

**RULES REVIEW COMMISSION MEETING
MINUTES
March 16, 2023**

The Rules Review Commission met on Thursday, March 16, 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, Barbara Jackson, Randy Overton, and Bob Rucho were present in the Commission Room. Commissioners Jay Hemphill and Paul Powell 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 9:04 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 February 16, 2023 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 9, noes 0 as follows: Voting in the affirmative: Andrew Atkins, Wayne R. Boyles III, Bobby Bryan, Jay Hemphill, Jeff Hyde, Barbara Jackson, Randy Overton, Paul Powell, and Bob Rucho – 9. Voting in the negative: None.

FOLLOW UP MATTERS

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 objection for lack of statutory authority. No action was required by the Commission.

Department of Public Safety

Upon the call of the Chair, 14B NCAC 03 .0401, .0402, .0403, .0404, .0405, .0406, .0407, .0408, .0409, and .0410 were approved by roll-call vote, ayes 9, noes 0 as follows: Voting in the affirmative: Andrew Atkins, Wayne R. Boyles III, Bobby Bryan, Jay Hemphill, Jeff Hyde, Barbara Jackson, Randy Overton, Paul Powell, and Bob Rucho – 9. Voting in the negative: None.

Department of Environmental Quality

Upon the call of the Chair, 15A NCAC 01E .0101, .0102, .0103, .0104, .0105, .0106, .0107, .0108, .0109, .0110, .0111, .0112, .0113, .0114, and .0115 were approved contingent upon incorporating a technical change to making these Rules effective on April 1, 2023 by roll-call vote, ayes 9, noes 0 as follows: Voting in the affirmative: Andrew Atkins, Wayne R. Boyles III, Bobby Bryan, Jay Hemphill, Jeff Hyde, Barbara Jackson, Randy Overton, Paul Powell, and Bob Rucho – 9. Voting in the negative: None.

Philip Reynolds, with the Department of Justice and representing the agency, addressed 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, .0702; 07J .0203, .0204, .0206, .0207, .0208, and .0312 – At the February meeting, the Commission continued its objection to these Rules from the September 2022 meeting pursuant to G.S. 150B-21.12(c). The agency has not responded to the Commission's continued objection. No action was required by the Commission.

Coastal Resources Commission

15A NCAC 07H .2305 – At the February meeting, the Commission continued its objection to this Rule from the September 2022 meeting pursuant to G.S. 150B-21.12(c). The agency has not responded to the Commission's continued objection. No action was required by the Commission.

Coastal Resources Commission

15A NCAC 07M .0201, .0202, .0401, .0402, .0403, .0701, .0703, .0704, .1001, .1002, and .1101 – At the February meeting, the Commission continued its objection to these Rules from the September 2022 meeting pursuant to G.S. 150B-21.12(c). The agency has not responded to the Commission's continued objection. No action was required by the Commission.

State Board of Education

Upon the call of the Chair, 16 NCAC 06E .0204 was approved by roll-call vote, ayes 9, noes 0 as follows: Voting in the affirmative: Andrew Atkins, Wayne R. Boyles III, Bobby Bryan, Jay Hemphill, Jeff Hyde, Barbara Jackson, Randy Overton, Paul Powell, and Bob Rucho – 9. Voting in the negative: None.

LOG OF FILINGS (PERMANENT RULES)

Commission for Public Health 10A NCAC 41C

Upon the call of the Chair, 10A NCAC 41C .1001, .1002, .1003, .1004, .1005, .1006, and .1007 were approved by roll-call vote, ayes 9, noes 0 as follows: Voting in the affirmative: Andrew Atkins, Wayne R. Boyles III, Bobby Bryan, Jay Hemphill, Jeff Hyde, Barbara Jackson, Randy Overton, Paul Powell, and Bob Rucho – 9. Voting in the negative: None.

Commission for Public Health 15A NCAC 18A

Upon the call of the Chair, the Commission extended the period of review for 15A NCAC 18A .2801, .2802, .2803, .2804, .2806, .2807, .2808, .2809, .2810, .2812, .2814, .2815, .2816, .2817, .2818, .2819, .2820, .2821, .2822, .2823, .2824, .2825, .2826, .2827, .2829, .2830, .2831, .2832, .2833, .2834, .2835, and .2836 by roll-call vote, ayes 9, noes 0 as follows: Voting in the affirmative: Andrew Atkins, Wayne R. Boyles III, Bobby Bryan, Jay Hemphill, Jeff Hyde, Barbara Jackson, Randy Overton, Paul Powell, and Bob Rucho – 9. Voting in the negative: None.

