

# REPORT OF THE EXECUTIVE DIRECTOR OF RACIAL EQUITY

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**PREPARED BY**

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**SUBMITTED TO THE GENERAL ASSEMBLY**

Senate Committee on Government Operations  
House Committee on Government Operations and Military Affairs



## INTRODUCTION

3 V.S.A. § 5003(f) requires that “[o]n or before January 15, 2020, and annually thereafter, the [Executive Director of Racial Equity] shall report to the House and Senate Committees on Government Operations demonstrating the State's progress in identifying and remediating systemic racial bias within State government.”

This report notwithstanding, the Director urges the General Assembly to revisit the 2024 annual report, which contains an extensive and almost entirely unaddressed list of the guidance and recommendations issued since July 2019 by the Director and/or the Office.<sup>1</sup>

## ADMINISTRATIVE MATTERS

### Workforce Equity

According to the State of Vermont FY'25 Workforce Report<sup>2</sup>:

- The percentage of classified State employees who identified as people of color was 7.1% in FY'25. State employees of color are still underrepresented in supervisory and managerial positions: In FY'25, there were a total of 15, representing only 3.5% of employees considered Managers. This is an increase of 2 employees since FY'24.

	Num	Percent	Average Salary	Average Age	Average LOS	Percent Female	Percent Male	UREG*
Manager	431	5.4%	\$114,880	50.7	16.6	47.3%	52.2%	3.5%
Supervisor	1,279	16.1%	\$91,959	47.7	13.9	54.6%	45.4%	4.3%
Non-Management	6,231	78.5%	\$70,834	44.1	8.9	52.4%	47.4%	8.0%
<b>Total</b>	<b>7,941</b>	<b>100.0%</b>	<b>\$76,668</b>	<b>45.0</b>	<b>10.1</b>	<b>52.5%</b>	<b>47.3%</b>	<b>7.1%</b>

\*Hispanic or Latino; Black or African American; Native Hawaiian or Other Pacific Islander; Asian or Pacific Islander; American Indian or Alaska Native; or Two or More Races.

Source: The State's Human Resource Information System (VTHR). Data include only classified employees of the Executive Branch for Fiscal Year 2025. Average Salary is annual base salary of full-time employees and does not include benefits or overtime. Average YOS is average length (years) of service. UREG is underrepresented racial and ethnic groups. See Appendix D for the definition of UREG as used in this report.

Note: A managerial employee is defined in 3 VSA § 902(18) and a supervisory employee in 3 VSA § 902(16). Per Personnel Policy 6.3 the criteria used to determine a managerial designation include: the extent to which a position has influence or makes decisions regarding policy, budget, and personnel; and the organizational structure of an agency or department into divisions or major sections. The criteria used to determine a supervisory unit designation include: the number of employees supervised; the degree and type of supervisory discretion exercised; and the extent to which supervision is a significant component of the individual's job duties.

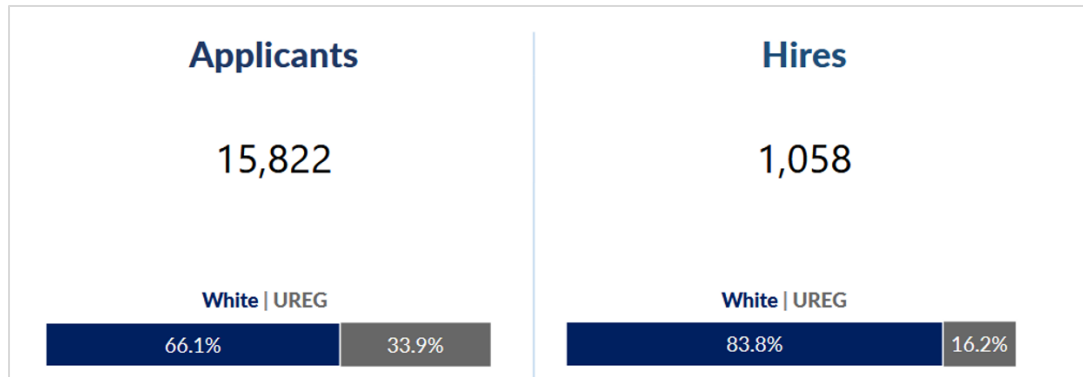
*from the State of Vermont FY'25 Workforce Report*

- Applicants for state service who identified as people of color were 33.9% of total applicants (an increase from 24.5% in FY'24 and the highest percentage of applicants of color the

<sup>1</sup> Prior reports are available on the Office of Racial Equity's website: [raciaequity.vermont.gov/reports-documents](https://raciaequity.vermont.gov/reports-documents)

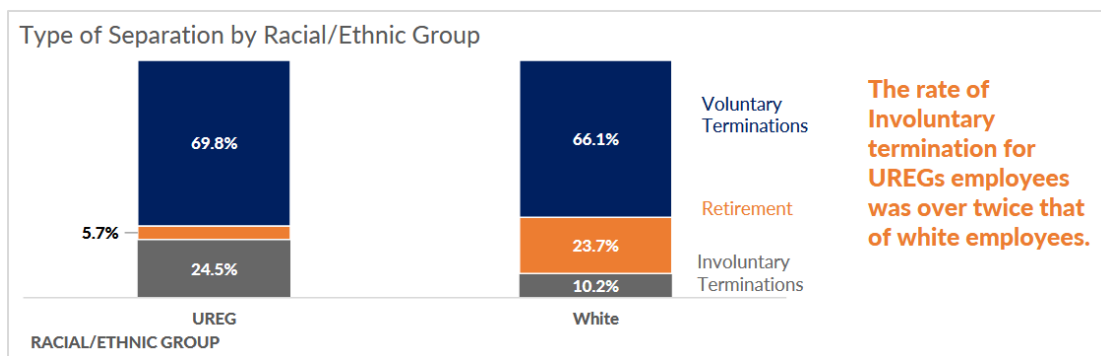
<sup>2</sup> [Fiscal Year 2025 Workforce Report](#).

state has received). People *hired* into state service who identified as people of color were 16.2% of total hires, an increase from 12.7% in FY'24 and the highest of any fiscal year. By contrast, applicants for state service who identified as White were 66.1% of total applicants, but were 83.8% of total hires.



