

RULES REVIEW COMMISSION MEETING
MINUTES
April 16, 2020

The Rules Review Commission met on Thursday, April 16, 2020 in the Commission Room at 1711 New Hope Church Road, Raleigh, North Carolina, and via telephone. The Commissioners held a telephonic meeting to ensure compliance with Executive Order 121, other orders limiting mass gatherings, and to encourage social distancing.

Commissioner Jeff Hyde was present in the Commission Room, and Commissioners present via teleconference were Andrew Atkins, Anna Baird Choi, Bobby Bryan, Margaret Currin, Jeanette Doran, Garth Dunklin, Brian LiVecchi, Paul Powell, and Tommy Tucker.

Staff members present were Commission Counsel, Ashley Snyder, and Amanda Reeder; and Alex Burgos. Amber Cronk May, Commission Counsel, was present via teleconference.

The meeting was called to order at 9:01 a.m. with Chairman Hyde 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 appearances of conflicts of interest.

APPROVAL OF MINUTES

Chairman Hyde asked for any discussion, comments, or corrections concerning the minutes of the March 19, 2020 meeting. There were none and the minutes were approved as distributed.

FOLLOW UP MATTERS

Structural Pest Control Committee

02 NCAC 34 .0302, .0309, .0328, .0331, .0501, .0502, .0503, .0504, .0505, .0506, .0602, .0703, and .1206 - The agency is addressing the request for technical changes from the March meeting. No action was required by the Commission.

Department of Natural and Cultural Resources

07 NCAC 13F .0202 was unanimously approved.

Board of Elections

The agency is addressing the objection for 08 NCAC 10B .0103. No action was required by the Commission.

Medical Care Commission

10A NCAC 13F .0202, .0204, .0208, .0209, .0212; and 13G .0202, .0204, .0208, .0209, .0212, and .0213 - The agency is addressing the request for technical changes from the March meeting. No action was required by the Commission.

Commission for the Blind

The agency is addressing the objections for 10A NCAC 63C .0203, .0204, .0403, and .0601. No action was required by the Commission.

Department of Insurance

11 NCAC 04 .0418 was unanimously approved.

Department of Insurance

11 NCAC 12 .1501, .1502, .1503, .1504, .1505, .1506, .1507, .1508, .1509, .1803 were unanimously approved.

The Commission objected to 11 NCAC 12 .0321 for lack of clarity. Line 5 cross-references a repealed rule. The Rule also uses the undefined terms "excessive," "inadequate" and "unfairly discriminatory" as well as the phrase "data deemed necessary by the commissioner."

The Commission also objected to 11 NCAC 12 .0514 for lack of clarity. The Rule is unclear for reasons detailed in the staff opinion, including multiple versions and meanings of the word "plan." It is also unclear whether "the order of benefit determination rules" refer to Item (3) of the Rule or Sub-item (3)(b) of the Rule. The Rule also uses the following undefined terms: "school accident-type coverage" at line 21; "parts" at line 29; "necessary, reasonable, and customary" at page 2, line 1; "services" at page 2, line 3; and "necessary medical expenses" at page 2, line 5.

Environmental Management Commission

15A NCAC 02B .0402, .0403, .0404, .0406, .0407, .0408, .0501, .0502, .0503, .0504, .0505, .0506, .0508, .0511; 02H .0101, .0102, .0103, .0105, .0106, .0107, .0108, .0109, .0111, .0112, .0113, .0114, .0115, .0116, .0117, .0118, .0120, .0121, .0124, .0125, .0127, .0138, .0139, .0140, .0141, .0142, .0143, .0401, .0402, .0403, .0404, .0405, .0406, .0407, .1201, .1202, .1203, .1204, .1205, and .1206 were unanimously approved.

Sedimentation Control Commission

15A NCAC 04C .0103 and .0106 - The agency is addressing the objections from the March meeting. No action was required by the Commission.

Psychology Board

21 NCAC 54 .2006 and .2008 were unanimously approved.

Building Code Council

Residential Code, N1106.2 (R406.2); Energy Conservation Code, R202; and Energy Conservation Code R406.2. – At the November meeting, the Commission voted pursuant to G.S. 150B-21.9 to ask the Office of State Budget and Management to determine if the above-referenced rules have a substantial economic impact and therefore require a fiscal note. A response to this request pursuant to G.S. 150B-21.9 will assist the Commission in determining whether the agency adopted the rules in accordance with the Administrative Procedure Act. OSBM has not formally responded to this request. No action was required by the Commission.

These Rules will remain under the Commission's review until after review by OSBM and subsequent action by the agency pursuant to G.S. 150B-21.12.

LOG OF FILINGS (PERMANENT RULES)

State Board of Elections

All rules were unanimously approved.

