

**RULES REVIEW COMMISSION MEETING
MINUTES
October 19, 2023**

The Rules Review Commission met on Thursday, October 19, 2023, in the Commission Room at 1711 New Hope Church Road, Raleigh, North Carolina, and via WebEx.

Commissioners Wayne R. Boyles III, Jeanette Doran, Jeff Hyde, Brandon Leebrick, Bill Nelson, Randy Overton, and Jake Parker were present in the Commission Room.

Staff member Alexander Burgos, Commission Counsel Seth Ascher, Brian Liebman, and Bill Peaslee were in the Commission 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.

Chair Doran introduced Associate Justice of the North Carolina Supreme Court, Philip Berger, Jr., to the Commission.

Justice Berger administered the Oath of Office to newly appointed Commissioner Brandon Leebrick.

The Chair read into the record the Evaluation of Statement of Economic Interest for Brandon Leebrick, which states the NC Ethics Commission did not find an actual conflict of interest but found the potential for a conflict of interest. The potential conflict identified does not prohibit service on this entity.

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 Tabs I and J for the Department of Revenue and temporary rules from DHHS - Division of Health Service Regulation.

The Chair notified the Commission that since all Commissioners attending the meeting are present in the Commission Room, the RRC is not required to cast roll-call votes; therefore, roll-call votes were not called at this meeting's agenda.

APPROVAL OF MINUTES

The Chair asked for any discussion, comments, or corrections concerning the October 5, 2023, special meeting minutes. There were none and the minutes were approved as distributed.

The Chair asked for any discussion, comments, or corrections concerning the September 21, 2023, meeting minutes. There were none and the minutes were approved as distributed.

FOLLOW UP MATTERS

Board of Agriculture

02 NCAC 52B .0214; 52J .0901, .0902, .0903, and .0904 - The Commission extended the period of review for these Rules at the September meeting. No action was required by the Commission.

Medical Care Commission

10A NCAC 13F .0702, .1307; 13G .0705, and .1301 - The Commission extended the period of review for these Rules at the September meeting. No action was required by the Commission.

Department of Justice

12 NCAC 02J .0201 - The Commission extended the period of review for this Rule at the September meeting. No action was required by the Commission.

Criminal Justice Education and Training Standards Commission

12 NCAC 09B .0209, .0403, .0501, .0502; 09C .0306; 09G .0405, and .0406 - The Commission extended the period of review for these Rules at the September meeting. No action was required by the Commission.

Sheriffs' Education and Training Standards Commission

12 NCAC 10B .0604, .0605, .0606, .0607, .0704, and .0714 - All rules were unanimously approved.

Private Protective Services Board

14B NCAC 16 .0201, .0205, .0403, .0807, .1101, .1501, .1502, .1601, .1701, .1706, and .1707 - All rules were unanimously approved.

Environmental Management Commission

15A NCAC 02D .0503, .0506, .0532, .0614, .0918, .0926, .0927, .0928, .0932, .0960, .0961, .0964, .1403, .1708; 02Q .0102, and .0706 - All rules were unanimously approved.

Coastal Resources Commission

Prior to the review of rules from the Coastal Resources Commission, Commissioner Parker recused himself and did not participate in any discussion or vote concerning these Rules because of a conflict of interest.

15A NCAC 07H .0208, .0308; and 07M .0603 - The Commission objected to these Rules at the August meeting. The agency has not responded to the Commission's objection. No action was required by the Commission.

Department of Revenue

17 NCAC 07B .0104, .0106, .0108, .0112, .0117, .0121, and .0801 were unanimously approved.

The Commission voted to object to 17 NCAC 07B .1202 pursuant to G.S. 150B-21.9(a), finding the rule to be unnecessary with Commissioner Hyde voting against the objection. Additionally, the Commission unanimously objected to 17 NCAC 07B .1303, .1404, .1601, .1605, .1705, .2001, .2002, .2204, and .4109 pursuant to G.S. 150B-21.9(a) for lack of necessity.

The Commission unanimously voted to object to 17 NCAC 07B .1202, .1303, .1404, .1601, .1605, .1705, .2001, .2002, .2204, and .4109 pursuant to G.S. 150B-21.9(a)(2) lack of clarity and G.S. 150-29.9(a)(1) for lack of authority.

