

**RULES REVIEW COMMISSION MEETING
MINUTES
June 16, 2016**

The Rules Review Commission met on Thursday, June 16, 2016, in the Commission Room at 1711 New Hope Church Road, Raleigh, North Carolina. Commissioners present were: Bobby Bryan, Margaret Currin, Jeanette Doran, Garth Dunklin, Jeff Hyde, Jeff Poley, and Stephanie Simpson.

Staff members present were Commission Counsels Abigail Hammond, 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 of interest.

APPROVAL OF MINUTES

Chairman Dunklin asked for any discussion, comments, or corrections concerning the minutes of the May 19, 2016 meeting. There were none and the minutes were approved as distributed.

FOLLOW UP MATTERS

Public Safety – Division of Emergency Management

14B NCAC 03 .0104 – The Department responded in accordance with the provisions of G.S. 150B-21.12(a)(2) on May 26, 2016 and indicated that the Department agreed with the objection to the rule by the Commission from the May meeting. Pursuant to G.S. 150B-21.12(d), the rule will be returned to the agency. Additionally, the rule will be removed from the North Carolina Administrative Code. No further action is required by the Commission.

Public Safety – State Capitol Police

14B NCAC 13 .0102, .0201, .0202, and .0203 – All rules were unanimously approved.

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)

Office of State Budget and Management

All rules were unanimously approved.

Medical Care Commission

All rules were unanimously approved.

Commission for Public Health

10A NCAC 45A .0101 was unanimously approved.

Criminal Justice Education and Training Standards Commission

All rules were unanimously approved.

Lauren Earnhardt from the Department of Justice addressed the Commission on behalf of the agency.

Environmental Management Commission

15A NCAC 02B .0227 was unanimously approved.

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

Coastal Resources Commission

15A NCAC 07H .0304 was unanimously approved.

Wildlife Resources Commission

15A NCAC 10F .0347 was unanimously approved.

Environmental Management Commission

All rules for Subchapter 15A NCAC 13A were unanimously approved.

Board of Barber Examiners

All rules were unanimously approved with the following exceptions:

The Commission extended the period of review to 21 NCAC 06F .0110.

The Commission objected to 21 NCAC 06B .0101 and .0103 based upon lack of statutory authority and ambiguity. The Commission found that the Board does not have authority to require a petitioner for rulemaking to include a summary of the contents rather than the draft required by G.S. 150B-21.2, and to ask for the effects on existing practices. Further, the Rules were unclear as written as to the effects of a rule on existing practices and what “existing practices in the area involved” means.

The Commission objected to 21 NCAC 06B .0105 based upon ambiguity. The Commission found that the language in Paragraph (a) is unclear regarding how the Chairman will determine whether the additional information or recommendations will be deemed relevant. It is also unclear what the “public interest” standard is or entails. Further, there is no guidance in the Rule on how “public interest” will be determined.

The Commission objected to 21 NCAC 06B .0301 based upon a lack of necessity. The Rule stated that unless otherwise noticed, the rulemaking hearing will be held at the Board’s office. However, G.S. 150B-21.2(c)(5) requires the Notice of Text for permanent rules to state the “place of any public hearing.” G.S. 150B-21.1(a)(4) requires a notice of public hearing to be posted on the OAH website for temporary rules. Therefore, the rule is not necessary, as the APA will control regarding rulemaking public hearing notices.

The Commission objected to 21 NCAC 06B .0302 based upon a lack of statutory authority. The language in the Rule encourages individuals to take an action. It does not set any standard. Further, G.S. 150B-21.1 and 21.2 set forth the timeframes for public hearings. This Rule appears to contradict those statutory timeframes.

The Commission objected to 21 NCAC 06B .0305 for lack of statutory authority and ambiguity. The Rule appears to state that the Board will accept written comments but the Rule shortens the timeframe for submitting written comments set forth in G.S. 150B.

The Commission objected to 21 NCAC 06B .0308 for ambiguity and lack of statutory authority and necessity. The Rule appears to recite G.S. 150B-21.2(h) and is therefore unnecessary. It is unclear to what types of rules (permanent or temporary) that this Rule will apply to. Further, the final sentence of the Rule is unclear as written. It allows the submission of the request prior to the hearing, but G.S. 150B-21.2(h) states that the request must be made after adoption. The agency lacks statutory authority to make the deadline earlier than the statute sets forth.

The Commission objected to 21 NCAC 06B .0503 for ambiguity. Specifically, G.S. 150B-4 requires agencies to prescribe in rule the circumstances in which declaratory rulings shall or shall not be issued. This Rule does not set any standards, but instead states that the agency may refuse to do so when the Board believes “for good reason” that the issuance is “undesirable.” As written, this Rule does not establish any circumstances when it will or will not issue the ruling, nor does it give any guidance on when this will occur.

The Commission objected to 21 NCAC 06B .0505 for ambiguity. As written, this Rule is unclear as to what the procedure is, what it will consist of, and who will determine what is required to make a decision as to what is “appropriate in a particular case.”

