

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: Commission for Public Health

RULE CITATION: Report for the Existing Rules Review for 15A NCAC 18A, Sections .1000, .1300, .1400, .1500, .1600, .1700, .1900, .2100, .2300, .2400, .2500, .2600, .2800, .2900, .3100, .3200, .3300, .3500, .3600 and .3800

RECOMMENDED ACTION:

- X Note staff's comment
- Object, based on:
  - Lack of statutory authority
  - Unclear or ambiguous
  - Unnecessary
  - Failure to comply with the APA
- Extend the period of review

COMMENT: Staff has collected and summarized past decisions of the RRC related to (1) the date on which rules expire pursuant to G.S. 150B-21.3A(b), and (2) late-filed requests for extensions pursuant to 26 NCAC 05 .0204.

**Expiration of Rules Pursuant to G.S. 150B-21.3A(b) and (d)(1)**

Staff found four occasions when agencies failed to file a report of their review of existing rules. In each case the RRC expressly stated that the effective date of this expiration was the date the report was scheduled to be reviewed by the RRC and not the date the report was required to be filed with the RRC. In three of these cases, the expiration date was recorded in the approved minutes of the meeting, and in the earliest case the date was recited in the notice of the RRC's action that was sent to the agency and to the APO. The following minutes and related letters are attached to this opinion:

Jason Thomas  
Commission Counsel  
Issued October 25, 2018

- August 17, 2017, RRC minutes
- April 21, 2016, RRC minutes
- September 18, 2014, RRC minutes
- July 17, 2014, RRC minutes and related correspondence

On two occasions, RRC actions implicitly recognized that the effective expiration date was, at the earliest, the date the report was scheduled to be reviewed by the RRC, and not the date the report was required to be filed with the RRC. The minutes for the following RRC meetings are attached to this opinion:

- On November 17, 2016, the RRC “deferred review” of two reports filed by the Department of the State Treasurer because it was unclear whether the proper rulemaking body engaged in the review and made the final determinations. Implicit in this decision is the assumption that the rules that were the subject of these reports did not expire on the filing date due to a failure of the proper rulemaking body to comply with the requirements in Step 1 of G.S. 150B-21.3A(c)(1).
- On April 16, 2015, the RRC required the Medical Board to repost its report for public comment because it had not included all the required information in its original posting. Implicit in this decision is the assumption that the rules that were the subject of this report did not expire on the filing date due to a failure of the rulemaking body to comply with the posting requirements in Step 1 of G.S. 150B-21.3A(c)(1).

Had the rules expired on the date the report was required to have been filed, it is not clear how the RRC could later accept for review those existing rule reports after the issues related to each set of rules was resolved.

G.S. 150B-21.3A refers to the automatic expiration of rules twice:

**§ 150B-21.3A. Periodic review and expiration of existing rules.**

- (a) Definitions. - For purposes of this section, the following definitions apply:
- (1) Commission. - Means the Rules Review Commission.
  - (2) Committee. - Means the Joint Legislative Administrative Procedure Oversight Committee.
  - (3) Necessary with substantive public interest. - Means any rule for which the agency has received public comments within the past two years. A rule is also "necessary with substantive public interest" if the rule

Jason Thomas  
 Commission Counsel  
 Issued October 25, 2018

affects the property interest of the regulated public and the agency knows or suspects that any person may object to the rule.

- (4) Necessary without substantive public interest. - Means a rule for which the agency has not received a public comment concerning the rule within the past two years. A "necessary without substantive public interest" rule includes a rule that merely identifies information that is readily available to the public, such as an address or a telephone number.
- (5) Public comment. - Means written comments objecting to the rule, in whole or in part, received by an agency from any member of the public, including an association or other organization representing the regulated community or other members of the public.
- (6) Unnecessary rule. - Means a rule that the agency determines to be obsolete, redundant, or otherwise not needed.

(b) Automatic Expiration. - Except as provided in subsection (e) of this section, any rule for which the agency that adopted the rule has not conducted a review in accordance with this section shall expire on the date set in the schedule established by the Commission pursuant to subsection (d) of this section.

(c) Review Process. - Each agency subject to this Article shall conduct a review of the agency's existing rules at least once every 10 years in accordance with the following process:

- (1) Step 1: The agency shall conduct an analysis of each existing rule and make an initial determination as to whether the rule is (i) necessary with substantive public interest, (ii) necessary without substantive public interest, or (iii) unnecessary. The agency shall then post the results of the initial determination on its Web site and invite the public to comment on the rules and the agency's initial determination. The agency shall also submit the results of the initial determination to the Office of Administrative Hearings for posting on its Web site. The agency shall accept public comment for no less than 60 days following the posting. The agency shall review the public comments and prepare a brief response addressing the merits of each comment. After completing this process, the agency shall submit a report to the Commission. The report shall include the following items:
  - a. The agency's initial determination.
  - b. All public comments received in response to the agency's initial determination.
  - c. The agency's response to the public comments.
- (2) Step 2: The Commission shall review the reports received from the agencies pursuant to subdivision (1) of this subsection. If a public

comment relates to a rule that the agency determined to be necessary and without substantive public interest or unnecessary, the Commission shall determine whether the public comment has merit and, if so, designate the rule as necessary with substantive public interest. For purposes of this subsection, a public comment has merit if it addresses the specific substance of the rule and relates to any of the standards for review by the Commission set forth in G.S. 150B-21.9(a). The Commission shall prepare a final determination report and submit the report to the Committee for consultation in accordance with subdivision (3) of this subsection. The report shall include the following items:

- a. The agency's initial determination.
- b. All public comments received in response to the agency's initial determination.
- c. The agency's response to the public comments.
- d. A summary of the Commission's determinations regarding public comments.
- e. A determination that all rules that the agency determined to be necessary and without substantive public interest and for which no public comment was received or for which the Commission determined that the public comment was without merit be allowed to remain in effect without further action.
- f. A determination that all rules that the agency determined to be unnecessary and for which no public comment was received or for which the Commission determined that the public comment was without merit shall expire on the first day of the month following the date the report becomes effective in accordance with this section.
- g. A determination that all rules that the agency determined to be necessary with substantive public interest or that the Commission designated as necessary with public interest as provided in this subdivision shall be readopted as though the rules were new rules in accordance with this Article.

- (3) Step 3: The final determination report shall not become effective until the agency has consulted with the Committee. The determinations contained in the report pursuant to sub-subdivisions e., f., and g. of subdivision (2) of this subsection shall become effective on the date the report is reviewed by the Committee. If the Committee does not hold a meeting to hear the consultation required by this subdivision within 60 days of receipt of the final determination report, the consultation requirement is deemed satisfied, and the determinations contained in the

report become effective on the 61st day following the date the Committee received the report. If the Committee disagrees with a determination regarding a specific rule contained in the report, the Committee may recommend that the General Assembly direct the agency to conduct a review of the specific rule in accordance with this section in the next year following the consultation.

(d) Timetable. - The Commission shall establish a schedule for the review and readoption of existing rules in accordance with this section on a decennial basis as follows:

- (1) With regard to the review process, the Commission shall assign each Title of the Administrative Code a date by which the review required by this section must be completed. In establishing the schedule, the Commission shall consider the scope and complexity of rules subject to this section and the resources required to conduct the review required by this section. The Commission shall have broad authority to modify the schedule and extend the time for review in appropriate circumstances. Except as provided in subsections (e) and (f) of this section, if the agency fails to conduct the review by the date set by the Commission, the rules contained in that Title which have not been reviewed will expire. The Commission shall report to the Committee any agency that fails to conduct the review. The Commission may exempt rules that have been adopted or amended within the previous 10 years from the review required by this section. However, any rule exempted on this basis must be reviewed in accordance with this section no more than 10 years following the last time the rule was amended.
- (2) With regard to the readoption of rules as required by sub-subdivision (c)(2)g. of this section, once the final determination report becomes effective, the Commission shall establish a date by which the agency must readopt the rules. The Commission shall consult with the agency and shall consider the agency's rule-making priorities in establishing the readoption date. The agency may amend a rule as part of the readoption process. If a rule is readopted without substantive change or if the rule is amended to impose a less stringent burden on regulated persons, the agency is not required to prepare a fiscal note as provided by G.S. 150B-21.4.

(e) Rules to Conform to or Implement Federal Law. - Rules adopted to conform to or implement federal law shall not expire as provided by this section. The Commission shall report annually to the Committee on any rules that do not expire pursuant to this subsection.

(e1) Rules to Protect Inchoate or Accrued Rights of Retirement Systems Members. - Rules deemed by the Boards of Trustees established under G.S. 128-28 and G.S. 135-6 to protect inchoate or accrued rights of members of the Retirement Systems administered by the State Treasurer shall not expire as provided by this section. The Commission shall report annually to the Committee on any rules that do not expire pursuant to this subsection.

(f) Other Reviews. - Notwithstanding any provision of this section, an agency may subject a rule that it determines to be unnecessary to review under this section at any time by notifying the Commission that it wishes to be placed on the schedule for the current year. The Commission may also subject a rule to review under this section at any time by notifying the agency that the rule has been placed on the schedule for the current year. (2013-413, s. 3(b); 2014-115, s. 17; 2014-120, s. 2; 2015-164, s. 7; 2015-286, s. 1.6(a).)

The statute does not expressly state the effective date of expiration. The statute expressly authorizes the RRC to exercise “broad authority to modify the schedule and extend the time for review in appropriate circumstances.”

