



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

Action Minutes

SEPTEMBER 20, 2012

Members Present: Representatives Patten, Pilotte, Schmidt, McGuire, Manuse, Kidder*, Bowers*, and Winter*, and Senators Merrill, White, Groen, and Carson*. (*) 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 9:04 a.m. by Rep. Patten as Chair.

Members present at this time, aside from Rep. Patten, were Reps. Pilotte, Schmidt, Kidder, Bowers, and Winter, and Sens. White and Carson.

Sen. Merrill and Rep. McGuire arrived shortly after the meeting convened, and Sen. White left.

Rep. Patten appointed Sen. Carson, Rep. Winter, Rep. Bowers, and Rep. Kidder as alternates, respectively, for Sen. White, Rep. Manuse, Sen. Lambert, and Sen. Kelley, who were absent.

2. The Committee discussed the response by the Department of Labor to the Committee's preliminary objection to Final Proposal 2011-161 (Employee Leasing Companies) and the Department's request to the Acting Director of the Office of Legislative Services for a waiver of the deadline to submit the response.

Martin Jenkins, Department Legal Counsel, testified for the Department.

Rep. McGuire moved that the Committee recommend that a waiver be granted.

Sen. Merrill seconded.

Adopted.

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

FP 2009-194 DEPARTMENT OF CULTURAL RESOURCES
Division of Historical Resources
Procedural Rules

FP 2009-195 DEPARTMENT OF CULTURAL RESOURCES
Division of Historical Resources
Explanation After Adoption and Waiver of Rules

FP 2012-33 PESTICIDE CONTROL BOARD
Pesticide Procedural Rules; Certificate of Registration Requirements; and
Continued Status

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FP 2012-77	GOVERNING BOARD OF PHYSICAL THERAPISTS Pre-Hearing Disclosure of Witnesses and Exhibits
FP 2012-78	GOVERNING BOARD OF PHYSICAL THERAPISTS English Language Proficiency Testing Requirements
FP 2012-79	GOVERNING BOARD OF PHYSICAL THERAPISTS Renewal of License, Reinstatement of License, and Maintenance of Continuing Education
FP 2012-80	INSURANCE DEPARTMENT Recognition of the 2001 CSO Mortality Table for Use in Determining Minimum Benefit Reserve Liabilities and Nonforfeiture Benefits
FP 2012-86	INSURANCE DEPARTMENT Life and Health Reinsurance Agreements
FP 2012-91	DEPARTMENT OF HEALTH AND HUMAN SERVICES Former Division of Public Health Services Radiological Health Rules Relating to Licensing and Radiation Safety Requirements for Irradiators and for Wireline Services Operations and Subsurface Tracer Studies
FP 2012-95	DEPARTMENT OF SAFETY Official Motor Vehicle Inspection Requirements Rules - Wheel Condition
FP 2012-101	DEPARTMENT OF SAFETY Bureau of Title and Anti-Theft Rules
INT 2012-7	DEPARTMENT OF AGRICULTURE, MARKETS AND FOOD Weights and Measures Fee Rules

Sen. Groen arrived during the discussion of this item.

Rep. Pilotte moved that the Committee approve the Consent Agenda, with the exception of Final Proposal 2012-33 and Proposed Interim Rule INT 2012-7.

Rep. Schmidt seconded.

Adopted.

4. The Committee discussed Final Proposal 2012-33 from the Pesticide Control Board (Pesticide Procedural Rules; Certificate of Registration Requirements; and Continued Status). David Rousseau, Director of the Division of Pesticide Control of the Department of Agriculture, Markets and Food, testified for the Board.

Rep. Winter moved that the Committee approve Final Proposal 2012-33.

Sen. Merrill seconded.

Adopted.

5. The Committee discussed Proposed Interim Rule INT 2012-7 from the Department of Agriculture, Markets and Food (Weights and Measures Fee Rules). David Rousseau and Cheryl Ayer testified for the Department.

Rep. Manuse arrived during this item. Rep. Winter was no longer a voting member.

Rep. Schmidt moved that the Committee object to Proposed Interim Rule INT 2012-7 on the grounds that the rule was contrary to legislative intent due to conflict with SB 311 (2012) and SB 157 (2011) and contrary to public interest by being unclear relative to fees for testing, certification, and sealing.

Sen. Carson seconded.

Adopted.

It was the consensus of the Committee that the response to the objection be placed on the Committee's agenda for its continued meeting on October 4, 2012 if the response is received prior to the meeting.

6. The Committee discussed the minutes of the Committee meeting on August 16, 2012.

Rep. Pilotte moved that the minutes be approved.

Rep. McGuire seconded.

Adopted.

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

Sen. Merrill moved that the Committee postpone action on the following items to the continued Committee meeting on October 4, 2012:

14. 2:00 p.m. DEPARTMENT OF LABOR

OR 2011-161* Employee Leasing Companies
(JLCAR Deadline October 24, 2012.)

15. 2:30 p.m. PHARMACY BOARD

OR 2012-61* Institutional Practices
(JLCAR Deadline November 20, 2012.)
**Response not yet received.*

OTHER BUSINESS

16. 3:00 p.m. Other

(a) Discussion on response by the Police Standards and Training Council to JLCAR's petition of August 16, 2012.

(b) Discussion on emergency rule (Doc. #10172, effective 8-18-12) filed by Department of Resources and Economic Development.

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8. The Committee discussed the following Final Proposal for which the agency had submitted a conditional approval request:

FP 2012-81 INSURANCE DEPARTMENT
 Life, Accident and Health Form and Rate Filings

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

Sen. Merrill seconded.

Adopted.

