

2020 Statutory Proposal, Phase II: Draft Code of Ethics

To: Vermont Senate Committee on Government Operations
Submitted by: Vermont State Ethics Commission, Larry Novins, Executive Director
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Subject to further revision

Introduction:

This document is intended to prompt discussion of a Vermont Ethics Code to be adopted by Statute. Statutorily adopted ethics codes have been found in over 40 states. The provisions of this draft are taken or modified from:

- Provisions of other states' ethics codes;
- The Code of Federal Regulations;
- The current State Code of Ethics (COE) adopted by the State Ethics Commission;
- Vermont statutes; and
- Governor Scott's Executive Order 19-17.

The suggestions herein are made with full knowledge that not all parts of this draft may be deemed necessary at this time.

This draft builds on the sources listed above. Its focus is to help public servants avoid conflicts of interest and promote faith in government. This code sets a base line for acceptable and unacceptable conduct. Many states and the federal government have more comprehensive and detailed ethics provisions. They often represent responses to specific instances of unethical conduct. The Ethics Commission has not yet seen conduct that would justify such detailed, complex provisions for Vermont.

The provisions of this draft Code recognize that Executive Orders, internal rules of the General Assembly, or agency rules or policies may set more specific or stringent ethics requirements.

The draft also contains language for possible legislative findings and statements of intent. The substantive provisions address the following topics:

- Conflict of Interest
- Appearance of Conflicts of Interest or Other Ethical or Law Violations
- Preferential Treatment
- Use of Position for Personal Gain
- Use of Confidential or Non-Public Information
- Use of Government Resources

- Gifts
- Statements Obligating the State of Vermont
- Unethical Conduct Cannot be Delegated
- Post Government Employment
- Compliance with Law
- Other Ethics Rules or Policies
- Whistleblower Protections for Ethics Complaints
- Ethics Education and Training

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Findings and Legislative Intent:

It is declared that high moral and ethical standards among state public servants are essential to the conduct of free government; that the legislature believes that a code of ethics for the guidance of state public servants will help them avoid conflicts between their personal interests and their public responsibilities, will improve standards of public service, and will promote and strengthen the faith and confidence that the people of this state are entitled to have in the judgment, integrity, and impartiality of their public servants.

Public servants hold their positions as a public trust, and any effort to realize personal gain through official conduct is a violation of that trust. This code does not prevent public servants from accepting other employment or following pursuits which in no way interfere with the full and faithful discharge of their duties to the state.

The Legislature further recognizes that public servants are drawn from society and, therefore, cannot and should not be without all personal and economic interest in the decisions and policies of government; that citizens who serve as state public servants retain their rights as citizens to interests of a personal or economic nature; that standards of ethical conduct for state public servants need to distinguish between minor and inconsequential conflicts that are unavoidable in a free society and conflicts which are substantial and material; and that state public servants may need to engage in employment, professional, or business activities, other than official duties, in order to support themselves or their families and to maintain a continuity of professional or business activity, or may need to maintain investments, which activities or investments do not conflict with the specific provisions of this code. The legislature recognizes that the activities of public servants should not be unduly circumscribed.

[Source: Wisconsin-modified]

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**Vermont State Code of Ethics
Substantive Provisions**

Applicability:

This Ethics Code applies to all persons elected or appointed to serve as officers of the State of Vermont, all persons elected or appointed to serve as members of the general assembly, all state employees excluding judges, and all persons appointed to serve on State Boards and Commissions or who in any other way are authorized to act or speak on behalf of the State of Vermont. This code refers to them all as "public servants."

Exclusions:

The functions of State Legislators that are protected by legislative privilege and immunity pursuant to the Constitution of the State of Vermont.

Conflicts of Interest:

(a) Public Servants shall serve without conflicts of interest.

(b) A "conflict of interest" for a public servant means an interest, direct or indirect, financial or otherwise, of the public servant or such an interest, known to the public servant, of a member of his or her immediate family or household, or of a business associate, in the outcome of a particular matter pending before the public servant or his or her public body, or which is in conflict with the proper discharge of the public servant's duties. "Conflict of Interest" does not include any interest that:

(1) is no greater than that of other persons generally affected by the outcome of a matter (such as a policyholder in an insurance company or a depositor in a bank), or

(2) has been disclosed as required by law or applicable written policy and found not to be significant.

[Modified from COE and Exec. Order #79]

(c) Public servants who are confronted with a conflict of interest shall take no action on the matter and, upon identifying the conflict of interest or potential conflict of interest, shall in writing disclose to their immediate supervisor or to the public in detail sufficient to be understood by the public, the nature of the interest, financial or otherwise, that gives rise to the conflict of interest, and sign a statement of recusal from future participation in the matter.

[Taken roughly from CT. Ethics Code, 1-86.]

Appearance of Violation:

Public Servants shall endeavor to avoid any actions creating the appearance that they are violating the law or the ethical standards set forth in this chapter.

Whether particular circumstances create an appearance that the law or these standards have been violated shall be determined from the perspective of a reasonable person with knowledge of the relevant facts.

[5 CFR § 2635.101 - Basic obligation of public service]

Preferential Treatment:

Public servants in the course of state business shall act impartially. A public servant shall not give or represent an ability to give preference or special treatment to anyone because of their wealth, position, or status, or because of any personal relationship with a public servant. When a law requires, a public servant may give preference to designated individuals or groups.

