

MINUTES
LEGISLATIVE ETHICS COMMITTEE
MARCH 10, 2025, MEETING
{Approved: March 24, 2025}

The Legislative Ethics Committee (RSA 14-B:2) met on Monday, March 10, 2025, at 10:00 A.M. in Room 103 of the State House.

The following members were present: the Honorable Edward M. Gordon, Chairman, the Honorable Donna Sytek, Vice Chairman, Senator Cindy Rosenwald, Senator Ruth Ward, Representative Bob Lynn, Representative Catherine Rombeau, and the Honorable David H. Hess. Also participating were Richard M. Lambert, Executive Administrator, Paul Smith, Clerk of the House, Rep. Gregory Hill, and Richard J. Lehmann, Senate Legal Counsel.

The Committee's meeting consisted of the following agenda items:

ITEM #1

Consideration of the draft *Minutes* from the Committee's meeting held on February 10, 2025. Following review, Vice Chairman Sytek moved to approve the *Minutes* as presented. Senator Rosenwald seconded the motion, and the Committee voted 5 to 0 in favor of the motion, with 1 abstention by Representative Lynn.

ITEM#2

Consideration of a request for guidance from Richard J. Lehmann, Senate Legal Counsel. Chairman Gordon noted that there was a proposed response to Attorney Lehmann's request that was circulated to the Committee members. He summarized the question and response: "So, basically the question was if a person noted that they had a conflict on one item on the Consent Calendar, what action should they take. Do they have to remove it from the Consent Calendar? Could they vote on the Consent Calendar? And we did prepare a proposed response. And that is, basically, if you want to vote on the calendar, you would have to remove the item from the calendar and address it separately."

Vice Chairman Sytek: "My concern is you say, 'the member has a choice to either recuse themselves from voting on the Consent Calendar or remove the recusal bill from the Consent Calendar.' If they are present, they must vote unless they are excused. They need to take the bill off the Consent Calendar, and they don't have a choice of not voting on the Consent Calendar...because if you are present you must vote."

Chairman Gordon asked Mr. Smith what the current practice is in the House.

Paul Smith, Clerk of the NH House: "So, the practice in the House is, if a member has declared a conflict on the bill on the Consent Calendar, unless the bill has been removed, we note right on the Speaker's script, 'Representative Jones declared a conflict on House Bill 586 and did not participate in the vote on the Consent Calendar'. ... In the House our process is that it takes 10 members to remove a bill from the Consent Calendar. So, our normal practice is that if you have declared a conflict you don't vote. You are excused from that vote because it is one vote. And 99.9999% of the time, we don't take a recorded vote on the Consent Calendar adoption."

Chairman Gordon: “So, an individual can’t remove a bill from the Consent Calendar? It takes 10?”

Mr. Smith: Correct. In the House it is 10...”

Chairman Gordon: “And so, if a person has a conflict currently, they declare the conflict and don’t vote?”

Mr. Smith: “And don’t participate in the vote on the Consent Calendar, and the Speaker notes it just like he notes it for any bill that we take up individually.”

After further brief discussion, Chairman Gordon said, “And so, it doesn’t seem that the proposed draft would be workable.”

Representative Lynn: “And so, my inclination would be to say that the procedure that the clerk described is alright because if the vote on the Consent Calendar is essentially a vote on the whole, of everything on it.... if there’s one vote and you have a conflict that you shouldn’t be voting on even if its only the part of it, isn’t that a basis to say, ‘I’m just not going to vote at all’? And the other thing is if it’s the Consent Calendar, it seems to me to be relatively unlikely that vote is going to make a significant difference on whether the calendar is adopted or not.”

Chairman Gordon: “And as a follow-up to that. And, at least in the House, at this point in time, you’re identifying the fact that they’re objecting to one of the particular bills and that’s in the House Journal?”

