

**RULES REVIEW COMMISSION MEETING
MINUTES
November 17, 2022**

The Rules Review Commission met on Thursday, November 17, 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, Jeanette Doran, Randy Overton, Paul Powell, and Bob Rucho were present in the Commission Room. Commissioners Jay Hemphill, Jeff Hyde, and Barbara Jackson were present via WebEx.

Staff member Alexander Burgos, and 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.

The Chair introduced new Commission Counsel Seth Ascher to the Commission.

APPROVAL OF MINUTES

The Chair asked for any discussion, comments, or corrections concerning the minutes of the October 20, 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, Jay Hemphill, 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 State Board of Elections and Permanent Rules for Behavior Analyst Licensure Board.

FOLLOW UP MATTERS

Board of Agriculture

02 NCAC 61 .0101, .0102, .0104, .0106, .0109, and .0111 – Upon the call of the Chair, the rules were approved by roll-call vote, ayes 8, noes 0 as follows: Voting in the affirmative: Andrew Atkins, Wayne R. Boyle III, Bobby Bryan, Jay Hemphill, Barbara Jackson, Randy Overton, Paul Powell, and Bob Rucho – 8. Voting in the negative: None.

Jeff Hyde joined the meeting via Webex.

Board of Agriculture

02 NCAC 52J .0208 and .0704 - The rules were returned at the request of the agency. No action was required by the Commission.

State Board of Elections

08 NCAC 04 .0308, and .0309 – The Commission objected to the rules in accordance with G.S. 150B-21.10. The Commission voted to adopt the staff opinion dated November 16, 2022 to object to the rules for failure to comply with the APA as the rules contain substantial changes that did not meet the notice and comment requirements of the permanent rulemaking process in addition to an objection for lack of statutory authority to adopt the rules, and the ambiguity contained in the rules.

Paul Cox, General Counsel for the Board of Elections, addressed the Commission.

Dr. Andy Jackson, with the John Locke Foundation, addressed 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 submitted revised rules for 10A NCAC 13B .4801 and .4805. The Commission did not vote on these Rules pending the agency's intention to seek a legislative fix to address the overarching statutory objection. No action was required by the Commission.

Sheriffs' Education and Training Standards Commission

12 NCAC 10B .0205, .0301, .0302, .0303, .0304, .0305, .0306, .0307, .0408, .0410 - 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, Jay Hemphill, Jeff Hyde, Barbara Jackson, Randy Overton, Paul Powell, and Bob Rucho – 9. Voting in the negative: None.

Environmental Management Commission

15A NCAC 02B .0208, .0212, .0214, .0215, .0216, and .0218 - The Commission objected to these Rules at the May meeting. The agency has not responded to the Commission's objection since August 2022. No action was required by the Commission.

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.

Coastal Resources Commission

15A NCAC 07H .0501, .0502, .0503, .0504, .0505, .0506, .0507, .0508, .0509, .0510, .0601, .0603, .0604; 07I .0406, .0504, .0506, .0508, .0510, .0511, .0602, .0702; 07J .0203, .0204, .0206, .0207, .0208, .0210, and .0312 – The Commission objected to these Rules at the September meeting. Pursuant to G.S. 150B-21.12(b), the time for the agency to respond to the objection has not expired. No action was required by the Commission.

Coastal Resources Commission

15A NCAC 07H .2305 – The Commission objected to this Rule at the September meeting. Pursuant to G.S. 150B-21.12(b), the time for the agency to respond to the objection has not expired. No action was required by the Commission.

Coastal Resources Commission

15A NCAC 07M .0201, .0202, .0401, .0402, .0403, .0503, .0601, .0603, .0701, .0703, .0704, .0801, .0802, .1001, .1002, .1101, .1102, .1201, and .1202 - The Commission objected to these Rules at the September meeting. Pursuant to G.S. 150B-21.12(b), the time for the agency to respond to the objection has not expired. No action was required by the Commission.