*from the State of Vermont FY'25 Workforce Report*

- Among the people whose state service ended in FY'25, racial and ethnic disparities remained present. White employees who left state service were fired in only 10.2% of cases. Another 23.7% left state service through retirement. By contrast, state employees of color who left state service in FY'25 were fired more than twice as much as their White counterparts were, at a rate of 24.5%. Another 69.8% of employees of color who left state service quit.



*from the State of Vermont FY'25 Workforce Report*

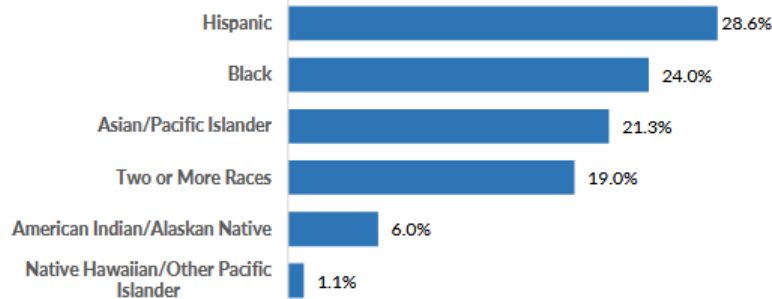
- The State continues to pay full-time employees of color less on average (\$68,927 for state employees of color, \$77,268 for White employees). The average age of employees of color is lower than the average age of White employees, so it is possible that a portion of this pay difference may be attributable to the distribution of entry-level positions among younger employees.

**Table 61 Underrepresented Racial and Ethnic Groups (UREG) and Sex Profile - Fiscal Year 2025**

	Gender*				Race/Ethnic Status		
	Female	Male	Total		UREG	White	Total
Number	4,168	3,759	7,941	Number	567**	7,374	7,941
Percent	52.5%	47.3%	99.8%	Percent	7.1%	92.9%	100%
Average Salary	\$76,357	\$77,048	\$76,668	Average Salary	\$68,927	\$77,268	\$76,668
Turnover	10.7%	13.4%	12.0%	Turnover	20.3%	11.4%	12.0%
Average Age	45.6	44.4	45.0	Average Age	41.3	45.3	45.0
Generation				Generation			
Pre-Baby Boom	0.0%	0.03%	0.01%	Pre-Baby Boom	0.0%	0.01%	0.01%
Baby Boom	11.9%	11.4%	11.7%	Baby Boom	6.3%	12.1%	11.7%
Generation X	40.1%	36.6%	38.4%	Generation X	29.8%	39.1%	38.4%
Millennial	40.3%	41.6%	40.9%	Millennial	51.3%	40.1%	40.9%
Gen Z	7.6%	10.4%	9.0%	Gen Z	12.5%	8.7%	9.0%
Ave. Years of Service	9.9	10.4	10.1	Ave. Years of Service	6.0	10.4	10.1

Underrepresented Racial and Ethnic Groups (UREG) employees had a lower average salary and a higher turnover rate compared to white employees.

**\*\* Detail on UREG Representation**



Male and female employees have nearly identical average annual salaries.

Source: The State's Human Resource Information System (VTHR). Data include only classified employees of the Executive Branch for Fiscal Year 2025. See Appendix D for the definition of Underrepresented Racial and Ethnic Groups (UREG) as used in this report. See Note on Table 15b for definitions of Generations. \*Fiscal Year 2025 was the first year in which the state offered a non-binary option for the collection of data on gender. However, the number reporting non binary is so small as to make the statistics unreliable, so they are not reported in this table.

*from the State of Vermont FY'25 Workforce Report*

## Pay Parity

In September, the authors completed a preliminary analysis of pay parity among a sample set of state employees. The 107-page findings report will be made available on the Office's [Reports and Research](#) page in Spring 2026. Using Chi square testing, Kruskal-Wallis tests, T-tests, Dissimilarity indices, and more, the report provides the following summarized findings:

- Overall, there are 12,312 individual full-time classified employees in the dataset ranging from the year 2022 through 2025, with 3,996 people being represented in all four years, 1,780 being represented in three of the years, 2,538 being represented only in two of the years, and 3,998 found in only one year. Given this large amount of overlap, each year was considered individually.
- Overall, employees were 52% female, 93% White, with a median age of 44 years in 2025.
- Overall, there was no significant difference in the average salary between men, women, and non-binary employees in any of the four years analyzed. However, there were statistically significant differences in salary between racial groups in all 4 years.

