

1 S.184

2 Introduced by Senator Pollina

3 Referred to Committee on Government Operations

4 Date: January 5, 2016

5 Subject: Executive; General Assembly; governmental ethics; Ethics

6 Commission; campaign finance

7 Statement of purpose of bill as introduced: This bill proposes to establish an
8 Ethics Commission and its support staff to receive and investigate complaints
9 alleging unethical conduct committed by legislators outside the scope of their
10 core legislative duties and by elected and appointed officials in the Executive
11 Branch. The bill would establish a Code of Ethics for those public officials, by
12 which the Ethics Commission would judge ethics complaints. The Code of
13 Ethics would include, as applicable, disclosures and prohibited conduct,
14 including prohibitions for limited periods of time on accepting certain
15 employment. If the Ethics Commission were to determine that a legislator or
16 Executive official violated the Code of Ethics, it could order certain penalties,
17 with those orders appealable to the Vermont Supreme Court. The bill also
18 proposes to transfer the civil investigation and enforcement authority over
19 alleged campaign finance violations from the Attorney General and State's
20 Attorneys to the new Ethics Commission.

1 An act relating to establishing a State Ethics Commission

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

3 ~~Sec. 1. FINDINGS AND PURPOSE~~

4 (a) Findings.

5 (1) The General Assembly finds that the citizens of the State of Vermont
6 desire a system by which the conduct of officers of State government may be
7 analyzed to ensure that those officers are acting as the citizens' trustees and
8 servants.

9 (2) The Vermont Constitution provides the framework within which our
10 State government must operate. Within that framework, each of the three
11 branches of State government is required to have separate and distinct powers
12 so that none of the branches exercise the powers belonging to the others.
13 Vt. Const. Ch. II, § 5. In accordance with that separation of powers principle,
14 each branch, to a certain extent, regulates its own ethics.

15 (A) In the Legislative Branch, each chamber of the General
16 Assembly has the exclusive constitutional authority to judge the qualifications
17 of and expel its members. Vt. Const. Ch. II, §§ 14 and 19. The Vermont
18 Supreme Court has interpreted "judging qualifications" to encompass the
19 authority to determine whether a member's personal or pecuniary interest
20 requires disqualification from voting on a question before the chamber. *Brady*
21 *v. Dean*, 173 Vt. 542, 544 (2001). However, our Court has cautioned that not

1 ~~all potential conflicts of interest of legislators are “immune from every form of~~
2 ~~executive or judicial oversight” and that legislators “may be criminally~~
3 ~~prosecuted for certain actions, such as soliciting or accepting bribes [citing~~
4 ~~13 V.S.A. § 1102], or even subject to civil suit for actions outside the scope of~~
5 ~~their legislative duties.” *Id.* at 545.~~

6 (B) In the Judicial Branch, the Vermont Supreme Court has
7 disciplinary authority concerning all judicial officers in the State, Vt. Const.
8 Ch. II, § 30, including the power to suspend those officers, Vt. Const. Ch. II,
9 § 36. The Court has established the Judicial Conduct Board to receive,
10 investigate, and adjudicate complaints alleging unethical judicial conduct,
11 subject to review by the Court. *See* Rules of the Supreme Court for
12 Disciplinary Control of Judges. “The ultimate decision in all judicial
13 disciplinary matters rests with this Court . . .” *In re Hodgdon*, 189 Vt. 265,
14 272 (2011). The General Assembly holds the powers of judicial retention set
15 forth in Vt. Const. Ch. II, § 34 and of impeachment of State judicial officers set
16 forth in Vt. Const. Ch. II, §§ 57 and 58.

17 (C) In the Executive Branch, each constitutional officer within that
18 branch enjoys a term of office set forth in the Vermont Constitution. Under
19 Vt. Const. Ch. II, § 20, the “Governor . . . shall have power to commission all
20 officers, and also to appoint officers, except where provision is, or shall be,
21 otherwise made by law or this Frame of Government; and . . . is also to take

1 ~~care that the laws be faithfully executed . . .” The General Assembly holds the~~
2 power of impeachment of State executive officers set forth in Vt. Const. Ch. II,
3 §§ 57 and 58.

4 (b) Purpose. The purpose of this act is to provide a system for regulating
5 governmental ethics in accordance with the framework of the Vermont
6 Constitution in order to give effect to the constitutional principle set forth in
7 Vt. Const. Ch. I, Art. 6 that officers of government are servants of the people
8 and at all times, in a legal way, accountable to them.

9 Sec. 2. 3 V.S.A. Part 1, chapter 31 is added to read:

10 CHAPTER 31. GOVERNMENTAL ETHICS

11 Subchapter 1. General Provisions

12 § 1201. PURPOSE

13 The purpose of this chapter is to establish the Code of Ethics set forth in
14 subchapters 2 through 4 of this chapter for Executive officers and for
15 legislators outside the scope of core legislative duties and to establish the State
16 Ethics Commission to enforce that Code of Ethics.

17 § 1202. DEFINITIONS

18 As used in this chapter:

19 (1) “Appearance of a conflict of interest” means the impression that a
20 reasonable person might have, after full disclosure of the facts, that an

1 ~~individual has a conflict of interest, even though the individual does not have~~
2 ~~an actual conflict of interest.~~

3 ~~(2) "Business associate" means:~~

4 ~~(A) any business:~~

5 ~~(i) in which an individual subject to this chapter is a director,~~
6 ~~officer, partner, trustee, or employee or holds any position of management; or~~

7 ~~(ii) in which an individual subject to this chapter has an~~
8 ~~investment worth \$2,000.00 or more; or~~

9 ~~(B) a person that has an investment worth \$2,000.00 or more in a~~
10 ~~business in which an individual subject to this chapter also has such an~~
11 ~~investment.~~

12 ~~(3) "Candidate" and "candidate's committee" shall have the same~~
13 ~~meanings as in 17 V.S.A. § 2901.~~

14 ~~(4)(A) "Conflict of interest" means an interest of an individual that is in~~
15 ~~conflict with the proper discharge of his or her official duties due to a~~
16 ~~significant personal or financial interest of the individual, of a member of the~~
17 ~~individual's immediate family, or of the individual's business associate.~~

18 ~~(B) "Conflict of interest" does not include any interest that is not~~
19 ~~greater than that of any other persons generally affected by the outcome of a~~
20 ~~matter.~~

21 ~~(5) "Contribution" shall have the same meaning as in 17 V.S.A. § 2901.~~

1 ~~(6) "Executive officer" means:~~

2 ~~(A) the Governor, Lieutenant Governor, Treasurer, Secretary of~~
3 ~~State, Auditor of Accounts, or Attorney General; or~~

4 ~~(B) a person appointed by or upon the approval of the Governor or by~~
5 ~~or upon the approval of such an appointee, who works as an exempt employee~~
6 ~~for an agency, department, or office of the State but not for any board,~~
7 ~~commission, council, or similar entity of the State, and who receives a~~
8 ~~full-time salary for State service.~~

9 ~~(7) "Immediate family" means a parent, stepparent, sibling, grandparent,~~
10 ~~spouse, domestic partner, or child.~~

11 ~~(8) "Legislator" means a member of the General Assembly.~~

12 ~~(9) "Lobbying" and "lobbyist" shall have the same meanings as in~~
13 ~~2 V.S.A. § 261.~~

14 ~~(10) "Political committee" and "political party" shall have the same~~
15 ~~meanings as in 17 V.S.A. § 2901.~~

16 ~~(11) "Private entity" means any person, including any corporation,~~
17 ~~partnership, joint venture, or association, whether organized for profit or not~~
18 ~~for profit, except one specifically chartered by the State or that relies upon~~
19 ~~taxes for at least 50 percent of its revenues.~~

1 ~~(12) "Public body" means any agency, department, division, or office,~~
2 ~~or any board, commission, council, or similar entity, in the Executive Branch~~
3 ~~of the State.~~

4 (13) "Regulated by an office, agency, or department" means that the
5 office, agency, or department is responsible for controlling, restricting, or
6 otherwise overseeing an entity in order for that entity to legally operate in this
7 State.

