November 4, 1998

No. 68

STATE OF NEW HAMPSHIRE

Legislative

SENATE CALENDAR

MEETINGS AND NOTICES

LAID ON TABLE

HB 1280-L, clarifying the procedures for background criminal checks for school employees and volunteers.

MEETINGS

THURSDAY, NOVEMBER 5, 1998

ADEQUATE EDUCATION COSTS AND MUNICIPALITY GRANT DISTRIBUTION COMMISSION (SB 462, Chapter 267:2, 1998) Room 102, LOB

10:00 a.m. Regular Meeting

- **PLEASE NOTE THE FOLLOWING MEETING IS RESCHEDULED FROM OCTOBER 28**

NEW HAMPSHIRE CONSTITUTION, PART 2ND. ART. 41, 72-a & 73-a, ADOPTION (HB 1338, Chapter 330:1, 1998) Room 208, LOB

10:00 a.m. Regular Meeting

FRIDAY, NOVEMBER 6, 1998

- **PLEASE NOTE THE FOLLOWING MEETING IS RESCHEDULED FROM OCTOBER 28.**

DISTRICT COURT EVENING SESSIONS (HB 734, Chapter 29, 1998) Room 208, LOB

10:00 a.m. Regular Meeting

OSTEOPOROSIS EDUCATION AND ADVISORY COUNCIL (RSA 126-I:3), Room 103, LOB

10:00 a.m. Regular Meeting

- **PLEASE NOTE THE FOLLOWING MEETING TIME HAS BEEN CHANGED.**

CHILD AND FAMILY RESOURCE GROUP (SB 360, Chapter 122:2, 1998) Room 308, LOB

11:00 a.m. Regular Meeting

Monday, NOVEMBER 9, 1998

PERINATAL ALCOHOL, TOBACCO, AND OTHER DRUG USE TASK FORCE (RSA 132:19) Room 101, LOB

9:00 a.m. Meeting

- **PLEASE NOTE THE FOLLOWING MEETING WAS RESCHEDULED FROM OCTOBER 28TH.**

LEGISLATIVE PERFORMANCE AUDIT AND OVERSIGHT COMMITTEE (RSA 17-N:1) Room 103, SH

10:00 a.m. Meeting

THE DEPARTMENT OF TRANSPORTATION Newington Town Hall, Newington

6:00-9:00 p.m. Open House (Route 16 Corridor Study)

TUESDAY, NOVEMBER 10, 1998

PHARMACEUTICAL ASSISTANCE FOR THE ELDERLY STUDY COMMITTEE (SB 507, Chapter 221:2, 1998) Room 102, LOB

9:00 a.m. Regular Meeting

LONG RANGE CAPITAL PLANNING AND UTILIZATION COMMITTEE (RSA 17-m:1) **AND THE SKYHAVEN AIRPORT COMMISSION** (RSA 422:47) Room 201, LOB

9:30 a.m. Subcommittee Only: Skyhaven Airport

STATE SUBSTANCE ABUSE TREATMENT DELIVERY STUDY COMMITTEE (HB 1174, Chapter 247:1, 1998) Room 102, LOB

1:30 p.m. Regular Meeting

NATURAL, CULTURAL AND HISTORIC RESOURCE CONSERVATION COMMISSION (SB 493, Chapter 161:2, 1998) Room 306, LOB

2:00 p.m. Regular Meeting

NEW HAMPSHIRE COMMISSION ON THE SMITHSONIAN FESTIVAL OF AMERICAN FOLKLIFE (SJR 20, Chapter 204, 1996), Room 307, LOB

3:00 p.m. Meeting

THE DEPARTMENT OF TRANSPORTATION Woodsville Emergency Services Building, Rout 10, Woodsville

7:00 p.m. Public Informational Meeting (Rehabilitate US Route 302 Bridge)

THURSDAY, NOVEMBER 12, 1998

- **Please note the ADEQUATE EDUCATION COSTS AND MUNICIPALITY GRANT DISTRIBUTION COMMISSION has been RESCHEDULED to november 13.**

