

STATE OF VERMONT

EXECUTIVE DEPARTMENT

EXECUTIVE ORDER NO. 04-22

[Executive Code of Ethics]

WHEREAS, throughout the State of Vermont, dedicated public servants bring their talents and expertise to work on behalf of all Vermonters; and

WHEREAS, it is essential to the proper operation of government that public officers be principled and impartial; that governmental decisions and policy be made fairly and impartially on the merits of the matter at issue; that public office not be used for private gain other than the remuneration provided by law; and that there be public confidence in the integrity of government; and

WHEREAS, there is a risk that the attainment of one or more of these ends may be impaired whenever a conflict exists between the private interests of a public officer and their official responsibilities; and

WHEREAS, it is also essential to the proper operation of government that those best qualified not be discouraged from serving as public officers by requiring them to relinquish totally the opportunity to further their interests, at least where such interests do not create irreconcilable conflicts with their official responsibilities; and

WHEREAS, both the public and private sectors of Vermont are enriched by the healthy exchange of individuals who have hands-on knowledge and work experience in both the public and private sectors; and

WHEREAS, in 2022, the Vermont General Assembly enacted Act 102, an act relating to the adoption of a State code of ethics (the "Act"), to establish for the first time an ethics code applicable to all three branches of government; and

WHEREAS, for decades, successive governors have adopted an Executive Code of Ethics to effectively ensure fairness and impartiality in the conduct of State business, while at the same time encouraging the recruitment and retention of those best qualified to serve the State; and

WHEREAS, the Executive Code of Ethics is hereby reaffirmed and updated in light of the enactment of the Act to maintain the rigorous standards of the Executive Code of Ethics as well as clarify processes and definitions consistent with the Act.

NOW THEREFORE, BE IT RESOLVED, that I, Philip B. Scott, by virtue of the authority vested in me as Governor, do hereby promulgate the following Executive Code of Ethics.

All State employees shall be subject to the Act. All Appointees (as defined herein) shall be subject to provisions of this Executive Code of Ethics as well as the Act. Nothing in this Executive Code of Ethics shall exempt an Appointee from any other requirement of law or any duly adopted State personnel policy. When a question arises regarding conflicting terms of this Executive Code of Ethics and the Act, the more restrictive requirement shall apply.

To assure adherence to this Executive Code of Ethics, all future Appointees, and any current Appointees who have not signed an acknowledgment with respect to Executive Order No. 19-17 (codified as Executive Order No. 3-84), will be asked to sign the acknowledgment attached hereto as Exhibit A and submit it to the Secretary. The Secretary shall have the authority to interpret the provisions of this Code as they relate to the circumstances of an Executive Officer and to issue exemptions from this Code when there is good cause to proceed in accordance with the Act. All such interpretations and exemptions shall be written and kept by the Secretary in the same manner as the Conflict Questionnaires.

I. Definitions

As used in this Executive Order:

"Appointee" means any member of a Public Body appointed by or upon the approval of the Governor, including Executive Officers, or any exempt employee appointed by or upon the approval of such an Appointee.

"Appearance of a Conflict of Interest" means the impression that a reasonable person might have, after full disclosure of the facts, that an Appointee's judgment might be significantly influenced by outside interests, even though there may be no actual Conflict of Interest.

"Confidential information" means information that is designated by law as confidential, or may be determined to be exempt from disclosure in accordance with the State Access to Records Law (1 V.S.A. § 315 *et seq.*).

"Conflict of Interest" means a direct or indirect interest of an Appointee or such an interest, known to the Appointee, of a member of their Immediate Family or household, or of a business associate, in the outcome of a particular matter pending before the Appointee or their Public Body, or that is in conflict with the proper discharge of the Appointee's duties. "Conflict of Interest" does not include any interest that (i) is no greater than that of other persons generally affected by the outcome of a matter (such as a policyholder in an insurance company or a depositor in a bank), or (ii) has been disclosed to the Secretary by an Executive Officer or to an Executive Officer by all other Appointees and the Secretary, or Executive Officer, as appropriate, has found good cause to proceed so that the Appointee can take action in a matter fairly, objectively and in the public interest.

"Domestic partner" means an individual in an enduring domestic relationship of a spousal nature with the Appointee, provided the individual and the Appointee:

- a) have shared a residence for at least six consecutive months;
- b) are at least 18 years of age;

- c) are not married to or considered a domestic partner of another individual;
- d) are not related by blood closer than would bar marriage under State law; and
- e) have agreed between themselves to be responsible for each other's welfare.

