



Action Minutes

September 17, 2020

Members Present: Representatives McGuire, Schmidt, Williams, Bershtein*, Karrick*, and Schuett*, 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 9:00 a.m. by Sen. Reagan, Vice-Chair, as Acting 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. McGuire, Schmidt, Williams, Bershtein, Karrick, and Schuett, and Sens. Reagan, Dietsch, Kahn, Ward, and Watters.

Sen. Reagan designated Rep. Bershtein as an alternate for Rep. Hoelzel, and Rep. Karrick as an alternate for Rep. Hatch, who were absent.

3. The Committee discussed the minutes of the Committee meeting on August 20, 2020.

Rep. Schmidt moved that the minutes be approved.

Rep. Williams seconded.

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

	<u>Yes</u>	<u>No</u>
Rep. McGuire	X	
Rep. Schmidt	X	
Rep. Williams	X	
Rep. Bershtein	X	
Rep. Karrick	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.

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

CONSENT AGENDA

2. *Committee Approval of Final Proposals:*

- (a) FP 2020-67 DEPARTMENT OF HEALTH AND HUMAN SERVICES
Former Division of Mental Health and Developmental Services
Medical and Psychiatric Emergencies
(JLCAR Deadline October 19, 2020.)

3. *Committee Conditional Approvals:*

- (a) FP 2020-64 INSURANCE DEPARTMENT
Standard Definitions and Policy Provisions—Prohibited Policy Provisions
(JLCAR Deadline October 12, 2020.)

The Committee also discussed Final Proposal 2020-65 from the Department of Health and Human Services (Former Division of Public Health Services, Certification of Other Qualified Services), for which the Department had submitted a conditional approval request with amended rules dated September 14, 2020.

Rep. Williams moved that the Committee approve the Consent Agenda including Final Proposal 2020-65, that is, approve Final Proposal 2020-67 in Item #2, and conditionally approve Final Proposal 2020-64 in Item #3 and Final Proposal 2020-65 based on the agencies' conditional approval requests.

Rep. McGuire seconded.

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

	<u>Yes</u>	<u>No</u>
Rep. McGuire	X	
Rep. Schmidt	X	
Rep. Williams	X	
Rep. Bershtein	X	
Rep. Karrick	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 whether to postpone action on certain items to another meeting.

Rep. Schmidt moved that the Committee postpone action on the following item to the next regular Committee meeting on October 15, 2020, and request a waiver from the Director of the Office of Legislative Services to waive the September 17, 2020 deadline for Committee action to October 15, 2020.

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9. DEPARTMENT OF SAFETY

FP 2019-202 Commissioner
Road Toll Administration Rules
(JLCAR Deadline September 17, 2020. Some rules are interim rules that expired September 17, 2020.)
(Formerly Item #13(a) on June 19, 2020 Agenda.)

Rep. Williams seconded.

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

	<u>Yes</u>	<u>No</u>
Rep. McGuire	X	
Rep. Schmidt	X	
Rep. Williams	X	
Rep. Bershtein	X	
Rep. Karrick	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 Final Proposal 2020-34 from the Board of Education (Robotics Education Fund). Amanda Phelps of the Department of Education testified for the Board.

The Board had submitted a conditional approval request in amended rules dated September 14, 2020.

Rep. Schmidt moved that the Committee make a preliminary objection to Final Proposal 2020-34 based on the annotations by Committee staff to the Final Proposal, with the understanding that changes made to the Final Proposal in the conditional approval request, as well as the changes to address the comments made by Committee staff to the conditional approval request, would be incorporated into any Board response to the preliminary objection.

Rep. Williams seconded.

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

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

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The vote was 10 “yes” and zero “no”.

The motion was adopted.

7. The Committee discussed Final Proposal 2020-46 from the Department of Environmental Services (Wetlands Programs, Wetlands Definitions Clarified). Gretchen Hamel and Pamela Monroe testified for the Department.

Sen. Watters moved that the Committee approve Final Proposal 2020-46.

Rep. Schmidt seconded.