17 NCAC 07B .0115, .3101, and .3107 – The Commission objected to these Rules at the September meeting. No action was required by the Commission.

17 NCAC 07B .0901, .0902, .0904, .1101, .1123, .1302, .1305, .1602, .1701, .1702, .1704, .1801, .1905, .1907, .2101, .2102, .2105, .2201, .2205, .2209, .2210, .2212, .2213, .2301, .2401, .2603, .2604, .2605, .2701, .2702, .2801, .2802, .2901, .3004, .3009, .3101, .3106, .3107, .3301, .3302, .3801, .3804, .3907, .3910, .4102, .4105, and .4106 - The Commission extended the period of review for these Rules at the September meeting. No action was required by the Commission.

Department of Revenue

17 NCAC 07B .4204, .4716, .4802, and .4803 were unanimously approved.

The Commission unanimously voted to object to 17 NCAC 07B .4707 and .5004 pursuant to G.S. 150B-21.9(a)(3) for lack of necessity. Additionally, the Commission unanimously voted to object to 17 NCAC .4202, .4207, .4801, and .5001 pursuant to G.S. 105B-21.9(a)(2) finding the rules to be unclear or ambiguous.

The Commission unanimously voted to object to 17 NCAC 07B .4201, .4202, .4707, .4708, and .5001 pursuant to G.S. 150B-21.9(a)(2) lack of clarity and G.S. 150-29.9(a)(1) for lack of authority.

17 NCAC 07B .4206, .4415, and .5002 – The Commission objected to these Rules at the September meeting. No action was required by the Commission.

17 NCAC 07B .4201, .4202, .4203, .4205, .4210, .4301, .4302, .4401, .4403, .4404, .4406, .4411, .4413, .4503, .4510, .4609, .4614, .4701, .4707, .4708, .4801, .5001, and .5004 - The Commission extended the period of review for these Rules at the September meeting. No action was required by the Commission.

Andrew Furuseth, with the agency, addressed the Commission.

The Chair called the meeting into a brief recess at 10:17 a.m.
The meeting resumed at 10:25 a.m.

LOG OF FILINGS (PERMANENT RULES)

Sheriffs' Education and Training Standards Commission

12 NCAC 10B .2201 was unanimously approved.

Wildlife Resources Commission

15A NCAC 10A .0401, .0402, .1101, and .1201 were unanimously approved.

State Board of Education

16 NCAC 06G .0601 was unanimously approved.

Board of Examiners in Optometry

21 NCAC 42B .0201 was unanimously approved.

The Commission voted to extend the period of review for 21 NCAC 42D .0102 in accordance with G.S. 150B-21.10. They did so in response to a request from the agency to extend the period to allow the agency additional time to prepare a response to a staff opinion issued on the rule. Commissioner Hyde voted against the extension.

LOG OF FILINGS (TEMPORARY RULES)

DHHS - Division of Health Service Regulation

Prior to the review of rules from DHHS - Division of Health Service Regulation, Commissioner Leebrick recused himself and did not participate in any discussion or vote concerning these Rules because of a conflict of interest.

10A NCAC 14E .0101 and .0111 were unanimously approved.

The Commission voted to object to 10A NCAC 14E .0104, .0106, .0107, .0109, .0112, .0114, .0201, .0202, .0207, .0209, .0210, .0211, .0212, .0315, .0318, .0319, .0320, .0321, .0322, .0323, .0324, .0325, .0326, .0327, .0328, .0329, .0330, and .0331 in accordance with G.S. 150B-21.1(b) finding the rules lacked statutory authority pursuant to G.S. 150-21.9(a)(1). Additionally, with respect to Rules 10A NCAC 14E .0106 and .0109, the Commission objected to the rules pursuant to G.S. 150B-

21.9(a)(2) finding the rules to be unclear or ambiguous. Commissioner Parker voted against the objection.

Eric Hunt, representing the agency, addressed the Commission.

State Board of Education

16 NCAC 06C .0408 was unanimously approved.

EXISTING RULES REVIEW

15A NCAC 05C – The Commission unanimously voted to amend the 2014-2023 Existing Rules Review Schedule and change the due date for 15A NCAC 05C from December 2023 to February 2024. Additionally, the Commission voted to approve the joint request from the Mining Commission and the Oil and Gas Commission to reassign 15A NCAC 05C for the periodic review from the Mining Commission to the Oil and Gas Commission.

