

RRC STAFF OPINION

PLEASE NOTE: THIS COMMUNICATION IS EITHER 1) ONLY THE RECOMMENDATION OF AN RRC STAFF ATTORNEY AS TO ACTION THAT THE ATTORNEY BELIEVES THE COMMISSION SHOULD TAKE ON THE CITED RULE AT ITS NEXT MEETING, OR 2) AN OPINION OF THAT ATTORNEY AS TO SOME MATTER CONCERNING THAT RULE. THE AGENCY AND MEMBERS OF THE PUBLIC ARE INVITED TO SUBMIT THEIR OWN COMMENTS AND RECOMMENDATIONS (ACCORDING TO RRC RULES) TO THE COMMISSION.

AGENCY: N.C. PRIVATE PROTECTIVE SERVICES BOARD

RULE CITATION: 12 NCAC 07D .0702

RECOMMENDED ACTION:

Return the rule to the agency for failure to comply with the Administrative Procedure Act

Approve, but note staff's comment

X Object, based on:

X Lack of statutory authority

X Unclear or ambiguous

Unnecessary

Failure to adopt the rule in accordance with the APA

Extend the period of review

COMMENT:

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 renewal after the registration has been expired for more than 30 days but less than 91 days. It is my opinion that given the statutory language in (e)(5) the agency would not be justified in refusing to renew a license within that time frame. At the same time given the language of the rule, they would not be entitled to collect any late renewal fee.

§ 74C-9. Form of license; term; renewal; posting; branch offices; not assignable; late renewal fee.

(a) The license when issued shall be in such form as may be determined by the Board and shall state:

- (1) The name of the licensee,
- (2) The name under which the licensee is to operate, and
- (3) The number and expiration date of the license.

(b) The license shall be issued for a term of two years. A trainee permit shall be issued for a term of two years. All licenses must be renewed prior to the expiration of the term of the license. Following issuance, the license shall at all times be posted in a conspicuous place in the licensee's principal place of business, in North Carolina, unless for good cause exempted by the Director. A license issued under this Chapter is not assignable. The Board may require all licensees to complete continuing education courses approved by the Board before renewal of their licenses.

(c) Repealed by Session Laws 1989, c. 759, s. 7.

(d) The operator or manager of any branch office shall be properly licensed or registered. The license shall be posted at all times in a conspicuous place in the branch office. This license shall be issued for a term of two years. Every business covered under the provisions of this Chapter shall file in writing with the Board the addresses of each of its branch offices, if any, within 10 working days after the establishment, closing, or changing of the location of any branch office. The Director may, upon the successful completion of an investigation of the application, issue a temporary branch office license pending approval of the application by the Board.

(e) The Board is authorized to charge reasonable application and license fees as follows:

- (1) A nonrefundable initial application fee in an amount not to exceed one hundred fifty dollars (\$150.00).
- (2) A new or renewal license fee in an amount not to exceed two hundred fifty dollars (\$250.00) per year of the license term.
- (3) A new or renewal trainee permit fee in an amount not to exceed two hundred fifty dollars (\$250.00) per year of the license term.
- (4) A new or renewal fee for each license or duplicate license in addition to the basic license referred to in subsection (2) in an amount not to exceed fifty dollars (\$50.00) per year of the license term.
- (5) A late renewal fee to be paid within 90 days from the date the license, registration, permit, or certification expires in addition to the renewal fee due in an amount not to exceed one hundred dollars (\$100.00), if the license, registration, permit, or certification has not been renewed on or before the expiration date of the license, registration, permit, or certification.
- (6) A new, renewal, replacement or reissuance fee for an unarmed registration identification card in an amount not to exceed thirty dollars (\$30.00).
- (7) An application fee for a firearm registration permit not to exceed fifty dollars (\$50.00).
- (8) A new, renewal, replacement, or reissuance fee for a firearm registration permit not to exceed thirty dollars (\$30.00).
- (9) An application fee for certification as a certified trainer not to exceed fifty dollars (\$50.00).