NEW HAMPSHIRE CONSERVATION NUMBER PLATE ADVISORY COMMITTEE (RSA 261:97-D) Room 203, LOB

9:00 a.m. Regular Meeting

WINNIPESAUKEE RIVER WATERSHED ADVISORY COMMITTEE (RSA 483-D:2) Room 105A, SH

1:00 p.m. Regular Meeting

DEVELOPMENTAL DISABILITY WAITLIST FUND ALLOCATION OVERSIGHT COMMITTEE (RSA 171-A:1-B) St. James United Methodist Church, Daniel Webster Highway, Merrimack

6:30 p.m. Public Hearing

FRIDAY, NOVEMBER 13, 1998

ADEQUATE EDUCATION COSTS AND MUNICIPALITY GRANT DISTRIBUTION COMMISSION (SB 462, Chapter 267:2, 1998) Room 102, LOB

9:00 a.m. Regular Meeting

JOINT LEGISLATIVE COMMITTEE ON ADMINISTRATIVE RULES (RSA 541-A:2), Room 103, SH

9:00 a.m. Special Meeting

- **PLEASE NOTE THE FOLLOWING MEETING HAS A ROOM CHANGE**

NEW HAMPSHIRE COLLEGE TUITION SAVINGS PLAN (RSA 195-H:2) Offices of Rath, Pignatelli, and Young

9:00 a.m. Commission Meeting

WORKER'S COMPENSATION ADVISORY COUNCIL (RSA 281-A:62) Room 105A, SH

9:00 a.m. Regular Meeting

MONDAY, NOVEMBER 16, 1998

VICTIMS ASSISTANCE SUBCOMMITTEE OF THE GOVERNOR'S COMMISSION ON DOMESTIC VIOLENCE Room 103, LOB

9:30 a.m. Meeting

TUESDAY, NOVEMBER 17, 1998

Foster care system task force (SB 346, Chapter 277:1, 1998) Room 308, LOB

2:00 p.m. Regular Meeting

NATURAL, HISTORIC RESOURCE CONSERVATION COMMISSION (SB 493, Chapter 161:2, 1998) Room 208, LOB

2:00 p.m. Regular Meeting

THE DEPARTMENT OF TRANSPORTATION Four Points Sheraton, North Conway

6:00-9:00 p.m. Open House (Route 16 Corridor Study)

WEDNESDAY, NOVEMBER 18, 1998

FISCAL COMMITTEE OF THE GENERAL COURT (RSA 14:30-a,I) Room 210-211, LOB

9:00 a.m. Regular Business

9:30 a.m. Audit: Office of the Governor, Office of State Planning

SPECIAL EDUCATION COMMISSION (SB 462, Chapter 267:2, 1998) Room 102, LOB

10:00 a.m. Regular Meeting

HEALTH EDUCATION REVIEW (RSA 186:67-a) Room 207, LOB

3:30 p.m. Regular Meeting

THE DEPARTMENT OF TRANSPORTATION Runnells Hall, Chocorua

6:00-9:00 p.m. Open House (Route 16 Corridor Study)

THE DEPARTMENT OF TRANSPORTATION, Community Room, Municipal Building, 26 Railroad Street, Charlestown

7:00 p.m. Public Informational/Officials Meeting

THURSDAY, NOVEMBER 19, 1998

BOARD OF MANUFACTURED HOUSING (RSA 205-A:25) Room 101, LOB

1:00 p.m. Complaint Hearing

THE DEPARTMENT OF TRANSPORTATION Birches Restaurant, Gorham

7:00 p.m. Open House (Route 16 Corridor Study)

FRIDAY, NOVEMBER 20, 1998

JOINT LEGISLATIVE COMMITTEE ON ADMINISTRATIVE RULES (RSA 541-A:2), Rooms 306-308, LOB

9:00 a.m. Regular Meeting

OIL FUND DISBURSEMENT BOARD (RSA 146-D:4) Room 305, LOB

9:30 a.m. Regular Meeting

TUESDAY, NOVEMBER 24, 1998

ELECTRIC RATE REDUCTION FINANCING STUDY COMMITTEE (HB 651, Chapter 263:1, 1998) Room 304, LOB

10:00 a.m. Regular Meeting

Monday, NOVEMBER 30, 1998

OIL FUND DISBURSEMENT BOARD (RSA 146-D:4) Room 305, LOB

9:30 a.m. Regular Meeting

TUESDAY, DECEMBER 1, 1998

NATURAL, HISTORIC RESOURCE CONSERVATION COMMISSION (SB 493, Chapter 161:2, 1998) Room 306-308, LOB

2:00 p.m. Regular Meeting

New HAMPSHIRE commission on the Smithsonian festival of American FOLKLIFE (SJR 20, Chapter 204, 1996), Room 307, LOB