Mr. Smith: “Yes. Both the Speaker announces at the conclusion of the vote...the Speaker would say, ‘Under the rules of the House, this bill is referred to Finance’ and at the conclusion of that ‘Representative Gordon declared a conflict on House Bill 587 and did not participate in the vote on the Consent Calendar.’”

Chairman Gordon asked Attorney Lehmann how many members does it take to remove a bill from the Consent Calendar in the Senate and Attorney Lehman replied that it takes one.

After further discussion, Chairman Gordon said, “I think the way, from my perspective, the way it should be constructed, is to say in all cases you can remove it from the Consent Calendar and not vote on it and then vote on the rest of the Consent Calendar. Now, I know that might be an issue in the House where you need 10 members to remove it.... But in the event that it’s not removed from the Consent Calendar in the House, you could as the option declare a conflict and then not vote on the Consent Calendar. And that would serve both bodies.” The Committee members seemed to agree with Chairman Gordon’s proposed response. Chairman Gordon said he would send a new draft to the Committee for their approval.

Representative Hill asked the following question, which he said he has been receiving from several House members: “What happens if I’m voting against my best interest? ...I’m voting, perhaps with my constituents, but it does harm me. Should I still vote?”

Chairman Gordon replied: “I think you have to follow the statute and if there would be some benefit or detriment, potentially, you’d have to recuse yourself. You can’t decide ‘I’m not going to recuse myself because I think I’m voting against my interest.’”

ITEM #3

Consideration of a request for an Interpretive Ruling from Paul C. Smith, Clerk of the House.

Chairman Gordon said that there was a proposed response which the Committee members had received. He then said Mr. Smith's request included 3 questions, which he quoted:

1. When and under what circumstances is a member required to recuse themselves from consideration of a piece of legislation? If a recusal is required, please describe the steps a member should take depending on the setting, i.e. floor session, committee meeting.
2. If recusal is not required, under what circumstances is it sufficient to file a conflict of interest?
3. If neither recusal nor a filing of a conflict of interest is necessary, when is verbal disclosure appropriate?

He asked Mr. Smith if he would like to speak with the Committee about the draft.

Mr. Smith: "I think it's very good. I had a couple of subsequent questions that I wanted, perhaps, to throw on your radar, specifically, and they are both on page 4. ... Regarding point 2, I just want to be clear where it says, 'For purposes of introducing a bill, the declaration must be made prior to signing off as a sponsor or co-sponsor...' that, obviously, in my opinion, makes it clear they have filed a conflict and are participating because if they're filing a conflict and sponsoring a bill, I think that's a bigger question. And lastly, on the verbal disclosure, I'm looking for this last question to be answered. If they have filed initially during their financial disclosure and don't feel that they need to, therefore, have a conflict of interest or a recusal, is that then when that is appropriate? That if they have filed the Financial Disclosure, then they should be doing that verbal disclosure? That's sort of where I was hoping to close the loop on that. And then, lastly, for your consideration, I just ... want to bring to you an issue of House Bill 282 that was before us a couple of weeks ago. This bill ... increased the maximum benefits for first responders that are critically injured during the line of duty and that increased the payment from \$500,000 to \$1 Million. ... I had zero declarations or recusals or anything. And this isn't about necessarily Group I or Group II in the Retirement System. This says first responders, of which I have many EMTs and everything else in the House. ... In the same vein, this past week I had a member who sent me a recusal form for an upcoming bill on the EFAs that, if enacted the way the House has drafted it, in the second year where that income threshold disappears, she said, 'My family could potentially benefit from this because I have school aged children.' So again, in this instance where you have first responders who may get this benefit if they got hurt, would that not be something to at least declare a conflict and participate, and versus sort of this other nebulous thing? Does this person need to recuse or just file a conflict? ... And just as one last point, I very much appreciate the scenarios that the former Speaker (Sytek) has devised, and I really would love to see those filled out and I'd pass those out to our members. Thank you."

