



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

**Action Minutes**

**MARCH 16, 2018**

**Members Present:** Senators Reagan, Avard, French, and Ward\*, and Representatives McGuire, Schmidt, Lang, Wolf, Ebel, and Ohm\*. (\*) 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 #11. However, that item was approved).

1. The meeting was convened at 9:02 a.m. by Sen. Reagan as Chair.

Members present at this time, aside from Sen. Reagan, were Sens. Avard, French, and Ward, and Reps. Schmidt, Hatch, Lang, Wolf, Ebel, and Ohm.

Sen. Reagan designated Sen. Ward and Rep. Ebel as alternates, respectively, for Sen. Kahn and Sen. Feltes, who were absent.

2. The Committee discussed the minutes of the Committee meeting on February 16, 2018.

Rep. Schmidt moved that the Committee approve the minutes with an amendment to the motion to approve Final Proposal 2017-126 from the Office of Licensed Allied Health Professionals (Fees Charged by the Governing Boards), so that the motion reads: "Rep. McGuire moved that the Committee approve Final Proposal 2017-126 with the understanding that the Office of Professional Licensure and Certification will initiate rulemaking by September of this year to eventually address all of the fees under its pending authority for the agencies it administers."

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 Expedited Amendment to Incorporation by Reference:*

FP 2017-135 DEPARTMENT OF HEALTH AND HUMAN SERVICES  
Former Division of Mental Health and Developmental Services  
Community Mental Health Regions

FP 2017-149 FISH AND GAME DEPARTMENT  
Freshwater Fishing

FP 2017-173 CURRENT USE BOARD  
Assessment Ranges for Forest Land Categories, With and Without Stewardship,  
Unproductive Land and Wetland Categories

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FP 2017-175	DEPARTMENT OF CORRECTIONS Practice and Procedure
FP 2017-183	DEPARTMENT OF SAFETY Commissioner Watercraft Safety Rafting Rules - Prohibited Areas: Winter Harbor
FP 2018-1	PESTICIDE CONTROL BOARD Restricted Use Pesticides
FP 2018-3	DEPARTMENT OF REVENUE ADMINISTRATION Phase-In of the All Veterans' Tax Credit
FP 2018-11	DEPARTMENT OF REVENUE ADMINISTRATION Classification of Special Education Aid
EXIR 2018-1	BOARD OF MENTAL HEALTH PRACTICE Code of Ethics

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

Rep. Hatch seconded.

Adopted.

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

No action to postpone was taken.

5. The Committee discussed Final Proposal 2017-119 from the Board of Licensing for Alcohol and Drug Use Professionals (Ongoing Requirements; Ethical Standards). Robert Lamberti of the Office of Professional Licensure and Certification testified for the Board.

Rep. McGuire arrived during the discussion of this item.

The Board had submitted a conditional approval request in a memorandum and amended rules dated March 12, 2018.

Sen. Avard moved that the Committee conditionally approve Final Proposal 2017-119 based on the request, but with an amendment to include the following sentence at the end of Alc 409.04(a): "Included with the completed form shall be a blank copy of the evaluation form used to rate instructors/presenters."

Rep. Schmidt seconded.

Adopted.

6. The Committee discussed Proposed Interim Rule INT 2018-4 from the Board of Family Mediator Certification (Complaints of Misconduct and Investigations; Settlements; Explanation of Adopted Rules). Robert Lamberti from the Office of Professional Licensure and Certification testified for the Board.

Rep. Hatch moved that the Committee approve Proposed Interim Rule INT 2018-4.

Rep. Schmidt seconded.

Adopted.

7. The Committee discussed Proposed Interim Rule INT 2018-5 from the Board of Family Mediator Certification (Certification Requirements; Continued Status; Ethical Standards; Initial Certification of Family Mediator Training Programs; Continued Status of Certified Family Mediator Programs). 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 2018-5.

Rep. Hatch seconded.

Adopted.

8. The Committee discussed Proposed Interim Rule INT 2018-6 from the N.H. Retirement System (Participation in the Retirement System). Mark Cavanaugh testified for the agency.

The rules in Proposed Interim Rule INT 2018-6 had expired October 14, 2017.

Rep. McGuire moved that the Committee approve Proposed Interim Rule INT 2018-6 with the recommendation that the Retirement System take measures to avoid expiration of its rules in the future.

Sen. Avarad seconded.

Adopted.

9. The Committee discussed Proposed Interim Rule INT 2018-7 from the N.H. Retirement System (Code of Ethics). Mark Cavanaugh testified for the agency.

Sen. Avarad moved that the Committee approve Proposed Interim Rule INT 2018-7.

Rep. Ohm seconded.

Adopted.

10. The Committee discussed Proposed Interim Rule INT 2018-8 from the Department of Health and Human Services (Former Division of Public Health Services, Home Care Service Provider Agencies). Melissa St. Cyr and David Newton testified for the Department.

Rep. Schmidt moved that the Committee approve Proposed Interim Rule INT 2018-8.

Rep. Hatch seconded.

