

RULES REVIEW COMMISSION MEETING
MINUTES
July 16, 2020

The Rules Review Commission met on Thursday, July 16, 2020 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 Order 121, other orders limiting mass gatherings, and to encourage social distancing. The meeting was conducted in accordance with the provisions of G.S. 166A-19.24.

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

Staff members present were Commission Counsel Ashley Snyder and Amanda Reeder; and Alex Burgos. Commission Counsel Amber Cronk May and Karlene Turrentine were present via WebEx.

The meeting was called to order at 9:08 a.m. with Second Vice Chair Choi presiding.

The Second Vice 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 Second Vice Chair asked for any discussion, comments, or corrections concerning the minutes of the June 18, 2020 meeting. There were none and the minutes were approved as distributed.

Upon the call of the Second Vice Chair, the minutes were approved by roll-call vote, ayes 8, noes 0 as follows: Voting in the affirmative: Atkins, Bryan, Choi, Currin, Doran, Dunklin, Tucker, and Powell – 8. Voting in the negative: None.

FOLLOW UP MATTERS

Pesticide Board

02 NCAC 09L .0102, .0103, .0308, .0310, .0317, .0318, .0402, .0502, .0503, .0504, .0505, .0509, .0516, .0519, .0520, .0522, .0523, .0524, .0525, .0526, .0527, .0602, .0603, .0701, .0702, .0703, .0705, .0707, .0810, .1001, .1002, .1003, .1005, .1006, .1009, .1102, .1103, .1104, .1105, .1107, .1108, .1109, .1111, .1201, .1202, .1302, .1303, .1305, .1306, .1401, .1402, .1404, .1805, .1806, .1901, .1902, .1905, .1906, .1907, .1908, .1909, .1914, .2001, .2002, .2003, .2004, .2201, .2202, and .2203 - Upon the call of the Second Vice Chair, the rules were approved by roll-call vote, ayes 8, noes 0 as follows: Voting in the affirmative: Atkins, Bryan, Choi, Currin, Doran, Dunklin, Tucker, and Powell – 8. Voting in the negative: None.

Upon the call of the Second Vice Chair, the Commission objected to 02 NCAC 09L .0101, .0515, .0529 by roll-call vote, ayes 8, noes 0 as follows: Atkins, Bryan, Choi, Currin, Doran, Dunklin, Tucker, and Powell – 8. Voting in the negative: None.

The Commission objected to 02 NCAC 09L .0101, .0515, and .0529 in accordance with G.S. 150B-21.10.

The Commission objected to Rule 02 NCAC 09L .0101 for lack of necessity. The language does not meet the definition of a "rule" because it does not set a standard of general applicability. Instead, it concerns internal agency management.

The Commission objected to Rule 02 NCAC 09L .0515 for ambiguity because the Rule does not specify which "applicants" or types of licensure it was regulating. It is also unclear whether an applicant

can take the exam a total of three times or whether an applicant can take up to three exams each year until passage.

The Commission also objected to Rule 02 NCAC 09L .0529 for lack of necessity. The Rule states it applies "prior to January 1, 2017." Since the contents of the Rule are no longer in effect, the Commission objected due to lack of necessity.

Commission for the Blind

10A NCAC 63C .0203, .0204, .0403, and .0601 - Upon the call of the Second Vice Chair, the rules were approved by roll-call vote, ayes 7, noes 1 as follows: Voting in the affirmative: Atkins, Bryan, Choi, Currin, Doran, Dunklin, and Powell – 7. Voting in the negative: Tucker - 1.

Crime Victims Compensation Commission

14B NCAC 09 .0301, .0302, and .0305 – The agency is addressing the technical change requests from the June meeting. No action was required by the Commission.

14B NCAC 09 .0303 and .0304 - The agency is addressing the objections from the June meeting. No action was required by the Commission.

Private Protective Services Board

14B NCAC 16 .1001, .1002, .1003, .1207, .1304, and .1404 - The agency is addressing the objections from the June meeting. No action was required by the Commission.

Building Code Council

Residential Code, N1106.2 (R406.2); Energy Conservation Code, R202; and Energy Conservation Code R406.2. – The rules were withdrawn and returned to the agency at the request of the agency. No action was required by the Commission.