8 Subchapter 2. Code of Ethics—Disclosures

9 § 1211. LEGISLATORS AND EXECUTIVE OFFICERS; ANNUAL

10 DISCLOSURE

11 (a) Annually, each legislator and Executive officer shall file with the State
12 Ethics Commission a disclosure form that contains the following information
13 in regard to the previous calendar year for the official and any spouse or
14 domestic partner and any dependent child of the official:

15 (1) each source of income totaling \$2,000.00 or more and a description
16 of the source, including any job title, employer or business name, and address,
17 but not specifying the amount of the income;

18 (2) each parcel of real property owned by the person or held in the name
19 of a corporation, partnership, or trust for the benefit of him or her, and its
20 location;

1 ~~(3) any board, commission, or other entity on which the person serves, a~~
2 description of that position, and whether the person receives any form of
3 remuneration for that position, but not specifying the amount of
4 remuneration; and

5 (4) any lease or contract with the State held or entered into by the person
6 or his or her business associate.

7 (b) An official shall file his or her disclosure on or before February 15 or, if
8 he or she is appointed after February 15, within 10 days after that appointment.

9 § 1212. LEGISLATORS AND EXECUTIVE OFFICERS; UPDATED

10 ANNUAL DISCLOSURE; SUBSTANTIAL CHANGES

11 (a)(1) A legislator or Executive officer shall file an updated annual
12 disclosure concerning the current calendar year if there is a substantial change
13 in the information required to be reported in the annual disclosure set forth in
14 subsection 1211(a) of this subchapter.

15 (2) As used in this section, “substantial change” means that since the
16 filing of that annual disclosure, for any person about whom the official is
17 required to report in that disclosure, the person has obtained

18 (A) a value of at least \$5,000.00 during the calendar year for any new
19 source of income, new parcel of real property, or remuneration for a new entity
20 on which the person serves; or

1 ~~(D) a new lease or contract with the State, of any value, held or~~
2 ~~entered into by the person or his or her business associate.~~

3 ~~(b) An official shall file his or her updated annual disclosure within 10 days~~
4 ~~of the substantial change.~~

5 § 1213. LEGISLATORS AND EXECUTIVE OFFICERS; CONFLICT OF
6 INTEREST OR THE APPEARANCE OF A CONFLICT OF
7 INTEREST

8 Within 10 days of a conflict of interest or the appearance of a conflict of
9 interest, a legislator or Executive officer shall file with the State Ethics
10 Commission a description of that conflict or the appearance thereof and a
11 description of any steps the official will take to avoid the conflict or the
12 appearance thereof.

13 § 1214. FILING DISCLOSURES

14 (a) The State Ethics Commission shall provide on its website an online
15 database of the disclosures required to be filed with the Commission.

16 (1) In this database, the Commission shall provide digital access to each
17 form that it shall provide to enable a person to file the required disclosures.
18 Digital access shall enable a person to file these disclosures by completing and
19 submitting the disclosure to the Commission online.

20 (2) The Commission shall maintain on the online database all
21 disclosures that have been filed digitally on it so that any person may have

1 ~~direct machine readable electronic access to the individual data elements in~~
2 each disclosure and the ability to search those data elements as soon as a
3 disclosure is filed.

4 (b) Any person required to file a disclosure with the Commission shall
5 sign it, declare that it is made under the penalties of perjury, and file it digitally
6 on the online database.

7 Subchapter 3. Code of Ethics—Prohibited Conduct While in Office

8 § 1221. EXECUTIVE OFFICERS; FINANCIAL INTEREST IN
9 GOVERNMENTAL DECISION

10 (a) Except as provided in subsection (c) of this section, an Executive
11 officer shall not make, participate in the making of, or use his or her official
12 position to influence any governmental decision in which the officer knows or
13 has reason to know he or she has a financial interest.

14 (b) An Executive officer knows or has reason to know that he or she has a
15 financial interest in a governmental decision if the decision will have a
16 significant financial effect on:

17 (1) the officer, a member of his or her immediate family, or his or her
18 business associate, and that significant financial effect is greater than that of
19 any other persons generally affected by the decision; or

20 (2) any entity, other than the State, with which the officer is actively
21 seeking employment.

1 ~~(c) The prohibition set forth in subsection (a) of this section shall not apply~~
2 ~~to any constitutional authority held by the Executive officer.~~

3 § 1222. EXECUTIVE OFFICERS; OWNERSHIP OR FINANCIAL

4 INTEREST IN REGULATED BUSINESSES

5 (a) An Executive officer shall not be the owner of, or financially interested,
6 directly or indirectly, in any corporation or association regulated by his or her
7 office, agency, or department, except as a policy holder in an insurance
8 company or a depositor in a bank.

9 (b) As used in subsection (a) of this section, a direct or indirect financial
10 interest does not include:

11 (1) any insignificant interest held by the officer or a member of his or
12 her immediate family or a business associate; or

13 (2) any interest that is not greater than that of any other persons
14 generally affected by the supervision of the office, agency, or department.

15 § 1223. EXECUTIVE OFFICERS; CONTRIBUTIONS, GIFTS, OR

16 FAVORS FROM CERTAIN PERSONS

17 An Executive officer shall not solicit or accept a contribution of any value,
18 or any gift or favor with a value over \$50.00, from any person or from an
19 individual acting on behalf of that person or from that person's or individual's
20 spouse or domestic partner, if the person:

1 ~~(1) has or seeks to obtain contractual or other business or financial~~
2 relationships with the officer's office or the agency or department in which he
3 or she is employed; or

4 (2) conducts business or activities that are regulated by the officer's
5 office or the agency or department in which he or she is employed.

6 § 1224. EXECUTIVE OFFICERS; CONTRACTS WITH CONTRIBUTORS

7 An Executive officer in his or her official capacity, or his or her office or
8 the agency or department in which he or she is employed, shall not enter into a
9 contract with a person if that person has made a contribution to that officer, or
10 if an individual acting on behalf of that person or that person's or individual's
11 spouse or domestic partner has made a contribution to that officer, within five
12 years preceding the date of the contract.

13 § 1225. LEGISLATORS AND EXECUTIVE OFFICERS; USE OR

14 DISCLOSURE OF CONFIDENTIAL INFORMATION

15 A legislator or Executive officer shall not use or disclose confidential or
16 privileged information acquired in the performance of his or her official duties
17 for the personal benefit or financial gain of that legislator or Executive officer
18 or of a member of his or her immediate family or of a business associate.

19 § 1226. LEGISLATORS AND EXECUTIVE OFFICERS; BRIBERY

20 A legislator or Executive officer shall not commit bribery as described in
21 13 V.S.A. § 1102.

1 ~~Subchapter 4. Code of Ethics - Prohibited Employment Related to Office~~

2 § 1241. EXECUTIVE OFFICERS

3 For one year after leaving office, a former Executive officer shall not:

4 (1) be a lobbyist for or, if not lobbying, be otherwise compensated to

5 advocate on behalf of a private entity before any public body or before the

6 General Assembly or its committees regarding any particular matter in which

7 the officer had exercised official responsibility; or

8 (2) be employed by any private entity that was regulated by his or her

9 office or the agency or department in which he or she was employed.

10 § 1242. LEGISLATORS

11 (a) For one year after leaving office, a former legislator shall not be a

12 lobbyist.

13 (b)(1) Except as provided in subdivision (2) of this subsection, a legislator

14 or former legislator shall not be employed in a position created by an act of

15 legislation for one year following the date on which the legislation was

16 enacted.

17 (2) The prohibition set forth in subdivision (1) of this subsection shall

18 not apply to any elected position, nor to any appointment on a board,

19 commission, council, or similar entity of the State for which compensation is

20 provided in the form of a per diem.

Subchapter 5. Administration

§ 1251. VERMONT ETHICS COMMISSION

(a) Creation. There is created within the Executive Branch an independent commission named the Vermont Ethics Commission to receive, investigate, and adjudicate complaints of alleged violations of the Code of Ethics set forth in subchapters 2 through 4 of this chapter and of the State's campaign finance law as set forth in 17 V.S.A. chapter 61.

