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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 lobby or 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 (incl. tax returns) and legislative candidates for office;
  - b. Certain Executive officers; and
  - c. Members of the State Ethics Commission.
3. **Impose restrictions on contracting and campaign contributions.**
  - a. *Restrictions on contributors entering into sole source contracts.* Prohibit State office contributors from entering into certain sole source contracts with that office for one year after the contribution or start of term, as applicable.
  - b. *Restrictions on sole source contractors making contributions.* Prohibit people who enter into certain sole source contracts with the office of a State officer from making a contribution to that State officer or a candidate for that office during the term of the contract.
4. **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 governmental conduct regulated by law, of the Department of Human Resource's employee code of ethics, and of the State's campaign finance law;
  - c. Create and maintain the State Code of Ethics, which sets forth principles of governmental ethical conduct;
  - d. Provide ethics training;
  - e. Issue advisory opinions regarding governmental ethical conduct;
  - f. Be staffed by a part-time Executive Director;
  - g. Annually report to the General Assembly; and
  - h. Be temporarily funded through a per-position charge assessed on Executive Branch agencies, departments, and offices.

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# S.8, as Proposed to be Amended by the Senate Committee on Government Operations: *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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January 31, 2017

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**S.8, As Proposed to be Amended by the Senate Committee on Government Operations  
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 |
|------|----------------|-------------------------|-------------------------------|-------|
|------|----------------|-------------------------|-------------------------------|-------|

**\*\*\* Former Legislators and Executive Officers; Lobbying Restriction \*\*\***

|   |  |   |   |   |
|---|--|---|---|---|
| 1 | <a href="#">2 V.S.A. § 266</a><br>(prohibited conduct) | Prohibited conduct for lobbyists, lobbying firms, lobbyist employers, administrative officials, legislators, and legislative leadership PACs. | (b)(1) For one year after leaving office, prohibits a legislator or Executive officer from being a lobbyist.<br>(2) Exemption for lobbyists exempted from registering under <a href="#">2 V.S.A. § 262</a> (lobbying; exempted persons).<br>(c)(1) Uses whole campaign finance chapter to define terms.<br>(2) "Executive officer" = statewide officer, agency secretary or deputy, or department commissioner or deputy. | See <a href="#">NCSL's 50-State Chart, "Rules Against Legislators Lobbying State Government After They Leave Office"</a> and notes below.<br><br>(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 \*\*\***

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|---|---|--|--|--|
| 2 | 3 V.S.A. § 267<br>(Executive officers; postemployment restrictions) | <i>n/a; proposed new statute</i><br>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:<br>(a) participated personally and substantively; or<br>(b) exercised official responsibility.<br>(c) Exemption for people if their only advocacy role would exempt them from registering under <a href="#">2 V.S.A. § 262</a> (lobbying; exempted persons).<br>(d) Public body enforces.<br>(e)(1) "Advocate" = person who assists, defends, or pleads.<br>(2) "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. <i>See e.g., Forti v. New York State Ethics Commission</i> , 555 N.Y.S.2d 235 (1990):<br><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> |
|---|---|--|--|--|

