



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

Action Minutes

OCTOBER 15, 2015

Members Present: Representatives McGuire, Schmidt, Ladd, Kidder, Sad, Hatch*, and Sytek*, and Senators Reagan, Cataldo, Avard, Feltes, Daniels*, Fuller Clark*, and D'Allesandro*. (*) 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, but that item was approved.)

1. The meeting was convened at 9:00 a.m. by Rep. McGuire as Chair.

Members present at this time, aside from Rep. McGuire, were Reps. Schmidt, Ladd, Kidder, Sad, Hatch, and Sytek, and Sens. Reagan, Cataldo, Feltes, and Daniels.

Sen. Avard arrived shortly after the Committee convened.

Rep. McGuire designated Sen. Daniels as an alternate for Sen. Watters, who was absent. Reps. Hatch and Sytek were not voting members at this time.

2. The Committee discussed the minutes of the Committee meeting on September 17, 2015.

Rep. Schmidt moved that the minutes be approved.

Sen. Reagan seconded.

Adopted.

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

2. *Committee Approval of Final Proposals:*

FP 2015-72 DEPARTMENT OF LABOR
Workers Compensation Appeals Advisory Board

FP 2015-121 FISH AND GAME DEPARTMENT
Haddock Fillet Length, White Perch Sale, and Oyster Rakes

FP 2015-123 BOARD OF COURT REPORTERS
Rules Regarding Explanation after Adoption

FP 2015-124 BOARD OF COURT REPORTERS
Rules Regarding Licensure Requirements, Continued Status, Ethical Standards, and License Surrender

- FP 2015-131 DEPARTMENT OF HEALTH AND HUMAN SERVICES
Former Division of Human Services
Annual Fee for Service
- FP 2015-133 INSURANCE DEPARTMENT
Fiduciary Obligation of Producers
- FP 2015-138 FISH AND GAME DEPARTMENT
Newborn Lifetime License
- FP 2015-142 DEPARTMENT OF REVENUE ADMINISTRATION
Organizational Rules

3. *9:10 a.m. Committee Conditional Approvals:*

- FP 2015-103 DEPARTMENT OF LABOR
Award of Fees and Interest

Sen. Reagan moved that the Committee approve the items on the Consent Agenda, that is, approve the Final Proposals in Item #2 and conditionally approve the Final Proposal in Item #3 based on the agency's conditional approval request.

Rep. Schmidt seconded.

Adopted.

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

Rep. Ladd moved that the Committee postpone action on the following items and request a waiver from the Director of the Office of Legislative Services to waive the deadline on Final Proposal 2014-189 so that the agency could submit an Amended Final Proposal as requested pursuant to RSA 541-A:12, 1-a.

10. BOARD OF EDUCATION

- FP 2014-189 Child Restraint Practices

16. BOARD OF REGISTRATION OF FUNERAL DIRECTORS AND EMBALMERS

- ROR 2015-39 Funeral Director's Place of Establishment
(JLCAR Deadline December 21, 2015. Former rules expired January 20, 1994.)
(Response not yet filed. Response due by November 2, 2015.)

17. Discussion on amendments to the Drafting and Procedure Manual for Administrative Rules.

Sen. Reagan seconded.

Adopted.

5. The Committee discussed Final Proposal 2015-79 from the Pharmacy Board (Licensing of Pharmacists and Pharmacies). Since the Board representative was not present, the Committee took up the next item.

6. The Committee discussed Final Proposal 2015-54 from the Department of Employment Security (Records and Reports, Contributions and Debts, Successor and Predecessor Liability, and Application of Wages). Marie-Helene Bailinson testified for the Department.

The Department submitted a conditional approval request in a letter and amended rule dated October 14, 2015.

Sen. Reagan moved that the Committee conditionally approve Final Proposal 2015-54 based on the request.

Sen. Cataldo seconded.

Adopted.

7. The Committee discussed again Final Proposal 2015-79 from the Board of Pharmacy (Licensing of Pharmacists and Pharmacies). Robert Stout testified for the Board.

Sen. Reagan moved that the Committee approve Final Proposal 2015-79 with the recommendation that the Board initiate rulemaking by May 1, 2016 to address the Committee staff comments to Ph 309.