“Executive Officer” means an agency secretary or deputy or a department commissioner or deputy.

"Full-time Appointee" means any Appointee receiving a salary for State service over \$30,000.

“Gift” means anything of value, tangible or intangible, that is given for less than adequate consideration.

“Good cause to proceed,” to be determined by the Secretary of Civil and Military Affairs in the case of Executive Officers, and Executive Officers in the case of other Appointees may include any of the following:

- a) an identified Conflict of Interest, potential Conflict of Interest or Appearance of a Conflict of Interest is de minimis in nature;
- b) the Conflict of Interest is amorphous, intangible, or otherwise speculative; or
- c) the Appointee cannot legally or practically delegate the matter.

“Immediate family” means an individual’s spouse, domestic partner, or civil union partner; child or foster child; sibling; parent; or such relations by marriage or by civil union or domestic partnership; or an individual claimed as a dependent for federal income tax purposes.

“Person” means any individual or Private Entity.

"Private Entity" is any business entity, partnership, joint venture, association, organization or group, whether organized for profit or not for profit, except those specifically chartered by the State of Vermont or which relies upon taxes for at least fifty percent (50%) of its revenues.

"Public Body" means any State agency, department, division or office and any board or commission of any such entity or any independent board or commission in the executive branch of the State.

“Secretary” shall, unless otherwise specified, mean the Secretary of Civil and Military Affairs.

II. General Conduct

An Appointee must conduct the affairs of their office in such a manner as to instill public trust and confidence in the integrity of State government. Further, Appointees have a responsibility to act as examples and set a civil and respectful tone in the public discourse.

- A. Thus, an Appointee shall always, and without exception, be honest, helpful and fully committed to the principle that all authority is derived from the people, and therefore, all officers of government, whether legislative or executive, are servants of the people and

at all times, in a legal way, accountable to them. [VT. Const., Ch I, Article 6]

- B. Appointees shall take all reasonable steps to avoid any action or circumstances, including acts or circumstances which may not be specifically prohibited by this Code or the Act, which might result in:
 - (1) Undermining their independence or impartiality or action;
 - (2) Taking official action based on unfair considerations;
 - (3) Giving preferential treatment to any private interest or Person based on unfair considerations;
 - (4) Giving preferential treatment to any Immediate Family member or member of the Appointee's household;
 - (5) Representing an ability to give preference or special treatment to any Person because of the Person's wealth, position, or status or because of any personal relationship with Appointee;
 - (6) Using public office for the advancement of personal interest;
 - (7) Using public office to secure special privileges or exemptions;
 - (8) Adversely affecting the confidence of the public in the integrity of State government; or
 - (9) Undermining the climate of civility and respect required for every open, democratic government to thrive.
- C. Every Appointee shall be true and faithful to the State of Vermont and will not, directly or indirectly, do any act or thing injurious to the Constitution or Government of the State of Vermont. Every Appointee will faithfully execute the office which they hold and will therein do equal right and justice to all men and women, to the best of their judgment and ability, according to law. [VT. Const., Ch II, Section 56]
- D. Appointees shall always treat each other, employees, staff, volunteers and the public with dignity, respect, empathy and courtesy.
- E. Appointees shall support efforts to create and maintain a diverse and effective work force.
- F. Appointees shall promote a workplace that is free from sexual harassment, or inappropriate personal relationships, and shall take quick and effective action to ensure that sexual harassment does not occur or persist.
- G. Every Full-Time Appointee shall devote their worktime to the duties of their office.
- H. An Appointee shall not use State property nor permit others to use State property unless the use is reasonably related to their official responsibilities or the conduct is permitted pursuant to a duly adopted State or agency personnel policy.
- I. An Appointee shall not enter into any commitment to expend State funds unless the expenditure is reasonable and valuable to the State and made in accordance with

all applicable statutes, rules, directives or Bulletins from the Secretary of the Agency of Administration.

- J. An Appointee shall be in good standing with respect to, or in full compliance with a plan to pay, all taxes due the United States, the State of Vermont and the municipality of residence. An Appointee shall be in good standing with respect to, or in full compliance with a plan to pay, all child support obligations.
- K. Within the first 120 days of public service, an Appointee shall engage in State-sponsored training on issues related to the Act of Ethics, sexual harassment and racial equity and implicit bias. Full-Time Appointees must complete this training at least annually.
- L. An Appointee shall not direct another person to act in a manner that would be unethical for the Appointee or the other person to act. An Appointee who has a conflict of interest shall not direct others to act for the Appointee's benefit where the action would be a violation of this Executive Code of Ethics or the Act if the Appointee were to perform the act.

