

1 S.184

2 Introduced by Senator Pollina

3 Referred to Committee on

4 Date:

5 Subject: Executive; General Assembly; governmental ethics; Ethics

6 Commission; campaign finance

7 Statement of purpose of bill as introduced: This bill proposes to establish an
8 Ethics Commission and its support staff to receive and investigate complaints
9 alleging unethical conduct committed by legislators outside the scope of their
10 core legislative duties and by elected and appointed officials in the Executive
11 Branch. The bill would establish a Code of Ethics for those public officials, by
12 which the Ethics Commission would judge ethics complaints. The Code of
13 Ethics would include, as applicable, disclosures and prohibited conduct,
14 including prohibitions for limited periods of time on accepting certain
15 employment. If the Ethics Commission were to determine that a legislator or
16 Executive official violated the Code of Ethics, it could order certain penalties,
17 with those orders appealable to the Vermont Supreme Court. The bill also
18 proposes to transfer the civil investigation and enforcement authority over
19 alleged campaign finance violations from the Attorney General and State's
20 Attorneys to the new Ethics Commission.

1 An act relating to establishing a State Ethics Commission

2 It is hereby enacted by the General Assembly of the State of Vermont:

3 Sec. 1. FINDINGS AND PURPOSE

4 (a) Findings.

5 (1) The General Assembly finds that the citizens of the State of Vermont
6 desire a system by which the conduct of officers of State government may be
7 analyzed to ensure that those officers are acting as the citizens' trustees and
8 servants.

9 (2) The Vermont Constitution provides the framework within which our
10 State government must operate. Within that framework, each of the three
11 branches of State government is required to have separate and distinct powers
12 so that none of the branches exercise the powers belonging to the others.
13 Vt. Const. Ch. II, § 5. In accordance with that separation of powers principle,
14 each branch, to a certain extent, regulates its own ethics.

15 (A) In the Legislative Branch, each chamber of the General
16 Assembly has the exclusive constitutional authority to judge the qualifications
17 of and expel its members. Vt. Const. Ch. II, §§ 14 and 19. The Vermont
18 Supreme Court has interpreted "judging qualifications" to encompass the
19 authority to determine whether a member's personal or pecuniary interest
20 requires disqualification from voting on a question before the chamber. *Brady*
21 *v. Dean*, 173 Vt. 542, 544 (2001). However, our Court has cautioned that not

1 all potential conflicts of interest of legislators are “immune from every form of
2 executive or judicial oversight” and that legislators “may be criminally
3 prosecuted for certain actions, such as soliciting or accepting bribes [citing
4 13 V.S.A. § 1102], or even subject to civil suit for actions outside the scope of
5 their legislative duties.” *Id.* at 545.

6 (B) In the Judicial Branch, the Vermont Supreme Court has
7 disciplinary authority concerning all judicial officers in the State, Vt. Const.
8 Ch. II, § 30, including the power to suspend those officers, Vt. Const. Ch. II,
9 § 36. The Court has established the Judicial Conduct Board to receive,
10 investigate, and adjudicate complaints alleging unethical judicial conduct,
11 subject to review by the Court. *See* Rules of the Supreme Court for
12 Disciplinary Control of Judges. “The ultimate decision in all judicial
13 disciplinary matters rests with this Court . . .” *In re Hodgdon*, 189 Vt. 265,
14 272 (2011). The General Assembly holds the powers of judicial retention set
15 forth in Vt. Const. Ch. II, § 34 and of impeachment of State judicial officers set
16 forth in Vt. Const. Ch. II, §§ 57 and 58.

17 (C) In the Executive Branch, each constitutional officer within that
18 branch enjoys a term of office set forth in the Vermont Constitution. Under
19 Vt. Const. Ch. II, § 20, the “Governor . . . shall have power to commission all
20 officers, and also to appoint officers, except where provision is, or shall be,
21 otherwise made by law or this Frame of Government; and . . . is also to take

1 care that the laws be faithfully executed . . .” The General Assembly holds the
2 power of impeachment of State executive officers set forth in Vt. Const. Ch. II,
3 §§ 57 and 58.

4 (b) Purpose. The purpose of this act is to provide a system for regulating
5 governmental ethics in accordance with the framework of the Vermont
6 Constitution in order to give effect to the constitutional principle set forth in
7 Vt. Const. Ch. I, Art. 6 that officers of government are servants of the people
8 and at all times, in a legal way, accountable to them.

9 Sec. 2. 3 V.S.A. Part 1, chapter 31 is added to read:

10 CHAPTER 31. GOVERNMENTAL ETHICS

11 Subchapter 1. General Provisions

12 § 1201. PURPOSE

13 The purpose of this chapter is to establish the Code of Ethics set forth in
14 subchapters 2 through 4 of this chapter for Executive officers and for
15 legislators outside the scope of core legislative duties and to establish the State
16 Ethics Commission to enforce that Code of Ethics.

