



STATE OF NEW HAMPSHIRE
JOINT LEGISLATIVE COMMITTEE ON ADMINISTRATIVE RULES

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

Action Minutes

OCTOBER 17, 2019

Members Present: Representatives Hatch, McGuire, Schmidt, Williams, Hoelzel, Lang*, Fontneau*, Karrick*, and Bershtein*, and Senators Reagan, Dietsch, Kahn, Watters, and Ward. (*) 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 Rep. Hatch as Chair.

Members present at this time, aside from Rep. Hatch, were Reps. McGuire, Schmidt, Williams, Hoelzel, Lang, Fontneau, Karrick, and Bershtein, and Senators Reagan, Dietsch, Kahn, Watters, and Ward.

Since no regular members were absent at this time, Rep. Hatch did not designate any alternates for regular members.

2. The Committee discussed the minutes of the Committee meeting on September 20, 2019.

Sen. Reagan moved that the minutes be approved.

Rep. Schmidt seconded.

Adopted.

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

CONSENT AGENDA

2. Committee Approval of Final Proposals:

FP 2019-123	DEPARTMENT OF HEALTH AND HUMAN SERVICES Former Division of Human Services FANF Intentional Program Violations
FP 2019-125	INSURANCE DEPARTMENT Continuing Care Retirement Communities
FP 2019-126	DEPARTMENT OF ENVIRONMENTAL SERVICES Cross-Program Rules Expediting Review of Applications
FP 2019-127	GOVERNING BOARD OF ATHLETIC TRAINERS Organizational and Procedural Rules
FP 2019-136	DEPARTMENT OF LABOR Definitions & Accident Reporting Requirements for Fatality and Serious Injury

- FP 2019-138 DEPARTMENT OF REVENUE ADMINISTRATION
Agency Action on Petitions for Redetermination or Reconsideration
- FP 2019-150 DEPARTMENT OF REVENUE ADMINISTRATION
Business Tax Technical Corrections
- FP 2019-151 DEPARTMENT OF REVENUE ADMINISTRATION
First Rollout of Revenue Information Management System (RIMS)

3. Committee Conditional Approvals:

- FP 2019-69 PEASE DEVELOPMENT AUTHORITY
Rules Regarding Permitting and Setting Moorings and Anchorages
- FP 2019-133 BOARD OF FAMILY MEDIATOR CERTIFICATION
Continuing Education and Requirement to Screen
- FP 2019-142 DEPARTMENT OF HEALTH AND HUMAN SERVICES
Commissioner
Child-Placing Agency Licensing Requirements

Rep. Schmidt moved that the Committee approve the Consent Agenda, that is, approve the Final Proposals in Item #2 and conditionally approve the Final Proposals in Item #3 based on the agencies' conditional approval requests.

Sen. Reagan seconded.

Adopted.

- 4. The Committee discussed the response by the Board of Education to the Committee's preliminary objection to Final Proposal 2019-5 (Learn Everywhere Program for High School Graduation Credit). Commissioner Frank Edelblut and Amanda Phelps of the Department of Education testified for the Board.

Rep. McGuire moved that the Committee approve the rules in the Objection Response.

Sen. Ward seconded.

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

	Yes	No
Rep. McGuire	X	
Rep. Hoelzel	X	
Rep. Schmidt		X
Rep. Williams		X
Rep. Hatch		X
Sen. Dietsch		X
Sen. Kahn		X
Sen. Reagan	X	
Sen. Ward	X	
Sen. Watters		X
Totals	4	6

The vote was 4 “yes” and 6 “no”. The motion was not adopted.

Sen. Kahn then moved that the Committee make a final objection to Final Proposal 2019-5, as amended in the Objection Response, on the following grounds:

1. Rule Ed 1407.02(a) in the Preliminary Objection Response is contrary to legislative intent to the extent that the rule violates the specific statute RSA 193-E:2-a, V(a), and the rule violates the more general statutory purpose clause RSA 193-E:1, II, as outlined in Committee staff comments;
2. Rule Ed 1400 in the Preliminary Objection Response is contrary to legislative intent to the extent that the rule violates the overall purpose of the statute RSA 193-E, as outlined in Committee staff comments; and
3. Rule Ed 1407.02(a) in the Preliminary Objection Response is beyond the Board's authority as outlined in Committee staff comments.

Sen. Watters seconded.

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

	Yes	No
Rep. McGuire		X
Rep. Hoelzel		X
Rep. Schmidt	X	
Rep. Williams	X	
Rep. Hatch	X	
Sen. Dietsch	X	
Sen. Kahn	X	
Sen. Reagan		X
Sen. Ward		X
Sen. Watters	X	
Totals	6	4

The vote was 6 “yes” and 4 “no”. The motion was adopted.

