



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

Mailing address:  
6714 Mail Service Center  
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1711 New Hope Church Rd  
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March 18, 2010

Charles F. McDarris  
Private Protective Services Board  
434 Fayetteville Street, Suite 2500  
Raleigh, NC 27601

Re: 12 NCAC 07D .0405, .0702

Dear Mr. McDarris:

At its March 18, 2010 meeting the Rules Review Commission objected to the above-captioned rules in accordance with G.S. 150B-21.10.

The Commission objected to Rule 12 NCAC 07D .0405 based on a failure to comply with the Administrative Procedure Act, G.S. 150B-21.10, by not making the requested technical changes. In addition the Commission was concerned by the fact the seal pictured in the rule is not the official state seal.

The Commission objected to Rule 12 NCAC 07D .0702 based on lack of statutory authority and ambiguity. The rule is either unclear or beyond the agency's authority.

The agency has the statutory authority to charge a late fee of not more than \$100.00 and charge it "to be paid within 90 days from the date the ... registration ... expires." Both the fee and the time limit appear to be within the statutory limits. G.S 74C-9(e)(5).

However, adding the "to be paid within 30 days from the date the registration expires" is outside the agency's authority if they intend to restrict the ability to pay a late fee to only 30 days since the statute authorizes it to be paid within 90 days. It is unclear what the agency would charge, expect to charge, or enforce if a registrant applied for

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renewal after the registration has been expired for more than 30 days but less than 91 days. Given the statutory language in (e)(5) the agency would not be justified in refusing to renew a license within that time frame for failure to make the late fee payment within 30 days.

Please respond to this letter in accordance with the provisions of G.S. 150B-21.12. If you have any questions regarding the Commission's action, please let me know.

Sincerely,

Joseph J. DeLuca, Jr.  
Commission Counsel

JJD:jbe



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March 18, 2010

Nancy Pate  
1601 Mail Service Center  
Raleigh, NC 27699-1601

Re: 15A NCAC 07H .0208, .0309, .1704-.1705

Dear Ms. Pate:

At its March 18, 2010 meeting the Rules Review Commission objected to the above-captioned rules in accordance with G.S. 150B-21.10.

The Commission objected to Rule 15A NCAC 07H .0208 based on lack of statutory authority and ambiguity.

1.) The rule in (b)(2)(G) page 5 lines 6 and 7 is unclear or is outside the agency's authority. The "case-by-case" review for "publicly funded projects" does not specify what review standards shall be applied, making these standards unclear. There is no authority to apply standards of review outside the standards found in existing rules.

2.) It is unclear what is meant or required by the standard in (b)(5)(P) page 8 lines 18 and 19 to "consider the cumulative impacts of marina development" in reviewing marina applications. It is unclear in that it mistakenly implies that a permit may be issued even though G.S. 113A-120(a)(10) sets out conditions where the "cumulative impacts" require that a permit be denied.

3.) In (b)(5)(Q), page 8 lines 20 - 23 it is unclear what the level of compliance with current standards – "to the maximum extent possible" – actually requires in determining whether to allow replacement of existing marinas and what is meant by the requirement in (b)(5)(Q) lines 22 and 23 to give "consideration ... to replacement costs and service needs" in deciding whether to allow replacements of existing marinas and how to determine the level of compliance with the current standards.

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The Commission objected to rules 15A NCAC 07H .0309, 1704 and .1705 based on failure to comply with the Administrative Procedure Act, G.S. 150B-21.10, by not making the requested technical changes (attached).

The Commission also requests the following additional technical changes. In Rule .0208(a)(2)(G) page 2 line 3 please change "or" in "public trust areas or estuarine waters" to "including" or delete "or estuarine waters" since estuarine waters are public trust areas. The same change is also needed in Rule .1704(c) line 30.

Sincerely,

Joseph J. DeLuca, Jr.  
Commission Counsel

JJD:jbe



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March 18, 2010

Nancy Pate  
Department of Environment  
and Natural Resources  
1601 Mail Service Center  
Raleigh, NC 27699-1601

Re: 15A NCAC 12A .0105

Dear Ms. Pate:

At its March 18, 2010 meeting the Rules Review Commission objected to the above-captioned rule in accordance with G.S. 150B-21.10.

The Commission objected to the rule based on ambiguity. It is not clear that all the terms in this Chapter that need defining are defined in this rule.

Please respond to this letter in accordance with the provisions of G.S. 150B-21.12. If you have any questions regarding the Commission's action, please let me know.

