

To: The House on Government Operations Concerning
S 8, an act relating to establishing the State Ethics Commission and standards
of governmental conduct

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Re: Proposed Changes to S8

As an ethics compliance professional and lawyer, I advise agencies, universities and community organizations on how to establish independent and comprehensive ethics compliance programs.

In my testimony I want to briefly outline what a comprehensive ethics compliance program is and then offer my specific concerns and recommendations on S8.

In 2016, I testified several times to the Senate Government Operations Committee on Senate Bill 184 and submitted for the Committee's consideration the "Essential Elements of an Ethics Compliance Program" which I have provided to this committee today along with a ethics compliance check list for your review.

When the Senate passed S8 this January, several members of the Senate Government Operations Committee referred to the proposed ethics commission as a funnel. This is incorrect.

What the funnel actually describes is an ethics information and referral program and not a comprehensive ethics compliance program. Under the funnel theory, a call comes in and the part-time ethics director provides information and then refers the ethics issue out for investigation and resolution.

A comprehensive independent ethics program is a system of funnels or stations that are manned by ethics compliance professionals.

Executive Director

Risk Assessments
Ethics Training Program Design
Oversight -Anonymous Ethic Line
State Ethics Code

Ethics Investigator

The Ethics Commission should have its own investigator position.

An ethics investigator under the direction of the Executive Director and the Ethics Commission should investigate all complaints against a State Officer or State Employee.

Directing the Agency of Human Resources to perform ethics investigations of State Officials and employees does not provide impartiality, confidentiality or advance the integrity of the State Ethics Commission.

An ethics investigation should be executed by an independent entity (Ethics Commission) because the Agency of Human Resources (the hire and fire agency) could be the subject to an ethics investigation for nepotism for instance.

Campaign Finance Ombudsmen would provide advice on campaign finance laws, address specific campaign finance complaints.

Next I will address specific concerns I have with S8 as it is currently drafted.

§1202 State Code of Ethics states that
The Ethics Commission in consultation with the Dept. of Human Resources will create and maintain the State Code of Ethics.

§1223 2(a) (b) Procedures for Handling Complaints

§1223 (b) (1)(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 Ex. Director shall refer the complaint to the Commissioner of Human Resources.

ISSUE: I am confused, is it the State Code of Ethics or the Department of Human Resources Code of Ethics?

Will the Department Natural Resources or Human Services have their own Ethics Code also?

An Independent Ethics Office and Commission should not favor any one State Agency that is under the governance of the Ethics Commission.

To end any confusion it should be called the Vermont State Ethics Code.

Under Section 11 Creation of a Staff Position for the State Ethics Commission,
Issue: Given the number of responsibilities outlined in S8, the Ethics Director position should be a full-time position and not part-time.

Section 13 Buildings and General Services; Space Allocation

ISSUE: Will the allocation of space for the State Ethics Commission also include phone, administrative assistance, 24/7 ethics hotline service etc?

Municipal Conflicts of Interest

Section 1984 Conflict of Interest Prohibition

ISSUE: In addition to a conflict of interest prohibition there needs to be added a requirement that all town officers, managers and employees undergo annual ethics training.

Most important the trainee must sign off that they have completed the training.

There are very good municipal ethics compliance training programs in use. For instance, the Town of Shelburne has a very good ethics-training program that has been in existence for a while.

ISSUE: Finally, the limited appropriation of \$100,000 cannot cover the Executive Director position, Ethics Training for 6000+ employees, government ethics compliance promotional materials for 6000+ employees, hotline/info line service, per diems for Ethics Commission members, travel for Ex. Director to Regional State Agency offices.

It is disingenuous to allocate a limited budget for a State ethics program esp. in regard to program promotion and ethics training and then in two years to evaluate the ethics program for continuance based on the number of inquires made. If you do not adequately promote the program and train employees what an ethics violation is, there will be limited inquiries to the Ethics Program.

For a ethics compliance program to succeed, there needs to be a financial commitment to staffing and operating expenses.