



**Action Minutes**

**May 29, 2020**

**Members Present:** Representatives Hatch, McGuire, Schmidt, Williams, Lang\*, Schuett\*, Bershtein\*, Karrick\*, and Fontneau\*, and Senators Reagan, Dietsch, Kahn, Ward, Watters, and Gray\*. (\*) 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 as a Zoom webinar at 9:03 a.m. by Rep. Hatch as Chair, who proceeded to read the script prepared by Committee staff regarding authorization for the Committee to meet remotely in accordance with the Governor’s Emergency Order #12 and pursuant to Executive Order 2020-4.
2. A roll call attendance was taken.

Members present remotely at this time were Reps. Hatch, McGuire, Schmidt, Williams, Lang, Schuett, Bershtein, Karrick, and Fontneau, and Sens. Reagan, Dietsch, Kahn, Ward, Watters, and Gray.

Rep. Hatch designated Rep. Bershtein as an alternate for Rep. Hoelzel, who was absent.

3. The Committee discussed suspension of certain Committee rules for the purpose of conducting remote meetings and to reflect the remote operation of the Administrative Rules division of the Office of Legislative Services.

Rep. Williams moved that the Committee suspend the following rules:

- JLCAR Rule 102.03(b)(5) on holding a JLCAR meeting within the 45-day review period for a Final Proposal;
- The last sentence in JLCAR Rule 102.04(a) on a schedule of meetings and agendas being available for public inspection during working hours at the Administrative Rules office in Concord;
- JLCAR Rule 102.09 on a meeting minutes and transcripts being available for public inspection during working hours at the Administrative Rules office in Concord; and
- JLCAR Rule 301.02(a) on the use of testimony cards by agencies and the public in Committee meetings.

Sen. Reagan seconded.

A roll call vote was called. The vote was as follows:

	<u>Yes</u>	<u>No</u>
Rep. Hatch	X	
Rep. McGuire	X	
Rep. Schmidt	X	
Rep. Williams	X	
Rep. Bershtein	X	
Sen. Reagan	X	
Sen. Ward	X	
Sen. Watters	X	

The vote was 10 “yes” and zero “no”.

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The motion was adopted.

4. The Committee discussed the minutes of the Committee meeting on March 6, 2020.

Rep. McGuire moved that the minutes be approved.

Sen. Kahn seconded.

A roll call vote was called. The vote was as follows:

	<u>Yes</u>	<u>No</u>
Rep. Hatch	X	
Rep. McGuire	X	
Rep. Schmidt	X	
Rep. Williams	X	
Rep. Bershtein	X	
Sen. Dietsch	X	
Sen. Kahn	X	
Sen. Reagan	X	
Sen. Ward	X	
Sen. Watters	X	

The vote was 10 “yes” and zero “no”.

The motion was adopted.

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

**CONSENT AGENDA**

***2. Committee Approval of Final Proposals and Proposed Expedited Revision to Forms:***

FP 2020-26	DEPARTMENT OF HEALTH AND HUMAN SERVICES Former Division of Public Health Services Licensing of Radioactive Material
FP 2020-27	DEPARTMENT OF HEALTH AND HUMAN SERVICES Former Division of Public Health Services Use of Radionuclides in the Healing Arts
FP 2020-30	DEPARTMENT OF SAFETY Commissioner Motor Vehicle On-Demand Inspection Sticker Informational Insert Placement
FP 2020-33	DEPARTMENT OF ADMINISTRATIVE SERVICES Recoupment of Expenditures for Indigent Defense
EXRF 2020-5	DEPARTMENT OF HEALTH AND HUMAN SERVICES Commissioner Expedited Revision to New Hampshire Health Professions Survey Opt-Out Form

