

RULES REVIEW COMMISSION MEETING
MINUTES
June 18, 2020

The Rules Review Commission met on Thursday, June 18, 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.

Commissioners Jeff Hyde and Tommy Tucker were present in the Commission Room, and Commissioners present via teleconference were Andrew Atkins, Bobby Bryan, Anna Baird Choi, Margaret Currin, Jeanette Doran, Garth Dunklin, Brian LiVecchi, 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 9:00 a.m. with Chairman Hyde 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

Chairman Hyde asked for any discussion, comments, or corrections concerning the minutes of the May 21, 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 9, noes 0 as follows: Voting in the affirmative: Atkins, Bryan, Choi, Currin, Doran, Dunklin, LiVecchi, Tucker, and Powell – 9. 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: Temporary rules for: DHHS-Division of Health Benefits, Code Officials Qualification Board, and Medical Board - 21 NCAC 32M .0119.

FOLLOW UP MATTERS

Pesticide Board

The agency is addressing the technical changes for 02 NCAC 09L .0101, .0102, .0103, .0308, .0310, .0317, .0318, .0402, .0502, .0503, .0504, .0505, .0509, .0515, .0516, .0519, .0520, .0522, .0523, .0524, .0525, .0526, .0527, .0529, .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. No action was required by the Commission.

The agency is addressing the objection for 02 NCAC 09L .1913. No action was required by the Commission.

Executive Director of the Board of Elections/Temporary Rule

08 NCAC 01 .0106 – The agency responded to the objection in accordance with the provisions of G.S. 150B-21.1(b2) on June 11, 2020 and stated that the agency will not be submitting a new statement or additional findings regarding this Rule. Pursuant to G.S. 150B-21.1(b2), the rule was returned to the agency. No further action will be taken by the Rules Review Commission on this Temporary Rule.

Commission for the Blind

The agency is addressing the objections for 10A NCAC 63C .0203, .0204, .0403, and .0601. No action was required by the Commission.

Department of Insurance

11 NCAC 12 .0321, and .0514 - Upon the call of the Chair, the rules were approved by roll-call vote, ayes 9, noes 0 as follows: Voting in the affirmative: Atkins, Bryan, Choi, Currin, Doran, Dunklin, LiVecchi, Tucker, and Powell – 9. Voting in the negative: None.

Auctioneer Licensing Board

21 NCAC 04B .0101, .0102, .0103, .0104, .0201, .0202, .0203, .0301, .0302, .0303, .0401, .0402, .0403, .0404, .0405, .0501, .0502, .0503, .0504, .0505, .0506, .0601, .0602, .0603, .0604, .0605, .0606, .0607, .0701, .0801, .0802, .0803, .0804, .0805, .0806, .0807, .0808, .0809, .0810, .0811, .0812, .0813, .0814, .0815, .0816, .0817, .0818, and .0819 - Upon the call of the Chair, the rules were approved by roll-call vote, ayes 9, noes 0 as follows: Voting in the affirmative: Atkins, Bryan, Choi, Currin, Doran, Dunklin, LiVecchi, Tucker, and Powell – 9. Voting in the negative: None.

Board of Examiners for Engineers and Surveyors

21 NCAC 56 .0303, .0304, .0501, .0503, .0601, .0603, .0804, .0902, .1301, .1302, .1403, .1603, .1604, and, .1607 - Upon the call of the Chair, the rules were approved by roll-call vote, ayes 9, noes 0 as follows: Voting in the affirmative: Atkins, Bryan, Choi, Currin, Doran, Dunklin, LiVecchi, Tucker, and Powell – 9. Voting in the negative: None.

Real Estate Commission

21 NCAC 58H .0401 - Upon the call of the Chair, the rule was approved by roll-call vote, ayes 8, noes 0 as follows: Voting in the affirmative: Atkins, Bryan, Choi, Currin, Doran, LiVecchi, Tucker, and Powell – 8. Voting in the negative: None.

Prior to the review of the rule from the Real Estate Commission, Commissioner Dunklin recused himself and did not participate in any discussion or vote concerning the rule because he practices before the NC Real Estate Commission and has been involved in discussions regarding these Rules.

Building Code Council

Residential Code, N1106.2 (R406.2); Energy Conservation Code, R202; and Energy Conservation Code R406.2. – The agency is addressing the objections. No action was required by the Commission.

LOG OF FILINGS (PERMANENT RULES)**Department of Administration**

Upon the call of the Chair, the rule was approved by roll-call vote, ayes 9, noes 0 as follows: Voting in the affirmative: Atkins, Bryan, Choi, Currin, Doran, Dunklin, LiVecchi, Tucker, and Powell – 9. Voting in the negative: None.

