

Executive Council Meeting Report

Meeting April 11, 2018

Confirmation Hearings for Associate Justice Nominee Patrick Donovan and Commissioner of the Department of Natural and Cultural Resources nominee Sarah Crawford Stewart

The Council held back to back multi-hour confirmation hearings for these two nominees on April 6, 2018. Both were well respected in their fields and brought supportive witnesses to testify.

Councilor Kenney carefully questioned Ms. Stewart about the operations of the state parks and the preservation of public forests and lands. By her responses, it was clear that Ms. Stewart is a bright and creative individual with extensive political experience and strong volunteer work in the arts. However, she has only very limited knowledge and no experience in land or parks management. The Councilors came away from Ms. Stewart's hearing committed to vote for her, if the Governor agreed to reappoint and take out of holdover status, Director Phil Bryce of the Division of State Parks and Director Brad Simpkins of the Division of Forests and Lands. The Governor did re-nominate Directors Bryce and Simpkins and Ms. Stewart was approved. The Governor also agreed and did re-nominate Michael York as the state librarian.

Mr. Donovan is a solo practitioner practicing primarily civil and criminal litigation in Salem, New Hampshire. He is a former assistant attorney general under Kelly Ayotte and served a term as counsel to the New Hampshire House of Representatives. Mr. Donovan represented the state as second chair in the Claremont School Funding case where I was the lead lawyer for the school children who sued the state. We maintained a good relationship despite being adversaries. Mr. Donovan confirmed that the principles established in the Claremont cases are settled and he saw no reason to overturn them in the future.

Although Mr. Donovan has impressive experience as a trial lawyer, he has not volunteered his time to advance the interests of the law as have most other Supreme Court nominees. While this is not enough to disqualify him, it is a bit disappointing that Mr. Donovan was nominated despite the fact that he never volunteered his time to teach other lawyers or hold board or officer positions in any legally oriented organization, regardless of its political bent.

Andru Volinsky, Executive Councilor for District Two
andruvolinsky@gmail.com

A. Agenda Items of Note

Education Tuition Reimbursements

The Council approved education tuition reimbursement agreements for Health and Human Services employees 4-1, Councilor Wheeler dissenting. Each of the agreements was for less than \$2000.

Substance Abuse Treatment Grants Increased

The Council approved an increase in substance abuse treatment grants from \$20 million to \$21 million. The grants extend through June 30, 2018.

Department of Transportation Paving and Bridge Repair Contracts

The Council approved contracts to pave 620 miles of roads throughout the state. Red-listed bridges (approximately 140 of them) will be addressed slowly over the course of the Ten Year Plan with some bridges not being replaced or fully repaired for up to ten years.

Governor's Scholarship Program

The Council approved approximately \$4 million in college and vocational scholarship money by a 3-2 vote with Councilor Pappas and me dissenting. The vote came after a motion to table the matter for a few days was rejected by the same margin. I moved to delay the vote because the ACLU of New Hampshire forwarded a letter to the Council at the start of our meeting that questioned the constitutionality of the program because it gave scholarship allotments to religious colleges and universities in our state without any restrictions on how the schools could spend the money. The New Hampshire Constitution prohibits spending tax money to directly support religion. This protects both taxpayers who do not support spending state money on religious purposes and prevents the affairs of religious institutions from becoming entangled with state management. I wanted a formal opinion from the Attorney General that the program was constitutional as it was or suggestions on how to change the program to comply with the Constitution. The Governor was quite peeved with me daring to ask for even a brief delay and the delay was denied by the Republicans on the Council.

The Governor's Scholarship Program also fails to recognize the state's responsibilities to its own public schools. The program allocates \$160,000 to every four year school in the state and \$80,000 in scholarship money to every two year school. Dartmouth's allotment is the same as Keene State's, regardless of the need of the institution or the responsibility to fund state higher education (of which we are last in the nation). The program also does nothing to change the cost of college tuitions. Regardless of this program, New Hampshire will remain one of the most expensive places to attend college and our students will continue to maintain the highest debt load in the nation at approximately \$36,000/student on average. In my opinion, the program does

Andru Volinsky, Executive Councilor for District Two
andruvolinsky@gmail.com

nothing to move us closer to debt free college and may actually undermine the effort.

