



STATE OF NEW HAMPSHIRE  
JOINT LEGISLATIVE COMMITTEE ON ADMINISTRATIVE RULES

ROOM 219  
25 CAPITOL STREET  
CONCORD, NEW HAMPSHIRE 03301-6312

Action Minutes

JULY 17, 2014

**Members Present:** Senators Reagan, Rausch, Cataldo, Lasky, and Watters, and Representatives Schmidt, McGuire, MacKay, Ladd, and Barry\*. (\*) 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 9:01 a.m. by Sen. Reagan as Chair.

Members present at this time, aside from Sen. Reagan, were Sens. Rausch, Cataldo, Lasky, and Watters, and Reps. Schmidt, McGuire, MacKay, and Ladd

Sen. Reagan designated Rep. Barry to be an alternate for Rep. Sad once Rep. Barry arrived.

2. The Committee discussed the minutes of the Committee meeting on June 20, 2014.

Sen. Cataldo moved that the minutes be approved.

Rep. Schmidt seconded.

Sen. Cataldo then moved to amend his motion to state that the minutes be approved with the following amendments: (1) change "Rep. Cataldo" to "Sen. Cataldo" in Item #4 relative to the second to the motion to request a waiver of the Committee's deadlines for Final Proposal 2013-222 and Final Proposal 2014-31, and (2) insert the following language in Item #9: "It was the understanding of the Committee that, for an AAC device to be a covered service under He-W 575.04, the device has to comply with paragraphs (a), (b), or (c)."

Rep. Schmidt amended his second.

The motion as amended was adopted.

3. The Committee discussed the following Final Proposals and Proposed Interim Rules (Consent Agenda – Final Proposals and Proposed Interim Rules):

FP 2014-18	DEPARTMENT OF ENVIRONMENTAL SERVICES Cross-Program Rules Prequalification of Engineers for Certain Projects
FP 2014-21	GOVERNING BOARD OF GENETIC COUNSELORS Organizational Rules
FP 2014-22	GOVERNING BOARD OF GENETIC COUNSELORS Procedural Rules

- FP 2014-72 DEPARTMENT OF HEALTH AND HUMAN SERVICES  
Former Division of Mental Health and Developmental Services  
Medical and Psychiatric Emergencies and Revocation of Conditional Discharge
- INT 2014-6 DEPARTMENT OF HEALTH AND HUMAN SERVICES  
Former Division of Human Services  
Recovery of Returned Child Support Payment Checks
- INT 2014-7 DEPARTMENT OF HEALTH AND HUMAN SERVICES  
Commissioner  
Certification for Payment of Foster Care Programs

Rep. Schmidt moved that the Committee approve the Final Proposals and Proposed Interim Rules.

Sen. Rausch seconded.

Adopted.

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

Rep. Schmidt moved that the Committee postpone action on the following items:

**9. DEPARTMENT OF REVENUE ADMINISTRATION**

- (b) FP 2014-31 Lien Procedures, Installment Payment Agreements, and Settlement Agreements  
(JLCAR Deadline September 18, 2014.)  
(Formerly Item #12(b) on 6-20-14 agenda.)

**10. DEPARTMENT OF EMPLOYMENT SECURITY**

- FP 2014-20 Penalty Weeks under RSA 282-A:164  
(JLCAR Deadline August 21, 2014.)  
(Formerly Item #8(a) on 6-20-14 agenda.)

**16. DEPARTMENT OF SAFETY**

- FP 2013-222 Readoption of Marketing, Sales, and Possession of Fireworks Rules  
(JLCAR Deadline September 18, 2014.)  
(Formerly Item #9(a) on 6-20-14 agenda.)

Sen. Rausch seconded.

Adopted

5. The Committee discussed Final Proposal 2014-46 from the Insurance Department (Suitability in Annuity Transactions). Keith Nyhan represented the Department.

Rep. Schmidt moved that the Committee approve Final Proposal 2014-46.

Sen. Watters seconded.

Adopted.

6. The Committee discussed Proposed Interim Rule INT 2014-4 from the Department of Health and Human Services (Former Division of Human Services, Substance Abuse Disorder (SUD) Treatment Program). Michael Holt, Jeffrey Meyers, and Joseph Harding testified for the Department.

The Department had submitted a conditional approval request in a letter and amended rule dated July 11, 2014.

Rep. Barry arrived during the discussion of this item, and was now a voting alternate for Rep. Sad.

Rep. MacKay moved that the Committee accept the conditional approval request and conditionally approve Proposed Interim Rule INT 2014-4 based on the request.

Sen. Watters seconded.

Adopted. Sen. Reagan noted for the record that Rep. McGuire and Sen. Cataldo voted "no."

7. The Committee discussed Final Proposal 2014-16 from the Department of Revenue Administration (Real Estate Transfer Tax (RETT)). Caroline Delaney and Kathleen Sher testified for the Department.

The Department had submitted a conditional approval request in a letter and amended rule dated July 8, 2014.

The Committee had also received written testimony from the following persons:

William Hoke, editor of New Hampshire Tax Advantage, in an e-mail dated July 11, 2014 and July 14, 2014.

Samuel A. Tamposi, Jr., representing the Tamposi Company, Inc.

