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## General Summary

To summarize, this bill would do the following:

1. **Prohibit certain employment after leaving public office.**
  - a. *Legislators.* For one year after leaving office, legislators could not be paid to lobby.
  - b. *Executive officers.* For one year after leaving office, certain Executive officers could not be paid to advocate for a private entity before a public body on any matter in which, while in State employ, they had participated or had official responsibility.
2. **Require financial disclosures of:**
  - a. Statewide and legislative candidates for office;
  - b. Certain Executive officers; and
  - c. Members of the State Ethics Commission.
3. **Prohibit people who bid for or enter into a contract with the office of a State officer from making a campaign contribution to that State officer or a candidate for that office.**
4. **Require the Department of Human Resources to create and maintain an official State Code of Ethics.**
5. **Establish the State Ethics Commission.** The Commission would:
  - a. Not have any enforcement authority;
  - b. Accept, review, make referrals regarding, and track complaints of alleged violations of the State Code of Ethics, of governmental conduct regulated by law, and of the State's campaign finance law;
  - c. Provide ethics training;
  - d. Issue advisory opinions regarding ethical governmental conduct;
  - e. Be staffed by a part-time Executive Director;
  - f. Annually report to the General Assembly; and
  - g. Be temporarily funded through a per-position charge assessed on Executive Branch agencies, departments, and offices.

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# S.8, as Introduced: An Act Relating to Establishing the State Ethics Commission and Standards of Governmental Ethical Conduct

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## General Summary and Section-by-Section Summary

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BetsyAnn Wrask, Legislative Counsel, Office of Legislative Council

January 11, 2017

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**S.8, As Introduced**  
**An Act Relating to Establishing the State Ethics Commission and Standards of Governmental Ethical Conduct**

Sec.	Cite and Title	Current Law Description	Proposed Amendment or New Law	Notes
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**\*\*\* Former Legislators; Lobbying Restriction \*\*\***

1	<a href="#">2 V.S.A. § 266</a> (prohibited conduct)	Prohibited conduct for lobbyists, lobbying firms, lobbyist employers, administrative officials, legislators, and legislative leadership PACs.	(b) For one year after leaving office, prohibits a legislator from being a lobbyist. (c) Uses whole campaign finance chapter to define terms.	See <a href="#">NCSL's 50-State Chart, "Rules Against Legislators Lobbying State Government After They Leave Office"</a> (c) A related expenditure may be a "contribution" under <a href="#">17 V.S.A. § 2944</a> .
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**\*\*\* Former Executive Officers; Postemployment Restrictions \*\*\***

2	3 V.S.A. § 267 (Executive officers; postemployment restrictions)	<i>n/a; proposed new statute</i> Would be codified in T.3 (Executive), ch. 11 (State officers and employees generally).	(a), (b) For one year after leaving office, prohibits an Executive officer from being paid to advocate for a private entity before a public body (incl. Leg. and committees) re: a matter that the Exec. officer: (a) participated personally and substantively; or (b) exercised official responsibility. (c) Public body enforces. (d)(1) "Executive officer" = statewide officer, agency secretary or deputy, or department commissioner or deputy.	Courts in other states have upheld various "cooling off periods"/"revolving door" prohibitions. See e.g., <a href="#">Forti v. New York State Ethics Commission</a> , 555 N.Y.S.2d 235 (1990): <ul style="list-style-type: none"> <li>"In general, the purpose of 'revolving door' provisions such as those at issue here is to prevent former government employees from unfairly profiting from or otherwise trading upon the contacts, associations and special knowledge that they acquired during their tenure as public servants . . . The underlying premise is that '[f]ormer officers should not be permitted to exercise undue influence over former colleagues, still in office, in matters pending before the agencies [and] they should not be permitted to utilize information on specific cases gained during government service for their own benefit and that of private clients. Both are forms of unfair advantage.'" <i>Id.</i> at 237-238 (other citations omitted).</li> <li>"[T]here is nothing harsh or unreasonable about the application to plaintiffs of the new <b>lifetime ban</b> on appearing or otherwise practicing before their former agencies in connection with a matter in which they directly participated during their State tenure. The ban is designed to prevent former public servants from falling prey to one form of conflict of interest, or to the appearance of a conflict, and from taking unfair advantage of their insider's knowledge and contacts, including the confidences and secrets they may have gained while working on the matter on behalf of the State." <i>Id.</i> at 241.</li> </ul>
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**\*\*\* Candidates for State and Legislative Office; Disclosure Form \*\*\***