LOG OF FILINGS (PERMANENT RULES)

Department of Commerce/ Division of Employment Security

Upon the call of the Second Vice Chair, the rules were approved by roll-call vote, ayes - 8, noes 0 as follows: Voting in the affirmative: Atkins, Bryan, Choi, Currin, Doran, Dunklin, Tucker, and Powell – 8. Voting in the negative: None.

State Board of Elections

Upon the call of the Second Vice Chair, the rule was approved by roll-call vote, ayes 8, noes 0 as follows: Voting in the affirmative: Atkins, Bryan, Choi, Currin, Doran, Dunklin, Tucker, and Powell – 8. Voting in the negative: None.

Code Officials Qualification Board

Upon the call of the Second Vice Chair, the rules were approved by roll-call vote, ayes 8, noes 0 as follows: Voting in the affirmative: Atkins, Bryan, Choi, Currin, Doran, Dunklin, Tucker, and Powell – 8. Voting in the negative: None.

Alarm Systems Licensing Board

Upon the call of the Second Vice Chair, the rules were approved by roll-call vote, ayes 8, noes 0 as follows: Voting in the affirmative: Atkins, Bryan, Choi, Currin, Doran, Dunklin, Tucker, and Powell – 8. Voting in the negative: None.

State Board of Education 16 NCAC 06B

Upon the call of the Second Vice Chair, the period of review was extended for the rules by roll-call vote, ayes 6, noes 2 as follows:

Voting in the affirmative: Atkins, Bryan, Choi, Currin, Dunklin, and Powell – 6. Voting in the negative: Doran and Tucker - 2.

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

State Board of Education 16 NCAC 06C

Upon the call of the Second Vice Chair, the period of review was extended for the rules by roll-call vote, ayes 6, noes 2 as follows:

Voting in the affirmative: Atkins, Bryan, Choi, Currin, Dunklin, and Powell – 6. Voting in the negative: Doran and Tucker - 2.

State Board of Education 16 NCAC 06D,E,G

Upon the call of the Second Vice Chair, the period of review was extended for the rules by roll-call vote, ayes 6, noes 2 as follows:

g in the affirmative: Atkins, Bryan, Choi, Currin, Dunklin, and Powell – 6. Voting in the negative: Doran and Tucker - 2.

State Board of Education 16 NCAC 06H,K

Upon the call of the Second Vice Chair, the period of review was extended for the rules by roll-call vote, ayes 6, noes 2 as follows:

Voting in the affirmative: Atkins, Bryan, Choi, Currin, Dunklin, and Powell – 6. Voting in the negative: Doran and Tucker - 2.

Medical Board/Perfusion Advisory Committee

Upon the call of the Second Vice Chair, the rule was approved by roll-call vote, ayes 8, noes 0 as follows: Voting in the affirmative: Atkins, Bryan, Choi, Currin, Doran, Dunklin, Tucker, and Powell – 8. Voting in the negative: None.

Board of Funeral Service

First Vice Chair Doran presided over the discussion and vote on the Board of Funeral Service rules.

Upon the call of the First Vice Chair, the rules were approved by roll-call vote, ayes 7, noes 0 as follows: Voting in the affirmative: Atkins, Bryan, Currin, Doran, Dunklin, Tucker, and Powell – 7. Voting in the negative: None.

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

The Commission received over 10 letters of objection to Rules 21 NCAC 34B .0313 and .0502. Pursuant to G.S. 150B-21.3, these rules are now subject to legislative review and a delayed effective date.

Board of Pharmacy

Second Vice Chair Choi resumed presiding over the meeting.

Upon the call of the Second Vice Chair, the rules were approved by roll-call vote, ayes 8, noes 0 as follows: Voting in the affirmative: Atkins, Bryan, Choi, Currin, Doran, Dunklin, Tucker, and Powell – 8. Voting in the negative: None.

LOG OF FILINGS (TEMPORARY RULES)

Department of Commerce/ Division of Employment Security

04 NCAC 24G .0102 and .0103 - Upon the call of the Second Vice Chair, the rules were approved by roll-call vote, ayes 8, noes 0 as follows: Voting in the affirmative: Atkins, Bryan, Choi, Currin, Doran, Dunklin, Tucker, and Powell – 8. Voting in the negative: None.