(b) Membership.

(1) The Commission shall be composed of the following five members:

(A) a chair of the Commission, who shall be appointed by the Chief Justice of the Supreme Court;

(B) one member appointed by the Vermont chapter of the American Civil Liberties Union;

(C) one member appointed by the Vermont Press Association;

(D) one member appointed by the Vermont Bar Association; and

(E) one member appointed by the Executive Director of the Human Rights Commission.

(2) A member shall not:

(A) hold any office in the Legislative, Executive, or Judicial Branch of State government or otherwise be employed by the State;

(B) be a lobbyist;

1 ~~(C) be a candidate; or~~

2 ~~(D) hold any office in a candidate's committee, political committee,~~
3 ~~or political party.~~

4 ~~(3) A member may be removed for cause by the remaining members~~
5 ~~of the Commission in accordance with the Vermont Administrative~~
6 ~~Procedure Act.~~

7 ~~(4)(A) A member shall serve a term of three years and until a successor~~
8 ~~is appointed. A term shall begin on January 1 of the year of appointment and~~
9 ~~run through December 31 of the last year of the term. Terms of members shall~~
10 ~~be staggered so that not all terms expire at the same time.~~

11 ~~(B) A vacancy created before the expiration of a term shall be filled~~
12 ~~in the same manner as the original appointment for the unexpired portion of the~~
13 ~~term.~~

14 ~~(C) A member shall not serve more than two terms. A member~~
15 ~~appointed to fill a vacancy created before the expiration of a term shall not be~~
16 ~~deemed to have served a term for the purpose of this subdivision (C).~~

17 ~~(c) Meetings. Meetings of the Commission may be called by the Chair and~~
18 ~~shall be called upon the request of any other two Commission members.~~

19 ~~(d) Reimbursement. Each member of the Commission shall be entitled to~~
20 ~~per diem compensation and reimbursement of expenses pursuant to~~
21 ~~32 V.S.A. § 1010.~~

~~§ 1252. COMMISSION MEMBER DUTIES AND PROHIBITED~~

CONDUCT

~~(a) Disclosures. Each member of the Commission shall file the disclosures described in subchapter 2 of this chapter in the manner described in that subchapter.~~

~~(b) Conflicts of interest.~~

~~(1) Prohibition, recusal.~~

~~(A) A Commission member shall not participate in any Commission matter in which he or she has a conflict of interest and shall recuse himself or herself from participation in that matter.~~

~~(B) The failure of a Commission member to recuse himself or herself as described in subdivision (A) of this subdivision (1) may be grounds for the Commission to discipline or remove that member.~~

~~(2) Disclosure of conflict of interest.~~

~~(A) A Commission member who has reason to believe he or she has a conflict of interest or the appearance of a conflict of interest in a Commission matter shall disclose that he or she has that belief and disclose the nature of the conflict of interest or the appearance thereof. This disclosure shall occur at a public Commission meeting or hearing. Alternatively, a Commission member may request that another Commission member recuse himself or herself from a Commission matter due to a conflict of interest.~~

1 ~~(B) Once there has been a disclosure of a member's conflict of~~
2 ~~interest or the appearance thereof, members of the Commission shall be~~
3 ~~afforded the opportunity to ask questions or make comments about the~~
4 ~~situation and, if appropriate, enter into executive session to address the conflict~~
5 ~~or the appearance thereof.~~

6 (3) Postrecusal procedure. A Commission member who has recused
7 himself or herself from participating on a Commission matter shall not sit or
8 deliberate with the Commission on that matter or otherwise act as a
9 Commission member on that matter, but may participate in that matter as a
10 member of the public.

11 (c) Gifts. A Commission member shall not accept a gift given by virtue of
12 the member's membership on the Commission if the gift is not available to the
13 public in general.

14 § 1253. COMMISSION TRAINING FOR PUBLIC OFFICIALS

15 At least annually, the Commission shall make available to Executive
16 officers and legislators training on the Code of Ethics set forth in this chapter.

17 § 1254. COMMISSION ADVISORY OPINIONS TO EXECUTIVE

18 OFFICERS AND LEGISLATORS

19 (a)(1) The Commission may issue to an Executive officer or to a legislator,
20 upon his or her request, an advisory opinion regarding any provision of this
21 chapter.

1 ~~(2) An advisory opinion issued under this subsection may be relied upon~~
2 by an Executive officer or legislator in the performance of his or her official
3 duties.

4 (b)(1) The Commission may issue to a legislator upon his or her request an
5 advisory opinion regarding whether the legislator has a conflict of interest or
6 the appearance of a conflict of interest in the performance of his or her core
7 legislative duties.

8 (2) An advisory opinion issued under this subsection is subject to that
9 legislator's chamber's constitutional authority to judge the qualifications of
10 members set forth in Vt. Const. Ch. II, § 14 or 19.

11 (c) Any advisory opinion issued by the Commission shall be a public
12 record.

13 § 1255. GENERAL COMMISSION POWERS; COMMISSION STAFF

14 (a) The Commission may:

15 (1) Adopt procedural rules governing the investigatory and adjudicatory
16 process.

17 (2) Issue subpoenas and administer oaths in connection with any
18 authorized hearing, investigation, or disciplinary proceeding.

19 (A) Subpoenas may be issued ex parte by the Chair of the
20 Commission, the Executive Director of the Commission, or any attorney
21 representing a party before the Commission.

1 ~~(E) Depositions may be taken after charges upon due notice to all~~
2 ~~parties, without specific authorization by the Commission.~~

3 ~~(b) The Commission shall have the assistance of the following Commission~~
4 ~~staff employees:~~

5 ~~(1) an Executive Director, who shall be an exempt State employee and~~
6 ~~an attorney admitted to practice in this State, act as prosecutor in hearings~~
7 ~~before the Commission, and generally assist the Commission in the~~
8 ~~administration of this chapter;~~

9 ~~(2) at least one investigator, who shall be a classified State employee, be~~
10 ~~certified as a Level III law enforcement officer under 20 V.S.A. chapter 151,~~
11 ~~have the same powers as a sheriff in criminal matters and the enforcement of~~
12 ~~the law and in serving criminal process, and have all the immunities and~~
13 ~~matters of defense now available or hereafter made available to sheriffs in a~~
14 ~~suit brought against them in consequence for acts done in the course of their~~
15 ~~employment; and~~

16 ~~(3) any other employees as permitted by law.~~

17 ~~§ 1256. PROCEDURE FOR RECEIVING, INVESTIGATING, AND~~

18 ~~ADJUDICATING COMPLAINTS~~

19 ~~(a) Procedure; generally. Except as otherwise provided in this chapter, the~~
20 ~~Commission's procedure for receiving, investigating, and adjudicating~~

1 ~~complaints shall be in accordance with the Vermont Administrative~~

2 Procedure Act.

3 (b) Complaints; generally.

4 (1) The Commission shall receive complaints from any source and may
5 upon its own motion investigate conduct without receiving a complaint.

6 (2) A person who in good faith files a complaint with the Commission
7 shall not be liable for damages in a civil action.

8 (3)(A) Any complaint regarding the Judicial Branch shall be forwarded
9 to the Judicial Conduct Board.

10 (B) Any complaint regarding a legislator concerning conduct not
11 addressed in this chapter shall be forwarded to the Speaker of the House in the
12 case of a House member or to the President Pro Tempore of the Senate in the
13 case of a Senator.

14 (c) Investigating complaints.

15 (1)(A) The Executive Director of the Commission shall assign one or
16 more members of the Commission to investigate a complaint. Such member or
17 members shall not have a conflict of interest or the appearance of a conflict of
18 interest in the complaint.

19 (B) Such a member shall have the assistance of an investigator for the
20 Commission and the Executive Director.

1 ~~(C) While acting in this capacity, a Commission member shall not sit~~
2 ~~in adjudication of the case and shall not participate in ex parte communications~~
3 ~~with other Commission members regarding the case.~~

4 (D) A Commission member whose term of office expires while an
5 investigation is pending may continue through the completion of the case.

