

MINUTES  
LEGISLATIVE ETHICS COMMITTEE  
February 13, 2023 MEETING  
{Approved: May 26, 2023}

The Legislative Ethics Committee (RSA 14-B:2) met on Monday, February 13, 2022, at 3:00 P.M. in Room 104 of the Legislative Office Building.

The following committee members were appointed for the 2023-2024 biennium: the Honorable Edward M. Gordon, Chairman, the Honorable Donna Sytek, Vice Chairman, Senator Ruth Ward, Senator Cindy Rosenwald, Representative Janet G. Wall, Representative Bob Lynn, and the Honorable David H. Hess. All were in attendance except Senator Rosenwald, who was unable to attend. Also participating was Richard M. Lambert, Executive Administrator.

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

ITEM #1

Consideration of the draft *Minutes* from the Committee's meeting held on August 8, 2022.

Following review, Vice Chairman Sytek moved to adopt the *Minutes* as presented. Representative Wall seconded the motion and the Committee voted 4-0 with 2 abstentions to adopt the motion.

ITEM #2

Discussion of pending legislation affecting the Legislative Ethics Committee: HB 301, "An Act relative to recusal by members of the general court for conflicts of interest," and HB 157, "An Act relative to the joint committee on legislative facilities and sexual harassment policies."

The Committee's discussion included the participation of Representative Greg Hill, Chairman of the House Committee on Legislative Administration, and Representative Stephen Pearson, a member of that committee.

Vice Chairman Sytek spoke first and said that she had served as a member of the "Commission to Study and Update the Rules and Procedures of the Legislative Ethics Committee," which met in 2013 and 2014. She said the commission did a survey of the ethics laws of the legislatures of all 50 states and the commission's work "boiled down to what should happen in the case of a conflict of interest. Should you have to recuse yourself or should you just have to disclose your conflict? And we struggled with that as a committee and we came out with the current practice, which is disclosure so that the public knows that you had voted when you were provided with the opportunity to declare the conflict and not participate. So, it was disclosure versus disqualification. And there was some concern about disqualifying someone who was duly elected. So, this is a dramatic change from that, from the policy that has been in place since the ethics committee was established, which was disclosure."

She discussed specific provisions of the bill, beginning with the fact that it would only require a legislator to recuse from voting, not from speaking on a bill. She quoted from section 3 of the bill, which reads:

"14-C:4-c Exclusions to Recusal for Conflicts of Interest. The restriction on voting shall not apply to budget or general revenue bills or bills of such great interest where such a large percentage of the members that would be affected as to cause a problem with quorum in the committee or in the full legislative bodies."

She asked, "How do you determine exclusions from recusal for conflicts of interest? What is a 'large percentage'? Give us a number. 51%? I don't know."

She referenced the bill's definition of conflict of interest, which uses the phrase "Someone the legislator cares about" and said: "I cared about all my constituents when I was here. And then it defines it. It says, 'means a person who affects the legislator to such an extent as to cause or influence the legislator to act in a manner contrary to how they may act without that relationship.' A lot of times the leadership of either party will ask you to do something, and you have to swallow hard, and you take one for the team. So, would you have to recuse yourself for everything your leadership asks you to do if it's not something you would otherwise want to do? And 'this person, or persons, may or may not include family members, friends, or business associates.' 'May or may not'? So, what's the meaning of that sentence?" She also questioned the bill's effective date of 30 days after its passage, saying that it would not leave sufficient time for the ethics committee to write new Ethics Guidelines that would be consistent with the new law.

Representative Lynn said, "I share much of Vice Chairman Sytek's concern .... This language 'someone the legislator cares about...mean's a person who affects the legislator to such an extent as to cause or influence the legislator to act in a manner contrary to how they may, may, act without that relationship.' So, suppose I'm on the Children and Family Law Committee and it's considering a bill regarding how some allegations of child abuse should be handled and suppose I'm sort of iffy on it, whether I think it's a good thing, and I speak to one of my constituents who says 'here's a concrete example of why we need this bill' and now I say 'you know I was sort of iffy before but now I'm voting for this.' Do I have to recuse myself because I might have acted differently? I may have acted differently if I hadn't talked with that person. If we pass this, this committee is going to be very busy, very busy."

