

## **Executive Council Meeting Report**

Meeting of December 5, 2018

### A. Lame Duck Nominations

The Governor submitted a number of nominations designed to take advantage of the lame duck Council that has a 3-2 Republican majority. The new Council will be sworn in on January 3, 2019. Two of these nominations appear to be designed to pack the Site Evaluation Committee (SEC) so that it will be friendlier to the Northern Pass Project if the matter is remanded by the New Hampshire Supreme Court back to the SEC.<sup>1</sup> A third nomination, involving a trial judgeship, was also problematic.

#### SEC Nominee Geoffrey Mitchell

The Executive Council rejected the Governor's nomination of Geoffrey Mitchell to the SEC by a 3-2 vote. Councilors Kenney, Pappas and I opposed the nomination. Councilor Wheeler supported the nominee. Councilor Prescott so strongly supported the nominee that he moved to have a public hearing so that the Council could meet the nominee. I had already spoken with Mr. Mitchell at some length and learned that he was encouraged to apply for the nomination by the Governor's brother, Michael Sununu, and that he has lifelong experience working as an engineering consultant for developers of large energy projects of the kind that come before the SEC for approval. Although Mr. Mitchell is semi-retired, he continues to work for the industry.

#### SEC Nominee Michael Vose

The Governor nominated former Representative Michael Vose on December 5, 2018. The Council will vote on his nomination on December 19, 2018. I have interviewed Mr. Vose. He informed me that the scientific community has not reached consensus on the human causation of climate change. He also informed me that the EPA has cleared fracking of environmental concerns. Finally, he claimed not to have taken a position with respect to the Northern Pass Project, but he stated support for the project in a 2016 political survey.

#### Judicial Nominee Daniel St. Hilaire

Finally, the Council voted 3-2 in support of the judicial nomination of Daniel St. Hilaire for the Superior Court. Councilor Pappas and I voted against the nomination. Mr. St. Hilaire was the District Two Executive Councilor in 2011 and provided the deciding vote to defund Planned Parenthood which

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<sup>1</sup> As I mentioned on the record at the December 5, 2018 Council meeting, I now represent an intervenor on the Northern Pass Project before the New Hampshire Supreme Court. As I am ethically prohibited from appearing before the Site Evaluation Committee, and will not do so, I do not believe I must recuse myself from voting on nominees.

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could have deprived 14,000 New Hampshire patients of their medical care. St. Hilaire also joined a lawsuit against Planned Parenthood later that fall. The Alliance Defending Freedom, formerly, the Alliance Defense Fund, organized the legal action against Planned Parenthood as part of its nationwide legal strategy to oppose women's reproductive rights. Mr. St. Hilaire, unlike any sitting trial court judge, also was disciplined for ethics violations as a lawyer. His discipline was issued in 2015 for not addressing a conflict of interest between concurrent clients and not keeping clients well-informed about their case. Mr. St. Hilaire has virtually no experience as a civil lawyer and has never tried a civil jury trial. As I asked the nominee at his public hearing, the question remains; is Mr. St. Hilaire the best we can do for our court system and litigants in New Hampshire? The New Hampshire Bar Association was unable to determine if Mr. St. Hilaire was qualified to become a judge because the Bar was given too little notice of his nomination.

B. Breakfast at the New Hampshire Center for Non-Profits in Concord.

Councilor Kenney hosted the breakfast meeting on December 5<sup>th</sup> at the Center for Non-profits. Kathleen Reardon, the Center director, and her staff discussed the state of non-profits in New Hampshire. Non-profits fulfill a vital role in New Hampshire providing services and advocating for social service interests and for the arts and culture. The non-profit sector also employs one in seven workers in New Hampshire, mostly in educational institutions and in hospitals. The presentation led to a good discussion about streamlining interactions between non-profit service providers and the state and fairly compensating those providers. I am also to follow-up with Attorney General MacDonald to develop a letter to municipalities to alert them to the importance of good governance on non-profit boards to prevent financial catastrophes that undermine social safety nets.

C. Agenda Items of Interest

Amendments to the Mt. Sunapee Lease (STILL KICKING)

The Sunapee Difference previously closed a sale of its leasehold interest and operating agreement to a subsidiary of Vail Ski Resorts. As part of the approval process for the transfer, Vail agreed to three lease amendments that also required approval by the Executive Council. The three amendments were presented as a single item to the Council which would have required an up or down vote on all three amendments together. I asked that the matter be removed and returned to the Council as three separate items so that each amendment would receive separate consideration. Councilor Prescott requested further briefing on the three amendments. The first amendment concerns the closing of a loop hole in the lease that allowed the Sunapee Difference to transfer the lease to a hedge fund known as Och Ziff without state

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approval. The second amendment concerns permission to extend the ski area into the West Bowl. The third amendment concerns the formation of a citizens advisory commission for the operation of the Mt. Sunapee park and ski area.

The amendments were not ready in time to be published with the rest of the Agenda items for our meeting. Indeed, they were not published at all. I asked to delay the vote for one meeting to give the public access to the amendments and the Council agreed.

