VERMONT HOUSE OF REPRESENTATIVES

CLERK OF THE HOUSE

Memorandum

To: House Committee on Government Operations and Military Affairs

From: BetsyAnn Wrask, Clerk of the House, Co-Counsel to House Ethics Panel

Date: Thurs., Feb. 27, 2025

Re: H.1 amendment conforms to Vermont's State constitutional governance structure

I. Introduction

Your committee has been considering 2025, H.1 (accepting and referring complaints by the State Ethics Commission), and specifically, the H.1 strike-all amendment (draft 1.3) proposed by the members of the House Ethics Panel.

The purpose of this memorandum is to provide additional context regarding why the Panel and its staff perceive the Panel's proposed H.1 strike-all amendment to be necessary in order to correct an infringement on constitutional legislative authority and procedure created by the enactment of 2024, Act 171 (H.875), Sec. 9.

That Sec. 9 amended 3 V.S.A. § 1223, which provides the procedure by which the Commission accepts and refers complaints regarding governmental ethics in any of the three branches of State government. Under that statutory law, which existed prior to 2024, Act 171, the Commission refers a complaint to the applicable State regulatory entity that ordinarily handles such a complaint, based on the complaint context.

To confirm, in the Legislative Branch, the Commission refers complaints regarding Representatives to the House Ethics Panel; and it refers complaints regarding Senators to the Senate Ethics Panel. In the Judicial Branch, the Commission refers complaints regarding judicial officers to the Judicial Conduct Board; and it refers complaints regarding attorneys to the Professional Responsibility Board. These are the regulatory entities that are the arms/agents of the State constitutional entities that have authority over these individuals, in accordance with the exclusive authority of the House and Senate to "judge member qualifications" as set forth in Vt. Const. Ch. II, §§ 14 and 19, and of the Supreme Court of Vermont to have "disciplinary authority concerning all judicial officers and attorneys at law in the State as set forth in Vt. Const. Ch. II, § 30.[1]

[1] The full list of applicable regulatory entities is set forth in 3 V.S.A. § 1223(b).

2024, Act 171, Sec. 9 added a new subsection (c) to provide a consultation requirement when the Commission refers such a complaint to the applicable State regulatory entity. The new consultation requirement is not yet in effect; it is set to take effect on September 1, 2025.[2]

Subsection (c) purports to require each regulatory entity to consult in writing with the Commission regarding the application of the State Code of Ethics on any complaint the Commission refers to the regulatory entity, before the entity can make a final determination on the complaint. Under the statutory construct of 3 V.S.A. § 1223, the Commission is an entity that "shall accept complaints from any source regarding governmental ethics in any of the three branches of State government or of the State's campaign finance law"; it is an entity to which any individual can submit a complaint about State ethical conduct,[3] and the duty of the Commission is to refer the complaint to the applicable State regulatory entity.

2025, H.1 As Introduced was sponsored by the members of the 2023–24 House Ethics Panel who were returning to the House, in order to address the separation of powers concerns regarding this new consultation requirement. These concerns were only realized after adjournment of that biennium, because neither the Panel nor its staff were consulted on these new requirements prior to bill enactment, despite these provisions impacting Panel processes.

The H.1 strike-all is proposed by the members of the 2025–26 Panel as updated language. Both the bill as introduced and the amendment are limited to the manner in which this consultation is required when the Commission refers a complaint to the applicable regulatory entity in the Legislative and Judicial Branches, due to the constitutional authority of those two separate branches.

Specifically, the H.1 amendment would require the Commission to provide in advance any application of the State Code of Ethics to the complaint, and a recommended action, in order to avoid the 2024 act's attempt to control by statute the constitutional authorities of the Legislative and Judicial Branches to regulate the individuals described in the Vermont Constitution.

