



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

Action Minutes

JANUARY 16, 2015

Members Present: Representatives McGuire, Schmidt, Ladd, Sad, Gottling*, and Hatch*, and Senators Reagan, Cataldo, Avard, and Feltes. (*) Indicates alternate member.

(**) Indicates where Part 1, Article 28-a of the N.H. Constitution was an issue in the Committee's discussions or decisions in this meeting (See Items #13 and #14. However, Item #13 was conditionally approved, and Item #14 was approved.)

1. The meeting was convened at 9:00 a.m. by Rep. McGuire as Chair.

Members present at this time, aside from Rep. McGuire, were Reps. Schmidt, Ladd, Sad, and Gottling, and Sens. Reagan, Cataldo, Avard, and Feltes.

Rep. McGuire designated Rep. Gottling as an alternate for Sen. Watters, who was absent.

2. The Committee discussed the minutes of the Committee meeting on December 18, 2014.

Sen. Reagan moved that the minutes be approved.

Rep. Ladd seconded.

Adopted.

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

2. Committee Approval of Final Proposals and Proposed Interim Rules:

- (a) FP 2014-117* BOARD OF EDUCATION
School Counseling and School Psychology
**(The only substantive issue with this final proposal is that the agency continued to operate under expired rules as noted in the fiscal impact statement.)*
- (b) FP 2014-159 REAL ESTATE APPRAISER BOARD
Rules Regarding General Education Requirements for Certification
- (c) FP 2014-170 DEPARTMENT OF REVENUE ADMINISTRATION
Tobacco Tax Definitions and Forms
- (d) FP 2014-173 DEPARTMENT OF HEALTH AND HUMAN SERVICES
Former Division of Human Services
Expiring Rules Related to the Food Stamp Program - Definitions and Fluctuating Income
- (e) INT 2014-15 HEALTH SERVICES PLANNING AND REVIEW BOARD
Megavoltage Radiation Therapy Services

(f) INT 2014-17 DEPARTMENT OF HEALTH AND HUMAN SERVICES
Former Division of Human Services
General Program Information

3. *Committee Conditional Approvals:*

FP 2014-158 REAL ESTATE APPRAISER BOARD
Rules Regarding Investigation of Complaints

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

OR 2014-14 BOARD OF MENTAL HEALTH PRACTICE
Ethical and Professional Standards, Responsibilities of Licensees

Sen. Reagan moved that the Committee approve the Consent Agenda, that is, approve the Final Proposals and Proposed Interim Rules in Item #2, conditionally approve the Final Proposal in Item #3, and accept the response and approve the rules in Item #4.

Rep. Schmidt seconded.

Adopted.

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

Sen. Reagan moved that the Committee postpone action on the following items to the next Committee meeting:

12. *INSURANCE DEPARTMENT*

ROR 2014-91 Long-Term Care Insurance
(JLCAR Deadline March 24, 2015.)
(Response not yet received. Response due by February 2, 2015.)

13. *DEPARTMENT OF LABOR*

OR 2014-143 Safety and Health of Public Employees
(JLCAR Deadline March 24, 2015.)
(Response not yet received. Response due by February 2, 2015.)

14. *BOARD OF MENTAL HEALTH PRACTICE*

OR 2014-12 License Requirements, Applications, and Fees
(JLCAR Deadline May 26, 2015.)
(Response not yet received. Response due by April 6, 2015.)

Rep. Schmidt seconded.

Adopted.

Rep. Hatch and Sen. Feltes arrived during the discussion of this item. Rep. McGuire designated Rep. Hatch as an alternate for Rep. Kidder, who was absent.

5. The Committee discussed Proposed Interim Rule INT 2014-11 from the Department of Safety (Mechanical Licensing Board, Initial Fuel Gas Fitting Licensing, Plumbing Licensing, Fuel Gas Trainee Registration, Plumbing Apprentice Registration, and Business Entity Licensing Rules). David Hilts and Jeffrey Cyr of the Department of Safety testified for the Board.

Sen. Reagan moved that the Committee approve Proposed Interim Rule INT 2014-11 with the understanding that the approval must not be taken as a precedent for future approval by the Committee of a proposed interim rule if, as was the case here, an existing emergency rule filed pursuant to RSA 541-A:18 is proposed for re-adoption as an interim rule pursuant to RSA 541-A:19.

