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Vermont State Code of Ethics

Section 1 – Declaration of Policy

The people of the State of Vermont believe that public officials and employees must adhere to the highest standards of ethical conduct, respect the public trust, be open, accountable and responsive, avoid the appearance of impropriety and not use their position for private gain or advantage.

Section 2 – Definitions

As used in this Code:

- (1) **"Any person within his or her family"** means a spouse and any dependent children of any public official or public employee as well as a person who is related to any public official or public employee, whether by blood, adoption or marriage, as any of the following: father, mother, son, daughter, brother, sister, grandfather, grandmother, grandson, granddaughter, father-in-law, mother-in-law, brother-in-law, sister-in-law, son-in-law, daughter-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half-brother or half-sister.
- (2) **"Business"** means a sole proprietorship, partnership, firm, corporation, holding company, joint stock company, receivership, trust or any other entity recognized in law through which business for profit or not for profit is conducted;
- (3) **"Business associate"** means a person joined together with another person to achieve a common financial objective;
- (4) **"Business subject to direct state or municipal regulation"** means a business that is directly regulated by a state or municipal agency as defined herein other than in a de minimus manner. This includes a business funded with state or municipal funds or federal funds disbursed by a state or municipal agency. If a specific regulatory body exists to control or supervise the business, and such body regulates and monitors the business' activities, it is a business subject to direct regulation. Utilities, insurance companies and regulated financial institutions are included. A business is not directly regulated because it is subject to general laws, tax or health laws for example, applicable to all businesses or, the fact that a business requires a license to operate, or a professional license is obtained. Businesses regulated by professional boards and occupational boards are excluded.
- (5) **"Doing business"** means engaging in a financial transaction, about which the public official has actual or constructive knowledge, which transaction constitutes a loan, purchase, sale or other type of transfer or exchange of money, goods, other property, or services for value.

- (6) **"Employees of state and local government, of boards, commissions and agencies" means** any full-time or part-time employees in the classified or exempt service of the state or of any municipality within the state, any individuals serving in any appointed state or municipal position, and any employees of any public or quasi-public state or municipal public body;
- (7) **"Governmental function" means** any action that is public in nature and is performed for the common good of all Vermont citizens and residents;
- (8) **"Income" means** any money or thing of value received or to be received as a claim on future services whether in form of a fee, salary, expenses, allowance, forbearance, forgiveness, interest, interest paid on a loan, dividend, royalty, rent, capital gain, or any other form of recompense that constitutes income under the Federal Internal Revenue Code.
- (9) **"Major decision-making position" means any state officer:** governor, Lt. governor state officer's deputy or chief of staff, secretary of a state agency, whether elected or appointed or serving as an employee, and all members of the judiciary.
- (10) **"Municipal agency" means** any agency, public body, or instrumentality of a "municipality" that exercises governmental functions other than in a purely advisory nature;
- (11) **"Municipality"** is defined in 1 V.S.A. 126 and means any public body or agency that is in any branch of municipal government and which exercises governmental functions other than in a purely advisory nature;
- (12) **"Open and public process" means** the open solicitation for bids or proposals from the general public by public announcement or public advertising followed by a public disclosure of all bids or proposals considered and contracts awarded;
- (13) **"Ownership interest" means** an interest in stock, assets, net profits, or losses of a business. The value of an ownership interest is determined at its highest fair market value in the calendar year.
- (14) **"Person" means** an individual or a business entity;
- (15) **"Public official" means** any state, county or municipal elected or appointed officer;
- (16) A person **"represents" himself or herself before a state or municipal agency if:**
- (A) he or she participates in the presentation of evidence or arguments before that agency for the purpose of influencing the judgment of the agency in his or her own favor;

(B) pursuant to his or her authorization or direction, another person participates in the presentation of evidence or arguments before that agency for the purpose of influencing the judgment of the agency in his or her favor; or

(C) he or she engages in the conduct described in subdivisions (a)(1) or (a)(2) before another agency for which he or she is the appointing authority or a member thereof.