Commission for Public Health

15A NCAC 18A .1301, .1302, .1304, .1305, .1306, .1307, .1308, .1309, .1310, .1311, .1312, .1313, .1314, .1315, .1316, .1317, .1318, .1319, .1320, .1321, .1323, .1324, and .1327 – 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, Jay Hemphill, Jeff Hyde, Barbara Jackson, Randy Overton, Paul Powell, and Bob Rucho – 9. Voting in the negative: None.

LOG OF FILINGS (PERMANENT RULES)

Department of Administration

Upon the call of the Chair, the Commission extended the period of review for 01 NCAC 05A .0112, 01 NCAC 05E .0101, .0102, .0103, .0104, .0105, and .0106 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.

Haley Pfeiffer-Haynes, with the agency, addressed the Commission.

Structural Pest Control Committee

Upon the call of the Chair, the Commission extended the period of review for 02 NCAC 34 .0904 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 Fire and Rescue Commission

Upon the call of the Chair, the repeal of 11 NCAC 05B .0301 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.

Sheriffs' Education and Training Standards Commission

Upon the call of the Chair, 12 NCAC 10B .0603 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.

Upon the call of the Chair, the Commission extended the period of review for 12 NCAC 10B .0713 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

Upon the call of the Chair, 16 NCAC 06G .0508 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.

Behavior Analyst Licensure Board

Upon the call of the Chair, the Commission extended the period of review 21 NCAC 05 .0101, .0201, .0202, .0203, .0301, .0401, .0402, .0403, .0501, .0601, .0602, and .0603 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.

Licensing Board for General Contractors

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, Jay Hemphill, Jeff Hyde, Barbara Jackson, Randy Overton, Paul Powell, and Bob Rucho – 9. Voting in the negative: None.

Board of Dental Examiners

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, Jay Hemphill, Jeff Hyde, Barbara Jackson, Randy Overton, Paul Powell, and Bob Rucho – 9. Voting in the negative: None.

Board of Dietetics/Nutrition

Upon the call of the Chair, the Commission extended the period of review for 21 NCAC 17 .0101, .0103, .0104, .0106, .0108, .0110, .0112, .0114, .0116, .0201, .0202, .0203, .0302, .0303, .0304, .0401, .0402, .0403, .0501, .0502, .0503, .0504, .0505, .0506, .0507, .0508, .0509, .0510, .0511, .0512, .0513, .0514, .0515, .0516, and .0517 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 conflict.

Upon the call of the Chair, 21 NCAC 32A .0115 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.

Building Code Council

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, Jay Hemphill, Jeff Hyde, Barbara Jackson, Randy Overton, Paul Powell, and Bob Rucho – 9. Voting in the negative: None.

LOG OF FILINGS (TEMPORARY RULES)

Upon the call of the Chair 15A NCAC 10B .0503; 10D .0229, and .0232 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.

EXISTING RULES REVIEW

State Board of Education

16A NCAC 06B, C, D, E, F, G, H, I, & J - As reflected in the attached letter, the Commission voted to schedule readoption of the rules no later than June 30, 2026 pursuant to G.S. 150B-21.3A(d)(2).

The Chair called the meeting into a brief recess at 10:27 a.m.

The meeting resumed at 10:35 a.m.

COMMISSION BUSINESS

Staff presented the Commission with an overview of proposed changes to 26 NCAC 05 .0100 - .0200.

Staff gave an overview of the upcoming Periodic Review process. The Commission will address the new schedule at the December meeting.

The Chair presented the updated pre-review checklist submitted by the NCBA Administrative Law Section to the RRC for discussion.

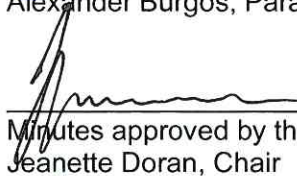
Bain Jones, the Chair of the North Carolina Bar Association, addressed the Commission.

The meeting adjourned at 10:48 a.m.

