

**RULES REVIEW COMMISSION MEETING
MINUTES
November 21, 2019**

The Rules Review Commission met on Thursday, November 21, 2019, in the Commission Room at 1711 New Hope Church Road, Raleigh, North Carolina. Commissioners present were Andrew Atkins, Anna Baird Choi, Bobby Bryan, Margaret Currin, Jeanette Doran, Garth Dunklin, Brian LiVecchi, Paul Powell, and Tommy Tucker.

Staff members present were Commission Counsel Amber Cronk May, Ashley Snyder, and Amanda Reeder; and Julie Brincefield, Alex Burgos, and Dana McGhee.

The meeting was called to order at 9:02 a.m. with Vice-Chair Doran presiding.

Vice-Chair Doran 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

Vice-Chair Doran asked for any discussion, comments, or corrections concerning the minutes of the October 17, 2019 meeting. There were none and the minutes were approved as distributed.

The Vice-Chair notified the Commissioners that the following items on the agenda would be taken up out of order at the end of the agenda: Temporary Rules for the State Board of Education.

FOLLOW UP MATTERS

Department of Administration

01 NCAC 05B .1520 was unanimously approved.

Board of Elections

The agency is addressing the objection for 08 NCAC 10B .0103. No action was required by the Commission.

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 Justice

12 NCAC 02I .0306 was withdrawn at the request of the agency. No action was required by the Commission.

Private Protective Services Board

14B NCAC 16 .0804 was unanimously approved.

Environmental Management Commission

The agency is addressing the technical change requests from the October meeting for 15A NCAC 02B .0229, .0232, .0234, .0235, .0236, .0237, .0238, .0239, .0240, .0255, .0256, .0257, .0258, .0701, and .0730 - No action was required by the Commission.

Environmental Management Commission

15A NCAC 02B .0402, .0403, .0404, .0406, .0407, .0408, .0501, .0502, .0503, .0504, .0505, .0506, .0508, .0511; 02H .0101, .0102, .0103, .0105, .0106, .0107, .0108, .0109, .0111, .0112, .0113, .0114, .0115, .0116, .0117, .0118, .0120, .0121, .0124, .0125, .0127, .0138, .0139, .0140, .0141, .0142, .0143, .0401, .0402, .0403, .0404, .0405, .0406, .0407, .1201, .1202, .1203, .1204, .1205, and .1206

- The agency is addressing the objections from the July meeting. The Commission renewed its objection.

Commissioner Bryan joined the meeting during the discussion of the rules from the Environmental Management Commission.

Board of Dietetics/Nutrition

21 NCAC 17 .0101 and .0303 were unanimously approved.

Commissioner LiVecchi joined the meeting during the discussion of the rules from the Board of Dietetics/Nutrition.

Board of Funeral Service

21 NCAC 34A .0201 was unanimously approved.

21 NCAC 34B .0310; 34C .0305; 34D .0105, .0203, and .0303 were withdrawn at the request of the agency. No action was required by the Commission.

Prior to the review of the rules from the Board of Funeral Service, Commissioner Choi recused herself and did not participate in any discussion or vote concerning the rules because her law firm represented the Board at the time the rules were submitted.

State Board of Opticians

21 NCAC 40 .0104, .0109, .0209, .0314, .0319, 0323, and .0325 were unanimously approved.

21 NCAC 40 .0321 - The agency is addressing the objections and requests for technical changes from the September meeting.

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 represents the Board and assists the Board with rulemaking.

LOG OF FILINGS (PERMANENT RULES)

Department of Natural and Cultural Resources

All rules were unanimously approved.

Department of Health and Human Services

All rules were unanimously approved.

Sheriffs' Education and Training Standards Commission

All rules were unanimously approved.

Alcoholic Beverage Control Commission

All rules were unanimously approved with the following exceptions:

The Commission extended the period of review for 14B NCAC 15A .1406 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 additional time to prepare a response to a staff opinion issued on the rule.

14B NCAC 15A .1101 was withdrawn at the request of the agency. No action was required by the Commission.

Real Estate Commission

All rules were unanimously approved.

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 Commission.

Building Code Council

All rules were unanimously approved with the following exceptions:

Residential Code, N1106.2 (R406.2); Energy Conservation Code, R202; and Energy Conservation Code R406.2. – The Commission voted pursuant to G.S. 150B-21.9 to ask the Office of State Budget and Management to determine if the above-referenced rules have a substantial economic impact and therefore require a fiscal note. A response to this request pursuant to G.S. 150B-21.9 will assist the Commission in determining whether the agency adopted the rules in accordance with the Administrative Procedure Act.

These Rules will remain under the Commission's review until after review by OSBM and subsequent action by the agency pursuant to G.S. 150B-21.12.

