

**RULES REVIEW COMMISSION MEETING
MINUTES
January 21, 2021**

The Rules Review Commission met on Thursday, January 21, 2021 in the Commission Room at 1711 New Hope Church Road, Raleigh, North Carolina, and via WebEx. The Commissioners held a WebEx meeting to ensure compliance with Executive Orders limiting mass gatherings, and to encourage social distancing. The meeting was conducted in accordance with the provisions of G.S. 166A-19.24.

Commissioners present via WebEx were Bobby Bryan, Andrew Atkins, Anna Baird Choi, Margaret Currin, Jeanette Doran, Jeff Hyde, Randy Overton, and Paul Powell.

Staff member Alex Burgos was present in the Commission room. Commission Counsel Amber May, Amanda Reeder, and Ashley Snyder were present via WebEx.

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.

Chair Doran recognized Amy Mull and welcomed her to the meeting. Amy Mull is a 3L at UNC School of Law and is an Extern with the Office of Administrative Hearings.

Chair Doran memorialized Commissioner Dunklin's recent passing. She informed the Commission staff was working with the Speaker's Office to send Commissioner Dunklin's family a tribute to honor his service to the State. Following the meeting, the Speaker's Office confirmed they will send a North Carolina flag and certificate in recognition of Commissioner Dunklin's service to the State.

APPROVAL OF MINUTES

The Chair asked for any discussion, comments, or corrections concerning the minutes of the December 17, 2020 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 7, noes 0 as follows: Voting in the affirmative: Andrew Atkins, Bobby Bryan, Anna Baird Choi, Margaret Currin, Jeff Hyde, Randy Overton, and Paul Powell – 7. Voting in the negative: None.

The Chair notified the Commissioners that the following item on the agenda would be taken up out of order at the end of the agenda: Follow-up matter for the State Board of Education Tab C.

FOLLOW UP MATTERS

Board of Agriculture

02 NCAC 61 .0112 - Upon the call of the Chair, the rule was approved by roll-call vote, ayes 7, noes 0 as follows: Voting in the affirmative: Andrew Atkins, Bobby Bryan, Anna Baird Choi, Margaret Currin, Jeff Hyde, Randy Overton, and Paul Powell – 7. Voting in the negative: None.

Environmental Management Commission

15A NCAC 02I .0101, .0102, .0103, .0104, .0105, .0106, .0203, .0301, .0302, .0402, .0501, .0502, .0503, .0504, .0601, .0602, and .0603 - Upon the call of the Chair, the rules were approved by roll-call vote, ayes 7, noes 0 as follows: Voting in the affirmative: Andrew Atkins, Bobby Bryan, Anna Baird Choi, Margaret Currin, Jeff Hyde, Randy Overton, and Paul Powell – 7. Voting in the negative: None.

State Board of Education

16 NCAC 06B .0114 - Upon the call of the Chair, the Commission objected to the rewritten rule in accordance with G.S. 150B-21.9 for lack of statutory authority by roll-call vote, ayes 5, noes 3 as

follows: Voting in the affirmative: Andrew Atkins, Bobby Bryan, Anna Choi, Jeanette Doran, and Jeff Hyde – 5. Voting in the negative: Margaret Currin, Randy Overton, and Paul Powell - 3.

The Commission found that the rewritten rule exceeds the agency's statutory authority to regulate a "school transportation system" by requiring individuals inspecting school buses to obtain a "North Carolina School Bus Inspection Certification." The governing standards set in the statutes listed in the rule's history note relate to school bus safety as it pertains to equipment and mechanical maintenance of school buses, not to the individuals conducting the inspections. G.S. 115C-240(c) discusses the following: "construction, equipment, color, and maintenance of school buses"; fuel requirements; and "adequate heating facilities, a standard signaling device..., an alternating flashing stoplight... and such other warning devices, fire protective equipment and first aid supplies as may be prescribed...." The rewritten rule governs the inspectors and does not address the specific safety criteria that will be used in the inspection.

G.S. 115C-248(a) states "the superintendent of each local school administrative unit, shall cause each school bus owned or operated by such local school administrative unit to be inspected at least once each 30 days during the school year..." In other words, the statute gives control of the act of conducting the inspection to the local superintendent.

