



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

Action Minutes

MARCH 21, 2014

Members Present: Senator Reagan and Representatives Schmidt, MacKay, Ladd, Sad, Gottling*, Kidder*, 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 9:01 a.m. by Sen. Reagan as Chair.

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

Sen. Reagan designated Rep. Gottling and Rep. Kidder as alternates, respectively, for Sen. Lasky and Rep. McGuire, who were absent.

2. The Committee discussed the minutes of the Committee meeting on March 7, 2014.

Rep. Ladd moved that the minutes be approved.

Rep. Schmidt seconded.

Adopted.

3. The Committee discussed the following Final Proposals and Proposed Interim Rule (Consent Agenda – Final Proposals and Proposed Interim Rule):

- FP 2013-181* BOARD OF EDUCATION
Certification Information, Elementary Education
**(The only substantive issue with this final proposal is that the agency continued to operate under expired rules as noted in the fiscal impact statement.)*
- FP 2013-191 RACING AND CHARITABLE GAMING COMMISSION
Prohibiting Possession of Electronic Devices by Bingo Callers
- FP 2013-192 RACING AND CHARITABLE GAMING COMMISSION
Persons Eligible to Sign Bingo Financial Reports
- FP 2013-193 RACING AND CHARITABLE GAMING COMMISSION
Description of Games of Chance Area
- FP 2013-209 INSURANCE DEPARTMENT
Medicare Supplement Insurance

- FP 2013-215 BOARD OF NURSING
Organizational Rules
- FP 2013-218 BOARD OF NURSING
Nursing Assistants
- FP 2014-1 DEPARTMENT OF ENVIRONMENTAL SERVICES
Air Related Programs
Definition of "Unobstructed" in Air Pollution Dispersion Modeling
- FP 2014-2 DEPARTMENT OF ENVIRONMENTAL SERVICES
Air Related Programs
Regulated Toxic Air Pollutants
- FP 2014-3 DEPARTMENT OF HEALTH AND HUMAN SERVICES
Former Division of Human Services
Legally Liable Relatives for Financial Assistance
- FP 2014-4 DEPARTMENT OF HEALTH AND HUMAN SERVICES
Former Division of Human Services
Expiring Rules Related to Emergency Assistance Verification, Income-In-Kind,
and Jointly Owned Resources
- FP 2014-10 DEPARTMENT OF REVENUE ADMINISTRATION
Conservation Rules
- INT 2014-1 DEPARTMENT OF HEALTH AND HUMAN SERVICES
Former Division of Human Services
Personal Care Attendant Services

Rep. Schmidt moved that the Committee approve the Final Proposals and Proposed Interim Rule.

Rep MacKay seconded.

Adopted.

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

Rep. Schmidt moved that the Committee postpone action on the following item to the next Committee meeting:

11. BOARD OF BARBERING, COSMETOLOGY AND ESTHETICS

- OR 2013-227 Shop License, School License, School and Shop Additional Requirements
(JLCAR Deadline May 27, 2014.)
(Response not yet received.)

Rep. Sad seconded.

Adopted.

5. The Committee discussed Final Proposal 2013-180 from the Board of Education (Home Education). Mary Mayo of the Department of Education testified for the Board.

Rep. Schmidt moved that the Committee approve Final Proposal 2013-180.

Rep. Ladd seconded.

Adopted.

Rep. Hatch arrived at this time. Sen. Reagan designated Rep. Hatch as an alternate for Sen. Watters, who was absent.

6. The Committee discussed Final Proposal 2013-221 from the Department of Health and Human Services (Former Division of Human Services, Physician Services). Michael Holt and Valerie King testified for the Department.

The following persons also testified:

Devon Chaffee, representing the N.H. Civil Liberties Union.

Zack Paakkonen, representing the Gay and Lesbian Advocates and Defenders.

Rep. Kidder moved that the Committee approve Final Proposal 2013-221.

Rep. Ladd seconded.

Adopted.

