

1 S.8

2 Introduced by Senators Pollina and White

3 Referred to Committee on

4 Date:

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

6 Commission

7 Statement of purpose of bill as introduced: This bill proposes to:

8 (1) prohibit for limited time periods certain employment after a legislator

9 or Executive officer leaves office;

10 (2) require disclosures of legislative and State office candidates;

11 (3) prohibit certain contractor campaign contributions;

12 (4) require Executive officers to file a biennial disclosure form; and

13 (5) create the State Ethics Commission that has the authority to accept,

14 review, make referrals regarding, and track complaints regarding governmental

15 ethical conduct.

16 An act relating to establishing the State Ethics Commission and standards of
17 governmental ethical conduct

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

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

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

4 § 266. PROHIBITED CONDUCT

5 * * *

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

8 (c) As used in this section, “candidate’s committee,” “contribution,” and
9 “legislative leadership political committee” shall have the same meanings as in
10 17 V.S.A. § ~~2904~~ chapter 61 (campaign finance).

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

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

13 § 267. EXECUTIVE OFFICERS; POSTEMPLOYMENT RESTRICTIONS

14 (a) Prior participation while in State employ.

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

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

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

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

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

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

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

16 (1) "Executive officer" means:

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

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

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

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

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

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

10 § 2414. CANDIDATES FOR STATE AND LEGISLATIVE OFFICE;

11 DISCLOSURE FORM

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

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

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

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

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

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

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

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

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

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

1 * * * Campaign Finance; Contractor Contribution Restrictions * * *

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

3 § 2950. STATE OFFICERS AND STATE OFFICE CANDIDATES;

4 CONTRACTOR CONTRIBUTION RESTRICTIONS

5 (a)(1)(A) A person who bids for or enters into a contract with the office of
6 a State officer or with the State on behalf of that office, or that person's
7 principal, shall not make a contribution to a candidate for that State office or to
8 that State officer.

9 (B) The candidate for State office or the State officer shall not solicit
10 or accept a contribution from a person if that candidate or State officer knows
11 the person is prohibited from making that contribution under this
12 subdivision (1).

13 (2) The prohibitions set forth in subdivision (1) of this subsection:

14 (A) shall be limited to a period beginning from the earlier of either
15 the date on which the person submits a bid for the contract or the date of
16 execution of the contract and ending with the rejection of that person's bid or
17 the completion of the contract, as applicable; and

18 (B) shall not apply to any contract that is exclusively federally
19 funded.

1 of any rule ~~or regulation~~ made pursuant to this chapter.

2 * * *

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

4 § 2904a. REPORTS TO STATE ETHICS COMMISSION

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

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

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

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

2 CHAPTER 31. GOVERNMENTAL ETHICS

3 Subchapter 1. General Provisions

4 § 1201. DEFINITIONS

5 As used in this chapter:

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

8 (2) “Commission” means the State Ethics Commission established
9 under subchapter 3 of this chapter.

10 (3) “Executive officer” means:

11 (A) a State officer; or

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

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

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

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

19 § 1202. STATE CODE OF ETHICS

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

1 (b) An officer shall file his or her disclosure on or before January 15 of the
2 odd-numbered year or, if he or she is appointed after January 15, within
3 10 days after that appointment.

4 § 1212. COMMISSION MEMBERS; BIENNIAL DISCLOSURE

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

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

13 § 1213. DISCLOSURES; GENERALLY

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

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

1 Subchapter 3. State Ethics Commission

2 § 1221. STATE ETHICS COMMISSION

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

9 (b) Membership.

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

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

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

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

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.

1 (2) A member shall not:

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

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

7 (C) be a lobbyist;

8 (D) be a candidate; or

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

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

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

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

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

4 (c) Executive Director.

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

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

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

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

15 (f) Reimbursement. Each member of the Commission shall be entitled to
16 per diem compensation and reimbursement of expenses pursuant to
17 32 V.S.A. § 1010.

