

PHILIP B. SCOTT
Governor



State of Vermont
OFFICE OF THE GOVERNOR

May 30, 2018

The Honorable John Bloomer
Secretary of the Senate
State House
Montpelier, VT 05633

Dear Mr. Bloomer:

I support without reservation the goal of this bill to ensure State governance is conducted in an unbiased, open, inclusive and welcoming manner.

Unfortunately, pursuant to Chapter II, Section 11 of the Vermont Constitution, I must return S.281, *An act relating to mitigation of systemic racism*, without my signature because of significant constitutional concerns given separation of powers violations described herein. Importantly, to ensure the intent of the legislation is fulfilled without delay, I have signed Executive Order 04-18. This Executive Order is modeled after S.281 but goes further in our effort to ensure racial, ethnic and cultural diversity, equity and equality – and avoids the unconstitutional provisions included in the bill.

I instructed the Agency of Administration to draft the order modeled after S.281 and to seek input from the Vermont Partnership for Fairness and Diversity and other stakeholders. Specifically, the order establishes the position of Chief Racial Equity and Diversity Officer, to be nominated and vetted by a five-member panel selected in consultation with the Judiciary, the Legislature and the Chair of the Human Rights Commission. The Chief Racial Equity and Diversity Officer will be housed in the Office of the Secretary of Administration. The duties and responsibilities of the Chief Racial Equity and Diversity Officer include those reflected in S.281.

Additionally, Executive Order 04-18 goes beyond what was contemplated in S.281 and mandates training of appointed leaders in all agencies and departments on implicit bias and related issues that contribute to inequity or inequality as well as recruitment for increased racial, ethnic and cultural diversity in State jobs and on boards and commissions. It also directs the Officer to evaluate existing State Executive Orders, which are designed to address equity and diversity issues and recommend updates, modifications or sunset provisions to ensure these Executive Orders and the bodies created therein are effective and getting meaningful results.

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It is unfortunate that I must return S.281 when the Legislature and the Administration share the same goals on this critical issue. I appreciate the work of the Legislature in drafting this bill – much of which is adopted in my Executive Order – and the work of many to address the constitutionality concerns during the Legislative process. Unfortunately, during the last days of the session, language was added that would usurp the executive's Constitutional authority to remove a cabinet member responsible for performing an executive function. The new executive branch official contemplated in this bill is both appointed by and accountable to the Governor. The removal power, incidental to the appointment power, is essential for a Governor to take care that the laws be faithfully executed in accordance with the Constitution. The exercise of executive authority by an inter-branch entity over a Governor violates the separation of powers dictated by the Constitution.

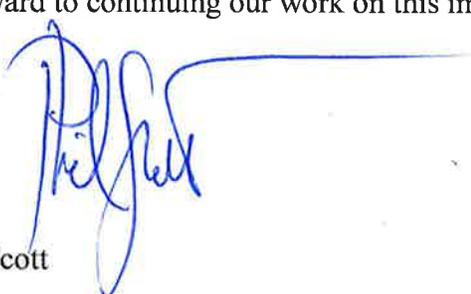
While several specific alternatives to the unconstitutional provision were proposed – which included removal with notice to, and consultation with, the Panel; and a term of office and termination by the Governor for cause only – the Legislature passed the bill with the unconstitutional language on the last day of the session and over the clear objection of my Administration.

It is important to note that, to date, the State of Vermont has demonstrated leadership in this area. For example, the Department of Public Safety's Fair and Impartial Policing Initiative, the Agency of Transportation's Office of Civil Rights, and the Agency of Education through partnerships with professional associations in anti-bias efforts. This is important progress, but as we have discussed there is still much more work to do. That's why I felt it was important to issue Executive Order 04-18.

With this Executive Order in place, there will be no delay in important work ahead of us, and the Legislature can take additional time to resolve the unconstitutional separation of powers violations detailed above.

I look forward to continuing our work on this important issue.

Sincerely,



Philip B. Scott
Governor

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