social Security number and that of ~~his or her~~ the
9 candidate's spouse, if applicable;

10 (2) the names of any dependent and the dependent's Social Security
11 number; ~~and~~

12 (3) the signature of the candidate and that of ~~his or her~~ the candidate's
13 spouse, if applicable;

14 (4) the candidate's street address; and

15 (5) any identifying information and signature of a paid preparer.

16 (d)(1) A senatorial district clerk or representative district clerk who
17 receives a disclosure form under this section shall forward a copy of the
18 disclosure to the Secretary of State within three business days ~~of~~ after
19 receiving it.

20 (2)(A) The Secretary of State shall post a copy of any disclosure forms
21 and tax returns ~~he or she~~ the Secretary receives under this section on ~~his or her~~

1 the Secretary’s official State website. The forms shall remain posted on the
2 Secretary’s website until the date of the filing deadline for petition and consent
3 forms for major party candidates for the statewide primary in the following
4 election cycle.

5 * * *

6 (e) As used in this section:

7 (1) “Commercially reasonable loan made in the ordinary course of
8 business” means a loan made:

9 (A) in the usual manner on any recognized market;

10 (B) at the price current in any recognized market at the time of
11 making the loan; or

12 (C) otherwise in conformity with reasonable commercial practices
13 among lenders typically dealing in the type of loan made.

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

17 (3) “County office” means the office of assistant judge of the Superior
18 Court, high bailiff, judge of Probate, sheriff, or State’s Attorney.

19 (4) “Domestic partner” means an individual with whom the candidate
20 has an enduring domestic relationship of a spousal nature, ~~as long as~~ provided
21 the candidate and the domestic partner:

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~~(2)~~(5) “Lobbyist” and “lobbying firm” shall have the same meanings as in 2 V.S.A. § 261.

(6) “Investment fund” means a widely held investment fund that is publicly traded or available and has assets that are widely diversified. Investment funds include a mutual fund, regulated investment company, common trust fund maintained by a bank or similar financial institution, pension or deferred compensation plan, and any other pooled investment fund.

(7) “Widely diversified” means a fund that does not have a stated policy of concentrating its investments in any industry, business, or single country other than the United States or bonds of a single state within the United States.

* * * In-Office Financial Disclosure Requirements * * *

Sec. 2. 3 V.S.A. § 1201 is amended to read:

§ 1201. DEFINITIONS

As used in this chapter:

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

(2) “Commission” means the State Ethics Commission established under subchapter 3 of this chapter.

(3) “Commercially reasonable loan made in the ordinary course of business” means a loan made:

1 (A) in the usual manner on any recognized market;

2 (B) at the price current in any recognized market at the time of
3 making the loan; or

4 (C) otherwise in conformity with reasonable commercial practices
5 among lenders typically dealing in the type of loan made.

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

9 (5) “Conflict of interest” means a direct or indirect interest of a public
10 servant or such an interest, known to the public servant, of a member of the
11 public servant’s immediate family, or of a business associate, in the outcome
12 of a particular matter pending before the public servant or the public servant’s
13 public body, or that is in conflict with the proper discharge of the public
14 servant’s duties. “Conflict of interest” does not include any interest that is not
15 greater than that of other individuals generally affected by the outcome of a
16 matter.

17 (6) “County officer” means an individual holding the office of high
18 bailiff or State’s Attorney.

19 (4)(7) “Domestic partner” means an individual in an enduring domestic
20 relationship of a spousal nature with the Executive officer or the public
21 servant, provided the individual and Executive officer or public servant:

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

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

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

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

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

9 ~~(5)~~(8) “Executive officer” means:

10 (A) a State officer; or

11 (B) a deputy under the Office of the Governor or a State officer,
12 including an agency secretary or deputy, ~~or~~ and a department commissioner or
13 deputy.

