

Senate proposal of amendment

H. 875.

An act relating to the State Ethics Commission and the State Code of Ethics

The Senate proposes to the House to amend the bill by striking out all after the enacting clause and inserting in lieu thereof the following:

* * * Candidate Financial Disclosure Requirements * * *

Sec. 1. 17 V.S.A. § 2414 is amended to read:

§ 2414. CANDIDATES FOR STATE AND LEGISLATIVE OFFICE; DISCLOSURE FORM

(a) Each candidate for State office, county office, State Senator, or State Representative shall file with the officer with whom consent of candidate forms are filed, along with ~~his or her~~ the candidate's consent, a disclosure form ~~prepared~~ created and maintained by the State Ethics Commission that contains the following information in regard to the previous ~~calendar year~~ 12 months:

(1) ~~Each~~ each source, but not amount, of personal income of the candidate and of ~~his or her~~ the candidate's spouse or domestic partner, and of the candidate together with ~~his or her~~ the candidate's spouse or domestic partner, that totals more than \$5,000.00, ~~including any of the sources meeting that total described as follows:~~

(A) ~~employment~~, including the candidate's employer or business name and address; and;

(B) if self-employed, a description of the nature of the self-employment ~~without needing to disclose any individual clients, including the names of any clients whose principal business activities are regulated by or that have a contract with any municipal or State office, department, or agency, provided that this information is known to the candidate or the candidate's domestic partner and that the disclosed information is not confidential information;~~ and

~~(B) investments, described generally as "investment income."~~

(2) ~~Any~~ any board, commission, or other entity that is regulated by law ~~or that, receives funding from the State on which the candidate served and the candidate's position on that entity;~~

(3)(A) ~~Any~~ any company of which the candidate or ~~his or her~~ the candidate's spouse or domestic partner, or the candidate together with ~~his or her~~ the candidate's spouse or domestic partner, owned more than 10 percent; and

(B) the details of any loan made to or by any applicable company in subdivision (A) of this subdivision (3) that is not a commercially reasonable loan made in the ordinary course of business, including any borrower and lender;

(4) any company of which the candidate or the candidate's spouse or domestic partner, or the candidate together with the candidate's spouse or domestic partner, had an ownership or controlling interest in any amount, and in the previous 12 months the company had business before or with any municipal or State office, agency, or department;

(5) Any any lease or contract with the State held or entered into by:

(A) the candidate or ~~his or her~~ the candidate's spouse or domestic partner; or

(B) a company of which the candidate or ~~his or her~~ the candidate's spouse or domestic partner, or the candidate together with ~~his or her~~ the candidate's spouse or domestic partner, owned more than 10 percent;

(6) a generalized description, but not amount, to the best of the candidate's knowledge, of the following investments held by a candidate or the candidate's spouse or domestic partner:

(A) individual stock holdings valued at \$25,000.00 or more, which a candidate exercises control over or has the ability to buy or sell, which shall be listed individually;

(B) interests in investment funds valued at \$25,000.00 or more that a candidate or the candidate's spouse or domestic partner has the ability to exercise control over the composition of assets within a fund, which shall be listed individually;

(C) interests in virtual currencies, as defined in 8 V.S.A. § 2500, valued at \$25,000.00 or more, which shall be listed individually;

(D) interests in trusts valued at \$25,000.00 or more, which shall be listed individually;

(E) municipal or State bonds issued in the State of Vermont valued at \$25,000.00 or more, which shall be listed individually; and

(F) the details of any loan valued at \$10,000.00 or more, made to the candidate or the candidate's spouse that is not a commercially reasonable loan made in the ordinary course of business; and

(7) the full name of the candidate's spouse or domestic partner.

(b) In addition, if a candidate's spouse or domestic partner is a lobbyist, the candidate shall disclose that fact and provide the name of ~~his or her~~ the

candidate's spouse or domestic partner and, if applicable, the name of his or her the lobbying firm.

(c) In addition, each candidate for State office shall attach to the disclosure form described in subsection (a) of this section a copy of ~~his or her~~ the candidate's most recent U.S. Individual Income Tax Return Form 1040; provided, however, that the candidate may redact from that form the following information:

(1) the candidate's Social Security number and that of ~~his or her~~ the candidate's spouse, if applicable;

(2) the names of any dependent and the dependent's Social Security number; ~~and~~

(3) the signature of the candidate and that of ~~his or her~~ the candidate's spouse, if applicable;

(4) the candidate's street address; and

(5) any identifying information and signature of a paid preparer.

(d)(1) A senatorial district clerk or representative district clerk who receives a disclosure form under this section shall forward a copy of the disclosure to the Secretary of State within three business days ~~of~~ after receiving it.

(2)(A) The Secretary of State shall post a copy of any disclosure forms and tax returns ~~he or she~~ the Secretary receives under this section on ~~his or her~~ the Secretary's official State website. The forms shall remain posted on the Secretary's website until the date of the filing deadline for petition and consent forms for major party candidates for the statewide primary in the following election cycle.

* * *

(e) As used in this section:

(1) "Commercially reasonable loan made in the ordinary course of business" means a loan made:

(A) in the usual manner on any recognized market;

(B) at the price current in any recognized market at the time of making the loan; or

(C) otherwise in conformity with reasonable commercial practices among lenders typically dealing in the type of loan made.

(2) "Confidential information" means information that is exempt from public inspection and copying under 1 V.S.A. § 315 et seq. or is otherwise designated by law as confidential.

(3) “County office” means the office of assistant judge of the Superior Court, high bailiff, judge of Probate, sheriff, or State’s Attorney.

(4) “Domestic partner” means an individual with whom the candidate has an enduring domestic relationship of a spousal nature, as long as provided the candidate and the domestic partner:

* * *

(2)(5) “Lobbyist” and “lobbying firm” shall have the same meanings as in 2 V.S.A. § 261.

(6) “Investment fund” means a widely held investment fund that is publicly traded or available, including a mutual fund, regulated investment company, common trust fund maintained by a bank or similar financial institution, pension or deferred compensation plan, and any other pooled investment fund.

* * * In-Office Financial Disclosure Requirements * * *

Sec. 2. 3 V.S.A. § 1201 is amended to read:

§ 1201. DEFINITIONS

As used in this chapter:

(1) “Candidate” and “candidate’s committee” have the same meanings as in 17 V.S.A. § 2901.

(2) “Commission” means the State Ethics Commission established under subchapter 3 of this chapter.

(3) “Commercially reasonable loan made in the ordinary course of business” means a loan made:

(A) in the usual manner on any recognized market;

(B) at the price current in any recognized market at the time of making the loan; or

(C) otherwise in conformity with reasonable commercial practices among lenders typically dealing in the type of loan made.

(4) “Confidential information” means information that is exempt from public inspection and copying under 1 V.S.A. § 315 et seq. or is otherwise designated by law as confidential.

