

RULES REVIEW COMMISSION MEETING
MINUTES
July 21, 2022

The Rules Review Commission met on Thursday, July 21, 2022, in the Commission Room at 1711 New Hope Church Road, Raleigh, North Carolina, and via WebEx.

Commissioners Andrew Atkins, Wayne R. Boyles III, Margaret Currin, Jeanette Doran, Randy Overton, Paul Powell, and Bob Rucho were present in the Commission Room. Commissioners present via WebEx were Bobby Bryan, Jeff Hyde and Barbara Jackson.

Staff members Alexander Burgos; Commission Counsel 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 June 16, 2022, 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 8, noes 0 as follows: Voting in the affirmative: Andrew Atkins, Wayne R. Boyles III, Bobby Bryan, Margaret Currin, 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 the Coastal Resources Commission Tab G and Permanent Rules for Sheriffs' Education and Training Standards Commission.

FOLLOW UP MATTERS

Board of Agriculture

02 NCAC 52J .0101, .0102, .0103, .0104, .0105, .0201, .0202, .0203, .0204, .0205, .0206, .0207, .0208, .0209, .0210, .0301, .0302, .0303, .0304, .0401, .0402, .0403, .0404, .0405, .0406, .0407, .0408, .0409, .0410, .0411, .0412, .0413, .0414, .0415, .0416, .0417, .0418, .0419, .0501, .0701, .0702, .0703, .0704, .0705, .0801, .0802, .0803, .0901, and .0902 - The agency is addressing the technical change requests from the June meeting. 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 - The agency is addressing the technical change requests from the June meeting. No action was required by the Commission.

Criminal Justice Education and Training Standards Commission

12 NCAC 09G .0205 – This Rule remains on the agenda to allow the agency time until the conclusion of the legislative review process. No action was required by the Commission.

Environmental Management Commission

15A NCAC 02B .0208, .0212, .0214, .0215, .0216, and .0218 - The agency is addressing the objection from the May meeting. No action was required by the Commission.

Commissioner Hyde joined the meeting Via Webex.

Environmental Management Commission

15A NCAC 02H .1301, .1401, .1402, .1403, .1404, and .1405 - The agency is addressing the objection from the May meeting. No action was required by the Commission.

Environmental Management Commission

15A NCAC 02Q .0103, .0503, .0504, .0505, .0507, .0508, .0509, .0514, .0516, .0518, .0521, .0522, .0525, and .0526 - The agency is addressing the technical change requests from the June meeting. No action was required by the Commission.

Coastal Resources Commission

Upon the call of the Chair, the Commission waived Rule 26 NCAC 05 .0105 to allow the request to speak by Steve Edwards after the deadline by roll-call vote, ayes 9, noes 0 as follows: Voting in the affirmative: Andrew Atkins, Wayne R. Boyles III, Bobby Bryan, Margaret Currin, Jeff Hyde, Barbara Jackson, Randy Overton, Paul Powell, and Bob Rucho – 9. Voting in the negative: None.

15A NCAC 07H .0104, .0208, .0304, .0305, .0306, .0308, .0309, .0310, .1205, .1801; 07J .0403, .0404, .1201, .1202, .1203, .1204, .1205, .1206, .1301, .1302, .1303; 07K .0208; 07M .0301, .0302, .0303, .0306, .0307, .0308, and .0310 - Upon the call of the Chair, the rules were approved by roll-call vote, ayes 9, noes 0 as follows: Voting in the affirmative: Andrew Atkins, Wayne R. Boyles III, Bobby Bryan, Margaret Currin, Jeff Hyde, Barbara Jackson, Randy Overton, Paul Powell, and Bob Rucho – 9. Voting in the negative: None.

Steve Edwards, with the Town of Oak Island, addressed the Commission.

Mary Lucasse, representing the agency, addressed the Commission.

Wildlife Resources Commission

15A NCAC 10D .0103 - Upon the call of the Chair, the rule was approved by roll-call vote, ayes 9, noes 0 as follows: Voting in the affirmative: Andrew Atkins, Wayne R. Boyles III, Bobby Bryan, Margaret Currin, Jeff Hyde, Barbara Jackson, Randy Overton, Paul Powell, and Bob Rucho – 9. Voting in the negative: None.

15A NCAC 10D .0209, .0226, .0229, .0230, .0239, .0240, .0243, .0260, and .0276 – The rules were withdrawn at the request of the agency. No action was required by the Commission.

LOG OF FILINGS (PERMANENT RULES)

DHHS - Division of Health Benefits

Upon the call of the Chair, the rules were approved by roll-call vote, ayes 9, noes 0 as follows: Voting in the affirmative: Andrew Atkins, Wayne R. Boyles III, Bobby Bryan, Margaret Currin, Jeff Hyde, Barbara Jackson, Randy Overton, Paul Powell, and Bob Rucho – 9. Voting in the negative: None.

