

RULES REVIEW COMMISSION MEETING
MINUTES
May 19, 2022

The Rules Review Commission met on Thursday, May 19, 2022, 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, Margaret Currin, Jeanette Doran, Jeff Hyde, Barbara Jackson, Randy Overton, Paul Powell, and Bob Rucho were present in the Commission Room.

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 9:01 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.

The Chair advised the Commission that all RRC members were present in the room, therefore, roll call votes are not required. The RRC members were instructed to respond with ayes or noes during the votes in this meeting.

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 Tab B - Environmental Management Commission 02B, Tab C - Environmental Management Commission 02H, and Tab D - Marine Fisheries Commission.

APPROVAL OF MINUTES

The Chair asked for any discussion, comments, or corrections concerning the minutes of the April 21, 2022, meeting. There were none and the minutes were approved as distributed.

The Chair introduced OAH extern, Joseph Schulke of UNC Law, to the Commission.

The Chair introduced her intern, Elizabeth Trent of the Institute for Constitutional Law, to the Commission.

FOLLOW UP MATTERS

Department of Environmental Quality

15A NCAC 01C .0101, .0103, .0104, .0105, .0106, .0107, .0108, .0109, .0205, .0206, .0207, 0208, .0304, .0305, .0306, .0405, .0406, .0407, .0408, .0409, .0410, and .0411 - All rewritten rules were unanimously approved.

Environmental Management Commission

15A NCAC 02B .0202, .0211, .0219, .0220, .0301, and .0311 were unanimously approved.

The Commission objected to 15A NCAC 02B .0208, .0212, .0214, .0215, .0216, and .0218 with Commissioners Atkins and Bryan voting against.

The Commission determined that each proposed Rule, as amended, had not been adopted in accordance with Part 2 of Article 2A of the APA. See G.S. 150B-21.9(a)(4).

The APA requires that, prior to publishing notice of the proposed text of a rule, the State agency must prepare a fiscal note that assesses the costs imposed by the rule to the greatest extent possible and state the amount of funds that would be expended pursuant to the rule. This allows both the public and regulated entities the opportunity to give informed comment, either to the agency during the rule adoption process, this Commission during the rule review process, or the legislature once the rule has been approved. See G.S. 150B-21.2(e) and (f); 150B-21.3(b2).

Specifically, the Commission determined that the Environmental Management Commission had not complied with the requirements of G.S.150B-21.4 when it proposed the inclusion of 1,4-dioxane in-stream target values in surface water standards set by 15A NCAC 02B .0208, .0212, .0214, .0215, .0216, and .0218. EMC achieved this by setting baseline target values for 1,4-dioxane through regulatory policy and permitting agreements instead of through the rule-making process required by law, then using these values as the baseline when submitting the addition of 1,4-dioxane target values to these rules for OSBM fiscal impact analysis. This resulted in the fiscal note concluding there would be no additional fiscal impact because there would be no change in in-stream target values. The fiscal note stated this even though adding 1,4-dioxane into EMC's regulatory rules would require treatment processes that are, in EMC's own words, "prohibitively expensive for local governments and the citizens served by public utilities," and yet EMC's fiscal note "did not attempt to monetize costs" because the baseline target values were already in place. This is not sufficient to satisfy the APA as costs must be quantified to the greatest extent possible and published with or before the publication of the notice of text of the proposed rule.

The RRC is not taking the position that EMC is not allowed to add 1,4-dioxane target values into its rules. That is a policy decision it alone may make. However, it must do so in the manner prescribed by law. The Commission is simply requiring of EMC, as it would require of any other rule-making body within the State, that it follow the good-governance requirements of the APA rule-making process and transparently assess and make known to regulated entities and the citizens of this State the fiscal impact of proposed rules and proposed rule amendments.

Robert El-Jaouhari of Cranfill Sumner, addressed the Commission.

Sean Sullivan, with the Fayetteville Publics Works Commission, addressed the Commission.

Phillip Reynolds with the Department of Justice, and representing the agency, addressed the Commission.

