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## North Carolina Industrial Commission

December 10, 2018

### VIA ELECTRONIC MAIL ONLY

Garth K. Dunklin, Chair  
North Carolina Rules Review Commission  
Office of Administrative Hearings  
6714 Mail Service Center  
Raleigh, NC 27699-6700  
[oah.rules@oah.nc.gov](mailto:oah.rules@oah.nc.gov)

RE: Withdrawal of Fiscal Note Certification after Adoption of Rule 11 NCAC 23B .0206

Dear Mr. Dunklin:

The North Carolina Industrial Commission respectfully requests the Rules Review Commission approve the amendments to Rule 11 NCAC 23B .0206 because the Industrial Commission complied with all requirements of the APA. Please note the following:

#### **§ 150B-21.2. Procedure for adopting a permanent rule.**

- (a) Steps. - Before an agency adopts a permanent rule, the agency must comply with the requirements of G.S. 150B-19.1, and it must take the following actions:
- (1) Publish a notice of text in the North Carolina Register.
  - (2) When required by G.S. 150B-21.4, prepare or obtain a fiscal note for the proposed rule.
  - (3) Repealed by Session Laws 2003-229, s. 4, effective July 1, 2003.
  - (4) When required by subsection (e) of this section, hold a public hearing on the proposed rule after publication of the proposed text of the rule.
  - (5) Accept oral or written comments on the proposed rule as required by subsection (f) of this section.

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

- (a) State Funds. - Before an agency publishes in the North Carolina Register the proposed text of a permanent rule change that would require the expenditure or distribution of funds subject to the State Budget Act, Chapter 143C of the General Statutes, it must submit the text of the proposed rule change, an analysis of the proposed rule change, and a fiscal note on the proposed rule change to the Office

of State Budget and Management and obtain certification from the Office of State Budget and Management that the funds that would be required by the proposed rule change are available. The fiscal note must state the amount of funds that would be expended or distributed as a result of the proposed rule change and explain how the amount was computed. The Office of State Budget and Management must certify a proposed rule change if funds are available to cover the expenditure or distribution required by the proposed rule change.

After adoption, the APA sets forth two options for challenging a rule based upon a fiscal note. First, a rule can be invalidated on the basis its fiscal note was not prepared in good faith. N.C. Gen. Stat. § 150B-21.4(c). Second, the rule and its fiscal impact may be reviewed by the legislature upon receiving ten or more letters of objection in accordance with N.C. Gen. Stat. § 150B-21.3. The legislature is in the unique position to approve, disapprove, or change the rule as well as settle any funding disputes.

The Industrial Commission requests the Rules Review Commission approve Rule 11 NCAC 23B .0206 because the rule was adopted in compliance with all requirements in the APA. Additionally, since more than ten letters of objection have been filed, approval will allow the legislature to review and determine all funding-related questions.

Sincerely,

**s/Ashley B. Snyder**

Ashley B. Snyder, Rulemaking Coordinator  
North Carolina Industrial Commission