COMMISSION BUSINESS

The meeting was adjourned at 10:56 a.m.

The next regularly scheduled meeting of the Commission is Thursday, November 16, 2023, at 9:00 a.m.

Alexander Burgos, Paralegal

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

October 19, 2023

Rules Review Commission
Meeting
Please Print Legibly

Name	Agency
Jennifer Everett	DEQ
Phillip Reynolds	NCDOJ
Taylor Corpening	PHHS
Laura Hansford	NCDOR
Andrew Furseth	NCDOR
RAT PREMAKUMAR	NC DHHS
Melissa Bowman	NCDOJ
Anne Evangelista	Governor's office
Elly Young	NCDOJ
Julie Cronin	NC DHHS
Bethany Burdon	NCDOJ
Am [unclear]	SOS
Helen Madi	HTS BAKTIS
Emily Kirby	Gov office
Derek Hunter	NC DOJ
Susan Birdsong	PPS AT

Rules Review Commission Meeting October 19, 2023
Via WebEx

Name	Agency
Ann Elmore	SOSNC
Ryan Collins	DPI
Marlika Hairston	NCCOB
Adam Parr	DEQ
Katherine Quinlan	DEQ
Julie Ventaloro	OSBM
Joelle Burleson	DEQ
Emily Jones	DOT
Ashley Snyder	OAH
Womenhealth225	Member of Public
Cameron Ervin	CSHLAW
Canaan Huie	MVALAW.COM
Jillian Riley	Member of Public
Liz Barber	acluofnc.org
Marktom0397	Member of Public
Ron Williams	DOJ
Emery Milliken	DHHS
Jeff Harms	DHHS
Jonathan Puryear	DOR
Makeda Harris	NCHA.ORG
Laura Rowe	Treasurer
Johnson, Daniel H	DOT
Catherine Blum	DEQ
Hope Ascher	Member of Public
Mark Payne	DHHS
Robert El-Jaouhari	CSHLAW.COM
Ruhlman, Carrie A	WRC
Anne Coan	NCFB
Melva Bonner	WRC
Dana McGhee	OAH
Eddie Sheehy	NCLEG
Nadine Pfeiffer	Member of Public
Donna Marie	Member of Public
T Moreland	Member of Public



STATE ETHICS COMMISSION

POST OFFICE BOX 27685
RALEIGH, NC 27611
PHONE: 919-814-3600

Via Email

October 6, 2023

The Honorable Phil Berger
President Pro Tempore of the Senate
16 West Jones Street, Room 2008
Raleigh, North Carolina 27601

**Re: Evaluation of Statement of Economic Interest Filed by Mr. Brandon Leebrick
Appointee to the Rules Review Commission**

Dear Senator Berger:

Our office has received **Mr. Brandon Leebrick's** 2023 Statement of Economic Interest as an appointee to the **Rules Review Commission (the "Commission")**. We have reviewed it for actual and potential conflicts of interest pursuant to Chapter 138A of the North Carolina General Statutes ("N.C.G.S."), also known as the State Government Ethics Act (the "Act").

Compliance with the Act and avoidance of conflicts of interest in the performance of public duties are the responsibilities of every covered person, regardless of this letter's contents. This letter, meanwhile, is not meant to impugn the integrity of the covered person in any way. This letter is required by N.C.G.S. § 138A-28(a) and is designed to educate the covered person as to potential issues that could merit particular attention. Advice on compliance with the Act is available to certain public servants and legislative employees under N.C.G.S. § 138A-13.

We did not find an actual conflict of interest but found the potential for a conflict of interest. The potential conflict identified does not prohibit service on this entity.

The Rules Review Commission has authority to review all temporary and permanent rules proposed by North Carolina government agencies, including the authority to veto rules that fail to satisfy specific statutory criteria. Generally speaking, those rules are intended to implement or interpret laws adopted by the General Assembly or Congress or certain federal regulations. Temporary or permanent rules approved by the Commission are filed with the Office of Administrative Hearings to be included in the North Carolina Administrative Code.