14 ~~(6)~~(9) “Governmental conduct regulated by law” means conduct by an
15 individual in regard to the operation of State government that is restricted or
16 prohibited by law and includes:

17 (A) bribery pursuant to 13 V.S.A. § 1102;

18 (B) neglect of duty by public officers pursuant to 13 V.S.A. § 3006
19 and by members of boards and commissions pursuant to 13 V.S.A. § 3007;

20 (C) taking illegal fees pursuant to 13 V.S.A. § 3010;

21 (D) false claims against government pursuant to 13 V.S.A. § 3016;

1 (E) owning or being financially interested in an entity subject to a
2 department’s supervision pursuant to section 204 of this title;

3 (F) failing to devote time to duties of office pursuant to section 205
4 of this title;

5 (G) engaging in retaliatory action due to a State employee’s
6 involvement in a protected activity pursuant to chapter 27, subchapter 4A of
7 this title;

8 (H) a former legislator or former Executive officer serving as a
9 lobbyist pursuant to 2 V.S.A. § 266(b); ~~and~~

10 (I) a former Executive officer serving as an advocate pursuant to
11 section 267 of this title; and

12 (J) creating or permitting to persist any unlawful employment
13 practice pursuant to 21 V.S.A. § 495.

14 ~~(7)~~(10) “Immediate family” means an individual’s spouse, domestic
15 partner, or civil union partner; child or foster child; sibling; parent; or such
16 relations by marriage or by civil union or domestic partnership; or an
17 individual claimed as a dependent for federal income tax purposes.

18 (11) “Investment fund” means a widely held investment fund, that is
19 publicly traded or available and has assets that are widely diversified.

20 Investment funds include a mutual fund, regulated investment company,

1 common trust fund maintained by a bank or similar financial institution,
2 pension or deferred compensation plan, and any other pooled investment fund.

3 ~~(8)~~(12) “Lobbyist” and “lobbying firm” have the same meanings as in
4 2 V.S.A. § 261.

5 ~~(9)~~(13) “Person” means any individual, group, business entity,
6 association, or organization.

7 ~~(10)~~(14) “Political committee” and “political party” have the same
8 meanings as in 17 V.S.A. § 2901.

9 (15) “Public servant” means an individual elected or appointed to serve
10 as a State officer, an individual elected or appointed to serve as a member of
11 the General Assembly, a State employee, an individual appointed to serve on a
12 State board or commission, or an individual who in any other way is
13 authorized to act or speak on behalf of the State.

14 ~~(11)~~(16) “State officer” means the Governor, Lieutenant Governor,
15 Treasurer, Secretary of State, Auditor of Accounts, or Attorney General.

16 (17) “Unethical conduct” means any conduct of a public servant in
17 violation of the Code of Ethics, as provided for in this chapter.

18 (18) “Widely diversified” means a fund that does not have a stated
19 policy of concentrating its investments in any industry, business, or single
20 country other than the United States or bonds of a single state within the
21 United States.

1 Sec. 3. 3 V.S.A. § 1202 is amended to read:

2 § 1202. STATE CODE OF ETHICS; APPLICABILITY

3 (a) Unless excluded under this section, the Code of Ethics applies to all
4 ~~individuals elected or appointed to serve as officers of the State, all individuals~~
5 ~~elected or appointed to serve as members of the General Assembly, all State~~
6 ~~employees, all individuals appointed to serve on State boards and~~
7 ~~commissions, and individuals who in any other way are authorized to act or~~
8 ~~speak on behalf of the State. This code refers to them all as public servants.~~

9 * * *

10 Sec. 4. 3 V.S.A. § 1203 is amended to read:

11 § 1203. CONFLICT OF INTEREST; APPEARANCE OF CONFLICT OF
12 INTEREST

13 (a) Conflict of interest; appearance of conflict of interest.

14 (1) In the public servant's official capacity, the public servant shall
15 avoid any conflict of interest or the appearance of a conflict of interest. The
16 appearance of a conflict shall be determined from the perspective of a
17 reasonable individual with knowledge of the relevant facts.

18 (2) Except as otherwise provided in subsections (b) and (c) of this
19 section, when confronted with a conflict of interest, a public servant shall
20 recuse themselves from the matter and not take further action.

