

Senate proposal of amendment

H. 135

An act relating to the State Ethics Commission

The Senate proposes to the House to amend the bill by striking out all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. 3 V.S.A. chapter 31 is amended to read:

CHAPTER 31. GOVERNMENTAL ETHICS

* * *

Subchapter 2. Disclosures

§ 1211. EXECUTIVE OFFICERS; ~~BIENNIAL~~ ANNUAL DISCLOSURE

(a) ~~Biennially~~ Annually, each Executive officer shall file with the State Ethics Commission a disclosure form that contains the following information in regard to the previous ~~calendar year~~ 12 months:

(1) Each source, but not amount, of personal income of the officer and of his or her spouse or domestic partner, and of the officer together with his or her spouse or domestic partner, that totals more than \$5,000.00, including any of the sources meeting that total described as follows:

(A) employment, including the employer or business name and address and, if self-employed, a description of the nature of the self-employment without needing to disclose any individual clients; and

(B) investments, described generally as “investment income.”

(2) Any board, commission, or other entity that is regulated by law or that receives funding from the State on which the officer served and the officer’s position on that entity.

(3) Any company of which the officer or his or her spouse or domestic partner, or the officer together with his or her spouse or domestic partner, owned more than 10 percent.

(4) Any lease or contract with the State held or entered into by:

(A) the officer or his or her spouse or domestic partner; or

(B) a company of which the officer or his or her spouse or domestic partner, or the officer together with his or her spouse or domestic partner, owned more than 10 percent.

(b) In addition, if an Executive officer’s spouse or domestic partner is a lobbyist, the officer shall disclose that fact and provide the name of his or her spouse or domestic partner and, if applicable, the name of his or her lobbying firm.

(c)(1) Disclosure forms shall contain the statement, “I certify that the information provided on all pages of this disclosure form is true to the best of my knowledge, information, and belief.”

(2) Each Executive officer shall sign his or her disclosure form in order to certify it in accordance with this subsection.

(d)(1) An officer shall file his or her disclosure on or before January 15 of the odd-numbered each year or, if he or she is appointed after January 15, within 10 days after that appointment.

(2) An officer who filed this disclosure form as a candidate in accordance with 17 V.S.A. § 2414 in the preceding year and whose disclosure information has not changed since that filing may update that filing to indicate that there has been no change.

~~(d)~~(e) As used in this section:

(1) “Domestic partner” means an individual with whom the Executive officer has an enduring domestic relationship of a spousal nature, as long as the officer and the domestic partner:

(A) have shared a residence for at least six consecutive months;

(B) are at least 18 years of age;

(C) are not married to or considered a domestic partner of another individual;

(D) are not related by blood closer than would bar marriage under State law; and

(E) have agreed between themselves to be responsible for each other’s welfare.

(2) “Lobbyist” and “lobbying firm” shall have the same meanings as in 2 V.S.A. § 261.

§ 1212. COMMISSION MEMBERS AND EXECUTIVE DIRECTOR;
~~BIENNIAL~~ ANNUAL DISCLOSURE

(a) ~~Biennially~~ Annually, each member of the Commission and the Executive Director of the Commission shall file with the Executive Director a disclosure form that meets the requirements of and contains the information that Executive officers are required to disclose under section 1211 of this subchapter.

(b) A member and the Executive Director shall file their disclosures on or before January 15 of ~~the first each year of their appointments~~ or, if the member or Executive Director is appointed after January 15, within 10 days after that appointment, ~~and shall file subsequent disclosures biennially thereafter.~~

§ 1213. DISCLOSURES; GENERALLY

(a) The Executive Director of the Commission shall prepare on behalf of the Commission any disclosure form required to be filed with it and the candidate disclosure form described in 17 V.S.A. § 2414, and shall make ~~those~~ forms to be filed with the Commission available on the Commission's website.

(b) The Executive Director shall post on the Commission's website a copy of any disclosure form the Commission receives.

Subchapter 3. State Ethics Commission

§ 1221. STATE ETHICS COMMISSION

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

(b) Membership.

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

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

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

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

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

(E) one member appointed by the Board of Directors of the SHRM (Society of Human Resource Management) Vermont Human Resource Association State Council, who shall be a member of the Association Council.

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

(3) A member shall not:

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

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

with the State;

(C) be a lobbyist;

(D) be a candidate for State ~~or~~, legislative, or elected judicial office;

or

(E) hold any office in a State ~~or~~, legislative, or elected judicial office candidate's committee, a political committee, or a political party.

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

(5)(A) A member shall serve a term of ~~three~~ five years and until a successor is appointed. A term shall begin on January 1 of the year of appointment and run through December 31 of the last year of the term. Terms of members shall be staggered so that ~~not all~~ no two terms expire at the same time.

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

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

(c) Executive Director.

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

(2) The Executive Director shall maintain the records of the Commission and shall provide administrative support as requested by the Commission, in addition to any other duties required by this chapter.

(d) Confidentiality. The Commission and the Executive Director shall maintain the confidentiality required by this chapter.

(e) Meetings. Meetings of the Commission:

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

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

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

(f) Reimbursement. Each member of the Commission shall be entitled to

per diem compensation and reimbursement of expenses pursuant to 32 V.S.A. § 1010.

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§ 1223. PROCEDURE FOR HANDLING COMPLAINTS

(a) Accepting complaints.

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

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

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

(1) Governmental conduct regulated by law.

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

(B) The Attorney General or State's Attorney shall file a report with the Executive Director regarding his or her decision as to whether to bring an enforcement action as a result of a complaint referred under subdivision (A) of this subdivision (1) within 10 days of that decision.