- Among managers, there was no significant difference in salary between genders from 2022-2024, however in 2025 male managers made significantly more than female managers ( $p=0.02$ ).
- The average salary for non-White managers was significantly lower than for White managers in all four years.
- Among non-Managers, there was no difference in average salary between genders ( $p=0.48$ ). There *was* a salary difference between non-White and White employees ( $p<0.01$ ).
- In 2025, 8 out of 41 departments had a statistically significant difference in average salary between men and women compared to 10 in 2024, 13 in 2023, and 11 in 2022. Of those 8 departments in 2025, 6 of them had a higher average salary for men than women and 2 of them had higher salaries for women.
- In 2025, there were 9 departments that had statistically significant differences in average salary between White and Non-White employees, compared to 9 in 2024, 8 in 2023, and 9 in 2022. In 2025, all 9 departments that had differences in salary by race had higher average salaries for White employees than Non-White employees.

This project was conducted in partnership with the Department of Human Resources and focused this first round of analysis on a sample set of state employees. Further research will be important to continue monitoring pay trends and incorporate a broader segment of the state workforce.

## WORKGROUPS

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In the 2023-2024 biennium, the legislature dissolved the standing Government Accountability Committee and created the Summer Government Accountability Committee through Act 53 of 2023. The Committee's stated intent was, among other things, to identify

1. ways to ensure that the Legislative Branch is accountable to the people of Vermont by creating new processes and metrics by which to measure accountability;
2. ways to ensure equity in pay across commissions, boards, and joint legislative committees based on the nature of the service and required skill level;
3. ways to ensure equitable participation on boards and commissions and in any public engagement process mandated by the State or General Assembly by providing appropriate compensation and material support; and
4. codifying mechanisms for controlling and restraining the increasing number of commissions, boards, and joint legislative committees.<sup>3</sup>

The Director provided two rounds of testimony<sup>4</sup>, which included a set of recommendations on the substantive topics of inquiry and also on the Committee's process itself. The Committee's work culminated in bill number H.702, which did not contain even a mention of equity or inclusion and did not pass both chambers of the General Assembly. Particularly now, with a volatile and unpredictable federal government—yes, *all* the branches—objective 1 above is critical for the state

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<sup>3</sup> No. 53. *an Act Relating to Boards and Commissions.*, [ACT053 As Enacted.pdf](#)

<sup>4</sup> <https://legislature.vermont.gov/committee/document/2024/384/Witness/Xusana%20Davis#documents-section>

to monitor and address any localized or population-level impacts that Vermont's residents and visitors may experience as a result of changes in federal policy and funding.

The following is a list of workgroups the Office anticipates supporting or engaging for the foreseeable future, unless and until there are changes to the Office's mandate.

GROUP <sup>5</sup>	FORMAL TITLE <sup>6</sup>
AIAC	Artificial Intelligence Advisory Council [C]
CCB	Cannabis Control Board [A]
CJC	Vermont Criminal Justice Council [M]
CYFAAC	Child Youth Family Advocate Advisory Council [M]
EJAC	Environmental Justice Advisory Council [M]
EJIAC	Environmental Justice Inter-Agency Committee [M]
ELs	Equity Liaisons [C]
FIP	Fair and Impartial Policing Committee
GWEDC	Governor's Workforce Equity and Diversity Council [L]
HEAC	Health Equity Advisory Commission [M]
HHB	Harassment, Hazing and Bullying Advisory Council
HRC	Vermont Human Rights Commission [L]
ICAR	Interagency Committee on Administrative Rules
LAOB	Land Access and Opportunity Board [M]
RDAP	Racial Disparities in the Criminal & Juvenile Justice System Advisory Panel [M]
REAP	Racial Equity Advisory Panel [ED]
RJSAC	Racial Justice Statistics Advisory Council [ED]
TRC	Truth & Reconciliation Commission
VCNAA	Vermont Commission on Native American Affairs

In addition to this non-exhaustive list, Vermont is also home to numerous community-based organizations performing important and impactful equity work across the state. It is equally important that the state actively engage with and support these organizations, given their deep contacts in communities and their contributions to the state's advancements in equity.

<sup>5</sup> This list does not include the many coalitions and workgroups performing equity work in Vermont's communities. It includes state-created or state-led groups, which have the distinct characteristic of being legally mandated to serve their specified function and meet defined expectations.

<sup>6</sup> [M]—Director is a member of this workgroup. [L]—Director serves as liaison or advisor to this workgroup. [C]/[VC]—Director is a chairperson or vice chairperson of this workgroup. [ED]—Director is the Executive Director of the state office to which this workgroup is attached.

## TOPICS REQUIRING CONTINUED ATTENTION

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### Courageous and Strategic Governance

In the 2025 annual report, the Director wrote that

*In Vermont, a common excuse for shying away from justice-focused initiatives and policies is the threat of federal funding clawbacks during the years 2017-2020 and anticipated in the imminent and indefinite future. This is a convenient way for leaders in all sectors in Vermont to avoid doing the necessary work of investing tangibly in equity efforts, and it chills the state's various institutions from expressing vocal support for creating a more just and inclusive state. [...] Working overtime to remain in the good graces of influential people who are fundamentally opposed to justice does not accomplish justice; it merely placates those who do not see themselves as being part of—or at least accountable to—communities that are oppressed or marginalized.*

This is still true.