(17) A person "represents" another person before a state or municipal agency" if:

(A) he or she is authorized by that other person to act, and does in fact act, as the other person's attorney at law or his or her attorney in fact in the presentation of evidence or arguments before that agency for the purpose of influencing the judgment of the agency in favor of that other person;

(B) he or she acts as an expert witness with respect to any matter the agency's disposition of which will or can reasonably be expected to directly result in an economic benefit or detriment to him or herself, or any person within his or her family or any business associate of the person or any business by which the person is employed or which the person represents; or

(C) he or she engages in the conduct described in subsection (b)(1) or (b)(2) before another agency for which he or she is the appointing authority or a member thereof.

(18) "State agency" means any agency, department, division, public body, office, authority, quasi-public authority, or instrumentality of the State Vermont, either chamber of the Vermont General Assembly, or any agency or committee thereof, the judiciary, or any other agency that is in any branch of Vermont state government and which exercises governmental functions other than in a purely advisory nature;

(19) "State agency" or "municipal agency" shall also include any group of persons, or corporations, organization, or other entity, however created, which:

(A) exercises governmental functions other than in an advisory nature, and expends public funds in excess of \$10,000 yearly; or

(B) those entities whose directors or other governing members are appointed by or through the governing body or highest official of state or municipal government.

(20) "State official" means any state elected or appointed officer;

Section 3 – Application

The following persons shall be subject to the provisions of the Vermont State Code of Ethics:

- (1) State elected and appointed officials;
- (2) Employees of state government;
- (3) County and municipal elected and appointed officials;
- (4) Employees of county and municipal government; and
- (5) Members of public bodies.

Section 4 - Prohibited Activities

(a) No person subject to this Code of Ethics shall have any interest, financial or otherwise, direct or indirect, or engage in any business, employment, transaction or professional activity, or incur any obligation of any nature, which is in substantial conflict with the proper discharge of his or her duties or employment in the public interest and of his or her responsibilities as prescribed in the laws of this state.

(b) No person subject to this Code of Ethics shall accept other employment which will either impair his or her independence of judgment as to his or her official duties or employment or require him or her, or induce him or her, to disclose confidential information acquired by him or her in the course of and by reason of his or her official duties.

(c) No person subject to this Code of Ethics shall willfully and knowingly disclose, for pecuniary gain, to any other person, confidential information acquired by him or her in the course of and by reason of his or her official duties or employment or use any such information for the purpose of pecuniary gain.

d) No person subject to this Code of Ethics shall use in any way his or her public office or confidential information received through his or her holding any public office to obtain financial gain, other than that provided by law, for him or herself or any person within his or her family, any business associate, or any business by which the person is employed or which the person represents.

(e) No person subject to this Code of Ethics shall:

(1) Represent him or herself before any state or municipal agency of which he or she is a member or by which he or she is employed. In cases of hardship the Ethics Commission may recommend such representation upon the request of the official and provided that he or she shall first:

(A) Advise the state or municipal agency in writing of the existence and the nature of his or her interest in the matter at issue, and

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(B) Recuse him or herself from voting on or otherwise participating in the agency's consideration and disposition of the matter at issue, and

(C) Follow any other recommendations the Ethics Commission may make to avoid any appearance of impropriety in the matter.

(2) Represent any other person before any state or municipal agency of which he or she is a member or by which he or she is employed.

(3) Act as an expert witness before any state or municipal agency of which he or she is a member or by which he or she is employed with respect to any matter the agency's disposition of which will or can reasonably be expected to directly result in an economic benefit or detriment to him, or herself, or any person within his or her family or any business associate of the person or any business by which the person is employed or which the person represents.

(4) Shall engage in any of the activities prohibited by this section for a period of one year after he or she has officially severed his or her position with said state or municipal agency; provided, however, that this prohibition shall not pertain to a matter of public record in a court of law.

(f) No business associate of any person subject to this Code of Ethics shall represent him or herself or any other person or **act as an expert witness before the state or municipal agency** of which the person is a member or by which the person is employed unless:

(1) He or she shall first advise the state or municipal agency of the nature of his or her business relationship with the said person subject to this Code of Ethics; and

(2) The said person subject to this Code of Ethics shall recuse him or herself from voting on or otherwise participating in the said agency's consideration and disposition of the matter at issue.