Pesticide Board

Upon the call of the Chair, the rule was approved by roll-call vote, ayes 9, noes 0 as follows: Voting in the affirmative: Atkins, Bryan, Choi, Currin, Doran, Dunklin, LiVecchi, Tucker, and Powell – 9. Voting in the negative: None.

Medical Care Commission

Upon the call of the Chair, the rules were approved by roll-call vote, ayes 9, noes 0 as follows: Voting in the affirmative: Atkins, Bryan, Choi, Currin, Doran, Dunklin, LiVecchi, Tucker, and Powell – 9. Voting in the negative: None.

Department of Health and Human Services

Upon the call of the Chair, the rules were approved by roll-call vote, ayes 9, noes 0 as follows:

Voting in the affirmative: Atkins, Bryan, Choi, Currin, Doran, Dunklin, LiVecchi, Tucker, and Powell –

9. Voting in the negative: None.

Commission for Public Health

Upon the call of the Chair, the rule was approved by roll-call vote, ayes 9, noes 0 as follows:

Voting in the affirmative: Atkins, Bryan, Choi, Currin, Doran, Dunklin, LiVecchi, Tucker, and Powell –

9. Voting in the negative: None.

State Registrar

Upon the call of the Chair, the rule was approved by roll-call vote, ayes 9, noes 0 as follows:

Voting in the affirmative: Atkins, Bryan, Choi, Currin, Doran, Dunklin, LiVecchi, Tucker, and Powell –

9. Voting in the negative: None.

Criminal Justice Education and Training Standards Commission

Upon the call of the Chair, the rules were approved by roll-call vote, ayes 9, noes 0 as follows:

Voting in the affirmative: Atkins, Bryan, Choi, Currin, Doran, Dunklin, LiVecchi, Tucker, and Powell –

9. Voting in the negative: None.

Sheriffs' Education and Training Standards Commission

Upon the call of the Chair, the rule was approved by roll-call vote, ayes 9, noes 0 as follows:

Voting in the affirmative: Atkins, Bryan, Choi, Currin, Doran, Dunklin, LiVecchi, Tucker, and Powell –

9. Voting in the negative: None.

Crime Victims Compensation Commission

Upon the call of the Chair, the period of review was extended for the following rules to by roll-call vote, ayes 9, noes 0 as follows:

Voting in the affirmative: Atkins, Bryan, Choi, Currin, Doran, Dunklin, LiVecchi, Tucker, and Powell –

9. Voting in the negative: None.

The Commission extended the period of review for 14B NCAC 09 .0301, .0302, and .0305 in accordance with G.S. 150B-21.10. They did so in response to a request from the Crime Victims Compensation Commission to extend the period in order to allow the agency to address the requested technical changes and submit the revised rules at a later meeting.

Upon the call of the Chair, the Commission objected to 14B NCAC 09 .0303 and .0304 by roll-call vote, ayes 9, noes 0 as follows:

Voting in the affirmative: Atkins, Bryan, Choi, Currin, Doran, Dunklin, LiVecchi, Tucker, and Powell –

9. Voting in the negative: None.

The Commission objected to 14B NCAC 09 .0303 for lack of statutory authority, clarity, and necessity. The agency did not provide authority for Paragraph (b), which allows the Director to “poll the members of the Commission regarding any matter requiring the Commission’s attention.” (emphasis added). G.S. 15B-3(e) states “a majority of the Commission constitutes a quorum to transact business.” Further, North Carolina’s Open Meetings Laws provide “. . . each official meeting of a public body shall be open to the public, and any person is entitled to attend such a meeting.” G.S. 143-318.10(a). As a result, the agency lacks statutory authority to make decisions regarding “any matter” without a quorum present at an open meeting.

Paragraph (b) allows the Director to poll Commission members “at such times as it is not practicable for the members to meet as a body.” The rule does not clarify under what circumstances it is

considered "not practicable" for the Commission to meet. Paragraph (b) is therefore ambiguous as written.

Paragraphs (a) and (d) govern conduct of Commission members at meetings. These statements concern only the internal management of the agency and do not meet the definition of a "Rule." G.S. 150B-2(8a)(a). Therefore, Paragraphs (a) and (d) are unnecessary. The first sentence of Paragraph (c) refers to public notice requirements established in statute for Commission meetings and is also unnecessary.

