

1 TO THE HONORABLE SENATE:

2 The Committee on Government Operations to which was referred Senate
3 Bill No. 171 entitled “An act relating to adoption of a State code of ethics”
4 respectfully reports that it has considered the same and recommends that the
5 bill be amended by striking out all after the enacting clause and inserting in
6 lieu thereof the following:

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

8 Subchapter 1. General Provisions; State Code of Ethics

9 § 1201. DEFINITIONS

10 As used in this chapter:

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

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

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

18 (4) “Domestic partner” means an individual in an enduring domestic
19 relationship of a spousal nature with the Executive officer or the public
20 servant, provided the individual and Executive officer or public servant:

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

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

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

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

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

8 ~~(3)~~(5) “Executive officer” means:

9 (A) a State officer; or

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

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

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

16 ~~(5)~~(6) “Governmental conduct regulated by law” means conduct by an
17 individual in regard to the operation of State government that is restricted or
18 prohibited by law and includes:

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

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

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

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

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

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

7 (G) engaging in retaliatory action due to a State employee’s
8 involvement in a protected activity pursuant to chapter 27, subchapter 4A of
9 this title;

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

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

14 (7) “Immediate family” means an individual’s spouse, domestic partner,
15 or civil union partner; child or foster child; sibling; parent; or such relations by
16 marriage or by civil union or domestic partnership; or an individual claimed as
17 a dependent for federal income tax purposes.

18 ~~(6)~~(8) “Lobbyist” and “lobbying firm” shall have the same meaning as
19 in 2 V.S.A. § 261.

20 (9) “Person” means any individual, group, business entity, association,
21 or organization.

1 ~~(7)~~(10) “Political committee” and “political party” shall have the same
2 meanings as in 17 V.S.A. § 2901.

3 ~~(8)~~(11) “State officer” means the Governor, Lieutenant Governor,
4 Treasurer, Secretary of State, Auditor of Accounts, or Attorney General.

5 § 1202. STATE CODE OF ETHICS; APPLICABILITY

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

9 Applicability.

10 (1) Unless excluded under this section, the Code of Ethics applies to all
11 individuals elected or appointed to serve as officers of the State, all individuals
12 elected or appointed to serve as members of the General Assembly, all State
13 employees, all individuals appointed to serve on State boards and
14 commissions, and individuals who in any other way are authorized to act or
15 speak on behalf of the State. This code refers to them all as “public servants.”

16 (2) The Code of Ethics established by this section does not prohibit
17 branches of State government, agencies, or departments from adopting
18 additional provisions regarding ethical conduct not covered by this Code of
19 Ethics or provisions that exceed the requirements of this Code of Ethics.

20 (3) The application of this Code of Ethics does not in any way abrogate
21 or alter the sole authority of each house of the General Assembly to judge the

1 elections and qualifications of its own members under Chapter II, Sections 14
2 and 19 of the Vermont Constitution.

3 § 1203. CONFLICT OF INTEREST; APPEARANCE OF CONFLICT OF
4 INTEREST

5 (a) Conflict of interest; appearance of conflict of interest.

6 (1) In the public servant’s official capacity, the public servant shall
7 avoid any conflict of interest or the appearance of a conflict of interest. The
8 appearance of a conflict shall be determined from the perspective of a
9 reasonable individual with knowledge of the relevant facts.

10 (2) Except as otherwise provided in subsections (b) and (c) of this
11 section, when confronted with a conflict of interest, a public servant shall
12 recuse themselves from the matter and not take further action.

13 (3) As used in this section, “conflict of interest” means a direct or
14 indirect interest of a public servant or such an interest, known to the public
15 servant, of a member of the public servant’s immediate family or household, or
16 of a business associate, in the outcome of a particular matter pending before
17 the public servant or the public servant’s public body, or that is in conflict with
18 the proper discharge of the public servant’s duties. “Conflict of interest” does
19 not include any interest that is not greater than that of other individuals
20 generally affected by the outcome of a matter.

1 (b) Course of action.

