

Senate Calendar

TUESDAY, FEBRUARY 07, 2017

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ACTION CALENDAR

NEW BUSINESS

Second Reading

Favorable with Recommendation of Amendment

S. 8.

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

Reported favorably with recommendation of amendment by Senator White for the Committee on Government Operations.

The Committee recommends that the bill be amended by striking out all after the enacting clause and inserting in lieu thereof the following:

* * * Former Legislators; Lobbying Restriction * * *

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

§ 266. PROHIBITED CONDUCT

* * *

(b)(1) A legislator or an Executive officer, for one year after leaving office, shall not be a lobbyist in this State.

(2) The prohibition set forth in subdivision (1) of this subsection shall not apply to a lobbyist exempted under section 262 of this chapter.

(c) As used in this section, “candidate’s:

(1) “Candidate’s committee,” “contribution,” and “legislative leadership political committee” shall have the same meanings as in 17 V.S.A. § 2901 chapter 61 (campaign finance).

(2) “Executive officer” means:

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

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

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

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

§ 267. EXECUTIVE OFFICERS; POSTEMPLOYMENT RESTRICTIONS

(a) Prior participation while in State employ.

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

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

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

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

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

(c) Exemption. The prohibitions set forth in subsections (a) and (b) of this section shall not apply if the former Executive officer's only role as an advocate would exempt that former officer from registration and reporting under 2 V.S.A. § 262.

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

(e) Definitions. As used in this section:

(1) "Advocate" means a person who assists, defends, or pleads.

(2) "Executive officer" means:

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

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

(3) "Private entity" means any person, corporation, partnership, joint venture, or association, whether organized for profit or not for profit, except

one specifically chartered by the State of Vermont or that relies upon taxes for at least 50 percent of its revenues.

(4) "Public body" means any agency, department, division, or office and any board or commission of any such entity, or any independent board or commission, in the Executive Branch of the State.

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

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

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

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

(1) Each source, but not amount, of personal taxable income of the candidate or of his or her spouse that totals more than \$10,000.00, including any of the sources meeting that total described as follows:

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

(B) investment income; and

(C) a lease or contract with the State held or entered into by:

(i) the candidate or his or her spouse; or

(ii) a company of which the candidate or his or her spouse, or the candidate together with his or her spouse, owned more than 10 percent.

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

(3) Any company of which the candidate or his or her spouse, or the candidate together with his or her spouse, owned more than 10 percent.

(b) In addition, each candidate for State office shall attach to the disclosure form described in subsection (a) of this section a copy of his or her most recent U.S. Individual Income Tax Return Form 1040; provided, however, that the candidate may redact from that form the following information:

(1) the candidate's social security number and that of his or her spouse, if applicable;

(2) the names of any dependent and the dependent's social security

number; and

(3) the signature of the candidate and that of his or her spouse, if applicable.

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

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

(B) Prior to posting, the Secretary shall redact from a tax return the information permitted to be redacted under subsection (b) of this section, if the candidate fails to do so.

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

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

§ 2950. STATE OFFICERS AND STATE OFFICE CANDIDATES;
CONTRACTOR CONTRIBUTION RESTRICTIONS

(a) Contributor restrictions on contracting.

(1) A person or his or her principal or spouse who makes a contribution to a State officer or a candidate for a State office shall not enter into a sole source contract valued at \$50,000.00 or more or multiple sole source contracts valued in the aggregate at \$100,000.00 or more with that State office or with the State on behalf of that office within one year following:

(A) that contribution, if the contribution was made to the incumbent State officer; or

(B) the beginning of the term of the office, if the contribution was made to a candidate for the State office who is not the incumbent.

(2) The prohibition set forth in subdivision (1) of this subsection shall only apply if the person to whom the contribution was made holds the office during the timeframe of the prohibition.

(b) Contractor restrictions on contributions.

(1)(A) A person who enters into a sole source contract valued at \$50,000.00 or more or multiple sole source contracts valued in the aggregate at \$100,000.00 or more with the office of a State officer or with the State on behalf of that office, or that person's principal or spouse, shall not make a contribution to a candidate for that State office or to that State officer.

(B) The candidate for State office or his or her candidate's committee

or the State officer shall not solicit or accept a contribution from a person if that candidate, candidate's committee, or State officer knows the person is prohibited from making that contribution under this subdivision (1).