Representative Lynn: “To me the issue here – and I think this is something we’re probably going to have to decide, maybe over a series of interpretive rulings or opinions – is what does it mean to have a greater benefit than to the general public? So, for example ... the benefit for the first responders. I would tend to say that someone who would be eligible for that benefit should not vote. ... The situation of the education accounts is somewhat of a closer question. I’m not sure of an answer but I wonder if you have children that are in school and you could potentially benefit from the EFA situation, presumably anyone who has children in school, especially if this were made universal, could benefit from that, but not everyone has children. So, what do we mean by the general population? If it’s limited to people who have children, is that not the general population? I don’t know the answer to that.”

Chairman Gordon: “From my perspective, it’s not so much comparing it to the general population as it is that word ‘direct’ because direct, it seems to me, if you’re going to get a ‘direct and substantial benefit.’ It seems to me that if you’re a person that has kids in school and you’re not taking advantage of EFAs right now, then you’re not getting a direct benefit by voting one way or the other on it. And the question is with regard to the first responders, if it’s a potential, if you get injured you might get it, is it a direct benefit?”

Mr. Hess: “On both of those issues, first of all, in response to Representative Lynn’s comment, I think the phrase referring to ‘effect on the general public’ would allow people to be compared with people with children generally across the entire population, and so I think that would be satisfied, that it’s no different from the general population because anybody with children can apply for that thing. Secondly, with respect to the contingent benefit, I think also, in addition to your comment about direct, it is also the fact that it ‘could be reasonably expected to incur’ because probably the number of EMTs that would benefit from this legislation would be a fraction of a percent of total EMTs. So, it’s probably not reasonable to expect that the people that are voting for it are going to benefit from it. Again, that’s throwing out another category of gray area where the issue is going to come up. But those are my thoughts on both of these examples.”

Senator Rosenwald: “I think the important word in #2 is ‘could’ reasonably be expected. So, maybe the EMTs are unlikely to die in the line of duty, but if we were to make the EFAs universal, then really any family with school aged children ‘could’ reasonably be expected. It’s not that you have to benefit, it’s that you ‘could’ reasonably be expected to benefit. So, I think that broadens the scope of who would have to recuse from voting on an issue like that. We have a bill in the Senate about the education tax credit scholarships and a House member came and testified that we should pass this bill because her husband made a little more money one year and her child lost the benefit. A plain reading of this would say to me she should not be participating in this because she wants to get that scholarship back. So, that word ‘could’ is strong for me.”

Representative Rombeau: “The note I made to myself, and I’m struggling with the EFA scenario in terms of ‘could,’ is you have people who are not necessarily ever, or do not want to, take advantage of that program...maybe there are some who would consider it if it changed going forward, so I feel like I’m bogged down by the intent. What’s in somebody’s mind at that point. I don’t think that in some ways it’s as clear as the EMT example, which I think you could qualify sort of the possibility of benefiting a little more clearly at the outset.”

Representative Lynn: “... Let’s take the EFA situation. I think that I agree with Senator Rosenwald. I don’t think that the question of recusal or not in that situation should depend on whether the member intends to take advantage of the EFA. ... where the language is ‘could’ I would tend to say that if getting that benefit of the EFA is not something that all members of the public could benefit from, and that would raise the issue then does ‘all members of the public’ mean only members of the public with children? Or does it mean all members of the public because there are people who don’t have children? But I would say that it should not depend on whether you would actually take advantage of the EFA or not. It should either apply or it doesn’t apply.”

Representative Hill: “It’s a great discussion. But the bill that was mentioned by the House Clerk is not as simple as increasing that benefit for just that individual. As the bill reads ... what it actually does is increase the aggregate pool that’s available to all first responders. So, it wouldn’t help any individual unless all of the prior injured first responders exceeded the \$500,000 and then they went into the next group from \$500,000 to \$1 Million. So, in order for this to benefit the first responder, you would have to be the one that kicks the benefit from \$500,000 in the aggregate to \$600,000. So, it’s much more nebulous than a direct benefit to you. You would not know ever if this was benefiting you unless five other people had been injured prior to it getting to you. ...I do think the other one you’re discussing is more interesting. The EFAs. If it were me, and I was the legislator questioning whether I should recuse or not, it would come to me to decide whether I intended to use the EFA program or not. So, I would say even though I have a school aged child, and I could benefit from this, if I don’t plan on doing it, I would probably not recuse.”

