RULES REVIEW COMMISSION MEETING MINUTES November 17, 2022

The Rules Review Commission met on Thursday, November 17, 2022, in the Commission Room at 1711 New Hope Church Road, Raleigh, North Carolina, and via WebEx.

Commissioners Andrew Atkins, Wayne R. Boyles III, Bobby Bryan, Jeanette Doran, Randy Overton, Paul Powell, and Bob Rucho were present in the Commission Room. Commissioners Jay Hemphill, Jeff Hyde, and Barbara Jackson were present via WebEx.

Staff member Alexander Burgos, and Commission Counsel Lawrence Duke, Brian Liebman, and Bill Peaslee were present in the room.

The meeting was called to order at 9:00 a.m. with Chair Doran presiding.

The Chair 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 appearance of conflicts of interest.

The Chair introduced new Commission Counsel Seth Ascher to the Commission.

APPROVAL OF MINUTES

The Chair asked for any discussion, comments, or corrections concerning the minutes of the October 20, 2022 meeting. There were none and the minutes were approved as distributed.

Upon the call of the Chair, the minutes were approved by roll-call vote, ayes 8, noes 0 as follows: Voting in the affirmative: Andrew Atkins, Wayne R. Boyles III, Bobby Bryan, Jay Hemphill, Barbara Jackson, Randy Overton, Paul Powell, and Bob Rucho – 8. Voting in the negative: None.

The Chair notified the Commissioners that the following items on the agenda would be taken up out of order at the end of the agenda: Follow up matters for the State Board of Elections and Permanent Rules for Behavior Analyst Licensure Board.

FOLLOW UP MATTERS

Board of Agriculture

02 NCAC 61 .0101, .0102, .0104, .0106, .0109, and .0111 – Upon the call of the Chair, the rules were approved by roll-call vote, ayes 8, noes 0 as follows: Voting in the affirmative: Andrew Atkins, Wayne R. Boyle III, Bobby Bryan, Jay Hemphill, Barbara Jackson, Randy Overton, Paul Powell, and Bob Rucho – 8. Voting in the negative: None.

Jeff Hyde joined the meeting via Webex.

Board of Agriculture

02 NCAC 52J .0208 and .0704 - The rules were returned at the request of the agency. No action was required by the Commission.

State Board of Elections

08 NCAC 04 .0308, and .0309 – The Commission objected to the rules in accordance with G.S. 150B-21.10. The Commission voted to adopt the staff opinion dated November 16, 2022 to object to the rules for failure to comply with the APA as the rules contain substantial changes that did not meet the notice and comment requirements of the permanent rulemaking process in addition to an objection for lack of statutory authority to adopt the rules, and the ambiguity contained in the rules.

Paul Cox. General Counsel for the Board of Elections, addressed the Commission.

Dr. Andy Jackson, with the John Locke Foundation, addressed the Commission.

Medical Care Commission

10A NCAC 13B .3801, .3903, .4103, .4104, .4106, .4305, .4603, .4801, .4805, .5102, .5105, .5406, .5408, and .5411 - The agency submitted revised rules for 10A NCAC 13B .4801 and .4805. The Commission did not vote on these Rules pending the agency's intention to seek a legislative fix to address the overarching statutory objection. No action was required by the Commission.

Sheriffs' Education and Training Standards Commission

12 NCAC 10B .0205, .0301, .0302, .0303, .0304, .0305, .0306, .0307, .0408, .0410 - Upon the call of the Chair, the rules were approved by roll-call vote, ayes 9, noes 0 as follows: Voting in the affirmative: Andrew Atkins, Wayne R. Boyles III, Bobby Bryan, Jay Hemphill, Jeff Hyde, Barbara Jackson, Randy Overton, Paul Powell, and Bob Rucho – 9. Voting in the negative: None.

Environmental Management Commission

15A NCAC 02B .0208, .0212, .0214, .0215, .0216, and .0218 - The Commission objected to these Rules at the May meeting. The agency has not responded to the Commission's objection since August 2022. No action was required by the Commission.

Environmental Management Commission

15A NCAC 02H .1301, .1401, .1402, .1403, .1404, and .1405 - The agency is addressing the objection from the May meeting. No action was required by the Commission.