By the H.1 amendment requiring the Commission to provide its consultation up-front, when it refers any complaint to the relevant legislative panels and judicial boards, it will address the constitutional concern, explained in testimony by the legal counsel for these entities, that the upcoming law, if not amended, attempts to control those entities before they can act on a complaint that is within their constitutional purview. Under the H.1 amendment, with this information in advance, for the House, the House Ethics Panel can then consider any application of the State Code of Ethics and the Panel's need to further consult with the Commission.

This memorandum will describe the legislative powers impacted by 2024, Act 171, Sec. 9 and relatedly, the judicial powers impacted by that provision. It will also provide an overview of the State Ethics Commission and the current processes shared between the Commission and the House Ethics Panel.

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[2] 2024, Act 171, Sec. 24 (effective dates).

[3] And starting September 1, 2025, municipal ethical conduct.

II. Federal Law Does Not Control Separation of Powers in Vermont

Under the U.S. Constitution, the Supremacy Clause set forth in Art. VI, cl. 2 provides that federal law "shall be the supreme Law of the Land[.]" However, our federal constitution provides Congress with enumerated powers, and the 10th Amendment provides that all powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states or to the people.

And the U.S. Supreme Court has held that the U.S. Constitution does not contain a requirement regarding how a state is to apportion power among its three branches,[4] and that whether and to what extent a state should have a separation of powers among its branches is an issue within the state's control.[5]

III. The Vermont Constitution Controls our State Government[6]

The Vermont Constitution controls the operation of our State government. "The Vermont Constitution is the fundamental charter of our state and is preeminent in our governmental scheme . . . As such, the constitution stands above legislative and judge-made law, and the rights contained therein speak 'for the entire people as their supreme law.'"[7]

IV. The Vermont Constitution Requires Separation of Powers

Vt. Const. Ch. II, § 5 requires that there be a separation of powers among the three branches of State government: "The Legislative, Executive, and Judiciary departments, shall be separate and distinct, so that neither exercise the powers properly belonging to the others."

"Briefly stated, the legislative power is the power that formulates and enacts the laws; the executive power enforces them; and the judicial power interprets and applies them."[8] Separating these three core powers is a "fundamental principle" that serves to create a governmental structure "resistant to the forces of tyranny."[9]

And to understand the requirements of our constitutional structure of State government, we turn to the caselaw of the Supreme Court of Vermont, because in the checks and balances built into the separation of powers among the three branches, "it is the province of the court to decide whether Vermont's laws comply with the State Constitution"[10]; "[i]t is the function of the

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[4] Highland Farms Dairy v. Agnew, 300 U.S. 608, 612 (1937) ("The Constitution of the United States in the circumstances here exhibited has no voice upon the subject [of whether a state legislature unlawfully delegated its legislative power] . . . How power shall be distributed by a state among its governmental organs is commonly, if not always, a question for the state itself.").

[5] Dreyer v. People of State of Illinois, 187 U.S. 71, 84 (1902) ("Whether the legislative, executive, and judicial powers of a state shall be kept altogether distinct and separate, or whether persons or collections of persons belonging to one department may, in respect to some matters, exert powers which, strictly speaking, pertain to anther department of government, is for the determination of the state.").

[6] *See also* Overview of Vermont State Governmental Structure.

[7] In re Town Highway No. 20, 191 Vt. 231, 248 (2012) (other citations omitted).

[8] In re D.L., 164 Vt. 223, 228 (1995).

[9] Id. (citing James Madison's statement in *Federalist Paper No. 47* that the accumulation of legislative, executive, and judicial power into one place is the "very definition of tyranny.").

[10] Brigham v. State, 179 Vt. 525, 528 (2005).

courts to maintain constitutional government"[11]; and the Supreme Court of Vermont is the "final interpreter of the Vermont Constitution."[12]

V. The Legislative and Judicial Powers Impacted by 2024, Act 171, Sec. 9

A. Each Legislative Chamber's Authority to Judge Member Qualifications

Vt. Const. Ch. II, § 14 provides: "The Representatives so chosen . . . shall have power to . . . judge of the elections and qualifications of their own members; they may expel members, but not for causes known to their constituents antecedent to their election . . ."