Senator Ward: “With the EFAs, if I have a school aged child, I don’t think that benefit would be anything different than everybody else in the state. So, I’m not getting anything more than anyone else would be getting. So, I think that’s a big difference there.”

Vice Chairman Sytek: “My thoughts are this. The (Ethics) Guidelines are not as clearcut as they could be. Section 6 of the Guidelines, the Conflict of Interest Procedure, it says you don’t have to file a declaration if you put it on the checklist and if the benefit or a detriment could accrue to a legislator as a member of any group that you listed on the checklist to a greater extent than anybody else in that group, that’s one step. Then to do a recusal, you have to recuse if you’ve got a conflict of interest, and you can get a direct and substantial financial benefit regardless of whether you filed a declaration. And then you have the next section where it deals with employment and that’s got a three-

prong test. ...So, you have three separate categories, and which one do you choose? It says if you've got a conflict that is 'direct and substantial' you shall recuse regardless of whether you put it on the checklist or whether you're going to get more than other people in your group. The Guidelines don't give us a clear-cut answer."

Chairman Gordon noted that Mr. Smith made a point about tying in the initial financial disclosure with the verbal disclosure requirement.

Mr. Smith: "Is that the trigger?"

Mr. Lambert: "And it is stated in the draft on page 3 in the last sentence under Financial Disclosure Form."

Chairman Gordon: "With regard to the interpretive ruling that we handed out, there are three questions. There are three responses. Maybe we can look at the first response. Is that a sufficient response to the first question? And I have to say in drafting it, it was done somewhat broadly because I know that there have been differences on the Committee with regard to what extent, absent specific cases, do we actually decide things. Are we looking for a specific case to come before the Committee? So, there are really just two examples in there. One is the example of current use where, basically, if the current use rates are going to go up or down, you probably have to recuse yourself. But if it's something about current use, for example, just how you file your current use lien or what trees are going to be included in the current use formula, then you might not have to recuse because it's not going to have a direct or substantial financial benefit or detriment.

"And the other one was the Retirement System. And, obviously, if we have a bill that says you're going to have a 1.5% increase in the COLA for retirees, it seems to me that a retiree has a conflict. But you could have other bills with regard to the Retirement System, which we frequently have, with regard to how the Retirement System is managed that wouldn't require recusal. So, it isn't a question of whether you're just a retiree and you have to recuse yourself from a retirement bill, it's if it has some benefit or detriment for you,"

Vice Chairman Sytek: "So, I think you've answered the first question."

Chairman Gordon said that the second question gets into the Financial Disclosure Form and the Declaration of Intent Form.

Senator Rosenwald suggested that the Committee should re-think the language on page 2 responding to question 1, "Recusal is required when a legislator recognizes that a legislative activity will have a direct and substantial impact upon them or a member of their household." She pointed out that the law says "could," not "will." She said, "So, I think we need to change the word to 'could,' which I going to scoot more people into probably having to recuse themselves. We also ought to, at some point, have a discussion about what 'general revenue bill' means."

Attorney Lehmann suggested changing the language to “could reasonably be expected to.” The Committee members expressed agreement with the change.

Vice Chairman Sytek questioned the last part of the sentence, “If there is any question in the legislator’s mind as to whether a Declaration of Intent would be required, the better practice would be to file one and opt to participate.” She asked, “Do we want to tell them to participate? They can file it and participate or not.”

Representative Rombeau said she was also wondering about the end of that sentence. After brief discussion, the Committee agreed to delete the words “and opt to participate.”