Mr. Hess said, "I share the concerns about that 'someone who the legislator cares about'. It would seem to me that that would apply whenever a lobbyist persuasively convinces a legislator to do something. Also, from a legal perspective there are no standards, no criteria, no rules that one can cite... there is no definition, and I would suggest, frankly, that on that ground alone it's probably void for vagueness because if it ever gets challenged legally or judicially. I have a lot of trouble with that. I also have a lot of trouble in section 4, line 17 with 'real or perceived financial interest.' What does that mean? And that's in contrast to real. So, it's not a real interest. It's not a financial interest. It's a perceived financial interest. If it doesn't exist and though it may be perceived, anybody can raise the argument, 'Oh, I think he has a conflict of interest' and fall under that broad term. So, I have serious reservations about the word 'perceived' for the same reasons."

Representative Wall said, "I will say that in committee (the House Committee on Legislative Administration) where we heard testimony and had some discussion, I did not like that 'someone you care about' that was, sorry, rather weak." She suggested "someone with whom you are closely involved financially." She added "we can strengthen this. We want to get something out this year... David (Hess) has a good point on line 17, section 4. I'm not sure how you'd change the language on that. David, do you have any suggestions?"

Mr. Hess responded: "Ah, delete it. ... I think this is rife for all kinds of allegations across the aisle. (Someone could say) 'I perceive you have a conflict of interest you Republican,' or the same thing, 'you Democrat.' It just opens the door for all kinds of allegations and without any standards it's neither definable nor defensible."

Chairman Gordon said, "What stimulated the bill to begin with was the Committee found ourselves in a situation -- and that was even before I was here -- but particularly with Representative Hill, we had a particular case in which the Committee in essence said there are circumstances when you are required to recuse yourself. And we have subsequently had a case, the Doug Ley case, where basically we said there are circumstances when you really need to recuse yourself, but if you were to read our

Guidelines, our rules, what's currently in statute, it's exactly what Speaker Sytek said, it's all about disclosure. There's nothing in there that requires anybody to recuse themselves. And so it seems to me, to be on solid ground, and that's what stimulated the legislation to begin with, you need to have some type of criteria. When is it that you have to recuse yourself? And so that's what precipitated the bill to begin with and I think probably the bill was too broad to begin with, but you always start broad, and narrow it down.... I think what's been said here is 'yea, it's too broad.' If we are going to have a standard where people have to recuse themselves on occasion, then we have to get that down, to narrow, and I don't think we need to change so much as certainly is in here. And I agree with many of the comments that have been made with regard to the language in here, as well. ... and Rich has provided a proposal that came from the Senate – from Senator (Jeb) Bradley – which I think does focus in, just on, circumstances where you're involved in an employment relationship. I was trying to make it broader than it has to be. As an example, if you were getting money directly from FRM and you are proposing legislation, and if you're going to get direct financial benefit, then it seems to me that in those circumstances you ought to recuse yourself ... but the long and the short of it is I agree with many of the comments with regard to the language that's here and it would be nice to be able to make it tighter.”

Representative Lynn said, “It struck me, you look at page 2, lines 5 through 8, with regard to the language ‘Is receiving remunerations from an employer which has a conflict of interest in the official activity.’ How can someone other than the legislator have a conflict of interest in the official activity? In other words, if we're considering regulating Walmart, does that mean that Walmart has a conflict of interest and couldn't appear before the legislature? I hope not. Suppose there was a move to unionize Walmart and so you had Walmart saying ‘Don't pass the legislation. It will be too easy for Walmart to be unionized.’ And people supporting the labor union say, ‘Yes, absolutely pass it.’ Does that mean that either one of them, that they both have a conflict of interest? I would think not. So, I think that that language is awkward to the extent it suggests that somebody other than the legislator, or maybe a legislative employee, has a conflict of interest because that might be able to encompass almost anybody that was the subject of something the legislature was considering doing.”

Chairman Gordon said, “I think that's existing language.”

Mr. Lambert suggested that it was in the Ethics Guidelines' Prohibited Activities section, in paragraph II, where it states that it's prohibited for a legislator to accept anything of value from someone who has an interest in legislation.

Representative Lynn pointed out that the language “has an interest in legislation” is different than saying someone “has a conflict of interest in legislation.”

Chairman Gordon then asked the Committee where they would like to go with the bill. He asked if they would like to recommend that they not support it altogether, or would they like to take a look at the bill sponsored by Senator Bradley (2020 Senate Bill 521).

After further brief discussion, Chairman Gordon asked Representative Hill if he would like to speak to the Committee.

