



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

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**Action Minutes**

**DECEMBER 20, 2018**

**Members Present:** Senators Reagan, Feltes, Kahn, Ward, and Dietsch, and Representatives Hatch, McGuire, Schmidt, Hoelzel, Williams, 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 9:00 a.m. by Sen. Reagan as outgoing Chair.

Members present at this time, aside from Sen. Reagan, were Sens. Feltes, Kahn, Ward, and Dietsch, and Reps. Hatch, McGuire, Schmidt, Hoelzel, and Sytek.

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

Rep. Schmidt nominated Rep. Hatch to be the Committee Chair.

Sen. Feltes seconded.

There were no further nominations.

The motion was adopted.

Rep. Hatch now chaired the meeting as Committee Chair.

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

Rep. Schmidt nominated Sen. Reagan to be the Committee Vice-Chair.

Sen. Feltes seconded.

There were no further nominations.

The motion was adopted.

4. The Committee discussed the minutes of the Committee meeting on November 15, 2018.

Rep. Williams arrived during the discussion of this item.

Rep. Schmidt moved that the minutes be approved.

Sen. Reagan seconded.

Adopted.

5. The Committee discussed scheduling Committee meetings in 2019.

Rep. McGuire moved that the Committee approve the schedule prepared by Committee staff, with the approval of Friday, April 26 as the regular meeting date in April.

Sen. Kahn seconded.

Adopted.

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

**CONSENT AGENDA**

***4. Committee Approval of Final Proposals:***

- |             |   |
|-------------|---|
| FP 2018-141 | POLICE STANDARDS AND TRAINING COUNCIL<br>Training Required  |
| FP 2018-142 | BOARD OF REGISTRATION OF MEDICAL TECHNICIANS<br>Definitions, Legal Address, Application, Removal of Registration, and<br>Reinstatement of Registration        |
| FP 2018-152 | OFFICE OF LICENSED ALLIED HEALTH PROFESSIONALS<br>Allied Health Organizational Forms  |
| FP 2018-165 | DEPARTMENT OF HEALTH AND HUMAN SERVICES<br>Former Division of Human Services<br>Emergency Assistance and Verification   |
| FP 2018-166 | DEPARTMENT OF ENVIRONMENTAL SERVICES<br>Air Related Programs<br>Sand & Gravel Sources, Non-Metallic Mineral Processing Plants, Cement and<br>Concrete Sources |
| FP 2018-167 | DEPARTMENT OF HEALTH AND HUMAN SERVICES<br>Former Division of Human Services<br>Utility Expenses Incurred Separately  |
| FP 2018-169 | INSURANCE DEPARTMENT<br>Automobile Insurance, Rating Practices  |
| FP 2018-172 | DEPARTMENT OF REVENUE ADMINISTRATION<br>Utility Property Tax  |
| FP 2018-173 | N. H. VETERANS' HOME<br>Procedural Rules  |
| FP 2018-175 | INSURANCE DEPARTMENT<br>Actuarial Opinion and Memorandum  |
| FP 2018-176 | DEPARTMENT OF ENVIRONMENTAL SERVICES<br>Air Related Programs<br>Sulfur Content Limitations  |
| FP 2018-178 | DEPARTMENT OF HEALTH AND HUMAN SERVICES<br>Former Division of Human Services<br>Pharmaceutical Services   |

FP 2018-179      DEPARTMENT OF HEALTH AND HUMAN SERVICES  
Former Division of Mental Health and Developmental Services  
Children's Special Medical Services

FP 2018-180      DEPARTMENT OF HEALTH AND HUMAN SERVICES  
Former Division of Mental Health and Developmental Services  
Family Support Services to Children and Young Adults with  
Chronic Health Conditions

**5. *Committee Conditional Approvals:***

FP 2018-177      DEPARTMENT OF ENVIRONMENTAL SERVICES  
Water Quality and Quantity Programs  
Instream Flow Rules

Rep. McGuire moved that the Committee approve the Consent Agenda, that is, approve the Final Proposals in Item #4 and conditionally approve Final Proposal 2018-177 in Item #3 based on the agency's conditional approval request.

Rep. Schmidt seconded.

Adopted.

7. The Committee discussed Final Proposal 2018-150 from the Office of Licensed Allied Health Professionals (Organizational Rules). Thomas Broderick and Tina Kelley from the Office of Professional Licensure and Certification testified for the Office.

Rep. McGuire moved that the Committee approve Final Proposal 2018-150.

Rep. Schmidt seconded.

Adopted.

8. The Committee discussed Final Proposal 2018-151 from the Office of Licensed Allied Health Professionals (Fees Charged by the Governing Boards). Thomas Broderick and Tina Kelley from the Office of Professional Licensure and Certification testified for the Office.

Rep. McGuire moved that the Committee conditionally approve Final Proposal 2018-151 on condition that the fee in Ahp 301.02 for transcribing eligibility records for physical therapy examination be reduced from \$45.00 to \$1.00.

Rep. Schmidt seconded.

Adopted.

9. The Committee discussed Final Proposal 2018-133 from the N.H. Retirement System (Rules of Practice and Procedure). Mark Cavanaugh testified for the System.

Rep. Schmidt moved that the Committee approve Final Proposal 2018-133.

Sen. Feltes seconded.

Adopted.