Chairman Gordon asked what the Committee thought about the response to question 3, regarding verbal disclosure. He also asked Mr. Smith if he had any thoughts.

Mr. Smith: “I understand Rich’s point about this statement, ‘Filing this form does not abrogate the requirement to file a Declaration of Intent Form or to make verbal disclosure as provided below’ ... I think it has to be very clear here and say, ‘If you have filed a financial disclosure then you should do the verbal disclosure. ...In section 3, it needs to state specifically if that is the threshold for the verbal disclosure. It should be made clear here. So, if you have filed a financial disclosure, you should do the verbal disclosure, if that is what you intend. I think that is a more appropriate thing to sort of start off with there as your base, if that is what you are going for.”

Mr. Lambert: “And that’s been required since 2015. Verbal disclosure is required.”

Mr. Smith: “And having been the clerk since 2015, I can tell you we’ve had absolutely zero.”

Representative Rombeau asked Mr. Smith, “You said since 2015 the verbal disclosure rule has been in place and you haven’t had any?” So, I guess what I’m wondering is what that looks like. Are folks not saying in committee, ‘Oh, I work in that industry,’ or ‘This is my job,’ ‘This is where I serve in this capacity’? Does this not happen in an informal manner that would satisfy the verbal disclosure rule...or are you talking about something different?”

Mr. Smith: “To answer your question about committees, I am aware occasionally of something where a member may say something, but most of the time I have not heard. But on the floor, specifically, I’ve had absolutely zero verbal disclosure of anything...”

Representative Lynn: “I wonder if maybe at the beginning of section 2 and section 3... what I think is important to emphasize is the filing of the Declaration of Intent needs to be done in two circumstances. If you’re going to recuse, you must file a Declaration of Intent. Then there is no verbal disclosure because you’re not

participating. It strikes me that much of what is discussed in section 2 and section 3 deal with the circumstances where you're filing a Declaration of Intent as per section 2, or you're engaging in verbal advocacy as per section 3, but you're not recused. ... I think it would be important to emphasize at the beginning of section 2 and section 3 that what we're talking about in the rest of that discussion assumes you don't have to recuse yourself because, if you do, there isn't going to be verbal advocacy. You're not going to be participating."

Chairman Gordon said, "We'll make the edits and circulate that to everybody."

After further discussion, Chairman Gordon suggested that the Committee could vote to issue the interpretive ruling "contingent upon agreement among the Committee members of a new draft."

Vice Chairman Sytek so moved. Senator Rosenwald seconded the motion, and the Committee voted 7 to 0 in favor of the motion.

Chairman Gordon asked the Committee if they would like to do the same regarding the response to the request from Attorney Lehmann. Vice Chairman then moved to issue the interpretive ruling contingent upon agreement among the Committee members of a new draft. Senator Rosenwald seconded the motion, and the Committee voted 7 to 0 in favor of the motion.

The Committee extensively discussed the "Ethics Scenarios" drafted by Vice Chairman Sytek. Following discussion, the Committee agreed to review a revised draft at their next meeting.

ITEM #4

New/Other Business.

- a) Request for an Interpretive Ruling from Rep. Gregory G. Hill (Merr./02)
- b) Request for an Advisory Opinion Richard J. Lehmann, Senate Legal Counsel, on behalf of Senator Donovan Fenton (Dist. 10).
- c) Request for an Advisory Opinion Richard J. Lehmann, Senate Legal Counsel, on behalf of Senator Victoria Sullivan (Dist. 18).

The Committee briefly discussed each request and authorized Chairman Gordon to prepare draft responses for consideration at the next meeting.

ITEM #5

Scheduling of the next meeting.

The Committee scheduled its next meeting on Monday, March 24, 2025, at 1:00 P.M.

The Committee's meeting adjourned at approximately 12:15 P.M.

{Prepared by Richard M. Lambert, Executive Administrator}