

From: [Liebman, Brian R](#)
To: [Dan Tingen](#)
Cc: [Burgos, Alexander N](#); [Rittlinger, David B](#); [Childs, Nathan D](#)
Subject: RE: [External] Request to waiver your rules to allow consideration of my comments
Date: Monday, April 29, 2024 4:04:15 PM

Mr. Tingen,

Thank you for letting me know about the letters. I'm not in the building today due to the outage, but I will see to them when I get in tomorrow morning.

I've copied Mr. Rittlinger and Mr. Childs on the email so they're aware.

Thanks,
Brian

Brian Liebman
Counsel to the North Carolina Rules Review Commission
Office of Administrative Hearings
(984)236-1948
brian.liebman@oah.nc.gov

E-mail correspondence to and from this address may be subject to the North Carolina Public Records Law N.C.G.S. Chapter 132 and may be disclosed to third parties.

From: Dan Tingen <dan@tingen.com>
Sent: Monday, April 29, 2024 3:54 PM
To: Liebman, Brian R <brian.liebman@oah.nc.gov>
Subject: Re: [External] Request to waiver your rules to allow consideration of my comments

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Brian,

I just dropped off 18 signed letters requesting legislative review on agenda item number 7 for tomorrow's RRC meeting. I dropped them off with the lady downstairs at your front desk. Thank you very much for all your help, Dan

On Apr 28, 2024 11:45 AM, "Liebman, Brian R" <brian.liebman@oah.nc.gov> wrote:
Mr. Tingen,

You can address the waiver to the chair, Jeanette Doran, and email it to me. I will make sure it's posted and that the commission considers your request for a waiver.

Thanks,
Brian

Brian Liebman
Counsel to the North Carolina Rules Review Commission
Office of Administrative Hearings
(984)236-1948
brian.liebman@oah.nc.gov

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From: Dan Tingen <dan@tingen.com>
Sent: Sunday, April 28, 2024 10:56:14 AM
To: Liebman, Brian R <brian.liebman@oah.nc.gov>
Subject: [External] Request to waiver your rules to allow consideration of my comments

You don't often get email from dan@tingen.com. [Learn why this is important](#)

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Brian,

To whom should I direct my request for a waiver of the rules so that my late comments might be considered.

Thanks so much for your help,

Dan Tingen

From: Liebman, Brian R <brian.liebman@oah.nc.gov>
Sent: Saturday, April 27, 2024 9:17 PM
To: Dan Tingen <dan@tingen.com>
Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>; Rittlinger, David B <david.rittlinger@ncdoj.gov>; Childs, Nathan D <nchilds@NCDOJ.GOV>
Subject: RE: [External] Agenda, April 30, 2024, Section III (follow-up matters), Item 7. Building Code Council - 2024 North Carolina Energy Conservation Code

Good evening Mr. Tingen,

Thank you for your email. A few things. First, under rule 26 NCAC 05 .0103, any comments

must be received no later than 5:00 p.m. on the fifth business day prior to the RRC meeting, and second, must be sent to the agency's rulemaking coordinator in the same manner as they were sent to RRC.

I've copied Mr. Rittlinger, the Building Code Council's rulemaking coordinator, on this email for your reference. Additionally, if you would like the RRC to consider your comments, you'll need to request a waiver of our rules pursuant to 26 NCAC 05 .0112.

All of RRC's rules are available on our website for further reference.

Also, please let me know if you are only submitting written comments, or if you also want to request to speak at the meeting on Tuesday.

Thanks,
Brian Liebman
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Cc: Liebman, Brian R <brian.liebman@oah.nc.gov>
Subject: [External] Agenda, April 30, 2024, Section III (follow-up matters), Item 7. Building Code Council - 2024 North Carolina Energy Conservation Code

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To whom it may concern,

Please find attached are my comments concerning Rules Review Commission Agenda, April 30, 2024, Section III (follow-up matters), Item 7. Building Code Council - 2024 North Carolina Energy Conservation Code as well as my request for legislative review should this item be approved by the RRC.

Respectfully,

Dan Tingen

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Burgos, Alexander N

To: Dan Tingen; Rittlinger, David B
Cc: Liebman, Brian R; Childs, Nathan D
Subject: RE: [External] Agenda, April 30, 2024, Section III (follow-up matters), Item 7. Building Code Council - 2024 North Carolina Energy Conservation Code

From: Dan Tingen <dan@tingen.com>
Sent: Sunday, April 28, 2024 5:52 PM
To: Rittlinger, David B <david.rittlinger@ncdoi.gov>
Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>; Liebman, Brian R <brian.liebman@oah.nc.gov>; Childs, Nathan D <nchilds@NCDOJ.GOV>
Subject: RE: [External] Agenda, April 30, 2024, Section III (follow-up matters), Item 7. Building Code Council - 2024 North Carolina Energy Conservation Code

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Nathan, you are correct, thank you very much. Attached is the complete document that was intended for the earlier email.