Sen. Cataldo seconded.

Adopted.

- **8. The Committee discussed Final Proposal 2015-92 from the Health Services Planning and Review Board (Long-Term Care Facilities). Cynthia Carrier testified for the Board.

Sen. Feltes moved that the Committee approve Final Proposal 2015-92.

Sen. Reagan seconded.

Adopted.

9. The Committee discussed Final Proposal 2015-112 from the Health Services Planning and Review Board (Robotic Assisted Surgery System Rules). Cynthia Carrier testified for the Board.

Sen. Reagan moved that the Committee approve Final Proposal 2015-112.

Rep. Schmidt seconded.

Adopted.

10. The Committee discussed Proposed Interim Rule INT 2015-11 from the Department of Health and Human Services (Former Division of Human Services, Elimination of the Prohibition of Decreasing the Standard Utility Allowance (SUA) in the Food Stamp Program if the CPI-U Is Negative). Catherine Bernhard testified for the Department

The Department had withdrawn the Proposed Interim Rule in a letter dated October 14, 2015.

Rep. Schmidt left the meeting during the discussion of this item.

Sen. Feltes moved that the Committee (1) send a letter to the Department requiring that it reinstate food stamp benefits, as discussed in the Department's testimony, and cease further reductions unless and until it's rules are amended pursuant to RSA 541-A, (2) petition the Department to adopt an emergency rule on

the subject of the Proposed Interim Rule since the Department testified that the proposed rule is being implemented, and (3) send a letter to the Department that it contact the N.H. Department of Justice relative to the issue of authority to reduce food stamp benefits as specified in the mandate from the U.S. Department of Agriculture, Markets & Foods.

Sen. Avard seconded.

Adopted.

11. The Committee discussed Final Proposal 2015-67 from the Department of Health and Human Services (Former Division of Human Services, Medicaid Managed Care). Michael Holt and Kathleen Dunn testified for the Department.

The Department had submitted a conditional approval request in a letter and amended rule dated October 1, 2015 and an amended conditional approval request in a letter and amended rule dated October 13, 2015.

Sen. Reagan moved the Committee conditionally approve Final Proposal 2015-67 based on the amended conditional approval request.

Sen. Feltes seconded.

Adopted.

12. The Committee discussed Final Proposal 2015-101 from the Department of Health and Human Services (Former Division of Human Services, Treatment of Jointly Owned Resources for All Categories of Cash Assistance and Those Categories of Medicaid that Require a Resource Test). Catherine Bernhard testified for the Department.

The Department requested a postponement of the Final Proposal.

Sen. Reagan moved that the Committee postpone action on Final Proposal 2015-101 and request a waiver from the Director of the Office of Legislative Services of the Committee's November 16, 2015 deadline to act on Final Proposal 2015-101.

Rep. Sad seconded.

Adopted.

13. The Committee discussed Final Proposal 2015-134 from the Department of Health and Human Services (Former Division of Public Health Services, Exempt Homestead Food Operations Definitions and Sales at Retail Food Stores, Out-of-State State Beverages and Bottled Water Labeling and Product Analysis Requirements; Late Renewal Fine, and Milk Producers, Plants and Producer/Distributors, Fines). Catherine Bernhard and Colleen Smith testified for the Department.

Sen. Feltes moved that the Committee approve Final 2015-134 with the understanding that the Committee would send a letter to the N.H. Department of Justice requiring that guidance be provided to N.H. State agencies relative to the U.S. Supreme Court decision in City of Los Angeles v. Patel (2015) on the implementation of this decision affecting inspections.

Rep. Sad seconded.

Adopted.

14. The Committee discussed Final Proposal 2015-136 from the Department of Health and Human Services (Commissioner, Therapeutic Cannabis Program – Registry Rules). Michael Holt, Mary Castelli, and John Martin testified for the Department.

Rep. McGuire designated Rep. Hatch as an alternate for Rep. Schmidt, who was absent.

Sen. Reagan moved that the Committee approve Final Proposal 2015-136.

Sen. Feltes seconded.

Adopted.

15. The Committee discussed Final Proposal 2015-137 from the Department of Health and Human Services (Commissioner, Therapeutic Cannabis Program - Alternative Treatment Centers). Michael Holt, Mary Castelli, and John Martin testified for the Department.

