

**RULES REVIEW COMMISSION MEETING**  
**MINUTES**  
**May 21, 2020**

The Rules Review Commission met on Thursday, May 21, 2020 in the Commission Room at 1711 New Hope Church Road, Raleigh, North Carolina, and via telephone. The Commissioners held a telephonic meeting to ensure compliance with Executive Order 138, other orders limiting mass gatherings, and to encourage social distancing. The meeting was conducted in accordance with the provisions of G.S. 166A-19.24.

Commissioners Jeff Hyde and Tommy Tucker were present in the Commission Room, and Commissioners present via teleconference were Andrew Atkins, Anna Baird Choi, Bobby Bryan, Margaret Currin, Jeanette Doran, Garth Dunklin, Brian LiVecchi, and Paul Powell.

Staff members present were Commission Counsel, Ashley Snyder and Amanda Reeder; and Alex Burgos. Amber Cronk May, Commission Counsel, was present via teleconference.

The meeting was called to order at 9:00 a.m. with Chairman Hyde presiding.

The Chair 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 Hyde asked for any discussion, comments, or corrections concerning the minutes of the April 16, 2020 meeting. There were none and the minutes were approved as distributed.

Upon the call of the Chair, the minutes were approved by roll-call vote, ayes 9, noes 0 as follows: Voting in the affirmative: Atkins, Bryan, Choi, Currin, Doran, Dunklin, LiVecchi, Tucker, and Powell – 9. Voting in the negative: None.

The Chair notified the Commissioners that the following item on the agenda would be taken up out of order at the end of the agenda: Temporary rule for the Executive Director of the Board of Elections.

**FOLLOW UP MATTERS**

**Structural Pest Control Committee**

02 NCAC 34 .0302, .0309, .0328, .0331, .0501, .0502, .0503, .0504, .0505, .0506, .0602, .0703, and .1206 – Upon the call of the Chair, the rules were approved by roll-call vote, ayes 9, noes 0 as follows: Voting in the affirmative: Atkins, Bryan, Choi, Currin, Doran, Dunklin, LiVecchi, Tucker, and Powell – 9. Voting in the negative: None.

**Board of Elections**

08 NCAC 10B .0103 - Upon the call of the Chair, the rule was approved by roll-call vote, ayes 9, noes 0 as follows:

Voting in the affirmative: Atkins, Bryan, Choi, Currin, Doran, Dunklin, LiVecchi, Tucker, and Powell – 9. Voting in the negative: None.

**Medical Care Commission**

10A NCAC 13F .0202, .0204, .0208, .0209, .0212; and 13G .0202, .0204, .0208, .0209, .0212, and .0213 - Upon the call of the Chair, the rules were approved by roll-call vote, ayes 9, noes 0 as follows: Voting in the affirmative: Atkins, Bryan, Choi, Currin, Doran, Dunklin, LiVecchi, Tucker, and Powell – 9. Voting in the negative: None.

**Commission for the Blind**

The agency is addressing the objections for 10A NCAC 63C .0203, .0204, .0403, and .0601. No action was required by the Commission.

**Department of Insurance**

The agency is addressing the objections for 11 NCAC 12 .0321 and .0514. No action was required by the Commission.

**Private Protective Services Board**

14B NCAC 16 .0109 and .0704 - Upon the call of the Chair, the rules were approved by roll-call vote, ayes 9, noes 0 as follows:

Voting in the affirmative: Atkins, Bryan, Choi, Currin, Doran, Dunklin, LiVecchi, Tucker, and Powell – 9. Voting in the negative: None.

**Sedimentation Control Commission**

15A NCAC 04C .0103 and .0106 - Upon the call of the Chair, the rules were approved by roll-call vote, ayes 9, noes 0 as follows:

Voting in the affirmative: Atkins, Bryan, Choi, Currin, Doran, Dunklin, LiVecchi, Tucker, and Powell – 9. Voting in the negative: None.