III. Personal Interests, Outside Employment and Financial Activities

A. Ethical Rules While Employed by the State:

- (1) No Full-Time Appointee shall be the owner of, or financially interested, directly or indirectly, in any Person subject to the supervision their respective Public Body, except any interest which is no greater than that of other persons who might be generally affected by the supervision of the Appointee's Public Body such as a policy holder in an insurance company or a depositor in a bank. (See also 3 V.S.A. §204).
- (2) An Appointee shall not take any action in any matter in which they have either a Conflict of Interest or the Appearance of a Conflict of Interest, until the Conflict is resolved one of two ways:
 - a. Disclosure of the Conflict made by an Executive Officer to the Secretary or the Appointee's appointing Executive Officer and recusal from the matter. Once recused, an Appointee shall not participate in or act to influence a decision regarding the matter.
 - b. If an Appointee chooses to proceed with a matter where there may be a Conflict of Interest or the Appearance of a Conflict of Interest, an Executive Officer shall seek a determination by the Secretary of Civil and Military Affairs or other Appointees shall seek a determination from their appointing Executive Officer with a written statement which shall:
 - 1. describe the matter requiring action;
 - 2. disclose the nature of the potential Conflict, actual Conflict or Appearance of a Conflict of Interest;

3. explain why good cause to proceed exists so that the Appointee can take action in the matter fairly, objectively, and in the public interest and include sufficient detail so that the matter may be understood by the public; and
4. in all cases, be filed with the Secretary.

Exemptions sought under this Code shall be issued only to further the twin goals of this Code: i) to establish high standards of ethical conduct for all Appointees and ii) to encourage those Vermonters best qualified to serve in State government.

- (3) An Appointee shall not take any official action that materially advances the interest of any Person with which the Appointee is actively seeking employment.
- (4) A full-time Appointee shall not, for personal or financial gain, be an advocate for any Person in any matter before any Public Body or before the State General Assembly or its committees.
- (5) An Appointee shall not seek or engage in outside employment or activities that are inconsistent, incompatible or in conflict with the Appointee's official duties.
- (6) Except in the event (i) a specific law, rule or regulation requires disclosure, or (ii) the State has entered into a confidentiality or non-disclosure agreement consistent with applicable State or federal law, regulation, rule or policy, an Appointee shall not disclose to any Person any confidential or privileged information obtained while employed by the State.
- (7) An Appointee shall not use nonpublic government information or confidential information acquired during the course of State service for personal or financial gain or for the personal or financial gain of any other person.
- (8) An Appointee or their family shall not trade in stock or otherwise transact private business based upon information obtained by the Appointee through their work on behalf of the State, or otherwise use nonpublic or confidential government information acquired during the course of State service for personal or financial gain or for the personal or financial gain of any other Person.
- (9) Appointees will use State-provided equipment, property, facilities and official email addresses for primarily State business purposes. Personal use shall be de minimus and must not: (i) interfere with normal business activities; or (ii) be associated with any outside for-profit business activity of the Appointee. An Appointee shall not engage in or direct another person to engage in work other than the performance of official duties during working hours.

- (10) Appointees are strongly encouraged to engage in electronic communications regarding official business only on their official email accounts. If private accounts must be used, Appointees shall copy their official email accounts on all such outgoing communications and forward any received messages on which their official emails are not copied. If substantive discussion (not otherwise documented) relating to the work of the Public Body occurs on a text-messaging system, such discussion is to be copied to a separate public record format (such as by copying the relevant text messages to the appointee's official email).
- (11) Email messages and other electronic data produced or acquired in the course of the business of the Public Body is considered a public record subject to disclosure under the Vermont Public Records Act, regardless of whether the record resides in a State-provided system or a private account; provided, however, solely for purposes of this subsection, "public body" does not include councils or similar groups established by the Governor for the sole purposes of advising the Governor with respect to policies. Upon receipt of a records request, Appointees shall provide their Records Officers all responsive records in their own custody and control.

