

Testimony Regarding Municipal Ethics Legislation

February 26, 2024



Testimony of the Vermont League of Cities and Towns
Ted Brady, Executive Director
House Government Operations and Military Affairs
Regarding Municipal Ethics Legislation
February 23, 2024

My name is Ted Brady, and I am the Executive Director of the Vermont League of Cities and Towns, which represents all 247 cities and towns in Vermont. VLCT is a non-partisan, non-profit organization operating as an instrumentality of every city and town in Vermont to serve and strengthen municipal government. To that end, VLCT supports efforts to strengthen municipalities' ability to conduct business in an ethical manner, and we've made several recommendations to this committee that we feel would codify additional ethical standards while respecting local decision-making authority. However, the ethics bill before the committee today does not address the concerns I've raised, and instead preempts local authority and wedges the state between elected municipal officials and voters, decreasing local control and accountability.

I believe the committee has only heard from two actual municipal officials about the impact of this legislation. As a quick reminder, this bill, as written, would have significant impact on the ability of thousands of municipal officials to do their jobs – perhaps as many or more than work or serve in state government. VLCT's database includes:

- More than 4,500 municipal employees (this represents only the 173 municipalities that responded to our compensation and benefits survey).
- 1279 Selectboard members, city councilors, aldermen and village trustees
- More than 1,000 volunteer planning commission members
- Nearly 1,000 volunteer development review board members and zoning board of adjustment members
- More than 500 listers
- 415 city, village, and town clerks, treasurers, and assistants
- 287 auditors
- And hundreds of other elected and appointed officials

VLCT thinks it's appropriate that the committee hear from more of those people impacted before acting on the bill.

As a reminder, VLCT's compromise language shared earlier this week proposed to set new ethical standards that municipalities must adopt and follow. Should the committee disregard that suggestion, we do have specific concerns about language that I want to highlight today:

- How would the bill interact with the Municipal Administrative Procedures Act and the code of ethics Appropriate Municipal Panels are required to adopt under Title 24, Section 4461 (a)?
- On page 4 of draft 3.2 (line 3), the definition of municipal employee could be interpreted to include independent contractors. Were they intended to be included in the definition?
- On page 4 of draft 3.2 (line 16), the language specifically excludes school districts from the language, a distinction we're unclear on why this code is only applicable to some municipalities.
- The recusal process on page 5 of draft 3.2 (line 9), seems overly complex for volunteer officials, and we'd request a simplified version.

- The necessity process for someone to act who would otherwise be required to recuse themselves (begins on page 5, line 16 of draft 3.2) is overly complex and burdensome for small volunteer organizations. A simpler process should be spelled out and codified, and should include recognition of a necessity provision when bodies would otherwise not have a quorum. This might be especially common on three person boards or quasi-judicial boards.
- On page 8, line 9 of draft 3.2, we recommend removing the second sentence describing preferential treatment. It seems redundant. L
- Page 10, line 17 of draft 3.2 regarding unauthorized commitments may need some revision. Municipal officials can not make a commitment on behalf of a municipality unless they are so authorized to do so in law. We don't feel this is an ethics issue, but instead a simple fact of law.
- Page 10, line 10 regarding "Benefit from contracts", is overly broad and fails to acknowledge the realities of small-town governments, where business people in town serve in municipal positions. It appears an individual who recused themselves from a vote, or disclosed a conflict, could still not benefit from a contract. As an example, a selectboard member may be the only business in a rural area that can provide a certain service, or might offer to provide a service at a significant savings to the community. Recusal should be allowed in these circumstances to facilitate necessary business.
- Draft 3.2 authorizes the Ethics Commission to provide guidance and advisory opinions related to municipal issues (page 10, line 14). It's unclear to us if this is a service only available to municipal officials or if the general public could also request opinions. VLCT's main concern is that the State Ethics Commission guidance and advisory opinions could be used by political opponents of an elected official. Many of the complaints the Secretary of States office and the State Ethics Commission receive are from the general public. Others are complaints that are not ethics related, but clear violations of existing law. VLCT does not oppose authorizing the State Ethics Commission from receiving requests from municipal officials, but we think this language should explicitly state this is for municipal officials only, and reiterate that public complaints, especially those related to illegal activity, be directed to the judicial system. In addition, if an official and municipality act on the content of the opinion, municipalities should be afforded immunity from liability for adhering to a State Ethics Commission's guidance or advisory opinion.

- Page 11, line 16 of draft 3.2 establishes mandatory ethics training. We recommend removing this section entirely. Requiring thousands of municipal officials and employees to complete ethics training is an overly burdensome requirement. The only requirement to be an elected official is that they get elected. This requirement intervenes in the relationship between voter and elected official. What happens if someone doesn't complete the training? Is the end goal that their actions are voided? Would they be removed from office? In addition, imagine every town volunteer – from firefighters to poll workers to social committees being required to meet this requirement and then have the town maintain records of that requirement for years.
- Page 13, line 1 of draft 3.2 establishes enforcement and remedies. This includes maintaining records of officers receiving training, designating an officer to receive complaints, requiring the investigation of complaints, maintaining records of complaints for the duration of an officers term PLUS five years, and sharing those complaints with the Ethics Commission. These are unfunded mandates, that will take time and resources. They also don't address what happens if the designated official is the subject of a complaint. The section would be particularly hard to implement in our smallest communities. We recommend removing this section.
- The bill also establishes whistleblower protections for municipal officials, which in concept makes sense to us. However, we're specifically concerned about the creation of a new civil action against municipalities, found on page 14, line 10 of draft 3.2. Any type of new civil action should be evaluated by experts on the impact of creating a new legal action against a municipality. At this point, I've not been able to evaluate what whistleblower protections municipal employees already have under state and federal law, if this creates a new liability to municipalities that would be born by the taxpayer, and if it would create a new opportunity for abuse from political opponents of an elected official.
- Page 16, section 4, line 2 of version 3.2 defines additional ethics training requirements, and includes requirements for training on Open Meeting Law and the State's Public Records Act. As a reminder, VLCT provides hundreds of hours of training a year to hundreds of municipal officials on these topics. VLCT supports encouraging training on all these issues. However, putting this requirement into practice requires considering what happens if someone doesn't take mandatory training. We recommend removing this training requirement.

I appreciate the opportunity to testify, and would like to remind the committee that I've shared testimony previously on how VLCT believes operationalizing new ethics requirements could be done in a way that respects local control and avoids creating unfunded mandates.

Attachments

[Testimony from Ted Brady Regarding Municipal Ethics Legislation 2024-02-23](#)