

1 S.157

2 Introduced by Senator Pollina

3 Referred to Committee on

4 Date:

5 Subject: Executive; State Ethics Commission; powers

6 Statement of purpose of bill as introduced: This bill proposes to grant the State
7 Ethics Commission the authority to adopt by rule an enforceable State Code of
8 Ethics and to permit the Commission to receive, investigate, and adjudicate
9 complaints alleging a violation of the State Code of Ethics, and to impose
10 penalties upon a finding of such a violation.

11 An act relating to expanding the powers of the State Ethics Commission

12 It is hereby enacted by the General Assembly of the State of Vermont:

13 Sec. 1. 3 V.S.A. § 1202 is amended to read:

14 § 1202. STATE CODE OF ETHICS

15 (a) The State Ethics Commission, in consultation with the Department of
16 Human Resources, shall ~~create and maintain~~ adopt by rule the State Code of
17 Ethics that sets forth ~~general~~ principles of governmental ethical conduct.

18 (b) The State Code of Ethics shall be in accordance with constitutional
19 requirements regulating governmental ethical conduct and governmental
20 conduct regulated by law and shall not provide requirements beyond those

1 constitutional and statutory provisions, but shall provide principles of
2 governmental ethical conduct that are enforceable by the Commission against
3 officials of State government and State employees to the extent permitted
4 under constitutional requirements.

5 Sec. 2. 3 V.S.A. § 1221 is amended to read:

6 § 1221. STATE ETHICS COMMISSION

7 (a) Creation. There is created within the Executive Branch an independent
8 commission named the State Ethics Commission to accept, review, make
9 referrals regarding, and track complaints of alleged violations of governmental
10 conduct regulated by law, of the Department of Human Resources Code of
11 Ethics, and of the State's campaign finance law set forth in 17 V.S.A. chapter
12 61 and to investigate and adjudicate alleged violations of the State Code of
13 Ethics; to provide ethics training; and to issue guidance and advisory opinions
14 regarding ethical conduct.

15 (b) Membership.

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

17 (A) one member appointed by the Chief Justice of the Supreme
18 Court;

19 (B) one member appointed by the League of Women Voters of
20 Vermont, who shall be a member of the League;

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

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

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

7 (2) The Commission shall elect the Chair of the Commission from
8 among its membership.

9 (3) A member shall not:

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

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

15 (C) be a lobbyist;

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

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

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

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

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

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

12 (c) ~~Executive Director~~ Commission staff. The Commission shall have the
13 assistance of the following Commission staff employees:

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

17 (2) ~~The Executive Director shall~~ an exempt State employee and an
18 attorney admitted to practice law in this State and who shall act as prosecutor
19 in hearings before the Commission, maintain the records of the Commission,
20 and shall provide administrative support as requested by the Commission, in
21 addition to any other duties required by this chapter.;

1 (2) an investigator who shall be a classified State employee, be certified
2 as a Level III law enforcement officer under 20 V.S.A. chapter 151, have the
3 same powers as a sheriff in criminal matters and the enforcement of the law
4 and in serving criminal process, and have all the immunities and matters of
5 defense now available or hereafter made available to sheriffs in a suit brought
6 against them in consequence for acts done in the course of their employment;
7 and

8 (3) any other employees as permitted by law.

9 (d) Confidentiality. The Commission and ~~the Executive Director~~ its
10 employees shall maintain the confidentiality required by this chapter.

11 (e) Meetings. Meetings of the Commission:

12 (1) shall be held at least quarterly for the purpose of the Executive
13 Director updating the Commission on his or her work;

14 (2) may be called by the Chair and shall be called upon the request of
15 any other two Commission members; and

16 (3) shall be conducted in accordance with 1 V.S.A. § 172.

17 (f) Reimbursement. Each member of the Commission shall be entitled to
18 per diem compensation and reimbursement of expenses pursuant to
19 32 V.S.A. § 1010.

1 Sec. 3. 3 V.S.A. § 1223 is amended to read:

2 § 1223. PROCEDURE FOR HANDLING COMPLAINTS REQUIRING
3 REFERRAL

4 (a) Accepting complaints.

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

9 (2) Complaints shall be in writing and shall include the identity of the
10 complainant.

11 (b) Preliminary review by Executive Director. The Executive Director
12 shall conduct a preliminary review of complaints made to the Commission in
13 order to take action as set forth in this subsection, which shall include referring
14 complaints to all relevant entities.

15 (1) Governmental conduct regulated by law.

16 (A) If the complaint alleges a violation of governmental conduct
17 regulated by law, the Executive Director shall refer the complaint to the
18 Attorney General or to the State's Attorney of jurisdiction, as appropriate.

19 (B) The Attorney General or State's Attorney shall file a report with
20 the Executive Director regarding his or her decision as to whether to bring an

1 enforcement action as a result of a complaint referred under subdivision (A) of
2 this subdivision (1) within 10 days of that decision.

3 (2) Department of Human Resources; Code of Ethics.

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

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

10 (3) Campaign finance.

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

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

18 (4) Legislative and Judicial Branches; attorneys.