**3. *Committee Conditional Approvals:***

FP 2020-4	DEPARTMENT OF HEALTH AND HUMAN SERVICES Former Division of Mental Health and Developmental Services Healthcare Coordination and Medication Administration
FP 2020-10	DEPARTMENT OF HEALTH AND HUMAN SERVICES Commissioner Employment Related NH Child Care Scholarship Program Eligibility
FP 2020-18	DEPARTMENT OF HEALTH AND HUMAN SERVICES Former Division of Public Health Services Radiological Health Rules—Expiring Interim Rules
FP 2020-21	BANKING DEPARTMENT Public Deposit Investment Pool
FP 2020-25	DEPARTMENT OF AGRICULTURE, MARKETS, AND BIRDS Transfer of Animals and Birds
EXIR 2020-1	DEPARTMENT OF SAFETY Commissioner FMCSA Out-of-Service Criteria for Commercial Vehicle Transportation of Hazardous Material and Waste
EXIR 2020-2	DEPARTMENT OF SAFETY Commissioner FMCSA Out-of-Service Criteria for Commercial Vehicle Transportation of Hazardous Material and Waste
EXIR 2020-3	DEPARTMENT OF SAFETY Commissioner FMCSA Out-of-Service Criteria for Commercial Vehicle Transportation Of School Vehicles

**4. *Committee Acceptance of Agency Responses to Objections:***

ROR 2019-145	DEPARTMENT OF HEALTH AND HUMAN SERVICES Former Division of Public Health Services Lead Poisoning Prevention and Control
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The Committee discussed the following Final Proposals from the Department of Health and Human Services for which requests for conditional approval dated May 4, 2020 and May 5, 2020 and amended requests for conditional approval, both dated May 28, 2020, had been submitted by the Department:

FP 2020-12	Commissioner Child Care Provider Enrollment Requirements
FP 2020-13	Commissioner Child Care Provider Billing and Payment Requirements

Sen. Watters moved that the Committee approve the Final Proposals in Item #2 of the Consent Agenda.

Rep. Williams seconded.

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A roll call vote was called. The vote was as follows:

	<u>Yes</u>	<u>No</u>
Rep. Hatch	X	
Rep. McGuire	X	
Rep. Schmidt	X	
Rep. Williams	X	
Rep. Bershtein	X	
Sen. Dietsch	X	
Sen. Kahn	X	
Sen. Reagan	X	
Sen. Ward	X	
Sen. Watters	X	

The vote was 10 “yes” and zero “no”.

The motion was adopted.

The Committee discussed again the Final Proposals in Item #3 and the Revised Objection Response in Item #4 of the Consent Agenda.

Sen. Reagan moved that the Committee approve the Consent Agenda in Item #3 and Item #4, with the exception of EXIR 2020-3 in Item #3 but with the addition of Final Proposal 2020-12 and Final Proposal 2020-13, that is, (1) conditionally approve the Final Proposals and EXIR’s in Item #3 with the exception of EXIR 2020-3 but with the addition of Final Proposal 2020-12 and Final Proposal 2012-13, based on the conditional approval requests, or if applicable the amended conditional approval requests, submitted by the agencies, and (2) accept the response and approve the rules in Revised Objection Response 2019-145 from the Department of Health and Human Services.

Rep. Hatch seconded.

A roll call vote was called. The vote was as follows:

	<u>Yes</u>	<u>No</u>
Rep. Hatch	X	
Rep. McGuire	X	
Rep. Schmidt	X	
Rep. Williams	X	
Rep. Bershtein	X	
Sen. Dietsch	X	
Sen. Kahn	X	
Sen. Reagan	X	
Sen. Ward	X	
Sen. Watters	X	

The vote was 10 “yes” and zero “no”.

The motion was adopted.

6. The Committee discussed whether to postpone certain items to another meeting.

Rep. Schmidt moved that the Committee postpone the following items to the regular Committee meeting on June 19, 2020:

**8. GOVERNING BOARD OF RESPIRATORY CARE PRACTITIONERS**

FP 2020-19                      Processing of Applications, Eligibility Requirements, Administrative Obligations, and Temporary Licenses  
(JLCAR Deadline June 19, 2020.)