3	17 V.S.A. § 2414 (Candidates for State and legislative office; disclosure form)	<i>n/a; proposed new statute</i> Would be codified in T.17 (Elections), ch. 49 (nominations).	(a) Requires candidates for State or legislative office to file, along with consent form, a disclosure form re: previous year's: (1) source of income more than \$10k, incl. investments and State contracts; (2) board service and description; and (3) companies with controlling interest. (b)(1) Clerk forwards to Sec. of State within 3 days. (2) Sec. of State posts publicly. (c) If candidate fails to file, name not printed on ballot.	The SCOV discussed ballot access in <a href="#">Trudell v. State</a> , 193 Vt. 515 (2012): <ul style="list-style-type: none"> <li>"[W]hen a state imposes a severe restriction on access to the ballot, the regulation must be 'narrowly drawn to advance a state interest of compelling importance' (citation omitted). And, when a state election law provision imposes 'reasonable, nondiscriminatory</li> </ul> <p align="right"><i>(continued on next pg.)</i></p>
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**S.8, As Introduced**  
**An Act Relating to Establishing the State Ethics Commission and Standards of Governmental Ethical Conduct**

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				<p>restrictions upon the First and Fourteenth Amendment rights of voters, the State’s important regulatory interests are generally sufficient to justify the restrictions’ (citation omitted).” <i>Id.</i> at 520.</p> <ul style="list-style-type: none"> <li>• ““The inquiry is whether the challenged restriction unfairly or unnecessarily burdens the availability of political opportunity’ (citation omitted). Put another way, we must determine whether a reasonably diligent independent candidate can gain access to the ballot or if instead he or she will rarely succeed.” <i>Id.</i> at 521-522.</li> <li>• “There is no debate that voter education is an important state interest.” <i>Id.</i> at 526.</li> <li>• “[W]e conclude that the Vermont filing deadline applies equally to all candidates and does not place independents at a particular disadvantage for accessing the ballot. Rather, the registration deadline is a reasonable, nondiscriminatory regulation that imposes at most a minor burden on plaintiffs’ rights.” <i>Id.</i> at 524.</li> </ul> <p>See <a href="#">NCSL’s 50-State Chart, “Paperwork Requirements for Filing as a Candidate for State Legislator”</a></p>
<b>*** Campaign Finance; Contractor Contribution Restrictions ***</b>				
4	17 V.S.A. § 2950 (State officers and State office candidates; contractor contribution restrictions)	<i>n/a; proposed new statute</i> Would be codified in T.17 (Elections), ch. 61 (campaign finance).	<p>(a)(1)(A) A person (or principal) who bids for or enters into a contract with office of State officer shall not contribute to candidate for that office or to the State officer.</p> <p style="padding-left: 20px;">(B) Candidate or State officer shall not solicit or accept such contribution if s/he knows the person is prohibited from making it.</p> <p style="padding-left: 20px;">(2)(A) Prohibition period is from bid to contract completion.</p> <p style="padding-left: 20px;">(B) Does not apply to exclusively fed-funded contracts</p> <p>(b) “Principal” =</p> <p style="padding-left: 20px;">(1) indiv. who has controlling interest in person (if biz); or</p> <p style="padding-left: 20px;">(2) person’s employee with substantial responsibilities re: contract negotiation.</p>	<ul style="list-style-type: none"> <li>• See similar investment services firm prohibition on contributions to candidate for State Treasurer – and prohibition on Treasurer entering into a contract with such contributing firms – set forth in <a href="#">32 V.S.A. § 109</a>.</li> <li>• See also prohibition on lobbyists, lobbyist employers, and lobbying firms from making contributions to legislators, legislators’ candidate’s committees, and legislative leadership PACs while General Assembly is in session, until adjournment <i>sine die</i>, set forth in <a href="#">2 V.S.A. § 266(a)(3)(B)</a>. <ul style="list-style-type: none"> <li>○ “[This contribution prohibition] functions solely as a timing measure, banning contributions to individual members only while the General Assembly is in session. The Act does not prohibit contributions to political parties during session, only those to individual legislators. Consequently, the limited prohibition focuses on a narrow period during which legislators could be, or could appear to be, pressured, coerced, or tempted into voting on the basis of cash contributions rather than on</li> </ul> </li> </ul> <p style="text-align: right;"><i>(continued on next pg.)</i></p>

