



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

Action Minutes

APRIL 19, 2013

Members Present: Senators Reagan, Rausch, Cataldo, and Watters, and Representatives Schmidt, McGuire, MacKay, Ladd, Sad, Barry*, Gottling*, and Kidder*. (*) 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 9:05 a.m. by Sen. Reagan as Chair.

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

Sen. Reagan designated Rep. Barry as an alternate for Sen. Lasky, and Rep. Gottling as an alternate for Sen. Watters, who were absent.

2. The Committee discussed the minutes of the Committee meeting on March 15, 2013.

Sen. Rausch moved that the minutes be approved.

Sen. Cataldo seconded.

Adopted.

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

FP 2012-149 DEPARTMENT OF HEALTH AND HUMAN SERVICES
Commissioner
NH Residential Child Care Licensing - Homeless Youth Programs

FP 2012-163 DEPARTMENT OF ENVIRONMENTAL SERVICES
Air Related Programs
Particulate Matter and Visible Emissions Standards

FP 2012-164 DEPARTMENT OF ENVIRONMENTAL SERVICES
Air Related Programs
Ferrous and Non-Ferrous Foundries, Smelters, and Investment Casting Operations

FP 2012-180 POLICE STANDARDS AND TRAINING COUNCIL
Police, Corrections or Probation/Parole Officers

FP 2012-181 POLICE STANDARDS AND TRAINING COUNCIL
Suspension for Failure to Pass Physical Fitness Requirements

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- FP 2012-200 DEPARTMENT OF EMPLOYMENT SECURITY
Definitions/Work Search/Employment Services
- FP 2012-201 DEPARTMENT OF EMPLOYMENT SECURITY
Employer Requirements, Contributions and Debts
- FP 2012-211 INSTALLATION STANDARDS BOARD
Organizational Rules
- FP 2013-6 DEPARTMENT OF HEALTH AND HUMAN SERVICES
Former Division of Human Services
Deprivation Due to Incapacity for the Financial Assistance to Needy Families Program
- FP 2013-12 DEPARTMENT OF HEALTH AND HUMAN SERVICES
Former Division of Human Services
Medicaid for Employed Adults with Disabilities
- FP 2013-13 DEPARTMENT OF ENVIRONMENTAL SERVICES
Air Related Programs
Definition of Incinerator
- FP 2013-14 DEPARTMENT OF ENVIRONMENTAL SERVICES
Air Related Programs
Incinerators (n/k/a Incinerators and Wood Waste Burners)
- FP 2013-17 REAL ESTATE APPRAISER BOARD
Real Estate Appraiser Board Rules Regarding Renewal Fees
- FP 2013-20 DEPARTMENT OF REVENUE ADMINISTRATION
Business Enterprise Tax Estimates

Sen. Rausch moved that the Committee approve the Final Proposals, except for Final Proposal 2013-20.

Rep. Schmidt seconded.

Adopted.

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

- FP 2012-207 DEPARTMENT OF HEALTH AND HUMAN SERVICES
Former Division of Mental Health and Developmental Services
Complaint Resolution Procedures for Family Centered Early Supports and Services
- FP 2012-208 DEPARTMENT OF HEALTH AND HUMAN SERVICES
Former Division of Mental Health and Developmental Services
Family Centered Early Supports and Services

The Department had also submitted an amended conditional approval request dated April 18, 2013 for each of these Final Proposals.

It was the consensus of the Committee that discussion of these Final Proposals be postponed to later in the meeting.

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

No action to postpone to another meeting was taken at this time.

6. The Committee discussed Final Proposal 2012-202 from the Department of Employment Security (Employer Requirements, Quarterly Reports, Authorized Agents, and Filing Requirements). Marie Bailinson and Gary Wright testified for the Department.

It was the consensus of the Committee to postpone action on this item to the next Committee meeting.

7. The Committee discussed Final Proposal 2012-132 from the Public Utilities Commission (Rules for Gas Service). Commissioner Michael Harrington and Commission staff Lynn Fabrizio and Randall Knepper testified for the Commission.

The Commission had submitted a request for conditional approval in a letter dated April 15, 2013 and amended rule dated April 12, 2013, and an amended request for conditional approval in an amended rule dated April 19, 2013.

