

RULES REVIEW COMMISSION MEETING
MINUTES
May 18, 2023

The Rules Review Commission met on Thursday, May 18, 2023, in the Commission Room at 1711 New Hope Church Road, Raleigh, North Carolina, and via WebEx.

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

Staff members Alexander Burgos, Commission Counsel Seth Ascher, 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 April 20, 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 8, noes 0 as follows: Voting in the affirmative: Andrew Atkins, Bobby Bryan, Jay Hemphill, Jeff Hyde, Barbara Jackson, Randy Overton, Paul Powell, and Bob Rucho – 8. 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.

Criminal Justice Education and Training Standards Commission

12 NCAC 09E .0107 - The Commission extended the period of review for this Rule at the April meeting. No action was required by 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.

Environmental Management Commission

Upon the call of the Chair, 15A NCAC 02D .0516 was approved by roll-call vote, ayes 8, noes 0 as follows: Voting in the affirmative: Andrew Atkins, Bobby Bryan, Jay Hemphill, Jeff Hyde, Barbara Jackson, Randy Overton, Paul Powell, and Bob Rucho – 8. Voting in the negative: None.

15A NCAC 02B .0315 - The Commission extended the period of review for this Rule at the April meeting. No action was required by the Commission.

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

Marine Fisheries Commission

Upon the call of the Chair, 15A NCAC 18A .0911 was approved by roll-call vote, ayes 8, noes 0 as follows: Voting in the affirmative: Andrew Atkins, Bobby Bryan, Jay Hemphill, Jeff Hyde, Barbara Jackson, Randy Overton, Paul Powell, and Bob Rucho – 8. Voting in the negative: None.

15A NCAC 03M .0101 - The Commission extended the period of review for this Rule at the April meeting. 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.

Commissioner Boyles joined the meeting via Webex.

Commission for Public Health

Upon the call of the Chair, 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 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.

State Board of Education

16 NCAC 06G .0601 - The Rule was returned at the request of the agency. No action was required by the Commission.

Board of Nursing

Prior to the review of the rule from the Board of Nursing, Commissioner Atkins recused himself and did not participate in any discussion or vote concerning the rule because of a potential conflict.

Upon the call of the Chair, 21 NCAC 36 .0807 was approved by roll-call vote, ayes 8, noes 0 as follows: Voting in the affirmative: Wayne R. Boyles III, Bobby Bryan, Jay Hemphill, Jeff Hyde, Barbara Jackson, Randy Overton, Paul Powell, and Bob Rucho – 8. Voting in the negative: None

LOG OF FILINGS (PERMANENT RULES)

Department of Insurance

Upon the call of the Chair, 11 NCAC 05A .0910 and .0911 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.

Wildlife Resources Commission

Upon the call of the Chair, 15A NCAC 10C .0205, .0206, .0302, .0306, .0314, .0401; 10D .0102, .0103, .0104, .0105, .0211, .0215, .0232, .0239, .0240, .0258, .0269, .0271; 10F .0308, .0316, .0333, .0355, and .0379 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

Board of Examiners of Electrical Contractors

Upon the call of the Chair, 21 NCAC 18B .0209 and .0404 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

Medical Board

Prior to the review of the rule from the Medical Board, Commissioner Atkins recused himself and did not participate in any discussion or vote concerning the rule because of a potential conflict.

Upon the call of the Chair, 21 NCAC 32B .1708; 32M .0107 and .0119 were approved by roll-call vote, ayes 8, noes 0 as follows: Voting in the affirmative: Wayne R. Boyles III, Bobby Bryan, Jay Hemphill, Jeff Hyde, Barbara Jackson, Randy Overton, Paul Powell, and Bob Rucho – 8. Voting in the negative: None

Upon the call of the Chair, the Commission extended the period of review for 21 NCAC 32B .1002 by roll-call vote, ayes 8, noes 0 as follows: Voting in the affirmative: Wayne R. Boyles III, Bobby Bryan, Jay Hemphill, Jeff Hyde, Barbara Jackson, Randy Overton, Paul Powell, and Bob Rucho – 8. Voting in the negative: None

Real Estate Commission

Upon the call of the Chair, 21 NCAC 58A .0113, .0301, .0505, .1705, .1708, .1711; 58B .0202; 58H .0202, .0216, .0302, and .0307 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

