

MINUTES
LEGISLATIVE ETHICS COMMITTEE
MARCH 24, 2025, MEETING
{Approved: April 7, 2025}

The Legislative Ethics Committee (RSA 14-B:2) met on Monday, March 24, 2025, at 1:00 P.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, Richard J. Lehmann, Senate Legal Counsel, and Paul Smith, Clerk of the House.

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

ITEM #1

Consideration of the draft *Minutes* from the Committee's meeting held on March 10, 2025.

Following review, Vice Chairman Sytek moved to approve the *Minutes* as presented. Representative Lynn seconded the motion, and the Committee voted 6 to 0 in favor of the motion.

ITEM#2

Initial Review of *Complaint 2025-1*. (Nonpublic Session)

Vice Chairman Sytek moved to enter nonpublic session, pursuant to RSA 14-B:3, I(d), to conduct an Initial Review of *Complaint 2025-1*. Representative Lynn seconded the motion, and the Committee voted as follows:

Mr. Hess	Yea
Representative Lynn	Yea
Representative Rombeau	Yea
Senator Ward	Yea
Senator Rosenwald	Yea
Chairman Gordon	Yea
Vice Chairman Sytek	Yea

{MOTION ADOPTED}

{NONPUBLIC SESSION}

Representative Lynn moved to exit nonpublic session. Mr. Hess seconded the motion, and the Committee voted as follows:

Mr. Hess	Yea
Representative Lynn	Yea
Representative Rombeau	Yea
Senator Ward	Yea
Senator Rosenwald	Yea
Chairman Gordon	Yea
Vice Chairman Sytek	Yea

{MOTION ADOPTED}

Chairman Gordon stated: “The Committee just concluded its nonpublic session in which it conducted an initial review of *Complaint 2025-1*. As a result of its consideration, it decided to continue the initial review in order to obtain additional information. It will be continued until our next scheduled meeting.”

ITEM #3

Discussion of *Interpretive Ruling 2025-3*, requested by Rep. Gregory Hill (Merr./02).

The request asked whether legislators, who are themselves or have a household member who is a retired member of the New Hampshire Retirement System, are required to recuse from participation in official activity relating to 2025 HB 596-FN, “An Act relative to a cost of living adjustment in the state retirement system.”

Chairman Gordon noted that there was a draft response that had been distributed to the Committee members.

Mr. Hess moved to adopt the draft as written. Vice Chairman Sytek seconded the motion. Chairman Gordon asked if there was any discussion.

Senator Rosenwald began the discussion and said that the wording in the recusal law “substantial financial benefit or detriment,” “depends entirely on whether we think ‘substantial’ is an absolute value or relative. ...To me, it can only be relative. You don’t know what the impact of a COLA would be on any particular retiree’s situation. The retiree’s spouse or the retiree themselves in that case -- and I don’t want to be looking into people’s tax returns. So, I can’t support this because I think it takes us beyond where we can really make judgments because it suggests that ‘substantial’ is an absolute value and not a relative value and I read it as a relative value.’

Representative Lynn said he disagreed. “It seems to me that if we adopted that view, then I think the implications of that would be pretty substantial and that would mean that if there was going to be a \$1000 benefit from a COLA ... some representatives might be disqualified, and others would not. That seems like that would not be a good way to interpret this. I tend to think it does mean, ‘Does it have some substantial value in sort of gross terms?’ In support of that, we have, for example, in other provisions of the ethics code, or Guidelines, we say that if an amount is under \$50, you don’t have to report it. If we were to adopt that same thing it might mean, well, \$50 if you’re earning a certain amount of money, but if you’re really wealthy then you don’t have to report it even if it’s \$5000 because you’re so wealthy that it doesn’t make any difference. But we don’t do that. It’s an amount and I think the same rationale should apply here. I would say this would be potentially a \$750 benefit. I would tend to say that’s a substantial amount.”

Vice Chairman Sytek: “For the rest of your life.”

Representative Lynn: “And that’s a substantial amount for any legislator and I would tend to think that the public would look at it that way. They would just be very uncomfortable saying, ‘Well, Representative X is a multimillion heir and so \$750 doesn’t make any difference to him or her.’ I’m not sure I want to be advocating that position as a public position for this Committee.”