Department of Public Safety

14B NCAC 05B .0401 - The Rule was withdrawn at the request of the agency. No action was required by the Commission.

Private Protective Services Board

14B NCAC 16 .0201, .0806, .0904, .1202, .1203 - Upon the call of the Second Vice Chair, the rules were approved by roll-call vote, ayes 8, noes 0 as follows: Voting in the affirmative: Atkins, Bryan, Choi, Currin, Doran, Dunklin, Tucker, and Powell – 8. Voting in the negative: None.

Board of Chiropractic Examiners

First Vice Chair Doran presided over the remainder of the meeting.

21 NCAC 10 .0216 - Upon the call of the First Vice Chair, the rule was approved by roll call vote, ayes 7, noes 0 as follows: Voting in the affirmative: Atkins, Bryan, Currin, Doran, Dunklin, Tucker, and Powell. Voting in the negative: None.

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

Licensing Board for General Contractors

21 NCAC 12A .0607 - Upon the call of the Vice Chair, the rule was approved by roll-call vote, ayes 7, noes 0 as follows: Voting in the affirmative: Atkins, Bryan, Currin, Doran, Dunklin, Tucker, and Powell – 7. Voting in the negative: None.

Prior to the review of the rule from the Licensing Board for General Contractors, Commissioner Choi recused herself and did not participate in any discussion or vote concerning the rule because her law firm provides legal representation to the Board. Additionally, she is the rulemaking coordinator for the Board.

Board of Massage and Bodywork Therapy

21 NCAC 30 .0636 - Upon the call of the Vice Chair, the rule was approved by roll-call vote, ayes 8, noes 0 as follows: Voting in the affirmative: Atkins, Bryan, Choi, Currin, Doran, Dunklin, Tucker, and Powell – 8. Voting in the negative: None.

Board of Funeral Service

21 NCAC 34A .0128 - Upon the call of the Vice Chair, the rule was approved by roll-call vote, ayes 7, noes 0 as follows: Voting in the affirmative: Atkins, Bryan, Currin, Doran, Dunklin, Tucker, and Powell – 7. Voting in the negative: None.

Prior to the review of the rule from the North Carolina Board of Funeral Service, Commissioner Choi recused herself and did not participate in any discussion or vote concerning the rule because her law firm provides legal representation to the Board.

Onsite Wastewater Contractors and Inspectors Certification Board


21 NCAC 39 .0904 - Upon the call of the Vice Chair, the rule was approved by roll-call vote, ayes 7, noes 0 as follows: Voting in the affirmative: Atkins, Bryan, Currin, Doran, Dunklin, Tucker, and Powell – 7. Voting in the negative: None.

Prior to the review of the rule from the Onsite Wastewater Contractors and Inspectors Certification Board, Commissioner Choi recused herself and did not participate in any discussion or vote concerning the rule because her law firm provides legal representation to the Board.

COMMISSION BUSINESS

The meeting adjourned at 9:59 a.m.

The next regularly scheduled meeting of the Commission is Thursday, August 20, 2020 at 9:00 a.m.



Alexander Burgos, Paralegal

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

**Rules Review Commission Meeting July 16, 2020
Held Via WebEx**

Name

Catherine Lee
Charles Wilkins
Christina Waggett
Clint Pinyan
Loretta Peace Bunch
Lou Martin
Cynthia Speight
Denice Henderson
Deanna Townsend
Elizabeth Kirk
Frank Weisner
Jessica Macari
Laura R
Lindsey Wakely
Patrick Jones
Regina Adams
Shelia Stephens
Tom Ziko
Tom Felling
Jim Burnette
Pat Jones
Deanna Townsend-Smith

Agency

General Contractors
Massage and Bodywork Therapy
Pesticide Board
Pharmacy Board
Insurance
State Board of Education
DHHS
DHHS

Occupational Therapy

Elections
Agriculture
Commerce

State Board of Education
NC DOJ
Pesticide Board
Pesticide Board
State Board of Education