

Many thanks to the House Government Operations and Military Affairs Committee for inviting me to address S.298.

My name is Paul Erlbaum. I live in East Montpelier. I am a retired attorney, having worked in the Office of the Vermont Attorney General and Vermont's Human Rights Commission as well as in private practice. I have served as a Commissioner of the Vermont State Ethics Commission since 2019, and as the Commission's Chair since 2021.

Section 4 of this bill would direct the Ethics Commission to provide candidates with information about Vermont's financial disclosure law and to answer candidates' questions regarding how to complete the disclosure form.

Advising candidates about financial disclosure has never been assigned to the Ethics Commission. It would be an altogether new duty for the Commission.

We already struggle to provide timely responses to questions from and about state public servants. The Commission has one part-time Director, and one part-time administrative assistant. This staffing makes it difficult to perform the most basic function of the office: providing substantive advice to the thousands of state workers who are subject to our Vermont State Code of Ethics.

The Ethics Commission is simply not able to respond to candidates' questions with its current staffing. This task would seem a better fit within the Elections Division of the Secretary of State's office which, with one exception, handles all state-level matters regarding elections.

The one exception: The Legislature assigned the Ethics Commission the task of creating a candidate financial disclosure form and maintaining the form to comply with statutory changes. We created a revised form months ago. We promptly provided it to the Elections Division for it to include in its candidate package, as the Elections Division has done for years.

If the Legislature expressly assigns this new election-related duty to the Ethics Commission via S.298, the Commission will only be able to implement it if we have adequate staffing. At least two new staff members would allow us to fulfill existing legislatively mandated duties, some of which we are already unable to implement. If the Legislature wishes the Ethics Commission to become involved in elections, we will need three new staff members, at least two of whom are attorneys.

If you vote to approve S.298's legislative directive to the Ethics Commission, you must also take all measures available to you to secure adequate staffing for the Commission. Without new staffing, section 4 of S.298 will become, along with municipal services and other tasks, another legislative directive the Ethics Commission will be unable to fulfill.

A bit off topic, but nonetheless relevant to Commission tasks and staffing – The House big budget bill, H.951, provides appropriation for one Commission attorney to prioritize municipal services. While a nod in the right direction, one new attorney position will be insufficient to fulfill the duties already assigned to the Ethics Commission. Nonetheless, the budget bill adds yet another duty for the Commission to fulfill: within the next eight months, create a plain language handbook for the Vermont State Code of Ethics. H.951 would also require the Commission to submit a draft of the handbook to House and Senate GovOps prior to publication. This is an unnecessary and inappropriate assignment. Further, mandatory prior legislative review is unacceptable for a commission that, by statute, is an “independent commission” (3 V.S.A. § 1221(a)).

A few large states have created ethics handbooks to explain their long, detailed ethics codes. An ethics handbook is unnecessary for Vermont, a relatively small state by population and square miles. In-person trainings at which real people with real current concerns can ask questions and follow-up questions are far superior to handbooks or online trainings. In-person ethics trainings are the best way to avoid ethics violations and ethics complaints. Speaking with personnel from large state ethics commissions, their primary focus is ethics training, with informal resolution, investigation, and enforcement second, third and fourth. The current under-staffing of the Commission has not allowed us to conduct nearly enough in-person trainings.

In each recent year, this legislature has added duties and obligations for the Commission, but has added no resources for the Commission to perform those obligations. S.298 is a continuation of this pattern. This bill adds new obligations for the Commission in the electoral realm - an area in which the Commission has no experience, and an area which is outside its mandate. I urge you to consider S.298 closely. At minimum, please provide us with staffing necessary to perform the functions you assign in the bill, but additionally provide staffing so that the Commission can perform its intended mandate: providing advice to public servants who are subject to Vermont’s State Code of Ethics. (Candidates who are not public servants are not subject to the Code.)

Respectfully submitted,

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