The Commission objected to 21 NCAC 06C .0202 for ambiguity. It does not set a standard – it simply encourages individuals to do something. Also, the Rule is unclear as written, as the rule does not offer guidance to what informal resolution the Board is referring to, or how one avails himself or herself of this remedy.

The Commission objected to 21 NCAC 06C .0203 based upon a lack of statutory authority. Specifically, the Board does not have the authority to require informal resolution before the filing of a contested case petition.

The Commission objected to 21 NCAC 06C .0501 based upon a lack of necessity, as the rule essentially recites G.S. 150B-38.

The Commission objected to 21 NCAC 06C .0909 based upon a lack of necessity, as the rule essentially recites G.S. 150B-40(e) and Rule 21 NCAC 06C .0601.

The Commission objected to 21 NCAC 06F .0116 and 21 NCAC 06Q .0103 based upon a lack of statutory authority. Specifically, the Commission found that the Board lacks statutory authority to require individuals seeking licensure from the Board to report that they are registered sex offenders, or to deny or revoke licensure due to being on the Registry. In light of these objections, the Commission extended the period of review for 21 NCAC 06F .0110, which may need to be rewritten as part of the Board’s response to these objections.

The Commission also objected to 21 NCAC 06Q .0103 for lack of statutory authority to abrogate G.S. 93B-8.1.

The Commission objected to 21 NCAC 06G .0106 based upon a lack of authority for the Board to require barbers to have five years of experience in order to qualify as barber instructors.

The Commission objected to 21 NCAC 06H .0102 for a lack of statutory authority, as the Commission found that the Board has no statutory authority to set the student-instructor ratio below that set forth in statute. In addition, the Commission found that the Board lacks authority to require a nonprofit school to be established within a State university or community college.

The Commission objected to 21 NCAC 06I .0101 based upon ambiguity. The Commission found that the phrase “substantially similar standards” is unclear as written, as the rule neither defines the standards nor sets forth how they will be determined.

The Commission objected to 21 NCAC 06I .0105; 06J .0101; 06K .0104; 06N .0104, and 06N .0106 for lack of statutory authority. Specifically, the Commission found that the Board lacks statutory authority to require applicants for licensure or certification to have high school diplomas or GED certificates.

The Commission objected to 21 NCAC 06L .0118, as the Commission found that the Board lacks statutory authority to state in Paragraph (f) of the rule that violation of Chapter 86A or any administrative rule adopted by the Board or operation of a shop that receives a failing grade shall be sufficient cause for revoking or suspending the permit. G.S. 86A-18 states that the Board may revoke or suspend the permit for violation provided the Board has previously given two written warnings to the individual committing the violation. Therefore, the Commission found that the agency is without authority to revoke a permit for failure to comply with this Rule unless the statutorily mandated two written warnings are issued first.

The Commission objected to 21 NCAC 06L .0119 because the rule was unclear as written. As stated in the Staff Opinion issued on May 25, 2016, it included many terms that were not defined and were unclear in the context of the rule.

The Commission objected to 21 NCAC 06N .0103 for a lack of statutory authority to charge a fee whenever a shop hires a new manager.

The Commission objected to 21 NCAC 06N .0108 based upon a lack of statutory authority to create a special class of out-of-state individuals seeking certification as apprentices.

The Commission objected to 21 NCAC 06N .0110 based upon a lack of statutory authority. Specifically, the Commission found that the Board does not have authority to charge a fee when someone is employed by a barber school to be the manager.

The Commission objected to 21 NCAC 06O .0120, finding the Board lacked statutory authority to create a civil penalty under the circumstances stated in the Rule. G.S. 86A-27 allows the Board to impose civil penalties for violation of the laws in G.S. 86A or any rules adopted by the Board. However, there are no cited any laws or rules that form the basis of the violations contained in this Rule.

The Commission objected to 21 NCAC 06Q .0101 based upon a lack of statutory authority with Commissioner Simpson voting against the objection. Specifically, the Commission found that the Board does not have authority to restrict the use of a barber pole to only licensees. In addition, the Board does not have authority to require an individual to "positively identify" a barber before having his or her hair cut.

The Commission objected to 21 NCAC 06Q .0104 based upon a lack of authority and ambiguity. Paragraphs (a) and (b) conflict with each other, and the application of the rule is unclear. In addition, the rule states that the Board will not act until it is satisfied with the individual's qualifications, but the rule does not state how satisfaction will be achieved. In addition, the rule appears to add requirements to G.S. 86A-3, which states there are four criteria for receiving a barber certificate. The Board does not have authority to add to the statutory criteria.

Dennis Seavers, with the Board, addressed the Commission.

Interpreter and Transliterator Licensing Board

21 NCAC 25 .0205 was unanimously approved.

Respiratory Care Board

21 NCAC 61 .0202 was unanimously approved.

LOG OF RULES (TEMPORARY RULES)

Commission for Public Health

10A NCAC 41A .0101 was unanimously approved.

