



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

Action Minutes

OCTOBER 16, 2014

Members Present: Senators Reagan, Cataldo, Lasky, and Watters, and Representatives Schmidt, McGuire, MacKay, Ladd, Sad, Kidder*, Barry*, 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 9:00 a.m. by Sen. Reagan as Chair.

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

Sen. Reagan designated Rep. Kidder and Rep. Barry as alternates, respectively, for Sen. Rausch and Sen. Watters, who were absent.

2. The Committee discussed the minutes of the meeting on October 2, 2014.

Rep McGuire moved that the minutes be approved.

Sen. Cataldo seconded.

Adopted.

3. The Committee discussed the following Final Proposals (Consent Agenda – Final Proposals):

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| FP 2014-71 | PESTICIDE CONTROL BOARD
Pesticides: Sale and Limited Use; Disposal and Storage; Record Keeping and Reporting |
| FP 2014-76 | BOARD OF ACCOUNTANCY
Board of Accountancy Rules Regarding Composition of the Board |
| FP 2014-77 | BOARD OF ACCOUNTANCY
Board of Accountancy Procedural Rules |
| FP 2014-81 | HEALTH SERVICES PLANNING AND REVIEW BOARD
Practice and Procedures - Definitions, Consent Agenda, Contested Cases |
| FP 2014-82 | HEALTH SERVICES PLANNING AND REVIEW BOARD
Application That a Project is Not Subject to Certificate of Need Review; Change of Scope; Form 301-C Application for a Change of Scope; and Threshold Adjustments |
| FP 2014-84 | DEPARTMENT OF ENVIRONMENTAL SERVICES
Air Related Programs
Asbestos Management and Control Amendments |
| FP 2014-95 | FISH AND GAME DEPARTMENT
Marine Rules: Miscellaneous |

- FP 2014-96 FISH AND GAME DEPARTMENT
Marine Rules: Daily Limit Cod and Haddock
- FP 2014-99 GOVERNING BOARD OF PHYSICAL THERAPISTS
Jurisprudence Examination
- FP 2014-100 GOVERNING BOARD OF PHYSICAL THERAPISTS
Jurisprudence Examination for Renewal
- FP 2014-104 POLICE STANDARDS AND TRAINING COUNCIL
Report of Arrests
- FP 2014-111 DEPARTMENT OF HEALTH AND HUMAN SERVICES
Former Division of Human Services
Citizenship/Non-citizen Status and Proof of Identity
- FP 2014-125 DEPARTMENT OF ENVIRONMENTAL SERVICES
Water Quality and Quantity Programs
Voluntary Certified Salt Applicator Program
- FP 2014-127 DEPARTMENT OF HEALTH AND HUMAN SERVICES
Former Division of Human Services
Expiring Rule Related to the Verification of Educational Income

Rep. Schmidt moved that the Final Proposals be approved.

Rep. MacKay seconded.

Adopted.

4. The Committee discussed the following Final Proposals for which the agencies had submitted conditional approval requests (Consent Agenda – Conditional Approvals):

- FP 2014-109 DEPARTMENT OF HEALTH AND HUMAN SERVICES
Former Division of Human Services
Expiring Rules Related to Social Security Account Numbers, In and Out Medically Needy
Medical Assistance, Deemed Income From an Alien's Sponsor, Separate Medical Assistance
Group, P.O. Boxes & General Delivery Mailing Addresses, & Deceased Recipients
- FP 2014-114 DEPARTMENT OF LABOR
Elevator and Accessibility Lift Inspection, Licensing and Reporting Procedures

Rep. Schmidt moved that the Committee accept the conditional approval requests and conditionally approve the Final Proposals based on the requests.

Rep. Sad seconded.

Adopted.

5. The Committee discussed the following objection response to a preliminary objection made by the Committee (Consent Agenda – Responses to Objections):

OR 2014-39 NH LOTTERY COMMISSION
Rules for Prize Claims
(Converted from conditional approval.)

Rep. Barry moved that the Committee accept the response and approve the rules.

Rep. Schmidt seconded.

Adopted.

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

Rep. McGuire moved that the Committee postpone action on the following items:

10. DEPARTMENT OF HEALTH AND HUMAN SERVICES

- (a) FP 2014-44 Former Division of Public Health Services
Immunization Registry
(JLCAR Deadline October 20, 2014.)
(Formerly Item #13(c) on 9-18-14 and 10-2-14 agendas.)

11. BOARD OF ACCOUNTANCY

- FP 2014-78 Board of Accountancy Rules Regarding Certification, Registration, and Permit
Requirements; Continued Status; and Ethics
(JLCAR Deadline October 27, 2014.)

16. PHARMACY BOARD

- (b) ROR 2014-66 Pharmacy Technicians
(JLCAR Deadline January 6, 2015.)
(Response not yet received. Response due by November 17, 2014.)
- (c) ROR 2014-67 Pharmacy Interns
(JLCAR Deadline January 6, 2015.)
(Response not yet received. Response due by November 17, 2014.)