Representative Hill said, “What precipitated all of this was a bill that Chairman Gordon brought to us in Legislative Administration {2022 HB 1368}. In fact, all of the findings in the beginning of this are direct quotes from that legislation. We started from the standpoint of trying to determine whether we needed to add recusal in as guidelines for the individual representative and/or for your seats here in judging or in setting a guilt or innocence standard. We chose to look at it more from the standpoint of

guiding our representatives, our fellow colleagues, to know how to rule on a situation for themselves while they're sitting in Rep's Hall and hearing testimony ... and trying to decide 'Oh my gosh, I just thought of my best friend who could stand to make out if I vote this way on this. What do I do if I don't have my attorney on speed dial and how do I answer it?' So, that's why I think you see things that are more broad than what you would like and what you saw in your professions. It would seem to me, also you rather need to decide how far from that legislator you need to look. Is it as we have in our (Ethics Booklet) just someone who lives in your household that you need to look from the legislator? With so many different family situations going on now, does it involve someone that is not related to you but lives in your household? .... The concentric circle theory: How far from that stone that hits the water do these ripples go? ... We have a case ... of a legislator's best friend benefitting from something, who is also a legislator. Should our rules be involved when their best friend is benefitting? It's not in (the Ethics Booklet) now and yet it seems to me that somewhere along the line we gotta decide whether that legislator should be recusing when their best friend makes out financially.

"There's a couple of other little decision point questions in here and, in fact, we have at one point talked with Mr. Lambert about some kind of decision tree to help a legislator sitting in Rep's Hall and going through saying, 'Who is this person that you are thinking of while this legislation is being discussed and does that affect you?' So, we look at it more as a help for the legislator than we did looking at it as what you would use for sentencing, I guess is maybe how I'd judge it. So, I think that's the best I can do. We do think that recusal is necessary in some instances. You mentioned the case that I brought to you for your opinion on. And that was certainly judged differently than the subsequent cases. So, we need clarification from the standpoint of legislators. So, if you're willing to provide us direction or some assistance with language, I understand this is not the final language. In fact, I mentioned that in committee the other day. I'm certain there's got to be some kind of a committee amendment coming. So, we would love to see your assistance in that."

Mr. Hess asked Chairman Gordon if he was correctly recalling that on the decisions the Committee has rendered saying that the member should have recused, all of them involved a direct pecuniary benefit either to the individual or to the legislator's employer or entity, or a non-profit on which the legislator served as a director or trustee.

Chairman Gordon replied, "For those cases which were already addressed, at least the last case – the Doug Ley case – involved his employment {President of the AFT-NH, a union representing teachers in NH}, and he was employed where, although not expressly then at least tacitly, part of his responsibility was to advocate on behalf of his membership and part of that was legislative and that was an expected duty on his part. So, in effect, he was receiving compensation for lobbying in certain circumstances, and those were for issues that would have a specific effect on his membership. So, I think he could vote generally on education issues, but not on issues that would specifically benefit the membership of the organization for which he was employed. {See Complaint 2019-2, Informal Resolution} And I think with Representative Hill, similarly, if he were to take employment with this organization {Children's Scholarship Fund} and then vote on issues that involved the financial interests of that organization, he would be precluded for participating on those votes, or should be. {See Advisory Opinion 2018-1} And I think it goes back to that original part of (the bill) that's in the (NH) Constitution that, I think, it's been interpreted generally to say you can't be a lobbyist and be a legislator. It doesn't make sense."

{Part II, article 7 of the New Hampshire constitution states: "No member of the general court shall take fees, be of counsel, or act as advocate, in any cause before either branch of the Legislature; and upon due proof thereof, such member shall forfeit his seat in the Legislature."}

“So, it seems to me that we could take that actually and say that no member of the General Court could be of counsel or act as an advocate in any cause before the legislature if they or a member of their household were to receive a direct financial benefit. And I think that is sort of where we want to go.”

Representative Lynn said he liked that and said that, as he reads the Ethics Guidelines, if you disclose an interest on the Financial Disclosure Form such as that you’re a landlord, and something comes up where you might profit but not more than other landlords, then all you are able to participate. He said that’s different than the situation which Chairman Gordon talked about. He said he agreed that the constitutional provision seemed perfectly clear to him.

Chairman Gordon asked if that sounded like the direction the Committee could go.

Vice Chairman Sytek said that it was considerably narrower than HB 301.

