

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) “Conflict of interest” means an interest, direct or indirect, financial
19 or otherwise, of a public servant or such an interest, known to the public
20 servant, of a member of the public servant’s immediate family or household, or
21 of a business associate, in the outcome of a particular matter pending before

1 the public servant or the public servant’s public body, or that is in conflict with
2 the proper discharge of the public servant’s duties. “Conflict of interest” does
3 not include any interest that is not greater than that of other individuals
4 generally affected by the outcome of a matter, such as a policyholder in an
5 insurance company or a depositor in a bank.

6 (5) “Domestic partner” means an individual in an enduring domestic
7 relationship of a spousal nature with the Executive officer or the public
8 servant, provided the individual and Executive officer or public servant:

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

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

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

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

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

17 ~~(3)~~(6) “Executive officer” means:

18 (A) a State officer; or

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

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

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

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

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

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

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

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

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

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

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

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

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

3 (8) “Immediate family” means an individual’s spouse, domestic partner,
4 or civil union partner; child or foster child; sibling; parent; or such relations by
5 marriage or by civil union or domestic partnership; or an individual claimed as
6 a dependent for federal income tax purposes.

7 ~~(6)~~(9) “Lobbyist” and “lobbying firm” shall have the same meaning as
8 in 2 V.S.A. § 261.

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

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

13 ~~(8)~~(12) “State officer” means the Governor, Lieutenant Governor,
14 Treasurer, Secretary of State, Auditor of Accounts, or Attorney General.

15 § 1202. STATE CODE OF ETHICS; APPLICABILITY; EXCLUSIONS

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

19 (a) Applicability.

20 (1) Unless excluded under this section, the Code of Ethics applies to all
21 individuals elected or appointed to serve as officers of the State, all individuals

1 elected or appointed to serve as members of the General Assembly, all State
2 employees, all individuals appointed to serve on State boards and
3 commissions, and individuals who in any other way are authorized to act or
4 speak on behalf of the State. This code refers to them all as “public servants.”

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

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

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

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

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

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

19 § 1203. CONFLICT OF INTEREST

20 (a) Course of action. Each time a public servant is confronted with a
21 conflict of interest, the public servant shall either make a public statement

1 recusing themselves from the matter or, if the public servant chooses to
2 proceed with the matter, prepare a written statement regarding the nature of the
3 conflict. A public servant may request either guidance or an advisory opinion
4 from the State Ethics Commission in making an initial determination whether a
5 conflict of interest exists, or whether good cause to proceed exists as set forth
6 in subsection (b) of this section. If the public servant chooses to proceed with
7 the matter, the public servant’s prepared written statement shall:

8 (1) describe the matter requiring action;

9 (2) disclose the nature of the potential conflict or actual conflict of
10 interest;

11 (3) explain why good cause, as set forth in subsection (b) of this section,
12 exists so that the public servant can take action in the matter fairly, objectively,
13 and in the public interest;

14 (4) include sufficient detail so that the matter may be understood by the
15 public; and

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

19 (b) Good cause. As used in this section, “good cause to proceed” may
20 include any of the following:

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

- 1 (2) the action to be taken is ministerial or clerical;
- 2 (3) the conflict is amorphous, intangible, or otherwise speculative; or
- 3 (4) the public servant cannot legally or practically delegate the matter.

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

6 § 1203a. DIRECTING UNETHICAL CONDUCT

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

12 § 1203b. APPEARANCE OF UNETHICAL CONDUCT

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

18 § 1203c. PREFERENTIAL TREATMENT

19 A public servant in the course of conducting State business shall act
20 impartially, showing no favor toward or prejudice against any person. A
21 public servant shall not give or represent an ability to give preference or

1 special treatment to any person because of the person’s wealth, position, or
2 status or because of any personal relationship with the public servant. When
3 permitted by law and written policy or rule, a public servant may give
4 preference to designated persons.

5 § 1203d. MISUSE OF POSITION

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

8 § 1203e. MISUSE OF INFORMATION

9 A public servant shall not use nonpublic government information or
10 confidential information acquired during the course of State service for
11 personal or financial gain or for the personal or financial gain of any other
12 person.

13 § 1203f. MISUSE OF GOVERNMENT RESOURCES

14 A public servant shall not make use of State materials, funds, property,
15 personnel, facilities, or equipment, or permit another person to do so, for any
16 purpose other than for official State business unless the use is expressly
17 permitted or required by law or by a written agency, departmental, or
18 institutional policy or rule. A public servant shall not engage in or direct
19 another person to engage in work other than the performance of official duties
20 during working hours, except as permitted or required by law or by written
21 agency, departmental, or institutional policy or rule.

1 § 1203g. GIFTS

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

6 (1) A devise or inheritance. A public servant may accept a devise or
7 inheritance.

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

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

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

17 (5) Printed or recorded material. A public servant may accept printed or
18 recorded informational or educational material germane to State action or
19 functions.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

4 § 1203h. UNAUTHORIZED COMMITMENTS

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

7 § 1203i. EMPLOYMENT RESTRICTIONS

8 (a) Outside employment. A public servant shall not seek or engage in
9 outside employment or activities that are inconsistent, incompatible, or in
10 conflict with the public servant’s official duties.

11 (b) Post-government employment.

12 (1) Executive officers. Executive officers shall comply with the post-
13 government employment restrictions prescribed in section 267 of this title and
14 2 V.S.A. § 266(b) and (c).

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

17 (3) Legislative Branch employees. Except as permitted in subdivision
18 (4) of this subsection, a former Legislative Branch employee shall not, for one
19 year after leaving State service, be an advocate for anyone, other than the
20 State, for compensation before the General Assembly or any of its subparts or
21 the office in which the Legislative Branch employee served at the time of

1 termination of State service concerning any matter in which the State has a
2 direct and substantial interest.

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

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

14 (A) in which the State is a party or has a direct and substantial
15 interest;

16 (B) in which the public servant participated personally and
17 substantially as a public servant; and

18 (C) that involved the same party or parties as at the time of such
19 participation.

1 § 1203j. COMPLIANCE WITH LAWS, RULES, AND POLICIES

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

7 § 1204. WHISTLEBLOWER PROTECTIONS FOR ETHICS COMPLAINTS

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

12 § 1205. MANDATORY ETHICS EDUCATION AND TRAINING

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

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

5 Sec. 2. REPEAL

6 3 V.S.A. § 1211(e) is repealed.

7 Sec. 3. EFFECTIVE DATE

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

9

10 (Committee vote: _____)

11

12

Senator _____

13

FOR THE COMMITTEE