17 § 1202. DEFINITIONS

18 As used in this chapter:

19 (1) “Appearance of a conflict of interest” means the impression that a
20 reasonable person might have, after full disclosure of the facts, that an

1 individual has a conflict of interest, even though the individual does not have
2 an actual conflict of interest.

3 (2) “Business associate” means:

4 (A) any business:

5 (i) in which an individual subject to this chapter is a director,
6 officer, partner, trustee, or employee or holds any position of management; or

7 (ii) in which an individual subject to this chapter has an
8 investment worth \$2,000.00 or more; or

9 (B) a person that has an investment worth \$2,000.00 or more in a
10 business in which an individual subject to this chapter also has such an
11 investment.

12 (3) “Candidate” and “candidate’s committee” shall have the same
13 meanings as in 17 V.S.A. § 2901.

14 (4)(A) “Conflict of interest” means an interest of an individual that is in
15 conflict with the proper discharge of his or her official duties due to a
16 significant personal or financial interest of the individual, of a member of the
17 individual’s immediate family, or of the individual’s business associate.

18 (B) “Conflict of interest” does not include any interest that is not
19 greater than that of any other persons generally affected by the outcome of a
20 matter.

21 (5) “Contribution” shall have the same meaning as in 17 V.S.A. § 2901.

1 (6) “Executive officer” means:

2 (A) the Governor, Lieutenant Governor, Treasurer, Secretary of
3 State, Auditor of Accounts, or Attorney General; or

4 (B) a person appointed by or upon the approval of the Governor or by
5 or upon the approval of such an appointee, who works as an exempt employee
6 for an agency, department, or office of the State but not for any board,
7 commission, council, or similar entity of the State, and who receives a
8 full-time salary for State service.

9 (7) “Immediate family” means a parent, stepparent, sibling, grandparent,
10 spouse, domestic partner, or child.

11 (8) “Legislator” means a member of the General Assembly.

12 (9) “Lobbying” and “lobbyist” shall have the same meanings as in
13 2 V.S.A. § 261.

14 (10) “Political committee” and “political party” shall have the same
15 meanings as in 17 V.S.A. § 2901.

16 (11) “Private entity” means any person, including any corporation,
17 partnership, joint venture, or association, whether organized for profit or not
18 for profit, except one specifically chartered by the State or that relies upon
19 taxes for at least 50 percent of its revenues.

1 (12) “Public body” means any agency, department, division, or office,
2 or any board, commission, council, or similar entity, in the Executive Branch
3 of the State.

4 (13) “Regulated by an office, agency, or department” means that the
5 office, agency, or department is responsible for controlling, restricting, or
6 otherwise overseeing an entity in order for that entity to legally operate in this
7 State.

8 Subchapter 2. Code of Ethics—Disclosures

9 § 1211. LEGISLATORS AND EXECUTIVE OFFICERS; ANNUAL

10 DISCLOSURE

11 (a) Annually, each legislator and Executive officer shall file with the State
12 Ethics Commission a disclosure form that contains the following information
13 in regard to the previous calendar year for the official and any spouse or
14 domestic partner and any dependent child of the official:

15 (1) each source of income totaling \$2,000.00 or more and a description
16 of the source, including any job title, employer or business name, and address,
17 but not specifying the amount of the income;

18 (2) each parcel of real property owned by the person or held in the name
19 of a corporation, partnership, or trust for the benefit of him or her, and its
20 location;

1 (3) any board, commission, or other entity on which the person serves, a
2 description of that position, and whether the person receives any form of
3 remuneration for that position, but not specifying the amount of
4 remuneration; and

5 (4) any lease or contract with the State held or entered into by the person
6 or his or her business associate.

7 (b) An official shall file his or her disclosure on or before February 15 or, if
8 he or she is appointed after February 15, within 10 days after that appointment.

9 § 1212. LEGISLATORS AND EXECUTIVE OFFICERS; UPDATED

10 ANNUAL DISCLOSURE; SUBSTANTIAL CHANGES

11 (a)(1) A legislator or Executive officer shall file an updated annual
12 disclosure concerning the current calendar year if there is a substantial change
13 in the information required to be reported in the annual disclosure set forth in
14 subsection 1211(a) of this subchapter.

15 (2) As used in this section, “substantial change” means that since the
16 filing of that annual disclosure, for any person about whom the official is
17 required to report in that disclosure, the person has obtained:

18 (A) a value of at least \$5,000.00 during the calendar year for any new
19 source of income, new parcel of real property, or remuneration for a new entity
20 on which the person serves; or

1 (B) a new lease or contract with the State, of any value, held or
2 entered into by the person or his or her business associate.

3 (b) An official shall file his or her updated annual disclosure within 10 days
4 of the substantial change.