Board of Cosmetic Art Examiners

Upon the call of the Chair, 21 NCAC 14A .0101; 14H .0201, .0203, .0401, .0402, .0403, .0501, .0503, .0504, .0505; 14P .0105, .0106, .0108, .0111, .0113, .0116, .0117; 14T .0101, .0102, .0201, .0202, .0301, .0302, .0303, .0304, .0305, .0502, .0601, .0602, .0603, .0604, .0605, .0606, .0607, .0608, .0609, .0610, .0611, .0612, .0613, .0614, .0615, .0616, .0617, .0701, .0702, .0706, .0802 and .0803 were approved by roll-call vote, ayes 9, noes 0 as follows: Voting in the affirmative: Andrew Atkins, Wayne R. Boyles III, Bobby Bryan, Jay Hemphill, Jeff Hyde, Barbara Jackson, Randy Overton, Paul Powell, and Bob Rucho – 9. Voting in the negative: None.

Landscape Contractors' Licensing Board

Upon the call of the Chair, 21 NCAC 28B .0402 was approved by roll-call vote, ayes 9, noes 0 as follows: Voting in the affirmative: Andrew Atkins, Wayne R. Boyles III, Bobby Bryan, Jay Hemphill, Jeff Hyde, Barbara Jackson, Randy Overton, Paul Powell, and Bob Rucho – 9. Voting in the negative: None.

Locksmith Licensing Board

Upon the call of the Chair, 21 NCAC 29 .0501 was approved by roll-call vote, ayes 9, noes 0 as follows: Voting in the affirmative: Andrew Atkins, Wayne R. Boyles III, Bobby Bryan, Jay Hemphill, Jeff Hyde, Barbara Jackson, Randy Overton, Paul Powell, and Bob Rucho – 9. Voting in the negative: None.

The Commission objected to 21 NCAC 29 .0705 in accordance with G.S. 150B-21.9(a). The Commission voted to adopt the staff opinion dated March 14, 2023 objecting to 21 NCAC 29 .0705 for lack of statutory authority to adopt the rule and ambiguity contained in the rule by roll-call vote, ayes 9, noes 0 as follows: Voting in the affirmative: Andrew Atkins, Wayne R. Boyles III, Bobby Bryan, Jay Hemphill, Jeff Hyde, Barbara Jackson, Randy Overton, Paul Powell, and Bob Rucho – 9. Voting in the negative: None.

Board of Nursing

Upon the call of the Chair, 21 NCAC 36 .0228 and .0817 were approved by roll-call vote, ayes 9, noes 0 as follows: Voting in the affirmative: Andrew Atkins, Wayne R. Boyles III, Bobby Bryan, Jay Hemphill, Jeff Hyde, Barbara Jackson, Randy Overton, Paul Powell, and Bob Rucho – 9. Voting in the negative: None.

Office of Administrative Hearings

Upon the call of the Chair, 26 NCAC 03 .0103, .0112, and .0123 were approved by roll-call vote, ayes 9, noes 0 as follows: Voting in the affirmative: Andrew Atkins, Wayne R. Boyles III, Bobby Bryan, Jay Hemphill, Jeff Hyde, Barbara Jackson, Randy Overton, Paul Powell, and Bob Rucho – 9. Voting in the negative: None.

LOG OF FILINGS (TEMPORARY RULES)

Department of Health and Human Services

10A NCAC 14J .1307 - The Commission objected to the rule in accordance with G.S. 150B-21.1(b1). The Commission voted to adopt the staff opinion dated March 8, 2023, objecting to 10A NCAC 14J .1307 for lack of necessity pursuant to G.S. 150B-21.9(a)(3) by roll-call vote, ayes 9, noes 0 as follows: Voting in the affirmative: Andrew Atkins, Wayne R. Boyles III, Bobby Bryan, Jay Hemphill, Jeff Hyde, Barbara Jackson, Randy Overton, Paul Powell, and Bob Rucho – 9. Voting in the negative: None.

Raj Premakumar with the agency, addressed the Commission.

Private Protective Services Board

The rules were withdrawn at the request of the agency. No action was required by the Commission.