(5) “Conflict of interest” means a direct or indirect interest of a public servant or such an interest, known to the public servant, of a member of the public servant’s immediate family, or of a business associate, in the outcome of a particular matter pending before the public servant or the public servant’s public body, or that is in conflict with the proper discharge of the public servant’s duties. “Conflict of interest” does not include any interest that is not

greater than that of other individuals generally affected by the outcome of a matter.

(6) “County officer” means an individual holding the office of high bailiff, sheriff, or State’s Attorney.

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

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

(B) are at least 18 years of age;

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

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

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

(5)(8) “Executive officer” means:

(A) a State officer; or

(B) a deputy under the Office of the Governor a State officer, including an agency secretary or deputy or, and a department commissioner or deputy.

(6)(9) “Governmental conduct regulated by law” means conduct by an individual in regard to the operation of State government that is restricted or prohibited by law and includes:

(A) bribery pursuant to 13 V.S.A. § 1102;

(B) neglect of duty by public officers pursuant to 13 V.S.A. § 3006 and by members of boards and commissions pursuant to 13 V.S.A. § 3007;

(C) taking illegal fees pursuant to 13 V.S.A. § 3010;

(D) false claims against government pursuant to 13 V.S.A. § 3016;

(E) owning or being financially interested in an entity subject to a department’s supervision pursuant to section 204 of this title;

(F) failing to devote time to duties of office pursuant to section 205 of this title;

(G) engaging in retaliatory action due to a State employee’s involvement in a protected activity pursuant to chapter 27, subchapter 4A of this title;

(H) a former legislator or former Executive officer serving as a lobbyist pursuant to 2 V.S.A. § 266(b); ~~and~~

(I) a former Executive officer serving as an advocate pursuant to section 267 of this title; and

(J) creating or permitting to persist any unlawful employment practice pursuant to 21 V.S.A. § 495.

~~(7)~~(10) “Immediate family” means an individual’s spouse, domestic partner, or civil union partner; child or foster child; sibling; parent; or such relations by marriage or by civil union or domestic partnership; or an individual claimed as a dependent for federal income tax purposes.

(11) “Investment fund” means a widely held investment fund that is publicly traded or available, including a mutual fund, regulated investment company, common trust fund maintained by a bank or similar financial institution, pension or deferred compensation plan, and any other pooled investment fund.

~~(8)~~(12) “Lobbyist” and “lobbying firm” have the same meanings as in 2 V.S.A. § 261.

~~(9)~~(13) “Person” means any individual, group, business entity, association, or organization.

~~(4)~~(14) “Political committee” and “political party” have the same meanings as in 17 V.S.A. § 2901.

(15) “Public servant” means an individual elected or appointed to serve as a State officer, an individual elected or appointed to serve as a member of the General Assembly, a State employee, an individual appointed to serve on a State board or commission, or an individual who in any other way is authorized to act or speak on behalf of the State.

~~(4)~~(16) “State officer” means the Governor, Lieutenant Governor, Treasurer, Secretary of State, Auditor of Accounts, or Attorney General.

(17) “Unethical conduct” means any conduct of a public servant in violation of the Code of Ethics, as provided for in this chapter.

Sec. 2a. REPEAL

24 V.S.A. § 314 (Sheriffs; annual disclosure) is repealed.

Sec. 3. 3 V.S.A. § 1202 is amended to read:

§ 1202. STATE CODE OF ETHICS; APPLICABILITY

(a) ~~Unless excluded under this section, the Code of Ethics applies to all individuals elected or appointed to serve as officers of the State, all individuals elected or appointed to serve as members of the General Assembly, all State~~

~~employees, all individuals appointed to serve on State boards and commissions, and individuals who in any other way are authorized to act or speak on behalf of the State. This code refers to them all as public servants.~~

~~* * *~~

Sec. 4. 3 V.S.A. § 1203 is amended to read:

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

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

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

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

~~(3) As used in this section, "conflict of interest" means a direct or indirect interest of a public servant or such an interest, known to the public servant, of a member of the public servant's immediate family or household, or of a business associate, in the outcome of a particular matter pending before the public servant or the public servant's public body, or that is in conflict with the proper discharge of the public servant's duties. "Conflict of interest" does not include any interest that is not greater than that of other individuals generally affected by the outcome of a matter. [Repealed.]~~

~~* * *~~

Sec. 5. 3 V.S.A. § 1211 is amended to read:

§ 1211. EXECUTIVE OFFICERS; ANNUAL DISCLOSURE

(a) Annually, each Executive officer and county officer shall file with the State Ethics Commission a disclosure form that contains the following information in regard to the previous 12 months:

(1) ~~Each~~ each source, but not amount, of personal income of the officer and of ~~his or her~~ the officer's spouse or domestic partner, and of the officer together with ~~his or her~~ the officer's spouse or domestic partner, that totals more than \$5,000.00, including ~~any of the sources meeting that total described as follows:~~

(A) ~~employment, including the officer's~~ employment, including the officer's employer or business name and address; and;

(B) if self-employed, a description of the nature of the self-employment without needing to disclose any individual clients, including the names of any clients whose principal business activities are regulated by or that have a contract with any municipal or State office, department, or agency, provided that this information is known to the candidate or the candidate's domestic partner and that the disclosed information is not confidential information; and

(B) investments, described generally as "investment income."

(2) Any any board, commission, or other entity that is regulated by law or that receives funding from the State on which the officer served and the officer's position on that entity;

(3)(A) Any any company of which the officer or his or her the officer's spouse or domestic partner, or the officer together with his or her the officer's spouse or domestic partner, owned more than 10 percent; and

(B) the details of any loan made to any applicable company in subdivision (A) of this subdivision (3) that is not a commercially reasonable loan made in the ordinary course of business, including any borrower and lender;

(4) any company of which the officer or the officer's spouse or domestic partner, or the officer together with the officer's spouse or domestic partner, had an ownership or controlling interest in any amount, and the company had business before or with any municipal or State office, agency, or department;

(5) Any any lease or contract with the State held or entered into by:

(A) the officer or his or her the officer's spouse or domestic partner;
or

(B) a company of which the officer or his or her the officer's spouse or domestic partner, or the officer together with his or her the officer's spouse or domestic partner, owned more than 10 percent;

(6) a generalized description, but not amount, to the best of the candidate's knowledge, of the following investments held by a candidate or the candidate's spouse or domestic partner:

(A) individual stock holdings valued at \$25,000.00 or more, which a candidate exercises control over or has the ability to buy or sell, which shall be listed individually;

(B) interests in investment funds valued at \$25,000.00 or more that a candidate or the candidate's spouse or domestic partner has the ability to exercise control over the composition of assets within a fund, which shall be listed individually;

(C) interests in virtual currencies, as defined in 8 V.S.A. § 2500, valued at \$25,000.00 or more, which shall be listed individually;

(D) interests in trusts valued at \$25,000.00 or more, which shall be listed individually;

(E) municipal or State bonds issued in the State of Vermont of valued at \$25,000.00 or more, which shall be listed individually; and

(F) the details of any loan valued at \$10,000.00 or more, made to the candidate or the candidate's spouse that is not a commercially reasonable loan made in the ordinary course of business; and

(7) the full name of the candidate's spouse or domestic partner.

