



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

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**Action Minutes**

**AUGUST 16, 2012**

**Members Present:** Representatives Pilotte, Schmidt, McGuire, Manuse, Taylor\*, Winter\*, and Bowers\*, and Senator Groen. (\*) 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 Item #10. However, that item was approved.)

1. The meeting was convened at 9:06 a.m. by Rep. Pilotte as Acting Chair.

Members present at this time, aside from Rep. Pilotte, were Reps. Schmidt, McGuire, Winter, and Bowers, and Sen. Groen.

Rep. Pilotte designated Rep. Bowers and Rep. Winter as alternates, respectively, for Rep. Manuse and Rep. Patten, who were absent.

2. The Committee discussed the minutes of the Committee meeting on July 19, 2012.

Rep. Schmidt moved that the minutes be approved.

Rep. McGuire seconded.

Adopted.

3. The Committee discussed the following Final Proposals and Proposed Interim Rule (Consent Agenda – Final Proposals and Proposed Interim Rule):

FP 2012-52	GOVERNING BOARD OF OCCUPATIONAL THERAPISTS Required Documents
FP 2012-63	COMMUNITY DEVELOPMENT FINANCE AUTHORITY Capacity Development Grants for Regional Development Corporations
FP 2012-67	GOVERNING BOARD OF RESPIRATORY CARE PRACTITIONERS Pre-Hearing Disclosure of Witnesses and Exhibits
FP 2012-68	GOVERNING BOARD OF RESPIRATORY CARE PRACTITIONERS Required Documents
FP 2012-73	DEPARTMENT OF EMPLOYMENT SECURITY Charging for Benefits in Cases of Two or More Concurrent Employers
INT 2012-6	DEPARTMENT OF AGRICULTURE, MARKETS AND FOOD Certification of Processors and Handlers of Organic Commodities

Thomas Sloan, representing the Department of Agriculture, Markets and Food, testified for the Department relative to Proposed Interim Rule INT 2012-6.

Rep. Schmidt moved that the Committee approve the Final Proposals and Proposed Interim Rule, with the exception of Final Proposal 2012-73.

Rep. Winter seconded.

Adopted.

4. The Committee discussed the following Final Proposal for which the agency had submitted a request for conditional approval (Consent Agenda – Conditional Approvals):

FP 2012-69      GOVERNING BOARD OF RESPIRATORY CARE PRACTITIONERS  
Definitions, License Renewal, and License Reinstatement

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

Rep. McGuire seconded.

Adopted.

5. The Committee discussed Final Proposal 2012-73 from the Department of Employment Security (Charging for Benefits in Cases of Two or More Concurrent Employers). Marie-Helene Bailinson testified for the Department.

Sen. Groen moved that the Committee approve Final Proposal 2012-73.

Rep. Schmidt seconded.

Adopted.

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

Rep. McGuire moved that the Committee postpone action on the following items to the regular Committee meeting on September 20, 2012:

**7. DEPARTMENT OF HEALTH AND HUMAN SERVICES**

- (d) OR 2012-71\*      Division of Elderly and Adult Services  
                                 Bureau of Elderly and Adult Services State Registry  
                                 (*JLCAR Deadline October 24, 2012.*)  
                                 **\*Response not yet received.**

**11. DEPARTMENT OF LABOR**

OR 2011-161\*     Employee Leasing Companies  
(JLCAR Deadline October 24, 2012.)  
***\*Response not yet received.***

Rep. Schmidt seconded.

Adopted.

7. The Committee discussed Final Proposal 2012-54 from the Department of Health and Human Services (Division of Elderly and Adult Services, Adult Protective Services Program).

Rep. Taylor arrived during the discussion of this item. Rep. Pilotte designated Rep. Taylor as an alternate for Sen. Merrill, who was absent.

The Department had submitted a conditional approval request in a letter and amended rule dated August 14, 2012.

Rep. Schmidt moved that the Committee accept the conditional approval request and conditionally approve Final Proposal 2012-54 based on the request.

Sen. Groen seconded.

Adopted.

8. The Committee discussed Final Proposal 2012-59 from the Department of Health and Human Services (Former Division of Human Services, Expiring Rules Related to Electronic Funds Transfer and Paper Checks). Jennifer Jones and Renee Drouin testified for the Department.

Rep. Manuse arrived during the discussion of this item. Rep. Pilotte therefore designated Rep. Bowers as an alternate for Sen. Lambert, who was absent.

Rep. Schmidt moved that the Committee approve Final Proposal 2012-59.

Rep. Winter seconded.

Adopted. Rep. Pilotte noted for the record that Rep. Manuse voted "no".