Sheriffs' Education and Training Standards Commission

Upon the call of the Chair, the Commission objected to 12 NCAC 10B .0704 by roll-call vote, ayes 6, noes 3 as follows: Voting in the affirmative: Andrew Atkins, Wayne R. Boyles III, Bobby Bryan, Margaret Currin, Jeff Hyde, and Barbara Jackson – 6. Voting in the negative: Randy Overton, Paul Powell, and Bob Rucho - 3.

The Commission objected to 12 NCAC 10B .0704 finding that: the Rule was not within the statutory authority delegated to the NC SETSC pursuant to G.S. 150B-21.9(a)(1), the Rule was not clear and unambiguous pursuant to G.S. 150B 21.9(a)(2), and the Rule was not adopted in accordance with the Administrative Procedures Act pursuant to G.S. 150B-21.9(a)(4).

Specifically, the RRC adopted the opinion of counsel by reference regarding the issue of the agency exceeding its authority, and clarity and ambiguousness. (See Parts 1 & 3 of the RRC Staff Opinion).

The RRC found that, notwithstanding the agency's second amendment to the Rule, the Rule did not prescribe the contents or substantive requirements of the forms identified in the Rule. Rather, the agency left the contents or substantive requirements of the forms open-ended by its employ of the word "includes".

Pursuant to G.S. 150B-2(8a)d., a form does not fall under the definition of a "Rule" if the contents and substantive requirements of the form are prescribed by rule or statute. 12 NCAC 10B .0704 does not prescribe all the contents or substantive requirements of Form F-7A or Form 7-B. A review of Subchapter 10A fails to reveal the contents or substantive requirements of these forms. 12 NCAC 10B .0704 does not reference any other subchapter or statute which prescribes the contents or substantive requirements of these forms.

Accordingly, the agency has failed to comply with the Administrative Procures Act by requiring the regulated public to use forms without adopting the forms or adopting a rule prescribing the complete contents or substantive requirements.

Sirena Jones, the rulemaking coordinator with the agency, addressed the Commission.

Robert Pickett, representing the agency, addressed the Commission.

Alarm Systems Licensing Board

Upon the call of the Chair, the rules were approved by roll-call vote, ayes 9, noes 0 as follows: Voting in the affirmative: Andrew Atkins, Wayne R. Boyles III, Bobby Bryan, Margaret Currin, Jeff Hyde, Barbara Jackson, Randy Overton, Paul Powell, and Bob Rucho – 9. Voting in the negative: None.

Coastal Resources Commission- 15A NCA 07H .0500, .0600, 07I, 07J

Upon the call of the Chair, the Commission extended the period of review for 15A NCAC 07H .0501, .0502, .0503, .0504, .0505, .0506, .0507, .0508, .0509, .0510, .0601, .0602, .0603, .0604; 07I .0204, .0302, .0305, .0306, .0401, .0402, .0406, .0504, .0505, .0506, .0507, .0508, .0509, .0510, .0511, .0601, .0602, .0701, .0702; 07J .0102, .0201, .0203, .0204, .0206, .0207, .0208, .0209, .0210, .0211, .0301, .0302, .0312, .0602, .0603, .0604, .0605, .0701, .0702, and .0703 by roll-call vote, ayes 9, noes 0 as follows: Voting in the affirmative: Andrew Atkins, Wayne R. Boyles III, Bobby Bryan, Margaret Currin, Jeff Hyde, Barbara Jackson, Randy Overton, Paul Powell, and Bob Rucho – 9. Voting in the negative: None.

Coastal Resources Commission – 15A NCAC 07H .1300 - .2700

Upon the call of the Chair, the Commission extended the period of review for 15A NCAC 07H .1301, .1302, .1303, .1304, .1305, .1401, .1402, .1403, .1404, .1405, .1501, .1502, .1503, .1504, .1505, .1601, .1602, .1603, .1604, .1605, .1805, .2001, .2002, .2003, .2004, .2005, .2101, .2102, .2103, .2104, .2105, .2201, .2202, .2203, .2204, .2205, .2301, .2302, .2303, .2304, .2305, .2401, .2402, .2403, .2404, .2405, .2601, .2602, .2603, .2604, .2605, .2701, .2702, .2703, .2704, and .2705 by roll-call vote, ayes 9, noes 0 as follows: Voting in the affirmative: Andrew Atkins, Wayne R. Boyles III, Bobby Bryan, Margaret Currin, Jeff Hyde, Barbara Jackson, Randy Overton, Paul Powell, and Bob Rucho – 9. Voting in the negative: None.