1 (3) ~~As used in this section, “conflict of interest” means a direct or~~
2 ~~indirect interest of a public servant or such an interest, known to the public~~
3 ~~servant, of a member of the public servant’s immediate family or household, or~~
4 ~~of a business associate, in the outcome of a particular matter pending before~~
5 ~~the public servant or the public servant’s public body, or that is in conflict with~~
6 ~~the proper discharge of the public servant’s duties. “Conflict of interest” does~~
7 ~~not include any interest that is not greater than that of other individuals~~
8 ~~generally affected by the outcome of a matter. [Repealed.]~~

9 * * *

10 Sec. 5. 3 V.S.A. § 1211 is amended to read:

11 § 1211. EXECUTIVE OFFICERS; ANNUAL DISCLOSURE

12 (a) Annually, each Executive officer and county officer shall file with the
13 State Ethics Commission a disclosure form that contains the following
14 information in regard to the previous 12 months:

15 (1) ~~Each~~ each source, but not amount, of personal income of the officer
16 and of ~~his or her~~ the officer’s spouse or domestic partner, and of the officer
17 together with ~~his or her~~ the officer’s spouse or domestic partner, that totals
18 more than \$5,000.00, including ~~any of the sources meeting that total described~~
19 ~~as follows:~~

20 (A) ~~employment, including the~~ officer’s employer or business name
21 and address; and,

1 (B) if self-employed, a description of the nature of the self-
2 employment ~~without needing to disclose any individual clients, including the~~
3 names of any clients, known to the candidate or the candidate’s domestic
4 partner, whose principal business activities are regulated by or that have a
5 contract with any municipal or State office, department, or agency, provided
6 that the disclosed information is not confidential information; ~~and~~

7 ~~(B) investments, described generally as “investment income.”~~

8 (2) ~~Any~~ any board, commission, or other entity that is regulated by law
9 ~~or that receives funding from the State~~ on which the officer served and the
10 officer’s position on that entity;

11 (3)(A) ~~Any~~ any company of which the officer or ~~his or her~~ the officer’s
12 spouse or domestic partner, or the officer together with his or her the officer’s
13 spouse or domestic partner, owned more than 10 percent; ~~and~~

14 (B) the details of any loan made to any applicable company in
15 subdivision (A) of this subdivision (3) that is not a commercially reasonable
16 loan made in the ordinary course of business;

17 (4) any company of which the officer or the officer’s spouse or domestic
18 partner, or the officer together with the officer’s spouse or domestic partner,
19 had an ownership or controlling interest in any amount, and the company had
20 business before or with any municipal or State office, agency, or department;

21 (5) ~~Any~~ any lease or contract with the State held or entered into by:

1 (A) the officer or ~~his or her~~ the officer's spouse or domestic partner;

2 or

3 (B) a company of which the officer or ~~his or her~~ the officer's spouse

4 or domestic partner, or the officer together with ~~his or her~~ the officer's spouse

5 or domestic partner, owned more than 10 percent;

6 (6) a generalized description, but not amount, to the best of the
7 candidate's knowledge, of the following investments held by a candidate or the
8 candidate's spouse or domestic partner:

9 (A) interests in investment funds valued at \$25,000.00 or more in
10 which a candidate neither exercises control over nor has the ability to exercise
11 control over the financial interests held by a fund, which shall be listed
12 individually;

13 (B) interests in trusts valued at \$25,000.00 or more, which shall be
14 listed individually; and

15 (C) municipal bonds issued in the State of Vermont of any value,
16 which shall be listed individually; and

17 (7) the full name of the officer's spouse or domestic partner.

18 (b) In addition, if an Executive officer's or county officer's spouse or
19 domestic partner is a lobbyist, the officer shall disclose that fact and provide
20 the name of ~~his or her~~ the officer's spouse or domestic partner and, if
21 applicable, the name of ~~his or her~~ the lobbying firm.

1 (c)(1) Disclosure forms shall contain the statement, “I certify that the
2 information provided on all pages of this disclosure form is true to the best of
3 my knowledge, information, and belief.”

4 (2) Each Executive officer and county officer shall sign ~~his or her~~ the
5 officer’s disclosure form in order to certify it in accordance with this
6 subsection.

7 (d)(1) ~~An~~ Each Executive officer and county officer shall file ~~his or her~~ the
8 officer’s disclosure on or before January 15 of each year or, if ~~he or she~~ the
9 officer is appointed after January 15, within 10 days after that appointment.

10 (2) ~~An officer who filed this disclosure form as a candidate in~~
11 ~~accordance with 17 V.S.A. § 2414 in the preceding year and whose disclosure~~
12 ~~information has not changed since that filing may update that filing to indicate~~
13 ~~that there has been no change.~~ [Repealed.]

14 (e) [Repealed.]