Coastal Resources Commission

15A NCAC 07H .0501, .0502, .0503, .0504, .0505, .0506, .0507, .0508, .0509, .0510, .0601, .0603, .0604; 07I .0406, .0504, .0506, .0508, .0510, .0511, .0602, .0702; 07J .0203, .0204, .0206, .0207, .0208, .0210, and .0312 — The Commission objected to these Rules at the September meeting. Pursuant to G.S. 150B-21.12(b), the time for the agency to respond to the objection has not expired. No action was required by the Commission.

Coastal Resources Commission

15A NCAC 07H .2305 – The Commission objected to this Rule at the September meeting. Pursuant to G.S. 150B-21.12(b), the time for the agency to respond to the objection has not expired. No action was required by the Commission.

Coastal Resources Commission

15A NCAC 07M .0201, .0202, .0401, .0402, .0403, .0503, .0601, .0603, .0701, .0703, .0704, .0801, .0802, .1001, .1002, .1101, .1102, .1201, and .1202 - The Commission objected to these Rules at the September meeting. Pursuant to G.S. 150B-21.12(b), the time for the agency to respond to the objection has not expired. No action was required by the Commission.

Commission for Public Health

15A NCAC 18A .1301, .1302, .1304, .1305, .1306, .1307, .1308, .1309, .1310, .1311, .1312, .1313, .1314, .1315, .1316, .1317, .1318, .1319, .1320, .1321, .1323, .1324, and .1327 – Upon the call of the Chair, the rules were approved by roll-call vote, ayes 9, noes 0 as follows: Voting in the affirmative: Andrew Atkins, Wayne R. Boyles III, Bobby Bryan, Jay Hemphill, Jeff Hyde, Barbara Jackson, Randy Overton, Paul Powell, and Bob Rucho – 9. Voting in the negative: None.

LOG OF FILINGS (PERMANENT RULES)

Department of Administration

Upon the call of the Chair, the Commission extended the period of review for 01 NCAC 05A .0112, 01 NCAC 05E .0101, .0102, .0103, .0104, .0105, and .0106 by roll-call vote, ayes 9, noes 0 as follows: Voting in the affirmative: Andrew Atkins, Wayne R. Boyles III, Bobby Bryan, Jay Hemphill, Jeff Hyde, Barbara Jackson, Randy Overton, Paul Powell, and Bob Rucho – 9. Voting in the negative: None.

Haley Pfeiffer-Haynes, with the agency, addressed the Commission.

Structural Pest Control Committee

Upon the call of the Chair, the Commission extended the period of review for 02 NCAC 34 .0904 by roll-call vote, ayes 9, noes 0 as follows: Voting in the affirmative: Andrew Atkins, Wayne R. Boyles III, Bobby Bryan, Jay Hemphill, Jeff Hyde, Barbara Jackson, Randy Overton, Paul Powell, and Bob Rucho – 9. Voting in the negative: None.

State Fire and Rescue Commission

Upon the call of the Chair, the repeal of 11 NCAC 05B .0301 was approved by roll-call vote, ayes 9, noes 0 as follows: Voting in the affirmative: Andrew Atkins, Wayne R. Boyles III, Bobby Bryan, Jay Hemphill, Jeff Hyde, Barbara Jackson, Randy Overton, Paul Powell, and Bob Rucho – 9. Voting in the negative: None.

Sheriffs' Education and Training Standards Commission

Upon the call of the Chair, 12 NCAC 10B .0603 was approved by roll-call vote, ayes 9, noes 0 as follows: Voting in the affirmative: Andrew Atkins, Wayne R. Boyles III, Bobby Bryan, Jay Hemphill, Jeff Hyde, Barbara Jackson, Randy Overton, Paul Powell, and Bob Rucho – 9. Voting in the negative: None.

Upon the call of the Chair, the Commission extended the period of review for 12 NCAC 10B .0713 by roll-call vote, ayes 9, noes 0 as follows: Voting in the affirmative: Andrew Atkins, Wayne R. Boyles III, Bobby Bryan, Jay Hemphill, Jeff Hyde, Barbara Jackson, Randy Overton, Paul Powell, and Bob Rucho – 9. Voting in the negative: None.

State Board of Education

Upon the call of the Chair, 16 NCAC 06G .0508 was approved by roll-call vote, ayes 9, noes 0 as follows: Voting in the affirmative: Andrew Atkins, Wayne R. Boyles III, Bobby Bryan, Jay Hemphill, Jeff Hyde, Barbara Jackson, Randy Overton, Paul Powell, and Bob Rucho – 9. Voting in the negative: None.