Prior to the review of the rules from the State Board of Elections, Commissioner LiVecchi recused himself and did not participate in any discussion or vote concerning the rules because as an attorney in private practice, he routinely represents clients before the State Board of Elections in conjunction with matters directly related to the matter before the RRC.

Department of Insurance

11 NCAC 08 .0203 was unanimously approved.

Private Protective Services Board

All rules were unanimously approved with the following exceptions:

The Commission objected to 14B NCAC 16 .0109 and .0704 in accordance with G.S. 150B-21.10.

The Commission objected to 14B NCAC 16 .0109 for lack of clarity and necessity. Specifically, the rule was unclear as written as to which of the OAH rules, which were incorporated by the rule, will be used by the agency. In addition, the rule incorporated by reference OAH rule publication rules, which were already binding upon the agency. Therefore, that part of the rule was unnecessary.

The Commission objected to 14B NCAC 16 .0704 for lack of statutory authority and ambiguity. Specifically, the Commission found that the use of the term "administrator" throughout the rule was ambiguous, as changes to G.S. 74C through Session Law 2001-487 established a new position of "Director" and it does not appear that the administrator position exists anymore.

In addition, Paragraph (a) of the rule states that there shall be "such further investigation of the applicant as deemed necessary." The rule does not say who will deem the investigation necessary, nor how the necessity will be determined. The Commission found that this language was ambiguous.

In Paragraph (b), the rule states that any denial of the registration by the administrator will be subject to review of the Board. However, G.S. 74C-12 states that any denial of an application will be made by the Board. The agency did not cite to any authority for the administrator to issue a denial such that it is reviewable by the Board, nor any authority of the Board to delegate this decision. Therefore, the Commission found that the agency lacks statutory authority for this Paragraph.

Marine Fisheries Commission

All rules were unanimously approved.

15A NCAC 03M .0509 and 03O .0108 are automatically subject to legislative review by S.L. 2019-198. The Commission also received over 10 letters of objection to 15A NCAC 03M .0509. Pursuant to G.S. 150B-21.3, these Rules are subject to legislative review and a delayed effective date.

Wildlife Resources Commission

All rules were unanimously approved.

The Commission received over 10 letters of objection to 15A NCAC 10B .0201. Pursuant to G.S. 150B-21.3, this Rule is now subject to legislative review and a delayed effective date.

Auctioneer Licensing Board

The Commission extended the period of review for 21 NCAC 04B .0101, .0102, .0103, .0104, .0201, .0202, .0203, .0301, .0302, .0303, .0401, .0402, .0403, .0404, .0405, .0501, .0502, .0503, .0504, .0505, .0604, .0605, .0606, .0607, .0701, .0801, .0802, .0803, .0804, .0805, .0806, .0807, .0808, .0809, .0810, .0811, .0812, .0813, .0814, .0815, .0816, .0817, .0818, and .0819 in accordance with G.S. 150B-21.10. They did so in response to a request from the Auctioneer Licensing Board to extend the period in order to allow the agency to address the requested technical changes and submit the revised rules at a later meeting.

Board of Physical Therapy Examiners

All rules were unanimously approved.

Board of Examiners of Plumbing, Heating and Fire Sprinkler Contractors

All rules were unanimously approved with the following exceptions:

21 NCAC 50 .0505 and .1101 were withdrawn at the request of the agency.

Board of Examiners for Engineers and Surveyors

The Commission extended the period of review for 21 NCAC 56 .0303, .0304, .0501, .0503, .0601, .0603, .0804, .0902, .1301, .1302, .1403, .1603, .1604, and .1607 in accordance with G.S. 150B-21.10. They did so in response to a request from the Board of Examiners for Engineers and Surveyors to extend the period in order to allow the agency to address the requested technical changes and submit the revised rules at a later meeting.

Appraisal Board

All rules were unanimously approved.

LOG OF FILINGS (TEMPORARY RULES)**Commission for Public Health**

10A NCAC 41A .0101 was unanimously approved.

Department of State Treasurer

20 NCAC 01I .0101, .0102, .0103, .0104, and .0105 were withdrawn at the request of the agency. No action was required by the Commission.

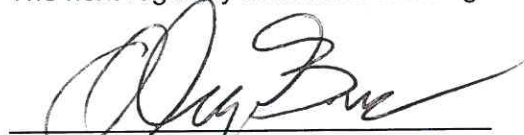
EXISTING RULES REVIEW**DHHS/Division of Adult and Aging Services**


04 NCAC 19O - As reflected in the attached letter, the Commission voted to schedule readoption of the rules no later than December 31, 2022 pursuant to G.S. 150B-21.3A(d)(2).

