

RULES REVIEW COMMISSION MEETING
MINUTES
January 19, 2023

The Rules Review Commission met on Thursday, January 19, 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 and Barbara Jackson were present via WebEx.

Staff member Alexander Burgos, and 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 December 15, 2022 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 8, noes 0 as follows: Voting in the affirmative: Andrew Atkins, Wayne R. Boyles III, Bobby Bryan, Jay Hemphill, Jeff Hyde, Barbara Jackson, 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 Tabs I, J, and K for Coastal Resources Commission and temporary rules for DHHS - Division of Health Service Regulation.

FOLLOW UP MATTERS

Department of Administration

01 NCAC 05A .0112 and 05E .0101 – 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 rules were returned at the request of the agency. 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.

Medical Care Commission

10A NCAC 13F .0904 and 13G .0904, and .5411 – The Commission extended the period of review for these Rules at the December 2022 meeting. No action was required by the Commission.

Industrial Commission

11 NCAC 23G .0104 - Upon the call of the Chair, the rule was 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, Jeff Hyde, Barbara Jackson, 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 02E .0401, .0402, .0403, .0404, .0405, .0406, .0407, .0408, .0409 - The Commission extended the period of review for these Rules at the December 2022 meeting. 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, .0508, .0511, .0702; 07J .0203, .0204, .0206, .0207, .0208, and .0312 - Upon the call of the Chair, the Commission voted to table these Rules and take them up at the February meeting by roll-call vote, ayes 8, noes 0 as follows: Voting in the affirmative: Andrew Atkins, Wayne R. Boyles III, Bobby Bryan, Jay Hemphill, Jeff Hyde, Barbara Jackson, Paul Powell, and Bob Rucho – 8. Voting in the negative: None.

Coastal Resources Commission

15A NCAC 07H .2305 - Upon the call of the Chair, the Commission voted to table this Rule and take it up at the February meeting by roll-call vote, ayes 8, noes 0 as follows: Voting in the affirmative: Andrew Atkins, Wayne R. Boyles III, Bobby Bryan, Jay Hemphill, Jeff Hyde, Barbara Jackson, Paul Powell, and Bob Rucho – 8. Voting in the negative: None.

Coastal Resources Commission

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 February meeting by roll-call vote, ayes 8, noes 0 as follows: Voting in the affirmative: Andrew Atkins, Wayne R. Boyles III, Bobby Bryan, Jay Hemphill, Jeff Hyde, Barbara Jackson, Paul Powell, and Bob Rucho – 8. Voting in the negative: None.

Wildlife Resources Commission

15A NCAC 10F .0201 - The Commission extended the period of review for this Rule at the December 2022 meeting. No action was required by the Commission.

TSERS and LGERS Board of Trustees

20 NCAC 02A .0101, .0102, .0103, .0104, .0201, .0202, .0301, .0302, .0303, .0401, .0503, .0504, and .0505 - The Commission extended the period of review for these Rules at the December 2022 meeting. No action was required by the Commission.

TSERS Board of Trustees

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 - The Commission extended the period of review for these Rules at the December 2022 meeting. No action was required by the Commission.

LGERS Board of Trustees

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 - The Commission extended the period of review for these Rules at the December 2022 meeting. No action was required by the Commission.

TSERS Board of Trustees

20 NCAC 02F .0101, .0104, .0107, and .0108 - The Commission extended the period of review for these Rules at the December 2022 meeting. No action was required by the Commission.

TSERS Board of Trustees

20 NCAC 02L .0101, .0103, .0202, .0302; 02M .0101, .0102, .0104, .0201, .0202, .0206, .0301, .0302, .0303, .0304, .0305, and .0307 - The Commission extended the period of review for these Rules at the December 2022 meeting. No action was required by the Commission.

LGERS Board of Trustees

20 NCAC 02N .0106, .0108, .0208, .0215, .0218, and .0219 - The Commission extended the period of review for these Rules at the December 2022 meeting. No action was required by the Commission.

Behavior Analyst Licensure Board

21 NCAC 05 .0102, .0201, .0202, .0203, .0301, .0401, .0402, .0501, .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: Wayne R. Boyles III, Bobby Bryan, Jay Hemphill, Jeff Hyde, Barbara Jackson, Paul Powell, and Bob Rucho – 7. Voting in the negative: None

21 NCAC 05 .0403 was withdrawn at the request of the agency. No action was required by the Commission.

Board of Examiners for Engineers and Surveyors

21 NCAC 56 .0303, .0601, .0608, .1702, .1703, .1704, .1705, .1707, and .1713 - The Commission extended the period of review for these Rules at the December 2022 meeting. No action was required by the Commission.

LOG OF FILINGS (PERMANENT RULES)

Department of Natural and Cultural Resources

Upon the call of the Chair, 07 NCAC 13C .0102, .0105, .0201, .0202, .0203, .0301, .0302, .0303, .0304, .0305, .0306, .0307, .0309, .0310, .0311, .0312, .0313, .0314, .0315, .0406, .0407, and .0408 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, Jeff Hyde, Barbara Jackson, Paul Powell, and Bob Rucho – 8. Voting in the negative: None.

State Board of Elections

Upon the call of the Chair, 08 NCAC 21 .0201, .0206, and 0207 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, Jeff Hyde, Barbara Jackson, Paul Powell, and Bob Rucho – 8. Voting in the negative: None.

