



STATE OF NEW HAMPSHIRE
JOINT LEGISLATIVE COMMITTEE ON ADMINISTRATIVE RULES

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

Action Minutes

JULY 18, 2019

Members Present: Representatives Hatch, McGuire, Schmidt, Williams, Lang*, Karrick*, and Sytek*, and Senators Reagan, Feltes, Ward, Kahn, and Watters*. (*) 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 #15. However, Item #13 was conditionally approved, and the three Final Proposals in Item #15 were either approved or conditionally approved.)

1. The meeting was convened at 9:02 a.m. by Rep. Hatch as Chair.

Members present at this time, aside from Rep. Hatch, were Reps. McGuire, Schmidt, Williams, Lang, and Karrick, and Sens. Reagan, Feltes, Ward, Kahn, and Watters.

Rep. Hatch designated Rep. Lang as an alternate for Rep. Hoelzel, and Sen. Watters as an alternate for Sen. Dietsch, who were absent.

2. The Committee discussed the minutes of the Committee meeting on June 21, 2019.

Sen. Feltes moved that the minutes be approved.

Sen. Reagan seconded.

Adopted.

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

CONSENT AGENDA

2. Committee Approval of Final Proposals:

- | | |
|------------|---|
| FP 2019-6 | BOARD OF ARCHITECTS
Licensure Requirements, Continued Status |
| FP 2019-43 | BOARD OF EDUCATION
Technology and Engineering Teacher and Educator Preparation Programs
for Various Endorsements |
| FP 2019-61 | BOARD OF REGISTRATION IN OPTOMETRY
Fee Schedule |
| FP 2019-65 | DEPARTMENT OF ENVIRONMENTAL SERVICES
Air Pollution Programs
Prevention, Abatement, and Control of Open Source Air Pollution |
| FP 2019-75 | DEPARTMENT OF REVENUE ADMINISTRATION
Indicia of Real Estate Transfer Tax Paid |

FP 2019-76 DEPARTMENT OF REVENUE ADMINISTRATION
Indicia of L-CHIP Paid

FP 2019-81 DEPARTMENT OF REVENUE ADMINISTRATION
Excavation Tax and Taxation of Excavation Area

3. *Committee Conditional Approvals:*

FP 2019-64 OFFICE OF LICENSED ALLIED HEALTH PROFESSIONALS
Allied Health Organizational Forms

Sen. Reagan moved that the Committee approve the Consent Agenda, except for Final Proposal 2019-61, that is, approve the Final Proposals in Item #2 except for Final Proposal 2019-61 and conditionally approve Final Proposal 2019-64 in Item #3 based on the agency's conditional approval request.

Rep. Schmidt seconded.

Adopted.

4. The Committee discussed Final Proposal 2019-61 from the Board of Registration in Optometry (Fee Schedule). Joseph Shoemaker from the Office of Professional Licensure and Certification testified for the Board.

Rep. Sytek arrived in the meeting at this time, but he was not a voting member.

Rep. Schmidt moved that the Committee postpone action on Final Proposal 2019-61 to the regular Committee meeting on August 15, 2019, and request a waiver from the Director of the Office of Legislative Services of the Committee's August 12, 2019 deadline to act on Final Proposal 2019-61.

Rep. Williams seconded.

Rep. McGuire requested that the Board also provide data on Board expenses so that they may be considered with the Final Proposal.

The motion was adopted.

5. The Committee discussed Proposed Interim Rule INT 2019-15 from the Board of Veterinary Medicine (Rules of the Board of Veterinary Medicine).

Sen. Reagan moved that the Committee approve Proposed Interim Rule INT 2019-15.

Rep. Schmidt seconded.

The Committee recessed on this Proposed Interim Rule while copies were made of relevant written testimony from Dr. Stephen Crawford, State Veterinarian.

6. The Committee discussed Final Proposal 2019-37 from the Lottery Commission (Games of Chance). Valerie King testified for the Commission.

The Commission had submitted a conditional approval request in a letter and amended rules dated July 17, 2019.

Rep. McGuire moved that the Committee conditionally approve Final Proposal 2019-37 based on the request.

Rep. Schmidt seconded.

Adopted.

7. The Committee resumed discussion on Proposed Interim Rule INT 2019-15 from the Board of Veterinary Medicine.

The previous motion was adopted to approve Proposed Interim Rule INT 2019-15, with the understanding that the Board would provide the Committee with information on fees collected since the former rules expired April 23, 2017.

The Chair noted for the record that Rep. McGuire voted “no”.

8. The Committee discussed Final Proposal 2019-83 from the Current Use Board (Organizational and Practice and Procedure Rules and Rules on Criteria for Open Space Current Use Assessment). Rick Evans represented the Board but did not speak.