Rep. Schmidt seconded.

Adopted.

6. The Committee discussed the response from the Department of Safety to the Committee's preliminary objection to Final Proposal 2013-222 (Commissioner, Re-adoption of Marketing, Sales, and Possession of Fireworks Rules). Marta Modigliani and State Fire Marshal J. William Degnan testified for the Department.

The Department had submitted a request for approval with further amendment pursuant to RSA 541-A:13, V(d) (Amended Objection Response) in a letter and amended rule dated December 31, 2014.

Steve Carbone, representing the N.H. Fireworks Association, also testified.

Sen. Reagan moved that the Committee conditionally approve the Amended Objection Response on condition that Saf-C 2607.01(b)(3), which had been in the Final Proposal, be inserted again.

Rep. Schmidt seconded.

After further discussion, Sen. Reagan amended his motion to be a motion that the Committee make a revised objection to the rules in the Amended Objection Response for Final Proposal 2013-222 on the ground that Saf-C 2607.01(b)(3) in the Final Proposal be inserted again.

Rep. Schmidt seconded.

Since an agency must request a revised objection pursuant to RSA 541-A:13, V(e), the Committee recessed this item so that the Department could consider making such a request.

7. The Committee discussed Final Proposal 2014-181 from the Department of Safety (Commissioner, Initial or Vanity Registration Plate Rules). David Hilts and Richard Bailey testified for the Department.

Gilles Bissonette, representing the New Hampshire Civil Liberties Union, also testified, and had also submitted written testimony prior to the meeting.

David Hilts submitted a conditional approval request in writing as amended rules.

Rep. Schmidt moved that the Committee accept the conditional approval request and conditionally approve Final Proposal 2014-181 based on the request.

Rep. Sad seconded.

Adopted.

8. The Committee discussed again the response by the Department of Safety to the Committee's preliminary objection to Final Proposal 2013-222 (Commission, Readoption of Marketing, Sales, and Possession of Fireworks Rules). Marta Modigliani and State Fire Marshal J. William Degan again represented the Department.

Rep. Hatch moved that the Committee accept the Amended Objection Response and approve the rules.

Rep. Gottling seconded.

Adopted.

9. The Committee discussed Final Proposal 2014-169 from the Department of Safety (Commissioner, Readoption of Change of Gender Rule). Marta Modigliani and Jeff Oberdank testified for the Department.

Rep. Edward Butler also testified briefly.

Rep. Schmidt left during the discussion of this item.

Sen. Reagan moved that the Committee conditionally approve Final Proposal 2014-169 on the condition that Saf-C 1011.03(c) and (d) be amended to insert the following language as noted in the annotation by Committee staff to the Final Proposal:

- Add the following to the end of (c):

“These certifications shall certify that the individual named in (a) above is currently under the signing health care provider's care for the change of gender identity, and that in the health care provider's professional opinion the individual's gender identify is male or female, and that it is reasonably likely his or her gender identity will remain such for the foreseeable future.”

- Add the following to the end of (d):

“This signature shall certify that the request for change of gender is for the purpose of ensuring that the applicant's driver's license/personal identification card accurately reflects his or her gender identity, and that the request is not for any fraudulent or unlawful purpose.”

Rep. Gottling seconded.

Adopted.

Sen. Avard left the meeting at this time.

10. The Committee discussed Final Proposal 2014-157 from the Board of Barbering, Cosmetology, and Esthetics (Apprentice, School Instructor and Shop License, School and Shop Requirements, Estheticians, Individuals Licensed in Another State, Fine Procedures, Notice, Violation Points, Tanning Facilities.).

Kathryn Wontuck testified for the Board.

Rep. Schmidt and Sen. Avard returned to the meeting during the discussion of this item.

Rep. Schmidt moved that the Committee make a preliminary objection to Final Proposal 2014-157 on the grounds as outlined in the annotations to the Final Proposal by Committee staff.

Sen. Reagan seconded.

Adopted.