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

	<u>Yes</u>	<u>No</u>
Rep. McGuire	X	
Rep. Schmidt	X	
Rep. Williams	X	
Rep. Bershtein	X	
Rep. Karrick	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 2020-47 from the Department of Environmental Services (Wetlands Programs, Spring 2020 Amendments to Wetlands Rules). Gretchen Hamel testified for the Department. Pamela Monroe also represented the Department.

Sen. Watters moved that the Committee approve Final Proposal 2020-47. There initially was no second.

Rep. McGuire then moved that the Committee make a preliminary objection to Final Proposal 2020-47 on the ground that there was no authority to require in Env-Wt 309.02(1)(2) that, “The work shall be conducted by divers who have received training in EAW control diving from a diving instructor who is registered and confirmed with the department’s invasive species coordinator”, as this registration was a form of licensing without legislative authorization.

There was no second.

Sen. Dietsch then seconded Sen. Watters’ motion.

Sen. Watters then amended his motion to have the Committee conditionally approve Final Proposal 2020-47 on condition that “who is registered and confirmed with the department’s invasive species coordinator” in Env-Wt 309.02(1)(2) would be amended to “who is listed with the department’s invasive species coordinator.”

Sen. Dietsch amended her second.

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

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

The vote was 4 “yes” and 6 “no”.

The motion was not adopted.

The Committee took no further action at this time. Since the Committee’s deadline for action on this Final Proposal pursuant to RSA 541-A:12, I was October 19, 2020, Final Proposal 2020-47 remained on the agenda for the next Committee meeting.

9. The Committee discussed Final Proposal 2020-59 from the Department of Environmental Services (Air-Related Programs, Purpose and Definitions of Subtitle Env-A Relative to Air-Related Programs). Gretchen Hamel testified for the Department. Pamela Monroe also represented the Department.

Sen. Kahn moved that the Committee approve Final Proposal 2020-59.

Sen. Dietsch seconded.

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

	<u>Yes</u>	<u>No</u>
Rep. McGuire	X	
Rep. Schmidt	X	
Rep. Williams	X	
Rep. Bershtein	X	
Rep. Karrick	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 2020-60 from the Department of Environmental Services (Cross-Program Rules, Non-Confidential Information). Gretchen Hamel testified for the Department. Pamela Monroe also represented the Department.

Rep. McGuire moved that the Committee approve Final Proposal 2020-60.

Rep. Schmidt seconded.

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

	<u>Yes</u>	<u>No</u>
Rep. McGuire	X	
Rep. Schmidt	X	
Rep. Williams	X	
Rep. Bershtein	X	
Rep. Karrick	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.

11. The Committee discussed again Final Proposal 2020-65 from the Department of Health and Human Services (Former Division of Public Health Services, Certification of Other Qualified Services).

Rep. Schmidt moved that the Committee reconsider its vote to conditionally approve Final Proposal 2020-65.

Sen. Reagan seconded.

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

	<u>Yes</u>	<u>No</u>
Rep. McGuire	X	
Rep. Schmidt	X	
Rep. Williams	X	
Rep. Bershtein	X	
Rep. Karrick	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.

After further discussion, Sen. Kahn moved that the Committee conditionally approve Final Proposal 2020-65 based on the Department’s conditional approval request in amended rules dated September 14, 2020.

Rep. Schmidt seconded.

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

	<u>Yes</u>	<u>No</u>
Rep. McGuire	X	
Rep. Schmidt	X	
Rep. Williams	X	

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Rep. Bershtein	X
Rep. Karrick	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 discussed Final Proposal 2020-57 from the Department of Health and Human Services (Former Division of Elderly and Adult Services, Nursing Facility Services). Allyson Zinno, Wendi Aultman, Douglas Osterhoudt, and Melissa St. Cyr testified for the Department.

The Department had requested a conditional approval in amended rules dated September 14, 2020.

The following persons also testified:

Carolyn Virtue, representing Granite Case Management.
Cheryl Steinberg, representing N. H. Legal Assistance.

Michelle Winchester, Health Policy Analyst, had previously submitted written testimony with Carolyn Virtue and Cheryl Steinberg.

