



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

Action Minutes

OCTOBER 19, 2017

Members Present: Senators Reagan, Feltes, French, Avard, and Kahn, and Representatives McGuire, Schmidt, Ladd, Hatch, Gottling*, Ebel*, Matthews*, Ohm*, and Sytek*. (*) 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 9:03 a.m. by Sen. Reagan as Chair.

Members present at this time, aside from Sen. Reagan, were Sens. Feltes, French, and Avard, and Reps. McGuire, Schmidt, Ladd, Hatch, Gottling, Ebel, Matthews, Ohm, and Sytek.

Sen. Reagan designated Rep. Gottling and Rep. Matthews as alternates, respectively, for Sen. Kahn and Rep. Graham, who were absent.

2. The Committee discussed the minutes of the Committee meeting on September 21, 2017.

Rep. Schmidt moved that the minutes be approved.

Sen. Feltes seconded.

Adopted.

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

CONSENT AGENDA

2. Committee Approval of Final Proposals and Proposed Interim Rules:

FP 2017-51	BOARD OF EDUCATION English Language Arts Teacher
FP 2017-61	DEPARTMENT OF ENVIRONMENTAL SERVICES Solid Waste Programs Amendments to Solid Waste Permitting Rules
FP 2017-62	BOARD OF NURSING Licensees with the Authority to Delegate Nursing Related Activities; Eligibility to be a Delegatee
FP 2017-65	BOARD OF EXAMINERS OF NURSING HOME ADMINISTRATORS Record of Official Actions; Custodian of Records; Media Access
FP 2017-85	INSURANCE DEPARTMENT Confidentiality of HIV Tests, Informed Consent

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- FP 2017-98 DEPARTMENT OF HEALTH AND HUMAN SERVICES
Former Division of Mental Health and Developmental Services
Clinical Records
- FP 2017-101 LIQUOR COMMISSION
Cost Changes by Vendor/Manufacturer
- FP 2017-115 BOARD OF AUCTIONEERS
Public Information, Record Retention
- INT 2017-22 DEPARTMENT OF HEALTH AND HUMAN SERVICES
Former Division of Public Health Services
In-State Beverage Fees

3. *Committee Conditional Approvals:*

- FP 2017-102 BOARD OF CHIROPRACTIC EXAMINERS
Licensing Requirements; Continued Status

Rep. Hatch moved that the Committee approve the Consent Agenda, with the exception of Final Proposal 2017-62, that is, approve the other Final Proposals and Proposed Interim Rule in Item #2, conditionally approve the Final Proposal in Item #3 based on the agency's conditional approval request, and approve Final Proposal 2017-73 from the Board of Barbering, Cosmetology, and Esthetics (Licensure Application; Schools and Shops Square Footage; School Operational Requirements; and Examinations).

Rep. Schmidt seconded.

Adopted.

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

Sen. Feltes moved that the Committee postpone action on Final Proposal 2017-62 from the Board of Nursing (Licensees with the Authority to Delegate Nursing Related Activities; Eligibility to be a Delegatee) to the next meeting.

Sen. French seconded.

Adopted.

5. The Committee discussed Final Proposal 2017-107 from the Lottery Commission (Keno). Valerie King testified for the Commission.

The Commission had requested a conditional approval in a letter and amended rules dated October 18, 2017.

Rep. McGuire moved that the Committee conditionally approve Final Proposal 2017-107 based on the request, and recommend that the Commission seek legislative clarification of its authority to require license applicants to submit financial information.

Rep. Schmidt seconded.

Sen. Kahn arrived at this time. Rep. Gottling was no longer a voting member.

The motion was adopted.

6. The Committee discussed Final Proposal 2017-116 from the Board of Auctioneers (Hearing Procedures; Decisions). Roy W. Tilsley, Board member, testified for the Board.