3:00 p.m. Regular Meeting

WEDNESDAY, DECEMBER 2, 1998

THE DEPARTMENT OF TRANSPORTATION Plymouth Town Hall, 6 Post Office Square, Plymouth

6:30 p.m. Public Informational Meeting (Smith Bridge Road)

THURSDAY, DECEMBER 3, 1998

CURRENT USE BOARD (RSA 79-A:3) Room 301-303, LOB

10:00 a.m. Hearings and Regular Meeting

1:00 p.m. Annual Board Meeting

THE DEPARTMENT OF TRANSPORTATION Londonderry Square, 50 Nashua Road, Londonderry

7:00 p.m. Public Selectmen Hearing

FRIDAY, DECEMBER 4, 1998

OSTEOPOROSIS EDUCATION AND ADVISORY COUNCIL (RSA 126-I:3), Room 103, LOB

10:00 a.m. Regular Meeting

Monday, december 7, 1998

BOARD OF MANUFACTURED HOUSING (RSA 205-A:25) Room 201, LOB

1:00 p.m. Complaint Hearing

FRIDAY, DECEMBER 11, 1998

BOARD OF CLAIMS (RSA 541-B:3), Room 202, LOB

9:00 a.m. Quarterly Meeting

NUCLEAR DECOMMISSIONING FINANCING COMMITTEE (RSA 91-A:2) Room 305-307, LOB

9:00 a.m. Meeting (The Purpose Of This Hearing is to Hear Testimony Concerning The Proposal Of The Joint Owners Concerning Funding Presented At The Last Hearing And, To The Extent Time Allows, To Meet With Legal Counsel To Discuss The Issues That Are Pending)

MONDAY, DECEMBER 14,1998

PERINATAL ALCOHOL, TOBACCO, AND OTHER DRUG USE TASK FORCE (RSA 132:19) Room 101, LOB

9:00 a.m. Meeting

Public water access advisory board (RSA 233-A:2,I), Department of Fish and Game, Director's Conference Room, Concord

10:00-12:00 p.m. Meeting

FRIDAY, DECEMBER 18, 1998

JOINT LEGISLATIVE COMMITTEE ON ADMINISTRATIVE RULES (RSA 541-A:2), Rooms 306-308, LOB

9:00 a.m. Regular Meeting

NOTICES

The Legislators for Limited Spending Will Meet Tuesday, November 10, 1998, at 9:00 a.m. at the Upham Walker House

Senator Carl Johnson

NOTICE

LEGISLATIVE ETHICS COMMITTEE

The Legislative Ethics Committee will hold a public hearing on Tuesday, October 6, 1998, at 9:00 a.m., in Room 304, LOB to receive input on a proposed Advisory Opinion. The proposed Advisory Opinion is printed below in its entirety.

Representative Jeb E. Bradley, Chairman

Senator Richard L. Russman, Vice-Chairman

Senator John A. King

Representative Sarah K. Bonneau

Shawn N. Jasper

Peter C. Scott

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ADVISORY OPINION 1998 - #2

(October 6, 1998)

The Legislative Ethics Committee received and reviewed a request for an Advisory Opinion to provide guidance for legislators for complying with the financial disclosure and conflict of interest disclosure provisions of the Ethics Guidelines.

Ethics Guidelines Section 3, Legislator's Financial Disclosure Form, requires every legislator to file a Financial Disclosure Form with the Office of the Secretary of State on or before January 31 of each year. The form consists of two sections. Completion of Section 1 of the form, which requires a legislator to identify sources of income in excess of $10,000 during the preceding calendar year, is mandatory. Completion of Section 2 of the form, which affords a legislator the opportunity to disclose and describe any financial interest that the legislator or legislator's spouse may have in certain businesses, professions, occupations, groups, or matters, is optional. Section 2 of the form is intended to eliminate the requirement in most circumstances for a legislator to file a specific Declaration of Intent Form, as provided in Ethics Guidelines Section 5, at the time of participation in any official activity in which a legislator has a potential conflict of interest.

