

RULES REVIEW COMMISSION MEETING
MINUTES
April 20, 2023

The Rules Review Commission met on Thursday, April 20, 2023, 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, Jeff Hyde, Paul Powell, and Bob Rucho were present in the Commission Room. Commissioners Jay Hemphill, Randy Overton, and Barbara Jackson were present via WebEx.

Staff member Alexander Burgos, Commission Counsel Seth Ascher, 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.

APPROVAL OF MINUTES

The Chair asked for any discussion, comments, or corrections concerning the minutes of the March 16, 2023, meeting. There were none and the minutes were approved as distributed.

Upon the call of the Chair, the minutes 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.

FOLLOW UP MATTERS

Medical Care Commission

10A NCAC 13B .3801, .3903, .4103, .4104, .4106, .4305, .4603, .4801, .4805, .5102, .5105, .5406, .5408, and .5411 – These Rules remain on the agenda pending the agency's intention to seek a legislative fix to address the overarching objection for lack of statutory authority. No action was required by the Commission.

Department of Health and Human Services

10A NCAC 14J .1307 – The Rule was returned at the request of the agency. No action was required by the Commission.

Environmental Management Commission

15A NCAC 02H .1301, .1401, .1402, .1403, .1404, and .1405 - The Commission objected to these Rules at the May 2022 meeting. The agency has not responded to the Commission's objection since August 2022. No action was required by the Commission.

Coastal Resources Commission

15A NCAC 07H .0501, .0502, .0503, .0505, .0506, .0507, .0508, .0509, .0510; 07I .0406, .0506, .0702; 07J .0203, .0204, .0206, .0207, .0208, and .0312 – At the February meeting, the Commission continued its objection to these Rules from the September 2022 meeting pursuant to G.S. 150B-21.12(c). The agency has not responded to the Commission's continued objection. No action was required by the Commission.

Coastal Resources Commission

15A NCAC 07H .2305 – At the February meeting, the Commission continued its objection to this Rule from the September 2022 meeting pursuant to G.S. 150B-21.12(c). The agency has not responded to the Commission's continued objection. No action was required by the Commission.

Coastal Resources Commission

15A NCAC 07M .0201, .0202, .0401, .0402, .0403, .0701, .0703, .0704, .1001, .1002, and .1101 – At the February meeting, the Commission continued its objection to these Rules from the September 2022 meeting pursuant to G.S. 150B-21.12(c). The agency has not responded to the Commission's continued objection. No action was required by the Commission.

Commission for Public Health

15A NCAC 18A .2801, .2802, .2803, .2804, .2806, .2807, .2808, .2809, .2810, .2812, .2814, .2815, .2816, .2817, .2818, .2819, .2820, .2821, .2822, .2823, .2824, .2825, .2826, .2827, .2829, .2830, .2831, .2832, .2833, .2834, .2835, and .2836 - The Commission extended the period of review for these Rules at the March meeting. No action was required by the Commission.

Locksmith Licensing Board

21 NCAC 29 .0705 - The Rule was returned at the request of the agency. No action was required by the Commission.

LOG OF FILINGS (PERMANENT RULES)

Radiation Protection Commission

Upon the call of the Chair, 10A NCAC 15 .0113, .0323, .0349, .1201, .1202, .1203, .1204, .1205, .1206, .1207, .1208, .1209, .1210, .1211, .1212, .1213, .1214, .1215, .1216, .1217, .1218, .1219, .1220, .1221, .1222, .1223, .1224, .1225, .1226, .1227, .1228, .1229, .1230, .1231, .1233, .1234, .1235, .1236, .1237, .1238, .1239, .1240, .1241, .1242, .1501, .1502, .1503, .1504, .1505, .1506, .1507, .1508, .1509, .1510, .1511, .1512, .1513, .1514, .1515, .1516, .1517, .1650, .1651, .1652, and .1701 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.

Nadine Pfeiffer, the rulemaking coordinator with the agency, addressed the Commission.

James Albright with the agency, addressed the Commission.

Criminal Justice Education and Training Standards Commission

Upon the call of the Chair, 12 NCAC 09B .0305; 09C .0311; 09G .0102, .0204, .0205, .0206, .0207, .0208, .0209, .0210, .0211, .0302, .0304, .0305, .0504, and .0505 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.

Upon the call of the Chair, the Commission extended the period of review for 12 NCAC 09E .0107 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

Upon the call of the Chair, the Commission extended the period of review for 15A NCAC 02B .0315; 02D .0516 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.