Mark J. Burger and Bradford Keith indicated their opposition to the rules and a wish to speak.

Sen. Feltes moved that the Committee make a preliminary objection to Final Proposal 2019-83 on the grounds as outlined in the annotations to the Final Proposal by Committee staff, especially regarding the comment to Cub 103.04(b)(1).

Rep. Williams seconded.

Adopted.

9. The Committee discussed Proposed Interim Rule INT 2019-18 from the Department of Health and Human Services (Former Division of Public Health Services, End Stage Renal Disease Dialysis Centers). Allyson Zinno and Doreen Shockley testified for the Department.

Sen. Kahn moved that the Committee approve Proposed Interim Rule INT 2019-18.

Rep. Lang seconded.

Adopted.

10. The Committee discussed Proposed Interim Rule INT 2019-19 from the Department of Health and Human Services (Former Division of Human Services, Developing Potential Sources of Income). Allyson Zinno and Brian Clark testified for the Department.

Sen. Reagan moved that the Committee approve Proposed Interim Rule INT 2019-19.

Rep. Schmidt seconded.

Adopted.

11. The Committee discussed Proposed Interim Rule INT 2019-20 from the Department of Health and Human Services (Division of Elderly and Adult Services, Choices for Independence Program). Kim Reeve testified for the Department.

Sen. Reagan moved that the Committee approve Proposed Interim Rule INT 2019-20.

Rep. Schmidt seconded.

Adopted.

12. The Committee discussed Proposed Expedited Revision to Form EXRF 2019-1 from the Department of Health and Human Services (Former Division of Human Services, Granite Advantage Health Care Program Forms: Monthly Reporting, Reporting Education Participations, Exemption Request, and Good Cause Request). Kim Reeve testified for the Department.

Rep. Lang moved that the Committee approved Proposed Expedited Revision to Form EXRF 2019-1.

Rep. Schmidt seconded.

Adopted.

- **13. The Committee discussed Final Proposal 2019-57 from the Board of Education (Minimum Standards for Computer Science and Kindergarten). Commissioner Frank Edelblut, Amanda Phelps, and Richard Sala from the Department of Education testified for the Board.

Board Chairman Drew Cline was also present but did not speak.

The Department of Education had submitted a conditional approval request in a letter dated July 17, 2019 and attached rules dated July 18, 2019.

Sen. Watters moved that the Committee conditionally approve Final Proposal 2019-57 based on the request.

Rep. Schmidt seconded.

Adopted.

14. The Committee discussed Final Proposal 2019-5 from the Board of Education (Learn Everywhere Program for High School Graduation Credit). Commissioner Frank Edelblut, Amanda Phelps, and Richard Sala from the Department of Education testified for the Board. Chairman Drew Cline also represented the Board.

Sen. Feltes recused himself from discussing or voting on Final Proposal 2019-5 due to a potential conflict of interest under Senate Rule 65. Rep. Hatch therefore designated Rep. Karrick as an alternate for Sen. Feltes.

Sen. Reagan read into the record the written testimony of Rep. Barbara Shaw in support of the rules.

The following persons testified:

Barrett M. Christina, representing the N.H. School Board Association, who had also submitted written testimony, and testified in opposition to the rules.

Rep. Rick Ladd, who had also submitted written testimony, testified in support of the rules.

The Committee took a break at this time. After the break, with Reps. Hatch, McGuire, Schmidt, Williams, Lang, and Karrick, and Sens. Reagan, Feltes, Ward, Kahn, and Watters present, the Committee resumed discussion on Final Proposal 2019-5.

The following persons then testified in opposition to the rules:

Lisa A. Whitte, representing the N.H. School Administrators Association, who also provided written testimony.

Rep. Mary Heath and Rep. Mel Myler, representing the House Education Committee. Rep. Myler had also submitted written testimony.

Gerald Zelin, representing the N.H. Association of Special Education Administrators, who had also submitted written testimony.

Extensive written testimony had also been provided by other individuals, most in opposition but some in support, especially before the Committee had convened, including a letter from Governor Sununu who supported Final Proposal 2019-5.

The following persons registered their support of the rules and a wish to speak:

Mike Moffatt

Victoria Sullivan

The following persons registered their opposition to the rules and a wish to speak:

Rep. Sallie Fellows, who had also submitted written testimony.

Denise Clark, representing Wilton N.H. Peace Action.

Dr. James C. Morse, representing SAU #5, who also had submitted written testimony.

Liz Tentarelli and Nancy Marashio, representing the League of Women Voters N.H.

Douglas A. Cullen, who had also submitted written testimony.

Megan Tuttle, representing NEA-NH, who also submitted written testimony.

Marg Wilke, representing the Education Working Group, Kent Street Coalition, who also submitted written testimony.