15 * * * Delinquent Disclosures for Candidates for State Office, County Office,

16 State Senator, and State Representative * * *

17 Sec. 6. 17 V.S.A. § 2415 is added to read:

18 § 2415. FAILURE TO FILE; PENALTIES

19 (a) If any disclosure required of a candidate for State office, county office,
20 State Senator, or State Representative by section 2414 of this title is not filed in
21 the time and manner set forth in sections 2356, 2361, and 2402 of this title, the

1 candidate for State office, county office, State Senator, or State Representative
2 shall be addressed as follows:

3 (1) The State Ethics Commission, after notification by the Office of the
4 Secretary of State of the names of delinquent filers, shall issue a notice of
5 delinquency to the candidate for State office, county office, State Senator, or
6 State Representative for any disclosure required of a candidate for State office,
7 county office, State Senator, or State Representative by section 2414 of this
8 title that is not filed in the time and manner set forth in sections 2356, 2361,
9 and 2402 of this title.

10 (2) Following notice of delinquency sent by the State Ethics
11 Commission to the candidate for State office, county office, State Senator, or
12 State Representative, the candidate shall have five working days from the date
13 of the issuance of the notice to cure the delinquency.

14 (3) Beginning six working days from the date of notice, the delinquent
15 candidate for State office, county office, State Senator, or State Representative
16 shall pay a \$10.00 penalty for each day thereafter that the disclosure remains
17 delinquent; provided, however, that in no event shall the amount of any penalty
18 imposed under this subdivision exceed \$1,000.00.

19 (4) Notwithstanding subdivision (3) of this subsection (a), the State
20 Ethics Commission may reduce or waive any penalty imposed under this
21 section if the candidate for State office, county office, State Senator, or State

1 Representative demonstrates good cause, as determined by the State Ethics
2 Commission and in the sole discretion of the State Ethics Commission.

3 (b) The Commission shall send a notice of delinquency to the e-mail
4 address provided by the candidate for State office, county office, State Senator,
5 or State Representative in the candidate’s consent of candidate form.

6 (c) The State Ethics Commission may avail itself of remedies available
7 under the Vermont Setoff Debt Collection Act, as set forth in 32 V.S.A.
8 chapter 151, subchapter 12, to collect any unpaid penalty.

9 (d)(1) A candidate for State office, county office, State Senator, or State
10 Representative who files a disclosure with intent to defraud, falsify, conceal, or
11 cover up by any trick, scheme, or device a material fact, or, with intent to
12 defraud, make any false, fictitious, or fraudulent claim or representation as to a
13 material fact, or, with intent to defraud, make or use any writing or document
14 knowing the same to contain any false, fictitious, or fraudulent claim or entry
15 as to a material fact shall be considered to have made a false claim for the
16 purposes of 13 V.S.A. § 3016.

17 (2) Pursuant to 3 V.S.A. § 1223 and section 2904a of this title,
18 complaints regarding any candidate for State office, county office, State
19 Senator, or State Representative who fails to properly file a disclosure required
20 under this subchapter may be filed with the State Ethics Commission. The
21 Executive Director of the State Ethics Commission shall refer complaints to

1 the Attorney General or to the State’s Attorney of jurisdiction for investigation,
2 as appropriate.

3 * * * Expansion of State Ethics Commission’s Powers * * *

4 Sec. 7. 3 V.S.A. § 1221(a) is amended to read:

5 (a) Creation. There is created within the Executive Branch an independent
6 commission named the State Ethics Commission to accept, review, investigate;
7 hold hearings, issue warnings and reprimands; and recommended actions,
8 make referrals regarding, and track complaints of alleged violations of
9 governmental conduct regulated by law, of the Department of Human
10 Resources Personnel Policy and Procedure Manual, of the State Code of
11 Ethics, and of the State’s campaign finance law set forth in 17 V.S.A. chapter
12 61; to provide ethics training; and to issue guidance and advisory opinions
13 regarding ethical conduct.

14 Sec. 8. 3 V.S.A. § 1222 is redesignated to read:

15 § 1222. COMMISSION MEMBER ~~DUTIES AND~~ PROHIBITED

16 CONDUCT

17 Sec. 9. 3 V.S.A. § 1223 is amended to read:

18 § 1223. PROCEDURE FOR ~~HANDLING~~ ACCEPTING AND REFERRING

19 COMPLAINTS

20 * * *

1 (b) Preliminary review by Executive Director. The Executive Director
2 shall conduct a preliminary review of complaints made to the Commission in
3 order to take action as set forth in this subsection and section 1223a of this
4 title, which shall include referring complaints to all relevant entities, including
5 the Commission itself.