Marine Fisheries Commission 15A NCAC 03M, 18A

Upon the call of the Chair, the Commission extended the period of review for 15A NCAC 03M .0101 and 18A .0911 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.

Wildlife Resources Commission

Upon the call of the Chair, 15A NCAC 10B .0110, .0127, .0203, .0227, .0301, .0303, .0306; 10H .1506; 10J .0101, and .0102 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 Nursing

Upon the call of the Chair, the Commission extended the period of review for 21 NCAC 36 .0807 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 Examiners for Nursing Home Administrators

Upon the call of the Chair, 21 NCAC 37B .0104; 37D .0604, and .0605 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 Examiners of Plumbing, Heating and Fire Sprinkler Contractors

Upon the call of the Chair, 21 NCAC 50 .0520 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.

LOG OF FILINGS (TEMPORARY RULES)

Private Protective Services Board

Upon the call of the Chair, 14B NCAC 16 .0201, .0403, .0807, .1501, .1502, .1503, .1504, .1601, .1701, .1702, .1703, .1704, .1705, .1706, .1707, and .1708 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.

14B NCAC 16 .1709 was withdrawn at the request of the agency. No action was required by the Commission.

State Board of Education

16 NCAC 06G .0601 – Upon the call of the Chair, the Commission denied the agency's request to waive the 210-day requirement pursuant to G.S. 150B-21.1(a2) by roll-call vote, ayes 4, noes 6 as follows: Voting in the affirmative: Andrew Atkins, Bobby Bryan, Jay Hemphill, and Barbara Jackson - 4 Voting in the Negative: Wayne Boyles III, Jeanette Doran, Jeff Hyde, Randy Overton, Paul Powell, Bob Rucho, - 6. Upon the call of the Chair, the Commission objected to the rule in accordance with G.S. 150B-21.1(b1).

The Commission objected to the Rule finding that the need for the temporary rule was predicated on a recent act of the General Assembly that had been made effective more than 210 days prior to the submission of the rule to the Commission, contrary to the requirements of G.S. 150B-21.1(a2), by roll-call vote, ayes 9, noes 1 as follows: Voting in the affirmative: Andrew Atkins, Wayne R. Boyles III,

Bobby Bryan, Jeanette Doran, Jeff Hyde, Barbara Jackson, Randy Overton, Paul Powell, and Bob Rucho – 9. Voting in the negative: Jay Hemphill - 1.

Tom Ziko, the rulemaking coordinator with the agency, addressed the Commission.

Board of Barber and Electrolysis Examiners

Upon the call of the Chair, 21 NCAC 06C .0912; 06F .0104, .0120; 06G .0106; 06J .0110; 06K .0101, .0104, .0110, .0111, .0112, .0113; 06L .0104, .0106, .0107, .0109, .0111, .0113, .0114, .0115, .0117, .0118, .0119, .0120, .0201, .0202, .0203, .0205; 06N .0101, .0105, .0106, .0107, .0109, .0110, .0112, .0114; 06O .0102, .0104, .0106, .0108, .0109, .0110, .0113, .0116, .0117, .0121, .0123, .0124, .0125; 06P .0103; and 06Q .0101 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.

Commissioner Bryan moved to approve rules where staff's opinions recommending objection were based solely upon pre-existing language in the permanent rule. Second by Commissioner Powell. Those rules were: 21 NCAC 06F.0102; 06H .0101; 06I .0105; 06J .0101; 06N .0102, .0103, .0104; and 06R .0101. The motion failed by a roll-call vote, ayes 4, noes 6 as follows: Voting in the affirmative Wayne R. Boyles III, Bobby Bryan, Jay Hemphill, and Paul Powell, Voting in the negative: Andrew Atkins, Jeff Hyde, Barbara Jackson, Randy Overton, Bob Rucho, and Jeanette Doran.

Commissioner Atkins moved to adopt staff's recommendation to object to 21 NCAC 06F .0102; 06H .0101; 06I .0105; 06J .0101; 06L .0112, .0116, .0204, 06N .0102, .0103, .0104, .0116; 06O .0105, .0112, .0114, .0119, .0122 .0126; and 06R .0101. The Motion was seconded by Commissioner Hyde. - The Commission objected to these rules in accordance with G.S. 150B-21.1(b1). The Commission voted to adopt the opinion of staff finding that the rules did not meet the standards of G.S. 150B-21.9 by roll-call vote, ayes 7, noes 2 as follows: Voting in the affirmative: Andrew Atkins, Wayne R. Boyles III, Jay Hemphill, Jeff Hyde, Barbara Jackson, Randy Overton, and Bob Rucho – 7. Voting in the negative: Bobby Bryan and Paul Powell - 2.