(g) No person subject to this Code of Ethics or spouse (if not estranged) or dependent child or business associate of the person or any business by which the person is employed or which the person represents, shall solicit or accept any gift, loan, political contribution, reward, or promise of future employment based on any understanding that the vote, official action, or judgment of the person would be influenced thereby.

(h) No person subject to this Code of Ethics and or any person within his or her family or business associate of the person or any business entity in which the person or any person within his or her family or current or former business associate of the person that has a financial interest, shall enter into any contract with any state or municipal agency regardless of whether the contract has been awarded through an open and public process, including prior public notice and subsequent public disclosure of all proposals considered and contracts awarded.

(i) No person shall give or offer to any person covered by this Code of Ethics, or to any candidate for public office, or to any person within his or her family or business associate of any such person, or to any business by which said person is employed or which the person represents, any gift, loan, political contribution, reward or promise of future employment based on any understanding or expectation that the vote, official action or judgment of said person would be influenced thereby.

(j) No person shall use for any commercial purpose information copied from any statements required by this Code or from lists compiled from such statements.

(k) No person shall knowingly and willfully make a false or frivolous complaint under this Code.

(l) No candidate for public office or any person within his or her family or business associate of the candidate or any business by which the candidate is employed or which the candidate represents, **shall solicit or accept any gift, loan, political contribution, reward, or promise of future employment** based on any understanding that the vote, official action or judgment of the candidate would be influenced thereby.

(m) No person subject to this Code of Ethics, shall, either directly, or indirectly, through any government agency, or through a business associate, or through any other person, threaten or intimidate any complainant or family member of any complainant who files a complaint with the state Ethics Commission.

(n) No state elected official, while holding state office and for a period of one (1) year after leaving state office, shall seek or accept employment with any other state agency other than employment which was held at the time of the official's election or at the time of adoption of this Code, except as follows:

(1) Nothing contained herein shall prohibit any general officer or the general assembly from appointing any state elected official to a senior policy-making, discretionary, or confidential position on the general officer's or the general assembly's staff, and in the case of the governor, to a position as a department director; nor shall the provisions herein prohibit any state elected official from seeking or accepting a senior policy-making, discretionary, or confidential position on any general officer's or the general assembly's staff, or from seeking or accepting appointment as a department director by the governor.

(2) Nothing contained herein shall prohibit a state elected official from seeking or being elected for any other constitutional office.

(o) [Postemployment restrictions on senior advisors of state officials and the General Assembly]

Section 4.1 - Prohibited Activities; Nepotism

(a) **Definitions.** For the purposes of applying the provisions of this Section, the following definitions apply:

(1) **"Household member"** means a person having legal residence or living in a public official's or public employee's place of residence.

(2) **"Any person within his or her family"** means, in addition to any other definition, any person who is related to any public official or public employee, whether by blood, marriage or adoption, as any of the following: spouse, father, step-father, father-in-law, mother, step-mother, mother-in-law, son, step-son, son-in-law, daughter, step-daughter, daughter-in-law, brother, step-brother, brother-in-law, sister, step-sister, sister-in-law, grandfather, step-grandfather, grandfather-in-law, grandmother, step-grandmother, grandmother-in-law, grandson, step-grandson, grandson-in-law, granddaughter, step-granddaughter, granddaughter-in-law, uncle, step-uncle, uncle-in-law, aunt, step-aunt, aunt-in-law, niece, step-niece, niece-in-law, nephew, step-nephew, nephew-in-law, first cousin, step-first cousin and first-cousin-in-law.

(b) **Prohibitions.** In addition to any other provisions of the Code of Ethics the following prohibitions relating to nepotism shall apply:

(1) **Nepotism Generally.** No person subject to the Code of Ethics shall participate in any matter as part of his or her public duties if he or she has reason to believe or expect that any person within his or her family, or any household member, is a party to or a participant in such matter, or will derive a direct monetary gain or suffer a direct monetary loss, or obtain an employment advantage, as the case may be.