- (10) A renewal or replacement fee for certified trainer certification not to exceed twenty-five dollars (\$25.00).
- (11) A new nonresident temporary permit fee not to exceed one hundred dollars (\$100.00).
- (12) An unarmed registration transfer fee not to exceed fifteen dollars (\$15.00).
- (13) A branch office license fee not to exceed fifty dollars (\$50.00) per year of the license term.
- (14) A special limited guard and patrol license fee not to exceed one hundred dollars (\$100.00) per year of the license term.
- (15) A correctable error fee not to exceed one hundred dollars (\$100.00) for each subsequent filing of an application following review and rejection of the initial application.

Except as provided in G.S. 74C-13(k), all fees collected pursuant to this section shall be expended, under the direction of the Board, for the purpose of defraying the expenses of administering this Chapter.

(f) A license or trainee permit granted under the provisions of this Chapter may be renewed by the Private Protective Services Board upon notification by the licensee or permit holder to the Director of intended renewal, the payment of the proper fee, and evidence of a policy of liability insurance as prescribed in G.S. 74C-10(e).

The renewal shall be finalized before the expiration date of the license. In no event will renewal be granted more than three months after the date of expiration of a license or trainee permit.

(g) Upon notification of approval of the application by the Board, an applicant must furnish evidence that the applicant has obtained the necessary liability insurance required by G.S. 74C-10 and obtain the license applied for or the application shall lapse.

(h) Trainee permits shall not be issued to applicants that qualify for a private detective license. A licensed private detective may supervise no more than five trainees at any given time. (1973, c. 528, s. 1; c. 1428; 1975, c. 592, ss. 2-4; 1979, c. 818, s. 2; 1983, c. 67, s. 1; c. 794, s. 8; 1985, c. 597, ss. 1-7; 1987, c. 657, s. 3; 1989, c. 759, s. 7; 2001-487, s. 64(d); 2007-511, s. 3; 2009-328, ss. 5, 6.)

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AGENCY: N.C. COASTAL RESOURCES COMMISSION

RULE CITATION: 15A NCAC 07H .0208

RECOMMENDED ACTION:

Return the rule to the agency for failure to comply with the Administrative Procedure Act

X Approve the use of "significant" or "significantly, but note staff's comment

X Object to the remaining cited passages as follows and based on:

Lack of statutory authority

X Unclear or ambiguous

Unnecessary

Failure to adopt the rule in accordance with the APA

Extend the period of review

COMMENT:

The Commissioners should not object in the following two cases. Counsel has noted why he makes this recommendation when you often would object in similar circumstances:

1.) *The use of "significant" throughout this rule is acceptable and should not be objected to.*

In (a)(2)(A) lines 17 and 18 the rule speaks to permitting a project within an AEC (Area of Environmental Concern) as long as it is "sited and designed to avoid significant adverse impacts upon [named environmental concerns]." (Emphasis added.) The use of "significant" in the same context also is found in (a)(2)(F), lines 36 and 37; (b)(1)(A) page 3 lines 10 and 11 and (C) line 18; (b)(3)(D) page 5 line 23; (b)(5)(A)(ii) page 6 lines 21 and 22; (b)(7)(B) page 11 line 2; (b)(8)(A)(v) page 12 line 3; (b)(12)(A)(i) - (iv) page 1, and perhaps in other places throughout the 17 pages of this rule.

(Note that in (b)(5)(E) page 7 and (b)(10)(D) page 14 "significant" is defined for the explicit context of existing shellfish harvesting and that this is based on federal law and would not be objectionable under any circumstances.)

"Significant" is a word we often ask agencies to "delete or define" in technical change requests because the meaning is often so uncertain and unclear. I have not done so here for three primary reasons. First, I am not certain that in this rule's context of a general rule laying out broad requirements that anyone could come up with a definition that would be more precise

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Commission Counsel

without setting bright lines – if that is even possible – that would leave no room for discretion on the permitting agency's part.

The second reason is that any uncertainty that might prevail in this case can be used by either the agency or the permit applicant to advance their position. It can be argued by either side that a particular impact is or is not "significant" and use that to justify their position. In this case it gives each side a little bit of "wiggle room" that may be necessary to make the proper ruling.