(2) The prohibitions set forth in subdivision (1) of this subsection shall be limited to a period beginning from the date of execution of the contract and ending with the completion of the contract.

(c) As used in this section:

(1) "Contract" means a "contract for services," as that term is defined in 3 V.S.A. § 341.

(2) "Person's principal" means an individual who:

(A) has a controlling interest in the person, if the person is a business entity;

(B) is vested with the authority to conduct, manage, or supervise the business affairs of the person, if the person is a for-profit business entity; or

(C) is an employee of the person and has direct, extensive, and substantive responsibilities with respect to the negotiation of the contract.

Sec. 4a. 3 V.S.A. § 347 is added to read:

§ 347. CONTRACTOR CONTRIBUTION RESTRICTIONS

The Secretary of Administration shall include in Administrative Bulletin 3.5 a notice regarding the contractor contribution restrictions set forth in 17 V.S.A. § 2950.

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

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

§ 2904. CIVIL INVESTIGATION

(a)(1) The Attorney General or a State's Attorney, whenever he or she has reason to believe any person to be or to have been in violation of this chapter or of any rule ~~or regulation~~ made pursuant to this chapter, may examine or cause to be examined by any agent or representative designated by him or her for that purpose any books, records, papers, memoranda, or physical objects of any nature bearing upon each alleged violation and may demand written responses under oath to questions bearing upon each alleged violation.

* * *

(5) Nothing in this subsection is intended to prevent the Attorney General or a State's Attorney from disclosing the results of an investigation conducted under this section, including the grounds for his or her decision as to whether to bring an enforcement action alleging a violation of this chapter

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

* * *

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

§ 2904a. REPORTS TO STATE ETHICS COMMISSION

Upon receipt of a complaint made in regard to a violation of this chapter or of any rule made pursuant to this chapter, the Attorney General or a State's Attorney shall:

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

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

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

CHAPTER 31. GOVERNMENTAL ETHICS

Subchapter 1. General Provisions

§ 1201. DEFINITIONS

As used in this chapter:

(1) "Candidate" and "candidate's committee" shall have the same meanings as in 17 V.S.A. § 2901.

(2) "Commission" means the State Ethics Commission established under subchapter 3 of this chapter.

(3) "Executive officer" means:

(A) a State officer; or

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

(4) "Governmental conduct regulated by law" includes:

(A) bribery pursuant to 13 V.S.A. § 1102;

(B) neglect of duty by public officers pursuant to 13 V.S.A. § 3006 and by members of boards and commissions pursuant to 13 V.S.A. § 3007;

(C) taking illegal fees pursuant to 13 V.S.A. § 3010;

(D) false claims against government pursuant to 13 V.S.A. § 3016;

(E) owning or being financially interested in an entity subject to a department's supervision pursuant to 3 V.S.A. § 204;

(F) failing to devote time to duties of office pursuant to section 205 of this title;

(G) a former legislator or former Executive officer serving as a lobbyist pursuant to 2 V.S.A. § 266(b); and

(H) a former Executive officer serving as an advocate pursuant to section 267 of this title.

(5) "Lobbyist" shall have the same meaning as in 2 V.S.A. § 261.

(6) "Political committee" and "political party" shall have the same meanings as in 17 V.S.A. § 2901.

(7) "State officer" means the Governor, Lieutenant Governor, Treasurer, Secretary of State, Auditor of Accounts, or Attorney General.

§ 1202. STATE CODE OF ETHICS

The Ethics Commission, in consultation with the Department of Human Resources, shall create and maintain a State Code of Ethics that sets forth principles of governmental ethical conduct.

Subchapter 2. Disclosures

§ 1211. EXECUTIVE OFFICERS; BIENNIAL DISCLOSURE

(a) Biennially, each Executive officer shall file with the State Ethics Commission a disclosure form that contains the following information in regard to the previous calendar year:

(1) Each source, but not amount, of personal taxable income of the officer or of his or her spouse that totals more than \$10,000.00, including any of the sources meeting that total described as follows:

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

(B) investment income; and

(C) a lease or contract with the State held or entered into by:

(i) the officer or his or her spouse; or

(ii) a company of which the officer or his or her spouse, or the officer together with his or her spouse, owned more than 10 percent.