#### **Extensions Pursuant to 26 NCAC 05 .0204**

The RRC has repeatedly granted extensions of time pursuant to 26 NCAC 05 .0204 in response to requests made by agencies both before and after the filing deadline. The minutes and related letters regarding late-filed requests are attached to this opinion:

- March 15, 2018, RRC minutes (2 late-filed .0204 requests and reports)
- February 19, 2015, RRC minutes (1 late-filed .0204 request and report)
- August 21, 2014, RRC minutes (3 late-filed .0204 requests and 1 late-filed report)

#### **Summary**

The RRC has consistently deemed rules that have expired pursuant to G.S. 150B-21.3A to have expired effective on the date the report was scheduled to be reviewed by the RRC and not on the date the report was required to be filed pursuant to 26 NCAC 05 .0203(c). Staff has found no contrary RRC decision other than that made at its most recent meeting on October 18, 2018.

Secondly, the RRC has granted extensions pursuant to 26 NCAC 05 .0204, regardless whether filed before or after the filing deadline set forth in 26 NCAC 05 .0203(c).

Jason Thomas  
Commission Counsel  
Issued October 25, 2018

**RULES REVIEW COMMISSION MEETING  
MINUTES  
August 17, 2017**

The Rules Review Commission met on Thursday, August 17, 2017, in the Commission Room at 1711 New Hope Church Road, Raleigh, North Carolina. Commissioners present were: Andrew P. Atkins, Bobby Bryan, Margaret Currin, Jeanette Doran, Garth Dunklin, Jeff Hyde, Jeff Poley, and Paul Powell.

Staff members present were Commission Counsels Amanda Reeder, Abigail Hammond, Amber Cronk May, and Jason Thomas; and Julie Brincefield, Alex Burgos, and Dana Vojtko.

The meeting was called to order at 10:02 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 discussed modifications to the July 20, 2017 minutes made after initial posting of the draft on the website regarding the readoption deadlines for the Board of Agriculture 02 NCAC 37, and the Alcoholic Beverage Control Commission 14B NCAC 15A.

Chairman Dunklin asked for any discussion, comments, or corrections concerning the minutes of the July 20, 2017 meeting. There were no additional modifications and the minutes were approved as distributed.

**FOLLOW UP MATTERS**

**Commission for Mental Health, Developmental Disabilities and Substance Abuse Services**

10A NCAC 27H .0202, .0203, .0204, .0205, and .0206 – The agency is addressing the objections from the March and June meetings. No action was required by the Commission.

**Department of Insurance**

11 NCAC 05A .0501, .0505, .0508, and .0511 - The rewritten rules were unanimously approved.

**Social Services Commission**

10A NCAC 70I .0101, .0201, .0202, .0302, .0305, .0306, .0308, .0405, .0503, .0504, .0506, .0601, .0604, .0609, .0613, and .0614 - The agency is addressing the objection to Rule .0308, and extension for the rest of the rules from the July meeting. No action was required by the Commission.

**Social Services Commission**

10A NCAC 97B .0401, .0402, .0403; 97C .0104, .0106, .0108, .0109, and .0111 - The agency is addressing the objections from the July meeting. No action was required by the Commission.

**LOG OF FILINGS (PERMANENT RULES)**

Pre-Reviewed Rules

**Tobacco Trust Fund Commission**

All rules were unanimously approved.

**Department of Commerce - Division of Employment Security**

All rules were unanimously approved.

Prior to the review of the rules from the Division of Employment Security, Commissioner Doran recused herself and did not participate in any discussion or vote concerning the rules because she works with the Board of Review.

**Department of Natural and Cultural Resources**

All rules were unanimously approved.

**Department of Public Safety - Boxing Authority**

All rules were unanimously approved.

**Board of Funeral Service**

All rules were unanimously approved.

Non Pre-Reviewed Rules

**Department of Administration**

01 NCAC 04A .0201 was unanimously approved.

**Board of Agriculture**

All rules were unanimously approved.

**Child Care Commission**

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 agency to extend the period of review in order to allow the agency to complete requested technical changes and submit the rewritten rules at a later meeting.

Dedra Alston, the rulemaking coordinator with the agency, addressed the Commission.

**Environmental Management Commission**

15A NCAC 02D .0530 was unanimously approved.

**Coastal Resources Commission**

All rules were unanimously approved.

**Cemetery Commission**

21 NCAC 07D .0101 was unanimously approved.

**Board of Examiners of Electrical Contractors**

All rules were unanimously approved.

**Building Code Council**

All rules were unanimously approved.

**EXISTING RULES REVIEW**

**Department of Environmental Quality**

04 NCAC 12 - The Commission unanimously approved the report as submitted by the agency.

**Apprenticeship and Training Council**

04 NCAC 22 – Pursuant to S.L. 2017-57, the Council was transferred from the Department of Commerce to the NC Community Colleges Systems Office, effective July 1, 2017. As community colleges are exempt from G.S. 150B Article 2A pursuant to G.S. 150B-1(g), these rules are no longer subject to the existing rules review in G.S. 150B-21.3A. No action was required by the Commission.

**Social Services Commission**

10A NCAC 70A - The Commission unanimously approved the report as submitted by the agency.

10A NCAC 70B - The Commission unanimously approved the report as submitted by the agency.

10A NCAC 70C - The Commission unanimously approved the report as submitted by the agency.

10A NCAC 70D -The agency did not conduct the review and all rules contained in the report expired on August 17, 2017 pursuant to G.S. 150B-21.3A(d)(1). No action was required by the Commission.

10A NCAC 70E - The Commission unanimously approved the report as submitted by the agency.

10A NCAC 70F - The Commission unanimously approved the report as submitted by the agency.

10A NCAC 70G - The Commission unanimously approved the report as submitted by the agency.

10A NCAC 70H - The Commission deferred review pursuant to Rule 26 NCAC 05 .0210 because it had a question regarding an apparent discrepancy in the report.

10A NCAC 70J - The Commission unanimously approved the report as submitted by the agency.

10A NCAC 70L - The Commission unanimously approved the report as submitted by the agency.

10A NCAC 70N - The Commission unanimously approved the report as submitted by the agency.

10A NCAC 70O - The Commission unanimously approved the report as submitted by the agency.

#### **NC Alarm Systems Licensing Board**

14B NCAC 17 - The Commission unanimously approved the report as submitted by the agency.

#### **NC Appraisal Board**

21 NCAC 57 - The Commission unanimously approved the report as submitted by the agency.

#### **Department of Natural and Cultural Resources**

07 NCAC 02 - As reflected in the attached letter, the Commission voted to schedule readoption of this Rule no later than April 30, 2018 pursuant to G.S. 150B-21.3A(d)(2).

#### **Well Contractors Certification Commission**

15A NCAC 27 – As reflected in the attached letter, the Commission voted to schedule readoption of these Rules no later than February 28, 2018 pursuant to G.S. 150B-21.3A(d)(2).

#### **Board of Dietetics/Nutrition**

21 NCAC 17 - As reflected in the attached letter, the Commission voted to schedule readoption of these Rules no later than July 31, 2019 pursuant to G.S. 150B-21.3A(d)(2).

#### **Department of Administration**

The agency requested a waiver of 26 NCAC 05 .0211 for the reports for 01 NCAC 38, 39, 40, 43, and 44.

The waiver request was unanimously approved. The Commission rescheduled the date of review for the reports, and amended 26 NCAC 05 .0211. The Commission will review the agency's reports at its February 2018 meeting.

John Maddrey, General Counsel with the agency, addressed the Commission.

#### **Board of Pharmacy**

The agency requested a waiver of 26 NCAC 05 .0211 for the report for 21 NCAC 46.

The waiver request was unanimously approved. The Commission rescheduled the date of review for the report, and amended 26 NCAC 05 .0211. The Commission will review the agency's report at its September 21, 2017 meeting.

#### **COMMISSION BUSINESS**

The Commission held an election to fill the vacancy for the 2nd Vice Chairman.

Jeanette Doran was elected to 2<sup>nd</sup> Vice Chairman.

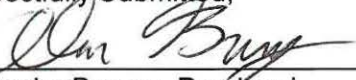
The Chairman gave a brief update on S16 and HB162.

The meeting adjourned at 10:50 a.m.

The next regularly scheduled meeting of the Commission is Thursday, September 21<sup>st</sup> 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

**RULES REVIEW COMMISSION MEETING  
MINUTES  
April 21, 2016**

The Rules Review Commission met on Thursday, April 21, 2016, in the Commission Room at 1711 New Hope Church Road, Raleigh, North Carolina. Commissioners present were: Danny Earl Britt, Jr., Margaret Currin, Jeanette Doran, Garth Dunklin, Jay Hemphill, Jeff Poley, and Stephanie Simpson.

Staff members present were Commission Counsels Abigail Hammond, Amber Cronk May, Amanda Reeder, and Jason Thomas; and Julie Brincefield, Alex Burgos, and Dana Vojtko.

The meeting was called to order at 10:02 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 March 17, 2016 meeting. There were none and the minutes were approved as distributed.

**FOLLOW UP MATTERS**

**911 Board**

09 NCAC 06C .0111, .0112, .0113, .0114, .0205, and .0216 – The agency is addressing the objections from the January meeting by publishing a Notice of Text in the North Carolina Register. No action was required by the Commission.

**Social Services Commission**

10A NCAC 71P .0101, .0102, .0103, .0201, .0202, .0301, .0302, .0303, .0304, .0306, .0401, .0402, .0403, .0404, .0405, .0406, .0501, .0502, .0504, .0505, .0506, .0507, .0508, .0601, .0602, .0603, .0604, .0608, .0701, .0702, .0704, .0705, .0801, .0802, .0803, .0804, .0805, .0902, .0903, .0904, .0905, and .0906 – The agency is addressing the technical change requests from the March meeting. No action was required by the Commission.