The next regularly scheduled meeting of the Commission is Thursday, December 15, 2022, at 9:00 a.m.



Alexander Burgos, Paralegal



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

November 17, 2022

Rules Review Commission
Meeting
Please Print Legibly

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Rules Review Commission Meeting November 17, 2022
Via WebEx

| Name | Agency |
|-------------------|------------------------|
| Melissa Vuotto | NCREC |
| Anna Choi | General Contractors |
| Travis Narron | raleighnc.gov |
| Daniel Johnson | DOT |
| Fred Moreno | NCREC |
| Hannah Schoenbaum | ap.org |
| Sumit Gupta | NCLEG |
| Canaan Huie | mvalaw.com |
| Ellen Roeber | PT Board |
| Madison Mackenzie | |
| Marnie Jones | NCBDN |
| Jill Cramer | Labor |
| Paul Finkelstein | NCSBE |
| Spencer Ramsey | Behavior Analyst Board |
| Lindsey Wakely | NCSBE |
| H Landi | DOT |
| Shelby Taylor | DHHS |
| Blake Brewer | apcoworldwide.com |
| Emma Kate Sowder | NCMEDSOC |
| Jessica Montie | DEQ |
| Nathan Vail | DHHS |
| Virginia Niehaus | DHHS |
| Andy Jackson | John Locke |
| Thomas Jumalon | DHHS |
| Carol Williams | |
| Will Polk | DPS |
| Hampton Billips | ktsstrategies.com |
| James Burnette | Agriculture |
| Laura Lansford | DOR |
| David Elliott | DOA |
| David Rittlinger | DOI |
| Laura Rowe | Treasurer |
| Mac O'connor | |
| Ashley Pekrul | WRC |
| Anna Hayworth | Agriculture |
| Charla Burill | Dietetics |

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|------------------------|------------------------|
| Hannah Jernigan | DOT |
| Renee Woody | Agriculture |
| Carrie Ruhlman | WRC |
| Ross Smith | myncma.org |
| Eric Hunt | DOJ |
| Powell Baggett | Treasurer |
| Pam Cashwell | DOA |
| Caitlin Schwab-Falzone | Behavior Analyst Board |
| John Barkley | DOJ |
| Yashira Cangas | Behavior Analyst Board |
| Shane Smith | DHHS |
| Brandon Walker | DPI |
| Douglas Brocker | Dental |
| Larry Michael | DHHS |
| Melissa Bowman | DOJ |
| Nadine Pfeiffer | DHHS |



**STATE OF NORTH CAROLINA
OFFICE OF ADMINISTRATIVE HEARINGS**

November 17, 2022

Thomas J. Ziko, Legal Specialist
North Carolina State Board of Education
301 N. Wilmington Street
Raleigh, NC 27699
Sent via email only to: Thomas.Ziko@dpi.nc.gov

Re: Readoption pursuant to G.S. 150B-21.3A(c)(2)g of 16 NCAC 06B, C, D, E, F, G, H, I, & J

Dear Mr. Ziko:

Attached to this letter are the rules subject to readoption pursuant to the periodic review and expiration of existing rules as set forth in G.S. 150B-21.3A(c)(2)g. After consultation with your agency, the scheduling of readoption for this set of rules was discussed and adopted at the November 17, 2022 Rules Review Commission meeting. Pursuant to G.S. 150B-21.3A(d)(2), the rules identified on the attached document shall be readopted no later than June 30, 2026.

If you have any questions regarding the Commission's action, please let me know.

