
General Summary

To summarize, this act does the following:

1. **Prohibits certain employment after leaving public office.**
 - a. *Legislators.* For one year after leaving office, legislators cannot be lobbyists.
 - b. *Executive officers.* For one year after leaving office, certain Executive officers cannot be lobbyists or paid to advocate for a private entity before a public body on any matter in which, while in State employ, they had substantively participated or had official responsibility.
2. **Requires financial disclosures of:**
 - a. Statewide (incl. tax return) and legislative candidates for office;
 - b. Certain Executive officers; and
 - c. Members and Executive Director of the State Ethics Commission.
3. **Imposes restrictions on contracting and campaign contributions.**
 - a. *Restrictions on contributors entering into sole source contracts.* Prohibits 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.* Prohibits 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. **Establishes the State Ethics Commission.** The Commission:
 - a. Does not have any enforcement authority;
 - b. Accepts, reviews, makes referrals regarding, and tracks 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. In consultation with DHR, creates and maintains the State Code of Ethics, which sets forth principles of governmental ethical conduct;
 - d. Provides ethics training;
 - e. Issues guidance and advisory opinions regarding governmental ethical conduct;
 - f. Is staffed by a part-time Executive Director;
 - g. Annually reports to the General Assembly; and
 - h. Is temporarily funded through a per-position charge assessed on Executive Branch agencies, departments, and offices.
5. **Requires towns, cities, and incorporated villages to adopt conflict of interest prohibitions, and allows them to adopt ethical conduct policies.**

2017, Act No. 79: *An Act Relating to Establishing the State Ethics Commission and Standards of Governmental Ethical Conduct*

General Summary and Section-by-Section Summary

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October 18, 2017

**2017, Act No. 79:
An Act Relating to Establishing the State Ethics Commission and Standards of Governmental Ethical Conduct**

Sec.	Cite and Title	Current Law Description	Enacted Amendment or New Law	Notes
*** Former Legislators and Executive Officers; Lobbying Restriction ***				
1	2 V.S.A. § 266 (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. (2) Exemption for lobbyists exempted from registering under 2 V.S.A. § 262 (lobbying; exempted persons). (c)(1) Uses whole campaign finance chapter to define terms. (2) "Executive officer" = statewide officer, agency secretary or deputy, or department commissioner or deputy.	<ul style="list-style-type: none"> • See NCSL's 50-State Chart, "Rules Against Legislators Lobbying State Government After They Leave Office" and notes below. • Penalties set forth in 2 V.S.A. § 268 would apply. • (c) A related expenditure may be a "contribution" under 17 V.S.A. § 2944.
*** Former Executive Officers; Postemployment Restrictions ***				
2	3 V.S.A. § 267 (Executive officers; postemployment restrictions)	<i>n/a; new statute</i> Will 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) Exemption for people if their only advocacy role would exempt them from registering under 2 V.S.A. § 262 (lobbying; exempted persons). (d) Public body enforces. (e)(1) "Advocate" = person who assists, defends, or pleads. (2) "Executive officer" = statewide officer, agency secretary or deputy, or department commissioner or deputy.	<p>Courts in other states have upheld various "cooling off periods"/"revolving door" prohibitions. See e.g., Forti v. New York State Ethics Commission, 555 N.Y.S.2d 235 (1990):</p> <ul style="list-style-type: none"> • "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). • "[T]here is nothing harsh or unreasonable about the application to plaintiffs of the new lifetime ban 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. See also the Governor's Executive Code of Ethics set forth in 3 App. V.S.A. ch. 3, § 53.

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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; new statute</i> Will be codified in T.17 (Elections), ch. 49 (nominations).	(a) Requires candidates for State or legislative office to file, w/ consent form, a disclosure form prepared by the State Ethics Commission re: previous year's: (1) source (but not amount) of personal income more than \$5k of candidate and/or spouse/domestic partner, incl. employment and general "investment income"; (2) board service and candidate's position on it; (3) companies that candidate and/or spouse/domestic partner had more than 10% ownership; and (4) any lease or contract with State held by candidate and/or spouse/domestic partner or a company that candidate and/or spouse/domestic partner had more than 10% ownership. (b) Identify candidate's spouse/domestic partner if s/he is a lobbyist; (c) Statewide candidates also have to file a copy of most recent IRS 1040; specific sensitive info (SSN, etc.) may be redacted. (d)(1) Clerk forwards to Sec. of State within 3 biz days of receipt. (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"> • See NCSL's 50-State Chart, "Paperwork Requirements for Filing as a Candidate for State Legislator" • No penalty for failure to file these disclosures. • Candidates will start to file their consents – and disclosure forms – beginning April 23, 2018 via 17 V.S.A. § 2356.
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***** Campaign Finance; Contractor Contribution Restrictions *****