11. After a break, with Reps. McGuire, Schmidt, Ladd, Sad, Hatch, and Gottling, and Sens. Reagan, Cataldo, Avard, and Feltes present, the Committee discussed Final Proposal 2014-105 from the Department of Environmental Services (Drinking Water Programs, Drinking Water Revolving Loan Fund Program). Gretchen Hamel and Rick Skarinka testified for the Department.

The Department had submitted a conditional approval request in a letter and amended rules dated January 13, 2015.

Sen. Reagan moved that the Committee accept the conditional approval request and conditionally approve Final Proposal 2014-151 based on the request.

Rep. Schmidt seconded.

Adopted.

12. The Committee discussed Final Proposal 2014-151 from the Department of Environmental Services (Drinking Water Programs, Definitions Related to Revised Total Coliform Rule for Public Water Systems). Gretchen Hamel testified for the Department.

The Department had submitted a conditional approval request in a letter and amended rule dated January 8, 2015.

Rep. Schmidt moved that the Committee accept the conditional approval request and conditionally approve Final Proposal 2014-151 based on the request.

Rep. Hatch seconded.

Adopted.

- **13. The Committee discussed Final Proposal 2014-152 from the Department of Environmental Services (Drinking Water Programs, Public Water Systems; Revised Total Coliform Rule and Other Updates). Gretchen Hamel and Sarah Pillsbury testified for the Department.

The Department had submitted a conditional approval request in a letter and amended rules dated January 12, 2015.

Rep. Schmidt moved that the Committee accept the conditional approval request and conditionally approve Final Proposal 2014-152 based on the request.

Sen. Reagan seconded.

Adopted.

- **14. The Committee discussed Final Proposal 2014-160 from the Department of Environmental Services (Air Related Programs, Other Solid Waste Incineration). Gretchen Hamel testified for the Department.

Sen. Reagan moved that the Committee approve Final Proposal 2014-160.

Rep. Schmidt seconded.

Adopted.

15. The Committee discussed Final Proposal 2014-146 from the Racing and Charitable Gaming Commission (Lucky 7). Valerie King and Paul Kelley, Executive Director, testified for the Commission.

The following persons also testified:

Michael McLaughlin, representing Diamond Game.

Susan Geiger, representing Technology Exclusion, Inc.

Rep. Gottling left the meeting at this time.

Sen. Reagan moved that the Committee approve Final Proposal 2014-146 with the recommendation that the Commission work with Rep. Hatch on legislation to change the relevant statutes as necessary, such as RSA 287-E:16-a, II and RSA 287-E:22, as noted in Committee staff's annotations.

Sen. Cataldo seconded.

Adopted.

Rep. McGuire noted for the record that Rep. Schmidt voted "no".

16. The Committee discussed Proposed Interim Rule INT 2014-13 from the Racing and Charitable Gaming Commission (Bingo Games). Valerie King and Paul Kelley, Executive Director, testified for the Commission.

Sen. Reagan moved that the Committee conditionally approve Proposed Interim Rule INT 2014-13 on the condition that the additional provisions in Pari 1000 that are also set to expire on January 20, 2015, but were not included in the Proposed Interim Rule, be inserted in the proposal.

Rep. Ladd seconded.

Adopted.

17. The Committee discussed Proposed Interim Rule INT 2014-14 from the Racing and Charitable Gaming Commission (Games of Chance). Valeric King and Paul Kelley, Executive Director, testified for the Commission.

Sen. Reagan moved that the Committee conditionally approve Proposed Interim Rule INT 2014-14 on condition that the additional provisions in Pari 1200 that are also set to expire on January 20, 2015, but were not included in the Proposed Interim Rule, be inserted in the proposal.

Rep. Hatch seconded.

Adopted.

18. The Committee discussed Final Proposal 2014-171 from the Department of Health and Human Services (Former Division of Human Services, Substance Abuse Disorder Treatment and Recovery Support Services). Michael Holt, Jeffrey Meyers, and Jaime Powers testified for the Department.

The Department had submitted a conditional approval request in a letter and amended rule dated January 14, 2015.

The following persons also testified:

Dianne Pepin, representing the N.H. Alcohol and Drug Abuse Counselors Association.
Dawn M. Tonkin, representing DMT Counseling Services.
Peter Dalpra, d/b/a DalPra Counseling Services.
Robert Dorley.

