

1 S.171

2 Introduced by Senators Pollina and White

3 Referred to Committee on

4 Date:

5 Subject: Ethics; State Ethics Commission; code of ethics

6 Statement of purpose of bill as introduced: This bill proposes to codify a State  
7 code of ethics in 3 V.S.A. chapter 31.

8 An act relating to adoption of a State code of ethics

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

10 Sec. 1. 3 V.S.A. § 1201 is amended to read:

11 § 1201. DEFINITIONS

12 As used in this chapter:

13 (1) “Candidate” and “candidate’s committee” ~~shall~~ have the same  
14 meanings as in 17 V.S.A. § 2901.

15 (2) “Commission” means the State Ethics Commission established  
16 under subchapter 3 of this chapter.

17 (3) “Confidential information” means information that is exempt from  
18 public inspection and copying under 1 V.S.A. § 315 et seq. or is otherwise  
19 designated by law as confidential.

1           (4) “Conflict of interest” means an interest, direct or indirect, financial  
2           or otherwise, of a public servant or such an interest, known to the public  
3           servant, of a member of the public servant’s immediate family or household, or  
4           of a business associate, in the outcome of a particular matter pending before  
5           the public servant or the public servant’s public body, or that is in conflict with  
6           the proper discharge of the public servant’s duties. “Conflict of interest” does  
7           not include any interest that is no greater than that of other persons generally  
8           affected by the outcome of a matter, such as a policyholder in an insurance  
9           company or a depositor in a bank.

10           ~~(3)~~(5) “Executive officer” means:

11                   (A) a State officer; or

12                   (B) under the Office of the Governor, an agency secretary or deputy  
13           or a department commissioner or deputy.

14           ~~(4)(A) “Gift” means anything of value, tangible or intangible, that is~~  
15           ~~bestowed for less than adequate consideration.~~

16           ~~(B) “Gift” does not mean printed educational material such as books,~~  
17           ~~reports, pamphlets, or periodicals.~~

18           (6) “Gift” has the same meaning as in 2 V.S.A. § 261.

19           ~~(5)~~(7) “Governmental conduct regulated by law” means conduct by an  
20           individual in regard to the operation of State government that is restricted or  
21           prohibited by law and includes:

1 (A) bribery pursuant to 13 V.S.A. § 1102;

2 (B) neglect of duty by public officers pursuant to 13 V.S.A. § 3006  
3 and by members of boards and commissions pursuant to 13 V.S.A. § 3007;

4 (C) taking illegal fees pursuant to 13 V.S.A. § 3010;

5 (D) false claims against government pursuant to 13 V.S.A. § 3016;

6 (E) owning or being financially interested in an entity subject to a  
7 department's supervision pursuant to section 204 of this title;

8 (F) failing to devote time to duties of office pursuant to section 205  
9 of this title;

10 (G) engaging in retaliatory action due to a State employee's  
11 involvement in a protected activity pursuant to chapter 27, subchapter 4A of  
12 this title;

13 (H) a former legislator or former Executive officer serving as a  
14 lobbyist pursuant to 2 V.S.A. § 266(b); and

15 (I) a former Executive officer serving as an advocate pursuant to  
16 section 267 of this title.

17 (8) "Immediate family" means a person's spouse or civil union partner;  
18 domestic partner as defined in 17 V.S.A. § 2414(e)(1); sibling; child or foster  
19 child; grandchild; parent; grandparent; or in-law, including a parent, sibling,  
20 child or foster child, grandchild or grandparent of a spouse, civil union partner,  
21 or domestic partner.

1           ~~(6)~~(9) “Lobbyist” ~~shall have~~ has the same meaning as in 2 V.S.A. § 261.

2           (10) “Person” means any individual, group, business entity, association,  
3           or organization.

4           ~~(7)~~(11) “Political committee” and “political party” ~~shall~~ have the same  
5           meanings as in 17 V.S.A. § 2901.