Sen. Feltes moved that the Committee make a preliminary objection to Final Proposal 2017-116 based on the annotations to the Final Proposal by Committee staff and the issue of lack of authority and being contrary to legislative intent by violating constitutional due process.

Sen. French seconded.

Adopted.

7. The Committee discussed Final Proposal 2017-86 from the Department of Safety (Commissioner, Readoption of Electronic Toll Collection Hearings). Keith Lohmann and David Hilts testified for the Department.

Rep. McGuire moved that the Committee postpone action on Final Proposal 2017-86 to the next meeting.

Rep. Schmidt seconded.

Adopted.

8. The Committee discussed Final Proposal 2017-48 from the Department of Safety (Commissioner, Safe Boater Education Rules). David Hilts and Keith Lohmann testified for the Department.

Rep. Schmidt moved that the Committee make a preliminary objection to Final Proposal 2017-48 based on the annotations to the Final Proposal by Committee staff.

Sen. French seconded.

Adopted.

9. The Committee discussed Final Proposal 2017-87 from the Department of Safety (Commissioner, New Hampshire Fire Standards and Training and EMS Administrative Fee Rules). David Hilts testified for the Department.

The Department had submitted a conditional approval request in amended rules dated October 18, 2017.

Rep. McGuire moved that the Committee postpone action on Final Proposal 2017-87 to the next meeting.

Rep. Schmidt seconded.

Adopted.

Sen. McGuire left the meeting at this time.

10. The Committee discussed Final Proposal 2017-66 from the Board of Examiners of Nursing Home Administrators (Fees; Renewal of Registration). Robert Lamberti of the Office of Professional Licensure and Certification testified for the Board.

Sen. Avar left the meeting at this time.

Sen. Kahn moved that the Committee approve Final Proposal 2017-66.

Sen. Feltes seconded.

Adopted.

Rep. McGuire returned to the meeting at this time.

11. The Committee discussed Final Proposal 2017-39 from the Department of Health and Human Services (Commissioner, New Hampshire Child Care Program Licensing Rules). Commissioner Jeffery Meyers, Melissa Clement, and Catherine Bernhard testified for the Department.

Sen. Avarad returned as the discussion on this item began.

The Department had submitted a conditional approval request in a letter and amended rules dated October 5, 2017 and an amended conditional approval request in a letter and amended rules dated October 18, 2017.

The following persons testified:

Michael McLaughlin representing Alpha Bits Learning Center, Inc.
Joann O'Shaughnessy
James O'Shaughnessy

The following persons registered their opposition to the rules but did not speak:

Kristin Ayers, representing Alpha Bits Learning Center, Inc.
Laura Elliot, representing Alpha Bits Learning Center, Inc.
Lisa Schroder, representing Alpha Bits Learning Center, Inc.
Lisa Mondello, representing Alpha Bits Learning Center, Inc.
Sally Wuellenweber, representing The Tot Spot and Keep Our Doors Open.
Kristen Biron.

The following person registered her support of the rules but did not speak:

Victoria Bram, representing Little Tree Education.

The following persons registered their desire to speak but ultimately did not speak:

Anne Grassier, representing the Child Care Advisory Council.
Amy Brooks, representing the Coos County Director Network.

Sen. Feltes moved that the Committee make a preliminary objection to Final Proposal 2017-39 on the grounds that Final Proposal 2017-39 was contrary to the public interest because the Committee determined that the Department failed to consider all public testimony by not providing the Committee with evidence, in response to a claim to the contrary, that the public comment was overruled on the merits.

Sen. French seconded.

Adopted.

12. The Committee discussed Final Proposal 2017-105 from the Department of Health and Human Services (Former Division of Human Services, Medicaid Physician Services - Non-Covered Services). Commissioner Jeffrey Meyers, Michael Holt, and Dr. Jonathan Welch testified for the Department.

The following persons also testified:

Shannon McGinley, representing Cornerstone Action.
Janson Wu, representing GLBTQ Legal Advocates and Defenders (GLAD), who also presented written testimony.