Coastal Resources Commission – 15A NCAC 07L, M

Upon the call of the Chair, 15A NCAC 07L .0503 was approved by roll-call vote, ayes 9, noes 0 as follows: Voting in the affirmative: Andrew Atkins, Wayne R. Boyles III, Bobby Bryan, Margaret Currin,

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 15A NCAC 07M .0201, .0202, .0401, .0402, .0403, .0503, .0601, .0602, .0603, .0701, .0702, .0703, .0704, .0705, .0801, .0802, .0902, .1001, .1002, .1101, .1102, .1201, and .1202 by roll-call vote, ayes 9, noes 0 as follows: Voting in the affirmative: Andrew Atkins, Wayne R. Boyles III, Bobby Bryan, Margaret Currin, Jeff Hyde, Barbara Jackson, Randy Overton, Paul Powell, and Bob Rucho – 9. Voting in the negative: None.

Board of Physical Therapy Examiners

Upon the call of the Chair, the Commission extended the period of review for 21 NCAC 48B .0102; 48E .0104; 48F .0101, .0103; 48G .0105, .0203, and .0504 by roll-call vote, ayes 9, noes 0 as follows: Voting in the affirmative: Andrew Atkins, Wayne R. Boyles III, Bobby Bryan, Margaret Currin, Jeff Hyde, Barbara Jackson, Randy Overton, Paul Powell, and Bob Rucho – 9. Voting in the negative: None.

Board of Recreational Therapy Licensure

Upon the call of the Chair, the rules were approved by roll-call vote, ayes 9, noes 0 as follows: Voting in the affirmative: Andrew Atkins, Wayne R. Boyles III, Bobby Bryan, Margaret Currin, Jeff Hyde, Barbara Jackson, Randy Overton, Paul Powell, and Bob Rucho – 9. Voting in the negative: None.

COMMISSION BUSINESS

The Codifier of Rules, Ashley Snyder, presented the Commission with an overview of the pre-reviews conducted by staff. Additionally, the Codifier discussed the upcoming changes to the 2023 Publication Schedule.

The Chair advised the Commission that at the August and September meetings, the Commission will continue the discussion on pre-reviews.

The Chair recognized outgoing Commissioner Margaret Currin for her service to the RCC and the State of North Carolina. The letter recognizing Commissioner Currin was ratified by the RRC and entered into the official minutes by roll-call vote, ayes 9, noes 0 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: None.

Commissioner Currin addressed the Commission.

The meeting adjourned at 10:50 a.m.

The next regularly scheduled meeting of the Commission is Thursday, August 18, 2022, at 9:00 a.m.



Alexander Burgos, Paralegal



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

July 21, 2022

Rules Review Commission
Meeting
Please Print Legibly

Name	Agency
Jennifer Everett	DEQ
Mary Lucas	NCDOJ
Hon B Wall	SOS
Bob Pickett	NCDOJ
Carrie Ruhlman	NCWRC
Ashley Pecum	NCWRC
Sienna Jones	NCDOJ

Rules Review Commission Meeting July 21, 2022
Via WebEx

Name	Agency
Helen Landi	DOT
Catherine Blum	MFC
Kathy Arney	PT
Christy Simmons	DEQ
Deborah Ragan	PT
Rachel Love-Adrick	DEQ
Chris Millis	NCHBA
Julie Youngman	SELNC
Ronald Williams	DOR
Kevin Martin	cucainc.org
Carrie Hollis	OSBM
Steve Edwards	oakislandnc.gov
Mike Lopazanski	CRC
Steve Edwards	oakislandnc.gov
Phillip Reynolds	DOJ
David Rittlinger	DOI
Julie Ventaloro	OSBM
Hannah Jernigan	DOT
Jim Flowers	DHHS DHB
Dennis Seavers	Barbers
Laura Rowe	Treasurer
David Kelly	Oakislandnc.gov
Daniel Johnson	DOT
Jessica Montie	DEQ
Christine Goebel	DEQ
Melissa Bowman	DOJ
Nadine Pfeiffer	DHSHR
Becky Garrett	BRTL
Hope wade	DEQ
Angela Willis	DEQ
Shazia Keller	DHHS DHB



STATE OF NORTH CAROLINA
OFFICE OF ADMINISTRATIVE HEARINGS

July 21, 2022

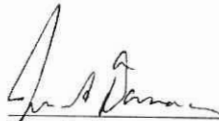
Dear Commissioner Currin,

On behalf of the Rules Review Commission and the Office of Administrative Hearings, we wish to thank you for your service to the citizens of this State. Since being appointed to the Commission in 2011, you have reviewed many administrative rules that are vital to the interests of all North Carolinians. Additionally, as Chair of the Commission from 2014-2015, you oversaw the implementation of the first periodic review process, ensuring that program's success.


The clarity of administrative rulemaking and adherence to legislative authority promote the efficient operation of state government. In this process, you have judiciously balanced the interests of the individual against the interests of the state, according to the legislative authority granted to the Rules Review Commission.

You have, as a citizen volunteer, unselfishly contributed your time and expertise to the Rules Review Commission. This Commission cannot accomplish its mission unless citizens, like you, offer themselves in public service. Please accept our sincere thank you for your willingness to serve in this capacity.

Very truly yours,



Jeanette Doran
Chair, Rules Review Commission



Donald R. van der Vaart
Chief Administrative Law Judge