Chairman Gordon said, “I think that if you use that as a standard, Senator (Rosenwald), the statute would be completely unenforceable because it would be relative to every individual. And how do you make a determination as to whether or not that individual believes it is substantial or not? ... I took seriously your email saying you had those concerns, and because I think you have a

point in the fact that ‘substantial’ is very discretionary and what does it really mean. But I think Representative Lynn sort of has gone in the direction which I sort of think we maybe want to go in. And that is, you already said \$50 is the amount of a gift you can get, but we also said in an annual period of time the most that you could receive is \$250. And so, it seems to me that we could, if we wanted to, say presumptively that ‘substantial’ is \$250 annually. And if we did that, at least, there would be a definition that you could apply. \$250 annually.”

Senator Rosenwald said, “So, if I’m a retiree at the low end of the pay scale and my COLA works out to \$150 a year...I’d be able to vote on that because it wouldn’t be ‘substantial.’ But if I were a retiree at the top of the pay scale and it was looking more like \$750, I could not. And I don’t see that we can make that determination. Where do we draw the line? ...”

After further discussion, Representative Lynn said, “Part of the motivation for changing the ethics rules to require recusal was public perception. If there was a bill to increase the COLAs for judges, I would not vote on the bill whatever the amount was because I think it would be, I think, the public perception would be, here’s a guy that’s now a legislator, he was a judge, and he’s giving himself a raise ... maybe that \$250 thing is a good benchmark, but I can certainly live with that. I would tend to go even further. I would tend to say, ‘unless the amount is really de minimis.’ Maybe \$50 is de minimis. But unless it is something that you could legitimately say is de minimis, you ought to recuse. And that would be my inclination.”

Chairman Gordon said, “...If you need to provide a standard, let’s take a look at the standard that we already have is the \$250 and that could be a standard to apply.”

Representative Lynn said, “I could live with that for sure...”

Senator Rosenwald asked Representative Lynn about his statement that if there was a bill about judicial retirement in any amount, he would recuse.

Representative Lynn said, “Recusal should be required in that circumstance unless the amount was de minimis. We can have a discussion of what constitutes de minimis. Maybe \$250. I can certainly live with that. I would tend to make it something lower than that, but I could live with \$250. But I would say that whatever that amount is, recusal should be required because I think that was the whole idea of this legislation. ... The public perception of a legislator shouldn’t be voting on things that are going to result in their financial benefit.”

Senator Rosenwald expressed her concern that, “this law is going to be used to direct the outcome of votes in a way that, because I think that ‘substantial’ is relative not absolute, that worries me about the internal politics of this place.”

Representative Lynn responded, “I think your concerns are well taken and I don’t disagree with you on that, but I think if those concerns are what should carry the day, then we really ought to repeal (HB) 1388 and go back to the, and my sense is that the legislature kind of made a decision, that we thought the public perception was worth that cost. Which I agree. There’s no doubt that on any particular issue it could be, particularly something involving state employees or former state employees could be outcome determinative, I suppose in some cases. But I tend to think the legislature made that decision when they passed this bill.”

After further discussion, Chairman Gordon said, “The way I feel is that we’re here to interpret what the legislature has done and to do our best job to do that, but if the legislature is unhappy with the way it’s been interpreted, it has the opportunity to make a change.”

After further discussion, Representative Rombeau said, “We talked about this last week, or two weeks ago, but I do think having some sort of baseline – it feels uncomfortable in some ways – but having a dollar amount, for instance, would be helpful. I share some of Senator Rosenwald’s concerns, but I am coming around to the idea that if you put sort of bracket around it, I think that \$250 makes sense given that that’s the number we have now for gifts that can be received. I think you could argue that \$250, the gift limit, is a much more direct benefit, potentially, that this one, but I think (inaudible) trying to determine what the legislature wants (inaudible), trying to articulate the public trust here, having a number at this time would be really important and helpful. And so, I think that’s how I’ve come to my compromise on this issue.”

Senator Ward said, “I was going to say \$50 agrees with what we have to report if we get a gift more than \$50. ... I think it would be very helpful to have an amount to go by.”

Vice Chairman Sytek said, “I agree with the thinking, and I think it would be useful to have a number. I could live with \$250 or any other number like that...”

