

1 TO THE HONORABLE SENATE:

2 The Committee on Government Operations to which was referred House
3 Bill No. 135 entitled “An act relating to the State Ethics Commission”
4 respectfully reports that it has considered the same and recommends that the
5 Senate propose to the House that the bill be amended by striking out all after
6 the enacting clause and inserting in lieu thereof the following:

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

8 CHAPTER 31. GOVERNMENTAL ETHICS

9 * * *

10 Subchapter 2. Disclosures

11 § 1211. EXECUTIVE OFFICERS; ~~BIENNIAL~~ ANNUAL DISCLOSURE

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

13 (B) are at least 18 years of age;

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

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

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

20 (2) “Lobbyist” and “lobbying firm” shall have the same meanings as in
21 2 V.S.A. § 261.

1 § 1212. COMMISSION MEMBERS AND EXECUTIVE DIRECTOR;

2 ~~BIENNIAL~~ ANNUAL DISCLOSURE

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

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

12 § 1213. DISCLOSURES; GENERALLY

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

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

19 Subchapter 3. State Ethics Commission

20 § 1221. STATE ETHICS COMMISSION

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

8 (b) Membership.

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

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

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

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

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

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

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

3 (3) A member shall not:

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

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

9 (C) be a lobbyist;

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

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

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

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

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

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

8 (c) Executive Director.

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

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

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

17 (e) Meetings. Meetings of the Commission:

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

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

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

2 (f) Reimbursement. Each member of the Commission shall be entitled to
3 per diem compensation and reimbursement of expenses pursuant to 32 V.S.A.
4 § 1010.

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6 § 1223. PROCEDURE FOR HANDLING COMPLAINTS

7 (a) Accepting complaints.

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

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

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

18 (1) Governmental conduct regulated by law.

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

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

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

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

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

14 (3) Campaign finance.

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

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

1 (4) Legislative and Judicial Branches; attorneys.

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

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

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

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

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

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

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 § 1224. COMMISSION ETHICS TRAINING

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

12 § 1225. EXECUTIVE DIRECTOR GUIDANCE AND ADVISORY
13 OPINIONS

14 (a) Guidance.

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

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

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

7 (b) Advisory opinions.

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

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

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

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

1 § 1226. COMMISSION REPORTS

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

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

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

12 (3) Recommendations. Any recommendations for legislative action to
13 address State governmental ethics or provisions of campaign finance law.
14 Sec. 2. 2017 Acts and Resolves No. 79, Sec. 13, as amended by 2020 Acts and
15 Resolves No. 120, Sec. A.8 is further amended to read:

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

18 (a) Surcharge.

19 (1) Notwithstanding the provisions of 3 V.S.A. § 2283(c) setting forth
20 the purpose and rate of charges collected in the Human Resource Services
21 Internal Service Fund, in fiscal year 2018 and thereafter, a surcharge of up to

1 2.3 percent, but no greater than the cost of the activities of the State Ethics
2 Commission set forth in Sec. 7 of this act, on the per-position portion of the
3 charges authorized in 3 V.S.A. § 2283(c)(2) shall be assessed to all Executive
4 Branch agencies, departments, and offices and shall be paid by all assessed
5 entities solely with State funds.

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

10 (b) Repeal. This section shall be repealed on ~~June 30, 2024~~ July 1, 2022.

11 Sec. 3. IMPLEMENTATION OF STAGGERED FIVE-YEAR TERMS

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

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

19 (2) Following the conclusion of the current term of the Board of
20 Directors of the Vermont Human Resource Association appointment on
21 December 31, 2022, the subsequent SHRM (Society of Human Resource

1 Management) Vermont State Council appointment shall be for a two-year term
2 ending on December 31, 2024.

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

5 The Executive Director, with the consent of the State Ethics Commission, is
6 authorized to establish one new exempt 0.5 full-time equivalent Administrative
7 Assistant position for the efficient administration of the Commission.

8 Sec. 5. EFFECTIVE DATE

9 This act shall take effect on passage.

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17 (Committee vote: _____)

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Senator _____

FOR THE COMMITTEE