(b) In addition, if an Executive officer's or county officer's spouse or domestic partner is a lobbyist, the officer shall disclose that fact and provide the name of ~~his or her~~ the officer's spouse or domestic partner and, if applicable, the name of ~~his or her~~ the lobbying firm.

(c)(1) Disclosure forms shall contain the statement, "I certify that the information provided on all pages of this disclosure form is true to the best of my knowledge, information, and belief."

(2) Each Executive officer and county officer shall sign ~~his or her~~ the officer's disclosure form in order to certify it in accordance with this subsection.

(d)(1) ~~An~~ Each Executive officer and county officer shall file ~~his or her~~ the officer's disclosure on or before January 15 of each year or, if ~~he or she~~ the officer is appointed after January 15, within 10 days after that appointment.

(2) ~~An officer who filed this disclosure form as a candidate in accordance with 17 V.S.A. § 2414 in the preceding year and whose disclosure information has not changed since that filing may update that filing to indicate that there has been no change. [Repealed.]~~

(e) [Repealed.]

* * * Delinquent Disclosures for Candidates for State Office, County Office, State Senator, and State Representative * * *

Sec. 6. 17 V.S.A. § 2415 is added to read:

§ 2415. FAILURE TO FILE; PENALTIES

(a) If any disclosure required of a candidate for State office, county office, State Senator, or State Representative by section 2414 of this title is not filed in the time and manner set forth in sections 2356, 2361, and 2402 of this title, the candidate for State office, county office, State Senator, or State Representative shall be addressed as follows:

(1) The State Ethics Commission, after notification by the Office of the Secretary of State of the names of delinquent filers, shall issue a notice of delinquency to the candidate for State office, county office, State Senator, or State Representative for any disclosure required of a candidate for State office, county office, State Senator, or State Representative by section 2414 of this title that is not filed in the time and manner set forth in sections 2356, 2361, and 2402 of this title.

(2) Following notice of delinquency sent by the State Ethics Commission to the candidate for State office, county office, State Senator, or State Representative, the candidate shall have five working days from the date of the issuance of the notice to cure the delinquency.

(3) Beginning six working days from the date of notice, the delinquent candidate for State office, county office, State Senator, or State Representative shall pay a \$10.00 penalty for each day thereafter that the disclosure remains delinquent; provided, however, that in no event shall the amount of any penalty imposed under this subdivision exceed \$1,000.00.

(4) Notwithstanding subdivision (3) of this subsection (a), the State Ethics Commission may reduce or waive any penalty imposed under this section if the candidate for State office, county office, State Senator, or State Representative demonstrates good cause, as determined by the State Ethics Commission and in the sole discretion of the State Ethics Commission.

(b) The Commission shall send a notice of delinquency to the e-mail address provided by the candidate for State office, county office, State Senator, or State Representative in the candidate's consent of candidate form.

(c) The State Ethics Commission may avail itself of remedies available under the Vermont Setoff Debt Collection Act, as set forth in 32 V.S.A. chapter 151, subchapter 12, to collect any unpaid penalty.

(d)(1) A candidate for State office, county office, State Senator, or State Representative who files a disclosure with intent to defraud, falsify, conceal, or cover up by any trick, scheme, or device a material fact, or, with intent to defraud, make any false, fictitious, or fraudulent claim or representation as to a material fact, or, with intent to defraud, make or use any writing or document knowing the same to contain any false, fictitious, or fraudulent claim or entry as to a material fact shall be considered to have made a false claim for the purposes of 13 V.S.A. § 3016.

(2) Pursuant to 3 V.S.A. § 1223 and section 2904a of this title, complaints regarding any candidate for State office, county office, State Senator, or State Representative who fails to properly file a disclosure required under this subchapter may be filed with the State Ethics Commission. The Executive Director of the State Ethics Commission shall refer complaints to

the Attorney General or to the State's Attorney of jurisdiction for investigation, as appropriate.

* * * Expansion of State Ethics Commission's Powers * * *

Sec. 7. 3 V.S.A. § 1221(a) is amended to read:

(a) Creation. There is created within the Executive Branch an independent commission named the State Ethics Commission to accept, review, investigate; hold hearings; issue warnings and reprimands; and recommended actions, make referrals regarding, and track complaints of alleged violations of governmental conduct regulated by law, of the Department of Human Resources Personnel Policy and Procedure Manual, of the State Code of Ethics, and of the State's campaign finance law set forth in 17 V.S.A. chapter 61; to provide ethics training; and to issue guidance and advisory opinions regarding ethical conduct.

Sec. 8. 3 V.S.A. § 1222 is redesignated to read:

§ 1222. COMMISSION MEMBER ~~DUTIES AND~~ PROHIBITED CONDUCT

Sec. 9. 3 V.S.A. § 1223 is amended to read:

§ 1223. PROCEDURE FOR ~~HANDLING~~ ACCEPTING AND REFERRING COMPLAINTS

* * *

(b) Preliminary review by Executive Director. The Executive Director shall conduct a preliminary review of complaints made to the Commission in order to take action as set forth in this subsection and section 1223a of this title, which shall include referring complaints to all relevant entities, including the Commission itself.

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(5) Municipal Code of Ethics. If the complaint alleges a violation of the Municipal Code of Ethics, the Executive Director shall refer the complaint to the designated ethics liaison of the appropriate municipality.

~~(5)~~(6) Closures. The Executive Director shall close any complaint that he or she the Executive Director does not refer as set forth in subdivisions (1)–(4)~~(5)~~ of this subsection.

(c) Consultation on unethical conduct. If the Executive Director refers a complaint under subsection (b) of this section, the Executive Director shall signify any likely unethical conduct described in the complaint. Any entity receiving a referred complaint, except those in subdivision (b)(5) of this section, shall consult with the Commission regarding the application of the State Code of Ethics to facts presented in the complaint. The consultation

shall be in writing and occur within 60 days after an entity receives a referred complaint and prior to the entity making a determination on the complaint, meaning either closing a complaint without further investigation or issuing findings following an investigation.

(d) Confidentiality. Complaints and related documents in the custody of the Commission shall be exempt from public inspection and copying under the Public Records Act and kept confidential, except as provided for in section 1231 of this title.

Sec. 10. 3 V.S.A. § 1227 is added to read:

§ 1227. INVESTIGATIONS

(a) Power to investigate. The Commission, through its Executive Director, may investigate public servants for alleged unethical conduct. The Commission may investigate alleged unethical conduct after receiving a complaint pursuant to section 1223 of this title. The Commission may also investigate suspected unethical conduct without receiving any complaint.

(b) Initiation of investigation by Commission vote. The Executive Director shall only initiate an investigation upon an affirmative vote to proceed with the investigation of unethical conduct by a majority of current members of the Commission who have not recused themselves.

(c) Statute of limitations. The Commission shall only initiate an investigation relating to unethical conduct that last occurred within the prior two years.

(d) Outside legal counsel and investigators. The Executive Director may appoint legal counsel, who shall be an attorney admitted to practice in this State, and investigators to assist with investigations, hearings, and issuance of warnings, reprimands, and recommended actions.

