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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 * * * Former Legislators; Lobbying Restriction * * *

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

9 § 266. PROHIBITED CONDUCT

10 (a) It shall be prohibited conduct:

11 (1) to employ a lobbyist or lobbying firm, or accept employment as a
12 lobbyist or lobbying firm, for compensation that is dependent on a
13 contingency;

14 (2) for a legislator or administrative official to solicit a gift, other than a
15 contribution, from a ~~registered~~ an employer, ~~or registered~~ lobbyist, or a
16 lobbying firm ~~engaged by an employer~~, except that charitable contributions for
17 nonprofit organizations qualified under 26 U.S.C. § 501(c)(3) may be solicited
18 from ~~registered~~ employers, ~~and registered~~ lobbyists, ~~or~~ and lobbying firms
19 ~~engaged by an employer~~; or

20 (3) when the General Assembly is in session, until adjournment sine die:

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1 (A) for a legislator, a legislator’s candidate’s committee, a legislative
2 leadership political committee, or an administrative official to solicit a
3 contribution from a **registered** lobbyist, a **registered** employer, or a lobbying
4 firm **engaged by an employer**; or

5 (B) for a **registered** lobbyist, **registered** employer, or a lobbying firm
6 **engaged by an employer** to make or promise a contribution to a legislator, a
7 legislator’s candidate’s committee, or a legislative leadership political
8 committee.

9 **(b) For one year after leaving office, a former legislator shall not be a**
10 **lobbyist.**

11 (c) As used in this section, “candidate’s committee,” “contribution,” and
12 “legislative leadership political committee” shall have the same meanings as in
13 **17 V.S.A. § 2904 chapter 61 (campaign finance).**

14 * * * Former Executive Officers; Post-Employment Restrictions * * *
15 **Sec. 2. 3 V.S.A. § 267 is added to read:**

16 **§ 267. EXECUTIVE OFFICERS; POST-EMPLOYMENT RESTRICTIONS**

17 **(a) Prior participation.**

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

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

2 (ii) the Executive officer had participated personally and

3 substantively while in State employ.

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

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

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

18 (d) Definitions. As used in this section:

19 (1) "Executive officer" means:

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

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

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

7 (3) “Public body” means any agency, department, division or office and
8 any board or commission of any such entity, or any independent board or
9 commission, in the executive branch of the State.

10 * * * State Office Candidates; Disclosure Form * * *

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

12 § 2414. CANDIDATES FOR STATE OFFICE; DISCLOSURE FORM

13 (a) Each candidate for State office shall file with the Secretary of State
14 along with his or her consent a disclosure form prepared by the Secretary that
15 contains the following information in regard to the candidate’s previous
16 calendar year:

17 (1)(A) Each source of income totaling \$10,000.00 or more and the
18 employer or business name and address, but not specifying the amount of the
19 income.

20 (B) If the candidate is self-employed, the “source of income” shall
21 mean self-employment, and the candidate shall be required to describe the

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1 nature of the employment, but shall not be required to disclose any individual
2 clients.

3 (C) If a source of income totaling \$10,000.00 is investment income,
4 the candidate shall only be required to check a box the Secretary shall provide
5 on the form to disclose that type of source.

6 (2) Any board, commission, or other association entity on which the
7 candidate serves, a description of that position, and whether the candidate
8 receives any payment for that position, but not specifying the amount of
9 payment.

10 (3) Any lease or contract with the State totaling \$10,000.00 or more held
11 or entered into by the candidate.

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

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

15 (c) A candidate who fails to file a disclosure form as required by this
16 section:

17 (1) shall not have his or her name printed on the primary ballot, if
18 applicable; and

19 (2) if not filed on or before the 60th day preceding the general election,
20 shall not have his or her name printed on the general election ballot.

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1 * * * Campaign Finance; Contracting and Contribution Restrictions * * *

2 Sec. 4. 17 V.S.A. § 2950 is added to read:

3 § 2950. STATE OFFICERS; CONTRACTS WITH CONTRIBUTORS

4 (a) A State officer shall not solicit or accept a contribution of any value
5 from any person, or from an individual acting on behalf of that person or from
6 that person's or individual's spouse or domestic partner, if the person has or if
7 the officer knows that the person seeks to obtain, a contract with the officer's
8 office or the agency or department in which he or she is employed or with the
9 State on behalf of that office, agency, or department.