2 (1) Legislative Branch. A member of the General Assembly shall
3 comply with Legislative Branch rules and policies regarding the course of
4 action a public servant may take when confronted with a conflict of interest, or
5 the appearance of a conflict of interest, that is related to core legislative
6 functions or duties.

7 (2) Judicial Branch. A judicial officer shall comply with the Vermont
8 Rules of Judicial Conduct regarding the course of action judicial officer may
9 take when confronted with a conflict of interest, or the appearance of a conflict
10 of interest, that falls under the Rules of Judicial Conduct.

11 (3) Government attorneys. A public servant who is a licensed,
12 practicing attorney shall comply with the Vermont Rules of Professional
13 Conduct regarding the course of action the attorney may take when confronted
14 when a conflict of interest, or the appearance of a conflict of interest, that falls
15 under the Vermont Rules of Professional Conduct.

16 (4) Public servants; other. Any public servant facing a conflict of
17 interest not covered by subdivisions (b)(1)–(3) of this section shall comply
18 with requirements prescribed in this subdivision (b)(4). Each time a public
19 servant is confronted with a conflict of interest, other than that for which the
20 public servant’s action is solely ministerial or clerical, the public servant shall
21 either make a public statement, which may consist of a statement made to the

1 public servant's immediate supervisor, recusing themselves from the matter or,
2 if the public servant chooses to proceed with the matter, prepare a written
3 statement regarding the nature of the conflict. A public servant may request
4 either guidance or an advisory opinion from the State Ethics Commission in
5 making an initial determination whether a conflict of interest exists, or whether
6 good cause to proceed exists as set forth in subsection (c) of this section. Once
7 recused, a public servant shall not in any way participate in or act to influence
8 a decision regarding the matter. If the public servant chooses to proceed with
9 the matter, the public servant's prepared written statement shall:

10 (A) describe the matter requiring action;

11 (B) disclose the nature of the potential conflict or actual conflict of
12 interest;

13 (C) explain why good cause, as set forth in subsection (c) of this
14 section, exists so that the public servant can take action in the matter fairly,
15 objectively, and in the public interest;

16 (D) include sufficient detail so that the matter may be understood by
17 the public; and

18 (E) be filed in accordance with the policies and procedures set forth
19 by the agency or entity governing the matter in question, including any
20 requirement that the statement be made public.

1 (c) Good cause. As used in this section, “good cause to proceed” may
2 include any of the following:

3 (1) the identified conflict or potential conflict is de minimis in nature;

4 (2) the conflict is amorphous, intangible, or otherwise speculative; or

5 (3) the public servant cannot legally or practically delegate the matter.

6 (d) Confidential information. Nothing in this section shall require a public
7 servant to disclose confidential information or information that is otherwise
8 privileged under law.

9 § 1203a. DIRECTING UNETHICAL CONDUCT

10 A public servant shall not direct another person to act in a manner that
11 would be unethical for the public servant or the other person to act. A public
12 servant who has a conflict of interest shall not direct others to act to the public
13 servant’s benefit where such action would be a violation of the Code of Ethics
14 if the public servant were to perform the act.

15 § 1203b. APPEARANCE OF UNETHICAL CONDUCT

16 A public servant shall avoid any actions creating the appearance that the
17 public servant is violating the Code of Ethics. Whether particular
18 circumstances create an appearance that the Code of Ethics have been violated
19 shall be determined from the perspective of a reasonable individual with
20 knowledge of the relevant facts.

1 § 1203c. PREFERENTIAL TREATMENT

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

9 § 1203d. MISUSE OF POSITION

10 A public servant shall not use the public servant’s official position for
11 personal or financial gain.

12 § 1203e. MISUSE OF INFORMATION

13 A public servant shall not use nonpublic government information or
14 confidential information acquired during the course of State service for
15 personal or financial gain or for the personal or financial gain of any other
16 person.