4	17 V.S.A. § 2950 (State officers and State office candidates; contractor contribution restrictions)	<i>n/a; new statute</i> Will be codified in T.17 (Elections), ch. 61 (campaign finance).	(a) <i>Contributor restrictions on contracting.</i> (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: (A) the contribution, if made to incumbent State officer; or (B) beginning of term, if made to non-incumbent candidate. (2) Prohibition applies until end of applicable one-year period or State officer leaving office, whichever occurs first. (b) <i>Contractor restrictions on contributions.</i> (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. (B) Candidate, cand. committee, or State officer shall not solicit or accept the contribution if s/he/it knows the person is prohibited from making it. (2) Prohibition timeframe is from contract execution until completion. (c)(1) "Contract" = "contract for services" via 3 V.S.A. § 341 (State contracts). (2) "Principal" = individual who: (A) has controlling interest in person (if business); (B) is Pres., Chair, CEO, or equivalent; (C) is person's employee with substantial responsibilities re: contract negotiation; or (D) employee with compensation dependent on contract.	<ul style="list-style-type: none"> • 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 –in 32 V.S.A. § 109. • 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>, in 2 V.S.A. § 266(a)(3)(B). <ul style="list-style-type: none"> ○ "[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." Kimbell v. Hooper, 164 Vt. 80, 90 (1995).
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4a	3 V.S.A. § 347 (contractor contribution restrictions)	<i>n/a; new statute</i> Will be codified in T.3 (Executive), ch. 14 (standards for State contracts).	Requires the Sec. of Administration to include in the terms and conditions of sole source contracts a self-certification of compliance with the previous section's restrictions on contributions and contracting.	
*** Campaign Finance Investigations; Reports to Ethics Commission ***				
5	17 V.S.A. § 2904 (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; new statute</i> Will 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.	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).
*** Governmental Ethics ***				
*** General Provisions ***				
7	3 V.S.A. § 1201 (definitions)	<i>n/a; new statute</i> Will 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. (4) "Governmental conduct regulated by law" includes: (A) <i>Bribery</i> via 13 V.S.A. § 1102 ; (B) <i>Neglect of duty by public officers</i> via 13 V.S.A. § 3006 and by members of boards and commissions via 13 V.S.A. § 3007 ; (C) <i>Taking illegal fees</i> via 13 V.S.A. § 3010 ; (D) <i>False claims against government</i> via 13 V.S.A. § 3016 ; (E) <i>Owning or being financially interested in entity subject to Ex. Br. department's supervision</i> via 3 V.S.A. § 204 ; (F) <i>Failure to devote time to duties of office</i> via 3 V.S.A. § 205 ; (G) <i>Retaliation against whistleblowers</i> via 3 V.S.A. ch. 27, subch. 4A ; (H) former legislator or Executive officer violating Sec. 1's 2 V.S.A. § 266(b); and (I) former Executive officer violating Sec. 2's 3 V.S.A. § 267.	
7	3 V.S.A. § 1202 (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.	See, e.g., the federal government's general principles of ethical conduct set forth in 5 C.F.R. § 2635.101(b).
*** Disclosures ***				
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 (but no tax returns). Due by Jan. 15th of odd-numbered years or, if appointed thereafter, within 10 days of appointment.	
7	3 V.S.A. § 1212 (Commission members and Executive Director; biennial disclosure)	"	Requires Ethics Commission members and the Commission's Executive Director to file a biennial disclosure with same info as candidates and Executive officers (but no tax returns).	