(2) **Advocacy/Supervision Regarding Family/Household Members.**

(A) No person subject to the Code of Ethics shall participate in the supervision, evaluation, appointment, classification, promotion, transfer or discipline of any person within his or her family or a household member, in the state or municipal agency in which the official or employee is serving or over which he or she exercises fiscal or jurisdictional control, except in accordance with particular instructions and advice received from the Ethics Commission in a written advisory opinion.

(B) No person subject to the Code of Ethics shall delegate to a subordinate any tasks relating to the supervision, evaluation, appointment, classification, promotion, transfer or discipline of any person within his or her family or household members, except in accordance with particular instructions and advice received from the Ethics Commission in a written advisory opinion.

(3) Participation in Budgets.

(A) General Prohibition. No person subject to the Code of Ethics shall participate in discussion or decision-making relative to a budgetary line item that would address or affect the employment, compensation or benefits of any person within his or her family or a household member.

(B) Specific Line Items. Notwithstanding the prohibition set forth in subsection 3(A), a person subject to the Code of Ethics may, only in accordance with particular instructions and advice received from the Ethics Commission in a written advisory opinion, participate in discussion or decision-making relative to a budgetary line item that addresses or affects the employment, compensation or benefits of any person within his or her family or a household member as a member of a significant and definable class of persons, and not individually or to any greater extent than any other similarly situated member of the class.

(C) Vote on Entire Budget. Notwithstanding the prohibition set forth in subsection 3(A), a person subject to the Code of Ethics may participate in discussion or decision-making relative to approving or rejecting the entire budget as a whole, provided that the person within his or her family or household member is impacted by the entire budget as a member of a significant and definable class of persons, and not individually or to any greater extent than any other similarly situated member of the class.

(4) Participation in Collective Bargaining/Employee Contracts.

(A) Negotiations. No person subject to the Code of Ethics shall participate in negotiations relative to an employee contract or collective bargaining which addresses or affects the employment, compensation or benefits of any person within his or her family or a household member.

(B) Vote on Entire Contract. Notwithstanding the prohibition set forth in subsection 4(A), a person subject to the Code of Ethics may participate in a decision to accept or reject an entire employee contract or collective bargaining agreement as a whole, provided that the person within his or her family or household member is impacted by the contract or agreement as a member of a significant and definable class of persons, and not individually or to any greater extent than any other similarly situated member of the class.

(c) The prohibitions contained herein which relate to the spouse or dependent child of a person subject to this Code of Ethics, except as to that activity described in Section 5(h), shall also pertain to any of the following relatives of such person, whether by blood,

marriage or adoption: Parents, grandparents, adult children, siblings, grandchildren, uncles, aunts, nieces, nephews and first cousins.

Section 4.2 – Prohibited Activities; Employment from own Board

No elected or appointed official may accept any appointment or election that requires approval by the body of which he or she is or was a member, to any position which carries with it any financial benefit or remuneration, until the expiration of one (1) year after termination of his or her membership in or on such body, unless the Ethics Commission shall give its approval for such appointment or election, and, further provided, that such approval shall not be granted unless the Ethics Commission is satisfied that denial of such employment or position would create a substantial hardship for the body, board, or municipality.

Section 4.3 - Prohibition Activities; State Employment

No member of the General Assembly shall seek or accept state employment not held at the time of the member's election, while serving in the General Assembly and for a period of one (1) year after leaving legislative office. For purposes of this Section, "employment" shall also include service as an independent contractor or consultant to the state or any state agency, whether as an individual or a principal of an entity performing such service.