9. The Committee discussed Final Proposal 2012-76 from the Board of Registration in Optometry (Rules Regarding Pharmaceutical Agents, Continuing Education Form, Misconduct Investigations and Disciplinary Sanctions for Optometrists).

Rep. McGuire moved that the Committee conditionally approve Final Proposal 2012-76 on the condition that the words "on an ex parte basis" in Opt 501.03(d) be replaced by the words "by a member of the board who shall recuse himself from the adjudicatory hearing."

Rep. Schmidt seconded.

Adopted.

10. The Committee discussed Final Proposal 2011-160 from the Department of Employment Security (Appeal from Denial of Continued Eligibility for Benefits). Marie-Helene Bailinson and Lon Siel testified for the Department.

The Department had submitted a conditional approval request in a letter and amended rule dated September 17, 2012 and an amended conditional approval request in a further amended rule dated September 17, 2012.

Daniel Phelps, representing N.H. Legal Assistance, also testified.

Rep. Pilotte moved that the Committee accept the amended conditional approval request and conditionally approve Final Proposal 2011-160 based on the request.

Rep. Schmidt seconded.

Adopted.

11. The Committee discussed Proposed Interim Rule INT 2012-8 from the Department of Employment Security (Definitions/Work Search/Employment Services). Marie-Helene Bailinson and Lon Siel testified for the Department

The Department had submitted a conditional approval request in a letter and amended rule dated September 17, 2012.

Daniel Phelps, representing N.H. Legal Assistance, also testified.

Rep. Schmidt moved that the Committee accept the conditional approval request and conditionally approve Proposed Interim Rule 2012-8 based on the request.

Sen. Carson seconded.

Adopted.

12. After a break, with Reps. Patten, Pilotte, Schmidt, McGuire, Kidder, Winter, and Bowers, and Sens. Merrill and Groen present, the Committee discussed Final Proposal 2012-92 from the Department of Environmental Services (Air Related Programs, Procedural Rules for DES Air Resources Division). Peter Demas and Karla McManus testified for the Department.

Rep. Winter resumed as the alternate for Rep. Manuse, who was now absent.

Sen. Carson returned to the meeting during the discussion of this item.

Sen. Merrill moved that the Committee approve Final Proposal 2012-92.

Rep. Pilotte seconded.

Adopted.

13. The Committee discussed Final Proposal 2012-21 from the Department of Transportation (Process for Marketing and Sale of State Owned Property Utilizing Real Estate Professionals). Kathleen Mulcahey-Hampson and Phillip Miles testified for the Department.

The Department had submitted a conditional approval request in an amended rule received September 19, 2012.

Rep. Schmidt moved that the Committee accept the conditional approval request with the further amendment to Tra 1003.02(d) by replacing "48 hours" with "2 business days" and an amendment to Tra 1003.04(e) by changing the capital "D" in "Department" to a lower case "d", with no further changes in capitalization, and conditionally approve Final Proposal 2012-21 based on the request as amended.

Rep. Pilotte seconded.

Adopted.

14. The Committee discussed Final Proposal 2009-193 from the Department of Cultural Resources (Division of Historical Resources, Organizational Rules). Elizabeth Muzzey, Division Director, testified for the Department.

The Department submitted a conditional approval request in an amended rule in the meeting.

Rep. Pilotte moved that the Committee accept the conditional approval request with amendment to change "RSA 229-C:9" in Cul-H 103.01 to "RSA 227-C:9".

Sen. Merrill seconded.

Adopted.

Sen. Merrill and Sen. Carson left the meeting at this time.

15. The Committee discussed Final Proposal 2012-106 from the Department of Health and Human Services (Former Division of Public Health Services, Homestead Food Operations). Michael Holt and Kathryn Frey testified for the Department.

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Rep. McGuire moved that the Committee make a preliminary objection to Final Proposal 2012-106 based on Committee staff comments on pages 4 and 5 of the Final Proposal, with the understanding that the Committee would not vote to sponsor a joint resolution to the Objection Response.

Rep. Schmidt seconded.

Adopted.

It was the consensus of the Committee that the Objection Response would be on the agenda for the Committee meeting on October 4, 2012 if it were submitted prior to the meeting.

Sen. Groen left the meeting at this time.

16. The Committee discussed the response by the Department of Health and Human Services to the Committee's preliminary objection to Final Proposal 2012-71 (Division of Elderly and Adult Services, Bureau of Elderly and Adult Services State Registry). Michael Holt and Mary McGuire testified for the Department.

The Department had submitted both an objection response dated August 31, 2012 and an amended objection response dated September 12, 2012.

Rep. McGuire moved that the Committee accept the amended objection response and approve the rules.

Rep. Winter seconded.

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

17. The Committee discussed Final Proposal 2012-56 from the Department of Health and Human Services (Former Division of Human Services, Medicaid Managed Care). It was the consensus to postpone the Final Proposal to the continued Committee meeting on October 4, 2012.

18. The Committee discussed Final Proposal 2012-105 from the Department of Health and Human Services (Former Division of Human Services, Private Duty Nursing Services). Michael Holt and Lisabritt Solsky testified for the Department.

Rep. Winter moved that the Committee approve Final Proposal 2012-105.

Rep. Kidder seconded.

Adopted.

19. Rep. Pilotte moved that the Committee recess.

Rep. McGuire seconded.

Adopted.

The Committee recessed at 12:16 p.m., effectively postponing consideration of the following item to the Committee meeting on October 4, 2012:

12. (e) OR 2012-85* DEPARTMENT OF HEALTH AND HUMAN SERVICES
Former Division of Public Health Services
Individual Home Care Service Providers
(JLCAR Deadline November 20, 2012.)
**Response not yet received.*