6 * * *

7 (c) Consultation on unethical conduct. If the Executive Director refers a
8 complaint under subsection (b) of this section, the Executive Director shall
9 signify any likely unethical conduct described in the complaint. Any entity
10 receiving a referred complaint shall consult with the Commission regarding the
11 application of the State Code of Ethics to facts presented in the complaint. The
12 consultation shall occur within 60 days after an entity receives a referred
13 complaint and prior to the entity making a determination on the complaint,
14 meaning either closing a complaint without further investigation or issuing
15 findings following an investigation.

16 (d) Confidentiality. Complaints and related documents in the custody of
17 the Commission shall be exempt from public inspection and copying under the
18 Public Records Act and kept confidential, except as provided for in section
19 1231 of this title.

1 Sec. 10. 3 V.S.A. § 1227 is added to read:

2 § 1227. INVESTIGATIONS

3 (a) Power to investigate. The Commission, through its Executive Director,
4 may investigate public servants for alleged unethical conduct. The
5 Commission may investigate alleged unethical conduct after receiving a
6 complaint pursuant to section 1223 of this title. The Commission may also
7 investigate suspected unethical conduct without receiving any complaint.

8 (b) Initiation of investigation by Commission vote. The Executive Director
9 shall only initiate an investigation upon an affirmative vote to proceed with the
10 investigation of unethical conduct by a majority of current members of the
11 Commission who have not recused themselves.

12 (c) Statute of limitations. The Commission shall only initiate an
13 investigation relating to unethical conduct that last occurred within the prior
14 two years.

15 (d) Outside legal counsel and investigators. The Executive Director may
16 appoint legal counsel, who shall be an attorney admitted to practice in this
17 State, and investigators to assist with investigations, hearings, and issuance of
18 warnings, reprimands, and recommended actions.

19 (e) Notice. The Executive Director shall notify the complainant and public
20 servant, in writing, of any complaint being investigated.

1 (f) Complainant participation. A complainant shall have the right to be
2 heard in an investigation resulting from the complaint.

3 (g) Timeline of investigation. An investigation shall conclude within six
4 months of either the date of the complaint received or, in the event no
5 complaint was received, the date of the investigation’s initiation by the
6 Executive Director.

7 (h) Burden of proof. For a hearing to be warranted subsequent to an
8 investigation, the Executive Director shall find that there is a reasonable basis
9 to believe that the public servant’s conduct constitutes an unethical violation.

10 (i) Determination after investigation.

11 (1) Upon investigating the alleged unethical conduct, if the Executive
12 Director determines that an evidentiary hearing is warranted, the Executive
13 Director shall notify the Commission. If a majority of current members of the
14 Commission who have not recused themselves vote in concurrence with the
15 Executive Director’s determination that an evidentiary hearing is warranted,
16 the Executive Director shall prepare an investigation report specifying the
17 public servant’s alleged unethical conduct, a copy of which shall be served
18 upon the public servant and any complainant, together with the notice of
19 hearing set forth in section 1228 of this title.

20 (2) Upon investigating the alleged unethical conduct, if the Executive
21 Director determines that an evidentiary hearing is not warranted, the Executive

1 Director shall notify the Commission, the public servant, and any complainant,
2 in writing, of the result of the investigation and the termination of proceedings.

3 Sec. 11. 3 V.S.A. § 1228 is added to read:

4 § 1228. HEARINGS BEFORE THE COMMISSION

5 (a) Power to hold hearings. The Commission may meet and hold hearings
6 for the purpose of gathering evidence and testimony if found warranted
7 pursuant to section 1227 of this title and to make determinations.

8 (b) All Commission hearings shall be considered meetings of the
9 Commission as described in subsection 1221(e) of this title, and shall be
10 conducted in accordance with 1 V.S.A. § 310 et seq.

11 (c) Time of hearing. The Chair of the Commission shall set a time for the
12 hearing as soon as convenient following the Director’s determination that an
13 evidentiary hearing is warranted, subject to the discovery needs of the public
14 servant and any complainant as established in any prehearing or discovery
15 conference or in any orders regulating discovery and depositions, or both, but
16 not earlier than 30 days after service of the charge upon the public servant.

