



STATE OF NEW HAMPSHIRE  
JOINT LEGISLATIVE COMMITTEE ON ADMINISTRATIVE RULES

ROOM 219  
25 CAPITOL STREET  
CONCORD, NEW HAMPSHIRE 03301-6312

**Action Minutes**

**NOVEMBER 15, 2012**

**Members Present:** Senators Merrill and Groen, and Representatives Pilotte, Schmidt, McGuire, Manuse, Bowers\*, Sad\*, and Winter\*. (\*) 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 9:07 a.m. by Sen. Merrill as Vice-Chair.

Members present at this time, aside from Sen. Merrill, were Sen. Groen, and Reps. Pilotte, Schmidt, McGuire, Bowers, Sad, and Winter.

Sen. Merrill designated Rep. Winter, Rep. Sad, and Rep. Bowers as alternates, respectively, for Rep. Patten, Sen. Kelly, and Sen. Lambert, who were absent.

2. The Committee discussed the minutes of the Committee meeting on October 18, 2012.

Rep. Pilotte moved that the minutes be approved.

Sen. Groen seconded.

Adopted.

Rep. Bowers left the meeting at this time.

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

No action to postpone was taken.

4. The Committee discussed the following Final Proposals from the agencies indicated (Consent Agenda – Final Proposals):

FP 2012-63      COMMUNITY DEVELOPMENT FINANCE AUTHORITY  
Capacity Development Grants for Regional Development Corporations

FP 2012-111    DEPARTMENT OF ENVIRONMENTAL SERVICES  
Oil and Remediation Programs  
Recovery of Gasoline Vapors

FP 2012-119    DEPARTMENT OF ADMINISTRATIVE SERVICES  
Division of Personnel  
Personnel Rules Chapter 100 Changes and the Electronic Human Resources  
Management System

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- FP 2012-120 DEPARTMENT OF ADMINISTRATIVE SERVICES  
Division of Personnel  
Various Personnel Rules and the Electronic Human Resources Management System
- FP 2012-125 DEPARTMENT OF REVENUE ADMINISTRATION  
Education Tax Credit Applied to the Business Profits Tax Liability
- FP 2012-126 DEPARTMENT OF REVENUE ADMINISTRATION  
Education Tax Credit Applied to the Business Enterprise Tax Liability
- FP 2012-130 DEPARTMENT OF REVENUE ADMINISTRATION  
Net Operating Loss Deduction to Gross Business Profits

Rep. Schmidt moved that the Committee approve the Consent Agenda.

Rep. McGuire seconded.

Adopted.

5. The Committee discussed the status of agency responses to the following conditional approvals made by the Committee:

***Conditionally Approved September 20, 2012:***

- FP 2012-76 BOARD OF REGISTRATION IN OPTOMETRY  
Rules Regarding Pharmaceutical Agents, Continuing Education Form, Misconduct Investigations and Disciplinary Sanctions for Optometrists  
*(Response received 11-6-12 and confirmed 11-7-12.)*

***Conditionally Approved October 18, 2012:***

- FP 2012-118 DEPARTMENT OF HEALTH AND HUMAN SERVICES  
Former Division of Mental Health and Developmental Services  
Nursing Facility Preadmission Screening and Resident Review (PASRR)  
*(Response received 10-24-12 and confirmed 10-24-12.)*
- FP 2012-74 DEPARTMENT OF SAFETY  
Readoption of Motor Carrier Safety Rules  
*(Response received 10-19-12 and confirmed 10-22-12.)*
- FP 2012-62 BOARD OF EDUCATION  
Principal, Associate Principal, District Administrator, Educational Interpreter and Professional Development  
*(Response not yet received.)*

No further action was taken.

6. The Committee discussed Final Proposal 2012-94 from the Department of Safety (Request for Reconsideration Rule).

The Department had earlier informed Committee staff that the Final Proposal had been withdrawn.

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No further Committee action was necessary or taken by the Committee.

7. The Committee discussed Final Proposal 2012-121 from the Department of Safety (Various Bureau of Electrical Safety and Licensing Rules). Sherri Kelloway and Dean Sotirakopoulos testified for the Department.

Rep. Bowers had returned to the meeting by the time the discussion on this item began.

The Department had submitted a request for conditional approval in a letter and amended rule dated November 1, 2012.

Rep. Pilotte moved that the Committee accept the conditional approval request and conditionally approve Final Proposal 2012-121 based on the request.

Rep. Sad seconded.

Adopted.

- \*\*8. The Committee discussed Final Proposal 2012-90 from the Architectural Barrier-Free Design Committee (Governor's Commission on Disability, Architectural Barrier Free Design Code). Jillian Shedd and David Gleason, Chair of the Architectural Barrier Free Design Committee, testified for the agency.

Rep. Pilotte moved that the Committee approve Final Proposal 2012-90.

Rep. Winter seconded.

Adopted.

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

9. The Committee discussed a report by the Office of Legislative Services (OLS) to the Committee Chair on an expedited rulemaking process as required pursuant to 2011, 252:14 (SB 161-FN).

Rep. Bowers left during the discussion of this item.

Rep. McGuire moved that the Committee recommend legislation to amend RSA 541-A based on the report, with further changes to RSA 541-A (1) to require notice to policy committees and to the regulated community beyond notice in the Rulemaking Register, and (2) to create a time period for the OLS Director to consult with the Committee Chair and Vice-Chair about agency requests for editorial changes.

Rep. Schmidt seconded.

Adopted.