6 (2)(A) When the Executive Director is unable to assign one or more
7 members to investigate a complaint by reason of recusal, resignation, vacancy,
8 or necessary absence, the Executive Director shall, at the request of the
9 Commission, appoint one or more ad hoc members to serve on the
10 Commission for the investigation of that matter only.

11 (B) An ad hoc member shall have the same qualifications as required
12 for Commission members.

13 (d) Notice.

14 (1)(A) The Commission shall notify a complainant in writing of the
15 result of any disciplinary investigation made as a result of his or her complaint
16 filed with the Commission.

17 (B) When an investigation results in a stipulation filed with the
18 Commission, the Commission shall provide the complainant with a copy of the
19 stipulation and notice of the stipulation review scheduled before the
20 Commission. The complainant shall have the right to be heard at the
21 stipulation review.

1 ~~(2) The Commission shall notify parties, in writing, of their right to~~
2 ~~appeal a final decision of the Commission.~~

3 ~~(e) Hearing officer.~~

4 ~~(1) The Commission shall appoint a hearing officer, who shall be an~~
5 ~~attorney admitted to practice in this State, to preside at hearings for the purpose~~
6 ~~of making procedural and evidentiary rulings. The Commission may overrule~~
7 ~~a ruling by the hearing officer. The hearing officer may administer oaths and~~
8 ~~exercise the powers of the Commission properly incidental to the conduct of~~
9 ~~the hearing.~~

10 ~~(2) The hearing officer shall draft findings of fact, conclusions of law,~~
11 ~~and Commission orders for the Commission's review. The Commission shall~~
12 ~~enter its findings, conclusions, and orders within 30 days of the conclusion of a~~
13 ~~hearing, unless the Commission grants an extension.~~

14 ~~(3) A hearing officer shall not preside at any hearing in which he or she~~
15 ~~has a conflict of interest or the appearance of a conflict of interest. If a hearing~~
16 ~~officer refuses to recuse himself or herself from such a hearing, the~~
17 ~~Commission may remove that hearing officer from presiding at the hearing and~~
18 ~~appoint a different hearing officer.~~

19 ~~(f) Procedural authority. The Commission may authorize:~~

20 ~~(1) its Chair or hearing officer to grant continuances of scheduled~~
21 ~~hearings;~~

1 ~~(2) its Chair to grant or deny stays pending appeal; and~~

2 (3) its Chair or hearing officer to convene and conduct prehearing
3 conferences.

4 (g) Ad hoc Commission members.

5 (1) When the Commission is unable to convene a quorum by reason of
6 recusal, resignation, vacancy, or necessary absence, the remaining members of
7 the Commission shall appoint ad hoc members to serve on the Commission for
8 that matter only.

9 (2) An ad hoc member shall have the same qualifications as required for
10 Commission members.

11 (h) Burden of proof. The burden of proof in a Code of Ethics action shall
12 be on the State to show by clear and convincing evidence that a person has
13 violated the code of ethics.

14 (i) Permitted Commission orders.

15 (1) Upon finding that a person violated a provision of the Code of
16 Ethics, the Commission may order any of the following, alone or in
17 combination:

18 (A) Reprimand.

19 (B) Cease and desist the violation.

20 (C) File or amend a required disclosure.

21 (D) Payment of an administrative penalty for each violation.

1 ~~(i) Except as provided in subdivisions (ii) and (iii) of this~~
2 ~~subdivision (D), an administrative penalty shall not exceed \$1,000.00 for each~~
3 ~~violation.~~

4 ~~(ii) In the case of a continuing violation, each day that a violation~~
5 ~~continues shall be deemed a separate offense. In no event shall the aggregate~~
6 ~~penalty for a continuing violation exceed \$10,000.00.~~

7 ~~(iii) Notwithstanding the limitations on administrative penalties~~
8 ~~set forth in subdivisions (i) and (ii) of this subdivision (D), an administrative~~
9 ~~penalty may also include the pecuniary value of any unjust enrichment the~~
10 ~~person gained as a result of his or her violation.~~

11 ~~(E) In the case of an Executive officer, recommend:~~

12 ~~(i) disciplinary action to the officer's supervisor, if applicable; or~~

13 ~~(ii) impeachment to the General Assembly.~~

14 ~~(F) In the case of a legislator, recommend disciplinary action to the~~
15 ~~chamber of the General Assembly of which the legislator is a member.~~

16 ~~(2) Any money received under this subsection shall be deposited in the~~
17 ~~State Ethics Fund established in section 1258 of this chapter.~~

18 ~~(j) Appeals. A party aggrieved by a decision of the Commission may~~
19 ~~appeal to the Vermont Supreme Court, which shall review the matter on the~~
20 ~~basis of the records created before the Commission.~~

1 ~~(k) Application. The provisions of this section shall not act as a bar to~~
2 ~~criminal or civil proceedings involving the same conduct.~~

3 ~~(1) The Commission may refer a case to the Attorney General or a~~
4 ~~State's Attorney for criminal prosecution.~~

5 ~~(2) In the event that conduct may constitute both a criminal act and a~~
6 ~~violation of the Code of Ethics, the Commission may on its own motion or~~
7 ~~upon the request of the Attorney General or a State's Attorney suspend its~~
8 ~~investigation or a pending hearing for the time period reasonably necessary to~~
9 ~~avoid compromising a criminal prosecution.~~

10 ~~§ 1257. ACCESSIBILITY AND CONFIDENTIALITY~~

11 ~~(a) It is the purpose of this section both to protect the reputation of public~~
12 ~~officials from public disclosure of unwarranted complaints against them and to~~
13 ~~fulfill the public's right to know of any action taken against a public official~~
14 ~~when that action is based on a determination of a violation of the Code of~~
15 ~~Ethics.~~

16 ~~(b) All meetings and hearings of the Commission shall be subject to the~~
17 ~~Open Meeting Law.~~

18 ~~(c) The Executive Director of the Commission shall prepare and maintain a~~
19 ~~register of all complaints, which shall be a public record and which shall show:~~

20 ~~(1) with respect to any complaint, the following information:~~

1 ~~(A) the date and the nature of the complaint, but not including the~~

2 identity of the public official; and

3 (B) a summary of the completed investigation; and

4 (2) only with respect to a complaint resulting in filing of charges or

5 stipulations, the following additional information:

6 (A) the name and address of the public official and of the

7 complainant;

8 (B) formal charges, provided that they have been served or a

9 reasonable effort to serve them has been made;

10 (C) the findings, conclusions, and order of the Commission;

11 (D) the transcript of the hearing, if one has been made, and exhibits

12 admitted at the hearing;

13 (E) any stipulation filed with the Commission; and

14 (F) any final disposition of the matter by the Vermont Supreme

15 Court.

16 (d) The Commission, its hearing officer, and Commission staff shall keep

17 confidential any other information regarding Code of Ethics complaints,

18 investigations, proceedings, and related records except the information

19 required or permitted to be released under this section.

20 (e) A person charged with violation of the Code of Ethics shall have the

21 right to inspect and copy the investigation file that results in the charges

1 ~~against him or her, except for any attorney work product or other privileged~~
2 information.

3 (f) Nothing in this section shall prohibit the disclosure of any information
4 regarding Code of Ethics complaints pursuant to an order from a court of
5 competent jurisdiction, or to a State or federal law enforcement agency in the
6 course of its investigation, provided the agency agrees to maintain the
7 confidentiality of the information as provided in subsection (d) of this section.

8 § 1258. STATE ETHICS FUND

9 A State Ethics Fund is created in accordance with 32 V.S.A. chapter 7,
10 subchapter 5 (special funds). All revenues received by the Commission shall
11 be deposited into the Fund and shall not be used for any purpose other than the
12 administration of this chapter, which shall include providing education and
13 training for Commission members, hearing officers, and Commission staff.