Regards,

Dan

Mr. Rittlinger,

Having just received the email below from Brian Liebman, I am providing my written comments now and will request a waiver of rules pursuant to 26 NCAC 05.0112 to allow my comments to be considered. Depending upon the action taken by the Rues Review Commission, you might also expect at least ten letters of objection requesting legislative review.

Sincerely,

Dan Tingen

Date: 4/27/2024

N.C. Rules Review Commission
1711 New Hope Church Rd.
Raleigh, NC 27609

Re: Agenda, April 30, 2024, Section III (follow-up matters), Item 7. Building Code Council - 2024 North Carolina Energy Conservation Code

I am writing to object to the approval of the aforementioned agenda item for the following reasons:

1. Given the multiple points raised by RRC staff, the proposed rule, as well as the process by which the Building Code Council adopted it does not comply with highlighted provisions of GS 150B-21.4 or GS 143-138 (see attachment #1 and #2, respectively).
2. Given the multiple points raised by RRC staff, the proposed rule, as well as the process by which the Building Code Council adopted it does not comply with highlighted provisions of GS 150B-19.1 (see attachment #3).

Should the Rule Review Commission elect to approve this agenda item, please find below is my request for legislative review.

Kindest regards,

A handwritten signature in black ink that reads "Dan Tingen". The signature is written in a cursive, flowing style.

Dan Tingen, President
Tingen Construction Company, Inc
Cell: 919-422-2576
Email: dan@tingen.com

Name: Dan Tingen

Address: 8411-121 Garvey Dr

Raleigh, NC 27616

Date: 4/27/2024

N.C. Rules Review Commission
1711 New Hope Church Rd.
Raleigh, NC 27609

Re: Agenda, April 30, 2024, Section III (follow-up matters), Item 7. Building Code
Council - 2024 North Carolina Energy Conservation Code

Members of the Commission:

I request that the above rule(s) be reviewed in the upcoming legislative session as set out in N.C.G.S. 150B-21.3. I further request that the rule(s) be subject to a delayed effective date as set out in that same provision.

Thank you for your consideration.

Dan Tingen
Print Name



Signature

Attachment #1

My objection is that the Council has not complied with the highlighted provisions of this General Statute

(Excerpts below)

(apologies for the loss of proper formatting)

§ 150B-21.4. Fiscal and regulatory impact analysis on rules.

(b1) Substantial Economic Impact.— Before an agency publishes in the North Carolina Register the proposed text of a permanent rule change that would have **a substantial economic impact** and that is not identical to a federal regulation that the agency is required to adopt, the agency shall prepare a fiscal note for the proposed rule change and have the note approved by the Office of State Budget and Management. The agency **must** also **obtain** from the Office **a certification** that the agency **adhered to** the **regulatory principles set** forth in **G.S. 150B-19.1(a)(2), (5), and (6)**. The agency may request the Office of State Budget and Management to prepare the fiscal note only after, working with the Office, it has exhausted all resources, internal and external, to otherwise prepare the required fiscal note. If an agency requests the Office of State Budget and Management to prepare a fiscal note for a proposed rule change, that Office must prepare the note within 90 days after receiving a written request for the note. If the Office of State Budget and Management fails to prepare a fiscal note within this time period, the agency proposing the rule change shall prepare a fiscal note. A fiscal note prepared in this circumstance does not require approval of the Office of State Budget and Management.

If an agency prepares the required fiscal note, the agency must submit the note to the Office of State Budget and Management for review. The Office of State Budget and Management shall Page 1 G.S. 150B-21.4 review the fiscal note within 14 days after it is submitted and either approve the note or inform the agency in writing of the reasons why it does not approve the fiscal note. After addressing these reasons, the agency may submit the revised fiscal note to that Office for its review. If an agency is not sure whether a proposed rule change would have a substantial economic impact, the agency shall ask the Office of State Budget and Management to determine whether the proposed rule change has a substantial economic impact. Failure to prepare or obtain approval of the fiscal note as required by this subsection shall be a basis for objection to the rule under G.S. 150B-21.9(a)(4).