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

(3) Any company of which the officer or his or her spouse, or the officer together with his or her spouse, owned more than 10 percent.

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

§ 1212. COMMISSION MEMBERS; BIENNIAL DISCLOSURE

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

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

§ 1213. DISCLOSURES; GENERALLY

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

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

Subchapter 3. State Ethics Commission

§ 1221. STATE ETHICS COMMISSION

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

(b) Membership.

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

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

(B) one member appointed by the Vermont affiliate of the American

Civil Liberties Union;

(C) one member appointed by the Board of Directors of the Vermont Society of Certified Public Accountants;

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

(E) one member appointed by the Board of Directors of the Vermont Human Resource Association.

(2) A member shall not:

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

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

(C) be a lobbyist;

(D) be a candidate for State or legislative office; or

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

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

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

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

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

(c) Executive Director.

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

(2) The Executive Director shall maintain the records of the Commission and shall provide administrative support as requested by the

Commission, in addition to any other duties required by this chapter.

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

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

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

§ 1222. COMMISSION MEMBER DUTIES AND PROHIBITED CONDUCT

(a) Conflicts of interest.

(1) Prohibition; recusal.

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

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

(2) Disclosure of conflict of interest.

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

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

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

(4) Definition. As used in this subsection, "conflict of interest" means an interest of a member that is in conflict with the proper discharge of his or her official duties due to a significant personal or financial interest of the member, of a person within the member's immediate family, or of the member's business associate. "Conflict of interest" does not include any

interest that is not greater than that of any other persons generally affected by the outcome of a matter.

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

§ 1223. PROCEDURE FOR HANDLING COMPLAINTS

(a) Accepting complaints. On behalf of the Commission, the Executive Director shall accept complaints from any source regarding governmental ethics in any of the three branches of State government or of the State's campaign finance law set forth in 17 V.S.A. chapter 61.

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

(1) Governmental conduct regulated by law. If the Executive Director finds that a State officer or employee may have committed a violation of governmental conduct regulated by law, the Executive Director shall submit the complaint to the Commission for its review as set forth in subsection (c) of this section.

(2) Department of Human Resources Code of Ethics.

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

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

(3) Campaign finance.

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

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

(4) Legislative and Judicial Branches; attorneys.

(A) If the complaint is in regard to conduct committed by a State Senator, the Executive Director shall refer the complaint to the Senate Ethics Panel and shall request a report back from the Panel regarding the final disposition of the complaint.

(B) If the complaint is in regard to conduct committed by a State Representative, the Executive Director shall refer the complaint to the House Ethics Panel and shall request a report back from the Panel regarding the final disposition of the complaint.

(C) If the complaint is in regard to conduct committed by a judicial officer, the Executive Director shall refer the complaint to the Judicial Conduct Board and shall request a report back from the Board regarding the final disposition of the complaint.

(D) If the complaint is in regard to an attorney employed by the State, the Executive Director shall refer the complaint to the Professional Responsibility Board and shall request a report back from the Board regarding the final disposition of the complaint.

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

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

(c) Commission reviews and referrals.

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

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

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

(d) Confidentiality. Complaints and related documents in the custody of the Commission shall be exempt from public inspection and copying under the Public Records Act and kept confidential.

§ 1224. COMMISSION ETHICS TRAINING

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

§ 1225. EXECUTIVE DIRECTOR ADVISORY OPINIONS

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

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

(b) An advisory opinion issued under this section shall be exempt from public inspection and copying under the Public Records Act. The Commission shall keep an advisory opinion confidential unless the receiving entity has publicly disclosed it.

§ 1226. COMMISSION REPORTS

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

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

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

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

* * * Implementation * * *

Sec. 8. APPLICABILITY OF EMPLOYMENT RESTRICTIONS

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

Sec. 9. STATE ETHICS COMMISSION; STATE CODE OF ETHICS CREATION

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

Sec. 10. IMPLEMENTATION OF THE STATE ETHICS COMMISSION

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

(b) Members of the Commission shall be appointed on or before

October 15, 2017 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, 2018.

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

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

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

(C) the Board of Directors of the Vermont Society of Certified Public Accountants shall appoint a member for a one-year term;

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

(E) the Board of Directors of the Vermont Human Resource Association shall appoint a member for a two-year term.