Sincerely,

Robert A. Bryan, Jr.  
Commission Counsel

RAB:tdc

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March 22, 2010

Nancy Pate  
Department of Environment  
and Natural Resources  
1601 Mail Service Center  
Raleigh, NC 27699-1601

Re: 15A NCAC 12B .0104, .0203, .0204, .0501, .0502, .0601, .0602, .0701, .0802,  
.1001, .1003, .1004, .1101, .1105, .1201, .1205 and .1206

Dear Ms. Pate:

At its March 18, 2010 meeting the Rules Review Commission objected to the above-captioned rule in accordance with G.S. 150B-21.10.

The Commission objected to the Rule .0104 based on ambiguity. It is not clear what standards the agency will use in granting permits pursuant to this Chapter.

The Commission objected to the Rule .0203 based on ambiguity. It is not clear what standards the agency will use in determining whether to grant a special activities permit.

The Commission objected to the Rule .0204 based on lack of statutory authority and ambiguity. In (b), it is not clear what standards the Park Superintendent is to use in deciding whether to grant permission to install permanent or fixed rock climbing anchors. As written, this paragraph contains a waiver provision without specific guidelines as prohibited by G.S. 150B-19(6). In (a), (d) and (e), it is not clear what standards the Department will use in determining whether to grant a permit or in setting the terms and conditions in a permit.

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The Commission objected to the Rule .0501 based on lack of statutory authority and ambiguity. In (d), it is not clear what standards the Department will use in determining whether to issue a vehicle beach use permit. The paragraph amounts to a waiver provision without specific guidelines.

The Commission objected to the Rule .0502 based on lack of statutory authority and ambiguity. In (b) and (c), it is not clear what standards the Department will use in determining whether to grant permits. The paragraphs are waiver provisions without specific guidelines. This objection applies to existing language in the rule.

The Commission objected to the Rule .0601 based on lack of statutory authority and ambiguity. In (b), it is not clear what standards the Department will use in limiting or prohibiting motor powered boats on lakes. In (e), it is not clear what standards the Department will use in granting a specific activity permit. As written this amounts to a waiver provision without specific guidelines. This objection applies to existing language in the rule.

The Commission objected to the Rule .0602 based on ambiguity. In (e), it is not clear what is meant by permanent or semipermanent camping.

The Commission objected to the Rule.0701 based on ambiguity. In (a), it is not clear what standards the Department will use in granting a special activity permit.

The Commission objected to the Rule .0802 based on ambiguity. In (b), it is not clear what restrictions exist in addition to State laws. This objection applies to existing language in the rule.

The Commission objected to the Rule .1001 based on ambiguity. In (b), it is not clear what would amount to unreasonable noise.

The Commission objected to the Rule .1003 based on ambiguity. In (a) and (c), it is not clear what is meant by "a long term operating lease." It is not clear if this is an existing agreement or one anyone can still get. In (c), it is not clear what parks are designated. In (f), it is not clear what other information is pertinent and may be required.

The Commission objected to the Rule .1004 based on lack of statutory authority and ambiguity. In (f), it is not clear when a Specialty Activity Permit will be granted. As written, this is a waiver provision without specific guidelines.

The Commission objected to the Rule .1101 based on lack of statutory authority and ambiguity. In (a) and (b), it is not clear when a special activity permit will be granted. This is a waiver provision without specific guidelines. This objection applies to existing language in the rule.

The Commission objected to the Rule .1105 based on lack of statutory authority and ambiguity. In (c), it is not clear what other information is required on the application

form. There is no authority to set requirements by form. It is also not clear what constitutes "good cause." Good cause is not specific guidelines as required by G.S. 150B-19(6).

The Commission objected to the Rule .1201 based on lack of statutory authority and ambiguity. In (a), it is not clear when a permit will be granted. This provision is a waiver without specific guidelines. This objection applies to existing language in the rule.

The Commission objected to the Rule .1205 based on lack of statutory authority and ambiguity. In (f), it is not clear when there will be an otherwise posted service charge, nor what that charge shall be. This is a modification provision without specific guidelines prohibited by G.S. 152B-19(6).

The Commission objected to the Rule .1206 based on lack of statutory authority and ambiguity. It is not clear the amount of the reservation service charge. There is no authority to change a fee not set by rule. In (10), it is not clear what the other appropriate charges are. This objection applies to existing language in the rule.

Please respond to this letter in accordance with the provisions of G.S. 150B-21.12. If you have any questions regarding the Commission's action, please let me know.