**Department of Insurance**

11 NCAC 18 .0103; 20 .0202, .0203, .0204, .0301, .0302, .0404, .0410, .0601; and 21 .0106 were withdrawn at the request of the agency.

As these rules were readoptions scheduled by the Commission pursuant to G.S. 150B-21.3A(d)(2), the Commission will set a new readoption date for these Rules at the May meeting.

**Property Tax Commission**

17 NCAC 11 .0216, and .0217 - The agency is addressing the objections from the October meeting by publishing a Notice of Text in the North Carolina Register. No action was required by the Commission.

**LOG OF FILINGS (PERMANENT RULES)**

**Pesticide Board**

The Commission extended the period of review for these Rules 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 make technical changes and submit the rewritten rules at a later meeting.

**Child Care Commission**

10A NCAC 09 .1718 was unanimously approved.

**Radiation Protection Commission**

All rules were unanimously approved.

**Criminal Justice Education and Training Standards Commission**

12 NCAC 09F .0106 was unanimously approved.

**Department of Revenue**

All rules were unanimously approved.

**Board of Dental Examiners**

21 NCAC 16T .0101 was unanimously approved.

Brooke Ottesen, an attorney representing the agency, addressed the Commission.

**Board of Examiners of Electrical Contractors**

All rules were approved with the following exception:

21 NCAC 18B .0502 was withdrawn at the request of the agency.

**Medical Board**

21 NCAC 32T .0101 was unanimously approved.

**Midwifery Joint Committee**

21 NCAC 33 .0110 was unanimously approved.

**Board of Pharmacy**

21 NCAC 46 .3101 was unanimously approved.

**Real Estate Commission**

2nd Vice Chairman Simpson presided over the discussion and vote on the Real Estate Commission rules.

All rules were unanimously approved.

Prior to the review of the rules from the Real Estate Commission, Commissioner Currin recused herself and did not participate in any discussion or vote concerning the rules because she has an inactive broker's license.

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.

**EXISTING RULES REVIEW****DHHS/Medical Care Commission**

10A NCAC 13J – The Commission unanimously approved the report as submitted by the agency, with the exception that it reclassified Rules .1107 and .1502 as "Necessary with Substantive Public Interest."

Prior to the review of the report from the Medical Care Commission, Commissioner Poley recused himself and did not participate in any discussion or vote concerning the report because he has a business conflict.

#### **DHHS/Commission for Mental Health**

10A NCAC 27A - The Commission unanimously approved the report as submitted by the agency.

10A NCAC 27B - The Commission unanimously approved the report as submitted by the agency.

10A NCAC 27D - The Commission unanimously approved the report as submitted by the agency.

#### **Department of Insurance**

11 NCAC 06 - The Commission unanimously approved the report as submitted by the agency.

11 NCAC 13 - The Commission unanimously approved the report as submitted by the agency.

#### **State Board of Education**

16 NCAC 01 - The agency did not conduct the review and all rules contained in the report expired on April 21, 2016 pursuant to G.S. 150B-21.3A(d). No action was required by the Commission.

16 NCAC 02 - The Chapter is repealed. No action was required by the Commission.

16 NCAC 03 - The Chapter is repealed. No action was required by the Commission.

#### **State Human Resources Commission**

25 NCAC 01F - The Commission unanimously approved the report as submitted by the agency.

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

#### **Alcoholic Beverage Control Commission**

04 NCAC 02R (recodified as 14B NCAC 15A .1403) - As reflected in the attached letter, the Commission voted to schedule readoption of the Rule pursuant to G.S. 150B-21.3A(c)(2) no later than May 31, 2017.

#### **Social Services Commission**

10A NCAC 10 - As reflected in the attached letter, the Commission voted to schedule readoption of these Rules pursuant to G.S. 150B-21.3A(c)(2) no later than May 31, 2019.

#### **Sedimentation Control Commission**

15A NCAC 04 - As reflected in the attached letter, the Commission voted to schedule readoption of these Rules pursuant to G.S. 150B-21.3A(c)(2) no later than November 30, 2019.

#### **Acupuncture Licensing Board**

21 NCAC 01 – As reflected in the attached letter, the Commission voted to schedule readoption of these Rules pursuant to G.S. 150B-21.3A(c)(2) no later than May 31, 2017.

#### **Licensing Board for General Contractors**

The Board requested a waiver of Rules 26 NCAC 05 .0203 and .0211 for the report for 21 NCAC 12.

The waiver request was unanimously approved, and the Commission rescheduled the date of review for the report.

The Commission will review the Board's report at its May 19, 2016 meeting.

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

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

**COMMISSION BUSINESS**

The Commission amended 26 NCAC 05 .0211 to reflect the recodification of rules in the Code.

The Commission discussed proposed amendments and adoptions of Rules 26 NCAC 05 .0103, .0104, .0301, .0302, and .0303.

Commission counsel discussed the written comments received and presented the Commission with a draft of proposed changes that staff prepared in response to the comments.

The Commission approved the Rules as presented with draft changes, except for Rule 26 NCAC 05 .0103. The Commission voted to amend Rule 26 NCAC 05 .0103(a) to state that the deadline to submit written comments for permanent rules is 5 p.m. the fifth business day before a meeting.

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


Chairman Dunklin asked the Commission counsels to draft rule language for the Commission to consider when agencies ask to go earlier than scheduled.

The meeting adjourned at 11:29 a.m.

The next regularly scheduled meeting of the Commission is Thursday, May 19<sup>th</sup> 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

**RULES REVIEW COMMISSION MEETING  
MINUTES  
September 18, 2014**

The Rules Review Commission met on Thursday, September 18, 2014, in the Commission Room at 1711 New Hope Church Road, Raleigh, North Carolina. Commissioners present were: Anna Choi, Margaret Currin, Jeanette Doran, Garth Dunklin, Jay Hemphill, Jeff Hyde, Stephanie Simpson, Ralph Walker, and Faylene Whitaker.

Staff members present were: Commission counsels Abigail Hammond, Amber Cronk May, and Amanda Reeder; and Julie Brincefield, Alex Burgos, and Dana Vojtko.

The meeting was called to order at 10:01 a.m. with Chairman Currin presiding.

Chairman Currin read the notice required by NCGS 138A-15(e) and reminded the Commission members that they have a duty to avoid conflicts of interest and the appearances of conflicts.

Commissioner Walker introduced Chief Justice Mark Martin of the North Carolina Supreme Court.

Chief Justice Martin addressed the Commission.

Chairman Currin introduced Campbell Law School student Teagan Humphries.

**APPROVAL OF MINUTES**

Chairman Currin asked for any discussion, comments, or corrections concerning the minutes of the August 21, 2014 meeting. There were none and the minutes were approved as distributed.

**FOLLOW-UP MATTERS**

**Department of Public Safety** – 14B NCAC 07A .0116. The rule was unanimously approved.

**Dental Examiners, Board of** – 21 NCAC 16D .0104, .0106; 16E 0103, .0104.

The agency did not respond in accordance with G.S. 150B-21.12. Therefore, there was no action for the Commission to take at the meeting.

**LOG OF FILINGS (PERMANENT RULES)**

**Office of the Commissioner of Banks**

All rules were unanimously approved.

**State Board of Elections**

All rules were unanimously approved.

**Commissioner of Insurance**

All rules were unanimously approved.

**Coastal Resources Commission**

All rules were unanimously approved.

**Department of Transportation**

All rules were unanimously approved.

**Board of Podiatry Examiners**

All rules were unanimously approved.

**Respiratory Care Board**

All rules were unanimously approved.

## **TEMPORARY RULES**

### **Building Code Council**

Prior to the review of the rules, Commissioner Simpson recused herself and did not participate in any discussion or vote concerning the rules because of a possible conflict with her husband's law firm.

Brandon Truman, with the Attorney General's office on behalf of the agency, addressed the Commission.

Dan Tingen and Barry Gupton with the agency addressed the Commission.

Robert Privott of the North Carolina Home Builders Association addressed the Commission.

Mitchell Armbruster of the Smith Anderson Law Firm addressed the Commission.

The Commission declined to approve the temporary rules in accordance with G.S. 150B-21.1(b). The Commission found the Building Code Council did not meet the requirements for temporary rules as set forth in G.S. 150B-21.1(a), as the Council failed to state a serious and unforeseen threat to the public health, safety, or welfare in its statement of the Findings of Need.

In addition, the Rules Review Commission objected to the proposed temporary rules in the Energy Conservation Code, Tables 402.1.1, 402.1.3, and Rules 402.3.5 and 402.5, as well as the Residential Code, Tables N1102.1, N1102.1.2, and Rules N1102.3.5 and N1102.5 based upon ambiguity. The Commission found the language allowing a permit holder to deviate from the standards based upon safety concerns of the specific individual without any guidance in the rules did not set clear standards in those Codes.

Pursuant to G.S. 150B-21.1(b2) and at the request of the Council, the rules were returned to the Council on September 22, 2014.

## **EXISTING RULES REVIEW**

### **Seafood Industrial Park Authority**

The agency did not conduct the review and all rules contained in the report expired on September 18, 2014 pursuant to G.S. 150B-21.3A(d). No action was required by the Commission.

### **Department of Environment and Natural Resources**

15A NCAC 01A – The Commission unanimously approved the report as submitted by the agency.

15A NCAC 01S – The Commission unanimously approved the report as submitted by the agency.

### **Secretary of State**

18 NCAC 03 – The Commission unanimously approved the report as submitted by the agency.

18 NCAC 05 – The Commission unanimously approved the report as submitted by the agency.

Ann Wall with the agency addressed the Commission.