17 § 1203f. MISUSE OF GOVERNMENT RESOURCES

18 A public servant shall not make use of State materials, funds, property,
19 personnel, facilities, or equipment, or permit another person to do so, for any
20 purpose other than for official State business unless the use is expressly
21 permitted or required by law or by a written agency, departmental, or

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

5 § 1203g. GIFTS

6 (a) Gift limitations and exceptions. A public servant shall not solicit or
7 accept a gift unless permitted under this section. For purposes of this
8 subchapter, “gift” means anything of value, tangible or intangible, that is given
9 for less than adequate consideration. A public servant may accept:

10 (1) A devise or inheritance. A public servant may accept a devise or
11 inheritance.

12 (2) Gifts to the State. A public servant may accept goods or services
13 that are provided to a State agency for use on State agency property or for use
14 by the public servant while serving in an official capacity.

15 (3) Ceremonial awards. A public servant may accept a certificate,
16 plaque, or other ceremonial award, provided the cost does not exceed the limit
17 established pursuant to subsection (b) of this section.

18 (4) Rebates, discounts, and promotions. A public servant may accept a
19 rebate, discount, or promotional item that is available to the general public or
20 to a definable subset of the general public.

1 (5) Printed or recorded material. A public servant may accept printed or
2 recorded informational or educational material germane to State action or
3 functions.

4 (6) Food or beverages. A public servant may accept food or beverages,
5 or both, under the following circumstances:

6 (A) The food or beverage, or both, is consumed on an occasion or
7 occasions at which the person paying, directly or indirectly, for the food or
8 beverage or the person’s representative is in attendance, provided the cost does
9 not exceed the limit established pursuant to subsection (b) of this section.

10 (B) The food or beverage, or both, is incidental to the performance of
11 a legitimate State function.

12 (C) The food or beverage, or both, is provided at a charitable,
13 cultural, political, or civic event at which the public servant participates in the
14 public servant’s official capacity.

15 (7) Admission fees and tickets. A public servant may accept tickets or
16 admission to a charitable, cultural, political, or civic event at which a public
17 servant participates in the public servant’s official capacity, provided such
18 tickets or admission is provided by the primary sponsoring entity.

19 (8) Private employment gifts. A public servant may accept anything of
20 value provided by an employer of the public servant, provided such benefits
21 are customarily and ordinarily provided to others in similar circumstances.

1 (9) Public-servant-to-public-servant gifts. A public servant may accept
2 a gift from another public servant under the following circumstances:

3 (A) If the recipient is not in a supervisor-supervisee relationship with
4 the giver, the public servant may accept a gift for a holiday or occasion of
5 significance.

6 (B) If the recipient is in a supervisor-supervisee relationship, the
7 public servant may accept a gift for a holiday or occasion of significance,
8 provided the value does not exceed the limit established pursuant to subsection
9 (b) of this section.

10 (10) Training or education. A public servant may accept attendance to
11 training or similar events determined to be in the interest of the public
12 servant’s agency or department.

13 (11) Gifts of de minimis value. A public servant may accept an
14 unsolicited gift having a de minimis market value as established pursuant to
15 subsection (b) of this section.

16 (12) Personal gifts. A public servant may accept gifts clearly motivated
17 by an outside relationship, family relationship, or personal friendship rather
18 than the position of the public servant. Relevant factors in making such a
19 determination include the history and nature of the relationship and whether
20 the individual, family member, or a friend personally pays for the gift.

1 (13) Loans. A public servant may accept a commercially reasonable
2 loan made on terms not more favorable than loans made in the ordinary course
3 of business.

4 (14) Gifts otherwise permitted and legal. A public servant may accept a
5 gift that is otherwise expressly permitted under State law.

6 (b) Gift valuation. For purposes of this subchapter, the value or cost limit
7 for gifts described in subsection (a) of this section shall be:

8 (1) Beginning on July 1, 2022:

9 (A) Ceremonial awards: Less than \$100.00.

10 (B) Food or beverages, or both: Less than \$100.00
11 in the aggregate per recipient, per source, in a calendar year.

12 (C) A supervisor-supervisee relationship gift: Less than \$100.00
13 for any single gift, and the value of all gifts does not exceed \$200.00 in the
14 aggregate per year.