Vt. Const. Ch. II, § 19 provides the Senate with "the like powers to decide on the election and qualifications of, and to expel any of, its members . . . as are incident to, or are possessed by, the House of Representatives."

In the 2001 Supreme Court of Vermont (SCOV) case Brady v. Dean,[13] the SCOV acknowledged that "our constitution does not define, nor have we previously addressed, the precise scope of the legislative prerogative over members' 'qualifications'," but held that this "exclusive constitutional prerogative" "encompasses the authority to determine whether a member's personal or pecuniary interest requires dis qualification from voting on a question before it."[14]

"Indeed, the House has adopted rules addressed to this very problem [citing House Rule 75 (prohibiting members from voting on questions of immediate or direct interest) and House Rule 88 (adopting *Mason's Manual of Legislative Procedure* to supplement House Rules)]."[15]

"We further conclude that, as a policy matter, a proper regard for the independence of the Legislature requires that we respect its members' personal judgments concerning their participation in matters before them."[16]

B. Each Legislative Chamber Controls its Own Procedure; Statute Does Not Control

The General Assembly's legislative power is only limited by the Vermont Constitution. "The Supreme Legislative power shall be exercised by a Senate and House of Representatives," Vt. Const. Ch. II, § 2, "but they shall have no power to add to, alter, abolish, or infringe any part of" the Vermont Constitution, Vt. Const. Ch. II, § 6. As the Vermont Supreme Court stated, the "Constitution is not a grant of power to the Legislature, but it is a limitation of its general powers. The Legislature's power is practically absolute, except for constitutional limitations."[17]

Legislative rulemaking is considered a necessary legislative power. *Mason's Manual of Legislative Procedure* — adopted as supplemental parliamentary procedure by both the House

[11] C.O. Granai v. Witters, Longmoore, Akley & Brown, 123 Vt. 468, 470 (1963).
[12] State v. Read, 165 Vt. 141, 153 (1996).
[13] Brady v. Dean, 173 Vt. 542 (2001).
[14] Id. at 544.
[15] Id.
[16] Id. at 545.

and Senate[18] and based on caselaw nationwide— states that "[e]very governmental body has an inherent right to regulate its own procedure, subject to the provisions of the constitution or other controlling authority."[19]

While legislative procedure must comply with any constitutional requirements—such as quorum requirements, when a roll call is required, or the vote threshold to override a veto—legislative procedural authority is otherwise unlimited. While there is no known SCOV caselaw that has directly addressed the constitutional limits of Vermont legislative procedures, there seems to be robust caselaw on this issue in other states. For example, the Supreme Court of Iowa adjudicated many such cases, and its cited holdings have acknowledged broad legislative procedural authority. That court quoted at least two cases holding that authority:

> . . . does not restrict the power . . . to the mere formulation of standing rules, or the proceedings of the body in ordinary legislative matters; but in the absence of constitutional restraints . . . such authority extends to the determination of the propriety and effect of any action . . . taken by the body as it proceeds in the exercise of any power, in the transaction of any business, or in the performance of any duty conferred upon it by the Constitution.[20]

The General Assembly's chambers may follow legislative procedures set forth in statute. But statute exists only after concurrence with the other chamber and after a bill has been presented to the Governor in accordance with the Vermont Constitution. Neither the Governor nor a separate chamber have authority to control another chamber's procedure. Therefore, whenever possible, legislative procedure should not be set forth in statute.

Moreover, the principle that constitutionally permitted legislative rules and procedures supersede statute is proclaimed multiple times in *Mason's*.[21] While there is no known SCOV caselaw that confirms this principle, that courts will not adjudicate challenges to constitutionally permitted legislative procedure — even if it conflicts with statute — is supported by caselaw in the U.S. Supreme Court and multiple other states' supreme courts.