Section 4.4 – Prohibited Activities; Acting as Agent or Attorney for Other than State or Municipality

(a) No state appointed or elected official or employee, who exercises fiscal or jurisdictional control over any state agency, board, Commission or governmental entity, shall act, for compensation, as an agent or attorney before such agency, board, Commission or governmental entity for any person or organization in any particular matter in which the state has an interest or is a party, unless:

- (1)** such representation is in the proper discharge of official duties; or
- (2)** such official or employee is acting as a representative of a duly certified bargaining unit of state or municipal employees; or
- (3)** such appearance is before a state court of public record; or
- (4)** the particular matter before the state agency requires only ministerial acts, duties, or functions involving neither adversarial hearings nor the authority of the agency to exercise discretion or render decisions.

(b) No municipal appointed or elected official or employee, who exercises fiscal or jurisdictional control over any municipal agency, board, Commission or

governmental entity, shall act, for compensation, as an agent or attorney before such agency, board, Commission or governmental entity for any person or organization in any particular matter in which the municipality has an interest or is a party, unless:

- (1) such representation is in the proper discharge of official duties; or
- (2) such official or employee is acting as a representative of a duly certified bargaining unit of state or municipal employees, or
- (3) such appearance is before a state court of public record; or
- (4) the particular matter before the municipal agency requires only ministerial acts, duties or functions involving neither adversarial hearings nor the authority of the agency to exercise discretion or render decisions.

(c) **For purposes of this Section, "fiscal control" shall include**, but is not necessarily limited to, authority to approve or allocate funds or benefits for the applicable state or municipal entity.

(d) **For purposes of this Section, "jurisdictional control" shall include**, but is not necessarily limited to, appointing authority, appellate review, or other substantive control in connection with the operation of the applicable state or municipal entity.

Section 4.5 - Prohibited Activities; Gifts

(a) No person subject to the Code of Ethics, either directly or as the beneficiary of a gift or other thing of value given to a spouse or dependent child, **shall accept or receive any gift** of cash, forbearance or forgiveness of indebtedness from an interested person, as defined herein, without the interested person receiving lawful consideration of equal or greater value in return.

(b) No person subject to the Code of Ethics, either directly or as the beneficiary of a gift or other thing of value **given to a spouse or dependent child, shall accept or receive any gift(s)** or other thing(s) having either a fair market value or actual cost greater than twenty-five dollars (\$25), but in no case having either an aggregate fair market value or aggregate actual cost greater than seventy-five dollars (\$75) in any calendar year including, but not limited to, gifts, loans, rewards, promises of future employment, favors or services, gratuities or special discounts, from a single interested person, as defined herein, without the interested person receiving lawful consideration of equal or greater value in return.

(c) **For purposes of this Section a "single interested person" shall include** all employees or representatives of an individual, business, organization or entity.

(d) The prohibitions in this section do not apply if the gift or other thing of value is:

(1) a campaign contribution as defined by the laws of the state;

(2) services to assist an official or employee in the performance of official duties and responsibilities, including but not limited to providing advice, consultation, information, and communication in connection with legislation, and services to constituents; or

(3) a plaque or other similar item given in recognition of individual or professional services in a field of specialty or to a charitable cause;

(e) **"Interested person," for purposes of this section, means** a person or a representative of a person or business that has a direct, ongoing financial interest in a decision that the person subject to the Code of Ethics is authorized to make, or to participate in the making of, as part of his or her official duties.

(f) The prohibitions in this section do not apply if the gift or thing of economic value is given:

(1) because of the recipient's membership in a group, a majority of whose members are not persons subject to the Code of Ethics, and an equivalent gift is given or offered to other members of the group; or

(2) by an interested person who is a person within the family of the recipient, unless the gift is given on behalf of someone who is not a member of said family.

(g) **For purposes of this section, a gift or other thing of value** is considered received when it comes into the possession or control of the person subject to the Code of Ethics, or his or her spouse or dependent child, and is a gift or other thing of value subject to the requirements of this Section unless it is immediately returned to the interested person or given to a bona fide charitable organization without benefit accruing to the person subject to the Code of Ethics.

Section 4.6 - Prohibited Activities; Honoraria

No person subject to the Code of Ethics shall accept an honorarium, fee or reward or other compensation for any activity that may be considered part of or directly relates to said person's official duties and responsibilities unless:

(1) the source of the honorarium, fee, reward or other compensation is an individual or entity for which the official or employee is not vested with decision making authority within his or her official duties and responsibilities; and

(2) the official or employee, when engaging in or preparing for the activity, uses his or her own time and do not make improper use of state or municipal materials or resources.