However, it would be disingenuous not to acknowledge that for a state like Vermont—small and demographically strained—even a comparatively small funding cut can have a more devastating impact than a cut of the same amount would have on another state. The realities of the state's demographic and economic situation are clear: The Vermont Futures Project reports that

- Between 2023 and 2024, only three U.S. states experienced a drop in population. Vermont is one of them.
- Comparing cost of living in 2024, Vermont ranked 43<sup>rd</sup> nationally, among the costliest jurisdictions.
- Vermont has a median age of about 44 years—the second highest in the country—and a dependency ratio<sup>7</sup> of 67.1%.<sup>8</sup>

Metrics like these have placed leaders across the country in the detestable position of having to ask: How principled can my state afford to be? This is not accidental; states, counties, and municipalities have long been forced to pit principles against finances through policy and funding threats from superseding jurisdictions. Nonetheless, the state remains particularly vulnerable partly because of its small population and accordingly small tax base. Yet decades of data have conclusively shown that when jurisdictions support immigrant communities and communities of color, the social and economic benefits abound. The Congressional reports that “Immigrants are highly entrepreneurial, launching new companies at twice the rate of native-born Americans and creating large numbers of jobs. All of this increases employment opportunities for native-born American workers, boosts wages and strengthens the middle class.” It goes on to add that “Immigrants added \$2 trillion to the U.S. GDP in 2016 and \$458.7 billion to state, local, and federal taxes in 2018. In 2018, after immigrants spent billions of dollars on state and local, and federal

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<sup>7</sup> As explained by the Vermont Futures Project, “When ratios are high, a larger percentage of people are out of the work force so there is a smaller percentage of people covering the costs of public services.”

<sup>8</sup> [“Vermont Competitiveness Dashboard.” Vermont Futures Project](#)



taxes, they were left with \$1.2 trillion in spending power, which they used to purchase goods and services, stimulating local business activity.”<sup>9</sup> Further, the U.S. Department of Treasury adds that “Decades of research have documented that the ability to build wealth varies significantly by a household’s demographics. Therefore, the economic benefits of asset building have yet to be equitably distributed, as evidenced by the persistent gaps in household wealth by race and ethnicity.”<sup>10</sup>

To protect and support Vermonters of color and immigrant Vermonters irrespective of immigration status, the National Equity Atlas outlines the below steps the state can take. To its credit, Vermont has already completed several of these objectives, which speaks to the state’s proven ability to govern smartly and courageously.

- “Foster [racial inclusion in governance](#).
- Build [multiracial alliances, coalitions, and movements](#) to advance policy change, including pro-immigrant policies.
- Dismantle barriers and build pathways to economic opportunity for [boys and men of color](#).
- Include immigrants by ensuring access to [health care](#), [driver's licenses](#), [in-state tuition](#), and [municipal ID cards](#) regardless of immigration status.
- Enact strong [language access](#) policies requiring interpretation and translation services for English-language learners and facilitate [naturalization](#) among green-card holders.
- Limit the participation of local law enforcement with [Immigration and Customs Enforcement](#) and support [community-led alternatives to policing](#) and [invest-divest strategies](#) in communities of color.
- Strengthen [democracy](#) by increasing participation of marginalized groups, expanding [voting rights](#) (and preventing rollback), and building [leadership development](#) pipelines.”<sup>11</sup>

### DRJS Report, January 2025

In January of 2025, the Office’s Division of Racial Justice Statistics (DRJS) submitted its annual report to the state legislature pursuant to 3 V.S.A. §5012(b). The report contained a cursory analysis of numerous data points including school suspensions, traffic stops, and incarceration. Notably, the Division received very limited yet sharp critique of the report and request for retraction. In particular, the following three critiques were raised:

- that the data set analyzed was “the wrong data set”;
- that the data analyzed did not support the Division’s conclusion that the racial disparities it reflected may suggest systemic bias in statewide traffic enforcement; and
- that the methodology was not sound.

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<sup>9</sup> [“Immigration Facts: The Positive Economic Impact of Immigration.” Congress.Gov, fwd.us](#)

<sup>10</sup> [U.S. Department of the Treasury 2024 Racial Equity Progress Report](#)

<sup>11</sup> [“Grow an Equitable Economy: Policies to Leverage Diversity as an Asset.” Diversity Index, National Equity Atlas](#)

Further, additional external parties who evidently felt empowered to speak on behalf of law enforcement added the following commentary in meetings with Division staff:

- The report was not defensible and its authors are not subject matter experts in anything.
- The report “burned a bridge with DPS” (the Department of Public Safety) so much so that [the DRJS] “will never be able to get anything from them in the future” and that the DRJS needs to—quote—“stay away from VSP.” Also, since Etan [Nasreddin-Longo, the then-statewide co-Director of Fair and Impartial Policing] is no longer employed by DPS, the DRJS “has no credibility or legitimacy over there, since he was the only one advocating for [the DRJS].”
- The Governor's appointee to the Division’s accompanying advisory council was not the person he should have chosen (and these commenters proceeded to provide the name of their preferred appointee).

First, the Division was intentional about using the data sets that were submitted to the Vermont Criminal Justice Council, which are presumably every agency’s best effort at an accurate and transparent record. This is the information provided so that communities, researchers, and policymakers can conduct informed research. The Office of Racial Equity is deeply concerned that any data set provided to the public could be considered “wrong” for data analysis purposes, especially if there are no caveats, notes, explanations, or alternatives provided to inform the data user of any limitations with the data set. Of course, the Division is capable of privately soliciting data from another entity, but for members of communities who do not have that direct access, influence, or statutory authority, that may not be a known or available option.

Second, it would appear that the phrase “may suggest systemic bias” has led some readers to conclude that the DRJS is alleging *individual* bias or racism by law enforcement actors. That is a costly misreading. While the Office has spent years providing hundreds of trainings all across the state on this difference, it is worth repeating here to correct any confusion: systemic bias relates to processes, policies, or practices that pervade systems, and invites us to focus less on the individual actors who make up those systems and more on the ways in which injustices are upheld and perpetuated by “macro-level mechanisms that operate independent of the intentions and actions of individuals, so that even if individual racism is not present, the adverse conditions and inequalities [...] continue to exist.”<sup>12</sup> It is naïve to claim that one year of traffic stop data do not support a conclusion that the racial disparities present in the data may suggest systemic bias; these data have been collected for many years and even when controlling for other factors such as gender, age, geographic location, and year, the racial disparities persist.