Mr. Hess said, “Going back to the ‘substantive’ issue, you could also use a dollar amount as presumptive. Anything above \$250 presumptively requires recusal and anything below \$250 depends on the facts and circumstances.”

Chairman Gordon responded, “And I think that’s the proper way to do it because the legislature didn’t say \$250. So, if we’re going to interpret it, I think we need to say ‘presumptively’ because the legislature has already in the past indicated the \$250 in different circumstances. That presumptively we would adopt that same standard for this.”

Attorney Lehmann said he had a couple of thoughts. “I’m not that sure pegging a dollar amount for a retirement benefit and equating it to a gift total is the right equivalence. The statute exempts bona fide wages from the gift ban. ... Retirement is an earned benefit for all those people who are working for the state. ... Also, on the amount, on the disclosure forms when you report household income, the amount for that is \$10,000. So, if you’re making \$999 from some source, you don’t have to disclose it at the beginning of the session. The third thing is this is a COLA and not an increase in benefits. So, in theory voting for the COLA is just keeping you even with where you were, not really improving your situation in a way that I think people might consider it. And finally, my concern about having a low dollar amount like \$250 or \$50 or something like that is nobody sitting here can predict how it’s going to play out in other bills. And if the number is low, I just don’t have the slightest idea what the unintended consequences are of a relatively low dollar amount that requires recusal which means the legislators’ constituents are going without representation on this bill. How that’s going to play out in the future. So, those are my thoughts...”

Chairman Gordon responded, “And I understand there’s a difference between a gift and earned income but the legislature in the past said, ‘We think this amount of money is the amount that would potentially affect the decision making of a legislator,’ and in that sense, it’s a common standard.”

Vice Chairman then moved the question.

Representative Lynn said, “The only other question I had...is on the next to last paragraph... ‘If, however, the retired legislator or family member does not qualify for the COLA because of the length of their retirement, they would not be required to recuse’ and I completely agree with that. ... My question is, ‘Although not required to recuse in those circumstances, verbal disclosure would still be required if the member intends to participate in verbal advocacy involving’. If you’re not going to be affected, if the COLA doesn’t apply to you, so you’re not going to be affected, I’m not sure I understand what you would be disclosing. ...Why would you need to disclose if you’re not going to be affected?”

Chairman Gordon said, “You would have already had to disclose it as a conflict on your Financial Disclosure Form and then if you look at the Financial Disclosure Form it says if you disclosed here then you have to verbally disclose if you’re going to participate in advocacy on legislation affecting that.”

Representative Lynn responded, “So, even if you’ve disclosed in the general thing you’ve filed in the beginning of the year, you still have to disclose.”

Chairman Gordon replied, “Right. You don’t have to file a Declaration of Intent, but you have to verbally disclose...”

After further discussion, Representative Rombeau said, “With regard to the motion to adopt here, are we coming to a conclusion for the \$250?”

After further discussion, Chairman Gordon asked the Committee if they wanted to adopt the draft as written or if they wanted to add language stating some financial number which constitutes presumptively what would be ‘substantial’.

Vice Chairman Sytek said, “I think we ought to decide on the \$250 or some other number separately in an interpretive ruling ...”

Mr. Hess agreed.

The Committee then agreed to address the definition of ‘substantial’ in a separate ruling.

After further discussion, the Committee agreed to amend the draft ruling by replacing the word “would” with “might” in the next to last paragraph in the draft so that the sentence would read, “Although not required to recuse in those circumstances, verbal disclosure might still be required if the member intends to participate in verbal advocacy involving HB 536-FN.” The Committee then voted 6 to 1 to issue *Interpretive Ruling 2025-3*, as amended.

ITEM #4

Discussion of *Advisory Opinion 2025-1*, requested by Richard J. Lehmann, Senate Legal Counsel, on behalf of Sen. Donovan Fenton (Dist. 10).

Chairman Gordon said the request asked whether Senator Fenton is required to recuse from participation in legislative activities related to 2025 House Bill 649-FN, a bill removing the requirement for physical safety inspections and on-board diagnostic tests for passenger vehicles. The request stated that Senator Fenton’s family owns car dealerships that conduct the inspections and he has an equity stake in those businesses.

