



Members of the Senate Government Operations Committee,

Thank you for your hard work and perseverance in working through S.171 this session. I know this bill is confusing in how it interrelates with existing rules, policies, and practices across different branches of government. It is not always easy to step back and see the broader picture of how these tie together.

I want to reiterate that Campaign for Vermont supports this legislation because it offers a universal set of expectations for public officials. We believe Vermonters deserve something that can be articulated simply and applied universally.

Someone in Committee last week noted that if we took a poll on whether a particular conduct was ethical or not, we would most likely find a consensus, i.e. “you know it when you see it.” This is of course true – unfortunately the nature of legislation is such that we can’t write “feelings” into law. So, the intent of the bill before you is to identify those things which could be interpreted as public officials using their position for personal gain or undue influence. Those definitions can be convoluted at times, and we have seen that reflected in the robust discussions to date.

**There are a few key points in the bill that we want to emphasize:**

1. **All three branches of government should be included.** We recognize there will be some overlap with existing rules in the judiciary and in the legislature, but these issues are not insurmountable. The judiciary has, on-average, a stronger set of rules than what is being proposed here. That is fine and expected for those in certain departments, roles, or occupations. For example, a regulator in DFR will have more stringent rules around financial conflicts than someone in AHS, and that is appropriate. Legislators will have campaign finance laws that others will not have and their legislative duties will be governed by their respective legislative body. All of these are reasonable implementations of a universal code of ethics that dozens of other states have passed. Exempting any one branch undermines the purpose of having a universal code of ethics.

2. **Boards and Commissions.** We believe strongly that most boards and commissions should fall under the jurisdiction of this code of ethics. In fact, many of these members already do. Investigating this issue we found an apparent gap in the existing rules - it appears that only board and commission members nominated or appointed by the Governor are subject to the executive order (EO) on ethics. This means that there are roughly 180 boards or commission that have at least one member subject to this standard, but other members of the same panel are not. For instance, there could be a ten-person board with only two people covered by the EO. This potential disparity exists today and would be remedied by this bill.

We would strongly encourage the inclusion of at least the 180 boards and commissions that have a member nominated or appointed by the Governor, but we would prefer that all boards and commissions be covered. Some of these entities make critical financial and policy decisions.

Take for example:

- a. Green Mountain Care Board
- b. State Board of Education
- c. Vermont State Retirement Board
- d. Public Utilities Commission
- e. Vermont State College Board of Trustees
- f. Vermont Pension Investment Committee
- g. State Police Advisory Commission

It is also important that we note a couple things about how this code of ethics is likely to play out in the real world. This is a complaint-driven process, meaning the Ethics Commission needs to receive a complaint from the general public or a request from a person covered by the code in order to issue recommendations on a matter. Passing this code is not likely to cause a spike in complaints (there are outlets for this already) and the Commission will not be out there looking for violations.

The process this code is asking for is a simple recusal on a matter the public official has decision-making authority over in instances where they may be conflicted. If the public official does not believe that apparent conflict rises to the

level of a real conflict (appearance vs. reality) or that the conflict will not impact their decision-making ability they can file a written statement. A one-page draft of such a statement was shared by the Ethics Commission a couple weeks ago and is a good example of how this might be implemented.

This process should not inhibit the normal functioning of government. The code does not cover ministerial actions but rather decision-making ones. Safeguards such as these protect both the public and the official as they either avoid the appearance of a conflict through recusal or provide an explanation for the reason they are proceeding that can be retained on record. At the end of the day, accountability and transparency protects public officials acting in good faith and also preserves the public's faith in the integrity of our government. A win-win.

There is no enforcement mechanism in this bill (nor should there be at this stage) so we should also remember that the consequences of a potential violation are no greater than the existing penalties in place. If the Commission finds that someone has violated the code of ethics it would be dependent upon another entity to take action to correct that wrong. The Commission has no authority to act unilaterally under this bill and all three branches have procedures to handle these issues

This would also be a good time to reiterate that separation of powers is really a (potential) enforcement issue. The code of ethics can apply universally, but we believe that concerns raised around separation of powers really surround who is enforcing that code, not the code itself. That is an issue for another day.

I want to, again, thank the committee for the time and energy spent on this issue and allowing us to weigh in so readily on this legislation. How this code will apply in individual circumstances will certainly be complicated in some instances. This is why we have an Ethics Commission to sort these things out. We would encourage inviting the Commission and various departments back in a couple years to review how this code has been implemented and smooth out any wrinkles.

Best Regards,

**Ben Kinsley**

Campaign for Vermont

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