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

Sec. 11. CREATION OF STAFF POSITION FOR STATE ETHICS COMMISSION

One part-time exempt Executive Director position is created in the State Ethics Commission set forth in Sec. 7 of this act by using an existing position in the position pool.

Sec. 12. 3 V.S.A. § 260 is amended to read:

§ 260. LOCATION OF OFFICES

* * *

(c) The principal office of each of the following boards and divisions shall be located in Montpelier: Division for Historic Preservation and, Board of Libraries, and State Ethics Commission.

* * *

Sec. 13. BUILDINGS AND GENERAL SERVICES; SPACE ALLOCATION

The Commissioner of Buildings and General Services, in accordance with 3 V.S.A. § 260 set forth in Sec. 12 of this act, shall allocate space for the State Ethics Commission established in Sec. 7 of this act. This space shall be

allocated on or before October 15, 2017.

Sec. 14. STATE ETHICS COMMISSION FUNDING SOURCE
SURCHARGE; REPEAL

(a) Surcharge.

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

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

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

* * * Municipal Conflicts of Interest * * *

Sec. 15. 24 V.S.A. § 1984 is amended to read:

§ 1984. CONFLICT OF INTEREST PROHIBITION

(a)(1) A Each town, city, ~~or~~ and incorporated village, by majority vote of those present and voting at an annual or special meeting warned for that purpose, ~~may~~ shall adopt a conflict of interest prohibition for its elected and appointed officials, which shall contain:

~~(1)(A)~~ A definition of “conflict of interest.”

~~(2)(B)~~ A list of the elected and appointed officials covered by such prohibition.

~~(3)(C)~~ A method to determine whether a conflict of interest exists.

~~(4)(D)~~ Actions that must be taken if a conflict of interest is determined to exist.

~~(5)(E)~~ A method of enforcement against individuals violating such prohibition.

(2) The requirement set forth in subdivision (1) of this subsection shall not apply if, pursuant to the provisions of subdivision 2291(20) of this title, the municipality has established a conflict of interest policy that is in substantial compliance with subdivision (1).

(b)(1) Unless the prohibition adopted pursuant to subsection (a) of this section contains a different definition of “conflict of interest,” for the purposes

of a prohibition adopted under this section, “conflict of interest” means a direct personal or pecuniary interest of a public official, or the official’s spouse, household member, business associate, employer, or employee, in the outcome of a cause, proceeding, application, or any other matter pending before the official or before the agency or public body in which the official holds office or is employed.

(2) “Conflict of interest” does not arise in the case of votes or decisions on matters in which the public official has a personal or pecuniary interest in the outcome, such as in the establishment of a tax rate, that is no greater than that of other persons generally affected by the decision.

* * * Effective Dates * * *

Sec. 16. EFFECTIVE DATES

This act shall take effect as follows:

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

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

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

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

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

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

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

(3) Secs. 4, 17 V.S.A. § 2950 (State officers and State office candidates; contractor contribution restrictions) and 4a, 3 V.S.A. § 347 (contractor contribution restrictions) shall take effect on December 16, 2018.

(4) Sec. 15, 24 V.S.A. § 1984 (municipalities; conflict of interest prohibition) shall take effect on July 1, 2020.

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

(Committee vote: 5-0-0)

Reported favorably with recommendation of amendment by Senator Sears for the Committee on Appropriations.

The Committee recommends that the bill be amended as recommended by the Committee on Government Operations with the following amendments thereto:

First: In Sec. 7, in 3 V.S.A. § 1221 (State Ethics Commission), in subsection (b) (membership), by striking out subdivision (1) and inserting in lieu thereof the following:

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

(A) a chair of the Commission, who shall be appointed by the Chief Justice of the Supreme Court and who shall be a retired Justice or judge; and

(B) the following remaining four members, who shall be members or employees of the appointing organization:

(i) one member appointed by the Vermont affiliate of the American Civil Liberties Union;

(ii) one member appointed by the Board of Directors of the Vermont Society of Certified Public Accountants;

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

(iv) one member appointed by the Board of Directors of the Vermont Human Resource Association.

Second: By striking out in its entirety Sec. 12, 3 V.S.A. § 260 (location of offices) and inserting in lieu thereof the following:

Sec. 12. [Deleted.]

