



STATE OF NEW HAMPSHIRE
JOINT LEGISLATIVE COMMITTEE ON ADMINISTRATIVE RULES
ROOM 219
25 CAPITOL STREET
CONCORD, NEW HAMPSHIRE 03301-6312

Action Minutes

JANUARY 17, 2014

Members Present: Senators Reagan, Rausch, Cataldo, Kelly, and Fuller Clark*, and Representatives Schmidt, McGuire, MacKay, Ladd, Sad, Kidder*, Gottling*, Barry*, and Hatch*. (*) Indicates alternate member.

(**) Indicates where Part 1, Article 28-a of the N.H. Constitution was an issue in the Committee's discussions or decisions in this meeting. (See Item #8. However, that item was approved.)

1. The meeting was convened at 9:06 a.m. by Sen. Reagan as Chair.

Members present at this time, aside from Sen. Reagan, were Sens. Rausch, Cataldo, and Kelly, and Reps. Schmidt, McGuire, MacKay, Ladd, Sad, Kidder, Gottling, and Barry.

2. The Committee discussed the minutes of the Committee meeting on December 19, 2013.

Rep. McGuire moved that the minutes be approved.

Re. MacKay seconded.

Adopted.

Sen. Reagan designated Rep. Gottling as an alternate for Sen. Watters, who was absent, until Sen. Fuller Clark arrived, whereupon Sen. Fuller Clark would be the alternate for Sen. Watters. At this time, Rep. Kidder and Rep. Barry were not voting members.

3. The Committee discussed the following Final Proposals and Proposed Interim Rules from the agencies indicated (Consent Agenda – Final Proposals and Proposed Interim Rules):

FP 2013-113 DEPARTMENT OF ENVIRONMENTAL SERVICES
Division of Water
Dam Program Organizational Rules

FP 2013-114 DEPARTMENT OF ENVIRONMENTAL SERVICES
Division of Water
Dam Program Procedural Rules

FP 2013-153 DEPARTMENT OF HEALTH AND HUMAN SERVICES
Former Division of Human Services
Issuance of Financial Assistance in the Financial Assistance to Needy Families and the Adult Categories of Financial Assistance Programs

- FP 2013-161 DEPARTMENT OF SAFETY
Rafting Prohibition in Camp Starfish Cove on Lake Monomonac
- FP 2013-187 DEPARTMENT OF HEALTH AND HUMAN SERVICES
Former Division of Human Services
Advanced Practice Registered Nurse (APRN) Services
- FP 2013-189 DEPARTMENT OF HEALTH AND HUMAN SERVICES
Former Division of Human Services
Laboratory Services
- FP 2013-190 DEPARTMENT OF HEALTH AND HUMAN SERVICES
Former Division of Human Services
Definition of "Educational Income" in the Food Stamp Program
- INT 2013-19 HEALTH SERVICES PLANNING AND REVIEW BOARD
Projects Not Subject to Certificate of Need (CON) Review
- INT 2013-20 HEALTH SERVICES PLANNING AND REVIEW BOARD
Standards and Application for Certificate of Need (CON)

Rep. Schmidt moved that the Final Proposals and Proposed Interim Rules be approved.

Sen. Rausch seconded.

Adopted.

4. The Committee discussed whether to postpone action on certain items to another meeting.

Rep. Schmidt moved that the Committee postpone action on the following items to the next Committee meeting on February 7, 2014:

14. DEPARTMENT OF SAFETY

- (b) FP 2013-105 Motorcycle Rider Education Program Rules
(JLCAR Deadline February 13, 2014.)

17. DEPARTMENT OF RESOURCES AND ECONOMIC DEVELOPMENT

- (a) FP 2013-130 Rules for Parks and Recreation
(JLCAR Deadline February 18, 2014.)
- (b) FP 2013-131 Rules for the Reserved and Privileged Use of DRED Lands, Facilities and Resources
(JLCAR Deadline February 18, 2014.)

- (c) FP 2013-132 Rules for Administrative Fines Pertaining to Violations of Recreational Use Rules
(JLCAR Deadline February 27, 2014.)

18. DEPARTMENT OF LABOR

- OR 2013-93 Whistleblowers' Protection Act Posting and Filing Procedures
(JLCAR Deadline March 25, 2014.)
(Objection Response not yet filed and not expected to be filed until after January 17, 2014.)

Rep. Ladd seconded.

Adopted.