### **Acupuncture Licensing Board**

The Commission unanimously approved the report as submitted by the agency.

### **Board of Massage and Bodywork Therapy**

The Commission approved the report as submitted by the agency, with Commissioner Dunklin opposed.

### **Board of Optometry**

The Commission rescheduled the review of this report to March 2015 at its August 2014 meeting. Therefore, there was no action for the Commission to take at the meeting.

**Examiners of Fee-Based Practicing Pastoral Counselors**

The Board requested a waiver of Rules 26 NCAC 05 .0203 and .0211.

The Commission approved the waiver request, with Commissioners Doran and Hyde opposed.

John Arey and Lee Dukes with the agency addressed the Commission.

The Commission rescheduled the date of review for the report pursuant to Rule 26 NCAC 05 .0204. The Commission will review the Board's report at its February 2016 meeting.

**Department of Commerce**

As this report was not scheduled for review at the September meeting, it was reviewed at the end of the regularly scheduled business.

The Board requested a waiver of Rule 26 NCAC 05 .0203 for a six day extension to the filing deadline of the report for review at the October 2014 meeting.

The Commission approved the waiver, with Commissioners Dunklin and Doran opposed.

**COMMISSION BUSINESS**

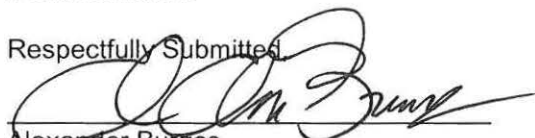
The Commission discussed holding a special meeting in December in order to consider the proposed rules of the Mining and Energy Commission.

The meeting adjourned at 12:31 p.m.

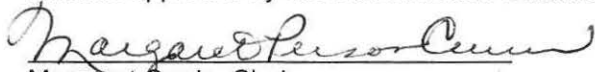
The next regularly scheduled meeting of the Commission is Thursday, October 16<sup>th</sup> at 10:00 a.m.

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:

  
\_\_\_\_\_  
Margaret Currin, Chair



STATE OF NORTH CAROLINA  
OFFICE OF ADMINISTRATIVE HEARINGS

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Raleigh, NC 27699-6714

Street address:  
1711 New Hope Church Rd  
Raleigh, NC 27609-6285

August 22, 2014

Carl Worsley, Chairman  
North Carolina Seafood Industrial Authority Park Authority  
633 Harbor Road  
Wanchese, NC 27981  
pogiew@obxcwa.com

Re: Periodic Review and Expiration of Existing Rules  
Title 04, Chapter 17

Dear Chairman Worsley,

At the Rules Review Commission's August meeting, it was noted that the North Carolina Seafood Industrial Authority Park Authority did not file the existing rules report as required by G.S. 150B-21.3A and Rule 26 NCAC 05 .0203(c) for review by the Rules Review Commission (RRC) at its September 18, 2014 meeting.

Pursuant to G.S. 150B-21.3A, all agencies subject to rulemaking under Article 2A of the North Carolina Administrative Procedure Act are required to review all existing rules in the North Carolina Administrative Code. This agency is subject to rulemaking under Article 2A. The RRC was given authority by the General Assembly to set the schedule for each agency to conduct the review. That schedule was adopted by the RRC effective April 1, 2014, and is contained in Rule 26 NCAC 05 .0211.

The rules of the Seafood Industrial Authority Park Authority are scheduled for review by the RRC at the September 2014 meeting. The deadline for filing the report was August 15, 2014. The agency did not file the report by the deadline. **Unless the agency seeks a waiver of the filing deadline pursuant to Rule 26 NCAC 05 .0204, and that request is granted by the Commission, the above-referenced rules will expire on September 18, 2014 pursuant to G.S. 150B-21.3A(b), and they will be deemed repealed as of that date.** The Codifier of Rules will remove the rules from the North Carolina Administrative Code.

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Rules Division  
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Assistants  
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Clerk's Office  
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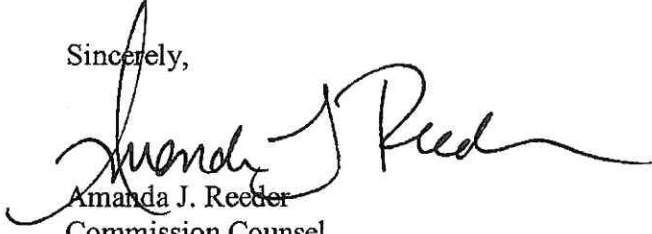
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Division  
919/431-3036  
fax: 919/431-3103

An Equal Employment Opportunity Employer

Should your agency wish to seek an extension for filing the report, please refer to Rule 26 NCAC 05 .0204. I encourage you to file the request as soon as possible.

If you have any questions regarding the Rules Review Commission's actions, please contact staff.

Sincerely,



Amanda J. Reeder  
Commission Counsel

cc: Sen. Fletcher Hartsell, Co-Chair, Joint Legislative Administrative Procedure Oversight Committee  
Rep. Tim Moffitt, Co-Chair, Joint Legislative Administrative Procedure Oversight Committee  
Karen Cochrane- Brown, Staff, Joint Legislative Administrative Procedure Oversight Committee  
Bob Peele, Rulemaking Coordinator  
John Hoomani, General Counsel, Department of Commerce

**RULES REVIEW COMMISSION MEETING  
MINUTES  
July 17, 2014**

The Rules Review Commission met on Thursday, July 17, 2014, in the Commission Room at 1711 New Hope Church Road, Raleigh, North Carolina. Commissioners present were: Anna Choi, Margaret Currin, Jeanette Doran, Garth Dunklin, Jeff Hyde, Jay Hemphill, Stephanie Simpson, Ralph Walker, and Faylene Whitaker.

Staff members present were: Commission counsels Abigail Hammond, Amber Cronk May, and Amanda Reeder; and Julie Brincefield, Tammara Chalmers, and Dana Vojtko.

The meeting was called to order at 10:02 a.m. with Chairman Currin presiding.

Chairman Currin read the notice required by NCGS 138A-15(e) and reminded the Commission members that they have a duty to avoid conflicts of interest and the appearances of conflicts.

Chairman Currin introduced OAH Externs Elizabeth Larner and Andrew Johnstone.

**APPROVAL OF MINUTES**

Chairman Currin asked for any discussion, comments, or corrections concerning the minutes of the June 18, 2014 meeting. There were none and the minutes were approved as distributed.

**FOLLOW-UP MATTERS**

**Medical Care Commission**

10A NCAC 13D .3201 was unanimously approved.

**Commission for Public Health**

10A NCAC 43K .0101, .0102, .0103 - The Commission granted a waiver of the 210-day submission requirement upon the request of the agency. Commissioner Hyde objected to the waiver. All rules were unanimously approved.

Dr. Gerri Mattison with the Commission for Public Health addressed the Commission.

Bob Martin with the Commission for Public Health addressed the Commission.

Peg O'Connell with the March of Dimes addressed the Commission.

**Home Inspector Licensure Board**

11 NCAC 08 .1103 was unanimously approved.

Commissioner Walker was not present during the vote.

**Department of Public Safety**

14B NCAC 07A .0116 - The agency did not respond in accordance with G.S. 150B-21.12. The Office of State Budget and Management did not respond to the Commission's request made pursuant to G.S. 150B-21.9. There was no action for the Commission to take at the meeting.

**Engineers and Surveyors, Board of Examiners for**

Prior to the review of these rules Commissioner Whitaker recused herself and did not participate in any discussion or vote concerning these rules.

21 NCAC 56 .0501, .0502, .0503, .0601, .0602, .0603, .0802, .0901, .1402, .1602, .1603, .1604, .1606, .1608, .1703, .1704, .1705 - All rules were unanimously approved.

### **Real Estate Commission**

Prior to the review of the rule Chairman Currin recused herself and did not participate in any discussion or vote concerning the rule because she has an inactive real estate broker's license.

Prior to the review of the rule Vice-Chairman Dunklin recused himself and did not participate in any discussion or vote concerning the rule because he practices before the Commission.

21 NCAC 58A .1709 was unanimously approved.

### **LOG OF FILINGS**

#### **Department of Agriculture**

The Commission extended the period of review for all rules 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 receive final approval from the Board of Agriculture and submit the rewritten rules at a later meeting.

#### **Commission for Public Health**

10A NCAC 41A .0101 was unanimously approved.

Dr. Zack Moore with the agency addressed the Commission.

#### **Department of Justice – Division of Criminal Information**

All rules were unanimously approved.

#### **Criminal Justice Education and Training Standards Commission**

All rules were unanimously approved.

#### **Coastal Resources Commission**

All rules were unanimously approved.

#### **Board of Cosmetic Art Examiners**

All rules were unanimously approved. Rules 21 NCAC 14H .0401 and 0505 were approved contingent upon receiving technical corrections. The rewritten rules were subsequently received.

#### **Board of Dental Examiners**

The Commission objected to the following rules in accordance with G.S. 150B-21.10: 21 NCAC 16B .0101, .0201, .0202, .0301, .0303, .0401, .0402, .0403, .0404, .0405, .0406, .0501, .0601, .0701, .0801, .0901, .1002, .1101, and 16C .0601.

The Commission objected to all of the rules in Subchapter 16B because the agency failed to comply with the Administrative Procedure Act, as it adopted the rules before the close of the comment period.

The Commission also objected to Rule 21 NCAC 16B .1101, finding the rule as written was ambiguous, as it stated that applicants may be required to take refresher courses at the discretion of the Board, but the rule does not state when that may occur or what may be required.