Sen. Watters arrived during the discussion of this item. Rep. Gottling was therefore no longer a voting member.

Rep. Schmidt moved that the Committee accept the amended conditional approval request and conditionally approve Final Proposal 2012-132 based on the request, and recommend that the Commission approach the policy committees to see whether a clarification is necessary to the Commission's authority to regulate landfill gas.

Rep. McGuire seconded.

Adopted.

8. The Committee discussed Final Proposal 2012-146 from the Department of Safety (Nonresident Pistol/Revolver License Rules). Marta Modigliani testified for the Department.

Petty Dean also testified.

Rep. Schmidt moved that the Committee conditionally approve Final Proposal 2012-146 on the grounds that Saf-C 2100 be amended to replace "permit" with "license" and that Saf-C 2102.02(a)(4) be amended to replace "out of state" with "resident".

Sen. Rausch seconded.

Adopted.

Sen. Reagan noted for the record that there were two "no" votes.

9. The Committee discussed Final Proposal 2012-148 from the Passenger Tramway Safety Board (Various Passenger Tramway Safety Rules).

Sen. Rausch moved that the Committee postpone action on this item to the continued Committee meeting on May 3, 2013.

Rep. Schmidt seconded.

Adopted.

10. The Committee discussed again Final Proposal 2012-146 from the Department of Safety (Nonresident Pistol/Revolver License Rules).

Penny Dean of Concord, N.H. testified.

Sen. Rausch moved that the Committee reconsider its prior vote to conditionally approve Final Proposal 2012-146.

Rep. Schmidt seconded.

By a show of hands, there were 7 "yes" votes. The motion was adopted.

Pursuant to Committee rule 302.03(b), the effect of adopting the motion to reconsider was to cancel the prior vote to conditionally approve Final Proposal 2012-146 as if it had never been taken.

Penny Dean testified again in opposition to the rules, and then Jay E. Simkin of Nashua, N.H. also testified in opposition.

Scott Wallace of Merrimack, N.H. registered his opposition to the rules but chose not to speak.

Rep. McGuire moved that the Committee make a preliminary objection to Final Proposal 2012-146 on the grounds as outlined in public testimony, and the issues in the Committee's discussion, including that the age limit in Saf-C 2103.01(b)(5) was beyond the Department's authority and that Saf-C 2102 was unclear relative to the references on Form DSSP 260 to Vermont residents because the rule contained no requirements regarding Vermont residents.

Sen. Cataldo seconded.

Adopted.

Sen. Reagan noted for the record that there were two "no" votes.

11. The Committee discussed Final Proposal 2012-139 from the Board of Education (Nonpublic Schools). Mary Mayo of the Department of Education testified for the Board.

The Board had submitted a request for conditional approval in an amended rule received on April 18, 2013 and an amended request for conditional approval in a further amended rule received on April 20, 2013.

Sen. Cataldo left the meeting during the discussion of this item.

Rep. Ladd moved that the Committee conditionally approve Final Proposal 2012-139 based on the conditional approval request, the amended conditional approval request, and on the condition that the following further amendments be made:

- A new paragraph (a) should be inserted in Ed 405.01 to read: "*Pursuant to RSA 193-E:3-b, I(c) NEASC shall be a recognized accrediting agency*".
- The words "*Accrediting agencies*" in the existing Ed 405.01(a) should be amended to read "*Other accrediting agencies that want*".
- The existing Ed 405.01(a)-(k) should be editorially re-lettered as (b)-(l), and all cross-references in the proposal to the paragraphs of Ed 405.01 should be editorially corrected.

Sen. Watters seconded.

Adopted.

Sen. Reagan noted for the record that there was one "no" vote.

12. The Committee discussed Final Proposal 2012-155 from the Board of Education (Daily Physical Activity Program, Suspension and Expulsion of Students, and High School Equivalency Programs). Mary Mayo of the Department of Education testified for the Board.

The Board had submitted a request for conditional approval in an amended rule received on April 18, 2013.

Gerald M. Zelin, representing the N.H. Council of School Attorneys, also testified.

Rep. MacKay moved that the Committee accept the conditional approval request and conditionally approve Final Proposal 2012-155 based on the request.