6           (12) “Prohibited source” means any person who:

7                   (A) is seeking official action by a public servant’s agency;

8                   (B) does business or seeks to do business with a public servant’s  
9           agency or department;

10                   (C) conducts activities regulated by the public servant’s agency;

11                   (D) has interests that may be substantially affected by the  
12           performance or nonperformance of the public servant’s official duties; or

13                   (E) is an organization with a majority of whose members are  
14           described as in subdivisions (A) and (B) of this subdivision (12).

15           ~~(8)~~(13) “State officer” means the Governor, Lieutenant Governor,  
16           Treasurer, Secretary of State, Auditor of Accounts, or Attorney General.

17           Sec. 2. 3 V.S.A. § 1202 is amended to read:

18           § 1202. STATE CODE OF ETHICS

19           ~~The Ethics Commission, in consultation with the Department of Human~~  
20           ~~Resources, shall create and maintain the State Code of Ethics that sets forth~~  
21           ~~general principles of governmental ethical conduct.~~

1       (a) Applicability.

2           (1) Unless excluded under this section, the Code of Ethics applies to all  
3 persons elected or appointed to serve as officers of the State, all persons  
4 elected or appointed to serve as members of the General Assembly, all State  
5 employees, all persons appointed to serve on State boards and commissions,  
6 and persons who in any other way are authorized to act or speak on behalf of  
7 the State. This code refers to them all as “public servants.”

8           (2) The Code of Ethics established by this section does not prohibit  
9 branches of State government, agencies, or departments from adopting more  
10 stringent provisions regarding the ethical conduct of their employees.

11          (3) The application of this Code of Ethics does not in any way abrogate  
12 or alter the sole authority of each house of the General Assembly to judge the  
13 elections and qualifications of its own members under Chapter II, Sections 14  
14 and 19 of the Vermont Constitution.

15          (b) Exclusions. The Code of Ethics does not apply to:

16           (1) the functions of members of the General Assembly that are protected  
17 by Chapter I, Article 14 of the Vermont Constitution;

18           (2) those exercising judicial power under Chapter II, Section 4 of the  
19 Vermont Constitution; and

20           (3) members of the General Assembly unless the Code of Ethics is  
21 adopted by rule by each house of the General Assembly.

1           (c) Ethical conduct.

2           (1) Conflict of interest.

3           (A) Course of action. Each time a public servant is confronted with a  
4 conflict of interest, the public servant shall either make a public statement  
5 recusing themselves from the matter or, if the public servant chooses to  
6 proceed with the matter, prepare a written statement regarding the nature of the  
7 conflict. A public servant may request either guidance or an advisory opinion  
8 from the State Ethics Commission in making an initial determination whether a  
9 conflict of interest exists, or whether good cause to proceed exists as set forth  
10 in subdivision (B) of this subdivision (1). If the public servant chooses to  
11 proceed with the matter, the public servant's prepared written statement shall:

12                   (i) describe the matter requiring action;

13                   (ii) disclose the nature of the potential conflict or actual conflict of  
14 interest;

15                   (iii) explain why good cause, as set forth in subdivision (B) of this  
16 subdivision (1), exists so that the public servant can take action in the matter  
17 fairly, objectively, and in the public interest;

18                   (iv) include sufficient detail so that the matter may be understood  
19 by the public; and

1                   (v) be filed in accordance with the policies and procedures set  
2                   forth by the agency or entity governing the matter in question, including any  
3                   requirement that the statement be made public.

4                   (B) Good cause. As used in this section, “good cause to proceed”  
5                   may include any of the following:

6                   (i) the identified conflict or potential conflict is de minimum in  
7                   nature;

8                   (ii) the action to be taken is ministerial or clerical;

9                   (iii) the conflict is amorphous, intangible, or otherwise  
10                  speculative; or

11                  (iv) the public servant cannot legally or practically delegate the  
12                  matter.

13                  (2) Directing unethical conduct. A public servant shall not direct  
14                  another person to act in a manner that would be unethical for the public servant  
15                  or the other person to act. A public servant who has a conflict of interest shall  
16                  not direct others to act to the public servant’s benefit where such action would  
17                  be a violation of the Code of Ethics if the public servant were to perform the  
18                  act.