The history note lists no authority allowing State Board of Education to govern individual inspectors. The rewritten rule establishes a new Certificate created and issued by the agency. To obtain a Certificate, the rule requires individuals to take a course and pass a test, both administered by the agency. The rule further provides how DPI can revoke this Certificate. The Commission is not aware of any other similar certificate created by an agency in rule instead of through statute absent express statutory authority. Therefore, the Commission objected for lack of statutory authority.

Tom Ziko, General Counsel with the agency, addressed the Commission.

State Board of Education

16 NCAC 06D .0307, .0308, .0311; 06E .0204, .0206; and 06G .0508 - The agency is in the process of repealing companion rules for 16 NCAC 06D .0307, .0308, .0311; 06E .0204, and .0206. In November, the Commission determined the rewritten version of 16 NCAC 06G .0508 met the Commission's objections but the changes were substantial, and the agency would need to re-publish the rule. No action was required by the Commission.

State Board of Education

16 NCAC 06D .0309 - The Rule received over 10 letters of objection and will be subject to legislative review and a delayed effective date upon approval in accordance with G.S. 150B-21.3. The agency is in the process of repealing a companion rule for 16 NCAC 06D .0309. No action was required by the Commission.

Department of Transportation

19A NCAC 02E .0204, .0206, and .0225 - The agency is addressing the objections from the December meeting. No action was required by the Commission.

LOG OF FILINGS (PERMANENT RULES)

Child Care Commission

Upon the call of the Chair, the rules were approved by roll-call vote, ayes 7, noes 0 as follows: Voting in the affirmative: Andrew Atkins, Bobby Bryan, Anna Baird Choi, Margaret Currin, Jeff Hyde, Randy Overton, and Paul Powell – 7. Voting in the negative: None.

21 NCAC 32S .0212 - Upon the call of the Chair, the rule was approved by roll-call vote, ayes 6, noes 0 as follows: Voting in the affirmative: Bobby Bryan, Anna Baird Choi, Margaret Currin, Jeff Hyde, Randy Overton, and Paul Powell – 6. Voting in the negative: None.

Board of Pharmacy

21 NCAC 46 .1819 - Upon the call of the Chair, the rule was approved by roll-call vote, ayes 7, noes 0 as follows: Voting in the affirmative: Andrew Atkins, Bobby Bryan, Anna Baird Choi, Margaret Currin, Jeff Hyde, Randy Overton, and Paul Powell – 7. Voting in the negative: None.

LOG OF FILINGS (TEMPORARY RULES)

Industrial Commission

11 NCAC 23E .0302 - Upon the call of the Chair, the rule was approved by roll-call vote, ayes 7, noes 0 as follows: Voting in the affirmative: Andrew Atkins, Bobby Bryan, Anna Baird Choi, Margaret Currin, Jeff Hyde, Randy Overton, and Paul Powell – 7. Voting in the negative: None.

2021 STATE MEDICAL FACILITIES PLAN

The Commission found that the Department of Health and Human Services and the State Health Coordinating Council complied with G.S. 131E-176(25) in the adoption of the 2021 Plan.

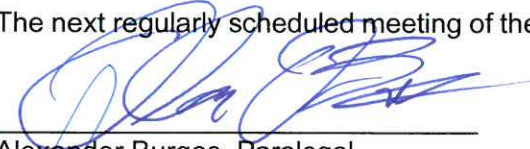
Upon the call of the Chair, the Commission approved compliance with G.S. 131E-176(25) by roll-call vote, ayes 7, noes 0 as follows: Voting in the affirmative: Andrew Atkins, Bobby Bryan, Anna Baird Choi, Margaret Currin, Jeff Hyde, Randy Overton, and Paul Powell – 7. Voting in the negative: None.


COMMISSION BUSINESS

The Commission conducted a review of comments submitted for the Style Guide. The Commission agreed to share the comments with Judge Mann and Gerry Cohen, a primary drafter of the current Style Guide, for their review.

The meeting adjourned at 9:44 a.m.

The next regularly scheduled meeting of the Commission is Thursday, February 18, 2021 at 9:00 a.m.



Alexander Burgos, Paralegal

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

DHHS - Division of Health Service Regulation

Upon the call of the Chair, the rules were approved by roll-call vote, ayes 7, noes 0 as follows: Voting in the affirmative: Andrew Atkins, Bobby Bryan, Anna Baird Choi, Margaret Currin, Jeff Hyde, Randy Overton, and Paul Powell – 7. Voting in the negative: None.

