

INTERPRETIVE RULING 2016-5

(Revised: September 13, 2017)

Conflicts of Interests – Disclosure Forms and Verbal Disclosure

This interpretive ruling is intended to provide guidance for legislators for complying with the requirements of the Ethics Guidelines relating to filing required disclosure forms and making a verbal disclosure of conflicts of interest.

A “**conflict of interest,**” as defined for legislators in Ethics Guidelines Section 2, is the condition in which a legislator has a “special interest” in any matter which could directly or indirectly affect or influence the performance of the legislator’s official activities. A “special interest” is defined as “any financial or non-financial personal interest in the outcome of a matter that is the subject of official activity, distinct from and greater than the interests of the public at large.”

There are two types of “special interest”:

1) A “**financial interest**” which exists when a legislator or household member could stand to gain or lose anything of material value as a result of the official activity; and

2) A “**non-financial personal interest**” which exists when a legislator or household member has a responsibility for the welfare of an organization by virtue of holding a position with a fiduciary responsibility, such as a board member, trustee, or director.

It is the responsibility of legislators to recognize when a conflict of interest exists and to act accordingly through the use of the appropriate disclosure form and by making a verbal disclosure.

There are three forms for disclosing conflicts of interest:

Financial Disclosure Form
General Disclosure of Non-Financial Personal Interests Form
Declaration of Intent Form

Financial Disclosure Form

Every legislator is required to file a Financial Disclosure Form with the Legislative Ethics Committee annually on or before the third Friday of January. (See RSA 14-B:8 and Ethics Guidelines Section 5.) The form consists of two sections:

Section 1, "Sources of Income," requires legislators to identify sources from which a legislator or a household member (not just family members), received income in excess of

\$10,000 during the prior calendar year. The sources of income a legislator is required to report DO NOT include securities, such as stocks, bonds, and similar financial instruments.

Section 2, "Disclosure of Financial Interests," requires legislators to identify and describe any financial interest a legislator or a household member may have in certain businesses, professions, occupations, groups, or matters.

Although disclosure of financial interests on this form would satisfy the Ethics Guidelines' requirements for disclosure of conflicts of interest in many circumstances, it will not relieve a legislator from the requirement of filing a specific Declaration of Intent Form in certain circumstances and from making a verbal disclosure.

General Disclosure of Non-Financial Personal Interests Form

A legislator who has a non-financial personal interest may choose to file a General Disclosure of Non-Financial Personal Interests Form. This form allows the legislator to identify and describe any non-financial personal interests the legislator or legislator's household member may have. A legislator who completes and files this form is NOT REQUIRED to file a Declaration of Intent Form to disclose the non-financial personal interest.

Declaration of Intent Form

A legislator is REQUIRED to file this form:

- 1) Whenever a **financial interest** could reasonably be expected to produce greater benefit or detriment to the legislator or the legislator's household member than would accrue to any other member of a business, profession, occupation, or other group listed by the legislator in the financial disclosure form; or
- 2) Whenever a legislator or a legislator's household member has a **non-financial personal interest** in the outcome of a matter that is the subject of official activity, distinct from and greater than the interests of the public at large and the legislator has NOT made the disclosure on the General Disclosure of Non-Financial Personal Interests Form.

On the form, a legislator must declare his or her decision to either participate in or not participate in the particular official activity described on the form. If a legislator elects to declare an intention to participate in the activity, the legislator is required to detail the nature of the conflict of interest on the form.

It is important to remember that a legislator's decision to participate or not participate applies to participation in all matters relating to the official activity. A legislator cannot participate in some activities (for example, introducing a bill or testifying on it before a committee) and then file a declaration opting to not participate in a later activity (such as voting on the same bill on the House or Senate floor).

Timing of Declaration of Intent filing

The requirement for filing a declaration of intent is triggered immediately when a legislator becomes aware that a conflict of interest exists or may exist with respect to any official activity the legislator is about to undertake. An “official activity” is defined as any activity which relates to official responsibilities, including the introduction of legislation, testifying before any legislative committee or state agency, voting in committee or in house or senate session or otherwise participating in, influencing, or attempting to influence any decision of the legislature, county delegation or any state agency.

For purposes of introducing a bill, the declaration must be made prior to signing off as a sponsor or co-sponsor of a particular piece of legislation. The declaration of intent form must be filed with the clerk of the member’s respective body prior to the time of the official action.

Verbal Disclosure

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. “Verbal Advocacy” means an attempt by a legislator to influence his or her colleagues on a matter that is the subject of official activity in a meeting of the general court or county delegation through public verbal communication. Verbal advocacy does not include casting a vote in executive session of a committee or in a full session of the House or Senate. The verbal disclosure shall consist of a short statement that identifies the financial interest or non-financial personal interest.

