

Model updated rule to be added to the existing language in Vermont House Rule 75, Senate Rule 71, or a municipal government ordinance:

A. This rule shall take effect at the start of the first legislative day following the next general election after passage.

B. No member may vote upon any matter with respect to which the independence of judgment of a reasonable person in his or her situation would be materially affected by electioneering contributions or independent expenditures directly or indirectly from any one or more persons or entities that have a special pecuniary interest in the matter.

C. A purchaser of broadcast, internet, or print media electioneering advertising shall promptly disclose the original source of electioneering funds used, all conduits through which these funds passed, the amount of money from each source, and the businesses owned or managed by the original sources of the electioneering funds, and shall immediately pass this information on to all relevant candidates and to the Secretary of State for posting.

D. An Ethics Panel shall investigate allegations of violation of sections B and C of this rule. The Panel is empowered to take testimony under oath and censure or fine.

Definitions as used in this chapter:

1) “Electioneering funds” include (a) electioneering contributions made to the member or electioneering spending in coordination with the member; (b) “independent” electioneering expenditures that explicitly advocate for the member or advocate against an opponent of the member; and (c) electioneering expenditures that fund “sham issue advertisements” that a reasonable person in the position of a constituent would interpret as advocating for the member or advocating against an opponent of the member.

2) A “person or entity” includes “a single person, family, or set of persons who are a part only of the community” (Vt. Const. Art. 7); a single person, family, or set of persons who live outside the voting district of the member; or a business.

3) A “special pecuniary interest” in the matter is a pecuniary interest in the matter that is separate in kind or degree from the “common benefit” (Vt. Const. Art. 7) to the members of the voting district of the member.

Key points about the updated rule:

Recusal is not required if the bill up for a vote provides no special pecuniary benefit to the electioneering funder, or if the amount of money contributed or spent independently is insufficient to impair the judgment of a reasonable person.

Recusal is also not required if the special pecuniary interest is merely incidental to the legislative process, such as a boost to a fundraising appeal for a public interest organization that supported its passage, rather than from a provision of the bill up for a vote itself.

Recusal on a matter up for a vote is required if the aggregate amount of funding from several people or entities, all with special pecuniary interest, would be enough to impair judgment of a reasonable person.

The "[reasonable person](#)" standard that was upheld by the US Supreme Court in the Nevada Commission on Ethics case is a widely used standard found in many areas of state and federal law, including criminal, privacy, personal injury and patent.

A “special pecuniary interest” in the matter up for a vote is defined in the rule to be a pecuniary interest in that matter that is different in kind or degree from the “common benefit” to the people, as used in article 7 of the Vermont Constitution.

The model rule also provides for an ethics panel with power to investigate allegations of violations and to enforce the rule by censuring or fining, just as the Nevada rule approved by the US Supreme Court is enforced by a Commission on Ethics.

To its credit, in *Buckley* and in *Citizens United*, the Supreme Court held detailed public disclosure requirements to be constitutional for all electioneering funding. Thus, the model rule requires public disclosure of the original sources of electioneering funds, all conduits through which those funds passed, the amount of money from each source, and the businesses owned or managed by the original sources of the electioneering funds, so the public knows which businesses are backing electioneering ads and so the rule can be properly enforced.

To avoid gridlock because of conflicts of interest that members may already have, the rule or law goes into effect only after the next election after passage.

The House and the Senate each make the rules to cover its own members. No state or federal court has authority to interfere, particularly with a rule to prevent corruption or the appearance of corruption.