Sen. Rausch seconded.

Rep. McGuire moved that the conditional approval also be based on the condition that Ed 310.02(a) and (b) be deleted and that Ed 310.03(b) be amended by deleting the words "child obesity."

Rep. Ladd seconded.

The motion as amended was adopted.

Sen. Reagan noted for the record that there was one "no" vote.

13. The Committee discussed Final Proposal 2012-170 (Application for Certification and Credential Renewal and Validity). Mary Mayo of the Department of Education testified for the Board.

The Board had submitted a request for conditional approval in an amended rule received on April 18, 2013.

Sen. Rausch moved that the Committee accept the conditional approval request and conditionally approve Final Proposal 2012-170 based on the request.

Rep. Sad seconded.

Adopted.

14. The Committee discussed Final Proposal 2012-212 from the Installation Standards Board (Rules Regarding Warranty Seals, Inspector, Inspection of Installations, and Inspection Fee). Louise Lavertu of the Joint Board of Licensure and Certification testified for the Installation Standards Board.

Rep. McGuire moved that the Committee approve Final Proposal 2012-212.

Sen. Watters seconded.

Adopted.

15. The Committee discussed Final Proposal 2012-178 from the Board of Dental Examiners (License Requirements, Expanded Functions for Auxiliaries, Anesthesia/Sedation Evaluations, Continuing Education). Dr. Raymond Jarvis testified for the Board.

Sen. Rausch moved that the Committee approve Final Proposal 2012-178.

Rep. Kidder seconded.

Adopted.

16. The Committee discussed Final Proposal 2013-16 from the Board of Medicine (Rules Regarding Severance of Connection, Standards of Conduct and Physician Assistant Renewal Applications). Executive Director Kathryn Bradley testified for the Board.

Rep. McGuire moved that the Committee approve Final Proposal 2013-16.

Rep. Schmidt seconded.

Adopted.

17. The Committee discussed again the following final Proposals:

FP 2012-207 DEPARTMENT OF HEALTH AND HUMAN SERVICES
Former Division of Mental Health and Developmental Services
Complaint Resolution Procedures for Family Centered Early Supports and Services

FP 2012-208 DEPARTMENT OF HEALTH AND HUMAN SERVICES
Former Division of Mental Health and Developmental Services
Family Centered Early Supports and Services

Sen. Watters moved that the Committee accept the Department's amended conditional approval request for Final Proposal 2012-207 and conditionally approve Final Proposal 2012-207 based on the request.

Rep. MacKay seconded.

Adopted.

Sen. Watters then moved that the Committee accept the Department's amended conditional approval request for Final Proposal 2012-208 and conditionally approve Final Proposal 2012-208 based on the request.

Rep. MacKay seconded.

Adopted.

18. The Committee discussed Final Proposal 2013-20 from the Department of Revenue Administration (Business Enterprise Tax Estimates).

It was the consensus of the Committee that this item be postponed to the next Committee meeting on May 3, 2013.

19. The Committee discussed Proposed Interim Rule INT 2013-4 from the Department of Health and Human Services (Former Division of Mental Health and Developmental Services, Day Services). Michael Holt testified for the Department.

Rep. Kidder left the meeting during the discussion of this item.

Sen. Watters moved that the Committee approve Proposed Interim Rule INT 2013-4.

Rep. Schmidt seconded.

Adopted.

Sen. Watters left the meeting at this time.

20. It was the consensus of the Committee to postpone action on the following items to the Committee meeting on May 3, 2013:

14. DEPARTMENT OF HEALTH AND HUMAN SERVICES

- (b) FP 2013-2 Former Division of Human Services
Aid to the Permanently and Totally Disabled (APTD) Cash Assistance Grant Criteria When the APTD Applicant or Recipient is Ineligible for Federal Benefits
(JLCAR Deadline May 20, 2013.)

- (c) FP 2013-15 Former Division of Human Services
Household Composition of Shared Custody of Children in the Food Stamp Program
(JLCAR Deadline May 20, 2013.)

21. The Committee recessed at 12:01 p.m., thereby also postponing action on the following item to the continued meeting on May 3, 2013:

OTHER BUSINESS

16. Other