**Auctioneer Licensing Board**

The agency is addressing the technical changes for 21 NCAC 04B .0101, .0102, .0103, .0104, .0201, .0202, .0203, .0301, .0302, .0303, .0401, .0402, .0403, .0404, .0405, .0501, .0502, .0503, .0504, .0505, .0506, .0601, .0602, .0603, .0604, .0605, .0606, .0607, .0701, .0801, .0802, .0803, .0804, .0805, .0806, .0807, .0808, .0809, .0810, .0811, .0812, .0813, .0814, .0815, .0816, .0817, .0818, and .0819. No action was required by the Commission.

**Board of Examiners for Engineers and Surveyors**

The agency is addressing the technical changes for 21 NCAC 56 .0303, .0304, .0501, .0503, .0601, .0603, .0804, .0902, .1301, .1302, .1403, .1603, .1604, and .1607. No action was required by the Commission.

**Building Code Council**

Residential Code, N1106.2 (R406.2); Energy Conservation Code, R202; and Energy Conservation Code R406.2. – Upon the call of the Chair, the rules were objected to by roll-call vote, ayes 9, noes 0 as follows:

Voting in the affirmative: Atkins, Bryan, Choi, Currin, Doran, Dunklin, LiVecchi, Tucker, and Powell – 9. Voting in the negative: None.

The Commission objected to these Rules for failure to comply with the APA. Specifically, the agency stated that no fiscal note was required for these Rules in its Notice of Text, published May 15, 2019. Pursuant to G.S. 150B-21.9(a), following a request from the public, the RRC sent the rules to the Office of State Budget Management (OSBM) to determine if these rules created a substantial economic impact. In a letter dated May 11, 2020, OSBM stated that fiscal note was required for these three rules.

Therefore, pursuant to G.S. 150B-21.4(b1) and 150B-21.9(a)(4), the Commission found that the agency did not comply with the APA.

## **LOG OF FILINGS (PERMANENT RULES)**

### **Pesticide Board**

Upon the call of the Chair, the period of review was extended for the following rules to by roll-call vote, ayes 9, noes 0 as follows:

Voting in the affirmative: Atkins, Bryan, Choi, Currin, Doran, Dunklin, LiVecchi, Tucker, and Powell – 9. Voting in the negative: None.

The Commission extended the period of review for 02 NCAC 09L .0101, .0102, .0103, .0308, .0310, .0317, .0318, .0402, .0502, .0503, .0504, .0505, .0509, .0515, .0516, .0519, .0520, .0522, .0523, .0524, .0525, .0526, .0527, .0529, .0602, .0603, .0701, .0702, .0703, .0705, .0707, .0810, .1001, .1002, .1003, .1005, .1006, .1009, .1102, .1103, .1104, .1105, .1107, .1108, .1109, .1111, .1201, .1202, .1302, .1303, .1305, .1306, .1401, .1402, .1404, .1805, .1806, .1901, .1902, .1905, .1906, .1907, .1908, .1909, .1914, .2001, .2002, .2003, .2004, .2201, .2202, and .2203. in accordance with G.S. 150B-21.10. They did so in response to a request from the Pesticide Board to extend the period in order to allow the agency to address the requested technical changes and submit the revised rules at a later meeting.

Upon the call of the Chair, the Commission objected to 02 NCAC 09L .1913 by roll-call vote, ayes 9, noes 0 as follows:

Voting in the affirmative: Atkins, Bryan, Choi, Currin, Doran, Dunklin, LiVecchi, Tucker, and Powell – 9. Voting in the negative: None.

The Commission objected to 02 NCAC 09L .1913 for lack of clarity and lack of necessity. The Rule is repetitive of the effective date contained in the history note and is therefore unnecessary. The Rule also does not specify whether the term “these Rules” refers to the rules of this Section or the rules of this Subchapter, making it unclear.