The Commission objected to Rule 21 NCAC 16C .0601, finding it was ambiguous as written. The rule stated that applicants may be required to take refresher courses at the discretion of the Board, but the rule does not state when that may occur or what may be required.

In addition to the objections, the Commission extended to period of review pursuant to G.S. 150B-21.10 for Rules 16C .0101, .0202, .0301, .0303, .0311, .0401, .0402, .0403, .0404, .0405, .0501 and 16Q .0303. The Commission did this in response to a request by the agency to extend the period of review.

#### **Board of Pharmacy**

All rules were approved unanimously.

**TEMPORARY RULES**

**Wildlife Resources Commission**

Both rules were unanimously approved.

**G.S. 150B-19.1(h) RRC CERTIFICATION**

**Sheriffs Education and Training Standards Commission**

The Commission certified that the agency adhered to the principles in G.S. 150B-19.1 for proposed rules 12 NCAC 10B .2005 and .2006.

**EXISTING RULES REVIEW**

**Office of State Auditor**

**The agency did not conduct the review.** The Commission asked for a letter to be sent to the Joint Legislative Administrative Procedure Oversight Committee to clarify what information the Committee is seeking from the Commission when an agency does not conduct the review.

**NC Irrigation Contractors' Licensing Board**

All agency final determinations were unanimously approved.

Tina Simpson with the Department of Justice, the agency's attorney, addressed the Commission.

**Board of Examiners for Nursing Home Administrators**

All agency final determinations were unanimously approved.

Jack Nichols, the agency's attorney, addressed the Commission.

Prior to the review of the report Commissioner Choi recused herself and did not participate in any discussion or vote concerning the report because her firm provides legal representation to the board.

**COMMISSION BUSINESS**

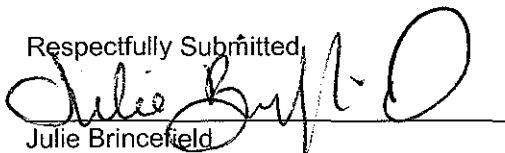
Staff gave the Commission a brief legislative update.

The meeting adjourned at 1:05 p.m.

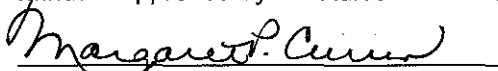
The next regularly scheduled meeting of the Commission is Thursday, August 21<sup>st</sup> at 10:00 a.m.

There is a digital recording of the entire meeting available from the Office of Administrative Hearings /Rules Division.

Respectfully Submitted,

  
Julie Brincefield  
Administrative Assistant

Minutes approved by the Rules Review Commission:

  
Margaret Gurrin, Chair



STATE OF NORTH CAROLINA  
OFFICE OF ADMINISTRATIVE HEARINGS

Mailing address:  
6714 Mail Service Center  
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Street address:  
1711 New Hope Church Rd  
Raleigh, NC 27609-6285

June 20, 2014

The Honorable Beth A. Wood, State Auditor  
Office of the State Auditor  
2 South Salisbury Street  
20601 Mail Service Center  
Raleigh, North Carolina 27699-0601

Re: Periodic Review and Expiration of Existing Rules  
Title 03, Chapter 1 (Rules 03 NCAC 01 .0101 - .0103 and .0201.)

Dear Auditor Wood:

At the Rules Review Commission's June meeting, it was noted that the Office of the State Auditor did not file the existing rules report as required by G.S. 150B-21.3A on Monday, June 16, 2014 for review by the Rules Review Commission (RRC) at its July 17, 2014 meeting.

Pursuant to G.S. 150B-21.3A, all agencies subject to rulemaking under Article 2A of the North Carolina Administrative Procedure Act are required to review all existing rules in the North Carolina Administrative Code. Your agency is subject to rulemaking under Article 2A. The RRC was given authority by the General Assembly to set the schedule for each agency to conduct the review. That schedule was adopted by the RRC effective April 1, 2014, and is contained in Rule 26 NCAC 05 .0211.

Your agency is scheduled for review by the RRC at the July 2014 meeting. The deadline for filing the report was June 16, 2014. The agency did not file the report by the deadline. Pursuant to G.S. 150B-21.3A(b), the above-referenced rules will expire on July 17, 2014, and they will be deemed repealed as of that date. The Codifier of Rules will remove the rules from the North Carolina Administrative Code.

If you have any questions regarding the Rules Review Commission's actions, please contact staff.

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

Sincerely,



Abigail Hammond  
Commission Counsel

cc: Sen. Fletcher Hartsell, Co-Chair, Joint Legislative Administrative Procedure  
Oversight Committee  
Rep. Tim Moffitt, Co-Chair, Joint Legislative Administrative Procedure Oversight  
Committee  
Karen Cochrane- Brown, Staff, Joint Legislative Administrative Procedure  
Oversight Committee  
Tim Hoegemeyer, Rulemaking Coordinator



STATE OF NORTH CAROLINA  
OFFICE OF ADMINISTRATIVE HEARINGS

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Street address:  
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Raleigh, NC 27609-6285

July 23, 2014

The Honorable Fletcher Hartsell  
The Honorable Tim Moffitt  
Co-Chairs of the Joint Legislative Administrative Procedure Oversight Committee  
545 Legislative Office Building  
300 North Salisbury Street  
Raleigh, North Carolina 27603

Re: Periodic Review and Expiration of Existing Rules

Dear Senator Hartsell and Representative Moffitt:

At the Rules Review Commission's July 2014 meeting, the Commission discussed the non-compliance of an agency by not filing a report as required by G.S. 150B-21.3A when the agency is subject to rulemaking under Article 2A.

The limited purpose of this letter is to request clarification as to whether a report forwarded by the Commission to the Committee resulting in rules being removed from the North Carolina Administrative Code should inform the Committee of the agency's statutory mandate to make rules. The Commission requests that this matter be added to an upcoming meeting agenda for the Committee.

The Commission is concerned about the statutory charge to an agency that is required to promulgate rules, as illustrated in the following statute:

**§ 147-64.9. Rules and regulations.**

The Auditor shall make and enforce such reasonable rules and regulations as are necessary for the operation of his office. The Auditor shall install an adequate accounting system for his office and shall keep or cause to be kept a complete, accurate, and adequate record of all fiscal

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fax: 919/431-3103

transactions of his office. (1983, c. 913, s. 2.) (emphasis added)

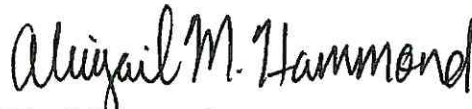
Pursuant to G.S. 150B-21.3A(b), if an agency fails to file a report, its rules will expire and will be deemed repealed as of the date and month of the scheduled review of the report by the Commission. The Codifier of Rules will then remove the rules from the North Carolina Administrative Code.

The Commission is concerned about the following factual pattern:

- (1) an agency has a statutory mandate to make rules;
- (2) an agency has rules in the North Carolina Administrative Code;
- (3) an agency does not complete a report as required by G.S. 150B-21.3A(c)(1);
- (4) the Commission forwards the incomplete report to the Committee as required by G.S. 150B-21.3A(c)(2);
- (5) the Commission is aware of the statutory mandate;
- (6) G.S. 150B-21.3A does not indicate whether the Commission should submit this or other additional information to the Commission when the Commission forwards the agency's incomplete report; and
- (7) the Codifier of Rules removes the rules from the North Carolina Administrative Code pursuant to G.S. 150B-21.3A(d).

Your consideration of this request is greatly appreciated. Please do not hesitate to contact us if you have any additional questions or concerns.

Sincerely,



Abigail Hammond  
Commission Counsel

cc: Karen Cochrane-Brown, Staff, Joint Legislative Administrative Procedure Oversight Committee

**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 re adoption 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 re adoption 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 re adoption date from the State Human Resources Commission, Commissioner Doran recused herself and did not participate in any discussion or vote concerning the proposed re adoption 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.

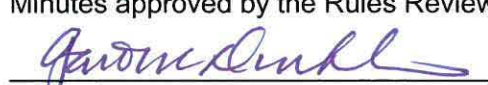
The next regularly scheduled meeting of the Commission is Thursday, December 15<sup>th</sup> at 10:00 a.m.

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

**RULES REVIEW COMMISSION MEETING  
MINUTES  
April 16, 2015**

The Rules Review Commission met on Thursday, April 16, 2015, in the Commission Room at 1711 New Hope Church Road, Raleigh, North Carolina. Commissioners present were: Margaret Currin, Jeanette Doran, Garth Dunklin, Jay Hemphill, Jeff Hyde, Stephanie Simpson, Ralph Walker, and Faylene Whitaker.

Staff members present were Commission Counsels Abigail Hammond, Amber Cronk May, and Amanda Reeder; and Julie Brincefield, Alex Burgos, and Dana Vojtko.

The meeting was called to order at 10:05 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.

**APPROVAL OF MINUTES**

Chairman Dunklin asked for any discussion, comments, or corrections concerning the minutes of the March 19, 2015 meeting. There were none and the minutes were approved as distributed.

**FOLLOW UP MATTERS**

**Acupuncture Licensing Board**

21 NCAC 01 .0108, .0109, .0110, .0111, .0601, .0602, .0603, .0604, .0605, .0606, .0607, .0608, and .0609 - No action was required by the Commission. The review of the rules will occur at the May meeting.

