

**RULES REVIEW COMMISSION MEETING
MINUTES
January 21, 2016**

The Rules Review Commission met on Thursday, January 21, 2016, in the Commission Room at 1711 New Hope Church Road, Raleigh, North Carolina. Commissioners present were: Danny Earl Britt, Jr., Bobby Bryan, Margaret Currin, Jeanette Doran, Garth Dunklin, Jay Hemphill, Jeff Hyde, Jeff Poley, and Stephanie Simpson.

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 10:01 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 of interest.

Chairman Dunklin introduced OAH extern Felicia Hyde.

APPROVAL OF MINUTES

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

FOLLOW UP MATTERS

911 Board

09 NCAC 06C .0101, .0102, .0103, .0104, .0105, .0106, .0107, .0108, .0109, .0110, .0111, .0112, .0113, .0114, .0201, .0202, .0203, .0204, .0205, .0206, .0207, .0208, .0209, .0210, .0211, .0212, .0213, .0214, .0215, .0216, .0301, .0302, .0303, .0304, .0305, .0306, .0401, .0402, .0403, .0404, and .0405 – All rules were unanimously approved with the following exceptions:

The Commission objected to Rules .0111, .0112, .0113, .0114, .0205, and .0216, finding the agency failed to comply with the Administrative Procedure Act because the rules were not published in the NC Register for the public comment period required by G.S. 150B-21.2. The Commission was aware that the Board has submitted these Rules for publication in the February 1, 2016 Register.

The Commission also objected to Rule .0112 because, as the rule was originally submitted, the Board proposed to respond to requests for declaratory ruling outside of the timeline set forth in G.S. 150B-4. Therefore, the Commission found that the Board did not have the statutory authority to change the timeline set forth in statute.

The Commission objected to Rules .0107, .0302, .0303, and .0304, with Commissioner Poley voting against the objection, finding the Board lacked statutory authority to require CMRS providers to submit a plan for preapproval of all reimbursable costs. Further, the Commission found the Board does not have the authority to require submission of records to prove that costs were incurred, and these requirements exceed the requirements of G.S. 62A-45.

The Commission objected to Rules .0105 and .0106 for ambiguity. Specifically, Paragraph (c) of both rules state that the Board “may, in its discretion, file a complaint with any other regulatory body exercising jurisdiction.” There is no guidance in the rules as to when this may occur and therefore, the Commission found the rules ambiguous.

The Commission also objected to Rule .0106 for lack of statutory authority, as Paragraph (d) states that the Board may suspend disbursements of a PSAP that is not compliant with the statutes, rules,

or requirements of an FCC order. However, G.S. 62A-48 states that the Board is required to suspend disbursements under these circumstances. Therefore, the Commission found that the Board does not have authority for the Rule as submitted.

Richard Bradford, with the Attorney General's Office representing the agency, addressed the Commission.

Child Care Commission

10A NCAC 09 .2001, .2002, .2003, .2004, and .2005 – All rules were unanimously approved.

Environmental Management Commission

15A NCAC 02L .0501, .0502, .0503, .0504, .0505, .0506, .0507, .0508, .0509, .0510, .0511, .0512, .0513, .0514, .0515 - There has been no response by the agency on these Rules pursuant to G.S. 150B-21.13, therefore no action was required by the Commission.

Property Tax Commission

17 NCAC 11 .0216, and .0217 - The agency is addressing the objections from the October meeting by publishing a Notice of Text in the North Carolina Register. No action was required by the Commission.

LOG OF FILINGS (PERMANENT RULES)

DHHS – Division of Health Service Regulation

All rules were unanimously approved.

Criminal Justice Education and Training Standards Commission

All rules were unanimously approved.

Upon review of 12 NCAC 09C .0401, the Commission approved the rewritten rule contingent upon receiving 12 NCAC 09C .0401 with the additional language following the word accreditation, "pursuant to the Commission's authority to certify criminal justice training schools in G.S. 17C-6,". The rule with the pertinent language was received subsequent to the adjournment of the meeting.

Sheriffs Education and Training Standards Commission

12 NCAC 10B .2005 was unanimously approved.

Private Protective Services Board

All rules were unanimously approved.

Marine Fisheries Commission

All rules were unanimously approved.

Coastal Resources Commission

All rules in 15A NCAC 07B were unanimously approved.

The Commission voted to extend the period of review for 15A NCAC 07L .0102, .0502, .0503, .0504, .0505, .0506, .0507, .0508, .0509, .0510, .0511, .0512, .0513, .0514, .0601, .0602, .0603, .0701, .0702, .0703, .0704, and .0705 in accordance with G.S. 150B-21.10. They did so in response to a request from the Coastal Resources Commission to allow additional time for review of technical change requests.