During the meeting, staff modified the staff opinion for 21 NCAC 06L .0112 by removing the recommendation of objection regarding ambiguity only for the Rule.

Dennis Seavers, the Executive Director for the agency, addressed the Commission.

Catherine Lee with the Law firm of Hedrick Gardner Kincheloe & Garofalo, LLP, and representing the agency, addressed the Commission.

COMMISSION BUSINESS

The Commission tabled the review of amendments to the Periodic Review Report Schedule to the next regular scheduled meeting.

The Commission tabled the adoption of proposed changes to 26 NCAC 05 .0100 - .0200 to the next regularly scheduled meeting.

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

At 10:30 a.m., upon a motion by the Chair Doran and a second by Commissioner Atkins, the Commission voted to call the public meeting of the Rules Review Commission into recess and enter into closed session pursuant to G.S. 143-318.11(a)(1) for the purpose of reviewing and approving the general account of the March 2023 closed session, which may be withheld from public inspection pursuant to G.S. 143-318.10(e), and also pursuant to G.S. 143-318.11(a)(3) for the purpose of consulting with counsel within the attorney client privilege by roll-call vote, ayes 9, noes 0 as follows:

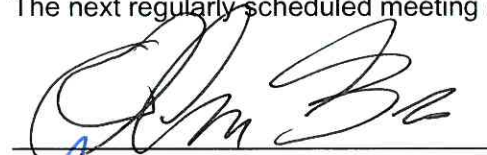
Voting in the affirmative: Andrew Atkins, Wayne R. Boyles III, Bobby Bryan, Jay Hemphill, Jeff Hyde, Barbara Jackson, Randy Overton, Paul Powell, and Bob Rucho – 9. Voting in the negative: None.

Following the closed session, Commissioners Jay Hemphill and Randy Overton left the meeting via Webex.

At 10:49 a.m., upon a motion by Commissioner Atkins and a second by Commissioner Bryan, the Commission voted to come out of closed session and reconvene the public meeting of the Rules Review Commission by roll-call vote, ayes 7, noes 0 as follows: Voting in the affirmative: Andrew Atkins, Wayne R. Boyles III, Bobby Bryan, Jeff Hyde, Barbara Jackson, Paul Powell, and Bob Rucho – 7. Voting in the negative: None.

The meeting adjourned at 10:50 a.m.

The next regularly scheduled meeting of the Commission is Thursday, May 18, 2023, at 9:00 a.m.



Alexander Burgos, Paralegal



Minutes approved by the Rules Review Commission:
Jeanette Doran, Chair

April 20, 2023

Rules Review Commission
Meeting
Please **Print** Legibly

Name	Agency
Reed Canten	young music
Martha Bell	NC Board of NHA
Sam Jones	NCBA
Catherine Lee	Hedrick
Dennis Seavers	Bd of Barber & Electrolysis
	Exam

Rules Review Commission Meeting April 20, 2022
Via WebEx

Name	Agency
E Wiley	Revenue
Anna Hayworth	Agriculture
Virginia Niehaus	DHHS
Phillip Reynolds	DOJ
Maria Pitre-Martin	DPI
David Palmer	docsedu.com
Nathan Vail	DHHS
Hope Ascher	
Christine Ryan	DOJ
David Gadd	satiskysilverstein.com
Katherine Quinlan	DEQ
Ellen Roeber	PT Board
Janice Peterson	Optometry
Joelle Burleson	EMC
David Crowley	DHHS
Jill Cramer	Labor
Fred Moreno	NCREC
Louis Brsyboy	DHHS
Lou Martin	DPI
Kathy Arney	PT Board
Jonathan Puryear	Revenue
Chris Kreh	WRC
Emily Wiley	DOT
Hannah Jernigan	DOT
Laura Rowe	Treasurer
Michelle Schilling	DOJ
Anne Coan	NCFB
Catherine Blum	DEQ
Mary Lucasse	DOJ
Ross Smith	myncma.org
H Landi	hntb.com
Jennifer Everett	DEQ
Nadine Pfeiffer	DHHS
Melva Bonner	WRC
Dauna Bartley	Dental Examiners
James Albright	Radiation Protection