**9. BOARD OF EDUCATION**

- (a) FP 2019-199              Special Education Teacher and Early Childhood Special Education Teacher  
(JLCAR Deadline June 19, 2020. Former interim rule expired April 8, 2020 and replaced by emergency rule effective April 9, 2020 and expires October 6, 2020.)
- (c) FP 2019-204              Credential Standards for Educational Personnel  
(JLCAR Deadline June 19, 2020.)
- (d) FP 2019-205              How to Obtain a New Hampshire Educator License  
(JLCAR Deadline June 19, 2020. Some former interim rules expired April 8, 2020 and replaced by emergency rule effective April 9, 2020 and expires October 6, 2020.)
- (e) FP 2019-206              Requirements for Special Educator Endorsements  
(JLCAR Deadline June 19, 2020.)
- (f) FP 2019-207              Renewal and Denial of Credentials  
(JLCAR Deadline June 19, 2020.)

**13. DEPARTMENT OF CORRECTIONS**

FP 2019-212                      Client Records Management  
(JLCAR Deadline June 19, 2020.)

**14. DEPARTMENT OF SAFETY**

(b) FP 2019-202              Commissioner  
Road Toll Administration Rules  
(JLCAR Deadline June 19, 2020. Some rules are interim rules that will expire June 29, 2020.)

**17. PUBLIC UTILITIES COMMISSION**

FP 2019-162                      Net Metering for Customer-Owned Renewable Emergency Generation Resources of 1,000 Kilowatts or Less  
(JLCAR Deadline June 19, 2020.)

**18. LIQUOR COMMISSION**

FP 2019-152                      Liquor Licensing  
(JLCAR Deadline June 19, 2020.)

**20. LOTTERY COMMISSION**

- (a) OR 2019-153            Bingo Rules  
                                  (JLCAR Deadline August 25, 2020.)
- (b) OR 2019-154            Lucky 7 Rules  
                                  (JLCAR Deadline August 25, 2020.)

**21. BOARD OF PSYCHOLOGISTS**

- OR 2019-135                Informal Resolution, Post-Doctoral Supervision, Application Process,  
                                  Temporary License Application, and Written Examinations  
                                  (JLCAR Deadline August 3, 2020.)  
                                  **(Response not yet filed. Response due by June 12, 2020.)**

**22. Discussion on Petition Responses:**

Petition January 17, 2020 to the Board of Accountancy relative to amending Ac 301.04 and Ac 301.05 on initial certification and reciprocity to address JLCAR staff comments regarding the authority under RSA 309-B of the National Association of State Boards of Accountancy (NASBA).  
**(Response not yet filed. Response was due by March 23, 2020.)**

Rep. Bershtein seconded.

A roll call vote was called. The vote was as follows:

	<u>Yes</u>	<u>No</u>
Rep. Hatch	X	
Rep. McGuire	X	
Rep. Schmidt	X	
Rep. Williams	X	
Rep. Bershtein	X	
Sen. Dietsch	X	
Sen. Kahn	X	
Sen. Reagan	X	
Sen. Ward	X	
Sen. Watters	X	

The vote was 10 “yes” and zero “no”.

The motion was adopted.

- 7. The Committee discussed Final Proposal 2019-177 from the Board of Barbering, Cosmetology, and Esthetics (Mobile Barbershops).

The Board had submitted a conditional approval request in a memo and amended rule dated March 3, 2020 and an amended conditional approval request in an amended rule dated May 22, 2020.

Sen. Reagan moved that the Committee conditionally approve Final Proposal 2019-177 based on the amended request.

Rep. McGuire seconded.

A roll call vote was called. The vote was as follows:

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	<u>Yes</u>	<u>No</u>
Rep. Hatch	X	
Rep. McGuire	X	
Rep. Schmidt	X	
Rep. Williams	X	
Rep. Bershtein	X	
Sen. Dietsch	X	
Sen. Kahn	X	
Sen. Reagan	X	
Sen. Ward	X	
Sen. Watters	X	

The vote was 10 “yes” and zero “no”.

The motion was adopted.

8. The Committee discussed Final Proposal 2019-200 from the Board of Education (School Building Aid). Amy Clark and Amanda Phelps from the Department of Education testified for the Board.