Rep. Schmidt seconded.

Adopted.

7. The Committee discussed requesting a waiver from the Director of the Office of Legislative Services of the Committee's October 20, 2014 deadline to act on Final Proposal 2014-44 from the Department of Health and Human Services and the October 27, 2014 deadline to act on Final Proposal 2014-78 from the Board of Accountancy.

Rep. Hatch arrived during the discussion of this item.

Rep. Schmidt moved that the Committee request a waiver.

Rep. MacKay seconded.

Adopted.

8. The Committee discussed Final Proposal 2014-58 from the Department of Revenue Administration (Meals and Rentals Tax). Caroline Delaney and Karen Mudgett testified for the Department.

The Department had submitted a conditional approval request in a letter dated October 2, 2014 and amended rules dated October 3, 2014, with further amended rules dated October 15, 2014.

Rep. Schmidt moved that the Committee (1) accept the conditional approval request and conditionally approve Final Proposal 2014-58 based on the request as amended, with the further amendment to amend Rev 707.01 (a) to read: "An operator ordered by the department to remit taxes collected at intervals determined by the department shall deposit all tax monies through an electronic funds transfer, as defined in Rev 2501.09, or as otherwise agreed with the department, to the department," and (2) recommend that the Department seek legislative clarification on filing forms in hardcopy.

Rep. McGuire seconded.

Adopted.

Sen. Reagan designated Rep. Hatch as an alternate for Sen. Lasky, who was absent.

9. The Committee discussed Final Proposal 2014-20 from the Department of Employment Security (Penalty Weeks Under RSA 282-A:164). Lon Siel and Marie-Helene Bailinson testified for the Department.

The Department had submitted a conditional approval request in amended rules dated October 15, 2014.

Rep. Schmidt moved that the Committee accept the conditional approval request and conditionally approve Final Proposals 2014-20 based on the request.

Sen. Cataldo seconded.

Adopted.

10. The Committee discussed Final Proposal 2013-222 from the Department of Safety (Commissioner, Readoption of Marketing, Sales, and Possession of Fireworks Rules). Marta Modigliani and J. William Degnan, State Fire Marshal, testified for the Department.

The Department had submitted a conditional approval request in a letter dated October 14, 2014, and amended rules dated October 9, 2014.

The following persons also testified:

Steven Carbone, representing the N.H. Fireworks Association.
Christina Katsikas.

The following persons registered their support for the conditional approval request but chose not to speak:

Paul Worsowicz.
Richard L. Bouley, representing Atlas Fireworks.

The following persons registered their opposition to the rules but chose not to speak:

Chris Vernon representing North Country Fireworks.
Jarrad Savinelli of Seabrook, N.H.
Rep. Mark McConley.

Sen. Lasky and Sen. Watters arrived during the discussion of this item. Therefore, Rep. Hatch and Rep. Barry were no longer voting members.

Rep. McGuire moved that the Committee make a preliminary objection to Final Proposal 2013-222 on the ground of legislative intent, and exceeding legislative authority in Saf-C 2607.01(c), based on public testimony and on the grounds as otherwise addressed in the conditional approval request, with the understanding that the changes to the Final Proposal in the request would be incorporated in the rules as amended in the objection response.

Sen. Cataldo seconded.

Adopted.

11. The Committee discussed Final Proposal 2014-35 from the Department of Health and Human Services (Former Division of Human Services, Comprehensive Health Information System (CHIS)).

Rep. Schmidt moved that the Committee approve Final Proposal 2014-35.

Sen. Watters seconded.

Adopted.

12. The Committee discussed Final Proposal 2014-130 from the Department of Health and Human Services (Former Division of Public Health Services, New Hampshire Shellfish Sanitation Rules). Michael Holt testified for the Department.

The Department had submitted a conditional approval request in a letter and amended rules dated October 15, 2014.

Rep. Schmidt moved that the Committee accept the conditional approval request and conditionally approve Final Proposal 2014-130 based on the request.

Rep. MacKay seconded.

Adopted.

13. The Committee discussed Final Proposal 2014-131 from the Department of Health and Human Services (Commissioner, N.H. Residential Child Care Licensing). Michael Holt and Melissa Clement testified for the Department.

Rep. MacKay moved that the Committee conditionally approve Final Proposal 2014-131 on the condition that He-C 4001.19(f) be amended by inserting “, high school equivalency certificate,” immediately after the phrase “high school diploma.”

Rep. Schmidt seconded.

Adopted.

14. The Committee discussed Proposed Interim Rule INT 2014-9 from the Department of Health and Human Services (Former Division of Mental Health and Developmental Services, Rights of Persons Receiving Mental Health Services in the Community). Catherine Bernhard and Michael Holt testified for the Department.

Rep. Schmidt moved that the Committee approve Proposed Interim Rule INT 2014-9.

Rep. McGuire seconded.

Adopted.