Adopted.

- \*\*11. The Committee discussed Final Proposal 2017-140 from the Department of Environmental Services (Water Quality and Quantity Program, Large Groundwater Withdrawals). Peter Demas testified for the Department.

The Department had submitted a conditional approval request in a cover letter and amended rules dated March 12, 2018.

Rep. McGuire moved that the Committee conditionally approve Final Proposal 2017-140 based on the request but with the recommendation that (1) the Office of Legislative Services (OLS) would seek legislative clarification to RSA 541-A on the issue of the consistency of forms with numbered rules as outlined in Committee staff comments to Final Proposal 2017-140 and (2) the Department will submit to the OLS for review any changes the Department makes to its forms.

Senator Avard seconded.

Adopted.

12. The Committee discussed Final Proposal 2017-147 from the Board of Education (Alternative Education and Career and Technical Education). Diana Fenton and Eric Feldborg from the Department of Education testified for the Board.

The Board had submitted a conditional approval request in an e-mail and amended rules dated March 15, 2018.

Rep Schmidt moved that the Committee conditionally approve Final Proposal 2017-147 based on the request but with the recommendation that the Board seek legislative changes to address the comments made by Committee staff on pages 7 and 10 of the request.

Rep. Hatch seconded.

Adopted.

13. The Committee discussed Final Proposal 2017-157 from the Board of Education (Manifest Educational Hardship). Diana Fenton from the Department of Education testified for the Board.

Senator Avard left the meeting during the discussion of this item.

Rep. Lang moved that the Committee approve Final Proposal 2017-157.

Rep. Schmidt seconded.

Senator Reagan designated Rep. Ohm as an alternate for Sen. Avard, who was now absent.

The motion was adopted.

14. The Committee discussed Final Proposal 2017-174 from the Department of Corrections (Organizational Rules). Christopher Kench and Commissioner Helen Hanks testified for the Department.

Rep. McGuire moved that the Committee approve Final Proposal 2017-174.

Rep. Schmidt seconded.

Adopted.

15. The Committee discussed Final Proposal 2017-176 from the Department of Corrections (Standards of Operation, Management and Administration of State Correctional Facilities). Christopher Kench and Commissioner Helen Hanks testified for the Department.

The Department had submitted a conditional approval request in an e-mail received on March 9, 2018.

Rep. Schmidt moved that the Committee conditionally approve Final Proposal 2017-176 based on the request.

Rep. Hatch seconded.

Adopted.

16. The Committee discussed Final Proposal 2017-177 from the Department of Corrections (Classification). Christopher Kench and Commissioner Helen Hanks testified for the Department.

Rep. McGuire moved that the Committee make a preliminary objection to Final Proposal 2017-177 based on the comments to the Final Proposal by Committee staff relative to lack of clarity.

Rep. Schmidt seconded.

After further discussion, Rep. McGuire withdrew her motion and Rep. Schmidt withdrew his second.

Rep. McGuire moved that the Committee approve Final Proposal 2017-177 with the recommendation that the Department begin the rulemaking process on these rules again after the outcome of SB 373 is determined.

Rep. Schmidt seconded.

Adopted.

17. The Committee discussed Final Proposal 2017-148 from the Department of Safety (Commissioner, Driver Education Rules). David Hiltz and State Trooper Russell Bailey testified for the Department.

Sen. Reagan and Rep. Schmidt left the meeting as the discussion on this item began. Rep. McGuire now conducted the meeting as Acting Chair.

The Department had submitted a conditional approval request in amended rules dated March 13, 2018.

Rep. Hatch moved that the Committee conditionally approve Final Proposal 2017-148 based on the request but with a further amendment to insert the word "unadjudicated" immediately before the word "arrest" in Saf-C 3106.01 (c)(1)-(4), (6), and (7), and Saf-C 3106.02 (b)(1)-(6).

Rep. Lang seconded.

Rep. Schmidt returned to the meeting before the vote.

The motion was adopted. Rep. Schmidt recused himself from voting because he was not present for the discussion.

After the vote, Scott A. Rogers, representing Thin Blue Line Driving School, testified.

18. The Committee discussed the response by the Department of Safety to the Committee's revised objection to Final Proposal 2017-74 (Commissioner, Licensure of Private Investigators, Security Guards, and Bail Recovery Agents). Keith Lohmann and State Police Captain Paul Hardcastle testified for the Department.

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Rep. Lang moved that the Committee accept the response and approve the rules with the recommendation that the Department seek legislative clarification to RSA 106-F to address the issues of legislative intent and inconsistencies with RSA 106-F as outlined in Committee staff comments to the rules.

Rep. Hatch seconded.

Adopted.

19. The Committee discussed an emergency rule (Document #12489) filed by the Fish and Game Department (Berry Brook and Taking of Salters) and effective March 7, 2018. Paul Sanderson testified for the Department.

No further action was taken.

20. The Committee discussed the continued meeting scheduled for April 6, 2018.

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

21. The Committee adjourned by consensus at 11:44 a.m.