(e) Notice. The Executive Director shall notify the complainant and public servant, in writing, of any complaint being investigated.

(f) Complainant participation. A complainant shall have the right to be heard in an investigation resulting from the complaint.

(g) Timeline of investigation. An investigation shall conclude within six months after either the date of the complaint received or, in the event no complaint was received, the date of the investigation's initiation by the Executive Director.

(h) Burden of proof. For a hearing to be warranted subsequent to an investigation, the Executive Director shall find that there is a reasonable basis to believe that the public servant's conduct constitutes an unethical violation.

(i) Determination after investigation.

(1) Upon investigating the alleged unethical conduct, if the Executive Director determines that an evidentiary hearing is warranted, the Executive Director shall notify the Commission. If a majority of current members of the Commission who have not recused themselves vote in concurrence with the Executive Director's determination that an evidentiary hearing is warranted, the Executive Director shall prepare an investigation report specifying the public servant's alleged unethical conduct, a copy of which shall be served upon the public servant and any complainant, together with the notice of hearing set forth in section 1228 of this title.

(2) Upon investigating the alleged unethical conduct, if the Executive Director determines that an evidentiary hearing is not warranted, the Executive Director shall notify the Commission, the public servant, and any complainant, in writing, of the result of the investigation and the termination of proceedings.

Sec. 11. 3 V.S.A. § 1228 is added to read:

§ 1228. HEARINGS BEFORE THE COMMISSION

(a) Power to hold hearings. The Commission may meet and hold hearings for the purpose of gathering evidence and testimony if found warranted pursuant to section 1227 of this title and to make determinations.

(b) All Commission hearings shall be considered meetings of the Commission as described in subsection 1221(e) of this title, and shall be conducted in accordance with 1 V.S.A. § 310 et seq.

(c) Time of hearing. The Chair of the Commission shall set a time for the hearing as soon as convenient following the Director's determination that an evidentiary hearing is warranted, subject to the discovery needs of the public servant and any complainant as established in any prehearing or discovery conference or in any orders regulating discovery and depositions, or both, but not earlier than 30 days after service of the charge upon the public servant. The public servant or a complainant may file motions to extend the time of the hearing for good cause, which may be granted by the Chair.

(d) Notice of hearing. The Chair shall give the public servant and any complainant reasonable notice of a hearing, which shall include:

(1) A statement of the time, place, and nature of the hearing.

(2) A statement of the legal authority and jurisdiction under which the hearing is to be held.

(3) A reference to the particular sections of the statutes and rules involved.

(4) A short and plain statement of the matters at issue. If the Commission is unable to state the matters in detail at the time the notice is served, the initial notice may be limited to a statement of the issues involved.

Thereafter, upon application by either the public servant or any complainant, a more definite and detailed statement shall be furnished.

(5) A reference and copy of any rules adopted by the Commission regarding the hearing's procedures, rules of evidence, and other aspects of the hearing.

(e) Rights of public servants and complainants. Opportunity shall be given to the public servant and any complainant to be heard at the hearing, present evidence, respond to evidence, and argue on all issues related to the alleged unethical misconduct.

(f) Executive session. In addition to the provisions of 1 V.S.A. § 313(a), the Commission may enter executive session if the Commission deems it appropriate in order to protect the confidentiality of an individual or any other protected information pertaining to any identifiable person that is otherwise confidential under State or federal law.

Sec. 12. 3 V.S.A. § 1229 is added to read:

§ 1229. WARNINGS; REPRIMANDS; RECOMMENDED ACTIONS;
AGREEMENTS

(a) Power to issue warnings, reprimands, and recommended actions. The Commission may issue warnings, reprimands, and recommended actions, not inconsistent with the Vermont Constitution and laws of the State, including facilitated mediation, additional training and education, referrals to counseling and wellness support, or other remedial actions.

(b) Factors in determination.

(1) Circumstances of unethical conduct. In this determining, the Commission shall consider the degree of unethical conduct, the timeline over which the unethical conduct occurred and whether the conduct was repeated, and the privacy, rights, and responsibilities of the parties.

(2) Determination based on evidence. The Commission shall render its determination on the allegation on the basis of the evidence in the record before it, regardless of whether the Commission makes its determination on the investigation report of the Executive Director pursuant to section 1227 of this title alone, on evidence and testimony presented in the hearing pursuant to section 1228 of this title, or on its own findings.

(3) Burden of proof. The Commission shall only issue a warning, reprimand, or recommended action if it finds that, by a preponderance of the evidence, the public servant committed unethical conduct.

(c) Determination after hearing.

(1) If a majority of current members of the Commission who have not recused themselves find that the public servant committed unethical conduct as specified in the investigation report the Executive Director pursuant to section 1227 of this title alone, the Commission shall then, in writing or stated in the record, issue a warning, reprimand, or recommended action.

(2) If the Commission does not find that the public servant committed unethical conduct, the Commission shall issue a statement that the allegations were not proved.

(3) When a determination or order is approved for issue by the Commission, the decision or order may be signed by the Chair on behalf of the Commission.

(d) Timeline for determination. The Commission shall make its determination within 30 days after concluding the Commission's last hearing under this section and notify the public servant and any complainant of the Committee's determination. This timeline may be extended by the Commission for good cause or pursuant to an agreement made between the Commission and the public servant.

(e) Referral of unethical conduct. Notwithstanding subsection 1223(c) of this title, the Commission shall notify the Attorney General or the State's Attorney of jurisdiction of any alleged violations of governmental conduct regulated by law or the relevant federal agency of any alleged violations of federal law, if discovered in the course of the Commission's investigations.

(f) Power to enter into resolution agreements.

(1) Notwithstanding any provisions of this chapter to the contrary, the Commission may, by a majority vote of its current members who have not recused themselves, enter into a resolution agreement with a public servant who is the subject of a complaint or investigation.

(2) A resolution agreement shall:

(A) include an agreed course of remedial action to be taken by the public servant;

(B) be in writing; and

(C) be executed by both the public servant and Executive Director.

(3) A resolution agreement may be entered into at any point in time before or during Commission proceedings. Any procedural deadlines described in this chapter or rules adopted pursuant to this chapter shall be paused at the time of execution of the resolution agreement. The Executive Director shall verify compliance with the resolution agreement within three months following execution of the agreement, and if the Executive Director is

not satisfied that compliance has been achieved, the Commission may resume its initial proceedings.

(4) The Commission shall create a summary of any resolution agreement. A summary of any resolution agreement shall be a public record subject to public inspection and copying under the Public Records Act. A resolution agreement shall be exempt from public inspection and copying under the Public Records Act and shall be considered confidential.

Sec. 13. 3 V.S.A. § 1230 is added to read:

§ 1230. PROCEDURE; RULEMAKING

(a) Procedure. Unless otherwise controlled by statute or rules adopted by the Commission, the Vermont Rules of Civil Procedure and the Vermont Rules of Evidence shall apply in the Commission's investigations and hearings.

