

**RULES REVIEW COMMISSION MEETING
MINUTES
December 15, 2022**

The Rules Review Commission met on Thursday, December 15, 2022, in the Commission Room at 1711 New Hope Church Road, Raleigh, North Carolina, and via WebEx.

Commissioners Bobby Bryan, Jeanette Doran, Barbara Jackson, Randy Overton, Paul Powell, and Bob Rucho were present in the Commission Room. Commissioners Wayne R. Boyles III, Jay Hemphill, and Jeff Hyde 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 9:01 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 November 17, 2022 regular meeting and the November 22, 2022 special meeting. There were none and the minutes were approved as distributed.

Upon the call of the Chair, the minutes for the November 17, 2022 regular meeting and the November 22, 2022 special meeting were 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.

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 Department of Administration, Coastal Resources Commission Tabs H and J, and Board of Dietetics/Nutrition.

FOLLOW UP MATTERS

Department of Administration

01 NCAC 05A .0112 and 05E .0101 - Upon the call of the Chair, the rules were 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.

01 NCAC 05E .0103, .0104, and .0105 - The Commission objected to the rules in accordance with G.S. 150B-21.10. The Commission voted to adopt the staff opinions dated December 13, 2022 objecting to 01 NCAC 05E .0103 for failure to comply with the APA, lack of statutory authority to adopt the rule, the ambiguity contained in the rule, and lack of necessity for the rules, objected to 01 NCAC 05E .0104 for failure to comply with the APA and ambiguity contained in the rule, and objected to 01 NCAC 05E .0105 for ambiguity contained in the rule 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.

01 NCAC 05E .0102 and .0106 were withdrawn at the request of the agency. No action was required by the Commission.

In accordance with G.S. 150B-21.3(b2), the Commission received over ten letters of objection requesting legislative review and a delayed effective date of 01 NCAC 05A .0112 and 05E .0101.

David Elliot, Deputy Secretary for the Department of Administration, addressed the Commission.

Gerry McCants with MCCANTS, LLC, addressed the Commission.

Structural Pest Control Committee

02 NCAC 34 .0904 - Upon the call of the Chair, the rule 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.

State Board of Elections

08 NCAC 04 .0308, and .0309 – The Commission objected to these Rules at the November 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.

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 statutory objection. No action was required by the Commission.

Sheriffs' Education and Training Standards Commission

12 NCAC 10B .0713 - Upon the call of the Chair, the rule 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.

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 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.

Coastal Resources Commission

15A NCAC 07H .0501, .0502, .0503, .0505, .0506, .0507, .0508, .0509, .0510; 07I .0406, .0506, .0508, .0511, .0702; 07J .0203, .0204, .0206, .0207, .0208, .0312 – Upon the call of the Chair, a motion to adopt Staff's recommendation to object to these Rules and approve Rules 15A NCAC 07I .0504, .0602, and 07J .0210 was taken up by the Commission by roll-call vote, ayes 1, noes 7 as follows: Voting in the affirmative: Jeff Hyde -1. Voting in the negative: Wayne R. Boyles III, Bobby Bryan, Jay Hemphill, Barbara Jackson, Randy Overton, Paul Powell, and Bob Rucho – 7. The motion failed.

15A NCAC 07I .0504, .0602, and 07J .0210 - Upon the call of the Chair, the rules were 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.

15A NCAC 07H .0501, .0502, .0503, .0505, .0506, .0507, .0508, .0509, .0510; 07I .0406, .0506, .0508, .0511, .0702; 07J .0203, .0204, .0206, .0207, .0208, .0312 – Upon the call of the Chair, the Commission voted to table these Rules and take them up at the January 2023 meeting 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.

15A NCAC 07H .0504, .0601, .0603, and .0604 were returned at the request of the agency. No action was required by the Commission.

Mary Lucasse with the Department of Justice, and representing the agency, addressed 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 .0601 and .0603 - Upon the call of the Chair, the rules were 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.

15A NCAC 07M .0201, .0202, .0401, .0402, .0403, .0701, .0703, .0704, .1001, .1002, .1101, and .1102 – Upon the call of the Chair, the Commission voted to table these Rules and take them up at the January 2023 meeting 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.

15A NCAC 07M .0503, .0801, .0802, .1201, and .1202 were returned at the request of the agency. No action was required by the Commission.

Behavior Analyst Licensure Board

21 NCAC 05 .0101, .0201, .0202, .0203, .0301, .0401, .0402, .0403, .0501, .0601, .0602, and .0603 – The Commission extended the period of review for these Rules at the November meeting. No action was required by the Commission.

Board of Dietetics/Nutrition

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 - Upon the call of the Chair, the rules were 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.

Cindy Schwalb, a member of the public, addressed the Commission.

Henry Jones with Jordan Price Wall Gray Jones and Carlton, PLLC and representing the agency, addressed the Commission.

In accordance with G.S. 150B-21.3(b2), the Commission received over ten letters of objection requesting legislative review and a delayed effective date of 21 NCAC 17 .0101, .0103, .0106, .0302, .0303, .0401, and .0516.

