

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,~~  
19 ~~financial or otherwise, of a public servant or such an interest, known to~~  
20 ~~the public servant, of a member of the public servant’s immediate family~~  
21 ~~or household, or of a business associate, in the outcome of a particular~~

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

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

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

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

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

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

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

18 ~~(3)~~(5) "Executive officer" means:

19 (A) a State officer; or

20 (B) under the Office of the Governor, an agency secretary or deputy  
21 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)~~(6) “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 (7) “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)~~(8) “Lobbyist” and “lobbying firm” shall have the same meaning as  
8 in 2 V.S.A. § 261.

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

11 ~~(7)~~(10) “Political committee” and “political party” shall have the same  
12 meanings as in 17 V.S.A. § 2901.

13 ~~(8)~~(11) “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 additional** provisions regarding the ethical conduct of their  
8 employees **or provisions which exceed the requirements of this Code of**  
9 **Ethics.**

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

14 ~~**(b) Exclusions. The Code of Ethics does not apply to:**~~

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

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

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

1     § 1203. CONFLICT OF INTEREST; **APPEARANCE OF CONFLICT OF**  
2             **INTEREST**

3             **(a) Conflict of interest; appearance of conflict of interest.**

4                 **(1) In the public servant's official capacity, the public servant shall**  
5             **avoid any conflict of interest or the appearance of a conflict of interest.**

6             **The appearance of a conflict shall be determined from the perspective of a**  
7             **reasonable individual with knowledge of the relevant facts.**

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

16            **(b) Course of action.**

17                 **(1) Legislative Branch. A public servant of the Legislative Branch,**  
18             **shall comply with applicable Legislative Branch rules and policies**  
19             **regarding the course of action a public servant may take when confronted**  
20             **with a conflict of interest or the appearance of a conflict of interest.**

1           **(2) Judicial Branch. A public servant of the Judicial Branch shall**  
2           **comply with applicable Judicial Branch Code of Conduct rules and**  
3           **policies regarding the course of action a public servant may take when**  
4           **confronted with a conflict of interest or the appearance of a conflict of**  
5           **interest.**

6           **(3) Government attorneys and licensed professions. A public**  
7           **servant who is a licensed attorney shall comply with the Vermont Rules of**  
8           **Professional Conduct regarding the course of action the attorney may take**  
9           **when confronted with a conflict of interest or the appearance of a conflict**  
10           **of interest. A public servant working in any other licensed profession**  
11           **shall comply with the rules of the licensing entity regarding the course of**  
12           **action the public servant may take when confronted with a conflict of**  
13           **interest or the appearance of a conflict of interest.**

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

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

9 (1) describe the matter requiring action;

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

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

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

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

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



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

2           ~~(2) the action to be taken is ministerial or clerical;~~

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

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

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

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

10           § 1203a. DIRECTING UNETHICAL CONDUCT

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

16           § 1203b. APPEARANCE OF UNETHICAL CONDUCT

17           A public servant shall avoid any actions creating the appearance that the  
18           public servant is violating ~~the law or~~ the Code of Ethics. Whether particular  
19           circumstances create an appearance that ~~the law or~~ the Code of Ethics have  
20           been violated shall be determined from the perspective of a reasonable  
21           individual with 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  
9                   does 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 July 1, 2022:

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

10                   (B) Food or beverages, or both:                   Less than \$50.00  
11           in the aggregate per recipient, per source, in a calendar year.

12                   (C) A supervisor-supervisee relationship gift:                   Less than \$20.00  
13           for any single gift, and the value of all gifts does not exceed \$50.00 in the  
14           aggregate per year.

15                   (D) De minimis gift:                   ~~\$20.00~~ **25.00** or  
16           less per source per occasion, provided that the aggregate market value of  
17           individual gifts received from any one person does not exceed \$100.00 in a  
18           calendar year.

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

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

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

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

10           § 1203h. UNAUTHORIZED COMMITMENTS

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

13           § 1203i. EMPLOYMENT RESTRICTIONS

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

17           (b) Post-government employment.

18           (1) Executive officers. Executive officers shall comply with the post-  
19           government employment restrictions prescribed in section 267 of this title and  
20           2 V.S.A. § 266(b) and (c).

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

3           (3) Legislative Branch employees. Except as permitted in subdivision  
4           (4) of this subsection, a former Legislative Branch employee shall not, for  
5           one year after leaving State service, be an advocate for anyone, other than  
6           the State, for compensation before the General Assembly or any of its  
7           subparts or the office in which the Legislative Branch employee served at  
8           the time of termination of State service concerning any matter in which  
9           the State has a direct and substantial interest. for one year after leaving  
10           office, a former Legislative Branch employee may not, for compensation,  
11           appear before the General Assembly or its subparts, or the office in which  
12           the employee served in at the time of leaving service, to advocate for  
13           anyone other than the State, concerning any matter in which the State has  
14           a direct and substantial interest. [interns/clerks?]

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

19           (5) Representation restrictions. A public servant shall not, after  
20           termination of State service or employment, knowingly make with the  
21           intent to influence any communication or appearance before any entity of



1 ~~the State on behalf of any person other than the State in connection with~~  
2 ~~any investigation, application, request for a ruling or determination,~~  
3 ~~rulemaking, contract, controversy, claim, charge, accusation, arrest,~~  
4 ~~quasi-judicial, judicial, or other proceeding:~~

5 ~~(A) in which the State is a party or has a direct and substantial~~  
6 ~~interest;~~

7 ~~(B) in which the public servant participated personally and~~  
8 ~~substantially as a public servant; and~~

9 ~~(C) that involved the same party or parties as at the time of such~~  
10 ~~participation.~~

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

19 § 1203j. COMPLIANCE WITH LAWS, RULES, AND POLICIES

20 A public servant shall comply with applicable State and federal laws and  
21 regulations, including anti-discrimination and equal opportunity laws, and

1 comply with applicable governmental codes of conduct. A public servant shall  
2 comply with any other applicable rules or policies established by executive  
3 order, agency rule, or policy.

4 § 1204. WHISTLEBLOWER PROTECTIONS FOR ETHICS COMPLAINTS

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

9 § 1205. MANDATORY ETHICS EDUCATION AND TRAINING

10 Within the first 120 days of public service, a public servant shall engage in  
11 ethics training, which may be in person or online. Completion of ethics  
12 training shall be documented by the department where the public servant is  
13 employed. A public servant shall participate in continuing ethics education,  
14 which may be in person or online, at least once every three years thereafter.

15 Approved continuing ethics education providers are the State Ethics  
16 Commission, the Department of Human Resources – Center for Achievement  
17 in Public Service (CAPS), the Vermont House of Representatives Ethics Panel  
18 for the House of Representatives, the Vermont Senate Ethics Panel for the  
19 Senate, **State licensing entities**, and any education providers approved by the  
20 State Ethics Commission. Copies of ethics training materials by ethics  
21 education providers shall be provided to the State Ethics Commission. On

1 request, the State Ethics Commission may collaborate with or assist ethics  
2 education providers.

3 Sec. 2. REPEAL

4 3 V.S.A. § 1211(e) is repealed.

5 Sec. 3. EFFECTIVE DATE

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

7

8 (Committee vote: \_\_\_\_\_)

9

10

\_\_\_\_\_

Senator \_\_\_\_\_

11

FOR THE COMMITTEE