Alcoholic Beverage Control Commission

14B NCAC 15A - Upon the call of the Chair, the rules were approved by roll-call vote, ayes 7, noes 0 as follows: Voting in the affirmative: Andrew Atkins, Bobby Bryan, Anna Baird Choi, Margaret Currin, Jeff Hyde, Randy Overton, and Paul Powell – 7. Voting in the negative: None.

Prior to the review of Rules 14B NCAC 15C .0602 and .0607 from the Alcoholic Beverage Control Commission, Commissioner Powell recused himself and did not participate in any discussion or vote concerning these rules because of a conflict with existing business relationship.

14B NCAC 15C .0602 and .0607- Upon the call of the Chair, the rules were approved by roll-call vote, ayes 6, noes 0 as follows: Voting in the affirmative: Andrew Atkins, Bobby Bryan, Anna Baird Choi, Margaret Currin, Jeff Hyde, and Randy Overton – 6. Voting in the negative: None.

The Commission received over 10 letters of objection to 14B NCAC 15C .0602 and .0607. Pursuant to G.S. 150B-21.3, the rules are subject to legislative review and a delayed effective date.

Department of Public Safety

Upon the call of the Chair, the period of review was extended by roll-call vote, ayes 7, noes 0 as follows: Voting in the affirmative: Andrew Atkins, Bobby Bryan, Anna Baird Choi, Margaret Currin, Jeff Hyde, Randy Overton, and Paul Powell – 7. Voting in the negative: None.

Wildlife Resources Commission

Upon the call of the Chair, the rules were approved by roll-call vote, ayes 7, noes 0 as follows: Voting in the affirmative: Andrew Atkins, Bobby Bryan, Anna Baird Choi, Margaret Currin, Jeff Hyde, Randy Overton, and Paul Powell – 7. Voting in the negative: None.

Marine Fisheries Commission

Upon the call of the Chair, the rules were approved by roll-call vote, ayes 7, noes 0 as follows: Voting in the affirmative: Andrew Atkins, Bobby Bryan, Anna Baird Choi, Margaret Currin, Jeff Hyde, Randy Overton, and Paul Powell – 7. Voting in the negative: None.

Department of The Secretary of State

18 NCAC 06A .2120 – Upon the call of the Chair, the rule was approved by roll-call vote, ayes 7, noes 0 as follows: Voting in the affirmative: Andrew Atkins, Bobby Bryan, Anna Baird Choi, Margaret Currin, Jeff Hyde, Randy Overton, and Paul Powell – 7. Voting in the negative: None.

Board of Barber Examiners

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

Upon the call of the Chair, the rules were approved by roll-call vote, ayes 6, noes 0 as follows: Voting in the affirmative: Andrew Atkins, Bobby Bryan, Margaret Currin, Jeff Hyde, Randy Overton, and Paul Powell – 6. 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.

**Rules Review Commission Meeting January 21, 2021
Held Via WebEx**

Name	Agency
Catherine Blum	DENR
Erin Bryan-Millush	DENR
Amy Mull	OAH Extern
Ann Wall	SOS
Sherrell Forbes	SOS
Lou Martin	SBOE
Thomas Ziko	SBOE
Carrie Ruhlman	WRC
Nadine Pfeiffer	DSHR
Gina Cammarano	IC
Dedra Alston	DHHS
John Green	DOJ
Tammy Sylvester	DHHS
Amber Davis	DOJ
Kiger, Korey	NCRMA
Walker Reagan	ABC
Kiger, Korey	NCRMA
Alison Keisler	DHHS
Amy Craddock	DHHS
Shannon Jenkins	DENR
Nadine Pfeiffer	DSHR
Ashley Pekarul	WRC
Jennifer Everett	DEQ
Daron Barnes	WRC
Clint Pinyan	Pharmacy
Kevin Harrison	SBOE
Betsy Haywood	WRC
Martha Frisone	DHHS
Korey Kiger	NCRMA
Dennis Seavers	Barbers Examiners
Ashley Baquero	SBOE
Bill Lane	DENR
Elizabeth Yelverton	NCASA
Grant Simpkins	Barbers Examiners
TJ Bugbee	NCOAA