5 § 1213. LEGISLATORS AND EXECUTIVE OFFICERS; CONFLICT OF
6 INTEREST OR THE APPEARANCE OF A CONFLICT OF
7 INTEREST

8 Within 10 days of a conflict of interest or the appearance of a conflict of
9 interest, a legislator or Executive officer shall file with the State Ethics
10 Commission a description of that conflict or the appearance thereof and a
11 description of any steps the official will take to avoid the conflict or the
12 appearance thereof.

13 § 1214. FILING DISCLOSURES

14 (a) The State Ethics Commission shall provide on its website an online
15 database of the disclosures required to be filed with the Commission.

16 (1) In this database, the Commission shall provide digital access to each
17 form that it shall provide to enable a person to file the required disclosures.
18 Digital access shall enable a person to file these disclosures by completing and
19 submitting the disclosure to the Commission online.

20 (2) The Commission shall maintain on the online database all
21 disclosures that have been filed digitally on it so that any person may have

1 direct machine-readable electronic access to the individual data elements in
2 each disclosure and the ability to search those data elements as soon as a
3 disclosure is filed.

4 (b) Any person required to file a disclosure with the Commission shall
5 sign it, declare that it is made under the penalties of perjury, and file it digitally
6 on the online database.

7 Subchapter 3. Code of Ethics—Prohibited Conduct While in Office

8 § 1221. EXECUTIVE OFFICERS; FINANCIAL INTEREST IN
9 GOVERNMENTAL DECISION

10 (a) Except as provided in subsection (c) of this section, an Executive
11 officer shall not make, participate in the making of, or use his or her official
12 position to influence any governmental decision in which the officer knows or
13 has reason to know he or she has a financial interest.

14 (b) An Executive officer knows or has reason to know that he or she has a
15 financial interest in a governmental decision if the decision will have a
16 significant financial effect on:

17 (1) the officer, a member of his or her immediate family, or his or her
18 business associate, and that significant financial effect is greater than that of
19 any other persons generally affected by the decision; or

20 (2) any entity, other than the State, with which the officer is actively
21 seeking employment.

1 (c) The prohibition set forth in subsection (a) of this section shall not apply
2 to any constitutional authority held by the Executive officer.

3 § 1222. EXECUTIVE OFFICERS; OWNERSHIP OR FINANCIAL

4 INTEREST IN REGULATED BUSINESSES

5 (a) An Executive officer shall not be the owner of, or financially interested,
6 directly or indirectly, in any corporation or association regulated by his or her
7 office, agency, or department, except as a policy holder in an insurance
8 company or a depositor in a bank.

9 (b) As used in subsection (a) of this section, a direct or indirect financial
10 interest does not include:

11 (1) any insignificant interest held by the officer or a member of his or
12 her immediate family or a business associate; or

13 (2) any interest that is not greater than that of any other persons
14 generally affected by the supervision of the office, agency, or department.

15 § 1223. EXECUTIVE OFFICERS; CONTRIBUTIONS, GIFTS, OR

16 FAVORS FROM CERTAIN PERSONS

17 An Executive officer shall not solicit or accept a contribution of any value,
18 or any gift or favor with a value over \$50.00, from any person or from an
19 individual acting on behalf of that person or from that person's or individual's
20 spouse or domestic partner, if the person:

1 (1) has or seeks to obtain contractual or other business or financial
2 relationships with the officer's office or the agency or department in which he
3 or she is employed; or

4 (2) conducts business or activities that are regulated by the officer's
5 office or the agency or department in which he or she is employed.

6 § 1224. EXECUTIVE OFFICERS; CONTRACTS WITH CONTRIBUTORS

7 An Executive officer in his or her official capacity, or his or her office or
8 the agency or department in which he or she is employed, shall not enter into a
9 contract with a person if that person has made a contribution to that officer, or
10 if an individual acting on behalf of that person or that person's or individual's
11 spouse or domestic partner has made a contribution to that officer, within five
12 years preceding the date of the contract.

13 § 1225. LEGISLATORS AND EXECUTIVE OFFICERS; USE OR

14 DISCLOSURE OF CONFIDENTIAL INFORMATION

15 A legislator or Executive officer shall not use or disclose confidential or
16 privileged information acquired in the performance of his or her official duties
17 for the personal benefit or financial gain of that legislator or Executive officer
18 or of a member of his or her immediate family or of a business associate.

19 § 1226. LEGISLATORS AND EXECUTIVE OFFICERS; BRIBERY

20 A legislator or Executive officer shall not commit bribery as described in
21 13 V.S.A. § 1102.

1 Subchapter 4. Code of Ethics—Prohibited Employment Related to Office

2 § 1241. EXECUTIVE OFFICERS

3 For one year after leaving office, a former Executive officer shall not:

4 (1) be a lobbyist for or, if not lobbying, be otherwise compensated to
5 advocate on behalf of a private entity before any public body or before the
6 General Assembly or its committees regarding any particular matter in which
7 the officer had exercised official responsibility; or

8 (2) be employed by any private entity that was regulated by his or her
9 office or the agency or department in which he or she was employed.