Anca Grozav, with Office of State Budget & Management, addressed the Commission.

Environmental Management Commission

The Commission objected to 15A NCAC 02H .1301, .1401, .1402, .1403, .1404, and .1405 in accordance with G.S. 150B-21.10 with Commissioners Atkins, and Bryan voting against.

Specifically, the Commission found the agency lacked statutory authority to adopt 15A NCAC 02H .1301, .1401, .1402, .1403, .1404, .1405 as the agency was barred from doing so pursuant to G.S. 150B-19.3(a). Further, the Commission found the definition of the term "impact" in Rule 15A NCAC .02H .1401, and as applied to Rules .1402, .1403, .1404, and .1405 was unclear and ambiguous as it did not provide certainty as to what acts were subject to regulation. Finally, the Commission found that the post-publication changes from "discharge" to "impact" in Rule 15A NCAC 02H .1401, and as applied to Rules .1402, .1403, .1404, and .1405 amounted to a substantial change pursuant to G.S.

150B-21.2(g)(3), in that it produced an effect that could not reasonably have been expected based on the proposed text of these Rules.

Kelly Moser, with Southern Environmental Law Center, addressed the Commission.

Norton Webster, with Eco Terra, addressed the Commission.

Chris Millis, with North Carolina Home Builders Association, addressed the Commission.

Phillip Reynolds with the Department of Justice, and representing the agency, addressed the Commission.

Sue Homewood, with DEQ – Division of Water Quality, addressed the Commission.

Marine Fisheries Commission

15A NCAC 03I .0101, .0104, .0105, .0113, .0114, .0118; 03J .0101, .0105, .0109, .0110, .0301, .0302, .0305, .0501, .0502, .0503, .0504, .0505; 03K .0101, .0102, .0103, .0104, .0105, .0106, .0107, .0108, .0109, .0111, .0201, .0202, .0204, .0205, .0207, .0208, .0209, .0301, .0302, .0304, .0305, .0401, .0505, .0507; 03L .0101, .0102, .0103, .0105, .0201, .0202, .0203, .0204, .0205; 03M .0201, .0202, .0204, .0205, .0503; 03N .0104, .0105; 03O .0101, .0102, .0103, .0104, .0105, .0107, .0109, .0110, .0111, .0113, .0203, .0205, .0206, .0207, .0208, .0210., .0211, .0301, .0302, .0303, .0401, .0402, .0403, .0404, .0405, .0406, .0502, .0504; 03P .0101; 03R .0110, .0111, .0118; 18A .0135, .0302, .0303, .0304, .0425, and .0912 were unanimously approved.

The Commission objected to 15A NCAC 03O .0114 and .0209 in accordance with G.S. 150B-21.10.

With respect to 15A NCAC 03O .0114, the Commission found that the agency lacked statutory authority to criminalize evasion of service of written notice of the suspension or revocation of licenses issued under Article 14A, Article 14B, and Article 25A of Chapter 113 of the North Carolina General Statutes.

With respect to 15A NCAC 03O .0209, the Commission found that the agency lacked statutory authority to condition the transfer of a shellfish lease or franchise on approval by the Division of Marine Fisheries, to require the use of a form provided and approved by the Division, or to limit the size of a transfer.

Phillip Reynolds with the Department of Justice, and representing the agency, addressed the Commission.

Jennifer Everett, the rulemaking coordinator with the agency, addressed the Commission.

Coastal Resources Commission

15A NCAC 07H .1701, .1702, .1703, .1704, .1705, .1901, .1902, .1903, .1904, .1905, .2501, .2502, .2503, .2504, and .2505 - The agency is addressing the technical change requests from the April meeting. No action was required by the Commission.

Wildlife Resources Commission

15A NCAC 10D .0106 – The rewritten rule was unanimously approved.

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 of 15A NCAC 10D .0106.

LOG OF FILINGS (PERMANENT RULES)

Office of the State Auditor

03 NCAC 01 .0301 was unanimously approved.

Commerce - Division of Employment Security

All rules were unanimously approved.

