



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

Action Minutes

July 16, 2015

Members Present: Representatives McGuire, Schmidt, Kidder, Ladd, Sad, Gottling*, Hatch*, and Sytek*, and Senators Reagan, Watters, and Daniels*. (*) 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 9:00 a.m. by Sen. Reagan as Vice-Chair.

Members present at this time, aside from Sen. Reagan, were Reps. Schmidt, Ladd, Kidder, Sad, Gottling, Hatch, and Sytek, and Sen. Watters.

Rep. McGuire arrived shortly after the meeting was convened, but Sen. Reagan continued to serve as Acting Chair at this time.

2. The Committee discussed the minutes of the Committee meeting on June 26, 2015.

Sen. Daniels arrived in the meeting at this time.

Sen. Watters moved that the minutes be approved.

Rep. Schmidt seconded.

Sen. Reagan designated Rep. Gottling and Sen. Daniels as alternates, respectively, for Sen. Feltes and Sen. Avard, who were absent. At this time Rep. Hatch and Rep. Sytek were not yet voting members.

The motion was adopted.

The meeting was conducted from this point onward by Rep. McGuire as Chair.

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

2. *Committee Approval of Final Proposals:*

FP 2015-45	BOARD OF ARCHITECTS Rules Regarding Licensure Requirements; Continued Status, Ethical Standards, and License Surrender
FP 2015-70	DEPARTMENT OF HEALTH AND HUMAN SERVICES Commissioner Employment Related Child Care

- FP 2015-77 DEPARTMENT OF HEALTH AND HUMAN SERVICES
Former Division of Human Services
Expiring Rules Related to Allowable Deductions for the Financial Assistance and Medicaid Programs, and Eligibility for Nursing Facility Assistance
- FP 2015-81 DEPARTMENT OF HEALTH AND HUMAN SERVICES
Former Division of Human Services
General Program Information
- FP 2015-84 DEPARTMENT OF HEALTH AND HUMAN SERVICES
Former Division of Public Health Services
Use of Radiation Machines: Administrative Requirements and General Requirements for All Diagnostic and Veterinary X-Ray Machines
- FP 2015-85 DEPARTMENT OF HEALTH AND HUMAN SERVICES
Former Division of Public Health Services
Use of Radiation Machines: Therapeutic Radiation Machines

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

- ROR 2015-24 GOVERNING BOARD OF OCCUPATIONAL THERAPISTS
Requirements for Licensure
- ROR 2015-25 GOVERNING BOARD OF OCCUPATIONAL THERAPISTS
Requirements for Reinstatement

The Committee also discussed adding the following Final Proposals to the Consent Agenda for Committee Conditional Approvals, since the agency had submitted conditional approval requests:

- FP 2015-41 GOVERNING BOARD OF RESPIRATORY CARE PRACTITIONERS
Requirements for Initial Licensure
- FP 2015-42 GOVERNING BOARD OF RESPIRATORY CARE PRACTITIONERS
Continued Status

Rep. Schmidt moved that the Committee add these Final Proposals to the Consent Agenda and approve the Consent Agenda, that is, approve the Final Proposals in Item #2, accept the responses and approve the rules in Item #4, and conditionally approve Final Proposal 2015-41 and Final Proposal 2015-42 based on the conditional approval requests.

Sen. Reagan 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 and request a waiver from the Director of the Office of Legislative Services to waive the Committee's July 20, 2015 deadline to act on Final Proposal 2015-67 and to set a new deadline of August 20, 2015:

9. DEPARTMENT OF HEALTH AND HUMAN SERVICES

- (a) FP 2015-67 Former Division of Human Services
Medicaid Managed Care
(JLCAR Deadline July 20, 2015.)
(Formerly Item #13(b) on 6-19-15 and 6-26-15 agendas.)

10. GOVERNING BOARDS UNDER THE OFFICE OF LICENSED ALLIED HEALTH PROFESSIONALS

- (c) ROR 2015-18 GOVERNING BOARD OF PHYSICAL THERAPISTS
Requirements for Initial Licensure
(JLCAR Deadline September 29, 2015.)
(Response not yet filed. Response due by August 10, 2015.)
- (d) ROR 2015-21 GOVERNING BOARD OF ATHLETIC TRAINERS
Continued Status
(JLCAR Deadline September 29, 2015.)
(Response not yet filed. Response due by August 10, 2015.)

Rep. Schmidt seconded.

Adopted.

5. The Committee discussed Final Proposal 2015-55 from the Department of Environmental Services (Air Related Programs, Owner and Operator Recordkeeping and Reporting Obligations). Gretchen Hamel testified for the Department.