COMMISSION BUSINESS

The meeting adjourned at 9:34 a.m.

The next regularly scheduled meeting of the Commission is Thursday, May 21, 2020 at 9:00 a.m.



Alexander Burgos, Paralegal

Minutes approved by the Rules Review Commission:
Jeff Hyde, Chair

Telephonic Attendees

Mariah Street, DNCR
Kelly Tornow, Board of Elections
Lindsey Wakely, Board of Elections
Nadine Pfeiffer, DHHS/ DHSR
Ibtisam Zatari, DHSR
Tichina Hamer, DHSR
Cynthia Speight, Services for the Blind
John Hoomani, Department of Insurance
Ted Hamby, Department of Insurance
Robert Croom, Assistant Attorney General
Kathy Shortt, Department of Insurance
Loretta Peace-Bunch, Department of Insurance
Jennifer Everett, Department of Environmental Quality
Mike Templeton, Division of Water Resources
Sondra Panico, Assistant Attorney General
Dan Collins, Psychology Board
Carl Martin, Office of State Fire Marshal
Jeff Gray, Private Protective Services Board
Catherine Blum, Division of Marine Fisheries
John Batherson, Department of Environmental and Natural Resources
Shawn Maier, Department of Justice
Carrie Ruhlman, Wildlife Resources
Michael Smallwood, Wildlife Resources
Charlie Diehl, Auctioneers licensing Board
Deborah Ragan, Board of Physical Therapy Examiners
Kathy Arney, Board of Physical Therapy Examiners
David Gadd, Board of Physical Therapy Examiners
Don Rodgers, Appraisal Board
Virginia Niehaus, Division of Public Health
Kirsten Leloudis, Division of Public Health
Carl Williams, DHHS
John Barkley, Department of Justice
Misty Piekarr-McWilliams, Division of Aging & Adult Services
Laura Rowe, Office of the State Treasurer
Regina Adams, DES
Barry Gupton, DOI/ Building Code Council



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April 16, 2020

Misty Piekaar-McWilliams, Rulemaking Coordinator
DHHS – Division of Adult and Aging Services
2101 Mail Service Center
Raleigh, NC 27699

Re: Readoption pursuant to G.S. 150B-21.3A(c)(2)g of **04 NCAC 19**

Dear Ms. Piekaar-McWilliams:

Attached to this letter are the rules subject to readoption pursuant to the periodic review and expiration of existing rules as set forth in G.S. 150B-21.3A(c)(2)g. After consultation with your agency, this set of rules was discussed at the April 16, 2020 Rules Review Commission meeting regarding the scheduling of these rules for readoption. Pursuant to G.S. 150B-21.3A(d)(2), the rules identified on the attached document shall be readopted by the agency no later than December 31, 2022.

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

Sincerely,

Amber May
Commission Counsel

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An Equal Employment Opportunity Employer

**RRC DETERMINATION
PERIODIC RULE REVIEW
December 19, 2019
APO Review: February 29, 2020
Total: 21**

HHS - Aging and Adult Services, Division of

Rule	Determination
04 <u>NCAC 19O .0101</u>	Necessary with substantive public interest
04 <u>NCAC 19O .0102</u>	Necessary with substantive public interest
04 <u>NCAC 19O .0103</u>	Necessary with substantive public interest
04 <u>NCAC 19O .0104</u>	Necessary with substantive public interest
04 <u>NCAC 19O .0201</u>	Necessary with substantive public interest
04 <u>NCAC 19O .0202</u>	Necessary with substantive public interest
04 <u>NCAC 19O .0301</u>	Necessary with substantive public interest
04 <u>NCAC 19O .0302</u>	Necessary with substantive public interest
04 <u>NCAC 19O .0303</u>	Necessary with substantive public interest
04 <u>NCAC 19O .0304</u>	Necessary with substantive public interest
04 <u>NCAC 19O .0401</u>	Necessary with substantive public interest
04 <u>NCAC 19O .0402</u>	Necessary with substantive public interest
04 <u>NCAC 19O .0403</u>	Necessary with substantive public interest
04 <u>NCAC 19O .0601</u>	Necessary with substantive public interest
04 <u>NCAC 19O .0602</u>	Necessary with substantive public interest
04 <u>NCAC 19O .0604</u>	Necessary with substantive public interest
04 <u>NCAC 19O .0605</u>	Necessary with substantive public interest
04 <u>NCAC 19O .0701</u>	Necessary with substantive public interest
04 <u>NCAC 19O .0702</u>	Necessary with substantive public interest
04 <u>NCAC 19O .0703</u>	Necessary with substantive public interest
04 <u>NCAC 19O .0704</u>	Necessary with substantive public interest