(b) Rulemaking. The Commission shall adopt rules pursuant to 3 V.S.A. chapter 25 regarding procedural and evidentiary aspects of the Commission's investigations and hearings.

(c) Waiver of rules. To prevent unnecessary hardship, delay, or injustice, or for other good cause, a vote of two-thirds of the Commission's members present and voting may waive the application of a rule upon such conditions as the Chair may require, unless precluded by rule or by statute.

(d) Subpoenas and oaths. The Commission, the Executive Director, and the Commission's legal counsel and investigators shall have the power to issue subpoenas and administer oaths in connection with any investigation or hearing, including compelling the provision of materials or the attendance of witnesses at any investigation or hearing. The Commission, the Executive Director, and the Commissioner's legal counsel shall seek voluntary compliance prior to issuing a subpoena, except in cases where there is reasonable suspicion that materials will not be produced in a timely manner. The Commission, the Executive Director, and the Commission's legal counsel and investigators may take or cause depositions to be taken as needed in any investigation or hearing.

Sec. 14. 3 V.S.A. § 1231 is added to read:

§ 1231. RECORDS; CONFIDENTIALITY

(a) Intent. It is the intent of this section both to protect the reputation of public servants from public disclosure of frivolous complaints against them and to fulfill the public's right to know any unethical conduct committed by a public servant that results in issued warnings, reprimands, or recommended actions.

(b) Public records. Except as where otherwise provided in this chapter, public records relating to the Commission's handling of complaints, alleged

unethical conduct, investigations, proceedings, and executed resolution agreements are exempt from public inspection and copying under the Public Records Act and shall be kept confidential, except those public records required or permitted to be released under this chapter. Records subject to public inspection and copying under the Public Records Act shall include:

(1) investigation reports relating to alleged unethical conduct determined to warrant a hearing pursuant to section 1227 of this title, but not any undisclosed records gathered or created in the course of an investigation;

(2) at the request of the public servant or the public servant's designated representative, investigation reports relating to alleged unethical conduct determined to not warrant a hearing pursuant to section 1227 of this title, but not any undisclosed records gathered or created in the course of an investigation;

(3) evidence produced in the open and public portions of Commission hearings;

(4) any warnings, reprimands, and recommendations issued by the Commission;

(5) any summaries of executed resolution agreements; and

(6) any records, as determined by the Commission, that support a warning, reprimand, recommendation, or summary of an executed resolution agreement, including consultations created pursuant to subsection 1223(c) of this title and investigation reports in accordance with subdivisions (1) and (2) of this subsection.

(c) Court orders. Nothing in this section shall prohibit the disclosure of any information regarding alleged unethical conduct pursuant to an order from a court of competent jurisdiction, or to a State or federal law enforcement agency in the course of its investigation, provided the agency agrees to maintain the confidentiality of the information as provided in subsection (b) of this section.

* * * State Ethics Commission Membership * * *

Sec. 15. 3 V.S.A. § 1221(b) is amended to read:

(b) Membership.

(1) The Commission shall be composed of the following ~~five~~ seven members:

(A) one member, appointed by the Chief Justice of the Supreme Court;

(B) one member, appointed by the League of Women Voters of Vermont, who shall be a member of the League;

(C) one member, appointed by the Board of Directors of the Vermont Society of Certified Public Accountants, who shall be a member of the Society;

(D) one member, appointed by the Board of Managers of the Vermont Bar Association, who shall be a member of the Association; ~~and~~

(E) one member, appointed by the Board of Directors of the SHRM (Society for Human Resource Management) Vermont State Council, who shall be a member of the Council;

(F) one member, who shall be a former municipal officer, appointed by the Speaker of the House; and

(G) one member, who shall be a former municipal officer, appointed by the Senate Committee on Committees.

* * *

* * * State Ethics Commission Staffing * * *

Sec. 16. 3 V.S.A. § 1221(c) is amended to read:

(c) Executive Director.

(1) The Commission shall be staffed by an Executive Director who shall be appointed by and serve at the pleasure of the Commission ~~and who shall be a part-time exempt State employee.~~

(2) The Executive Director shall maintain the records of the Commission and shall provide administrative support as requested by the Commission, in addition to any other duties required by this chapter.

Sec. 17. [Deleted.]

* * * Citation Correction * * *

Sec. 18. 3 V.S.A. § 1221(e) is amended to read:

(e) Meetings. Meetings of the Commission:

(1) shall be held at least quarterly for the purpose of the Executive Director updating the Commission on ~~his or her~~ the Executive Director's work;

(2) may be called by the Chair and shall be called upon the request of any other two Commission members; and

(3) shall be conducted in accordance with ~~1 V.S.A. § 172~~ 1 V.S.A. § 310 et seq.

* * * Ethics Data Collection * * *

Sec. 19. 3 V.S.A. § 1226 is amended to read:

§ 1226. ETHICS DATA COLLECTION; COMMISSION REPORTS

(a) Annually, on or before November 15, the following entities shall report to the State Ethics Commission aggregate data on ethics complaints not submitted to the Commission, with the complaints separated by topic, and the disposition of those complaints, including any prosecution, enforcement action, or dismissal:

(1) the office of the Attorney General and State's Attorneys' offices, of alleged violations of governmental conduct regulated by law and associated crimes and including campaign finance requirements;

(2) the Department of Human Resources, of complaints alleging conduct that violates the ethical provisions of the Department of Human Resources Personnel Policy and Procedure Manual or of the State Code of Ethics;

(3) the Senate Ethics Panel, of alleged unethical conduct committed by State Senators;

(4) the House Ethics Panel, of alleged unethical conduct committed by State Representatives;

(5) the Judicial Conduct Board, of alleged unethical conduct committed by a judicial officer;

(6) the Professional Responsibility Board, of alleged unethical conduct committed by an attorney employed by the State; and

(7) the Office of the State Court Administrator, of complaints alleging conduct that violates the ethical provisions of the Judicial Branch Personnel Policy or of the State Code of Ethics, including for attorneys employed by the State.

(b) Annually, on or before January 15, the State Ethics Commission shall report to the General Assembly regarding the following issues:

(1) Complaints.

(A) The number and a summary of the complaints made to ~~it~~ the Commission, separating the complaints by topic, and the disposition of those complaints, including any prosecution, enforcement action, or dismissal. This summary of complaints shall not include any personal identifying information.

(B) The number and a summary of the complaints data received by the Commission pursuant to subsection (a) of this section.

* * *

* * * Repeal of Redundant Municipal Ethics Law * * *

Sec. 20. REPEAL

24 V.S.A. § 1984 (conflict of interest prohibition) is repealed.

Sec. 21. 24 V.S.A. § 2291 is amended to read:

§ 2291. ENUMERATION OF POWERS

For the purpose of promoting the public health, safety, welfare, and convenience, a town, city, or incorporated village shall have the following powers:

* * *

~~(20) To establish a conflict of interest policy to apply to all elected and appointed officials of the town, city, or incorporated village or ethical conduct policies to apply to all elected and appointed officials and employees of the municipality, or both. [Repealed.]~~

* * *

* * * Creation of Municipal Code of Ethics * * *

Sec. 22. 24 V.S.A. chapter 60 is added to read:

CHAPTER 60. MUNICIPAL CODE OF ETHICS

§ 1991. DEFINITIONS

As used in this chapter:

(1) “Advisory body” means a public body that does not have supervision, control, or jurisdiction over legislative, quasi-judicial, tax, or budgetary matters.