10 § 1242. LEGISLATORS

11 (a) For one year after leaving office, a former legislator shall not be a
12 lobbyist.

13 (b)(1) Except as provided in subdivision (2) of this subsection, a legislator
14 or former legislator shall not be employed in a position created by an act of
15 legislation for one year following the date on which the legislation was
16 enacted.

17 (2) The prohibition set forth in subdivision (1) of this subsection shall
18 not apply to any elected position, nor to any appointment on a board,
19 commission, council, or similar entity of the State for which compensation is
20 provided in the form of a per diem.

1 Subchapter 5. Administration

2 § 1251. VERMONT ETHICS COMMISSION

3 (a) Creation. There is created within the Executive Branch an independent
4 commission named the Vermont Ethics Commission to receive, investigate,
5 and adjudicate complaints of alleged violations of the Code of Ethics set forth
6 in subchapters 2 through 4 of this chapter and of the State's campaign finance
7 law as set forth in 17 V.S.A. chapter 61.

8 (b) Membership.

9 (1) The Commission shall be composed of the following five members:

10 (A) a chair of the Commission, who shall be appointed by the Chief
11 Justice of the Supreme Court;

12 (B) one member appointed by the Vermont chapter of the American
13 Civil Liberties Union;

14 (C) one member appointed by the Vermont Press Association;

15 (D) one member appointed by the Vermont Bar Association; and

16 (E) one member appointed by the Executive Director of the Human
17 Rights Commission.

18 (2) A member shall not:

19 (A) hold any office in the Legislative, Executive, or Judicial Branch
20 of State government or otherwise be employed by the State;

21 (B) be a lobbyist;

1 (C) be a candidate; or

2 (D) hold any office in a candidate's committee, political committee,
3 or political party.

4 (3) A member may be removed for cause by the remaining members
5 of the Commission in accordance with the Vermont Administrative
6 Procedure Act.

7 (4)(A) A member shall serve a term of three years and until a successor
8 is appointed. A term shall begin on January 1 of the year of appointment and
9 run through December 31 of the last year of the term. Terms of members shall
10 be staggered so that not all terms expire at the same time.

11 (B) A vacancy created before the expiration of a term shall be filled
12 in the same manner as the original appointment for the unexpired portion of the
13 term.

14 (C) A member shall not serve more than two terms. A member
15 appointed to fill a vacancy created before the expiration of a term shall not be
16 deemed to have served a term for the purpose of this subdivision (C).

17 (c) Meetings. Meetings of the Commission may be called by the Chair and
18 shall be called upon the request of any other two Commission members.

19 (d) Reimbursement. Each member of the Commission shall be entitled to
20 per diem compensation and reimbursement of expenses pursuant to
21 32 V.S.A. § 1010.

1 § 1252. COMMISSION MEMBER DUTIES AND PROHIBITED

2 CONDUCT

3 (a) Disclosures. Each member of the Commission shall file the disclosures
4 described in subchapter 2 of this chapter in the manner described in that
5 subchapter.

6 (b) Conflicts of interest.

7 (1) Prohibition; recusal.

8 (A) A Commission member shall not participate in any Commission
9 matter in which he or she has a conflict of interest and shall recuse himself or
10 herself from participation in that matter.

11 (B) The failure of a Commission member to recuse himself or herself
12 as described in subdivision (A) of this subdivision (1) may be grounds for the
13 Commission to discipline or remove that member.

14 (2) Disclosure of conflict of interest.

15 (A) A Commission member who has reason to believe he or she has a
16 conflict of interest or the appearance of a conflict of interest in a Commission
17 matter shall disclose that he or she has that belief and disclose the nature of the
18 conflict of interest or the appearance thereof. This disclosure shall occur at a
19 public Commission meeting or hearing. Alternatively, a Commission member
20 may request that another Commission member recuse himself or herself from a
21 Commission matter due to a conflict of interest.

1 (B) Once there has been a disclosure of a member's conflict of
2 interest or the appearance thereof, members of the Commission shall be
3 afforded the opportunity to ask questions or make comments about the
4 situation and, if appropriate, enter into executive session to address the conflict
5 or the appearance thereof.

6 (3) Postrecusal procedure. A Commission member who has recused
7 himself or herself from participating on a Commission matter shall not sit or
8 deliberate with the Commission on that matter or otherwise act as a
9 Commission member on that matter, but may participate in that matter as a
10 member of the public.

11 (c) Gifts. A Commission member shall not accept a gift given by virtue of
12 the member's membership on the Commission if the gift is not available to the
13 public in general.

14 § 1253. COMMISSION TRAINING FOR PUBLIC OFFICIALS

15 At least annually, the Commission shall make available to Executive
16 officers and legislators training on the Code of Ethics set forth in this chapter.

17 § 1254. COMMISSION ADVISORY OPINIONS TO EXECUTIVE

18 OFFICERS AND LEGISLATORS

19 (a)(1) The Commission may issue to an Executive officer or to a legislator,
20 upon his or her request, an advisory opinion regarding any provision of this
21 chapter.

