

1 TO THE HONORABLE SENATE:

2 The Committee on Government Operations to which was referred Senate  
3 Bill No. 184 entitled “An act relating to establishing a State Ethics  
4 Commission” respectfully reports that it has considered the same and  
5 recommends that the bill be amended by striking out all after the enacting  
6 clause and inserting in lieu thereof the following:

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

8 CHAPTER 31. GOVERNMENTAL ETHICS

9 Subchapter 1. General Provisions

10 § 1201. DEFINITIONS

11 As used in this chapter:

12 (1) “Contribution” shall have the same meaning as in 17 V.S.A. § 2901.

13 (2) “Executive officer” means:

14 (A) a statewide officer; or

15 (B) within the office of a statewide officer, an agency secretary or  
16 deputy, a department commissioner or deputy, or division or office director or  
17 deputy.

18 (3) “Lobbyist” shall have the same meaning as in 2 V.S.A. § 261.

19 (4) “Private entity” is any person, corporation, partnership, joint venture  
20 or association, whether organized for profit or not for profit, except those  
21 specifically chartered by the State of Vermont or which relies upon taxes for at  
22 least 50 percent of its revenues.



1 partner has made a contribution to that officer, within two years preceding the  
2 date of the contract.

3 § 1222. EXECUTIVE OFFICERS; POST-EMPLOYMENT RESTRICTIONS

4 (a)(1) For one year after leaving office, a former Executive officer shall not,  
5 for pecuniary gain, be an advocate for any private entity before any public  
6 body or before the General Assembly or its committees, regarding any  
7 particular matter:

8 (i) in which the State is a party or has a direct and substantial  
9 interest; and

10 (ii) in which the Executive officer had participated personally and  
11 substantively while in State employ.

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

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

21 § 1223. LEGISLATORS; LOBBYING RESTRICTION

22 For one year after leaving office, a former legislator shall not be a lobbyist.

1 Subchapter 3. Administration

2 § 1251. VERMONT ETHICS COMMISSION

3 (a) Creation. There is created within the Executive Branch an independent  
4 commission named the Vermont Ethics Commission to receive and make  
5 recommendations regarding complaints of alleged violations of the Code of  
6 Ethics set forth in subchapter 2 of this chapter, of the State Code of Ethics  
7 described in section 1202 of this chapter, and of the State’s campaign finance  
8 law as set forth in 17 V.S.A. chapter 61; to provide ethics training; and to issue  
9 advisory opinions regarding ethical conduct.

10 (b) Membership.

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

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

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

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

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

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

20 (2) A member shall not:

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

1           (B) be a lobbyist;

2           (C) be a candidate; or

3           (D) hold any office in a candidate’s committee, political committee,  
4 or political party.

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

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

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

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

18           (c) Executive Director.

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

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

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

6           (e) Reimbursement. Each member of the Commission shall be entitled to  
7           per diem compensation and reimbursement of expenses pursuant to  
8           32 V.S.A. § 1010.

9           § 1252. COMMISSION MEMBER DUTIES AND PROHIBITED

10           CONDUCT

11           (a) Conflicts of interest.

12           (1) Prohibition; recusal.

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

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

19           (2) Disclosure of conflict of interest.

20           (A) A Commission member who has reason to believe he or she has a  
21           conflict of interest or the appearance of a conflict of interest in a Commission  
22           matter shall disclose that he or she has that belief and disclose the nature of the

1 conflict of interest or the appearance thereof. This disclosure shall occur at a  
2 public Commission meeting or hearing. Alternatively, a Commission member  
3 may request that another Commission member recuse himself or herself from a  
4 Commission matter due to a conflict of interest.

5 (B) Once there has been a disclosure of a member’s conflict of  
6 interest or the appearance thereof, members of the Commission shall be  
7 afforded the opportunity to ask questions or make comments about the  
8 situation and, if appropriate, enter into executive session to address the conflict  
9 or the appearance thereof.

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

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

21

1        (b) Gifts. A Commission member shall not accept a gift given by virtue of  
2        the member’s membership on the Commission.

3        § 1253. PROCEDURE FOR RECEIVING AND MAKING  
4        RECOMMENDATIONS REGARDING COMPLAINTS

5        (a) Receiving complaints. The Commission shall accept complaints from  
6        any source regarding a violation of the Code of Ethics set forth in subchapter 2  
7        of this chapter, the State Code of Ethics described in section 1202 of this  
8        chapter, or a violation of campaign finance law set forth in 17 V.S.A.  
9        chapter 61.

10       (b) Preliminary review by Executive Director.

11       (1) The Executive Director shall conduct a preliminary review of  
12       complaints submitted to the Commission. The purpose of the preliminary  
13       review shall be to determine whether a person may have violated a provision of  
14       this chapter’s Code of Ethics, the State Code of Ethics, or campaign finance  
15       law.

16       (2) If the Executive Director finds such a violation may have occurred,  
17       he or she shall submit the complaint to the Commission’s review as set forth in  
18       subsection (c) of this section. The Executive Director shall keep a record of all  
19       of his or her preliminary reviews, which shall be exempt from public  
20       inspection and copying under the Public Records Act and shall not be publicly-  
21       released, but which shall be made available to the Commission.



1        (c) Commission reviews.

2            (1) If the Commission finds that there may have been a violation of this  
3        chapter's Code of Ethics or of campaign finance law, it shall refer the  
4        complaint to the Attorney General or a State's Attorney.

5            (2) If the Commission finds that there may have been a violation of the  
6        State Code of Ethics described in section 1202 of this chapter, it shall refer the  
7        complaint to the appropriate statewide officer.