First, courts will not adjudicate challenges to constitutionally permitted legislative rules, or the violation thereof. "It is a legislative prerogative to make, interpret[,] and enforce its own

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[17] Rafus v. Daley, 103 Vt. 426, 154 A. 695, 697 (1931) (citations omitted).

[18] House Rule 88 and Senate Rule 91, respectively.

[19] *Mason's* Sec. 2-1.

[20] Des Moines Register and Tribune Co, v. Dwyer, 542 N.W.2d 491, 498 (1996) (citations omitted). This quote is also used as the basis for *Mason's* Sec. 3-4.

[21] *See Mason's* Secs. 2-3 ("The constitutional right of a state legislature to control its own procedure cannot be withdrawn or restricted by statute, but statutes may control procedure insofar as they do not conflict with the rules of the houses or with the rules contained in the constitution."); 2-7 ("An act of the legislature is legal when the constitution contains no prohibitions against it."); 3-2 ("The house and senate each may pass an internal operating rule for its own procedure that is in conflict with a statute formerly adopted."); 4-1 and 13-5 ("Rules of procedure passed by one legislature or statutory provisions governing the legislative process are not binding on a subsequent legislature."); 4-2 ("Rules of legislative procedure are derived from several sources and take precedence in the order listed below . . . [with constitutional provisions; adopted rules; and custom, usage, and precedents taking precedence in that order over statutory provisions]"); 13-7 ("Rules of procedure are always within control of the majority of a deliberative body and may be changed at any time by a majority vote.").

procedural rules and the judiciary cannot compel the legislature to exercise a purely legislative prerogative . . . Just as the legislature may not invade our province of procedural rulemaking for the court system, we may not invade the legislature's province of internal procedural rulemaking. A member of the legislature can raise a point of order regarding a violation of any of the rules of the house or senate. That is the proper forum for determining the propriety of the activities complained of . . ."[22]

Relatedly, the U.S. Supreme Court has stated that Congress' constitutional authority to determine its rules of proceedings is an ongoing power. "The constitution empowers each house to determine its rules of proceedings . . . The power to make rules is not one which once exercised is exhausted. It is a continuous power, always subject to be exercised by the house . . ."[23]

Moreover, multiple states' supreme courts appear consistent: statute does not control legislative procedure. For example, in an opinion by the Supreme Judicial Court of Maine, the court found that a person contesting a House member's election failed to comply with a statutory requirement to notify that legislator of the contest within a certain amount of time.[24] However, the Court stated that this should not prohibit the House's Committee on Elections from having jurisdiction to entertain the contestant's petition, since under a provision of the Maine Constitution, each chamber has the authority to judge the elections of its members.[25] "The Constitution thus clothes each house of the Legislature with exclusive and plenary jurisdiction. The Legislature may prescribe reasonable rules of conduct and procedure in resolving election contests involving its own membership, *but its jurisdiction continues to rest upon the authority vested in it by the Constitution and may not be made to depend upon any technical compliance or failure to comply with such procedural requirements* [emphasis added]."[26]

In a case before the Wisconsin Supreme Court, respondents argued that an act was invalid in part because prior to passage, the bill was not referred to a specific committee, as required by statute.[27] Petitioners argued that the bill did not meet the description of the type of legislation that the statute required to be referred to that committee.[28] The court refused to decide the question, in light of the principle of separation of powers.[29] "To discuss or consider the petitioner's argument [regarding whether the statute applied to the bill] would imply that this court will review legislative conduct to ensure the legislature complied with its own procedural rules or statutes in enacting the legislation . . . we conclude we will not intermeddle in what we

