

**RULES REVIEW COMMISSION MEETING
MINUTES
November 17, 2016**

The Rules Review Commission met on Thursday, November 17, 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 Poley, Paul Powell, and Stephanie Simpson.

Staff members present were Commission Counsels Amber Cronk May, Amanda Reeder, Abigail Hammond, 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 October 20, 2016 meeting. There were none and the minutes were approved as distributed.

FOLLOW UP MATTERS

Criminal Justice Education and Training Standards Commission

12 NCAC 09B .0203 - The agency is addressing the objection from the September meeting. No action was required by the Commission.

Environmental Management Commission

15A NCAC 02H .1019, .1042, .1043, .1044, .1045, .1050, .1051, .1052, .1053, .1054, .1055, .1056, .1059, and .1060 – All rewritten rules were unanimously approved.

Environmental Management Commission

15A NCAC 02I .0501 was unanimously approved.

LOG OF FILINGS (PERMANENT RULES)

Structural Pest Control Committee

The Commission extended the period of review for the rules in accordance with G.S. 150B-21.10. They did so in response to a request from the rulemaking coordinator to extend the period in order to allow the agency additional time to make technical changes.

Historical Commission

The rules were unanimously approved with the following exceptions: 07 NCAC 04R .0909 and .0926 were withdrawn at the request of the agency.

HHS - Division of Health Service Regulation

All rules were unanimously approved.

The Commission received over 10 letters of objection requesting a delayed effective date and legislative review for the approved rules except for 10A NCAC 14C .1802, in accordance with G.S. 150B-21.3(b2).

Commission for Public Health

10A NCAC 41C .0702 was unanimously approved.

Department of Insurance

The Commission extended the period of review for the rules in accordance with G.S. 150B-21.10. They did so in response to a request from the rulemaking coordinator to extend the period in order to allow the agency additional time to make technical changes, and to review and prepare responses to the staff opinions.

Commissioner of Insurance

11 NCAC 06A .0809 was unanimously approved.

Manufactured Housing Board

The Commission objected to 11 NCAC 08 .0904 due to lack of statutory authority and failure to comply with the APA. Specifically, the Commission found that the amended rule was approved for publication and adopted by the Department rather than the proper authority: the Manufactured Housing Board. In addition, the Commission found that existing language of the rule exceeds the statutory language of G.S. 143-143.10, as modified in Session Law 2015-286, Section 2.2, because the rule purports to impose requirements on applicants for licensure as manufactured home manufacturers or dealers that were explicitly removed from the statute by the General Assembly.

Wildlife Resources Commission

15A NCAC 10B .0106 was unanimously approved.

Department of Natural and Cultural Resources

All rules were unanimously approved.

Department of Transportation

All rules were unanimously approved.

Board of Cosmetic Art Examiners

All rules were unanimously approved.

Board of Dental Examiners

21 NCAC 16H .0207 was unanimously approved.

Board of Nursing

All rules were unanimously approved.

Social Work Certification and Licensure Board

All rules were unanimously approved with the following exception:

The Commission objected to 21 NCAC 63 .0505 in accordance with G.S. 150B-21.10(2). The Commission objected to the following provisions in this Rule based on ambiguity:

- Line 5 – social workers shall “know the areas of competence of other professionals”
- Item (1) – social workers shall “treat with respect and represent accurately the views, qualifications and findings of colleagues, and when expressing judgment on these matters shall do so fairly and through appropriate channels.”
- Item (2) – “In referring clients, social workers shall refer to professionals who are recognized by their respective profession as competent to carry out the services required.”
- Item (3) – “If a social worker's services are sought by an individual who is already receiving similar services from another professional, consideration for the client's welfare shall be paramount. It requires the social worker to proceed with great caution,

carefully considering both the existing professional relationship and the therapeutic issues involved.”

- Item (4) – Social workers “shall evaluate fairly the performance of those under their supervision,” shall not “harass,” and “shall not abuse the power inherent in their position.”
- Item (5) – “unethical or incompetent behavior” and “take equally appropriate steps to assist and defend colleagues unjustly charged with such conduct.”

The Commission objected to the above language as it is unclear as to what is expected of the social worker in carrying out these provisions.

Anna Baird Choi, with the Law Office of Nichols, Choi & Lee, PLLC, representing the Board, addressed the Commission.

Elizabeth Pope, the Assistant Executive Director with the Board, addressed the Commission.

Building Code Council

All rules were unanimously approved.

