

**RULES REVIEW COMMISSION MEETING
MINUTES
September 17, 2015**

The Rules Review Commission met on Thursday, September 17, 2015, in the Commission Room at 1711 New Hope Church Road, Raleigh, North Carolina. Commissioners present were: Anna Choi, Margaret Currin, Garth Dunklin, Jay Hemphill, Jeff Hyde, Stephanie Simpson, and Faylene Whitaker.

Staff members present were Commission Counsels Abigail Hammond, Amber Cronk May, Amanda Reeder, and Jason Thomas; and Julie Brincefield, Alex Burgos, and Dana Vojtko.

The meeting was called to order at 10:03 a.m. with Chairman Dunklin presiding.

Chairman Dunklin read the notice required by G.S. 138A-15(e) and reminded the Commission members that they have a duty to avoid conflicts of interest and the appearances of conflicts.

Chairman Dunklin announced the retirement of Jim Wellons with the Department of Justice.

APPROVAL OF MINUTES

Chairman Dunklin asked for any discussion, comments, or corrections concerning the minutes of the August 20, 2015 meeting. There were none and the minutes were approved as distributed.

FOLLOW UP MATTERS

Veterans Affairs Commission

01 NCAC 26B .0104, .0105, and .0106 – All rules were unanimously approved.

Environmental Management Commission

15A NCAC 02B .0295 – There has been no response by the agency, therefore no action was required by the Commission. The review of this Rule will occur at the October meeting.

Board of Electrolysis Examiners

21 NCAC 19 .0501 and .0701 – Both rules were unanimously approved.

Board of Massage and Bodywork Therapy

21 NCAC 30 .0201 and .0701 - Both rules were unanimously approved.

21 NCAC 30 .0702, .1001, .1002, .1003, .1004, .1005, .1006, .1007, .1008, .1009, .1010, .1011, .1012, .1013, .1014, and .1015 - The Commission objected to Rule 21 NCAC 30 .0702, finding the agency failed to comply with the Administrative Procedure Act. Specifically, the Commission found that changing the contact hours' equivalency for a semester credit hour at a post-secondary institution from "21" to "15" in Item (3) after publication constitutes a "substantial change" pursuant to G.S. 150B-21.2(g).

The Commission objected to Rules 21 NCAC 30 .1001 through .1015, finding the Board of Massage and Bodywork Therapy lacks the statutory authority to promulgate these rules regulating establishments.

In addition to the overall objection to Rules 21 NCAC 30 .1001 through .1015 for lack of statutory authority, the Commission issued additional objections to Rules 21 NCAC 30 .1002, .1003, .1004, .1005, .1008, .1013, .1014, and .1015.

The Commission objected to Rule 21 NCAC 30 .1002 for lack of statutory authority to charge "the fee set forth in G.S. 90-628(b)(1) and (2)" contained in Subparagraph (a)(1). The Commission also

objected to the requirement that establishments provide “proof of property damage and bodily injury liability insurance coverage” contained in Subparagraph (a)(2) for lack of statutory authority.

The Commission objected to Rule 21 NCAC 30 .1003 for lack of statutory authority to charge “the required fees required in Rule .1013 of this Chapter.” The Commission also objected to the requirements contained in Items (2), (3), and (4) for lack of statutory authority. Further, the Commission objected to the requirement in Item (7) as being unclear and ambiguous. Item (7) requires that the applicant has “satisfied G.S. 90-629(3).” G.S. 90-629(3) requires that the applicant be “of good moral character as determined by the Board.” As written, the Rule provides no additional information regarding how “good moral character” will be determined by the Board.

The Commission objected to Rule 21 NCAC 30 .1004 for lack of statutory authority as not being “necessary to carry out the purposes of [Article 39] and the duties and responsibilities of the Board.”

The Commission objected to Rule 21 NCAC 30 .1005 for lack of statutory authority as not being “necessary to carry out the purposes of [Article 39] and the duties and responsibilities of the Board.”

The Commission objected to Rule 21 NCAC 30 .1008 for lack of statutory authority to charge the fee contained in Paragraphs (a) and (b).

The Commission objected to Rule 21 NCAC 30 .1013 for lack of statutory authority to charge the fees contained in this Rule. The Commission also objected to this Rule as being unclear and ambiguous as it is unclear whether this Rule exclusively pertains to establishments.

The Commission objected to Rule 21 NCAC 30 .1014 for lack of statutory authority to charge the fees contained in Paragraph (a). The Commission also objected to this Rule as being unclear and ambiguous as it is unclear whether this Rule exclusively pertains to establishments.