10. After a break, with Sen. Merrill, Sen. Groen, and Reps. Pilotte, Schmidt, McGuire, Sad, and Winter present, the Committee discussed Final Proposal 2012-127 from the Department of Revenue Administration (Education Tax Credit Program). Kathryn Skouteris and John Lighthall testified for the Department.

Rep. Manuse arrived during the discussion of this item, and Sen. Groen and Rep. Schmidt left.

The Department had submitted a conditional approval request in a letter and amended rule dated November 9, 2012.

Rep. McGuire moved that the Committee accept the conditional approval request and conditionally approve Final Proposal 2012-127 based on the request, and recommend to the Acting Director of the Office of Legislative Services that she accept as editorial changes to the Department's "Report ED-05" form the changes listed below to Item 9 (1) of the form:

- (a) "Number of parents/legal guardians of participating students" – Remove "parents/legal guardians of".
- (b) "Number of parents/legal guardians of participating students who responded" – Replace with "Number of participating students whose parents responded".
- (c) "Percentage of parents/legal guardians of participating students who responded" – Replace with "Percentage of participating students whose parents responded."

Rep. Manuse seconded.

Adopted.

11. The Committee discussed Final Proposal 2012-75 from the Board of Education (Comprehensive Agricultural, Marketing and Business Education). Dr. Judith Fillion of the Department of Education testified for the Board.

Sen. Groen returned to the meeting during the discussion of this item.

Rep. Pilotte moved that the Committee approve Final Proposal 2012-75.

Rep. Sad seconded.

Adopted.

12. The Committee discussed Final Proposal 2012-93 from the Board of Education (Superintendent and Assistant Superintendent). Dr. Judith Fillion of the Department of Education testified for the Board.

Rep. Pilotte moved that the Committee approve Final Proposal 2012-93.

Rep. McGuire seconded.

Adopted.

13. The Committee discussed Final Proposal 2012-128 from the Insurance Department (Rules for Dispute Resolution in Medical Injury Early Offer Proceedings). Deborah O'Loughlin and James Fox testified for the Department.

The Department had submitted a conditional approval request in a letter and amended rule dated November 13, 2012 and a supplementary request in an amended rule dated November 14, 2012.

Rep. Pilotte moved that the Committee accept the conditional approval request, as amended by the supplementary request, with the following additional amendments, and conditionally approve Final Proposal 2012-128 based on the requests, as amended:

- In Ins 4802.01 (e) of the conditional approval request, deletion of the words “or from” before “a hearing officer.”
- In Ins 4804.04 of the conditional approval request, replacement of the words “no party” with “no person”, and the deletion of the words “or from” before “a hearing officer.”
- In Ins 4812.01 of the supplementary conditional approval request, amendment of the rule so it reads as follows:

*Ins 4812.01 Record of the Hearing.*

*(a) The hearing officer shall record the hearing by accurate audio means for purposes of providing a verbatim record, except as provided in (b).*

*(b) Upon the request of any party to the hearing officer, the record of the hearing shall be made live by a court reporter licensed under RSA 310-A:161-181, rather than by audio means. The party requesting that the record be made live by a court reporter shall bear the cost of the court reporter, including a transcript, which shall be made by the court reporter. The court reporter costs shall be divided evenly among the requesting parties should more than one party request that a court reporter make a live record and a transcript. Either the audio recording under (a) or the transcript from a court reporter, as appropriate, shall qualify as the official copy of the record.*

*(c) A copy of the record shall be:*

*(1) Made available to all parties in the form it was kept pursuant to Ins 4812.01(a) or (b); and*

*(2) Paid for by the requesting party at the time the party obtains the copy of the record.*

*(d) In the event that the requesting party prevails in the hearing, the non-prevailing party shall reimburse the requesting party for the cost of a copy of the record.*

Rep. Winter seconded.

Adopted.

14. The Committee discussed the Proposed Expedited Revision to Agency Form EXRF 2012-2 from the Department of Health and Human Services (Former Division of Mental Health and Developmental Services, Special Medical Services (SMS) – Application for All Services). Michele Beasley and Elizabeth Collins testified for the Department.

Rep. Schmidt had returned to the meeting by this time.

Rep. McGuire moved that the Committee approve the Proposed Expedited Revision to Agency Form EXRF 2012-2.

Rep. Manuse seconded.

Adopted.

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15. The Committee discussed Final Proposal 2012-131 from the Department of Health and Human Services (Former Office of Alcohol and Drug Abuse Prevention, Impaired Driver Programs). Michael Holt and Joseph Harding testified for the Department.

Rep. Pilotte moved that the Committee conditionally approve Final Proposal 2012-131 on the condition that He-A 504.04(i)(2) be amended to read: "Regulation of weapons of any kind on the premises, as consistent with federal and state law."

Rep. McGuire seconded.

Adopted.

16. The Committee discussed the letter dated November 9, 2012 from the Commissioner of the Department of Agriculture, Markets and Food in response to the Committee's letter of October 4, 2012 requesting the Department to report back to the Committee by November 15, 2012 on the status of the Weights and Measures Advisory Board required by RSA 438:8-b.

No further action was taken by the Committee.

17. The Committee discussed the scheduled Committee continued meeting date of December 6, 2012.

It was the consensus of the Committee to cancel that meeting as the date is the day after organization day, and the current Committee will no longer exist.

18. The Committee discussed that this was the last meeting of the current Committee, and members thanked Rep. Patten for her long service on the Committee.

19. Rep. McGuire moved that the Committee adjourn.

Rep. Pilotte seconded.

The Committee adjourned at 12:02 p.m.