17 The public servant or a complainant may file motions to extend the time of the
18 hearing for good cause, which may be granted by the Chair.

19 (d) Notice of hearing. The Chair shall give the public servant and any
20 complainant reasonable notice of a hearing, which shall include:

21 (1) A statement of the time, place, and nature of the hearing.

1 (2) A statement of the legal authority and jurisdiction under which the
2 hearing is to be held.

3 (3) A reference to the particular sections of the statutes and rules
4 involved.

5 (4) A short and plain statement of the matters at issue. If the
6 Commission is unable to state the matters in detail at the time the notice is
7 served, the initial notice may be limited to a statement of the issues involved.
8 Thereafter, upon application by either the public servant or any complainant, a
9 more definite and detailed statement shall be furnished.

10 (5) A reference and copy of any rules adopted by the Commission
11 regarding the hearing’s procedures, rules of evidence, and other aspects of the
12 hearing.

13 (e) Rights of public servants and complainants. Opportunity shall be given
14 to the public servant and any complainant to be heard at the hearing, present
15 evidence, respond to evidence, and argue on all issues related to the alleged
16 unethical misconduct.

17 (f) Executive session. In addition to the provisions of 1 V.S.A. § 313(a),
18 the Commission may enter executive session if the Commission deems it
19 appropriate in order to protect the confidentiality of an individual or any other
20 protected information pertaining to any identifiable person that is otherwise
21 confidential under State or federal law.

1 Sec. 12. 3 V.S.A. § 1229 is added to read:

2 § 1229. WARNINGS; REPRIMANDS; RECOMMENDED ACTIONS;

3 AGREEMENTS

4 (a) Power to issue warnings, reprimands, and recommended actions. The
5 Commission may issue warnings, reprimands, and recommended actions, not
6 inconsistent with the Vermont Constitution and laws of the State, including
7 facilitated mediation, additional training and education, referrals to counseling
8 and wellness support, or other remedial actions.

9 (b) Factors in determination.

10 (1) Circumstances of unethical conduct. In this determining, the
11 Commission shall consider the degree of unethical conduct, the timeline over
12 which the unethical conduct occurred and whether the conduct was repeated,
13 and the privacy, rights, and responsibilities of the parties.

14 (2) Determination based on evidence. The Commission shall render its
15 determination on the allegation on the basis of the evidence in the record
16 before it, regardless of whether the Commission makes its determination on the
17 investigation report of the Executive Director pursuant to section 1227 of this
18 title alone, on evidence and testimony presented in the hearing pursuant to
19 section 1228 of this title, or on its own findings.

1 (3) Burden of proof. The Commission shall only issue a warning,
2 reprimand, or recommended action if it finds that, by a preponderance of the
3 evidence, the public servant committed unethical conduct.

4 (c) Determination after hearing.

5 (1) If a majority of current members of the Commission who have not
6 recused themselves find that the public servant committed unethical conduct as
7 specified in the investigation report the Executive Director pursuant to section
8 1227 of this title alone, the Commission shall then, in writing or stated in the
9 record, issue a warning, reprimand, or recommended action.

10 (2) If the Commission does not find that the public servant committed
11 unethical conduct, the Commission shall issue a statement that the allegations
12 were not proved.

13 (3) When a determination or order is approved for issue by a board or
14 commission, the decision or order may be signed by the chair on behalf of the
15 issuing board or commission.

16 (d) Timeline for determination. The Commission shall make its
17 determination within 30 days of concluding the Commission’s last hearing
18 under this section and notify the public servant and any complainant of the
19 Committee’s determination. This timeline may be extended by the
20 Commission for good cause or pursuant to an agreement made between the
21 Commission and the public servant.

1 (e) Referral of unethical conduct. Notwithstanding subsection 1223(c) of
2 this title, the Commission shall notify the Attorney General or the State’s
3 Attorney of jurisdiction of any alleged violations of governmental conduct
4 regulated by law or the relevant federal agency of any alleged violations of
5 federal law, if discovered in the course of the Commission’s investigations.

6 (f) Power to enter into resolution agreements.

7 (1) Notwithstanding any provisions of this chapter to the contrary, the
8 Commission may, by a majority vote of its current members who have not
9 recused themselves, enter into a resolution agreement with the public servant.