LOG OF FILINGS (TEMPORARY RULES)

Wildlife Resources Commission

15A NCAC 10A .1601 and 10L .0101 were approved with Commissioner Tucker voting against.

Michael Smallwood, with the agency, addressed the Commission.

Commission for Public Health

15A NCAC 18A .2508 and .2543 were unanimously approved.

State Board of Education

16 NCAC 06C .0326, .0329, .0334, .0335, .0336, .0337, .0338, .0339, .0340, .0341, .0342, .0343, .0344, .0345, and .0346.

The Commission found that the statements of the findings of need as provided in the Temporary Findings of Need Forms did not meet the criteria set forth in G.S. 150B-21.1(a) and also that the rules did not meet the standards set forth in G.S. 150B-21.9.

The Temporary Findings of Need Forms for these Rules indicate that the agency engaged in temporary rulemaking as a result of a recent act of the General Assembly, specifically S.L. 2019-149. Box 7 of the Forms state that "the General Assembly directed the State Board of Education to adopt by October 1, 2019, a rule required by N.C. Gen. Stat. 115C-269.45(c1)." Box 5 of the Forms indicate that the State Board of Education did not adopt these Rules until November 7, 2019. The Commission did not approve these Rules because the adoption date of these Rules was after October 1, 2019 and therefore, the State Board of Education lacked the statutory authority for temporary rule making.

In addition, the Commission objected to all rules except for .0340, which specifically addresses the small group exception referenced by Section 2 of S.L. 2019-149, for lack of statutory authority. The Commission found that the remaining rules are beyond the limited and narrow scope of the mandate provided in the Section 2 of S.L. 2019-149 as referenced on the Findings of Need Forms.

The Commission also objected to 16 NCAC 06C .0339 and .0342 through .0346 for clarity. The Commission determined that it was unclear whether these Rules create sanctions in addition to those

provided in G.S. 115C-269.45(a)(1) through (3) or whether the intent is to address the “performance measures” as referenced by the same.

Finally, the Commission objected to 16 NCAC 06C .0346 for lack of statutory authority, finding that this Rule as filed directly contradicts G.S. 115C-269.45. Specifically, Paragraph (b) of this Rule allows for “an EPP on revoked status” to “continue to admit students...”; however, G.S. 115C-269.45(b)(2) states “upon assignment of revoked status of EPP approval, the EPP shall not admit new students.” Further, Paragraph (c) of this Rule provides an EPP the ability to recommend students for licensure for two years once it is placed on revoked status; however, G.S. 115C-269.45(a)(3) states that “an EPP shall be assigned revoked status and its approval to recommend students for educator licensure revoked...” when specific requirements are met.

Commissioner LiVecchi voted against the objections.

Eric Snider, the rulemaking coordinator with the agency, addressed the Commission.

Real Estate Commission

21 NCAC 58A .0305 was unanimously approved.

Prior to the review of the rule from the Real Estate Commission, Commissioner Dunklin recused himself and did not participate in any discussion or vote concerning the rule because he practices before the Commission.

EXISTING RULES REVIEW

Department of Revenue

17 NCAC 07 – As reflected in the attached letter, the Commission voted to schedule readoption of the rules no later than December 31, 2023 pursuant to G.S. 150B-21.3A(d)(2).

COMMISSION BUSINESS

The Commission reviewed the 2020 RRC meeting dates.

The meeting adjourned at 10:37 a.m.

The next regularly scheduled meeting of the Commission is Thursday, December 19, 2019 at 9:00 a.m.

Alexander Burgos, Paralegal

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

November 21, 2019

Rules Review Commission
Meeting
Please Print Legibly

Name	Agency
Susan Broadwell	NC Dept of Revenue
Virginia Niehaus	IVE DHHS, PPH
Hannah Jennigan	NCDOT
Heidi Martin	SBE
Janice Davidson	NC DOR
ANDREW SIOBERG	SBE
KIM EVANS	SBE
Diane Konopila	DOJ- Sheriff's Stds.
Cheryl Osley	DHHS
M. Smallwood	NC WRC
Eric Snider	State Board of Ed.
Sue Hodgins	State Board of Opticians
Larry Mitchell	NCDHHS
Rob Patrick	NCREC
Meissa Wotto	NCREC
Shannon Gerger	NC DOA
Martha Turner-Orest	NCPA
WALKER REAGAN	ABC Commission
Marian Street	NC DWCR
John Barkley	DOJ for CPH DHHS
Joel Johnson	DHHS

November 21, 2019

Rules Review Commission
Meeting
Please Print Legibly

[illegible]



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

November 21, 2019

Janice Davidson, Rulemaking Coordinator
Department of Revenue, Sales and Use Tax Division
PO Box 871
Raleigh, NC 27602

Re: Readoption pursuant to G.S. 150B-21.3A(c)(2)g of 17 NCAC 07

Dear Ms. Davidson:

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 November 21, 2019 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 December 31, 2023.