Conflicts of interest, as defined for legislators in Ethics Guidelines Section 2, exist when a legislator's participation in any legislative activity has a direct material financial effect upon the legislator, or the legislator's spouse, which is distinguishable from its effect upon the general public. 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 procedure.

There are three ways for a legislator to comply with the disclosure provisions of the Ethics Guidelines.

Option #1: Completion of Section 2 of the Legislator's Financial Disclosure Form. The so-called "checklist" allows a general disclosure of a legislator's financial interests in certain issues likely to come before the General Court. Although disclosure of financial interests on the checklist would satisfy the Ethics Guidelines' disclosure requirements in most circumstances, it will not relieve a legislator from the requirement of filing a specific Declaration of Intent Form if a legislator's participation in pending legislation or other official activities could reasonably be expected to result in any benefit that is either: (1) limited to the legislator or the legislator's spouse (or a small group which includes the legislator or the legislator's spouse); or (2) of a significantly greater magnitude than would result to other individuals with similar financial interests. In such cases, the legislator must choose either Option #2 or Option #3.

Option #2: Filing a Declaration of Intent Form and indicating "I will participate." When a legislator becomes aware that participation in an official activity could reasonably be expected to result in any benefit that is either limited to the legislator or the legislator's spouse (or a small group which includes the legislator or the legislator's spouse) or is of a significantly greater magnitude than would result to other individuals with similar financial interests, the legislator must file a Declaration of Intent Form. On the form, a legislator may elect to declare an intention to participate in the activity but must detail the nature of the conflict of interest in order to do so. Use of the Declaration of Intent Form is also required for disclosure of any conflicts of interest which have occurred subsequent to filing the checklist form in January of the current year.

Option #3: Filing a Declaration of Intent Form and indicating "I will not participate." When a legislator becomes aware that participation in an official activity could reasonably be expected to result in any benefit that is either limited to the legislator or the legislator's spouse (or a small group which includes the legislator or the legislator's spouse) or is of a significantly greater magnitude than would result to other individuals with similar financial interests, the legislator must file a Declaration of Intent Form and may elect to abstain from participation in any activity relating to the issue. The decision to participate or not to participate is solely that of each individual legislator. The greater the perceived financial benefit is to the legislator, however, the more seriously the legislator may want to consider electing not to participate.

The Committee believes that the following hypothetical examples may be helpful in understanding the conflict of interest disclosure procedure and choosing an appropriate disclosure option:

1. The legislator owns a restaurant and has disclosed this financial interest by checking the box in checklist category "(i) restaurants and lodging" and writing on the line below "My wife and I own a restaurant." There is a bill before the legislature to raise the Rooms & Meals Tax generally. The legislator is not required to file a specific Declaration of Intent Form before voting on or participating in any official activity relating to the bill because the legislator's generic disclosure on the checklist adequately covers this legislation which is of a general nature.

2. The legislator is a lawyer and a partner/owner of a two-person law firm. The legislature is considering one bill relating to the Business Enterprise Tax and another relating to the regulation of lawyers. The legislator has disclosed the financial interest in checklist categories: "(k) the practice of law," and "(q) New HAMPSHIRE Taxes: Business Enterprise Tax." As in the example above, no filing of a specific Declaration of Intent Form is required because these generic disclosures on the checklist adequately cover these general pieces of legislation.
3. The legislator is a member or beneficiary of the New HAMPSHIRE Retirement System and has disclosed this financial interest in checklist category "(g) the New HAMPSHIRE Retirement System." Advisory Opinion 1992 - #3 and this opinion hold that membership in or receiving a benefit from the System constitutes a conflict of interest with respect to any proposed legislation, or other official activity, which would affect the amount or timing of benefits payable by the System to the legislator or the legislator's spouse or the amount or timing of contributions required to be made to the System by the legislator or the legislator's spouse. 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, the legislator's disclosure of membership in or being a beneficiary of the System on the checklist would satisfy the requirements of the Ethics Guidelines' disclosure provisions in this example. Although not required, the legislator may elect to file a Declaration of Intent Form and declare an intention to participate or not participate. The greater the perceived financial benefit is to the legislator, the more seriously the legislator may want to consider choosing these options.

