

H.1: An Act Relating to Accepting and Referring Complaints by the State Ethics Commission

The State Ethics Commission and the General
Assembly's Sole Constitutional Authority to
Judge its Members

Title 3 : Executive

Chapter 031 : Governmental Ethics

Subchapter 003 : STATE ETHICS COMMISSION

(Cite as: 3 V.S.A. § 1223)

§ 1223. Procedure for accepting and referring complaints

(a) Accepting complaints.

(1) On behalf of the Commission, the Executive Director 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 set forth in 17 V.S.A. chapter 61.

(2) Complaints shall be in writing and shall include the identity of the complainant.

[Subsection (b) introductory paragraph effective until September 1, 2025; see also subsection (b) introductory paragraph effective September 1, 2025 set out below.]

(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, which shall include referring complaints to all relevant entities.

[Subsection (b) introductory paragraph effective September 1, 2025; see also subsection (b) introductory paragraph effective until September 1, 2025 set out above.]

(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.

(1) Governmental conduct regulated by law.

(A) If the complaint alleges a violation of governmental conduct regulated by law, the Executive Director shall refer the complaint to the Attorney General or to the State's Attorney of jurisdiction, as appropriate.

(B) The Attorney General or State's Attorney shall file a report with the Executive Director regarding his or her decision as to whether to bring an enforcement action as a result of a complaint referred under subdivision (A) of this subdivision (1) within 10 days of that decision.

(2) Department of Human Resources, Personnel Policy and Procedure Manual.

(A) If the complaint alleges a violation of the Department of Human Resources Personnel Policy and Procedure Manual, the Executive Director shall refer the complaint to the Commissioner of Human Resources.

(B) The Commissioner shall report back to the Executive Director regarding the final disposition of a complaint referred under subdivision (A) of this subdivision (2) within 10 days of that final disposition.

(3) Campaign finance.

(A) If the complaint alleges a violation of campaign finance law, the Executive Director shall refer the complaint to the Attorney General or to the State's Attorney of jurisdiction, as appropriate.

(B) The Attorney General or State's Attorney shall file a report with the Executive Director regarding his or her decision as to whether to bring an enforcement action as a result of a complaint referred under subdivision (A) of this subdivision (3) as set forth in 17 V.S.A. § 2904a.

(4) Legislative and Judicial Branches; attorneys.

(A) If the complaint is in regard to conduct committed by a State Senator, the Executive Director shall refer the complaint to the Senate Ethics Panel and shall request a report back from the Panel regarding the final disposition of the complaint.

(B) If the complaint is in regard to conduct committed by a State Representative, the Executive Director shall refer the complaint to the House Ethics Panel and shall request a report back from the Panel regarding the final disposition of the complaint.

(C) If the complaint is in regard to conduct committed by a judicial officer, the Executive Director shall refer the complaint to the Judicial Conduct Board and shall request a report back from the Board regarding the final disposition of the complaint.

(D) If the complaint is in regard to an attorney employed by the State, the Executive Director shall refer the complaint to the Professional Responsibility Board and shall request a report back from the Board regarding the final disposition of the complaint.

(E) If any of the complaints described in subdivisions (A)-(D) of this subdivision (4) also allege that a crime has been committed, the Executive Director shall also refer the complaint to the Attorney General and the State's Attorney of jurisdiction.

If complaint is in regard to a Member of the House, the Executive Director of the Commission refers the complaint to the House Ethics Panel and shall request a report back from the Panel regarding the disposition of the complaint.

2024 Acts and Resolves No. 171, Sec. 9

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.¶

* * *¶

~~(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.¶

3 V.S.A. §1223(c): Consultation on Ethical Conduct Effective September 1, 2025

~~(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.¶~~

House Ethics Panel Must Wait Up to 60 Days Before Closing a Complaint or Issuing Findings

The House Has
Sole Authority
to Judge Its
Members

The Authority
Should Not Be
Conditioned on
Action by
Others

Vt. Const. Ch. II, § 14

“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 . . .”

Brady v. Dean, 173 Vt. 542 (2001)

The Supreme Court of Vermont held that the chamber authority to “judge qualifications” is an “exclusive constitutional prerogative” that “encompasses the authority to determine whether a member’s personal or pecuniary interest requires disqualification from voting on a question before it.”
Id. at 544.

Prior Restraint of Legislative Authority

- Prior restraint—when government restricts constitutional speech or action before it happens.
- Prior restraints on speech and publication are the most serious and the least tolerable infringement on First Amendment rights. See *Nebraska Press Ass'n v Stuart*, 427 U.S. 539, 559 (1976).
- Prior restraint on legislative action is when a court or other authority attempts to prevent a legislature from engaging in constitutional legislative authority.
- Political question doctrine, where there is a textually demonstrable constitutional commitment of an issue to one branch of government, the judiciary [and executive] have no role. *Baker v Carr*, 369 U.S. 186 (1962). Separation of powers.
- The focus of a separation of powers inquiry is not whether one branch of government is exercising certain powers that may in some way pertain to another branch, but whether the power exercised so encroaches upon another branch's power as to usurp from that branch its constitutionally defined function. *Hunter v State*, 177 VT 339 (2004).

Review of House Ethics Panel's
Proposed Amendment to H.1
See Committee Website