



Action Minutes

December 17, 2020

Members Present: Representatives McGuire, Bershtein, Hatch, Schmidt, Lang, and Roy*, and Senators Reagan, Gray, Ward, and Whitley. (*) 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 as a Zoom webinar at 9:00 a.m. by Rep. Hatch as outgoing Chair, who proceeded to read the script prepared by Committee staff regarding authorization for the Committee to meet remotely in accordance with the Governor’s Emergency Order #12 and pursuant to Executive Order 2020-4.
2. A roll call attendance was taken.

Members present remotely at this time, aside from Rep. Hatch, were Reps. McGuire, Bershtein, Schmidt, Lang, and Roy, and Sens. Reagan, Gray, Ward, and Whitley.

NOTE: Sen. Watters responded to the roll call because he was also present at the Zoom invitation of Committee staff, who had thought he had been appointed as a regular Senate member due to a preliminary report from the Senate President’s Office. This was determined to be incorrect when the Senate President’s Office provided the final appointments after the meeting. In all subsequent votes in these minutes, Sen. Watters’ vote is enumerated with an asterisk (*) to record his participation but is not counted in the vote total because he was not appointed a member of the Committee.

3. The Committee discussed nominations for the next Committee Chair.

Rep. Hatch nominated Sen. Reagan to be the Committee Chair.

Rep. McGuire seconded.

There were no further nominations.

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

	<u>Yes</u>	<u>No</u>
Sen. Gray	X	
Sen. Reagan	X	
Sen. Ward	X	
Sen. Watters	*	
Sen. Whitley	X	
Rep. Bershtein	X	
Rep. Hatch	X	
Rep. Lang	X	
Rep. McGuire	X	
Rep. Schmidt	X	

The vote was 9 “yes” and zero “no”.

The motion was adopted.

Sen. Reagan now chaired the meeting as Committee Chair.

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4. The Committee discussed nominations for the next Committee Vice-Chair.

Rep. Schmidt nominated Rep. McGuire to be the Committee Vice-Chair.

Rep. Hatch seconded.

There were no further nominations.

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

	<u>Yes</u>	<u>No</u>
Sen. Gray	X	
Sen. Reagan	X	
Sen. Ward	X	
Sen. Watters	*	
Sen. Whitley	X	
Rep. Bershtein	X	
Rep. Hatch	X	
Rep. Lang	X	
Rep. McGuire	X	
Rep. Schmidt	X	

The vote was 9 “yes” and zero “no”.

The motion was adopted.

Since all regular members known to have been appointed were present, there were no alternates designated at this time.

5. The Committee discussed the minutes of the Committee meeting on November 19, 2020.

Rep. Hatch moved that the minutes be approved.

Rep. Schmidt seconded.

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

	<u>Yes</u>	<u>No</u>
Sen. Gray	X	
Sen. Reagan	X	
Sen. Ward	X	
Sen. Watters	*	
Sen. Whitley	X	
Rep. Bershtein	X	
Rep. Hatch	X	
Rep. Lang	--	--
Rep. McGuire	X	
Rep. Schmidt	X	

Rep. Lang abstained, so the actual vote was 8 “yes” and zero “no”.

The motion was adopted.

6. The Committee discussed scheduling Committee meetings in 2021.

Rep. Schmidt moved that the Committee approve the schedule prepared by Committee staff.

Sen. Ward seconded.

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

	<u>Yes</u>	<u>No</u>
Sen. Gray	X	
Sen. Reagan	X	
Sen. Ward	X	
Sen. Watters	*	
Sen. Whitley	X	
Rep. Bershtein	X	
Rep. Hatch	X	
Rep. Lang	X	
Rep. McGuire	X	
Rep. Schmidt	X	

The vote was 9 “yes” and zero “no”.

The motion was adopted.