LOG OF FILINGS (PERMANENT RULES)

Medical Care Commission

Upon the call of the Chair, the Commission extended the period of review for 10A NCAC 13F .0904 and 13G .0904 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.

DHHS- Division of Health Service Regulation

Upon the call of the Chair, 10A NCAC 14C .1102, .2001, .2003, .2801, .2803, .3801, .3803, .4001, and .4003 were 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.

Industrial Commission

Upon the call of the Chair, the Commission extended the period of review for 11 NCAC 23G .0104 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.

Sheriffs' Education and Training Standards Commission

Rule 12 NCAC 10B .1302 was withdrawn at the request of the agency. No action was required by the Commission.

Private Protective Services Board

Upon the call of the Chair, 14B NCAC 16 .0103 and .0807 were 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.

Environmental Management Commission

Upon the call of the Chair, the Commission extended the period of review for 15A NCAC 02E .0401, .0402, .0403, .0404, .0405, .0406, .0407, .0408, and .0409 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.

Wildlife Resources Commission

Upon the call of the Chair, the Commission extended the period of review for 15A NCAC 10F .0201 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.

TSERS and LGERS Board of Trustees 20 NCAC 02A

Upon the call of the Chair, the Commission extended the period of review for 20 NCAC 02A .0101, .0102, .0103, .0104, .0201, .0202, .0301, .0302, .0303, .0401, .0503, .0504, and .0505 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.

TSERS Board of Trustees 20 NCAC 02B

Upon the call of the Chair, the Commission extended the period of review for 20 NCAC 02B .0101, .0202, .0210, .0211, .0213, .0301, .0302, .0303, .0304, .0305, .0307, .0308, .0401, .0402, .0404, .0405, .0501, .0502, .0503, .0504, .0510, .0701, .0706, .0801, .0802, .0803, .0804, .0805, .0806, .0807, .0810, .0901, .0902, .0903, .0904, .0905, .0906, .1003, .1004, .1005, .1006, .1007, .1101, .1102, .1104, .1204, .1205, and .1207 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

LGERS Board of Trustees 20 NCAC 02C

Upon the call of the Chair, the Commission extended the period of review for 20 NCAC 02C .0101, .0201, .0204, .0205, .0301, .0302, .0303, .0304, .0306, .0307, .0402, .0403, .0404, .0405, .0501, .0502, .0503, .0504, .0704, .0901, .0902, .0904, .0906, .0907, .0908, .0909, .1001, .1002, .1003, .1004, .1006, .1007, .1201, .1301, .1302, .1501, .1503, .1504, .1505, and .1506 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

TSERS Board of Trustees 20 NCAC 02F

Upon the call of the Chair, the Commission extended the period of review for 20 NCAC 02F .0101, .0104, .0107, and .0108 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

TSERS and LGERS Board of Trustees 20 NCAC 02L, 02M

Upon the call of the Chair, the Commission extended the period of review for 20 NCAC 02L .0101, .0103, .0202, .0302; 02M .0101, .0102, .0104, .0201, .0202, .0206, .0301, .0302, .0303, .0304, .0305, and .0307 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

LGERS Board of Trustees 20 NCAC 02N

Upon the call of the Chair, the Commission extended the period of review for 20 NCAC 02N .0106, .0108, .0208, .0215, .0218, and .0219 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

Board of Funeral Service

Upon the call of the Chair, 21 NCAC 34B .0408 and 34D .0202 were 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.

Board of Examiners in Optometry

Upon the call of the Chair, 21 NCAC 42A .0101 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.

Board of Examiners for Engineers and Surveyors

Upon the call of the Chair, the Commission extended the period of review for 21 NCAC 56 .0303, .0601, .0608, .1702, .1703, .1704, .1705, .1707, and .1713 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

The Chair called the meeting into a brief recess at 10:29 a.m.
The meeting resumed at 10:37 a.m.

COMMISSION BUSINESS

The Commission voted to adopt the RRC 2023 meeting dates with changes to the December meeting date. The December 21, 2023, meeting date was changed to December 14, 2023 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

The Commission voted to approve the proposed changes to 26 NCAC 05 .0100 - .0200 and begin the rulemaking process 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

The Commission voted to approve the 2024-2027 Periodic Review Schedule 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

The Commission voted to approve the staff recommended Pre-Review Cover Sheet 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

The meeting adjourned at 10:49 a.m.

The next regularly scheduled meeting of the Commission is Thursday, January 19, 2023, at 9:00 a.m.

Alexander Burgos, Paralegal

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

December 15, 2022

Rules Review Commission
Meeting
Please Print Legibly

Name	Agency
Jennifer Everett	DEQ
David Elliott	DOA / -
Ann Wall	SOS
Charla Buri II	NCBDM
Donya Strong	DOA
Henry Jones	NCBDM
Doug Cassiter	NCSTA
Robert El-Jawhri	Cranfill Summer LLP
Mary Lane	NC DOV
DAVID GADD	NCBPTC
Julie Youngman	SELK
Jonathan Avery	DNCR

Rules Review Commission Meeting December 15, 2022
Via WebEx

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

DRAFT