5. The Committee discussed Final Proposal 2013-140 from the Governing Board of Occupational Therapists (Application Form, Required Documents, Full Licensure of Conditional Licensees, and Eligibility Requirement for Supervisors). Tina Kelley of the Office of Licensed Allied Health Professionals testified for the Board.

The Board had submitted a conditional approval request in a cover memo and amended rule dated January 13, 2014.

Rep. Schmidt moved that the Committee accept the conditional approval request and conditionally approve Final Proposal 2013-140 based on the request.

Rep. MacKay seconded.

Adopted.

6. The Committee discussed Final Proposal 2013-141 from the Governing Board of Occupational Therapists (License Renewal, Reinstatement, Supervisors). Tina Kelley of the Office of Licensed Allied Health Professionals testified for the Board.

The Board had submitted a conditional approval request in a cover memo with amended rule dated January 13, 2014.

Rep. Schmidt moved that the Committee accept the conditional approval request and conditionally approve Final Proposal 2013-141 based on the request.

Rep. MacKay seconded.

Adopted.

7. The Committee discussed Final Proposal 2013-150 from the Department of Agriculture, Markets and Food (Animal Population Control program). Dr. Stephen Crawford, State Veterinarian, testified for the Department.

Sen. Fuller Clark and Rep. Hatch arrived during the discussion of this item. Sen. Fuller Clark was now the designated alternate for Sen. Watters, who was absent. At this time, Rep. Gottling was therefore not a voting member.

Rep. McGuire moved that the Committee make a preliminary objection to Final Proposal 2013-150 based on Committee staff's annotations to the Final Proposal.

Sen. Cataldo seconded.

Adopted.

- **8. The Committee discussed Final Proposal 2013-115 from the Department of Environmental Services (Division of Water, Dam Program Rules). Gretchen Hamel and Steve Doyon testified for the Department.

Rep. Schmidt moved that the Committee approve Final Proposal 2013-115.

Sen. Rausch seconded.

Adopted.

Sen. Reagan noted for the record that Rep. McGuire voted "no".

9. The Committee discussed Final Proposal 2013-186 from the Department of Health and Human Services (Former Division of Mental Health and Developmental Services, Designation of Receiving Facilities). Michael Holt testified for the Department.

The Department had submitted a conditional approval request and amended conditional approval request in amended rules, both dated January 16, 2014.

Rep. McGuire moved that the Committee accept the amended conditional approval request and conditionally approve Final Proposal 2013-186 based on the request.

Rep. Schmidt seconded.

Adopted.

10. The Committee discussed Final Proposal 2013-188 from the Department of Health and Human Services (Former Division of Human Services, Radiological Services). Michael Holt testified for the Department.

The Department had submitted a conditional approval request in a letter and amended rule dated January 13, 2014 and an amended conditional approval request in a letter and amended rule dated January 15, 2014.

Sen. Rausch moved that the Committee accept the amended conditional approval request and conditionally approve Final Proposal 2013-188 based on the request.

Rep. MacKay seconded.

Adopted.

11. The Committee discussed Final Proposal 2013-124 from the Public Utilities Commission (Tariffs and Special Contracts). Amy Ignatius, Commission Chairperson, testified for the Commission.

The Commission had submitted a conditional approval request in a letter and amended rule dated January 15, 2014.

Rep. Schmidt moved that the Committee accept the conditional approval request and conditionally approve Final Proposal 2013-124 based on the request.

Sen. Kelly seconded.

Adopted.

Rep. Barry had left the meeting by this time.

12. In the meeting the Committee discussed Final Proposal 2013-51 from the Public Utilities Commission (Rules for Telephone Utilities). Amy Ignatius, Commission Chairperson, and David Wiesner testified for the Commission.

In the meeting the Commission submitted a conditional approval request in a letter and amended rule dated January 16, 2014.

The following persons also testified:

Maura Weston, representing New England Cable and Telecommunication Association.

Chris Hodgdon, representing Comcast.

Susan Geiger, of Orr and Reno, representing Comcast, which had submitted written testimony prior to the meeting.

Harry Malone, representing the N.H. Telephone Association.

Ryan Taylor, representing the N.H. Telephone Association.

Rep. Naida Kalm registered her appearance but did not speak.

Dan Feltes, representing N.H. Legal Assistance, registered his support of the rules but did not speak.

Theresa Rosenberger, of Devine Millimet, representing N.H. Telephone Association, had provided written testimony prior to the meeting but did not speak.