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

Sincerely,

A handwritten signature in dark ink, appearing to read "Amber May", is written over a horizontal line.

Amber May
Commission Counsel

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

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

Judges and
Assistants
919/431-3000
fax: 919/431-3100

Clerk's Office
919/431-3000
fax: 919/431-3100

Rules Review
Commission
919/431-3000
fax: 919/431-3104

Civil Rights
Division
919/431-3036
fax: 919/431-3103

An Equal Employment Opportunity Employer

**RRC DETERMINATION
PERIODIC RULE REVIEW
March 21, 2019
APO Review: May 25, 2019
Total: 96**

Revenue, Department of

Rule	Determination
17 <u>NCAC 07B .0104</u>	Necessary with substantive public interest
17 <u>NCAC 07B .0106</u>	Necessary with substantive public interest
17 <u>NCAC 07B .0108</u>	Necessary with substantive public interest
17 <u>NCAC 07B .0112</u>	Necessary with substantive public interest
17 <u>NCAC 07B .0115</u>	Necessary with substantive public interest
17 <u>NCAC 07B .0117</u>	Necessary with substantive public interest
17 <u>NCAC 07B .0121</u>	Necessary with substantive public interest
17 <u>NCAC 07B .0801</u>	Necessary with substantive public interest
17 <u>NCAC 07B .0901</u>	Necessary with substantive public interest
17 <u>NCAC 07B .0902</u>	Necessary with substantive public interest
17 <u>NCAC 07B .0904</u>	Necessary with substantive public interest
17 <u>NCAC 07B .1101</u>	Necessary with substantive public interest
17 <u>NCAC 07B .1123</u>	Necessary with substantive public interest
17 <u>NCAC 07B .1202</u>	Necessary with substantive public interest
17 <u>NCAC 07B .1301</u>	Necessary with substantive public interest
17 <u>NCAC 07B .1302</u>	Necessary with substantive public interest
17 <u>NCAC 07B .1303</u>	Necessary with substantive public interest
17 <u>NCAC 07B .1305</u>	Necessary with substantive public interest
17 <u>NCAC 07B .1404</u>	Necessary with substantive public interest
17 <u>NCAC 07B .1601</u>	Necessary with substantive public interest
17 <u>NCAC 07B .1602</u>	Necessary with substantive public interest
17 <u>NCAC 07B .1605</u>	Necessary with substantive public interest
17 <u>NCAC 07B .1701</u>	Necessary with substantive public interest
17 <u>NCAC 07B .1702</u>	Necessary with substantive public interest
17 <u>NCAC 07B .1704</u>	Necessary with substantive public interest
17 <u>NCAC 07B .1705</u>	Necessary with substantive public interest
17 <u>NCAC 07B .1801</u>	Necessary with substantive public interest
17 <u>NCAC 07B .1905</u>	Necessary with substantive public interest
17 <u>NCAC 07B .1907</u>	Necessary with substantive public interest
17 <u>NCAC 07B .2001</u>	Necessary with substantive public interest
17 <u>NCAC 07B .2002</u>	Necessary with substantive public interest
17 <u>NCAC 07B .2101</u>	Necessary with substantive public interest
17 <u>NCAC 07B .2102</u>	Necessary with substantive public interest
17 <u>NCAC 07B .2105</u>	Necessary with substantive public interest
17 <u>NCAC 07B .2201</u>	Necessary with substantive public interest

17	<u>NCAC 07B .4411</u>	Necessary with substantive public interest
17	<u>NCAC 07B .4413</u>	Necessary with substantive public interest
17	<u>NCAC 07B .4415</u>	Necessary with substantive public interest
17	<u>NCAC 07B .4503</u>	Necessary with substantive public interest
17	<u>NCAC 07B .4510</u>	Necessary with substantive public interest
17	<u>NCAC 07B .4609</u>	Necessary with substantive public interest
17	<u>NCAC 07B .4614</u>	Necessary with substantive public interest
17	<u>NCAC 07B .4701</u>	Necessary with substantive public interest
17	<u>NCAC 07B .4707</u>	Necessary with substantive public interest
17	<u>NCAC 07B .4708</u>	Necessary with substantive public interest
17	<u>NCAC 07B .4716</u>	Necessary with substantive public interest
17	<u>NCAC 07B .4801</u>	Necessary with substantive public interest
17	<u>NCAC 07B .4802</u>	Necessary with substantive public interest
17	<u>NCAC 07B .4803</u>	Necessary with substantive public interest
17	<u>NCAC 07B .5001</u>	Necessary with substantive public interest
17	<u>NCAC 07B .5002</u>	Necessary with substantive public interest
17	<u>NCAC 07B .5004</u>	Necessary with substantive public interest