15 (D) De minimis gift: \$50.00 or less per
16 source per occasion, provided that the aggregate market value of individual
17 gifts received from any one person does not exceed \$150.00 in a calendar year.

18 (2) On or after July 1, 2026, the State Ethics Commission may increase
19 the value or cost limit set in subdivision (1) of this subsection, provided:

20 (A) the State Ethics Commission presents its proposed increase to the
21 House and Senate Committees on Government Operations at least 180 days

1 prior to proposed implementation and after consultation with the Department
2 of Human Resources and the Judicial Branch;

3 (B) the cost or value limit is not increased more than once in a five-
4 year period; and

5 (C) the increased cost or value limit is posted on the State Ethics
6 Commission website and the Commission sends a notice of increase to public
7 servants not less than 60 days prior to the increase's effective date.

8 § 1203h. UNAUTHORIZED COMMITMENTS

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

11 § 1203i. EMPLOYMENT RESTRICTIONS

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

15 (b) Post-government employment.

16 (1) Executive officers. Executive officers shall comply with the post-
17 government employment restrictions prescribed in section 267 of this title and
18 2 V.S.A. § 266(b) and (c).

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

1 (3) Legislative Branch employees. Except as permitted in subdivision
2 (4) of this subsection, for one year after leaving office, a former Legislative
3 Branch employee may not, for compensation, appear before the General
4 Assembly or its subparts, or the office in which the employee served in at the
5 time of leaving service, to advocate for anyone other than the State, concerning
6 any matter in which the State has a direct and substantial interest.

7 (4) Contracting exception. The limitations in subdivisions (1) through
8 (3) of this subsection do not apply to individuals providing information or
9 services to the State pursuant to contracts of the State unless the public servant
10 is otherwise prohibited from doing so by State or federal law.

11 (5) Representation restrictions. After leaving State service or
12 employment, a public servant shall not knowingly, with the intent to advocate
13 for an outcome of an investigation; application; ruling; license; contract; claim;
14 rulemaking; charge; arrest; quasi-judicial or judicial proceeding, communicate
15 with or appear before the State on matters involving specific parties in which
16 the employee participated personally and substantially during government
17 service and in which the State is a party or has a direct and substantial interest.

18 § 1203j. COMPLIANCE WITH LAWS, RULES, AND POLICIES

19 A public servant shall comply with applicable State and federal laws and
20 regulations, including anti-discrimination and equal opportunity laws, and
21 comply with applicable governmental codes of conduct. A public servant shall

1 comply with any other applicable rules or policies established by executive
2 order, agency rule, or policy.

3 § 1204. WHISTLEBLOWER PROTECTIONS FOR ETHICS COMPLAINTS

4 Consistent with section 971–978 of this title, a public servant shall be free
5 to disclose waste, fraud, abuse of authority, violations of law, or violations of
6 this or other applicable codes regarding ethical conduct to the State Ethics
7 Commission without fear of reprisal, intimidation, or retaliation.

8 § 1205. MANDATORY ETHICS EDUCATION AND TRAINING

9 Within the first 120 days of public service, a public servant shall engage in
10 ethics training, which may be in person or online. Completion of ethics
11 training shall be documented by the department where the public servant is
12 employed. A public servant shall participate in continuing ethics education,
13 which may be in person or online, at least once every three years thereafter.
14 Approved continuing ethics education providers are the State Ethics
15 Commission, the Department of Human Resources – Center for Achievement
16 in Public Service (CAPS), the Vermont House of Representatives Ethics Panel
17 for the House of Representatives, the Vermont Senate Ethics Panel for the
18 Senate, and any education providers approved by the State Ethics Commission.
19 Copies of ethics training materials by ethics education providers shall be
20 provided to the State Ethics Commission. On request, the State Ethics
21 Commission may collaborate with or assist ethics education providers.

1 Sec. 2. REPEAL

2 3 V.S.A. § 1211(e) is repealed.

3 Sec. 3. EFFECTIVE DATE

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

5

6 (Committee vote: _____)

7

8

Senator _____

9

FOR THE COMMITTEE