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

CONSENT AGENDA

4. Committee Approval of Final Proposals:

- (a) FP 2020-87 DEPARTMENT OF ENVIRONMENTAL SERVICES
Oil and Remediation Programs
Change to Ambient Groundwater Quality Standard for Manganese

5. Committee Conditional Approvals:

- (a) FP 2020-72 DEPARTMENT OF HEALTH AND HUMAN SERVICES
Commissioner
NH Residential Child Care Licensing Rules
- (b) FP 2020-81 BOARD OF EDUCATION
Home Education
- (c) FP 2020-84 DEPARTMENT OF LABOR
Safety Programs and Joint Loss Management Committees
- (d) INT 2020-6 DEPARTMENT OF HEALTH AND HUMAN SERVICES
Former Office of Alcohol & Drug Abuse Prevention
Voluntary Registry of Recovery Houses

Rep. Schmidt moved that the Committee approve the Consent Agenda, that is, approve the Final Proposal in Item #4, and conditionally approve the Final Proposals and Proposed Interim Rule in Item #5 based on the agencies’ conditional approval requests.

Sen. Ward seconded.

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

	<u>Yes</u>	<u>No</u>
Sen. Gray	X	
Sen. Reagan	X	
Sen. Ward	X	
Sen. Watters	*	
Sen. Whitley	X	

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Rep. Bershtein	X
Rep. Hatch	X
Rep. Lang	X
Rep. McGuire	X
Rep. Schmidt	X

The vote was 9 “yes” and zero “no”.

The motion was adopted.

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

Sen. Reagan moved that the following items be postponed to the next regular meeting on January 15, 2021 and that a waiver be requested of the deadline for Final Proposal 2019-209 so that it may be heard at the Committee meeting on January 15, 2021:

9. DEPARTMENT OF SAFETY

(b) OR 2019-202 Commissioner
Road Toll Administration Rules
(JLCAR Deadline February 23, 2021. Some rules were interim rules that expired June 29, 2020.)
(Response not yet received. Response due by January 4, 2021.)

11. DEPARTMENT OF HEALTH AND HUMAN SERVICES

(a) FP 2019-209 Former Division of Public Health Services
Rules for Hospitals
(JLCAR Deadline December 22, 2020. Former interim rules expired April 22, 2018.)
(Formerly Item #9(a) on November 19, 2020 Agenda.)

Rep. McGuire seconded.

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

	<u>Yes</u>	<u>No</u>
Sen. Gray	X	
Sen. Reagan	X	
Sen. Ward	X	
Sen. Watters	*	
Sen. Whitley	X	
Rep. Bershtein	X	
Rep. Hatch	X	
Rep. Lang	X	
Rep. McGuire	X	
Rep. Schmidt	X	

The vote was 9 “yes” and zero “no”.

The motion was adopted.

9. The Committee discussed Final Proposal 2020-90 from the Department of Safety (Commissioner, Firefighter Medical Examination Reimbursement).

Rep. McGuire moved that the Committee make a preliminary objection to Final Proposal 2020-90 on the ground that the Department’s requirement that applicants provide their Social Security number, or a portion thereof, was beyond the agency’s authority.

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Rep. Schmidt seconded.

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

	<u>Yes</u>	<u>No</u>
Sen. Gray	X	
Sen. Reagan	X	
Sen. Ward	X	
Sen. Watters	*	
Sen. Whitley	X	
Rep. Bershtein	X	
Rep. Hatch	X	
Rep. Lang	X	
Rep. McGuire	X	
Rep. Schmidt	X	

The vote was 9 “yes” and zero “no”.

The motion was adopted.

10. The Committee discussed Objection Response 2020-54 by the Department of Environmental Services to the Committee’s preliminary objection to Final Proposal 2020-54 (Drinking Water State Revolving Loan Fund Program). Pam Monroe testified for the Department.

The Department had also submitted an amended objection response dated December 9, 2020 and a letter dated December 10, 2020.

After further discussion Pam Monroe requested a revised objection, with the understanding that the changes in the amended objection response would be incorporated into the Department’s revised objection response, and was based on the Department’s request to address Committee staff comments to the rules in the preliminary objection response as follows:

- Comment on page 4, by amending the language at Env-Dw 1102.53(f) to read as follows: “Has a good reputation for integrity as generally known in the industry;”;
- Comment on page 8, by resolving the inconsistencies between Env-Dw 1104.04(b)(1) and form “DWSRF Pre-Application Form”, NHDES-W-03-217;
- Comment on page 13, by resolving the inconsistencies between Env-Dw 1106.03(g) and “Form 1: Final Application”, NHDES-W-03-064; and
- Comment on page 24, by inserting the certification statement found on the form “Request for DWSRF Disbursement”, NHDES-W-03-206, into the rule at Env-Dw 1107.07.