Finally this is a term used in existing language in the rule and has been approved by previous Commissions.

2.) In (b)(8)(F) page 13 lines 1 – 3 it appears that beach nourishment must be limited to one time under any permit. However if a permit is "renewed" the beach nourishment may be "repeated." I have requested a technical change to make this clear. If that is not the intent of this rule then the rule is unclear.

OBJECT:

The Commissioners should raise objections in the following cases based on the reasons set out:

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.

Although this objection applies to existing language and has been previously approved, it appears that this is probably more the result of oversight than a conscious decision by a previous Commission to approve language that the RRC normally finds objectionable.

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 whether this means a permit for a marina could be denied or restricted even though the marina meets all the rule requirements simply because there are "enough [or 'too many']" marinas given the impact of adding a new marina to the legal impacts of the existing ones. That might be a legitimate standard to use, but it needs to be made clearer.

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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AGENCY: Department of Environment and Natural Resources

RULE CITATION: 15A NCAC 28 .0301

RECOMMENDED ACTION:

- ☐ Approve, but note staff's comment
- ☒ Object, based on:
 - ☒ Lack of statutory authority
 - ☒ Unclear or ambiguous
 - ☐ Unnecessary
 - ☐ Failure to comply with the APA
- ☐ Extend the period of review

COMMENT:

It is not clear what standard 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).

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AGENCY: Department of Environment and Natural Resources

RULE CITATION: 15A NCAC 28 .0502

RECOMMENDED ACTION:

- ☐ Approve, but note staff's comment
- ☒ Object, based on:
 - ☐ Lack of statutory authority
 - ☒ Unclear or ambiguous
 - ☐ Unnecessary
 - ☐ Failure to comply with the APA
 - ☐ Extend the period of review

COMMENT:

It is not clear what standards the Divisions Director will use in approving the sale of beer and wine.

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AGENCY: Department of Environment and Natural Resources

RULE CITATION: 15A NCAC 28 .0503

RECOMMENDED ACTION:

- ☐ Approve, but note staff's comment
- ☒ Object, based on:
 - ☐ Lack of statutory authority
 - ☒ Unclear or ambiguous
 - ☐ Unnecessary
 - ☐ Failure to comply with the APA
 - ☐ Extend the period of review

COMMENT:

It is not clear what standards the Division Director will use in approving the serving and consumption of alcohol.

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AGENCY: Department of Environment and Natural Resources

RULE CITATION: 15A NCAC 28 .0602

RECOMMENDED ACTION:

- ☐ Approve, but note staff's comment
- ☒ Object, based on:
 - ☐ Lack of statutory authority
 - ☒ Unclear or ambiguous
 - ☐ Unnecessary
 - ☐ Failure to comply with the APA
- ☐ Extend the period of review

COMMENT:

It is not clear what standards the Aquarium Director will use in granting permission for the erection and display of notices and advertisements.

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AGENCY: Department of Environment and Natural Resources

RULE CITATION: 15A NCAC 28 .0603

RECOMMENDED ACTION:

- ☐ Approve, but note staff's comment
- ☒ Object, based on:
 - ☒ Lack of statutory authority
 - ☒ Unclear or ambiguous
 - ☐ Unnecessary
 - ☐ Failure to comply with the APA
- ☐ Extend the period of review

COMMENT:

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).

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AGENCY: Department of Environment and Natural Resources

RULE CITATION: 15A NCAC 28 .0604

RECOMMENDED ACTION:

- ☐ Approve, but note staff's comment
- ☒ Object, based on:
 - ☒ Lack of statutory authority
 - ☒ Unclear or ambiguous
 - ☐ Unnecessary
 - ☐ Failure to comply with the APA
- ☐ Extend the period of review

COMMENT:

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).

