



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

Action Minutes

JANUARY 20, 2017

Members Present: Senators Reagan, Feltes, French, and Kahn, and Representatives McGuire, Schmidt, Ladd, and Hatch. (*) Indicates alternate member.

(**) Part 1, Article 28-a of the N.H. Constitution was not an issue in the Committee's discussions or decisions in this meeting.

1. The meeting was convened at 9:03 a.m. by Sen. Reagan as Chair.

Members present at this time, aside from Sen. Reagan, were Sens. French and Kahn, and Reps. McGuire, Schmidt, Ladd, and Hatch.

2. The Committee discussed the minutes of the Committee meeting on December 15, 2016.

Rep. Schmidt moved that the minutes be approved.

Rep. Hatch seconded.

Adopted.

3. The Committee discussed the following items on the Consent Agenda:

CONSENT AGENDA

2. Committee Approval of Final Proposals and Proposed Interim Rules:

| | |
|-------------|---|
| 2016-114 | BOARD OF PROFESSIONAL GEOLOGISTS Definitions, Organization, and Public Information |
| FP 2016-115 | BOARD OF PROFESSIONAL GEOLOGISTS Practice and Procedure |
| FP 2016-123 | BOARD OF MENTAL HEALTH PRACTICE Educational and Practical Experience Requirements for Pastoral Psychotherapists |
| FP 2016-132 | BOARD OF HEARING CARE PROVIDERS Misconduct Investigations; Nonadjudicative Investigations and Informal Hearings; Explanation of Rules After Adoption; Waiver of Substantive Rules |
| FP 2016-162 | PUBLIC UTILITIES COMMISSION Underground Utility Damage Prevention Program |
| FP 2016-188 | LOTTERY COMMISSION Racing and Charitable Gaming Division Repeal of Former Racing and Charitable Gaming Commission's Organizational Rules |

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- FP 2016-189 LOTTERY COMMISSION
Racing and Charitable Gaming Division
Repeal of Former Racing and Charitable Gaming Commission's Rules of Practice
- FP 2016-199 INSURANCE DEPARTMENT
Life Insurance Illustrations
- FP 2016-206 DEPARTMENT OF HEALTH AND HUMAN SERVICES
Former Division of Public Health Services
Definitions -- NH Rules for the Control of Radiation
- FP 2016-208 INSURANCE DEPARTMENT
Use of Senior-Specific Certifications and Professional Designations in the Sale of Life
Insurance and Annuities
- FP 2016-212 FISH AND GAME DEPARTMENT
Free Fishing Days and Marking of Freshwater Fish Prohibited
- FP 2016-215 DEPARTMENT OF HEALTH AND HUMAN SERVICES
Former Division of Public Health Services
Milk Producers, Milk Plants, Producer Distributors, and Distributors
- FP 2016-217 DEPARTMENT OF HEALTH AND HUMAN SERVICES
Former Division of Human Services
Medicaid Substance Use Disorder (SUD) Treatment and Recovery Support Services
- FP 2016-218 DEPARTMENT OF HEALTH AND HUMAN SERVICES
Former Division of Human Services
Hospital Services
- FP 2016-222 N.H. MOTOR VEHICLE INDUSTRY BOARD
Various Motor Vehicle Industry Board Rules
- FP 2016-224 DEPARTMENT OF HEALTH AND HUMAN SERVICES
Commissioner
Standards and Burden of Proof
- INT 2017-5 DEPARTMENT OF HEALTH AND HUMAN SERVICES
Former Division of Mental Health and Developmental Services
Secure Psychiatric Unit Transfers

3. *Committee Conditional Approvals:*

- FP 2016-211 DEPARTMENT OF AGRICULTURE, MARKETS, AND FOOD
Nursery and Nursery Stock

5. Committee Issuance of Preliminary or Revised Objections to Final Proposals:

FP 2016-138 BOARD OF AUCTIONEERS
Definitions, Organization, and Public Information

FP 2016-139 BOARD OF AUCTIONEERS
Complaints and Hearing Procedures, Licensing Requirements, Continued Status, and
Ethical Standards

Rep. Schmidt moved that the Committee approve the Consent Agenda, that is, approve the Final Proposals and Proposed Interim Rule in Item #2, conditionally approve the Final Proposal in Item #3 based on the agency's request, and make a preliminary objection to the Final Proposals in Item #5 based on the annotations to the Final Proposals by Committee staff.

Rep. Hatch seconded.

Adopted.

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

Rep. McGuire moved that the Committee postpone action on the following item to the next Committee meeting:

19. BOARD OF EDUCATION

FP 2016-86 NH Rules for the Education of Children with Disabilities
(JLCAR Deadline February 17, 2017. Amended Final Proposal not yet received.)

Rep. Schmidt seconded.

The Committee also discussed the following item:

12. DEPARTMENT OF HEALTH AND HUMAN SERVICES

FP 2016-167 Commissioner
Certification Payment Standards for Health Care and Laboratory Service Providers
(JLCAR Deadline February 13, 2017.)