10. The Committee discussed Final Proposal 2018-123 from the N.H. Retirement System (Participation in the Retirement System). Mark Cavanaugh testified for the System.

Rep. Schmidt moved that the Committee approve Final Proposal 2018-123.

Rep. McGuire seconded.

Adopted.

11. The Committee discussed Final Proposal 2018-124 from the N.H. Retirement System (Code of Ethics). Mark Cavanaugh testified for the System.

Rep. Schmidt moved that the Committee approve Final Proposal 2018-124 with the recommendation that the Retirement System seek legislative clarification of the System's status as an entity outside of the executive branch, particularly in regards to the applicability of RSA 21-G:21-35 on the executive branch code of ethics.

Sen. Kahn seconded.

Adopted.

12. The Committee discussed Final Proposal 2018-174 from the N.H. Veterans' Home (Residency, Admission, Transfer, and Discharge Rules). Commandant Margaret D. LaBrecque and Paul Lloyd testified for the Home.

Sen. Reagan moved that the Committee approve Final Proposal 2018-174 with the understanding that the Home will address in another rulemaking proceeding the issues outlined in the annotations by Committee staff to the Final Proposal.

Sen. Feltes seconded.

Adopted.

13. The Committee discussed Final Proposal 2018-122 from the Department of Safety (Modular Buildings and Building Components Rules). Assistant Director Maxim Schultz of the Division of Fire Safety and Deputy Fire Marshal Robert Farley testified for the Department.

Rep. McGuire moved that the Committee make a preliminary objection to Final Proposal 2018-122 with the recommendation that the Department undertake regular rulemaking to address the issues outlined in the annotations by Committee staff to the Final Proposal.

Sen. Feltes seconded.

Adopted.

14. The Committee discussed Final Proposal 2018-135 from the Department of Safety (Display Fireworks Rules). Assistant Director Maxim Schultz of the Division of Fire Safety and Christopher Wyman testified for the Department.

Sen. Feltes moved that the Committee postpone action on Final Proposal 2018-135 to the next Committee meeting.

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Sen. Reagan seconded.

Adopted.

15. The Committee discussed Final Proposal 2018-132 from the Department of Health and Human Services (Former Division of Public Health Services, Home Health Care Providers Licensing). Allyson Zinno and Doreen Shockley testified for the Department.

The Department had submitted a conditional approval request in a letter and amended rules dated December 17, 2018.

Rep. McGuire moved that the Committee conditionally approve Final Proposal 2018-132 as requested.

Rep. Schmidt seconded.

Adopted.

16. The Committee discussed Proposed Interim Rule INT 2018-25 from the Department of Health and Human Services (Former Division of Human Services, Granite Workforce Pilot Program). Kim Reeve, Lynn Wilder, and Richard Lavers testified for the Department.

Dawn McKinney, representing N.H. Legal Assistance, also testified.

The Department had submitted a conditional approval request in a letter and amended rules dated December 19, 2018.

Sen. Reagan moved that the Committee conditionally approve Proposed Interim Rule INT 2018-25 as requested but with the further amendment to change references in He-W 639.04(a)(4) from "18 years" to "19 years".

Sen. Feltes seconded.

Adopted.

17. The Committee discussed Proposed Interim Rule INT 2018-26 from the Department of Health and Human Services (Former Division of Human Services, N.H. Granite Advantage Health Care Program). Commissioner Jeffrey Meyers and Melissa St. Cyr testified for the Department.

Rep. McGuire left the meeting during the discussion of this item. Rep. Sytek was not designated at this time as an alternate for Rep. McGuire and so was not a voting member.

The following persons also testified:

Dawn McKinney, representing N.H. Legal Assistance, who also submitted written testimony.

Karen Rosenberg, representing the Disability Rights Center, who had previously submitted written testimony.

Jesse Burdwood and Chris Rueggeberg, representing the Council on Developmental Disabilities, which had previously submitted written testimony.

Sen. Feltes moved that the Committee object to Proposed Interim Rule INT 2018-26 on the grounds:

(a) Stated in Committee staff comments including, but not limited to, the following:

1. The Proposed Interim Rule is contrary to legislative intent by appearing to violate or conflict with federal statutory provisions or federal regulations, specifically the Americans with Disabilities Act;
2. The Department lacks the authority to violate a provision of the U.S. Constitution, specifically the Due Process Clause of Amendment V; and
3. The Proposed Interim Rule is contrary to the public interest because the language is too broad and not clear so as to be understandable to the regulated community; and

(b) That the Proposed Interim Rule is contrary to legislative intent by violating the overall purpose of RSA 126-AA including, but not limited to, issues relative to deficiency of hours, carry over of work hours, and exemptions relative to people with disabilities.

Sen. Reagan seconded.

Adopted.

18. The Committee discussed an emergency rule, Document #12688, effective December 7, 2018, from the Department of Health and Human Services (Former Division of Elderly and Adult Services, Nursing Facility Reimbursement – Budget Adjustment Factor). Kim Reeve, Robert Berry, and Jennifer Doig testified for the Department.

No further action was taken.

19. The Committee discussed an orientation session for new members.

It was the consensus of the Committee to postpone this item to the regular Committee meeting on January 18, 2019.

20. The Committee discussed the continued meeting scheduled for January 4, 2019.

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

21. The Committee adjourned by consensus at 10:38 a.m.