

**DRAFT; NOT YET EDITED; FOR COMMITTEE DISCUSSION**

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 \* \* \*

11 (b) For one year after leaving office, a former legislator shall not be a  
12 lobbyist in this State.

13 (c) As used in this section, “candidate’s committee,” “contribution,” and  
14 “legislative leadership political committee” shall have the same meanings as in  
15 17 V.S.A. § ~~2904~~ chapter 61 (campaign finance).

16 \* \* \* Former Executive Officers; Post-Employment Restrictions \* \* \*

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

18 § 267. EXECUTIVE OFFICERS; POST-EMPLOYMENT RESTRICTIONS

19 (a) Prior participation while in State employ.

20 (1) For one year after leaving office, a former Executive officer shall  
21 not, for pecuniary gain, be an advocate for any private entity before any public

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1 body or the General Assembly or its committees regarding any particular  
2 matter in which:

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

4 (ii) the Executive officer had participated personally and  
5 substantively while in State employ.

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

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

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

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

2            (1) “Executive officer” means:

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

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

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

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

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

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

16           § 2414. CANDIDATES FOR STATE AND LEGISLATIVE OFFICE;  
17           DISCLOSURE FORM

18           (a) Each candidate for State office, State Senator, or State Representative  
19           shall file with the Secretary of State along with his or her consent a disclosure  
20           form prepared by the Secretary that contains the following information in  
21           regard to the candidate’s previous calendar year:

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1           (1)(A) Each source, but not amount, of income totaling \$10,000.00 or  
2 more, including any of the sources described as follows:

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

6                   (ii) aggravated investment income, described generally as  
7 “investments”; and

8                   (iii) a lease or contract with the State held or entered into by the  
9 candidate.

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

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

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

17                   (c) A candidate who fails to file a disclosure form as required by this  
18 section shall not have his or her name printed on the primary or general  
19 election ballot, if applicable, except if the candidate wins the primary as a  
20 write-in candidate, he or she shall have one week from the date of the primary  
21 to file the disclosure form in order to be placed 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)(1) A person, or an individual acting on behalf of that person, or that  
5           person's or individual's spouse or domestic partner, shall not make a  
6           contribution to a State officer if that person has or seeks to obtain a contract  
7           with the officer's office or the agency or department in which he or she is  
8           employed or with the State on behalf of that office, agency, or department.

9           (2) A State officer shall not solicit or accept a contribution from any of  
10          the persons described in subdivision (1) of this subsection if the officer knows  
11          that the person is prohibited from making the contribution under that  
12          subdivision.

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

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\* \* \* 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 VERMONT 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

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1 investigation of such an alleged violation without receiving a complaint, the  
2 Attorney General or a State’s Attorney shall:

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

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

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

13 CHAPTER 31. GOVERNMENTAL ETHICS

14 Subchapter 1. General Provisions

15 § 1201. DEFINITIONS

16 As used in this chapter:

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

19 (2) “Executive officer” means:

20 (A) a State officer; 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           (3) “Lobbyist” shall have the same meaning as in 2 V.S.A. § 261.

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

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

8           § 1202. STATE CODE OF ETHICS

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

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

14                                   Subchapter 2. Disclosures

15           § 1211. EXECUTIVE OFFICERS; BIENNIAL DISCLOSURE

16           (a) Biennially, each Executive officer shall file with the State Ethics  
17           Commission a disclosure form prepared by the Commission that contains the  
18           following information in regard to the candidate’s previous calendar year:

19                   (1)(A) Each source, but not amount, of income totaling \$10,000.00 or  
20           more, including any of the sources described as follows:



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

4           (ii) aggravated investment income, described generally as  
5           “investments”; and

6           (iii) a lease or contract with the State held or entered into by the  
7           officer.

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

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

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

15           § 1213. FILING DISCLOSURES

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

18           (1) In this database, the Commission shall provide digital access to each  
19           form that it shall provide to enable a person to file the required disclosures.

20           Digital access shall enable a person to file these disclosures by completing and  
21           submitting the disclosure to the Commission online.

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

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

9                           Subchapter 2. State Ethics Commission

10           § 1221. STATE ETHICS COMMISSION

11           (a) Creation. There is created within the Executive Branch an independent  
12           commission named the State Ethics Commission to receive, review, make  
13           referrals regarding, and track complaints of alleged governmental unethical  
14           conduct and of alleged violations of the State's campaign finance law set forth  
15           in 17 V.S.A. chapter 61; to provide ethics training; and to issue advisory  
16           opinions regarding ethical conduct.