Through all this flurry of interest, the Division did *not* receive any of the following:

- a concrete explanation of where the report’s methodology erred;
- any details about the methodology used by the parties challenging the DRJS’ methodology;
- a reason for why any data set being publicly submitted pursuant to state law would be “the wrong data set.”

Notwithstanding the above, the Office enthusiastically welcomes the opportunity to continue collaborating with agencies, peers, and communities on ways to affirmatively address the disparities at the core of this ongoing dialogue.

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<sup>12</sup> [“Levels of Racism: Systemic vs Individual.”](#) Levels of Racism: Systemic vs Individual.

## Statewide Office of the Ombudsman

The Office of Racial Equity recommends the establishment of a statewide, independent Office of the Ombudsman.

Vermont has a well-earned reputation for placing a high value on civic engagement and collaborative, transparent government. Yet nationally, politics and governance have rapidly devolved into spiteful and opaque terrain that discourages and obstructs the public's ability to navigate government in their everyday lives. To avoid a similar fate, Vermont will need to re-affirm its commitment to civic engagement by bolstering or establishing people-centered processes that are designed to be *constructive*, not *destructive*.

Currently, there are gaps in how Vermont's residents and visitors are able to access government, and state leaders regularly miss opportunities to streamline and collaborate on their statewide efforts. For example,

- Conflicting approaches to community consultation have caused delays in projects like the Traffic Regulation Review Committee and the Climate Council, causing deep divides between key constituent groups.
- The State still maintains nearly 300 boards and commissions, even after sunseting a significant number of them in the 2019-2023 legislative sessions. While the large number of boards and commissions might imply broad public access and input, most of these working groups are advisory to policymakers and government officials, not advisory to individuals. Members of the public still struggle to find accessible and affordable sources of sound advice on everyday conflicts and obstacles.
- When individuals do experience problems, such as discrimination by state government or potentially unethical government conduct, there are state entities available for when those individuals are ready to take formal action to address the problem, but there are few—if any—trusted and reliable state entities who can advise along the way to explore those options before pursuing them. This means missed opportunities for alternative dispute resolution, effective routing of complaints, or opportunities to review and revise administrative decisions.
- Policy negotiation during the rulemaking and legislative processes are often less effective because decisionmakers do not always have a complete understanding of how government operates, leading to duplication of efforts or other preventable inefficiencies.

To address these gaps, the Office proposes that the State establish an independent, state-level Office of Collaborative Action and Ombuds Services. The office will fill an unserved gap between the portfolios of the Ethics Commission, the Human Rights Commission, the Chief Performance Office, the Chief Operating Officer, and the Department of Human Resources by providing independent, neutral, and confidential consultation to anyone within or outside state government seeking guidance on navigating state government or assistance with dispute resolution.

## STRUCTURE & FUNCTION

The two main pillars of the proposed office's work are ombuds services and fostering collaboration.

## Pillar 1: Ombuds Services

Ombudsmen act as no-barrier, first-stop for people seeking guidance and information from a trusted advisor who engages in constructive problem-solving. They help individuals who experience conflicts with peers, those who have compliance or ethical concerns about the workplace, those who experience harassment or workplace misconduct, and those who need a safe place to go for information and confidential guidance. Typically, Ombudsmen embody three important attributes: independence, confidentiality, and impartiality. These core standards are universally expected of Ombudsmen, and are outlined in the standards adopted by the American Bar Association (ABA)<sup>i</sup>, the International Ombudsman Association (IOA)<sup>ii</sup>, and the United States Ombudsman Association (USOA)<sup>iii</sup>. Ombudsmen also generally employ alternative dispute resolution techniques such as mediation to help parties resolve conflicts or navigate complex relationships.

Currently, there is no entity in Vermont state government that can claim all these attributes. The Ethics Commission can give advisory opinions on ethical questions, but does not perform dispute resolution or give guidance on non-ethics questions. The Human Rights Commission, to avoid the potential for bias in a case, cannot advise on or discuss topics that might become cases under its jurisdiction. This means they cannot engage with a prospective party to a case unless a complaint is formally brought to the Commission. The Department of Human Resources cannot guarantee independence or impartiality because they are embedded in the Executive branch and completely under the direction of the Governor. Whether true or not, the Department is widely believed to be focused on protecting the State from legal action, thus undermining any perception of impartiality. The Chief Performance Office and the Chief Operating Officer both identify opportunities for systemic improvements in government, but are not independent and are not empowered to receive or resolve concerns from members of the public.