LOG OF RULES (TEMPORARY RULES)

Board of Agriculture

All rules were unanimously approved.

EXISTING RULES REVIEW

Department of Health and Human Services

10A NCAC 14F - The Commission unanimously approved the report as submitted by the agency with the following exceptions for rules 10A NCAC 14F .1203 and .1903. The RRC designated these rules as “necessary with substantive public interest.”

Wildlife Resources Commission

15A NCAC 10F - The Commission unanimously approved the report as submitted by the agency. Commissioner Doran was not present during the vote.

15A NCAC 10H - The Commission unanimously approved the report as submitted by the agency with the following exception for rule 15A NCAC 10H .1106. The RRC designated the rule as “necessary with substantive public interest.”

Department of State Treasurer

20 NCAC 03 – The Commission deferred review of the report to confirm that the proper agency conducted the analysis, made the initial determinations, posted the report for the 60-day comment period, and made the final determinations. Rule 26 NCAC 05 .0211 was amended to reflect that 20 NCAC 03 was not reviewed at the November 2016 meeting and this report will be rescheduled for review by the Commission.

20 NCAC 08 – The Commission unanimously approved the report as submitted by the agency.

20 NCAC 09 – The Commission deferred review of the report to confirm that the proper agency conducted the analysis, made the initial determinations, posted the report for the 60-day comment period, and made the final determinations. Rule 26 NCAC 05 .0211 was amended to reflect that 20 NCAC 09 was not reviewed at the November 2016 meeting and this report will be rescheduled for review by the Commission.

Patrice Alexander, with the agency, addressed the Commission.

Prior to the review of the reports from the Department of State Treasurer, Commissioner Poley recused himself and did not participate in any discussion or vote concerning the reports because he works with the agency.

Environmental Management Commission

15A NCAC 02S - As reflected in the attached letter, the Commission voted to schedule readoption of these Rules no later than July 31, 2018 pursuant to G.S. 150B-21.3A(d)(2).

State Human Resources Commission

25 NCAC 01J - As reflected in the attached letter, the Commission voted to schedule readoption of these Rules no later than January 31, 2018 pursuant to G.S. 150B-21.3A(d)(2).

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

State Board of Elections

The agency requested a waiver of 26 NCAC 05 .0203(c) pursuant to 26 NCAC 05 .0204 for the 08 NCAC 01, 02, 03, 04, 05, 06, 07, 08, 09, 10, and 12 reports.

The waiver request was unanimously approved.

The Commission will review the reports at its December 15, 2016 meeting.

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

Prior to the review of the reports from the State Board of Elections, Commissioner Poley recused himself and did not participate in any discussion or vote concerning the reports because a partner at his firm is a member of the Board of Elections.

COMMISSION BUSINESS


The Commission voted to approve the amendment of Rule 26 NCAC 05 .0205.

The meeting adjourned at 11:32 a.m.

The next regularly scheduled meeting of the Commission is Thursday, December 15th 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

November 17, 2016

Rules Review Commission
Meeting
Please Print Legibly

Name	Agency
Crystal Tillman	NC Board of Nursing
LINDA BURHAS	NC Board of Nursing
Jennie Hawser	NC DOS / EMC
ERICA GARNER	NCWRC
Ashley Snyder	Cultural Resources
Loretta Peace-Bunch	Insurance
Clarence Ervin	NC DHHS / DHSS
Lynda Elliott	nc state Bd of Cosmetic Arts
Jennifer Everett	DEQ
BARRY GUPTON	NC DOI
Misty Buchanan	NC DNCR - NHP
S. M. [Signature]	NC DNCR
Nci / Perry	NC DOT - Rail / Division
Cygan Troy	NC SBE
Angela Ellis	NC Board of Nursing
Nadine Pfeiffer	NC DHHS / DHSS
Azzie Conky	NC DHHS / DHSS
Helen Vandi	DOT
Julie Ventahero	NC DEQ
Katelyn Love	NC SBE
Amara [Signature]	Cultural Resources NC DNCR