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AGENCY: Department of Environment and Natural Resources

RULE CITATION: 15A NCAC 28 .0605

RECOMMENDED ACTION:

- ☐ Approve, but note staff's comment
- ☒ Object, based on:
 - ☐ Lack of statutory authority
 - ☒ Unclear or ambiguous
 - ☐ Unnecessary
 - ☐ Failure to comply with the APA
 - ☐ Extend the period of review

COMMENT:

It is not clear what standards the Aquarium Director will use in granting permission to engage in fundraising activities.

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AGENCY: Department of Environment and Natural Resources

RULE CITATION: 15A NCAC 28 .0701

RECOMMENDED ACTION:

- ☐ Approve, but note staff's comment
- ☒ Object, based on:
 - ☒ Lack of statutory authority
 - ☒ Unclear or ambiguous
 - ☐ Unnecessary
 - ☐ Failure to comply with the APA
 - ☐ Extend the period of review

COMMENT:

It is not clear what standards employees or agents will use in authorizing the activities listed in this rule. The rule is a wavier provision without specific guidelines.

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AGENCY: DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

RULE CITATION: 15A NCAC 12B .0203

RECOMMENDED ACTION:

- ☐ Approve, but note staff's comment
- ☒ Object, based on:
 - ☐ Lack of statutory authority
 - ☒ Unclear or ambiguous
 - ☐ Unnecessary
 - ☐ Failure to comply with the APA
- ☐ Extend the period of review

COMMENT:

It is not clear what standards the agency will use in determining whether to grant a special activities permit.

ROBERT A. BRYAN, JR.
COMMISSION COUNSEL

RRC STAFF OPINION

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AGENCY: DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

RULE CITATION: 15A NCAC 12B .0204

RECOMMENDED ACTION:

- ☐ Approve, but note staff's comment
- ☒ Object, based on:
 - ☒ Lack of statutory authority
 - ☒ Unclear or ambiguous
 - ☐ Unnecessary
 - ☐ Failure to comply with the APA
 - ☐ Extend the period of review

COMMENT:

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.

ROBERT A. BRYAN, JR.
COMMISSION COUNSEL

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AGENCY: DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

RULE CITATION: 15A NCAC 12B .0501

RECOMMENDED ACTION:

- ☐ Approve, but note staff's comment
- ☒ Object, based on:
 - ☒ Lack of statutory authority
 - ☒ Unclear or ambiguous
 - ☐ Unnecessary
 - ☐ Failure to comply with the APA
 - ☐ Extend the period of review

COMMENT:

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.

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COMMISSION COUNSEL

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AGENCY: DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

RULE CITATION: 15A NCAC 12B .0502

RECOMMENDED ACTION:

- ☐ Approve, but note staff's comment
- ☒ Object, based on:
 - ☒ Lack of statutory authority
 - ☒ Unclear or ambiguous
 - ☐ Unnecessary
 - ☐ Failure to comply with the APA
 - ☐ Extend the period of review

COMMENT:

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.

ROBERT A. BRYAN, JR.
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AGENCY: DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

RULE CITATION: 15A NCAC 12B .0601

RECOMMENDED ACTION:

- ☐ Approve, but note staff's comment
- ☒ Object, based on:
 - ☒ Lack of statutory authority
 - ☒ Unclear or ambiguous
 - ☐ Unnecessary
 - ☐ Failure to comply with the APA
 - ☐ Extend the period of review

COMMENT:

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.

ROBERT A. BRYAN, JR.
COMMISSION COUNSEL

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AGENCY: DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

RULE CITATION: 15A NCAC 12B .0602

RECOMMENDED ACTION:

- ☐ Approve, but note staff's comment
- ☒ Object, based on:
 - ☐ Lack of statutory authority
 - ☒ Unclear or ambiguous
 - ☐ Unnecessary
 - ☐ Failure to comply with the APA
 - ☐ Extend the period of review

COMMENT:

In (e), it is not clear what is meant by permanent or semipermanent camping.

