

**Testimony on DR 24-0461 draft 4.3**  
**House Government Operations Committee**  
**February 29, 2024**  
**Submitted by Elaine Haney, Essex Junction City Councilor**

Good morning Mr. Chair, Mr. Vice Chair, and members of the Committee. Thank you for inviting me to speak on your draft bill regarding a potential municipal code of ethics.

For the record, my name is Elaine Haney and I am an elected city councilor for the City of Essex Junction. While I am in my first term as a city councilor, I have also served seven years as a trustee of the Village of Essex Junction, as well as three years as a member of the Town of Essex Selectboard, with two of those years as chair. I am speaking today as an individual elected official and not on behalf of the City Council.

I am also a former member of the Vermont League of Cities and Towns board of directors, and currently serve as a member of their Equity Advisory Committee.

Additional context to my remarks today comes from my employment as the Executive Director of Emerge Vermont, which recruits and trains Democratic women to run for office. In that capacity I work with scores of women candidates and elected officials and have heard a great deal about their experiences serving in public office.

My testimony today will focus on the need for municipalities to have a resource for guidance on how to deal with unethical behavior and some context as to why such a resource is necessary. If I may, I would also like to share some thoughts on the potential impact some aspects of this draft bill may have on municipalities.

Last fall I submitted comments to the Ethics Commission in response to their call for feedback regarding ethical behavior at the municipal level. I shared my concerns about the experiences local officials have (particularly women) when they question procedures of their legislative bodies or the behavior of fellow elected officials or municipal staff.

In my role as a recruiter and trainer of women who run for office, I also am a sounding board. I have heard many stories from women selectboard members who have come to me in varying degrees of shock after experiencing a strong reaction when they have pointed out something that's not being done correctly, or worse. These women are generally from much smaller communities, sometimes with 3-member boards, and almost always they are the only woman (or the youngest, or both) on the board. They've experienced a wide range of reactions, including being systematically removed from other committees, public accusations and harassment, and intentionally being excluded from official board business, all for asking questions or raising concerns. After experiencing such treatment, sometimes long term, often these women will finish out their term of office and not run again; sometimes they will vacate their seat mid-term. These negative experiences, especially if carried out in the public eye, can deter people from serving in public office and foster distrust in government.

I appreciate section 1994 of the draft bill which establishes a confidential resource for an individual municipal officer to seek guidance on ethical questions. This kind of guidance is not currently available. VLCT provides excellent training and technical support, but they are strictly advisory, so if an elected official calls them for help, they are able only to provide background information and assist in interpreting existing law. There doesn't appear to be a resource for elected officials to get advice and guidance on their particular issues, unless they go to their municipal attorney, which costs money and means their inquiry could become public information. I think establishing a confidential resource is something that's needed and will be well utilized.

More importantly, unlike the protections afforded to government and private employees, there are no protections for elected officials who point out potential ethical violations in a community, especially a small one. And the price for challenging a decision, a fellow board member, or a staff member can be very high, regardless of the outcome.

I appreciate the establishment of whistleblower protections in section 1997. Done properly, these protections should lead to more disclosure of unethical behavior, but more importantly, to better and more prompt resolution of such behavior and a reduction in the need for reporting.

As an elected official, I have concerns about other proposals in the draft bill. It makes many recommendations that would apply to all municipalities (though I would note that they do not apply to school boards, which by their nature as elected bodies and with budgets substantially higher than most municipalities, I would think would be included). I want to emphasize that while it is important to provide a framework of ethics that all can follow, it is equally important to allow for and maintain the work many municipalities have already done in this area.

I have found that communities with larger populations tend to have policies and procedures in place that address potential ethical issues. Each year for example, Essex Junction city councilors sign a conflict of interest policy and receive training that includes a review of our municipal purchasing policy. As members of our local governing board we are also members of our board of civil authority, and so have received some training on election integrity and tax abatement rules and responsibilities. And of course we also are trained on the rules of open meeting law. City staff regularly make us aware of additional trainings available through VLCT and other outlets and facilitate our enrolling in them.

I believe in larger communities elected officials are sufficiently trained to fulfill their roles so that there aren't any significant or intentional lapses. Additionally, larger municipalities generally seem to have strong auditing policies which they follow, and they use any findings as accountability tools. Smaller communities do not always have the capacity to be so thorough. Some have only recently adopted conflict of interest policies, which are required by the Enumeration of Powers statute that this draft bill repeals.

Section 1997 states municipalities should not implement any anti-whistleblower policies. While I applaud this idea and the intent behind requiring ethics training, I believe it would be more effective and efficient to maintain the requirement for a conflict of interest policy and add to it a requirement for an ethics policy, reporting procedure, and non-retaliation policy, all of which should be approved and adopted by a legislative body. This would allow each municipality to work with the policies they currently have, develop new ones, and do it all in the public eye.

The ethics training proposed in the draft bill imposes a lot of additional administrative work on municipal staff and duplicates what is already being done in many municipalities. You might ask, if municipalities are already doing this, why are we still hearing about unethical behavior? We can't necessarily legislate behavior in this case. But what we can do is support the work already being done at the municipal level by filling in the gaps between what municipalities are already doing and what they are unable to do. Section 1994 of this draft bill is a great example of that. Requiring municipalities to create, approve, and implement their own policies is another example.

Lastly, from the perspective of an elected official, the ultimate form of discipline is removal from office. No matter the office, an elected official is primarily concerned with serving their constituents, and doing so in a way that gets them re-elected. Investigations and maintaining records happen after the fact and generally apply to a specific instance of unethical behavior. Sometimes it's behavior over time or a particularly egregious unethical act that disrupts a local governing board and catches the public's attention. Allowing Vermont voters to recall local officials would be a definite deterrent to unethical behavior. In order to prevent recall from being used as a tool against a particular elected official by a political opponent, it should have a high bar: a recall petition signed by, for example, 15% of registered voters, which is the threshold proposed by the Town of Essex in their revised charter that was recently approved by the House. Recall is a drastic remedy, but it speaks volumes to an elected official.

I respectfully caution the Committee not to impose additional administrative work on municipalities, but rather facilitate their access to and implementation of tools that already exist. Ensuring that every municipality in Vermont has a conflict of interest policy, ethics policy, reporting procedure, and non-retaliation policy—and providing guidance for their implementation—seems like a balanced approach that ensures the municipality is the center of this work. Establishing a parallel system outside of both the municipality and existing judicial channels would be duplicative, confusing, and costly.

I applaud this effort by the Committee and the Ethics Commission to ensure that local elected officials and municipal officers perform their duties and interpret the law to the highest ethical standards. This discussion is long overdue. But as you know, ethical leadership also means being as inclusive as possible of all parties potentially affected by a decision. I believe and recommend that for this initiative to be successful, it requires a partnership between the Ethics Commission, the Secretary of State's office, and VLCT. A single code of ethics imposed upon municipalities statewide will not be as effective as working together to create a system of accountability that involves ongoing training and support for all types of

municipalities with taxing authority on the rules of ethical behavior, open meeting law, and appropriate professional culture for governing bodies.

Thank you very much for the opportunity to share my thoughts on this draft bill, and for the Committee's necessary work on this topic.