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

7. The Committee discussed Final Proposal 2014-8 from the Department of Health and Human Services (Former Office of Alcohol and Drug Abuse Prevention, Impaired Driver Programs – Out-of-State Residents). Michael Holt and Patti Fowler testified for the Department.

Rep. Kidder moved that the Committee approve Final Proposal 2014-8.

Rep. Sad seconded.

Adopted.

8. The Committee discussed Final Proposal 2013-217 from the Board of Nursing (Continued Status). Denise Nies and Lori Tetreault testified for the Board.

The Board had submitted a conditional approval request in a letter and amended rule dated March 18, 2014.

Rep. Schmidt moved that the Committee accept the conditional approval request and conditionally approve Final Proposal 2013-217 based on the request.

Rep. MacKay seconded.

Adopted.

9. The Committee discussed Final Proposal 2013-219 from the Board of Nursing (Certificate of Medication Administration for Licensed Nursing Assistants and Medication Administration Education Program). Denise Nies and Lori Tetreault testified for the Board.

The Board had submitted a conditional approval request in a letter and amended rule dated March 18, 2014.

Rep. Kidder moved that the Committee accept the conditional approval request and conditionally approve Final Proposal 2013-219 based on the request.

Rep. Gottling seconded.

Adopted.

10. The Committee discussed Final Proposal 2014-9 from the Department of Safety (Staffing Emergency Medical Services Vehicles When Transporting Neonatal Patients). David Hilts testified for the Department.

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

Kyle Madigan, representing Dartmouth-Hitchcock Advanced Response Team.

Richard L. Cooper, representing the Department of Safety, Bureau of Emergency Medical Services.

Rep. MacKay moved that the Committee approve Final Proposal 2014-9.

Rep. Hatch seconded.

Adopted.

11. The Committee discussed the response by the Department of Safety to the Committee's preliminary objection to Final Proposal 2013-105 (Motorcycle Rider Education Program rules). David Hilts and Larry Crowe testified for the Department.

At the request of David Hilts on behalf of the Department, Rep. Schmidt moved that the Committee make a revised objection to Final Proposal 2013-105 based on the following grounds concerning the text of the rules in the preliminary objection response and the relevant Department forms:

- The deletion of paragraph Saf-C 5302.04(e) in the preliminary objection response, and inclusion of its substance only as an agreement of the applicant on the form DSMV 620 (Rev. 03/14) otherwise incorporated by reference, was contrary to legislative intent as outlined in the 2nd Committee staff comment to that paragraph; and
- Saf-C 5306.04 and the related waiver and indemnification form DSMV 624 (Rev. 03/14) were contrary to the public interest by not being clear that injuries to persons or property, for which the student grants the Department a release from liability, must be caused by negligence and not other cause.

Rep. Schmidt also included in his motion that the Committee recommend to the Department that it seek legislation to clarify its authority to charge tuition fees in Saf-C 5305.02(a) for the Department's own motorcycle program course, and noted that the Department representative agreed at the meeting.

Rep. MacKay seconded.

Adopted.

12. The Committee discussed a request of by the Department of Environmental Services for an editorial change to an adopted rule (Oil and Remediation Programs, Aboveground Petroleum Storage Facilities (Document #10487, effective 2-7-14). Gretchen Hamel testified for the Department.

Rep. Sad moved that the Committee accept the proposed change as an editorial change and so recommend to the Director of the Office of Legislative Services, while noting that this action did not set a precedent for agreeing to future requests.

Rep. Hatch seconded.

Adopted.

13. The Committee discussed the possible legislative repeal of rule Env-A 3700 of the Department of Environmental Services (Air Related Programs, NOx Emissions Reduction Fund for NOx Emitting Generation Sources) due to 2010, 59:2, effective 1-1-14. Gretchen Hamel testified for the Department.

Jill K. Sieveking, Director of the Office of Legislative Services, also testified.

It was the consensus of the Committee that there was not clear legislative repeal, and that the Department would proceed instead with a repeal of Env-A 3700 through an expedited repeal process.

14. It was the consensus of the Committee to cancel the continued meeting scheduled for April 4, 2014 and adjourn.

The Committee adjourned at 10:40 a.m.