



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

Action Minutes

DECEMBER 3, 2015

Members Present: Representatives McGuire, Schmidt, Kidder, Sad, and Sytek*, and Senators Reagan, Cataldo, Avard, and Daniels* (*) 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 9:10 a.m. by Rep. McGuire as Chair.

Members present at this time, aside from Rep. McGuire, were Reps. Schmidt, Kidder, Sad, and Sytek, and Senators Reagan, Cataldo, Avard, and Daniels.

Rep. McGuire designated Rep. Sytek and Sen. Daniels as alternates, respectively, for Rep. Ladd and Sen. Feltes, who were absent.

2. The Committee discussed the minutes of the Committee meeting on November 19, 2015.

Sen. Reagan moved that the minutes be approved.

Sen. Avard seconded.

Adopted.

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

No action to postpone was taken.

4. The Committee discussed the response by the Board of Nursing to the Committee's preliminary objection to Final Proposal 2015-77 (Licensing Requirements). Executive Director Denise Nies testified for the Board.

Sen. Reagan moved that the Committee accept the response and approve the rules.

Rep. Schmidt seconded.

Adopted.

5. The Committee discussed the following responses by the Site Evaluation Committee (SEC) to preliminary objections made by the Committee:

OR 2015-11 Organizational and Practice and Procedure Rules

OR 2015-12 Explanation of Proposed Rule and Certificates of Site and Facility Rules

Board Chairman Martin Honigberg and David Wiesner from the Public Utilities Commission testified for the SEC.

Will Abbott, representing the Forest Society, Appalachian Mountain Club, and N.H. Audubon, also testified.

The Committee had received written testimony from the following persons prior to the meeting:

J. Barrie Sellers, representing Geokan, Inc.
George P. Dowing, representing Elektrisola, Inc.
Don Welch, representing Globe Manufacturing Company, LLC.
Val Zanchuk, representing Graphicast, Inc.
Joe Shean, representing R.P. Abrasives.
Raymond Tice, representing Lindt and Sprungli USA.
Ursula Nadeau, representing Amphenol IT and Communications Products Group.
Patti Carrier, representing New Hampshire Ball Bearings, Inc.
Francis Pullaro, representing RENEW Northeast.
David Cuzzi, from Prospect Hill Strategies, representing BAE Systems.

Sen. Reagan moved that the Committee accept Objection Responses 2015-11 and 2015-12 and approve the rules, and petition the SEC pursuant to RSA 541-A:4 to adopt clearer, that is, more comprehensive, rules regarding suspension and revocation of certificates. The verbatim motion was as follows:

"I move to accept the Objection Responses from the Site Evaluation Committee and approve the rule. In so moving, I would like to briefly explain the basis for my motion which is informed by JLCAR staff attorneys, as well as Senator Feltes who was unable to be here today because of a family medical issue.

First, the removal of a cumulative effects analysis for all projects is consistent with the statutory framework because the Legislature only specifically required a cumulative effects analysis for wind projects.

Second, the new public interest rules proposed by the Site Evaluation Committee is not beyond its statutory authority. Here, the Site Evaluation Committee appropriately uses the policy provisions of the statute, RSA 162-H:1, that says policy provisions are an allowable basis to inform agency rules, and the authority for this can be referenced in the New Hampshire Supreme Court case, Appeal of the New Hampshire Department of Transportation, with a case citation number 152 NH, 565, in the year 2005. The new proposal incorporates the list of impacts and benefits in the first sentence of that policy provision.

The second sentence of the policy provision referencing the public interest refers back to the first sentence. So the inclusion of this list in the public interest rule is an appropriate reading.

In the proposal, the words "shall consider" appear before the list. That means that all items on the list must be considered together and that no one item can be singularly qualifying or singularly disqualifying, and that is consistent with the plain language of the second sentence of the purpose provision, as well as -- as well as RSA 162-H:16, IV.

The new public interest rule proposal is also consistent with other statutory provisions. As just one example, a proposed project could be singularly disqualified if it had an unreasonable adverse effect on historic sites. However, if it just had an adverse effect, not an unreasonable adverse effect, it could be still qualifying under that separate standard. That impact on historic

sites would then be considered in the public interest standard together with all of the items on the list, including any benefits.

As part of this approval, I would further move that we use our authority under RSA 541-A:4, to petition the Site Evaluation Committee to enter rulemaking to adopt clearer rules regarding the suspension and revocation of certificates. I believe the decision to suspend or revoke a license on this significance is an important decision for which clear standards should exist.

While I believe those rules are unclear, I also believe that at this point in the rulemaking process there is not enough time to draft language that would sufficiently address this concern. In my view, other than the rules on which I move we petition, the Objection Response from the Site Evaluation Committee does not violate any provision of 541-A."

Sen. Avard seconded.

Adopted.

Rep. McGuire noted for the record that Rep. Kidder and Rep. Sytek voted "no".

Sen. Reagan and Rep. Kidder left the meeting at this time.

6. The Committee discussed amendments to the Drafting and Procedure Manual for Administrative Rules as prepared by Committee staff and approved pursuant to RSA 541-A:8 by the Director of Legislative Services and the Commissioner of the Department of Administrative Services.

Sen. Cataldo moved that the Committee approved the proposed amendments, with an editorial change suggested by Rep. Sytek, for purposes of soliciting agency and public comment, schedule a public hearing at the end of the Committee meeting on January 15, 2016, and set the deadline for written or electronic comment for the conclusion of the hearing.

Rep. Sad seconded.

Adopted.

Sen. Avard left the meeting at this time.

Rep. Schmidt moved that the Committee adjourn.

Sen. Cataldo seconded.

Adopted.

The Committee adjourned at 9:45 a.m.