B. Ethical Rules After State Employment:

- (1) For one year after leaving office, a former Appointee shall not, for personal or financial gain, be an advocate for any Person before any Public Body or before the State General Assembly or its committees, regarding any particular matter in which:
 - a. the State is a party or has a direct and substantial interest; and
 - b. the Appointee had participated personally and substantively while employed by the State.
- (2) This prohibition applies to any matter the Appointee directly handled, supervised or managed, or gave substantial input, advice or comment, or benefited from, either through discussing, attending meetings on, or reviewing materials prepared regarding the matter.
- (3) After leaving office, a former Appointee shall not, with the intent to advocate for an outcome of an investigation, application, ruling, license, contract, claim, rulemaking, charge, arrest, or quasi-judicial or judicial proceeding, communicate with or appear before any Public Body or before the State General Assembly or its committees, on matters regarding specific parties in which the Appointee participated personally and substantively during their time in office and in which the State is a party or has a direct and substantial interest.
- (4) Subject to exemptions set forth in 2 V.S.A. § 262, for one year after leaving office, an Executive Officer, shall not be a lobbyist (as defined in 2 V.S.A. § 261), in this State.

IV. Gifts

A. Prohibited Gifts. While the Act limits the acceptance of certain gifts by public servants, it is essential the Appointees of the Governor understand a gift given to a public servant may have the appearance of being given either as a *quid pro quo* or to influence official action. The monetary value of the gift is not the issue. Notwithstanding the Act, for purposes of this Executive Code of Ethics:

- (1) An Appointee, while employed by the State, shall not solicit or receive *any* payment, gift or favor based on any understanding which may be reasonably implied by the Appointee or inferred by the donor, that it may influence any official action.
- (2) An Appointee shall not solicit or receive *any* payment, gift or favor from any Person which has, or seeks to obtain, contractual or other business or financial relationships with the Appointee's Public Body; conducts business or activities that are regulated by the Appointee's Public Body; or has an interest that may be substantially affected by the Appointee's official actions.
- (3) An Appointee, or their designee, shall not solicit or accept gifts or trips from Persons if the gifts or trips (i) are a *quid pro quo*; (ii) are intended to influence any decision by the Appointee; or (iii) create an appearance of a Conflict of Interest.

B. Except as set forth in Section IV(A) above, Appointees may accept gifts as set forth in the Act (3 V.S.A. § 1203g).

V. Reports

A. Appointees

Within 30 days of appointment and thereafter, on or before January 15th of a new biennium, every Full-Time Appointee shall file with the Secretary an "Ethics Questionnaire" as prescribed in Exhibit B. These questionnaires shall be treated as confidential personal records as set forth in 1 VSA § 317(b)(7) and kept as such during the gubernatorial administration in which the Appointee serves, or for one year after the Appointee leaves office, whichever occurs first, at which point they will be destroyed.

B. Executive Officers (3 V.S.A. § 1211)

In addition to the reporting required in Section V(A) above, each Executive Officer shall file a disclosure form with the State Ethics Commission in accordance with 3 V.S.A. § 1211.

VI. Enforcement

The purpose of this Executive Code of Ethics is to provide guidance to Appointees covered herein. During such appointment, except as otherwise required by law, only the Governor or his designated agent shall have the power to sanction any violations hereof. Nothing in this Code shall create a right to continue State employment. The remedy for a violation of post-employment restrictions set forth in Section III(B) shall rest with the Public Body before which the former Appointee appears and, barring unusual circumstances, shall result only in disqualifying the former Appointee from appearing or participating in the matter.

VII. Effective Date

Except as otherwise required by law, this Executive Order supersedes and replaces Executive Order No. 19-17 (codified as No.3-84), dated December 4, 2017. This Executive Order shall take effect upon signing.



WITNESS my name hereunto subscribed and the Great Seal of the State of Vermont hereunto affixed at Montpelier this 29th day of September, 2022.

A handwritten signature in blue ink that reads "Philip B. Scott".

Philip B. Scott
Governor

By the Governor:

A handwritten signature in black ink that reads "Brittney L. Wilson".

Brittney L. Wilson
Secretary of Civil and Military Affairs

Executive Order No. 04-22

CODE OF ETHICS ACKNOWLEDGEMENT

I, _____, having been appointed to the position of _____, hereby acknowledge having received and read Executive Order 04-22, the Executive Code of Ethics, promulgated on September 29, 2022, and agree to adhere to it.

Signature: _____

Date: _____

Name (print): _____

OATH OF OFFICE

I, _____, do solemnly swear/affirm that I will be true and faithful to the State of Vermont, and that I will not, directly or indirectly, do any act or thing injurious to the Constitution or Government thereof. So help me God. / Under the pains and penalties of perjury.