ROBERT A. BRYAN, JR.
COMMISSION COUNSEL

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AGENCY: DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

RULE CITATION: 15A NCAC 12B .0701

RECOMMENDED ACTION:

- ☐ Approve, but note staff's comment
- ☒ Object, based on:
 - ☐ Lack of statutory authority
 - ☒ Unclear or ambiguous
 - ☐ Unnecessary
 - ☐ Failure to comply with the APA
 - ☐ Extend the period of review

COMMENT:

In (a), it is not clear what standards the Department will use in granting a special activity permit.

ROBERT A. BRYAN, JR.
COMMISSION COUNSEL

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AGENCY: DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

RULE CITATION: 15A NCAC 12B .0802

RECOMMENDED ACTION:

- ☐ Approve, but note staff's comment
- ☒ Object, based on:
 - ☐ Lack of statutory authority
 - ☒ Unclear or ambiguous
 - ☐ Unnecessary
 - ☐ Failure to comply with the APA
 - ☐ Extend the period of review

COMMENT:

In (b), it is not clear what restrictions exist in addition to State laws.

ROBERT A. BRYAN, JR.
COMMISSION COUNSEL

RRC STAFF OPINION

PLEASE NOTE: THIS COMMUNICATION IS EITHER 1) ONLY THE RECOMMENDATION OF AN RRC STAFF ATTORNEY AS TO ACTION THAT THE ATTORNEY BELIEVES THE COMMISSION SHOULD TAKE ON THE CITED RULE AT ITS NEXT MEETING, OR 2) AN OPINION OF THAT ATTORNEY AS TO SOME MATTER CONCERNING THAT RULE. THE AGENCY AND MEMBERS OF THE PUBLIC ARE INVITED TO SUBMIT THEIR OWN COMMENTS AND RECOMMENDATIONS (ACCORDING TO RRC RULES) TO THE COMMISSION.

AGENCY: DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

RULE CITATION: 15A NCAC 12B .1001

RECOMMENDED ACTION:

- ☐ Approve, but note staff's comment
- ☒ Object, based on:
 - ☐ Lack of statutory authority
 - ☒ Unclear or ambiguous
 - ☐ Unnecessary
 - ☐ Failure to comply with the APA
 - ☐ Extend the period of review

COMMENT:

In (b), it is not clear what would amount to unreasonable noise.

ROBERT A. BRYAN, JR.
COMMISSION COUNSEL

RRC STAFF OPINION

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AGENCY: DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

RULE CITATION: 15A NCAC 12B .1003

RECOMMENDED ACTION:

- ☐ Approve, but note staff's comment
- ☒ Object, based on:
 - ☐ Lack of statutory authority
 - ☒ Unclear or ambiguous
 - ☐ Unnecessary
 - ☐ Failure to comply with the APA
 - ☐ Extend the period of review

COMMENT:

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.

ROBERT A. BRYAN, JR.
COMMISSION COUNSEL

RRC STAFF OPINION

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AGENCY: DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

RULE CITATION: 15A NCAC 12B .1004

RECOMMENDED ACTION:

- ☐ Approve, but note staff's comment
- ☒ Object, based on:
 - ☒ Lack of statutory authority
 - ☒ Unclear or ambiguous
 - ☐ Unnecessary
 - ☐ Failure to comply with the APA
 - ☐ Extend the period of review

COMMENT:

In (f), it is not clear when a Specialty Activity Permit will be granted. As written, this is a waiver provision without specific guidelines.

ROBERT A. BRYAN, JR.
COMMISSION COUNSEL

RRC STAFF OPINION

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AGENCY: DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

RULE CITATION: 15A NCAC 12B .1101

RECOMMENDED ACTION:

- ☐ Approve, but note staff's comment
- ☒ Object, based on:
 - ☒ Lack of statutory authority
 - ☒ Unclear or ambiguous
 - ☐ Unnecessary
 - ☐ Failure to comply with the APA
 - ☐ Extend the period of review

COMMENT:

In (a) and (b), it is not clear when a special activity permit will be granted. This is a waiver provision without specific guidelines.