The Commission objected to 14B NCAC 09 .0304 for lack of statutory authority and necessity. Paragraphs (b) and (c) follow a process that allowed agencies to issue a "final decision" after a "recommended decision" from the Office of Administrative Hearings in contested cases. This process of appealing agency decisions was changed in 2012 by S.L. 2012-187. The Administrative Procedure Act no longer allows the Crime Victims Compensation Commission to review decisions from Administrative Law Judges. Additionally, the Commission objected for lack of necessity because G.S. 15B-10(d) and G.S. 150B, Article 3 provide the process for commencing a contested case.

Will Polk, with the agency, addressed the Commission.

Private Protective Services Board

Upon the call of the Chair, all rules except 14B NCAC 16 .1001, .1002, .1003, .1207, .1304, and .1404 were approved by roll-call vote, ayes 9, noes 0 as follows:

Voting in the affirmative: Atkins, Bryan, Choi, Currin, Doran, Dunklin, LiVecchi, Tucker, and Powell – 9. Voting in the negative: None.

The Commission objected to 14B NCAC 16 .1001, .1002, and .1003 for lack of statutory authority. Specifically, these three Rules comprise the entirety of 14B NCAC 16 .1000, the Section named "Recovery Fund." These Rules address the process for an individual to apply to the Board for recovery of funds when he or she believes a member of the regulated public harmed them. All three Rules cite to G.S. 74C-31 as sole authority for the rules. G.S. 74C-31 was repealed by Session Law 2009-328. That Session Law further eliminated the Recovery Fund that was previously addressed in G.S. 74C, Article 2 and created an Education Fund. The roles of those funds do not appear to be similar. The Commission found that the Board does not have any statutory authority to regulate this now defunct fund.

The Commission objected to 14B NCAC 16 .1207 for lack of necessity. The Commission found that this Rule simply repeated the requirements of Rule 14B NCAC 16 .1205(b) and was therefore unnecessary.

The Commission objected to 14B NCAC 16 .1304 and .1404 for lack of statutory authority and ambiguity. Specifically, the Commission found that the use of the term "administrator" throughout the Rules was ambiguous, as changes to G.S. 74C through Session Law 2001-487 established a new position of "Director" and it does not appear that the administrator position exists anymore.

In addition, Paragraph (a) of each Rule states that there shall be "such further investigation of the applicant as deemed necessary." The rules do not say who will deem the investigation necessary, nor how the necessity will be determined. The Commission found that this language was ambiguous.

In Paragraph (b), the rules state that any denial of the registration by the administrator will be subject to review of the Board. However, G.S. 74C-12 states that any denial of an application will be made by the Board. The agency did not cite to any authority for the administrator to issue a denial such that it is reviewable by the Board, nor any authority of the Board to delegate this decision. Therefore, the Commission found that the agency lacks statutory authority for this Paragraph in each rule.

Coastal Resources Commission

Upon the call of the 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. Commissioner LiVecchi was not present for the vote or discussion on these Rules.

Wildlife Resources Commission

Upon the call of the Chair, the rule was approved by roll-call vote, ayes 9, noes 0 as follows:

Voting in the affirmative: Atkins, Bryan, Choi, Currin, Doran, Dunklin, LiVecchi, Tucker, and Powell – 9. Voting in the negative: None.

Environmental Management Commission

Upon the call of the Chair, the rules were approved by roll-call vote, ayes 9, noes 0 as follows:

Voting in the affirmative: Atkins, Bryan, Choi, Currin, Doran, Dunklin, LiVecchi, Tucker, and Powell – 9. Voting in the negative: None.

Board of Barber Examiners

Upon the call of the Chair, the rules were approved by roll-call vote, ayes 8, noes 0 as follows:

Voting in the affirmative: Atkins, Bryan, Currin, Doran, Dunklin, LiVecchi, Tucker, and Powell – 8. Voting in the negative: None.

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 the rules because her law firm provides legal services to the Board.

Board of Massage and Bodywork Therapy

Upon the call of the Chair, the rule was approved by roll-call vote, ayes 9, noes 0 as follows:

Voting in the affirmative: Atkins, Bryan, Choi, Currin, Doran, Dunklin, LiVecchi, Tucker, and Powell – 9. Voting in the negative: None.

State Human Resources Commission

Upon the call of the Chair, the rules were approved by roll-call vote, ayes 9, noes 0 as follows:

Voting in the affirmative: Atkins, Bryan, Choi, Currin, Doran, Dunklin, LiVecchi, Tucker, and Powell – 9. Voting in the negative: None.