1 (2) An advisory opinion issued under this subsection may be relied upon
2 by an Executive officer or legislator in the performance of his or her official
3 duties.

4 (b)(1) The Commission may issue to a legislator upon his or her request an
5 advisory opinion regarding whether the legislator has a conflict of interest or
6 the appearance of a conflict of interest in the performance of his or her core
7 legislative duties.

8 (2) An advisory opinion issued under this subsection is subject to that
9 legislator's chamber's constitutional authority to judge the qualifications of
10 members set forth in Vt. Const. Ch. II, § 14 or 19.

11 (c) Any advisory opinion issued by the Commission shall be a public
12 record.

13 § 1255. GENERAL COMMISSION POWERS; COMMISSION STAFF

14 (a) The Commission may:

15 (1) Adopt procedural rules governing the investigatory and adjudicatory
16 process.

17 (2) Issue subpoenas and administer oaths in connection with any
18 authorized hearing, investigation, or disciplinary proceeding.

19 (A) Subpoenas may be issued ex parte by the Chair of the
20 Commission, the Executive Director of the Commission, or any attorney
21 representing a party before the Commission.

1 (B) Depositions may be taken after charges upon due notice to all
2 parties, without specific authorization by the Commission.

3 (b) The Commission shall have the assistance of the following Commission
4 staff employees:

5 (1) an Executive Director, who shall be an exempt State employee and
6 an attorney admitted to practice in this State, act as prosecutor in hearings
7 before the Commission, and generally assist the Commission in the
8 administration of this chapter;

9 (2) at least one investigator, who shall be a classified State employee, be
10 certified as a Level III law enforcement officer under 20 V.S.A. chapter 151,
11 have the same powers as a sheriff in criminal matters and the enforcement of
12 the law and in serving criminal process, and have all the immunities and
13 matters of defense now available or hereafter made available to sheriffs in a
14 suit brought against them in consequence for acts done in the course of their
15 employment; and

16 (3) any other employees as permitted by law.

17 § 1256. PROCEDURE FOR RECEIVING, INVESTIGATING, AND

18 ADJUDICATING COMPLAINTS

19 (a) Procedure; generally. Except as otherwise provided in this chapter, the
20 Commission's procedure for receiving, investigating, and adjudicating

1 complaints shall be in accordance with the Vermont Administrative
2 Procedure Act.

3 (b) Complaints; generally.

4 (1) The Commission shall receive complaints from any source and may
5 upon its own motion investigate conduct without receiving a complaint.

6 (2) A person who in good faith files a complaint with the Commission
7 shall not be liable for damages in a civil action.

8 (3)(A) Any complaint regarding the Judicial Branch shall be forwarded
9 to the Judicial Conduct Board.

10 (B) Any complaint regarding a legislator concerning conduct not
11 addressed in this chapter shall be forwarded to the Speaker of the House in the
12 case of a House member or to the President Pro Tempore of the Senate in the
13 case of a Senator.

14 (c) Investigating complaints.

15 (1)(A) The Executive Director of the Commission shall assign one or
16 more members of the Commission to investigate a complaint. Such member or
17 members shall not have a conflict of interest or the appearance of a conflict of
18 interest in the complaint.

19 (B) Such a member shall have the assistance of an investigator for the
20 Commission and the Executive Director.

1 (C) While acting in this capacity, a Commission member shall not sit
2 in adjudication of the case and shall not participate in ex parte communications
3 with other Commission members regarding the case.

4 (D) A Commission member whose term of office expires while an
5 investigation is pending may continue through the completion of the case.

6 (2)(A) When the Executive Director is unable to assign one or more
7 members to investigate a complaint by reason of recusal, resignation, vacancy,
8 or necessary absence, the Executive Director shall, at the request of the
9 Commission, appoint one or more ad hoc members to serve on the
10 Commission for the investigation of that matter only.

11 (B) An ad hoc member shall have the same qualifications as required
12 for Commission members.

13 (d) Notice.

14 (1)(A) The Commission shall notify a complainant in writing of the
15 result of any disciplinary investigation made as a result of his or her complaint
16 filed with the Commission.

17 (B) When an investigation results in a stipulation filed with the
18 Commission, the Commission shall provide the complainant with a copy of the
19 stipulation and notice of the stipulation review scheduled before the
20 Commission. The complainant shall have the right to be heard at the
21 stipulation review.

1 (2) The Commission shall notify parties, in writing, of their right to
2 appeal a final decision of the Commission.

3 (e) Hearing officer.

4 (1) The Commission shall appoint a hearing officer, who shall be an
5 attorney admitted to practice in this State, to preside at hearings for the purpose
6 of making procedural and evidentiary rulings. The Commission may overrule
7 a ruling by the hearing officer. The hearing officer may administer oaths and
8 exercise the powers of the Commission properly incidental to the conduct of
9 the hearing.