ROBERT A. BRYAN, JR.
COMMISSION COUNSEL

RRC STAFF OPINION

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AGENCY: DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

RULE CITATION: 15A NCAC 12B .1105

RECOMMENDED ACTION:

- ☐ Approve, but note staff's comment
- ☒ Object, based on:
 - ☒ Lack of statutory authority
 - ☒ Unclear or ambiguous
 - ☐ Unnecessary
 - ☐ Failure to comply with the APA
 - ☐ Extend the period of review

COMMENT:

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).

ROBERT A. BRYAN, JR.
COMMISSION COUNSEL

RRC STAFF OPINION

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AGENCY: DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

RULE CITATION: 15A NCAC 12B .1201

RECOMMENDED ACTION:

- ☐ Approve, but note staff's comment
- ☒ Object, based on:
 - ☒ Lack of statutory authority
 - ☒ Unclear or ambiguous
 - ☐ Unnecessary
 - ☐ Failure to comply with the APA
 - ☐ Extend the period of review

COMMENT:

In (a), it is not clear when a permit will be granted. This provision is a waiver without specific guidelines.

ROBERT A. BRYAN, JR.
COMMISSION COUNSEL

RRC STAFF OPINION

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AGENCY: DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

RULE CITATION: 15A NCAC 12B .1205

RECOMMENDED ACTION:

- ☐ Approve, but note staff's comment
- ☒ Object, based on:
 - ☒ Lack of statutory authority
 - ☒ Unclear or ambiguous
 - ☐ Unnecessary
 - ☐ Failure to comply with the APA
 - ☐ Extend the period of review

COMMENT:

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).

ROBERT A. BRYAN, JR.
COMMISSION COUNSEL

RRC STAFF OPINION

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AGENCY: DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

RULE CITATION: 15A NCAC 12B .1206

RECOMMENDED ACTION:

- ☐ Approve, but note staff's comment
- ☒ Object, based on:
 - ☒ Lack of statutory authority
 - ☒ Unclear or ambiguous
 - ☐ Unnecessary
 - ☐ Failure to comply with the APA
 - ☐ Extend the period of review

COMMENT:

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.

ROBERT A. BRYAN, JR.
COMMISSION COUNSEL

RRC STAFF OPINION

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AGENCY: DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

RULE CITATION: 15A NCAC 12A .0105

RECOMMENDED ACTION:

- ☐ Approve, but note staff's comment
- ☒ Object, based on:
 - ☐ Lack of statutory authority
 - ☒ Unclear or ambiguous
 - ☐ Unnecessary
 - ☐ Failure to comply with the APA
 - ☐ Extend the period of review

COMMENT:

It is not clear that all the terms in this Chapter that need defining are defined in this rule.

ROBERT A. BRYAN, JR.
COMMISSION COUNSEL

RRC STAFF OPINION

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AGENCY: DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

RULE CITATION: 15A NCAC 12B .0104

RECOMMENDED ACTION:

- ☐ Approve, but note staff's comment
- ☒ Object, based on:
 - ☐ Lack of statutory authority
 - ☒ Unclear or ambiguous
 - ☐ Unnecessary
 - ☐ Failure to comply with the APA
 - ☐ Extend the period of review

COMMENT:

It is not clear what standards the agency will use in granting permits pursuant to this Chapter.

ROBERT A. BRYAN, JR.
COMMISSION COUNSEL

RRC STAFF OPINION

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AGENCY: LICENSING BOARD FOR GENERAL CONTRACTORS

RULE CITATION: 21 NCAC 12 .0208

RECOMMENDED ACTION:

- ☐ Approve, but note staff's comment
- ☒ Object, based on:
 - ☒ Lack of statutory authority
 - ☐ Unclear or ambiguous
 - ☐ Unnecessary
 - ☐ Failure to comply with the APA
- ☐ Extend the period of review

COMMENT:

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.

ROBERT A. BRYAN, JR.
COMMISSION COUNSEL

Chapter 87.

Contractors.

Article 1.

General Contractors.

§ 87-1. "General contractor" defined; exceptions.