Sincerely,

Lawrence R. Duke
Commission Counsel

Donald R. van der Vaart, Director
Chief Administrative Law Judge

Fred G. Morrison, Jr.
Senior Administrative Law Judge

An Equal Employment Opportunity Employer
1711 New Hope Church Road, Raleigh, NC 27609
Telephone: (984) 236-1850 | Facsimile: (984) 236-1871
www.oah.nc.gov

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**RRC DETERMINATION
PERIODIC RULE REVIEW
January 01, 2020 through June 30, 2023
Education, State Board of
Total: 110**

RRC Determination: Necessary with substantive public interest

| Rule | Determination | APO Review Date |
|-----------------------------------|--|------------------------|
| 16 NCAC 06B .0103 | Necessary with substantive public interest | May 21, 2022 |
| 16 NCAC 06B .0107 | Necessary with substantive public interest | May 21, 2022 |
| 16 NCAC 06C .0101 | Necessary with substantive public interest | May 21, 2022 |
| 16 NCAC 06C .0102 | Necessary with substantive public interest | May 21, 2022 |
| 16 NCAC 06C .0202 | Necessary with substantive public interest | May 21, 2022 |
| 16 NCAC 06C .0301 | Necessary with substantive public interest | May 21, 2022 |
| 16 NCAC 06C .0302 | Necessary with substantive public interest | May 21, 2022 |
| 16 NCAC 06C .0304 | Necessary with substantive public interest | May 21, 2022 |
| 16 NCAC 06C .0305 | Necessary with substantive public interest | May 21, 2022 |
| 16 NCAC 06C .0306 | Necessary with substantive public interest | May 21, 2022 |
| 16 NCAC 06C .0307 | Necessary with substantive public interest | May 21, 2022 |
| 16 NCAC 06C .0308 | Necessary with substantive public interest | May 21, 2022 |
| 16 NCAC 06C .0313 | Necessary with substantive public interest | May 21, 2022 |
| 16 NCAC 06C .0401 | Necessary with substantive public interest | May 21, 2022 |
| 16 NCAC 06C .0402 | Necessary with substantive public interest | May 21, 2022 |
| 16 NCAC 06C .0403 | Necessary with substantive public interest | May 21, 2022 |
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| 16 NCAC 06C .0601 | Necessary with substantive public interest | May 21, 2022 |
| 16 NCAC 06C .0602 | Necessary with substantive public interest | May 21, 2022 |
| 16 NCAC 06D .0101 | Necessary with substantive public interest | May 21, 2022 |
| 16 NCAC 06D .0105 | Necessary with substantive public interest | May 21, 2022 |
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| 16 NCAC 06D .0401 | Necessary with substantive public interest | May 21, 2022 |
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| 16 NCAC 06D .0501 | Necessary with substantive public interest | May 21, 2022 |

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| 16 NCAC 06D .0503 | Necessary with substantive public interest | May 21, 2022 |
| 16 NCAC 06D .0506 | Necessary with substantive public interest | May 21, 2022 |
| 16 NCAC 06E .0101 | Necessary with substantive public interest | May 21, 2022 |
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| 16 NCAC 06H .0105 | Necessary with substantive public interest | May 21, 2022 |
| 16 NCAC 06H .0106 | Necessary with substantive public interest | May 21, 2022 |
| 16 NCAC 06H .0107 | Necessary with substantive public interest | May 21, 2022 |
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| 16 NCAC 06H .0112 | Necessary with substantive public interest | May 21, 2022 |
| 16 NCAC 06I .0101 | Necessary with substantive public interest | May 21, 2022 |
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| 16 NCAC 06I .0401 | Necessary with substantive public interest | May 21, 2022 |
| 16 NCAC 06I .0402 | Necessary with substantive public interest | May 21, 2022 |
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| 16 NCAC 06I .0405 | Necessary with substantive public interest | May 21, 2022 |

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RRC Determination - Periodic Rule Review

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| 16 NCAC 06J .0406 | Necessary with substantive public interest | May 21, 2022 |
| 16 NCAC 06J .0407 | Necessary with substantive public interest | May 21, 2022 |
| 16 NCAC 06J .0101 | Necessary with substantive public interest | May 21, 2022 |
| 16 NCAC 06J .0102 | Necessary with substantive public interest | May 21, 2022 |
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| 16 NCAC 06J .0301 | Necessary with substantive public interest | May 21, 2022 |