Rep. Hatch moved that the Committee make a revised objection to Final Proposal 2020-54 as requested.

Rep. Schmidt seconded.

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

	<u>Yes</u>	<u>No</u>
Sen. Gray	X	
Sen. Reagan	X	
Sen. Ward	X	
Sen. Watters	*	
Sen. Whitley	X	
Rep. Bershtein	X	
Rep. Hatch	X	
Rep. Lang	X	

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Rep. McGuire	X
Rep. Schmidt	X

The vote was 9 “yes” and zero “no”.

The motion was adopted.

11. The Committee discussed Proposed Interim Rule INT 2020-5 from the Department of Health and Human Services (Former Division of Human Services, Expungement of SNAP Benefits). Allyson Zinno and Lindsay Bibeau testified for the Department.

Rep. Hatch moved that the Committee make an objection to Proposed Interim Rule INT 2020-5 on the ground that the rule does not meet the requirement for an interim rule under RSA 541-A:19, I(c).

Sen. Whitley seconded.

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

	<u>Yes</u>	<u>No</u>
Sen. Gray	X	
Sen. Reagan	X	
Sen. Ward	X	
Sen. Watters	*	
Sen. Whitley	X	
Rep. Bershtein	X	
Rep. Hatch	X	
Rep. Lang	X	
Rep. McGuire	X	
Rep. Schmidt	X	

The vote was 9 “yes” and zero “no”.

The motion was adopted.

12. The Committee discussed an editorial change requested by the Department of Health and Human Services in a letter dated December 11, 2020 to the Director of Legislative Services for He-E 501.05(a)(4), effective 12-7-19 (Document #12936), relative to the monthly income eligibility limit subject to the annual cost of living adjustment (COLA) for services under the Social Services Block Grant.

Rep. Hatch moved that the Committee recommend to the Director of Legislative Services that he accept the requested change as an editorial change.

Rep. Bershtein seconded.

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

	<u>Yes</u>	<u>No</u>
Sen. Gray	X	
Sen. Reagan	X	
Sen. Ward	X	
Sen. Watters	*	
Sen. Whitley	X	
Rep. Bershtein	X	
Rep. Hatch	X	
Rep. Lang	X	
Rep. McGuire	X	
Rep. Schmidt	X	

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The vote was 9 “yes” and zero “no”.

The motion was adopted.

13. The Committee discussed Objection Response 2020-62 from the Department of Corrections to the Committee’s preliminary objection to Final Proposal 2020-62 (Visitation, Request Slips, Grievances, Resident E-Mail, & Package Service). Dennis Fitton testified for the Department.

Rep. Hatch moved that the Committee accept the response and approve the rules with a recommendation to the Director of Legislative Services that he accept as an editorial change in the adopted rule the insertion of the words “To ensure visitor safety” at the beginning of Cor 305.07(c)(7).

Sen. Ward seconded.

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

	<u>Yes</u>	<u>No</u>
Sen. Gray	X	
Sen. Reagan	X	
Sen. Ward	X	
Sen. Watters	*	
Sen. Whitley	X	
Rep. Bershtein	X	
Rep. Hatch	X	
Rep. Lang	X	
Rep. McGuire	X	
Rep. Schmidt	X	

The vote was 9 “yes” and zero “no”.

The motion was adopted.

14. The Committee discussed Final Proposal 2020-75 from the Board of Mental Health Practice (Organizational Rules).

Thomas Broderick, from the Office of Professional Licensure and Certification, was not yet present to testify on behalf of the Board, so the Committee discussed the next item.

15. The Committee discussed Final Proposal 2020-83 from the Board of Education (Demonstrated Knowledge and Skills in High School).

The Board had submitted a conditional approval request in amended rules dated November 25, 2020.

Rep. McGuire moved that the Committee conditionally approve Final Proposal 2020-83 based on the request.

Rep. Hatch seconded.

