

TO THE HONORABLE SENATE

The Committee on Government Operations to which was referred Senate Bill No. S. 184, entitled "An act relating to establishing a State Ethics Commission"

respectfully reports that it has considered the same and recommends that the bill be amended by striking out all after the enacting clause and inserting in lieu thereof the following:

\* \* \* 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 income totaling \$10,000.00 or more, 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 income totaling \$10,000.00 or more, 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. 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) The amount of \$1.00 is appropriated to fund the position described in subsection (a) of this section.

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.

\* \* \* 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.

(Committee vote: 5-0-0)



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Senator Pollina  
FOR THE COMMITTEE