Board of Certified Public Accountant Examiners

All rules were unanimously approved.

Bob Brooks with the agency addressed the Commission.

Board of Chiropractic Examiners

The Commission objected to 21 NCAC 10 .0214, finding that the language in Paragraph (b) that referred to the “Secretary’s professional judgment” is ambiguous.

The Commission voted to extend the period of review for 21 NCAC 10 .0106 and .0208 in accordance with G.S. 150B-21.10. They did so in response to a request from the Board to extend the period in order to allow the agency time to determine whether to move forward with rulemaking for these Rules.

Vance Kinlaw, attorney for the agency, addressed the Commission.

Dr. Ricky R. Sides with the agency addressed the Commission.

Board of Dental Examiners

21 NCAC 16W .0101 was withdrawn at the request of the agency.

Commissioner Hemphill was not present during the discussion.

Board of Examiners of Electrical Contractors

21 NCAC 18B .0101 was unanimously approved.

Commissioner Hemphill was not present during the vote.

Interpreter and Transliterater Licensing Board

21 NCAC 25 .0103 was unanimously approved.

Commissioner Hemphill was not present during the vote.

Board of Examiners of Fee-Based Practicing Pastoral Counselors

21 NCAC 45 .0101 was unanimously approved.

Commissioner Hemphill was not present during the vote.

State Human Resources Commission

All rules were unanimously approved.

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

Commissioner Hemphill was not present during the vote.

EXISTING RULES REVIEW

Department of Administration

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

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

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

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

Commissioner Poley was not present during the vote.

Department of Military and Veterans Affairs [formerly Veterans' Affairs Commission – transferred pursuant to S.L. 2015-241, Sec. 24.1(a)]

01 NCAC 26 - The Commission unanimously approved the report as submitted by the agency.

Commissioner Poley was not present during the vote.

Medical Care Commission & Department of Health and Human Services/Secretary

10A NCAC 13P - The Commission unanimously approved the report as submitted by the agency.

Prior to the review of the report from the N.C. Medical Care Commission & Department of Health and Human Services/Secretary, Commissioner Poley recused himself and did not participate in any discussion or vote concerning these rules because of a conflict with his law firm.

DHHS - Commission for Mental Health, Developmental Disabilities, and Substance Abuse Services

10A NCAC 26E - The Commission unanimously approved the report as submitted by the agency.

10A NCAC 26F - The Commission unanimously approved the report as submitted by the agency.

Sedimentation Control Commission

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

Board of Examiners of Electrical Contractors

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

Locksmith Licensing Board

21 NCAC 29 - The Commission unanimously approved the report as submitted by the agency.

Department of Commerce

The agency requested a waiver of 26 NCAC 05 .0211 pursuant to 26 NCAC 05 .0204 for the report for 04 NCAC 01.

The waiver request was approved, with Commissioner Dunklin voting against.

The Commission rescheduled the date of review for the report, and amended 26 NCAC 05 .0211.

The Commission will review the agency's report at its July 2016 meeting.

Prior to the review of the report from the Department of Commerce, Commissioner Doran recused herself and did not participate in any discussion or vote concerning the report because she is a state employee with the Department of Commerce.

DHHS - Division of Services for the Deaf and Hard of Hearing

The agency requested a waiver of 26 NCAC 05 .0211 pursuant to 26 NCAC 05 .0204 for the report for 10A NCAC 17.

The waiver request was approved, with Commissioners Doran, Dunklin, and Hyde voting against.

The Commission rescheduled the date of review for the report, and amended 26 NCAC 05 .0211.

The Commission will review the agency's report at its March 2017 meeting.

2016 STATE MEDICAL FACILITIES PLAN

The Commission found that the Department of Health and Human Services and the State Health Coordinating Council complied with G.S. 131E-176(25) in the adoption of the 2016 Plan.

Prior to the review of the 2016 State Medical Facilities Plan from the Department of Health and Human Services and the State Health Coordinating Council, Commissioner Poley recused himself and did not participate in any discussion or vote concerning the 2016 Plan because of a conflict with his law firm.

COMMISSION BUSINESS

Commissioners and Commission Counsel discussed RRC proposed rules 26 NCAC 05 .0103, .0104, .0301, .0302, and .0303. The Commission voted to publish the rules in the North Carolina Register and they are attached.

The Commission's Bylaws require that elections be held at the January meeting. The following members were elected as officers:

Garth Dunklin was re-elected Chairman.

Jeff Hyde was re-elected 1st Vice-Chairman.