The following persons registered their opposition to the rules but did not speak:

Pat Tucker.
Kathleen Russo.
Patricia Martick-Campbell.
Meredith Hamel, representing Hamel Substance Abuse Services.

Carol Murtagh completed a pink testimony card but did not indicate a wish to speak or indicate if she supported or opposed the proposal.

Sen. Feltes moved that the Committee accept the conditional approval request and conditionally approve Final Proposal 2014-171 based on the request.

Sen. Reagan seconded.

A voice vote was indecisive, so a roll call vote was called. The vote was as follows:

	Yes	No
Rep. Ladd		X
Rep. McGuire	X	
Rep. Sad	X	
Rep. Schmidt	X	
Rep. Hatch	X	
Sen. Reagan	X	
Sen. Avard		X
Sen. Cataldo		X
Sen. Feltes	X	
Total	6	3

The vote was 6 “yes” and 3 “no”. The motion was adopted.

Rep. Hatch left the meeting at this time.

19. The Committee discussed the following Proposed Interim Rules from the Department of Health and Human Services:

- INT 2014-16 Former Division of Mental Health and Developmental Services
Eligibility and the Process of Providing Services
- INT 2014-18 Former Division of Public Health Services
Use of Radiation Machines: Administrative Requirements and General
Requirements for All Diagnostic and Veterinary X-Ray Machines
- INT 2014-19 Former Division of Public Health Services
Use of Radiation Machines: Therapeutic Radiation Machines

Michael Holt testified for the Department.

Rep. Sad moved that the Committee conditionally approve Proposed Interim Rule INT 2014-16 on condition that He-M 503.14 be removed from the proposal, and that the adopting, amending, and repealing language (AARL) be amended to reflect that the Department is readopting He-M 503.01-503.13 and He-M 503.15-503.19, rather than He-W 503 in its entirety.

Rep. Ladd seconded.

Adopted.

20. The Committee then discussed further the Proposed Interim Rules INT 2014-18 and INT 2014-19 from the Department of Health and Human Services.

Rep. Schmidt moved that the Committee approve Proposed Interim Rules INT 2014-18 and INT 2014-19.

Sen. Cataldo seconded.

Adopted.

21. The Committee discussed Final Proposal 2014-113 from the Department of Health and Human Services (Commissioner, Certification for Payment Standards for Residential Treatment Programs). Michael Holt and Kathleen Talbot testified for the Department.

The Department had submitted a conditional approval request in a letter and amended rules dated January 14, 2015.

Rep. Schmidt moved that the Committee accept the conditional approval request and conditionally approve Final Proposal 2014-113 based on the request, but with the following additional amendments:

- (1) Amend the introductory statement to He-C 6350.05(d) by replacing the words "with the application form" with "with, or in addition to, the application form";
- (2) Amend the introductory sentence to He-C 6350.05(h) by replacing the words "with the renewal application form" with "with, or in addition to, the renewal application form"; and
- (3) Amend He-C 6350.15(g) by inserting the phrase ", sign and date the form," after "update the form as necessary".

Sen. Reagan seconded.

Adopted.

22. The Committee discussed Final Proposal 2014-174 from the Department of Health and Human Services (Commissioner, Certification of Payment Standards of Foster Care Programs). Michael Holt testified for the Department.

The Department had submitted a conditional approval request in a letter and amended rules dated January 14, 2015.

Rep. Sad moved that the Committee accept the conditional approval request and conditionally approve Final Proposal 2014-174 based on the request.

Rep. Ladd seconded.

Adopted.

23. The Committee discussed Final Proposal 2014-177 from the Department of Health and Human Services (Former Division of Human Services, Recoupment and Recovery of Support Payments). Michael Holt, Catherine Bernhard, and Karen Hebert testified for the Department.

The Department had submitted a conditional approval request in a letter and amended rules dated January 14, 2015.

Sen. Reagan moved that the Committee accept the conditional approval request and conditionally approve Final Proposal 2014-177 based on the request.

Sen. Avard seconded.

Adopted.

24. The Committee recessed by consensus at 1:00 p.m.