

Amendment to SB 400

1 Amend the bill by replacing all after the enacting clause with the following:

2
3 1 Executive Branch Ethics; Definitions. Amend RSA 21-G:21 to read as follows:

4 21-G:21 Definitions. In this subdivision:

5 I. "Agency" means any executive branch agency, department, division, board, commission,
6 or entity of the executive branch.

7 ***I-a. "Classified employee" means any person in the state classified service system as***
8 ***defined in RSA 21-I:49.***

9 II. "Conflict of interest" means a situation, circumstance, or financial interest which has the
10 potential to cause a private interest to interfere with the proper exercise of a public duty.

11 II-a. "Executive branch official" means ~~[every elected official as defined by RSA 15-B:2, III,~~
12 ~~who holds an executive branch office, every public official as defined by RSA 15-B:2, X]~~ ***the***
13 ***governor, members of the executive council, every commissioned, unclassified, or***
14 ***nonclassified executive branch employee other than one elected by the legislature,*** every
15 constitutional official as defined by RSA 15-B:2, II, and ~~[every public employee as defined by RSA~~
16 ~~15-B:2, IX]~~ ***any person other than a classified employee who conducts business on behalf of***
17 ***the governor, an executive branch official, or executive branch agency, including a***
18 ***volunteer.***

19 III. [Repealed.]

20 IV. [Repealed.]

21 V. [Repealed.]

22 2 Conflict of Interest. Amend RSA 21-G:22 to read as follows:

23 21-G:22 Conflict of Interest. Executive branch officials ***and classified employees*** shall avoid
24 conflicts of interest. Executive branch officials ***and classified employees*** shall not participate in
25 any matter in which they, or their spouse or dependents, have a private interest which may directly
26 or indirectly affect or influence the performance of their duties.

27 3 Misuse of Position. Amend the introductory paragraph of RSA 21-G:23 to read as follows:

28 21-G:23 Misuse of Position. No executive branch official ***or classified employee*** shall:

29 4 Acceptance of Campaign Contributions. Amend RSA 21-G:24 to read as follows:

30 21-G:24 Acceptance of Campaign Contributions. An executive branch official ***or classified***
31 ***employee*** who is a candidate for an elective office that is not subject to the reporting requirements
32 of RSA 664 and who accepts a political contribution from any person or entity which is or is likely to
33 become subject to that executive branch official's ***or classified employee's*** duties shall make a
34 disclosure of such contributions to the secretary of state within 5 days of receipt of such

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1 contributions. The disclosure shall be in writing and on such form as the secretary of state shall
2 prescribe.

3 5 Restrictions on Simultaneous Employment and Public Service. Amend the introductory
4 paragraph of RSA 21-G:25 to read as follows:

5 21-G:25 Restrictions on Simultaneous Employment and Public Service. Volunteer service shall
6 not be used, directly or indirectly, for personal financial gain, or to facilitate non-public
7 communications with executive branch officials **or classified employees** for the purpose of
8 promoting or advancing any matter on behalf of a third party, or to influence executive branch
9 officials **or classified employees** in the performance of their duties. In furtherance of this
10 prohibition:

11 6 Employment Restrictions. Amend RSA 21-G:26 to read as follows:

12 21-G:26 Employment Restrictions. For 6 months after leaving office or employment with the
13 state, no executive branch official **or classified employee** shall appear as a lobbyist:

14 I. To promote or oppose directly any specific legislation pending or proposed before the
15 general court; or

16 II. To directly promote or oppose action or inaction on any matter, contract, license, permit,
17 or administrative rule pending before the executive branch or with regard to any matter over which
18 that executive branch official **or classified employee** had personal and direct responsibility while
19 in state government.

20 7 Nepotism. Amend the introductory paragraph of RSA 21-G:26-a to read as follows:

21 21-G:26-a Nepotism. No executive branch official **or classified employee** shall directly hire,
22 evaluate, set the compensation or salary for, supervise, or terminate the employment of any full-
23 time or part-time employee, temporary employee, or member of a state board or commission if such
24 employee or member is related to such official in one of the following ways:

25 8 Executive Branch Ethics Committee; Jurisdiction. Amend RSA 21-G:29, I and II to read as
26 follows:

27 I. There is hereby established an executive branch ethics committee to issue guidelines,
28 interpretive rulings, and advisory opinions relative to standards for ethical conduct in the executive
29 branch and to resolve, through procedures established under RSA 21-G:32, issues, questions, or
30 complaints involving executive branch officials ~~[who are not]~~ **and** classified employees.

31 II. The jurisdiction of the committee shall consist of matters arising under the executive
32 branch code of ethics, RSA 21-G:21-27, RSA 15-A, RSA 15-B, and rules or guidelines adopted
33 thereunder, as applied to current or former executive branch officials ~~[who are not]~~ **and** classified
34 employees, provided that the committee may only consider a complaint against a former executive
35 branch official if the complaint is filed no later than 180 days after the day the official resigned,
36 retired, or otherwise left his or her position.