New Hampshire Higher Education Plan

Coincidentally, the Council approved, on this same agenda, amendments to an already existing state college scholarship plan called the UNIQUE college scholarship program which has a stable funding source related to fees derived from New Hampshire's 529 college savings plan. The UNIQUE program already has an administrative structure and distributes three times as many scholarships as the Governor's constitutionally infirm plan. The UNIQUE plan allots scholarship money to students and not to institutions.

Program to Take Polluting Diesel Trucks Off the Road Tabled

At the request of Councilor Wheeler, the Council tabled a vote on the acceptance of federal EPA grants to remove from use and to scrap older diesel trucks in service at the New Hampshire Department of Transportation. The vote was 3-2 with Councilor Pappas and me dissenting.

NH Lottery Lease Amendment

The Council approved a lease amendment to extend the lease of the NH Lottery at its current location. The lease includes a buyout provision, but the Director of the Lottery directly assured the Council that it could not be executed without a further hearing before the Governor and Council.

B. Nominations and Confirmations

The following nominees were confirmed:

Assistant Commissioner, Department of Revenue Administration
Carolyn J. Lear, Dunbarton

Associate Justice, NH Supreme Court
Patrick E. Donovan, Windham

Advisory Council on Unemployment Compensation
(Employees) Glenn Brackett, Northwood
(Employers) Kevin P. Sullivan, Hampton

Agricultural Advisory Board
(Petroleum Industry) Richard D. Davis, Epsom

Board of Optometry
Guy R. Lessard, Manchester

Board of Registration of Podiatrists
Matthew L. Burrell, Meredith

Andru Volinsky, Executive Councilor for District Two
andruvolinsky@gmail.com

Jennifer S. Sartori, Greenland

Current Use Advisory Board

(Representing assessing official in a city) Jonathan A. Rice, Bedford

Community Development Finance Authority

(Community Development Organizations) Robert W. Tourigny, Manchester

Commissioner, Department of Natural and Cultural Resources

Sarah L. Stewart, Manchester

Enhanced 911 Commission

(Rep. Mobile Telecommunications Carriers Industry) Patrick Robinson,
Manchester

Fish and Game Commission

(Coastal Commission Member) Paul G. McInnis, r, North Hampton

State Commission for Human Rights

Matthew P. Mayberry, Dover

State Veterans Council

Roger A. Sevigny, Dover

Volunteer New Hampshire Board of Directors

Jennifer Rainie, Concord

Water Council

(Agriculture) Charles Hardy, Hollis

Warden of the State Prison

Michelle T. Edmark, Campton

C. 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. The following contractors were approved with the pay scales noted:

DEPARTMENT OF CORRECTIONS

[#52](#) Authorize to **retroactively** enter into a **sole source** amendment with Worldwide Travel Staffing Limited, Tonawanda, NY (originally approved by G&C on 5-6-15, item #41), for the provision of retroactive Temporary Pharmacy

Andru Volinsky, Executive Councilor for District Two
andruvolinsky@gmail.com

staffing services for the NH Department of Corrections, by increasing the amount by \$146,602.50 from \$370,792 to \$517,394.50. Effective July 7, 2017 through June 30, 2018. Of the additional amendment amount \$80,602.50 for Temporary Pharmacy staffing services was already performed from July 7, 2017 until February 16, 2018. **100% General Funds. Unanimous.**
Lowest hourly wage reported for Worldwide Staffing - \$22.00

DEPARTMENT OF NATURAL AND CULTURAL RESOURCES

#55 Authorize the Division of Parks and Recreation to enter into a contract with Lee T. Corrigan LLC, Gorham, NH, to provide a new foundation for the new Ski Patrol Hut at Cannon Mountain Ski Area, in the amount of \$34,353. Effective upon G&C approval through June 17, 2018. **100% Capital Funds. Unanimous.**

Lee T. Corrigan LLC (Gorham, NH) reports the lowest paid wage (by contractor) is \$18/hr.