10 (2) The hearing officer shall draft findings of fact, conclusions of law,
11 and Commission orders for the Commission's review. The Commission shall
12 enter its findings, conclusions, and orders within 30 days of the conclusion of a
13 hearing, unless the Commission grants an extension.

14 (3) A hearing officer shall not preside at any hearing in which he or she
15 has a conflict of interest or the appearance of a conflict of interest. If a hearing
16 officer refuses to recuse himself or herself from such a hearing, the
17 Commission may remove that hearing officer from presiding at the hearing and
18 appoint a different hearing officer.

19 (f) Procedural authority. The Commission may authorize:

20 (1) its Chair or hearing officer to grant continuances of scheduled
21 hearings;

1 (2) its Chair to grant or deny stays pending appeal; and

2 (3) its Chair or hearing officer to convene and conduct prehearing
3 conferences.

4 (g) Ad hoc Commission members.

5 (1) When the Commission is unable to convene a quorum by reason of
6 recusal, resignation, vacancy, or necessary absence, the remaining members of
7 the Commission shall appoint ad hoc members to serve on the Commission for
8 that matter only.

9 (2) An ad hoc member shall have the same qualifications as required for
10 Commission members.

11 (h) Burden of proof. The burden of proof in a Code of Ethics action shall
12 be on the State to show by clear and convincing evidence that a person has
13 violated the code of ethics.

14 (i) Permitted Commission orders.

15 (1) Upon finding that a person violated a provision of the Code of
16 Ethics, the Commission may order any of the following, alone or in
17 combination:

18 (A) Reprimand.

19 (B) Cease and desist the violation.

20 (C) File or amend a required disclosure.

21 (D) Payment of an administrative penalty for each violation.

1 (i) Except as provided in subdivisions (ii) and (iii) of this
2 subdivision (D), an administrative penalty shall not exceed \$1,000.00 for each
3 violation.

4 (ii) In the case of a continuing violation, each day that a violation
5 continues shall be deemed a separate offense. In no event shall the aggregate
6 penalty for a continuing violation exceed \$10,000.00.

7 (iii) Notwithstanding the limitations on administrative penalties
8 set forth in subdivisions (i) and (ii) of this subdivision (D), an administrative
9 penalty may also include the pecuniary value of any unjust enrichment the
10 person gained as a result of his or her violation.

11 (E) In the case of an Executive officer, recommend:

12 (i) disciplinary action to the officer's supervisor, if applicable; or

13 (ii) impeachment to the General Assembly.

14 (F) In the case of a legislator, recommend disciplinary action to the
15 chamber of the General Assembly of which the legislator is a member.

16 (2) Any money received under this subsection shall be deposited in the
17 State Ethics Fund established in section 1258 of this chapter.

18 (j) Appeals. A party aggrieved by a decision of the Commission may
19 appeal to the Vermont Supreme Court, which shall review the matter on the
20 basis of the records created before the Commission.

1 (k) Application. The provisions of this section shall not act as a bar to
2 criminal or civil proceedings involving the same conduct.

3 (1) The Commission may refer a case to the Attorney General or a
4 State's Attorney for criminal prosecution.

5 (2) In the event that conduct may constitute both a criminal act and a
6 violation of the Code of Ethics, the Commission may on its own motion or
7 upon the request of the Attorney General or a State's Attorney suspend its
8 investigation or a pending hearing for the time period reasonably necessary to
9 avoid compromising a criminal prosecution.

10 § 1257. ACCESSIBILITY AND CONFIDENTIALITY

11 (a) It is the purpose of this section both to protect the reputation of public
12 officials from public disclosure of unwarranted complaints against them and to
13 fulfill the public's right to know of any action taken against a public official
14 when that action is based on a determination of a violation of the Code of
15 Ethics.

16 (b) All meetings and hearings of the Commission shall be subject to the
17 Open Meeting Law.

18 (c) The Executive Director of the Commission shall prepare and maintain a
19 register of all complaints, which shall be a public record and which shall show:

20 (1) with respect to any complaint, the following information:

1 (A) the date and the nature of the complaint, but not including the
2 identity of the public official; and

3 (B) a summary of the completed investigation; and

4 (2) only with respect to a complaint resulting in filing of charges or
5 stipulations, the following additional information:

6 (A) the name and address of the public official and of the
7 complainant;

8 (B) formal charges, provided that they have been served or a
9 reasonable effort to serve them has been made;

10 (C) the findings, conclusions, and order of the Commission;

11 (D) the transcript of the hearing, if one has been made, and exhibits
12 admitted at the hearing;

13 (E) any stipulation filed with the Commission; and

14 (F) any final disposition of the matter by the Vermont Supreme
15 Court.

16 (d) The Commission, its hearing officer, and Commission staff shall keep
17 confidential any other information regarding Code of Ethics complaints,
18 investigations, proceedings, and related records except the information
19 required or permitted to be released under this section.

