

**RULES REVIEW COMMISSION MEETING
MINUTES
October 15, 2015**

The Rules Review Commission met on Thursday, October 15, 2015, in the Commission Room at 1711 New Hope Church Road, Raleigh, North Carolina. Commissioners present were: Bobby Bryan, Anna Choi, Jeanette Doran, Garth Dunklin, Jay Hemphill, Jeff Hyde, Jeff Poley, and Ralph Walker.

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 10:02 a.m. with Chairman Dunklin presiding.

New Commissioners Bobby Bryan and Jeff Poley were welcomed and introduced by Chairman Dunklin.

Retired Court of Appeals Judge and Commissioner, the Honorable Ralph Walker, administered the oath of office to new Commissioners Bobby Bryan and Jeff Poley.

Chairman Dunklin called to attention the presence of Wake County Sherriff, Donnie Harrison.

Chairman Dunklin recognized Commissioners Walker and Whitaker for their service.

OAH Chief Administrative Law Judge, the Honorable Julian Mann, III, addressed the Commission.

Chairman Dunklin read into the record the following statements of economic interest for:

Bobby Bryan, which stated there was no actual conflict of interest or the potential for a conflict of interest.

Jeff Poley, which stated there was no actual conflict of interest. However, there is the potential for a conflict of interest because Mr. Poley is a Partner with the law firm of Parker Poe Adams & Bernstein, LLP, and his spouse is a Partner with the law firm of Cranfill Sumner & Hartzog, LLP. Should any employees or partners of the aforesaid firms, or any of the firms' current or former clients, come before the Commission for official action, Mr. Poley should exercise appropriate caution in the performance of his public duties. This could include recusing himself to the extent that those interests would influence or could reasonably appear to influence his actions.

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.

APPROVAL OF MINUTES

Chairman Dunklin asked for any discussion, comments, or corrections concerning the minutes of the September 17, 2015 meeting. There were none and the minutes were approved as distributed.

FOLLOW UP MATTERS

Environmental Management Commission

The Commission voted to allow 12 letters of objection submitted pursuant to G.S. 150B-21.3 to be withdrawn pursuant to Rule 26 NCAC 05 .0113.

15A NCAC 02B .0295 was unanimously approved.

Property Tax Commission

17 NCAC 11 .0216 and .0217 – The Commission objected to both rules for failure to comply with Part 2 of the Administrative Procedure Act, specifically as the Property Tax Commission asserted at the time of filing these Rules that the Property Tax Commission was exempt from the notice and hearing requirements of Article 2A of G.S. 150B under G.S. 150B-1(d)(4). The Commission found that the cited exemption does not apply to the Property Tax Commission, which is an independent agency created by statute and separate from the Department of Revenue; therefore, the Property Tax Commission failed to comply with Part 2 of the Administrative Procedure Act.

Further, and in addition to the objection set forth in the prior paragraph, the Commission objected to the following language set forth in Rule 17 NCAC 11 .0216:

An appellant represented by an attorney who is a member of a law firm is urged to see that another member of the firm be prepared to present his case in the event that primary attorney is unable to attend the hearing.

The Commission found this language to be: outside the authority delegated to the agency by the General Assembly; unclear and ambiguous; and unnecessary.

Board of Massage and Bodywork Therapy

21 NCAC 30 .0702 was unanimously approved.

21 NCAC 30 .1001, .1002, .1003, .1004, .1005, .1006, .1007, .1008, .1009, .1010, .1011, .1012, .1013, .1014, .1015 - There has been no response by the agency on these Rules, therefore no action was required by the Commission.

Building Code Council

2011 NC Electrical Code – 300.9 – The Rule was returned at the request of the agency, therefore no action was required by the Commission.

LOG OF FILINGS (PERMANENT RULES)**NC Rural Electrification Authority**

04 NCAC 08 .0304 was unanimously approved.

Department of Health and Human Services

10A NCAC 14D .0101 was unanimously approved.

Prior to the discussion of the rule from the Department of Health and Human Services, Commissioner Poley recused himself and did not participate in any discussion or vote concerning these Rules because his law firm, Parker Poe Adams & Bernstein, LLP, works with DHHS from time to time.

Criminal Justice Education and Training Standards Commission

All rules were unanimously approved.

Department of Labor

13 NCAC 07G .0101 was unanimously approved.

The Commission received more than 10 letters of objection to 13 NCAC 07G .0101. Pursuant to G.S. 150B-21.3, the rule is now subject to legislative review and a delayed effective date.

Environmental Management Commission

The Commission voted to extend the period of review for these Rules in accordance with G.S. 150B-21.10. They did so in response to a request from the Environmental Management Commission to extend the period of review in order to allow for approval of technical change requests.

Board of Pharmacy

21 NCAC 46 .2612 was unanimously approved.

Board of Podiatry Examiners

All rules were unanimously approved.

EXISTING RULES REVIEW

Council of State

06 NCAC 01 - The Commission unanimously approved the report as submitted by the agency.

06 NCAC 02 - The Commission unanimously approved the report as submitted by the agency.

06 NCAC 03 - The Commission unanimously approved the report as submitted by the agency.

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

Commission for Public Health

10A NCAC 40 - The Commission unanimously approved the report as submitted by the agency.

10A NCAC 47 - The Commission unanimously approved the report as submitted by the agency.

Department of Insurance

11 NCAC 11 - The Commission unanimously approved the report as submitted by the agency.

11 NCAC 19 - The Commission unanimously approved the report as submitted by the agency.

Department of the Secretary of State

18 NCAC 01 - The Commission unanimously approved the report as submitted by the agency.

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

18 NCAC 13 - The Commission unanimously approved the report as submitted by the agency.

Ann Wall with the agency addressed the Commission.

State Human Resources Commission

25 NCAC 01D – The Commission unanimously approved the report as submitted by the agency.

Prior to the discussion of the report from the State Human Resources Commission, Commissioner Doran recused herself and did not participate in any discussion or vote concerning the report because she has a possible conflict for she is a state employee and supervises state employees.

COMMISSION BUSINESS

Commissioners and Commission counsel discussed consistency in review of rules pursuant to G.S. 150B-2.8(a)(d).

Ann Wall with the Secretary of State addressed the Commission.

Bill Peaslee with the Department of Administration addressed the Commission.

Staff gave the Commission a brief legislative update.

The meeting adjourned at 12:14 p.m.

The next regularly scheduled meeting of the Commission is Thursday, November 19th 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

October 2015

Rules Review Commission
Meeting
Please Print Legibly

Name	Agency
Hollis Yelverton	NCDOL
ALLEN MCNEELY	NCDOL
KEVIN BEAUREGARD	NCDOL
Jane Gilchrist	INCDOL
Jennifer Hayward	NCDOL
Carla Rose	NCDOL
David Lingertfel	NCDOR
John T. Shires	Property Tax Commission
Sue Homewood	NCDEQ
Nadine Pfeiffer	DHSR
Megan Lamphere	DHSR
Libby Kinsey	DHSR
Marquet Duke	OSHR
Jennifer Everett	DEQ
CLINT POSTAN	BOP
Amanda Honaker	TSS
Maggie Craven	OSHR
Penney DePas	NC Board of Podiatry Exmrs
Gr. Wall	SOs
Frances Likes	NCREA
Raken Higgins	NCDEFQ