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An Act Relating to Establishing the State Ethics Commission and Standards of Governmental Ethical Conduct

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				consideration of the public weal. The [L]egislature has chosen a narrowly drawn measure to avoid a serious appearance of impropriety, and we see no reason to strike that measure down.” <u>Kimbell v. Hooper</u> , 164 Vt. 80, 90 (1995).
* * * <b>Campaign Finance Investigations; Reports to Ethics Commission</b> * * *				
5	<a href="#">17 V.S.A. § 2904</a> (civil investigation)	Provides the process for the Attorney General to conduct a civil investigation of campaign finance complaints.	<i>Technical correction:</i> Deletes “or regulation” because agencies adopt rules, not regulations.	
6	17 V.S.A. § 2904a (reports to State Ethics Commission)	<i>n/a; proposed new statute</i> Would be codified in T.17 (Elections), ch. 61 (campaign finance).	If the AG or a State’s Attorney receives or investigates a campaign finance complaint, s/he must notify the State Ethics Commission and shall report decision whether to bring action.	<i>See Sec. 7, 3 V.S.A. ch. 31, subch. 3 (State Ethics Commission). This statute relates to the Ethics Commission’s authority to track campaign finance complaints in § 1221(a); to report and hear back from AG and SA re: such complaints in § § 1223(b)(3); and to report to Leg. on campaign finance complaints and recommendations in § 1226(1), (3).</i>
* * * <b>Governmental Ethics</b> * * *				
* * * <b>General Provisions</b> * * *				
7	3 V.S.A. § 1201 (definitions)	<i>n/a; proposed new statute</i> Would be codified in T.3 (Executive), new ch. 31 (governmental ethics).	(3) “Executive officer” = statewide officer, agency secretary or deputy, or department commissioner or deputy.	Committee may want to define in this statute what “governmental conduct regulated by law” <i>includes</i> , since the Commission would review complaints re: this issue ( <i>see Sec. 7’s 3 V.S.A. § 1223(c)</i> ). Potential definition of what the term includes: <ul style="list-style-type: none"> <li>• <i>Bribery</i> via <a href="#">13 V.S.A. § 1102</a>;</li> <li>• <i>Neglect of duty by public officers</i> via <a href="#">13 V.S.A. § 3006</a> and by <i>members of boards and commissions</i> via <a href="#">13 V.S.A. § 3007</a>;</li> <li>• <i>Taking illegal fees</i> via <a href="#">13 V.S.A. § 3010</a>;</li> <li>• <i>False claims against government</i> via <a href="#">13 V.S.A. § 3016</a>;</li> <li>• <i>Owning or being financially interested in entity subject to Ex. Br. department’s supervision</i> via <a href="#">3 V.S.A. § 204</a>*; and</li> <li>• <i>Failure to devote time to duties of office</i> via <a href="#">3 V.S.A. § 205</a>.*</li> </ul> <p>*These statutes refer to departments and offices created under this chapter. However, <a href="#">3 V.S.A. § 212</a> is an incomplete list of departments. Perhaps amend § 212 so that it is not an exhaustive list.</p>
7	3 V.S.A. § 1202 (State Code of Ethics)	“	(a) Requires the Dept. of Human Resources to create and maintain a State Code of Ethics in accordance with <a href="#">3 V.S.A. § 315</a> . (b) Allows State officers to supplement the Code of Ethics for specific office needs.	Current <a href="#">3 V.S.A. § 315</a> requires State officers and employees to comply with HR Commissioner’s rules and orders and allows Comm’r to bring compliance action.