### **Parks and Recreation Authority**

Upon the call of the Chair, the rules were approved by roll-call vote, ayes 9, noes 0 as follows:

Voting in the affirmative: Atkins, Bryan, Choi, Currin, Doran, Dunklin, LiVecchi, Tucker, and Powell – 9. Voting in the negative: None.

### **Department of Transportation**

Upon the call of the Chair, the rules were approved by roll-call vote, ayes 9, noes 0 as follows:

Voting in the affirmative: Atkins, Bryan, Choi, Currin, Doran, Dunklin, LiVecchi, Tucker, and Powell – 9. Voting in the negative: None.

### **Real Estate Commission –**

Upon the call of the Chair, the rules were approved with the exception of 21 NCAC 58H .0401 by roll-call vote, ayes 8, noes 0 as follows:

Voting in the affirmative: Atkins, Bryan, Choi, Currin, Doran, LiVecchi, Tucker, and Powell – 8. Voting in the negative: None.

Upon the call of the Chair, the Commission extended the period of review for 21 NCAC 58H .0401 in by roll-call vote, ayes 8, noes 0 as follows:

Voting in the affirmative: Atkins, Bryan, Choi, Currin, Doran, LiVecchi, Tucker, and Powell – 8. Voting in the negative: None.

The Commission extended the period of review for 21 NCAC 58H .0401 in accordance with G.S. 150B-21.10. They did so in response to a request from the agency to extend the period in order to allow the agency to address public comments received regarding this Rule.

Prior to the review of the rules from the Real Estate Commission, Commissioner Dunklin recused himself and did not participate in any discussion or vote concerning the rules because he practices before the NC Real Estate Commission and have been involved in discussions regarding these Rules.

### **Building Code Council**

Upon the call of the Chair, the rules were approved by roll-call vote, ayes 9, noes 0 as follows:

Voting in the affirmative: Atkins, Bryan, Choi, Currin, Doran, Dunklin, LiVecchi, Tucker, and Powell – 9. Voting in the negative: None.

The Commission received over 10 letters of objection to the NC Plumbing Code, Sections 702.1, 702.4, 1102.2, and 1102.7. Pursuant to G.S. 150B-21.3, these Rules are subject to legislative review and a delayed effective date.

### **LOG OF FILINGS (TEMPORARY RULES)**

Prior to the review of the temporary rule from the Executive Director of the Board of Elections, the Chair called the meeting into a brief recess at 9:56 a.m. The meeting resumed at 10:06 a.m.

During the review of the temporary rule from the Executive Director of the Board of Elections, the Chair called the meeting into a brief recess at 10:37 a.m. The meeting resumed at 10:42 a.m.

### **Executive Director of the Board of Elections**

08 NCAC 01 .0106 - Upon the call of the Chair, the Commission declined to approve the Rule by roll-call vote, ayes 9, noes 0 as follows:

Voting in the affirmative: Atkins, Bryan, Choi, Currin, Doran, Dunklin, LiVecchi, Tucker, and Powell – 9. Voting in the negative: None. The vote was in accordance with G.S. 150B-21.1(b) and G.S. 150B-21.9.

The Commission determined that the Rule did not meet the criteria to qualify as a temporary rule under G.S. 150B-21.1(a). Specifically, the Commission found that the agency failed to show that adherence to notice and hearing requirements required for permanent rulemaking were contrary to the public interest for this amendment, such that immediate adoption would be required.

Further, the Commission objected to this Rule based on lack of statutory authority as set forth in G.S. 150B-21.9(a)(1). Specifically, the Commission found that the agency does not have the authority to expand the definition of “natural disaster” as proposed in Part (b)(1)(H) of the Rule.

The Commission also found Part (b)(1)(H) contained unclear language. As such, the Commission also objected based upon ambiguity, as set forth in G.S. 150B-21.9(a)(2).

In addition, the Commission found that the agency failed to provide notice to the public that the language in Paragraph (d) would be added to the Rule. As such, the Commission objected for lack of notice required by G.S. 150B-21.1(a3).

Jay DeLancy, with the Voter Integrity Project of North Carolina, Addressed the Commission.