Liz Gabert, representing Cornerstone Action and herself.
Roger and Ann Schneeweis.
Rep. David Testerman, who also provided written testimony.
Rep. Al Baldasaro
Devin Farrelly
Kathleen Hedstrom
Susan Orłowski
Kathleen Yahnian
Toni Maviki
John A. Jeskevicus, who also provided written testimony.
Kathy Prierio
Dawn McKinney, representing N.H. Legal Assistance, who also provided written testimony.
Devon Chaffee, representing the American Civil Liberties Union of New Hampshire.
Julie Laughner

Gabrielle Jette also registered her opposition to the rules but did not speak.

After a break, with Sens. Reagan, Feltes, French, Avarđ, and Kahn, and Reps. McGuire, Schmidt, Ladd, Hatch, Gottling, Ebel, Matthews, Ohm, and Sytek present, the Committee resumed discussion of Final Proposal 2017-105. Reps. Gottling, Ebel, Ohm, and Sytek were not voting members at this time.

Sen. Avarđ moved that the Committee make a preliminary objection to Final Proposal 2017-105 on the ground that the fiscal impact statement was inadequate.

Rep. Ladd seconded.

On a show of hands, the vote was 5 “yes” and 5 “no”. The motion was not adopted.

Sen. Feltes moved that the Committee approve Final Proposal 2017-105 and recommend that the Department undertake emergency rulemaking pursuant to RSA 541-A:18 on the subject of this proposal if the underlying federal law implemented by the Final Proposal, Section 1557 of the Affordable Care Act, is changed.

Rep. Schmidt seconded.

On a show of hands, the vote was 6 “yes” and 4 “no”. The motion was adopted.

13. The Committee discussed Final Proposal 2017-103 from the Department of Health and Human Services (Former Division of Public Health Services, Assisted Living Residence -- Residential Care Licensing). Michael Holt and Melissa St. Cyr testified for the Department.

Sen. Avarđ left the meeting as the discussion on this item began.

The Department had submitted a conditional approval request in a letter and amended rules dated October 16, 2017.

Eldon Munson, representing the N.H. Association of Residential Care Homes, also testified.

Sen. Kahn moved that the Committee conditionally approve Final Proposal 2017-103 based on the Department’s request.

Sen. Feltes seconded.

Adopted.

14. The Committee discussed Proposed Interim Rule INT 2017-23 from the Department of Health and Human Services (Former Division of Mental Health and Developmental Services, Admissions to Glencliff Home). Catherine Bernhard testified for the Department.

Rep. McGuire moved that the Committee approve Proposed Interim Rule INT 2017-23.

Sen. Feltes seconded.

Adopted.

15. The Committee discussed Proposed Interim Rule INT 2017-24 from the Department of Health and Human Services (Former Division of Public Health Services, Rules for Hospitals). Michael Holt testified for the Department.

Rep. McGuire moved that the Committee approve Proposed Interim Rule INT 2017-24.

Rep. Schmidt seconded.

Adopted.

16. The Committee discussed Proposed Interim Rule INT 2017-25 from the Department of Health and Human Services (Former Division of Mental Health and Developmental Services, Committee for the Protection of Human Subjects). Catherine Bernhard and Jaime Kelly testified for the Department.

Sen. Feltes moved that the Committee approve Proposed Interim Rule INT 2017-25 with the understanding that the Department would address the substantive comment by Committee staff to He-M 316.03(a) relative to the lack of rules pursuant to RSA 171-A:19-b on procedures, conditions, and criteria for the conduct and approval of research.

Sen. French seconded.

Adopted.

17. The Committee discussed the continued meeting, tentatively scheduled for November 2, 2017, to discuss the postponed items and the Objection Response for Final Proposal 2017-39.

It was the consensus of the Committee to arrange a different meeting date.

18. The Committee recessed by consensus at 12:14 p.m.