

**RULES REVIEW COMMISSION MEETING
MINUTES
September 15, 2022**

The Rules Review Commission met on Thursday, September 15, 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, Jeff Hyde, Randy Overton, and Bob Rucho were present in the Commission Room. Commissioners Barbara Jackson and Paul Powell were present via WebEx.

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 9:00 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 August 18, 2022 regular meeting and the August 25, 2022 special 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, Jeff Hyde, 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 Board of Agriculture Tab A and Coastal Resources Commission Tabs H, I, and J.

FOLLOW UP MATTERS

Board of Agriculture

02 NCAC 52J .0205, .0301, .0408, .0418, .0419, and .0702 - 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. Boyles III, Bobby Bryan, Jeff Hyde, Barbara Jackson, Randy Overton, Paul Powell, and Bob Rucho – 8. Voting in the negative - 0.

Upon the call of the Chair, the Commission voted to adopt staff's recommendation to object to 02 NCAC 52J .0201, .0208 and .0704 by adopting the opinions incorporated in counsel's staff opinion that the rules were unclear and ambiguous pursuant to G.S. 150B-21.9. The RRC also objected to 15A NCAC 07M .0704 finding the rule was not reasonably necessary pursuant to G.S. 150B-21.9. During the discussion, the original motion to object to Rule 02 NCAC 52J .0201 was amended by Commissioner Atkins without objection by Commissioner Bryan and the Commission voted to approve 02 NCAC 52J .0201 and object to 02 NCAC 52J .0208 and .0704 by roll-call vote, ayes 6, noes 2 as follows: Voting in the affirmative: Andrew Atkins, Wayne R. Boyles III, Bobby Bryan, Barbara Jackson, Randy Overton, and Paul Powell – 6. Voting in the negative: Jeff Hyde and Bob Rucho - 2.

Chris McClennan with the Department of Justice and representing the agency addressed the Commission.

Dr. Patricia Norris, DVM, Director of Animal Welfare Section for the agency, addressed the Commission.

State Board of Elections

08 NCAC 10B .0101; and 20 .0101 – Pursuant to G.S. 150B-21.1(b2) the rules were returned to the agency. No action was required by 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 is addressing the objection from the August meeting. No action was required by the Commission.

Sheriffs' Education and Training Standards Commission

12 NCAC 10B .0704 - The agency is addressing the objection from the July meeting. No action was required by the Commission.

Environmental Management Commission

15A NCAC 02B .0208, .0212, .0214, .0215, .0216, and .0218 - The agency is addressing the objection from the May meeting. 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.

Environmental Management Commission

15A NCAC 02P .0101, .0102, .0103, .0201, .0202, .0301, .0302, .0401, .0402, .0403, .0404, .0405, .0406, and .0407 – The rules were approved 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

Coastal Resources Commission

15A NCAC 07I .0204, .0302, .0305, .0306, .0401, .0402, .0505, .0507, .0509, .0510, .0601, .0701; 07J .0102, .0201, .0209, .0211, .0301, .0302, .0602, .0603, .0605, .0701, .0702, and .0703 - The rules were approved 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

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 the rules for lack of statutory authority pursuant to G.S. 150B-21.9(1), ambiguity pursuant to G.S. 150B-21.9(2), on the basis that the rules were not reasonably necessary pursuant to G.S. 150B-21.9(3), and for failure to comply with Part 2 of Article 2A of the Administrative Procedure Act pursuant to G.S. 150B-21.9(4) 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

15A NCAC 07H .0602 and 07J .0604 were withdrawn at the request of the agency. No action was required by the Commission.

Mary Lucasse with the Department of Justice, and representing the agency, addressed the Commission.

Coastal Resources Commission

15A NCAC 07H .1301, .1302, .1303, .1304, .1305, .1401, .1402, .1403, .1404, .1405, .1501, .1502, .1503, .1504, .1505, .1601, .1602, .1603, .1604, .1605, .2001, .2002, .2003, .2004, .2005, .2101, .2102, .2103, .2104, .2105, .2201, .2202, .2203, .2204, .2205, .2301, .2302, .2303, .2304, .2401, .2402, .2403, .2404, .2405, .2601, .2602, .2603, .2604, .2605, .2701, .2702, .2703, .2704, .2705 - The rules were approved 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

15A NCAC 07H .2305 – The Commission objected to the rule for ambiguity pursuant to G.S. 150B-21.9(2) 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

Mary Lucasse with the Department of Justice, and representing the agency, addressed the Commission.

Coastal Resources Commission

15A NCAC 07M .0702 and .0705 – The rules were approved 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

15A NCAC 07M .0201, .0202, .0401, .0403, .0503, .0701, .0801, .0802, .1001, .1101, .1201, and .1202 - The Commission objected to the rules for ambiguity pursuant to G.S. 150B-21.9(2), on the basis that the rules were not reasonably necessary pursuant to G.S. 150B-21.9(3), and for failure to comply with Part 2 of Article 2A of the Administrative Procedure Act pursuant to G.S. 150B-21.9(4) 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

15A NCAC 07M .0402, .0601, .0603, .0703, .0704, .1002, and .1102 – The Commission objected to the rules for lack of statutory authority pursuant to G.S. 150B-21.9(1) and ambiguity pursuant to 150B-21.9(2) 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

15A NCAC 07M .0602 and .0902 were withdrawn at the request of the agency. No action was required by the Commission.

Mary Lucasse with the Department of Justice, and representing the agency, addressed the Commission.

The Chair called the meeting into a brief recess at 10:02 a.m.
The meeting resumed at 10:10 a.m.

