

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” shall and “lobbying firm” have the same meaning
19 meanings as 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 personnel policies regarding ethical conduct not covered by this
19 Code of Ethics or provisions that exceed the requirements of this Code of
20 Ethics. Nothing herein shall be interpreted to require a lawyer or judicial
21 officer to violate their respective professional codes of conduct.

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

5 (4) The application of this Code of Ethics does not in any way abrogate
6 or alter the Vermont Supreme Court’s constitutional authority under Chapter
7 II, Section 30 of the Vermont Constitution.

8 § 1203. CONFLICT OF INTEREST; APPEARANCE OF CONFLICT OF
9 INTEREST

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

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

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

18 (3) As used in this section, “conflict of interest” means a direct or
19 indirect interest 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.

5 (b) Course of action.

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

11 (2) Judicial Branch. A judicial officer shall comply with the Vermont
12 Code of Judicial Conduct regarding the course of action a judicial officer may
13 take when confronted with a conflict of interest, or the appearance of a conflict
14 of interest, that falls under the Code of Judicial Conduct, including in
15 situations where a conflict of interest, or the appearance of a conflict of
16 interest, falls under both the Vermont Code of Judicial Conduct and the Code
17 of Ethics.

18 (3) Government attorneys. A public servant who is a licensed attorney
19 shall comply with the Vermont Rules of Professional Conduct regarding the
20 course of action the attorney may take when confronted with a conflict of
21 interest, or the appearance of a conflict of interest, that falls under the Vermont

1 Rules of Professional Conduct, including situations where a conflict of interest,
2 or the appearance of a conflict of interest, falls under both the Vermont Rules
3 of Professional Conduct and the Code of Ethics.

4 (4) Public servants; other. Any public servant facing a conflict of
5 interest not covered by subdivisions (1)–(3) of this subsection shall comply
6 with requirements prescribed in this subdivision. Each time a public servant is
7 confronted with a conflict of interest, other than that for which the public
8 servant’s action is solely ministerial or clerical, the public servant shall either
9 make a public statement, which may consist of a statement made to the public
10 servant’s immediate supervisor, recusing themselves from the matter or, if the
11 public servant chooses to proceed with the matter, prepare a written statement
12 regarding the nature of the conflict. A public servant may request either
13 guidance or an advisory opinion from the State Ethics Commission in making
14 an initial determination whether a conflict of interest exists, or whether good
15 cause to proceed exists as set forth in subsection (c) of this section. Once
16 recused, a public servant shall not in any way participate in or act to influence
17 a decision regarding the matter. If the public servant chooses to proceed with
18 the matter, the public servant’s prepared written statement shall:

19 (A) describe the matter requiring action;

20 (B) disclose the nature of the potential conflict or actual conflict of
21 interest;

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

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

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

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

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

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

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

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

17 § 1203a. DIRECTING UNETHICAL CONDUCT

18 A public servant shall not direct another person to act in a manner that
19 would be unethical for the public servant or the other person to act. A public
20 servant who has a conflict of interest shall not direct others to act to the public

1 servant’s benefit where such action would be a violation of the Code of Ethics
2 if the public servant were to perform the act.

3 § 1203b. APPEARANCE OF UNETHICAL CONDUCT

4 A public servant shall avoid any actions creating the appearance that the
5 public servant is violating the Code of Ethics. Whether particular
6 circumstances create an appearance that the Code of Ethics have been violated
7 shall be determined from the perspective of a reasonable individual with
8 knowledge of the relevant facts.

9 § 1203c. PREFERENTIAL TREATMENT

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

17 § 1203d. MISUSE OF POSITION

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

1 § 1203e. MISUSE OF INFORMATION

2 A public servant shall not use nonpublic government information or
3 confidential information acquired during the course of State service for
4 personal or financial gain or for the personal or financial gain of any other
5 person.

6 § 1203f. MISUSE OF GOVERNMENT RESOURCES

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

15 § 1203g. GIFTS

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

20 (1) A devise or inheritance. A public servant may accept a devise or
21 inheritance.

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

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

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

10 (5) Printed or recorded material. A public servant may accept printed or
11 recorded informational or educational material germane to State action or
12 functions.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

19 (1) Beginning on July 1, 2022:

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

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

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

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

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

11 (A) the State Ethics Commission presents its proposed increase to the
12 House and Senate Committees on Government Operations at least 180 days
13 prior to proposed implementation and after consultation with the Department
14 of Human Resources and the Judicial Branch;

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

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

1 § 1203h. UNAUTHORIZED COMMITMENTS

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

4 § 1203i. EMPLOYMENT RESTRICTIONS

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

8 (b) Post-government employment.

9 (1) Executive officers. Executive officers shall comply with the post-
10 government employment restrictions prescribed in section 267 of this title and
11 2 V.S.A. § 266(b) and (c).

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

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

20 (4) Contracting exception. The limitations in subdivisions (1) through
21 (3) of this subsection do not apply to individuals providing information or

1 services to the State pursuant to contracts of the State unless the public servant
2 is otherwise prohibited from doing so by State or federal law.

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

11 § 1203j. COMPLIANCE WITH LAWS, RULES, AND POLICIES

12 A public servant shall comply with applicable State and federal laws and
13 regulations, including anti-discrimination and equal opportunity laws, and
14 comply with applicable governmental codes of conduct. A public servant shall
15 comply with any other applicable rules or policies established by executive
16 order, agency rule, or policy.

17 § 1204. WHISTLEBLOWER PROTECTIONS FOR ETHICS COMPLAINTS

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

1 § 1205. MANDATORY ETHICS EDUCATION AND TRAINING

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

16 Sec. 2. REPEAL

17 3 V.S.A. § 1211(e) is repealed.

18 Sec. 3. EFFECTIVE DATE

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

1

2 (Committee vote: _____)

3

4

Senator _____

5

FOR THE COMMITTEE