15A NCAC 18A .1971 was unanimously approved.

EXISTING RULES REVIEW

Alcoholic Beverage Control Commission

14B NCAC 15B – The Commission unanimously approved the report as submitted by the agency.

Department of Revenue

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

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

17 NCAC 12 – The Commission unanimously approved the report as submitted by the agency.

Property Tax Commission

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

State Human Resources Commission

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

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

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

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

Department of Insurance

11 NCAC 18, 11 NCAC 20, and 11 NCAC 21 - As reflected in the attached letter, the Commission voted to schedule readoption of these Rules pursuant to G.S. 150B-21.3A(d)(2) no later than November 30, 2017.

COMMISSION BUSINESS

Staff gave the Commission a brief legislative update.

Commissioner Dunklin gave the Commission a brief update on the status of the lawsuit by the State Board of Education against the Rules Review Commission.

The meeting adjourned at 11:05 a.m.

The next regularly scheduled meeting of the Commission is Thursday, July 21st 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

June 16, 2016

Rules Review Commission
Meeting
Please Print Legibly

Name	Agency
Doug Lassiter	NC Septic Tank Assoc
Beverly Spero ff	NC DHHS DHSR
Nadine Pfeiffer	NC DHHS DHSR
Elizabeth Pope	NC Social Work Licensure Board
Ann Preston	NC DEQ - HWS
Janice Davidson	NC DOR
JOHN SEIBERT	NC DOR
Bill Croft	NC RCB
Dennis Seavers	BRE
Evan Allen	State Capitol Police
Carlin Schwab	NCITLB
Mike Bann	NC DOR
David Lingerfelt	NC DOR
Laura Hansford	NC DOR
Mary Ellen Jorgensen	NC DOR
Lauren Eamhardt	NC DOJ / NC CJETS
Jennifer Everett	DEQ
Derek Hunter	DOJ
Elizabeth Kantis	DEQ
Jeff Poleg	Commissioner
Trevor Allen	DOJ CJETS!

June 16, 2016

Rules Review Commission
Meeting
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STATE OF NORTH CAROLINA
OFFICE OF ADMINISTRATIVE HEARINGS

Mailing address:
6714 Mail Service Center
Raleigh, NC 27699-6714

Street address:
1711 New Hope Church Rd
Raleigh, NC 27609-6285

June 17, 2016

Loretta Peace-Bunch
Department of Insurance
1201 Mail Service Center
Raleigh, NC 27699-1201

Re: Readoption pursuant to G.S. 150B-21.3A(c)(2)g of 11 NCAC 18, 11 NCAC 20, 11 NCAC 21

Dear Ms. Peace-Bunch:

Attached to this letter are the rules subject to readoption pursuant to the periodic review and expiration of existing rules as set forth in G.S. 150B-21.3A(c)(2)g. After consultation with your agency, this set of rules was discussed at the June 16, 2016 Rules Review Commission meeting regarding the scheduling of these rules for readoption. **Pursuant to G.S. 150B-21.3A(d)(2), the rules identified on the attached printout shall be readopted by the agency no later than November 30, 2017.**

If you have any questions regarding the Commission's action, please let me know.

Sincerely,

A handwritten signature in blue ink, appearing to read "Amanda J. Reeder", is written over the typed name and title.

Amanda J. Reeder
Commission Counsel

Enclosure

Administration
919/431-3000
fax: 919/431-3100

Rules Division
919/431-3000
fax: 919/431-3104

Judges and
Assistants
919/431-3000
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Clerk's Office
919/431-3000
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Rules Review
Commission
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Civil Rights
Division
919/431-3036
fax: 919/431-3103

An Equal Employment Opportunity Employer

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**RRC DETERMINATION
PERIODIC RULE REVIEW
July 01, 2014 through June 30, 2015
Insurance, Department of
Total: 10**

RRC Determination: Necessary with substantive public interest

Rule	Determination	APO Review Date
<u>11 NCAC 18 .0103</u>	Necessary with substantive public interest	December 16, 2014
<u>11 NCAC 20 .0202</u>	Necessary with substantive public interest	December 16, 2014
<u>11 NCAC 20 .0203</u>	Necessary with substantive public interest	December 16, 2014
<u>11 NCAC 20 .0204</u>	Necessary with substantive public interest	December 16, 2014
<u>11 NCAC 20 .0301</u>	Necessary with substantive public interest	December 16, 2014
<u>11 NCAC 20 .0302</u>	Necessary with substantive public interest	December 16, 2014
<u>11 NCAC 20 .0404</u>	Necessary with substantive public interest	December 16, 2014
<u>11 NCAC 20 .0410</u>	Necessary with substantive public interest	December 16, 2014
<u>11 NCAC 20 .0601</u>	Necessary with substantive public interest	December 16, 2014
<u>11 NCAC 21 .0106</u>	Necessary with substantive public interest	December 16, 2014