	Ethics Commission	Human Rights Commission	Dept of Human Resources	Chief Performance Officer	Chief Operating Officer	Office of the Ombudsman
Independent	✓	✓				✓
Impartial	✓	✓				✓
Confidential	✓	Partly, but final reports are public	✓			✓
Informal				✓	✓	✓
Pre-Complaint Mediation			✓	✓	✓	✓
Systemic Recommendations	Ethics only	Broad, but discrimination-focused	SOV Workplace only	Broad, but operations- and training-focused	Operations only	Broad

## Pillar 2: Collaborative Action

Collaborative action refers to “a suite of processes and arrangements that facilitate two or more parties working together to solve a set of resource issues they cannot solve individually.”<sup>iv</sup> The concept and practice of collaborative action have become integral to governmental processes at the federal and state levels in the U.S. Multiple laws and federal executive branch directives have mandated

or encouraged the federal government’s use of dispute resolution, conflict prevention, and collaborative action in appropriate circumstances. These include the documents listed below, which are described in further detail in Endnote ii<sup>v</sup>

- Contract Disputes Act of 1978
- Negotiated Rulemaking Act of 1990
- Administrative Dispute Resolution Act of 1996
- Executive Order 12988, “Civil Justice Reform” (1996)
- Alternative Dispute Resolution Act of 1998
- Environmental Policy and Conflict Resolution Act of 1998
- Presidential Memorandum, “Designation of Interagency Committee[s] to Facilitate & Encourage Agency Use of Alternate Means of Dispute Resolution & Negotiated Rulemaking” (1998)
- Department of the Interior Secretarial Order on Collaborative Action & Dispute Resolution (2001)
- Environmental Policy and Conflict Resolution Advancement Act of 2003
- Executive Order 13352, “Facilitation of Cooperative Conservation” (2004)
- Memorandum on Environmental Conflict Resolution (2005)
- Presidential Memorandum, “Transparency and Open Government” (2009)
- Office of Management and Budget Memorandum, “Open Government Directive” (2009)
- Presidential Memorandum, “Tribal Consultation” (2009)
- Office of Management and Budget and President’s Council on Environmental Quality, Memorandum on Environmental Collaboration and Conflict Resolution (2012)

Since Vermont government largely functions through the volunteer or very modestly-paid labor of “citizen legislators” and community members of boards and commissions, the work of governance in Vermont is marked by frequent turnover and is performed in cycles that tend to revolve around a 5-month legislative session. Because of this, it can be difficult to identify emerging patterns or widespread systemic shortcomings from one year to the next. An independent office focused on collaboration will employ a whole-of-government lens to identify emerging systemic issues. Other offices in state government are empowered to make systemic recommendations and should continue to be supported. They include the Office of Racial Equity; the Office of the Child, Youth, and Family Advocate; the Office of the Auditor; and the Secretary of State’s Office. However, each of those entities has a specific lens through which it filters its work. The Office of Racial Equity is not independent and its work is centered exclusively on equity and inclusion. The Office of the Child, Youth, and Family Advocate is specifically focused on issues that impact the child and family services sector. The Auditor’s Office is empowered to investigate and make recommendations about many topic areas, but generally does not operate in an informal manner and does not mediate or facilitate processes

across state agencies. The Secretary of State’s Office has broad purview over many topic areas, but is not empowered to mediate conflict and rarely acts in an informal manner.

## BENEFIT

There are important social, financial, and operational benefits to establishing an Ombudsman role and a Collaborative Action team.

- Risk mitigation: The cost of workplace conflict is nearly \$400 billion per year in the U.S.<sup>vi</sup> Ombudsmen help organizations anticipate and avoid risk, litigation, and costly damage to brands and reputations. The parties who are “at the table” do their best to represent the interests of those who are not, but competing priorities sometimes leave some people feeling ignored. Companies with highly engaged employees experience 10%-15% higher profits.<sup>vii</sup> By contrast, more than \$144k per day is lost due to conflict, miscommunication, and poor decision-making.<sup>viii</sup> Ombudsmen build employee loyalty and a culture of engagement that can save costs and improve workplaces.
- Alternative dispute resolution: As described by the U.S. Department of State, “When these problems defy easy categorization as potential grievances, EEO issues, or IG matters, that is precisely when you should call on the Ombudsman.” Visiting an Ombudsman doesn’t trigger a formal investigation that is often typical of HR or legal processes. Speaking with an Ombudsman is always off-the-record.
- Stronger policy: An Ombudsman serves as a listener and sounding board for new ideas, initiatives, and proposed complex and high-stakes actions.
- Good governance: An entity that is independent, impartial, confidential, and informal will look objectively at the practices and policy of state government and identify remedies or improvements to improve outcomes for leaders, staff, and community.

## COST

An Ombudsman and a Collaborative Action team can help reduce the costs of litigation, lost productivity, and missed programmatic opportunity. For this reason, the Office is likely to “pay for itself” through cost savings and process improvements. The estimated cost to create the Office of Collaborative Action and Ombuds Services is **\$750,000-1,000,000 per year**. This would support office space, the most basic equipment, and 4 staff in the following roles: Ombudsman, Mediator/Facilitator, Navigator/Educator, and Administrative Assistant. There are many options for structuring staff positions, but some potentially comparable existing job codes may include

Proposed Role	Possible Comparable Existing Job Title
Ombudsman	<a href="#">Civil Rights Compliance Program Chief [060200]</a>
Deputy Ombudsman/Mediator	<a href="#">Taxpayer Advocate [028900]</a> or <a href="#">Court Diversion Assistant Director [059505]</a>
Navigator/Coordinator	<a href="#">Education Programs Manager [200300]</a> or <a href="#">Field Director [019600]</a>
Administrative Assistant	<a href="#">Executive Office Manager [005300]</a>

## ANTICIPATED QUESTIONS

**Q:** Is Ombudsman a gender-specific term?

**A:** No. “Ombudsman” is a gender-neutral term. It is a Scandinavian word meaning “representative,” and has existed since at least the early 1800s. The term is sometimes adapted as “Ombudsperson” or simply “Ombuds,” but it is understood that “Ombudsman” is a catch-all term that is not gender-specific.