20 (e) A person charged with violation of the Code of Ethics shall have the
21 right to inspect and copy the investigation file that results in the charges

1 against him or her, except for any attorney work product or other privileged
2 information.

3 (f) Nothing in this section shall prohibit the disclosure of any information
4 regarding Code of Ethics complaints pursuant to an order from a court of
5 competent jurisdiction, or to a State or federal law enforcement agency in the
6 course of its investigation, provided the agency agrees to maintain the
7 confidentiality of the information as provided in subsection (d) of this section.

8 § 1258. STATE ETHICS FUND

9 A State Ethics Fund is created in accordance with 32 V.S.A. chapter 7,
10 subchapter 5 (special funds). All revenues received by the Commission shall
11 be deposited into the Fund and shall not be used for any purpose other than the
12 administration of this chapter, which shall include providing education and
13 training for Commission members, hearing officers, and Commission staff.

14 § 1259. AGENT FOR PROCESS; NONRESIDENTS

15 (a) Whenever a person subject to the provisions of this chapter resides
16 outside the State and fails to appoint an agent for process, the Executive
17 Director of the Commission shall be an agent of that person, upon whom any
18 process, notice, or demand may be served.

19 (b) In the event any process, notice, or demand is served on the Executive
20 Director in accordance with subsection (a) of this section, the Executive

1 Director shall immediately cause a copy of it to be forwarded by certified mail,
2 addressed to the person at his or her registered office.

3 Sec. 3. 17 V.S.A. § 2903 is amended to read:

4 § 2903. PENALTIES

5 (a) A person who knowingly and intentionally violates a provision of
6 subchapter 2, 3, or 4 of this chapter shall be fined not more than \$1,000.00 or
7 imprisoned not more than six months, or both.

8 (b) A person who violates any provision of this chapter shall be subject to a
9 ~~civil~~ administrative penalty of up to \$10,000.00 for each violation and shall
10 refund to the Secretary of State an amount equivalent to any contributions or
11 expenditures that violate subdivision 2983(b)(1) of this chapter.

12 (c) In addition to the other administrative penalties provided in this section,
13 ~~a State's Attorney or the Attorney General~~ the Vermont Ethics Commission
14 may institute any appropriate administrative action, injunction, or other
15 proceeding to prevent, restrain, correct, or abate any violation of this chapter.

16 Sec. 4. 17 V.S.A. § 2904 is amended to read:

17 § 2904. ~~CIVIL~~ ADMINISTRATIVE INVESTIGATION

18 (a)(1) The ~~Attorney General or a State's Attorney~~ Vermont Ethics
19 Commission, whenever ~~he or she~~ it has reason to believe any person to be or to
20 have been in violation of this chapter or of any rule ~~or regulation~~ made
21 pursuant to this chapter, may examine or cause to be examined by any agent or

1 representative designated by ~~him or her~~ it for that purpose any books, records,
2 papers, memoranda, or physical objects of any nature bearing upon each
3 alleged violation and may demand written responses under oath to questions
4 bearing upon each alleged violation.

5 (2) The ~~Attorney General or a State's Attorney~~ Commission may require
6 the attendance of such person or of any other person having knowledge in the
7 premises in the county where such person resides or has a place of business or
8 in Washington County if such person is a nonresident or has no place of
9 business within the State and may take testimony and require proof material
10 for his or her information and may administer oaths or take acknowledgment in
11 respect of any book, record, paper, or memorandum.

12 (3) The ~~Attorney General or a State's Attorney~~ Commission shall serve
13 notice of the time, place, and cause of such examination or attendance or notice
14 of the cause of the demand for written responses personally or by certified mail
15 upon such person at his or her principal place of business or, if such place is
16 not known, to his or her last known address. Such notice shall include a
17 statement that a knowing and intentional violation of subchapters 2 through 4
18 of this chapter is subject to criminal prosecution.

19 (4) Any book, record, paper, memorandum, or other information
20 produced by any person pursuant to this section shall not, unless otherwise
21 ordered by a court of this State for good cause shown, be disclosed to any

1 person other than the authorized agent or representative of the ~~Attorney~~
2 ~~General or a State's Attorney~~ Commission or ~~another~~ a law enforcement
3 officer engaged in legitimate law enforcement activities unless with the
4 consent of the person producing the same, except that any transcript of oral
5 testimony, written responses, documents, or other information produced
6 pursuant to this section may be used in the enforcement of this chapter,
7 including in connection with any ~~civil~~ administrative action brought under
8 section 2903 of this subchapter or subsection (c) of this section.

9 (5) Nothing in this subsection is intended to prevent the ~~Attorney~~
10 ~~General or a State's Attorney~~ Commission from disclosing the results of an
11 investigation conducted under this section, including the grounds for ~~his or her~~
12 its decision as to whether to bring an ~~enforcement~~ action alleging a violation of
13 this chapter or of any rule ~~or regulation~~ made pursuant to this chapter.

14 (6) This subsection shall not be applicable to any criminal investigation
15 or prosecution brought under the laws of this or any state.

