

Advisory Opinion 2024-3

House Bill 1388 (November 18, 2024)

On January 1, 2025, the provisions of House Bill 1388 become effective, requiring members of the General Court to recuse themselves from participating in legislative activities in certain circumstances. While the Ethics Committee has found in the past that recusal is warranted when some conflicts of interest exist, this is the first time that a formal requirement has been imposed by statute.

When the Ethics Guidelines were initially adopted in 1991, there was substantial uncertainty as to how they would be applied. At that time, the Ethics Committee issued an Advisory Opinion recognizing that legislators may require a period of time to review and become familiar with the Guidelines. The Committee acknowledged that there would be violations, but the focus was on correction, not on punitive measures. Over time, the Committee has come to expect strict compliance with the Guidelines because they have become defined by application of factual circumstances brought before the Committee in the form of complaints or requests for advisory opinions.

The new provisions of HB 1388 are subject to interpretation and may cause some uncertainty among members of the General Court. Like the initial Guidelines, it is expected that specific cases will be brought before the Committee which will give more definition to the new statutory provisions. Until that happens, legislators should do their best to comply with HB 1388 according to their understanding and interpretation of the statutory language. In any event, at a minimum, they are required to comply with existing disclosure requirements.

It is the intention of the Committee that there be education of and compliance with the Guidelines, including the provisions of HB 1388. As long as a legislator acts in good faith in attempting to comply with the provisions of HB 1388, violations may be recognized but the Committee intends to focus on correction and not on punitive measures. This will remain the intention until the recusal provisions are better defined and understood.

Legislators are encouraged to bring questions about their specific circumstances to the Ethics Committee by requesting an advisory opinion or interpretive ruling.