**S.8, As Proposed to be Amended by the Senate Committee on Government Operations  
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   |
|---|--|---|--|---|
| <b>*** Candidates for State and Legislative Office; Disclosure Form ***</b> |  |   |  |   |
| 3   | 17 V.S.A. § 2414<br>(Candidates for State and legislative office; disclosure form)                     | <i>n/a; proposed new statute</i><br>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: candidate and spouse's previous year's:<br>(1) source of income more than \$10k, incl. employment, specific investments, and State contracts;<br>(2) board service and description; and<br>(3) companies with more than 10% ownership.<br>(b) Statewide candidates also have to file a copy of most recent IRS 1040; specific sensitive info (SSN, etc.) may be redacted.<br>(c)(1) Clerk forwards to Sec. of State within 3 days.<br>(2) Sec. of State posts publicly and shall redact any of the sensitive info not redacted by the candidate.   | <ul style="list-style-type: none"> <li>• See <a href="#">NCSL's 50-State Chart, "Paperwork Requirements for Filing as a Candidate for State Legislator"</a></li> <li>• No penalty for failure to file these disclosures.</li> </ul>   |
| <b>*** Campaign Finance; Contractor Contribution Restrictions ***</b>       |  |   |  |   |
| 4   | 17 V.S.A. § 2950<br>(State officers and State office candidates; contractor contribution restrictions) | <i>n/a; proposed new statute</i><br>Would be codified in T.17 (Elections), ch. 61 (campaign finance).             | (a) <i>Contributor restrictions on contracting.</i><br>(1) A person (or principal or spouse) who makes a contribution to State officer or candidate for that office shall not enter into a sole source contract of \$50,000 or more or multiple sole source contracts of aggregate \$100,000 or more with that office within one year following:<br>(A) the contribution, if made to incumbent State officer; or<br>(B) beginning of term, if made to non-incumbent candidate.<br>(2) Prohibition only applies if contribution receiver is in office during prohibition timeframe.<br>(b) <i>Contractor restrictions on contributions.</i><br>(1)(A) A person who enters into a sole source contract(s) described above with office of State officer shall not contribute to candidate for that office or to the State officer, nor shall person's principal or spouse.<br>(B) Candidate, his/her committee, or State officer shall not solicit or accept such contribution if s/he/it knows the person is prohibited from making it.<br>(2) Prohibition timeframe is while contract is in effect.<br>(c)(1) "Contract" = "contact for services" via <a href="#">3 V.S.A. § 341</a> (State contracts).<br>(2) "Principal" = individual who:<br>(A) has controlling interest in person (if business);<br>(B) is vested with authority over person, (if for-profit business); or<br>(C) is person's employee with substantial responsibilities re: contract negotiation. | <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 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." <a href="#">Kimbell v. Hooper</a>, 164 Vt. 80, 90 (1995).</li> </ul> </li> </ul> |
| 4a  | 3 V.S.A. § 347<br>(contractor contribution restrictions)   | <i>n/a; proposed new statute</i><br>Would be codified in T.3 (Executive), ch. 14 (standards for State contracts). | Requires the Sec. of Administration to include in Administrative Bulletin 3.5 a notice re: the previous section's restrictions on contributions and contracting.   |   |

**S.8, As Proposed to be Amended by the Senate Committee on Government Operations**  
**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  |
|--|---|--|---|--|
| <b>*** Campaign Finance Investigations; Reports to Ethics Commission ***</b> |   |  |   |  |
| 5  | <a href="#">17 V.S.A. § 2904</a><br>(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<br>(reports to State Ethics Commission)       | <i>n/a; proposed new statute</i><br>Would be codified in T.17 (Elections), ch. 61 (campaign finance).          | If the AG or a State’s Attorney receives a campaign finance complaint, s/he must notify the State Ethics Commission and shall file a subsequent report re: 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<br>(definitions)                                | <i>n/a; proposed new statute</i><br>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.<br>(4) “Governmental conduct regulated by law” includes:<br>(A) <i>Bribery</i> via <a href="#">13 V.S.A. § 1102</a> ;<br>(B) <i>Neglect of duty by public officers</i> via <a href="#">13 V.S.A. § 3006</a> and by members of boards and commissions via <a href="#">13 V.S.A. § 3007</a> ;<br>(C) <i>Taking illegal fees</i> via <a href="#">13 V.S.A. § 3010</a> ;<br>(D) <i>False claims against government</i> via <a href="#">13 V.S.A. § 3016</a> ;<br>(E) <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> ;<br>(F) <i>Failure to devote time to duties of office</i> via <a href="#">3 V.S.A. § 205</a> ;<br>(G) former legislator or Executive officer violating Sec. 1’s 2 V.S.A. § 266(b); and<br>(H) former Executive officer violating Sec. 2’s 3 V.S.A. § 267. |  |
| 7  | 3 V.S.A. § 1202<br>(State Code of Ethics)                       | “  | Requires the Ethics Commission, in consultation with DHR, to create and maintain a State Code of Ethics setting forth principles of governmental ethical conduct.   |  |
| <b>*** Disclosures ***</b>   |   |  |   |  |
| 7  | 3 V.S.A. § 1211<br>(Executive officers;<br>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 (but no tax returns).   |  |
| 7  | 3 V.S.A. § 1212<br>(Commission members;<br>biennial disclosure) | “  | Requires Ethics commission members to file a biennial disclosure with same info as candidates and Executive officers (but no tax returns).  |  |
| 7  | 3 V.S.A. § 1213<br>(disclosures generally)                      | “  | (a) Executive Director of Commission prepares disclosure forms.<br>(b) Exec. Dir. posts all received disclosure forms on Commission’s website.  |  |