Representative Lynn said, “In the situation that you posited where your employer expects you to advance the interests of the employer before the legislature – and you can do that because you’re a legislator – it seems to me that that kind of comes close to what we would traditionally think of as a bribe. So, somebody comes up to you in the middle of the night and says ‘Okay Lynn, go advocate this bill and if you’re successful you’re going to get ten grand, obviously I shouldn’t be able to do that, and if I do, I should be in a lot of trouble. So, I think that’s sort of along the line of what you’re saying. I think it makes sense.”

Representative Wall suggested that the Committee return to discussing the definition of “household member.”

Chairman Gordon said, “In terms of ‘a person you care for,’ ‘household member’ is something that is at least definable for us when we go to establish whether somebody is culpable or not culpable. At least it’s a definable standard where ‘a person you care for,’ I think is too broad for us.”

Vice Chairman Sytek added that the current definition of “household member” also says ‘shares a common economic interest,’ whether you’re related or not.

Representative Hill asked, “What do you do when it’s someone outside of that household that very well could be benefitting and not living in that household? ... You know. their brother doesn’t live in that household any longer, but obviously is benefitting... somewhere we need something to guide our colleagues .... Are we defining this for adjudication purposes or are we defining this for guidance purposes? ... I understand the difficulty it is when someone files a complaint here, but I’ve been telling my committee, most of this is your own interpretation and your own ethics and you just need to be aware that, when you make a decision, it doesn’t just affect you, it tars with the same brush all of us. And I think that’s what needs to come through in the (Ethics) Booklet. I’m not really as concerned about your difficulty in adjudicating it... I think if it works over there, you’re always going to get complaints over here. I don’t know how we deal with that. But, I think, they are two separate things: the guidance versus the adjudication.”

Representative Pearson said, “Mr. Chairman, I sit on Legislative Administration as well. ... As far as ‘family member’ goes, I want to remind you that ... we have two sets of couples in the House and we have a situation where my father {Representative Mark Pearson} serves in this House, so we don’t live in the same household necessarily, where I would presume that the McGuires {Representatives Carol and Dan McGuire} and the Lekas’s {Representatives Tony and Alicia Lekas} do in fact live in the same

household. Do we end up handcuffing the other spouse? Do I have to sit down and have a bill-by-bill discussion with my dad about something that I'm not sure is in his world or my world? Because we're looking to change definitions here and to change the way we look at this. And I just think we need to be careful in that regard when it comes to relationships because if we get too rigid, then it will pretty much prohibit a spouse from running for office if the other one is here. ... So, that's a concern I have when it comes to the familial relations part of what we're discussing."

Representative Wall said, "In listening to you and (Representative) Greg (Hill), that's how I came upon (the language) 'someone with whom the legislator is closely associated.' It can be a household member, your best friend, or a business associate."

Representative Pearson said, "I'm not sure how this body would handle that if an accusation was made. I'm not providing you with my Facebook friend's page. ... The (Ethics Booklet) is either a guide or it's the prosecuting of rules, of deciding whether you're going to be admonished or punished or whatever by the Ethics Committee. But I think it can't be both. It's got to be one or the other because as a legislator I need to know what set of rules I'm being judged against, and that's not a guideline. That's a set of rules to which I will be held accountable. So, one way or the other, but it can't be both."

Chairman Gordon said, "Okay, I'm not sure we're going to come to agreement today because I'm not sure we're in agreement other than the fact that we agree that there are circumstances when people need to recuse themselves. And the question is how you define that. And what I'd like to do is, maybe is, try to put together something like the standards I talked about following the constitutional provision and mirroring the constitutional provision, and I'll draft that and send it around to the Committee members to see if we can be in agreement with that, if it makes sense to you."

Mr. Hess said, "In terms of broadening the impact of the rules ... I'm all in favor of doing that in baby steps. Take one step at a time and see how that works, rather than trying to envision all possible areas that we want to address and include expansive language and then realize that we've opened a Pandora's Box that we really didn't contemplate or intend to do."

Following further discussion, the Committee authorized Chairman Gordon to draft a proposed amendment to HB 301 and to participate on the Committee's behalf in the upcoming work session on the bills scheduled to be held on March 8, 2023.

The Committee briefly discussed HB 157 with Representative Hill. Chairman Gordon summarized the bill's provisions. He said it does away with mandatory sexual harassment training for legislators and staff, does away with a mandatory review by the Joint Committee on Legislative Facilities of the sexual harassment policies of other jurisdictions, and it does away with the requirement that the Joint Committee on Legislative Facilities adopt a sexual harassment policy. He said the one thing it doesn't address is the (Policy Against Sexual and Other Unlawful Harassment and Discrimination) itself. It doesn't say whether the Legislative Ethics Committee should have jurisdiction over the policy.