Section 4.7 - Prohibited Activities; Transactions with Subordinates

(a) No person subject to the Code of Ethics shall engage in a financial transaction, including participating in private employment or consulting, and giving or receiving loans or monetary contributions, including charitable contributions, with a subordinate or person or business for which, in the official's or employee's official duties and responsibilities, he or she exercises supervisory responsibilities, unless:

- (1)** the financial transaction is in the normal course of a regular commercial business or occupation;
- (2)** the subordinate or person or business described above offers or initiates the financial transaction; or
- (3)** the financial transaction involves a charitable event or fundraising activity which is the subject of general sponsorship by a state or municipal agency through official action by a governing body or the highest official of state or municipal government.

(b) No person subject to the Code of Ethics shall solicit or request, directly or through a surrogate, political contributions, from a subordinate for whom, in the official's or employee's official duties and responsibilities, he or she exercises supervisory responsibilities. This does not prohibit or limit the First Amendment rights of a subordinate, as defined in this section, to make political contributions.

(c) For purposes of this Section, "subordinate" means an employee, contractor, consultant, or appointed official of the official's or employee's agency.

Section 4.8 - Prohibited Activities; Restrictions on Activities relating to Public Bodies

(a) No member of the General Assembly, while serving as a member of a public body, shall:

- (1)** ask, demand, solicit, accept, receive or agree to receive any gift, loan, reward, promise of future employment, favor or service, forbearance or forgiveness of indebtedness, gratuity or special discount or other thing of economic value from any person, business or other entity having a financial interest, direct or indirect, in a contract or proposed contract in which the member has participated or intends to participate or vote, and in which the public body on which he or she serves, is an interested party. The Prohibition in this subsection shall apply during the term of any such contract and for a period of 12 months thereafter.
- (2)** ask, demand, solicit, accept, receive or agree to receive any gift, loan, reward, promise of future employment, favor or service, forbearance or forgiveness of

indebtedness, gratuity or special discount or other thing of economic value from any employee, or applicant for employment of that public body; or,

(3) while serving as an appointed member of an executive, public or quasi-public board, authority, corporation, commission or agency, and for a period of one (1) year after leaving that office, seek or accept employment, or act as an agent, attorney, professional service provider, professional consultant, or consultant for, any business or other entity which had a financial interest, direct or indirect, in any contract or proposed contract in which the public body was an interested party and which was in effect at any time during his or her service on the public body

(b) The prohibitions set forth in subsection (a) of this section shall not apply to or prohibit **political contributions**.

(c) **No member of the General Assembly, while serving on a public body, shall:**

(1) ask, demand, solicit, accept, receive or agree to receive any political contribution from any person, business or other entity ("Vendor") having a financial interest, direct or indirect, in a contract in which the member of the General Assembly has participated or voted as a member of said public board. This prohibition shall apply to any Vendor from which the member of the General Assembly has received any political contribution within 12 months prior to his or her participation or vote, and, in the event said member is otherwise permitted to participate or vote, he or she shall be prohibited from accepting any such political contribution from any Vendor after such participation or vote, during the term of the contract, and for a period of 12 months thereafter. The prohibitions set forth in this subsection (c) shall also apply to political contributions through any Political Action Committee, or similar political funding entity, owned or controlled by such Vendor. "Vendor" shall include, but not be limited to:

(A) individuals;

(B) partners;

(C) managers and officers of a limited liability company, and members owning a five percent or greater interest in said limited liability company;

(D) directors and officers of a corporation, and shareholders of a corporation owning a five percent or greater interest in said corporation; or

(2) directly or indirectly ask, demand, or solicit any political contribution from any employee, or applicant for employment of that public body.

(d) The restrictions and prohibitions of this section shall not apply to matters representing arms-length, bona fide contracts for which due and fair consideration has been paid and received by the parties.