The Board had submitted a conditional approval request in an amended rule dated May 8, 2020 and an amended conditional approval request in an amended rule dated May 8, 2020.

Sen. Kahn moved that the Committee conditionally approve Final Proposal 2019-200 based on the amended conditional approval request and also recommend that the Board seek legislation to amend RSA 198:15-b to address the question of authority as outlined in the Committee staff comment to Ed 321.05(f) in the amended conditional approval request.

Sen. Dietsch seconded.

A roll call vote was called. The vote was as follows:

	<u>Yes</u>	<u>No</u>
Rep. Hatch	X	
Rep. McGuire	X	
Rep. Schmidt	X	
Rep. Williams	X	
Rep. Bershtein	X	
Sen. Dietsch	X	
Sen. Kahn	X	
Sen. Reagan	X	
Sen. Ward	X	
Sen. Watters	X	

The vote was 10 “yes” and zero “no”.

The motion was adopted.

9. The Committee discussed Final Proposal 2019-194 from the Fish and Game Department (Residency for Permits and Licenses and Off Highway Recreation Vehicles and Snowmobiles). Paul Sanderson testified for the Department.

Rep. Schmidt moved that the Committee approve Final Proposal 2019-194 with the recommendation that the Department seek legislation to address the issues of authority under RSA 214-A:2, VI-a for the internet

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transaction fee and authority under RSA 215-A and RSA 215-C for business registrations, as outlined in Committee staff comments to the Final Proposal.

Sen. Reagan seconded.

After further discussion, including about pending legislation in the current legislative session, Rep. Schmidt withdrew his motion and Sen. Reagan withdrew his second.

Sen. Dietsch moved that the Committee postpone action on Final Proposal 2019-194 to the regular Committee meeting on June 19, 2020.

Sen. Kahn seconded.

A roll call vote was called. The vote was as follows:

	<u>Yes</u>	<u>No</u>
Rep. Hatch	X	
Rep. McGuire	X	
Rep. Schmidt	X	
Rep. Williams	X	
Rep. Bershtein	X	
Sen. Dietsch	X	
Sen. Kahn	X	
Sen. Reagan	X	
Sen. Ward	X	
Sen. Watters	X	

The vote was 10 “yes” and zero “no”.

The motion was adopted.

10. The Committee discussed Final Proposal 2020-9 from the Department of Environmental Services (Wetlands Programs, Delineation of Shoreline Structure Projects). Gretchen Hamel testified for the Department.

Rep. Hatch moved that the Committee approve Final Proposal 2020-9.

Rep. Williams seconded.

A roll call vote was called. The vote was as follows:

	<u>Yes</u>	<u>No</u>
Rep. Hatch	X	
Rep. McGuire	X	
Rep. Schmidt	X	
Rep. Williams	X	
Rep. Bershtein	X	
Sen. Dietsch	X	
Sen. Kahn	X	
Sen. Reagan	X	
Sen. Ward	X	
Sen. Watters	X	

The vote was 10 “yes” and zero “no”.

The motion was adopted.



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11. The Committee discussed Final Proposal 2019-216 from the Department of Environmental Services (Water Quality and Quantity Programs, Amendments to Criteria for Issuance of Alteration of Terrain Permits). Gretchen Hamel and Commissioner Robert Scott testified for the Department.

The following persons also testified:

Gary Abbott, representing Associated General Contractors.

Richard Head, of Rath, Young, and Pignatelli.

Rick Van de Poll.

Rep. Schmidt moved that the Committee approve Final Proposal 2019-216.

Sen. Watters seconded.

A roll call vote was called. The vote was as follows:

	<u>Yes</u>	<u>No</u>
Rep. Hatch	X	
Rep. McGuire	X	
Rep. Schmidt	X	
Rep. Williams	X	
Rep. Bershtein	X	
Sen. Dietsch	X	
Sen. Kahn	X	
Sen. Reagan	X	
Sen. Ward	X	
Sen. Watters	X	

The vote was 10 “yes” and zero “no”.

The motion was adopted.

12. The Committee took a break from 11:28 a.m. to 11:40 a.m.

A roll call attendance was taken after the members’ return.