The Committee reviewed a draft response followed by discussion.

Vice Chairman Sytek moved to approve the draft response. Mr. Hess seconded the motion.

Chairman Gordon said, “I think the same question arises as to what the financial effect might be. What is ‘substantial’? But that can be addressed in the separate opinion.”

Senator Rosenwald said, “In addition to that, I think there’s a question as to whether or not this would be a direct detriment to Senator Fenton and to his business because the customer has to make the decision where to take their car. I don’t think it’s an automatic transfer of money from a consumer to his, I think it’s a Toyota dealership. So, for me it doesn’t work on both the relative value of substantialness and also the fact that it’s not direct.”

Representative Lynn said he disagreed with Senator Rosenwald on that but said he thought that earlier she raised a valid point in that “unlike the one we just dealt with where we know that the COLA is 1.5% up to \$50,000, here we don’t really have any kind of calculation of any kind of indication of what the benefit might be and so ...maybe we ought to have that information. ...But I’m also comfortable with the draft the way it’s written because I would feel almost positive that the answer to that would be it’s an amount that most of us would consider substantial. I can’t imagine if it wasn’t he would have submitted the request for an advisory opinion. If his dealerships make \$20 a year on doing inspections, I suspect he wouldn’t have thought to ask for an advisory opinion. So, I suspect it’s an amount that we would all consider substantial.”

Mr. Hess said, “I take a public perception perspective on this issue, and I think that somebody that has the facts that Senator Fenton does and votes on the bill would probably raise significant conflict of interest concerns or accusations that would rise to the level possibly of a headline in the Manchester Union Leader. And so, I agree with the opinion as drafted.”

Chairman Gordon said, “I think it’s another one where defining ‘substantive’ would be helpful.”

It was pointed out that there was a typo in the next to last paragraph of the draft where “RSA 649-FM” should be “HB 649-FN.” The motion was changed to issue *Advisory Opinion 2025-1* as amended. The Committee then voted 6 to 1 in favor of the motion.

ITEM #5

Discussion of *Advisory Opinion 2025-2*, requested by Richard J. Lehmann, Senate Legal Counsel, on behalf of Sen. Victoria Sullivan (Dist. 18).

Chairman Gordon said this was a request asking whether Senator Sullivan is required to recuse from participation in any official activities involving the Education Freedom Accounts.

The Committee reviewed a draft response.

Vice Chairman Sytek moved to approve the draft. Senator Rosenwald seconded the motion.

Mr. Hess said, “This question raises the general population issue, but it’s not discussed in the opinion, and I don’t think it needs to be discussed in the opinion because the facts preclude recusal. But I just wanted to point that out in case anybody thought that would be something worth adding...”

Representative Rombeau said, “I had the same thought in thinking of how we were going to get to the scenarios discussions, but it did occur to me that the facts presented here are unique enough.”

Representative Lynn said, “Right. And I do think that at least in one of the scenarios it raises that very issue, and so we can do that at that time.”

The Committee then voted 7 to 0 to issue *Advisory Opinion 2025-2*.

ITEM #6

Discussion of the adoption of ethics scenarios to provide guidance for compliance with recusal and disclosure requirements.

The Committee reviewed a draft of ten ethics scenarios with possible responses which had been distributed to members for purposes of discussion. The Committee discussed each of the following scenarios and made tentative determinations on each.

(1) A legislator is a retired state employee belonging to Group 1 of the New Hampshire Retirement System (“NHRS”). A bill would provide a cost of living adjustment (“COLA”) to all NHRS retirees for amounts up to \$50,000.

Financial Disclosure Form’s “Checklist”? - Yes. The Committee has previously held that legislators, or legislators who have a household member, who are retired NHRS members collecting benefits or active members making contributions, have a financial interest which must be disclosed on the Financial Disclosure Form filed at the beginning of the legislative biennium. The membership should be reported under “(g) The New Hampshire Retirement System.”

Verbal disclosure? – No. The legislator will recuse and will not be participating in verbal advocacy.

Declaration of Intent? – Yes. The legislator is required to report recusal.

Recusal? – Yes. As the retired legislator would qualify to receive the proposed COLA, the legislator could reasonably be expected to incur a direct and substantial financial benefit. Recusal would be required by RSA 14-C:4-a, I, and the legislator would be required to refrain from participating in any legislative activities involving the bill.