Sen. Reagan moved that the Committee approve Final Proposal 2015-55.

Rep. Schmidt seconded.

Adopted.

6. The Committee discussed Final Proposal 2015-46 from the Public Utilities Commission (NH Code for Energy Conservation in New Building Construction). Suzanne Amidon testified for the Commission.

The Commission had submitted a conditional approval request in a letter dated June 30, 2015 and an amended rule dated May 22, 2015 [sic].

Rep. Schmidt moved that the Committee accept the conditional approval request and conditionally approve Final Proposal 2015-46 based on the request.

Sen. Watters seconded.

Adopted.

7. The Committee discussed Final Proposal 2015-14 from the Public Utilities Commission (Affiliate Transactions). Michael Sheehan and Martin Honigberg, Commission Chairman, testified for the Commission.

The Commission had submitted a conditional approval request in a letter and amended rule dated July 13, 2015.

Donald Pfundstein, from Gallagher, Callahan and Gartrell, testified for Northern Pass.

Sen. Reagan moved that the Committee accept the Commission's conditional approval request and conditionally approve Final Proposal 2015-14 based on the request, but with the further amendment to Puc 2105.04(a) to replace "parent company, as third party provider" with "or parent company".

There was no second at this time. Instead, the Committee recessed on this item to allow time for the Commission to discuss potential amendments to Final Proposal 2015-14 with stakeholders.

8. The Committee discussed Final Proposal 2015-82 from the Department of Health and Human Services (Former Division of Mental Health and Developmental Services, Eligibility and the Process of Providing Services). Michael Holt and Melissa Nemeth testified for the Department.

The Department had submitted a conditional approval request in a letter and amended ruled dated July 15, 2015.

The following persons also testified:

Cynthia Mahar, representing Community Crossroads, who also submitted written testimony.

Jennifer Bertrand, representing the N.H. Council on Developmental Disabilities, who also submitted written testimony.

Cathy Spinney, representing the N.H. Developmental Disabilities Quality Council.

Richard Cohen, representing the N.H. Developmental Disabilities Quality Council.

Dotty Treisner, representing Community Support Network, Inc.

Rebecca Whitley, representing the Disabilities Rights Center.

Adrienne Mallinson, representing the Disabilities Rights Center.

The Disabilities Rights Center and the N.H. Developmental Disabilities Quality Council had also submitted written testimony prior to the meeting.

Sen. Reagan moved that the Committee accept the Department's conditional approval request and conditionally approve Final Proposal 2015-82 based on the request, but with the following additional amendments:

(1) Delete "have been requested and" from He-M 503.03(c)(4), so that the subparagraph in its entirety reads as follows: "Other applicable services available pursuant to He-M 500 that are needed as determined in accordance with He-M 503.05, except those that are the legal responsibility of the local education agency (LEA) pursuant to the Interagency Agreement in accordance with RSA 186-C:7-a, the department's division for children, youth and families (DCYF) or another state agency to provide.";

(2) Adding ", if necessary," in front of the word "performed" in He-M 503.08(d)(10)a. and making an editorial change to the placement of the appendix reference, so that the clause in its entirety reads as follows: "Ensure that all needed evaluations, screening or assessments, such as the SIS, HRST, each available as noted in Appendix A, assistive technology evaluation, risk assessments, behavior plans and other clinical or health evaluations are updated and, if necessary, performed and that information from said evaluations, screenings and assessments is discussed and shared with the individual, guardian or representative;"; and

(3) Since there were two subparagraphs numbered as He-W 503.10(c)(12), the second should be numbered He-W 503.10(c)(13).

9. After a break, with Reps. McGuire, Schmidt, Ladd, Sad, Kidder, Gottling, Hatch, and Sytek, and Sens. Reagan and Daniels present, the Committee resumed discussion of Final Proposal 2015-14 from the Public Utilities Commission (Affiliate Transactions). Michael Sheehan testified for the Commission.

Sen. Reagan moved that the Committee accept the Commission's conditional approval request and conditionally approve Final Proposal 2015-14 based on the request but with the further amendment to move and renumber the text in Puc 2105.04(e)(9) and (10) to become Puc 2105.04 (c)(24) and (25).

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

The motion was adopted.

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

INT 2015-6 Former Division of Public Health Services
 Licensing of Radioactive Materials

INT 2015-7 Former Division of Public Health Services
 Use of Radionuclides in the Healing Arts

Catherine Bernhard testified for the Department.

Sen. Reagan moved that the Committee approve Proposed Interim Rule INT 2015-6.

Rep. Ladd seconded.

Adopted.

After further discussion, Sen. Reagan moved that the Committee approve Proposed Interim Rule INT 2015-7.

