

## **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: The Council of State

RULE CITATION: 06 NCAC 04 .0103

RECOMMENDATION DATE: June 24, 2026

RECOMMENDED ACTION:

No action

Approve, but note staff's comment

**X** Object, based on:

**X** Lack of statutory authority

**X** Unclear or ambiguous

Unnecessary

Failure to comply with the APA

Extend the period of review

COMMENT:

*This rule was originally submitted to the RRC for review in March 2026. At the April 28, 2026, RRC Meeting, the Commission voted to extend the period of review. Staff has been working with the Council's rulemaking coordinator on requests for changes since then; however, a few of those requests remain outstanding. The Council's rulemaking coordinator has indicated that he is unable to convene the Council before Thursday's meeting to confirm final changes to the rule, and we are unable to extend the review period to next month's RRC meeting given the 70-day deadline set forth in G.S. 150B-21.13. As such, Staff is recommending objection to the current version of the rule for the reasons set forth below. However, the Council's rulemaking coordinator intends to raise potential rule corrections with the Council at its July 7, 2026, meeting.*

### *1. Lack of Statutory Authority*

*Per G.S. 150B-21.9(a)(1), the RRC is tasked with determining whether a rule "is within the authority delegated to the agency by the General Assembly."*

*G.S. 150B-4(a), concerning declaratory rulings issued by state agencies, states in relevant part: “On request of a person aggrieved, an agency shall issue a declaratory ruling as to the validity of a rule or as to the applicability to a given state of facts of a statute administered by the agency or of a rule or order of the agency.”*

*Rule 06 NCAC 04 .0103, as proposed by the Council of State, relies on G.S. 150B-4 for authority. On lines 6-9, the proposed rule states:*

*Any person ~~substantially affected~~ aggrieved by a rule approved or adopted by the Council of State may request a declaratory ruling as to either the manner in which the rule applies to a given factual situation, if at all, or as to whether a particular rule of the Council is valid. Such persons may also request either type of declaratory ruling concerning the statute under which the rule was adopted.*

*When reading these two sentences together, the proposed rule would allow the Council to make declaratory rulings on whether statutes administered by the Council are valid. Without even considering arguments concerning separation of powers, it is clear that these types of rulings would not be permitted by G.S. 150B-4(a).*

## *2. Unclear or Ambiguous*

*The RRC is also tasked with determining whether a rule is “clear and unambiguous.”*

*On lines 15-18 of the proposed rule, the Council added language to explain when it may exercise its discretion to review and amend proposed departmental declaratory rulings. The updated rule reads as follows:*

*In its determination whether to review, whether to amend, and how to amend the proposed declaratory ruling, the Council shall consider at least the following factors: whether there is authority to adopt the rule; the effect of the proposed rule on existing rules, programs, and practices; probable costs and cost factors of the proposed rule; and the impact of the rule on the public and regulated entities.*

*The rule changes appear to focus only on rulings related to proposed rules; however, these rulings can also be requested and issued for existing rules. In Staff’s opinion, further revisions are needed to clarify how Council’s discretion is used regarding rulings on existing rules. As such, Staff recommends objecting to the current version of the rule.*

1 06 NCAC 04 .0103 is adopted with changes as published in 40:11 NCR 858-859 as follows:

2  
3 **CHAPTER 4 - DECLARATORY RULINGS**

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5 **06 NCAC 04 .0103 DECLARATORY RULING PROCESS**

6 Any person ~~substantially affected~~ aggrieved by a rule approved or adopted by the Council of State may request a  
7 declaratory ruling as to either the manner in which the rule applies to a given factual situation, if at all, or as to whether  
8 a particular rule of the Council is valid. Such persons may also request either type of declaratory ruling concerning  
9 the statute under which the rule was adopted. All requests for declaratory rulings shall be submitted to the executive  
10 department responsible for administering the statute to which the rule relates. All such requests shall be in accordance  
11 with the administrative procedures of the responsible executive department. The chief executive officer of the  
12 responsible executive department shall respond to the request in accord with the applicable administrative procedures  
13 of the department. The chief executive officer of the responsible department shall also notify the Council of any such  
14 request received and the department's proposed disposition thereof. The Council may, in its discretion, review and  
15 amend any such proposed departmental declaratory rulings. In its determination whether to review, whether to amend,  
16 and how to amend the proposed declaratory ruling, the Council shall consider at least the following factors: whether  
17 there is authority to adopt the rule; the effect of the proposed rule on existing rules, programs, and practices; probable  
18 costs and cost factors of the proposed rule; and the impact of the rule on the public and regulated entities. It may also  
19 take such other action in regard thereto as it deems necessary.

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21 *History Note: Authority G.S. 147-13; 150B-4;*

22 *Eff. ~~May~~ July 1, 2026.*