19 (A) If the complaint is in regard to conduct committed by a State
20 Senator, the Executive Director shall refer the complaint to the Senate Ethics

1 Panel and shall request a report back from the Panel regarding the final
2 disposition of the complaint.

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

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

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

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

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

1 except for complaints alleging a violation of the State Code of Ethics, which
2 shall be handled in accordance with section 1223a of this chapter.

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

6 Sec. 4. 3 V.S.A. § 1223a is added to read:

7 § 1223a. PROCEDURE FOR HANDLING COMPLAINTS ALLEGING A
8 VIOLATION OF THE STATE CODE OF ETHICS

9 (a) Generally.

10 (1) In addition to the requirement to refer complaints as set forth in
11 section 1223 of this chapter, the Commission shall receive, investigate, and
12 adjudicate complaints alleging a violation of the State Code of Ethics in
13 accordance with the Vermont Administrative Procedure Act.

14 (2) A complaint regarding the same alleged conduct may be both
15 referred as set forth in section 1223 of this chapter and handled in accordance
16 with the provisions of this section.

17 (b) Complaints generally.

18 (1) The Commission shall receive such complaints from any source and
19 may upon its own motion investigate conduct that may violate the State Code
20 of Ethics without receiving a complaint.

1 (2) Complaints shall be in writing and shall include the identity of the
2 complainant.

3 (3) A person who in good faith files a complaint with the Commission
4 shall not be liable for damages in a civil action.

5 (c) Investigating complaints.

6 (1)(A) The Executive Director of the Commission shall assign one or
7 more members of the Commission to investigate a complaint.

8 (B) Such a member shall have the assistance of an investigator for the
9 Commission and the Executive Director.

10 (C) While acting in this capacity, a Commission member shall not sit
11 in adjudication of the case and shall not participate in ex parte communications
12 with other Commission members regarding the case.

13 (D) A Commission member whose term of office expires while an
14 investigation is pending may continue through the completion of the case.

15 (2)(A) When the Executive Director is unable to assign one or more
16 members to investigate a complaint by reason of recusal, resignation, vacancy,
17 or necessary absence, the Executive Director shall, at the request of the
18 Commission, appoint one or more ad hoc members to serve on the
19 Commission for the investigation of that matter only.

20 (B) An ad hoc member shall have the same qualifications as required
21 for Commission members.

1 (d) Notice.

2 (1)(A) In addition to notice provided to a person alleged to have violated
3 the State Code of Ethics as required by the Administrative Procedure Act, the
4 Commission shall notify a complainant in writing of the result of any
5 disciplinary investigation made as a result of his or her complaint filed with the
6 Commission.

7 (B) When an investigation results in a stipulation filed with the
8 Commission, the Commission shall provide the complainant with a copy of the
9 stipulation and notice of the stipulation review scheduled before the
10 Commission. The complainant shall have the right to be heard at the
11 stipulation review.

12 (2) The Commission shall notify parties, in writing, of their right to
13 appeal a final decision of the Commission.

14 (e) Hearing officer.

15 (1) The Commission shall appoint a hearing officer, who shall be an
16 attorney admitted to practice in this State, to preside at hearings for the purpose
17 of making procedural and evidentiary rulings. The Commission may overrule
18 a ruling by the hearing officer. The hearing officer may administer oaths and
19 exercise the powers of the Commission properly incidental to the conduct of
20 the hearing.

1 (2) The hearing officer shall draft findings of fact, conclusions of law,
2 and Commission orders for the Commission's review. The Commission shall
3 enter its findings, conclusions, and orders within 30 days of the conclusion of a
4 hearing, unless the Commission grants an extension.

5 (3)(A) A hearing officer shall not preside at any hearing in which he or
6 she has a conflict of interest or the appearance of a conflict of interest. If a
7 hearing officer refuses to recuse himself or herself from such a hearing, the
8 Commission may remove that hearing officer from presiding at the hearing and
9 appoint a different hearing officer.

10 (B) As used in this subdivision (3), "conflict of interest" is as defined
11 in subdivision 1222(a)(4) of this chapter.

12 (f) Procedural authority. The Commission may authorize:

13 (1) its Chair or hearing officer to grant continuances of scheduled
14 hearings;

15 (2) its Chair or hearing officer to grant or deny stays pending appeal;
16 and

17 (3) its Chair or hearing officer to convene and conduct prehearing
18 conferences.

19 (g) Ad hoc Commission members.

20 (1) When the Commission is unable to convene a quorum by reason of
21 recusal, resignation, vacancy, or necessary absence, the remaining members of

1 the Commission shall appoint ad hoc members to serve on the Commission for
2 that matter only.

3 (2) An ad hoc member shall have the same qualifications as required for
4 Commission members.

5 (h) Burden of proof. The burden of proof shall be on the State to show by
6 clear and convincing evidence that a person has violated the State Code of
7 Ethics.

8 (i) Permitted Commission orders.

9 (1) Upon finding that a person violated a provision of the State Code of
10 Ethics, the Commission may order any of the following, alone or in
11 combination:

12 (A) Reprimand.

