

Summary of S. 171 - An act relating to adoption of a State code of ethics

Prepared by the Vermont Ethics Commission

S. 171 is divided into several distinct substantive sections, all of which are summarized below. The core “**Code of Ethics**” can be found at § 1202 (c) of the Bill (beginning at p. 6, line 1). There are twelve distinct provisions in this section, each of which states a specific ethical expectation for public servants.

The other sections of the bill supplement the Code: **(1) Definitions for use in understanding the Code of Ethics** (“Definitions,” § 1201; p. 1, line 11); **(2) Who is subject to the Code of Ethics** (“Applicability” and “Exclusions,” §§ 1202 (a) and (b); p. 5, line 1); **(3) Protections for whistleblowers** (“Whistleblower protections for ethics complaints,” § 1202 (d); p. 13, line 9); and, **(4) Ethics training and education** (“Mandatory ethics education and training,” § 1202 (e); p. 13, line 14). All are discussed below.

Summary of Sections in S. 171 (in order of substance):

- I. **The Code of Ethics** (§ 1202 (c); beginning at p.6, line 1). The twelve subsections in the Code are:
 1. **Recusal and disclosure for conflicts of interest** (p. 6, line 2): public servants faced with a conflict must publicly recuse themselves from the matter or, if they believe that they may proceed impartially, they must disclose the conflict in writing and explain why they believe they can act impartially. The disclosure is a matter of public record.
 2. **No directing others to act unethically** (p. 7, line 13): public servants cannot direct others to do what they cannot ethically do themselves.
 3. **No participation after recusal due to conflict** (p. 7, line 19): once a public servant recuses because of a conflict, that recusal is full and complete.
 4. **Avoiding appearance of unethical conduct** (p. 8, line 1): public servants should reasonably try to avoid even the appearance of ethical impropriety.
 5. **No improper preferential treatment** (p. 8, line 6): public servants should not show any favoritism or prejudice to anyone in carrying out state work.
 6. **No using state position for improper financial gain** (p. 8, line 13): public servants may not use their positions for improper gain.
 7. **No using state information for improper financial gain** (p. 8, line 15): public servants may not use any nonpublic information of the state’s for improper gain.
 8. **No using state resources for improper financial gain** (p. 8, line 19): public servants must use state equipment and resources only for their intended public purpose.
 9. **Limitations on gifts to public servants** (p. 9, line 7): with limited exception, public servants may not solicit or accept gifts in the course of their state employment. Gifts under \$20 are excluded, if received only once a year per source. Public servants may also accept attendance at trainings or

similar events that are in the state's interest and approved by supervisors. Gifts from friends and family are allowed.

10. No making unauthorized commitments on behalf of the state (p. 11, line 7): public servants may not commit the state, or any of its resources, unless authorized.
11. Limits on other employment (p. 11, line 10): public servants may not take outside jobs that conflict with state duties; and, after leaving state service, may not turn around and lobby their former agency, or "switch sides" on a matter on which they were working.
12. Must comply with all other relevant rules not included in the Code (p. 13, line 3).

II. **Definitions for use in understanding the Code of Ethics** ("Definitions," § 1201; p. 1, line 11). This section provides definitions for the terms that are used in the substantive Code of Ethics. Although there are multiple definitions in the section, several are noted here:

1. "Conflict of interest" (p. 2, line 1) – means an interest of a public servant (or a known interest of the immediate family or a business associate) in the outcome of a particular matter pending before the public servant or the servant's agency. "Conflict of interest" does not include any interest of the public servant where the interest is no greater than any other member of the public affected by the matter (e.g., a member of the Department of Taxes recommending an increase or decrease in the income tax).
2. "Gift" (p. 2, line 18) – has the same definition used in 2 V.S.A. § 261 regarding lobbyists, and generally includes "anything of value, tangible or intangible, that is bestowed for less than adequate consideration." There are exceptions in 2 V.S.A § 261, such as gifts among family, and gifts that are returned within 30 days. The substantive provision in the Code also provides several other exceptions.
3. "Immediate Family" (p. 3, line 17) – includes any spouse, domestic partner, sibling, child, parent, grandparent, or in-law.
4. "Person" (p. 4, line 2) – for purposes of the Code of Ethics, "person" means a human being as well as any business and other organization.

III. **Who is subject to the Code of Ethics** ("Applicability" and "Exclusions," §§ 1202 (a) and (b); p. 5, line 1). This section discusses to whom the Code applies. Unless specifically exempted by an "exclusion," the Code of Ethics applies to all elected or appointed officers, General Assembly Members, state employees, persons on state boards and commissions, and any state agents exercising state authority.

The Code specifically excludes judges and magistrates. The Code also does not (and cannot) apply to any conduct that falls within the constitutional duties or permissions of any elected official.

General Assembly Members are excluded from the provisions of the Code of Ethics unless each chamber of the Assembly independently votes to adopt the Code by rule.

- IV. **Protections for Whistleblowers** (§ 1202 (d); p. 13, line 9) – This section prohibits retaliation or intimidation against any public servant who submits a complaint to the Ethics Commission regarding ethical misconduct.¹
- V. **Ethics training and education** (§ 1202 (e); p. 13, line 14) – If enacted, all public servants would be required to take ethics training within the first 120 days with the state, and then take additional training once every three years thereafter. The Vermont Ethics Commission would continue to provide training and education to any state body upon request.

¹ The Vermont Ethics Commission does not have authority to investigate or prosecute any complaint that is filed with it.