16 (b)(1) A person upon whom a notice is served pursuant to the provisions of
17 this section shall comply with its terms unless otherwise provided by the order
18 of a court of this State.

19 (2) Any person who, with intent to avoid, evade, or prevent compliance,
20 in whole or in part, with any ~~civil~~ administrative investigation under this
21 section, removes from any place; conceals, withholds, or destroys; or

1 mutilates, alters, or by any other means falsifies any documentary material in
2 the possession, custody, or control of any person subject to such notice or
3 mistakes or conceals any information shall be fined not more than \$5,000.00.

4 (c)(1) Whenever any person fails to comply with any notice served upon
5 him or her under this section or whenever satisfactory copying or reproduction
6 of any such material cannot be done and the person refuses to surrender the
7 material, the ~~Attorney General or a State's Attorney~~ Commission may file, in
8 the Superior Court in the county in which the person resides or has his or her
9 principal place of business or in Washington County if the person is a
10 nonresident or has no principal place of business in this State, and serve upon
11 the person a petition for an order of the Court for the enforcement of this
12 section.

13 (2) Whenever any petition is filed under this section, the Court shall
14 have jurisdiction to hear and determine the matter so presented and to enter any
15 order or orders as may be required to carry into effect the provisions of this
16 section. Any disobedience of any order entered under this section by any court
17 shall be punished as a contempt of the court.

18 (d) Any person aggrieved by ~~a civil~~ an administrative investigation
19 conducted under this section may seek relief from Washington Superior Court
20 or the Superior Court in the county in which the aggrieved person resides.
21 Except for cases the Court considers to be of greater importance, proceedings

1 before Superior Court as authorized by this section shall take precedence on
2 the docket over all other cases.

3 Sec. 5. APPLICABILITY

4 The provisions of Sec. 2 of this act shall not apply to any contract or
5 employment in effect on the effective date of this act that would otherwise be
6 restricted by this act.

7 Sec. 6. IMPLEMENTATION OF THE STATE ETHICS COMMISSION

8 (a) The State Ethics Commission, created in Sec. 2 of this act, is
9 established on January 1, 2017.

10 (b) Members of the Commission shall be appointed on or before
11 October 15, 2016 in order to prepare as they deem necessary for the
12 establishment of the Commission, including the hiring of Commission staff.
13 Terms of members shall officially begin on January 1, 2017.

14 (c) In order to stagger the terms of the members of the State Ethics
15 Commission as described in 3 V.S.A. § 1251(b)(4)(A), in Sec. 2 of this act, the
16 initial terms of those members shall be as follows:

17 (1) The Chief Justice of the Supreme Court shall appoint the Chair for a
18 three-year term;

19 (2) The Vermont chapter of the American Civil Liberties Union shall
20 appoint a member for a two-year term;

1 (3) The Vermont Press Association shall appoint a member for a
2 one-year term;

3 (4) The Vermont Bar Association shall appoint a member for a
4 three-year term; and

5 (5) The Executive Director of the Human Rights Commission shall
6 appoint a member for a two-year term.

7 Sec. 7. CREATION OF STAFF POSITIONS FOR STATE ETHICS
8 COMMISSION

9 (a) The following positions are created in the State Ethics Commission,
10 created in Sec. 2 of this act, by using existing positions in the position pool:

11 (1) one full-time exempt Executive Director;

12 (2) one full-time classified investigator; and

13 (3) one full-time classified administrative assistant.

14 (b) There is appropriated to the Commission the amount of \$1.00 for
15 personal and operating expenses.

16 Sec. 8. GENERAL ASSEMBLY RECOMMENDATION; ISSUES
17 RELATING TO ETHICS AND CONFLICTS OF INTEREST IN
18 MUNICIPALITIES

19 The General Assembly recommends that municipalities use existing
20 statutory authority to address municipal issues relating to ethics and conflicts
21 of interest. Provisions of law addressing those issues include the following:

1 (1) 24 V.S.A. § 1202, regarding the ability of a local board to use the
2 Municipal Administrative Procedure Act set forth in 24 V.S.A. chapter 36,
3 which includes compliance with 12 V.S.A. § 61(a), regarding disqualifications
4 for interest for persons acting in a judicial capacity;

5 (2) 24 V.S.A. § 1984, regarding the ability of the voters of a town, city,
6 or incorporated village to adopt a conflict of interest policy for their elected
7 and appointed officials;

8 (3) 24 V.S.A. § 2291(20), regarding the ability of a town, city, or
9 incorporated village to establish a conflict of interest policy to apply to all
10 elected or appointed officials in the municipality; and

11 (4) 24 V.S.A. § 4461(a), regarding the requirement that an appropriate
12 municipal panel, as part of its development review procedure, adopt rules of
13 ethics with respect to conflicts of interest.

14 Sec. 9. EFFECTIVE DATE

15 This act shall take effect on July 1, 2016.