(2) “Candidate” and “candidate’s committee” have the same meanings as in 17 V.S.A. § 2901.

(3) “Commission” means the State Ethics Commission established under 3 V.S.A. chapter 31, subchapter 3.

(4) “Confidential information” means information that is exempt from public inspection and copying under 1 V.S.A. § 315 et seq. or is otherwise designated by law as confidential.

(5) “Conflict of interest” means a direct or indirect interest of a municipal officer or such an interest, known to the officer, of a member of the officer’s immediate family or household, or of a business associate, in the outcome of a particular matter pending before the officer or the officer’s public body, or that is in conflict with the proper discharge of the officer’s duties. “Conflict of interest” does not include any interest that is not greater than that of other individuals generally affected by the outcome of a matter.

(6) “Department head” means any authority in charge of an agency, department, or office of a municipality.

(7) “Designated complaint recipient” means:

(A) a department head or employee specifically designated or assigned to receive a complaint that constitutes protected activity, as set forth in section 1997 of this title;

(B) a board or commission of the State or a municipality;

(C) the Vermont State Auditor;

(D) a State or federal agency that oversees the activities of an agency, department, or office of the State or a municipality;

(E) a law enforcement officer as defined in 20 V.S.A. § 2358;

(F) a federal or State court, grand jury, petit jury, law enforcement agency, or prosecutorial office;

(G) the legislative body of the municipality, the General Assembly or the U.S. Congress; or

(H) an officer or employee of an entity listed in this subdivision (7) when acting within the scope of the officer’s or employee’s duties.

(8) “Domestic partner” means an individual in an enduring domestic relationship of a spousal nature with the municipal officer, provided the individual and municipal officer:

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

(B) are at least 18 years of age;

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

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

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

(9) “Illegal order” means a directive to violate, or to assist in violating, a federal, State, or local law.

(10) “Immediate family” means an individual’s spouse, domestic partner, or civil union partner; child or foster child; sibling; parent; or such relations by marriage or by civil union or domestic partnership; or an individual claimed as a dependent for federal income tax purposes.

(11) “Legislative body” means the selectboard in the case of a town, the mayor, alderpersons, and city council members in the case of a city, the president and trustees in the case of an incorporated village, the members of

the prudential committee in the case of a fire district, and the supervisor in the case of an unorganized town or gore.

(12) “Municipal officer” or “officer” means:

(A) any member of a legislative body of a municipality;

(B) any member of a quasi-judicial body of a municipality; or

(C) any individual who holds the position of, or exercises the function of, any of the following positions in or on behalf of any municipality:

(i) advisory budget committee member;

(ii) auditor;

(iii) building inspector;

(iv) cemetery commissioner;

(v) chief administrative officer;

(vi) clerk;

(vii) collector of delinquent taxes;

(viii) department heads;

(ix) first constable;

(x) lister or assessor;

(xi) mayor;

(xii) moderator;

(xiii) planning commission member;

(xiv) road commissioner;

(xv) town or city manager;

(xvi) treasurer;

(xvii) village or town trustee;

(xviii) trustee of public funds; or

(xix) water commissioner.

(13) “Municipality” means any town, village, or city.

(14) “Protected employee” means an individual employed on a permanent or limited status basis by a municipality.

(15) “Public body” has the same meaning as in 1 V.S.A. § 310.

(16) “Retaliatory action” includes any adverse performance or disciplinary action, including discharge, suspension, reprimand, demotion,

denial of promotion, imposition of a performance warning period, or involuntary transfer or reassignment; that is given in retaliation for the protected employee's involvement in a protected activity, as set forth in section 1997 of this title.

§ 1992. CONFLICTS OF INTEREST

(a) Duty to avoid conflicts of interest. In the municipal officer's official capacity, the officer shall avoid any conflict of interest or the appearance of a conflict of interest. The appearance of a conflict shall be determined from the perspective of a reasonable individual with knowledge of the relevant facts.

(b) Recusal.

(1) If a municipal officer is confronted with a conflict of interest or the appearance of one, the officer shall immediately recuse themselves from the matter, except as otherwise provided in subdivisions (2) and (5) of this subsection, and not take further action on the matter or participate in any way or act to influence a decision regarding the matter. After recusal, an officer may still take action on the matter if the officer is a party, as defined by section 1201 of this title, in a contested hearing or litigation and acts only in the officer's capacity as a member of the public. The officer shall make a public statement explaining the officer's recusal.

(2)(A) Notwithstanding subdivision (1) of this subsection (b), an officer may continue to act in a matter involving the officer's conflict of interest or appearance of a conflict of interest if the officer first:

(i) determines there is good cause for the officer to proceed,
meaning:

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

(II) the officer cannot legally or practically delegate the matter;
or

(III) the action to be taken by the officer is purely ministerial and does not involve substantive decision-making; and

(ii) the officer submits a written nonrecusal statement to the legislative body of the municipality regarding the nature of the conflict that shall:

(I) include a description of the matter requiring action;

(II) include a description of the nature of the potential conflict or actual conflict of interest;

(III) include an explanation of why good cause exists so that the municipal officer can take action in the matter fairly, objectively, and in the public interest;

(IV) be written in plain language and with sufficient detail so that the matter may be understood by the public; and

(V) be signed by the municipal officer.

(B) Notwithstanding subsection (A) of this subdivision (2), a municipal officer that would benefit from any contract entered into by the municipality and the officer, the officer's immediate family, or an associated business of the officer or the officer's immediate family, and whose official duties include execution of that contract, shall recuse themselves from any decision-making process involved in the awarding of that contract.

(C) Notwithstanding subsection (A) of this subdivision (2), a municipal officer shall not continue to act in a matter involving the officer's conflict of interest or appearance of a conflict of interest if authority granted to another official or public body elsewhere under law is exercised to preclude the municipal officer from continuing to act in the matter.

(3) If an officer's conflict of interest or the appearance of a conflict of interest concerns an official act or actions that take place outside a public meeting, the officer's nonrecusal statement shall be filed with the clerk of the municipality and be available to the public for the duration of the officer's service plus a minimum of five years.

(4) If an officer's conflict of interest is related to an official municipal act or actions considered at a public meeting, the officer's nonrecusal statement shall be filed as part of the minutes of the meeting of the public body in which the municipal officer serves.

(5) If, at a meeting of a public body, an officer becomes aware of a conflict of interest or the appearance of a conflict of interest for the officer and the officer determines there is good cause to proceed, the officer may proceed with the matter after announcing and fully stating the conflict on the record. The officer shall submit a written nonrecusal statement pursuant to subdivision (2) of this subsection within five business days after the meeting. The meeting minutes shall be subsequently amended to reflect the submitted written nonrecusal statement.