14 § 1259. AGENT FOR PROCESS; NONRESIDENTS

15 (a) Whenever a person subject to the provisions of this chapter resides
16 outside the State and fails to appoint an agent for process, the Executive
17 Director of the Commission shall be an agent of that person, upon whom any
18 process, notice, or demand may be served.

19 (b) In the event any process, notice, or demand is served on the Executive
20 Director in accordance with subsection (a) of this section, the Executive

1 ~~Director shall immediately cause a copy of it to be forwarded by certified mail,~~
2 addressed to the person at his or her registered office.

3 Sec. 3. 17 V.S.A. § 2903 is amended to read:

4 § 2903. PENALTIES

5 (a) A person who knowingly and intentionally violates a provision of
6 subchapter 2, 3, or 4 of this chapter shall be fined not more than \$1,000.00 or
7 imprisoned not more than six months, or both.

8 (b) A person who violates any provision of this chapter shall be subject to a
9 ~~civil~~ administrative penalty of up to \$10,000.00 for each violation and shall
10 refund to the Secretary of State an amount equivalent to any contributions or
11 expenditures that violate subdivision 2983(b)(1) of this chapter.

12 (c) In addition to the other administrative penalties provided in this section,
13 ~~a State's Attorney or the Attorney General~~ the Vermont Ethics Commission
14 may institute any appropriate administrative action, injunction, or other
15 proceeding to prevent, restrain, correct, or abate any violation of this chapter.

16 Sec. 4. 17 V.S.A. § 2904 is amended to read:

17 § 2904. ~~CIVIL~~ ADMINISTRATIVE INVESTIGATION

18 (a)(1) The ~~Attorney General or a State's Attorney~~ Vermont Ethics
19 Commission, whenever ~~he or she~~ it has reason to believe any person to be or to
20 have been in violation of this chapter or of any rule ~~or regulation~~ made
21 pursuant to this chapter, may examine or cause to be examined by any agent or

1 ~~representative designated by him or her it for that purpose any books, records,~~
2 papers, memoranda, or physical objects of any nature bearing upon each
3 alleged violation and may demand written responses under oath to questions
4 bearing upon each alleged violation.

5 (2) ~~The Attorney General or a State's Attorney~~ Commission may require
6 the attendance of such person or of any other person having knowledge in the
7 premises in the county where such person resides or has a place of business or
8 in Washington County if such person is a nonresident or has no place of
9 business within the State and may take testimony and require proof material
10 for his or her information and may administer oaths or take acknowledgment in
11 respect of any book, record, paper, or memorandum.

12 (3) ~~The Attorney General or a State's Attorney~~ Commission shall serve
13 notice of the time, place, and cause of such examination or attendance or notice
14 of the cause of the demand for written responses personally or by certified mail
15 upon such person at his or her principal place of business or, if such place is
16 not known, to his or her last known address. Such notice shall include a
17 statement that a knowing and intentional violation of subchapters 2 through 4
18 of this chapter is subject to criminal prosecution.

19 (4) Any book, record, paper, memorandum, or other information
20 produced by any person pursuant to this section shall not, unless otherwise
21 ordered by a court of this State for good cause shown, be disclosed to any

1 ~~person other than the authorized agent or representative of the Attorney~~
2 ~~General or a State's Attorney Commission or another a law enforcement~~
3 ~~officer engaged in legitimate law enforcement activities unless with the~~
4 ~~consent of the person producing the same, except that any transcript of oral~~
5 ~~testimony, written responses, documents, or other information produced~~
6 ~~pursuant to this section may be used in the enforcement of this chapter,~~
7 ~~including in connection with any ~~civil~~ administrative action brought under~~
8 ~~section 2903 of this subchapter or subsection (c) of this section.~~

9 (5) Nothing in this subsection is intended to prevent the ~~Attorney~~
10 ~~General or a State's Attorney Commission~~ from disclosing the results of an
11 investigation conducted under this section, including the grounds for ~~his or her~~
12 its decision as to whether to bring an ~~enforcement~~ action alleging a violation of
13 this chapter or of any rule ~~or regulation~~ made pursuant to this chapter.

14 (6) This subsection shall not be applicable to any criminal investigation
15 or prosecution brought under the laws of this or any state.

16 (b)(1) A person upon whom a notice is served pursuant to the provisions of
17 this section shall comply with its terms unless otherwise provided by the order
18 of a court of this State.

19 (2) Any person who, with intent to avoid, evade, or prevent compliance,
20 in whole or in part, with any ~~civil~~ administrative investigation under this
21 section, removes from any place; conceals, withholds, or destroys; or

1 ~~mutilates, alters, or by any other means falsifies any documentary material in~~
2 the possession, custody, or control of any person subject to such notice or
3 mistakes or conceals any information shall be fined not more than \$5,000.00.

4 (c)(1) Whenever any person fails to comply with any notice served upon
5 him or her under this section or whenever satisfactory copying or reproduction
6 of any such material cannot be done and the person refuses to surrender the
7 material, the ~~Attorney General or a State's Attorney~~ Commission may file, in
8 the Superior Court in the county in which the person resides or has his or her
9 principal place of business or in Washington County if the person is a
10 nonresident or has no principal place of business in this State, and serve upon
11 the person a petition for an order of the Court for the enforcement of this
12 section.

13 (2) Whenever any petition is filed under this section, the Court shall
14 have jurisdiction to hear and determine the matter so presented and to enter any
15 order or orders as may be required to carry into effect the provisions of this
16 section. Any disobedience of any order entered under this section by any court
17 shall be punished as a contempt of the court.

18 (d) Any person aggrieved by ~~a civil~~ an administrative investigation
19 conducted under this section may seek relief from Washington Superior Court
20 or the Superior Court in the county in which the aggrieved person resides.
21 Except for cases the Court considers to be of greater importance, proceedings

1 ~~before Superior Court as authorized by this section shall take precedence on~~
2 the docket over all other cases.

3 Sec. 5. APPLICABILITY

4 The provisions of Sec. 2 of this act shall not apply to any contract or
5 employment in effect on the effective date of this act that would otherwise be
6 restricted by this act.

7 Sec. 6. IMPLEMENTATION OF THE STATE ETHICS COMMISSION

8 (a) The State Ethics Commission, created in Sec. 2 of this act, is
9 established on January 1, 2017.

10 (b) Members of the Commission shall be appointed on or before
11 October 15, 2016 in order to prepare as they deem necessary for the
12 establishment of the Commission, including the hiring of Commission staff.
13 Terms of members shall officially begin on January 1, 2017.

14 (c) In order to stagger the terms of the members of the State Ethics
15 Commission as described in 3 V.S.A. § 1251(b)(4)(A), in Sec. 2 of this act, the
16 initial terms of those members shall be as follows:

17 (1) The Chief Justice of the Supreme Court shall appoint the Chair for a
18 three-year term;

19 (2) The Vermont chapter of the American Civil Liberties Union shall
20 appoint a member for a two-year term;

1 ~~(3) The Vermont Press Association shall appoint a member for a~~
2 ~~one-year term;~~

3 ~~(4) The Vermont Bar Association shall appoint a member for a~~
4 ~~three-year term; and~~

5 ~~(5) The Executive Director of the Human Rights Commission shall~~
6 ~~appoint a member for a two-year term.~~

7 Sec. 7. CREATION OF STAFF POSITIONS FOR STATE ETHICS
8 COMMISSION

9 ~~(a) The following positions are created in the State Ethics Commission,~~
10 ~~created in Sec. 2 of this act, by using existing positions in the position pool:~~

11 ~~(1) one full-time exempt Executive Director;~~

12 ~~(2) one full-time classified investigator; and~~

13 ~~(3) one full-time classified administrative assistant.~~

14 ~~(b) There is appropriated to the Commission the amount of \$1.00 for~~
15 ~~personal and operating expenses.~~

16 Sec. 8. GENERAL ASSEMBLY RECOMMENDATION; ISSUES
17 RELATING TO ETHICS AND CONFLICTS OF INTEREST IN
18 MUNICIPALITIES

19 ~~The General Assembly recommends that municipalities use existing~~
20 ~~statutory authority to address municipal issues relating to ethics and conflicts~~
21 ~~of interest. Provisions of law addressing those issues include the following:~~

1 ~~(1) 24 V.S.A. § 1202, regarding the ability of a local board to use the~~
2 Municipal Administrative Procedure Act set forth in 24 V.S.A. chapter 36,
3 which includes compliance with 12 V.S.A. § 61(a), regarding disqualifications
4 for interest for persons acting in a judicial capacity;

5 (2) 24 V.S.A. § 1984, regarding the ability of the voters of a town, city,
6 or incorporated village to adopt a conflict of interest policy for their elected
7 and appointed officials;

8 (3) 24 V.S.A. § 2291(20), regarding the ability of a town, city, or
9 incorporated village to establish a conflict of interest policy to apply to all
10 elected or appointed officials in the municipality; and

11 (4) 24 V.S.A. § 4461(a), regarding the requirement that an appropriate
12 municipal panel, as part of its development review procedure, adopt rules of
13 ethics with respect to conflicts of interest.

