

RRC STAFF OPINION

PLEASE NOTE: THIS COMMUNICATION IS EITHER 1) ONLY THE RECOMMENDATION OF AN RRC STAFF ATTORNEY AS TO ACTION THAT THE ATTORNEY BELIEVES THE COMMISSION SHOULD TAKE ON THE CITED RULE AT ITS NEXT MEETING, OR 2) AN OPINION OF THAT ATTORNEY AS TO SOME MATTER CONCERNING THAT RULE. THE AGENCY AND MEMBERS OF THE PUBLIC ARE INVITED TO SUBMIT THEIR OWN COMMENTS AND RECOMMENDATIONS (ACCORDING TO RRC RULES) TO THE COMMISSION.

AGENCY: Environmental Management Commission

RULE CITATION: 15A NCAC 02H .1301, .1401, .1402, .1403, .1404, and .1405

DATE ISSUED: October 3, 2023

RECOMMENDED ACTION:

Approve, but note staff's comment

Object, based on:

Lack of statutory authority

Unclear or ambiguous

Unnecessary

Failure to comply with the APA

Extend the period of review

X Return to Agency

COMMENT:

The above-captioned rules were first submitted by the Environmental Management Commission, hereinafter "EMC," to the Rules Review Commission, hereinafter "the Commission," for review on February 3, 2022.

The Commission first objected to the above-captioned rules at its May 19, 2022 meeting and first notified EMC of these objections via letter dated and emailed to the agency's rulemaking coordinator on May 20, 2022.

The agency has not submitted changes to any of the above-captioned rules.

As of the date of the October 5, 2023 special meeting, 503 days will have passed since the Commission first notified the agency of the Commission's objections to these rules.

Pursuant to Section 21.2.(m) of S.L. 2023-134, which became effective on October 3, 2023, proposed permanent rules pending before the RRC shall "immediately be returned to the agency" if rules meet three qualifications:

- (1) The Commission has notified the agency that it has objected to the proposed permanent rule.*

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Commission Counsel

- (2) *The agency has not submitted a change to the rule to satisfy the Commission's objection.*
- (3) *More than 60 days have passed since the Commission first notified the agency of the Commission's objection to the proposed rule.*

Accordingly, it is staff's opinion that the above-captioned rules must "immediately be returned to the agency" pursuant to Section 21.2.(m) of S.L. 2023-134.

1 The Executive Director of the Board of Elections shall issue written opinions to candidates,
2 the communications media, political committees, referendum committees, or other entities upon
3 request, regarding filing procedures and compliance with this Article. Any such opinion so issued
4 shall specifically refer to this paragraph. If the candidate, communications media, political
5 committees, referendum committees, or other entities rely on and comply with the opinion of the
6 Executive Director of the Board of Elections, then prosecution or civil action on account of the
7 procedure followed pursuant thereto and prosecution for failure to comply with the statute
8 inconsistent with the written ruling of the Executive Director of the Board of Elections issued to
9 the candidate or committee involved shall be barred. Nothing in this paragraph shall be construed
10 to prohibit or delay the regular and timely filing of reports. The Executive Director shall file all
11 opinions issued pursuant to this section with the Codifier of Rules to be published unedited in
12 the North Carolina Register and the ~~North Carolina Administrative Code~~. State Board of Elections
13 website.

14 This section applies to ~~Articles and Article 22M of the General Statutes~~ this Chapter to the
15 same extent that it applies to this Article."

16 **SECTION 21.2.(l)** Any pending proposed temporary rule submitted to the Rules
17 Review Commission pursuant to G.S. 150B-21.1 on or before the day immediately prior to the
18 effective date of this act shall be returned to the agency by the Commission if:

- 19 (1) The Commission has notified the agency that the agency's statement of its
20 findings of need does not meet the criteria listed in G.S. 150B-21.1(a) or that
21 the rule does not meet the standards in G.S. 150B-21.9 or Article 2A of
22 Chapter 150B of the General Statutes;
- 23 (2) The agency has not supplemented its statement of need with additional
24 findings or submitted a new statement that meets the criteria listed in
25 G.S. 150B-21.1(a) or that the rule meets the standards in G.S. 150B-21.9 or
26 Article 2A of Chapter 150B of the General Statutes, as determined by the
27 Commission; and
- 28 (3) More than 60 days have passed since the Commission first notified the agency
29 that the statement does not meet the criteria listed in G.S. 150B-21.1(a) or that
30 the rule does not meet the standards in G.S. 150B-21.9 or Article 2A of
31 Chapter 150B of the General Statutes.

32 If a rule is returned to the agency under this section, the agency may file an action for
33 declaratory judgment within 30 days after the rule is returned in Wake County Superior Court
34 pursuant to Article 26 of Chapter 1 of the General Statutes and G.S. 150B-21.1(b2).

35 **SECTION 21.2.(m)** Any pending proposed permanent rule submitted to the
36 Commission pursuant to G.S. 150B-21.2 on or before the day immediately prior to the effective
37 date of this act shall immediately be returned to the agency if:

- 38 (1) The Commission has notified the agency that it has objected to the proposed
39 permanent rule.
- 40 (2) The agency has not submitted a change to the rule to satisfy the Commission's
41 objection.
- 42 (3) More than 60 days have passed since the Commission first notified the agency
43 of the Commission's objection to the proposed rule.

44 If a rule is returned to the agency under this section, the agency may file an action for
45 declaratory judgment within 30 days after the rule is returned to the agency in Wake County
46 Superior Court pursuant to Article 26 of Chapter 1 of the General Statutes.

47 **SECTION 21.2.(n)** Subsection (e) of this section is effective when it becomes law
48 and applies to rules adopted on or after that date. Subsections (j) and (k) of this section are
49 effective when they become law and apply to filings on or after that date. The remainder of this
50 section is effective when it becomes law.

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