Behavior Analyst Licensure Board

Upon the call of the Chair, the Commission extended the period of review 21 NCAC 05 .0101, .0201, .0202, .0203, .0301, .0401, .0402, .0403, .0501, .0601, .0602, and .0603 by roll-call vote, ayes 9, noes 0 as follows: Voting in the affirmative: Andrew Atkins, Wayne R. Boyles III, Bobby Bryan, Jay Hemphill, Jeff Hyde, Barbara Jackson, Randy Overton, Paul Powell, and Bob Rucho – 9. Voting in the negative: None.

Licensing Board for General Contractors

Upon the call of the Chair, the rules were approved by roll-call vote, ayes 9, noes 0 as follows: Voting in the affirmative: Andrew Atkins, Wayne R. Boyles III, Bobby Bryan, Jay Hemphill, Jeff Hyde, Barbara Jackson, Randy Overton, Paul Powell, and Bob Rucho – 9. Voting in the negative: None.

Board of Dental Examiners

Upon the call of the Chair, the rules were approved by roll-call vote, ayes 9, noes 0 as follows: Voting in the affirmative: Andrew Atkins, Wayne R. Boyles III, Bobby Bryan, Jay Hemphill, Jeff Hyde, Barbara Jackson, Randy Overton, Paul Powell, and Bob Rucho – 9. Voting in the negative: None.

Board of Dietetics/Nutrition

Upon the call of the Chair, the Commission extended the period of review for 21 NCAC 17 .0101, .0103, .0104, .0106, .0108, .0110, .0112, .0114, .0116, .0201, .0202, .0203, .0302, .0303, .0304, .0401, .0402, .0403, .0501, .0502, .0503, .0504, .0505, .0506, .0507, .0508, .0509, .0510, .0511, .0512, .0513, .0514, .0515, .0516, and .0517 by roll-call vote, ayes 9, noes 0 as follows: Voting in the affirmative: Andrew Atkins, Wayne R. Boyles III, Bobby Bryan, Jay Hemphill, Jeff Hyde, Barbara Jackson, Randy Overton, Paul Powell, and Bob Rucho – 9. Voting in the negative: None.

Medical Board

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

Upon the call of the Chair, 21 NCAC 32A .0115 was approved by roll-call vote, ayes 8, noes 0 as follows: Voting in the affirmative: Wayne R. Boyles III, Bobby Bryan, Jay Hemphill, Jeff Hyde, Barbara Jackson, Randy Overton, Paul Powell, and Bob Rucho – 8. Voting in the negative: None.

Building Code Council

Upon the call of the Chair, the rules were approved by roll-call vote, ayes 9, noes 0 as follows: Voting in the affirmative: Andrew Atkins, Wayne R. Boyles III, Bobby Bryan, Jay Hemphill, Jeff Hyde, Barbara Jackson, Randy Overton, Paul Powell, and Bob Rucho – 9. Voting in the negative: None.

LOG OF FILINGS (TEMPORARY RULES)

Upon the call of the Chair 15A NCAC 10B .0503; 10D .0229, and .0232 were approved by roll-call vote, ayes 9, noes 0 as follows: Voting in the affirmative: Andrew Atkins, Wayne R. Boyles III, Bobby Bryan, Jay Hemphill, Jeff Hyde, Barbara Jackson, Randy Overton, Paul Powell, and Bob Rucho – 9. Voting in the negative: None.

EXISTING RULES REVIEW

State Board of Education

16A NCAC 06B, C, D, E, F, G, H, I, & J - As reflected in the attached letter, the Commission voted to schedule readoption of the rules no later than June 30, 2026 pursuant to G.S. 150B-21.3A(d)(2).

The Chair called the meeting into a brief recess at 10:27 a.m.

The meeting resumed at 10:35 a.m.

COMMISSION BUSINESS

Staff presented the Commission with an overview of proposed changes to 26 NCAC 05 .0100 - .0200.

Staff gave an overview of the upcoming Periodic Review process. The Commission will address the new schedule at the December meeting.

The Chair presented the updated pre-review checklist submitted by the NCBA Administrative Law Section to the RRC for discussion.

Bain Jones, the Chair of the North Carolina Bar Association, addressed the Commission.

The meeting adjourned at 10:48 a.m.