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

Rep. Linda Tanner

Rep. Art Ellison

Rep. Christy Bartlett

Rep. Tamara Le

Millie LaFontaine

Maureen Prohl, who had also submitted written testimony.

Raili Cohen

Jeanne Cusson

Brenda Willis, representing N.H. PTA.

Pamela Power

Susan Covert

Helmut Koch

Laurie Koch

Morgan Trevett

Claudia C. Damon

Jeanne Torpey

Gena Cohen Moses

Maxine Petrocelli

Maureen Redmond-Scura

Elizabeth Corell

Mary Marsh

Deborah Jakubowski

Julie Freeman-Woolpert

Tara M. Haarlander
Peter Miller
Gale Taylor
William Thomas
Ruth Perencevich, who had also submitted written testimony.
David Cawley
Samantha "Mandy" Fraser, representing SAU #24, John Stark Regional High School.
Mo Baxley
Mel Hinebauch
Rep. Roger W. Dontonville
Lisa Ferrigno, representing Newport Teachers' Association.
Stephanie Gilson, representing Newport Teachers' Association.
Kelley Merritt, representing Newport Teachers' Association.
Nicole Leapley
Anne Dontonville, representing Mascoma School District.
Sara Smith
Michelle McKinnon
Rachel Hawkinson, representing NEA-NH
Sandra Amlow, representing NHREA, NEA-NH
Terry L. Burlingame, representing NEA-NH and Gilmanton SAU #79.
Gregory Paris, representing NEA-NH
Carolyn Leite, representing NEA
Rebecca Butler, representing NEA-NH
Kathy Cahill
Martha Clark
Susan Kennedy
Wilfried Feneberg, representing Kearsarge Regional School Board.

Sen. Kahn moved that the Committee make a preliminary objection to Final Proposal 2019-5 on the following grounds:

1. Rule Ed 1407.02(a) 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, because the statutory intent of both was to create a bifurcated system where the Board of Education mandates the minimum standards for graduation, and the local school districts maintain the specific curriculum which dictates the credit needed for those minimum standards for graduation. The proposed rule, in requiring a school district to accept completion certificates for up to 1/3 of graduation credits from a Learn Everywhere Program, violates the statutes because it requires the school district to grant credit for curriculum it has not approved;
2. Rule Ed 1400 is **contrary to legislative intent to the extent that** the rule violates the overall purpose of the statute RSA 193-E because the statute delegates to school districts responsibility for the specific curriculum for which credit is granted;
3. Rule Ed 1407.02(a) is **beyond the Board's authority** because RSA 193-E:2-a, V(b) does not give the Board the authority to require a school district to grant credit for programs or courses when the school district did not itself approve the curriculum;

4. Rule Ed 1407.02(a) is **contrary to the public interest** because it conflicts with the existing rule Ed 306.27. The conflict creates a situation where the rules cannot be uniformly applied because a school district must at the same time approve a curriculum before granting credit and yet grant credit for that same curriculum without approving it first;
5. Rule Ed 1407.02(a) is **contrary to the public interest** because it conflicts with the existing rule Ed 306.21(h) regarding the requirement that staff assigned to alternative programs meet the same certification requirements as staff assigned to standard schools. The conflict creates a situation where school districts would be accepting credit from a program without knowledge of the teacher's credentials;
6. Rule Ed 1407.02(b) is **contrary to the public interest** because it is unclear and thus cannot be uniformly applied. The rule is unclear because it does not account for how a school district is to apply credit that it is required to grant if a student has already fulfilled that credit area; and
7. Rule Ed 1409.01(a) is **contrary to the public interest** because it conflicts with Ed 403.01(a)(2)o. Ed 1409.01(a) allows for complaints to be submitted to the Department of Education but excludes complaints that might be made regarding student safety from bullying, harassment, or abuse, because the program is not required to have the grievance policy required by Ed 403.01(a)(2)o.

Sen. Watters seconded.

Rep. McGuire moved that the Committee amend the motion, based on the testimony of Gerald Zelin, to add an eighth ground as follows:

8. Rule Ed 1401.02(c) is **beyond the authority of the Department** because it conflicts with RSA 193-E:2-a, V(b) since it expands the Learn Everywhere Program to include programs that would not grant credit if the programs would help a student make progress toward one or more of the student's annual goals set forth in his or her IEP.

Sen. Kahn seconded.

The amendment was adopted.

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

	<u>YES</u>	<u>NO</u>
Rep. McGuire		X
Rep. Schmidt	X	
Rep. Williams	X	
Rep. Karrick	X	
Rep. Lang		X
Rep. Hatch	X	
Sen. Kahn	X	
Sen. Reagan		X
Sen. Ward		X
Sen. Watters	<u>X</u>	<u> </u>
	6	4

The vote was 6 "yes" and 4 "no". The motion was adopted.