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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.	
* * * State Ethics Commission * * *				
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: governmental conduct regulated by law, DHR employee code of ethics, and campaign finance; to provide ethics training; and to issue guidance and advisory opinions. (b) Membership. (1) Five members; appointed by Chief Justice, LWVV, Vt. Society of CPAs, VBA, and Vt. Human Resource Assoc. (2) Members elect their Chair from among membership. (3) 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. (4) Members may be removed for cause by other members. (5) Staggered 3-year terms; limit of two consecutive terms. (c) Staffed by Ex. Dir. appointed by and serving at pleasure of Commission. Part-time exempt State employee. Maintains Commission records. (d) Commission and Ex. Dir. must maintain chapter’s required confidentiality. (e) Meetings held at least quarterly; may be called by Chair and upon request of any other two Commission members. (f) Standard 32 V.S.A. § 1010 per diem (\$50) and expense reimbursement.	
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 may request that other members recuse. Other members may discuss. Three members may prohibit another member from participating. (3) Recused or prohibited members shall not sit or deliberate with the Commission. (4) “ <i>Conflict of interest</i> ” = interest conflicting with official duties due to significant personal or financial interest of the member, immediate family, or business associate. Does not incl. interests not 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. accepts complaints from any source re: State government ethics or campaign finance. Complaints must be in writing and include identity of complainant.</p> <p>(b) Ex. Dir. conducts preliminary review and refers to <u>all relevant entities</u>:</p> <p>(1) <i>Gov't conduct regulated by law</i> to AG or State's Attorney, as appropriate; s/he reports back re: whether s/he will bring enforcement action.</p> <p>(2) <i>DHR Employee Code of Ethics</i> to Comm'r of Human Resources. Comm'r reports back re: final disposition.</p> <p>(3) <i>Campaign finance</i> to AG or State's Attorney, as appropriate; s/he reports back re: whether s/he will bring enforcement action, in accordance with Sec. 6.</p> <p>(4) <i>Leg. and Jud. Br., attorneys; request for report back</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>Attorney</i> to Professional Responsibility Board.</p> <p>(E) <i>Alleged crimes</i> also to AG and the State's Attorney of jurisdiction.</p> <p>(5) Ex. Dir. closes any complaints not referred.</p> <p>(c) Commission keeps complaint docs confidential.</p>	
7	3 V.S.A. § 1224 (Commission ethics training)	“	<p>Commission collaborates with DHR to provide ethics training at least annually to legislators, State officers, and State employees. Training shall include topics re: those covered in guidance or advisory opinions.</p>	
7	3 V.S.A. § 1225 (Executive Director guidance and advisory opinions)	“	<p>(a) Ex. Dir. may issue guidance to Exec. officers and State employees, upon request; may consult with Commission members and DHR in doing so. Guidance is confidential, unless receiver has publicly disclosed it.</p> <p>(b) Ex. Dir. may issue advisory opinions to provide general advice or interpretation re: gov't ethics; may consult with Commission members and DHR. Advisory opinions shall be posted on Commission website.</p>	
7	3 V.S.A. § 1226 (Commission reports)	“	<p>Commission annually reports to the General Assembly by Jan. 15 re:</p> <ul style="list-style-type: none"> • <i>Complaints.</i> Number, summary, and disposition; no personal identifying info. • <i>Guidance.</i> Number and summary; no personal identifying info. • <i>Recommendations.</i> Re: governmental ethics or campaign finance. 	

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*** Implementation ***				
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 Procedure for Creation	“	Ethics Commission required create a draft State Code of Ethics in consultation with DHR. Draft to Gov Ops Committees by 3/15/18. Final version by 7/1/18.	
10	Implementation of the State Ethics Commission	“	(a) Ethics Commission 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	Buildings and General Services; Space Allocation	“	Requires the Commissioner of BGS to allocate space for the Commission by Oct. 15, 2017.	
13	State Ethics Commission Funding Source Surcharge; Repeal	“	(a) In FY18, Commission would be funded by a per-position fee via 3 V.S.A. § 2283(c)(2) paid by Ex. Br. agencies. (b) Funding source repealed on June 30, 2020.	
*** Municipal Conflicts of Interest ***				
14	24 V.S.A. § 1984 (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 vote 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 24 V.S.A. § 2291(20) .	Requirement takes effect on July 1, 2019 via Sec. 18(4).
15	24 V.S.A. § 2291 (enumeration of powers)	General municipal law authority for towns, cities, and incorporated villages	<i>Permits</i> these municipalities to establish ethical conduct policies to apply to all elected and appointed officials and employees (in addition to current authority to establish conflict-of-interest policy for elected and appointed officials).	
16	General Assembly; recommendations regarding municipal ethics	<i>n/a; session law</i>	General Assembly recommends that towns, cities, and incorporated villages adopt ethical conduct policies for their elected and appointed officials and employees.	
17	Transitional provision; municipal ethics complaints; Secretary of State; Ethics Commission; reports	“	(a) Until 12/15/20, requires Sec. of State to accept complaints in writing re: municipal governmental ethical conduct and 1) forward the complaints to the applicable municipality; and 2) report the complaints annually to the State Ethics Commission. (b) Commission shall summarize these in its annual report to Leg.	
*** Effective Dates ***				
18	Effective Dates	“	<ul style="list-style-type: none"> • 7/1/17 for post-office employment prohibitions; • 1/1/18 for candidate disclosures, campaign finance reports to Comm’n, and new ethics chapter (incl. Comm’n); • 12/16/18 (new election cycle) for contractor contribution prohibition; and • 7/1/19 for town requirement to adopt conflict of interest prohibition. 	

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