#### Capital Region Development Council (CRDC) Line of Credit

The Council approved a \$500,000 line of credit from the Business Finance Authority to the CRDC to be used for economic development projects in the Concord, Newport and Claremont areas.

#### Substance Abuse Treatment Monies

The Council approved two series of contracts for substance abuse treatment. First, the Council approved a series of vendor contracts totaling \$1,125,710 to provide medically assisted treatment. These contracts were 100% federally funded. Second, the Council approved a series of contracts to eight vendors totaling \$8,278,098 to provide substance abuse treatment and recovery support service across the state. These contracts were 69% federally funded.

#### Liquor Commission Supply Chain Contract

The Council approved an extension of the contract between the Liquor Commission/State and DHL Supply Chain Americas for transportation services for five years. The contract is now in place until January 31, 2024.

#### Department of Natural and Cultural Resources Grants

The Council approved two modest grants of less than \$15,000 for arts and cultural organizations. The grant recipients were: the Arts Alliance of Northern NH and the Prescott Park Arts Festival.

#### Drinking Water and Groundwater Trust Funds

The Council approved the expenditure of \$24 million in expenditures during FY 2019 from the Drinking Water and Groundwater Trust Funds.

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### Purchase of Lottery Building

By a 4-1 vote, the Council approved the state's purchase of the building on Integra Drive in Concord in which the NH Lottery is located for \$2,975,000. I opposed the purchase because I am concerned about the very independent operation of so-called enterprise agencies that support themselves and wield power over the Governor and legislature due to their financial contributions to the state budget. The purchase of this building further insulates the Lottery Commission from careful state oversight. (The State Liquor Commission in another enterprise agency and the Office of the Secretary of State has some of the same features and raises the same concerns.)

### Pardon Request for Joe Barton and Hearing on Pardon Request

The Council approved a hearing for Mr. Joe Barton's pardon request. The hearing occurred on December 10<sup>th</sup>. Mr. Barton seeks a pardon from his conviction for resisting arrest when he attempted to interfere with voting at the Newmarket polling place in 2014. Mr. Barton testified that he was wrongfully convicted and his conviction on appeal was upheld in error. He claims that the Department of Justice investigator who arrested him was motivated by a connection to the Democratic Party. When I asked for evidence to support this accusation, Mr. Barton could not provide any. He also made claims of police abuse against the investigator. Unfortunately, the Department of Justice made no effort to refute these allegations. The Newmarket Police Department sent a letter in opposition to the pardon. As a pardon is an extraordinary event, I do not believe this petition meets the required standards. The vote on the pardon will occur at the December 19<sup>th</sup> meeting.

### D. Nominations and Confirmations

The following persons were nominated on 12/5/2018

Board of Psychologists, Klaran W. Warner, Grantham, NH

Compensation Appeals Board, Timothy S. Wheelock, Portsmouth, NH

Current Use Advisory Board, Charles H. Souther, Concord, NH

Division of Ports and Harbors Advisory Council, Christopher D. Holt, Stratham, NH

Medial Review Subcommittee, Lisa A. Patterson, Winchester, NH

Manufactured Housing Installation Standards Board, Gary Francoeur, Hudson, NH and John T. Flanders, II

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New Hampshire State Council on the Arts, Catherine V. Sununu, Exeter, NH

Passenger Tramway Safety Board, Robert Hoyt, Freedom, NH

Real Estate Appraisers Board, Justin K. Macagba, New Boston, NH

State Committee on Aging, Daniel A. Marcek, Brookline, NH

State Commission for Human Rights, Nancy G. LeRoy, Laconia, NH

The following persons were confirmed on 12/5/2018

Board of Licensure of Interpreters for the Deaf and Hard of Hearing, Lori M. Johnstone, Auburn, NH

Current Use Advisory Board, Thomas N. Thomson, Orford, NH

Director Division of Personnel, DAS, Lorrie A. Rudis, Merrimack, NH

Family Mediator Certification Board, Erin P. Jasina, Hampton, NH

Justice, New Hampshire Circuit Court, Kerry P. Steckowych, Goffstown, NH

Justice, New Hampshire Superior Court, Daniel I. St. Hilaire, Concord, NH

Mechanical Licensing Board, Steven Guercia, Concord, NH

New Hampshire State Council on the Arts, Timothy G. Sink, Concord, NH and  
William H. Stelling, Manchester, NH

New Hampshire Transportation Council, Cosema E. Crawford, Berkeley  
Heights, NJ

Site Evaluation Committee, George I. Kassas, Salem, NH

Waste Management Council, Daniel P. Sweet, Kensington, NH

#### E. Spotlight

##### \$15 an Hour

At my request, the state's agencies began reporting the lowest rates of compensation paid by state vendors to their employees on the contracts in question. For this meeting no compensation amounts were reported.

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F. Next Meeting

Our next regularly scheduled Executive Council meeting will occur on December 19, 2018. The meeting will begin at 10 a.m. at Council Chambers in Concord. The agenda for the meeting will be posted by the Secretary of State on the Executive Council web page late on the preceding Friday afternoon.  
<http://sos.nh.gov/GC2.aspx>

The Governor will host the Council breakfast which the public may attend. It will be held at the Bridges House on Mountain Road in Concord, beginning at 8:00 a.m.