**15. The Committee discussed the following Final Proposals from the Department of Environmental Services:

- FP 2019-14 Water Quality and Quantity Programs
Discharges to Groundwater of Wastewater Containing Certain Per- and Polyfluoroalkyl
Substances

- FP 2019-15 Oil and Remediation Programs
Amendments to Ambient Groundwater Quality Standards (AGQS)

- FP 2019-16 Drinking Water Programs
Water Quality Standards, Monitoring, Compliance, Reporting, and Public Notification
for Certain Per- and Polyfluoroalkyl Substances

Sen. Feltes was a voting member again.

Gretchen Hamel testified for the Department.

Sen. Kahn left the meeting at this time.

Rep. Hatch designated Rep. Karrick as an alternate for Sen. Kahn.

Gretchen Hamel made a conditional approval request on behalf of the Department relative to Final Proposal 2019-14, that the word "twice" be removed from the introductory clause of Env-Wq 402.251(a).

Much written testimony had been submitted prior to the meeting.

The following persons registered their support for the rules and a wish to speak:

- Rep. David Meuse
- Robert Woodward
- Jim McConnell, who had also submitted written testimony.
- Lawrence Allen, representing Merrimack Citizens for Clean Water.
- Shaina Kasper, representing Toxics Action Center Campaigns.
- Geoff Daly
- Hugh Evans
- Mindi Messmer
- Michael Dowe
- Andrea Amico (relative to Final Proposal 2019-16).
- Rep. Nancy Murphy (relative to Final Proposal 2019-16).
- Rep. Michael P. Pedersen
- Rep. Michael Edgar
- Peter Miller
- Mo Baxley

The following persons registered their opposition to the rules and a wish to speak:

- Shelagh Connelly, representing RMI and NHWPCA (relative to Final Proposals 2019-14 and 16).
- Stephen Risotto, representing the American Chemistry Council (relative to Final Proposal 2019-16).
- Jim Roche (relative to Final Proposal 2019-16), representing the Business and Industry Association,
which had also submitted written testimony.
- Margaret Byrnes, representing the N.H. Municipal Association, which had also submitted written
testimony.

The following persons registered a desire to speak but not whether they were in support or in opposition to the rules:

Rep. Tamara Le

Jim McNamara, representing the City of Lebanon (relative to Final Proposal 2019-16).

Sen. Feltes moved that the Committee conditionally approve Final Proposal 2019-14 based on the Department's request.

Sen. Watters seconded.

Sen. Feltes moved that the Committee approve Final Proposal 2019-15.

Sen. Watters seconded.

Sen. Feltes moved that the Committee approve Final Proposal 2019-16.

Sen. Watters seconded.

Sen. Kahn returned to the meeting at this time. Rep. Karrick was therefore no longer a voting member.

A roll call vote was called on the 3 Final Proposals, as follows:

Final Proposal 2019-14:

	<u>YES</u>	<u>NO</u>
Rep. McGuire	X	
Rep. Schmidt	X	
Rep. Williams	X	
Rep. Lang		X
Rep. Hatch	X	
Sen. Feltes	X	
Sen. Kahn	X	
Sen. Reagan		X
Sen. Ward		X
Sen. Watters	<u>X</u>	<u>X</u>
	7	3

The vote was 7 "yes" and 3 "no".

The motion to conditionally approve Final Proposal 2019-14 was adopted.

Final Proposal 2019-15:

	<u>YES</u>	<u>NO</u>
Rep. McGuire		X
Rep. Schmidt	X	
Rep. Williams	X	
Rep. Lang		X
Rep. Hatch	X	
Sen. Feltes	X	
Sen. Kahn	X	
Sen. Reagan		X
Sen. Ward		X
Sen. Watters	<u>X</u>	<u> </u>
	6	4

The vote was 6 “yes” and 4 “no”.

The motion to approve Final Proposal 2019-15 was adopted.

Final Proposal 2019-16:

	<u>YES</u>	<u>NO</u>
Rep. McGuire		X
Rep. Schmidt	X	
Rep. Williams	X	
Rep. Lang		X
Rep. Hatch	X	
Sen. Feltes	X	
Sen. Kahn	X	
Sen. Reagan		X
Sen. Ward		X
Sen. Watters	<u>X</u>	<u> </u>
	6	4

The vote was 6 “yes” and 4 “no”.

The motion to approve Final Proposal 2019-16 was adopted.

16. The Committee discussed proposed amendments to the Drafting and Procedure Manual for Administrative Rules relative to electronic filing after July 31, 2019.

Sen. Reagan moved that the amendments be approved.

Sen. Feltes seconded.

Adopted.

17. The Committee discussed the continued meeting scheduled for August 1, 2019.

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

18. The Committee adjourned by consensus at 12:29 p.m.