The Committee generally agreed with the scenario.

(2) A legislator is the parent of a child who is currently enrolled in the New Hampshire public school system. Under current law, the legislator’s income exceeds the threshold that allows participation in the Education Freedom Account (“EFA”) program. A bill would remove that income cap and allow the legislator’s child to become eligible to participate in the EFA program.

Financial Disclosure Form’s “Checklist”? – No. At the time when the legislator was required to file the form, the legislator was not a participant in the program and had no financial interest to report.

Verbal disclosure? – No. The legislator will recuse and will not be participating in verbal advocacy.

Declaration of Intent? – Yes, to report the required recusal.

Recusal? – Yes. Because the proposed legislation would allow the legislator to participate in the program when she previously could not, the legislator could incur a direct and substantial financial benefit from the bill’s enactment and recusal would be required.

The Committee disagreed and by a vote of 5 to 2 said the response to each question should be “no.”

3) A legislator’s household member is a registered lobbyist representing several clients. The lobbyist testifies on a bill affecting one of the household member’s clients.

Financial Disclosure Form’s “Checklist”? - No.

Verbal disclosure? – No. The legislator will recuse and will not be participating in verbal advocacy.

Declaration of Intent? – Yes, to report the required recusal.

Recusal? – Yes. Pursuant to RSA 14-C:4-a, II, if the household member, “(a) Receives financial remuneration from an organization; (b) Holds a position to exercise substantial influence over the affairs of the organization; and (c) The organization has lobbied, testified, or otherwise attempted to influence the outcome of the official legislative activity,” the legislator is required to recuse themselves from participation in any official legislative activity pertaining to the bill.

The Committee generally agreed.

(4) A legislator’s household member owns and operates a service station. A bill repeals annual inspections and diagnostic tests, the fees from which provide a significant portion of the service station’s profits.

Financial Disclosure Form’s “Checklist”? – Yes. The ownership should be reported under “(r) Other.”

Verbal disclosure? – No. The legislator will recuse and will not be participating in verbal advocacy.

Declaration of Intent? – Yes, to report recusal.

Recusal? – Yes. The legislator has a conflict of interest which requires the legislator’s recusal from participating in legislative activities involving the bill. Although the interest in the subject may be no greater than other businesses which perform inspections and diagnostic tests, the legislator has a financial interest which is greater than the public at large. Given the legislator’s household member’s ownership of the service station, the legislator could reasonably be expected to incur a direct and substantial financial detriment as a result of the outcome of the bill.

The Committee generally agreed.

(5) A legislator serves on the governing board of nonprofit entity. The legislator receives no compensation for serving on the board. The nonprofit receives revenue from charitable gaming. There is a bill that caps charitable gaming grants to such entities at \$50,000 per year.

Financial Disclosure Form’s “Checklist”? – No. Only “financial interests” are required to be reported on the Financial Disclosure Form. In this example, the legislator is not compensated for serving on the board and therefor has no financial interest. However, the legislator presumably has a **fiduciary** responsibility for the welfare of the nonprofit entity. This creates a **non-financial personal interest** in the outcome of the legislation. The legislator could disclose this non-financial personal interest on the **General Disclosure of Non-Financial Personal Interests Form** or file a **Declaration of Intent Form** prior to participating in official activities related to the bill.

Verbal disclosure? – Yes. When a legislator becomes aware of a financial interest or a non-financial personal interest in the outcome of a matter the legislator is required to make a verbal disclosure prior to engaging in verbal advocacy at any meeting of the general court or county delegation.

Declaration of Intent? -Yes, if the legislator had not reported the non-financial personal interest on the General Disclosure of Non-Financial Personal Interests Form.

Recusal? – No. Recusal is not required for non-financial personal interests.

The Committee generally agreed.

(6) A legislator serves in an uncompensated capacity on the board of a for-profit nursing home. A bill increases Medicaid rates for long term care.

Financial Disclosure Form’s “Checklist”? – No, because the legislator is not compensated for serving on the board. The legislator does not have a financial interest but may have a non-financial personal interest that could be reported on the General Disclosure of Non-Financial Personal Interests Form.

