rrc staff OPINION

*Please Note: This communication is either 1) only the recommendation of an RRC staff attorney as to action that the attorney believes the Commission should take on the cited rule at its next meeting, or 2) an opinion of that attorney as to some matter concerning that rule. The agency and members of the public are invited to submit their own comments and recommendations (according to RRC rules) to the Commission.*

AGENCY: PRIVATE PROTECTIVE SERVICES BOARD

RULE CITATION: 12 NCAC 07D .1303

RECOMMENDED ACTION:

 Approve, but note staff’s comment

X Object, based on:

 X Lack of statutory authority

X Unclear or ambiguous

 Unnecessary

 Failure to comply with the APA

 Extend the period of review

COMMENT:

In (f), it is not clear what is meant by the requirement that a course be "appropriate to the licensee." It is not clear what the standards are for approving the courses "on a case-by-case basis." There is no authority cited to approve them based on standards not adopted as rules.

Robert A. Bryan, Jr.

Commission Counsel

§ 74C-2. Licenses required.

(a)        No private person, firm, association, or corporation shall engage in, perform any services as, or in any way represent or hold itself out as engaging in a private protective services profession or activity in this State without having first complied with the provisions of this Chapter. Compliance with the licensing requirements of this Chapter shall not relieve any person, firm, association or corporation from compliance with any other licensing law.

(b)        An individual in possession of a valid private protective services license or private detective trainee permit issued prior to October 1, 1989, shall not be subject to forfeiture of such license by virtue of this Chapter. Such license shall, however, remain subject to suspension, denial, or revocation in the same manner in which all other licenses issued pursuant to this Chapter are subject to suspension, denial, or revocation.

(c)        In its discretion, the Private Protective Services Board may issue a trainee permit in lieu of a private investigator license provided that the applicant works under the direct supervision of a licensee. (1973, c. 528, s. 1; 1979, c. 818, s. 1; 1989, c. 759, s. 2.)

§ 74C-4. Private Protective Services Board established; members; terms; vacancies; compensation; meetings.

(a)        The Private Protective Services Board is hereby established in the Department of Justice to administer the licensing and set educational and training requirements for persons, firms, associations, and corporations engaged in a private protective services profession within this State.

(b)        The Board shall consist of 14 members: the Attorney General or his designated representative, two persons appointed by the Attorney General, one person appointed by the Governor, five persons appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate, and five persons appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives. All appointments by the General Assembly shall be subject to the provisions of G.S. 120-121, and vacancies in the positions filled by those appointments shall be filled pursuant to G.S. 120-122. One of those persons appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate and all five persons appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives shall be licensees under this Chapter; all other appointees may not be licensees of the Board nor licensed by the Board while serving as Board members. All persons appointed shall serve terms of three years. With the exception of the Attorney General or his designated representative, no person shall serve more than eight consecutive years on the Board, including years of service prior and subsequent to July 1, 1983. Board members may continue to serve until their successors have been appointed.

(c)        Vacancies on the Board occurring for any reason shall be filled by the authority making the original appointment of the person causing the vacancy.

(d)       Each member of the Board, before assuming the duties of his office, shall take an oath for the faithful performance of his duties. A Board member may be removed at the pleasure of the authority making the original appointment or by the Board for misconduct, incompetence, or neglect of duty.

(e)        Members of the Board who are State officers or employees shall receive no per diem compensation for serving on the Board, but shall be reimbursed for their expenses in accordance with G.S. 138-6. Members of the Board who are full-time salaried public officers or employees other than State officers or employees shall receive no per diem compensation for serving on the Board, but shall be reimbursed for their expenses in accordance with G.S. 138-6 in the same manner as State officers or employees. All other Board members shall receive per diem compensation and reimbursement in accordance with G.S. 93B-5.

(f)        The Board shall elect a chairman, vice-chairman, and other officers and committee chairmen from among its members as the Board deems necessary and desirable at the first meeting after July 1 of each year. The chairman and vice-chairman shall be selected by the members of the Board for a term of one year and shall be eligible for reelection. The Board shall meet at the call of the chairman or a majority of the members of the Board at such time, date, and location as may be decided upon by a majority of the Board.

(g)        All decisions heretofore made by the Private Protective Services Board, established pursuant to Chapter 74B, shall remain in full force and effect unless and until repealed or suspended by action of the Private Protective Services Board established herein. (1973, c. 528, s. 1; 1975, c. 592, ss. 8, 9; 1977, c. 535; 1979, c. 818, s. 2; 1981, c. 148, s. 1; c. 807, s. 7; 1983, c. 794, s. 7; 1985, c. 597, s. 12; 1989, c. 759, s. 4; 1995, c. 490, s. 39; 2000-181, s. 2.3.)

§ 74C-5. Powers of the Board.

In addition to the powers conferred upon the Board elsewhere in this Chapter, the Board shall have the power to do all of the following:

(1)        Adopt rules necessary to carry out and administer the provisions of this Chapter including the authority to require the submission of reports and information by licensees under this Chapter.

(2)        Determine minimum qualifications, establish and require written or oral examinations, and establish minimum education, experience, and training standards for applicants and licensees under this Chapter.

(3)        Conduct investigations regarding alleged violations and to make evaluations as may be necessary to determine if licensees and trainees under this Chapter are complying with the provisions of this Chapter.

(4)        Adopt and amend bylaws, consistent with law, for its internal management and control.

(5)        Approve individual applicants to be licensed or registered according to this Chapter.

(6)        Deny, suspend, or revoke any license or trainee permit issued or to be issued under this Chapter to any applicant, licensee, or permit holder who fails to satisfy the requirements of this Chapter or the rules established by the Board. The denial, suspension, or revocation shall be in accordance with Chapter 150B of the General Statutes of North Carolina.

(7)        Issue subpoenas to compel the attendance of witnesses and the production of pertinent books, accounts, records, and documents. The district court shall have the power to impose punishment pursuant to G.S. Chapter 5A, Article 2, for acts occurring in matters pending before the Private Protective Services Board which would constitute civil contempt if the acts occurred in an action pending in court.

(8)        Repealed by Session Laws 1989, c. 759, s. 5.

(9)        Adopt rules governing detection of deception schools, and charge fees for reimbursement of costs incurred pursuant to approval of the schools.

(10)      Contract for services as necessary to carry out the functions of the Board.

(11)      Approve training schools, instructors, and course materials for any person, firm, association, or corporation wishing to provide training described in this Chapter.

(12)      Approve a design for a badge or shield that indicates a person is licensed or registered to engage in private protective services. The badge or shield shall be approved by the North Carolina Sheriffs' Association and the North Carolina Association of Chiefs of Police. (1973, c. 528, s. 1; c. 1331, s. 3; 1979, c. 818, s. 2; 1981 (Reg. Sess., 1982), c. 1359, s. 3; 1983, c. 794, s. 2; c. 810; 1989, c. 759, s. 5; 1999-456, s. 19; 2007-511, s. 2.)

§ 74C-22. Continuing education.

The Board may require individuals holding a license, registration, certificate, or permit to complete continuing education courses approved by the Board before renewal. The Board shall establish, by rule, the number of hours of continuing education necessary for renewal and any other requirements for completion of continuing education courses. The Board shall have the authority to approve continuing education courses and shall consider the continuing education course criteria, including the course curriculum, the qualifications of the instructor, the potential benefit to the industry, and any other criteria the Board deems appropriate. (2007-511, s. 9.)