Rep. Schmidt moved that the Committee make a preliminary objection to Final Proposal 2103-51 based on public testimony.

Sen. Fuller Clark seconded.

Adopted. Sen. Reagan noted for the record that Sen. Cataldo voted "no".

13. The Committee discussed Final Proposal 2013-166 from the Higher Education Commission (Private Postsecondary Career Schools). Dr. Richard Gustafson and Mary Mayo of the Department of Education testified for the Commission.

The Commission had submitted a conditional approval request in an amended rule dated January 17, 2014 with a further amendment dated January 17, 2014 submitted in the meeting relative to Hede 312.01(c).

Rep. McGuire moved that the Committee postpone action on Final Proposal 2013-166 to the continued Committee meeting on February 7, 2014.

Rep. Ladd seconded.

Adopted.

14. After a break, with Sens. Reagan, Rausch, Kelly, and Fuller Clark, and Reps. McGuire and Ladd present, the Committee discussed postponing action on the following Final Proposals from the Banking Department:

FP 2103-121 Amendments to Bylaws of Credit Unions

FP 2013-120 Credit Union Branching and Reciprocal Branching

Rep. McGuire moved that these Final Proposals be postponed to the continued meeting on February 7, 2014.

Sen. Rausch seconded.

Adopted.

15. The Committee discussed Final Proposal 2013-104 from the Department of Safety (Commercial Driver Licensing Rules). David Hilts testified for the Department.

Sen. Cataldo and Reps. Schmidt, Ladd, Kidder, and Gottling returned to the meeting as the discussion began.

Sen. Rausch moved that the Committee conditionally approve Final Proposal 2013-104 on the condition that Saf-C 1806.07(a) be amended to replace the words "unless the director designates otherwise" with the following:

"unless, upon the request of the applicant, the director determines that:

(1) The reason(s) for failure are unlikely to be repeated without further education or practice; and

(2) There are sufficient staff and time available for retesting on that date."

Sen. Fuller Clark seconded.

Adopted.

16. The committee discussed Final Proposal 2013-168 from the Pharmacy Board (New Hampshire Controlled Drug Prescription Health and Safety Program). Trish Lucas and Board members Charles Fanaris and Robert Stout testified for the Board.

Rep. MacKay moved that the Committee approve Final Proposal 2013-168 with the understanding that insertion of the date "February 2014" for Board forms would be made as an editorial change in the rules Ph 1505.01(b) and Ph 1505.02(e)(1) in place of the words "edition date".

Rep. Schmidt seconded.

Adopted.

Sen. Reagan noted for the record that Rep. McGuire voted "no".

17. The Committee discussed Final Proposal 2013-94 from the Board of Education (Minimum Standards for Public School Approval). Mary Mayo of the Department of Education and Paul Leather, Deputy Commissioner of the Department of Education, testified for the Board.

Sen. Reagan read from a letter from Senator Stiles in support of the rules.

The following persons registered their support of the rules but did not speak:

John J. Freeman, representing the Pittsfield School District.
Keith R. Burke, representing the N.H. Department of Education.

The following persons testified:

Fred Bramante, representing the National Center for Competency-Based Learning.
Rep. David K. Murotake.
Ann Marie Banfield, representing Cornerstone Action.
Doris Hohensee, representing N.H. Families for Education.
David Ruff, representing Great Schools Partnership.
Laura El-Azem of Londonderry, N.H.
Bill Duncan, representing Advance N.H. Public Education.
William MacKenzie of Goffstown, N.H.
Mark Joyce, representing the N.H. School Administrators Association.

Rep. Ladd moved that the Committee accept the conditional approval request and conditionally approve Final Proposal 2013-94 based on the request, with further amendment to insert the words "conditioned on legislative approval" in those rules applicable in 2015.

Rep. Schmidt seconded.

A roll call vote was called. The vote was as follows:

	Yes	No
Rep. Sad	X	
Rep. Ladd	X	
Rep. MacKay	X	
Rep. McGuire		X
Rep. Schmidt	X	
Sen. Fuller Clark	X	
Sen. Kelly	X	
Sen. Cataldo		X
Sen. Rausch	X	
Sen. Reagan		X
Total	7	3

The vote was 7 “yes” and 3 “no”. The motion was adopted.

18. The Committee recessed by consensus at 12:13 p.m., thereby postponing action on the following item to the continued meeting on February 7, 2014:

OTHER BUSINESS

19. Other