Verbal disclosure? – Yes. When a legislator becomes aware of a financial interest or a non-financial personal interest in the outcome of a matter the legislator is required to make a verbal disclosure prior to engaging in verbal advocacy at any meeting of the general court or county delegation.

Declaration of Intent? Yes, if the legislator had not reported the non-financial personal interest on the General Disclosure of Non-Financial Personal Interests Form.

Recusal? - No. Recusal is not required for non-financial personal interests.

The Committee generally agreed.

(7) A legislator’s household member is employed at a community health center. A bill increases Medicaid payments to such facilities.

Financial Disclosure Form’s “Checklist”? – Yes. The employment should be reported under “(b) Health care.”

Verbal disclosure? – Maybe.

Declaration of Intent? – Yes, to report recusal if required, or yes to choose “will participate” or “will not participate” if recusal is not required but the bill has a greater financial impact on the legislator’s household member than would accrue to other members of the health care industry.

Recusal? – This would depend on the household member’s position at the community health center. If the household member’s compensation or status at the community health center could be affected by the increased Medicaid payments, the household member could reasonably be expected to incur a direct and substantial financial benefit or detriment as a result of the outcome of the legislation and the legislator should recuse. If the household member’s compensation or position at the community health center would not be affected by the bill, recusal would not be required.

The Committee generally agreed.

(8) A legislator owns rental properties in NH. A bill would require landlords to give at-will tenants a 60-day notice of intent to evict.

Financial Disclosure Form’s “Checklist”? – Yes. The ownership should be reported under “(d) Real estate, including brokers, agents, developers, and landlords.”

Verbal disclosure? – Yes. When a legislator becomes aware of a financial interest or a non-financial personal interest in the outcome of a matter the legislator is required to make a verbal disclosure prior to engaging in verbal advocacy at any meeting of the general court or county delegation.

Declaration of Intent? – Yes. In this scenario, although the legislator-landlord might incur a financial detriment if the landlord is prevented from executing immediate eviction of a tenant, it cannot be reasonably expected as required in RSA 14-C: 4-a, I.

Recusal? – No.

There was consensus that the response to “Declaration of Intent?” should be changed to “no” and that an explanation should be provided to the question of recusal.

(9) A legislator lives in rented apartment in NH. A bill would limit annual rent increases to the rate of inflation, as calculated by the US Bureau of Labor Statistics.

Financial Disclosure Form’s “Checklist”? – Yes. A legislator who is a tenant should report their status as a tenant under “(r) Other.”

Verbal disclosure? – No. The legislator will recuse and will not be participating in verbal advocacy.

Declaration of Intent? – Yes, to report recusal.

Recusal? – Yes. As the legislator’s future rent would almost certainly be lower than it would be absent the legislation, the legislator could reasonably be expected to incur a direct and substantial financial benefit. Recusal would be required by RSA 14-C:4-a, I, and the legislator would be required to refrain from participating in any legislative activities involving the bill.

The Committee disagreed and said that “no” should be the response to each question.

(10) A legislator owns rental properties in NH. A bill would limit annual rent increases to the rate of inflation, as calculated by the US Bureau of Labor Statistics.

Financial Disclosure Form’s “Checklist”? – Yes. The ownership should be reported under “(d) Real estate, including brokers, agents, developers, and landlords.”

Verbal disclosure? – No. The legislator will recuse and will not be participating in verbal advocacy.

Declaration of Intent? – Yes, to report recusal.

Recusal? – Yes. As the legislator’s rental income would almost certainly be lower than it would be absent the legislation, the legislator could reasonably be expected to incur a direct and substantial financial detriment. Recusal would be required by RSA 14-C:4-a, I, and the legislator would be required to refrain from participating in any legislative activities involving the bill.

The Committee disagreed and said that “no” should be the response to each question.

The Committee agreed to discuss a revised draft at the next meeting.

ITEM #7

New/Other Business.

There was no new or other business.

ITEM #8

Scheduling of the next meeting.

The Committee scheduled its next meeting on Monday, April 7, 2025, at 1:00 P.M.

The Committee’s meeting adjourned at approximately 3:15 P.M.

{Prepared by Richard M. Lambert, Executive Administrator}