Department of Public Safety

Upon the call of the Chair, the Commission extended the period of review for 14B NCAC 03 .0401, .0402, .0403, .0404, .0405, .0406, .0407, .0408, .0409, and .0410 by roll-call vote, ayes 8, noes 0 as follows: Voting in the affirmative: Andrew Atkins, Wayne R. Boyles III, Bobby Bryan, Jay Hemphill, Jeff Hyde, Barbara Jackson, Paul Powell, and Bob Rucho – 8. Voting in the negative: None.

Department of Environmental Quality

Upon the call of the Chair, the Commission extended the period of review for 15A NCAC 01E .0101, .0102, .0103, .0104, .0105, .0106, .0107, .0108, .0109, .0110, .0111, .0112, .0113, .0114, and .0115 by roll-call vote, ayes 8, noes 0 as follows: Voting in the affirmative: Andrew Atkins, Wayne R. Boyles III, Bobby Bryan, Jay Hemphill, Jeff Hyde, Barbara Jackson, Paul Powell, and Bob Rucho – 8. Voting in the negative: None.

Wildlife Resources Commission

Upon the call of the Chair, 15A NCAC 10F .0301, .0326, .0327, .0336, .0361; 10I .0103, .0104, and .0105 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, Jeff Hyde, Barbara Jackson, Paul Powell, and Bob Rucho – 8. Voting in the negative: None.

Upon the call of the Chair, 15A NCAC 10F .0314 was approved subject to technical changes in this Rule changing “marker” to “channel marker” or “no-wake marker” where referenced throughout this Rule. The technical changes were made following the conclusion of the meeting and the rule was 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, Jeff Hyde, Barbara Jackson, Paul Powell, and Bob Rucho – 8. Voting in the negative: None.

Upon the call of the Chair, 15A NCAC 10B .0201, excepting paragraph (h), was 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, Jeff Hyde, Barbara Jackson, Paul Powell, and Bob Rucho – 8. Voting in the negative: None.

Pursuant to S.L. 2021-176 Rule 15A NCAC 10B .0201(h) is not subject to RRC review.

Board of Dental Examiners

Upon the call of the Chair 21 NCAC 16Q .0103, .0104, .0202, .0302, .0405, and .0703 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, Jeff Hyde, Barbara Jackson, Paul Powell, and Bob Rucho – 8. Voting in the negative: None.

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 for 21 NCAC 16Q .0103, .0104, .0202, .0302, .0405, and .0703.

Interpreter and Transliterator Licensing Board

Upon the call of the Chair, 21 NCAC 25 .0205 was 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, Jeff Hyde, Barbara Jackson, Paul Powell, and Bob Rucho – 8. Voting in the negative: None.

Board of Licensed Clinical Mental Health Counselors

Upon the call of the Chair, 21 NCAC 53 .0206 and .0701 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, Jeff Hyde, Barbara Jackson, Paul Powell, and Bob Rucho – 8. Voting in the negative: None.

LOG OF FILINGS (TEMPORARY RULES)

DHHS - Division of Health Service Regulation

Upon the call of the Chair, 10A NCAC 14C .1403 and .2703 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, Jeff Hyde, Barbara Jackson, Paul Powell, and Bob Rucho – 8. Voting in the negative: None.

Derek Hunter with the Department of Justice and representing the agency, addressed the Commission.

Review of the 2023 State Medical Facilities Plan

Upon the call of the Chair, the 2023 State Medical Facilities Plan was 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, Jeff Hyde, Barbara Jackson, Paul Powell, and Bob Rucho – 8. Voting in the negative: None.

COMMISSION BUSINESS

The Chair reminded the Commission that the deadline to update their Statement of Economic Interest is April 17, 2023.

The meeting adjourned at 9:52 a.m.

The next regularly scheduled meeting of the Commission is Thursday, February 16, 2023, at 9:00 a.m.

Alexander Burgos, Paralegal

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

Rules Review Commission Meeting January 19, 2022
Via WebEx

Name	Agency
Chris Millis	NCHBA
Shazia Keller	DHHS
Janice Peterson	ncoptometry.org
Shelby Taylor	DHHS
Jill Cramer	Labor
Misty Piekaar	DHHS
Anna Hayworth	Agriculture
Rachel A Love-Adrick	CRC
Shelby Taylor	DHHS
Dennis Seavers	Barbers
Mark Payne	DHHS
Anne Coan	NCFB
Hannah Jernigan	DOT
Virginia Niehaus	DHHS
Angela Willis	CRC
Alex Ward	DOJ
Caroline Olds	
Doug Miskew	publicsectorgroup.com
Micheala Mitchell	DHHS
Bethany Burgon	DOJ
Donya Strong	DOA
Robin Colburn	cce-global.org
Emily Jones	DOT
Betsy Haywood	WRC
Laura Lansford	DOR
Julie Youngman	selcnc.org
Carol Williams	
Elizabeth Brown	DHHS
Melonie Davis	ncblcmhc.org
Brandice Bell	ncblcmhc.org
Patrice Alexander	DOR
Kim Meymandi	ascendent.com
Sidney Thomas	
Madison Mackenzie	DHHS
Caitlin Schwab-Falzone	NCITLB
Ellen Roeber	ncptboard.org

Laura Rowe	Treasurer
Jessica Montie	DEQ
Ross Smith	myncma.org
Christine Goebel	DEQ
Alesia Balshakova	DOJ
Sandra Guenther	aaoms.org
Andrea Emanuel	DHHS
Leo John	sosnc.gov
Carrie Ruhlman	WRC
Marlika Hairston	NCCOB
Will Polk	DPS
Mark Schwarze	appstate.edu
Juliane Bradshaw	DOJ

DRAFT