

Ethics Commission Testimony on H.1

5/7/2025

Thank you for allowing me to testify on a new draft of H.1. In summary, the Commission continues to vigorously oppose H.1 as against the public interest.

Summary of H.1 (The Present Draft)

The present draft of H.1, dated April 21, does several things. First, and most significantly, it postpones the effective date of the Commission's investigatory and hearing authority until September 2027. Second, even though the Commission is barred from investigating complaints, H.1 demands that the Commission nonetheless flag "likely" unethical behavior based solely on allegations made in a complaint and then make recommendations as to what actions the referring agency should take regarding the complaint. Third, in a rollback from what the Legislature just last year agreed was a sensible and constitutionally sound path just, under agencies that receive complaints referred by the Ethics Commission will no longer need to consult with the Commission, depriving them of the benefit of a conversation on how the Code of Ethics should be applied, undermining the intent and purpose of a uniform code of ethics.

This Committee Should Reject H.1

1. H.1 Is a Retreat from Vermont's Commitment to Governmental Ethics

H.1 – in its present form – represents a retreat from government ethics for Vermont.

In 2017, after consistently being ranked one of the lowest states in terms of government ethics, Vermont enacted Act 79. The Act made a (late coming)

commitment to Vermonters that its government took ethics seriously. It established the State Ethics Commission. The Commission had limited authority, but its establishment represented a first step on the path to a vibrant, independent agency.

Last session, this Committee was instrumental in setting up a plan to give the Commission investigations and hearing authority beginning in September of this year - just four months from now. The bill also gave the Commission authority to make procedural rules for investigations and hearings. For Vermonters, this was long-overdue. Citizens would now be able to file complaints with an independent office and could have confidence that a thorough and independent investigation would be conducted. Additionally, it resolved a long-standing problem – what to do with complaints where there is no referral authority. One of the primary reasons for the Ethics Commission receiving hearing and investigatory authority in the first place.

With H.1, all that would be gone. After years of slow – sometimes glacial - progress, Vermont has now decided to roll back its commitment to government ethics. “Next steps can wait,” says the Committee, “for another two years.”

The reason to keep Vermonters waiting? The Committee has suggested that the Commission lacks the resources to begin its enforcement duties.¹ But, it’s the *legislature* that continues to withhold those resources. The Commission is still staffed – as it was in 2017 – by a part-time director. No attorneys. No investigators. No educators. This now seems like a deliberate

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¹ See testimony of House Clerk Betsy Ann Wrask (April 1, 2025), at p. 11: “Note, however, that while [2024, H.875 As Introduced](#) would have provided the Commission in Sec. 17 with the new position of full-time Legal Counsel to assist the Commission with these new powers—in addition to the municipal ethics duties that the bill provided—that position and its related appropriation were deleted from the final version of the bill passed by the General Assembly. Therefore, at this time, the Commission has no legal staff to assist the Commission to administer these new functions that involve the interpretation and application of the law. The General Assembly would need to appropriate funds to the Commission to enable it to appoint outside legal counsel and investigators pursuant to [3 V.S.A. § 1227\(d\)](#).” (footnote omitted)

decision by a Legislature that wants to be seen as moving forward with ethics, but is actually more comfortable with laws on paper than real accountability.

The public would certainly disagree with this approach, particularly at this moment in our nation's history, when so many Vermonters – including many legislators - are protesting the rollback of government accountability at the national level – only to see the same thing happening in their own state.

2. H.1 Is Fundamentally Flawed

a. H.1 Forces the Commission to Make Recommendations without any Knowledge of the Complaint

H.1 tells the Commission that it cannot investigate complaints. Nevertheless, it tells the Commission that it must make recommendations on what an agency should do with the complaints that are referred, even when a complaint may contain little information, and it is unknown whether the information on the complaint is factually accurate. This makes little sense. The Commission currently lacks authority to look into the underlying facts of any complaint. How can the Commission possibly make a meaningful recommendation on how to proceed, when it can't take even the first necessary action to determine what the recommendation might be?

Arguments have been made over the last few weeks regarding whether the existing provision in Act 171, which requires referral entities to consult with the Ethics Commission on complaints, is constitutional. We have heard testimony from experts in Vermont constitutional law who don't see problems with the consultation requirement. However, it should be noted that H.1 would now require the Ethics Commission to make a judgment regarding complaints filed against legislators, judges, and attorneys, without the benefit of a conversation with the referral entities, and then go even further and make a recommendation about a course of action the referral entity should take. This is asking the Ethics Commission to go even further than what the existing consultation provision requires, but without

engagement between parties, and for what purpose? To the public, this could seem like referral entities have something to hide.

b. H.1 Will Lead to Inconsistent Applications of the Code of Ethics

The bill passed by this Committee last session required that agencies consult with the Commission when the Commission makes a recommendation.

Through this, agencies could make informed decisions based on an accurate, consistent interpretation of the Code of Ethics. There would be a consistent application of the Code because the interpretation would come from a single knowledgeable source: the State Ethics Commission, which works with the Code of Ethics every day.

H.1 strips this provision from the law. There would now be no requirement that any agency consult with the Commission on any complaint it receives. Each agency would come up with its own interpretation of the Code. This would likely lead to inconsistency, as well as incorrect and unequal application of the law, which would erode public confidence.²

3. The Commission Urges the Committee to Support Government Ethics and the State Ethics Commission

H.1 does not serve the public interest. It represents a blow to government ethics in Vermont – a state that is already behind the ethics curve. The public interest can only be served by a vibrant, independent ethics agency. H.1 is antithetical to this.

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² This consultation provision has been the subject of much discussion and testimony. The Commission understands that now, after a year has passed, this Committee has newly decided that the consultation provision from last year's bill is unconstitutional. Top constitutional scholars have appeared before this Committee and testified that there is no constitutional issue, but the Committee continues to reject their reasoned, independent presentations.

Conclusion

The Committee should vote “no” on H.1 and instead support the State Ethics Commission’s quest for resources and authority so that it can perform its original mission: provide ethics advice, educate government employees, and advance accountability in relation to the State Code of Ethics.

Thank you for your time and attention. I am happy to respond to any questions you may have.