Stephanie Simpson re-elected 2nd Vice-Chairman.

The meeting adjourned at 12:15 p.m.

The next regularly scheduled meeting of the Commission is Thursday, February 18th 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

Rules Review Commission
Meeting
Please Print Legibly

Name	Agency
Dr. Bruce Whitton	NC BOE
VANCE KINLAW	NCBD, OF CHIRO. EXAMINERS
CATHERINE BLUM	NCDEQ, NCDMF
Philip R. Protz	NC DHHS NCDVRS
Teresa Barik	911 Board
Jamie Weiss	Ellis & Winters
Trevor Allan	DOJ - CS standards
Lauren Eamhardt	DOJ
Fatimah Wilson	DHSR-CON
Dr. Ricky B. Sides	NC BOE
Richard Bradford	911 BOARD
Jan Withers	DSDHH
Monica McGee (interpreter)	DSDHH
Lisa Pittman	DHSR-CON
Martha Frisone	DHSR-CON
Laura Sylcaro	911 Board
Jennifer Eusoff	DEQ
RICHARD TAYLOR	NC 911 BOARD
Ashley Rodgers	DEQ, DEMUR
Nadine Pfeiffer	DHHS DHSR
Holly Ainsworth	DHSR/DEMS

Rules Review Commission
Meeting
Please Print Legibly

Name	Agency
Stacey Carraway	DHHS/DHSE/HPCON
Kelicia Hyde	externing w/ Judge Morrison (OAH)
Bob Brooks	CPA BOARD
DAVID NANCE	CPA BOARD
Margaret Duce	OSHR
Jackie Hobbs	NC BCE
Debra Alon	DCDEE
Maggie Craven	OSHR
Bethany Burgher	DOJ
Jeff Gray	PPS VB
Rita Dorry	NCGA
Kassia Elliott	OSHR.
W. Denise Booker	DHHS - DMH/po/sas
John Haaman;	Dept of Commerce

SUBMISSION OF WRITTEN COMMENTS CONCERNING PERMANENT RULES TO THE RRC

- (a) ~~Written comments submitted by any~~ Any person ~~desiring to submit written comments~~ concerning a permanent rule ~~shall submit the comments to the individual commissioners and two copies (unless submitted by email in which case one copy is sufficient) to~~ shall be received by the RRC staff by 5:00 p.m. of the ~~Tuesday of the week~~ second business day prior to the ~~next RRC meeting~~ meeting at which the permanent rule is to be reviewed. ~~Written comments may be submitted electronically to the individual commissioners who accept delivery in an electronic format. If comments are submitted electronically, the comments shall be sent to rrc.comments@oah.nc.gov.~~
- (b) Written ~~submissions~~ comments shall ~~specify~~ state how a rule either complies with or fails to comply with the statutory grounds for the RRC's review set out in G.S. 150B-21.9.
- (c) Persons submitting comments shall also submit a copy of the comments at the same time and in the same manner to the ~~agency~~ agency's rulemaking coordinator. Rulemaking coordinator contact information is located at www.ncoah.com/rules.
- (d) A person or agency may submit rebuttal comments ~~to comments~~ concerning permanent rules. ~~The comments~~ Comments from a person shall be submitted in the same manner as set out in Paragraph (a) of this Rule prior ~~up~~ to 5:00 p.m. of the business day before the RRC meeting at which the rule is to be reviewed. ~~A person or~~ An agency may submit rebuttal comments at the RRC meeting.
- (e) Any person submitting written comments ~~at an RRC meeting~~ or submitting rebuttal comments at an RRC meeting shall submit ~~at the meeting~~ sufficient copies for ~~all each of the members attending~~ Commissioners, commission counsel, agency rulemaking coordinator, and the permanent record, ~~a maximum of 14~~ a total of 16 copies.
- (f) The Chair may waive the requirements of this Rule based on the factors in Rule .0112 of this Chapter.
- (g) Written comments not submitted in accordance with this Rule are subject to being excluded from the record by the Commission.
- (h) ~~The RRC staff shall maintain a list of commissioners and rulemaking coordinators with their contact information.~~

History Note: Authority G.S. 143B-30.1;
Eff. August 1, 2008;