(c) Authority to inquire about conflicts of interest. If a municipal officer is a member of a public body, the other members of that body shall have the authority to inquire of the officer about any possible conflict of interest or any appearance of a conflict of interest and to recommend that the member recuse themselves from the matter.

(d) Confidential information. Nothing in this section shall require a municipal officer to disclose confidential information or information that is otherwise privileged under law.

§ 1993. PROHIBITED CONDUCT

(a) Directing unethical conduct. A municipal officer shall not direct any individual to act in a manner that would:

(1) benefit a municipal officer in a manner related to the officer's conflict of interest;

(2) create a conflict of interest or the appearance of a conflict of interest for the officer or for the directed individual; or

(3) otherwise violate the Municipal Code of Ethics as described in this chapter.

(b) Preferential treatment. A municipal officer shall act impartially and not unduly favor or prejudice any person in the course of conducting official business. An officer shall not give, or represent an ability to give, undue preference or special treatment to any person because of the person's wealth, position, or status or because of a person's personal relationship with the officer, unless otherwise permitted or required by State or federal law.

(c) Misuse of position. A municipal officer shall not use the officer's official position for the personal or financial gain of the officer, a member of the officer's immediate family or household, or the officer's business associate.

(d) Misuse of information. A municipal officer shall not use nonpublic or confidential information acquired during the course of official business for personal or financial gain of the officer or for the personal or financial gain of a member of the officer's immediate family or household or of an officer's business associate.

(e) Misuse of government resources. A municipal officer shall not make use of a town's, city's, or village's materials, funds, property, personnel, facilities, or equipment, or permit another person to do so, for any purpose other than for official business unless the use is expressly permitted or required by State law; ordinance; or a written agency, departmental, or institutional policy or rule. An officer shall not engage in or direct another person to engage in work other than the performance of official duties during working hours, except as permitted or required by law or a written agency, departmental, or institutional policy or rule.

(f) Gifts.

(1) No person shall offer or give to a municipal officer or candidate, or the officer's or candidate's immediate family, anything of value, including a

gift, loan, political contribution, reward, or promise of future employment based on any understanding that the vote, official action, or judgment of the municipal officer or candidate would be, or had been, influenced thereby.

(2) A municipal officer or candidate shall not solicit or accept anything of value, including a gift, loan, political contribution, reward, or promise of future employment based on any understanding that the vote, official action, or judgment of the municipal officer or candidate would be or had been influenced thereby.

(3) Nothing in subdivision (1) or (2) of this subsection shall be construed to apply to any campaign contribution that is lawfully made to a candidate or candidate's committee pursuant to 17 V.S.A. chapter 61 or to permit any activity otherwise prohibited by 13 V.S.A. chapter 21.

(g) Unauthorized commitments. A municipal officer shall not make unauthorized commitments or promises of any kind purporting to bind the municipality unless otherwise permitted by law.

(h) Benefit from contracts. A municipal officer shall not benefit from any contract entered into by the municipality and the officer, the officer's immediate family, or an associated business of the officer or the officer's immediate family, unless:

(1) the benefit is not greater than that of other individuals generally affected by the contract;

(2) the contract is a contract for employment with the municipality;

(3) the contract was awarded through an open and public process of competitive bidding; or

(4) the total value of the contract is less than \$2,000.00.

§ 1994. GUIDANCE AND ADVISORY OPINIONS

(a) Guidance.

(1) The Executive Director of the State Ethics Commission may provide guidance only to a municipal officer and only with respect to the officer's duties regarding any provision of this chapter or regarding any other issue related to governmental ethics.

(2) The Executive Director may consult with members of the State Ethics Commission and the municipality in preparing this guidance.

(3) Guidance provided under this subsection shall be exempt from public inspection and copying under the Public Records Act and shall be kept confidential unless the receiving entity has publicly disclosed it.

(b) Advisory opinions.

(1) On the written request of any municipal officer, the Executive Director may issue an advisory opinion to that officer that provides general advice or interpretation with respect to the officer's duties regarding any provision of this chapter or regarding any other issue related to governmental ethics.

(2) The Executive Director may consult with members of the Commission and the municipality in preparing these advisory opinions.

(3) The Executive Director may seek comment from persons interested in the subject of an advisory opinion under consideration.

(4) The Executive Director shall post on the Commission's website any advisory opinions that the Executive Director issues. Personally identifiable information is exempt from public inspection and copying under the Public Records Act and shall be kept confidential unless the municipal officer who is the subject of the advisory opinion authorizes the publication of the personally identifiable information.

§ 1995. ETHICS TRAINING

(a) Initial ethics training. Within 120 days after the election or appointment of a member of a legislative body or a quasi-judicial body, or a chief administrative officer, mayor, town or city manager, that individual shall complete ethics training, as approved by the State Ethics Commission. A municipality shall make a reasonable effort to provide training to all other municipal officers. The officer, the officer's employer, or another individual designated by the municipality shall document the officer's completed ethics training.

(b) Continuing ethics training. Upon completing initial ethics training, a municipal officer shall complete additional ethics training, as determined by the State Ethics Commission, every three years.

(c) Approval of training. Ethics trainings shall at minimum reflect the contents of the Municipal Ethics Code and be approved by the State Ethics Commission. Approval of ethics trainings shall not be unreasonably withheld. Ethics trainings shall be conducted by the State Ethics Commission, the municipality, or a third party approved in advance by the State Ethics Commission. The State Ethics Commission may approve trainings that are in person, online, and synchronous or asynchronous. The State Ethics Commission shall require ethics training to be designed in a manner as to achieve improved competency in the subject matter rather than rely on fixed hours of training as a measure of completed training.

(d) Training provided by the Commission.

(1) The State Ethics Commission shall develop and make available to municipalities ethics training required of municipal officers by subsections (a) and (b) of this section.

(2) The Commission shall develop and make available to municipalities trainings regarding how to investigate and resolve complaints that allege violations of the Municipal Code of Ethics.

(e) State Ethics Commission liaisons. Each municipality, acting through its legislative body, shall designate an employee as its liaison to the State Ethics Commission. If a municipality does not have any employees, the legislative body shall designate one of its members as its liaison to the State Ethics Commission. The municipality shall notify the Commission in writing of any newly designated liaison within 30 days after such change. The Commission shall disseminate information to the designated liaisons and conduct educational seminars for designated liaisons on a regular basis on a schedule to be determined by the Commission, in consultation with the municipality. The Commission shall report any ethics training conducted by the Commission and completed by an officer to the liaison of that officer's municipality.

§ 1996. DUTIES OF MUNICIPALITIES

Each municipality shall:

(1) Ensure that the following are posted on the town's, city's, or village's website or, if no such website exists, ensure that a copy of each is received by all municipal officers and is made available to the public upon request:

(A) the Municipal Code of Ethics;

(B) procedures for the investigation and enforcement of complaints that allege a municipal officer has violated the Municipal Code of Ethics, as required by section 1997 of this title; and

(C) any supplemental or additional ordinances, rules, and personnel policies regarding ethics adopted by a municipality.