[Comment: e.g. Affirmative action plans, or a statute giving a preference to a group like veterans. A public servant executing the statute may give preference to the target group, but otherwise act impartially and consistent with the statute. Modified from Current Code, and NIH Ethics Order, 5 CFR § 2635.101(b)(8).]

Use of Position for Personal Gain:

Public servants shall not use their official positions for personal or financial gain.

Use of Confidential or Non-Public Information:

Public servants shall not use or disclose nonpublic government information or confidential information learned during the course of state service for their own or anyone else’s personal or financial gain.

[Modified from current Vermont COE]

Use of Government Resources:

Public servants shall not make use of state materials, funds, property, personnel, facilities, or equipment or permit others to do so for any purpose other than for official state business unless the use is expressly permitted or required by law or by a written agency, departmental, or institutional policy or rule.

Public servants shall not engage in, or direct others to engage in work other than the performance of official duties during working hours, except as permitted or required by law, or by written agency, departmental, or institutional policy or rule.

[Modified from Iowa Statutes and E.O. 19-17.]

Gifts:

Public servants shall not solicit, accept, or receive, directly or indirectly, from any person a gift under circumstances in which it can reasonably be inferred that the gift is intended to influence them in the performance of their official duties or is intended as a reward for any official action or inaction on their part.

[Modified from current COE, E.O. 19-17 is more specific.]

Statements Obligating the State of Vermont:

Public servants shall not make unauthorized commitments or promises of any kind purporting to bind State government.

[VCOE, modified per 5 CFR § 2635.101(b)(12)]

Unethical Conduct Cannot be Delegated:

Public servants who have a conflict of interest shall not direct others to act to their benefit. Public servants who because of a conflict of interest recuse themselves from a matter may not in any way participate in or act to influence a decision regarding that matter.

Post Government Employment:

While in State service, public servants shall not seek or negotiate in any manner employment that potentially or actually conflicts with their official government duties and responsibilities.

[VCOE]

One-year restriction. Public servants shall not, for one year after leaving state service, represent anyone, other than the State of Vermont, for compensation before the department, agency, board, commission, or office in which they served at the time of their termination of service, concerning any matter in which the State of Vermont has a substantial interest.

Permanent restrictions on representation on particular matters. Public servants shall not, after termination of their service or employment with State, knowingly make, with the intent to influence, any communication or appearance before any entity of the State of Vermont on behalf of any person other than the State of Vermont in connection with a particular matter:

- (a) in which the State of Vermont is a party or has a direct and substantial interest, and
- (b) in which the former public servant participated personally and substantially while in public service.

[Source: 18 USC § 207, a criminal statute].

Compliance with Law:

Public servants shall meet personal legal obligations and comply with applicable state and federal laws and regulations, and other governmental codes of conduct.

[VCOE, modified]

Other Ethics Rules or Policies:

Public servants shall comply with any other applicable more-restrictive rules or policies established by executive order, agency rule, or policy. Nothing herein shall prohibit branches of state government, agencies, or departments from adopting more stringent ethics provisions.

Whistleblower Protections for Ethics Complaints:

Consistent with 3 V.S.A. § 971 et seq., public servants shall be free to disclose waste, fraud, abuse of authority, violations of law or of this or other applicable ethics codes to the Ethics Commission without fear of reprisal, intimidation, or retaliation.

Ethics Education and Training:

Mandatory ethics training. Within the first 6 months of public service or beginning a new state position, public servants shall engage in ethics training which may be in person or on-line. Public servants shall participate in continuing ethics education at least once every five years thereafter. Acceptable continuing ethics education providers are: The State Ethics Commission, the Department of Human Resources - Center for Achievement in Public Service (CAPS), the Vermont House of Representatives Ethics Panel for the House of Representatives, and the Vermont Senate Ethics Panel for the Senate. Copies of CAPS, House, and Senate Ethics training materials shall be provided to the Ethics Commission. On request, the State Ethics Commission may collaborate with or assist other providers.

Definitions:

1) "Confidential information:" means information that is exempt from public inspection and copying or is otherwise designated by law as "confidential."

2) "Gift" means: anything of value, tangible or intangible, that is bestowed for less than adequate consideration." Included within this definition are travel expenses such as travel fare, room and board, and other expenses associated with travel.

(a) Examples of gifts may also include;

- (1) campaign contributions;
- (2) a meal or alcoholic beverage;
- (3) a ticket, fee, or expenses for or to any sporting, recreational, or entertainment event;
- (4) a speaking fee or honorarium, except actual and reasonable travel expenses;
- (5) a loan made on terms more favorable than those made generally available to the public in the normal course of business.

[3 V.S.A. § 1201(4)(a), 2 V.S.A. § 261(6)(A)(ii)]

(b) Not Considered "Gifts:"

- (1) An item which would qualify as a gift, but which is not used, and which within 30 days after receipt, is returned to the donor, or for which the donor is reimbursed for its fair market value will not be considered a "gift." [2 V.S.A. § 261]
- (2) anything given between immediate family members;
- (3) printed educational material such as books, reports, pamphlets, or periodicals;
- (4) a devise or inheritance.

[currently in 3 V.S.A. § 1201(4)(B) and 2 V.S.A. § 261]

3) "Person" as used in this chapter means: any individual, group, business entity, association or organization.