**Irrigation Contractors Licensing Board**

21 NCAC 23 .0105 - No action was required by the Commission. The review of this Rule will occur at the June meeting.

**Board of Physical Therapy Examiners**

21 NCAC 48C .0104 - No action was required by the Commission. The review of this Rule will occur at the May meeting.

**State Human Resources Commission**

25 NCAC 01B .0350, .0413; 01C .0311, .0402, .1004, .1007; 01D .0201, .0207; 01E .0204, .0901, .1601, .1602, .1603, .1605, .1606; 01H .0633, .0634, .0636, .0641, .0901, .0902, .0904, .0905, .1103; 01J .0603, .0610, .0615, .0616, .0617, .0618, .1101, .1201, .1202, .1203, .1204, .1205, .1206, .1207, .1208, .1301, .1302, .1303, .1304, .1305, .1306, .1307, .1308, .1309, .1310, .1311, .1312, .1313, .1314, .1315, .1316, .1317, .1318, .1319, .1320, .1401, .1402, .1403, .1404, .1405, .1406, .1407, .1408, .1409, .1410, .1411, and .1412 - The Commission approved these Rules with Commissioners Dunklin, Hemphill, Hyde, Simpson, Walker, and Whitaker voting in favor of the motion to approve the rules and Commissioner Currin voting against.

Prior to the review of the rules from the State Human Resources Commission, Commissioner Doran recused herself and did not participate in any discussion or vote concerning these Rules because she is a state employee in a supervisory position over state employees.

Attorney Michael Byrne addressed the Commission.

**Building Code Council**

The Commission approved the following rules in the NC Residential Code: AM106 and AM111 Tables; N1 and N2 Tables; and N1 and N2 Tables – Wood and Flitch Plate Examples.

The Commission approved these Rules with Commissioner Doran voting against. The Commission found that the Council setting an earlier effective date for these Rules was not a substantial change and therefore, the agency complied with the APA.

No action was taken on the 2012 NC Residential Code, Sections R101.2, R202, and R324, Screen Enclosure, the 2012 Building Code, Chapter 36, and the 2012 Fire Code, 4504.1. The review of these Rules will occur at the June meeting.

Barry Gupton from the agency addressed the Commission.

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

#### **Child Care Commission**

The Commission extended the period of review on 10A NCAC 09 .0302, .0604, .0607, .0707, .1701, .1705, .1720, .1721, .2318 and .2829 in accordance with G.S. 150B-21.10 and G.S. 150B-21.13. The Commission extended the period of review to allow the Child Care Commission additional time to revise the rules in response to technical change requests.

#### **Environmental Management Commission**

All rules were unanimously approved.

#### **Marine Fisheries Commission**

All rules were unanimously approved.

The Commission received more than 10 letters of objection to Rule 15A NCAC 03M .0513. Pursuant to G.S. 150B-21.3, the rule is now subject to legislative review and a delayed effective date.

#### **Coastal Resources Commission**

15A NCAC 07K .0208 was unanimously approved.

#### **Wildlife Resources Commission**

All rules were unanimously approved.

The Commission received more than 10 letters of objection to 15A NCAC 10B .0106 and .0219 and 15A NCAC 10I .0102 and .0104. Pursuant to G.S. 150B-21.3, these Rules are now subject to legislative review and a delayed effective date.

#### **Well Contractors Certification Commission**

All rules were unanimously approved.

#### **Medical Board**

All rules were unanimously approved.

Prior to the review of the rules from the Medical Board, Commissioner Walker recused himself and did not participate in any discussion or vote concerning the rules because he is a member of the board.

#### **Real Estate Commission**

Chairman Dunklin stepped away and Vice Chairman Hyde presided over the discussion and vote on the Real Estate Commission rules.

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.

Prior to the review of the rules from the Real Estate Commission, Commissioner Currin recused herself and did not participate in any discussion or vote concerning the rules because she possesses an inactive real estate broker's license.

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

##### **Wildlife Resources Commission**

15A NCAC 10F .0333 was unanimously approved.

#### **EXISTING RULES REVIEW**

##### **Medical Care Commission**

10A NCAC 13L - The Commission unanimously approved the report as submitted by the agency.

##### **Medical Care Commission**

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

##### **Medical Care Commission**

10A NCAC 13O - The Commission unanimously approved the report as submitted by the agency.

##### **Commission for Mental Health**

10A NCAC 26A - The Commission unanimously approved the report as submitted by the agency.

##### **Commission for Mental Health**

10A NCAC 26B – The Commission unanimously approved the report as submitted by the agency.

##### **Commission for Mental Health**

10A NCAC 26D – The Commission unanimously approved the report as submitted by the agency.

##### **Environmental Management Commission**

15A NCAC 02R – The Commission unanimously approved the report as submitted by the agency.

##### **Medical Board**

21 NCAC 32 – The Commission voted to not approve the staff recommendation to approve the report as submitted by the agency, with Commissioners Currin, Doran, Dunklin, Hemphill, Simpson, and Whitaker voting against and Commissioner Hyde voting in favor.

The Commission objected to the report after receiving public comments that the Board did not post all information required by Rule 26 NCAC 05 .0207 during the public comment period. The Commission determined that the Board will need to repost the report for another 60 day comment period. The Commission rescheduled the review of the report for February 2016.

Prior to the review of the report from the Medical Board, Commissioner Walker recused himself and did not participate in any discussion or vote concerning the report because he is a member of the board.

Jeanne M. McIntosh addressed the Commission.

Marcus Jimison, attorney for the Board, addressed the Commission.

**RULES REVIEW COMMISSION MEETING  
MINUTES  
March 15, 2018**

The Rules Review Commission met on Thursday, March 15, 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, Garth Dunklin, Jay Hemphill, Jeff Hyde, Jeff Poley, and Paul Powell.

Staff members present were Commission Counsels Abigail Hammond, Amber Cronk May, Amanda Reeder, and Jason Thomas; and Julie Brincefield, Alex Burgos, and Dana McGhee.

The meeting was called to order at 10:04 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.

Chairman Dunklin introduced OAH extern Jack Williams to the Commission.

**APPROVAL OF MINUTES**

Chairman Dunklin asked for any discussion, comments, or corrections concerning the minutes of the February 15, 2018 meeting. There were none and the minutes were approved as distributed.

**FOLLOW UP MATTERS**

**Board of Agriculture**

02 NCAC 60B .0101, .0201, .0202, .0205, .0302, .0401, .0402, .0603, .0604, .0605, .0701, .0702, .0804, .0805, .0901, .1003, .1004, .1005, .1006, .1007, .1008, .1009, .1010, .1011, .1012, .1013, .1014, .1015, .1016, .1017, .1018, .1019, .1020, .1021, .1022, .1023, .1024, .1025, .1026, .1027, .1028, .1029, .1030, .1031, .1032; 60C .0101, .0102, .0201, .0202, .0203, .0204, .0205, .0206, .0207, .0208, and .0209 - All rules were unanimously approved.

**Environmental Management Commission**

15A NCAC 02Q .0101, .0102, .0103, .0104, .0105, .0106, .0107, .0108, .0109, .0110, .0111, .0112, .0113, .0201, .0202, .0203, .0204, .0205, .0206, .0207, .0301, .0303, .0304, .0305, .0306, .0307, .0308, .0309, .0310, .0311, .0312, .0313, .0314, .0315, .0316, .0317, .0318, .0401, .0402, .0501, .0502, .0503, .0504, .0505, .0507, .0508, .0509, .0510, .0512, .0513, .0514, .0515, .0516, .0517, .0518, .0519, .0520, .0521, .0522, .0523, .0524, .0525, .0526, .0527, .0528, .0801, .0802, .0803, .0804, .0805, .0806, .0807, .0808, .0809, .0810, .0901, .0902, and .0903 - All rules were unanimously approved.

**Licensing Board for General Contractors**

21 NCAC 12 .0204, .0503, and .0504 - All rules were unanimously approved.

Prior to the review of the rules from the Licensing Board for General Contractors, Commissioner Atkins recused himself and did not participate in any discussion or vote concerning the rules because of a conflict.

Prior to the review of the rules from the Licensing Board for General Contractors, Commissioner Choi recused herself and did not participate in any discussion or vote concerning the rules because her law firm represents the Board, and she is the rulemaking coordinator for the Board.

**Building Code Council**

2018 Residential Code Tables N1102.1.2, N1102.1.4; 2018 Energy Conservation Code Tables R402.1.2, R402.1.4 – The agency is addressing the objections from the February meeting. No action was required by the Commission.

**LOG OF FILINGS (PERMANENT RULES)***Pre-Reviewed Rules***Acupuncture Licensing Board**

All rules were unanimously approved.

**Board of Barber Examiners**

All rules were unanimously approved.

**Board of Dental Examiners**

All rules were unanimously approved.

*Non Pre-Reviewed Rules***Banking Commission**

04 NCAC 03C .1001 was unanimously approved.

**Criminal Justice Education and Training Standards Commission**

All rules were unanimously approved.

**Alcoholic Beverage Control Commission**

14B NCAC 15A .0102 was unanimously approved.

**Alarm Systems Licensing Board**

14B NCAC 17 .0204 was unanimously approved.

**Department of Revenue**

17 NCAC 05 - The Commission extended the period of review for the rules in accordance with G.S. 150B-21.10 and G.S. 150B-21.13. The Commission extended the period of review to allow the Department of Revenue additional time to revise the rules in response to the technical change requests.

**Board of Chiropractic Examiners**

All rules were unanimously approved.

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

**Board of Landscape Architects**

All rules were unanimously approved.

**Board of Examiners of Plumbing, Heating and Fire Sprinkler Contractors**

All rules were unanimously approved.

**State Human Resources Commission**

All rules were unanimously approved.