19                  (3) Conduct after recusal. Once recused, a public servant shall not in  
20                  any way participate in or act to influence a decision regarding the matter.

1           (4) Appearance of unethical conduct. A public servant shall avoid any  
2           actions creating the appearance that the public servant is violating the law or  
3           the Code of Ethics. Whether particular circumstances create an appearance  
4           that the law or the Code of Ethics have been violated shall be determined from  
5           the perspective of a reasonable person with knowledge of the relevant facts.

6           (5) Preferential treatment. A public servant in the course of conducting  
7           State business shall act impartially, showing no favor toward or prejudice  
8           against any person. A public servant shall not give or represent an ability to  
9           give preference or special treatment to any person because of the person's  
10           wealth, position, or status or because of any personal relationship with the  
11           public servant. When permitted by law and written policy or rule, a public  
12           servant may give preference to designated persons.

13           (6) Misuse of position. A public servant shall not use his or her official  
14           position for personal or financial gain.

15           (7) Misuse of information. A public servant shall not use nonpublic  
16           government information or confidential information acquired during the course  
17           of State service for personal or financial gain or for the personal or financial  
18           gain of any other person.

19           (8) Misuse of government resources. A public servant shall not make  
20           use of State materials, funds, property, personnel, facilities, or equipment, or  
21           permit another person to do so, for any purpose other than for official State



1 business unless the use is expressly permitted or required by law or by a  
2 written agency, departmental, or institutional policy or rule. A public servant  
3 shall not engage in or direct another person to engage in work other than the  
4 performance of official duties during working hours, except as permitted or  
5 required by law or by written agency, departmental, or institutional policy or  
6 rule.

7 (9) Gifts.

8 (A) Gifts prohibited. Unless covered by an exception, a public  
9 servant shall not:

10 (i) accept a gift under circumstances that could reasonably be  
11 inferred as accepting a gift that is intended to influence the public servant in  
12 the public servant's performance of official duties;

13 (ii) use or permit the use of the public servant's government  
14 position or any authority associated with public office to solicit or coerce the  
15 offering of a gift;

16 (iii) accept gifts from the same or different sources on a basis so  
17 frequent that a reasonable person would be led to believe the public servant is  
18 using the public servant's office for personal gain;

19 (iv) accept a gift in violation of an applicable law, rule, policy, or  
20 executive order; or

1                   (v) directly or indirectly solicit a gift from a prohibited source or  
2                   solicit a gift to be given because of the public servant's official position.

3                   (B) Gift exceptions.

4                   (i) Gifts of \$20.00 or less. A public servant may accept  
5                   unsolicited gifts having an aggregate market value of \$20.00 or less per source  
6                   per occasion, provided that the aggregate market value of individual gifts  
7                   received from any one person under the authority of this subdivision (i) does  
8                   not exceed \$50.00 in a calendar year. This exception does not apply to gifts of  
9                   cash or of investment interests such as stock, bonds, or certificates of deposit.

10                  Where the market value of a gift or the aggregate market value of gifts offered  
11                  on any single occasion exceeds \$20.00, the public servant shall not pay the  
12                  excess value over \$20.00 in order to accept that portion of the gift or those  
13                  gifts worth \$20.00. Where the aggregate value of tangible items offered on a  
14                  single occasion exceeds \$20.00, the public servant may decline any distinct  
15                  and separate item in order to accept those items aggregating \$20.00 or less.

16                  (ii) Personal gifts. A public servant may accept a gift given by an  
17                  individual under circumstances that make it clear that the gift is motivated by  
18                  an outside relationship, family relationship, or personal friendship rather than  
19                  the position of the public servant. Relevant factors in making such a  
20                  determination include the history and nature of the relationship and whether  
21                  the person, family member, or a friend personally pays for the gift.

