

**RULES REVIEW COMMISSION MEETING
MINUTES
October 18, 2018**

The Rules Review Commission met on Thursday, October 18, 2018, in the Commission Room at 1711 New Hope Church Road, Raleigh, North Carolina. Commissioners present were: Andrew Atkins, Bobby Bryan, Anna Baird Choi, Margaret Currin, Jeanette Doran, Garth Dunklin, and Jeff Hyde.

Staff members present were Commission Counsels Amber Cronk May, Amanda Reeder, and Jason Thomas; and Alex Burgos, Dana McGhee, and Cathy Matthews-Thayer.

The meeting was called to order at 10:03 a.m. with Chairman Dunklin presiding.

Chairman Dunklin read the notice required by G.S. 163A-159 and reminded the Commission members that they have a duty to avoid conflicts of interest and the appearances of conflicts of interest.

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

Brian P. LiVecchi will fill the role of a public member on the Commission. He is the owner and incorporator of the LiVecchi Law Office, PA, a law firm which could represent clients that come before the Commission during the rulemaking process. Thus, he has the potential for conflicts of interest and should exercise appropriate caution in the performance of his public duties should issues involving the law firm or any of the firm's clients come before the Commission for official action.

APPROVAL OF MINUTES

Chairman Dunklin asked for any discussion, comments, or corrections concerning the minutes of the September 20, 2018 meeting. There were none and the minutes were approved as distributed.

FOLLOW UP MATTERS

Commission of Navigation and Pilotage for the Cape Fear River and Bar

The agency is addressing the objections for 04 NCAC 15 .0119, .0121, .0123, .0124, .0127, and .0128. No action was required by the Commission.

Board of Elections and Ethics Enforcement

08 NCAC 05 .0111; 16 .0101, .0102, .0104; 18 .0102 – The rewritten rules were unanimously approved.

The agency is addressing the objections for 08 NCAC 02 .0112, .0113; 03 .0101, .0102, .0103, .0104, .0105, .0106, .0201, .0202, .0301, .0302; 04 .0302, .0304, .0305, .0306, .0307; 06B .0103, .0104, .0105; 08 .0104; 09 .0106, .0107, .0108, .0109; 10B .0101, .0102, .0103, .0104, .0105, .0106, .0107. No action was required by the Commission.

Prior to the review of the rules from the Board of Elections and Ethics Enforcement, Commissioner Doran recused herself and did not participate in any discussion or vote concerning the rules because she has a matter pending before the Board.

DHHS/Division of Medical Assistance

The agency is addressing the objections for 10A NCAC 22F .0301 and 22J .0106. 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.

Criminal Justice Education and Training Standards Commission

The agency is addressing the objection to 12 NCAC 09G .0103, and technical change requests for 12 NCAC 09B .0101, .0203, .0301; 09G .0102, .0304, .0504, .0505, .0701. No action was required by the Commission.

Water Pollution Control System Operator Certification Commission

The agency is addressing the objections to 15A NCAC 08F .0406 and 08G .0802. No action was required by the Commission.

Commission for Public Health

15A NCAC 18A .1934, .1935, .1937, .1938, .1939, .1940, .1941, .1942, .1943, .1944, .1945, .1946, .1947, .1948, .1949, .1950, .1951, .1952, .1953, .1954, .1955, .1956, .1957, .1958, .1959, .1960, .1961, .1962, .1964, .1965, .1966, .1967, .1968, .1969, .1970, .1971; 18E .0101, .0102, .0103, .0104, .0105, .0201, .0202, .0203, .0204, .0205, .0206, .0207, .0301, .0302, .0303, .0304, .0305, .0401, .0402, .0403, .0501, .0502, .0503, .0504, .0505, .0506, .0507, .0509, .0510, .0801, .0802, .0803, .0804, .0805, .1401, .1402, .1403, .1404, .1405, .1406, .1501, .1502, .1503, .1504, .1505, .1601, .1602, and .1603 – The rules were unanimously approved.

The Commission received over 10 letters of objection in accordance with G.S. 150B-21.3(b2), requesting a delayed effective date and legislative review of 15A NCAC 18E .0103, .0105, .0303, .0505, .0805, .1401, .1402 and .1404.

The agency is addressing the technical change requests for 15A NCAC 18E .0601, .0602, .0701, .0702, .0703, .0901, .0902, .0903, .0904, .0905, .0906, .0907, .0908, .0909, .0910, .0911, .1001, .1002, .1101, .1102, .1103, .1104, .1105, .1106, .1201, .1202, .1203, .1204, .1205, .1206, .1302, .1303, .1304, .1305, .1306, .1307, .1701, .1702, .1703, .1704, .1705, .1706, .1707, .1709, .1710, .1711, .1712, and .1713. No action was required by the Commission.