**Q:** Is there precedent for this kind of office or role?

**A:** Yes. Ombudsmen and/or Collaborative Action offices are present in numerous federal and state agencies, including the U.S. Department of State, the Bureau of Land Management, the Department of the Interior, the Bureau of Indian Affairs, the Food and Drug Administration, the State of Alaska, and the State of Indiana. Further, all 50 states have a Healthcare Ombudsman or equivalent, which is an Ombudsman specifically focused on long-term care and other healthcare-related issues. In Vermont, the Healthcare Ombudsman is more commonly referred to as the Health Care Advocate housed in Legal Aid. Outside the government sector, Ombudsmen and collaborative action facilitators are prevalent in countless industries and sectors including higher education, finance, non-profit, energy, legal, and professional associations.

**Q:** Shouldn’t the Ombudsman be housed in one of the Executive agencies?

**A:** No. A foundational characteristic of Ombudsmen is that they are independent. In Vermont state government, the independence of a State entity is best achieved by housing it outside the Judiciary, Legislative, and Executive branches.

**Q:** Who is the Ombudsman’s “boss?”

**A:** The Ombudsman’s role can be designed in several different ways. One common structure is for the selected candidate to be appointed by a legislative body and confirmed by the Executive. Ombudsmen typically receive complaints or concerns about various state agencies, but occasionally an inquirer may wish to submit a complaint about the Ombudsman or the process. In such cases, the Ombudsman’s office receives the grievance, a staff member who did not handle that case reviews it (this is why it is important to provide adequate staffing so there can be alternate reviewers), the reviewer provides a response, and if action is needed such as the re-opening of an investigation, the action is taken. Annually, the Ombudsman will publish a report that details the nature of the work without breaking confidentiality in any specific cases. Ombudsmen are typically appointed to long terms to avoid the appearance of political bias; in government, term lengths of 5 years are common.

**Q:** Are there resources to guide the conduct and practices of an Ombudsman?

**A:** Yes. There are regional, national, international, and private-sector professional associations dedicated to supporting Ombudsmen. There are volumes of research, best practices guides, sample charters, model rules of professional conduct, continuing education courses, and contracted observers available to ensure an Ombudsman’s office is structured on a solid foundation of core professional values and established best practices.

**Q:** What powers and duties would the Ombudsman have?

**A:** The Ombudsman’s powers and duties can be structured in different ways, and comparable roles across the country each have their unique setups. In Vermont, an effective Office of Collaborative Action and Ombuds Services would generally have the following jurisdiction:



- ✓ Offer a confidential resource to discuss options for reporting misconduct or managing and resolving conflicts.
- ✓ Investigate complaints about administrative acts of state agencies and determine appropriate remedies.
- ✓ Conduct training, education, coaching, and facilitation.
- ✓ Conduct mediation and dispute resolution.
- ✓ Build and strengthen productive and effective relationships between organizational departments, partners, and professionals.
- ✓ Perform outreach to diverse constituencies and impacted parties about alternatives to traditional conflict resolution.
- ✓ Promote fair and efficient government through objective inquiry and well-reasoned recommendations for meaningful, measurable improvement.
- ✓ Identify systemic trends and risks that help leaders make informed business, policy and management decisions.
- ✗ Receive notice of claims against the State.
- ✗ Make management decisions or policy.
- ✗ Substitute for formal complaint channels.
- ✗ Testify in court or produce documents in legal or other proceedings.

To make these functions most effective, the Ombudsman will need access to relevant documents as the law permits.

**Q:** What is the appropriate staffing for an Office of Collaborative Action and Ombuds Services?

**A:** At a minimum, 4 staff positions are required for the success of the proposed office.

- The **Ombudsman** leads the office and is responsible for ensuring the applicable duties and standards are met.
- A **Mediator/Facilitator** assists the Ombudsman to perform alternative dispute resolution. This role is necessary to provide extra coverage for the Ombudsman at times of high volume, and provides interested parties with options for another mediator or facilitator who may bring a different personality, cultural background, or subject matter expertise to the office. It also allows for joint mediation or facilitation with the Ombudsman during complex cases.
- A **Navigator/Educator** works with State and non-State inquirers seeking assistance with navigating State government and understanding their options to address their concerns. The person in this role has an encyclopedic knowledge of Vermont's institutions and conducts appropriate outreach and education to reduce the barriers that prevent members of the public from understanding or interacting with their government.
- An **Administrative Assistant** supports the team with day-to-day office management tasks and assists the Ombudsman in ensuring compliance with the office's duties and standards.

These four positions are the minimum required; they do not account for any staff person taking vacation or sick days. They do not allow for interim coverage of a staff person's duties if a position becomes vacant. As with most of state government, more staff support would help make the work more effective, but the minimum 4 positions would suffice for a very lean and mission-driven team in which staff support the office by wearing multiple "hats" as needed.



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<sup>i</sup> ABA Standards for the Establishment and Operation of Ombuds Offices (2004) (hereinafter “ABA Standards”)

<sup>ii</sup> IOA Standards of Practice (2009), *available at* <https://www.ombudsassociation.org/standards-of-practice-code-of-ethics>

<sup>iii</sup> USOA Governmental Ombudsman Standards (2003), *available at* <https://www.usombudsman.org/site-usoa/wp-content/uploads/USOA-STANDARDS1.pdf>

<sup>iv</sup> Bureau of Land Management. 2015. Transforming Collaborative Action and Dispute Resolution in the BLM: A Strategic Plan.

Division of Decision Support, Planning and NEPA, Washington, DC.

<sup>v</sup> List reproduced from “Transforming Collaborative Action and Dispute Resolution in the BLM: A Strategic Plan.”