9. The Committee discussed Final Proposal 2012-85 from the Department of Health and Human Services (Division of Elderly and Adult Services, Individual Home Care Service Providers). John Martin, Rodney Bascom, and Michael Holt testified for the Department.

Written testimony dated August 15, 2012 had been submitted prior to the meeting from Carol Stamatakis, Executive Director of the Council on Developmental Disabilities.

Rep. Manuse moved that the Committee make a preliminary objection to Final Proposal 2012-85 on the grounds that He-P 812.01 through He-P 812.12 were contrary to legislative intent and beyond the authority of the Department pursuant to HB 1644 and also as described in the testimony of the Council on Developmental Disabilities.

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Rep. McGuire seconded.

Adopted.

- \*\*10. After a break, with Reps. Pilotte, Schmidt, McGuire, Taylor, Winter, and Bowers, and Sen. Groen present; the Committee discussed Final Proposal 2012-20 from the Department of Environmental Services (Air Related Programs, Ambient Air Quality Standards). Peter Demas, Barbara Hoffman, and Michele Roberge testified for the Department.

Rep. Schmidt moved that the Committee approve Final Proposal 2012-20.

Rep. Bowers seconded.

Adopted. Rep. Pilotte noted for the record that Sen. Groen and Reps. Bowers, Winter, and McGuire stated that they voted to approve under duress.

11. The Committee discussed Final Proposal 2012-48 from the Department of Environmental Services (Air Related Programs, Statewide Air Permit System). Peter Demas and Todd Moore testified for the Department.

The Department had submitted a request for conditional approval with a letter and amended rule dated August 15, 2012 and an amended conditional approval request with a further amended rule dated August 16, 2012.

Rep. McGuire moved that the Committee accept the amended conditional approval request and conditionally approve Final Proposal 2012-48 based on the amended request.

Rep. Schmidt seconded.

Adopted.

12. The Committee discussed Final Proposal 2012-82 from the Department of Safety (Driver Licensing Rules). Sheri Kelloway testified for the Department. Jeffrey Oberdank also represented the Department.

Rep. Schmidt moved that the Committee approve Final Proposal 2012-82.

Rep. McGuire seconded.

Adopted.

13. The Committee discussed Final Proposal 2012-60 from the Pharmacy Board (Transmission of Prescription Drug Order by Prescriber). James Queenan, Executive Director, testified for the Board.

Rep. McGuire moved that the Committee conditionally approve Final Proposal 2012-60 on the condition that Ph 704.03 (f)(1) – (f)(3) be amended as follows:

Delete the phrase “*by facsimile,*” from the first sentence in (f)(1) and (f)(3); and insert the phrase “*or printed copy of the transmission*” immediately after “*The facsimile*” in the final sentences of (f)(1)-(3).

Sen. Groen seconded.

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Adopted.

14. The Committee discussed Final Proposal 2012-61 from the Pharmacy Board (Institutional Practices). James Queenan, Executive Director, testified for the Board.

Rep. Schmidt moved that the Committee make a preliminary objection to Final Proposal 2012-61 on the grounds as outlined in the annotations to the Final Proposal by Committee staff.

Rep. McGuire seconded.

Adopted.

15. The Committee discussed as "other business" (1) the filing by the Department of Resources and Economic Development (DRED) of an emergency rule (Doc. #10172, effective August 14, 2012) relative to rules on firearms, hunting, and consumption of alcoholic beverages on state-owned land, and (2) the filing of a declaratory ruling by the Police Standards and Training Council on June 27, 2012 relative to corrections officers of the Department of Corrections and a subsequent interpretation by the N.H. Department of Justice in an e-mail dated August 13, 2012 on the nature of the ruling.

It was the consensus of the Committee to direct staff to contact DRED for further information as to (1) why Res 7301.25 in the emergency rule was needed relative to consumption of alcoholic beverages if the issue was already covered by existing law and rules, and (2) why an emergency rule was filed in August to address such consumption in July, as indicated in rule Res 7301.25(d).

It was the consensus of the Committee that it was acceptable for the Acting Director of the Office of Legislative Services (OLS) to publish notice of the declaratory ruling in the Rulemaking Register pursuant to RSA 541-A:9, I (f), but that she may also publish a disclaimer that OLS does not thereby imply agreement with the Council that the ruling meets the definition of a "declaratory ruling" in RSA 541-A:1, V.

Rep. Taylor left the meeting at this time.

Rep. McGuire moved that the Committee send a rulemaking petition to the Council to adopt a rule addressing the requirements in the ruling.

Rep. Schmidt seconded.

Adopted.

16. It was the consensus of the Committee to cancel the previously scheduled continued meeting date of September 6, 2012.

17. Rep. Schmidt moved that the Committee adjourn.

Sen. Groen seconded.

Adopted.