Rep. Sad seconded.

Adopted.

11. The Committee discussed Proposed Interim Rule INT 2015-3 from the Fish and Game Department (Taking Bear with Crossbow). Evan Mulholland testified for the Department.

Sen. Reagan moved that the Committee approve Proposed Interim Rule INT 2015-3.

Sen. Daniels seconded.

Adopted.

12. The Committee discussed Proposed Interim Rule INT 2015-4 from the Fish and Game Department (Newborn Lifetime License). Evan Mulholland testified for the Department.

The Department has submitted a conditional approval request in a letter and amended rule dated July 6, 2015.

Sen. Reagan moved that the Committee accept the conditional approval request and conditionally approve Proposed Interim Rule INT 2015-4 based on the request.

Rep. Gottling seconded.

Adopted.

13. The Committee discussed an emergency rule filed by the Fish and Game Department (Temporary License and Permit Fees, Document #10874, effective July 1, 2015). Evan Mulholland testified for the Department.

The Committee took no further action.

14. The Committee discussed Proposed Interim Rule INT 2015-5 from the Department of Safety (Commissioner, Motor Vehicle Inspection Requirements). David Hilts testified for the Department.

Sen. Reagan moved that the Committee approve Proposed Interim Rule INT 2015-5.

Rep. Schmidt seconded.

Adopted.

15. The Committee discussed an emergency rule filed by the Passenger Tramway Safety Board (Orphan Lift Inspection Rules, Document #10872, effective June 30, 2015). David Hilts from the Department of Safety testified for the Board.

The Committee took no further action.

16. The Committee discussed Final Proposal 2015-32 from the Pharmacy Board (Standards of Practice). Robert Stout testified for the Board.

Rep. Sad had left the meeting by this time.

Sen. Reagan moved that the Committee approve Final Proposal 2015-32 with the recommendation to the Director of the Office of Legislative Services that she consider as an editorial change in the adopted rule the insertion of "(Rev 7/2015)" immediately after "Form #Ph 558" in Ph 707.03(b)(1) and (2) to indicate the specific revision date of the current form being incorporated by reference in the rules.

Rep. Schmidt seconded.

Adopted.

17. The Committee discussed Final Proposal 2015-35 from the Pease Development Authority (Slip Penalties; State-Owned Restricted Piers). Geno Marconi and Marie Aleksy testified for the Authority.

Rep. Gottling had left the meeting by this time.

Sen. Reagan moved that the Committee conditionally approve Final Proposal 2015-35 on the condition that the words "or the applicant's duly authorized representative" be inserted after the word "applicant" in Pda 709.01(e) and Pda 709.02(d).

Rep. Schmidt seconded.

Adopted.

18. The Committee discussed Final Proposal 2015-73 from the Lottery Commission (Rules for Sales Agents). Lynda Plante and Susan Smart testified for the Commission.

The Commission had submitted a conditional approval request in an amended rule dated July 9, 2015.

Rep. McGuire moved that the Committee accept the conditional approval request and conditionally approve Final Proposal 2015-73 based on the request, with the recommendation that the Commission seek legislation to specifically authorize it to require submission of Social Security numbers by persons listed in the "Board of Directors Member Listing" for the purpose of credit checks, as stated in Sw 301.01(d).

Rep. Schmidt seconded.

Adopted.

19. The Committee discussed an emergency rule filed by the Board of Education (Minimum Standards for Public School Approval, Document #10870, effective June 29, 2015). Erin McIntyre of the Department of Education testified for the Board.

The Committee took no further action except a directive by consensus to the Committee staff to examine the underlying statutes regarding what is required for legislative approval of standards for public schools, in light of the amendments to the minimum standards proposed by the Board in 2013.

20. The Committee discussed the status of the response by the Board of Education to the Committee's rulemaking petition of June 18, 2015 relative to incorporation by reference of a code of ethics for the education professions.

The Board had responded in a letter dated July 10, 2015 that it had voted on June 25, 2015 to grant the petition.

No further action was taken by the Committee.

21. The Committee discussed the status of the response by the Commissioner of the Department of Agriculture, Markets and Food to the Committee's rulemaking petition of June 19, 2015 relative to registration of poultry and rabbit producers to implement RSA 153-A:16, II.

A response had not yet been submitted.

No further action was taken by the Committee at this time.

22. The Committee discussed with Committee staff whether Committee member packets would be sent electronically to members prior to the delivery in paper.

Sen. Daniels requested that this be done for his packet 3 days before the next Committee meeting.

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23. The Committee discussed the continued meeting date of August 6, 2015.

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

24. The Committee adjourned by consensus at 12:40 p.m.