15. The Committee discussed Proposed Interim Rule INT 2014-10 from the Department of Health and Human Services (Former Division of Mental Health and Developmental Services, Rights of Persons in State Mental Health Facilities). Catherine Bernhard and Michael Holt testified for the Department.

Rep. Sad moved that the Committee approve Proposed Interim Rule INT 2014-10.

Rep. McGuire seconded.

Adopted.

16. After a break, with Sens. Reagan, Cataldo, Lasky, and Watters, and Reps. Schmidt, McGuire, MacKay, Ladd, Kidder, and Barry present, the Committee discussed Final Proposal 2014-106 from the Department of Environmental Services (Water Quality and Quantity Programs, New Hampshire Clean Lakes Program). Peter Demas testified for the Department.

Rep. Sad returned to the meeting as the discussion began on this item. Rep. Barry was not a voting member at this time.

Sen. Watters moved that the Committee approve Final Proposal 2014-106.

Rep. Kidder seconded.

Adopted.

17. The Committee discussed Final Proposal 2014-91 from the Insurance Department (Long-Term Care Insurance). David Sky and Jennifer Patterson testified for the Department, whose Commissioner had also submitted written testimony.

The following persons also testified:

Patrick C. Reeder, representing Genworth Financial of Richmond, Virginia, who had also provided written testimony.

Dan Bryant, representing the American Council of Life Insurers (ACLI), which had also submitted written testimony through Heidi L. Kroll.

Charles P. Piacentini, representing the Unum Group of Portland, Maine.

David Plumb, representing John Hancock Financial Services, of Boston, Mass.

Michael McLaughlin, representing ACLI, registered his opposition to the rules but chose not to speak.

Sen. Watters left the meeting during the discussion of this item. Rep. Barry was once again a voting member.

Rep. Schmidt moved that the Committee make a preliminary objection to Final Proposal 2014-91 on the ground that the Final Proposal was contrary to the public interest, based on public testimony.

Rep. McGuire seconded.

Adopted.

Sen. Reagan noted for the record that Rep. MacKay voted “no”.

18. The Committee discussed Final Proposal 2014-119 from the Fish and Game Department (Voluntary Hike Safe Card). Evan Mulholland testified for the Department.

Rep. Kidder moved that the Committee approve Final Proposal 2014-119 with the understanding that the Department would not make the rules effective before January 1, 2015, the date that the underlying statute, RSA 206:26-bb, I(c), goes into effect.

Rep. Sad seconded.

Adopted.

19. The Committee discussed the response by the Lottery Commission to the Committee’s preliminary objection to Final Proposal 2014-38 (Rules for Sales Agents). Charles McIntyre and Lynda Plante testified for the Commissioner.

Rep. McGuire moved that the Committee approve the objection response for Final Proposal 2014-38 with the recommendation that the Commission “clean up” the application packet, by initiating rulemaking to address requirements in the application packet that are not already contained in statute or rule, and are not capable of being incorporated by reference pursuant to RSA 541-A:19-b and § 3.12 of Ch. 4 of the Manual.

Rep. Schmidt seconded.

Adopted.

20. The Committee discussed Proposed Interim Rule INT 2014-8 from the Pharmacy Board (Licensing of Pharmacies and Pharmacists). Robert Stout, Board Vice-President, testified for the Board.

Rep. McGuire moved that the Committee approve Proposed Interim Rule INT 2014-9 with the understanding that the Board, during the regular rulemaking process, would address the comments made as annotations to the Proposed Interim Rule by Committee Staff.

Rep. Sad seconded.

Adopted.

21. The Committee discussed requesting a waiver from the Director of the Office of Legislative Services of the Committee’s November 17, 2014 deadline to act on the following Final Proposals filed on October 3, 2014 for the Committee’s regular meeting agenda on November 20, 2014:

FP 2014-11	BOARD OF MENTAL HEALTH PRACTICE Practice and Procedure
FP 2014-12	BOARD OF MENTAL HEALTH PRACTICE License Requirements, Applications and Fees
FP 2014-13	BOARD OF MENTAL HEALTH PRACTICE License Renewal, Continuing Education, Collaboration and Reinstatement

FP 2014-14 BOARD OF MENTAL HEALTH PRACTICE
Ethics and Professional Standards, Responsibilities of Licensees

FP 2014-108 DEPARTMENT OF SAFETY
Commissioner
Rafting Prohibition on Round Cove, Fish Cove and Flag Cove on
Lake Winnepesaukee in the Town of Meredith

It was the consensus of the Committee to request a waiver.

22. The Committee discussed whether to cancel the continued Committee meeting scheduled for November 6, 2014.

It was the consensus of the Committee to hold the continued meeting and to have the objection responses for Final Proposal 2013-222 from the Department of Safety and Final Proposal 2014-91 from the Insurance Department be placed on the agenda if the responses were submitted prior to that date.

23. The Committee recessed by consensus at 11:45 a.m.