14 Sec. 9. EFFECTIVE DATE

15 ~~This act shall take effect on July 1, 2016.~~

** * * Former Legislators; Lobbying Restriction * * **

Sec. 1. 2 V.S.A. § 266 is amended to read:

§ 266. PROHIBITED CONDUCT

** * **

(b) A legislator, for one year after leaving office, shall not be a lobbyist in this State.

(c) As used in this section, “candidate’s committee,” “contribution,” and “legislative leadership political committee” shall have the same meanings as in 17 V.S.A. § 2904 chapter 61 (campaign finance).

**** Former Executive Officers; Postemployment Restrictions ****

Sec. 2. 3 V.S.A. § 267 is added to read:

§ 267. EXECUTIVE OFFICERS; POSTEMPLOYMENT RESTRICTIONS

(a) Prior participation while in State employ.

(1) An Executive officer, for one year after leaving office, shall not, for pecuniary gain, be an advocate for any private entity before any public body or the General Assembly or its committees regarding any particular matter in which:

(A) the State is a party or has a direct and substantial interest; and

(B) the Executive officer had participated personally and substantively while in State employ.

(2) The prohibition set forth in subdivision (1) of this subsection applies to any matter the Executive officer directly handled, supervised, or managed or gave substantial input, advice, or comment or benefited from, either through discussing, attending meetings on, or reviewing materials prepared regarding the matter.

(b) Prior official responsibility. An Executive officer, for one year after leaving office, shall not, for pecuniary gain, be an advocate for any private entity before any public body or the General Assembly or its committees regarding any particular matter in which the officer had exercised any official responsibility.

(c) Public body enforcement. A public body shall disqualify a former Executive officer from his or her appearance or participation in a particular matter if the officer's appearance or participation is prohibited under this section.

(d) Definitions. As used in this section:

(1) "Executive officer" means:

(A) the Governor, Lieutenant Governor, Treasurer, Secretary of State, Auditor of Accounts, or Attorney General; or

(B) under the Office of the Governor, an agency secretary or deputy or a department commissioner or deputy.

(2) "Private entity" means any person, corporation, partnership, joint venture, or association, whether organized for profit or not for profit, except one specifically chartered by the State of Vermont or that relies upon taxes for at least 50 percent of its revenues.

(3) "Public body" means any agency, department, division, or office and any board or commission of any such entity, or any independent board or commission, in the Executive Branch of the State.

** * * State Office and Legislative Candidates; Disclosure Form * * **

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

§ 2414. CANDIDATES FOR STATE AND LEGISLATIVE OFFICE;
DISCLOSURE FORM

(a) Each candidate for State office, State Senator, or State Representative shall file with the officer with whom consent of candidate forms are filed, along with his or her consent, a disclosure form prepared by the Secretary of State that contains the following information in regard to the candidate's previous calendar year:

(1) Each source, but not amount, of personal taxable income totaling more than \$10,000.00, including any of the sources meeting that total described as follows:

(A) employment, including the employer or business name and address, and if self-employed, a description of the nature of the self-employment without needing to disclose any individual clients;

(B) aggregated investment income, described generally as "investments;" and

(C) a lease or contract with the State held or entered into by the candidate or a company in which the candidate holds a controlling interest.

(2) Any board, commission, association, or other entity on which the candidate serves and a description of that position.

(3) Any company in which the candidate holds a controlling interest.

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

(2) The Secretary shall post a copy of any disclosure forms he or she receives under this section on his or her official State website.

(c) A candidate who fails to file a disclosure form as required by this section shall not have his or her name printed on the primary ballot, if applicable, or the general election ballot, except if the candidate wins the primary as a write-in candidate, he or she shall have one week from the date of the primary to file the disclosure form in order to be placed on the general election ballot.

Sec. 4. [Deleted.]

** * * Campaign Finance Investigations; Reports to Ethics Commission * * **

Sec. 5. 17 V.S.A. § 2904 is amended to read:

§ 2904. CIVIL INVESTIGATION

(a)(1) The Attorney General or a State's Attorney, whenever he or she has reason to believe any person to be or to have been in violation of this chapter or of any rule ~~or regulation~~ made pursuant to this chapter, may examine or cause to be examined by any agent or representative designated by him or her for that purpose any books, records, papers, memoranda, or physical objects of any nature bearing upon each alleged violation and may demand written responses under oath to questions bearing upon each alleged violation.

** * **

(5) Nothing in this subsection is intended to prevent the Attorney General or a State's Attorney from disclosing the results of an investigation conducted under this section, including the grounds for his or her decision as to whether to bring an enforcement action alleging a violation of this chapter or of any rule ~~or regulation~~ made pursuant to this chapter.

** * **

Sec. 6. 17 V.S.A. § 2904a is added to read:

§ 2904a. REPORTS TO STATE ETHICS COMMISSION

Upon his or her receipt of a complaint made in regard to a violation of this chapter or of any rule made pursuant to this chapter, or upon his or her investigation of such an alleged violation without receiving a complaint, the Attorney General or a State's Attorney shall:

(1) Forward a copy of the complaint or a description of the investigation to the State Ethics Commission established in 3 V.S.A. chapter 31. The Attorney General or State's Attorney shall provide this information to the Commission within 10 days of his or her receipt of the complaint or the start of the investigation.

(2) Report to the Commission regarding his or her decision as to whether to bring an enforcement action as a result of that complaint or investigation. The Attorney General or State's Attorney shall make this report within 10 days of that decision.

Sec. 7. 3 V.S.A. Part 1, chapter 31 is added to read:

CHAPTER 31. GOVERNMENTAL ETHICS

Subchapter 1. General Provisions

§ 1201. DEFINITIONS

As used in this chapter:

(1) "Candidate" and "candidate's committee" shall 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) "Executive officer" means:

(A) a State officer; or

(B) under the Office of the Governor, an agency secretary or deputy or a department commissioner or deputy.

(4) "Lobbyist" shall have the same meaning as in 2 V.S.A. § 261.

(5) "Political committee" and "political party" shall have the same meanings as in 17 V.S.A. § 2901.

(6) "State officer" means the Governor, Lieutenant Governor, Treasurer, Secretary of State, Auditor of Accounts, or Attorney General.

§ 1202. STATE CODE OF ETHICS

(a) The Department of Human Resources shall create and maintain a State Code of Ethics in accordance with section 315 of this title.

(b) In consultation with the Commissioner of Human Resources, each State officer may supplement the State Code of Ethics for the specific needs of his or her office.

Subchapter 2. Disclosures

§ 1211. EXECUTIVE OFFICERS; BIENNIAL DISCLOSURE

(a) Biennially, each Executive officer shall file with the State Ethics Commission a disclosure form that contains the following information in regard to the officer's previous calendar year:

(1) Each source, but not amount, of personal taxable income totaling more than \$10,000.00, including any of the sources meeting that total described as follows:

(A) employment, including the employer or business name and address, and if self-employed, a description of the nature of the self-employment without needing to disclose any individual clients;

(B) aggregated investment income, described generally as “investments;” and

(C) a lease or contract with the State held or entered into by the officer or a company in which the officer holds a controlling interest.

