

Senate Rules and Enrolled Bills Committee

Angela Leach 271-3077

SB 35, relative to the procedure for legislators to disclose a conflict or personal interest in legislation.

Hearing Date: January 26, 2017

Time Opened: 10:03 a.m.

Time Closed: 10:32 a.m.

Members of the Committee Present: Senators Avar, Bradley, Daniels, Soucy and Fuller Clark

Members of the Committee Absent : None

Bill Analysis: This bill adds a personal interest disclosure statement to the financial disclosure form required to be filed annually by legislators. The bill also provides that legislators shall not be required to file a declaration of intent form, but shall verbally disclose any conflict or special interest before deciding whether to participate in any official activity associated with the interest.

Sponsors:
Sen. Giuda

Who supports the bill: Sponsors, Senator Bradley

Who is neutral on the bill: Rick Lehmann, Senate Legal Counsel

Summary of testimony presented:

Senator Bradley introduced the bill on behalf of Senator Giuda – In regards to the passage of HB 458, this bill is attempting to correct some of the issues which have been raised. We should consider whether personal interest is the right terminology for a non-financial issue. We could clarify personal interest with a term that could be no financial personal benefit so it is clear there is a personal interest. The Second issue is, Line 22 through 26, outlines when you file a 2017 financial disclosure form, which is the form that we all file on a certain date in January which describes the potential financial interest that could rise of a potential conflict of interest. On the second page, small letter r, describes “other”, I have always interpreted that as any other potential conflict, could be a non-financial personal benefit. In the past I have worked on the shoreland protection act, I live in the shoreland have always checked that off. That is what is considered personal interest and personal benefit. When we have a conflict that is different than any other member of the public that is heightened, limited to ourselves or a small number of people. I live on route 28 in Wolfeboro, if there was legislation to widen the road, take part of my property, I would fill out this form because I have a particular potential conflict and then I can choose to participate or not participate. What we need to do is make it simple and clear when someone has to file this form. If you have verbally acknowledged the declaration of intent, you don’t have to file the written form. In the HB 458 legislation, “a personal interest exists where a legislator or household member could otherwise be affected by outcome of such activity when the legislator has the responsibility for the welfare of an organization, and where that welfare could be affected by the outcome of such activity.” Add a sentence to the end of that definition, makes it very clear that if you serve in an elected position, state, county, school or a local elected position that does not constitute a personal interest. I have been appointed to the Nuclear Decommissioning Finance Committee, which

has huge implications for electric rates and I don't think that constitutes a conflict of interest or personal interest because I was appointed by the House Speaker. Make sure that if you appointed to a board by your governor, governor and council, senate president, speaker of the house, county commissioner, or governing body that should not constitute a personal interest. If you are an official in a not for profit organization such as the Red Cross and there is a bill for disaster relief, if you have a responsibility for the welfare of an organization.

Senator Avard - What if someone is elected to a position such as an alderman.

Senator Bradley -Yes, elected and appointed by the governing body. I was on the retirement board for two or three years and I don't think that constitutes a personal interest as defined here unless I was a member of the retirement system.

Senator Daniels- As far as being appointed, local level, is it your desire to have your local boards do the vetting. For example if you had a gas pipeline going through your property, and were on a local committee for gas pipelines.

Senator Bradley- if you are appointed by a select board to some study group it should be disclosed.

Senator Soucy- statute would imply to legislators, if a local board appoints a person only if that person was a legislator.

Senator Bradley- Exactly

Senator Soucy- In regards to the retirement boards, as a legislator you wouldn't have to fill anything out.

Senator Bradley- If you are former state, local or county, school member of the retirement system, you check the box.

Senator Fuller Clark- Confusion about this issue, in regards to the declaration of intent, you'd do a special declaration of intent even if you filled out this form.

Senator Bradley- If you were using extreme caution, you could do both. That is at the discretion of the legislator. If you filled out this form and said you were going to participate, you would have fulfilled your obligation.

Senator Fuller Clark- I think it would be helpful to provide some sort of information as to what is "other"

Senator Bradley- We could define "other" as a personal interest or a non-financial personal benefit.

Senator Fuller Clark- It is important to Include the definition so that people are not going to look at the ethics booklet, should be clarified on the form.

Senator Bradley- Good point. Probably be 3 pages rather than 2.

Senator Daniels- My only fear with the "other" it could be a long list, one of things I don't see on here is being a veteran, we have bills regarding tax credits for veterans, and would I have a conflict of interest. I don't want to see a long list of withholding exceptions like they have at the department of labor.

Senator Bradley- "Other" was meant to capture. That's where I always file that I live in the shoreland zone under "other".

Senator Soucy- In regards to the declaration of intent, it could be filed either in writing or verbally.

Senator Bradley- Clarify how it gets filed so it is simply as possible. When a bill is coming up, and you have a particular conflict of interest then you fill out the form and give it to the Clerk. And then you don't have to verbalize, realize at the last minute you have a conflict, then you would have an option of verbally declaring.

Senator Soucy- I do think our legal counsel's memo was helpful, maybe incorporate some of that language.

Rick Lehmann- Legal Counsel for the NH Senate defining what constitute a personal interest that has to be disclosed, , if the organization is subject to the right to know law then it's not a personal interest requiring disclosure then we know you're involved in a subject with public disclosure. If it is a private organization not subject to the right to know law, then the public does not have an alternative means to find out what you do for that organization. Easy way to use existing law to create a line.

Senator Soucy- So are you suggesting we define the organization.

Rick Lehmann- Define organization and be defined to an organization of which you have a fiduciary duty. Cleaner definitions.

Senator Fuller Clark- That is moving in the right direction, perhaps you could prepare that language. Beyond that that if you serve on a board of the nonprofit you do have a fiduciary responsibly to non-governmental organizations, we want that kind of disclosure. On the form on the second page, "do you or a household member", should bold that.

Rick Lehman-I agree with your comments with paragraph R, a catch all, another piece of paper, the lack of the definition.

Senator Fuller Clark- may be appropriate that other categories are added such as veterans.

Rick Lehmann- Might want to consider the timing of the disclosure. Realizing late in the game that you have a conflict is going to happen, your duty to disclose happens when you become aware but you becoming aware might happen late. Maybe a written disclosure that gives you 72 hours once you become aware and after a vote has been taken, at least there is a record. The bill that was passed last year, there's statutory language that really has nothing to do with these verbal disclosures, guidelines that were in the statute as well as guidelines of how to amend do not follow the ordinary legislative process, they simply have to be approved by the majority of both bodies within 3 legislative business days. The process can happen much more simply then through a statute.

Future Action: Pending

AJL

Date Hearing Report completed: January 27, 2017