Third: In Sec. 13 (Buildings and General Services; space allocation), in the first sentence, following “The Commissioner of Buildings and General Services” by striking out “, in accordance with 3 V.S.A. § 260 set forth in Sec. 12 of this act.”

(Committee vote: 7-0-0)

Amendment to the recommendation of amendment of the Committee on Appropriations to S. 8 to be offered by Senator Sears

Senator Sears moves to amend the recommendation of amendment of the Committee on Appropriations by striking out the first instance of amendment in its entirety and inserting in lieu thereof the following:

First: In Sec. 7, in 3 V.S.A. § 1221 (State Ethics Commission), in subsection (b) (membership), by striking out subdivision (1) and inserting in lieu thereof the following:

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

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

(B) one member appointed by the Board of Directors of the Vermont affiliate of the American Civil Liberties Union, who shall be a member of the Board or an employee of that Vermont affiliate;

(C) one member appointed by the Board of Directors of the Vermont Society of Certified Public Accountants, who shall be a member of the Society;

(D) one member appointed by the Board of Managers of the Vermont Bar Association, who shall be a member of the Association; and

(E) one member appointed by the Board of Directors of the Vermont Human Resource Association, who shall be a member of the Association.

Joint Resolutions for Action

J.R.S. 13.

Joint resolution providing for a Joint Assembly for the election of a Sergeant at Arms, an Adjutant and Inspector General, and three Trustees of the University of Vermont and State Agricultural College.

PENDING QUESTION: Shall the resolution be adopted?

(For text of resolution, see Senate Journal of February 3, 2017, page 85.)

J.R.S. 14.

Joint resolution establishing a procedure for the conduct of the election of UVM trustees by plurality vote by the General Assembly in 2017.

PENDING QUESTION: Shall the resolution be adopted?

(For text of resolution, see Senate Journal of February 3, 2017, page 86.)

Senate Resolution for Action

S.R. 5.

Senate resolution declaring the Vermont Senate's continuing dedication to its historic and fundamental values of democracy, diversity, and pluralism.

PENDING QUESTION: Shall the resolution be adopted?

(For Text of resolution, see Senate Journal for Friday, February 3, 2017, page 87)

NOTICE CALENDAR

Second Reading

Favorable

S. 33.

An act relating to the Roza McLaughlin Farm-to-School Program.

Reported favorably by Senator Branagan for the Committee on Agriculture.

(Committee vote: 5-0-0)

S. 60.

An act relating to the repeal of 21 V.S.A. § 6.

Reported favorably by Senator Clarkson for the Committee on Economic Development, Housing and General Affairs.

(Committee vote: 5-0-0)

Favorable with Recommendation of Amendment

S. 10.

An act relating to liability for the contamination of potable water supplies.

Reported favorably with recommendation of amendment by Senator Campion for the Committee on Natural Resources and Energy.

The Committee recommends that the bill be amended by striking out all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. 10 V.S.A. § 6615e is added to read:

§ 6615e. RELIEF FOR CONTAMINATED POTABLE WATER SUPPLIES

(a) Definitions. As used in this section:

(1) “Public water system” means any system or combination of systems owned or controlled by a person that provides drinking water through pipes or other constructed conveyances to the public and that has at least 15 service connections or serves an average of at least 25 individuals daily for at least 60 days out of the year. A “public water system” includes all collection, treatment, storage, and distribution facilities under the control of the water supplier and used primarily in connection with the system, and any collection or pretreatment storage facilities not under the control of the water supplier that are used primarily in connection with the system. “Public water system” shall also mean any part of a system that does not provide drinking water, if use of such a part could affect the quality or quantity of the drinking water

supplied by the system. “Public water system” shall also mean a system that bottles drinking water for public distribution and sale.

(2) “Public community water system” means a public water system that serves at least 15 service connections used by year-round residents or regularly serves at least 25 year-round residents.