The Department had submitted a conditional approval request in a letter and amended rule dated October 14, 2015,

Sen. Reagan moved that the Committee conditionally approve Final Proposal 2015-137 based on the request.

Sen. Avard seconded.

Adopted.

16. The Committee discussed Final Proposal 2015-129 from the Insurance Department (Claim Settlement). James Fox testified for the Department.

Rep. Sad moved that the Committee conditionally approve Final Proposal 2015-129 on the condition that Ins 1002.16(a)(1) and (3) be amended by deleting the word "ready" in both subparagraphs where it appears immediately before "willing and able" and by inserting the phrase "within a reasonable time" in both paragraphs immediately after "like kind and quality".

Rep. Hatch seconded.

Adopted.

17. The Committee discussed Final Proposal 2015-105 from the Department of Agriculture, Markets, and Food (Seal of Quality Standards). Jennifer Gornert, Janis Conner, and Vicky Smith testified for the Department.

Sen. Reagan moved that the Committee approve Final Proposal 2015-105.

Sen. Avard seconded.

Adopted.

18. After a break, with Reps. McGuire, Schmidt, Ladd, Sad, Hatch, and Sytek, and Sens. Reagan, Cataldo, Avard, Feltes, and Daniels present, the Committee discussed Final Proposal 2015-143 from the Department of Revenue Administration (Low Income Housing Tax Credit Assessment). Caroline Delaney testified for the Department.

Rep. Kidder returned to the meeting during the discussion of this Final Proposal. At this time, Rep. Hatch and Rep. Sytek were not voting members.

Sen. Reagan moved that the Committee conditionally approve Final Proposal 2015-143 on the condition that Rev 611.03(b) be amended by deleting the phrase "in accordance with RSA 541-A:6".

Rep. Schmidt seconded.

Adopted.

19. The Committee discussed the following Final Proposals from the Site Evaluation Committee (SEC):

FP 2015-11 Organization and Practice and Procedure Rules

FP 2015-12 Explanation of Proposed Rule and Certificates of Site and Facility Rules

Martin Honigberg, SEC Chair, and David Wiesner, staff to the Public Utilities Commission, testified for the SEC.

Sen. Reagan moved that the Committee make a preliminary objection to Final Proposal 2015-11 and Final Proposal 2015-12 on the grounds as outlined in the annotations by Committee staff and in the written public testimony already submitted prior to the meeting.

Sen. Avard seconded.

Sens. Martha Fuller Clark and D'Allesandro arrived during the discussion of this item, but they were not voting members at this time.

The following persons also testified:

Rep. Lawrence Rappaport
Rep. Dwane Brown
Cody Morrison, representing Executive Counselor Joseph Kenney.
Dr. Deborah Warner
Maureen D. Smith, of Orr and Reno, representing EDP Renewables.
Sen. Jeanie Forrester
Jim Roche, representing the Business and Industry Association (BIA).
Heidi Kroll, representing Monadnock Paper Mills, Inc.
Donald Pfundstein, representing Northern Pass – Eversource Project.
Dorothy McPhaul
Lorie Lemer, representing N.H. Wind Watch.
Lisa Linowes, representing Wind Action Group.
Robert Piehler
Pamela Martin
David Cuzzi, representing BAE Systems.
Susan Arnold, representing the Appalachian Mountain Club.

Sen. Martha Fuller Clark and Rep. Sad left during the course of the public testimony.

The following person registered his opposition to the rules but did not speak:

Marc Brown, representing N.H. Ratepayers Association, who submitted written testimony.

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

Jennifer Tuthill
Parker Griffin, representing the Newfound Lake Region Association.
Dennis Cashman

Sen. Reagan amended his motion to include grounds based on the oral and written public testimony provided by the public at the meeting and on the Committee's concerns as reflected by its comments at the meeting.

Sen. Avard amended his second.

Rep. McGuire designated Rep. Hatch as an alternate for Rep. Sad, who was absent.

The motion was adopted.

20. Sen. Cataldo moved that the Committee adjourn.

Sen. Reagan second.

Adopted.

The Committee adjourned at 12:38 p.m., thereby cancelling the continued meeting scheduled for November 5, 2015.