Members present remotely were Reps. Hatch, McGuire, Schmidt, Williams, Bershtein, Fontneau, Karrick, and Schuett, and Sens. Kahn, Reagan, Ward, and Watters.

Rep. Hatch designated Rep. Karrick as an alternate for Sen. Dietsch, who was absent. Rep. Bershtein continued as an alternate for Rep. Hoelzel.

13. The Committee discussed Final Proposal 2020-14 from the Department of Revenue Administration (Hearing Procedures Relating to Meals and Rooms (Rentals) Tax Licenses, and Tobacco Tax Licenses and Seizures). Assistant Commissioner Carollynn Lear testified for the Department.

Sen. Reagan moved that the Committee conditionally approve Final Proposal 2020-14 on condition that rule Rev 207.05 (h) be amended to read: “Pursuant to RSA 78:21, II, the department shall assess an administrative fine in addition, to, or in lieu of, a period of suspension, pursuant to Rev 1008.07 and in accordance with the procedures for suspension provided in (a)-(g) above.”

Rep. McGuire seconded.

A roll call vote was called. The vote was as follows:

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	<u>Yes</u>	<u>No</u>
Rep. Hatch	X	
Rep. McGuire	X	
Rep. Schmidt	X	
Rep. Williams	X	
Rep. Bershtein	X	
Rep. Karrick	X	
Sen. Kahn	X	
Sen. Reagan	X	
Sen. Ward	X	

The vote was 9 “yes” and zero “no”.

The motion was adopted.

14. The Committee discussed Final Proposal 2020-15 from the Department of Revenue Administration (Meals and Rooms (Rentals) Tax with Regard to Meals). Assistant Commissioner Carollynn Lear testified for the Department.

Sen. Dietsch and Sen. Watters returned during the discussion of this item, and Sen. Kahn had left by this time. Rep. Karrick was not a voting member at this time.

Rep. Williams moved that the Committee (1) conditionally approve Final Proposal 2020-15 on condition that rules Rev 701.07, Rev 701.12(a)(3), and Rev 702.011(a)(2) be amended by deleting the words “reasonably and”, and (2) recommend that the Department seek legislative clarification relative to the definition of “hotel” in RSA 78-A:3, VII, the definition of “short-term rental” in RSA 78-A:3, XXIII, and the definition of “food products” in RSA 78-A:3, IV to address the issues as outlined in Committee staff comments to Rev 701.25 and Rev 702.011(a)(2) in Final Proposal 2020-15.

Rep. Williams seconded.

Sen. Dietsch returned to the meeting at this time.

A roll call vote was called. The vote was as follows:

	<u>Yes</u>	<u>No</u>
Rep. Hatch	X	
Rep. McGuire	X	
Rep. Schmidt	X	
Rep. Williams	X	
Rep. Bershtein	X	
Sen. Dietsch	X	
Sen. Reagan	X	
Sen. Ward	X	
Sen. Watters	X	

The vote was 9 “yes” and zero “no”.

The motion was adopted.

15. The Committee discussed Final Proposal 2020-16 from the Department of Revenue Administration (Mutual Valuation of Utility Company Distribution Assets). Assistant Commissioner Carollynn Lear testified for the Department.

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Rep. Hatch moved that the Committee (1) conditionally approve Final Proposal 2020-16 to amend rule Rev 1907 as outlined in the Department's conditional approval request dated May 1, 2020, and (2) recommend that the Department seek a legislative clarification relative to Department forms to address the apparent conflict between RSA 72:8-d, V and RSA 541-A:21, V concerning whether Department forms are subject to RSA 541-A, as outlined in Committee staff comment to Rev 1907.02(a).

Rep. Williams seconded.

A roll call vote was called. The vote was as follows:

	<u>Yes</u>	<u>No</u>
Rep. Hatch	X	
Rep. McGuire	X	
Rep. Schmidt	X	
Rep. Williams	X	
Rep. Bershtein	X	
Sen. Dietsch	X	
Sen. Reagan	X	
Sen. Ward	X	
Sen. Watters	X	

The vote was 9 "yes" and zero "no".