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[22] Des Moines Register and Tribune Co., 542 N.W.2d at 500-501 (1996) (citing Moffitt v. Willis, 459 So.2d 1018, 1021-1022 (Fla. 1984) (other citations omitted)).
[23] U.S. v. Ballin, 144 U.S. 1, 5 (1892).
[24] Opinion of the Justices, 157 Me. 98, 101 (1961). (The Maine House of Representatives requested this opinion pursuant to the Maine Constitution, which requires the Court to provide opinions to the Legislature under certain conditions.).
[25] Id.
[26] Id. at 102.
[27] State ex rel. La Follette v. Stitt, 114 Wis.2d 358, 363 (1983).
[28] Id. at 364.
[29] Id. at 364-365.

view, in the absence of constitutional directives to the contrary, to be purely legislative concerns; accordingly, we decline to resolve the question . . ."[30]

"Although since Marbury v. Madison[31]. . . courts have had the authority to review acts of the legislature for any conflict with the constitution, courts generally consider that the legislature's adherence to the rules or statutes prescribing procedure is a matter entirely within legislative control and discretion, not subject to judicial review unless the legislative procedure is mandated by the constitution."[32] The Wisconsin court then cited the principle in Sutherland that a legislature, by statute or joint resolution, cannot bind or restrict itself or its successors as to the procedure to be followed in the passage of legislation.[33] "[The statute] is simply a procedural rule, albeit in statute form and thereby imbued with all the dignity and importance of a legislative act passed by both houses of the legislature and signed by the governor. Nevertheless, the fact that [the statute] is something more than a mere internal procedural rule but less than a constitutional requirement, does not remove it from the application of the general rule as stated by Sutherland, *supra* . . . it has been held that the legislature's failure to follow a procedural rule — even if such rule is embodied in a statute — is not open to judicial scrutiny and cannot be a basis for judicial invalidation of a legislative enactment."[34]

The Supreme Court of New Hampshire more recently echoed the sentiment that constitutionally permitted legislative procedures may supersede statute, and that it is not within a court's authority to intervene if that happens. The court relied on multiple cases from other states, including one from Alaska, which held that "when a statute 'relates solely to the internal organization of the legislature, a subject which has been committed by our constitution to each house . . . proper recognition of the respective roles of the legislature and the judiciary requires that the latter not intervene.'"[35] While the court stated that claims regarding compliance with mandatory constitutional provisions are justiciable, the question of whether the New Hampshire legislature violated statutes codifying its own constitutionally permitted procedural rules is nonjusticiable.[36]

In a separate but similar case, the New Hampshire court — citing other states' caselaw — discussed that legislative rulemaking authority is a "'continuous power absolute,'" which means that a chamber is not bound by action taken by a previous legislature, and that a "legislature, alone, 'has complete control and discretion whether it shall observe, enforce, waive, suspend, or disregard its own rules of procedure.'"[37] "The same is true of statutes that codify legislative procedural rules. Statutes relating to the internal proceedings of the legislature 'are not binding

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[30] Id. at 364.
[31] Marbury v. Madison, 5 U.S. (1 Cranch) 137 (1803).
[32] LaFollette at 365.
[33] Id. (citing 1 Sutherland, Statutory Construction (4th Ed.) sec. 7.04, p. 264).
[34] Id. at 367 (other citations omitted).
[35] Baines v. New Hampshire Senate President, 152 N.H. 124, 132 (2005) (citing Malone v. Meekins, 650 P.2d 351, 356 (Alaska 1982)).
[36] Id. at 132.
[37] Hughes v. Speaker of the New Hampshire House of Representatives, 152 N.H. 276, 284 (2005) (other citations omitted).

upon the Houses . . . Either branch, under its exclusive rule-making constitutional prerogatives, is free to disregard or supersede such statutes by unicameral action.'"[38]