10 (2) A resolution agreement shall:

11 (A) include an agreed course of remedial action to be taken by the
12 public servant;

13 (B) be in writing;

14 (C) be executed by both the public servant and Executive Director;

15 and

16 (D) be a public record subject to public inspection and copying under
17 the Public Records Act.

18 (3) A resolution agreement may be entered into at any point in time
19 before or during Commission proceedings. Any procedural deadlines
20 described in this chapter or rules adopted pursuant to this chapter shall be
21 paused at the time of execution of the resolution agreement. The Executive

1 Director shall verify compliance with the resolution agreement within three
2 months following execution of the agreement, and if the Executive Director is
3 not satisfied that compliance has been achieved, the Commission may resume
4 its initial proceedings.

5 Sec. 13. 3 V.S.A. § 1230 is added to read:

6 § 1230. PROCEDURE; RULEMAKING

7 (a) Procedure. Unless otherwise controlled by statute or rules adopted by
8 the Commission, the Vermont Rules of Civil Procedure and the Vermont Rules
9 of Evidence shall apply in the Commission’s investigations and hearings.

10 (b) Rulemaking. The Commission shall adopt rules pursuant to 3 V.S.A.
11 chapter 25 regarding procedural and evidentiary aspects of the Commission’s
12 investigations and hearings.

13 (c) Waiver of rules. To prevent unnecessary hardship, delay, or injustice,
14 or for other good cause, a vote of two-thirds of the Commission’s members
15 present and voting may waive the application of a rule upon such conditions as
16 the Chair may require, unless precluded by rule or by statute.

17 (d) Subpoenas and oaths. The Commission, the Executive Director, and
18 the Commission’s legal counsel and investigators shall have the power to issue
19 subpoenas and administer oaths in connection with any investigation or
20 hearing, including compelling the provision of materials or the attendance of
21 witnesses at any investigation or hearing. The Commission, the Executive

1 Director, and the Commission’s legal counsel and investigators may take or
2 cause depositions to be taken as needed in any investigation or hearing.

3 Sec. 14. 3 V.S.A. § 1231 is added to read:

4 § 1231. RECORD; CONFIDENTIALITY

5 (a) Intent. It is the intent of this section both to protect the reputation of
6 public servants from public disclosure of frivolous complaints against them
7 and to fulfill the public’s right to know any unethical conduct committed by a
8 public servant that results in issued warnings, reprimands, or recommended
9 actions.

10 (b) Public Records. Public records relating to the Commission’s handling
11 of complaints, alleged unethical conduct, investigations, and proceedings are
12 exempt from public inspection and copying under the Public Records Act and
13 shall be kept confidential, except those public records required or permitted to
14 be released under this chapter. Records subject to public inspection and
15 copying under the Public Records Act shall include:

16 (2) investigation reports relating to alleged unethical conduct
17 determined to warrant a hearing pursuant to section 1227 of this title, but not
18 any undisclosed records gathered or created in the course of an investigation;

19 (3) at the request of the public servant or the public servant’s designated
20 representative, investigation reports relating to alleged unethical conduct
21 determined to not warrant a hearing pursuant to section 1227 of this title, but

1 not any undisclosed records gathered or created in the course of an
2 investigation;

3 (4) evidence produced in the open and public portions of Commission
4 hearings;

5 (5) any warnings, reprimands, and recommendations issued by the
6 Commission;

7 (6) any executed resolution agreements; and

8 (7) any records, as determined by the Commission, that support a
9 warning, reprimand, recommendation, or executed resolution agreement,

10 including consultations created pursuant to § 1223(c) and investigation reports
11 in accordance with subdivisions (2) and (3) of this subdivision (b).

12 (c) Court orders. Nothing in this section shall prohibit the disclosure of any
13 information regarding alleged unethical conduct pursuant to an order from a
14 court of competent jurisdiction, or to a State or federal law enforcement agency
15 in the course of its investigation, provided the agency agrees to maintain the
16 confidentiality of the information as provided in subsection (b) of this section.

17 * * * State Ethics Commission Membership * * *

18 Sec. 15. 3 V.S.A. § 1221(b) is amended to read:

19 (b) Membership.