Building Code Council

Upon the call of the Chair, 2018 NC Building Code Table 2902.1 and Section 202; NC Plumbing Code Table 403.1 and Section 202 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)

Board of Barber and Electrolysis Examiners

Upon the call of the Chair, 21 NCAC 06O .0201; 06U .0101, .0106, .0107, .0108, .0109, .0110; 06Z .0101, .0102, .0103, .0104, .0105, .0106, .0107, .0108, .0109, .0110 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

21 NCAC 06O .0202 and .0203 were withdrawn at the request of the agency. No action was required by the Commission.

COMMISSION BUSINESS

Benjamin Wynn, an intern with the North Carolina Institute of Constitutional Law and a rising 2L at Campbell Law, introduced himself to the Commission.

Steven Harrelson, the extern with OAH and a rising 3L at UNC Law, introduced himself to the Commission.

Upon the call of the Chair, the Commission approved the amendments to the Periodic Review Report Schedule 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

Upon the call of the Chair, the Commission voted to adopt amendments to 26 NCAC 05 .0101, .0103, .0104, .0105, .0106, .0107, .0108, .0110, .0114, .0202, .0203, .0204, .0205, and .0211; repeals of .26 NCAC 05 .0102, .0109, and .0201; and adoptions of 26 NCAC 05 .0115 and .0212, 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

At 9:29 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)(1) for the purpose of reviewing and approving the general account of the March 2023 closed session, which may be withheld from public inspection pursuant to G.S. 143-318.10(e) 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.

Following the closed session, Commissioners Jay Hemphill and Barbara Jackson left the meeting via Webex.

At 9:40 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 7, noes 0 as follows: Voting in the affirmative: Andrew Atkins, Wayne R. Boyles III, Bobby Bryan, Jeff Hyde, Randy Overton, Paul Powell, and Bob Rucho – 7. Voting in the negative: None

The meeting adjourned at 9:44 a.m.

The next regularly scheduled meeting of the Commission is Thursday, June 15, 2023, at 9:00 a.m.

Alexander Burgos, Paralegal

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

May 18, 2023

Rules Review Commission
Meeting
Please Print Legibly

| Name | Agency |
|------------------|-----------------------------|
| Jennifer Everett | DEQ |
| Hannah Fenigan | NCDOT |
| Reed Furbush | YMN |
| Elizabeth Pope | NCSWCLB |
| Betsy Haywood | NC Wildlife Resources Comm. |
| Daron Barnes | NC Wildlife Resources Comm. |
| Ann B. Wake | NC Dept of Sec. of State |
| Virginia Nichols | NCDHHS |
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Rules Review Commission Meeting May 18, 2023
Via WebEx

| Name | Agency |
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| Marlika Hairston | Commissioner Banks |
| Bradley Nelson | DEQ |
| Emily Jones | DOT |
| Dennis Seavers | Barber Board |
| David Rittlinger | DOI |
| Elizabeth Kountis | EMC |
| Carrie Pickett | DEQ |
| Brenda Bass | DHHS |
| Joelle Burleson | DEQ |
| Ellen Roeber | PT Board |
| Helen Landi | hntb.com |
| Lynn Bernstein | transparentelectionsnc |
| Donna Gilbird | |
| Katherine Quinlan | DEQ |
| Paul A Wojoski | DEQ |
| Melissa Vuotto | NCREC |
| Laura | Treasurer |
| Meredith Parris | Nursing |
| Britne Becker | Labor |
| Davie Summey | DOI |
| Rob Pearsall | DHHS |
| Phillip Reynolds | DOJ |
| John Hahn | mayerbrown.com |
| Dauna Bartley | Dental Board |
| Ed Norman | DHHS |
| Catherine Blum | MFC |
| Ross Smith | myncma.org |
| Nadine Pfeiffer | DHHS |
| Shawn Maier | DEQ |
| Christian Waters | WRC |
| John Barkley | DOJ |
| Tina Moore | DEQ |
| Andy Haines | DEQ |
| Ashley Brown | gaston.k12.nc.us |
| Larry Michael | DHHS |
| Kim Luisana | BON |
| Kimly Blount | DHHS |
| Melva Bonner | WRC |

¹ Commissioner Boyles joined the RRC meeting after the Commission had begun its business as noted hereinafter.

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