The verbal disclosures must be made in the following circumstances and manner:

(a) When **testifying** before a legislative committee regarding a bill or other matter in which the legislator has a special interest, the legislator shall make the disclosure prior to testifying.

(b) When **appointed to a subcommittee** working on a bill in which the legislator has a special interest, the disclosure shall be made upon appointment to the subcommittee and at the initial subcommittee work session.

(c) When **servicing as a member of a committee** considering a bill in which the legislator has a special interest, the disclosure shall be made prior to engaging in verbal advocacy.

(d) When **addressing the full House or Senate** on a bill in which the legislator has a special interest, the disclosure shall be made prior to engaging in verbal advocacy. **If the legislator does not speak on the bill, the legislator is not required to make a verbal disclosure.**

(e) When **appointed as a member of a Committee of Conference** on a bill in which the legislator has a special interest, the disclosure shall be made at the initial meeting of the Committee of Conference.

(f) When **serving as a member of a county delegation** considering a matter in which the legislator has a special interest, the disclosure shall be made to all participants prior to engaging in verbal advocacy.

Hypothetical examples

The Committee believes that the following hypothetical examples may be helpful in understanding the conflict of interest disclosure procedure and knowing when filing a Declaration of Intent Form and making a verbal disclosure are required.

(1) A legislator is a member or beneficiary of the **New Hampshire Retirement System** and has disclosed this financial interest in checklist category “(g) New Hampshire Retirement System” on the Financial Disclosure Form. In this hypothetical example, the legislature is considering a bill to increase the state’s contribution to the System for all members or affected group members or beneficiaries. The legislator stands to derive a direct financial benefit from passage of this legislation; however, **this benefit would presumably be no greater than the benefit derived by the many other members of the System throughout the state.** Therefore, in this example the legislator’s disclosure of membership in or being a beneficiary of the System on the Financial Disclosure Form would satisfy the requirements of the Ethics Guidelines’ disclosure provisions.

Declaration of Intent required? – No

Verbal Disclosure required? – Yes

(2) The legislator’s spouse is a beneficiary of the **New Hampshire Retirement System** and the legislator has disclosed this financial interest in checklist category “(g) New Hampshire Retirement System” on the Financial Disclosure Form. In this hypothetical example, there is a bill to provide a cost of living adjustment in benefits only for certain members of group I of the System who retired as teachers prior to 1987. The legislator’s spouse would qualify to receive the cost of living adjustment provided in the bill. Because the legislator’s family member stands to **benefit directly from this specific legislation which affects only a small group**, or subset, of System beneficiaries, the legislator’s generic disclosure on the checklist form is inadequate.

Declaration of Intent required? – Yes

Verbal Disclosure required? – Yes

(3) The legislator is a **developer** and has disclosed this financial interest in checklist category “(d) Real estate, including brokers, agents, developers, and landlords.” There is a bill to construct a new exit ramp off of a state highway. The legislator owns a parcel of land the value of which would be directly affected by construction of the exit ramp. Because the legislator stands to benefit directly from this specific legislation, the legislator’s generic disclosure on the checklist form is inadequate.

Declaration of Intent required? – Yes

Verbal Disclosure required? – Yes

(4) The legislator attends a county delegation meeting where there is a budget proposal to appropriate county funds to a **nonprofit agency on which the legislator serves as a board member**. Because the legislator serves on the governing board of the nonprofit entity and presumably has a **fiduciary** responsibility for the welfare of that entity, the legislator has a **non-financial personal interest** in whether the county appropriates funds to it. The legislator could have disclosed this non-financial personal interest on the General Disclosure of Non-Financial Personal Interests Form, however in this example the legislator had not.

Declaration of Intent required? – Yes

Verbal Disclosure required? – Yes

If the legislator had disclosed this non-financial personal interest on the General Disclosure of Non-Financial Personal Interests Form:

Declaration of Intent required? – No

Verbal Disclosure required? – Yes

The Committee recognizes that the application of any guideline to individual circumstances may pose questions not easily addressed in an interpretive ruling, which is general in nature. The Committee is available to provide advice with respect to specific situations as they arise.

Honorable Donna Sytek, Chairman
Senator Sharon M. Carson, Vice Chairman
Representative Janet G. Wall
Senator Martha Fuller Clark
Representative David A. Welch
Attorney David H. Bradley
Honorable David W. Hess

For the Committee,
Donna Sytek
Chairman

[Vote: 7-0]