The motion was adopted.

16. The Committee discussed Final Proposal 2020-20 from the Department of Revenue Administration (Tobacco Tax). Assistant Commissioner Carolynn Lear testified for the Department.

Rep. Williams moved that the Committee approve Final Proposal 2020-20.

Sen. Ward seconded.

Rep. Hatch designated Rep. Karrick as an alternate for Sen. Kahn, who was absent.

A roll call vote was called. The vote was as follows:

	<u>Yes</u>	<u>No</u>
Rep. Hatch	X	
Rep. McGuire	X	
Rep. Schmidt	X	
Rep. Williams	X	
Rep. Bershtein	X	
Rep. Karrick	X	
Sen. Dietsch	X	
Sen. Reagan	X	
Sen. Ward	X	
Sen. Watters	X	

The vote was 10 "yes" and zero "no".

The motion was adopted.

Sen. Watters and Rep. Karrick left the meeting after the vote.

17. The Committee discussed Objection Response EXRF 2020-1 from the Department of Safety (Commissioner, Form DSSP 311 for Registration of Criminal Defenders). Heidi Barba testified for the Department.

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Rep. Schuett was designated as an alternate for Sen. Watters, who was now absent.

Rep. Williams moved that the Committee (1) approve the Objection Response EXRF 2020-1, (2) recommend that the Department seek legislative clarification of RSA 651-B:4, III(e) to clearly include the VIN number of a motor vehicle as a statutory requirement for information provided by the offender, and (3) petition the Department pursuant to RSA 541-A:4 to amend Saf-C 5503.02 to address the inconsistencies between the rule and the revised form DSSP 311 as outlined in Committee staff comments to the objection response.

Rep. Schuett seconded.

A roll call vote was called. The vote was as follows:

	<u>Yes</u>	<u>No</u>
Rep. Hatch	X	
Rep. McGuire	X	
Rep. Schmidt	X	
Rep. Williams	X	
Rep. Bershtein	X	
Rep. Schuett	X	
Sen. Dietsch	X	
Sen. Reagan	X	
Sen. Ward	X	

The vote was 9 “yes” and zero “no”.

The motion was adopted.

Sen. Ward and Rep. McGuire left the meeting after the vote.

18. The Committee discussed recessing the meeting and postponing remaining items to the continued meeting on June 5, 2020.

Laura Condon briefly testified about Final Proposal 2020-6 from the Department of Health and Human Services (Commissioner, Foster Family Care Licensing Requirements).

Rep. Williams moved that the Committee recess and postpone action on the following items to the continued meeting on June 5:

- 3. (h) EXIR 2020-3**      DEPARTMENT OF SAFETY
- Commissioner  
FMCSA Out-of-Service Criteria for Commercial Vehicle Transportation  
Of School Vehicles  
(No JLCAR Deadline.)

**15. DEPARTMENT OF HEALTH AND HUMAN SERVICES**

- (a) FP 2020-5      Commissioner  
Certification for Payment Standards for Foster Family Care Service Credentials  
(JLCAR Deadline June 19, 2020.)
- (b) FP 2020-6      Commissioner  
Foster Family Care Licensing Requirements  
(JLCAR Deadline June 19, 2020.)

(c) FP 2020-11 Commissioner  
Preventive and Protective Child Care Eligibility and Provider Enrollment  
(JLCAR Deadline June 19, 2020.)

**16. INSURANCE DEPARTMENT**

FP 2020-8 Pharmacy Benefits  
(JLCAR Deadline June 19, 2020.)

Sen. Dietsch seconded.

A roll call vote was called. The vote was as follows:

	<u>Yes</u>	<u>No</u>
Rep. Hatch	X	
Rep. McGuire	X	
Rep. Schmidt	X	
Rep. Williams	X	
Rep. Bershtein	X	
Rep. Schuett	X	
Sen. Dietsch	X	
Sen. Reagan	X	

The vote was 7 “yes” and zero “no”.

The motion was adopted.

The Committee recessed at 1:15 p.m.