The original motion was adopted.

5. The Committee discussed Final Proposal 2016-148 from the Pesticide Control Board (Pesticide Use). David Rousseau of the Department of Agriculture, Markets, and Food represented the Board.

Rep. McGuire moved that the Committee approve Final Proposal 2016-148.

Rep. Schmidt seconded.

Adopted.

6. The Committee discussed Final Proposal 2016-161 from the Fish and Game Department (Rules for Lands and Waters Under Department Control). Paul Sanderson testified for the Department.

Rep. Schmidt moved that the Committee make a preliminary objection to Final Proposal 2016-161 based on the annotations to the Final Proposal by Committee staff.

Rep. Ladd seconded.

Adopted.

7. The Committee discussed Final Proposal 2016-185 from the N.H. Retirement System (Electronic Filing of Documents). Carolyn Johnson and Timothy Crutchfield testified for the System.

Rep. Schmidt moved that the Committee approve the Final Proposal with the understanding that the words "in accordance with subsections (a)-(c) above" would be deleted from Ret 202.01(d) as an editorial change in the adopted rule.

Rep. Hatch seconded.

Adopted.

8. The Committee discussed Final Proposal 2016-190 from the Lottery Commission (Rules of Practice and Procedure). Valerie King testified for the Commission.

Rep. McGuire moved that the Committee approve Final Proposal 2016-190.

Rep. Schmidt seconded.

Adopted.

9. The Committee discussed the following Final Proposals from the Lottery Commission:

| | |
|-------------|---|
| FP 2016-195 | Racing and Charitable Gaming Division Bingo Penalties |
| FP 2016-196 | Racing and Charitable Gaming Division Lucky 7 Penalties |
| FP 2016-197 | Racing and Charitable Gaming Division Game of Chance Penalties |

Valerie King testified for the Department.

The Commission had submitted conditional approval requests in a letter and amended rules dated January 18, 2017 for each of the Final Proposals.

Rep. Schmidt moved that the Committee conditionally approve Final Proposal 2016-195, Final Proposal 2016-196, and Final Proposal 2016-197 based on the respective conditional approval requests.

Rep. Ladd seconded.

Adopted.

10. The Committee discussed again Final Proposal 2016-167 from the Department of Health and Human Services (Commissioner, Certification Payment Standards for Health Care and Laboratory Service Providers).

The Department had submitted a conditional approval request in amended rules received on January 19, 2017.

Rep. McGuire moved that the Committee postpone Final Proposal 2016-167 to the next Committee meeting and request a waiver from the Director of Legislative Services of the Committee's deadline of February 13, 2017.

Rep. Schmidt seconded.

Adopted.

11. The Committee discussed Proposed Interim Rule INT 2016-41 from the Fire Standards and Training Commission (Interim New Hampshire Fire Standards and Training Commission Rules). David Hiltz testified for the Commission.

Rep. McGuire moved that the Committee conditionally approve Proposed Interim Rule INT 2016-41 on the ground that Fire 701.03 be deleted and the rule number be reserved, with the understanding that the issues in the other annotations by Committee staff to the Proposed Interim Rule would be addressed in regular rulemaking.

Rep. Schmidt seconded.

Adopted.

12. The Committee discussed Final Proposal 2016-116 from the Board of Professional Geologists (Licensure Requirements; Continued Status; Ethical Standards and License Surrenders). Robert Lamberti from the Office of Professional Licensure and Certification testified for the Board.

The Board had submitted a conditional approval request in a letter and amended rules dated January 19, 2017.

Sen. Kahn moved that the Committee conditionally approve Final Proposal 2016-146 based on the request.

Rep. McGuire seconded.

Adopted.

13. The Committee discussed Proposed Interim Rule INT 2017-1 from the Board of Chiropractic Examiners (Licensing Requirements; Continued Status). Robert Lamberti from the Office of Professional Licensure and Certification testified for the Board.

Rep. McGuire moved that the Committee approve Proposed Interim Rule INT 2017-1 with the understanding that the Board would address in regular rulemaking the annotations to the Proposed Interim Rule by Committee Staff.

Rep. Hatch seconded.

Adopted.

14. The Committee discussed Proposed Interim Rule INT 2017-2 from the Board of Registration in Optometry (Applications for Initial Licensure; License Renewal and Continuing Education; Ethical Standards and Disciplinary Matters; Professional Standards). Robert Lamberti from the Office of Professional Licensure and Certification testified for the Board.

Rep. Schmidt moved that the Committee approve Proposed Interim Rule INT 2017-2 with the understanding that the Board would address in regular rulemaking the annotations to the Proposed Interim Rule by Committee staff.

Rep. Hatch seconded.

Adopted.

15. The Committee discussed the following Proposed Interim Rules from the Real Estate Commission:

INT 2017-3 Procedural Rules

INT 2017-4 Application Form; Brokerage Contract, Advertisements, Agency Code of Ethics, Brokerage Relationship Disclosure

Robert Lamberti from the Office of Professional Licensure and Certification testified for the Commission.