COMMISSION BUSINESS

At 9:30 a.m., upon a motion by the Chair Doran and a second by Commissioner Atkins, the Commission voted to call the public meeting of the Rules Review Commission into recess and enter into closed session pursuant to G.S. 143-318.11(a)(3) to consult with counsel under the attorney-client privilege regarding the lawsuit filed by the NC Environmental Management Commission v NC Rules Review Commission, 23 CV 005003-910 (Wake) by roll-call vote, ayes 9, noes 0 as follows: Voting in the affirmative: Andrew Atkins, Wayne R. Boyles III, Bobby Bryan, Jay Hemphill, Jeff Hyde, Barbara Jackson, Randy Overton, Paul Powell, and Bob Rucho – 9. Voting in the negative: None.

No action was taken in closed session.

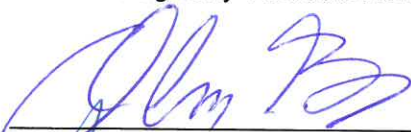
Following the closed session, Commissioner Hemphill left the meeting via Webex.

At 10:08 a.m., upon a motion by Commissioner Atkins and a second by Commissioner Bryan, the Commission voted to come out of closed session and reconvene the public meeting of the Rules Review Commission by roll-call vote, ayes 8, noes 0 as follows: Voting in the affirmative: Andrew Atkins, Wayne R. Boyles III, Bobby Bryan, Jeff Hyde, Barbara Jackson, Randy Overton, Paul Powell, and Bob Rucho – 8. Voting in the negative: None.


Upon a motion by Commissioner Atkins and a second by Commissioner Bryan, the Commission voted to exercise its discretion pursuant to G.S. 143B-30.1 and hold that G.S. 114-2.3 and G.S. 147-17(a) through (c1) shall not apply to the Commission in the matter of the North Carolina Environmental Management Commission v. the North Carolina Rules Review Commission file number 23 CV 005003-910 Wake County Superior Court. Further, that the Commission authorizes the Chair to retain private counsel, specifically Higgins Benjamin, PLLC, to represent the Commission in this matter and retain substitute counsel should the need arise. Additionally, that the Commission grant the Chair final decision-making authority with respect to the defense and disposition of this matter by roll-call vote, ayes 8, noes 0 as follows: Voting in the affirmative: Andrew Atkins, Wayne R. Boyles III, Bobby Bryan, Jeff Hyde, Barbara Jackson, Randy Overton, Paul Powell, and Bob Rucho – 8. Voting in the negative: None.

The meeting adjourned at 10:12 a.m.

The next regularly scheduled meeting of the Commission is Thursday, April 20, 2023, at 9:00 a.m.



Alexander Burgos, Paralegal



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

March 16, 2023

Rules Review Commission
Meeting
Please Print Legibly

Name	Agency
Jennifer Everett	DEQ
Madine Pfeiffer	DHHS - DHSR
Will Pulk	NCDPS
Alyssa Wright	DEW
Phillip Reynolds	NCDOS
Raj Premakumar	NCDHHS
Virginia Nicholas	NCDHHS - PH
Elizabeth Pope	NCSWCLB

Rules Review Commission Meeting March 16, 2022
Via WebEx

Name	Agency
Ross Smith	NCMA
Joelle Burlison	DEQ
Laura Rowe	Treasurer
Dan Hirschman	DOJ
Angela Willis	CRC
Christine Ryan	EMC
Misty Piekaar	DHHS
Jeff Dellinger	DHHS
Melanie Mabrey	Nursing
Gina Cleary	DOJ
Nathan Vail	DHHS
Peter Daniel	ncchamber.com
Anne Coan	NCFB
Donna Gilbird	
Meredith Parris	Nursing
Dana Lee	Auditor
Calvin Kirven	NCLCLB
Julie Ventaloro	OSBM
David Palmer	docsedu.com
Kimberly Luisana	Nursing
Helen Landi	hntb.com
Carrie Ruhlman	WRC
Jeff Harms	DHHS
Tammy Sylvester	DHHS
Ellen Roeber	PT Board
Rob Pearsall	DHHS
Ryan Collins	DPI
Laura Lansford	DOR
Chris Millis	NCHBA
Jessica Montie	DEQ
Melva Bonner	WRC
Lou Martin	DPI
Brenda Bass	DHHS
Ross Smith	MYNCMA
Edward Norman	DHHS
Jill Cramer	DOL

Hyrum Hemingway	DOJ
Hannah Jernigan	DOT
Laryssa Smith	NCBDN
Todd Neal	DIJ
Dauna Bartley	Dental
Ellis Angela	NCBON
John Barkley	DOJ
Larry Michael	DHHS
Brian Barnes	DPS
Ann Wall	SOS
Lynda Elliott	Cosmetic Arts