**EXISTING RULES REVIEW**

**Department of Natural and Cultural Resources**

07 NCAC 13A, 13B, 13C, 13D, 13F, 13G, and 13I - The agency requested an extension of the deadline established in Rule 26 NCAC 05 .0203, as it submitted the reports three business days after the filing deadline.

The Commission approved the extension request with Commissioners Bryan and Dunklin voting against.

The Commission unanimously approved the reports as submitted by the agency.

Phil Feagan, General Counsel for the agency, addressed the Commission.

**Parks and Recreation Authority**

07 NCAC 13K - The agency requested an extension of the deadline established in Rule 26 NCAC 05 .0203, as it submitted the reports three business days after the filing deadline.

The Commission approved the extension request with Commissioner Dunklin voting against.

The Commission unanimously approved the report as submitted by the agency.

**Board of Physical Therapy Examiners**

21 NCAC 48 - The Commission unanimously approved the report as submitted by the agency.

**Real Estate Commission**

21 NCAC 58 - The Commission unanimously approved the report as submitted by the agency.

**Environmental Management Commission**

15A NCAC 13C - As reflected in the attached letter, the Commission voted to schedule readoption of the rules no later than April 30, 2021 pursuant to G.S. 150B-21.3A(d)(2).

**Industrial Commission**


04 NCAC 10 – The agency requested that the Commission clarify the rules subject to the Periodic Review and Expiration of Existing Rules Review pursuant to G.S. 150B-21.3A as scheduled for May 2019. The Commission tabled the discussion pending the submission of a request for exemption pursuant to Rule 26 NCAC 05 .0209 from the agency.

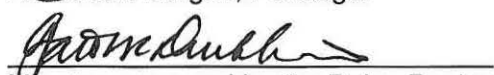
Commissioner Hyde was not present during the discussion or vote concerning the report.

**COMMISSION BUSINESS**

The meeting adjourned at 11:35 a.m.

The next regularly scheduled meeting of the Commission is Thursday, April 19<sup>th</sup> at 10:00 a.m.

  
\_\_\_\_\_  
Alexander Burgos, Paralegal

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

**RULES REVIEW COMMISSION MEETING  
MINUTES  
February 19, 2015**

The Rules Review Commission met on Thursday, February 19, 2015, in the Commission Room at 1711 New Hope Church Road, Raleigh, North Carolina. Commissioners present were: Anna Choi, Margaret Currin, Jeanette Doran, Garth Dunklin, Jeff Hyde, and Stephanie Simpson.

Staff members present were Commission Counsels Abigail Hammond, Amber Cronk May, and Amanda Reeder, 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.

**APPROVAL OF MINUTES**

Chairman Dunklin asked for any discussion, comments, or corrections concerning the minutes of the January 15, 2015 meeting. There were none and the minutes were approved as distributed.

**FOLLOW UP MATTERS**

**Department of Commerce – Credit Union Division**

All rules were unanimously approved.

Prior to the review of the rules from the Department of Commerce – Credit Union Division, Commissioner Doran recused herself and did not participate in any discussion or vote concerning these rules because she is a state employee with the Department of Commerce.

**DHHS – Division of Mental Health**

All rules were withdrawn at the request of the agency. No action was required by the Commission.

**Board of Landscape Architects**

All rules were unanimously approved.

**Board of Physical Therapy Examiners**

21 NCAC 48C .0104 - There has been no response by the agency, therefore no action was required by the Commission.

**LOG OF FILINGS (PERMANENT RULES)**

**Industrial Commission**

All rules were unanimously approved.

Prior to the review of the rules from the Industrial Commission, Commissioner Simpson recused herself and did not participate in any discussion or vote concerning these rules because of a possible conflict with her husband's law firm.

**Child Care Commission**

10A NCAC 09 .0102 was unanimously approved.

**Criminal Justice Education and Training Standards Commission**

12 NCAC 09B .0203 was unanimously approved.

**Department of Labor**

All rules were unanimously approved.

**Building Code Council**

All rules were unanimously approved.

**LOG OF RULES (TEMPORARY RULES)**

**Wildlife Resources Commission**

All rules were unanimously approved.

**EXISTING RULES REVIEW**

**Office of State Budget and Management**

09 NCAC 03 – The Commission unanimously approved the report as submitted by the agency, with the following exception for Rule 09 NCAC 03A .0103, which received public comment that was deemed to have merit as defined by G.S. 150B-21.3A(c)(2). The RRC designated this rule as “necessary with substantive public interest.”

Lindsey Wakely with the Governor’s office addressed the Commission.

**Office of Information Technology Services**

09 NCAC 06 – The Commission unanimously approved the report as submitted by the agency.

**Social Services Commission**

10A NCAC 97 – The Commission unanimously approved the report as submitted by the agency with the following exceptions for rules 10A NCAC 97B .0401, .0402, .0403; 97C .0104, .0106, .0108, .0109 and .0111. The RRC designated these rules as “necessary with substantive public interest.”

**Environmental Management Commission**

15A NCAC 02S - The Commission unanimously approved the report as submitted by the agency.

**Board of Barber Examiners**

The Board requested a waiver of Rule 26 NCAC 05 .0203.

The waiver request was unanimously approved.

The Commission unanimously approved the report as submitted by the agency.

Prior to the review of the report from the Board of Barber Examiners, Commissioner Choi recused herself and did not participate in any discussion or vote concerning this report because the law firm she is employed at provides legal representation to the board.

Bain Jones with the agency addressed the Commission.

**Agriculture Finance Authority**

24 NCAC 02 – The Commission unanimously approved the report as submitted by the agency.

**Coastal Resources Commission**

The Board requested a waiver of Rules 26 NCAC 05 .0203 and .0211 for the report for 15A NCAC 07B.

The waiver request was unanimously approved.

The Commission rescheduled the date of review for the report.

The Commission will review the Board's report at its June 18, 2015 meeting.

**COMMISSION BUSINESS**

Staff proposed a recommendation to schedule rules for readoption after completion of the periodic review and expiration of existing rules. The following readoption deadline dates were adopted by the Commission:

- August 31, 2015  
04 NCAC 24E Division of Employment Security
- November 30, 2015  
21 NCAC 23 Irrigation Contractors' Licensing Board  
21 NCAC 37 Board of Examiners for Nursing Home Administrators
- December 31, 2015  
21 NCAC 02 Board of Architecture
- January 31, 2016  
11 NCAC 18, 11 NCAC 20, 11 NCAC 21 Department of Insurance  
21 NCAC 08 Board of Certified Public Accountant Examiners
- March 31, 2016  
21 NCAC 14 Board of Cosmetic Art Examiners
- April 30, 2016  
21 NCAC 52 Board of Podiatry Examiners  
25 NCAC 01C State Human Resources Commission

Staff gave the Commission a brief legislative update.

At 11:21 a.m., Chairman Dunklin ended the public meeting of the Rules Review Commission and called the meeting into closed session pursuant to G.S. 143-318.11(a)(3) to discuss the lawsuit filed by the State Board of Education against the Rules Review Commission and G.S. 143-318.11(a)(6).

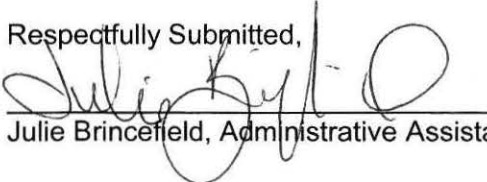
The Commission came out of closed session at 1:52 p.m.

The meeting adjourned at 1:53 p.m.

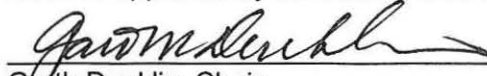
The next regularly scheduled meeting of the Commission is scheduled for Thursday, March 19<sup>th</sup> at 10:00 a.m.

There is a digital recording of the entire meeting available from the Office of Administrative Hearings /Rules Division.

Respectfully Submitted,

  
Julie Brincefield, Administrative Assistant

Minutes approved by the Rules Review Commission:

  
Garth Dunklin, Chair



State of North Carolina

**Board Members**

Don Beal  
Lance Crumley  
David Hood  
Steffon Sharpless  
Valerie Willis

Board of Barber Examiners  
5809-102 Departure Drive  
Raleigh, NC 27616  
(919) 981-5210  
(919) 981-5068 (fax)

Dennis Seavers  
Executive Director

W. Bain Jones, Jr.  
Counsel to the Board

January 20, 2015

The North Carolina Rule Commission  
1711 New Hope Church Road  
Raleigh, North Carolina 27609

Re: Extension for filing the Agency's Spreadsheet Report

Dear Members of the North Carolina Rules Commission:

I am writing requesting an extension of the filing of the Agency's Spreadsheet Report on **January 15, 2015**. Bain Jones, the Agency Rule Coordinator, had been ill with the flu. Mr. Jones had the Board to determine that all rules are necessary with a substantial public interest and complied with the statutory requirements concerning this determination on April 14, 2014. He noticed the determination for public comment and we received none. The Board made the final determination of necessary with a substantial public interest on August 18, 2014.

With Mr. Jones's assistance, the Board has reviewed the rules and is moving forward with the review required in February 2015. Mr. Jones has made every effort to remain in communication with the Rules Review Staff Attorneys as to the status of our compliance with the rules review.

From December 1, 2014-January 11, 2014, Mr. Jones served as the Interim Executive Director in addition to his responsibilities as Counsel to the Board. I began my work as Executive Director on January 12, 2015. This has been a very busy period for the Board. Mr. Jones was ill the weekend before January 12, 2015 and came to work before he should have on January 15, 2015. He transmitted the spreadsheet to Abigail Hammond on January 15, 2015. Regrettably, the full documentation was not transmitted and Mr. Jones was out of work with the flu on January 16, 2015.

