

Coalition for Integrity

Comments of Coalition for Integrity on Vermont State Ethics Commission 2020 Statutory Proposal: Draft Code of Ethics

The Coalition for Integrity is a non-profit, non-partisan 501(c)(3) organization. We work in coalition with a wide range of individuals and organizations to combat corruption and promote integrity in the public and private sectors.

One of our areas of focus is state ethics laws. In 2018, the Coalition published a report on States with Anticorruption Measures for Public Officials (SWAMP Index). This report graded and compared all fifty states and DC on their laws and regulations surrounding ethics and integrity in state government. The report, rankings, and methodology are all available [here](#).

We built on this report in 2019 with another report: Enforcement of Ethics Rules by State Ethics Agencies: Unpacking the S.W.A.M.P. Index. This report examined how state ethics agencies actually enforce those ethics laws that they are charged with enforcing. It also graded and ranked states based on how transparent they were with the public regarding that enforcement. The report, methodology, and rankings are all available [here](#). We are currently working on a revised SWAMP Index and appreciate the Ethics Commission's comments on our work.

In the SWAMP Index, Vermont ranked in the lower half of the states because of the limited nature of its gift rules, limited financial disclosure requirements and lack of enforcement powers. The Enforcement report noted that Vermont had no enforcement powers and therefore was not covered.

The Coalition applauds the State Ethics Commission's proposed Draft Code of Ethics. We believe that the provisions will go a long way in addressing the gaps in Vermont's ethics regulatory framework. There remains, however, more to be legislated for Vermont to have an effective ethics regime.

Enforcement

While the Ethics Commission has stated that it “believes adopting a statutory code of ethics setting ethics standards for public servants should come first - before enforcement discussions,” the Coalition urges the State to give the Commission the power to investigate ethics complaints and sanction offenders as part of this new legislative effort. As of June 2019, there were 50 state ethics agencies with investigative and enforcement powers of some kind.¹ The majority of state ethics agencies have the power to initiate and conduct their own investigations and the ability to issue subpoenas.² Most of these agencies have the power to enjoin improper conduct, impose fines and issues letters of reprimand.³ Three agencies have the ability to take personnel actions, including termination of an official not subject to impeachment



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- the Louisiana Board of Ethics, New Jersey State Ethics Commission and Rhode Island Ethics Commission.⁴

The fines which state ethics agencies can impose range from a minimal amount to significant penalties. In most cases, however, the minimal amount relates to failure to file financial disclosure statements. In the period from 2016 to 2018, 16 ethics agencies imposed fines of \$10,000 or more in individual cases.⁵

- Examples of practices in other states
 - Massachusetts – can issue cease and desist or compliance orders, impose fines up to \$10,000 (\$25,000 for corruptly demanding or accepting anything of value)⁶
 - Hawaii – can impose fines of up to \$1,000 per violation.⁷
 - West Virginia – can impose fines of up to \$5,000 per violation plus costs and issue cease and desist orders and public reprimands.⁸
 - Ohio can issue public censures.⁹

Complaint Process

Anyone should be able to file a complaint against covered officials and employees. There should be some avenue for complainants to report anonymously to avoid fear of retaliation.

Most state ethics agencies allow anybody to file a complaint, whether or not a resident of the state. They differ, however, on whether a complaint can be filed anonymously; whether a complaint must be notarized; when a complaint is provided to the person who is the subject of the complaint; and when a complaint is made public.

- Examples of practices in other states
 - Florida – allows anybody to file a complaint, but requires it be notarized.¹⁰ Identifying information is collected and made public upon a finding of probable cause.
 - Colorado – a complaint must be in writing, but is not required to be sworn or notarized. Identifying information is collected, but kept confidential until the complaint is found to be non-frivolous.¹¹
 - California – a complaint must be in writing and can be done either sworn or as an anonymous tip. However, only persons filing sworn complaints have the right to be notified about the Commission's actions respecting the complaint.¹²

Financial Disclosure

Vermont requires limited disclosure through the executive and legislative financial disclosure forms – particularly for legislators. For example, neither form requires disclosure of gifts and legislators have minimal reporting requirements. The proposed Code of Ethics will prohibit



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virtually all gifts so a reporting requirement on gifts received is not necessary. However, legislators should be required to make fuller disclosure.

In particular, Legislators should disclose the names of all clients for whom they work, whether the client directly hires the legislator or hires the entity which employs the legislator.

Client disclosure is an important way to determine whether a legislator has a conflict of interest in matters on which he or she acts or refrains from acting. It is not sufficient to list the name of the employer, such as a consulting firm. The potential conflict arises from the clients for whom the legislator provides services, as an employee of that firm.

For example, Oregon requires that legislators must disclose the identity of each person for whom the person has performed services for a fee greater than \$1,000 if that person has a “legislative or administrative interest or that has been doing business, does business or could reasonably be expected to do business with the governmental agency of which the public official holds, or the candidate if elected would hold, an official position or over which the public official exercises, or the candidate if elected would exercise, any authority.”¹³ 17 have some client disclosure requirements, for example, if the client is a lobbyist or if the service provided requires interaction with a state agency.¹⁴

We hope these comments are useful. Please do not hesitate to contact Shruti Shah, President & CEO at sshah@coalitionforintegrity.org if you have any questions.



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