- Contract Disputes Act of 1978, as amended – Allows contractors and federal agencies to use mutually agreeable ADR techniques to resolve contracting disputes
- Negotiated Rulemaking Act of 1990 – Codifies that collaborative or negotiated rulemaking is legal and encourages federal agencies to use negotiated rulemaking when appropriate to enhance the informal rulemaking process. (Reauthorized in and incorporated into the Administrative Procedure Act; further encouraged by Executive Order 12866, “Regulatory Planning and Review.”)
- Administrative Dispute Resolution Act of 1996 – Requires all federal agencies to establish policy concerning ADR processes, encourage the use of ADR, designate a dispute resolution specialist, and provide related training.
- Executive Order 12988, “Civil Justice Reform” (1996) – Requires federal litigation counsel to consider ADR processes and encourage use of ADR when it would “materially contribute to prompt, fair, and efficient resolution of the claims.”
- Alternative Dispute Resolution Act of 1998 – Authorizes the use of ADR techniques in federal court cases.
- Environmental Policy and Conflict Resolution Act of 1998 – Establishes the U.S. Institute for Environmental Conflict Resolution (USIECR) within the Morris K. Udall Foundation to help parties resolve environmental, public lands, and natural resources conflicts that involve federal agencies or interests. (The act amends the Morris K. Udall Scholarship and Excellence in National Environmental and Native American Public Policy Act of 1992.)
- Presidential Memorandum, “Designation of Interagency Committee[s] to Facilitate and Encourage Agency Use of Alternate Means of Dispute Resolution and Negotiated Rulemaking” (1998) – Directs agencies with a “significant interest in dispute resolution” to form an interagency committee to promote ADR and negotiated rulemaking.
- Department of the Interior Secretarial Order on Collaborative Action and Dispute Resolution (2001) – Establishes the Office of Collaborative Action and Dispute Resolution (CADR) with the Department of the Interior (DOI) to promote a culture and climate where appropriate dispute resolution mechanisms and collaborative and consensus-building processes are used effectively to assess, prevent, manage, and resolve conflicts. (DOI’s dispute resolution specialist and the director of the CADR Office are one and the same; each bureau’s dispute resolution specialist sits on the Interior Dispute Resolution Council along with the DOI CADR Office.)
- Environmental Policy and Conflict Resolution Advancement Act of 2003 – Provided \$4 million in funding for USIECR during 2004–2008 to support resolution of environmental conflicts.
- Executive Order 13352, “Facilitation of Cooperative Conservation” (2004) – Directs various departments (Interior, Agriculture, Commerce, and Defense) and the Environmental Protection Agency to implement environmental and natural resources laws that encourage cooperative conservation and that include local participation in federal decision-making when appropriate. The order also directs the same agencies to convene a conference for sharing relevant information and advice. (DOI’s response included publication of “A Common Sense Approach to Collaboration and Partnering at the U.S. Department of the Interior: A Plan of Action for the Years 2006–2010” and a list of collaborative competencies based on the Office of Personnel Management’s “Proficiency Levels for Leadership Competencies.”)

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- Office of Management and Budget and President's Council on Environmental Quality, Memorandum on Environmental Conflict Resolution (2005) – Directs federal agencies to increase capacity for and use of environmental conflict resolution and collaborative problem solving by adopting mechanisms and strategies such as those described in the memorandum. The memorandum requires agencies to report annually on their progress to the Office of Management and Budget (OMB) and the Council on Environmental Quality (CEQ).
  - Presidential Memorandum, "Transparency and Open Government" (2009) – Calls for agencies to make information about their activities and decisions more available to the public; to provide the public with more opportunities for input into policy-making; and to seek out opportunities and new methodologies for collaboration within and across the federal government and with the private sector. It also requires an Open Government Directive from OMB's director, specifying implementation actions for federal agencies.
  - Office of Management and Budget Memorandum, "Open Government Directive" (2009) – Pursuant to the President's "Transparency and Open Government" memorandum, this memorandum instructs federal agencies to improve information and publish online, promote a collaborative culture, and create enabling policy for using new and emerging technologies to further the principles expressed in the President's memorandum.
  - Presidential Memorandum, "Tribal Consultation" (2009) – Directs all departments and independent agencies to develop a detailed plan of action implementing Executive Order 13175 "Consultation and Coordination with Indian Tribal Governments," and to improve government-to-government coordination and consultation with tribes. (DOI responded with a new "Policy on Consultation with Indian Tribes" for bringing more issues under consultation, encouraging early tribal participation, involving the appropriate level of decision makers, and creating a Department-wide tribal governance officer.)
  - Office of Management and Budget and President's Council on Environmental Quality, Memorandum on Environmental Collaboration and Conflict Resolution (2012) – Expands on the 2005 memo by encouraging "upstream" collaborative activities and the use of assisted (and unassisted) collaborative processes where appropriate. The memorandum calls for increased commitment to using Environmental Collaboration and Conflict Resolution and continues to require annual progress reports to OMB and the CEQ (which DOI and the BLM include in various reports).

<sup>vi</sup> CPP Global Human Capital Report, July 2008, pg. 3. Based on average hourly earnings of \$17.95, seasonally adjusted, non-farm workers. Bureau of Labor Statistics, May 2008.

<sup>vii</sup> MIT Sloan Management Review: Measuring the Benefits of Employee Engagement, Summer 2015, page 5.

<sup>viii</sup> Harvard Business Review, "Putting a Price on People Problems at Work," by Tanya Menon and Leigh Thompson, August 23, 2016.