Department of Natural and Cultural Resources

All rules were unanimously approved except for 07 NCAC 02H .0306.

The Commission objected to 07 NCAC 02H .0306 finding that the rule was not reasonably necessary to implement or interpret an enactment of the General Assembly, or of Congress, or a regulation of federal agency, pursuant to G.S. 150B-21.9(3).

Environmental Management Commission

All rules were unanimously approved.

Wildlife Resources Commission

15A NCAC 10C .0301, .0302, .0304, .0305, .0306, .0307, .0308, .0313, .0314, .0318, .0319, .0321, .0322, .0323, .0324, .0325, .0326, .0401, .0402, .0404, .0405, .0406, .0407, .0409, .0410, .0411, .0412, .0413, .0414, .0415, .0416, .0417, .0418, .0419, .0420, .0421, .0422, .0423, .0424, .0425, .0426, .0427, .0428, .0429, .0430, .0701; 10F .0312, .0317, .0318, .0323, .0327, .0333, .0336, .0354, and, .0378 were unanimously approved.

The Commission extended the period of review for 15A NCAC 10D .0103, .0209, .0226, .0229, .0230, .0239, .0240, .0243, .0260, and .0276 in accordance with G.S. 150B-21.10. They did so in response to a request from the agency to extend the period of review through the end of the 2022 Legislative Session of the General Assembly, as one or more of these rules await legislative review.

15A NCAC 10C .0101, .0102, .0103, .0104, .0105, .0106, .0107, .0108, .0109, .0110, and .0111 were withdrawn at the request of the agency. No action was required by the Commission.

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 of 15A NCAC 10C .0301, .0302, .0304, .0305, .0306, .0307, .0308, .0313, .0314, .0318, .0319, .0321, .0322, .0323, .0324, .0325, .0326, .0401, .0402, .0404, .0405, .0406, .0407, .0409, .0410, .0411, .0412, .0413, .0414, .0415, .0416, .0417, .0418, .0419, .0420, .0421, .0422, .0423, .0424, .0425, .0426, .0427, .0428, .0429, .0430, and .0701.

Jerry Schill, with N.C. Fisheries Association, Inc., addressed the Commission.

Board of Architecture and Registered Interior Designers

All rules were unanimously approved.

Real Estate Commission

All rules were unanimously approved.

Building Code Council

All rules were unanimously approved.

The Chair called the meeting into a brief recess at 10:53 a.m.

The meeting resumed 11:02 a.m.

LOG OF FILINGS (TEMPORARY RULES)

DHHS - Division of Aging and Adult Services

10A NCAC 06Q .0201 – During the meeting, and prior to the review of this Rule, the agency requested to withdraw the rule. No action was required by the Commission.

Raj Prem Kumar, with the Department of Justice, and representing the agency, addressed the Commission.

Social Services Commission

10A NCAC 06T .0201 – During the meeting, and prior to the review of this Rule, the agency requested to withdraw the rule. No action was required by the Commission.

Raj Prem Kumar, with the Department of Justice, and representing the agency, addressed the Commission.

State Board of Education

16 NCAC 06E .0204 - The Commission objected to the temporary rule in accordance with G.S. 150B-21.1(b). Specifically, the Commission objected to the rule for lack of statutory authority. Specifically, the Commission found that the State Board of Education lacked statutory authority to delegate the authority to waive student eligibility requirements to an administering organization.

Ashley Carroll, with the Davidson County Schools, addressed the Commission.

Brandon Walker, with the agency, addressed the Commission.

Department of Transportation - Division of Motor Vehicles

Prior to the review of the rule from the Department of Transportation - Division of Motor Vehicles, Commissioner Bryan recused himself and did not participate in the vote or discussion of the rule because his family is currently in litigation with the agency.

19A NCAC 03K .0103 was approved.

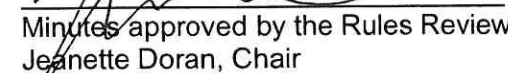
COMMISSION BUSINESS

The meeting adjourned at 11:28 a.m.