**S.8, As Introduced**  
**An Act Relating to Establishing the State Ethics Commission and Standards of Governmental Ethical Conduct**

Sec.	Cite and Title	Current Law Description	Proposed Amendment or New Law	Notes
<i>*** Disclosures ***</i>				
7	3 V.S.A. § 1211 (Executive officers; biennial disclosure)	“	Requires Executive officers to file a biennial disclosure with the Ethics Commission re: the previous year. Disclosure info same as candidates for office in Sec. 3.	
7	3 V.S.A. § 1212 (Commission members; biennial disclosure)	“	Requires Ethics commission members to file a biennial disclosure with same info as candidates and Executive officers.	
7	3 V.S.A. § 1213 (disclosures generally)	“	(a) Executive Director of Commission prepares disclosure forms. (b) Exec. Dir. posts all received disclosure forms on Commission’s website.	
<i>*** State Ethics Commission ***</i>				
7	3 V.S.A. § 1221 (State Ethics Commission)	“	(a) Created as independent Ex. Br. commission to accept, review, make referrals regarding, and track complaints re: State Code violations, governmental conduct regulated by law, and campaign finance; to provide ethics training; and to issue advisory opinions. (b) Membership. (1) Five members; Chair appointed by Chief Justice, others by ACLU, VT League of Women Voters, VBA, and Ex. Dir. of Human Rights Comm’n. (2) Members cannot hold Leg., Ex., or Jud. office or be State employees, have State contract, or be a lobbyist, candidate, or hold office in a candidate committee, PAC, or party. (3) Members may be removed for cause by other members. (4) Staggered 3-year terms; limit of two terms. (c) Staffed by Ex. Dir. appointed by and serving at pleasure of Commission. Part-time exempt State employee. (d) Commission and Ex. Dir. must maintain chapter’s required confidentiality. (e) Meetings called by Chair and upon request of any other two Commission members. (f) Standard <a href="#">32 V.S.A. § 1010</a> per diem (\$50) and expense reimbursement.	(c) Limit total terms, or consecutive terms?
7	3 V.S.A. § 1222 (Commission member duties and prohibited conduct)	“	(a) Conflicts of interest. (1) Members shall recuse if they have a conflict of interest. Failure to recuse may be grounds for discipline or removal. (2) Members shall disclose self-perceived conflicts and request that other members recuse. Other members may discuss. (3) Recused members shall not sit or deliberate, but may participate as a member of public would. (4) “ <i>Conflict of interest</i> ” = interest conflicting with official duties due to significant personal or financial interest of the member, immediate family, or biz assoc. Does not incl. interests no greater than that of others generally affected by outcome. (b) Members may not accept gifts given by virtue of office.	