November 17, 2016

Rules Review Commission
Meeting
Please Print Legibly

Name	Agency
Victor Lennon	N.C. Dept. of Agriculture to Consumer Services
Beth Blackwell	NC Dept. of Insurance
Patricia Dunn	NC Dept. of Ag
Joe Sadler	NC DOB MANUFACTURED HOUSING PROGRAM
Annette Lucas	NC DEQ
Patrice Alexander	DST
Elizabeth Pope	NC Social Work Board
Katy Kingsbury	BROOKS Pierce
Anna Choi	Nichols, Choi & Lee
Bob Martin	NC DPW
LaShawn Piquant	NC DOJ
Margaret Duce	OSHR
Annie Hirsch	NC DHHS
Mina Shehee	NC DHHS
Martha Frisone	NC DHHS DHSP HPCON



STATE OF NORTH CAROLINA
OFFICE OF ADMINISTRATIVE HEARINGS

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6714 Mail Service Center
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1711 New Hope Church Rd
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November 17, 2016

Jennifer Everett, Rulemaking Coordinator
Department of Environment Quality
Environmental Management Commission
1601 Mail Service Center
Raleigh, North Carolina 27699-1601

Re: Readoption pursuant to G.S. 150B-21.3A(c)(2)g of **15A NCAC 02S**

Dear Ms. Everett:

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 17, 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 July 31, 2018.

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

Sincerely,

Abigail M. Hammond
Commission Counsel

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

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fax: 919/431-3104

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An Equal Employment Opportunity Employer

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**RRC DETERMINATION
PERIODIC RULE REVIEW
January 01, 2015 through March 30, 2015
Environmental Management Commission
Total: 12**

RRC Determination: Necessary with substantive public interest

Rule	Determination	APO Review Date
<u>15A NCAC 02S .0101</u>	Necessary with substantive public interest	April 25, 2015
<u>15A NCAC 02S .0102</u>	Necessary with substantive public interest	April 25, 2015
<u>15A NCAC 02S .0201</u>	Necessary with substantive public interest	April 25, 2015
<u>15A NCAC 02S .0202</u>	Necessary with substantive public interest	April 25, 2015
<u>15A NCAC 02S .0301</u>	Necessary with substantive public interest	April 25, 2015
<u>15A NCAC 02S .0501</u>	Necessary with substantive public interest	April 25, 2015
<u>15A NCAC 02S .0502</u>	Necessary with substantive public interest	April 25, 2015
<u>15A NCAC 02S .0503</u>	Necessary with substantive public interest	April 25, 2015
<u>15A NCAC 02S .0506</u>	Necessary with substantive public interest	April 25, 2015
<u>15A NCAC 02S .0507</u>	Necessary with substantive public interest	April 25, 2015
<u>15A NCAC 02S .0508</u>	Necessary with substantive public interest	April 25, 2015
<u>15A NCAC 02S .0509</u>	Necessary with substantive public interest	April 25, 2015



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November 17, 2016

Margaret Duke, Rulemaking Coordinator
State Human Resources Commission
Office of State Human Resources
1331 Mail Service Center
Raleigh, North Carolina 27699-1331

Re: Readoption pursuant to G.S. 150B-21.3A(c)(2)g of **25 NCAC 01J**

Dear Ms. Duke:

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 17, 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 January 31, 2018.

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

Sincerely,

A handwritten signature in cursive script that reads "Abigail M. Hammond".

Abigail M. Hammond
Commission Counsel

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An Equal Employment Opportunity Employer

**RRC DETERMINATION
PERIODIC RULE REVIEW
June 16, 2016
APO Review: August 20, 2016**

**State Human Resources Commission
Total: 14**

RRC Determination: Necessary with substantive public interest

Rule	Determination
25 <u>NCAC 01J .1302</u>	Necessary with substantive public interest
25 <u>NCAC 01J .1306</u>	Necessary with substantive public interest
25 <u>NCAC 01J .1307</u>	Necessary with substantive public interest
25 <u>NCAC 01J .1308</u>	Necessary with substantive public interest
25 <u>NCAC 01J .1309</u>	Necessary with substantive public interest
25 <u>NCAC 01J .1310</u>	Necessary with substantive public interest
25 <u>NCAC 01J .1311</u>	Necessary with substantive public interest
25 <u>NCAC 01J .1312</u>	Necessary with substantive public interest
25 <u>NCAC 01J .1314</u>	Necessary with substantive public interest
25 <u>NCAC 01J .1315</u>	Necessary with substantive public interest
25 <u>NCAC 01J .1316</u>	Necessary with substantive public interest
25 <u>NCAC 01J .1318</u>	Necessary with substantive public interest
25 <u>NCAC 01J .1319</u>	Necessary with substantive public interest
25 <u>NCAC 01J .1320</u>	Necessary with substantive public interest