8            (3) The Commission may discuss an alleged ethics violation with the  
9        statewide officer or other State employee about whom the complaint is made.

10          (4) The Commission shall meet in executive session to consider  
11        complaints made to it.

12          (5) Except for referrals for made to the Attorney General or a State's  
13        Attorney under subdivision (1) of this section, referrals shall be exempt from  
14        public inspection and copying under the Public Records Act and shall not be  
15        publicly- released.

16        § 1254. COMMISSION ETHICS TRAINING

17          At least annually, in collaboration with the Department of Human  
18        Resources, the Commission shall make available to Executive officers and  
19        State employees training on the Code of Ethics set forth in this chapter.

1     § 1255. COMMISSION ADVISORY OPINIONS

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

5           (b) An advisory opinion issued by the Commission shall be exempt from  
6     public inspection and copying under the Public Records Act and shall not be  
7     publicly-released.

8     Sec. 2. 17 V.S.A. § 2904 is amended to read:

9     § 2904. CIVIL INVESTIGATION

10           (a)(1) Any allegation regarding a violation of this chapter or of any rule  
11     made pursuant to this chapter shall be forwarded to the Vermont Ethics  
12     Commission for its review and possible referral under 3 V.S.A. § 1253.

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

21           ~~(2)~~(3) The Attorney General or a State's Attorney may require the  
22     attendance of such person or of any other person having knowledge in the

1 premises in the county where such person resides or has a place of business or  
2 in Washington County if such person is a nonresident or has no place of  
3 business within the State and may take testimony and require proof material  
4 for his or her information and may administer oaths or take acknowledgment in  
5 respect of any book, record, paper, or memorandum.

6 ~~(3)~~(4) The Attorney General or a State's Attorney shall serve notice of  
7 the time, place, and cause of such examination or attendance or notice of the  
8 cause of the demand for written responses personally or by certified mail upon  
9 such person at his or her principal place of business or, if such place is not  
10 known, to his or her last known address. Such notice shall include a statement  
11 that a knowing and intentional violation of subchapters 2 through 4 of this  
12 chapter is subject to criminal prosecution.

13 ~~(4)~~(5) Any book, record, paper, memorandum, or other information  
14 produced by any person pursuant to this section shall not, unless otherwise  
15 ordered by a court of this State for good cause shown, be disclosed to any  
16 person other than the authorized agent or representative of the Attorney  
17 General or a State's Attorney or another law enforcement officer engaged in  
18 legitimate law enforcement activities unless with the consent of the person  
19 producing the same, except that any transcript of oral testimony, written  
20 responses, documents, or other information produced pursuant to this section  
21 may be used in the enforcement of this chapter, including in connection with

1 any civil action brought under section 2903 of this subchapter or subsection (c)  
2 of this section.

3 ~~(5)~~(6) Nothing in this subsection is intended to prevent the Attorney  
4 General or a State's Attorney from disclosing the results of an investigation  
5 conducted under this section, including the grounds for his or her decision as to  
6 whether to bring an enforcement action alleging a violation of this chapter or  
7 of any rule or regulation made pursuant to this chapter.

8 ~~(6)~~(7) This subsection shall not be applicable to any criminal  
9 investigation or prosecution brought under the laws of this or any state.

10 \* \* \*

11 Sec. 3. APPLICABILITY

12 The provisions of 3 V.S.A. § 1222 set forth in Sec. 1 of this act shall not  
13 apply to any employment in effect on the effective date of this act that would  
14 otherwise be restricted by that section.

15 Sec. 4. IMPLEMENTATION OF THE VERMONT ETHICS COMMISSION

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

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

1        (c) In order to stagger the terms of the members of the State Ethics  
2        Commission as described in 3 V.S.A. § 1251(b)(4)(A), in Sec. 1 of this act, the  
3        initial terms of those members shall be as follows:

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

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

8                (3) The Vermont Press Association shall appoint a member for a  
9        one-year term;

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

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

14        Sec. 5. CREATION OF STAFF POSITION FOR VERMONT ETHICS

15                COMMISSION

16               One (1) part-time exempt Executive Director is created in the Vermont  
17        Ethics Commission, created in Sec. 1 of this act, by using an existing position  
18        in the position pool.

1                                   \* \* \* Municipal Conflicts of Interest \* \* \*

2           Sec. 6. GENERAL ASSEMBLY RECOMMENDATION; ISSUES  
3                           RELATING TO ETHICS AND CONFLICTS OF INTEREST IN  
4                           MUNICIPALITIES

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

8                           (1) 24 V.S.A. § 1202, regarding the ability of a local board to use the  
9           Municipal Administrative Procedure Act set forth in 24 V.S.A. chapter 36,  
10           which includes compliance with 12 V.S.A. § 61(a), regarding disqualifications  
11           for interest for persons acting in a judicial capacity;

12                           (2) 24 V.S.A. § 1984, regarding the ability of the voters of a town, city,  
13           or incorporated village to adopt a conflict of interest policy for their elected  
14           and appointed officials;

15                           (3) 24 V.S.A. § 2291(20), regarding the ability of a town, city, or  
16           incorporated village to establish a conflict of interest policy to apply to all  
17           elected or appointed officials in the municipality; and

18                           (4) 24 V.S.A. § 4461(a), regarding the requirement that an appropriate  
19           municipal panel adopt rules of ethics with respect to conflicts of interest as part  
20           of its development review procedure.

21

22

1 (Committee vote: \_\_\_\_\_)

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\_\_\_\_\_

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Senator \_\_\_\_\_

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FOR THE COMMITTEE