(b) Extension of public community water system. In addition to a response action required under section 6615 or 6615b of this title, any person who the Secretary has determined released perfluorooctanoic acid into the air, groundwater, surface water, or onto the land shall be strictly, jointly, and severally liable for the costs of extending the water supply of a public water system to a property when:

(1) the property is served by a potable water supply regulated under chapter 64 of this title;

(2) the Secretary has determined that the potable water supply on the property:

(A) is a failed supply under chapter 64 of this title due to perfluorooctanoic acid contamination; or

(B) is likely to be contaminated by perfluorooctanoic acid due to the proximity of the public water supply to other public water supplies contaminated by perfluorooctanoic acid or due to other relevant factors; and

(3) the person the Secretary determined released perfluorooctanoic acid into the air, groundwater, surface water, or onto the land is the cause of or contributor to the perfluorooctanoic acid contamination or likely contamination of the potable water supply.

(c) Liability payment. A person liable under subsection (b) of this section for the extension of the water supply of a public water system shall pay the operator of the public water system for the extension of the water supply within 30 days of notification of liability by the Secretary or within an alternate time frame ordered by the Secretary. If the person liable for the extension of the water supply does not pay the operator within the required time frame, the person shall be liable for interest on the assessed cost of the extension of the water supply.

(d) Appeal standard. Notwithstanding subsection 8504(h) of this title, the Environmental Division of the Superior Court shall review an appeal of a decision of the Secretary under this section on the record pursuant to Rule 74 of the Vermont Rules of Civil Procedure. Prior to issuing a final liability determination under subsection (b) of this section, the Secretary shall post a proposed liability determination to the website of the Agency of Natural Resources for public notice and written comment for 30 days. In developing

the record of a decision under this section, the Secretary shall provide any person an opportunity to supplement the record of the liability determination.

Sec. 2. APPLICATION OF LIABILITY

(a) This act shall apply to any determination of liability made by the Secretary of Natural Resources under 10 V.S.A. § 6615e after the effective date of the act.

(b) Notwithstanding any contrary provision of 1 V.S.A. § 214, this act shall apply to any relevant release of perfluorooctanoic acid regardless of the date of the relevant release, including releases that occurred prior to the effective date of this act.

Sec. 3. EFFECTIVE DATE

This act shall take effect on passage.

(Committee vote: 5-0-0)

S. 18.

An act relating to freedom of expression for students.

Reported favorably with recommendation of amendment by Senator Benning for the Committee on Education.

The Committee recommends that the bill be amended by striking out all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. 16 V.S.A. chapter 42 is added to read:

CHAPTER 42. STUDENT RIGHTS

§ 1623. FREEDOM OF EXPRESSION

(a) Findings.

(1) The General Assembly finds that freedom of expression and freedom of the press are fundamental principles in our democratic society granted to every citizen of the nation by the First Amendment to the U.S. Constitution and to every resident of this State by Vt. Const. Ch. I, Art. 13.

(2) These freedoms provide all citizens, including students, with the right to engage in robust and uninhibited discussion of issues.

(3) The General Assembly intends to ensure free speech and free press protections for both public school students and students at institutions of higher education in this State in order to encourage students to become educated, informed, and responsible members of society.

(b) Definitions. As used in this chapter:

(1) “Media adviser” means an individual employed, appointed, or designated by a school or its governing body to supervise or provide instruction relating to school-sponsored media.

(2) “School” means a public school operating in the State.

(3) “School-sponsored media” means any material that is prepared, written, published, or broadcast as part of a school-supported program or activity by a student journalist and is distributed or generally made available as part of a school-supported program or activity to an audience beyond the classroom in which the material is produced.

(4) “Student journalist” means a student enrolled at a school who gathers, compiles, writes, edits, photographs, records, or prepares information for dissemination in school-sponsored media.

(5) “Student supervisor” is a student who is responsible for editing school-sponsored media.

(c)(1) Subject to subsection (e) of this section, a student journalist may exercise freedom of speech and freedom of the press in school-sponsored media.

(2) Subdivision (1) of this subsection shall not be construed to be limited by the fact that the school-sponsored media are:

(A) supported financially by a school or its governing body, or by use of facilities owned by the school; or

(B) produced in conjunction with a class in which the student journalist is enrolled.

(d)(1) Subject to subsection (e) of this section, the student supervisors of school-sponsored media are responsible for determining the content of their respective media.

(2) Subject to subdivision (1) of this subsection, a media adviser may teach professional standards of English and journalism to student journalists.