D. Next Meeting

Our next regularly scheduled Executive Council meeting will occur on May 2, 2018, , beginning at 10 a.m. in Council Chambers at the State House. 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>

Councilor Joseph Kenney will host the Council breakfast which anyone may attend. It will be held at the Police Standards and Training Council at the Technical Institute in Concord beginning at 8:00 a.m.

E. Items of Interest to District Two, by Region

Region 1-Monadnock Region

COMMUNITY DEVELOPMENT FINANCE AUTHORITY

#31 Authorize to award a grant to the City of Lebanon, NH, in the amount of \$400,000 to support the development of the affordable housing project known as Tracy Street situated in West Lebanon, NH. Effective April 11, 2018 through December 31, 2019. **100% Federal Funds. Unanimous.**

DEPARTMENT OF AGRICULTURE, MARKETS & FOOD

#43 Authorize the Division of Agricultural Development to enter into a grant with the Cheshire County Conservation District, Walpole, NH, in the amount of \$64,768 to create and conduct a program that promotes the use of reduced till/no-till planting practices for soil health to specialty crop farmers, a group that has not traditionally been exposed to these management

Andru Volinsky, Executive Councilor for District Two
andruvolinsky@gmail.com

systems. Effective upon G&C approval through September 29, 2020. **100% Federal Funds – Specialty Crop Block Grant. Unanimous.**

DEPARTMENT OF ENVIRONMENTAL SERVICES

[#72](#) Authorize to award a Local Source Water Protection grant to the City of Claremont, NH, in the amount of \$8,000 to complete a project to protect public drinking water systems. Effective upon G&C approval through May 31, 2019. **100% Federal Funds. Unanimous.**

Region 2-Merrimack County

DEPARTMENT OF HEALTH AND HUMAN SERVICES

New Hampshire Hospital

[#12](#) Authorize to enter into an agreement with Achievement Therapy Services LLC, Tilton, NH, to provide physical therapy services to clients admitted to NH Hospital, in an amount not to exceed \$202,500. Effective upon G&C approval through June 30, 2020. **34% General, 20% Federal, 46% Other Funds. Unanimous.**

DEPARTMENT OF TRANSPORTATION

[#26](#) Authorize the Bureau of Construction to enter into a contract with Continental Paving Inc., Londonderry, NH, for resurfacing of approximately 46 miles in District V in Hillsborough, Merrimack and Rockingham Counties, on the basis of a low bid of \$4,106,926.05. (2)Further authorize a contingency in the amount of \$205,346.31 for payment of latent conditions which may appear during the construction of the project. Effective upon G&C approval through October 19, 2018. **100% Other Funds (78% Betterment, 22% Agency Income). Unanimous.**

DEPARTMENT OF ENVIRONMENTAL SERVICES

[#67](#) Authorize to enter into an agreement with the Upper Merrimack Watershed Association, Penacook, NH, to complete the *Turkey River Watershed Restoration and Management Plan Phase I: Plan Development*, in the amount of \$50,000. Effective upon G&C approval through February 28, 2020. **100% Federal Funds. Unanimous.**

Region 3-Strafford County

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Bureau of Drug and Alcohol Services

[#6](#) Authorize to **retroactively** exercise a renewal option by amending contracts with vendors as detailed in letter dated March 23, 2018, to continue to provide services for substance use disorder treatment and recover support,