4. The legislator owns land subject to current use assessment. Advisory Opinion 1996 - #1 has previously held that the current use tax system constitutes a financial interest, and therefore a potential conflict of interest, with respect to any official activity pertaining to the tax. The legislature is considering a bill to change the definition of open space land and the method used to assess it. This bill would potentially affect the financial benefit of current use land ownership for every owner of land in current use. The legislator has disclosed the ownership of land in current use by checking the box in checklist category "(h) the current use land assessment program" and writing on the line below "I own 25 acres in current use." This disclosure would be sufficient in most cases given the large number of individuals in the state owning land subject to current use assessment and the probability that the financial benefit or detriment of the bill would affect all such landowners similarly. As in the example above, the legislator may elect to file a Declaration of Intent Form and declare an intention to participate or not participate. The greater the perceived financial benefit is to the legislator, the more seriously the legislator may want to consider choosing these options.

5. The legislator is an attorney who represents an electric utility. The legislature is considering one bill relating to the Public Utilities Commission and another relating to the regulation of electric utilities. The legislator has disclosed the financial interest in checklist category "(k) the practice of law." This disclosure would be sufficient if the legislator receives very little income from the utility. If, however, the legislator receives a significant income from the utility, the legislator must in addition either: (1) check checklist category "(l) any business regulated by the Public Utilities Commission" and disclose the name of the utility; or (2) file a specific Declaration of Intent Form for each of the two bills. As a practical matter, the legislator may not want to disclose on the checklist the names of all businesses with whom the legislator deals. Accordingly, the usual and preferred course would be to file a Declaration of Intent Form as the need arises. In some circumstances, the legislator may consider declining to participate, depending on the nature of the legislator's relationship with the utility, the amount of income generated, and the terms of the legislation.

6. 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. The legislator in this example must also file a specific Declaration of Intent Form and declare an intention to participate or not participate.

7. The legislator is not a developer or professional Realtor and therefore has not made any disclosure in checklist category "(d)" or elsewhere on the checklist regarding a parcel of land owned by the legislator. The bill referenced in the above example would affect the value of this legislator's land. The legislator in this example must file a specific Declaration of Intent Form and declare an intention to participate or not participate.

8. The legislator has an ownership interest in a hotel and makes disclosure of such in checklist category "(i) restaurants and lodging." There is a bill to allow video gambling in a few specific hotels, including the legislator's. Although the legislator has disclosed ownership in a hotel, the legislator could reasonably be expected to financially benefit from the bill in a way that only a few other individuals in the state would. The legislator must file a specific Declaration of Intent Form and declare whether the legislator will participate or will not participate.

9. The legislator's spouse is a teacher in the state's public school system. The legislator could have elected to disclose this financial interest by checking checklist category "(n) education" and writing on the line below "My wife/husband is a public school teacher." Instead the legislator has chosen not to complete the optional checklist section of the Legislator's Financial Disclosure Form. There is a bill relating to teacher tenure. Because the legislator has made no disclosure of this financial interest, the legislator must file a specific

Declaration of Intent Form and declare an intention to participate or not participate before voting on or participating in any official activity relating to this bill.

In adopting the Ethics Guidelines, the General Court has sought to balance the need of the public to know when a member may have a conflict of interest with the goal of providing a disclosure process that is clear and uncomplicated for members to use. The Committee recognizes that the application of any guideline to individual circumstances may pose questions not easily addressed in an advisory opinion which is general in nature. The Committee is available to provide advice with respect to specific situations as they arise.

October 29, 1998 State of New HAMPSHIRE LTSR140

The members listed below have bills ready for signature

in Legislative Services.

Richard E. Amidon, Director

SPONSOR DISTRICT LSR NUMBER

Hollingworth, Beverly 23 1999-S-0107-R

Johnson, Carl 03 1999-H-0070-R

Johnson, Carl 03 1999-H-0123-R

King, Frederick 01 1999-H-0084-R

King, Frederick 01 1999-H-0085-L

Wheeler, David 11 1999-H-0038-R