13 (B) Cease and desist the violation.

14 (C) File or amend a required disclosure.

15 (D) Payment of an administrative penalty for each violation.

16 (i) Except as provided in subdivisions (ii) and (iii) of this
17 subdivision (D), an administrative penalty shall not exceed \$1,000.00 for each
18 violation.

19 (ii) In the case of a continuing violation, each day that a violation
20 continues shall be deemed a separate offense. In no event shall the aggregate
21 penalty for a continuing violation exceed \$10,000.00.

1 (iii) Notwithstanding the limitations on administrative penalties
2 set forth in subdivisions (i) and (ii) of this subdivision (D), an administrative
3 penalty may also include the pecuniary value of any unjust enrichment the
4 person gained as a result of his or her violation.

5 (E) In the case of an Executive officer, recommend:

6 (i) disciplinary action to the officer's supervisor, if applicable; or

7 (ii) impeachment to the General Assembly.

8 (F) In the case of a legislator, recommend disciplinary action to the
9 chamber of the General Assembly of which the legislator is a member.

10 (2) Any money received under this subsection shall be deposited in the
11 State Ethics Fund established in section 1223c of this chapter.

12 (j) Appeals. A party aggrieved by a decision of the Commission may
13 appeal to the Supreme Court of Vermont, which shall review the matter on the
14 basis of the records created before the Commission.

15 (k) Application.

16 (1) The provisions of this section shall not act as a bar to criminal or
17 civil proceedings involving the same conduct.

18 (2) In the event that conduct may constitute both a criminal act and a
19 violation of the State Code of Ethics, the Commission may on its own motion
20 or upon the request of the Attorney General or a State's Attorney suspend its

1 investigation or a pending hearing for the time period reasonably necessary to
2 avoid compromising a criminal prosecution.

3 Sec. 5. 3 V.S.A. § 1223b is added to read:

4 § 1223b. ACCESSIBILITY AND CONFIDENTIALITY OF STATE CODE
5 OF ETHICS ACTIONS

6 (a) It is the purpose of this section both to protect the reputation of State
7 officials and employees from public disclosure of unwarranted complaints
8 against them and to fulfill the public's right to know of any action taken
9 against those public entities when that action is based on a determination of a
10 violation of the State Code of Ethics.

11 (b) All meetings and hearings of the Commission shall be subject to the
12 Open Meeting Law.

13 (c) The Executive Director of the Commission shall prepare and maintain a
14 register of all complaints, which shall be a public record and which shall show:

15 (1) with respect to any complaint, the following information:

16 (A) the date and the nature of the complaint, but not including the
17 identity of the State official or employee (respondent); and

18 (B) a summary of the completed investigation; and

19 (2) only with respect to a complaint resulting in filing of charges or
20 stipulations, the following additional information:

21 (A) the name and address of the respondent and of the complainant;

1 (B) formal charges, provided that they have been served or a
2 reasonable effort to serve them has been made;

3 (C) the findings, conclusions, and order of the Commission;

4 (D) the transcript of the hearing, if one has been made, and exhibits
5 admitted at the hearing;

6 (E) any stipulation filed with the Commission; and

7 (F) any final disposition of the matter by the Supreme Court of
8 Vermont.

9 (d) The Commission, its hearing officer, and Commission staff shall keep
10 confidential any other information regarding State Code of Ethics complaints,
11 investigations, proceedings, and related records except the information
12 required or permitted to be released under this section.

13 (e) A person charged with violation of the State Code of Ethics shall have
14 the right to inspect and copy the investigation file that results in the charges
15 against him or her, except for any attorney work product or other privileged
16 information.

17 (f) Nothing in this section shall prohibit the disclosure of any information
18 regarding State Code of Ethics complaints pursuant to an order from a court of
19 competent jurisdiction, or to a State or federal law enforcement agency in the
20 course of its investigation, provided the agency agrees to maintain the
21 confidentiality of the information as provided in subsection (d) of this section.

1 Sec. 6. 3 V.S.A. § 1223c is added to read:

2 § 1223c. STATE ETHICS FUND

3 The State Ethics Fund is created in accordance with 32 V.S.A. chapter 7,
4 subchapter 5 (special funds). All revenues received by the Commission shall
5 be deposited into the Fund and shall not be used for any purpose other than the
6 administration of this chapter, which shall include providing education and
7 training for Commission members, hearing officers, and Commission staff.

8 Sec. 7. CREATION OF INVESTIGATOR POSITION FOR STATE ETHICS
9 COMMISSION

10 (a) One part-time classified investigator position is created in the State
11 Ethics Commission as set forth in 3 V.S.A. § 1221(c)(2) in Sec. 2 of this act,
12 by using an existing position in the position pool.

13 (b) Funding for this position shall be derived from the surcharge collected
14 from the Human Resources Internal Services Fund as set forth in 2017 Acts
15 and Resolves No. 79, Sec. 13.

16 Sec. 8. EFFECTIVE DATE

17 This act shall take effect on July 1, 2019.