LOG OF FILINGS (TEMPORARY RULES)

Medical Care Commission

10A NCAC 13O .0301 - Upon the call of the Chair, the rule was approved by roll-call vote, ayes 9, noes 0 as follows:

Voting in the affirmative: Atkins, Bryan, Choi, Currin, Doran, Dunklin, LiVecchi, Tucker, and Powell – 9. Voting in the negative: None.

DHHS-Division of Health Benefits

10A NCAC 21A .0304 - Upon the call of the Chair, the rule was approved by roll-call vote, ayes 9, noes 0 as follows:

Voting in the affirmative: Atkins, Bryan, Choi, Currin, Doran, Dunklin, LiVecchi, Tucker, and Powell – 9. Voting in the negative: None.

The rule was approved contingent upon a technical change to Item (2) of the rule to replace the phrase “technology medium” with “telephone or electronic means.” The Commission voted to require the rewritten rule by 5 p.m. on Monday, June 22, 2020. That technical change was subsequently received before the deadline.

Shazia Keller, with the agency, addressed the Commission.

Matthew Jordan Cochran, with Ott, Cone & Redpath, PA, addressed the Commission.

Code Officials Qualification Board

11 NCAC 08 .0735 - Upon the call of the Chair, the rule was approved by roll-call vote, ayes 9, noes 0 as follows:

Voting in the affirmative: Atkins, Bryan, Choi, Currin, Doran, Dunklin, LiVecchi, Tucker, and Powell – 9. Voting in the negative: None.

Thomas Felling, with the agency, addressed the Commission.

Secretary of State

18 NCAC 06A .2120 - Upon the call of the Chair, the rule was approved by roll-call vote, ayes 9, noes 0 as follows:

Voting in the affirmative: Atkins, Bryan, Choi, Currin, Doran, Dunklin, LiVecchi, Tucker, and Powell – 9. Voting in the negative: None.

North Carolina Interpreter & Transliterator Licensing Board

21 NCAC 25 .0501 - Upon the call of the Chair, the rule was approved by roll-call vote, ayes 9, noes 0 as follows:

Voting in the affirmative: Atkins, Bryan, Choi, Currin, Doran, Dunklin, LiVecchi, Tucker, and Powell – 9. Voting in the negative: None.

Landscape Contractors' Licensing Board

21 NCAC 28B .0406 - Upon the call of the Chair, the rule was approved by roll-call vote, ayes 8, noes 0 as follows:

Voting in the affirmative: Atkins, Bryan, Currin, Doran, Dunklin, LiVecchi, Tucker, and Powell – 8. Voting in the negative: None.

Prior to the review of the rules from the Landscape Contractors' Licensing Board, Commissioner Choi recused herself and did not participate in any discussion or vote concerning the rules because her law firm provides legal services to the Board.

Medical Board

21 NCAC 32B .1707 - Upon the call of the Chair, the rule was approved by roll-call vote, ayes 9, noes 0 as follows:

Voting in the affirmative: Atkins, Bryan, Choi, Currin, Doran, Dunklin, LiVecchi, Tucker, and Powell – 9. Voting in the negative: None.

Medical Board

21 NCAC 32B .1708 - Upon the call of the Chair, the rule was approved by roll-call vote, ayes 9, noes 0 as follows:

Voting in the affirmative: Atkins, Bryan, Choi, Currin, Doran, Dunklin, LiVecchi, Tucker, and Powell – 9. Voting in the negative: None.

Medical Board

21 NCAC 32M .0119 - Upon the call of the Chair, the rule was approved by roll-call vote, ayes 9, noes 0 as follows:

Voting in the affirmative: Atkins, Bryan, Choi, Currin, Doran, Dunklin, LiVecchi, Tucker, and Powell – 9. Voting in the negative: None.

Midwifery Joint Committee

21 NCAC 33 .0113 – The rule was withdrawn at the request of the agency. No action was required by the Commission.

Board of Nursing

21 NCAC 36 .0817 - Upon the call of the 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, LiVecchi, Tucker, and Powell – 8. Voting in the negative: None.

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

Board Pharmacy

21 NCAC 46 .1819 - Upon the call of the Chair, the rule was approved by roll-call vote, ayes 9, noes 0 as follows:

Voting in the affirmative: Atkins, Bryan, Choi, Currin, Doran, Dunklin, LiVecchi, Tucker, and Powell – 9. Voting in the negative: None.