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| Sec.                                   | Cite and Title   | Current Law Description | Proposed Amendment or New Law   | Notes |
|--|--|-------------------------|---|-------|
| <i>*** State Ethics Commission ***</i> |  |                         |   |       |
| 7                                      | 3 V.S.A. § 1221<br>(State Ethics Commission)                         | “                       | <p>(a) Created as independent Ex. Br. commission to accept, review, make referrals regarding, and track complaints re: governmental conduct regulated by law, DHR code of ethics, and campaign finance; to provide ethics training; and to issue advisory opinions.</p> <p>(b) Membership.</p> <p>(1) Five members; Chair appointed by Chief Justice, others by ACLU, Vt. Society of CPAs, VBA, and Vt. Human Resource Assoc.</p> <p>(2) Members cannot hold Leg., Ex., or Jud. office or be a State employee, have a State contract, be a lobbyist or State or legislative candidate, or hold office in a State or legislative candidate committee or in a PAC or party.</p> <p>(3) Members may be removed for cause by other members.</p> <p>(4) Staggered 3-year terms; limit of two consecutive terms.</p> <p>(c) Staffed by Ex. Dir. appointed by and serving at pleasure of Commission. Part-time exempt State employee. Maintains Commission records.</p> <p>(d) Commission and Ex. Dir. must maintain chapter’s required confidentiality.</p> <p>(e) Meetings called by Chair and upon request of any other two Commission members.</p> <p>(f) Standard <a href="#">32 V.S.A. § 1010</a> per diem (\$50) and expense reimbursement.</p> |       |
| 7                                      | 3 V.S.A. § 1222<br>(Commission member duties and prohibited conduct) | “                       | <p>(a) Conflicts of interest.</p> <p>(1) Members shall recuse if they have a conflict of interest. Failure to recuse may be grounds for discipline or removal.</p> <p>(2) Members shall disclose self-perceived conflicts and may request that other members recuse. Other members may discuss.</p> <p>(3) Recused members shall not sit or deliberate, but may participate as a member of public would.</p> <p>(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.</p> <p>(b) Members may not accept gifts given by virtue of office.</p>  |       |

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| 7    | 3 V.S.A. § 1223<br>(procedure for handling complaints)    | “                       | <p>(a) Ex. Dir. <b>accepts complaints</b> from any source re: State government ethics 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 style="padding-left: 20px;">(1) <b>Gov't conduct regulated by law to Ethics Commission.</b> (See (c), below.)</p> <p style="padding-left: 20px;">(2) <i>DHR Code of Ethics</i> to Comm'r of Human Resources. Comm'r reports back re: final disposition.</p> <p style="padding-left: 20px;">(3) <i>Campaign finance</i> to AG or State's Attorney, as appropriate, and s/he files a report back to the Comm'n, in accordance with Sec. 6.</p> <p style="padding-left: 20px;">(4) <i>Leg. and Jud. Br., attorneys; request for report back.</i></p> <p style="padding-left: 40px;">(A) <i>State Senator</i> to Senate Ethics Panel.</p> <p style="padding-left: 40px;">(B) <i>House Rep.</i> to House Ethics Panel.</p> <p style="padding-left: 40px;">(C) <i>Judicial officer</i> to Judicial Conduct Board.</p> <p style="padding-left: 40px;">(D) <i>Attorney</i> to Professional Responsibility Board.</p> <p style="padding-left: 40px;">(E) <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 style="padding-left: 20px;">(1) Commission meets to review complaints <i>re: governmental conduct regulated by law.</i> Not a public meeting.</p> <p style="padding-left: 20px;">(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<br>(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<br>(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) An advisory opinion is exempt under PRA, unless receiver has publicly disclosed it.</p>   |       |
| 7    | 3 V.S.A. § 1226<br>(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, summary, and disposition; 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>  |       |

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| <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  | State Ethics Commission; State Code of Ethics Creation                 | “  | Ethics Commission required to create the State Code of Ethics by July 1, 2018.  |  |
| 10   | Implementation of the State Ethics Commission                          | “  | (a) Ethics Commission established on Jan. 1, 2018.<br>(b) Members appointed by Oct. 15, 2017 to prepare; terms officially begin 1/1/18.<br>(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><br>(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.<br>(b) Funding source repealed on June 30, 2019.  |  |
| <b>*** Municipal Conflicts of Interest ***</b> |  |  |   |  |
| 15   | 24 V.S.A. § 1984<br>(municipalities; conflict of interest prohibition) | <i>Permits</i> a town, city, or incorporated village to vote on a conflict of interest prohibition for its elected and appointed officials, with certain parameters. | <i>Requires</i> these municipalities to adopt a conflict of interest prohibition, unless their legislative body has already adopted a substantially compliant one pursuant to its current authority set forth in <a href="#">24 V.S.A. § 2291(20)</a> .   | Requirement takes effect on July 1, 2020 via Sec. 16(4). |
| <b>*** Effective Dates ***</b>                 |  |  |   |  |
| 16   | Effective Dates  | <i>n/a; session law</i>  | <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);</li> <li>• 12/16/18 (new election cycle) for contractor contribution prohibition; and</li> <li>• 7/1/20 for town requirement to adopt conflict of interest prohibition.</li> </ul> |  |