(e) This section shall not be construed to authorize or protect content of school-sponsored media that:

(1) is libelous or slanderous;

(2) constitutes an unwarranted invasion of privacy;

(3) may be defined as obscene, gratuitously profane, threatening, or intimidating;

(4) may be defined as harassment, hazing, or bullying under section 11 of this title;

(5) violates federal or State law; or

(6) creates the imminent danger of materially or substantially disrupting the ability of the school to perform its educational mission.

(f) A school is prohibited from subjecting school-sponsored media, other than that listed in subsection (e) of this section, to prior restraint. A school may restrain the distribution of content in student media described in subsection (e), provided that the school's administration shall have the burden of providing lawful justification without undue delay. Content shall not be suppressed solely because it involves political or controversial subject matter, or is critical of the school or its administration.

(g) A student journalist may not be disciplined for acting in accordance with this section.

(h) A media adviser may not be dismissed, suspended, disciplined, reassigned, or transferred for:

(1) taking reasonable and appropriate action to protect a student journalist for engaging in conduct protected by this section; or

(2) refusing to infringe on conduct that is protected by this section, by the first amendment to the U.S. Constitution, or by the Vermont Constitution.

(i) Each school or its governing body shall adopt a written policy consistent with the provisions of this section.

(j) No expression made by students in school-sponsored media shall be deemed to be an expression of school policy.

Sec. 2. 16 V.S.A. § 180 is added to read:

§ 180. STUDENT RIGHTS—FREEDOM OF EXPRESSION

(a) Findings.

(1) The General Assembly finds that freedom of expression and freedom of the press are fundamental principles in our democratic society granted to every citizen of the nation by the First Amendment to the U.S. Constitution and to every resident of this State by Vt. Const. Ch. I, Art. 13.

(2) These freedoms provide all citizens, including students, with the right to engage in robust and uninhibited discussion of issues.

(3) The General Assembly intends to ensure free speech and free press protections for both public school students and students at institutions of higher education in this State in order to encourage students to become educated, informed, and responsible members of society.

(b) Definitions. As used in this chapter:

(1) “Media adviser” means an individual employed, appointed, or designated by a school or its governing body to supervise or provide instruction relating to school-sponsored media.

(2) “School” means a public postsecondary school operating in the State.

(3) “School-sponsored media” means any material that is prepared, written, published, or broadcast as part of a school-supported program or activity by a student journalist and is distributed or generally made available as part of a school-supported program or activity to an audience beyond the classroom in which the material is produced.

(4) “Student journalist” means a student enrolled at a school who gathers, compiles, writes, edits, photographs, records, or prepares information for dissemination in school-sponsored media.

(5) “Student supervisor” is a student who is responsible for editing school-sponsored media.

(c)(1) Subject to subsection (e) of this section, a student journalist may exercise freedom of speech and freedom of the press in school-sponsored media.

(2) Subdivision (1) of this subsection shall not be construed to be limited by the fact that the school-sponsored media are:

(A) supported financially by a school or its governing body, or by use of facilities owned by the school; or

(B) produced in conjunction with a class in which the student journalist is enrolled.

(d)(1) Subject to subsection (e) of this section, the student supervisors of school-sponsored media are responsible for determining the content of their respective media.

(2) Subject to subdivision (1) of this subsection, a media adviser may teach professional standards of English and journalism to student journalists.

(e) This section shall not be construed to authorize or protect content of school-sponsored media that:

(1) is libelous or slanderous;

(2) constitutes an unwarranted invasion of privacy;

(3) may be defined as obscene, gratuitously profane, threatening, or intimidating;

(4) may be defined as harassment, hazing, or bullying under section 11 of this title;

(5) violates federal or State law; or

(6) creates the imminent danger of materially or substantially disrupting the ability of the school to perform its educational mission.

(f) Absent a showing that a particular publication will cause direct, immediate, and irreparable harm that would warrant the issuance of a prior restraint order against the private media, school officials are not authorized to censor or subject to prior restraint the content of schoolsponsored media. Content shall not be suppressed solely because it involves political or controversial subject matter, or is critical of the school or its administration.

(g) A student journalist may not be disciplined for acting in accordance with this section.