Real Estate Commission

21 NCAC 58G .0104 and .0105 - Upon the call of the Chair, the rules were approved by roll-call vote, ayes 8, noes 0 as follows:

Voting in the affirmative: Atkins, Bryan, Choi, Currin, Doran, LiVecchi, Tucker, and Powell – 8. Voting in the negative: None.

Prior to the review of the rules from the Real Estate Commission, Commissioner Dunklin recused himself and did not participate in any discussion or vote concerning the rules because he practices before the NC Real Estate Commission and have been involved in discussions regarding these Rules.

Board of Environmental Health Specialist Examiners

21 NCAC 62 .0407 and .0411 - Upon the call of the Chair, the rules were approved by roll-call vote, ayes 9, noes 0 as follows:

Voting in the affirmative: Atkins, Bryan, Choi, Currin, Doran, Dunklin, LiVecchi, Tucker, and Powell – 9. Voting in the negative: None.

Social Work Certification and Licensure Board

21 NCAC 63 .0810 - Upon the call of the Chair, the rule was approved by roll-call vote, ayes 8, noes 0 as follows:

Voting in the affirmative: Atkins, Bryan, Currin, Doran, Dunklin, LiVecchi, Tucker, and Powell – 8. Voting in the negative: None.

Prior to the review of the rule from Social Work Certification and Licensure Board, Commissioner Choi recused herself and did not participate in any discussion or vote concerning the rule because her law firm provides legal services to the Board.

State Board of Examiners for Speech and Language Pathologists and Audiologists

21 NCAC 64 .0108, .0219, .1101, .1102, .1103, .1104, and .1105 - Upon the call of the Chair, the rules were approved by roll-call vote, ayes 8, noes 0 as follows:

Voting in the affirmative: Atkins, Bryan, Currin, Doran, Dunklin, LiVecchi, Tucker, and Powell – 8. Voting in the negative: None.

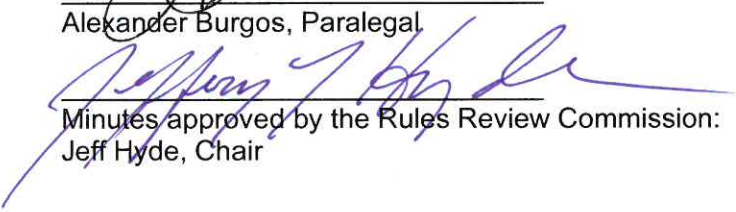
Prior to the review of the rules from State Board of Examiners for Speech and Language Pathologists and Audiologists, Commissioner Choi recused herself and did not participate in any discussion or vote concerning the rules because her law firm provides legal services to the Board.

COMMISSION BUSINESS

The meeting adjourned at 10:43 a.m.

The next regularly scheduled meeting of the Commission is Thursday, June 16, 2020 at 9:00 a.m.



Alexander Burgos, Paralegal

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

**Rules Review Commission Meeting June 18, 2020
Held Via WebEx**

Name

Ann Wall
Loretta Peace-Bunch
Thomas Felling
Donna Coffey
Shazia A. Keller
Marcus Jimison
Denise Mazza
Gina Cammarano
Melissa A. Vuotto
Will Polk
Jennifer Everett
Matthew Cochran
John F. Maddrey
Christina L. Waggett
Nadine Pfeiffer
Virginia Niehaus
Charminique Williams
Diane Konopka
Charles McDarris
Carrie Ruhlman
Dennis Seavers
Charles Wilkins
Caitlin Schwab
Calvin Kirven
Angela H. Ellis
Clinton R. Pinyan
Elizabeth Pope
Nahale Kalfas
Allan Russ
Jim Burnette
Pat Jones
Jessica Montie
John Hoomani
Christine Ryan
Carl Dean
Lynne Taylor
Amy Fitzhugh
John Barkley
John Green

Agency

Secretary of State
Insurance
Code Officials
Board of Environmental Health Specialist Examiners
Division of Health Benefits
Medical Board
Office of State Human Resources
Industrial Commission
Real Estate Commission
Crime Victims Compensation Commission
DEQ
Ott Cone & Redpath, P.A.
DOA
Pesticide Board
Medical Care Commission
CPH
CJETS
SHETS
Private Protective Services Board
Wildlife
Barber Examiners
Massage and Bodywork
Interpreter and Transliterator Licensing
Landscape Contractors'
Midwifery Joint Committee/Nursing
Pharmacy Board
Social Work
Speech and Language Pathologists
Secretary of State
Pesticide Board
Pesticide Board
DEQ
Insurance
OSHR
OSHR
Medical Board
Midwifery/Nursing
Environmental Health Specialist Examiners
Attorney General