26 NCAC 05 .0104 SUBMISSION OF WRITTEN COMMENTS CONCERNING TEMPORARY RULES TO THE RRC

- (a) ~~Written comments submitted by any~~ Any person ~~desiring to submit written comments~~ concerning a temporary rule shall ~~submit the comments to the individual commissioners and two copies (unless submitted by email in which case one copy is sufficient) to~~ shall be received by the RRC staff by 5:00 p.m. the business day prior to ~~or at the RRC meeting or RRC designee meeting~~ at which the temporary rule shall ~~is~~ to be reviewed. If comments are submitted electronically, the comments shall be sent to rrc.comments@oah.nc.gov.
- (b) ~~Written submissions~~ comments shall ~~specify state~~ how a rule either complies with or fails to comply with the statutory grounds for the RRC's review set out in G.S. 150B-21.1 and G.S. 150B-21.9.
- (c) Persons submitting comments shall also submit a copy of the comments at the same time and in the same manner to the ~~agency~~ agency's rulemaking coordinator. Rulemaking coordinator contact information is located at www.ncioah.com/rules.
- (d) A person or agency may submit rebuttal comments ~~to comments~~ concerning temporary rules.
- (e) ~~Any comments and rebuttal comments~~ An agency may submit rebuttal comments at the RRC meeting.
- (f) (e) Any person submitting written comments or rebuttal comments at an RRC meeting shall submit ~~at the meeting~~ sufficient copies for ~~all each of the members attending.~~ Commissioners, commission counsel, agency rulemaking coordinator, and the permanent record, a maximum of 14 total of 16 copies.
- (g) (f) The Chair may waive the requirements of this Rule based on the factors in Rule .0112 of this Chapter.
- (h) (g) Written comments not submitted in accordance with this Rule are subject to being excluded from the record by the Commission.
- (i) ~~The RRC staff shall maintain a list of commissioners and rulemaking coordinators with their contact information.~~

*History Note: Authority G.S. 143B-30.1;
Eff. August 1, 2008.*

1 SECTION .0300 - TEMPORARY RULES FOR RRC REVIEW

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3 26 NCAC 05 .0301 FORMATTING REQUIREMENTS

4 An agency submitting temporary rules to be reviewed by the Commission shall comply with the requirements in 26
5 NCAC 02C .0100, .0200, and .0400, which are hereby incorporated by reference, including subsequent amendments
6 and editions.

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8 *History Note: Authority G.S. 150B-21.1;*
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11 26 NCAC 05 .0302 TEMPORARY RULEMAKING FINDINGS OF NEED FORM

12 (a) An agency shall submit a completed typed original Temporary Rulemaking Findings of Need form for each rule
13 when filing a temporary rule for Commission review. The form may be accessed at no cost at www.ncoah.com/rules.

14 (b) The form sets forth the requirements of G.S. 150B-21.1 to allow the Commission to determine whether the
15 temporary rule meets the statutory requirements.

16 (c) The agency head shall sign the original form. If the agency head has delegated this authority to another person
17 pursuant to G.S. 143B-10(a), then the agency shall submit a copy of the delegation.

18 (d) Pursuant to G.S. 143B-10(a), only the following agency heads may delegate signing of the form:

19 (1) the Secretary of the Department of Natural and Cultural Resources;

20 (2) the Secretary of the Department of Health and Human Services;

21 (3) the Secretary of the Department of Revenue;

22 (4) the Secretary of the Department of Public Safety;

23 (5) the Secretary of the Department of Environmental Quality;

24 (6) the Secretary of the Department of Transportation;

25 (7) the Secretary of the Department of Administration; and

26 (8) the Secretary of the Department of Commerce.

27 (e) For all other agencies, the head of an agency shall not delegate signature authority for signing the form pursuant
28 to G.S. 150B-21.1(a)(4).

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30 *History Note: Authority G.S. 143B-2; 143B-10(a); 150B-21.1(a4);*
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34 26 NCAC 05 .0303 FILING A TEMPORARY RULE

35 For each temporary rule, the agency shall file the following:

36 (1) an original and two copies of the Temporary Rulemaking Findings of Need form. The original form
37 shall be signed by the agency head or designee, as set forth in Rule .0302 of this Section;

38 (2) if designation authority is invoked under G.S. 143B-10, a letter delegating the authority for the
39 signature on the form, as set forth in Rule .0302 of this Section;

40 (3) a copy of the relevant portion of the authority cited that authorizes the promulgation of the temporary
41 rule;

- 1 (4) an original and two copies of the temporary rule prepared in accordance with 26 NCAC 02C .0108,
2 containing:
3 (a) an introductory statement that states the rule was adopted under temporary rulemaking
4 procedures;
5 (b) the text of the rule, showing any changes made after publication as set forth in 26 NCAC
6 02C .0405; and
7 (c) the history note, as set forth in 26 NCAC 02C .0406; and
8 (5) an electronic version of the Rule, as set forth in 26 NCAC 02C .0105.

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10 *History Note:* *Authority G.S. 150B-21.1; 150B-21.19;*
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12