Section 4.9 - Prohibited Activities; Municipal Official Revolving Door

(a) No municipal elected official or municipal school board member, whether elected or appointed, while holding office and for a period of one (1) year after leaving municipal office, shall seek or accept employment with any municipal agency in the municipality in which the official serves. Nothing contained herein shall prohibit a municipal elected official or municipal school board member, whether elected or appointed, from seeking or being elected to any elective office.

(b) The State Ethics Commission may recommend exceptions to this Section where such exceptions would not create an appearance of impropriety.

Section 4.10 - Prohibited Activities; State Official Revolving Door

(a) No person holding or fulfilling a position in the Governor's Office or the Agency of Administration who in the course of and by reason of his or her official duties has substantial involvement in matters involving a state agency shall:

(1) Represent him or herself before the state agency with which he or she has substantial involvement unless the Ethics Commission shall give its approval for such representation in a written advisory opinion and further provided that such approval shall not be granted unless:

(A) The Ethics Commission is satisfied that denial of such representation would create a hardship, and

(B) the person shall first:

(i) Advise the Governor's Office or the Agency of Administration and the state agency in writing of the existence and the nature of his or her relationship with the agency and his or her interest in the matter at issue;

(ii) recuse him or herself from participating in the state agency's consideration and disposition of the matter at issue; and

(iii) follow any other recommendations the State Ethics Commission may make to avoid any appearance of impropriety in the matter.

(2) Represent any other person, before the state agency with which he or she has substantial involvement in the course of and by reason of his or her official duties.

(3) Engage in any of the activities prohibited by subsection (a)(1) or (a)(2) of this Section for a period of one year after he or she has officially severed his or her position with the Governor’s Office or the Agency of Administration, unless:

(A) Such representation is in the proper discharge of his or her official duties; or

(B) the particular matter before the state agency requires only ministerial acts, duties, or functions involving neither adversarial hearings nor the authority of the agency to exercise discretion or render decisions.

(4) For purposes of this section, “substantial involvement” shall include, but is not necessarily limited to, substantial control or substantial influence over and/or substantial participation in matters involving budget, communications, legal, legislative, or policy matters. Positions exercising such involvement shall include, but are not limited to, Budget Officer, Chief of Staff, Deputy Chief of Staff, Executive Counsel, Communications Director, Director of Administrative Services, Director of Policy, and Director of Legislative Affairs.

(5) For purposes of this Section, a state agency shall include, but is not necessarily limited to, any agency, department, division, public body governmental entity, office, or quasi-public authority in the executive branch of state government, or any agency or committee thereof, that exercises governmental functions and is not part of another constitutional office.

(6) For purposes of this Section, a person holding a position in the Governor’s Office shall include, but is not necessarily limited to, Chief of Staff, Deputy Chief of Staff, Executive Counsel, Communications Director, Director of Administrative Services, Director of Policy, and Director of Legislative Affairs.

(b) No secretary or commissioner of a state agency or department, or director of a division within the Agency of Administration, who are appointed by the Governor, shall:

(1) Represent him or herself before the Governor’s Office or the Agency of Administration unless the Ethics Commission shall give its approval for such representation in a written advisory opinion and further provided that such approval shall not be granted unless:

(A) The State Ethics Commission is satisfied that denial of such representation would create a hardship; and

(B) the person follows any other recommendations the Ethics Commission may make to avoid any appearance of impropriety in the matter.

(2) Represent any other person, before the Governor’s Office or the Agency of Administration.

(3) Engage in any of the activities prohibited by subsection (b)(1) or (b)(2) of this Section for a period of one year after he or she has officially severed his or her position, unless:

(A) Such representation is in the proper discharge of his or her official duties; or

(B) The particular matter before the Governor’s Office or Agency of Administration requires only ministerial acts, duties, or functions involving neither adversarial hearings nor the authority to exercise discretion or render decisions.

Section 5 - Additional Circumstances Warranting Recusal

(a) A person subject to this Code of Ethics must also recuse himself or herself from participation when any of the following circumstances arises:

(1) Any person within his or her family, or a household member, appears or presents evidence or arguments before his or her state or municipal agency.