Mr. Hess said that under current statute the Committee's jurisdiction is defined by the legislative bodies and the policy was adopted by the Joint Committee on Legislative Facilities.

Representative Hill asked the Committee if they would support an amendment to the bill stating whether they have jurisdiction.

Chairman Gordon said that the legislature should determine whether the Committee should have jurisdiction. Following further brief discussion, he agreed to attend the Legislative Administration Committee's work session on HB 157.

ITEM #3

Initial Review of *Complaint 2023-1*, *Complaint 2023-2*, *Complaint 2023-3*, and examination of *Complaint 2023-4*.

Representative Wall moved to enter nonpublic session, pursuant to RSA 14-B:3, I(d), to review the complaints. Vice Chairman Sytek seconded the motion and the Committee voted as follows:

Vice Chairman Sytek	Yea
Representative Lynn	Yea
Mr. Hess	Yea
Senator Ward	Yea
Chairman Gordon	Yea
Representative Wall	Yea
{MOTION ADOPTED}	

{NONPUBLIC SESSION}

Chairman Gordon moved to exit the nonpublic session. Representative Wall seconded the motion and the Committee voted as follows:

Vice Chairman Sytek	Yea
Representative Lynn	Yea
Mr. Hess	Yea
Senator Ward	Yea
Chairman Gordon	Yea
Representative Wall	Yea
{MOTION ADOPTED}	

Chairman Gordon stated: "We just came out of nonpublic session, in which case we did an initial review of *Complaint 2023-1*, *Complaint 2023-2*, *Complaint 2023-3*, and also discussed *Complaint 2023-4*. As a result of our nonpublic session, we voted to put *Complaint 2023-1* on file, we voted to discharge *Complaint 2023-2*, we voted to discharge *Complaint 2023-3*, and we voted to discharge *Complaint 2023-4*."

ITEM #4

Review of the filing of the 2023-2024 Financial Disclosure Forms. Approval of electronically transmitting the filed forms to the Secretary of State {Pursuant to RSA 14-B:3, IV} and consideration of late or incomplete filings.

The Committee reviewed a report submitted by Mr. Lambert which indicated the following:

- **Senate**  
All 24 members of the Senate filed a form by the January 20, 2023, deadline.
- **Officers**  
The Senate Clerk, the House Clerk and the House Sergeant-at-Arms filed their forms by the January 20, 2023, deadline.

- **House**
  - **395** members of the House, out of the **398** elected members, filed a form by the January 20, 2023, deadline.
  - **2** additional House members filed forms after the January 20, 2023, filing deadline. They are:
    - Representative Tommy Hoyt (filed on January 23, 2023)
    - Representative Daniel Popovici-Muller (filed on January 24, 2023)
  - **1** member has not yet filed. That member is:
    - Representative Juliet Smith
  - **5** members filed incomplete forms.
- **Electronic Filing**
  - **75%** of Senate and House members filed electronically using the My GCNH Portal.

Following a brief discussion, the Committee asked Mr. Lambert to contact the members who had filed incomplete forms to ask them to complete their forms. Vice Chairman Sytek then moved to authorize staff to transmit the forms to the Secretary of State's Office. Representative Lynn seconded the motion and the Committee voted 6 to 0 in favor of the motion.

Mr. Lambert said that numerous members of Senate and House leadership staffs contributed considerable time and effort to assure that every Senate and House member filed their forms in a timely manner. He added that the success of the financial disclosure filing effort would not have been possible without the great help of the following individuals:

Debra Vanderbeek, Senate Chief of Staff and Grant Bosse, Deputy Senate Chief of Staff, from the Senate President's Office.  
Jennifer Horgan and Jennifer Gallagher, from the Senate Minority Office.  
All the Senate Administrative Assistants and Legislative Aids.

Aaron Goulette, House Chief of Staff, Debra Childs, Deputy House Chief of Staff, from the House Speaker's Office.  
Megan Stone, Jeremy Baker, and Sean Connor from the House Majority Office.  
Dan Mason, Rachel Cole, and Slate Goodwin from the House Minority Office.

**ITEM #5**

New/Other business.  
There was no new or other business.

**ITEM #6**

Scheduling of the next meeting.  
The Committee's next meeting will be at the call of the chair.

The Committee's meeting adjourned at approximately 4:30 P.M.

{Prepared by Richard M. Lambert, Executive Administrator}