1                   (iii) Event attendance. A public servant may accept a gift of  
2                   attendance to training or similar events approved by the public servant's  
3                   supervisor and determined to be in the interest of the public servant's agency  
4                   or department.

5                   (iv) Otherwise permitted by law. A public servant may accept a  
6                   gift where expressly permitted to do so under State law.

7                   (10) Unauthorized commitments. A public servant shall not make  
8                   unauthorized commitments or promises of any kind purporting to bind State  
9                   government.

10                  (11) Employment restrictions.

11                  (A) Outside employment. A public servant shall not seek or engage  
12                  in outside employment or activities that are inconsistent, incompatible, or in  
13                  conflict with the public servant's official duties.

14                  (B) Post-government employment.

15                  (i) Executive officers. Executive officers shall comply with the  
16                  post-government employment restrictions prescribed in 3 V.S.A. § 267 and  
17                  2 V.S.A. § 266(b) and (c).

18                  (ii) Legislators. Legislators shall comply with the post-  
19                  government employment restrictions prescribed in 2 V.S.A. § 266(b).

20                  (iii) Legislative Branch employees. Except as permitted in  
21                  subdivision (iv) of this subdivision (B), a former Legislative Branch employee

1 shall not, for one year after leaving State service, be an advocate for anyone,  
2 other than the State, for compensation before the General Assembly or any of  
3 its subparts or the office in which the Legislative Branch employee served at  
4 the time of termination of State service concerning any matter in which the  
5 State has a direct and substantial interest.

6 (iv) Contracting exception. The limitations in subdivisions (i)  
7 through (iii) of this subdivision (B) do not apply to individuals providing  
8 information or services to the State pursuant to contracts of the State unless the  
9 public servant is otherwise prohibited from doing so by State or federal law.

10 (v) Representation restrictions. A public servant shall not, after  
11 termination of State service or employment, knowingly make with the intent to  
12 influence any communication or appearance before any entity of the State on  
13 behalf of any person other than the State in connection with any investigation,  
14 application, request for a ruling or determination, rulemaking, contract,  
15 controversy, claim, charge, accusation, arrest, quasi-judicial, judicial, or other  
16 proceeding:

17 (I) in which the State is a party or has a direct and substantial  
18 interest;

19 (II) in which the public servant participated personally and  
20 substantially as a public servant; and

1                   (III) that involved the same party or parties as at the time of  
2 such participation.

3                   (12) Compliance with laws, rules, and policies. A public servant shall  
4 comply with applicable State and federal laws and regulations, including anti-  
5 discrimination and equal opportunity laws, and comply with applicable  
6 governmental codes of conduct. A public servant shall comply with any other  
7 applicable rules or policies established by executive order, agency rule, or  
8 policy.

9                   (d) Whistleblower protections for ethics complaints. Consistent with  
10 3 V.S.A. § 971 et seq., a public servant shall be free to disclose waste, fraud,  
11 abuse of authority, violations of law, or violations of this or other applicable  
12 codes regarding ethical conduct to the State Ethics Commission without fear of  
13 reprisal, intimidation, or retaliation.

14                   (e) Mandatory ethics education and training. Within the first 120 days of  
15 public service, a public servant shall engage in ethics training, which may be in  
16 person or online. Completion of ethics training shall be documented by the  
17 department where the public servant is employed. A public servant shall  
18 participate in continuing ethics education, which may be in person or online, at  
19 least once every three years thereafter. Approved continuing ethics education  
20 providers are the State Ethics Commission, the Department of Human  
21 Resources – Center for Achievement in Public Service (CAPS), the Vermont

1 House of Representatives Ethics Panel for the House of Representatives, the  
2 Vermont Senate Ethics Panel for the Senate, and any education providers  
3 approved by the State Ethics Commission. Copies of ethics training materials  
4 by ethics education providers shall be provided to the State Ethics  
5 Commission. On request, the State Ethics Commission may collaborate with  
6 or assist ethics education providers.

7 Sec. 3. EFFECTIVE DATE

8 This act shall take effect on July 1, 2022.