(2) Any board, commission, association, or other entity on which the officer serves and a description of that position.

(3) Any company in which the officer holds a controlling interest.

(b) An officer shall file his or her disclosure on or before January 15 of the odd-numbered year or, if he or she is appointed after January 15, within 10 days after that appointment.

§ 1212. COMMISSION MEMBERS; BIENNIAL DISCLOSURE

(a) Biennially, each member of the State Ethics Commission shall file with the Executive Director of the Commission a disclosure form that contains the information that Executive officers are required to disclose under section 1211 of this subchapter.

(b) A member shall file his or her disclosure on or before January 15 of the first year of his or her appointment or, if the member is appointed after January 15, within 10 days after that appointment, and shall file subsequent disclosures biennially thereafter.

§ 1213. DISCLOSURES; GENERALLY

(a) The Executive Director of the Commission shall prepare on behalf of the Commission any disclosure form required to be filed with it, and shall make those forms available on the Commission’s website.

(b) The Executive Director shall post a copy of any disclosure form the Commission receives on the Commission’s website.

Subchapter 3. State Ethics Commission

§ 1221. STATE ETHICS COMMISSION

(a) Creation. There is created within the Executive Branch an independent commission named the State Ethics Commission to accept, review, make referrals regarding, and track complaints of alleged violations of the State Code of Ethics, of governmental conduct regulated by law, and of the State’s campaign finance law set forth in 17 V.S.A. chapter 61; to provide ethics training; and to issue advisory opinions regarding ethical conduct.

(b) Membership.

(1) The Commission shall be composed of the following five members:

(A) a chair of the Commission, who shall be appointed by the Chief Justice of the Supreme Court;

(B) one member appointed by the Vermont affiliate of the American Civil Liberties Union;

(C) one member appointed by the League of Women Voters of Vermont;

(D) one member appointed by the Vermont Bar Association; and

(E) one member appointed by the Executive Director of the Human Rights Commission.

(2) A member shall not:

(A) hold any office in the Legislative, Executive, or Judicial Branch of State government or otherwise be employed by the State;

(B) hold or enter into any lease or contract with the State, or have a controlling interest in a company that holds or enters into a lease or contract with the State;

(C) be a lobbyist;

(D) be a candidate; or

(E) hold any office in a candidate's committee, a political committee, or a political party.

(3) A member may be removed for cause by the remaining members of the Commission in accordance with the Vermont Administrative Procedure Act.

(4)(A) A member shall serve a term of three years and until a successor is appointed. A term shall begin on January 1 of the year of appointment and run through December 31 of the last year of the term. Terms of members shall be staggered so that not all terms expire at the same time.

(B) A vacancy created before the expiration of a term shall be filled in the same manner as the original appointment for the unexpired portion of the term.

(C) A member shall not serve more than two terms. A member appointed to fill a vacancy created before the expiration of a term shall not be deemed to have served a term for the purpose of this subdivision (C).

(c) Executive Director.

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

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

(d) Confidentiality. The Commission and the Executive Director shall maintain the confidentiality required by this chapter.

(e) Meetings. Meetings of the Commission may be called by the Chair and shall be called upon the request of any other two Commission members.

(f) Reimbursement. Each member of the Commission shall be entitled to per diem compensation and reimbursement of expenses pursuant to 32 V.S.A. § 1010.

§ 1222. COMMISSION MEMBER DUTIES AND PROHIBITED CONDUCT

(a) Conflicts of interest.

(1) Prohibition; recusal.

(A) A Commission member shall not participate in any Commission matter in which he or she has a conflict of interest and shall recuse him- or herself from participation in that matter.

(B) The failure of a Commission member to recuse him- or herself as described in subdivision (A) of this subdivision (1) may be grounds for the Commission to discipline or remove that member.

(2) Disclosure of conflict of interest.

(A) A Commission member who has reason to believe he or she has a conflict of interest in a Commission matter shall disclose that he or she has that belief and disclose the nature of the conflict of interest. Alternatively, a Commission member may request that another Commission member recuse him- or herself from a Commission matter due to a conflict of interest.

(B) Once there has been a disclosure of a member's conflict of interest, members of the Commission shall be afforded the opportunity to ask questions or make comments about the situation to address the conflict.

(3) Postrecusal procedure. A Commission member who has recused him- or herself from participating on a Commission matter shall not sit or deliberate with the Commission on that matter or otherwise act as a

Commission member on that matter, but may participate in that matter as a member of the public.

(4) Definition. As used in this subsection, “conflict of interest” means an interest of a member that is in conflict with the proper discharge of his or her official duties due to a significant personal or financial interest of the member, a person within the member’s immediate family, or the member’s business associate. “Conflict of interest” does not include any interest that is not greater than that of any other persons generally affected by the outcome of a matter.

(b) Gifts. A Commission member shall not accept a gift given by virtue of his or her membership on the Commission.

§ 1223. PROCEDURE FOR HANDLING COMPLAINTS

(a) Accepting complaints. On behalf of the Commission, the Executive Director shall accept complaints from any source regarding alleged violations of the State Code of Ethics, of governmental conduct regulated by law, or of the State’s campaign finance law set forth in 17 V.S.A. chapter 61.

(b) Preliminary review by Executive Director. The Executive Director shall conduct a preliminary review of complaints made to the Commission in order to take action as set forth in this subsection.

(1) State Code of Ethics.

(A) If the complaint alleges a violation of the State Code of Ethics, the Executive Director shall refer the complaint to the Commissioner of Human Resources.

(B) The Commissioner shall report back to the Executive Director regarding the final disposition of a complaint referred under this subdivision (A) within 10 days of that final disposition.

(2) Governmental conduct regulated by law. If the Executive Director finds that a State officer or employee may have committed a violation of governmental conduct regulated by law, that a former legislator may have violated 2 V.S.A. § 266(b), or that a former Executive officer may have violated 3 V.S.A. § 267, the Executive Director shall submit the complaint to the Commission for its review.

(3) Campaign finance.

(A) If the complaint alleges a violation of campaign finance law, the Executive Director shall refer the complaint to the Attorney General or to the State’s Attorney of jurisdiction, as appropriate.

(B) The Attorney General or State's Attorney shall report back to the Executive Director regarding his or her decision as to whether to bring an enforcement action as a result of a complaint referred under this subdivision (A) as set forth in 17 V.S.A. § 2904a.

(4) Legislative and Judicial Branches.

(A) If the complaint is in regard to conduct committed by a State Senator, the Executive Director shall refer the complaint to the Senate Ethics Panel.

(B) If the complaint is in regard to conduct committed by a State Representative, the Executive Director shall refer the complaint to the House Ethics Panel.

(C) If the complaint is in regard to conduct committed by a judicial officer, the Executive Director shall refer the complaint to the Judicial Conduct Board.

(D) If any of the complaints described in subdivisions (A)-(C) of this subdivision (4) also allege that a crime has been committed, the Executive Director shall also refer the complaint to the Attorney General and the State's Attorney of jurisdiction.

(5) Closures. The Executive Director shall close any complaint that he or she does not submit or refer as set forth in subdivisions (1)-(4) of this subsection.

(c) Commission reviews and referrals.

(1) For any complaint regarding an alleged violation of governmental conduct regulated by law that the Executive Director submits to it under subdivision (b)(2) of this section, the Commission shall meet to review the complaint. This meeting shall not be open to the public and is exempt from the requirements of the Open Meeting Law.

(2)(A) If, after its review, the Commission finds that there may have been a violation of governmental conduct regulated by law, it shall refer the complaint to the Attorney General and the State's Attorney of jurisdiction.

(B) If, after its review, the Commission finds that there has not been a violation of governmental conduct regulated by law, it shall close the complaint.

(d) Confidentiality. Except for complaints regarding alleged campaign finance law violations referred under subdivision (b)(3) of this section, complaints and related documents in the custody of the Commission shall be exempt from public inspection and copying under the Public Records Act and kept confidential.