The Act establishes ethical standards for certain public servants and prohibits public servants from: (1) using their positions for their financial benefit or for the benefit of their extended family or business, N.C.G.S. § 138A-31; and (2) participating in official actions from which they or certain associated persons might receive a reasonably foreseeable financial benefit, N.C.G.S. § 138A-36(a). The Act also requires public servants to take appropriate steps to remove themselves from proceedings in which their impartiality might reasonably be questioned due to a familial, personal, or financial relationship with a participant in those proceedings. N.C.G.S. § 138A-36(c).

The Honorable Phil Berger
October 6, 2023
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Mr. Leebrick is a principal attorney with Ott Cone & Redpath, P.A., a law firm which could represent clients that come before the Commission during the rulemaking process. As such, he has the potential for a conflict of interest and should exercise appropriate caution in the performance of his public duties should issues involving the law firm of Ott Cone & Redpath, P.A. or its clients come before the Commission for official action.

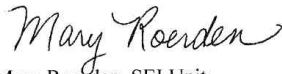
In addition to the conflicts standards noted above, the Act prohibits public servants from accepting gifts from (1) a lobbyist or lobbyist principal, (2) a person or entity that is seeking to do business with the public servant's agency, is regulated or controlled by that agency, or has financial interests that might be affected by their official actions, or (3) anyone in return for being influenced in the discharge of their official responsibilities. N.C.G.S. § 138A-32. Exceptions to the gifts restrictions are set out in N.C.G.S. § 138A-32(e).

When this letter cites an actual or potential conflict of interest under N.C.G.S. § 138A-24(e), the conflict must be recorded in the minutes of the applicable board and brought to the membership's attention by the board's chair as often as necessary to remind all members of the conflict and to help ensure compliance with the Act. N.C.G.S. § 138A-15(c).

Finally, the Act mandates that all public servants attend an ethics and lobbying education presentation. N.C.G.S. § 138A-14. Please review the attached document for additional information concerning this requirement.

Please contact our office if you have any questions concerning our evaluation or the ethical standards governing public servants under the Act.

Sincerely,



Mary Roerden, SEI Unit
State Ethics Commission

cc: Brandon Leebrick
Alexander Burgos, Ethics Liaison

Attachment: Ethics Education Guide

MEMORANDUM OF ABSTENTION FROM
PARTICIPATION IN OFFICIAL ACTION
RULES REVIEW COMMISSION

In accordance with N.C. General Statute G.S. 138A-15(e), I have abstained from taking any verbal or written action, including voting, on the agenda item regarding

Item # IV. H.

I have abstained because a potential conflict of interest.

This the 19th day of October, 2023.



Signature of Commission Member

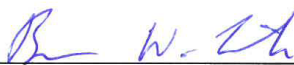
No public servant authorized to perform an official action requiring the exercise of discretion shall knowingly participate in an official action by the board if the public servant, a member of the public servant's extended family, or a business with which the public servant is associated has an economic interest in, or a reasonably foreseeable benefit from, the matter under consideration, which would impair the public servant's independence of judgment or from which it could be reasonably inferred that the interest or benefit would influence the public servant's participation. A potential benefit includes a detriment to a business competitor or (1) the public servant; (2) a member or the public servant's extended family, or (3) a business with which the public servant is associated. The public servant shall abstain from taking any verbal or written action and shall submit in writing to the board the reasons for the abstention.

MEMORANDUM OF ABSTENTION FROM
PARTICIPATION IN OFFICIAL ACTION
RULES REVIEW COMMISSION

In accordance with N.C. General Statute G.S. 138A-15(e), I have abstained from taking any verbal or written action, including voting, on the agenda item regarding VI.1 (DHHS Temporary Rules).

I have abstained because a potential conflict of interest.

This the 19th day of October, 2023.



Signature of Commission Member

No public servant authorized to perform an official action requiring the exercise of discretion shall knowingly participate in an official action by the board if the public servant, a member of the public servant's extended family, or a business with which the public servant is associated has an economic interest in, or a reasonably foreseeable benefit from, the matter under consideration, which would impair the public servant's independence of judgment or from which it could be reasonably inferred that the interest or benefit would influence the public servant's participation. A potential benefit includes a detriment to a business competitor or (1) the public servant; (2) a member or the public servant's extended family, or (3) a business with which the public servant is associated. The public servant shall abstain from taking any verbal or written action and shall submit in writing to the board the reasons for the abstention.