(h) A media adviser may not be dismissed, suspended, disciplined, reassigned, or transferred for:

(1) taking reasonable and appropriate action to protect a student journalist for engaging in conduct protected by this section; or

(2) refusing to infringe on conduct that is protected by this section, by the first amendment to the U.S. Constitution, or by the Vermont Constitution.

(i) Each school or its governing body shall adopt a written policy consistent with the provisions of this section.

(j) No expression made by students in school-sponsored media shall be deemed to be an expression of school policy.

Sec. 3. EFFECTIVE DATE

This act shall take effect on July 1, 2017.

(Committee vote: 6-0-0)

Favorable with Proposal of Amendment

H. 125.

An act relating to fiscal year 2017 budget adjustments.

Reported favorably with recommendation of proposal of amendment by Senator Kitchel for the Committee on Appropriations.

The Committee recommends that the Senate propose to the House to amend the bill by striking out all after the enacting clause and inserting in lieu thereof the following:

For text of Report of Committee on Appropriations, see Addendum to Senate Calendar for February 7, 2017)

(Committee vote: 7-0-0)

(For House amendments, see House Journal for January 26, 2017, page 104.)

PUBLIC HEARINGS

Thursday, February 9, 2017 - 7:00 P.M. - 8:30 P.M. - Room 11 - Re: Minimum Wage - House Committee on General, Housing and Military Affairs.

Joint Community-Based Public Hearings on Fiscal Year 2018 State budget

House and Senate Committees on Appropriations

Monday, February 13, 2017 - 6:00 P.M. - 7:00 P.M. – The Vermont House and Senate Committees on Appropriations are seeking public input on the FY2018 proposed State budget and will hold joint public hearings Monday, February 13, 2017, 6:00 – 7:00 p.m. at 6 locations across the State.

Bellows Falls: Windham Antique Center, 5 The Square.

Johnson: Johnson State College, Bentley 207.

Rutland City: Rutland Public Schools, Longfellow School Building.

St. Albans City: St. Albans City Elementary School, Library.

St. Johnsbury: The St. Johnsbury School, Cafeteria.

Winooski: Community College of Vermont, Janice Couture Room (108).

The Committees will take testimony on the Governor's FY 2018 State budget proposal at that time. Anyone interested in testifying should come to one of the hearings. Time limits on testimony may apply depending on volume of participants.

To view or print a copy of the proposed budget, go to: <http://finance.vermont.gov/budget/budget-recommendations/operating-budget/fy2018>. For more information about the format of these events, or to submit written testimony, e-mail Theresa Utton-Jerman at tutton@leg.state.vt.us or Rebecca Buck at rbuck@leg.state.vt.us, or call 802-828-5767 or 802-828-2295. Requests for interpreters should be made to the office by 3:00 p.m. on Monday, January 30, 2017.

February 16, 2017 - 6:00 P.M. - 7:00 P.M. - Room 11 - Re: FY 2018 Governor's proposed State budget - House Committee on Appropriations.

NOTICE OF JOINT ASSEMBLY

Thursday, February 16, 2017 - 10:30 A.M. – House Chamber - Election of a Sergeant at Arms, of an Adjutant and Inspector General, and of three (3) trustees for the University of Vermont, and Vermont and State Agricultural College.

Candidates for the positions of Sergeant at Arms, Adjutant and Inspector General, and legislative candidates for UVM trustees must notify the Secretary of State **in writing** of their candidacies not later than Thursday, February 9, 2017, by 4:00 P.M., pursuant to the provisions of 2 V.S.A. §12(b). Otherwise their names will not appear on the ballots for these positions.

The following rules shall apply to the conduct of these elections:

First: All nominations for these offices will be presented in alphabetical order prior to voting.

Second: There will be only one nominating speech of not more than three (3) minutes and not more than two seconding speeches of not more than one (1) minute each for each nominee.

FOR INFORMATION PURPOSES

STATE OF VERMONT

EXECUTIVE DEPARTMENT

EXECUTIVE ORDER NO. 07-17

The Senate Committee on Economic Development, Housing and General Affairs to which was referred Executive Order No. 07-17 (Merger of the Department of Liquor Control and the State Lottery Commission) has considered the same, and after testimony, voted affirmatively to approve the changes proposed in Executive Order No. 07-17 and will not be recommending the Senate disapprove of Executive Order No. 07-17 under 3 V.S.A. § 2002(b).