Andru Volinsky, Executive Councilor for District Two
andruvolinsky@gmail.com

by increasing the price by \$942,264 from \$19,889,860 to an amount not to exceed \$20,832,124, and by extending the completion date from March 31, 2018 to June 30, 2018. **60% Federal, 15% General, 25% Other Funds. Unanimous.**

Division of Public Health Services

[#11A](#) Authorize to retroactively amend an existing sole source Cooperative Project Agreement with the University of NH Cooperative Extension, Durham, NH (originally approved by G&C on 1-18-17, item #13), to provide professional development for the Food Safety Modernization Act team members in support of the coordinated effort among 3 state agencies to assess, educate, train and oversee the implementation of the Food and Drug Administration Produce Safety Rule, by increasing the price by \$10,000 from \$203,824 to an amount not to exceed \$213,824. Effective upon G&C approval through the original end date of June 30, 2018. **100% Federal Funds Unanimous.**

DEPARTMENT OF TRANSPORTATION

[#15](#) Authorize the Bureau of Planning & Community Assistance to amend an agreement with the City of Rochester sub-recipient (originally approved by G&C on 3-28-12, item #129), to provide funding and services under the Federal Highway Safety Improvement Program through a local project administration process, by retroactively increasing the original agreement amount by \$97,200 from \$450,000 to \$547,200, and by extending the completion date from June 30, 2013 to June 30, 2019. Effective upon G&C approval. **100% Federal Funds. Unanimous.**

[#25](#) Authorize the Bureau of Construction to enter into a contract with Pike Industries Inc., Belmont, NH, for resurfacing of approximately 62 miles in District VI in Rockingham and Strafford Counties, on the basis of a low bid of \$3,878,746.85. (2) Further authorize a contingency in the amount of \$193,937.34 for payment of latent conditions which may appear during the construction of the project. Effective upon G&C approval through October 19, 2018. **100% Other Funds (86% Betterment, 14% Agency Income). Unanimous.**

[#30](#) Authorize the Bureau of Construction to enter into a contract with Brox Industries Inc., Dracut, MA, for resurfacing of approximately 19.5 lane miles along the Spaulding Turnpike, Exit 9 Ramps and Indian Brook Drive in Dover, as well as the Exit 3 Ramps along I-95 in Portsmouth, on the basis of a low bid of \$3,030,957.69. Effective upon G&C approval through September 28, 2018. **100% Turnpike Funds. Unanimous.**

DEPARTMENT OF INFORMATION TECHNOLOGY

[#34](#) Authorize to enter into a sole source Project Agreement with the University of NH, Durham, NH, for the development of a plan for scheduled

Andru Volinsky, Executive Councilor for District Two
andruvolinsky@gmail.com

acquisition of statewide base map imagery, in the amount not to exceed \$29,448. Effective upon G&C approval through April 31, 2019. **100% Capital Funds. Unanimous.**

DEPARTMENT OF AGRICULTURE, MARKETS & FOOD

[#41](#) Authorize the Division of Pesticide Control to grant funds and enter into a Cooperative Project Agreement with the University of NH Office of Sponsored Research for the advancement of agricultural research and to assist in the promotion of Integrated Pest Management practices in NH, in the amount of \$38,976. Effective upon G&C approval through March 31, 2019. **100% Other Funds. Unanimous.**

[#42](#) Authorize the Division of Pesticide Control to grant funds and enter into a Cooperative Project Agreement with the University of NH Office of Sponsored Research, for the advancement of agricultural research and to assist in the promotion of Integrated Pest Management practices in NH, in the amount of \$38,716. Effective upon G&C approval through March 31, 2019. **100% Other Funds. Unanimous.**

DEPARTMENT OF NATURAL AND CULTURAL RESOURCES

[#59](#) Authorize the Division of Parks and Recreation to enter into a contract with Green Shadow Property Maintenance LLC, Rollinsford, NH, to perform beach cleaning services at Hampton Beach State Park, in the amount of \$132,825. Effective upon G&C approval through September 30, 2019. **100% Agency Income. Unanimous.**