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

	<u>Yes</u>	<u>No</u>
Sen. Gray	X	
Sen. Reagan	X	
Sen. Ward	X	
Sen. Watters	*	
Sen. Whitley	X	
Rep. Bershtein	X	

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Rep. Hatch	X
Rep. Lang	X
Rep. McGuire	X
Rep. Schmidt	X

The vote was 9 “yes” and zero “no”.

The motion was adopted.

16. The Committee discussed Final Proposal 2020-85 from the Insurance Department (Antifraud Plans Standards). Marty Mobley testified for the Department.

The Department had submitted a conditional approval request in amended rules dated December 1, 2020.

Rep. Hatch moved that the Committee conditionally approve Final Proposal 2020-85 based on the request.

Rep. Bershtein seconded.

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

	<u>Yes</u>	<u>No</u>
Sen. Gray	X	
Sen. Reagan	X	
Sen. Ward	X	
Sen. Watters	*	
Sen. Whitley	X	
Rep. Bershtein	X	
Rep. Hatch	X	
Rep. Lang	X	
Rep. McGuire	X	
Rep. Schmidt	X	

The vote was 9 “yes” and zero “no”.

The motion was adopted.

17. The Committee discussed the following Final Proposals from the Board of Mental Health Practice.

FP 2020-75 Organizational Rules

FP 2020-78 Ethical and Professional Standards, Responsibilities of Licensees

Thomas Broderick, from the Office of Professional Licensure and Certification, testified on behalf of the Board.

The Board had submitted conditional approval requests in amended rules dated December 10, 2020 for each Final Proposal.

Rep. McGuire moved that the Committee conditionally approve Final Proposal 2020-74 based on the request.

Rep. Schmidt seconded.

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

	<u>Yes</u>	<u>No</u>
Sen. Gray	X	
Sen. Reagan	X	
Sen. Ward	X	

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Sen. Watters	*
Sen. Whitley	X
Rep. Bershtein	X
Rep. Hatch	X
Rep. Lang	X
Rep. McGuire	X
Rep. Schmidt	X

The vote was 9 “yes” and zero “no”.

The motion was adopted.

Rep. Hatch moved that the Committee conditionally approve Final Proposal 2020-78 based on the request but also on the conditions that

- On page 3, amending Mhp 502.01(o) to read as follows: “A licensee shall have a professional will which means a written plan in place for management of clinical records in case his or her incapacitation, retirement, or practice closure, which identifies an individual or entity who shall oversee the professional will. Such individual shall be a licensee of the board.”;
- On page 7, providing Committee Staff with a current copy of the form “Report of Alleged Misconduct” incorporated at Mhp 503.02(d);
- On page 18, amending Appendix B: Incorporation by Reference Information so that the hyperlinks are functioning for Mhp 501.02(a)(1)-(3); and
- On page 18, submitting completed Incorporation by Reference Statements for Mhp 501.02(a)(1)-(2) and (4).

Sen. Whitley seconded.

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

	<u>Yes</u>	<u>No</u>
Sen. Gray	X	
Sen. Reagan	X	
Sen. Ward	X	
Sen. Watters	*	
Sen. Whitley	X	
Rep. Bershtein	X	
Rep. Hatch	X	
Rep. Lang	X	
Rep. McGuire	X	
Rep. Schmidt	X	

The vote was 9 “yes” and zero “no”.

The motion was adopted.

18. The Committee discussed the following emergency rule filed by the Board of Nursing:

ER Doc. #13141	Instructor Qualifications <i>(Effective December 4, 2020. Scheduled to expire June 2, 2021.)</i>
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No further action was taken.

19. The Committee discussed the following emergency rule filed by the Office of Professional Licensure and Certification (OPLC):

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ER Doc. #13145 Method for Applying for a Student Nurse Emergency License
(Effective December 11, 2020. Scheduled to expire June 9, 2021.)

No further action was taken.

20. The Committee discussed adjournment, as no continued meeting had been scheduled.

Rep. Hatch moved that the Committee adjourn.

Sen. Ward seconded.

Instead of taking a roll call vote, the Committee adjourned at the call of the Chair.

The Committee adjourned at 10:50 a.m.