18 § 1222. COMMISSION MEMBER DUTIES AND PROHIBITED

19 CONDUCT

20 (a) Conflicts of interest.

21 (1) Prohibition; recusal.

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

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

7 (2) Disclosure of conflict of interest.

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

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

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

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

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

10 § 1223. PROCEDURE FOR HANDLING COMPLAINTS

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

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

18 (1) State Code of Ethics.

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

1 (B) The Commissioner shall report back to the Executive Director
2 regarding the final disposition of a complaint referred under subdivision (A) of
3 this subdivision (1) within 10 days of that final disposition.

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

10 (3) Campaign finance.

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

14 (B) The Attorney General or State's Attorney shall report back to the
15 Executive Director regarding his or her decision as to whether to bring an
16 enforcement action as a result of a complaint referred under subdivision (A) of
17 this subdivision (3) as set forth in 17 V.S.A. § 2904a.

18 (4) Legislative and Judicial Branches.

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

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

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

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

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

14 (c) Commission reviews and referrals.

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

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

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

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

12 § 1224. COMMISSION ETHICS TRAINING

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

16 § 1225. EXECUTIVE DIRECTOR ADVISORY OPINIONS

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

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

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

4 § 1226. COMMISSION REPORTS

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

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

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

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

17 * * * Implementation * * *

18 Sec. 8. APPLICABILITY OF EMPLOYMENT RESTRICTIONS

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

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

3 The Department of Human Resources shall create the State Code of Ethics
4 described in 3 V.S.A. § 1202 in Sec. 7 of this act on or before January 1, 2018.

5 Sec. 10. IMPLEMENTATION OF THE STATE ETHICS COMMISSION

6 (a) The State Ethics Commission, created in Sec. 7 of this act, is
7 established on January 1, 2018.

8 (b) Members of the Commission shall be appointed on or before
9 October 15, 2017 in order to prepare as they deem necessary for the
10 establishment of the Commission, including the hiring of the Commission's
11 Executive Director. Terms of members shall officially begin on
12 January 1, 2018.

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

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

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

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

1 Sec. 13. BUILDINGS AND GENERAL SERVICES; SPACE ALLOCATION

2 The Commissioner of Buildings and General Services, in accordance with
3 3 V.S.A. § 260 set forth in Sec. 12 of this act, shall allocate space for the State
4 Ethics Commission established in Sec. 7 of this act. This space shall be
5 allocated on or before October 15, 2017.

6 Sec. 14. STATE ETHICS COMMISSION FUNDING SOURCE

7 SURCHARGE; REPEAL

8 (a) Surcharge.

9 (1) In fiscal year 2018 and thereafter, a surcharge of up to 2.3 percent,
10 but no greater than the cost of the activities of the State Ethics Commission set
11 forth in Sec. 7 of this act, on the per-position portion of the charges authorized
12 in 3 V.S.A. § 2283(b)(2) shall be assessed to all Executive Branch agencies,
13 departments, and offices and shall be paid by all assessed entities solely with
14 State funds.

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

19 (b) Repeal. This section shall be repealed on June 30, 2019.

1 * * * Municipal Conflicts of Interest * * *

2 Sec. 15. 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.

1 (b) On or before January 1, 2018, the Secretary of State shall report to the
2 General Assembly on the number of towns that are using the statutory
3 authority described in subsection (a) of this section, and which of those
4 authorities are used.

5 * * * Effective Dates * * *

6 Sec. 16. EFFECTIVE DATES

7 This act shall take effect as follows:

8 (1) The following sections shall take effect on July 1, 2017:

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

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

13 (2) The following sections shall take effect on January 1, 2018:

14 (A) Sec. 3, 17 V.S.A. § 2414 (candidates for State and legislative
15 office; disclosure form);

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

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

19 (3) Sec. 4, 17 V.S.A. § 2950 (State officers and State office candidates;
20 contractor contribution restrictions) shall take effect on December 16, 2018.

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