(2) Maintain a record of municipal officers who have received ethics training pursuant to section 1995 of this title.

(3) Designate a municipal officer or body to receive complaints alleging violations of the Municipal Code of Ethics.

(4) Maintain a record of received complaints and the disposition of each complaint made against a municipal officer for the duration of the municipal officer's service plus a minimum of five years.

(5) Upon request of the State Ethics Commission, promptly provide the State Ethics Commission with a summary of complaints received by the

municipality and the outcome of each complaint, but excluding any personally identifiable information.

§ 1998. WHISTLEBLOWER PROTECTION

(a) Protected activity.

(1) An agency, department, appointing authority, official, or employee of a municipality shall not engage in retaliatory action against a protected employee because the protected employee refuses to comply with an illegal order or engages in any of the following:

(A) providing to a designated complaint recipient a good faith report or good faith testimony that alleges an entity of a municipality, employee or official of a municipality, or a person providing services to a municipality under contract has engaged in a violation of law or in waste, fraud, abuse of authority, or a threat to the health of employees, the public, or persons under the care of a municipality; or

(B) assisting or participating in a proceeding to enforce the provisions of this section.

(2) No agency, department, appointing authority, official, or employee of a municipality shall attempt to restrict or interfere with, in any manner, a protected employee's ability to engage in any of the protected activity described in subdivision (1) of this subsection.

(3) No agency, department, appointing authority, or manager of a municipality shall require any protected employee to discuss or disclose the employee's testimony, or intended testimony, prior to the employee's appearance to testify before the General Assembly if the employee is not testifying on behalf of an entity of the municipality.

(4) No protected employee may divulge information that is confidential under State or federal law. An act by which a protected employee divulges such information shall not be considered protected activity under this subsection.

(5) In order to establish a claim of retaliation based upon the refusal to follow an illegal order, a protected employee shall assert at the time of the refusal the employee's good faith and reasonable belief that the order is illegal.

(b) Communications with legislative bodies of municipalities and the General Assembly.

(1) No entity of a municipality may prohibit a protected employee from engaging in discussion with a member of a legislative body or the General Assembly or from testifying before a committee of a municipality or a committee of the General Assembly; provided, however, that a protected

employee may not divulge confidential information, and an employee shall be clear that the employee is not speaking on behalf of an entity of a municipality.

(2) No protected employee shall be subject to discipline, discharge, discrimination, or other adverse employment action as a result of the employee providing information to a member of a legislative body, a legislator, or a committee of a municipality or a committee of the General Assembly; provided, however, that the protected employee does not divulge confidential information and that the employee is clear that the employee is not speaking on behalf of any entity of the municipality. The protections set forth in this section shall not apply to statements that constitute hate speech or threats of violence against a person.

(3) In the event that an appearance before a committee of a municipality or committee of the General Assembly will cause a protected employee to miss work, the employee shall request to be absent from work and shall provide as much notice as is reasonably possible. The request shall be granted unless there is good cause to deny the request. If a request is denied, the decision and reasons for the denial shall be in writing and shall be provided to the protected employee in advance of the scheduled appearance. The protections set forth in this subsection (b) are subject to the efficient operation of municipal government, which shall prevail in any instance of conflict.

(c) Enforcement and preemption.

(1) Nothing in this section shall be deemed to diminish the rights, privileges, or remedies of a protected employee under other federal, State, or local law, or under any collective bargaining agreement or employment contract, except the limitation on multiple actions as set forth in this subsection.

(2) A protected employee who files a claim of retaliation for protected activity with the Vermont Labor Relations Board or through binding arbitration under a grievance procedure or similar process available to the employee may not bring such a claim in Superior Court.

(3) A protected employee who files a claim under this section in Superior Court may not bring a claim of retaliation for protected activity under a grievance procedure or similar process available to the employee.

(d) Remedies. A protected employee who brings a claim in Superior Court may be awarded the following remedies:

(1) reinstatement of the employee to the same position, seniority, and work location held prior to the retaliatory action;

(2) back pay, lost wages, benefits, and other remuneration;

(3) in the event of a showing of a willful, intentional, and egregious violation of this section, an amount up to the amount of back pay in addition to the actual back pay;

(4) other compensatory damages;

(5) interest on back pay;

(6) appropriate injunctive relief; and

(7) reasonable costs and attorney's fees.

(e) Posting. Every agency, department, and office of a municipality shall post and display notices of protected employee protection under this section in a prominent and accessible location in the workplace.

(f) Limitations of actions. An action alleging a violation of this section brought under a grievance procedure or similar process shall be brought within the period allowed by that process or procedure. An action brought in Superior Court shall be brought within 180 days following the date of the alleged retaliatory action.

§ 1999. MUNICIPAL CHARTERS; SUPPLEMENTAL ETHICS POLICIES

(a) To the extent any provisions of this chapter conflict with the provisions of any municipal charter listed in Title 24 Appendix, the provisions of this chapter shall prevail.

(b) A municipality may adopt additional ordinances, rules, and personnel policies regarding ethics, provided that these are not in conflict with the provisions of this chapter.

Sec. 22a. 24 V.S.A. § 1997 is added to read:

§ 1997. ENFORCEMENT AND REMEDIES

Each municipality shall adopt, by ordinance, rule, or personnel policy, procedures for the investigation of complaints that allege a municipal officer has violated the Municipal Code of Ethics and the enforcement in instances of substantiated complaints, including methods of enforcement and available remedies.

* * * Initial Ethics Training for In-Office Municipal Officers * * *

Sec. 23. INITIAL ETHICS TRAINING FOR IN-OFFICE MUNICIPAL OFFICERS

On or before September 30, 2025, all members of legislative bodies and quasi-judicial bodies, chief administrative officers, mayors, town and city managers shall complete ethics training, which may be in person or online, as approved by the State Ethics Commission, unless they have otherwise completed ethics training pursuant to 24 V.S.A § 1995 (ethics training). The

State Ethics Commission shall require ethics training to be designed in a manner as to achieve improved competency in the subject matter rather than rely on fixed hours of training as a measure of completed training. The officer, the officer's employer, or another individual designated by the municipality shall document the officer's completed ethics training.

* * * Effective Dates * * *

Sec. 24. EFFECTIVE DATES

This act shall take effect on passage, except that Sec. 13 (adding 3 V.S.A. § 1230) shall take effect on July 1, 2025, Sec. 22 shall take effect on January 1, 2025, Secs. 7 (amending 3 V.S.A. § 1221(a)), 8 (amending 3 V.S.A. § 1222), 9 (amending 3 V.S.A. § 1223), 10 (adding 3 V.S.A. § 1227), 11 (adding 3 V.S.A. § 1228), 12 (adding 3 V.S.A. § 1229), and 14 (adding 3 V.S.A. § 1231) shall take effect on September 1, 2025, and Sec. 1 (amending 17 V.S.A. § 2414) shall take effect on January 1, 2026.