Board of Registration for Foresters

The agency is addressing the technical change requests for 21 NCAC 20 .0103 and .0104. No action was required by the Commission.

Board of Massage and Bodywork Therapy

21 NCAC 30 .1009 and .1010 – The rewritten rules were unanimously approved.

The Commission received over 10 letters of objection in accordance with G.S. 150B-21.3(b2), requesting a delayed effective date and legislative review of 21 NCAC 30 .1009 and .1010.

Prior to the review of the rules from the Board of Massage and Bodywork Therapy, Commissioner Atkins recused himself and did not participate in any discussion or vote concerning the rules because of a conflict.

LOG OF FILINGS (PERMANENT RULES)

Pre-Reviewed Rules

Department of Public Safety

14B NCAC 07C .0101 and .0102 were unanimously approved.

The Commission voted to extend the period of review for 14B NCAC 07A .0104, .0105, .0106, .0107, .0108, .0109, .0110, .0111, .0112, .0113, .0114, .0115, .0116, .0118, and .0119 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 requested technical changes.

14B NCAC 01C .0401 and .0402 – The Commission objected to 14B NCAC 01C .0401 based upon lack of statutory authority.

Specifically, the Commission found that a statute cited to as authority for this Rule, G.S. 160A-288.1, requires the rule to be “necessary to establish a plan under which temporary State law-enforcement assistance will be provided to the cities and counties.” This Rule does not do that; instead, it establishes agreements for the city or county to reimburse the costs after the Secretary provided the assistance. Therefore, there was no authority cited for this Rule.

In addition, G.S. 160A-288.1(c) states that all times, the State law-enforcement officer shall be considered an employee of the State for all purposes. However, in Items (1) through (3), the Rule states that the costs of employment, including pay, workers compensation, and fringe benefits, may be paid by the local government. There was no authority presented for the agency to offset all State employment requirements to local governments through rulemaking

The Commission objected to 14B NCAC 01C .0402 based upon lack of statutory authority and ambiguity.

Specifically, one of the statutes cited as authority for this Rule, G.S. 160A-288.1, states the rules shall be “necessary to establish a plan under which temporary State law-enforcement assistance will be provided to the cities and counties.” This Rule does not do that, but instead establishes the billing method for payment of an agreement. Therefore, there was no authority cited for this Rule.

In addition, the Rule is unclear as written, as it states that the Secretary shall send the notice “at such time as he determines.” There is no guidance in the Rule as to when this will happen and it is left entirely within the discretion of the Secretary.

Wildlife Resources Commission

All rules were unanimously approved.

Board of Dental Examiners

21 NCAC 16R .0201 was unanimously approved.

Non Pre-Reviewed Rules

Department of Labor

13 NCAC 15 .0208 was unanimously approved.

Locksmith Licensing Board

All rules were unanimously approved.

Midwifery Joint Committee

All rules were unanimously approved.

Prior to the review of the rules from the Midwifery Joint Committee, Commissioner Choi recused herself and did not participate in any discussion or vote concerning the rules because her law firm represents the Board of Nursing which has co-jurisdiction over the Midwifery Joint Committee.

Board of Physical Therapy Examiners

All rules were unanimously approved.

EXISTING RULES REVIEW

Medical Care Commission

10A NCAC 13K – The Commission unanimously approved the report as submitted by the agency.

State Registrar of Vital Statistics

10A NCAC 41H – The Commission unanimously approved the report as submitted by the agency.

Department of Revenue

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

Board of Opticians

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

Prior to the review of the rules from the 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 of Opticians and from time to time provides legal advice on rulemaking.

Department of Transportation/Division of Motor Vehicles

19A NCAC 03B, C, D, E, F, G, I, J - As reflected in the attached letter, the Commission voted to schedule readoption of the rules no later than October 31, 2021 pursuant to G.S. 150B-21.3A(d)(2).

Helen Landi, the rulemaking coordinator with the agency, addressed the Commission.

Commission for Public Health

15A NCAC 18A – The Rules Review Commission (RRC) considered a request of the Commission for Public Health (CPH) for an extension of the filing deadline to submit the Existing Rules Report (Report) for the rules referenced above. The RRC determined that the Report was not submitted in a timely manner, that the CPH has not fully conducted the review required by G.S. 150B-21.3A, and that the rules included in that Report expired pursuant to G.S. 150B-21.3A(b). Finally, the RRC determined that the rules expired as of October 15, 2018.