Sincerely,

Robert A. Bryan, Jr.  
Commission Counsel

RAB:tdc





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March 22, 2010

Nancy Pate  
Department of Environment  
and Natural Resources  
1601 Mail Service Center  
Raleigh, NC 27699-1601

Re: 15A NCAC 28 .0301, .0502, .0503, .0504, .0602, .0603, .0604, .0605, .0701

Dear Ms. Pate:

At its March 18, 2010 meeting the Rules Review Commission objected to the above-captioned rule in accordance with G.S. 150B-21.10.

The Commission objected to the Rule .0301 based on lack of statutory authority and ambiguity. It is not clear what standards the Aquarium Director will use in giving permission to others to enter or remain on Aquarium Property other than when the facility is open to the public. This amounts to a waiver provision without specific guidelines as required by G.S. 150B-19(6). This objection applies to existing language in the rule.

The Commission objected to the Rule .0502 based on ambiguity. It is not clear what standards the Divisions Director will use in approving the sale of beer and wine.

The Commission objected to the Rule .0503 based on ambiguity. It is not clear what standards the Division Director will use in approving the serving and consumption of alcohol. This objection applies to existing language in the rule.

The Commission objected to the Rule .0504 based on ambiguity. It is not clear if local ordinances apply on State-owned property. Please provide documentation that local ordinances to pick up animal waste apply to Aquarium grounds.

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The Commission objected to the Rule .0602 based on ambiguity. It is not clear what standards the Aquarium Director will use in granting permission for the erection and display of notices and advertisements. This objection applies to existing language in the rule.

The Commission objected to the Rule .0603 based on lack of statutory authority and ambiguity. It is not clear what standards the Aquarium Director will use in granting permission to take photographs, etc., for commercial purposes. This amounts to a waiver provision prohibited by G.S. 150B-19(6). This objection applies to existing language in the rule.

The Commission objected to the Rule .0604 based on lack of statutory authority and ambiguity. It is not clear what standards the Division Director will use in granting permission for the use or modification of logos, names, or slogans. This is a waiver provision without specific guidelines as prohibited by G.S. 150B-19(6). This objection applies to existing language in the rule.

The Commission objected to the Rule .0605 based on ambiguity. It is not clear what standards the Aquarium Director will use in granting permission to engage in fundraising activities.

The Commission objected to the Rule .0701 based on lack of statutory authority and ambiguity. It is not clear what standards employees or agents will use in authorizing the activities listed in this rule. The rule is a waiver provision without specific guidelines. This objection applies to existing language in the rule.

Please respond to this letter in accordance with the provisions of G.S. 150B-21.12. If you have any questions regarding the Commission's action, please let me know.

Sincerely,

Robert A. Bryan, Jr.  
Commission Counsel

RAB:tdc



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March 18, 2010

Kim M. Dove  
NC Board of Dietetics/Nutrition  
1000 Centre Green Way  
Suite 200  
Cary, NC 27513

Re: 21 NCAC 17 .0401

Dear Ms. Dove:

At its March 18, 2010 meeting the Rules Review Commission objected to the above-captioned rule in accordance with G.S. 150B-21.10.

The Commission objected to the rule based on lack of statutory authority. There does not appear to be authority for paragraphs (b) and (c) limiting the application of G.S. 90-368(4) to persons meeting certain requirements. The statute exempts everyone from the requirements of the Dietetics/Nutrition Practice Act, not just those the Board chooses to exempt. As written, the paragraphs establish an occupational license for aides. There is no authority cited to do so.

Please respond to this letter in accordance with the provisions of G.S. 150B-21.12. If you have any questions regarding the Commission's action, please let me know.

Sincerely,

Robert A. Bryan, Jr.  
Commission Counsel

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March 18, 2010

M. Denise Stanford  
NC Licensing Board for General Contractors  
P. O. Box 1351  
Raleigh, NC 27602

Re: 21 NCAC 12 .0208

Dear Ms. Stanford:

At its March 18, 2010 meeting the Rules Review Commission objected to the above-captioned rule in accordance with G.S. 150B-21.10.

The Commission objected to the rule based on lack of statutory authority. In (b)(3)(B), there does not appear to be authority for the Board to determine liability issues pursuant to a contract. There is no authority to tell a court what it can and cannot do.

Please respond to this letter in accordance with the provisions of G.S. 150B-21.12. If you have any questions regarding the Commission's action, please let me know.

Sincerely,

Robert A. Bryan, Jr.  
Commission Counsel

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