Sen. Feltes, who had been in the meeting before it was convened, returned to the meeting and left during the discussion of these items.

Rep. McGuire moved that the Committee approve Proposed Interim Rule INT 2017-3 and Proposed Interim Rule INT 2017-4 with the understanding that the Commission would address in regular rulemaking the annotations to the Proposed Interim Rules by Committee staff.

Rep. Schmidt seconded.

Adopted.

16. The Committee discussed Final Proposal 2016-133 from the Board of Hearing Care Providers (Initial Licensure and Registration; License and Registration Renewals; Ethical Standards). Robert Lamberti from the Office of Professional Licensure and Certification testified for the Board.

The Board had submitted a conditional approval request in a letter and amended rules dated January 17, 2017.

Rep. McGuire moved that the Committee conditionally approve Final Proposal 2016-133 based on the request.

Rep. Schmidt seconded.

Adopted.

17. After a break, with Sens. Reagan, Feltes, French, and Kahn, and Reps. McGuire, Schmidt, Ladd, and Hatch present, the Committee discussed Final Proposal 2016-109 from the Insurance Department (Uniform Prior Authorization Forms and Electronic Standard for Prescription Drug Benefits).

The Department had submitted a conditional approval request in a letter and amended rules dated January 18, 2017.

Rep. Schmidt moved that the Committee postpone action on Final Proposal 2016-209 to the next Committee meeting and request a waiver from the Director of Legislative Services of the Committee's deadline of January 30, 2017. [sic].*

Rep. Ladd seconded.

Adopted.

*NOTE: The motion to request a waiver was mistakenly made with the understanding, as stated in the tentative agenda, that the deadline was January 30, 2017. The deadline was actually February 21, 2017, so no waiver was necessary.

18. The Committee discussed the response by the Insurance Department to the Committee's preliminary objection to Final Proposal 2016-172 (Prescription Prices for Pharmacists and Pharmacies).

It was the consensus of the Committee to postpone action on this item to the next Committee meeting.

19. The Committee discussed the Governor's rulemaking moratorium request of January 5, 2017.

Sen. Reagan read the draft of a letter under his signature to the Governor, as follows:

To Whom It May Concern,

In the view of the legislative members of the Joint Committee on Administrative Rules, New Hampshire has a process in place that accomplishes many of the goals of the Governor's letter seeking a reduction in governmental rules and regulations.

The committee oversees that process. Further, the majority of rulemaking is mandated by statute, and agencies cannot choose not to adopt rules when a statute says that they shall. The Governor's concern for government efficiency and effective rules is one that we share, but there are consequences to failing to carry out rulemaking. We want to make our position on those consequences clear.

In order to ensure regular review of the rules, our Administrative Procedure Act causes most rules to expire every ten years. This expiration period forces agencies to review their rules and make sure they are still necessary and authorized by statute. It also provides for consequences when agencies allow their rules to expire; consequences that have become more explicit since Representative McGuire's bill changed RSA 541-A:22, I to forbid agencies from enforcing expired rules.

In light of the penalties associated with such rules, agencies ought to continue with any effort to readopt and to prevent the expiration of all rules which are about to expire. There are rules dictating the payment of revenue items contributing to the state General Fund. We don't imagine there is a moratorium intended for revenue receipts.

While we do not approve of it, we know that many agencies continue to operate under expired rules. We request that all agencies act to prevent this practice, which exposes the state to potential lawsuits and no statutory authority to enforce the rules we all live by and with by working to readopt and prevent expirations from occurring.

As for new rulemaking initiatives, we ask all agencies to take the Governor's request into consideration when proposing new rules or changes to existing rules. If you feel that the change is essential to your programs it will be processed as would any proposal, according to the provisions of the Administrative Procedure Act. We encourage agencies to review existing programs and determine if any are obsolete or can be run more efficiently. We believe this was the primary concern the Governor expressed in his letter, and the reason for his requested report.

Furthermore, should this motion pass, I move our staff forward this letter, over the committee chair's signature and on behalf of the committee to the Office of the Governor for forwarding to all agencies. The committee is at a loss for another course of action.

For the Joint Committee on Administrative Rules,

Senator John Reagan, Chair.

Sen. Feltes moved that the letter be approved.

Rep. Hatch seconded.

After further discussion, it was the consensus of the Committee that the letter be amended, aside from editorial changes, to (1) change "government efficiency and effective rules in the second paragraph" to "government and business efficiency through effective and meaningful rules", (2) insert a reference to the effect that the agencies identify any structural obstacles to rulemaking and that the Committee stands ready to remove this obstacle, and (3) delete the last paragraph since it is directed to Committee staff.

Gretchen Hamel from the Department of Environmental Services also testified.

Sen. Kahn moved that the Committee approve the letter with the noted amendments.

Rep. McGuire seconded.

Adopted.

20. The Committee discussed the continued Committee meeting scheduled for February 3, 2017.

It was the consensus of the Committee to cancel the meeting.

21. The Committee adjourned by consensus at 10:25 a.m.