I, _____, do solemnly swear/affirm that I will faithfully execute the Office of _____, for the State of Vermont, and that I will therein do equal right and justice to all persons, to the best of my judgment and ability according to law. So help me God. / Under the pains and penalties of perjury.

I, _____, do solemnly swear/affirm that I will support the Constitution of the United States. So help me God. / Under the pains and penalties of perjury.

Signature: _____

[Oath must be administered by a Notary unless otherwise administered in accordance with law by the Governor, a Supreme Court Justice, Superior Court Judge, Assistant Judge, Justice of the Peace or the Presiding Officer, Secretary or Clerk of either house of the General Assembly.]

STATE OF VERMONT

_____ COUNTY, SS

At _____, in said County, this _____ day of _____, 202_, personally appeared _____ and took and subscribed the foregoing oath of office and allegiance.

Before Me, _____

Notary Public

My Commission expires _____

EXECUTIVE ORDER NO. 04-22

EXHIBIT B

ETHICS QUESTIONNAIRE

In accordance with the Executive Order No. 04-22 Executive Code of Ethics, every Appointee, as defined therein, who earns \$30,000 or more per year, shall fill out and file this questionnaire at the start of a new biennium, on or by January 15, or within 30 days of appointment, with the Secretary of Civil and Military Affairs. This questionnaire shall be treated as a confidential personnel document pursuant to 1 V.S.A. § 317(c)(7) and kept as such during the gubernatorial administration in which the Appointee serves, or for one year after the Appointee leaves office, whichever occurs first.

The purpose of this questionnaire is to determine any significant personal interests of Appointees that might conflict with the best interests of the state. It is understood that individuals serving the state as Appointees may have personal or financial interests that may relate to matters arising in the course of their performance of the official responsibilities. This form is intended to identify those interests and provide assurance that conflicts of interest will not impair fair and impartial state actions. Appointees must avoid Conflicts of Interest and, where they do occur, must disclose them to the Secretary of Civil and Military Affairs.

In answering questions, please disclose not only your own direct interests but also any indirect or beneficial interests which could arise through members of your Immediate Family or through persons who reside in your home or by reason of a trust or partnership arrangement in which you or a member of your Immediate Family or household participates or has an interest.

(Use reverse side or an additional sheet of paper to give additional information, if necessary.)

1. Are you, your spouse, or a member of your Immediate Family the director, officer, partner or employee of any Person that, to your knowledge, does business or has a financial relationship with the State of Vermont? If yes, please list all such positions.

Yes _____ No _____

2. To the best of your knowledge, except for securities that are listed on a national exchange, do you own directly, indirectly, or beneficially, securities, options, or rights to purchase securities or share in profits of companies doing business with the State? If yes, list company and percent of total shares.

Yes _____ No _____

3. Do you directly, indirectly or beneficially, have any ownership interest in a proprietorship, partnership or syndicate that, to your knowledge, operates any business which does business with the State? If yes, explain briefly.

Yes _____ No _____

4. To the best of your knowledge, does there currently exist any creditor-debtor relationship between you, directly or indirectly, and any non-financial organization doing business with the State, except normal charge accounts and installment purchase accounts? If yes, explain briefly.

Yes _____ No _____

5. Are you receiving commissions or any forms of compensation, gift or reward on business transacted with the State either directly or through a third person? If yes, explain briefly.

Yes _____ No _____

6. In addition to the information reported above, do you have any direct or indirect business relationships which may reasonably be considered to have some influence on your judgment and decisions involving transactions with the State, or otherwise during the performance of your duties and responsibilities as an Appointee? If yes, explain briefly.

Yes _____ No _____

7. Are you in good standing with respect to, or in full compliance with a plan to pay, any and all taxes due the United States, the State of Vermont and the municipality of residence? If no, explain.

Yes _____ No _____

8. If you are under an obligation to pay child support, are you in good standing with respect to that obligation?

Yes _____ No _____

If no, have you entered into a payment plan with the Vermont Office of Child Support and are you in full compliance with that payment plan?

Yes _____ No _____ N/A _____

9. I agree to disassociate myself from situations where possible conflicts of interest pertaining to any matter addressed in this questionnaire might occur, when requested by the Governor or the Secretary of Civil and Military Affairs.

10. To the best of my knowledge, the answers to all the above questions are true and complete in every respect.

Signed: _____ Date: _____

Name (printed): _____

Position: _____