Pursuant to G.S. 150B-21.3A(d)(1), the RRC must establish a date by which review of titles of the Administrative Code is to be completed. If an agency fails to conduct the review by the date set by the RRC, the rules contained in that Title expire. The RRC set its November 2018 meeting as the date on which it would review the Report, pursuant to 26 NCAC 05 .0211. Under this schedule and pursuant to 26 NCAC 05 .0203(c), CPH was required to file the Report on or before October 15, 2018.

On October 16, 2018, staff received by attachment to email a letter dated October 15, 2018, in which Mr. Bob Martin, the former rulemaking coordinator for CPH, requested an extension of the Report filing deadline pursuant to 26 NCAC 05 .0204. The RRC denied this request.

In response to a question from the Codifier of Rules regarding the date on which the rules expired by operation of statute, the RRC determined that the rules expired on October 15, 2018, the date the Report was required to be filed pursuant to 26 NCAC 05 .0203(c).

Bob Martin, the rulemaking coordinator with the agency, addressed the Commission.

John Barkley, with the Attorney General's Office representing the agency, addressed the Commission.

Molly Masich, the Codifier of Rules with OAH, addressed the Commission.

COMMISSION BUSINESS

The Commission voted to change the start time of the RRC meetings from 10:00 a.m. to 9:00 a.m. starting at the November 2018 meeting. Additionally, lunch breaks, when appropriate, will be taken for longer RRC meetings. Agenda items can be taken out of order in future meetings in response to the requested number of speakers or the complexity of the issues presented.

The meeting adjourned at 11:47 a.m.

The next regularly scheduled meeting of the Commission is Thursday, November 15th at 10:00 a.m.

Alexander Burgos, Paralegal

Minutes approved by the Rules Review Commission:
Garth Dunklin, Chair

DRAFT

October 18, 2018

Rules Review Commission
Meeting
Please **Print** Legibly

Name	Agency
Mayorie Acker	DHSR
Nadine Pfeiffer	DHSR
Rahy Arney	NCBPTE
Doug Lassiter	NC STA
Michael Smallwood	NC WAC
Hannah Jennigan	NCDOT
Dubhine IRAGAN	NCBPTE
Clarence Ervin	DHSR
Angela Ellis	NCBON
Catheline Moore	NCBON
Katelyn Love	State Bd of Elections & Ethics
Tricia Angeli	OSWP, DPH
Kevin Neel	OSWP DPH
John Barkley	OS for DPH
David Leutz	Infiltrator water tech
Reed Forstner	YMH/NCLLB
Cindy Pfeiffer	DHSR
Sue Hodgins	State Board of Opticians
Amy Gulez	DHSR
Jerry Michel	DHHS
Chad Zwick	NCLLB

October 18, 2018

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

October 18, 2018

Helen Landi
DOT – Division of Motor Vehicles
1501 Mail Service Center
Raleigh, NC 27699

Re: Readoption pursuant to G.S. 150B-21.3A(c)(2)g of **19A NCAC 03B, C, D, E, F, G, I, and J**

Dear Ms. Landi:

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 October 18, 2018 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 October 31, 2021.

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

Sincerely,

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

Amber May
Commission Counsel

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Assistants
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An Equal Employment Opportunity Employer

**RRC DETERMINATION
PERIODIC RULE REVIEW
July 19, 2018
APO Review: September 22, 2018
DOT - Division of Motor Vehicles
Total: 113**