G. Items of Interest to District Two, by Region

Region 1-Monadnock Region

*Division of Public Health Services*

[#16](#) Authorized to enter into an agreement with Keene State College, Keene, NH, to provide physical activity and nutrition assessment in child care programs and public schools, in an amount not to exceed \$280,000. Effective upon G&C approval through June 30, 2022. **100% Federal Funds. VOTE: UNANAMOUS**

*Bureau of Drug and Alcohol Services, DHHS*

[#21](#) Authorized to enter into sole source agreements with the vendors as detailed in letter dated September 28, 2018, to provide Student Assistance Program services, in an amount not to exceed \$191,470. Effective upon G&C approval through June 30, 2019. 98.63% Federal, 1.37% General Funds. **VOTE: UNANAMOUS**

Region 2-Merrimack County

**BUSINESS FINANCE AUTHORITY**

[#6](#) Authorized to hold a Public Hearing with respect to the financing of a loan to Capital Regional Development Council located in Concord, NH. Action will Authorized a Resolution under RSA 162-A:18 to determine the financing will serve a public use, provide public benefit and is within the policy and authority of the Act. **VOTE: UNANAMOUS**

*Division of Public Health Services, DHHS*

[#18](#) Authorized to enter into an agreement with JSI Research and Training Institute Inc., d/b/a Community Health Institute, Bow, NH, to conduct a statewide primary care needs assessment in an amount not to exceed \$63,760. Effective upon G&C approval through June 30, 2020. **100% General Funds. VOTE: UNANAMOUS**

*Bureau of Drug and Alcohol Services, DHHS*

[#20](#) Authorized to enter into a **sole source** amendment to an existing contract with JSI Research & Training Institute d/b/a Community Health Institute, Bow, NH (originally approved

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by G&C on 10-17-18, item #6), for the coordination of services provided to the NH Alcohol and Other Drug Continuum of Care System, by increasing the price by \$1,450,000 from \$3,400,734 to an amount not to exceed \$4,850,734. Effective upon G&C approval through the original completion date of June 30, 2020. **45.22% Federal, 16.67% General, 38.11% Other Funds. VOTE: UNANAMOUS**

#### **DEPARTMENT OF TRANSPORTATION**

[#29](#) Authorized the Bureau of Planning and Community Assistance to amend an agreement with the Town of Northfield sub-recipient (originally approved by G&C on 10-29-14, item #25), to provide funding and services under the State Highway Aid Program and State Bridge Aid Program through a Local Project Administration process, by increasing the amount by \$2,300,000 from \$200,000 to \$2,500,000. Effective upon G&C approval through June 30, 2021. **78% Highway, 22% Agency Income (Town Share). VOTE: UNANAMOUS**

[#30](#) Authorized the Bureau of Planning and Community Assistance to enter into a contract with the Central NH Regional Planning Commission, Concord, NH, to provide Transportation Demand Management Services and Rideshare Coordination in the State of NH, in the amount of \$228,794. Effective upon G&C approval through December 31, 2021. **100% Federal Funds. VOTE: UNANAMOUS**

[#40](#) Authorized the Bureau of Construction to enter into a contract with The Gorman Group LLC, Albany, NY, for pavement preservation on I-93, beginning at Exit 20 in Tilton and extending northerly just south of Exit 22 in Sanbornton, on the basis of a low bid of \$2,129,987.50. (2)Further Authorized a contingency in the amount of \$106,499.38 for payment of latent conditions which may appear during the construction of the project. Effective upon G&C approval through August 23, 2019. **100% Federal Funds. VOTE: UNANAMOUS**

#### **DEPARTMENT OF NATURAL AND CULTURAL RESOURCES**

[#60](#) Authorized to acquire fee title to 33.40 +/- acres in the Town of Warner, NH, from Lawrence Tusoni at the fair market value of \$40,000. Effective upon G&C approval. **50% Federal, 50% Agency Income Funds. VOTE: UNANAMOUS**

#### Region 3-Strafford County

#### **DEPARTMENT OF TRANSPORTATION**

[#36](#) Authorized the Bureau of Construction to enter into a contract with Brox Industries Inc., Dracut, MA, for constructing a two-way left turn lane on NH 125 in Rochester, on the basis of a low bid of \$476,806.55. (2)Further Authorized a contingency in the amount of \$28,608.39 for payment of latent conditions which may appear during the construction of the project. Effective upon G&C approval through September 27, 2019. **100% Federal Funds. VOTE: UNANAMOUS**

#### **DEPARTMENT OF ENVIRONMENTAL SERVICES**

[#76](#) Authorized to enter into a **sole source** agreement with the University of NH, Durham, NH, in the amount of \$110,000 to complete the *Nutrient Pollution Implementation and Planning for UNH and other Great Bay Watershed Communities* project. Effective upon G&C approval

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through December 31, 2020. **100% Clean Water State Revolving Fund. VOTE:  
UNANAMOUS**