C. The Supreme Court of Vermont's Exclusive Disciplinary Authority

Pursuant to Vt. Const. Ch. II, § 30, the Vermont Supreme Court has "disciplinary authority concerning all judicial officers and attorneys at law in the State." While the Court has the assistance of the Judicial Conduct Board for judicial officers, "in judicial conduct proceedings, this Court makes the only final and ultimate decision. The findings and recommendations of the Board carry great weight, but are advisory, not binding."[39] Regarding attorneys, the Professional Conduct Board "acts on behalf of this Court" pursuant to the Court's "exclusive responsibility" over attorney discipline, with the Court making "its own ultimate decisions on discipline."[40]

VI. Overview of the Vermont State Ethics Commission

A. The Commission is an Independent Executive Branch Entity

The State Ethics Commission is in the Executive Branch. This is stated in the Commission's enabling law ("There is created within the Executive Branch an independent commission named the State Ethics Commission . . ."),[41] but that statements exists only as clarifying language. The Commission would be in the Executive Branch regardless of whether that provision of its enabling law were repealed or if it were never enacted to begin with. Nor would the Commission's suggestion to amend the law to provide that the Commission is or is not "of the" Executive Branch be of any effect.

The Vermont Constitution does not contemplate State entities that float free from one of the three branches. "Briefly stated, the legislative power is the power that formulates and enacts the laws; the executive power enforces them; and the judicial power interprets and applies them."[42] Separating these three core powers is a "fundamental principle" that serves to create a governmental structure "resistant to the forces of tyranny."[43]

The Ethics Commission is in the Executive Branch because it executes the law enacted by the General Assembly. The conferred authority to execute law is the Executive power.[44] Executive Branch entities have the power to "apply the general provisions of law to particular circumstances and situations[.]" This is true not only on our State level, but also on the federal level.[45]

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[38] Id. (other citations omitted).
[39] In re Bryan, 164 Vt. 589, 593 (1996) (other citations omitted).
[40] In re Berk, 157 Vt. 524, 527 (1991) (quoting Vt. Const. Ch. II, § 30 and the Court's administrative rules).
[41] 3 V.S.A. § 1221(a).
[42] In re D.L., 164 Vt. 223, 228 (1995).
[43] Id. (citing James Madison's statement in *Federalist Paper No. 47* that the accumulation of legislative, executive, and judicial power into one place is the "very definition of tyranny.").
[44] *See* Waterbury v. Melendy, 109 Vt. 441, 448 (1938) (There is a distinction "between a delegation of the power to make the law[,] which necessarily includes a discretion as to what it shall be[,] and the conferring of authority or discretion as to its execution[,]" which is exercised under and in pursuance of the law.).
[45] *See* Bowsher v. Synar, 478 U.S. 714, 733 (1986) ("Interpreting a law enacted by Congress to implement the legislative mandate is the very essence of the "execution" of the law.").

And the Ethics Commission is "independent" in the Executive Branch because it answers to no entity other than itself: Via 3 V.S.A. § 1221(b)(4), Commission members can only be removed for cause by the remaining members of the Commission. As the U.S. Supreme Court stated, "[o]nce an officer is appointed, it is only the authority that can remove him, and not the authority that appointed him, that he must fear and, in the performance of his functions, obey."[46]

The General Assembly has used this same structure to create the similar independent Executive Branch entities the Green Mountain Care Board[47] and the Cannabis Control Board.[48]

B. New Commission Investigative and Enforcement Authority

As it was originally created, the State Ethics Commission did not have investigative or enforcement authority. However, the 2024 Ethics Act—2024, Act 171 (H.875)—provided the Commission with authority to investigate, hold hearings, issue warnings and reprimands, and recommend actions in regard to complaints, effective September 1, 2025.[49] On that date, the Commission may investigate after receiving a complaint or investigate on its own initiative.[50]

That new Commission authority will include the power to enforce the State Code of Ethics, which is set forth in 3 V.S.A. ch. 31, subch. 1. While 3 V.S.A. § 1202(c) of the Code of Ethics provides that the application of the Code "does not in any way abrogate or alter the sole authority of each house of the General Assembly to judge the elections and qualifications of its members" under the Vt. Const., it is to be determined how the Commission will view the scope of its enforcement authority in regard to House member conduct.