10 (b) A State officer in his or her official capacity, or his or her office or any
11 subdivisions thereof, or the State acting on behalf of that office or its
12 subdivisions, shall not enter into a contract with a person if that person has
13 made a contribution to that officer, or if an individual acting on behalf of that
14 person or that person's or individual's spouse or domestic partner, has made a
15 contribution to that officer within one year preceding the date of the contract.

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

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

18 § 2904. CIVIL INVESTIGATION

19 (a)(1) The Attorney General or a State's Attorney, whenever he or she has
20 reason to believe any person to be or to have been in violation of this chapter
21 or of any rule or regulation made pursuant to this chapter, may examine or

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

5 * * *

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

11 * * *

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

13 **§ 2904a. REPORTS TO VERMONT ETHICS COMMISSION**

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

18 (1) Forward a copy of the complaint to the Vermont Ethics Commission
19 established in 3 V.S.A. chapter 31. This report shall be made within 10 days of
20 his or her receipt of the complaint or investigation.

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1 (2) Report to the Commission regarding his or her decision as to
2 whether to bring an enforcement action as a result of that complaint or
3 investigation. This report shall be made within 10 days of that decision.

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

5 CHAPTER 31. GOVERNMENTAL ETHICS

6 Subchapter 1. General Provisions

7 § 1201. DEFINITIONS

8 As used in this chapter:

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

11 (2) “Executive officer” means:

12 (A) a State officer; or

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

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

16 (4) “Political committee” and “political party” shall have the same
17 meanings as in 17 V.S.A. § 2901.

18 (5) “State officer” means the Governor, Lieutenant Governor, Treasurer,
19 Secretary of State, Auditor of Accounts, or Attorney General.

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1 § 1202. STATE CODE OF ETHICS

2 (a) The Department of Human Resources shall create a State Code of
3 Ethics in accordance with 3 V.S.A. § 315.

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

7 Subchapter 2. Disclosures

8 § 1211. EXECUTIVE OFFICERS; ANNUAL DISCLOSURE

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

12 (1)(A) Each source of income totaling \$10,000.00 or more and the
13 employer or business name and address, but not specifying the amount of the
14 income.

15 (B) If the officer is self-employed, the "source of income" shall mean
16 self-employment, and the officer shall be required to describe the nature of the
17 employment, but shall not be required to disclose any individual clients.

18 (C) If a source of income totaling \$10,000.00 is investment income,
19 the officer shall only be required to check a box the Commission shall provide
20 on the form to disclose that type of source.

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1 (2) Any board, commission, or other association entity on which the
2 officer serves, a description of that position, and whether the officer receives
3 any payment for that position, but not specifying the amount of payment.

4 (3) Any lease or contract with the State totaling \$10,000.00 or more held
5 or entered into by the officer.

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

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

9 § 1212. EXECUTIVE OFFICERS; UPDATED ANNUAL DISCLOSURE;

10 SUBSTANTIAL CHANGES

11 (a)(1) An Executive officer shall file an updated annual disclosure
12 concerning the current calendar year if there is a substantial change in the
13 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, the officer has obtained:

17 (A) a value of at least \$10,000.00 during the calendar year for any
18 new source of income or payment for a new entity on which the officer serves;

19 (B) a new lease or contract with the State totaling \$5,000.00 or more
20 held or entered into by the officer; or

21 (C) a controlling interest in a new company.

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

3 § 1214. FILING DISCLOSURES

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

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

10 (2) The Commission shall maintain on the online database all
11 disclosures that have been filed digitally on it so that any person may have
12 direct machine-readable electronic access to the individual data elements in
13 each disclosure and the ability to search those data elements as soon as a
14 disclosure is filed.

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

18 Subchapter 2. Vermont Ethics Commission

19 § 1221. VERMONT ETHICS COMMISSION

20 (a) Creation. There is created within the Executive Branch an independent
21 commission named the Vermont Ethics Commission to receive, review, make

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1 referrals regarding, and track complaints of alleged governmental unethical
2 conduct and of the State's campaign finance law as set forth in 17 V.S.A.
3 chapter 61; to provide ethics training; and to issue advisory opinions regarding
4 ethical conduct.

5 (b) Membership.

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

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

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

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

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

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

15 (2) A member shall not:

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

18 (B) be a lobbyist;

19 (C) be a candidate; or

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

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

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

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

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

14 (c) Executive Director.