As used in this subsection, the term **"substantial economic impact"** means an aggregate financial impact on all persons affected **of at least one million dollars (\$1,000,000)** in a 12-month period. In analyzing substantial economic impact, an agency shall do the following:

- (1) **Determine and identify the appropriate time frame of the analysis.**
- (2) **Assess the baseline conditions against which the proposed rule is to be measured.**
- (3) **Describe the persons who would be subject to the proposed rule and the type of expenditures these persons would be required to make.**
- (4) **Estimate any additional costs that would be created by implementation of the proposed rule by measuring the incremental difference between the baseline and the future condition expected after implementation of the rule. The analysis should include direct costs as well as opportunity costs. Cost estimates must be monetized to the greatest extent possible. Where costs are not monetized, they must be listed and described.**
- (5) **For costs that occur in the future, the agency shall determine the net present value of the costs by using a discount factor of seven percent (7%).**

Attachment #2

My objection is that the Council has not complied with the highlighted provisions of this General Statute

(Excerpts below)

(apologies for the loss of proper formatting)

§ 143-138. (Effective until January 1, 2025) North Carolina State Building Code.

- (a) Preparation and Adoption. – The Building Code Council may prepare and adopt, in accordance with the provisions of this Article, a North Carolina State Building Code. Before the adoption of the Code, or any part of the Code, the Council shall hold at least one public hearing. A notice of the public hearing shall be published in the North Carolina Register at least 15 days before the date of the hearing. Notwithstanding G.S. 150B-2(8a)h., the North Carolina State Building Code as adopted by the Building Code Council is a rule within the meaning of G.S. 150B-2(8a) and shall be adopted in accordance with the procedural requirements of Article 2A of Chapter 150B of the General Statutes.
- (a1) Additional Adoption Requirements.
 - (1) The Council shall request the Office of State Budget and Management to prepare a fiscal note for a proposed Code change that has a **substantial economic impact, as defined in G.S. 150B-21.4(b1), or that increases the cost of residential housing by eighty dollars (\$80.00) or more per housing unit.** The change can become effective only in accordance with G.S. 143-138(d). Neither the Department of Insurance nor the Council shall be required to expend any monies to pay for the preparation of any fiscal note under this section by any person outside of the Department or Council unless the Department or Council contracts with a third-party vendor to prepare the fiscal note.
 - (2) The Council shall conduct a cost-benefit analysis for all proposed changes consider

Attachment #3

My objection is that the Council has not complied with the highlighted provisions of this General Statute

(Excerpts below)

(apologies for the loss of proper formatting)

§ 150B-19.1. Requirements for agencies in the rule-making process.

- (a) In developing and drafting rules for adoption in accordance with this Article, agencies shall adhere to the following principles:
- (1) An agency may adopt only rules that are expressly authorized by federal or State law and that are necessary to serve the public interest.
 - (2) An agency shall ***seek to reduce the burden upon those persons or entities who must comply with the rule.***
 - (3) Rules shall be written in ***a clear and unambiguous manner*** and must be reasonably necessary to implement or interpret federal or State law.
 - (4) An agency shall consider the ***cumulative effect of all rules*** adopted by the agency related to the specific purpose for which the rule is proposed. The agency shall not adopt a rule that is unnecessary or redundant.
 - (5) When appropriate, rules shall be based on sound, reasonably available scientific, technical, economic, and other relevant information. Agencies shall include a reference to this information in the notice of text required by G.S. 150B-21.2(c).
 - (6) Rules shall be designed to ***achieve the regulatory objective in a cost-effective and timely manner.***
- (b) Each agency subject to this Article shall conduct an annual review of its rules to identify existing rules that are unnecessary, unduly burdensome, or inconsistent with the principles set forth in subsection (a) of this section. The agency shall repeal any rule identified by this review.
- (c) Each agency subject to this Article shall post on its Web site, no later than the publication date of the notice of text in the North Carolina Register, all of the following:
- (1) The text of a proposed rule.
 - (2) An explanation of the proposed rule and the reason for the proposed rule.
 - (3) The federal certification required by subsection (g) of this section.
 - (4) Instructions on how and where to submit oral or written comments on the proposed rule, including a description of the procedure by which a person can object to a proposed rule and subject the proposed rule to legislative review.
 - (5) Any fiscal note that has been prepared for the proposed rule.
- If an agency proposes any change to a rule or fiscal note prior to the date it proposes to adopt a rule, the agency shall publish the proposed change on its Web site as soon as practicable after the change is drafted. If an agency's staff proposes any such change to be presented to the rule-making agency, the staff shall publish the proposed change on the agency's Web site as soon as practicable after the change is drafted.
- (d) Each agency shall determine whether its policies and programs overlap with the policies and programs of another agency. In the event two or more agencies' policies and

programs overlap, the agencies shall coordinate the rules adopted by each agency to avoid unnecessary, unduly burdensome, or inconsistent rules.