20 (1) The Commission shall be composed of the following ~~five~~ six
21 members:

1 (A) one member, appointed by the Chief Justice of the Supreme
2 Court;

3 (B) one member, appointed by the League of Women Voters of
4 Vermont, who shall be a member of the League;

5 (C) one member, appointed by the Board of Directors of the Vermont
6 Society of Certified Public Accountants, who shall be a member of the Society;

7 (D) one member, appointed by the Board of Managers of the
8 Vermont Bar Association, who shall be a member of the Association; ~~and~~

9 (E) one member, appointed by the Board of Directors of the SHRM
10 (Society for Human Resource Management) Vermont State Council, who shall
11 be a member of the Council; and

12 (F) one member, appointed by the Vermont League of Cities and
13 Towns.

14 * * *

15 * * * State Ethics Commission Staffing * * *

16 Sec. 16. 3 V.S.A. § 1221(c) is amended to read:

17 (c) Executive Director.

18 (1) The Commission shall be staffed by an Executive Director who shall
19 be appointed by and serve at the pleasure of the Commission ~~and who shall be~~
20 ~~a part-time exempt State employee.~~

1 (2) The Executive Director shall maintain the records of the
2 Commission and shall provide administrative support as requested by the
3 Commission, in addition to any other duties required by this chapter.

4 Sec. 17. STATE ETHICS COMMISSION; POSITIONS; APPROPRIATION

5 (a) The position of one new, permanent, full-time, exempt Legal Counsel is
6 created in the State Ethics Commission.

7 (b) The Executive Director of the State Ethics Commission shall be
8 reclassified as a full-time, exempt State employee.

9 (c) The position of Administrative Assistant in the State Ethics
10 Commission shall be reclassified as a full-time, exempt State employee.

11 (d) The sum of \$150,000.00 is appropriated to the State Ethics Commission
12 from the General Fund in fiscal year 2025 for the creation of the position of
13 Legal Counsel in the State Ethics Commission.

14 (e) The sum of \$150,000.00 is appropriated to the State Ethics Commission
15 from the General Fund in fiscal year 2025 for the reclassification of the
16 position of Executive Director in the State Ethics Commission.

17 (f) The sum of \$57,000.00 is appropriated to the State Ethics Commission
18 from the General Fund in fiscal year 2025 for the reclassification of the
19 position of Administrative Assistant in the State Ethics Commission.

1 (2) the Department of Human Resources, of complaints alleging conduct
2 that violates the ethical provisions of the Department of Human Resources
3 Personnel Policy and Procedure Manual or of the State Code of Ethics;

4 (3) the Senate Ethics Panel, of alleged unethical conduct committed by
5 State Senators;

6 (4) the House Ethics Panel, of alleged unethical conduct committed by
7 State Representatives;

8 (5) the Judicial Conduct Board, of alleged unethical conduct committed
9 by a judicial officer;

10 (6) the Professional Responsibility Board, of alleged unethical conduct
11 committed by an attorney employed by the State; and

12 (7) the Office of the State Court Administrator, of complaints alleging
13 conduct that violates the ethical provisions of the Judicial Branch Personnel
14 Policy or of the State Code of Ethics, including for attorneys employed by the
15 State.

16 (b) Annually, on or before January 15, the State Ethics Commission shall
17 report to the General Assembly regarding the following issues:

18 (1) Complaints.

19 (A) The number and a summary of the complaints made to ~~it~~ the
20 Commission, separating the complaints by topic, and the disposition of those

1 complaints, including any prosecution, enforcement action, or dismissal. This
2 summary of complaints shall not include any personal identifying information.

3 (B) The number and a summary of the complaints data received by
4 the Commission pursuant to subsection (a) of this section.

5 * * *

6 * * * Effective Dates * * *

7 Sec. 20. EFFECTIVE DATES

8 This act shall take effect on passage, except that Sec. 1 (amending
9 17 V.S.A. § 2414) shall take effect on January 1, 2026 and Secs. 7 (amending
10 3 V.S.A. § 1221(a)), 8 (amending 3 V.S.A. § 1222), 9 (amending 3 V.S.A. §
11 1223), 10 (adding 3 V.S.A. § 1227), 11 (adding 3 V.S.A. § 1228), 12 (adding 3
12 V.S.A. § 1229), and 14 (adding 3 V.S.A. § 1231) shall take effect on January
13 1, 2025.