The next regularly scheduled meeting of the Commission is Thursday, December 15, 2022, at 9:00 a.m.
Alexander Burgos, Paralegal
Minutes approved by the Rules Review Commission: Jeanette Doran, Chair

November 17, 2022

Rules Review Commission Meeting Please Print Legibly

Name	Agency
ann Wall	See of State
Donya Strong	Dept. of administration
Robert ET. JAOUMAZI	Cranfill Junner LLP
Borden Cyloroth	Randolph Cloud & HSSOC. 1441M MCBA 300
Robert Por late	NCDOJ/Shoriffs
ADAM STEELE	NC STATE BOARD OF ELECTIONS
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Britton	Sec State
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Rules Review Commission Meeting November 17, 2022 <u>Via WebEx</u>

Name	Agency
Melissa Vuotto	NCREC
Anna Choi	General Contractors
Travis Narron	raleighnc.gov
Daniel Johnson	DOT
Fred Moreno	NCREC
Hannah Schoenbaum	ap.org
Sumit Gupta	NCLEG
Canaan Huie	mvalaw.com
Ellen Roeber	PT Board
Madison Mackenzie	
Marnie Jones	NCBDN
Jill Cramer	Labor
Paul Finkelstein	NCSBE
Spencer Ramsey	Behavior Analyst Board
Lindsey Wakely	NCSBE
H Landi	DOT
Shelby Taylor	DHHS
Blake Brewer	apcoworldwide.com
Emma Kate Sowder	NCMEDSOC
Jessica Montie	DEQ
Nathan Vail	DHHS
Virginia Niehaus	DHHS
Andy Jackson	John Locke
Thomas Jumalon	DHHS
Carol Williams	
Will Polk	DPS
Hampton Billips	ktsstrategies.com
James Burnette	Agriculture
Laura Lansford	DOR
David Elliott	DOA
David Rittlinger	DOI
Laura Rowe	Treasurer
Mac O'connor	
Ashley Pekrul	WRC
Anna Hayworth	Agriculture
Charla Burill	Dietetics

Hannah Jernigan	DOT
Renee Woody	Agriculture
Carrie Ruhlman	WRC
Ross Smith	myncma.org
Eric Hunt	DOJ
Powell Baggett	Treasurer
Pam Cashwell	DOA
Caitlin Schwab-Falzone	Behavior Analyst Board
John Barkley	DOJ
Yashira Cangas	Behavior Analyst Board
Shane Smith	DHHS
Brandon Walker	DPI
Douglas Brocker	Dental
Larry Michael	DHHS
Melissa Bowman	DOJ
Nadine Pfeiffer	DHHS



STATE OF NORTH CAROLINA OFFICE OF ADMINISTRATIVE HEARINGS

November 17, 2022

Thomas J. Ziko, Legal Specialist North Carolina State Board of Education 301 N. Wilmington Street Raleigh, NC 27699 Sent via email only to: Thomas.Ziko@dpi.nc.gov

Re: Readoption pursuant to G.S. 150B-21.3A(c)(2)g of 16 NCAC 06B, C, D, E, F, G, H, I, & J

Dear Mr. Ziko:

Attached to this letter are the rules subject to readoption pursuant to the periodic review and expiration of existing rules as set forth in G.S. 150B-21.3A(c)(2)g. After consultation with your agency, the scheduling of readoption for this set of rules was discussed and adopted at the November 17, 2022 Rules Review Commission meeting. Pursuant to G.S. 150B-21.3A(d)(2), the rules identified on the attached document shall be readopted no later than June 30, 2026.

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

Sincerely.

Lawrence R. Duke Commission Counsel

Donald R. van der Vaart, Director Chief Administrative Law Judge Fred G. Morrison, Jr. Senior Administrative Law Judge

An Equal Employment Opportunity Employer

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RRC DETERMINATION PERIODIC RULE REVIEW January 01, 2020 through June 30, 2023

Education, State Board of Total: 110

RRC Determination: Necessary with substantive public interest

Rule	Determination	APO Review Date
16 NCAC 06B .0103	Necessary with substantive public interest	May 21, 2022
16 NCAC 06B .0107	Necessary with substantive public interest	May 21, 2022
16 NCAC 06C .0101	Necessary with substantive public interest	May 21, 2022
16 NCAC 06C .0102	Necessary with substantive public interest	May 21, 2022
16 NCAC 06C .0202	Necessary with substantive public interest	May 21, 2022
16 NCAC 06C .0301	Necessary with substantive public interest	May 21, 2022
16 NCAC 06C .0302	Necessary with substantive public interest	May 21, 2022
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RRC Determination - Periodic Rule Review

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16 NCAC 06J .0101	Necessary with substantive public interest	May 21, 2022
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