Andy Jackson, with the Civitas Institute, addressed the Commission.

Katelyn Love, with the agency, addressed the Commission.

### **Wildlife Resources Commission**

15A NCAC 10F .0317 and .0327 - Upon the call of the Chair, the Rules were approved by roll-call vote, ayes 9, noes 0 as follows:

Voting in the affirmative: Atkins, Bryan, Choi, Currin, Doran, Dunklin, LiVecchi, Tucker, and Powell – 9. Voting in the negative: None.

#### **Board of Barber Examiners**

21 NCAC 06F .0128 and 06N .0111 - Upon the call of the Chair, the Rules were approved by roll-call vote, ayes 9, noes 0 as follows: Voting in the affirmative: Atkins, Bryan, Currin, Doran, Dunklin, LiVecchi, Tucker, and Powell – 8. Voting in the negative: None.

Prior to the review of the rules from the Board of Barber Examiners, Commissioner Choi recused herself and did not participate in any discussion or vote concerning the rules because her law firm provides legal services to the Board.

#### **State Board of Opticians**

21 NCAC 40 .0113 - Upon the call of the Chair, the Rule was approved by roll-call vote, ayes 5, noes 3 as follows: Voting in the affirmative: Atkins, Bryan, Currin, Doran, Dunklin–5. Voting in the negative: LiVecchi, Tucker, and Powell - 3.

Catherine Lee, with the agency, addressed the Commission.

Prior to the review of the rules from the State Board of Opticians, Commissioner Choi recused herself and did not participate in any discussion or vote concerning the rules because her law firm provides legal services to the Board.

#### **Respiratory Care Board**

21 NCAC 61 .0901 - Upon the call of the Chair, the Rule was approved by roll-call vote, ayes 8, noes 1 as follows:

Voting in the affirmative: Atkins, Bryan, Choi, Currin, Doran, Dunklin, LiVecchi, and Powell – 8. Voting in the negative: Tucker-1.

#### **COMMISSION BUSINESS**

The meeting adjourned at 11:48 a.m.

The next regularly scheduled meeting of the Commission is Thursday, June 18, 2020 at 9:00 a.m.

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Alexander Burgos, Paralegal

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Minutes approved by the Rules Review Commission:  
Jeff Hyde, Chair

### Telephonic Attendees

<b>Agency</b>	<b>Name</b>
Structural Pest Control Committee	Jim Burnette
Structural Pest Control Committee	Victor Lennon
Structural Pest Control Committee	Richard Willis
Structural Pest Control Committee	Roger Bryan
Board of Elections	Katelyn Love
Medical Care Commission	Nadine Pfeiffer
Medical Care Commission	Ibtisam Zatari
Medical Care Commission	Tichina Hamer
Department of Insurance	Loretta Bunch
DEQ	Jennifer Everett
Auctioneer Licensing Board	Charlie Diehl
Building Code Council	Carl Martin
Pesticide Board	Pat Jones
DNCR	Mariah Street
Department of Transportation	Helen Landi
Department of Transportation	Hannah Jernigan
Department of Transportation	Ebony Pittman
Department of Transportation	David Harris
Real Estate Commission	Melissa Vuotto
Real Estate Commission	Rob Padgett
State Board of Elections	Katelyn Love
Civitas Institute	Andy Jackson
Voter Integrity Project	Jay DeLancy
Wildlife Resources Commission	Michael Smallwood
Wildlife Resources Commission	Betsy Haywood
Board of Barber Examiners	Dennis Seavers
Respiratory Care Board	Bill Croft
Opticians	Catherine Lee
Opticians	Sue Hodgins
DES	Regina Adams
Citizen	Trina Smith
Transparent Elections NC	Lynne Bernstein
Citizen of Wake County	Tripp Black
DHHS	Meghan Lamphere
Citizen of Wake County	Nicole Black
NC GOP	David Harris
Citizen of Onslow County	Steve Stephenson

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