Sen. Kahn then moved that the Committee vote to sponsor a joint resolution on the same grounds as for the Final Objection and that the resolution:

1. Prohibit the Board from adopting Ed 1400 as contained in Objection Response 2019-5; and
2. Recommend that the General Court clarify that the rulemaking authority of the Board in RSA 193-E:2-a, V(b) does not give the Board authority to require that school districts grant credit for courses or programs when the district did not itself approve the curriculum. In other words, the General Court should clarify that the statute does not authorize the Board to force a school district to accept the credit if it chose not to.

Sen. Watters seconded.

Rep. McGuire requested that Item #2 in the joint resolution say “does or does not” instead of “does not”, and Sen. Kahn accepted that as an amendment.

Rep. Watters seconded the amendment.

A roll call vote was called on the motion as amended. The vote was as follows:

	Yes	No
Rep. McGuire		X
Rep. Hoelzel		X
Rep. Schmidt	X	
Rep. Williams	X	
Rep. Hatch	X	
Sen. Dietsch	X	
Sen. Kahn	X	
Sen. Reagan		X
Sen. Ward		X
Sen. Watters	X	
Totals	6	4

The vote was 6 “yes” and 4 “no”. The motion was adopted.

5. The Committee discussed an emergency rule (Document #12895, effective October 10, 2019) from the Board of Education (School Use Aid). Commissioner Frank Edelblut and Amanda Phelps of the Department of Education testified for the Board.

It was the consensus of the Committee to take no further action on the emergency rule.

6. The Committee discussed an emergency rule (Document #12896, effective October 10, 2019) from the Board of Education (Robotics Education Fund). Commissioner Frank Edelblut, Amanda Phelps, and Nathaniel Green of the Department of Education testified for the Board.

Rep. McGuire moved that the Committee petition the Board of Education pursuant to RSA 541-A:4 to readopt Ed 1304 with amendment as a regular rule with a recommendation that the following concerns be addressed in the regular rulemaking process:

- (1) There was a concern about oral rulemaking in the emergency rule regarding the placement of grant application deadlines only on the Board’s website and form instead of in the rules, in violation of RSA 541-A:22, I and RSA 188-E:24-a, VI as noted in Committee staff annotations to the rule. The grant deadline must be in the regular rules; and (2) In submitting a Request for Fiscal Impact Statement (FIS) from the Office of Legislative Budget Assistant (LBA) pursuant to RSA 541-A:5, I and IV, the Board should indicate the costs and benefits due to all changes from the regular rules prior to the emergency rule, since an emergency rule filing does not have an FIS, and the LBA would normally focus the FIS on the cost and benefits of changes from the existing (emergency) rule.

Rep. Schmidt seconded.

Adopted.

7. The Committee discussed Final Proposal 2019-68 from the Department of Justice (Victims’ Compensation). Patrick J. Queenan and Lisa Lamphere testified for the Department.

Sen. Watters and Rep. McGuire left the meeting during the discussion of this item. Rep. Hatch designated Rep. Bershtein as an alternate for Rep. McGuire and designated Rep. Fontneau as an alternate for Sen. Watters.

Sen. Reagan moved that the Committee conditionally approve Final Proposal 2019-68 on the following grounds:

- Amend Jus 603.03 by inserting “60 days” in place of “120 days”;
- Amend Jus 604.04(a) by inserting “revised 8/23/2019” immediately after the form name;
- Amend Jus 604.08 by inserting a new paragraph (c) to read as follows:

“(c) By his or her signature on the ‘Mental Health Assessment and Treatment Plan Form’, effective 1/14/19, the provider shall agree to the following:

1. *I am a licensed therapist who is experienced in working with the victims of trauma;*
2. *Under the laws and rules applicable to the Commission, that the Victims’ Compensation Program is the payer of last resort and all private insurance and/or federal or state funding, including Medicaid and Medicare, must be billed first;*
3. *I will accept the NH Victims’ Compensation Program’s reimbursement of \$75 for an individual, crime-related, therapy session and \$35 for a group, crime-related, therapy session as payment in full;*
4. *I understand that I may only bill the Victims’ Compensation Program for crime-related therapy.*
5. *I will request any necessary extension of treatment 30 days prior to the end of all Commission approved sessions.”;*

- Renumber Jus 604.08(c)-(f) as (d)-(g); and
- Amend Jus 600 in response to the editorial comments made by Committee staff to Final Proposal 2019-68.