LOG OF FILINGS (PERMANENT RULES)

Board of Agriculture

Upon the call of the Chair, the Commission extended the period of review for 02 NCAC 52B .0212, .0214, 02 NCAC 61 .0101, .0102, .0104, .0106, .0109, and .0111 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.

State Board of Elections

Upon the call of the Chair, the Commission extended the period of review for 08 NCAC 04 .0308 and .0309 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.

Medical Care Commission

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. Boyles III, Bobby Bryan, Jeff Hyde, Barbara Jackson, Randy Overton, Paul Powell, and Bob Rucho – 8. Voting in the negative: None.

Radiation Protection Commission

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. Boyles III, Bobby Bryan, Jeff Hyde, Barbara Jackson, Randy Overton, Paul Powell, and Bob Rucho – 8. Voting in the negative: None.

Commission for Public Health

Upon the call of the Chair, 10A NCAC 41A .0107 was approved 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.

Criminal Justice Education and Training Standards Commission

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. Boyles III, Bobby Bryan, Jeff Hyde, Barbara Jackson, Randy Overton, Paul Powell, and Bob Rucho – 8. Voting in the negative: None.

Private Protective Services Board

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. Boyles III, Bobby Bryan, Jeff Hyde, Barbara Jackson, Randy Overton, Paul Powell, and Bob Rucho – 8. Voting in the negative: None.

Wildlife Resources Commission

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. Boyles III, Bobby Bryan, Jeff Hyde, Barbara Jackson, Randy Overton, Paul Powell, and Bob Rucho – 8. 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 .1301, .1302, .1304, .1305, .1306, .1307, .1308, .1309, .1310, .1311, .1312, .1313, .1314, .1315, .1316, .1317, .1318, .1319, .1320, .1321, .1323, .1324, .1327 and .0309 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.

Board of Chiropractic Examiners

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. Boyles III, Bobby Bryan, Jeff Hyde, Barbara Jackson, Randy Overton, Paul Powell, and Bob Rucho – 8. Voting in the negative: None.

Board of Dental Examiners

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. Boyles III, Bobby Bryan, Jeff Hyde, Barbara Jackson, Randy Overton, Paul Powell, and Bob Rucho – 8. Voting in the negative: None.

Board of Pharmacy

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. Boyles III, Bobby Bryan, Jeff Hyde, Barbara Jackson, Randy Overton, Paul Powell, and Bob Rucho – 8. Voting in the negative: None.

State Human Resources Commission

25 NCAC 01C .1007 was withdrawn at the request of the agency. No action was required by the Commission.

LOG OF FILINGS (TEMPORARY RULES)

Wildlife Resources Commission

Upon the call of the Chair, 15A NCAC 10F .0305 was approved 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.

COMMISSION BUSINESS

The Chair continued the pre-review discussion. A proposed pre-review checklist draft submitted by the NCBA Administrative Law Section was distributed to the RRC.

The Commission's Bylaws require that elections be held at the September meeting. Upon the call of the Chair, the Commission waived its bylaws to re-elect the current Chair and Vice-Chairs in one motion.

Upon the call of the Chair, the following members were re-elected as officers: Jeanette Doran as Chair, Andrew Atkins as 1st Vice-Chair, and Bobby Bryan as 2nd Vice-Chair by roll-call vote, ayes 8 noes 0 as follows: Voting in the affirmative: Andrew Atkins, Bobby Bryan, Wayne Boyles, Jeff Hyde, Barbara Jackson, Randy Overton, Paul Powell, and Bob Rucho – 8. Voting in the negative: None.

The meeting adjourned at 10:41 a.m.

The next regularly scheduled meeting of the Commission is Thursday, October 20, 2022, at 9:00 a.m.

Alexander Burgos, Paralegal

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

Rules Review Commission Meeting September 15, 2022
Via WebEx

Name	Agency
Tenisha Jacobs	NCDOR
Elizabeth Kountis	DEQ
Virginia Niehaus	DHHS
Daniel Johnson	DOT
Chris Millis	NCHBA
Jared Simmons	ncleg.gov
Misty Piekaar	DHHS
Ronald Williams	NCDOR
Seth Ascher	
Dennis Seavers	Barbers
Anna S	amreican.edu
Julie Ventaloro	OSBM
Nancy Hardison	DEQ
Chris Ventaloro	DEQ
Anna Choi	Chiropractic Bd
Madison Alligood	
Carmine Plott	novanthealth.org
Vance Jackson	DEQ
Thomas Jumalon	DHHS
David Crowley	DHHS
Michelle Schilling	DOJ
Libby Kinsey	libby.kinsey@dhhs.nc.gov
Bridget Shelton	DEQ
Makeda Harris	NCHA
Jessica Montie	DEQ
Dauna Bartley	Dental Bd
Russell Henderson	DOJ
Brooks Pearson	SELCNC
Christine Ryan	DOJ
Helen Landi	DOT
Catherine Blum	DEQ
Laura Lansford	DOR
James Albright	DHHS
Larry Michael	DHHS

Shazia Keller	DHHS
Phillip Reynolds	DOJ
Kim Harron	DHHS
Anne Coan	NCFB
Laura Rowe	Treasurer
John Barkley	DOJ
Carl Williams	DHHS
Clint Pinyan	Pharmacy
Shane Smith	DHHS
Nadine Pfeiffer	DHHS
Zack Moore	DHHS
Mary Lucasse	CRC
Shelby Taylor	DHHS
Nathan Vail	DHHS
Kathy Herring	rkk.com

DRAFT