RRC Determination: Necessary with substantive public interest

Rule	Determination
<u>19A NCAC 03B .0103</u>	Necessary with substantive public interest
<u>19A NCAC 03B .0201</u>	Necessary with substantive public interest
<u>19A NCAC 03B .0301</u>	Necessary with substantive public interest
<u>19A NCAC 03B .0403</u>	Necessary with substantive public interest
<u>19A NCAC 03B .0702</u>	Necessary with substantive public interest
<u>19A NCAC 03B .0703</u>	Necessary with substantive public interest
<u>19A NCAC 03B .0704</u>	Necessary with substantive public interest
<u>19A NCAC 03B .0705</u>	Necessary with substantive public interest
<u>19A NCAC 03B .0706</u>	Necessary with substantive public interest
<u>19A NCAC 03B .0707</u>	Necessary with substantive public interest
<u>19A NCAC 03B .0709</u>	Necessary with substantive public interest
<u>19A NCAC 03B .0711</u>	Necessary with substantive public interest
<u>19A NCAC 03B .0801</u>	Necessary with substantive public interest
<u>19A NCAC 03C .0101</u>	Necessary with substantive public interest
<u>19A NCAC 03C .0102</u>	Necessary with substantive public interest
<u>19A NCAC 03C .0201</u>	Necessary with substantive public interest
<u>19A NCAC 03C .0202</u>	Necessary with substantive public interest
<u>19A NCAC 03C .0220</u>	Necessary with substantive public interest
<u>19A NCAC 03C .0221</u>	Necessary with substantive public interest
<u>19A NCAC 03C .0222</u>	Necessary with substantive public interest
<u>19A NCAC 03C .0223</u>	Necessary with substantive public interest
<u>19A NCAC 03C .0224</u>	Necessary with substantive public interest
<u>19A NCAC 03C .0225</u>	Necessary with substantive public interest
<u>19A NCAC 03C .0226</u>	Necessary with substantive public interest
<u>19A NCAC 03C .0227</u>	Necessary with substantive public interest
<u>19A NCAC 03C .0228</u>	Necessary with substantive public interest
<u>19A NCAC 03C .0229</u>	Necessary with substantive public interest
<u>19A NCAC 03C .0230</u>	Necessary with substantive public interest
<u>19A NCAC 03C .0232</u>	Necessary with substantive public interest
<u>19A NCAC 03C .0233</u>	Necessary with substantive public interest
<u>19A NCAC 03C .0234</u>	Necessary with substantive public interest
<u>19A NCAC 03C .0235</u>	Necessary with substantive public interest
<u>19A NCAC 03C .0236</u>	Necessary with substantive public interest

<u>19A NCAC 03D .0533</u>	Necessary with substantive public interest
<u>19A NCAC 03D .0534</u>	Necessary with substantive public interest
<u>19A NCAC 03D .0535</u>	Necessary with substantive public interest
<u>19A NCAC 03D .0536</u>	Necessary with substantive public interest
<u>19A NCAC 03D .0537</u>	Necessary with substantive public interest
<u>19A NCAC 03D .0538</u>	Necessary with substantive public interest
<u>19A NCAC 03D .0539</u>	Necessary with substantive public interest
<u>19A NCAC 03D .0540</u>	Necessary with substantive public interest
<u>19A NCAC 03D .0541</u>	Necessary with substantive public interest
<u>19A NCAC 03D .0542</u>	Necessary with substantive public interest
<u>19A NCAC 03D .0543</u>	Necessary with substantive public interest
<u>19A NCAC 03D .0544</u>	Necessary with substantive public interest
<u>19A NCAC 03D .0545</u>	Necessary with substantive public interest
<u>19A NCAC 03D .0550</u>	Necessary with substantive public interest
<u>19A NCAC 03D .0551</u>	Necessary with substantive public interest
<u>19A NCAC 03D .0552</u>	Necessary with substantive public interest
<u>19A NCAC 03E .0401</u>	Necessary with substantive public interest
<u>19A NCAC 03F .0201</u>	Necessary with substantive public interest
<u>19A NCAC 03F .0202</u>	Necessary with substantive public interest
<u>19A NCAC 03F .0203</u>	Necessary with substantive public interest
<u>19A NCAC 03F .0602</u>	Necessary with substantive public interest
<u>19A NCAC 03G .0208</u>	Necessary with substantive public interest
<u>19A NCAC 03G .0212</u>	Necessary with substantive public interest
<u>19A NCAC 03G .0301</u>	Necessary with substantive public interest
<u>19A NCAC 03I .0303</u>	Necessary with substantive public interest
<u>19A NCAC 03I .0307</u>	Necessary with substantive public interest
<u>19A NCAC 03I .0402</u>	Necessary with substantive public interest
<u>19A NCAC 03I .0501</u>	Necessary with substantive public interest
<u>19A NCAC 03J .0201</u>	Necessary with substantive public interest
<u>19A NCAC 03J .0204</u>	Necessary with substantive public interest
<u>19A NCAC 03J .0303</u>	Necessary with substantive public interest
<u>19A NCAC 03J .0305</u>	Necessary with substantive public interest
<u>19A NCAC 03J .0306</u>	Necessary with substantive public interest
<u>19A NCAC 03J .0307</u>	Necessary with substantive public interest
<u>19A NCAC 03J .0402</u>	Necessary with substantive public interest
<u>19A NCAC 03J .0601</u>	Necessary with substantive public interest