Sen. Dietsch seconded.

Adopted.

8. After a break, with Reps. Hatch, Schmidt, Williams, Hoelzel, Lang, Fontneau, and Karrick, and Sens. Reagan, Dietsch, Kahn, and Ward present, the Committee discussed Final Proposal 2019-102 from the Department of Environmental Services (Drinking Water Programs, Administrative Procedures for Grants and Loans from the Drinking Water and Groundwater Trust Fund). Gretchen Hamel and Johnna McKenna testified for the Department.

The Department had submitted a conditional approval request in a letter and amended rules dated October 14, 2019.

Rep. Bershtein returned to the meeting during the discussion of this item.

Sen. Reagan moved that the Committee conditionally approve Final Proposal 2019-102 based on the request.

Rep. Schmidt seconded.

Adopted.

9. The Committee discussed Final Proposal 2019-88 from the Department of Safety (Commissioner, Various N.H. Vehicle Registration Rules). David Hilts and Christopher Ialuna testified for the Department.

Sen. Reagan moved that the Committee approve Final Proposal 2019-88.

Rep. Schmidt seconded.

Adopted.

10. The Committee discussed Proposed Interim Rule INT 2019-29 from the Department of Safety. (Commissioner, Voluntary Certification of Fire Protection Equipment Technicians). David Hilts testified for the Department.

The Department had submitted a conditional approval request in amended rules dated October 10, 2019, but the Department had withdrawn the request.

Sen. Kahn moved that the Committee approve Proposed Interim Rule INT 2019-29 with the understanding that the Department would address in a regular rulemaking proceeding the issues outlined in the annotations by Committee staff to the Proposed Interim Rule.

Sen. Reagan seconded.

Adopted.

11. The Committee discussed an emergency rule (Document #12894) from the Department of Safety (Commissioner, Substance Abuse Grant Program Emergency Rule). David Hilts testified for the Department.

It was the consensus of the Committee to take no further action.

12. The Committee discussed Final Proposal 2019-100 from the Department of Health and Human Services (Former Division of Public Health Services, Rules for Residential Treatment and Rehabilitation Facilities). Allyson Zinno, Doreen Shockley, and Kenneth Walsh testified for the Department.

Sen. Dietsch and Rep. Lang left the meeting during the discussion of this item. Rep. Hatch designated Rep. Karrick as an alternate for Sen. Dietsch.

Sen. Kahn left the meeting at this time.

It was the consensus of the Committee to postpone action on this item to the continued meeting on November 7, 2019.

13. The Committee discussed whether to postpone the remainder of the agenda as follows to the continued meeting on November 7, 2019:

11. DEPARTMENT OF HEALTH AND HUMAN SERVICES

- (b) FP 2019-108 Former Division of Public Health Services
Rules for Ambulatory Surgical Centers
*(JLCAR Deadline November 12, 2019. Former interim rules expired
December 24, 2018.)*

- (c) FP 2019-121 Former Division of Mental Health and Developmental Services
Certification Standards for Behavioral Health Community Residences
(JLCAR Deadline November 18, 2019. Former interim rules expired
September 6, 2019.)

12. BOARD OF ACCOUNTANCY

- FP 2019-107 Application for Initial Certification, Reciprocity, and Return to Active Practice
(JLCAR Deadline October 17, 2019.)
(Formerly Item #8 on 9-20-19 Agenda.)

13. BOARD OF PSYCHOLOGISTS

- FP 2019-110 Petition for Waiver
(JLCAR Deadline October 24, 2019.)

14. BOARD OF MEDICINE

- FP 2019-46 Licensure Requirements, Renewal Requirements, Ethical Standards, and Physician
Assistant Rules
(JLCAR Deadline November 12, 2019.)

15. REAL ESTATE COMMISSION

- FP 2019-67 Amendments to Organizational Rules, Practice and Procedural Rules, Licensing
Requirements, and Continued Status
(JLCAR Deadline November 18, 2019.)

16. PHARMACY BOARD

- (a) OR 2019-33 Registered and Certified Pharmacy Technician Duties
(JLCAR Deadline December 2, 2019.)
- (b) FP 2019-72 Investigations
(JLCAR Deadline November 14, 2019.)
- (c) FP 2019-74 Inspections
(JLCAR Deadline November 14, 2019.)

17. ELECTRICIANS' BOARD

- FP 2019-94 Apprentice Qualifications
(JLCAR Deadline November 18, 2019.)

18. GOVERNING BOARD OF PHYSICAL THERAPISTS

- FP 2019-99 Ethical Standards
(JLCAR Deadline November 7, 2019.)