(2) Department of Human Resources, ~~Code of Ethics~~ Personnel Policy and Procedure Manual.

(A) If the complaint alleges a violation of the Department of Human Resources, ~~Code of Ethics~~ Personnel Policy and Procedure Manual, the Executive Director shall refer the complaint to the Commissioner of Human Resources.

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

(3) Campaign finance.

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

(B) The Attorney General or State's Attorney shall file a report with

the Executive Director regarding his or her decision as to whether to bring an enforcement action as a result of a complaint referred under subdivision (A) of this subdivision (3) as set forth in 17 V.S.A. § 2904a.

(4) Legislative and Judicial Branches; attorneys.

(A) If the complaint is in regard to conduct committed by a State Senator, the Executive Director shall refer the complaint to the Senate Ethics Panel and shall request a report back from the Panel regarding the final disposition of the complaint.

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

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

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

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

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

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

§ 1224. COMMISSION ETHICS TRAINING

At least annually, in collaboration with the Department of Human Resources, the Commission shall make available to legislators, State officers, and State employees training on issues related to governmental ethics. The training shall include topics related to those covered in any guidance provided or advisory opinion issued under section 1225 of this subchapter.

§ 1225. EXECUTIVE DIRECTOR GUIDANCE AND ADVISORY OPINIONS

(a) Guidance.

(1) ~~The Executive Director may issue~~ provide guidance only to an Executive officer or other State employee a person who is or will be subject to the provisions of this chapter, upon his or her request, guidance with respect to that person's duties regarding any provision of this chapter or regarding any other issue related to governmental ethics.

(2) The Executive Director may consult with members of the Commission and the Department of Human Resources in preparing this guidance.

(3) ~~Guidance issued~~ provided under this subsection shall be exempt from public inspection and copying under the Public Records Act and shall be kept confidential unless the receiving entity has publicly disclosed it.

(b) Advisory opinions.

(1) ~~The~~ On the written request of a person who is or will be subject to the provisions of this chapter, ~~the~~ Executive Director may issue an advisory opinion to that person that ~~provide~~ provides general advice or interpretation with respect to that person's duties regarding any provision of this chapter or regarding any other issue related to governmental ethics.

(2) The Executive Director may consult with members of the Commission and the Department of Human Resources in preparing these advisory opinions.

(3) The Executive Director may seek comment from persons interested in the subject of an advisory opinion under consideration.

(4) The Executive Director shall post on the Commission's website any advisory opinions that he or she issues.

§ 1226. COMMISSION REPORTS

Annually, on or before January 15, the Commission shall report to the General Assembly regarding the following issues:

(1) Complaints. The number and a summary of the complaints made to it, separating the complaints by topic, and the disposition of those complaints, including any prosecution, enforcement action, or dismissal. This summary of complaints shall not include any personal identifying information.

(2) Guidance. The number of requests for and a summary of the guidance ~~documents~~ the Executive Director issued provided, separating the guidance by topic. This summary of guidance shall not include any personal identifying information.

(3) Recommendations. Any recommendations for legislative action to address State governmental ethics or provisions of campaign finance law.

Sec. 2. 2017 Acts and Resolves No. 79, Sec. 13, as amended by 2020 Acts

and Resolves No. 120, Sec. A.8 is further amended to read:

Sec. 13. STATE ETHICS COMMISSION FUNDING SOURCE
SURCHARGE; REPEAL

(a) Surcharge.

(1) Notwithstanding the provisions of 3 V.S.A. § 2283(c) setting forth the purpose and rate of charges collected in the Human Resource Services Internal Service Fund, in fiscal year 2018 and thereafter, a surcharge of up to 2.3 percent, but no greater than the cost of the activities of the State Ethics Commission set forth in Sec. 7 of this act, on the per-position portion of the charges authorized in 3 V.S.A. § 2283(c)(2) shall be assessed to all Executive Branch agencies, departments, and offices and shall be paid by all assessed entities solely with State funds.

(2) The amount collected shall be accounted for within the Human Resource Services Internal Service Fund and used solely for the purposes of funding the activities of the State Ethics Commission set forth in Sec. 7 of this act.

(b) Repeal. This section shall be repealed on ~~June 30, 2021~~ July 1, 2022.

Sec. 3. IMPLEMENTATION OF STAGGERED FIVE-YEAR TERMS

In order to stagger the terms of the members of the State Ethics Commission as described in 3 V.S.A. § 1221(b)(5)(A) in Sec. 1 of this act, members shall serve five-year terms beginning on January 1, 2022, except that:

(1) Following the conclusion of the current term of the Chief Justice of the Supreme Court appointment on December 31, 2023, the subsequent Chief Justice of the Supreme Court appointment shall be for a two-year term ending on December 31, 2025.

(2) Following the conclusion of the current term of the Board of Directors of the Vermont Human Resource Association appointment on December 31, 2022, the subsequent SHRM (Society of Human Resource Management) Vermont State Council appointment shall be for a two-year term ending on December 31, 2024.

Sec. 4. CREATION OF POSITION WITHIN THE STATE ETHICS
COMMISSION

(a) The establishment of the following new position is authorized in fiscal year 2022, and the position shall be transferred and converted from an existing vacant position in the Executive Branch and shall not increase the total number of authorized State positions: one permanent exempt 0.5 full-time equivalent Administrative Assistant position for the efficient administration of the State Ethics Commission.

(b) The Executive Director may fill the position created in subsection (a) of this section with the consent of the State Ethics Commission.

Sec. 5. EFFECTIVE DATE

This act shall take effect on passage.