15 (1) The Commission shall be staffed by an Executive Director, who
16 shall be appointed by and serve at the pleasure of the Commission and who
17 shall be a part-time exempt State employee. Within one year of appointment,
18 the Executive Director shall be certified as an ethics compliance officer by a
19 national ethics certification organization approved by the Commission.

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

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

8 (f) Reimbursement. Each member of the Commission shall be entitled to
9 per diem compensation and reimbursement of expenses pursuant to
10 32 V.S.A. § 1010.

11 § 1222. COMMISSION MEMBER DUTIES AND PROHIBITED

12 CONDUCT

13 (a) Conflicts of interest.

14 (1) Prohibition; recusal.

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

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

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1 (2) Disclosure of conflict of interest.

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

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

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

19 (4) Definition. As used in this subsection, "conflict of interest" means
20 an interest of an individual that is in conflict with the proper discharge of his or
21 her official duties due to a significant personal or financial interest of the

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1 individual, a member of the individual’s immediate family, or the individual’s
2 business associate. “Conflict of interest” does not include any interest that is
3 not greater than that of any other persons generally affected by the outcome of
4 a matter.

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

7 **§ 1223. PROCEDURE FOR HANDLING AND TRACKING COMPLAINTS**

8 (a) Receiving complaints. The Commission shall accept complaints from
9 any source regarding alleged governmental unethical conduct and of the
10 State’s campaign finance law as set forth in 17 V.S.A. chapter 61.

11 (b) Preliminary review by Executive Director.

12 (1) The Executive Director shall conduct a preliminary review of
13 complaints submitted to the Commission in order to take action as set forth in
14 this subsection.

15 (2)(A) If the Executive Director finds a State officer or a State employee
16 may have committed unethical conduct, he or she shall submit the complaint to
17 the Commission for its review.

18 (B) If the complaint alleges a violation of campaign finance law, the
19 Executive Director shall refer the complaint to the Attorney General and the
20 State’s Attorney of jurisdiction and shall also submit the complaint to the
21 Commission for its review.

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1 (C) The Executive Director shall keep a record of all of his or her
2 preliminary reviews, which shall be exempt from public inspection and
3 copying under the Public Records Act and shall not be publicly-released, but
4 which shall be made available to the Commission.

5 (c) Commission reviews and referrals.

6 (1) If the Commission finds that there may have been a violation of
7 governmental conduct regulated by law, it shall refer the complaint to the
8 Attorney General and the State’s Attorney of jurisdiction.

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

12 (3)(A) The Commission shall meet in executive session to consider
13 complaints made to it.

14 (B) Commission referrals shall be exempt from public inspection and
15 copying under the Public Records Act and shall not be publicly-released.

16 § 1224. COMMISSION ETHICS TRAINING

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

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1 § 1225. 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 § 1226. COMMISSION REPORTS

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

11 (1) the number and a summary of the complaints made to it, separating
12 the complaints by topic;

13 (2) the disposition of those complaints;

14 (3) the number and a summary of the advisory opinions the Commission
15 issues, separating the opinions by topic; and

16 (4) any recommendations for legislative action to address governmental
17 ethics or provisions of campaign finance law.

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1 * * * Implementation * * *

2 Sec. 8. APPLICABILITY

3 The provisions of Secs. 1 and 2 of this act that restrict employment shall not
4 apply to any employment in effect on the effective date of this act that would
5 otherwise be restricted by those sections.

6 Sec. 9. IMPLEMENTATION OF THE VERMONT ETHICS COMMISSION

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

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

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

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

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

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

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

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

7 (2) After the expiration of the initial terms set forth in subdivision (1) of
8 this subsection, Commission member terms shall be as set forth in
9 3 V.S.A. § 1221(b)(4)(A) in Sec. 7 of this act.

10 Sec. 10. CREATION OF STAFF POSITION FOR VERMONT ETHICS
11 COMMISSION

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

15 (b) The amount of \$1.00 is appropriated to fund the position described in
16 subsection (a) of this section.

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1 * * * Municipal Conflicts of Interest * * *

2 Sec. 11. GENERAL ASSEMBLY RECOMMENDATION; ISSUES

3 RELATING TO ETHICS AND CONFLICTS OF INTEREST IN

4 MUNICIPALITIES

5 (a) 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.

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

4 * * * Effective Date * * *

5 Sec. 12. EFFECTIVE DATE

6 This act shall take effect on July 1, 2016.

7 (Committee vote: _____)

8 _____
9 Senator _____

10 FOR THE COMMITTEE