The next regularly scheduled meeting of the Commission is Thursday, June 16, 2022, at 9:00 a.m.



Alexander Burgos, Paralegal



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

May 19, 2022

Rules Review Commission
Meeting
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Name	Agency
Jay Schulte	UNC Law Wren w/ O.H.H.
Hannah Jennigan	DOT/DMV
Jennifer Everett	DEQ
Phillip Reynolds	NCDCS
TERESA SCHILL	NC Firefighter ASSO.
CHRIS MILLIS	NCHBA
Peter Daniel	NC Chamber
Norton Webster	Eco Terra
Alday Meyer	EcoTerra
Robert Ez-Jantuzi	Cranfill Sumner LLP
Ashley Carroll	Davidsen County Board of Education
Brooks Rainey Pearson	SELC
RAJ PREMAKUMAR	DOJ
Glenda Ardis	DHHS - Division of Aging & Adult Services
Elizabeth Trent	law student
MISCH PTI	DHHS
Curtis Brooks	NC DOJ
Sue Homewood	NCDEQ
Kelly Moser	SELC
Mary Mackie Astall	SELC
Patricia Mincey	Cranfill Sumner LLP

May 19, 2022

Rules Review Commission
Meeting
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Name	Agency
Laurin Main	NCDOT / DMV
Chris Ventresca	NCDOT
Dore Lassiter	NCSIA
Carrie Ruhlman	NCWRC
Ashley Fekrud	NCWRC
Brian McKee	NCWRC
Christian Waters	NCWRC
Brad Howard	UCWRC

Rules Review Commission Meeting May 19, 2022
Via WebEx

Name	Agency
Dee Lupton	DEQ
Lara Klibansky	DEQ
Robin Smith	Smith Environment
Cassie Gavin	Sierraclub.org
Lou Martin	DPI
Jeff Poupart	DEQ
Catherine Blum	MFC
Zoe Gabrielson	Selcnc.org
Shawn Maier	DOJ
Evelyn Hawthorne	
Caroline Spence	Selcnc.org
Keith Larick	Farms Bureau
Shazia Keller	DHHS
Mallory Sparks	parkerpoe.com
Elizabeth Kountis	DEQ
Anna Hayworth	Agriculture
Dustin Doty	FAY PWC
Dennis Seavers	Barber Board
Carrie Hollis	OSBM
Carrie Pickett	DEQ
Heather Burkhardt	nccoalitiononaging.org
Canaan Huie	mvalaw.com
Craig Bromby	
Bridget Shelton	DEQ
Cassie Gavin	sierraclub.org
James West	FAY PWC
Jason Walsh	DEQ
Grady Mccallie	ncconservationnetwork.org
D Hargrove	DEQ
Anca Grozav	OSBM
Russell Henderson	DOJ
Glen Peterson	DES
Melissa Vuotto	NCREC
Brandon Walker	DPI
Anne Coan	NCFB
Zoe Gabrielson	Selcnc.org
Jeff Manning	DEQ

Shelton Sullivan	DEQ
Brandi Salmon	DEQ
Judy Estevez	Auditor
Sean Sullivan	robinsonbradshaw.com
Dakota Loveland	Selcnc.org
Lara Klibansky	DEQ
Amanda Reeder	DOJ
Geoff Gisler	SELNC
Karen Higgins	DEQ
Corey Oakley	WRC
Laura Rowe	Treasurer
Jasper Stem	ncaggregates.org
Michael Briggs	WRC
Hannah Nelson	Selcnc.org
Monty Crump	gorockingham.com
Nadine Pfeiffer	DHHS
Jonathan Avery	DNCR
Betsy Haywood	WRC
Carl Martin	DOI
Julie Ventaloro	DEQ
Carl Keehn	DEQ
Paul Wojoski	DEQ
Tyler Barrick	ncbarch.org
Heather Carter	DHHS
Sharon Martin	DES
Tom Akins	leadingagenc.org
Nicole Cordano	oneprotest.org
Ross Smith	ross.smith@myncma.org