(2) His or her business associate or employer appears or presents evidence or arguments before his or her state or municipal agency.

(3) His or her business associate, employer, household member or any person within his or her family authorizes another person, on his or her behalf, to appear or to present evidence or arguments before his or her state or municipal agency.

(b) A person subject to this Code of Ethics is not required to recuse himself or herself pursuant to this or any other provision of the Code when:

(1) The person's business associate, employer, household member or any person within his or her family is before the person's state or municipal agency, solely in an official capacity as a duly authorized member or employee of another state or municipal agency, to participate in non-adversarial information sharing or coordination of activities between the two agencies, provided that the business associate, employer, household member or person within his or her family is not otherwise a party or participant, and has no personal financial interest, in the matter under discussion.

(2) The person's business associate, employer, household member or any person within his or her family is before the person's state or municipal agency during a period when public comment is allowed, to offer comment on a matter of general public interest, provided that all other members of the public have an equal

opportunity to comment, and further provided that the business associate, employer, household member or person within his or her family is not otherwise a party or participant, and has no personal financial interest, in the matter under discussion.

Section 6 - Limitations on Recusal

The notice and recusal provisions of Sections 4 and 5 shall not be interpreted so as to permit a person subject to this Code to make use of such provisions on a regular basis. If such actions occur with such frequency as to give the appearance of impropriety, the person subject to this Code may be deemed to have violated the provisions of this Code, unless such actions are necessitated by circumstances beyond the control of such person and are the only legal course of action available to such person in order to protect a vested property interest.

Section 7 - Reasonable Foreseeability

A public official has reason to believe or expect a conflict of interest exists when it is "reasonably foreseeable". The probability must be greater than "conceivably", but the Conflict of Interest need not be certain to occur.

Section 8 - Governmental Decision

A public official makes a governmental decision when the public official acting within the authority of his or her office:

- (1) votes on a matter;
- (2) appoints a person;
- (3) obligates a state or municipal agency to a course of action;
- (4) enters into any contractual agreement on behalf of a state or municipal agency, or;
- (5) determines not to act within the meaning of 1, 2, 3, or 4 because of a potential conflict of interest.

Section 9 - Interest in Conflict with Discharge of Duties

(a) A person subject to this Code of Ethics has an interest which is in substantial conflict with the proper discharge of his or her duties or employment in the public interest and of his or her responsibilities as prescribed in the laws of this state, if he or she has reason to believe or expect that he or she or any person within his or her family or any business associate, or any business by which the person is employed or which the person represents will derive a direct monetary gain or suffer a direct monetary loss, as the case may be, by reason of his or her official activity.

(b) A person subject to this Code of Ethics does not have an interest which is in substantial conflict with the proper discharge of his or her duties in the public interest and of his or her responsibilities as prescribed by the laws of this state, if any benefit or detriment accrues to him or her or any person within his or her family or any business associate, or any business by which the person is employed or which the person represents, as a member of a business, profession, occupation or group, or of any significant and definable class of persons within the business, profession, occupation or group, to no greater extent than any other similarly situated member of the business, profession, occupation or group, or of the significant and definable class of persons within the business, profession, occupation or group.

Section 10 - Public Forum Exception

No violation of this Code shall result by virtue of any person publicly expressing his or her own viewpoints in a public forum on any matter of general public interest or on any matter which directly affects said individual or his or her spouse or dependent child.

Section 11 - Officers of Public Agencies

Notwithstanding any other provision of the Code of Ethics, it shall not be a violation of this Code for an appointed or elected member of a state or municipal agency to participate in a vote of the agency during an open meeting to elect him/herself to a position of officer of that agency, provided that if such position carries with it any form of compensation, reimbursement or stipend that is greater than that provided to non-officer members, such additional compensation, reimbursement or stipend must either have been in effect at the time of the vote pursuant to a valid provision of constitution, statute, regulation, charter or ordinance, or be waived.

Section 12 – [Public Officials Procurement of Goods and Services from State Vendors]