Sen. Watters moved that the Committee postpone action on this item to the Committee meeting on October 15, 2020.

Sen. Kahn seconded.

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

	<u>Yes</u>	<u>No</u>
Rep. McGuire	X	
Rep. Schmidt	X	
Rep. Williams	X	
Rep. Bershtein	X	
Rep. Karrick	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.

13. The Committee discussed the response by the Liquor Commission to the Committee’s preliminary objection to Final Proposal 2019-152 (Liquor Licensing). Stephen J. Judge testified for the Commission.

Sen. Gray had arrived in the meeting by this time.

Sen. Kahn moved that the Committee accept the response and approve the rules, with the recommendation that the Commission seek legislative clarification of RSA 178 to clearly specify the duration for which

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certain initial licenses granted by the Commission shall be effective as indicated in the Committee staff comment to Liq 703.05.

Rep. Williams seconded.

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

	<u>Yes</u>	<u>No</u>
Rep. McGuire	X	
Rep. Schmidt	X	
Rep. Williams	X	
Rep. Bershtein	X	
Rep. Karrick	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.

14. The Committee discussed Final Proposal 2020-51 from the Naturopathic Board of Examiners (Formulary). Thomas Broderick from the Office of Professional Licensure and Certification testified for the Board.

Rep. McGuire moved that the Committee approve Final Proposal 2020-51 with the recommendation that the Director of Legislative Services consider as an editorial change the deletion of the language “, *as described in Nat 406.01(f)(6)(a)*” from Nat 406.01(j)(8) in the Final Proposal.

Rep. Schmidt seconded.

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

	<u>Yes</u>	<u>No</u>
Rep. McGuire	X	
Rep. Schmidt	X	
Rep. Williams	X	
Rep. Bershtein	X	
Rep. Karrick	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.

15. The Committee discussed the response by the Board of Chiropractic Examiners to the Committee’s rulemaking petition of June 19, 2020 relative to amending Ch 200 on practice and procedures and Ch 404.01(f) on continuing education to address the issues as outlined in Committee staff comments to Final Proposal 2020-41. Thomas Broderick from the Office of Professional Licensure and Certification testified for the Board.

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The Board had submitted a letter dated September 3, 2020 in response to the petition.

No further action was taken.

16. The Committee discussed the response by the Pharmacy Board to the Committee’s conditional approval on August 20, 2020 of Final Proposal 2020-45 (Biennial Licensing), and whether the meeting of the Board on September 16, 2020, which was adjourned soon after convening, should count as a meeting in calculating the response deadline pursuant to RSA 541-A:13, V(a).

It was the consensus of the Committee that a meeting was held, but that the Board may seek a waiver of the deadline.

17. The Committee discussed amendments pursuant to RSA 541-A:8 to the *Drafting and Procedure Manual for Administrative Rules (Manual)* due to HB 1245 (Chapter 37 of the Laws of 2020). Specifically, the Committee reviewed amendments to the Office of Legislative Services rulemaking forms “Rulemaking Notice Form” and “Cover Sheet for Final Proposal”, currently Appendix II-C and Appendix II-G, respectively, in the *Manual*, and to the rulemaking flow chart for regular rules in Chapter 3 of the *Manual*.

Sen. Ward moved that the Committee approve the amended forms and flow chart.

Rep. Williams seconded.

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

	<u>Yes</u>	<u>No</u>
Rep. McGuire	X	
Rep. Schmidt	X	
Rep. Williams	X	
Rep. Bershtein	X	
Rep. Karrick	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.

18. The Committee discussed SB 576 from the 2020 session which had failed to pass.

After a presentation by Sen. Kahn, it was the consensus of the Committee that this issue be presented to the Committee as a motion in the next meeting.

19. The Committee discussed the continued Committee meeting scheduled for October 1, 2020.

The Committee cancelled the continued meeting by consensus.

20. The Committee discussed adjournment.

Instead of taking a vote, the Committee adjourned at the call of the Acting Chair.

The Committee adjourned at 11:29 a.m.