The North Carolina Board of Barber Examiners wishes to fully comply with all statutory requirements. All documentation was emailed and received by the Rules Review Commission on January 20, 2015, the first day Mr. Jones returned to the office.

North Carolina Rules Review Commission

January 20, 2015

Page Two

We regret the delay in the complete filing and respectfully ask the Commission to allow an extension for filing the Spreadsheet report. Thank you for your consideration in this matter.

Sincerely yours,

1/20/2015

**X** Dennis Seavers

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Dennis Seavers  
Executive Director

Dennis Seavers  
Executive Director

cc: file

**RULES REVIEW COMMISSION MEETING  
MINUTES  
August 21, 2014**

The Rules Review Commission met on Thursday, August 21, 2014, in the Commission Room at 1711 New Hope Church Road, Raleigh, North Carolina. Commissioners present were: Anna Choi, Margaret Currin, Jeanette Doran, Garth Dunklin, Jeff Hyde, Stephanie Simpson, and Ralph Walker.

Staff members present were: Commission counsels Abigail Hammond, Amber Cronk May, and Amanda Reeder; and Julie Brincefield, Alex Burgos, and Dana Vojtko.

The meeting was called to order at 10:00 a.m. with Chairman Currin presiding.

Chairman Currin read the notice required by NCGS 138A-15(e) and reminded the Commission members that they have a duty to avoid conflicts of interest and the appearances of conflicts.

Chairman Currin introduced OAH Paralegal Alex Burgos.

**APPROVAL OF MINUTES**

Chairman Currin asked for any discussion, comments, or corrections concerning the minutes of the July 17, 2014 meeting. There were none and the minutes were approved as distributed.

**FOLLOW-UP MATTERS**

**Commissioner of Agriculture** – 02 NCAC 52K .0301, .0401, .0501. All rules were unanimously approved.

**Department of Public Safety** – 14B NCAC 07A .0116., The Office of State Budget and Management sent a response on August 20, 2014 to the Commission's request made pursuant to G.S. 150B-21.9, and stated that the rule change did not create a substantial economic impact. However, the agency did not respond in accordance with G.S. 150B-21.12. Therefore, there was no action for the Commission to take at the meeting.

**Board of Dental Examiners** – 21 NCAC 16B .0101, .0201, .0202, .0301, .0303, .0401, .0402, .0403, .0404, .0405, .0406, .0501, .0601, .0701, .0801, .0901, .1002, .1101; 16C .0101, .0202, .0301, .0303, .0311, .0401, .0402, .0403, .0404, .0405, .0501, .0601; 16Q .0303.

Prior to the review of the rules, Commissioner Choi recused herself, and did not participate in any discussion or vote concerning the rules. Commissioner Choi stated the law firm that she is employed with provides legal services for the above referenced Board; therefore, although her firm does not provide counsel on rulemaking for the above referenced Board, in the abundance of caution, she recused herself.

All rules were unanimously approved.

**LOG OF FILINGS (PERMANENT RULES)**

**Pesticide Board**

All rules were withdrawn by the agency. No action was required by the Commission.

**Alcoholic Beverage Control Commission**

All rules were unanimously approved.

**Department of Labor**

13 NCAC 13 .0401 was unanimously approved.

**Environmental Management Commission**

15A NCAC 02B .0306 was unanimously approved.

#### **Dental Examiners, Board of**

Prior to the review of the rules, Commissioner Choi recused herself, and did not participate in any discussion or vote concerning the rules. Commissioner Choi stated the law firm that she is employed with provides legal services for the above referenced Board; therefore, although her firm does not provide counsel on rulemaking for the above referenced Board, in the abundance of caution, she recused herself.

21 NCAC 16D .0103 was unanimously approved by the Commission.

The Commission objected to Rule 21 NCAC 16D .0106. The Commission found that the language was ambiguous as written, as it stated the Board will look into any information deemed proper as it relates to the applicants' qualifications or character; however, the rule gives no guidance as to what that will be. Further, the Commission found that the Board did have statutory authority to create a waiver of recovery of damages against the Board, its members or any person who answers a Board inquiry, as proposed in the rule.

In addition, the Commission extended to period of review pursuant to G.S. 150B-21.10 for Rules 16D .0104, 16E .0103 and .0104. The Commission did this in response to a request by the agency to extend the period of review.

#### **Examiners of Electrical Contractors, Board of**

All rules were unanimously approved.

#### **Medical Board**

Prior to the review of the rules, Commissioner Simpson recused herself and did not participate in any discussion or vote concerning the rules because of a possible conflict with her husband's law firm.

All rules were unanimously approved.

#### **Board of Pharmacy**

Prior to the review of the rule, Commissioner Simpson recused herself and did not participate in any discussion or vote concerning the rule because of a possible conflict with her husband's law firm.

Clint Pinyan, the Board's attorney, addressed the Commission.

21 NCAC 46 .2507 was unanimously approved.

#### **Board of Podiatry Examiners**

All rules were withdrawn by the agency. No action was required by the Commission.

#### **Appraisal Board**

The rule was unanimously approved.

#### **Building Code Council**

Prior to the review of the rules, Commissioner Walker recused himself and did not participate in any discussion or vote concerning the rules because his son is an engineer.

Barry Gupton with the agency addressed the Board.

All rules were unanimously approved.

#### **G.S. 150B-19.1(h) RRC CERTIFICATION**

##### **Criminal Justice Training and Education Standards Commission**

The Commission certified that the agency adhered to the principles in G.S. 150B-19.1 for proposed Rule 12 NCAC 09G .0412.

### **Department of State Treasurer**

The Commission certified that the agency adhered to the principles in G.S. 150B-19.1 for proposed Rules 20 NCAC 01G .0101, .0102, .0103, .0104, .0105, .0106, .0107, .0108, .0109, .0201, .0202, .0203, .0204, .0207, .0301, .0302, .0303, .0304, .0305, .0306, .0307, .0401, .0402, .0403, .0404, .0405, .0406, .0407, .0408, .0501, .0502, .0503, .0504, .0505, .0506, .0507, .0508; 01H .0101, .0102, .0104, .0201, .0202, .0203, .0204, .0205, .0301, .0302, .0303, .0304, .0305, .0306, .0307, .0401, .0402.

### **EXISTING RULES REVIEW**

#### **Division of Employment Security**

Prior to the review of the report, Commissioner Doran recused herself and did not participate in any discussion or vote concerning the report because she is employed at DES as Chair of the agency's Board of Review.

The Division requested a waiver of Rule 26 NCAC 05 .0203, as it submitted the report three days after the filing deadline.

The Commission unanimously approved the waiver request.

All agency final determinations were unanimously approved.

#### **Certified Public Accountants**

Prior to the review of the report, Commissioner Choi recused herself, and did not participate in any discussion or vote concerning the report. Commissioner Choi stated the law firm that she is employed with provides legal services for the above referenced Board; therefore, although her firm does not provide legal services on rulemaking for the above referenced Board, in the abundance of caution, she recused herself.

Bob Brooks, the agency's director, addressed the Commission.

The Commission unanimously approved the report as submitted by the agency.

#### **Podiatry Examiners**

The Commission unanimously approved the report as submitted by the agency.

Commissioner Doran was not present for the vote for this report.

#### **Agricultural Finance Authority**

The Board requested a waiver of Rules 26 NCAC 05 .0203 and .0211.

The Commission approved the waiver request, with Vice Chairman Dunklin, and Commissioners Doran and Hyde opposed.

Frank Bordeaux and Stephanie Oxley with the agency addressed the Commission.

The Commission rescheduled the date of review for the report pursuant to Rule 26 NCAC 05 .0204. The Commission will review the Board's report at its February 19, 2015 meeting.

#### **State Human Resources Commission**

Prior to the review of the reports, Commissioner Doran recused herself and did not participate in any discussion or vote concerning the reports because she is a State employee.

25 NCAC Subchapter 01A - The Commission unanimously approved the report as submitted by the agency.

25 NCAC Subchapter 01B - The Commission unanimously approved the report as submitted by the agency.

25 NCAC Subchapter 01C - The Commission unanimously approved the report as submitted by the agency, with the following exceptions for rules that received public comment that were deemed to have merit as defined by G.S. 150B-21.3A (c)(2): 01C .0303, .0304, .0902 and .0903. The RRC designated those rules as "necessary with substantive public interest."

**Office of Americans with Disabilities Act**

The Commission unanimously approved the report as submitted by the agency.

**Board of Optometry**

As this report was not scheduled for review at the August meeting, it was reviewed at the end of the regularly scheduled business.

The Board requested a waiver of Rules 26 NCAC 05 .0203 and .0211.

The Commission approved the waiver.

Johnny M. Loper, the Board's attorney, addressed the Commission.

The Commission rescheduled the date of review for the report pursuant to Rule 26 NCAC 05 .0204. The Commission will review the Board's report at its March 19, 2015 meeting.

The Commission discussed waivers for the periodic review and expiration of existing rules. Vice Chairman Dunklin voiced concerns about requests to extend deadlines after the filing deadline, and stated that extensions of deadlines should be requested prior to the deadline.

**COMMISSION BUSINESS**

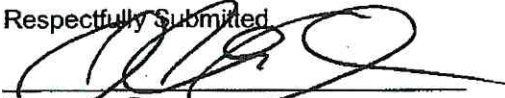
Staff gave the Commission a brief legislative update.

The meeting adjourned at 1:20 p.m.

The next regularly scheduled meeting of the Commission is Thursday, September 18<sup>th</sup> 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 II

Minutes approved by the Rules Review Commission:

  
Margaret Currin, Chair