Alan DeStefano, representing the N.H. Association of Realtors.

Rep. McGuire moved that the Committee make a preliminary objection to Final Proposal 2014-16 (1) on the ground that Rev 801.09 (Rev 801.08 in the conditional approval request defining "real estate holding company") was inconsistent with legislative intent, and (2) on the ground as outlined in public testimony relative to Rev 801.06 and Rev 802.01(j), and recommend that the Department seek legislative clarification of the definition of "real estate holding company" in RSA 78-B:1-a, VI.

Rep. Barry seconded.

After further discussion, Rep. McGuire withdrew her motion and Rep. Barry withdrew his second.

It was the consensus of the Committee (1) to request a waiver from the Director of the Office of Legislative Services of the July 18, 2014 Committee deadline under RSA 541-A:13, I to act on Final Proposal 2014-16 and (2) to postpone action on Final Proposal 2014-16.

8. The Committee discussed Final Proposal 2014-36 from the Department of Revenue Administration (Financial Accounting for Counties). Caroline Delaney and Stephan W. Hamilton testified for the Department.

Sen. Watters moved that the Committee conditionally approve Final Proposal 2014-36 on the condition that Rev 2203.01(a) be amended by inserting "shall be" immediately after "Governmental funds."

Rep. McGuire seconded.

Adopted.

9. The Committee discussed Final Proposal 2014-26 from the Board of Education (Duties of Superintendents, School Boards, Principals, School Health Services, and Dropout Prevention). Mary Mayo of the Department of Education testified for the Board.

The Board had submitted a conditional approval request in an amended rule dated July 17, 2014.

Sen. Lasky left during the discussion of this item.

Sen. Watters moved that the Committee accept the conditional approval request and conditionally approve Final Proposal 2014-26 based on the request, with the further amendment to insert the following language as a new paragraph (I) in Ed 303.01: "Adopt a teacher performance evaluation system, with the involvement of teachers and principals, for use in the school district, pursuant to RSA 189:1-a, III."

Rep. McGuire seconded.

Adopted.

10. After a break, with Sens. Reagan, Rausch, Cataldo, and Watters, and Reps. Schmidt, McGuire, Ladd, and Barry present, the Committee discussed Final Proposal 2014-27 from the Governing Board of Respiratory Care Practitioners (Material Management).

Rep. McGuire moved that the Committee make a preliminary objection to Final Proposal 2014-27 on the grounds as outlined in the Committee staff's annotations to the Final Proposal.

Rep. Schmidt seconded.

Adopted.

11. The Committee discussed Final Proposal 2014-28 from the Governing Board of Respiratory Care Practitioners (Polysomnographic Technologist Limited Scope of Practice and Polysomnographic Trainee).

The Board had requested a conditional approval in an amended rule dated July 10, 2014.

Rep. McGuire moved that the Committee make a preliminary objection to Final Proposal 2014-28 on the grounds as outlined in the Committee staff's annotations to the Final Proposal, with the noted concern that the Board lacked authority to regulate non-registered polysomnographic technologists as outlined in the Committee staff's comments to the conditional approval request.

Rep. Schmidt seconded.

Adopted.

12. The Committee discussed Proposed Expedited Repeal EXP 2014-2 from the Public Employee Labor Relations Board (Written Majority Authorization). Karina Lange testified for the Board.

Sen. Watters moved that the Committee approve Proposed Expedited Repeal EXP 2014-2.

Sen. Rausch seconded.

Adopted.

13. The Committee discussed the following Proposed Expedited Revisions to Agency Forms from the Board of Dental Examiners:

EXRF 2014-2 Dentists – Application for Registration and License Renewal

EXRF 2014-3 Hygienists – Application for Registration and License Renewal

EXRF 2014-4 Initial Application to Administer General Anesthesia and/or Sedation

Since these proposals had been withdrawn by the Board, no further committee action was required or taken.

14. The Committee discussed the response by the Pharmacy Board to the Committee's revised objection to Final Proposal 2013-184 (Mail Order Pharmacy).

Rep. Schmidt moved that the Committee accept the response and approve the rules, with the understanding that the Board will undertake a new rulemaking proceeding to include all the requirements of Form MO-2 in rule Ph 906.03.

Sen. Watters seconded.

Adopted.

15. The Committee discussed as "other business" a proposed pilot program from the Racing and Charitable Gaming Commission and proposed guidelines relative to electronic poker/blackjack and electronic Lucky 7, approved by the Commission on July 9, 2014. Paul Kelley, Commissioner Frederick Booth, and Valerie King testified for the Commission.

Sens. Reagan and Watters left during the discussion of this item, and Rep. Schmidt as Vice-Chair conducted the meeting. Sen. Reagan returned later, but Rep. Schmidt continued to conduct the meeting.

Rep. McGuire moved that the Committee recommend legislation on authorization of electronic poker with a letter to the Senate President, Speaker of the House, and policy committee chairs.

Sen. Reagan seconded.

It was the consensus of the Committee that the text of the letter would be drafted by Committee staff and approved by the Chair.

The motion was adopted.

16. The Committee discussed the continued meeting scheduled for August 7, 2014.

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

17. The Committee adjourned by consensus at 11:25 a.m