37 9 Committee Members; Restrictions; Partisan Campaign. Amend RSA 21-G:29, VI to read as

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1 follows:

2 VI. Committee members shall serve terms of 3 years and until their successors are
3 appointed and qualified. However, initially, the governor shall nominate one member for a one-year
4 term, one member for a 2-year term and one member for a 3-year term; the secretary of state shall
5 nominate one member for a 2-year term, and one member for a 3-year term; the treasurer shall
6 nominate one member for a one-year term and one member for a 2-year term. Initial nominations
7 to the committee shall be made no later than 90 days after the effective date of this section. The
8 initial appointments shall begin on July 1, 2006 and end on June 30 of the appropriate year.
9 Vacancies shall be filled for the remainder of any unexpired term. During their term of
10 appointment, members may not hold or campaign for *partisan* elective office, serve as an officer of
11 any political party or political committee, permit their names to be used in support of or in
12 opposition to any *local or state partisan* candidate [~~or proposition~~], participate in any way in any
13 *local or state partisan* election campaign, make a contribution as defined in RSA 664:2 to any
14 *local or state* candidate for office or *state* political committee, or act as or assist a lobbyist required
15 to be registered under RSA 15:1.

16 10 Duties; Ethics Committee. Amend RSA 21-G:30, I to read as follows:

17 I. The committee shall be authorized to:

18 (a) Issue guidelines consistent with the executive branch code of ethics, RSA 21-G:21-
19 27, RSA 15-A, and RSA 15-B, relative to proper and appropriate conduct for individuals relating to
20 the performance of their duties as executive branch officials *or classified employees*. Such
21 guidelines shall be consistent with statute.

22 (b) Issue interpretative rulings explaining and clarifying any law, guideline, *or* rule[, ~~or~~
23 ~~regulation~~] within the jurisdiction of the committee.

24 (c) Render [~~an~~] advisory [~~opinion, in writing within a reasonable time, in response to a~~
25 ~~written request by a person subject to any law, guideline, rule, or regulation concerning the~~
26 ~~application of any law, guideline, rule, or regulation within the committee's jurisdiction to a specific~~
27 ~~factual situation pertinent to the conduct or proposed conduct of the person seeking the advisory~~
28 ~~opinion. Any advisory opinion concerning any person subject to the provisions of this subdivision~~
29 ~~who acted in reliance thereon, shall be binding upon the committee, and it shall be an absolute~~
30 ~~defense in any complaint brought under this subdivision or prosecution under RSA 15-A or RSA 15-~~
31 ~~B that the person complained against acted in reliance upon such advisory opinion. The name of~~
32 ~~the person seeking an advisory opinion and any information in the opinion that would identify such~~
33 ~~person shall be nonpublic. A redacted version of the advisory opinion shall be public]~~ *opinions in*
34 *accordance with RSA 21-G:31-a.*

35 (d) Receive sworn complaints, investigate allegations of violations of this subdivision [~~or~~
36 ~~guidelines adopted thereunder~~] by executive branch officials *or classified employees* and make
37 appropriate findings of fact and conclusions with respect to such conduct.

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1 (e) Investigate any unauthorized disclosure of information by any committee member or
2 assistant and report to the appropriate authority any allegation which it finds to be substantiated.

3 11 Complaints; Subpoena Powers. Amend RSA 21-G:31, VI to read as follows:

4 VI. In proceedings under this subdivision, the committee shall have the power to issue
5 subpoenas and administer oaths. ***Such subpoena powers may be exercised for the committee***
6 ***by the chairperson or legal counsel to the committee. The fees for witnesses shall be***
7 ***consistent with RSA 516:16 and shall be borne by the committee or the party requesting the***
8 ***subpoena.***

9 12 New Sections; Advisory Opinions; Interpretive Rulings. Amend RSA 21-G by inserting after
10 section 31 the following new sections:

11 21-G:31-a Advisory Opinions; Procedure.

12 I. Any executive branch official or classified employee may request, in writing, an advisory
13 opinion regarding the application of any law, guideline, or rule within the committee's jurisdiction
14 to a specific factual situation pertinent to the requester's conduct or proposed conduct.
15 Notwithstanding any other provision of law, all proceedings, information, communications,
16 materials, papers, files, and transcripts, written or oral, received or developed by the committee in
17 the course of its work in response to a request for an advisory opinion, except for the opinion itself,
18 shall be confidential. The advisory opinion shall be made public but the name of the person seeking
19 the opinion and any information in the opinion that would identify such person shall be nonpublic.

20 II. Any advisory opinion concerning any person subject to the provisions of this subdivision
21 who acted in reliance thereon, shall be binding upon the committee, and it shall be an absolute
22 defense in any complaint brought under this subdivision or prosecution under RSA 15-A or RSA 15-
23 B that the person complained against acted in reliance upon such advisory opinion.

24 21-G:31-b Interpretive Rulings; Procedure. The committee may initiate or any person may
25 request an interpretive ruling explaining or clarifying a law, guideline, or rule of general
26 applicability within the committee's jurisdiction. If the committee determines that a requested
27 interpretive ruling will be helpful to those individuals under the committee's jurisdiction, it shall
28 take up the request in public, receive testimony and other information that it deems helpful on the
29 issue, and render a public ruling.

30 13 Rules; Procedures. Amend RSA 21-G:32 to read as follows:

31 21-G:32 Rules; Procedures and Standards. The committee shall adopt, publish, and make
32 available to the public rules governing its procedures, including provisions for disqualification of
33 members for conflict of interest and provisions for the committee to discipline its members for
34 breach of committee procedures, ~~[as well as guidelines referred to in RSA 21-G:30, I,]~~ consistent
35 with the procedures set forth in RSA 541-A.

36 14 Effective Date. This act shall take effect 60 days after its passage.

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AMENDED ANALYSIS

This bill clarifies the application of the executive branch code of ethics to executive branch officials and classified employees, removes certain restrictions on appointment of members of the executive branch ethics committee, and modifies procedures of the committee.