Specifically, it is unknown at this time what the Commission will perceive to be core legislative functions constitutionally committed to the House (such as conflicts of interest in voting as described in Brady), versus noncore legislative functions that the Commission may permissibly regulate. For example, it is unknown at this time whether the Commission would attempt to prohibit legislators from holding certain outside employment under 3 V.S.A. § 1203i(a),[51,52] or to prohibit another branch of government from hiring a legislator.[53]

VII. Interaction Between Commission and House Ethics Panel

1. Once the Commission was created in law, in accordance with the Commission's original duty in 3 V.S.A. § 1223(b)(4)(B) to refer complaints about Reps. to the House Ethics Panel and "request" a report back from the Panel regarding the final disposition of the complaint, the Panel added to its Procedure for Handling Complaints § 7(C), which

[46] Id. at 726 (quoting Synar v. U.S., 626 F.Supp. 1374, 1401 (1986)).
[47] *See* 18 V.S.A. § 9374(b)(4).
[48] *See* 7 V.S.A. § 843(c)(4).
[49] 3 V.S.A. § 1221(a), as amended by 2024, Act 171, Sec. 7.
[50] 3 V.S.A. § 1227, as added by 2024, Act 171, Sec. 10.
[51] 3 V.S.A. § 1203i provides: "A public servant shall not seek or engage in outside employment or activities that are inconsistent, incompatible, or in conflict with the public servant's official duties."
[52] Under the Vt. Const., the qualifications to be elected to legislative office are: 1) the voter qualifications as set forth in Ch. I, Art. 8 and Ch. II, § 42; and 2) the residency requirement set forth in Ch. II, §§ 15 and 66. And once in office, legislators are prohibited from being paid to lobby as set forth in Ch. II, § 12.
[53] Legislators are prohibited from simultaneously holding Congressional offices of profit or trust as described in Vt. Const. Ch. II, § 17 or an incompatible constitutional office as set forth in Ch. II, § 54. Otherwise, Ch. II, § 12 prohibits a legislator from being paid to lobby, "except when employed in behalf of the State."

provides an exception to the Panel's confidentiality requirement to provide to the Commission notice of the final disposition of a complaint referred to the Panel by the Commission.

- To do so, the Panel provides the Commission with a copy of the closure report provided to the Complainant and Respondent.

2. 3 V.S.A. § 1205 provides that the Panel is to submit its Code of Ethics training materials to the Commission in advance of the training. The Panel has submitted its training Power Points to the Commission for review. In 2023, the Commission participated in this House training by reviewing the new gift provisions of the Code. This biennium, the Panel invited the Commission again to participate in the Panel training, but the Commission was not able to do so due to a scheduling conflict. However, the Commission reviewed the Panel's training materials, provided feedback, and the Panel updated its Code of Ethics training materials based on that feedback.

3. The Panel or its staff will refer Reps. to the Commission on matters that pertain to the acceptance of gifts and other non-core legislative duties.

4. Pursuant to 3 V.S.A. § 1226(a), as added by 2024, Act 171, Sec. 19, annually, by November 15, the Panel is to report to the 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." The Panel corresponded with the Commission about this requirement due to the Panel's confidentiality requirement and issued an initial report, received feedback from the Commission regarding this new report requirement, and thereafter the Panel submitted to the Commission a report addendum to conform to this reporting.

    - Panel members sponsored 2025, H.R.6 to propose amendments to the House ethics rule to address this and other matters relating to disclosure of complaint information.

VIII. Conclusion

In conclusion, the proposed H.1 amendment is offered by the members of the House Ethics Panel to address the constitutional concerns related to 2024, Act 171, Sec. 9's consultation requirement, while still allowing the Panel to consider and understand the Commission's perspective and expertise on any application of the State Code of Ethics. Please let me know if you have any questions or would like to further discuss. Thank you.