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7	3 V.S.A. § 1223 (procedure for handling complaints)	“	<p>(a) Ex. Dir. <b>accepts complaints</b> from any source re: State Code, governmental conduct regulated by law, or campaign finance.</p> <p>(b) Ex. Dir. conducts <b>preliminary review</b> and submits or refers to another entity based on type of complaint:</p> <p>(1) <i>State Code of Ethics</i> to Comm’r of Human Resources. Comm’r reports back re: final disposition.</p> <p>(2) <i>Gov’t conduct regulated by law</i> (and “revolving door” prohibitions in Secs. 1 and 2) <b>to Ethics Commission</b>. (See (c), below.)</p> <p>(3) <i>Campaign finance</i> to AG or State’s Attorney, with their report back, in accordance with Sec. 6.</p> <p>(4) <i>Leg. and Jud. Br.</i></p> <p>(A) <i>State Senator</i> to Senate Ethics Panel.</p> <p>(B) <i>House Rep.</i> to House Ethics Panel.</p> <p>(C) <i>Judicial officer</i> to Judicial Conduct Board.</p> <p>(D) <i>Alleged crimes</i> also to AG <b>and</b> the State’s Attorney of jurisdiction.</p> <p>(5) Ex. Dir. <b>closes</b> any complaints not submitted (to Commission) or referred (to others).</p> <p><b>(c) Commission reviews and referrals.</b></p> <p>(1) Commission meets to review complaints <i>re: governmental conduct regulated by law</i>. Not a public meeting.</p> <p>(2) <i>If it finds there may have been a violation, Comm’n forwards to AG and State’s Attorney of jurisdiction</i>. Otherwise closes complaint.</p> <p>(d) Commission keeps complaint docs confidential.</p>	
7	3 V.S.A. § 1224 (Commission ethics training)	“	Commission collaborates with DHR to provide ethics training at least annually to legislators, State officers, and State employees.	
7	3 V.S.A. § 1225 (Executive Director advisory opinions)	“	<p>(a) Ex. Dir. may issue advisory opinions to Exec. officers and State employees and may consult with Commission members in doing so.</p> <p>(b) Advisory opinions are exempt under PRA.</p>	Should opinion receiver be able to make an advisory opinion public? If so, <i>alternative language</i> : “An advisory opinion issued under this section is exempt from public inspection and copying under the [PRA]. The Commission shall keep an advisory opinion confidential unless the receiving entity has publicly disclosed it.”
7	3 V.S.A. § 1226 (Commission reports)	“	<p>Commission annually reports to the General Assembly by 1/15 re:</p> <ul style="list-style-type: none"> <li>• <i>Complaints</i>. Number and summary; no personal identifying info.</li> <li>• <i>Advisory opinions</i>. Number and summary; no personal identifying info.</li> <li>• <i>Recommendations</i>. Re: governmental ethics or campaign finance.</li> </ul>	
<b>*** Implementation ***</b>				
8	Applicability of Employment Restrictions	<i>n/a; session law</i>	Secs. 1 and 2 employment restrictions on former legislators and Executive officers do not apply to employment in effect on eff. date (July 1, 2017).	
9	Department of Human Resources; State Code of Ethics Creation	“	DHR required to create the State Code of Ethics by Jan. 1, 2018.	

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Sec.	Cite and Title	Current Law Description	Proposed Amendment or New Law	Notes
10	Implementation of the State Ethics Commission	“	(a) Established on Jan. 1, 2018. (b) Members appointed by Oct. 15, 2017 to prepare; terms officially begin 1/1/18. (c) Staggering of initial terms.	
11	Creation of Staff Position for State Ethics Commission	“	Creates Executive Director position: part-time, exempt, using an existing position in the position pool.	
12	<a href="#">3 V.S.A. § 260</a> (location of offices)	Describes where certain officers and offices must be physically located.	Commission located in Montpelier.	
13	Buildings and General Services; Space Allocation	<i>n/a; session law</i>	Requires the Commissioner of BGS to allocate space in Montpelier for the Commission by Oct. 15, 2017.	
14	State Ethics Commission Funding Source Surcharge; Repeal	“	(a) In FY18, Commission would be funded by a per-position fee via <a href="#">3 V.S.A. § 2283(c)(2)</a> paid by Ex. Br. agencies. (b) Funding source repealed on June 30, 2019.	Correct statute: § 2283(c)(2)
<b>*** Municipal Conflicts of Interest ***</b>				
15	General Assembly Recommendation; Issues Relating to Ethics and Conflicts of Interest in Municipalities	“	(a) General Assembly recommends that municipalities use existing statutes to address municipal ethics and conflicts; provides list of those statutes. (b) Requires Sec. of State to report to General Assembly re: the number of towns using the statutes, and which ones.	
<b>*** Effective Dates ***</b>				
16	Effective Dates	“	<ul style="list-style-type: none"> <li>• 7/1/17 for post-office employment prohibitions;</li> <li>• 1/1/18 for candidate disclosures, campaign finance reports to Comm'n; and new ethics chapter (incl. Comm'n); and</li> <li>• 12/16/18 (new election cycle) for contractor contribution prohibition.</li> </ul>	