For the purpose of this Article any person or firm or corporation who for a fixed price, commission, fee, or wage, undertakes to bid upon or to construct or who undertakes to superintend or manage, on his own behalf or for any person, firm, or corporation that is not licensed as a general contractor pursuant to this Article, the construction of any building, highway, public utilities, grading or any improvement or structure where the cost of the undertaking is thirty thousand dollars (\$30,000) or more, or undertakes to erect a North Carolina labeled manufactured modular building meeting the North Carolina State Building Code, shall be deemed to be a "general contractor" engaged in the business of general contracting in the State of North Carolina.

This section shall not apply to persons or firms or corporations furnishing or erecting industrial equipment, power plant equipment, radial brick chimneys, and monuments.

This section shall not apply to any person or firm or corporation who constructs or alters a building on land owned by that person, firm or corporation provided such building is intended solely for occupancy by that person and his family, firm, or corporation after completion; and provided further that, if such building is not occupied solely by such person and his family, firm, or corporation for at least 12 months following completion, it shall be presumed that the person, firm, or corporation did not intend such building solely for occupancy by that person and his family, firm, or corporation.

This section shall not apply to any person engaged in the business of farming who constructs or alters a building on land owned by that person and used in the business of farming, when such building is intended for use by that person after completion. (1925, c. 318, s. 1; 1931, c. 62, s. 1; 1937, c. 429, s. 1; 1949, c. 936; 1953, c. 810; 1971, c. 246, s. 1; 1975, c. 279, s. 1; 1981, c. 783, s. 1; 1989, c. 109, s. 1; c. 653, s. 1; 1991 (Reg. Sess., 1992), c. 840, s. 1.)

§ 87-4. First meeting of Board; officers; secretary-treasurer and assistants.

The said Board shall, within 30 days after its appointment by the Governor, meet in the City of Raleigh, at a time and place to be designated by the Governor, and organize by electing a chairman, a vice-chairman, and a secretary-treasurer, each to serve for one year. Said Board shall have power to make such bylaws, rules and regulations as it shall deem best, provided the same are not in conflict with the laws of North Carolina. The secretary-treasurer shall give bond in such sum as the Board shall determine, with such security as shall be approved by the Board, said bond to be conditioned for the faithful performance of the duties of his office and for the faithful accounting of all moneys and other property as shall come into his hands. The secretary-treasurer need not be a member of the Board, and the Board is hereby authorized to employ a full-time secretary- treasurer, and such other assistants and make such other expenditures as may be necessary to the proper carrying out of the provisions of this Article. Payment of compensation and reimbursement of expenses of board members shall be governed by G.S. 93B-5. (1925, c. 318, s. 4; 1941, c. 257, s. 4; 1947, c. 611; 1951, c. 453; 1979, c. 713, s. 6.)

RRC STAFF OPINION

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AGENCY: N.C. BOARD OF COMMUNITY COLLEGES

RULE CITATION: 23 NCAC 02C .0305

RECOMMENDED ACTION:

- ☐ Approve, but note staff's comment
- ☒ Object, based on:
 - ☒ Lack of statutory authority
 - ☒ Unclear or ambiguous
 - ☒ Unnecessary
 - ☐ Failure to adopt the rule in accordance with the APA
- ☐ Extend the period of review
- ☐ Return the rule to the agency for failure to comply with the Administrative Procedure Act

COMMENT:

The statement or requirement in (a) is unclear and unnecessary.

It is unclear what is meant by "shall encourage" and what is required by it, what obligation exists for the state board to fulfill this rule. To the extent that it is a statement of good intentions then it is unnecessary.

There is no authority cited for the provision in (f)(3)(G) requiring a nonpublic school student to be subject to additional terms of enrollment than for public school students. In other words there is no authority cited for why a nonpublic school student must wait for all spaces available to be taken by public school students before the nonpublic school student can take that available space.

In (f)(5)(B) the rule provides that a community college "may" seek reimbursement from the state Department of Public Instruction for certain expenses. It is unclear whether this rule is intending to require DPI to make those reimbursements and if so what conditions would determine whether they are made. There is no authority cited for requiring DPI to make any reimbursements.

Joseph J. DeLuca, Jr.
Commission Counsel