



Vermont State Ethics Commission

TO: Senate Committee on Government Operations

FROM: Vermont State Ethics Commission

RE: S. 171, A Proposed State Code of Ethics

DATE: February 15, 2022

On February 11, 2022, in an open hearing, the Senate Committee on Government Operations indicated it had reached a consensus. It intends to abandon the adoption of a comprehensive Statewide Code of Ethics that would apply equally to all branches of government in favor a stripped-down version of the current bill. Each branch of government would then adopt its own code of ethics, interpreting and enforcing it against itself.

The Ethics Commission believes this will create a system that is woefully inadequate to protect both the public and Vermont State employees. Unethical conduct in government is not amorphous or intangible. It can have serious and long-lasting impact on individuals. For example, the [court employee left unemployed and homeless due to racial discrimination](#), or the Department of Corrections employees who quit or transferred to lower paying jobs after experiencing ongoing ethical misconduct, including sexual harassment, by their supervisors. According to a [Burlington Free Press investigation](#), sex discrimination and harassment cases alone have cost Vermonters \$1 million dollars since 2008. It is worth noting that we only know about these instances of misconduct because of the press. How many more are there? Under our current system, there is no way to tell.

The proposed changes to S. 171 would codify into law many of the practices that helped place Vermont at the bottom of the Center for Public Integrity's 2015 State Integrity Investigation. In national rankings by integrity organizations, a crucial element for an effective Code of Ethics is that it apply equally to all. If each branch is left to develop its own ethics policies, the result will be differing rules. Why should the gift rules for a maintenance worker in the Executive Branch be different from a maintenance worker in the Judicial Branch? Further, vesting ethics rule-making authority with each branch ensures that - even within a branch - rules will be fluid and ever-changing: rules will be amended and revised every time new leadership takes over.

The Ethics Commission, which is tasked with training the state and providing advice, would have an impossible task of constantly re-learning and updating all training and advice as the rules shifted. Even if the rules stay stable, the Commission will have difficulties training employees on multiple, differing sets of rules. The Commission is not staffed for this level of work. It currently has one part-time Executive Director, and one part-time administrative assistant. The Commission would need at least three full-time positions to keep up with this increased workload.

This is the very system we were tasked with changing. The same system that allowed the EB-5 fraud to go unchecked over the course of several years – only coming to a halt when the federal government intervened in the form of the SEC and the FBI. Too late for the investors who lost their life savings. Too late for the State employees who were so uncomfortable with what they saw happening around them they left their jobs rather than participate.

The draft Code of Ethics we have been discussing for the last several weeks is the result of years of collaborative research, drafting, and public comment. To gut it now would substitute the judgment of a few for the judgment of many. The reasoned, researched Code presented by the Commission (and amended by the Committee) has the benefit of detailed analysis and public input. It is a solid, balanced Code that provides an understandable and justifiable set of rules for all.

A little more than a week ago, the Committee was confident enough in the draft Code of Ethics to propose a vote. Since that time, the Committee has been inundated with last-minute commentary related to the application of the Code to the Judiciary, much of it inaccurately representing the Code’s provisions, with little opportunity for those with more experience with the Code to correct misinformation. For example, commentary was presented that the Code would prevent State prosecutors from joining a criminal defense firm for a year after leaving government service. This is factually inaccurate. Nowhere does the Code state or imply this. Much time and attention has also been devoted to the argument that attorneys, an elite and well-represented group of professionals who make up a small percentage of State of Vermont employees, should be granted an exemption from the Code of Ethics. Such an exemption would be highly unusual and out of step with national practices. The same thought and attention has not been given to less powerful Vermonters; the low and mid-level State employees and members of the general public who make up the majority of those who turn to the Commission for help - the people who will be most harmed if a true Code of Ethics is not adopted. It is an unfortunate truth that over the last few weeks the public interest has rarely entered in our conversations.

The Ethics Commission supports the draft version of S. 171, the state Code of Ethics dated February 4, 2011, without substantial deviations. We urge the Senate Committee on Government Operations to re-think its sudden departure from a well-established path. A path that has broad bi-partisan support across government. The adoption of a bare-bones code of ethics is no substitute for a comprehensive and uniform code of ethics that applies equally to all three branches of government. It is not sufficient to address governmental ethical misconduct in a meaningful way. It serves only to protect vested interests. Vermonters deserve better. They deserve a system that puts them first.

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