

REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: Building Code Council

RULE CITATION: N.C. Administrative Code, Chapter 1

DEADLINE FOR RECEIPT: TBD

PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following changes be made:

Section 101

In 101.3.2, are there known conflicts between the scope provided in the technical codes and the scope provisions here? Or is this in the event that there are future changes?

On p.2, in the commentary following 101.3.2.9, correct the citation to G.S. 143-138(b) to just 143-138, and make sure you have a closing parentheses around the citation.

In the second commentary on p.2, the definition of "farm building" appears to contradict the definition found in 143-138(b4)(1)(b), which explicitly contemplates farm buildings being open to the public. Similarly, the last sentence in this commentary, regarding education and research, is also contradicted by G.S. 160D-903(a). Please revise or delete accordingly.

Section 103

In 103.2.2, p.4, what kind of "other pleadings" are contemplated? What filings may or may not be made to the BCC?

What is the statutory authority for the modification procedures in 103.6? Is it 143-141(c)? Is there a difference between a "variation" and a "modification"?

Section 104

In 104.1.2, p.5, who attests that the jurisdiction is capable of performing required inspections? The sentence as amended doesn't make grammatical sense.

Section 105

In 105.1, does "the codes" refer to the technical codes?

In the commentary following 105.2.2 on p. 6, in the definition of "performance method", there are two grammatical errors. In the first sentence, it says a pier could be designed to a lesser size "if the performance requirements of the NC Residential Code." The sentence appears to be incomplete. In the second sentence, it says "An example could

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be that the dead and/or load of the structure...” I think “dead and/or load” is potentially missing some words? Please correct if true.

Section 106

In 106.2.1, p. 7, should “inspection department” be capitalized? I believe it is capitalized elsewhere.

Also in 106.2.1, what is the “inspection department”? Is this the local department, or is this part of DOI?

In Exception 2 to 106.2.1, please delete “paragraph” from the citation to N.C. Gen. Stat. 160D-1110. It should just say NCGS 160D-1110(b).

In 106.4, p.8, what is the “911 site address”?

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Brian Liebman
Commission Counsel

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RULE CITATION: N.C. Administrative Code, Chapter 2

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In reviewing this Rule, the staff recommends the following changes be made:

Section 201

What does it mean that Chapter 2 is “commentary” on the General Statutes?

Section 202

In 202.1, p.11, isn't one of the duties of the Council to interpret the Code? See G.S. 143-141.

In 202.4, p. 12, does the 15-day notice requirement apply to special meetings as well as regular meetings?

Consider adding 143-138 to the citation at the end of 202.4.

In 202.5.2, you require that submissions be made the first day of the month prior to the next scheduled council meeting. However, 202.4 only requires 15 days of notice prior to each meeting. I understand that in most cases you'd give more than 15 days' notice, but by the letter of these provisions, the Council could forbid any submissions by simply not sending out notice until 15 days prior to the meeting. Please consider revising 202.4 accordingly.

In 202.5.4, a “request” for what?

Also in 202.5.4, what does the sentence “Persons filing proposed petitions are hereby notified of the place and time of the scheduled hearings” mean?

Throughout 202.5.5, make sure “Council Chair” and “Council” are capitalized, as they are elsewhere.

Does 202.5.5.1 comply with 150B-20, particularly with the requirement that the Council grant or deny a petition within 120 days?

In the second paragraph of 202.5.5.3, on p.13, define “substantially similar.”

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In 202.5.5.4, I think there's some confusion on the term "adopted". G.S. 150B-2(1a) defines "adopt" as "to take final action to create, amend, or repeal a rule. Thus, a rule is adopted before it is sent to RRC for review. Here, you say an amendment is not "adopted" until after RRC approves it. Perhaps there is another term you could use, such as "effective"? The only catch there is that often BCC submits rules with delayed effective dates, so I'm not sure that works.

Similarly, in Table 202.5.5, consider replacing "approved" with "effective". Technically, 150B-21.3 states a permanent rule not subject to a delayed effective date becomes effective on the first day of the month following the month the rule is approved by the Commission.

In 202.6.1, the publication requirement in 143-138(g) states that the BCC "shall cause [the Code] to be printed. . . ." Is there other statutory authority for not printing amendments? Otherwise I don't think you have the statutory authority to make this statement.

In 202.6.1, what are "Agency Rules"? What does this refer to?

In the commentary on p.14, under 202.8.3, I have several questions:

In 1, who is "asking" the Ad Hoc committee to approach its review in this way?

If it is BCC, can the Council do this?

In 2, I think "base line" should be one word.

In 4, "thought to be" in whose opinion? What does it mean to be "controversial" in this context?

In 202.9.1, are "interpretation" and "determination" the same thing?

In 202.9.2.3, p.15, it appears 2 and 3 both require a copy of the decision appealed from. Please revise accordingly.

In 202.9.2.4., when is it necessary and not necessary to distribute the appeal?

Section 203

In 203.1.1., p.16, number 6, "Natural or liquified petroleum gas systems", this is not in the scope DOI's authority under G.S. 143-139(b).

In 203.1.1.1, G.S. 58-2-95 says that the Commissioner or his "deputy", not designee, may take steps to enforce the law. Not sure if that's a distinction with a difference, but I would think that a designee is broader than a deputy, given that I believe there is an office of the deputy commissioner at DOI.

In 203.1.1.3, what is the "Municipal Council"?

In 203.2.3, p.17, what is the effect of Code Errata? Are they enforceable? Amendments to the Code?

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Section 204

In 204.1, is there a citation for the assertion that local code enforcement officials have no enforcement power over state and federal government entities?

In 204.3.1, p.18, there are two citations to 160A-292. Appears to be a typo to me.

In 204.3.3, what is a fire prevention department? Is that different from a local fire department?

In 204.3.3, item 4, “identify technical provisions” of what? The Fire Prevention Code?

In 204.3.3, item 8, what does “other actions” mean?

Also in 204.3.3, item 8, what does it mean to “adequately” enforce the Code?

In 204.3.3, item 10, does “year” mean a school year or a calendar year?

In 204.3.8, define “proper identification” and “proper credentials”.

In 204.4.3, p.19, define “substantially”.

In 204.6.3.1, p.20, define “substantial”.

In 204.10.1.1, p.21, what is “the information and data necessary to determine compliance”?

In 204.12, define “promptly”.

In 204.12, who is “the person affected”? The owner? The builder? Anyone else?

In 204.13.1, define “safe capacity.” Who determines what the “safe capacity” is?

In 204.13.1, when is excessive loading “likely” to occur?

Section 205

On p.23, what’s the statutory authority for 205.1.1? The Boiler Pressure Vessel Division is in 143-139(c), but not the Elevator and Amusement Device Division. Add the cite.

Appendix A

On p.30, what is required on the 3rd line of the application, which is titled only “Permit Application”?

Why is page 32 completely blank? Similarly, most of p.34 is blank.

Appendix B

Why is p.38 blank?

I have no further questions for the separate change submitted to Appendix B.

Appendix C

On p. 44, under the bullet point for “Substantial”, the change made appears to change “two” to 2” but also to add a hyphen between “2” and “alternatives”, which is incorrect. Please spell out “two” and delete the hyphen.

Appendix E,

There appears to be two copies of page 47.

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

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