The Commission objected to Rule 21 NCAC 30 .1015 as being unclear and ambiguous as it is unclear whether this Rule exclusively pertains to establishments. It also objected to the requirement that “the applicant provide all documentation related to the applicant’s compliance with G.S. 90-629(3).” G.S. 90-629(3) requires that the applicant be “of good moral character as determined by the Board.” As written, the Rule provides no additional information regarding how “good moral character” will be determined by the Board.

Prior to the discussion of the rules from the Board of Massage and Bodywork Therapy, Commissioner Currin recused herself and did not participate in any discussion or vote concerning these Rules because she has a contract for services with a party opposing these Rules.

Prior to the discussion of the rules from the Board of Massage and Bodywork Therapy, Commissioner Simpson recused herself and did not participate in any discussion or vote concerning these Rules because she has a possible conflict with representation of her husband’s law firm.

Charles Wilkins with the agency addressed the Commission.

Attorney Mitchell Armbruster representing Massage Envy Spa addressed the Commission.

Dr. Ed Preston with the agency addressed the Commission.

Building Code Council

2011 NC Electrical Code – 300.9 – There has been no response by the agency, therefore no action was required by the Commission.

The Commission took a break at 11:43 a.m., and returned from the break at 11:56 a.m.

LOG OF FILINGS (PERMANENT RULES)

Child Care Commission

All rules were unanimously approved.

The Commission received over 10 letters of objection in accordance with G.S. 150B-21.3(b2), requesting a delayed effective date and legislative review for the approved rules.

DHHS/Division of Health Service Regulation

All rules were unanimously approved.

Radiation Protection Commission

All rules were unanimously approved.

Commission for Public Health

10A NCAC 41A .0101 was unanimously approved.

Private Protective Services Board

All rules were unanimously approved.

Jeff Gray, representing the Board, addressed the Commission.

Wildlife Resources Commission

15A NCAC 10F .0333 was unanimously approved.

Property Tax Commission

The Commission voted to extend the period of review for these Rules in accordance with G.S. 150B-21.10 and G.S. 150B-21.13. The Commission extended the period of review to allow the North Carolina Property Tax Commission additional time to revise the rules in response to the technical change requests and to review the staff opinions.

Board of Architecture

21 NCAC 02 .0703 was unanimously approved.

Prior to the discussion of the rules from the Board of Architecture, Commissioner Choi recused herself and did not participate in any discussion or vote concerning these Rules as her law firm provides legal representation to the board.

Board of Examiners for Nursing Home Administrators

All rules were unanimously approved.

Prior to the discussion of the rules from the Board of Examiners for Nursing Home Administrators, Commissioner Choi recused herself and did not participate in any discussion or vote concerning these Rules as her law firm provides legal representation to the board.

EXISTING RULES REVIEW

Commission of Navigation Pilotage for the Cape Fear River and Bar

04 NCAC 15 - The Commission unanimously approved the report as submitted by the agency.

DHHS/Commission for the Blind

10A NCAC 63 – The Commission unanimously approved the report as submitted by the agency.

Commission for Public Health

15A NCAC 18C – The Commission unanimously approved the report as submitted by the agency.

COMMISSION BUSINESS

Commissioners and Commission counsel discussed consistency in review of rules.

The meeting adjourned at 1:11 p.m.

The next regularly scheduled meeting of the Commission is Thursday, October 15th at 10:00 a.m.

There is a digital recording of the entire meeting available from the Office of Administrative Hearings /Rules Division.

Respectfully Submitted,

Alexander Burgos, Paralegal

Minutes approved by the Rules Review Commission:

Garth Dunklin, Chair

DRAFT

September 2015

Rules Review Commission
Meeting
Please Print Legibly

Name	Agency
Nadine Pfeiffer	DHSR
Anna Crag	DHSR
Shelby Lewis	DHSR
Wendi Amos	NC Veterans Affairs Commission
Wayne Peedin	DOA/Veterans Affairs
Mitch ARMARUSTEK	RE MESSAGE BOARD RULES (PRIVATE ATTEND)
Bethany Burgen	DOJ / DHHS
Jenny Rollins	DHSR - RPS
Jon Granger	DHSR - RPS
Christy	DHSR - RPS
Lee Cox	DHSR - RPS
J. Wan	SOS
Elizabeth Kirk	NCBMBT
Charles Wilkins	NCBMBT
Ed Preston, MD	NCBMBT
Bill Reaslee	DOA - VA
Jessica Godreau	DENR
Debra Allen	DHHS
Traey Hipp	DHHS
Karen Higgins	DENR
Melissa Reed	PPS AT