§ 1224. COMMISSION ETHICS TRAINING

At least annually, in collaboration with the Department of Human Resources, the Commission shall make available to legislators, State officers, and State employees training on issues related to governmental ethics.

§ 1225. EXECUTIVE DIRECTOR ADVISORY OPINIONS

(a)(1) The Executive Director may issue to an Executive officer or other State employee, upon his or her request, an advisory opinion regarding any provision of this chapter or any issue related to governmental ethics.

(2) The Executive Director may consult with members of the Commission in preparing an advisory opinion.

(b) An advisory opinion issued under this section shall be exempt from public inspection and copying under the Public Records Act and kept confidential.

§ 1226. COMMISSION REPORTS

Annually, on or before January 15, the Commission shall report to the General Assembly regarding the following issues:

(1) Complaints. The number and a summary of the complaints made to it, separating the complaints by topic, and the disposition of those complaints, including any prosecution, enforcement action, or dismissal. This summary of complaints shall not include any personal identifying information.

(2) Advisory opinions. The number and a summary of the advisory opinions the Executive Director issued, separating the opinions by topic. This summary of advisory opinions shall not include any personal identifying information.

(3) Recommendations. Any recommendations for legislative action to address governmental ethics or provisions of campaign finance law.

* * * Implementation * * *

Sec. 8. APPLICABILITY OF EMPLOYMENT RESTRICTIONS

The provisions of Secs. 1 and 2 of this act that restrict employment shall not apply to any employment in effect on the effective date of those sections.

Sec. 9. DEPARTMENT OF HUMAN RESOURCES; STATE CODE OF ETHICS CREATION

The Department of Human Resources shall create the State Code of Ethics described in 3 V.S.A. § 1202 in Sec. 7 of this act on or before January 1, 2017.

Sec. 10. IMPLEMENTATION OF THE STATE ETHICS COMMISSION

(a) The State Ethics Commission, created in Sec. 7 of this act, is established on January 1, 2017.

(b) Members of the Commission shall be appointed on or before October 15, 2016 in order to prepare as they deem necessary for the establishment of the Commission, including the hiring of the Commission's Executive Director. Terms of members shall officially begin on January 1, 2017.

(c)(1) In order to stagger the terms of the members of the State Ethics Commission as described in 3 V.S.A. § 1221(b)(4)(A), in Sec. 7 of this act, the initial terms of those members shall be as follows:

(A) the Chief Justice of the Supreme Court shall appoint the Chair for a three-year term;

(B) the Vermont affiliate of the American Civil Liberties Union shall appoint a member for a two-year term;

(C) the League of Women Voters of Vermont shall appoint a member for a one-year term;

(D) the Vermont Bar Association shall appoint a member for a three-year term; and

(E) the Executive Director of the Human Rights Commission shall appoint a member for a two-year term.

(2) After the expiration of the initial terms set forth in subdivision (1) of this subsection, Commission member terms shall be as set forth in 3 V.S.A. § 1221(b)(4)(A) in Sec. 7 of this act.

*Sec. 10a. STATE ETHICS COMMISSION; RECOMMENDATIONS
REGARDING CONTRIBUTIONS FROM STATE
CONTRACTORS*

(a) On or before September 1, 2017, the State Ethics Commission shall recommend to the General Assembly whether the State should prohibit campaign contributions to candidates for State office and to State officers from persons who contract with the State or who bid on such a contract.

(b) If the Commission determines that the General Assembly should enact such a prohibition, the Commission's recommendation shall include the following information:

(1) Whether there should be a minimum contract amount that would trigger the prohibition.

(2) The duration of the prohibition.

(3) Whether the prohibition should apply both to persons who bid for a contract and persons who are awarded a contract. If the Commission recommends that persons who bid for a contract should be included in the prohibition, the Commission shall also recommend whether to include prequalified vendors in the prohibition and, if so, the manner in which the prohibition would apply.

(4) If a contractor or prospective contractor is a business entity, whether any principals of the business—such as an individual who has a controlling interest in it—should be included in the prohibition, and whether any family members of an individual who is a contractor, prospective contractor, or principal should be included in the prohibition.

(5) Any other information the Commission considers relevant.

**Sec. 11. CREATION OF STAFF POSITION FOR STATE ETHICS
COMMISSION**

(a) One (1) part-time exempt Executive Director position is created in the State Ethics Commission set forth in Sec. 7 of this act by using an existing position in the position pool.

(b) [Deleted.]

Sec. 12. 3 V.S.A. § 260 is amended to read:

§ 260. LOCATION OF OFFICES

* * *

(c) The principal office of each of the following boards and divisions shall be located in Montpelier: Aeronautics Board, Division for Historic Preservation, Board of Libraries, ~~and~~ Division of Recreation, and State Ethics Commission.

* * *

Sec. 13. BUILDINGS AND GENERAL SERVICES; SPACE ALLOCATION

The Commissioner of Buildings and General Services shall allocate space for the State Ethics Commission established in Sec. 7 of this act in accordance with 3 V.S.A. § 260 set forth in Sec. 12 of this act. This space shall be allocated on or before October 15, 2016.

**Sec. 13a. STATE ETHICS COMMISSION FUNDING SOURCE;
SURCHARGE; REPEAL**

(a) Surcharge.

(1) In fiscal year 2017 and thereafter, a surcharge of up to 2.3%, but no greater than the cost of the activities of the State Ethics Commission set forth in Sec. 7 of this act, on the per position portion of the charges authorized in 3 V.S.A. § 2283(b)(2) shall be assessed to all Executive Branch agencies, departments, and offices and shall be paid by all assessed entities solely with State funds.

(2) The amount collected shall be accounted for within the Human Resource Services Internal Service Fund and used solely for the purposes of funding the activities of the State Ethics Commission set forth in Sec. 7 of this act.

(b) Repeal. This section shall be repealed on June 30, 2018.

** * * Municipal Conflicts of Interest * * **

*Sec. 14. GENERAL ASSEMBLY RECOMMENDATION; ISSUES
RELATING TO ETHICS AND CONFLICTS OF INTEREST IN
MUNICIPALITIES*

(a) The General Assembly recommends that municipalities use existing statutory authority to address municipal issues relating to ethics and conflicts of interest. Provisions of law addressing those issues include the following:

(1) 24 V.S.A. § 1202, regarding the ability of a local board to use the Municipal Administrative Procedure Act set forth in 24 V.S.A. chapter 36, which includes compliance with 12 V.S.A. § 61(a), regarding disqualifications for interest for persons acting in a judicial capacity;

(2) 24 V.S.A. § 1984, regarding the ability of the voters of a town, city, or incorporated village to adopt a conflict of interest policy for their elected and appointed officials;

(3) 24 V.S.A. § 2291(20), regarding the ability of a town, city, or incorporated village to establish a conflict of interest policy to apply to all elected or appointed officials in the municipality; and

(4) 24 V.S.A. § 4461(a), regarding the requirement that an appropriate municipal panel adopt rules of ethics with respect to conflicts of interest as part of its development review procedure.

(b) On or before January 1, 2017, the Vermont League of Cities and Towns shall report to the General Assembly on the number of towns that are using the statutory authority described in subsection (a) of this section, and which of those authorities are used.

** * * Effective Dates * * **

Sec. 15. EFFECTIVE DATES

This act shall take effect as follows:

(1) The following sections shall take effect on July 1, 2016:

(A) Sec. 1, 2 V.S.A. § 266 (former legislators; lobbying; prohibited employment); and

(B) Sec. 2, 3 V.S.A. § 267 (former Executive officers; prohibited employment).

(2) The following sections shall take effect on January 1, 2017:

(A) Sec. 6, 17 V.S.A. § 2904a (Attorney General or State's Attorney; campaign finance; reports to State Ethics Commission); and

(B) Sec. 7, 3 V.S.A. Part 1, chapter 31 (governmental ethics).

(3) Sec. 3, 17 V.S.A. § 2414 (candidates for State and legislative office; disclosure form) shall take effect on January 1, 2018.

(4) This section and all other sections shall take effect on passage.