17           (b) Membership.

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

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

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

3           (C) one member appointed by the Vermont Ethics Network;

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

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

7           (2) A member shall not:

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

10          (B) be a lobbyist;

11          (C) be a candidate; or

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

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

16 Procedure Act.

17          (4)(A) A member shall serve a term of three years and until a successor

18 is appointed. A term shall begin on January 1 of the year of appointment and

19 run through December 31 of the last year of the term. Terms of members shall

20 be staggered so that not all terms expire at the same time.

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

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

7           (c) Executive Director.

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

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

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

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

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

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1     § 1222. COMMISSION MEMBER DUTIES AND PROHIBITED

2             CONDUCT

3             (a) Conflicts of interest.

4                 (1) Prohibition; recusal.

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

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

11                 (2) Disclosure of conflict of interest.

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

19                     (B) Once there has been a disclosure of a member's conflict of  
20                     interest or the appearance thereof, members of the Commission shall be  
21                     afforded the opportunity to ask questions or make comments about the

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1 situation and, if appropriate, enter into executive session to address the conflict  
2 or the appearance thereof.

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

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

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

17 § 1223. PROCEDURE FOR HANDLING AND TRACKING COMPLAINTS

18 (a) Receiving complaints. The Commission shall accept complaints from  
19 any source regarding violations of the State Code of Ethics or of other  
20 governmental unethical conduct and violations of the State’s campaign finance  
21 law set forth in 17 V.S.A. chapter 61.

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1        (b) Preliminary review by Executive Director.

2            (1) The Executive Director shall conduct a preliminary review of  
3        complaints made to the Commission in order to take action as set forth in this  
4        subsection.

5            (2)(A) If the Executive Director finds that a State employee may have  
6        violated the State Code of Ethics, he or she shall consult with the Department  
7        of Human Resources and refer the complaint to the appropriate State officer.  
8        The Director shall keep a record of such a referral, which shall be exempt from  
9        public inspection and copying under the Public Records Act and kept  
10       confidential, except for review by the Commission in executive session.

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

16           (C) If the complaint alleges a violation of campaign finance law, the  
17       Executive Director shall refer the complaint to the Attorney General and shall  
18       also submit the complaint to the Commission for its review.

19           (3) The Executive Director shall summarize any complaints he or she  
20       closed or which were in regard to alleged violations of the State Code of Ethics

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1 as described in subdivision (2)(A) of this subsection, but shall redact any  
2 personal identifying information from that summary.

3 (c) Commission reviews and referrals.

4 (1) Governmental ethics.

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

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

11 (2) Campaign finance. If the Attorney General reports to the  
12 Commission pursuant to 17 V.S.A. § 2904a that he or she will not pursue a  
13 campaign finance enforcement action as a result of a complaint or his or her  
14 own investigation, the Commission may refer the complaint or the Attorney  
15 General's description of the investigation to the State's Attorney of  
16 jurisdiction.

17 § 1224. COMMISSION ETHICS TRAINING

18 At least annually, in collaboration with the Department of Human  
19 Resources, the Commission shall make available to legislators, State officers,  
20 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 kept  
7     confidential.

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, including any prosecution,  
14    enforcement action, or dismissal;

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

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

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Sec. 8. APPLICABILITY

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 this act.

Sec. 9. 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 chapter of the American Civil Liberties Union shall appoint a member for a two-year term;

(C) The Vermont Ethics Network shall appoint a member for a one-year term;

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

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

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

8           Sec. 10. CREATION OF STAFF POSITION FOR STATE ETHICS  
9           COMMISSION

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

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

15                           \* \* \* Municipal Conflicts of Interest \* \* \*

16          Sec. 11. GENERAL ASSEMBLY RECOMMENDATION; ISSUES  
17                           RELATING TO ETHICS AND CONFLICTS OF INTEREST IN  
18                           MUNICIPALITIES

19          (a) 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:

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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 adopt rules of ethics with respect to conflicts of interest as part  
13          of its development review procedure.

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

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\* \* \* Effective Date \* \* \*

Sec. 12. EFFECTIVE DATE

This act shall take effect on July 1, 2016 except that Sec. 3, 17 V.S.A. § 2414 (candidates for State and legislative office; disclosure form), shall take effect on January 1, 2018.

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

\_\_\_\_\_  
Senator \_\_\_\_\_

FOR THE COMMITTEE