- (e) Each agency ***shall quantify the costs and benefits*** to all parties of a proposed rule to the ***greatest extent possible***. Prior to submission of a proposed rule for publication in accordance with G.S. 150B-21.2, the agency shall review the details of any fiscal note prepared in connection with the proposed rule and approve the fiscal note before submission.
- (f) If the agency determines that a proposed rule will have a substantial economic impact as defined in G.S. 150B-21.4(b1), the agency shall consider at least two alternatives to the proposed rule. The alternatives may have been identified by the agency or by members of the public. Page 1 G.S. 150B-19.1
- (g) Whenever an agency proposes a rule that is purported to implement a federal law, or required by or necessary for compliance with federal law, or on which the receipt of federal funds is conditioned, the agency shall:
 - (1) Prepare a certification identifying the federal law requiring adoption of the proposed rule. The certification shall contain a statement setting forth the reasons why the proposed rule is required by federal law. If all or part of the proposed rule is not required by federal law or exceeds the requirements of federal law, then the certification shall state the reasons for that opinion.
 - (2) Post the certification on the agency Web site in accordance with subsection (c) of this section.
 - (3) Maintain a copy of the federal law and provide to the Office of State Budget and Management the citation to the federal law requiring or pertaining to the proposed rule.
- (h) Repealed by Session Laws 2014-120, s. 6(a), effective September 18, 2014, and applicable to proposed rules published on or after that date. (2011-398, s. 2; 2012-187, s. 3; 2013-143, s. 1.1; 2014-120, s. 6(a).

From: Liebman, Brian R <brian.liebman@oah.nc.gov>
Sent: Saturday, April 27, 2024 9:17 PM
To: Dan Tingen <dan@tingen.com>

Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>; Rittlinger, David B <david.rittlinger@ncdoj.gov>; Childs, Nathan D <nchilds@NCDOJ.GOV>

Subject: RE: [External] Agenda, April 30, 2024, Section III (follow-up matters), Item 7. Building Code Council - 2024 North Carolina Energy Conservation Code

Good evening Mr. Tingen,

Thank you for your email. A few things. First, under rule 26 NCAC 05 .0103, any comments must be received no later than 5:00 p.m. on the fifth business day prior to the RRC meeting, and second, must be sent to the agency's rulemaking coordinator in the same manner as they were sent to RRC.

I've copied Mr. Rittlinger, the Building Code Council's rulemaking coordinator, on this email for your reference. Additionally, if you would like the RRC to consider your comments, you'll need to request a waiver of our rules pursuant to 26 NCAC 05 .0112.

All of RRC's rules are available on our website for further reference.

Also, please let me know if you are only submitting written comments, or if you also want to request to speak at the meeting on Tuesday.

Thanks,
Brian Liebman
Counsel to the North Carolina Rules Review Commission
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brian.liebman@oah.nc.gov

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Respectfully,

Dan Tingen

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Burgos, Alexander N

Subject: FW: [External] Agenda, April 30, 2024, Section III (follow-up matters), Item 7. Building Code Council - 2024 North Carolina Energy Conservation Code
Attachments: Comments and Request Legislative Review.pdf

From: Dan Tingen <dan@tingen.com>
Sent: Sunday, April 28, 2024 10:47 AM
To: Rittlinger, David B <david.rittlinger@ncdoi.gov>
Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>; Liebman, Brian R <brian.liebman@oah.nc.gov>; Childs, Nathan D <nchilds@NCDOJ.GOV>
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Sincerely,

Dan Tingen

Date: 4/27/2024

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1711 New Hope Church Rd.
Raleigh, NC 27609

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Kindest regards,

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Dan Tingen, President
Tingen Construction Company, Inc
Cell: 919-422-2576
Email: dan@tingen.com

Name: Dan Tingen

Address: 8411-121 Garvey Dr

Raleigh, NC 27616

Date: 4/27/2024

N.C. Rules Review Commission
1711 New Hope Church Rd.
Raleigh, NC 27609

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Council - 2024 North Carolina Energy Conservation Code

Members of the Commission:

I request that the above rule(s) be reviewed in the upcoming legislative session as set out in N.C.G.S. 150B-21.3. I further request that the rule(s) be subject to a delayed effective date as set out in that same provision.

Thank you for your consideration.

Dan Tingen
Print Name



Signature

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